

EXHIBIT A

April 8, 2016

Via Federal Express Only

Jeffrey A. Feasby
Perez Wilson, Vaughn & Feasby
750 B Street, Suite 3300
San Diego, CA 92101
Feasby@perezwilson.com

**Re: Bennion & Deville Fine Homes, Inc. v. Windermere Real Estate
Services Company**
Case No.: 5:15-cv-01921-R-KK

Dear Mr. Feasby:

Enclosed please find a thumb drive containing our clients' second round of document production in the case. The documents on the thumb drive contain non-consecutive Bates number ranging from B&D000081 to B&D0069097. Please note there are 40 documents are marked CONFIDENTIAL and 1193 additional documents. In total, the thumb drive contains 1233 documents.

Please call Kevin Adams directly if you have any questions.

Sincerely,



Barbara Calvert

EXHIBIT B

#1 Financials

Bennion & Deville Fine Homes SoCal, Inc.

Windermere Real Estate Coast

2014

A) Financial Statements and Accountants' Compilation Report

For the year ended December 31, 2014 – Not completed

B) QuickBooks Balance Sheet – All Office as of December 31, 2014

C) QuickBooks Balance Sheet – By Office as of December 31, 2014

D) QuickBooks Profit & Loss Statement – All Office (January – December 2014)

E) QuickBooks Profit & Loss Statement – By Office (January – December 2014)

**Bennion Deville Fine Homes SoCal, Inc.
Profit & Loss**

January through December 2014

All Offices**Ordinary Income/Expense****Income**

Agent Commission
E&O Income
Interest Income
Rental - Office Space
Uncategorized Income

Total Income**REDACTED - CONFIDENTIAL****Gross Profit****Expense****Advertising**

Advertising Expense
Marketing Allowance
Marketing Events

Total Advertising**Alarm / Security**

Arena to Mare - Fuel and Mainta

Arena to Mare - Pilot

Auto Lease

Automobile Expense

Automobile Fuel & Maintenance

Bank Service Charges

Bonus

Contributions / Donations

Windermere Foundation

Contributions / Donations - Other

Total Contributions / Donations

Dues/Memberships/Subscriptions

Equipment Expense

Computer

Copier

Total Equipment Expense**Insurance**

Building policy

Commercial Vehicle

E&O

Payout

Premiums

Total E&O

**Bennion Deville Fine Homes SoCal, Inc.
Profit & Loss**

January through December 2014

All Offices

REDACTED - CONFIDENTIAL

Medical

Other

Worker's Comp

Total Insurance

Interest

Interest-CC Finance Charge

Interest - JFF

Interest - Laurel Tree

Interest - Leaf Financial

Interest - Vendor Lease Mgmt

Interest - Washington Loan

Total Interest

Landscaping / Maint

License/Permits

Meals & Entertainment

Moving / Storage

Office Cleaning

Office Expenses

Meetings

Office Expenses - Other

Total Office Expenses

Office Supplies

Payroll

Medical Reimbursement

Payroll Processing Fee

Payroll Tax Expense

Salaries/Wages

Total Payroll

Postage/Shipping

Printing

Professional Fees

Accounting

Cleaning Service

Legal Fees

Rackspace

Web

Total Professional Fees

Promotion / Events

**Bennion Deville Fine Homes SoCal, Inc.
Profit & Loss**

January through December 2014

All Offices

REDACTED - CONFIDENTIAL

Recruitment

Promotion / Events - Other

Total Promotion / Events

Rent

CAM Charges

Rent expense

Total Rent

Repairs & Maintenance

Sales & Use Tax

Signage

Taxes

Telephone

Cellular Phone

Office Lines

Total Telephone

Travel

Utilities

Windermere Services Southern Ca

Franchise fee

Technology fee

Total Windermere Services Southern Ca

Total Expense

Net Ordinary Income

Other Income/Expense

Other Expense

Bad Debt

Total Other Expense

Net Other Income

Net Income

Bennion Deville Fine Homes SoCal, Inc.
Profit & Loss by Office
 January through December 2014

Closed
5/22/14

Carlsbad Carmel Valley Dana Point

Ordinary Income/Expense**Income**

Agent Commission
 E&O Income
 Interest Income
 Rental - Office Space
 Uncategorized Income
 Total Income

REDACTED - CONFIDENTIAL

Gross Profit**Expense****Advertising**

Advertising Expense
 Marketing Allowance
 Marketing Events

Total Advertising**Alarm / Security**

Arena to Mare - Fuel and Mainta
 Arena to Mare - Pilot
 Auto Lease

Automobile Expense
 Automobile Fuel & Maintenance
 Bank Service Charges

Bonus**Contributions / Donations**

Windermere Foundation
 Contributions / Donations - Other

Total Contributions / Donations**Dues/Memberships/Subscriptions****Equipment Expense**

Computer
 Copier

Total Equipment Expense**Insurance**

Building policy
 Commercial Vehicle
 E&O
 Payout
 Premiums

Total E&O

Bennion Deville Fine Homes SoCal, Inc.
Profit & Loss by Office
January through December 2014

Closed
5/22/14

Carlsbad Carmel Valley Dana Point

REDACTED - CONFIDENTIAL

Medical
Other
Worker's Comp
Total Insurance

Interest
Interest-CC Finance Charge
Interest - JFF
Interest - Laurel Tree
Interest - Leaf Financial
Interest - Vendor Lease Mgmt
Interest - Washington Loan
Total Interest

Landscaping / Maint
License/Permits
Meals & Entertainment
Moving / Storage
Office Cleaning
Office Expenses
Meetings
Office Expenses - Other
Total Office Expenses

Office Supplies
Payroll
Medical Reimbursement
Payroll Processing Fee
Payroll Tax Expense
Salaries/Wages
Total Payroll

Postage/Shipping
Printing
Professional Fees
Accounting
Cleaning Service
Legal Fees
Rackspace
Web
Total Professional Fees

Promotion / Events

Accrual Basis

Bennion Deville Fine Homes SoCal, Inc.

Profit & Loss by Office

January through December 2014

Closed
5/22/14

Carlsbad	Carmel Valley	Dana Point
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REDACTED - CONFIDENTIAL

Recruitment

Promotion / Events - Other

Total Promotion / Events

Rent

CAM Charges

Rent expense

Total Rent

Repairs & Maintenance

Sales & Use Tax

Signage

Taxes

Telephone

Cellular Phone

Office Lines

Total Telephone

Travel

Utilities

Windermere Services Southern Ca

Franchise fee

Technology fee

Total Windermere Services Southern Ca

Total Expense

Net Ordinary Income

Other Income/Expense

Other Expense

Bad Debt

Total Other Expense

Net Other Income

Net Income

Bennion Deville Fine Homes SoCal, Inc.

Profit & Loss by Office

January through December 2014

	Opens 4/1/15		Closed 12/20/14
	Encinitas	Hillcrest	La Mesa
Ordinary Income/Expense			
Income			
Agent Commission			
E&O Income			
Interest Income			
Rental - Office Space			
Uncategorized Income			
Total Income			
Gross Profit			
Expense			
Advertising			
Advertising Expense			
Marketing Allowance			
Marketing Events			
Total Advertising			
Alarm / Security			
Arena to Mare - Fuel and Mainta			
Arena to Mare - Pilot			
Auto Lease			
Automobile Expense			
Automobile Fuel & Maintenance			
Bank Service Charges			
Bonus			
Contributions / Donations			
Windermere Foundation			
Contributions / Donations - Other			
Total Contributions / Donations			
Dues/Memberships/Subscriptions			
Equipment Expense			
Computer			
Copier			
Total Equipment Expense			
Insurance			
Building policy			
Commercial Vehicle			
E&O			
Payout			
Premiums			
Total E&O			

REDACTED - CONFIDENTIAL

Bennion Deville Fine Homes SoCal, Inc.
Profit & Loss by Office
 January through December 2014

-	Opens 4/1/15	Closed 12/20/14
	<u>Encinitas</u>	<u>Hillcrest</u>
		<u>La Mesa</u>

REDACTED - CONFIDENTIAL

Medical
 Other
 Worker's Comp
Total Insurance

Interest
 Interest-CC Finance Charge
 Interest - JFF
 Interest - Laurel Tree
 Interest - Leaf Financial
 Interest - Vendor Lease Mgmt
 Interest - Washington Loan
Total Interest

Landscaping / Maint
 License/Permits
 Meals & Entertainment
 Moving / Storage
 Office Cleaning
 Office Expenses
 Meetings
 Office Expenses - Other
Total Office Expenses

Office Supplies
Payroll
 Medical Reimbursement
 Payroll Processing Fee
 Payroll Tax Expense
 Salaries/Wages
Total Payroll

Postage/Shipping
 Printing
 Professional Fees
 Accounting
 Cleaning Service
 Legal Fees
 Rackspace
 Web
Total Professional Fees

Promotion / Events

Accrual Basis

Bennion Deville Fine Homes SoCal, Inc.

Profit & Loss by Office

January through December 2014

Opens 4/1/15	Closed 12/20/14
Encinitas	Hillcrest La Mesa

REDACTED - CONFIDENTIAL

Recruitment

Promotion / Events - Other

Total Promotion / Events

Rent

CAM Charges

Rent expense

Total Rent

Repairs & Maintenance

Sales & Use Tax

Signage

Taxes

Telephone

Cellular Phone

Office Lines

Total Telephone

Travel

Utilities

Windermere Services Southern Ca

Franchise fee

Technology fee

Total Windermere Services Southern Ca

Total Expense

Net Ordinary Income

Other Income/Expense

Other Expense

Bad Debt

Total Other Expense

Net Other Income

Net Income

Bennion Deville Fine Homes SoCal, Inc.
Profit & Loss by Office
 January through December 2014

La Mesa Village Laguna Beach Laguna Niguel

Ordinary Income/Expense**Income**

Agent Commission
 E&O Income
 Interest Income
 Rental - Office Space
 Uncategorized Income

Total Income

REDACTED - CONFIDENTIAL

Gross Profit**Expense****Advertising**

Advertising Expense
 Marketing Allowance
 Marketing Events

Total Advertising**Alarm / Security****Arena to Mare - Fuel and Mainta****Arena to Mare - Pilot****Auto Lease****Automobile Expense****Automobile Fuel & Maintenance****Bank Service Charges****Bonus****Contributions / Donations**

Windermere Foundation

Contributions / Donations - Other

Total Contributions / Donations**Dues/Memberships/Subscriptions****Equipment Expense**

Computer

Copier

Total Equipment Exponso**Insurance**

Building policy

Commercial Vehicle

E&O

Payout

Premiums

Total E&O

Bennion Deville Fine Homes SoCal, Inc.
Profit & Loss by Office
 January through December 2014

La Mesa Village Laguna Beach Laguna Niguel

REDACTED - CONFIDENTIAL

Medical
 Other
 Worker's Comp
Total Insurance

Interest
 Interest-CC Finance Charge
 Interest - JFF
 Interest - Laurel Tree
 Interest - Leaf Financial
 Interest - Vendor Lease Mgmt
 Interest - Washington Loan
Total Interest

Landscaping / Maint
License/Permits
Meals & Entertainment
Moving / Storage
Office Cleaning
Office Expenses
 Meetings
 Office Expenses - Other
Total Office Expenses

Office Supplies
Payroll
 Medical Reimbursement
 Payroll Processing Fee
 Payroll Tax Expense
 Salaries/Wages
Total Payroll

Postage/Shipping
Printing
Professional Fees
 Accounting
 Cleaning Service
 Legal Fees
 Rackspace
 Web
Total Professional Fees

Promotion / Events

Accrual Basis

Bennion Deville Fine Homes SoCal, Inc.
Profit & Loss by Office
 January through December 2014

La Mesa Village Laguna Beach Laguna Niguel

REDACTED - CONFIDENTIAL

Recruitment

Promotion / Events - Other

Total Promotion / Events

Rent

CAM Charges

Rent expense

Total Rent

Repairs & Maintenance

Sales & Use Tax

Signage

Taxes

Telephone

Cellular Phone

Office Lines

Total Telephone

Travel

Utilities

Windermere Services Southern Ca

Franchise fee

Technology fee

Total Windermere Services Southern Ca

Total Expense

Net Ordinary Income

Other Income/Expense

Other Expense

Bad Debt

Total Other Expense

Net Other Income

Net Income

Accrual Basis

Bennion Deville Fine Homes SoCal, Inc.

Profit & Loss by Office

January through December 2014

Closed

2/22/14

Little Italy	Solana Beach	TOTAL
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Ordinary Income/Expense

Income

Agent Commission

E&O Income

Interest Income

Rental - Office Space

Uncategorized Income

Total Income

REDACTED - CONFIDENTIAL

Gross Profit

Expense

Advertising

Advertising Expense

Marketing Allowance

Marketing Events

Total Advertising

Alarm / Security

Arena to Mare - Fuel and Mainta

Arena to Mare - Pilot

Auto Lease

Automobile Expense

Automobile Fuel & Maintenance

Bank Service Charges

Bonus

Contributions / Donations

Windermere Foundation

Contributions / Donations - Other

Total Contributions / Donations

Dues/Memberships/Subscriptions

Equipment Expense

Computer

Copier

Total Equipment Expense

Insurance

Building policy

Commercial Vehicle

E&O

Payout

Premiums

Total E&O

Accrual Basis

Bennion Deville Fine Homes SoCal, Inc.
Profit & Loss by Office
 January through December 2014

Closed
2/22/14

Little Italy Solana Beach TOTAL

REDACTED - CONFIDENTIAL

Medical
 Other
 Worker's Comp
Total Insurance

Interest
 Interest-CC Finance Charge
 Interest - JFF
 Interest - Laurel Tree
 Interest - Leaf Financial
 Interest - Vendor Lease Mgmt
 Interest - Washington Loan
Total Interest

Landscaping / Maint
License/Permits
Meals & Entertainment
Moving / Storage
Office Cleaning
Office Expenses
 Meetings
 Office Expenses - Other
Total Office Expenses

Office Supplies
Payroll
 Medical Reimbursement
 Payroll Processing Fee
 Payroll Tax Expense
 Salaries/Wages
Total Payroll

Postage/Shipping
Printing
Professional Fees
 Accounting
 Cleaning Service
 Legal Fees
 Rackspace
 Web
Total Professional Fees

Promotion / Events

11 of 12

CONFIDENTIAL

J&D0068864

Accrual Basis

Bennion Deville Fine Homes SoCal, Inc.
Profit & Loss by Office
 January through December 2014

Closed
2/22/14

Little Italy Solana Beach TOTAL

REDACTED - CONFIDENTIAL

Recruitment

Promotion / Events - Other

Total Promotion / Events

Rent

CAM Charges

Rent expense

Total Rent

Repairs & Maintenance

Sales & Use Tax

Signage

Taxes

Telephone

Cellular Phone

Office Lines

Total Telephone

Travel

Utilities

Windermere Services Southern Ca

Franchise fee

Technology fee

Total Windermere Services Southern Ca

Total Expense

Net Ordinary Income

Other Income/Expense

Other Expense

Bad Debt

Total Other Expense

Net Other Income

Net Income

Bennion Deville Fine Homes SoCal, Inc. Balance Sheet

As of December 31, 2014

TOTAL
ASSETS**Current Assets****Checking/Savings**

First Bank Operating

First Bank Special Account

First Bank Trust Account

First Bank z Home Collection

Total Checking/Savings**Accounts Receivable**

*Accounts Receivable

Total Accounts Receivable**Other Current Assets**

Accounts Receivable

Due To / From B&D Inc.

Due To / From Benville Funding

Due To/From B Squared Funding

Due To/From Bob & Bob

Due To/From Bob & Bob (CC)

Due To/From SC Serv & Prop Mg

Hill Note

Prepaid E&O

Undeposited Funds - Agent Billi

Total Other Current Assets**Total Current Assets****Fixed Assets****Accumulated Depreciation****Equipment**

Equipment - Computers

Equipment - Phones

Total Equipment**Furniture & Fixtures****Signs****Tenant Improvements**

Tenant Improv - 8277 La Mesa

Tenant Improv - Carlsbad

Tenant Improv - Carmel Valley

Tenant Improv - Encinitas

Tenant Improv - La Mesa

Tenant Improv - La Mesa Village

REDACTED - CONFIDENTIAL

Bennion Deville Fine Homes SoCal, Inc. Balance Sheet

As of December 31, 2014

TOTAL

REDACTED - CONFIDENTIAL

Tenant Improv - Laguna Niguel

Tenant Improv - Little Italy

Tenant Improv - Solana Beach

Total Tenant Improvements

Total Fixed Assets**Other Assets**

Bank Transfer

Reserves

Reserves - E&O Deductable

Reserves - E&O Prepayment

Reserves - Web

Total Reserves

Security Deposit - Rent

Security Deposit - Utilities

Security Deposit - Lease Finance

Total Other Assets

TOTAL ASSETS**LIABILITIES & EQUITY****Liabilities****Current Liabilities**

Accounts Payable

Accounts Payable

Total Accounts Payable

Credit Cards

FirstBank So Cal Credit Card

Total Credit Cards

Other Current Liabilities

401k Payable

Payroll Tax Payable

Prop Mgt Fees Earned

Property Management

Commissions Paid Out

Property Mgmt - Broker

Property Mgmt - LL

Property Mgmt - Other

Property Mgmt Security Dep

Property Management - Other

Bennion Deville Fine Homes SoCal, Inc. Balance Sheet

As of December 31, 2014

	<u>TOTAL</u>
Total Property Management	REDACTED - CONFIDENTIAL
Sale Proceed Reserve	
Suspense/Wash	
Trust Referral Deposit	
Agent Trust Commission	
Broker Commission	
LL Trust Funds	
Trust Security Deposit	
Trust Referral Deposit - Other	-
Total Trust Referral Deposit	-
Total Other Current Liabilities	-
Total Current Liabilities	
Long Term Liabilities	
Amounts Due WRE-CV	
Blue Cross	
Inter-company Billing	
Magazine	-
Total Amounts Due WRE-CV	-
Due To/From B&D LLC	
Due To/From WRE CV	
Lease Pay - LEAF Carlsbad	
Lease Pay - LEAF Corp	
Lease Pay - LEAF Encinitas	
Lease Pay - LEAF Little Italy	
Lease Pay - Royal Bank	
Lease Pay - Vendor Mgmt	
Line of Credit - First Bank	
N/P - Whitney Bank / Flynn	
N/P Shareholders	
Note Pay - Laurel Tree-Extensio	
Note Payable Carmel LLC	-
Total Long Term Liabilities	-
Total Liabilities	
Equity	
Common Stock	
Retained Earnings	
Net Income	

Accrual Basis

Bennion Deville Fine Homes SoCal, Inc.
Balance Sheet

As of December 31, 2014

Total Equity

TOTAL

REDACTED - CONFIDENTIAL

TOTAL LIABILITIES & EQUITY

UNBALANCED CLASSES

Bennion Deville Fine Homes SoCal, Inc.

Balance Sheet

As of December 31, 2014

 Closed
8/29/13

Carlsbad	Carmel Valley	Commercial	Corporate
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ASSETS**Current Assets****Checking/Savings**

First Bank Operating
First Bank Special Account
First Bank Trust Account
First Bank z Home Collection

Total Checking/Savings**Accounts Receivable**

*Accounts Receivable

Total Accounts Receivable**Other Current Assets**

Accounts Receivable
Due To / From B&D Inc.
Due To / From Benville Funding
Due To/From B Squared Funding
Due To/From Bob & Bob
Due To/From Bob & Bob (CC)
Due To/From SC Serv & Prop Mg
Hill Note
Prepaid E&O
Undeposited Funds - Agent Bill

Total Other Current Assets**Total Current Assets****Fixed Assets****Accumulated Depreciation****Equipment**

Equipment - Computers
Equipment - Phones

Total Equipment**Furniture & Fixtures****Signs****Tenant Improvements**

Tenant Improv - 8277 La Mesa
Tenant Improv - Carlsbad
Tenant Improv - Carmel Valley
Tenant Improv - Encinitas
Tenant Improv - La Mesa
Tenant Improv - La Mesa Village

REDACTED - CONFIDENTIAL

Accrual Basis

Bennion Deville Fine Homes SoCal, Inc.

Balance Sheet

As of December 31, 2014

Closed
8/29/13

	Carlsbad	Carmel Valley	Commercial	Corporate
Tenant Improv - Laguna Niguel	REDACTED - CONFIDENTIAL			
Tenant Improv - Little Italy				
Tenant Improv - Solana Beach				
Total Tenant Improvements				
Total Fixed Assets				
Other Assets				
Bank Transfer				
Reserves				
Reserves - E&O Deductable				
Reserves - E&O Prepayment				
Reserves - Web				
Total Reserves				
Security Deposit - Rent				
Security Deposit - Utilities				
Security Deposit - Lease Finance				
Total Other Assets				
TOTAL ASSETS				
LIABILITIES & EQUITY				
Liabilities				
Current Liabilities				
Accounts Payable				
Accounts Payable				
Total Accounts Payable				
Credit Cards				
FirstBank So Cal Credit Card				
Total Credit Cards				
Other Current Liabilities				
401k Payable				
Payroll Tax Payable				
Prop Mgt Fees Earned				
Property Management				
Commissions Paid Out				
Property Mgmt - Broker				
Property Mgmt - LL				
Property Mgmt - Other				
Property Mgmt Security Dep				
Property Management - Other				

Accrual Basis

Bennion Deville Fine Homes SoCal, Inc. Balance Sheet

As of December 31, 2014

Closed
8/29/13

Carlsbad	Carmel Valley	Commercial	Corporate
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Total Property Management

REDACTED - CONFIDENTIAL

Sale Proceed Reserve

Suspense/Wash

Trust Referral Deposit

Agent Trust Commission

Broker Commission

LL Trust Funds

Trust Security Deposit

Trust Referral Deposit - Other

Total Trust Referral Deposit

Total Other Current Liabilities

Total Current Liabilities

Long Term Liabilities

Amounts Due WRE-CV

Blue Cross

Inter-company Billing

Magazine

Total Amounts Due WRE-CV

Due To/From B&D LLC

Due To/From WRE CV

Lease Pay - LEAF Carlsbad

Lease Pay - LEAF Corp

Lease Pay - LEAF Encinitas

Lease Pay - LEAF Little Italy

Lease Pay - Royal Bank

Lease Pay - Vendor Mgmt

Line of Credit - First Bank

N/P - Whitney Bank / Flynn

N/P Shareholders

Note Pay - Laurel Tree-Extensio

Note Payable Carmel LLC

Total Long Term Liabilities

Total Liabilities

Equity

Common Stock

Retained Earnings

Net Income

Accrual Basis

**Bennion Deville Fine Homes SoCal, Inc.
Balance Sheet**

As of December 31, 2014

Closed
8/29/13

Carlsbad Carmel Valley Commercial Corporate

Total Equity

REDACTED - CONFIDENTIAL

TOTAL LIABILITIES & EQUITY

UNBALANCED CLASSES

Accrual Basis

Bennion Deville Fine Homes SoCal, Inc. Balance Sheet

As of December 31, 2014

Closed	Opens		Closed
5/22/14	4/1/15		12/20/14
<u>Dana Point</u>	<u>Encinitas</u>	<u>Hillcrest</u>	<u>La Mesa</u>

ASSETS**REDACTED - CONFIDENTIAL****Current Assets****Checking/Savings**

First Bank Operating
First Bank Special Account
First Bank Trust Account
First Bank z Home Collection

Total Checking/Savings**Accounts Receivable**

*Accounts Receivable

Total Accounts Receivable**Other Current Assets**

Accounts Receivable
Due To / From B&D Inc.
Due To / From Benville Funding
Due To/From B Squared Funding
Due To/From Bob & Bob
Due To/From Bob & Bob (CC)
Due To/From SC Serv & Prop Mg
Hill Note
Prepaid E&O
Undeposited Funds - Agent Billi

Total Other Current Assets**Total Current Assets****Fixed Assets****Accumulated Depreciation****Equipment**

Equipment - Computers
Equipment - Phones

Total Equipment**Furniture & Fixtures****Signs****Tenant Improvements**

Tenant Improv - 8277 La Mesa
Tenant Improv - Carlsbad
Tenant Improv - Carmel Valley
Tenant Improv - Encinitas
Tenant Improv - La Mesa
Tenant Improv - La Mesa Village

Accrual Basis

Bennion Deville Fine Homes SoCal, Inc. Balance Sheet

As of December 31, 2014

Closed 5/22/14	Opens 4/1/15		Closed 12/20/14
<i>Dana Point</i>	<i>Encinitas</i>	<i>Hillcrest</i>	<i>La Mesa</i>

Tenant Improv - Laguna Niguel

Tenant Improv - Little Italy

Tenant Improv - Solana Beach

Total Tenant Improvements

REDACTED - CONFIDENTIAL

Total Fixed Assets

Other Assets

Bank Transfer

Reserves

Reserves - E&O Deductable

Reserves - E&O Prepayment

Reserves - Web

Total Reserves

Security Deposit - Rent

Security Deposit - Utilities

Security Deposit - Lease Finance

Total Other Assets

TOTAL ASSETS

LIABILITIES & EQUITY

Liabilities

Current Liabilities

Accounts Payable

Accounts Payable

Total Accounts Payable

Credit Cards

FirstBank So Cal Credit Card

Total Credit Cards

Other Current Liabilities

401k Payable

Payroll Tax Payable

Prop Mgt Fees Earned

Property Management

Commissions Paid Out

Property Mgmt - Broker

Property Mgmt - LL

Property Mgmt - Other

Property Mgmt Security Dep

Property Management - Other

Bennion Deville Fine Homes SoCal, Inc. Balance Sheet

As of December 31, 2014

Closed

Opens

Closed

5/22/14

4/1/15

12/20/14

Dana Point

Encinitas

Hillcrest

La Mesa

Total Property Management

REDACTED - CONFIDENTIAL

Sale Proceed Reserve

Suspense/Wash

Trust Referral Deposit

Agent Trust Commission

Broker Commission

LL Trust Funds

Trust Security Deposit

Trust Referral Deposit - Other

Total Trust Referral Deposit

Total Other Current Liabilities

Total Current Liabilities

Long Term Liabilities

Amounts Due WRE-CV

Blue Cross

Inter-company Billing

Magazine

Total Amounts Due WRE-CV

Due To/From B&D LLC

Due To/From WRE CV

Lease Pay - LEAF Carlsbad

Lease Pay - LEAF Corp

Lease Pay - LEAF Encinitas

Lease Pay - LEAF Little Italy

Lease Pay - Royal Bank

Lease Pay - Vendor Mgmt

Line of Credit - First Bank

N/P - Whitney Bank / Flynn

N/P Shareholders

Note Pay - Laurel Tree-Extensio

Note Payable Carmel LLC

Total Long Term Liabilities

Total Liabilities

Equity

Common Stock

Retained Earnings

Net Income

Accrual Basis

**Bennion Deville Fine Homes SoCal, Inc.
Balance Sheet**

As of December 31, 2014

Closed 5/22/14	Opens 4/1/15	Closed 12/20/14
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<i>Dana Point</i>	<i>Encinitas</i>	<i>Hillcrest</i>	<i>La Mesa</i>
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Total Equity

REDACTED - CONFIDENTIAL

TOTAL LIABILITIES & EQUITY

UNBALANCED CLASSES

Bennion Deville Fine Homes SoCal, Inc. Balance Sheet

As of December 31, 2014

La Mesa Village Laguna Beach Laguna Niguel Little Italy

ASSETS**Current Assets****Checking/Savings**

First Bank Operating

First Bank Special Account

First Bank Trust Account

First Bank z Home Collection

Total Checking/Savings**Accounts Receivable**

*Accounts Receivable

Total Accounts Receivable**Other Current Assets**

Accounts Receivable

Due To / From B&D Inc.

Due To / From Benville Funding

Due To/From B Squared Funding

Due To/From Bob & Bob

Due To/From Bob & Bob (CC)

Due To/From SC Serv & Prop Mg

Hill Note

Prepaid E&O

Undeposited Funds - Agent BIII

Total Other Current Assets**Total Current Assets****Fixed Assets****Accumulated Depreciation****Equipment**

Equipment - Computers

Equipment - Phones

Total Equipment**Furniture & Fixtures****Signs****Tenant Improvements**

Tenant Improv - 8277 La Mesa

Tenant Improv - Carlsbad

Tenant Improv - Carmel Valley

Tenant Improv - Encinitas

Tenant Improv - La Mesa

Tenant Improv - La Mesa Village

REDACTED - CONFIDENTIAL

Bennion Deville Fine Homes SoCal, Inc. Balance Sheet

As of December 31, 2014

La Mesa Village	Laguna Beach	Laguna Niguel	Little Italy
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REDACTED - CONFIDENTIAL

Tenant Improv - Laguna Niguel

Tenant Improv - Little Italy

Tenant Improv - Solana Beach

Total Tenant Improvements

Total Fixed Assets

Other Assets

Bank Transfer

Reserves

Reserves - E&O Deductable

Reserves - E&O Prepayment

Reserves - Web

Total Reserves

Security Deposit - Rent

Security Deposit - Utilities

Security Deposit -Lease Finance

Total Other Assets

TOTAL ASSETS**LIABILITIES & EQUITY**

Liabilities

Current Liabilities

Accounts Payable

Accounts Payable

Total Accounts Payable

Credit Cards

FirstBank So Cal Credit Card

Total Credit Cards

Other Current Liabilities

401k Payable

Payroll Tax Payable

Prop Mgt Fees Earned

Property Management

Commissions Paid Out

Property Mgmt - Broker

Property Mgmt - LL

Property Mgmt - Other

Property Mgmt Security Dep

Property Management - Other

CONFIDENTIAL

B&D0068879

Bennion Deville Fine Homes SoCal, Inc.

Balance Sheet

As of December 31, 2014

La Mesa Village Laguna Beach Laguna Niguel Little Italy

Total Property Management

REDACTED - CONFIDENTIAL

Sale Proceed Reserve

Suspense/Wash

Trust Referral Deposit

Agent Trust Commission

Broker Commission

LL Trust Funds

Trust Security Deposit

Trust Referral Deposit - Other

Total Trust Referral Deposit

Total Other Current Liabilities

Total Current Liabilities

Long Term Liabilities

Amounts Due WRE-CV

Blue Cross

Inter-company Billing

Magazine

Total Amounts Due WRE-CV

Due To/From B&D LLC

Due To/From WRE CV

Lease Pay - LEAF Carlsbad

Lease Pay - LEAF Corp

Lease Pay - LEAF Encinitas

Lease Pay - LEAF Little Italy

Lease Pay - Royal Bank

Lease Pay - Vendor Mgmt

Line of Credit - First Bank

N/P - Whitney Bank / Flynn

N/P Shareholders

Note Pay - Laurel Tree-Extensio

Note Payable Carmel LLC

Total Long Term Liabilities

Total Liabilities

Equity

Common Stock

Retained Earnings

Net Income

Accrual Basis

Bennion Deville Fine Homes SoCal, Inc.
Balance Sheet

As of December 31, 2014

Total Equity

La Mesa Village Laguna Beach Laguna Niguel Little Italy

REDACTED - CONFIDENTIAL

TOTAL LIABILITIES & EQUITY

UNBALANCED CLASSES

Accrual Basis

Bennion Deville Fine Homes SoCal, Inc. Balance Sheet

As of December 31, 2014

Closed

5/31/13

Closed

2/22/14

Northern CA

Prop MGMT

Solana Beach

Unclassified

ASSETS**Current Assets****Checking/Savings**

First Bank Operating

First Bank Special Account

First Bank Trust Account

First Bank z Home Collection

Total Checking/Savings**Accounts Receivable**

*Accounts Receivable

Total Accounts Receivable**Other Current Assets**

Accounts Receivable

Due To / From B&D Inc.

Due To / From Benville Funding

Due To/From B Squared Funding

Due To/From Bob & Bob

Due To/From Bob & Bob (CC)

Due To/From SC Serv & Prop Mg

Hill Note

Prepaid E&O

Undeposited Funds - Agent Billl

Total Other Current Assets**Total Current Assets****Fixed Assets****Accumulated Depreciation****Equipment**

Equipment - Computers

Equipment - Phones

Total Equipment**Furniture & Fixtures****Signs****Tenant Improvements**

Tenant Improv - 8277 La Mesa

Tenant Improv - Carlsbad

Tenant Improv - Carmel Valley

Tenant Improv - Encinitas

Tenant Improv - La Mesa

Tenant Improv - La Mesa Village

REDACTED - CONFIDENTIAL

Bennion Deville Fine Homes SoCal, Inc. Balance Sheet

As of December 31, 2014

Closed
5/31/13Closed
2/22/14

Northern CA	Prop MGMT	Solana Beach	Unclassified
-------------	-----------	--------------	--------------

REDACTED - CONFIDENTIAL

Tenant Improv - Laguna Niguel

Tenant Improv - Little Italy

Tenant Improv - Solana Beach

Total Tenant Improvements

Total Fixed Assets

Other Assets

Bank Transfer

Reserves

Reserves - E&O Deductable

Reserves - E&O Prepayment

Reserves - Web

Total Reserves

Security Deposit - Rent

Security Deposit - Utilities

Security Deposit - Lease Finance

Total Other Assets

TOTAL ASSETS

LIABILITIES & EQUITY

Liabilities

Current Liabilities

Accounts Payable

Accounts Payable

Total Accounts Payable

Credit Cards

FirstBank So Cal Credit Card

Total Credit Cards

Other Current Liabilities

401k Payable

Payroll Tax Payable

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Property Management

Commissions Paid Out

Property Mgmt - Broker

Property Mgmt - LL

Property Mgmt - Other

Property Mgmt Security Dep

Property Management - Other

Bennion Deville Fine Homes SoCal, Inc. Balance Sheet

As of December 31, 2014

Closed
5/31/13Closed
2/22/14

Northern CA	Prop MGMT	Solana Beach	Unclassified
-------------	-----------	--------------	--------------

Total Property Management

REDACTED - CONFIDENTIAL

Sale Proceed Reserve

Suspense/Wash

Trust Referral Deposit

Agent Trust Commission

Broker Commission

LL Trust Funds

Trust Security Deposit

Trust Referral Deposit - Other

Total Trust Referral Deposit

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Due To/From WRE CV

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Lease Pay - LEAF Encinitas

Lease Pay - LEAF Little Italy

Lease Pay - Royal Bank

Lease Pay - Vendor Mgmt

Line of Credit - First Bank

N/P - Whitney Bank / Flynn

N/P Shareholders

Note Pay - Laurel Tree-Extensio

Note Payable Carmel LLC

Total Long Term Liabilities

Total Liabilities

Equity

Common Stock

Retained Earnings

Net Income

Accrual Basis

**Bennion Deville Fine Homes SoCal, Inc.
Balance Sheet**

As of December 31, 2014

Closed
5/31/13Closed
2/22/14Northern CA Prop MGMT Solana Beach Unclassified

Total Equity

REDACTED - CONFIDENTIAL

TOTAL LIABILITIES & EQUITY

UNBALANCED CLASSES

Bennion Deville Fine Homes SoCal, Inc. Balance Sheet

As of December 31, 2014

TOTAL

ASSETS**REDACTED - CONFIDENTIAL****Current Assets****Checking/Savings**

First Bank Operating

First Bank Special Account

First Bank Trust Account

First Bank z Home Collection

Total Checking/Savings**Accounts Receivable**

*Accounts Receivable

Total Accounts Receivable**Other Current Assets**

Accounts Receivable

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Due To / From Benville Funding

Due To/From B Squared Funding

Due To/From Bob & Bob

Due To/From Bob & Bob (CC)

Due To/From SC Serv & Prop Mg

Hill Note

Prepaid E&O

Undeposited Funds - Agent Billi

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Equipment - Computers

Equipment - Phones

Total Equipment**Furniture & Fixtures****Signs****Tenant Improvements**

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Tenant Improv - Carlsbad

Tenant Improv - Carmel Valley

Tenant Improv - Encinitas

Tenant Improv - La Mesa

Tenant Improv - La Mesa Village

Bennion Deville Fine Homes SoCal, Inc. Balance Sheet

As of December 31, 2014

TOTAL

REDACTED - CONFIDENTIAL

Tenant Improv - Laguna Niguel

Tenant Improv - Little Italy

Tenant Improv - Solana Beach

Total Tenant Improvements

Total Fixed Assets

Other Assets

Bank Transfer

Reserves

Reserves - E&O Deductable

Reserves - E&O Prepayment

Reserves - Web

Total Reserves

Security Deposit - Rent

Security Deposit - Utilities

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TOTAL ASSETS

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Property Management

Commissions Paid Out

Property Mgmt - Broker

Property Mgmt - LL

Property Mgmt - Other

Property Mgmt Security Dep

Property Management - Other

Bennion Deville Fine Homes SoCal, Inc. Balance Sheet

As of December 31, 2014

	TOTAL
Total Property Management	REDACTED - CONFIDENTIAL
Sale Proceed Reserve	
Suspense/Wash	
Trust Referral Deposit	
Agent Trust Commission	
Broker Commission	
LL Trust Funds	
Trust Security Deposit	
Trust Referral Deposit - Other	
Total Trust Referral Deposit	
Total Other Current Liabilities	
Total Current Liabilities	
Long Term Liabilities	
Amounts Due WRE-CV	
Blue Cross	
Inter-company Billing	
Magazine	
Total Amounts Due WRE-CV	
Due To/From B&D LLC	
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Lease Pay - LEAF Carlsbad	
Lease Pay - LEAF Corp	
Lease Pay - LEAF Encinitas	
Lease Pay - LEAF Little Italy	
Lease Pay - Royal Bank	
Lease Pay - Vendor Mgmt	
Line of Credit - First Bank	
N/P - Whitney Bank / Flynn	
N/P Shareholders	
Note Pay - Laurel Tree-Extensio	
Note Payable Carmed LLC	
Total Long Term Liabilities	
Total Liabilities	
Equity	
Common Stock	
Retained Earnings	
Net Income	

Accrual Basis

**Bennion Deville Fine Homes SoCal, Inc.
Balance Sheet**

As of December 31, 2014

	TOTAL
Total Equity	REDACTED -
TOTAL LIABILITIES & EQUITY	CONFIDENTIAL
UNBALANCED CLASSES	

Coast P&Ls by Office (San Diego Cty only)

Since Inception - 2011

Bennion Deville SoCal
Profit & Loss by Class
January through September 2015

12:02 PM
01/22/16
Accrual Basis

	Total Carlsbad	Total Camel Valley	Total Encinitas	Total Hillcrest	La Mesa	Total La Mesa Village (Comer)	Total Little Italy	TOTAL
Ordinary Income/Expense								
Income								
Agent Commission								
E&O Income (Pre-paid)								
Rental - Office Space								
Total Income								
Gross Profit								
Expense								
Advertising								
Advertising Expense								
Marketing Allowance								
Marketing Events								
Advertising - Other								
Total Advertising								
Alarm / Security								
Auto Lease								
Automobile Expense								
Automobile Fuel & Maintenance								
Bank Service Charges								
Contributions / Donations								
Windermere Foundation								
Total Contributions / Donations								
Dues/Memberships/Subscriptions								
Equipment Expense								
Computer								
Copier								
Phone/Fax								
Total Equipment Expense								
Insurance								
Building policy								
Commercial Vehicle								
E&O								
Attorney								
Premiums								
Total E&O								
Medical								
Other								

Bennion Deville SoCal
Profit & Loss by Class
January through September 2015

	Total Carlsbad	Total Carmel Valley	Total Encinitas	Total Hillcrest	La Mesa	Total La Mesa Village (Corner)	Total Little Italy	TOTAL
Worker's Comp								
Total Insurance								
Interest								
Interest-CC Finance Charge								
Interest - JFF								
Interest - Laurel Tree								
Interest - Leaf Financial								
Total Interest								
License/Permits								
Meals & Entertainment								
Moving / Storage								
Office Cleaning								
Office Expenses								
Office Supplies								
Payroll								
Payroll Processing Fee								
Payroll Tax Expense								
Salaries/Wages								
Total Payroll								
Postage/Shipping								
Printing								
Professional Fees								
Accounting								
Legal Fees								
Rackspace								
Re-branding								
Web								
Total Professional Fees								
Promotion / Events								
Recruitment								
Total Promotion / Events								
Rent								
CAM Charges								
Rent expense								
Rent Expense - Agent								
Total Rent								
Repairs & Maintenance								

REDACTED - CONFIDENTIAL

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Accrual Basis

CONFIDENTIAL

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Bennion Deville SoCal
Profit & Loss by Class
January through September 2015

12:02 PM
01/22/16
Accrual Basis

	Total Carlsbad	Total Carmel Valley	Total Encinitas	Total Hillcrest	La Mesa	Total La Mesa Village (Corner)	Total Little Italy	TOTAL
Sales & Use Tax								
Signage								
Taxes								
Telephone								
Cellular Phone								
Office Lines								
Total Telephone								
Travel								
Utilities								
Windemere Services Southern Ca								
Franchise fee								
Technology fee								
Total Windemere Services Southern Ca								
Total Expense								
Net Ordinary Income								
Net Income								

REDACTED -
CONFIDENTIAL

Bennion Deville SoCal
Profit & Loss by Class
January through December 2014

12:10 PM
01/22/16
Accrual Basis

	Total Carlsbad	Total Carmel Valley	Encinitas	Total Hillcrest	Total La Mesa	Total La Mesa Village (Corner)	Total Little Italy	Total Solana Beach	TOTAL
Ordinary Income/Expense									
Income									
Agent Commission									
E&O Income (Pre-paid)									
Interest Income									
Rental - Office Space									
Uncategorized Income									
Total Income									
Gross Profit									
Expense									
Advertising									
Advertising Expense									
Marketing Allowance									
Marketing Events									
Total Advertising									
Alarm / Security									
Arena to Ma-e - Fuel and Mainta									
Arena to Ma-e - Pilot									
Auto Lease									
Automobile Expense									
Automobile Fuel & Maintenance									
Bank Service Charges									
Bonus									
Contributions / Donations									
Windemere Foundation									
Contributions / Donations - Other									
Total Contributions / Donations									
Dues/Memberships/Subscriptions									
Equipment Expense									
Computer									
Copier									
Total Equipment Expense									
Insurance									
Building policy									
Commercial Vehicle									
E&O									
Payout									
Premiums									
Total E&O									
Medical									
Other									

12:10 PM
01/22/16
Accrual Basis

**Bennion Deville SoCal
Profit & Loss by Class
January through December 2014**

	Total Carlsbad	Total Carmel Valley	Encinitas	Total Hillcrest	Total La Mesa	Total La Mesa Village (Corner)	Total Little Italy	Total Solana Beach	TOTAL
Worker's Comp									
Total Insurance									
Interest									
Interest-CC Finance Charge									
Interest - JFF									
Interest - Laurel Tree									
Interest - Leaf Financial									
Interest - Vendor Lease Mgmt									
Interest - Washington Loan									
Total Interest									
Landscaping / Maint									
License/Permits									
Meals & Entertainment									
Moving / Storage									
Office Cleaning									
Office Expenses									
Meetings									
Office Expenses - Other									
Total Office Expenses									
Office Supplies									
Payroll									
Medical Reimbursement									
Payroll Processing Fee									
Payroll Tax Expense									
Salaries/Wages									
Total Payroll									
Postage/Shipping									
Printing									
Professional Fees									
Accounting									
Cleaning Service									
Legal Fees									
Rackspace									
Web									
Total Professional Fees									
Promotion / Events									
Recruitment									
Promotion / Events - Other									
Total Promotion / Events									
Rent									

Bennion Deville SoCal
Profit & Loss by Class
January through December 2014

12:10 PM
01/22/16
Accrual Basis

	Total Carlsbad	Total Carmel Valley	Encinitas	Total Hillcrest	Total La Mesa	Total La Mesa Village (Corner)	Total Little Italy	Total Solana Beach	TOTAL
CAM Charges									
Rent expense									
Total Rent									
Repairs & Maintenance									
Sales & Use Tax									
Signage									
Taxes									
Telephone									
Cellular Phone									
Office Lines									
Total Telephone									
Travel									
Utilities									
Windermere Services Southern Ca									
Franchise fee									
Technology fee									
Total Windermere Services Southern Ca									
Total Expense									
Net Ordinary Income									
Other Income/Expense									
Other Expense									
Bad Debt									
Total Other Expense									
Net Other Income									
Net Income									

REDACTED - CONFIDENTIAL

EXHIBIT C

PEREZ WILSON VAUGHN FEASBY

Attorneys at Law

Symphony Towers
750 B Street, 33rd Floor
San Diego, CA 92101
619.702.8044
619.460.0437 *facsimile*
www.perezwilson.com

JEFFREY A. FEASBY
(619) 741-0242

EMAIL ADDRESS
jfeasby@perezwilson.com

May 6, 2016

VIA FEDERAL EXPRESS

Kevin A. Adams, Esq.
Mulcahy LLP
Four Park Plaza, Suite 1230
Irvine CA 92614

**Re: Bennion & Deville Fine Homes, Inc. et al. v. Windermere Real Estate Services
Company – USDC CDCA. Case No. 5:15-cv-01921-R-KK**

Dear Mr. Adams,

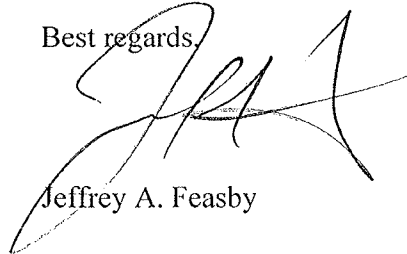
Enclosed herewith is a thumb drive containing our client's sixth round of production of documents in this matter. These documents are Bates Stamp Nos. WSC055178 through 058998. You may notice that Bates No. WSC055178 overlaps with the last document in our prior production. I doubt this will be an issue, however, I wanted to alert you to this error.

This production includes documents provided by your clients under the Non-Disclosure Agreement. As we discussed, the production of these documents will not be construed by either party as a breach of that agreement. These documents have been marked as "Confidential" pursuant to the Protective Order entered by the Court. Our vendor also marked additional document in this production as "Confidential" that should not have been. Rather than delay this production, we have produced herewith. We can address the issue later if necessary. However, the documents marked as "Attorneys' Eyes Only" should be treated as such.

Kevin A. Adams, Esq.
May 6, 2016
Page 2

Also enclosed are our client's supplemental discovery responses, as promised. We will provide you with the verification for the interrogatories next week.

Best regards,

A handwritten signature in black ink, appearing to read 'J. Feasby', with a large, sweeping flourish extending from the bottom left.

Jeffrey A. Feasby

Enclosures

EXHIBIT D

LEASE

BETWEEN

TERRAMAR RETAIL CENTERS, LLC

Landlord

and

BENNION & DEVILLE FINE HOMES, INC.

Tenant

CAMINO VILLAGE SOUTH

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EXHIBIT	A	GENERAL SITE PLAN
EXHIBIT	B	PREMISES
EXHIBIT	C	CONSTRUCTION PROVISIONS
EXHIBIT	D	INTENTIONALLY DELETED
EXHIBIT	E	RULES AND REGULATIONS
EXHIBIT	F	SIGN CRITERIA
EXHIBIT	G	COMMENCEMENT DATE CERTIFICATE
EXHIBIT	H	TENANT'S STATEMENT OF GROSS SALES
EXHIBIT	I	ESTOPPEL CERTIFICATE

RETAIL LEASE

This Lease ("Lease") is entered into as of the date set forth in section 1.1, by and between Landlord and Tenant.

ARTICLE 1 - BASIC LEASE PROVISIONS

1.1 Effective Date: July 17, 2014.

1.2 Landlord: TERRAMAR RETAIL CENTERS, LLC, a Delaware limited liability company.

1.3 Tenant: BENNION & DEVILLE FINE HOMES, INC., a California corporation.

1.4 Tenant's Trade Name: Windermere Real Estate SoCal. (Article 10)

1.5 Center: Camino Village South located in Encinitas, California.

1.6 Premises: 158 N. El Camino Real, Suite C, in the Center. (Article 2)

1.7 Floor Area: Approximately 2,360 square feet. (Article 2)

1.8 Term: 5 years, with 1 Option Term of 3 years. (Article 3)

1.9 Time to Complete Tenant's Work: 60 days, which shall begin to run upon the latest to occur of: (i) the date of Substantial Completion, (ii) the Satisfaction Date (as defined in Section 3.1), and (iii) the date the contingency in Section 23.11(s) has been satisfied or waived. (Article 3)

1.10 Minimum Annual Rent: \$106,200.00 per annum (\$45.00 per square foot) ^{10.8} payable at the rate of \$8,850.00 per month, commencing on the Commencement Date and continuing through the day before the first anniversary of the Commencement Date. (Article 6)

1.11 Percentage Rate: None. (Article 6)

1.12 Radius Restriction Area: 1 mile. (Article 10)

1.13 Use of Premises: The Premises shall be used only for real estate sales and marketing and/or related services, including, but not limited to, property management, mortgage lending, escrow and other real estate related services, and for no other use or purpose. (Article 10)

1.14 Promotional Charge: None.

1.15 Insurance Limits: \$2,000,000 per occurrence. (Article 15)

1.16 Security Deposit: \$9,960.75. (Article 23)

1.17 Guarantor: None.

1.18 Broker: (a) Retained by Landlord: TRC Realty Services, Inc.
(b) Retained by Tenant: Bennion & Deville Fine Homes, Inc. (Article 23)

1.19 Notices: To Landlord: Terramar Retail Centers, LLC
5973 Avenida Encinas, Suite 300
Carlsbad, California 92008-4476

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70.3

To Tenant: Bennion & Deville Fine Homes, Inc.
 44530 San Pablo Ave., Suite 101
 Palm Desert, California 92260 (Article 23)

1.20 Construction Allowance: \$20.00 per square foot of the Premises. (Exhibit C)

This Article 1 is intended to supplement and summarize the provisions set forth in the balance of this Lease. If there is any conflict between any provisions contained in this Article 1 and the balance of this Lease, the balance of this Lease shall control.

ARTICLE 2 - PREMISES

2.1 Premises. Landlord leases to Tenant and Tenant leases from Landlord, for the "Term" (as defined in Article 3) and upon the covenants and conditions set forth in this Lease, the premises described in section 1.6 ("Premises").

2.2 Reservation. Landlord reserves the right to use the exterior walls, floor, roof and plenum in, above and below the Premises for the repair, maintenance, use and replacement of pipes, ducts, utility lines and systems, structural elements serving the Center and for such other purposes as Landlord deems necessary. In exercising its rights reserved herein, Landlord shall not unreasonably interfere with the operation of Tenant's business on the Premises.

2.3 Floor Area. "Floor Area" shall mean all areas designated by Landlord for the exclusive use of a tenant measured from the exterior surface of exterior walls (and extensions, in the case of openings) and from the center of interior demising walls, and shall include, but not be limited to, restrooms, warehouse and storage areas, clerical and office areas, and employee areas, but shall exclude any non-sales mezzanines. The Premises contain approximately the number of square feet of Floor Area specified in section 1.7.

ARTICLE 3 - TERM

3.1 Term. This Lease shall be effective from and after the Effective Date specified in section 1.1. The term of this Lease ("Term") shall commence on that date (the "Commencement Date") which is the earlier of: (a) the date Tenant initially opens for business to the public in the Premises, or (b) the date immediately following the expiration of the period set forth in section 1.9 as the "Time to Complete Tenant's Work", which shall begin to run upon the latest to occur of: (i) the date of Substantial Completion, (ii) the Satisfaction Date (as defined below), and (iii) the date the contingency in Section 23.11(s) has been satisfied or waived. The Term shall continue, unless sooner terminated in accordance with the provisions of this Lease, for the number of years specified in section 1.8, from the Commencement Date if it is the first day of the calendar month or, if not, from the first day of the first calendar month following the Commencement Date.

Tenant covenants that it shall apply for any and all licenses, permits and/or approvals (collectively, the "Permits") necessary to permit Tenant to perform "Tenant's Work" (as specified in Exhibit C) in accordance with the "Final Plans" (as defined in Exhibit C) and to conduct the Permitted Use. Tenant shall apply for the Permits no later than the date (the "Start Date") which is seven (7) days after the date Landlord approves the plans for Tenant's Work contemplated by Section 3(a)(i) of Exhibit C. Thereafter, Tenant shall use diligent, continuous good faith efforts to obtain the Permits from all required governmental authorities. Tenant's good faith efforts to obtain the Permits shall include, without limitation, retaining permit expeditors at Tenant's sole cost and expense.

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 22966111-1

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Tenant shall, upon Landlord's inquiry from time to time, apprise Landlord of the status of Permit issuance. Tenant shall make all building code and all reasonable minor revisions to the Final Plans requested by any governmental authority. If Tenant has submitted to Landlord its plans for Tenant's Work contemplated by Section 3(a)(i) of Exhibit C within thirty (30) days following full execution and delivery of this Lease and has timely applied for the Permits as set forth above, and if the Permits are not available for issuance within forty-five (45) days after the Start Date, then Tenant shall so notify Landlord in writing by the forty-fifth (45th) day after the Start Date either that the Permits are not available for issuance and therefore is terminating the Lease, so long as Tenant is not in default of this Lease beyond any applicable notice and cure periods at such time. If Tenant shall fail to so notify Landlord with regard to the notification period set forth above, the Permits shall be deemed to be available for issuance, and the rights of Tenant to terminate this Lease under this paragraph shall be deemed abrogated and waived. If Tenant elects to terminate this Lease, then Landlord, within ten (10) days after receipt of Tenant's termination notice may notify Tenant, in writing, that Landlord has elected to attempt to obtain the Permits. If Landlord fails to so notify Tenant, then this Lease shall terminate effective on the 10th day following Tenant's termination notice. Landlord shall, if it so elects, have ninety (90) days after the date of Tenant's notice of termination to attempt to obtain the Permits, and Tenant shall cooperate with Landlord's efforts, if any. If Landlord obtains the Permits within such 90-day period, Tenant's termination of this Lease pursuant to this paragraph will be nullified. If Landlord timely notifies Tenant that Landlord will attempt to obtain the Permits on behalf of Tenant but fails to obtain the Permits within such 90-day period, then this Lease shall be deemed terminated as of the expiration of such 90-day period. If this Lease is terminated pursuant hereto, thereafter neither party shall accrue any further liability to the other under this Lease, except that Landlord shall return to Tenant all prepaid rent and the Security Deposit. Anything herein to the contrary notwithstanding, the date the Permits are obtained or deemed to have been obtained is the "Satisfaction Date."

3.2 Option to Extend. If Tenant (i) has not at any time during this Term of the Lease been in default of any Terms or provisions of this Lease; (ii) is in occupancy and conducting from the Premises the business permitted by this Lease; and (iii) has not assigned, sublet, or otherwise transferred its interest in this Lease, then Tenant shall have the right to extend the initial Term of this Lease for one (1) period of three (3) years ("Extended Term") upon the same terms and conditions as the original Term, with the exception that the Minimum Annual Rent for the Extended Term shall be increased (a) on the commencement of the Extended Term, to the then prevailing market rate as determined by Landlord, but in no event shall the Minimum Annual Rent for such first year of the Extended Term be less than 103% of the previous year's Minimum Annual Rent, and (b) on each one year anniversary thereafter such rate shall be increased by three percent (3%). To exercise the option to extend the term of the Lease, Tenant shall serve written notice to Landlord not more than three hundred sixty (360) days and not less than two hundred seventy (270) days prior to the expiration of the then current Term of the Lease, indicating its intention to exercise the option to extend. The option granted herein is granted solely to Tenant and is not assignable or transferable, and any attempt to assign or transfer this option shall be void and of no force or effect.

ARTICLE 4 - POSSESSION

4.1 Substantial Completion. "Substantial Completion" shall mean the date Landlord notifies Tenant in writing that "Landlord's Work" (as specified in Exhibit C), if any, is substantially complete to the point that Tenant's contractor may commence the construction of "Tenant's Work" (as specified in Exhibit C) without unreasonable interference from Landlord's contractor performing Landlord's Work, if any.

4.2 Delivery of Possession. Tenant shall accept possession of the Premises from Landlord upon Substantial Completion. Tenant shall deliver each of the following to Landlord before Substantial Completion: (a) executed copies of policies of insurance or certificates thereof (as required under Article 15); (b) "Final Plans" (as defined in

Exhibit C); and (c) a copy of Tenant's building permit. Tenant shall pay the first month's Minimum Annual Rent (\$8,850.00) and the Security Deposit (as defined in Section 23.2) to Landlord, upon Tenant's execution and delivery of this Lease. Landlord shall not be obligated to deliver possession of the Premises to Tenant until such items are delivered, but the date of Substantial Completion shall not be affected or delayed by Tenant's failure to deliver any of such items or by Landlord's decision not to deliver possession of the Premises as a result of such failure.

ARTICLE 5 - TENANT'S CONSTRUCTION

Tenant shall commence construction of Tenant's Work upon Substantial Completion and delivery of possession of the Premises to Tenant, and shall diligently prosecute it to completion. Tenant agrees to improve the Premises in a manner similar to Tenant's office in Indian Wells, California. Tenant shall deliver to Landlord a copy of the certificate of occupancy for the Premises issued by the appropriate governmental agency upon completion of Tenant's Work. Within ten days after Tenant initially opens for business to the public in the Premises, Tenant shall execute and deliver to Landlord a certificate in the form attached hereto as Exhibit G.

ARTICLE 6 - RENT

6.1 Minimum Annual Rent. Tenant shall pay the sum specified in section 1.10 ("Minimum Annual Rent") in the monthly installments specified, in advance, on or before the first day of each month, without prior demand and without offset or deduction (except as expressly and specifically provided in this Lease), commencing on the Commencement Date. If the Commencement Date shall be a day other than the first day of a calendar month, the monthly installment of Minimum Annual Rent for the first partial month shall be equal to 1/30th of the monthly installment of Minimum Annual Rent for each day from the Commencement Date to the end of the partial month.

6.2 Adjustment to Minimum Annual Rent. The Minimum Annual Rent payable under section 1.10 and this Article 6 shall be increased at the commencement of the first full month beginning on or after the onest year anniversary of the Commencement Date and each one year anniversary thereafter (each such date is hereinafter referred to as an "Adjustment Date") ~~by the percentage increase, if any, in the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index, All Urban Consumers (all items, 1982-84 equals 100) published for the area in which the Premises are situated or which is otherwise closest to the Premises ("Index") for the calendar month three months before the calendar month during which the subject Adjustment Date occurs, as compared to the Index for the calendar month which is 15 months before the calendar month during which the subject Adjustment Date occurs. In no event, however, shall the Minimum Annual Rent for any year be less than the Minimum Annual Rent payable during the preceding year. If the Bureau of Labor Statistics shall discontinue the publication of the Index, or publish the same less frequently, or alter the same in some other manner, Landlord shall adopt a substitute Index or substitute procedure which reasonably reflects and monitors consumer prices to an amount equal to 103% of the Minimum Annual Rent for the immediately preceding twelve month period.~~

6.3 Reports: Intentionally Deleted.

~~(a) Tenant shall furnish or cause to be furnished to Landlord a statement of the monthly Gross Sales of Tenant within 20 days after the close of each calendar month and a statement of the annual Gross Sales of Tenant within 30 days after the close of each calendar year. Such statements shall be in the form and certified in the manner shown in Exhibit H attached to this Lease, which form Landlord may~~

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~~revise from time to time. Such statements shall be certified as an accurate accounting of Tenant's Gross Sales by an authorized representative of Tenant. In addition, with each annual statement, Tenant shall furnish to Landlord a copy of Tenant's sales tax return (State and Local Sales and Use Tax Returns), with respect to the period covered by such statement.~~

~~(b) "Gross Sales" shall mean the gross selling price of all merchandise or services sold or rented in or from the Premises by Tenant, its subtenants, licensees and concessionaires, whether for cash or on credit and whether made by store personnel or by machines, as well as any business interruption insurance proceeds received by Tenant with respect to the Premises, excluding therefrom the following: (i) The selling price of all merchandise returned by customers and accepted for full credit; (ii) interest or other charges paid by customers for extension of credit; (iii) receipts from vending machines solely used by Tenant's employees; (iv) sales taxes, excises, taxes or gross receipts taxes imposed by governmental entities upon the sale of merchandise or services, but only if collected from customers separately from the selling price and paid directly to the respective governmental entities; and (v) proceeds from the sale of fixtures, equipment or property which are not stock in trade. The exclusions listed above in this subsection (b) shall be referred to as "Exclusions from Gross Sales". All sales originating at the Premises shall be deemed made and completed from the Premises, even though bookkeeping or payment of the account is transferred to another location for collection or filling of the sale or service order, and actual delivery of the merchandise is made from a location other than the Premises. Each installment sale, credit sale or layaway sale shall be treated as a sale for the full cash price at the time of sale or deposit.~~

6.4 Additional Rent. Tenant shall pay, as "Additional Rent", all sums required to be paid by Tenant to Landlord pursuant to this Lease in addition to Minimum Annual Rent, commencing on the Commencement Date. Landlord shall have the same rights and remedies for the nonpayment of Additional Rent as it has with respect to the nonpayment of Minimum Annual Rent. Minimum Annual Rent and Additional Rent to be paid hereunder shall be paid to Landlord absolutely net, without deduction of any amount of any nature whatever.

6.5 Place of Payment. Tenant shall pay Minimum Annual Rent and Additional Rent to Landlord at the address specified in section 1.19, or to such other address and/or person as Landlord may from time to time designate in writing to Tenant.

6.6 Late Payments. If Tenant fails to pay when the same is due any Minimum Annual Rent or Additional Rent, the unpaid amounts shall bear interest at the Interest Rate (as defined in section 23.11(k)) from the date the unpaid amount was initially due, to and including the date of payment. In addition, if any installment of Minimum Annual Rent or Additional Rent is not received by Landlord from Tenant within five days after such installment is due, Tenant shall immediately pay to Landlord a late charge equal to \$500. Landlord and Tenant agree that this late charge represents a reasonable estimate of the costs and expenses Landlord will incur and is fair compensation to Landlord for its loss suffered by reason of late payment by Tenant.

ARTICLE 7 - TENANT'S FINANCIAL DATA

~~7.1 Recordation of Sales. At the time of a sale or other transaction, Tenant shall record the sale or other transaction in the presence of the customer, either in a cash register with sealed continuous tape or computer or by using any other method of recording sequentially numbered purchases and keeping a cumulative total.~~

~~7.2 Books and Records. For a period of three years following the close of each calendar year, Tenant shall keep at the Premises or at any other location in California, full and accurate books of account and records relative to transactions from~~

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~~the Premises in accordance with generally accepted accounting principles consistently applied.~~

~~7.3 Audits. Landlord, at any time within three years after receipt of any statement and upon no less than five days prior written notice to Tenant, may cause an audit to be made of Tenant's Gross Sales and Exclusions from Gross Sales and all of Tenant's records and books. Tenant shall make available for the audit at the Premises, or at any other location in California, all of these books and records.~~ 7.4

Financial Statements. Within 15 days after Landlord's written request made only in connection with a proposed sale or financing of the Center, which request will not be made more often than once per year. Tenant shall furnish Landlord with financial statements or other reasonable financial information reflecting Tenant's current financial condition, certified by Tenant or its financial officer. If Tenant is a publicly traded corporation, delivery of Tenant's last-published financial information shall be satisfactory for purposes of this section 7.4. Any information obtained from Tenant's financial statements shall be confidential and shall not be disclosed other than to carry out the purposes of this Lease. Landlord shall, however, incur no liability for the inadvertent disclosure of any such information. In addition, Landlord may divulge the contents of any financial statements in connection with any financing arrangement or sale of Landlord's interest in the Premises or Center, or in connection with any administrative or judicial proceedings.

ARTICLE 8 - TAXES

8.1 Real Property Taxes.

(a) "Taxes" shall include any form of tax or assessment, license fee, license tax, possessory interest tax, tax or excise on rent, or any other levy, charge, expense or imposition imposed by any federal, state, county or city authority having jurisdiction, or any political subdivision thereof, or any school, agricultural, lighting, drainage or other improvement or special-assessment district (collectively, "Governmental Agencies") on any interest of Landlord or Tenant (including any legal or equitable interest of Landlord or its Mortgagee (as defined in section 20.1), if any, in the Premises, the remainder of the Center or the underlying realty including, but not limited to: (i) any impositions (whether or not such impositions constitute tax receipts to Governmental Agencies) in substitution, partially or totally, of any impositions now or previously included within the definition of real property taxes including, without limitation, those imposed or required by Governmental Agencies to increase tax increments to Governmental Agencies and for services such as fire protection, street, sidewalk and road maintenance, refuse removal or other governmental services formerly provided without charge to property owners or occupants; (ii) any impositions allocable to, or measured by, the area of the Premises, the sales generated from the Premises or any rent payable under this Lease; and (iii) any impositions upon this Lease transaction or any document to which Tenant is a party creating or transferring an interest or an estate in the Premises. The term "Taxes" shall not include Landlord's general income taxes, inheritance, estate or gift taxes.

(b) From and after the Commencement Date, Tenant shall pay to Landlord, as Additional Rent, a share of the Taxes pursuant to subsection (c) below. Taxes for any partial year shall be prorated. Landlord, at its option, may collect Tenant's payment of its share of Taxes after the actual amount of Taxes are ascertained or in advance, monthly or quarterly, based upon estimated Taxes. If Landlord elects to collect Tenant's share of Taxes based upon estimates, Tenant shall pay to Landlord from and after the Commencement Date, and thereafter on the first day of each month or quarter during the Term (as determined by Landlord), an amount estimated by Landlord to be the monthly or quarterly Taxes payable by Tenant. Landlord may periodically adjust the estimated amount. If Landlord collects Taxes based upon estimated amounts, following the end of each calendar year or, at Landlord's option,

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Landlord's fiscal year, Landlord shall furnish Tenant with a statement covering the year just expired showing the total Taxes for the Center for such year, the total Taxes payable by Tenant for such year, and the payments previously made by Tenant with respect to such year, as set forth above. If the actual Taxes payable for such year exceed Tenant's prior payments, Tenant shall pay to Landlord the deficiency within ten days after its receipt of the statement. If Tenant's payments exceed the actual Taxes payable for that year, Tenant shall be entitled to offset the excess against the next payment(s) of Taxes and/or other Additional Rent that become due to Landlord. Upon termination of this Lease if Tenant is not in default hereunder, Landlord shall refund to Tenant the amount of any excess, promptly upon Landlord's receipt of Tenant's request therefor.

(c) If the Premises and underlying realty are part of a larger parcel for assessment purposes or are within a multi-level building ("larger parcel"), Tenant's share of the Taxes shall be determined by multiplying all of the Taxes on the larger parcel, excluding Taxes on the "Common Area" (as defined in section 12.1), by a fraction, the numerator of which shall be the Floor Area of the Premises and the denominator of which shall be the Floor Area in the larger parcel which is occupied as of the commencement of the applicable calendar or fiscal year, exclusive of the Joint Use Facilities (as defined in section 12.4).

8.2 Other Property Taxes. Tenant shall pay, before delinquency, all taxes, assessments, license fees and public charges levied, assessed or imposed upon its business operation, trade fixtures, merchandise and other personal property in, on or upon the Premises. If any such items of property are assessed with property of Landlord, the assessment shall be equitably divided between Landlord and Tenant.

8.3 Contesting Taxes. If Landlord contests any Taxes levied or assessed during the Term, Tenant shall pay to Landlord that portion of all costs incurred by Landlord in connection with such contest, pursuant to the formula set forth in section 8.1(c) for the allocation of Taxes. If Landlord receives a refund pursuant to its contest of any Taxes, if Tenant has paid its share of the total Taxes and its share of the costs incurred by Landlord in connection with such contest as required by this Article 8, Landlord shall reimburse Tenant that portion of the total refund prorated in the same manner as set forth in section 8.1(c).

ARTICLE 9 - UTILITIES

Tenant shall pay directly to the appropriate utility company all charges for utility services supplied to Tenant for which there is a separate meter and/or submeter to the Premises. Tenant shall pay to Landlord its share of all charges for utility services supplied to the Premises for which there is no separate meter or submeter upon billing by Landlord of Tenant's share, as reasonably determined by Landlord based upon estimated actual usage. No failure or interruption of any utility or service shall entitle Tenant to terminate this Lease or discontinue making payments of Minimum Annual Rent or Additional Rent. If Tenant fails to pay when due any charges referred to in this Article 9, Landlord may pay the charge and Tenant shall reimburse Landlord, as Additional Rent, for any amount so paid by Landlord, plus interest thereon, within ten days after demand therefor. With respect to any utilities paid directly by Tenant (or any party claiming by, through or under Tenant) to the provider for any energy consumed at the Premises, Tenant, promptly upon request, shall deliver to Landlord (or, at Landlord's option, execute and deliver to Landlord an instrument enabling Landlord to obtain from such provider) any data about such consumption that Landlord, in its reasonable judgment, is required to disclose to a prospective buyer, tenant or Lender or prospective Lender under California Public Resources Code §25402.10 or any similar law.

Landlord may, in its sole and absolute discretion, at any time and from time to time, contract, or require Tenant to contract, for utility services (including generation, transmission and delivery of the utility service) with a utility service provider(s) ("USP")

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of Landlord's choosing. Tenant shall fully cooperate with Landlord and any USP selected by Landlord. Tenant shall permit Landlord and the USP to have reasonable access to the Premises and the utility equipment serving the Premises, including lines, feeders, risers, wiring, pipes and meters. ~~Tenant shall either pay, or reimburse Landlord for, all costs associated with any change of utility service, including the cost of any new utility equipment, within 20 days after Landlord's written demand for payment or reimbursement.~~ Under no circumstances shall Landlord be responsible or liable for any loss, damage or expense that Tenant may incur as a result of any change of utility service, including any change that makes the utility supplied less suitable for Tenant's needs, or for any failure, interference or defect in any utility service. No such change, failure, interference or defect shall constitute an actual or constructive eviction of Tenant, entitle Tenant to any abatement of rent, or relieve Tenant from any of Tenant's obligations under this Lease. If Tenant wishes to use the services of a USP instead of the public utility or Landlord-selected USP which is then serving the Center, no such USP shall be permitted to provide service to Tenant, or to install its lines or other equipment within the Center without obtaining the prior written consent of Landlord, which may be withheld in Landlord's sole and absolute discretion. Tenant shall either pay, or reimburse Landlord for, all costs associated with any change of utility service requested or initiated by Tenant, including the cost of any new utility equipment, within 20 days after Landlord's written demand for payment or reimbursement.

ARTICLE 10 - TENANT'S CONDUCT OF BUSINESS

10.1 Permitted Trade Name and Use. Tenant shall use the Premises solely under the trade name specified in section 1.4 and shall not use the Premises under a different trade name without Landlord's prior written consent, which consent may be withheld in Landlord's sole and absolute discretion. Tenant shall use the Premises solely for the use specified in section 1.13, and for no other use or purpose, and Tenant shall not be permitted to change the use of the Premises without the prior written consent of Landlord, which consent Landlord may grant or withhold in its sole and absolute discretion.

10.2 Covenant to Open and Operate. Tenant covenants to open for business to the public with the Premises fully fixtured ~~and stocked with merchandise~~ and inventory on or before the Commencement Date ~~which is ninety (90) days after Substantial Completion~~. Subject to temporary closures necessitated by casualty, condemnation or permitted remodeling as provided in this Lease, Tenant shall operate continuously and uninterruptedly in the entire Premises the business which it is permitted to operate under this Lease and, at all times, shall keep and maintain within the Premises an adequate stock of merchandise and trade fixtures to service and supply the usual and ordinary requirements of its customers.

10.3 Hours of Business. From and after the Commencement Date ~~and after~~ of (i) ~~the date which Tenant opens for business in the Premises and~~ (ii) ~~the date which is ninety (90) days after Substantial Completion~~, Tenant shall keep the entire Premises continuously open for business during the days and hours established by Landlord from time to time for the Center generally, including, but not limited to, all holidays except Thanksgiving Day, Christmas Day, New Year's Day and Easter Day. Tenant shall have its window displays, exterior signs and exterior advertising displays adequately illuminated continuously during those hours and days that the Premises are required to be open for business to the public.

10.4 Hours for Deliveries. Tenant shall use its reasonable efforts to require all deliveries, (exclusive of United Parcel Service and U.S. Postal Service), loading, unloading and services to the Premises to be completed between 7:00 a.m. and 10:00 a.m. each day. All deliveries, loading, unloading and services to the Premises shall be accomplished within the service areas of the Center.

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10.5 Tenant's Signs.

(a) Tenant shall be permitted to use its standard interior window signage without the need for Landlord's prior approval so long as such signage is professionally prepared and maintained in a neat manner, complies with all applicable laws, ordinances and regulations, and does not, at any time, occupy more than 25% of the storefront windows or doors. Except as provided in the first sentence of this subsection (a), no advertising medium shall be utilized by Tenant which can be heard or seen outside the Premises including, without limitation, flashing lights, searchlights, loudspeakers, phonographs, radios or televisions. Tenant shall not display, paint or place any handbill, bumper sticker or other advertising device on any vehicle parked in the Common Area. Tenant shall not distribute any handbills or other advertising matter in the Center.

(b) Tenant shall not affix upon the exterior of the Premises any sign, advertising placard, name, insignia, trademark, descriptive material or other like item (collectively, the "Exterior Signs"), unless the Exterior Signs (i) comply with all governmental requirements, (ii) comply with the sign criteria for the Center attached hereto as Exhibit F, and (iii) are approved in advance by Landlord, which approval shall not be unreasonably withheld. No later than the Commencement Date, Tenant shall install, on the building in which the Premises are located, an identification Exterior Sign for the Premises. All of the Exterior Signs shall be erected by Tenant at its sole cost and expense, and Tenant shall maintain all of its Exterior Signs in good condition and repair during the Term.

10.6 Radius Restriction. During the Term, none of Tenant, any entity owned by Tenant, any entity controlled directly or indirectly by Tenant, any entity under common control with Tenant, or any shareholder, member or partner holding more than 50% of the shares, ownership interest or partnership interest, as the case may be, of Tenant shall own, operate or have any financial interest in any business similar to the business of Tenant, as set forth in section 1.13, if such other business is opened after the Effective Date and its front door or storefront opening is located within the Radius Restriction Area set forth in section 1.12. Without limiting Landlord's remedies if Tenant violates this covenant, for so long as Tenant is operating the other business, Tenant shall pay to Landlord as additional Minimum Annual Rent, over and above any other rent required to be paid hereunder, 25% of the monthly installment of Minimum Annual Rent provided in section 1.10 hereof, as adjusted pursuant to section 6.2. Such additional Minimum Annual Rent shall be payable monthly, commencing the first day of the calendar month following the opening of such other business location and continuing thereafter on the first day of each calendar month which such other business continues. Notwithstanding anything herein to the contrary, this section 10.6 shall not be deemed to restrict the operation of an escrow or mortgage office within the Radius Restriction Area.

10.7 Center Name. Tenant shall only authorized to use the name of the Center in its advertising as the address reference for the Premises. Tenant shall not use the name of the Center for any to describe the location of Tenant's business and for no other purpose. Landlord reserves the right, in its sole discretion, to change the name and logo of the Center at any time.

10.8 Use Exclusive.

(a) From and after the Effective Date, Landlord shall not execute and deliver any lease for space in the Center or sell any part of the Center pursuant to which Landlord authorizes the primary use of the premises demised for brokerage services for real estate sales ("Exclusive Use").

(b) Notwithstanding any provision of this Lease to the contrary, the Exclusive Use shall not apply: (i) to any portion of the Center not owned, or the use of

which is not controlled by Landlord, and (ii) to any leases in existence as of the Effective Date, and any amendments, extensions and renewals thereof, or any replacement leases therefor with similar uses, and (iii) to any incidental use of any portion of the Center for the conduct of business in conflict with the Exclusive Use. If, however, any occupant under an existing lease requests Landlord's consent to a change in use that, if subject to the provisions of this section, would violate the Exclusive Use right granted to Tenant under this section, Landlord shall withhold such consent so long as such withholding of consent would not constitute a default by Landlord under such other lease.

(c) The failure of Tenant to continuously conduct business in the Premises primarily for the Exclusive Use shall constitute an abandonment of the Exclusive Use, which shall thereupon release Landlord from all obligations with respect to the Exclusive Use. Additionally, Landlord's obligations hereunder shall be conditioned upon Tenant's not being in default under the Lease, after applicable cure periods. No action shall be brought or prosecuted by Tenant against Landlord for any breach of the Exclusive Use if Tenant then is in default after applicable cure periods of any obligation of Tenant under this Lease.

(d) If the Exclusive Use or Tenant's or Landlord's enforcement of same violates, or is alleged or claimed to violate, any law or governmental rule or regulation, Tenant shall indemnify, defend and hold Landlord harmless from and against all claims, losses, damages and expenses, including reasonable attorneys' fees, asserted against or suffered by Landlord resulting from any liability or obligation of Landlord arising out of, or in connection with, such violation, or alleged or claimed violation.

(e) Except as expressly set forth in this Lease, Tenant shall have no exclusive right, express or implied, to conduct business of any nature whatsoever in the Center.

(f) The right granted herein is granted solely to Bennion & Deville Fine Homes, Inc. and is not assignable or transferable, and any attempt to assign or transfer this right shall be void and of no force or effect.

ARTICLE 11 - MAINTENANCE, REPAIRS AND ALTERATIONS

11.1 Landlord's Maintenance Obligations. Landlord shall maintain in good condition and repair the structural components and foundations, roofs and exterior surfaces of the exterior walls of all buildings (exclusive of doors, door frames, door checks, windows, window frames and, unless Landlord elects to include cleaning of the storefronts and storefront awnings of tenants of the Center as part of Common Area maintenance pursuant to Article 12 below, storefronts and storefront awnings). If, however, any repairs or replacements are necessitated by the negligence or willful acts of Tenant or anyone claiming under Tenant, by Tenant's failure to observe or perform any conditions or agreements contained in this Lease, or by alterations, additions or improvements made by Tenant or anyone claiming under Tenant, the cost of same shall be the sole responsibility of Tenant. The cost of some or all of Landlord's maintenance obligations described in the first sentence of this section 11.1 may, at Landlord's sole discretion, be prorated and paid as Common Area Costs (as defined in section 12.4). Notwithstanding anything to the contrary contained in this Lease, Landlord shall not be liable for failure to make repairs required to be made by Landlord under the provisions of this Lease unless Tenant has previously notified Landlord in writing of the need for such repairs, and Landlord has failed to commence and complete the repairs within a reasonable period of time following receipt of Tenant's written notification. Tenant waives the provisions of Sections 1941 and 1942 of the Civil Code of the State of California, or any superseding statute, and of any other law permitting Tenant to make repairs at Landlord's expense. Landlord represents that the Premises has ~~for has not~~ been inspected by a Certified Access Specialist, and has ~~for has not~~ been determined

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to meet all applicable construction-related accessibility standards pursuant to Section 55.53 of Section 1938 of the Civil Code of the State of California.

11.2 Landlord's Right of Entry. Landlord, its agents, contractors, servants and employees may enter the Premises following reasonable notice to Tenant and Landlord's good faith efforts to coordinate such entry with Tenant's on-site management so as to minimize interference with Tenant's business operations (except in a case of emergency): (a) to examine the Premises; (b) to perform any obligation or exercise any right or remedy of Landlord under this Lease; (c) to perform work necessary to comply with laws, ordinances, rules or regulations of any public authority or of any insurance underwriter; (d) to make repairs, alterations, improvements or additions to the Premises or to other portions of the Center as Landlord deems necessary or desirable; and (e) to perform work that Landlord deems necessary to prevent waste or deterioration in connection with the Premises, if Tenant shall fail to commence such work within five days after written notice from Landlord of the need for such work (or if more than five days shall be required because of the nature of the work, if Tenant shall fail to proceed diligently to commence to perform such work after written notice). If Landlord makes any repairs which Tenant is obligated to make pursuant to the terms of this Lease, Tenant shall pay the cost of such repairs, plus interest, to Landlord, as Additional Rent, promptly upon receipt of a bill from Landlord for same.

11.3 Tenant's Maintenance Obligations. Except for Landlord's obligations set forth in section 11.1, Tenant, at its expense, shall keep the Premises including, but not limited to, floor coverings, fixtures, equipment, the storefront or storefronts, all of Tenant's signs, locks and closing devices, all window sashes, casements or frames, doors and door frames, all items of repair, maintenance and improvement or reconstruction as may at any time or from time to time be required with respect to the Premises by any governmental agency having jurisdiction, and all utility facilities and systems exclusively serving the Premises ("Tenant Utility Facilities"), in first-class order, condition and repair, but excluding the roof, exterior walls, structural portions of the Premises and structural floor, and shall make replacements necessary to keep the Premises and Tenant Utility Facilities in such condition. All replacements shall be of a quality equal to or exceeding that of the original.

At the option of Landlord, (a) Tenant shall contract with a service company approved by Landlord for the regular (but not less frequently than quarterly) maintenance, repair and/or replacement (when necessary) of the heating, ventilating and air conditioning equipment serving the Premises (the "HVAC System") and shall provide Landlord with a copy of any service contract within ten days following its execution, or (b) Landlord may contract with a service company of its own choosing (or provide such service itself) for the maintenance, repair and/or replacement of the HVAC System and charge Tenant periodically for the cost of same or based upon estimates in a manner similar to the way in which Common Area Costs are estimated and billed, or as part of Common Area Costs. Landlord shall be entitled to obtain an administration fee of 15% on all of the HVAC System expense billed to Tenant.

11.4 Alterations.

(a) After initially opening the Premises for business, Tenant shall not make or cause to be made to the Premises or the Tenant Utility Facilities any addition, renovation, alteration, reconstruction or change (collectively, "Alterations") (i) costing in excess of \$10,000, (ii) involving structural changes or additions, (iii) affecting the exterior storefront, mechanical systems, fire sprinkler systems, exterior walls, floor slab, ceiling or roof of the Premises, or (iv) requiring or resulting in any penetration of the roof, demising walls or floor slab of the Premises, without first obtaining the written consent of Landlord.

(b) All Alterations shall be made under the supervision of a competent licensed architect or competent licensed structural engineer reasonably satisfactory to

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Landlord and shall be made in accordance with plans and specifications with respect thereto, approved in writing by Landlord before the commencement of work, in accordance with section 3 of Exhibit C.

(c) Tenant shall provide Landlord with not less than ten days' prior written notice of the commencement of any Alterations in the Premises and Landlord shall have the right to enter upon the Premises to post customary notices of non-responsibility with respect thereto. Tenant, at its cost, shall obtain all required governmental permits and approvals for all Alterations, and all such Alterations shall be performed strictly in accordance with all applicable laws, ordinances, rules and regulations of any public authority, in a good and workmanlike manner and diligently prosecuted to completion, to the end that the Premises shall at all times be a complete unit except during the period of work. Construction work in connection with any Alterations shall be performed in such manner as not to obstruct access to the Premises or otherwise interfere with the business by any other occupant of the Center. Subject to section 23.9, below, such Alterations shall be considered as improvements, shall become an integral part of the Premises upon installation thereof and shall not be removed by Tenant. All improvements to the Premises by Tenant including, but not limited to, light fixtures, floor coverings and partitions and other items comprising Tenant's Work pursuant to Exhibit C, but excluding trade fixtures and signs, shall be deemed to be the property of Landlord upon installation thereof. Within 30 days after the completion of any Alterations, Tenant shall deliver to Landlord a set of "as built" plans depicting the Alterations as actually constructed or installed. If Tenant shall make any permitted Alterations, Tenant shall carry "Builder's All Risk" insurance in an amount determined by Landlord covering the construction of such Alterations and such other insurance as Landlord may reasonably require. All of such Alterations shall be insured by Tenant pursuant to section 15.1(d) immediately upon completion thereof.

ARTICLE 12 - COMMON AREA

12.1 Definition of Common Area. "Common Area" shall mean all areas within the exterior boundaries of the Center, now or later made available for the general use of Landlord and other persons entitled to occupy Floor Area in the Center.

12.2 Use of Common Area. The use and occupancy by Tenant of the Premises shall include the non-exclusive use of the Common Area (except those portions of the Common Area on which have been constructed or placed permanent or temporary kiosks, displays, carts and stands and except areas used in the maintenance or operation of the Center) in common with Landlord and the other tenants of the Center and their customers and invitees.

12.3 Control of and Changes to Common Area. Landlord shall have the sole and exclusive control of the Common Area, and right to make changes to the Common Area. Landlord's rights shall include, but not be limited to, the right to (a) restrain the use of the Common Area by unauthorized persons; (b) utilize from time to time any portion of the Common Area for promotional, entertainment and related matters; (c) place permanent or temporary kiosks, displays, carts and stands in the Common Area and to lease same to tenants; (d) temporarily close any portion of the Common Area for repairs, improvements or alterations, to discourage noncustomer use, to prevent dedication or an easement by prescription, or for any other reason deemed sufficient in Landlord's reasonable judgment; (e) renovate, upgrade or change the shape and size of the Common Area or add, eliminate or change the location of improvements to the Common Area including, without limitation, buildings, parking areas, roadways and curb cuts, and (f) to construct buildings on the Common Area.

12.4 Common Area Costs. "Common Area Costs" shall mean all costs and expenses incurred by Landlord in (a) operating, managing, policing, insuring, repairing, replacing and maintaining the Common Area, and the onsite management and/or

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security offices, and nonprofit community buildings as may be located in the Center from time to time (which offices and buildings shall hereinafter be referred to as the "Joint Use Facilities"), (b) maintaining, repairing and replacing the exterior surface of exterior walls (and storefronts and storefront awnings if Landlord has elected to include the cleaning of same as part of Common Area maintenance) and maintaining, repairing and replacing roofs of the buildings from time to time constituting part of the Center, and (c) operating, insuring, repairing, replacing and maintaining all utility facilities and systems including, without limitation, sanitary sewer lines and systems, fire-protection lines and systems, security lines and systems, and storm-drainage lines and systems not exclusively serving the premises of any tenant or store ("Common Utility Facilities"), mall furniture and equipment, seasonal and holiday decorations, Common Area lighting fixtures, Center sign monuments or pylons (but not the tenant identification signs thereon) and directional signage. Common Area Costs shall include the actual costs incurred by Landlord for onsite personnel (whether employees of Landlord or third party contractors) employed in the management and operation of the Center. Common Area Costs shall include, without limitation, the following: expenses for maintenance, landscaping, repaving, resurfacing, repairs, replacements, painting, lighting, cleaning, trash removal, security, fire protection and similar items; depreciation or rent on equipment; charges, surcharges and other levies related to the requirements of any federal, state or local governmental agency; expenses related to the Common Utility Facilities; Taxes on the improvements and land comprising the Common Area; comprehensive or commercial general liability insurance on the Common Area; standard "all risks" fire and extended coverage insurance with, at Landlord's option, business interruption insurance and an earthquake damage endorsement covering the Common Areas; costs of management of the Center (whether such management services are provided by Landlord or a third-party contractor); and, a sum payable to Landlord for administration and overhead in an amount equal to 15% of the Common Area Costs.

12.5 Proration of Common Area Costs. The Common Area Costs shall be prorated in the following manner:

(a) From and after the Commencement Date, Tenant shall pay to Landlord, on the first day of each calendar month, an amount estimated by Landlord to be the monthly amount of Tenant's share of the Common Area Costs. The estimated monthly charge may be adjusted periodically by Landlord on the basis of Landlord's reasonably anticipated costs.

(b) Following the end of each calendar year or, at Landlord's option, its fiscal year, Landlord shall furnish to Tenant a statement covering the calendar or fiscal year (as the case may be) just expired, the actual Common Area Costs for that year, the total Floor Area of the Center, the amount of Tenant's share of the Common Area Costs for that year, and the total payments made by Tenant during that year for the Common Area Costs. If Tenant's share of the Common Area Costs exceeds Tenant's prior payments, Tenant shall pay to Landlord the deficiency within ten days after receipt of such annual statement. If Tenant's payments for the calendar year exceed Tenant's actual share of the Common Area Costs, Tenant may offset the excess against payments of Common Area Costs next due Landlord. Upon termination of this Lease, if Tenant is not in default hereunder, Landlord shall refund to Tenant the amount of any excess, promptly upon Landlord's receipt of Tenant's request therefor.

(c) Portions of the Center are, or may be, owned or leased from time to time by various persons or entities occupying freestanding facilities or other facilities which maintain, repair and replace their own facilities and, consequently, contribute to the Common Area Costs on a basis other than that described herein (collectively, "Other Stores"). The contributions received from the Other Stores towards the Common Area Costs shall be credited against the total Common Area Costs and the balance thereof shall be prorated in the following manner: Tenant's share of the Common Area Costs shall be determined by multiplying the Common Area Costs that remain after

applying the contributions paid by the Other Stores by a fraction, the numerator of which is the number of square feet of Floor Area in the Premises and the denominator of which is the number of square feet of Floor Area in the Center occupied by tenants as of the commencement of the applicable calendar or fiscal year (as the case may be), exclusive of the Floor Area of the Other Stores and exclusive of the Joint Use Facilities. Notwithstanding the foregoing, if certain costs are not attributable to all occupants and/or an occupant maintains a certain service, with Landlord's permission, at that occupant's own expense (for example, without limitation, water, trash pick-up, roof maintenance, fire sprinklers, painting and HVAC maintenance), in such event, Landlord may, at Landlord's sole and absolute discretion, establish alternative Common Area Costs pools and determine different shares, which may be in addition to or substituted for that described above, and which shall, provided the service or services are applicable to the Premises, be based on the ratio that the Floor Area of the Premises bears to the Floor Area of all of occupants of the Center to which a particular pool cost is attributable.

12.6 Parking. Tenant and its employees shall park their vehicles only in the parking areas from time to time designated for that purpose by Landlord. Without limiting the generality of the foregoing, if Landlord implements any program related to parking, parking facilities or transportation facilities including, but not limited to, any program of parking validation, employee shuttle transportation during peak traffic periods or other program to limit, control, enhance, regulate or assist parking by customers of the Center, Tenant shall participate in the program and pay its proportionate share of the costs of the program under reasonable and nondiscriminatory rules and regulations from time to time established by Landlord. Tenant shall furnish Landlord with a list of its and its employees' vehicle license numbers at any time during the Term, within ten days after Landlord's written request. Tenant authorizes Landlord to tow, at Tenant's expense, any vehicle belonging to Tenant or Tenant's employees parked in violation of these provisions and/or to attach violation stickers or notices to any such vehicle. Tenant shall assume responsibility for compliance by its employees with these parking provisions and shall indemnify and defend Landlord and its agents from and against all costs, expenses and liabilities arising from Landlord's reasonable enforcement efforts.

ARTICLE 13 - ASSIGNMENT AND SUBLETTING

13.1 Restrictions.

A. The Center consists of an interdependent group of retail enterprises and the realization of the benefits of this Lease, both to Landlord and Tenant, is dependent upon Tenant's creating and maintaining a successful and profitable retail operation in the Premises. The "tenant mix" of the Center is also vital to the realization of the benefits of this Lease, both to Landlord and Tenant. Accordingly, as a material inducement for Landlord to enter into this Lease and as a matter specifically bargained for between Landlord and Tenant, Tenant shall not transfer, assign, sublet, enter into franchise, license or concession agreements, change ownership or voting control, mortgage, encumber, pledge or hypothecate all or any part of this Lease, Tenant's interest in the Premises or Tenant's business (collectively, "Transfer") without first procuring the written consent of Landlord, which consent shall not be unreasonably withheld, subject to the terms, covenants and conditions contained in this Lease and to the right of Landlord to elect to terminate this Lease as provided in section 13.2(c). Any attempted or purported Transfer without Landlord's prior written consent shall be void and of no force or effect and shall not confer any estate or benefit on anyone. Further, any such attempted or purported Transfer shall entitle Landlord immediately to terminate this Lease and all further obligations of Landlord hereunder. A consent to one Transfer by Landlord shall not be deemed to be a consent to any subsequent Transfer to any other party. No Transfer of this Lease or agreement entered into with respect

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thereto, whether with or without Landlord's consent, shall relieve Tenant or any Guarantor from liability under this Lease.

B. The consent of Landlord required hereunder shall not be unreasonably withheld. It shall not, however, be unreasonable for Landlord to withhold its consent to any proposed Transfer for any of the following reasons, which are not exclusive:

(i) A conflict between the contemplated use of the Premises by the proposed franchisee, licensee, concessionaire, transferee, assignee or sublessee (collectively, "Transferee") with the use permitted by Article 10 hereof;

(ii) The financial worth and/or financial stability of the Transferee is less than that of the Tenant hereunder at the commencement of the Term or not reasonably suitable to Landlord, in Landlord's sole discretion, so as to ensure the ability of the Transferee to perform Tenant's obligations under this Lease for the full Term;

(iii) The Transferee's reputation or proposed use of the Premises could have an adverse effect upon the reputation of the Center and/or any other business located in the Center;

(v) The Transfer would breach any covenant of, or affecting, Landlord concerning radius, location, use or exclusivity, in any other lease, financing agreement or other agreement relating to the Center;

(vi) Tenant is in default, or has been in default beyond any applicable cure period, pursuant to this Lease;

(vii) The nature of the Transferee's proposed or likely use of the Premises would involve any risk, greater than that of Tenant's, of the use, release, disposition or mishandling of Hazardous Materials (as defined in section 23.4); and

(viii) The Transferee is not likely to conduct on the Premises a business of a quality substantially equal to that conducted by Tenant.

13.2 Procedure for Transfer. If Tenant shall desire to make a Transfer hereunder, Tenant shall, in each instance, give at least 60 days' prior written notice of its intention to do so to Landlord, specifying in such notice the type of Transfer, the proposed date thereof, specifically identifying the proposed Transferee, and current and audited (if otherwise available) financial statements and recent per square foot sales figures and advertising budgets for the proposed Transferee's comparable business operations in other locations. Such notice shall be accompanied by a copy of the proposed Transfer agreement. Tenant shall also provide Landlord with such reasonable financial and other information concerning a proposed Transferee as Landlord may request within 15 days of Landlord's receipt of Tenant's notice of intent concerning the proposed Transfer. Landlord, within 30 days after its receipt of both such notice of proposed Transfer from Tenant and its receipt of the above-described documents, by notice to Tenant of its intention to do so, shall (a) withhold consent to the Transfer pursuant to section 13.1B; or (b) consent to such Transfer, in which event the Minimum Annual Rent may be increased under section 13.3 hereof; or (c) terminate this Lease, such termination to be effective 30 days after such notice to Tenant. No Transfer of this Lease or agreement entered into with respect thereto, whether with or without Landlord's consent, shall relieve Tenant or any Guarantor of this Lease from liability under this Lease. If Landlord elects to terminate this Lease pursuant to section 13.2(c) above, Landlord may, if it elects, enter into a new lease covering the Premises with the intended Transferee on such terms as Landlord and such person may agree, or enter into a new lease covering the Premises with any other person; in such event, Tenant shall not be entitled to any portion of the profit, if any, which Landlord may realize on account of such termination and reletting.

BY PLACING THEIR INITIALS AT THE END OF THIS SENTENCE, LANDLORD AND TENANT HEREBY CERTIFY THAT THIS SECTION 13.2 HAS BEEN FREELY NEGOTIATED.

"LANDLORD"

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"TENANT"

13.3 Transfer Rent Adjustment. ~~Except with respect to a Transfer under section 13.7, if~~ Tenant shall make a permitted Transfer hereunder, the Minimum Annual Rent specified in Article 6 shall be increased, effective as of the date of such Transfer, to the higher of: (a) the total rent payable by the Transferee pursuant to such Transfer; or (b) a sum equal to the then fair-market rental value of the Premises as reasonably determined by Landlord, the amount of which Landlord shall notify Tenant before the effective date of the Transfer. In no event shall the Minimum Annual Rent, after Transfer, be less than the Minimum Annual Rent immediately before Transfer. ~~In addition to the foregoing, if Tenant shall make a Transfer hereunder in accordance with the provisions of this Article, Tenant shall repay to Landlord upon the effective date of the Transfer all sums received by Tenant from Landlord for the construction and/or remodeling of the Premises.~~

13.4 Required Documents. Each Transfer to which Landlord has consented shall be evidenced by a written instrument, the form and content of which is satisfactory to Landlord, executed by Tenant and the Transferee, under which the Transferee shall agree in writing for the benefit of Landlord to perform and to abide by all of the terms, covenants and conditions of this Lease to be done, kept and performed by Tenant. Tenant shall reimburse Landlord for Landlord's reasonable attorneys' and reasonable administrative fees incurred in conjunction with the processing of, and documentation for, each proposed Transfer, whether or not the Transfer is consummated.

13.5 Merger and Consolidation. If Tenant is a corporation which, under the current laws, rules or guidelines promulgated by the governmental body or agency having jurisdiction and authority to promulgate the same, is not deemed a public corporation, or is an unincorporated association, partnership, or limited liability company, the transfer, assignment or hypothecation, in the aggregate of more than 49% of the total outstanding stock or interest in such corporation, association, partnership or limited liability company shall be deemed a Transfer within the meaning and provisions of this Article and shall require Landlord's prior written consent.

13.6 Bankruptcy.

A. If this Lease is Transferred to any person or entity pursuant to the provisions of the Bankruptcy Code, 11 U.S.C. Section 101 et seq. (the "Bankruptcy Code"), all monies or other consideration payable or otherwise to be delivered in connection with such Transfer shall be paid or delivered to Landlord, shall be and remain the exclusive property of Landlord, and shall not constitute property of Tenant or of the estate of Tenant within the meaning of the Bankruptcy Code. All monies or other considerations constituting Landlord's property under this section 13.6 not paid or delivered to Landlord shall be held in trust for the benefit of Landlord and shall be promptly paid or delivered to Landlord.

B. Any person or entity to which this Lease is Transferred pursuant to the provisions of the Bankruptcy Code shall be deemed, without further act or deed, to have assumed all of the obligations arising under this Lease on and after the date of such Transfer, including the obligation to operate the business which Tenant is required to operate pursuant to section 1.13 hereof.

13.7 Approved Transfers. Notwithstanding any provision to the contrary in this Lease, Tenant shall have the right, without the consent of Landlord, to assign this Lease

or sublet the Premises to a corporation, person or other entity which: (i) is Tenant's parent or affiliate; (ii) is a wholly owned subsidiary of Tenant; or (iii) is a corporation, person or other entity of which Tenant, Tenant's parent or an affiliate of Tenant owns the controlling ownership interest. Any assignment or subletting pursuant to this section 13.7 shall be subject to the following conditions: (a) Tenant shall remain fully liable during the unexpired term of this Lease; (b) any such assignment or subletting shall be subject to all of the terms, covenants and conditions of this Lease and such assignee or sublessee shall expressly assume the obligations of Tenant under the Lease by a document reasonably satisfactory to Landlord; (c) Tenant shall, in writing, notify Landlord of any Transfer under this section, at least 30 days prior to its occurrence; and (d) after such Transfer, all parties liable for "Tenant" obligations under the Lease shall have a combined tangible net worth equal to or greater than that of the previous Tenant prior to such Transfer. The Transferees described in this section 13.7 are each a "Preapproved Transferee". As used herein, "affiliate" shall mean a person or entity which controls, is controlled by, or is under common control with Tenant.

ARTICLE 14 – INTENTIONALLY DELETED

ARTICLE 14 – PROMOTIONAL CHARGE; ADVERTISING

~~14.1 Promotional Charge. At Landlord's option, Tenant shall either maintain membership in a merchants' association ("Association") or participate in a promotional service ("Service") to be provided by Landlord. If Landlord has established the Service during the Term hereof, it may thereafter cause it to be abolished and establish the Association, and vice versa. In either case, Tenant shall sign any documents necessary to accomplish such change. Tenant shall pay to Landlord, as Tenant's share of the Association or Service, as the case may be, an annual charge ("Promotional Charge") as set forth in section 1.14. The Promotional Charge in effect from time to time shall be increased as of January 1 of each calendar year by the greater of (a) 5%, or (b) the increase in the Consumer Price Index calculated as follows: The Promotional Charge as set forth in section 1.14 shall be increased on the first January 1 following the Commencement Date and each January 1 thereafter (each such date is hereinafter referred to as an "Adjustment Date") by the percentage increase, if any, in the Index for the calendar month three months before the calendar month during which the subject Adjustment Date occurs, as compared to the Index for the calendar month which is 15 months before the calendar month during which the subject Adjustment Date occurs. Tenant's obligation to pay the Promotional Charge shall commence upon the Commencement Date. The Promotional Charge shall be paid by Tenant as Additional Rent, at Landlord's option, (a) within ten days of billing for same, without deduction or offset, or (b) monthly or quarterly, without demand and without deduction or offset.~~

ARTICLE 15 - INSURANCE

15.1 Tenant's Insurance. Tenant, at its sole cost and expense, commencing on the earlier of the date of Substantial Completion or the date Tenant is given earlier access to the Premises, and continuing during the Term, shall procure, pay for and keep in full force and effect the following types of insurance, in at least the amounts and in the forms specified below:

(a) Comprehensive or commercial general liability insurance with coverage limits of not less than the combined single limit for bodily injury, personal injury, death and property damage liability specified in section 1.15 or the limit carried by Tenant, whichever is greater, insuring against all liability of the insureds with respect to the Premises or arising out of the maintenance, use or occupancy of the Premises or related to the exercise of any rights of Tenant pursuant to this Lease, subject to increases in amount as Landlord may reasonably require from time to time to ensure that the insurance maintained by Tenant hereunder is in amounts consistent with

prudent practice in the shopping center industry. All such liability insurance shall specifically insure the performance by Tenant of the indemnity agreement as to liability for injury to or death of persons and injury or damage to property set forth in section 15.5. Further, all such liability insurance shall include, but not be limited to, personal injury, blanket contractual, cross-liability and severability of interest clauses, broad-form property damage, independent contractors, owned, nonowned and hired vehicles and, if alcoholic beverages are served, sold, consumed or obtained in the Premises, liquor-law liability.

(b) Worker's compensation coverage in an amount adequate to comply with law, and employer's liability coverage with a limit of not less than \$2,000,000.

(c) Plate-glass insurance covering all plate glass on the Premises at full replacement value. Tenant shall have the option either to insure this risk or to self-insure.

(d) Insurance covering all of Tenant's Work, Tenant's leasehold improvements and Alterations permitted under Article 11, trade fixtures, merchandise and personal property from time to time in, on or about the Premises, in an amount not less than their full replacement value from time to time, including replacement cost endorsement, providing protection against any peril included within the classification Fire and Extended Coverage, sprinkler damage, vandalism, malicious mischief, earthquake and such other additional perils as covered in an "all risks" standard insurance policy. Any policy proceeds shall be used for the repair or replacement of the property damaged or destroyed unless this Lease shall cease and terminate under the provisions of Article 16.

15.2 Policy Form. All policies of insurance required of Tenant herein shall be issued by insurance companies with a general policy holder's rating of not less than "A-" and a financial rating of not less than Class "VIII", as rated in the most current available "Best's Key Rating Guide", and which are qualified to do business in the State of California. All such policies, except for the Worker's Compensation coverage, shall name, and shall be for the mutual and joint benefit and protection of, Landlord, Mortgagee(s), Tenant and Landlord's agents as additional insureds. The policies described in subsections (c) and (d) of section 15.1 shall also name Landlord and Mortgagee(s) as loss payees, if Landlord shall furnish to Tenant the names and addresses of such Mortgagee(s). Executed copies of the policies of insurance or certificates thereof shall be delivered to Landlord before Tenant, its agents or employees shall enter the Premises for any purpose. Thereafter, executed copies of renewal policies or certificates thereof shall be delivered to Landlord within 30 days before the expiration of the term of each policy. All policies of insurance delivered to Landlord must contain a provision that the company writing the policy will give to Landlord 30 days' prior written notice of any cancellation or lapse, and the effective date of any reduction in the amounts of insurance. All policies required of Tenant herein shall be endorsed to read that such policies are primary policies and any insurance carried by Landlord or Landlord's property manager shall be noncontributing with such policies. No policy required to be maintained by Tenant shall have a deductible greater than \$25,000 unless approved in writing by Landlord.

15.3 Blanket Policies. Notwithstanding anything to the contrary contained in this Article 15, Tenant's obligation to carry insurance may be satisfied by coverage under a so-called blanket policy or policies of insurance. The coverage afforded Landlord will not, however, be reduced or diminished and the requirements set forth in this Lease shall otherwise be satisfied by such blanket policy or policies.

15.4 Reimbursement of Insurance Premiums by Tenant. Landlord, at all times from and after Substantial Completion, shall maintain in effect during the Term a policy or policies of insurance covering the building of which the Premises are a part (including boiler and machinery) in an amount not less than 90% of the full replacement cost

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(exclusive of the cost of excavations, foundations and footings) or the amount of insurance Mortgagee(s) may require Landlord to maintain, whichever is the greater, providing protection against any peril generally included in the classification "Fire and Extended Coverage" and such other additional insurance as covered in an "all risks" standard insurance policy, with earthquake coverage and loss of rental income insurance if deemed necessary by Landlord in Landlord's sole judgment, or if required by Mortgagee(s) or by any federal, state, county, city or local authority. Landlord's obligation to carry this insurance may be brought within the coverage of any so-called blanket policy or policies of insurance carried and maintained by Landlord. From and after the Commencement Date, Tenant shall pay to Landlord, as Additional Rent, its share of the cost to Landlord of this insurance. The cost of such insurance for any partial year of the Term shall be prorated. Payment shall be made in the same manner set forth for payment of Taxes in section 8.1(b). Tenant's share of the premiums for this insurance shall be a fractional portion of the premiums, the numerator of which shall be the Floor Area of the Premises and the denominator of which shall be the Floor Area of all areas existing which are covered by this insurance and are occupied as of the commencement of the applicable calendar or fiscal year, exclusive of the Joint Use Facilities. Tenant acknowledges that Landlord shall have the right to maintain commercially reasonable deductibles and/or self-insured retentions in connection with any insurance carried by Landlord pursuant to this Lease, as determined by Landlord in its reasonable business judgment. In the event of an insurance loss covered by the insurance carried by Landlord pursuant to this Lease, Tenant shall be required to pay its share of such deductibles or self-insured retentions, as determined pursuant to this section 15.4 or section 12.5, as applicable.

15.5 Indemnity. "Landlord" for the purposes of this section 15.5 shall mean and include Landlord, Mortgagee(s) and Landlord's and Mortgagee's(s) directors, officers, shareholders, members, managers, agents and employees. To the fullest extent permitted by law, Tenant covenants with Landlord that Landlord shall not be liable for any damage or liability of any kind or for any injury to or death of persons, or damage to property of Tenant or any other person occurring from and after Substantial Completion (or such earlier date if Tenant is given earlier access to the Premises) from any cause whatever related to the use, occupancy or enjoyment of the Premises by Tenant, or any person thereon or holding under Tenant including, but not limited to, damages resulting from any labor dispute. Tenant shall pay for, defend (with an attorney approved by Landlord), indemnify and save Landlord harmless against and from any real or alleged damage or injury, and from all claims judgments, liabilities, costs and expenses arising out of or connected with Tenant's use of the Premises and its facilities, any repairs, Alterations or improvements (including original improvements and fixtures specified as Tenant's Work) which Tenant may make or cause to be made upon the Premises, any breach of this Lease by Tenant, and any loss or interruption of business or loss of rental income resulting from any of the foregoing. Although Tenant shall in all cases accept any tender of defense of any action or proceeding in which Landlord is named or made a party and shall, notwithstanding any allegations of negligence or misconduct on the part of Landlord, defend Landlord as provided herein, Tenant shall not be liable for such damage or injury to the extent and in the proportion that the same is ultimately determined to be attributable to the negligence or willful misconduct of Landlord. The obligations to indemnify set forth in this section 15.5 shall include all attorneys' fees, litigation costs, investigation costs and court costs and all other costs, expenses and liabilities incurred by the indemnified party from the first notice that any claim or demand is to be made or may be made. All indemnity obligations under this section 15.5 shall survive the expiration or termination of this Lease.

15.6 Waiver of Subrogation. Landlord and Tenant each waives any rights each may have against the other on account of any loss or damage occasioned to Landlord or Tenant, as the case may be, their respective property, the Premises or its contents, or to other portions of the Center arising from any liability, loss, damage or injury caused by fire or other casualty for which property insurance is carried or required to be carried pursuant to this Lease. The insurance policies obtained by Landlord and Tenant

pursuant to this Lease shall contain endorsements waiving any right of subrogation which the insurer may otherwise have against the noninsuring party. If Landlord has contracted with a third party for the management of the Center, the waiver of subrogation by Tenant herein shall also run in favor of such third party.

15.7 Failure by Tenant to Maintain Insurance. If Tenant refuses or neglects to secure and maintain insurance policies complying with the provisions of this Article 15, or to provide copies of policies or certificates or copies of renewal policies or certificates within the time provided in section 15.2, Landlord may, after providing written notice to Tenant of its intention to do so, secure the appropriate insurance policies and Tenant shall pay, within 30 days following demand, the cost of same to Landlord, as Additional Rent.

ARTICLE 16 - DAMAGE

16.1 Insured Casualty. In the case of damage by fire or other perils covered by the insurance specified in section 15.4, the following provisions shall apply:

(a) Within a period of 60 days after all applicable permits have been obtained (which permits Landlord shall promptly apply for and diligently seek), Landlord shall, but only to the extent that proceeds of such insurance are available to Landlord for such purpose, if at all, commence such repair, reconstruction and restoration of the Premises as Landlord, in its sole judgment, deems necessary, and shall diligently prosecute the same to completion. Tenant, at its cost, shall, however, repair and restore all items of Tenant's Work and replace its stock, trade fixtures, furniture, furnishings and equipment. Tenant shall commence this work promptly upon delivery of possession of the Premises to Tenant and shall prosecute same to completion within the Time to Complete Tenant's Work set forth in section 1.9.

(b) Notwithstanding the foregoing, (i) if the Premises are totally destroyed, (ii) if the proceeds of such insurance paid to Landlord are not sufficient to pay the entire cost of such repair, reconstruction and restoration, (iii) if the Center is destroyed to an extent of at least 50% of the then full replacement cost thereof as of the date of destruction, (iv) if the destruction to the Premises occurs during the last two years of the Term, or (v) if, before it is begun, it is reasonably estimated that repair or restoration after a casualty which Landlord is obligated under this Lease to undertake will take more than 365 days after the issuance of the building permit for such work to complete, Landlord and Tenant shall each have the right to terminate this Lease. In each case, the termination right shall be exercised by the terminating party's giving written notice to the other party within 30 days after the date of damage.

16.2 Uninsured Casualty. If the Premises or the Center is damaged as a result of any casualty not covered by the insurance specified in section 15.4, Landlord, within 90 days following the date of such damage, may, in its sole discretion, elect to commence repair, reconstruction or restoration of the Premises to the extent provided herein and diligently prosecute the same to completion, or not so to repair, reconstruct or restore the damaged property, in which event, this Lease shall cease and terminate upon the expiration of such 90-day period. If Landlord elects to restore the Premises, Tenant shall have the same repair, restoration and replacement obligations it has pursuant to section 16.1(a).

16.3 Distribution of Proceeds. If this Lease shall be terminated pursuant to this Article 16, all proceeds from the Fire and Extended Coverage insurance carried pursuant to Article 15 and all insurance covering Tenant's Work and Tenant's leasehold improvements, but excluding proceeds for trade fixtures, merchandise, signs and other personal property, shall be disbursed and paid to Landlord.

16.4 Abatement. In the event of repair, reconstruction and restoration, as provided in this Article 16, the Minimum Annual Rent and Additional Rent payable hereunder shall be thereafter abated proportionately by the degree to which Tenant's use of the Premises is impaired during the remainder of the period of repair, reconstruction and restoration. The amount of Minimum Annual Rent and Additional Rent abated pursuant to this section 16.4 shall not, however, exceed the amount of loss of rental income insurance proceeds actually received by Landlord. Tenant shall continue the operation of its business on the Premises during any such period to the extent reasonably practicable from the standpoint of prudent business management. Tenant shall not be entitled to any compensation or damages from Landlord for loss of use of the whole or any part of the Premises, the building of which the Premises are a part or the Center, Tenant's personal property or any inconvenience or annoyance occasioned by such damage, repair, reconstruction or restoration.

16.5 Waiver of Termination. Tenant waives any statutory rights of termination which may arise by reason of any partial or total destruction of the Premises.

ARTICLE 17 - EMINENT DOMAIN

17.1 Taking. "Taking" shall mean an appropriation or taking under the power of eminent domain by any public or quasi-public authority, or a voluntary sale or conveyance in lieu of condemnation but under threat of condemnation.

17.2 Total Taking. In the event of a Taking of the entire Premises, this Lease shall terminate and expire as of the date possession is delivered to the condemning authority. In such event, Landlord and Tenant shall each be released from any liability accruing pursuant to this Lease after the date of such termination, but Minimum Annual Rent and Additional Rent for the last month of Tenant's occupancy shall be prorated, and Landlord shall refund to Tenant any Minimum Annual Rent and Additional Rent paid in advance.

17.3 Partial Taking. If (a) there is a Taking of more than 25% of the Floor Area of the Premises, or (b) there is a Taking of a portion of the Premises and, regardless of the amount taken, the remainder of the Premises is not one undivided parcel of property, either Landlord or Tenant may terminate this Lease, upon giving notice in writing of such election to the other party within 30 days after receipt by Tenant from Landlord of written notice that a portion of the Premises has been so appropriated or taken. In each case, the termination of this Lease shall be effective as of the date Tenant is required to vacate the Premises, or the portion of the Premises taken.

17.4 Award. The entire award or compensation in any condemnation proceeding, whether for a total or partial Taking, or for diminution in the value of the leasehold or for the fee, shall belong to and be the property of Landlord; nevertheless, the Mortgagee shall have first priority with respect thereto, to the extent of the unpaid balance of principal and interest on its loan. Without derogating the rights of Landlord or Mortgagee under the preceding sentence, Tenant shall be entitled to recover from the condemning authority such compensation as may be separately awarded by the condemning authority to Tenant or recoverable from the condemning authority by Tenant in its own right for the taking of trade fixtures and equipment owned by Tenant and for the expense of removing and relocating its trade fixtures and equipment, but only if the compensation awarded to Tenant shall be in addition to and shall not diminish the compensation awarded to Landlord as provided above.

17.5 Continuation of Lease. In the event of a Taking, if Landlord and Tenant elect not to terminate this Lease as provided above (or have no right to so terminate), Landlord shall, at Landlord's cost and expense as soon as reasonably possible after the Taking, restore the Premises (to the extent of the condemnation proceeds) on the land remaining, to a complete unit of like quality and character as existed before the Taking.

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Thereafter, Minimum Annual Rent and Additional Rent shall be reduced on an equitable basis, taking into account the relative value of the portion taken as compared to the portion remaining, and Landlord shall be entitled to receive the total award or compensation in such proceedings.

ARTICLE 18 - DEFAULTS BY TENANT

18.1 Events of Default. If Tenant shall at any time be in default with respect to any payment of Minimum Annual Rent, Additional Rent or any other charge payable by Tenant pursuant to this Lease for a period of three days after written notice from Landlord to Tenant (any notice shall, however, be in lieu of, and not in addition to, any notice required under Section 1161 of the Code of Civil Procedure of California or any similar, superseding statute), or if Tenant shall be in default in the prompt and full performance of any other of its promises, covenants or agreements herein contained for more than 30 days (if, however, the default cannot be rectified or cured within such 30-day period, the default shall be deemed to be rectified or cured if Tenant, within such 30-day period, shall have commenced to rectify or cure the default and shall thereafter diligently and continuously prosecute the same to completion) after written notice thereof from Landlord to Tenant specifying the particulars of the default (any notice shall, however, be in lieu of, and not in addition to, any notice required under Section 1161 of the Code of Civil Procedure of California or any similar, superseding statute), or if Tenant shall vacate or abandon the Premises, or if Tenant shall make any general assignment for the benefit of creditors, or if there be filed against Tenant a petition to have Tenant adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, the same is dismissed within 60 days), or if Tenant shall institute any proceedings under the Bankruptcy Code or any similar or successor statute, code or act, or if an appointed trustee or receiver shall take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease where possession is not restored to Tenant within 30 days, or if substantially all of Tenant's assets located at the Premises or Tenant's interest in this Lease shall be attached or judicially seized where the seizure is not discharged within 30 days; provided, however, Landlord shall only be required to give written notice with an opportunity to cure when provided for above two (2) times in any year for the same type of default, and any further default of the same type within such year shall be an automatic event of default with no opportunity to cure the same), then:

Landlord may treat the occurrence of any one or more of the foregoing events as a breach of this Lease and, in addition to all other rights or remedies of Landlord by law provided, Landlord shall have the right, at Landlord's option, without further notice or demand of any kind to Tenant or any other person, (a) to declare the Term ended and to re-enter and take possession of the Premises and remove all persons therefrom, or (b) without declaring this Lease terminated and without terminating Tenant's right to possession, to re-enter the Premises and occupy the whole or any part for and on account of Tenant and to collect any unpaid rents and other charges which have become payable or which may thereafter become payable, or (c) even though it may have re-entered the Premises as provided in clause (b) above, to thereafter elect to terminate this Lease and all of the rights of Tenant in or to the Premises. In any case in which Landlord shall re-enter and occupy the whole or any part of the Premises, by unlawful detainer proceedings or otherwise, Landlord, at its option, may repair, alter, subdivide or change the character of the Premises from time to time in such manner as Landlord deems best, and may relet the Premises or any part thereof and receive the rents therefor, and none of such actions shall constitute a termination of this Lease, a release of Tenant from any liability hereunder, or result in the release or exoneration of any Guarantor. Landlord shall not be deemed to have terminated this Lease or the liability of Tenant to pay any Minimum Annual Rent, Additional Rent or other charges later accruing by any re-entry of the Premises pursuant to section 18.1(b) above, or by any action in unlawful detainer or otherwise to obtain possession of the Premises,

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unless Landlord shall have notified Tenant in writing that it has so elected to terminate this Lease.

18.2 Termination of Lease. If Landlord shall elect to terminate this Lease pursuant to the provisions of sections 18.1(a) or (c) above, Landlord may recover from Tenant, as damages, the following: (a) The worth at the time of award of any unpaid rent which had been earned at the time of the termination, plus (b) the worth at the time of award of the amount by which the unpaid rent, which would have been earned after termination until the time of award, exceeds the amount of rent loss Tenant proves could have been reasonably avoided, plus (c) the worth at the time of award of the amount by which the unpaid rent for the balance of the Term, after the time of award, exceeds the amount of rent loss that Tenant proves could be reasonably avoided, plus (d) any other amounts necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which, in the ordinary course of things, would be likely to result therefrom including, but not limited to, any costs or expenses incurred by Landlord in (i) retaking possession of the Premises, including reasonable attorneys' fees therefor, (ii) maintaining or preserving the Premises after any default, (iii) preparing the Premises for reletting to a new tenant, including repairs or alterations to the Premises, (iv) leasing commissions, and (v) any other costs necessary or appropriate to relet the Premises, plus (e) at Landlord's election, any other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the laws of the State of California.

As used in subsections (a) and (b) above, the "worth at the time of award" is computed by allowing interest at the Interest Rate. As used in subsection (c) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank situated nearest to the location of the Center at the time of award plus 1%. 10.6

18.3 Definition of Rent. For purposes of this Article 18 only, the term "rent" shall be deemed to be Minimum Annual Rent, Additional Rent and all other sums required to be paid by Tenant pursuant to the terms of this Lease. All sums, other than Minimum Annual Rent, shall, for the purpose of calculating any amount due under the provisions of section 18.2(c) above, be computed on the basis of the average monthly amount accruing during the immediately preceding 60-month period, except that if it becomes necessary to compute these sums before the 60-month period has occurred, these sums shall be computed on the basis of the average monthly amount accruing during the shorter period.

ARTICLE 19 - DEFAULTS BY LANDLORD

19.1 Landlord's Liability. If Landlord fails to perform any of the covenants provisions or conditions contained in this Lease on its part to be performed within 30 days after written notice of default (or if more than 30 days shall be required because of the nature of the default, if Landlord shall fail to proceed diligently to commence to cure the default after written notice), Landlord shall be liable to Tenant for all actual damages sustained by Tenant as a direct result of Landlord's breach, but Tenant shall not be entitled to terminate this Lease, or to an offset or a defense against Tenant's obligation to pay rent, as a result thereof. Notwithstanding anything contained in this Lease to the contrary, any judgment against Landlord resulting from any default or other claim under this Lease shall be satisfied only out of the net rents, issues, profits and other income actually received from the operation of the Center, and Tenant shall have no claim against Landlord (as Landlord is defined in section 15.5) or any of Landlord's or its shareholders', partners', members', directors', officers' or managers' personal assets for satisfaction of any judgment with respect to this Lease.

19.2 Cure by Assignee. If any part of the Premises is at any time subject to a first mortgage or a first deed of trust, if this Lease or the rents due from Tenant

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hereunder are assigned by Landlord to a Mortgagee ("Assignee" for purposes of this Article 19 only) and if Tenant is given written notice of the assignment including the post office address of Assignee, Tenant shall also give written notice of any default by Landlord to Assignee, specifying the default in reasonable detail and affording Assignee a reasonable opportunity to make performance for and on behalf of Landlord. If and when Assignee has made performance on behalf of Landlord, the default shall be deemed cured.

ARTICLE 20 - SUBORDINATION, ATTORNMENT AND ESTOPPEL CERTIFICATES

20.1 Subordination. Within ten days after written request of Landlord, Landlord's mortgagee(s), the beneficiary(ies) of deed(s) of trust of Landlord or lessor(s) of Landlord (each, a "Mortgagee"), Tenant will subordinate its rights pursuant to this Lease in writing to the lien of any mortgages, deeds of trust or the interest of any leases in which Landlord is the lessee (or, at Landlord's option, cause the lien of said mortgages, deeds of trust or the interest of any leases in which Landlord is the lessee to be subordinated to this Lease) and to all advances made or hereafter to be made upon the security thereof.

20.2 Attornment. If any proceedings are brought for foreclosure, or in the event of the exercise of the power of sale under any mortgage or deed of trust made by Landlord encumbering the Premises, or if a lease in which Landlord is the lessee shall be terminated, Tenant shall attorn to the purchaser or lessor under such lease upon any foreclosure, sale or lease termination and recognize the purchaser or lessor as Landlord under this Lease.

20.3 Estoppel Certificates. Tenant shall, within ten days after Landlord's written request, execute, acknowledge and deliver to Landlord, a statement in writing in substantially the form of Exhibit "I" hereto or in such other form as may be required by Landlord's Mortgagee ("Estoppel Certificate"). It is intended that any Estoppel Certificate delivered pursuant hereto may be relied upon by Landlord, any purchaser or prospective purchaser of the Center, any current or prospective Mortgagee, or by any other party who may reasonably rely on such statement. At Landlord's option, the failure to deliver such Estoppel Certificate within such time shall be a default under this Lease by Tenant, and it shall be conclusively presumed and shall constitute a representation and warranty by Tenant, that (a) this Lease is in full force and effect without modification, and (b) Landlord is not in breach or default of any of its obligations under this Lease.

ARTICLE 21 - QUIET ENJOYMENT

Upon Tenant's payment of Minimum Annual Rent and Additional Rent and its observation and performance of all of the covenants, terms and conditions of this Lease to be observed and performed by Tenant, Tenant shall peaceably and quietly hold and enjoy the Premises from and after delivery thereof to Tenant, subject to (a) the rights of the parties as set forth in this Lease, (b) any mortgages, deeds of trust, or ground or underlying leases to which this Lease is subordinate, and (c) all matters of record.

ARTICLE 22 - TITLE OF LANDLORD

Landlord covenants that, as of the date of this Lease, there are no liens upon its estate other than (a) covenants, conditions, restrictions, easements, ground leases, mortgages or deeds of trust (collectively, "Agreements"); (b) the effect of any zoning laws of the city, county and state where the Center is situated, (c) liens and encumbrances which do not prevent Tenant from using the Premises as for the use set forth in section 1.13; and (d) general and special taxes not delinquent. (i) As to its

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leasehold estate, Tenant and all persons in possession or holding under it will conform to and will not violate the terms of the Agreements or any matters of record, and (ii) this Lease is subordinate to the Agreements and any amendments or modifications thereto. If the Agreements are not, however, of record as of the date of this Lease, this Lease shall automatically become subordinate to the Agreements upon recordation so long as the Agreements do not prevent Tenant from using the Premises for the use set forth in section 1.13. Tenant shall execute and return to Landlord, within ten days of written demand by Landlord, an agreement in recordable form subordinating this Lease to the Agreements.

ARTICLE 23 - MISCELLANEOUS

23.1 Notices. Every notice, demand or request (collectively, "Notice") required hereunder or by law to be given by either party to the other shall be in writing. Every provision of this Lease which provides that either party shall notify the other of any particular matter shall be governed by this section. Notices shall be given by personal service, by United States certified or registered mail, postage prepaid, return receipt requested, or by telegram, mailgram, or same-day or overnight private courier, addressed to the party to be served at the address indicated in section 1.19 or such other address as the party to be served may from time to time designate in a Notice to the other party. Notice personally served shall be effective when delivered. If served by registered or certified mail, Notice shall be conclusively deemed served on the date shown on the return receipt, but if delivery is refused or the Notice is unclaimed, Notice shall conclusively be deemed given 48 hours after mailing. If served by telegram, mailgram or private courier, Notice shall be conclusively deemed given as confirmed by the telegraphic agency or private courier service making delivery. Copies of any Notice shall be sent to the addresses, if any, designated for service of copies of Notices in section 1.19; but the inadvertent failure to serve a copy of a Notice, either to the address so designated or in the manner provided in this section, shall not render service of Notice invalid if the original Notice is served in accordance with this section.

23.2 Security Deposit. Concurrently with Tenant's first delivery to Landlord of Tenant-executed counterparts of this Lease, Tenant shall deposit with Landlord the security deposit referenced in section 1.16 hereof ("Security Deposit"). The Security Deposit shall be held by Landlord as security for the faithful performance by Tenant of all of the terms, covenants and conditions of this Lease to be kept and performed by Tenant during the Term. If Tenant defaults with respect to any provision of this Lease, including but not limited to the provisions relating to the payment of rent, Landlord may (but shall not be required to) use, apply or retain all or any part of the Security Deposit for the payment of any rent or any other sum in default or for the payment of any amount which Landlord may spend or become obligated to spend by reason of Tenant's default, or to compensate Landlord for any other loss or damage which Landlord may suffer by reason of Tenant's default. If any portion of the Security Deposit is so used or applied, Tenant shall, within five days after written demand therefor, deposit funds with Landlord in an amount sufficient to restore the Security Deposit to its original amount. Landlord shall not be required to keep the Security Deposit separate from its general funds, and Tenant shall not be entitled to interest on the Security Deposit. If Tenant shall fully and faithfully perform every provision of this Lease to be performed by it, the Security Deposit, or any balance thereof, shall be returned to Tenant (or, at Landlord's option, to the last assignee of Tenant's interest hereunder) within 30 days following the expiration of the Term. Landlord may deliver the Security Deposit to the purchaser of Landlord's interest in the Premises, and Landlord shall then be discharged from any further liability with respect to the Security Deposit.

23.3 Relocation. ~~Landlord shall have the right to relocate the Premises to another part of the Center in accordance with the following: (a) The new Premises shall be substantially the same in size, decor and nature as the Premises described in this Lease and shall be placed in that condition by Landlord at its cost, (b) the physical~~

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~~relocation of the Premises shall be accomplished by Landlord at its cost, (c) Landlord shall give Tenant at least 30 days' notice of Landlord's intention to relocate the Premises, (d) Landlord shall diligently pursue the relocation of the Premises, and Minimum Annual Rent and all other sums and charges payable under this Lease shall abate during the period of such relocation, (e) all incidental costs incurred by Tenant as a result of the relocation including, without limitation, costs incurred in changing addresses on stationery, business cards, directories, advertising and other such items shall be paid by Landlord in a sum not to exceed \$1,000, (f) Landlord shall not have the right to relocate the Premises more than two times during the Term, (g) if the Floor Area of the relocated Premises differs from that of the Premises as they existed before the relocation, Minimum Annual Rent shall be adjusted to a sum computed by multiplying the Minimum Annual Rent by a fraction, the numerator of which shall be the total number of square feet of Floor Area in the relocated Premises and the denominator of which shall be the total number of square feet of Floor Area in the Premises before relocation, and (h) the parties shall immediately execute an amendment to this Lease specifying the relocation of the Premises and the adjustment of Minimum Annual Rent, if any.~~
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23.4 Hazardous Materials. Tenant represents and warrants that it and its agents, servants, employees, contractors, and anyone else acting on Tenant's behalf will not, without Landlord's prior written consent (except in connection with small amounts of office supplies and cleaning supplies) handle, store, dispose, produce, use, permit the escape or release of, transport or manufacture any hazardous waste, hazardous materials or hazardous substances as defined or regulated by local, state or federal law on the Premises or any portion of the Center (collectively, "Hazardous Materials"). Without limitation, Hazardous Materials shall include those described in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et seq.; any applicable state or local laws, and the regulations adopted under these Acts.

If Tenant intends or does store, use, handle or dispose of any Hazardous Materials on the Premises or any portion of the Center (collectively, "Tenant's Use"), Tenant shall so notify Landlord in writing at least ten days before their first appearance on the Premises or any portion of the Center, and secure Landlord's written approval thereto; Tenant's failure to do so shall constitute a default under this Lease. Tenant shall comply with all of Landlord's rules and regulations concerning Tenant's Use. Such notification shall include identification (type and common name) and quantity of each Hazardous Material which is intended for Tenant's Use. Landlord may, at any time or from time to time, at Landlord's sole discretion, and at Tenant's sole cost and expense, require Tenant to conduct specific monitoring or evaluation activities with respect to Hazardous Materials on the Premises, or Tenant's Use, to be performed by environmental specialists approved in advance by Landlord. The scope of any such monitoring or evaluation activities shall also be approved in advance by Landlord. Such monitoring and/or evaluation activity may include, without limitation, soil testing, air testing, production waste stream analysis and groundwater testing.

Tenant shall promptly notify Landlord of, and shall promptly provide Landlord with, true, correct, complete and legible copies of, any environmental notices relating to the Premises that may be delivered to, or served upon, Tenant. If Tenant shall become aware of the existence of, the presence of, or the contamination of the Premises or the Center with, Hazardous Materials, Tenant shall give Landlord prompt written notice thereof. Notwithstanding any provision of this Lease, Tenant may not perform, or cause to be performed, any environmental investigation or assessment at or in the Premises.

If Tenant or any of its agents, servants, employees, contractors or suppliers or anyone else acting on Tenant's behalf violates the foregoing provisions by handling, storing, disposing, producing, using, transporting or manufacturing any Hazardous Materials in, on or about the Premises or the Center without Landlord's prior written

consent, or fails to comply with any requirements applicable to such Hazardous Materials, including the other provisions of this Section 23.4, Tenant shall indemnify, defend and hold Landlord harmless from any damage, claim, injury, cost, expense or liability arising therefrom or related thereto, including all costs of clean-up, attorneys' fees and court costs.

The clean-up and disposal of all Hazardous Materials on or from the Premises shall be performed by Tenant at Tenant's sole cost and expense and shall be performed in accordance with all applicable laws, rules, regulations and ordinances. The foregoing notwithstanding, Landlord in Landlord's sole and absolute discretion may elect, by written notice to Tenant, to perform the clean-up and disposal of such Hazardous Materials on or from the Premises. In such event, Tenant shall pay to Landlord the actual cost of same upon receipt from Landlord of Landlord's written invoice therefor. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of Hazardous Materials on or from the Premises, or resulting from the actions or inaction of Tenant or of anyone entering upon the Center by or under Tenant, then the reasonable costs thereof shall be reimbursed by Tenant to Landlord upon demand as Additional Rent. In addition, Tenant shall execute affidavits, representations and the like, from time to time at Landlord's request, concerning Tenant's best knowledge and belief regarding the presence of Hazardous Materials on or from the Premises.

In all events, Tenant shall indemnify and hold Landlord and the Center harmless pursuant to and under section 15.5 hereof from any damage, claim, injury, cost, expense or liability associated with any release of Hazardous Material on or from the Premises occurring during the Term or while Tenant is in possession, or elsewhere if caused by Tenant or persons associated with Tenant entering upon the Center or acting under Tenant. The provisions of this Section 23.4 shall survive the expiration or termination of this Lease.

23.5 Center Remodeling. Landlord may, at its election (but shall in no event be obligated to), construct, modify, reduce or expand the Center or any part thereof. Tenant acknowledges that such construction, modification, reduction or expansion of the Center or any part thereof, if and when it may occur, will involve barricading, materials storage, noise, dust, vibration, scaffolding, demolition, structural alterations, the presence of workmen and equipment, rearrangement of parking areas, common areas, roadways and lighting facilities, redirection of vehicular and pedestrian traffic, and other inconveniences typically associated with construction.

Tenant hereby grants to Landlord and its authorized employees, agents, contractors, architects, structural engineers and representatives such licenses and easements in, upon, through, above or below the Premises and any portion thereof as shall be reasonably required: (a) for the installation, inspection, surveying, maintenance and/or construction of mains, conduits, shafts, columns, footings, piers, pipes or other facilities to serve any building or any part thereof including, without limitation, the premises of any occupant of the Center; and (b) for any future construction, modification, reduction or expansion of the Center. Landlord shall, however, use its reasonable efforts to minimize any unreasonable interference with Tenant's use, occupancy or enjoyment of the Premises as contemplated by this Lease caused by Landlord's exercise of such licenses and easements.

In connection with such construction, modification, reduction or expansion of the Center, Tenant shall permit Landlord and its authorized employees, agents, contractors, architects, structural engineers and representatives to enter the Premises at all reasonable times for the purpose of inspecting, working in, and/or surveying them. During any time that Landlord or its authorized employees, agents, contractors, architects, structural engineers or representatives enter the Premises pursuant to this section, Landlord shall, at its sole cost and expense, provide adequate security for Tenant's inventory and personal property located in the Premises.

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Tenant acknowledges that such construction, modification, reduction or expansion of any portion of the Center by Landlord may require the closing of the Premises for business at the option of Landlord. Any such closure by Landlord shall not exceed 90 days and, for the duration of such closure, Tenant shall receive the Construction Abatement, as defined below.

Except as set forth below, Tenant waives any claim or defense it may have against Landlord and its authorized employees, agents, contractors, architects, structural engineers and representatives, any right of offset against or deductions from rent or any other sum payable under this Lease, and any cause of action based upon interruption of or interference with Tenant's conduct of business, loss of business, decreased sales or inconvenience to its customers caused by any construction, modification, reduction or expansion of the Center, except when caused by Landlord's negligence or willful misconduct.

If any construction, modification, reduction or expansion of the Center or the Premises substantially interferes with the operation of Tenant's business in the Premises or requires the closing of the Premises for business, for the duration of such substantial interference or closure, Minimum Annual Rent and all other charges provided to be paid under this Lease shall be equitably abated in the same proportion that Tenant's use of the Premises is impaired ("Construction Abatement"). Tenant shall continue the operation of its business in the Premises at all times to the extent reasonably practicable from the standpoint of prudent business management. Tenant shall not be entitled to any compensation or damage from Landlord for any reason including, without limitation: (a) loss of the use of the whole or any part of the Premises; (b) damage to Tenant's personal property; (c) any inconvenience, annoyance or loss; (d) loss of business; or (e) decrease in sales, occasioned by such construction, modification, reduction or expansion, except (i) in the event of Landlord's negligence or willful misconduct or that of Landlord's agents, employees, servants or contractors; and (ii) for the Construction Abatement.

23.6 Failure to Substantially Complete Premises. Notwithstanding anything to the contrary contained herein, (a) if for any reason whatever Substantial Completion has not occurred on or before the last day of the 24th month following the Effective Date, or (b) if Landlord shall at any time postpone or abandon the development or construction of the Center or that portion of the Center in which the Premises are located, either party may elect to terminate this Lease by giving 30 days' notice of such election to the other party, given before Substantial Completion shall occur. If such notice is given, this Lease and the rights and obligations of the parties pursuant to this Lease shall cease and terminate. If this Lease is terminated pursuant to this section 23.6, neither party shall have any further or additional rights, remedies, claims or liability arising out of this Lease or the termination of this Lease.

23.7 Trade Fixtures, Personal Property, and Alterations. Upon the expiration or earlier termination of the Term, subject to section 23.9, below, Tenant shall remove from the Premises all of Tenant's trade fixtures, furniture, equipment, signs, improvements, additions and Alterations to the extent such items are not permanently affixed to the Premises, and immediately repair any damage occasioned to the Premises or the Center by reason of the installation or removal thereof, so as to leave the Premises in a neat and clean condition. Tenant may encumber or finance its movable fixtures and equipment installed in the Premises, and no such encumbrance or financing shall be deemed a Transfer, provided such encumbrance or financing creates a security interest in such movable fixtures and equipment only, and confers no interest in the Premises. All trade fixtures, signs and other personal property installed in or attached to the Premises by Tenant must be new or like-new when so installed or attached.

23.8 Force Majeure. Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable

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substitutes therefor, governmental restrictions, governmental regulations, governmental controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes (except financial) beyond the reasonable control of the party obligated to perform shall excuse the performance by that party for a period equal to the prevention, delay or stoppage, except the obligations imposed with regard to Minimum Annual Rent and Additional Rent to be paid by Tenant pursuant to this Lease.

23.9 Termination and Holding Over. This Lease shall terminate without further notice upon the expiration of the Term. Upon the expiration or earlier termination of the Term, Tenant shall peaceably and quietly surrender the Premises broom-clean and in the same condition (including, at Landlord's option, the demolition and removal of any Alterations made by Tenant to the Premises, unless, at the time Landlord gave its consent to such Alterations, Landlord agreed in writing that Tenant would not have to demolish and remove such Alterations upon the termination of this Lease) as the Premises were in upon delivery of possession of same to Tenant by Landlord, reasonable wear and tear and any damage to the Premises which Tenant is not required to repair pursuant to Article 16 or Article 17 excepted. If Tenant shall hold over in the Premises beyond the expiration or earlier termination of this Lease, the holding over shall not constitute a renewal or extension of this Lease or give Tenant any rights under this Lease. In such event, Landlord may, in its sole discretion, treat Tenant as a tenant at will, subject to all of the terms and conditions in this Lease, except that Minimum Annual Rent shall be an amount equal to the product of multiplying 1.5 by the amount of Minimum Annual Rent which was payable by Tenant for the 12-month period immediately preceding the expiration or earlier termination of this Lease.

23.10 Charges for Failure to Comply. The charges described in this section 23.10 shall be in addition to all other rights or remedies available to Landlord at law, in equity or under this Lease. The parties agree that each such charge represents a fair and reasonable estimate of the costs that Landlord will incur with respect to each occurrence described in this section 23.10.

~~(a) Books and Records. If Tenant fails timely to furnish or make available to Landlord any statement, book or record required to be submitted or kept by Tenant for Landlord under section 6.3(b), Tenant shall pay \$100 per week for each week or part thereof that any is not submitted or made available when required. If, upon Landlord's written request therefor, such failure shall continue for more than ten days, it shall constitute an incurable default under this Lease, and Tenant shall pay to Landlord as Additional Rent hereunder an amount equal to 20% of the Minimum Annual Rent payable for such period or periods.~~ Intentionally Deleted.

(b) Signs. If Tenant violates any provision of section 10.5 hereof, Tenant shall pay \$250 per day for each day that such violation continues.

(c) Tenant to Remain Open. Subject to Article 16, Article 17 and section 23.8, Tenant shall pay to Landlord \$250 per day for each day that Tenant fails continuously to remain open for business during the hours Tenant is required to remain open pursuant to section 10.3 hereof.

(d) Employee Parking. If Tenant or its employees fail to park their vehicles in designated parking areas as set forth in section 12.6, Tenant shall pay to Landlord \$10 per day for each day or partial day per vehicle parked in any area other than those designated. Landlord shall, however, give Tenant written notice of the first violation of this provision, and Tenant shall have two days thereafter within which to cause the violation to be discontinued. If the violation shall not be discontinued within the two-day period, the \$10 per day charge shall commence. After the one notice of such violation, no notice of any subsequent violation shall be required. All amounts due under the provisions of this subsection shall be payable by Tenant within ten days after demand therefor.

23.11 Miscellaneous Provisions.

(a) Any waiver by either party of a breach by the other party of a covenant of this Lease shall not be construed as a waiver of a subsequent breach of the same covenant. The consent or approval by either party to anything requiring such party's consent or approval shall not be deemed a waiver of such party's right to withhold consent or approval of any subsequent similar act. No breach of a covenant of this Lease shall be deemed to have been waived by the other party unless the waiver is in writing and is signed by such party.

No receipt by Landlord of a lesser payment than the rent required under this Lease shall be considered to be other than on account of the earliest amount due, and no endorsement or statement on any check or letter accompanying a payment or check shall be considered an accord and satisfaction. Landlord may accept checks or payments without prejudice to Landlord's right to recover all amounts due and pursue all other remedies provided for in this Lease. Landlord's receipt of monies from Tenant after giving notice to Tenant terminating this Lease shall in no way reinstate, continue or extend the Term or affect any termination notice given by Landlord before the receipt of those monies. After serving notice terminating this Lease, filing an action or obtaining final judgment for possession of the Premises, Landlord may receive and collect any rent due, and the payment of that rent shall not waive or affect such prior notice, action or judgment.

(b) Except as provided herein to the contrary, and subject to the specific limitations contained in Article 19, the respective rights and remedies of the parties specified in this Lease shall be cumulative and in addition to any rights and remedies not specified in this Lease. There are no oral or written agreements or representations between the parties hereto affecting this Lease, and this Lease supersedes and cancels all previous negotiations, arrangements, representations, brochures, agreements and understandings, if any, between Landlord and Tenant. No provision of this Lease may be amended except by an agreement in writing signed by Landlord and Tenant. If any provision of this Lease or the application of such provision to any person, entity or circumstance is found invalid or unenforceable by a court of competent jurisdiction, such determination shall not affect the other provisions of this Lease, and all other provisions of this Lease shall be deemed valid and enforceable.

(c) This Lease shall be governed by and construed in accordance with the laws of the State of California without giving effect to the choice of law provisions thereof.

(d) Subject to the terms of this Lease, all rights and obligations of Landlord and Tenant under this Lease shall extend to and bind the respective heirs, personal representatives, executors, administrators and the permitted concessionaires, successors, subtenants and assignees of the parties, if any. If there is more than one Tenant hereunder, each shall be bound jointly and severally by the terms, covenants and agreements contained in this Lease.

(e) Except for the delivery of possession of the Premises to Tenant, time is of the essence of all provisions of this Lease of which time is an element.

(f) If Tenant or Landlord is a corporation, limited liability company or partnership, each individual executing this Lease on behalf of the corporation, limited liability company or partnership (in his representative capacity only) represents and warrants that he is duly authorized to execute and deliver this Lease on behalf of the corporation, limited liability company or partnership and that this Lease is binding upon the corporation, limited liability company or partnership.

(g) Tenant shall observe faithfully and comply with, and shall cause its employees and invitees to observe faithfully and comply with, reasonable and

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nondiscriminatory rules and regulations governing the Center as may from time to time be promulgated by Landlord, which rules and regulations currently include the provisions of Exhibit E.

(h) Tenant waives all rights of redemption granted under any present and future laws if Landlord obtains the right to possession of the Premises by reason of the violation by Tenant of any of the covenants and conditions of this Lease or otherwise.

(i) Landlord has retained the broker or agent named in section 1.18(a) and Tenant has retained the broker or agent named in section 1.18(b) in connection with this transaction. Landlord will pay the compensation of the company retained by it in respect of this Lease, pursuant to Landlord's agreement with said company. Such company shall share its commission with the company retained by Tenant pursuant to their agreement.

Except as expressly set forth herein, Landlord and Tenant represent and warrant that there are no claims for brokerage commissions or finders' fees in connection with the execution of this Lease, and each shall indemnify the other against and hold it harmless from all liability arising from any such claim arising through it including, without limitation, the cost of attorneys' fees and court costs in connection therewith.

(j) If Landlord shall sell, exchange or assign this Lease (other than a conditional assignment as security for a loan), Landlord, as transferor, shall be relieved of all obligations on the part of Landlord accruing under this Lease from and after the date of such transfer, as long as Landlord's successor in interest shall assume such obligations from and after such date.

(k) Except where another rate of interest is specifically provided for in this Lease, any amount due from either party to the other under this Lease, which is not paid when due, shall bear interest at the rate per year ("Interest Rate") equal to the prime interest rate charged by Wells Fargo Bank plus two percentage points (but in no event to exceed the maximum lawful rate), from the date such amount was originally due to and including the date of payment.

(l) Landlord shall have the right to go upon the Premises to show same to prospective Mortgagees, tenants or purchasers during normal business hours and upon reasonable notice to Tenant.

(m) Tenant shall pay all costs for work performed by or on account of it, and shall keep the Premises and the Center free and clear of mechanics' liens and all other liens. Tenant shall give Landlord immediate notice of any lien filed against the Premises or the Center as a result of any work of improvement performed by or on behalf of Tenant. Tenant shall immediately cause any lien to be discharged or removed of record by either paying the amount thereof or recording a statutory lien release bond in an amount equal to 150% of the amount of said lien, or such other amount as may be adequate to cause the lien to be released as an encumbrance against the Premises and the Center. If Tenant fails to do so, Landlord shall have the right, but not the obligation, in addition to all other rights and remedies available to Landlord under this Lease, after ten days' prior written notice to Tenant, either to pay and discharge such lien, without regard to the validity thereof, or to procure and cause to be recorded a statutory lien release bond, and to (i) collect from Tenant as Additional Rent; or (ii) deduct from any tenant improvement allowance or any other amount payable by Landlord to Tenant under this Lease (A) all costs incurred by Landlord in paying and discharging such lien or in procuring such bond, and (B) all expenses incurred by Landlord in connection with such lien, including attorneys' fees and costs, recording fees and administrative costs and expenses.

(n) Landlord and Tenant desire and intend that any disputes arising between them with respect to or in connection with this Lease be subject to expeditious resolution in a court trial without a jury. Consequently, Landlord and Tenant each hereby waives the right to trial by jury of any cause of action, claim, counterclaim or cross-complaint in any action, proceeding or other hearing brought either by Landlord against Tenant, or by Tenant against Landlord, on any matter whatever arising out of, or in any way connected with, this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, any claim of injury or damage, and the enforcement of any remedy under any law, statute and regulation, emergency or otherwise, now or hereafter in effect. Tenant hereby waives its right to plead any offset, or any counterclaim or cross-complaint related to this Lease in any action or proceeding brought by Landlord against Tenant for non-payment of rent or any other default hereunder. The foregoing shall not, however, constitute a waiver of Tenant's right to assert any claim against Landlord in any separate action brought by Tenant.

(o) Tenant shall reimburse Landlord, upon demand, for all costs or expenses incurred by Landlord in connection with any breach or default of Tenant under this Lease, whether or not suit is commenced or judgment entered. Such costs shall include legal fees and costs incurred for the negotiation of a settlement, enforcement of rights or otherwise. Furthermore, if any action for breach of, or to enforce, the provisions of this Lease is commenced, the court in such action shall award, to the party in whose favor a judgment is entered, a reasonable sum as attorneys' fees and costs. Such attorneys' fees and costs shall be paid by the losing party in such action. Tenant shall also indemnify Landlord against and hold Landlord harmless from all costs, expenses, demands and liabilities incurred by Landlord if Landlord becomes or is made a party to any claim or action (a) instituted by Tenant by or against any person holding any interest under or using the Premises by license of or agreement with Tenant; (b) for foreclosure of any lien for labor or material furnished to or for Tenant or such other person; (c) otherwise arising out of or resulting from any act or transaction of Tenant or such other person; (d) necessary to protect Landlord's interest under this Lease in a bankruptcy proceeding or other proceeding under Title 11 of the United States Code, as amended. Tenant shall defend Landlord against any such claim or action at Tenant's expense with counsel acceptable to Landlord or, at Landlord's election, Tenant shall reimburse Landlord for any legal fees or costs incurred by Landlord in any such claim or action.

(p) Landlord reserves the absolute right to effect such other tenancies in the Center as Landlord in the exercise of its sole business judgment shall determine. Tenant does not rely on the fact, nor does Landlord represent, that any specific tenant or type or number of tenants shall, during the Term, occupy any space in the Center or that any particular building or other improvements will be constructed or remain within the Center.

(q) If Tenant shall request any modification, amendment or termination of this Lease, Tenant shall reimburse Landlord for Landlord's reasonable attorneys' fees for the review, preparation, negotiation and drafting of each such instrument, and for Landlord's reasonable administrative costs incurred in the processing of each such request. The foregoing attorneys' fees and administrative costs shall be due and payable upon Landlord's written demand therefor, whether or not the modification, amendment or termination is ultimately executed and delivered. As of the Effective Date, Landlord's reasonable attorneys' fees and administrative costs total at least \$1,000.

(r) If any portion of this Lease was typed in bold print at or before the execution hereof, such bold print shall have no effect on the interpretation of this Lease, and this Lease shall be read as if none of it were typed in bold print. Wherever in this Lease, any portion hereof, whether printed or otherwise, was deleted at or before the execution hereof, and whether or not any related provision was added, this Lease shall be read and construed as if the material deleted had never been included herein.

(s) This Lease is subject to and contingent upon Landlord's entering into an agreement, on or before the date (the "Contingency Date") thirty (30) days after the Effective Date, allowing Tenant's service provider to install certain data and communication facilities at the Center to serve the Premises. If Landlord has not entered into such an agreement on or before the Contingency Date, then Tenant may terminate this Lease by giving written notice (the "Termination Notice") of such termination to Landlord within five (5) days after the Contingency Date, in which event this Lease shall terminate effective as of the date that the Termination Notice is provided to Landlord (the "Termination Date"). Failure by Tenant to timely terminate this Lease by delivering the Termination Notice pursuant to this paragraph shall constitute a waiver of such termination right. If Tenant has previously taken possession of the Premises and exercises the termination right set forth in this paragraph, then Tenant shall deliver possession of the Premises to Landlord in the same condition the Premises was in as of the Effective Date and Landlord shall return the Security Deposit, if previously paid, subject to Tenant's compliance with the terms and conditions of this Lease.

Exhibits. The following Exhibits are attached to this Lease and, by this reference, made a part of this Lease:

Exhibit A - Site plan of the Center. Landlord, at any time, may change the shape, size, location, number and extent of the improvements shown on Exhibit A, may eliminate, add or relocate any improvements to any portion of the Center, including, without limitation, buildings, parking areas (including parking structures), roadways, curb cuts, temporary or permanent kiosks, displays or stands, and may add land to and/or withdraw land from the Center. The notations and designations found on Exhibit A are intended only for the convenience of Landlord and are not intended to define, limit or otherwise alter the intent or scope of this Lease or of any other lease to which Landlord may be a party, nor as a representation or warranty as to current occupancy or future occupancy of any particular tenant in the Center.

Exhibit B ~~—~~ Premises.

Exhibit C - Construction Provisions.

Exhibit D ~~—Guaranty of Lease— Intentionally Deleted.~~

Exhibit E - Rules and Regulations.

Exhibit F - Sign Criteria.

Exhibit G - Commencement Date Certificate.

Exhibit H ~~—Tenant's Statement of Gross Sales— Intentionally Deleted.~~

Exhibit I - Estoppel Certificate.

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Lease on the day and year first above written.

LANDLORD:

TERRAMAR RETAIL CENTERS, LLC,
a Delaware limited liability company

By: [Signature]
Name: Wendy M. Godoy
Title: CFO

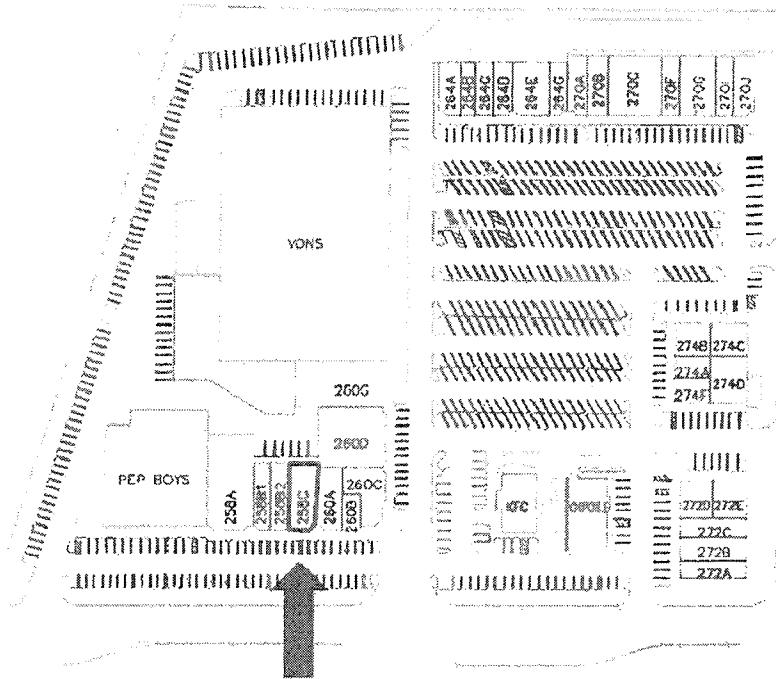
TENANT:

BENNION & DEVILLE FINE HOMES,
INC., a California corporation

By: [Signature]
Name: Joseph R. Deville
Title: Partner/President

Tenant's Tax Identification
Number: 33-0958647

EXHIBIT A
SITE PLAN

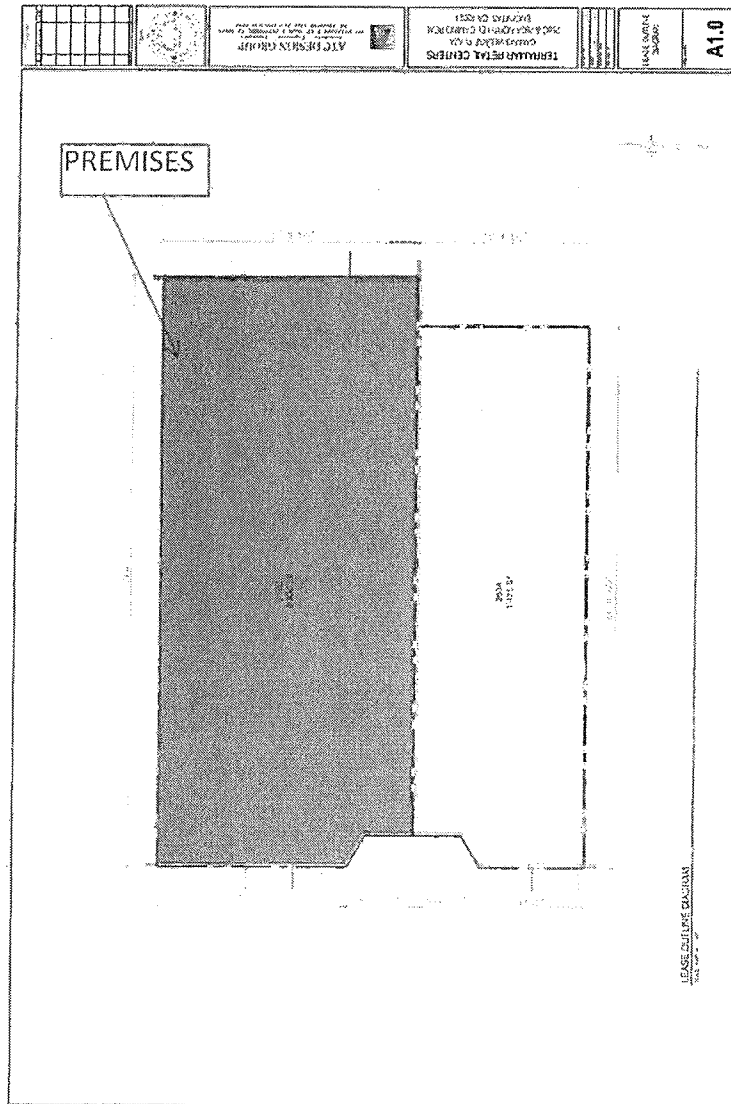


The purpose of this Exhibit is to show the approximate location of the Premises. It shall not be deemed to be a warranty, representation or agreement on the part of Landlord that the Center will be, or will remain, as depicted hereon, or that the tenants shown hereon (if any) are now, or will be, in occupancy at any time during the Term. Landlord reserves the right to make changes in and to the Center as set forth in this Lease.

EXHIBIT B

PREMISES

(All measurements of the Premises shall be made from the outside of exterior walls and from the center of the interior demising partitions, including those measurements to establish the length and width of the Premises. Deductions shall not be allowed for columns, sprinkler risers, tool drains, vents, piping, waste lines, conduit, ventilation shafts and related items serving the other tenant spaces).



The purpose of this Exhibit is to show the approximate location of the Premises. It shall not be deemed to be a warranty, representation or agreement on the part of Landlord that the Center will be, or will remain, as depicted hereon, or that the tenants shown hereon (if any) are now, or will be, in occupancy at any time during the Term. Landlord reserves the right to make changes in and to the Center as set forth in this Lease.

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EXHIBIT C

CONSTRUCTION PROVISIONS

1. Description of Landlord's Work.

A. Landlord shall provide Tenant with the store space detailed on Exhibits A and B. The store space shall constitute the Premises, as defined in section 2.1 of this Lease.

B. Landlord warrants that the HVAC unit, and the electrical and plumbing systems are in good operating condition as of Substantial Completion.

C. Except as provided in section B, above, Tenant accepts the Premises in their "as is" condition as of the Effective Date.

2. Description of Tenant's Work.

The work to be done by Landlord in satisfying its obligation to construct the Premises under this Lease shall be limited to that described in section 1 above. All other work to be done in the Premises shall be provided by Tenant at Tenant's sole cost and expense ("Tenant's Work"). Tenant's Work shall include, but shall not be limited to, the purchase, installation and performance of the following (including all applicable architectural and engineering fees therefor):

A. Floors: Tenant shall provide all floor coverings and base in the Premises.

B. Walls: Tenant shall construct all interior partition walls and shall provide all wall finishes.

C. Plumbing: Tenant shall provide all additional plumbing beyond that provided for toilet room as Landlord's Work, if any.

D. Gas Service: Tenant shall apply for and pay any fees associated with the installation of a gas meter and shall pay for the extension of service lines to the Premises.

E. Telephone: Tenant shall provide all telephone equipment, distribution systems and connections to the main terminal backboard. All equipment required for Tenant's telephone will be located within the Premises.

F. Fire Sprinklers: Tenant, at its sole cost and expense, shall modify the existing fire sprinkler system as required by building or fire officials.

G. Signs: Tenant shall provide all storefront signs in conformance with the approved sign program for the Center. In addition to Landlord's approval, Tenant shall obtain the approval of all governmental entities having jurisdiction.

H. Utilities: Tenant shall apply for and pay all fees associated with all utility services and permits, any increase in the serving capacity of water, electrical, HVAC, sewer or gas services due to Tenant's requirements, and any additional equipment necessitated thereby.

3. Provisions For Completion of Plans and Specifications and Construction of Premises.

(a) The procedure for approval of Tenant's plans and specifications for Tenant's Work is as follows:

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(i) Within 30 days of the Effective Date, Tenant shall submit to Landlord four sets of fully dimensioned, one-quarter-inch-scale drawings and specifications prepared by Tenant's licensed architect at Tenant's expense, which drawings shall indicate clearly and in detail all specific changes and alterations to the Premises including, but not limited to, the storefront, interior partitions, fixture plans, plumbing, lighting, electrical outlets and all of Tenant's Work. All such plans shall be subject to Landlord's prior written approval. If Landlord shall disapprove Tenant's plans, Landlord shall provide Tenant with written objections, and Tenant shall have seven business days within which to amend its proposed plans and incorporate Landlord's required changes.

(ii) Upon Landlord's approval of Tenant's proposed plans, Tenant shall promptly submit such approved plans to the appropriate governmental authority for plan checking and the issuance of a building permit. If such governmental authority requires any changes to such approved plans before the issuance of a building permit, Tenant shall, at its sole cost and expense, promptly change such plans pursuant to such governmental request and submit such changed plans to Landlord for its approval. Landlord may approve or disapprove such changed plans. If Landlord shall disapprove such changed plans, Landlord shall provide Tenant with written objections, and Tenant shall have five business days within which to amend such plans and incorporate Landlord's required changes. Upon Landlord's approval of the changed plans, Tenant shall promptly resubmit such plans to the appropriate governmental authority for plan checking and the issuance of a building permit as previously set forth in this subsection (a). Upon Tenant's receipt of a building permit and any other necessary governmental approvals for Tenant's Work based upon plans approved by Landlord (the "Final Plans"), and after the Substantial Completion, Tenant shall immediately commence construction of Tenant's Work and shall diligently pursue such construction to completion in accordance with the Final Plans.

(iii) No changes, modifications or alterations to the Final Plans may be made without the prior written consent of Landlord. Any additional costs and expenses including, without limitation, increased fees which Landlord may be required to pay for architectural, engineering and other similar services arising by reason of any change, modification or alteration to the Final Plans, any additional construction costs, including costs of change orders charged by Landlord's contractor, and all other costs, expenses and damages incurred or suffered by Landlord by reason of the changes, modifications or alterations to the Final Plans, and the cost of any delays directly or indirectly caused by such damages, modifications or alterations to the Final Plans shall be at the sole cost and expense of Tenant. Such costs shall be paid by Tenant to Landlord before the performance of the work requested by Tenant.

(b) Tenant shall not commence any work in the Premises unless and until the following conditions have been met: (i) Final Plans shall have been achieved; (ii) Landlord shall have reasonably approved Tenant's contractor; (iii) Tenant shall have obtained all permits and approvals from all appropriate governmental authorities for Tenant's Work and shall furnish Landlord with copies of all such permits; (iv) Tenant, its contractor and subcontractors (collectively, "Tenant's Agents") shall have procured all insurance required under the provisions of this Lease and shall have furnished Landlord with certificates of such insurance in accordance with the provisions of this Lease; and (v) Landlord shall have consented to the commencement of Tenant's Work.

(c) (i) Tenant's Work shall be constructed in accordance with the Final Plans in a good and workmanlike manner and in compliance with all applicable laws. Neither Tenant nor Tenant's Agents shall interfere with, obstruct or delay any other work in the Center. Tenant and Tenant's Agents shall abide by all reasonable rules made by Landlord's contractor with respect to the storage of materials and coordination of work with other work being performed in the Center. Each of Tenant's Agents shall guarantee to Tenant, for the benefit of Landlord, that the portion of Tenant's Work for which it is responsible shall be free from any defects in workmanship and materials for a

period of not less than one year from the later of (A) the date of completion thereof, and (B) the Commencement Date. Each of Tenant's Agents shall be responsible for the replacement or repair, without additional charge, of all work done or furnished in accordance with its contract that shall become defective within one year after the later of completion of (x) the work performed by such contractor or subcontractors, and (y) the Commencement Date. The correction of such work shall include, without additional charge, all additional expenses and damages incurred in connection with such removal or replacement of all or any part of Tenant's Work, the building in which the Premises are located, and the Common Areas that may be damaged or disturbed thereby. All such warranties and guaranties as to materials or workmanship of or with respect to Tenant's Work shall be written such that such guaranties and warranties shall inure to the benefit of Landlord and Tenant, as their respective interests may appear, and may be directly enforced by either of them. Tenant covenants to give to Landlord an assignment or other assurances which may be necessary to effect Landlord's right of direct enforcement.

(ii) All of Tenant's Agents shall carry worker's compensation insurance covering all of their respective employees, and shall also carry public liability insurance, including property damage, all with limits, in form and with companies as are reasonably required by Landlord, and the policies therefor shall inure to the benefit of Tenant and Landlord, as their interests may appear. In addition, during the course of performance of Tenant's Work, Tenant shall carry "Builder's All Risk" insurance in an amount reasonably approved by Landlord covering the construction of Tenant's Work. Certificates for all insurance carried pursuant hereto shall be delivered to Landlord before the commencement of construction of Tenant's Work and all such policies of insurance must contain a provision that the company writing said policy will give Landlord 30 days' prior written notice of any cancellation, lapse of the effective date or reduction in the amounts of such insurance. If Tenant's Work is damaged by any cause during the course of the construction thereof, Tenant shall immediately repair the same at Tenant's sole cost and expense. Tenant and Tenant's Agents shall maintain all of the foregoing insurance coverage in force until Tenant's Work is completed. All insurance required hereunder (except worker's compensation) shall preclude subrogation claims by the insurer against anyone insured thereunder, shall provide that it is primary insurance as respects Landlord and shall provide that any other insurance maintained by Landlord is excess and noncontributing with the insurance required hereunder.

(iii) Within ten days after completion of construction of Tenant's Work, Tenant shall cause a Notice of Completion to be recorded in the office of the Recorder of the county in which the Premises are located in accordance with Section 3093 of the Civil Code of the State of California or any successor statute, and shall furnish a copy thereof to Landlord upon such recordation. If Tenant fails to do so, Landlord may execute and file the same on behalf of Tenant as Tenant's agent for such purpose, at Tenant's sole cost and expense. Within 30 days following the completion of Tenant's Work, Tenant shall deliver to Landlord (i) a set of as-built drawings for the Premises, and (ii) a copy of all warranties, guaranties, operating manuals and information relating to the improvements, equipment and systems in the Premises. Tenant shall obtain a certificate of occupancy for the Premises promptly following completion of Tenant's Work.

4. Construction Allowance. Notwithstanding anything to the contrary contained in Exhibit C, upon fulfillment of all of the conditions precedent set forth below, Landlord shall contribute the amount sum specified in Section section 1.20 of the Lease to apply toward Tenant's Work, except that said sum shall not in any event apply toward Tenant's trade fixtures, personal property, signs or architect's fees. Said sum is hereinafter referred to as the "Construction Allowance." and shall be payable to Tenant in two (2) installments as follows:

a. If Tenant is not in default under this Lease, after completion of 50% of Tenant's Work, as certified by Tenant's architect, Landlord shall pay to

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Tenant the first installment in the amount of fifty percent (50%) of the sum specified in Section 1.20 (but only if Tenant shall have met all of the conditions set forth in this Section 4(a) for payment of the Construction Allowance) within 30 days following Tenant's written request therefor and after Tenant has delivered to Landlord:

1. A copy of all Tenant-contractor invoices, paid, totaling, or in excess of 50% of Tenant's Work (excluding fixtures, furniture and equipment); and
2. A copy of all mechanic's lien releases and other lien releases on account of such construction work from all parties having the right to file the same on account thereof, if any covering Tenant's Work that has been completed and for which reimbursement is requested.

b. If Tenant is not in default under this Lease, Landlord shall pay to Tenant the balance of the Construction Allowance (but only if Tenant shall have met all of the conditions set forth in this Section 4(b) for payment of the Construction Allowance within six months after the Commencement Date) within 30 days after Tenant has opened for business in the Premises and delivered to Landlord:

1. An executed Estoppel Certificate substantially in the form of Exhibit 1;
2. A copy of the "certificate of occupancy", Certificate of Occupancy, issued by the appropriate governmental agency;
3. A copy of Tenant's recorded "Notice of Completion";
4. 3. A copy of all Tenant-contractor invoices, paid, totaling, or in excess of, the Construction Allowance;
5. 4. A copy of all unconditional mechanic's lien releases and other lien releases on account of such construction work from all parties having the right to file the same on account thereof, if any. If no such party shall have such right, Tenant shall in writing represent and warrant same to Landlord;
6. 5. A copy of all building permits with all sign-offs executed;
7. 6. A copy of "as-built" drawings for all of Tenant's Work;
8. 7. Tenant's agreement to assign to Landlord, upon the expiration or earlier termination of the Term, all warranties with respect to Tenant's Work and any other work performed by, or on behalf of, Tenant in the Premises; and
9. 8. An architect's or, if permitted hereunder, Tenant's space planner's, certification that the Premises were constructed in conformance with Landlord-approved plans and specifications and are 100% complete with respect thereto.

The Except for Landlord's Work, the cost of any work performed by Landlord for the benefit of Tenant, if any, shall be deducted from the Construction Allowance before the Construction Allowance is paid to Tenant.

Should Tenant fail to open for business in the Premises within the time limit set forth in ~~section~~ Section 10.2 of this Lease or if Tenant shall fail to fulfill timely all of the conditions precedent set forth herein for payment of the Construction Allowance, Landlord shall not be obligated to contribute all or any part of the Construction Allowance nor any other money to apply toward Tenant's Work. If Tenant shall at any time default during the first five years of the Term, Landlord may recover the unamortized Construction Allowance (using a ten-year amortization period, amortized

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on a straight-line basis), as additional damages for such default as additional rent due under the Lease.

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EXHIBIT D

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GUARANTY OF LEASE

~~THIS GUARANTY OF LEASE ("Guaranty") is entered into as of the ____ day of _____, 20____, by _____, whose address is _____ ("Guarantor"), for the benefit of TERRAMAR RETAIL CENTERS, LLC, a Delaware limited liability company ("Landlord"), with reference to the following facts:~~

~~A. Landlord and _____ ("Tenant"), have entered or will enter into a lease of even date herewith (the "Lease").~~

~~B. By its covenants herein set forth, Guarantor has induced Landlord to enter into the Lease, which was made and entered into in consideration for Guarantor's said covenants.~~

~~1. Guarantor unconditionally guarantees, without deduction by reason of setoff, defense or counterclaim, to Landlord and its successors and assigns the full and punctual payment, performance and observance by Tenant, of all of the amounts, terms, covenants and conditions in the Lease contained on Tenant's part to be paid, kept, performed and observed.~~

~~2. If Tenant shall at any time default in the punctual payment, performance and observance of any of the amounts, terms, covenants or conditions in the Lease contained on Tenant's part to be paid, kept, performed and observed, Guarantor will pay, keep, perform and observe same, as the case may be, in the place and stead of Tenant. Guarantor shall also pay to Landlord all reasonable and necessary incidental damages and expenses incurred by Landlord as a direct and proximate result of Tenant's failure to perform, which expenses shall include reasonable attorneys' fees and interest on all sums due and owing Landlord by reason of Tenant's failure to pay same, at the maximum rate allowed by law.~~

~~3. Any act of Landlord, or its successors or assigns, consisting of a waiver of any of the terms or conditions of the Lease, the giving of any consent to any matter or thing relating to the Lease, or the granting of any indulgence or extension of time to Tenant may be done without notice to Guarantor and without releasing Guarantor from any of its obligations hereunder.~~

~~4. The obligations of Guarantor hereunder shall not be released by Landlord's receipt, application or release of any security given for the performance and observance of any covenant or condition in the Lease contained on Tenant's part to be performed or observed, nor by any modification of the Lease, regardless of whether Guarantor consents thereto or receives notice thereof.~~

~~5. The liability of Guarantor hereunder shall in no way be affected by: (a) the release or discharge of Tenant in any creditor's, receivership, bankruptcy or other proceeding; (b) the impairment, limitation or modification of the liability of Tenant or the estate of Tenant in bankruptcy, or of any remedy for the enforcement of Tenant's liability under the Lease resulting from the operation of any present or future provision of the national bankruptcy act or other statute or from the decision of any court; (c) the rejection or disaffirmance of the Lease in any such proceedings; (d) the assignment or transfer of the Lease by Tenant; (e) any disability or other defense of Tenant; (f) the cessation from any cause whatever of the liability of Tenant; (g) the exercise by Landlord of any of its rights or remedies reserved under the Lease or by law; or (h) any termination of the Lease.~~

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~~6. If Tenant shall become insolvent or be adjudicated bankrupt, whether by voluntary or involuntary petition, if any bankruptcy action involving Tenant shall be commenced or filed, if a petition for reorganization, arrangement or similar relief shall be filed against Tenant, or if a receiver of any part of Tenant's property or assets shall be appointed by any court, Guarantor shall pay to Landlord the amount of all accrued, unpaid and accruing Minimum Annual Rent and other charges due under the Lease to the date when the debtor in possession, the trustee or administrator accepts the Lease and commences paying same. At such time as the debtor in possession, the trustee or administrator rejects the Lease, however, Guarantor shall pay to Landlord all accrued, unpaid and accruing Minimum Annual Rent and other charges under the Lease for the remainder of the Term. At the option of Landlord, Guarantor shall either:~~

~~(a) pay Landlord an amount equal to the Minimum Annual Rent and other charges which would have been payable for the unexpired portion of the Term reduced to present day value; or (b) execute and deliver to Landlord a new lease for the balance of the Term with the same terms and conditions as the Lease, but with Guarantor as tenant thereunder. Any operation of any present or future debtor's relief act or similar act, or law or decision of any court, shall in no way affect the obligations of Guarantor or Tenant to perform any of the terms, covenants or conditions of the Lease or of this Guaranty.~~

~~7. Guarantor may be joined in any action against Tenant in connection with the obligations of Tenant under the Lease and recovery may be had against Guarantor in any such action. Landlord may enforce the obligations of Guarantor hereunder without first taking any action whatever against Tenant or its successors and assigns, or pursuing any other remedy or applying any security it may hold. Guarantor hereby waives all rights to assert or plead at any time any statute of limitations as relating to the Lease, the obligations of Guarantor hereunder and any surety or other defense in the nature thereof.~~

~~8. Until all of the covenants and conditions in the Lease on Tenant's part to be performed and observed are fully performed and observed, Guarantor: (a) shall have no right of subrogation against Tenant by reason of any payment or performance by Guarantor hereunder; and (b) subordinates any liability or indebtedness of Tenant now or hereafter held by Guarantor to the obligations of Tenant to Landlord under the Lease.~~

~~9. If Landlord desires to sell, finance or refinance the Center, or any part thereof, Guarantor shall deliver to any lender or buyer designated by Landlord such financial statements of Guarantor as may be reasonably required by such lender or buyer. Such statements shall include the past three years' financial statements of Guarantor. All such financial statements shall be received by Landlord in confidence and shall be used only for the foregoing purposes.~~

~~10. This Guaranty shall apply to the Lease, any extension, renewal, modification or amendment thereof, to any assignment, subletting or other tenancy thereunder and to any holdover term following the Term granted under the Lease, or any extension or renewal thereof.~~

~~11. If this Guaranty shall be held ineffective or unenforceable by any court of competent jurisdiction or in the event of any limitation of Guarantor's liability hereunder other than as expressly provided herein, Guarantor shall be deemed to be a tenant under the Lease with the same force and effect as if Guarantor were expressly named as a joint and several tenant therein with respect to the obligations of Tenant thereunder hereby guaranteed.~~

~~12. In the event of any litigation between Guarantor and Landlord with respect to the subject matter hereof, the unsuccessful party in such litigation shall pay to the~~

successful party all fees, costs and expenses thereof, including reasonable attorneys' fees and expenses.

~~13. No delay on the part of Landlord in exercising any right hereunder or under the Lease shall operate as a waiver of such right or of any other right of Landlord under the Lease or hereunder, nor shall any delay, omission or waiver on any one occasion be deemed a bar to, or a waiver of, the same or any other right on any future occasion.~~

~~14. If there is more than one undersigned Guarantor, (a) the term "Guarantor," as used herein, shall include all of the undersigned; (b) each provision of this Guaranty shall be binding on each one of the undersigned, who shall be jointly and severally liable hereunder; and (c) Landlord shall have the right to join one or all of them in any proceeding or to proceed against them in any order.~~

~~15. This instrument constitutes the entire agreement between Landlord and Guarantor with respect to the subject matter hereof, superseding all prior oral and written agreements and understandings with respect thereto. It may not be changed, modified, discharged or terminated orally or in any manner other than by an agreement in writing signed by Guarantor and Landlord.~~

~~16. This Guaranty shall be governed by and construed in accordance with the laws of the state of in which the Center is located.~~

~~17. Notice hereunder shall be in writing and shall be effective upon personal service or five days after deposit thereof in the United States Mail, registered or certified delivery, return receipt requested, addressed to the other party at its address specified in the Lease or the above address, except that under no circumstance shall Landlord be obligated to give Guarantor any notice not specifically required to be given by Landlord pursuant to this Guaranty. Either party may by notice given as aforesaid designate a different address for notice purposes.~~

~~18. Any action to declare or enforce any right or obligation under the Lease may be commenced by Landlord in the Superior Court of the county in which the "Center" (as defined in the Lease) is located. Guarantor hereby consents to the jurisdiction of such Court for such purposes. Any notice, complaint or legal process so delivered shall constitute adequate notice and service of process for all purposes and shall subject Guarantor to the jurisdiction of such Court for purposes of adjudicating any matter related to this Guaranty. Landlord and Guarantor hereby waive their respective rights to trial by jury of any cause of action, claim, counterclaim or cross-complaint in any action, proceeding and/or hearing brought by either Landlord against Guarantor or Guarantor against Landlord on any matter whatever arising out of, or in any way connected with, the Lease or this Guaranty, the relationship of Landlord and Guarantor, the use or occupancy of the Premises, any claim of injury or damage, or the enforcement of any remedy under any law, statute or regulation, emergency or otherwise, now or hereafter in effect.~~

~~19. This Guaranty may be assigned in whole or part by Landlord upon written notice to Guarantor, but it may not be assigned by Guarantor without Landlord's prior written consent, which may be withheld in Landlord's sole and absolute discretion.~~

~~20. The terms and provisions of this Guaranty shall be binding upon and inure to the benefit of the heirs, personal representatives, successors and permitted assigns of the parties hereto.~~

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~~IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the date first above written.~~

~~"GUARANTOR"~~

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EXHIBIT E
RULES AND REGULATIONS

1. USE OF STORE PREMISES

(a) All floor area, including vestibules, entrances, returns, doors, fixtures, windows and plate glass shall be maintained in a safe, neat and clean condition.

(b) All trash, refuse and waste material shall be regularly removed from the Premises and until removal shall be stored (i) in adequate containers, which containers shall be located so as not to be visible to the general public shopping in the Center; and (ii) so as not to constitute any health or fire hazard or nuisance to any occupant. All boxes shall be "broken down" before being placed in Center refuse receptacles.

(c) No portion of the Center shall be used for lodging purposes.

(d) Neither sidewalks nor walkways shall be used to display, store or place any merchandise, equipment or device.

(e) No advertising medium, device, instrument or apparatus shall be used or operated which can be heard or experienced outside the Premises including, without limiting the generality of the foregoing, flashing lights, searchlights, loudspeakers, sound equipment, organs, radios, television or video monitors.

(f) No auction, fire, bankruptcy, or going-out-of-business sale shall be conducted in, at or about the Center or any portion or portions thereof, except pursuant to court order.

(g) No use shall be made of the Center or any portion or portions thereof which would (i) violate any law, ordinance or regulation; (ii) constitute a nuisance; (iii) constitute a hazardous use; or (iv) violate, suspend or void any policy or policies of insurance.

(h) All occupants of the Center shall use their reasonable efforts to cause all trucks servicing retail facilities within the Center to load and unload before the Center opens for business to the general public.

(i) All pallets shall be stored inside the Premises.

(j) Tenant shall promptly collect and shall maintain all of its shopping carts. Shopping carts shall be stored only where, and in the manner, designated by Landlord.

2. CONDUCT OF PERSONS

The following rules and regulations govern the use of roadways, walkways, parking areas and other common areas and facilities:

(a) No person shall use any roadway or walkway, except as a means of egress from or ingress to any floor area or parking area within the Center or adjacent public streets. Such use shall be in an orderly manner and in accordance with directional or other signs or guides. Roadways shall not be used at a speed in excess of 20 miles per hour or any lesser posted speed limit and shall not be used for parking or stopping, except for the immediate loading or unloading of passengers. No walkways, hallways or corridors shall be used for other than pedestrian travel.

(b) No person shall use any parking area, except for ingress and egress to and from the Center and for the parking of motor vehicles during the period of time such

person or the occupants of such vehicle are customers or business invitees of the retail establishments within the Center or are using any park and ride. All motor vehicles shall be parked in an orderly manner within the painted lines defining the individual parking spaces. During peak periods of business activity, limitations may be imposed respecting the length of time for parking use. Such limitations may be made in specified areas.

(c) No person shall use any utility area, truck court or other area reserved for use in connection with the conduct of business, except for the specific purpose for which permission to use such area is given.

(d) No tenant, contractor, agent or employee of any business in the Center shall use any area for motor vehicle parking, except the area or areas specifically designated by Landlord for employee parking, for the particular period of time such use is allowed, as determined by Landlord or as established by ordinance.

(e) Unless the following prohibitions are forbidden by law, no person shall, in or on any part of the common areas:

(i) Except as provided in this lease or the leases of other tenants in the Center, vend, peddle, store, display, place or solicit orders for sales or distribution of any merchandise, equipment, device, service, periodical, book, pamphlet or other matter whatever.

(ii) Exhibit any sign, placard, banner, notice or other written material; distribute any circular, booklet, handbill, placard or other material; solicit signatures or registration for membership in any organization, group or association or contribution for any purpose; parade, rally, patrol, picket, demonstrate or engage in any conduct that might tend to interfere with or impede the use of any of the common areas by any person entitled to use the same, create a disturbance, attract attention or harass, annoy, disparage or be detrimental to the interest of any of the retail establishments within the Center.

(iii) Use any common area for any purpose when none of the retail establishments within the Center is open for business or employment except for any park-and-ride facility.

(iv) Throw, discard or deposit any paper, glass or extraneous matter of any kind, except in designated receptacles, or create litter or hazards of any kind.

(v) Use any sound-making device of any kind or create or produce in any manner noise or sound that is annoying, unpleasant or distasteful to occupants or invitees.

(vi) Deface, damage or demolish any sign, light standard or fixture, landscaping material or other improvement within the Center, or the property of customers, business invitees or employees situated within the Center.

The listing of specific items as being prohibited is not intended to be exclusive, but is to indicate in general the manner in which the right to use the common areas solely as a means of access and convenience in shopping at the establishments in the Center is limited and controlled.

3. PROHIBITED OPERATIONS AND NUISANCES

No use or operation will be made, conducted or permitted on any part of the Center, which use or operation is clearly objectionable to the development or operation of the Center. Included among the uses or operations which are objectionable are uses or operations which produce or are accompanied by the following characteristics, which list is not intended to be all-inclusive:

- (a) Any noise, litter, dust, dirt, odor or other activity which may constitute a public or private nuisance;
- (b) Any unusual firing, explosive or other damaging or dangerous hazards (including the storage, display or sale of explosives or fireworks);
- (c) Any warehouse operation, or any assembling, manufacturing, distilling, refining, smelting, industrial, agricultural, drilling or mining operation. Any area used for the storage of goods to be sold at any retail establishment in the Center shall not, however, be deemed to be a warehouse operation;
- (d) Any trailer court, mobile home park, lot for sale of new or used motor vehicles, labor camp, junkyard, stockyard or animal raising (other than pet shops if section 1.13 permits such use);
- (e) Any dumping, disposal, incineration or reduction of garbage or refuse other than handling or reducing such waste if produced on the Premises from an authorized use and if handled in a lawful and reasonably clean, sanitary and noiseless manner;
- (f) Any laundromat, veterinary hospital, bowling alley, mortuary or similar service establishment; and
- (g) Any vehicle body and fender repair work.

EXHIBIT F

SIGN CRITERIA

CAMINO VILLAGE PLAZA

SIGN CRITERIA

1. The purpose the criteria in this document is to establish the minimum sign standard necessary to insure coordinated proportional exposure for all tenants. Performance shall be strictly enforced and non-conforming signs shall be removed by the Tenant or the sign contractor, at their expense.
2. One square foot of sign is allowed for each linear foot of building (store) frontage on the signage band for Tenant's illuminated channel letter sign (as approved in writing). Tenant must verify sign size, space and location with Landlord before fabrication. NOT TO EXCEED 100 SF.
3. All sign designs, letter styles, color, size, etc., must meet the sign criteria attached as well as meet all governmental codes and ordinances. Exceptions to this may be allowed in the case of registered trademark lettering for major tenants.
4. In order to maintain consistency of quality and design characteristics, all signs shall be purchased and fabricated by either Landlord's designated Shopping Center sign contractor or a licensed sign contractor of tenant's selection.
5. Prior to applying for any Governmental Permits, each Tenant shall submit to the Landlord, for approval, through the sign contractor, two (2) copies of a detailed drawing of the proposed signs, signed by Tenant indicating conformance with this criteria. All sign applications must be approved by the Landlord prior to submission to the City of Encinitas.
6. The tenant shall pay for all signs and their installation, maintenance and permits, except that sign contractor shall provide a full one (1) year electrical warranty.
7. Landlord reserves the right to reject any work determined by Landlord or project architect to be of lesser quality.
8. All signs and their installation must comply with all local building, sign, and electrical codes. No flashing, inflatable, or animation of signs will be permitted. No exposed electrical tubing or "crossovers" will be permitted. No projections above or below the "signable area" will be permitted. Sign size, materials and location are per Landlord's specifications as called out on page 2. The current sign program has been approved by the City of Encinitas and is subject to Section 10.60 of the Sign Ordinance as amended December, 1989.
9. It is the responsibility of the sign company to verify all conduit and transformer locations and service prior to fabrication.
10. Total sign area for each Tenant space and related prices are as follows:
 - SIGN A - 18" x approximately 60' of store frontage in length, or specifically 1 square foot of sign is allowed for each linear foot of store frontage for illuminated letters, cost may vary.
 - SIGN B - Under canopy sign to be any shape within 4 sq.ft. maximum. COST may vary.
 - SIGN C - 9" high x 2'-6" in length for the rear door sign. Cost may vary.

APPENDUM A
APPENDUM B:
* WELLS FARGO
ALLOWED 126 SF

APPENDUM A
100 SF MAX.

Camino Village Plaza
Sign Criteria
Page Two

These prices are based upon purchase and installation at the same time and any purchases of signs B or C at a later date will be subject to individual pricing.

11. Additional signs such as window lettering, hour plaques, menu boards, etc., must be submitted for review and approval. No signs may be affixed to storefront windows, however, additional signs may be affixed to Plexiglas and/or suspended inside window storefront glass. The total area of such signs shall not exceed 25% of the window area. The use of suction cups to suspend signs will be limited to "hours/days of operation" type signs.
12. All signs must be installed not later than thirty (30) days following the date Tenant opens for business.
13. **EXCEPTIONS:** Any exceptions to these standards must be reviewed by Landlord and receive City approval prior to fabrication of any signs.
14. No sandblasted signs will be allowed on canopy fascia. All "A" frames are in violation of the municipal sign ordinance.
15. Logo signs, conforming in materials and colors, will be considered subject to all the provisions herein and must comply with the parameters of 10.A above.
16. Proper City of Encinitas permit for Temporary "Grand Opening" type banners will be permitted for 30 days. The current ordinance allows a maximum of 24 square feet.
17. Proper City of Encinitas permit for "Temporary -Sale" banners, subject to prior approval, will be allowed for up to 7 days.
18. The use or action of any sign whatsoever which violates these provisions and the rights of other tenants or Landlord, shall constitute a default of the lease and be subject to all of its default provisions.
19. Additional parkway monument signs will violate the rights of current and future tenants and require variance permits. Consequently, they will be denied by the Landlord.
20. **ADDENDUM A ...**
SCOPE OF SIGNS

1. **SIGN TYPE A:** Signs shall be comprised of internally illuminated 18" channel letters as per attached criteria. Each Shop Tenant will be required to have one such sign, meeting the following specifications:

- Letter style shall be helvetica medium or helvetica outline, or machine bold type.
- 24 gauge stretcher-leveled paint LOC Sheet Steel custom fabricated with 5" metal returns.
- Letter edge to have Rustoleum primer base with Rustoleum Dark Bronze Enamel Paint Finish.
- Letter interior to have Rustoleum White Reflective Paint Finish.
- Interior illumination to be 60 Milliamp single-tube neon gas system operating on France or Jefferson High Power Factor Transformers.

- Letter face to be 3/16" Rohm & Haas or equal acrylic plastic. Colors are as follows: Red is the primary choice of color and must remain at least 55% of the center's signage color, Red #2793, Blue, White, Yellow, Cream and Black. Each sign will be limited to 3 colors.
 - All crossovers and wiring to be contained in a raceway behind fascia. Raceway to be finished with rust inhibitor paint to match wood stain.
 - All connections between letters and raceway to be made with threaded conduit.
 - 2. SIGN TYPE B: Double-faced, sandblasted wood sign with business name only. Each Shop Tenant will be required to have one such sign.
 - 3. SIGN TYPE C: Single-faced plexiglas sign on rear door, optional.
- Letter style to be Helvetica Medium on all signs.
- 4. MONUMENT SIGNS: Monument sign exterior letters may be changed (existing tenants), however, new tenant signs or any modification to the sign itself requires permits and approval from the City.

SPECIFIED BUILDING STANDARD TYPE STYLES:

HELVETICA MEDIUM

ABCDEFGHIJKLMN O P Q R S T U V W X Y Z

ACCEPTABLE EXAMPLES OF EXCEPTIONS TO STANDARD TYPE STYLES
(MAJOR TENANTS AND REGISTERED TRADEMARKS)

ATTENTION: MARIANNE BUSCEMI
ADDENDUM TO CAMINO VILLAGE PLAZA SIGN CRITERIA
with
CITY OF ENCINITAS
ADDENDUM A

1. ITEM #2. Add the following sentence:

In addition, the surface area of the channel letters shall not exceed 100 square feet.

2. #10-A. Add the following:

The minimum square footage of said sign shall not exceed 100 square feet.

3. #14. Add the following:

No roof signs will be permitted.

4. #20 (New)

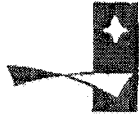
above the sign band...
In general, wall signs are not allowed. Subject to Landlord's prior approval, exceptions may be allowed for major tenants and registered tenant names, provided the wall space above the sign board fronting the store is available and the total sign surface area meets all zoning requirements. No painted wall signs will be allowed.

By: MITSUI/SBD AMERICA FUND 87-II

By: REAL ESTATE MARKETING/MANAGEMENT
Agent for Owner

By:

James H. Dodson
James H. Dodson, CPM



PACIFIC SIGN CONSTRUCTION, INC.

ADDENDUM B

ADDENDUM TO SHOPPING CENTER CRITERIA - VILLAGE PLAZA

The applicant shall modify requirements #2, #10 (Sign A) and the Addendum to Camino Village Plaza Sign Criteria of the existing sign program. These criteria shall be modified to read "one square foot per linear foot of building on the side where the main entrance is located with a maximum of 100 square feet with the exception of 276 No. El Camino Real (Wells Fargo Bank) which has received permission from the New Encinitas Community Advisory Board to exceed the required square footage to a maximum of 126 square feet (Case No. 92-218 V/SPRO/MOD). At such time that the present tenant (Wells Fargo Bank) no longer occupies said space, the wall sign square footage will revert back to the approved one square foot per linear foot of store frontage not to exceed 100 square feet requirement."

EXHIBIT G

COMMENCEMENT DATE CERTIFICATE

THIS CERTIFICATE is made as of _____, 20____, by and between TERRAMAR RETAIL CENTERS, LLC, a Delaware limited liability company ("Landlord"), and BENNION & DEVILLE FINE HOMES, INC., a California corporation ("Tenant").

WHEREAS, Landlord and Tenant have entered into a lease dated _____, 2014 (the "Lease"), for Premises designated on Exhibits A and B attached to the Lease;

NOW THEREFORE, Landlord and Tenant agree and acknowledge that the information set forth below, with respect to the Lease, is true and accurate.

Premises Address: _____

Center Name:

Trade Name:

Premises Floor Area: _____ sq.ft.

Commencement Date: _____, 20____

Lease Expiration Date: _____, 20____

Option To Extend The Lease: _____, 20____

Security Deposit Held: \$ _____

LANDLORD:

TENANT:

TERRAMAR RETAIL CENTERS, LLC,
a Delaware limited liability company

BENNION & DEVILLE FINE HOMES,
INC., a California corporation

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

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22966113-1

EXHIBIT H
INTENTIONALLY DELETED

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EXHIBIT I
ESTOPPEL CERTIFICATE

TO:
RE: Lease dated _____, 20__ (the "Lease")
between _____ ("Tenant")
and _____ ("Landlord")
concerning the premises known as _____
Suite _____
California _____ (the "Premises") located in the
_____ (the "Center").

For good and valuable consideration, the undersigned, as Tenant under the Lease described above, hereby certifies and agrees as follows:

1. This Estoppel Certificate of Tenant ("Certificate") is executed for the benefit of _____. This Certificate is further executed for the benefit of any lender (the "Lender") making a loan to Landlord secured by a lien on the Premises for, among other things, the purchase of the Center. Tenant makes this Certificate with the understanding that _____ and the Lender will materially rely on this Certificate in purchasing the Center and the Premises and in making such loan to Landlord.
2. The Lease is presently in full force and effect, and has not been amended, modified or supplemented in any way, and the Lease represents the entire agreement between Landlord and Tenant with respect to the Premises and the leasing relationship, except as follows: [if none, state "none"].
3. The present term of the Lease commenced on _____, 20__ and shall expire on _____.
4. Tenant entered into occupancy of the entire Premises on _____, 20__, and Tenant is presently occupying the entire space covered by the Lease for the purposes designated therein. The Premises comprise _____ rentable/usable square feet.
5. As of the date hereof, the minimum rent obligation under the Lease is \$_____ per month and the monthly additional rent for common area expenses, insurance and/or real estate taxes is \$_____ per month. In addition, in 20__, Tenant paid percentage rent in the amount of \$_____. The minimum, additional and percentage rents have been paid to the date of _____, 20__, and no rent has been paid in excess of 30 days in advance.
6. Tenant is currently obligated to pay the entire amount of rent and additional rent provided for in the Lease.
7. Tenant owns no options to extend the term of the Lease, options to purchase the Premises, or rights of first refusal or other rights to acquire an interest in the Premises, except as follows: [if none, state "none"].
8. Tenant has made, and Landlord holds, a security deposit with a current balance as of the date hereof equal to \$_____.
9. Tenant has not made, and has received no notice of, any sale, transfer, pledge, assignment or hypothecation of the Lease, or of the rents owed thereunder.
10. All conditions under the Lease to be performed by Landlord prerequisite to the full effectiveness of the Lease have been satisfied.

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11. All construction, repairs and improvements contemplated by the Lease to be performed by Landlord have been performed by Landlord and have been completed satisfactorily in accordance with the terms of the Lease, and no other construction, repair and improvements are contemplated under the Lease.

12. There are no sums or credits due Tenant from Landlord under the Lease, except for the return of any remaining balance of the security deposit (if any) at the end of the Lease term in accordance with the terms of the Lease and applicable law.

13. As of the date hereof, there exists no factual circumstance or condition which, with notice or the lapse of time, or both, would give rise to any obligation on the part of Landlord, would constitute a default on the part of Landlord, would constitute a defense to the enforcement of the Lease by Landlord or any offset against the rents or other charges due Landlord under the Lease, or would constitute the basis for a claim or cause of action against Landlord.

14. Tenant is not using the Premises in violation of any applicable laws, rules, ordinances or regulations, including, but not limited to, any applicable environmental laws, rules or regulations (collectively "Laws"); there are no regulatory actions or other claims pending or threatened against Tenant in connection with any Laws; Tenant has not received any notice from any third party or governmental authority alleging a violation of any Laws; and Tenant shall immediately notify Landlord in writing of any existing, pending or threatened action by any local, state or general governmental authority and of any third party claims of which Tenant is aware arising out of the violation or alleged violation of any Laws.

15. There has not been filed by or against Tenant nor, to the best knowledge and belief of Tenant, is there threatened against or contemplated by Tenant, a petition in bankruptcy, voluntary or otherwise, any assignment for the benefit of creditors, any petition seeking reorganization or arrangement under bankruptcy laws of the United States or of any state thereof, or any other action brought under said bankruptcy laws.

16. The undersigned hereby agrees that Lender and its successors and assigns shall not be bound by any prepayment by Tenant of more than one month's installment of rent unless such prepayment is expressly required in the Lease or has been specifically approved in writing by Lender.

17. If Lender advises Tenant that Landlord is in default of any indebtedness to Lender and Lender requests that payment of all future rents be made directly to Lender, Tenant agrees that it shall make all future rent payments under the Lease directly to Lender until instructed otherwise by Lender.

18. Tenant acknowledges having read this Certificate and understands the certifications and representations made herein, and hereby executes this Certificate intending reliance hereon by _____ and Lender, and the successors and assigns of each. The undersigned signatory represents and warrants that he or she is duly authorized to execute this Certificate on behalf of Tenant.

Dated: _____, 20____

(Name of Tenant)

By: _____

(Signature)

(Printed Name of Person
Signing this Certificate)

(Title of Person Signing this Certificate)

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