

**EXHIBIT "A"**  
**(Initial Lease)**

*LEASE AGREEMENT*

*between*

*ZELLERS INC.*

*and*

*FAUBOURG BOISBRIAND LIMITED PARTNERSHIP*  
*an Ontario Limited Partnership, herein represented by its*  
*General Partner, FAUBOURG BOISBRIAND G.P. INC*

Standard Zellers Lease -  
Construction by Tenant

INDEX

| <u>CLAUSE</u>   | <u>Page</u> |
|---|-------------|
| Description of Shopping Centre.....                                     | 1           |
| 1 Description of Demised Premises<br>& Construction Specifications..... | 4           |
| 2. Opening Date & Ninety Day Notice of Possession.....                  | 7           |
| 3. Term.....  | 8           |
| 4. Payee.....   | 9           |
| 5. Currency.....  | 9           |
| 6. Fixed Rent.....  | 9           |
| 7. Percentage Rent.....   | 9           |
| <br><u>ARTICLE</u>  |             |
| 1. Covenant to Pay Rent.....  | 11          |
| 2. Use of Premises and Uses Prohibited Within the Shopping Centre.....  | 12          |
| 3. Taxes.....   | 13          |
| 4. Tenant's Insurance.....  | 16          |
| Landlord's Insurance.....   | 18          |
| 5. Indemnity.....   | 19          |
| 6. Maintenance & Repair.....  | 19          |
| 7. Compliance with Laws.....  | 20          |
| 8. Alterations to Premises.....   | 21          |
| 9. Legal Hypothecs.....   | 22          |
| 10. Entry to Premises.....  | 22          |
| 11. Assignment & Sublet.....  | 22          |
| 12. Utilities.....  | 24          |
| 13. Restoration in Event of Damage to Property.....                     | 24          |
| 14. Cart Corrals.....   | 25          |
| 15. Remedies on Default.....  | 25          |
| 16. Heating & Air-Conditioning.....                                     | 27          |
| 17. Signs.....  | 27          |
| 18. INTENTIONALLY DELETED.....  | 28          |
| 19. Parking and Common Areas.....                                       | 28          |
| 20. INTENTIONALLY DELETED.....  | 30          |
| 21. INTENTIONALLY DELETED.....  | 30          |
| 22. Exclusions and Restrictions.....                                    | 30          |
| 23. Extension of Lease.....   | 31          |
| 24. Holding Over.....   | 31          |
| 25. Expropriation.....  | 31          |
| 26. Quiet Possession and Priority of Lease.....                         | 32          |
| 27. Notices.....  | 33          |
| 28. Waiver.....   | 33          |
| 29. Future Expansion of Demised Premises and Landlord Development.....  | 34          |
| 30. Only Agreement.....   | 34          |
| 31. Commissions & Approvals.....  | 34          |
| 32. Interest Rate.....  | 34          |
| Force Majeure.....  | 35          |
| Gross Leasable Area.....  | 35          |
| 33. Merchants' Association.....   | 35          |

|     |  |    |
|-----|--|----|
| 34. | <i>Tenant Outdoor Selling Area</i> .....   | 36 |
| 35. | <i>Operation of the Shopping Centre<br/>and Enforcement of the Reciprocal Easement Agreement</i> .....       | 36 |
| 36. | <i>Press Releases</i> .....  | 37 |
| 37. | <i>Zellers Inc. 's Covenant Regarding the Rosemere Store</i> .....   | 37 |
| 38. | <i>Particulars Required under Section 9 of an Act<br/>Respecting Duties on Transfer of Immoveables</i> ..... | 37 |
| 39. | <i>Registration of Lease</i> .....   | 38 |
| 40. | <i>Arbitration</i> .....   | 38 |
| 41. | <i>Status Certificates</i> .....   | 39 |
| 42. | <i>INTENTIONALLY DELETED</i> .....   | 39 |
| 43. | <i>Interpretation</i> .....  | 39 |
|     | <i>Successors</i> .....  | 40 |
|     | <i>Execution</i> .....   | 40 |

|                     |   |  |
|---------------------|---|--|
| <i>Schedule "A"</i> | - | <i>Site Plan</i>                             |
| <i>Schedule "B"</i> | - | <i>Copy of Reciprocal Easement Agreement</i> |
| <i>Schedule "C"</i> | - | <i>Additional Prohibited Uses</i>            |

**SITE PLAN COLOURS**

|                                    |   |                           |
|------------------------------------|---|---------------------------|
| <i>Demised Premises</i>            | - | <i>Outlined in RED</i>    |
| <i>Landlord's Parcel</i>           | - | <i>Outlined in GREEN</i>  |
| <i>Costco Lands</i>                | - | <i>Outlined in ORANGE</i> |
| <i>Town Centre</i>                 | - | <i>Hatched in GREEN</i>   |
| <i>Tenant Outdoor Selling Area</i> | - | <i>Hatched in RED</i>     |
| <i>No-Build Area</i>               | - | <i>Outlined in BLUE</i>   |

**ZELLERS LEASE  
FAUBOURG BOISBRIAND, BOISBRIAND, QUEBEC**

THIS LEASE made as of the 24<sup>th</sup> day of August, 2005

BETWEEN:

**FAUBOURG BOISBRIAND LIMITED  
PARTNERSHIP**, an Ontario Limited  
Partnership,  
herein represented by its General Partner,  
**FAUBOURG BOISBRIAND G.P. INC.**  
(hereinafter called the "**Landlord**")

PARTY OF THE FIRST PART

- AND -

**ZELLERS INC.**, a company  
incorporated under the laws of Canada

(hereinafter called the "**Tenant**")

PARTY OF THE SECOND PART

(A) **WHEREAS** the Landlord warrants and represents that it is the owner of the following lands (the "**Original Parcel**") situated in the City of Boisbriand, Province of Québec:

An emplacement known and designated as lots TWO MILLION FIVE HUNDRED AND FIVE THOUSAND AND NINETY-SIX, TWO MILLION FIVE HUNDRED AND FIVE THOUSAND AND NINETY-SEVEN, TWO MILLION SIX HUNDRED AND NINETY-NINE THOUSAND AND THIRTY-FOUR, TWO MILLION SEVEN HUNDRED AND SIXTY-NINE THOUSAND FOUR HUNDRED AND EIGHTY-SIX, TWO MILLION SEVEN HUNDRED AND SIXTY-NINE THOUSAND FOUR HUNDRED AND EIGHTY-SEVEN, TWO MILLION SEVEN HUNDRED AND SIXTY-NINE THOUSAND FOUR HUNDRED AND EIGHTY-EIGHT, TWO MILLION SEVEN HUNDRED AND SIXTY-NINE THOUSAND FOUR HUNDRED AND EIGHTY-NINE, TWO MILLION SEVEN HUNDRED AND SIXTY-NINE THOUSAND FOUR HUNDRED AND NINETY, TWO MILLION SEVEN HUNDRED AND SIXTY-NINE THOUSAND FOUR HUNDRED AND NINETY-ONE, TWO MILLION SEVEN HUNDRED AND SIXTY-NINE THOUSAND FOUR HUNDRED AND NINETY-TWO, TWO MILLION SEVEN HUNDRED AND SIXTY-NINE THOUSAND FOUR HUNDRED AND NINETY-THREE, TWO MILLION SEVEN HUNDRED AND SIXTY-NINE THOUSAND FOUR HUNDRED AND NINETY-FOUR, TWO MILLION SEVEN HUNDRED AND SIXTY-NINE THOUSAND SEVEN HUNDRED AND TWENTY-EIGHT, TWO MILLION SEVEN HUNDRED AND SIXTY-NINE THOUSAND SEVEN HUNDRED AND TWENTY-NINE, TWO MILLION SEVEN HUNDRED AND SIXTY-NINE THOUSAND SEVEN HUNDRED AND THIRTY, TWO MILLION SEVEN HUNDRED AND SIXTY-NINE THOUSAND SEVEN HUNDRED AND THIRTY-ONE, and TWO MILLION SEVEN HUNDRED AND SIXTY-NINE THOUSAND SEVEN HUNDRED AND THIRTY-TWO (2 505 096, 2 505 097, 2 699 034, 2 769 486, 2 769 487, 2 769 488, 2 769 489, 2 769 490, 2 769 491, 2 769 492, 2 769 493, 2 769 494, 2 769 728, 2 769 729, 2 769 730, 2 769 731 & 2 769 732), of the cadastre of Québec, registration division of Terrebonne;

(B) **AND WHEREAS** the Landlord hereby covenants, warrants and represents that it has constructed and/or shall construct a mixed-use complex comprising an aggregate GLA of approximately 1,100,000 square feet (the "**Landlord Development**") upon that portion

of the Original Parcel shown outlined in **GREEN** on the plan (the "**Plan**") attached hereto<sup>2</sup> as Schedule "A" (the "**Landlord's Parcel**"), which Landlord Development shall be known as "*Faubourg Boisbriand*" and shall consist of the following:

- (a) a residential and commercial complex (which may or may not include some retail operations from time to time) contained within that portion of the Landlord's Parcel shown **HATCHED** in **GREEN** on the Plan (the "**Town Centre**"); and
- (b) a shopping centre complex given over ~~exclusively~~ <sup>primarily</sup> to retail purposes and contained within those portions of the Landlord's Parcel that lie outside the perimeter of the aforementioned Town Centre (the "**Shopping Centre**");

(C) **AND WHEREAS** the Landlord hereby warrants and represents that:

- (a) it has agreed to sell that portion of the Original Parcel shown outlined in **ORANGE** on the Plan (the "**Costco Lands**") to Costco Wholesale Canada Ltd. (the said Costco Wholesale Canada Ltd. and its successors and assigns being hereinafter referred to as the "**Costco Lands Owner**");
- (b) as part of the aforesaid agreement to sell the Costco Lands, the Landlord and the Costco Lands Owner have agreed to enter into an agreement called a "*Constitution of Servitudes and Reciprocal Covenant Agreement*" substantially in the form attached hereto as Schedule "B" (the "**Reciprocal Easement Agreement**"), the purpose of which agreement is, inter alia, to provide for the partial integration of the operation of the Landlord Development and the operation of the Costco Lands Owner's development of the Costco Lands;
- (c) upon the closing of the said sale of the Costco Lands to the Costco Lands Owner, notice of the Reciprocal Easement Agreement shall be registered on title to each of the Costco Lands and the Landlord's Parcel; and
- (d) following the Costco Lands Owner's purchase of the Costco Lands, the Costco Lands Owner has agreed to construct (or cause to be constructed) certain buildings and improvements in and upon the Costco Lands, the layout and configuration of which buildings and improvements shall substantially conform to the corresponding layout and configuration therefor shown on the Plan.

(D) **AND WHEREAS**, as of the date of signing hereof:

- (a) the Tenant leases certain premises (the "**Rosemere Store**") in and forming part of the shopping centre known as "*Galerie Mille-Îles*" in the City of Rosemere, Province of Québec and operates the said Rosemere Store as a typical "Zellers" department store; and
- (b) the current term of the Tenant's lease of the Rosemere Store (the "**Rosemere Lease**") is set to expire on October 31, 2008.

(E) **AND WHEREAS** the Landlord wishes to lease to the Tenant and the Tenant wishes to lease from the Landlord certain premises to be constructed within the area shown outlined in **RED** on the Plan, all on the terms and conditions hereinafter more particularly provided;

**NOW THEREFORE THIS LEASE WITNESSETH THAT:**

IN CONSIDERATION of the rents, covenants and agreements hereinafter respectively reserved and contained on the part of the Tenant, its successors and assigns, to be paid, kept, observed and performed, the Landlord by these presents doth demise and lease unto the Tenant, its successors and assigns, for the Term and upon the conditions hereinafter

mentioned ALL and SINGULAR the building that is to be constructed on the lands shown<sup>3</sup> outlined in RED on the Plan (the "Demised Premises"), which Demised Premises include the related improvements from time to time erected thereon and therein, and which Demised Premises shall form part of the Shopping Centre portion of the Landlord Development.

For such consideration the Landlord does also hereby grant to the Tenant, its successors and assigns the right and licence (which shall be irrevocable during the Term) for the Tenant, its employees, customers, licensees and invitees, in common with all others now or hereafter entitled thereto and subject to the conditions of this Lease, to use the "Common Facilities" (as that term is hereinafter defined) of the Landlord Development for the purposes for which such Common Facilities are intended and provided; and in particular, without limiting the generality of the foregoing, such right and license of use shall include:

- (1) The right to use the paved parking facilities of the Landlord Development that are more particularly shown on the Plan (subject to such changes thereto as the Landlord may be permitted to make from time to time, as hereinafter more particularly provided), including the means of pedestrian and vehicular access and the entrances and exits to and from the Landlord Development included therein, for the purpose of pedestrian and vehicular access to, from and within the Landlord Development and the parking of vehicles in the parking spaces provided therein, all as hereinafter more particularly provided in Article 20 of this Lease;
- (2) The right to the use and benefit of utilities and services as have been or may be provided by the Landlord, in accordance with the provisions of this Lease;
- (3) The right to use such public washrooms and other facilities provided for common use and enjoyment as part of the Common Facilities; and
- (4) The exclusive right to use the truck standing and receiving area that is adjacent to and is used in conjunction with the truck dock and receiving facilities of the Demised Premises, for the purpose of the standing of motor vehicles and trailers and garbage compactors and bins, and the right of access to and from such truck standing and receiving area and receiving facilities.

For the purposes of this Lease, the term "Common Facilities" shall mean all areas, improvements and facilities forming part of the Landlord Development, both interior and exterior, that are appropriate and intended from time to time throughout the Term (as that term is hereinafter defined) for common use by or benefit of the tenants and other occupants of the Landlord Development (including the Tenant) and their employees, licensees and customers, including without limitation: (i) the aforementioned paved parking facilities and all other improvements in and upon the Landlord's Parcel that are from time to time associated with parking such as all curbs, lighting facilities, pavement, signs, entrances, exits, roads, ramps and other means of access to parking (hereinafter collectively referred to as the "Parking Facilities"); (ii) common utilities, services and utility distribution systems benefiting more than one tenant (to the extent the same are not situated within rentable premises); (iii) means of public access to the Landlord Development and its component parts; and (iv) any pylon sign(s) displaying the name of more than one tenant of the Shopping Centre (as hereinafter more particularly provided); but excludes all of the following: rentable premises and portions thereof; any portions of Parking Facilities while being used where expressly permitted under this Lease for retail selling and other private purposes; and all corridors, loading docks and truck receiving and delivery facilities, and electrical and mechanical vaults and rooms and facilities therein, which in each case are appropriate and intended predominantly for use only by one tenant or a limited group of tenants and its and their employees (except that the utility distribution systems shall not be excluded if serving more than one tenant or occupant).

It is understood and agreed that the Landlord shall use reasonable efforts to cause the grand opening date of the Shopping Centre to occur on or about August 15, 2006.

**DESCRIPTION OF DEMISED PREMISES & CONSTRUCTION SPECIFICATIONS**

4

1. The Demised Premises, having a GLA (as defined in Article 32) of approximately 116,403 square feet and a mezzanine floor area of approximately 4,312 square feet, shall be constructed by the Tenant as agent for the Landlord (but at the Tenant's expense and holding the Landlord harmless from liability and liens in connection therewith), in accordance with the Tenant's outline building specifications. The contractors and consultants engaged in the construction of the Demised Premises shall be selected by the Tenant, subject to the approval of the Landlord (such approval not to be unreasonably withheld or delayed), and shall be under the sole control of the Tenant. The Tenant shall obtain the building permit required for the construction of the Demised Premises at its sole cost and shall construct the Demised Premises in compliance with all applicable laws. The design of the exterior of the Demised Premises, to the extent that it materially differs from the standard design of the Tenant's similar stores in the Province of Québec shall be subject to the approval of the Landlord (such approval not to be unreasonably withheld or delayed). The exterior elevations of the Demised Premises shall also be subject to the approval of the Landlord (such approval not to be unreasonably withheld or delayed). The construction of the Demised Premises shall be consistent with the Plan. The Tenant shall be responsible for obtaining all building permits and other permits relating to the construction, occupation and operation of the Demised Premises. Subject to the foregoing, the Landlord shall be responsible, for obtaining any and all development approvals and/or permits that may be required for the construction of the Landlord Development (including, without limiting the generality of the foregoing, all necessary zoning approvals, as hereinafter more particularly provided).

The Landlord Development as a whole shall be laid out and constructed substantially in accordance with the Plan, including the Demised Premises. For the sake of greater clarity, the parties hereto hereby acknowledge and agree that the Demised Premises will at all times be free-standing, such that the Landlord shall at no time during the Term construct (or permit to be constructed) any premises that abut or share a party wall with the Demised Premises. The Landlord hereby covenants that it shall proceed expeditiously to secure all necessary zoning approvals required to allow the Landlord Development (including the Demised Premises) to be laid out and constructed substantially in accordance with the Plan and for the whole of the Shopping Centre to be used for retailing purposes, including the use of the Demised Premises as a department store. Any substantial modifications to the Plan, including any material change in the size of the Shopping Centre or the GLA of leasable premises therein, shall require the approval of the Tenant.

The Landlord shall pay to the Tenant an amount per square foot of GLA of the Demised Premises of **Fifty-Three Dollars (\$53.00)** (the "Allowance"), together with any federal and/or provincial sales, value-added or goods and services taxes, including (without limitation) the federal GST and Quebec Sales Tax ( hereinafter collectively referred to as the "GST") that may be applicable to such payment to the extent that the Tenant is required pursuant to the applicable legislation to collect the same. The aforesaid Allowance shall represent the Landlord's contribution towards the costs the Tenant will incur (i) in constructing the Demised Premises, and (ii) in ceasing its operation of the Rosemere Store (as more particularly provided in Article 37 hereof).

The Landlord shall pay the Allowance to the Tenant in the following instalments:

- (a) the sum of One Million Dollars (\$1,000,000.00), plus applicable GST, shall be paid thirty (30) days from and including the day upon which the Tenant commences construction (the "**Zellers Construction Start Date**");
- (b) the further sum of Two Million Dollars (\$2,000,000.00), plus applicable GST, shall be paid four (4) months from and including the aforesaid Zellers Construction Start Date; and

the balance of the Allowance, plus applicable GST, shall be paid on the date that the Demised Premises are first opened for business with the public (the "**Store Opening**");



Date"), subject to any holdback requirements applicable to such payment under<sup>5</sup> the then current legislation in the Province of Quebec, including, without limitation, legislation governing legal hypothecs that might be claimed in respect of any work directly related to the construction of the Demised Premises and/or workers' compensation claims; provided that the Tenant has first provided the Landlord with a statutory declaration of a senior officer of the Tenant stating that all accounts for work, services and materials performed or supplied in respect of the Tenant's construction of the Demised Premises have been paid by it in full to all contractors and subcontractors, subject to statutory holdbacks and subject to bona fide holdbacks to cover deficiencies or uncompleted work, and identifying any bona fide dispute in respect of any withheld payments and providing relevant particulars of the same; and further provided that if any legal hypothecs directly related to and arising from any work or supplies provided by third parties in the construction of the Demised Premises hereunder should be registered on title to the Landlord's Parcel on the Store Opening Date, the Landlord may, in its sole discretion, hold back from its payment of the balance of the Allowance an amount equal to the aggregate sum of such legal hypothecs until the date upon which all such legal hypothecs have been discharged from title to the Landlord's Parcel. For greater certainty, the parties hereto further acknowledge and agree that the provisions of Article 9 of this Lease shall have full application to any legal hypothecs that may be registered on title to the Landlord's Parcel as a result of the Tenant's construction of the Demised Premises, regardless of the date upon which such legal hypothecs are so registered.

Where the Landlord fails to make payment of the Allowance or the GST as required, the Tenant shall, in addition to any other rights it may have at law, be entitled to deduct the amounts so payable by the Landlord, together with interest thereon from any payments which the Tenant is required to make to the Landlord under this Lease. The outstanding amounts owing by the Landlord shall bear interest from the date payment was due until payment has been made in full (including the accrued interest), at a rate per annum equal to the rate charged from time to time by the Canadian Imperial Bank of Commerce at its main Toronto branch to its most preferred commercial borrowers (commonly known in the banking industry and referred to in Article 32 hereof as the "prime rate") plus 1%. Interest shall be calculated and compounded at the end of each calendar month.

The Landlord shall at its expense, and not as part of the Allowance, perform (or cause to be performed) all of the following work (the "**Landlord's Work**"):

- (a) construct all work outside the perimeter wall of the Demised Premises, such as but not limited to sidewalks, curbs, ramps, stairs, asphaltting and landscaping around the Demised Premises, and any retaining walls adjacent to or related to the construction of the Demised Premises; and do all associated backfilling in regard to the construction of the Demised Premises;
- (b) provide a compacted pad to 95% Modified Proctor density in the areas where the Tenant will construct the Demised Premises, at twelve inches below the top of the finished slab-on-grade, recognizing nevertheless the intention of the parties to have the Demised Premises at substantially the same elevation as the remainder of the retail premises in the Shopping Centre. The final seven inches of fill (crushed stone or granular) required between the compacted pad and the underside of the concrete floor slab shall be installed by the Tenant's contractor but paid for by the Landlord). The Landlord shall also provide a compacted pad to 95% Modified Proctor density in the truck standing and garbage retention area for the Demised Premises as well as the concrete surface for such area in accordance with the Tenant's standard specifications;
- (c) grade the lands around the Demised Premises so as to be six inches below the top of the finished ground floor of the Demised Premises. Where such elevational difference cannot be achieved, the Landlord shall pay all additional costs incurred by the Tenant as a result of the lands around the Demised Premises not being graded as aforesaid, including without limitation

the cost of reinforced retaining walls, foundation walls and footings deeper<sup>6</sup> than 4 feet below ground floor level. In any event the Parking Facilities must be at approximately the same level as the exterior public entrances to the Demised Premises, such that no stairs or ramps are necessary in order to gain access to the Demised Premises. The Landlord shall pay for the concrete retaining walls at the truck standing and garbage retention area (other than the retaining/foundation wall of the Demised Premises in this area), including masonry walls, gutters, etc. in accordance with the Tenant's standard specifications;

- (d) Should soil conditions be such that they have a bearing capacity of less than 3500 p.s.f., or should there be rock present which prevents the use of footings and foundations which are of standard width, depth or makeup (based on generally accepted construction industry standards), the Owner shall be responsible for all incremental costs (such as but not limited to costs of excavation, compaction, backfilling, drilling, pile driving, dowelling, forming, concrete, reinforcing steel and labour) associated with or resulting from the need for:
- (i) exterior wall footings and foundations that exceed 4 feet in depth below ground floor level, or which are wider than the industry standard, or which are not of normal depth due to the presence of rock;
  - (ii) interior footings, foundations and column piers that exceed 2 feet 6 inches in depth below ground floor level, or which are wider than industry standard, or which are not of normal depth due to the presence of rock; or
  - (iii) any special design substructure such as but not limited to floating structural slabs, caissons and associated work, piling, pile caps and associated grade beams, alternate footing designs including dowelling into bedrock, reinforced structural floor slabs on grade, any additional work required as a result of any soil or other ground condition preventing the use of standard strip footings, poured concrete foundations or trench wall, and any grade differential of more than six inches (6");
- (e) provide (no less than 100 days prior to the proposed Commencement Date) to the perimeter of the site of the Demised Premises (at locations to be mutually agreed between the Tenant and the Landlord), and maintain during the Term as part of the common facilities, such utilities and services and in such capacity as are required for the normal operation of the Demised Premises (including watermains with sufficient water pressure and flow capacity to meet local fire department requirements and the Tenant's standard specifications for its sprinkler and fire hose systems). All fire pumps, jockey pumps, generators and other ancillary equipment and systems which are necessary in order to meet the above requirements shall be provided at the Landlord's expense; and
- (f) provide interim services and utilities (including a 208 volt, 200 amp, 3-phase electrical service) to the construction site to the extent necessary to enable construction of the Demised Premises (it being understood that all costs of consumption of interim services and utilities shall be borne by the Tenant).

The Landlord hereby warrants and represents that the Demised Premises will be constructed in and upon that portion of the Landlord's Parcel currently comprising Lot 3 490 640 of the cadastre of Québec, registration division of Terrebonne. The Tenant hereby acknowledges that, prior to the date of acceptance hereof, the Landlord has provided the Tenant with a copy of a soil test report on that part of the said Lot 3 490 640 on which the Demised Premises shall be constructed. The Tenant hereby further acknowledges that, prior

to the date of acceptance hereof, the Landlord has provided the Tenant with a copy of a<sup>7</sup> Certificate of Decontamination, dated as of May 17, 2005, that has been issued in respect of the said Lot 3 490 640 of the cadastre of Québec, registration division of Terrebonne, pursuant to Article 31.59 of the Loi sur la Qualité de l'Environnement (L.R.Q. c. Q-2), along with a copy of the environmental report (prepared and signed by Serge Panasuk of Sanexen Services Environnementaux Inc.) that forms part of the said Certificate. The said report expresses the opinion that the lands in question have been remediated to commercial limit values and that the remediation work performed on site was done in accordance with the rehabilitation plan approved by the Provincial Ministère du Développement durable, de l'Environnement et des Parcs.

The Parking Facilities of the Shopping Centre shall be completed by the Landlord by no later than sixty (60) days prior to the Commencement Date and the final parking lot coat (together with parking stall striping) shall be completed by the Landlord prior to the Commencement Date. The said Parking Facilities shall be maintained by the Landlord at its expense prior to the opening of the Shopping Centre to the public. The Landlord shall also complete no later than sixty (60) days prior to the Commencement Date all driveways, sidewalks, loading and service areas, accessways to and from adjoining streets and highways, and other common areas appurtenant thereto in accordance with the Plan. In the event that all of the foregoing work described in this paragraph shall not be completed on or before the commencement of the Term, the fixed annual rent hereby reserved shall abate entirely and shall not begin to accrue until the date upon which all of such work shall have been completed (the "Effective Date") and the Tenant may, at its option, postpone opening the Demised Premises for business with the general public until the Effective Date. If the Tenant elects to postpone opening the Demised Premises for business with the general public as aforesaid, then, in addition to the said abatement of fixed annual rent, all other payments to be made by the Tenant pursuant to this Lease shall abate entirely and shall not begin to accrue until the Effective Date (or such earlier date as the Demised Premises may be opened for business with the general public).

It is understood and agreed, and the Landlord hereby acknowledges, that the Allowance relates only to the construction of the Demised Premises and the cessation of operation of the Rosemere Store (as more particularly provided in Article 37 hereof), and that the Landlord is fully responsible at its sole expense and without responsibility on the part of the Tenant or attribution towards the Allowance for all other work necessary in order to construct and complete the remainder of the Landlord Development (excluding construction of the Demised Premises), including, without limitation, the paving, striping, entrance ramps, lighting and drainage for the Parking Facilities serving the Demised Premises, and for the payment of any development fees, imposts, levies or charges that are attributable to the development of the Landlord Development, including the Demised Premises (whether applied by governmental authorities on the basis of lands being developed or buildings being constructed or otherwise, and whether or not such development fees, imposts, levies or charges are required to be paid at the time of or as a condition of the issuance of a building permit). Notwithstanding the foregoing, the Tenant shall be responsible for all fees associated with obtaining a building permit for the Demised Premises. It is further understood and agreed that, with the exception of the work that the Landlord has agreed to carry out itself at its expense (as opposed to the construction that the Tenant will carry out as agent of the Landlord) pursuant to this Clause 1, the Tenant shall be responsible for all costs of constructing the Demised Premises in excess of the Allowance, to the complete exoneration of the Landlord.

After the commencement of any work to be carried out by the Landlord, it shall keep the Tenant advised of the progress thereof by letters addressed to the Tenant's Design and Engineering Manager at least once in each succeeding thirty (30) day period.

#### OPENING DATE & NINETY DAY NOTICE OF POSSESSION

2. Provided that the Landlord has carried out the work required of it pursuant to Clause 1 and which is necessary to enable the construction of the Demised Premises to be proceeded with, including providing the compacted pad to the Tenant by no later than October 31, 2005, the Tenant shall construct the Demised Premises and carry out the installation of its fixtures,

equipment and merchandise for a Store Opening Date of approximately August 15, 2006<sup>8</sup> (subject to Force Majeure). To the extent that the Landlord is late in providing the compacted pad to the Tenant, the Tenant may postpone the Store Opening Date beyond August 15, 2006.

In any event the Tenant shall not be required to open:

- (i) between June 1<sup>st</sup> and July 31<sup>st</sup> and where the Tenant opens during any such period the fixed annual rent provided for in Clause 6 shall not commence until the month of August following; or
- (ii) between November 2<sup>nd</sup> in one year and the last day of February in the following year, and where the Tenant opens during any such period the fixed annual rent provided for in Clause 6 shall not commence until the earlier of (a) two (2) months after the actual Store Opening Date and (b) the following March 1<sup>st</sup>.

Should the compacted pad not be delivered to the Tenant by October 31, 2006 for whatever reason, the Tenant may by notice to the Landlord terminate this Lease.

Should the Tenant not commence construction of the Demised Premises or should the Tenant not be diligently proceeding with the construction of the Demised Premises within twelve (12) months after the date upon which the Landlord delivers the compacted pad to the Tenant, the Landlord may by notice to the Tenant terminate this Lease.

The Tenant shall be entitled to install its fixtures, equipment and merchandise in the Demised Premises as soon as is reasonably possible prior to the Store Opening Date. The cost of any utilities consumed by the Tenant prior to the Store Opening Date shall be paid for by the Tenant.

The Tenant covenants to carry out the construction of the Demised Premises in a diligent and timely manner and to open the Demised Premises for business by no later than November 1, 2006 (presuming that the Landlord has delivered the compacted pad to the Tenant by no later than October 31, 2005), subjects always to the intervention of Force Majeure and/or delays resulting from the Landlord's failure to complete the Landlord's Work.

When construction of the Demised Premises is fully complete the Landlord shall furnish the Tenant with a certificate in writing of the Landlord's architect certifying the as-built GLA of the Demised Premises.

### **TERM**

3. The term of this Lease shall be for a period of fifteen (15) years commencing on the Commencement Date (as that term is hereinafter defined), unless this Lease shall have been sooner terminated as hereinafter provided and subject to the rights of the Tenant to extend the term as hereinafter provided for (such initial term and any periods of extension which are exercised being hereinafter referred to as the "Term").

For the purposes of this Lease, the term "Commencement Date" shall mean the earlier of the following two dates:

- (i) the Store Opening Date; or
- (ii) November 1, 2006 (the "Scheduled Date");

provided that, if (a) the compacted pad is not provided to the Tenant on or before October 31, 2005 for any reason or (b) should the Tenant be delayed in completing its construction and finishing of the Demised Premises by reason of Force Majeure, the aforesaid Scheduled Date shall be postponed by the same number of days as are attributable to such late delivery of the compacted pad and/or the delay occasioned by such intervention of Force Majeure.

**PAYEE**

4. All payments hereunder to the Landlord shall be made to Faubourg Boisbriand Limited Partnership at 1010 Sherbrooke Street West, #718, Montréal, QC H3A 2R7, or to such other person and at such other place as may from time to time be designated by notice given by the Landlord to the Tenant.

**CURRENCY**

5. The parties agree that any payments of money required to be made under the provisions of this Lease shall be made in lawful money of Canada and may be made by cheque payable in Canadian funds.

**FIXED RENT**

6. The Tenant shall pay a fixed annual rent to the Landlord during the Term commencing (subject to the exceptions more particularly provided in the foregoing Clauses 1 and 2 hereof) on the Commencement Date as follows:

- (i) for the first five (5) years of the Term (years 1 through 5), at the annual rate of \$8.50 per square foot of the GLA of the Demised Premises;
- (ii) for the next five (5) years of the Term (years 6 through 10), at the annual rate of \$9.00 per square foot of the GLA of the Demised Premises;
- (iii) for the next five (5) years of the Term (years 11 through 15), at the annual rate of \$10.00 per square foot of the GLA of the Demised Premises; and
- (iv) thereafter, for each and every subsequent first five (5) year extension of the Term, at the annual rate of \$10.00 per square foot of the GLA of the Demised Premises.

payable in advance in equal, consecutive, monthly instalments of one-twelfth (1/12<sup>th</sup>) of such amount on or before the first day of each calendar month throughout the Term. Fixed rent payable for part of a month shall be prorated on a per diem basis, and any partial month at the beginning of the Term shall be paid for on or before the first day of the following month.

It is further understood that, notwithstanding the foregoing provision relating to the date on which the fixed annual rent shall commence to accrue, if sixty percent (60%) of the aggregate GLA of leasable premises in the Shopping Centre, including the Demised Premises, are not open for business with the general public or do not open or are not ready to open for business with the general public simultaneously with the Tenant, then, in this event, the Tenant may at its option either refuse to open the Demised Premises for business until one (1) week after such percentage of leasable GLA is so open for business (subject always to the right of the Tenant pursuant to Clause 2 not to open during certain times of the year) or open the Demised Premises for business and, in either case, the fixed annual rent and the percentage rent payable by the Tenant under this Lease (and, while the Demised Premises remain closed, any other payments required to be made by the Tenant pursuant to this Lease) shall abate entirely until such percentage of leasable GLA is so open for business to the general public.

**PERCENTAGE RENT**

7. In addition to the fixed annual rent payable under Clause 6, the Tenant during the Term shall pay a percentage rent equal to one percent (1.0 %) of "Gross Retail Sales", as hereinafter defined, made from the Demised Premises during each "percentage rent period", as hereinafter defined, in excess of Thirty Million Dollars (\$30,000,000.00). The Tenant shall pay the percentage rent provided for in this Clause 7 within sixty (60) days of the termination of each percentage rent period.

The "Gross Retail Sales" made from the Demised Premises shall mean and include all sales of merchandise made and services provided from the Demised Premises including

the net amounts received by the Tenant as a result of sales of merchandise dispensed from<sup>10</sup> machines and services provided by machines and including all orders for merchandise taken on the Demised Premises to be filled elsewhere, without any deduction for uncollected or uncollectible credit accounts. Notwithstanding the aforesaid, the following items shall be excluded in calculating such Gross Retail Sales:

- i) all credits and refunds made to customers for merchandise returned or lost or found defective;
- ii) all receipts from service devices, such as public telephones, public toilets, weighing machines, stamp machines, banking machines and lockers;
- iii) all discounts allowed on the purchase of merchandise by charitable organizations or by the Tenant's employees or by others to whom the Tenant shall allow discounts;
- iv) all interest and service charges on sales of merchandise or services made on credit;
- v) all amounts or credits received in settlement of claims for loss of or damage to merchandise and for merchandise transferred to other stores of the Tenant or returned to manufacturers or jobbers;
- vi) all taxes based upon gross receipts or the sale or sale price of merchandise or services and which must be paid by the vendor or collected by the vendor from customers, whether or not such taxes are included in the price shown to the customer or are added separately, whether or not the same be commonly known as "sales tax" "harmonized sales tax" or "goods and services taxes", and whether or not imposed by virtue of any existing or future law or ordinance;
- vii) for any services provided from the Demised Premises for which the Tenant or its subtenant, licensee or concessionaire receives a commission from a third party dealing at arm's length for the providing or sale of such services, all receipts from customers of such services will be excluded from Gross Retail Sales, but there shall be included as Gross Retail Sales the amount of any such commissions earned. Included in such services, without limitation are:
  - (a) a post office,
  - (b) a ticket office for the sale of tickets to entertainment events,
  - (c) a travel agency,
  - (d) a financial services department, and
  - (e) a lottery ticket outlet;
- viii) all receipts from the sale of gift certificates (provided that the value of any gift certificates redeemed in the Demised Premises for merchandise shall be included in Gross Retail Sales); and
- ix) the revenue for the services rendered of any subtenants, licensees or concessionaires who provide professional services from an office environment such as, but not limited to, dentists, doctors, optometrists, chiropractors, therapists and other health care professionals, provided that there shall be included in Gross Retail Sales the gross rental or fee received by the Tenant from such subtenants, licensees and concessionaires as consideration for their use of space in the Demised Premises.

For the purposes hereof the words "percentage rent period" shall mean each successive twelve (12) month period occurring during the Term, provided that, if the Term commences on any day other than the first day of a calendar month, the first such percentage rent period shall commence on the Commencement Date and shall end on the last day of the twelfth calendar month following the Commencement Date. A period of more than twelve

(12) months at the commencement of the Term and a period of less than twelve (12)<sup>11</sup> months immediately preceding the expiry date or earlier termination of this Lease shall be deemed a "percentage rent period", and the aforementioned annual 'threshold' amount of Thirty Million Dollars for such period of more or less than twelve (12) months shall be increased or reduced accordingly on a proportionate per diem basis.

For the purpose of enabling the Landlord to ascertain the amount of percentage rent payable hereunder the Tenant shall annually within sixty (60) days of the termination of each percentage rent period throughout the Term and within sixty (60) days following the expiry or sooner termination of the Term, furnish the Landlord with a statement certified by an officer of the Tenant (the "**Tenant Statement**") showing the Gross Retail Sales made in the Demised Premises during the said percentage rent period.

The Tenant agrees to keep proper and sufficient books and records of all retail sales effected in the Demised Premises from the Store Opening Date and to give the Landlord, or its duly authorized agent or nominee, free access to said books and records which shall be made available to the Landlord, its agent or nominee during the usual business hours of the Tenant at its head office, and in a manner which does not unreasonably interfere with the conduct of the Tenant's business, provided that any such inspection of the Tenant's books and records by the Landlord shall only be made within sixty (60) days after mailing of the Tenant Statement to the Landlord and shall be limited to the Gross Retail Sales effected in the Demised Premises and to the period covered by the Tenant Statement and no claim for revision thereof or for additional percentage rent computed on the information therein shall be made more than one hundred and twenty (120) days after the mailing of the Tenant Statement to the Landlord; and the Landlord hereby covenants that neither it, nor its agent or nominee, will divulge any information contained in any Tenant Statement furnished to the Landlord by the Tenant or made known to the Landlord by the latter's examination of the books and records of the Tenant, except as may be required to enforce this Lease or to the extent that any such information has become public knowledge through other sources..

If the Landlord disputes the amount of the Gross Retail Sales set forth in any Tenant Statement, the matter shall be referred for prompt decision to an independent auditor who shall be mutually appointed by the Landlord and the Tenant, each acting reasonably, and shall be deemed to be acting as an expert and not as an arbitrator. The auditor's final determination of the matter shall be presented in written form and shall be final and binding on both the Landlord and the Tenant. Any adjustment required to any previous payment by the Tenant by reason of any such decision shall be made within fourteen (14) days of the parties' receipt of the auditor's determination. The Landlord shall bear all costs charged by the aforesaid auditor unless the adjustment in question represents a payment to the Landlord of more than three percent (3%) of the Gross Retail Sales that were the subject of dispute, in which case the Tenant shall bear all such cost.

## *ARTICLE 1*

### *COVENANT TO PAY RENT*

**Section 1.** The Tenant covenants to pay the rent herein reserved at the times and in the manner in this Lease provided, without any previous notice or demand of the Landlord, and without any abatement, set-off or deduction whatsoever except as specifically provided for in this Lease or as permitted by court order.

**Section 2.** Any amounts owing by the Tenant to the Landlord under this Lease, whether or not described herein as rent, shall be deemed to be rent for the purposes of this Lease and the Landlord shall have the same recourses and rights of recovery for payment of the same as it has for the non-payment of rent hereunder.

**USE OF PREMISES AND USES PROHIBITED WITHIN THE SHOPPING CENTRE**

**Section 1.** Throughout the Term, the Demised Premises, when used, shall be used only for lawful retail and service purposes. Without prejudice to the Tenant's rights to use the Demised Premises as aforesaid, the Tenant covenants that the whole of the Demised Premises shall open for business on the Store Opening Date as a department store operating under the trade name "Zellers", fully fixtured, stocked and staffed and in a manner typical of the other "Zellers" department stores of comparable size then operating in the Province of Québec. For the purposes of this Lease, the term "department store" shall mean any large retail establishment selling various types of merchandise and services, organized by departments. The parties acknowledge the fluid and dynamic nature of a department store operation and agree that the departments and types of merchandise and services typically featured in such an operation are subject to changes over time to better accommodate the operator's perception of its target market.

**Section 2.** The parties hereto hereby acknowledge that, as of the date of acceptance hereof, there is registered against title to the Landlord's Parcel on December 17, 2001, as Instrument No. 1 322 778 a certain servitude (the "Home Depot Servitude") in favour of certain neighbouring lands (the "Home Depot Lands") that provides (a) that no portion of the Landlord's Parcel (including the Demised Premises) shall be used for the operation of a hardware or home improvement centre such as, without limitation, a "Rona", "Reno-Depot", "Builders' Box", "Kent" or "Lowe's" store, and (b) that no portion of the Landlord's Parcel may be leased, used or occupied for parking for, or any other uses accessory to, such businesses unless such parking or accessory uses are for the benefit of the Home Depot Lands. The Tenant hereby covenants that the Tenant shall not permit the Demised Premises to be put to any of the aforementioned uses that are prohibited under the Home Depot Servitude if and for so long as the Home Depot Servitude remains in full force and effect.

**Section 3.** The Tenant covenants with the Landlord that throughout the Term the Tenant shall not use the whole or any portion of the Demised Premises for any of the following purposes:

- (i) a full service bank;
- (ii) a cinema, theatre or auditorium;
- (iii) any use that violates any applicable laws or by-laws, including (without limitation) any by-laws relating to zoning or parking;
- (iv) a retail/wholesale store and warehouse used for the sale of hard and soft goods and groceries as is generally carried on by Costco Wholesale Canada Ltd. and/or any of its affiliates (as that term is defined in the *Canada Business Corporations Act*) in the majority of those stores operating in Canada under the name "Costco" in April 2005; or
- (v) any use that is the subject of a grant of exclusivity made by the Landlord in favour of another occupant of the Shopping Centre after the date of acceptance hereof, provided (and the Landlord hereby covenants) that no such grant of exclusivity will interfere or be deemed to interfere with the Tenant's right to operate the Demised Premises as a department store (as that term is hereinbefore more particularly defined).

**Section 4.** The Tenant further covenants with the Landlord not to use the Demised Premises for any use specified in Schedule "C" attached hereto.

**Section 5.** Nothing contained herein shall create or be interpreted as creating a covenant by the Tenant to continuously occupy and operate the Demised Premises



throughout all or any portion of the Term. However, If at any time after the Store<sup>13</sup> Opening Date the Tenant ceases to occupy and operate the Demised Premises for the purposes herein permitted for a period of more than three (3) consecutive months for any reason other than Force Majeure, material adverse interference that prevents the Tenant from operating its business or temporary closures for permitted alterations, repairs, renovation and/or assignment or subletting of the Demised Premises, then, for so long thereafter as the aforesaid cessation of operation should persist, the Landlord shall have the right to terminate the Lease by giving the Tenant thirty (30) days' prior written notice thereof.

**Section 6.** The parties hereto acknowledge and agree that it is strictly the Tenant's obligation to obtain and maintain in force any permits and licenses required for the Tenant's occupation and operation of its business in the Demised Premises, that this Lease is not conditional upon the Tenant obtaining an occupancy permit for the Demised Premises, and that the Landlord does not guarantee that the Tenant shall be able to obtain the required permits or licenses.

### ARTICLE 3

#### TAXES

**Section 1.** The term "Real Property Taxes" whenever used in this Lease shall mean any and all general taxes and school taxes (which includes rates, assessments, levies, charges and impositions), whether general or special (including, without limitation, any surtaxes on non-residential immoveables, non-residential parking taxes or any taxes of a similar nature), from time to time levied or imposed with respect to real property (including land, buildings, fixtures, and accessories and improvements to them) by municipal or other governmental authorities having jurisdiction; provided that:

- i) interest, fines or penalties for non-payment or late payment shall be excluded;
- ii) taxes that are primarily of the nature of taxes on income, capital, business, place of business or otherwise personal to the taxpayer, and not primarily of the nature of taxes on real property shall be excluded; and
- iii) local improvement taxes relating to or levied or imposed solely in respect of the construction of the whole or any part of the Landlord Development or any future alterations or expansions of the Landlord Development shall be excluded.

**Section 2.** Where no separate bill for Real Property Taxes for the Demised Premises is issued directly to the Tenant by the municipal or other governmental taxing authority, the Landlord shall provide the Tenant with a copy of all assessments and tax bills affecting the Shopping Centre and/or the Landlord Development, as the case may be forthwith upon receipt by it and in any event at least seven (7) days prior to the expiry of any period for appeal or other contesting thereof. The Landlord hereby authorizes the Tenant to obtain directly from the taxing and assessing authorities such information as the Tenant requires for the purposes of determining the Real Property Taxes and assessment that are applicable or attributable to the Demised Premises. If necessary for the Tenant to obtain such information, the Landlord, at the Tenant's written request, shall promptly provide to the taxing and assessing authorities whatever written authorization is required to enable the Tenant to obtain such information. All information provided to the Tenant hereunder shall be kept confidential by the Tenant, except to the extent that the Tenant needs to use such information in a court of law or before a governmental or quasi-governmental body, or to the extent that any such information has become public knowledge through other sources.

**Section 3.** Subject to the provisions of Section 2 of this Article 3, the Tenant covenants and agrees to pay and discharge all Real Property Taxes imposed during the Term in respect of the Demised Premises or any part or parts thereof, or against the Landlord as the

owner thereof or against any property on the Demised Premises owned or brought thereon<sup>14</sup> by the Tenant. The Tenant also covenants and agrees to pay every tax and license fee in respect of every business carried on from or at the Demised Premises during the Term or in respect of the occupancy of the Demised Premises by the Tenant. Where no separate bill for Real Property Taxes is issued for the Demised Premises, the Tenant shall pay to the Landlord the Real Property Taxes required by this Article 3 to be paid by the Tenant within thirty (30) days of receipt from the Landlord of official receipts from the taxing authority or other proof satisfactory to the Tenant that Real Property Taxes for the Shopping Centre and/or the Landlord Development, as the case may be have been paid in full.

The Landlord shall pay or cause to be paid all Real Property Taxes in respect of the Landlord Development (except those payable by the Tenant directly to taxing authorities pursuant to this Article 3). The Landlord shall also pay or cause to be paid all business taxes (including taxes for the supply of utilities and services to leasable premises other than the Demised Premises) and other taxes of a similar nature imposed by municipal or other governmental authorities having jurisdiction in respect of all business and activities carried on by tenants and other occupants of the Landlord Development (except those payable in respect of the Demised Premises by the Tenant pursuant to this Article 3) to the extent that any such taxes are capable of constituting a lien against the Landlord's Parcel in the event of non-payment. Whenever the Tenant shall reasonably request, the Landlord shall provide the Tenant with receipts or other appropriate evidence as to the due payment of any Real Property Taxes payable by the Landlord hereunder.

**Section 4.** For the purpose of establishing the amount of Real Property Taxes payable by the Tenant pursuant to Section 3 of this Article and the amount of Real Property Taxes to be included in the costs to which the Tenant contributes under Section 3 of Article 19, the parties recognize and acknowledge that it is necessary to establish the assessments upon which such Real Property Taxes are based, being the assessment in the first case of the Demised Premises and the land thereunder including in each case the buildings, improvements, fixtures and equipment thereon, and in the second case the assessment, if any, of the Common Facilities including the lands attributable thereto.

If such separate assessments or any of them are not made by the municipal or other governmental authorities, or professional assessors hired by those authorities, responsible for the determination of assessments upon which Real Property Taxes are based, the Landlord shall use its continuing and diligent efforts (with the assistance of the Tenant if the Landlord or the Tenant considers such assistance necessary or desirable) to have such separate assessments made or, failing that, to obtain sufficient official information to determine such separate assessments.

However, in the event and to the extent that such separate assessments or such official information cannot be obtained from such municipal or other governmental authorities or the professional assessors hired by them, the Landlord and the Tenant shall allocate the total assessment of the Shopping Centre (or the Landlord Development or such smaller subdivision containing the Tenant Store as may have been separately assessed, as the case may be) and the improvements thereon in a manner which is equitable and consistent with the basis of assessment in use by municipal or other governmental authorities having jurisdiction in the municipal area in which the Shopping Centre is situate so as to arrive at the separate assessments mentioned in the first sentence of this Section and which are required for the application of the provisions of this Lease. In so doing the parties shall have regard, as far as possible, to the method of assessment and applicable elements utilized in arriving at the assessment of the whole of the Shopping Centre and/or the Landlord Development or such smaller subdivision containing the Tenant Store as may have been separately assessed, as the case may be, by the municipal or other governmental authorities having jurisdiction. The parties hereto further acknowledge and agree that if Real Property Taxes assessed against the Shopping Centre as a whole are reduced due to the vacancy of one or more premises, Real Property Taxes allocated for the Tenant's account hereunder shall be calculated as if the Shopping Centre were fully occupied (such that the Landlord gets the full benefit of the aforesaid reduction in assessment or any tax credit resulting from vacancies), unless it is determined that Real Property Taxes are to be allocated on a proportionate share basis to the Tenant's account. If the Landlord and the Tenant cannot agree to the required allocation of

assessments, the allocation shall be determined by arbitration pursuant to the provisions of<sup>15</sup> this Lease, but having regard to the basis of determination set out in this Section 4. The allocation which is either agreed to or determined by arbitration shall, until such time as there is a change in assessments, or methods of assessment or allocation of such assessments, be binding upon the parties and the separate assessments so arrived at shall be applied to determine the respective obligations of the parties with respect to Real Property Taxes, if any, under this Article 3 and also the amount of Real Property Taxes allocable to the Common Facilities for the purposes of computing costs pursuant to Section 3 of Article 19. If any Real Property Taxes or instalments thereof become due before such determination has been made, the Landlord may make a reasonable estimate of the allocation which shall not bind the parties but shall nevertheless be adopted for the basis of the interim payment of Real Property Taxes respectively payable by them, and when the allocation of assessments has been finally determined and the Real Property Taxes respectively payable by them finally computed, the parties shall promptly make the appropriate readjustment and additional payment by the Tenant or repayment to the Tenant, as the case may be, together with interest at the Interest Rate on such payment from the date of overpayment or underpayment to the date the adjustment payment is made.

Neither the Landlord nor the Tenant shall direct or authorize the assessing authority to use a method of determining assessment for the Demised Premises which is different than the method used for determining assessment for the Shopping Centre and/or the Landlord Development, as the case may be.

**Section 5.** The parties hereto agree that any Real Property Taxes relating to a fiscal period of the taxing authority, a part of which is included within the Term and a part of which is included in a period of time prior to the date of commencement of the Term or after the termination of the Term shall (whether or not such Real Property Taxes shall be assessed, levied, confirmed, imposed or become a lien upon the Demised Premises, or shall become payable, during the Term) be adjusted as between the Landlord and the Tenant as of the date of commencement of the Term or the termination of the Term, so that the Landlord shall pay that proportion of such Real Property Taxes which that part of such fiscal period prior to the date of commencement of the Term or included in the period of time after the termination of the Term bears to such fiscal period, and the Tenant shall pay the remainder thereof.

**Section 6.** Nothing in this Lease contained shall require the Tenant to pay any franchise, estate, inheritance, succession, capital levy or transfer tax of the Landlord, or any income, excess profits or revenue tax or any other tax, assessment, charge or levy upon the rent payable by the Tenant under this Lease. Notwithstanding of any other provision of this Lease, the Tenant shall pay to the Landlord an amount equal to any GST (as that term is hereinbefore defined) that is imposed on the Tenant (and/or on amounts payable by the Tenant under this Lease) by any governmental taxing authority and is required to be collected by the Landlord.

**Section 7.** The Tenant covenants to furnish to the Landlord upon request within thirty (30) days after the date whenever any Real Property Taxes are payable by the Tenant directly to the taxing authority as in this Article provided, official receipts of the appropriate taxing authority, or other proof reasonably satisfactory to the Landlord, evidencing the payment thereof.

**Section 8.** The Tenant shall have the right to appeal or otherwise contest the amount or validity of any Real Property Taxes and business taxes for which it is responsible to pay, and the assessments on which such Real Property Taxes or business taxes are based, by appropriate legal proceedings, and the Landlord shall co-operate with the Tenant to the extent reasonably necessary to enable the Tenant to carry out its appeal or other contestation. However the Landlord shall not be required to join in any proceeding or to commence (and prosecute in good faith and with due diligence) any proceeding unless the Tenant does not have the right on its own to commence and prosecute the proceeding. The Landlord shall not be subjected to any liability for the payment of any costs or expenses in connection with any proceedings brought by the Tenant, and the Tenant covenants to indemnify and save harmless the Landlord from any such costs or expenses.

**Section 9.** The certificate, advice or bill of the appropriate official, designated by<sup>16</sup> law o make or issue the same or to receive payment of any Real Property Taxes, of the payment or non-payment of any such Real Property Taxes shall be prima facie evidence that such Real Property Taxes have been paid or are due and unpaid (as the case may be) at the time of the making or issuance of such certificate, advice or bill.

#### **ARTICLE 4**

##### **TENANT'S INSURANCE**

**Section 1.** The Tenant shall take out and at all times during the Term keep in force, or cause to be taken out and kept in force, at its own expense and in respect of the Demised Premises, the use and occupancy thereof by it and its subtenants and concessionaires and licensees and the conduct of business thereon the following insurance:

- i) comprehensive general liability insurance for bodily injury or death and damages to property of others including blanket contractual liability, owners and contractors protective liability, non-owned automobile and employers liability insurance coverage with respect to all business conducted in, at, upon or from the Demised Premises, the use and occupancy thereof and the use of Common Facilities, by the Tenant and by any other person on behalf of the Tenant and by those for whom the Tenant is in law responsible. Such policy or policies shall be written with such inclusive limits as would be carried by a prudent and reasonable owner of similar property, but in any event not less than five million dollars (\$5,000,000) for any one accident or occurrence, shall be primary and non-contributing with, and not in excess of, any other insurance obtained by the Landlord, and shall include severability of interests and cross liability clauses;
- ii) "all risks" property insurance (including flood and earthquake) in respect of the Demised Premises and the Tenant's leasehold improvements situated therein, and such other property in or forming part of the Demised Premises (not being property which the Landlord is required to insure pursuant to this Lease) as the Landlord or any mortgagee of the Landlord Development may from time to time reasonably require, for the full replacement cost thereof, with no co-insurance penalties and with reasonable deductibles. Notwithstanding the aforesaid, the Tenant shall not be obligated to take out or keep in force insurance in respect of loss or damage to the Tenant's trade fixtures, furniture, inventory, stock in trade including merchandise or other contents of the Demised Premises, and if the Tenant so insures the loss payable shall (notwithstanding the provisions of Subsection 2(v)(a) hereof) be only to the Tenant without any trust provisions;
- iii) comprehensive boiler and machinery insurance in respect of boilers, pressure vessels, air-conditioning equipment and miscellaneous electrical apparatus installed in, relating to or serving the Demised Premises or any part thereof and operated by the Tenant or by others (other than the Landlord) on behalf of the Tenant, on a repair and replacement basis; and
- iv) business interruption insurance in such amount as will reimburse the Tenant for all direct or indirect loss of gross earnings attributable to the perils insured against in paragraphs (ii) and (iii) of Section 1 or attributable to prevention of access to the Demised Premises or the Shopping Centre as a result of such perils.

**Section 2.** The insurance described above shall:

- i) with the exception of the insurance referred to in paragraph (iv) of Section 1, include the Landlord as an additional insured;

- ii) be placed with an insurer or insurers of recognized net worth and<sup>17</sup> reputation duly licensed to carry on the business of insurance in all provinces in Canada;
- iii) be provided under a policy or policies in such form, providing for such coverage and exclusions and on such terms as are normally effected by prudent and reasonable owners and/or tenants in similar circumstances;
- iv) provide that the policies shall not be invalidated by reason of any breach or violation by the Tenant of any warranties, representations, declarations or conditions in such policies or in any applications for such policies;
- v) with regard to insurances outlined in paragraphs (ii) and (iii) of Section 1 of this Article provide:
  - (a) that the proceeds thereof shall be payable to the Landlord, such of the Landlord's mortgagees for the Landlord's Development, if any, as requested in writing by the Landlord (and which request shall include the mortgagee's address) and the Tenant as their respective interests may appear. Notwithstanding the aforesaid, the Landlord hereby agrees with the Tenant that all proceeds of such insurance payable in the event of loss, damage or destruction to the insured property shall be made available for the repair or rebuilding of the insured property, and the Tenant shall not be required to include any such mortgagee as a loss payable unless such mortgagee has agreed in writing with the Landlord (which agreement the Landlord covenants with the Tenant to enforce on behalf of the Tenant) or is bound by the provisions of its mortgage (which particular provisions the Landlord covenants with the Tenant not to amend) that all such proceeds shall be made available for such repair or rebuilding regardless of the existence of any mortgage default (provided further that, where the proceeds which are payable thereunder do not exceed two hundred thousand dollars (\$200,000) (which amount shall be adjusted at the end of each Lease year based on the percentage change which has occurred in the CPI (as defined in Article 19) during such Lease year), the foregoing provisions as to loss payable shall not apply and such proceeds shall be payable solely to the Tenant or as it shall otherwise direct)
  - (b) provide that the insurers specifically waive subrogation rights against the Landlord and any loss payee, including their respective employees, officers and directors, with respect to loss, damage or destruction to the insured property (whether or not caused by the negligence of the Landlord, its employees, agents or any other party for whom the Landlord is responsible at law), and the Tenant hereby releases the Landlord and any loss payee, including their respective employees, officers and directors, from liability in regard to such loss, damage or destruction; and
- vi) contain a provision by the insurers to notify in writing all named insureds and such of the Landlord's mortgagees for the Landlord Development, if any, of whom the Landlord has given the Tenant written notice (including the mortgagee's address), not less than thirty (30) days before cancellation or reducing coverage.

**Section 3.** The Tenant shall from time to time, whenever reasonably requested, furnish to the Landlord certificates of insurance to evidence the insurance to be kept in force by the Tenant hereunder.

**Section 4.** If the Tenant shall fail to insure as required under this Lease, the Landlord after at least fifteen (15) days notice to the Tenant may (but shall not be obligated to) effect such insurance in the name of and at the expense of the Tenant, and the Tenant shall promptly

repay to the Landlord all costs incurred by the Landlord in so doing.

**Section 5.** The Tenant shall not commit any act or store in or near the Demised Premises any substance that shall cause any increase in the cost of the premiums paid by the Landlord for the insurance it provides in accordance with Section 5 of this Article 4. If the cost of insurance premiums incurred by the Landlord should increase as a result of any such action by the Tenant, the Tenant shall reimburse the amount of such increase in costs to the Landlord upon receipt of the Landlord's invoice therefor, accompanied by such proof of payment and such other evidence in support thereof as the Tenant may reasonably request.

#### ***LANDLORD'S INSURANCE***

**Section 5.** The Landlord shall take out, or cause to be taken out, and at all times during the Term keep or cause to be kept in force, without expense to the Tenant (but subject to the payments and contributions in respect of such expense which the Tenant is obligated to make under Article 19), in respect of the Landlord's Development and the Landlord's operation thereof the following insurance:

- i) comprehensive general liability insurance for bodily injury or death and damage to property of others including blanket contractual liability, non-owned automobile and employers liability insurance coverage, with respect to the Landlord's operation of the Landlord's Development. Such policy or policies shall be written with such inclusive limits as would be carried by a prudent and reasonable owner of similar property, but in any event not less than five million dollars (\$5,000,000) for any one accident or occurrence, shall be primary and non-contributory with, and not in excess of, any other insurance obtained by the Tenant, and shall include severability of interest and cross liability clauses;
- ii) "all risks" property insurance (including flood and earthquake) in respect of all buildings on the Landlord's Parcel (but excluding the Demised Premises), together with all building equipment and fixed improvements of or associated with such buildings (excluding tenant's trade fixtures) and upon all other fixed improvements on the Landlord's Parcel as any mortgagee of the Landlord's Development may from time to time require, for the full replacement cost thereof, with no co-insurance penalties; and
- iii) comprehensive boiler and machinery insurance in respect of boilers, pressure vessels, air-conditioning equipment and miscellaneous electrical apparatus installed in, relating to or serving the Landlord's Development or any part thereof and operated by the Landlord or by others (other than the Tenant) on behalf of the Landlord, on a repair and replacement basis.
- iv) such other insurance as a prudent landlord would obtain to insure its interest in a similar development, or as may be required by the Landlord's mortgagee(s), if any.

**Section 6.** The insurance described above shall:

- i) with regard to the insurance referred to in paragraph (i) of Section 5, include the Tenant as an additional insured, either by name or as part of an insured class of tenants;
- ii) be placed with an insurer or insurers of recognized net worth and reputation duly licensed to carry on the business of insurance in all provinces in Canada;
- iii) be provided under a policy or policies in such form, providing for such coverage and exclusions and on such terms as are normally effected by prudent and reasonable owners in similar circumstances;
- iv) provide that the policies shall not be invalidated by reason of any breach or

violation by the Landlord of any warranties, representations, declarations<sup>19</sup> or conditions in such policies or in any applications for such policies;

- v) with regard to insurances outlined in paragraphs (ii) and (iii) of Section 5 of this Article:
  - (a) provide that the proceeds thereof shall be payable to the Landlord and the Landlord's mortgagee, if any, as their respective interests may appear. Notwithstanding the aforesaid, the Landlord covenants with the Tenant that all proceeds of such insurance payable to the Landlord in the event of loss, damage or destruction to the insured property shall be made available for the repair or rebuilding of the insured property; and
  - (b) provide that the insurers specifically waive subrogation rights against the Tenant, its employees, officers and directors with respect to loss, damage or destruction to the insured property (whether or not caused by the negligence of the Tenant, its employees, agents or any other party for whom the Tenant is responsible at law), and the Landlord hereby releases the Tenant, its employees, officers and directors from liability in regard to such loss, damage or destruction;
- vi) contain a provision by the insurers to notify the Tenant in writing not less than thirty (30) days before cancellation or reducing coverage.

**Section 7.** The Landlord shall from time to time, whenever reasonably requested, furnish to the Tenant certificates of insurance to evidence the insurance to be kept in force by the Landlord.

**Section 8.** If the Landlord shall fail to insure as required under this Lease, the Tenant after at least fifteen (15) days notice to the Landlord may (but shall not be obligated to) effect such insurance in the name of and at the expense of the Landlord, and the Landlord shall promptly repay to the Tenant all costs incurred by the Tenant in so doing.

## *ARTICLE 5*

### *INDEMNITY*

Except to the extent that it is released pursuant to Sections 2 or 6 of Article 4, each of the Landlord and the Tenant will protect, defend, indemnify and save harmless the other including the other's directors, officers, employees, agents and contractors (collectively the "**indemnified party**") of and from all damages, costs (including without limitation legal costs), fines, suits, claims, demands and actions of any kind or nature which the indemnified party shall or may become liable for or suffer by reason of any breach, violation or non-performance by the party so indemnifying of any covenant, term or provision of this Lease or by reason of any damage, injury or death occasioned to or suffered by any person or persons (including the Landlord or the Tenant, as the case may be) or any property, resulting from any wrongful act, neglect or default on the part of the party so indemnifying or any of its directors, agents, employees, officers or contractors.

## *ARTICLE 6*

### *MAINTENANCE & REPAIR*

**Section 1.** Subject to the provisions of Section 2 of this Article 6 and Article 13 (and notwithstanding anything to the contrary contained in Article 1864 of the *Civil Code of Quebec*), the Tenant covenants throughout the Term, at the Tenant's sole cost and expense, to maintain and keep in a good and substantial state of repair the Demised Premises and the equipment, fixtures, motors and machinery thereof (including any heating, ventilating and air-

conditioning systems), and shall promptly at the Tenant's own cost and expense make all<sup>20</sup> necessary repairs thereto, but excluding reasonable wear and tear which does not affect the proper use of the Demised Premises for the purposes intended. When used in this Article the term "repairs" shall include replacements or renewals when necessary.

**Section 2.** As an express exception to the foregoing covenant by the Tenant to repair, the Tenant shall not be deemed to be under and is hereby relieved of any obligation whatsoever to make repairs to the structure of the Demised Premises that are rendered necessary as a result of the improper compaction of the compacted pad upon which the Demised Premises are constructed, all of which excepted repairs shall be performed by the Landlord, at its sole expense. If the Tenant alleges that damage to the structure of the Demised Premises is caused by the improper compaction of the compacted pad, the Tenant shall bear the burden of so proving.

**Section 3.** The Landlord shall not make any settlement of loss or damage with an insurance company or companies under any of the insurance policies provided by the Tenant on the Demised Premises because of fire or other casualty without the written approval of the Tenant. All insurance money recovered throughout the Term on account of such damage or destruction shall be applied to the payment of the cost of the repairing, restoring and rebuilding and shall be made available from time to time as such work progresses. If the insurance proceeds shall be insufficient to pay the entire cost of such work, the Tenant agrees to pay the deficiency. Any insurance money remaining upon the completion of the work shall belong to the Tenant and the Landlord shall not have any interest therein.

**Section 4.** The Landlord covenants throughout the Term to maintain and keep or cause to be maintained and kept in good and substantial state of repair all buildings and improvements of the Landlord Development, including without limitation the Common Facilities and all utilities and services necessary for the operation of the Shopping Centre but excluding the Demised Premises to the extent that the Tenant is obliged to repair and maintain the same, consistent with the standards of a careful and prudent owner, and accordingly the Landlord shall promptly make all necessary repairs.

**Section 5.** Without limiting the foregoing, the Tenant shall be responsible, throughout the Term and at its sole cost, for:

- (a) removing garbage from the Demised Premises;
- (b) keeping the Demised Premises free from pests and vermin; and
- (c) installing, maintaining and cleaning any grease traps that may be used in the Demised Premises for the operation of a restaurant or similar facility.

The Tenant shall perform all of the foregoing responsibilities on a regular basis, in keeping with the standards of a prudent and careful owner.

**Section 6.** At the expiration or earlier termination of this Lease, the Tenant shall surrender and give up vacant possession of the Demised Premises to the Landlord in the state of repair in which the Tenant is required to maintain the same throughout the Term, unless otherwise expressly provided in this Lease.

## *ARTICLE 7*

### *COMPLIANCE WITH LAWS*

**Section 1.** Except as to any repair obligations of the Landlord as set out in this Lease and except in respect of those hazardous substances which are provided for in Article 26 hereof as not being the Tenant's responsibility, the Tenant covenants throughout the Term, at the Tenant's sole expense, promptly to comply with all legal requirements (including statutes, laws, by-laws, regulations, ordinances, orders, rules and regulations of every governmental



authority having jurisdiction) from time to time affecting the condition, equipment,<sup>21</sup> maintenance, use or occupation of the Demised Premises, or affecting the Tenant's use of the Tenant Outdoor Selling Area (as defined in Article 34) or the Cart Corrals (as defined in Article 14).

**Section 2.** Except to the extent that the Tenant is responsible for compliance pursuant to Section 1 of this Article, the Landlord covenants that it will, at no expense to the Tenant, promptly comply or cause prompt compliance with all legal requirements (including statutes, laws, by-laws, regulations, ordinances, orders, rules and regulations of every governmental authority having jurisdiction) from time to time affecting the Landlord Development.

**Section 3.** The party responsible for compliance pursuant to Section 1 or Section 2 of this Article shall have the right to contest by appropriate legal proceedings, without cost or expense to the other, the validity of any such legal requirements referred to in Section 1 or 2, and if by the terms of any such legal requirements compliance therewith may legally be held in abeyance without subjecting the Tenant or the Landlord to any liability of whatsoever nature for failure so to comply therewith, the party responsible may postpone compliance therewith until the final determination of any such proceedings, provided that all such proceedings shall be prosecuted with all due diligence and dispatch.

## **ARTICLE 8**

### **ALTERATIONS TO PREMISES**

**Section 1.** The Tenant may at any time and from time to time, at its own expense, paint and decorate the Demised Premises, place such interior signing as it desires, and make such changes, alterations and improvements thereto, including such changes to the store front as will, in the judgement of the Tenant, better suit the purposes of its business, provided that such changes, alterations or improvements are not of a nature to endanger the structure or reduce the value of the Demised Premises and provided further that they are made by the Tenant in conformity with all statutes, regulations or by-laws of any federal, provincial or municipal authority applicable thereto; provided however that no structural alteration shall be undertaken until detailed plans and specifications have first been submitted to and approved in writing by the Landlord, which approval shall not be unreasonably withheld or delayed.

**Section 2.** The Tenant shall have the right to install (including installation prior to the commencement of the Term), maintain, repair, operate and replace on the roof of the Demised Premises such mechanical, electrical, plumbing, telecommunication, heating, ventilation and air-conditioning equipment and facilities and such other systems as are required by the Tenant in the operation of the Demised Premises. The Tenant shall use reasonable commercial efforts to ensure that the operation of any telecommunication equipment and facilities it installs upon the roof of the Demised Premises do not materially interfere with the operation of any telecommunication equipment and facilities belonging to other tenants or occupants of the Landlord Development.

**Section 3.** Upon the termination of this Lease, all changes, alterations or improvements which may be effected in or upon the Demised Premises and which are attached to the floors, walls or ceilings thereof (including, without limitation, all heating, ventilating and air-conditioning equipment) shall remain and be surrendered with the Demised Premises as part thereof and become the property of the Landlord without any compensation to the Tenant. It is agreed, however, that all fixtures in the nature of trade or tenant's fixtures installed in the Demised Premises by the Tenant and all chattels shall be removable at any time and from time to time by the Tenant and shall, upon the termination of this Lease, remain the property of the Tenant provided the Tenant shall repair all damage to the Demised Premises caused by such removal.

**LEGAL HYPOTHECS:**

**Section 1.** The Tenant shall not suffer or permit any legal hypothec to be registered against the Demised Premises or any part of the Landlord's Parcel by reason of work, labour, services or materials supplied or claimed to have been supplied to the Tenant or anyone holding the Demised Premises or any part thereof through or under the Tenant. If any such legal hypothec shall at any time be registered against the Demised Premises and/or the Landlord's Parcel, the Tenant shall cause the same to be discharged within twenty (20) days after the Tenant has been notified of such registration. If the Tenant shall fail to discharge such legal hypothec within such period then, in addition to any other right or remedy of the Landlord, the Landlord may, but shall not be obligated to, discharge such legal hypothec by making payment to the hypothecary claimant or in any other manner permitted at law, provided that the Landlord shall not exercise such remedy if the Tenant is then contesting the validity of such legal hypothec by appropriate legal proceedings in accordance with (and subject to) the terms and conditions more particularly provided in Section 2 of this Article 9. Any amount paid by the Landlord for any of the aforesaid purposes, and all reasonable legal and other expenses of the Landlord, including reasonable counsel fees, in defending any such action or in discharging such legal hypothec, with all necessary disbursements in connection therewith and with interest thereon at the Interest Rate from the date of payment, shall be repaid by the Tenant to the Landlord on demand, and if unpaid may be treated as additional rent.

**Section 2.** Notwithstanding the provisions of Section 1 of this Article 9, the Tenant shall have the right to contest the validity of any such legal hypothec by appropriate legal proceedings, subject to such indemnity as the Landlord may reasonably impose (which may include remitting to the Landlord as security sufficient funds to pay the full amount of the claim, including interest and legal fees) and provided that the Landlord shall not be subjected to any liability for the payment of any cost or expense in connection with any proceeding brought by the Tenant.

ARTICLE 10

**ENTRY TO PREMISES**

The Tenant agrees to permit the Landlord and the authorized representatives of the Landlord to enter the Demised Premises at all reasonable times during usual business hours for the purpose of inspecting the same upon written request by the Landlord, and the Tenant shall arrange for such entry at a time convenient to both parties, provided that such entry shall occur no more than twenty-four (24) hours following the Tenant's receipt of the Landlord's written request. In the event of an emergency endangering personal health and safety or threatening immediate property damage, the Landlord may enter the Demised Premises directly for the purpose of taking remedial action and shall not be required under such circumstances to provide the Tenant with advance notice of the Landlord's entry.

ARTICLE 11

**ASSIGNMENT & SUBLET**

**Section 1.** The Tenant may freely assign the Lease or sublet all or any part or parts (including the granting of concessions and licenses to use and occupy any part or parts) of the Demised Premises and the Tenant Outdoor Selling Area at any time, provided that:

- (a) during the first ten (10) years of the Term, the Tenant shall not assign this Lease or sublet the whole or any part of the Demised Premises to any third party other than those listed in subparagraph (b) of this Section unless it has first obtained the Landlord's written consent to such assignment or sublet, which approval shall not be unreasonably withheld or delayed;

- (b) as an exception to the rule set out in the preceding subparagraph (a) of this<sup>23</sup> Section, the Tenant shall not require the Landlord's consent to any assignment of the Lease or sublet of the whole or any part of the Demised Premises to any of the following parties during the first ten (10) years of the Term:
- (i) an affiliate (as that term is defined in the *Canada Business Corporations Act*) of the Tenant, provided that such affiliate remains an affiliate of the assigning party for at least two (2) years following the date of assignment or sublet; or
  - (ii) any corporation to which it transfers a majority of its other stores then operating under the name "Zellers"; or
  - (iii) a national retailer that has a financial stature and/or credit rating that is then comparable to that of the assigning or subletting party;
  - (iv) a mortgagee or encumbrancer that is a recognized financial institution (including a bank, life insurance, trust or mortgage company and a trustee for bondholders) as security in connection with any bona fide general corporate borrowing by the Tenant or an affiliate (as that term is defined in the *Canada Business Corporations Act*) of the Tenant, provided that, prior to any such mortgagee or encumbrancer entering into possession of the Demised Premises, it shall undertake to the Landlord to be bound by the terms of this Lease but only for so long as it remains in possession, and if it sells or otherwise disposes of its security, it shall require the purchaser to covenant directly with the Landlord to be bound by the terms of this Lease; upon such covenant being given such mortgagee or encumbrancer shall be released from its obligations stipulated hereunder;

provided that the Tenant shall provide the Landlord with written notice of any assignment or sublet to any of the parties listed above in this subparagraph that may occur during the first ten (10) years of the Term; and

- (c) in the event of any assignment of this Lease, the Tenant shall deliver to the Landlord an agreement in and by which the assignee of the Lease assumes and agrees to observe and perform all of the terms, covenants and conditions thereof, provided that, where such assignee is a mortgagee or encumbrancer, such mortgagee or encumbrancer shall only be required to undertake to the Landlord to be bound by the terms of this Lease only if and for so long as it is in possession of the Demised Premises, and if it sells or otherwise disposes of its security, it shall require the purchaser to covenant directly with the Landlord to be bound by the terms of this Lease; and
- (d) No assignment or subletting shall relieve the Tenant of its liability for the performance of the terms, covenants and conditions of this Lease and the Tenant shall in any event remain solidarily liable with any assignee for the fulfilment of the Tenant's obligations under the Lease, without the benefit of division or discussion.

**Section 2.** It is understood and agreed that the Landlord may not assign this Lease or sell, transfer or otherwise alienate the Landlord's Parcel at any time prior to the date on which the Demised Premises and the remaining buildings of the Shopping Centre are substantially completed (the "Completion Date") to any person, firm or corporation which is dealing with the Landlord at arms length as defined in the Income Tax Act of Canada, without the prior express written consent of the Tenant; provided that this prohibition as to assignment or transfer prior to the Completion Date shall in no way apply to an assignment by the Landlord of this Lease in order to secure the necessary funds for the construction of the Shopping Centre by way of (i) mortgage financing or by way of an assignment to a financial institution such as a bank or trust company, or (ii) the sale of an equity interest in the Landlord Development (which may include the transfer of the Landlord Development to a new

corporate entity or partnership), provided that the Landlord continues to have a substantial<sup>24</sup> on-going financial interest in the development of the Landlord Development.

In the event of any assignment by the Landlord of this Lease or sale, transfer or other alienation of the Landlord's Parcel, whether it occurs before, on or after the Completion Date, the Landlord shall deliver to the Tenant an agreement by which the assignee or transferee assumes and agrees with the Tenant to observe, perform and be bound by all of the terms, covenants and conditions of this Lease. In any event:

- i) no assignment of this Lease shall relieve the Landlord of its liability for the performance of the terms, covenants and conditions of this Lease prior to the date of such assignment, sale or transfer; and
- ii) without limiting the generality of the foregoing, the Landlord shall not be relieved of its obligation to pay the full amount of the Allowance (and any applicable GST and/or interest) to the Tenant.

## **ARTICLE 12**

### **UTILITIES**

The Tenant agrees to pay or cause to be paid for all water, gas, electricity, light, heat or power, all of which shall be separately metered (at the Landlord's expense), telephone or other communication service supplied to or used in connection with the Demised Premises throughout the Term, and to indemnify the Landlord and save it harmless against any liability or damages on such account. Provided however that the cost and expense to connect or have the Demised Premises initially connected to the electric and gas lines and the water and sewer systems serving the municipality wherein the Demised Premises are situate and the cost of maintaining the systems for the providing of such services and utilities to the Demised Premises shall be borne by the Landlord. The Tenant shall also at its sole cost and expense procure any and all necessary permits, licenses or other authorization required for the lawful and proper installation and maintenance upon the Demised Premises of wires, pipes, conduits, tubes and other equipment and appliances for use in supplying any such service to and upon the Demised Premises. The Tenant shall have the right, at its sole cost and expense, to bring to the Demised Premises such further and other utilities and services as it reasonably requires in the operation of its business, and the Landlord shall permit the installation and maintenance by or on behalf of the Tenant of those further utilities and services.

The Tenant shall not install any equipment that would exceed or overload the capacity of the utility services within the Demised Premises.

The Landlord shall not be liable for any injury to the Tenant, its employees, agents or invitees in or upon the Demised Premises, or for damage to any property of the same or for any loss of profits and/or direct or indirect damages of any kind arising from an interruption or failure in the supply of any utility or service to the Demised Premises unless such injury, damage, loss or damages are caused by or attributable to the negligence or malfeasance of the Landlord and/or its employees, agents or others for whom the Landlord is responsible at law.

## **ARTICLE 13**

### **RESTORATION IN EVENT OF DAMAGE TO PROPERTY**

**Section 1.** If, during the last two (2) years of the first extension term or at any time during any subsequent extended term or terms, the Demised Premises shall be destroyed or damaged in whole, or damaged or destroyed in part to an extent that, according to the reasonable estimate of the Tenant the cost of rebuilding shall exceed twenty-five percent (25%) of the replacement cost (excluding footings and foundations) of the entire Demised Premises, the Tenant shall have the option to terminate this Lease by notice to the Landlord, which termination shall be effective not less than thirty (30) days after the giving of such

notice, and the Tenant thereupon shall make payment of all rent and other charges payable<sup>25</sup> by the Tenant hereunder justly apportioned to the date of such termination. In the event of such termination, the Tenant shall assign to the Landlord its interest in all insurance proceeds which may be payable under the property insurance policies required to be maintained by the Tenant hereunder with respect to such damage or destruction (other than proceeds which are payable in regard to the Tenant's fixtures, equipment or inventory) and the Tenant shall have no obligation to repair or rebuild.

**Section 2.** In the event the whole or any part of the Demised Premises, or the Parking Facilities or any other Common Facilities of the Shopping Centre, shall become untenable, dangerous or unfit for the Tenant's use, or the Tenant shall lose the use of all or any part thereof, as a result of destruction or damage by fire, explosion, structural defect collapse, land subsidence, flood, earthquake, falling objects, impact by aircraft or vehicles, lightning, hail, windstorm, riot, civil commotion, war, or other casualty, then in any of these events, rent for the Demised Premises shall not abate during the continuance of such condition and, subject to the provisions of the preceding Section 1 of this Article, the Tenant (with respect to its obligations to repair the Demised Premises hereunder) and/or the Landlord (with respect to its own repair obligations hereunder) shall expeditiously effect all necessary repairs and rebuilding.

#### **ARTICLE 14**

##### **CART CORRALS**

The Tenant shall, during the Term, have the right to install, maintain and exclusively use up to but not more than 3 separate exterior cart corrals (the "Cart Corrals") in the Parking Facilities in proximity to the exterior entrances to the Demised Premises. Each of the Cart Corrals will be double sided and shall not occupy more than 2 parking stalls. The exact location of the Cart Corrals shall be determined by the Tenant and approved by the Landlord, both acting reasonably and in good faith. The Tenant shall indemnify and save the Landlord harmless from any damages, costs or liability arising from the storage and/or use of the carts, except to the extent that such damages, costs or liabilities result from the negligence of the Landlord or those for whom the Landlord is responsible at law. For the purpose of determining satisfaction of the parking ratio requirements contained in this Lease, one Cart Corral shall be deemed to represent two (2) parking stalls.

#### **ARTICLE 15**

##### **REMEDIES ON DEFAULT**

**Section 1.** If the Tenant fails to pay the rent hereinbefore reserved or any other amount due and payable under this Lease within fifteen (15) days after receipt of notice from the Landlord that such rent or other amount is due and unpaid or if any other default of the Tenant shall continue uncorrected for thirty (30) days after notice thereof from the Landlord (save with respect to a default that cannot reasonably be cured within thirty (30) days, in which case if such default be not cured within a reasonable time after the Tenant has received notice thereof from the Landlord) the Landlord may, by giving notice to the Tenant at any time thereafter during the continuance of such default, either

- i) terminate the Lease, or
- ii) remedy any default of the Tenant, and the Tenant shall forthwith reimburse the Landlord for any expenditure thus reasonably incurred, with interest at the Interest Rate, or
- iii) re-enter the Demised Premises, re-let them and receive the rent therefrom, but the Tenant shall remain liable for the equivalent of the amount of all rent reserved herein, less the avails of reletting, if any, after deducting therefrom the reasonable cost of obtaining possession of the Demised Premises and of

any repairs and alterations necessary to prepare them for reletting,<sup>26</sup> provided that the Landlord has used reasonable efforts to mitigate its damages. Any and all monthly deficiencies so payable by the Tenant shall be paid monthly on the date herein provided for the payment of rent.

Section 2. The Tenant may (but shall not be obligated to) remedy any default of the Landlord hereunder by performing the obligation of the Landlord in question, provided that:

- (a) the Tenant first delivers notice of such default to the Landlord in writing (the "Initial Default Notice");
- (b) the default in question remains uncorrected for thirty (30) days after the Landlord's receipt of the Initial Default Notice (save with respect to a default arising from repairs that cannot be reasonably cured within thirty (30) days, in which case if such default is not cured within a reasonable time after the Landlord has received the Initial Default Notice from the Tenant);
- (c) the default in question remains uncorrected after the aforesaid thirty-day (or longer) period and the Tenant at any time thereafter delivers a further notice to the Landlord, in writing (the "Second Default Notice"), confirming the Tenant's intention to remedy the default in question and providing the Tenant's reasonable estimate of the cost(s) of such remediation (including a copy of any independent third party quotation the Tenant has used in arriving at such estimation); and
- (d) the Landlord fails to correct such default within sixty (60) days after the Landlord's receipt of the Second Default Notice;

provided further that, notwithstanding the foregoing, the Tenant may make any replacements and repairs of an urgent nature required to be made by the Landlord without first notifying the Landlord. The Landlord shall reimburse the Tenant for any expenditure thus incurred upon receipt of the Tenant's invoice therefor, accompanied by a receipted invoice or other evidence of the expenditure in support thereof, together with interest at the Interest Rate, provided that, where such invoice is for a repair or replacement of an urgent nature that the Tenant effected without first giving the Landlord notice thereof, the Landlord shall not be required to pay the amount of such invoice and no interest shall accrue on the amount charged until sixty (60) days after the Landlord's receipt of the invoice in question. Any sums due to the Tenant from the Landlord (including any predecessors in title) under the provisions of this Lease or arising out of the Landlord's failure to comply with or perform any of its obligations under this Lease may be deducted by the Tenant from rent. Where the Landlord disputes the deduction, such deduction shall not constitute a default by the Tenant hereunder, unless the Tenant shall fail to pay to the Landlord, within thirty (30) days after final adjudication (or arbitration), the amount so found owing.

Section 3. If the interest of the Tenant under this Lease shall be taken or seized in execution or attachment by any creditor of the Tenant, or if the Tenant shall make any general assignment for the benefit of creditors or shall wind up (save and except in pursuance of a bona fide corporate reorganization) or become bankrupt or insolvent, or its affairs and assets shall be placed in trusteeship, receivership or liquidation, then in each such case, unless (a) the Tenant is taking reasonable steps to dispute such actions and is able to have the same set aside within sixty (60) days of initiation of such actions or (b) a mortgagee of the Tenant having security upon the Tenant's interest under this Lease shall take possession of the Demised Premises and remedies the Tenant's defaults and perform all the obligations of the Tenant hereunder while in possession, the Landlord may at its option and after reasonable notice to the Tenant and any such mortgagee re-enter the Demised Premises and terminate this Lease, in which event fixed annual rent for the three (3) months next ensuing after the then current month shall immediately become due and payable.

Section 4. No reference to or exercise of any specific right or remedy by the Landlord or the Tenant shall prejudice or preclude the Landlord or the Tenant from exercising or invoking

any other remedy in respect thereof, whether allowed at law or in equity or expressly<sup>27</sup> provided for in this Lease.

#### ARTICLE 16

##### HEATING & AIR-CONDITIONING

The Tenant shall maintain, operate, repair and replace the air-conditioning and heating systems in the Demised Premises and all parts thereof, at its sole cost and expense, including the paying for the cost of fuel consumed by the said systems, as and when necessary throughout the Term, but excepting reasonable wear and tear which does not affect the proper use of such systems for the purposes intended.

#### ARTICLE 17

##### SIGNS

The Landlord shall, concurrently with the construction of the Demised Premises, at its sole cost and expense, furnish and erect on the Landlord's Parcel a pylon sign advertising the full name of the Landlord Development, and throughout the Term keep same in a state of good repair and lighted from sundown until ten o'clock each evening. Such pylon sign shall be erected and operating thirty (30) days prior to the Commencement Date. The Tenant shall be entitled to have its name on such pylon sign (at no cost to the Tenant except for the cost of the Tenant's nameplate) in a position selected by the Landlord, acting reasonably and having regard to the GLA of the Demised Premises in proportion to that of other tenants in the Shopping Centre, having a nameplate area of not less than six feet (6') by ten feet (10'), and with lettering at least equal in size, type and prominence to that of any other occupant of the Shopping Centre given representation, and otherwise with lettering of reasonable size, type, and prominence. The Landlord shall provide elevations and perspectives of the proposed pylon sign for approval by the Tenant.

The Landlord shall not place or permit to be placed on any other pylon sign or signs the name of any other occupant of the Shopping Centre unless the Tenant's name is also placed thereon in a position approved by the Tenant and with lettering at least equal in size, type and prominence to that of any other occupant, at no cost to the Tenant except for its nameplate.

During construction of the Shopping Centre the Landlord shall erect, at its sole cost and expense, a billboard sign on the Landlord's Parcel indicating that a new Zellers store is being erected for the Tenant thereon, which sign shall be constructed in accordance with specifications to be provided by the Tenant.

The Tenant shall have the right (without requiring prior approval by the Landlord) to erect and maintain on the exterior of the Demised Premises such identification signage and slogans as are generally used by the Tenant in the Province of Québec at its similar stores. In particular the Landlord acknowledges that the Tenant shall have the right to erect and maintain on one exterior wall of the Demised Premises appropriate signage for any restaurant and any pharmacy in the Demised Premises. Except as provided aforesaid, any other exterior signage shall require the Landlord's prior written approval (such approval not to be unreasonably withheld or delayed). All signage shall be in compliance with applicable municipal and other governmental requirements. The Tenant agrees that it shall consult with the Landlord about the Tenant's exterior signage for the purpose of exploring possibilities of harmonizing the Tenant's signs with the signage colours and other exterior features that are inherently part of the Shopping Centre's overall 'life-style' design, provided that, notwithstanding the foregoing, the Tenant shall be under no obligation to make its signage conform to the aforementioned features.

## INTENTIONALLY DELETED

## ARTICLE 19

## PARKING AND COMMON AREAS

Section 1. The Landlord covenants and agrees with the Tenant that throughout the Term:

- i) the Tenant's customers, prospective customers, invitees, licensees and all other persons having business with the Tenant, together with the customers, prospective customers, invitees and licensees of all other persons having business with the tenants of other premises in the Landlord Development, shall have the right and licence to use the Parking Facilities free of charge for the parking of motor vehicles thereon and the right and licence of passage, on foot, on all aisles and sidewalks, same to be available and/or open for pedestrian use at all times that the Demised Premises are open for business, and that the Landlord will not erect or construct, or permit or suffer to be erected or constructed, any building, billboard or other structure whatsoever on the Parking Facilities, aisles or sidewalks, or hinder or obstruct the use thereof for the purposes aforesaid, or use, or permit or suffer anyone to use, the Parking Facilities aisles or sidewalks for any other purposes; provided, however, that:
  - a) the Tenant shall have the right to use the sidewalk abutting the Demised Premises for the operation of a reasonable number of vending machines and for the sale on an occasional basis of merchandise; and
  - b) the Landlord may permit other tenants of the Shopping Centre to use any sidewalks abutting their premises for the sale on an occasional basis of merchandise and to operate seasonal outdoor selling areas in close proximity to their premises, provided that such outdoor selling areas do not encroach upon the No-Build Area (as that term is hereinafter defined) and further provided that such outdoor selling areas do not detrimentally affect visibility of the Demised Premises and/or pedestrian or vehicular access to and egress from the Demised Premises in any manner;
- ii) The Parking Facilities will be laid out substantially in accordance with the Plan and no material changes shall be made to those Parking Facilities located within the area designated as "Block A" on the Plan without the express written consent of the Tenant. The Parking Facilities located within the Shopping Centre will always accommodate no fewer than 4.5 parking spaces for passenger motor vehicles for each 1,000 square feet of GLA of leasable premises of the Shopping Centre, and the Parking Facilities located within the Town Centre shall always accommodate no fewer than 4.22 parking spaces for passenger motor vehicles for each 1,000 square feet of GLA of leasable premises contained within the Town Centre,;
- iii) a driveway at least thirty (30) feet in width shall afford a means of access to and from the delivery or service entrance of the Demised Premises and the surrounding streets and highways, and an adequate area adjacent to and adjoining the delivery or service entrance of the Demised Premises shall afford space for trucks loading or unloading goods, wares or merchandise thereat or waiting to do so, and the Tenant, its suppliers and invitees, shall



have the right and licence of passage on foot or by vehicle over the said<sup>29</sup> driveway, and the exclusive right and licence of use of the said standing, loading and unloading area, for the delivery of goods, wares or merchandise to or from the Demised Premises or for the removal of refuse therefrom;

- iv) an adequate and sufficient area at the Shopping Centre shall be designated by the Landlord, subject to the Tenant's prior written approval as to the area (such approval not to be unreasonably withheld), for the parking of the motor vehicles of the Tenant's employees and the employees of other tenants and users of the Shopping Centre, and the Landlord will use all reasonable means to ensure that such employees refrain from parking in any other area than that provided for their use as aforesaid. So long as the Landlord indiscriminately enforces the use of such designated area, the Tenant will ensure that its employees use the designated area; and
- v) there shall be identified by the Landlord using appropriate signage and pavement markings 6 parking spaces for use only by handicapped drivers and 2 parking space for use only by expectant mothers and parents with young children, all in close proximity to the Demised Premises. The Landlord shall have no obligation to supervise the use of those parking spaces.

**Section 2.** The Landlord covenants and agrees that it shall, throughout the Term:

- i) maintain and repair the Parking Facilities and the drainage systems related thereto, the pylon sign, sidewalks, aisles, standing, loading and unloading area and driveway and the systems for the delivery of services and utilities to the Demised Premises and all other Common Facilities (including, without limitation, any landscaping) and keep the same clean and sanitary, properly drained and free of ice, snow, debris and dirt,;
- ii) light the Parking Facilities, pylon signs, sidewalks, aisles, standing, loading and unloading area and driveway from sundown until one hour after the Demised Premises are closed each evening, and for such purposes make all repairs needed to the lighting system accessory thereto;
- iii) insure the Common Facilities in accordance with the provisions of Article 4;
- iv) pay all Real Property Taxes, if any, attributable to the Common Facilities; and
- v) maintain and repair all equipment and machinery reasonably necessary to carry out the aforementioned maintenance and repair of the Common Facilities.

**Section 3.** The Tenant agrees, subject to the provisions of this Section 3, to pay the Landlord during the Term as additional rent hereunder its proportionate share of the annual costs (the "CAM Cost") incurred by the Landlord in providing and performing the services referred to in Section 2 of this Article for those Common Facilities located exclusively within the Shopping Centre portion of the Landlord Development, plus an annual fifteen percent (15%) administration fee on all CAM Cost items allocated to the Tenant's account other than insurance and Real Property Taxes. The proportionate share of the CAM Cost attributable to the Tenant shall be the proportion that the GLA of the Demised Premises bears to the GLA of all the buildings (including the Demised Premises) at any time forming part of the Shopping Centre. In no event shall this proportion exceed One Dollar and Twenty-Five Cents (\$1.25) per square foot per annum of GLA of the Demised Premises in each of the first and second years of the Term and such limitation shall be adjusted every year thereafter, commencing in the third Lease year, by the percentage change in the Consumer Price Index for the Province of Québec, all items, excluding the food component, or an equivalent or comparable index should the aforesaid index cease to be available (the "CPI") during the previous Lease year.

**Section 4.** Provided that the CAM Cost shall include only such sums as are actually and directly expended by the Landlord to provide the services, repairs, replacements and

insurance referred to in Section 2 of this Article; and shall not include depreciation,<sup>30</sup> indirect or overhead expenses, audit costs, or wages or salaries except those paid to persons necessarily employed to provide said services, repairs, replacements and insurance and paid solely for same, or initial expenses for mall decoration, fixtures and appointments.

**Section 5.** On or before the Commencement Date the Landlord shall advise the Tenant in writing of its estimate of the CAM Cost to be incurred for the then current fiscal year or broken portion of the fiscal year of the Landlord, as the case may be. On or before thirty (30) days prior to the commencement of each succeeding fiscal year that commences thereafter during the Term, the Landlord shall advise the Tenant in writing of its estimate of Operating Costs to be incurred in such fiscal year or (if applicable) the broken portion of a fiscal year immediately prior to the end of the Term. Such estimate shall in every case be a reasonable estimate and based wherever possible upon previous operating experience and shall be accompanied by reasonable particulars of the manner in which it was arrived at. The Tenant shall pay its annual contribution towards CAM Cost in equal monthly instalments each on the first day of each month in advance, subject to adjustments at the end of each twelve month fiscal period of the Landlord after receipt by the Tenant of the itemized statement of account more particularly provided in the following Section 6 of this Article.

**Section 6.** Within ninety (90) days of the end of each such fiscal year the Landlord shall provide an itemized statement to the Tenant, certified by an officer of the Landlord and audited by an accredited and independent auditor, showing the cost of said services, repairs and replacements for the previous period, with a cumulative total of the amounts so expended and supported by such evidence in verification thereof as the Tenant may require (acting reasonably). Upon receipt of each such statement and evidence in verification the Landlord shall pay to the Tenant the amount by which any amount found payable as aforesaid is less than the aggregate of the Tenant's actual monthly payments and the Tenant shall pay to the Landlord the amount by which any amount found payable as aforesaid is more than the aggregate of such monthly payments, subject always to the aforementioned annual maximum limit on the Tenant's contribution towards CAM Cost. If the Landlord and the Tenant fail to agree upon the proper amount of the adjustment, any dispute shall be settled by arbitration pursuant to the provisions of this Lease, provided that the arbitrators shall be chartered accountants authorized to practice in the Province of Quebec.

#### *ARTICLE 20*

**INTENTIONALLY DELETED**

#### *ARTICLE 21*

**INTENTIONALLY DELETED**

#### *ARTICLE 22*

#### **EXCLUSIONS AND RESTRICTIONS**

**Section 1.** The Landlord covenants and agrees with the Tenant that it is the intent of this covenant that the burden thereof shall run with all and every part of the Landlord Development for the benefit of the Demised Premises and that during the Term it will not occupy or use, or suffer or permit to be occupied or used, any premises in the Landlord Development other than the Demised Premises:

- (a) for the operation of any junior or promotional department store (such as, by way of example only, and including, without limitation, those stores operating in North America under the names "Target", "K Mart" and "Wal-Mart");
- (b) for any of the prohibited uses listed in Schedule "C" hereto.

**Section 2.** The Landlord further covenants and agrees with the Tenant that it is the<sup>31</sup> intent that the burden thereof shall run with all and every part of the Landlord Development for the benefit of the Demised Premises and that during the Term it will take whatever action may be available to it under the terms and provisions of the Reciprocal Easement Agreement to ensure that no portion of the Costco Lands shall be used for the operation of a junior or promotional department store.

#### **ARTICLE 23**

##### **EXTENSION OF LEASE**

**Section 1.** The Tenant shall have the option, to be exercised as hereinafter provided, to extend the initial term of this Lease for seven (7) consecutive periods of five (5) years each. Each extended term shall be for the same rent and upon the same terms, covenants and conditions as in this Lease provided except that, unless otherwise agreed between the parties hereto, there shall be no covenant for further extension after the last of such extended terms (except pursuant to Section 3 of this Article).

The Tenant shall be deemed to have exercised its right to extend the term of this Lease as aforesaid, without the need for any notice of exercise or other action by the Tenant, unless the Tenant gives notice to the Landlord not later than six (6) months prior to the expiry of the initial term in respect of the first option or not later than six (6) months prior to the expiry of any then extended term, in respect of the remaining options that it does not wish to exercise such right of extension. Upon the giving of such notice, the Term shall expire at the end of the initial term or the then extended term, as the case may be, and there shall be no further or other right of the Tenant to exercise any right to extend.

**Section 2.** Notwithstanding the aforesaid, the Landlord shall have the right, by notice to the Tenant, to require the Tenant to exercise the first option to extend the term of this Lease for a period of five years following the initial term, provided that the Landlord shall give such notice by no later than 6 months prior to the end of the initial term.

**Section 3.** Regardless of the exercise or non-exercise by the Tenant of any or all of the options referred to in Section 1 of this Article, the Tenant shall have, unless the last day of the term shall be January 31<sup>st</sup> of any year, the option to extend (or further extend, as the case may be) the Term for such period of time as shall cause the last day of the Term to be January 31<sup>st</sup> next succeeding the date upon which the term of this Lease would expire but for the exercise of this option. This option shall be exercised by notice to the Landlord not less than six (6) months from the then current expiration of the Term.

#### **ARTICLE 24**

##### **HOLDING OVER**

In the event the Tenant shall hold over in possession of the Demised Premises after the expiry of the Term, such holding over shall not be deemed to extend the Term or renew the Lease but the tenancy thereafter shall continue upon the covenants and conditions herein set forth and at the rent in effect during the last month of the Term, until terminated by either party by notice designating the date of termination and given to the other party at least sixty (60) days before said date of termination. This Article 24 applies despite any statutory provision or legal presumption to the contrary, including, without limitation, Article 1879 of the *Civil Code of Quebec*.

#### **ARTICLE 25**

##### **EXPROPRIATION**

Both the Landlord and Tenant agree to cooperate with each other in respect of any

expropriation of all or any part of the Demised Premises or any other part of the Shopping<sup>32</sup> Centre so that each may receive the maximum award to which each is respectively entitled by law. If at any time during the Term so much of the Shopping Centre is acquired or expropriated by any lawful expropriating authority, or if access to the Demised Premises is so altered by any such acquisition or expropriation, or if so much of the Demised Premises is acquired or expropriated, that the operation of the Tenant's business from the Demised Premises is materially affected, the Tenant may by notice to the Landlord terminate this Lease; and should the Tenant not terminate the fixed annual rent shall, from the date of acquisition or expropriation, be reduced proportional to the reduction, if any, in the GLA of the Demised Premises. Whether this Lease is terminated or not, the Tenant shall have no claim against the Landlord as a result of or arising out of any expropriation of all or any part of the Shopping Centre, except as expressly provided aforesaid.

## **ARTICLE 26**

### ***QUIET POSSESSION AND PRIORITY OF LEASE***

**Section 1.** The Landlord covenants, warrants and represents that it has full right and power to execute this Lease and to perform the covenants thereof on its part to be performed and to grant the estate demised herein, and covenants that the Tenant on paying the rent herein reserved and performing the covenants and agreements hereof on its part to be performed, shall peaceably and quietly have, hold and enjoy the Demised Premises and all rights and appurtenances belonging or in any way pertaining thereto during the Term in accordance with the terms and conditions of this Lease.

**Section 2.** The Landlord hereby covenants, warrants and represents that it has not entered into (and shall not enter into at any time during the Term), any lease or other agreement with any occupant of the Landlord Development other than the Tenant whereby such occupant is given exclusive rights of use that would prohibit any use of the Demised Premises and/or the Tenant Outdoor Selling Area that is permitted under the terms of this Lease.

**Section 3.** The Landlord covenants and agrees that this Lease will have priority over any hypothecs, mortgages, charges and other encumbrances that affect the Landlord's Parcel other than (a) the aforementioned Home Depot Servitude and (b) any governmental agreements, utility easements, access easements and any other encumbrance of a similar nature if and for so long as the same do not derogate from the rights granted to the Tenant under this Lease. Notwithstanding the immediately preceding sentence:

- (i) the Tenant shall agree to subordinate to any financing or collateral financing that the Landlord may from time to time arrange for the Shopping Centre or the Landlord Development, so long as the holder of any hypothec, mortgage or other charge granted as security for such financing (hereinafter referred to as a "mortgagee" for the purposes of this Section 3 of Article 26) enters into a written non-disturbance agreement with the Tenant, in a form satisfactory to the Tenant and the mortgagee (each acting reasonably), whereby the Tenant shall be provided with security of tenure and the right to remain in possession of the Demised Premises under the terms and conditions of this Lease, including, without limitation, the right to have the Landlord's covenants hereunder performed by the mortgagee while in possession, or by any purchaser pursuant to an exercise of a mortgagee's power of sale or pursuant to a court-ordered sale (subject to the discretion of the court in question) or otherwise from or through a mortgagee, until such time as the Lease shall expire, be surrendered or be terminated for default (which form of non-disturbance agreement is herein referred to as a "Non-Disturbance Agreement");
- (ii) the Landlord shall only be required to use its reasonable best efforts to obtain a Non-Disturbance Agreement from General Motors of Canada Limited in respect of the hypothec contained in the Deed of Sale and Hypothec dated November 12, 2004 and registered in the Terrebonne Registry Office on November 15, 2004 as Instrument No. 11 867 784.

**Section 4.** The Landlord further covenants, warrants and represents that, to the<sup>33</sup> best of its knowledge, the Landlord's Parcel as of the date of this Lease contain no Hazardous Substance in excess of those levels permitted under the guidelines/regulations provided by the Ministère de l'Environnement du Québec. For the purpose of this warranty "**Hazardous Substance**" means a substance which from time to time is declared to be hazardous or toxic under any law or regulation enacted or promulgated by any government having jurisdiction (including without limitation any substance for which the removal or disposal is subject to governmental environmental controls), except that the Landlord shall not be responsible for any hazardous substance which has been brought on the Landlord's Parcel by the Tenant, or by any other tenant without the Landlord's knowledge.

**Section 5.** The Landlord shall, on or before the Commencement Date, furnish the Tenant with:

- i) any plans of survey in the possession of or available to the Landlord showing the Demised Premises and the Shopping Centre and/or the Demised Premises as constructed;
- ii) any architect or surveyor certificates in the possession of or available to the Landlord showing the GLA of the Shopping Centre and the Demised Premises as constructed; and
- iii) a properly executed Non-Disturbance Agreement between the Tenant and the holder of any mortgage, hypothec or charge against the Demised Premises or the Landlord Development that has been granted for any financing or collateral financing of the Landlord Development.

#### *ARTICLE 27*

##### **NOTICES**

All notices to the Tenant, all requests to the Tenant for consent or approval and all consents or approvals given or denied by the Tenant shall be in writing and shall be delivered or shall be sent (except during periods of known postal disruption) by registered mail addressed to the Tenant at 401 Bay Street, Suite 600, Toronto, ON M5H 2Y4, Attention: Senior Vice-President of Real Estate and Development, or to such other person, address or telecopier number as the Tenant shall from time to time designate by notice to the Landlord.

All notices to the Landlord, all requests to the Landlord for consent or approval and all consents or approvals given or denied by the Landlord shall be in writing and shall be delivered or shall be sent (except during periods of known postal disruption) by registered mail addressed to the person to whom rent is payable at the address to which payments of rent may be sent, or to such other person, address and telecopier number as the Landlord shall from time to time designate by notice to the Tenant, unless the Tenant shall be in doubt as to whom payments should be made, in which case the said notices may be addressed and sent to the person to whom rent was last paid at the address where such payment was directed.

All notices of default to have effect shall state the nature of the default. Notices and requests sent by registered mail shall (except during periods of known postal disruption) be deemed to have been received on the fifth day following the mailing thereof.

#### *ARTICLE 28*

##### **WAIVER**

In the event either the Landlord or the Tenant shall for the benefit of the other waive any of the covenants, agreements or obligations herein contained to be observed, performed or discharged, such waiver shall not be construed as a waiver of any succeeding breach thereof or of any other covenants, agreements or obligations contained in this Lease; furthermore, no delay or omission on the part of the Landlord or the Tenant to exercise a right

acquired through default of the other to observe, perform or discharge any of the<sup>34</sup> covenants, agreements or obligations herein contained shall be construed as a waiver of or shall impair said right.

#### **ARTICLE 29**

##### **FUTURE EXPANSION OF DEMISED PREMISES AND LANDLORD DEVELOPMENT**

**Section 1.** The Tenant shall have no right to expand or construct any addition to the Demised Premises during the Term.

**Section 2.** The Landlord shall not permit any building or other structure (other than those buildings and improvements approximately shown on the Plan and additional grade level parking facilities and landscaping) shall be constructed within the area shown outlined in BLUE on the Plan (the "No-Build Area").

**Section 3.** The parties hereto hereby acknowledge and agree that the construction of the Landlord's Development shall occur in different phases, the duration of which may extend beyond the Commencement Date. The Landlord shall take all reasonable measures and precautions to ensure that any construction occurring from and after the Commencement Date does not materially interfere with the Tenant's business operations in and from the Demised Premises or with pedestrian and/or vehicular access to the Demised Premises.

#### **ARTICLE 30**

##### **ONLY AGREEMENT**

It is understood and agreed by and between the parties hereto that this Lease is the only agreement between the said parties respecting the matters herein mentioned and that there are no other agreements between the parties with respect thereto. Any amendment to this Lease must be done by written agreement signed by both parties.

Nothing herein contained shall be deemed to constitute a partnership between the parties hereto.

#### **ARTICLE 31**

##### **COMMISSIONS & APPROVALS**

The Landlord agrees to pay all fees and commissions for bringing about the execution and delivery of this Lease and agrees to indemnify the Tenant and save it harmless from all claims for such fees and commissions. The Landlord shall promptly obtain at its sole expense any and all approvals under the applicable provincial planning legislation, if any, which are necessary in order to allow for this Lease, including the registration thereof.

#### **ARTICLE 32**

##### **INTEREST RATE**

**Section 1.** It is understood that, unless specifically provided for otherwise in this Lease, the interest rate (the "Interest Rate") to be used by the parties hereto for payments under this Lease which are in arrears shall be the rate of one percent (1%) over the prime rate (as defined in Clause 1) from time to time.

**Section 2.** In the event that either party shall be delayed, hindered in or prevented from the performance of any act, covenant or obligation hereunder by reason of strikes, inability to procure materials, failure of power, restrictive governmental laws, ordinances or regulations, riots, insurrection, war, fortuitous event, or any other reason whether of a like nature or not, beyond the reasonable control of such party ("**Force Majeure**") (but in any event not including any inability to perform because of any lack of funds or any financial condition), then performance of such act, covenant or obligation shall be excused for the period of delay so caused and the period for the performance of such act, covenant or obligation shall be extended by a period equivalent to the period of such delay. Each party shall promptly notify the other of the occurrence of any Force Majeure which might prevent or delay the doing or performance of acts or things required to be done or performed by it, upon becoming aware of such Force Majeure, and shall also advise the other of the anticipated duration and consequences of such Force Majeure.

**GROSS LEASABLE AREA**

**Section 3.**

- (2) "**GLA**" as applied to the Demised Premises means the aggregate floor area thereof on each level expressed in square feet, calculated by measuring from the exterior face of all exterior walls and including any recessed portion of the storefront; but excluding the area of all mezzanines, mechanical penthouses, electrical and mechanical vaults and rooms, loading docks and truck receiving and delivery facilities, and, where the Demised Premises are on more than one floor, any stairwells, elevators and escalators serving the Demised Premises.
- (3) "**GLA**", as applied to any rentable premises comprising the Shopping Centre other than the Demised Premises, means the aggregate floor area thereof on each level expressed in square feet, calculated by measuring from the exterior face of all exterior walls, the exterior face of all interior walls separating rentable premises from interior common areas and other areas not intended to be leased, and the centre line of walls separating any rentable premises from adjoining rentable premises and including any recessed portion of any storefront; but excluding the area of all mezzanines that are not used for commercial or retail purposes, mechanical penthouses, electrical and mechanical vaults and rooms, loading docks and truck receiving and delivery facilities.

**Section 4.** The GLA of the Demised Premises and any other premises in the Shopping Centre in respect of which it is material under the provisions of this Lease to determine the same, shall, unless accepted and agreed by both the Landlord and Tenant in writing, be determined at the instance of either party by a surveyor appointed by the Landlord and the Tenant acting jointly for the purpose, or if they cannot agree upon such appointment, appointed upon the application of either party by a judge having jurisdiction of the matter in the Province of Québec. Any GLA so agreed or determined shall be binding upon the parties but subject to redetermination in the manner herein provided if there shall be any expansion, alteration, reconstruction or other change affecting the same.

**ARTICLE 33**

**MERCHANTS' ASSOCIATION**

The Tenant shall have no obligation to become a member of any merchants' association for the Shopping Centre, or to contribute to such an association except while it is a member thereof. The Tenant will not be bound in any way or manner whatsoever by the rules and regulations governing such association except while it is a member thereof. The Tenant shall also have no obligation to make any contribution to any fund which has been set up by the Landlord to promote the Shopping Centre and its tenants.

**ARTICLE 34****TENANT OUTDOOR SELLING AREA**

The Landlord hereby grants to the Tenant the exclusive right and license at any time and from time to time during the Term, and not terminable by the Landlord, to occupy and use the area (which in any event shall not exceed 5,000 sq. ft.) **HATCHED in RED** on the Plan (the "**Tenant Outdoor Selling Area**") for use as a garden centre, selling goods relating to gardening and outdoor activities, which use may include the sale of plants, shrubs, gardening supplies and outdoor living, sports and recreational merchandise. The Tenant may enclose the Tenant Outdoor Selling Area by fence or other barrier and may erect an awning, tent or other shelter over all or any part of such area. No payment shall be required to be made to the Landlord by the Tenant for its use of the Tenant Outdoor Selling Area either on account of rent, CAM Cost, merchants' association fees, Real Property Taxes or otherwise, provided that the Tenant shall pay any business taxes that result from its use thereof. The Tenant, while using the Tenant Outdoor Selling Area, shall be responsible for all repairs, upkeep and maintenance resulting from or required by its use of the Tenant Outdoor Selling Area.

**ARTICLE 35****OPERATION OF THE SHOPPING CENTRE AND ENFORCEMENT OF THE RECIPROCAL EASEMENT AGREEMENT**

**Section 1.** The Landlord Development is at all times subject to the Landlord's exclusive control and management, subject always to the provisions of this Lease.

**Section 2.** The Landlord shall operate the Shopping Centre in a manner and during those hours of business which are reasonable and consistent with the requirements of a first-class shopping centre similar in size to the Shopping Centre. The Tenant, while it is operating the Demised Premises, shall not be required to observe any minimum hours of operation and shall be further entitled (but not required) to observe whatever hours of business may be established generally for its other comparable stores in the Province of Québec.

**Section 3.** The Landlord hereby covenants, warrants and represents that:

- i) upon closing of the aforementioned sale of the Costco Lands to the Costco Lands Owner, the Landlord and the Costco Lands Owner shall enter into the Reciprocal Easement Agreement described in Recital "C" of this Lease;
- ii) notice of the Reciprocal Easement Agreement shall thereupon be promptly registered on title to each of the Costco Lands and the Landlord's Parcel;
- iii) the Reciprocal Easement Agreement shall remain in full force and effect throughout the Term of this Lease; and
- iv) on or before the date upon which notice of the Reciprocal Easement Agreement is so registered on title, the Landlord shall provide the Tenant with written notice of the exact legal description of each of the Landlord's Parcel and the Costco Lands.

**Section 4.** The Landlord, at its sole cost, shall diligently and promptly observe and enforce the terms and provisions of the Reciprocal Easement Agreement throughout the Term and shall indemnify and save the Tenant harmless from any and all damages, costs, fines, suits, claims, demands and losses of any kind whatsoever (including, without limitation, business losses) that the Tenant and/or its assignees or subtenants hereunder may become liable for or suffer as a result of any breach, violation or non-performance of the Reciprocal Easement Agreement by any one of the parties thereto (save and except for any such breach,



violation or non-performance that is attributable to any act or omission of the Tenant<sup>37</sup> and/or its assignees or subtenants).

**Section 5.** The Tenant shall not undertake any activity or course of action that would result (or would reasonably be expected to result) in the Landlord being in default of the Reciprocal Easement Agreement.

#### **ARTICLE 36**

##### **PRESS RELEASES**

The Tenant's permission (such permission not to be unreasonably withheld) shall be obtained prior to the issuance of any press statements concerning the Tenant's participation in the Shopping Centre. The parties hereto hereby acknowledge and agree that the foregoing sentence shall not prevent the Landlord from disclosing the contents of this Lease to its financial partners and/or those parties providing financing for the development of the Landlord's Parcel contemplated herein.

#### **ARTICLE 37**

##### **ZELLERS INC.'S COVENANT REGARDING THE ROSEMERE STORE**

In consideration of the lease of the Demised Premises hereunder, Zellers Inc. hereby covenants and agrees that, effective as of the Commencement Date and thereafter throughout the remaining term (including any renewal or extension) of the Rosemere Lease, neither it nor any one of its affiliates (as that term is defined in the Canada Business Corporations Act) shall use the Rosemere Store for any of the following purposes:

- (i) a "Zellers" department store;
- (ii) a "Home Outfitters" store;
- (iii) a "Designer Depot" store; or
- (iv) any other kind of retail store that may be operated by Zellers Inc. and/or any one of its affiliates (as that term is defined in the *Canada Business Corporations Act*) from time to time, save for and excepting any store used for the clearance sale of merchandise sold from any one or more of the retail stores operated by Zellers Inc. and/or its affiliates.

#### **ARTICLE 38**

##### **PARTICULARS REQUIRED UNDER SECTION 9 OF AN ACT RESPECTING DUTIES ON TRANSFER OF IMMOVEABLES (THE "ACT").**

For the purpose of the ACT, the Landlord and Tenant hereby declare:

- (a) The transferor is Foubourg Boisbriand Limited Partnership, whose principal place of business is at:

1010 Sherbrooke Street West  
#718  
Montréal, QC H3A 2R7

(b) The transferee is Zellers Inc. whose principal place of business is at: 38

401 Bay Street  
Suite 600  
Toronto, ON M5H 2Y4

- (c) The immovable being transferred is situated in the City of Boisbriand, Province of Québec and is a lease of premises in the Shopping Centre for an initial term of fifteen (15) years, with seven (7) options to extend the term of five (5) years each, and a further option to extend to January 31 next following.
- (d) The amount of consideration given for the transferred property is \$9,021,000.
- (e) The amount constituting the base of imposition of the transfer duties is \$9,021,000.
- (f) The duties, if exigible, are \$133,815.00.

The Tenant shall pay the aforementioned duties if and when they fall due, together with any additional tax resulting from a re-evaluation of the duties payable by the relevant governmental authority.

**ARTICLE 39**

**REGISTRATION OF LEASE**

**Section 1.** Subject to the prior approval of the Landlord, not to be unreasonably withheld or unduly delayed, the Tenant shall be entitled to register this Lease, either by notice or a short form thereof (but not the Lease itself), on title to the Demised Premises, and the Landlord shall co-operate with the Tenant in effecting such registration. The notice or short form of Lease registered on title shall not disclose the financial terms of this Lease. The Tenant shall discharge the registration of the Lease at the expiration or earlier termination thereof.

**Section 2.** The Landlord hereby covenants and agrees that prior to the earlier of:

- (a) the Commencement Date; and
- (b) the date upon which the Landlord's aforesaid sale of the Costco Lands takes effect;

the Landlord shall provide the Tenant with a full and up-to-date legal description of each of the Landlord's Parcel and the Costco Lands.

**ARTICLE 40**

**ARBITRATION**

In the case of any dispute between the Landlord and the Tenant as to any matter contained in this Lease, either party hereto shall be entitled to give to the other party notice of such dispute and demand arbitration thereof and, after giving notice and demand, each party shall at once appoint an arbitrator and such appointees shall jointly appoint a third. The decision of any two of the three arbitrators so appointed shall be final and binding upon the parties hereto who covenant one with the other that their disputes shall be so decided by arbitration alone and not by recourse to any Court by action at law. If within a reasonable time the two arbitrators appointed by the parties hereto do not agree upon a third, or if the party who has been notified of a dispute fails to appoint an arbitrator, then a third arbitrator or an arbitrator to represent the party in default may, upon petition of the party not in default, be

appointed by a Judge in the Province of Québec having jurisdiction of the matter. The cost<sup>39</sup> of arbitration shall be apportioned between the parties hereto as the arbitrators may decide.

#### *ARTICLE 41*

#### ***STATUS CERTIFICATES***

The Tenant agrees that it will from time to time whenever reasonably required by the Landlord for the purpose of giving assurance to any third party interested (including any prospective or actual assignee or mortgagee of the Landlord) execute and deliver to the Landlord or as the Landlord may direct, within ten (10) days of the Tenant's receipt of the Landlord's request therefor, a statement in writing certifying to such third party whether this Lease is in full force and effect, whether or not it has been modified (and if so in what respect), the status of annual rent and other accounts between the Landlord and Tenant, whether or not there are any existing defaults on the part of the Landlord of which the Tenant has notice (and if so, specifying them) and as to any other matters in connection with this Lease in respect of which such a certificate is reasonably requested. The Landlord agrees that it will from time to time whenever reasonably requested for the purpose of giving assurance to any third party interested (including any proposed or actual assignee, sublessee or mortgagee of the Tenant) execute and deliver to the Tenant or as the Tenant may direct, within ten (10) days of the Landlord's receipt of the Tenant's request therefor, a statement in writing certifying to such third party whether this Lease is in full force and effect, whether or not it has been modified (and if so in what respect), the status of annual rent and other accounts between the Landlord and the Tenant, whether or not there are any existing defaults on the part of the Tenant of which the Landlord has notice (and if so, specifying them) and as to any other matters in connection with this Lease in respect of which such a certificate is reasonably requested. Such statements may be relied upon by (but only by) the third party for whose benefit they are given.

#### *ARTICLE 42*

#### **INTENTIONALLY DELETED**

#### *ARTICLE 43*

#### ***INTERPRETATION***

It is understood and agreed by and between the parties hereto that all of the provisions herein contained shall be construed as covenants, agreements and obligations as though the words importing said covenants, agreements and obligations were used in each separate paragraph hereof. If any provision of this Lease is illegal, invalid or unenforceable, such provision shall be considered as separate and severable from the remaining provisions, which remaining provisions shall remain in force and binding as though the said provision had never been included.

It is further agreed between the parties hereto that the Schedules attached and signed for identification by the parties shall form part of this Lease. This Lease consists of 40 pages, together with Schedules A, B and C, and an Index.

It is further agreed between the parties hereto that this present Lease shall not constitute a completed transaction, notwithstanding its execution on behalf of the Landlord, until such time as it shall also have been executed on behalf of the Tenant.

The headings used in this Lease and the index are intended for convenience of reference only and shall not be construed as having any legal effect. Any references in this Lease to Articles, Sections, Subsections or Clauses shall be a reference to the Articles, Sections, Subsections and Clauses of this Lease.

This Lease shall be interpreted according to the laws of the Province of Québec<sup>40</sup> and the laws of Canada applicable hereto.

The parties hereto hereby acknowledge and agree that this Lease is not a contract of adhesion (as that term is defined in the *Civil Code of Quebec*) and that all of the provisions contained in this Lease, including each and every one of the Schedules and other addenda hereto, have been independently reviewed, negotiated and agreed by the parties hereto.

Les parties aux présentes ont exigé que le présent bail soit rédigé en anglais. The parties hereto have requested that this Lease be prepared in the English language.

**SUCCESSORS**

This Lease and all of the terms, conditions, covenants and provisions herein shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

IN WITNESS WHEREOF the parties hereto have hereunto respectively caused their corporate names to be written and attested by their duly authorized officers.

Signed this 4<sup>th</sup> day of June, 2005 in the City of Montreal, Province of Quebec.

FAUBOURG BOISBRIAND G.P. INC.,  
acting in its capacity as general partner of  
FAUBOURG BOISBRIAND LIMITED  
PARTNERSHIP

IN THE PRESENCE OF:

[Signature]  
Name: H. Girard  
Address: 80 Boul. #1000  
Montreal, H3E 1N9

per: [Signature]  
per: JOHN E. DAVIES  
Chairman  
I/We have the authority to bind the corporation

Signed this 7<sup>th</sup> day of November, 2005 in the City of Toronto, Province of Ontario

ZELLERS INC.

IN THE PRESENCE OF:

[Signature]  
Name: ROBERT COOPER  
Address: #310 - 135 BLUECKER ST  
TORONTO, ON M4X 1X2

per: [Signature]  
per: [Signature]  
We have the authority to bind the corporation

**CONSTITUTION OF SERVITUDES AND RECIPROCAL COVENANT AGREEMENT** made  
as of the • (•) day of •, Two Thousand and Five (2005)

BEFORE •, Notary, practising in the City of Montreal, Province of Quebec

APPEARED: **FAUBOURG BOISBRIAND G.P. INC.**, a Canadian Corporation, in  
its capacity as general partner of Faubourg Boisbriand Limited  
Partnership, an Ontario limited partnership  
(herein called "Faubourg")

AND **COSTCO WHOLESALE CANADA LTD.**, a Canadian corporation  
(herein called "Costco")

[NOTE TO DRAFT: PUT FULL APPEARANCES]

**WHICH PARTIES DECLARED**

A. The parties hereto separately own two parcels of land located in the Town of Boisbriand, Province of Quebec, which the parties wish to partially integrate for development purposes, through the constitution of servitudes and development and operating covenants herein contained;

NOW THEREFORE for and in consideration of the premises and the mutual covenants and agreements herein contained, the parties hereto agree as follows:

**ARTICLE 1: INTERPRETATION**

1.1 **Definitions:** In this Agreement, unless the context expressly or by necessary implication requires otherwise, the following words and terms shall have the respective meanings set out below:

"Agreement" means this constitution of servitude and reciprocal covenant agreement.

"Applicable Laws" means all laws, by-laws, regulations and other lawful directives of any Governmental Authority having jurisdiction and includes as well all applicable building codes and standards, *protocoles d'ententes*, and all other agreements made with any Governmental Authority that are approved by the Owners acting reasonably in connection with the Project or the part thereof being considered.

"Building" means any building or structure from time to time constructed or caused or permitted to be constructed by any Owner on its Parcel.

"Building Standard" means the general standard prevailing at the effective date hereof for construction and operation of buildings and related facilities used in shopping centres in Canada that are mixed use "lifestyle centres" and "power centres", subject, however, to the limitations occasioned by the design of each Building and its basic systems. It is acknowledged that the power centre component and lifestyle centre component of the Project are being planned to operate and function on an integrated basis and harmoniously, the power centre Building Standard will be elevated from that which is traditionally found in projects that are solely power centres, and that furthermore, certain design and related standards and requirements will be imposed by the Municipality, and these will be deemed to be included within the "Building Standard".

"Business Day" means Mondays through Fridays inclusive, excluding days when banks are customarily closed in Montreal, Quebec.

"Cadastre" means the official Cadastre of Quebec, Land Registration Division of Terrebonne.

**"Common Area"** means the portion of the Project from time to time intended for the nonexclusive use by the Owners and their Permittees in common with other users as permitted by this Agreement.

Common Area shall include, but not be limited to the Driveway, access roads, accessways, the walkways, sidewalks (except sidewalks adjacent and appurtenant to any Building) and landscaping. The Common Area shall include all items of Common Area identified as such on the Site Plan, subject to such additions, subtraction and modifications as Faubourg in the exercise of good shopping centre management practice Faubourg may decide upon from time to time, provided that the Driveway shall not be altered as a Common Area.

Common Area shall not include any truck and/or loading docks, the concrete apron or ramp leading to such areas, any asphalt paved areas immediately adjacent to and adjoining such concrete apron or ramp area, sidewalks adjacent and appurtenant to any Building, compactor facilities, cart corrals, seasonal sales and merchandising areas and customer pick-up areas.

**"Costco"** means Costco Wholesale Canada Ltd. as one of the parties hereto.

**"Costco Parcel"** means that certain emplacement located in the City of Boisbriand, Province of Quebec, known and designated as lot • of the Cadastre.

**"Costco Use"** means a retail/wholesale store and warehouse used for the sale of hard and soft goods and groceries as generally carried on by Costco and/or any of its subsidiaries, affiliated and/or parent corporations in the majority of their stores in Canada in April, 2005 together with a drug store or pharmacy, propane dispensing facility and an automotive fuelling station if and when constructed by the Owner of the Costco Parcel.

**"Driveway"** means that part of the Faubourg Parcel to the south of the Costco Parcel shown cross-hatched on the Site Plan.

**"Faubourg No Build Zone"** means that portion of the Faubourg Parcel diagonally striped in black on the Site Plan being a part of Lot \_\_\_\_\_ of the Cadastre, being the 120 feet on each side of the Costco Parcel.

**"Faubourg Parcel"** means those lands located in the City of Boisbriand, in the Province of Quebec, known and designated as being composed of lot(s) • of the Cadastre.

**"Governmental Authority"** means each federal, provincial, municipal, inter-municipal, borough and other government agency and bureau having jurisdiction in any applicable circumstances.

**"Gross Floor Area"** means with respect to any premises, the aggregate areas of all storeys of a Building measured to the exterior of outside walls, but not including: (a) the area of any cellar; (b) parking areas above or below grade whether or not within a Building or separate structure; (c) mezzanine areas, (d) mechanical and/or electrical rooms, penthouses, vaults; (e) open canopied areas; and (f) areas above ground level that are not destined for retail purposes in Buildings that are otherwise retail uses.

**"HD Servitudes"** means the Deeds of Servitude executed under private signature on the seventeenth (17<sup>th</sup>) day of December, Two Thousand One (2001) between Home Depot Holdings Inc. and General Motors of Canada, published at the Land Register under number 132 278.

**"Land Registry Office"** means the Land Registry Office for the Registration Division of Terrebonne.

**"Majority of the Costco Parcel Owners"** means the Owners or Owner collectively owning not less than 50.1% of the total acreage within the Costco Parcel. For example, if there are 13 acres in the Costco Parcel, then a Majority of the Costco Parcel Owners would be the Owners or Owner owning not less than an aggregate of 6.6 acres.

**"Majority of the Faubourg Parcel Owners"** means the Owners or Owner collectively owning not less than 50.1% of the total acreage within the Faubourg Parcel. For example, if there are 100 acres in the Faubourg Parcel, then a Majority of the Faubourg Parcel Owners would be the Owners or Owner owning not less than an aggregate of 50.1 acres.

**Majority of the Parcel Owners"** means, as the context may require, any one or more of the Majority of the Costco Parcel Owners or the Majority of the Faubourg Parcel Owners.

**"Municipality"** means the Town of Boisbriand.

**"No Restaurant Zone"** is the area shaded on the Site Plan. [200 feet on north and south side of Costco Parcel]

**"Notice"** means a notice delivered by an Owner to any other Owner or Owners in accordance with Article 17 hereof.

**"Owner"** means, as the context may require, the persons executing this Agreement, and their successors and assigns in interest as hereinafter provided, as shown in the Land Registry Office as of the date of the exercise of powers or rights or the performance by such Owners of obligations created by this Agreement, and shall, so far as the terms, covenants, provisions and conditions of this Agreement to be kept, performed, observed and enforced by them are concerned, refer only to the person who at the time in question is the Owner with respect to the Parcel, or part thereof, concerned, it being agreed and understood that such terms, covenants and conditions shall be binding upon and enforceable by each Owner only during and in respect of its or their successive periods in which each is an Owner and with respect to obligations which accrue during such period, except as herein provided to the contrary; provided further that:

(a) In the event of the assignment, transfer or conveyance of the whole of the interest of any of the Owners in and to the Parcel in which such Owner presently has an interest, without retaining any beneficial interest other than under the terms of a hypothec pursuant to the terms of which it undertakes to all other owners that should it re-acquire ownership or possession, it will assume and perform its obligations of the Owner liable to it under this Deed for so long as it is Owner or possession of the Parcel, or without simultaneously acquiring a new interest by way of lease, right of use or other possessory arrangement, then the powers conferred upon such Owner shall be deemed assigned, transferred or conveyed and the obligations assumed with its interest;

(b) If the whole of the interest of such Owner in and to the Parcel in which it has a present interest is assigned, transferred or conveyed but a new interest is created in such Owner simultaneously with such assignment, transfer or conveyance by way of lease, right of use or similar possessory arrangement, or in the event such Owner shall convey its interest in said Parcel or any part thereof by hypothec or otherwise as security for indebtedness, then none of the powers or obligations conferred upon such Owner pursuant to the interest assigned, transferred or conveyed by such Owner shall be exercised or assumed by the assignee or secured party, but all of the powers and obligations herein referred to shall remain in such Owner so long as such party retains any possessory interest in and to said Parcel. In the event the interest of such Owner referred to in this subsection shall cease and terminate, then upon such termination the powers and/or obligations of such Owner shall vest in accordance with subsections (a) or (c) hereof, whichever is applicable, save that the grantee of any hypothec or other security will not be liable for any default of the Owner granting the hypothec or other security that pre-dates the time when the grantee assumes the Owner's interest and that the Owner shall continue to be liable for any defaults that pre-date the time when the grantee assumes the Owner's interest.

(c) If a Parcel is divided into one or more separate lots, each of such separate lots shall thereafter be considered to be a "Parcel" and the owners of each such legal lot shall be an "Owner". Any Parcel or Parcels subdivided as aforesaid shall remain subject to all terms and conditions of this Agreement.

(d) If any of the Owners shall transfer its present interest in a Parcel or a portion of such interest to more than one person other than by creation of a separate lots, then not less than fifty-one percent

(51%) in interest of such transferees shall designate one of their number to act on behalf of all of such transferees in the exercise of the powers granted to such Owner under this Agreement. So long as such designation remains in effect, such designee shall be an Owner hereunder and shall have the power to bind such Parcel and such transferees, and such transferees shall not be deemed to be Owners, it being understood that all co-owners of any parcel will be solidarily liable to the Owner of such other parcel for the performance of all of the Owner's obligations and the convergences of any default of fulfil these obligations. Any such designation must be in writing and Notice delivered of such designation to the other Owners within 10 days thereafter. In the absence of such written designation, the acts of the Owner whose interest is so divided with respect to the exercise of the powers under this Agreement shall be binding upon all persons having an interest in such Parcel until such time as Notice of such designation is given as herein provided; and

(e) Whenever the rights, powers and obligations conferred upon any of the Owners are transferred to another Owner or Owners pursuant to the provisions of subsections (a), (b), (c) or (d) above, the transferor shall, subject to this Agreement, be released or discharged from the obligations thereafter accruing under the terms of this Agreement, and the transferee(s) of such interest shall be bound by the covenants and restrictions herein contained.

(f) Costco shall be solidarily liable with any transferee of the Costco Parcel until such time as the warehouse is first opened on the Costco Parcel for the Costco Use of approximately 140,000 square feet whereupon Costco shall be released from its obligations hereunder the performance of which or liability for which is to occur after such opening date if and to the extent it is otherwise entitled to a release hereunder.

"Parcel" means, as the context may require, any one or more of the Faubourg Parcel or the Costco Parcel.

"Permittees" means with respect to each Owner, the agents, tenants, employees, servants, licensees, concessionaires, customers, visitors and invitees of such Owner and the agents, subtenants, employees, servants, licensees, concessionaires, customers, visitors and invitees of such Owners tenants and occupants, and so long as the HD Servitudes remain in force, those persons which, pursuant to the HD Servitudes are entitled to exercise rights over any parcel.

"Project" means, collectively, the Faubourg Parcel and the Costco Parcel.

"Residential Zone" is that part of the Project approximately as shown cross-hatched on the Site Plan.

"Restricted Area" is that part of the Faubourg Parcel labelled D on the Site Plan together with an equivalently sized and laid out area on the north side of the Costco Parcel from such part D if and when such north side is developed for commercial purposes.

"Services" means services and utility installations constructed upon the Project as of the effective date hereof or subsequently constructed pursuant to Section 3.2 in, on or under any Parcel, which connect to, service and/or benefit any other Parcel and the Buildings and improvements from time to time thereon, which shall include, without limitation, storm, water and sanitary sewers, drains, watermains, water courses and hydroelectric, gas, and water lines and installations, together with their appurtenances.

"Servitudes" means the real and perpetual servitudes over portions of the Project constituted by and defined in Sections 3.1, 3.2 and 3.3.

"Site Plan" means the site plan of the Project showing the presently existing or intended buildings thereon, a copy of which, in reduced size, is attached to this Agreement as Schedules A-1 and A-2.

"Term" means the term of this Agreement as specified in Section 15.1.

1.2 **Exercise and Enforcement of Rights:** Each Owner shall perform its obligations under this Agreement and shall, except as otherwise expressly provided herein, act reasonably in the exercise



and the enforcement of its rights under this Agreement. Each right shall, except as otherwise expressly provided, be exercisable and enforceable from time to time.

1.3 **Permittees:** Each right of access, pedestrian passage, vehicular passage, parking, and use of an Owner under this Agreement shall also be exercisable by the Permittees of such Owner and the respective Permittees of each other Owner.

1.4 **Demand for Payment and Grant of Immovable Hypothec:** Any demand for payment under this Agreement shall provide a period of fifteen (15) days for payment. Arrears of payment shall bear interest from the due date until paid at a rate per annum equal to two percentage points in excess of the prime commercial lending rate in Toronto of the Royal Bank of Canada (or any successor bank thereof) from time to time.

1.5 **Approvals:** Whenever in this Agreement a matter requires the approval or consent of any Owner or a Majority of the Parcel Owners, that approval or consent shall not be unreasonably withheld, conditioned or delayed unless otherwise specifically herein provided. Approvals or consents shall be deemed to have been given unless an Owner or a Majority of the Parcel Owners (as the case may be) receiving a request therefor delivers, within 15 days after delivery to it of a Notice requesting a consent or approval, a Notice to all other Owners setting out its refusal to consent or approve and its reasons therefore, provided the Notice requesting the approval is accompanied by all explanations and supporting documentation the recipient reasonably requires to make an informed decision, specifies in the Notice the consequence of not responding within the 15 day delay and quotes this section. Disputes as to whether an approval or consent has been unreasonably withheld and whether a party has acted reasonably where required to do so hereunder shall be resolved by arbitration in accordance with Section 11.1.

1.6 **Date for Any Action:** If any date on which any action is required to be taken hereunder by any of the parties is not a Business Day, such action shall be required to be taken on the next succeeding Business Day.

## ARTICLE 2: INTEGRATED DEVELOPMENT

### 2.1 **Standard of Operation:**

(a) Subject to Subsection 2.1(c), each Owner shall at no expense of the other Owner maintain, repair, insure and manage, or cause to be maintained, repaired, insured and managed and consistent with the philosophy of a first class, mixed use development of this nature, all Building(s) and improvements erected on its Parcel, in each case to the Building Standard.

(b) Subject to Subsections 2.1(c) and 3.2(d) each Owner shall be responsible for the maintenance, repair, insurance and management of the Common Area of its Parcel, in each case to the Building Standard. The foregoing obligation shall extend to Services in circumstances where such Services are being utilized by another Owner. Whenever reasonably possible, and if mutually beneficial, the Owners shall use joint contractors to reduce the costs to perform the aforesaid functions and provide for the proper operation of the Project.

(c) An Owner shall only be required to perform its obligations under Sections 2.1(a) and (b) of this Agreement during such periods of time in which it or any of its tenants is carrying on active business in the Building(s) constructed upon its Parcel, provided that it shall at all times continue to comply with Section 6.3 of this Agreement.

(d) Notwithstanding the foregoing, the roads cross-hatched on the Site Plan will be or have been ceded to the Municipality, which will maintain and repair these roads and Services above and below them to municipal standards. No Owner will have any liability to any other Owner if the municipality fails to fulfil this obligation.

2.2 **Regulations :** The Faubourg may make reasonable regulations for the orderly operation of the Buildings and improvements within the Project and upon Notice to any other Owner of such

regulations, such other Owner shall observe and shall use reasonable efforts to cause its Permittees to observe them. Such regulations shall not conflict with the provisions of this Agreement, and will be subject to the approval of the Majority of the Costco Parcel Owners.

2.3 **Building Signage:** Each Owner may place such sign or signs on the exterior of the Building on its Parcel as shall be permitted by applicable governmental requirements.

2.4 **Pylon Signage.**

(a) The Municipality has approved the erection of [INSERT NUMBER] pylon signs for the Project in the area substantially as shown on Schedule ● annexed hereto, and designated as:

**[DESCRIPTION TO BE ADDED]**

The whole is as shown on plan number ●, minute ●, reference ●, dated ●, 2005, prepared by Daniel Lacroix, Quebec Land Surveyor.

(b) Costco will be entitled to place one fascia sign at its expense to advertise the principal business being operated from the building to be constructed on the Costco Parcel on the top of space available from time to time for retailer identification, which right must be exercised within 60 days of notice by Faubourg to Costco. If Costco fails to exercise such right within such time it will have no further rights or obligations with respect to the pylon sign.

(c) If Costco exercises its rights in (b), Faubourg will be entitled to place, on the bottom remainder of the pylon available for retailer identification, as many signs as it requires from time to time, subject to Applicable Laws. The top of the pylon will be reserved for the identification of the Project. The size of which identification will be equal.

(d) If Costco exercises its rights in (b), Costco will pay to Faubourg, its prorata share (based on the respective size of the fascia on the pylon sign) of the cost of operating, maintaining, repairing and replacing the pylon sign and each of the Faubourg and Costco will be responsible to maintain, repair and replace its own fascia signage. Payments will be made by monthly instalments on the first day of each month in advance, based upon Faubourg's reasonable provisional estimates and adjusted annually, or at Faubourg's option, exercisable by Notice to Faubourg, on the basis of annual billings, payable within thirty (30) days of invoicing.

(e) Notwithstanding the above provisions, should any Governmental Authority oblige Faubourg to place the pylon sign on another Parcel, the servitudes will be adjusted to achieve the same results as contemplated above.

2.5 **Directional Signage**

(a) By ●, 2006, Faubourg will supply, install, operate, maintain, repair and replace directional signs for the Project.

(b) If Costco elects to participate in such directional signage program (which election shall be made within 60 days of notice by Faubourg to Costco, failing which Costco will have no further rights or obligations with respect to such directional signage), Costco will pay a share of the cost of fulfilling the Faubourg obligations under 2.5(a), equal to the percentage of the directional signage Costco elects to utilize.

(c) Payments under paragraph (b) by Costco to Faubourg will be made as follows:

(i) for the supply and installation of the directional signage, within thirty (30) days of invoicing by the Faubourg, provided the signage has been installed.

(ii) for the operation, maintenance, repair and replacement of the directional signage, by monthly instalments on the first day of each month in advance, based upon the Faubourg's reasonable provisional estimates and adjusted annually, or at Costco's option, exercisable by notice to Faubourg, on the basis of annual billings, payable within thirty (30) days of invoicing.

### ARTICLE 3: SERVITUDES

3.1 **Servitudes:** Faubourg hereby constitutes a real and perpetual servitude of passage and repassage, on foot and by vehicle, over and upon the Driveway, as servient land, and in favour of the Costco Parcel as dominant land. [other specific servitudes]

3.2 **General Servitudes:** Subject to the terms of this Agreement, each Owner constitutes the following real and perpetual servitudes against its Parcel, as servient land, in favour of the Parcel of each other Owner, collectively as dominant land:

(a) a servitude to permit natural drainage of water over, along, and upon the Parcel of the Owner of the servient land (except such portions of that Parcel upon which there are from time to time constructed Buildings or other above-ground improvements), to allow water from the Parcel of the Owner of the dominant land to drain into the catch basins and other storm water management features located upon the Parcel of the Owner of the servient land, provided that grading upon the Parcel of the Owner of the dominant land complies with grading plans and specifications approved by the Owner of the servient land; and [Note to Draft: Scope of drainage servitude to be adjusted based on site conditions and water management systems]

3.3 **No Building Servitude:** Faubourg hereby constitutes a real servitude against the "Faubourg No Build Zone", as servient land, in favour of the Costco Parcel, as dominant land, prohibiting the construction, installation or placement of any Building or above ground improvements of any kind whatsoever (other than cart corals, and parking, a garden centre as permitted by Section 5.8(b), driveway and landscaping facilities, including traffic signs, upon the servient land at any time during the period commencing on the date of this Agreement and terminating on the 50<sup>th</sup> anniversary thereof.

3.4 **Confirmation of Servitudes:**

(a) Each Owner will, at any other Owner's request and the submitting by the other Owner of the appropriate documents to the requested Owner for the latter's approval in a form suitable for registration, execute and acknowledge such documents giving further assurances of the Servitudes. The Servitudes shall be exercised in common with the right of the Owner of the servient land, for itself and for the benefit of its Permittees.

(b) The exercise of Servitudes constituted in Sections 3.1, 3.2, and 3.3 may be temporarily restricted or prohibited by any Owner during the making of repairs or replacements, or for other reasons beyond the reasonable control of an Owner, provided that it proceeds expeditiously and diligently, and uses all reasonable efforts to offer temporary and comparable substitute rights, and except in case of emergency and except during the first 12 months of the Term, no prohibition, restriction, or relocation (where permitted) shall take place between November 1 of any year and January 15 of the following year.

(c) Each Owner acknowledges, confirms and agrees for and on behalf of itself, its successors and assigns, and all subsequent registered owners of its Parcel, that notwithstanding any stipulation to the contrary, the Servitude constituted in Section 3.2 hereof shall only be exercised on, over, under and through such parts of the said Parcels not encumbered by buildings and structures or other above-ground improvements, which, for the purposes of this subsection, shall be deemed to include any exterior or outside area used for the sale of goods in connection with business operations normally or reasonable carried on on any portion of the Parcel of the Owner, from time to time as permitted by Applicable Laws and not otherwise restricted by this Agreement.

3.5 **Further Rights and Servitudes:** Each Owner covenants and agrees with the other Owners to grant any other Owner such further rights and servitudes as may be required by municipal or statutory authorities for the installation and maintenance of public utilities and other Services including, without limiting the generality of the foregoing, those required for drainage and those required by the corporation or commission supplying telephone service, electricity, or natural gas to the Project as long as:

- (a) the said rights and servitudes do not materially interfere with the enjoyment by any other Owner of its Parcel;
- (b) the location of said rights and servitudes are not encumbered by Buildings or other above-ground improvements (which, for the purposes of this Subsection shall be deemed to include any exterior outside area used for the sale of goods in connection with business operations normally or reasonably carried on on any portion of the Project that are permitted by Applicable Laws and not otherwise restrictive by this Agreement);
- (c) such rights and servitudes can be located in a way that does not interfere with the siting and construction of any Buildings or above-ground improvements; and
- (d) the Owner requesting the said rights or servitudes pays all reasonable costs associated therewith.

3.6 **Restrictions on the Constitution of Servitudes:** The constitution of servitudes pursuant to the provisions of Section 3.6 shall be subject to the following:

- (a) constitution of a servitude shall not be requested by an Owner where it is practical and feasible for such Owner to obtain the required Services directly through public highways or streets adjacent to its Parcel.
- (b) the location of the servitudes shall be such as not to materially interfere with the presently erected or contemplated Buildings and to the extent possible not to materially interfere with any future development that may occur; and
- (c) every constitution of a servitude shall require the owner of the dominant land to construct the Services so as to permit the surface of the affected portion of the Project to be used for parking, access roads or other reasonable uses without damage thereto.

3.7 **Unauthorized Use and Closure of Common Area:** Each Owner hereby reserves the right to eject or cause the ejection from its Parcel of any person or persons not authorized, empowered or privileged to use the Parcel pursuant to this Agreement without liability to the other Owner. Each Owner also reserves the right to close off its Parcel for such reasonable period or periods of time as may be legally necessary to prevent the acquisition of prescriptive rights by anyone; provided, however, that prior to closing off any portion of a Parcel, as herein provided, such Owner shall give Notice to the other Owners of its intention to do so, and shall coordinate such closing with the other Owners so that no unreasonable interference with the operation of the Project shall occur.

3.8 **Prohibition Against Constituting Servitudes:** No Owner, nor any person not an Owner, shall, subsequent to the date of this Agreement, constitute a new servitude of the type set forth in this Article 3 for the benefit of any property not within the Project at the time of such constitution.

3.9 **Servitude Relocation:** The servitudes referred to in Section 3.5 hereof and the improvements constructed in conjunction therewith, burdening the Costco Parcel and those of the Faubourg Parcel, may be relocated by the Owner of the Parcel benefitting from the servitude or the Owner whose Parcel is subject to the Servitude (a "Relocating Owner") following their original constitution and construction only in accordance with the following criteria: (a) the approval of the Owner affected by the relocation which did not propose the relocation (the "Affected Owner") must first be obtained regarding all aspects relative to the relocation of the servitude and associated improvements including, without limitation, the proposed new location for the servitude as well as all plans and specifications for all improvements associated therewith; (b) all costs and expenses relating to the relocation of the servitude and associated improvements shall be borne by the Relocating Owner; (c) the Relocating Owner shall take such steps as are reasonably necessary and in accordance with sound engineering practice to ensure that: (1) those improvements which were installed or erected as permitted by the servitude which is being relocated are, if appropriate, removed from the location they were originally installed; and (2) the Parcel or portion thereof originally affected by the servitude and associated improvements being relocated is returned to substantially the same condition it was in prior to creation of the original servitude and construction

of the improvements associated therewith; and (d) the conditions set forth in Sections 3.5 and 3.7 shall apply, *mutatis mutandis*, to the servitude and associated improvements being relocated.

It shall be reasonable for the Affected Owner to consider, without limitation, the following in determining whether to grant or withhold its approval provided for in the first paragraph of this Section: (e) whether the said proposed location of the relocated servitude and associated improvements are encumbered by Buildings or other above-ground improvements (which, for the purposes of this paragraph shall be deemed to include any exterior outside area used for the sale of goods in connection with business operations normally or reasonably carried on any portion of a Parcel); (f) whether such servitudes and associated improvements can be located in a way that does not interfere with the siting and construction of any Buildings or above-ground improvements; and (g) whether the proposed servitude and associated improvements will materially and adversely interfere with the use of or access to the Parcel of the Affected Owner or the use of or access to the servitude, if the Relocating Owner is not the Owner who constituted the servitude of the servitude proposed to be relocated. The parties shall execute an amendment to this Agreement addressing the terms of the relocated servitude which agreement shall be registered by the Relocating Owner at its sole cost and expense prior to any work commencing respecting the relocation. The parties shall act reasonably and diligently in their negotiations regarding any such amendment.

3.10 **Renunciation to Right of Redemption:** In accordance with Article 1190 of the *Civil Code of Quebec*, the parties to this Agreement hereby exclude the possibility of redemption of the Servitudes for a period of 30 years from the date of this Agreement.

#### ARTICLE 4: CONSTRUCTION

4.1 **Construction on a Parcel:** All work of any nature undertaken with respect to a Parcel shall: (a) comply with all Applicable Laws; (b) be performed in a good and workmanlike manner and in accordance with the Building Standard; (c) be performed so as not to cause any increase in the cost of construction upon the Parcel of another Owner; (d) be performed so as not to unreasonably interfere with and to minimize, to the extent reasonably possible, disruptions of the business activities on, and access to, the Parcel of any other Owner or any part thereof or the access roads to and from the Project. Any damage occurring to the Parcel of another Owner, or to any improvements constructed thereon as a result of such construction work shall be repaired by the Owner undertaking or requesting such construction at its sole cost and expense, to the same condition as existed immediately prior to such work being commenced and such repairs shall be made with all due diligence.

4.2 **Legal Hypothecs:**

(a) An Owner which performs work or has work performed for it, or services or materials supplied at its request for or in respect of its Parcel shall promptly pay all of its contractors, suppliers and workmen for any work or services performed or any material supplied in connection with all work carried out on its Parcel and any other Owners' Parcel and shall ensure that no legal hypothecs are registered against the Parcel of another Owner.

(b) Whenever a legal hypothec of persons having taken part in the reconstruction or renovation of an immovable, or encumbrance for work, labour, services or materials supplied to or for an Owner or for the cost of which an Owner may be in any way liable (the "Developing Owner") shall be filed against the Parcel of another Owner (the "Passive Owner"), the Developing Owner shall, within 10 days after receipt of Notice therefor, procure and register a discharge thereof, by payment or in such other manner as may be required or permitted by law, or posting such reasonable security in an amount no less than the amount claimed as the Passive Owner reasonably requires, failing which the Passive Owner may make any payments required to procure and register the discharge of any such legal hypothec or encumbrance, and shall be entitled to be reimbursed by the Developing Owner forthwith.

(c) For greater certainty, the Developing Owner shall be responsible for and shall indemnify the Passive Owner from and against all liabilities, costs, losses, damages and expenses (including

reasonable legal fees) incurred by the Passive Owner in connection with all demands, claims, judgements, actions or proceedings arising as a result of or in any way related to any work undertaken, labour, services and/or material supplied and/or provided by or at the request of the Developing Owner or any injury to or death of any natural person, or any loss or damage to property, as shall occur by reason of the performance of any work undertaken by or at the request of the Developing Owner, to the extent not caused by or contributed to the fault or negligence of the Passive Owner.

**4.3 Construction and Maintenance of Facilities and Parking Areas:**

(a) Faubourg shall pay the capital cost of constructing the Driveway (including, without limitation paving, sidewalks, curbs, lighting, directional signals and signs) for the Driveway. Plans and specifications for such work which derogate in any material way from the Site Plan will require the approval of a Majority of the Parcel Owners. If Faubourg fails to comply with its obligations in this Section, Costco shall be entitled, on not less than 10 Business Days prior Notice, to enter upon the Faubourg Parcel and perform all or any part of such obligations, and Faubourg shall remit to Costco the cost thereof, plus a 10% administrative fee.

(b) Following completion of construction on the Driveway, the Owner of the Faubourg Parcel shall be responsible for maintaining, repairing, replacing, insuring, cleaning, lighting and removing snow, debris and ice upon the Driveway. At the end of each calendar year, the Owner of the Faubourg Parcel shall provide the Owner of the Costco Parcel with a detailed list of expenditures respecting the costs it has incurred in fulfilling its obligations provided for in this Subsection which shall exclude local improvement charges (the "**Expense List**"). The Owner of each of the Faubourg Parcel and the Costco Parcel shall each pay 50% of the costs and expenses set forth on the Expense List. Within thirty (30) days after receipt of the Expense List the Owner of the Costco Parcel shall pay to the Owner of the Faubourg Parcel 50% of the costs and expenses set out on the Expense List., subject to the Owner of the Faubourg Parcel substantiating the validity and reasonableness of such costs to the satisfaction of Costco, acting reasonably. **[Note to Draft: Faubourg may want monthly payments]**

**4.4 Staging Area:** In connection with any construction, reconstruction, repair or maintenance on its Parcel, each Owner reserves the right to create a temporary staging and/or storage area in the Common Area on its Parcel ("Staging Area"), but on no other Parcel, at such location as will not unreasonably interfere with access between such Owner's Parcel and the other areas of the Project. Without the prior written consent of the other Owner, no Owner shall be permitted to establish a Staging Area in any portion of the Project consisting of common roadways or within the area 25 feet of each side of common roadways (the "Prohibited Area"). It shall be reasonable for the relevant Owner to withhold such consent if the Staging Area would be established or would remain in place during the period from October 15 to January 15, if the Owner withholding its consent has, or intends to have, an operating business on its Parcel during any portion of such period. Prior to the commencement of any work which requires the establishment of a Staging Area in the Common Area on an Owner's Parcel, the constructing Owner shall give the other Owner at least 30 days prior notice of the proposed location of its Staging Area. All parking of construction vehicles, including vehicles of workers, shall occur only on the constructing Owner's Parcel and shall not occur on any portion of the Prohibited Area unless such parking has been approved in the same manner as the approval of a Staging Area within the Prohibited Area. Upon completion of such work, the constructing Owner shall restore the affected Common Area to a condition equal to or better than that existing prior to commencement of such work. No establishment of a Staging Area under this provision may reduce the parking on a Parcel below that required under Section 0.

**ARTICLE 5: PROJECT DEVELOPMENT RESTRICTIONS**

**5.1 Parking Areas:**

The Owners covenant and agree that the number of parking spaces, widths of parking spaces, parking lanes and parking bays shall be at least equal to the requirements mandated by applicable governmental authorities having jurisdiction with respect to the Building(s) from time to time

constructed on the Project, provided that in any event, there shall be maintained at all times on each of the Costco Parcel and on the Restricted Area not less than four (4) parking spaces for each one thousand (1,000) square feet of Gross Floor Area thereon. [Note to Draft: consider Block I and ratio for restaurants outside of No Restaurant Zone on D and D1]

5.2 **No Barriers or Variations:**

Each Owner covenants and agrees with the other Owners not to construct, install, erect, or affix or permit to be constructed, installed, erected or affixed any fence, wall, barrier, fixture, or other material obstruction whatsoever in, on, or between the parking areas and driveways (including the Driveway) from time to time located on the Project or the public or private access roads thereto, nor make any changes to the grade of the parking areas on its Parcel, which would in either instance inhibit or prevent passage, ingress and egress for pedestrians or vehicles between the parking areas on the Project. The foregoing covenant and agreement shall not apply to temporary interruption of use for the purposes of making repairs, or the laying of or making repairs, to underground services or otherwise as may be specifically permitted by the other Owners. In making the aforesaid repairs, each Owner shall make reasonable efforts to effect the same as expeditiously as possible and to minimize disruption for users of the parking areas. Each Owner will not impose or permit the imposition of parking charges for parking in the parking areas on its Parcel.

[Note to Draft: Address, building location, fencing and access points regarding Block I's use as a theatre. Also address these issues re: Residential Zone]

5.3 **Maintenance of Parking Areas, etc.:**

(a) Subject as herein provided, each Owner agrees with the other Owners that all parking areas, driveways, access roads, and truck loading areas on its respective portion of the Project will, at its own expense, be maintained in good order and repair, be properly drained, be kept in sanitary condition, be cleared promptly of ice, snow, and rubbish, and be kept adequately lighted during and for appropriate periods before and after business hours. The parking areas and driveways on each Parcel shall be kept free of mud, dirt and debris and will be power-swept as required from time to time. Each of the Owners shall be responsible for any striping, repairing, or other resurfacing of parking areas on its Parcel unless the same are necessitated due to the exercise by the other Owner of its servitude rights provided for in Article 3. The grading of the parking areas shall be performed and maintained by each respective Owner for its lands in accordance with the requirements of the City of Boisbriand.

(b) If an Owner, determines, acting in good faith, that any particular item of maintenance to the parking area and/or landscaped area of another Owner has not been properly maintained to the extent required under this Agreement, such Owner shall have the right to give Notice to the other Owner, stating with reasonable particularity the reasonable grounds for its position and requiring the other Owner to carry out such items of maintenance within thirty (30) Business Days of the date of the giving of such Notice. If the Owner to whom such Notice is given has not carried out such item of maintenance within the said thirty (30) Business Day period, or has not responded in writing that it disagrees with the complaining Owner's positions, the Owner giving the Notice shall be entitled to enter upon the Parcel of the other Owner without the same constituting a trespass in order to correct the said item of maintenance, and the Owner on whose Parcel such maintenance was carried out shall forthwith pay to the Owner carrying out such maintenance the cost of same on receipt of proper invoices substantiating such cost.

5.4 **Employee Parking:** Each Owner shall use all reasonable efforts to prevent its employees and, if applicable, its tenants' employees, from parking in the parking areas on the Project in close proximity to the entrances to Buildings from time to time on the Project and to direct such employees to park in designated employee parking areas on the Parcel which they occupy.

5.5 **Common Area:** Except as provided in Section 5.6 below, Faubourg agrees that no improvements may be built or maintained in the Faubourg No Build Zone other than parking lots, driveways, accessways, drive aisles, lights, signs, landscaping, shopping cart corals, underground utilities and improvements normally found in a parking lot. Except as provided in Section 5.8 below,

no portion of such Common Area may be used for any purpose other than the parking of vehicles and vehicular and pedestrian ingress and egress. Without limitation upon the foregoing, but subject to Section 5.8 below, no portion of such Common Area may be used for Christmas tree sales, shows, carnivals, sales by merchants using vehicles or booths, fireworks sales or any other purpose which would limit or impair ingress or egress or the use of any parking spaces.

5.6 **Non-Interference with Common Area:** In order to provide for the orderly development and operation of the Project, the parties agree as follows:

(a) an Owner shall not permit any occupant of its Parcel to carry any merchandise or substance or to perform any activity in relation to the use of its Parcel which would: (1) cause or threaten the cancellation of any insurance covering any portion of the Project; or (2) increase the insurance rates applicable to the Common Area or the Buildings on the other Owner's Parcel over the rates which would otherwise apply unless such occupant shall pay the increased insurance cost on demand. Such payment shall be conditioned upon such occupant receiving written notice of the demand for payment which shall be accompanied by reasonable written evidence from the insurer of the Owner claiming the reimbursement stating that the increase is due solely to the activity performed by the occupant or the merchandise or substance carried by the occupant. If the increase is partially due to the occupant's merchandise, substance or activities, the occupant shall pay its equitable share of the increased premium; and

(b) the restrictions under this Article 5 shall not be deemed to prohibit: (i) the use by an Owner of the sidewalk area on its Parcel adjacent to its Building for food sales by vendors from movable carts or kiosks (such as a hot dog cart and cooler or the like), or for the sale of merchandise, or bulk items (ii) the use of a portion of the Common Areas of the Costco Parcel for a garden centre; (iii) the use by any tenant or occupant of the Faubourg Parcel of the Common Areas of the Faubourg Parcel for a garden Centre; (iv) the use by an Owner of the sidewalks on its Parcel for the storage of shopping carts; (v) the use by an Owner of the Common Areas on its Parcel for the storage of shopping carts, so long as such cart storage does not reduce the number of parking spaces on such Parcel below the minimum parking ratio requirements under 5.1 above; or (vi) the display, sale, storage and/or placement of merchandise or the placement of portable signs within a Building Area on any Parcel, provided that the same does not reduce the number of parking spaces on such Parcel below the minimum parking ratio requirements under Section 5.1 or impair ingress and egress to such parking spaces; (vii) the use by an Owner of the Common Areas on its Parcel for temporary (not exceeding one week in continuous duration) charitable fund raising activities only between January 16 and October 31 in any year provided the same does not reduce the number of parking spaces on such Parcel below the minimum parking ratio requirements under Section 5.1 or impair ingress or egress to such parking spaces.

5.7 **BLOCK 1:** [Note to Draft: insert results of Block 1 discussions under purchase agreement]

## ARTICLE 6: BUILDING CONSTRUCTION AND MAINTENANCE

6.1 **Grades and Elevations:** The Owners shall co-operate with each other and the other Owners' respective representatives and contractors to ensure that the grading on each Owner's property is performed in such a way as to comply with the intent of this Agreement and permit the operation of an integrated development, and initially in conformity with the grading plan approved by applicable authorities.

6.2 **Changes to Site Plan:** The Owner of the Faubourg Parcel shall obtain the prior approval of the Majority of the Costco Parcel Owners to any aspect of the development of its Parcel that varies in any material way from the Site Plan with respect to the Restricted Parcel and the general use concepts shown on the Site Plan in the case of the balance of the Faubourg Parcel, of principally power centre type uses in the Restricted Area and Blocks A, B and C, a convenience centre in Block F and retail and other lifestyle centre uses permitted by Applicable Law within Blocks G, H and I (as such blocks are shown on the Site Plan). For greater certainty, but subject to the express provisions of this Agreement, the Owner of the Costco Parcel will not have any control over or any approval of



any matter relating to the use of all or any part of any Building on the Faubourg Parcel, tenant mix or any related matter.

6.3 **Maintenance of Buildings:** Subject to Article 8, each Owner shall at all times during the term of this Agreement, at no cost and expense to the other Owner, maintain, or cause to be maintained, its Parcel and all Buildings or improvements thereon, in good order and condition and state of repair to the Building Standard.

6.4 **Maintenance of Common Area:**

(a) Subject as hereinafter provided and subject to section 4.3(b) as to maintenance of the Driveway, each Owner shall at all times during the term of this Agreement, at its sole cost and expense, maintain and repair such Owner's Parcel and keep them in good condition and repair, clean, free of rubbish and other hazards to persons using such area, properly lighted and landscaped (in accordance with landscaping plans approved by applicable governmental authorities having jurisdiction). Any unimproved Common Area shall be kept dust and litter-free. The minimum standard of maintenance for the improved Common Area shall be the Building Standard and in compliance with all applicable governmental laws, rules, regulations orders and by-laws, and the provisions of this Agreement. All Common Area improvements shall be repaired or replaced with materials at least equal to the quality of the materials being repaired or replaced so as to maintain the architectural and aesthetic harmony of the Project as a whole.

6.5 **Nuisance:** An Owner shall not use or permit any part of its Parcel to be used in such a manner as to create a nuisance, nor allow or permit any noises, water, vapours, steam, odours, vibrations, or other undesirable effects to emanate from its Parcel or any part thereof or from any equipment or installation therein which in the reasonable opinion of any other Owner is objectionable or causes any interference with the safety, comfort or convenience to the Parcel of another Owner.

6.6 **Insurance:** Each Owner covenants and agrees with the other Owners that:

(a) it shall maintain and keep in force, with a nationally recognized insurance company licensed to do business in Quebec, its own commercial general liability insurance in an amount of not less than five million dollars (\$5,000,000.00) each and every loss or occurrence or series of losses or occurrences arising from, under, or through the use of the reciprocal parking areas or in connection with the enjoyment or exercise of any other rights conferred under this Agreement, and each Owner shall provide proof of such insurance to the others at all times and upon request. Each Owner (in this context the "Releasing Party") hereby agrees to release and indemnify each other Owner (in this context the "Released Party") from and to the extent legally possible for it to do so on behalf of its insurer, hereby waives any liability for any damages, losses, or other liabilities whatsoever arising as a result of occurrences required to be or otherwise insured against by the Releasing Party to the required limit of such insurance and without taking into account any deductible or coinsurance provisions or clauses in the Releasing Party's insurance policy or policies, to the extent the quantum of damages suffered by the Releasing Party exceeds the greater of the insurance proceeds available to the Released Party or the amount of insurance that would be available to the Released Party if it were to subscribe for and maintain in force the comprehensive general liability insurance required by this section and diligently pursued all claims and without regard to its right to self-insure. This release shall extend to and be for the benefit of the hypothecary creditors of each Released Party. Upon the written request of an Owner, each other Owner shall add the requesting Owner and its hypothecary creditors to its commercial general liability insurance policy as named additional insured and such policy shall contain a Waiver of Subrogation and cross-liability endorsements and severability of interest clauses. Notwithstanding the terms of this Subsection 6.6(a), so long as an Owner or its ultimate parent corporation has a net worth of at least One Hundred Million Dollars (\$100,000,000.00), such Owner may "self insure", or provide for a deductible from the said coverage related to its Parcel, to the extent of three percent (3%) of the net worth of such Owner or its ultimate parent corporation in its last annual or fiscal year as certified by an independent certified public accountant and computed in accordance with generally accepted accounting principles consistently applied;

(b) each Owner, acting reasonably, shall have the right for a period of sixty (60) days following the end of each five year period from the date hereof, to give Notice to any other Owner requiring the amount of the coverage of the said liability to be increased; the amount of such increase shall be an amount commensurate with the then current standard of liability insurance coverage with respect to the operation of mutual parking areas and cross-access used in conjunction with commercial operations for comparable projects in Province of Quebec;

(c) if an Owner (the "Defaulting Owner") fails to take out, renew or keep in force the insurance provided for above, then any other Owner may give Notice to the Defaulting Owner requiring compliance with this Section 6.6 and if the Defaulting Owner does not, within 20 Business Days, provide appropriate evidence of compliance with this Section 6.6, such other Owner may obtain some or all of the insurance which the Defaulting Owner has failed to obtain and the Defaulting Owner shall forthwith pay all premiums and other costs incurred by the other Owner forthwith upon demand; and

(d) any insurance required to be carried pursuant to this Section 6.6 may be carried under a policy or policies covering other liabilities and locations of an Owner or subsidiaries, controlling or affiliated corporations of an Owner; provided, however, that such policy or policies apply to the Parcels required to be insured by this Section 6.6 in an amount not less than the amount of insurance required to be carried by such Owner with respect thereto, pursuant to this Section 6.6 on a primary insurance and not secondary or umbrella basis.

6.7 **Indemnification:** Each Owner shall indemnify, defend, and save the other Owners harmless from and against any and all demands, liabilities, damages, expenses, causes of action, suits, claims, and judgments, including reasonable legal fees, arising from injury or death to person or damage to property that occurs on the indemnifying Owner's Parcel. An Owner shall not be entitled to such indemnification for any damage caused to such Owner by reason of its negligence or wilful misconduct. This indemnity shall also extend and apply to any damage to the Parcel of another Owner or injury to any person on the Project caused by or resulting from the operation of a gas or automotive fuelling station operated on the Costco Parcel, as the case may be.

[Note to Draft: Sections 6.6 and 6.7 subject to review by Costco risk management consultants]

## ARTICLE 7: USE RESTRICTIONS

### 7.1 **Costco Use Restriction:**

(a) Neither the Owner of the Faubourg Parcel, nor any company, partnership or other entity directly or indirectly owned or controlled by the Owner of the Faubourg Parcel (collectively "Faubourg's Entities") shall, directly or indirectly, with respect to all or any portion of the Faubourg Parcel described in paragraph 7.1(d) (the "Restricted Property"), (i) sell, lease or otherwise transfer all or any portion of the Restricted Property to, or for a use which is the same as or substantially similar to the Costco Use (ii) sell, lease or otherwise transfer all or any portion of the Restricted Property for use as a grocery store or supermarket that primarily sells food products in bulk quantities (a "Wholesale Grocer"), (iii) sell, lease or otherwise transfer all or any portion of the Restricted Property to any party to support a facility operating either under the Costco Use or as a Wholesale Grocer (i.e., for parking or other necessary improvements for such a facility), or (iv) participate in the planning, development, construction or operation of any facility on all or any portion of the Restricted Property to be operated under either the Costco Use or as a Wholesale Grocer; provided, however, that in no event shall any of the foregoing prohibitions prohibit the Restricted Property from being used for or as a Costco Wholesale warehouse club or any other facility then operated by Costco or by any successor to Costco (collectively, a "Costco Facility"). The foregoing prohibitions include, but shall not be limited to: (i) any business which operates as a warehouse club (other than a Costco Facility), (ii) any business operated under the tradenames of Sam's, BJ's, or Real Canadian Superstore and any of their French language equivalents, and (iii) any business (other than a Costco Facility) similar to those operated under the tradenames Costco, Sam's, BJ's or Real Canadian Superstore and any of their French language equivalents. Faubourg, on its own behalf and on behalf of each of Faubourg's Entities, acknowledges that the breach of the

foregoing restrictive covenant may cause immediate and irreparable harm for which damages are not an adequate remedy and that, to protect against such harm, Costco may seek and obtain from a court of competent jurisdiction the issuance of a restraining order or injunction to prohibit any actual or threatened breach. Such an action for a restraining order or injunction is in addition to and does not limit any and all other remedies provided by law or equity.

(b) Notwithstanding the foregoing, this restrictive covenant is not intended (and shall not be construed) to prohibit any of the following uses on any Restricted Property: (A) a traditional neighbourhood grocery store operation similar to that conducted on the date of this Agreement by a retail grocer such as Provigo, Maxi, Metro, Sobeys, IGA or Super C; (B) a specialty retail store which sells primarily goods in a few specific product categories, such as any one or more of pet food, sporting goods, office supplies, home goods, home improvements, books, toys, party supplies, craft supplies, apparel, shoes, drug store or pharmacy, an automotive fuelling station, furniture, appliances or electronics; or (C) a traditional department store, discount department store, promotional department store or junior department store, such as, in each case, The Bay or Zellers.

(c) This restrictive covenant will cease to apply; (a) 12 months following the date Costco permanently ceases operations of the Costco Facility for the Costco use on the Costco Parcel; (b) 12 months following the date Costco permanently ceases to operate the Costco use from at least 65,000 contiguous and undemised square feet of building area on the Costco Parcel; or (c) if Costco has not commenced the Costco Use on the Costco Parcel within 24 months following the date hereof. If this restriction should cease to apply, the then owner of the Costco Parcel will execute such documents as are reasonably necessary to discharge such restriction from title to the Restricted Property.

(d) The Restricted Property is the Faubourg Parcel except the Residential Zone.

(e) The Residential Zone will be subject to a real servitude burdening the Residential Zone as the servient lands and benefitting the Costco Parcel as the dominant lands limiting the use of the Residential Zone to principally residential uses and, on an ancillary basis, only non-residential uses which are complementary to the residential project (any such ancillary use not to exceed 10,000 square feet). This servitude will be executed concurrently with this deed of servitude and will subsist for as long as the restrictive covenant in Section 7.1(a) continues to apply.

## **7.2 Home Depot Restriction**

(a) Each Owner acknowledges to have taken cognizance of Sections 1.1 (1) of the HD Servitude ("HD Restrictive Covenant") that read as follows:

No portion of the Plant Lands [Note - this is the Project] may be leased, used or occupied for a hardware or home improvement centre such as, without limitation, a Rona, Reno-Depot, Builders' Box, Kent or Lowes store, nor may any portion of the Full Lots be leased, used or occupied for parking for, or any other uses accessory to, such businesses unless such parking or accessory uses are for the benefit of the HD Parcel.

(b) Neither Owner nor any company or other entity directly or indirectly owned or controlled by an Owner, nor any future Owner or any company of other entity directly or indirectly owned or controlled by any such future Owner will use, or permit to be used all or any part of its Parcel and/or all or any part of any Building or other improvement situated on its Parcel at any time in contravention of all or any part of the HD Restrictive Covenant.

**7.3 General Use Restrictions:** Each Owner covenants and agrees that for a term of 50 years commencing on the date of this Agreement it shall not permit its Parcel, other than the Residential Zone which is addressed in Section 7.1(e), to be used for any of the following:

- (a) any cemetery, mortuary or similar service establishment;
- (b) a lumber yard or any operation creating an excessive quantity of dust, dirt, or fly ash;

- (c) any fire, explosion or other damaging or dangerous hazard, including the storage, display or sale of explosives or fireworks, provided that this restriction shall not preclude the sale of fireworks on a temporary basis in connection with holidays;
- (d) any distillation, refining, smelting, agriculture or mining operations or any drilling for or removal of subsurface substances;
- (e) any mobile home or trailer court, labour camp, junk yard, stock yard or animal raising. Notwithstanding the foregoing, a pet store or pet food store or a veterinary hospital which is an accessory use to a pet store or pet food store shall be permitted within the Project;
- (f) any dumping of garbage or refuse, other than in enclosed receptacles intended for such purpose;
- (g) bowling alley, teenage discotheque, discotheque, dance hall, video game parlour, pool room, massage parlour, adult book store, peep show, a facility for the sale or display of pornographic or obscene material, (except an establishment where the sale, exhibition or distribution of pornographic or obscene material is an incidental part of its activities and the floor space for such sale, exhibition or distribution represents not more than five percent (5%) of the aggregate floor space of such establishment), a facility for the sale or display of paraphernalia for use with illicit drugs, off-track betting facility, casino, card club or bingo parlour;
- (h) any fire sale, flea market, bankruptcy sale (unless pursuant to a court order), going out of business sale or auction operation;
- (i) any automobile, truck, trailer, or recreational vehicles sales, leasing or display which is not entirely conducted inside of a Building, any car washing establishment or any automobile body and fender repair shop;
- (j) any church, synagogue, mosque or other place of worship;
- (k) other than in the lands labelled F, G and H or "Residential" on the Site Plan, any apartment, home or residence; and
- (l) as a commercial laundry or drycleaning plant (but a drop off facility for offsite cleaning is permitted), laundromat, any manufacturing operation, factory, heavy industrial use, processing or rendering plant, but light industrial uses are permitted.

**7.4 Restricted Area Use Restrictions** The Owner of the Faubourg Parcel covenants and agrees that for a term of 50 years commencing on the date of this Agreement its shall not permit the Restricted Area to be used for any of the following: theatre, playhouse, cinema or movie theatre.

**7.5 Further Restrictions** The Owner of the Faubourg Parcel covenants and agrees that for a term of 50 years commencing on the date of this Agreement it shall not permit the Restricted Area or the lands labelled "I" on the Site Plan to be used for any of the following:

- (a) any health, exercise, entertainment, recreation or amusement use, whether directed to children or adults. Such prohibited uses shall include, without limitation, any one or more of the following: health spas or clubs, gyms, exercise studios, dance studios, yoga or martial arts schools;
- (b) facility containing gaming equipment, planned play environment, arcade games, amusement gallery, rides, video or redemption games, play for fun casino games, golf simulations, rodeo simulations, other sport simulations and carnival activities;
- (c) any banquet hall, auditorium, or other place of public assembly, any school, training, educational or day care facility, including but not limited to: beauty schools, barber colleges, nursery schools, diet centres, reading rooms (other than in conjunction with a retail book store), places of instruction or other operations catering primarily to students or trainees rather than to customers; provided that this restriction shall not apply to on site employee training by an occupant incidental to the conduct of its business at the Project,

- (d) any hotel, motel or other lodging facility; and
- (e) any office use other than incidental to a retail or retail/wholesale operation.

7.6 **Restaurants** The Owner of the Faubourg Parcel covenants and agrees that for a term of 50 years commencing on the date of this Agreement it shall not permit the No Restaurant Zones to be used for any type of restaurant or food take out facility.

7.7 **Costco Parcel Use**

(a) The Owner of the Costco Parcel agrees that for the first 20 years commencing on the date of this Agreement it shall use the Costco Parcel for no use other than retail and/or warehouse club and/or, subject to applicable municipal requirements and adequate on-site parking for the use, entertainment uses and otherwise in compliance with Section 7.8 of this Agreement.

(b) If at any time after the first 20 years commencing on the date of this Agreement the Owner of the Costco Parcel receives a *bona fide* offer (the "Offer") from a third party to acquire all or any part of the Costco Parcel (the "Subject Interest") for a use other than retail and/or warehouse club and/or, subject to applicable municipal requirements and adequate on-site parking for the use, entertainment uses which offer the Owner of the Costco Parcel has accepted subject to this right, the Owner of the Costco Parcel shall promptly give written notice thereof, together with a true copy of the Offer, to Faubourg or such single entity as a successor or assign to Faubourg as Faubourg has previously notified the Owner of the Costco Parcel in writing (in this section, sometimes referred to as the "Offeree"). Upon receipt of such notice and the Offer, the Offeree shall have the option, but not the obligation, of purchasing the Subject Interest upon the terms and conditions set out in the Offer, save for any terms or conditions which the Offeree cannot reasonably be expected to match, (such as, by way of example, but not by way of limitation, an exchange of lands), that will be deemed excluded from the Offer for the purposes hereof (the "Option"). An Offeree may exercise the Option at any time within 30 Days of receipt of the Offer by giving written notice to that effect to the Owner of the Costco Parcel. Failure by the Offeree to give such notice shall constitute an election by the Offeree not to exercise the Option. If the Offeree does not exercise the Option as aforesaid, the Owner of the Costco Parcel shall be at liberty to complete the transaction set out in the Offer (on terms no less favourable in the aggregate to the Owner of the Costco Parcel under the terms and conditions set forth in the Offer) whereupon the right will be of no further force or effect, unless the transaction contemplated by the Offer does not close, in which case this right will continue in full force and effect. If the Offeree exercises the Option it shall complete the acquisition of the Subject Interest in accordance with the terms and conditions of the Offer. This Section and the Option shall not apply to transfers of parts of the Costco Parcel to any Governmental Authority.

(c) If at any time after the first 20 years commencing on the date of this Agreement the Owner of the Costco Parcel received a *bona fide* offer to lease (the "Lease Offer") of all of the Costco Parcel for a term (taking into account all options to renew, if any) of 20 years or more which offer the Owner of the Costco Parcel has accepted subject to this right, the Owner of the Costco Parcel shall promptly give written notice to the Offeree. Upon receipt of such notice, the Offeree shall have the option (the "Purchase Option") but not the obligation, of purchasing the Costco Parcel for its fair market value, as agreed between the Owner of the Costco Parcel and the Offeree and failing agreement determined by arbitration under Article 11 of this Agreement. The Offeree may exercise the Purchase Option within 30 days of receipt of such notice from the Owner of the Costco Parcel. Failure by the Offeree to give such notice shall constitute an election by the Offeree not to exercise the Purchase Option. If the Offeree does not exercise the Purchase Option, as aforesaid, the Owner of the Costco Parcel may proceed with the Lease Offer, as it may be amended from time to time whereupon this right will be of no further force or effect unless the transaction contemplated by the Lease Offer does not close, in which case this right will continue in full force and effect. If the Offeree exercises the Purchase Option it shall complete the acquisition of the Costco Parcel within 60 days of determination of the fair market value and shall pay a deposit of 5% of the fair market value on its determination.

7.8 **Exclusives** The Owner of the Costco Parcel agrees that it shall comply with the following restrictions (singularly a "Restrictive" and collectively the "Restrictives") in respect of all or any

part of the Costco Parcel and/or all or any part of any Building or other improvement situated on the Costco Parcel for a term expiring on the earlier of 50 years from the date hereof and one year from the date the beneficiary of the corresponding Restrictive ceases to carry on business from its premises on the Faubourg Parcel (unless such tenant is replaced within 1 year of ceasing to carry on business with another tenant for substantially the same use);

(a) a junior or promotional department store as generally carried on by Zellers in the majority of its stores in Quebec on the date hereof (provided that such use is commenced within 24 months from the date hereof failing which this Restrictive shall cease to apply);

(b) a conventional food supermarket as generally carried on by Sobeys, Provigo or Metro in the majority of its stores in Quebec on the date hereof (provided such use is commenced within 24 months from the date hereof failing which this Restrictive shall cease to apply); and

(c) any four of the following as are designated by written notice to the Owner of the Costco Parcel by the Owner of the Faubourg Parcel on or before August 1, 2006 and the corresponding use commences within 24 months from the date of the notice failing which the Restrictive so designated shall cease to apply:

- (i) Arts and Craft Store (e.g., Michaels, Lewiscraft)
- (ii) Bookstore / Musicstore (e.g., Archambault, Renaud Bray, Chapters, Indigo).
- (iii) Computer, Computer Software and Supply Store (e.g., Future Shop, Best Buy, Compu-Smart)
- (iv) Office Supply Store (e.g., Business Depot, Office Place)
- (v) Pet Food and Supply Store (e.g., Petsmart, Petvalue)
- (vi) Sporting Goods Store (e.g., Sportcheck, Forzani, Sports Experts, Atmosphere)
- (vii) Toys and Games Store (e.g., Toys-R-Us)
- (viii) Linen and Bedding Store (e.g., Home Outfitters, Linen'n Things, Linen Chest)
- (ix) Housewares (e.g., Homesense)

in each case, as the corresponding uses are carried on in the majority of such tenant's stores in Quebec on the date hereof.

The letters "e.g." as used above mean "by way of example only" and the examples relate only to use and not to size. Notwithstanding this Section 7.8, none of these restrictions shall preclude the Costco Use on the Costco Parcel.

Each of the parties hereto agree that they will enter into and register an amendment of this Agreement as soon as those 4 Restrictives have been selected by Faubourg. If at the time of selection the wording of a Restrictive has been finalized it will be included in the amendment, if the wording of a Restrictive has not then been finalized, the amendment will include the applicable description contained above and once the wording is finalized, this Agreement will be re-amended and registered to record the exact wording. Costco covenants and agrees with Faubourg that it will cause any entity or entities to which it transfers its Parcel to enter into and execute such amendment to this Agreement to the intent that such amendment will be binding upon its Parcel and rank prior to all encumbrances thereon save those to which the Costco Parcel were subject to at the date of this Agreement.

#### ARTICLE 8: DAMAGE TO IMPROVEMENTS

8.1 Restoration of Common Area In the event of any damage or destruction to the Common Area on any Parcel, whether insured or uninsured, the Owner of such Parcel shall restore, repair or

rebuild such Common Area with all due diligence as nearly as possible to at least as good a condition as it was in immediately prior to such damage or destruction, subject to compliance with applicable governmental requirements.

8.2 **Restoration of Buildings** In the event of damage to or destruction of the Building(s) on an Owners' Parcel, such Owner may, but shall not be obligated to, restore and reconstruct such Building(s). If an Owner so elects, such Owner shall restore and reconstruct such Building(s) to the Building Standard. All such restoration and reconstruction shall be performed in accordance with the following requirements, as the same are applicable thereto:

(a) Prior to commencing reconstruction of any portion of the Common Area on the Restricted Area which will differ in a material way from that shown on the Site Plan, the Owner of the Faubourg Parcel (the "Rebuilding Owner") shall deliver the other Owners three (3) copies of its proposed Common Area plans. The Rebuilding Owner shall use reasonable efforts to ensure that the proposed Common Area plans which are submitted to the other Owners conform to applicable governmental design standards existing on the date submitted to the other Owners. Within fifteen (15) days following delivery of the Common Area plans, the other Owners shall approve the Common Area plans or request reasonable revisions. The other Owners shall give reasons for any request for revision of the Common Area plans. Each Owner shall act in good faith and use reasonable efforts to agree on the final form of the Common Area plans incorporating any revisions requested by the other Owners; provided that the approval of a Majority of the Parcel Owners shall be required in order to effect any such material modifications to the Site Plan. On obtaining such approval, the Owners shall sign such plans as approved and the Rebuilding Owner shall promptly submit such plans for approval by the applicable governmental authorities having jurisdiction.

(b) All work shall be performed in a good and workmanlike manner and shall conform to and comply with: (1) the plans and specifications prepared therefor as aforesaid; (2) all applicable requirements of laws, codes, regulations and by-laws; and (3) all applicable requirements of this Agreement.

(c) All such work shall be completed with due diligence, and at the sole cost and expense of the Rebuilding Owner.

8.3 **Clearing of Premises** Whenever an Owner elects not to restore, repair or rebuild its Building(s) that has or have been damaged or destroyed, such Owner, at its sole cost and expense, shall forthwith raze such Building(s) or such part thereof as has or have been damaged or destroyed (with the remaining portion of such Building(s) being repaired or restored with materials of the same or equal quality to that existing prior to the damage or destruction), clear the premises of all debris, and all areas not restored to their original use shall, at the expense of such Owner, be levelled, cleared and improved with, at the option of the Owner of such Parcel, either landscaping or parking area, of like standard and design as the Common Area of the Project.

## ARTICLE 9: AGREEMENTS FROM THIRD PARTIES

### 9.1 **Consent of Hypothecary Creditors**

Each Owner agrees to obtain from each and every creditor holding a hypothec on its Parcel a written agreement consenting to the grants of servitudes, as hereinbefore provided and each Owner agrees to use reasonable efforts to obtain from every prior and future hypothecary creditor, a covenant substantially in the form of Schedule B.

## ARTICLE 10: FEES

10.1 **Management Fee:** Whenever in this Agreement an Owner (the "Performing Owner") is entitled to perform the obligations of another Owner consequent upon a default by such other Owner hereunder (the "Defaulting Owner"), then in addition to all amounts which the Defaulting Owner may owe to the Performing Owner consequent upon such default, the Defaulting Owner shall pay to

the Performing Owner a management fee equal to 10% of the amount owed by the Defaulting Owner to the Performing Owner. For greater certainty no administrative fee shall be payable to an Owner performing an obligation on behalf of all of the Owners except as set out in this Section 10.1.

#### ARTICLE 11: ARBITRATION

11.1 **Arbitration:** In the event of any dispute between the parties hereto which by the terms hereof are to be settled by arbitration, or which the parties to a dispute agree to be settled by arbitration, such dispute shall be determined by one arbitrator agreed on by the parties and if they cannot agree, one arbitrator appointed by the appropriate judicial authority in Quebec. The constitution and proceedings of such arbitration shall be governed by the applicable arbitration legislation of Quebec and shall be final and binding on the parties hereto, this Section 11.1 being intended to constitute a clause compromissoire for all purposes. All costs and expenses of such proceedings shall be borne by the parties in equal portions, but each party shall be solely responsible for its own legal costs and for the costs of its witnesses.

#### ARTICLE 12: SALE OR TRANSFER OF LANDS

12.1 **Covenants to be Extracted from Grantees:** Each Owner covenants and agrees with the other Owners that upon the sale or transfer of any part or all of its Parcel, it will extract from and have executed by every grantee of any such lands covenants in favour of the other parties to this Agreement and their successors and assigns as are contained in this Agreement, including this covenant, so that all persons hereinafter holding any portion of the Project or claiming title thereto from or under an Owner, or from its successors or assigns, shall be bound to observe or perform the terms and covenants of this Agreement on the part of such Owner to be observed and performed. If any Owner fails to comply with this obligation, its rights and benefits hereunder, and those of its grantee, shall be suspended until it and its grantee comply with such obligation. Notwithstanding the foregoing, the Agreement shall be released from and no covenant shall be required in respect of the sale of any part of the Faubourg Parcel to individual residential owners or occupants.

#### ARTICLE 13: EXPROPRIATION

13.1 **Awards** If any part of the Project, including the Common Area, shall be taken by expropriation or any other similar proceeding, the entire award for value of the land and improvements so taken shall belong to the Owner whose property was so taken or its tenants, as their leases may provide, and the other Owners shall not claim any portion of such award by virtue of any interests created by this Agreement. However, the other Owners may file a claim with the expropriating authority over and above the value of the property so taken or for injurious affection to the extent of any damage suffered by such Owners resulting from the severance of such area taken; provided that such claim does not diminish the award of the Owner whose property was so taken by the expropriating authority. In the case of a partial taking, the Owner whose property was so expropriated shall promptly effect such work as is necessary to put the remaining portion of its Parcel as nearly as practicable to the condition existing just prior to such expropriation, without contribution from the other Owners.

#### ARTICLE 14: GENERAL PROVISIONS

14.1 **Realty Taxes and Assessments:** Each Owner shall, at its sole cost and expense, pay when due, all real estate taxes and assessments which may be levied, assessed, or charged by any public authority against its Parcel, the improvements thereon or any other part thereof including, without limitation, the Common Area on its Parcel. If at any time, the Parcels have not been assigned separate tax roll numbers and the City of Boisbriand or Regional Assessor fails to otherwise allocate the taxes between the Parcels, then the taxes shall be allocated to the Parcels on a proportionate basis based upon the acreage of each Owner's Parcel to the total acreage of the Project, except that any taxes attributable to improvements constructed on any Parcel shall be allocated to the Parcel on



which such improvements are located on the basis of the principles of assessment utilized by the assessor in determining in determining the building component of each applicable unit of assessment. If an Owner shall deem any real estate tax or assessment (including the rate thereof or the assessed valuation of the property) to be excessive or illegal, such Owner shall have the right, at its own cost and expense, to contest the same by appropriate proceedings, and nothing contained in this Section shall require such Owner to pay any such real estate tax or assessment as long as: (a) no other Owners' Parcel would be subject to the risk of immediate foreclosure by such failure to pay (or bond); and (b) the amount or validity thereof shall be contested in good faith. If the failure to pay (or bond) such tax would result in the risk of immediate foreclosure to any other Owners' Parcel, such other Owner, on not less than ten (10) days prior written notice to the nonpaying Owner, shall have the right to pay such tax and shall have a lien on the nonpaying Owners' Parcel for the amount so paid until reimbursed for such payment. Any such lien shall be subject to and junior to, and shall in no way impair or defeat the lien or charge of any Mortgagee.

14.2 **Binding Effect:** All of the limitations, covenants, conditions, servitudes, and restrictions contained herein shall attach to and run with each of the Faubourg Parcel and the Costco Parcel, and shall, except as otherwise set forth herein, benefit or be binding upon the successors and assigns of the respective Owners.

14.3 **Legal Fees:** In the event of any action between the Owners hereto for breach of or to enforce any provision or right hereunder, the unsuccessful Owner in such action shall pay to the successful Owner (which shall be the Owner which obtains substantially all the relief sought) all costs and expenses expressly including, but not limited to, reasonable legal fees incurred by the successful Owner in connection with such action.

14.4 **Breach Shall Not Permit Termination** It is expressly agreed that no breach of this Agreement shall entitle any Owner to cancel, rescind, or otherwise terminate this Agreement, and such limitations shall not affect in any manner any of the rights or remedies which the Owners may have by reason of any breach of this Agreement.

14.5 **Breach - Effect on Hypothecary Creditor and Right to Cure:** Notwithstanding any other provision in this agreement for Notices of default, the hypothecary creditor of any Owner in default hereunder shall be entitled to notice of said default, in the same manner and at the same time that other notices are required to be given under this Agreement; provided, however, that said hypothecary creditor shall have, prior to the time of the default, notified the Owner hereto giving said Notice of default of the hypothecary creditor's mailing address. Any such hypothecary creditor delivering such Notice shall be afforded the same curative rights and grace period as are granted hereunder to the Owner whose Parcel its hypothec affects which shall run concurrent with the curative rights and grace period granted to such Owner. Giving of any Notice of default or the failure to deliver a copy to any hypothecary creditor shall in no event vitiate a Notice delivered to the defaulting Owner.

14.6 **Effect on Third Parties:** Except for Section 14.5 which is for the benefit of a hypothecary creditor (as therein provided), the rights, privileges, or immunities conferred hereunder are for the benefit of the Owners and not for any third party.

14.7 **No Partnership:** Neither this Agreement nor any acts of the Owners hereto shall be deemed or construed by the parties hereto, or any of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between any of the Owners to this Agreement.

14.8 **Modification:** No modification, waiver, amendment, discharge, or change of this Agreement shall be valid unless the same is in writing and signed by the Owners and then only in registerable form, duly registered in the Land Registry Office. Any modification, waiver, amendment, discharge or change which is made without the written consent of a Majority of the Parcel Owners shall be null and void and of no effect.

14.9 **Severability** In the event any term, covenant, condition, provision, or agreement contained herein is held to be invalid, void, or otherwise unenforceable, by any court of competent jurisdiction,

such holding shall in no way affect the validity or enforceability of any other term, covenant, condition, provision, or agreement contained herein.

14.10 **Governing Law:** This Agreement and the obligations of the Owners hereunder shall be interpreted, construed, and enforced in accordance with the laws applicable in the Province of Quebec.

14.11 **Terminology:** All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neuter gender, shall include all other genders; the singular shall include the plural and vice versa.

14.12 **Captions:** Article and section titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this agreement or any provisions hereof.

14.13 **Estoppel Certificate:** Each Owner hereby covenants that within thirty (30) days of the written request of any other Owner it will issue to such other Owner or to any actual or prospective hypothecary creditor, or prospective purchaser of such Owner's Parcel an estoppel certificate stating: (a) whether the Owner to whom the request has been directed knows of any default under this Agreement and if there are known defaults specifying the nature thereof; (b) whether to its knowledge this Agreement has been assigned, modified or amended in any way (and if it has, then stating the nature thereof); (c) whether to the Owner's knowledge this Agreement as of that date is in full force and effect; and (d) such other matters relating to this Agreement as may be requested by such other Owner, actual or prospective hypothecary creditor or prospective purchaser, acting reasonably.

14.14 **Time of Essence:** Time is of the essence with respect to the performance of each of the covenants and agreements contained in this Agreement.

14.15 **Entire Agreement:** This Agreement and the Schedules hereto contain all the representations and the entire agreement between the Owners with respect to the subject matter hereof. Any prior correspondence, memoranda, oral communications or agreements are superseded in total by this Agreement and Schedules hereto. The provisions of this Agreement shall be construed as a whole according to their common meaning and not strictly for or against any Owner.

14.16 **Force Majeure:** Each Owner shall be excused from performing any obligation or undertaking provided in this Agreement, except any obligation to pay any sums of money under the applicable provisions hereof (unless such payment is conditioned upon performance of any obligation or undertaking excused by this Section), if and so long as the performance of any such obligation is prevented or delayed, retarded or hindered by act of God, fire, earthquake, floods, explosion, actions of the elements, war, invasion, insurrection, riot, mob violence, sabotage; inability to procure or general shortage of labour, equipment, facilities, materials or supplies in the ordinary course on the open market, failure of normal transportation, strikes, lockouts, action of labour unions, condemnation, requisition, laws, orders or governmental approvals or permits or any other cause despite the exercise of due diligence and reasonable efforts by an Owner, whether similar or dissimilar to the foregoing, not within the reasonable control of such Owner, other than the lack of or inability to obtain funds.

14.17 **Waiver of Default:** No waiver of any default by any Owner to this Agreement shall be implied from any omission by any other Owner to take any action in respect of such default if such default continues or is repeated. No express written waiver of any default shall affect any default or cover any period of time other than the default and period of time specified in such express waiver. One or more written waivers of any default in the performance of any term, provision or covenant contained in this Agreement shall not be deemed to be a waiver of any subsequent default in the performance of the same term, provision or covenant or any other term, provision or covenant contained in this Agreement. The consent or approval by any Owner to or of any act or request by any other Owner requiring consent or approval shall not be deemed to waive or render unnecessary the consent to or approval of any subsequent similar acts or requests. The rights and remedies given to any Owner by this Agreement shall be deemed to be cumulative and no one of such rights and

remedies shall be exclusive of any of the others, or if any other right or remedy at law or in equity which any such Owner might otherwise have by virtue of a default under this Agreement, and the exercise of one such right or remedy by any such Owner shall not impair such Owner's standing to exercise any other right or remedy.

#### ARTICLE 15: ENUREMENT

15.1 **Enurement and Term:** This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors in title to portions of the Project during a term of 50 years (the "Term"), and with respect to the servitudes and restrictions contained in Sections 3.1, 3.2 and all provisions hereof related thereto, in perpetuity unless otherwise agreed by all Owners. The provisions of Article 7.1 shall apply during the period referred to in each, even if such period extends beyond the expiry of the Term.

#### ARTICLE 16: COUNTERPARTS

16.1 **Counterparts:** This Agreement may be executed in several counterparts, each of which when executed by the parties hereto shall be deemed to be an original, and such counterparts shall together constitute one and the same instrument. The execution of this Agreement or any other writing by any party hereto or thereto will not become effective until such Agreement or other writing or until counterparts hereof or thereof, as the case may be, have been executed and delivered to one another by all parties hereto or thereto.

#### ARTICLE 17: NOTICE

17.1 **Notice:** Any notice or other communication required or permitted to be given hereunder from one party to the other shall be made in writing and sent by prepaid registered post, return receipt requested, or hand delivered or sent by telecopier during normal business hours of the recipient party, addressed to it as follows:

|              |  |
|--------------|--|
| to Faubourg: | Faubourg Boisbriand G.P. Inc.<br>1010 Sherbrooke St. West, Suite 525<br>Montreal, Québec H3A 2R7 |
|              | Attention: Pierre Martin and John C. Davies<br>Fax No.: 514 843-9112                             |

|                 |  |
|-----------------|--|
| with a copy to: | De Grandpré Chait LLP<br>1000 De La Gauchetière St. West, Suite 2900<br>Montréal, Québec H3B 4W5 |
|                 | Attention: Fredric L. Carsley<br>Fax No.: 514 878-5762   |

to Costco:

Costco Wholesale Canada Ltd.  
415 West Hunt Club Road  
Ottawa, ON K2E 1C5

Attention: Corporate Counsel  
Fax No.: 613 221-2281

with a copy to:

McCarthy Tétrault LLP  
Suite 4700, Toronto Dominion Bank Tower  
Toronto-Dominion Centre  
Toronto, ON M5K 1E6

Attention Abraham Costin  
Fax No.: (416) 868-0673

or to such other address in Canada as either party may in writing advise by notice given in accordance with this Section. Any such notice or other communication will be deemed to have been given, if mailed as aforesaid, on the date of delivery by postal authorities, or if hand delivered or sent

by telefax as aforesaid, on the first Business Day after the notice or communication is received by the addressee.

**FAUBOURG BOISBRIAND G.P. INC. AS GENERAL  
PARTNER OF FAUBOURG BOISBRIAND LIMITED  
PARTNERSHIP**

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

**COSTCO WHOLESALE CANADA LTD.**

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

**Schedules:**

- A: (A-1) – Building Areas
- (A-2) – Service and Access Servitudes
- B: Form of Hypothecary Creditor Consent

**SCHEDULE A**

**SITE PLAN**

**SCHEDULE B**

The undersigned, the actual or proposed hypothecary creditor of those lands and premises known and designated as lot • of the Cadastre of Quebec, Registration Division of • (the "Immovable"), for good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by the undersigned) hereby covenants with [add names of all parties to this agreement or their respective successors in title and the holders of all charges on their respective Parcel in each case as of the date of which this covenant is given) and their respective successors and assigns that:

1. If the undersigned, in the context of the exercise of its hypothecary rights:
  - (a) takes possession of the Immovable; or
  - (b) becomes the owner of the Immovable;

then the undersigned will, only during such period of time as it is in possession as aforesaid or is the owner of the Immovable, observe and perform all the obligations of its debtor under the agreement registered at the Registry Office of the Registration Division of Terrebonne under number • (the "Agreement").

2. If the undersigned sells the Immovable either by sale by the creditor or sale by judicial authority or otherwise, it will cause the purchaser to covenant with all other Owners in each case as of the date of such sale, to observe and perform all of the obligations in this Schedule to be performed by the purchaser of the Immovable from and after the date of such sale, whereupon the undersigned all be released from all of its obligations to the other Owners.
3. Upon the undersigned making any assignment or other disposition of its hypothecary rights with respect to the Immovable, the undersigned will cause the person to whom the assignment or other disposition is made to covenant likewise, whereupon the undersigned will be released from all of its obligations to the other Owners.
4. Under no circumstances will the undersigned, or any successor of the undersigned for any assignee of any of the undersigned rights be liable for any default of its debtor arising prior to the date possession or ownership (which ever first occurs) of the Immovable is obtained.

**IN WITNESS WHEREOF** the undersigned has executed under seal this covenant.

**DATED** the • (•) day of • Two Thousand • (20•)

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

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

## SCHEDULE "C"

### ADDITIONAL PROHIBITED USES

- Any church, synagogue, mosque or other place of worship, funeral parlour, hotel/motel, circus, carnival, amusement park, auction or flea market.
- Any army-navy type surplus or salvage or odd-lot-type store (other than clearance or warehouse style retail outlets).
- Any pawn shop or second hand store or similar type of operation.
- A hospital.
- A funeral establishment, mortuary, cemetery or similar service establishment.
- Off-track betting (provided that the sale of lottery tickets shall not be prohibited).
- A bingo hall or any facility for providing games of chance, but the sale of lottery tickets shall not be prohibited.
- A video game or amusement arcade, except as an incidental part of another primary business.
- A lumber yard or any operation creating an excessive quantity of dust, dirt or fly ash.
- Any fire, explosion or other damaging or dangerous hazard, including the storage, display or sale of explosives or fireworks, provided that this restriction shall not preclude the sale of fireworks on a temporary basis in connection with holidays.
- Any distillation, refining, smelting, agriculture or mining operations or any drilling for or removal of subsurface substances;
- Any mobile home or trailer court, labour camp, junk yard, stock yard or animal raising. Notwithstanding the foregoing, a pet store or pet food store or a veterinary hospital that is an accessory use to a pet store or pet food store shall be permitted.
- Any dumping of garbage or refuse, other than in enclosed receptacles intended for such use.
- Bowling alley, teenage discotheque, discotheque, dance hall, video game parlour, pool room, massage parlour, adult book store, peep show, a facility for the sale or display of pornographic or obscene material (except an establishment where the sale, exhibition or distribution of pornographic or obscene material is an incidental part of its activities and the floor space for such sale, exhibition or distribution represents not more than five percent (5%) of the aggregate floor space of such establishment, a facility for the sale or display of paraphernalia for use with illicit drugs, off-track betting facility, casino, card club or bingo parlour;
- Any fire sale, flea market, bankruptcy sale (unless pursuant to a court order), going out of business sale or auction operation.
- Any automobile, truck, trailer or recreational vehicles sales, leasing or display that is not entirely conducted inside of a building, any car washing establishment or any automobile body and fender repair shop.

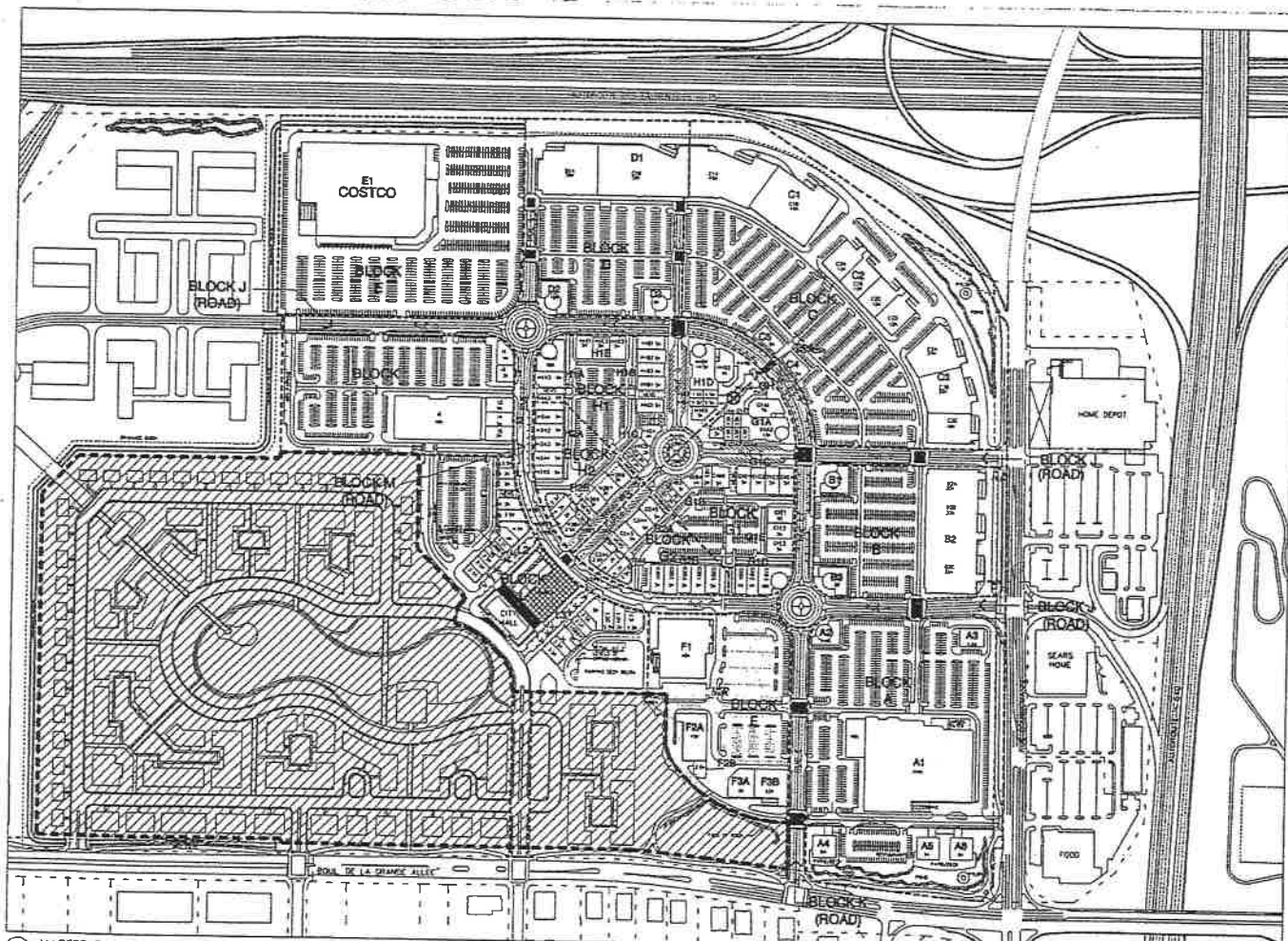







- Any apartment, home or residence (save and except for any contained in the Town Centre).
- A commercial laundry or dry-cleaning plant (but a drop-off facility for offsite cleaning is permitted), Laundromat, any manufacturing operation, factory, industrial use, processing or rendering plant.

**EXHIBIT D-1**

**PLAN CROSS-HATCHING RESIDENTIAL ZONE**



1 MASTER PLAN - LEASING PLAN  
1/2000

|   |                |
|---|----------------|
| Revision<br>No. Description Date By   |                |
|   |                |
| No. Description Date Checked<br>Issued for  |                |
| Project<br>No. & Location   |                |
|    | GMP<br>107     |
| Drawn by: CAD   | Scale: 1:2000  |
| Checked by:   | Date: 05.05.12 |
| Printed:  | No. 04034      |
| <b>Faubourg Boisbriand</b><br>Boisbriand, Québec<br>for<br> <b>CHEROKEE CANADA</b> |                |
| Drawing title:<br><b>SITE PLAN</b>  |                |
|  <b>DCYSM</b> <small>peilow + associates</small><br>ARCHITECTS IN JOINT VENTURE    |                |
| 2000 Ave. 6600, Suite 600<br>Boisbriand, Québec<br>Tel: 514 947 1177 Fax: 514 947 2287  |                |

**EXHIBIT E**

**UNDERTAKING CONCERNING CONFIDENTIALITY  
SECTION 6.6 OF SELLER'S AGREEMENT OF PURCHASE AND SALE  
NON-DISCLOSURE AGREEMENT**

*McCarthy Tétrault LLP TDO-RED #8272854 v. 1*