Stephen F. Austin State University

MINUTES OF THE BOARD OF REGENTS

Austin, Texas

January 22, 1991
Volume 103
# INDEX

Minutes of the Meeting  
Board of Regents  
Stephen F. Austin State University  
Held at Austin, Texas  
January 22, 1991

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<th>Approval of Minutes of October 16, 1990</th>
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<tr>
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</table>
The meeting was called to order by Mrs. Peggy Wedgeworth Wright, Chairman of the Board of Regents, at 9:30 a.m., Tuesday, January 22, 1991, at the Four Seasons Hotel, Austin, Texas.

REGENTS

PRESENT: Senator Roy M. Blake of Nacogdoches
Mr. Homer Bryce of Henderson
Mr. Larry J. Christopher of Crockett
Mr. Dan Haynes of Bullard
Mr. Richard Hile of Jasper
Mr. Kelly Jones of Arlington
Mr. Wayne Salvant of Fort Worth
Mr. James M. Windham, Jr. of Houston
Mrs. Peggy Wedgeworth Wright of Nacogdoches

STAFF

PRESENT: Dr. Donald E. Bowen, President
Mr. Scott Chafin, General Counsel
Mr. Don L. Henry, Vice President for Administrative and Fiscal Affairs
Dr. Baker Pattillo, Vice President for University Affairs
Dr. James V. Reese, Vice President for Academic Affairs
Dr. Nancy Speck, Vice President for University Advancement
Ms. Lucy Stringer, Assistant to the President and Editor of University Publications
MINUTES OF THE MEETING
BOARD OF REGENTS
STEPHEN F. AUSTIN STATE UNIVERSITY

January 22, 1991

91-28
Upon motion of Regent Christopher, seconded by Regent Salvant, with all members voting aye, it was ordered that the minutes of the meeting of the Board of Regents dated October 16, 1990, be approved.

91-29
Upon motion of Regent Salvant, seconded by Regent Hile, with all members voting aye, it was ordered that the following faculty and staff appointments for 1990-91 be approved.

1. Communication

Ms. Martha Jean Fisher, Part-time Instructor, at a salary of $1,750 for 25% time for the spring semester, 1991.

2. Counseling and Special Educational Programs

Ms. Suzanne A. Herman, Lecturer, M.Ed. (Stephen F. Austin State University), at a salary of $1,500 for 25% time for the fall semester, 1990.

Dr. Newell G. Holland, Lecturer, at a salary of $4,000 for 50% time for three months, effective October 1, 1990.

Ms. Sandra Hull, Part-time Instructor, at a salary of $1,500 for 25% time for three months, effective October 1, 1990.

Dr. Jack L. Spurrier, Part-time Professor, at a salary of $18,346 for 50% time for the fall semester, 1990.

Mr. Clois L. Walker, Part-time Instructor, at a salary of $1,000 for 25% time for three months, effective October 1, 1990.

3. Elementary Education

Ms. Elizabeth Bettye Alexander, Part-time Instructor, M.Ed. (Stephen F. Austin State University), at a salary of $2,000 for 50% time for the fall semester, 1990.
Ms. Marilyn Joyce Barton, Part-time Instructor, at a salary of $2,000 for 50% time for the fall semester, 1990.

Ms. Becky S. Griffith, Part-time Instructor, at a salary of $1,500 for 25% time for the fall semester, 1990.

Ms. Mildred Faye Heil, Part-time Instructor, M.Ed. (Stephen F. Austin State University), at a salary of $1,500 for 25% time for the fall semester, 1990.

Mr. Clois L. Walker, Part-time Instructor, at a salary of $1,000 for 25% time for the fall semester, 1990.

Ms. Leta Ann Weaver, Part-time Instructor, at a salary of $2,000 for 50% time for the fall semester, 1990.

4. English and Philosophy

Mr. Rufus Jeff Banks, Part-time Associate Professor, at a salary of $14,296 for 50% time for nine months, effective fall semester, 1990.

Dr. Neal B. Houston, Part-time Professor, at a salary of $21,268 for 50% time for nine months, effective fall semester, 1990.

Ms. Debbie Vint-Miller, Lecturer, at a salary of $7,000 for 100% time for the fall semester, 1990.

5. Kinesiology and Health Science

Mr. William David Campbell, Part-time Instructor, at a salary of $4,000 for 25% time for the fall semester, 1990.

Mr. Emil R. Slovacek, Part-time Lecturer, M.Ed. (Stephen F. Austin State University), at a salary of $3,000 for 50% time for the fall semester, 1990.

6. Mathematics and Statistics

Mr. John Michael Garner, Part-time Instructor, M.S. (Texas A&M University), at a salary of $3,700 for 50% time for the fall semester, 1990.

7. Nursing

Ms. Laura Kay Bilderback, Instructor, M.S.N. (University of Texas at Arlington), at a salary of $15,000 for 100% time for the fall semester, 1990.
Ms. Cynthia Anne McCarley, Lecturer, B.S.N. (Northwestern State University), at a salary of $7,500 for 50% time for the fall semester, 1990.

Ms. Nancy Jean Smith-Blair, Part-time Instructor, at a salary of $2,950 for 25% time for the fall semester, 1990.

8. Political Science and Geography

Dr. Joseph E. Fults, Lecturer, at a salary of $7,500 for 100% time for the spring semester, 1991.

Dr. Robert E. Norris, Lecturer, at a salary of $1,750 for 25% time for the spring semester, 1991.

9. Theatre

Ms. Gem Holt Roberson, Part-time Lecturer, at a salary of $1,500 for 25% time for the fall semester, 1990.

10. Secondary Education

Dr. Billy R. Bowman, Part-time Instructor, at a salary of $2,000 for 25% time for the spring semester, 1991.

Dr. Allan Gordon Cannon, Part-time Instructor, at a salary of $4,000 for 50% time for the spring semester, 1991.

Dr. Harold G. Hill, Part-time Professor, at a salary of $10,552 for 50% time for three months, effective February 1, 1991.

Dr. Darryl L. Morris, Part-time Instructor, at a salary of $2,000 for 25% time for the spring semester, 1991.

Dr. Hugh Douglas Prewitt, Part-time Professor, at a salary of $10,726 for 50% time for three months, effective February 1, 1991.

Mr. Malcolm N. Rector, Part-time Instructor, at a salary of $4,000 for 50% time for the spring semester, 1991.

Mr. Morris Edward Smith, Lecturer, at a salary of $4,000 for 100% time for the spring semester, 1991.
11. Administrative and Fiscal Affairs

Ms. Dianna Lynne Richards, Accounting Clerk III, at a salary of $11,773 for 100% time for twelve months, effective November 16, 1990.

12. University Affairs

Mr. David Batson, Athletic Certification Officer, at a salary of $15,000 for twelve months, effective September 24, 1990.

Mr. David Meyers, Assistant Sports Information Director and Staff Writer, at a salary of $18,885 for twelve months, effective September 24, 1990.

Mr. Lynn Graves, Head Football Coach, at a salary of $60,500 for twelve months, effective January 1, 1991.

Mr. Phillip Bounds, Assistant Football Coach and Part-time Instructor of Kinesiology and Health Science, at a salary of $40,000 for ten and one-half months, effective January 1, 1991.

Mr. Denzil Cox, Assistant Football Coach and Part-time Instructor of Kinesiology and Health Science, at a salary of $35,000 for ten and one-half months, effective January 1, 1991.

Mr. Dorn Spencer Leftwich, Assistant Football Coach and Part-time Instructor of Kinesiology and Health Science, at a salary of $28,000 for ten and one-half months, effective January 1, 1991.

Mr. Mike Major, Assistant Football Coach and Part-time Instructor of Kinesiology and Health Science, at a salary of $35,000 for ten and one-half months, effective January 1, 1991.

Mr. Bradley Peveto, Assistant Football Coach and Part-time Instructor of Kinesiology and Health Science, at a salary of $30,000 for ten and one-half months, effective January 1, 1991.

Mr. Zane Zamenski, Assistant Football Coach and Part-time Instructor of Kinesiology and Health Science, at a salary of $40,000 for ten and one-half months, effective January 1, 1991.

Upon motion of Regent Bryce, seconded by Regent Jones, with all members voting aye, it was ordered that the following changes of status for 1990-91 be approved.
1. Communication

Dr. Jennie C. Casey, from Part-time Lecturer at a salary of $6,000 for 75% time, to Lecturer at a salary of $7,250 for 100% time for the fall semester, effective November 12, 1990. This is to replace a faculty member who is ill.

Mr. Gary R. Walters, Part-time Lecturer, from a salary of $1,750 for 25% time, to a salary of $2,844 for 75% time for the fall semester, effective November 12, 1990. This is to replace a faculty member who is ill.

2. Elementary Education

Ms. Wynter Chauvin, Part-time Instructor, from a salary of $3,000 for 50% time, to a salary of $4,500 for 75% time for the fall semester, 1990.

Dr. Mary Ella Lowe, Associate Professor, an additional $1,000 for teaching an overload the fall semester, 1990.

Dr. Leah Susan Smith, Assistant Professor, an additional $1,000 for teaching an overload the fall semester, 1990.

Dr. Robert Frank Smith, Professor, an additional $1,000 for teaching an overload the fall semester, 1990.

Dr. Elizabeth J. Vaughan, Associate Professor, an additional $1,000 for teaching an overload the fall semester, 1990.

3. Secondary Education

Dr. Jose A. Rodriguez, from Professor to Professor and Title VII Director, at a salary of $35,805 for 100% time (50% time each) for nine months, effective spring semester, 1991.

4. Social Work

Mr. Arlyn D. Vierkant, Part-time Instructor, an additional $500 for teaching a combined class.

5. University Advancement

Ms. Sue Zienko, from Senior Secretary at a salary of $11,212 to Programs Coordinator at a salary of $12,333, effective September 7, 1990.
6. Alumni Association

Ms. Betty Ford, from Administrative secretary at a salary of $20,364 to Assistant to the Director of the Alumni Association at a salary of $21,860, effective October 31, 1990.

91-31
Upon motion of Regent Windham, seconded by Regent Christopher, with all members voting aye, it was ordered that the following retirements be accepted.

1. Administrative Services

Mrs. Jean Rudisill, Assistant Professor, effective December 31, 1990.

2. Secondary Education

Dr. Harold Gene Hill, Professor, effective December 31, 1990.

Dr. Hugh Douglas Prewitt, Professor, effective December 31, 1990.

91-32
Upon motion of Regent Jones, seconded by Regent Salvant, with all members voting aye, it was ordered that the Last Class Day Report for the fall semester, 1990, be approved as presented.

91-33
Upon motion of Regent Jones, seconded by Regent Salvant, with all members voting aye, it was ordered that the Chairman of the Board be authorized to approve the Underenrolled Class Report for the spring semester, 1991.

91-34
Upon motion of Regent Jones, seconded by Regent Salvant, with all members voting aye, it was ordered that the Chairman of the Board be authorized to approve the Twelfth Class Day Report for the spring semester, 1991.

91-35
Upon motion of Regent Hile, seconded by Regent Windham, with all members voting aye, it was ordered that the closing transfers for FY 1990 be approved as presented on page 9.
91-36
Upon motion of Regent Bryce, seconded by Regent Salvant, with all members voting aye, it was ordered that the financial certification as presented below be approved.

In accordance with the request of the Board of Regents, the President and Vice President for Administrative and Fiscal Affairs certify to the best of their knowledge and belief that:

1. All accounting reports submitted to the Board of Regents contain information resulting from procedures that are in compliance with state law and regulations and are correct.

2. All funds are on deposit with approved depositories as authorized by the Board of Regents at the July 10, 1990, meeting.

91-37
Upon motion of Regent Christopher, seconded by Regent Haynes, with all members voting aye, it was ordered that the food service contract with ARASERVE, which reflects a rate increase of 10% beginning with the Fall 1991-1992 semester, be approved and that the President be authorized to sign the contract. Upon signature of the President, the contract will become a part of these minutes and will be added accordingly.

91-38
Upon motion of Regent Blake, seconded by Regent Jones, with all members voting aye, it was ordered that a computer access fee be established by the authority provided in Section 54.504 of the Texas Education Code at a rate of $3.00 per student credit hour not to exceed $36.00 per regular semester and $18.00 per summer term and that the rate increase be effective beginning with fall semester, 1991.

91-39
Upon motion of Regent Hile, seconded by Regent Blake, with Regent Bryce abstaining, it was ordered that the University financial advisor and bond counsel be authorized to prepare documents for the refinancing of the bonded indebtedness of the University, and that the administration seek approval from the Texas Bond Review Board for the issue. It was further ordered that bids be accepted for refinancing of existing bond issues; that an additional $1,200,000 be issued, the proceeds of which shall be used to renovate Gibbs Hall; and that the administration seek preparation of plans and specifications
for such project to be submitted to the Board of Regents at its next scheduled meeting.

91-40
Upon motion of Regent Blake, seconded by Regent Salvant, with all members voting aye, it was ordered that the administration be authorized to secure a lease purchase agreement with Quine and Associates, Inc., for the property located at 1112 North Street, to secure approval from the State Purchasing and General Services Commission for the lease agreement, to secure appraisals and seek approval from the Texas Higher Education Coordinating Board for the purchase of the property, and that the Chairman of the Board be authorized to sign the necessary documents. (See page 11.)

91-41
Upon motion of Regent Bryce, seconded by Regent Blake, with all members voting aye, it was ordered that Regent Kelly Jones be elected Chairman, Regent Larry Christopher be elected Vice Chairman, and Mr. Don L. Henry be elected Secretary to the Board of Regents of Stephen F. Austin State University.
## SCHEDULE A-3

### SCHEDULE OF LEGISLATIVE APPROPRIATIONS

For the Year Ended August 31, 1990

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<th>Appropriation Adjustments</th>
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<th>Net Appropriations</th>
<th>Disbursements</th>
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<th>Appropriation Balances Aug. 31, 1990</th>
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| Appropriation Balances | 16,015.25 | 350,831.27 | 16,015.25 | 350,831.27 | 1,708.49 | 1,708.49 | 1,066,426.83 | 1,066,426.83 | 56,513.47 | 56,513.47 | 1,017,755.33 | 1,017,755.33 | 101,785.33 | 101,785.33 | 267,593.73 | 267,593.73 | 751.38 | 751.38 | 1,915,331.00 | 1,915,331.00 | 17,237,713.00 | 17,237,713.00 | 3,055,636.00 | 3,055,636.00 | 964,329.00 | 964,329.00 | 2,441,475.00 | 2,441,475.00 | 5,283,540.00 | 5,283,540.00 | 400,000.00 | 400,000.00 | 19,713.00 | 19,713.00 | 46,487.00 | 46,487.00 | 234,000.00 | 234,000.00 | 50,000.00 | 50,000.00 | 75,399.00 | 75,399.00 | 455,312.00 | 455,312.00 | 1,115,274.00 | 1,115,274.00 | 1,167,178.00 | 1,167,178.00 | 3,132.00 | 3,132.00 | 15,059.32 | 15,059.32 | 228,060.00 | 228,060.00 | 2,014,225.97 | 2,014,225.97 | 154,023.39 | 154,023.39 | 9,087.59 | 9,087.59 | 2,484,451.60 | 2,484,451.60 | 1,533,047.84 | 1,533,047.84 | 37,840,590.55 | 37,840,590.55 | 1,824,637.00 | 1,824,637.00 | 5,924,655.00 | 5,924,655.00 | 224,000.00 | 224,000.00 | 35,039,632.99 | 35,039,632.99 | 35,201,156.57 | 35,201,156.57 | 1,838,471.82 | 1,838,471.82 |

**UNAUDITED**
## STEPHEN F. AUSTIN STATE UNIVERSITY
### SCHEDULE A-3
### SCHEDULE OF LEGISLATIVE APPROPRIATIONS
### For the Year Ended August 31, 1990

**UNAUDITED**

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<td>2,114,098.24</td>
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<td>Special Items:</td>
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<td>Stone Fort Museum</td>
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<td>Social Security Matching</td>
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<td>Operation and Maintenance of</td>
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<td>Stephen F. Austin State Univ.</td>
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<td>Total Current Fund 261</td>
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<td>1,534,024.53</td>
<td>(1,623,210.90)</td>
<td>476,114.18</td>
<td>(1,198,416.44)</td>
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<td>Special Mineral Fund 241</td>
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<td>Stephen F. Austin State Univ.</td>
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<td>Total Special Mineral Fund 241</td>
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### UNEXPENDED PLANT FUNDS

#### H.E.A.F
- Proposition 2
- Fiscal Year 1988
- Fiscal Year 1989
- Fiscal Year 1990

<table>
<thead>
<tr>
<th>Appropriation Balances</th>
<th>Appropriations</th>
<th>Unexpended Plant Funds</th>
<th>Total Appropriations</th>
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<td>6,325,265.64</td>
<td>(114.83)</td>
<td>3,679,226.00</td>
<td>2,999,845.17</td>
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<td>3,679,226.00</td>
<td>(114.83)</td>
<td>3,000,000.00</td>
<td>3,252,380.47</td>
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<td>420,625.15</td>
<td>734,651.04</td>
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<tr>
<td>$11,107,025.78</td>
<td>$37,840,598.55</td>
<td>$2,999,845.17</td>
<td>$2,999,845.17</td>
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### Appropriation Adjustments Consist of:
- Actual Revenue over Amount Estimated
- FY 1991 Deferred Income Deposited Before 8-31-90 and Included in Ending Balance
- FY 1990 Deferred Income Deposited Before 8-31-89 and Included in Beginning Balance
- Higher Education Assist. Funds (Prop 2)
- E & G Funds
- Uncapped Plant Funds
- Remedial Education Coordinating Board Insurance Supplement

<table>
<thead>
<tr>
<th>Appropriation Adjustments</th>
<th>1,480,750.58</th>
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</thead>
<tbody>
<tr>
<td>Appropriation Adjustments</td>
<td>1,480,750.58</td>
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</tbody>
</table>
SHOPPING CENTER LEASE

This lease is entered into as of the 1st day of June, 1991, by and between the Landlord and the Tenant hereinafter named.

DEFINITIONS AND CERTAIN BASIC PROVISIONS

ARTICLE I.

1.1 (a) "Landlord": TRI-STATE COMMERCIAL ASSOCIATES, a Texas joint venture

(b) Landlord's address: P.O. Box 833009, Richardson, TX 75083-3009

(c) "Tenant": Stephen F. Austin State University ("University")

(d) Tenant's address: P. O. Box 6078 SFA Station, Nacogdoches, TX 75962-6078

(e) Tenant's trade name: Stephen F. Austin State University

(f) "Agent": Quine & Associates, Inc.

(g) "Cooperating Agent": Lee Danis & Associates

(h) "Demised Premises": in Tri-State $156 Shopping Center (herein referred to as the "Shopping Center") in the City of Nacogdoches, Nacogdoches County, Texas, a store unit approximately 24,946 square feet in area, being approximately irregular (measured to the exterior of outside walls and to the center of interior walls), said premises known as 1112 North Street, Nacogdoches, TX, and being outlined in red on the plot plan attached hereto and made a part hereof. Exhibit "A".

(i) Lease term: Commencing on the 1st day of June, 1991 except as may be modified by exhibits which will be attached to this lease if a building is to be constructed for Tenant (the "Commencement Date") and continuing for Ten (10) years and -0- months; provided that if the Commencement Date is a date other than the first day of a calendar month, the lease term shall be extended for said number of years and months in addition to the remainder of the calendar month following the Commencement Date.

(j) Minimum guaranteed rental: $SEE PAGE 1A per month, payable in advance.

(k) Percentage rental rate: -0- % monthly.

(l) Common area maintenance charge: A minimum of $ ** 1990 Base Year as further defined in this Lease.

Initials: _______ Tenant _______ Tenant _______ Landlord

Page 1
1.1 (j) CONTINUED:

$4,157.66 per month, payable in advance for months 1 through 24.

$4,282.30 per month, payable in advance for months 25 through 36.

$4,410.85 per month, payable in advance for months 37 through 48.

$4,543.17 per month, payable in advance for months 49 through 60.

$4,679.46 per month, payable in advance for months 61 through 72.

$4,819.84 per month, payable in advance for months 73 through 84.

$4,964.43 per month, payable in advance for months 85 through 96.

$5,113.36 per month, payable in advance for months 97 through 108.

$5,266.76 per month, payable in advance for months 109 through 120.

Initials: Tenant ___, Tenant ___ , Landlord ___
13

Prepaid rental: $4,157.66, being rent for the first month(s) of the lease term.

Security deposit: $None

Permitted use: Office and maintenance facility of the University and no other use

1.2 Each of the foregoing definitions and basic provisions shall be construed in conjunction with and limited by the references thereto in the other provisions of this lease.

GRANTING CLAUSE

ARTICLE II. 2.1 In consideration of the obligation of Tenant to pay rent as herein provided and in consideration of the other terms, covenants and conditions hereof, Landlord hereby demises and leases to Tenant, and Tenant hereby takes from Landlord, the Demised Premises as described in Section 1.1 (h), TO HAVE AND TO HOLD said premises for the lease term specified in Section 1.1 (i), all upon the terms and conditions set forth in this lease. Landlord further agrees that if Tenant shall perform all of the covenants and agreements herein required to be performed by Tenant, Tenant shall, subject to the terms of quiet possession of the Demised Premises. (See NOTE below.)

* NOTE: If this lease provides for construction prior to occupancy, refer to the appropriate exhibits attached hereto. In such case Article II above shall be deemed modified to the extent inconsistent with such exhibits.

ARTICLE III. 3.1 By occupying the Demised Premises, Tenant shall be deemed to have accepted the same and to have acknowledged that the same comply fully with Landlord's covenants and obligations hereunder.

CONSTRUCTION AND ACCEPTANCE OF PREMISES

3.2 If this lease is executed before the Demised Premises become vacant or if any present tenant or occupant of the premises holds over, and Landlord cannot acquire possession of the Demised Premises prior to the Commencement Date of this lease as above defined, Landlord shall not be deemed to be in default hereunder, and Tenant agrees to accept possession of the Demised Premises at such time as Landlord is able to tender the same. Landlord hereby waives the payment of rent covering any period prior to tender of possession to Tenant hereunder.

3.3 Landlord and Tenant each agree that at the request of either they will execute and deliver a short form lease in recordable form containing the basic provision of this agreement acknowledging that Tenant has accepted possession and reciting the exact Commencement Date and termination date of this lease.

RENT

ARTICLE IV. 4.1 Rental shall accrue hereunder from the Commencement Date, and shall be payable to Landlord in care of Agent at the address specified in Section 1.1 (b) above.

4.2 Tenant shall pay to Landlord minimum guaranteed rental in monthly installments in the amounts specified in Section 1.1 (j) above. The first such monthly installment shall be due and payable on or before the Commencement Date, and subsequent installments shall be due and payable on or before the first day of each succeeding calendar month during the hereby demised term; provided that there shall be due and payable on or before such date as minimum guaranteed rental for the balance of such calendar month a sum equal to that proportion of the number of days from the Commencement Date to the end of the calendar month in such month.

Initials: Tenant L.W., Tenant M.D., Landlord

Page 2
4.3 In addition to the minimum guaranteed rental, Tenant shall also pay to Landlord, for each year during the term of this lease, percentage rental determined by (i) multiplying the total gross sales made in or from the Demised Premises during the particular calendar year by the percentage rental rate specified in Section 7.1 (k) above and then (ii) subtracting from the product thus obtained the minimum guaranteed rental actually paid by Tenant to Landlord for such calendar year. The percentage rental shall be paid in monthly installments as follows: On or before the 10th day of each calendar month during the term of this lease Tenant shall pay to Landlord, after deducting therefrom the minimum guaranteed rental paid for the preceding calendar month, a sum of money equal to the product of the percentage rental rate specified multiplied by the total gross sales made in or from the Demised Premises during such month. In the event that the total of the monthly payments of percentage rentals for any calendar year is not equal to the annual percentage rental computed on the amount of gross sales for such calendar year in accordance with the specified rate, then Tenant shall pay to Landlord any deficiency or Landlord shall refund to Tenant any overpayment, as the case may be, within sixty days after the end of such calendar year. In no event shall the rent to be paid by Tenant and retained by Landlord for any calendar year be less than the annual minimum guaranteed rental herein specified.

4.4 If this lease should commence on a date other than the first day of a calendar year or terminate on a date other than the last day of a calendar year, percentage rental for such fractional part of the calendar year following the Commencement Date or preceding the termination date, as the case may be, shall be paid at the specified rate for all sales made during such fractional calendar year, after deducting from such percentage rental all payments of minimum guaranteed rentals for such fractional period, such percentage rental to be paid in monthly installments as provided above with respect to full calendar years.

4.5 The term "gross sales" as used herein shall be construed to include the entire amount of the sales price, whether for cash or otherwise, of all sales of merchandise (including gift and merchandise certificates), services and other receipts whatsoever of all business conducted in or from the Demised Premises, including mail or telephone orders received or filled at the Demised Premises, deposits not refunded to purchasers, orders taken, although said orders may be filled elsewhere, sales to employees, sales through vending machines or other devices, and sales by any sublessee, concessionaire or licensee or otherwise in said premises. Each sale made upon installment or credit shall be treated as a sale for the full price in the month during which such sale was made, irrespective of the time when Tenant receives payment from its customer. No deduction shall be allowed for uncollected or uncollectible credit accounts. Gross sales shall not include, however, any sums collected and paid out for any sales or excise tax imposed by any duly constituted governmental authority, nor shall it include the exchange of merchandise between the stores of Tenant, if any, where such exchanges are made solely for the convenience of the business of Tenant and not for the purpose of consumating a sale which has heretofore been made in or from the Demised Premises, nor for depriving Landlord of the benefit of a sale which otherwise would be made in or from the Demised Premises, nor the amount of returns to shippers or manufacturers, nor the amount of any cash or credit refund made upon any sale where the merchandise sold, or some part thereof is thereafter returned by purchaser and accepted by Tenant, nor sales of Tenant's fixtures.

4.6 It is understood that the minimum guaranteed rental is payable on or before the first day of the month (in accordance with Section 4.2 above) and percentage rental, if any, is payable on or before the 5th day of each calendar month, without offset or deduction of any nature. In the event any rental is not received within 5 days after its due date for any reason whatsoever, there will be a $25.00 penalty on the 6th day, and an additional $10.00 per day penalty, thereafter, until paid.

4.7 If Tenant fails in two consecutive months to make rental payments within five days after due, Landlord, in order to reduce its administrative costs, may require, by giving written notice to Tenant (and in addition to any penalty accruing pursuant to Section 4.6 above, as well as any other rights and remedies accruing pursuant to Article XIX or Article XX below, or any other term, provision or covenant of this lease), that minimum guaranteed rentals are to be paid quarterly in advance instead of monthly and that all future rental payments are to be made on or before the due date by cash, cashier's check, or

Initials: Tenant Tenant Landlord

Page 3
money order, and that the delivery of Tenant's personal or corporate check will no longer constitute a payment of rental as provided in this lease. Any acceptance of a monthly rental payment or of a personal or corporate check thereafter by Landlord shall not be construed as a subsequent waiver of said rights.

SALES REPORTS AND RECORDS

ARTICLE V. 5.1—On or before the 5th day of each calendar month during the term of this lease, Tenant shall prepare and deliver to Landlord at the place where rental is then payable a certified statement of gross sales made during the preceding calendar month. In addition, within sixty days after the expiration of each calendar year and within sixty days after the termination of this lease if this lease should not terminate at the end of a calendar year, Tenant shall prepare and deliver to Landlord at the place where rental is then payable a statement of gross sales during the preceding calendar year (or partial calendar year), certified to be correct by an Independent Certified Public Accountant. Tenant shall furnish similar statements for its licensees, concessionaires and subtenants, if any. All such statements shall be in such form as the Landlord may require.

5.2 Tenant shall keep in the Demised Premises or at some other location in the city where the premises are located a permanent, accurate set of books and records of all sales of merchandise and revenue derived from business conducted in the Demised Premises, and all supporting records such as tax reports and banking records. All such books and records shall be retained and preserved for at least twenty-four (24) months after the end of the calendar year to which they relate, and shall be subject to inspection and audit by Landlord and its agents at all reasonable times.

5.3 In the event Landlord is not satisfied with the statements of gross sales submitted by Tenant, Landlord shall have the right to have its auditors make a special audit of all books and records, wherever located, pertaining to sales made in or from the Demised Premises. If such statements are found to be incorrect to an extent of more than two per cent over the figures submitted by Tenant, Tenant shall pay for such audit. Tenant shall promptly pay to Landlord any deficiency or Landlord shall promptly refund to Tenant any overpayment, as the case may be, which is established by such audit.

COMMON AREAS

ARTICLE VI. 6.1 The term "Common Area" is defined for all purposes of this lease as that part of the Shopping Center intended for the common use of all tenants, including among other facilities (as such may be applicable to the Shopping Center) parking area, private streets and alleys, landscaping, curbs, loading area, sidewalks, malls and promenades (enclosed or otherwise), lighting facilities, drinking fountains, meeting rooms, public toilets, and the like but excluding space in buildings (now or hereafter existing) designed for rental for commercial purposes, as the same may exist from time to time and further excluding streets and alleys maintained by a public authority. Landlord reserves the right to change from time to time the dimensions and location of the Common Area, as well as the dimensions, identity and type of any buildings in the Shopping Center. Tenant, and its employees and customers, and when duly authorized pursuant to the provisions of this lease, its subtenants, licensees and concessionaires shall have the non-exclusive right to use the Common Area as constituted from time to time, such use to be in common with Landlord, other tenants to the Shopping Center and other persons permitted by Landlord to use the same, and subject to such reasonable rules and regulations governing use as Landlord may from time to time prescribe, including the designation of specific areas within the Shopping Center or in reasonable proximity thereto in which automobiles owned by Tenant, its employees, subtenants, licensees and concessionaires shall be parked. In this regard, Tenant shall furnish to Landlord upon request a complete list of license numbers of all automobiles operated by Tenant, its employees, subtenants, licensees or concessionaires, and Tenant agrees that if any automobile or other vehicles owned by Tenant or any of its employees, subtenants, licensees or concessionaires shall at any time be parked in any part of the Shopping Center other than the specified areas designated for employee parking, Tenant shall pay to Landlord as additional rent upon demand an amount equal to the daily rate or charge for such parking as

Initials:  
Tenant  
Landlord
established by Landlord from time to time for each day, or part thereof, such automobile or other vehicle is so parked. Tenant shall not solicit business within the Common Area or take any action which would interfere with the rights of other persons to use the Common Area. Landlord may temporarily close any part of the Common Area for such periods of time as may be necessary to make repairs or alterations or to prevent the public from obtaining prescriptive rights.

6.2 Landlord may from time to time substitute for any parking area other areas reasonably accessible to the tenants of the Shopping Center, which areas may be elevated, surface or underground.

6.3 Landlord shall be responsible for the operation, management, and maintenance of the Common Area, the manner of maintenance and the expenditures therefor to be in the sole discretion of Landlord.

SEE PAGE 5A

5.4 In addition to rent and other charges prescribed in this lease, Tenant shall pay to Landlord Tenant's proportionate share of the cost of operation and maintenance of the Common Area (including, among other costs, those for lighting, painting, cleaning, policing, inspecting, repairing and Center, for heating and cooling) which may be incurred by Landlord in its for depreciation of maintenance equipment, and the cost of hazard insurance, but excluding general real estate taxes, assessments, and depreciation of Landlord's original investment. The proportionate share to be paid by tenant of the cost that the total ground floor area of the Demised Premises bears to the total ground floor areas of all buildings within the Shopping Center; providing that, in no event shall such share be less than the amount specified in Section 11 (1) above. Tenant shall make such payments to Landlord on demand, at intervals not more frequent than monthly. Landlord may, at its option, make monthly or other periodic charges based upon the estimated annual cost of operation and maintenance of the Common Area, payable in advance but subject to adjustment after the end of the year on the basis of the actual cost for such year.

USE AND CARE OF PREMISES

ARTICLE VII. 7.1 The Demised Premises may be used only for the purpose or purposes, specified in Section 11 (a) above, and for no other purposes without the prior written consent of Landlord. Tenant shall use in the transaction of the Demised Premises the trade name specified in Section 11 (a) above and no other trade name without the prior written consent of Landlord. Tenant shall not at any time leave the Demised Premises vacant, but shall in good faith continuously throughout the term of this lease conduct and carry on in the entire Demised Premises the type of business for which the Demised Premises are leased. Tenant shall operate its business in an efficient, high class and reputable manner so as to produce the maximum amount of sales from the premises, and shall, except during reasonable periods for repairing, cleaning, and decorating, keep the premises open to the public for business with adequate personnel in attendance on all days and during all hours (including evenings) established by Landlord from time to time as store hours for the Shopping Center, and during any other hours when the Shopping Center generally is open to the public for business, except to the extent Tenant may be prohibited from being open for business by applicable law, ordinance or governmental regulation.

7.2 Tenant shall not, without Landlord's prior written consent, keep anything within the premises or use the premises for any purpose which increases the insurance premium cost or invalidates any insurance policy carried on the Demised Premises or other parts of the Shopping Center. All property kept, stored or maintained within the premises by Tenant shall be at Tenant's sole risk.

7.3 Tenant shall not conduct within the Demised Premises any fire, auction, bankruptcy, "going-out-of-business," "lost-out-lease" or similar sales, a cooperative store, a "second hand" store, a "surplus" store or any store generally referred to as a "discount house." Tenant shall not advertise that it sells its products or services at "discount," "cut price," or "cut rate" prices. Tenant shall not permit any objectionable or unpleasant odors to emanate from

Initials: ___________ Tenant ___________ Tenant ___________ Landlord
6.4 Tenant will assume and pay his prorata share of any common area charges calculated over the Base Year of 1991. The amount of the increase will be computed in accordance with the formulas stated in Article 18.
the premises; nor place or permit any radio, television, loudspeaker or amplifier on the roof or outside of the Demised Premises or where the same can be seen or heard from outside the building nor place any antenna, awning or other projection on the exterior of the Demised Premises; nor take any other action which would constitute a nuisance or would disturb or endanger other tenants of the Shopping Center or unreasonably interfere with their use of their respective premises; nor do anything which would tend to injure the reputation of the Shopping Center.

7.4 Tenant shall take good care of the Demised Premises and keep the same free from waste at all times. Tenant shall keep the Demised Premises and sidewalks, service-ways and loading areas adjacent to the premises neat, clean and free from dirt or rubbish at all times, and shall store all trash and garbage within the premises, arranging for the regular pick-up of such trash and removal of garbage and trash shall be made only in the manner and areas or garbage within the Shopping Center area.

7.5 Tenant shall maintain all display windows in a neat, attractive condition, and shall keep all display windows exterior lighting, electric signs and exterior opening, any canopy in front of the Demised Premises lighted from dusk until 11:00 P.M., every day, including Sundays and holidays.

7.6 Tenant shall include the address and identity of its business activities in all advertising made by Tenant in which the address and identity of any similar local business activity of Tenant is mentioned.

7.7 Tenant shall procure at its sole expense any permits and licenses required for the transaction of business in the Demised Premises and otherwise comply with all applicable laws, ordinances, and governmental regulations.

MAINTENANCE AND REPAIR OF PREMISES

ARTICLE VIII. 8.1 Landlord shall keep the foundation, the exterior walls (except plate glass windows, doors, door closure devices and other exterior openings, window and door frames, molding, locks and hardware; special store fronts; lighting, heating, air conditioning, plumbing and other electrical, mechanical and electromotive installation, equipment and fixtures; signs, placards, decorations or advertising media of any type, and interior painting or repair. Landlord, however, shall not be required to make any repairs occasioned by the act or negligence of Tenant, its agents, employees, subtenants, licensees and concessionaires; and the provisions of the previous sentence are expressly recognized to be subject to the provisions of Article XV and Article XVI of this lease. In the event the Demised Premises should become in need of repairs required to be made by Landlord hereunder, Tenant shall give immediate written notice thereof to Landlord; and Landlord shall not be responsible in any way for failure to make any such repairs until a reasonable time shall have elapsed after receipt by Landlord of such written notice.

8.2 Tenant shall keep the Demised Premises in good, clean and habitable condition and shall at its sole cost and expense keep the premises free of insects, rodents, vermin and other pests and make all needed repairs and replacements, including replacement of cracked or broken glass, except for Section 8.1, Article XV and Article XVI. Without limiting the coverage of the previous sentence, it is understood that Tenant's responsibilities therein include the repair and replacement of all lighting, heating, air conditioning, equipment and fixtures and also include all utility repairs in ducts, conduits, pipes and wiring, and any sewer stoppage located in, under and above the Demised within ten days after written notice delivered to Tenant by Landlord, Landlord or damage which may result to its stock or business by reason of such repairs; the cost of such repairs plus interest at the maximum contractual rate which could be charged in the event of a loan of such payment to Tenant in the state.

Initials: Tenant ___________, Tenant ___________, Landlord
the premises; nor place or permit any radio, television, loudspeaker or amplifier on the roof or outside of the Demised Premises or where the same can be seen or heard from outside the building nor place any antenna, awning or other projection on the exterior of the Demised Premises; nor take any other action which would constitute a nuisance or would disturb or endanger other tenants of the Shopping Center or unreasonably interfere with their use of their respective premises; nor do anything which would tend to injure the reputation of the Shopping Center.

7.4 Tenant shall take good care of the Demised Premises and keep the same free from waste at all times. Tenant shall keep the Demised Premises and sidewalks, service-ways and loading areas adjacent to the premises neat, clean and free from dirt or rubbish at all times, and shall store all trash and garbage within the premises, arranging for the regular pick-up of such trash and garbage at Tenant's expense. Receiving and delivery of goods and merchandise and removal of garbage and trash shall be made only in the manner and areas prescribed by Landlord. Tenant shall not operate an incinerator or burn trash or garbage within the Shopping Center area.

7.5 Tenant shall maintain all display windows in a neat, attractive condition, and shall keep all display windows, exterior electric signs and exterior lighting under any canopy in front of the Demised Premises lighted from dusk until 11:00 p.m. every day, including Sundays and holidays.

7.6 Tenant shall include the address and identity of its business activities in the Demised Premises in all advertisements made by Tenant in which the address and identity of any similar local business activity of Tenant is mentioned.

7.7 Tenant shall procure at its sole expense any permits and licenses required for the transaction of business in the Demised Premises and otherwise comply with all applicable laws, ordinances, and governmental regulations.

MAINTENANCE AND REPAIR OF PREMISES

ARTICLE VIII. 8.1 Landlord shall keep the foundation, the exterior walls (except plate glass windows, doors, door closure devices and other exterior openings; window and door frames, molding, locks and hardware; special store fronts; lighting, heating, air conditioning, plumbing and other electrical, mechanical and electromotive installation, equipment and fixtures; signs, placards, decorations or advertising media of any type, and interior painting or other treatment of exterior walls) and roof of the Demised Premises in good repair. Landlord, however, shall not be required to make any repairs occasioned by the act or negligence of Tenant, its agents, employees, subtenants, licensees and concessionaires; and the provisions of the previous sentence are expressly recognized to be subject to the provisions of Article XV and Article XVI of this lease. In the event the Demised Premises should become in need of repairs required to be made by Landlord hereunder, Tenant shall give immediate written notice thereof to Landlord; and Landlord shall not be responsible in any way for failure to make any such repairs until a reasonable time shall have elapsed after receipt by Landlord of such written notice.

8.2 Tenant shall keep the Demised Premises in good, clean and habitable condition and shall at its sole cost and expense keep the premises free of insects, rodents, vermin and other pests and make all needed repairs and replacements, including replacement of cracked or broken glass, except for repairs and replacements required to be made by Landlord under the provisions of Section 8.1, Article XV and Article XVI. Without limiting the coverage of the previous sentence, it is understood that Tenant's responsibilities therein include the repair and replacement of all lighting, heating, air conditioning, plumbing and other electrical, mechanical and electromotive installation, equipment and fixtures and also include all utility repairs in ducts, conduits, pipes and wiring, and any sewer stoppage located in, under and above the Demised Premises. If any repairs required to be made by Tenant hereunder are not made within ten days after written notice delivered to Tenant by Landlord, Landlord may, at its option, make such repairs without liability to Tenant for any loss or damage which may result to its stock or business by reason of such repairs; and Tenant shall pay to Landlord upon demand as additional rent hereunder, the cost of such repairs plus interest at the maximum contractual rate which could legally be charged in the event of a loan of such payment to Tenant in the state.

Initials: Tenant , Tenant , Landlord
ALTERATIONS

ARTICLE IX. 9.1 Tenant shall not make any alterations, additions or improvements to the Demised Premises without the prior written consent of Landlord, except for the installation of unattached, movable trade fixtures which may be installed without drilling, cutting or otherwise defacing the premises. All alterations, additions, improvements and fixtures other than Tenant's unattached, readily movable furniture and office equipment, which may be made or installed by either party upon the Demised Premises shall remain upon and be surrendered with the premises and become the property of the Landlord at the termination of this lease, unless Landlord requests their removal in which event Tenant shall remove the same and restore the premises to their original condition at Tenant's expense.

9.2 All construction work done by Tenant within the Demised Premises shall be performed in a good and workmanlike manner, in compliance with all governmental requirements, and in such manner as to cause a minimum of interference with other construction in progress and with the transaction of business in the Shopping Center. Tenant agrees to indemnify Landlord and hold Landlord harmless against any loss, liability or damage resulting from such work, and Tenant shall, if requested by Landlord, furnish bond or other security satisfactory to Landlord against any such loss, liability or damage.

LANDLORD'S RIGHT OF ACCESS; USE OF ROOF

ARTICLE X. 10.1 Landlord shall have the right to enter upon the Demised Premises at any time for the purpose of inspecting the same, or of making repairs to the Demised Premises, or of making repairs, alterations or additions to adjacent premises, or of showing the Demised Premises to prospective purchasers, lessees or lenders.

10.2 Tenant will permit Landlord to place and maintain "For Rent" or "For Lease" signs on the Demised Premises during the last ninety days of the lease term, it being understood that such sign shall in no way affect Tenant's obligations pursuant to Section 7.3, Section 11.1 or any other provision of this lease.

10.3 Use of the roof above the Demised Premises is reserved for Landlord.

SIGNS; STORE FRONTS

ARTICLE XI. 11.1 Tenant shall not, without Landlord's prior written consent (a) make any changes to the store front or (b) install any exterior lighting, decorations, paintings, awnings, canopies or the like or (c) erect or install any signs, window or door lettering, placards, decorations or advertising media of any type which can be viewed from the exterior of the Demised Premises, excepting only dignified displays of customary type for its display windows. All signs, lettering, placards, decorations and advertising media shall conform in all respects to the sign criteria established by Landlord for the Shopping Center from time to time in the exercise of its sole discretion, and shall be subject to the prior written approval of Landlord as to construction, method of attachment, size, shape, height, lighting, color and general appearance. All signs shall be kept in good condition and in proper operating order at all times.

UTILITIES

ARTICLE XII. 12.1 Landlord agrees to cause to be provided and maintained the necessary mains, conduits and other facilities necessary to supply water, *(including, but not limited to, all heating, ventilating, and air conditioning equipment and components)*

Initials: [Tenant], [Tenant], [Landlord]
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gas, electricity, telephone service and sewerage service to the Demised Premises.

12.2 Tenant shall promptly pay all charges for electricity, water, gas, telephone service, sewerage service and other utilities furnished to the Demised Premises. Landlord may, if it so elects, furnish one or more utility service to tendered by Landlord, and shall pay on demand as additional rental the rates established therefor by Landlord which shall not exceed the rates which would be charged for the same services if furnished directly by the local public utility without obligation to tenant other than to connect the Demised Premises to the public utility, if any, furnishing such service.

12.3 Landlord shall not be liable for any interruption whatsoever in utility services not furnished by him, nor for interruptions in utility services furnished by him which are due to fire, accident, strike, acts of God or other causes beyond the control of Landlord or in order to make alterations, repairs or improvements.

INDEMNITY AND PUBLIC LIABILITY INSURANCE

ARTICLE XIII. 13.1 Landlord shall not be liable to Tenant, to Tenant's injury to person or damage to property on or about the Demised Premises or the Common Area caused by the negligence or misconduct of Tenant, its employees, Shopping Center under express or implied invitation of Tenant, or arising out of the use of the premises by Tenant and the conduct of its business therein, or arising out of any breach or default by Tenant in the performance of its obligations hereunder; and Tenant hereby agrees to indemnify Landlord and hold Landlord harmless from any loss, expense or claims arising out of such damage or injury.

13.2 Tenant shall procure and maintain throughout the term of this lease a policy or policies of insurance, at its sole cost and expense, insuring both Landlord and Tenant against all claims, demands or actions arising out of or in connection with Tenant's use or occupancy of the Demised Premises, by the an amount not less than $200,000 in respect of injuries to or death of any one person, and in an amount of not less than $500,000 in respect of any one accident or disaster, and in an amount of not less than $100,000 in respect of any one property damaged or destroyed and to be written by insurance companies of each insurance company to notify Landlord at least ten days prior to such insurance. Such policies or duly executed certificates of required shall be delivered to Landlord at least thirty days prior to the expiration of the respective policy terms. If Tenant should fail to comply with the foregoing requirements relating to insurance, Landlord may obtain such insurance hereunder the premium cost thereof plus interest at the maximum contractual rate (but in no event to exceed 1 1/2% per month) from the date of payment by Landlord until repaid by Tenant.

NON-LIABILITY FOR CERTAIN DAMAGES

ARTICLE XIV. 14.1 Landlord and Landlord's agents and employees shall not be liable to Tenant for any injury to person or damage to property caused by the Demised Premises or other portions of the Shopping Center becoming out of repair or by defect or failure of any structural element of the Demised Premises or of or by gas, water, steam, electricity or oil leaking, escaping or flowing into repairs required to be made by Landlord hereunder, after the expiration of a reasonable time after written notice to Landlord of the need for such repairs, nor shall Landlord be liable to Tenant for any loss or damage that may be occasioned by or through the acts or omissions of other tenants of the Shopping

Initials: / Tenant / Landlord

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Center or of any other persons whomever, excepting only duly authorized employees and agents of Landlord.

**DAMAGES BY CASUALTY**

**ARTICLE XV.** 15.1 Tenant shall give immediate written notice to Landlord of any damage caused to the Demised Premises by fire or other casualty.

15.2 In the event that the Demised Premises shall be damaged or destroyed by fire or other casualty insurable under standard fire and extended coverage insurance and Landlord does not elect to terminate this lease as hereinafter provided, Landlord shall proceed with reasonable diligence and at its sole cost and expense to rebuild and repair the Demised Premises. In the event (a) the building in which the Demised Premises are located shall be destroyed or such building be destroyed or rendered untenantable to an extent in excess of fifty (50) percent of the first floor area by a casualty not covered by Landlord's insurance or (b) the holder of a mortgage, deed or trust or other lien on the Demised Premises at the time of the casualty elects, pursuant to such mortgage, insurance proceeds in satisfaction of all or part of Landlord's mortgage, deed of trust or other lien, then Landlord may elect either to terminate this lease or to proceed to rebuild and repair the Demised Premises. After the occurrence of such casualty and if it elects to rebuild and repair shall proceed to do so with reasonable diligence and at its sole cost and expense.

15.3 Landlord's obligation to rebuild and repair under this Article XV shall in any event be limited to restoring (a) the Demised Premises to substantially the condition in which the same existed prior to such casualty, exclusive of any alterations, additions, improvements, fixtures and equipment installed by Tenant, or (b) Landlord's work, as described in Exhibit B, if any, to substantially the same condition in which the same existed prior to the casualty, as the case may be. Tenant agrees that promptly after completion of such work by Landlord, Tenant will proceed with reasonable diligence and at Tenant's sole cost and expense to restore, repair and replace all alterations, improvements, fixtures, signs and equipment installed by Tenant or, if an Exhibit C is attached hereto, all items of Tenant's work as described in Exhibit C, as the case may be.

15.4 Tenant agrees, that during any period of reconstruction or repair of the Demised Premises, it will continue the operation of its business within the Demised Premises to the extent practicable. During the period from the occurrence of the casualty until Landlord's repairs are completed, the minimum rental shall be reduced to such extent as may be fair and reasonable under the circumstances; however, there shall be no abatement of the percentage rental and other charges provided for herein.

**EXCISENT DOMAIN**

**ARTICLE XVI.** 16.1 If more than thirty (30) percent of the floor area of the Demised Premises should be taken for any public or quasi-public use under any governmental law, ordinance or regulation or by right of eminent domain or by private purchase in lieu thereof, this lease shall terminate and the rent shall be abated during the unexpired portion of this lease, effective on the date physical possession is taken by the condemning authority.

16.2 If less than thirty (30) percent of the floor area of the Demised Premises should be taken as aforesaid, this lease shall not terminate; however, the minimum guaranteed rental (but not percentage rental) payable hereunder during the unexpired portion of this lease shall be reduced in proportion to the area taken, effective on the date physical possession is taken by the condemning authority. Following such partial taking, Landlord shall make all necessary repairs or alterations to the remaining premises or, if an Exhibit B is attached herein, all necessary repairs or alterations within the scope of Landlord's work as described in Exhibit B, as the case may be, required to make the remaining portions of the Demised Premises an architectural whole.

Initials: __________ Tenant __________ Landlord __________

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16.3 If any part of the Common Area should be taken as aforesaid, this lease shall not terminate, nor shall the rent payable hereunder be reduced, except that either Landlord or Tenant may terminate this lease if the area of the Common Area remaining following such taking plus any additional parking area provided by Landlord in reasonable proximity to the Shopping Center shall be less than seventy per cent of the area of the Common Area immediately prior to the taking. Any election to terminate this lease in accordance with this provision shall be evidenced by written notice of termination delivered to the other party within thirty days after the date physical possession is taken by the condemning authority.

16.4 All compensation awarded for any taking (or the proceeds of private sale in lieu thereof) of the Demised Premises or Common Area shall be the property of Landlord, and Tenant hereby assigns its interest in any such award to Landlord; provided, however, Landlord shall have no interest in any award made to Tenant for Tenant’s moving and relocation expenses or for the loss of Tenant’s fixtures and other tangible personal property if a separate award for such items are made to Tenant.

ASSIGNMENT AND SUBLETTING

ARTICLE XVII. 17.1 Tenant shall not assign or in any manner transfer this lease or any estate or interest therein, or sublet the Demised Premises or any part thereof, or grant any license, concession or other right of occupancy or any portion of the Demised Premises without the prior written consent of Landlord. Consent by Landlord to one or more assignments or sublettings shall not operate as a waiver of the Landlord's rights as to any subsequent assignments and sublettings.

17.2 If Tenant is a corporation and if at any time during the primary term of this lease or any renewal or extension thereof the person or persons who own a majority of either the outstanding voting shares or all outstanding shares of capital stock of Tenant at the time of execution of this lease cease to own a majority of such shares (except as a result of transfers by devise or descent), the loss of a majority of such shares shall be deemed as assignments of this lease by Tenant and therefore subject in all respects to the provisions of Section 17.1 above. The previous sentence shall not apply, however, if at the time of the execution of this lease the outstanding voting shares of capital stock of Tenant are listed on a recognized security exchange or over-the-counter market.

17.3 Notwithstanding any assignment or subletting, Tenant and any guarantor of Tenant's obligations under this lease shall at all times remain fully responsible and liable for the payment of the rent herein specified and for compliance with all of its other obligations under this lease (even if subletting by Tenant, and regardless of whether or not landlord's approval has been obtained for such future assignments and sublettings). Moreover, in the event that the rental due and payable by sublessee (or a combination of the rental payable under such sublease plus any bonus or other consideration therefore or incident therein) exceeds the rental payable under this lease or if with respect to a permitted assignment, permitted license, or other transfer by Tenant permitted by Landlord, the consideration payable to Tenant by the assignee, licensee or other transferee exceeds the rental payable under this lease, then Tenant shall be bound and obligated to pay Landlord all such excess rental and other excess consideration within ten (10) days following receipt thereof by Tenant from such sublessee, assignee, licensee or other transferee, as the case may be. Finally, in any event of assignment or subletting it is understood and agreed that all rentals paid to Tenant by an assignee or sublessee shall be received by Tenant in trust for Landlord, to be forwarded immediately to Landlord without offset or reduction of any kind; and upon election by Landlord such rentals shall be paid directly to Landlord as specified in Section 4.1 of this lease (to be applied as a credit and offset to Tenant's rental obligations).

17.4 Tenant shall not mortgage, pledge or otherwise encumber its interest in this lease or in the Demised Premises.

17.5 In the event of the transfer and assignment by Landlord of its interest in this lease and in the building containing the Demised Premises to a

Initials: __________, Tenant /[W], Tenant /[M], Landlord

Page 10.
person expressly assuming Landlord's obligations under this lease, Landlord shall thereby be released from any further obligations hereunder, and Tenant agrees to look solely to such successor in interest of the Landlord for performance of such obligations. Any security given by Tenant to secure performance of Tenant's obligations hereunder may be assigned and transferred by Landlord to such successor in interest, and Landlord shall thereby be discharged of any further obligation relating thereto.

TAXES AND INSURANCE

ARTICLE XVIII. 10.1 Tenant shall be liable for all taxes levied against personal property and trade furniture placed by Tenant in the Demised Premises. If any such taxes are levied against Landlord or Landlord's property and if Landlord elects to pay the same or if the assessed value of Landlord's property is increased by inclusion of personal property and trade fixtures placed by Tenant in the Demised Premises and Landlord elects to pay the taxes based on such increase, Tenant shall pay to Landlord upon demand that part of such taxes for which Tenant is primarily liable hereunder.

10.2 Lessee will assume and pay his pro rata share of any insurance premiums and ad valorem taxes calculated from the base year of 1990. Lessee's pro rata share of insurance and taxes will be determined by dividing the net rentable area demised to Lessee into the total net rentable area of the center for each year in question. This sum shall be multiplied by the ad valorem taxes assessed against the center and total insurance premiums assessed against the center.

10.3 If at any time during the primary term of this lease or any renewal or extension thereof a tax or excise on rents, or other tax however described (except any franchise, estate, inheritance, capital stock, income or excess profits tax imposed upon Landlord) is levied or assessed against Landlord by any lawful taxing authority on account of Landlord's interest in this lease or the rents or other charges reserved hereunder, as a substitute in whole or in part, or in addition to the general taxes described in Section 10.2 above, Tenant agrees to pay Landlord upon demand, and addition to the rentals and other charges prescribed in this lease, the amount of such tax or excise. In the event any such tax or excise is levied or assessed directly against Tenant, then Tenant shall be responsible for and shall pay the same at such times and in such manner as the taxing authority shall require.

18.4 If at any time during the primary term of this lease or any renewal or extension thereof the premiums for liability insurance, fire and extended coverage insurance, or both, carried by Landlord covering the Shopping Center (hereinafter referred to as the "Insurance premiums") shall exceed the insurance premiums for the base insurance term, Tenant shall pay to Landlord upon demand, and in addition to the rentals and other charges prescribed in this lease, all of such increases attributable to the Demised Premises. The term "base insurance term" shall mean the period of time commencing with the date the Demised Premises shall have been originally occupied by Tenant under this lease or any prior lease (or, if later, the date on which Landlord commenced to carry insurance on the Shopping Center) and ending on the date at which the amount of insurance premiums is increased from the amount at the commencement of the term. The term "increase attributable to the Demised Premises" is defined in Section 18.5 below. The payment to be made by Tenant for the insurance term in which this lease terminates shall bear the same ratio to the payment which would be required to be paid for the full insurance term as the number of days of such term which elapsed prior to termination of this lease bears to the full term.

18.5 The amount of any increase of general taxes or insurance premiums, as the case may be, which is attributable to the Demised Premises shall be computed in accordance with the following formula:

\[ I = \left( \frac{A}{B} - \frac{C}{D} \right) \times F \]

where "I" equals the dollar amount of any increase which is attributable to the Demised Premises; "A" equals the amount of general taxes or insurance premiums accruing during the period in question (prorated, if necessary, to provide a period of like duration to the base real estate tax year or base insurance term, as the case may be); "B" equals the total leasable ground floor area of all buildings in the Shopping Center at the commencement of the period in question; "C" equals the amount of general taxes or insurance premiums charged on the base real estate tax year or base insurance term, as the case may be; and "D" equals the total leasable ground floor area of all buildings in the Shopping Center as of the date of the increase.

Initials: Tenant [Signature] Tenant [Signature] Landlord [Signature]
"CM" equals the amount of general real estate taxes or insurance premiums which accrued during the base real estate tax year or base insurance term, as the case may be; "MV" equals the total leaseable ground floor area of all buildings in the Shopping Center either at the beginning of the base real estate tax year or base insurance term, or, if later, at the time Tenant originally occupied the Demised Premises; and "F" equals the total square feet included in the Demised Premises.

18.6 If at any time during the primary term of this lease or any renewal or extension thereof Landlord has reason to believe that at some time within the immediately succeeding twelve-month period Tenant will owe Landlord a payment pursuant to one or more of the preceding sections of this Article XVIII, Landlord may direct that Tenant pay monthly a pro rata portion of the prospective future payment (i.e., the prospective future payment divided by the number of months before the prospective future payment will be due). Tenant agrees that any such prepayment directed by Landlord shall be due and payable monthly on the same day that minimum guaranteed rental is due.

DEFAULT BY TENANT AND REMEDIES

ARTICLE XIX. 19.1 The following events shall be deemed to be events of default by Tenant under this lease:

(1) Tenant shall fail to pay any installment of rent or any other obligation hereunder involving the payment of money and such failure shall continue for a period of ten days after the date due.
(2) Tenant shall fail to comply with any term, provision or covenant of this lease, other than as described in subsection (1) above, and shall not cure such failure within fifteen days after written notice thereof to Tenant.
(3) Tenant or any guarantor of Tenant's obligations under this lease shall become insolvent, or shall make a transfer in fraud of creditors, or shall make an assignment for the benefit of creditors.
(4) Tenant or any guarantor of Tenant's obligations under this lease shall file a petition under any section or chapter of the National Bankruptcy Act, as amended, or under any similar law or statute of the United States or any State thereof; or Tenant or any guarantor of Tenant's obligations under this lease shall be adjudged bankrupt or insolvent in proceedings filed against Tenant or any guarantor of Tenant's obligations under this lease thereunder.
(5) A receiver or Trustee shall be appointed for the Demised Premises or for all or substantially all of the assets of Tenant or any guarantor of Tenant's obligations under this lease.
(6) Tenant shall desert or vacate shall commence to desert or vacate the Demised Premises or any substantial portion of the Demised Premises or shall remove or attempt to remove, without the prior written consent of Landlord, all or a substantial value of Tenant's goods, wares, equipment, fixtures, furniture, or other personal property.
(7) Tenant shall do or permit to be done anything which creates a lien upon the premises.

Upon the occurrence of any such events of default, Landlord shall have the option to pursue either of the following alternative remedies:

A. Without any notice of demand whatsoever, Landlord may take any or more of the actions permissible at law to enforce performance by Tenant of Tenant's covenants and obligations under this lease. In this regard, it is agreed that if Tenant deserts or vacates the Demised Premises, Landlord may enter upon and take possession of such premises in order to protect them from deterioration and continue to demand from Tenant the monthly rentals and other charges provided in this lease, without any obligation to relet; but that if Landlord does, at its sole discretion, elect to relet the Demised Premises, such action by Landlord shall not be deemed as an acceptance of Tenant's surrender of the Demised Premises unless Landlord expressly notifies Tenant of such acceptance in writing pursuant to subsection 8 of this Section 19.1. Tenant hereby acknowledging that Landlord otherwise be reletting as Tenant's agent and Tenant furthermore hereby agreeing to pay to Landlord on demand any deficiency that may arise between the monthly rentals and other charges provided in this lease and that actually collected by Landlord. It is further agreed in this regard that in the event of any default described in (2) of this Section 19.1, Landlord shall have the right to enter upon the Demised Premises by force if necessary without being liable for prosecution or any

Initials: _______ Tenant _______ , Tenant _______ , Landlord
claim for damages therefor, and do whatever Tenant is obligated to do under the terms of this lease; and Tenant agrees to reimburse Landlord on demand for any expenses which Landlord may incur in thus effecting compliance with Tenant's obligations under this lease, and Tenant further agrees that Landlord shall not be liable for any damages resulting to the Tenant from such action.

B. Landlord may terminate this lease by written notice to Tenant, in which event Tenant shall immediately surrender the Demised Premises to Landlord, and if Tenant fails to do so, Landlord may, without prejudice to any other remedy which Landlord may have for possession or arrearages in rent (including any interest which may have accrued pursuant to Section 4.6, enter upon and take possession of the Demised Premises and expel or remove Tenant and any other person who may be occupying said premises or any part thereof, by force if necessary, without being liable for prosecution or any claim for damages therefor. Tenant hereby waives and statutory requirement of prior written notice for filing eviction or damage suits for nonpayment of rent. In addition, Tenant agrees to pay to Landlord on demand the amount of all loss and damage which Landlord may suffer by reason of any termination effected pursuant to this subsection B, said loss and damage to be determined by either of the following alternative measures of damages:

(i) Until Landlord is able, through reasonable efforts, the nature of which efforts shall be at the sole discretion of Landlord, to relet the Demised Premises, Tenant shall pay to Landlord on or before the first day of each calendar month, the monthly rentals and other charges provided in this lease. After the Demised Premises have been relet by Landlord, Tenant shall pay to Landlord on the 20th day of each calendar month the difference between the monthly rentals and other charges provided in this lease for the preceding calendar month and that actually collected by Landlord for such month. If it is necessary for Landlord to bring suit in order to collect any deficiency, Landlord shall have a right to allow such deficiencies to accumulate and to bring an action on several or all of the accrued deficiencies at one time. Any such suit shall not prejudice in any way the right of Landlord to bring a similar action for any subsequent deficiency or deficiencies. Any amount collected by Landlord from subsequent tenants for any calendar month, in excess of the monthly rentals and other charges provided in this lease, shall be credited to Tenant in reduction of Tenant's liability for any calendar month for which the amount collected by Landlord will be less than the monthly rentals and other charges provided in this lease; but Tenant shall have no right to such excess other than the above described credit.

(ii) When Landlord desires, Landlord may demand a final settlement. Upon demand for a final settlement, Landlord shall have a right to, and Tenant hereby agrees to pay, the difference between the total of all monthly rentals and other charges provided in this lease for the remainder of the term and the reasonable rental value of the Demised Premises for such period. Such difference to be discounted to present value at a rate equal to the rate of interest which is allowed by law, in the State designated by Section 25.10 of this lease, when the parties to a contract have not agreed on any particular rate of interest (or, in the absence of such law, at the rate of six per cent per annum).

If Landlord elects to exercise the remedy prescribed in subsection A above, this election shall in no way prejudice Landlord's right at any time thereafter to cancel said election in favor of the remedy prescribed in subsection B above, provided that at the time of such cancellation Tenant is still in default. Similarly, if Landlord elects to compute damages in the manner prescribed by subsection B (i) above, this election shall in no way prejudice Landlord's right at any time thereafter to demand a final settlement in accordance with subsection B (ii) above. Pursuit of any of the above remedies shall not preclude pursuit of any other remedies prescribed in other sections of this lease and any other remedies provided by law. Forbearance by Landlord to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of such default.

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13.2 It is expressly agreed that in determining "the monthly rentals and other charges provided in this lease," as that term is used throughout subsections A and B of Section 13.1 above, there shall be added to the minimum

Initials: 

Tenant  
Tenant  
Landlord
ADDENDUM TO SECTION 19.1:

Notwithstanding anything in this article to the contrary, the Tenant shall not be deemed to have waived any immunity or defense which (i) under the laws and constitution of the State of Texas, may only be waived by action of the Legislature of the State of Texas, and (ii) have not been heretofore or hereafter waived by the Legislature; provided, however, that such stipulation shall not preclude Landlord from obtaining consent as provided by law for the maintenance of a suit against Tenant.
guaranteed rental (as specified in Section 1.1 (f) of this lease) a sum equal to the charges for maintenance of the Common Area (as specified in Section 6.4 of this lease), the charges for taxes and insurance (as specified in Article XVIII of this lease) plus one-twenty-fifth of the total of all percentage rentals required to be paid by Tenant (pursuant to Sections 4.3 and 4.4 of this lease) because of gross sales during the two full calendar years immediately preceding the date Landlord initiated action pursuant to said subsections or, if two full calendar years have not then elapsed, to the corresponding fraction of all percentage rentals required to be paid because of gross sales during the period commencing with the Commencement Date of this lease and concluding with the date on which Landlord initiated such action.

19.3 It is further agreed that, in addition to payments required pursuant to subsections A and B of Section 19.1 above, Tenant shall compensate Landlord for all expenses incurred by Landlord in repossession (including among other expenses, any increase in insurance premiums caused by the vacancy of the Demised Premises), all expenses incurred by Landlord in reletting (including among other expenses, repairs, remodeling, replacements, advertisements and brokerage fees), all concessions granted to a new tenant upon reletting by other tenants or potential tenants of the Shopping Center and a reasonable allowance for Landlord’s administrative efforts, salaries and overhead attributable directly or indirectly to Tenant’s default and Landlord’s pursuing the rights and remedies provided herein and under applicable law.

19.4 Landlord may restrain or enjoin any breach or threatened breach of any covenant, duty or obligation of Tenant herein contained without the necessity of proving the inadequacy of any legal remedy or irreparable harm. The remedies of Landlord hereunder shall be deemed cumulative and not exclusive of each other.

19.5 If on account of any breach or default by Tenant in its obligations hereunder, Landlord shall employ an attorney to present, enforce or defend any of Landlord’s rights or remedies hereunder, Tenant agrees to pay any reasonable attorney’s fees incurred by Landlord in such connection.

19.6 Landlord hereby acknowledges receipt from Tenant of the sum stated in Section 1.1 (m) above, to be applied to the first accruing installments of rent. Landlord further acknowledges receipt from Tenant of the sum stated in Section 1.1 (n) above to be held by Landlord without interest as security for the performance by Tenant of Tenant’s covenants and obligations under this lease, it being expressly understood that such deposit may be co-mingled with Landlord’s other funds and is not an advance payment of rental or a measure of Landlord’s damages in case of default by Tenant. Upon the occurrence of any event of default by Tenant, Landlord may, from time to time, without prejudice to any other remedy provided herein or provided by law use such fund to the extent necessary to make good any arrears of rentals and any other damages, injury, expense or liability caused to Landlord by such event or default, and Tenant shall pay to Landlord on demand the amount so applied in order to restore the security deposit to its original amount. If Tenant is not then in default hereunder, any remaining balance of such deposit shall be returned by Landlord to Tenant upon termination of this lease (subject to the provisions of Section 17.5 above).

LANdOARD’S CONTRACTUAL SECURITY INTEREST

ARTICLE XX. 20.1 In addition to the statutory landlord’s lien, Landlord shall have at all times a valid security interest in secure payment of all rentals and other sums of money becoming due hereunder from Tenant, and to secure payment of any damages or loss which Landlord may suffer by reason of the breach by Tenant of any covenant, agreement or condition contained herein, upon all goods, wares, equipment, fixtures, furniture, improvements and other personal property of Tenant presently, or which may hereafter be, situated on the Demised Premises, and all proceeds therefrom, and such property shall not be removed without the consent of Landlord until all arrears in rent as well as all Landlord hereunder shall first have been paid and discharged and all the covenants, agreements and conditions hereof have been fully complied with and all the covenants, agreements and conditions hereof have been fully complied with and all the covenants, agreements and conditions hereof have been fully 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HOLDING OVER

ARTICLE XXI. 21.1 In the event Tenant remains in possession of the Demised Premises after the expiration of this lease and without the execution of a new lease, it shall be deemed to be occupying said premises as a tenant from month to month at a rental equal to the rental (including any percentage rental) herein provided plus fifty per cent of such amount and otherwise subject to all the conditions, provisions and obligations of this lease so far as the same are applicable to a month to month tenancy.

SUBORDINATION; ATTORNMENT

ARTICLE XXII. 22.1 Tenant accepts this lease subject and subordinate to any mortgage, deed of trust or other lien presently existing or hereafter placed upon the Demised Premises or the Shopping Center as a whole, and to any renewals and extensions thereof. Tenant agrees that any such mortgagee shall have the right at any time to subordinate such mortgage, deed of trust or other lien to be superior to mortgage, deed of trust or other lien, the provisions of mortgage, deed of trust or other lien relative to the rights of the mortgagee to respect to proceeds arising from an eminent domain taking (including a voluntary conveyance by Landlord) and/or arising from insurance payable by reason of damage to or destruction of the Demised Premises shall be prior and superior to any contrary provisions contained in this instrument with respect to the payment or usage thereof. Landlord is hereby irrevocably vested with full power and authority to subordinate this lease to any mortgage, deed of trust or other lien hereafter placed upon the Demised Premises of the Shopping Center as a whole, and Tenant agrees upon demand to execute such further instruments subordinating this lease as Landlord may request; provided, however, that upon Tenant's written request and notice to Landlord, Landlord shall use good faith efforts to obtain from any such mortgagee a written agreement that the rights of Tenant shall remain in full force and effect during the term of this lease so long as Tenant shall continue to recognize and perform all of the covenants and conditions of this lease.

22.2 At any time when the holder of an outstanding mortgage, deed of trust or other lien covering Landlord's interest in the Demised Premises has given Tenant written notice of its interest in this lease, Tenant may not exercise any remedies for default by Landlord hereunder unless and until the holder of the
indebtedness secured by such mortgage, deed of trust or other lien shall have received written notice of such default and a reasonable time for curing such default shall thereafter have elapsed.

**MERCHANTS ASSOCIATION**

**ARTICLE XXIII.** 23.4 In the event that Landlord shall organize a merchants association composed of tenants in the Shopping Center, Tenant agrees that it will join and maintain membership in such association, will pay such dues and assessments as may be fixed and determined from time to time by the association and will comply with such other bylaws, rules and regulations as may be adopted from time to time by the association.

**DIRECTION OF TENANT'S ENERGIES**

**ARTICLE XXIV.** 24.1 Tenant acknowledges that Tenant's monetary contribution to Landlord (in the form of rentals) and Tenant's general contribution to commerce within the Shopping Center (also important in Landlord's determination to execute this lease with Tenant) will be substantially reduced if during the term of this lease, either Tenant or any person, firm or corporation, directly or indirectly controlling, controlled by or under common control with Tenant shall directly or indirectly operate, manage, conduct or have any interest in any establishment within commercial proximity of the Shopping Center. Accordingly, Tenant agrees that during the term of this lease neither Tenant nor any person, firm or corporation, directly or indirectly controlling, controlled by or under common control with Tenant (and also, in the event Tenant is a corporation, if any officer or director thereof or shareholder owning more than ten percent (10%) of the outstanding stock thereof, or parent, subsidiary or related or affiliated corporation) shall directly or indirectly operate, manage, conduct or have any interest in any commercial establishment within three miles of the Shopping Center, except that any such commercial establishment existing at the date of this lease may continue to be operated, managed, conducted and owned in the same manner as on the date of this lease, provided there is no change in the size or trade name of such commercial establishment.

**NOTICES**

**ARTICLE XXV.** 25.1 Wherever any notice is required or permitted hereunder such notice shall be in writing. Any notice or document required or permitted to be delivered hereunder shall be deemed to be delivered when actually received by the designated addressee, or if earlier and regardless of whether actually received or not, when deposited in the United States Mail, postage prepaid, Certified Mail, Return Receipt Requested, addressed to the parties hereto at the respective addresses set out in Section 1.1 above (or at Landlord's option, to Tenant at the Demised Premises), or at such other addresses as they have therefore specified by written notice.

25.2 If and when included within the term "Landlord" as used in this instrument there are more than one person, firm or corporation, all shall jointly arrange among themselves for their joint execution of such notice specifying some individual at some specific address for the receipt of notices and payments to the Landlord; if and when included within the term "Tenant" as used in this instrument there are more than one person, firm or corporation, all shall jointly arrange among themselves for their joint execution of such a notice specifying some individual at some specific address for the receipt of notices and payments to Tenant. All parties included within the terms "Landlord" and "Tenant", respectively, shall be bound by notices and payments given in accordance with the provisions of this Article to the same effect as if each had received such notice or payment.

**REGULATIONS**

**ARTICLE XXVI.** 26.1 Landlord and Tenant acknowledge that there are in effect federal, state, county and municipal laws, orders, rules, directives and regulations (collectively referred to hereinafter as the "Regulations") and that additional Regulations may hereafter be enacted or go into effect, relating to

Initials: [Tenant], [Tenant], [Landlord]

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as affecting the Demised Premises or the Shopping Center and concerning the impact on the environment of construction, land use, maintenance and operation of structures, and conduct of business. Subject to the express rights granted to Tenant under the terms of this lease, Tenant will not cause, or permit to be caused, any act or practice, by negligence, omission, or otherwise, that would adversely affect the environment, or do anything to permit anything to be done that would violate any of said laws, regulations, or guidelines. Moreover, Tenant shall have no claim against Landlord by reason of any changes Landlord may make in the Shopping Center or the Demised Premises pursuant to said Regulations or any changes imposed upon customers or other invitees pursuant to same.

26.2 If by reason of any federal, state, county or municipal law, order, rule, directive or regulation (collectively referred to hereinafter as the "Regulations"), the payment to, or collection by, Landlord of any rental or other charge (collectively referred to hereinafter as "Lease Payments") payable by Tenant to Landlord pursuant to the provisions of this lease is in excess of amount (the "Maximum Charge") permitted therefor by the Regulations, then Tenant, during the period (the "Freeze Period") when the Regulations shall be in force and effect shall not be required to pay, nor shall Landlord be permitted to collect, any sum in excess of the Maximum Charge. Upon the earlier of (i) the expiration of the Freeze Period, or (ii) the issuance of a final order or judgment of a court of competent jurisdiction declaring the Regulations to be not then prescribed by law, and commencing with the first day of the month immediately following, shall pay to the Landlord as additional rental, in equal monthly installments during the balance of the term of this lease, a sum equal to the cumulative difference between the Maximum Charges and the Lease Payments during the Freeze Period. If any provisions of this section, or the application thereof, shall to any extent be declared to be invalid and unenforceable, the same shall not be deemed to affect any of the other provisions of this section or of this lease, all of which shall be deemed valid and enforceable to the fullest extent permitted by law.

MISCELLANEOUS

ARTICLE XXVII. 27.1 Nothing herein contained 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, it being understood and agreed that neither the method of computation of rent, nor any other provision 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.

27.2 Tenant shall not for any reason withhold or reduce Tenant's required payments of rentals and other charges provided in this lease, it being agreed that the obligations of Landlord hereunder are independent of Tenant's obligations tenant, except as may be otherwise expressly provided. In this regard it is specifically understood and agreed that in the event Landlord commences any proceedings against Tenant for non-payment of rentals or any other sum due and payable by Tenant hereunder, Tenant will not interpose any counter-claim or other claim against Landlord of whatever nature or description in any such proceedings; and in the event that Tenant interposes any such counter-claim or other claim against Landlord in such proceedings, Landlord and Tenant stipulate and agree that, in addition to any other lawful remedy of Landlord, upon motion of Landlord, such counter-claim or other claim asserted by Tenant shall be severed out of the proceedings instituted by Landlord and the proceedings and agreed that, in addition to any other lawful remedy of Landlord, upon motion of Landlord, such counter-claim or other claim asserted by Tenant shall be instituted by Landlord may proceed to final judgment separately and apart from and without consolidation with or reference to the status of such counter-claim or any other claim asserted by Tenant.

27.3 The liability of Landlord to Tenant for any default by Landlord under the terms of this lease shall be limited to the proceeds of sale on execution of the property, or on personal property, or on any security deposited under the provisions of Section 17.5 hereof, remain personally liable to account to Tenant for any security deposited hereunder. This clause shall not be deemed to limit Tenant to any other remedies of the Tenant under this lease, the Tenant shall be entitled to the remedy of specific performance.
27.4 Except as may be otherwise herein provided, in all circumstances under this lease where prior consent or permission of one ("first party"), whether it be Landlord or Tenant, is required before the other party ("second party") is authorized to take any particular type of action, the matter of whether or not to grant such consent or permission shall be within the sole and exclusive judgment and discretion of the first party; and it shall not constitute any nature of breach by the first party hereunder or any defense to the performance any covenant, duty or obligation of the second party hereunder that the first party failed or withheld the granting of such consent or permission, whether or not the delay or withholding of such consent or permission was, in the opinion of the second party, prudent or reasonable or based on good cause.

27.5 One or more waivers of any covenant, term or condition of this lease by either party shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition. The consent or approval by either party of any act by the other party requiring such consent or approval shall not be deemed to waiver or render unnecessary consent to or approval of any subsequent similar act.

27.6 Whenever a period of time is herein prescribed for action to be taken by Landlord, Landlord shall not be liable or responsible for, and there shall be excluded from the computation of any such period of time, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, governmental laws, regulations or restrictions or any other causes of any kind whatsoever which are beyond the reasonable control of Landlord.

27.7 Tenant agrees that it will from time to time upon request by Landlord execute and deliver to Landlord a statement in recordable form certifying that this lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as so modified).

27.8 In the event that the designation of a percentage rental rate in Section 11 (a) of this lease includes a breakpoint of gross sales (e.g., $% of gross sales over $100,000), then: (a) subsection (ii) in the first sentence of Section 4.3 of this lease shall be deemed to have been deleted and all other formula references in Article IV adjusted accordingly; (b) the breakpoint shall be divided by twelve for purposes of computing monthly percentage rental installments in the second sentence of Section 4.3; and (c) during all periods when minimum guaranteed rentals are reduced (e.g., pursuant to Section 15.4 or Section 16.2) the breakpoint shall be reduced proportionately.

27.9 If this lease is in fact a sublease, Tenant accepts this lease subject to all of the terms and conditions of the underlying lease under which Landlord holds the Shopping Center as lessee. Tenant covenants that it will do no act or thing which would constitute a violation by Landlord of his obligation under such underlying lease; provided, however, that Tenant's agreement in this regard is premised on Landlord's assurances to the effect that the terms of this lease do not violate such underlying lease.

27.10 The laws of the State in which the Demised Premises are located shall govern the interpretation, validity, performance and enforcement of this lease. If any provision of this lease shall be held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this lease shall not be affected thereby. Venue for any action under this lease shall be the county in which rentals are due pursuant to Section 4.1 and Section 1.1 of this lease.

27.11 The captions used herein are for convenience only and do not limit or amplify the provisions hereof.

27.12 Whenever herein the singular number is used, the same shall include the plural, and words of any gender shall include each other gender.

27.13 The terms, provisions and covenants contained in this lease shall apply to, inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors in interest and legal representatives except as otherwise herein expressly provided.

27.14 This lease contains the entire agreement between the parties, and no agreement shall be effective to change, modify, or terminate this lease in whole.

Initials: 
Tenant: [Signature], Tenant: [Signature], Landlord
or in part unless such is in writing and duly signed by the party against whom enforcement of such change, modification or termination is sought. Landlord and Tenant hereby acknowledge that they are not relying on any representation or promise of the other, or of the Agent or Cooperating Agent, except as may be expressly set forth in this lease.

27.15 This lease consists of twenty-seven articles and 3 attached pages, including Exhibits A through C (any space left blank will be deemed to have been completed with the word "none"). With the exception of Article VI, in the event any provision of an exhibit or other attached page shall be inconsistent with a provision in the body of the lease, the provision as set forth in the exhibit shall be deemed to control.

27.16 Tenant has inspected the leased premises and deems it to be suitable for the type of business to be conducted during the lease term. Landlord has made no warranty of fitness concerning the suitability of the leased premises for the Tenant's business.

27.17 This is a lease of real property within a Shopping Center within the meaning of §365(b)(3) of the Bankruptcy Code. Notwithstanding anything in this lease to the contrary, all amounts payable by Tenant to or on behalf of Landlord under this lease, whether or not expressly denominated as rent, shall constitute rent for the purposes of §502(b)(6) of the Bankruptcy Code.

27.18 As a condition precedent to any assignment or subletting consented to by Landlord, Tenant or Tenant's proposed assignee or subtenant shall pay a transfer fee to Landlord of the greater of Two Hundred Fifty and No/100 Dollars ($250.00) or ten percent (10%) of the then current Monthly Rental installment attempted assignment or subletting shall render null and void and shall constitute an event of default under this lease.

27.19 Tenant shall have possession of the premises prior to February 1, 1991, to commence remodeling and construction with all terms and conditions of the Lease in effect with the exception of the payment of rental.

27.20 The "University" shall have first right of refusal for the 5000 square feet at 1110 North Street more commonly known as Yahmoo provided:

(1) The current Tenant's lease is terminated or expires;

(2) The "University" accepts in writing such first right within thirty (30) days after written receipt from Landlord of the vacancy;

(3) The Demised Premises are used by the "University" or agents of or for the "University". Tenant warrants that it will not sublease the Demised Premises to a third party without the expressed written approval of the Landlord.

(4) The terms and conditions of this additional square footage will be the same as this Lease document, with the rent per square foot being the then prevailing rate with appropriately called for annual escalations.

Initials: __________ Tenant, __________ Tenant, __________ Landlord

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27.21 OPTION TO PURCHASE. Provided that no default has occurred by Tenant hereunder, Tenant shall have, and Landlord hereby grants Tenant an option (the "Option") to purchase the Property described on Exhibit "B" hereto, in accordance with the Contract of Sale attached to this Lease marked Exhibit "C," and made a part hereof by reference, and executed by Landlord. If Tenant exercises the Option to purchase, such purchase will be on the terms and conditions stated in the Contract of Sale. Notwithstanding the exercise of the Option, all rents and other charges shall remain due and payable and be prorated up to the date of Closing. Unless Closing has occurred within the original term of this Lease, such Option shall expire and shall be of no further force and effect. Tenant covenants and agrees not to exercise the Option unless funds have been lawfully appropriated for the purchase of the Property and no legal impediments exist to Tenant's Closing thereunder.

a. Time of Exercising Option. Tenant may exercise the Option at any time after February 1, 1992, but prior to the expiration or early termination of this Lease.

b. Method of Exercising Option. If Tenant decides to exercise the Option, it will notify Landlord and Title Company in writing by executing the Contract of Sale, and shall deposit such executed Contract and the Escrow Deposit specified in the Contract of Sale in escrow with the Title Company. The Option will be deemed to have been exercised upon giving such notice and the deposit of the Escrow Deposit with the Title Company.

c. Performance of Sale and Purchase. If and when the Option is exercised, Landlord as Seller, and Tenant as Purchaser, will close under the Contract of Sale attached hereto within the time specified therein, time being of the essence.

d. Consideration of Sale. The sales price of the Property will depend upon the time the Tenant closes the Purchase under the Option. If the Option is closed between February 1, 1992, and January 31, 1994, the sales price will be $675,000.00, called the "Base Option Sales Price." If the Option is closed after January 31, 1994, the sales price will be increased by three percent over the prior year's price on each February 1, commencing February 1, 1994.

e. Default under Contract. Should Tenant exercise the Option, and thereafter fail to close the purchase of the Property due to Tenant's default thereunder, at Landlord's option such failure shall constitute a default by Tenant under this Lease.

f. Documentation. At the time of execution of this Lease, Landlord shall execute the following documents and deliver same into escrow with the Title Company:

- Special Warranty Deed to be effective as of the Closing Date, and with the Permitted Exceptions to be attached at Closing
In the event that Closing under the Contract does not occur, such escrowed items shall be returned to Landlord and shall not be delivered to Tenant.

q. Early Termination. Upon Closing of the purchase of the Property pursuant to the Option, this Lease shall terminate and merge into the deed, except only Tenant's indemnities in favor of Landlord and Tenant's financial obligations due and unpaid.

27.22 This Lease when executed by the Landlord constitutes an offer to lease which is open to acceptance by Tenant on or before 5:00 p.m. local time on January 31, 1991, by unconditional delivery of two (2) fully executed counterparts to Landlord or its representative on or before such date and time, accompanied by minutes of the Board of Regents of Tenant confirming its approval hereof, and by a copy of a letter from the State Purchasing and General Services Commission consenting to the Tenant entering into a direct lease with Landlord. If such acceptance is not timely delivered, at the option of Landlord, this Lease shall be null and void and of no further force and effect. Time is of the essence of this Lease and each provision hereof.

EXECUTED as of the date hereinabove stated.

LANDLORD:

TRI-STATE COMMERCIAL ASSOCIATES,
a Texas joint venture

By: TRI-STATE PROPERTIES INC.,
a Texas corporation, joint venturer

ATTEST or WITNESS

By: ____________________________
   Mike Schuminsky, President

By: TRI-STATE INVESTORS GROUP,
a California limited partnership, joint venturer

ATTEST or WITNESS

By: ____________________________
   Herb Jaffe, President

TENANT:

STEPHEN F. AUSTIN STATE UNIVERSITY

By: ____________________________
   Peggy W. Wright

Printed Name:
Title: 

ATTEST or WITNESS

Initials: ________ Tenant ________ Tenant ________ Landlord
PROPERTY TX #1156
1112 NORTH STREET
NACOGDOCHES, TEXAS


NORTH STREET

DISCLAIMER

"This site plan is presented solely for the purpose of identifying the approximate location and size of the existing space. Site dimensions, access and parking areas, existing tenant locations and identities are subject to change at the owner's discretion, except as is otherwise expressly restricted herein."

P.D. [Signature]
BEING all that certain lot, tract, or parcel of land lying and situated on the SAM HOUSTON SURVEY ABSTRACT NO. 34 in Nacogdoches County, Texas being an aggregate of the following three tracts of land: (1) a tract of land described in a correction deed from J. E. Reese et ux to Henderson County Trading Co. dated August 18, 1964 and recorded in Volume 123, on pages 429-430 of the Deed Records of Nacogdoches County, Texas and designated as Lot No. 51 in Block No. 45 on the City of Nacogdoches Tax Records Book; (2) a tract of land described in a deed from Carl E. Monk et ux to Henderson County Trading Co. dated July 10, 1964 and recorded in Volume 322, on Pages 239-241 of the Deed Records of Nacogdoches County, Texas and designated as Lot No. 42 in Block No. 45 on the City of Nacogdoches Tax Record Books; (3) a 1.4299 acre tract of land described in a deed from J. D. Harkrider et ux to Buddie's Super Markets, Inc., dated May 31, 1965 and recorded in Volume 349, on Page 137 of the Deed Records of Nacogdoches County, Texas and designated as Lot No. 43 in Block No. 45 on the City of Nacogdoches Tax Record Books to which references are hereby made and the three tracts being described in aggregate as follows, to-wit:

BEGINNING at the intersection of the East Right-of-Way of North Street, 40 feet at right angles from the centerline of same, and the South boundary line of an 8 foot wide strip of land described in a deed from Mrs. Ethel Dent to D. K. Cason dated March 23, 1923, and recorded in Volume 133, or Page 466 of the Deed Records of Nacogdoches County, Texas, also being the most Western N.W. corner of the aforesaid referred to tract described in the correction deed from J. E. Reese a 1/2" iron pin, found for corner.

THENCE N 88° 54' 45" E (called N 88 1/2° E), with the South boundary line of the said D. K. Cason 8 foot wide strip of land and the most Southern North boundary line of the said tract described in the correction deed from J. E. Reese, at 290.90 feet (called about 300 feet) the S. E. corner of the said 8 foot wide strip of land and an angle corner of the said J. E. Reese tract, a 1/2" iron pipe, set for corner;

THENCE N 3° 16' 29" E (called southwardly), with the East boundary line of the said D. K. Cason 8 foot wide strip of land the most Northern West boundary line of the said J. E. Reese tract, at 8.00 feet the N.E. corner of the D. K. Cason 8 foot wide strip of land and the most Northern N.W. corner of the said J. E. Reese tract a 1/2" iron pipe, set for corner;

THENCE N 88° 53' 45" E (called N 88 1/2° E), with the most Northern boundary line of the said J. E. Reese tract, at 193.60 feet (called 184.5 feet) the N.E. corner of same a 1/2" iron pipe, set for corner;

THENCE S 1° 03' 28" W (called South) with the East boundary line of the said J. E. Reese tract, at 103.50 feet the S.E. corner of same, on the North boundary line of the aforesaid referred to tract described in a deed from Carl E. Monk a 1/2" iron pipe, set for corner;

THENCE N 88° 55' 20" E (called 88 1/2° E), with the North boundary line of the said Monk tract at 11.50 feet the N.E. corner of same a 1/2" iron pipe, set for corner;

THENCE S 3° 16' 29" W, with the East boundary line of the said
Monk tract at 103.40 feet (called 103.5 feet) the S.E. corner of same and the North boundary line of the aforesaid referred to 1.4299 acre tract described in a deed from J. D. Harkrider et ux a 1/2" iron pipe, set for corner;

THENCE N 88° 55' 17" E (called N 88° 53' 28" E), with the North boundary line of the said Harkrider 1.4299 acre tract, at 13.76 feet the N. E. corner of the same a 1/2" iron pipe set for corner;

THENCE S 0° 04' 05" E (called S 0° 02' E), with the East boundary line of the said Harkrider 1.4299 acre tract, at 118.75 feet the S. E. corner of same on the North boundary line of Safeway Stores, Inc. property a 1/2" iron pin found for corner;

THENCE S 88° 38' 00" W, with the South boundary line of the said Harkrider 1.4299 acre tract and the North boundary line of Safeway Stores, Inc. property, at 520.91 feet intersect the aforesaid East Right-of-Way line of North Street, 40 feet at right angles for the center line of same, a 1/2" iron pipe, set for corner;

THENCE N 3° 16' 29" E, with the said East R-of-W line of North Street, at 121.70 feet pass the N.W. corner of the said Harkrider 1.4299 acre tract and the S.W. corner of the said Monk tract, at 225.11 feet pass the N.W. corner of the said Monk tract and the S.W. corner of the said Reese tract, at 320.61 feet the point and place of beginning and containing 3.7095 acres or 161,586.0605 square feet of land, more or less.
City of Nacogdoches Tax Records Book; (2) a tract of land described in a deed from Carl E. Monk et ux to Henderson County Trading Co. dated July 10, 1964 and recorded in Volume 321, on Pages 239-241 of the Deed Records of Nacogdoches County, Texas and designated as Lot No. 42 in Block No. 45 on the City of Nacogdoches Tax Record Books; (3) a 1.4299 acre tract of land described in a deed from J. D. Harkrider et ux to Buddie's Super Markets, Inc., dated May 31, 1968 and recorded in Volume 349, on Page 137 of the Deed Records of Nacogdoches County, Texas and designated as Lot No. 43 in Block No. 45 on the City of Nacogdoches Tax Record Books to which references are hereby made and the three tracts being described in aggregate as follows, to-wit:

BEGINNING at the intersection of the East Right-of-Way of North Street, 40 feet at right angles from the centerline of same, and the South boundary line of an 8 foot wide strip of land described in a deed from Mrs. Ethel Dent to D. K. Cason dated March 23, 1923, and recorded in Volume 133, on Page 466 of the Deed Records of Nacogdoches County, Texas, also being the most Western N.W. corner of the aforesaid referred to tract described in the correction deed from J. E. Reese a 1/2" iron pin, found for corner.

THENCE N 88° 54' 45" E (called N 88 1/2° E), with the South boundary line of the said D. K. Cason 8 foot wide strip of land and the most Southern North boundary line of the said tract described in the correction deed from J. E. Reese, at 290.90 feet (called about 300 feet) the S. E. corner of the said 8 foot wide strip of land and an angle corner of the said J. E. Reese tract, a 1/2" iron pipe, set for corner;

THENCE N 3° 16' 29" E (called Southwardly), with the East boundary line of the said D. K. Cason 8 foot wide strip of land the most Northern West boundary line of the said J. E. Reese tract, at 8.00 feet the N.E. corner of the D. K. Cason 8 foot wide strip of land and the most Northern N.W. corner of the said J. E. Reese tract a 1/2" iron pipe, set for corner;

THENCE N 88° 53' 45" E (called N 88 1/2° E), with the most Northern boundary line of the said J. E. Reese tract, at 193.60 feet (called 194.5 feet) the N.E. corner of same a 1/2" iron pipe, set for corner;

THENCE S 1° 03' 28" W (called South) with the East boundary line of the said J. E. Reese tract, at 103.50 feet the S.E. corner of same, on the North boundary line of the aforesaid referred to tract described in a deed from Carl E. Monk a 1/2" iron pipe, set for corner;

THENCE N 88° 55' 20" E (called 88 1/2° E), with the North boundary line of the said Monk tract at 11.50 feet the N.E. corner of same a 1/2" iron pipe, set for corner;

THENCE S 3° 16' 29" W, with the East boundary line of the said
EXHIBIT "C"  

CONTRACT OF SALE

1. Parties. This Contract of Sale is between Tri-State Commercial Associates, A Joint Venture ("Seller") and Stephen F. Austin State University ("Purchaser"). Seller has executed this Contract incident to a lease of a portion of the Property (below defined), to facilitate an option to Purchaser, as tenant of a portion of the Property, to purchase the Property. This Contract is open to acceptance by Purchaser no sooner than February 1, 1992, and no later than termination or expiration of the Lease to which it is attached.

2. Sale and Purchase. Subject to the terms of this Contract of Sale, Seller will sell to Purchaser, and Purchaser will purchase from Seller, the land described in Exhibit "A", attached hereto and made a part hereof by reference, including all improvements located thereon "as is" as of the Closing date, without express or implied warranty, except as expressly set out herein, there being no implied warranties of merchantability, habitability, or fitness for any intended purpose (the "Property").

3. Purchase Price. The Purchase Price will be the sum of Six Hundred Seventy-Five Thousand Dollars ($675,000.00) if Closing occurs between February 1, 1992, and January 31, 1994, increasing three percent (3%) over the previous year's price on each February 1. The Purchase Price, as adjusted by expenses or charges as provided herein, will be payable, all in cash, at Closing.

4. Purchaser's Obligations. The obligations of the Purchaser to consummate the transaction contemplated by this Contract of Sale is subject to the satisfaction of each of the following conditions, any of which may be waived in whole or in part by Purchaser at or prior to the Closing.

4.1 Survey. Within thirty (30) days after this Contract of Sale becomes effective, Purchaser will cause to be made a current plat of survey of the Property, prepared by a duly licensed Texas land surveyor acceptable to Purchaser, Seller, and the Title Company, and certified to such parties. The survey will be staked on the ground and the plat will show the location of all improvements, highways, streets, easements, rights-of-way, and other features on or adjacent to the Property, if any, and shall contain the surveyor's certification that there are no encroachments on the Property except as noted thereon and shall set forth the approximate number of total acres comprising the Property, together with a metes and bounds description thereof. Upon receipt of the completed survey, Purchaser will promptly file same with the Title Company and Seller.

4.2 Preliminary Title Report. Within thirty (30) days after this Contract of Sale becomes effective, Seller will have caused Lawyers American Title Company, 300 Crescent Court, Suite 100, Dallas, Texas 75201, Attention: Paulette Hubbard ("Title Company") to issue a preliminary title report ("Title Report"), accompanied by copies of all recorded documents relating to easements, rights-of-way, etc., affecting the Property. Purchaser will give Seller written notice on or before thirty (30) days after it receives the Title Report that the condition of the title as set forth in Schedule B of the title binder is or is not satisfactory. Seller may promptly undertake to eliminate
or modify all such unacceptable matters to the reasonable satisfaction of the Purchaser, but Seller shall not be obligated to incur any expenses whatsoever in order to do so. In the event Seller is unable or unwilling to do so prior to the date set for Closing, Purchaser may at its election withdraw its objections and close without abatement of the Purchase Price, or declare this Contract to be terminated and of no further force and effect. All objections in the Title Report not cured by Seller shall be permitted exceptions to the deed and Title Policy if Purchaser does not elect to terminate this Contract.

4.3 **State Agency and Use of State Funds.** Purchaser is an agency of the State of Texas and as such its funds are deemed to be state funds and its legal authority is limited to that which has been granted by the state legislature. In the event legal impediments not now known to the Purchaser are raised by the Attorney General of Texas, the Comptroller of Texas, or the State Auditor in such manner as cannot be appropriately cured, and to the extent the Purchaser is legally prohibited from consummating this purchase, then in such event this Contract shall terminate, and it shall be null and void for all purposes. Purchaser agrees to exercise diligence with respect to correcting any legal impediments that may arise.

4.4 **Estoppel Letter.** At Closing, Seller shall deliver to Purchaser an "estoppel letter," signed on behalf of the Seller, in which shall be stipulated that no third persons other than Purchaser, and those claiming under Purchaser, are in possession of the Property nor have any rights to possession, with the exception of lawful tenants of Seller. To the extent any such persons may be presently occupying or using the premises in any manner, Seller shall have such estoppel letter signed by such third person (or Seller's certificate and indemnity in lieu thereof) stipulating the basis upon which they occupy or possess and further stipulating no continued right to do so after conveyance to the Purchaser, with the exception of lawful tenants of Seller. However, Purchaser hereby agrees to allow any lawful tenant of Seller to continue to occupy the Property until the lease agreement with such tenant expires. Such tenant lease(s) if any shall be assigned to and assumed by Purchaser. A copy of any written lease agreement shall be furnished to the Purchaser, and at Closing the original of any such lease shall be delivered to Purchaser.

5. **Representations and Warranties of Seller.** Seller hereby represents and warrants to Purchaser as follows to the best of Seller's actual knowledge and belief, which representations and warranties shall be deemed made by Seller to Purchaser as of the date of Seller's execution hereof.

5.1 There are no parties in possession of any portion of the Property as lessees, tenants at sufferance, or trespassers, except as stipulated by Seller, other than Purchaser and those claiming under Purchaser; "Yahmoz" is stipulated to be a tenant of 1110 North Street as of Seller's execution hereof.
5.2 There is no pending or threatened condemnation or similar proceeding or assessment affecting the Property, or any part thereof, nor to the best knowledge and belief of Seller is any such proceeding or assessment contemplated by any governmental authority;

5.3 Seller has complied with all applicable laws, ordinances, regulations, statutes, rules and restrictions relating to the Property, or any part thereof;

5.4 The Property has full and free access to and from public highways, streets or roads and, to the best knowledge and belief of Seller, there is no pending or threatened governmental proceeding which would impair or result in the termination of such access.

6. **Closing.**

6.1 **Closing Agent.** The Closing Agent will be the Title Company.

6.2 **Date and Place.** The Closing will take place at the Title Company, within thirty (30) days after the earlier of (a) the Seller’s completion of curative title work pursuant to paragraph 4.2 hereof if Purchaser timely shall have objected to title pursuant to paragraph 4.2 hereof, or (b) Purchaser’s notification to the Seller that it is satisfied with the condition of the title (which shall be deemed to have been given on the thirtieth (30th) day after delivery of the Title Report if no notice is given by Purchaser), or at such other date as the Seller and Purchaser may agree.

6.3 **Seller’s Duties.** At the Closing, the Seller shall:

6.3.1 Deliver to Purchaser an acknowledged Special Warranty Deed conveying good and indefeasible title in fee simple to all of the Property, free and clear of any and all liens, encumbrances, conditions, easements, assessments, and restrictions, except for those enumerated in the preliminary Title Report and which are or are deemed acceptable to Purchaser and except for the following:

   a. General real estate taxes for the year of Closing and subsequent years not yet due and payable (see proration of taxes for current year);

   b. Any exception approved or deemed approved by Purchaser pursuant to Section 4 hereof; and
6.3.2 Deliver to Purchaser a Texas Owner's Title Policy issued by the Title Company in Purchaser's name in the full amount of the Purchase Price, insuring Purchaser's fee simple title to the Property subject only to those title exceptions as may be approved pursuant to this Contract, and the standard printed exceptions contained in the usual form of a Texas Owner's Title Policy, provided, however:

a. The exception as to restrictive covenants shall be endorsed "None of Record," except those made a part of the deed for this conveyance as hereinabove provided;

b. To the extent permitted by law without premium surcharge, the exception as to liens for taxes shall be limited to the year of Closing and shall be endorsed "Not Yet Due and Payable"; and

c. The exception as to any discrepancies, conflicts, or shortages in area or boundary lines, or any encroachments, or any overlapping of improvements shall be deleted except for "shortages in area," and matters shown on the survey specified in Section 4.1.

6.3.3 Deliver to Purchaser possession of the Property, subject to permitted exceptions and tenants.

6.3.4 Taxes and Costs. General real estate taxes for the year of claims relating to the Property shall be prorated as of the date of Closing based upon the taxes assessed, subject to the parties' respective obligations for taxes under the Lease. If the Closing shall occur before the Seller has received current year tax notices, the taxes shall be estimated based upon the most recent taxes assessed. Such to the parties' respective obligations for taxes under the Lease. The estimated amount is to be delivered or charged to Purchaser at the time of Closing. If the taxes actually
due exceed the estimated sum, Seller shall be liable to Purchaser for the additional amount due; however, if the estimated amount exceeds the taxes actually due, Seller shall be entitled to a refund of the excess.

All special taxes or assessments due prior to Closing shall likewise be paid by Seller. All costs and expenses of Closing consummating the sale and purchase of the Property shall be borne and paid as follows:

a. **Owner's Title Policy** paid by Seller;
b. **Escrow fee, if any, paid** one-half (1/2) by Seller and one-half (1/2) by Purchaser;
c. **Filing and recording fees of Special Warranty Deed** paid by Purchaser;
d. **Filing and recording of any releases and curative instruments as may be required to be paid by Seller and**
e. **Seller's attorney's fees** paid by Seller.

7. **Real Estate Commissions.** If the Closing actually occurs hereunder, but not otherwise (including default by either party or failure of title) Seller shall be liable to pay out of the Closing Funds to be received by it a commission of two percent (2%) of the Purchase Price each to Quine & Associates, Inc. and to Lee Danis & Associates ("Brokers"). Brokers hereby advise the Purchaser that it should obtain or be provided with a policy of title insurance or a complete abstract of title to be reviewed by an attorney of Purchaser's own selection. By their acceptance of such sums, Brokers will be deemed to represent and warrant that they are licensed Texas real estate brokers entitled to be paid and receive such commissions. Purchaser stipulates that the Property has not been presented to it as a prospective purchaser by any real estate agent or broker other than Lee Danis & Associates. To the extent any other real estate commission shall be claimed or become due or payable arising out of this transaction, such payment obligation shall be the sole obligation of the party alleged to have committed to pay such commission and who hereby agrees to hold the other party harmless from any such payment obligation.

8. **Escrow Deposit.** For the purpose of securing the performance of Purchaser under the terms and provisions of this Contract, Purchaser will deliver to the Title Company the sum of One Thousand and No/100 Dollars ($1,000.00) (the "Escrow Deposit") which shall be paid by the Title Company to the Seller in the event Purchaser breaches this Contract. At
the Closing, the Escrow Deposit shall be returned to Purchaser and shall not be applied to the cash portion of the Purchase Price. In the event, however, that one or more of the conditions to Purchaser’s obligations set forth in Section 4 hereof have not been complied with by Seller, then the Escrow Deposit shall be forthwith returned by the Title Company to the Purchaser as Purchaser’s sole and exclusive remedy.


9.1 Survival of Covenants. Seller has not made any representations or warranties not set out herein, and no person has authority to do so on its behalf or to waive the terms and conditions hereof. Any of the representations, warranties, covenants, and agreements of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the Closing of the transactions contemplated hereby shall survive the Closing and shall not be merged therein.

9.2 Notice. Any notice required or permitted to be delivered hereunder shall be deemed received when sent by United States mail, postage pre-paid, certified mail, return receipt requested addressed to Seller or Purchaser, as the case may be, at the address(es) set forth opposite the signature of each party hereeto.

9.3 Parties Bound. This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and permitted assigns, where permitted by this Contract.

9.4 Legal Construction. In case any one or more of the provisions contained in this Contract shall for any reason be held to be invalid or illegal in any respect, such invalidity or illegality shall not affect any other provision hereof, and this Contract shall be construed as if such invalid or illegal provision had never been contained herein. Captions and titles shall not affect the construction. Both parties have participated in the negotiation hereof and the same shall not be strictly construed against either party.

9.5 Prior Agreements Superseded. This Contract constitutes the sole and only agreement of the parties hereto and supersedes any understandings or written or oral agreements between the parties respecting the subject matter of this Contract, except the lease agreement to which this Contract is attached. Time is of the essence.
CONTRACT OF SALE - Page 7

EXECUTED by Seller this ____ day of ____________, 1991.

SELLER:

TRI-STATE COMMERCIAL ASSOCIATES,
a Texas joint venture

By: TRI-STATE PROPERTIES, INC.,
a Texas corporation, joint venturer

By: ________________
Mike Schuminsky, President

By: TRI-STATE INVESTORS GROUP,
a California limited partnership

By: NCM MANAGEMENT OF TEXAS, INC.,
a corporation, general partner

By: ________________
Herb Jaffe, President

EXECUTED by Purchaser this ____ day of ____________, 199____.

PURCHASER:

STEPHEN F. AUSTIN STATE UNIVERSITY

By: ___________________________
Printed Name: ___________________
Its: Chairman, Board of Regents

By: _________________________
Donald E. Bowen, President

The undersigned Brokers hereby accept the provisions of paragraph 7 above as Seller's sole and conditional brokerage obligation with respect to the sale of the Property, and make the representations and give the notices set forth in such paragraph.

LEE DANIS & ASSOCIATES, INC.
a ____________

By: ___________________________
Lee Danis, Its: ____________

QUINE & ASSOCIATES, INC.,
a Texas corporation

By: ___________________________
Coy Quine, President
EXHIBIT "A"

Page 1 of 2

BEING all that certain lot, tract, or parcel of land lying and situated on the SAM HOUSTON SURVEY ABSTRACT NO. 34 in Nacogdoches County, Texas being an aggregate of the following three tracts of land: (1) a tract of land described in a correction deed from J. E. Reese et ux to Henderson County Trading Co. dated August 18, 1964 and recorded in Volume 323, on pages 429-430 of the Deed Records of Nacogdoches County, Texas and designated as Lot No. 41 in Block No. 45 on the City of Nacogdoches Tax Records Book; (2) a tract of land described in a deed from Carl E. Monk et ux to Henderson County Trading Co. dated July 10, 1964 and recorded in Volume 322, on pages 239-241 of the Deed Records of Nacogdoches County, Texas and designated as Lot No. 42 in Block No. 45 on the City of Nacogdoches Tax Record Books; (3) a 1.4299 acre tract of land described in a deed from J. D. Harkrider et ux to Buddie's Super Markets, Inc., dated May 31, 1968 and recorded in Volume 349, on Page 137 of the Deed Records of Nacogdoches County, Texas and designated as Lot No. 43 in Block No. 45 on the City of Nacogdoches Tax Record Books to which references are hereby made and the three tracts being described in aggregate as follows, to-wit:

BEGINNING at the intersection of the East Right-of-Way of North Street, 40 feet at right angles from the centerline of same, and the South boundary line of an 8 foot wide strip of land described in a deed from Mrs. Ethel Dent to D. K. Cason dated March 23, 1923, and recorded in Volume 133, on Page 466 of the Deed Records of Nacogdoches County, Texas, also being the most Western N.W. corner of the aforesaid referred to tract described in the correction deed from J. E. Reese a 1/2" iron pin, found for corner.

THENCE N 54' 45" E (called N 88 1/2° E), with the South boundary line of the said D. K. Cason 8 foot wide strip of land and the most Southern North boundary line of the said tract described in the correction deed from J. E. Reese, at 290.90 feet (called about 300 feet) the S. E. corner of the said 8 foot wide strip of land and an angle corner of the said J. E. Reese tract, a 1/2" iron pipe, set for corner;

THENCE N 16' 20" E (called Southwardly), with the East boundary line of the said D. K. Cason 8 foot wide strip of land the most Northern West boundary line of the said J. E. Reese tract, at 8.00 feet the N.E. corner of the D. K. Cason 8 foot wide strip of land and the most Northern N.W. corner of the said J. E. Reese tract a 1/2" iron pipe, set for corner;

THENCE N 53' 45" E (called N 88 1/2° E), with the most Northern boundary line of the said J. E. Reese tract, at 193.60 feet (called 184.5 feet) the N.E. corner of same a 1/2" iron pipe, set for corner;
THENCE S 03° 28' W (called South) with the East boundary line of the said J. E. Reese tract, at 103.50 feet the S.E. corner of same, on the North boundary line of the aforesaid referred to tract described in a deed from Carl E. Monk a 1/2" iron pipe, set for corner;

THENCE N 88° 55' 20" E (called N 88 1/2° E), with the North boundary line of the said Monk tract at 11.50 feet the N.E. corner of same a 1/2" iron pipe, set for corner;

THENCE S 3° 16' 29" W, with the East boundary line of the said Monk tract at 103.40 feet (called 103.5 feet) the S.E. corner of same and the North boundary line of the aforesaid referred to 1.4299 acre tract described in a deed from J. D. Harkrider et ux a 1/2" iron pipe, set for corner;

THENCE N 88° 55' 17" E (called N 88° 53° 47" E), with the North boundary line of the said Harkrider 1.4299 acre tract, at 13.76 feet the N.E. corner of the same a 1/2" iron pipe, set for corner;

THENCE S 0° 04' 05" E (called S 00° 02' E), with the East boundary line of the said Harkrider 1.4299 acre tract, at 118.75 feet the S.E. corner of same on the North boundary line of Safeway Stores, Inc. property a 1/2" iron pin found for corner;

THENCE S 88° 38' 00" W, with the South boundary line of the said Harkrider 1.4299 acre tract and the North boundary line of Safeway Stores, Inc. property, at 520.91 feet intersect the aforesaid East Right-of-Way line of North Street, 40 feet at right angles for the center line of same, a 1/2" iron pipe, set for corner;

THENCE N 3° 16' 29" E, with the said East R-of-W line of North Street, at 121.70 feet pass the N.W. corner of the said Harkrider 1.4299 acre tract and the S.W. corner of the said Monk tract; at 225.11 feet pass the W.W. corner of the said Monk tract and the S.W. corner of the said Reese tract, at 320.61 feet the point and place of beginning and containing 3.7095 acres or 161,586.0605 square feet of land, more or less.