

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:	)	Chapter 7
	)	BKY Case No. 03-47742-RJK
Mahfood Abdelrahman Btoush,)	
	)	<u>NOTICE OF HEARING AND MOTION</u>
Debtor(s)	)	<u>TO ASSUME, CURE AND ASSIGN</u>
	)	<u>LEASE</u>

TO: The United States Bankruptcy Court, the United States Trustee, the debtor, the debtor's attorney, and all parties who requested notice under Bankruptcy Rule 2002:

1. Julia A. Christians is the duly qualified and acting trustee in this case.
2. The Court will hold a hearing on the trustee's Motion for Authority to Assume Lease with Aham LLC for the premises described herein, to cure all defaults therein, to compensate lessor for actual pecuniary loss by reason of existing default, and to assign the lease to Ali Sabhari, on October 14, 2004, at 10:30 a.m. in Courtroom No. 8 West, U.S. Courthouse, 300 South Fourth Street, Minneapolis, MN 55415, or as soon thereafter as counsel can be heard.
3. Any entity opposing the motion under Local Rule 9013-2 is required to file and serve a response, including a memorandum of facts and law and any opposing affidavit, not later than October 13, 2004. **If no response is timely served and filed, the Court may grant the relief requested without a hearing.**
4. This motion is brought on an expedited basis for the reason that the 60 day period in which to timely assume or reject leases expires October 15, 2004. There was not sufficient time between confirmation of the offer to assume, cure and assign the lease and said expiration date in which to bring the motion on full notice. Parties were served with the Motion and notice of the hearing six days prior to the hearing.

5. On or about February 1, 2003, Debtor entered into a lease as lessee/assignee with Ali Sabhari as assignor and Sisket Investments, LLC as lessor of that certain retail space known as 1845 Nicollet Avenue, Minneapolis, MN (the "Lease"). The terms of the assigned lease were for 5 (five) years commencing on April 1, 2001 at annual rental amounts of \$42,000, \$43,200, \$49,200, \$49,200 and \$49,200, respectively. On information and belief, via assignment or name change, the property owner/lessor is now known as Aham LLC.

6. Said Lease constitutes valuable property of the estate. The trustee has received a firm offer from Ali Sabhari to regain his interest in said Lease by paying to the estate the sum of \$2,000.00 plus all such amounts necessary to cure the defaults under the Lease, in exchange for an assignment of the remaining term of said Lease by the trustee. Mr. Sabhari represents he is able to satisfy and carry out all of the obligations of the lessee under said Lease and to assure future performance of the lessee thereunder.

7. On information and belief, at this time the lease is in default in the following respects: nonpayment of rent in the amount of \$18,700, plus compensation sought by the landlord of its attorney's fees in the amount of \$1,950.

8. On condition of payment by Ali Sabhari or other assignee of the afore-mentioned amounts, the trustee is prepared to cure the aforementioned defaults and to compensate Aham LLC, the lessor, for its actual pecuniary loss resulting from such defaults.

9. Should any party object to the proposed assignment of Debtor's interest in the Lease to Ali Sabhari and make a counter-offer to the estate for its interest in the Lease, the Trustee reserves the right to hold an auction and/or otherwise accept bids from interested parties for the estate's interest.

WHEREFORE, the Trustee asks that she be permitted to assume the unexpired lease between the debtor and Aham LLC and concurrently therewith, for authority to assign said lease pursuant to 11 U.S.C. § 365(c) to Ali Sabhari for the sum of \$2,000 plus all amounts necessary to cure the defaults under the Lease and satisfy all necessary claims for compensation resulting from the defaults, and for such other relief as the court deems just and proper.

Dated: October 8, 2004

/e/ Julia A. Christians

Julia A. Christians, Trustee
One Financial Plaza, Suite 2500
120 South Sixth Street
Minneapolis, MN 55402
(612) 338-5815

VERIFICATION

Julia A. Christians, being duly sworn, says that she is the Chapter 7 Trustee in this action, that she has read this Verified Notice of Hearing and Motion to Assume, Cure and Assign Lease and that it is true of her own knowledge, to the best of her information.

/e/ Julia A. Christians

Julia A. Christians

ASSIGNMENT AND ASSUMPTION OF LEASE

THIS ASSIGNMENT AND ASSUMPTION OF LEASE is made as of the 1st day of February, 2003, by and among Ali Sabhari ("Assignor"), Mahfood Abdalrhman Botoush, having an address of 3512 Bryant Avenue South, Apt. 207, Minneapolis, Minnesota 55408 ("Assignee") and Sisaket Investments, LLC, having an address of 2632 Nicollet Avenue South, Minneapolis, Minnesota ("Landlord").

RECITALS

Assignor, as "Tenant," and Landlord made and entered into that certain Retail Lease dated April 1, 2001 (the "Lease"), demising certain leased premises located at 1845 Nicollet Avenue, City of Minneapolis, State of Minnesota, containing approximately 3,720 square feet. Assignor desires to assign the Lease to Assignee. The Lease prohibits assignment of the Lease without the Landlord's consent in writing. Landlord is willing to consent to this Assignment of the Lease by Assignor to Assignee, but only on the terms and subject to the conditions set forth below.

AGREEMENTS

NOW THEREFORE, in consideration of these premises, and for other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, the parties do hereby agree as follows:

1. Effective as of February 1, 2003, Assignor assigns to Assignee all of his right, title and interest in and to the Lease.
2. Assignor hereby surrenders and assigns to Assignee, and Assignee hereby accepts the surrender and assignment from Assignor of, all of Assignor's right, title and interest in, to and under the Lease, a copy of which Lease is attached hereto as Exhibit A and made a part hereof.
3. Assignee hereby assumes and agrees to be bound by and pay and perform all of the obligations, terms, covenants and conditions which, pursuant to the Lease, are to be observed, kept and performed by the Assignor, effective February 1, 2003.
4. Assignor hereby agrees to remain liable for the performance of all terms, covenants and conditions of the Lease to be performed by Assignee and by Assignee's successors and assigns thereunder.
5. Landlord consents to this Assignment of the Lease by Assignor to Assignee upon the express conditions that: (a) Assignor remains liable for the full and due performance by the Assignee, and by Assignee's successors and assigns, of all terms,

LEASE AGREEMENT

BY AND BETWEEN

SISAKET INVESTMENTS, LLC
("LANDLORD")

and

Ali Sabhari
("TENANT")

FOR

1845
~~1815~~ **NICOLLET AVENUE**

RETAIL LEASE
1815 Nicollet Avenue
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RETAIL LEASE
REFERENCE PAGE

RETAIL CENTER: 1815 NICOLLET AVENUE

LANDLORD: SISAKET INVESTMENTS, LLC

LANDLORD'S ADDRESS: Sisaket Investments, LLC
2632 Nicollet Avenue South
Minneapolis, MN

LEASE REFERENCE DATE: August 2nd 2001

TENANT: Ali Sabhari

TENANT'S ADDRESS & TELEPHONE: _____

(a) As of beginning of term: _____

(b) Prior to beginning of Term (if different): April 1st 2001

PREMISES IDENTIFICATION: Suite Number 1845
(for outline of Premises see Exhibit A-1)

PREMISES AREA: approximately 3,720 sq. ft.

USE (AUTHORIZED BUSINESS): Dollar Store, Tobacco, Deli

TENANT'S TRADE NAME (if any): Z Food & Dollar Store Market

POSSESSION DATE: April 1st 2001

SCHEDULED COMMENCEMENT DATE: April 1st 2001

TERMINATION DATE: March 31st 2006

TERM OF LEASE: 5 years and 8 months beginning on the Commencement Date and ending on the Termination Date (unless sooner terminated pursuant to the Lease)

OPTIONS: 1 options to renew for a term of 5 years each

ANNUAL RENTAL:

(a) For initial Term: Yr. 1: 42,000.00 Yr. 4: 45,200.00
Yr. 2: 43,800.00 Yr. 5: 47,200.00
Yr. 3: 44,200.00

(b) For first renewal Term (if any): _____

(c) For second renewal Term (if any): _____

MINIMUM RENTAL (Article 3): Yr. 1: \$3,500. per month Yr. 4: \$4,100. per month
Yr. 2: \$3,600. per month Yr. 5: \$4,100. per month
Yr. 3: \$4,100. per month

TENANT'S PROPORTIONATE SHARE: 37.2% (south building 10,000 SQF)

PROMOTION FUND: \$ _____

SECURITY DEPOSIT: \$ 3,500.00

HOURS OF OPERATION: _____

The Reference Page information is incorporated into and made a part of the Lease Agreement. In the event of any conflict between any Reference Page information and the Lease, the Lease shall control. This Lease includes Exhibits A-1, A-2 and B, all of which are made a part of this Lease.

LANDLORD: Sisaket Investment, LLC.

By: [Signature]

Its: owner

Dated: August 2nd 2001

TENANT: Ali Sabhari

By: [Signature]

Its: _____

Dated: August 3-2001

RETAIL LEASE AGREEMENT

PREAMBLE

THIS LEASE AGREEMENT (hereafter called the "Lease Agreement") made as of the Reference Date set forth on the Reference Page, by and between Steaker Investments, LLC, a Minnesota limited liability company (hereafter called the "Landlord"), and the Tenant as listed on the Reference Page (hereafter called the "Tenant").

WITNESSED

FOR AND IN CONSIDERATION of good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, Landlord does hereby lease and let unto Tenant, and Tenant does hereby hire, lease and take from Landlord, that area outlined in red and/or cross-hatched on Exhibit A-1 attached hereto, and by this reference incorporated herein, and described on the Reference Page, (hereafter called the "Premises") at 1815 Nicollet Avenue, Minneapolis, Minnesota (hereinafter called the "Retail Center"). The term Retail Center as it is used herein shall consist of the land and building(s) set forth in Exhibit A-2 hereto.

ARTICLE 1 - TERM

A. To have and to hold said Premises for an initial term of years and certain renewal terms as set forth on the Reference Page (hereafter called the "Term") upon the rentals and subject to the conditions set forth in this Lease Agreement, and the Exhibits attached hereto. The Commencement and Termination Dates are specifically subject to the provisions of Article 5 hereof. The term "Lease Year" shall mean that period from the Commencement Date to the next succeeding anniversary date of the Commencement Date. Thereafter, "Lease Year" shall mean successive twelve (12) month periods following the expiration of the first Lease Year. Should the commencement of the rental obligations of Tenant under this Lease Agreement occur for any reason on a day other than the first day of a calendar month, then in that event solely for the purposes of computing the Term of this Lease Agreement, the Commencement Date of the Term shall become and be the first day of the first full calendar month following the date when Tenant's rental obligation commences and the Termination Date shall be adjusted accordingly; provided, however, that the Termination Date shall be the last day of a calendar month, which date shall in no event be earlier than the Termination Date set out above.

B. Tenant shall, provided the Lease is in full force and effect and Tenant is not in default under any of the other terms and conditions of the Lease at the time of notification or commencement, have the option(s) to renew this Lease Agreement set forth on the Reference Page, if any, on the same terms and conditions set forth in the Lease Agreement, except as modified by the terms, covenants and conditions as set forth below:

1. If Tenant elects to exercise said option(s), then Tenant shall provide Landlord with written notice no earlier than the date which is one year prior to the expiration of the then current term of the Lease Agreement but no later than the date which is one hundred eighty (180) days prior to the expiration of the then current term of this Lease Agreement. If Tenant fails to provide such notice, Tenant shall have no further or additional right to extend or renew the term of the Lease Agreement. The notice shall be given in the manner provided in the Lease Agreement for the giving of notices to Landlord.

2. The annual rental in effect at the expiration of then current term of the Lease Agreement shall be adjusted as provided in Article 3 below.

3. The option(s) shall not be transferable; the parties hereto acknowledge and agree that they intend that the aforesaid option to renew this Lease Agreement shall be "personal" to Tenant as set forth above and that in no event will any assignee or sublessee have any rights to exercise the aforesaid option to renew.

4. If Tenant exercises the renewal option(s) provided for above, Tenant shall have no further right to extend the Term of the Lease Agreement after the expiration of the last option period.

ARTICLE 2 - USE

A. The Premises shall be used by the Tenant solely for the retail purpose(s) set forth on the Reference Page (the "Authorized Business"). Landlord on its part covenants and agrees that Tenant, upon payment of Minimum Rental together with Additional Rent and any other sums due hereunder and upon performance of Tenant's covenants and agreements herein contained, shall peaceably and quietly have, hold and enjoy the Premises during the Term, subject to the rights of any present or future holder of a deed in trust or mortgage to which this Lease, as long as Tenant's lease rights are recognized by said holder, shall be deemed to be subordinated.

B. The Premises will be used during the Term only for the purpose set forth above and for no other purpose whatsoever without the prior written consent of Landlord. Tenant shall apply for all such licenses, permits and approvals necessary for it to conduct the Authorized Business within the Premises, and shall diligently pursue such applications, and take all reasonable actions within its control to obtain such licenses, permits and approvals. The obtaining and retaining of such licenses shall be Tenant's sole responsibility, the failure of which shall be deemed a default hereunder.

C. The Premises shall not be used in violation of any applicable federal, state, or local law, ordinance, rule, or regulation, and Tenant shall comply with the same at its sole cost and expense.

D. During the Term, Tenant will continuously conduct the Authorized Business within the Premises.

E. Tenant shall not use the Retail Center walkways, sidewalks and parking area adjacent to the Premises, or other parts of the parking and Common Areas forming part of the Retail Center, for business purposes (including, without limitation, the distribution of handbills or advertising of any type), except for ingress and egress and parking, without the prior written consent of Landlord, which consent may be withheld or denied for any or no reason.

F. Landlord makes no representation as to the identity of other tenants in the Retail Center, and said tenants may be changed from time to time without any notice to Tenant.

G. Tenant covenants and agrees that Tenant, its agents, contractors, licensees and invitees shall not handle, use, manufacture, store or dispose of any flammables, explosives, radioactive materials, hazardous wastes or materials (as may be defined by Federal or State Law), toxic wastes or materials, petroleum products, or other similar substances or derivatives thereof (collectively "Hazardous Materials"), on, under, or about the Premises, without Landlord's prior written consent (which consent may be withheld or denied for any or no reason); provided, however, that Tenant may handle, store, or use products containing small quantities of Hazardous Materials, which products are of a type customarily found in businesses of a similar nature (such as cleaning fluid, cleaning supplies and the like); provided further that Tenant shall handle, store, and use and dispose of any such Hazardous Materials in a safe and lawful manner in compliance with all governmental rules, laws and regulations, and shall not allow such Hazardous Materials to contaminate the Premises, Retail Center, or the surrounding environment. If Tenant's handling (including transportation to and from the Premises), storage, use or disposal of any such Hazardous Materials on or from the Premises results in the contamination of the Premises, the soil or surface or ground water of the Retail Center, or loss or damage to persons or property, then Tenant agrees to: 1) notify Landlord immediately of any contamination, claim of contamination, loss or damage, 2) after consultation with Landlord, clean up the contamination in full compliance with all applicable statutes, regulations and industry standards and 3) indemnify, defend and hold Landlord harmless from and against any claims, suits, causes

of action, costs and fees, including attorneys' fees, arising from or connected with any such contamination, claim of contamination, loss or damages. The provisions of this paragraph shall survive the expiration or earlier termination of this Lease Agreement. Any and all consents of Landlord pursuant to this paragraph must be in writing.

H. Tenant shall not perform any act or carry on any practice that may injure the Premises or any other part of the Retail Center, or that may cause any offensive odors or loud noise (including, but without limitation, the use of loudspeakers), or that may constitute a nuisance or menace to any other occupant or other persons in the Retail Center, and in no event shall any noises or odors be emitted from the Premises.

I. Tenant agrees that it and its employees and others connected with the Tenant's operations at the Premises shall abide by all reasonable rules and regulations from time to time established by the Landlord by written notice to the Tenant with respect to the Retail Center and/or the Common Area portions thereof.

J. Tenant shall conduct the Authorized Business in the Premises in such a manner that the Tenant's invitees and patrons shall not collect, line up, loiter or linger outside of the Premises, but shall be entirely accommodated within the Premises.

K. Tenant shall not use the name of the Retail Center directly or indirectly in connection with the Tenant's business, except as a part of the Tenant's address and except in connection with Tenant's advertising of its business address, and the Landlord reserves the right to change the name of the Retail Center at any time. Landlord hereby consents to Tenant's use of the Retail Center's name as set forth on the Reference Page in connection with its Authorized Business, but only in connection with its business operations within the Retail Center.

L. Tenant shall always conduct its operations in the Premises under its present trade name, unless the Landlord shall otherwise consent in writing.

M. Tenant shall keep the display windows in the Premises clean and in an orderly and presentable manner.

N. Tenant shall receive and deliver goods and merchandise only in the manner, at such times, and in such areas, as may be designated by the Landlord; and all trash, refuse, and the like shall be kept in covered metal or plastic cans, which metal cans shall be kept within the Premises at all times, unless exterior storage is specifically designated for Tenant's use by Landlord.

O. The Tenant shall not place on the exterior or interior of the Premises (including, but without limitation, windows, doors, and entrance lobbies) any signs other than those which shall first have been approved by the Landlord, including replacements thereof.

P. The Premises (as well as all doors and entryway thereto) shall be kept open for business at least for the hours as set forth on the Reference Page, Retail Center recognized holidays specifically excluded. Tenant agrees to operate the Authorized Business within the Premises for the foregoing hours (or if none are listed, then, for the hours for which a majority of the Retail Center's tenants operate) continuously throughout the Term; subject, however, to the other terms and conditions of this Lease Agreement.

Q. Tenant covenants and agrees (insofar as and to the extent that it is lawful so to agree) that for a period commencing with the execution of this Lease Agreement and continuing for the full Term, neither the Tenant nor any of its affiliated, parent, or subsidiary companies will operate, either directly or indirectly, another store with the same or similar use as the Authorized Business of the same name, or any other name within a reasonable area of the Premises, without the prior written consent of the Landlord. Tenant acknowledges that the area within a circle having as its center the Premises and having a radius of five (5) miles is a reasonable area for this purpose.

ARTICLE 3 - RENTALS

A. **Minimum Rental.** Tenant agrees to pay to Landlord as minimum rental (hereinafter called "Minimum Rental") for the Premises, without notice, setoff or demand, the sum(s) as set forth on the Reference Page per month for each month during the Term, said monthly installments to be due and payable by Tenant in advance on the first day of each calendar month during the Term of this Lease Agreement, at the office of Landlord set forth in the preamble to this Lease Agreement or at such other place as Landlord may designate. In the event of any fractional calendar month, Tenant shall pay for each day in such partial month a rental equal to 1/30 of the Minimum Rental. Tenant agrees to pay, as Additional Rent, which shall be collectible to the same extent as Minimum Rental, all amounts which may become due to Landlord hereunder and any tax, charge or fee that may be levied, assessed or imposed upon or measured by the rents reserved hereunder by any governmental authority acting under any present or future law before any fine, penalty, interest or costs may be added thereto for non-payment, except for any tax based on Landlord's income or revenue.

B. **Rental for Renewal Terms.** The annual rental in effect at the expiration of then current Term of the Lease Agreement shall be adjusted as reflected on the Reference Page for each optional renewal Term, if any, and the Minimum Rental payable in accordance with paragraph A of this Article shall thereafter be an amount equal to 1/12 of said adjusted annual rental for each Lease Year of the then current renewal Term.

C. **Additional Rent.** Wherever it is provided in this Lease that Tenant is required to make payment to Landlord, including but not limited to, Tenant's Proportionate Share of Real Estate Taxes, Common Area Maintenance and Promotional Fund, such payment(s) shall be deemed "Additional Rent" and all remedies applicable to the nonpayment of rent shall be applicable thereto. Notwithstanding the foregoing, such Additional Rent shall not be deemed to be Minimum Rental, but shall be payable along with the Minimum Rental, as and when such Minimum Rental is due hereunder.

D. **Late Rent.** Tenant recognizes that late payment of any Minimum Rental, Additional Rent or other sum due under this Lease Agreement will result in administrative expense to Landlord, the extent of which additional expense is extremely difficult and economically impractical to ascertain. Tenant therefore agrees that if rent or any other sum is not paid when due and payable pursuant to this Lease Agreement, a late charge shall be imposed in the amount of Two Hundred Dollars (\$200.00). The amount of the late charge to be paid by Tenant shall be reassessed and added to Tenant's obligation for each successive monthly period until paid. The provisions of this Section in no way relieve Tenant of the obligation to pay rent or other payments on or before the date on which they are due, nor do the terms of this Section in any way affect Landlord's remedies pursuant to Article 20 of this Lease Agreement in the event said rent or other payment is unpaid after date due.

E. **Security Deposit.** Tenant shall deposit the Security Deposit, if any is listed on the Reference Page, with Landlord upon the execution of this Lease Agreement. Said sum shall be held by Landlord as security for the faithful performance by Tenant of all the terms, covenants and conditions of this Lease Agreement to be kept and performed by Tenant and not as an advance rental deposit or as a measure of Landlord's damage in case of Tenant's default. If Tenant defaults with respect to any provision of this Lease Agreement, Landlord may use any part of the Security Deposit for the payment of any rent or any other sum in default, or for the payment of any amount which Landlord may spend or become obligated to spend by reason of Tenant's default, or to compensate Landlord for any other loss or damage which Landlord may suffer by reason of Tenant's default. If any portion is so used, Tenant shall within five (5) days after written demand therefor, deposit with Landlord an amount sufficient to restore the Security Deposit to its original amount, and Tenant's failure to do so shall be a material breach of this Lease Agreement. Except to such extent, if any, as shall be required by law, Landlord shall not be required to keep the Security Deposit separate from its general funds, and Tenant shall not be entitled to interest on such deposit. If Tenant shall fully and faithfully perform every provision of this Lease Agreement to be performed by it, the Security Deposit or any balance thereof shall be returned to Tenant at such time after termination of this Lease Agreement when Landlord shall have determined that all of Tenant's obligations under this Lease Agreement have been fulfilled.

F. **Promotion Fund.** If Landlord has or establishes a promotion fund in further the awareness and promotion of the Retail Center, Tenant shall pay to Landlord, the amount set forth on the Reference Page each month in the same manner as Minimum Rental.

In the event a Merchants Association shall at the option of Landlord be established in lieu of a Promotion Fund, Tenant agrees to promptly become a member of, participate fully in, and remain in good standing in said Merchants Association organized to promote the activities of the Retail Center. Tenant agrees to pay to such Merchants Association annual dues and/or special assessments as shall be fixed by the Merchants Association's Board of Directors payable in a manner prescribed by the Merchants Association.

ARTICLE 4 - CONSTRUCTION

Tenant shall take the Premises in its "as is" condition; except for those alterations, if any, set forth specifically as Landlord's responsibilities on Exhibit B ("Landlord's Work"). The Landlord's Work may be performed during the "Move-in Period" (as defined in Article 5 below) and Tenant hereby grants to Landlord the right and license to enter the Premises for purposes of doing Landlord's Work. Any improvements to the Premises other than the Landlord's Work and the furnishing of the Premises shall be made by Tenant at the sole cost and expense of Tenant, subject to all other provisions of this Lease Agreement, including compliance with all applicable governmental laws, ordinances and regulations and Exhibit B attached hereto.

ARTICLE 5 - POSSESSION AND MOVE-IN PERIOD

Except as otherwise provided, Landlord shall deliver possession of the Premises on or before the Possession Date set forth on the Reference Page to allow Tenant to install trade fixtures and equipment ("Move-in Period"), but such delivery of possession prior to the above specified Commencement Date shall not affect the Termination Date of this Lease Agreement. Failure of Landlord to deliver possession of the Premises by the Possession Date, due to a holding over by a prior tenant, or any other cause beyond Landlord's control, or acts of God, shall automatically postpone the Commencement Date and shall extend the Termination Date by periods equal to those which shall have elapsed between and including the date hereinabove specified for commencement of the Move-in Period and the date on which possession of the Premises is delivered to the Tenant. Tenant's occupancy during the Move-in Period shall in all respects be the same as that of a tenant under this Lease Agreement, with the exception of the payment of rentals. The rentals herein reserved shall commence on the Commencement Date, provided, however, in the event Tenant commences its business operations prior to the Commencement Date, the rental shall commence as of the date that Tenant so commences its business operations in the Premises. During the Move-in Period, Landlord shall have no responsibility or liability for loss or damage to fixtures, facilities or equipment installed or left within the Premises. Immediately after Tenant's occupancy of the Premises, the Landlord and Tenant shall execute a ratification agreement which shall set forth the final Commencement and Termination Dates for the Term.

ARTICLE 6 - COMMON AREA MAINTENANCE AND REAL ESTATE TAXES

A. Tenant shall pay as Additional Rent for each Lease Year Tenant's Proportionate Share of Common Area Maintenance ("CAM") and Taxes incurred for such Lease Year. Tenant's Proportionate Share shall be equal to the percentage obtained by dividing the leaseable area of the Premises by the total leaseable area within the Retail Center and converting said product to a percentage. Said percentage of the CAM and Taxes of the entire Retail Center shall then equal Tenant's Proportionate Share of said CAM and Taxes. Said percentage and Tenant's Proportionate Share may change from time to time, if e.g., the Premises area changes due to lease amendment, the Retail Center is expanded, etc. Tenant's initial Proportionate Share is set forth on the Reference Page. Rental payments pursuant to this Article shall be paid in monthly installments along with the Minimum Rental as provided in paragraph A of Article 1.

1. "CAM" shall be defined as: all direct costs of operation, maintenance, repair and management of the Retail Center, as determined in accordance with generally accepted accounting principles, including the following costs by way of illustration, but not limitation: insurance charges relating to all insurance policies and endorsements deemed by Landlord to be reasonably necessary or desirable for the protection, preservation or operation of all or any part of the Retail Center; utility costs for all parts of the Retail Center shared in common by tenants of the Retail Center and tenants' utility costs to the extent not separately metered such as heat, light, power, steam, gas, waste disposal, water and sewer; the cost of security and alarm services (including any central station signaling system); the cost of maintaining, repairing and replacing any heating, ventilating and air conditioning systems not otherwise being paid for by tenants; the cost of landscaping and seasonal decorations; the cost of maintaining and repairing any exterior stairway, truck way, loading dock, package pick-up station, pedestrian sidewalk; the cost of maintaining, repairing, operating and policing the buildings and improvements in the Retail Center and their appurtenances and equipment, including, without limitation, the roof, common signage, the parking lot and any driveway areas, including the construction and maintenance of lighting facilities therefor, comfort stations and first aid stations, exterior window cleaning costs; labor costs; all management costs including: management fees, if any; employee benefits and payroll taxes; accounting and legal fees; material costs; equipment costs, including the cost of service agreements on equipment; tool costs; the costs of licenses, permits and inspection fees, and any sales, use or service taxes incurred in connection therewith. Excluded are amounts chargeable to specific tenants of the Retail Center and amounts resulting from structural replacements to the exterior of any individual store buildings of the Retail Center which are normally chargeable to capital account under sound accounting principles. CAM shall not include other capital improvements, depreciation or amortization of the Retail Center or equipment in the Retail Center except as provided herein, loan principal payments, costs of alterations of tenants' premises, leasing commissions, interest expenses on long-term borrowings, advertising costs or management salaries for executive personnel other than personnel located at the Retail Center; provided, however, Landlord shall be entitled to amortize and include as an adjustment to the Additional Rent: (i) an allocable portion of the cost of capital improvement items which are reasonably calculated to reduce operating expenses; (ii) fire sprinklers and suppression systems and other life safety systems; and (iii) other capital expenses which are required under any governmental laws, regulations or ordinances which were not applicable to the Retail Center at the time it was constructed. All such capital costs shall be amortized over the reasonable life of such improvements in accordance with such reasonable life and amortization schedules as shall be determined by Landlord in accordance with generally accepted accounting principles, with interest on the unamortized amount at one percent (1%) in excess of the prime lending rate announced from time to time as such by Wells Fargo Bank.

2. "Taxes" shall be defined as: Real estate taxes and any other taxes, charges and assessments which are levied with respect to the Retail Center or the land appurtenant to the Retail Center, or with respect to any improvements, fixtures and equipment or other property of Landlord, real or personal, located in the Retail Center and used in connection with the operation of the Retail Center and said land; any payments to any ground lessor or mortgagee in reimbursement of tax payments made by such lessor; and all fees, expenses and costs incurred by Landlord in investigating, protesting, contesting or in any way seeking to reduce or avoid increase in any assessments, levies or the tax rate pertaining to any Taxes to be paid by Landlord in any Lease Year. Taxes shall not include any corporate franchise, or estate, inheritance or net income tax, or tax imposed upon any transfer by Landlord of its interest in this Lease Agreement or, the Retail Center.

B. The annual determination of CAM shall be made by Landlord and certified to Tenant. Tenant may review the books and records supporting such determination in the office of Landlord, or Landlord's agent, during normal business hours, upon giving Landlord five (5) days' advance written notice within sixty (60) days after receipt of such determination, but in no event more often than once in any one year period.

C. Prior to the actual determination thereof for a Lease Year, Landlord shall prior to the beginning of each Lease Year and may from time to time thereafter estimate Tenant's liability for CAM and/or Taxes for the Lease Year or portion thereof. Landlord will give Tenant written notification of the amount of such estimate, and Tenant agrees that it will pay, by increase of its monthly installments of Additional Rent due in such Lease Year, Additional Rent in the amount of such estimate. Any such increased rate of monthly installments of Additional Rent pursuant to this Article shall remain in effect until further written notification to Tenant pursuant hereto.

D. When the above mentioned actual determination of Tenant's liability for CAM and/or Taxes is made in any Lease Year and when Tenant is so notified in writing, then:

1. If the total Additional Rent Tenant actually paid pursuant to this Article on account of CAM and/or Taxes for the Lease

Year is less than Tenant's actual liability for CAM and/or Taxes, then Tenant shall pay to Landlord such deficiency as Additional Rent in one lump sum within thirty (30) days of receipt of Landlord's bill therefor; and

2. If the total Additional Rent Tenant actually paid pursuant to this Article on account of CAM and/or Taxes for the Lease Year is more than Tenant's actual liability for CAM and/or Taxes, then Landlord shall credit the difference against the then next due payments of Additional Rent to be made by Tenant under this Article.

F. If the Commencement Date is other than January 1 or if the Termination Date is other than December 31, Tenant's liability for CAM and Taxes for the Lease Year in which said Date occurs shall be prorated based upon a three hundred sixty-five (365) day year.

F. Landlord reserves, and Tenant hereby assigns to Landlord, the sole and exclusive right to contest, protest, petition for review, or otherwise seek a reduction in the real estate taxes.

ARTICLE 7 - UTILITIES AND SERVICE

A. Landlord agrees to furnish gas, water, sewer, and electricity utilities to the Premises, and Tenant agrees to pay Landlord for its use thereof based upon Landlord's reasonable allocation thereof to the Premises. Tenant shall allow Landlord any access to the Premises necessary to separately meter or monitor usage of gas, water, sewer and electricity. In the event any utilities provided to the Premises are separately metered or submetered, Tenant shall be responsible to pay such fees and cost charges relating to the providing of such utilities to the Premises directly to the supplier thereof. Tenant agrees to maintain and clean Premises and keep the same in a sanitary and orderly manner. Tenant shall provide its own trash removal to dumpsters provided by Landlord within the Retail Center, recycling (to collection points within the Retail Center), pest, and vermin control. Should Tenant fail to clean and maintain the Premises and remove trash therefrom as required herein, Landlord shall have the right to complete such services and charge Tenant such costs plus overhead as Additional Rent. Tenant agrees not to waste any utilities and will adopt affirmative practices and policies so as to maximize a conservative use of all utilities.

B. Landlord agrees to provide the heating, ventilating and air conditioning units ("HVAC") currently servicing the Premises, which shall be maintained by Tenant pursuant to Article 9 below

C. No temporary interruption or failure of such services incidental to the making of repairs, alterations or improvements, or due to accidents or strike or conditions or events not under Landlord's control shall be deemed as an eviction of the Tenant or relieve the Tenant from any of the Tenant's obligations hereunder, including without limitation, payment of Minimum Rental and Additional Rent.

D. Landlord reserves the right without notice to Tenant to cut off and discontinue gas, water, sewer, electrical, heating, ventilating, antenna service and any or all other service on twenty four (24) hours verbal notice without liability to Tenant, whenever and during any periods where reasonably necessary to make repairs or alterations; provided however that no notice shall be required in an emergency. No such action by Landlord, or disturbance of possession shall be deemed an election by Landlord to terminate this Lease Agreement.

E. Except as otherwise provided on Exhibit B attached hereto, Tenant agrees to furnish, at its sole expense, all lamps, bulbs, tubes, starters and ballasts in connection with the lighting of the Premises.

ARTICLE 8 - NON-LIABILITY OF LANDLORD

Except in the event of gross negligence of Landlord, its agents, employees or contractors, Landlord shall not be liable for any loss or damage for failure to furnish heat, air conditioning, electricity, water, sprinkler system, sewer or gas service. Landlord shall not be liable for personal injury, death or any damage from any cause about the Premises or the Retail Center except if caused by Landlord's gross negligence.

ARTICLE 9 - CARE OF PREMISES AND EQUIPMENT

A. Tenant agrees:

1. To keep the Premises in as good condition and repair as they were in at the time Tenant took possession of same, reasonable wear and tear and damage from fire and other casualty for which insurance is normally procured excepted;

2. To keep the Premises in a safe, clean and sanitary condition and in compliance with all applicable laws, ordinances, rules and regulations of any governmental authority, or of any company or companies insuring against losses resulting from damage or destruction to the Retail Center or from personal injuries, deaths or property damage occurring in, on or about the Retail Center.

3. Not to commit any nuisance or waste on the Premises, overload the Premises or the electrical, water and/or plumbing facilities in the Premises or Retail Center, throw foreign substances in plumbing facilities, or wastefully use any of the utilities furnished by Landlord; and

4. To abide by such rules and regulations as may from time to time be reasonably promulgated by Landlord,

5. Except as otherwise provided in this Article, those portions of the Premises, including, but not limited to, plumbing, electrical, HVAC equipment, and other mechanical equipment requiring maintenance or repair, shall at all times be maintained and repaired at Tenant's own cost and expense and in accordance with all laws, directions, rules and regulations of regulatory bodies or officials having jurisdiction in that regard. Tenant shall, at its own cost and expense, enter into a regularly scheduled preventive maintenance/service contract with a maintenance contractor approved by Landlord for servicing all HVAC equipment serving the Premises (and a copy thereof shall be furnished to Landlord). The service contract must include all services suggested by the equipment manufacturer in the operation/maintenance manual and must become effective within thirty (30) days of the date Tenant takes possession of the Premises. Landlord may, upon notice to Tenant, enter into such a maintenance/service contract on behalf of Tenant or perform the work and in either case, charge Tenant the cost thereof along with a reasonable amount for Landlord's overhead. If Tenant refuses or neglects to commence repairs and/or maintenance within ten (10) days after written demand and/or adequately to complete such repairs within a reasonable time thereafter, Landlord may make the repairs without liability to Tenant for any loss or damage that may accrue to Tenant's stock or business by reason thereof, and if Landlord makes such repairs, Tenant shall pay to Landlord, on demand, as Additional Rent the cost thereof plus overhead.

B. If Tenant shall fail to keep and preserve the Premises in the state of condition required by the provisions of this Lease Agreement, Landlord may at its option put or cause the same to be put into the condition and state of repair agreed upon, and in such case the Tenant, on demand, shall pay the cost thereof plus overhead, as Additional Rent.

ARTICLE 10 - NON-PERMITTED USE

Tenant agrees to use the Premises only for the Authorized Business purpose. Tenant further agrees not to commit or permit any act to be performed on the Premises or any omission to occur which shall be in violation of any statute, regulation or ordinance of any governmental body or which will increase the insurance rates on the Retail Center or which will be in violation of any insurance policy carried on the Retail Center by the Landlord. Tenant, at its expense, shall comply with all governmental laws, ordinances, rules and regulations applicable to the use of the Premises and its occupancy and shall promptly comply with all governmental orders, rulings and directives for the correction, prevention and abatement of any violation

upon, or in connection with, the Premises or Tenant's use or occupancy of the Premises, including the making of any alterations or improvements to the Premises, all at Tenant's sole cost and expense.

ARTICLE 11 - INSPECTION

The Landlord or its employees or agents shall have the right without any diminution of rent or other charges payable hereunder by Tenant to enter the Premises at all reasonable times for the purpose of exhibiting the Premises to prospective tenants or purchasers and/or inspection, cleaning, repairing, testing, altering or improving the same or said Retail Center, but nothing contained in this Article shall be construed so as to impose any obligation on the Landlord to make any repairs, alterations or improvements.

ARTICLE 12 - ALTERATIONS

Tenant will not make any alterations, repairs, additions or improvements in or to the Premises or add, disturb or in any way change any locks, plumbing or wiring therein without the prior written consent of the Landlord as to the character of the alterations, additions or improvements to be made, the manner of doing the work, and the contractor doing the work. Such consent shall not be unreasonably withheld or delayed, if such alterations, repairs, additions or improvements are required of Tenant or are the obligation of Tenant pursuant to this Lease Agreement. All such work shall comply with all applicable governmental laws, ordinances, rules and regulations. The Landlord as a condition to said consent may require a surety performance and/or payment bond from the Tenant for said actions. Tenant agrees to indemnify and hold Landlord free and harmless from any liability, loss, cost, damage or expense (including attorneys' fees) by reason of any said alteration, repairs, additions or improvements.

ARTICLE 13 - SIGNS

Tenant shall, if requested by Landlord, install at Tenant's expense an exterior sign conforming to the general appearance of other signs in the Retail Center and the sign criteria established by Landlord in writing. Tenant shall at all times keep all signs in accordance with Landlord's sign criteria and in good condition, proper operating order and in accordance with all applicable government regulations. Use of the roof of the Premises is reserved to Landlord, and Landlord may install upon the roof equipment, signs, antennas, displays and other objects and may construct additional stories above the Premises, provided any such use does not unreasonably interfere with Tenant's occupancy of the Premises. Upon termination of this Lease Agreement, Tenant shall remove any signs and repair any damage to the Retail Center caused by the installation and removal thereof, or, at Landlord's option, such signs shall become part of the realty and belong to Landlord without compensation to Tenant with title passing to Landlord under this Lease as by a bill of sale. Tenant agrees that no other signs or other advertising materials shall be erected, attached or affixed to any portion of the interior or exterior of the Premises or the Retail Center without the express prior written consent of Landlord.

ARTICLE 14 - COMMON AREAS

A. Tenant, and its licensees, concessionaires, employees and customers (for purposes of this Article, collectively "Tenant") shall have the non-exclusive right to use the "Common Areas" (which shall be defined as the areas of the Retail Center other than tenants' premises within the Retail Center, as constituted from time to time), in common with Landlord, other tenants of the Retail Center and other persons entitled to use the same. Landlord may require that automobiles operated by Tenant or its employees be parked in specific portions of the Common Areas or other parking areas outside the Retail Center which are in reasonable proximity thereto. Tenant shall not interfere with the rights of other persons to use the Common Areas. Landlord may temporarily close parts of the Common Areas for such periods of time as may be necessary for (i) temporary use as a work area in connection with the construction of buildings or other improvements within the Retail Center or contiguous property, (ii) repairs or alterations in or to the Common Areas or to any utility type facilities, (iii) preventing the public from obtaining prescriptive rights in or to the Common Areas, (iv) security reasons, or (v) doing and performing such other acts as in the use of good business judgment Landlord shall determine to be appropriate for the Retail Center; provided however, that Landlord shall use reasonable efforts not to unduly interfere with or disrupt Tenant's business. Landlord shall have the right at any time to change the dimensions and location of any buildings in the Retail Center and the arrangement and/or locations of entrances, parking areas, sidewalks, landscaped areas, passageways or other parts of the Common Areas and to change the name, number or designation by which the Retail Center is commonly known. Tenant's use of the Common Areas shall be subject to such rules and regulations as may from time to time be made by Landlord for the safety, comfort and convenience of the owners, occupants, tenants and invitees of said Retail Center. Tenant agrees that no awnings, curtains, drapes or shades shall be used upon the Premises except as may be approved by Landlord.

B. If the Common Areas include parking, Landlord and Tenant agree that Landlord will not be responsible for any loss, theft or damage to vehicles, or the contents thereof, parked or left in the Common Areas, and Tenant agrees to so advise its employees, visitors or invitees who may use such parking areas. The parking areas shall include those areas designated by Landlord, in its sole discretion, as either restricted or unrestricted parking areas. Tenant further agrees not to use or permit its employees, visitors or invitees to use the parking areas for overnight storage of vehicles.

ARTICLE 15 - ASSIGNMENT AND SUBLETTING

A. Tenant agrees not to assign, sublet, license, mortgage or encumber this Lease Agreement, the Premises, or any part thereof, whether by voluntary act, operation of law, or otherwise, without the specific prior written consent of Landlord in each instance. If Tenant is a corporation or a partnership, transfer of a controlling interest of Tenant shall be considered an assignment of this Lease Agreement for purposes of this Article. Consent by Landlord in one such instance shall not be a waiver of Landlord's rights under this Article as to requiring consent for any subsequent instance. In the event Tenant desires to sublet a part or all of the Premises, or assign this Lease Agreement, Tenant shall give written notice to Landlord at least thirty (30) days prior to the proposed subletting or assignment, which notice shall state the name of the proposed subtenant or assignee, the terms of any sublease or assignment documents and copies of financial reports or other relevant financial information of the proposed subtenant or assignee. At Landlord's option, any and all payments by the proposed assignee or sublessee with respect to the assignment of sublease shall be paid directly to Landlord. In any event no subletting or assignment shall release Tenant of its obligation to pay the rent and to perform all other obligations to be performed by Tenant hereunder for the Term of this Lease Agreement. The acceptance of rent by Landlord from any other person shall not be deemed to be a waiver by Landlord of any provision hereof. At Landlord's option, Landlord may terminate the Lease Agreement at lieu of giving its consent to any proposed assignment of this Lease Agreement or subletting of the Premises (which termination may be contingent upon the execution of a new lease with the proposed assignee or subtenant).

B. In no event shall Landlord be required to consent to any assignment or sublease by Tenant or any person holding an interest in the leasehold under or through Tenant ("Transfer") unless Landlord is provided adequate assurances in Landlord's sole opinion that:

1. The source of rent and other consideration due under this Lease Agreement, and in the case of a Transfer, that the financial condition and operating performance of the proposed assignee and its guarantors, if any, shall be equal to or greater than the financial condition and operating performance of the Tenant or such other persons and its guarantors, if any, as of the time the Tenant became the lessee under this Lease Agreement;
2. That the Transfer of this Lease Agreement is subject to all the provisions hereof, including, but not limited to, provisions such as a radius, location, use or exclusivity provision, and will not breach any such provision contained in any other lease, financing agreement or master agreement relating to the Retail Center;
3. That the Transfer of this Lease Agreement will not disrupt any tenant mix or balance in the Retail Center;
4. That the proposed transferee agrees to assume the obligations under this Lease Agreement;

5. That the proposed transferee has sufficient experience in operations similar to the Authorized Business being operated within the Premises;
6. Any payments to be made by the proposed transferee shall, at Landlord's option, be paid directly to Landlord; and
7. Tenant agrees to continue to be bound by the terms of the Lease Agreement notwithstanding any modification or amendments to this Lease Agreement.

C. Landlord's right to assign this Lease Agreement is and shall remain unqualified upon any sale or Transfer of the Retail Center and, providing the purchaser succeeds to the interests of Landlord under this Lease Agreement, Landlord shall thereupon be entirely freed of all obligations of Landlord hereunder and shall not be subject to any liability resulting from any act or omission or event occurring after such conveyance.

ARTICLE 16 - LOSS BY CASUALTY

If the Retail Center is damaged or destroyed by fire or other casualty, Landlord shall have the right to terminate this Lease Agreement, provided it gives written notice thereof to Tenant within ninety (90) days after such damage or destruction. If a portion of the Premises is damaged by fire or other casualty, and Landlord does not elect to terminate this Lease Agreement, the Landlord shall, at its expense, restore the Premises to as near the condition which existed immediately prior to such damage or destruction, as reasonably possible, and the rentals shall abate during such period of time as the Premises are untenantable, in the proportion that the untenable portion of the Premises bears to the entire Premises.

ARTICLE 17 - WAIVER OF SUBROGATION

Landlord and Tenant hereby release the other from any and all liability or responsibility to the other or anyone claiming through or under them by way of subrogation or otherwise for any loss or damage to property caused by fire or any of the extended coverage or supplementary contract casualties, even if such fire or other casualty shall have been caused by the fault or negligence of the other party, or anyone for whom such party may be responsible; provided however, that this release shall be applicable and in force and effect only with respect to loss or damage occurring during such times as the releasing party's policies shall contain a clause of endorsement to the effect that any such release would not adversely affect or impair said policies or prejudice the right of the releasing party to recover thereunder. Landlord and Tenant agree that they will request their insurance carriers to include in their policies such a clause of endorsement. If extra cost shall be charged therefor, each party shall advise the other of the amount of the extra cost, and the other party, at its election, may pay the same, but shall not be obligated to do so.

ARTICLE 18 - EMINENT DOMAIN

If the entire Retail Center is taken by eminent domain, this Lease Agreement shall automatically terminate as of the date of taking. If a portion of the Retail Center is taken by eminent domain, the Landlord shall have the right to terminate this Lease Agreement, provided it gives written notice thereof to the Tenant within ninety (90) days after the date of taking. If a portion of the Premises is taken by eminent domain and this Lease Agreement is not terminated by Landlord, the Landlord shall, at its expense, restore the Premises to as near the condition which existed immediately prior to the date of taking as reasonably possible, and the rentals shall abate during such period of time as the Premises are untenantable, in the proportion that the untenable portion of the Premises bears to the entire Premises. All damages awarded for such taking under the power of eminent domain shall belong to and be the sole property of Landlord, irrespective of the basis upon which they are awarded; provided, however, that nothing contained herein shall prevent Tenant from making a separate claim to the condemning authority for its moving expenses and trade fixtures. For purposes of this Article, a taking by eminent domain shall include Landlord's giving of a deed under threat of condemnation.

ARTICLE 19 - SURRENDER

On the last day of the Term of this Lease Agreement or on the sooner termination thereof in accordance with the terms hereof, Tenant shall peacefully surrender the Premises in good condition and repair consistent with Tenant's duty to make repairs as provided in Article 9 hereof. On or before said last day, Tenant shall at its expense remove all of its equipment from the Premises, repairing any damage caused thereby, and any property not removed shall be deemed abandoned. All alterations, additions and fixtures other than Tenant's trade fixtures, which have been made or installed by either Landlord or Tenant upon the Premises shall remain as Landlord's property and shall be surrendered with the Premises as a part thereof, or shall be removed by Tenant, at the option of Landlord, in which event Tenant shall at its expense repair any damage caused thereby. It is specifically agreed that any and all telephonic, coaxial, ethernet, or other computer, word processing, facsimile, or electronic wiring installed by Tenant within the Premises (hereafter "Wiring") shall be removed at Tenant's cost at the expiration of the Term, unless Landlord has specifically requested in writing that said Wiring shall remain, whereupon said Wiring shall be surrendered with the Premises as Landlord's property. If the Premises are not surrendered at the end of the Term or the sooner termination thereof, Tenant shall indemnify Landlord against loss or liability resulting from delay by Tenant in so surrendering the Premises, including, without limitation, claims made by any succeeding tenant founded on such delay. Tenant shall promptly surrender all keys for the Premises to Landlord at the place then fixed for payment of rental and shall inform Landlord of combinations on any locks and safes on the Premises.

ARTICLE 20 - NONPAYMENT OF RENT, DEFAULTS

If any one or more of the following occurs: (1) a rent payment or any other payment due from Tenant to Landlord shall be and remain unpaid in whole or in part for more than ten (10) days after same is due and payable; (2) Tenant shall fail to continuously operate the Authorized Business within the Premises for ten (10) consecutive business days, in violation of paragraph 2P; (3) Tenant shall violate or default on any of the other covenants, agreements, stipulations or conditions herein, or in any parking agreement(s) or other agreements between Landlord and Tenant relating to the Premises, and such violation or default shall continue for a period of ten (10) days after written notice from Landlord of such violation or default; or (4) if Tenant shall commence or have commenced against Tenant proceedings under a bankruptcy, receivership, insolvency or similar type of action, then it shall be optional for Landlord, without further notice or demand, to cure such default or to declare this Lease Agreement forfeited and the said Term ended, or to terminate only Tenant's right to possession of the Premises, and to reenter the Premises, with or without process of law, using such force as may be necessary to remove all persons or chattels therefrom, and Landlord shall not be liable for damages by reason of such reentry or forfeiture. In the event Landlord terminates this Lease in such event, Landlord shall be entitled to recover as damages a lump sum of money equal to: (a) any unpaid Minimum Rental and Additional Rent as of the termination date, plus (b) any unpaid Minimum Rental and Additional Rent which would have accrued after the termination date absent termination through the balance of the Term, discounted to present value at an assumed interest rate equal to 6% per annum. In the event Landlord terminates only Tenant's right to possession of the Premises, the liability of Tenant for the rent and all other sums provided herein shall not be relinquished or extinguished for the balance of the Term of this Lease Agreement and Landlord shall be entitled to recover: (a) any unpaid Minimum Rental and Additional Rent as of the date possession is terminated; plus (b) any unpaid Minimum Rental and Additional Rent as such rent accrues during the balance of the Term, less any net proceeds of reletting that are actually received by Landlord during such period. Notwithstanding the foregoing, Landlord shall in no event have any obligation to mitigate its damages except as otherwise provided by law. Landlord shall be entitled to periodically sue Tenant for all sums due under this Lease Agreement or which become due prior to judgment, but such suit shall not bar subsequent suits for any further sums coming due thereafter. No waivers by Landlord of performance by Tenant shall be considered a continuing waiver or shall preclude Landlord from exercising its rights in the event of a subsequent default. Tenant shall be responsible for, in addition to the rentals and other sums agreed to be paid hereunder, the cost of any necessary maintenance, repair, restoration, reletting (including related cost of removal or modification of tenant improvements) or cure, as well as reasonable attorneys' fees incurred or awarded in any suit or action instituted by Landlord to enforce the provisions of this Lease Agreement, regain possession of the Premises, or the collection of the rentals due Landlord hereunder. Tenant agrees to pay interest at the highest permissible rate of interest allowed under the usury statutes of the State of Minnesota, or in case no such maximum rate of interest is provided, at the rate of twelve percent (12%) per annum, on all rentals and other sums due Landlord hereunder not paid within ten

(10) days from the date same become due and payable. Each right or remedy of Landlord provided for in this Lease Agreement shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease Agreement now or hereafter existing at law or in equity or by statute or otherwise.

ARTICLE 21- LANDLORD'S DEFAULT

Landlord shall not be deemed to be in default under this Lease Agreement until Tenant has given Landlord written notice specifying the nature of the default and Landlord does not cure such default within thirty (30) days after receipt of such notice or within such reasonable time thereafter as may be necessary to cure such default where such default is of such a character as to reasonably require more than thirty (30) days to cure.

ARTICLE 22- HOLDING OVER

Tenant will, at the expiration of this Lease Agreement, whether by lapse of time or termination, give up immediate possession to Landlord. If Tenant fails to give up possession the Landlord may, at its option, serve written notice upon Tenant that such holdover constitutes any one of (i) renewal of this Lease Agreement for one year, and from year to year thereafter, or (ii) creation of a month-to-month tenancy, or (iii) creation of a tenancy at sufferance. If Landlord does not give said notice, Tenant's holdover shall create a tenancy at sufferance. In any such event the tenancy shall be upon the terms and conditions of this Lease Agreement, except that the Minimum Rental shall be double the Minimum Rental Tenant was obligated to pay Landlord under this Lease Agreement immediately prior to termination (in the case of tenancy at sufferance such Minimum Rental shall be prorated on the basis of a 365 day year for each day Tenant remains in possession); excepting further that in the case of a tenancy at sufferance, no notices shall be required prior to commencement of any legal action to gain repossession of the Premises. In the case of a tenancy at sufferance, Tenant shall also pay to Landlord all damages sustained by Landlord resulting from retention of possession by Tenant. The provisions of this paragraph shall not constitute a waiver by Landlord of any right of reentry as otherwise available to Landlord; nor shall receipt of any rent or any other act in apparent affirmation of the tenancy operate as a waiver of the right to terminate this Lease Agreement for a breach by Tenant hereof.

ARTICLE 23- SUBORDINATION

Tenant agrees that this Lease Agreement shall be subordinate to any mortgage(s) that may now or hereafter be placed upon the Retail Center or any part thereof, and to any and all advances to be made thereunder, and to the interest thereon, and all renewals, replacements, and extensions thereof, provided the mortgagee named in such mortgage(s) shall agree to recognize this Lease Agreement or Tenant in the event of foreclosure provided the Tenant is not in default. In confirmation of such subordination, Tenant shall promptly execute and deliver any instrument, in recordable form, as required by Landlord's mortgagee. In the event of any mortgagee electing to have the Lease Agreement a prior encumbrance in its mortgage, then and in such event upon such mortgagee notifying Tenant to that effect, this Lease Agreement shall be deemed prior in encumbrance to the said mortgage, whether this Lease Agreement is dated prior to or subsequent to the date of said mortgage.

ARTICLE 24- INDEMNITY, INSURANCE AND SECURITY

A. Tenant will keep in force at its own expense for so long as this Lease Agreement remains in effect public liability insurance with respect to the Premises in which Landlord shall be named as an additional insured, in companies and in form acceptable to Landlord with a minimum combined limit of liability of One Million Dollars (\$1,000,000.00). This limit shall apply per location. Said insurance shall also provide for contractual liability coverage by endorsement. Tenant shall further provide for business interruption insurance to cover a period of not less than six (6) months. Tenant will further deposit with Landlord the policy or policies of such insurance or certificates thereof, or other acceptable evidence that such insurance is in effect, which evidence shall provide that Landlord shall be notified in writing thirty (30) days prior to cancellation, material change, or failure to renew the insurance. Tenant further covenants and agrees to indemnify and hold Landlord and Landlord's manager of the Retail Center harmless for any claim, loss or damage, including reasonable attorney's fees, suffered by Landlord, Landlord's manager or Landlord's other tenants caused by: i) any act or omission by Tenant, Tenant's employees or anyone claiming through or by Tenant in, at, or around the Premises or the Retail Center; ii) the conduct or management of any work or thing whatsoever done by Tenant in or about the Premises or from transactions of the Tenant concerning the Premises; or iii) Tenant's failure to comply with any and all governmental laws, rules, ordinances or regulations applicable to the use of the Premises and its occupancy. If Tenant shall not comply with its covenants made in this Article 24, Landlord may, at its option, cause insurance as aforesaid to be issued and in such event Tenant agrees to pay the premium for such insurance promptly upon Landlord's demand.

B. Tenant shall be responsible for the security and safeguarding of the Premises and all property kept, stored or maintained in the Premises. Landlord will make available to Tenant, at Tenant's request, the plans and specifications for construction of the Retail Center and the Premises, if such plans and specifications are in Landlord's possession or control. Tenant represents that it is satisfied that the construction of the Retail Center and the Premises, including the floors, walls, windows, doors and means of access therein are suitable for the particular needs of Tenant's business. Tenant further represents that it is satisfied with the security of said Retail Center and Premises for the protection of any property which may be owned, held, stored or otherwise caused or permitted by Tenant to be present upon the Premises. The placement and sufficiency of all safes, vaults, cash or security drawers, cabinets or the like placed upon the Premises by Tenant shall be at the sole responsibility and risk of Tenant. Tenant shall maintain in force throughout the Term, insurance upon all contents of the Premises, including that owned by others and Tenant's equipment and any alterations, additions, fixtures, or improvements in the Premises acknowledged by Landlord to be the Tenant's.

C. Landlord shall carry and cause to be in full force and effect a fire and extended coverage insurance policy on the Retail Center, but not Tenant's merchandise, trade fixtures, furnishings, operating equipment, wall, floor and window coverings, nor any other contents owned, leased or otherwise in possession of Tenant. Insurance on such property, equipment and contents shall be maintained by Tenant at its sole cost and expense. The cost of the insurance maintained by Landlord shall be a CAM expense.

ARTICLE 25- NOTICES

All notices from Tenant to Landlord required or permitted by any provisions of this Lease Agreement shall be directed to Landlord postage prepaid, certified or registered mail, at the address provided for Landlord in the preamble to this Lease Agreement or at such other address as Tenant shall be advised to use by Landlord. All notices from Landlord to Tenant required or permitted by any provision of this Lease Agreement shall be directed to Tenant, postage prepaid, certified or registered mail, at the Premises and at the address, if any, set forth on the signature page of this Lease Agreement. Landlord and Tenant shall each have the right at any time and from time to time to designate one (1) additional party to whom copies of any notice shall be sent.

ARTICLE 26- APPLICABLE LAW

This Lease Agreement shall be construed under the laws of the State of Minnesota.

ARTICLE 27- MECHANICS' LIEN

In the event any mechanic's lien shall at any time be filed against the Premises or any part of the Retail Center by reason of work, labor, services or materials performed or furnished to Tenant or to anyone holding the Premises through or under Tenant, Tenant shall forthwith cause the same to be discharged of record. If Tenant shall fail to cause such lien forthwith to be discharged within fifteen (15) days after being notified of the filing thereof, then, in addition to any other right or remedy of Landlord, Landlord may, but shall not be obligated to, discharge the same by paying the amount claimed to be due, or by bonding, and the amount so paid by Landlord and all costs and expenses, including reasonable attorney's fees incurred by Landlord in procuring the discharge of such lien, shall be due and payable in full by Tenant to Landlord on demand.

ARTICLE 28 - SECURITY INTEREST

Tenant hereby grants to Landlord a security interest in all goods, chattels, fixtures and personal property belonging to Tenant, which now are or may hereafter be placed in the Premises, to secure all rents due hereunder and all other covenants and obligations of Tenant hereunder. In the event there exists any security interest in said property which security interest is paramount and superior to the security interest herein created, Landlord may satisfy said paramount security interest, and all sums paid in satisfying said security interest will be considered additional sums owed Landlord by Tenant hereunder. Tenant hereby acknowledges receipt of a true, full and complete copy of this Lease Agreement. Landlord, in the event of a default by Tenant of any covenant or condition herein contained, may exercise, in addition to any rights and remedies herein granted, all the rights and remedies of a secured party under the Uniform Commercial Code or any other applicable law. Tenant agrees upon request of Landlord to execute and deliver to Landlord a financing statement evidencing such security interest. A copy of this Lease Agreement may be filed as a financing statement.

ARTICLE 29 - BROKERAGE

Each of the parties represents and warrants that there are no claims for brokerage commissions or finder's fees in connection with this Lease Agreement, and agrees to indemnify the other against, and hold it harmless from all liabilities arising from any such claim, including without limitation, the cost of attorney's fees in connection therewith.

ARTICLE 30 - SUBSTITUTION

Landlord reserves the right, on thirty (30) days' written notice to Tenant, to substitute other premises within the Retail Center for the Premises hereunder. The substituted premises shall contain substantially the same square footage as the Premises, shall contain comparable improvements, and the Minimum Rental shall not exceed the Minimum Rental specified in Article 3 hereof.

ARTICLE 31 - ESTOPPEL CERTIFICATES

Tenant agrees that at any time, and from time to time during the Term of this Lease Agreement (but not more often than twice in each calendar year), within ten (10) days after request by Landlord, it will execute, acknowledge and deliver to Landlord or to any prospective purchaser, assignee or mortgagee designated by Landlord, an estoppel certificate in a form acceptable to Landlord. Tenant agrees to provide Landlord (but not more often than twice in any calendar year), within ten (10) days of request, the then most current financial statements, including but not limited to the most recent balance sheet and income statement of Tenant and any guarantors of this Lease Agreement, which shall be certified by Tenant, and if available, shall be audited and certified by a certified public accountant. Landlord shall keep such financial statements confidential, except Landlord shall, in confidence, be entitled to disclose such financial statements to existing or prospective mortgagees or purchasers of the Retail Center.

ARTICLE 32 - GENERAL

This Lease Agreement does not create the relationship of principal and agent or of partnership or of joint venture or of any association between Landlord and Tenant, the sole relationship between Landlord and Tenant being that of landlord and tenant. No waiver of any default of Tenant hereunder shall be implied from any omission by Landlord to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. The covenants of Tenant to pay the Minimum Rental and the Additional Rent are each independent of any other covenant, condition, or provision contained in this Lease Agreement. The marginal or topical headings of the several Articles, paragraphs and clauses are for convenience only and do not define, limit or construe the contents of such Articles, paragraphs or clauses. All preliminary negotiations are merged into and incorporated in this Lease Agreement. This Lease Agreement can only be modified or amended by an agreement in writing signed by the parties hereto. All provisions hereof shall be binding upon the heirs, successors and assigns of each party hereto. If any term or provision of this Lease Agreement shall to any extent be held invalid or unenforceable, the remainder shall not be affected thereby, and each other term and provision of this Lease Agreement shall be valid and be enforced to the fullest extent permitted by law. If Tenant is a corporation, each individual executing this Lease Agreement on behalf of said corporation represents and warrants that he or she is duly authorized to execute and deliver this Lease Agreement on behalf of said corporation in accordance with a duly adopted resolution of the Board of Directors of said corporation or in accordance with the Bylaws of said corporation, and that this Lease Agreement is binding upon said corporation in accordance with its terms. No receipt or acceptance by Landlord from Tenant of less than the monthly rent herein stipulated shall be deemed to be other than a partial payment on account for any due and unpaid stipulated rent; no endorsement or statement of any check or any letter or other writing accompanying any check or payment of rent to Landlord shall be deemed an accord and satisfaction, and Landlord may accept and negotiate such check or payment without prejudice to Landlord's rights to (i) recover the remaining balance of such unpaid rent or (ii) pursue any other remedy provided in this Lease Agreement. (Neither party shall record this Lease Agreement or any memorandum thereof, and any such recordation shall be a breach of this Lease Agreement void, and without effect.) Time is of the essence with respect to the due performance of the terms, covenants and conditions herein contained. Submission of this instrument for examination does not constitute a reservation of or option for the Premises, and this Lease Agreement shall become effective only upon execution and delivery thereof by Landlord and Tenant.

ARTICLE 33 - EXCULPATION

Tenant agrees to look solely to Landlord's interest in the Retail Center for the recovery of any judgment from Landlord, it being agreed that Landlord shall never be personally liable for any such judgment.

IN WITNESS WHEREOF, this Lease Agreement has been duly executed by the parties hereto as of the day and year indicated above.

LANDLORD: Sisaket Investments, LLC.

TENANT: _____

By: Thomas Sisaket
Its: owner

By: [Signature]
Its: _____

Dated: August 2nd 2001

Dated: August 3 - 2001

Address for Notices,
if other than Premises:

Restaurant

1835

1841

1845

Nicollet Ave So.

**EXHIBIT B
TENANT'S WORK AND LANDLORD'S WORK**

Plans and/or a description of improvements and/or modifications to the Premises are attached as Exhibit B-1 and by this reference incorporated herein (hereafter called the "Plans") (if for any reason the Plans are not so attached hereto as Exhibit B-1 then Tenant must secure Landlord's written approval, prior to the doing of "Tenant's Work" (as defined below) of all plans and specifications in connection with the "Tenant Improvements", as defined below). The Plans, if so attached, have been approved by each of Landlord and Tenant. The parties acknowledge that the Plans are to modify the Premises to accommodate Tenant's intended use. Tenant shall be responsible for constructing the improvements as shown on the Plans (hereafter called "Tenant Improvements") for and on behalf of Tenant, except Landlord agrees to perform the following work, if any is so listed:

("Landlord's Work"). Except for the Landlord's Work, if any, Tenant shall take the Premises in its current "AS IS" condition without any modification or alterations to be performed by Landlord.

Tenant shall not commence construction of the Tenant Improvements (the "Tenant's Work") until Tenant has secured Landlord's written approval of all contractors to be used in performing Tenant's Work. Tenant's Work shall be coordinated with Landlord's Work and/or other tenants of Landlord to such a degree that such Tenant's Work will not interfere with nor delay the completion of Work by Landlord and/or other tenants of Landlord.

Tenant's Work shall be performed in a first-class workmanlike manner and shall be in good and usable condition at the date of completion thereof.

All Tenant's Work shall conform to applicable governmental statutes, ordinances, regulations, and codes. Landlord's approval of plans and specifications shall not constitute an acknowledgment that Tenant's Work done in conformity therewith will so conform, and Tenant shall be solely responsible for corrections in Tenant's Work required by any governmental agency. Tenant shall secure its own building and occupancy permits. Landlord shall have the right to inspect and/or supervise, to the extent Landlord deems reasonably advisable; but Landlord shall not by reason of any such inspection or supervision assume or have any responsibility to Tenant or any entity for either the quality of any Tenant's Work or any loss, injury or damage suffered by anyone by reason of the quality or performance of any Tenant's Work. Landlord reserves the right to require changes in Tenant's Work when necessary by reason of code requirements or directives of governmental authorities having jurisdiction over the Premises.

Tenant shall save, protect, indemnify and hold harmless Landlord, the Premises and the building and land of which the Premises are a part, from and against all claims in the nature of mechanics' liens arising out of either any contracts entered into, or any services, labor or materials rendered, with respect to the Tenant's Work or the Tenant Improvements.

Prior to commencement of Tenant's Work and until completion thereof, or commencement of the Term of the Lease, whichever is the last to occur, Tenant shall maintain, or cause to be maintained, casualty insurance in builder's risk form, covering Landlord, Landlord's agents and beneficiaries, Landlord's architect, Landlord's contractor or subcontractors, Tenant and Tenant's contractors as their interests may appear, against loss or damage by fire, vandalism and malicious mischief, and such other risks as are customarily covered by the so-called "extended coverage endorsement non-reporting form" upon all Tenant's Work-in-Place, and all materials stored at the site of Tenant's Work and all materials, equipment, supplies and temporary structures of all kinds incident to Tenant's Work and builder's machinery, tools and equipment, all while forming a part of, or contained in, such improvements or temporary structures while on the demised premises or when adjacent thereto while on malls, drives, sidewalks, streets or alleys, all in the full insurable value thereof at all times. In addition, Tenant agrees to require all contractors and subcontractors engaged in the performance of Tenant's Work to effect and maintain and deliver to Tenant and Landlord certificates evidencing the existence of, prior to the commencement of Tenant's Work and until completion thereof, the following minimum insurance coverages:

- a. Workmen's Compensation Insurance - In accordance with the laws of the State of Minnesota, including Employer's Liability Insurance, to the limit of \$100,000 each accident.
- b. Comprehensive General Liability Insurance against bodily injury, including death resulting therefrom, to the combined aggregate limits of \$500,000.
- c. Automobile insurance, including "non-owned" automobiles against bodily injury, including death resulting therefrom, to the combined aggregate limit of \$500,000 for personal injury, and against property damage to the combined aggregate limit of \$100,000.

Prior to the commencement of Tenant's Work, Tenant shall deliver to Landlord's Representative certificates of all required insurance, and evidence of the payment of premiums thereon (and certificates of renewals, and evidence of premium payments with reference thereto, where appropriate). All such insurance shall provide, and certificates thereof shall state, that the same is non-cancelable and non-assignable without twenty (20) days' prior written notice to Landlord.

Landlord and Tenant have agreed that the costs of the Tenant Improvements shall be paid by Tenant.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:	)	Chapter 7
	)	BKY Case No. 03-47742-RJK
Mahfood Abdelrahman Btoush,)	
)	
Debtor(s)	)	<u>MEMORANDUM OF LAW IN</u>
	)	<u>SUPPORT OF MOTION TO ASSUME,</u>
	)	<u>CURE AND ASSIGN LEASE</u>

Julia A. Christians, Trustee, for her Memorandum in support of Motion to Assume, Cure and Assign Lease, states as follows:

On or about February 1, 2003, Debtor entered into a lease as lessee/assignee with Ali Sabhari as assignor and Sisket Investments, LLC as lessor of that certain retail space known as 1845 Nicollet Avenue, Minneapolis, MN (the "Lease). The terms of the assigned lease were for 5 (five) years commencing on April 1, 2001 at annual rental amounts of \$42,000, \$43,200, \$49,200, \$49,200 and \$49,200, respectively. On information and belief, via assignment or name change, the property owner is now known as Aham LLC.

Said Lease constitutes valuable property of the estate. The trustee has received a firm offer from Ali Sabhari to regain his interest in said Lease by paying to the estate the sum of \$2,000.00 plus all such amounts necessary to cure the defaults under the Lease, in exchange for an assignment of the remaining term of said Lease by the trustee. Mr. Sabhari represents he is able to satisfy and carry out all of the obligations of the lessee under said Lease and to assure future performance of the lessee thereunder.

On information and belief, at this time the lease is in default in the following respects: nonpayment of rent in the amount of \$18,700, plus compensation sought by the landlord of its attorney's fees in the amount of \$1,950.

11 U.S.C. §365 (a) provides that a trustee may, subject to court approval, assume or reject any unexpired lease of the debtor. If there has been a default under the lease, the trustee may not assume the lease unless, at the time of the assumption, the trustee cures or provides adequate assurance that the trustee will promptly cure such default, compensates a party other than the debtor to such lease for any actual pecuniary loss to such party resulting from such default and provides adequate assurance of future performance under the lease. 11 U.S.C. §365 (b)(1).

Dated: October 8, 2004

/e/ Julia A. Christians

Julia A. Christians, Trustee
One Financial Plaza, Suite 2500
120 South Sixth Street
Minneapolis, MN 55402
(612) 338-5815

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:) Chapter 7
Mahfood Abdelrahman Btoush,) Case No. 03-47742-RJK
Debtor(s).)

UNSWORN CERTIFICATE OF SERVICE

I, Sarah L. Fortin, declare under penalty of perjury that on October 8, 2004, I served copies of the attached **Notice Of Hearing And Motion to Assume, Cure and Assign Lease; Memorandum of Law in Support of Motion to Assume, Cure and Assign Lease; and proposed Order** by first class mail postage prepaid to each entity named below at the address stated below for each entity, and by facsimile to each entity stated below at the facsimile number for each entity:

SEE ATTACHED SERVICE LIST

Executed on: October 8, 2004

/s/ Sarah L. Fortin
Sarah L. Fortin, Legal Secretary
Lapp, Libra, Thomson, Stuebner &
Pusch, Chartered
120 South Sixth Street, Suite 2500
Minneapolis, MN 55402
612/338-5815

SERVICE LIST

Mahfood Abdelrahman Btoush, debtor.
BKY No. 03-47742-RJK

VIA U.S. MAIL ONLY

Mahfood Abdelrahman Btoush
3512 Bryant Avenue South
Apt. 301
Minneapolis, MN 55408

Office of the United States Trustee
1015 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415
FAX: 612-664-5516

AHAM LLC
c/o John Hedback
2855 Anthony Lane South
Suite 201
St. Anthony, MN 55418
FAX: 612-789-2109

Wayne G. Nelson
5500 Wayzata Blvd.
Suite 1025
Golden Valley, MN 55416
FAX: 763-591-1653

AHAM LLC
c/o Steven H. Berndt
Zappia, LeVahn & Heuer, Ltd.
Hillwind Office Center
941 Hillwind Road NE, Suite 301
Fridley, MN 55432
FAX: 763-571-7734

Ali Sabhari
c/o Joseph W. Dicker, PA
1406 West Lake Street
Suite 208
Minneapolis, MN 55408
FAX: 612-822-1873

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:	)	Chapter 7
	)	BKY Case No. 03-47742-RJK
Mahfood Abdelrahman Btoush,)	
)	
Debtor(s)	)	<u>ORDER AUTHORIZING TRUSTEE TO</u>
	)	<u>ASSUME AND ASSIGN LEASE</u>

ORDER

The Motion of Julia A. Christians, trustee herein, for authority to assume an existing lease with Aham LLC for certain premises commonly known as 1845 Nicollet Avenue, Minneapolis, MN, to cure all defaults therein, to compensate the lessor for actual pecuniary loss by reason of existing default, and contemporaneously therewith to assign said lease to Ali Sabhari for a consideration of \$2,000.00 plus amounts necessary to cure all defaults, duly came on for hearing on the 14th day of October, 2004. Appearances were as noted in the record.

The Court having heard the evidence presented by the parties and having heard the arguments of counsel, and being satisfied that the assignment of the lease by the trustee to Ali Sabhari provides adequate assurance of future performance under the lease to the lessor, and good cause appearing therefore, it is

ORDERED that Julia A. Christians, Trustee herein, be and she hereby is, authorized to assume that certain lease between the debtor and Aham LLC, arising pursuant to Assignment and Assumption of Lease dated February 1, 2003 assigning that Lease between Sisaket Investments, LLC and Ali Sabhari dated August 2, 2001 with reference to that certain property described as 1845 Nicollet Avenue, Minneapolis, MN, and in connection therewith to cure existing defaults by paying over to the lessor from funds to be paid by Assignee Ali Sabhari the sum of \$18,700,

and to compensate the lessor from funds to be paid by Assignee Ali Sabhari for actual pecuniary loss suffered by the lessor as a result of such defaults in the sum of \$1,950.00; and it is further

ORDERED that the trustee be, and hereby is, authorized contemporaneously with the assumption of the lease to assign said lease to Ali Sabhari for the sum of \$2,000.00, plus the sums sufficient to cure defaults and compensate the lessor for actual pecuniary loss suffered by the lessor as a result of such defaults, and his assumption of all of the terms and provisions of the aforesaid lease.

Dated: _____

Robert J. Kressel
United States Bankruptcy Judge