

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

CASE TYPE: CONTRACT

Anthropologie, Inc., n/k/a URBN US Retail
LLC,

Court File No.: _____

Plaintiff,

v.

SUMMONS

Wayzata Bay West Retail, LLC,

Defendant.

THIS SUMMONS IS DIRECTED TO DEFENDANT:

YOU ARE BEING SUED. The Plaintiff has started a lawsuit against you. The Plaintiff's Complaint against you is attached to this Summons. Do not throw these papers away. They are official papers that affect your rights. You must respond to this lawsuit even though it may not yet be filed with the Court and there may be no court file number on this Summons.

YOU MUST REPLY WITHIN 21 DAYS TO PROTECT YOUR RIGHTS. You must give or mail to the person who signed this Summons a written response called an Answer within 21 days of the date on which you received this Summons. You must send a copy of your Answer to the person who signed this Summons located at:

**Ballard Spahr LLP
2000 IDS Center
80 South Eighth Street
Minneapolis, MN 55402**

YOU MUST RESPOND TO EACH CLAIM. The Answer is your written response to the Plaintiff's Complaint. In your Answer you must state whether you agree or disagree with each

paragraph of the Complaint. If you believe the Plaintiff should not be given everything asked for in the Complaint, you must say so in your Answer.

YOU WILL LOSE YOUR CASE IF YOU DO NOT SEND A WRITTEN RESPONSE TO THE COMPLAINT TO THE PERSON WHO SIGNED THIS SUMMONS. If you do not Answer within 21 days, you will lose this case. You will not get to tell your side of the story, and the Court may decide against you and award the Plaintiff everything asked for in the Complaint. If you do not want to contest the claims stated in the Complaint, you do not need to respond. A default judgment can then be entered against you for the relief requested in the Complaint.

LEGAL ASSISTANCE. You may wish to get legal help from a lawyer. If you do not have a lawyer, the Court Administrator may have information about places where you can get legal assistance. Even if you cannot get legal help, you must still provide a written Answer to protect your rights or you may lose the case.

ALTERNATIVE DISPUTE RESOLUTION. The parties may agree to or be ordered to participate in an alternative dispute resolution process under Rule 114 of the Minnesota General Rules of Practice. You must still send your written response to the Complaint even if you expect to use alternative means of resolving this dispute.

Dated: March 30, 2023

BALLARD SPAHR LLP

By: /s/ Christopher R. Grote

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STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

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CASE TYPE: CONTRACT

Anthropologie, Inc. n/k/a URBN US Retail
LLC,

Court File No.: _____

Plaintiff,

v.

COMPLAINT

Wayzata Bay West Retail, LLC,

Defendant.

For its Complaint against Defendant Wayzata Bay West Retail, LLC (“Wayzata Bay” and “Landlord”), Plaintiff Anthropologie, Inc. n/k/a URBN US Retail LLC (“Anthropologie” and “Tenant”) states the following:

INTRODUCTION

1. Anthropologie is a unique, full-lifestyle retail shopping destination, with a mostly exclusive assortment of clothing, shoes, accessories, beauty, furniture, home décor, garden and bridal products. (www.anthropologie.com/help/our-story.) On or about September 3, 2014, Anthropologie, as “Tenant,” and Wayzata Bay, as “Landlord,” entered into a commercial lease agreement (the “Lease”) for approximately 9,500 square feet of retail space on the ground level of the West Block of The Promenade of Wayzata (the “Property” or the “Shopping Center”).¹ A true and correct copy of the Lease is attached hereto and incorporated herein as **Exhibit A**). The space occupied by Anthropologie, the “Leased Space” is located at 803 Lake Street, Wayzata, MN.

¹ Capitalized terms used herein have the meaning given them in the Lease unless otherwise indicated.

Anthropologie opened its store and commenced its retail operations in the Leased Space in the summer of 2015. A picture of the Wayzata Anthropologie store follows:



Pursuant to the Lease and on the “Commencement Date,” Anthropologie was to start paying “Rent.” (Ex. A at §§ 5(a) and 3(e).) However, the Lease also contains an “Operating Cotenancy Condition” (the “Cotenancy Provision”). (*Id.* at § 30.) Under the Cotenancy Provision, Anthropologie is only required to pay “Alternate Rent” until certain specifically identified retailers, such as Lululemon, PaperSource and Lunds, rented space in the Property and “retail tenants and restaurants of the type typically found in first-class shopping centers located in the Minneapolis/St. Paul, MN metropolitan area occupy[] at least seventy five (75%) percent of the

total rentable retail area of [the Property, not counting the Anthropologie space], all of which shall have opened for business to the public" (*Id.* at § 30(a).) Landlord has never satisfied the Cotenancy Provision. Nevertheless, Landlord has now demanded that Anthropologie pay full "Rent" as defined in the Lease. The "Rent" demanded by Landlord is two to three times as much as the "Alternate Rent" that Anthropologie has been paying. Even further, Landlord has demanded that Anthropologie pay more than \$128,000 in "Rent" above "Alternate Rent" that Landlord claims has accrued since July of 2022. With this action, Anthropologie seeks a declaration from the Court that: (1) the Cotenancy Provision of the Lease has not been satisfied; (2) Anthropologie is entitled to continue to pay "Alternate Rent" until the Cotenancy Provision is satisfied; (3) Landlord is not entitled to the "Rent" it has claimed over and above the "Alternate Rent" paid to date by Anthropologie; and (4) pursuant to the Lease (**Ex. A** at § 40), Anthropologie is entitled to an award of its costs, expenses and reasonable attorneys' fees incurred in bringing this action.

PARTIES

2. Anthropologie, Inc. was a Pennsylvania corporation with its principal place of business located at 5000 South Broad Street, Philadelphia, Pennsylvania 19112. Anthropologie, Inc. converted its corporate structure to and is now known as URBN US Retail LLC, a Pennsylvania limited liability company. Anthropologie continues to be located at 5000 South Broad Street, Philadelphia, Pennsylvania 19112.

3. Landlord is a Minnesota limited liability company with its principal place of business located at 2845 Hamline Avenue North, Roseville, Minnesota 55113.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this matter because Landlord is a resident of the State of Minnesota and the causes of action herein arose from the transaction of business and the ownership of property located in Hennepin County, Minnesota.

5. Venue is proper in Hennepin County, Minnesota in accordance with Minnesota Statutes § 542.09 because the causes of action herein arose in Hennepin County.

FACTS

6. On or about September 3, 2014, Anthropologie, as “Tenant,” and Wayzata Bay, as “Landlord,” entered into a commercial lease agreement (the “Lease”) for approximately 9,500 square feet of retail space on the ground level of the West Block of The Promenade of Wayzata (the “Property” or the “Shopping Center”).

7. The Lease defines the terms “Property” and “Shopping Center” as “The Land, together with the Building (and all other buildings and improvements on the Land) and all Common Areas and Facilities, and commonly referred to as West Block of The Promenade of Wayzata.” (Ex. A at I(H).)

8. The Lease defines the term “Land” as “The tract of land bounded by Superior Boulevard, Lake Street, Mill Street and Rice Street in Wayzata, MN, as more fully described on Exhibit ‘A’ attached hereto and made a part hereof.” (Ex. A at I(E).)

9. Exhibit A to the Lease contains the legal description of the Land:

Real Property in the City of Wayzata, County of Hennepin, State of Minnesota, described as follows:

Parcel 1: Tracts B, C, E, G and J, Registered Land Survey No. 1820, Hennepin County, Minnesota.

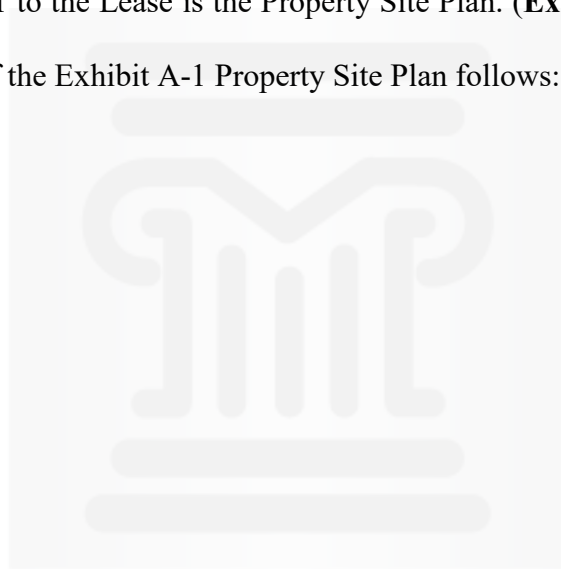
Parcel 2: Exclusive easement for utility and infrastructure purposes, together with any incidental rights, in favor of Wayzata Bay Redevelopment Company, LLC, a

Minnesota limited liability company, as contained in the Utility and Infrastructure Easement Agreement, dated November 29, 2011, recorded December 5, 2011, as Document No. 4907300 (Torrens).

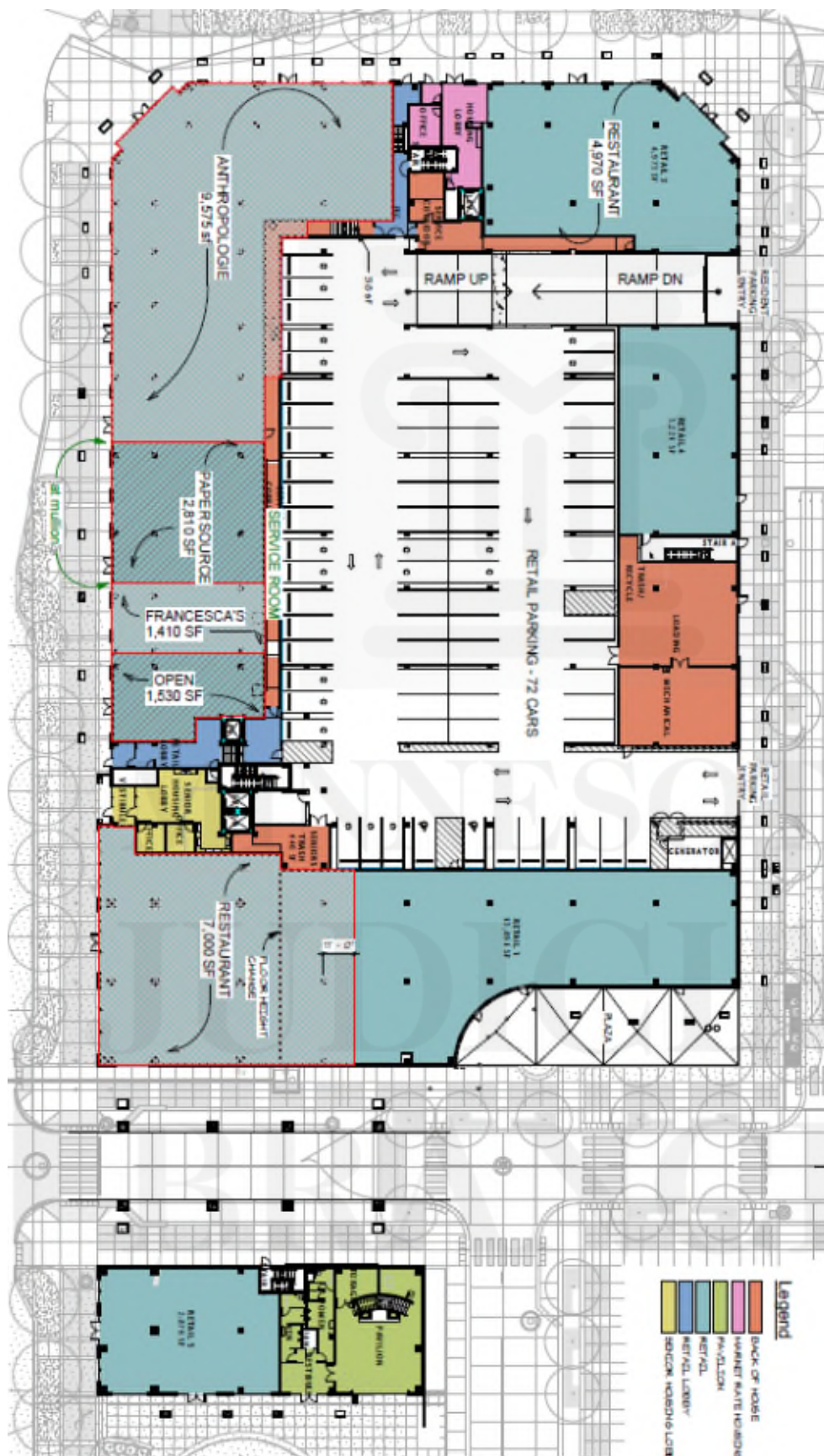
(Ex. A at Exhibit A thereto.)

10. Exhibit A-1 to the Lease is the Property Site Plan. (Ex. A at Exhibit A-1 thereto.)

A true and correct copy of the Exhibit A-1 Property Site Plan follows:



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11. Exhibit A-1 to the Lease shows the location and size (in square feet) of the retail spaces that are available for lease in the Shopping Center.

12. Despite being identified on Exhibit A-1 of the Lease, neither PaperSource nor Francesca's are leasing retail space in the Shopping Center.

13. On March 1, 2015, Landlord delivered the Leased Space to Anthropologie.

14. Pursuant to Sections 5, 6 and 7 of the Lease, and commencing on the "Commencement Date" (as that term is defined in the Lease), Anthropologie is required to pay Landlord "Rent," which includes, "Minimum Rent," "Percentage Rent," and "Additional Rent" (as those terms are defined in the Lease). (**Ex. A** at §§ 3(e), 5, 6, 7.).

15. As defined in the Lease, the "Commencement Date" is: "The date which is one hundred (120) days after the Delivery Date; subject, however, to the "Commencement Date Condition" set forth in Section [30] hereof, and; subject, further, to any extension as provided by Section [5](a) hereof." (*Id.* at II(L).)

16. Section 30(a) of the Lease sets forth the "Commencement Date Condition" and the Cotenancy Provision:

It shall be a condition of the Commencement Date that Landlord shall have entered into written, legal, valid and binding leases for space in the Property (except as noted) with (i) Lund's, located in the Superior Block of The Promenade at Wayzata (adjacent to the Property), and (ii) at least two of the following ten retailers: PaperSource, Francesca's, Arafina, Ala Mode, Lululemon, yogafit, Invision Eyewear, Charleson Shoe Co., solidcore or Lou & Grey (or replacements thereof approved by Tenant), and (iii) retail tenants and restaurants of the type typically found in first-class shopping centers located in the Minneapolis/St. Paul, MN metropolitan area occupying at least seventy five (75%) percent of the total rentable retail area of the "West Block" of Property (exclusive of the Leased Space but inclusive of the occupants described in clause (ii) hereof), all of which shall have opened for business to the public (the "Commencement Date Condition"). In the event Tenant elects at its sole discretion to open prior to the satisfaction of this Commencement Date Condition, then the Commencement Date shall be deemed to have occurred, but as long as this Commencement Date Condition remains unsatisfied, then, in lieu of Minimum Rent, Percentage Rent, and Additional Rent,

if any, Tenant shall only be obligated to pay Landlord “Alternate Rent.” “Alternate Rent” for purposes of subsections (a) and (b) of this Section [30], is herein defined to mean five percent (5%) of all of Tenant’s Gross Sales from the Leased Space. Furthermore, if such Commencement Date Condition remains unsatisfied for eighteen (18) months, then Tenant may notify Landlord of Tenant’s election to terminate this Lease, whereupon this Lease shall become null and void and, thereafter, neither party hereto shall have any further rights, liabilities or obligations hereunder (exclusive of Landlord’s obligation to pay Tenant the Tenant Improvement Allowance, in full, which shall specifically survive, and Tenant’s obligation to pay all Rent due through the effective date of early termination). Upon satisfaction of the Commencement Date Condition, subject to the terms and conditions of this Lease, Tenant shall immediately commence the payment of full Rent.

(Ex. A at § 30(a).)

17. Since occupying the Leased Space, Anthropologie has been paying Alternate Rent to Landlord.

18. Condition (ii) of the Cotenancy Provision is not satisfied because none of the identified ten retailers are leasing space in the Shopping Center.

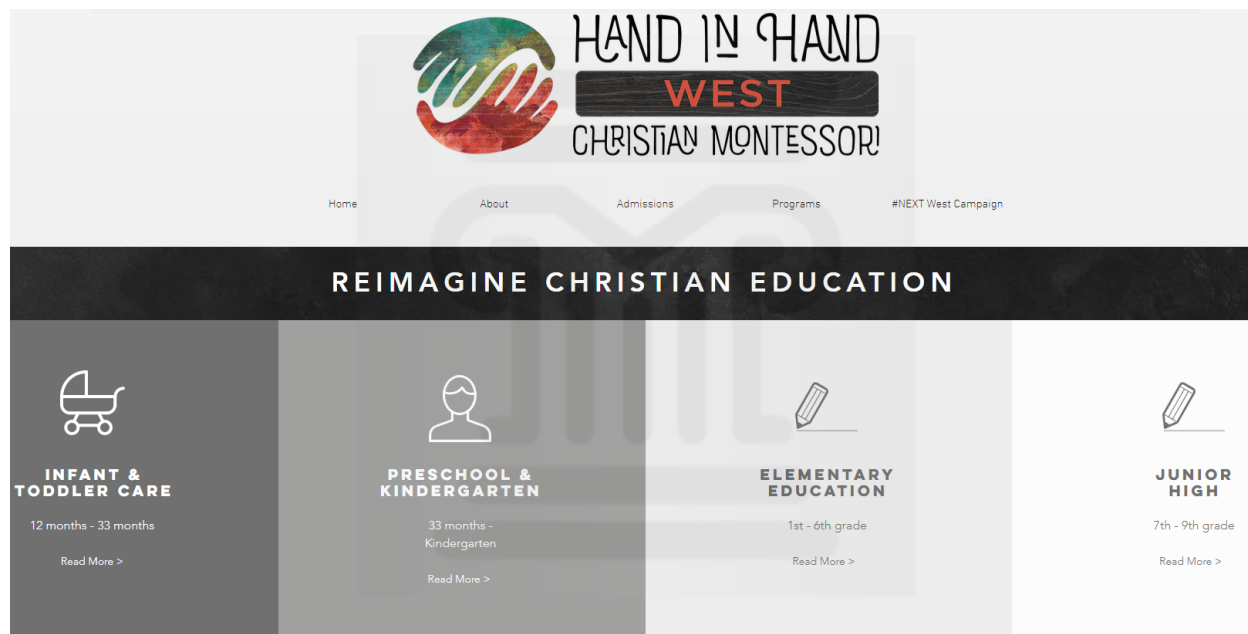
19. Condition (iii) of the Cotenancy Provision is not satisfied because retail tenants and restaurants of the type typically found in first-class shopping centers located in the Minneapolis/St. Paul, MN metropolitan area **are not** occupying at least seventy five (75%) of the total rentable retail area of the West Block of The Promenade of Wayzata.

20. Exhibit A-1 to the Lease identifies and locates the “retail” spaces in the Shopping Center and it identifies the square footage of those retail spaces. (Ex. A at Exhibit A-1 thereto.)

21. The space in the Shopping Center identified as “Retail 1” contains 13,891 square feet of space.

22. Landlord has leased the Retail 1 space to an entity operating as “Hand in Hand West.” On its website, www.handinhandwest.com, Hand in Hand West identifies itself as a

“Christian Montessori” school. A screen shot of the “About” page on Hand in Hand West’s website follows:



(www.handinhandwest.com/aboutus.) Hand in Hand West is currently operating in the Retail 1 space and it has been operating in the Retail 1 space for a number of years.

23. The Lease defines “Permitted Uses” as:

Any **general retail use**, including the display and sale of apparel, shoes and accessories, gifts, cards, furniture, home furnishings, housewares, food and food stuffs, plants, fresh and dried flowers, pots, containers and stands for plants or flowers, and/or items related to the foregoing, together with ancillary office and storage use.

(Ex. A at III(R), emphasis added.)

24. As long as Hand in Hand West continues to operate in the Retail 1 space, condition (iii) of the Cotenancy Provision is not, and cannot, be satisfied. This is because a Christian Montessori school is not a retail tenant or a restaurant. Accordingly, Landlord cannot satisfy the

condition requiring that retail tenants and restaurants occupy “at least seventy five (75%) of the total rentable retail area of the ‘West Block’ of Property (exclusive of the Leased Space but inclusive of the occupants described in clause (ii) hereof).” (**Ex. A** at § 30(a).)

25. On February 7, 2023, Landlord filed an “EVICTION COMPLAINT (COMMERCIAL LEASE)” in Hennepin County District Court (the “Eviction Complaint”). A true and correct copy of Landlord’s Eviction Complaint is attached hereto and incorporated herein as **Exhibit B**.

26. Landlord has not served the Eviction Complaint on Anthropologie as of the date of this pleading.

27. In the Eviction Complaint, Landlord seeks to evict Anthropologie from the Property. (**Ex. B** at 6.)

28. In the Eviction Complaint, Landlord alleges that Tenant is obligated to pay full “Rent” (as that term is defined in Section 3(e) of the Lease) rather than the “Alternate Rent” that Anthropologie has been paying pursuant to Section 30 of the Lease. (**Ex. B** at 3-4.)

29. In the Eviction Complaint, Landlord alleges that Anthropologie is in default of the Lease for failing to pay full Rent for September, October, November and December 2022. (**Ex. B** at 4.)

30. In the Eviction Complaint, Landlord alleges that Anthropologie is in default for failure to pay Landlord \$128,464.48 in full Rent charges for the months of September, October, November and December 2022. (*Id.* at 4.)

31. In the Eviction Complaint, Landlord alleges that as of February 1, 2023 and a result of its failure to pay full Rent under the Lease, Anthropologie “owes Landlord \$180,540.50, in addition to such attorney fees and other costs as provided under the Lease.” (*Id.* at 5.)

COUNT I
DECLARATORY JUDGMENT

32. Anthropologie restates and incorporates by reference the paragraphs above as though fully-stated here.

33. Pursuant to the Minnesota Uniform Declaratory Judgments Act, Minn. Stat. § 555.01 et seq., this Court has the power to construe the Lease and to declare the rights of the parties under the Lease.

34. The Cotenancy Provision of the Lease has been satisfied by Landlord.

35. Condition (ii) of the Cotenancy Provision has not been satisfied.

36. Condition (iii) of the Cotenancy Provision has not been satisfied

37. Condition (iii) of the Cotenancy Provision cannot be satisfied as long as Hand in Hand West continues to operate in the Retail 1 space because a Christian Montessori school is not a retail tenant or a restaurant and accordingly, Landlord cannot satisfy the condition requiring that retail tenants and restaurants occupy “at least seventy five (75%) of the total rentable retail area of the ‘West Block’ of Property (exclusive of the Leased Space but inclusive of the occupants described in clause (ii) hereof).” (Ex. A at § 30(a).)

38. Anthropologie is not and has not been obligated to pay Landlord Rent, as opposed to Alternate Rent, under the Lease.

39. Landlord is not entitled to any of the sums it claims are owed by Anthropologie in the Eviction Complaint.

40. Anthropologie has not breached the Lease in any fashion.

41. Landlord is not entitled to any of the relief it seeks in the Eviction Complaint.

42. There is a present, active and justiciable dispute between Anthropologie and Landlord with regard to whether condition (ii) of the Cotenancy Provision has been satisfied.

43. There is a present, active and justiciable dispute between Anthropologie and Landlord with regard to whether condition (iii) of the Cotenancy Provision has been satisfied.

44. There is a present, active and justiciable dispute between Anthropologie and Landlord as to whether Anthropologie has been and is entitled to pay Alternate Rent, as opposed to Rent, under the Lease.

45. There is a present, active and justiciable dispute between Anthropologie and Landlord as to whether Anthropologie owes Landlord any of the sums identified by Landlord in the Eviction Complaint.

46. There is a present, active and justiciable dispute between Anthropologie and Landlord as to whether Anthropologie has breached the Lease and/or is in default under the Lease.

47. For the reasons stated herein, Anthropologie is entitled to a declaratory judgment from this Court that Landlord has not satisfied condition (ii) of the Cotenancy Provision.

48. For the reasons stated herein, Anthropologie is entitled to a declaratory judgment from this Court that Landlord has not satisfied condition (iii) of the Cotenancy Provision.

49. For the reasons stated herein, Anthropologie is entitled to a declaratory judgment from this Court that condition (iii) of the Cotenancy Provision cannot be satisfied by Landlord as long as Hand in Hand West continues to lease the Retail 1 space shown on Exhibit A-1 of the Lease.

50. For the reasons stated herein, Anthropologie is entitled to a declaratory judgment from this Court that Anthropologie is entitled to pay Alternate Rent under the Lease until the Cotenancy Provision is satisfied by Landlord.

51. For the reasons stated herein, Anthropologie is entitled to a declaratory judgment from this Court that Anthropologie does not owe Landlord any of the sums identified by Landlord in the Eviction Complaint.

52. For the reasons stated herein, Anthropologie is entitled to a declaratory judgment from this Court that Anthropologie is not in breach of or in default under the Lease.

53. Anthropologie is further entitled to judgment against Landlord and an award of its “reasonable attorney’s fees and other costs and expenses” incurred by Anthropologie in this action pursuant to Section 40 of the Lease.

WHEREFORE, Plaintiff Anthropologie, Inc., n/k/a URBN US Retail LLC, respectfully requests that this Court:

1. Enter an order and judgment declaring that Landlord has not satisfied condition (ii) of the Cotenancy Provision (Section 30(a)) of the Lease;
2. Enter an order and judgment declaring that Landlord has not satisfied condition (iii) of the Cotenancy Provision (Section 30(a)) of the Lease;
3. Enter an order and judgment declaring that condition (iii) of the Cotenancy Provision (Section 30(a)) of the Lease cannot be satisfied by Landlord as long as Hand in Hand West continues to lease the Retail 1 space shown on Exhibit A-1 of the Lease;
4. Enter an order and judgment declaring that Anthropologie is entitled to pay Alternate Rent under the Lease until the Cotenancy Provision is satisfied by Landlord;
5. Enter an order and judgment declaring that Anthropologie does not owe Landlord any of the sums identified by Landlord in the Eviction Complaint;
6. Enter an order and judgment declaring that Anthropologie is not in breach of or in default under the Lease;

7. Award Anthropologie its costs, attorneys' fees, and disbursements under Section 40 of the Lease and all other applicable legal authority; and
8. Grant Anthropologie such other relief as the Court deems just and equitable.

ACKNOWLEDGEMENT

The party upon whose behalf this pleading is submitted, by and through the undersigned, hereby acknowledges that sanctions may be imposed under Minnesota Statutes § 549.211.

Dated: March 30, 2023

BALLARD SPAHR LLP

By: /s/ Christopher R. Grote
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**Attorneys for Plaintiff Anthropologie, Inc., n/k/a
URBN US Retail LLC**

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EXHIBIT

A
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LEASE

by and between

WAYZATA BAY WEST RETAIL, LLC, LANDLORD

and

ANTHROPOLOGIE, INC., TENANT

**LEASED SPACE: 803 Lake Street, The Promenade of Wayzata – West Block, Wayzata,
MN**

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SCHEDULE OF TERMS

Whenever any term below is mentioned in this Lease, the definition and/or information next to the corresponding term shall be incorporated in its meaning:

- A. **LANDLORD:** WAYZATA BAY WEST RETAIL, LLC, a Minnesota limited liability company
- B. **LANDLORD'S ADDRESS:** 3116 Fairview Avenue North
Roseville, MN 55113
- C. **TENANT:** ANTHROPOLOGIE, INC., a Pennsylvania corporation
- D. **TENANT'S ADDRESS:** 5000 South Broad Street
Philadelphia, PA 19112
- E. **LAND:** The tract of land bounded by Superior Boulevard, Lake Street, Mill Street and Rice Street in Wayzata, MN, as more fully described on Exhibit "A" attached hereto and made a part hereof.
- F. **LEASED SPACE:** The approximately Nine Thousand Five Hundred (9,500) square feet of space on the ground level in the Building, as shown on the plan attached hereto as Exhibit "B" and made a part hereof.
- G. **BUILDING:** That portion of the buildings erected on the Land consisting of approximately Forty Thousand Seven Hundred Fourteen (40,714) rentable square feet of retail space and consisting of Tracts B, C, E and G, Registered Land Survey No. 1820, Hennepin County, Minnesota. It is acknowledged and agreed that the defined term "Building" shall not include the residential portions, including the residential parking facility, of the structure of which the Building is a part.
- H. **PROPERTY or SHOPPING CENTER:** The Land, together with the Building (and all other buildings and improvements on the Land) and all Common Areas and Facilities, and commonly referred to as West Block of The Promenade of Wayzata.
- I. **COMMON AREAS AND FACILITIES:** All common areas and facilities located within the Building, and the common parking facility adjacent to the Building, including any and all parking areas, driveways, passageways, sidewalks, walkways, curbs, entrances, exits, cellar doors, landscaped areas, loading facilities, elevators, lobbies, staircases, corridors and other areas, equipment, signs and facilities, both interior and exterior, now existing and from time to time hereafter furnished by Landlord in, within the Building and adjacent parking facility for the common or joint use and benefit of all of the occupants in the Building.

- J. **INITIAL LEASE TERM:** Ten (10) Lease Years; subject, however, to the determination of the “Expiration Date” (as defined below).
- K. **DELIVERY DATE:** The date as determined in accordance with the provisions of Section [3] hereof.
- L. **COMMENCEMENT DATE:** The date which is one hundred twenty (120) days after the Delivery Date; subject, however, to the “Commencement Date Condition” set forth in Section [30] hereof, and; subject, further, to any extension as provided by Section [5](a) hereof.
- M. **EXPIRATION DATE:** 11:59 p.m. (Wayzata, MN time) on the day immediately preceding the date which is ten (10) years after the Commencement Date; provided, however, if the Commencement Date is a date other than a February 1st, the Expiration Date shall be extended from the scheduled expiration date until the immediately succeeding January 31st, subject, however, to Tenant’s Option(s) to Extend or sooner termination pursuant to the provisions hereof.
- N. **ANNUAL MINIMUM RENTAL RATE:**

<u>Initial Lease Term Lease Year</u>	<u>Annual Minimum Rental Rate</u>	<u>Monthly Installments</u>
1-5	\$190,000	\$15,833.33
6-10	\$209,000	\$17,416.67
<u>First Extension Term, if any</u>	<u>Annual Minimum Rental Rate</u>	<u>Monthly Installments</u>
1-5	\$357,485	\$29,790.42
<u>Second Extension Term, if any</u>	<u>Annual Minimum Rental Rate</u>	<u>Monthly Installments</u>
1-5	\$411,065	\$34,255.42

- O. **ADDITIONAL RENT:** All costs and charges other than Minimum Rent and Percentage Rent payable by Tenant pursuant to the provisions of this Lease.
- P. **PERCENTAGE RENT:** See Section [6] hereof.
- Q. **DEFAULT RATE:** The lesser of Ten (10%) percent per annum and the maximum rate permitted by law.

- R. **PERMITTED USES:** Any general retail use, including the display and sale of apparel, shoes and accessories, gifts, cards, furniture, home furnishings, housewares, food and food stuffs, plants, fresh and dried flowers, pots, containers and stands for plants or flowers, and/or items related to the foregoing, together with ancillary office and storage use.
- S. **OPTIONS TO EXTEND:** Two (2) options of five (5) years each, exercisable in accordance with the provisions of Section [8] hereof.
- T. **TENANT'S PROPORTIONATE SHARE:** A fraction, the numerator of which shall be the total rentable square feet of the Leased Space (i.e., 9,500) and the denominator of which shall be the total rentable retail square feet of the Building (i.e., 35,407), or twenty six and 83/100 (26.83%) percent.
- U. **LAWS:** All federal, state, county and local governmental or quasi-governmental laws, statutes, codes, ordinances, rules, decrees, orders, standards and regulations, including those of any utility company or authority, public, quasi-public or private, both foreseen and unforeseen, either now in force or hereafter adopted or enacted.
- V. **LANDLORD'S WORK:** The construction, alterations and improvements set forth on Exhibit "C" attached hereto and made a part hereof.
- W. **TENANT'S WORK:** The alterations and improvements to be performed by Tenant in accordance with the provisions of Section [17] hereof to prepare the Leased Space for Tenant's initial use and occupancy.
- X. **TENANT IMPROVEMENT ALLOWANCE:** Seven Hundred Ninety Two Thousand Five Hundred and 00/100 (\$792,500) Dollars, payable as provided in Section [17] hereof.
- Y. **AFFILIATE:** Any entity (i) into or with which an entity may be merged or consolidated, (ii) which is controlled by, controls, or is under common control of or with an entity, or (iii) which acquires or controls the majority of the assets of an entity. For purposes of this definition, the terms "controlled by," "controls" or "under common control with" shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of any entity, whether through ownership, legally or beneficially, of voting securities, by contract or otherwise..

LEASE

LEASE made this rd3 day of September, 2014, by and between WAYZATA BAY WEST RETAIL, LLC, a Minnesota limited liability company ("Landlord"), party of the first part, and ANTHROPOLOGIE, INC., a Pennsylvania corporation ("Tenant"), party of the second part.

WITNESSETH:

The parties hereto, intending to be legally bound, hereby covenant and agree as follows:

[1] **LEASED SPACE.** Landlord hereby demises and lets to Tenant, and Tenant hires and leases from Landlord, upon the terms, covenants, conditions and provisions set forth herein and in the Schedule of Terms attached hereto and made a part hereof, the Leased Space.

[2] **COMMON AREAS AND FACILITIES.** Tenant shall have the non-exclusive right of access to, egress from, and use of all Common Areas and Facilities, which shall be available to Tenant seven (7) days a week, twenty-four (24) hours a day, subject to temporary closure and/or restriction from time to time, as often and for only so long as reasonably necessary therefor in connection with the construction, repair, maintenance or replacement of any of said Common Areas and Facilities.

[3] **TERM; COMMENCEMENT DATE; EFFECTIVENESS; PRIOR POSSESSION.**

(a) The Initial Lease Term shall be for the period set forth in the Schedule of Terms, commencing on the Commencement Date and ending on the Expiration Date; subject, however, to extension pursuant to Tenant's Options to Extend and to sooner termination pursuant to the provisions hereof.

(b) Landlord shall, at Landlord's sole cost and expense, commence and complete Landlord's Work, in a good and workmanlike manner using only materials that are new, of good quality, free of material defect and in accordance with (i) the terms, covenants, conditions and provisions of this Lease, (ii) all Laws applicable to the Property, and (iii) the plans, drawings, specifications and construction memoranda prepared by Landlord's architect and approved in advance by Tenant. Landlord acknowledges that Landlord has visited other stores operated by Tenant as of the date of this Lease, has consulted with Tenant's design representatives, and is familiar with both Tenant's current aesthetic design and construction standards and the manner in which Tenant operates its business at such other stores. Landlord shall use commercially reasonable efforts to utilize such standards of Tenant in the preparation of the aforesaid plans, drawings, specifications and construction memoranda for Tenant's approval. It shall be deemed reasonable for Tenant to withhold such approval of the plans, drawings, specifications and/or construction memoranda if Tenant does so because the plans, drawings, specifications and/or construction memoranda deviate from such standards or do not otherwise

comply with the other requirements and provisions of this Lease. Furthermore, Landlord shall also solicit and obtain at all times Tenant's approval in advance of any proposed material deviations from such plans, drawings, specifications and construction memoranda previously approved by Tenant relating to the Leased Space; provided, however, that any deviation affecting the Leased Space or the ability of Tenant to either use, occupy or enjoy the Leased Space or to operate its business thereon or therefrom, all as contemplated by Tenant, in Tenant's reasonable opinion, shall be deemed material and, provided, further, that with respect to the immediately preceding proviso, the standards of Section [37] shall not apply. Landlord's Work shall be "substantially complete" on the date when Landlord is ready and able to deliver exclusive possession of the Leased Space to Tenant with Landlord's Work, including all aspects thereof necessary for the commencement and completion of Tenant's Work, completed to the reasonable satisfaction of Tenant, with only "punchlist items" of minor finishing and adjustment as determined by Tenant, in Tenant's reasonable opinion, remaining to be completed. For purposes of this Lease, the "Delivery Date" shall mean the date on which Landlord's Work is substantially complete and Tenant accepts possession thereof. Tenant shall not be required to accept possession of the Leased Space any date prior to March 1, 2015; provided, however, Tenant shall be required to accept delivery from and after the March 1, 2015 if the Leased Space is then delivered to Tenant in the conditioned required by this Lease. Landlord agrees to promptly apply for and diligently prosecute the issuance of all permits, licenses and approvals by the governmental and quasi-governmental authorities having jurisdiction and all applicable utility companies necessary for the commencement and completion of Landlord's Work. Landlord understands and agrees that Landlord's construction criteria, shop drawings and samples are for reference purposes only and shall not be binding upon any determination of Tenant to any extent, including Tenant's approval or withholding of approval of any aspect of Landlord's Work. Landlord further agrees to complete all punchlist items within thirty (30) days after the Delivery Date, failing which Tenant shall have the right, but not the obligation, to complete such work at Landlord's expense, and if Landlord fails to reimburse Tenant for the cost therefor incurred by Tenant within thirty (30) days after the presentation of an invoice setting forth in reasonable detail, such cost, then such amount shall accrue interest at the Default Rate from the date of submission of such invoice, and Tenant, may set off such cost and interest from installments of Rent next to become due hereunder. Landlord shall use commercially reasonable efforts to ensure that the Delivery Date occurs no later than March 1, 2015. If the Delivery Date does not occur by August 1, 2015, Tenant shall have the right, but not the obligation, to terminate this Lease by notice to Landlord at any time thereafter, in which event this Lease shall be null and void and neither Landlord nor Tenant shall have any further rights, liabilities or obligations hereunder.

Notwithstanding the foregoing, if the Delivery Date does not occur by March 1, 2015 and Tenant has not thereafter exercised any termination right provided for herein, then Tenant shall receive a credit equal to two (2) days of all costs and charges payable as installments of Minimum Rent (based on the Annual Minimum Rental Rate set forth in Paragraph N of the Schedule of Terms for the first Lease Year) and costs and charges payable as Additional Rent, calculated on a per diem basis, for each day after March 1, 2015 and until the earlier to occur of either April 1, 2015 or the date on which Landlord's Work is substantially completed, to be applied on account of the installments of Rent first to become due and payable hereunder from

and after the Commencement Date. If the Delivery Date has not occurred by April 1, 2015, Tenant shall receive a credit equal to three (3) days of all Minimum Rent (based on the Annual Minimum Rental Rate set forth in Paragraph N of the Schedule of Terms for the first Lease Year) and costs and charges payable as Additional Rent, calculated on a per diem basis, for each day from and after April 1, 2015, and until the date on which Landlord's Work is substantially completed, to be applied on account of the installments of Rent first to become due and payable hereunder from and after the Commencement Date. The foregoing two (2) periods for determination of credits resulting from a delay in the Delivery Date shall run consecutively, but not cumulatively. The credits provided by this paragraph are acknowledged by Landlord to be a material inducement to Tenant to execute and deliver this Lease, and shall be in addition to any and all other rights and remedies available to Tenant hereunder or at law or in equity.

(i) The extension provisions of Section [38] hereof shall not apply to any of the provisions of this Section [3](b) insofar as they relate to the Rent credits for Landlord's failure to deliver the Leased Space in a timely manner, except and to the extent they are deemed to exclusively be fire, tornado, earthquake, or hurricane and provided Landlord provides notice of such event(s) within three (3) days of its/their occurrence. To the extent that the provisions of Section [38] hereof shall apply, the dates set forth in the immediately preceding paragraph shall be extended for a number of days equal to the delay in substantial completion of Landlord's Work caused directly and solely by one of the above-named occurrences.

(c) From and after the date of this Lease, Landlord and Tenant shall be bound by all of the terms, covenants, conditions and provisions of this Lease (other than the payment of Rent) applicable respectively to each party hereunder, notwithstanding that the Initial Lease Term shall not commence until the Commencement Date as provided hereby. To that end, in addition to all other rights of Tenant hereunder, Tenant, its architects, contractors, agents and other designees shall have the right of access to and egress from the Leased Space, Building and the Common Areas and Facilities from and after the date of this Lease to prepare the Leased Space for Tenant's use and occupancy, provided that Landlord and its contractor shall have total control over such access and neither Tenant nor its representatives or contractors shall in any manner interfere with the work of Landlord's contractor. Tenant's obligation to pay all Minimum Percentage, and Additional Rent and any other costs and charges payable by Tenant hereunder shall not begin, subject, however, to any credits provided hereunder, until the Commencement Date.

(d) After the Commencement Date has been established, Landlord and Tenant shall execute and deliver a memorandum confirming the Delivery Date, the Commencement Date, and the Expiration Date.

(e) As used herein, the term "Rent" shall be defined as Minimum Rent, Percentage Rent and all sums payable and collectible as Additional Rent.

(f) If the Commencement Date and/or the Expiration Date is other than the first day or last day of a calendar month, as the case may be, then Rent shall be prorated for each such partial month.

(g) If, after the Delivery Date, any governmental or quasi-governmental authority or public, quasi-public or private utility company or authority prohibits Tenant from either opening or operating a general retail business on the Leased Space or, after opening, requires Tenant to close that business, in whole or in part, because of any reason within Landlord's control (except to the extent related to the acts or omissions of Tenant), no Rent shall be due or payable by Tenant for such period, and if such closure continues for more than thirty (30) days, Tenant, in addition to all other rights and remedies available hereunder and at law or in equity, may terminate this Lease at any time after the expiration of such thirty (30) day period by notice to Landlord. Tenant acknowledges and agrees that in opening and operating its business in the Leased Space, Tenant will abide by all state and local codes and regulations.

(h) The terms "Term" or "Lease Term" as used in this Lease shall mean the Initial Lease Term and any and all "Extension Term(s)" (as that term is hereinafter defined).

[4] **PURPOSE.** The Leased Space may be used and occupied for the Permitted Uses or, upon Landlord's prior written consent, which will not be unreasonably withheld, any other lawful purpose.

[5] **MINIMUM RENT.**

(a) Commencing on the Commencement Date, Tenant shall pay Landlord the annual Minimum Rent in equal monthly installments on the first day of each calendar month during the Initial Lease Term and any Extension Term, in advance and without prior notice or demand; provided, however, if the Commencement Date would fall between November 1 and March 1 of two (2) successive calendar years or between May 5 and July 15 of the same calendar year, the Commencement Date shall be postponed until the following March 2 or July 16, as the case may be, and no Rent shall be due or payable for, or otherwise allocated or attributable to any period prior to, March 2 or July 16, as the case may be, even though Tenant may have opened and begun operating its business in the Leased Space during that period.

(b) All Rent shall be payable to Landlord at its offices set forth in the Schedule of Terms, or to such other address as Landlord may so notify Tenant from time to time in the manner prescribed in Section [34] hereof.

(c) A "Lease Year" referred to in the Schedule of Terms shall mean each twelve (12) month period during the Initial Lease Term and any Extension Term commencing on the Commencement Date or an anniversary of the Commencement Date, provided that during the first Lease Year no Rent shall be due or payable until, or otherwise allocated or attributable to any period prior to, the Commencement Date, notwithstanding any of the provisions of this Lease to the contrary. The final Lease Year during the Initial Term shall include those months and days, if any, from the tenth (10th) anniversary of the day immediately preceding the Commencement Date to the Expiration Date.

[6] **PERCENTAGE RENT.** In addition to the Minimum Rent and all other charges and sums payable as Additional Rent hereunder, Tenant shall pay to Landlord, in the

manner and in accordance with the provisions herein set forth for each Percentage Rent Lease Year (as hereinafter defined) during the Initial Lease Term and any Extension Term, an additional percentage rent ("Percentage Rent") equal to five percent (5%) of "Gross Sales from the Leased Space" (as hereinafter defined) for such Percentage Rent Lease Year in excess of the quotient of the Minimum Rent payable during such Percentage Rent Lease Year divided by .05 (the "Percentage Rent Base").

(a) The term "Percentage Rent Lease Year" as used herein shall mean the twelve (12) month period beginning on February 1 and ending on January 31, and each successive twelve (12) month period thereafter during the Initial Lease Term and any Extension Term; provided, however, that if the Commencement Date is other than a February 1, then the first Percentage Rent Lease Year shall be the period from the Commencement Date to the next succeeding January 31, and, provided further, if the first Percentage Rent Lease Year contains less than one hundred eighty (180) days, the Gross Sales from the Leased Space generated for such Percentage Rent Lease Year and the prorated Minimum Rent due and payable for such Percentage Rent Lease Year shall each be added to the respective figures applicable to the second Percentage Rent Lease Year for purposes of determining Percentage Rent for the combined first and second Percentage Rent Lease Years. In such instance, anything in Section [6](b) or elsewhere in this Lease to the contrary notwithstanding, the combined Percentage Rent due for such first and second Percentage Rent Lease Years shall be due within ninety (90) days after the expiration of the second Percentage Rent Lease Year. If the Expiration Date is other than January 31, the last Percentage Rent Lease Year shall be the period from the immediately preceding February 1 to the Expiration Date, and the Percentage Rent Base for such partial Percentage Rent Lease Year shall be adjusted accordingly.

(b) Within ninety (90) days after the expiration of each Percentage Rent Lease Year (except as provided in Section [6](a) hereof with respect to a first Percentage Rent Lease Year of less than one hundred eighty (180) days), Tenant shall submit to Landlord a statement, certified as being true and correct on behalf of Tenant by its Chief Financial Officer, showing the amount of Gross Sales from the Leased Space for such Percentage Rent Lease Year, and Tenant will pay to Landlord any Percentage Rent due hereunder within ninety (90) days after the expiration of the Percentage Rent Lease Year.

(c) If Landlord is unwilling to accept the statement furnished to Landlord by Tenant, Landlord is hereby given the right to retain a reputable, independent Certified Public Accountant ("C.P.A.") of its own choice for the purpose of auditing the gross receipts and sales books of Tenant pertaining to the Leased Space subject to these conditions: (i) the audit cannot be performed by a firm retained on a contingency fee or fee plus bonus basis; (ii) the audit must be completed within sixty (60) days after Tenant makes Tenant's books and records available to Landlord's auditor; and (iii) Landlord and its accounting firm must treat any audit in a confidential manner. If the findings of the C.P.A. retained by Landlord indicate a discrepancy in Gross Sales from the Leased Space which is less than or equal to five (5%) percent of those furnished by Tenant and which would entitle Landlord to receive a greater amount of Percentage Rent, then Landlord agrees to pay the compensation of the C.P.A. retained by Landlord, and Tenant shall pay Landlord the amount of Percentage Rent found to be due and

owing by Landlord's C.P.A. within thirty (30) days after receipt of demand. Should the findings of the C.P.A. retained by Landlord indicate a discrepancy which indicates that Tenant's payment of Percentage Rent exceeded the amount which otherwise was due, then Landlord agrees to pay the compensation of the C.P.A. and to reimburse Tenant, upon demand, in an amount equal to any overpayment. If, however, the findings of the C.P.A. retained by Landlord disclose a discrepancy in excess of five (5%) percent between the figures furnished by the C.P.A. retained by Landlord and those furnished by Tenant and which would entitle Landlord to receive a greater amount of Percentage Rent, then Tenant shall pay the actual reasonable compensation of the C.P.A. retained by Landlord, and Tenant agrees that the Percentage Rent payments shall be made in accordance with the findings of the C.P.A. retained by Landlord. All such payments are to be made within thirty (30) days after receipt of demand.

(d) Tenant shall keep at the Leased Space or at the headquarters of Tenant sufficient books of account, vouchers and other records showing Gross Sales from the Leased Space of Tenant, and Tenant shall permit Landlord and any C.P.A. retained by Landlord at all reasonable times and upon reasonable advance notice, to examine the same for the purpose of verification of the statements hereinabove provided for, if Landlord should elect to do so, which examination of any particular statement shall be made within two (2) years after the date such statement is delivered to Landlord.

(e) The expression "Gross Sales from the Leased Space" used in this Lease shall mean the sum of (i) the total (exclusive of all sales taxes or other taxes in the nature thereof) of all selling prices or charges for merchandise sold at, in, on or from the Leased Space, whether for cash or on credit, by or for Tenant, reduced by any discounts or adjustments allowed to purchasers on such sales and by the price of returned merchandise so sold during a Percentage Rent Lease Year, and (ii) the gross sales of any concessionaire, licensee or subtenant of Tenant occupying any portion or portions of the Leased Space (determined in accordance with the provisions of the preceding clause (i)); provided, however, in the case of coin-in-slot machines (including public telephones and vending machines) that Tenant may either maintain or license to be maintained on the Leased Space, such expression shall not mean the amounts collected in such machines, but only the license fees or other comparable fees that accrue to Tenant therefrom. The Gross Sales from the Leased Space shall not include: (A) the exchange of merchandise between stores of Tenant where such exchanges are made solely for the convenient operation of Tenant's business and not for the purpose of consummating a sale that has theretofore been made at, in, on or from the Leased Space and/or for the purpose of depriving Landlord of the benefit of a sale that otherwise would have been made at, in, on or from the Leased Space; or (B) returns to shippers or manufacturers; or (C) merchandise orders transmitted via telephone, email, facsimile transmission, or via the internet, smartphone, PDA, tablet, video or any other portable electronic or technology based device, wherever placed, fulfilled or shipped, either from the Leased Space or any other retail, office, wholesale, fulfillment or distribution facility or center; or (D) sales of fixtures and equipment after use thereof in the conduct of Tenant's business in the Leased Space; or (E) all rent actually collected by Tenant from any concessionaire, licensee or subtenant of Tenant occupying any portion or portions of the Leased Space; or (F) donations to charitable organizations; or (G) sales at a discount to employees of Tenant provided such sales do not exceed two (2%) percent of Gross Sales from

the Leased Space; or (H) the deductions or charges imposed on Tenant by third party credit card issuers or carriers; or (I) any interest or carrying charges imposed by Tenant on Tenant issued credit cards or other time sales); or (J) the price of any gift card sold or exchanged, except and to the extent the same, after issuance, is used to purchase merchandise at, in or from the Leased Space.

(f) Notwithstanding the fact that a portion of the rental reserved hereunder may be a percentage of Gross Sales from the Leased Space, and notwithstanding anything else to the contrary, Landlord shall not be deemed for any purpose to be or to have become a partner of Tenant or a joint venturer or a member of a joint enterprise with Tenant. The provisions of this Lease relating to Percentage Rent payable hereunder are included solely for the purpose of providing a method whereby Percentage Rent is to be measured and ascertained.

[7] **ADDITIONAL RENT.** Commencing on the Commencement Date, Tenant shall pay Landlord according to the following, in addition to the Minimum Rent specified herein:

(a) Taxes. (i) Tenant's Proportionate Share of all real estate taxes levied against the Property (the "Taxes") during the Initial Lease Term and any Extension Term. Tenant shall pay Tenant's Proportionate Share of such Taxes on an annual basis within thirty (30) days after the date that Tenant receives from Landlord an invoice for such Taxes for the tax year(s) in question issued by the appropriate governmental authority; subject, however, to Tenant's right of contest as hereafter set forth, and, provided further, Tenant shall not be responsible for any late fees, charges, penalties or interest due to Landlord's delinquency or delay in payment of such Taxes. If any such invoice shall cover any period of time prior to the Commencement Date or after the Expiration Date, Tenant's Proportionate Share shall be appropriately prorated. Landlord estimates Tenant's Proportionate Share of Taxes to be \$5.00 and \$8.25 per square foot in the Leased Space for calendar years 2015 and 2016, respectively.

(ii) Provided Tenant has received Landlord's prior written consent, which shall not be unreasonably withheld, Tenant shall have the privilege, before delinquency occurs, of contesting the legality or amount of any such Taxes levied against the Property in the name of Landlord or Tenant, or both. Any such contest, in the first instance, shall be at the cost and expense of Tenant. Each refund of such Taxes so contested shall be paid to Landlord, but Landlord shall promptly remit to Tenant, upon receipt of such refund, reasonable costs and expenses of such contest advanced by Tenant before retention or distribution, as the case may be, of the balance of such refund. Thereafter, Landlord shall promptly remit Tenant's Proportionate Share of the balance of such refund to Tenant if Tenant has paid Tenant's Proportionate Share of such Taxes. If Landlord receives a reimbursement, refund, credit or other retroactive adjustment of Taxes after Tenant has paid Tenant's Proportionate Share thereof, Landlord shall promptly remit to Tenant upon receipt, Tenant's Proportionate Share of such reimbursement, refund, credit or other retroactive adjustment, which payment obligation shall survive the Expiration Date of this Lease. The foregoing right of contest shall equally extend to any right to apply for or to request an abatement, deferral or reduction of Taxes relating to or

arising from the completion or installation of any alterations or improvements to the Leased Space.

(iii) Landlord shall deliver evidence, reasonably acceptable to Tenant, that such Taxes have been paid in full within thirty (30) days after Tenant's payment to Landlord of Tenant's Proportionate Share thereof. Landlord also shall deliver to Tenant copies of all notices relating to the imposition of new Taxes, or the increase in real estate tax rates or assessments, at least twenty (20) days prior to any deadline for the filing of a contest to such imposition or increase as a matter of right so that Tenant may have ample time to contest the same.

(iv) Other than the payment of Tenant's Proportionate Share of Taxes, Tenant shall not be required to pay any other governmental tax, levy, assessment or charge assessed against Landlord, including levies on Rent and any gift, estate or inheritance tax.

(b) Intentionally Omitted.

(c) CAM Charges. (i) Tenant's Proportionate Share of all costs and expenses actually incurred by Landlord in connection with the general maintenance, operation or cleaning (but not repair expense, replacement expense or any capital expenditure) solely with respect to the Common Areas and Facilities, inclusive of the premiums for Special Form Coverage of insurance and commercial general liability insurance maintained by Landlord upon the Building pursuant to Section [12](c) hereof, provided, however, that Tenant shall not be responsible for the payment of any portion of such premiums attributable to earthquake, rent or flood insurance (collectively, the "CAM Charges"). Notwithstanding anything to the contrary contained in this Lease, in no event shall CAM Charges include: (A) management fees or commissions; (B) administrative fees, costs or charges; or (C) the costs (or any depreciation or amortization thereof) of any alterations, additions, renovations, changes, replacements, improvements, repairs, fixtures, equipment, or any other items which would be properly classified as a "capital expenditure" under generally accepted accounting principles consistently applied pertaining to the real estate industry.

(ii) Tenant shall not be responsible for any late fees, charges, penalties or interest due to Landlord's delinquency or delay in payment of any item of the CAM Charges. If any CAM Charges are or may be payable by Landlord in annual installments, only that installment payable in a Lease Year shall be included in expenses incurred by Landlord in connection with the Common Areas and Facilities to determine Tenant's Proportionate Share thereof. If any CAM Charges shall cover any period of time prior to the Commencement Date or after the Expiration Date, Tenant's Proportionate Share thereof shall be appropriately prorated.

(iii) Landlord covenants and agrees to operate and maintain the Common Areas and Facilities in good order, condition and repair, and in a commercially reasonable safe, secure, well-lit and clean condition in a cost-effective manner that is reasonable and consistent with the needs of the tenants and occupants of the Property, and consistent with the standards at other first-class shopping centers located within the geographic area of the Property. In no event shall Tenant be required to pay more than Tenant's Proportionate Share of

each cost and expense category of the CAM Charges set forth above and actually incurred and payable by Landlord. CAM Charges shall be “net” only and for that purpose shall be deemed reduced by the amounts of any reimbursements, recoupments, payments, discounts, credits, reductions, allowances or the like received (or that should have been received) by Landlord from any source whatsoever in connection with CAM Charges (except for normal Common Areas and Facilities payments made to Landlord by other tenants or occupants of the Property). Landlord shall not be permitted to set-off cost savings under one cost or expense category against an exclusive cost or expense under another cost or expense category, and Landlord shall not be permitted to “double recover” (i.e., recover more than one hundred percent (100%) of Common Areas and Facilities costs and expenses from all tenants and occupants of the Property). Landlord represents and warrants that none of the expenses included in determining Tenant’s Proportionate Share of CAM Charges shall be included in any other charge payable under this Lease.

(iv) Landlord shall submit to Tenant a statement (the “Projected Statement”) of the projected CAM Charges expected to be incurred by Landlord during each Lease Year at least thirty (30) days prior to the commencement date therefor that shall be accompanied by a statement of a projection for Tenant’s Proportionate Share thereof; provided, however, if any such statement shall cover any of Tenant’s Proportionate Share for any time period prior to the Commencement Date or after the Expiration Date, Tenant’s payment thereof shall be appropriately prorated. Tenant agrees to remit payment to Landlord for Tenant’s Proportionate Share of such Projected Statement in twelve (12) equal monthly installments commencing on the first day of the next month following Tenant’s receipt thereof. Notwithstanding anything to the contrary contained in this Section [7], for calendar year 2015, Tenant shall pay the lesser of (A) \$6.00 per rentable square foot of the Leased Space (which amount shall be prorated for a partial calendar year), or (B) the actual amount of Tenant’s Proportionate Share of CAM Charges for calendar year 2015. For calendar year 2016 (the “Base Year”), Tenant shall pay the lesser of (Y) \$3.25 per rentable square foot of the Leased Space, or (Z) the actual amount of Tenant’s Proportionate Share of CAM Charges, and the amount so payable shall be deemed to be Tenant’s Proportionate Share of CAM Charges for the Base Year, irrespective of the actual amount calculated therefor. Notwithstanding anything to the contrary contained in this Section [7], after the completion of the Base Year and the determination of Landlord’s actual CAM Charges therefor, the annual increase in the “controllable” portion of Tenant’s Proportionate Share of CAM Charges for the next year shall not exceed three percent (3%) of the “controllable” portion of Tenant’s Proportionate Share of CAM Charges (such amount being the “cap”) and for each calendar year thereafter, the annual increase in the “controllable” portion of Tenant’s Proportionate Share of CAM Charges for the next year shall not exceed three percent (3%) of the cap of the previous year. Thereafter, Tenant shall pay Tenant’s Proportionate Share of CAM Charges as such amount may be limited by the cap set forth herein. For purpose of this subsection, all CAM Charges shall be deemed to be “controllable” except the costs of snow and ice removal, insurance and utilities serving the Common Areas and Facilities.

(v) Landlord agrees to submit to Tenant a statement in reasonable detail of actual costs and expenses for CAM Charges (the “Actual Statement”)

incurred during each period for which such a Projected Statement was provided within 120 days after the expiration thereof. If such Actual Statement shows that actual CAM Charges were more or less than that set forth in the Projected Statement for any calendar year, then Landlord shall promptly refund to Tenant or Tenant shall promptly pay Landlord such sums as may be so refundable or payable, as the case may be, subject to the limitation on increases in CAM Charges set forth above. Tenant reserves the right, upon thirty (30) days' prior notice to Landlord, at Tenant's sole cost and expense, to audit Landlord's books and records relating to CAM Charges during regular business hours at the offices of Landlord, which audits shall not be conducted more than once per Lease Year, subject to these conditions: (i) the audit shall be prepared by a certified public accounting firm of recognized national standing; (ii) the audit cannot be performed by a firm retained on a contingency fee or fee plus bonus basis; (iii) the audit must be completed within sixty (60) days after Landlord makes Landlord's books and records available to Tenant's auditor; and (iv) Tenant and its accounting firm must treat any audit in a confidential manner. Tenant shall be entitled to inspect all those books and records necessary for Tenant to verify charges imposed by Landlord on Tenant hereunder, and Tenant may do so as to CAM Charges covered by an Actual Statement for a period of three (3) calendar years after Tenant's receipt thereof. If Tenant's audit reveals a discrepancy in Tenant's favor and a refund is due on account thereof, Landlord shall refund such overpayment to Tenant, together with interest thereon at the Default Rate from the date that Tenant originally paid such amount to the date that Landlord refunds in full the overpaid expenses to Tenant; provided, however, that if the discrepancy reveals an overcharge in CAM Charges in excess of five percent (5%), then Landlord agrees to also promptly reimburse Tenant for the reasonable costs and expenses incurred by Tenant to complete such audit. All reimbursement obligations hereunder shall survive the Expiration Date of the Lease. Furthermore, Landlord shall deliver to Tenant with the Actual Statement evidence reasonably acceptable to Tenant that insurance premiums due as a portion of CAM Charges have been paid in full.

[8] **TENANT'S OPTIONS TO EXTEND.** Tenant shall have the option(s) to extend the term of this Lease for two (2) successive additional periods (individually, an "Extension Term" and, together, the "Extension Terms") of five (5) years each, commencing on the first day following the Expiration Date of the Initial Lease Term or of the Extension Term then in effect, as the case may be. Tenant's exercise of an extension option shall be by written notice to Landlord at least one hundred eighty (180) days prior to the last day of either the Initial Lease Term or of the Extension Term then in effect, as the case may be. Each Extension Term shall be upon the same terms, covenants, conditions and provisions as are in effect as of the Expiration Date of the Initial Lease Term, except that the annual Minimum Rental Rate in effect during the Extension Terms shall be as provided in Paragraph [N] of the Schedule of Terms hereof.

[9] **UTILITIES AND SERVICES.** Landlord, at Landlord's sole cost and expense, shall provide and connect to the Leased Space the lines, equipment and/or facilities necessary to enable Tenant to obtain water, gas, electricity, telephone, storm and sewer service and all other appropriate utilities or services thereon, together with separate meters or submeters for each, in sufficient capacities to enable Tenant to use, occupy and enjoy the Leased Space for its intended purposes and to operate its business thereon and therefrom, all as part of Landlord's

Work as if fully set forth on Exhibit "C" attached hereto. Landlord shall provide Tenant with all applicable meter numbers, and unobstructed access to such meters at all times to the extent any of such meters are located outside of the Leased Space. Except as set forth in this Section [9] and elsewhere in this Lease, Tenant shall pay prior to delinquency all costs and charges for such utilities or services used or consumed by Tenant on the Leased Space, whether supplied by Landlord or by a private, public or quasi-public utility company or authority; provided, however, if such utilities or services are not separately metered or submetered to the Leased Space, Tenant's obligation to pay the same prior to delinquency shall be conditioned on Landlord's delivery of paid receipts therefor prior thereto. In no event shall Tenant be obligated to reimburse Landlord for any utilities or services at a rate in excess of the rate that Landlord actually pays for such utilities or services, nor shall Tenant be responsible for any late fees, charges, penalties or interest due to Landlord's failure to timely make such payments.

[10] **AFFIRMATIVE AGREEMENTS OF TENANT.** Tenant agrees, throughout the Initial Lease Term and any Extension Term:

(a) To keep the interior of the Leased Space clean and well-maintained, to remove all refuse, trash and debris from the Leased Space, and to surrender the Leased Space broom clean, reasonable wear and tear and damage by fire, other casualty or taking excepted, upon the Expiration Date of the Initial Lease Term or of the Extension Term(s), as the case may be, unless such work is necessitated by the failure, negligently or intentionally, of Landlord, its agents, contractors, servants or employees, to keep, observe and perform Landlord's obligations under this Lease;

(b) To comply with all notices issued by any governmental authorities having jurisdiction over the Leased Space solely with respect to the particular manner Tenant uses the Leased Space (as distinguished from the mere occupancy of the Leased Space as a retail establishment or otherwise), as well as with the reasonable recommendations with respect to Tenant's use and occupancy of the Leased Space made by the Board of Fire Underwriters and by insurance carriers insuring the Property, unless such compliance is necessitated by the failure, negligently or intentionally, of Landlord, its agents, contractors, servants or employees, to keep, observe and perform Landlord's obligations under this Lease;

(c) To use every reasonable precaution against fire in the Leased Space;

(d) To give Landlord prompt notice of any fire occurring in the Leased Space;

(e) To maintain (i) commercial general liability insurance coverage written on an occurrence form through a company(ies) reasonably satisfactory to Landlord naming Landlord as an additional insured and covering any and all claims for bodily injury (including death) and property damage occurring in or about the Leased Space with a combined single limit of not less than Two Million (\$2,000,000) Dollars per occurrence and Three Million (\$3,000,000) Dollars annual aggregate, and (ii) basic form coverage insurance covering Tenant's personal property in the Leased Space and any leasehold improvements installed by Tenant that

are removable by Tenant pursuant to the provisions of this Lease in such amounts as Tenant deems reasonable;

(f) To deliver to Landlord certificate(s) of insurance(s) maintained by Tenant pursuant to sub-section (e) above (which, at Tenant's option, may be maintained under blanket and/or umbrella coverages so long as the certificates evidencing such blanket or umbrella coverage specifically identify the Leased Space and are otherwise reasonably acceptable to Landlord in form and substance) at the Commencement Date, and, thereafter, at least ten (10) days prior to the expiration date of any policy(ies) then in force;

(g) To be responsible for all maintenance and repair of the interior, non-structural portions of the Leased Space, including those portions of the plumbing, electrical, sprinkler, telephone, sewer, gas and other utility systems, lines, equipment and facilities located entirely within the Leased Space and that serve it exclusively, unless such work is necessitated by the failure, negligently or intentionally, of Landlord, its agents, contractors, servants or employees, to keep, observe and perform Landlord's obligations under this Lease; provided, however, that anything in this Lease to the contrary notwithstanding, Tenant shall not be responsible for the performance of any such work in compliance with so-called "LEED" (or its equivalent) construction or certification standards now in existence or hereinafter established or adopted by Landlord;

(h) To enter into a standard maintenance contract, annually written at normal and customary rates, for the servicing of the HVAC system installed and placed in good operating order by Landlord as part of the Landlord's Work; such contract to at least provide (but with no obligation that it extend beyond) (i) inspection, cleaning and testing at least quarterly, (ii) any servicing, maintenance, repair or replacement of filters, belts or other items covered by such a standard contract, and (iii) an annual service report at the end of each calendar year, and to otherwise repair and replace the HVAC system at its sole cost and expense as and when necessary as determined by Tenant;

(i) To surrender possession of the Leased Space to Landlord at the Expiration Date in good order and condition, reasonable wear and tear and damage by fire or other casualty or "taking" (as that term is hereinafter defined) excepted; subject however, to the provisions of Section [17] and other applicable provisions of this Lease;

(j) To indemnify, defend and hold Landlord and its officers, employees and agents harmless from any claims, judgments, damages, fines, penalties, costs, liabilities (including sums paid in settlement of claims) or loss including reasonable attorneys' fees, consultants' fees and experts' fees which arise during or after the term of this Lease in connection with the presence of toxic or hazardous substances in the soil, ground water or soil vapor on or under the Property resulting from any negligence, willful misconduct or violation of this Lease or applicable laws and/or regulations by Tenant, its officers, employees, invitees or agents. In the event that any third party or any unit of government brings any action or asserts any claim against the Tenant arising from or related to the above referenced environmental matters, Tenant shall immediately notify the Landlord in writing of the action or claim; and

(k) Notwithstanding anything to the contrary in this Lease, to abide by the provisions of the Declarations set forth on Exhibit “F” attached hereto.

[11] **NEGATIVE AGREEMENTS OF TENANT.** Tenant agrees, throughout the Initial Lease Term and any Extension Term, that Tenant shall not, without the prior consent of Landlord:

(a) Use or operate any machinery or equipment that is harmful to the Leased Space or the Building;

(b) Place any weights in the Leased Space beyond the safe carrying capacity of the Building;

(c) Do or allow to be done anything which may suspend the fire insurance maintained by Landlord covering the Building;

(d) Use the Leased Space for the production, sale or storage of any toxic or hazardous substances, dispose of any hazardous substances in or on the Property, provided that Tenant shall be permitted to use and store hazardous substances used in the normal and customary conduct of Tenant’s business, in no greater than normal and customary amounts, further provided that Tenant shall comply with all applicable laws, rules, regulations and ordinances with regard to such storage, use and handling of such hazardous substances; and

(e) Take any action which would violate the provisions of the Declarations set forth on Exhibit “F” attached hereto.

[12] **AFFIRMATIVE AND NEGATIVE AGREEMENTS OF LANDLORD.**

(a) Landlord covenants, represents, warrants and agrees that the Leased Space, Building and Common Areas and Facilities are in good condition and structurally sound with the roof and all below grade levels watertight, that there has been no water infiltration into the Leased Space, Building or Common Areas and Facilities, and that possession of the Leased Space shall be delivered to Tenant in such condition, after Landlord’s Work has been substantially completed, on the Delivery Date. Landlord further covenants, represents, warrants and agrees that all water, sewer, gas, telephone, electrical and other utility lines, equipment and facilities shall be in good condition and working order and free of any obstructions as of the Delivery Date and as a condition thereof. Landlord, at its sole cost and expense (subject to reimbursement of CAM Charges to the extent provided in Section [7]), shall be responsible for (i) the maintenance and repair (including replacements, as necessary) of (A) the Common Areas and Facilities, including the removal of snow, ice and debris therefrom, (B) all structural portions of the Building (whether or not within, above, below, or outside of the Leased Space), including the roof with built-up insulation, downspouts, drains, gutters, exterior and interior walls, ceilings, floor slabs, foundation and structural supports and windows, (C) the plumbing, electrical, sprinkler, telephone, sewer, gas and other systems, equipment and facilities serving the Leased Space (except as set forth in Section [10(g)] above), (D) the water, sewer, gas, telephone,

electrical, and other utility lines from each public or private utility source to the point where such utility enters the Leased Space, (E) the removal of water which has infiltrated any and all portions of the Building, and the abatement of any hazardous or dangerous conditions or substances that may result or has resulted from such infiltrations, and (F) the portions of various utility lines, systems, equipment and facilities within the Leased Space that service other tenants or occupants of any portion of the Property either exclusively or in common with Tenant, and (ii) the removal from the Property (including the Building) of all hazardous or dangerous substances regulated under any Laws, pertaining to the environment to the degree required by applicable governmental regulatory authorities. Tenant acknowledges receipt of the environmental reports and information described on Exhibit "E" attached hereto and made a part hereof (the "Environmental Reports").

In addition to, and not in limitation of, Landlord's Work and Landlord's other responsibilities set forth elsewhere in this Lease, if it is determined that, during the course of the commencement and/or completion of either Landlord's Work or Tenant's Work, in order for Tenant to either be able and/or be permitted pursuant to applicable Laws, to commence, proceed with and/or complete Tenant's Work, certain remedial work is necessary to maintain, preserve or restore the integrity of the Building's roof, structure, or utility systems, equipment and/or facilities, Landlord shall promptly commence and complete, at Landlord's sole cost and expense, all such remedial work in accordance with applicable Laws. If any such remedial work is required of Landlord pursuant to this paragraph and either the commencement or the completion thereof delays the commencement of Tenant's Work beyond May 1, 2015, or after such date precludes Tenant from performing Tenant's Work and thereby delays the completion of Tenant's Work, whether or not the Commencement Date has already occurred, then Tenant shall receive a credit, calculated on a per diem basis, and equal to two (2) days of all costs and charges payable as installments of Rent for each day of such delay to be applied on account of the installments of Rent (calculated, as to the Minimum Rent component thereof, at the Annual Minimum Rental Rate for the first Lease Year set forth in Paragraph N of the Schedule of Terms) first to become due and payable hereunder either from and after the Commencement Date (if the Commencement Date has not occurred) or thereafter (if the Commencement Date has occurred). The rent credits provided by the immediately preceding sentence shall be in addition to any and all other rights, credits, extensions and remedies available to Tenant hereunder and at law or in equity.

In carrying out its responsibilities as required under this Section [12], Landlord shall promptly undertake all such maintenance, repair and replacement work within a reasonable time after Landlord knows of the need therefor and thereafter shall diligently prosecute the same to completion. All such work shall be commenced and completed in accordance with applicable Laws, and to the extent within the Leased Space upon reasonable advance notice to Tenant, except in the case of emergencies, and undertaken in a manner that does not unreasonably disrupt or interfere with the business activities of Tenant. To the extent reasonably possible, all repairs within the Leased Space shall be done during the hours that Tenant is not open for business, and in the presence of Tenant designated personnel. During any period when all or a portion of the Leased Space is rendered untenable due to Landlord's

activities as contemplated by this Section [12], Tenant's obligation to pay Rent under this Lease shall be proportionately abated.

(b) Except as specifically set forth in Section [10](b) hereof, Landlord, at Landlord's sole cost and expense (subject to CAM Charges), shall comply with all Laws relating to the Leased Space and the Common Areas and Facilities, including those pertaining to handicapped access to and egress from the Leased Space.

(c) Landlord shall maintain (i) Special Form Coverage insurance covering the Building (including the Leased Space as improved by Landlord's Work) to its full insurable replacement cost, excepting therefrom the personal property of the tenants in the Building, and (ii) commercial general liability insurance coverage written on an occurrence form with a contractual liability endorsement covering Landlord's indemnity obligations under this Lease, with a combined single limit of not less than Two Million (\$2,000,000) Dollars per occurrence and Three Million (\$3,000,000) Dollars annual aggregate covering all claims for bodily injury (including death), property damage and advertising injury occurring in or about the Common Areas and Facilities. Landlord shall upon written request deliver to Tenant certificates evidencing such insurance.

(d) Landlord and its authorized representatives may upon reasonable advance notice to Tenant (except in the case of an emergency, in which event no such notice shall be required): (i) inspect the Leased Space; (ii) exhibit the Leased Space to current and prospective purchasers, lenders, insurers, governmental authorities and, within the twelve (12) months prior to the Expiration Date of the Initial Lease Term or the Extension Term(s), as the case may be, to brokers and prospective tenants; and (iii) enter the Leased Space for the purpose of exercising any rights or remedies expressly granted or reserved to Landlord under this Lease or applicable Laws, or to make any repairs, maintenance, replacements, improvements or alterations or other work in or about the Leased Space consistent with Landlord's responsibilities hereunder. In connection with exercising such rights, Landlord shall (except in the case of exercising remedies upon the occurrence of an Event of Default hereunder by Tenant) conduct itself in a manner so as not to disrupt or interfere with the operation of Tenant's business thereon or therefrom, which shall include, to the extent possible, the exercise of such rights during the hours that Tenant is not open for business.

(e) Landlord shall not permit any sidewalk sales or the display or sale of any merchandise in the Common Areas and Facilities in a manner which, in Tenant's judgment, is or would be deleterious to the operation of Tenant's business on and from the Leased Space or injurious to Tenant's image or reputation, and Landlord shall cause such sales or displays to be terminated promptly after Tenant's notice that the same is objectionable.

(f) Landlord shall not utilize the roof of, or the air rights above, the Building, either temporarily or permanently, for advertising for competitors of Tenant, whether, including the installation or utilization of any signage or billboards on or above the roof of the Building containing such advertising.

(g) Landlord shall maintain the existence, arrangement and location generally of any of the Building, and Landlord shall not construct or install, or permit or suffer the construction or installation of, any structure or other improvements within or around the Leased Space that affects access to or visibility of the Leased Space, provided that Tenant acknowledges that there will be a kiosk and landscaping on the “Layout Plan” portion of Exhibit “A-1” (as such kiosk is depicted on Exhibit “G”). Also, Tenant shall have the right, but not the obligation, to review and approve in advance any actions by or on behalf of Landlord of any type or nature whatsoever within the Façade Control Zone as delineated on Exhibit “C-1” which, in Tenant’s sole judgment, would have an impact on the aesthetic environment to be created by Tenant on, in and about the Leased Space. If Landlord takes any such actions or permits such actions to occur, and Tenant thereafter determines, in Tenant’s sole judgment, that such actions are objectionable or inconsistent with Tenant’s aesthetic environment as aforesaid, Landlord, at its sole cost and expense, shall promptly remove, terminate and/or otherwise rectify the subject condition.

(h) Landlord shall not grant any other occupant or tenant of premises in the Building any dedicated, preferential or reserved parking to the detriment of Tenant, its agents, contractors, employees, customers and/or invitees.

(i) Landlord shall not promulgate any rule or regulation for either the Building or the Common Areas and Facilities which impairs Tenant’s use, occupancy and/or enjoyment of the Leased Space or the operation of its business thereon or therefrom (including any rule or regulation which would affect the days or hours of Tenant’s operation), and Landlord shall apply uniformly all rules and regulations to all tenants and occupants of other premises on the Property from time to time. To the extent any such rule or regulation is breached by any such other tenant or occupant in a manner which adversely affects Tenant, Landlord shall enforce such rule or regulation against such other tenant or occupant, at Landlord’s sole cost and expense.

(j) Landlord hereby represents to Tenant that the legal address for the Leased Space which may be used for purposes of delivery of all construction materials, inventory, merchandise and other items of personal property to be used by Tenant, its contractors, agents and employees to prepare and perform Tenant’s Work, and to otherwise ready the Leased Space for Tenant’s use, occupancy and enjoyment and for the operation of Tenant’s business thereon and therefrom is 803 Lake Street, Wayzata, MN.

[13] **SIGNS.** Permission is hereby given to Tenant, at Tenant’s sole cost and expense, to erect or install lighting, awnings and/or signs in the interior of the Leased Space, as well as on the exterior of the Leased Space, without Landlord’s approval and at Tenant’s discretion, to the maximum extent possible, so long as such exterior signage complies with applicable Laws. Tenant shall be responsible for the erection and maintenance of such lighting, awnings and/or signs in accordance with all such applicable Laws. Tenant agrees, at Tenant’s sole cost and expense, at the Expiration Date of the Initial Lease Term or the Extension Term(s), as the case may be, to remove such awnings and/or signs, if directed by Landlord to do so, and to repair any damage to the Leased Space and/or the Building caused by the erection, maintenance or removal thereof. If Landlord does not so direct, Tenant may still remove any such signage or other devices which identify Tenant.

[14] **ADJACENT PROPERTIES.** To the extent Landlord either directly or indirectly owns or controls any other real property immediately adjacent to the Leased Space (including above and below), including other property operated together with the Leased Space pursuant to reciprocal operating agreements or otherwise, in its own name or in the name of any officer, director, subsidiary, parent, partner or other Affiliate, Landlord covenants and agrees that, as to leases entered into subsequent to the execution of this Lease, if the purpose of the occupancy of the adjacent properties is for the operation of a dine-in, food court, take-out or delivery-service restaurant business (each, a “Restaurant”), the occupants of such other properties shall covenant and agree in its lease to operate the Restaurant in all respects in a dignified, high caliber, first class manner by requiring the occupants and any subtenants of such occupants to (a) maintain the Restaurant and any sidewalks, driveways, curbs, entryways, passages, courts, corridors or halls adjacent thereto in a clean, orderly and sanitary condition, free of debris, insects, rodents, vermin and other pests; (b) keep any garbage, trash, rubbish and refuse in rat-proof sealed containers within the interior of the Restaurant until removed; (c) have any garbage, trash, rubbish and refuse removed on a daily basis and at no time place any sealed container with garbage, trash, rubbish and refuse therein for pickup in front of the Restaurant between the hours of 9 a.m. and midnight; (d) maintain efficient and effective devices for preventing and eliminating any odors or fumes, cooking or otherwise, which may interfere with Tenant’s use, enjoyment or occupancy of the Leased Space; (e) not place, maintain or permit any merchandise, food or produce, trash, debris, refuse or other articles in or on any sidewalks, driveways, curbs, entryways, passages, courts or corridors adjacent to the exterior of the Restaurant; (f) not permit the burning of garbage, trash, rubbish or other debris within or without the Restaurant; (g) if the Restaurant is located in premises above the Leased Space, take all actions necessary to prevent any flooding or leakage into the Leased Space; and (h) be obligated to employ from time to time a licensed exterminator who shall treat the Restaurant and areas adjacent thereto for vermin, rodents and insects, at occupant’s sole cost and expense, on a monthly basis (or more frequently as may be required). Landlord also covenants and agrees to actively enforce such provisions (or provisions of similar import) contained in any such subsequent or existing leases.

[15] **ASSIGNMENT AND SUBLETTING.** Subject to Landlord’s prior written consent, which will not be unreasonably withheld, conditioned or delayed, Tenant shall be permitted to assign this Lease or sublet any portion of the Leased Space during the Initial Lease Term and any Extension Term; provided, however, that: (a) Tenant notifies Landlord of the assignment or subletting at least five (5) days prior to (or if not practical under the circumstances, promptly after) the completion thereof; (b) the assignment or subletting is by written agreement and a copy thereof is provided by Tenant to Landlord; (c) the assignee expressly assumes all obligations of Tenant under this Lease in a writing reasonably acceptable to Landlord in form and content; and (d) any assignment or subletting does not release Tenant from any of the terms, covenants, conditions or provisions of this Lease. Notwithstanding the foregoing to the contrary, Landlord’s consent shall not be required (but the requirements of (a) through (d) in the preceding sentence shall continue to apply) in the event that Tenant (i) assigns this Lease or sublets any portion(s) of the Leased Space during the Initial Lease Term and any Extension Term to any corporation, limited liability company or partnership into or with which Tenant may be merged or consolidated or to any corporation, limited liability company or partnership that shall be an Affiliate, subsidiary, parent or successor of Tenant, or to a

partnership, the majority interest in which shall be owned by the stockholders or other interest or equityholders of Tenant or of any such corporation, or to any person or entity that acquires at least five (5) of the stores of Tenant (including the store at the Leased Space) that are open and operating under the same trade name as of the date of acquisition, or (ii) converts its structure into any other type of structure as may be permitted by Laws. Landlord acknowledges that the stock of or other equity interest in Tenant is not publicly traded as of the date of this Lease, and, therefore, neither (A) any subsequent public offering of any or all of the stock or interests in Tenant, nor (B) any sale, assignment or other transfer of the stock or interests in Tenant by a shareholder(s) or other holder(s) pursuant to either a public offering or private sale shall be deemed an assignment of this Lease by operation of law or otherwise.

[16] INDEMNIFICATION; WAIVER OF SUBROGATION.

(a) Tenant agrees to indemnify, defend and hold harmless Landlord during the Initial Lease Term and all Extension Term(s) against and from all claims, losses, liabilities, costs, damages or expenses (including reasonable attorney's, consultant's and expert fees and expenses actually incurred) directly or indirectly arising out of or attributable to any injury to any person (including death) or damage to any property which arises from Tenant's act or omission, negligent or intentional, or from the failure of Tenant to keep, observe, and perform any of the terms, covenants, conditions and provisions of this Lease to be kept, observed or performed by Tenant, unless such injury or damage is caused by the act or omission, negligent or intentional, of Landlord, its agents, contractors, servants or employees, or is covered by insurance required to be maintained by Tenant hereunder or which arises out of or is attributable to the failure of Landlord to keep, observe or perform any of the terms, covenants, conditions or provisions of this Lease to be kept, observed or performed by Landlord. Landlord agrees to indemnify, defend and hold harmless Tenant during the Initial Lease Term and all Extension Term(s) against and from all claims, losses (which shall not be limited to the loss or restriction of use of the Leased Space), liabilities, costs, damages or expenses (including reasonable attorney's, consultant's and expert fees and expenses actually incurred) directly or indirectly arising out of or attributable to any injury to any person (including death) or damage to any property which occurs in the Common Areas and Facilities during the Initial Lease Term and any Extension Term, the failure of Landlord to keep, observe and perform any of the terms, covenants, conditions and provisions of this Lease to be kept, observed or performed by Landlord, or from Landlord's act or omission, negligent or intentional, or out of any misrepresentation or breach or non-fulfillment of warranty by Landlord, unless the same is caused by the act or omission, negligent or intentional, of Tenant, its agents, contractors, servants or employees or is covered by insurance required to be maintained by Landlord hereunder. The scope and the extent of the respective obligations of Landlord and Tenant under this Section [16] shall be to the fullest extent permitted by Law, and also shall not be limited to the minimum dollar amounts of commercial general liability insurance to be maintained by Landlord and Tenant, respectively, under this Lease. The indemnification, defense and hold harmless provisions of this Section [16] shall survive the Expiration Date of the Initial Lease Term or the Extension Term(s), as the case may be.

(b) As to any loss or damage which occurs upon the property of a party hereto, such party hereby releases the other, to the extent of such damaged party's insurance

indemnities, from any and all liability for such loss or damage even if such loss or damage shall be brought about by the fault or negligence of such other party, or the agents, servants or employees of such other party; provided, however, that this release shall be effective only with respect to loss or damage occurring during such time as the applicable policy(ies) of insurance shall contain a clause to the effect that this release shall not affect said policy(ies) or the right of the insured to recover thereunder. If any policy does not contain such a clause, the insured party shall, at the request of the other party to this Lease, have such a clause added to said policy if obtainable.

[17] **ALTERATIONS AND IMPROVEMENTS.** Tenant, at Tenant's sole cost and expense, may make any alterations and improvements to the Leased Space (including the Façade Control Zone), either interior or exterior, as it desires and without Landlord's consent, for Tenant's use, occupancy and enjoyment and the operation of its business thereon and therefrom, at anytime during the Initial Lease Term and the Extension Terms, if any, including Tenant's Work necessary for Tenant's initial use and occupancy, except for alterations and improvements which would affect the structural integrity of the Building or mechanical systems serving other premises in the Building, which latter work shall be done in accordance with plans and specifications submitted by Tenant to Landlord for approval prior to the commencement thereof. Notwithstanding the foregoing, Tenant shall not install audio speakers outside of the Leased Space. Tenant shall not be obligated to perform any of such alterations and improvements in compliance with so-called "LEED" (or its equivalent) construction or certification standards. All alterations and improvements made by Tenant shall comply with all applicable statutes, laws, codes and ordinances and with the provisions of the Declarations set forth on Exhibit "F" attached hereto. Such improvements necessarily may include high speed data connection service, such as T1 line and/or a high speed cable connection (along with a high speed line from the Leased Space to the service provider's connection box) to link the Leased Space to Tenant's communication network. Landlord's failure to notify Tenant of any objections within ten (10) business days after the date of submission of the plans and specifications for any such work shall be conclusively presumed to constitute Landlord's consent thereto. To the extent Tenant and its designees require access to otherwise accessible areas of the Property outside of the Leased Space to commence and complete any such alterations or improvements, Landlord shall upon reasonable notice provide such access, at no cost or expense to Tenant. All alterations and improvements which are made by Tenant for which Landlord's consent must be requested as aforesaid shall remain upon the Leased Space at the Expiration Date of the Initial Lease Term or the Extension Term(s), as the case may be, in the absence of an agreement to the contrary between the parties hereto, provided that Tenant acknowledges and agrees that Landlord may require such agreement as a condition to its consent. Anything in this Lease to the contrary notwithstanding, all Tenant's Work which is non-structural in nature and is not related to utility systems serving other premises in the Building and any trade fixtures, equipment, machinery, goods and effects whenever installed or placed in, on or about the Leased Space by Tenant, whether attached to the Leased Space or not, shall remain the personal property of Tenant and shall be removable by Tenant, at Tenant's election, from time to time and also upon the Expiration Date of the Initial Lease Term or the Extension Term(s), as the case may be; provided, however, that Tenant shall repair, or cause to be repaired, at Tenant's sole cost and expense, any damage to the Leased Space caused by the removal of said additions and improvements, trade

fixtures, equipment, machinery, goods and effects, and, provided further, that any additions or improvements remaining on the Leased Space upon the Expiration Date shall become the personal property of the Landlord and except to the extent of an agreement to the contrary as described above, there shall be no obligation of Tenant to remove said additions and/or improvements. Landlord recognizes and agrees that whenever its consent or approval is required hereunder with respect to alterations and improvements to the Leased Space and/or the Building, it shall be unreasonable for Landlord to withhold its consent or approval on the basis of aesthetics, so long as the subject alterations or improvements are consistent with Tenant's then current aesthetic design and construction standards.

Landlord agrees to pay Tenant the Tenant Improvement Allowance as a reimbursement on account of Tenant's costs, fees and expenses of any type or nature whatsoever to prepare and perform Tenant's Work and to otherwise ready the Leased Space for Tenant's use, occupancy and enjoyment. The Tenant Improvement Allowance shall be due and payable, without set-off or deduction by Landlord for any reason whatsoever, in full, on or before the date which is thirty (30) days after Tenant opens for business in the Leased Space and has provided a final lien waiver from Tenant's general contractor; provided, however, Landlord shall not be required to pay the Tenant Improvement Allowance while there exists a Section [21](a) Event of Default. Notwithstanding anything to the contrary contained in this Section [17] or elsewhere in this Lease, if Tenant is prevented from opening for business in the Leased Space for reasons out of Tenant's control, after substantial completion of Tenant's Work as set forth in this Lease, Landlord shall pay the Tenant Improvement Allowance to Tenant within thirty (30) days after the Commencement Date.

[18] **LIENS.** Tenant shall keep the Leased Space free from any liens arising from any labor performed by or on behalf of, or materials furnished to, Tenant. If any such lien attaches, and the same is not discharged of record or bonded-off within thirty (30) days after Landlord notifies Tenant thereof, then Landlord shall have the option to discharge the same and Tenant shall reimburse Landlord promptly therefor as Additional Rent. Tenant agrees that Landlord may post notices of non-responsibility for liens at the entrances to the Leased Space during Tenant's construction.

[19] **DAMAGE.**

(a) In the event of damage to or destruction of the Leased Space, or to any portions of the Common Areas and Facilities which directly affect the Leased Space, caused by fire or other casualty, whether by act of God or not, intentional, or otherwise, Landlord shall make repairs and restorations as hereinafter set forth, unless this Lease is terminated by either Landlord or Tenant as hereinafter provided. If the damage or destruction is to the Leased Space or to any portion(s) of the Common Areas and Facilities and the same cannot be restored within one hundred twenty (120) days after commencement of the work to substantially the condition as existed immediately prior to such damage or destruction, then Landlord shall so advise Tenant promptly, and either party hereto, for a period of thirty (30) days after Tenant's receipt of such notice, shall have the right to terminate this Lease by notice to the other, as of the date specified in such termination notice, which termination date shall be no earlier than thirty (30) days nor later than sixty (60) days after the date of such termination notice. In the event of such fire or

other casualty, if this Lease is not terminated pursuant to the provisions of this Section [19], then Landlord shall proceed diligently to restore the Leased Space (excluding such portions which were Tenant's Work, which shall be the sole responsibility of Tenant) and any portions of the Common Areas and Facilities so damaged or destroyed so that the affected portions are in substantially the same condition, to the extent reasonably possible, as existed prior to the occurrence of the damage or destruction.

(b) In the event of such damage or destruction and if this Lease has not been terminated as elsewhere provided herein, if Landlord has not substantially completed the repairs and reconstruction of the Leased Space within one hundred eighty (180) days after the date on which such damage or destruction occurred so that the Leased Space is in the same condition as it was immediately prior to such damage or destruction, Tenant, at its option, may terminate this Lease by giving notice thereof to Landlord at any time prior to the substantial completion of such work.

(c) For purposes of this Section [19], the standard for the term "substantial completion" shall be a state of completion when there remains to be completed only punchlist items of minor finishing and adjustment mutually determined by Landlord and Tenant. Landlord further covenants and agrees, at its sole cost and expense, to complete such punchlist items within thirty (30) days after the date of substantial completion.

(d) If Landlord elects to terminate this Lease as provided herein, then it is agreed and understood that no such notice of termination by Landlord shall be effective unless Landlord shall have similarly and simultaneously cancelled the leases of all other tenants in the Building so affected by the damage or destruction.

(e) If any such damage or destruction to the Leased Space or to any portions of the Common Areas and Facilities is of a nature or extent that Tenant's continued use and occupancy of the Leased Space is materially impaired, the Rent payable by Tenant hereunder shall be equitably abated until the date on which Tenant has reopened for business to the public, fully stocked and staffed, in the Leased Space.

[20] **TAKING.** If the entirety of the Leased Space is taken or condemned for a public or quasi-public use by any lawful power or authority, or if Tenant is denied access to or egress from the Leased Space by any action or decree of any lawful power or authority or as a result of natural or other disaster, or if Tenant is denied or deprived of either the use, occupancy and/or enjoyment of the Leased Space and/or the ability to operate its business thereon or therefrom by action or decree of any lawful power or authority or as a result of natural or other disaster, or by any oral or written agreement between Landlord or any such power or authority or by the acquiescence of Landlord (individually, and collectively, a "taking"), and in all such cases the taking is not deemed "temporary" (as that term is hereinafter defined), this Lease shall, as to the part which is subject to the taking, terminate as of the date Tenant is denied or deprived of such possession, use, occupancy, enjoyment and/or operation of or on the Leased Space, and the Rent due hereunder shall be reduced proportionately by the square footage of the Leased Space which is so affected. Should any portion(s) of the Common Areas and Facilities be the subject of a taking (and no portion of the Leased Space is directly affected), but the taking adversely affects

Tenant's use, occupancy and/or enjoyment of the Leased Space and/or the operation of Tenant's business thereon or therefrom, then the Rent due hereunder shall be equitably reduced as of the date on which such taking commenced to reflect the impact on Tenant. If, however, only a portion of the Leased Space or of the Common Areas and Facilities is subject to a taking, and such taking is not temporary, and such taking renders the Leased Space unfit, in Tenant's reasonable opinion, for Tenant's use, occupancy and/or enjoyment of the Leased Space (or such portion thereof remaining after such taking) for the Permitted Purpose, and/or the continued operation of Tenant's business thereon or therefrom, Tenant shall have the option, but not the obligation, of terminating this Lease by giving Landlord notice to that effect within thirty (30) days after the taking. A taking, whether partial or total, shall be deemed "temporary" hereunder if, as of the date on which such taking commenced, Tenant has the expectation that, within one hundred fifty (150) days after the taking, Tenant's access and egress to and from the Leased Space, and/or Tenant's possession, use, occupancy, enjoyment and operation of or on the Leased Space, as the case may be, shall be restored to the satisfaction of Tenant. In the event of a temporary taking, Rent shall be equitably reduced as aforesaid for the duration thereof. If, after one hundred fifty (150) days, notwithstanding Tenant's expectation, Tenant's rights have not been restored, then Tenant shall notify Landlord to such effect, the taking shall no longer be deemed temporary, and the other provisions of this Section [20] applicable to a taking shall then apply. In the event of any total or partial taking, whether temporary or not, Tenant waives all claims against Landlord and agrees that its claim against the exercising power or authority shall be limited to those claims provided by applicable Laws for lessees similarly situated which shall not diminish the award to Landlord, such as business interruption and loss of business, removal expenses and loss of leasehold improvements, trade fixtures and personalty. If this Lease shall continue after a partial taking, Landlord shall make such repairs and restorations to the remainder of the Property (including the Leased Space) as may be reasonably required for the continued operation of Tenant's business on and from the Leased Space (or the remainder thereof), but Landlord shall not be required to expend any sums in excess of the total of all award and insurance proceeds received by it; provided, however, that if such collective proceeds are insufficient, in Landlord's opinion, to complete the repairs and restorations and Landlord is unwilling to expend any additional sums, then Landlord shall notify Tenant to that effect, and Tenant shall have the option of (a) terminating this Lease by giving notice to Landlord, the effective date of which shall be no less than fifteen (15) days and no more than sixty (60) days after the date of Tenant's notice, within thirty (30) days after Tenant's receipt from Landlord of Landlord's notice of its unwillingness to expend such additional sums and the Rent shall be apportioned as of the effective date of such termination notice, or (b) paying the additional amount needed to complete the repairs and restorations as may be required by Tenant for the continued operation of its business on and from the Leased Space. Landlord agrees to promptly notify Tenant of any taking, but in any event no later than ten (10) days after Landlord learns thereof.

[21] **TENANT'S DEFAULTS.** Any other provisions of this Lease to the contrary notwithstanding, it shall be deemed to be an "Event of Default" under this Lease if (a) Tenant fails to pay any installment of Rent which is due and payable hereunder by Tenant and such failure continues for a period of ten (10) days after Tenant's receipt of notice thereof from Landlord, or (b) Tenant fails to keep, observe or perform any other term, covenant or condition of

this Lease to be kept, observed or performed by Tenant and such failure continues after Tenant's receipt of notice of default thereof from Landlord for more than thirty (30) days, provided that if the same cannot be cured within thirty (30) days, then within such additional time, if any, as is reasonably necessary to complete such cure, provided that Tenant has commenced such cure within the initial thirty (30) day period and diligently pursues such cure to completion, further provided that if such failure adversely affects other occupants of the Property, Landlord may by written notice to Tenant reduce the additional time permitted for cure to twenty (20) days, or (c) if there is filed by or against Tenant a petition in bankruptcy or insolvency or for reorganization or for the appointment of a receiver or trustee, or if Tenant makes an assignment for the benefit of creditors or takes advantage of any insolvency act or code, and within one hundred twenty (120) days thereafter Tenant fails to secure discharge of any of such proceedings, or (d) if Tenant assigns or sublets this Lease in violation of the provisions hereof, or (e) if Tenant is declared insolvent.

[22] **REMEDIES FOR TENANT'S DEFAULTS.**

(a) If an Event of Default as defined in Section [21] hereof shall have occurred and is continuing Landlord may, at its option:

(i) Terminate this Lease by giving ten (10) additional days' prior notice thereof to Tenant and, upon the expiration of such notice period, this Lease shall terminate with the same force and effect as though the date of such notice were the Expiration Date, and all rights of Tenant hereunder shall expire and terminate, but Tenant shall remain liable as hereinafter expressly provided, and/or

(ii) Without terminating the Lease, re-enter and take possession of the Leased Space and expel or remove Tenant and any other person occupying the Leased Space in accordance with applicable law without liability for prosecution of any claim or damages therefor, and/or

(iii) Exercise any other rights and remedies available to Landlord at law or in equity.

(b) At any time or from time to time after the repossession of the Leased Space, Landlord may relet all or any part thereof for the account of Tenant for such term(s) (which may be greater or less than the period which otherwise would have constituted the balance of the Initial Lease Term or of the Extension Term then in effect, as the case may be) and on such conditions and for such uses as Landlord, in its reasonable discretion, may determine, and Landlord may collect and receive any rents payable by reason of such reletting for the account of Tenant.

(c) In the event of any termination of this Lease or repossession of the Leased Space or any part thereof by reason of an Event of Default, as liquidated and agreed to damages and not as a penalty for the failure of Tenant to keep, observe and perform Tenant's covenants hereunder, Tenant agrees to pay the Minimum Rent which would be payable under this Lease by Tenant in the absence of such termination or repossession, less the net proceeds, if any,

of any reletting pursuant to Section [22](b) hereof or otherwise, after deducting from such proceeds all of Landlord's reasonable expenses actually incurred directly attributable to such reletting, other than costs imposed or charged by Landlord or persons or entities affiliated with Landlord. Tenant shall pay such liquidated damages on the days on which the Minimum Rent would have been payable under this Lease in the absence of such termination or repossession, and Landlord shall be entitled to recover the same from Tenant on each such day.

(d) Notwithstanding the foregoing, Landlord may at any time during the continuance of an Event of Default by Tenant, whether before or after exercising any of the foregoing actions, elect to accelerate Rent, in which event Landlord shall be entitled to recover from Tenant, and Tenant shall pay to Landlord on demand, as and for liquidated and agreed final damages for Tenant's default, an amount equal to (i) the then present value of the Rent and other sums or charges reserved or payable under this Lease (such other sums or charges shall be calculated on the basis of one hundred percent (100%) of such sums or charges payable in the Lease Year preceding Landlord's exercise of this remedy) from the day of such termination or repossession for what would be the then unexpired term if the same had remained in effect less (ii) the then present value of the fair market rental value (including additional rent) of the Leased Space for such same time period, said present values to be arrived at on the basis of a discount rate of eight percent (8%) per annum.

(e) In the event of any termination of this Lease or repossession of the Leased Space or any part thereof by reason of an Event of Default, Landlord agrees to use commercially reasonable efforts to relet the Leased Space in order to mitigate the damages which will otherwise be incurred because of such early termination or repossession.

(f) All remedies available to Landlord hereunder as a result of the occurrence of an Event of Default by Tenant shall be cumulative and concurrent, but may only be exercised by Landlord after Tenant has received all required notices from Landlord and all applicable periods have expired without a cure having been effectuated by Tenant.

[23] LANDLORD'S DEFAULTS AND TENANT'S REMEDIES; LOSS OF LEASEHOLD. (a) It shall constitute a default hereunder if, from and after the date of this Lease, Landlord fails to keep, observe or perform any of its obligations to be kept, observed or performed under this Lease within thirty (30) days after Landlord's receipt of notice of nonperformance from Tenant; provided, however, that if such breach cannot be cured within thirty (30) days, then within such additional time, if any, as is reasonably necessary to complete such cure, so long as Landlord has commenced such cure within the initial thirty (30) day period and diligently pursues such cure to completion; and, provided further, that in the event of a breach that will adversely affect the operation of Tenant's business on the Leased Space, Tenant may, in its notice of breach, reduce the period for cure to any shorter period reasonable under the circumstances, so long as Tenant states in its notice the exact nature of the threat to the operation of its business. If Landlord fails to cure such default within the applicable time period, then Tenant may elect, in addition to any and all other rights and remedies available to Tenant hereunder or at law or in equity, to cure such default on behalf of Landlord, but Tenant shall be under no obligation, express or implied, to do so. In such latter event, following the presentation to Landlord of reasonable evidence that Tenant has expended sums to cure such default and

otherwise has incurred damages as a result of Landlord's failure to cure such default, Tenant shall be permitted to deduct such damages and expended sums, together with interest thereon at the Default Rate calculated as provided in Section [39] hereof from the installments of Rent next to become due under this Lease. Furthermore, such reimbursement obligation shall survive the Expiration Date or sooner termination of this Lease.

The notice and grace provisions of this Section [23] shall not apply to Landlord's payment obligations with respect to the Tenant Improvement Allowance for which the only grace period, without notice, is the thirty (30) day period that is specifically set forth in Section [17] hereof. If the Tenant Improvement Allowance is not paid in its entirety within the thirty (30) days provided in said Section [17] for such purpose, then such unpaid amount shall bear interest at the Default Rate from the expiration date of such thirty (30) day period to the date of collection or set-off in full by Tenant. Tenant shall have the right to set off the Tenant Improvement Allowance (or any portion thereof that remains unpaid), as well as interest calculated thereon as aforesaid, against any and all installments of Rent thereafter payable by Tenant under this Lease, in addition to any and all rights and remedies available to Tenant under this Lease or at law or in equity. If, for any reason whatsoever, Tenant's obligation to pay Rent hereunder either does not commence or, after it has commenced thereafter is suspended, and Tenant, therefore, does not have an opportunity to apply in full on account of Rent hereunder the Tenant Improvement Allowance, then the Tenant Improvement Allowance or so much thereof which Tenant has not applied on account of Rent, shall bear interest at the Default Rate until the date of collection in full by Tenant. The rights of Tenant and the obligations of Landlord under this Section [23] shall specifically survive the Expiration Date or sooner termination of this Lease.

(b) The parties hereto acknowledge and agree that (i) the leasehold estate created by this Lease is unique to Tenant and for the operation of its business therein and therefrom, (ii) the loss of this leasehold estate cannot be adequately compensated for by money damages, and (iii) money payment, bonding, or any other security cannot adequately protect Tenant from the loss thereof. Nevertheless, if, by virtue of Landlord's bankruptcy, or otherwise, it becomes necessary to value such leasehold estate, then a variety of factors must be taken into account to make a determination whether Tenant's interest in the leasehold estate is adequately protected. The parties hereto further acknowledge and agree that such determination of adequate protection must recognize the various unique aspects of the leasehold estate which cannot be duplicated, including, (I) the amount of rent and sums payable as additional rent therefor by Tenant if less than fair market value, (II) the cost of leasehold improvements made by or on behalf of Tenant, (III) the cost of furniture, fixtures and equipment installed by or on behalf of Tenant, (IV) the layout of the Leased Space for Tenant's business, and (V) the creation and development of good will and market presence for Tenant's business at the Leased Space.

[24] OWNERSHIP, ENCUMBRANCES AND COMPLIANCE WITH LAWS. Landlord represents and warrants to and agrees with Tenant as follows:

(a) Landlord is the owner in fee simple of the Leased Space and the Property, and Landlord has good and marketable title thereto.

(b) The Leased Space is currently zoned under all applicable Laws to permit the use and occupancy thereof for the Permitted Uses, and Landlord is unaware of any facts or circumstances that could or would cause any licenses or permits which may be required for Tenant's use and occupancy of the Leased Space either to not be granted, or, if granted, to not be continued in effect or renewed.

(c) Landlord is a limited liability company duly formed and validly existing under the laws of Minnesota; Landlord has full power and authority under the laws of Minnesota to execute and deliver this lease and to perform its obligations hereunder; the signatory hereto on behalf of Landlord has full power and authority to bind Wayzata Bay West Retail, LLC, as Landlord, and all requisite actions necessary to authorize Landlord to execute and deliver this Lease and to perform its obligations hereunder have been taken.

(d) The Leased Space and the Common Areas and Facilities will upon completion of Landlord's Work comply with all Laws, including those Laws relating to handicapped access and egress, seismic reinforcement, replacement and retrofitting, life and fire safety, health and the environment.

(e) Neither the Leased Space nor the Property is subject to any mortgage, deed of trust, lien, claim or encumbrance as of the date of this Lease except as set forth on Exhibit "D" attached hereto and made a part hereof, and there are no violations or defaults under any instrument enumerated in such Exhibit "D," and the enforcement of any such rights or claims shall not adversely affect the improvement, use, occupancy or enjoyment of the Leased Space and the Common Areas and Facilities by Tenant in the manner contemplated by this Lease.

(f) Except as set forth in the Environmental Reports, no hazardous or dangerous substances which are regulated under any Laws pertaining to the environment, including asbestos, asbestos-containing materials, radon, toxic and non-toxic molds, and transformers containing or contaminated by PCBs, whether prior to or during the period that Landlord is the legal or beneficial owner of the Property, have to the best of Landlord's knowledge been or are presently, used, handled, generated, processed, treated, stored, transported, released, discharged or disposed on, about, or beneath the Property, by any person in violation of any such Laws.

(g) Neither the Property nor the Building is listed as a historic site, nor is the Land located within a historic district, as designated under any Laws applicable thereto at the local, state or federal level.

(h) The Property consists of one or more separately assessed real estate tax parcel for all purposes, but none of those tax parcels is assessed with any property outside of the Property, and Landlord owns all of such parcels.

[25] **SUBORDINATION OF LEASE; ATTORNMENT.** This Lease shall not become subject or subordinate to any lease, right, claim, mortgage or deed of trust hereafter placed against or affecting the Leased Space or any portion or portions thereof unless and until

the holder of any right or claim or the mortgagee under any mortgage or the lessor under any lease, as the case may be (hereafter the “holder”) shall have executed, acknowledged and delivered to Tenant a recordable, written instrument in form and content reasonably acceptable to Tenant (the “Non-Disturbance Agreement”) pursuant to which any such holder on behalf of itself and its respective heirs, personal representatives, successors and assigns (including any purchaser under foreclosure proceedings or grantee under a deed in lieu of foreclosure (the “Purchaser”)) shall recognize Tenant’s interest in this Lease and permit Tenant to remain in quiet possession of the Leased Space (together with Tenant’s non-exclusive right in and to the Common Areas and Facilities) for the balance of the Initial Lease Term and any Extension Term(s) so long as Tenant shall pay the Minimum Rent as reserved hereunder and otherwise keep, observe and perform all of its obligations under this Lease. Landlord shall use commercially reasonable efforts to obtain a commercially reasonable Non-Disturbance Agreement (which may neither expand any of Tenant’s obligations, nor diminish, detract from, modify or abrogate any of Tenant’s rights, under this Lease) from the holder of any existing lease, right, claim, mortgage or deed of trust against or affecting the Leased Space promptly after the execution and delivery of this Lease, if Landlord has not already obtained such Non-Disturbance Agreement prior to the execution and delivery hereof. If Landlord fails to obtain a Non-Disturbance Agreement as aforesaid from any existing holder within sixty (60) days after the execution and delivery of this Lease by the parties hereto, Tenant shall have the option, but not the obligation, to terminate this Lease at any time thereafter upon thirty (30) days notice to Landlord.

If any proceedings are brought for the foreclosure of, or in the event of exercise of the power of sale under, any mortgage (or other instrument) made by Landlord covering the Leased Space, Tenant shall, at the request of Purchaser, attorn to Purchaser upon any such foreclosure or sale and recognize such Purchaser as the Landlord under this Lease, subject to Tenant’s receipt of a Non-Disturbance Agreement as provided above.

[26] **ESTOPPEL CERTIFICATES.** Landlord and Tenant agree within thirty (30) days after receipt of request therefor to execute and deliver to the other a statement, addressed to such party, in writing, certifying: (a) that this Lease is in full force and effect and unmodified or, if modified, stating the date of modification and the terms thereof, (b) the Delivery Date, the Commencement Date, and the Expiration Date, (c) that the Rent is paid currently without any offset or defense thereto, or stating any offsets or defenses claimed by Tenant or Landlord, as the case may be, and known at the time of such statement, (d) the amount of Rent, if any, paid in advance, (e) that, to the actual knowledge of the certifying party, there are no uncured Events of Default by Tenant or defaults by Landlord after the giving of any required notices and the expiration of any applicable cure periods provided by this Lease, all as the case may be, or stating those claimed by either Tenant or Landlord provided that, in fact, such Events of Default or defaults are ascertainable, and (f) such other matters as may be reasonably requested.

[27] **LANDLORD’S WAIVER.** Anything in this Lease to the contrary notwithstanding, Landlord waives any right it may now or hereafter have to distress or distrain upon or secure a lien, under applicable Laws, against the inventory, trade fixtures, equipment, machinery or other goods and effects of Tenant. Notwithstanding the foregoing, if Tenant shall

acquire inventory, trade fixtures, equipment, machinery or other goods and effects subject to a purchase money security interest, or shall lease any of the same, or if any institutional lender provides Tenant with financing the proceeds of which are intended to enable Tenant to use and occupy the Leased Space or to operate Tenant's business and such financing is secured in whole or in part by a lien on such goods or fixtures, Landlord shall confirm such waiver, upon request of Tenant, by executing a confirmatory waiver of any such right it may have or had to distress or distrain upon or secure a lien against such goods or fixtures for any reason whatsoever, in form and content reasonably acceptable to Landlord; provided, however, that the holder of any such security interest or the lessor under any such lease must agree in writing to repair any damage that may be done to the Leased Space as the result of the removal of such inventory, trade fixtures, equipment, machinery or other goods and effects.

[28] **NON-WAIVER OF DEFAULT.** No delay or omission by Landlord in exercising any right upon any Event of Default by Tenant, or by Tenant in exercising any right upon any default by Landlord, will impair any such right or be construed as a waiver thereof or be deemed to be a waiver as to future events.

[29] **AGENT.** Landlord and Tenant represent, warrant and agree that the only brokers or agents with which they have dealt in connection with this Lease are The McDevitt Company and Mid-America Real Estate - Minnesota LLC, for whose commissions Landlord agrees to be solely responsible. Landlord and Tenant agree to indemnify, defend and hold the other harmless of, from and against any claims against or costs and expenses (including reasonable attorney's fees and expenses) incurred by the other resulting from a misrepresentation, breach of warranty, nonfulfillment of warranty or breach of agreement with respect to the foregoing. The provisions of this Section [29] shall survive the Expiration Date of the Initial Lease Term and any Extension Term.

[30] **COMMENCEMENT DATE CONDITION; OPERATING COTENANCY CONDITION.**

(a) It shall be a condition of the Commencement Date that Landlord shall have entered into written, legal, valid and binding leases for space in the Property (except as noted) with (i) Lund's, located in the Superior Block of The Promenade at Wayzata (adjacent to the Property), and (ii) at least two of the following ten retailers: PaperSource, Francesca's, Arafina, Ala Mode, Lululemon, yogafit, Invision Eyewear, Charleson Shoe Co., solidcore or Lou & Grey (or replacements thereof approved by Tenant), and (iii) retail tenants and restaurants of the type typically found in first-class shopping centers located in the Minneapolis/St. Paul, MN metropolitan area occupying at least seventy five (75%) percent of the total rentable retail area of the "West Block" of Property (exclusive of the Leased Space but inclusive of the occupants described in clause (ii) hereof), all of which shall have opened for business to the public (the "Commencement Date Condition"). In the event Tenant elects at its sole discretion to open prior to the satisfaction of this Commencement Date Condition, then the Commencement Date shall be deemed to have occurred, but as long as this Commencement Date Condition remains unsatisfied, then, in lieu of Minimum Rent, Percentage Rent, and Additional Rent, if any, Tenant shall only be obligated to pay Landlord "Alternate Rent." "Alternate Rent" for purposes of subsections (a) and (b) of this Section [30], is herein defined to mean five percent (5%) of all of

Tenant's Gross Sales from the Leased Space. Furthermore, if such Commencement Date Condition remains unsatisfied for eighteen (18) months, then Tenant may notify Landlord of Tenant's election to terminate this Lease, whereupon this Lease shall become null and void and, thereafter, neither party hereto shall have any further rights, liabilities or obligations hereunder (exclusive of Landlord's obligation to pay Tenant the Tenant Improvement Allowance, in full, which shall specifically survive, and Tenant's obligation to pay all Rent due through the effective date of early termination). Upon satisfaction of the Commencement Date Condition, subject to the terms and conditions of this Lease, Tenant shall immediately commence the payment of full Rent.

(b) If, at any time during the term of this Lease as it may be extended, but after the Commencement Date Condition has been satisfied, less than seventy five percent (75%) of the total rentable retail square feet of the West Block (which for purposes of this Section [30] shall exclude the Leased Space) is actively being used for the operation of retail tenants of the type typically found in first-class shopping centers located in the Minneapolis/St. Paul, MN metropolitan area for a period of twelve (12) months or more (such condition being hereinafter referred to as an "Excess Vacancy"), then in such event, Tenant shall have the right at its sole discretion to pay Alternate Rent in lieu of Minimum Rent, Percentage Rent, and Additional Rent during the period of such Excess Vacancy. If the Excess Vacancy continues for an additional twelve (12) months, Tenant may elect to terminate this Lease, exercisable by giving Landlord at least thirty (30) days' prior notice, in which event this Lease shall terminate on the date set forth in Tenant's notice of termination without further liability on the part of either Landlord or Tenant, except for those obligations which survive the expiration or other termination of this Lease pursuant to the express terms of this Lease. At such time as there is no longer any Excess Vacancy in the West Block, subject to the terms and conditions of this Lease, Tenant shall immediately commence the payment of full Rent.

(c) If Tenant elects the Alternate Rent option under either Section [30](a) or (b) hereof, Tenant agrees to pay such payments on or before thirty (30) days after the end of each calendar month that Tenant is obligated to pay Alternative Rent.

(d) Time is of the essence of each and every provision of this Section [30].

[31] **ENTIRE AGREEMENT; AMENDMENTS IN WRITING.** The parties hereto have read this Lease carefully and understand it fully. The parties expressly understand and agree that this Lease sets forth all of the terms, covenants, conditions, promises and agreements relative to the Leased Space, and there are no terms, covenants, conditions, promises or agreements, either oral or written, express or implied, other than those set forth herein. Neither this Lease, nor any Exhibits or Schedules attached hereto, may be modified or amended except pursuant to a written agreement executed and delivered by both parties hereto.

[32] **PARTIES BOUND.** All rights and liabilities given to, or imposed upon, the parties to this Lease shall also extend to and bind their several and respective heirs, personal representatives, successors and assigns.

[33] **RECORDATION OF MEMORANDUM OF LEASE.** At the request of either party hereto, such parties shall execute and deliver a recordable memorandum or short form of this Lease.

[34] **NOTICES.** All notices, statements, demands, requests, consents, communications and certificates to Landlord must be in writing and given by certified or registered mail, return receipt requested, postage prepaid, or by nationally-recognized overnight courier service, addressed to Landlord at the address set forth below (and regardless of whether or not the provisions of this Lease specifically indicate that a notice shall be in writing). All notices, statements, demands, requests, consents, communications and certificates by Landlord to Tenant must be in writing and given by certified or registered mail, return receipt requested, postage prepaid, or by nationally-recognized overnight courier service, addressed to Tenant at the address set forth below (and regardless of whether or not the provisions of this Lease specifically indicate that a notice shall be in writing). Any such notices, statements, demands, requests, consents, communications, or certificates may also be given to such other parties or addresses as Landlord or Tenant may designate in writing to the other from time to time in the manner prescribed above and in all cases shall be deemed given on the date the same is mailed or delivered in accordance with the provisions of this Section [34].

To Landlord: Wayzata Bay West Retail, LLC
3116 Fairview Avenue North
Roseville, MN 55113
Attn: John Mehrkens

To Tenant: Anthropologie, Inc.
5000 South Broad Street
Philadelphia, PA 19112
Attn: Chief Executive Officer

and

Anthropologie, Inc.
5000 South Broad Street
Philadelphia, PA 19112
Attn: General Counsel

[35] **PARTIAL INVALIDITY.** If any term, covenant or condition of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease and the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant and condition of this Lease shall be valid and enforceable to the fullest extent permitted by law.

[36] **HEADINGS; GENERAL INTERPRETIVE PRINCIPLES.**

(a) Any headings preceding the text of the various Sections and subsections hereof are inserted solely for convenience and reference and shall not constitute a part of this Lease, nor shall they affect its meaning, construction or effect.

(b) For purposes of this Lease, except as otherwise expressly provided or unless the context otherwise requires, (i) the terms defined in this Lease have the meanings assigned to them and include the plural as well as the singular, and the use of any gender hereunder shall be deemed to include the other genders; (ii) references herein to “Sections,” “subsections,” “paragraphs” and other subdivisions without reference to a document are to designated Sections, subsections, paragraphs and other subdivisions of this Lease; (iii) a reference to a subsection without further reference to a Section is a reference to such subsection as contained in the same Section in which the reference appears, and this rule shall also apply to paragraphs and other subdivisions; (iv) the words “herein,” “hereof,” “hereunder” and other words of similar import refer to this Lease as a whole and not to any particular provision; and (v) the word “including” means “including, but not limited to.”

[37] **REASONABLENESS.** Whenever the terms, covenants, conditions and provisions of this Lease entitle Landlord and/or Tenant to exercise their respective opinions, or to give their respective approvals or consents, such opinions shall be reasonable and such approvals and consents shall not be unreasonably withheld, conditioned or delayed, notwithstanding that in some, but not all, instances a reasonableness standard is referenced. Landlord agrees that if there are other tenants or occupants in the Building, Landlord will not take any actions, or exercise any opinions, or give any consents or approvals, with respect to such other tenants or occupants which either discriminate against Tenant or materially interfere with Tenant’s use, occupancy and enjoyment of the Leased Space or the operation of its business thereon or therefrom. Furthermore, Landlord agrees that, having acknowledged its familiarity with the manner in which Tenant operates its business at other stores, nothing in this Lease is intended to require Tenant to operate its business in the Leased Space in a manner which is different from the manner Tenant generally operates its business at such other stores, and that it would be unreasonable for Landlord to exercise any of its approval, consent or other rights under the provisions of this Lease in a way which would prohibit Tenant from doing so.

[38] **FORCE MAJEURE.** If either Landlord or Tenant shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, martial law, restrictive Laws, riots, insurrection, acts of terrorism, war or other reasons of a like nature not the fault of, or under the control of, the party delayed in performing work or doing acts required under the terms, covenants, conditions or provisions of this Lease, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay; provided, however, that the foregoing provisions of this Section [38] shall not apply to (i) Landlord’s reimbursement obligation for the Tenant Improvement Allowance or for any other reimbursement or payment obligation of Landlord hereunder, (ii) Tenant’s obligation to pay Rent (except in those instances under this Lease which specifically provided for a reduction or abatement thereof, as in Sections [19] and [20] relating to fire, casualty and taking), or (iii) any other performance obligation under

this Lease which specifically provides that the provisions of this Section [38] shall not apply; provided further, that as to the aforesaid payment or reimbursement obligations, the provisions of this Section [38] shall apply if delivery thereof is delayed because of any of the foregoing occurrences or events and either Landlord or Tenant, as the case may be, is able to establish that payment or reimbursement was presented to the delivery service (including either the postal or courier service) on or before the due date therefor.

[39] **DEFAULT RATE.** Any payment of any sums hereunder, or sums advanced or expended to or on behalf of one of the parties hereto by the other party, whether by Landlord to Tenant, or by Tenant to Landlord, which is not made or repaid when due shall accrue interest at the Default Rate from the due date through the date of collection or set-off, as the case may be.

[40] **ATTORNEY'S FEES.** If either Landlord or Tenant shall institute any action or proceeding against the other relating to any of the terms, covenants, conditions or provisions of this Lease, or there occurs any Event of Default by Tenant or default by Landlord, the unsuccessful party in such action or proceeding shall reimburse the successful party for reasonable attorney's fees and other costs and expenses incurred therein by the successful party, including fees, costs and expenses incurred in any appellate proceeding.

[41] **QUIET ENJOYMENT.** Upon payment by Tenant of the Rent reserved and provided to be paid by Tenant hereunder and upon the keeping, observance and performance by Tenant of all of the terms, covenants, conditions and provisions of this Lease on Tenant's part to be kept, observed and performed, Tenant shall peaceably and quietly hold and enjoy the Leased Space for the Initial Lease Term and all Extension Term(s) without hindrance or interruption by Landlord or by any person or persons lawfully claiming or holding by, through or under Landlord.

[42] **GOVERNING LAW.** This Lease shall be construed, interpreted and governed by the laws of the State in which the Leased Space is situated.

[43] **COUNTERPARTS; FACSIMILES.**

(a) This Lease may be executed in any number of counterparts, each of which shall be an original, and such counterparts together shall constitute one and the same instrument.

(b) The parties hereto agree that a facsimile or other electronic transmission of an executed counterpart of this Lease shall have the same binding effect on the signatory as an executed and delivered original thereof. The parties hereto further agree, for confirmatory purposes only, to exchange copies of executed counterpart originals promptly after the aforesaid facsimile or other electronic transmissions so that each party may have at least one (1) fully executed original hereof.

[44] **LANDLORD'S RECAPTURE RIGHT.** Subject to Landlord's performance of its obligations to complete Landlord's Work and deliver the Leased Space to

Tenant and Sections [5] and [38] hereof, Tenant agrees to initially open for business to the public by the date that is six (6) months after the Delivery Date. Notwithstanding any other provisions of this Lease, Tenant shall after initially opening for business have no obligation operate any business in the Leased Space, and shall have the right, at any time, to cease to conduct any business operations in the Leased Space, and Tenant shall incur no liability to Landlord or its mortgagee by reason thereof (it being understood and agreed that all of Tenant's obligations under this Lease shall continue unless this Lease is terminated pursuant, inter alia, to the further provisions of this Section [44] or any other provision of this Lease). In the event that Tenant does not operate or cause to be operated any retail business in the Leased Space (other than during Excused Periods) for more than one hundred eighty (180) consecutive days, Landlord shall have the option to terminate this Lease, which option shall be exercisable by giving notice thereof to Tenant by not later than the ninetieth (90th) day after the date on which said 270-day period expires, and whereupon this Lease shall terminate upon the thirtieth (30th) day (the "Recapture Date") after the date on which Tenant receives Landlord's termination notice, as if the Recapture Date was originally set forth herein as the expiration date of the Term. If prior to the Recapture Date, Tenant re-opens for business in the Leased Space within thirty (30) days from the date of such notice, continue to do business in the Leased Space, then this Lease shall continue in full force and effect as if the termination notice had never been given (provided that Tenant actually re-opens within such 30-day period). In the event of a termination pursuant to this Section [44], upon such termination, Landlord and Tenant shall each be released from any and all liabilities thereafter accruing hereunder, except obligations which accrue prior to the Recapture Date and those that survive the expiration or other termination of this Lease pursuant to the express terms of this Lease. All rent payable by Tenant hereunder shall be apportioned as of the Recapture Date and Tenant shall promptly pay to Landlord any amounts so determined to be due and owing by Tenant to Landlord, and conversely Landlord shall promptly reimburse Tenant for any amounts prepaid by Tenant for periods subsequent to the Recapture Date. For purposes of this Lease, "Excused Periods" shall mean: Periods during which Tenant's (or other occupant's) failure to conduct the operations of its business or any other business: (a) resulted from alterations or renovations being performed in and to the Leased Space provided that Tenant is continuously and diligently proceeding with such alterations or renovations, (b) was caused by damage or destruction, eminent domain proceedings or actions, or force majeure, or (c) was caused by any act or omission of Landlord, or its employees, agents, or contractors.

[45] **HOLDOVER.** If Tenant or any party claiming under Tenant remains in possession of the Leased Space or any part thereof after any termination or expiration of this Lease, Landlord, in Landlord's sole discretion, may treat such holdover as an automatic renewal of this Lease for a month to month tenancy subject to all the terms and conditions provided herein, except that Minimum Rent shall be increased to 150% of the amount of Minimum Rent payable during the period immediately prior to the termination or expiration.

[46] **LIMITATION ON LANDLORD LIABILITY.** Notwithstanding anything to the contrary contained in this Lease, in the event of any default or breach by Landlord with respect to any of the terms, covenants and conditions of this Lease to be observed, honored or performed by Landlord, Tenant shall look solely to the estate and property of Landlord in the land and building owned by Landlord comprising the Leased Space and/or Property (including

the rents, issues, and profits thereof and therein) for the collection of any judgment (or any other judicial procedures requiring the payment of money by Landlord) and no other property or assets of Landlord shall be subject to levy, execution, or other procedures for satisfaction of Tenant's remedies.

[47] **WAIVER OF JURY TRIAL.** LANDLORD AND TENANT DO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THEIR RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, OR UNDER OR IN CONNECTION WITH THIS LEASE, OR ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ANY ACTIONS OF EITHER PARTY ARISING OUT OF OR RELATED IN ANY MANNER WITH THIS LEASE (INCLUDING WITHOUT LIMITATION, ANY ACTION TO RESCIND OR CANCEL THIS LEASE AND ANY CLAIMS OR DEFENSES ASSERTING THAT THIS LEASE WAS FRAUDULENTLY INDUCED OR IS OTHERWISE VOID OR VOIDABLE). THIS WAIVER IS A MATERIAL INDUCEMENT FOR EACH OF LANDLORD AND TENANT TO ENTER INTO AND ACCEPT THIS LEASE.



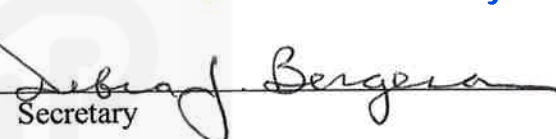
MINNESOTA
JUDICIAL
BRANCH

IN WITNESS WHEREOF the parties hereto, intending to be legally bound, have caused this Lease to be duly executed, under seal, the day and year first above-written.

LANDLORD:

WAYZATA BAY WEST RETAIL, LLC

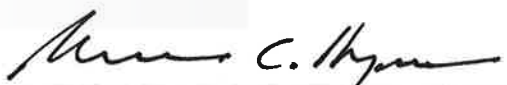
By: 
President *Chiz A. Financial Mgr.*

Attest: 
Secretary

no seal
(Corporate Seal)

TENANT:

ANTHROPOLOGIE, INC.

By: 
Its: Chief Executive Officer

MINNESOTA
JUDICIAL
BRANCH

Exhibit "A"

[Land]

Real property in the City of Wayzata, County of Hennepin, State of Minnesota, described as follows:

Parcel 1:

Tracts B, C, E, G and J, Registered Land Survey No. 1820, Hennepin County, Minnesota.

Parcel 2:

Exclusive easement for utility and infrastructure purposes, together with any incidental rights, in favor of Wayzata Bay Redevelopment Company, LLC, a Minnesota limited liability company, as contained in the Utility and Infrastructure Easement Agreement, dated November 29, 2011, recorded December 5, 2011, as Document No. 4907300 (Torrens).

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Exhibit "A-1"

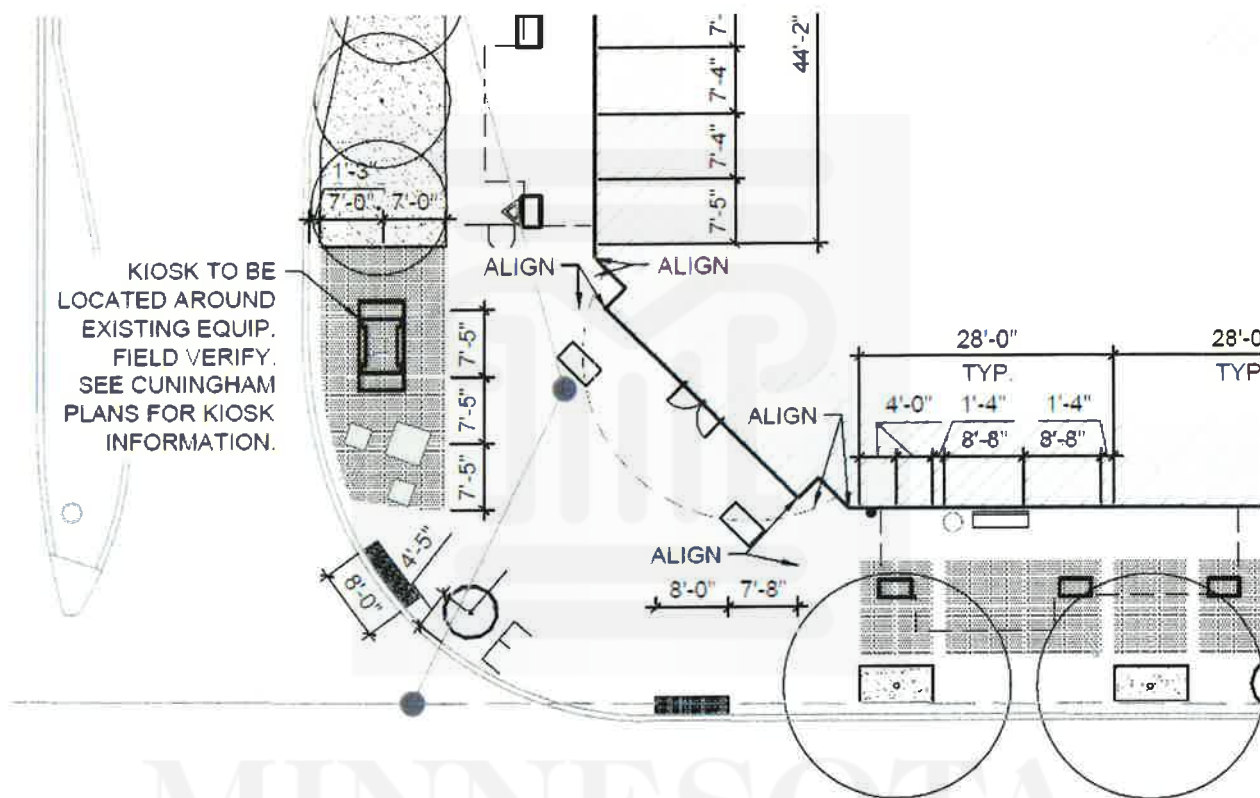
PROPERTY SITE PLAN

See attached



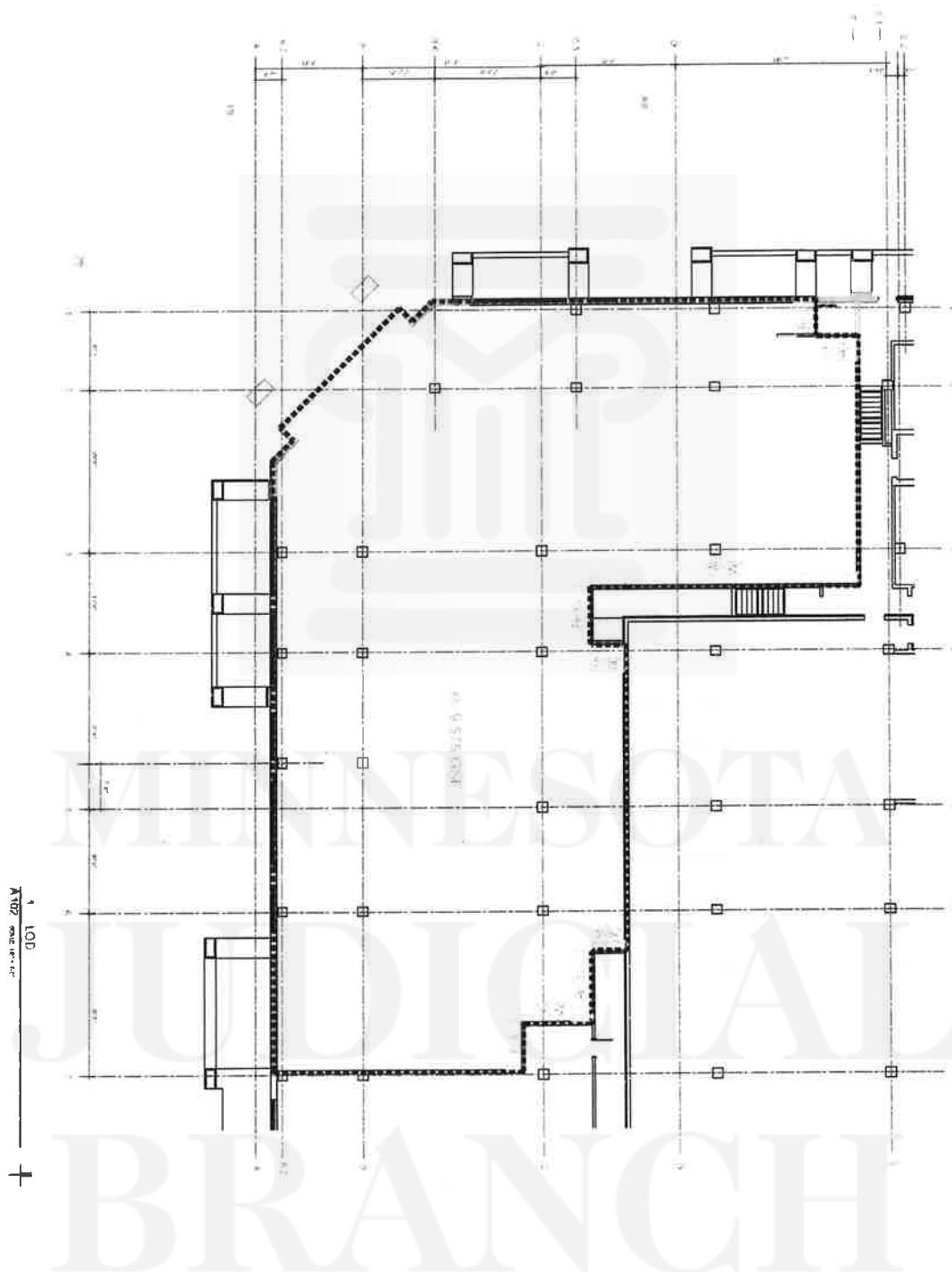
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Exhibit "A-1" (page 2)



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Exhibit "B" - [Leased Space]



Minnesota
 State of Minnesota
 Department of Public Safety
 Division of Criminal Justice
 400 South Second Street
 Minneapolis, MN 55404

ANTHROPOLICIA
 THE CORPORATION OF ANTHONY
 1000 W. WASHINGTON
 MINNEAPOLIS, MN 55404

GENERAL NOTE:
 DESIGN ORIGINATOR:
 800 SOUTH SECOND STREET
 MINNEAPOLIS, MN 55404
 TEL: 612-339-1111
 FAX: 612-339-1112

DATE: 03/20/2023

PROJECT NO:
 LOD

A102

EXHIBIT "C"

Landlord's Work

ANTHROPOLOGIE PROMENADE AT WAYZATA MN - SHELL DELIVERY SPECIFICATION - EXHIBIT "C"			
Tenant shall not be required to accept possession of the Leased Premises until Tenant has inspected and found the Leased Premises and all Landlord Work noted below to be in conformance with this Exhibit and the requirements of the Lease.			
DESCRIPTION	LANDLORD	TENANT	DOES NOT APPLY
1.00 GENERAL SHELL DELIVERY CONDITION			
1.01 Delivered in a good workmanlike manner.	X		
1.02 In accordance with the plans and specifications prepared by Landlord's Architect, in conjunction with the Tenant's design, specifications, and aesthetic, and approved by Tenant.	X		
1.03 In compliance with all laws, rules and regulations as required for a retail use.	X		
1.04 In accordance with all other applicable provisions of the Lease.	X		
1.05 In compliance with all disabled accessibility and life-safety requirements to and from the Leased Premises and to and from the Building, Common Areas, and Facilities.	X		
1.06 In compliance with all parking requirements for a retail use of the Leased Premises.	X		
1.07 Provide design and specifications for all applicable shell delivery items as defined herein ("Exhibit "C-2""), with layout drawings to be provided within sixty (60) days of Lease execution.		X	
2.01 SOUND & MUSIC MITIGATION			
2.01 Leased Premises delivered to permit sound and music within the Leased Premises typical of an Anthropologie retail store use.	X		
2.02 Installation of sound management and mitigation assemblies outside of the Leased Premises, unless agreed in advance by Tenant to be located within the Leased Premises.	X		
3.00 HAZARDOUS MATERIALS			
3.01 Free and clear of any and all hazardous substances presently regulated under all laws.	X		
3.02 Free and clear of asbestos-containing materials (encapsulated or not).	X		
3.03 Free of any toxic or non-toxic molds.	X		
3.04 Free of any radon or transformers containing or contaminated by PCB's.	X		
3.05 Provision of all appropriate environmental and inspection reports upon Lease execution.	X		
4.00 STRIP-OUT & DEMOLITION			
4.01 Broom swept and clean throughout.	X		
4.02 Free of any unused or inactive interior utility lines, conduit, flexible conduit, BX conduit, pipes, ducts, shafts and chases.	X		
5.00 HOARDING & BARRICADES			
5.01 If Tenant's complete storefront assembly is not in place by the Landlord's anticipated Grand Opening date, and subject to approval by the governing authority, provide hoarding to be located a minimum of 3'-6" in front of the storefront and façade with a minimum 6'-0" wide by 7'-0" high opening.	X		
5.02 Furnish and install Tenant's approved graphics.		X	
5.03 Furnish and install Tenant's staff recruiting information.		X	
5.04 Furnish and install solid-core wood door assembly, including hinges and door frame.	X		
5.05 Paint existing face of hoarding with two (2) coats of semi-gloss white paint, to match Benjamin Moore OC-7.	X		
5.06 Furnish and install door lock hardware and cores.		X	
5.07 Removal and disposal of hoarding, with dates to be coordinated between Landlord and Tenant.		X	
6.00 FLOORING			
6.01 Provide a smooth and clean condition for the floor and slab throughout the Leased Premises.	X		
6.02 Delivered at a single elevation, to commercially reasonable and industry standards. Maximum deviation of floor slab to be 1/4" over 10'-0", with a maximum change of 1" for the entire Leased Premises.	X		
6.03 Flooring, on all levels, shall be delivered structurally sound and satisfy the following floor load requirements:	X		
a Retail use with a load capacity of 100lbs/sqft	X		
b High-density shelving and stockroom use with a load capacity of 125lbs/sqft	X		
7.00 ELEVATORS & LIFTS			
7.01 NOT USED.			X
8.00 STAIRS AND VOIDS			
8.01 NOT USED.			X

ANTHROPOLOGIE PROMENADE AT WAYZATA MN - SHELL DELIVERY SPECIFICATION - EXHIBIT "C"			
Tenant shall not be required to accept possession of the Leased Premises until Tenant has inspected and found the Leased Premises and all Landlord Work noted below to be in conformance with this Exhibit and the requirements of the Lease.			
DESCRIPTION	LANDLORD	TENANT	OWNER'S NAME = FPL
9.00 WALLS			
9.01	Provide full height 6" metal framed walls throughout the Leased Premises with cross bracing from structural floor to ceiling deck, roof or structural soffit above, true and plumb to industry standards.	X	
9.02	Perimeter walls, common shafts/chases, and demising walls sheathed on Tenant side of Leased Premises, from structural floor to ceiling deck, roof or structural soffit above with 5/8" blue board sheathing, taped, bed, and finished for painting	X	
9.03	Provide fire-rated assemblies and sheathing as required by the governing authority and code	X	
10.00 CEILING & STRUCTURAL SOFFIT			
10.01	Ceiling deck delivered clean free of any excess fireproofing, nailing and adhesives	X	
10.02	Any interior utility lines, conduit, flexible conduit, BX conduit, pipes, ducts, shafts and chases to be located with a minimum 14'-0" clearance between the structural floor and the bottom of the existing element.	X	
10.03	Provide a metal trapeze sub-structure assembly (such as Unistrut) throughout the Leased Premises for attachment of Tenant's fixtures, ducts, conduit, plumbing lines and other Tenant-provided equipment, with layout and spacing as defined in Exhibit "C-2".	X	
11.00 ROOF & WATERTIGHTNESS			
11.01	The Leased Premises shall be delivered watertight and free of any leaks	X	
11.02	Provide the code-mandated insulation value (minimum R-30), with spray insulation applied to the underside of the ceiling deck, and with any overspray to be cleaned from all surfaces within the Leased Premises. Tenant acknowledges they will not be permitted to penetrate or modify the existing insulation system without reinstatement and repair of the insulation and intumescent assembly, to be approved by Landlord (and approval not to be unreasonably withheld)	X	
12.00 UTILITIES			
12.01	Provide all utilities to be used or consumed on the Leased Premises, including electricity, telephone and water, with sufficient capacity for Tenant's retail use of the Leased Premises	X	
12.02	Provide stub-in locations within the Leased Premises for all utilities, to Tenant's desired locations for any new services	X	
12.03	Provide meters, sub-meters, or check meters as approved by the governing jurisdiction for all utilities, unless measured via a pro-rata method or if part of common area maintenance (CAM) fees	X	
13.00 ELECTRICAL			
13.01	Provide electrical service to a location within the Leased Premises (400A / 3PH / 4W / 277/480V), Tenant shall provide Landlord with an electric load letter from Tenant's engineer to confirm the power service requirement, and should the load letter indicate a reduced service requirement, Landlord may elect to provide the reduced electrical service to the Leased Premises	X	
13.02	Provide conduit and feeder wires from the main electric switchgear room to a disconnect within the Leased Premises	X	
13.03	Provide a meter socket and number	X	
13.04	Provide the electric panel within the Leased Premises	X	
13.05	Provide a 120/208V step-down transformer within the Leased Premises, as per Tenant's specification	X	
14.00 TELECOM & DATA			
14.01	Provide a 2" conduit and pull-string from the main switching equipment room to a location approved by Tenant within the Leased Premises	X	
14.02	Provide a 4'-0" x 4'-0" plywood backer board within the Leased Premises	X	
14.03	Provide a 1" empty conduit, pull-string with pull-wire, and junction box from the Tenant's proposed sign location as defined in Exhibit "C-2" to a point within the Leased Premises	X	
15.00 GAS			
15.01	NOT USED		X
16.00 SANITARY SEWER			
16.01	Provide a 4" sanitary sewer line stub-in to a mutually agreed location between Landlord and Tenant acting reasonably and within the Leased Premises	X	
16.02	Sewer main delivered in good working order and free of any obstructions from the point of entry into the Leased Premises and outside of the Leased Premises	X	

ANTHROPOLOGIE PROMENADE AT WAYZATA MN - SHELL DELIVERY SPECIFICATION - EXHIBIT "C"			
Tenant shall not be required to accept possession of the Leased Premises until Tenant has inspected and found the Leased Premises and all Landlord Work noted below to be in conformance with this Exhibit and the requirements of the Lease.			
	DESCRIPTION	LANDLORD	TENANT DOES NOT APPLY
16.03	Provide tie-in to the sanitary sewer line within the Leased Premises.		X
17.00	DOMESTIC WATER		
17.01	Provide 1-1/2" domestic water line stub-in to a location approved by Tenant within the Leased Premises.	X	
17.02	Provide a main valve at the connection point within the Leased Premises.	X	
18.00	HEATING, VENTILATION & COOLING		
18.01	Provide new fully-operational HVAC units to Tenant's specifications (Lennox or Trane manufacturer, or approved equal), to provide Tenant with a minimum one (1) ton per 250 square feet (25sqm) of leasable square feet for the Leased Premises.	X	
18.02	Provide all base installation and equipment, including (as applicable):	X	
a	heat pumps	X	
b	condenser units	X	
c	air-handling and ventilation equipment	X	
d	points of connection to vertical shafts within the Leased Premises	X	
e	exhaust shafts and ducts sized to Tenant's specifications to a point within the Leased Premises	X	
f	smoke vents for extraction (where applicable) within the Leased Premises	X	
g	fresh-air supply ducts to a point within the Leased Premises	X	
h	water or refrigerant lines, (supply and return) within the Leased Premises	X	
i	coordinate air and water temperatures (incoming and outgoing) with Tenant's engineer	X	
j	shut-off valves within the Leased Premises	X	
k	condensate water lines or receptors within the Leased Premises	X	
l	pads, curbs and/or bases for exterior systems, including floor penetrations	X	
m	low-voltage thermostats and controls	X	
n	provide all electrical connections and operating infrastructure to HVAC equipment, including dedicated panels, disconnect & bus connection	X	
o	smoke and/or CO duct detectors at supply and return points at each unit, as required by code and the governing authority	X	
p	duct stub sleeves from the mechanical unit through the roof or ceiling deck penetration into the Leased Premises	X	
18.03	Provide points of connection for any necessary or code-required chases, shafts or exhausts.	X	
19.00	SHOPFRONT, SIGNS & FAÇADE		
19.01	Provide every commercially reasonable effort to support Tenant's application for storefront, signage and façade modifications with the governing authority. Tenant's design may be in conflict with established design criteria set by those having jurisdiction, including Planning Departments and Design Review Committees. Tenant's design limits shall be the extent of the Leased Premises per the Façade Control Zone as delineated in Exhibit "C-1". Such support shall be conditioned upon Landlord not being required to do anything which may prejudice Landlord's relationship with those having jurisdiction.	X	
19.02	Provide a shopfront façade constructed for attachment of Tenant's shopfront system	X	
19.03	Provide all building bulkheads, neutral piers, and intermediate column finishes which are not part of Tenant's shopfront modifications, to Landlord's design and specifications.	X	
19.04	Installation of Tenant's prototypical signage, to Tenant's design and specification, along all elevations of the Leased Premises, as permitted by the governing authority and code.		X
19.05	Provide all means of egress for each level of the Leased Premises shell condition, excluding Tenant's storefront entrance(s) , to comply with all applicable egress and accessibility requirements. Assemblies to include:	X	
a	steel door and frame to satisfy the applicable fire-rating requirements	X	
b	lever or panic hardware as required by the governing jurisdiction, with a satin nickel finish	X	
c	7-pin construction cores and matched key suite with ten (10) key sets	X	
19.06	Provide complete façade and shopfront systems for all elevations of the Leased Premises, as defined in Exhibit "C-2" and excluding the main entrance bay, including but not limited to i) all storefront framing and glazing assemblies, ii) substrate assemblies for installation of Tenant's external plaster system, iii) external building and sign lighting, iv)	X	

ANTHROPOLOGIE PROMENADE AT WAYZATA MN - SHELL DELIVERY SPECIFICATION - EXHIBIT "C"			
Tenant shall not be required to accept possession of the Leased Premises until Tenant has inspected and found the Leased Premises and all Landlord Work noted below to be in conformance with this Exhibit and the requirements of the Lease.			
DESCRIPTION	LANDLORD	TENANT	BOES NO APPL.
shopfront curbs, and vi solid façade finishes (excluding Tenant's external plaster system). Façade and shopfront system shall be delivered as approved by the governing authority, in good sound condition, and free of any material defect or leaks.			
20.00 SHELL STRUCTURE			
20.01 Ensure the existing structure, both in the Leased Premises and adjacent dependent structure, is structurally sound and meets or exceeds all applicable structural code requirements.	X		
20.02 Perform any modifications to the existing structure or additional structural improvements directly arising from Tenant's proposed structural improvements to the Leased Premises.		X	
21.00 SPRINKLERS			
21.01 Provide a fully-functioning fire sprinkler system to the Leased Premises, in accordance with all governing jurisdiction requirements, including:	X		
a Dedicated sprinkler riser (Landlord may provide a shared riser if permitted by the governing authority and code for the retail use of the Leased Premises).	X		
b Main trunk with flowtamper switch and backflow prevention assemblies within the Leased Premises.	X		
c Distribution grid in a minimum 20'-0" x 20'-0" grid layout.	X		
d Sprinkler heads.	X		
21.02 Provide sufficient water capacity and pressure for Tenant's sprinkler system.	X		
21.03 Sprinkler head and distribution modification to satisfy Tenant's fit-out requirements.		X	
22.00 LIFE-SAFETY SYSTEMS			
22.01 Provide an addressable point of connection and telemetry within the Leased Premises for Tenant's connection to Landlord's base-building fire alarm and life-safety controls.	X		
22.02 Provide infrastructure elements including wiring and conduit from base-building controls to the Leased Premises.	X		
22.03 Provide fire-alarm and life-safety systems associated with the Leased Premises and Tenant improvements.		X	
23.00 SMOKE EXTRACTION			
23.01 NOT USED.			X
24.00 FIRE PROTECTION & SEPARATION			
24.01 Provide fire separation, fireproofing and firestopping assemblies within the Leased Premises and between the Leased Premises and adjacent spaces, with design and specification to be coordinated with Tenant on visible surfaces and elements within the Leased Premises shell condition.	X		
25.00 COMMON AREAS & FACILITIES			
25.01 Construction of all building common areas and facilities, including:	X		
a sidewalks, roadways and drives	X		
b parking areas, with sufficient parking for the retail use of the Leased Premises	X		
c permanent electrical service	X		
d telephone and data systems to the building	X		
e street and exterior building lighting	X		
f hardscaping, landscaping, and irrigation	X		
g storm and sanitary sewers	X		
h egress stair towers	X		
i roof access footpaths, ladders, and railing assemblies	X		
END OF DELIVERY SPECIFICATION			

Exhibit "C-1" - Façade Control Zone

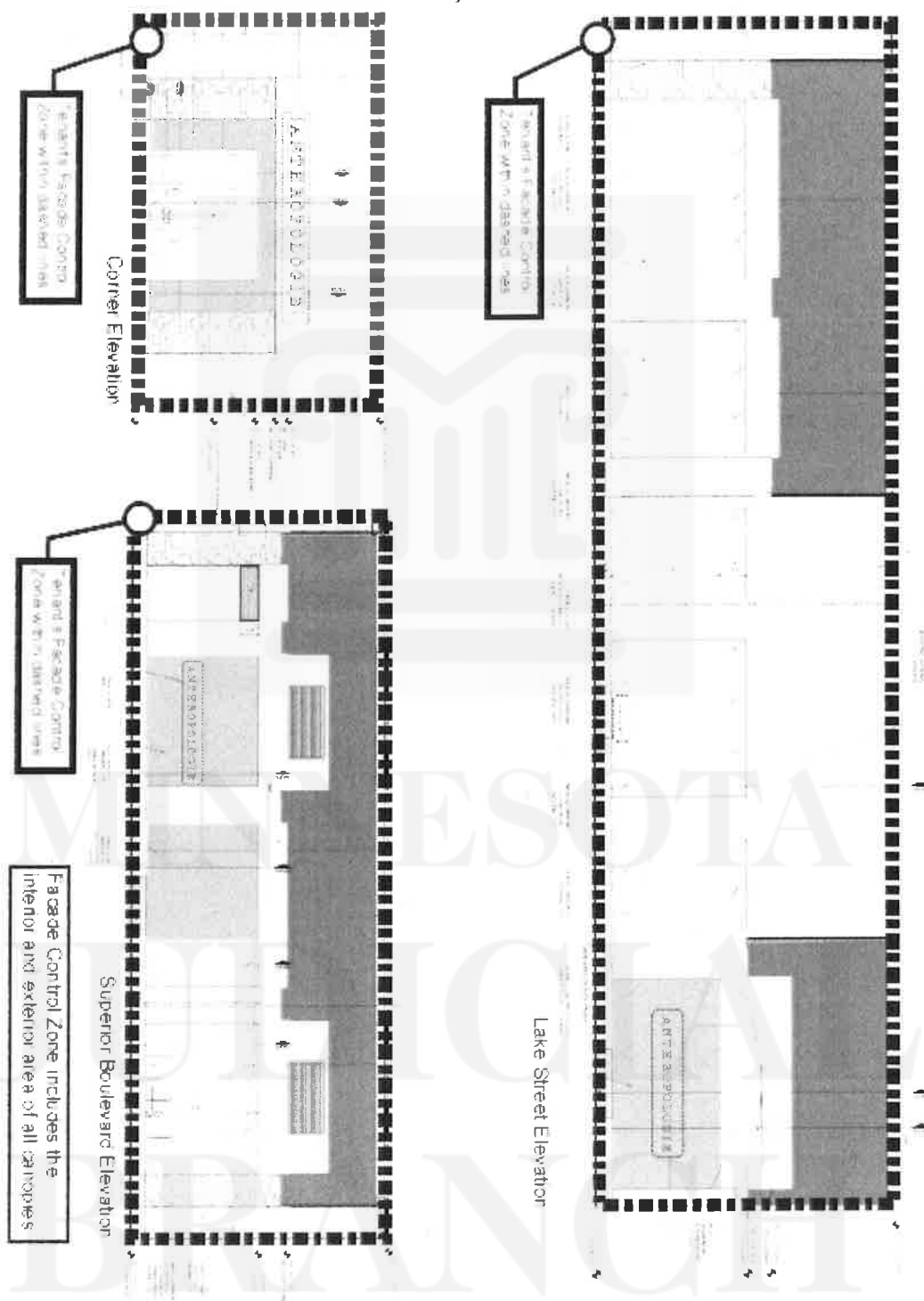


Exhibit "D"

[Title Matters]

1. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown in the public records.
2. Real estate taxes payable in the year 2014 and thereafter.
3. Rights of tenants under unrecorded leases.
Other than to the Leased Space.
4. Subject to minerals and mineral rights reserved by the State of Minnesota , shown by recital on the certificates of title.
5. Easements for drainage and utility purposes as shown on the recorded plat of Wayzata Bay Center, shown as a recital on the certificates of title.
6. Terms, conditions, covenants, provisions and agreements set forth in the unrecorded PUD Development Agreement dated October 21, 2008, as disclosed by the Memorandum of PUD Development Agreement, executed December 9, 2008, recorded January 9, 2009, as Document No. No. 4605369 (Torrens).
7. Easement for utility and infrastructure purposes, together with any incidental rights, in favor of Wayzata Bay Redevelopment Company, LLC, a Minnesota limited liability company, as contained in the Utility and Infrastructure Easement Agreement, dated November 29, 2011, recorded December 5, 2011, as Document No. 4907300 (Torrens).
8. Terms, conditions, covenants, provisions and agreements set forth in the unrecorded Redevelopment Agreement dated October 21, 2008, amended by unrecorded First Amendment to Redevelopment Agreement dated December 15, 2009, and by unrecorded Second Amendment to Redevelopment Agreement dated December 7, 2011, as disclosed by the Memorandum of Redevelopment Agreement, executed February 27, 2012, recorded March 12, 2012, as Document No. No. 4934986 (Torrens).
9. Covenants, conditions, restrictions, obligations, provisions and easements as contained in the Master Declaration The Promenade of Wayzata dated May 10, 2012, recorded May 11, 2012, as Document No. 4954333 (Torrens). Amended by First Amendment to Master Declaration The Promenade of Wayzata dated September 30, 2013, recorded October 10, 2013, as Document No. 5123336 (Torrens).
10. Terms, conditions, covenants, provisions and agreements set forth in the Declaration of Reciprocal Easements and Covenants for The Promenade of Wayzata West Block dated December 17, 2013, recorded December 18, 2013, as Document No. 05140612 (Torrens). (As to Parcels 1 and 2)
11. Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Financing Statement dated December 17, 2013, recorded December 18, 2013, as Document No. 05140618, made by Wayzata Bay West Senior Housing, LLC, Wayzata Bay West All Age Housing, LLC, and Wayzata Bay West Retail, LLC, in favor of TCF National Bank, a national banking association.

Exhibit "E"**Environmental Reports**

-Phase II Environmental Site Assessment dated March 6, 2008 prepared by American Engineering Testing, Inc.

-Development Response Action Plan ("DRAP") dated March 25, 2008 prepared by American Engineering Testing, Inc.

-Letter Addendum to DRAP dated April 21, 2008

-Additional Phase II Environmental Site Assessment dated April 21, 2008 prepared by American Engineering Testing, Inc.

-Project Status Report dated January 26, 2012 prepared by American Engineering Testing, Inc.

-Final Response Action Implementation Report dated July 13, 2012 prepared by American Engineering Testing, Inc.

-Letter dated August 2, 2012 from Minnesota Pollution Control Agency concluding that soils were managed as proposed and stating that MPCA has closed the release site file and no further remediation/cleanup work is required in response to the identified petroleum contamination

Exhibit "F"

Relevant Provisions of the Declaration

The Leased Space shall be used exclusively for office, commercial or retail use

Any outside seating shall be subject to the Master Board of the Master Association.

The use of the parking Facilities serving the Shopping Center, driveways, and other parking areas on the Shopping Center, and the types of vehicles and personal property permitted thereon, shall be subject to regulation by the Master Board of the Master Association.

Unless authorized in writing by the Master Board, parking spaces shall not be used for purposes which would prevent the parking of a standard size automobile in the parking space. Flammable, explosive or other hazardous materials or substances shall not be stored in the Parking Facilities.

The streets, walkways, driveways and other portions of the common elements used for access to and from the Shopping Center may not be obstructed, or used for parking, storage, activities or any purpose other than access and authorized parking.

No structure or other Improvement of a temporary character such as, but not limited to, house trailers, vans, shacks, sheds, animal enclosures, fencing, or other temporary or accessory buildings or structures, shall be erected, kept or maintained on the Shopping Center, except as authorized by the Master Board.

The Master Association shall have authority to promulgate, administer, and enforce reasonable master rules governing vehicular and pedestrian traffic, including reasonable safety measures, speed limits and other use restrictions on private streets and walkways on the Shopping Center. The Master Association may enforce the Master Rules by such enforcement procedures as it deems appropriate, consistent with state and local laws and regulations, including without limitation levying fines and towing. All vehicles, bicycles or other transportation or sports devices shall be operated in a careful, prudent, and safe manner; and with due consideration for the rights of all residents and other users.

The Shopping Center shall be occupied and used so as not to cause a nuisance or disturbance, nor unduly restrict, or interfere with other person's use and quiet enjoyment of Units or other parcels of the Shopping Center. Notwithstanding the foregoing, it is recognized that a mixed-use development such as The Promenade is located in an active, urban area and involves a variety of business activities that can generate a variety of noises, sights and smells typical of urban environments. Such normal noise and related activity are an inherent and normal consequence of an urban development and shall not alone, in the absence of aggravating circumstances, be deemed to impair the use or quiet enjoyment of the Shopping Center by other lawful occupants or users of the Shopping Center.

No use shall be made of the Leased Space which could cause waste to the Shopping Center, cause a material increase in insurance rates on other parcels within the Shopping Center, or otherwise cause any unusual liability, health or safety risk, or expense, for owners and occupants of other parcels within the Shopping Center.

No goods, provisions, equipment or materials having an offensive odor or noxious nature or anything that could create a nuisance or an unreasonable fire hazard or undue load on electrical circuits or cause unreasonable vibration or undue heat or noise shall be used, kept or permitted in or about the Shopping Center. No debris, garbage or refuse shall be placed, left or discarded anywhere on the Shopping Center, except as deposited in proper receptacles supplied and placed for that purpose.

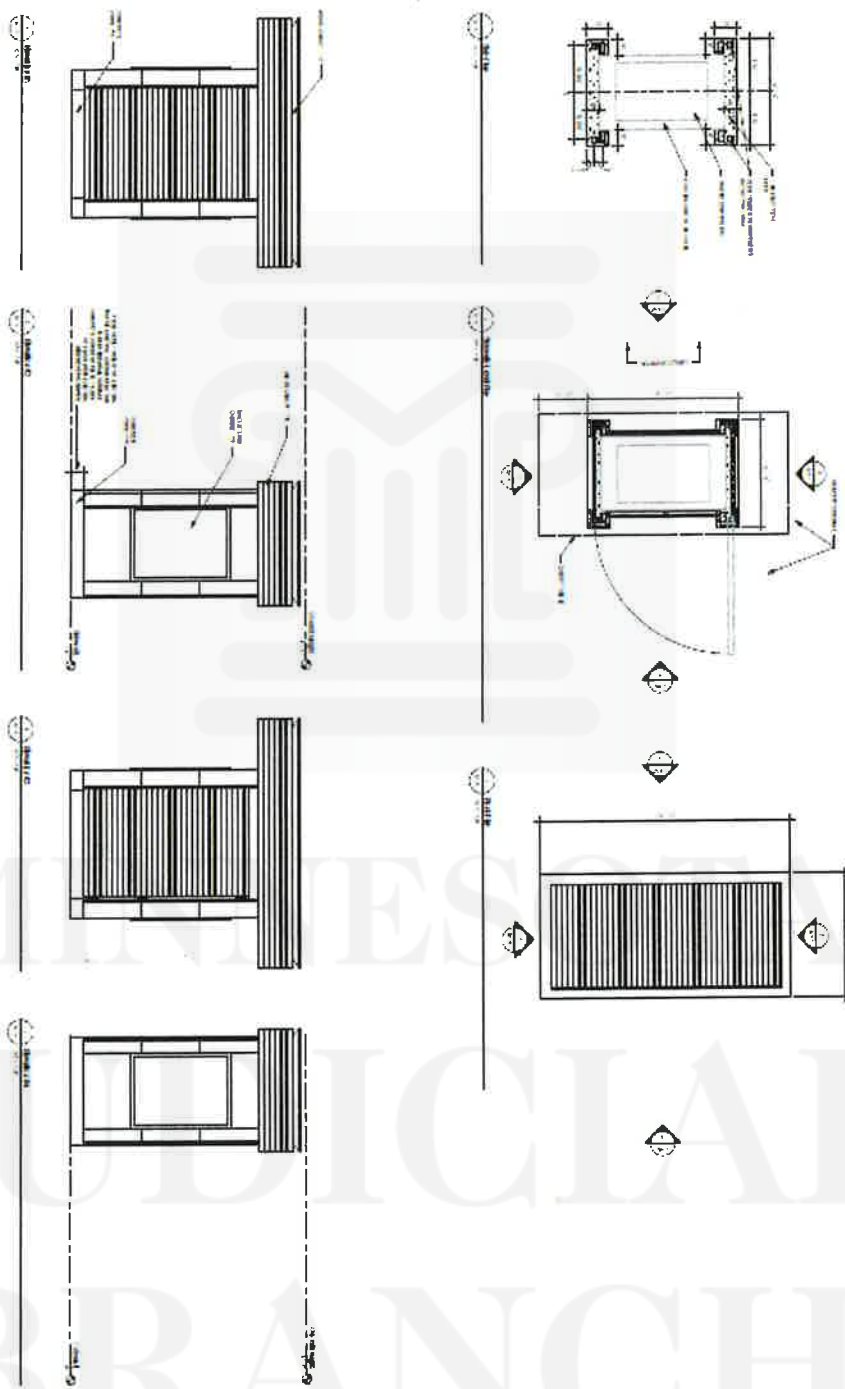
The Leased Space may not be used for any of the following businesses, trades, occupations or professions, whether carried on for profit or otherwise: pool hall; amusement arcade; adult book store; adult theatre; adult amusement or novelty facility; any facility selling, providing or displaying adult-oriented or pornographic materials; any facility selling, providing or displaying equipment which facilitates the use of controlled substances in violation of any federal, state or local law, regulation or ordinance; any facility selling, storing or using inherently dangerous products or substances such as guns, explosives or dangerous chemicals; auction house; flea market; sleeping quarters or lodging; warehouse; open sales lot, pawn shop; any industrial use or manufacturing facility; taxi terminal; tattoo parlor; or car wash.

The Leased Space shall be used in such a manner as to avoid causing a nuisance or unduly restricting, interfering with or impeding the use of the other parcels within the Shopping Center.

MINNESOTA
JUDICIAL
BRANCH

Exhibit "G"
Kiosk Depiction (4 pages)





MINNESOTA
JUDICIAL
BRANCH

THIS DOCUMENT IS UNCLASSIFIED EXCEPT WHERE SHOWN OTHERWISE BY A NOTICE OF CLASSIFICATION OR DECLASSIFICATION AUTHORITY.



CUNNINGHAM

Architect
10000 Hennepin Avenue
Suite 1000
Minneapolis, MN 55424
Phone: 612.338.1100
www.cunningham.com

Drawn by: [Name]
Date: [Date]

**STEEL BUILDING
NOTES
CONSTRUCTION**

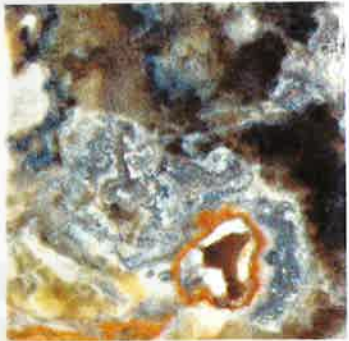
1. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL JURISDICTION.
2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL JURISDICTION.
3. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL JURISDICTION.

Drawn by: [Name]
Date: [Date]

Drawn by: [Name]
Date: [Date]

MATERIALS

CANON CMO2

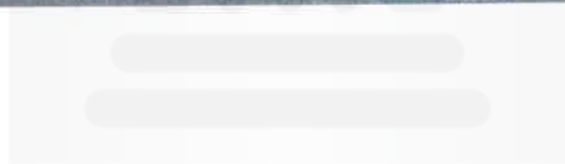


ACCURWOOD
MEDIUM DUTY PINE
SOLUTIONS FOR
OUTDOOR USE



FROM MADE AT WAZATA - WAFEN DING KIOSKAS

CUNNINGHAM



MINNESOTA JUDICIAL BRANCH



EXHIBIT

B
MINNESOTA
JUDICIAL
BRANCH

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT
CASE TYPE: Eviction

Wayzata Bay West Retail, LLC,

Court File No:

Plaintiff,

vs.

**EVICITION COMPLAINT
(COMMERCIAL LEASE)**

Anthropologie, Inc.,

Defendant.

Plaintiff Wayzata Bay West Retail, LLC ("Landlord"), as and for its Eviction Complaint against Defendant Anthropologie, Inc. ("Tenant"), states and alleges as follows:

PARTIES

1. Landlord is a Minnesota limited liability company with its principal place of business located at 2845 Hamline Avenue North, Roseville, Minnesota 55113.
2. Tenant is a Pennsylvania Corporation with its principal place of business located at 5000 South Broad Street, Philadelphia, Pennsylvania 19112.

JURISDICTION

3. The Court has personal and subject matter jurisdiction over this action as Landlord is a Minnesota resident, and Tenant transacted or currently transacts business in the State of Minnesota, and has sufficient contacts with the State of Minnesota.

VENUE

4. Venue is proper pursuant to Minn. Stat. § 542.09 as the as the real property at issue in this matter is located in Hennepin County, Minnesota.

FACTUAL BACKGROUND

5. On September 3, 2014, the Landlord and Tenant entered into a commercial lease agreement (the “Lease”) for approximately 9,500 square feet of space on the ground level of the Promenade Building (the “Building”) owned by Landlord and located at 803 Lake Street, Wayzata, Minnesota (the “Leased Space”) for an initial term of ten (10) years.

6. On March 1, 2015, pursuant to the Lease, Landlord delivered the Leased Space to Tenant and Tenant accepted delivery.

7. The Commencement Date (as defined in the Lease), *inter alia*, is the date which is 120 days after the Delivery Date, but is subject to a “Commencement Date Condition,” as set forth in Section 30 of the Lease. (See Lease, schedule, Item L; Section 30 of the Lease)

8. Pursuant to Section 5 of the Lease, commencing on the Commencement Date (as defined in the Lease), Tenant agreed to pay annual Minimum Rent (as defined in the Lease) in equal monthly installments on the first day of each calendar month during the Initial Lease Term and any Extension Term. (See Section 5 of the Lease)

9. Pursuant to Section 6 of the Lease, in addition to Minimum Rent, and in addition to any Additional Rent (as defined in the Lease), Tenant agreed to pay Landlord an additional percentage rent

equal to five percent (5%) of “Gross Sales from the Leased Space” (as hereinafter defined) for such Percentage Rent Lease Year in excess of the quotient of the Minimum Rent payment during such Percentage Rent Lease Year divide by .05 (the “Percentage Rent Base”).

(See Section 6 of the Lease)

10. Pursuant to Section 7 of the Lease, in addition to Minimum Rent, after the Commencement Date, Tenant agreed to pay Landlord Additional Rent (as defined in the lease), including, Tenant’s proportionate share of real estate taxes levied against the Property (including

the Building and the land on which the Building is situated) and CAM Charges (as defined in the Lease). (See Section 7 of the Lease)

11. “Rent” is defined in the Lease as “Minimum Rent, Percentage Rent and all sums payable and collectible as Additional Rent.” (See Section 3(e) of the Lease)

12. Pursuant to Section 30 of the Lease, the Commencement Date was conditioned upon the Landlord entering into

“written, legal, valid and binding leases for space in the Property (except as noted) with (i) Lund’s, located in the Superior Block of The Promenade at Wayzata (adjacent to the Property, and (ii) at least two of the following ten retailers: PaperSource, Francesca’s, Arafina, Ala Mode, Lululemon, yogafit, Invision Eyewear, Charleson Shoe Co., solidcore or Lou & Grey (or replacements thereof approved by Tenant), and (iii) retail tenants and restaurants of the type typically found in first-class shopping centers located in the Minneapolis/St. Paul, MN metropolitan area occupying at least seventy-five (75%) percent of the total rentable retail area of the “West Block” of Property (exclusive of the Leases Space by inclusive of the occupants described in clause (ii) hereof), all of which shall have opened for business to the public (the “Commencement Date Condition.”

(See Section 30 of the Lease)

13. In the event the Commencement Date Condition was not met, and Tenant opted to open for business, Tenant was only obligated to pay Landlord “Alternate Rent,” defined in the Lease to mean “five percent (5%) of all of Tenant’s Gross Sales from the Leased Space.” (*Id.*)

14. If the Commencement Date Condition was not met for eighteen (18) months, Tenant retained the right to terminate the Lease. (*Id.*)

15. In the event the Commencement Date Condition was met, Tenant is required to “immediately commence payment of full Rent.” (*Id.*)

16. On February 1, 2022, Landlord sent correspondence to Tenant, informing it that (1) the first criterion of the Commencement Date Condition had been met, (2) formally requesting that

Tenant approve two then-current tenants as fitting within the parameters necessary to meet the second criterion under the Commencement Date Condition, and (3) as it anticipated satisfying the third criterion on April 1, 2022 as one of those tenants would be installed, requesting that Tenant begin paying full Rent at that time.

17. Having heard no objection from Tenant, on July 18, 2022, Landlord sent a “Notice of Commencement of Full Rent” explaining that the commencement of Tenant’s requirement to pay Full Rent would begin on August 1, 2022, as the Commencement Date Condition had been satisfied.

18. Despite the notice, Tenant failed to pay the full Rent amount for August, 2022.

19. On September 19, 2022, Landlord sent a Notice of Failure to Pay Full Rent, notifying Tenant of its failure to pay full Rent and its default under the terms of the Lease.

20. Tenant failed to pay the full Rent for September, October, November, and December 2022, as well as January 2023.

21. Pursuant to Section 21 of the Lease, an “Event of Default” occurs under the Lease if Tenant

fails to pay any installment of Rent which is due and payable hereunder by Tenant and such failure continues for a period of ten (10) days after Tenant’s receipt of notice thereof from Landlord

(See Section 21 of the Lease)

22. On January 4, 2023, Landlord sent a Notice of Default to Tenant, stating that Tenant has defaulted under the Lease for failing to pay full Rent. The Notice of Default provided Tenant 10 days to cure the default, in the aggregate sum of \$128,464.68.

23. Tenant failed to timely cure the default.

24. Pursuant to Section 22 of the Lease, upon an Event of Default, the Landlord may, at its option:

(i) Terminate this Lease by giving ten (10) additional days' prior notice thereof to Tenant and, upon the expiration of such notice period, this Lease shall terminate with the same force and effect as though the date of such notice were the Expiration Date, and all rights of Tenant hereunder shall expire and termination, but Tenant shall remain liable as hereinafter expressly provided, and/or (ii) Without terminating the Lease, re-enter and take possession of the Leased Space and expel or remove Tenant and any other person occupying the Leased Space in accordance with applicable law without liability for prosecution of any claim or damages therefor, and/or (iii) Exercise and other rights and remedies available to Landlord at law or in equity.

(See Section 22(a) of the Lease)

25. Pursuant to Section 39 of the Lease, delinquent amounts accrue interest from their respective due dates at the Default Rate under the Lease of 10% per annum. (See Section 39 of the Lease)

26. Pursuant to Section 40 of the Lease, if an Event of Default occurs, and an action or proceeding is initiated, the prevailing party shall recover reasonable attorney's fees and other costs and expenses incurred. (See Section 40 of the Lease)

27. Tenant is in default under the term of the Lease as Tenant failed to pay Landlord amounts owed pursuant to the Lease. As of February 1, 2023, Tenant owes Landlord \$180,540.50, in addition to such attorney fees and other costs as provided under the Lease.

28. Landlord notified Tenant of its default on September 19, 2022, discussed the default with Tenant's attorney over the phone on December 14, 2022, and sent a Notice of Default to Tenant on January 4, 2023, thus satisfying the notification requirements under Section 21 of the Lease.

COUNT I
(Writ of Recovery - Eviction)

29. Landlord hereby incorporates paragraphs 1 through 28 as if fully set forth herein.

30. Because the Leased Space is commercial space, the disclosures required under Minn. Stat. 504B.181 are inapplicable to this matter.

31. Tenant has defaulted under the terms of the Lease by failing to make payments of full Rent (as defined in the Lease) for the months of August-December 2022, and January 2023.

32. Despite notice and an opportunity to cure, Tenant has failed to cure the default.

33. Pursuant to the terms of the Lease, in the event of a default, Landlord is entitled to re-enter and take possession of the Leased Space and expel or remove Tenant and any other person occupying the Leased Space in accordance with applicable law.

34. To that end, Landlord is entitled to an immediate Writ of Recovery in order to recover possession of the Leased Space from Tenant as Tenant unlawfully detains the same due to Tenant's failure to pay amounts due and owing Landlord under the Lease as well Tenant's ongoing violations of the terms, conditions, and covenants of the Lease.¹

WHEREFORE, Landlord demands judgment against Tenant, issuing a Writ of Recovery restoring Landlord to possession of the Leased Space in possession of Tenant, ordering Tenant to remove all personal property from the Leased Space, restraining Tenant from committing any waste upon the Leased Space, awarding Landlord its costs, disbursements, and reasonable attorney fees incurred herein, and granting such other relief as the Court deems just and equitable.

¹ Landlord does not waive, and expressly reserves the right to file a separate action or separate actions against Tenant and/or any other persons or entities for any and all relief to which Landlord may be entitled under the Lease and/or applicable law, including without limitation to collect the amounts the Landlord is owed under the Lease and/or to seek any damages arising out of Tenant's breach of the Lease

ACKNOWLEDGMENT

Plaintiff hereby acknowledges that sanctions may be imposed under the circumstances set forth in Minn. Stat. § 549.211.

Respectfully submitted,

BASSFORD REMELE
A Professional Association

Dated: February 7, 2023

By: /s/ Jeffrey D. Klobucar

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Madeline M. Gustafson (#0402040)
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Attorneys for Wayzata Bay West Retail, LLC

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