



COURT FILE NO. 25-2642858  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE NOTICE OF INTENTION TO FILE A  
PROPOSAL OF OLYMPUS FOOD (CANADA) INC.

APPLICANT LE CARREFOUR LAVAL (2013) INC.

DOCUMENT **AFFIDAVIT OF CHRISTIAN VÉZINA**

ADDRESS FOR SERVICE AND CONTACT  
INFORMATION OF PARTY FILING  
THIS DOCUMENT

**Gowling WLG (Canada) LLP**  
1600, 421 – 7<sup>th</sup> Avenue SW  
Calgary, AB T2P 4K9

Attn: **Alexandre Forest/Caireen E. Hanert**

Phone: 514.392.9424/403.298.1992

Fax: 514.876.9024/403.263.9193

File No.: L48240263

**AFFIDAVIT OF CHRISTIAN VÉZINA**  
**sworn August 28, 2020**

I, **CHRISTIAN VÉZINA**, of the City of Montréal, in the Province of Québec, **MAKE OATH AND SAY THAT:**

1. I am the Vice President, Operations of the Eastern Canada Portfolio of The Cadillac Fairview Corporation Limited ("**Cadillac Fairview**") acting as agent for the Applicant Le Carrefour Laval (2013) Inc. ("**Le Carrefour**") and have personal knowledge of the matters herein deposed to, except where stated to be based upon information and belief, in which case I verily believe same to be true.

**Dealings between Olympus and Cadillac Fairview (as agent)**

2. At all material times, Olympus Food (Canada) Inc. ("**Olympus**") operated various Kentucky Fried Chicken restaurants in Québec. Olympus leased premises for this purpose



at two shopping centres, at CF Galeries d'Anjou ("**Anjou**") where Les Galeries d'Anjou Leaseholds Inc. is the landlord, and at CF Promenades St-Bruno ("**Bruno**"), where Ontrea Inc. is the landlord.

3. In addition, on or about March 3, 2015 and June 11, 2015, Le Carrefour and Olympus entered into two leases (collectively, the "**Leases**") in respect of certain premises (retail store and storage area) located at the shopping centre known as CF Carrefour Laval in Laval, Québec (the "**Premises**"). Pursuant to the Leases, Le Carrefour agreed to lease the Premises to Olympus on the terms and conditions set out in the Leases. Attached collectively hereto as **Exhibit "A"** are copies of the Leases.
4. At all three locations, Cadillac Fairview acts as agent for the landlords.
5. During the first half of 2019, it became apparent that Olympus was having business difficulties. For reasons not disclosed to the landlord, Olympus' rights under its franchise agreement with Kentucky Fried Chicken Canada Company ("**KFC**"), including the licence to operate the location and all rights associated with the franchise, were terminated by KFC effective April 1, 2019 in relation to the Anjou location. Olympus notified the landlord of the termination and advised that it would be closing the Anjou location and terminating the lease for the Anjou location effective April 1, 2019. Attached hereto as **Exhibit "B"** is a copy of the letter dated March 30, 2019 advising of same.
6. Accordingly, on or about April 23, 2019, the landlord of the Anjou premises commenced proceedings against Olympus for payment of rent owing in the amount of \$1,419,630.89.
7. On or about May 15, 2019, Olympus advised Le Carrefour that it had entered into an agreement with FMI Atlantic Inc. ("**FMI**") to sell certain of its assets, including its rights and interest in the Leases, to FMI (the "**PSA**"). The transaction underlying the PSA was scheduled to close by June 16, 2019 (the "**Transaction**"). Attached hereto as **Exhibit "C"** is a copy of the letter advising of same.
8. Between April and November 2019, Cadillac Fairview negotiated a settlement with Olympus regarding all three abovementioned leased premises, which settlement included a requirement that the assignment of the Leases to FMI be finalized. By July 2019, FMI



was occupying the Premises and discharging the obligations of the tenant under the Leases. Moreover, all terms of the assignment of the Leases had been agreed to by Olympus, FMI and Le Carrefour.

9. On or about November 12, 2019, Les Galeries d'Anjou Leaseholds Inc. filed proceedings in the Quebec Superior Court (Civil Division) to compel Olympus to abide by the agreement negotiated with Cadillac Fairview regarding all three abovementioned leased premises (the "**Homologation Motion**"). As part of those proceedings, Olympus filed a declaration sworn December 11, 2019 by Emmanuel Jalandoni, President of Olympus, in which Mr. Jalandoni confirmed that Le Carrefour, FMI and Olympus had all agreed to the written terms of the assignment of the Leases. Attached hereto as **Exhibit "D"** is a copy of Mr. Jalandoni's sworn declaration.
10. A decision on the Homologation Motion was issued by the Court on or about December 16, 2019, whereby the Court denied the relief sought against Olympus, notably because the Court considered that the parties had never formally agreed on the payment modalities of the settlement amount to be paid by Olympus nor on the termination date of the Bruno lease. Attached hereto as **Exhibit "E"** is a copy of the decision.
11. For reasons again not disclosed to the landlord, Olympus' rights under its franchise agreement with KFC, including the licence to operate the location and all rights associated with the franchise, were terminated by KFC effective December 29, 2019 in relation to the Bruno location. Olympus notified the landlord of the termination and advised that it would be closing the Bruno location and terminating the lease for the Bruno location effective December 29, 2019. Attached hereto as **Exhibit "F"** is a copy of the letter dated December 27, 2019 advising of same.
12. Accordingly, on or about February 17, 2020, the landlord of the Bruno premises commenced proceedings against Olympus for payment of rent owing in the amount of \$1,399,460.22.

**The Assignment**

13. As noted above, since July 2019, FMI has occupied the Premises and has paid the rent and otherwise complied with the terms of the Leases. Attached hereto as **Exhibit "G"** are a series of email messages between Le Carrefour and FMI confirming same together with the Electronic Fund Transfer (EFT) agreement between Le Carrefour and FMI dated November 15, 2019 for the monthly payment of rent.
  
14. As part of its occupation of the Premises and its recognition of its obligation to meet the tenant's obligations under the Leases, FMI negotiated with Le Carrefour a Rent Deferral Agreement pursuant to which Le Carrefour agreed that the rent for April 2020 would be paid in August 2020. Le Carrefour agreed to the terms of the Rent Deferral Agreement, as:
  - (a) FMI was in occupation of the Premises and was otherwise meeting the obligations set out in the Leases; and
  - (b) In reliance on the representations made by Olympus as to the agreement by each of Olympus, FMI and Le Carrefour to the terms of the assignment of the Leases.Attached hereto as **Exhibit "H"** is a an email exchange confirming same Rent Deferral Agreement and the payment of the April 2020 rent on August 1, 2020.
  
15. On May 1, 2020, Olympus filed a Notice of Intention to Make a Proposal (the "**NOI**") pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "**BIA**").
  
16. To preserve its rights and to ensure that Le Carrefour was not prejudiced by the NOI, it served Olympus with a Notice of Default on May 27, 2020 pursuant to the Leases. Attached hereto as **Exhibit "I"** is a copy of the Notice of Default.
  
17. To date, and notwithstanding its evidence put before the Quebec Superior Court in Mr. Jalandoni's declaration that all terms of the assignment of the Leases had been agreed to by the parties, Olympus has not finalized the assignment of the Leases, which failure unnecessarily prejudices Le Carrefour.

(2)

18. Throughout the negotiations between Le Carrefour and Olympus since at least the end of 2019, Le Carrefour understood that the Leases had been effectively assigned to FMI, as FMI was meeting all obligations of the tenant under the Leases, including the payment of rent.
19. On July 30, 2020, Olympus served a Notice to Disclaim or Resiliate an Agreement dated July 29, 2020 (the “**Disclaimer**”) on Le Carrefour pursuant to section 65.2 of the BIA to disclaim the Leases. Attached hereto as **Exhibit “J”** is a copy of the Disclaimer.
20. On August 18, 2020, Le Carrefour received a letter from counsel for FMI advising that FMI was occupying the Premises and operating the restaurant under a Management Agreement with Olympus entered into as of June 16, 2019 (the “**Management Agreement**”). The existence of the Management Agreement was not previously disclosed to Le Carrefour. Counsel for Le Carrefour has requested a copy of the Management Agreement, but to date, FMI has refused to provide a copy. Attached hereto as **Exhibits “K” and “L”** respectively are copies of the letter and the email from counsel for FMI refusing to provide the Management Agreement.
21. Le Carrefour has recently learned that on or about August 21, 2020, FMI vacated the Premises.
22. Without delay on this same date, counsel for Le Carrefour advised counsel for FMI by email that Le Carrefour required FMI to abide by the terms of the Leases, and specifically reserved its rights pursuant to same. A copy of this email can be found under Exhibit L.
23. Le Carrefour reasonably relied on the representations made by Olympus with respect to the PSA and the Transaction and on the actions of FMI with regards to the Premises, and conducted itself accordingly to its detriment.
24. In these circumstances, the actions of Olympus in failing to complete the Transaction and in issuing the Disclaimer fall short of the requirement under the BIA that it act in good faith and treat its stakeholders in a fair and equitable manner.
25. I swear this Affidavit in support of an Application to set aside the Disclaimer.



26. I was not physically present before the Commissioner for Oaths, but was connected to her by video technology and followed the process for remote commissioning.

SWORN (OR AFFIRMED) BEFORE ME )  
at Montréal, Québec, this 28<sup>th</sup> day of )  
August, 2020. )  
)  
)  
)  
)  
)

\_\_\_\_\_  
A Commissioner for Oaths and Notary in )  
and for the Province of Québec )

  
\_\_\_\_\_  
**CHRISTIAN VÉZINA**



THIS IS EXHIBIT "A" REFERRED TO IN  
THE AFFIDAVIT OF CHRISTIAN VÉZINA  
SWORN BEFORE ME  
THIS 28<sup>TH</sup> DAY OF AUGUST, 2020

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A Commissioner of Oaths/Notary Public  
in and for the Province of Quebec



## STORAGE AGREEMENT

March 3<sup>rd</sup>, 2015

OLYMPUS FOOD (CANADA) INC.  
908 53 Avenue NE, Suite 1  
Calgary, Alberta T2E 6N9

Att. Mr. Emmanuel Jalandoni, President

Re: OLYMPUS FOOD (CANADA) INC. (the "Tenant")  
t/a "PFK and/or KFC"  
Store No. F007 - Storage No. ~~SG205~~ <sup>SF217</sup> (the "Premises")  
Le Carrefour Laval (the "Shopping Centre")

Further to your request, the Landlord is hereby leasing to the Tenant and the Tenant is leasing from the Landlord the storage area (the "Storage Area") designated as Storage Area No. SF217 containing an area of 184 square feet (certified), in the location outlined in red on Schedule "B" attached hereto, solely for the purpose of storage of those items permitted to be sold or used in the Premises.

The term hereof shall commence on the date the Tenant opens for business in any part of the Premises or the day following the expiry of the Fixturing Period or the outside date: ~~June 16, 2015~~ <sup>Aug 22, 2015</sup> (the "Storage Term"), subject to earlier termination in accordance with the terms of this Agreement. Unless terminated prior to that date, this Agreement will terminate contemporaneously with the Lease in the event that the Lease is terminated by the Landlord.

The Tenant shall pay to the Landlord on the first day of each calendar month during the Storage Term, in advance, without deduction, abatement or set-off, the following amounts (collectively referred to as the "Monthly Rent"), plus G.S.T. and Q.S.T., for the use of the Storage Area:

The following calculations are based on a full month, however, the first month will be adjusted with the "Commencement date":

- (a) an amount equal to \$766.67 based upon an annual rate of \$50.00 per square foot of the area of the Storage Area; ~~from June 1<sup>st</sup>, 2015 to May 31, 2018~~ <sup>Aug 22, 2015 to Aug 31, 2018</sup>  
an amount equal to \$812.67 based upon an annual rate of \$53.00 per square foot of the area of the Storage Area; ~~from June 1<sup>st</sup>, 2018 to May 31, 2022~~ <sup>Sept 1, 2018 to Aug 31, 2022</sup>  
an amount equal to \$858.67 based upon an annual rate of \$56.00 per square foot of the area of the Storage Area; ~~from June 1<sup>st</sup>, 2022 to 2025~~ <sup>Sept 1, 2022 to Aug 31, 2025</sup>
- (b) an amount estimated for the first Rental Year to be equal to \$139.00 based upon an annual estimated rate of \$18.13 per square foot on 50% of the Storage Area, for the costs of operation, maintenance and administration of, and all utilities used or consumed in, the Storage Area, and whatever heating, ventilating and air conditioning services are provided for the Storage Area (collectively the "Charges"); and
- (c) an amount estimated for the first Rental Year to be equal to \$214.98 based upon an annual estimated rate of \$28.04 per square foot on 50% of the Storage Area, in respect of the Tenant's share of Taxes and Surtaxes imposed or assessed with respect to the lands, buildings and improvements forming the Shopping Centre.

Initial Here	
Landlord	Tenant
Ⓞ	NW

Ⓞ

The amounts payable pursuant to Paragraphs (b) and (c) are payable on the basis of the Landlord's estimates from time to time, and upon determination by the Landlord of such amounts, the Tenant will pay to the Landlord forthwith upon request of the Landlord any amount determined to be owing by the Tenant or the Landlord will pay to the Tenant, as soon as reasonably possible, any excess owing by the Landlord to the Tenant. The Landlord shall be entitled to notify the Tenant prior to the commencement of each subsequent Rental Year of the estimated increases in the Charges and in the Taxes and Surtaxes for that Rental Year and the Tenant shall pay on the basis of such revised estimates for such Rental Year.

The Tenant will pay to the taxing authorities, or to the Landlord, as it directs, before delinquency, all Business Taxes payable by the Tenant with respect to the Storage Area.

The Tenant will, at all times, ensure that the insurance policies which it is required to maintain under the lease extend to and cover the Tenant's use of the Storage Area and activities therein. The provisions of the Lease containing the release and indemnification by the Tenant of the Released Persons will specifically apply to this Agreement.

The Tenant shall only be permitted to assign this Agreement or sublet the Storage Area in conjunction with a Transfer permitted under the Lease.

The Tenant will keep the Storage Area clean and orderly and in a good state of repair. The Tenant will not make any repairs, alterations, replacements or improvements to any part of the Storage Area without the Landlord's prior written consent, which may not be unreasonably withheld. The Tenant will be liable for all damage caused to the Storage Area or any part of it regardless of who caused the damage.



If the Tenant fails to pay the Monthly Rent, Business Taxes, G.S.T. or Q.S.T., at the times required, or if the Tenant defaults in the performance of any of its other obligations under this Agreement, or the Lease, then in addition to any other rights and remedies the Landlord has at law, the Landlord may, after five (5) days prior written notice, terminate this Agreement.

The Landlord has the right on thirty (30) days prior written notice to the Tenant to (a) relocate the Storage Area to a new location, or ~~(b) terminate this Agreement.~~

The Tenant agrees to comply with all federal, provincial and municipal laws and all rules and regulations in effect from time to time with respect to the Storage Area.

All notices, demands or requests under this Agreement will be made in the manner and to the parties' addresses set out in the Lease (as it may have been amended from time to time).

It is understood and agreed that all capitalised terms and expressions used in this Agreement have the same meaning as they have in the Lease.

Initial Here	
Landlord	Tenant
	



Please signify your agreement with the foregoing by signing and returning the attached duplicate copy of this letter to the undersigned failing which this Agreement shall be null and void and of no further force and effect.

Yours very truly,

**LE CARREFOUR LAVAL LEASEHOLDS INC.**

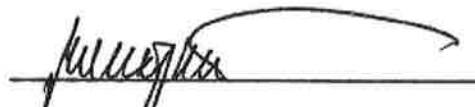
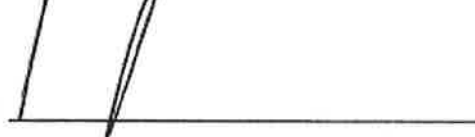
  
CHRISTIAN VEZTINA

Annie Daniel  
Property Manager  
Le Carrefour Laval



Martin Duguay  
General Manager  
Le Carrefour Laval

Read and agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

OLYMPUS FOOD (CANADA) INC. \_\_\_\_\_  
("Tenant")

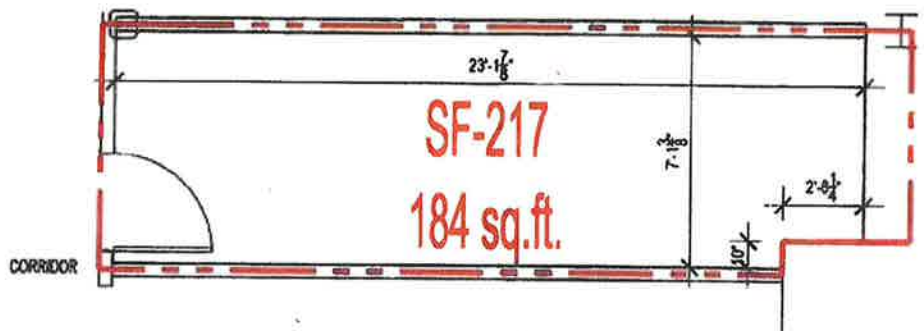
Per:   
Per: 

I / We have the authority to bind the company.

Initial Here	
Landlord	Tenant
	







SEAL: 	PROJECT <b>CERTIFICAT          CARREFOUR LAVAL</b>		DRAWN BY: <b>GG</b>	CHECKED <b>FMcG</b>
			DATE <b>10.09.2009</b>	SCALE <b>NONE</b>
			DATE SITE MEASURED <b>03.09.2009</b>	UNIT # <b>SF-217</b>
			DWG NO. <b>1 OF 1</b>	

*Handwritten signature and initials.*



**CARREFOUR LAVAL**

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**LEASE**

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**LE CARREFOUR LAVAL (2013) INC.**

Landlord

- and -

**OLYMPUS FOOD (CANADA ) INC.**

Tenant

**t/a "KFC" and/or "PFK"**

**STORE NO. F007**

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CARREFOUR LAVAL

RETAIL LEASE

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THIS LEASE is dated the 11<sup>th</sup> day of June, 2015, and is made

**B E T W E E N**

**LE CARREFOUR LAVAL (2013) INC.**  
(the "Landlord")

OF THE FIRST PART

- and -

**OLYMPUS FOOD (CANADA ) INC.**  
(the "Tenant")

OF THE SECOND PART

**ARTICLE I – TERM SHEET AND DEFINITIONS**

**Section 1.01 Term Sheet**

The following are certain basic terms and provisions which are part of, may be referred to and are more fully specified in this Lease. If there is a discrepancy between the terms and provisions of this Section 1.01 and any other section of the Lease, the provisions of such other section of the Lease shall prevail.

(a) Premises Number:	<b>F007</b>
(b) Premises GLA:	<b>358 square feet (33.26 square metres) approximately.</b>
(c) Trade Name:	<b>"KFC" and/or "PFK"</b>
(d) Use:	<b>The business of a stand-up fast food service, with no stools or other seating facilities, limited to the sale, at retail, of fried chicken, French-fried potatoes, cole slaw, potato salad, macaroni salad and mixed vegetable salad, and as ancillary to such principal use, the sale, at retail, of chicken soup, chicken-on-a-bun, gravy, poutine (that is, French-fried potatoes with gravy and cheese curds), bread and biscuits served as accompaniment with a meal, a maximum of four (4) different types of beverages (either carbonated or non-carbonated, but specifically excluding fruit beverages), soft ice cream, and a maximum of four (4) dessert items (such as, by way of example, lemon tarts and danishes), all of the aforementioned items being intended for immediate consumption either on or off the Premises. The Tenant covenants and agrees that it will not suffer or permit the sale of muffins, doughnuts or cookies in all or any part of the Premises.</b>
(e) Term:	Commencing on the date which is the earliest of (1) the date the Tenant opens its business to the public in any part of the Premises, or (2) the day following the expiry of the Fixturing Period, or (3) the <b>22<sup>nd</sup></b> day of <b>August, 2015</b> (the "Commencement Date"), and expiring on the <b>31<sup>st</sup></b> day of <b>August, 2025</b> .
(f) Minimum Rent:	(i) during the <b>first (1<sup>st</sup>)</b> through <b>second (2<sup>nd</sup>)</b> consecutive twelve (12) month periods, inclusive, of the Term, and if the Commencement Date is not the first day of a month, then the part of the month from the Commencement Date to and including the last day of the month in which the Commencement Date occurs, <b>\$400.00</b> per square foot of the GLA of the Premises per annum; (ii) during the <b>third (3<sup>rd</sup>)</b> through <b>fourth (4<sup>th</sup>)</b> consecutive twelve (12) month periods, inclusive, of the Term, <b>\$410.00</b> per square foot of the GLA of the Premises per annum; (iii) during the <b>fifth (5<sup>th</sup>)</b> through <b>sixth (6<sup>th</sup>)</b> consecutive twelve (12) month periods, inclusive, of the Term, <b>\$420.00</b> per square foot of the GLA of the Premises per annum; (iv) during the <b>seventh (7<sup>th</sup>)</b> through <b>eighth (8<sup>th</sup>)</b> consecutive twelve (12) month periods, inclusive, of the Term, <b>\$430.00</b> per square foot of the GLA of the Premises per annum; and (v) during the remainder of the Term, <b>\$440.00</b> per square foot of the GLA of the Premises per annum.
(g) Percentage Rent:	<b>8%</b> <input checked="" type="checkbox"/> natural breakpoint <input type="checkbox"/> false breakpoint





(h) Fixturing Period:	A maximum of 68 days commencing on the 15 <sup>th</sup> day of June, 2015.
(i) Marketing Fund:	\$3.44 per square foot of the GLA of the Premises per annum.
(j) Radius Restriction:	Not Applicable
(k) Food Court Tenant:	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
Food Court Capital Contribution:	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES
(l) Kiosk:	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
(m) Tenant's Address:	908 – 53 <sup>rd</sup> Avenue NE Suite 1 Calgary, Alberta T2E 6N9

### Section 1.02 Definitions

The following definitions apply in this Lease.

**"Additional Rent"**: money payable by the Tenant under this Lease (except Minimum Rent and Percentage Rent) whether or not it is designated "Additional Rent".

**"Affiliate"**: an affiliate within the meaning of the Canada Business Corporations Act, R.S.C. 1985, c.C-44, as it exists on the date of this Lease.

**"Applicable Laws"**: statutes, regulations, orders, rules, notices, policies, guidelines, codes, certificates of authorization, permits or directives and other requirements of a governmental or quasi-governmental authority with jurisdiction over any matter.

**"Architect"**: an accredited architect chosen by the Landlord from time to time.

**"Commencement Date"**: the date specified in Section 1.01(e).

**"Common Elements"**: (a) the areas, facilities, utilities, improvements, equipment and installations (collectively, "elements") in the Shopping Centre that, from time to time, are not intended to be leased to tenants of the Shopping Centre, or are designated from time to time as Common Elements by the Landlord, (b) the elements outside the Shopping Centre that serve the Shopping Centre (or any part of it) and are designated by the Landlord from time to time as part of the Common Elements, and (c) the elements in or on Rentable Premises that are provided for the benefit of the tenants of the Shopping Centre and their employees, customers and other invitees in common with others entitled to use them. The Common Elements include, but are not limited to, the roof, exterior wall assemblies including weather walls, exterior and interior structural components and bearing walls in the buildings and improvements in the Shopping Centre; equipment, furniture, furnishings and fixtures; music, fire prevention, security and communication systems; columns; pipes; electrical, plumbing, drainage, mechanical and other installations, equipment or services in the Shopping Centre or related to it, as well as the structures housing them; the HVAC System of the Shopping Centre as defined in Schedule "D"; parking facilities; and the Food Court. The Common Elements shall not include electrical, plumbing, drainage, sprinkler, mechanical and all other installations, systems, equipment, services and facilities located in the Shopping Centre but installed for the exclusive use of individual Rentable Premises or an individual storage area.

**"C.P.I."**: (a) the Consumer Price Index (All Items for Regional Cities, base year 2002=100) for the city in which the Shopping Centre is located, or if there is no Consumer Price Index for that city, for the city in Canada nearest the Shopping Centre for which there is a Consumer Price Index published by Statistics Canada (or by a successor or other governmental agency, including a provincial agency), or (b) if the Consumer Price Index is no longer published, an index published in substitution for the Consumer Price Index or any replacement index designated by the Landlord. If a substitution is required, the Landlord will make the necessary conversions. If the base year for the Consumer Price Index (or the substituted or replacement index) is changed by Statistics Canada (or by its successor or other governmental agency) the Landlord will make the necessary conversion.

**"Emphyteutic Lessors"**: the emphyteutic lessor, if any, of the Shopping Centre, or any part of it, from time to time. In sections that contain a release or other exculpatory language in favour of the Emphyteutic Lessors, "Emphyteutic Lessors" includes the directors, officers, employees (while in the ordinary course of their employment), mandataries and agents of the Emphyteutic Lessors.

**"Fixturing Period"**: the period specified in Section 1.01(h) and Section 3.05.

**"Food Court"**: the parts of the Common Elements designated by the Landlord from time to time to support Food Court Tenants' operations. These parts include, but are not limited to, public table and seating areas, waste collection facilities and other areas and facilities.

**"Food Court Tenant"**: a tenant designated from time to time by the Landlord as a Food Court Tenant.



**"GLA":** the area measured from, (a) the exterior face of exterior walls, doors and windows; (b) the exterior face of interior walls, doors and windows separating Rentable Premises from Common Elements; (c) the exterior face of interior walls that are not party walls, separating Rentable Premises from adjoining Rentable Premises; and (d) the centre line of interior party walls separating Rentable Premises from adjoining Rentable Premises. GLA includes interior space even if it is occupied by projections, structures or columns, structural or non-structural, and if a storefront is recessed from the lease line the area of the recess is included within the GLA of such Rentable Premises. The dimensions of Rentable Premises that are a kiosk will be determined by the Landlord.

**"GLA of a Rentable Premises":** the total GLA of the levels of a Rentable Premises.

**"Gross Revenue":** the total of the selling or rental prices of goods sold or leased and services performed in or from the Premises whether the sales or rentals are made or services performed on the Premises or elsewhere.

Gross Revenue includes but is not limited to:

- (a) orders taken or received at the Premises, whether the orders are filled from the Premises or elsewhere;
- (b) sales and rentals of goods and services via an internet website operated by the Tenant or an Affiliate of the Tenant where the sales and rentals are generated via a terminal or console located within the Premises;
- (c) deposits not refunded to purchasers; and
- (d) all other receipts and receivables (including interest, instalment and finance charges) from business conducted in or from the Premises,

whether the sales, rentals or other receipts or receivables are made by cheque, cash, credit, charge account, exchange or otherwise and whether the sales or rentals are made by means of mechanical or other vending devices in the Premises. Bank charges or uncollectible credit accounts or charges made by collection agencies will not be deducted and no allowances will be made for bad debts. Each charge, sale or rental made on instalment or credit will be treated as a sale or rental for the full selling or rental price in the month for which the charge, sale or rental is made, regardless of the time when the Tenant receives payment (whether full or partial).

Gross Revenue does not include, or there will be deducted from Gross Revenue:

- (i) sales or rentals of merchandise for which cash has been refunded or credit made to a charge account, but only to the extent of the refund or credit, and in the case of sales made through catalogues or the internet, only to the extent that such refund or credit relates to a prior inclusion of the same transaction in Gross Revenue;
- (ii) the selling or rental price of merchandise returned by customers for exchange, but the selling or rental price of merchandise delivered to the customer in exchange will be included in Gross Revenue;
- (iii) retail tax imposed by federal, provincial, municipal or any other governmental authorities directly on sales and rentals and collected from customers at the point of sale or rental by the Tenant acting as agent for the authority, but only if the amount is added separately to the selling or rental price and does not form part of the quoted price for the article or the service and is actually paid by the Tenant to the authority; and
- (iv) transfers of merchandise between the Tenant's stores and merchandise returned to the Tenant's suppliers, but only if the transfers or returns are for convenience and not for reducing Gross Revenue.

**"Hazardous Substance":** means any substance or material whose discharge, release, use, storage, handling or disposal is regulated, prohibited or controlled, either generally or specifically, by any governmental authority or quasi-governmental authority pursuant to or under any Applicable Laws, including, but not limited to, any contaminant, pollutant, deleterious substance, or material which may impair the environment, petroleum and other hydrocarbons and their derivatives and by-products, dangerous substances or goods, asbestos, gaseous, solid and liquid waste, special waste, toxic substance, hazardous or toxic chemical, hazardous waste, hazardous material or hazardous substance, either in fact or as defined in or pursuant to any Applicable Laws.

**"Landlord":** the party of the First Part and its authorized representatives. In sections that contain a release or other exculpatory provision or an indemnity in favour of the Landlord, "Landlord" includes the directors, officers, employees (while in the ordinary course of their employment), mandataries and agents of the Landlord.

**"Landlord's Work":** the work to be performed by the Landlord pursuant to Schedule "C".





**"Lease":** this agreement, all Schedules thereto and the Rules and Regulations adopted or revised from time to time under Section 17.01.

**"Management Company":** a company or other entity, if any, retained by the Landlord from time to time to operate or manage the Shopping Centre. In sections that contain a release or other exculpatory provision or an indemnity in favour of a Management Company, "Management Company" includes the officers, directors, employees (while in the ordinary course of their employment), mandataries and agents of the Management Company.

**"Minimum Rent":** the annual rent payable pursuant to Section 1.01(f) and Section 4.02.

**"Mortgagee":** a mortgage or hypothecary creditor (including a trustee for bondholders) of the Shopping Centre or part of it and a chargee or other secured creditor that holds any rights, title or interest in and to the Shopping Centre or a part of it as security, but a Mortgagee is not a creditor, chargee or security holder of a tenant of Rentable Premises. In sections that contain a release or other exculpatory provision or an indemnity in favour of the Mortgagee, "Mortgagee" includes the directors, officers and employees (while in the ordinary course of their employment), mandataries and agents of the Mortgagee, and the Landlord acts as mandatary for the benefit of the Mortgagee so that each such release, indemnity and/or other exculpatory provision is fully enforceable by the Mortgagee.

**"Owners":** the owner or owners, or the emphyteutic lessees, if any, from time to time (other than the Landlord) of the Shopping Centre. In sections that contain a release or other exculpatory provision or an indemnity in favour of an Owner, "Owners" includes the officers, directors, employees (while in the ordinary course of their employment), mandataries and agents of the Owners, and the Landlord acts as mandatary for the benefit of the Owners so that each such release, indemnity and/or other exculpatory provision is fully enforceable by the Owners.

**"Percentage Rent":** the rent payable pursuant to Section 1.01(g) and Section 4.03.

**"Person":** if the context allows, a person, firm, partnership or corporation, group of persons, firms, partnerships or corporations, or any combination of them.

**"Premises":** the Rentable Premises described in Section 1.01(a) and Section 3.01.

**"Prime Rate":** the rate of interest, per annum, from time to time publicly quoted by the Toronto-Dominion Bank, at Toronto as the reference rate of interest (commonly known as its "prime rate") used by it to determine rates of interest chargeable in Canada on Canadian dollar demand loans to its commercial customers.

**"Proportionate Share":** a fraction which has as its numerator the Weighted GLA of the Premises, and as its denominator the Weighted GLA of the Shopping Centre.

**"Province":** the province in which the Shopping Centre is located.

**"Released Persons":** collectively and individually includes the Landlord, the Management Company, the Owners, the Emphyteutic Lessors (if any) and the Mortgagee.

**"Rent":** Minimum Rent, Percentage Rent and Additional Rent.

**"Rentable Premises":** those premises (including the Premises), in or on the Shopping Centre that are, or are intended from time to time to be occupied by businesses that sell or lease goods or services to the public.

**"Rental Year":** the period of time that, in the case of the first Rental Year of the Term,

- (a) starts on the first day of the Term, and for Article IV and related Sections and Articles, ends on the date that is one year after the first day of the Term (unless the first day of the Term is not the first day of a month, in which case the first Rental Year shall end on the date that is one year after the last day of the month in which the first day of the Term occurs);
- (b) starts on the first day of the Term, and for Article V and related Sections and Articles ends on the immediately ensuing December 31st;
- (c) starts on the first day of the Term, and for Articles VI, VII, VIII, Schedule "D" and Schedule "F" and related Sections and Articles ends on the immediately ensuing October 31st; and

in the case of Rental Years after the first Rental Year, is a period of twelve (12) consecutive calendar months starting the first day after the Rental Year that immediately precedes it, but (i) the last Rental Year whether it is twelve (12) calendar months or not, terminates on the expiration or earlier termination of this Lease, and (ii) the Landlord may, from time to time, by written notice to the Tenant, specify a date (which may precede the notice) on which the then current Rental Year will terminate and the anniversary of the specified date will be the expiry date of the subsequent Rental Years. The Landlord will not change the Rental Year, however, if its main purpose is to increase Rent, nor will it change a Rental Year to shorten the Term.



**"Rules and Regulations":** the rules and regulations set out in Schedule "E", adopted, promulgated, revised or amended by the Landlord from time to time under Section 17.01.

**"Sales Taxes":** all goods and services taxes, sales taxes, value-added taxes, multi-stage taxes, business transfer taxes, and any other taxes imposed in respect of the Rent payable by the Tenant under this Lease or in respect of the rental of space under this Lease.

**"Shopping Centre":** the lands described in Schedule "A" as they are altered, reduced or expanded from time to time and the buildings, improvements, equipment and facilities, including, without limitation, the Common Elements, serving them or located on or in them from time to time.

**"Stipulated Rate":** the rate of interest per annum that is five percentage points more than the Prime Rate.

**"Storage Areas":** those areas designated by the Landlord from time to time as Storage Areas.

**"Surety":** a Person, if any, who has executed or agreed to execute a the suretyship agreement ~~that is attached to this Lease as Schedule "G"~~ or who otherwise guarantees any obligations of the Tenant under this Lease.

**"Tenant":** the Party of the Second Part and any Person mentioned as Tenant in this Lease. "Tenant" includes, where the context allows (as in Section 10.07), the officers, directors, employees, agents, mandataries, invitees **(for whom the Tenant may be responsible at law)** and licensees of the Tenant, and those over whom the Tenant **is responsible at law.** ~~may reasonably be expected to have control.~~ **In sections that contain a release or other exculpatory provisions or an indemnity in favour of the Tenant, "Tenant" includes the directors, officers, employees (while in the ordinary course of their employment) and agents of the Tenant.**

**"Tenant's Work":** the work to be performed by the Tenant pursuant to Schedule "C".

**"Term":** the period described in Section 1.01(e).

**"Weighted GLA of a Rentable Premises":** the area of a Rentable Premises obtained by multiplying the GLA of each level described below, of a Rentable Premises, by the factor indicated for it, and totalling the products:

- |     |  |             |
|-----|--|-------------|
| (a) | <u>the GLA of a level at or near the level of a mall and having direct enclosed pedestrian access to and frontage on a mall</u>  | <u>1.00</u> |
| (b) | the GLA of a level not at or near the level of a mall, or not having direct enclosed pedestrian access to and frontage on a mall | 0.50        |

If there is an expansion of the Shopping Centre, or the buildings, improvements, equipment and facilities, including the Common Elements, located in the Shopping Centre, the Landlord will designate the relevant factor to be applied in obtaining the Weighted GLA of all Rentable Premises including the Premises.

**"Weighted GLA of the Shopping Centre":** the total of the Weighted GLA of all Rentable Premises excluding the following categories of space: (a) kiosks; (b) Storage Areas; (c) free-standing buildings; (d) Rentable Premises with a GLA of more than 15,000 square feet; (e) space used or intended for use as theatres or cinemas; (f) offices that are not at or near the level of a mall and do not have direct enclosed pedestrian access to and frontage on a mall; (g) space used or intended to be used as recreational, sports or health facilities; (h) space used or intended for use by governmental or public offices, agencies or services or charitable organizations, community facilities, daycare facilities, customer care or information booths; and (i) mezzanine areas inside Rentable Premises. However, the area of the Premises and the area of other Rentable Premises that are of the same category of space as the Premises shall be included in the Weighted GLA of all Rentable Premises.

## ARTICLE II - INTENT AND INTERPRETATION

### Section 2.01 Net Lease

(a) This Lease is a completely net lease to the Landlord. Except as stated in this Lease, the Landlord is not responsible for costs, charges, or expenses relating to the Premises, their use and occupancy, their contents, or the business carried on in them, and the Tenant will pay the charges, impositions, costs and expenses relating to the Premises except as stated in this Lease. This Section will not be interpreted to make the Tenant responsible for emphyteutic rent that may be payable by the Landlord or the Owners, payments to Mortgagees or, subject to Article V, the Landlord's income taxes. Capital Tax as defined in Section 6.02(d) is not considered as income tax.

(b) The Tenant will pay to the Landlord, in the manner specified by the Landlord, the full amount of all Sales Taxes. Sales Taxes are payable by the Tenant whether they are characterized as a goods and services tax, sales tax, value-added tax, multi-stage tax, business transfer tax, or otherwise, with the intent that the Landlord be fully indemnified in respect of all Sales Taxes payable or collectible by the Landlord in respect of Rent or the rental of space under this Lease. Sales Taxes payable by the Tenant (i) will be calculated by the Landlord in accordance with the applicable legislation; (ii) will be paid to the Landlord at the same time as the amounts to which the Sales Taxes are payable to the Landlord under



this Lease (or upon demand at such other time or times as the Landlord from time to time determines); and (iii) despite anything else in this Lease, will not be considered to be Rent but the Landlord will have all of the same remedies for, and rights of recovery with respect to such amounts, as it has for non-payment of Rent under this Lease or at law. If a deposit is forfeited or an amount becomes payable to the Landlord due to a default or as consideration for a modification of this Lease and the applicable legislation deems a part of the deposit or amount to include Sales Taxes, then the deposit or amount will be grossed up to ensure that the full amount of the forfeited deposit or amount payable is received by the Landlord in full without encroachment by any deemed payment, input credit or otherwise.

#### **Section 2.02 Landlord and Representatives to Act Reasonably and in Good Faith**

The Landlord, and each Person acting for the Landlord, in making a determination, designation, calculation, estimate, conversion, or allocation under this Lease, will act reasonably and in good faith and each accountant, architect, engineer or surveyor, or other professional Person employed or retained by the Landlord will act in accordance with the applicable principles and standards of the Person's profession.

#### **Section 2.03 Rent Disputes**

The Tenant may dispute an invoice, billing or statement in respect of Rent only by giving written notice to the Landlord specifying the basis of the dispute within ~~twelve (12) months~~ ~~sixty (60) days~~ after delivery of the invoice, billing or statement, as the case may be. The Tenant will, in any event, continue to pay Rent in accordance with the Landlord's invoice, billing or statement until the dispute is resolved. No dispute in respect of any invoice, billing or statement issued to the Tenant is valid unless the procedure set out above is strictly complied with.

#### **Section 2.04 Entire Agreement**

Whether or not the Tenant is permitted to take possession of the Premises, and whether or not it pays a deposit or any instalment of Minimum Rent or other Rent which is accepted by the Landlord, no change which the Tenant makes to the form of this Lease will be binding on the Landlord even if it is brought to the Landlord's attention, until the Landlord executes this Lease and initials the change or a page of this Lease containing the change and the Lease is delivered to the Tenant. The Lease includes the Schedules attached to it and the Rules and Regulations adopted under Section 17.01. There are no agreements, promises, conditions, representations, incitement, parallel, accessory or concomitant agreement or understandings, either oral or written, between the parties concerning this Lease, the Premises, the Shopping Centre or any matter related to all or any of them, except those that are set out in this Lease. All representations, promises, guarantees and incitements made by the Landlord or its mandataries, agents or representatives, if any, and upon which the Tenant relies, are contained in this Lease and the Tenant expressly acknowledges, for now and always, that it did not rely on any other representation, promise, guarantee or incitement which is not contained in this Lease. No alteration, amendment, change or addition to this Lease is binding upon the Landlord unless it is in writing and signed by the Tenant and two authorized representatives of the Landlord. No electronic communications between the parties will have the effect of amending this Lease.

#### **Section 2.05 General Matters of Intent and Interpretation**

- (a) Each agreement under this Lease is an obligation.
- (b) The captions, section numbers, article numbers and Table of Contents do not define, limit, construe or describe the scope or intent of the sections or articles.
- (c) The use of the neuter singular pronoun to refer to the Landlord or the Tenant is a proper reference even though the Landlord or the Tenant is an individual, a partnership, a corporation or a group of two or more individuals, partnerships or corporations. The grammatical changes needed to make the provisions of this Lease apply in the plural sense when there is more than one Landlord or Tenant and to corporations, associations, partnerships or individuals, males or females, are implied.
- (d) If a part of this Lease or the application of it to a Person or circumstance, is to any extent held or rendered invalid, unenforceable or illegal, that part:
  - (i) is independent of the remainder of the Lease and is severable from it, and its invalidity, unenforceability or illegality does not affect, impair or invalidate the remainder of this Lease; and
  - (ii) continues to be applicable to and enforceable to the fullest extent permitted by law against any Person and circumstance except those as to which it has been held or rendered invalid, unenforceable or illegal.

No part of this Lease will be enforced against a Person, if, or to the extent that by doing so, the Person is made to breach a law, rule, regulation or enactment.

- (e) This Lease will be construed in accordance with the laws of the Province and the laws of Canada applicable therein.
- (f) Time is of the essence of this Lease. In addition to any other circumstances where the Tenant is in default by operation of law, the simple occurrence of an Event of Default as provided in Section 16.01 hereof shall constitute the Tenant in default in accordance with the provisions of Articles 1594 and following of the Civil Code of Quebec.





(g) The Landlord acts as mandatary for the Management Company, all Mortgagees and the Owners to the extent necessary to ensure that all exculpatory provisions and indemnities included in their favour in this Lease are enforceable against the Tenant by them, and by the Landlord.

#### **Section 2.06 Freely Negotiated**

The Landlord and the Tenant acknowledge that they have been represented by legal counsel in the discussion, negotiation and execution of this Lease. The Landlord and the Tenant further acknowledge and agree that the provisions of this Lease, including without restriction all schedules attached hereto and forming part hereof, have been freely and fully discussed and negotiated and that the execution of this Lease constitutes and is deemed to constitute full and final proof of the foregoing statement. The Landlord and the Tenant acknowledge and agree that they have read, examined, understood and approved all of the provisions of this Lease, including without restriction all schedules attached hereto and forming part hereof.

The Tenant acknowledges that it has obtained all information useful or necessary for it to make an enlightened decision to execute this Lease.

### **ARTICLE III - GRANT AND TERM**

#### **Section 3.01 The Premises**

The Landlord leases to the Tenant, and the Tenant leases from the Landlord, the Premises in the Shopping Centre that are designated as set out in Section 1.01(a), and have a GLA as set out in Section 1.01(b). The approximate location of the Premises is shown on the plan of the Shopping Centre attached as Schedule "B".

If the Premises are entirely self-enclosed, their boundaries extend (a) to the limits from which the GLA of the Premises is measured, and (b) from the top surface of the structural subfloor to the bottom surface of the structural ceiling. If the Premises have no structural ceiling abutting the demising walls and are open to the ceiling or the bottom surface of the structural ceiling of the Shopping Centre, the boundaries of the Premises extend from the top surface of the structural subfloor to the height of the demising walls. Common Elements (including, but not limited to, columns and walls that form part of the Common Elements) that are within the space enclosed by the boundaries of the Premises, do not form part of the Premises, although any floor space occupied by them is included in the GLA of the Premises.

The Tenant acknowledges and agrees that there is no warranty whatsoever made or given by the Landlord that the Premises may be used for the purpose for which they are leased in accordance with Section 9.01 of this Lease and the Landlord has no obligation whatsoever to maintain the Premises for such purpose, the whole notwithstanding any law, legislation or regulation to the contrary. The Tenant hereby expressly forever waives any right it may presently enjoy or which it may enjoy in the future with respect to any such warranty or maintenance. The Tenant acknowledges and represents to the Landlord that it has examined and is satisfied with the zoning affecting the Shopping Centre and the Premises.

#### **Section 3.02 Use of Common Elements**

The Tenant has the non-exclusive and non-transferable right (except in accordance with Article XIII) to use the Common Elements in common with others entitled to do so, for the purposes for which they are intended and during those hours that the Shopping Centre is open for business, subject however, to this Lease.

#### **Section 3.03 The Term**

The Tenant will have and hold the Premises for the Term set out in Section 1.01(e), unless sooner terminated as provided for in this Lease. If the Commencement Date is not fixed by this Lease, within a reasonable time after the Commencement Date occurs, the Landlord will confirm the Commencement Date by notice to the Tenant and such confirmed Commencement Date will apply for this Lease.

#### **Section 3.04 Certified GLA**

If the GLA of the Premises is certified by the Architect or by an accredited land surveyor designated by the Landlord, then such GLA will apply instead of the area indicated in Section 1.01(b) and Rent will be adjusted as calculated by the Landlord, which adjustment will be retroactive if the certification does not occur until after the Commencement Date.

#### **Section 3.05 Fixturing Period**

The Tenant shall have the maximum period of days set out in Section 1.01(h) to complete the Tenant's Work which shall commence on the day set out in Section 1.01(h), and shall expire on the earliest of: (i) the date immediately prior to the date upon which any part of the Premises is opened to the public for business, or (ii) the final day of the maximum number of days set out in Section 1.01(h). During the Fixturing Period, the Tenant shall not be obligated to pay Minimum Rent, Percentage Rent, its Proportionate Share of Taxes, its Proportionate Share of the costs and expenses of maintaining, operating, repairing and administering the Shopping Centre, the Marketing Fund, or the charges under Schedule "D", but the Tenant shall be subject to all of the other terms and conditions of this Lease insofar as they are applicable including, without limitation, the obligation to pay Business Taxes if applicable, and the Charges for Utilities, the obligation to maintain insurance pursuant to the Lease, and the provisions relating to the liability of the Tenant for its acts and omissions, and the acts and omissions of its



employees, agents, mandataries, contractors and invitees and the indemnification of the Released Persons.

#### ARTICLE IV – RENT

##### Section 4.01 Agreement to Pay Rent

The Tenant agrees to pay Minimum Rent, Percentage Rent, and Additional Rent.

##### Section 4.02 Minimum Rent

(a) The Tenant will, throughout the Term, pay to the Landlord, or to the Management Company, as the Landlord directs, at its head office, or at any other place designated by the Landlord or the Management Company, as the case may be, in Canadian funds, without demand and without deduction, abatement, set-off or compensation, as Minimum Rent, an annual amount equal to the per square foot rate specified in Section 1.01(f) multiplied by the number of square feet comprising the GLA of the Premises, payable in equal consecutive monthly instalments, each in advance on the first day of each calendar month.

(b) If the Commencement Date is not the first day of a calendar month, the Tenant will pay, on the Commencement Date, Minimum Rent calculated on a per diem basis (based on three hundred and sixty-five (365) days) from the Commencement Date to the end of the month in which it occurs.

(c) ~~The Tenant will deliver to the Landlord at the beginning of each Rental Year, a series of monthly post-dated cheques for the Rental Year for the total of the monthly payments of Minimum Rent and any Additional Rent that is estimated by the Landlord in advance.~~

##### Section 4.03 Percentage Rent

(a) In addition to the Minimum Rent, the Tenant will pay to the Landlord, or to the Management Company, as the Landlord directs, as Percentage Rent, the percentage specified in Section 1.01(g) of Gross Revenue for each Rental Year in excess of the Breakpoint. The term "Breakpoint" means the amount obtained when the annual Minimum Rent payable pursuant to Section 1.01(f) and Section 4.02(a) is divided by the percentage specified in Section 1.01(g).

(b) Percentage Rent is payable to the Landlord or to the Management Company as the Landlord directs, at its head office or at any other place designated by the Landlord or the Management Company, as the case may be, in Canadian funds, without demand, and without deduction, abatement, set-off or compensation. The first payment of Percentage Rent is due on the tenth (10th) day after the last day of the first calendar month in which Gross Revenue for the Rental Year exceeds the Breakpoint, and on the tenth (10th) day after the end of each successive calendar month of the Rental Year, as well as the tenth (10th) day of the month after the end of the Term. The amount of each payment of Percentage Rent will be obtained by applying the percentage referred to in Section 1.01(g) to the total of the stated Gross Revenue in excess of the Breakpoint for the immediately preceding month and the stated Gross Revenue in excess of the Breakpoint for all preceding months of the Rental Year, and deducting from that total, the payments on account of Percentage Rent made previous to that time by the Tenant for the Rental Year. If the Annual Statement furnished by the Tenant under Section 4.04, at the end of a Rental Year, discloses that the total Percentage Rent paid by the Tenant for the Rental Year exceeds or is exceeded by the total Percentage Rent payable by the Tenant for the Rental Year, the Tenant will pay any deficiency at the same time as it furnishes the Annual Statement, or the Landlord will pay any excess to the Tenant as soon as reasonably possible after the Landlord's receipt of the audit opinion **or when applicable, the written special purpose report** referred to in Section 4.04(c) (unless an audit under Section 4.08 is in progress or the Tenant is then in default under any term or condition of this Lease).

(c) If the Rental Year is less than 365 days, the Breakpoint will be reduced by multiplying the Breakpoint by a fraction, the numerator of which is the number of days in the Rental Year and the denominator of which is 365.

(d) If the Tenant fails to carry on business in the Premises on a day on which the Tenant is required to carry on business in accordance with the terms of this Lease, the Breakpoint will be reduced by multiplying it by a fraction, the numerator of which is the number of days in the Rental Year on which the Premises are open to the public for business and the denominator of which is the number of days in the Rental Year on which the Tenant is required to carry on business in the Premises in accordance with the terms of this Lease plus any days on which the Tenant is not required to carry on business by reason of closures under Article XII of this Lease or force majeure as described in Section 17.08 of this Lease.

##### Section 4.04 Gross Revenue Reports

(a) On or before the tenth (10th) day of each calendar month, except for the first month of the Term, the Tenant will deliver to the Landlord, at the place then fixed for the payment of Rent, a statement (the "Monthly Statement") signed by the Tenant which, (i) states that Gross Revenue as reported in the Monthly Statement is in accordance with the definition of Gross Revenue in Section 1.02; (ii) contains a certification by the Tenant that the Monthly Statement is correct; (iii) is in the detail and form that the Landlord requires; and (iv) without limiting the requirements stated above, shows (1) the amount of Gross Revenue for the preceding month, (and fractional months, if any, at the commencement or end of the Term); (2) the amount of Gross Revenue for all preceding months of the Rental Year (and fractional months, if any, at the commencement or end of the Term); and (3) the monthly payments made on account of Percentage Rent for the Rental Year.



(b)(i) Before the sixty-first (61st) day after the end of each Rental Year (including the last Rental Year of the Term), the Tenant will deliver to the Landlord at the place then fixed for the payment of Rent, a statement (the "Annual Statement") signed by the Tenant which Annual Statement will (i) state that Gross Revenue as shown in the Annual Statement is in accordance with the definition of Gross Revenue in Section 1.02; (ii) contain a certification that the Annual Statement is true and correct; and (iii) without limiting the requirements stated above, show month by month, the amount of Gross Revenue during the preceding Rental Year.

(ii) Notwithstanding any provision of Section 4.04(b)(i) to the contrary and provided the Tenant is OLYMPUS FOOD (CANADA) INC., and is itself (and not by means of a franchisee) in occupation of the whole of the Premises, and has not failed or neglected to remedy or commence to remedy any default or breach of its obligations as set out in this Lease after notice and within the times as set forth in this Lease, then before the sixty-first (61st) day after the end of each Rental Year (including the last Rental Year of the Term), the Tenant will deliver to the Landlord at the place then fixed for the payment of Rent, (A) a statement (the "Annual Statement") signed by the President of the Tenant ~~who is a chartered accountant~~, which Annual Statement will be in the form set out in Schedule "G" attached hereto; and (B) a breakdown of monthly Gross Revenue (the "Breakdown of Monthly Gross Revenue") signed by the President of the Tenant, which Breakdown of Monthly Gross Revenue will be in the form set out in Schedule "G-1" attached hereto. It is understood and agreed, however, that if the Landlord exercises its right under Section 4.08 to audit the Tenant's business and records and the audit discloses that the Gross Revenue for the relevant period is understated by three percent (3%) or more, then the provisions of this Section 4.04(b)(ii) shall be of no further force and effect.

(c)(i) Before the one hundred and eighty-first (181st) day after each fiscal year end of the Tenant, the Tenant will deliver to the Landlord an audit opinion by an independent public accountant of recognized standing (an "Accountant") signed by the Accountant and stating that, (i) he has examined, in accordance with generally accepted auditing standards, the Gross Revenue (as defined in Section 1.02) of the Tenant for the fiscal year then ended; and (ii) Gross Revenue is fairly presented for the fiscal year then ended in accordance with Section 1.02 and on a basis consistent with that of the preceding fiscal year.

(ii) Notwithstanding any provision of Section 4.04(c)(i) to the contrary, provided the Tenant is OLYMPUS FOOD (CANADA) INC., and is itself (and not by means of a franchisee) in occupation of the whole of the Premises, and has not failed or neglected to remedy or commence to remedy any default or breach of its obligations as set out in this Lease after notice and within the times as set forth in this Lease, then before the one hundred and eighty-first (181st) day after each fiscal year end of the Tenant, the Tenant will deliver to the Landlord a written special purpose report by an independent public accountant of recognized standing (an "Accountant"), signed by the Accountant in a form similar to Schedule "G-2" attached hereto which shall include comments to the effect that (1) he has agreed the amount of the Gross Revenue to the general ledger of the Tenant for each of the months in the year then ended; and (2) he compared the definition of Gross Revenue referred to in Section 1.02 of the Lease with the Tenant's accounting policy for the recording of sales in the general ledger and found no exceptions. It is understood and agreed, however, that if the Landlord exercises its right under Section 4.08 to audit the Tenant's business and records and the audit discloses that the Gross Revenue for the relevant period is understated by three percent (3%) or more, then the provisions of this Section 4.04(c)(ii) shall be of no further force and effect.

#### Section 4.05 Occasional Statements

The Landlord may, on infrequent occasions, require the Tenant to deliver, within one (1) week of the request, a statement of the approximate amount of Gross Revenue on a daily basis for the week preceding the date on which the statement is to be delivered. These statements will be used to analyze special promotions or sales trends and not to calculate Percentage Rent.

#### Section 4.06 Tenant's Records

The Tenant will keep in the Premises or at its principal office in Canada, for at least three (3) years after the end of each Rental Year, adequate books and records kept in accordance with generally accepted accounting principles that show inventories and receipts of merchandise at the Premises and daily receipts from all sales, rentals, charges, services and other transactions, in or from the Premises made by the Tenant and any other Persons conducting business in or from the Premises as well as sales and rental tax returns, pertinent original sales and rental records, and any other sales and rental records that the Landlord reasonably requires and that would normally be examined by an accountant pursuant to accepted auditing standards in performing a detailed audit of Gross Revenue. The Tenant will also cause the records described above to be kept by all Persons doing business in or from the Premises. The Tenant, and all other Persons conducting business in or from the Premises, will record at the time of the sale or rental, in the presence of the customer, all receipts from sales, rentals, charges, services or other transactions whether for cash or credit, in a cash register or registers or computerized systems featuring safeguards so as to prevent the deletion of a perpetual and cumulative total and any other control features that are required by the Landlord.

#### Section 4.07 Right to Examine

The Landlord may, upon **forty-eight (48) hours prior notice to the Tenant**, examine the Tenant's books and records relating to Gross Revenue and the inventories of merchandise at the Premises and at the Tenant's principal office in Canada, for the period covered by any statement issued by the Tenant. The





Landlord and its authorized representatives may examine the Tenant's records and procedures during regular business hours, and may have a Person in the Premises to check, verify and tabulate Gross Revenue, or to examine accounting records and procedures including control features affecting the determination of Gross Revenue. **The Landlord shall not disclose the contents of the financial records of the Tenant submitted by the Tenant to the Landlord pursuant to the terms of this Lease except as is necessary for their intended lawful use in connection with the Landlord's business in the Shopping Centre or as may be otherwise ordered to be disclosed by any court or governmental authority having jurisdiction.**

#### **Section 4.08 Audit**

The Landlord may, at reasonable times, **upon forty-eight (48) hours prior notice to the Tenant**, cause a complete audit to be made of the Tenant's business and records relating to the calculation of Gross Revenue. If the auditor reports that the Tenant's records and procedures are insufficient to permit a determination of Gross Revenue for a Rental Year, or a part of a Rental Year, or that the Tenant is not complying with this Article IV, the Landlord may deliver to the Tenant an estimate (which will be final and binding on the Tenant **unless the Tenant shall be able to prove, within thirty (30) days of receipt of such estimate from the Landlord that such estimate is in error**) of Gross Revenue for the relevant period and the Tenant will immediately pay to the Landlord the amount shown in the estimate to be owing.

If the Landlord's auditor reports that the Tenant is in default under this Article IV or if the audit discloses that Gross Revenue for the relevant period is understated by three percent (3%) or more, the Tenant will pay to the Landlord, on demand, the cost of the audit in addition to the deficiency, together with interest on the latter calculated from the first day of such period at the Stipulated Rate in force on such day.

#### **Section 4.09 Tenant's Failure**

If the Tenant fails to deliver a statement or an audit opinion **or when applicable, the written special purpose report** required under this Article IV within the time required, the Landlord may, on five (5) days notice to the Tenant, employ an auditor to examine the Tenant's books and records to certify the amount of Gross Revenue for the period related to the statement or the audit opinion **or when applicable, the written special purpose report**, and the Tenant will pay to the Landlord, on demand, as Additional Rent the cost of the examination together with the sums shown by the examination to be owing on account of Percentage Rent with interest on the latter calculated from the date the statement or the audit opinion **or when applicable, the written special purpose report** was required at the Stipulated Rate in force on such date.

#### **Section 4.10 Special Recourses**

Neither the delivery to nor the acceptance by Landlord of any statement of Gross Revenue, nor payment of Percentage Rent based on a statement of Gross Revenue shall be deemed to relieve the Tenant from its obligations to comply with Sections 4.03 to 4.08, inclusive. Without limitation, should any audit disclose that the actual Gross Revenue exceeds the Gross Revenue stated in Monthly Statements or Annual Statements by three percent (3%) or more, then in addition to all other amounts payable, the Tenant shall pay to the Landlord an amount equal to five (5) times the amount of such deficiency for the mere delay of providing the Landlord with a proper Monthly Statement or Annual Statement and the parties hereto acknowledge and agree that the foregoing penalty is reasonable and cannot be reduced. If the Tenant fails to furnish the Monthly Statement when required for three (3) consecutive months, then the Tenant shall pay the penalty of One Dollar (\$1.00) per square foot of the GLA of the Premises for the mere delay in performance and the parties hereto acknowledge and agree that the foregoing penalty is reasonable and cannot be reduced. Furthermore, the Tenant hereby renounces all rights to have any of the foregoing penalties reduced, even if the obligations referred to in this Section 4.10 have been performed in part. All of the Landlord's rights and recourses stipulated in this Section 4.10 will be cumulative and not alternative, and strictly without prejudice to all other rights and recourses of the Landlord pursuant to this Lease including, without limitation, termination.

#### **Section 4.11 Additional Rent**

Additional Rent, (a) is payable in Canadian funds without deduction, abatement, set-off or compensation; (b) is payable (except when this Lease states that it is payable on demand) with the first monthly instalment of Minimum Rent after the Additional Rent begins to accrue; and (c) accrues daily.

#### **Section 4.12 Electronic Funds Transfer**

At the Landlord's request, the Tenant will participate in an electronic funds transfer system or similar system whereby the Tenant will authorize its bank, trust company, credit union or other financial institution to credit the Landlord's bank account each month in an amount equal to the Minimum Rent and Additional Rent payable on a monthly basis pursuant to the provisions of this Lease.

#### **Section 4.13 Overdue Rent**

If the Tenant defaults in the payment of Rent, the unpaid Rent bears interest from the due date to the date of complete payment, whether before or after default or judgment and notwithstanding any provision of law to the contrary, including, without limitation, Article 1883 of the Civil Code of Quebec, at the Stipulated Rate in force on the due date. Notwithstanding anything else in this Lease, such interest will not be considered to be Rent but the Landlord will have all of the same remedies for, and rights of recovery with respect to such amounts, as it has for non-payment of Rent under this Lease or at law.



## ARTICLE V - TAXES

### Section 5.01 Taxes - Definition

"Taxes" means (a) real property taxes, surtaxes, water (including any invoice for water based on consumption or otherwise) and garbage removal taxes, rates, duties and assessments (including local improvement taxes), impost charges or levies (referred to collectively as "real property taxes"), that are levied, rated, charged or assessed against the Shopping Centre or any part of it from time to time (including, but not limited to, the Common Elements) by a taxing authority, whether federal, provincial, municipal, school or otherwise, and any taxes or other amounts that are imposed instead of, or in addition to, real property taxes whether similar or not, and whether in existence at the Commencement Date or not, and any real property taxes levied, or assessed against the Landlord or the Owners on account of its or their ownership of or interest in the Shopping Centre, (b) the costs and expenses incurred for consultation, appraisal, legal and other fees and expenses to the extent they are incurred in an attempt to minimize or reduce amounts mentioned in Section 5.01(a), and (c) amounts imposed against or allocated by the Landlord to the Shopping Centre in respect of office expenses, salaries, benefits, and other personnel costs related to the administration and management of amounts such as those included in Sections 5.01(a) and (b). Taxes shall in every instance be calculated on the basis of the Shopping Centre being fully assessed and taxed at prevailing commercial/shopping centre rates for occupied space for the period for which Taxes are being calculated. **For greater certainty, "Taxes" shall exclude any penalties or interest incurred by the Landlord as a result of its failure to pay Taxes in a timely manner, except Taxes shall include any interest in respect of a deferral of payment in accordance with sound shopping centre practices if permitted by statute or pursuant to an agreement with the taxing authority.**

### Section 5.02 Taxes Payable by the Landlord

The Landlord will, subject to Sections 5.03, 5.04 and 6.02, pay the Taxes that are imposed against the Shopping Centre or any part of it. However, the Landlord may defer payment of Taxes, or defer compliance with statutes, laws or by-laws, regulations or ordinances in connection with the levying of Taxes, to the extent permitted by law, if it diligently pursues or causes to be pursued the contest or appeal of the Taxes.

### Section 5.03 Taxes Payable by the Tenant

(a) Whether or not there are separate real property tax bills or separate real property assessment notices issued by a taxing authority, the Tenant will pay to the Landlord, in each Rental Year, those Taxes that are imposed against the Shopping Centre or any part of it, including the Common Elements, (except for the Taxes that are allocated by the Landlord to the Rentable Premises not included in the Weighted GLA of the Shopping Centre) which shall be paid on the basis of the Tenant's Proportionate Share of such Taxes or on such other reasonable and equitable basis as the Landlord determines. The Tenant's Proportionate Share of Taxes shall remain payable regardless of any deferral of payment or contestation or appeal of Taxes by the Landlord or the Owners. The Landlord and the Owners will, notwithstanding the preceding sentence, have no obligation to contest, object to or litigate the levying or imposition of Taxes.

(b) The Tenant will pay the amounts payable under Section 5.03(a) according to estimates or revised estimates made by the Landlord from time to time in respect of each Rental Year. The Tenant's payments will be made in advance in monthly amounts, determined by the Landlord, for periods determined by the Landlord. Within a reasonable time after the Taxes are determined for the Rental Year, the Landlord will deliver a statement (a "Tax Statement") to the Tenant that (i) specifies the Tenant's Proportionate Share of Taxes for the Rental Year, and (ii) sets out the total (the "Prepayment Total"), of amounts payable under this Section 5.03(b) that have been paid by the Tenant for the applicable period. If the Prepayment Total, less any amounts that were previously credited to the Tenant, and any amounts paid for arrears in respect of previous Rental Years, (the "Net Prepayment Total") is less than the Tenant's Proportionate Share of Taxes specified in the Tax Statement, the Tenant will pay the deficiency **within thirty (30) days of the receipt of the Tax Statement. with the next monthly payment of Minimum Rent.** If the Net Prepayment Total exceeds the Tenant's Proportionate Share of Taxes specified in the Tax Statement, the Landlord will refund the excess within **ninety (90) days a reasonable time** after delivery of the Tax Statement (unless the Tenant is then in default under any term or condition of this Lease). The Landlord may estimate Taxes for the Rental Year following the then current Rental Year, and the Tenant will continue to make monthly payments in advance, in amounts determined by the Landlord, for periods determined by the Landlord. The monthly payments paid by the Tenant applicable to the subsequent Rental Year will be credited against the Tenant's Proportionate Share of Taxes for the subsequent Rental Year. The rendering of any Tax Statement shall not affect the Landlord's right to subsequently render an amended or corrected statement.

(c) If the Lease expires or is terminated before the end of a Rental Year, the Landlord will deliver to the Tenant a Tax Statement within a reasonable time after the expiry or termination of the Lease or, at the Landlord's option, within a reasonable time after the last Rental Year. In the former case, the Tenant's Proportionate Share of Taxes may be based on the Landlord's estimate of Taxes, which will be considered as the final actual amount of Taxes for the last Rental Year. In either case the Tenant will pay to the Landlord any deficiency within ten (10) days after the Landlord delivers the Tax Statement, or the Landlord will pay to the Tenant any excess the Tenant is entitled to within a reasonable time after the Landlord delivers the Tax Statement (unless the Tenant is then in default under any term or condition of this Lease or it owes money to the Landlord in respect of its obligations under this Lease).





#### Section 5.04 Business Taxes and Other Taxes of the Tenant

The Tenant will pay to the taxing authorities, or to the Landlord, as it directs, before delinquency, all "Business Taxes" if applicable. "Business Taxes" means, (a) the taxes, rates, duties, assessments and other charges that are imposed against or in respect of the improvements, equipment and facilities of the Tenant on or in the Premises or the Shopping Centre or any part of either of them or the Landlord on account of its ownership of or interest in either of them; and (b) every tax and license fee that is imposed against or in respect of business carried on in the Premises or in respect of the use or occupancy of the Premises or any part of the Shopping Centre by the Tenant or its sub-tenants or licensees, or against the Landlord or the Owners on account of its or their ownership of the Premises or the Shopping Centre or any part of it. If there is not a separate bill issued by the relevant authority for Business Taxes, the Tenant will pay its Proportionate Share of the Business Taxes with respect to the entire Shopping Centre. The Landlord will remit amounts that it collects for Business Taxes to the relevant authority.

#### Section 5.05 Tenant's Responsibility

The Tenant will, (a) on the Landlord's request, promptly deliver to the Landlord, (i) receipts for payment of all Business Taxes payable by the Tenant; (ii) notices of any assessments for Taxes or Business Taxes or other assessments received by the Tenant that relate to the Premises or the Shopping Centre; and (iii) whatever other information relating to Taxes and Business Taxes the Landlord reasonably requests from time to time; and (b) deliver to the Landlord, at least ten (10) days before the last date for filing appeals, notice of any appeal or contest that the Tenant intends to institute with respect to Business Taxes payable by the Tenant and obtain the prior written consent of the Landlord for the appeal or contest which consent will not be unreasonably withheld. If the Tenant obtains the Landlord's consent and does not pay the Business Taxes before the appeal or contest, the Tenant will deliver to the Landlord whatever security for the payment of the Business Taxes the Landlord reasonably requires and will promptly and diligently pursue the appeal or contest and keep the Landlord informed on all aspects of it. The Tenant will not contest any Taxes or appeal any assessments related thereto and hereby forever waives and renounces any and all rights it has now or may in the future have to contest Taxes or appeal any assessment related thereto.

The Tenant will indemnify and save the Landlord harmless from all losses, costs, charges and expenses arising from Business Taxes as well as any taxes that are imposed in place of Business Taxes or which are assessed against rentals payable under this Lease in place of Taxes or Business Taxes, whether against the Landlord or the Tenant including, but not limited to, increases in Taxes or Business Taxes arising directly or indirectly out of an appeal or contest by the Tenant. The Tenant will deliver to the Landlord any security for such an increase in Taxes or Business Taxes that the Landlord reasonably requires. **So long as the Tenant is OLYMPUS FOOD (CANADA) INC., and is not in default under this Lease after notice and after the applicable cure period provided in the Lease, the Tenant shall not be required to provide security to the Landlord for any such appeal or contestation of Business Taxes.**

#### Section 5.06 Per Diem Adjustment

If a Rental Year is not twelve (12) calendar months, the Taxes payable by the Tenant under Section 5.03 will be adjusted on a per diem basis, based on three hundred and sixty-five (365) days.

### ARTICLE VI - SHOPPING CENTRE AND COMMON ELEMENTS - CONTROL AND PAYMENT

#### Section 6.01 Control of the Shopping Centre by the Landlord

The Landlord will operate the Shopping Centre in a first class and reputable manner having regard to size, age and location. The Common Elements and those portions of the Shopping Centre which are not leased to tenants are under the exclusive control of the Landlord.

Without limitation, the Landlord may, in its operation of the Shopping Centre:

- (a) (i) temporarily close parts of the Common Elements to prevent their dedication or the accrual of rights in them in favour of Persons or the public; grant, modify and terminate servitudes and other agreements pertaining to the use and operation of the Shopping Centre or any part of it, and temporarily obstruct or close off or shut down parts of the Shopping Centre for inspection, maintenance, repair, construction or safety reasons;
- (ii) employ personnel, including supervisory personnel and managers, for the operation, maintenance and control of the Shopping Centre. The Shopping Centre or parts of it, may be managed by The Cadillac Fairview Corporation Limited or by another Person or Persons that the Landlord designates in writing from time to time;
- (iii) use parts of the Common Elements for merchandising, display, decorations, entertainment and structures, permanent or otherwise, designed for retail selling or special features or promotional activities;
- (iv) regulate, acting reasonably, all aspects of loading and unloading, delivery and shipping of fixtures, equipment and merchandise, and all aspects of garbage collection and disposal. The Tenant is responsible for pick-up and disposal of its garbage at its cost. If the Landlord provides facilities or designates a commercial service for the pick-up and disposal of garbage instead of, or in addition to the service provided by the local



municipality, the Tenant will use such facilities and commercial service at its cost, **provided such cost is at reasonably competitive rates;**

- (v) prohibit the Tenant and its employees from parking in the Shopping Centre. **In the exercise of its right herein, the Landlord will not act in a manner that is discriminatory solely as against the Tenant;** and
  - (vi) impose or permit to be imposed reasonable charges upon any Person (including the general public) for the use of parking facilities that may at any time be part of the Common Elements;
- (b)
- (i) change the area, level, location, arrangement or use of the Shopping Centre or any part of it;
  - (ii) construct other buildings, structures, or improvements in the Shopping Centre and make alterations of, additions to, subtractions from, or rearrangements of the Shopping Centre, build additional stores in any part of the Shopping Centre, and construct additional stores, buildings or facilities adjoining or near the Shopping Centre;
  - (iii) install kiosks and other installations, permanent or otherwise, in or on the Common Elements. **The Landlord agrees that at all times throughout the Term, it will not place or erect, nor suffer or permit to be placed or erected any kiosk or other similar retail selling structure (except kiosks or structures of a temporary, "short-term" nature) in the mall of the Shopping Centre within ten (10) feet directly in front of the storefront width of the Premises. However, this shall not apply to nor prohibit the Landlord from constructing, placing or erecting any planters, mall furniture or other similar installations in the mall nor from constructing, placing or erecting temporary promotional or advertising displays in the mall;**
  - (iv) diminish, expand, alter, relocate or rearrange the buildings, parking facilities and other parts of the Shopping Centre and, with the consent of the Tenant, which consent will not be unreasonably withheld, relocate or rearrange the Premises **within the Food Court**, from that shown on Schedule "B", the purpose of which Schedule is solely to show the approximate location of the Premises. **Notwithstanding the foregoing, it is understood and agreed that any rights of the Landlord to relocate, change, renovate, reduce, add to or rearrange the Premises (with the Tenant's consent, which consent will not be unreasonably withheld), shall only apply in connection with an expansion, substantial alteration to or remerchandising of all or any part of the Shopping Centre,** and
  - (v) do and perform such other acts in and to the Shopping Centre as, in the use of good business judgment, the Landlord determines to be advisable for the proper operation of the Shopping Centre.

Despite anything else in this Lease, the Landlord has no liability for diminution or alteration of the Common Elements that occurs as the result of the Landlord's exercise of its rights under this Section 6.01 or elsewhere under this Lease and the Tenant will not be entitled to compensation or a reduction or abatement of Rent or a rescission of this Lease, and no such diminution or alteration of the Common Elements shall be deemed to be a constructive or actual eviction of the Tenant, or to constitute a change in the form or the destination of either the Premises or the Shopping Centre, or a default by the Landlord of any obligation for quiet enjoyment contained in this Lease or provided at law.

#### **Section 6.02 Tenant's Proportionate Share of Expenses**

- (a) In each Rental Year, the Tenant will pay to the Landlord, **without duplication**, its Proportionate Share of the costs and expenses of maintaining, operating, repairing and administering the Shopping Centre.
- (b) The costs and expenses referred to in Section 6.02(a) include, but are not limited to those listed below, none of which is to be a duplication of another cost or expense:
- (i) the cost of the Landlord's insurance premiums (after deducting recoveries from tenants under clauses similar to Section 10.02) on lands, buildings, improvements, equipment and other property in the Shopping Centre together with all amounts falling below the level of the Landlord's insurance deductibles which are paid by the Landlord in connection with claims made against it. The Landlord's insurance and costs of insurance may include (but might not be limited to), (aa) loss of insurable gross profits attributable to the perils insured against by the Landlord or commonly insured against by landlords, including loss of rent and other amounts receivable from tenants in the Shopping Centre, (bb) third party liability coverage including the exposure of personal injury, bodily injury and property damage occurrence, including all contractual obligations coverage and including actions of the employees, contractors, subcontractors, agents and mandataries working on behalf of the Landlord, and (cc) costs and expenses for defending and payment of claims below deductibles;
  - (ii) cleaning, snow removal, garbage and waste collection and disposal, and landscaping;



- (iii) lighting, electricity, fuel, steam, water, public utilities, loudspeakers, public address and musical broadcasting systems, telephone answering services, telephone facilities and systems used in or serving the Common Elements, and electricity for signs that are part of the Common Elements;
- (iv) policing, security, supervision and traffic control;
- (v) management office expenses of operation, and salaries of personnel, including management and other supervisory personnel, employed to carry out the operation and the cleaning, maintenance, and repair of the Shopping Centre, including fringe benefits and contributions and premiums for unemployment insurance and workers compensation insurance, pension plan contributions and similar premiums and contributions, and severance pay or indemnity, or, where the management office and personnel serve more than one shopping centre, an allocated share of those expenses, salaries and contributions;
- (vi) rental of equipment and signs, and the cost of building supplies used by the Landlord in the maintenance, cleaning, repair and operation of the Shopping Centre;
- (vii) auditing (including audit fees for the statements referred to in Section 6.03), accounting, legal and other professional and consulting fees and disbursements;
- (viii) repairs (including major repairs) and replacements to and maintenance and operation of the Shopping Centre, (except for repairs or replacements of inherent structural defects or weaknesses);
- (ix) depreciation or amortization of the costs of repairs and replacements mentioned in Section 6.02(b)(viii), and of the costs, including repair and replacement, of the maintenance, cleaning and operating equipment, master utility meters and all other fixtures, equipment and facilities that are part of the Common Elements (including, without limitation, fixtures, equipment and facilities made or added for the greater comfort or convenience of the public or the tenants) unless they are, under Section 6.02(b)(viii), charged fully in the Rental Year in which they are incurred, all in accordance with rates, and for periods determined by the Landlord from time to time in accordance with reputable shopping centre management and operating practices. **It is understood and agreed that the Tenant is not required to pay depreciation or amortization pursuant to Section 6.02(b)(ix) above or interest pursuant to Section 6.02(b)(xi) above in respect of the costs of any such replacement to the extent, if any, that such costs were included in Section 6.02(b)(viii), it being the intention of the parties at all times to avoid any duplication of costs and charges as set out in Section 6.02(b)(viii) and 6.02(b)(ix);**
- (x) that part of the Operating Costs of the HVAC System allocated to the Common Elements in accordance with Schedule "D";
- (xi) interest calculated upon the undepreciated or unamortized part of the costs referred to in Section 6.02(b)(ix), at a rate per annum that is two percentage points above the average daily Prime Rate of interest for the period during which the present interest is calculated;
- (xii) the Business Taxes and other Taxes, if any, payable by the Landlord or the Owners with respect to the Common Elements, and Capital Tax as defined in Section 6.02(d); and
- (xiii) an administration fee of fifteen percent (15%) of the costs referred to above (but excluding those referred to in Section 6.02(b)(xi) and (xii)) to cover head office and regional office support services. This administration fee is in addition to and is not a duplication of the expenses, salaries and benefits referred to in Section 6.02(b)(v) above.

**It is understood and agreed that the costs and expenses set out in Section 6.02(b) shall not include any cost and expense incurred by the Landlord:**

- (1) **in respect to principal and interest on any mortgage of the Landlord with respect to the Shopping Centre;**
- (2) **of a capital nature in accordance with sound shopping centre accounting practices in connection with the initial construction of any expansion of the Shopping Centre (provided, however, that the provisions of this subsection shall in no way exclude or release the Tenant from paying any costs or expenses in connection with such expansion (upon completion thereof) as set out in Section 6.02 hereof);**
- (3) **for advertising costs and brokerage commissions paid by the Landlord in connection with the leasing of space in the Shopping Centre;**
- (4) **for interest and penalties paid by the Landlord by reason of the Landlord's late payment of any amount required to be paid by the Landlord hereunder;**
- (5) **in performing Landlord's Work in connection with the original construction of the Shopping Centre and the Premises as set out in Schedule "C";**



- (6) for fines and penalties paid by the Landlord resulting from the violation by the Landlord of any applicable law and the Landlord's non-compliance with or violation of such laws;
- (7) for which the Tenant or any other party compensates the Landlord such that no duplication of payment shall occur; and
- (8) to prepare other premises in the Shopping Centre for leasing including expenses incurred in respect of installation or removal of any tenant's improvements.

- (c) From the total of the costs referred to in Sections 6.02(b)(i) to (xiii) (inclusive) there is deducted:
  - (i) net recoveries that reduce the expenses incurred by the Landlord in operating and maintaining the Shopping Centre and the Common Elements, which are received by the Landlord from tenants as a result of any act, omission, default or negligence of tenants or as the result of breaches by tenants of the provisions in their leases (but not recoveries from tenants under clauses similar to this Section 6.02);
  - (ii) net proceeds from insurance policies taken out by the Landlord, to the extent that the proceeds relate to the costs and expenses incurred in the maintenance and operation of the Shopping Centre and the Common Elements; (if the Landlord defaults under Section 10.05, it will deduct an amount equal to the net proceeds that the Landlord would have been entitled to had it not defaulted under that Section);
  - (iii) net recoveries from charges, if any, for the use of the parking facilities of the Shopping Centre, but only to the extent of the total costs of maintaining and operating the parking facilities;
  - (iv) contributions, if any, to the total cost of maintaining and operating the Shopping Centre and the Common Elements made by tenants or occupants of space that is excluded from the Weighted GLA of the Shopping Centre; and
  - (v) amounts contributed by Food Court Tenants which are incurred or allocated by the Landlord exclusively for the maintenance and operation of the Food Court (excluding those costs and expenses which would have been incurred in any case, had the Food Court been one of the Common Elements instead of a Food Court) to the extent, if any, those costs are included under Section 6.02.

(d) Capital Tax is an amount determined by multiplying each of the "Applicable Rates" by the "Shopping Centre Capital" and totalling the products. "Shopping Centre Capital" is the amount of capital which the Landlord determines, without duplication, is invested from time to time by the Landlord, the Owners, or all of them, in doing all or any of the following: acquiring, developing, expanding, redeveloping and improving the Shopping Centre. Shopping Centre Capital will not be increased by any financing or refinancing except to the extent that the proceeds are invested directly as Shopping Centre Capital. An "Applicable Rate" is the capital tax rate specified from time to time under any statute of Canada and any statute of the Province which imposes a tax in respect of the capital of corporations. Each Applicable Rate will be considered to be the rate that would apply if none of the Landlord or the Owners employed capital outside of the Province.

**Section 6.03 Payment of the Tenant's Proportionate Share**

(a) The Tenant will pay the amounts payable under Section 6.02 according to estimates or revised estimates made by the Landlord from time to time in respect of periods determined by the Landlord. The Tenant's payments will be made in monthly instalments in advance for the periods in respect of which the estimates are made. Within a reasonable time after the end of each Rental Year the Landlord will deliver to the Tenant a report certified by the Landlord's auditors (an "Auditor's Report") of the amounts referred to in Section 6.02(b) together with a statement (a "Statement") of the Tenant's Proportionate Share of those amounts. If the Tenant has paid more than a Statement specifies, the excess will be refunded within **ninety (90) days** ~~a reasonable time~~ after delivery of the Statement (unless the Tenant is then in default under any term or condition of this Lease). If the Tenant has paid less than a Statement specifies, the Tenant will pay the deficiency with the next monthly payment of Minimum Rent.

(b) For the last Rental Year the Landlord may elect to either (i) deliver to the Tenant, within a reasonable time after the last Rental Year, a report of the amounts referred to in Section 6.02 (which report, although it may involve estimates and may be unaudited, will be considered final), together with a Statement or (ii) deliver to the Tenant, within a reasonable time after the date when the last Rental Year would have ended if the Term had not expired or this Lease had not terminated, an Auditor's Report, together with a Statement. The Tenant will pay any deficiency to the Landlord within ten (10) days after the Landlord delivers the Statement, or the Landlord will pay to the Tenant any excess that the Tenant is entitled to, which payment will be made within **ninety (90) days** ~~a reasonable time~~ after the Landlord delivers the Statement, (unless the Tenant is then in default under any term or condition of this Lease, or the Tenant owes the Statement money to the Landlord in respect of its obligations under this Lease).

(c) If a Rental Year is less than twelve (12) months, the Tenant's Proportionate Share under Section 6.02 will be prorated on a per diem basis based on three hundred and sixty-five (365) days.





## ARTICLE VII - UTILITIES AND HEATING, VENTILATING AND AIR-CONDITIONING

### Section 7.01 Charges for Utilities

(a) The Tenant will pay to the Landlord an amount (the "Charge") which is the total, without duplication, of: (i) the costs incurred by the Landlord for water, electricity, fuel, power, telephone and other utilities (the "Utilities") used in or for the Premises or allocated to them by the Landlord including any Utilities consumed as a result of the installation of any re-heat coil or additional heating system in the Premises; (ii) charges imposed in place of or in addition to Utilities as determined by the Landlord; (iii) the Landlord's costs of determining the Charge, inspecting, verifying, maintaining and repairing meters and metering systems and any professional, engineering and consulting fees in connection with the supply of Utilities; and (iv) an administration fee of fifteen percent (15%) of the total referred to above. No administration fee is payable for amounts billed directly to the Tenant by a supplier of a Utility and paid by the Tenant directly to the supplier.

(b) If the Landlord supplies Utilities to the Premises, (i) the Tenant will pay the Landlord for them on demand **but at no profit to the Landlord (save and except that the Landlord shall be entitled to recover the administration fee referred to in Section 7.01(a) over and above the rates it charges the Tenant)**; (ii) the Tenant will pay the Charge to the Landlord based on estimates of the Landlord but subject to adjustment within a reasonable time after the period for which the estimate has been made; (iii) the Tenant will, if requested by the Landlord, install at its own expense, at a location designated by the Landlord, a separate check meter indicating demand and consumption for Utilities in the Premises, or where a base building metering system has been installed in the Shopping Centre, the Landlord will provide, at the Tenant's expense, all necessary components and programming to connect the Premises to the Landlord's metering system; and (iv) the Landlord is not liable for interruption or cessation of, or failure in the supply of Utilities, services or systems in, to or serving the Shopping Centre or the Premises, whether they are supplied by the Landlord or others, and whether or not the interruption or cessation is caused by the Landlord's negligence.

(c) The Landlord will determine the Charge by allocating the Utilities for the Shopping Centre among the Shopping Centre's components including the Common Elements, Rentable Premises and Storage Areas, acting on the advice of a qualified engineer using as a basis, but not limited to (i) check meters and/or metering systems, (ii) the relevant rates of demand and consumption of Utilities in the Common Elements, Rentable Premises and Storage Areas, and (iii) the connected loads of the areas that make up the Common Elements, Rentable Premises and Storage Areas for which there are no check meters.

### Section 7.02 Heating, Ventilating and Air-Conditioning

(a) The Tenant shall be entitled to regulate those parts of the heating, ventilating and air-conditioning facilities within the Premises (including the distribution system for the Premises) that are not part of the Common Elements so as to maintain reasonable conditions of temperature and humidity within the Premises and to avoid direct or indirect appropriation of heating, ventilating or air-conditioning from the Common Elements, and will comply with reasonable directions of the Landlord. Any variable air volume valve, thermostat or fan coil unit in the Premises and any items (including but not limited to, booster units and make-up air units) installed by or on behalf of the Tenant that are located outside the Premises may, at the Landlord's option, be maintained solely by the Landlord at the expense of the Tenant, and the Tenant will pay to the Landlord an administration fee of fifteen percent (15%) of that expense.

(b) The cost of maintaining, repairing and replacing exhaust systems or make-up air systems that serve more than one tenant will be allocated by the Landlord amongst the tenants using them in accordance with the recommendations of the Landlord's engineer.

(c) The Tenant will pay, monthly in advance, the charges under Schedule "D".

## ARTICLE VIII - MARKETING FUND

### Section 8.01 Marketing Fund

(a) The Tenant will pay to the Landlord in each Rental Year, a contribution towards the establishment and maintenance of a fund for the promotion and marketing of the Shopping Centre (the "Marketing Fund") in the amount set out in Section 1.01(i). The Marketing Fund payment will be increased on a cumulative basis by three percent (3%) per annum at the start of each Rental Year after the first Rental Year. The Marketing Fund payment will be made in monthly instalments in advance, on the first day of each calendar month.

(b) The Marketing Fund will be used by the Landlord for the purpose of enhancing the customer experience in the Shopping Centre, including but not limited to market and consumer research, communication of marketing programs by way of print, digital or other forms of media, special events, community relations initiatives and other forms of promotion and marketing.

## ARTICLE IX - USE OF THE PREMISES

### Section 9.01 Use of the Premises and Trade Name

(a) The Tenant will not use or permit any part of the Premises to be used for any purpose other than the use set out in Section 1.01(d).



(b) The Tenant will use only the trade name set out in Section 1.01(c) for its business in the Premises and will not change or permit the change of that trade name without the prior written consent of the Landlord, **which consent shall not be unreasonably withheld.**

(c) The Tenant agrees that it will not disturb the normal enjoyment of the other tenants in the Shopping Centre and shall take all necessary steps to ensure that its employees, servants, agents, mandataries, contractors, invitees or any Person for whom the Tenant is responsible at law and any Person that the Tenant allows or tolerates to use or to have access to the Shopping Centre or the Premises shall act in a way that does not disturb the normal enjoyment of the other tenants in the Shopping Centre. The Tenant shall, with respect to the foregoing agreement, indemnify and save the Released Persons harmless from all loss, claims, actions, damages, liability and expenses which arise in connection from any breach of the foregoing agreement.

#### **Section 9.02 Prohibited Activities**

(a) The Tenant will not use or permit to be used any part of the Premises for, nor shall it engage in any media advertising with respect to the Premises of the sale of goods not in keeping with a reputable and first class shopping centre, second hand goods or armed services surplus articles, insurance salvage stock, fire sale stock or bankruptcy stock; the sale of firecrackers or fireworks; the installation of an automated teller machine; an auction, bulk sale (other than a bulk sale made to an assignee or sub-tenant under a permitted assignment or subletting), liquidation sale, "going out of business" or bankruptcy sale, or warehouse sale; a sale of fixtures; a sale or business conduct which, because of the merchandising methods or quality of operation likely to be used, would tend to lower the character of the Shopping Centre; any practice of unethical or deceptive advertising or selling procedures; or catalogue sales, except of merchandise that the Tenant is permitted to sell "over the counter" in or at the Premises under Section 1.01(d).

(b) The Tenant will not use, permit to be used, or engage in any promotion, sale or display bearing any trademarks or trade or business names or insignia in existence from time to time associated with the Shopping Centre or owned or authorized for use by the Landlord, the Owners, the manager of the Shopping Centre and their respective agents, mandataries, employees and representatives, without the Landlord's prior written consent, which consent may be unreasonably or arbitrarily withheld.

#### **Section 9.03 Conduct of Business**

The Tenant will, throughout the Term, conduct continuously and actively, in a reputable and first class manner, the business set out in Section 1.01(d), in the whole of the Premises. In the conduct of the Tenant's business, the Tenant will:

(a) conduct its business in the Premises during the hours and on the days that the Landlord requires or permits from time to time and at no other time but the Tenant is not required to carry on business when prohibited by a governmental law or by-law regulating the hours of business;

(b) ensure that all furniture, fixtures and equipment on or installed in the Premises are of first-class quality and keep them in good condition; maintain an adequate staff and stocks of sufficient size, character and quality to produce the maximum volume of sales from the Premises consistent with good business practices; stock in the Premises only the merchandise that the Tenant intends to offer for retail sale from the Premises; not use any part of the Premises for office, clerical or other non-selling purposes except minor parts reasonably required for the Tenant's business in the Premises; and, at all times, keep displays of merchandise in the display windows and keep the display windows and signs in the Premises well lighted during the hours that the Landlord designates from time to time;

(c) participate in a ticket validation system, if one is established by the Landlord for the parking facilities of the Shopping Centre, and pay on demand, the parking charges attributable to it under that system;

(d) use the name and insignia that the Landlord requires in connection with the Shopping Centre in the advertising of the Tenant's business in the Premises; claim no rights in those names, marks or insignia; promptly abandon or assign to the Landlord any such rights that it acquires by operation of law, and promptly execute the documents that the Landlord requests to give effect to this provision;

(e) indemnify the Released Persons in respect of any loss, cost or expense which any Released Person incurs in respect of any claim, action, or liability enforced or sought to be enforced against any Released Person arising in connection with any strike, lock-out, or labour disruption or in connection with any union organizational or certification related proceedings involving the employees of the Tenant, any sub-tenant, or any licensee or occupant of the Premises. The Tenant will, in addition, within ten (10) days of its receipt of an invoice particularizing the Landlord's costs and expenses for extra cleaning, security, maintenance, or legal costs associated with activities of the type described above, pay to the Landlord the full amount of that invoice together with an administration fee of fifteen percent (15%) of the amount invoiced in respect of those costs and expenses; ~~and~~

(f) not place or maintain any merchandise or other articles in any vestibule or entry of the Premises, on the adjacent foot walks or elsewhere on the exterior of the Premises or the Common Elements; ~~and~~

(g) **upon obtaining the Landlord's prior written consent, the Tenant may close the Premises for major renovations of the Premises provided that the nature of renovations and the period of time for such renovations are agreed upon in advance by the Landlord and such renovations will**



be conducted in accordance with Schedule "C" of this Lease. In all cases, all Rent shall continue to be payable by the Tenant.

#### Section 9.04 Compliance with and Observance of Law

(a) The Tenant will comply with the statutes, regulations, ordinances or other governmental requirements relating to its ability to enter into and comply with this Lease.

(b) The Tenant will also promptly comply with Applicable Laws which pertain to the Premises, the Tenant's use of the Premises, the conduct of business in the Premises, or the doing of work on or in the Premises. The Tenant is not required, however, to remedy work done by the Landlord in contravention of or without the permits required by law.

#### Section 9.05 Radius Clause

~~The Tenant will not engage in nor will it permit any Person under its control or affiliated with it, whether as partner, shareholder, lender, employee or otherwise, to engage, directly or indirectly, in a business operating under the same name as the Tenant's business in the Premises, or under a similar name, within any building or building complex, any part of which is within a radius as set out in Section 1.04(j) from any point on the perimeter of the Shopping Centre. This restriction does not apply, however, to any business or store of the Tenant that is in operation under the same name as the Tenant's business in the Premises, or under a similar name, within that radius at the Commencement Date so long as the size of that business or store is not increased. If the Tenant defaults under this provision, the Landlord may require that gross revenue (calculated in the same manner as Gross Revenue under this Lease) from the business, the conduct of which contravenes this provision, be included in Gross Revenue under this Lease, and the Landlord will have the same rights of inspection and audit with respect to the gross revenue of that other business as it has with respect to Gross Revenue under Article IV.~~

#### Section 9.06 Energy Conservation

The Tenant will comply with reasonable requests of the Landlord for conservation of energy.

#### Section 9.07 Pest Control

In order to maintain satisfactory and uniform pest control throughout the Shopping Centre, the Tenant shall engage for the Premises at its sole cost and expense such pest extermination contractor as the Landlord directs and at such intervals as the Landlord requires. The Tenant shall ensure that its pest extermination contractor complies with all Applicable Laws governing the use of pesticides. If the Landlord, in its sole discretion, determines that the Tenant's pest extermination contractor is not performing its duties effectively, and in compliance with all Applicable Laws, then the Landlord may, without notice, engage its own pest extermination contractor on the Tenant's behalf without incurring any liability in respect thereof and the Tenant will pay to the Landlord, immediately upon demand, the cost of the Landlord's pest extermination contractor together with an administration fee of fifteen percent (15%) of the total cost.

#### Section 9.08 Waste Disposal and Reduction

(a) If the Landlord provides garbage disposal facilities or collection services then the Tenant will use them only for the disposal of solid waste that is not a Hazardous Substance and can lawfully be transported to, and dumped at, the closest landfill site without surcharges or penalties. The Tenant will use the sewers only to dispose of liquid waste that is not a Hazardous Substance and may be lawfully discharged into the municipal sewer.

(b) Unless any Applicable Laws provide to the contrary, all waste that cannot be disposed of under subsection (a) above (including waste which is a Hazardous Substance) will be disposed of by the Tenant at its expense at least once every three (3) months (or more often if the Landlord requires it) using the Landlord's designated hauler or remover, or if there is none, using a properly licensed service. If Applicable Laws require the Tenant to keep waste at the Shopping Centre for more than three (3) months or the period required by the Landlord, then the Tenant shall store it at its sole expense in a manner and in a location specified by the Landlord and which complies with all Applicable Laws.

(c) The Tenant will comply with all Applicable Laws pertaining to waste reduction in connection with the Premises and the Tenant's conduct of business. Without limiting this requirement, the Tenant will (i) perform all waste audits and waste reduction work plans; (ii) implement all waste reduction work plans; and (iii) provide to the Landlord, within ten (10) days of the Landlord's request in each case, copies of all evidence that the Landlord requires concerning compliance. The Tenant will also do whatever else is reasonably requested by the Landlord in connection with any waste audits, waste reports, and waste reduction work plans that the Landlord prepares. To the extent responsibility in connection with any waste related matters is imposed by Applicable Laws so as to appear to overlap or duplicate responsibilities among the Landlord, the Management Company, the Tenant, or any other party, the Landlord may allocate responsibility to the Tenant in whole or in part by notice to the Tenant particularizing the responsibilities which the Tenant will assume.

#### Section 9.09 Compliance with Environmental Laws

The Tenant shall, at the Tenant's expense, comply, and cause any other person acting under its authority or control to comply with all Applicable Laws (including, but not limited to, obtaining any required permits or similar authorizations) pertaining to protection, conservation, utilization, impairment or degradation of the environment (which includes air, land, ground water and surface water) relating to the Premises or the use of the Premises by the Tenant or those acting under its authority or control. Without limiting the





generality of the foregoing, the Tenant shall, at the Tenant's expense, comply with all Applicable Laws regulating the manufacture, use, storage, transportation and disposal of Hazardous Substances and shall make, obtain and deliver all reports and studies required by governmental or quasi-governmental authorities having jurisdiction. **The Landlord shall comply, and cause any other person acting under its authority or control to comply with all Applicable Laws (including, but not limited to, obtaining any required permits or similar authorizations) pertaining to protection, conservation, utilization, impairment or degradation of the environment (which includes air, land, ground water and surface water) relating to the Shopping Centre or the use of the Shopping Centre by the Landlord or those acting under its authority or control. Without limiting the generality of the foregoing, the Landlord shall comply with all Applicable Laws regulating the manufacture, use, storage, transportation and disposal of Hazardous Substances and shall make, obtain and deliver all reports and studies required by governmental or quasi-governmental authorities having jurisdiction.**

#### **Section 9.10 Use of Hazardous Substances**

The Tenant shall not authorize, cause or permit any Hazardous Substance to be brought upon, kept or used in or about the Premises or the Shopping Centre nor use the Premises or permit them to be used to generate, manufacture or produce Hazardous Substances, unless such Hazardous Substance is reasonably necessary for the Tenant's permitted use of the Premises or is used by the Tenant in the normal course of its business as permitted under this Lease and unless the Hazardous Substance is used, kept, stored, generated, manufactured, produced or disposed of in a manner that complies with all Applicable Laws. The Tenant will take all proactive and preventative steps that may be imposed or recommended under any of the Applicable Laws or that a prudent tenant would take in order to minimize risk pertaining to Hazardous Substances.

#### **Section 9.11 Inspection**

(a) Without relieving the Tenant of any of its obligations under this Lease, the Tenant shall permit the Landlord, its officers, employees, consultants, authorized representatives, mandataries and agents to:

- (i) visit and inspect the Premises and the Tenant's operations;
- (ii) conduct tests and environmental assessments or appraisals;
- (iii) remove samples from the Premises;
- (iv) examine and make abstracts from and copies of any documents or records relating to the Premises;
- (v) interview the Tenant's employees; and
- (vi) make reasonable enquiries from time to time of any government or governmental agency in order to determine the Tenant's compliance with Applicable Laws pertaining to Hazardous Substances **at the Premises** and the Tenant agrees that it will provide to the Landlord such written authorization as the Landlord may reasonably require in order to facilitate the obtaining of such information,

all at such reasonable times and intervals as the Landlord may desire.

(b) If, pursuant to any of the above actions, the Landlord determines that the Tenant is in contravention of Section 9.09 or 9.10, the Tenant shall, immediately after being notified by the Landlord of such contravention, comply with all Applicable Laws regulating any such Hazardous Substances and reimburse the Landlord for all costs incurred pursuant to subsection 9.11(a) above.

#### **Section 9.12 Removal of Hazardous Substances**

(a) If (i) any governmental authority having jurisdiction shall order or require any Released Person to submit a rehabilitation plan or to perform a characterization study with respect to, or to clean-up, remove, treat, rehabilitate, remedy any Hazardous Substances held, released, spilled, abandoned or placed upon the Premises or the Shopping Centre **by or on behalf of the Tenant** or released into the environment in the course of business being carried on from the Premises or as a result of the use or occupancy of the Premises and the land thereunder **by or on behalf of the Tenant**, or (ii) any harmful moulds or other harmful airborne substances are generated within the Premises as a result of the use or occupancy of the Premises by the Tenant, its contractors, sub-contractors or any Person the Tenant allows or tolerates to have access to the Premises or the Shopping Centre and the Landlord requires the removal of such harmful moulds or other harmful airborne substances, then the Tenant shall, at its own expense, prepare all necessary studies, plans and proposals and submit the same for approval, shall provide all bonds and other security required by governmental authorities having jurisdiction, and shall carry out the work required in accordance with all Applicable Laws and other governmental authority's requirements and keep the Landlord fully informed, and shall provide to the Landlord full information with respect to proposed plans and comply with the Landlord's reasonable requirements with respect to such plans. The Tenant further agrees that if the Shopping Centre or any Released Person is placed in jeopardy by the requirement for any such plan, study or work, or if the Tenant fails to promptly complete and furnish such plan or study or to carry out the work required, or if in the Landlord's reasonable opinion the Tenant is not competent to do so, the Landlord may itself (or through any other Person) undertake such plan, study or work or any part thereof on not less than one (1) day's prior written notice to the Tenant and the Tenant shall pay to the Landlord all costs incurred by the Landlord in so doing, together with an administration fee of fifteen percent (15%) of such costs.





(b) In the event of any release or spill of any Hazardous Substance at or from the Premises, whether under the circumstances referred to in Section 9.12(a) above, or otherwise, the Tenant shall, upon becoming aware of such release or spill, immediately notify the Landlord, such notice to include all information known to the Tenant regarding such release or spill. In addition, where the Tenant, from monitoring of its inventories, has reason to suspect a potential release or spill, the Tenant will authorize the Landlord to conduct an inspection of the land at the Tenant's expense. Where a written report is obtained relative to such inspections, the Tenant agrees to provide a copy of same to the Landlord within seven (7) days after receipt. The Tenant shall, upon becoming aware of the existence of any harmful moulds or harmful airborne substances within the Premises or which are or have been generated as a result of the use or occupancy of the Premises by the Tenant, its contractors, sub-contractors or any Person the Tenant allows or tolerates to have access to the Premises or the Shopping Centre, immediately notify the Landlord, such notice to include all information known to the Tenant regarding such harmful mould or harmful airborne substance.

(c) The Tenant shall, prior to the expiry or termination of this Lease or any renewal thereof, or upon the Tenant vacating a portion of the Premises, at the Tenant's sole expense and in accordance with Applicable Laws, promptly remove all Hazardous Substances and any harmful moulds or harmful airborne substances generated by the Tenant or by the use or occupancy of the Premises by the Tenant, its contractors, sub-contractors or any Person the Tenant allows or tolerates to have access to the Premises or the Shopping Centre or brought onto the Premises or part thereof vacated by the Tenant, its contractors, sub-contractors or any Person the Tenant allows or tolerates to have access to the Premises or the Shopping Centre. For greater certainty, the foregoing obligation of the Tenant shall include, without limitation, the responsibility to remove any Hazardous Substances, harmful moulds or other harmful airborne substances which have as a result of the operations of the Tenant, its contractors, sub-contractors or any Person the Tenant allows or tolerates to have access to the Premises or the Shopping Centre, become affixed to, permeated within or accumulated on or within the Shopping Centre. The Tenant shall obtain and provide to the Landlord a copy of the Tenant's environmental consultant's close-out report or reports and characterization studies with respect to such removal of Hazardous Substances and harmful moulds and other harmful airborne substances.

(d) Should a notice of contamination be published against the Shopping Centre or any part thereof, with respect to or on account of any Hazardous Substance contemplated in this Section 9.12 or of any contamination released, generated or coming from, in any manner whatsoever, the Premises or located therein, the Tenant must publish with diligence (and no later than on the date the Tenant is required to have removed all and any Hazardous Substances pursuant to the provisions of Section 9.12(c)), at its cost, a notice of decontamination, priorly approved in writing by the Landlord, against the Shopping Centre or any part thereof, with respect to such Hazardous Substances or contamination and remit to the Landlord all characterization studies supporting such notice of decontamination.

#### **Section 9.13 Ownership of Hazardous Substances**

If the Tenant, its contractors, sub-contractors or any Person the Tenant allows or tolerates to have access to the Premises or the Shopping Centre create or bring to the Shopping Centre or the Premises any Hazardous Substance or if the Tenant shall cause there to be any Hazardous Substance at the Shopping Centre or the Premises, then notwithstanding any rule of law to the contrary or anything to the contrary contained in this Lease, such Hazardous Substance shall be and remain the sole and exclusive property of the Tenant and shall not become the property of the Landlord notwithstanding the degree of affixation to the Premises or the Shopping Centre of the Hazardous Substance or the goods containing the Hazardous Substance, and notwithstanding the expiry or earlier termination of this Lease.

#### **Section 9.14 Environmental Indemnification**

The Tenant shall indemnify and hold the Released Persons harmless at all times from and against any and all claims, losses, damages, penalties, fines, costs, fees and expenses (including legal counsel's and consultant's fees and expenses) resulting from (a) any breach of or non-compliance with the provisions of Section 9.08 through 9.13 by the Tenant, (b) any legal or administrative action commenced by, or claim made or order or environmental notice from, any third party, including, without limitation, any governmental authority, to or against any Released Persons or the Shopping Centre, in whole or in part, and pursuant to or under any Applicable Laws or concerning a release or alleged release of Hazardous Substances or the presence of Hazardous Substances at the Shopping Centre, and related to or as a result of the operations of the Tenant, its contractors, sub-contractors or any Person the Tenant allows or tolerates to have access to the Premises or the Shopping Centre, and (c) any decontamination, rehabilitation, treatment and remediation, including all analysis and tests, carried by any of the Released Persons, whether such Released Person or any other Released Person was required or not under any Applicable Laws, order, judgment, lawsuit or other recourse, to carry such decontamination, rehabilitation, treatment or remediation, with respect to or on account of the existence in the Shopping Centre of any Hazardous Substance brought by or relating to or resulting from the use or occupancy of the Tenant, its contractors, sub-contractors or any Person the Tenant allows or tolerates to have access to the Premises or the Shopping Centre. The indemnification provided for in this Section 9.14 shall survive the termination or expiry of this Lease or any renewal thereof.



## ARTICLE X - INSURANCE AND INDEMNITY

### Section 10.01 Tenant's Insurance

(a) The Tenant will maintain the insurance described below throughout the Term and any period when it is in possession of the Premises, and each policy of that insurance will name, as insureds, the Tenant, the Landlord (both in its capacity as Landlord and hypothecary creditor), the Owners, the Emphyteutic Lessors (if any) and the Mortgagee as their respective interests may appear. The insurance which the Tenant is required to maintain is as follows:

- (i) all risks (including flood and earthquake) property insurance in an amount equal to one hundred percent (100%) of the full replacement cost, insuring (1) all property owned by the Tenant, or for which the Tenant is legally liable, or installed by or on behalf of the Tenant, and located within the Shopping Centre including, but not limited to, fittings, installations, alterations, additions, partitions, and all other leasehold improvements, and (2) the Tenant's inventory, furniture and movable equipment;
- (ii) **if applicable**, broad form boiler and machinery insurance on a blanket repair and replacement basis with limits for each accident in an amount of at least the replacement cost of all leasehold improvements and of all boilers, pressure vessels, air-conditioning equipment and miscellaneous electrical apparatus owned or operated by the Tenant or by others (except for the Landlord) on behalf of the Tenant in the Premises, or relating to, or serving the Premises;
- (iii) business interruption insurance in an amount that will reimburse the Tenant for direct or indirect loss of earnings attributable to all perils insured against under Sections 10.01(a)(i) and 10.01(a)(ii), and other perils commonly insured against by prudent tenants, or attributable to prevention of access to the Premises or the Shopping Centre as a result of those perils;
- (iv) public liability and property damage insurance including personal injury liability, contractual liability, non-owned automobile liability, employers liability, and owners' and contractors' protective insurance coverage, with respect to the Premises and the Tenant's use of the Common Elements, with coverage including the activities and operations conducted by the Tenant and any other Person on the Premises and by the Tenant and any other Person performing work on behalf of the Tenant and those for whom the Tenant is in law responsible, in any other part of the Shopping Centre. These policies will (1) be written on a comprehensive basis with inclusive limits of at least Five Million Dollars (\$5,000,000.00) per occurrence for bodily injury for any one or more Persons, or property damage, (but the Landlord, acting reasonably, or the Mortgagee, may require higher limits from time to time), and (2) contain a severability of interests clause and cross liability clauses;
- (v) tenant's legal liability insurance for the full replacement cost of the Premises, including loss of their use;
- (vi) standard owners form automobile insurance providing third party liability insurance with One Million Dollars (\$1,000,000.00) inclusive limits, and accident benefits insurance, covering all licensed vehicles owned or operated by or on behalf of the Tenant; and
- (vii) any other form of insurance and with whatever higher limits the Tenant, the Landlord, acting reasonably, or the Mortgagee requires from time to time, in form, in amounts and for risks against which a prudent tenant would insure, **so long as such form of insurance is similar to the insurance taken out by similar tenants in similar shopping centres in the Province at the time.**

(b) The policies specified under Sections 10.01(a)(i), 10.01(a)(ii) and 10.01(a)(iii) will contain the Mortgagee's standard mortgage clause and may have reasonable deductibles of up to three percent (3%) of the amount insured. If there is a dispute as to the amount of the full replacement cost, the Landlord will determine it.

(c) The policies specified under Sections 10.01(a)(i), 10.01(a)(ii) and 10.01(a)(iii) will contain a waiver of any subrogation rights which the Tenant's insurers may have against all and any of the Landlord, the Owners, the Emphyteutic Lessors (if any), the Mortgagee, the Management Company and those for whom all and any of them are or is in law responsible, whether or not the damage is caused by their act, omission or negligence.

(d) All policies will (i) be taken out with insurers acceptable to the Landlord; (ii) be in a form satisfactory to the Landlord; (iii) be non-contributing with, and will apply only as primary and not excess to any other insurance available to all and any of the Landlord, the Owners, the Emphyteutic Lessors (if any) and the Mortgagee; (iv) not be invalidated with respect to the interests of all and any of the Landlord, the Owners, the Emphyteutic Lessors (if any) and the Mortgagee by reason of any breach or violation of warranties, representations, declarations or conditions contained in the policies; and (v) contain an undertaking by the insurers to notify the Landlord, the Owners, the Emphyteutic Lessors (if any) and the Mortgagee in writing not less than thirty (30) days before any material change, cancellation, or termination.

(e) The Tenant will deliver certificates of insurance on the Landlord's standard form, duly executed by the Tenant's insurers evidencing that the required insurance is in force, or, if required by the Landlord



or the Mortgagee, the Tenant will deliver certified copies of each insurance policy as soon as possible after the placing of the insurance. No review or approval of any insurance certificate or insurance policy by the Landlord derogates from or diminishes the Landlord's rights under this Lease.

#### **Section 10.02 Increase in Insurance Premiums**

The Tenant will comply promptly with the loss prevention recommendations of the Landlord's insurer, pertaining to the Premises or the Shopping Centre. If the occupancy of the Premises, the conduct of business in the Premises, or anything done or omitted by the Tenant results in an increase in premiums for the insurance carried by the Landlord with respect to the Shopping Centre, the Tenant will pay the increase to the Landlord immediately on demand. In determining whether the Tenant is responsible for increased premiums and the amount for which the Tenant is responsible, a schedule issued by the organization that computes the insurance rate on the Shopping Centre showing the components of the rate will be conclusive evidence of the items that make up the rate.

#### **Section 10.03 Cancellation of Insurance**

The Tenant will not do or permit anything to be done that results in the cancellation or threatened cancellation or the reduction or threatened reduction of coverage under any insurance policy on the Shopping Centre or any part of it.

#### **Section 10.04 Loss or Damage**

None of the Released Persons is liable for damage to property of the Tenant or of others located on the Premises or elsewhere, nor will they be responsible for disturbance of enjoyment of the Premises or for loss of or damage to, or loss of use of property of the Tenant or others from any cause, whether or not it results from the negligence or misconduct of a Released Person. Without limiting the general intent of the previous sentence, no Released Person is liable for damage to property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain, flood, snow or leaks from or onto any part of the Premises or the Shopping Centre or from pipes, appliances, plumbing works, roof or subsurface of any floor or ceiling, or from the street or any other place, or by dampness, the existence of any Hazardous Substances in any part of the Shopping Centre or resulting by any other cause and no Released Person is liable for damage caused by other tenants or Persons in the Shopping Centre or by occupants of property adjacent to the Shopping Centre, or the public, or caused by construction or by any private, public, or quasi-public work.

#### **Section 10.05 Landlord's Insurance**

The Landlord will maintain, throughout the Term, in those reasonable amounts, and with those reasonable deductions that a prudent owner of a shopping centre similar to the Shopping Centre would maintain, having regard to size, age and location, (a) all risks insurance on the Shopping Centre (excluding the foundations and excavations) and the machinery, boilers and equipment contained in it and owned by the Landlord or the Owners (except property that the Tenant and other tenants are required to insure); (b) public liability and property damage insurance with respect to the Landlord's operations in the Shopping Centre; and (c) whatever other forms of insurance the Landlord, the Owners, or the Mortgagee reasonably consider advisable. This Section does not relieve the Tenant from liability arising from or contributed to by its negligence or its misconduct; no insurable interest is conferred on the Tenant under any policies of insurance carried by the Landlord; and the Tenant has no right to receive proceeds of any of those policies.

#### **Section 10.06 Indemnification of the Released Persons**

Despite anything else in this Lease, the Tenant will indemnify the Released Persons and save them harmless from all loss (including loss of Rent payable by the Tenant under this Lease), claims, actions, damages, liability and expenses in connection with loss of life, personal injury, damage to property or any other loss or injury arising from this Lease, or any occurrence in, on, or at the Premises, or from the occupancy or use by the Tenant of the Premises, or any part of them, or occasioned wholly or in part by an act or omission of the Tenant or by anyone permitted to be on the Premises by the Tenant. However, the Tenant is not required to indemnify the Released Persons or save them harmless from loss, claims, actions, damages, liability or expenses when they arise directly from the negligence of the Released Person.

#### **Section 10.07 Release by the Landlord**

Despite any other section or clause of this Lease, (except the last sentence of this Section), the Tenant is not responsible for any part, in excess of Five Million Dollars (\$5,000,000.00), or the amount of liability insurance coverage available to the Tenant, whichever is the greater, of any loss or damage to property of the Landlord that is located in, or is part of the Shopping Centre, caused by any of the perils against which the Landlord is required to insure under Section 10.05. This release applies whether or not the loss or damage arises from the negligence of the Tenant. This release does not apply, however, to damage arising from the wilful or grossly negligent acts of the Tenant.

### **ARTICLE XI - MAINTENANCE, REPAIRS AND ALTERATIONS**

#### **Section 11.01 Maintenance and Repairs by the Tenant**

Subject to Article XII, the Tenant will use the Premises with prudence and diligence and will keep the Premises and all improvements in or on them in first class condition. Notwithstanding the provisions of Article 1864 of the Civil Code of Quebec or similar legislation, this obligation includes, but is not limited to, repainting and redecorating at reasonable intervals, making repairs and replacements to plate glass, storefronts, signs (interior and exterior), mouldings, doors, hardware, partitions, walls, fixtures, lighting





and plumbing fixtures, wiring, piping, ceilings, floors and thresholds in the Premises and maintaining, repairing and replacing all operating equipment in the Premises unless it forms part of the Common Elements. At the expiry or termination of this Lease, the Tenant will, (a) leave the Premises in the same condition as it was required to keep them in during the Term, (b) deliver all keys for the Premises to the Landlord at the place then fixed for the payment of Rent, (c) give to the Landlord the combinations of any locks, safes, and vaults in the Premises, and (d) comply with Section 11.06(b). **The Tenant shall not be responsible for repairs resulting from any inherent structural defects in the Premises nor shall it be required to effect any structural repairs to the Premises, but it shall be responsible for the payment of its Proportionate Share of such latter costs pursuant to Section 6.02 of this Lease.**

The Tenant shall without delay notify the Landlord in writing of any damage to, defect in or malfunction or deterioration of the Premises or any part thereof including, without limitation, the water pipes, the sprinkler system, the heating, ventilating or air-conditioning system, the electrical system, or any other system located in or serving the Premises which is connected to the Shopping Centre's main physical systems, and of any leak, accident, defect, damage or deficiency in any part of the Premises or the Shopping Centre which comes to the attention of the Tenant, its employees or contractors, whether or not the maintenance or repair thereof is the responsibility of the Landlord.

#### **Section 11.02 Approval of the Tenant's Alterations**

(a) The Tenant will not make repairs, alterations, replacements, decorations or improvements to the Premises (individually and collectively, "Premises Work") without the Landlord's prior written approval, which approval will not be unreasonably withheld, if, (i) the Premises Work will equal or exceed the then current standard for the Shopping Centre; (ii) adequate plans and specifications are produced; (iii) the Tenant obtains the consents, permits and other governmental approvals that are required; and (iv) the Tenant provides to the Landlord reasonable assurances that it will comply with Section 11.02(b). In the performance of and contracting for any Premises Work, the Landlord and the Tenant acknowledge and agree that the Tenant is not and shall not be deemed to be an agent or mandatary of the Landlord.

(b) The Premises Work will be performed, (i) by competent workers whose labour union affiliations are compatible with others employed by the Landlord and its contractors, (ii) in a good and workmanlike manner, (iii) in accordance with the plans and specifications approved by the Landlord, and (iv) in accordance with the Landlord's reasonable requirements.

(c) The Landlord may require that any (1) maintenance to the Premises or Premises Work, or (2) improvements installed to benefit the Premises or maintenance and repairs to such improvements, be performed by the Landlord at the Tenant's cost if they affect (i) the structure of the Premises, (ii) the Common Elements, or (iii) any part of the Shopping Centre outside the Premises. On completion of the maintenance, Premises Work, or the installation of the improvements, the Tenant will pay to the Landlord, on demand, the Landlord's costs including, without limitation, architectural and engineering consultants' fees plus an administration fee of fifteen percent (15%) of the total costs.

(d) The Tenant must immediately obtain at the end of the Premises Work, one or more certificates from the Commission de la Santé et de la Sécurité du Travail certifying that the Persons who completed the Premises Work, as the case may be, have complied with all the requirements provided for by the Loi sur les accidents du travail et les maladies professionnelles and by the Loi sur la santé et la sécurité du travail and that such Persons are duly registered members and that they are in good standing at the date of the certificate(s). The Tenant will remit to the Landlord the certificate(s) upon receipt thereof.

#### **Section 11.03 Maintenance and Repairs by the Landlord**

Subject to Article XII, the Landlord will maintain and repair or cause to be maintained and repaired the Common Elements as would a prudent owner of a similar shopping centre, having regard to size, age and location but the cost (except for the cost of repairing or replacing inherent structural defects or weaknesses) will be included under Section 6.02. The obligations of the Landlord under this Section 11.03 are subject to the following exceptions: (a) any occurrence which is not covered by insurance which the Landlord is required to maintain under this Lease or the cost of repair or restoration which exceeds the proceeds of such insurance actually received by the Landlord; (b) Damage or Expropriation as set out in Article XII, in the circumstances where the Lease will terminate; and (c) damage or injury caused by or resulting from any negligence, fault, omission, want of skill, act or misconduct of the Tenant, its officers, agents, mandataries, servants, employees, contractors, invitees or licensees or Persons for whom the Tenant is responsible in law or over whom the Tenant may reasonably be expected to exercise control.

#### **Section 11.04 Repair Where the Tenant is at Fault**

If the Shopping Centre or any part of it requires repair, replacement or alteration, (a) because of the negligence, fault, omission, want of skill, act or misconduct of the Tenant or its officers, agents, mandataries, employees, contractors, invitees or licensees, (b) due to the requirements of governmental authorities relating to the Tenant's conduct of business, or (c) as a result of the Tenant stopping up or damaging the heating apparatus, water pipes, drainage pipes or other equipment or facilities or parts of the Shopping Centre, the cost of the repairs, replacements or alterations plus a sum equal to fifteen percent (15%) of the cost for the Landlord's overhead will be paid by the Tenant to the Landlord on demand.

#### **Section 11.05 Tenant Not to Overload**

The Tenant will not install equipment that overloads the capacity of a utility, electrical, or mechanical facility in the Premises and will not, (a) bring into the Premises any utility, electrical, or mechanical facility

or service of which the Landlord does not approve, or (b) bring upon the Premises anything that might damage them or overload the floors. If damage is caused to the Premises or to the Shopping Centre as a result of the installation of such equipment or contravention of the provisions of paragraphs (a) or (b) of this Section by the act, neglect, fault, want of skill, or misuse of or by the Tenant or its officers, agents, mandataries, servants, employees, contractors, invitees, licensees or Persons for whom the Tenant is responsible in law or over whom the Tenant may reasonably be expected to exercise control, or by any Person having business with the Tenant, the Tenant will repair the damage or, at the Landlord's option, pay to the Landlord on demand the cost of repairing the damage plus a sum equal to fifteen percent (15%) of the costs for the Landlord's overhead.

#### **Section 11.06 Removal and Restoration by the Tenant**

All Premises Work (as defined in Section 11.02(a)) (including any Tenant's Work) done by the Tenant, or by the Landlord or others for the Tenant (but not the Tenant's trade fixtures) is the property of the Landlord on affixation or installation, without compensation to the Tenant. The Tenant will not remove Premises Work (including any Tenant's Work) or trade fixtures from the Premises at any time except that:

(a) the Tenant may during the Term in the normal course of its business and on obtaining the prior written consent of the Landlord, remove its trade fixtures if they have become excess for the Tenant's purposes, or if the Tenant substitutes new and similar trade fixtures; and

(b) the Tenant will, at the expiry or earlier termination of this Lease, remove at its own expense its trade fixtures and the leasehold improvements that the Landlord requires be removed. The Tenant will at its own expense repair any damage caused to the Premises or the Shopping Centre by such removal. If the Tenant does not remove its trade fixtures on the expiry or earlier termination of this Lease, they will, at the Landlord's option, become the property of the Landlord. The Tenant's trade fixtures do not include, (i) heating, ventilating and air-conditioning systems, facilities, and equipment in or serving the Premises; (ii) floor covering that is affixed; (iii) light fixtures (**except display lighting not affixed to the Premises is deemed to be a trade fixture**); (iv) the storefront or doors; (v) internal stairways, escalators or elevators; or (vi) anything that would not normally be considered a trade fixture, all of which are considered as leasehold improvements.

#### **Section 11.07 Tenant to Discharge all Hypothecs**

The Tenant will promptly pay all charges incurred by it or on its behalf for any work, materials or services supplied or done in respect of the Premises so as to ensure that no hypothec or other encumbrance affects or is registered against (a) the Shopping Centre or any part of it, or (b) the Landlord's interest in the Shopping Centre or any part of it, or (c) the Tenant's interest in the Premises or the Tenant's assets located in the Premises by any Person claiming by, through, under, or against the Tenant or its employees, agents, mandataries, invitees, licensees, contractors or subcontractors. If the Tenant defaults under this section the Landlord may, in addition to its remedies contained in Article XVI of this Lease, discharge and radiate the hypothec or other encumbrance by paying the amount claimed to be due into court or directly to the creditor having registered a hypothec and the total amount so paid, as well as the costs and expenses (including legal costs) incurred as the result of the registration of the hypothec or other encumbrance, including the radiation and discharge of the hypothec or other encumbrance, will be paid by the Tenant to the Landlord on demand.

#### **Section 11.08 Signs and Advertising**

The Tenant will not display any sign, picture, notice, lettering or decoration (the "Sign") on the exterior of the Premises without the prior written approval of the Landlord. If the Landlord, acting reasonably, objects to a Sign in the interior of the Premises that is visible from the exterior, **the Landlord shall notify the Tenant of the basis for the objection and, if the Tenant does not alter or replace the sign, picture, advertisement, notice, lettering or decoration to the satisfaction of the Landlord,** the Tenant will immediately remove it, failing which the Landlord may enter upon the Premises, without notice, and remove it on the Tenant's behalf, at the Tenant's expense, without incurring any liability in respect thereof. The Tenant will erect and maintain one or more identification signs (which the Tenant will own) of a type or types in a location or locations specified in writing by the Landlord and in accordance with the Landlord's requirements for the Shopping Centre. The Landlord may require that any such Sign be illuminated. Any such Sign will remain the property of the Tenant, will be maintained by the Tenant at the Tenant's expense and the Tenant will pay for the electricity consumed by such Sign. At the expiration of the Term or earlier termination of this Lease, the Tenant will remove any such Sign at the Tenant's expense and will immediately repair all damage caused by any such removal.

### **ARTICLE XII - DAMAGE AND DESTRUCTION AND EXPROPRIATION**

#### **Section 12.01 Interpretation of Article XII**

In this Article:

(a) "Damage" means damage (including but not limited to, smoke and water damage and damage that amounts to destruction) that (i) for the purpose of Section 12.02 results from a peril against which the Landlord is required to insure under Section 10.05 or against which the Landlord otherwise insures, and (ii) for the purpose of Section 12.03 results from any cause, and "Damaged" has a corresponding meaning;

(b) "Expropriated" means expropriated by a governmental authority, or transferred, conveyed, or dedicated in contemplation of a threatened expropriation, and "Expropriation" has a corresponding meaning; and



(c) "Usable" means usable by the Tenant for the purpose contemplated by this Lease.

#### **Section 12.02 Damage to the Premises**

Subject to Section 12.03, if the Premises are Damaged, the Landlord will promptly repair or reconstruct the Premises to the extent of the Landlord's Work. If part or all of the Premises is not Usable because of the Damage, Minimum Rent (but not Additional Rent or Percentage Rent) will abate in the proportion that the GLA of that part of the Premises which is not Usable is to the GLA of the whole of the Premises, from the date of the Damage until the earlier of, (i) the date when the whole of the Premises is Usable again or, (ii) ~~sixty (60) thirty (30)~~ days after substantial completion of the Landlord's Work. When the Landlord notifies the Tenant that it has completed enough of the Landlord's Work to enable the Tenant to start the Tenant's Work, the Tenant will complete the Tenant's Work and reopen the whole of the Premises for business as soon as possible but in any case within thirty (30) days after the Landlord's notice. No capital allowance, inducement to lease, or other payment that was made to the Tenant at the time of, or in connection with the original construction of the Premises or the Tenant's improvements thereto will be payable by the Landlord to the Tenant. The computation of Percentage Rent will be based on the abated or reduced Minimum Rent for the period starting on the date of the Damage and ending when the whole of the Premises is open to the public for business. Notwithstanding the foregoing, the Tenant will not be entitled to any abatement of Minimum Rent if the Damage resulted from or was occasioned by any act, fault, misconduct, negligence, omission or want of skill of the Tenant, its officers, servants, employees, agents, mandataries, contractors, invitees or licensees, or by Persons for whom the Tenant is responsible at law or over whom the Tenant may be reasonably expected to exercise control.

#### **Section 12.03 Damage to or Expropriation of the Shopping Centre**

- (a) Despite anything else in this Lease, if:
- (i) more than thirty-five percent (35%) of the Weighted GLA of the Shopping Centre is Damaged or Expropriated, whether or not the Premises are Damaged or Expropriated;
  - (ii) more than thirty-five percent (35%) of the floor area of the Common Elements (excluding the area of parking facilities) or more than twenty percent (20%) of the area of the parking facilities is Damaged or Expropriated, whether or not the Premises are Damaged or Expropriated, or
  - (iii) a Rentable Premises with a GLA of more than thirty thousand (30,000) square feet is Damaged or Expropriated and is not Usable for more than one hundred and eighty (180) days for the purpose contemplated by its lease,

the Landlord may, by written notice to the Tenant within ninety (90) days after the Damage or Expropriation, terminate this Lease, effective thirty (30) days after the notice, and all Rent will abate as of the effective date of the termination. The Tenant will have no claim, action, right of action or any other demand against the Released Persons as a result of or arising from any such early termination of this Lease. **In exercising its termination right as set out herein, the Landlord agrees to act in a bona fide manner and not in a manner discriminating solely as against the Tenant.**

(b) If the Shopping Centre is Damaged or Expropriated to the extent described in Section 12.03(a) and the Landlord does not terminate this Lease, the Landlord will promptly rebuild or repair or cause to be rebuilt or repaired the Shopping Centre to the extent of the Landlord's obligations under the leases for Rentable Premises that are in force at the time but the Landlord may use plans and specifications and working drawings that are different in content from those used in the original construction of the Shopping Centre or any part of it and the rebuilt or repaired Shopping Centre may be different in configuration, size or design from the Shopping Centre before the Damage or Expropriation.

(c) The Landlord and the Tenant will co-operate with each other if there is an Expropriation of all or part of the Premises or the Shopping Centre so that each may receive the maximum award that it is entitled to at law. To the extent, however, that a part of the Shopping Centre, other than the Premises, is Expropriated, the full proceeds that are paid or awarded as a result will belong solely to the Landlord, and the Tenant will assign to the Landlord any rights that it may have or acquire in respect of the proceeds or awards and will execute the documents that the Landlord reasonably requires in order to give effect to this intention. Whether or not the Lease is terminated, the Tenant will have no claim, action, right of action or any other demand against the Released Persons as a result or arising from the Expropriation of all or any part of the Shopping Centre.

#### **Section 12.04 Architect's Certificate**

A certificate issued by the Architect will bind the parties concerning any of the matters that need to be determined under this Article.

### **ARTICLE XIII - ASSIGNMENT**

#### **Section 13.01 Consent Required**

(a) In this Article, "Transfer" means, (i) an assignment, sale, conveyance, sublease, disposition, or licensing of this Lease or the Premises, or any part of them, or any interest in this Lease (whether or not by operation of law) or in a partnership that is a Tenant under this Lease or an amalgamation of the Tenant with another corporation, (ii) a hypothec, charge or debenture (floating or otherwise) or other encumbrance of this Lease or the Premises or any part of them or of any interest in this Lease or of a



partnership or partnership interest where the partnership is a Tenant under this Lease, (iii) a parting with or sharing of possession of all or part of the Premises, and (iv) a transfer or issue by sale, assignment, bequest, inheritance, operation of law or other disposition, or by subscription of all or part of the corporate shares of the Tenant or an "Affiliate" of the Tenant which results in a change in the effective voting control of the Tenant. "Transferor" and "Transferee" have meanings corresponding to the definition of "Transfer" set out above, (it being understood that for a Transfer described in Section 13.01(a)(iv) the Transferor is the Person that has effective voting control before the Transfer and the Transferee is the Person that has effective voting control after the Transfer).

(b) **Subject to the provisions of Section 13.01(e) and Section 13.01(f)**, the Tenant will not effect or permit a Transfer without the consent of the Landlord which consent will not be unreasonably withheld, except that despite any statute or law:

(i) the Landlord may unreasonably withhold its consent to a Transfer within twenty-four (24) months of the Commencement Date, and

(ii) without limiting the grounds upon which a Transfer may be refused, in deciding whether to give its consent to a Transfer after that twenty-four (24) month period the parties agree that each of the following shall be a serious reason for the Landlord to refuse its consent and the Landlord may refuse to give its consent if:

(1) the likely effect of the Transfer on the merchandise mix of the Shopping Centre may be adverse;

(2) agreements, restrictions, or commitments given by the Landlord to other tenants in the Shopping Centre or to Mortgagees, the Owners, or other parties regardless of when given, prevent or inhibit the Landlord from giving its consent to the Transfer;

(3) the Transferee (A) does not have a history of successful business operation in the business to be conducted in the Premises, (B) does not have a good credit rating and a substantial net worth, or (C) is not able to finance the Transferee's acquisition of its interest in the Premises and its operations in the Premises without a material risk of defaulting under this Lease and in a manner that will enable the Transferee to carry on business successfully in the Premises throughout the Term;

(4) there is a history of defaults under commercial leases by the Transferee, or by companies or partnerships in which the Transferee or any of its directors, senior officers or principal shareholders was a director, senior officer, principal shareholder or partner at the time of the defaults;

(5) the length of time since the previous Transfer is less than twenty-four (24) months;

(6) the length of time remaining in the Term of this Lease is less than **twelve (12) ~~eighteen (18)~~** complete months;

(7) the Transferee pays or gives money or other value (**other than that attributable to the Tenant's business goodwill and the Tenant's interest in the leasehold improvements**) that is reasonably attributable to the desirability of the location of the Premises or to leasehold improvements that are owned by the Landlord or for which the Landlord has paid in whole or in part;

(8) the Transfer is a hypothec, charge, debenture (floating or otherwise) or other encumbrance in respect of, this Lease or the Premises or any part of them. **However, the Tenant shall not be deemed to be in default under the terms of this Lease by reason of any hypothec, debenture, charge or encumbrance which may attach to the goods, trade fixtures, furnishings or equipment (hereinafter collectively called the "Equipment") of the Tenant located in the Premises (excluding leasehold improvements) so long as:**

A. **any such hypothec, debenture, charge or encumbrance arises through any bona fide financing done by the Tenant in accordance with the Tenant's normal business practice or by reason of any sale and leaseback agreement entered into by the Tenant for financing purposes with respect to the Equipment (excluding leasehold improvements);**

B. **the Tenant is not in default under any such hypothec, debenture, charge or encumbrance, or any such sale or leaseback agreement; and**

C. **the foregoing shall in no way prejudice or affect the priority of the Landlord's rights or the obligations of the Tenant with respect to**

I. **such Equipment or stock-in-trade or leasehold improvements under all other terms of the Lease, and**

II. **all laws relating to bankruptcy.**





The form of all documentation under this Section 13.01(b)(ii)(8) shall be subject to the prior written approval of the Landlord, which approval will not be unreasonably withheld. The Tenant agrees that it will not cause, suffer or permit such documentation or any notice thereof to be registered against the title to the Shopping Centre lands or any portion thereof.

The Tenant acknowledges and agrees that as a condition of the Landlord agreeing to the foregoing financing by the Tenant, the Tenant will cause the holder of any security granted by the Tenant to enter into an agreement with the Landlord and the Tenant in a form prepared by the Landlord, at the Tenant's expense, acknowledging and agreeing to the foregoing and waiving its rights under such security agreement in favour of the Landlord's priority referred to above;

- (9) there is reasonable ground to believe that the proposed Transfer may result in a reduction of Gross Revenue;
  - (10) the Landlord does not receive sufficient information from the Tenant or the Transferee to enable it to make an enlightened determination concerning the matters set out above; and
- (iii) the Landlord shall not be liable for any claims or actions by or any damages, liabilities, losses or expenses of the Tenant or any proposed Transferee arising out of the Landlord unreasonably withholding its consent to any Transfer and the Tenant's only recourse shall be to bring an application for a declaration that the Landlord shall grant its consent to such Transfer.

(c) Section 13.01(b) does not apply to (i) a Transfer that occurs on the death of the Transferor, (ii) a Transfer described in Section 13.01(a)(iv) which occurs when the sole Tenant in occupation of the Premises is a corporation (a "Public Corporation") whose shares are traded and listed on a stock exchange in Canada or the United States, or (iii) a Transfer that occurs when (1) the sole Tenant in occupation of the Premises is a "subsidiary body corporate" (as that term is defined on the date of this Lease under the Canada Business Corporations Act, R.S.C. 1985, c. C-44) of a Public Corporation and (2) it is the shares of the Public Corporation and not of the Tenant that are transferred or issued. However, if after any of the Transfers described in this Section 13.01(c) the Tenant fails to satisfy the Landlord, (who is to act reasonably) that there will be continuity or improvement of the business practices and policies of the Tenant that existed before the Transfer, the Landlord may, at any time after the Transfer, until sixty (60) days after the Tenant notifies the Landlord in writing of the Transfer, notify the Tenant of its dissatisfaction, and a default of Section 13.01(b) will be considered to have occurred as of the date of the Landlord's notice.

(d) Notwithstanding Article 1871 of the Civil Code of Quebec or similar legislation, the Landlord will benefit from a delay of thirty (30) days following receipt of all the required information to notify the Tenant in writing either, that it grants or refuses to grant its consent to the proposed Transfer, but the Landlord's failure to respond within that thirty (30) day period shall not be construed as consent on the part of the Landlord.

(e) Notwithstanding anything contained to the contrary in Section 13.01(b), and so long as the Tenant and occupant of the whole of the Premises is OLYMPUS FOOD (CANADA) INC., and the Tenant is not in default under this Lease, the Tenant shall not require the consent of the Landlord (but in each case shall provide the Landlord with at least thirty (30) days prior written notice), in the case of any Transfer to:

- (i) any Affiliate, but only so long as such Affiliate remains an Affiliate of OLYMPUS FOOD (CANADA) INC.;
- (ii) a corporation formed as a result of a merger or amalgamation (as those terms are defined pursuant to the Canada Business Corporations Act) of the Tenant with an Affiliate;

provided that (1) such transferee shall carry on only the same business as is permitted to be carried on by the Tenant under this Lease pursuant to Section 1.01(d) and with similar merchandising policies and under the same trade name as the Tenant is required to use pursuant to Section 1.01(c); (2) the Tenant shall cause such transferee to enter into an agreement prepared by and in a form satisfactory to the Landlord in which such transferee covenants directly with the Landlord to be bound by all the terms of this Lease to which the Tenant is bound; (3) the Tenant shall continue to remain liable under the terms of this Lease; and (4) the Tenant shall provide the Landlord the effective date of the Transfer and a copy of articles of amendment or articles of amalgamation evidencing the Transfer.

In the event of a further proposed Transfer the terms of this Lease shall prevail as if this Section 13.01(e) had not formed part of this Lease.

(f) Notwithstanding any provision of Section 13.01(b) to the contrary, so long as the Tenant and occupant of the whole of the Premises is OLYMPUS FOOD (CANADA) INC., and is not in default under this Lease, the Tenant shall have the right to sublease the whole of the Premises to





a fully trained franchisee of the Tenant upon first obtaining the consent of the Landlord, which consent may not be unreasonably withheld, based upon the criteria set out in subparagraphs (3), (4), (5), (6), (7), (9) and (10) of Section 13.01(b)(ii), and further subject to the following conditions, namely that:

- (i) such franchise agreement shall be subject to the terms and conditions contained in this Lease;
- (ii) such franchisee shall not at any one time occupy less than the whole of the Premises;
- (iii) each such franchisee shall carry on business under the trade name and style of the Tenant as set out in Sections 1.01(c) and 9.01 and in the same manner as that carried on in a typical store of the Tenant;
- (iv) the Tenant shall provide the Landlord with an executed copy of each such franchise agreement and if any terms or conditions contained in such franchise agreement are in conflict or inconsistent with the terms and conditions contained in this Lease, the terms and conditions of this Lease will prevail;
- (v) the Landlord's consent will apply only if and for so long as the Tenant and any such franchisee are parties to the franchise agreement and the franchise agreement is in full force and effect with no default on the part of the franchisee; and
- (vi) all of the provisions of Section 13.02 (save and except (f), (j), (k)) shall apply in the event of a Transfer pursuant to this Section 13.01(f).

#### **Section 13.02 Terms and Conditions Relating to Transfers**

The following terms and conditions apply in respect of a Transfer:

- (a) the consent by the Landlord is not a waiver of the requirement for consent to subsequent Transfers;
- (b) no acceptance by the Landlord of Rent or other payments by a Transferee is, (i) a waiver of the requirement for the Landlord to consent to the Transfer, (ii) the acceptance of the Transferee as Tenant, or (iii) a release of the Tenant from its obligations under this Lease;
- (c) the Landlord may apply amounts collected from the Transferee to any unpaid Rent;
- (d) the Transferor, unless the Transferee is a sub-tenant of the Tenant, will retain no rights under this Lease in respect of obligations to be performed by the Landlord or in respect of the use or occupation of the Premises after the Transfer;
- (e) the Tenant and the Transferee will execute an agreement directly with the Landlord agreeing that the Transferee will be bound by this Lease as if the Transferee had originally executed this Lease as Tenant but the Transferor will, notwithstanding any legislation to the contrary, including, without limitation, Article 1873 of the Civil Code of Quebec, not be released of any of its obligations under this Lease but will remain solidarily responsible with the Transferee for the fulfilment of all obligations of the Tenant under this Lease (as the Lease may be modified by the application of Section 13.02(f) during the remainder of the Term and any renewal or extension thereof, the whole without novation or derogation of any kind, and without the exception of subrogation under the provisions of Article 1531 of the Civil Code of Quebec or any similar or succeeding legislation;
- (f) at the Landlord's option, the Minimum Rent will be increased as of the date of the Transfer by an amount (the "Excess Amount") equal to the greater of:
  - (i) the amount by which the annual Minimum Rent that pertains on the day before the Transfer (the "Current Minimum Rent") is exceeded by the average annual total of Minimum Rent and Percentage Rent paid or payable by the Tenant for the last three twelve (12) month Rental Years that precede the Transfer or (if less than three such Rental Years precede the Transfer), the highest annual total of Minimum Rent and Percentage Rent since the Commencement Date; or
  - (ii) the Current Minimum Rent multiplied by the percentage increase in the C.P.I. from the year in which the Commencement Date occurs to the most recent C.P.I. available when the Transfer is requested.

If it is stated in Section 1.01(f) or an addendum to that Section that the annual Minimum Rent is to increase at specified times, the Excess Amount will be added to the increased Minimum Rent. **It is understood and agreed that the provisions of this Section 13.02(f) shall not apply in the case of a Transfer to a Transferee described in Section 13.01(e);**

- (g) for the purpose of calculating Percentage Rent, at the Landlord's option the Rental Year current on the day before the Transfer will end on that day, and a new Rental Year will start on the day of the



Transfer, and end on the day on which that current Rental Year would have ended if it had not been shortened;

(h) any documents relating to a Transfer or the Landlord's consent will be prepared by the Landlord or its solicitors and all of the legal costs of the Landlord together with a reasonable administration charge of at least One Hundred and Fifty Dollars (\$150.00) will be paid to the Landlord by the Tenant on demand;

(i) the repudiation, disaffirmation, disclaimer, surrender (except with the consent of the Landlord) or termination of this Lease by a Transferee, by any trustee in bankruptcy of a Transferee, or by a court representative, shall not in any manner release, discharge, affect or modify any of the obligations of the original Tenant named in this Lease or of any Transferee (except the bankrupt or insolvent Transferee), and the Lease shall continue to bind the original Tenant named in the Lease and any Transferee (except the bankrupt or insolvent Transferee) with the Landlord as if this Lease had not been so repudiated, disaffirmed, disclaimed, surrendered or terminated;

(j) in the event of any Transfer which is a subletting of the Premises by the Tenant by virtue of which the Tenant receives a rent in the form of cash, goods or services from the Transferee which is greater than the Rent payable hereunder to the Landlord, the Tenant will pay any such excess to the Landlord in addition to all Rent payable under this Lease, and such excess rent shall be deemed to be further Additional Rent;

(k) if the Transferee pays or gives money or other value that is reasonably attributable to the desirability of the location of the Premises or to leasehold improvements that are owned by the Landlord or for which the Landlord has paid in whole or in part, then at the Landlord's option, the Transferor will pay to the Landlord such money or other value in addition to all Rent payable under this Lease and such amounts shall be deemed to be further Additional Rent; and

(l) if the Transferee is a sub-tenant, the Transferee shall not, under any circumstances, make any advance payment of any amount to the Tenant and shall not be entitled to exercise against the Landlord any of the rights and remedies of the Tenant.

#### **Section 13.03 No Advertising of the Premises**

The Tenant will not offer or advertise the whole or any part of the Premises or this Lease for the purpose of a Transfer and will not permit a broker or other Persons to do so.

#### **Section 13.04 Sales and Other Dispositions by the Landlord**

If the Landlord sells, or otherwise transfers or disposes of the Shopping Centre or any part of it, or if the Landlord assigns this Lease or any interest of the Landlord under it, then to the extent that the purchaser, transferee or other donee agrees with the Landlord to assume the Landlord's obligations under this Lease, the Landlord will be released from those obligations.

### **ARTICLE XIV - ACCESS AND ALTERATIONS**

#### **Section 14.01 Right of Entry**

(a) It is not a breach of any obligation for quiet enjoyment if the Landlord and its representatives enter the Premises at reasonable times after ~~forty-eight (48) twenty-four (24)~~ hours notice (but if the Landlord determines there is an emergency, no notice is required) (i) to examine them, (ii) to carry out work thereon, including making repairs, alterations, improvements or additions to the Premises or the Shopping Centre or adjacent property, (iii) to conduct an environmental audit of the Premises or any part of the Shopping Centre, or (iv) to excavate land adjacent to or subjacent to the Premises, and the Landlord and its representatives may take material into and on the Premises for those purposes. This right extends to (and is not limited to) the pipes, conduits, wiring, ducts, columns and other installations in the Premises. Rent will not abate or be reduced while the repairs, alterations, improvements or additions are being made and the Landlord is not liable for any damage caused to the property of the Tenant or others located on the Premises as a result of the entry, any work carried out or the exercise of any of its rights hereunder, regardless of how the damage is caused. However, the Landlord is responsible for unavoidable loss or interruption of business directly attributable to the exercise of this right (but not for any other damages, regardless of how they are caused) to the extent it does not take reasonable steps to minimize the interruption.

(b) Notwithstanding the provisions of Article 1885 of the Civil Code of Quebec, the Landlord may (i) enter the Premises at reasonable times to show them to prospective purchasers, tenants or Mortgagees and (ii) during the twelve (12) months before the expiry of the Term, display on the Premises "For Rent" or "For Sale" notices of reasonable size and number, and in reasonable locations.

(c) If the Premises are not open when, for any reason, an entry therein is necessary or permissible, the Landlord may enter the Premises by a master key, or by force, without rendering the Landlord liable therefor and without in any way affecting the obligations of the Tenant under this Lease.



## ARTICLE XV - STATUS STATEMENT AND SUBORDINATION

### Section 15.01 Status Statement

Within ten (10) days after each request by the Landlord, the Tenant will deliver to the Landlord, on a form supplied by the Landlord, a status statement or certificate to any proposed Mortgagee, purchaser, or other disponee of part or all of the Shopping Centre and to the Landlord, stating:

- (a) that this Lease is in full force and effect, except only for any modifications that are set out in the statement or certificate;
- (b) the commencement and expiry dates of the Lease;
- (c) the date to which Rent has been paid under this Lease and the amount of any prepaid Rent or any deposits held by the Landlord;
- (d) that the Minimum Rent, the Percentage Rent and the Additional Rent are then accruing under this Lease or the dates on which each of these will start accruing;
- (e) **to the best of its knowledge, information and belief**, that the Premises are free from any construction deficiencies, or if there are such deficiencies, the certificate will state the particulars;
- (f) that there is not any uncured default on the part of the Landlord or if there is a default, the certificate will state the particulars;
- (g) whether there are any set-offs, defences or counter-claims against enforcement of the obligations to be performed by the Tenant under this Lease;
- (h) with reasonable particularity, details concerning the Tenant's and any Surety's financial standing and corporate organization. **However, a written statement from the Tenant's bank confirming the Tenant's ability to finance its business operations shall satisfy the Tenant's obligation to provide details concerning its financial standing under this Section 15.01(h);** and
- (i) any other information or statement that a proposed Mortgagee, purchaser, or disponee may reasonably require.

### Section 15.02 Subordination

(a) This Lease is and will remain subordinate to every hypothec, emphyteusis, charge, trust deed, financing, refinancing or collateral financing and the instruments of, as well as the charge or hypothec resulting from all or any of them and any renewals or extensions of them from time to time (collectively, an "Encumbrance") against the Premises or the Shopping Centre and the Tenant will, on request, sign any document requested by the Landlord to confirm the subordination of this Lease to any Encumbrance and to all advances made or to be made on the security of the Encumbrance. The Tenant will also, if the Landlord requests it to do so, become the tenant of the holder of any Encumbrance, the Owners, the Emphyteutic Lessors or any purchaser, transferee or disponee of the Shopping Centre or of an ownership or equity interest in the Shopping Centre and the Tenant will, on request, sign any document requested by the Landlord to confirm this agreement.

(b) If possession is taken under, or any proceedings are brought for the foreclosure of, or if a power of sale is exercised resulting from an Encumbrance the Tenant will become the tenant of the Person that so takes possession if that Person requests it and will recognize that Person as the Landlord under this Lease.

(c) The form and content of any document confirming or effecting the subordination and recognition provided for in this Section 15.02 will be that required by the Landlord or the holder of the Encumbrance in each case, and each such document will be delivered by the Tenant to the Landlord within ten (10) days after the Landlord requests it.

(d) **Upon the written request of the Tenant, the Landlord shall use its commercially reasonable efforts to obtain at the Tenant's expense an agreement from the permanent financing Mortgagee of the Shopping Centre (on the Mortgagee's standard form), to the effect that upon the execution and delivery by the Tenant to the Landlord of this Lease, if the Tenant shall pay the Rent and comply with all terms and conditions contained in this Lease and attorn to the permanent financing Mortgagee, the Tenant shall be permitted to remain in quiet possession of the Premises without interruption or disturbance from the permanent financing Mortgagee, or at the option of the permanent financing Mortgagee, shall be entitled to obtain a new lease for the unexpired Term of this Lease, on the same terms and conditions as contained in this Lease. The Tenant shall (i) promptly execute such documents as may be required by the Landlord to give effect to the foregoing, and (ii) indemnify the Landlord from and against all reasonable costs including legal costs incurred by the Landlord in connection with obtaining and preparing any such agreement.**

### Section 15.03 Mandatory

The Tenant will execute and deliver whatever instruments and certificates are requested by all or any of the Landlord, the Owner(s), the Emphyteutic Lessor, if any, and any Mortgagee to give effect to Sections 15.01 and 15.02. If the Tenant has not executed whatever instruments and certificates it is required to execute within ten (10) days after the Landlord's request, **an Event of Default will be deemed to have**



occurred and the Landlord may avail itself of all rights and remedies at law and under Article XVI of this Lease. ~~the Tenant irrevocably appoints the Landlord as the Tenant's mandatary with full power and authority to execute and deliver in the name of the Tenant, any of these instruments or certificates of the Landlord, may, at its option, terminate this Lease without incurring any liability.~~

#### ARTICLE XVI - DEFAULT

##### Section 16.01 Events of Default

- (a) An "Event of Default" occurs when:
  - (i) the Tenant defaults in the payment of Rent or Sales Taxes and fails to remedy the default within five (5) days after written notice;
  - (ii) the Tenant commits a breach that is capable of remedy other than a default in the payment of Rent or Sales Taxes, and fails to remedy the breach within ten (10) days after written notice that (1) specifies particulars of the breach, and (2) requires the Tenant to remedy the breach (or if the breach would reasonably take more than ten (10) days to remedy, fails to start remedying the breach within the ten (10) day period, or fails to continue diligently and expeditiously to complete the remedy);
  - (iii) the Tenant commits a breach of this Lease that is not capable of remedy and receives written notice specifying particulars of the breach;
  - (iv) a report or statement required from the Tenant under this Lease is false or misleading except for a misstatement that is the result of an innocent clerical error **and unless the Tenant can show to the Landlord that it was not a party to such falsification and that all steps have been taken to prevent its reoccurrence;**
  - (v) the Tenant, or a Person carrying on business in a part of the Premises, or a Surety becomes bankrupt or insolvent or takes the benefit of any statute for bankrupt or insolvent debtors (including, but not limited to, the Companies' Creditors Arrangement Act, R.S.C. 1985, c.C-36, as amended), or makes any proposal, assignment or arrangement with its creditors;
  - (vi) a receiver or a receiver and manager is appointed for all or a part of the property of the Tenant, or of another Person carrying on business in the Premises, or of a Surety;
  - (vii) steps are taken or proceedings are instituted for the dissolution, winding up or other termination of the Tenant's or the Surety's existence or for the liquidation of their respective assets **other than in connection with a bona fide corporate reorganization permitted under the provisions of this Lease;**
  - (viii) the Tenant makes or attempts to make a sale of a substantial portion of its assets regardless of where they are situated (except for such a sale made to a Transferee when the Transfer has been consented to by the Landlord);
  - (ix) **subject to the provisions of Section 9.03(g)**, the Premises are vacant or unoccupied for five (5) consecutive days or the Tenant abandons or attempts to abandon the Premises, or sells or disposes of property of the Tenant or removes it from the Premises so that the value of the assets remaining in the Premises charged by the movable hypothec referred to in Section 16.08 of this Lease is less than the amount required pursuant to Section 16.08;
  - (x) the Tenant effects or attempts to effect a Transfer that is not permitted by this Lease;
  - (xi) this Lease or any of the Tenant's assets on the Premises are taken or seized under a writ of execution, an assignment, pledge, charge, hypothec, debenture, or other security instrument **(and such writ of execution or other instrument is not satisfied or discharged within five (5) days of its service);**
  - (xii) the Tenant consents to or attempts to grant a Guarantee contrary to the provisions of Section 16.08;
  - (xiii) any preliminary measure is taken or instituted for the exercise of secured or hypothecary rights against or in respect of this Lease (it being understood that this is not intended to be construed as giving the Tenant any right to secure, pledge or give any hypothecary rights in this Lease), the Tenant, a Surety or any of the Tenant's or Surety's assets or property, including, without limiting the foregoing, any preliminary measure taken or instituted by the sending of a notice of intention to enforce security pursuant to the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, or the filing and/or registration of a notice to exercise a hypothecary right pursuant to the Civil Code of Quebec or any other legislation of similar effect **and provided that the Tenant has not contested such preliminary measure within the delays provided by the applicable legislation and has not diligently continued to contest such preliminary measure;**
  - (xiv) the Tenant defaults in the timely payment of Rent and any such default has occurred on two previous occasions, notwithstanding that such defaults may have been cured within the period after notice has been provided pursuant to the terms of this Lease;





- (xv) there has been an Unexpected Termination (as that term is defined in Section 16.01(d)) of any lease which the Tenant or an Affiliate of the Tenant holds for premises in the Shopping Centre or in another shopping centre or development that is owned (in whole or in part), operated or managed by or on behalf of the Landlord, an Affiliate of the Landlord, or its successors or assigns, or that is operated or managed by a Management Company or an Affiliate of a Management Company; or
  - (xvi) the Suretyship Agreement, if any, is terminated for any reason whatsoever or, alternatively, if the obligations of the Surety under the Suretyship Agreement are reduced, modified or otherwise limited, except by way of an agreement made in writing with the Landlord.
- (b) Notwithstanding:
- (i) anything in any applicable statute or other legislation or any regulation that exists now or that comes into existence and any rule of law, including, without limitation, the provisions of Article 1595 of the Civil Code of Quebec,
  - (ii) any defect in any notice given by the Landlord, including without limitation, an error in the amount of Rent in arrears (provided, however, that Rent is, in fact, in arrears) or a failure of the notice to require the Tenant to make compensation in money or remedy the breach; and
  - (iii) the Landlord's election not to give notice to the Tenant in respect of a breach (other than that for which notice must be given under Section 16.01(a)(i) and (ii) above),

upon the occurrence of any Event of Default the full amount of the current month's and the next three (3) months' instalments of Minimum Rent and Additional Rent, and Sales Taxes, will immediately become due and payable, without any notice or demand and without any cure period. At the option of the Landlord, this Lease shall be ipso facto terminated without legal proceedings and the full amount of the Rent (calculated according to Section 16.01(d)) for that part of the Term that would have remained but for the Unexpected Termination (as that term is defined in Section 16.01(d)) shall become due and payable. If this Lease is so terminated, the Landlord, to the extent permitted by law, may immediately repossess the Premises and expel all Persons from the Premises and may remove all property from the Premises, sell or dispose of it as the Landlord considers appropriate, or store it in a public warehouse or elsewhere at the cost of the Tenant, all without service of notice, without legal proceedings, and without liability for loss or damage and wholly without prejudice to the rights of the Landlord to recover arrears of Rent or damages for any antecedent default by the Tenant of its obligations or agreements under this Lease or of any term or condition of this Lease, and wholly without prejudice to the rights of the Landlord to recover from the Tenant damages for loss of Rent suffered by reason of this Lease having been prematurely terminated.

(c) Should an Event of Default occur and should the Landlord have instituted proceedings to resiliate this Lease, notwithstanding Article 1883 of the Civil Code of Quebec or similar legislation, the Tenant will not have any right to prevent such resiliation by remedying its default or defaults subsequent to the institution of such legal proceedings.

(d) In this Article XVI, an "Unexpected Termination" means (i) a termination or resiliation of a lease due to a default under a lease, (ii) a surrender or termination of a lease to which the landlord does not consent in writing or (iii) a repudiation, disclaimer or disaffirmation of a lease. If an Unexpected Termination of this Lease occurs, then for the purpose of calculating Rent under Section 16.01(b) and the Landlord's damages, the Gross Revenue and Additional Rent will each be deemed to have increased at the minimum rate of five percent (5%) per annum for that part of the Term that would have remained but for the Unexpected Termination, and Percentage Rent will be calculated and payable on the Gross Revenue so assumed.

(e) It is understood and agreed that the Tenant shall be responsible for all of the legal costs of the Landlord associated with the Landlord preparing and issuing its notice to the Tenant under Section 16.01(a)(i) and (ii) above.

(f) Notwithstanding any provision hereof, any legislation to the contrary or any non-enforcement of this right by the Landlord in the past, during any period of time when an Event of Default is in existence which has not been cured by the Tenant, the Landlord, at its option, can require the Tenant to cease, forthwith upon receipt of notice from the Landlord, all its business operations in the Premises until the Event of Default is cured. In the event that the Landlord gives the Tenant written notice of its election to exercise this right, the Tenant agrees that the Landlord shall be entitled to exercise any recourse available to prevent the Tenant from carrying on its business operations in the Premises, including, without limiting the foregoing, obtaining and enforcing seizure and injunction orders. **Notwithstanding any provision of this Section 16.01(f) to the contrary, it is understood and agreed that the Tenant shall not be required to cease its business operations in the Premises unless the Tenant is in material, repeated or continuous default.**

#### Section 16.02 Expenses

If legal proceedings are brought for recovery of possession of the Premises, for the recovery of Rent or Sales Taxes, or because of a default by the Tenant, the Tenant will pay to the Landlord its expenses, including its legal costs.



### Section 16.03 Landlord May Cure the Tenant's Default

If the Tenant defaults in the payment of money that it is required under this Lease to pay to a third party, the Landlord, after giving five (5) days notice in writing to the Tenant, may pay all or part of the amount payable. If the Tenant defaults under this Lease (except for a default in the payment of Rent or Sales Taxes), the Landlord may, after giving reasonable notice (it being agreed that forty-eight (48) hours is reasonable notice of a default of Section 10.01) or, without notice in the case of an emergency, perform or cause to be performed all or part of what the Tenant failed to perform and may enter upon the Premises and do those things that it considers necessary for that purpose. The Tenant will pay to the Landlord on demand, the Landlord's expenses incurred under this Article XVI plus an amount equal to fifteen percent (15%) of those expenses for the Landlord's overhead. The Landlord will have no liability to the Tenant for loss or damages resulting from its action or entry upon the Premises.

### Section 16.04 Application of Money

The Landlord may apply money received from or due to the Tenant against money due and payable under this Lease. The Landlord may impute any payment made by or on behalf of the Tenant towards the payment of any amount due and owing by the Tenant at the date of such payment regardless of any designation or imputation by the Tenant. **However, nothing in this Section 16.04 is intended to prejudice the Tenant's rights in respect of amounts genuinely in dispute.**

### Section 16.05 Failure of the Tenant to Carry on Business

(a) The Tenant will open the whole of the Premises for business on the Commencement Date, fully fixtured, stocked and staffed, and will, throughout the Term, conduct its business continuously, diligently and actively in the whole of the Premises in accordance with this Lease. The Tenant acknowledges and agrees that continuous operation in the Premises as required in this Section is of the essence of this Lease and that any default of the Tenant under this Section will cause grave prejudice to the Landlord which cannot be entirely compensated by the payment of a sum of money.

(b) **Subject to the provisions of Section 9.03(g)**, if the Tenant fails to open or reopen the Premises for business or to carry on business at all times in accordance with this Lease, the Landlord may, (i) collect (in addition to Minimum Rent, Percentage Rent and Additional Rent) an additional charge at a daily rate of twenty-five cents (\$0.25) per square foot of the Weighted GLA of the Premises or Two Hundred and Fifty Dollars (\$250.00) whichever is the greater, for each day of default, (this additional charge being a liquidated sum representing the minimum damages that the Landlord is considered to have suffered as a result of the Landlord's failure to receive Percentage Rent and the lack of participation by the Tenant in the general synergy and interdependence of the Rentable Premises in the Shopping Centre, and being without prejudice to the Landlord's right to recover other damages), and (ii) use its other remedies for the Tenant's default, including obtaining an injunction or an order for specific performance in a court of competent jurisdiction to restrain the Tenant from defaulting under this Section 16.05 and a mandatory injunction to compel the Tenant to open or reopen the Premises for business to the public in accordance with this Lease. The Tenant consents to the Landlord obtaining those injunctions upon the Landlord establishing by affidavit or other evidence that the Tenant has defaulted or that the Landlord has reasonable cause to believe that the Tenant is about to default under this Section.

### Section 16.06 Non-Acceptance of Termination

No acceptance of keys for the Premises by the Landlord and no other act of the Landlord will be considered as an acceptance by the Landlord (implied or otherwise) of a termination of this Lease by the Tenant. Only a written acknowledgment or termination agreement executed by two (2) authorized representatives of the Landlord will be effective as an acceptance by the Landlord of a termination of this Lease.

### Section 16.07 Remedies Generally

(a) The remedies under this Lease are cumulative. No remedy is exclusive or dependent upon any other remedy. Any one or more remedies may be exercised generally or in combination. The specifying or use of a remedy under this Lease does not limit the right to use other remedies available at law generally.

(b) Except as otherwise expressly contained herein, any breach by the Landlord under this Lease can be adequately compensated in damages and the Tenant agrees that its only remedy to enforce its rights under this Lease is an action for damages and any right of the Tenant to damages may not be assigned or transferred and any assignment or transfer in violation of this provision shall be null and void and shall not be binding on the Landlord.

### Section 16.08 Movable Hypothec

(a) As continuing and collateral security for the due and punctual payment of Rent and all other amounts now owing or which may hereafter become owing to the Landlord by the Tenant under this Lease, as same may be amended, renewed, extended or supplemented, and as continuing and collateral security for the due and punctual performance and fulfilment of all other obligations and agreements of the Tenant contained in this Lease, as same may be amended, renewed, extended or supplemented, the Tenant hereby hypothecates in favour of the Landlord, with effect as of and from this date, for the sum of **TWO HUNDRED AND FORTY-EIGHT THOUSAND DOLLARS (\$248,000.00)**, together with interest thereon at the Stipulated Rate, calculated semi-annually, not in advance, all of the rights, title and interests of the Tenant in and to the following universalities (hereinafter referred to as the "Universalities"):



- (i) the universality of all movable improvements, equipment, machinery, furniture and trade fixtures of every kind, present and future, located on or upon the Premises or used directly or indirectly in connection with the business of the Tenant carried on at the Premises, including all indemnities or proceeds paid under insurance contracts or policies pertaining to or covering such movables; and
  - (ii) the universality of all property in stock, raw material, work in process and inventory, present and future, situated on or upon the Premises or used directly or indirectly in connection with the business of the Tenant carried on at the Premises, including all indemnities or proceeds paid under insurance contracts or policies pertaining to or covering such movables.
- (b) The hypothec herein created in favour of the Landlord shall not constitute nor be construed as a floating hypothec under Article 2715 of the Civil Code of Quebec.
- (c) The security hereby created is without delivery and shall, subject to Articles 2673, 2674 and 2734 of the Civil Code of Quebec, not prevent the Tenant, until an Event of Default has occurred and the security hereby constituted shall become enforceable, from selling, leasing or otherwise disposing of or dealing with its inventory in the ordinary course of its business and for the purposes of carrying on the same, provided that such inventory is forthwith replaced with inventory of equal or greater value and quality.
- (d) Upon the occurrence of an Event of Default the security hereby constituted shall become enforceable and the Landlord shall forthwith be entitled to exercise any and all of the rights provided for in Chapter V of Title III of Book VI of the Civil Code of Quebec and in the Code of Civil Procedure of Quebec. In exercising any of the rights and recourses available hereunder or at law, the Landlord may, in respect of all or any part of each of the Universalities, exercise such rights and recourses as are available to it hereunder or at law, as it may choose, without prejudice to its other rights and recourses in respect of all or part of each of the other Universalities. Furthermore, the Landlord may exercise any of its rights and recourses in respect of all or any part of each of the Universalities, simultaneously or successively.
- (e) Subject only to the subordination contemplated hereinafter, the Tenant hereby represents, warrants to and agrees with the Landlord that the movable hypothec granted by the Tenant to the Landlord pursuant to this Section 16.08 shall constitute and remain during the entire Term of this Lease, and any renewal or extension thereof, a first ranking charge on all the movable assets charged thereunder, and that all other Guarantees (as defined in Section 16.08(f)) granted by the Tenant shall rank after the movable hypothec granted to the Landlord under this Section 16.08, **other than the movable hypothec on a universality of the movable rights and property, corporeal and incorporeal, present and future of any kind whatsoever and wherever situated, in favour of the Bank of Nova Scotia and any renewal or replacement (the "BNS Security"), which will rank first in priority to the Landlord's movable hypothec.** Notwithstanding the preceding sentence, however, should the Tenant obtain a bona fide financing for the operation of its business in the Premises from a Canadian chartered bank or other reputable financial lending institution acceptable to the Landlord, acting reasonably (the "Tenant's Lender"), **other than the BNS Security**, the Landlord shall execute, at the cost of the Tenant, a subordination agreement in favour of such Tenant's Lender, based on the Landlord's standard form of subordination agreement, provided that (i) the Tenant pays to the Landlord all expenses incurred by the Landlord in relation thereto, including without restriction, legal costs; and (ii) no security granted or to be granted to the Tenant's Lender shall affect or in any manner whatsoever charge property which is or may become the Landlord's property pursuant to the terms of this Lease.
- (f) Subject to the provisions of Section 16.08(e), the Tenant may hypothecate, pledge, charge or encumber its inventory, equipment, furniture or trade fixtures which may, from time to time, be on the Premises, by way of a movable hypothec, trust deed, security under the Bank Act, S.C. 1991, c.46, conditional sales agreement, consignment sales agreement, instalment sales agreement, sale with right of redemption or in any other manner in which movables may guarantee the obligations of the Tenant in conformity with federal or provincial laws (the "Guarantee"), provided that (i) in each case the Tenant gives the Landlord written notice thereof within ten (10) days of such Guarantee having being granted; (ii) at the Landlord's request, the Tenant provides the Landlord with a copy of all documentation executed between the Tenant and the creditor or holder of such Guarantee; (iii) at the Landlord's request, the Tenant executes, and has the creditor or holder of such Guarantee (or mandatary or trustee acting on the creditor's behalf) execute such reasonable documentation as may be required by the Landlord to give effect to the provisions of this Section 16.08, whether express or implied; and (iv) such Guarantee may not affect or in any manner whatsoever charge property which is or may become the Landlord's property pursuant to the terms of this Lease. All expenses incurred by the Landlord in relation to such Guarantee, including without restriction, legal costs, will be reimbursed immediately, upon request, by the Tenant.
- (g) The Tenant agrees to furnish the Premises with and to maintain therein at all times during the Term, and any renewal or extension thereof, a sufficient quantity of inventory, equipment, furniture, trade fixtures and other effects, sufficient to secure all of the Tenant's obligations under this Lease. In no event will the value of the inventory, equipment, furniture, trade fixtures and other effects of the Tenant charged by the Landlord's movable hypothec under this Section 16.08 be less than the amount provided in Section 16.08(a).



## ARTICLE XVII - MISCELLANEOUS

### Section 17.01 Rules and Regulations

The Landlord, acting reasonably, may adopt rules and regulations which may differentiate between different types of businesses. Each rule and regulation, as revised from time to time, forms part of this Lease as soon as the rule, regulation or revision is made known to the Tenant. The Tenant will comply with each rule and regulation and each revision thereof. No rule or regulation, however, will contradict the terms and conditions of this Lease. The Landlord is not responsible to the Tenant for the non-observance of a rule or regulation by any other tenant of Rentable Premises or occupant of the Shopping Centre or of the terms or conditions of any other lease of Rentable Premises. **The Landlord agrees that it will not apply the Rules and Regulations in a manner which is discriminatory solely as against the Tenant.**

### Section 17.02 Overholding - No Tacit Renewal

If the Tenant remains in possession of the Premises after the Term with the consent of the Landlord but without executing a new lease, there is no tacit renewal of this Lease despite any statutory provision or legal presumption to the contrary, including, without limitation, Article 1879 of the Civil Code of Quebec or similar legislation. The Tenant will occupy the Premises as a Tenant from month to month (with either party having the right to terminate such month to month tenancy at any time on thirty (30) days notice, whether or not the date of termination is at the end of a rental period) at a monthly Minimum Rent payable in advance on the first day of each month equal to two times the Minimum Rent payable during the last month of the Term, and the Tenant will comply with the same terms and conditions as are in this Lease as far as they apply to a monthly tenancy including, for greater certainty, the payment of Additional Rent.

### Section 17.03 Successors

The rights and obligations under this Lease extend to and bind the successors and assigns of the Landlord and, if Section 13.01 is complied with, the heirs, executors, administrators and permitted successors and permitted assigns of the Tenant. If there is more than one Tenant, or more than one Person comprising the Tenant, each is bound solidarily by this Lease without the exception of subrogation under the provisions of Article 1531 of the Civil Code of Quebec or any similar or succeeding legislation.

### Section 17.04 Tenant Partnership

If there is at any time more than one Tenant or more than one Person constituting the Tenant, their obligations shall be solidary and shall apply to each and every one of them, without the exception of subrogation under the provisions of Article 1531 of the Civil Code of Quebec or any similar or succeeding legislation. If the Tenant is a partnership or other business association, the members of which are, by virtue of statutory or general law, subject to personal liability, each Person who is a member of the partnership or other business association, and each Person who becomes a member of a successor of the partnership or other business association, is solidarily liable as Tenant under this Lease and will continue to be liable after that Person ceases to be a member of the partnership or other business association or a successor of the partnership or other business association and after the partnership or other business association ceases to exist, the whole without the exception of subrogation under the provisions of Article 1531 of the Civil Code of Quebec or any similar or succeeding legislation.

### Section 17.05 Waiver

The waiver by the Landlord or the Tenant of a default under this Lease is not a waiver of any subsequent default. The Landlord's acceptance of Rent after a default is not a waiver of any preceding default under this Lease even if the Landlord knows of the preceding default at the time of acceptance of the Rent. No term or condition of this Lease will be considered to have been waived by the Landlord or the Tenant unless the waiver is in writing. The Tenant waives any statutory or other rights in respect of abatement, set-off or compensation in its favour that may exist or come to exist in connection with Rent.

### Section 17.06 Accord and Satisfaction

Payment by the Tenant or receipt by the Landlord of less than the required monthly payment of Minimum Rent is on account of the earliest stipulated Minimum Rent. An endorsement or statement on a cheque or letter accompanying a cheque or payment as Rent is not an acknowledgment of full payment or an accord and satisfaction, and the Landlord may accept and cash the cheque or payment without prejudice to its right to recover the balance of the Rent or pursue its other remedies.

### Section 17.07 Brokerage Commission

Since the Landlord has not employed or retained a broker for this Lease or anything related to it, the Tenant will indemnify and hold the Landlord harmless from claims for commission with respect to this Lease or any matter related to it.

### Section 17.08 Force Majeure

Despite anything contained in this Lease to the contrary, if the Landlord or the Tenant is, in good faith, delayed or prevented from doing anything required by this Lease because of a strike, labour trouble, inability to get materials or services, power failure, restrictive governmental laws or regulations, riots, insurrection, sabotage, rebellion, war, act of God, or any other similar reason, that is not the fault of the party delayed, the doing of the thing is excused for the period of the delay and the party delayed will do what was delayed or prevented within the appropriate period after the delay. The preceding sentence does not excuse the Tenant from payment of Rent or the Landlord from payment of amounts that it is required to pay, in the amounts and at the times specified in this Lease.





### **Section 17.09 Notices**

Notices, demands, requests or other instruments under this Lease will be delivered in person (which shall include delivery by a third party courier or delivery service) or sent by registered mail postage prepaid and addressed (a) if to the Landlord, c/o The Cadillac Fairview Corporation Limited, at Fifth Floor, 20 Queen Street West, Toronto, Ontario, M5H 3R4, Attention: Executive Vice-President, National Property Operations, with a copy to the Shopping Centre Manager, or to such other Person at any other address that the Landlord designates by written notice, and (b) if to the Tenant, ~~at the Premises, or, at the Landlord's option,~~ to the Tenant's head office at the address set out in Section 1.01(m). A notice, demand, request or consent will be considered to have been given or made on the day that it is delivered, or, if mailed, seventy-two (72) hours after the date of mailing. Despite what is stated above, the Tenant acknowledges that if its head office address is stipulated as a post office box or a rural route number, then notice will be considered to have been sufficiently given to the Tenant if delivered in person or sent by registered mail to the Premises or, where notice cannot be given in person upon the Premises, by posting the notice upon the Premises. Either party may notify the other in writing of a change of address and the address specified in the notice will be considered the address of the party for the giving of notices under this Lease. If the postal service is interrupted or substantially delayed, any notice, demand, request or other instrument will only be delivered in person. A notice given by or to one Tenant is a notice by or to all of the Persons who are the Tenant under this Lease. Notice may not be given by facsimile transmission, electronic mail or any other electronic communication.

### **Section 17.10 Registration**

The Tenant and the Landlord hereby acknowledge and agree that it is in their mutual interest that this Lease be registered by way of a notice of lease only (or in the case of a Transfer, a notice of transfer), in accordance with Article 2999.1 of the Civil Code of Quebec, such notice not to refer to any monetary obligations or monetary provisions under this Lease. It is further agreed that no notice of lease (or notice of transfer) shall be registered before such notice has been approved in writing by the Landlord.

All costs, fees and expenses relating to the preparation, review and/or registration of the notice of lease (or notice of transfer), including without restriction, all registration fees, shall be paid for by the Tenant and the Tenant shall reimburse the Landlord without delay for all costs, fees and expenses (including, without restriction, all legal costs) incurred by the Landlord, if any, with respect to the foregoing. If the Shopping Centre comprises more than one lot, the Landlord may direct the Tenant as to the lot(s) against which registration may be effected, provided the Premises are actually located on such lot(s). Within a reasonable period after registration, the Tenant shall supply to the Landlord, at Tenant's cost, a copy of the notice bearing the registration number of the notice of lease (or notice of transfer, as the case may be).

At the expiry or earlier termination of this Lease, the Tenant will, at its expense, radiate any registration hereunder, and if the Tenant has not done so within sixty (60) days after the expiry or earlier termination of the Lease, the Landlord may do so at the Tenant's expense; and for this purpose the Tenant hereby irrevocably constitutes the Landlord as the Tenant's mandatary to execute and register any cancellation or radiation document that may be required and agrees and undertakes to ensure that any Transferee constitutes the Landlord as its mandatary for this purpose.

### **Section 17.11 No Partnership**

Nothing contained in this Lease or as a result of any acts of the parties hereto will be deemed to create any relationship between the parties other than that of Landlord, Tenant and, if applicable, Surety.

### **Section 17.12 No Offer**

The Landlord will not be deemed to have made an offer to the Tenant by furnishing the Tenant with an unexecuted copy of this Lease with particulars inserted. Notwithstanding that a deposit or the first instalment of Minimum Rent is received by the Landlord when this Lease is received by it for execution, no contractual or other right will exist between the Landlord and the Tenant with respect to the Premises until both have executed and delivered this Lease.

### **Section 17.13 Quiet Enjoyment**

If the Tenant performs its obligations under this Lease, it may hold and use the Premises without interference by the Landlord or any other Person claiming by, through or under the Landlord, subject however to the terms and conditions of this Lease.

### **Section 17.14 Waivers by the Tenant**

The Tenant waives any right which it may have or enjoy at any time pursuant to Articles 1859, 1861, 1863 and 1867 of the Civil Code of Quebec, or any replacement legislation.

### **Section 17.15 Premises subject to Vacant Possession**

The Tenant acknowledges that the Premises are presently occupied by and subject to a lease in favour of a third party. Notwithstanding anything contained in this Lease to the contrary, it is understood and agreed by the Landlord and the Tenant that the Tenant's right to occupy the Premises is conditional upon the Landlord obtaining vacant possession of the Premises from that third party prior to the commencement of the Fixturing Period, failing which the commencement of the Fixturing Period, the Commencement Date and all other relevant dates shall be postponed by notice in writing from the Landlord. The Tenant agrees to execute any further documentation, prepared by the Landlord, and which the Landlord, acting reasonably, determines is necessary to give effect to the foregoing.



**Section 17.16 Language**

The Landlord and the Tenant have required that this Lease and all notices, deeds, documents and other instruments to be given pursuant hereto be drawn in the English language only. Le Bailleur et le Locataire ont exigé que le présent bail, ainsi que tous les avis et autres documents à être donnés ou exécutés en vertu du bail soient rédigés en langue anglaise seulement.

IN WITNESS WHEREOF, the Landlord and the Tenant have executed this Lease.

Approved  
for signature  
*June*  
12, 2015

LE CARREFOUR LAVAL (2013) INC.  
(Landlord)

Per: *[Signature]*  
Authorized Signature

Per: *[Signature]*  
Authorized Signature

OLYMPUS FOOD (CANADA ) INC.  
(Tenant)

Per: *[Signature]*  
Authorized Signature

Per: \_\_\_\_\_  
Authorized Signature

I/We have authority to bind the corporation.



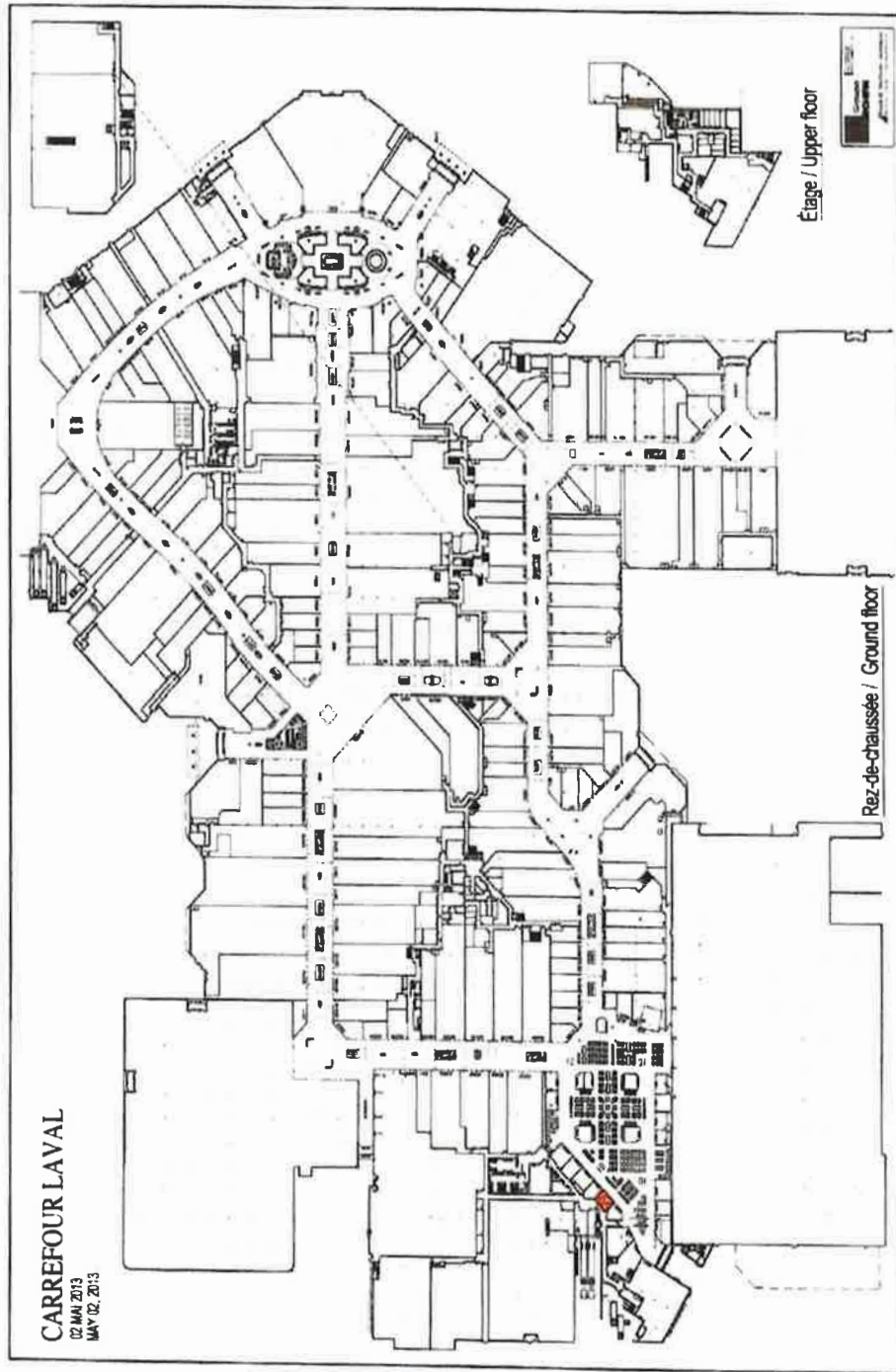
**SCHEDULE "A" - LEGAL DESCRIPTION OF THE SHOPPING CENTRE**

Those parcels of land known and designated as Lot numbers 1 730 620, 1 730 621, 1 730 622, 1 730 623, 1 730 625, 1 730 626, 1 731 763, 2 057 084, 2 057 579, 2 057 580, 2 057 581, 2 057 582, 2 057 583, 2 057 584, 2 057 585, 2 057 709, 2 057 716, 2 057 726, 2 057 742, 2 057 743, 2 057 744, 2 057 745, 2 057 746, 2 057 747 and 2 057 748 on the Official Cadastre of Québec, Registration Division of Laval, Province of Quebec.

This Lease may be registered only against Lot numbers 1 730 623, 2 057 579, 2 057 581, 2 057 583, 2 057 584 and 2 057 586, and may not be registered in any manner whatsoever against any other Lot numbers.



SCHEDULE "B" - FLOOR PLAN OF THE SHOPPING CENTRE



The purpose of this plan is to identify the approximate location of the Premises in the Shopping Centre.



**SCHEDULE "C" - LANDLORD'S & TENANT'S WORK  
LE CARREFOUR LAVAL - FOOD COURT**

**TENANT'S ACKNOWLEDGMENTS**

- (1) Manual - The Landlord will provide to the Tenant a manual for Tenant's work and design as well as procedures, rules, and regulations (collectively referred to as the "Manual") relating to the design and construction of Rentable Premises in the Shopping Centre and the Tenant agrees to comply with and to cause its contractors and sub-contractors to comply with the Manual in addition to the other requirements set out in this Schedule.
- (2) Timely Performance by Tenant - The time periods set out in the Manual and this Schedule for completing the Tenant's obligations represent maximum allowable time periods. The Tenant agrees to proceed expeditiously and to complete the Tenant's obligations as much in advance of the maximum allowable time periods as possible.
- (3) Access - The Landlord will be entitled to continue with its construction activities in the Premises and in the Shopping Centre at all times, including the Fixturing Period described in Sections 1.01(h) and 3.05 of the Lease.
- (4) Architect's Opinion - The opinion in writing of the Architect is binding on both the Landlord and the Tenant respecting all matters of dispute regarding the Landlord's Work and the Tenant's Work, including the state of completion and whether or not work is completed in a good and workmanlike manner and in accordance with the Manual and this Schedule.

**I. LANDLORD'S WORK**

**Section 1.01 Landlord's Work**

The Tenant acknowledges that, it has carefully examined the Premises, it is accepting the Premises in an "as is" condition as of the date of possession thereof, and the Landlord is not required to perform any work in or with respect to the Premises, except as set out below (the "Landlord's Work") and the Landlord's Work will be performed in accordance with the Landlord's choice of materials:

- (a) One main electrical service, up to a maximum of 200 amps at 600 volts, 3 phases, 3 wire, with a suspended 75 KVA transformer, ending in a main disconnect switch within the Premises, in a location within the Premises determined by the Landlord.

**II. TENANT'S WORK**

**Section 2.01 Tenant's Work**

**UNIQUE FOOD COURT AND MALL DESIGN** – The Tenant acknowledges and agrees that the design, fixturing, and finishes of the Premises are a critical element in the Shopping Centre's unique food court and mall design, and accordingly the Tenant agrees to design and construct the Premises such that they conform to the Landlord's design criteria and result in a one of a kind store location for the Tenant in the Quebec retail market.

The Tenant will provide and carry out, at its expense, in accordance with the Manual and this Schedule, all equipment and work required to be provided and performed in order to make the Premises complete and suitable to open for business, it being agreed that all equipment and materials installed in the Premises shall be new and of first class quality (the "Tenant's Work") including, but not limited to, the following:

- (a) **DEMOLITION** - Remove all existing finishes, improvements, and installations within the Premises, including, without limitation, previous tenant's ventilation conduits, plumbing network and electrical distribution. Only the existing installations that serve other premises and/or the Shopping Centre building should remain.
- (b) **SIGN** - One (1) sign on the back wall area or integrated within the Tenant's overall architectural design (wired to the Tenant's electrical panel, if illuminated), as well as two (2) blade signs as per the Landlord's design specifications. The Landlord shall provide and install the two (2) blade signs at the Tenant's expense.
- (c) **STOREFRONT** - A fully open storefront for the Premises, in accordance with the Landlord's design criteria. No security grilles or screens will be permitted at the storefront.
- (d) **INTERIOR FINISHES AND STORE INSTALLATIONS** - All interior finishes and installations including, but not limited to, painting and decorating, partitions, floor coverings, ceiling (fire rated over the entire area if required by law or by the Landlord) with provision for access, column enclosures (fire rated in accordance with the requirements of the law), store fixtures and furnishings, show window enclosures, display platforms, special wall or ceiling finishes, vertical and horizontal transportation





equipment, security vaults, sound insulation, smoke baffle and refuse refrigeration equipment or other refuse storage as may be required by law or by the Landlord.

- (e) FLOOR - Existing concrete floor slab, repaired and made smooth. All existing finishes to be removed and all abandoned plumbing to be capped below slab level, up to the main connection point, and holes filled.
- (f) REAR DOOR ASSEMBLY – Existing door could remain or be modified as per the Tenant's demonstrated needs, subject to the Landlord's approval.
- (g) ELECTRICAL - Existing main point of connection can remain or be modified as per the Tenant's demonstrated needs, subject to the Landlord's approval. Lighting and power panels, branch wiring, lighting outlets and receptacles, disconnect switches, transformer, all lighting and electrical fixtures including lamps (it being acknowledged that exposed fluorescent light tubes must not be used in ceiling light fixtures, sales areas, or display windows), time clocks, exit signs, emergency lighting, night lights, appliances, smoke detectors (which the Landlord may require to be wired to the alarm system of the Shopping Centre), and other equipment as required. If the main electrical service provided by the Landlord is not adequate for the Tenant's use, the Tenant will provide the calculations necessary for the Landlord to determine the service capacity required in amperes based on the service voltage supplied and indicating an anticipated connected load and estimated demand load in KVA, and the Landlord may, at its option, agree to provide the additional electrical capacity at the Tenant's expense. Immediately following completion of the Tenant's electrical installation, the Tenant will provide the Landlord with a copy of the final certificate(s) of approval. All electrical work shall conform to the National Building Code, the Canadian Electrical Code and all other requirements of the law.
- (h) HEATING, VENTILATING AND AIR-CONDITIONING (HVAC) - A connection point to the Landlord's heating, ventilating and air-conditioning equipment, designed for a maximum supply capacity of 1 cfm per square foot of the GLA of the Premises, at a location within the Premises determined by the Landlord. Modification to controls and thermostat must be as per the Landlord's consultant.
- (i) PLUMBING AND EXHAUST VENTILATION - Existing main points of connection to remain: water supply, drainage, and vent. The Tenant will provide and install all internal plumbing including a clean-out at the sanitary drain and at the grease trap, floor drain(s), and all plumbing fixtures, and domestic hot water tank and heater as required. If the Tenant chooses to or is required by law to have public washrooms within the Premises, the Tenant will install water closets, washbasins and plumbing and will do all finishing. The Tenant will connect to the general or sanitary exhaust system as required and cap any unused connection(s). Additional water and drainage lines and exhaust ventilation that may be required and available for installation will be provided by the Landlord at the Tenant's expense.
- (j) SPRINKLER DISTRIBUTION - The Tenant will reuse existing sprinkler distribution system and as required, any new lines and or heads (which system will be in accordance with all requirements of the law, including the applicable building code, the Landlord and the insurers of the Shopping Centre) and the Tenant will also install any other firefighting and emergency equipment that is required by law, the Tenant, the Landlord, and any insurer of the Premises or of the Shopping Centre. The Tenant's sprinkler system will be installed by a sprinkler contractor approved by the Canadian Automatic Sprinkler Association or any successor organization.
- (k) COMMUNICATIONS - Existing main point of connection could remain or be modified as per the Tenant's demonstrated needs, subject to Landlord's approval. If required by law, the Landlord or the Tenant, the Tenant will supply and install all parts and components of the following systems: intercom, bell systems and burglar alarm, antenna, cable and telephone.
- (l) KITCHEN EXHAUST AND MAKE-UP AIR SYSTEMS - The Tenant shall supply and install a complete first class state-of-the-art kitchen exhaust air systems and kitchen exhaust hood, heated make-up air, smoke and odour evacuation systems, and all requisite appurtenances the whole to be designed and built so as to strictly ensure that no smoke or odours resulting from the use of the Premises at any time migrates to any of other premises in Carrefour Laval, all of which shall be manufactured and installed by suppliers/installers who shall be acceptable to the Landlord, the whole subject solely to the Landlord's approval. The Tenant shall supply and install a NFPA 96 approved ULC listed grease kitchen exhaust system including welded ductwork, Halton UV Capture Jet Hood c/w control panel and Ventmaster GEF heavy duty grease exhaust fan, and make-up air as required. If a grease exhaust fan is not required in the opinion of the Landlord, the Tenant shall supply and install a general kitchen exhaust system of a size and type determined by the Landlord's engineers, including without limitation, make-up air, controls, ductwork and roof mounted exhaust fan. A Building Code compliant fire suppression system shall be included for each hood installed. The Tenant work shall include the installation of hoods. The installation of the curb(s), and all necessary roof openings for the system will be provided by the Tenant at Tenant's expense. All electrical power and gas connections, control wiring for the exhaust and make up air system shall be completed by the Tenant from the Tenant electrical and gas services. Heated make-up air system must be gas fed. Wiring shall include interlocking of the make-up and exhaust fans so the exhaust fan cannot run without the make-up air system being on and automatic closure of the exhaust damper when the exhaust fan is off. The interlock of the fire suppression and alarm to the Landlord's fire alarm panel/annunciator will be completed by the Landlord at Tenant's expense. Structural support for all equipment must be approved by the Landlord's structural engineering consultant.





- (m) GREASE TRAP - If required by law, the Landlord or the Tenant, the Tenant will connect to the Landlord's central grease trap system and will provide an accessible clean-out point within the Premises.
- (n) COOKING OIL DISPOSAL - The Tenant shall provide equipment satisfactory to the Landlord to transport used cooking oils to the Landlord's central used cooking oil reservoir.
- (o) NATURAL GAS - Existing main point of connection can remain or be modified as per the Tenant's demonstrated needs, subject to the Landlord's approval. All metering, safety controls and piping required for the supply and use of natural gas in the Premises.
- (p) FIRE ALARM - The Tenant will supply and install all components of a fire alarm system within the Premises, which system must be compatible with the Landlord's fire alarm system. The Landlord shall connect the Tenant's fire alarm system to the Landlord's system at the Tenant's expense.

**Section 2.02 Equipment Supplied or Work Performed by Landlord**

- (a) BASE BUILDING LIFE SAFETY SYSTEMS AND BAS - All final connections to, re-programming and verifications of the base building life safety systems of the Shopping Centre, such as the fire alarm system and the sprinkler protection system for monitoring or control functions, and connections to the Landlord's BAS, resulting from the Tenant's Work or otherwise occasioned by the Tenant's requirements, will be performed by the Landlord, and the Tenant will reimburse the Landlord for all of its costs related thereto, together with an overhead charge equal to 10% of the Landlord's costs.
- (b) GENERALLY - The Landlord may, at its option, but after giving notice to the Tenant (except in case of real or apprehended emergency) supply any equipment and perform any work forming part of the Tenant's Work, at the Tenant's expense. Any equipment or work other than that stipulated as the Landlord's Work which is supplied or performed by the Landlord for or at the request of the Tenant, or any excess or additional cost in the Landlord's Work occasioned by the Tenant's requirements or revisions to such requirements, will be paid for by the Tenant. The cost of the equipment or work will include (in addition to direct labour, material and applicable taxes) architectural, engineering and contractors' fees, any costs to the Landlord which are attributable to changes requested by the Tenant after approval of the Tenant's plans, drawings and specifications by the Landlord, and an overhead charge for the Landlord's supervision equal to 10% of the aggregate cost of the equipment and work.

**Section 2.03 Restrictions**

- (a) FLOOR LOADS - The Tenant will not impose upon any floor area a greater load than the designed live load capacity for the Shopping Centre of one hundred (100) pounds per square foot uniformly distributed.
- (b) SUSPENDED LOADS - No suspended loads are permitted other than the normal ceiling and lighting loads from the underside of any floor, roof or ceiling structures or assemblies of the Shopping Centre. No suspended loads will be permitted from the roof, steel deck, ducts, pipes or conduits.
- (c) SHOPPING CENTRE STRUCTURE, ROOF AND SYSTEMS - The Tenant, its contractors, and their employees and agents will not (i) enter onto the roof of the Shopping Centre or make any opening in the roof; (ii) drill or cut openings for conduit or pipe sleeves, or chases for ducts or equipment in the floors, columns, walls, ceilings, roof or structure of the Shopping Centre; (iii) vary or alter in any manner whatsoever any plumbing, electrical, mechanical systems or the HVAC System of the Shopping Centre or any of their components, whether or not located within the Premises. Any such work required by the Tenant, if approved by the Landlord, will be performed by the Landlord at the Tenant's expense, or if the Landlord permits it, by the Tenant under the supervision of the Landlord's representatives.
- (d) VISUAL MEDIA - The Tenant will not install digital signs, televisions or other audio-visual devices that can be seen outside of the Premises, without the Landlord's prior approval.

**Section 2.04 Removal of Equipment and Improvements**

Any requirement for the Tenant to provide equipment, carry out work or complete improvements also requires the Tenant to remove any existing corresponding equipment and improvements, unless the Landlord directs otherwise.

**III. LANDLORD'S REQUIREMENTS FOR TENANT'S WORK**

**Section 3.01 Requirements Prior to Commencement of Tenant's Work**

- (a) Designer Requirements - The Tenant must implement and adapt its new store design concept that has been developed for The Urban Eatery at the Toronto Eaton Centre and/or the Dining Hall at Rideau Centre to the Premises. The Tenant must employ the same design consultant used for any of these foregoing locations and/or from the Landlord's pre-selected list of interior designers and Architects, to prepare its final "roll-out" construction document drawings.



- (b) Mechanical, Electrical and Plumbing Engineer Requirements - The Tenant must contract with and use the Landlord's base building mechanical and electrical engineers and if applicable, base building structural engineer, to design and prepare the mechanical, electrical and any structural drawings and specifications of Tenant's final construction document drawings.
- (c) Preliminary Conceptual Design Requirements - Within 30 days after the Tenant has received the Manual and the Landlord's Lease Outline Drawing (LOD) package for the Premises, the Tenant will submit to the Landlord for its approval, plans, drawings and specifications in digital format only consisting of:
- Floor plan (1/4" = 1'0");
  - Reflected ceiling plan (1/4" = 1'0");
  - Vertical section(s) (1" = 1'0");
  - Equipment plan (1/4" = 1'0");
  - Rendered elevations and sections clearly showing the proposed brand identity treatments, materials application, and food merchandising approach;
  - 3D modeled and rendered perspective views as required to fully describe design intent;
  - Lighting design and fixture cut sheets;
  - Front counter food display casework, equipment design details and cut sheets (for food display and merchandising);
  - Kitchen equipment cut sheets;
  - Samples of all materials and finishes;
  - Specifications of all accent materials and finishes related to design concept;
  - Signage drawings and lifestyle/environmental graphic design concept;
  - Menu board design drawings and required professional food photography and styled imagery content; and
  - Uniform design concept as part of the overall brand identity package.

The Tenant shall pay all reasonable fees, including outside consultants' fees, incurred by the Landlord for the review of the Tenant's architectural plans, drawings and specifications, together with an administration fee equal to 15% of those fees. Such fees shall not exceed five hundred dollars (\$500.00) plus applicable **Sales Taxes** per review.

The Tenant shall be required to use the Landlord's designated outside base building consultants only to prepare its mechanical, electrical, and structural plans, drawings, and specifications.

- (d) Preliminary Design Concept Approval - The Tenant and its designer will be required to meet with the Landlord's design representatives to review and approve the design progress of the Tenant's preliminary conceptual design. Specific deliverables at scheduled dates to be determined by the Landlord. Once the Landlord has approved the preliminary conceptual design, the Tenant can then proceed with final working drawings suitable for its building permit and construction.
- (e) Final Construction Document Drawing Submission - Within 14 days of the Tenant receiving preliminary design concept approval, the Tenant will then submit to the Landlord for its approval final construction document drawings: two (2) 24" x 36" white prints and one (1) electronic set of drawings on CD of each of its plans and drawings (including the plans and drawings for its sign(s)) together with the specifications for the finishing of the Premises, which plans, drawings and specifications must (1) be prepared, signed, and stamped by qualified architects, designers and engineers from the Landlord's pre-approved list, and (2) include floor plans, a reflected ceiling plan, wall elevations, storefront elevation, sections, details (including details of any special facilities or installations which affect the Landlord's facilities), and sign design drawings and details and (ii) two (2) 24" x 36" white prints and one (1) electronic set of drawings on CD of each of its complete mechanical and electrical drawings and specifications, and if applicable, structural drawings prepared by the Landlord's specified engineers, which must include without limitation, all under-floor requirements, special equipment, connections and installations, water and sewage, HVAC distribution systems, kitchen exhaust systems, sprinkler mains and runs, electrical diagrams and panel schedules.
- (f) Final Construction Documents Drawing Approval - If the Landlord notifies the Tenant that it does not approve the Tenant's plans, drawings and specifications, the Tenant must submit revised plans, drawings and specifications as required by the Landlord, within 14 days of receipt of the Landlord's notice. If the Tenant fails to submit complete plans, drawings and specifications which meet with the Landlord's approval, acting reasonably, within the time periods set out in Sections 3.01(c), (e) and (f) hereof, then the Landlord may, by notice in writing, terminate the Lease, without legal proceedings and without prejudice to any of the Landlord's other rights and remedies and all amounts paid by the Tenant to the Landlord will be forfeited on such termination of the Lease.
- (g) Tenant's Insurance - Before entering on the Premises for any purpose, the Tenant will provide the Landlord with a certificate of insurance on the Landlord's standard form, duly executed by the Tenant's insurers, evidencing that the insurance required to be placed by the Tenant pursuant to the Lease is in force.
- (h) Tenant's Contractors - The Tenant will employ a general contractor qualified and licensed to practice in the Province of Quebec who will be responsible for all construction within the Premises, including the contracting and co-ordination of all trades. All work on or in respect of the Premises will be



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performed by competent local workers. Further, the Tenant acknowledges that the Landlord and/or the Management Company may be bound by collective bargaining agreements that require all labour employed in connection with any work to be performed on or in the Premises to have union affiliations compatible with those collective bargaining agreements. Prior to the commencement of any work, the Tenant will obtain full particulars of such requirements from the Landlord and will indemnify the Released Persons in respect of every loss, cost, claim, expense, and liability that the Released Persons may suffer or incur as a consequence of the Tenant's failure to comply with such requirements. This indemnity extends to, but is not limited to, loss, costs and expenses and liability attributable to picketing, labour disruption, construction delay and interference with the operations and activities of other tenants and occupants of the Shopping Centre.

- (i) CSST Certificates - The Tenant will provide to the Landlord, prior to commencing any work on or in respect of the Premises, a current certificate of good standing from the Commission de la Santé et de la Sécurité du Travail in respect of the contractor and every sub-contractor which the Tenant proposes to employ or to permit to do work on or in respect of the Premises, certifying that each such contractor and sub-contractor has complied with all the requirements of the Loi sur les accidents du travail et les maladies professionnelles and the Loi sur la santé et la sécurité du travail, is a duly registered member and is in good standing at the date of the certificate. The Tenant will not permit any contractor or sub-contractors to do work on or in respect of the Premises unless the foregoing certificate of good standing has been provided to the Landlord.
- (j) Tenant's Permits - The Tenant will provide evidence satisfactory to the Landlord, prior to commencing any work on or in respect of the Premises, that the Tenant has obtained at its expense, all necessary consents, permits, licenses, inspections and certificates from all authorities having jurisdiction, and the Tenant will post permits when required by law. Should the Tenant fail to obtain any required consent, permit, license, inspection or certificate, the Landlord may, but will not be obligated to, obtain it on behalf of the Tenant at the Tenant's expense.
- (k) Schedule for Tenant's Work - The Tenant will carry out the Tenant's Work during the Fixturing Period described in Sections 1.01(h) and 3.05 of the Lease however, the Tenant acknowledges that it will not be entitled to commence any Tenant's Work until (i) all requirements of this Section 3.01 have been complied with; (ii) the Landlord has notified the Tenant that it has approved the Tenant's plans, drawings and specifications and that the Premises are available and ready for commencement of Tenant's Work.

### **Section 3.02 Requirements With Respect to Performance of Tenant's Work**

- (a) Compliance with Laws, Insurers' and Landlord's Requirements - All Tenant's Work must comply with all applicable laws, building codes, permits and approvals for the work and with the requirements of the Landlord's insurers and the Landlord. If the Tenant is in default of this obligation and does not cure the default within the time period required by the authority, the Landlord's insurers or the Landlord, the Landlord may, but will not be obligated to, cure the default, and all charges and costs incurred by the Landlord will be paid to the Landlord by the Tenant, together with an administrative fee equal to 15% of those charges and costs.
- (b) Compliance with Tenant's Plans, Drawings and Specifications - The Tenant will, after satisfying all the requirements of Section 3.01, complete the Tenant's Work in a good and workmanlike manner, using new materials, to the Landlord's satisfaction and in conformity with the plans, drawings and specifications approved by the Landlord. Mediocre or inferior materials or workmanship will be replaced by the Tenant at its expense by materials or workmanship of first class quality, to the Landlord's satisfaction. One set of the plans, drawings and specifications with the Landlord's consent endorsed on them will remain on the Premises at all times during completion of the Tenant's Work.
- (c) Compliance with Landlord's Requirements - The Tenant, its contractors, and their employees and agents will: (i) abide by all safety regulations; (ii) provide adequate fire protection including, without limitation, fire extinguishers; (iii) deliver and store materials and tools as directed by the Landlord; (iv) stop immediately, if requested by the Landlord, any work which, in the opinion of the Landlord, by reason of public hazard, noise or otherwise, is likely to affect the normal operation of the Shopping Centre or any part of it; (v) be responsible for pick-up and disposal of its garbage at its expense, unless the Landlord provides facilities or designates a commercial service for the pick-up of garbage instead of, or in addition, to the service provided by the local municipality, in which case the Tenant will use such facilities or commercial service at its expense; and (vi) abide by all other reasonable requirements of the Landlord.
- (d) Occupational Health and Safety - The Tenant will ensure that a comprehensive and rigorous health and safety program to protect workers is implemented for the performance of the Tenant's Work. The Tenant will indemnify each of the Released Persons in respect of all claims, infractions, prosecutions, alleged infractions, losses, costs and expenses and any fines or proceedings relating to fines or other offenses under all occupational health and safety and similar legislation that might be brought, imposed against, or suffered by Released Persons or any of them in connection with the performance of the Tenant's Work. In addition, the Tenant will do, at least the following: (i) ensure that all legal obligations imposed on constructors or on other persons supervising, completing or co-ordinating the Tenant's Work are properly performed, that all directions given by any governmental or other regulatory inspector are properly performed and that necessary access is provided to those inspectors; (ii) where the law provides for designations of separate projects, co-operate with the



Landlord in having the Tenant's Work designated as a separate project so that the Landlord does not incur obligations as a constructor or similar obligations in connection with the performance of the Tenant's Work; (iii) comply with any recommendations of the Landlord with respect to health and safety requirements; (iv) employ only contractors and require contractors to employ only sub-contractors that have good health and safety records, and provide evidence satisfactory to the Landlord concerning their health and safety records; and (v) provide to the Landlord whatever rights of access, inspection, and whatever information and documents the Landlord requires in order to ensure that the Tenant's obligations under this Section are complied with.

- (e) Hoarding - The Landlord will install storefront hoarding suitable for the Shopping Centre, at the Tenant's cost, which cost shall not exceed \$5.00 per square foot of the hoarding surface.
- (f) Testing of Tenant's Systems - The Tenant will test all plumbing, gas, fire protection and electrical systems within five days of their installation and give two days prior written notice to the Landlord that such test will be performed. The Landlord may be present in the Premises when such test is performed. The Tenant will be responsible for any damage caused as a result of the performance of such test. The Tenant will provide the Landlord with a copy of the test results and final certificate(s) of approval.

### **Section 3.03 Requirements After Performance of Tenant's Work**

- (a) Tenant's Declaration - The Tenant will provide to the Landlord, within 60 days of completion of the Tenant's Work, a statutory declaration (the "Declaration"): (i) stating that the Tenant's Work has been performed in accordance with all of the provisions of this Schedule and that all deficiencies (if any) which the Landlord has brought to the Tenant's attention have been corrected; (ii) stating that there are no construction, builders, mechanics', workers, workers' compensation or other liens, hypothecs and/or encumbrances affecting the Premises or the Shopping Centre with respect to work, services or materials relating to the Tenant's Work and that all accounts for such work, services and materials have been paid in full; (iii) listing each contractor and sub-contractor who performed work or supplied services or materials in connection with the Tenant's Work; (iv) confirming the date upon which the last such work was performed and services and materials were supplied; and (v) confirming as correct an itemized list showing the actual cost of all improvements including, without limitation, sprinklers, washrooms, or any other special facilities.
- (b) Final CSST Certificates - The Tenant will also provide to the Landlord, within sixty (60) days of completion of the Tenant's Work, a certificate of good standing from the Commission de la Santé et de la Sécurité du Travail in respect of each contractor and sub-contractor who performed work or supplied services or materials in connection with the Tenant's Work, certifying that each such contractor and sub-contractor has complied with all the requirements of the Loi sur les accidents du travail et les maladies professionnelles and the Loi sur la santé et la sécurité du travail, is a duly registered member and is in good standing at the date of the certificate.
- (c) Occupancy Permit - The Tenant will obtain and provide to the Landlord a copy of all occupancy and other permits required by any authority having jurisdiction, to permit the Tenant to open for business.
- (d) As-built Drawings - The Tenant shall provide to the Landlord CAD and PDF of as-built drawings within thirty (30) days after completion of the Tenant's Work.

### **IV. TENANT'S EXPENSES**

All amounts payable by the Tenant pursuant to this Schedule will be paid to the Landlord as Additional Rent forthwith on demand, and failure by the Tenant to pay any amount payable pursuant to this Schedule shall entitle the Landlord, in addition to its other rights and remedies at law and under the Lease, to retain any amounts paid by the Tenant to the Landlord and to retain for its use, without payment for it, any work forming part of the Tenant's Work which has been commenced within the Premises, without prejudice to the Landlord's rights to claim and prove additional damages from the Tenant.





## SCHEDULE "D" - CHARGES FOR HEATING, VENTILATING AND AIR-CONDITIONING SERVICES

- A. THE HVAC SYSTEM - The "HVAC System" of the Shopping Centre is made up of the heating, ventilating and air-conditioning equipment and facilities that are operated and maintained by the Landlord. It includes the buildings or areas which house common heating, ventilating or air-conditioning facilities, the equipment, improvements, installations, and utilities located in them, and rooftop or window heating, ventilating or air-conditioning units operated or maintained by the Landlord; the fuel and power facilities of the systems mentioned above; distribution piping, air handling units, and common fan coil and ventilation units that form part of those systems; monitoring, energy saving, and control systems, including the thermostat in each Rentable Premises supplied by the HVAC System and those ventilation systems which serve more than one tenant. The HVAC System does not include: (i) self-contained heating, ventilating and air-conditioning systems in a department store, food supermarket, cinema or auditorium or other Rentable Premises that have systems which have been installed and are maintained by the occupants; (ii) the distribution system within Rentable Premises; and (iii) any tenant-maintained ventilation ducts, make-up air facilities and booster units that are installed for individual tenants, or a group of tenants, to satisfy requirements that are in excess of the standard maximum sensible cooling load established by the Landlord, or which result from the production of air which is not suitable for recirculation.
- B. THE BASIC CHARGE - The Tenant will pay annually, in equal monthly instalments in advance, a charge (the "Basic Charge") for heating, ventilating and air-conditioning services to the Premises, whether directly or by appropriation, and to the Common Elements, in the amount of \$1.75 per square foot of the GLA of the Premises.
- C. THE OPERATING CHARGE
- (a) In each Rental Year, the Landlord will allocate between the Common Elements and the Rentable Premises, based on the advice of the Landlord's engineer, the total costs (the "Operating Costs") of the following services (the "Services"): operating, maintaining, repairing and replacing components of the HVAC System. The Operating Costs include but are not limited to the following: costs for labour including fringe benefits, power, fuel, domestic water, chemicals, lubricants, filters, and outside maintenance contracts, if any, the costs incurred by the Landlord in doing the allocation mentioned above, and a fee of fifteen percent (15%) of the total of the Operating Costs allocated to the Rentable Premises, for the Landlord's overhead. If a repair or replacement cost is not charged in full in the Rental Year in which it is performed or purchased, the Landlord will charge in each Rental Year, depreciation or amortization on the depreciated or amortized costs (together with a fee of fifteen percent (15%) of the depreciation or amortization) and interest at two percentage points above the Prime Rate on the undepreciated or unamortized part.
- (b) The Operating Costs allocated to Common Elements will be included in the costs under Section 6.02.
- (c) The Tenant will pay, in each Rental Year, the "Tenant's Operating Charge". The "Tenant's Operating Charge" is the total of: (i) those Operating Costs allocated to any basement areas of the Premises, and (ii) the product of (1) the Operating Costs allocated to Rentable Premises after deducting any operating costs allocated to basement areas of Rentable Premises, and (2) a fraction which has as its numerator the GLA of the Premises, excluding basement areas, and as its denominator the total GLA of those Rentable Premises (including the Premises), excluding basement areas, that are occupied throughout the Rental Year and are served by the HVAC System. The allocations mentioned in this subparagraph will be made by the Landlord's engineer.
- (d) If Rentable Premises are occupied by tenants who are solely responsible for providing a Service, the Tenant's Operating Charge as applied to that Service will be adjusted by excluding the GLA of those Rentable Premises from the denominator referred to in subparagraph (c) above.
- (e) For the purpose of Section 6.03 of the Lease, the amounts payable under subparagraph (c) above will be considered as amounts payable under Section 6.02 of the Lease with references to "Proportionate Share" being substituted, for the purposes of subparagraph (c) above, by references to "Tenant's Operating Charge".





## SCHEDULE "E" - RULES AND REGULATIONS

The Tenant will:

- (a) keep the inside and outside of all glass in the doors and windows of the Premises clean;
- (b) keep all exterior storefront surfaces of the Premises clean;
- (c) replace promptly, at its expense, any cracked or broken window glass of the Premises;
- (d) maintain the Premises at its expense, in a clean, orderly and sanitary condition and free of insects, rodents, vermin and other pests;
- (e) keep any garbage, trash, rubbish or refuse in ratproof containers within the interior of the Premises until removed;
- (f) remove garbage, trash, rubbish and refuse at its expense on a regular basis as prescribed by the Landlord;
- (g) keep all mechanical apparatus free of vibration and noise which may be transmitted beyond the Premises, and
- (h) cause its employees, agents, mandataries and contractors to park only in the parts of the Common Elements, if any, designated by the Landlord as employee parking.

The Tenant will not:

- (i) commit or permit waste upon or damage to the Premises or any nuisance or other act that disturbs the quiet enjoyment of other tenants or occupants of the Shopping Centre;
- (ii) do anything that may damage the Shopping Centre or permit odours, vapours, steam, water, vibrations, noises or other undesirable effects to come from the Premises;
- (iii) permit accumulations of garbage, trash, rubbish or other refuse within or outside the Premises;
- (iv) distribute handbills or other advertising matter to Persons in the Shopping Centre other than in the Premises;
- (v) permit the parking of delivery vehicles so as to interfere with the use of any driveway, walkway, parking facilities, mall or other area of the Shopping Centre;
- (vi) receive, ship, load or unload articles of any kind including merchandise supplies, materials, debris, garbage, trash, refuse and other goods, except through service access facilities designated from time to time by the Landlord and using Landlord approved apparatus;
- (vii) use the plumbing facilities for any other purposes than those for which they are constructed;
- (viii) use any part of the Premises for lodging, sleeping or any illegal purposes;
- (ix) cause or permit any machines selling merchandise, rendering services or providing, however operated, entertainment to be present on the Premises unless consented to in advance in writing by the Landlord;
- (x) solicit business and display merchandise except in the Premises, nor do or permit anything to be done in or on the Common Elements or the Shopping Centre that hinders or interrupts the flow of traffic to, in and from the Shopping Centre or obstructs the free movement of Persons in, to or from the Shopping Centre; or
- (xi) permit on the Premises any transmitting device or erect an aerial on any exterior walls of the Premises or any of the Common Elements, or use travelling or flashing lights, signs or television or other audio-visual or mechanical devices that can be seen outside of the Premises, or loudspeakers, television, phonographs, radios or other audio-visual or mechanical devices that can be heard outside of the Premises.



## SCHEDULE "F" - FOOD COURT TENANTS

1.01 The Tenant is a Food Court Tenant and the provisions of this Schedule "F" apply as part of the Lease.

1.02 The following definitions apply in this Schedule "F" in addition to those set out in Article I of the Lease;

"Food Court Cost": those costs and expenses incurred or allocated by the Landlord from time to time exclusively for the maintenance and operation of the Food Court as the Food Court (and excluding those costs and expenses which would have been incurred in any case had the Food Court been an enclosed mall area instead of a Food Court) including, but not limited to: (i) salaries, wages, benefits and other costs of busboys and other personnel employed for cleaning and servicing the Food Court; (ii) garbage and waste collection and disposal and all costs associated with pest control in the Food Court, but excluding pest control costs involving individual Rentable Premises of Food Court Tenants; (iii) cleaning of grease traps and exhaust systems if the Landlord implements a plan to provide such service to all or a majority of the Food Court Tenants; (iv) rental of equipment and signs; (v) repairs or replacements to, and maintenance and operation of, the furniture, fixtures, and furnishings of the Food Court; (vi) depreciation or amortization and interest in the manner provided for in Section 6.02 of the Lease with respect to repairs or replacements included in item (v) above, the cost of which is not charged in full in the Rental Year in which it is incurred; (vii) the cost of additional security, policing and supervision for the Food Court; and (viii) an administration fee of fifteen percent (15%) of the total annual costs noted above except interest charges. From the total of the costs described above (and prior to the calculation of the fifteen percent (15%) administration fee referred to in item (viii) above), there is deducted contributions, if any, to those costs made by tenants or occupants of space who are not Food Court Tenants.

"Food Court Proportionate Share": a fraction, the numerator of which is the GLA of the Premises and the denominator of which is the GLA of all Rentable Premises leased to Food Court Tenants that utilize the same Food Court as the Tenant.

1.03 In each Rental Year the Tenant will pay to the Landlord, as Additional Rent, in addition to its obligations under Section 6.02 of the Lease, the Tenant's Food Court Proportionate Share of the Food Court Costs. If required, the Tenant's Food Court Proportionate Share will be adjusted on a per diem basis based on a period of 365 days.

1.04 The Landlord will arrange for pest control in the Food Court and in the Premises in such intervals and using such contractor as the Landlord in its sole discretion determines. The cost thereof shall, with respect to the Food Court, be included in the Food Court Costs and, with respect to the Premises, shall be paid by the Tenant together with an administration fee of fifteen percent (15%) of the cost immediately upon demand and the provisions of Section 9.07 of the Lease shall not apply.

1.05 The Landlord may from time to time relocate or rearrange the Food Court, expand or reduce the space within the Food Court including designating other parts of the Common Elements immediately adjacent to the Food Court as part of the Food Court. The Landlord may also designate other parts of the Shopping Centre as food courts whether as part of the Food Court or as separate and distinct food courts and may make Rules and Regulations and policies, standards and directions governing the overall operations of those food courts.

1.06 The Landlord may formulate and enforce the policies, standards and practices for the Food Court that the Landlord determines are in the best interests of the overall operation of the Food Court and the Shopping Centre, including without limitation a policy of requiring all or a majority of the Food Court Tenants to use contractors designated or approved by the Landlord for the cleaning of grease traps and exhaust systems (provided such contractors' fees are competitive in the market place) and may also designate the name or names by which the Food Court is to be referred. The Tenant will comply with those policies, standards and practices and will refer to the Food Court in all its advertising and the conduct of its business in the Premises by the name or names designated by the Landlord.

~~1.07 The Tenant will pay to the Landlord the sum set out in Section 1.04(k) as a capital contribution on account of the Tenant's share of the cost of providing furniture, furnishings, equipment and facilities for the Food Court at the same time as the Tenant executes and delivers this Lease.~~

1.08 For the purpose of Section 6.03 of the Lease, the amounts payable under this Schedule "F" will be considered as amounts payable under Section 6.02 of the Lease with reference to "Proportionate Share" being substituted, for the purpose of this Schedule "F", by references to "Food Court Proportionate Share".



**SCHEDULE "G" – ANNUAL STATEMENT**

(on the letterhead of the Tenant)

**TO: LANDLORD'S FULL LEGAL NAME**  
c/o The Cadillac Fairview Corporation Limited  
20 Queen Street West  
Toronto, Ontario  
M5H 3R4

Attention: Accounting Department

**RE: SALES AUDIT – TENANT'S FULL LEGAL NAME**  
Store No.      **UNIT NUMBER**,      **NAME OF SHOPPING CENTRE**

On behalf of **TENANT'S FULL LEGAL NAME**, I have carried out an examination of the Gross Revenue (as defined in the Lease for the store) of Store No.      **UNIT NUMBER** located at      **NAME OF SHOPPING CENTRE** for the twelve (12) months ended                      20    .

My examination included a general review of the accounting procedures and such tests of the accounting procedures and such tests of the accounting records and other supporting evidence as I considered necessary in the circumstances.

Based on my examination outlined above, I report that the accounting records of **TENANT'S FULL LEGAL NAME** show that the Gross Revenue of the **NAME OF SHOPPING CENTRE** store leased by the Tenant were (\$    ) for the twelve (12) months ended                      20    . A schedule of Gross Revenue by month is attached.

\_\_\_\_\_  
President of  
**OLYMPUS FOOD (CANADA) INC.**  
(the Tenant)



**SCHEDULE "G-1" - BREAKDOWN OF MONTHLY GROSS REVENUE**

FOR YEAR-ENDED \_\_\_\_\_

January	_____
February	_____
March	_____
April	_____
May	_____
June	_____
July	_____
August	_____
September	_____
October	_____
November	_____
December	_____

\_\_\_\_\_  
President of  
**OLYMPUS FOOD (CANADA) INC.**  
(the Tenant)

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**SCHEDULE "G-2" – SPECIAL PURPOSE REPORT**

(on the letterhead of the Accountant)

**TO: LANDLORD'S FULL LEGAL NAME**  
c/o The Cadillac Fairview Corporation Limited  
(hereinafter called the "Landlord")

As requested by **TENANT'S FULL LEGAL NAME** (hereinafter called the "Tenant"), we report that the Gross Revenue, as determined in accordance with the Lease dated \_\_\_\_\_ 20\_\_ between the Landlord and the Tenant, of the Tenant's store designated as \_\_\_ **UNIT NUMBER** at \_\_\_ **NAME OF SHOPPING CENTRE**, for each of the months in the lease year ended \_\_\_\_\_ 20\_\_ is recorded in the general ledger sales account of the Tenant as follows:

January  
February  
March  
April  
May  
June  
July  
August  
September  
October  
November  
December

On \_\_\_\_\_ 20\_\_ we reported on the financial statements of the Tenant for the year ended \_\_\_\_\_ 20\_\_; however, our examination of such financial statements was not directed to the determination of Gross Revenue or other financial information of individual stores, nor have we examined the Tenant's financial statements for the period subsequent to the year ended \_\_\_\_\_ 20\_\_. We have not performed an audit of and accordingly do not express an opinion on the amount of the Gross Revenue referred to in the preceding paragraph.

However, in connection with this report, we have performed the following procedures:

1. We agreed the amount of the Gross Revenue as referred to above to the general ledger of the Tenant for each of the months in the year ended \_\_\_\_\_ 20\_\_.
2. We compared the definition of Gross Revenue referred to in Section 1.02 of the Lease referred to above with the Tenant's accounting policy for the recording of sales in the general ledger and found no exceptions.

It is understood that this report is to be used solely for computing Percentage Rent and is not to be referred to or distributed to any person not a member of management of the Landlord or the Tenant.

\_\_\_\_\_  
date

\_\_\_\_\_  
Chartered Accountants





THIS IS EXHIBIT "B" REFERRED TO IN  
THE AFFIDAVIT OF CHRISTIAN VÉZINA  
SWORN BEFORE ME  
THIS 28<sup>TH</sup> DAY OF AUGUST, 2020

---

A Commissioner of Oaths/Notary Public  
in and for the Province of Quebec

②



OLYMPUS FOOD (CANADA), INC.

March 30, 2019

**DELIVERED BY MESSENGER**

**THE CADILLAC FAIRVIEW CORPORATION  
LIMITED**

5<sup>th</sup> Floor, 20 Queen St. W, Toronto, ON, M5H 3R4

**Att: Executive Vice-President, National Property  
Operations**

***With a copy for Shopping Centre Manager***

**Re: NOTICE OF CLOSURE AND TERMINATION OF LEASE**

Lease between Les Galeries d'Anjou Leaseholds inc. -and- Olympus Food (Canada) Inc., t/a "KFC" and/or "PFK", entered into on June 11, 2015 (the "Lease")

Store #: No. F006

Location: 7999, boul. des Galeries d'Anjou, Anjou, QC, H1M 1W9 (the "Leased Premises")

Dear Madam or Sir:

We hereby inform you that, by force of circumstance, we are constrained to terminate the Lease with you, effective as of **April 1st, 2019**. Our Franchisor, Kentucky Fried Chicken Canada Company ("Franchisor"), has informed us that our franchise agreement, license to operate this restaurant location, and all rights associated thereto, will be terminated, effective as of the above-stated date making it impossible for us to perform our obligations relating to such Lease. Due to the said termination, we shall have lost the legal right to continue the use of the premises, the license and the name Kentucky Fried Chicken or KFC in association with our business in your leased premises.

As you are aware, we have always used the commercial names Kentucky Fried Chicken and KFC in relation to the business located in your leased premises. This was, and has always been, our intended and actual authorized use in the premises, notably as per sections 1.01 (d) and 9.01 of the lease.

Therefore, as of April 1st, 2019 onward, we will not have any option, but to close the business in the leased premises and terminate the lease.

In the spirit of good faith and collaboration, but without any obligation nor admission, we are offering to pay you an amount equivalent to three (3) months of rent, if you act in the same reasonableness and good faith and do not contest said termination under these uncontrollable circumstances and given the impossibility on our part to continue the business for which the leased premises were rented, and the whole to your knowledge.

Please confirm your acceptance of the terms above at your earliest convenience.

Should you have any question, we are available to discuss this further with you.

We remain,

Yours truly,



Emmanuel Jalandoni  
President, Olympus Food (Canada) Inc.

---

Acknowledged receipt and acceptance of the three (3) months offer, on this \_\_\_\_ day of \_\_\_\_\_ 2019.

Per: \_\_\_\_\_



THIS IS EXHIBIT "C" REFERRED TO IN  
THE AFFIDAVIT OF CHRISTIAN VÉZINA  
SWORN BEFORE ME  
THIS 28<sup>TH</sup> DAY OF AUGUST, 2020

---

A Commissioner of Oaths/Notary Public  
in and for the Province of Quebec





OLYMPUS FOOD (CANADA), INC.

May 15, 2019

LE CARREFOUR LAVAL (2013) INC.

c/o The Cadillac Fairview Corporation Limited

5<sup>th</sup> Floor, 20 Queen Street West

Toronto, ON M5H 3R4

Attention: Executive Vice-President, National Property Operations

**Re: Lease of Premises –3035 Boul Le Carrefour, Laval (Quebec) H7T 1C7 (the “Lease”)**

To Whom It May Concern:

We are writing to provide notice that Olympus Food (Canada) Inc. (“Olympus”) has entered into an agreement to sell certain of its assets (the “Sale”), including its rights and interests in the Lease, to FMI Atlantic Inc. (“FMI”). FMI is one of the largest franchise operators in Canada. Under the terms of the Sale, FMI will be assuming the Lease and all of the rights and obligation of Olympus under the Lease, subject to its terms. The Sale is scheduled to be completed by June 16, 2019.

Representatives of Olympus will be contacting you shortly to discuss the steps necessary to assign the Lease.

OLYMPUS FOOD (CANADA) INC.

Per:



Emmanuel Jalandoni

c.c. DLA Piper (Canada) LLP  
Attention: Mike Weinczok





THIS IS EXHIBIT "D" REFERRED TO IN  
THE AFFIDAVIT OF CHRISTIAN VÉZINA  
SWORN BEFORE ME  
THIS 28<sup>TH</sup> DAY OF AUGUST, 2020

---

A Commissioner of Oaths/Notary Public  
in and for the Province of Quebec



CANADA  
PROVINCE DE QUÉBEC  
DISTRICT DE MONTRÉAL

No: 500-17-107503-198

COUR SUPÉRIEURE  
(chambre civile)

LES GALERIES D'ANJOU LEASEHOLDS INC.

Demanderesse

c.

OLYMPUS FOOD (CANADA) INC.

Défenderesse

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**AVIS DE COMMUNICATION DE LA DÉCLARATION ASSERMENTÉE D'EMMANUEL  
JALANDONI**  
(Articles 105 et 106 C.p.c.)

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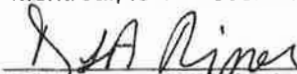
**Destinataire :** GOWLING WLG (CANADA) S.E.N.C.R.L.  
*Avocats de la Demanderesse*  
**Me Alexandre Forest**  
1, Place Ville-Marie, suite 3700  
Montréal (Québec) H3B 3P4  
Courriel: [alexandre.forest@gowlingwlg.com](mailto:alexandre.forest@gowlingwlg.com)  
Téléphone: 514 392-9424  
Télécopieur: 514 876-9024

**PRENEZ AVIS** qu'au soutien de ses représentations à l'encontre de la *Demande en homologation de transaction* de la Demanderesse, la Défenderesse entend invoquer et déposer la Déclaration assermentée d'Emmanuel Jalandoni.

Copie de la Déclaration assermentée d'Emmanuel Jalandoni datée du 11 décembre 2019 est jointe en annexe au présent avis.

**VEUILLEZ AGIR EN CONSÉQUENCE.**

Montréal, le 11 décembre 2019



**DLA PIPER (CANADA) S.E.N.C.R.L.**

*Avocats de la Défenderesse*

**Me Mélanie Martel**

1501, avenue McGill College, bureau 1400

Montréal (Québec) H3A 3M8

Courriel : [melanie.martel@dlapiper.com](mailto:melanie.martel@dlapiper.com)

Téléphone: 514-392-8443

Télécopieur: 514-392-8390

Notre dossier: 100249-00001

**CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL**

**SUPERIOR COURT**  
(civil chamber)

**No: 500-17-107503-198**

**LES GALERIES D'ANJOU LEASEHOLDS  
INC.**

Plaintiff

v.

**OLYMPUS FOOD (CANADA) INC.**

Defendant

---

**SWORN DECLARATION OF EMMANUEL JALANDONI**

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I, the undersigned, EMMANUEL JALANDONI, President of Olympus Food (Canada) Inc. exercising then my functions at 908, 53<sup>rd</sup> Avenue NE, Suite I, in the city of Calgary, province of Alberta, T2E 6N9, solemnly declares the following:

1. At all time relevant to this declaration, I was the president of the Defendant, Olympus Food (Canada) Inc. and was the one in charge of the negotiations;
2. As such, I have knowledge of the facts mentioned herewith, although I am no longer active as President or employee of the Defendant since November 1, 2019, when I went on sabbatical leave.
3. Defendant never agreed to the terms of the settlement sent by Plaintiff on October 21<sup>st</sup>, 2019, exhibit R-5, pages 13 to 15;
4. There were many different matters to be resolved between the parties and the court litigation regarding one of them was only one of these matters;
5. The parties agree that all the settlements were related one to another and all the issues had to be resolved to reach a complete settlement;
6. The settlement discussions regarding Anjou (modalities and dates of payment) and St-Bruno were suspended since there were issues with the assignment of Carrefour Laval between FMI and Plaintiff;
7. Defendant never agreed with Plaintiff on a termination date for the Saint-Bruno lease on January 31<sup>st</sup>, 2020, and this termination date was crucial for Defendant considering notably its franchise agreement with KFC;
8. Defendant never agreed with Plaintiff to an amount being payable from February 2020 to January 2021 for the Saint-Bruno lease since Defendant's offer was for a termination in September 2019 and a monthly rent payment from September 2019 to August 2020, as it would have been too onerous and unacceptable for Defendant otherwise;

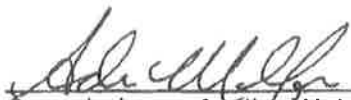


9. Furthermore, Defendant never agreed with Plaintiff to a lump sum being paid for the Saint-Bruno premises, as Defendant's offer was for monthly installments as the rent was, and since it was what Defendant could offer;
10. Defendant never agreed to pay the agreed amount for the Anjou location in one lump sum immediately upon signature, since the negotiations on the modalities and time of the payment was never completed nor agreed on;
11. The draft settlement agreement (Anjou) and simple "statement of account" with no mention of termination (St-Bruno) received by our attorneys from Plaintiff's attorneys was sent to us at the end of October 2019;
12. In the following days, we informed our attorneys that the terms contained therein such as the date of termination for St-Bruno, the starting date of the year rent for St-Bruno (we offered September 2019, they counter offered with February 2020 : we never agreed) and the dates and modalities (monthly installments or lump sums) of payments for Anjou and St-Bruno were not agreed upon by Defendant, and those imposed by Plaintiff in its draft documents were not consented to by us at any time;
13. We asked our counsel to inform opposing counsel that we were not consenting nor had ever been to those imposed dates of termination, starting dates for termination indemnity, dates of payments and modalities of payments accordingly;
14. We then receive this proceeding and are contesting any homologation or imposition by Plaintiff and the court of termination dates, modalities and dates of payments, and number of months to be paid for termination.
15. Since all the settlements were related, Plaintiff is refusing to assign the Carrefour Laval lease to FMI although all parties agreed to the written terms of the assignment, given that Anjou and St-Bruno are clearly not settled;
16. Furthermore, I was informed by our counsel that Defendant received an estoppel certificate from Plaintiff that disregarded the settlement discussions, and even more so any types of "settlements", exhibit RO-3;
17. All of the facts alleged in the present affidavit are true and to my knowledge.

AND I HAVE SIGNED,

  
EMMANUEL JALANDONI

Solemnly declared before me, in  
on December 11, 2019

  
Commissioner of oaths / Notary public

Andrew MacGregor  
Barrister & Solicitor



No: 500-17-107503-198

**COUR SUPÉRIEURE  
PROVINCE DE QUÉBEC  
CHAMBRE CIVILE**

**LES GALERIES D'ANJOU LEASEHOLDS INC.**

Demanderesse

c.

**OLYMPUS FOOD (CANADA) INC.**

Défenderesse

**AVIS DE COMMUNICATION DE LA DÉCLARATION  
ASSERMENTÉE D'EMMANUEL JALANDONI &  
SWORN DECLARATION OF EMMANUEL  
JALANDONI DATED DECEMBER 11, 2019**

**Copie pour la Demanderesse**

Me Mélanie Martel  
MM/jb

Notre dossier: 100249-00001



DLA Piper (Canada) s.e.n.c.r.l.  
1501, McGill College Avenue, suite 1400  
Montréal (Québec) H3A 3M8  
Téléphone: (514) 392-8428  
Télécopieur : (514) 392-8390  
BH 0834

3



THIS IS EXHIBIT "E" REFERRED TO IN  
THE AFFIDAVIT OF CHRISTIAN VÉZINA  
SWORN BEFORE ME  
THIS 28<sup>TH</sup> DAY OF AUGUST, 2020

---

A Commissioner of Oaths/Notary Public  
in and for the Province of Quebec



# COUR SUPÉRIEURE

CANADA  
PROVINCE DE QUÉBEC  
DISTRICT DE MONTRÉAL

N° : 500-17-107503-198

DATE : Le 16 décembre 2019

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**SOUS LA PRÉSIDENTE DE L'HONORABLE PATRICK BUCHHOLZ, J.C.S.**

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**LES GALERIES D'ANJOU LEASEHOLDS INC.**  
Demanderesse

c.  
**OLYMPUS FOOD (CANADA) INC.**  
Défenderesse

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## JUGEMENT SUR LA DEMANDE EN HOMOLOGATION DE TRANSACTION

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- [1] **CONSIDÉRANT** la demande en homologation;
- [2] **CONSIDÉRANT** l'article 2631 C.c.Q.;
- [3] **CONSIDÉRANT** les autorités soumises par les parties;
- [4] **CONSIDÉRANT** que la demanderesse a le fardeau de prouver, sur la balance des probabilités, l'existence d'une transaction entre les parties sur l'ensemble des éléments clés de leur entente alléguée;
- [5] **CONSIDÉRANT** qu'une transaction est un contrat nommé dont la formation juridique valable requiert notamment un échange de consentement;



[6] **CONSIDÉRANT** la preuve contradictoire;

[7] **CONSIDÉRANT** que, compte tenu de la preuve écrite déposée et la preuve testimoniale entendue, on ne peut conclure, sur la balance des probabilités, qu'il y avait, à quelque moment précis, un échange de consentement sur l'ensemble des éléments clés de la transaction alléguée, notamment quant aux modalités de paiements de montants d'importance et de la date de résiliation d'un bail dans l'établissement situé à Saint-Bruno;

[8] **CONSIDÉRANT** que pour une entreprise qui a récemment perdu certains droits importants de franchise, toute considération financière, dont des modalités de paiements quelconques, revêt une importance plus qu'accessoire;

[9] **CONSIDÉRANT** qu'il y avait tout au plus, le 20 septembre 2019, une entente verbale conditionnelle de principe, insuffisante pour être considérée dès lors une transaction complète sur tous les points essentiels;

[10] **CONSIDÉRANT** qu'au 20 septembre 2019, les parties n'avaient pas encore convenu de points importants dont notamment les conditions précises de mise en œuvre future de l'entente de principe et les termes d'une convention de cession tripartite;

[11] **CONSIDÉRANT** que la défenderesse n'a jamais accepté l'ensemble des termes des diverses ententes écrites qui lui ont été soumises le 21 octobre 2019;

[12] **CONSIDÉRANT** de plus que le *Lease Amending Agreement* proposé comme faisant partie de la transaction alléguée comporte une modification importante depuis l'entente de principe qui serait intervenue verbalement le 20 septembre 2019, à savoir, que la date à laquelle le paiement forfaitaire équivalant à 12 mois de loyer ne serait plus le 1<sup>er</sup> février 2020, mais plutôt immédiatement sur signature du *Lease Amending Agreement*, et que cela démontre bien qu'il restait des détails clés à clarifier et à convenir entre les parties;

[13] **CONSIDÉRANT** que la demanderesse n'a pas réussi à rencontrer son fardeau de preuve à démontrer, sur la balance des probabilités, l'existence d'une transaction complète entre les parties;

**POUR CES MOTIFS, LE TRIBUNAL :**

[14] **REJETTE** la demande en homologation;



[15] **FRAIS À SUIVRE.**



PATRICK BUCHHOLZ, J.C.S.

Me Alexandre Forest  
GOWLING WLG  
Avocats de la demanderesse

Me Mélanie Martel  
Me Ayman Daher  
DLA PIPER AVOCATS  
Avocats de la défenderesse

Date d'audience : Le 12 décembre 2019





THIS IS EXHIBIT "F" REFERRED TO IN  
THE AFFIDAVIT OF CHRISTIAN VÉZINA  
SWORN BEFORE ME  
THIS 28<sup>TH</sup> DAY OF AUGUST, 2020

---

A Commissioner of Oaths/Notary Public  
in and for the Province of Quebec





OLYMPUS FOOD (CANADA), INC.

December 27, 2019

**DELIVERED BY COURIER**

**LES PROMENADES SAINT-BRUNO LEASEHOLDS INC.**  
**C/O CADILLAC FAIRVIEW**  
 20, Queen St. West, 5<sup>th</sup> Floor  
 Toronto, ON, M5H 3R4

**Re:                    NOTICE OF CLOSURE AND TERMINATION**  
 Lease dated June 10, 2015 and Storage Area Agreement dated August 18, 2015  
 (collectively the "**Lease**")  
 Store #: No.: FC09  
 Storage # Area: S-13  
 Location: Food stand located at Promenades St-Bruno, 1, Promenades Blvd.,  
 St-Bruno de Montarville, Québec, J3V 5J5 (the "**Leased Premises**")

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Dear Madam or Sir:

We hereby inform you that by force of circumstances, we are constrained to terminate the Lease with you, effective as of December 29, 2019.

Our franchisor, Kentucky Fried Chicken Company ("**Franchisor**") has informed us that we have lost the legal right to continue the use of the premises, the license and the name Kentucky Fried Chicken or KFC or its French version Poulet Frit Kentucky or PFK in association with our business in your Leased Premises.

As you are aware, we have always used the commercial names Kentucky Fried Chicken, KFC, Poulet Frit Kentucky and PFK in relation to the business located in your Leased Premises. This was and has always been our intended and actual authorized used in the Leased Premises.

We will proceed to empty the Leased Premises for the termination date, December 29, 2019.

Should you have any question, we are available to discuss this further with you.

We remain,

Yours truly,

Manolo Tingzon  
 Representative duly authorized of Olympus Food (Canada) Inc.

THIS IS EXHIBIT "G" REFERRED TO IN  
THE AFFIDAVIT OF CHRISTIAN VÉZINA  
SWORN BEFORE ME  
THIS 28<sup>TH</sup> DAY OF AUGUST, 2020

---

A Commissioner of Oaths/Notary Public  
in and for the Province of Quebec

2



France Paradis <france.paradis2@cadillacfairview.com>

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## Fwd: AVT - Employés du PFK pour la loi anti-tabac

1 message

---

France Paradis <france.paradis2@cadillacfairview.com>

13 septembre 2019 à 09 h 54

À : kfc1277@fmigroup.ca

Bonjour Amélie,

Voir ci-dessous pour ton info.

Merci !

### FRANCE PARADIS

GESTIONNAIRE À LA SÉCURITÉ / MANAGER, SECURITY & LIFE SAFETY

CF Carrefour Laval  
3003, boul. Le Carrefour  
Laval, QC H7T 1C7

T: (450) 687-2560

[france.paradis2@cadillacfairview.com](mailto:france.paradis2@cadillacfairview.com)

[cadillacfairview.com](http://cadillacfairview.com)



DOMICILE D'ÉQUIPE CANADA



PREMIÈRE TRANCHE DE 25 %  
DES ENTREPRISES LES PLUS MOBILISATRICES  
À L'ÉCHELLE MONDIALE

----- Forwarded message -----

De : **Jean-Fabrice Ouimet** <[jeanfabrice.ouimet@cadillacfairview.com](mailto:jeanfabrice.ouimet@cadillacfairview.com)>

Date: jeu. 12 sept. 2019, à 15 h 29

Subject: AVT - Employés du PFK pour la loi anti-tabac

To: [lavsecurite@cadillacfairview.com](mailto:lavsecurite@cadillacfairview.com)

Bonjour,

Jeudi le 12 septembre 2019 vers 15:20, le superviseur Znack avise le contrôle avoir émis des avertissements à deux employés du PFK concernant la loi anti-tabac au Quai BG.

--  
**Jean-Fabrice Ouimet**

Agent de sécurité

Tel: (450) 687-1366

**GARDAWORLD**





France Paradis &lt;france.paradis2@cadillacfairview.com&gt;

**Fwd: AVT - Employés PFK pour loi anti-tabac et consommation d'alcool**

1 message

France Paradis &lt;france.paradis2@cadillacfairview.com&gt;

17 septembre 2019 à 17 h 07

À : kfc1277@fmigroup.ca

Encore moi, désolée.

Un autre avertissement cette fois-ci impliquant non seulement des fumeurs mais consommation d'alcool aussi.

Merci de faire le nécessaire.

**FRANCE PARADIS**

GESTIONNAIRE À LA SÉCURITÉ / MANAGER, SECURITY &amp; LIFE SAFETY

CF Carrefour Laval  
3003, boul. Le Carrefour  
Laval, QC H7T 1C7

T: (450) 687-2560

[france.paradis2@cadillacfairview.com](mailto:france.paradis2@cadillacfairview.com)[cadillacfairview.com](http://cadillacfairview.com)

DOMICILE D'ÉQUIPE CANADA

PREMIÈRE TRANCHE DE 25 %  
DES ENTREPRISES LES PLUS MOBILISATRICES  
À L'ÉCHELLE MONDIALE

----- Forwarded message -----

De : **Jean-Fabrice Ouimet** <[jeanfabrice.ouimet@cadillacfairview.com](mailto:jeanfabrice.ouimet@cadillacfairview.com)>

Date: mar. 17 sept. 2019, à 16 h 44

Subject: AVT - Employés PFK pour loi anti-tabac et consommation d'alcool

To: lavsecurite <[lavsecurite@cadillacfairview.com](mailto:lavsecurite@cadillacfairview.com)>, gplavadmin <[gplavadmin@cadillacfairview.com](mailto:gplavadmin@cadillacfairview.com)>, France Paradis <[france.paradis2@cadillacfairview.com](mailto:france.paradis2@cadillacfairview.com)>

Bonjour,

Mardi le 17 septembre 2019 vers 16:25, j'effectuais un balayage de caméras quand j'ai aperçu quatre personnes fumer au Quai BG près de la sortie d'urgence. Deux d'entre elles consommaient également de l'alcool. Le superviseur Znack et l'agent Latreille ont été envoyés sur les lieux. Les agents ont procédé à l'avertissement et ils ont pu constater que trois d'entre eux sont des employés du PFK.

**Jean-Fabrice Ouimet**

Agent de sécurité

Tel: (450) 687-1366

**GARDAWORLD**





France Paradis &lt;france.paradis2@cadillacfairview.com&gt;

**Fwd: AVT - Loi anti-tabac - PFK**

1 message

France Paradis &lt;france.paradis2@cadillacfairview.com&gt;

23 octobre 2019 à 17 h 49

À : KFC1277 &lt;kfc1277@fmigroup.ca&gt;

Bonjour Amélie,

Il y a longtemps que je ne t'avais pas écrit pour tes employés, c'est bon signe !

Mais aujourd'hui il y a eu 2 avertissements pour des fumeurs qui n'ont pas respecté le 9 mètres réglementaire, voir ci-dessous pour ton attention.

Merci !

**FRANCE PARADIS**

GESTIONNAIRE À LA SÉCURITÉ / MANAGER, SECURITY &amp; LIFE SAFETY

CF Carrefour Laval  
3003, boul. Le Carrefour  
Laval, QC H7T 1C7

T: (450) 687-2560

[france.paradis2@cadillacfairview.com](mailto:france.paradis2@cadillacfairview.com)[cadillacfairview.com](http://cadillacfairview.com)

DOMICILE D'ÉQUIPE CANADA

PREMIÈRE TRANCHE DE 25 %  
DES ENTREPRISES LES PLUS MOBILISATRICES  
À L'ÉCHELLE MONDIALE

----- Forwarded message -----

De : Jonathan Znack &lt;jonathan.znack@cadillacfairview.com&gt;

Date: mer. 23 oct. 2019, à 17 h 46

Subject: AVT - Loi anti-tabac - PFK

To: lavsecurite &lt;lavsecurite@cadillacfairview.com&gt;

Bonjour,

mercredi le 23 octobre 2019, vers 17:30, l'agent Hœu accompagné de l'agent Moahamad ont donné des avertissement à 2 des employés du PFK concernant la loi anti-tabac. Ceux-ci n'ont pas été coopératif. 5 minutes plus tard, les agents sont repassé et ont revu les mêmes employés et ils ont été irrespectueux envers les agents.

Merci,

 Jonathan ZNACK

25/08/2020

Courriel Cadillac Fairview - Fwd: AVT - Loi anti-tabac - PFK



Officier de site, **GARDAWORLD**

CF Carrefour Laval

**T:** 450-687-1366

3035 Boul. le Carrefour, Laval

**GARDAWORLD**





France Paradis &lt;france.paradis2@cadillacfairview.com&gt;

**Fwd: AVT multiples loi anti-tabac à des employés de PFK**

1 message

France Paradis &lt;france.paradis2@cadillacfairview.com&gt;

31 janvier 2020 à 10 h 34

À : KFC1277 &lt;kfc1277@fmigroup.ca&gt;

Bonjour Amélie,

Voir ci-dessous des interventions faites par la sécurité hier soir pour des employés qui ne respectaient pas la loi sur le tabagisme encore une fois.

Merci de réitérer l'importance de respecter les lois et nos règlements.

Pendant tes vacances, pourrais-tu me donner les coordonnées d'une personne à joindre si jamais j'avais une urgence ?

Merci !

**FRANCE PARADIS**

GESTIONNAIRE À LA SÉCURITÉ / MANAGER, SECURITY &amp; LIFE SAFETY

CF Carrefour Laval  
3003, boul. Le Carrefour  
Laval, QC H7T 1C7

T: (450) 687-2560

[france.paradis2@cadillacfairview.com](mailto:france.paradis2@cadillacfairview.com)[cadillacfairview.com](http://cadillacfairview.com)

DOMICILE D'ÉQUIPE CANADA



PREMIÈRE TRANCHE DE 25 %  
DES ENTREPRISES LES PLUS MOBILISATRICES  
À L'ÉCHELLE MONDIALE

----- Forwarded message -----

De : **Jean-Fabrice Ouimet** <jeanfabrice.ouimet@cadillacfairview.com>

Date: jeu. 30 janv. 2020, à 19 h 05

Subject: AVT multiples loi anti-tabac à des employés de PFK

To: lavsecurite &lt;lavsecurite@cadillacfairview.com&gt;

Bonjour,

Jeudi le 30 janvier 2020 vers 18:15, l'agent Hoen avise le Contrôle qu'il aperçoit trois employés de PFK fumer à côté de la porte de l'Administration, soit à moins de 9 mètres. Il est donc allé leur émettre un avertissement. Quelques minutes plus tard, il s'est dirigé au Quai BG où il a procédé à un nouvel avertissement pour la loi anti-tabac à un autre employé du PFK.

SIMS # 20-000100

--

**Jean-Fabrice Ouimet**

Agent de sécurité

25/08/2020

Courriel Cadillac Fairview - Fwd: AVT multiples loi anti-tabac à des employés de PFK

Tel: (450) 687-1366

**GARDAWORLD**





France Paradis &lt;france.paradis2@cadillacfairview.com&gt;

**Fwd: Avertissement anti-tabac - PFK + Porte E-2**

1 message

France Paradis &lt;france.paradis2@cadillacfairview.com&gt;

19 février 2020 à 10 h 17

À : KFC1277 &lt;kfc1277@fmigroup.ca&gt;

Bonjour Amélie,

Voir ci-dessous pour ton suivi.

Merci de continuer à renforcer les règlements relatifs au tabac.

**FRANCE PARADIS**

GESTIONNAIRE À LA SÉCURITÉ / MANAGER, SECURITY &amp; LIFE SAFETY

CF Carrefour Laval  
3003, boul. Le Carrefour  
Laval, QC H7T 1C7

T: (450) 687-2560

france.paradis2@cadillacfairview.com

cadillacfairview.com



DOMICILE D'ÉQUIPE CANADA

PREMIÈRE TRANCHE DE 25 %  
DES ENTREPRISES LES PLUS MOBILISATRICES  
À L'ÉCHELLE MONDIALE

----- Forwarded message -----

De : **Jonathan Znack** <jonathan.znack@cadillacfairview.com>

Date: dim. 16 févr. 2020, à 17 h 46

Subject: Avertissement anti-tabac - PFK + Porte E-2

To: lavsecurite &lt;lavsecurite@cadillacfairview.com&gt;, Jean Adam &lt;Jean.Adam@gdi.com&gt;

Bonjour,

dimanche le 16-02-2020, vers 17:40, l'agente Flynn émet un avertissement à Anisse, employé au PFK, concernant la loi anti tabac prêt du quai BG. Elle leur mentionne également qu'elle barre les portes et qu'ils leurs sera impossible de rentrer s'ils ne le font pas maintenant. Ce dernier lui a mentionné qu'il "n'en avait rien à foutre" car il allait forcer la porte E-2, ce qu'il a fait.

Merci,

**Jonathan ZNACK**

Officier de site, GARDAWORLD

CF Carrefour Laval





25/08/2020

Courriel Cadillac Fairview - Fwd: Avertissement anti-tabac - PFK + Porte E-2

T: 450-687-1366

3035 Boul. le Carrefour, Laval

**GARDAWORLD**





France Paradis <france.paradis2@cadillacfairview.com>

---

## Fwd: Crime - Consommations de substances illicites PFK

1 message

---

France Paradis <france.paradis2@cadillacfairview.com>  
À : KFC1277 <kfc1277@fmigroup.ca>

16 décembre 2019 à 09 h 18

Bonjour Amélie,

Voir ci-dessous pour ton info. Ce se serait produit vers 14h15.

Merci !

### FRANCE PARADIS

GESTIONNAIRE À LA SÉCURITÉ / MANAGER, SECURITY & LIFE SAFETY

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[cadillacfairview.com](http://cadillacfairview.com)



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À L'ÉCHELLE MONDIALE

----- Forwarded message -----

De : **Annia Cote-Jacques** <[annia.cotejacques@cadillacfairview.com](mailto:annia.cotejacques@cadillacfairview.com)>

Date: sam. 14 déc. 2019, à 14 h 58

Subject: Crime - Consommations de substances illicites PFK

To: [lavsecurite@cadillacfairview.com](mailto:lavsecurite@cadillacfairview.com)

Bonjour,

En date du 14 décembre 2019, l'agent Schmalhaus s'est rendu au Quai BG afin d'émettre un avertissement à un employé de chez PFK puisqu'il fumait à l'intérieur du mail soit à la porte E1.

Cordialement,

**Côté-Jacques, Annia**

Agente de sécurité

Carrefour Laval

T.450.687.1366





France Paradis &lt;france.paradis2@cadillacfairview.com&gt;

**Fwd: Crime - Employés du PFK consommant du cannabis à l'intérieur**

1 message

France Paradis &lt;france.paradis2@cadillacfairview.com&gt;

22 janvier 2020 à 17 h 35

À : KFC1277 &lt;kfc1277@fmigroup.ca&gt;

Bonjour Amélie,

Voir ci-dessous pour ton information et suivi.

J'apprécierais si vous pourriez rappeler à vos employés qu'il est interdit de fumer partout à l'intérieur que ce soit tabac, cannabis ou vapotage à l'intérieur de même qu'à 9 mètre de toute porte à l'extérieur.

Aussi, il serait important qu'ils soient respectueux envers notre personnel qui ne fait qu'appliquer les lois en vigueur.

Merci !

**FRANCE PARADIS**

GESTIONNAIRE À LA SÉCURITÉ / MANAGER, SECURITY &amp; LIFE SAFETY

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DOMICILE D'ÉQUIPE CANADA



PREMIÈRE TRANCHE DE 25 %  
DES ENTREPRISES LES PLUS MOBILISATRICES  
À L'ÉCHELLE MONDIALE

----- Forwarded message -----

De : **Jean-Fabrice Ouimet** <[jeanfabrice.ouimet@cadillacfairview.com](mailto:jeanfabrice.ouimet@cadillacfairview.com)>

Date: mer. 22 janv. 2020, à 17 h 22

Subject: Crime - Employés du PFK consommant du cannabis à l'intérieur

To: [lavsecurite@cadillacfairview.com](mailto:lavsecurite@cadillacfairview.com), [Sebastien Perron](mailto:Sebastien.Perron@cadillacfairview.com) <[Sebastien.Perron@cadillacfairview.com](mailto:Sebastien.Perron@cadillacfairview.com)>

Bonjour,

Mercredi le 22 janvier 2020 vers 16:20, j'effectuais un balayage de caméras quand j'ai aperçu des employés du PFK se diriger vers le Corridor G-1. Les employés en question étant connus pour enfreindre les lois sur le tabac, l'agent Latreille est allé vérifier le Quai G-1. Arrivée sur les lieux, il a constaté que les employés du PFK consommaient du cannabis à l'intérieur du Corridor G-1 avec un autre individu. L'agent Latreille a expulsé les individus et donné un avertissement aux employés du PFK. Selon l'agent Latreille, les employés étaient agressifs envers lui. L'un des deux se nommerait Annis.

25/08/2020

Courriel Cadillac Fairview - Fwd: Crime - Employés du PFK consommant du cannabis à l'intérieur

--  
**Jean-Fabrice Ouimet**  
Agent de sécurité  
Tel: (450) 687-1366  
**GARDAWORLD**





France Paradis <france.paradis2@cadillacfairview.com>

**Fwd: Crime - Expulsion employés PFK pour consommation à l'intérieur**

1 message

France Paradis <france.paradis2@cadillacfairview.com>

21 février 2020 à 11 h 03

À : KFC1277 <kfc1277@fmigroup.ca>

Bonjour Amélie,

Voir ci-dessous pour ton attention et suivi avec tes employés.

Merci de les sensibiliser à l'interdiction de consommer du cannabis partout sur la propriété, que ce soit intérieur ou extérieur.

Merci !

**FRANCE PARADIS**

GESTIONNAIRE À LA SÉCURITÉ / MANAGER, SECURITY & LIFE SAFETY

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Laval, QC H7T 1C7

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À L'ÉCHELLE MONDIALE

----- Forwarded message -----

De : **Jean-Fabrice Ouimet** <[jeanfabrice.ouimet@cadillacfairview.com](mailto:jeanfabrice.ouimet@cadillacfairview.com)>

Date: jeu. 20 févr. 2020, à 20 h 49

Subject: Crime - Expulsion employés PFK pour consommation à l'intérieur

To: lavsecurite <[lavsecurite@cadillacfairview.com](mailto:lavsecurite@cadillacfairview.com)>

Bonjour,

Jeudi le 20 février 2020 vers 20:30, l'agent Simon-Olivier Allard avise le Contrôle avoir procédé à l'expulsion d'un groupe de 5 employés du PFK qui consommaient du cannabis à l'intérieur du Corridor BG.

SIMS # 20-000175

**Jean-Fabrice Ouimet**

Agent de sécurité

Tel: (450) 687-1366

**GARDAWORLD**





France Paradis &lt;france.paradis2@cadillacfairview.com&gt;

**Fwd: PFK - Fermeture temporaire - violation de bail -**

1 message

France Paradis &lt;france.paradis2@cadillacfairview.com&gt;

4 septembre 2019 à 11 h 00

À : kfc1277@fmigroup.ca

Bonjour Amélie,

Voici les détails concernant l'incident de cette fin de semaine ainsi que la photo jointe.

Merci !

**FRANCE PARADIS**

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Laval, QC H7T 1C7

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À L'ÉCHELLE MONDIALE

----- Forwarded message -----

De : **Mélanie Brais** <[melanie.brais@cadillacfairview.com](mailto:melanie.brais@cadillacfairview.com)>

Date: dim. 1 sept. 2019, à 14 h 49

Subject: PFK - Fermeture temporaire - violation de bail -

To: [lavsecurite@cadillacfairview.com](mailto:lavsecurite@cadillacfairview.com)

Bonjour,

Dimanche le 1er septembre 2019 vers 14h00, le Sergent Znack constate qu'une affiche écrite à la main par les employés était collé sur le mur du PFK indiquant qu'ils étaient fermé. Nous avons fait une vérification avec les caméras et pouvons constater que l'affiche a été installée vers 13h31 et retirée vers 14h15. Après des vérifications caméra plus poussées, nous pouvons constater que plusieurs des employés de ce restaurant étaient dans les escaliers extérieur du quai BG en train de flâner de 13h54 à 14h18. L'agent Kayhan est en direction afin de leur émettre un avertissement.

Merci

--

**GARDAWORLD****Mélanie Brais**



**Chef d'équipe**  
**T: 450-687-1366**



**IMG\_1721.jpg**  
129K





France Paradis &lt;france.paradis2@cadillacfairview.com&gt;

**Fwd: Violation règle de propriété - Employé PFK fumant du cannabis au Quai BG**

1 message

France Paradis &lt;france.paradis2@cadillacfairview.com&gt;

9 janvier 2020 à 12 h 12

À : KFC1277 &lt;kfc1277@fmigroup.ca&gt;

Bonjour Amélie,

Voir ci-dessous pour ton info.

Merci !

**FRANCE PARADIS**

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À L'ÉCHELLE MONDIALE

----- Forwarded message -----

De : **Jean-Fabrice Ouimet** <jeanfabrice.ouimet@cadillacfairview.com>

Date: mer. 8 janv. 2020, à 18 h 10

Subject: Violation règle de propriété - Employé PFK fumant du cannabis au Quai BG

To: lavsecurite &lt;lavsecurite@cadillacfairview.com&gt;

Bonjour,

Mercredi le 8 janvier 2020 vers 16:50, GDI nous avise qu'il y a des employés du PFK qui fument du cannabis au Quai BG et que l'odeur est très forte dans le corridor G-1. L'agent Hœu a été envoyé sur les lieux. Il a procédé à l'avertissement de six employés de PFK dont seulement deux étaient en service.

**Jean-Fabrice Ouimet**

Agent de sécurité

Tel: (450) 687-1366

**GARDAWORLD**



France Paradis &lt;france.paradis2@cadillacfairview.com&gt;

**Re: AVT - Loi anti-tabac**

1 message

France Paradis &lt;france.paradis2@cadillacfairview.com&gt;

17 septembre 2019 à 17 h 19

À : KFC1277 &lt;KFC1277@fmigroup.ca&gt;

Bonjour Amélie,

Nous n'avons pas le nom mais dans ce cas-ci c'était une fille et pour l'autre courriel que je t'ai envoyé par la suite impliquant de l'alcool, il s'agissait d'une fille et 2 garçons. Un des garçons avait à la main ce qui semble être une bière en bouteille.

Merci !

**FRANCE PARADIS**

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À L'ÉCHELLE MONDIALE

Le mar. 17 sept. 2019, à 17 h 07, KFC1277 &lt;KFC1277@fmigroup.ca&gt; a écrit :

Bonjour,

Merci pour le suivi.

Pouvez vous me dire si vous avez le nom de l'employé en question. Si non est ce que c'était un homme ou une femme.

Merci

Amélie  
KFC 1277

**From:** France Paradis <france.paradis2@cadillacfairview.com>**Sent:** Tuesday, September 17, 2019 5:04:23 PM**To:** kfc1277@fmigroup.ca <kfc1277@fmigroup.ca>**Subject:** Fwd: AVT - Loi anti-tabac

Bonjour Amélie,



Voir ci-dessous un avis donné à une de tes employés pour avoir fumé dans un endroit interdit (près de la sortie d'urgence du quai de livraison).

Merci de faire le suivi avec la personne en question afin de l'informer de la loi en vigueur (9 mètre de toute porte, fenêtre et prise d'air).

Merci !

## FRANCE PARADIS

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À L'ÉCHELLE MONDIALE

----- Forwarded message -----

De : **Jean-Fabrice Ouimet** <[jeanfabrice.ouimet@cadillacfairview.com](mailto:jeanfabrice.ouimet@cadillacfairview.com)>

Date: mar. 17 sept. 2019, à 16 h 04

Subject: AVT - Loi anti-tabac

To: lavsecurite <[lavsecurite@cadillacfairview.com](mailto:lavsecurite@cadillacfairview.com)>, gplavadmin <[gplavadmin@cadillacfairview.com](mailto:gplavadmin@cadillacfairview.com)>

Bonjour,

Mardi le 17 septembre 2019 vers 15:30, le superviseur avise le contrôle avoir émis un avertissement concernant la loi anti-tabac à une employée du PFK.

--

**Jean-Fabrice Ouimet**

Agent de sécurité

Tel: (450) 687-1366

**GARDAWORLD**



France Paradis &lt;france.paradis2@cadillacfairview.com&gt;

**RE: Contact pour FMI Montréal - Carrefour Laval**

1 message

**Angela Kennedy** <Angela.Kennedy@fmigroup.ca>  
À : France Paradis <france.paradis2@cadillacfairview.com>

11 mai 2020 à 10 h 14

Good morning,

My apologies for taking so long to reply. For any issues dealing our store's employees, please contact me and depending on the nature of the issue I will forward along to the appropriate person within our Support Centre.

Thank you,



**Angela Kennedy**  
Paralegal

FMI Group

T: (506) 328-4631 x 302

F: (506) 328-9408

W: [fmigroup.ca](http://fmigroup.ca)

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A handwritten signature in black ink, appearing to be the initials 'AP'.

25/08/2020

Courriel Cadillac Fairview - RE: Contact pour FMI Montréal - Carrefour Laval

**From:** France Paradis <[france.paradis2@cadillacfairview.com](mailto:france.paradis2@cadillacfairview.com)>

**Sent:** February 28, 2020 2:43 PM

**To:** Angela Kennedy <[Angela.Kennedy@fmigroup.ca](mailto:Angela.Kennedy@fmigroup.ca)>

**Subject:** Re: Contact pour FMI Montréal

Thank you for your reply.

For follow-up about issues with employees, do I communicate with you or Mme Parisien ?

## FRANCE PARADIS

GESTIONNAIRE À LA SÉCURITÉ / MANAGER, SECURITY & LIFE SAFETY

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3003, boul. Le Carrefour  
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À L'ÉCHELLE MONDIALE

Le jeu. 27 févr. 2020, à 09 h 51, Angela Kennedy <[Angela.Kennedy@fmigroup.ca](mailto:Angela.Kennedy@fmigroup.ca)> a écrit :

Good morning,

I am the liaison between the Landlords and our stores. So any operational issues or notices you need to send to the store, you can provide to me and I will forward along to the store and Area Coach.

On weekends or after hours in case of an emergency, you can contact the Area Coach – Monik Parisien - [monik.parisien@fmigroup.ca](mailto:monik.parisien@fmigroup.ca)

Our store number for this location is 1277 in case you need that for future reference.

Thank you,







**Angela Kennedy**  
Paralegal

FMI Group

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F: (506) 328-9408

W: [fmigroup.ca](http://fmigroup.ca)



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**From:** France Paradis <[france.paradis2@cadillacfairview.com](mailto:france.paradis2@cadillacfairview.com)>

**Sent:** February 6, 2020 12:27 PM

**To:** Angela Kennedy <[Angela.Kennedy@fmigroup.ca](mailto:Angela.Kennedy@fmigroup.ca)>

**Subject:** Contact pour FMI Montréal

Bonjour,

Je suis gestionnaire de sécurité pour Cadillac Fairview, propriétaire du Carrefour Laval.

Je suis à la recherche d'un contact dans votre organisation au niveau des opérations régionales afin de pouvoir obtenir une ressource lors de besoins opérationnels.

Merci de me fournir les coordonnées d'une personne avec qui je pourrais en discuter.

Bonne journée !



Good morning,

25/08/2020

Courriel Cadillac Fairview - RE: Contact pour FMI Montréal - Carrefour Laval

I am the security manager for Cadillac Fairview, owner of Carrefour Laval. I am looking for an operation/management contact in your organization in order to be able to obtain a resource to contact for operational needs, but at a higher level than store manager. Could you please provide me the person's coordinates with whom I could discuss it. Thank you and have a good day,

## FRANCE PARADIS

GESTIONNAIRE À LA SÉCURITÉ / MANAGER, SECURITY & LIFE SAFETY

CF Carrefour Laval  
3003, boul. Le Carrefour  
Laval, QC H7T 1C7

T: (450) 687-2560

[france.paradis2@cadillacfairview.com](mailto:france.paradis2@cadillacfairview.com)

[cadillacfairview.com](http://cadillacfairview.com)



DOMICILE D'ÉQUIPE CANADA



**PREMIÈRE TRANCHE DE 25 %**  
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À L'ÉCHELLE MONDIALE

(2)



France Paradis &lt;france.paradis2@cadillacfairview.com&gt;

**RE: Contact pour FMI Montréal**

1 message

**Angela Kennedy** <Angela.Kennedy@fmigroup.ca>  
À : France Paradis <france.paradis2@cadillacfairview.com>

27 février 2020 à 09 h 51

Good morning,

I am the liaison between the Landlords and our stores. So any operational issues or notices you need to send to the store, you can provide to me and I will forward along to the store and Area Coach.

On weekends or after hours in case of an emergency, you can contact the Area Coach – Monik Parisien - monik.parisien@fmigroup.ca

Our store number for this location is 1277 in case you need that for future reference.

Thank you,



**Angela Kennedy**  
Paralegal

FMI Group

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W: [fmigroup.ca](http://fmigroup.ca)



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25/08/2020

Courriel Cadillac Fairview - RE: Contact pour FMI Montréal

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**From:** France Paradis <[france.paradis2@cadillacfairview.com](mailto:france.paradis2@cadillacfairview.com)>  
**Sent:** February 6, 2020 12:27 PM  
**To:** Angela Kennedy <[Angela.Kennedy@fmigroup.ca](mailto:Angela.Kennedy@fmigroup.ca)>  
**Subject:** Contact pour FMI Montréal

Bonjour,

Je suis gestionnaire de sécurité pour Cadillac Fairview, propriétaire du Carrefour Laval.

Je suis à la recherche d'un contact dans votre organisation au niveau des opérations régionales afin de pouvoir obtenir une ressource lors de besoins opérationnels.

Merci de me fournir les coordonnées d'une personne avec qui je pourrais en discuter.

Bonne journée !

Good morning,

I am the security manager for Cadillac Fairview, owner of Carrefour Laval. I am looking for an operation/management contact in your organization in order to be able to obtain a resource to contact for operational needs, but at a higher level than store manager. Could you please provide me the person's coordinates with whom I could discuss it. Thank you and have a good day,

## FRANCE PARADIS

GESTIONNAIRE À LA SÉCURITÉ / MANAGER, SECURITY & LIFE SAFETY

CF Carrefour Laval  
3003, boul. Le Carrefour  
Laval, QC H7T 1C7

T: (450) 687-2560

[france.paradis2@cadillacfairview.com](mailto:france.paradis2@cadillacfairview.com)

[cadillacfairview.com](http://cadillacfairview.com)



DOMICILE D'ÉQUIPE CANADA



PREMIÈRE TRANCHE DE 25 %  
DES ENTREPRISES LES PLUS MOBILISATRICES  
À L'ÉCHELLE MONDIALE

25/08/2020

Courriel Cadillac Fairview - RE: Contact pour FMI Montréal

A small, handwritten mark or signature in the bottom right corner of the page, consisting of a stylized, circular scribble.



Robert Crepin &lt;robert.crepin@cadillacfairview.com&gt;

**Fwd: Schedule for a call?**

1 message

**Edith Claveau** <edith.claveau@cadillacfairview.com>  
 À : Robert Crepin <robert.crepin@cadillacfairview.com>

25 août 2020 à 11 h 38

**EDITH CLAVEAU**

COORDONNATRICE DE REVENUS / REVENUE COORDINATOR  
 CF CARREFOUR LAVAL

3003 Blvd. Le Carrefour,  
 Laval, Quebec  
 H7T 1C7

T: (450) 687-2560 X 170206 F: 450-687-9827

edith.claveau@cadillacfairview.com

cadillacfairview.com



DOMICILE D'ÉQUIPE CANADA



**GLOBAL TOP 25%**  
 MOST ENGAGED COMPANIES



**PREMIÈRE TRANCHE DE 25 %**  
 DES ENTREPRISES LES PLUS MOBILISATRICES  
 À L'ÉCHELLE MONDIALE

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his e-mail and any files transmitted with it are confidential and intended solely for the use of the individual to whom it is addressed. If you have received this email in error please send it back to the person that sent it to you.

----- Forwarded message -----

De : **Oren Rubin** <oren.rubin@cadillacfairview.com>

Date: mar. 23 juin 2020 à 23:23

Subject: Fwd: Schedule for a call?

To: Edith Claveau &lt;edith.claveau@cadillacfairview.com&gt;, Bernice Richard &lt;bernice.richard@cadillacfairview.com&gt;, Izabella Sadoyan &lt;izabella.sadoyan@cadillacfairview.com&gt;

Good evening everyone, please see below email from *FMI Group*. (Our Legal Entity responsible for KFC at Laval & Champlain, and Panera Bread at Shops. For Laval, assignment docs are still being finalized, but they have been paying you the rent for the past several months).

Can you confirm with me please that they have paid you *May and June* rent? Thanks!

They will be paying April rent arrears on August 1, 2020's EFT payment.

Thanks,  
 Oren

----- Forwarded message -----

From: **Leasing** <leasing@fmigroup.ca>

Date: Mon, Jun 22, 2020 at 1:46 PM

Subject: RE: Schedule for a call?

To: Oren Rubin &lt;oren.rubin@cadillacfairview.com&gt;





Thanks Oren,

Yes, I checked and we pay all those locations by EFT.

The notification emails we have set up in our system are:

KFC - Carrefour Laval - [edith.claveau@cadillacfairview.com](mailto:edith.claveau@cadillacfairview.com)

KFC - Champlain Mall – [bernice.richard@cadillacfairview.com](mailto:bernice.richard@cadillacfairview.com)

Panera - Don Mills Road - [IZABELLA.SADOYANI@cadillacfairview.com](mailto:IZABELLA.SADOYANI@cadillacfairview.com)

Thank you,



**Angela Kennedy**  
Paralegal

FMI Group

T: (506) 328-4631 x 302

F: (506) 328-9408

W: [fmigroup.ca](http://fmigroup.ca)



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**From:** Oren Rubin <[oren.rubin@cadillacfairview.com](mailto:oren.rubin@cadillacfairview.com)>

**Sent:** June 22, 2020 2:18 PM



25/08/2020

Courriel Cadillac Fairview - Fwd: Schedule for a call?

**To:** Leasing <[leasing@fmigroup.ca](mailto:leasing@fmigroup.ca)>

**Subject:** Re: Schedule for a call?

Yes that is ok. Thank you!

(Side bar: Do you always pay by EFT, if not we would like you to going forward please?).

On Mon, Jun 22, 2020 at 7:26 AM Leasing <[leasing@fmigroup.ca](mailto:leasing@fmigroup.ca)> wrote:

Hi Oren,

Further to our call on June 16<sup>th</sup>, I now have instructions from my superior to pay April rent for the two KFC's and one Panera. Would it be okay if we paid the April rent with our August rent which we will be paying via EFT on August 1<sup>st</sup>?

Thank you,



**Angela Kennedy**  
Paralegal

FMI Group

T: (506) 328-4631 x 302

F: (506) 328-9408

W: [fmigroup.ca](http://fmigroup.ca)



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**From:** Oren Rubin <[oren.rubin@cadillacfairview.com](mailto:oren.rubin@cadillacfairview.com)>

**Sent:** June 16, 2020 1:33 PM

A handwritten signature in black ink, appearing to be the name 'Oren'.

25/08/2020

Courriel Cadillac Fairview - Fwd: Schedule for a call?

**To:** Leasing <[leasing@fmigroup.ca](mailto:leasing@fmigroup.ca)>

**Subject:** Re: Schedule for a call?

Great, thank you.

6472448196

On Tue, Jun 16, 2020 at 12:32 PM Leasing <[leasing@fmigroup.ca](mailto:leasing@fmigroup.ca)> wrote:

Hi Oren,

That sounds okay. I will give you call at 1:30 your time which will be 2:30 my time (New Brunswick)

Thank you,



**Angela Kennedy**  
Paralegal

FMI Group

T: (506) 328-4631 x 302

F: (506) 328-9408

W: [fmigroup.ca](http://fmigroup.ca)



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A handwritten signature in black ink, consisting of a stylized, circular scribble.

**From:** Oren Rubin <oren.rubin@cadillacfairview.com>  
**Sent:** June 16, 2020 1:19 PM  
**To:** Leasing <leasing@fmigroup.ca>  
**Subject:** Re: Schedule for a call?

Understood. Let's chat 130pm? Does that work?

On Jun 16, 2020, at 11:52 AM, Leasing <leasing@fmigroup.ca> wrote:

Hi Oren,

I should be able to give you a call this afternoon.

I will have to take your response to our request and provide it to our Chief Leasing Officer for his review and instructions back to me which I will then be able to relay back to you. That is why we have been trying to do all communications by email instead of phone.

I am attaching the most recent emails I have sent to Cadillac Fairview on the below stores.

What we are looking for is an abatement or a partial abatement of April rent only. We do not want our portfolio to struggle with deferral repayment obligations. Unfortunately, we do not qualify for the CERCA program as one of the criteria of that program is that the tenant generates no more than \$20m in gross annual revenues at the ultimate parent level. Our locations are part of a larger company of stores that together exceed the revenue threshold in order to qualify for the CERCA program.

KFC 1277 – 3035 Blvd Le Carrefour, Laval, QC

KFC 1056 – 477 Paul Street, Dieppe, NB (Champlain Mall)

Panera 5103 – 1066 Don Mills Road, Toronto, ON

Thank you,



25/08/2020

Courriel Cadillac Fairview - Fwd: Schedule for a call?

**OREN RUBIN**

SR. MANAGER, LEASING

The Cadillac Fairview Corporation Limited  
1 Dundas Street West, Suite 200  
Toronto, Ontario  
M5G 1Z3

T: 4165988662 M: 6472448196

[oren.rubin@cadillacfairview.com](mailto:oren.rubin@cadillacfairview.com)

[cadillacfairview.com](http://cadillacfairview.com)



HOME OF TEAM CANADA



**GLOBAL TOP 25%**  
MOST ENGAGED COMPANIES

--

**OREN RUBIN**

SR. MANAGER, LEASING

The Cadillac Fairview Corporation Limited  
1 Dundas Street West, Suite 200  
Toronto, Ontario  
M5G 1Z3

T: 4165988662 M: 6472448196

[oren.rubin@cadillacfairview.com](mailto:oren.rubin@cadillacfairview.com)

[cadillacfairview.com](http://cadillacfairview.com)



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Toronto, Ontario  
M5G 1Z3

T: 4165988662 M: 6472448196

[oren.rubin@cadillacfairview.com](mailto:oren.rubin@cadillacfairview.com)



25/08/2020

Courriel Cadillac Fairview - Fwd: Schedule for a call?

[cadillacfairview.com](http://cadillacfairview.com)



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**THE CADILLAC FAIRVIEW  
CORPORATION LIMITED**

(In its capacity as Owner and Manager)

I hereby authorize you to process payments to our firm through Electronic Fund Transfer (EFT).

Our bank account is as follows:

**Tenant** FMI Atlantic Inc.  

---

**Location** Le Carrefour Laval  

---

**Bank Account Name** Le Carrefour Laval (2013) Inc.  

---

**Bank Name** The Toronto Dominion Bank  

---

**Bank Address** 55 King St. West at Bay  
Toronto, Ontario  
M5K 1A2  

---

**Swift:** TDOMCATTOR  

---

**Bank Transit Number** 10202-004  

---

**Bank Account Number** 0690-5446-191  

---

**Lease I.D.** LPFK//2  

---

**Information required with EFT payment**



Nov 15, 2019

Date

Written confirmation of each deposit must be faxed to Edith Claveau at 450-687-9827.  
or E-mail: [edith.claveau@cadillacfairview.com](mailto:edith.claveau@cadillacfairview.com)



THIS IS EXHIBIT "H" REFERRED TO IN  
THE AFFIDAVIT OF CHRISTIAN VÉZINA  
SWORN BEFORE ME  
THIS 28<sup>TH</sup> DAY OF AUGUST, 2020

---

A Commissioner of Oaths/Notary Public  
in and for the Province of Quebec





Robert Crepin <robert.crepin@cadillacfairview.com>

---

**RE: Cadillac Fairview-FMI Atlantic Inc.**

1 message

---

**Leasing** <leasing@fmigroup.ca>

11 août 2020 à 14 h 39

À : Robert Crepin <robert.crepin@cadillacfairview.com>

Cc : Oren Rubin <oren.rubin@cadillacfairview.com>

Good afternoon Robert,

I can confirm we have paid our April rents to Cadillac Fairview with August Rent. Please find below the EFT remittance forms:



25/08/2020

Courriel Cadillac Fairview - RE: Cadillac Fairview-FMI Atlantic Inc.

CARLAV		LE CARREFOUR LAVAL (2013) INC.		7/29/2020
RENT 8889 APR 2020	8/1/2020	22,372.86	0.00	22,372.86
RENT 1277 AUG 2020	8/1/2020	22,372.86	0.00	22,372.86
RENT 1277ST APR 2020	8/1/2020	1,443.33	0.00	1,443.33
RENT 1277ST AUG 2020	8/1/2020	1,443.33	0.00	1,443.33
Page Totals		47,631.78	0.00	<u>47,631.78</u>

CARLAV		LE CARREFOUR LAVAL (2013) INC.		7/29/2020
RENT 1277 APR 2020	8/1/2020	22,372.86	0.00	22,372.86
RENT 1277 AUG 2020	8/1/2020	22,372.86	0.00	22,372.86
RENT 1277ST APR 2020	8/1/2020	1,443.33	0.00	1,443.33
RENT 1277ST AUG 2020	8/1/2020	1,443.33	0.00	1,443.33
		47,631.78	0.00	47,631.78

DATE 07292020  
M M D D Y Y Y Y

\*\*Forty-Seven Thousand Six Hundred Thirty-One and 78/100 Dollars

\$

\*\*47,631.78

LE CARREFOUR LAVAL (2013) INC.  
c/o CADILLAC FAIRVIEW CORPORATION LIMITED  
FIFTH FLOOR, 20 QUEEN STREET WEST  
TORONTO, ON M5H 3R4  
CANADA

25/08/2020

Courriel Cadillac Fairview - RE: Cadillac Fairview-FMI Atlantic Inc.

CADDIE		CADILLAC FAIRVIEW CORPORATION LIMITED		7/29/2020
RENT 1088 APR 2020	8/1/2020	15,162.32	0.00	15,162.32
RENT 1088 AUG 2020	8/1/2020	15,162.32	0.00	15,162.32
Page Totals		30,324.64	0.00	<u>30,324.64</u>

CADDIE		CADILLAC FAIRVIEW CORPORATION LIMITED		7/29/2020
RENT 1088 APR 2020	8/1/2020	15,162.32	0.00	15,162.32
RENT 1088 AUG 2020	8/1/2020	15,162.32	0.00	15,162.32
		30,324.64	0.00	30,324.64

DATE 07292020  
M M D D Y Y Y Y

\*\*Thirty Thousand Three Hundred Twenty-Four and 64/100 Dollars

\$

\*\*30,324.64

CADILLAC FAIRVIEW CORPORATION LIMITED  
477 PAUL STREET  
DIEPPE, NB E1A 4X5  
CANADA



SHOADM		SHOPS AT DON MILLS		7/20/2020
RENT 0900 APR 2020	8/1/2020	27,688.29	0.00	27,688.29
RENT 0103 AUG 2020	8/1/2020	27,688.29	0.00	27,688.29
<b>Page Totals</b>		<b>55,376.58</b>	<b>0.00</b>	<b><u>155,376.58</u></b>

SHOADM		SHOPS AT DON MILLS		7/20/2020
RENT 5103 APR 2020	8/1/2020	27,688.29	0.00	27,688.29
RENT 5103 AUG 2020	8/1/2020	27,688.29	0.00	27,688.29

		55,376.58	0.00	55,376.58
--	--	-----------	------	-----------

DATE 0 7 2 9 2 0 2 0  
 W W D O Y Y Y Y

\*\*Fifty-Five Thousand Three Hundred Seventy-Six and 58/100 Dollars

\$ \*\*55,376.58

SHOPS AT DON MILLS  
 7 MAGINN MEWS  
 TORONTO, ON M3C 0G8  
 CANADA

Thank you,



**Angela Kennedy**  
 Paralegal

FMI Group

T: (506) 328-4631 x 302

F: (506) 328-9408

W: [fmigroup.ca](http://fmigroup.ca)







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**From:** Robert Crepin <[robert.crepin@cadillacfairview.com](mailto:robert.crepin@cadillacfairview.com)>  
**Sent:** August 11, 2020 3:32 PM  
**To:** Leasing <[leasing@fmigroup.ca](mailto:leasing@fmigroup.ca)>  
**Cc:** Oren Rubin <[oren.rubin@cadillacfairview.com](mailto:oren.rubin@cadillacfairview.com)>  
**Subject:** Cadillac Fairview-FMI Atlantic Inc.

TO THE ATTENTION OF MS. ANGELA KENNEDY, PARALEGAL

Good afternoon Ms Kennedy,

Further to your discussions with our leasing team, please find attached the draft Tenant Assistance Agreement for FMI Atlantic Inc. regarding the premises located in the CF Shopping Centres, for your review and comments.

Regarding the arrears due as per Paragraph 3 of the Tenant Assistance Agreement, we will review our records and, if any, we will confirm the total amount later this week.

Please note that we have added additional language in Paragraph 11 regarding the KFC/Laval Lease in order to update our records and to confirm the assumption of the lease by FMI.

Should you have any questions, please do not hesitate to contact me at your best convenience.

Thank you.

Best regards.

**ROBERT CRÉPIN**  
DIRECTEUR PRINCIPAL, SERVICES JURIDIQUES, LEGAL  
Data & Analytics / Eastern Canada Portfolio

A handwritten signature in black ink, appearing to be "R. Crepin", enclosed in a hand-drawn circle.

25/08/2020

Courriel Cadillac Fairview - RE: Cadillac Fairview-FMI Atlantic Inc.

**Première Tranche de 25% Canada / Eastern Canada FMI 2010**  
La Corporation Cadillac Fairview Limitée / The Cadillac Fairview Corporation Limited  
1100 avenue des Canadiens-de-Montréal, Bureau 400  
Montréal, Québec H3B 2S2

T: (514) 353-2241 M: (438) 923-5852

robert.crepin@cadillacfairview.com  
cadillacfairview.com



DOMICILE D'ÉQUIPE CANADA



**PREMIÈRE TRANCHE DE 25 %**  
DES ENTREPRISES LES PLUS MOBILISATRICES  
À L'ÉCHELLE MONDIALE

THIS IS EXHIBIT "I" REFERRED TO IN  
THE AFFIDAVIT OF CHRISTIAN VÉZINA  
SWORN BEFORE ME  
THIS 28<sup>TH</sup> DAY OF AUGUST, 2020

---

A Commissioner of Oaths/Notary Public  
in and for the Province of Quebec



Montreal, May 26, 2020

**Alexandre Forest**  
Direct: 514.392.9424  
Fax : 514.876.9024  
alexandre.forest@gowlingwlg.com

**BY BAILIFF**

Assistant : Nathalie Héту  
Tel. : (514) 878-1041, ext. 65288  
nathalie.hetu@gowlingwlg.com

**WITHOUT PREJUDICE**

**Olympus Food (Canada) Inc.**  
908-53 Ave NE  
Suite I  
Calgary, AB, T2E 6N9

**Re: Olympus Food (Canada) Inc. (the "Tenant")  
Store no. F007 (the "Premises")  
CF Carrefour Laval (the "Shopping Centre")  
NOTICE OF DEFAULT  
Our file : L48240263**

---

Sir,

We are the lawyers for Le Carrefour Laval (2013) Inc. represented by its agent, The Cadillac Fairview Corporation Limited (hereinafter the "**Landlord**"), which has given us instructions to address you the following.

We are hereby making reference to a lease between the Landlord and the Tenant for the Premises at the Shopping Center dated June 11, 2015 and to the Storage Agreement between the Landlord and the Tenant dated March 3, 2015 (together, the "**Lease**").

The Tenant is currently in default under the Lease in that, without limitation, you (a) filed a *Notice of Intention to make a Proposal* under the *Bankruptcy and Insolvency Act* on May 1<sup>st</sup>, 2020, the whole in contravention to Section 16.01(v) of the Lease and (b) there have been two (2) Unexpected Terminations (as this term is defined under the Lease) of the Tenant's leases in shopping centres managed by The Cadillac Fairview Corporation Limited, namely CF Promenades St-Bruno and CF Galeries d'Anjou, the whole in contravention to Section 16.01(xv) of the Lease.

**You are duly advised that the Landlord is hereby putting the Tenant in default under the Lease.**

The present is transmitted to you under reserve of our client's rights and recourses and without any admission or renunciation of whatsoever nature.

**DO GOVERN YOURSELF ACCORDINGLY**

**GOWLING WLG (CANADA) LLP**



Alexandre Forest

AF/nh  
Encls.

Cc. The Cadillac Fairview Corporation Limited  
Mes Carole Hunter and Mike Weinczok, DLA Piper (Canada) LLP  
Mrs. Charla Smith, BDO Canada Limited



Je soussigné(e), **SINTHUJAH MUTHIAH**, huissier de justice, ayant mon domicile professionnel au 511 PLACE D'ARMES #800, MONTREAL, QC, CANADA, H2Y 2W7, certifie sous mon serment professionnel

v/d : L48240263

**LE CARREFOUR LAVAL (2013) INC.**

que le **27 mai 2020 à 9:10 heures**,

**OLYMPUS FOOD (CANADA) INC.**  
TENANT

j'ai signifié à partir de l'adresse de l'expéditeur:  
**SINTHUJAH.MUTHIAH@PAQUETTE.CA**

une COPIE de la présente DEMAND LETTER (Notice of default) par VOIE DE COURRIEL conformément à l'arrêté no 4267 de la juge en chef du Québec et de la ministre de la Justice du Québec du 27 mars 2020.

Signification	23,00 \$ (3)
<b>SOUS-TOTAL</b>	<b>23,00 \$</b>

destiné à **OLYMPUS FOOD (CANADA) INC. A/S MADELEINE CHAN**,

Autres frais :	
(non admissible à l'état des frais)	
Gestion	8,00 \$ (4)
<b>SOUS-TOTAL</b>	<b>8,00 \$</b>

par la transmission de ladite procédure à l'adresse suivante:  
**maddie.chan@hiflyer.ca** .

<b>TOTAL AVANT TAXES</b>	<b>31,00 \$</b>
<b>TPS</b>	<b>1,55 \$</b>
<b>TVQ</b>	<b>3,09 \$</b>
<b>TOTAL</b>	<b>35,64 \$</b>

MONTREAL, le 27 mai 2020.



**SINTHUJAH MUTHIAH**, huissier de justice  
Permis # 1095

a/s : ALEXANDRE FOREST  
GOWLING WLG (CANADA) S.E.N.C.R.L., S.R.L.  
(2191)

(QE ALAAL) MUTSI 4 BOULU E0527 I0527-09:33 REF:2219547-1-1-2 ( )  
NB:2 FRAIS:

SE

No Engr. T.P.S. : R122687056

No Engr. T.V.Q. : 1013245793



THIS IS EXHIBIT "J" REFERRED TO IN  
THE AFFIDAVIT OF CHRISTIAN VÉZINA  
SWORN BEFORE ME  
THIS 28<sup>TH</sup> DAY OF AUGUST, 2020

---

A Commissioner of Oaths/Notary Public  
in and for the Province of Quebec



FORM 45

NOTICE TO LESSOR TO DISCLAIM A LEASE BY COMMERCIAL TENANT

To:	Le Carrefour Laval (2013) Inc. 3035 Boulevard le Carrefour Laval, QC H7T 1C8	The Cadillac Fairview Corporation Limited 5 <sup>th</sup> Floor, 20 Queen Street West Toronto, ON M5H 3R4  Attention: Executive Vice-President, National Property Operations
-----	--	---

TAKE NOTICE THAT:

1. A notice of intention to make a proposal in respect of the undersigned commercial lessee was filed under section 50.4(1) of the *Bankruptcy and Insolvency Act* (the "Act") on 1<sup>st</sup> day of May, 2020.
2. Pursuant to subsection 65.2(1) of the Act, the commercial lessee hereby gives you, the lessor, 30 days' notice of its disclaimer or resiliation of the commercial lease dated the 11<sup>th</sup> day of June, 2015 and storage area agreement dated the 3<sup>rd</sup> day of March, 2015 (together, the "Lease"), which Lease granted possession of the property situated at Store No. F007 and Storage Area No. SF217 at CF Carrefour Laval, 3035 Boulevard le Carrefour, Laval, QC H7T 1C8.
3. The disclaimer or resiliation of the lease will become effective on the 28<sup>th</sup> day of August, 2020.
4. You may apply to the court, within 15 days after the day on which you are given this notice, for a declaration that subsection 65.2(1) of the Act does not apply in respect of the lease mentioned above.
5. If you make such an application, the court, on notice to such parties as it may direct, shall make such declaration unless the commercial lessee satisfies the court that the lessee would not be make a viable proposal, without its disclaimer or resiliation of the lease and all other leases that the lessee has disclaimed or resiliated under subsection 65.2(1) of the Act.

DATED at Calgary, Alberta, this 29th day of July, 2020.

OLYMPUS FOOD (CANADA) INC.



Name: Noli Tingzon  
Title: President



THIS IS EXHIBIT "K" REFERRED TO IN  
THE AFFIDAVIT OF CHRISTIAN VÉZINA  
SWORN BEFORE ME  
THIS 28<sup>TH</sup> DAY OF AUGUST, 2020

---

A Commissioner of Oaths/Notary Public  
in and for the Province of Quebec



**Leanne Laughlin**  
T: 416-367-6229  
llaughlin@blg.com

Borden Ladner Gervais LLP  
Bay Adelaide Centre, East Tower  
22 Adelaide Street West  
Toronto, ON, Canada M5H 4E3  
T 416.367.6000  
F 416.367.6749  
blg.com



**WITHOUT PREJUDICE**

August 18, 2020

**VIA EMAIL**

Le Carrefour Laval (2013) Inc.  
c/o La Corporation Cadillac Fairview Limitée  
1100 avenue des Canadiens-de-Montréal, Bureau 400  
Montréal, QC H3B 232

Attention: Mr. Robert Crépin  
General Director, Legal Services

Dear Sirs:

**Re: Lease dated June 11, 2015 between Le Carrefour Laval (2013) Inc., as landlord (the "Landlord" or "CF"), and Olympus Foods, as tenant ("Olympus"), Store F007, KFC at CF Carrefour Laval (the "Lease")**

We act as legal counsel to FMI Atlantic Inc. ("FMI").

Since June of 2019, FMI has been operating a KFC restaurant at the subject location on behalf of Olympus, the tenant under the Lease. FMI is operating this restaurant on behalf of Olympus pursuant to a Management Agreement with Olympus entered into as of June 16, 2019.

As you know, in 2019, FMI sought an assignment of the Lease from Olympus. Over a period of several weeks, CF, Olympus and FMI negotiated the terms of an Assignment of Lease for this restaurant. As part of this negotiation, CF advised FMI that it would, as a condition of its consent, require FMI to pay an increase in the Minimum Rent payable under the Lease, as it was permitted to do by Section 13.02(f) of the Lease. FMI reluctantly agreed to a negotiated increase in Minimum Rent which was to commence upon the execution and delivery of the Assignment of Lease itself. The Assignment of Lease was never executed nor delivered and the matter has been in limbo since last November.



In the fall of 2019, CF advised FMI that it was unable to execute and deliver the settled form of Assignment of Lease as the matter was tied to pending litigation between CF and Olympus on three locations (Anjou, St-Bruno, and Laval) and could not be separated notwithstanding that FMI was not a party to the litigation between CF and Olympus.

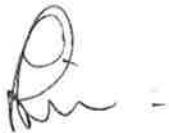
While awaiting for the Assignment of Lease over the ensuing months, FMI continued to operate the store on behalf of Olympus, as per the terms of the Management Agreement.

As you know, by letter dated May 4, 2020, Olympus Food (Canada) Inc. advised its creditors that it had filed a *Notice of Intention to Make a Proposal* pursuant to the *Bankruptcy and Insolvency Act* (the "BIA") on May 1, 2020. Subsequent to that announcement, Olympus has advised the Lease will be disclaimed on August 28, 2020 as part of these proceedings.

FMI wishes to advise you that, in light of the disclaimer of the Lease by Olympus, it will be closing the store, effective August 28, 2020.

Yours very truly,

**BORDEN LADNER GERVAIS LLP**



Leanne Laughlin

LL

c.c. Line Abecassis  
Angela Kennedy  
Tyler Langdon

THIS IS EXHIBIT "L" REFERRED TO IN  
THE AFFIDAVIT OF CHRISTIAN VÉZINA  
SWORN BEFORE ME  
THIS 28<sup>TH</sup> DAY OF AUGUST, 2020

---

A Commissioner of Oaths/Notary Public  
in and for the Province of Quebec

3

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**From:** Forest, Alexandre  
**Sent:** August 21, 2020 6:04 PM  
**To:** Laughlin, Leanne  
**Cc:** Gagnon, François D.; Abecassis, Line  
**Subject:** RE: KFC at Le Carrefour Laval

**Importance:** High

**WITHOUT PREJUDICE**

Hello Leanne,

Our client has just been advised that FMI Atlantic Inc. ("**FMI**") is currently emptying and closing the leased premises at the Carrefour Laval, the whole notwithstanding the fact that our client is currently opposing the disclaimer recently served by Olympus Food (Canada) Inc. ("**Olympus**") with regards to same leased premises and the fact that same lease was *de facto* assigned to FMI who stepped into the shoes of Olympus with regards to its obligations for the leased premises since roughly a year ago, the whole to the best knowledge of our client.

Please be advised that, not being able to review the Management Agreement between Olympus and your client (which was never disclosed to our client although it appears it was executed more than a year ago), our client reserves all its rights and recourses as against your client considering its uninterrupted occupation of the leased premises since roughly a year (again to the best knowledge of our client), notably but not limited to its right to force your client to occupy the leased premises and continuously operate same leased premises.

**PLEASE ADVISE YOUR CLIENT TO ACT ACCORDINGLY.**

Regards,

Alexandre Forest  
Associé  
Tél. +1 514 392 9424  
alexandre.forest@gowlingwlg.com



Gowling WLG (Canada) S.E.N.C.R.L., s.r.l.  
1, Place Ville Marie, bureau 3700  
Montréal QC H3B 3P4  
Canada



[gowlingwlg.com](http://gowlingwlg.com)

Efficacité, certitude quant aux coûts et valeur ajoutée : GPJ Pratique par Gowling WLG<sup>MC</sup>

De : Laughlin, Leanne <LLaughlin@blg.com>  
Envoyé : 21 août 2020 14:43





**À :** Forest, Alexandre <alexandre.forest@gowlingwlg.com>  
**Cc :** Gagnon, François D. <FGagnon@blg.com>; Abecassis, Line <LAbecassis@blg.com>  
**Objet :** KFC at Le Carrefour Laval

**This message originated from outside of Gowling WLG. | Ce message provient de l'extérieur de Gowling WLG.**

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WITHOUT PREJUDICE

Hello Alexandre,

I have had an opportunity to review your request for a copy of FMI's June 2019 Management Agreement with Olympus Food (Canada) Inc. as it pertains to the KFC at Carrefour Laval.

Le Carrefour Laval (2013) Inc. is not entitled to receive a copy of the Management Agreement, hence same will not be provided.

Your client's pursuit of litigation in this matter against its tenant Olympus resulted in an indeterminate period of delay in completion of the Assignment of Lease for the KFC at Carrefour Laval to my client FMI. FMI's management of the store on behalf of the tenant is a fact that should come as no surprise given that the Assignment of Lease remained unavailable pending the outcome of the court proceeding instituted by your client.

Regards,

Leanne

**BLG**  
**Borden Ladner Gervais**

**Leanne Laughlin**  
Counsel  
T 416.367.6229 | [LLaughlin@blg.com](mailto:LLaughlin@blg.com)

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**From:** Forest, Alexandre <[alexandre.forest@gowlingwlg.com](mailto:alexandre.forest@gowlingwlg.com)>  
**Sent:** August 20, 2020 3:31 PM  
**To:** Laughlin, Leanne <[LLaughlin@blg.com](mailto:LLaughlin@blg.com)>  
**Cc:** Gagnon, François D. <[FGagnon@blg.com](mailto:FGagnon@blg.com)>  
**Subject:** RE: FMI at Le Carrefour Laval

Hello Leanne,

Time is of the essence in this file. Cadillac Fairview is currently opposing the disclaimer at Carrefour Laval and urgently need the Agreement.

Can you please send it to us today?

Regards,



Alexandre Forest  
Associé  
Tél. +1 514 392 9424  
[alexandre.forest@gowlingwlg.com](mailto:alexandre.forest@gowlingwlg.com)



**De :** Forest, Alexandre  
**Envoyé :** 19 août 2020 17:24  
**À :** 'LLaughlin@blg.com' <[LLaughlin@blg.com](mailto:LLaughlin@blg.com)>  
**Cc :** 'Gagnon, François D.' <[FGagnon@blg.com](mailto:FGagnon@blg.com)>  
**Objet :** RE: FMI at Le Carrefour Laval

Hello Leanne,

Our client did receive the attached letter.

Could you please provide us with a copy of the Management Agreement referred to in this letter as soon as possible?

Regards,

Alexandre Forest  
Associé  
Tél. +1 514 392 9424  
[alexandre.forest@gowlingwlg.com](mailto:alexandre.forest@gowlingwlg.com)



**De :** Forest, Alexandre  
**Envoyé :** 17 août 2020 20:07  
**À :** 'Gagnon, François D.' <[FGagnon@blg.com](mailto:FGagnon@blg.com)>  
**Cc :** 'LLaughlin@blg.com' <[LLaughlin@blg.com](mailto:LLaughlin@blg.com)>  
**Objet :** RE: FMI at Le Carrefour Laval

Hello François,

Would either you or Leanne be available to discuss the file tomorrow?

I can be reached on my cellphone at 514-975-6265.

Regards,

Alexandre Forest  
Associé  
Tél. +1 514 392 9424  
[alexandre.forest@gowlingwlg.com](mailto:alexandre.forest@gowlingwlg.com)





**De :** Forest, Alexandre  
**Envoyé :** 14 août 2020 17:20  
**À :** Gagnon, François D. <[FGagnon@blg.com](mailto:FGagnon@blg.com)>  
**Cc :** 'LLaughlin@blg.com' <[LLaughlin@blg.com](mailto:LLaughlin@blg.com)>  
**Objet :** FMI at Le Carrefour Laval

Hello François,

As discussed, we are having a very hard time discussing the Carrefour Laval premises with Olympus' attorneys since Olympus filed a Notice of Intention to File a Proposal on May 1<sup>st</sup>. Considering this and the fact that FMI is presently in the premises and have been paying the rent for the last month, our client would like to finalize the documentation of FMI's occupation of the premises.

We understand that the relevant documents were already exchanged between our respective client and would like to know if there is any issue.

Regards,

Alexandre Forest  
Associé  
Tél. +1 514 392 9424  
[alexandre.forest@gowlingwlg.com](mailto:alexandre.forest@gowlingwlg.com)



Gowling WLG (Canada) S.E.N.C.R.L., s.r.l.  
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Montréal QC H3B 3P4  
Canada



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Efficacité, certitude quant aux coûts et valeur ajoutée : GPJ Pratique par Gowling WLG<sup>MC</sup>

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Clerk's Stamp

COURT FILE NO. 25-2642858  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE NOTICE OF INTENTION TO FILE A  
PROPOSAL OF OLYMPUS FOOD (CANADA) INC.

APPLICANT LE CARREFOUR LAVAL (2013) INC.

DOCUMENT **AFFIDAVIT OF CHRISTIAN VÉZINA**

ADDRESS FOR SERVICE AND CONTACT  
**Gowling WLG (Canada) LLP**  
1600, 421 – 7<sup>th</sup> Avenue SW  
Calgary, AB T2P 4K9

INFORMATION OF PARTY FILING  
THIS DOCUMENT

Attn: **Alexandre Forest/Caireen E. Hanert**  
Phone: 514.392.9424/403.298.1992  
Fax: 514.876.9024/403.263.9193  
File No.: L48240263

**AFFIDAVIT OF CHRISTIAN VÉZINA**  
**sworn August 28, 2020**

I, **CHRISTIAN VÉZINA**, of the City of Montréal, in the Province of Québec, **MAKE OATH AND SAY THAT:**

1. I am the Vice President, Operations of the Eastern Canada Portfolio of The Cadillac Fairview Corporation Limited (“**Cadillac Fairview**”) acting as agent for the Applicant Le Carrefour Laval (2013) Inc. (“**Le Carrefour**”) and have personal knowledge of the matters herein deposed to, except where stated to be based upon information and belief, in which case I verily believe same to be true.

**Dealings between Olympus and Cadillac Fairview (as agent)**

2. At all material times, Olympus Food (Canada) Inc. (“**Olympus**”) operated various Kentucky Fried Chicken restaurants in Québec. Olympus leased premises for this purpose

LK

at two shopping centres, at CF Galeries d'Anjou ("**Anjou**") where Les Galeries d'Anjou Leaseholds Inc. is the landlord, and at CF Promenades St-Bruno ("**Bruno**"), where Ontrea Inc. is the landlord.

3. In addition, on or about March 3, 2015 and June 11, 2015, Le Carrefour and Olympus entered into two leases (collectively, the "**Leases**") in respect of certain premises (retail store and storage area) located at the shopping centre known as CF Carrefour Laval in Laval, Québec (the "**Premises**"). Pursuant to the Leases, Le Carrefour agreed to lease the Premises to Olympus on the terms and conditions set out in the Leases. Attached collectively hereto as **Exhibit "A"** are copies of the Leases.
4. At all three locations, Cadillac Fairview acts as agent for the landlords.
5. During the first half of 2019, it became apparent that Olympus was having business difficulties. For reasons not disclosed to the landlord, Olympus' rights under its franchise agreement with Kentucky Fried Chicken Canada Company ("**KFC**"), including the licence to operate the location and all rights associated with the franchise, were terminated by KFC effective April 1, 2019 in relation to the Anjou location. Olympus notified the landlord of the termination and advised that it would be closing the Anjou location and terminating the lease for the Anjou location effective April 1, 2019. Attached hereto as **Exhibit "B"** is a copy of the letter dated March 30, 2019 advising of same.
6. Accordingly, on or about April 23, 2019, the landlord of the Anjou premises commenced proceedings against Olympus for payment of rent owing in the amount of \$1,419,630.89.
7. On or about May 15, 2019, Olympus advised Le Carrefour that it had entered into an agreement with FMI Atlantic Inc. ("**FMI**") to sell certain of its assets, including its rights and interest in the Leases, to FMI (the "**PSA**"). The transaction underlying the PSA was scheduled to close by June 16, 2019 (the "**Transaction**"). Attached hereto as **Exhibit "C"** is a copy of the letter advising of same.
8. Between April and November 2019, Cadillac Fairview negotiated a settlement with Olympus regarding all three abovementioned leased premises, which settlement included a requirement that the assignment of the Leases to FMI be finalized. By July 2019, FMI

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was occupying the Premises and discharging the obligations of the tenant under the Leases. Moreover, all terms of the assignment of the Leases had been agreed to by Olympus, FMI and Le Carrefour.

9. On or about November 12, 2019, Les Galeries d'Anjou Leaseholds Inc. filed proceedings in the Quebec Superior Court (Civil Division) to compel Olympus to abide by the agreement negotiated with Cadillac Fairview regarding all three abovementioned leased premises (the "**Homologation Motion**"). As part of those proceedings, Olympus filed a declaration sworn December 11, 2019 by Emmanuel Jalandoni, President of Olympus, in which Mr. Jalandoni confirmed that Le Carrefour, FMI and Olympus had all agreed to the written terms of the assignment of the Leases. Attached hereto as **Exhibit "D"** is a copy of Mr. Jalandoni's sworn declaration.
10. A decision on the Homologation Motion was issued by the Court on or about December 16, 2019, whereby the Court denied the relief sought against Olympus, notably because the Court considered that the parties had never formally agreed on the payment modalities of the settlement amount to be paid by Olympus nor on the termination date of the Bruno lease. Attached hereto as **Exhibit "E"** is a copy of the decision.
11. For reasons again not disclosed to the landlord, Olympus' rights under its franchise agreement with KFC, including the licence to operate the location and all rights associated with the franchise, were terminated by KFC effective December 29, 2019 in relation to the Bruno location. Olympus notified the landlord of the termination and advised that it would be closing the Bruno location and terminating the lease for the Bruno location effective December 29, 2019. Attached hereto as **Exhibit "F"** is a copy of the letter dated December 27, 2019 advising of same.
12. Accordingly, on or about February 17, 2020, the landlord of the Bruno premises commenced proceedings against Olympus for payment of rent owing in the amount of \$1,399,460.22.



**The Assignment**

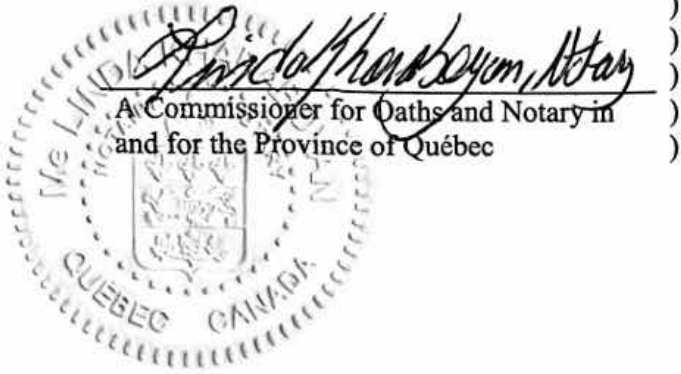
13. As noted above, since July 2019, FMI has occupied the Premises and has paid the rent and otherwise complied with the terms of the Leases. Attached hereto as **Exhibit "G"** are a series of email messages between Le Carrefour and FMI confirming same together with the Electronic Fund Transfer (EFT) agreement between Le Carrefour and FMI dated November 15, 2019 for the monthly payment of rent.
  14. As part of its occupation of the Premises and its recognition of its obligation to meet the tenant's obligations under the Leases, FMI negotiated with Le Carrefour a Rent Deferral Agreement pursuant to which Le Carrefour agreed that the rent for April 2020 would be paid in August 2020. Le Carrefour agreed to the terms of the Rent Deferral Agreement, as:
    - (a) FMI was in occupation of the Premises and was otherwise meeting the obligations set out in the Leases; and
    - (b) In reliance on the representations made by Olympus as to the agreement by each of Olympus, FMI and Le Carrefour to the terms of the assignment of the Leases.
- Attached hereto as **Exhibit "H"** is a an email exchange confirming same Rent Deferral Agreement and the payment of the April 2020 rent on August 1, 2020.
15. On May 1, 2020, Olympus filed a Notice of Intention to Make a Proposal (the "NOI") pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "BIA").
  16. To preserve its rights and to ensure that Le Carrefour was not prejudiced by the NOI, it served Olympus with a Notice of Default on May 27, 2020 pursuant to the Leases. Attached hereto as **Exhibit "I"** is a copy of the Notice of Default.
  17. To date, and notwithstanding its evidence put before the Quebec Superior Court in Mr. Jalandoni's declaration that all terms of the assignment of the Leases had been agreed to by the parties, Olympus has not finalized the assignment of the Leases, which failure unnecessarily prejudices Le Carrefour.

18. Throughout the negotiations between Le Carrefour and Olympus since at least the end of 2019, Le Carrefour understood that the Leases had been effectively assigned to FMI, as FMI was meeting all obligations of the tenant under the Leases, including the payment of rent.
19. On July 30, 2020, Olympus served a Notice to Disclaim or Resiliate an Agreement dated July 29, 2020 (the "**Disclaimer**") on Le Carrefour pursuant to section 65.2 of the BIA to disclaim the Leases. Attached hereto as **Exhibit "J"** is a copy of the Disclaimer.
20. On August 18, 2020, Le Carrefour received a letter from counsel for FMI advising that FMI was occupying the Premises and operating the restaurant under a Management Agreement with Olympus entered into as of June 16, 2019 (the "**Management Agreement**"). The existence of the Management Agreement was not previously disclosed to Le Carrefour. Counsel for Le Carrefour has requested a copy of the Management Agreement, but to date, FMI has refused to provide a copy. Attached hereto as **Exhibits "K" and "L"** respectively are copies of the letter and the email from counsel for FMI refusing to provide the Management Agreement.
21. Le Carrefour has recently learned that on or about August 21, 2020, FMI vacated the Premises.
22. Without delay on this same date, counsel for Le Carrefour advised counsel for FMI by email that Le Carrefour required FMI to abide by the terms of the Leases, and specifically reserved its rights pursuant to same. A copy of this email can be found under Exhibit L.
23. Le Carrefour reasonably relied on the representations made by Olympus with respect to the PSA and the Transaction and on the actions of FMI with regards to the Premises, and conducted itself accordingly to its detriment.
24. In these circumstances, the actions of Olympus in failing to complete the Transaction and in issuing the Disclaimer fall short of the requirement under the BIA that it act in good faith and treat its stakeholders in a fair and equitable manner.
25. I swear this Affidavit in support of an Application to set aside the Disclaimer.

LK

26. I was not physically present before the Commissioner for Oaths, but was connected to her by video technology and followed the process for remote commissioning.

SWORN (OR AFFIRMED) BEFORE ME )  
at Montréal, Québec, this 28<sup>th</sup> day of )  
August, 2020. )

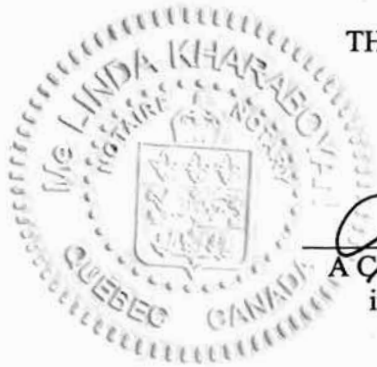


CHRISTIAN VÉZINA

LK

THIS IS EXHIBIT "A" REFERRED TO IN  
THE AFFIDAVIT OF CHRISTIAN VÉZINA  
SWORN BEFORE ME

THIS 28<sup>TH</sup> DAY OF AUGUST, 2020



*Linda Kharaboyan, Notary*  
A Commissioner of Oaths/Notary Public  
in and for the Province of Quebec

LK

## STORAGE AGREEMENT

March 3<sup>rd</sup>, 2015

**OLYMPUS FOOD (CANADA) INC.**  
908 53 Avenue NE, Suite 1  
Calgary, Alberta T2E 6N9

Att. Mr. Emmanuel Jalandoni, President

Re: **OLYMPUS FOOD (CANADA) INC. (the "Tenant")**  
t/a "PFK and/or KFC"  
Store No. F007 - Storage No. ~~SG205~~ <sup>SF217</sup> (the "Premises")  
Le Carrefour Laval (the "Shopping Centre")

Further to your request, the Landlord is hereby leasing to the Tenant and the Tenant is leasing from the Landlord the storage area (the "Storage Area") designated as Storage Area No. SF217 containing an area of 184 square feet (certified), in the location outlined in red on Schedule "B" attached hereto, solely for the purpose of storage of those items permitted to be sold or used in the Premises.

The term hereof shall commence on the date the Tenant opens for business in any part of the Premises or the day following the expiry of the Fixturing Period or the outside date: ~~June 16, 2015~~ <sup>Aug 22, 2015</sup> (the "Storage Term"), subject to earlier termination in accordance with the terms of this Agreement. Unless terminated prior to that date, this Agreement will terminate contemporaneously with the Lease in the event that the Lease is terminated by the Landlord.

The Tenant shall pay to the Landlord on the first day of each calendar month during the Storage Term, in advance, without deduction, abatement or set-off, the following amounts (collectively referred to as the "Monthly Rent"), plus G.S.T. and Q.S.T., for the use of the Storage Area:

The following calculations are based on a full month, however, the first month will be adjusted with the "Commencement date":

- (a) an amount equal to \$766.67 based upon an annual rate of \$50.00 per square foot of the area of the Storage Area; ~~from June 1<sup>st</sup>, 2015 to May 31, 2018~~ <sup>Aug 22, 2015 to Aug 31, 2018</sup>  
an amount equal to \$812.67 based upon an annual rate of \$53.00 per square foot of the area of the Storage Area; ~~from June 1<sup>st</sup>, 2018 to May 31, 2022~~ <sup>Sept 1, 2018 to Aug 31, 2022</sup>  
an amount equal to \$858.67 based upon an annual rate of \$58.00 per square foot of the area of the Storage Area; ~~from June 1<sup>st</sup>, 2022 to 2025~~ <sup>Sept 1, 2022 to Aug 31, 2025</sup>
- (b) an amount estimated for the first Rental Year to be equal to \$139.00 based upon an annual estimated rate of \$18.13 per square foot on 50% of the Storage Area, for the costs of operation, maintenance and administration of, and all utilities used or consumed in, the Storage Area, and whatever heating, ventilating and air conditioning services are provided for the Storage Area (collectively the "Charges"); and
- (c) an amount estimated for the first Rental Year to be equal to \$214.98 based upon an annual estimated rate of \$28.04 per square foot on 50% of the Storage Area, in respect of the Tenant's share of Taxes and Surtaxes imposed or assessed with respect to the lands, buildings and improvements forming the Shopping Centre.

Initial Here	
Landlord	Tenant
⓪	[Signature]

LK

The amounts payable pursuant to Paragraphs (b) and (c) are payable on the basis of the Landlord's estimates from time to time, and upon determination by the Landlord of such amounts, the Tenant will pay to the Landlord forthwith upon request of the Landlord any amount determined to be owing by the Tenant or the Landlord will pay to the Tenant, as soon as reasonably possible, any excess owing by the Landlord to the Tenant. The Landlord shall be entitled to notify the Tenant prior to the commencement of each subsequent Rental Year of the estimated increases in the Charges and in the Taxes and Surtaxes for that Rental Year and the Tenant shall pay on the basis of such revised estimates for such Rental Year.

The Tenant will pay to the taxing authorities, or to the Landlord, as it directs, before delinquency, all Business Taxes payable by the Tenant with respect to the Storage Area.

The Tenant will, at all times, ensure that the insurance policies which it is required to maintain under the lease extend to and cover the Tenant's use of the Storage Area and activities therein. The provisions of the Lease containing the release and indemnification by the Tenant of the Released Persons will specifically apply to this Agreement.

The Tenant shall only be permitted to assign this Agreement or sublet the Storage Area in conjunction with a Transfer permitted under the Lease.

The Tenant will keep the Storage Area clean and orderly and in a good state of repair. The Tenant will not make any repairs, alterations, replacements or improvements to any part of the Storage Area without the Landlord's prior written consent, which may not be unreasonably withheld. The Tenant will be liable for all damage caused to the Storage Area or any part of it regardless of who caused the damage.

If the Tenant fails to pay the Monthly Rent, Business Taxes, G.S.T. or Q.S.T., at the times required, or if the Tenant defaults in the performance of any of its other obligations under this Agreement, or the Lease, then in addition to any other rights and remedies the Landlord has at law, the Landlord may, after five (5) days prior written notice, terminate this Agreement.

The Landlord has the right on thirty (30) days prior written notice to the Tenant to (a) relocate the Storage Area to a new location, or ~~(b) terminate this Agreement.~~

The Tenant agrees to comply with all federal, provincial and municipal laws and all rules and regulations in effect from time to time with respect to the Storage Area.

All notices, demands or requests under this Agreement will be made in the manner and to the parties' addresses set out in the Lease (as it may have been amended from time to time).

It is understood and agreed that all capitalised terms and expressions used in this Agreement have the same meaning as they have in the Lease.

Initial Here	
Landlord	Tenant
<i>[Signature]</i>	<i>[Signature]</i>

LK

Please signify your agreement with the foregoing by signing and returning the attached duplicate copy of this letter to the undersigned failing which this Agreement shall be null and void and of no further force and effect.

Yours very truly,

LE CARREFOUR LAVAL LEASEHOLDS INC.


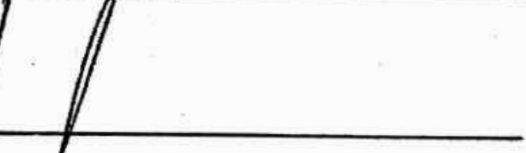
  
CHRISTIAN VEZTINA

~~Annie Daniel~~  
~~Property Manager~~  
~~Le Carrefour Laval~~



~~Martin Duguay~~  
~~General Manager~~  
~~Le Carrefour Laval~~

Read and agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

OLYMPUS FOOD (CANADA) INC.  
("Tenant")

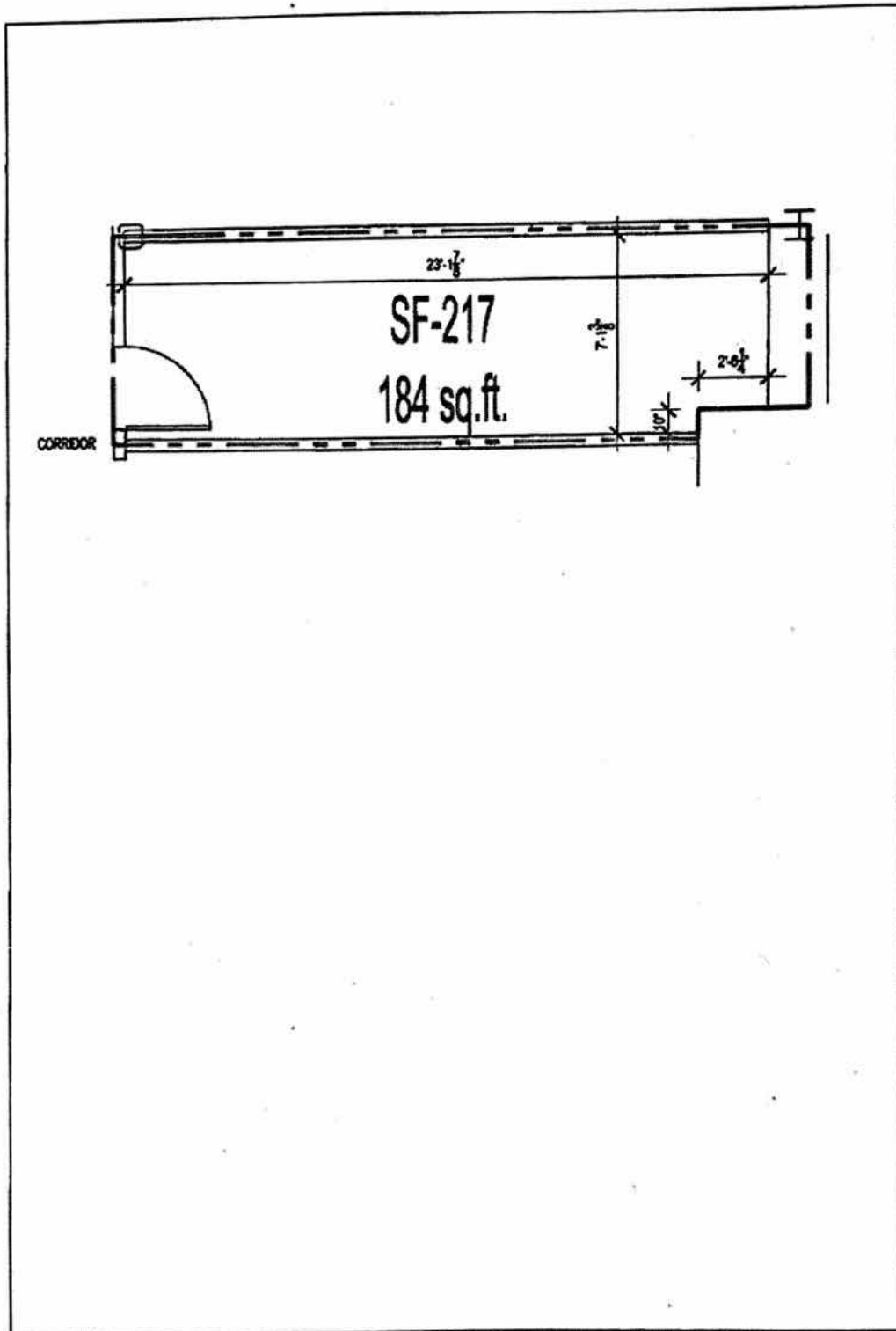
Per:   
Per: 

I / We have the authority to bind the company.

Initial Here	
Landlord	Tenant
	

LK





SEAL: 	PROJECT <b>CERTIFICAT          CARREFOUR LAVAL</b>	DRAWN BY: <b>GG</b>	CHECKED <b>FMcG</b>
		 <b>Frank G. McGrath, architects</b>	DATE <b>10.09.2009</b>
		DATE SITE MEASURED <b>03.09.2009</b>	UNIT # <b>SF-217</b>
		DWG NO. <b>1 OF 1</b>	

*McG*  
  
 LK



**CARREFOUR LAVAL**

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**LEASE**

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**LE CARREFOUR LAVAL (2013) INC.**

Landlord

- and -

**OLYMPUS FOOD (CANADA ) INC.**

Tenant

**t/a "KFC" and/or "PFK"**

**STORE NO. F007**

---



LK

CARREFOUR LAVAL

RETAIL LEASE

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THIS LEASE is dated the 11<sup>th</sup> day of June, 2015, and is made

BETWEEN

LE CARREFOUR LAVAL (2013) INC.  
(the "Landlord")

OF THE FIRST PART

- and -

OLYMPUS FOOD (CANADA) INC.  
(the "Tenant")

OF THE SECOND PART

#### ARTICLE I – TERM SHEET AND DEFINITIONS

##### Section 1.01 Term Sheet

The following are certain basic terms and provisions which are part of, may be referred to and are more fully specified in this Lease. If there is a discrepancy between the terms and provisions of this Section 1.01 and any other section of the Lease, the provisions of such other section of the Lease shall prevail.

(a) Premises Number:	F007
(b) Premises GLA:	358 square feet (33.26 square metres) approximately.
(c) Trade Name:	"KFC" and/or "PFK"
(d) Use:	The business of a stand-up fast food service, with no stools or other seating facilities, limited to the sale, at retail, of fried chicken, French-fried potatoes, cole slaw, potato salad, macaroni salad and mixed vegetable salad, and as ancillary to such principal use, the sale, at retail, of chicken soup, chicken-on-a-bun, gravy, poutine (that is, French-fried potatoes with gravy and cheese curds), bread and biscuits served as accompaniment with a meal, a maximum of four (4) different types of beverages (either carbonated or non-carbonated, but specifically excluding fruit beverages), soft ice cream, and a maximum of four (4) dessert items (such as, by way of example, lemon tarts and danishes), all of the aforementioned items being intended for immediate consumption either on or off the Premises. The Tenant covenants and agrees that it will not suffer or permit the sale of muffins, doughnuts or cookies in all or any part of the Premises.
(e) Term:	Commencing on the date which is the earliest of (1) the date the Tenant opens its business to the public in any part of the Premises, or (2) the day following the expiry of the Fixturing Period, or (3) the 22 <sup>nd</sup> day of August, 2015 (the "Commencement Date"), and expiring on the 31 <sup>st</sup> day of August, 2025.
(f) Minimum Rent:	(i) during the first (1 <sup>st</sup> ) through second (2 <sup>nd</sup> ) consecutive twelve (12) month periods, inclusive, of the Term, and if the Commencement Date is not the first day of a month, then the part of the month from the Commencement Date to and including the last day of the month in which the Commencement Date occurs, \$400.00 per square foot of the GLA of the Premises per annum; (ii) during the third (3 <sup>rd</sup> ) through fourth (4 <sup>th</sup> ) consecutive twelve (12) month periods, inclusive, of the Term, \$410.00 per square foot of the GLA of the Premises per annum; (iii) during the fifth (5 <sup>th</sup> ) through sixth (6 <sup>th</sup> ) consecutive twelve (12) month periods, inclusive, of the Term, \$420.00 per square foot of the GLA of the Premises per annum; (iv) during the seventh (7 <sup>th</sup> ) through eighth (8 <sup>th</sup> ) consecutive twelve (12) month periods, inclusive, of the Term, \$430.00 per square foot of the GLA of the Premises per annum; and (v) during the remainder of the Term, \$440.00 per square foot of the GLA of the Premises per annum.
(g) Percentage Rent:	8% <input checked="" type="checkbox"/> natural breakpoint <input type="checkbox"/> false breakpoint



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(h) Fixturing Period:	A maximum of 68 days commencing on the 15 <sup>th</sup> day of June, 2015.
(i) Marketing Fund:	\$3.44 per square foot of the GLA of the Premises per annum.
(j) Radius Restriction:	Not Applicable
(k) Food Court Tenant:	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
Food Court Capital Contribution:	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES
(l) Kiosk:	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
(m) Tenant's Address:	908 - 53 <sup>rd</sup> Avenue NE Suite 1 Calgary, Alberta T2E 6N9

### Section 1.02 Definitions

The following definitions apply in this Lease.

**"Additional Rent"**: money payable by the Tenant under this Lease (except Minimum Rent and Percentage Rent) whether or not it is designated "Additional Rent".

**"Affiliate"**: an affiliate within the meaning of the Canada Business Corporations Act, R.S.C. 1985, c.C-44, as it exists on the date of this Lease.

**"Applicable Laws"**: statutes, regulations, orders, rules, notices, policies, guidelines, codes, certificates of authorization, permits or directives and other requirements of a governmental or quasi-governmental authority with jurisdiction over any matter.

**"Architect"**: an accredited architect chosen by the Landlord from time to time.

**"Commencement Date"**: the date specified in Section 1.01(e).

**"Common Elements"**: (a) the areas, facilities, utilities, improvements, equipment and installations (collectively, "elements") in the Shopping Centre that, from time to time, are not intended to be leased to tenants of the Shopping Centre, or are designated from time to time as Common Elements by the Landlord, (b) the elements outside the Shopping Centre that serve the Shopping Centre (or any part of it) and are designated by the Landlord from time to time as part of the Common Elements, and (c) the elements in or on Rentable Premises that are provided for the benefit of the tenants of the Shopping Centre and their employees, customers and other invitees in common with others entitled to use them. The Common Elements include, but are not limited to, the roof, exterior wall assemblies including weather walls, exterior and interior structural components and bearing walls in the buildings and improvements in the Shopping Centre; equipment, furniture, furnishings and fixtures; music, fire prevention, security and communication systems; columns; pipes; electrical, plumbing, drainage, mechanical and other installations, equipment or services in the Shopping Centre or related to it, as well as the structures housing them; the HVAC System of the Shopping Centre as defined in Schedule "D"; parking facilities; and the Food Court. The Common Elements shall not include electrical, plumbing, drainage, sprinkler, mechanical and all other installations, systems, equipment, services and facilities located in the Shopping Centre but installed for the exclusive use of individual Rentable Premises or an individual storage area.

**"C.P.I."**: (a) the Consumer Price Index (All Items for Regional Cities, base year 2002=100) for the city in which the Shopping Centre is located, or if there is no Consumer Price Index for that city, for the city in Canada nearest the Shopping Centre for which there is a Consumer Price Index published by Statistics Canada (or by a successor or other governmental agency, including a provincial agency), or (b) if the Consumer Price Index is no longer published, an index published in substitution for the Consumer Price Index or any replacement index designated by the Landlord. If a substitution is required, the Landlord will make the necessary conversions. If the base year for the Consumer Price Index (or the substituted or replacement index) is changed by Statistics Canada (or by its successor or other governmental agency) the Landlord will make the necessary conversion.

**"Emphyteutic Lessors"**: the emphyteutic lessor, if any, of the Shopping Centre, or any part of it, from time to time. In sections that contain a release or other exculpatory language in favour of the Emphyteutic Lessors, "Emphyteutic Lessors" includes the directors, officers, employees (while in the ordinary course of their employment), mandataries and agents of the Emphyteutic Lessors.

**"Fixturing Period"**: the period specified in Section 1.01(h) and Section 3.05.

**"Food Court"**: the parts of the Common Elements designated by the Landlord from time to time to support Food Court Tenants' operations. These parts include, but are not limited to, public table and seating areas, waste collection facilities and other areas and facilities.

**"Food Court Tenant"**: a tenant designated from time to time by the Landlord as a Food Court Tenant.



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"GLA": the area measured from, (a) the exterior face of exterior walls, doors and windows; (b) the exterior face of interior walls, doors and windows separating Rentable Premises from Common Elements; (c) the exterior face of interior walls that are not party walls, separating Rentable Premises from adjoining Rentable Premises; and (d) the centre line of interior party walls separating Rentable Premises from adjoining Rentable Premises. GLA includes interior space even if it is occupied by projections, structures or columns, structural or non-structural, and if a storefront is recessed from the lease line the area of the recess is included within the GLA of such Rentable Premises. The dimensions of Rentable Premises that are a kiosk will be determined by the Landlord.

"GLA of a Rentable Premises": the total GLA of the levels of a Rentable Premises.

"Gross Revenue": the total of the selling or rental prices of goods sold or leased and services performed in or from the Premises whether the sales or rentals are made or services performed on the Premises or elsewhere.

Gross Revenue includes but is not limited to:

- (a) orders taken or received at the Premises, whether the orders are filled from the Premises or elsewhere;
- (b) sales and rentals of goods and services via an internet website operated by the Tenant or an Affiliate of the Tenant where the sales and rentals are generated via a terminal or console located within the Premises;
- (c) deposits not refunded to purchasers; and
- (d) all other receipts and receivables (including interest, instalment and finance charges) from business conducted in or from the Premises,

whether the sales, rentals or other receipts or receivables are made by cheque, cash, credit, charge account, exchange or otherwise and whether the sales or rentals are made by means of mechanical or other vending devices in the Premises. Bank charges or uncollectible credit accounts or charges made by collection agencies will not be deducted and no allowances will be made for bad debts. Each charge, sale or rental made on instalment or credit will be treated as a sale or rental for the full selling or rental price in the month for which the charge, sale or rental is made, regardless of the time when the Tenant receives payment (whether full or partial).

Gross Revenue does not include, or there will be deducted from Gross Revenue:

- (i) sales or rentals of merchandise for which cash has been refunded or credit made to a charge account, but only to the extent of the refund or credit, and in the case of sales made through catalogues or the internet, only to the extent that such refund or credit relates to a prior inclusion of the same transaction in Gross Revenue;
- (ii) the selling or rental price of merchandise returned by customers for exchange, but the selling or rental price of merchandise delivered to the customer in exchange will be included in Gross Revenue;
- (iii) retail tax imposed by federal, provincial, municipal or any other governmental authorities directly on sales and rentals and collected from customers at the point of sale or rental by the Tenant acting as agent for the authority, but only if the amount is added separately to the selling or rental price and does not form part of the quoted price for the article or the service and is actually paid by the Tenant to the authority; and
- (iv) transfers of merchandise between the Tenant's stores and merchandise returned to the Tenant's suppliers, but only if the transfers or returns are for convenience and not for reducing Gross Revenue.

"Hazardous Substance": means any substance or material whose discharge, release, use, storage, handling or disposal is regulated, prohibited or controlled, either generally or specifically, by any governmental authority or quasi-governmental authority pursuant to or under any Applicable Laws, including, but not limited to, any contaminant, pollutant, deleterious substance, or material which may impair the environment, petroleum and other hydrocarbons and their derivatives and by-products, dangerous substances or goods, asbestos, gaseous, solid and liquid waste, special waste, toxic substance, hazardous or toxic chemical, hazardous waste, hazardous material or hazardous substance, either in fact or as defined in or pursuant to any Applicable Laws.

"Landlord": the party of the First Part and its authorized representatives. In sections that contain a release or other exculpatory provision or an indemnity in favour of the Landlord, "Landlord" includes the directors, officers, employees (while in the ordinary course of their employment), mandataries and agents of the Landlord.

"Landlord's Work": the work to be performed by the Landlord pursuant to Schedule "C".



**"Lease":** this agreement, all Schedules thereto and the Rules and Regulations adopted or revised from time to time under Section 17.01.

**"Management Company":** a company or other entity, if any, retained by the Landlord from time to time to operate or manage the Shopping Centre. In sections that contain a release or other exculpatory provision or an indemnity in favour of a Management Company, "Management Company" includes the officers, directors, employees (while in the ordinary course of their employment), mandataries and agents of the Management Company.

**"Minimum Rent":** the annual rent payable pursuant to Section 1.01(f) and Section 4.02.

**"Mortgagee":** a mortgage or hypothecary creditor (including a trustee for bondholders) of the Shopping Centre or part of it and a chargee or other secured creditor that holds any rights, title or interest in and to the Shopping Centre or a part of it as security, but a Mortgagee is not a creditor, chargee or security holder of a tenant of Rentable Premises. In sections that contain a release or other exculpatory provision or an indemnity in favour of the Mortgagee, "Mortgagee" includes the directors, officers and employees (while in the ordinary course of their employment), mandataries and agents of the Mortgagee, and the Landlord acts as mandatary for the benefit of the Mortgagee so that each such release, indemnity and/or other exculpatory provision is fully enforceable by the Mortgagee.

**"Owners":** the owner or owners, or the emphyteutic lessees, if any, from time to time (other than the Landlord) of the Shopping Centre. In sections that contain a release or other exculpatory provision or an indemnity in favour of an Owner, "Owners" includes the officers, directors, employees (while in the ordinary course of their employment), mandataries and agents of the Owners, and the Landlord acts as mandatary for the benefit of the Owners so that each such release, indemnity and/or other exculpatory provision is fully enforceable by the Owners.

**"Percentage Rent":** the rent payable pursuant to Section 1.01(g) and Section 4.03.

**"Person":** if the context allows, a person, firm, partnership or corporation, group of persons, firms, partnerships or corporations, or any combination of them.

**"Premises":** the Rentable Premises described in Section 1.01(a) and Section 3.01.

**"Prime Rate":** the rate of interest, per annum, from time to time publicly quoted by the Toronto-Dominion Bank, at Toronto as the reference rate of interest (commonly known as its "prime rate") used by it to determine rates of interest chargeable in Canada on Canadian dollar demand loans to its commercial customers.

**"Proportionate Share":** a fraction which has as its numerator the Weighted GLA of the Premises, and as its denominator the Weighted GLA of the Shopping Centre.

**"Province":** the province in which the Shopping Centre is located.

**"Released Persons":** collectively and individually includes the Landlord, the Management Company, the Owners, the Emphyteutic Lessors (if any) and the Mortgagee.

**"Rent":** Minimum Rent, Percentage Rent and Additional Rent.

**"Rentable Premises":** those premises (including the Premises), in or on the Shopping Centre that are, or are intended from time to time to be occupied by businesses that sell or lease goods or services to the public.

**"Rental Year":** the period of time that, in the case of the first Rental Year of the Term,

- (a) starts on the first day of the Term, and for Article IV and related Sections and Articles, ends on the date that is one year after the first day of the Term (unless the first day of the Term is not the first day of a month, in which case the first Rental Year shall end on the date that is one year after the last day of the month in which the first day of the Term occurs);
- (b) starts on the first day of the Term, and for Article V and related Sections and Articles ends on the immediately ensuing December 31st;
- (c) starts on the first day of the Term, and for Articles VI, VII, VIII, Schedule "D" and Schedule "F" and related Sections and Articles ends on the immediately ensuing October 31st; and

in the case of Rental Years after the first Rental Year, is a period of twelve (12) consecutive calendar months starting the first day after the Rental Year that immediately precedes it, but (i) the last Rental Year whether it is twelve (12) calendar months or not, terminates on the expiration or earlier termination of this Lease, and (ii) the Landlord may, from time to time, by written notice to the Tenant, specify a date (which may precede the notice) on which the then current Rental Year will terminate and the anniversary of the specified date will be the expiry date of the subsequent Rental Years. The Landlord will not change the Rental Year, however, if its main purpose is to increase Rent, nor will it change a Rental Year to shorten the Term.



**"Rules and Regulations":** the rules and regulations set out in Schedule "E", adopted, promulgated, revised or amended by the Landlord from time to time under Section 17.01.

**"Sales Taxes":** all goods and services taxes, sales taxes, value-added taxes, multi-stage taxes, business transfer taxes, and any other taxes imposed in respect of the Rent payable by the Tenant under this Lease or in respect of the rental of space under this Lease.

**"Shopping Centre":** the lands described in Schedule "A" as they are altered, reduced or expanded from time to time and the buildings, improvements, equipment and facilities, including, without limitation, the Common Elements, serving them or located on or in them from time to time.

**"Stipulated Rate":** the rate of interest per annum that is five percentage points more than the Prime Rate.

**"Storage Areas":** those areas designated by the Landlord from time to time as Storage Areas.

**"Surety":** a Person, if any, who has executed or agreed to execute a ~~the~~ suretyship agreement ~~that is attached to this Lease as Schedule "C"~~ or who otherwise guarantees any obligations of the Tenant under this Lease.

**"Tenant":** the Party of the Second Part and any Person mentioned as Tenant in this Lease. "Tenant" includes, where the context allows (as in Section 10.07), the officers, directors, employees, agents, mandataries, invitees (for whom the Tenant may be responsible at law) and licensees of the Tenant, and those over whom the Tenant is responsible at law. ~~may reasonably be expected to have control.~~ In sections that contain a release or other exculpatory provisions or an indemnity in favour of the Tenant, "Tenant" includes the directors, officers, employees (while in the ordinary course of their employment) and agents of the Tenant.

**"Tenant's Work":** the work to be performed by the Tenant pursuant to Schedule "C".

**"Term":** the period described in Section 1.01(e).

**"Weighted GLA of a Rentable Premises":** the area of a Rentable Premises obtained by multiplying the GLA of each level described below, of a Rentable Premises, by the factor indicated for it, and totalling the products:

- (a) the GLA of a level at or near the level of a mall and having direct enclosed pedestrian access to and frontage on a mall 1.00
- (b) the GLA of a level not at or near the level of a mall, or not having direct enclosed pedestrian access to and frontage on a mall 0.50

If there is an expansion of the Shopping Centre, or the buildings, improvements, equipment and facilities, including the Common Elements, located in the Shopping Centre, the Landlord will designate the relevant factor to be applied in obtaining the Weighted GLA of all Rentable Premises including the Premises.

**"Weighted GLA of the Shopping Centre":** the total of the Weighted GLA of all Rentable Premises excluding the following categories of space: (a) kiosks; (b) Storage Areas; (c) free-standing buildings; (d) Rentable Premises with a GLA of more than 15,000 square feet; (e) space used or intended for use as theatres or cinemas; (f) offices that are not at or near the level of a mall and do not have direct enclosed pedestrian access to and frontage on a mall; (g) space used or intended to be used as recreational, sports or health facilities; (h) space used or intended for use by governmental or public offices, agencies or services or charitable organizations, community facilities, daycare facilities, customer care or information booths; and (i) mezzanine areas inside Rentable Premises. However, the area of the Premises and the area of other Rentable Premises that are of the same category of space as the Premises shall be included in the Weighted GLA of all Rentable Premises.

## ARTICLE II - INTENT AND INTERPRETATION

### Section 2.01 Net Lease

(a) This Lease is a completely net lease to the Landlord. Except as stated in this Lease, the Landlord is not responsible for costs, charges, or expenses relating to the Premises, their use and occupancy, their contents, or the business carried on in them, and the Tenant will pay the charges, impositions, costs and expenses relating to the Premises except as stated in this Lease. This Section will not be interpreted to make the Tenant responsible for emphyteutic rent that may be payable by the Landlord or the Owners, payments to Mortgagees or, subject to Article V, the Landlord's income taxes. Capital Tax as defined in Section 6.02(d) is not considered as income tax.

(b) The Tenant will pay to the Landlord, in the manner specified by the Landlord, the full amount of all Sales Taxes. Sales Taxes are payable by the Tenant whether they are characterized as a goods and services tax, sales tax, value-added tax, multi-stage tax, business transfer tax, or otherwise, with the intent that the Landlord be fully indemnified in respect of all Sales Taxes payable or collectible by the Landlord in respect of Rent or the rental of space under this Lease. Sales Taxes payable by the Tenant (i) will be calculated by the Landlord in accordance with the applicable legislation; (ii) will be paid to the Landlord at the same time as the amounts to which the Sales Taxes are payable to the Landlord under



this Lease (or upon demand at such other time or times as the Landlord from time to time determines); and (iii) despite anything else in this Lease, will not be considered to be Rent but the Landlord will have all of the same remedies for, and rights of recovery with respect to such amounts, as it has for non-payment of Rent under this Lease or at law. If a deposit is forfeited or an amount becomes payable to the Landlord due to a default or as consideration for a modification of this Lease and the applicable legislation deems a part of the deposit or amount to include Sales Taxes, then the deposit or amount will be grossed up to ensure that the full amount of the forfeited deposit or amount payable is received by the Landlord in full without encroachment by any deemed payment, input credit or otherwise.

#### **Section 2.02 Landlord and Representatives to Act Reasonably and in Good Faith**

The Landlord, and each Person acting for the Landlord, in making a determination, designation, calculation, estimate, conversion, or allocation under this Lease, will act reasonably and in good faith and each accountant, architect, engineer or surveyor, or other professional Person employed or retained by the Landlord will act in accordance with the applicable principles and standards of the Person's profession.

#### **Section 2.03 Rent Disputes**

The Tenant may dispute an invoice, billing or statement in respect of Rent only by giving written notice to the Landlord specifying the basis of the dispute within **twelve (12) months** ~~sixty (60) days~~ after delivery of the invoice, billing or statement, as the case may be. The Tenant will, in any event, continue to pay Rent in accordance with the Landlord's invoice, billing or statement until the dispute is resolved. No dispute in respect of any invoice, billing or statement issued to the Tenant is valid unless the procedure set out above is strictly complied with.

#### **Section 2.04 Entire Agreement**

Whether or not the Tenant is permitted to take possession of the Premises, and whether or not it pays a deposit or any instalment of Minimum Rent or other Rent which is accepted by the Landlord, no change which the Tenant makes to the form of this Lease will be binding on the Landlord even if it is brought to the Landlord's attention, until the Landlord executes this Lease and initials the change or a page of this Lease containing the change and the Lease is delivered to the Tenant. The Lease includes the Schedules attached to it and the Rules and Regulations adopted under Section 17.01. There are no agreements, promises, conditions, representations, incitement, parallel, accessory or concomitant agreement or understandings, either oral or written, between the parties concerning this Lease, the Premises, the Shopping Centre or any matter related to all or any of them, except those that are set out in this Lease. All representations, promises, guarantees and incitements made by the Landlord or its mandataries, agents or representatives, if any, and upon which the Tenant relies, are contained in this Lease and the Tenant expressly acknowledges, for now and always, that it did not rely on any other representation, promise, guarantee or incitement which is not contained in this Lease. No alteration, amendment, change or addition to this Lease is binding upon the Landlord unless it is in writing and signed by the Tenant and two authorized representatives of the Landlord. No electronic communications between the parties will have the effect of amending this Lease.

#### **Section 2.05 General Matters of Intent and Interpretation**

- (a) Each agreement under this Lease is an obligation.
- (b) The captions, section numbers, article numbers and Table of Contents do not define, limit, construe or describe the scope or intent of the sections or articles.
- (c) The use of the neuter singular pronoun to refer to the Landlord or the Tenant is a proper reference even though the Landlord or the Tenant is an individual, a partnership, a corporation or a group of two or more individuals, partnerships or corporations. The grammatical changes needed to make the provisions of this Lease apply in the plural sense when there is more than one Landlord or Tenant and to corporations, associations, partnerships or individuals, males or females, are implied.
- (d) If a part of this Lease or the application of it to a Person or circumstance, is to any extent held or rendered invalid, unenforceable or illegal, that part:
  - (i) is independent of the remainder of the Lease and is severable from it, and its invalidity, unenforceability or illegality does not affect, impair or invalidate the remainder of this Lease; and
  - (ii) continues to be applicable to and enforceable to the fullest extent permitted by law against any Person and circumstance except those as to which it has been held or rendered invalid, unenforceable or illegal.

No part of this Lease will be enforced against a Person, if, or to the extent that by doing so, the Person is made to breach a law, rule, regulation or enactment.

- (e) This Lease will be construed in accordance with the laws of the Province and the laws of Canada applicable therein.

- (f) Time is of the essence of this Lease. In addition to any other circumstances where the Tenant is in default by operation of law, the simple occurrence of an Event of Default as provided in Section 16.01 hereof shall constitute the Tenant in default in accordance with the provisions of Articles 1594 and following of the Civil Code of Quebec.





(g) The Landlord acts as mandatary for the Management Company, all Mortgagees and the Owners to the extent necessary to ensure that all exculpatory provisions and indemnities included in their favour in this Lease are enforceable against the Tenant by them, and by the Landlord.

**Section 2.06 Freely Negotiated**

The Landlord and the Tenant acknowledge that they have been represented by legal counsel in the discussion, negotiation and execution of this Lease. The Landlord and the Tenant further acknowledge and agree that the provisions of this Lease, including without restriction all schedules attached hereto and forming part hereof, have been freely and fully discussed and negotiated and that the execution of this Lease constitutes and is deemed to constitute full and final proof of the foregoing statement. The Landlord and the Tenant acknowledge and agree that they have read, examined, understood and approved all of the provisions of this Lease, including without restriction all schedules attached hereto and forming part hereof.

The Tenant acknowledges that it has obtained all information useful or necessary for it to make an enlightened decision to execute this Lease.

**ARTICLE III - GRANT AND TERM**

**Section 3.01 The Premises**

The Landlord leases to the Tenant, and the Tenant leases from the Landlord, the Premises in the Shopping Centre that are designated as set out in Section 1.01(a), and have a GLA as set out in Section 1.01(b). The approximate location of the Premises is shown on the plan of the Shopping Centre attached as Schedule "B".

If the Premises are entirely self-enclosed, their boundaries extend (a) to the limits from which the GLA of the Premises is measured, and (b) from the top surface of the structural subfloor to the bottom surface of the structural ceiling. If the Premises have no structural ceiling abutting the demising walls and are open to the ceiling or the bottom surface of the structural ceiling of the Shopping Centre, the boundaries of the Premises extend from the top surface of the structural subfloor to the height of the demising walls. Common Elements (including, but not limited to, columns and walls that form part of the Common Elements) that are within the space enclosed by the boundaries of the Premises, do not form part of the Premises, although any floor space occupied by them is included in the GLA of the Premises.

The Tenant acknowledges and agrees that there is no warranty whatsoever made or given by the Landlord that the Premises may be used for the purpose for which they are leased in accordance with Section 9.01 of this Lease and the Landlord has no obligation whatsoever to maintain the Premises for such purpose, the whole notwithstanding any law, legislation or regulation to the contrary. The Tenant hereby expressly forever waives any right it may presently enjoy or which it may enjoy in the future with respect to any such warranty or maintenance. The Tenant acknowledges and represents to the Landlord that it has examined and is satisfied with the zoning affecting the Shopping Centre and the Premises.

**Section 3.02 Use of Common Elements**

The Tenant has the non-exclusive and non-transferable right (except in accordance with Article XIII) to use the Common Elements in common with others entitled to do so, for the purposes for which they are intended and during those hours that the Shopping Centre is open for business, subject however, to this Lease.

**Section 3.03 The Term**

The Tenant will have and hold the Premises for the Term set out in Section 1.01(e), unless sooner terminated as provided for in this Lease. If the Commencement Date is not fixed by this Lease, within a reasonable time after the Commencement Date occurs, the Landlord will confirm the Commencement Date by notice to the Tenant and such confirmed Commencement Date will apply for this Lease.

**Section 3.04 Certified GLA**

If the GLA of the Premises is certified by the Architect or by an accredited land surveyor designated by the Landlord, then such GLA will apply instead of the area indicated in Section 1.01(b) and Rent will be adjusted as calculated by the Landlord, which adjustment will be retroactive if the certification does not occur until after the Commencement Date.

**Section 3.05 Fixturing Period**

The Tenant shall have the maximum period of days set out in Section 1.01(h) to complete the Tenant's Work which shall commence on the day set out in Section 1.01(h), and shall expire on the earliest of: (i) the date immediately prior to the date upon which any part of the Premises is opened to the public for business, or (ii) the final day of the maximum number of days set out in Section 1.01(h). During the Fixturing Period, the Tenant shall not be obligated to pay Minimum Rent, Percentage Rent, its Proportionate Share of Taxes, its Proportionate Share of the costs and expenses of maintaining, operating, repairing and administering the Shopping Centre, the Marketing Fund, or the charges under Schedule "D", but the Tenant shall be subject to all of the other terms and conditions of this Lease insofar as they are applicable including, without limitation, the obligation to pay Business Taxes if applicable, and the Charges for Utilities, the obligation to maintain insurance pursuant to the Lease, and the provisions relating to the liability of the Tenant for its acts and omissions, and the acts and omissions of its



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employees, agents, mandataries, contractors and invitees and the indemnification of the Released Persons.

#### ARTICLE IV – RENT

##### Section 4.01 Agreement to Pay Rent

The Tenant agrees to pay Minimum Rent, Percentage Rent, and Additional Rent.

##### Section 4.02 Minimum Rent

(a) The Tenant will, throughout the Term, pay to the Landlord, or to the Management Company, as the Landlord directs, at its head office, or at any other place designated by the Landlord or the Management Company, as the case may be, in Canadian funds, without demand and without deduction, abatement, set-off or compensation, as Minimum Rent, an annual amount equal to the per square foot rate specified in Section 1.01(f) multiplied by the number of square feet comprising the GLA of the Premises, payable in equal consecutive monthly instalments, each in advance on the first day of each calendar month.

(b) If the Commencement Date is not the first day of a calendar month, the Tenant will pay, on the Commencement Date, Minimum Rent calculated on a per diem basis (based on three hundred and sixty-five (365) days) from the Commencement Date to the end of the month in which it occurs.

(c) ~~The Tenant will deliver to the Landlord at the beginning of each Rental Year, a series of monthly post-dated cheques for the Rental Year for the total of the monthly payments of Minimum Rent and any Additional Rent that is estimated by the Landlord in advance.~~

##### Section 4.03 Percentage Rent

(a) In addition to the Minimum Rent, the Tenant will pay to the Landlord, or to the Management Company, as the Landlord directs, as Percentage Rent, the percentage specified in Section 1.01(g) of Gross Revenue for each Rental Year in excess of the Breakpoint. The term "Breakpoint" means the amount obtained when the annual Minimum Rent payable pursuant to Section 1.01(f) and Section 4.02(a) is divided by the percentage specified in Section 1.01(g).

(b) Percentage Rent is payable to the Landlord or to the Management Company as the Landlord directs, at its head office or at any other place designated by the Landlord or the Management Company, as the case may be, in Canadian funds, without demand, and without deduction, abatement, set-off or compensation. The first payment of Percentage Rent is due on the tenth (10th) day after the last day of the first calendar month in which Gross Revenue for the Rental Year exceeds the Breakpoint, and on the tenth (10th) day after the end of each successive calendar month of the Rental Year, as well as the tenth (10th) day of the month after the end of the Term. The amount of each payment of Percentage Rent will be obtained by applying the percentage referred to in Section 1.01(g) to the total of the stated Gross Revenue in excess of the Breakpoint for the immediately preceding month and the stated Gross Revenue in excess of the Breakpoint for all preceding months of the Rental Year, and deducting from that total, the payments on account of Percentage Rent made previous to that time by the Tenant for the Rental Year. If the Annual Statement furnished by the Tenant under Section 4.04, at the end of a Rental Year, discloses that the total Percentage Rent paid by the Tenant for the Rental Year exceeds or is exceeded by the total Percentage Rent payable by the Tenant for the Rental Year, the Tenant will pay any deficiency at the same time as it furnishes the Annual Statement, or the Landlord will pay any excess to the Tenant as soon as reasonably possible after the Landlord's receipt of the audit opinion or when applicable, the written special purpose report referred to in Section 4.04(c) (unless an audit under Section 4.08 is in progress or the Tenant is then in default under any term or condition of this Lease).

(c) If the Rental Year is less than 365 days, the Breakpoint will be reduced by multiplying the Breakpoint by a fraction, the numerator of which is the number of days in the Rental Year and the denominator of which is 365.

(d) If the Tenant fails to carry on business in the Premises on a day on which the Tenant is required to carry on business in accordance with the terms of this Lease, the Breakpoint will be reduced by multiplying it by a fraction, the numerator of which is the number of days in the Rental Year on which the Premises are open to the public for business and the denominator of which is the number of days in the Rental Year on which the Tenant is required to carry on business in the Premises in accordance with the terms of this Lease plus any days on which the Tenant is not required to carry on business by reason of closures under Article XII of this Lease or force majeure as described in Section 17.08 of this Lease.

##### Section 4.04 Gross Revenue Reports

(a) On or before the tenth (10th) day of each calendar month, except for the first month of the Term, the Tenant will deliver to the Landlord, at the place then fixed for the payment of Rent, a statement (the "Monthly Statement") signed by the Tenant which, (i) states that Gross Revenue as reported in the Monthly Statement is in accordance with the definition of Gross Revenue in Section 1.02; (ii) contains a certification by the Tenant that the Monthly Statement is correct; (iii) is in the detail and form that the Landlord requires; and (iv) without limiting the requirements stated above, shows (1) the amount of Gross Revenue for the preceding month, (and fractional months, if any, at the commencement or end of the Term); (2) the amount of Gross Revenue for all preceding months of the Rental Year (and fractional months, if any, at the commencement or end of the Term); and (3) the monthly payments made on account of Percentage Rent for the Rental Year.



(b)(i) Before the sixty-first (61st) day after the end of each Rental Year (including the last Rental Year of the Term), the Tenant will deliver to the Landlord at the place then fixed for the payment of Rent, a statement (the "Annual Statement") signed by the Tenant which Annual Statement will (i) state that Gross Revenue as shown in the Annual Statement is in accordance with the definition of Gross Revenue in Section 1.02; (ii) contain a certification that the Annual Statement is true and correct; and (iii) without limiting the requirements stated above, show month by month, the amount of Gross Revenue during the preceding Rental Year.

(ii) Notwithstanding any provision of Section 4.04(b)(i) to the contrary and provided the Tenant is OLYMPUS FOOD (CANADA) INC., and is itself (and not by means of a franchisee) in occupation of the whole of the Premises, and has not failed or neglected to remedy or commence to remedy any default or breach of its obligations as set out in this Lease after notice and within the times as set forth in this Lease, then before the sixty-first (61st) day after the end of each Rental Year (including the last Rental Year of the Term), the Tenant will deliver to the Landlord at the place then fixed for the payment of Rent, (A) a statement (the "Annual Statement") signed by the President of the Tenant ~~who is a chartered accountant~~, which Annual Statement will be in the form set out in Schedule "G" attached hereto; and (B) a breakdown of monthly Gross Revenue (the "Breakdown of Monthly Gross Revenue") signed by the President of the Tenant, which Breakdown of Monthly Gross Revenue will be in the form set out in Schedule "G-1" attached hereto. It is understood and agreed, however, that if the Landlord exercises its right under Section 4.08 to audit the Tenant's business and records and the audit discloses that the Gross Revenue for the relevant period is understated by three percent (3%) or more, then the provisions of this Section 4.04(b)(ii) shall be of no further force and effect.

(c)(i) Before the one hundred and eighty-first (181st) day after each fiscal year end of the Tenant, the Tenant will deliver to the Landlord an audit opinion by an independent public accountant of recognized standing (an "Accountant") signed by the Accountant and stating that, (i) he has examined, in accordance with generally accepted auditing standards, the Gross Revenue (as defined in Section 1.02) of the Tenant for the fiscal year then ended; and (ii) Gross Revenue is fairly presented for the fiscal year then ended in accordance with Section 1.02 and on a basis consistent with that of the preceding fiscal year.

(ii) Notwithstanding any provision of Section 4.04(c)(i) to the contrary, provided the Tenant is OLYMPUS FOOD (CANADA) INC., and is itself (and not by means of a franchisee) in occupation of the whole of the Premises, and has not failed or neglected to remedy or commence to remedy any default or breach of its obligations as set out in this Lease after notice and within the times as set forth in this Lease, then before the one hundred and eighty-first (181st) day after each fiscal year end of the Tenant, the Tenant will deliver to the Landlord a written special purpose report by an independent public accountant of recognized standing (an "Accountant"), signed by the Accountant in a form similar to Schedule "G-2" attached hereto which shall include comments to the effect that (1) he has agreed the amount of the Gross Revenue to the general ledger of the Tenant for each of the months in the year then ended; and (2) he compared the definition of Gross Revenue referred to in Section 1.02 of the Lease with the Tenant's accounting policy for the recording of sales in the general ledger and found no exceptions. It is understood and agreed, however, that if the Landlord exercises its right under Section 4.08 to audit the Tenant's business and records and the audit discloses that the Gross Revenue for the relevant period is understated by three percent (3%) or more, then the provisions of this Section 4.04(c)(ii) shall be of no further force and effect.

#### Section 4.05 Occasional Statements

The Landlord may, on infrequent occasions, require the Tenant to deliver, within one (1) week of the request, a statement of the approximate amount of Gross Revenue on a daily basis for the week preceding the date on which the statement is to be delivered. These statements will be used to analyze special promotions or sales trends and not to calculate Percentage Rent.

#### Section 4.06 Tenant's Records

The Tenant will keep in the Premises or at its principal office in Canada, for at least three (3) years after the end of each Rental Year, adequate books and records kept in accordance with generally accepted accounting principles that show inventories and receipts of merchandise at the Premises and daily receipts from all sales, rentals, charges, services and other transactions, in or from the Premises made by the Tenant and any other Persons conducting business in or from the Premises as well as sales and rental tax returns, pertinent original sales and rental records, and any other sales and rental records that the Landlord reasonably requires and that would normally be examined by an accountant pursuant to accepted auditing standards in performing a detailed audit of Gross Revenue. The Tenant will also cause the records described above to be kept by all Persons doing business in or from the Premises. The Tenant, and all other Persons conducting business in or from the Premises, will record at the time of the sale or rental, in the presence of the customer, all receipts from sales, rentals, charges, services or other transactions whether for cash or credit, in a cash register or registers or computerized systems featuring safeguards so as to prevent the deletion of a perpetual and cumulative total and any other control features that are required by the Landlord.

#### Section 4.07 Right to Examine

The Landlord may, upon forty-eight (48) hours prior notice to the Tenant, examine the Tenant's books and records relating to Gross Revenue and the inventories of merchandise at the Premises and at the Tenant's principal office in Canada, for the period covered by any statement issued by the Tenant. The



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Landlord and its authorized representatives may examine the Tenant's records and procedures during regular business hours, and may have a Person in the Premises to check, verify and tabulate Gross Revenue, or to examine accounting records and procedures including control features affecting the determination of Gross Revenue. **The Landlord shall not disclose the contents of the financial records of the Tenant submitted by the Tenant to the Landlord pursuant to the terms of this Lease except as is necessary for their intended lawful use in connection with the Landlord's business in the Shopping Centre or as may be otherwise ordered to be disclosed by any court or governmental authority having jurisdiction.**

#### **Section 4.08 Audit**

The Landlord may, at reasonable times, **upon forty-eight (48) hours prior notice to the Tenant**, cause a complete audit to be made of the Tenant's business and records relating to the calculation of Gross Revenue. If the auditor reports that the Tenant's records and procedures are insufficient to permit a determination of Gross Revenue for a Rental Year, or a part of a Rental Year, or that the Tenant is not complying with this Article IV, the Landlord may deliver to the Tenant an estimate (which will be final and binding on the Tenant **unless the Tenant shall be able to prove, within thirty (30) days of receipt of such estimate from the Landlord that such estimate is in error**) of Gross Revenue for the relevant period and the Tenant will immediately pay to the Landlord the amount shown in the estimate to be owing.

If the Landlord's auditor reports that the Tenant is in default under this Article IV or if the audit discloses that Gross Revenue for the relevant period is understated by three percent (3%) or more, the Tenant will pay to the Landlord, on demand, the cost of the audit in addition to the deficiency, together with interest on the latter calculated from the first day of such period at the Stipulated Rate in force on such day.

#### **Section 4.09 Tenant's Failure**

If the Tenant fails to deliver a statement or an audit opinion **or when applicable, the written special purpose report** required under this Article IV within the time required, the Landlord may, on five (5) days notice to the Tenant, employ an auditor to examine the Tenant's books and records to certify the amount of Gross Revenue for the period related to the statement or the audit opinion **or when applicable, the written special purpose report**, and the Tenant will pay to the Landlord, on demand, as Additional Rent the cost of the examination together with the sums shown by the examination to be owing on account of Percentage Rent with interest on the latter calculated from the date the statement or the audit opinion **or when applicable, the written special purpose report** was required at the Stipulated Rate in force on such date.

#### **Section 4.10 Special Recourses**

Neither the delivery to nor the acceptance by Landlord of any statement of Gross Revenue, nor payment of Percentage Rent based on a statement of Gross Revenue shall be deemed to relieve the Tenant from its obligations to comply with Sections 4.03 to 4.08, inclusive. Without limitation, should any audit disclose that the actual Gross Revenue exceeds the Gross Revenue stated in Monthly Statements or Annual Statements by three percent (3%) or more, then in addition to all other amounts payable, the Tenant shall pay to the Landlord an amount equal to five (5) times the amount of such deficiency for the mere delay of providing the Landlord with a proper Monthly Statement or Annual Statement and the parties hereto acknowledge and agree that the foregoing penalty is reasonable and cannot be reduced. If the Tenant fails to furnish the Monthly Statement when required for three (3) consecutive months, then the Tenant shall pay the penalty of One Dollar (\$1.00) per square foot of the GLA of the Premises for the mere delay in performance and the parties hereto acknowledge and agree that the foregoing penalty is reasonable and cannot be reduced. Furthermore, the Tenant hereby renounces all rights to have any of the foregoing penalties reduced, even if the obligations referred to in this Section 4.10 have been performed in part. All of the Landlord's rights and recourses stipulated in this Section 4.10 will be cumulative and not alternative, and strictly without prejudice to all other rights and recourses of the Landlord pursuant to this Lease including, without limitation, termination.

#### **Section 4.11 Additional Rent**

Additional Rent, (a) is payable in Canadian funds without deduction, abatement, set-off or compensation; (b) is payable (except when this Lease states that it is payable on demand) with the first monthly instalment of Minimum Rent after the Additional Rent begins to accrue; and (c) accrues daily.

#### **Section 4.12 Electronic Funds Transfer**

At the Landlord's request, the Tenant will participate in an electronic funds transfer system or similar system whereby the Tenant will authorize its bank, trust company, credit union or other financial institution to credit the Landlord's bank account each month in an amount equal to the Minimum Rent and Additional Rent payable on a monthly basis pursuant to the provisions of this Lease.

#### **Section 4.13 Overdue Rent**

If the Tenant defaults in the payment of Rent, the unpaid Rent bears interest from the due date to the date of complete payment, whether before or after default or judgment and notwithstanding any provision of law to the contrary, including, without limitation, Article 1883 of the Civil Code of Quebec, at the Stipulated Rate in force on the due date. Notwithstanding anything else in this Lease, such interest will not be considered to be Rent but the Landlord will have all of the same remedies for, and rights of recovery with respect to such amounts, as it has for non-payment of Rent under this Lease or at law.



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## ARTICLE V - TAXES

### Section 5.01 Taxes - Definition

"Taxes" means (a) real property taxes, surtaxes, water (including any invoice for water based on consumption or otherwise) and garbage removal taxes, rates, duties and assessments (including local improvement taxes), impost charges or levies (referred to collectively as "real property taxes"), that are levied, rated, charged or assessed against the Shopping Centre or any part of it from time to time (including, but not limited to, the Common Elements) by a taxing authority, whether federal, provincial, municipal, school or otherwise, and any taxes or other amounts that are imposed instead of, or in addition to, real property taxes whether similar or not, and whether in existence at the Commencement Date or not, and any real property taxes levied, or assessed against the Landlord or the Owners on account of its or their ownership of or interest in the Shopping Centre, (b) the costs and expenses incurred for consultation, appraisal, legal and other fees and expenses to the extent they are incurred in an attempt to minimize or reduce amounts mentioned in Section 5.01(a), and (c) amounts imposed against or allocated by the Landlord to the Shopping Centre in respect of office expenses, salaries, benefits, and other personnel costs related to the administration and management of amounts such as those included in Sections 5.01(a) and (b). Taxes shall in every instance be calculated on the basis of the Shopping Centre being fully assessed and taxed at prevailing commercial/shopping centre rates for occupied space for the period for which Taxes are being calculated. **For greater certainty, "Taxes" shall exclude any penalties or interest incurred by the Landlord as a result of its failure to pay Taxes in a timely manner, except Taxes shall include any interest in respect of a deferral of payment in accordance with sound shopping centre practices if permitted by statute or pursuant to an agreement with the taxing authority.**

### Section 5.02 Taxes Payable by the Landlord

The Landlord will, subject to Sections 5.03, 5.04 and 6.02, pay the Taxes that are imposed against the Shopping Centre or any part of it. However, the Landlord may defer payment of Taxes, or defer compliance with statutes, laws or by-laws, regulations or ordinances in connection with the levying of Taxes, to the extent permitted by law, if it diligently pursues or causes to be pursued the contest or appeal of the Taxes.

### Section 5.03 Taxes Payable by the Tenant

(a) Whether or not there are separate real property tax bills or separate real property assessment notices issued by a taxing authority, the Tenant will pay to the Landlord, in each Rental Year, those Taxes that are imposed against the Shopping Centre or any part of it, including the Common Elements, (except for the Taxes that are allocated by the Landlord to the Rentable Premises not included in the Weighted GLA of the Shopping Centre) which shall be paid on the basis of the Tenant's Proportionate Share of such Taxes or on such other reasonable and equitable basis as the Landlord determines. The Tenant's Proportionate Share of Taxes shall remain payable regardless of any deferral of payment or contestation or appeal of Taxes by the Landlord or the Owners. The Landlord and the Owners will, notwithstanding the preceding sentence, have no obligation to contest, object to or litigate the levying or imposition of Taxes.

(b) The Tenant will pay the amounts payable under Section 5.03(a) according to estimates or revised estimates made by the Landlord from time to time in respect of each Rental Year. The Tenant's payments will be made in advance in monthly amounts, determined by the Landlord, for periods determined by the Landlord. Within a reasonable time after the Taxes are determined for the Rental Year, the Landlord will deliver a statement (a "Tax Statement") to the Tenant that (i) specifies the Tenant's Proportionate Share of Taxes for the Rental Year, and (ii) sets out the total (the "Prepayment Total"), of amounts payable under this Section 5.03(b) that have been paid by the Tenant for the applicable period. If the Prepayment Total, less any amounts that were previously credited to the Tenant, and any amounts paid for arrears in respect of previous Rental Years, (the "Net Prepayment Total") is less than the Tenant's Proportionate Share of Taxes specified in the Tax Statement, the Tenant will pay the deficiency **within thirty (30) days of the receipt of the Tax Statement. with the next monthly payment of Minimum Rent.** If the Net Prepayment Total exceeds the Tenant's Proportionate Share of Taxes specified in the Tax Statement, the Landlord will refund the excess within **ninety (90) days a reasonable time** after delivery of the Tax Statement (unless the Tenant is then in default under any term or condition of this Lease). The Landlord may estimate Taxes for the Rental Year following the then current Rental Year, and the Tenant will continue to make monthly payments in advance, in amounts determined by the Landlord, for periods determined by the Landlord. The monthly payments paid by the Tenant applicable to the subsequent Rental Year will be credited against the Tenant's Proportionate Share of Taxes for the subsequent Rental Year. The rendering of any Tax Statement shall not affect the Landlord's right to subsequently render an amended or corrected statement.

(c) If the Lease expires or is terminated before the end of a Rental Year, the Landlord will deliver to the Tenant a Tax Statement within a reasonable time after the expiry or termination of the Lease or, at the Landlord's option, within a reasonable time after the last Rental Year. In the former case, the Tenant's Proportionate Share of Taxes may be based on the Landlord's estimate of Taxes, which will be considered as the final actual amount of Taxes for the last Rental Year. In either case the Tenant will pay to the Landlord any deficiency within ten (10) days after the Landlord delivers the Tax Statement, or the Landlord will pay to the Tenant any excess the Tenant is entitled to within a reasonable time after the Landlord delivers the Tax Statement (unless the Tenant is then in default under any term or condition of this Lease or it owes money to the Landlord in respect of its obligations under this Lease).



#### **Section 5.04 Business Taxes and Other Taxes of the Tenant**

The Tenant will pay to the taxing authorities, or to the Landlord, as it directs, before delinquency, all "Business Taxes" if applicable. "Business Taxes" means, (a) the taxes, rates, duties, assessments and other charges that are imposed against or in respect of the improvements, equipment and facilities of the Tenant on or in the Premises or the Shopping Centre or any part of either of them or the Landlord on account of its ownership of or interest in either of them; and (b) every tax and license fee that is imposed against or in respect of business carried on in the Premises or in respect of the use or occupancy of the Premises or any part of the Shopping Centre by the Tenant or its sub-tenants or licensees, or against the Landlord or the Owners on account of its or their ownership of the Premises or the Shopping Centre or any part of it. If there is not a separate bill issued by the relevant authority for Business Taxes, the Tenant will pay its Proportionate Share of the Business Taxes with respect to the entire Shopping Centre. The Landlord will remit amounts that it collects for Business Taxes to the relevant authority.

#### **Section 5.05 Tenant's Responsibility**

The Tenant will, (a) on the Landlord's request, promptly deliver to the Landlord, (i) receipts for payment of all Business Taxes payable by the Tenant; (ii) notices of any assessments for Taxes or Business Taxes or other assessments received by the Tenant that relate to the Premises or the Shopping Centre; and (iii) whatever other information relating to Taxes and Business Taxes the Landlord reasonably requests from time to time; and (b) deliver to the Landlord, at least ten (10) days before the last date for filing appeals, notice of any appeal or contest that the Tenant intends to institute with respect to Business Taxes payable by the Tenant and obtain the prior written consent of the Landlord for the appeal or contest which consent will not be unreasonably withheld. If the Tenant obtains the Landlord's consent and does not pay the Business Taxes before the appeal or contest, the Tenant will deliver to the Landlord whatever security for the payment of the Business Taxes the Landlord reasonably requires and will promptly and diligently pursue the appeal or contest and keep the Landlord informed on all aspects of it. The Tenant will not contest any Taxes or appeal any assessments related thereto and hereby forever waives and renounces any and all rights it has now or may in the future have to contest Taxes or appeal any assessment related thereto.

The Tenant will indemnify and save the Landlord harmless from all losses, costs, charges and expenses arising from Business Taxes as well as any taxes that are imposed in place of Business Taxes or which are assessed against rentals payable under this Lease in place of Taxes or Business Taxes, whether against the Landlord or the Tenant including, but not limited to, increases in Taxes or Business Taxes arising directly or indirectly out of an appeal or contest by the Tenant. The Tenant will deliver to the Landlord any security for such an increase in Taxes or Business Taxes that the Landlord reasonably requires. **So long as the Tenant is OLYMPUS FOOD (CANADA) INC., and is not in default under this Lease after notice and after the applicable cure period provided in the Lease, the Tenant shall not be required to provide security to the Landlord for any such appeal or contestation of Business Taxes.**

#### **Section 5.06 Per Diem Adjustment**

If a Rental Year is not twelve (12) calendar months, the Taxes payable by the Tenant under Section 5.03 will be adjusted on a per diem basis, based on three hundred and sixty-five (365) days.

### **ARTICLE VI - SHOPPING CENTRE AND COMMON ELEMENTS - CONTROL AND PAYMENT**

#### **Section 6.01 Control of the Shopping Centre by the Landlord**

The Landlord will operate the Shopping Centre in a first class and reputable manner having regard to size, age and location. The Common Elements and those portions of the Shopping Centre which are not leased to tenants are under the exclusive control of the Landlord.

Without limitation, the Landlord may, in its operation of the Shopping Centre:

- (a) (i) temporarily close parts of the Common Elements to prevent their dedication or the accrual of rights in them in favour of Persons or the public; grant, modify and terminate servitudes and other agreements pertaining to the use and operation of the Shopping Centre or any part of it, and temporarily obstruct or close off or shut down parts of the Shopping Centre for inspection, maintenance, repair, construction or safety reasons;
- (ii) employ personnel, including supervisory personnel and managers, for the operation, maintenance and control of the Shopping Centre. The Shopping Centre or parts of it, may be managed by The Cadillac Fairview Corporation Limited or by another Person or Persons that the Landlord designates in writing from time to time;
- (iii) use parts of the Common Elements for merchandising, display, decorations, entertainment and structures, permanent or otherwise, designed for retail selling or special features or promotional activities;
- (iv) regulate, acting reasonably, all aspects of loading and unloading, delivery and shipping of fixtures, equipment and merchandise, and all aspects of garbage collection and disposal. The Tenant is responsible for pick-up and disposal of its garbage at its cost. If the Landlord provides facilities or designates a commercial service for the pick-up and disposal of garbage instead of, or in addition to the service provided by the local



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municipality, the Tenant will use such facilities and commercial service at its cost, **provided such cost is at reasonably competitive rates;**

- (v) prohibit the Tenant and its employees from parking in the Shopping Centre. **In the exercise of its right herein, the Landlord will not act in a manner that is discriminatory solely as against the Tenant;** and
  - (vi) Impose or permit to be imposed reasonable charges upon any Person (including the general public) for the use of parking facilities that may at any time be part of the Common Elements;
- (b)
- (i) change the area, level, location, arrangement or use of the Shopping Centre or any part of it;
  - (ii) construct other buildings, structures, or improvements in the Shopping Centre and make alterations of, additions to, subtractions from, or rearrangements of the Shopping Centre, build additional stores in any part of the Shopping Centre, and construct additional storeys, buildings or facilities adjoining or near the Shopping Centre;
  - (iii) install kiosks and other installations, permanent or otherwise, in or on the Common Elements. **The Landlord agrees that at all times throughout the Term, it will not place or erect, nor suffer or permit to be placed or erected any kiosk or other similar retail selling structure (except kiosks or structures of a temporary, "short-term" nature) in the mall of the Shopping Centre within ten (10) feet directly in front of the storefront width of the Premises. However, this shall not apply to nor prohibit the Landlord from constructing, placing or erecting any planters, mall furniture or other similar installations in the mall nor from constructing, placing or erecting temporary promotional or advertising displays in the mall;**
  - (iv) diminish, expand, alter, relocate or rearrange the buildings, parking facilities and other parts of the Shopping Centre and, with the consent of the Tenant, which consent will not be unreasonably withheld, relocate or rearrange the Premises **within the Food Court**, from that shown on Schedule "B", the purpose of which Schedule is solely to show the approximate location of the Premises. **Notwithstanding the foregoing, it is understood and agreed that any rights of the Landlord to relocate, change, renovate, reduce, add to or rearrange the Premises (with the Tenant's consent, which consent will not be unreasonably withheld), shall only apply in connection with an expansion, substantial alteration to or remerchandising of all or any part of the Shopping Centre;** and
  - (v) do and perform such other acts in and to the Shopping Centre as, in the use of good business judgment, the Landlord determines to be advisable for the proper operation of the Shopping Centre.

Despite anything else in this Lease, the Landlord has no liability for diminution or alteration of the Common Elements that occurs as the result of the Landlord's exercise of its rights under this Section 6.01 or elsewhere under this Lease and the Tenant will not be entitled to compensation or a reduction or abatement of Rent or a resiliation of this Lease, and no such diminution or alteration of the Common Elements shall be deemed to be a constructive or actual eviction of the Tenant, or to constitute a change in the form or the destination of either the Premises or the Shopping Centre, or a default by the Landlord of any obligation for quiet enjoyment contained in this Lease or provided at law.

#### **Section 6.02 Tenant's Proportionate Share of Expenses**

(a) In each Rental Year, the Tenant will pay to the Landlord, **without duplication**, its Proportionate Share of the costs and expenses of maintaining, operating, repairing and administering the Shopping Centre.

(b) The costs and expenses referred to in Section 6.02(a) include, but are not limited to those listed below, none of which is to be a duplication of another cost or expense:

- (i) the cost of the Landlord's insurance premiums (after deducting recoveries from tenants under clauses similar to Section 10.02) on lands, buildings, improvements, equipment and other property in the Shopping Centre together with all amounts falling below the level of the Landlord's insurance deductibles which are paid by the Landlord in connection with claims made against it. The Landlord's insurance and costs of insurance may include (but might not be limited to), (aa) loss of insurable gross profits attributable to the perils insured against by the Landlord or commonly insured against by landlords, including loss of rent and other amounts receivable from tenants in the Shopping Centre, (bb) third party liability coverage including the exposure of personal injury, bodily injury and property damage occurrence, including all contractual obligations coverage and including actions of the employees, contractors, subcontractors, agents and mandataries working on behalf of the Landlord, and (cc) costs and expenses for defending and payment of claims below deductibles;
- (ii) cleaning, snow removal, garbage and waste collection and disposal, and landscaping;



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- (iii) lighting, electricity, fuel, steam, water, public utilities, loudspeakers, public address and musical broadcasting systems, telephone answering services, telephone facilities and systems used in or serving the Common Elements, and electricity for signs that are part of the Common Elements;
- (iv) policing, security, supervision and traffic control;
- (v) management office expenses of operation, and salaries of personnel, including management and other supervisory personnel, employed to carry out the operation and the cleaning, maintenance, and repair of the Shopping Centre, including fringe benefits and contributions and premiums for unemployment insurance and workers compensation insurance, pension plan contributions and similar premiums and contributions, and severance pay or indemnity, or, where the management office and personnel serve more than one shopping centre, an allocated share of those expenses, salaries and contributions;
- (vi) rental of equipment and signs, and the cost of building supplies used by the Landlord in the maintenance, cleaning, repair and operation of the Shopping Centre;
- (vii) auditing (including audit fees for the statements referred to in Section 6.03), accounting, legal and other professional and consulting fees and disbursements;
- (viii) repairs (including major repairs) and replacements to and maintenance and operation of the Shopping Centre, (except for repairs or replacements of inherent structural defects or weaknesses);
- (ix) depreciation or amortization of the costs of repairs and replacements mentioned in Section 6.02(b)(viii), and of the costs, including repair and replacement, of the maintenance, cleaning and operating equipment, master utility meters and all other fixtures, equipment and facilities that are part of the Common Elements (including, without limitation, fixtures, equipment and facilities made or added for the greater comfort or convenience of the public or the tenants) unless they are, under Section 6.02(b)(viii), charged fully in the Rental Year in which they are incurred, all in accordance with rates, and for periods determined by the Landlord from time to time in accordance with reputable shopping centre management and operating practices. **It is understood and agreed that the Tenant is not required to pay depreciation or amortization pursuant to Section 6.02(b)(ix) above or interest pursuant to Section 6.02(b)(xi) above in respect of the costs of any such replacement to the extent, if any, that such costs were included in Section 6.02(b)(viii), it being the intention of the parties at all times to avoid any duplication of costs and charges as set out in Section 6.02(b)(viii) and 6.02(b)(ix);**
- (x) that part of the Operating Costs of the HVAC System allocated to the Common Elements in accordance with Schedule "D";
- (xi) interest calculated upon the undepreciated or unamortized part of the costs referred to in Section 6.02(b)(ix), at a rate per annum that is two percentage points above the average daily Prime Rate of interest for the period during which the present interest is calculated;
- (xii) the Business Taxes and other Taxes, if any, payable by the Landlord or the Owners with respect to the Common Elements, and Capital Tax as defined in Section 6.02(d); and
- (xiii) an administration fee of fifteen percent (15%) of the costs referred to above (but excluding those referred to in Section 6.02(b)(xi) and (xii)) to cover head office and regional office support services. This administration fee is in addition to and is not a duplication of the expenses, salaries and benefits referred to in Section 6.02(b)(v) above.

**It is understood and agreed that the costs and expenses set out in Section 6.02(b) shall not include any cost and expense incurred by the Landlord:**

- (1) in respect to principal and interest on any mortgage of the Landlord with respect to the Shopping Centre;
- (2) of a capital nature in accordance with sound shopping centre accounting practices in connection with the initial construction of any expansion of the Shopping Centre (provided, however, that the provisions of this subsection shall in no way exclude or release the Tenant from paying any costs or expenses in connection with such expansion (upon completion thereof) as set out in Section 6.02 hereof);
- (3) for advertising costs and brokerage commissions paid by the Landlord in connection with the leasing of space in the Shopping Centre;
- (4) for interest and penalties paid by the Landlord by reason of the Landlord's late payment of any amount required to be paid by the Landlord hereunder;
- (5) in performing Landlord's Work in connection with the original construction of the Shopping Centre and the Premises as set out in Schedule "C";



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- (6) for fines and penalties paid by the Landlord resulting from the violation by the Landlord of any applicable law and the Landlord's non-compliance with or violation of such laws;
  - (7) for which the Tenant or any other party compensates the Landlord such that no duplication of payment shall occur; and
  - (8) to prepare other premises in the Shopping Centre for leasing including expenses incurred in respect of installation or removal of any tenant's improvements.
- (c) From the total of the costs referred to in Sections 6.02(b)(i) to (xiii) (inclusive) there is deducted:
- (i) net recoveries that reduce the expenses incurred by the Landlord in operating and maintaining the Shopping Centre and the Common Elements, which are received by the Landlord from tenants as a result of any act, omission, default or negligence of tenants or as the result of breaches by tenants of the provisions in their leases (but not recoveries from tenants under clauses similar to this Section 6.02);
  - (ii) net proceeds from insurance policies taken out by the Landlord, to the extent that the proceeds relate to the costs and expenses incurred in the maintenance and operation of the Shopping Centre and the Common Elements; (if the Landlord defaults under Section 10.05, it will deduct an amount equal to the net proceeds that the Landlord would have been entitled to had it not defaulted under that Section);
  - (iii) net recoveries from charges, if any, for the use of the parking facilities of the Shopping Centre, but only to the extent of the total costs of maintaining and operating the parking facilities;
  - (iv) contributions, if any, to the total cost of maintaining and operating the Shopping Centre and the Common Elements made by tenants or occupants of space that is excluded from the Weighted GLA of the Shopping Centre; and
  - (v) amounts contributed by Food Court Tenants which are incurred or allocated by the Landlord exclusively for the maintenance and operation of the Food Court (excluding those costs and expenses which would have been incurred in any case, had the Food Court been one of the Common Elements instead of a Food Court) to the extent, if any, those costs are included under Section 6.02.
- (d) Capital Tax is an amount determined by multiplying each of the "Applicable Rates" by the "Shopping Centre Capital" and totalling the products. "Shopping Centre Capital" is the amount of capital which the Landlord determines, without duplication, is invested from time to time by the Landlord, the Owners, or all of them, in doing all or any of the following: acquiring, developing, expanding, redeveloping and improving the Shopping Centre. Shopping Centre Capital will not be increased by any financing or refinancing except to the extent that the proceeds are invested directly as Shopping Centre Capital. An "Applicable Rate" is the capital tax rate specified from time to time under any statute of Canada and any statute of the Province which imposes a tax in respect of the capital of corporations. Each Applicable Rate will be considered to be the rate that would apply if none of the Landlord or the Owners employed capital outside of the Province.

**Section 6.03 Payment of the Tenant's Proportionate Share**

- (a) The Tenant will pay the amounts payable under Section 6.02 according to estimates or revised estimates made by the Landlord from time to time in respect of periods determined by the Landlord. The Tenant's payments will be made in monthly instalments in advance for the periods in respect of which the estimates are made. Within a reasonable time after the end of each Rental Year the Landlord will deliver to the Tenant a report certified by the Landlord's auditors (an "Auditor's Report") of the amounts referred to in Section 6.02(b) together with a statement (a "Statement") of the Tenant's Proportionate Share of those amounts. If the Tenant has paid more than a Statement specifies, the excess will be refunded within **ninety (90) days** ~~a reasonable time~~ after delivery of the Statement (unless the Tenant is then in default under any term or condition of this Lease). If the Tenant has paid less than a Statement specifies, the Tenant will pay the deficiency with the next monthly payment of Minimum Rent.
- (b) For the last Rental Year the Landlord may elect to either (i) deliver to the Tenant, within a reasonable time after the last Rental Year, a report of the amounts referred to in Section 6.02 (which report, although it may involve estimates and may be unaudited, will be considered final), together with a Statement or (ii) deliver to the Tenant, within a reasonable time after the date when the last Rental Year would have ended if the Term had not expired or this Lease had not terminated, an Auditor's Report, together with a Statement. The Tenant will pay any deficiency to the Landlord within ten (10) days after the Landlord delivers the Statement, or the Landlord will pay to the Tenant any excess that the Tenant is entitled to, which payment will be made within **ninety (90) days** ~~a reasonable time~~ after the Landlord delivers the Statement, (unless the Tenant is then in default under any term or condition of this Lease, or the Tenant owes money to the Landlord in respect of its obligations under this Lease).
- (c) If a Rental Year is less than twelve (12) months, the Tenant's Proportionate Share under Section 6.02 will be prorated on a per diem basis based on three hundred and sixty-five (365) days.



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## ARTICLE VII - UTILITIES AND HEATING, VENTILATING AND AIR-CONDITIONING

### Section 7.01 Charges for Utilities

(a) The Tenant will pay to the Landlord an amount (the "Charge") which is the total, without duplication, of: (i) the costs incurred by the Landlord for water, electricity, fuel, power, telephone and other utilities (the "Utilities") used in or for the Premises or allocated to them by the Landlord including any Utilities consumed as a result of the installation of any re-heat coil or additional heating system in the Premises; (ii) charges imposed in place of or in addition to Utilities as determined by the Landlord; (iii) the Landlord's costs of determining the Charge, inspecting, verifying, maintaining and repairing meters and metering systems and any professional, engineering and consulting fees in connection with the supply of Utilities; and (iv) an administration fee of fifteen percent (15%) of the total referred to above. No administration fee is payable for amounts billed directly to the Tenant by a supplier of a Utility and paid by the Tenant directly to the supplier.

(b) If the Landlord supplies Utilities to the Premises, (i) the Tenant will pay the Landlord for them on demand but at no profit to the Landlord (save and except that the Landlord shall be entitled to recover the administration fee referred to in Section 7.01(a) over and above the rates it charges the Tenant); (ii) the Tenant will pay the Charge to the Landlord based on estimates of the Landlord but subject to adjustment within a reasonable time after the period for which the estimate has been made; (iii) the Tenant will, if requested by the Landlord, install at its own expense, at a location designated by the Landlord, a separate check meter indicating demand and consumption for Utilities in the Premises, or where a base building metering system has been installed in the Shopping Centre, the Landlord will provide, at the Tenant's expense, all necessary components and programming to connect the Premises to the Landlord's metering system; and (iv) the Landlord is not liable for interruption or cessation of, or failure in the supply of Utilities, services or systems in, to or serving the Shopping Centre or the Premises, whether they are supplied by the Landlord or others, and whether or not the interruption or cessation is caused by the Landlord's negligence.

(c) The Landlord will determine the Charge by allocating the Utilities for the Shopping Centre among the Shopping Centre's components including the Common Elements, Rentable Premises and Storage Areas, acting on the advice of a qualified engineer using as a basis, but not limited to (i) check meters and/or metering systems, (ii) the relevant rates of demand and consumption of Utilities in the Common Elements, Rentable Premises and Storage Areas, and (iii) the connected loads of the areas that make up the Common Elements, Rentable Premises and Storage Areas for which there are no check meters.

### Section 7.02 Heating, Ventilating and Air-Conditioning

(a) The Tenant shall be entitled to regulate those parts of the heating, ventilating and air-conditioning facilities within the Premises (including the distribution system for the Premises) that are not part of the Common Elements so as to maintain reasonable conditions of temperature and humidity within the Premises and to avoid direct or indirect appropriation of heating, ventilating or air-conditioning from the Common Elements, and will comply with reasonable directions of the Landlord. Any variable air volume valve, thermostat or fan coil unit in the Premises and any items (including but not limited to, booster units and make-up air units) installed by or on behalf of the Tenant that are located outside the Premises may, at the Landlord's option, be maintained solely by the Landlord at the expense of the Tenant, and the Tenant will pay to the Landlord an administration fee of fifteen percent (15%) of that expense.

(b) The cost of maintaining, repairing and replacing exhaust systems or make-up air systems that serve more than one tenant will be allocated by the Landlord amongst the tenants using them in accordance with the recommendations of the Landlord's engineer.

(c) The Tenant will pay, monthly in advance, the charges under Schedule "D".

## ARTICLE VIII - MARKETING FUND

### Section 8.01 Marketing Fund

(a) The Tenant will pay to the Landlord in each Rental Year, a contribution towards the establishment and maintenance of a fund for the promotion and marketing of the Shopping Centre (the "Marketing Fund") in the amount set out in Section 1.01(i). The Marketing Fund payment will be increased on a cumulative basis by three percent (3%) per annum at the start of each Rental Year after the first Rental Year. The Marketing Fund payment will be made in monthly instalments in advance, on the first day of each calendar month.

(b) The Marketing Fund will be used by the Landlord for the purpose of enhancing the customer experience in the Shopping Centre, including but not limited to market and consumer research, communication of marketing programs by way of print, digital or other forms of media, special events, community relations initiatives and other forms of promotion and marketing.

## ARTICLE IX - USE OF THE PREMISES

### Section 9.01 Use of the Premises and Trade Name

(a) The Tenant will not use or permit any part of the Premises to be used for any purpose other than the use set out in Section 1.01(d).





(b) The Tenant will use only the trade name set out in Section 1.01(c) for its business in the Shopping Centre and will not change or permit the change of that trade name without the prior written consent of the Landlord, which consent shall not be unreasonably withheld.

(c) The Tenant agrees that it will not disturb the normal enjoyment of the other tenants in the Shopping Centre and shall take all necessary steps to ensure that its employees, servants, agents, mandataries, contractors, invitees or any Person for whom the Tenant is responsible at law and any Person that the Tenant allows or tolerates to use or to have access to the Shopping Centre or the Premises shall act in a way that does not disturb the normal enjoyment of the other tenants in the Shopping Centre. The Tenant shall, with respect to the foregoing agreement, indemnify and save the Released Persons harmless from all loss, claims, actions, damages, liability and expenses which arise in connection from any breach of the foregoing agreement.

#### **Section 9.02 Prohibited Activities**

(a) The Tenant will not use or permit to be used any part of the Premises for, nor shall it engage in any media advertising with respect to the Premises of the sale of goods not in keeping with a reputable and first class shopping centre, second hand goods or armed services surplus articles, insurance salvage stock, fire sale stock or bankruptcy stock; the sale of firecrackers or fireworks; the installation of an automated teller machine; an auction, bulk sale (other than a bulk sale made to an assignee or sub-tenant under a permitted assignment or subletting), liquidation sale, "going out of business" or bankruptcy sale, or warehouse sale; a sale of fixtures; a sale or business conduct which, because of the merchandising methods or quality of operation likely to be used, would tend to lower the character of the Shopping Centre; any practice of unethical or deceptive advertising or selling procedures; or catalogue sales, except of merchandise that the Tenant is permitted to sell "over the counter" in or at the Premises under Section 1.01(d).

(b) The Tenant will not use, permit to be used, or engage in any promotion, sale or display bearing any trademarks or trade or business names or insignia in existence from time to time associated with the Shopping Centre or owned or authorized for use by the Landlord, the Owners, the manager of the Shopping Centre and their respective agents, mandataries, employees and representatives, without the Landlord's prior written consent, which consent may be unreasonably or arbitrarily withheld.

#### **Section 9.03 Conduct of Business**

The Tenant will, throughout the Term, conduct continuously and actively, in a reputable and first class manner, the business set out in Section 1.01(d), in the whole of the Premises. In the conduct of the Tenant's business, the Tenant will:

(a) conduct its business in the Premises during the hours and on the days that the Landlord requires or permits from time to time and at no other time but the Tenant is not required to carry on business when prohibited by a governmental law or by-law regulating the hours of business;

(b) ensure that all furniture, fixtures and equipment on or installed in the Premises are of first-class quality and keep them in good condition; maintain an adequate staff and stocks of sufficient size, character and quality to produce the maximum volume of sales from the Premises consistent with good business practices; stock in the Premises only the merchandise that the Tenant intends to offer for retail sale from the Premises; not use any part of the Premises for office, clerical or other non-selling purposes except minor parts reasonably required for the Tenant's business in the Premises; and, at all times, keep displays of merchandise in the display windows and keep the display windows and signs in the Premises well lighted during the hours that the Landlord designates from time to time;

(c) participate in a ticket validation system, if one is established by the Landlord for the parking facilities of the Shopping Centre, and pay on demand, the parking charges attributable to it under that system;

(d) use the name and insignia that the Landlord requires in connection with the Shopping Centre in the advertising of the Tenant's business in the Premises; claim no rights in those names, marks or insignia; promptly abandon or assign to the Landlord any such rights that it acquires by operation of law, and promptly execute the documents that the Landlord requests to give effect to this provision;

(e) indemnify the Released Persons in respect of any loss, cost or expense which any Released Person incurs in respect of any claim, action, or liability enforced or sought to be enforced against any Released Person arising in connection with any strike, lock-out, or labour disruption or in connection with any union organizational or certification related proceedings involving the employees of the Tenant, any sub-tenant, or any licensee or occupant of the Premises. The Tenant will, in addition, within ten (10) days of its receipt of an invoice particularizing the Landlord's costs and expenses for extra cleaning, security, maintenance, or legal costs associated with activities of the type described above, pay to the Landlord the full amount of that invoice together with an administration fee of fifteen percent (15%) of the amount invoiced in respect of those costs and expenses; and

(f) not place or maintain any merchandise or other articles in any vestibule or entry of the Premises, on the adjacent foot walks or elsewhere on the exterior of the Premises or the Common Elements; and

(g) upon obtaining the Landlord's prior written consent, the Tenant may close the Premises for major renovations of the Premises provided that the nature of renovations and the period of time for such renovations are agreed upon in advance by the Landlord and such renovations will



be conducted in accordance with Schedule "C" of this Lease. In all cases, all Rent shall continue to be payable by the Tenant.

#### Section 9.04 Compliance with and Observance of Law

(a) The Tenant will comply with the statutes, regulations, ordinances or other governmental requirements relating to its ability to enter into and comply with this Lease.

(b) The Tenant will also promptly comply with Applicable Laws which pertain to the Premises, the Tenant's use of the Premises, the conduct of business in the Premises, or the doing of work on or in the Premises. The Tenant is not required, however, to remedy work done by the Landlord in contravention of or without the permits required by law.

#### Section 9.05 Radius Clause

~~The Tenant will not engage in nor will it permit any Person under its control or affiliated with it, whether as partner, shareholder, lender, employee or otherwise, to engage, directly or indirectly, in a business operating under the same name as the Tenant's business in the Premises, or under a similar name, within any building or building complex, any part of which is within a radius set out in Section 1.04(f) from any point on the perimeter of the Shopping Centre. This restriction does not apply, however, to any business or store of the Tenant that is in operation under the same name as the Tenant's business in the Premises, or under a similar name, within that radius at the Commencement Date so long as the size of that business or store is not increased. If the Tenant defaults under this provision, the Landlord may require that gross revenue (calculated in the same manner as Gross Revenue under this Lease) from the business, the conduct of which contravenes this provision, be included in Gross Revenue under this Lease, and the Landlord will have the same rights of inspection and audit with respect to the gross revenue of that other business as it has with respect to Gross Revenue under Article IV.~~

#### Section 9.06 Energy Conservation

The Tenant will comply with reasonable requests of the Landlord for conservation of energy.

#### Section 9.07 Pest Control

In order to maintain satisfactory and uniform pest control throughout the Shopping Centre, the Tenant shall engage for the Premises at its sole cost and expense such pest extermination contractor as the Landlord directs and at such intervals as the Landlord requires. The Tenant shall ensure that its pest extermination contractor complies with all Applicable Laws governing the use of pesticides. If the Landlord, in its sole discretion, determines that the Tenant's pest extermination contractor is not performing its duties effectively, and in compliance with all Applicable Laws, then the Landlord may, without notice, engage its own pest extermination contractor on the Tenant's behalf without incurring any liability in respect thereof and the Tenant will pay to the Landlord, immediately upon demand, the cost of the Landlord's pest extermination contractor together with an administration fee of fifteen percent (15%) of the total cost.

#### Section 9.08 Waste Disposal and Reduction

(a) If the Landlord provides garbage disposal facilities or collection services then the Tenant will use them only for the disposal of solid waste that is not a Hazardous Substance and can lawfully be transported to, and dumped at, the closest landfill site without surcharges or penalties. The Tenant will use the sewers only to dispose of liquid waste that is not a Hazardous Substance and may be lawfully discharged into the municipal sewer.

(b) Unless any Applicable Laws provide to the contrary, all waste that cannot be disposed of under subsection (a) above (including waste which is a Hazardous Substance) will be disposed of by the Tenant at its expense at least once every three (3) months (or more often if the Landlord requires it) using the Landlord's designated hauler or remover, or if there is none, using a properly licensed service. If Applicable Laws require the Tenant to keep waste at the Shopping Centre for more than three (3) months or the period required by the Landlord, then the Tenant shall store it at its sole expense in a manner and in a location specified by the Landlord and which complies with all Applicable Laws.

(c) The Tenant will comply with all Applicable Laws pertaining to waste reduction in connection with the Premises and the Tenant's conduct of business. Without limiting this requirement, the Tenant will (i) perform all waste audits and waste reduction work plans; (ii) implement all waste reduction work plans; and (iii) provide to the Landlord, within ten (10) days of the Landlord's request in each case, copies of all evidence that the Landlord requires concerning compliance. The Tenant will also do whatever else is reasonably requested by the Landlord in connection with any waste audits, waste reports, and waste reduction work plans that the Landlord prepares. To the extent responsibility in connection with any waste related matters is imposed by Applicable Laws so as to appear to overlap or duplicate responsibilities among the Landlord, the Management Company, the Tenant, or any other party, the Landlord may allocate responsibility to the Tenant in whole or in part by notice to the Tenant particularizing the responsibilities which the Tenant will assume.

#### Section 9.09 Compliance with Environmental Laws

The Tenant shall, at the Tenant's expense, comply, and cause any other person acting under its authority or control to comply with all Applicable Laws (including, but not limited to, obtaining any required permits or similar authorizations) pertaining to protection, conservation, utilization, impairment or degradation of the environment (which includes air, land, ground water and surface water) relating to the Premises or the use of the Premises by the Tenant or those acting under its authority or control. Without limiting the



generality of the foregoing, the Tenant shall, at the Tenant's expense, comply with all Applicable Laws regulating the manufacture, use, storage, transportation and disposal of Hazardous Substances and shall make, obtain and deliver all reports and studies required by governmental or quasi-governmental authorities having jurisdiction. **The Landlord shall comply, and cause any other person acting under its authority or control to comply with all Applicable Laws (including, but not limited to, obtaining any required permits or similar authorizations) pertaining to protection, conservation, utilization, impairment or degradation of the environment (which includes air, land, ground water and surface water) relating to the Shopping Centre or the use of the Shopping Centre by the Landlord or those acting under its authority or control. Without limiting the generality of the foregoing, the Landlord shall comply with all Applicable Laws regulating the manufacture, use, storage, transportation and disposal of Hazardous Substances and shall make, obtain and deliver all reports and studies required by governmental or quasi-governmental authorities having jurisdiction.**

#### **Section 9.10 Use of Hazardous Substances**

The Tenant shall not authorize, cause or permit any Hazardous Substance to be brought upon, kept or used in or about the Premises or the Shopping Centre nor use the Premises or permit them to be used to generate, manufacture or produce Hazardous Substances, unless such Hazardous Substance is reasonably necessary for the Tenant's permitted use of the Premises or is used by the Tenant in the normal course of its business as permitted under this Lease and unless the Hazardous Substance is used, kept, stored, generated, manufactured, produced or disposed of in a manner that complies with all Applicable Laws. The Tenant will take all proactive and preventative steps that may be imposed or recommended under any of the Applicable Laws or that a prudent tenant would take in order to minimize risk pertaining to Hazardous Substances.

#### **Section 9.11 Inspection**

(a) Without relieving the Tenant of any of its obligations under this Lease, the Tenant shall permit the Landlord, its officers, employees, consultants, authorized representatives, mandataries and agents to:

- (i) visit and inspect the Premises and the Tenant's operations;
- (ii) conduct tests and environmental assessments or appraisals;
- (iii) remove samples from the Premises;
- (iv) examine and make abstracts from and copies of any documents or records relating to the Premises;
- (v) interview the Tenant's employees; and
- (vi) make reasonable enquiries from time to time of any government or governmental agency in order to determine the Tenant's compliance with Applicable Laws pertaining to Hazardous Substances at the Premises and the Tenant agrees that it will provide to the Landlord such written authorization as the Landlord may reasonably require in order to facilitate the obtaining of such information,

all at such reasonable times and intervals as the Landlord may desire.

(b) If, pursuant to any of the above actions, the Landlord determines that the Tenant is in contravention of Section 9.09 or 9.10, the Tenant shall, immediately after being notified by the Landlord of such contravention, comply with all Applicable Laws regulating any such Hazardous Substances and reimburse the Landlord for all costs incurred pursuant to subsection 9.11(a) above.

#### **Section 9.12 Removal of Hazardous Substances**

(a) If (i) any governmental authority having jurisdiction shall order or require any Released Person to submit a rehabilitation plan or to perform a characterization study with respect to, or to clean-up, remove, treat, rehabilitate, remedy any Hazardous Substances held, released, spilled, abandoned or placed upon the Premises or the Shopping Centre by or on behalf of the Tenant or released into the environment in the course of business being carried on from the Premises or as a result of the use or occupancy of the Premises and the land thereunder by or on behalf of the Tenant, or (ii) any harmful moulds or other harmful airborne substances are generated within the Premises as a result of the use or occupancy of the Premises by the Tenant, its contractors, sub-contractors or any Person the Tenant allows or tolerates to have access to the Premises or the Shopping Centre and the Landlord requires the removal of such harmful moulds or other harmful airborne substances, then the Tenant shall, at its own expense, prepare all necessary studies, plans and proposals and submit the same for approval, shall provide all bonds and other security required by governmental authorities having jurisdiction, and shall carry out the work required in accordance with all Applicable Laws and other governmental authority's requirements and keep the Landlord fully informed, and shall provide to the Landlord full information with respect to proposed plans and comply with the Landlord's reasonable requirements with respect to such plans. The Tenant further agrees that if the Shopping Centre or any Released Person is placed in jeopardy by the requirement for any such plan, study or work, or if the Tenant fails to promptly complete and furnish such plan or study or to carry out the work required, or if in the Landlord's reasonable opinion the Tenant is not competent to do so, the Landlord may itself (or through any other Person) undertake such plan, study or work or any part thereof on not less than one (1) day's prior written notice to the Tenant and the Tenant shall pay to the Landlord all costs incurred by the Landlord in so doing, together with an administration fee of fifteen percent (15%) of such costs.



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(b) In the event of any release or spill of any Hazardous Substance at or from the Premises, whether under the circumstances referred to in Section 9.12(a) above, or otherwise, the Tenant shall, upon becoming aware of such release or spill, immediately notify the Landlord, such notice to include all information known to the Tenant regarding such release or spill. In addition, where the Tenant, from monitoring of its inventories, has reason to suspect a potential release or spill, the Tenant will authorize the Landlord to conduct an inspection of the land at the Tenant's expense. Where a written report is obtained relative to such inspections, the Tenant agrees to provide a copy of same to the Landlord within seven (7) days after receipt. The Tenant shall, upon becoming aware of the existence of any harmful moulds or harmful airborne substances within the Premises or which are or have been generated as a result of the use or occupancy of the Premises by the Tenant, its contractors, sub-contractors or any Person the Tenant allows or tolerates to have access to the Premises or the Shopping Centre, immediately notify the Landlord, such notice to include all information known to the Tenant regarding such harmful mould or harmful airborne substance.

(c) The Tenant shall, prior to the expiry or termination of this Lease or any renewal thereof, or upon the Tenant vacating a portion of the Premises, at the Tenant's sole expense and in accordance with Applicable Laws, promptly remove all Hazardous Substances and any harmful moulds or harmful airborne substances generated by the Tenant or by the use or occupancy of the Premises by the Tenant, its contractors, sub-contractors or any Person the Tenant allows or tolerates to have access to the Premises or the Shopping Centre or brought onto the Premises or part thereof vacated by the Tenant, its contractors, sub-contractors or any Person the Tenant allows or tolerates to have access to the Premises or the Shopping Centre. For greater certainty, the foregoing obligation of the Tenant shall include, without limitation, the responsibility to remove any Hazardous Substances, harmful moulds or other harmful airborne substances which have as a result of the operations of the Tenant, its contractors, sub-contractors or any Person the Tenant allows or tolerates to have access to the Premises or the Shopping Centre, become affixed to, permeated within or accumulated on or within the Shopping Centre. The Tenant shall obtain and provide to the Landlord a copy of the Tenant's environmental consultant's close-out report or reports and characterization studies with respect to such removal of Hazardous Substances and harmful moulds and other harmful airborne substances.

(d) Should a notice of contamination be published against the Shopping Centre or any part thereof, with respect to or on account of any Hazardous Substance contemplated in this Section 9.12 or of any contamination released, generated or coming from, in any manner whatsoever, the Premises or located therein, the Tenant must publish with diligence (and no later than on the date the Tenant is required to have removed all and any Hazardous Substances pursuant to the provisions of Section 9.12(c)), at its cost, a notice of decontamination, priorly approved in writing by the Landlord, against the Shopping Centre or any part thereof, with respect to such Hazardous Substances or contamination and remit to the Landlord all characterization studies supporting such notice of decontamination.

#### **Section 9.13 Ownership of Hazardous Substances**

If the Tenant, its contractors, sub-contractors or any Person the Tenant allows or tolerates to have access to the Premises or the Shopping Centre create or bring to the Shopping Centre or the Premises any Hazardous Substance or if the Tenant shall cause there to be any Hazardous Substance at the Shopping Centre or the Premises, then notwithstanding any rule of law to the contrary or anything to the contrary contained in this Lease, such Hazardous Substance shall be and remain the sole and exclusive property of the Tenant and shall not become the property of the Landlord notwithstanding the degree of affixation to the Premises or the Shopping Centre of the Hazardous Substance or the goods containing the Hazardous Substance, and notwithstanding the expiry or earlier termination of this Lease.

#### **Section 9.14 Environmental Indemnification**

The Tenant shall indemnify and hold the Released Persons harmless at all times from and against any and all claims, losses, damages, penalties, fines, costs, fees and expenses (including legal counsel's and consultant's fees and expenses) resulting from (a) any breach of or non-compliance with the provisions of Section 9.08 through 9.13 by the Tenant, (b) any legal or administrative action commenced by, or claim made or order or environmental notice from, any third party, including, without limitation, any governmental authority, to or against any Released Persons or the Shopping Centre, in whole or in part, and pursuant to or under any Applicable Laws or concerning a release or alleged release of Hazardous Substances or the presence of Hazardous Substances at the Shopping Centre, and related to or as a result of the operations of the Tenant, its contractors, sub-contractors or any Person the Tenant allows or tolerates to have access to the Premises or the Shopping Centre, and (c) any decontamination, rehabilitation, treatment and remediation, including all analysis and tests, carried by any of the Released Persons, whether such Released Person or any other Released Person was required or not under any Applicable Laws, order, judgment, lawsuit or other recourse, to carry such decontamination, rehabilitation, treatment or remediation, with respect to or on account of the existence in the Shopping Centre of any Hazardous Substance brought by or relating to or resulting from the use or occupancy of the Tenant, its contractors, sub-contractors or any Person the Tenant allows or tolerates to have access to the Premises or the Shopping Centre. The indemnification provided for in this Section 9.14 shall survive the termination or expiry of this Lease or any renewal thereof.





## ARTICLE X - INSURANCE AND INDEMNITY

### Section 10.01 Tenant's Insurance

(a) The Tenant will maintain the insurance described below throughout the Term and any period when it is in possession of the Premises, and each policy of that insurance will name, as insureds, the Tenant, the Landlord (both in its capacity as Landlord and hypothecary creditor), the Owners, the Emphyteutic Lessors (if any) and the Mortgagee as their respective interests may appear. The insurance which the Tenant is required to maintain is as follows:

- (i) all risks (including flood and earthquake) property insurance in an amount equal to one hundred percent (100%) of the full replacement cost, insuring (1) all property owned by the Tenant, or for which the Tenant is legally liable, or installed by or on behalf of the Tenant, and located within the Shopping Centre including, but not limited to, fittings, installations, alterations, additions, partitions, and all other leasehold improvements, and (2) the Tenant's inventory, furniture and movable equipment;
- (ii) **if applicable**, broad form boiler and machinery insurance on a blanket repair and replacement basis with limits for each accident in an amount of at least the replacement cost of all leasehold improvements and of all boilers, pressure vessels, air-conditioning equipment and miscellaneous electrical apparatus owned or operated by the Tenant or by others (except for the Landlord) on behalf of the Tenant in the Premises, or relating to, or serving the Premises;
- (iii) business interruption insurance in an amount that will reimburse the Tenant for direct or indirect loss of earnings attributable to all perils insured against under Sections 10.01(a)(i) and 10.01(a)(ii), and other perils commonly insured against by prudent tenants, or attributable to prevention of access to the Premises or the Shopping Centre as a result of those perils;
- (iv) public liability and property damage insurance including personal injury liability, contractual liability, non-owned automobile liability, employers liability, and owners' and contractors' protective insurance coverage, with respect to the Premises and the Tenant's use of the Common Elements, with coverage including the activities and operations conducted by the Tenant and any other Person on the Premises and by the Tenant and any other Person performing work on behalf of the Tenant and those for whom the Tenant is in law responsible, in any other part of the Shopping Centre. These policies will (1) be written on a comprehensive basis with inclusive limits of at least Five Million Dollars (\$5,000,000.00) per occurrence for bodily injury for any one or more Persons, or property damage, (but the Landlord, acting reasonably, or the Mortgagee, may require higher limits from time to time), and (2) contain a severability of interests clause and cross liability clauses;
- (v) tenant's legal liability insurance for the full replacement cost of the Premises, including loss of their use;
- (vi) standard owners form automobile insurance providing third party liability insurance with One Million Dollars (\$1,000,000.00) inclusive limits, and accident benefits insurance, covering all licensed vehicles owned or operated by or on behalf of the Tenant; and
- (vii) any other form of insurance and with whatever higher limits the Tenant, the Landlord, acting reasonably, or the Mortgagee requires from time to time, in form, in amounts and for risks against which a prudent tenant would insure, **so long as such form of insurance is similar to the insurance taken out by similar tenants in similar shopping centres in the Province at the time.**

(b) The policies specified under Sections 10.01(a)(i), 10.01(a)(ii) and 10.01(a)(iii) will contain the Mortgagee's standard mortgage clause and may have reasonable deductibles of up to three percent (3%) of the amount insured. If there is a dispute as to the amount of the full replacement cost, the Landlord will determine it.

(c) The policies specified under Sections 10.01(a)(i), 10.01(a)(ii) and 10.01(a)(iii) will contain a waiver of any subrogation rights which the Tenant's insurers may have against all and any of the Landlord, the Owners, the Emphyteutic Lessors (if any), the Mortgagee, the Management Company and those for whom all and any of them are or is in law responsible, whether or not the damage is caused by their act, omission or negligence.

(d) All policies will (i) be taken out with insurers acceptable to the Landlord; (ii) be in a form satisfactory to the Landlord; (iii) be non-contributing with, and will apply only as primary and not excess to any other insurance available to all and any of the Landlord, the Owners, the Emphyteutic Lessors (if any) and the Mortgagee; (iv) not be invalidated with respect to the interests of all and any of the Landlord, the Owners, the Emphyteutic Lessors (if any) and the Mortgagee by reason of any breach or violation of warranties, representations, declarations or conditions contained in the policies; and (v) contain an undertaking by the insurers to notify the Landlord, the Owners, the Emphyteutic Lessors (if any) and the Mortgagee in writing not less than thirty (30) days before any material change, cancellation, or termination.

(e) The Tenant will deliver certificates of insurance on the Landlord's standard form, duly executed by the Tenant's insurers evidencing that the required insurance is in force, or, if required by the Landlord



or the Mortgagee, the Tenant will deliver certified copies of each insurance policy as soon as possible after the placing of the insurance. No review or approval of any insurance certificate or insurance policy by the Landlord derogates from or diminishes the Landlord's rights under this Lease.

**Section 10.02 Increase in Insurance Premiums**

The Tenant will comply promptly with the loss prevention recommendations of the Landlord's insurer, pertaining to the Premises or the Shopping Centre. If the occupancy of the Premises, the conduct of business in the Premises, or anything done or omitted by the Tenant results in an increase in premiums for the insurance carried by the Landlord with respect to the Shopping Centre, the Tenant will pay the increase to the Landlord immediately on demand. In determining whether the Tenant is responsible for increased premiums and the amount for which the Tenant is responsible, a schedule issued by the organization that computes the insurance rate on the Shopping Centre showing the components of the rate will be conclusive evidence of the items that make up the rate.

**Section 10.03 Cancellation of Insurance**

The Tenant will not do or permit anything to be done that results in the cancellation or threatened cancellation or the reduction or threatened reduction of coverage under any insurance policy on the Shopping Centre or any part of it.

**Section 10.04 Loss or Damage**

None of the Released Persons is liable for damage to property of the Tenant or of others located on the Premises or elsewhere, nor will they be responsible for disturbance or enjoyment of the Premises or for loss of or damage to, or loss of use of property of the Tenant or others from any cause, whether or not it results from the negligence or misconduct of a Released Person. Without limiting the general intent of the previous sentence, no Released Person is liable for damage to property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain, flood, snow or leaks from or onto any part of the Premises or the Shopping Centre or from pipes, appliances, plumbing works, roof or subsurface of any floor or ceiling, or from the street or any other place, or by dampness, the existence of any Hazardous Substances in any part of the Shopping Centre or resulting by any other cause and no Released Person is liable for damage caused by other tenants or Persons in the Shopping Centre or by occupants of property adjacent to the Shopping Centre, or the public, or caused by construction or by any private, public, or quasi-public work.

**Section 10.05 Landlord's Insurance**

The Landlord will maintain, throughout the Term, in those reasonable amounts, and with those reasonable deductions that a prudent owner of a shopping centre similar to the Shopping Centre would maintain, having regard to size, age and location, (a) all risks insurance on the Shopping Centre (excluding the foundations and excavations) and the machinery, boilers and equipment contained in it and owned by the Landlord or the Owners (except property that the Tenant and other tenants are required to insure); (b) public liability and property damage insurance with respect to the Landlord's operations in the Shopping Centre; and (c) whatever other forms of insurance the Landlord, the Owners, or the Mortgagee reasonably consider advisable. This Section does not relieve the Tenant from liability arising from or contributed to by its negligence or its misconduct; no insurable interest is conferred on the Tenant under any policies of insurance carried by the Landlord; and the Tenant has no right to receive proceeds of any of those policies.

**Section 10.06 Indemnification of the Released Persons**

Despite anything else in this Lease, the Tenant will indemnify the Released Persons and save them harmless from all loss (including loss of Rent payable by the Tenant under this Lease), claims, actions, damages, liability and expenses in connection with loss of life, personal injury, damage to property or any other loss or injury arising from this Lease, or any occurrence in, on, or at the Premises, or from the occupancy or use by the Tenant of the Premises, or any part of them, or occasioned wholly or in part by an act or omission of the Tenant or by anyone permitted to be on the Premises by the Tenant. However, the Tenant is not required to indemnify the Released Persons or save them harmless from loss, claims, actions, damages, liability or expenses when they arise directly from the negligence of the Released Person.

**Section 10.07 Release by the Landlord**

Despite any other section or clause of this Lease, (except the last sentence of this Section), the Tenant is not responsible for any part, in excess of Five Million Dollars (\$5,000,000.00), or the amount of liability insurance coverage available to the Tenant, whichever is the greater, of any loss or damage to property of the Landlord that is located in, or is part of the Shopping Centre, caused by any of the perils against which the Landlord is required to insure under Section 10.05. This release applies whether or not the loss or damage arises from the negligence of the Tenant. This release does not apply, however, to damage arising from the wilful or grossly negligent acts of the Tenant.

**ARTICLE XI - MAINTENANCE, REPAIRS AND ALTERATIONS**

**Section 11.01 Maintenance and Repairs by the Tenant**

Subject to Article XII, the Tenant will use the Premises with prudence and diligence and will keep the Premises and all improvements in or on them in first class condition. Notwithstanding the provisions of Article 1864 of the Civil Code of Quebec or similar legislation, this obligation includes, but is not limited to, repainting and redecorating at reasonable intervals, making repairs and replacements to plate glass, storefronts, signs (interior and exterior), mouldings, doors, hardware, partitions, walls, fixtures, lighting



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and plumbing fixtures, wiring, piping, ceilings, floors and thresholds in the Premises and maintaining, repairing and replacing all operating equipment in the Premises unless it forms part of the Common Elements. At the expiry or termination of this Lease, the Tenant will, (a) leave the Premises in the same condition as it was required to keep them in during the Term, (b) deliver all keys for the Premises to the Landlord at the place then fixed for the payment of Rent, (c) give to the Landlord the combinations of any locks, safes, and vaults in the Premises, and (d) comply with Section 11.06(b). **The Tenant shall not be responsible for repairs resulting from any inherent structural defects in the Premises nor shall it be required to effect any structural repairs to the Premises, but it shall be responsible for the payment of its Proportionate Share of such latter costs pursuant to Section 6.02 of this Lease.**

The Tenant shall without delay notify the Landlord in writing of any damage to, defect in or malfunction or deterioration of the Premises or any part thereof including, without limitation, the water pipes, the sprinkler system, the heating, ventilating or air-conditioning system, the electrical system, or any other system located in or serving the Premises which is connected to the Shopping Centre's main physical systems, and of any leak, accident, defect, damage or deficiency in any part of the Premises or the Shopping Centre which comes to the attention of the Tenant, its employees or contractors, whether or not the maintenance or repair thereof is the responsibility of the Landlord.

#### **Section 11.02 Approval of the Tenant's Alterations**

(a) The Tenant will not make repairs, alterations, replacements, decorations or improvements to the Premises (individually and collectively, "Premises Work") without the Landlord's prior written approval, which approval will not be unreasonably withheld, if, (i) the Premises Work will equal or exceed the then current standard for the Shopping Centre; (ii) adequate plans and specifications are produced; (iii) the Tenant obtains the consents, permits and other governmental approvals that are required; and (iv) the Tenant provides to the Landlord reasonable assurances that it will comply with Section 11.02(b). In the performance of and contracting for any Premises Work, the Landlord and the Tenant acknowledge and agree that the Tenant is not and shall not be deemed to be an agent or mandatary of the Landlord.

(b) The Premises Work will be performed, (i) by competent workers whose labour union affiliations are compatible with others employed by the Landlord and its contractors, (ii) in a good and workmanlike manner, (iii) in accordance with the plans and specifications approved by the Landlord, and (iv) in accordance with the Landlord's reasonable requirements.

(c) The Landlord may require that any (1) maintenance to the Premises or Premises Work, or (2) improvements installed to benefit the Premises or maintenance and repairs to such improvements, be performed by the Landlord at the Tenant's cost if they affect (i) the structure of the Premises, (ii) the Common Elements, or (iii) any part of the Shopping Centre outside the Premises. On completion of the maintenance, Premises Work, or the installation of the improvements, the Tenant will pay to the Landlord, on demand, the Landlord's costs including, without limitation, architectural and engineering consultants' fees plus an administration fee of fifteen percent (15%) of the total costs.

(d) The Tenant must immediately obtain at the end of the Premises Work, one or more certificates from the Commission de la Santé et de la Sécurité du Travail certifying that the Persons who completed the Premises Work, as the case may be, have complied with all the requirements provided for by the Loi sur les accidents du travail et les maladies professionnelles and by the Loi sur la santé et la sécurité du travail and that such Persons are duly registered members and that they are in good standing at the date of the certificate(s). The Tenant will remit to the Landlord the certificate(s) upon receipt thereof.

#### **Section 11.03 Maintenance and Repairs by the Landlord**

Subject to Article XII, the Landlord will maintain and repair or cause to be maintained and repaired the Common Elements as would a prudent owner of a similar shopping centre, having regard to size, age and location but the cost (except for the cost of repairing or replacing inherent structural defects or weaknesses) will be included under Section 6.02. The obligations of the Landlord under this Section 11.03 are subject to the following exceptions: (a) any occurrence which is not covered by insurance which the Landlord is required to maintain under this Lease or the cost of repair or restoration which exceeds the proceeds of such insurance actually received by the Landlord; (b) Damage or Expropriation as set out in Article XII, in the circumstances where the Lease will terminate; and (c) damage or injury caused by or resulting from any negligence, fault, omission, want of skill, act or misconduct of the Tenant, its officers, agents, mandataries, servants, employees, contractors, invitees or licensees or Persons for whom the Tenant is responsible in law or over whom the Tenant may reasonably be expected to exercise control.

#### **Section 11.04 Repair Where the Tenant is at Fault**

If the Shopping Centre or any part of it requires repair, replacement or alteration, (a) because of the negligence, fault, omission, want of skill, act or misconduct of the Tenant or its officers, agents, mandataries, employees, contractors, invitees or licensees, (b) due to the requirements of governmental authorities relating to the Tenant's conduct of business, or (c) as a result of the Tenant stopping up or damaging the heating apparatus, water pipes, drainage pipes or other equipment or facilities or parts of the Shopping Centre, the cost of the repairs, replacements or alterations plus a sum equal to fifteen percent (15%) of the cost for the Landlord's overhead will be paid by the Tenant to the Landlord on demand.

#### **Section 11.05 Tenant Not to Overload**

The Tenant will not install equipment that overloads the capacity of a utility, electrical, or mechanical facility in the Premises and will not, (a) bring into the Premises any utility, electrical, or mechanical facility



or service of which the Landlord does not approve, or (b) bring upon the Premises anything that might damage them or overload the floors. If damage is caused to the Premises or to the Shopping Centre as a result of the installation of such equipment or contravention of the provisions of paragraphs (a) or (b) of this Section by the act, neglect, fault, want of skill, or misuse of or by the Tenant or its officers, agents, mandataries, servants, employees, contractors, invitees, licensees or Persons for whom the Tenant is responsible in law or over whom the Tenant may reasonably be expected to exercise control, or by any Person having business with the Tenant, the Tenant will repair the damage or, at the Landlord's option, pay to the Landlord on demand the cost of repairing the damage plus a sum equal to fifteen percent (15%) of the costs for the Landlord's overhead.

#### **Section 11.06 Removal and Restoration by the Tenant**

All Premises Work (as defined in Section 11.02(a)) (including any Tenant's Work) done by the Tenant, or by the Landlord or others for the Tenant (but not the Tenant's trade fixtures) is the property of the Landlord on affixation or installation, without compensation to the Tenant. The Tenant will not remove Premises Work (including any Tenant's Work) or trade fixtures from the Premises at any time except that:

(a) the Tenant may during the Term in the normal course of its business and on obtaining the prior written consent of the Landlord, remove its trade fixtures if they have become excess for the Tenant's purposes, or if the Tenant substitutes new and similar trade fixtures; and

(b) the Tenant will, at the expiry or earlier termination of this Lease, remove at its own expense its trade fixtures and the leasehold improvements that the Landlord requires be removed. The Tenant will at its own expense repair any damage caused to the Premises or the Shopping Centre by such removal. If the Tenant does not remove its trade fixtures on the expiry or earlier termination of this Lease, they will, at the Landlord's option, become the property of the Landlord. The Tenant's trade fixtures do not include, (i) heating, ventilating and air-conditioning systems, facilities, and equipment in or serving the Premises; (ii) floor covering that is affixed; (iii) light fixtures (**except display lighting not affixed to the Premises is deemed to be a trade fixture**); (iv) the storefront or doors; (v) internal stairways, escalators or elevators; or (vi) anything that would not normally be considered a trade fixture, all of which are considered as leasehold improvements.

#### **Section 11.07 Tenant to Discharge all Hypothecs**

The Tenant will promptly pay all charges incurred by it or on its behalf for any work, materials or services supplied or done in respect of the Premises so as to ensure that no hypothec or other encumbrance affects or is registered against (a) the Shopping Centre or any part of it, or (b) the Landlord's interest in the Shopping Centre or any part of it, or (c) the Tenant's interest in the Premises or the Tenant's assets located in the Premises by any Person claiming by, through, under, or against the Tenant or its employees, agents, mandataries, invitees, licensees, contractors or subcontractors. If the Tenant defaults under this section the Landlord may, in addition to its remedies contained in Article XVI of this Lease, discharge and radiate the hypothec or other encumbrance by paying the amount claimed to be due into court or directly to the creditor having registered a hypothec and the total amount so paid, as well as the costs and expenses (including legal costs) incurred as the result of the registration of the hypothec or other encumbrance, including the radiation and discharge of the hypothec or other encumbrance, will be paid by the Tenant to the Landlord on demand.

#### **Section 11.08 Signs and Advertising**

The Tenant will not display any sign, picture, notice, lettering or decoration (the "Sign") on the exterior of the Premises without the prior written approval of the Landlord. If the Landlord, acting reasonably, objects to a Sign in the interior of the Premises that is visible from the exterior, **the Landlord shall notify the Tenant of the basis for the objection and, if the Tenant does not alter or replace the sign, picture, advertisement, notice, lettering or decoration to the satisfaction of the Landlord, the Tenant will immediately remove it, failing which the Landlord may enter upon the Premises, without notice, and remove it on the Tenant's behalf, at the Tenant's expense, without incurring any liability in respect thereof.** The Tenant will erect and maintain one or more identification signs (which the Tenant will own) of a type or types in a location or locations specified in writing by the Landlord and in accordance with the Landlord's requirements for the Shopping Centre. The Landlord may require that any such Sign be illuminated. Any such Sign will remain the property of the Tenant, will be maintained by the Tenant at the Tenant's expense and the Tenant will pay for the electricity consumed by such Sign. At the expiration of the Term or earlier termination of this Lease, the Tenant will remove any such Sign at the Tenant's expense and will immediately repair all damage caused by any such removal.

### **ARTICLE XII - DAMAGE AND DESTRUCTION AND EXPROPRIATION**

#### **Section 12.01 Interpretation of Article XII**

In this Article:

(a) "Damage" means damage (including but not limited to, smoke and water damage and damage that amounts to destruction) that (i) for the purpose of Section 12.02 results from a peril against which the Landlord is required to insure under Section 10.05 or against which the Landlord otherwise insures, and (ii) for the purpose of Section 12.03 results from any cause, and "Damaged" has a corresponding meaning;

(b) "Expropriated" means expropriated by a governmental authority, or transferred, conveyed, or dedicated in contemplation of a threatened expropriation, and "Expropriation" has a corresponding meaning; and



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- (c) "Usable" means usable by the Tenant for the purpose contemplated by this Lease.

#### Section 12.02 Damage to the Premises

Subject to Section 12.03, if the Premises are Damaged, the Landlord will promptly repair or reconstruct the Premises to the extent of the Landlord's Work. If part or all of the Premises is not Usable because of the Damage, Minimum Rent (but not Additional Rent or Percentage Rent) will abate in the proportion that the GLA of that part of the Premises which is not Usable is to the GLA of the whole of the Premises, from the date of the Damage until the earlier of, (i) the date when the whole of the Premises is Usable again or, (ii) ~~sixty (60) thirty (30)~~ days after substantial completion of the Landlord's Work. When the Landlord notifies the Tenant that it has completed enough of the Landlord's Work to enable the Tenant to start the Tenant's Work, the Tenant will complete the Tenant's Work and reopen the whole of the Premises for business as soon as possible but in any case within thirty (30) days after the Landlord's notice. No capital allowance, inducement to lease, or other payment that was made to the Tenant at the time of, or in connection with the original construction of the Premises or the Tenant's improvements thereto will be payable by the Landlord to the Tenant. The computation of Percentage Rent will be based on the abated or reduced Minimum Rent for the period starting on the date of the Damage and ending when the whole of the Premises is open to the public for business. Notwithstanding the foregoing, the Tenant will not be entitled to any abatement of Minimum Rent if the Damage resulted from or was occasioned by any act, fault, misconduct, negligence, omission or want of skill of the Tenant, its officers, servants, employees, agents, mandataries, contractors, invitees or licensees, or by Persons for whom the Tenant is responsible at law or over whom the Tenant may be reasonably expected to exercise control.

#### Section 12.03 Damage to or Expropriation of the Shopping Centre

- (a) Despite anything else in this Lease, if:
- (i) more than thirty-five percent (35%) of the Weighted GLA of the Shopping Centre is Damaged or Expropriated, whether or not the Premises are Damaged or Expropriated;
  - (ii) more than thirty-five percent (35%) of the floor area of the Common Elements (excluding the area of parking facilities) or more than twenty percent (20%) of the area of the parking facilities is Damaged or Expropriated, whether or not the Premises are Damaged or Expropriated, or
  - (iii) a Rentable Premises with a GLA of more than thirty thousand (30,000) square feet is Damaged or Expropriated and is not Usable for more than one hundred and eighty (180) days for the purpose contemplated by its lease,

the Landlord may, by written notice to the Tenant within ninety (90) days after the Damage or Expropriation, terminate this Lease, effective thirty (30) days after the notice, and all Rent will abate as of the effective date of the termination. The Tenant will have no claim, action, right of action or any other demand against the Released Persons as a result of or arising from any such early termination of this Lease. **In exercising its termination right as set out herein, the Landlord agrees to act in a bona fide manner and not in a manner discriminating solely as against the Tenant.**

(b) If the Shopping Centre is Damaged or Expropriated to the extent described in Section 12.03(a) and the Landlord does not terminate this Lease, the Landlord will promptly rebuild or repair or cause to be rebuilt or repaired the Shopping Centre to the extent of the Landlord's obligations under the leases for Rentable Premises that are in force at the time but the Landlord may use plans and specifications and working drawings that are different in content from those used in the original construction of the Shopping Centre or any part of it and the rebuilt or repaired Shopping Centre may be different in configuration, size or design from the Shopping Centre before the Damage or Expropriation.

(c) The Landlord and the Tenant will co-operate with each other if there is an Expropriation of all or part of the Premises or the Shopping Centre so that each may receive the maximum award that it is entitled to at law. To the extent, however, that a part of the Shopping Centre, other than the Premises, is Expropriated, the full proceeds that are paid or awarded as a result will belong solely to the Landlord, and the Tenant will assign to the Landlord any rights that it may have or acquire in respect of the proceeds or awards and will execute the documents that the Landlord reasonably requires in order to give effect to this intention. Whether or not the Lease is terminated, the Tenant will have no claim, action, right of action or any other demand against the Released Persons as a result or arising from the Expropriation of all or any part of the Shopping Centre.

#### Section 12.04 Architect's Certificate

A certificate issued by the Architect will bind the parties concerning any of the matters that need to be determined under this Article.

### ARTICLE XIII - ASSIGNMENT

#### Section 13.01 Consent Required

(a) In this Article, "Transfer" means, (i) an assignment, sale, conveyance, sublease, disposition, or licensing of this Lease or the Premises, or any part of them, or any interest in this Lease (whether or not by operation of law) or in a partnership that is a Tenant under this Lease or an amalgamation of the Tenant with another corporation, (ii) a hypothec, charge or debenture (floating or otherwise) or other encumbrance of this Lease or the Premises or any part of them or of any interest in this Lease or of a



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partnership or partnership interest where the partnership is a Tenant under this Lease, (iii) a parting with or sharing of possession of all or part of the Premises, and (iv) a transfer or issue by sale, assignment, bequest, inheritance, operation of law or other disposition, or by subscription of all or part of the corporate shares of the Tenant or an "Affiliate" of the Tenant which results in a change in the effective voting control of the Tenant. "Transferor" and "Transferee" have meanings corresponding to the definition of "Transfer" set out above, (it being understood that for a Transfer described in Section 13.01(a)(iv) the Transferor is the Person that has effective voting control before the Transfer and the Transferee is the Person that has effective voting control after the Transfer).

(b) **Subject to the provisions of Section 13.01(e) and Section 13.01(f), the Tenant will not effect or permit a Transfer without the consent of the Landlord which consent will not be unreasonably withheld, except that despite any statute or law:**

- (i) the Landlord may unreasonably withhold its consent to a Transfer within twenty-four (24) months of the Commencement Date, and
- (ii) without limiting the grounds upon which a Transfer may be refused, in deciding whether to give its consent to a Transfer after that twenty-four (24) month period the parties agree that each of the following shall be a serious reason for the Landlord to refuse its consent and the Landlord may refuse to give its consent if:
  - (1) the likely effect of the Transfer on the merchandise mix of the Shopping Centre may be adverse;
  - (2) agreements, restrictions, or commitments given by the Landlord to other tenants in the Shopping Centre or to Mortgagees, the Owners, or other parties regardless of when given, prevent or inhibit the Landlord from giving its consent to the Transfer;
  - (3) the Transferee (A) does not have a history of successful business operation in the business to be conducted in the Premises, (B) does not have a good credit rating and a substantial net worth, or (C) is not able to finance the Transferee's acquisition of its interest in the Premises and its operations in the Premises without a material risk of defaulting under this Lease and in a manner that will enable the Transferee to carry on business successfully in the Premises throughout the Term;
  - (4) there is a history of defaults under commercial leases by the Transferee, or by companies or partnerships in which the Transferee or any of its directors, senior officers or principal shareholders was a director, senior officer, principal shareholder or partner at the time of the defaults;
  - (5) the length of time since the previous Transfer is less than twenty-four (24) months;
  - (6) the length of time remaining in the Term of this Lease is less than ~~twelve (12)~~ **eighteen (18)** complete months;
  - (7) the Transferee pays or gives money or other value (**other than that attributable to the Tenant's business goodwill and the Tenant's interest in the leasehold improvements**) that is reasonably attributable to the desirability of the location of the Premises or to leasehold improvements that are owned by the Landlord or for which the Landlord has paid in whole or in part;
  - (8) the Transfer is a hypothec, charge, debenture (floating or otherwise) or other encumbrance in respect of, this Lease or the Premises or any part of them. **However, the Tenant shall not be deemed to be in default under the terms of this Lease by reason of any hypothec, debenture, charge or encumbrance which may attach to the goods, trade fixtures, furnishings or equipment (hereinafter collectively called the "Equipment") of the Tenant located in the Premises (excluding leasehold improvements) so long as:**
    - A. any such hypothec, debenture, charge or encumbrance arises through any bona fide financing done by the Tenant in accordance with the Tenant's normal business practice or by reason of any sale and leaseback agreement entered into by the Tenant for financing purposes with respect to the Equipment (excluding leasehold improvements);
    - B. the Tenant is not in default under any such hypothec, debenture, charge or encumbrance, or any such sale or leaseback agreement; and
    - C. the foregoing shall in no way prejudice or affect the priority of the Landlord's rights or the obligations of the Tenant with respect to
      - I. such Equipment or stock-in-trade or leasehold improvements under all other terms of the Lease, and
      - II. all laws relating to bankruptcy.



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The form of all documentation under this Section 13.01(b)(ii)(8) shall be subject to the prior written approval of the Landlord, which approval will not be unreasonably withheld. The Tenant agrees that it will not cause, suffer or permit such documentation or any notice thereof to be registered against the title to the Shopping Centre lands or any portion thereof.

The Tenant acknowledges and agrees that as a condition of the Landlord agreeing to the foregoing financing by the Tenant, the Tenant will cause the holder of any security granted by the Tenant to enter into an agreement with the Landlord and the Tenant in a form prepared by the Landlord, at the Tenant's expense, acknowledging and agreeing to the foregoing and waiving its rights under such security agreement in favour of the Landlord's priority referred to above;

- (9) there is reasonable ground to believe that the proposed Transfer may result in a reduction of Gross Revenue;
  - (10) the Landlord does not receive sufficient information from the Tenant or the Transferee to enable it to make an enlightened determination concerning the matters set out above; and
- (iii) the Landlord shall not be liable for any claims or actions by or any damages, liabilities, losses or expenses of the Tenant or any proposed Transferee arising out of the Landlord unreasonably withholding its consent to any Transfer and the Tenant's only recourse shall be to bring an application for a declaration that the Landlord shall grant its consent to such Transfer.

(c) Section 13.01(b) does not apply to (i) a Transfer that occurs on the death of the Transferor, (ii) a Transfer described in Section 13.01(a)(iv) which occurs when the sole Tenant in occupation of the Premises is a corporation (a "Public Corporation") whose shares are traded and listed on a stock exchange in Canada or the United States, or (iii) a Transfer that occurs when (1) the sole Tenant in occupation of the Premises is a "subsidiary body corporate" (as that term is defined on the date of this Lease under the Canada Business Corporations Act, R.S.C. 1985, c. C-44) of a Public Corporation and (2) it is the shares of the Public Corporation and not of the Tenant that are transferred or issued. However, if after any of the Transfers described in this Section 13.01(c) the Tenant fails to satisfy the Landlord, (who is to act reasonably) that there will be continuity or improvement of the business practices and policies of the Tenant that existed before the Transfer, the Landlord may, at any time after the Transfer, until sixty (60) days after the Tenant notifies the Landlord in writing of the Transfer, notify the Tenant of its dissatisfaction, and a default of Section 13.01(b) will be considered to have occurred as of the date of the Landlord's notice.

(d) Notwithstanding Article 1871 of the Civil Code of Quebec or similar legislation, the Landlord will benefit from a delay of thirty (30) days following receipt of all the required information to notify the Tenant in writing either, that it grants or refuses to grant its consent to the proposed Transfer, but the Landlord's failure to respond within that thirty (30) day period shall not be construed as consent on the part of the Landlord.

(e) Notwithstanding anything contained to the contrary in Section 13.01(b), and so long as the Tenant and occupant of the whole of the Premises is OLYMPUS FOOD (CANADA) INC., and the Tenant is not in default under this Lease, the Tenant shall not require the consent of the Landlord (but in each case shall provide the Landlord with at least thirty (30) days prior written notice), in the case of any Transfer to:

- (i) any Affiliate, but only so long as such Affiliate remains an Affiliate of OLYMPUS FOOD (CANADA) INC.;
- (ii) a corporation formed as a result of a merger or amalgamation (as those terms are defined pursuant to the Canada Business Corporations Act) of the Tenant with an Affiliate;

provided that (1) such transferee shall carry on only the same business as is permitted to be carried on by the Tenant under this Lease pursuant to Section 1.01(d) and with similar merchandising policies and under the same trade name as the Tenant is required to use pursuant to Section 1.01(c); (2) the Tenant shall cause such transferee to enter into an agreement prepared by and in a form satisfactory to the Landlord in which such transferee covenants directly with the Landlord to be bound by all the terms of this Lease to which the Tenant is bound; (3) the Tenant shall continue to remain liable under the terms of this Lease; and (4) the Tenant shall provide the Landlord the effective date of the Transfer and a copy of articles of amendment or articles of amalgamation evidencing the Transfer.

In the event of a further proposed Transfer the terms of this Lease shall prevail as if this Section 13.01(e) had not formed part of this Lease.

(f) Notwithstanding any provision of Section 13.01(b) to the contrary, so long as the Tenant and occupant of the whole of the Premises is OLYMPUS FOOD (CANADA) INC., and is not in default under this Lease, the Tenant shall have the right to sublease the whole of the Premises to





a fully trained franchisee of the Tenant upon first obtaining the consent of the Landlord, which consent may not be unreasonably withheld, based upon the criteria set out in subparagraphs (3), (4), (5), (6), (7), (9) and (10) of Section 13.01(b)(ii), and further subject to the following conditions, namely that:

- (i) such franchise agreement shall be subject to the terms and conditions contained in this Lease;
- (ii) such franchisee shall not at any one time occupy less than the whole of the Premises;
- (iii) each such franchisee shall carry on business under the trade name and style of the Tenant as set out in Sections 1.01(c) and 9.01 and in the same manner as that carried on in a typical store of the Tenant;
- (iv) the Tenant shall provide the Landlord with an executed copy of each such franchise agreement and if any terms or conditions contained in such franchise agreement are in conflict or inconsistent with the terms and conditions contained in this Lease, the terms and conditions of this Lease will prevail;
- (v) the Landlord's consent will apply only if and for so long as the Tenant and any such franchisee are parties to the franchise agreement and the franchise agreement is in full force and effect with no default on the part of the franchisee; and
- (vi) all of the provisions of Section 13.02 (save and except (f), (j), (k)) shall apply in the event of a Transfer pursuant to this Section 13.01(f).

#### Section 13.02 Terms and Conditions Relating to Transfers

The following terms and conditions apply in respect of a Transfer:

- (a) the consent by the Landlord is not a waiver of the requirement for consent to subsequent Transfers;
- (b) no acceptance by the Landlord of Rent or other payments by a Transferee is, (i) a waiver of the requirement for the Landlord to consent to the Transfer, (ii) the acceptance of the Transferee as Tenant, or (iii) a release of the Tenant from its obligations under this Lease;
- (c) the Landlord may apply amounts collected from the Transferee to any unpaid Rent;
- (d) the Transferor, unless the Transferee is a sub-tenant of the Tenant, will retain no rights under this Lease in respect of obligations to be performed by the Landlord or in respect of the use or occupation of the Premises after the Transfer;
- (e) the Tenant and the Transferee will execute an agreement directly with the Landlord agreeing that the Transferee will be bound by this Lease as if the Transferee had originally executed this Lease as Tenant but the Transferor will, notwithstanding any legislation to the contrary, including, without limitation, Article 1873 of the Civil Code of Quebec, not be released of any of its obligations under this Lease but will remain solidarily responsible with the Transferee for the fulfilment of all obligations of the Tenant under this Lease (as the Lease may be modified by the application of Section 13.02(f)) during the remainder of the Term and any renewal or extension thereof, the whole without novation or derogation of any kind, and without the exception of subrogation under the provisions of Article 1531 of the Civil Code of Quebec or any similar or succeeding legislation;
- (f) at the Landlord's option, the Minimum Rent will be increased as of the date of the Transfer by an amount (the "Excess Amount") equal to the greater of:
  - (i) the amount by which the annual Minimum Rent that pertains on the day before the Transfer (the "Current Minimum Rent") is exceeded by the average annual total of Minimum Rent and Percentage Rent paid or payable by the Tenant for the last three twelve (12) month Rental Years that precede the Transfer or (if less than three such Rental Years precede the Transfer), the highest annual total of Minimum Rent and Percentage Rent since the Commencement Date; or
  - (ii) the Current Minimum Rent multiplied by the percentage increase in the C.P.I. from the year in which the Commencement Date occurs to the most recent C.P.I. available when the Transfer is requested.

If it is stated in Section 1.01(f) or an addendum to that Section that the annual Minimum Rent is to increase at specified times, the Excess Amount will be added to the increased Minimum Rent. It is understood and agreed that the provisions of this Section 13.02(f) shall not apply in the case of a Transfer to a Transferee described in Section 13.01(e);

- (g) for the purpose of calculating Percentage Rent, at the Landlord's option the Rental Year current on the day before the Transfer will end on that day, and a new Rental Year will start on the day of the



Transfer, and end on the day on which that current Rental Year would have ended if it had not been shortened;

(h) any documents relating to a Transfer or the Landlord's consent will be prepared by the Landlord or its solicitors and all of the legal costs of the Landlord together with a reasonable administration charge of at least One Hundred and Fifty Dollars (\$150.00) will be paid to the Landlord by the Tenant on demand;

(i) the repudiation, disaffirmation, disclaimer, surrender (except with the consent of the Landlord) or termination of this Lease by a Transferee, by any trustee in bankruptcy of a Transferee, or by a court representative, shall not in any manner release, discharge, affect or modify any of the obligations of the original Tenant named in this Lease or of any Transferee (except the bankrupt or insolvent Transferee), and the Lease shall continue to bind the original Tenant named in the Lease and any Transferee (except the bankrupt or insolvent Transferee) with the Landlord as if this Lease had not been so repudiated, disaffirmed, disclaimed, surrendered or terminated;

(j) in the event of any Transfer which is a subletting of the Premises by the Tenant by virtue of which the Tenant receives a rent in the form of cash, goods or services from the Transferee which is greater than the Rent payable hereunder to the Landlord, the Tenant will pay any such excess to the Landlord in addition to all Rent payable under this Lease, and such excess rent shall be deemed to be further Additional Rent;

(k) if the Transferee pays or gives money or other value that is reasonably attributable to the desirability of the location of the Premises or to leasehold improvements that are owned by the Landlord or for which the Landlord has paid in whole or in part, then at the Landlord's option, the Transferor will pay to the Landlord such money or other value in addition to all Rent payable under this Lease and such amounts shall be deemed to be further Additional Rent; and

(l) if the Transferee is a sub-tenant, the Transferee shall not, under any circumstances, make any advance payment of any amount to the Tenant and shall not be entitled to exercise against the Landlord any of the rights and remedies of the Tenant.

#### **Section 13.03 No Advertising of the Premises**

The Tenant will not offer or advertise the whole or any part of the Premises or this Lease for the purpose of a Transfer and will not permit a broker or other Persons to do so.

#### **Section 13.04 Sales and Other Dispositions by the Landlord**

If the Landlord sells, or otherwise transfers or disposes of the Shopping Centre or any part of it, or if the Landlord assigns this Lease or any interest of the Landlord under it, then to the extent that the purchaser, transferee or other donee agrees with the Landlord to assume the Landlord's obligations under this Lease, the Landlord will be released from those obligations.

### **ARTICLE XIV - ACCESS AND ALTERATIONS**

#### **Section 14.01 Right of Entry**

(a) It is not a breach of any obligation for quiet enjoyment if the Landlord and its representatives enter the Premises at reasonable times after ~~forty-eight (48) twenty-four (24)~~ hours notice (but if the Landlord determines there is an emergency, no notice is required) (i) to examine them, (ii) to carry out work thereon, including making repairs, alterations, improvements or additions to the Premises or the Shopping Centre or adjacent property, (iii) to conduct an environmental audit of the Premises or any part of the Shopping Centre, or (iv) to excavate land adjacent to or subjacent to the Premises, and the Landlord and its representatives may take material into and on the Premises for those purposes. This right extends to (and is not limited to) the pipes, conduits, wiring, ducts, columns and other installations in the Premises. Rent will not abate or be reduced while the repairs, alterations, improvements or additions are being made and the Landlord is not liable for any damage caused to the property of the Tenant or others located on the Premises as a result of the entry, any work carried out or the exercise of any of its rights hereunder, regardless of how the damage is caused. However, the Landlord is responsible for unavoidable loss or interruption of business directly attributable to the exercise of this right (but not for any other damages, regardless of how they are caused) to the extent it does not take reasonable steps to minimize the interruption.

(b) Notwithstanding the provisions of Article 1885 of the Civil Code of Quebec, the Landlord may (i) enter the Premises at reasonable times to show them to prospective purchasers, tenants or Mortgagees and (ii) during the twelve (12) months before the expiry of the Term, display on the Premises "For Rent" or "For Sale" notices of reasonable size and number, and in reasonable locations.

(c) If the Premises are not open when, for any reason, an entry therein is necessary or permissible, the Landlord may enter the Premises by a master key, or by force; without rendering the Landlord liable therefor and without in any way affecting the obligations of the Tenant under this Lease.



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## ARTICLE XV - STATUS STATEMENT AND SUBORDINATION

### Section 15.01 Status Statement

Within ten (10) days after each request by the Landlord, the Tenant will deliver to the Landlord, on a form supplied by the Landlord, a status statement or certificate to any proposed Mortgagee, purchaser, or other disposee of part or all of the Shopping Centre and to the Landlord, stating:

- (a) that this Lease is in full force and effect, except only for any modifications that are set out in the statement or certificate;
- (b) the commencement and expiry dates of the Lease;
- (c) the date to which Rent has been paid under this Lease and the amount of any prepaid Rent or any deposits held by the Landlord;
- (d) that the Minimum Rent, the Percentage Rent and the Additional Rent are then accruing under this Lease or the dates on which each of these will start accruing;
- (e) **to the best of its knowledge, information and belief**, that the Premises are free from any construction deficiencies, or if there are such deficiencies, the certificate will state the particulars;
- (f) that there is not any uncured default on the part of the Landlord or if there is a default, the certificate will state the particulars;
- (g) whether there are any set-offs, defences or counter-claims against enforcement of the obligations to be performed by the Tenant under this Lease;
- (h) with reasonable particularity, details concerning the Tenant's and any Surety's financial standing and corporate organization. **However, a written statement from the Tenant's bank confirming the Tenant's ability to finance its business operations shall satisfy the Tenant's obligation to provide details concerning its financial standing under this Section 15.01(h);** and
- (i) any other information or statement that a proposed Mortgagee, purchaser, or disposee may reasonably require.

### Section 15.02 Subordination

(a) This Lease is and will remain subordinate to every hypothec, emphyteusis, charge, trust deed, financing, refinancing or collateral financing and the instruments of, as well as the charge or hypothec resulting from all or any of them and any renewals or extensions of them from time to time (collectively, an "Encumbrance") against the Premises or the Shopping Centre and the Tenant will, on request, sign any document requested by the Landlord to confirm the subordination of this Lease to any Encumbrance and to all advances made or to be made on the security of the Encumbrance. The Tenant will also, if the Landlord requests it to do so, become the tenant of the holder of any Encumbrance, the Owners, the Emphyteutic Lessors or any purchaser, transferee or disposee of the Shopping Centre or of an ownership or equity interest in the Shopping Centre and the Tenant will, on request, sign any document requested by the Landlord to confirm this agreement.

(b) If possession is taken under, or any proceedings are brought for the foreclosure of, or if a power of sale is exercised resulting from an Encumbrance the Tenant will become the tenant of the Person that so takes possession if that Person requests it and will recognize that Person as the Landlord under this Lease.

(c) The form and content of any document confirming or effecting the subordination and recognition provided for in this Section 15.02 will be that required by the Landlord or the holder of the Encumbrance in each case, and each such document will be delivered by the Tenant to the Landlord within ten (10) days after the Landlord requests it.

(d) **Upon the written request of the Tenant, the Landlord shall use its commercially reasonable efforts to obtain at the Tenant's expense an agreement from the permanent financing Mortgagee of the Shopping Centre (on the Mortgagee's standard form), to the effect that upon the execution and delivery by the Tenant to the Landlord of this Lease, if the Tenant shall pay the Rent and comply with all terms and conditions contained in this Lease and attorn to the permanent financing Mortgagee, the Tenant shall be permitted to remain in quiet possession of the Premises without interruption or disturbance from the permanent financing Mortgagee, or at the option of the permanent financing Mortgagee, shall be entitled to obtain a new lease for the unexpired Term of this Lease, on the same terms and conditions as contained in this Lease. The Tenant shall (i) promptly execute such documents as may be required by the Landlord to give effect to the foregoing, and (ii) indemnify the Landlord from and against all reasonable costs including legal costs incurred by the Landlord in connection with obtaining and preparing any such agreement.**

### Section 15.03 Mandatory

The Tenant will execute and deliver whatever instruments and certificates are requested by all or any of the Landlord, the Owner(s), the Emphyteutic Lessor, if any, and any Mortgagee to give effect to Sections 15.01 and 15.02. If the Tenant has not executed whatever instruments and certificates it is required to execute within ten (10) days after the Landlord's request, **an Event of Default will be deemed to have**



~~occurred and the Landlord may avail itself of all rights and remedies at law and under Article XVI of this Lease. the Tenant irrevocably appoints the Landlord as the Tenant's mandatary with full power and authority to execute and deliver in the name of the Tenant, any of those instruments or certificates or the Landlord, may, at its option, terminate this Lease without incurring any liability.~~

#### ARTICLE XVI - DEFAULT

##### Section 16.01 Events of Default

- (a) An "Event of Default" occurs when:
- (i) the Tenant defaults in the payment of Rent or Sales Taxes and fails to remedy the default within five (5) days after written notice;
  - (ii) the Tenant commits a breach that is capable of remedy other than a default in the payment of Rent or Sales Taxes, and fails to remedy the breach within ten (10) days after written notice that (1) specifies particulars of the breach, and (2) requires the Tenant to remedy the breach (or if the breach would reasonably take more than ten (10) days to remedy, fails to start remedying the breach within the ten (10) day period, or fails to continue diligently and expeditiously to complete the remedy);
  - (iii) the Tenant commits a breach of this Lease that is not capable of remedy and receives written notice specifying particulars of the breach;
  - (iv) a report or statement required from the Tenant under this Lease is false or misleading except for a misstatement that is the result of an innocent clerical error **and unless the Tenant can show to the Landlord that it was not a party to such falsification and that all steps have been taken to prevent its reoccurrence;**
  - (v) the Tenant, or a Person carrying on business in a part of the Premises, or a Surety becomes bankrupt or insolvent or takes the benefit of any statute for bankrupt or insolvent debtors (including, but not limited to, the Companies' Creditors Arrangement Act, R.S.C. 1985, c.C-36, as amended), or makes any proposal, assignment or arrangement with its creditors;
  - (vi) a receiver or a receiver and manager is appointed for all or a part of the property of the Tenant, or of another Person carrying on business in the Premises, or of a Surety;
  - (vii) steps are taken or proceedings are instituted for the dissolution, winding up or other termination of the Tenant's or the Surety's existence or for the liquidation of their respective assets **other than in connection with a bona fide corporate reorganization permitted under the provisions of this Lease;**
  - (viii) the Tenant makes or attempts to make a sale of a substantial portion of its assets regardless of where they are situated (except for such a sale made to a Transferee when the Transfer has been consented to by the Landlord);
  - (ix) **subject to the provisions of Section 9.03(g)**, the Premises are vacant or unoccupied for five (5) consecutive days or the Tenant abandons or attempts to abandon the Premises, or sells or disposes of property of the Tenant or removes it from the Premises so that the value of the assets remaining in the Premises charged by the movable hypothec referred to in Section 16.08 of this Lease is less than the amount required pursuant to Section 16.08;
  - (x) the Tenant effects or attempts to effect a Transfer that is not permitted by this Lease;
  - (xi) this Lease or any of the Tenant's assets on the Premises are taken or seized under a writ of execution, an assignment, pledge, charge, hypothec, debenture, or other security instrument **(and such writ of execution or other instrument is not satisfied or discharged within five (5) days of its service);**
  - (xii) the Tenant consents to or attempts to grant a Guarantee contrary to the provisions of Section 16.08;
  - (xiii) any preliminary measure is taken or instituted for the exercise of secured or hypothecary rights against or in respect of this Lease (it being understood that this is not intended to be construed as giving the Tenant any right to secure, pledge or give any hypothecary rights in this Lease), the Tenant, a Surety or any of the Tenant's or Surety's assets or property, including, without limiting the foregoing, any preliminary measure taken or instituted by the sending of a notice of intention to enforce security pursuant to the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, or the filing and/or registration of a notice to exercise a hypothecary right pursuant to the Civil Code of Quebec or any other legislation of similar effect **and provided that the Tenant has not contested such preliminary measure within the delays provided by the applicable legislation and has not diligently continued to contest such preliminary measure;**
  - (xiv) the Tenant defaults in the timely payment of Rent and any such default has occurred on two previous occasions, notwithstanding that such defaults may have been cured within the period after notice has been provided pursuant to the terms of this Lease;



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- (xv) there has been an Unexpected Termination (as that term is defined in Section 16.01(d)) of any lease which the Tenant or an Affiliate of the Tenant holds for premises in the Shopping Centre or in another shopping centre or development that is owned (in whole or in part), operated or managed by or on behalf of the Landlord, an Affiliate of the Landlord, or its successors or assigns, or that is operated or managed by a Management Company or an Affiliate of a Management Company; or
  - (xvi) the Suretyship Agreement, if any, is terminated for any reason whatsoever or, alternatively, if the obligations of the Surety under the Suretyship Agreement are reduced, modified or otherwise limited, except by way of an agreement made in writing with the Landlord.
- (b) Notwithstanding:
- (i) anything in any applicable statute or other legislation or any regulation that exists now or that comes into existence and any rule of law, including, without limitation, the provisions of Article 1595 of the Civil Code of Quebec,
  - (ii) any defect in any notice given by the Landlord, including without limitation, an error in the amount of Rent in arrears (provided, however, that Rent is, in fact, in arrears) or a failure of the notice to require the Tenant to make compensation in money or remedy the breach; and
  - (iii) the Landlord's election not to give notice to the Tenant in respect of a breach (other than that for which notice must be given under Section 16.01(a)(i) and (ii) above),

upon the occurrence of any Event of Default the full amount of the current month's and the next three (3) months' instalments of Minimum Rent and Additional Rent, and Sales Taxes, will immediately become due and payable, without any notice or demand and without any cure period. At the option of the Landlord, this Lease shall be ipso facto terminated without legal proceedings and the full amount of the Rent (calculated according to Section 16.01(d)) for that part of the Term that would have remained but for the Unexpected Termination (as that term is defined in Section 16.01(d)) shall become due and payable. If this Lease is so terminated, the Landlord, to the extent permitted by law, may immediately repossess the Premises and expel all Persons from the Premises and may remove all property from the Premises, sell or dispose of it as the Landlord considers appropriate, or store it in a public warehouse or elsewhere at the cost of the Tenant, all without service of notice, without legal proceedings, and without liability for loss or damage and wholly without prejudice to the rights of the Landlord to recover arrears of Rent or damages for any antecedent default by the Tenant of its obligations or agreements under this Lease or of any term or condition of this Lease, and wholly without prejudice to the rights of the Landlord to recover from the Tenant damages for loss of Rent suffered by reason of this Lease having been prematurely terminated.

(c) Should an Event of Default occur and should the Landlord have instituted proceedings to resiliate this Lease, notwithstanding Article 1883 of the Civil Code of Quebec or similar legislation, the Tenant will not have any right to prevent such resiliation by remedying its default or defaults subsequent to the institution of such legal proceedings.

(d) In this Article XVI, an "Unexpected Termination" means (i) a termination or resiliation of a lease due to a default under a lease, (ii) a surrender or termination of a lease to which the landlord does not consent in writing or (iii) a repudiation, disclaimer or disaffirmation of a lease. If an Unexpected Termination of this Lease occurs, then for the purpose of calculating Rent under Section 16.01(b) and the Landlord's damages, the Gross Revenue and Additional Rent will each be deemed to have increased at the minimum rate of five percent (5%) per annum for that part of the Term that would have remained but for the Unexpected Termination, and Percentage Rent will be calculated and payable on the Gross Revenue so assumed.

(e) It is understood and agreed that the Tenant shall be responsible for all of the legal costs of the Landlord associated with the Landlord preparing and issuing its notice to the Tenant under Section 16.01(a)(i) and (ii) above.

(f) Notwithstanding any provision hereof, any legislation to the contrary or any non-enforcement of this right by the Landlord in the past, during any period of time when an Event of Default is in existence which has not been cured by the Tenant, the Landlord, at its option, can require the Tenant to cease, forthwith upon receipt of notice from the Landlord, all its business operations in the Premises until the Event of Default is cured. In the event that the Landlord gives the Tenant written notice of its election to exercise this right, the Tenant agrees that the Landlord shall be entitled to exercise any recourse available to prevent the Tenant from carrying on its business operations in the Premises, including, without limiting the foregoing, obtaining and enforcing seizure and injunction orders. **Notwithstanding any provision of this Section 16.01(f) to the contrary, it is understood and agreed that the Tenant shall not be required to cease its business operations in the Premises unless the Tenant is in material, repeated or continuous default.**

#### Section 16.02 Expenses

If legal proceedings are brought for recovery of possession of the Premises, for the recovery of Rent or Sales Taxes, or because of a default by the Tenant, the Tenant will pay to the Landlord its expenses, including its legal costs.



### **Section 16.03 Landlord May Cure the Tenant's Default**

If the Tenant defaults in the payment of money that it is required under this Lease to pay to a third party, the Landlord, after giving five (5) days notice in writing to the Tenant, may pay all or part of the amount payable. If the Tenant defaults under this Lease (except for a default in the payment of Rent or Sales Taxes), the Landlord may, after giving reasonable notice (it being agreed that forty-eight (48) hours is reasonable notice of a default of Section 10.01) or, without notice in the case of an emergency, perform or cause to be performed all or part of what the Tenant failed to perform and may enter upon the Premises and do those things that it considers necessary for that purpose. The Tenant will pay to the Landlord on demand, the Landlord's expenses incurred under this Article XVI plus an amount equal to fifteen percent (15%) of those expenses for the Landlord's overhead. The Landlord will have no liability to the Tenant for loss or damages resulting from its action or entry upon the Premises.

### **Section 16.04 Application of Money**

The Landlord may apply money received from or due to the Tenant against money due and payable under this Lease. The Landlord may impute any payment made by or on behalf of the Tenant towards the payment of any amount due and owing by the Tenant at the date of such payment regardless of any designation or imputation by the Tenant. **However, nothing in this Section 16.04 is intended to prejudice the Tenant's rights in respect of amounts genuinely in dispute.**

### **Section 16.05 Failure of the Tenant to Carry on Business**

(a) The Tenant will open the whole of the Premises for business on the Commencement Date, fully fixtured, stocked and staffed, and will, throughout the Term, conduct its business continuously, diligently and actively in the whole of the Premises in accordance with this Lease. The Tenant acknowledges and agrees that continuous operation in the Premises as required in this Section is of the essence of this Lease and that any default of the Tenant under this Section will cause grave prejudice to the Landlord which cannot be entirely compensated by the payment of a sum of money.

(b) **Subject to the provisions of Section 9.03(g)**, if the Tenant fails to open or reopen the Premises for business or to carry on business at all times in accordance with this Lease, the Landlord may, (i) collect (in addition to Minimum Rent, Percentage Rent and Additional Rent) an additional charge at a daily rate of twenty-five cents (\$0.25) per square foot of the Weighted GLA of the Premises or Two Hundred and Fifty Dollars (\$250.00) whichever is the greater, for each day of default, (this additional charge being a liquidated sum representing the minimum damages that the Landlord is considered to have suffered as a result of the Landlord's failure to receive Percentage Rent and the lack of participation by the Tenant in the general synergy and interdependence of the Rentable Premises in the Shopping Centre, and being without prejudice to the Landlord's right to recover other damages), and (ii) use its other remedies for the Tenant's default, including obtaining an injunction or an order for specific performance in a court of competent jurisdiction to restrain the Tenant from defaulting under this Section 16.05 and a mandatory injunction to compel the Tenant to open or reopen the Premises for business to the public in accordance with this Lease. The Tenant consents to the Landlord obtaining those injunctions upon the Landlord establishing by affidavit or other evidence that the Tenant has defaulted or that the Landlord has reasonable cause to believe that the Tenant is about to default under this Section.

### **Section 16.06 Non-Acceptance of Termination**

No acceptance of keys for the Premises by the Landlord and no other act of the Landlord will be considered as an acceptance by the Landlord (implied or otherwise) of a termination of this Lease by the Tenant. Only a written acknowledgment or termination agreement executed by two (2) authorized representatives of the Landlord will be effective as an acceptance by the Landlord of a termination of this Lease.

### **Section 16.07 Remedies Generally**

(a) The remedies under this Lease are cumulative. No remedy is exclusive or dependent upon any other remedy. Any one or more remedies may be exercised generally or in combination. The specifying or use of a remedy under this Lease does not limit the right to use other remedies available at law generally.

(b) Except as otherwise expressly contained herein, any breach by the Landlord under this Lease can be adequately compensated in damages and the Tenant agrees that its only remedy to enforce its rights under this Lease is an action for damages and any right of the Tenant to damages may not be assigned or transferred and any assignment or transfer in violation of this provision shall be null and void and shall not be binding on the Landlord.

### **Section 16.08 Movable Hypothec**

(a) As continuing and collateral security for the due and punctual payment of Rent and all other amounts now owing or which may hereafter become owing to the Landlord by the Tenant under this Lease, as same may be amended, renewed, extended or supplemented, and as continuing and collateral security for the due and punctual performance and fulfilment of all other obligations and agreements of the Tenant contained in this Lease, as same may be amended, renewed, extended or supplemented, the Tenant hereby hypothecates in favour of the Landlord, with effect as of and from this date, for the sum of **TWO HUNDRED AND FORTY-EIGHT THOUSAND DOLLARS (\$248,000.00)**, together with interest thereon at the Stipulated Rate, calculated semi-annually, not in advance, all of the rights, title and interests of the Tenant in and to the following universalities (hereinafter referred to as the "Universalities"):



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- (i) the universality of all movable improvements, equipment, machinery, furniture and trade fixtures of every kind, present and future, located on or upon the Premises or used directly or indirectly in connection with the business of the Tenant carried on at the Premises, including all indemnities or proceeds paid under insurance contracts or policies pertaining to or covering such movables; and
- (ii) the universality of all property in stock, raw material, work in process and inventory, present and future, situated on or upon the Premises or used directly or indirectly in connection with the business of the Tenant carried on at the Premises, including all indemnities or proceeds paid under insurance contracts or policies pertaining to or covering such movables.

(b) The hypothec herein created in favour of the Landlord shall not constitute nor be construed as a floating hypothec under Article 2715 of the Civil Code of Quebec.

(c) The security hereby created is without delivery and shall, subject to Articles 2673, 2674 and 2734 of the Civil Code of Quebec, not prevent the Tenant, until an Event of Default has occurred and the security hereby constituted shall become enforceable, from selling, leasing or otherwise disposing of or dealing with its inventory in the ordinary course of its business and for the purposes of carrying on the same, provided that such inventory is forthwith replaced with inventory of equal or greater value and quality.

(d) Upon the occurrence of an Event of Default the security hereby constituted shall become enforceable and the Landlord shall forthwith be entitled to exercise any and all of the rights provided for in Chapter V of Title III of Book VI of the Civil Code of Quebec and in the Code of Civil Procedure of Quebec. In exercising any of the rights and recourses available hereunder or at law, the Landlord may, in respect of all or any part of each of the Universalities, exercise such rights and recourses as are available to it hereunder or at law, as it may choose, without prejudice to its other rights and recourses in respect of all or part of each of the other Universalities. Furthermore, the Landlord may exercise any of its rights and recourses in respect of all or any part of each of the Universalities, simultaneously or successively.

(e) Subject only to the subordination contemplated hereinafter, the Tenant hereby represents, warrants to and agrees with the Landlord that the movable hypothec granted by the Tenant to the Landlord pursuant to this Section 16.08 shall constitute and remain during the entire Term of this Lease, and any renewal or extension thereof, a first ranking charge on all the movable assets charged thereunder, and that all other Guarantees (as defined in Section 16.08(f)) granted by the Tenant shall rank after the movable hypothec granted to the Landlord under this Section 16.08, **other than the movable hypothec on a universality of the movable rights and property, corporeal and incorporeal, present and future of any kind whatsoever and wherever situated, in favour of the Bank of Nova Scotia and any renewal or replacement (the "BNS Security"), which will rank first in priority to the Landlord's movable hypothec.** Notwithstanding the preceding sentence, however, should the Tenant obtain a bona fide financing for the operation of its business in the Premises from a Canadian chartered bank or other reputable financial lending institution acceptable to the Landlord, acting reasonably (the "Tenant's Lender"), other than the BNS Security, the Landlord shall execute, at the cost of the Tenant, a subordination agreement in favour of such Tenant's Lender, based on the Landlord's standard form of subordination agreement, provided that (i) the Tenant pays to the Landlord all expenses incurred by the Landlord in relation thereto, including without restriction, legal costs; and (ii) no security granted or to be granted to the Tenant's Lender shall affect or in any manner whatsoever charge property which is or may become the Landlord's property pursuant to the terms of this Lease.

(f) Subject to the provisions of Section 16.08(e), the Tenant may hypothecate, pledge, charge or encumber its inventory, equipment, furniture or trade fixtures which may, from time to time, be on the Premises, by way of a movable hypothec, trust deed, security under the Bank Act, S.C. 1991, c.46, conditional sales agreement, consignment sales agreement, instalment sales agreement, sale with right of redemption or in any other manner in which movables may guarantee the obligations of the Tenant in conformity with federal or provincial laws (the "Guarantee"), provided that (i) in each case the Tenant gives the Landlord written notice thereof within ten (10) days of such Guarantee having been granted; (ii) at the Landlord's request, the Tenant provides the Landlord with a copy of all documentation executed between the Tenant and the creditor or holder of such Guarantee; (iii) at the Landlord's request, the Tenant executes, and has the creditor or holder of such Guarantee (or mandatary or trustee acting on the creditor's behalf) execute such reasonable documentation as may be required by the Landlord to give effect to the provisions of this Section 16.08, whether express or implied; and (iv) such Guarantee may not affect or in any manner whatsoever charge property which is or may become the Landlord's property pursuant to the terms of this Lease. All expenses incurred by the Landlord in relation to such Guarantee, including without restriction, legal costs, will be reimbursed immediately, upon request, by the Tenant.

(g) The Tenant agrees to furnish the Premises with and to maintain therein at all times during the Term, and any renewal or extension thereof, a sufficient quantity of inventory, equipment, furniture, trade fixtures and other effects, sufficient to secure all of the Tenant's obligations under this Lease. In no event will the value of the inventory, equipment, furniture, trade fixtures and other effects of the Tenant charged by the Landlord's movable hypothec under this Section 16.08 be less than the amount provided in Section 16.08(a).



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## ARTICLE XVII - MISCELLANEOUS

### Section 17.01 Rules and Regulations

The Landlord, acting reasonably, may adopt rules and regulations which may differentiate between different types of businesses. Each rule and regulation, as revised from time to time, forms part of this Lease as soon as the rule, regulation or revision is made known to the Tenant. The Tenant will comply with each rule and regulation and each revision thereof. No rule or regulation, however, will contradict the terms and conditions of this Lease. The Landlord is not responsible to the Tenant for the non-observance of a rule or regulation by any other tenant of Rentable Premises or occupant of the Shopping Centre or of the terms or conditions of any other lease of Rentable Premises. **The Landlord agrees that it will not apply the Rules and Regulations in a manner which is discriminatory solely as against the Tenant.**

### Section 17.02 Overholding - No Tacit Renewal

If the Tenant remains in possession of the Premises after the Term with the consent of the Landlord but without executing a new lease, there is no tacit renewal of this Lease despite any statutory provision or legal presumption to the contrary, including, without limitation, Article 1879 of the Civil Code of Quebec or similar legislation. The Tenant will occupy the Premises as a Tenant from month to month (with either party having the right to terminate such month to month tenancy at any time on thirty (30) days notice, whether or not the date of termination is at the end of a rental period) at a monthly Minimum Rent payable in advance on the first day of each month equal to two times the Minimum Rent payable during the last month of the Term, and the Tenant will comply with the same terms and conditions as are in this Lease as far as they apply to a monthly tenancy including, for greater certainty, the payment of Additional Rent.

### Section 17.03 Successors

The rights and obligations under this Lease extend to and bind the successors and assigns of the Landlord and, if Section 13.01 is complied with, the heirs, executors, administrators and permitted successors and permitted assigns of the Tenant. If there is more than one Tenant, or more than one Person comprising the Tenant, each is bound solidarily by this Lease without the exception of subrogation under the provisions of Article 1531 of the Civil Code of Quebec or any similar or succeeding legislation.

### Section 17.04 Tenant Partnership

If there is at any time more than one Tenant or more than one Person constituting the Tenant, their obligations shall be solidary and shall apply to each and every one of them, without the exception of subrogation under the provisions of Article 1531 of the Civil Code of Quebec or any similar or succeeding legislation. If the Tenant is a partnership or other business association, the members of which are, by virtue of statutory or general law, subject to personal liability, each Person who is a member of the partnership or other business association, and each Person who becomes a member of a successor of the partnership or other business association, is solidarily liable as Tenant under this Lease and will continue to be liable after that Person ceases to be a member of the partnership or other business association or a successor of the partnership or other business association and after the partnership or other business association ceases to exist, the whole without the exception of subrogation under the provisions of Article 1531 of the Civil Code of Quebec or any similar or succeeding legislation.

### Section 17.05 Waiver

The waiver by the Landlord or the Tenant of a default under this Lease is not a waiver of any subsequent default. The Landlord's acceptance of Rent after a default is not a waiver of any preceding default under this Lease even if the Landlord knows of the preceding default at the time of acceptance of the Rent. No term or condition of this Lease will be considered to have been waived by the Landlord or the Tenant unless the waiver is in writing. The Tenant waives any statutory or other rights in respect of abatement, set-off or compensation in its favour that may exist or come to exist in connection with Rent.

### Section 17.06 Accord and Satisfaction

Payment by the Tenant or receipt by the Landlord of less than the required monthly payment of Minimum Rent is on account of the earliest stipulated Minimum Rent. An endorsement or statement on a cheque or letter accompanying a cheque or payment as Rent is not an acknowledgment of full payment or an accord and satisfaction, and the Landlord may accept and cash the cheque or payment without prejudice to its right to recover the balance of the Rent or pursue its other remedies.

### Section 17.07 Brokerage Commission

Since the Landlord has not employed or retained a broker for this Lease or anything related to it, the Tenant will indemnify and hold the Landlord harmless from claims for commission with respect to this Lease or any matter related to it.

### Section 17.08 Force Majeure

Despite anything contained in this Lease to the contrary, if the Landlord or the Tenant is, in good faith, delayed or prevented from doing anything required by this Lease because of a strike, labour trouble, inability to get materials or services, power failure, restrictive governmental laws or regulations, riots, insurrection, sabotage, rebellion, war, act of God, or any other similar reason, that is not the fault of the party delayed, the doing of the thing is excused for the period of the delay and the party delayed will do what was delayed or prevented within the appropriate period after the delay. The preceding sentence does not excuse the Tenant from payment of Rent or the Landlord from payment of amounts that it is required to pay, in the amounts and at the times specified in this Lease.





#### **Section 17.09 Notices**

Notices, demands, requests or other instruments under this Lease will be delivered in person (which shall include delivery by a third party courier or delivery service) or sent by registered mail postage prepaid and addressed (a) if to the Landlord, c/o The Cadillac Fairview Corporation Limited, at Fifth Floor, 20 Queen Street West, Toronto, Ontario, M5H 3R4, Attention: Executive Vice-President, National Property Operations, with a copy to the Shopping Centre Manager, or to such other Person at any other address that the Landlord designates by written notice, and (b) if to the Tenant, ~~at the Premises, or, at the Landlord's option,~~ to the Tenant's head office at the address set out in Section 1.01(m). A notice, demand, request or consent will be considered to have been given or made on the day that it is delivered, or, if mailed, seventy-two (72) hours after the date of mailing. Despite what is stated above, the Tenant acknowledges that if its head office address is stipulated as a post office box or a rural route number, then notice will be considered to have been sufficiently given to the Tenant if delivered in person or sent by registered mail to the Premises or, where notice cannot be given in person upon the Premises, by posting the notice upon the Premises. Either party may notify the other in writing of a change of address and the address specified in the notice will be considered the address of the party for the giving of notices under this Lease. If the postal service is interrupted or substantially delayed, any notice, demand, request or other instrument will only be delivered in person. A notice given by or to one Tenant is a notice by or to all of the Persons who are the Tenant under this Lease. Notice may not be given by facsimile transmission, electronic mail or any other electronic communication.

#### **Section 17.10 Registration**

The Tenant and the Landlord hereby acknowledge and agree that it is in their mutual interest that this Lease be registered by way of a notice of lease only (or in the case of a Transfer, a notice of transfer), in accordance with Article 2999.1 of the Civil Code of Quebec, such notice not to refer to any monetary obligations or monetary provisions under this Lease. It is further agreed that no notice of lease (or notice of transfer) shall be registered before such notice has been approved in writing by the Landlord.

All costs, fees and expenses relating to the preparation, review and/or registration of the notice of lease (or notice of transfer), including without restriction, all registration fees, shall be paid for by the Tenant and the Tenant shall reimburse the Landlord without delay for all costs, fees and expenses (including, without restriction, all legal costs) incurred by the Landlord, if any, with respect to the foregoing. If the Shopping Centre comprises more than one lot, the Landlord may direct the Tenant as to the lot(s) against which registration may be effected, provided the Premises are actually located on such lot(s). Within a reasonable period after registration, the Tenant shall supply to the Landlord, at Tenant's cost, a copy of the notice bearing the registration number of the notice of lease (or notice of transfer, as the case may be).

At the expiry or earlier termination of this Lease, the Tenant will, at its expense, radiate any registration hereunder, and if the Tenant has not done so within sixty (60) days after the expiry or earlier termination of the Lease, the Landlord may do so at the Tenant's expense; and for this purpose the Tenant hereby irrevocably constitutes the Landlord as the Tenant's mandatary to execute and register any cancellation or radiation document that may be required and agrees and undertakes to ensure that any Transferee constitutes the Landlord as its mandatary for this purpose.

#### **Section 17.11 No Partnership**

Nothing contained in this Lease or as a result of any acts of the parties hereto will be deemed to create any relationship between the parties other than that of Landlord, Tenant and, if applicable, Surety.

#### **Section 17.12 No Offer**

The Landlord will not be deemed to have made an offer to the Tenant by furnishing the Tenant with an unexecuted copy of this Lease with particulars inserted. Notwithstanding that a deposit or the first instalment of Minimum Rent is received by the Landlord when this Lease is received by it for execution, no contractual or other right will exist between the Landlord and the Tenant with respect to the Premises until both have executed and delivered this Lease.

#### **Section 17.13 Quiet Enjoyment**

If the Tenant performs its obligations under this Lease, it may hold and use the Premises without interference by the Landlord or any other Person claiming by, through or under the Landlord, subject however to the terms and conditions of this Lease.

#### **Section 17.14 Waivers by the Tenant**

The Tenant waives any right which it may have or enjoy at any time pursuant to Articles 1859, 1861, 1863 and 1867 of the Civil Code of Quebec, or any replacement legislation.

#### **Section 17.15 Premises subject to Vacant Possession**

The Tenant acknowledges that the Premises are presently occupied by and subject to a lease in favour of a third party. Notwithstanding anything contained in this Lease to the contrary, it is understood and agreed by the Landlord and the Tenant that the Tenant's right to occupy the Premises is conditional upon the Landlord obtaining vacant possession of the Premises from that third party prior to the commencement of the Fixturing Period, failing which the commencement of the Fixturing Period, the Commencement Date and all other relevant dates shall be postponed by notice in writing from the Landlord. The Tenant agrees to execute any further documentation, prepared by the Landlord, and which the Landlord, acting reasonably, determines is necessary to give effect to the foregoing.



**Section 17.16 Language**

The Landlord and the Tenant have required that this Lease and all notices, deeds, documents and other instruments to be given pursuant hereto be drawn in the English language only. Le Bailleur et le Locataire ont exigé que le présent bail, ainsi que tous les avis et autres documents à être donnés ou exécutés en vertu du bail soient rédigés en langue anglaise seulement.

IN WITNESS WHEREOF, the Landlord and the Tenant have executed this Lease.



LE CARREFOUR LAVAL (2013) INC.  
(Landlord)

Per: [Handwritten Signature]  
Authorized Signature

Per: [Handwritten Signature]  
Authorized Signature

OLYMPUS FOOD (CANADA) INC.  
(Tenant)

Per: [Handwritten Signature]  
Authorized Signature

Per: \_\_\_\_\_  
Authorized Signature

I/We have authority to bind the corporation.



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**SCHEDULE "A" - LEGAL DESCRIPTION OF THE SHOPPING CENTRE**

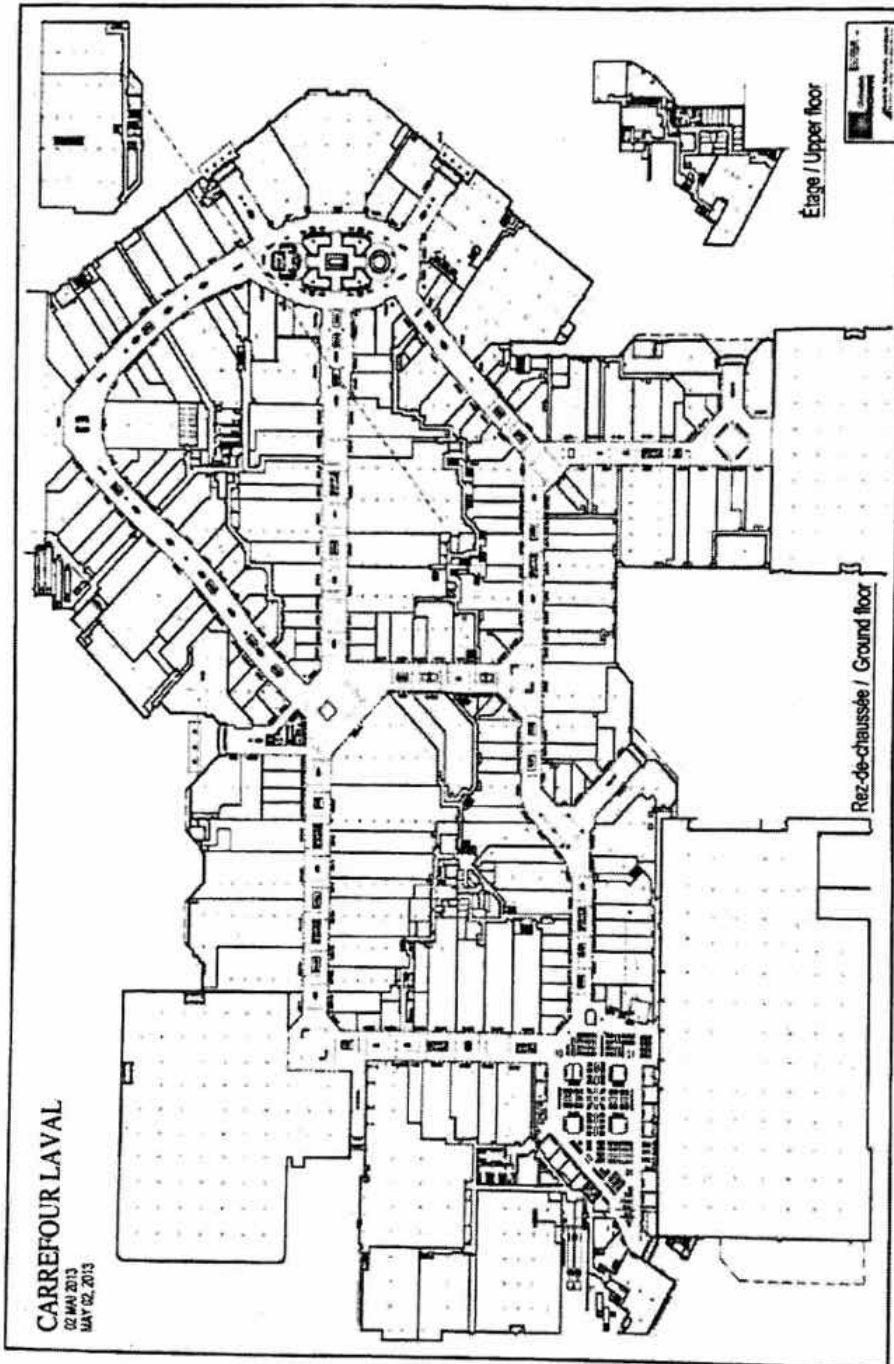
Those parcels of land known and designated as Lot numbers 1 730 620, 1 730 621, 1 730 622, 1 730 623, 1 730 625, 1 730 626, 1 731 763, 2 057 084, 2 057 579, 2 057 580, 2 057 581, 2 057 582, 2 057 583, 2 057 584, 2 057 585, 2 057 709, 2 057 716, 2 057 726, 2 057 742, 2 057 743, 2 057 744, 2 057 745, 2 057 746, 2 057 747 and 2 057 748 on the Official Cadastre of Québec, Registration Division of Laval, Province of Quebec.

This Lease may be registered only against Lot numbers 1 730 623, 2 057 579, 2 057 581, 2 057 583, 2 057 584 and 2 057 585, and may not be registered in any manner whatsoever against any other Lot numbers.



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SCHEDULE "B" - FLOOR PLAN OF THE SHOPPING CENTRE



The purpose of this plan is to identify the approximate location of the Premises in the Shopping Centre.



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**SCHEDULE "C" - LANDLORD'S & TENANT'S WORK  
LE CARREFOUR LAVAL - FOOD COURT**

**TENANT'S ACKNOWLEDGMENTS**

- (1) Manual - The Landlord will provide to the Tenant a manual for Tenant's work and design as well as procedures, rules, and regulations (collectively referred to as the "Manual") relating to the design and construction of Rentable Premises in the Shopping Centre and the Tenant agrees to comply with and to cause its contractors and sub-contractors to comply with the Manual in addition to the other requirements set out in this Schedule.
- (2) Timely Performance by Tenant - The time periods set out in the Manual and this Schedule for completing the Tenant's obligations represent maximum allowable time periods. The Tenant agrees to proceed expeditiously and to complete the Tenant's obligations as much in advance of the maximum allowable time periods as possible.
- (3) Access - The Landlord will be entitled to continue with its construction activities in the Premises and in the Shopping Centre at all times, including the Fixturing Period described in Sections 1.01(h) and 3.05 of the Lease.
- (4) Architect's Opinion - The opinion in writing of the Architect is binding on both the Landlord and the Tenant respecting all matters of dispute regarding the Landlord's Work and the Tenant's Work, including the state of completion and whether or not work is completed in a good and workmanlike manner and in accordance with the Manual and this Schedule.

**I. LANDLORD'S WORK**

**Section 1.01 Landlord's Work**

The Tenant acknowledges that, it has carefully examined the Premises, it is accepting the Premises in an "as is" condition as of the date of possession thereof, and the Landlord is not required to perform any work in or with respect to the Premises, except as set out below (the "Landlord's Work") and the Landlord's Work will be performed in accordance with the Landlord's choice of materials:

- (a) One main electrical service, up to a maximum of 200 amps at 600 volts, 3 phases, 3 wire, with a suspended 75 KVA transformer, ending in a main disconnect switch within the Premises, in a location within the Premises determined by the Landlord.

**II. TENANT'S WORK**

**Section 2.01 Tenant's Work**

**UNIQUE FOOD COURT AND MALL DESIGN** - The Tenant acknowledges and agrees that the design, fixturing, and finishes of the Premises are a critical element in the Shopping Centre's unique food court and mall design, and accordingly the Tenant agrees to design and construct the Premises such that they conform to the Landlord's design criteria and result in a one of a kind store location for the Tenant in the Quebec retail market.

The Tenant will provide and carry out, at its expense, in accordance with the Manual and this Schedule, all equipment and work required to be provided and performed in order to make the Premises complete and suitable to open for business, it being agreed that all equipment and materials installed in the Premises shall be new and of first class quality (the "Tenant's Work") including, but not limited to, the following:

- (a) **DEMOLITION** - Remove all existing finishes, improvements, and installations within the Premises, including, without limitation, previous tenant's ventilation conduits, plumbing network and electrical distribution. Only the existing installations that serve other premises and/or the Shopping Centre building should remain.
- (b) **SIGN** - One (1) sign on the back wall area or integrated within the Tenant's overall architectural design (wired to the Tenant's electrical panel, if illuminated), as well as two (2) blade signs as per the Landlord's design specifications. The Landlord shall provide and install the two (2) blade signs at the Tenant's expense.
- (c) **STOREFRONT** - A fully open storefront for the Premises, in accordance with the Landlord's design criteria. No security grilles or screens will be permitted at the storefront.
- (d) **INTERIOR FINISHES AND STORE INSTALLATIONS** - All interior finishes and installations including, but not limited to, painting and decorating, partitions, floor coverings, ceiling (fire rated over the entire area if required by law or by the Landlord) with provision for access, column enclosures (fire rated in accordance with the requirements of the law), store fixtures and furnishings, show window enclosures, display platforms, special wall or ceiling finishes, vertical and horizontal transportation



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equipment, security vaults, sound insulation, smoke baffle and refuse refrigeration equipment or other refuse storage as may be required by law or by the Landlord.

- (e) FLOOR - Existing concrete floor slab, repaired and made smooth. All existing finishes to be removed and all abandoned plumbing to be capped below slab level, up to the main connection point, and holes filled.
- (f) REAR DOOR ASSEMBLY - Existing door could remain or be modified as per the Tenant's demonstrated needs, subject to the Landlord's approval.
- (g) ELECTRICAL - Existing main point of connection can remain or be modified as per the Tenant's demonstrated needs, subject to the Landlord's approval. Lighting and power panels, branch wiring, lighting outlets and receptacles, disconnect switches, transformer, all lighting and electrical fixtures including lamps (it being acknowledged that exposed fluorescent light tubes must not be used in ceiling light fixtures, sales areas, or display windows), time clocks, exit signs, emergency lighting, night lights, appliances, smoke detectors (which the Landlord may require to be wired to the alarm system of the Shopping Centre), and other equipment as required. If the main electrical service provided by the Landlord is not adequate for the Tenant's use, the Tenant will provide the calculations necessary for the Landlord to determine the service capacity required in amperes based on the service voltage supplied and indicating an anticipated connected load and estimated demand load in KVA, and the Landlord may, at its option, agree to provide the additional electrical capacity at the Tenant's expense. Immediately following completion of the Tenant's electrical installation, the Tenant will provide the Landlord with a copy of the final certificate(s) of approval. All electrical work shall conform to the National Building Code, the Canadian Electrical Code and all other requirements of the law.
- (h) HEATING, VENTILATING AND AIR-CONDITIONING (HVAC) - A connection point to the Landlord's heating, ventilating and air-conditioning equipment, designed for a maximum supply capacity of 1 cfm per square foot of the GLA of the Premises, at a location within the Premises determined by the Landlord. Modification to controls and thermostat must be as per the Landlord's consultant.
- (i) PLUMBING AND EXHAUST VENTILATION - Existing main points of connection to remain: water supply, drainage, and vent. The Tenant will provide and install all internal plumbing including a clean-out at the sanitary drain and at the grease trap, floor drain(s), and all plumbing fixtures, and domestic hot water tank and heater as required. If the Tenant chooses to or is required by law to have public washrooms within the Premises, the Tenant will install water closets, washbasins and plumbing and will do all finishing. The Tenant will connect to the general or sanitary exhaust system as required and cap any unused connection(s). Additional water and drainage lines and exhaust ventilation that may be required and available for installation will be provided by the Landlord at the Tenant's expense.
- (j) SPRINKLER DISTRIBUTION - The Tenant will reuse existing sprinkler distribution system and as required, any new lines and or heads (which system will be in accordance with all requirements of the law, including the applicable building code, the Landlord and the insurers of the Shopping Centre) and the Tenant will also install any other firefighting and emergency equipment that is required by law, the Tenant, the Landlord, and any insurer of the Premises or of the Shopping Centre. The Tenant's sprinkler system will be installed by a sprinkler contractor approved by the Canadian Automatic Sprinkler Association or any successor organization.
- (k) COMMUNICATIONS - Existing main point of connection could remain or be modified as per the Tenant's demonstrated needs, subject to Landlord's approval. If required by law, the Landlord or the Tenant, the Tenant will supply and install all parts and components of the following systems: intercom, bell systems and burglar alarm, antenna, cable and telephone.
- (l) KITCHEN EXHAUST AND MAKE-UP AIR SYSTEMS - The Tenant shall supply and install a complete first class state-of-the-art kitchen exhaust air systems and kitchen exhaust hood, heated make-up air, smoke and odour evacuation systems, and all requisite appurtenances the whole to be designed and built so as to strictly ensure that no smoke or odours resulting from the use of the Premises at any time migrates to any of other premises in Carrefour Laval, all of which shall be manufactured and installed by suppliers/installers who shall be acceptable to the Landlord, the whole subject solely to the Landlord's approval. The Tenant shall supply and install a NFPA 96 approved ULC listed grease kitchen exhaust system including welded ductwork, Halton UV Capture Jet Hood c/w control panel and Ventmaster GEF heavy duty grease exhaust fan, and make-up air as required. If a grease exhaust fan is not required in the opinion of the Landlord, the Tenant shall supply and install a general kitchen exhaust system of a size and type determined by the Landlord's engineers, including without limitation, make-up air, controls, ductwork and roof mounted exhaust fan. A Building Code compliant fire suppression system shall be included for each hood installed. The Tenant work shall include the installation of hoods. The installation of the curb(s), and all necessary roof openings for the system will be provided by the Tenant at Tenant's expense. All electrical power and gas connections, control wiring for the exhaust and make up air system shall be completed by the Tenant from the Tenant electrical and gas services. Heated make-up air system must be gas fed. Wiring shall include interlocking of the make-up and exhaust fans so the exhaust fan cannot run without the make-up air system being on and automatic closure of the exhaust damper when the exhaust fan is off. The interlock of the fire suppression and alarm to the Landlord's fire alarm panel/annunciator will be completed by the Landlord at Tenant's expense. Structural support for all equipment must be approved by the Landlord's structural engineering consultant.



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- (m) GREASE TRAP - If required by law, the Landlord or the Tenant, the Tenant will connect to the Landlord's central grease trap system and will provide an accessible clean-out point within the Premises.
- (n) COOKING OIL DISPOSAL - The Tenant shall provide equipment satisfactory to the Landlord to transport used cooking oils to the Landlord's central used cooking oil reservoir.
- (o) NATURAL GAS - Existing main point of connection can remain or be modified as per the Tenant's demonstrated needs, subject to the Landlord's approval. All metering, safety controls and piping required for the supply and use of natural gas in the Premises.
- (p) FIRE ALARM - The Tenant will supply and install all components of a fire alarm system within the Premises, which system must be compatible with the Landlord's fire alarm system. The Landlord shall connect the Tenant's fire alarm system to the Landlord's system at the Tenant's expense.

**Section 2.02 Equipment Supplied or Work Performed by Landlord**

- (a) BASE BUILDING LIFE SAFETY SYSTEMS AND BAS - All final connections to, re-programming and verifications of the base building life safety systems of the Shopping Centre, such as the fire alarm system and the sprinkler protection system for monitoring or control functions, and connections to the Landlord's BAS, resulting from the Tenant's Work or otherwise occasioned by the Tenant's requirements, will be performed by the Landlord, and the Tenant will reimburse the Landlord for all of its costs related thereto, together with an overhead charge equal to 10% of the Landlord's costs.
- (b) GENERALLY - The Landlord may, at its option, but after giving notice to the Tenant (except in case of real or apprehended emergency) supply any equipment and perform any work forming part of the Tenant's Work, at the Tenant's expense. Any equipment or work other than that stipulated as the Landlord's Work which is supplied or performed by the Landlord for or at the request of the Tenant, or any excess or additional cost in the Landlord's Work occasioned by the Tenant's requirements or revisions to such requirements, will be paid for by the Tenant. The cost of the equipment or work will include (in addition to direct labour, material and applicable taxes) architectural, engineering and contractors' fees, any costs to the Landlord which are attributable to changes requested by the Tenant after approval of the Tenant's plans, drawings and specifications by the Landlord, and an overhead charge for the Landlord's supervision equal to 10% of the aggregate cost of the equipment and work.

**Section 2.03 Restrictions**

- (a) FLOOR LOADS - The Tenant will not impose upon any floor area a greater load than the designed live load capacity for the Shopping Centre of one hundred (100) pounds per square foot uniformly distributed.
- (b) SUSPENDED LOADS - No suspended loads are permitted other than the normal ceiling and lighting loads from the underside of any floor, roof or ceiling structures or assemblies of the Shopping Centre. No suspended loads will be permitted from the roof, steel deck, ducts, pipes or conduits.
- (c) SHOPPING CENTRE STRUCTURE, ROOF AND SYSTEMS - The Tenant, its contractors, and their employees and agents will not (i) enter onto the roof of the Shopping Centre or make any opening in the roof; (ii) drill or cut openings for conduit or pipe sleeves, or chases for ducts or equipment in the floors, columns, walls, ceilings, roof or structure of the Shopping Centre; (iii) vary or alter in any manner whatsoever any plumbing, electrical, mechanical systems or the HVAC System of the Shopping Centre or any of their components, whether or not located within the Premises. Any such work required by the Tenant, if approved by the Landlord, will be performed by the Landlord at the Tenant's expense, or if the Landlord permits it, by the Tenant under the supervision of the Landlord's representatives.
- (d) VISUAL MEDIA - The Tenant will not install digital signs, televisions or other audio-visual devices that can be seen outside of the Premises, without the Landlord's prior approval.

**Section 2.04 Removal of Equipment and Improvements**

Any requirement for the Tenant to provide equipment, carry out work or complete improvements also requires the Tenant to remove any existing corresponding equipment and improvements, unless the Landlord directs otherwise.

**III. LANDLORD'S REQUIREMENTS FOR TENANT'S WORK**

**Section 3.01 Requirements Prior to Commencement of Tenant's Work**

- (a) Designer Requirements - The Tenant must implement and adapt its new store design concept that has been developed for The Urban Eatery at the Toronto Eaton Centre and/or the Dining Hall at Rideau Centre to the Premises. The Tenant must employ the same design consultant used for any of these foregoing locations and/or from the Landlord's pre-selected list of interior designers and Architects, to prepare its final "roll-out" construction document drawings.



- (b) Mechanical, Electrical and Plumbing Engineer Requirements - The Tenant must contract with and use the Landlord's base building mechanical and electrical engineers and if applicable, base building structural engineer, to design and prepare the mechanical, electrical and any structural drawings and specifications of Tenant's final construction document drawings.
- (c) Preliminary Conceptual Design Requirements - Within 30 days after the Tenant has received the Manual and the Landlord's Lease Outline Drawing (LOD) package for the Premises, the Tenant will submit to the Landlord for its approval, plans, drawings and specifications in digital format only consisting of:
- Floor plan (1/4" = 1'0");
  - Reflected ceiling plan (1/4" = 1'0");
  - Vertical section(s) (1" = 1'0");
  - Equipment plan (1/4" = 1'0");
  - Rendered elevations and sections clearly showing the proposed brand identity treatments, materials application, and food merchandising approach;
  - 3D modeled and rendered perspective views as required to fully describe design intent;
  - Lighting design and fixture cut sheets;
  - Front counter food display casework, equipment design details and cut sheets (for food display and merchandising);
  - Kitchen equipment cut sheets;
  - Samples of all materials and finishes;
  - Specifications of all accent materials and finishes related to design concept;
  - Signage drawings and lifestyle/environmental graphic design concept;
  - Menu board design drawings and required professional food photography and styled imagery content; and
  - Uniform design concept as part of the overall brand identity package.

The Tenant shall pay all reasonable fees, including outside consultants' fees, incurred by the Landlord for the review of the Tenant's architectural plans, drawings and specifications, together with an administration fee equal to 15% of those fees. Such fees shall not exceed five hundred dollars (\$500.00) plus applicable Sales Taxes per review.

The Tenant shall be required to use the Landlord's designated outside base building consultants only to prepare its mechanical, electrical, and structural plans, drawings, and specifications.

- (d) Preliminary Design Concept Approval - The Tenant and its designer will be required to meet with the Landlord's design representatives to review and approve the design progress of the Tenant's preliminary conceptual design. Specific deliverables at scheduled dates to be determined by the Landlord. Once the Landlord has approved the preliminary conceptual design, the Tenant can then proceed with final working drawings suitable for its building permit and construction.
- (e) Final Construction Document Drawing Submission - Within 14 days of the Tenant receiving preliminary design concept approval, the Tenant will then submit to the Landlord for its approval final construction document drawings: two (2) 24" x 36" white prints and one (1) electronic set of drawings on CD of each of its plans and drawings (including the plans and drawings for its sign(s)) together with the specifications for the finishing of the Premises, which plans, drawings and specifications must (1) be prepared, signed, and stamped by qualified architects, designers and engineers from the Landlord's pre-approved list, and (2) include floor plans, a reflected ceiling plan, wall elevations, storefront elevation, sections, details (including details of any special facilities or installations which affect the Landlord's facilities), and sign design drawings and details and (ii) two (2) 24" x 36" white prints and one (1) electronic set of drawings on CD of each of its complete mechanical and electrical drawings and specifications, and if applicable, structural drawings prepared by the Landlord's specified engineers, which must include without limitation, all under-floor requirements, special equipment, connections and installations, water and sewage, HVAC distribution systems, kitchen exhaust systems, sprinkler mains and runs, electrical diagrams and panel schedules.
- (f) Final Construction Documents Drawing Approval - If the Landlord notifies the Tenant that it does not approve the Tenant's plans, drawings and specifications, the Tenant must submit revised plans, drawings and specifications as required by the Landlord, within 14 days of receipt of the Landlord's notice. If the Tenant fails to submit complete plans, drawings and specifications which meet with the Landlord's approval, acting reasonably, within the time periods set out in Sections 3.01(c), (e) and (f) hereof, then the Landlord may, by notice in writing, terminate the Lease, without legal proceedings and without prejudice to any of the Landlord's other rights and remedies and all amounts paid by the Tenant to the Landlord will be forfeited on such termination of the Lease.
- (g) Tenant's Insurance - Before entering on the Premises for any purpose, the Tenant will provide the Landlord with a certificate of insurance on the Landlord's standard form, duly executed by the Tenant's insurers, evidencing that the insurance required to be placed by the Tenant pursuant to the Lease is in force.
- (h) Tenant's Contractors - The Tenant will employ a general contractor qualified and licensed to practice in the Province of Quebec who will be responsible for all construction within the Premises, including the contracting and co-ordination of all trades. All work on or in respect of the Premises will be



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performed by competent local workers. Further, the Tenant acknowledges that the Landlord and/or the Management Company may be bound by collective bargaining agreements that require all labour employed in connection with any work to be performed on or in the Premises to have union affiliations compatible with those collective bargaining agreements. Prior to the commencement of any work, the Tenant will obtain full particulars of such requirements from the Landlord and will indemnify the Released Persons in respect of every loss, cost, claim, expense, and liability that the Released Persons may suffer or incur as a consequence of the Tenant's failure to comply with such requirements. This indemnity extends to, but is not limited to, loss, costs and expenses and liability attributable to picketing, labour disruption, construction delay and interference with the operations and activities of other tenants and occupants of the Shopping Centre.

- (i) **CSST Certificates** - The Tenant will provide to the Landlord, prior to commencing any work on or in respect of the Premises, a current certificate of good standing from the Commission de la Santé et de la Sécurité du Travail in respect of the contractor and every sub-contractor which the Tenant proposes to employ or to permit to do work on or in respect of the Premises, certifying that each such contractor and sub-contractor has complied with all the requirements of the Loi sur les accidents du travail et les maladies professionnelles and the Loi sur la santé et la sécurité du travail, is a duly registered member and is in good standing at the date of the certificate. The Tenant will not permit any contractor or sub-contractors to do work on or in respect of the Premises unless the foregoing certificate of good standing has been provided to the Landlord.
- (j) **Tenant's Permits** - The Tenant will provide evidence satisfactory to the Landlord, prior to commencing any work on or in respect of the Premises, that the Tenant has obtained at its expense, all necessary consents, permits, licenses, inspections and certificates from all authorities having jurisdiction, and the Tenant will post permits when required by law. Should the Tenant fail to obtain any required consent, permit, license, inspection or certificate, the Landlord may, but will not be obligated to, obtain it on behalf of the Tenant at the Tenant's expense.
- (k) **Schedule for Tenant's Work** - The Tenant will carry out the Tenant's Work during the Fixturing Period described in Sections 1.01(h) and 3.05 of the Lease however, the Tenant acknowledges that it will not be entitled to commence any Tenant's Work until (i) all requirements of this Section 3.01 have been complied with; (ii) the Landlord has notified the Tenant that it has approved the Tenant's plans, drawings and specifications and that the Premises are available and ready for commencement of Tenant's Work.

### Section 3.02 Requirements With Respect to Performance of Tenant's Work

- (a) **Compliance with Laws, Insurers' and Landlord's Requirements** - All Tenant's Work must comply with all applicable laws, building codes, permits and approvals for the work and with the requirements of the Landlord's insurers and the Landlord. If the Tenant is in default of this obligation and does not cure the default within the time period required by the authority, the Landlord's insurers or the Landlord, the Landlord may, but will not be obligated to, cure the default, and all charges and costs incurred by the Landlord will be paid to the Landlord by the Tenant, together with an administrative fee equal to 15% of those charges and costs.
- (b) **Compliance with Tenant's Plans, Drawings and Specifications** - The Tenant will, after satisfying all the requirements of Section 3.01, complete the Tenant's Work in a good and workmanlike manner, using new materials, to the Landlord's satisfaction and in conformity with the plans, drawings and specifications approved by the Landlord. Mediocre or inferior materials or workmanship will be replaced by the Tenant at its expense by materials or workmanship of first class quality, to the Landlord's satisfaction. One set of the plans, drawings and specifications with the Landlord's consent endorsed on them will remain on the Premises at all times during completion of the Tenant's Work.
- (c) **Compliance with Landlord's Requirements** - The Tenant, its contractors, and their employees and agents will: (i) abide by all safety regulations; (ii) provide adequate fire protection including, without limitation, fire extinguishers; (iii) deliver and store materials and tools as directed by the Landlord; (iv) stop immediately, if requested by the Landlord, any work which, in the opinion of the Landlord, by reason of public hazard, noise or otherwise, is likely to affect the normal operation of the Shopping Centre or any part of it; (v) be responsible for pick-up and disposal of its garbage at its expense, unless the Landlord provides facilities or designates a commercial service for the pick-up of garbage instead of, or in addition to, the service provided by the local municipality, in which case the Tenant will use such facilities or commercial service at its expense; and (vi) abide by all other reasonable requirements of the Landlord.
- (d) **Occupational Health and Safety** - The Tenant will ensure that a comprehensive and rigorous health and safety program to protect workers is implemented for the performance of the Tenant's Work. The Tenant will indemnify each of the Released Persons in respect of all claims, infractions, prosecutions, alleged infractions, losses, costs and expenses and any fines or proceedings relating to fines or other offenses under all occupational health and safety and similar legislation that might be brought, imposed against, or suffered by Released Persons or any of them in connection with the performance of the Tenant's Work. In addition, the Tenant will do, at least the following: (i) ensure that all legal obligations imposed on constructors or on other persons supervising, completing or co-ordinating the Tenant's Work are properly performed, that all directions given by any governmental or other regulatory inspector are properly performed and that necessary access is provided to those inspectors; (ii) where the law provides for designations of separate projects, co-operate with the



Landlord in having the Tenant's Work designated as a separate project so that the Landlord does not incur obligations as a constructor or similar obligations in connection with the performance of the Tenant's Work; (iii) comply with any recommendations of the Landlord with respect to health and safety requirements; (iv) employ only contractors and require contractors to employ only sub-contractors that have good health and safety records, and provide evidence satisfactory to the Landlord concerning their health and safety records; and (v) provide to the Landlord whatever rights of access, inspection, and whatever information and documents the Landlord requires in order to ensure that the Tenant's obligations under this Section are complied with.

- (e) Hoarding - The Landlord will install storefront hoarding suitable for the Shopping Centre, at the Tenant's cost, which cost shall not exceed \$5.00 per square foot of the hoarding surface.
- (f) Testing of Tenant's Systems - The Tenant will test all plumbing, gas, fire protection and electrical systems within five days of their installation and give two days prior written notice to the Landlord that such test will be performed. The Landlord may be present in the Premises when such test is performed. The Tenant will be responsible for any damage caused as a result of the performance of such test. The Tenant will provide the Landlord with a copy of the test results and final certificate(s) of approval.

#### **Section 3.03 Requirements After Performance of Tenant's Work**

- (a) Tenant's Declaration - The Tenant will provide to the Landlord, within 60 days of completion of the Tenant's Work, a statutory declaration (the "Declaration"): (i) stating that the Tenant's Work has been performed in accordance with all of the provisions of this Schedule and that all deficiencies (if any) which the Landlord has brought to the Tenant's attention have been corrected; (ii) stating that there are no construction, builders, mechanics', workers, workers' compensation or other liens, hypothecs and/or encumbrances affecting the Premises or the Shopping Centre with respect to work, services or materials relating to the Tenant's Work and that all accounts for such work, services and materials have been paid in full; (iii) listing each contractor and sub-contractor who performed work or supplied services or materials in connection with the Tenant's Work; (iv) confirming the date upon which the last such work was performed and services and materials were supplied; and (v) confirming as correct an itemized list showing the actual cost of all improvements including, without limitation, sprinklers, washrooms, or any other special facilities.
- (b) Final CSST Certificates - The Tenant will also provide to the Landlord, within sixty (60) days of completion of the Tenant's Work, a certificate of good standing from the Commission de la Santé et de la Sécurité du Travail in respect of each contractor and sub-contractor who performed work or supplied services or materials in connection with the Tenant's Work, certifying that each such contractor and sub-contractor has complied with all the requirements of the Loi sur les accidents du travail et les maladies professionnelles and the Loi sur la santé et la sécurité du travail, is a duly registered member and is in good standing at the date of the certificate.
- (c) Occupancy Permit - The Tenant will obtain and provide to the Landlord a copy of all occupancy and other permits required by any authority having jurisdiction, to permit the Tenant to open for business.
- (d) As-built Drawings - The Tenant shall provide to the Landlord CAD and PDF of as-built drawings within thirty (30) days after completion of the Tenant's Work.

#### **IV. TENANT'S EXPENSES**

All amounts payable by the Tenant pursuant to this Schedule will be paid to the Landlord as Additional Rent forthwith on demand, and failure by the Tenant to pay any amount payable pursuant to this Schedule shall entitle the Landlord, in addition to its other rights and remedies at law and under the Lease, to retain any amounts paid by the Tenant to the Landlord and to retain for its use, without payment for it, any work forming part of the Tenant's Work which has been commenced within the Premises, without prejudice to the Landlord's rights to claim and prove additional damages from the Tenant.



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## SCHEDULE "D" - CHARGES FOR HEATING, VENTILATING AND AIR-CONDITIONING SERVICES

- A. THE HVAC SYSTEM - The "HVAC System" of the Shopping Centre is made up of the heating, ventilating and air-conditioning equipment and facilities that are operated and maintained by the Landlord. It includes the buildings or areas which house common heating, ventilating or air-conditioning facilities, the equipment, improvements, installations, and utilities located in them, and rooftop or window heating, ventilating or air-conditioning units operated or maintained by the Landlord; the fuel and power facilities of the systems mentioned above; distribution piping, air handling units, and common fan coil and ventilation units that form part of those systems; monitoring, energy saving, and control systems, including the thermostat in each Rentable Premises supplied by the HVAC System and those ventilation systems which serve more than one tenant. The HVAC System does not include: (i) self-contained heating, ventilating and air-conditioning systems in a department store, food supermarket, cinema or auditorium or other Rentable Premises that have systems which have been installed and are maintained by the occupants; (ii) the distribution system within Rentable Premises; and (iii) any tenant-maintained ventilation ducts, make-up air facilities and booster units that are installed for individual tenants, or a group of tenants, to satisfy requirements that are in excess of the standard maximum sensible cooling load established by the Landlord, or which result from the production of air which is not suitable for recirculation.
- B. THE BASIC CHARGE - The Tenant will pay annually, in equal monthly instalments in advance, a charge (the "Basic Charge") for heating, ventilating and air-conditioning services to the Premises, whether directly or by appropriation, and to the Common Elements, in the amount of \$1.75 per square foot of the GLA of the Premises.
- C. THE OPERATING CHARGE
- (a) In each Rental Year, the Landlord will allocate between the Common Elements and the Rentable Premises, based on the advice of the Landlord's engineer, the total costs (the "Operating Costs") of the following services (the "Services"): operating, maintaining, repairing and replacing components of the HVAC System. The Operating Costs include but are not limited to the following: costs for labour including fringe benefits, power, fuel, domestic water, chemicals, lubricants, filters, and outside maintenance contracts, if any, the costs incurred by the Landlord in doing the allocation mentioned above, and a fee of fifteen percent (15%) of the total of the Operating Costs allocated to the Rentable Premises, for the Landlord's overhead. If a repair or replacement cost is not charged in full in the Rental Year in which it is performed or purchased, the Landlord will charge in each Rental Year, depreciation or amortization on the depreciated or amortized costs (together with a fee of fifteen percent (15%) of the depreciation or amortization) and interest at two percentage points above the Prime Rate on the undepreciated or unamortized part.
- (b) The Operating Costs allocated to Common Elements will be included in the costs under Section 6.02.
- (c) The Tenant will pay, in each Rental Year, the "Tenant's Operating Charge". The "Tenant's Operating Charge" is the total of: (i) those Operating Costs allocated to any basement areas of the Premises, and (ii) the product of (1) the Operating Costs allocated to Rentable Premises after deducting any operating costs allocated to basement areas of Rentable Premises, and (2) a fraction which has as its numerator the GLA of the Premises, excluding basement areas, and as its denominator the total GLA of those Rentable Premises (including the Premises), excluding basement areas, that are occupied throughout the Rental Year and are served by the HVAC System. The allocations mentioned in this subparagraph will be made by the Landlord's engineer.
- (d) If Rentable Premises are occupied by tenants who are solely responsible for providing a Service, the Tenant's Operating Charge as applied to that Service will be adjusted by excluding the GLA of those Rentable Premises from the denominator referred to in subparagraph (c) above.
- (e) For the purpose of Section 6.03 of the Lease, the amounts payable under subparagraph (c) above will be considered as amounts payable under Section 6.02 of the Lease with references to "Proportionate Share" being substituted, for the purposes of subparagraph (c) above, by references to "Tenant's Operating Charge".



## SCHEDULE "E" - RULES AND REGULATIONS

The Tenant will:

- (a) keep the inside and outside of all glass in the doors and windows of the Premises clean;
- (b) keep all exterior storefront surfaces of the Premises clean;
- (c) replace promptly, at its expense, any cracked or broken window glass of the Premises;
- (d) maintain the Premises at its expense, in a clean, orderly and sanitary condition and free of insects, rodents, vermin and other pests;
- (e) keep any garbage, trash, rubbish or refuse in ratproof containers within the interior of the Premises until removed;
- (f) remove garbage, trash, rubbish and refuse at its expense on a regular basis as prescribed by the Landlord;
- (g) keep all mechanical apparatus free of vibration and noise which may be transmitted beyond the Premises, and
- (h) cause its employees, agents, mandataries and contractors to park only in the parts of the Common Elements, if any, designated by the Landlord as employee parking.

The Tenant will not:

- (i) commit or permit waste upon or damage to the Premises or any nuisance or other act that disturbs the quiet enjoyment of other tenants or occupants of the Shopping Centre;
- (ii) do anything that may damage the Shopping Centre or permit odours, vapours, steam, water, vibrations, noises or other undesirable effects to come from the Premises;
- (iii) permit accumulations of garbage, trash, rubbish or other refuse within or outside the Premises;
- (iv) distribute handbills or other advertising matter to Persons in the Shopping Centre other than in the Premises;
- (v) permit the parking of delivery vehicles so as to interfere with the use of any driveway, walkway, parking facilities, mall or other area of the Shopping Centre;
- (vi) receive, ship, load or unload articles of any kind including merchandise supplies, materials, debris, garbage, trash, refuse and other goods, except through service access facilities designated from time to time by the Landlord and using Landlord approved apparatus;
- (vii) use the plumbing facilities for any other purposes than those for which they are constructed;
- (viii) use any part of the Premises for lodging, sleeping or any illegal purposes;
- (ix) cause or permit any machines selling merchandise, rendering services or providing, however operated, entertainment to be present on the Premises unless consented to in advance in writing by the Landlord;
- (x) solicit business and display merchandise except in the Premises, nor do or permit anything to be done in or on the Common Elements or the Shopping Centre that hinders or interrupts the flow of traffic to, in and from the Shopping Centre or obstructs the free movement of Persons in, to or from the Shopping Centre; or
- (xi) permit on the Premises any transmitting device or erect an aerial on any exterior walls of the Premises or any of the Common Elements, or use travelling or flashing lights, signs or television or other audio-visual or mechanical devices that can be seen outside of the Premises, or loudspeakers, television, phonographs, radios or other audio-visual or mechanical devices that can be heard outside of the Premises.



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## SCHEDULE "F" - FOOD COURT TENANTS

1.01 The Tenant is a Food Court Tenant and the provisions of this Schedule "F" apply as part of the Lease.

1.02 The following definitions apply in this Schedule "F" in addition to those set out in Article I of the Lease;

"Food Court Cost": those costs and expenses incurred or allocated by the Landlord from time to time exclusively for the maintenance and operation of the Food Court as the Food Court (and excluding those costs and expenses which would have been incurred in any case had the Food Court been an enclosed mall area instead of a Food Court) including, but not limited to: (i) salaries, wages, benefits and other costs of busboys and other personnel employed for cleaning and servicing the Food Court; (ii) garbage and waste collection and disposal and all costs associated with pest control in the Food Court, but excluding pest control costs involving individual Rentable Premises of Food Court Tenants; (iii) cleaning of grease traps and exhaust systems if the Landlord implements a plan to provide such service to all or a majority of the Food Court Tenants; (iv) rental of equipment and signs; (v) repairs or replacements to, and maintenance and operation of, the furniture, fixtures, and furnishings of the Food Court; (vi) depreciation or amortization and interest in the manner provided for in Section 6.02 of the Lease with respect to repairs or replacements included in item (v) above, the cost of which is not charged in full in the Rental Year in which it is incurred; (vii) the cost of additional security, policing and supervision for the Food Court; and (viii) an administration fee of fifteen percent (15%) of the total annual costs noted above except interest charges. From the total of the costs described above (and prior to the calculation of the fifteen percent (15%) administration fee referred to in item (viii) above), there is deducted contributions, if any, to those costs made by tenants or occupants of space who are not Food Court Tenants.

"Food Court Proportionate Share": a fraction, the numerator of which is the GLA of the Premises and the denominator of which is the GLA of all Rentable Premises leased to Food Court Tenants that utilize the same Food Court as the Tenant.

1.03 In each Rental Year the Tenant will pay to the Landlord, as Additional Rent, in addition to its obligations under Section 6.02 of the Lease, the Tenant's Food Court Proportionate Share of the Food Court Costs. If required, the Tenant's Food Court Proportionate Share will be adjusted on a per diem basis based on a period of 365 days.

1.04 The Landlord will arrange for pest control in the Food Court and in the Premises in such intervals and using such contractor as the Landlord in its sole discretion determines. The cost thereof shall, with respect to the Food Court, be included in the Food Court Costs and, with respect to the Premises, shall be paid by the Tenant together with an administration fee of fifteen percent (15%) of the cost immediately upon demand and the provisions of Section 9.07 of the Lease shall not apply.

1.05 The Landlord may from time to time relocate or rearrange the Food Court, expand or reduce the space within the Food Court including designating other parts of the Common Elements immediately adjacent to the Food Court as part of the Food Court. The Landlord may also designate other parts of the Shopping Centre as food courts whether as part of the Food Court or as separate and distinct food courts and may make Rules and Regulations and policies, standards and directions governing the overall operations of those food courts.

1.06 The Landlord may formulate and enforce the policies, standards and practices for the Food Court that the Landlord determines are in the best interests of the overall operation of the Food Court and the Shopping Centre, including without limitation a policy of requiring all or a majority of the Food Court Tenants to use contractors designated or approved by the Landlord for the cleaning of grease traps and exhaust systems (provided such contractors' fees are competitive in the market place) and may also designate the name or names by which the Food Court is to be referred. The Tenant will comply with those policies, standards and practices and will refer to the Food Court in all its advertising and the conduct of its business in the Premises by the name or names designated by the Landlord.

~~1.07 The Tenant will pay to the Landlord the sum set out in Section 4.01(k) as a capital contribution on account of the Tenant's share of the cost of providing furniture, furnishings, equipment and facilities for the Food Court at the same time as the Tenant executes and delivers this Lease.~~

1.08 For the purpose of Section 6.03 of the Lease, the amounts payable under this Schedule "F" will be considered as amounts payable under Section 6.02 of the Lease with reference to "Proportionate Share" being substituted, for the purpose of this Schedule "F", by references to "Food Court Proportionate Share".



**SCHEDULE "G" - ANNUAL STATEMENT**

(on the letterhead of the Tenant)

**TO: LANDLORD'S FULL LEGAL NAME**  
c/o The Cadillac Fairview Corporation Limited  
20 Queen Street West  
Toronto, Ontario  
M5H 3R4

Attention: Accounting Department

**RE: SALES AUDIT - TENANT'S FULL LEGAL NAME**  
Store No.      **UNIT NUMBER**,      **NAME OF SHOPPING CENTRE**

On behalf of **TENANT'S FULL LEGAL NAME**, I have carried out an examination of the Gross Revenue (as defined in the Lease for the store) of Store No.      **UNIT NUMBER** located at      **NAME OF SHOPPING CENTRE** for the twelve (12) months ended                      20    .

My examination included a general review of the accounting procedures and such tests of the accounting procedures and such tests of the accounting records and other supporting evidence as I considered necessary in the circumstances.

Based on my examination outlined above, I report that the accounting records of **TENANT'S FULL LEGAL NAME** show that the Gross Revenue of the **NAME OF SHOPPING CENTRE** store leased by the Tenant were (\$    ) for the twelve (12) months ended                      20    . A schedule of Gross Revenue by month is attached.

---

President of  
**OLYMPUS FOOD (CANADA) INC.**  
(the Tenant)



LK

**SCHEDULE "G-1" - BREAKDOWN OF MONTHLY GROSS REVENUE**

FOR YEAR-ENDED \_\_\_\_\_

January	_____
February	_____
March	_____
April	_____
May	_____
June	_____
July	_____
August	_____
September	_____
October	_____
November	_____
December	_____

\_\_\_\_\_  
President of  
**OLYMPUS FOOD (CANADA) INC.**  
(the Tenant)



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SCHEDULE "G-2" – SPECIAL PURPOSE REPORT

(on the letterhead of the Accountant)

TO: **LANDLORD'S FULL LEGAL NAME**  
c/o The Cadillac Fairview Corporation Limited  
(hereinafter called the "Landlord")

As requested by **TENANT'S FULL LEGAL NAME** (hereinafter called the "Tenant"), we report that the Gross Revenue, as determined in accordance with the Lease dated \_\_\_\_\_ 20\_\_ between the Landlord and the Tenant, of the Tenant's store designated as \_\_\_\_\_ **UNIT NUMBER** at \_\_\_\_\_ **NAME OF SHOPPING CENTRE**, for each of the months in the lease year ended \_\_\_\_\_ 20\_\_ is recorded in the general ledger sales account of the Tenant as follows:

January  
February  
March  
April  
May  
June  
July  
August  
September  
October  
November  
December

On \_\_\_\_\_ 20\_\_ we reported on the financial statements of the Tenant for the year ended \_\_\_\_\_ 20\_\_; however, our examination of such financial statements was not directed to the determination of Gross Revenue or other financial information of individual stores, nor have we examined the Tenant's financial statements for the period subsequent to the year ended \_\_\_\_\_ 20\_\_. We have not performed an audit of and accordingly do not express an opinion on the amount of the Gross Revenue referred to in the preceding paragraph.

However, in connection with this report, we have performed the following procedures:

1. We agreed the amount of the Gross Revenue as referred to above to the general ledger of the Tenant for each of the months in the year ended \_\_\_\_\_ 20\_\_.
2. We compared the definition of Gross Revenue referred to in Section 1.02 of the Lease referred to above with the Tenant's accounting policy for the recording of sales in the general ledger and found no exceptions.

It is understood that this report is to be used solely for computing Percentage Rent and is not to be referred to or distributed to any person not a member of management of the Landlord or the Tenant.

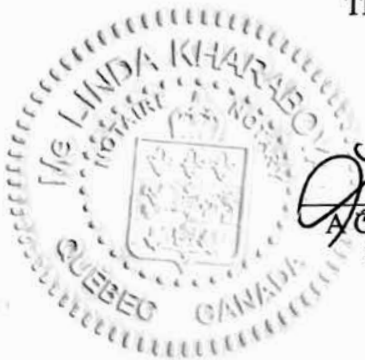
\_\_\_\_\_  
date

\_\_\_\_\_  
Chartered Accountants



UK

THIS IS EXHIBIT "B" REFERRED TO IN  
THE AFFIDAVIT OF CHRISTIAN VÉZINA  
SWORN BEFORE ME  
THIS 28<sup>TH</sup> DAY OF AUGUST, 2020



*Linda Kharabon*  
A Commissioner of Oaths/Notary Public  
in and for the Province of Quebec

LK  
LK



OLYMPUS FOOD (CANADA), INC.

March 30, 2019

**DELIVERED BY MESSENGER**

**THE CADILLAC FAIRVIEW CORPORATION  
LIMITED**

5<sup>th</sup> Floor, 20 Queen St. W, Toronto, ON, M5H 3R4

**Att: Executive Vice-President, National Property  
Operations**

***With a copy for Shopping Centre Manager***

**Re:                    NOTICE OF CLOSURE AND TERMINATION OF LEASE**  
Lease between Les Galeries d'Anjou Leaseholds inc. -and- Olympus Food  
(Canada) Inc., t/a "KFC" and/or "PFK", entered into on June 11, 2015 (the  
"Lease")  
Store #: No. F006  
Location: 7999, boul. des Galeries d'Anjou, Anjou, QC, H1M 1W9 (the "Leased  
Premises")

Dear Madam or Sir:

We hereby inform you that, by force of circumstance, we are constrained to terminate the Lease with you, effective as of **April 1st, 2019**. Our Franchisor, Kentucky Fried Chicken Canada Company ("Franchisor"), has informed us that our franchise agreement, license to operate this restaurant location, and all rights associated thereto, will be terminated, effective as of the above-stated date making it impossible for us to perform our obligations relating to such Lease. Due to the said termination, we shall have lost the legal right to continue the use of the premises, the license and the name Kentucky Fried Chicken or KFC in association with our business in your leased premises.

As you are aware, we have always used the commercial names Kentucky Fried Chicken and KFC in relation to the business located in your leased premises. This was, and has always been, our intended and actual authorized use in the premises, notably as per sections 1.01 (d) and 9.01 of the lease.

Therefore, as of April 1st, 2019 onward, we will not have any option, but to close the business in the leased premises and terminate the lease.

In the spirit of good faith and collaboration, but without any obligation nor admission, we are offering to pay you an amount equivalent to three (3) months of rent, if you act in the same reasonableness and good faith and do not contest said termination under these uncontrollable circumstances and given the impossibility on our part to continue the business for which the leased premises were rented, and the whole to your knowledge.

LK

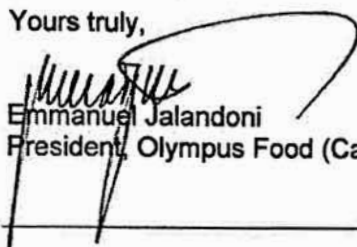


Please confirm your acceptance of the terms above at your earliest convenience.

Should you have any question, we are available to discuss this further with you.

We remain,

Yours truly,

  
Emmanuel Jalandoni  
President, Olympus Food (Canada) Inc.

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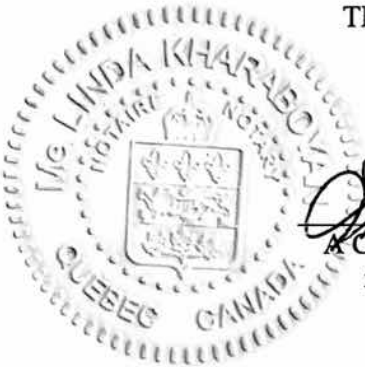
Acknowledged receipt and acceptance of the three (3) months offer, on this \_\_\_ day of \_\_\_\_\_ 2019.

Per: \_\_\_\_\_

LK

THIS IS EXHIBIT "C" REFERRED TO IN  
THE AFFIDAVIT OF CHRISTIAN VÉZINA  
SWORN BEFORE ME

THIS 28<sup>TH</sup> DAY OF AUGUST, 2020



*Linda Kharaeou*  
Commissioner of Oaths/Notary Public  
in and for the Province of Quebec

LK



OLYMPUS FOOD (CANADA), INC.

May 15, 2019

LE CARREFOUR LAVAL (2013) INC.

c/o The Cadillac Fairview Corporation Limited

5<sup>th</sup> Floor, 20 Queen Street West

Toronto, ON M5H 3R4

Attention: Executive Vice-President, National Property Operations

**Re: Lease of Premises –3035 Boul Le Carrefour, Laval (Quebec) H7T 1C7 (the “Lease”)**

To Whom It May Concern:

We are writing to provide notice that Olympus Food (Canada) Inc. (“Olympus”) has entered into an agreement to sell certain of its assets (the “Sale”), including its rights and interests in the Lease, to FMI Atlantic Inc. (“FMI”). FMI is one of the largest franchise operators in Canada. Under the terms of the Sale, FMI will be assuming the Lease and all of the rights and obligation of Olympus under the Lease, subject to its terms. The Sale is scheduled to be completed by June 16, 2019.

Representatives of Olympus will be contacting you shortly to discuss the steps necessary to assign the Lease.

OLYMPUS FOOD (CANADA) INC.

Per:

Emmanuel Jalandoni

c.c. DLA Piper (Canada) LLP  
Attention: Mike Weinczok

908-53 AVENUE NE, SUITE I, CALGARY, AB T2E 6N9, CANADA  
PHONE: 403-230-0297 FAX: 403-230-2610

LK

THIS IS EXHIBIT "D" REFERRED TO IN  
THE AFFIDAVIT OF CHRISTIAN VÉZINA

SWORN BEFORE ME

THIS 28<sup>TH</sup> DAY OF AUGUST, 2020



*Linda Kharam, Notary*  
A Commissioner of Oaths/Notary Public  
in and for the Province of Quebec

LK

CANADA  
PROVINCE DE QUÉBEC  
DISTRICT DE MONTRÉAL

COUR SUPÉRIEURE  
(chambre civile)

No: 500-17-107503-198

LES GALERIES D'ANJOU LEASEHOLDS INC.

Demanderesse

c.

OLYMPUS FOOD (CANADA) INC.

Défenderesse

---

AVIS DE COMMUNICATION DE LA DÉCLARATION ASSERMENTÉE D'EMMANUEL  
JALANDONI

(Articles 105 et 106 C.p.c.)

---

Destinataire : GOWLING WLG (CANADA) S.E.N.C.R.L.  
Avocats de la Demanderesse  
Me Alexandre Forest  
1, Place Ville-Marie, suite 3700  
Montréal (Québec) H3B 3P4  
Courriel: [alexandre.forest@gowlingwlq.com](mailto:alexandre.forest@gowlingwlq.com)  
Téléphone: 514 392-9424  
Télécopieur: 514 876-9024

PRENEZ AVIS qu'au soutien de ses représentations à l'encontre de la *Demande en homologation de transaction* de la Demanderesse, la Défenderesse entend invoquer et déposer la Déclaration assermentée d'Emmanuel Jalandoni.

Copie de la Déclaration assermentée d'Emmanuel Jalandoni datée du 11 décembre 2019 est jointe en annexe au présent avis.

VEUILLEZ AGIR EN CONSÉQUENCE.

Montréal, le 11 décembre 2019

  
DLA PIPER (CANADA) S.E.N.C.R.L.

Avocats de la Défenderesse

Me Mélanie Martel

1501, avenue McGill College, bureau 1400

Montréal (Québec) H3A 3M8

Courriel : [melanie.martel@dlapiper.com](mailto:melanie.martel@dlapiper.com)

Téléphone: 514-392-8443

Télécopieur: 514-392-8390

Notre dossier: 100249-00001

LK

**CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL**

**No: 500-17-107503-198**

**SUPERIOR COURT  
(civil chamber)**

**LES GALERIES D'ANJOU LEASEHOLDS  
INC.**

Plaintiff

v.

**OLYMPUS FOOD (CANADA) INC.**

Defendant

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**SWORN DECLARATION OF EMMANUEL JALANDONI**

---

I, the undersigned, EMMANUEL JALANDONI, President of Olympus Food (Canada) Inc. exercising then my functions at 908, 53<sup>rd</sup> Avenue NE, Suite 1, in the city of Calgary, province of Alberta, T2E 6N9, solemnly declares the following:

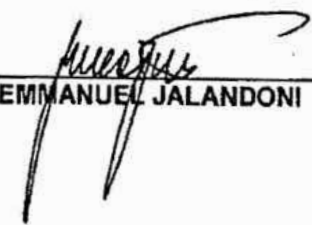
1. At all time relevant to this declaration, I was the president of the Defendant, Olympus Food (Canada) Inc. and was the one in charge of the negotiations;
2. As such, I have knowledge of the facts mentioned herewith, although I am no longer active as President or employee of the Defendant since November 1, 2019, when I went on sabbatical leave.
3. Defendant never agreed to the terms of the settlement sent by Plaintiff on October 21<sup>st</sup>, 2019, exhibit R-5, pages 13 to 15;
4. There were many different matters to be resolved between the parties and the court litigation regarding one of them was only one of these matters;
5. The parties agree that all the settlements were related one to another and all the issues had to be resolved to reach a complete settlement;
6. The settlement discussions regarding Anjou (modalities and dates of payment) and St-Bruno were suspended since there were issues with the assignment of Carrefour Laval between FMI and Plaintiff;
7. Defendant never agreed with Plaintiff on a termination date for the Saint-Bruno lease on January 31<sup>st</sup>, 2020, and this termination date was crucial for Defendant considering notably its franchise agreement with KFC;
8. Defendant never agreed with Plaintiff to an amount being payable from February 2020 to January 2021 for the Saint-Bruno lease since Defendant's offer was for a termination in September 2019 and a monthly rent payment from September 2019 to August 2020, as it would have been too onerous and unacceptable for Defendant otherwise;

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9. Furthermore, Defendant never agreed with Plaintiff to a lump sum being paid for the Saint-Bruno premises, as Defendant's offer was for monthly installments as the rent was, and since it was what Defendant could offer;
10. Defendant never agreed to pay the agreed amount for the Anjou location in one lump sum immediately upon signature, since the negotiations on the modalities and time of the payment was never completed nor agreed on;
11. The draft settlement agreement (Anjou) and simple "statement of account" with no mention of termination (St-Bruno) received by our attorneys from Plaintiff's attorneys was sent to us at the end of October 2019;
12. In the following days, we informed our attorneys that the terms contained therein such as the date of termination for St-Bruno, the starting date of the year rent for St-Bruno (we offered September 2019, they counter offered with February 2020 : we never agreed) and the dates and modalities (monthly installments or lump sums) of payments for Anjou and St-Bruno were not agreed upon by Defendant, and those imposed by Plaintiff in its draft documents were not consented to by us at any time;
13. We asked our counsel to inform opposing counsel that we were not consenting nor had ever been to those imposed dates of termination, starting dates for termination indemnity, dates of payments and modalities of payments accordingly;
14. We then receive this proceeding and are contesting any homologation or imposition by Plaintiff and the court of termination dates, modalities and dates of payments, and number of months to be paid for termination.
15. Since all the settlements were related, Plaintiff is refusing to assign the Carrefour Laval lease to FMI although all parties agreed to the written terms of the assignment, given that Anjou and St-Bruno are clearly not settled;
16. Furthermore, I was informed by our counsel that Defendant received an estoppel certificate from Plaintiff that disregarded the settlement discussions, and even more so any types of "settlements", exhibit RO-3;
17. All of the facts alleged in the present affidavit are true and to my knowledge.

AND I HAVE SIGNED,

  
EMMANUEL JALANDONI

Solemnly declared before me, in  
on December 11, 2019

  
Commissioner of oaths / Notary public

Andrew MacGregor  
Barrister & Solicitor

LK

No: 500-17-107503-198

COUR SUPÉRIEURE  
PROVINCE DE QUÉBEC  
CHAMBRE CIVILE

LES GALERIES D'ANJOU LEASEHOLDS INC.

Demanderesse

c.

OLYMPUS FOOD (CANADA) INC.

Défenderesse

AVIS DE COMMUNICATION DE LA DÉCLARATION  
ASSERMENTÉE D'EMMANUEL JALANDONI &  
SWORN DECLARATION OF EMMANUEL  
JALANDONI DATED DECEMBER 11, 2019

Copie pour la Demanderesse

Me Mélanie Martel  
MM/jb

Notre dossier: 100249-00001



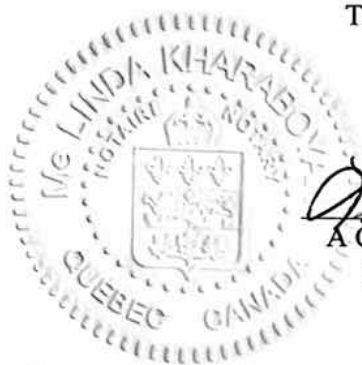
**DLA PIPER**

DLA Piper (Canada) s.e.n.c.r.l.  
1501, McGill College Avenue, suite 1400  
Montréal (Québec) H3A 3M8  
Téléphone: (514) 392-8428  
Télécopieur : (514) 392-8390  
BH 0834

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THIS IS EXHIBIT "E" REFERRED TO IN  
THE AFFIDAVIT OF CHRISTIAN VÉZINA  
SWORN BEFORE ME

THIS 28<sup>TH</sup> DAY OF AUGUST, 2020



*Linda Kharabon*  
A Commissioner of Oaths/Notary Public  
in and for the Province of Quebec

LK.

## COUR SUPÉRIEURE

CANADA  
PROVINCE DE QUÉBEC  
DISTRICT DE MONTRÉAL

N° : 500-17-107503-198

DATE : Le 16 décembre 2019

---

SOUS LA PRÉSIDENTE DE L'HONORABLE PATRICK BUCHHOLZ, J.C.S.

---

**LES GALERIES D'ANJOU LEASEHOLDS INC.**

Demanderesse

c.

**OLYMPUS FOOD (CANADA) INC.**

Défenderesse

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### JUGEMENT SUR LA DEMANDE EN HOMOLOGATION DE TRANSACTION

---

- [1] **CONSIDÉRANT** la demande en homologation;
- [2] **CONSIDÉRANT** l'article 2631 C.c.Q.;
- [3] **CONSIDÉRANT** les autorités soumises par les parties;
- [4] **CONSIDÉRANT** que la demanderesse a le fardeau de prouver, sur la balance des probabilités, l'existence d'une transaction entre les parties sur l'ensemble des éléments clés de leur entente alléguée;
- [5] **CONSIDÉRANT** qu'une transaction est un contrat nommé dont la formation juridique valable requiert notamment un échange de consentement;

[6] **CONSIDÉRANT** la preuve contradictoire;

[7] **CONSIDÉRANT** que, compte tenu de la preuve écrite déposée et la preuve testimoniale entendue, on ne peut conclure, sur la balance des probabilités, qu'il y avait, à quelque moment précis, un échange de consentement sur l'ensemble des éléments clés de la transaction alléguée, notamment quant aux modalités de paiements de montants d'importance et de la date de résiliation d'un bail dans l'établissement situé à Saint-Bruno;

[8] **CONSIDÉRANT** que pour une entreprise qui a récemment perdu certains droits importants de franchise, toute considération financière, dont des modalités de paiements quelconques, revêt une importance plus qu'accessoire;

[9] **CONSIDÉRANT** qu'il y avait tout au plus, le 20 septembre 2019, une entente verbale conditionnelle de principe, insuffisante pour être considérée dès lors une transaction complète sur tous les points essentiels;

[10] **CONSIDÉRANT** qu'au 20 septembre 2019, les parties n'avaient pas encore convenu de points importants dont notamment les conditions précises de mise en œuvre future de l'entente de principe et les termes d'une convention de cession tripartite;

[11] **CONSIDÉRANT** que la défenderesse n'a jamais accepté l'ensemble des termes des diverses ententes écrites qui lui ont été soumises le 21 octobre 2019;

[12] **CONSIDÉRANT** de plus que le *Lease Amending Agreement* proposé comme faisant partie de la transaction alléguée comporte une modification importante depuis l'entente de principe qui serait intervenue verbalement le 20 septembre 2019, à savoir, que la date à laquelle le paiement forfaitaire équivalant à 12 mois de loyer ne serait plus le 1<sup>er</sup> février 2020, mais plutôt immédiatement sur signature du *Lease Amending Agreement*, et que cela démontre bien qu'il restait des détails clés à clarifier et à convenir entre les parties;

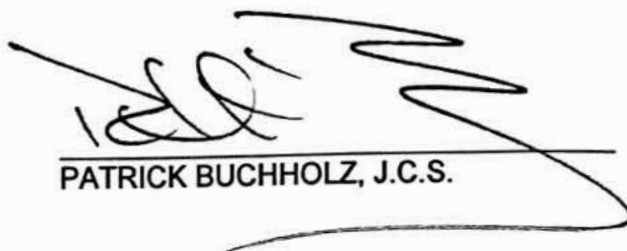
[13] **CONSIDÉRANT** que la demanderesse n'a pas réussi à rencontrer son fardeau de preuve à démontrer, sur la balance des probabilités, l'existence d'une transaction complète entre les parties;

**POUR CES MOTIFS, LE TRIBUNAL :**

[14] **REJETTE** la demande en homologation;

LK

[15] FRAIS À SUIVRE.



PATRICK BUCHHOLZ, J.C.S.

Me Alexandre Forest  
GOWLING WLG  
Avocats de la demanderesse

Me Mélanie Martel  
Me Ayman Daher  
DLA PIPER AVOCATS  
Avocats de la défenderesse

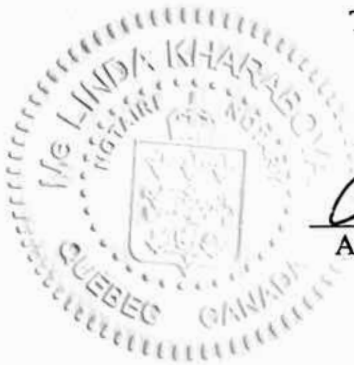
Date d'audience : Le 12 décembre 2019

LK



THIS IS EXHIBIT "F" REFERRED TO IN  
THE AFFIDAVIT OF CHRISTIAN VÉZINA  
SWORN BEFORE ME

THIS 28<sup>TH</sup> DAY OF AUGUST, 2020



*Linda Kharraboua, Notary*  
A Commissioner of Oaths/Notary Public  
in and for the Province of Quebec

LK



OLYMPUS FOOD (CANADA), INC.

December 27, 2019

**DELIVERED BY COURIER**

**LES PROMENADES SAINT-BRUNO LEASEHOLDS INC.**

**C/O CADILLAC FAIRVIEW**

20, Queen St. West, 5<sup>th</sup> Floor

Toronto, ON, M5H 3R4

**Re:                    NOTICE OF CLOSURE AND TERMINATION**  
Lease dated June 10, 2015 and Storage Area Agreement dated August 18, 2015  
(collectively the "Lease")  
Store #: No.: FC09  
Storage # Area: S-13  
Location: Food stand located at Promenades St-Bruno, 1, Promenades Blvd.,  
St-Bruno de Montarville, Québec, J3V 5J5 (the "Leased Premises")

---

Dear Madam or Sir:

We hereby inform you that by force of circumstances, we are constrained to terminate the Lease with you, effective as of December 29, 2019.

Our franchisor, Kentucky Fried Chicken Company ("Franchisor") has informed us that we have lost the legal right to continue the use of the premises, the license and the name Kentucky Fried Chicken or KFC or its French version Poulet Frit Kentucky or PFK in association with our business in your Leased Premises.

As you are aware, we have always used the commercial names Kentucky Fried Chicken, KFC, Poulet Frit Kentucky and PFK in relation to the business located in your Leased Premises. This was and has always been our intended and actual authorized used in the Leased Premises.

We will proceed to empty the Leased Premises for the termination date, December 29, 2019.

Should you have any question, we are available to discuss this further with you.

We remain,

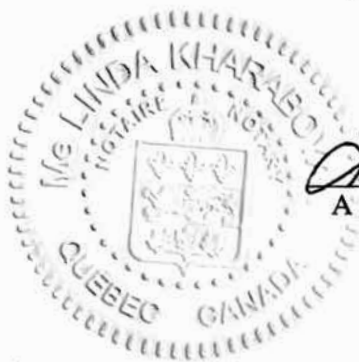
Yours truly,

Manolo Tingzon

Representative duly authorized of Olympus Food (Canada) Inc.

LK

THIS IS EXHIBIT "G" REFERRED TO IN  
THE AFFIDAVIT OF CHRISTIAN VÉZINA  
SWORN BEFORE ME  
THIS 28<sup>TH</sup> DAY OF AUGUST, 2020



*Linda Kharaboo*  
A Commissioner of Oaths/Notary Public  
in and for the Province of Quebec

LK

LK



France Paradis <france.paradis2@cadillacfairview.com>

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**Fwd: AVT - Employés du PFK pour la loi anti-tabac**

1 message

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France Paradis <france.paradis2@cadillacfairview.com>  
À : kfc1277@fmigroup.ca

13 septembre 2019 à 09 h 54

Bonjour Amélie,

Voir ci-dessous pour ton info.

Merci !

**FRANCE PARADIS**

GESTIONNAIRE À LA SÉCURITÉ / MANAGER, SECURITY & LIFE SAFETY

CF Carrefour Laval  
3003, boul. Le Carrefour  
Laval, QC H7T 1C7

T: (450) 687-2560

france.paradis2@cadillacfairview.com

cadillacfairview.com



DOMICILE D'ÉQUIPE CANADA



PREMIÈRE TRANCHE DE 25 %  
DES ENTREPRISES LES PLUS MOBILISATRICES  
À L'ÉCHELLE MONDIALE

----- Forwarded message -----

De : **Jean-Fabrice Ouimet** <jeanfabrice.ouimet@cadillacfairview.com>

Date: jeu. 12 sept. 2019, à 15 h 29

Subject: AVT - Employés du PFK pour la loi anti-tabac

To: lavsecurite <lavsecurite@cadillacfairview.com>

Bonjour,

Jeudi le 12 septembre 2019 vers 15:20, le superviseur Znack avise le contrôle avoir émis des avertissements à deux employés du PFK concernant la loi anti-tabac au Quai BG.

--

**Jean-Fabrice Ouimet**

Agent de sécurité

Tel: (450) 687-1366

**GARDAWORLD**

LK



France Paradis <france.paradis2@cadillacfairview.com>

**Fwd: AVT - Employés PFK pour loi anti-tabac et consommation d'alcool**

1 message

France Paradis <france.paradis2@cadillacfairview.com>  
À : kfc1277@fmigroup.ca

17 septembre 2019 à 17 h 07

Encore moi, désolée.

Un autre avertissement cette fois-ci impliquant non seulement des fumeurs mais consommation d'alcool aussi.

Merci de faire le nécessaire.

**FRANCE PARADIS**

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DOMICILE D'ÉQUIPE CANADA



PREMIÈRE TRANCHE DE 25 %  
DES ENTREPRISES LES PLUS MOBILISATRICES  
À L'ÉCHELLE MONDIALE

----- Forwarded message -----

De : Jean-Fabrice Ouimet <jeanfabrice.ouimet@cadillacfairview.com>

Date: mar. 17 sept. 2019, à 16 h 44

Subject: AVT - Employés PFK pour loi anti-tabac et consommation d'alcool

To: lavsecurite <lavsecurite@cadillacfairview.com>, gplavadmin <gplavadmin@cadillacfairview.com>, France Paradis <france.paradis2@cadillacfairview.com>

Bonjour,

Mardi le 17 septembre 2019 vers 16:25, j'effectuais un balayage de caméras quand j'ai aperçu quatre personnes fumer au Quai BG près de la sortie d'urgence. Deux d'entre elles consommaient également de l'alcool. Le superviseur Znack et l'agent Latreille ont été envoyés sur les lieux. Les agents ont procédé à l'avertissement et ils ont pu constater que trois d'entre eux sont des employés du PFK.

—  
**Jean-Fabrice Ouimet**  
Agent de sécurité  
Tel: (450) 687-1366  
**GARDAWORLD**

LK



France Paradis <france.paradis2@cadillacfairview.com>

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**Fwd: AVT - Loi anti-tabac - PFK**

1 message

---

France Paradis <france.paradis2@cadillacfairview.com>  
À : KFC1277 <kfc1277@fmigroup.ca>

23 octobre 2019 à 17 h 49

Bonjour Amélie,

Il y a longtemps que je ne t'avais pas écrit pour tes employés, c'est bon signe !

Mais aujourd'hui il y a eu 2 avertissements pour des fumeurs qui n'ont pas respecté le 9 mètres réglementaire, voir ci-dessous pour ton attention.

Merci !

**FRANCE PARADIS**

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DOMICILE D'ÉQUIPE CANADA



PREMIÈRE TRANCHE DE 25 %  
DES ENTREPRISES LES PLUS MOBILISATRICES  
À L'ÉCHELLE MONDIALE

—— Forwarded message ——

De : Jonathan Znack <jonathan.znack@cadillacfairview.com>

Date: mer. 23 oct. 2019, à 17 h 46

Subject: AVT - Loi anti-tabac - PFK

To: lavsecurite <lavsecurite@cadillacfairview.com>

Bonjour,

mercredi le 23 octobre 2019, vers 17:30, l'agent Hœu accompagné de l'agent Moahamad ont donné des avertissement à 2 des employés du PFK concernant la loi anti-tabac. Ceux-ci n'ont pas été coopératif. 5 minutes plus tard, les agents sont repassé et ont revu les mêmes employés et ils ont été irrespectueux envers les agents.

Merci,

Jonathan ZNACK

LK



25/08/2020

Courriel Cadillac Fairview - Fwd: AVT - Loi anti-tabac - PFK



Officier de site, GARDAWORLD

CF Carrefour Laval

T: 450-687-1366

3035 Boul. le Carrefour, Laval

**GARDAWORLD**

LK

25/08/2020

Courriel Cadillac Fairview - Fwd: AVT multiples loi anti-tabac à des employés de PFK



France Paradis <france.paradis2@cadillacfairview.com>

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## Fwd: AVT multiples loi anti-tabac à des employés de PFK

1 message

---

France Paradis <france.paradis2@cadillacfairview.com>  
À : KFC1277 <kfc1277@fmigroup.ca>

31 janvier 2020 à 10 h 34

Bonjour Amélie,

Voir ci-dessous des interventions faites par la sécurité hier soir pour des employés qui ne respectaient pas la loi sur le tabagisme encore une fois.

Merci de réitérer l'importance de respecter les lois et nos règlements.

Pendant tes vacances, pourrais-tu me donner les coordonnées d'une personne à joindre si jamais j'avais une urgence ?

Merci !

### FRANCE PARADIS

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DOMICILE D'ÉQUIPE CANADA



PREMIÈRE TRANCHE DE 25 %  
DES ENTREPRISES LES PLUS MOBILISATRICES  
À L'ÉCHELLE MONDIALE

----- Forwarded message -----

De : Jean-Fabrice Ouimet <jeanfabrice.ouimet@cadillacfairview.com>

Date: jeu. 30 janv. 2020, à 19 h 05

Subject: AVT multiples loi anti-tabac à des employés de PFK

To: lavsecurite <lavsecurite@cadillacfairview.com>

Bonjour,

Jeudi le 30 janvier 2020 vers 18:15, l'agent Hœu avise le Contrôle qu'il aperçoit trois employés de PFK fumer à côté de la porte de l'Administration, soit à moins de 9 mètres. Il est donc allé leur émettre un avertissement. Quelques minutes plus tard, il s'est dirigé au Quai BG où il a procédé à un nouvel avertissement pour la loi anti-tabac à un autre employé du PFK.

SIMS # 20-000100

—  
Jean-Fabrice Ouimet  
Agent de sécurité

LK

25/08/2020

Courriel Cadillac Fairview - Fwd: AVT multiples loi anti-tabac à des employés de PFK

Tel: (450) 687-1366

**GARDAWORLD**

LK



France Paradis <france.paradis2@cadillacfairview.com>

**Fwd: Avertissement anti-tabac - PFK + Porte E-2**

1 message

France Paradis <france.paradis2@cadillacfairview.com>  
À : KFC1277 <kfc1277@fmigroup.ca>

19 février 2020 à 10 h 17

Bonjour Amélie,

Voir ci-dessous pour ton suivi.

Merci de continuer à renforcer les règlements relatifs au tabac.

**FRANCE PARADIS**

GESTIONNAIRE À LA SÉCURITÉ / MANAGER, SECURITY & LIFE SAFETY

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cadillacfairview.com



DOMICILE D'ÉQUIPE CANADA



PREMIÈRE TRANCHE DE 25 %  
DES ENTREPRISES LES PLUS MOBILISATRICES  
À L'ÉCHELLE MONDIALE

----- Forwarded message -----

De : Jonathan Znack <jonathan.znack@cadillacfairview.com>  
Date: dim. 16 févr. 2020, à 17 h 46  
Subject: Avertissement anti-tabac - PFK + Porte E-2  
To: lavsecurite <lavsecurite@cadillacfairview.com>, Jean Adam <Jean.Adam@gdi.com>

Bonjour,

dimanche le 16-02-2020, vers 17:40, l'agente Flynn émet un avertissement à Anisse, employé au PFK, concernant la loi anti tabac prêt du quai BG. Elle leur mentionne également qu'elle barre les portes et qu'ils leurs sera impossible de rentrer s'ils ne le font pas maintenant. Ce dernier lui a mentionné qu'il "n'en avait rien à foutre" car il allait forcer la porte E-2, ce qu'il a fait.

Merci,



Jonathan ZNACK  
Officier de site, GARDAWORLD  
CF Carrefour Laval

LK

25/08/2020

Courriel Cadillac Fairview - Fwd: Avertissement anti-tabac - PFK + Porte E-2

T: 450-687-1366

3035 Boul. le Carrefour, Laval

**GARDAWORLD**

LK.

25/08/2020

Courriel Cadillac Fairview - Fwd: Crime - Consommations de substances illicites PFK



France Paradis <france.paradis2@cadillacfairview.com>

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## Fwd: Crime - Consommations de substances illicites PFK

1 message

---

France Paradis <france.paradis2@cadillacfairview.com>  
À : KFC1277 <kfc1277@fmigroup.ca>

16 décembre 2019 à 09 h 18

Bonjour Amélie,

Voir ci-dessous pour ton info. Ce se serait produit vers 14h15.

Merci !

### FRANCE PARADIS

GESTIONNAIRE À LA SÉCURITÉ / MANAGER, SECURITY & LIFE SAFETY

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3003, boul. Le Carrefour  
Laval, QC H7T 1C7

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cadillacfairview.com



DOMICILE D'ÉQUIPE CANADA



PREMIÈRE TRANCHE DE 25 %  
DES ENTREPRISES LES PLUS MOBILISATRICES  
À L'ÉCHELLE MONDIALE

----- Forwarded message -----

De : **Annia Cote-Jacques** <annia.cotejacques@cadillacfairview.com>

Date: sam. 14 déc. 2019, à 14 h 58

Subject: Crime - Consommations de substances illicites PFK

To: lavsecurite <lavsecurite@cadillacfairview.com>

Bonjour,

En date du 14 décembre 2019, l'agent Schmalhaus s'est rendu au Quai BG afin d'émettre un avertissement à un employé de chez PFK puisqu'il fumait à l'intérieur du mail soit à la porte E1.

Cordialement,

**Côté-Jacques, Annia**

Agente de sécurité

Carrefour Laval

T.450.687.1366

LK





France Paradis <france.paradis2@cadillacfairview.com>

**Fwd: Crime - Employés du PFK consommant du cannabis à l'intérieur**

1 message

France Paradis <france.paradis2@cadillacfairview.com>  
À : KFC1277 <kfc1277@fmigroup.ca>

22 janvier 2020 à 17 h 35

Bonjour Amélie,

Voir ci-dessous pour ton information et suivi.

J'apprécierais si vous pourriez rappeler à vos employés qu'il est interdit de fumer partout à l'intérieur que ce soit tabac, cannabis ou vapotage à l'intérieur de même qu'à 9 mètre de toute porte à l'extérieur.

Aussi, il serait important qu'ils soient respectueux envers notre personnel qui ne fait qu'appliquer les lois en vigueur.

Merci !

**FRANCE PARADIS**

GESTIONNAIRE À LA SÉCURITÉ / MANAGER, SECURITY & LIFE SAFETY

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3003, boul. Le Carrefour  
Laval, QC H7T 1C7

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cadillacfairview.com



DOMICILE D'ÉQUIPE CANADA



PREMIÈRE TRANCHE DE 25 %  
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À L'ÉCHELLE MONDIALE

----- Forwarded message -----

De : Jean-Fabrice Ouimet <jeanfabrice.ouimet@cadillacfairview.com>

Date: mer. 22 janv. 2020, à 17 h 22

Subject: Crime - Employés du PFK consommant du cannabis à l'intérieur

To: lavsecurite <lavsecurite@cadillacfairview.com>, Sebastien Perron <Sebastien.Perron@cadillacfairview.com>

Bonjour,

Mercredi le 22 janvier 2020 vers 16:20, j'effectuais un balayage de caméras quand j'ai aperçu des employés du PFK se diriger vers le Corridor G-1. Les employés en question étant connus pour enfreindre les lois sur le tabac, l'agent Latreille est allé vérifier le Quai G-1. Arrivée sur les lieux, il a constaté que les employés du PFK consumaient du cannabis à l'intérieur du Corridor G-1 avec un autre individu. L'agent Latreille a expulsé les individus et donné un avertissement aux employés du PFK. Selon l'agent Latreille, les employés étaient agressifs envers lui. L'un des deux se nommerait Annis.

LK

25/08/2020

Courriel Cadillac Fairview - Fwd: Crime - Employés du PFK consommant du cannabis à l'intérieur

—  
**Jean-Fabrice Ouimet**  
Agent de sécurité  
Tel: (450) 687-1366  
**GARDAWORLD**

LK



France Paradis <france.paradis2@cadillacfairview.com>

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**Fwd: Crime - Expulsion employés PFK pour consommation à l'intérieur**

1 message

---

France Paradis <france.paradis2@cadillacfairview.com>  
À : KFC1277 <kfc1277@fmigroup.ca>

21 février 2020 à 11 h 03

Bonjour Amélie,

Voir ci-dessous pour ton attention et suivi avec tes employés.

Merci de les sensibiliser à l'interdiction de consommer du cannabis partout sur la propriété, que ce soit intérieur ou extérieur.

Merci !

**FRANCE PARADIS**

GESTIONNAIRE À LA SÉCURITÉ / MANAGER, SECURITY & LIFE SAFETY

CF Carrefour Laval  
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Laval, QC H7T 1C7

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DOMICILE D'ÉQUIPE CANADA



PREMIÈRE TRANCHE DE 25 %  
DES ENTREPRISES LES PLUS MOBILISATRICES  
À L'ÉCHELLE MONDIALE

----- Forwarded message -----

De : **Jean-Fabrice Ouimet** <jeanfabrice.ouimet@cadillacfairview.com>

Date: jeu. 20 févr. 2020, à 20 h 49

Subject: Crime - Expulsion employés PFK pour consommation à l'intérieur

To: lavsecurite <lavsecurite@cadillacfairview.com>

Bonjour,

Jeudi le 20 février 2020 vers 20:30, l'agent Simon-Olivier Allard avise le Contrôle avoir procédé à l'expulsion d'un groupe de 5 employés du PFK qui consommaient du cannabis à l'intérieur du Corridor BG.

SIMS # 20-000175

—  
**Jean-Fabrice Ouimet**

Agent de sécurité

Tel: (450) 687-1366

**GARDAWORLD**

LK



France Paradis &lt;france.paradis2@cadillacfairview.com&gt;

---

**Fwd: PFK - Fermeture temporaire - violation de bail -**

1 message

---

**France Paradis** <france.paradis2@cadillacfairview.com>  
À : kfc1277@fmigroup.ca

4 septembre 2019 à 11 h 00

Bonjour Amélie,

Voici les détails concernant l'incident de cette fin de semaine ainsi que la photo jointe.

Merci !

**FRANCE PARADIS**

GESTIONNAIRE À LA SÉCURITÉ / MANAGER, SECURITY &amp; LIFE SAFETY

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DOMICILE D'ÉQUIPE CANADA

PREMIÈRE TRANCHE DE 25 %  
DES ENTREPRISES LES PLUS MOBILISATRICES  
À L'ÉCHELLE MONDIALE

----- Forwarded message -----

De : **Mélanie Brais** <melanie.brais@cadillacfairview.com>  
Date: dim. 1 sept. 2019, à 14 h 49  
Subject: PFK - Fermeture temporaire - violation de bail -  
To: lavsecurite <lavsecurite@cadillacfairview.com>

Bonjour,

Dimanche le 1er septembre 2019 vers 14h00, le Sergent Znack constate qu'une affiche écrite à la main par les employés était collé sur le mur du PFK indiquant qu'ils étaient fermés. Nous avons fait une vérification avec les caméras et pouvons constater que l'affiche a été installée vers 13h31 et retirée vers 14h15. Après des vérifications caméra plus poussées, nous pouvons constater que plusieurs des employés de ce restaurant étaient dans les escaliers extérieur du quai BG en train de flâner de 13h54 à 14h18. L'agent Kayhan est en direction afin de leur émettre un avertissement.

Merci

**GARDAWORLD****Mélanie Brais**

LK

25/08/2020

Courriel Cadillac Fairview - RE: Contact pour FMI Montréal - Carrefour Laval

25/08/2020

Courriel Cadillac Fairview - Fwd: PFK - Fermeture temporaire - violation de bail -

**Chef d'équipe**  
**T: 450-687-1366**

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IMG\_1721.jpg  
129K

LK



France Paradis <france.paradis2@cadillacfairview.com>

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**Fwd: Violation règle de propriété - Employé PFK fumant du cannabis au Quai BG**

1 message

---

France Paradis <france.paradis2@cadillacfairview.com>  
À : KFC1277 <kfc1277@fmigroup.ca>

9 janvier 2020 à 12 h 12

Bonjour Amélie,

Voir ci-dessous pour ton info.

Merci !

**FRANCE PARADIS**

GESTIONNAIRE À LA SÉCURITÉ / MANAGER, SECURITY & LIFE SAFETY

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Laval, QC H7T 1C7

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DOMICILE D'ÉQUIPE CANADA



PREMIÈRE TRANCHE DE 25 %  
DES ENTREPRISES LES PLUS MOBILISATRICES  
À L'ÉCHELLE MONDIALE

----- Forwarded message -----

De : **Jean-Fabrice Ouimet** <jeanfabrice.ouimet@cadillacfairview.com>

Date: mer. 8 janv. 2020, à 18 h 10

Subject: Violation règle de propriété - Employé PFK fumant du cannabis au Quai BG

To: lavsecurite <lavsecurite@cadillacfairview.com>

Bonjour,

Mercredi le 8 janvier 2020 vers 16:50, GDI nous avise qu'il y a des employés du PFK qui fument du cannabis au Quai BG et que l'odeur est très forte dans le corridor G-1. L'agent Hœu a été envoyé sur les lieux. Il a procédé à l'avertissement de six employés de PFK dont seulement deux étaient en service.

—  
**Jean-Fabrice Ouimet**

Agent de sécurité

Tel: (450) 687-1366

**GARDAWORLD**

LK



25/08/2020

Courriel Cadillac Fairview - Re: AVT - Loi anti-tabac



France Paradis <france.paradis2@cadillacfairview.com>

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**Re: AVT - Loi anti-tabac**

1 message

---

France Paradis <france.paradis2@cadillacfairview.com>

17 septembre 2019 à 17 h 19

À : KFC1277 <KFC1277@fmigroup.ca>

Bonjour Amélie,

Nous n'avons pas le nom mais dans ce cas-ci c'était une fille et pour l'autre courriel que je t'ai envoyé par la suite impliquant de l'alcool, il s'agissait d'une fille et 2 garçons. Un des garçons avait à la main ce qui semble être une bière en bouteille.

Merci !

**FRANCE PARADIS**

GESTIONNAIRE À LA SÉCURITÉ / MANAGER, SECURITY & LIFE SAFETY

CF Carrefour Laval  
3003, boul. Le Carrefour  
Laval, QC H7T 1C7

T: (450) 687-2560

france.paradis2@cadillacfairview.com

cadillacfairview.com



DOMICILE D'ÉQUIPE CANADA



PREMIÈRE TRANCHE DE 25 %  
DES ENTREPRISES LES PLUS MOBILISATRICES  
À L'ÉCHELLE MONDIALE

Le mar. 17 sept. 2019, à 17 h 07, KFC1277 <KFC1277@fmigroup.ca> a écrit :

Bonjour,

Merci pour le suivi.

Pouvez vous me dire si vous avez le nom de l'employé en question. Si non est ce que c'était un homme ou une femme.

Merci

Amélie  
KFC 1277

---

**From:** France Paradis <france.paradis2@cadillacfairview.com>

**Sent:** Tuesday, September 17, 2019 5:04:23 PM

**To:** kfc1277@fmigroup.ca <kfc1277@fmigroup.ca>

**Subject:** Fwd: AVT - Loi anti-tabac

Bonjour Amélie,

LK

Voir ci-dessous un avis donné à une de tes employés pour avoir fumé dans un endroit interdit (près de la sortie d'urgence du quai de livraison).

Merci de faire le suivi avec la personne en question afin de l'informer de la loi en vigueur (9 mètre de toute porte, fenêtre et prise d'air).

Merci !

**FRANCE PARADIS**

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Laval, QC H7T 1C7

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DES ENTREPRISES LES PLUS MOBILISATRICES  
À L'ÉCHELLE MONDIALE

----- Forwarded message -----

De : **Jean-Fabrice Ouimet** <jeanfabrice.ouimet@cadillacfairview.com>

Date: mar. 17 sept. 2019, à 16 h 04

Subject: AVT - Loi anti-tabac

To: lavsecurite <lavsecurite@cadillacfairview.com>, gplavadmin <gplavadmin@cadillacfairview.com>

Bonjour,

Mardi le 17 septembre 2019 vers 15:30, le superviseur avise le contrôle avoir émis un avertissement concernant la loi anti-tabac à une employée du PFK.

—  
**Jean-Fabrice Ouimet**

Agent de sécurité

Tel: (450) 687-1366

**GARDAWORLD**

LK

25/08/2020

Courriel Cadillac Fairview - RE: Contact pour FMI Montréal - Carrefour Laval



France Paradis <france.paradis2@cadillacfairview.com>

---

**RE: Contact pour FMI Montréal - Carrefour Laval**

1 message

---

Angela Kennedy <Angela.Kennedy@fmigroup.ca>  
À : France Paradis <france.paradis2@cadillacfairview.com>

11 mai 2020 à 10 h 14

Good morning,

My apologies for taking so long to reply. For any issues dealing our store's employees, please contact me and depending on the nature of the issue I will forward along to the appropriate person within our Support Centre.

Thank you,



**Angela Kennedy**  
Paralegal

FMI Group

T: (506) 328-4631 x 302

F: (506) 328-9408

W: fmigroup.ca



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LK

25/08/2020

Courriel Cadillac Fairview - RE: Contact pour FMI Montréal - Carrefour Laval

**From:** France Paradis <france.paradis2@cadillacfairview.com>  
**Sent:** February 28, 2020 2:43 PM  
**To:** Angela Kennedy <Angela.Kennedy@fmigroup.ca>  
**Subject:** Re: Contact pour FMI Montréal

Thank you for your reply.

For follow-up about issues with employees, do I communicate with you or Mme Parisien ?

**FRANCE PARADIS**

GESTIONNAIRE À LA SÉCURITÉ / MANAGER, SECURITY & LIFE SAFETY

CF Carrefour Laval  
3003, boul. Le Carrefour  
Laval, QC H7T 1C7

T: (450) 687-2560

france.paradis2@cadillacfairview.com

cadillacfairview.com



**CF**  
Cadillac  
Fairview

DOMICILE D'ÉQUIPE CANADA



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À L'ÉCHELLE MONDIALE

Le jeu. 27 févr. 2020, à 09 h 51, Angela Kennedy <Angela.Kennedy@fmigroup.ca> a écrit :

Good morning,

I am the liaison between the Landlords and our stores. So any operational issues or notices you need to send to the store, you can provide to me and I will forward along to the store and Area Coach.

On weekends or after hours in case of an emergency, you can contact the Area Coach – Monik Parisien - monik.parisien@fmigroup.ca

Our store number for this location is 1277 in case you need that for future reference.

Thank you,

LK

25/08/2020

Courriel Cadillac Fairview - RE: Contact pour FMI Montréal - Carrefour Laval



**Angela Kennedy**  
Paralegal

FMI Group

T: (506) 328-4631 x 302

F: (506) 328-9408

W: fmigroup.ca



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**From:** France Paradis <france.paradis2@cadillacfairview.com>

**Sent:** February 6, 2020 12:27 PM

**To:** Angela Kennedy <Angela.Kennedy@fmigroup.ca>

**Subject:** Contact pour FMI Montréal

Bonjour,

Je suis gestionnaire de sécurité pour Cadillac Fairview, propriétaire du Carrefour Laval.

Je suis à la recherche d'un contact dans votre organisation au niveau des opérations régionales afin de pouvoir obtenir une ressource lors de besoins opérationnels.

Merci de me fournir les coordonnées d'une personne avec qui je pourrais en discuter.

Bonne journée !

Good morning,

A handwritten signature in black ink, appearing to be the initials 'LK'.

25/08/2020

Courriel Cadillac Fairview - Fwd: Schedule for a call?

25/08/2020

Courriel Cadillac Fairview - RE: Contact pour FMI Montréal - Carrefour Laval

I am the security manager for Cadillac Fairview, owner of Carrefour Laval. I am looking for an operation/management contact in your organization in order to be able to obtain a resource to contact for operational needs, but at a higher level than store manager. Could you please provide me the person's coordinates with whom I could discuss it. Thank you and have a good day,

**FRANCE PARADIS**

GESTIONNAIRE À LA SÉCURITÉ / MANAGER, SECURITY & LIFE SAFETY

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Laval, QC H7T 1C7

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cadillacfairview.com



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À L'ÉCHELLE MONDIALE

LK

25/08/2020

Courriel Cadillac Fairview - RE: Contact pour FMI Montréal



France Paradis <france.paradis2@cadillacfairview.com>

---

**RE: Contact pour FMI Montréal**

1 message

---

Angela Kennedy <Angela.Kennedy@fmigroup.ca>  
À : France Paradis <france.paradis2@cadillacfairview.com>

27 février 2020 à 09 h 51

Good morning,

I am the liaison between the Landlords and our stores. So any operational issues or notices you need to send to the store, you can provide to me and I will forward along to the store and Area Coach.

On weekends or after hours in case of an emergency, you can contact the Area Coach – Monik Parisien - monik.parisien@fmigroup.ca

Our store number for this location is 1277 in case you need that for future reference.

Thank you,



Angela Kennedy  
Paralegal

FMI Group

T: (506) 328-4631 x 302

F: (506) 328-9408

W: fmigroup.ca



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LK



25/08/2020

Courriel Cadillac Fairview - RE: Contact pour FMI Montréal

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**From:** France Paradis <france.paradis2@cadillacfairview.com>  
**Sent:** February 6, 2020 12:27 PM  
**To:** Angela Kennedy <Angela.Kennedy@fmigroup.ca>  
**Subject:** Contact pour FMI Montréal

Bonjour,

Je suis gestionnaire de sécurité pour Cadillac Fairview, propriétaire du Carrefour Laval.

Je suis à la recherche d'un contact dans votre organisation au niveau des opérations régionales afin de pouvoir obtenir une ressource lors de besoins opérationnels.

Merci de me fournir les coordonnées d'une personne avec qui je pourrais en discuter.

Bonne journée !

Good morning,

I am the security manager for Cadillac Fairview, owner of Carrefour Laval. I am looking for an operation/management contact in your organization in order to be able to obtain a resource to contact for operational needs, but at a higher level than store manager. Could you please provide me the person's coordinates with whom I could discuss it. Thank you and have a good day,

## FRANCE PARADIS

GESTIONNAIRE À LA SÉCURITÉ / MANAGER, SECURITY & LIFE SAFETY

CF Carrefour Laval  
3003, boul. Le Carrefour  
Laval, QC H7T 1C7

T: (450) 687-2560

france.paradis2@cadillacfairview.com

cadillacfairview.com



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À L'ÉCHELLE MONDIALE

LK

LF



Robert Crepin <robert.crepin@cadillacfairview.com>

**Fwd: Schedule for a call?**

1 message

**Edith Claveau** <edith.claveau@cadillacfairview.com>  
À : Robert Crepin <robert.crepin@cadillacfairview.com>

25 août 2020 à 11 h 38

**EDITH CLAVEAU**

COORDONNATRICE DE REVENUS / REVENUE COORDINATOR  
CF CARREFOUR LAVAL

3003 Blvd. Le Carrefour,  
Laval, Quebec  
H7T 1C7

T: (450) 687-2560 X 170206 F: 450-687-9827

edith.claveau@cadillacfairview.com

cadillacfairview.com



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À L'ÉCHELLE MONDIALE

Ce message électronique et tous les fichiers attachés qu'il contient sont confidentiels et destinés exclusivement à l'usage de la personne à laquelle ils sont adressés. Si vous avez reçu ce message par erreur, merci de le retourner à son émetteur.

his e-mail and any files transmitted with it are confidential and intended solely for the use of the individual to whom it is addressed. If you have received this email in error please send it back to the person that sent it to you.

----- Forwarded message -----

De : **Oren Rubin** <oren.rubin@cadillacfairview.com>

Date: mar. 23 juin 2020 à 23:23

Subject: Fwd: Schedule for a call?

To: Edith Claveau <edith.claveau@cadillacfairview.com>, Bernice Richard <bernice.richard@cadillacfairview.com>, Izabella Sadoyan <izabella.sadoyan@cadillacfairview.com>

Good evening everyone, please see below email from *FMI Group*. (Our Legal Entity responsible for KFC at Laval & Champlain, and Panera Bread at Shops. For Laval, assignment docs are still being finalized, but they have been paying you the rent for the past several months).

Can you confirm with me please that they have paid you *May and June* rent? Thanks!

They will be paying April rent arrears on August 1, 2020's EFT payment.

Thanks,  
Oren

----- Forwarded message -----

From: **Leasing** <leasing@fmigroup.ca>

Date: Mon, Jun 22, 2020 at 1:46 PM

Subject: RE: Schedule for a call?

To: Oren Rubin <oren.rubin@cadillacfairview.com>

Theresa Chen,

Yes, I checked and we got all those numbers by 5:15

The sufficient emails we took off of it our system are

4PE - Carrolour Lead - carolour.lead@caillia.com

4PE - Christian Wal - christian.wal@caillia.com

4PE - Dan Will Lead - DANIELA.DADIVANI@caillia.com

Thank you,



**Angie Kennedy**  
Paralegal  
FMI Group  
T (505) 528-4531 x 302  
F (505) 528-4408  
W fmi-group.com



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From: Theresa Chen <chen.theresa@caillia.com>

Date: June 22, 2025 7:19 PM

44

25/08/2020

Courriel Cadillac Fairview - Fwd: Schedule for a call?

**To:** Leasing <leasing@fmigroup.ca>  
**Subject:** Re: Schedule for a call?

Yes that is ok. Thank you!

(Side bar: Do you always pay by EFT, if not we would like you to going forward please?).

On Mon, Jun 22, 2020 at 7:26 AM Leasing <leasing@fmigroup.ca> wrote:

Hi Oren,

Further to our call on June 16<sup>th</sup>, I now have instructions from my superior to pay April rent for the two KFC's and one Panera. Would it be okay if we paid the April rent with our August rent which we will be paying via EFT on August 1<sup>st</sup>?

Thank you,



**Angela Kennedy**  
Paralegal

FMI Group

T: (506) 328-4631 x 302

F: (506) 328-9408

W: fmigroup.ca



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**From:** Oren Rubin <oren.rubin@cadillacfairview.com>  
**Sent:** June 16, 2020 1:33 PM

LK

25/08/2020

Courriel Cadillac Fairview - Fwd: Schedule for a call?

**To:** Leasing <leasing@fmigroup.ca>  
**Subject:** Re: Schedule for a call?

Great, thank you.

6472448196

On Tue, Jun 16, 2020 at 12:32 PM Leasing <leasing@fmigroup.ca> wrote:

Hi Oren,

That sounds okay. I will give you call at 1:30 your time which will be 2:30 my time (New Brunswick)

Thank you,



**Angela Kennedy**  
Paralegal

FMI Group

T: (506) 328-4631 x 302

F: (506) 328-9408

W: fmigroup.ca



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LK

25/08/2020

Courriel Cadillac Fairview - Fwd: Schedule for a call?

**From:** Oren Rubin <oren.rubin@cadillacfairview.com>  
**Sent:** June 16, 2020 1:19 PM  
**To:** Leasing <leasing@fmigroup.ca>  
**Subject:** Re: Schedule for a call?

Understood. Let's chat 130pm? Does that work?

On Jun 16, 2020, at 11:52 AM, Leasing <leasing@fmigroup.ca> wrote:

Hi Oren,

I should be able to give you a call this afternoon.

I will have to take your response to our request and provide it to our Chief Leasing Officer for his review and instructions back to me which I will then be able to relay back to you. That is why we have been trying to do all communications by email instead of phone.

I am attaching the most recent emails I have sent to Cadillac Fairview on the below stores.

What we are looking for is an abatement or a partial abatement of April rent only. We do not want our portfolio to struggle with deferral repayment obligations. Unfortunately, we do not qualify for the CERCA program as one of the criteria of that program is that the tenant generates no more than \$20m in gross annual revenues at the ultimate parent level. Our locations are part of a larger company of stores that together exceed the revenue threshold in order to qualify for the CERCA program.

KFC 1277 – 3035 Blvd Le Carrefour, Laval, QC

KFC 1056 – 477 Paul Street, Dieppe, NB (Champlain Mall)

Panera 5103 – 1066 Don Mills Road, Toronto, ON

Thank you,

LK



25/08/2020

Courriel Cadillac Fairview - Fwd: Schedule for a call?

**OREN RUBIN**

SR. MANAGER, LEASING

The Cadillac Fairview Corporation Limited  
1 Dundas Street West, Suite 200  
Toronto, Ontario  
M5G 1Z3

T: 4165988662 M: 6472448196

oren.rubin@cadillacfairview.com

cadillacfairview.com



HOME OF TEAM CANADA



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—

**OREN RUBIN**

SR. MANAGER, LEASING

The Cadillac Fairview Corporation Limited  
1 Dundas Street West, Suite 200  
Toronto, Ontario  
M5G 1Z3

T: 4165988662 M: 6472448196

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T: 4165988662 M: 6472448196

oren.rubin@cadillacfairview.com

LK

25/08/2020

Courriel Cadillac Fairview - Fwd: Schedule for a call?

[cadillacfairview.com](http://cadillacfairview.com)



**CF**  
Cadillac  
Fairview

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LK

**THE CADILLAC FAIRVIEW  
CORPORATION LIMITED**  
(In its capacity as Owner and Manager)

I hereby authorize you to process payments to our firm through Electronic Fund Transfer (EFT).

Our bank account is as follows:

<b>Tenant</b>	FMI Atlantic Inc.
<b>Location</b>	Le Carrefour Laval
<b>Bank Account Name</b>	Le Carrefour Laval (2013) Inc.
<b>Bank Name</b>	The Toronto Dominion Bank
<b>Bank Address</b>	55 King St. West at Bay Toronto, Ontario M5K 1A2
<b>Swift:</b>	TDOMCATTOR
<b>Bank Transit Number</b>	10202-004
<b>Bank Account Number</b>	0690-5446-191
<b>Lease I.D.</b>	LPFK///2

**Information required with EFT payment**



Nov 15, 2019

Date

Written confirmation of each deposit must be faxed to Edith Claveau at 450-687-9827.  
or E-mail: [edith.claveau@cadillacfairview.com](mailto:edith.claveau@cadillacfairview.com)

LK

THIS IS EXHIBIT "H" REFERRED TO IN  
THE AFFIDAVIT OF CHRISTIAN VÉZINA  
SWORN BEFORE ME

THIS 28<sup>TH</sup> DAY OF AUGUST, 2020



*Linda Kharabec, Notary*  
A Commissioner of Oaths/Notary Public  
in and for the Province of Quebec

LK

25/08/2020

Courriel Cadillac Fairview - RE: Cadillac Fairview-FMI Atlantic Inc.



Robert Crepin <robert.crepin@cadillacfairview.com>

---

**RE: Cadillac Fairview-FMI Atlantic Inc.**

1 message

---

Leasing <leasing@fmigroup.ca>

11 août 2020 à 14 h 39

À : Robert Crepin <robert.crepin@cadillacfairview.com>

Cc : Oren Rubin <oren.rubin@cadillacfairview.com>

Good afternoon Robert,

I can confirm we have paid our April rents to Cadillac Fairview with August Rent. Please find below the EFT remittance forms:

LK

25/08/2020

Courriel Cadillac Fairview - RE: Cadillac Fairview-FMI Atlantic Inc.

CARLAV		LE CARREFOUR LAVAL (2013) INC.		7/29/2020
RENT 1277 APR 2020	8/1/2020	22,372.56	0.00	22,372.56
RENT 1277 AUG 2020	8/1/2020	22,372.56	0.00	22,372.56
RENT 1277ST APR 2020	8/1/2020	1,443.33	0.00	1,443.33
RENT 1277ST AUG 2020	8/1/2020	1,443.33	0.00	1,443.33
<b>Page Totals</b>		<b>47,631.78</b>	<b>0.00</b>	<b><u>47,631.78</u></b>

CARLAV		LE CARREFOUR LAVAL (2013) INC.		7/29/2020
RENT 1277 APR 2020	8/1/2020	22,372.56	0.00	22,372.56
RENT 1277 AUG 2020	8/1/2020	22,372.56	0.00	22,372.56
RENT 1277ST APR 2020	8/1/2020	1,443.33	0.00	1,443.33
RENT 1277ST AUG 2020	8/1/2020	1,443.33	0.00	1,443.33
		<b>47,631.78</b>	<b>0.00</b>	<b>47,631.78</b>

DATE 07292020  
M M D D Y Y Y Y

\*\*Forty-Seven Thousand Six Hundred Thirty-One and 78/100 Dollars

\$ \*\*47,631.78

LE CARREFOUR LAVAL (2013) INC.  
c/o CADILLAC FAIRVIEW CORPORATION LIMITED  
FIFTH FLOOR, 20 QUEEN STREET WEST  
TORONTO, ON M5H 3R4  
CANADA

LK

25/08/2020

Courriel Cadillac Fairview - RE: Cadillac Fairview-FMI Atlantic Inc.

CADDIE		CADILLAC FAIRVIEW CORPORATION LIMITED		7/29/2020
RENT 1056 APR 2020	8/1/2020	15,162.32	0.00	15,162.32
RENT 1056 AUG 2020	8/1/2020	15,162.32	0.00	15,162.32
Page Totals		30,324.64	0.00	30,324.64

CADDIE		CADILLAC FAIRVIEW CORPORATION LIMITED		7/29/2020
RENT 1056 APR 2020	8/1/2020	15,162.32	0.00	15,162.32
RENT 1056 AUG 2020	8/1/2020	15,162.32	0.00	15,162.32
		30,324.64	0.00	30,324.64

DATE 07292020  
M M D D Y Y Y Y

\*\*Thirty Thousand Three Hundred Twenty-Four and 64/100 Dollars

\$ \*\*30,324.64

CADILLAC FAIRVIEW CORPORATION LIMITED  
477 PAUL STREET  
DIEPPE, NB E1A 4X5  
CANADA

LK



25/08/2020

Courriel Cadillac Fairview - RE: Cadillac Fairview-FMI Atlantic Inc.

SHOADM		SHOPS AT DON MILLS		7/29/2020
RENT 5103 APR 2020	8/1/2020	27,688.29	0.00	27,688.29
RENT 5103 AUG 2020	8/1/2020	27,688.29	0.00	27,688.29
<b>Page Totals</b>		<b>55,376.58</b>	<b>0.00</b>	<b><u>55,376.58</u></b>

SHOADM		SHOPS AT DON MILLS		7/29/2020
RENT 5103 APR 2020	8/1/2020	27,688.29	0.00	27,688.29
RENT 5103 AUG 2020	8/1/2020	27,688.29	0.00	27,688.29
		<b>55,376.58</b>	<b>0.00</b>	<b>55,376.58</b>

DATE 07292020  
M M D D Y Y Y Y

\*\*Fifty-Five Thousand Three Hundred Seventy-Six and 58/100 Dollars

\$ \*\*55,376.58

SHOPS AT DON MILLS  
7 MAGINN MEWS  
TORONTO, ON M3C 0G8  
CANADA

Thank you,



Angela Kennedy  
Paralegal

FMI Group

T: (506) 328-4631 x 302

F: (506) 328-9408

W: fmigroup.ca

LK



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**From:** Robert Crepin <robert.crepin@cadillacfairview.com>  
**Sent:** August 11, 2020 3:32 PM  
**To:** Leasing <leasing@fmigroup.ca>  
**Cc:** Oren Rubin <oren.rubin@cadillacfairview.com>  
**Subject:** Cadillac Fairview-FMI Atlantic Inc.

TO THE ATTENTION OF MS. ANGELA KENNEDY, PARALEGAL

Good afternoon Ms Kennedy,

Further to your discussions with our leasing team, please find attached the draft Tenant Assistance Agreement for FMI Atlantic Inc. regarding the premises located in the CF Shopping Centres, for your review and comments.

Regarding the arrears due as per Paragraph 3 of the Tenant Assistance Agreement, we will review our records and, if any, we will confirm the total amount later this week.

Please note that we have added additional language in Paragraph 11 regarding the KFC/Laval Lease in order to update our records and to confirm the assumption of the lease by FMI.

Should you have any questions, please do not hesitate to contact me at your best convenience.

Thank you.

Best regards.

**ROBERT CRÉPIN**  
DIRECTEUR PRINCIPAL, SERVICES JURIDIQUES, LEGAL  
Division Services Juridiques, Courtois / Eastern Canada Portfolio

<https://mail.google.com/mail/u/0?ik=ade4672992&view=pt&search=all&permthid=thread-a%3Ar-7999182860323510801%7Cmsg-f%3A167475535303...> 5/6

LK

25/08/2020

Courriel Cadillac Fairview - RE: Cadillac Fairview-FMI Atlantic Inc.

~~La Corporation Cadillac Fairview Limitée / The Cadillac Fairview Corporation Limited~~  
La Corporation Cadillac Fairview Limitée / The Cadillac Fairview Corporation Limited  
1100 avenue des Canadiens-de-Montréal, Bureau 400  
Montréal, Québec H3B 2S2

T: (514) 353-2241 M: (438) 923-5852

robert.crepin@cadillacfairview.com  
cadillacfairview.com



DOMICILE D'ÉQUIPE CANADA

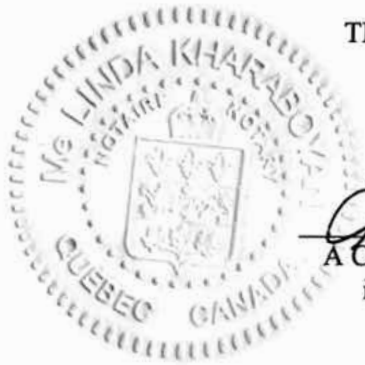


PREMIÈRE TRANCHE DE 25 %  
DES ENTREPRISES LES PLUS MOBILISATRICES  
À L'ÉCHELLE MONDIALE

LK

THIS IS EXHIBIT "I" REFERRED TO IN  
THE AFFIDAVIT OF CHRISTIAN VÉZINA  
SWORN BEFORE ME

THIS 28<sup>TH</sup> DAY OF AUGUST, 2020



*Linda Kharabou, Notary*  
A Commissioner of Oaths/Notary Public  
in and for the Province of Quebec

LK

Montreal, May 26, 2020

**Alexandre Forest**  
Direct: 514.392.9424  
Fax : 514.876.9024  
alexandre.forest@gowlingwlg.com

**BY BAILIFF**

Assistant : Nathalie Héту  
Tel. : (514) 878-1041, ext. 65288  
nathalie.hetu@gowlingwlg.com

**WITHOUT PREJUDICE**

**Olympus Food (Canada) Inc.**  
908-53 Ave NE  
Suite 1  
Calgary, AB, T2E 6N9

**Re: Olympus Food (Canada) Inc. (the "Tenant")  
Store no. F007 (the "Premises")  
CF Carrefour Laval (the "Shopping Centre")  
NOTICE OF DEFAULT  
Our file : L48240263**

---

Sir,

We are the lawyers for Le Carrefour Laval (2013) Inc. represented by its agent, The Cadillac Fairview Corporation Limited (hereinafter the "**Landlord**"), which has given us instructions to address you the following.

We are hereby making reference to a lease between the Landlord and the Tenant for the Premises at the Shopping Center dated June 11, 2015 and to the Storage Agreement between the Landlord and the Tenant dated March 3, 2015 (together, the "**Lease**").

The Tenant is currently in default under the Lease in that, without limitation, you (a) filed a *Notice of Intention to make a Proposal* under the *Bankruptcy and Insolvency Act* on May 1<sup>st</sup>, 2020, the whole in contravention to Section 16.01(v) of the Lease and (b) there have been two (2) Unexpected Terminations (as this term is defined under the Lease) of the Tenant's leases in shopping centres managed by The Cadillac Fairview Corporation Limited, namely CF Promenades St-Bruno and CF Galeries d'Anjou, the whole in contravention to Section 16.01(xv) of the Lease.

**You are duly advised that the Landlord is hereby putting the Tenant in default under the Lease.**



The present is transmitted to you under reserve of our client's rights and recourses and without any admission or renunciation of whatsoever nature.

**DO GOVERN YOURSELF ACCORDINGLY**

**GOWLING WLG (CANADA) LLP**

A handwritten signature in black ink, appearing to read "Alexandre Forest".

Alexandre Forest

AF/nh  
Encls.

Cc. The Cadillac Fairview Corporation Limited  
Mes Carole Hunter and Mike Weinczok, DLA Piper (Canada) LLP  
Mrs. Charla Smith, BDO Canada Limited

CANADA, PROVINCE DE QUÉBEC

**SIGNIFICATION AU DESTINATAIRE**

v/d : L48240263

**LE CARREFOUR LAVAL (2013) INC.**

**OLYMPUS FOOD (CANADA) INC.**  
TENANT

Signification	23,00 \$ (3)
<b>SOUS-TOTAL</b>	<b>23,00 \$</b>

Autres frais :  
(non admissible à l'état des frais)

Gestion	8,00 \$ (4)
<b>SOUS-TOTAL</b>	<b>8,00 \$</b>

<b>TOTAL AVANT TAXES</b>	<b>31,00 \$</b>
<b>TPS</b>	<b>1,55 \$</b>
<b>TVQ</b>	<b>3,09 \$</b>
<b>TOTAL</b>	<b>35,64 \$</b>

Je soussigné(e), **SINTHUJAH MUTHIAH**, huissier de justice, ayant mon domicile professionnel au 511 PLACE D'ARMES #800, MONTREAL, QC, CANADA, H2Y 2W7, certifie sous mon serment professionnel

que le **27 mai 2020 à 9:10 heures**,

j'ai signifié à partir de l'adresse de l'expéditeur:  
**SINTHUJAH.MUTHIAH@PAQUETTE.CA**

une COPIE de la présente DEMAND LETTER (Notice of default) par VOIE DE COURRIEL conformément à l'arrêté no 4267 de la juge en chef du Québec et de la ministre de la Justice du Québec du 27 mars 2020.

destiné à **OLYMPUS FOOD (CANADA) INC. A/S MADELEINE CHAN**,

par la transmission de ladite procédure à l'adresse suivante:  
**maddie.chan@hiflyer.ca.**

MONTREAL, le 27 mai 2020.



**SINTHUJAH MUTHIAH**, huissier de justice  
Permis # 1095

a/s : ALEXANDRE FOREST  
GOWLING WLG (CANADA) S.E.N.C.R.L., S.R.L.  
(2191)

(QE ALAAL) MUTSI 4 BOULU E0527 I0527-09:33 REF:2219547-1-1-2 ( ) SE  
NB:2 FRAIS:

No Engr. T.P.S. : R122687056

No Engr. T.V.Q. : 1013245793

**PAQUETTE**  
HUISSIERS DE JUSTICE

LK



THIS IS EXHIBIT "J" REFERRED TO IN  
THE AFFIDAVIT OF CHRISTIAN VÉZINA

SWORN BEFORE ME

THIS 28<sup>TH</sup> DAY OF AUGUST, 2020



*Linda Kharrabe*  
A Commissioner of Oaths/Notary Public  
in and for the Province of Quebec

LK

FORM 45

NOTICE TO LESSOR TO DISCLAIM A LEASE BY COMMERCIAL TENANT

To:	Le Carrefour Laval (2013) Inc. 3035 Boulevard le Carrefour Laval, QC H7T 1C8	The Cadillac Fairview Corporation Limited 5 <sup>th</sup> Floor, 20 Queen Street West Toronto, ON M5H 3R4  Attention: Executive Vice-President, National Property Operations
-----	--	---

TAKE NOTICE THAT:

1. A notice of intention to make a proposal in respect of the undersigned commercial lessee was filed under section 50.4(1) of the *Bankruptcy and Insolvency Act* (the "Act") on 1<sup>st</sup> day of May, 2020.
2. Pursuant to subsection 65.2(1) of the Act, the commercial lessee hereby gives you, the lessor, 30 days' notice of its disclaimer or rescission of the commercial lease dated the 11<sup>th</sup> day of June, 2015 and storage area agreement dated the 3<sup>rd</sup> day of March, 2015 (together, the "Lease"), which Lease granted possession of the property situated at Store No. F007 and Storage Area No. SF217 at CF Carrefour Laval, 3035 Boulevard le Carrefour, Laval, QC H7T 1C8.
3. The disclaimer or rescission of the lease will become effective on the 28<sup>th</sup> day of August, 2020.
4. You may apply to the court, within 15 days after the day on which you are given this notice, for a declaration that subsection 65.2(1) of the Act does not apply in respect of the lease mentioned above.
5. If you make such an application, the court, on notice to such parties as it may direct, shall make such declaration unless the commercial lessee satisfies the court that the lessee would not be make a viable proposal, without its disclaimer or rescission of the lease and all other leases that the lessee has disclaimed or rescinded under subsection 65.2(1) of the Act.

DATED at Calgary, Alberta, this 29th day of July, 2020.

OLYMPUS FOOD (CANADA) INC.



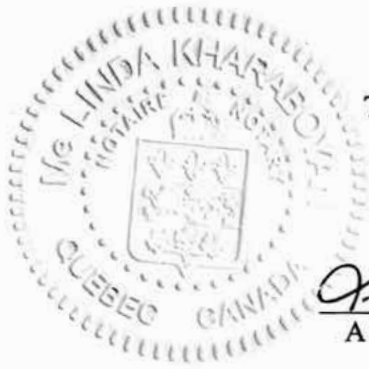
\_\_\_\_\_  
Name: Noli Tingzon  
Title: President

LK

THIS IS EXHIBIT "K" REFERRED TO IN  
THE AFFIDAVIT OF CHRISTIAN VÉZINA

SWORN BEFORE ME

THIS 28<sup>TH</sup> DAY OF AUGUST, 2020



*Linda Khazab, Notary*  
A Commissioner of Oaths/Notary Public  
in and for the Province of Quebec

LK

Leanne Laughlin  
T: 416-367-6229  
llaughlin@blg.com

Borden Ladner Gervais LLP  
Bay Adelaide Centre, East Tower  
22 Adelaide Street West  
Toronto, ON, Canada M5H 4E3  
T 416.367.6000  
F 416.367.6749  
blg.com



**WITHOUT PREJUDICE**

August 18, 2020

**VIA EMAIL**

Le Carrefour Laval (2013) Inc.  
c/o La Corporation Cadillac Fairview Limitée  
1100 avenue des Canadiens-de-Montréal, Bureau 400  
Montréal, QC H3B 232

Attention: Mr. Robert Crépin  
General Director, Legal Services

Dear Sirs:

**Re: Lease dated June 11, 2015 between Le Carrefour Laval (2013) Inc., as landlord (the "Landlord" or "CF"), and Olympus Foods, as tenant ("Olympus"), Store F007, KFC at CF Carrefour Laval (the "Lease")**

We act as legal counsel to FMI Atlantic Inc. ("FMI").

Since June of 2019, FMI has been operating a KFC restaurant at the subject location on behalf of Olympus, the tenant under the Lease. FMI is operating this restaurant on behalf of Olympus pursuant to a Management Agreement with Olympus entered into as of June 16, 2019.

As you know, in 2019, FMI sought an assignment of the Lease from Olympus. Over a period of several weeks, CF, Olympus and FMI negotiated the terms of an Assignment of Lease for this restaurant. As part of this negotiation, CF advised FMI that it would, as a condition of its consent, require FMI to pay an increase in the Minimum Rent payable under the Lease, as it was permitted to do by Section 13.02(f) of the Lease. FMI reluctantly agreed to a negotiated increase in Minimum Rent which was to commence upon the execution and delivery of the Assignment of Lease itself. The Assignment of Lease was never executed nor delivered and the matter has been in limbo since last November.

LK

In the fall of 2019, CF advised FMI that it was unable to execute and deliver the settled form of Assignment of Lease as the matter was tied to pending litigation between CF and Olympus on three locations (Anjou, St-Bruno, and Laval) and could not be separated notwithstanding that FMI was not a party to the litigation between CF and Olympus.

While awaiting for the Assignment of Lease over the ensuing months, FMI continued to operate the store on behalf of Olympus, as per the terms of the Management Agreement.

As you know, by letter dated May 4, 2020, Olympus Food (Canada) Inc. advised its creditors that it had filed a *Notice of Intention to Make a Proposal* pursuant to the *Bankruptcy and Insolvency Act* (the "BIA") on May 1, 2020. Subsequent to that announcement, Olympus has advised the Lease will be disclaimed on August 28, 2020 as part of these proceedings.

FMI wishes to advise you that, in light of the disclaimer of the Lease by Olympus, it will be closing the store, effective August 28, 2020.

Yours very truly,

**BORDEN LADNER GERVAIS LLP**



Leanne Laughlin

LL

c.c. Line Abecassis  
Angela Kennedy  
Tyler Langdon

THIS IS EXHIBIT "L" REFERRED TO IN  
THE AFFIDAVIT OF CHRISTIAN VÉZINA  
SWORN BEFORE ME

THIS 28<sup>TH</sup> DAY OF AUGUST, 2020



*Linda Kharabou Notary*  
A Commissioner of Oaths/Notary Public  
in and for the Province of Quebec

LL

---

**From:** Forest, Alexandre  
**Sent:** August 21, 2020 6:04 PM  
**To:** Laughlin, Leanne  
**Cc:** Gagnon, François D.; Abecassis, Line  
**Subject:** RE: KFC at Le Carrefour Laval

**Importance:** High

**WITHOUT PREJUDICE**

Hello Leanne,

Our client has just been advised that FMI Atlantic Inc. ("FMI") is currently emptying and closing the leased premises at the Carrefour Laval, the whole notwithstanding the fact that our client is currently opposing the disclaimer recently served by Olympus Food (Canada) Inc. ("Olympus") with regards to same leased premises and the fact that same lease was *de facto* assigned to FMI who stepped into the shoes of Olympus with regards to its obligations for the leased premises since roughly a year ago, the whole to the best knowledge of our client.

Please be advised that, not being able to review the Management Agreement between Olympus and your client (which was never disclosed to our client although it appears it was executed more than a year ago), our client reserves all its rights and recourses as against your client considering its uninterrupted occupation of the leased premises since roughly a year (again to the best knowledge of our client), notably but not limited to its right to force your client to occupy the leased premises and continuously operate same leased premises.

**PLEASE ADVISE YOUR CLIENT TO ACT ACCORDINGLY.**

Regards,

Alexandre Forest  
Associé  
Tél. +1 514 392 9424  
alexandre.forest@gowlingwlg.com



Gowling WLG (Canada) S.E.N.C.R.L., s.r.l.  
1, Place Ville Marie, bureau 3700  
Montréal QC H3B 3P4  
Canada



[gowlingwlg.com](http://gowlingwlg.com)

Efficacité, certitude quant aux coûts et valeur ajoutée : GPJ Pratique par Gowling WLG<sup>MC</sup>

---

De : Laughlin, Leanne <LLaughlin@blg.com>  
Envoyé : 21 août 2020 14:43



**À :** Forest, Alexandre <alexandre.forest@gowlingwlg.com>  
**Cc :** Gagnon, François D. <FGagnon@blg.com>; Abecassis, Line <LABecassis@blg.com>  
**Objet :** KFC at Le Carrefour Laval

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---

WITHOUT PREJUDICE

Hello Alexandre,


I have had an opportunity to review your request for a copy of FMI's June 2019 Management Agreement with Olympus Food (Canada) Inc. as it pertains to the KFC at Carrefour Laval.

Le Carrefour Laval (2013) Inc. is not entitled to receive a copy of the Management Agreement, hence same will not be provided.

Your client's pursuit of litigation in this matter against its tenant Olympus resulted in an indeterminate period of delay in completion of the Assignment of Lease for the KFC at Carrefour Laval to my client FMI. FMI's management of the store on behalf of the tenant is a fact that should come as no surprise given that the Assignment of Lease remained unavailable pending the outcome of the court proceeding instituted by your client.

Regards,

Leanne

 **Leanne Laughlin**  
Counsel  
T 416.367.6229 | [LLaughlin@blg.com](mailto:LLaughlin@blg.com)  
**Borden Ladner Gervais**

---

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Borden Ladner Gervais LLP

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---

**From:** Forest, Alexandre <[alexandre.forest@gowlingwlg.com](mailto:alexandre.forest@gowlingwlg.com)>  
**Sent:** August 20, 2020 3:31 PM  
**To:** Laughlin, Leanne <[LLaughlin@blg.com](mailto:LLaughlin@blg.com)>  
**Cc:** Gagnon, François D. <[FGagnon@blg.com](mailto:FGagnon@blg.com)>  
**Subject:** RE: FMI at Le Carrefour Laval

Hello Leanne,

Time is of the essence in this file. Cadillac Fairview is currently opposing the disclaimer at Carrefour Laval and urgently need the Agreement.

Can you please send it to us today?

Regards,

Alexandre Forest  
Associé  
Tél. +1 514 392 9424  
[alexandre.forest@gowlingwlq.com](mailto:alexandre.forest@gowlingwlq.com)



---

**De :** Forest, Alexandre  
**Envoyé :** 19 août 2020 17:24  
**À :** 'LLaughlin@blg.com' <[LLaughlin@blg.com](mailto:LLaughlin@blg.com)>  
**Cc :** 'Gagnon, François D.' <[FGagnon@blg.com](mailto:FGagnon@blg.com)>  
**Objet :** RE: FMI at Le Carrefour Laval

Hello Leanne,

Our client did receive the attached letter.

Could you please provide us with a copy of the Management Agreement referred to in this letter as soon as possible?

Regards,

Alexandre Forest  
Associé  
Tél. +1 514 392 9424  
[alexandre.forest@gowlingwlq.com](mailto:alexandre.forest@gowlingwlq.com)



---

**De :** Forest, Alexandre  
**Envoyé :** 17 août 2020 20:07  
**À :** 'Gagnon, François D.' <[FGagnon@blg.com](mailto:FGagnon@blg.com)>  
**Cc :** 'LLaughlin@blg.com' <[LLaughlin@blg.com](mailto:LLaughlin@blg.com)>  
**Objet :** RE: FMI at Le Carrefour Laval

Hello François,

Would either you or Leanne be available to discuss the file tomorrow?

I can be reached on my cellphone at 514-975-6265.

Regards,

Alexandre Forest  
Associé  
Tél. +1 514 392 9424  
[alexandre.forest@gowlingwlq.com](mailto:alexandre.forest@gowlingwlq.com)



**De :** Forest, Alexandre  
**Envoyé :** 14 août 2020 17:20  
**À :** Gagnon, François D. <[FGagnon@blg.com](mailto:FGagnon@blg.com)>  
**Cc :** 'LLaughlin@blg.com' <[LLaughlin@blg.com](mailto:LLaughlin@blg.com)>  
**Objet :** FMI at Le Carrefour Laval

Hello François,

As discussed, we are having a very hard time discussing the Carrefour Laval premises with Olympus' attorneys since Olympus filed a Notice of Intention to File a Proposal on May 1<sup>st</sup>. Considering this and the fact that FMI is presently in the premises and have been paying the rent for the last month, our client would like to finalize the documentation of FMI's occupation of the premises.

We understand that the relevant documents were already exchanged between our respective client and would like to know if there is any issue.

Regards,

Alexandre Forest  
Associé  
Tél. +1 514 392 9424  
[alexandre.forest@gowlingwlg.com](mailto:alexandre.forest@gowlingwlg.com)



Gowling WLG (Canada) S.E.N.C.R.L., s.r.l.  
1, Place Ville Marie, bureau 3700  
Montréal QC H3B 3P4  
Canada



[gowlingwlg.com](http://gowlingwlg.com)

Efficacité, certitude quant aux coûts et valeur ajoutée : GPJ Pratique par Gowling WLG<sup>MC</sup>

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LK

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COURT FILE NO.: 25-2642858

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PROCEEDINGS IN THE MATTER OF THE NOTICE OF INTENTION TO FILE A PROPOSAL OF OLYMPUS FOOD (CANADA) INC.

APPLICANTS LE CARREFOUR LAVAL (2013)

DOCUMENT **CERTIFICATE OF REMOTE COMMISSIONING FOR THE AFFIDAVIT OF CHRISTIAN VEZINA**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

**Gowling WLG (Canada) LLP**  
1600, 421 – 7<sup>th</sup> Avenue SW  
Calgary, AB T2P 4K9  
Attn: Alexandre Forest/Caireen E. Hanert

Phone: 514.393.9424/403.298.1992  
Fax: 514.876.9024/403.263.9193  
File No.: L48240263

I, **Linda Kharaboyan**, a Notary and Commissioner for Oaths in and for the Province of Québec, certify that the requirements outlined in the Court of Queen's Bench of Alberta, Notice to the Profession and Public, "Remote Commissioning of Affidavits for Use in Civil and Family Proceedings During the COVID-19 Pandemic" dated March 25, 2020 (the "**Notice**"), has been complied with as follows:

1. I met with **Christian Vezina** on August 28, 2020, using video technology.
2. While connected to video technology, I undertook the following steps in accordance with the Notice:
  - (a) verified and retained "screenshot" copies of the front and back of **Christian Vezina's** government issued photo identification;
  - (b) verified that both parties had a paper copy of the Affidavit and all Exhibits before them during the video conference;
  - (c) reviewed every page of the Affidavit and Exhibits with **Christian Vezina**, with both parties initialing the lower right corner of each page to verify the pages are identical; and
  - (d) administered the oath at the end of the review and observed **Christian Vezina** sign his name to the Affidavit.

3. I received the signed Affidavit with Exhibits from **Christian Vezina** electronically, and upon receipt, verified that this copy was identical to the one I initialed during the video conference, and signed the jurat. Both copies are attached to this Certificate.
4. I believe that remote commissioning is necessary because it is impossible or unsafe, for medical reasons, to physically meet with **Christian Vezina** to commission the Affidavit.

SIGNED at the City of Laval, Province of  
Québec, this twenty-eighth (28<sup>th</sup>) day of  
August, 2020.

  
Notary and Commissioner for Oaths in and for  
the Province of Québec

