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December 19, 2011

**WORK SESSION**  
**Taylor Conference Room**  
12000 Findley Road, Suite 300  
[www.JohnsCreekGA.gov](http://www.JohnsCreekGA.gov)

5:00 PM

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**A) PLEDGE OF ALLEGIANCE**

**B) OPENING COMMENTS-Mayor Bodker**

**C) DEPARTMENTAL UPDATES**

Public Works

- Review and Discussion of Contracts for the Engineering Design for Three Sidewalks Projects

Legal

- Discussion of City Hall Lease Renewal

Police

- Discussion of Police Substation Lease

Council

- Cultural Arts Discussion (Place Holder)
- Call for nominees for the Planning Commission, Board of Zoning Appeals and the Convention and Visitors Bureau

**D) EXECUTIVE SESSION**

Two Legal Matter

**E) ADJOURNMENT**



# AGENDA REPORT

**To:** Honorable Mayor and City Council  
**From:** John Kachmar, City Manager  
**By:** Tom Black, Public Works Director  
**Date:** December 12, 2011 Work Session  
**Agenda:** Approval of Task Orders #1, 2, and 3 for Sidewalk/Trail Design Services

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**Issue:** Approval of three task orders to provide engineering services for the design of sidewalk at various locations.

**Recommendation:** Approve the following task orders:

Task Order #1 – American Engineers, Inc.: \$153,015

Segments on Douglas Road, Jones Bridge Road, Barnwell Road, Medlock Bridge Road, and Haynes Bridge Road.

Task Order #2 – Southeastern Engineering, Inc.: \$204,000

Segments on Findley Road, Abbotts Bridge Road, and Medlock Bridge Road.

Task Order #3 – Development Planning & Engineering, Inc.: \$136,014

Segments on Johns Creek Parkway, Lakefield Drive, Bell Road, and Medlock Bridge Road.

**Basis for Recommendation:** Sidewalk locations for Task Order #1 were based on filling gaps, financial constraints, and constructability. Task Orders #2 and 3 were identified in the MARTA eligibility area (within ½ mile radius of bus stops), and have been previously approved by Council.

**Financial Impact:** \$153,015 for Task Order #1 will be funded through the City's capital budget. A total of \$340,014 for Task Orders #2 and 3 will be funded with MARTA Offset funds.

**Background:** Earlier this year, RFQ's were solicited for design services in the areas of intersection improvements, sidewalk/trail design, surveying, hydrology, and engineering & inspection services. Based on staff recommendations, the three above firms were approved by Council for sidewalk design services. Sidewalk design needs were divided into three groupings and proposals were negotiated with the firms. Sidewalks/trails along Medlock Bridge Road and Abbotts Bridge Road will require a permit from GDOT. Portions of Findley Road and Abbotts Bridge Road may require a Corps of Engineers permit due to wetlands and stream buffers.

**Alternative Approaches:** Reject these proposals and seek alternative approaches.

**Attachment(s):** Location maps: [Task Order #1 Map](#); [Task Order #2 Map](#); [Task Order #3 Map](#)

Task Orders: [Task Order #1](#); [Task Order #2](#); [Task Order #3](#)

Proposals: [Task Order #1-AEI](#); [Task Order #2-SEI](#); [Task Order #3-DPE](#)

**A RESOLUTION TO AUTHORIZE AND APPROVE THE EXERCISE OF AN OPTION  
TO EXTEND THE LEASE TERM FOR 12000 FINDLEY ROAD (CITY HALL) FOR AN  
ADDITIONAL ONE (1)-YEAR TERM**

**WHEREAS:** CH2M Hill, Inc. assigned that certain Lease for 12000 Findley Road (the "Lease") to the City of Johns Creek on or about March 16, 2011; and

**WHEREAS:** The current Lease Term for 12000 Findley Road ("City Hall") expires September 30, 2012; and

**WHEREAS:** Exhibit E of the Lease grants the City two (2) options to extend the Lease Term for additional one (1)-year terms; and

**WHEREAS:** the Mayor and Council of the City of Johns Creek desire to extend the Lease Term for an additional one (1) – year term commencing October 1, 2012, and expiring September 30, 2013; and

**WHEREAS,** in order to exercise the option to extend the Lease Term for an additional one (1)-year term, Exhibit E of the Lease requires the City, as the Tenant, to provide notice of its intent to extend the Lease Term nine (9) months prior to the expiration of the then applicable Lease Term.

**NOW THEREFORE BE IT RESOLVED** by the Mayor and Council for the City of Johns Creek that the option to extend the Lease Term for 12000 Findley Road for an additional one (1) – year term commencing October 1, 2012, and expiring September 30, 2013, is hereby exercised, approved and authorized, and the City Manager is hereby authorized to provide notice of same in accordance with the Lease.

**SO RESOLVED AND EFFECTIVE**, this 12<sup>th</sup> day of December, 2011.

Approved:

\_\_\_\_\_  
Michael E. Bodker, Mayor

Attest:

\_\_\_\_\_  
Joan C. Jones, City Clerk

(Seal)



# AGENDA REPORT

**To:** Honorable Mayor and City Council Members  
**From:** William F. Riley, Jr., City Attorney, and Scott T. Hastey, Assistant City Attorney  
**Date:** December 9, 2011  
**Agenda:** December 19, 2011 Work Session; Agenda Item: Discussion of Police Substation Lease

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**Issue:** Approval of a lease agreement for additional premises to be used by the Police Department as a police substation in the southwestern part of the City.

**Background:** The Police Department has identified a public safety need to maintain a greater police presence in the southwestern part of the City, and in order to facilitate same it is necessary to acquire a space to utilize as a police substation. The proposed lease is for a space, which is approximately 1,402 square feet, located in a commercial shopping center known as Old Alabama Square on Old Alabama Rd. The term of the lease is approximately five (5) years. Rental payments will commence April 1, 2012. For the first two (2) years of the lease, the rent will be \$2,336.67 per month along with monthly CAM and Tax payments of approximately \$674.13 per month (For Years 1-2, the Total Monthly Payment to Landlord  $\approx$  \$3,010.80). For the third, fourth and fifth years of the lease, the rent will increase to \$2,570.33 per month (For Years 3-5, the Total Monthly Payment to Landlord  $\approx$  \$3,244.46). Improvements to the proposed space have been planned in order to conform the space to a police use, and the Landlord has agreed to provide a Tenant Allowance of \$7,010.00 for such improvements, which will be paid to the City following the completion of such improvements. The expenses for the proposed lease, including the improvements thereto, have been budgeted for the City's 2012 Fiscal Year.

**Recommendation:** Approve the Lease for a Police Substation.

**Alternative Approaches:** (i) Take no further action or (ii) Look for alternate locations for spaces to lease.

**Concurrent Review:** John Kachmar, City Manager; Ed Densmore, Chief of Police; Monte Vavra, Finance Director

**Attachment(s):** Draft of Police Substation Lease.

**LEASE AGREEMENT**

**SHOPPING CENTER: OLD ALABAMA SQUARE**

**LANDLORD: OLD ALABAMA, LLC**

**TENANT: CITY OF JOHNS CREEK GEORGIA**

**DBA: JOHNS CREEK POLICE DEPARTMENT**

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## LEASE AGREEMENT

**THIS LEASE AGREEMENT** (this "Lease") is entered into this [redacted] day of December, 2011 (the "Effective Date") by and between **OLD ALABAMA, LLC**, a Delaware limited liability company authorized to do business in the State of Georgia, ("Landlord"), and **CITY OF JOHNS CREEK, GEORGIA**, a municipal corporation of the State of Georgia ("Tenant").

### WITNESSETH:

In consideration of the obligation of Tenant to pay rent as herein provided and in consideration of the other terms, covenants and conditions hereof, Landlord leases to Tenant and Tenant takes from Landlord, the Premises (as defined below) for the Lease Term (as defined below), on and subject to the terms and conditions hereof.

## ARTICLE I

### DEFINITIONS AND EXHIBITS

1.1 **Definitions.** The following terms, as defined below, are used in this Lease, in addition to other terms defined herein:

(a) **SHOPPING CENTER:** (i) The shopping center in Fulton County, State of Georgia, located at 3005 Old Alabama Road, Alpharetta, GA 30022, on the property described in Exhibit "A" attached hereto and the buildings and improvements located thereon, which Shopping Center is commonly known as "Old Alabama Square." The Shopping Center is generally depicted on the drawing attached hereto as Exhibit "B".

(b) **THE PREMISES:** Approximately 1,402 square feet of space, Suite #120 being that portion of the Shopping Center which is cross-hatched on Exhibit "B".

(c) **READY FOR OCCUPANCY:** The date upon which Landlord's Work (as defined in Exhibit "C"), if any, on the Premises has been substantially completed (except for minor finishing operations or items necessarily awaiting performance of Tenant's Work, as defined in Exhibit "C"), as certified in writing by Landlord to Tenant. If the Premises are being leased to Tenant "as-is" in accordance with the provisions of this Lease (i.e., without any Landlord's Work to be performed) and are unleased and vacant on the date of complete execution of this Lease, Tenant shall be deemed to have been given notification that the Premises are Ready for Occupancy by Landlord's execution of this Lease. Furthermore, "as is" condition shall not include any personal property items which may be in the premises upon delivery which are not owned by Landlord such as furniture, trade fixtures, and/or equipment.

(d) **RENT COMMENCEMENT DATE:** Subject to the provisions of Section 2.1(b), the Rent Commencement Date shall be the latest to occur of (a) the date which is one hundred twenty (120) days after the Effective Date of the Lease; or (b) April 1, 2012. Tenant shall promptly upon Landlord's request execute the statement shown on Exhibit "J" confirming the Commencement Date.

(e) **LEASE TERM OR TERM:** This Lease shall be for a term beginning with the date of Lease execution by both parties and ending March 31, 2017, unless earlier terminated as provided for herein below and as further provided for in accordance with O.C.G.A. § 36-60-13. Pursuant to O.C.G.A. § 36-60-13, this Lease is effective upon its execution by both parties hereto, and terminates on December [redacted], 2012 (the "Initial Term") without further obligation on the part of either party other than outstanding obligations incurred prior to the expiration of such term. Thereafter, in accordance with O.C.G.A. § 36-60-13 and subject to the further conditions provided in this Section, this Lease shall be automatically renewed for up to five (5) successive one (1) year terms and an additional term of three (3) months commencing January 1, 2017 and terminating March 31, 2017 (each subsequent term following the Initial Term referred to as a "renewal term"), unless Tenant furnishes Landlord with written notice of its intent not to renew this Lease not less than one hundred twenty (120) calendar days prior to the expiration of the Initial Term. At the termination of each renewal term, this Agreement shall be automatically renewed for an additional renewal term, unless Tenant furnishes Landlord with written notice of its intent not to renew this Lease not less than one hundred twenty (120) calendar days prior to the expiration of such renewal term, in which case this Lease will be terminated without further obligation on the part of either party other than outstanding obligations incurred prior to the expiration of such term.

(f) **MINIMUM RENTAL:** The rental per annum payable during each Lease Year of the Lease Term as provided in Special Stipulation 1 attached hereto and by this reference made a part hereof, which Minimum Rental is payable monthly in advance in equal installments as provided by Article III hereof.

(g) **PERCENTAGE RENT RATE:** N/A

(h) **ADVANCE DEPOSIT:** \$3,010.80, applied as first month's Minimum Rental, CAM, tax and insurance, payable and due upon execution of the within Lease Agreement.

(i) **SECURITY DEPOSIT:** Intentionally deleted.

(j) **TENANT'S NAME IN USE OF PREMISES:** "City of Johns Creek" or "Johns Creek Police Department"

(k) **LANDLORD'S MAILING ADDRESS:**

Old Alabama, LLC  
3700 Airport Road, Suite 401  
Boca Raton, FL 33431

With a copy of all correspondence to:

Merchants Property Group, Inc.  
P.O. Box 3040  
Duluth, Georgia 30096  
Attn: Ms. Kay M. Brown, CPM

or such other address as may from time to time be designated by Landlord in a written notice to Tenant.

(l) **TENANT'S MAILING ADDRESS:**

City of Johns Creek  
12000 Findley Rd., Suite 400  
Johns Creek, GA 30097  
Phone: (678) 512-3200  
Attn: City Manager

With a copy of all correspondence to:

City Attorney  
City of Johns Creek  
12000 Findley Rd., Suite 400  
Johns Creek, GA 30097

or such other address as may from time to time be designated by Tenant in a written notice to Landlord.

(m) **USE OF PREMISES:**

The Premises may be used only for the following purposes:

The Premises shall be used solely for the operation of a police precinct for the City of Johns Creek, and for no other purpose whatsoever.

(n) **GROSS RENTABLE AREA:** Floor area designed for tenant occupancy and exclusive use, measured from the exterior of outside walls and store fronts and from the center of party walls. The parties agree that, on the date hereof, the Gross Rentable Area of the Premises is 1,402 square feet.

(o) **LEASE YEAR:** Each successive period of twelve (12) calendar months during the Lease Term; provided that, if the Rent Commencement Date is other than the first day of a calendar month, the first Lease Year shall be the period of time from the Rent Commencement Date to the end of the calendar month in which such date shall fall, plus the following twelve (12) calendar months. The last Lease Year shall terminate on the date of expiration of this Lease.

(p) **LIABILITY INSURANCE LIMITS:** \$1,000,000 with respect to a combined single limit to include injuries to or death of any one person, any one occurrence and property damage.

1.2 **Exhibits.** The exhibits enumerated on the attached Exhibit index (which is by this reference made a part hereof) are, if used in this Lease, attached to this Lease, incorporated in this Lease by this reference and to be construed as a part of this Lease.

## ARTICLE II

### CONSTRUCTION AND ACCEPTANCE OF PREMISES

2.1 **Condition of Premises; Construction.** (a) Any and all construction in the Premises to prepare same for Tenant's occupancy shall be governed by and performed in accordance with Exhibit "C" attached hereto and by this reference made a part hereof. Except for any "Landlord's Work" described in Exhibit "C" and Exhibit "H", Special Stipulations, Tenant acknowledges that it has inspected the Premises, that Landlord has made no representations or warranties whatsoever respecting the condition thereof or otherwise, that Landlord has no obligation or duty to make any alterations, improvements or repairs whatsoever in and to the Premises to make same ready for Tenant's use and occupancy and that Tenant takes and accepts the Premises in their present "as is" condition.

(b) In case of delay in delivery of the Premises Ready for Occupancy which is caused by delay due to omission, delay or default by Tenant or anyone acting under or for Tenant ("Tenant Delay"), the Commencement Date shall in any case occur not later than the date which would have been, but for the Tenant Delay, the Commencement Date determined in accordance herewith.

2.2 **Acceptance of Premises**. When the Premises are Ready for Occupancy, Tenant agrees to accept possession thereof and to proceed with due diligence to perform Tenant's Work (once approved), and to install its fixtures, furniture, and equipment in the Premises. By occupying the Premises, Tenant shall be deemed to have acknowledged that the Landlord has complied with all of its covenants and obligations with respect to construction within the Premises. In the event of any dispute concerning work performed or required to be performed in the Premises by Landlord or Tenant, the matter in dispute shall be submitted to a neutral architect selected by both parties for determination and such architect's reasonable determination with respect thereto shall be binding on Landlord and Tenant, except for the work outlined in Exhibits "C" and "H".

2.3 **Covenant to Open**. N/A.

2.4 **Lease Valid and Binding**. Upon complete execution by the parties hereto this Lease shall be and is effective, in full force and effect and valid and binding against the parties in accordance with (but always on and subject to) its terms and conditions.

### ARTICLE III

#### RENT

3.1 **Payment of Rentals**. Rental and other charges due and payable hereunder shall accrue hereunder from the Rent Commencement Date, subject to the rental abatement set forth in the Special Stipulations, and shall be payable at Landlord's Mailing Address unless otherwise directed by Landlord in writing. Rent and all other charges due shall be paid and in the Landlord's possession no later than the first (1<sup>st</sup>) day of the month. Any rent or other charges and balances due as provided herein received after the fifth (5<sup>th</sup>) day of the month shall be subject to a fifteen (15%) percent late fee. Landlord reserves the right, at any time after any Event of Default hereunder or following return of any check of Tenant for insufficient funds, to require any payments to be made by Tenant by virtue of this Lease to be made by cashier's check or similar mode of payment. Minimum Rental, and each and every other charge, fee, cost or expense which Tenant is obligated or liable to pay to, refund to or reimburse Landlord (sometimes referred to as "Additional Rent") shall, for the purposes of the default provisions of this Lease, be deemed additional rental due from Tenant, and Tenant's failure to so pay, refund or reimburse when due shall entitle Landlord to all the remedies provided for herein and at law or in equity on account of failure to pay rent.

3.2 **Minimum Rental**. Tenant covenants and agrees to pay to Landlord the Minimum Rental monthly in advance in equal monthly installments as provided in Special Stipulation 1 above without notice on the first day of each calendar month during the Lease Term, except that the first such monthly installment shall be due and payable in accordance with the Special Stipulations and if the first monthly payment falls on a day other than the first day of a calendar month, the payment for such the calendar month shall be a prorated amount based upon the total number of days in such month (and shall be in addition to the annual Minimum Rental payable for the balance of the first Lease Year as set forth in Special Stipulation 1). The covenant of Tenant to pay all rents hereunder is and shall be deemed a separate and independent covenant and Tenant shall have no right of deduction or set-off whatsoever.

3.3 **Percentage Rent**. N/A

3.4 **Gross Sales Definition**. N/A

### ARTICLE IV

#### SALES REPORTS AND RECORDS

4.1 **Monthly and Annual Sales Reports**. N/A.

4.2 **Records of Gross Sales**. N/A.

4.3 **Audit Rights**. N/A.

### ARTICLE V

#### COMMON AREAS

5.1 **Use of Common Areas**. Tenant and its licensees, concessionaires, employees and customers shall have the non-exclusive right to use those areas of the Shopping Center which are from time to time designated by Landlord as open for joint use by the tenants of the Shopping Center or by the public, including (without limitation) parking areas, access roads, driveways, delivery passages, walkways, concourses, malls, landscaped areas, public restrooms and common loading and receiving areas which are not leased to or reserved for individual tenants (collectively, "Common Areas"),

such use to be in common with Landlord and other tenants of the Shopping Center (and their respective licenses, concessionaires, employees and customers) and other persons entitled to use the Common Areas, subject to such reasonable rules and regulations as Landlord may from time to time prescribe. Landlord may require that automobiles owned by Tenant, its licensees, concessionaires and employees be parked in specific portions of the Common Areas, as long as such request does not materially and adversely interfere with Tenant's operations or use of the Premises. Tenant shall not interfere with the rights of other persons to use the Common Areas. Landlord may temporarily close any part of the parking facilities or other portions 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 Shopping Center or contiguous property, (ii) repairs or alterations in or to the Common Areas or to any sewers, utility facilities or distribution lines located with the Common Areas, (iii) preventing the dedication of same to the public, (iv) security reasons or (v) doing and performing such other acts (whether similar or dissimilar to the foregoing) in, to and with respect to, the Common Areas as in the use of good business judgment the Landlord shall determine to be appropriate for the Shopping Center; provided, however, that Landlord shall use reasonable efforts not to materially and adversely interfere with or disrupt Tenant's business, and shall ensure that Tenant's customers have access to the Shopping Center. Landlord further reserves the right, from time to time, to utilize portions of the Common Areas (including common mall area, if applicable) for carnival type shows, rides and entertainment, outdoor shows, seasonal displays, display, automobile and other product shows, and business promotions, the leasing of kiosks (provided such kiosks are not located within ten (10) feet of Tenant's storefront) or sales space, or such other uses which in Landlord's judgment tend to attract the public, provided such use does not materially and adversely interfere with Tenant's operations or use of the Premises. Further, Landlord reserves the right to utilize the lighting standards and other areas in the parking lot (and common mall area, if applicable) for advertising purposes.

5.2 **Taxes and CAM Expenses.** (a) Tenant agrees to pay as additional rent, as hereinafter provided, Tenant's Proportionate Share (as hereafter defined) of Taxes (as hereafter defined) with regard to the Shopping Center for each calendar year (or portion thereof) during the Term and of expenses incurred by Landlord for each calendar year (or portion thereof) during the Term, at Landlord's discretion, for the operation and maintenance of the Shopping Center and Common Areas thereof ("collectively, "Taxes and CAM Expenses"); provided however, Taxes and CAM Expenses shall not begin to accrue until after the Rental Commencement Date.

(b) Taxes and CAM Expenses shall include (without limitation) Taxes (as hereafter defined), and costs incurred in operating, managing, administering, maintaining, repairing, replacing or improving the Shopping Center and its Common Areas, including (without limitation) costs of lighting, painting, cleaning, central trash disposal (if Landlord elects to provide such), traffic control, policing, security, inspecting, landscaping and repairing and replacing the Common Areas, or any part thereof, depreciation of maintenance equipment, public liability, hazard or casualty and property damage and other insurance with respect to the Shopping Center, utility costs not separately metered to tenants (single or multiple), and capital expenditures required due to applicable governmental or other regulations that were not in effect when the Shopping Center was built, but excluding depreciation of Landlord's original investment in the Shopping Center. Taxes and CAM Expenses shall also include an allowance of fifteen percent (15%) of all the foregoing for Landlord's overhead and administrative expenses. For purposes of this Lease, "Taxes" shall mean, for each calendar year beginning with the Rental Commencement Date and during the Lease Term and any renewals or extensions thereof, prorated as appropriate for the first and last years of the Lease Term if such years are less than full calendar years, all real estate taxes, assessments (special or otherwise, and including, without limitation, any assessments, special or otherwise, imposed upon the Shopping Center, or any portion thereof, or any other charge payable by Landlord by virtue of the Shopping Center, or any portion thereof, being located within and/or benefited by a special improvement district or subject to tax increment financing), ad valorem charges, water and sewer rents, rates and charges (other than rents or charges which are based on consumption and are paid directly by tenants or otherwise included in Taxes and CAM Expenses), city and county taxes, minor privilege permits and any other governmental liens, impositions or charges of a similar or dissimilar nature, whether general, special, ordinary, extraordinary, foreseen or unforeseen, current or future, and any payments in lieu of such charges, which may be levied, assessed or imposed on or with respect to all or any part of the Shopping Center by any taxing authority, whether or not the same constitutes one or more tax lots, as well as any fees and expenses charged by Landlord's tax consultants and/or fees and expenses (including, without limitation, attorneys' fees and accountants' fees) incurred by Landlord in connection with pursuit of any reduction, refund or appeal of Taxes. If at any time during the Term the methods of taxation prevailing at the date hereof shall be altered so that in lieu of or as an addition to or as a substitute for the whole or any part of the Taxes now levied, assessed or imposed on all or any part of the Shopping Center, there shall be levied, assessed or imposed (i) a tax, assessment, levy, imposition or charge based on the rents received therefrom whether or not wholly or partially as a capital levy or otherwise, or (ii) a tax, assessment, levy, imposition, or charge measured by or based in whole or in part upon all or any part of the Shopping Center and imposed on Landlord, or (iii) a license fee measured by the rent payable by Tenant to Landlord, or (iv) any other tax, levy, imposition, charge or license fee however described or imposed, then all such taxes, assessments, levies, impositions, charges or license fees or the part thereof so measured or based, shall be deemed to be Taxes, unless otherwise paid directly by Tenant or other tenants of the Shopping Center. In no event, however, shall Taxes include any income, inheritance, estate, succession, profit, capital levy, documentary stamp tax, recording fees, transfer, gift or franchise tax of Landlord, unless such tax is in lieu of or in partial substitution for other items that are included as part of Taxes. For purposes of this Lease, "Tenant's Proportionate Share" shall be a fraction, expressed as a percentage, having the Gross Rentable Area of the Premises as its numerator and the Gross Rentable Area of the Shopping Center as its denominator.

(c) Landlord may require monthly payments from Tenant based upon estimates from time to time of Taxes and CAM Expenses for any calendar year, which shall be payable in advance but subject to adjustment after the end of such calendar year on the basis of the actual costs for such year. After the close of each calendar year, Landlord will furnish to

Tenant a final reconciliation and statement of Taxes and CAM Expenses for such year, such statement to show Tenant's Proportionate Share of the Taxes and CAM Expenses computed as herein provided. If such statement shows an amount owing by Tenant for Taxes and CAM Expenses during a calendar year that is less than the sum of the monthly estimated payments of same made by Tenant for such calendar year, the excess paid shall be credited against the next succeeding estimated payments of Taxes and CAM Expenses becoming due hereunder; provided, however, that if the Lease Term shall expire or this Lease shall terminate prior to full application of such credit, any balance due Tenant shall be refunded to Tenant by Landlord if Tenant is not in default under this Lease (and, if Tenant is in default hereunder, such balance shall be held as additional security for Tenant's performance, may be applied by Landlord toward the cure of any such default and shall not be refunded until any such default is completely cured by Tenant). If such statement shows an amount owing by Tenant which is more than the sum of the monthly estimated payments made by Tenant for such calendar year, Tenant shall pay such deficiency to Landlord within thirty (30) days after receipt of such statement. Estimated payments toward Tenant's Proportionate Share of Taxes and CAM Expenses shall initially be in the amount set out on Exhibit "D" attached hereto, subject to revision hereafter based upon revised estimates by Landlord.

5.3 **Alteration of Common Areas.** Landlord shall have the right at all times, in its sole discretion, to change the size, location, elevation, nature or use of any portion or all of the Common Areas, the Shopping Center, or any part thereof, as Landlord may from time to time determine, including the right to change the size thereof, to erect buildings thereon, to sell or lease part or parts thereof, to change the location and size of the landscaping and buildings or Common Areas, and to make additions to, subtractions from, or rearrangement of, said buildings and Common Areas, so long as such changes comply with all applicable zoning, development and building codes and guidelines established by all governing authorities and do not materially and adversely interfere with Tenant's operations or use of the Premises.

## ARTICLE VI

### USE AND CARE OF PREMISES

6.1 **Use and Operation of Premises.** Tenant shall in good faith continuously throughout the Term of this Lease conduct and carry on in the entire Premises the type of operations described in Section 1.1(m) and the Premises shall not be used for any other purpose. Tenant shall use either "City of Johns Creek" or "Johns Creek Police Department" in the transaction of business in the Premises and Tenant shall not change such name without the written consent of Landlord. Tenant shall not use or permit the use of any vending machines or public telephones on, at or about the Premises without the prior written consent of Landlord and Tenant shall under no circumstances use the Premises or any portion thereof for lodging or residence purposes. Tenant shall not commit waste, perform any acts or carry on any practices which may injure the Shopping Center or be a nuisance or menace to other tenants in the Shopping Center. Tenant shall operate its business in a dignified manner, and shall, at all times when the Premises are open for business with the public, if any, keep the Premises equipped with fixtures and attended by adequate personnel. Tenant agrees not to violate any exclusive use provisions which may exist in other tenants' leases within the shopping center throughout the term of this Lease Agreement and any extensions thereof provided that Tenant has notice of the same. This Lease is expressly subject and subordinate to all matters of record recorded before the date of this Lease, including but not limited to that certain Declaration of Easements, Covenants and Restrictions for Old Alabama Square dated October 8, 1999, and recorded in Deed Book 27820, Page 101 of the Real Estate Records of Fulton County, Georgia, as amended by that certain First Amendment to Declaration of Easements, Covenants and Restrictions dated August 8, 2000, and recorded in Deed Book 29404, Page 466 of the aforesaid Records, and any other declarations, reciprocal easement agreements, covenants, conditions and restrictions or similar documents recorded in the aforesaid records (collectively, the "Declaration"). The Declaration and any other present or future instrument or document of public record now or hereafter affecting the Shopping Center are collectively referred to in this Lease as the "Restrictions". Tenant agrees to comply with the Restrictions; provided however, that to the extent any declarations, reciprocal easement agreements, covenants, conditions or restrictions affecting the Shopping Center are recorded after the date of this Lease, Tenant shall not be required to comply with such specific portion of the Restrictions if same unreasonably and adversely interferes with Tenant's use of the Premises. Furthermore, Tenant acknowledges and agrees that a violation of any term or condition of the Restrictions by any tenant or occupant that is subject to the provisions of said Restrictions (including, without limitation, any residential tract, office tract, or outparcel user) shall not constitute a violation or default by Landlord hereunder. While the subordination to the Restrictions is intended to be self-operative, Tenant agrees to execute such instruments confirming such subordination as may be requested by Landlord. In the event of a conflict between this Article (6.1) and Article (1.1 m) of this Lease Agreement, then this Article (6.1) shall control.

6.2 **Compliance with Laws.** In the use and occupancy of the Premises, Tenant shall, at its cost, obtain all necessary licenses and permits to conduct its business within the Premises and otherwise comply with all laws and ordinances and all valid rules and regulations of any applicable federal, state or local government or agency thereof and all requirements of any public or private agency having authority over insurance rates, with respect to Tenant's specific manner of use of the Premises. Without limitation, Tenant shall be responsible at its expense (and with Landlord's approval of any needed alterations) to comply in all respects with the Americans with Disabilities Act of 1990, as amended, but only as Tenant's work, where the need for such compliance results from Tenant's specific manner of use of the Premises or alterations or improvements to the Premises made by Tenant or on Tenant's behalf.

6.3 **Hazardous Materials.** Tenant shall not generate, store, treat, dispose of, install or otherwise cause or permit any Hazardous Material to be brought upon, kept or used in or about the Premises or the Shopping Center by Tenant, its agents, employees, contractors or invitees. Tenant shall indemnify, defend and hold Landlord harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation, diminution in value

of the Premises, damages for the loss or restriction on use of rentable or useable space or of any amenity of the Premises, damages arising from any adverse impact or marketing of space as a result of any change in Tenant's use of the Premises which results in a violation of this provision, sums paid in settlement of claims, reasonable attorneys' fees inclusive of such fees incurred in enforcement of this indemnity and including fees on appeal, consultant fees and expert fees) which arise during or after the Lease Term as a result of Tenant's failure to comply fully with this Section 6.3, the provisions hereof to survive expiration or termination of this Lease. This indemnification of Landlord by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Material present in the soil or ground water on or under the Premises; (except that nothing herein contained shall obligate Tenant to indemnify Landlord for conditions existing prior to the date hereof or caused by Landlord). Without limiting the foregoing, if the presence of any Hazardous Material on the Premises solely caused or permitted by Tenant results in any contamination of the Premises, Tenant shall promptly take all actions at its sole expense as are necessary to return the Premises to the condition existing prior to the introduction of any such Hazardous Material to the Premises; provided that Landlord's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Premises. For purposes hereof, "Hazardous Material" means any substance, material, element or compound affected by any federal, state or local statute, law, ordinance, code, rule, regulation, order or decree now or at any time hereafter in effect, regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic, dangerous, restricted or otherwise regulated waste, substance or material.

## ARTICLE VII

### TENANT'S COVENANTS

7.1 **Prohibited Activities.** Tenant shall not, nor shall Tenant at any time permit any occupant of the Premises to (i) conduct or permit any fire, bankruptcy or auction sale (whether real or fictitious) unless directed by order of a court of bankruptcy or of competent jurisdiction, or conduct or permit any fictitious "Going Out of Business" sale; (ii) use the Premises for any unlawful purpose or for or conduct therein activities, the purpose for which is excluded from or inconsistent with or not included within the purpose for which the Premises may be used according to Section 1.1(m) of this Lease; (iii) use, operate or maintain the Premises in such manner that any of the rates for any insurance carried by Landlord, or the occupant of any premises within the Shopping Center, shall thereby be increased; (iv) install, operate or maintain in the Premises any electrical equipment which will overload the electrical system therein, or any part thereof, beyond its reasonable capacity for proper and safe operation as determined by Landlord in light of the over-all system and requirements therefore in the Shopping Center, or which does not bear Underwriter's Laboratories approval; or (v) sell or offer for sale Georgia lottery tickets, regardless of how the same may be denominated.

7.2 **Cleaning of Premises.** Without limiting the provisions of Section 8.2 hereof, Tenant (i) will keep clean the inside and outside of all glass in the doors and windows of the Premises; (ii) will maintain the Premises in a safe, clean, sightly, orderly, sanitary and serviceable condition, free of insects, rodents, vermin and other pests; (iii) will not permit undue accumulation of garbage, trash, rubbish or other refuse in the Premises; and (iv) will keep such refuse in proper containers inside the Premises until such time as same is called for to be removed.

7.3 **Business Hours.** N/A.

7.4 **Abandonment.** In the event that at any time during the Term, or any extension or renewal thereof, Tenant should vacate, abandon, or desert the Premises, then, in any such event, Tenant shall be in default hereunder and Landlord shall have, in addition to all rights and remedies provided under Section 17.2 hereof, the right to collect the Minimum Rental; provided, however, that such rental shall not accrue during any period when the Premises are rendered untenable by reason of fire, casualty, or cause beyond Tenant's control (and not resulting from the intentional or negligent acts or omissions of Tenant, its assignees, sublessees, servants, agents, employees, invitees, licensees, or concessionaires, or the servants, agents, employees, invitees, licensees or concessionaires of Tenant's assignees or sublessees) and the failure to operate Tenant's store during any such period shall not be deemed a default hereunder.

7.5 **Rules and Regulations.** The rules and regulations shown on Exhibit "E" are hereby made a part of this Lease, and Tenant agrees to comply with and observe the same. Landlord reserves the right from time to time to amend or supplement said rules and regulations and to adopt and promulgate additional rules and regulations applicable to the Premises and the Shopping Center, and Tenant agrees to comply with and observe all such amended, supplemental and additional rules and regulations after Tenant has received notice of same.

7.6 **Radius Restriction.** N/A.

## ARTICLE VIII

### MAINTENANCE AND REPAIR OF PREMISES, ALTERATIONS AND LANDLORD'S RIGHT OF ACCESS

8.1 **Landlord Repair Obligations.** Landlord shall keep the foundation, the roof and the exterior walls of the Premises (except plate glass, doors, door closures, door frames, store fronts, windows and window frames located in

exterior building walls) in good repair, except that Landlord shall not be required to make any repairs occasioned by the act or neglect of Tenant or its assignees and sublessees, or their respective servants, agents, employees, invitees, licensees or contractors. In the event that the Premises should become in need of repairs required to be made by Landlord hereunder, Tenant shall give immediate written notice thereof to Landlord; and Landlord shall not be responsible in any way for failure to make any such repairs until fifteen (15) days following receipt of written notice from Tenant, unless any such repair is of a nature that can not reasonably be cured within said fifteen (15) day period and Landlord has initiated and diligently pursues completion of any such repair.

**8.2 Tenant Repair Obligations.** Tenant shall, at its sole cost and expense, make and perform all maintenance, repairs and replacements of or to the Premises except for the specific repair obligations of Landlord set forth in Section 8.1 above. Without limitation, Tenant shall make and perform all maintenance, repairs and replacements to (i) the heating, ventilating and air conditioning systems specifically serving the Premises; (ii) the exterior and interior portion of all doors, windows, window frames, plate or window glass, door closures and hardware, door frames and store fronts; (iii) all plumbing and sewage facilities within the Premises, including free flow up to the connection to the main sewer line; (iv) all fixtures within the Premises; (v) all electrical systems serving the Premises (whether or not located within the Premises); (vi) all sprinkler systems serving the Premises; (vii) all interior walls, floors and ceilings; (viii) any of Tenant's Work; (ix) all repairs, replacements or alterations required by any governmental authority at any time during the Term with respect to Tenant's specific manner of the premises; and (x) all necessary repairs and replacements of Tenant's trade fixtures required for the proper conduct and operation of Tenant's business. Tenant shall, at its expense, keep in force a standard maintenance agreement on all heating, ventilating, and air conditioning systems (the "HVAC System") specifically serving the Premises with a reputable contractor and shall provide a copy of said maintenance agreement to Landlord. Provided Tenant fails to maintain a HVAC maintenance agreement, Tenant further agrees that Landlord may, from time to time during the Term of this Lease, employ a contractor to inspect the HVAC System to insure that Tenant is complying with and performing its maintenance and repair obligations with respect thereto required hereby. Tenant shall reimburse Landlord within thirty (30) days following invoice for the costs of such inspector and costs incurred by Landlord in connection with such inspections. Tenant shall also be responsible, at its sole cost and expense (and subject to the further requirements of Section 8.3 below), promptly to perform any repairs or maintenance determined to be necessary as a result of such inspection. Tenant shall, at its own cost and expense, make or cause to be made all such alterations to the Premises (including without limiting the generality of the foregoing, removing barriers and providing alternative services) as shall be required for compliance with the Americans with Disabilities Act of 1990, as now or hereafter amended, but only as to Tenant's specific manner of use of the Premises and/or Tenant's work, and the rules and regulations from time to time promulgated thereunder, or any other governmental or insurance underwriter's laws, rules or regulations.

**8.3 Alterations.** Tenant shall not make any alterations, additions or replacements to the Premises (other than the Tenant's Work) without the prior written consent of Landlord, except for installation of unattached moveable fixtures which may be installed without drilling, cutting or otherwise defacing the Premises or items not exceeding \$1,500.00 during any one Lease year. All alterations, additions and improvements made in and to the Premises and all fixtures (other than trade fixtures) which are installed in the Premises shall remain in and be surrendered with the Premises and shall become the property of Landlord at the expiration or sooner termination of this Lease. Tenant shall have the right to remove its trade fixtures from the Premises prior to expiration or termination, provided that Tenant shall repair and restore any damage to the Premises caused or occasioned by such removal. Provisions of this Section 8.3 shall survive expiration or any termination of this Lease.

**8.4 Legal Compliance; Plan Approval.** All Tenant's Work and all repairs, alterations, additions and improvements performed by Tenant within the Premises shall be performed in a good and workmanlike manner, in compliance with all governmental requirements, and at such times and in such manner as will cause a minimum of interference with other construction in progress and with the transaction of business in the Shopping Center. In no event shall any construction work be commenced within the Premises without Landlord's written approval of plans and specifications therefor, which shall not be unreasonably withheld, delayed or conditioned. All plans and specifications submitted to Landlord for alterations to the Premises shall be in compliance with all applicable laws and governmental and quasi-governmental rules and regulations. Further, all work to be performed within the Premises will be performed by licensed and insured contractors and subcontractors which have been approved by Landlord, such approval not to be unreasonably withheld, delayed or conditioned.

**8.5 Entry by Landlord.** Landlord shall have the right, but not the duty, to reasonably enter upon the Premises at any time and upon reasonable advance written notice for the purpose of inspecting the same, making repairs to the Premises, making repairs, alterations or additions to adjacent property or showing the Premises to lenders or to prospective purchasers, or during the last six (6) months of the term show the Premises to prospective replacement tenants. Without limitation, Landlord shall have the right to run utility lines, pipes, roof drainage pipes, conduit, wire, ductwork, or sprinkler systems, where necessary, through, in, or beneath, the Premises, and maintain same in a manner which does not unduly interfere with Tenant's use thereof. If Tenant or Tenant's agents or employees shall not be present or permit entry into the Premises at any time and for any reason when entry therein shall be necessary or permissible under this Lease, Landlord or Landlord's agents or employees may enter same by whatever lawful means necessary without liability therefor and without in any manner affecting the obligations, covenants, terms, or conditions of this Lease. Notwithstanding the foregoing, any entry by Landlord onto the Premises shall not result in the interference with the conduct of business to the public.

8.6 **No Liens.** Tenant shall not suffer or permit any materialmen's, mechanics' or other liens to be filed or placed or exist against the Shopping Center and/or Premises, or Tenant's interest in the Premises, by reason of work, services or materials supplied or claimed to have been supplied to Tenant or anyone holding the Premises or any part thereof through or under Tenant, and nothing contained in this Lease shall be deemed or construed in any way as giving Tenant any right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to the filing of a materialmen's, mechanics' or other lien against the Shopping Center or the Premises. If any such lien should, at any time, be filed, Tenant shall cause the same to be discharged of record within fifteen (15) days after the date of filing thereof.

8.7 **No Liability.** Landlord shall not be liable to Tenant for any minimal interruption of Tenant's business or inconvenience caused Tenant or Tenant's assigns, sublessees, customers, invitees, employees, licensees or concessionaires in the Premises or for any other loss or damage, whether to Tenant's personal property or otherwise, on account of Landlord's performance, following five (5) days written notice to Tenant, of any repair, maintenance or replacement in the Premises or any other work or entry therein pursuant to Landlord's rights or obligations under this Lease, so long as such work or entry is being conducted without negligence or disregard for Tenant's business operations, which shall be fully coordinated with Tenant and performed after business hours, when possible, and none of same shall constitute an eviction of Tenant, actual or constructive, in whole or in part, and the rents herein reserved shall in no wise abate by virtue of any of same.

## ARTICLE IX

### SIGNS, STORE FRONTS AND ROOF

9.1 **Signs, Etc.** Tenant shall not, without the prior written consent of Landlord (i) make any changes to the store front or other exterior walls of the Premises; (ii) install any exterior lighting, awning or protrusions or any exterior signs, (iii) install any coverings on exterior windows and doors or (iv) erect or install any signs, window or door lettering, placards, decorations or advertising media of any type on any window or door glass or which can be viewed from the exterior of the Premises. Tenant shall, if requested by Landlord, install at Tenant's expense an exterior sign conforming to the general appearance of other signs in the Shopping Center and the Sign Criteria set forth in Exhibit "F" (if used). Tenant shall at all times keep all signs in good condition, in proper operating order and in accordance with all applicable government regulations. Use of the roof of the Premises and Shopping Center is reserved to Landlord (and Tenant shall have no right to use any part of the roof of the Premises or Shopping Center) and Landlord may install upon the roof equipment, signs, antennae, 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. Landlord agrees and acknowledges that Tenant's signage shall be similar to Tenant's signage for Tenant's other lease premises in the Shopping Center. Landlord shall not install signage of any other tenant over, on or directly outside the Premises.

If Landlord should undertake any remodeling or renovation of the Shopping Center which requires modification of Tenant's signs, then Tenant shall, if required by Landlord, conform to the standard Sign Criteria used for such remodeling or renovation, at Tenant's sole cost and expense. Tenant shall have no right to place a sign on any Shopping Center monument, pylon or reader board sign.

## ARTICLE X

### UTILITIES

10.1 **Utilities.** Tenant shall contract for and register all utilities to the Premises in Tenant's name and Tenant shall promptly pay all charges for electricity, water, sewer, telephone, gas (where applicable), chilled water service (where applicable) and other utilities furnished to the Premises. Notwithstanding the foregoing, Landlord may, if it so elects with Tenant's consent, which such consent shall not be unreasonably withheld, conditioned or delayed, furnish one or more of such services to Tenant, and, in such event, Tenant shall purchase such services as are tendered by Landlord and shall pay for such services, as additional rent, at the rates established therefore by Landlord, provided that such rates shall not exceed the rate which would be charged for the same service if furnished directly by the applicable public utility then furnishing such service. In the event that Landlord furnishes any of such services and same are provided to Tenant jointly with any other tenants, the bill for same rendered by Landlord shall be based upon Tenant's prorated share of such services as reasonably determined by Landlord.

10.2 **Interruptions in Services.** In no event shall Landlord be required to provide electric energy or other utility service to the Premises in quantities beyond the capacity of the conductors, conduits or equipment presently installed by Landlord in the Shopping Center for such utility service. Further, Landlord shall not be liable for the interruption, curtailment or reduction in or of any utility or service for any reason whatsoever. In the event of any interruption of utility services caused by Landlord's negligence and continuing for more than three (3) business days, Tenant shall receive abatement of Minimum Rent and all Additional Rent under the Lease, on a day-per-day basis, until any such interruption is restored. Tenant agrees that it will not install any equipment which will exceed or overload the capacity of any utility facilities serving the Premises and that if any equipment installed by Tenant shall require additional utility facilities, the same shall be installed and maintained at Tenant's expense in accordance with plans and specifications approved in writing by Landlord.

## ARTICLE XI

## INDEMNITY AND NON-LIABILITY

### 11.1 **Indemnification.**

11.1.1 To the extent allowed by law and without waiving Tenant's sovereign immunity, Tenant agrees to defend, indemnify and save and hold Landlord harmless from and against any and all liability for any injury to or death of any person or persons or any damage to property in any way arising out of or connected with the condition, use or occupancy of the Premises, or in any way arising out of Tenant's breach of any of the covenants and obligations of Tenant set forth in this Lease, or in any way arising out of the activities in the Premises, Common Areas or other portions of the Shopping Center, of the Tenant, its assignees or sublessees or of the respective agents, employees, licensees, concessionaires or invitees of Tenant, its assignees or sublessees, and from all costs, expenses and liabilities, including, but not limited to, court costs and reasonable attorneys' fees (inclusive of fees through any and all appeals), incurred by Landlord in connection with any of the foregoing; provided that the foregoing shall in no way obligate Tenant to indemnify Landlord against Landlord's negligence or willful misconduct or for any breach of this Lease by Landlord.

11.1.2 Landlord agrees to defend, indemnify and save and hold Tenant, including its public officials, officers, employees and agents, harmless from and against any and all liability for any injury to or death of any person or persons or any damage to property arising out of or caused by the negligence or willful misconduct of Landlord or its agents, or arising out of Landlord's material breach of any of the covenants and obligations of Landlord set forth in this Lease, and from all costs, expenses and liabilities, including, but not limited to, court costs and reasonable attorneys' fees (inclusive of fees through any and all appeals), actually incurred by Tenant in connection with any of the foregoing; provided that the foregoing shall in no way obligate Landlord to indemnify Tenant against Tenant's negligence or willful misconduct or for any breach of this Lease by Tenant.

11.1.3 The provisions of this Section 11.1 shall survive the expiration or other termination of this Lease.

11.2 **Non-Liability.** Tenant covenants and agrees, to the maximum extent permitted by law and except for (but subject to the waiver of subrogation and release provisions hereof) damage caused by Landlord's negligence or material breach of this Lease, that Landlord shall not be liable to Tenant for any injury to or death of any person or persons or for damage to any property of Tenant, or any person claiming through Tenant, arising out of any accident or occurrence on the Premises or any other portion of the Shopping Center by any cause whatsoever, including, without limiting the generality of the foregoing, injury, death or damage caused by the Premises or other portions of the Shopping Center becoming out of repair or caused by any defect in or failure of equipment, pipes, or wiring, or caused by broken glass, or caused by the backing up of drains, or caused by gas, water, steam, electricity, or oil leaking, escaping or flowing into the Premises and of which there was no negligence or willful misconduct on the part of Landlord, or caused by fire or smoke, or caused by the acts or omissions of other tenants of the Shopping Center.

## ARTICLE XII

### INSURANCE

#### 12.1 **Casualty Insurance.**

12.1.1 Tenant agrees that it shall throughout the Lease Term carry fire and extended coverage insurance insuring all leasehold improvements and betterments to the Premises and any and all trade fixtures, furniture, equipment, inventory, supplies and other property owned, leased, held or possessed by it and contained therein, in an amount equal to the full insurable values thereof (it being understood that no lack or inadequacy of insurance by Tenant shall in any event make Landlord subject to any claim by virtue of any theft of or loss of damage to any uninsured or inadequately insured property).

12.1.2 Landlord agrees to carry and maintain fire and extended coverage insurance covering the Shopping Center and Common Area in amounts per lender's requirements.

#### 12.2 **Liability Insurance, Etc.**

12.2.1 Tenant shall also procure and maintain throughout the Lease Term a policy or policies of insurance, insuring Tenant, and naming as additional insureds, Landlord, Manager and any other affiliates of Landlord designated by Landlord, upon written notice of the name and address of such other affiliates of Landlord, against any and all liability for injury to or death of a person or persons and for damage to property occasioned by or arising out of any construction work being done on the Premises, or arising out of the condition, use or occupancy of the Premises, or in any way occasioned by or arising out of the activities of Tenant, its agents, employees or licensees in the Premises, or other portions of the Shopping Center, in amounts not less than the Liability Insurance Limits provided in Section 1.1(p) hereof or such higher limits as Landlord may reasonably require from time to time during the Lease Term.

12.2.2 Landlord shall also procure and maintain throughout the Lease Term commercial general liability insurance in amounts not less than the Liability Insurance Limits provided in Section 1.1(p) hereof or, if Landlord requires Tenant to procure insurance with higher limits as set forth in Section 12.2.1, in an amount not less than such higher

amount. ~~Such~~Provided such policy permits, such policy of insurance shall name the City of Johns Creek, Georgia as an additional insured.

12.3 **Insurance Requirements.** All insurance policies that are required to be procured and maintained pursuant to this Lease shall be carried with companies licensed to do business in the State in which the Shopping Center is located, and with a rating acceptable to the other party and shall be noncancellable except after five (5) days' written notice to the other party and any designees thereof. Such policies or duly executed certificates of insurance with respect thereto shall be delivered to the other party prior to the date that Tenant takes possession of the Premises, and renewals thereof as required shall be delivered to the other party at least thirty (30) days prior to the expiration of each respective policy term, and must name the other party, as additional named insureds under the policies. Tenant shall name the Landlord, its Manager, and any others affiliates of Landlord as designated by the Landlord as additional insureds.

12.4 **Mutual Waiver of Subrogation; etc.** Landlord and Tenant (for themselves and for their insurers) each hereby waive any and all rights to recover against the other, or against the officers, directors, shareholders, partners, joint venturers, employees and agents of such other party, and agree to release same from liability, for any loss or damage to such waiving party arising from any cause covered by any public liability insurance, casualty insurance or business interruption insurance maintained or required to be maintained by such party under the terms and provisions of this Lease. In furtherance of the foregoing, Landlord and Tenant will each cause their respective insurers to issue appropriate waiver of subrogation rights endorsements (to the extent that such rights are not waived in the policies themselves) to such policies of insurance. Evidence of the existence of such waiver will be furnished by either party to the other party on request and each party will indemnify the other party from and against any loss or damage sustained as a result of the indemnifying party's failure to comply with the provisions of this Section 12.4.

### ARTICLE XIII

#### DAMAGE BY CASUALTY

13.1 **Casualty.** Tenant shall give immediate written notice to Landlord of any damage to the Premises caused by fire or other casualty, and if Landlord does not elect to terminate this Lease as hereinafter provided, Landlord shall proceed with reasonable diligence and at its sole cost and expense to rebuild and repair the Premises within one-hundred and eighty (180) days following the date of any such casualty. Notwithstanding the foregoing, in the event that (i) the insurance proceeds payable in connection with such damage and destruction shall be insufficient to make such restoration, (ii) the building in which the Premises are located shall be destroyed or substantially damaged by casualty not covered by standard fire or extended coverage insurance, (iii) said building shall be destroyed or rendered untenable by any casualty to the extent of at least fifty percent (50%) of the Gross Rentable Area of said building, (iv) Landlord shall not have actual and unconditional receipt of the insurance proceeds payable in connection with such damage and destruction, (v) the holder of any mortgage, deed to secure debt, deed of trust, or other instrument in the nature thereof which encumbers Landlord's interest hereunder or in the Premises shall require that such proceeds shall be applied against any indebtedness owed to such holder, or (vi) there shall be less than two (2) years remaining in the Term, or any extension or renewal thereof, then, in any of such events, Landlord may elect either to terminate this Lease or to proceed to rebuild and repair the Premises in accordance herewith. Landlord shall give written notice to Tenant of such election within thirty (30) days after the occurrence of such casualty. Notwithstanding the foregoing, Tenant shall have the right to terminate this Lease if any casualty to the Premises occurs during the final six (6) months of this Lease.

13.2 **Extent of Renovation, Etc.** Landlord's obligation to rebuild and repair the Premises under this Article XIII shall in any event be limited to restoring the base building structure and systems of the building in which the Premises are located (exclusive of tenant finish and other tenant improvements), all to substantially the condition in which the same existed prior to the casualty, and Tenant agrees that promptly after the completion of such work by Landlord, Tenant will proceed with reasonable diligence and at its sole cost and expense to restore Tenant's Work and all other tenant finish and other tenant improvements to substantially the condition in which the same existed prior to the casualty.

13.3 **Rental Abatement, Etc.** Tenant agrees that during any period of reconstruction or repair of the Premises, it will continue the operation of its business within the Premises to the extent practicable. During the period from the occurrence of a casualty until Landlord's repairs are completed, the Minimum Rental shall be reduced and abated in proportion to the amount of Gross Rentable Area of the Premises which is rendered untenable as a result of such casualty; provided, however, that if such damage or destruction is caused by the intentional or grossly negligent acts or omissions of Tenant, its assignees or sublessees or their respective servants, agents, employees, invitees, licensees or concessionaires, then, and in that event, the Minimum Rental shall not abate. Tenant shall not be entitled to and hereby waives, releases and relinquishes any and all claims against Landlord for any compensation or damage for loss of use of all or any part of the Premises or for any inconvenience or annoyance occasioned by any such damage, destruction, repair, or restoration of the Premises, except any such claims arising out of the negligence or intentional acts or omissions of Landlord.

13.4 **Damage to Shopping Center.** In the event that fifty percent (50%) or more of the Gross Rentable Area of the Shopping Center shall be destroyed or substantially damaged by any casualty, notwithstanding that the Premises may be unaffected by such casualty, Landlord may terminate this Lease by giving to Tenant thirty (30) days' prior written notice of Landlord's election to do so, which notice shall be given, if at all, within ninety (90) days following the date of said occurrence. Rent shall be adjusted as of the date of such termination.

## ARTICLE XIV

### EMINENT DOMAIN

14.1 **Taking of Premises.** Should the Premises or any part thereof be taken by eminent domain or condemnation or by agreement between Landlord and those authorized to exercise said rights (all such procedures being herein collectively called "Condemnation"), Landlord shall have the following options:

(a) If the part remaining, if any, after such Condemnation is, in Landlord's opinion, not reasonably suitable for the use specified in Section 1.1(m) for which the Premises were leased, this Lease shall terminate upon possession of the Premises (or affected portion) by the condemning authority and Minimum Rental and any other monies shall be accounted for between the parties as of the date of said possession.

(b) If the part remaining, if any, after such Condemnation is, in Landlord's opinion, reasonably suitable for the use specified in Section 1.1(m), then Landlord, at its own expense shall, upon receipt of the Condemnation award, restore the remaining portion of the Premises and the Minimum Rental shall be proportionately adjusted if the area of the Premises is changed. Said restoration shall be (i) subject to the written consent of Landlord's first Mortgagee who has a prior right to such award; (ii) limited to the condition originally provided by Landlord when the Premises are delivered Ready for Occupancy; and (iii) limited in cost to the net proceeds of the Condemnation award received and retained by Landlord for the Premises.

(c) If the part remaining, if any, after such Condemnation is, in Landlord's opinion, reasonably suited for the use specified in Section 1.1(m), but such event occurs during the last year of the Term, Landlord may, at Landlord's sole option, elect to follow the provisions of either (a) or (b) above.

14.2 **Taking of Shopping Center.** In addition to the foregoing, if in Landlord's judgment a material portion of the Shopping Center shall be taken by Condemnation (regardless of whether the Premises are affected), Landlord may terminate this Lease by giving Tenant written notice of its election and if Landlord does so this Lease and the Term shall terminate ninety (90) days after the date of said notice and thereupon each party will be relieved of all obligation and liability accruing under this Lease subsequent to the effective termination date. Through the effective termination date all terms and conditions of this Lease will be and remain in full force and effect.

14.3 **Termination Rights.** Notwithstanding anything in this Lease to the contrary (i) if all or any portion of the Shopping Center shall be taken by Condemnation and the award to Landlord is insufficient to pay Landlord for the costs of repairing or restoring the Shopping Center or any part thereof (including the Premises), or (ii) if any Mortgagee of the Shopping Center, or anyone else entitled to all or any part of Landlord's award, does not consent to the payment thereof to Landlord for such purpose; then, and in any such event, Landlord, at its election, may terminate this Lease on thirty (30) days' prior written notice to Tenant and if Landlord does so this Lease and the Term shall terminate thirty (30) days after the date of said notice and thereupon each party will be relieved of all obligation and liability accruing under this Lease subsequent to the effective termination date. Through the effective termination date all terms and conditions of this Lease will be and remain in full force and effect.

14.4 **Allocation of Award.** All compensation paid for any Condemnation, or paid as the purchase price for the sale and conveyance in lieu of formal condemnation proceedings, shall belong to and be the property of Landlord; provided however, Tenant shall have the sole right to reclaim and recover from the condemning authority, but not from the Landlord, such compensation as may be separately awarded or recoverable by Tenant in Tenant's own right on account of any and all costs or losses that Tenant might incur, including any loss of its property interest, business loss or costs in removing Tenant's furniture, fixtures, improvements, and equipment to a new location, so long as any such separate award does not diminish or adversely affect Landlord's award or that of any Mortgagees or underlying ground lessors; provided however, in the event only one (1) award is made by the condemning authority and such award is received by Landlord, then to the extent any portion of Landlord's award is intended to pay any of Tenant's expenses or losses as set forth above, then the Landlord agrees to forthwith remit such sums to Tenant.

## ARTICLE XV

### ASSIGNMENT AND SUBLETTING

15.1 **Restrictions on Assignment and Subletting.** Tenant shall not assign or transfer all or any portion of its interest in this Lease or in the Premises, or sublet all or any portion of the Premises, whether voluntarily, by operation of law or otherwise, without the prior written consent of Landlord which shall not be unreasonably withheld. Consent by Landlord to one or more assignments or sublettings shall not operate as a waiver of Landlord's rights with respect to any subsequent assignment or subletting, and Tenant shall remain liable hereunder following any such assignment or sublease, regardless of Landlord's consent thereto. If Tenant is a corporation, then any transfer of this Lease from Tenant by merger, consolidation or liquidation, sale of substantially all of the assets of the corporation, or any change in ownership or power to vote the majority of its outstanding voting stock, shall constitute an assignment for the purposes of this Lease. If Tenant is a partnership, then any dispositions(s) of the majority of the interests therein, or any change in ownership or the power to vote the majority of the interests therein, shall also constitute an assignment for the purposes of this Lease. The term "sublet" shall be deemed to include the granting of licenses, concessions, and any other rights of occupancy of

any portion of the Premises, excepting only customary leased department arrangements under which such leased department is not operated under a separate name and is held out to the public as an integral part of the Premises.

15.2 **No Waiver or Release.** Any assignment or sublease in violation of this Article shall be deemed void ab initio. No occupancy by any party other than Tenant or collection of rent by Landlord will be deemed (i) a waiver of provisions of this Article, or (ii) the acceptance of the assignee, subtenant, or occupant as tenant, or (iii) a release of Tenant from the further performance by Tenant of covenants on the part of Tenant contained in this Lease. No permitted subtenant shall have the right to assign or encumber its sublease or further sublease all or any portion of its subleased space or otherwise permit the subleased space or any part of its subleased space to be used or occupied by others.

15.3 **Sales by Landlord.** The term "Landlord" as used in this Lease means only the owner or entity from time to time owning the building containing the Premises, so that in the event of any sale or sales thereof, the Landlord who is a grantor in any such sale shall be and hereby is, without further agreement, entirely freed and relieved of all the obligations of Landlord hereunder. Any such sale or sales of the Premises, unless pursuant to a foreclosure sale or deed in lieu of such foreclosure, shall be subject to this Lease and it shall be deemed and construed without further agreement that the purchaser at any such sale has assumed and agreed to carry out any and all obligations of Landlord under this Lease from and after the date of such sale so long as such purchaser shall be the owner of the building containing the Premises.

15.4 **No Encumbrance; Usufruct.** Tenant shall not mortgage, pledge, or otherwise encumber its interest under this Lease. Tenant has only a usufruct, not subject to levy, sale or other transfer except in accordance with this Article XV.

15.5 **Options Personal.** In no case may Tenant assign any options granted to Tenant hereunder, all such options being deemed personal to Tenant and exercisable by Tenant only.

15.6 **Processing Fee.** Any request by Tenant for approval to sublet the Premises or any portion thereof or to transfer or assign Tenant's interest in this Lease or any interest therein, shall be accompanied by a non-refundable processing charge in the amount of Five Hundred Dollars and No/100 (\$500.00), to be paid prior to Landlord's review of Assignment or Sublease.

## ARTICLE XVI

### TAXES

16.1 **Tenant's Taxes.** To the extent applicable, Tenant shall be liable for and shall pay all taxes levied against personal property, fixtures, and Tenant's Work in the Premises; if such taxes for which Tenant is liable are levied against Landlord or Landlord's property and if Landlord elects to pay the same or if the assessed value of Landlord's property is increased by inclusion of any such items and Landlord elects to pay the taxes based on such increase, Tenant shall pay to Landlord upon demand that part of such taxes for which Tenant is liable hereunder.

16.2 **Rent Taxes.** Tenant agrees to pay as additional rent any rent tax or other tax imposed upon rent payments or imposed upon Landlord based upon rent payments by Tenant to Landlord; however, Tenant shall not be required to pay any income tax of Landlord.

## ARTICLE XVII

### DEFAULTS AND REMEDIES

17.1 **Events of Default.** The happening of any one or more of the following shall be deemed to be events of default under this Lease:

17.1.1 **Tenant's Default.**

(a) Failure of Tenant to pay any installment of rent or other charge or money obligation herein required to be paid by Tenant within five (5) days following written notice that, such payment is due and payable; or

(b) Failure of Tenant to comply with any covenant or provision of this Lease (except payment of any installment of rent or other charge or money obligation herein required to be paid by Tenant) within twenty (20) business-days after written notice of such failure to comply is given by Landlord, or if it is not feasible to cure such failure within such period, to begin performance of such covenant within such period and to diligently pursue performance to completion in a reasonable time thereafter, not to exceed sixty (60) days.

17.1.2 **Landlord's Default.**

(a) Failure of Landlord to comply with any covenant or provision of this Lease within twenty (20) business-days after written notice of such failure to comply is given by Tenant, or if it is not feasible to cure such failure within such period, to begin performance of such covenant within such period and to diligently pursue performance to completion in a reasonable time thereafter.

In the event of a Landlord default that is not cured within the above-described period of time (as that time period may be extended so long as Landlord is diligently pursuing a cure), then Tenant shall have the right to terminate this Lease, without penalty, such termination to be effective as of the termination date designated on Tenant's termination notice.

17.2 **Remedies of Landlord.** Upon the occurrence of any of such events of Tenant's default, Landlord shall have the option to pursue any one or more of the following remedies upon written notice or demand whatsoever:

(a) Terminate this Lease, in which event Tenant shall immediately surrender the Premises to Landlord. Landlord may, without prejudice to any other remedy which it may have, enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof, by force, if necessary, without being liable for prosecution or any claim of damages therefor;

(b) Not terminate this Lease but rather enter upon and take possession of the Premises and, if Landlord so elects, make such alterations and repairs as may be necessary to relet the Premises, and relet the Premises or any part thereof for the account of Tenant, at such rent and for such term and subject to such terms and conditions as Landlord may deem advisable and receive the rent therefor. Upon each such reletting all rentals received by Landlord from such reletting shall be applied, first, to the payment of any indebtedness other than rent due hereunder from Tenant to Landlord; second, to the payment of any loss and expenses of such reletting, including brokerage fees and reasonable attorneys' fees and costs of such alterations and repairs; third to the payment of rent due and unpaid hereunder, and the residue, if any, shall be held by Landlord and applied in payment of future rent as the same may become due and payable hereunder, and Tenant agrees to pay to Landlord on demand any deficiency that may arise by reason of such reletting. Notwithstanding any such reletting without termination, Landlord may at any time thereafter elect to terminate this Lease for such previous breach; Landlord shall be obligated to use good faith efforts to relet the Premises.

(c) Should Landlord at any time terminate this Lease for any breach, in addition to any other remedies it may have, it may recover from Tenant all damages it may incur by reason of such breach, including the cost of recovering the Premises, reasonable attorneys' fees, and the worth at the time of such termination of the excess, if any, of the amount of rent and charges equivalent to rent reserved in this Lease for the remainder of the Term over the then reasonable rental value of the Premises for the remaining portion of the Term all of which amounts shall be immediately due and payable from Tenant to Landlord, the foregoing liability to survive any termination of this Lease; or

(d) Cure or prosecute the curing of the failure or violation, the expense of which shall be deemed to be additional rental hereunder and shall be paid to Landlord by Tenant on demand. Landlord shall not be liable for any loss or damage suffered by Tenant resulting from the exercise of rights granted under this Section.

Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies herein provided or any other remedies provided by law or in equity, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any rent due to Landlord hereunder or of any damages accruing to Landlord by reason of the violation of any of the covenants and provisions herein contained. Forbearance by Landlord to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of such default.

17.3 **Attorneys' Fees; Interest.** If, because of any breach or default by Tenant in Tenant's obligations hereunder, it shall become necessary for Landlord to employ an attorney to enforce or defend any of the Landlord's rights or remedies hereunder, Tenant agrees to pay reasonable attorneys' fees incurred by Landlord in connection therewith (including, without limitation, costs on appeal). If, because of any breach or default by Landlord in Landlord's obligations hereunder beyond the applicable notice and cure period, it shall become necessary for Tenant to employ an outside attorney to enforce or defend any of the Tenant's rights or remedies hereunder, in the event that Tenant is the prevailing party then Landlord agrees to pay reasonable attorneys' fees actually incurred by Tenant in connection therewith (including, without limitation, reasonable costs on appeal). Further, any installment of rent or any other charge or money obligation herein required to be paid by Tenant which is not paid when due shall bear interest at the rate of ten percent (10%) per annum or at the maximum rate allowed by law, whichever is less, from the due date until paid and Landlord may treat any such charge or money obligation as additional rent hereunder. Tenant shall, in addition, pay a service charge of Ten and No/100 Dollars (\$10.00) per day on amounts not so paid when due and Landlord may treat such charge as additional rent hereunder.

17.4 **Advance Deposit; Security Deposit.** Landlord hereby acknowledges receipt from Tenant of the Advance Deposit set forth in Section 1.1(h), which shall be applied to the first accruing installments of Minimum Rental or as otherwise provided in such Section.

## ARTICLE XVIII

### HOLDING OVER

18.1 **Holding Over.** If Tenant remains in possession of the Premises after the termination of this Lease and without the execution of a new lease, Tenant shall be deemed to be occupying the Premises as a tenant at sufferance at a rent equal to the rents (including any Percentage Rent) herein provided plus fifty (50%) percent of such amounts and otherwise subject to all the covenants and provisions of this Lease insofar as the same are applicable to a tenant at sufferance and in no event shall there be any renewal of this Lease by operation of law. Nothing herein contained shall be construed as

constituting Landlord's consent or approval to of any such holdover, nor operate to preclude or inhibit the exercise by Landlord of all rights and remedies hereunder or available under applicable law to dispossess or evict Tenant.

## ARTICLE XIX

### SUBORDINATION

19.1 **Subordination.** This Lease and all rights of Tenant hereunder are and shall be subject and subordinate to the lien of any first priority mortgage, deed to secure debt, deed of trust, or other instrument in the nature thereof (a "Mortgage"; the holder thereof being sometimes referred to herein as a "Mortgagee") which may now or hereafter affect Landlord's title to the Premises or Shopping Center and to any modifications, renewals, consolidations, extensions, or replacements of any of the foregoing. This clause shall be self-operative and no further instrument of subordination shall be necessary. In confirmation of such subordination, however, Tenant shall, upon demand at any time or times, execute, seal and deliver to Landlord, without expense to Landlord, any and all instruments in recordable form that may be requested by Landlord to evidence the subordination of this Lease and all rights hereunder to the lien and security title of any such Mortgage and each renewal, modification, consolidation, replacement and extension thereof. Landlord agrees that, following execution of this Lease Agreement by the parties, Landlord shall request and use its best efforts to obtain, on lender's form, a Subordination and Non-Disturbance Agreement on behalf of Tenant.

19.2 **Agreement to Make Superior.** Tenant shall, however, upon Landlord's request, at any time or times, execute, seal and deliver to Landlord without expense to Landlord, any and all instruments that may be necessary to make this Lease superior to the lien of any Mortgage.

19.3 **Attornment.** If the holder of any Mortgage or any successor thereto through foreclosure or similar procedure shall hereafter succeed to the rights of Landlord under this Lease, whether through possession or foreclosure action or otherwise, then, at the option of such holder, Tenant shall attorn to and recognize such successor as Tenant's landlord under this Lease, and shall promptly execute and deliver any instrument that may be necessary to evidence such attornment. Upon the attornment provided for in this Section 19.3, this Lease shall continue in full force and effect as a direct lease between such successor Landlord and Tenant, subject to all the terms, covenants, and conditions of this Lease; provided, however, that such holder, as successor landlord, shall not be bound by, liable for returning to Tenant, nor crediting against any rent due hereunder, any advance rentals previously paid by Tenant to Landlord, nor shall such holder be (i) liable for any act or omission of any prior Landlord under the Lease, (ii) subject to any offsets or defenses which Tenant might have against any prior Landlord under the Lease, or (iii) bound by any amendment or modification of the Lease made after the date of the foreclosed Mortgage without the prior written consent of the holder of such Mortgage. The provisions of this Section 19.3 shall survive any termination of this Lease resulting from foreclosure of a Mortgage.

## ARTICLE XX

### MISCELLANEOUS

20.1 **Notices.** Whenever any notice is required or permitted hereunder, such notice shall be in writing. Any notice or document required or permitted to be given hereunder shall be delivered in person, by recognized overnight air courier or delivery service or deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the address for Landlord and Tenant, as the case may be, specified in Section 1.1 (k) or Section 1.1(l), respectively.

20.2 **Notices to Mortgagees.** Tenant agrees that, upon the request of either Landlord or any Mortgagee, Tenant shall send to such Mortgagee copies of all notices sent to Landlord, such copies to be forwarded to such Mortgagee as and when such notices are sent to Landlord and at the mailing address from time to time provided to Tenant by either Landlord or such Mortgagee. In addition, Tenant agrees that it may not exercise any remedies on account of a default by Landlord under this Lease unless and until such Mortgagee shall have received written notice of such default from Tenant and the opportunity of such notice for curing such default within the same periods afforded Tenant hereunder.

20.3 **Captions.** The captions and the table of contents used in this Lease are for convenience only and do not in any way limit or amplify the terms and provisions hereof. Whenever the singular number is used the same shall include the plural, and words of any gender shall include each other gender.

20.4 **Waivers.** One or more waivers of any covenant, term or condition of this Lease by either party shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The consent or approval by either party to or of any act by the other party requiring such consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act.

20.5 **Quiet Enjoyment.** Landlord hereby covenants and agrees that if Tenant shall perform all of the covenants and agreements herein required to be performed on the part of Tenant, Tenant shall, subject to the terms of this Lease, at all times during the continuance of this Lease have the peaceable and quiet enjoyment and possession of the Premises against Landlord and all persons or entities claiming by, through or under Landlord. Anything herein to the contrary notwithstanding, except as set forth in Section 5.3, Landlord expressly reserves the right at any time(s) to change the name and/or address of the Shopping Center and to make changes, additions, deletions, removals, replacements, alterations and improvements in and to all or any part of the Shopping Center as previously set forth herein.

20.6 **Entire Agreement.** This Lease contains the entire agreement between the parties and no agreement, representation or inducement shall be effective to change, modify or terminate this Lease in whole or in part unless in writing and signed by the parties.

20.7 **Brokers.** Tenant warrants that it has had no dealings with any broker other than Westplan Investors representing Landlord and no other broker (collectively, the "Broker(s)"), in connection with the negotiation or execution of this Lease, and Tenant agrees to indemnify Landlord and hold Landlord harmless from and against any and all cost, expense or liability for commissions or other compensation or charges claimed by any broker or agent other than Broker(s) in regard to representation of Tenant with respect to this Lease. Tenant shall not be liable for any brokerage fees due or owing to Westplan Investors.

20.8 **Estoppel Certificates.** At any time and from time to time, Tenant, on or before the date specified in a request made by Landlord, which date shall not be earlier than ten (10) days from the making of such request, shall execute, acknowledge and deliver to Landlord a certificate evidencing whether or not (i) this Lease is in full force and effect; (ii) this Lease has been amended in any way; (iii) there are any existing defaults hereunder to the knowledge of Tenant and specifying the nature of such default, if any; and (iv) the date to which rent, has been paid. Each certificate delivered pursuant to this Section 20.8 may be relied on by any prospective purchaser or transferee of the Shopping Center or of Landlord's interest hereunder or by any Mortgagee of Landlord or by any assignee of any such Mortgagee.

20.9 **Successors and Assigns.** The terms, provisions and covenants contained in this Lease shall apply to, inure to the benefit of, and be binding upon the parties hereto and their respective heirs, assigns, successors-in-interest and legal representatives, except as otherwise herein expressly provided.

**20.10 Limitation of Liability. LANDLORD'S OBLIGATIONS AND LIABILITY TO TENANT WITH RESPECT TO THIS LEASE SHALL BE LIMITED SOLELY TO LANDLORD'S LEGAL AND EQUITABLE INTEREST IN THE SHOPPING CENTER, AND TENANT SHALL LOOK SOLELY TO LANDLORD'S LEGAL AND EQUITABLE INTEREST IN THE SHOPPING CENTER FOR SATISFACTION OF TENANT'S REMEDIES AND IN NO EVENT SHALL TENANT SUE FOR CONSEQUENTIAL, SPECIAL, PUNITIVE OR TREBLE DAMAGES. WITHOUT EXPANDING BY IMPLICATION ANY LIMITATIONS ON LIABILITY OTHERWISE PROVIDED BY LAW, IT IS AGREED BY TENANT THAT NEITHER LANDLORD NOR ANY PERSON OR ENTITY COMPRISING LANDLORD NOR ANY PARTNER, OFFICER, DIRECTOR OR SHAREHOLDER OF LANDLORD OR OF ANY PARTNER OF LANDLORD SHALL HAVE ANY PERSONAL LIABILITY WHATSOEVER WITH RESPECT TO THIS LEASE.**

20.11 **Time of the Essence.** Time is of the essence of this Lease.

20.12 **Governing Law.** The laws of the State of Georgia shall govern the interpretation, validity, performance, and enforcement of this Lease.

20.13 **Surrender of Possession.** Tenant shall, on or before the last day of the Term hereof, or on the sooner termination hereof, peaceably and quietly leave, surrender and yield to Landlord the Premises, together with all alterations, additions, improvements, fixtures and equipment (including air-conditioning equipment, but excluding trade fixtures and other personal property of Tenant, any lessee, sublessee, licensee or concessionaire of Tenant, or any other occupant of the Premises) in good order and repair, ordinary wear and tear and damage by fire or other casualty or condemnation only excepted. All such trade fixtures and other personal property, including any Tenant signage, shall be removed by Tenant (with repair of any damage to the Premises or Shopping Center caused thereby made by Tenant at its expense) on or before the last day of the Term hereof. In the event any such trade fixtures or personal property are not removed, Landlord shall give notice to Tenant to remove all or any part hereof, in which event Tenant shall promptly at its expense remove same, or Landlord may do so at Tenant's expense. The foregoing shall survive expiration or termination of this Lease.

20.14 **Severability.** If any term, covenant, or condition of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant, or condition to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby and each term, covenant, or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law. Without limiting the generality of the foregoing, it is the express intent of Landlord and Tenant that no provision set forth in this Lease shall in any way obligate either Landlord or Tenant to indemnify or hold harmless the other party against liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of such other party or its agents or employees in violation of the provisions of Section 13-8-2 of the Official Code of Georgia Annotated.

20.15 **No Partnership.** Nothing herein contained shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or joint venture between the parties hereto, it being understood and agreed that neither the method of computation of rent, nor any other provision contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of landlord and tenant.

20.16 **Counterparts, Etc.** This Lease may be executed in multiple counterparts, each of which shall be deemed an original and any of which shall be deemed to be complete of itself and may be introduced into evidence or used for any purpose without the production of any other copy. This Lease is the product of the joint efforts of Landlord and Tenant, and, accordingly, no provision of this Lease shall be interpreted or otherwise construed in favor of Landlord or Tenant by virtue of the authorship of such provision by either Landlord or Tenant.

20.17 **No Offer.** The submission of this Lease by Landlord to Tenant is not an offer to lease the Premises or an agreement by Landlord to reserve the Premises for Tenant. Landlord shall not be bound to Tenant until Tenant has duly executed and delivered original counterparts of this Lease to Landlord, and Landlord has duly executed and delivered one of such original counterparts of this Lease to Tenant.

20.18 **No Recording.** This Lease shall not be recorded by either party.

20.19 **Force Majeure.** In the event that either party shall be delayed or hindered in, or prevented from, the performance of any work, service, or other act required under this Lease to be performed by the party and such delay or hinderance is due to strikes, lockouts, acts of God, governmental restrictions, enemy act, civil commotion, unavoidable fire or other casualty, or other causes of a like nature beyond the control of the party so delayed or hindered, then performance of such work, service, or other act shall be excused for the period of such delay and the period for the performance of such work, service, or other act shall be extended for a period equivalent to the period of such delay. In no event shall such delay constitute a termination or extension of this Lease. Likewise, no delay occasioned by financial inability of a party shall be considered an event of force majeure.

20.20 **Property Management.** Landlord shall have the right to delegate any and all of its obligations under this Lease to an entity engaged in the operation and management of shopping centers (any such entity herein referred to as "Manager"). Such delegation shall not, however, relieve Landlord of any such obligations. The initial Manager is Westplan Investors and such Manager's address is set out in Section 1.1(k) above. Landlord may designate a replacement Manager at any time and from time to time by notice to Tenant.

20.21 **Transfer of Tenants.** Intentionally Omitted.

20.22 **No Representations or Warranties.** Without limiting Section 20.6 above, Tenant hereby acknowledges and agrees that the leasing and field personnel of Landlord and/or Manager are only authorized to show the Premises and negotiate terms and conditions for leases subject to Landlord's final approval, and are not authorized to make any agreements, representations, understandings or obligations binding upon Landlord respecting the present or future condition of the Premises or Shopping Center, suitability of the same for Tenant's business, or any other matter, and no such agreements, representations, understandings or obligations not expressly contained herein shall be of any force or effect. Tenant further acknowledges and agrees that Manager has made no representations or warranties to Tenant with respect to the Premises or this Lease.

20.23 **Multiple Tenants.** If Tenant is composed of more than one individual or entity, then all are jointly and severally liable for the due and proper performance of Tenant's duties and obligations arising under or in connection with this Lease.

20.24 **Guaranty.** To the extent that the obligations of Tenant under and with respect to this Lease are to be guaranteed by a guarantor, Tenant shall cause such guarantor to execute and deliver to Landlord on or before Tenant's execution and delivery of this Lease, a guaranty of this Lease substantially in the form of Exhibit "G" attached hereto and by this reference made a part hereof. If there is no such guarantor, Exhibit "G" shall be of no relevance hereto and shall be deemed omitted from this Lease.

20.25 **Special Stipulations.** To the extent that the Special Stipulations set forth in Exhibit "H" conflict with any of the printed provisions of this Lease, such Special Stipulations shall control.

**IN WITNESS WHEREOF**, the parties have caused this Lease to be executed under seal by their duly authorized representatives as of the day, month and year first above written.

LANDLORD:

**OLD ALABAMA, LLC**, a Delaware limited liability company  
authorized to do business in the State of Georgia

Date: \_\_\_\_\_

BY: \_\_\_\_\_

Witness: \_\_\_\_\_

Print: \_\_\_\_\_

Its: \_\_\_\_\_

TENANT:

**CITY OF JOHNS CREEK, GEORGIA**, a municipal  
corporation of the State of Georgia

Date: \_\_\_\_\_

BY: \_\_\_\_\_

Witness: \_\_\_\_\_

Print: \_\_\_\_\_

Its: \_\_\_\_\_

EXHIBIT "A"

SHOPPING CENTER LEGAL DESCRIPTION

All that tract or parcel of land lying in and being in Land Lots 840, 841, 868, and 869 of the 1st District, 2nd Section of Fulton County, Georgia and being more particularly described as follows:

Beginning at a ½" rebar set at the intersection of the southerly right-of-way of Old Alabama Road (having a variable right-of-way), and the westerly right-of-way of Rod Road (having a variable right-of-way), said point being 55 feet from the centerline of Old Alabama Road and being THE POINT OF BEGINNING;

THENCE leaving the southerly right-of-way of Old Alabama Road and along the westerly right-of-way of Rod Road the following courses and distances;

THENCE South 08 degrees 19 minutes 13 seconds West for a distance of 29.78 feet to a ½" rebar set;

THENCE along a curve to the left having a radius of 250.00 feet and an arc length of 115.35 feet, being subtended by a chord of South 04 degrees 53 minutes 51 seconds East for a distance of 114.33 feet to a point;

THENCE along a curve to the left having a radius of 250.00 feet and an arc length of 22.11 feet, being subtended by a chord of South 20 degrees 32 minutes 55 seconds East for a distance of 22.10 feet to a point;

THENCE South 23 degrees 10 minutes 54 seconds East for a distance of 9.22 feet to a ½" rebar set;

THENCE South 09 degrees 04 minutes 21 seconds West for a distance of 130.04 feet to a ½" rebar set;

THENCE South 86 degrees 53 minutes 39 seconds West for a distance of 150.00 feet to a point in the centerline of a ditch;

THENCE along the centerline of said ditch, the following courses and distances:

THENCE South 72 degrees 02 minutes 02 seconds West for a distance of 18.10 feet to a point;

THENCE South 37 degrees 56 minutes 52 seconds West for a distance of 22.35 feet to a point;

THENCE South 66 degrees 58 minutes 14 seconds West for a distance of 15.83 feet to a point;

THENCE South 41 degrees 55 minutes 53 seconds West for a distance of 20.31 feet to a point;

THENCE North 85 degrees 25 minutes 14 seconds West for a distance of 9.30 feet to a point;

THENCE South 48 degrees 34 minutes 12 seconds West for a distance of 19.27 feet to a point;

THENCE South 20 degrees 05 minutes 54 seconds West for a distance of 16.42 feet to a point;

THENCE South 84 degrees 20 minutes 02 seconds West for a distance of 10.11 feet to a point;

THENCE South 69 degrees 17 minutes 35 seconds West for a distance of 36.60 feet to a point;

THENCE South 42 degrees 38 minutes 07 seconds West for a distance of 29.30 feet to a point;

THENCE South 17 degrees 32 minutes 41 seconds West for a distance of 36.35 feet to a point;

THENCE South 06 degrees 39 minutes 17 seconds East for a distance of 9.18 feet to a point;

THENCE South 51 degrees 27 minutes 35 seconds West for a distance of 8.70 feet to a point;

THENCE South 21 degrees 49 minutes 55 seconds West for a distance of 33.30 feet to a point;  
THENCE South 44 degrees 41 minutes 45 seconds East for a distance of 12.63 feet to a point;  
THENCE South 47 degrees 04 minutes 55 seconds West for a distance of 18.18 feet to a point;  
THENCE South 37 degrees 08 minutes 28 seconds West for a distance of 17.97 feet to a point;  
THENCE South 82 degrees 39 minutes 08 seconds West for a distance of 139.80 feet leaving said ditch to a ½" rebar set;  
THENCE North 87 degrees 46 minutes 50 seconds West for a distance of 798.16 feet to a point in the centerline of a creek;  
THENCE along said creek centerline the following courses and distances:  
THENCE North 51 degrees 01 minutes 23 seconds East for a distance of 11.29 feet to a point;  
THENCE North 27 degrees 17 minutes 18 seconds East for a distance of 33.31 feet to a point;  
THENCE North 39 degrees 33 minutes 45 seconds East for a distance of 14.65 feet to a point;  
THENCE North 26 degrees 05 minutes 38 seconds East for a distance of 59.76 feet to a point;  
THENCE North 07 degrees 05 minutes 58 seconds East for a distance of 41.68 feet to a point;  
THENCE North 46 degrees 41 minutes 59 seconds East for a distance of 59.10 feet to a point;  
THENCE North 31 degrees 53 minutes 46 seconds East for a distance of 69.60 feet to a point;  
THENCE North 59 degrees 47 minutes 24 seconds East for a distance of 27.94 feet to a point;  
THENCE North 45 degrees 06 minutes 38 seconds East for a distance of 18.84 feet to a point;  
THENCE North 64 degrees 52 minutes 58 seconds East for a distance of 21.13 feet to a point;  
THENCE North 02 degrees 29 minutes 18 seconds East for a distance of 27.14 feet to a point;  
THENCE North 59 degrees 19 minutes 38 seconds East for a distance of 23.16 feet to a point;  
THENCE North 44 degrees 09 minutes 05 seconds West for a distance of 221.65 feet leaving the centerline of said creek to a ½" rebar set on the southerly right-of-way of Old Alabama Road, said point being 55 feet from centerline of said road;  
THENCE along the southerly right-of-way of Old Alabama Road the following courses and distances:  
THENCE North 55 degrees 39 minutes 48 seconds East for a distance of 91.70 feet to ½" rebar set;  
THENCE North 59 degrees 11 minutes 03 seconds East for a distance of 93.98 feet to a ½" rebar set;  
THENCE North 65 degrees 21 minutes 08 seconds East for a distance of 89.03 feet to ½" rebar set;  
THENCE North 72 degrees 48 minutes 45 seconds East for a distance of 91.53 feet to a ½" rebar set;  
THENCE North 80 degrees 41 minutes 26 seconds East for a distance of 99.89 feet to a ½" rebar set;  
THENCE North 85 degrees 27 minutes 28 seconds East for a distance of 109.71 feet to a ½" rebar set;  
THENCE South 88 degrees 29 minutes 09 seconds East for a distance of 94.27 feet to a ½" rebar set;  
THENCE South 83 degrees 13 minutes 46 seconds East for a distance of 94.87 feet to a ½" rebar set;  
THENCE South 77 degrees 22 minutes 19 seconds East for a distance of 93.02 feet to a ½" rebar set;

THENCE South 74 degrees 43 minutes 29 seconds East for a distance of 113.36 feet to a ½" rebar set;

THENCE South 73 degrees 55 minutes 08 seconds East for a distance of 38.07 feet to a ½" rebar set;

THENCE South 74 degrees 32 minutes 37 seconds East for a distance of 270.61 feet to THE POINT OF THE BEGINNING.

EXHIBIT "B"

SHOPPING CENTER LAYOUT AND LOCATION OF PREMISES  
(subject to those areas shown as excluded)



EXHIBIT "C"

DESCRIPTION OF LANDLORD'S WORK AND TENANT'S WORK

**Tenant accepts Premises in "AS IS" condition.**

**ARTICLE I. CONDITION OF BUILDING AND OTHER IMPROVEMENTS**

- A. Landlord has constructed a shell structure of the Shopping Center in which the Demised Premises will be located. Certain building improvements have been previously constructed by former tenants of the Demised Premises.
- B. Tenant represents and agrees that Tenant has made a complete and total inspection and is fully and completely satisfied as to the condition of the Demised Premises.
- C. Landlord disclaims any warranty of habitability or suitability for a particular purpose which may otherwise have arisen by operation of law. Landlord does not warrant that the Demised Premises are habitable and fit for the purposes to which Tenant will utilize same and Landlord does not warrant that there are no latent defects in the facilities that will render the Demised Premises unsafe, unsanitary or otherwise fit for utilization in the Demised Premises. Tenant expressly agrees to lease the property "as is" whether habitable or not, and expressly waives the implied warrant of habitability and suitability for a particular purpose.

**ARTICLE II. GENERAL SPECIFICATIONS**

- A. All plans, diagrams, schedules, specifications and other data required to be furnished by Tenant (at Tenant's sole expense) under this exhibit must be submitted to Landlord complete, sufficient to obtain a building permit, and ready for Landlord's consideration and final approval within ten (10) days of Tenant notifying Landlord of its intention to improve its space. Upon review, Landlord shall, in writing, accept or notify Tenant of its objections to said plans and specifications and general contractor within ten (10) days after receipt. Landlord shall respond within five (5) business days of any revised plans submitted by Tenant.
- B. Tenant shall secure Landlord's written approval of all designs, plans, specifications, contracts and contractor for work to be performed by Tenant before beginning the work (including compliance with Tenant Construction Specifications which Landlord may deliver to Tenant), and shall secure all necessary licenses and permits to be used in performing the work. Three (3) sets of the plans and specifications shall be signed and dated by both parties, with two (2) sets retained by Landlord and one (1) set retained by Tenant. Changes to said plans and specifications shall be made only by written change order describing scope of work and exact cost of same signed by both parties. Tenant's finished work shall be subject to Landlord's reasonable approval and acceptance, which shall be a condition to any reimbursement hereinafter provided.
- C. As soon as said plans and specifications have been approved by Landlord, Tenant shall commence construction (and shall be required to diligently pursue said construction) no later than thirty-five (35) calendar days after the date upon which Landlord approved Tenant's plans and specifications. If Tenant has not commenced construction within said time period, Landlord shall have the option to declare this lease null and void; or, if Tenant has not completed construction of such improvements within seventy-five (75) calendar days after the date upon which Tenant's plans and specifications have been approved by Landlord, then Landlord shall have the option to declare this lease null and void and in either such event, Tenant shall forfeit all prepaid rent and any security deposits made under this lease.

**ARTICLE III. DESCRIPTION OF TENANT'S WORK**

- A. Signs: Tenant shall pay for all signs and the installation thereof.
- B. Utilities: All meters or other measuring devices in connection with utility services shall be provided by Tenant. All service deposits shall be made at Tenant's expense. Additionally, Tenant may locate a conduit on the exterior of the building, connected at the AT&T box on the exterior and running to the Premises in order to provide service therein.
- C. Storefront: Tenant shall be responsible for the storefront, exterior doors and weatherproofing.
- D. Interior Work: The work to be done by Tenant shall include, but not be limited to, the purchase and/or installation and/or performance of the following:
  - 1. Electrical panel, wiring, and fixtures.
  - 2. Tenant is responsible for providing a complete party wall(s) dividing Tenant's space from that of adjacent lease space. Said wall(s) shall include fill sound insulation, "R-11", and shall be constructed with 3-5/8" metal studs at 16" O.C. with 5/8" fire rated sheetrock on both sides, taped and bedded Tenant's side only, and shall extend from floor slab up to roof deck.
  - 3. Interior partitions including finishing, electrical wiring, and connections within the Demised Premises.
  - 4. Light covers and special hung and furred ceilings.
  - 5. Interior painting.

6. Store fixtures and furnishings.
  7. Display window enclosure.
  8. Plumbing fixtures within the Demised Premises.
  9. Ceiling to include insulation R-19 installed no lower than the storefront glass.
  10. Heating, air conditioning and ventilating equipment, including electrical and gas hookup, duct work and roof penetrations.
  11. Floor Covering.
- E. All work undertaken by Tenant shall be at Tenant's expense and shall not damage the building or any part thereof. Any roof penetration shall be sealed by Landlord's approved roofer and shall be performed only after Landlord has given consent, which consent shall in part be conditioned upon Tenant's plans to include materials acceptable to Landlord and to include roof top curbs to spread the weight of the equipment being installed in order to prevent damage to the roof. Tenant shall also be responsible for obtaining, and paying for, professional inspections of any structural work and/or mechanical work (including, without limitation, any roof work or concrete work) as required by Landlord.
- F. All of Tenant's Work to the Demised Premises made by Tenant shall be in good and workmanlike manner and shall be in conformity with the applicable building code or other applicable governmental requirements of the city in which the Shopping Center was built.
- G. Upon completion of the improvements to the Demised Premises, Tenant shall furnish Landlord:
1. A Certificate of Occupancy issued by the municipality in which the Demised Premises are located or other evidence satisfactory to Landlord that the improvements have been approved by such municipality;
  2. A notarized affidavit executed by Tenant or its authorized representative, stating that all work and materials performed or used in connection with the improvements to the Demised Premises have been paid for by Tenant, along with INVOICES detailing the work done in the premises; Lien releases for all contractors, subcontractors and material suppliers; and Proof of payment for all improvements to the premises;
  3. True and correct original releases or waivers of lien from general contractor;
  4. Evidence of all costs of construction of the improvements to the Demised Premises;
  5. Certificate from Landlord's roofing contractor for all roofwork performed (if applicable);
  6. Copy of HVAC warranties (if applicable);
  7. Tenant's executed Estoppel Letter (if applicable, please coordinate with Property Manager);
  8. Tenant's Certificate of Insurance for term of Occupancy (please coordinate with Property Manager).

Upon receipt and approval of all documentation set forth in subsections 1, 2, 3, 4, 5, 6, 7 and 8 above, completion of all improvements to Landlord's satisfaction, and commencement of business in the Demised Premises, Landlord shall reimburse Tenant within thirty (30) working days after Landlord's approval of said documentation in the amount of the lesser of (i) \$0 per square foot of the Demised Premises as stated in Basic Lease Information, Item P. of this Lease for Tenant's improvements to the interior of the building, or (ii) N/A.

- H. Although no variations are permitted, upon completion of Tenant's Work, the amount of square footage in the Demised Premises as set forth in Basic Lease Information Item N may be adjusted in order to conform to any minor variations in actual square footage. A corresponding adjustment to such variation shall also be made in the amount of Minimum Guaranteed Rental, Common Area Maintenance charge, Insurance Escrow payment, Tax Escrow Payment and all other charges based on the square footage of the Demised Premises. If adjustments are necessary, such will be shown as an amendment to this lease, which Tenant agrees to execute within ten (10) days after presentation by Landlord.

Tenant shall be deemed to have been given notification that the Premises are Ready for Occupancy by Landlord's and Tenant's execution of this Lease. Furthermore, "as is" condition shall not include any personal property items which may be in the premises upon delivery which are not owned by Landlord such as furniture, trade fixtures, and/or equipment.

EXHIBIT "D"

ESTIMATED CHARGES FOR  
SECTION 5.2

CAM Expenses (includes Insurance):	\$350.50 per month, \$4,206.00 per annum, (\$3.00 per sqft = \$2.75/sqft for CAM & \$0.25 /sqft for Ins.)
Property Tax Expenses:	\$323.63 per month, \$3883.54 per annum, (\$2.77 per square foot)
TOTAL CAM & Tax Expense:	\$674.13 per month, \$8,089.54 per annum, (\$5.77 per square foot)

Based upon the foregoing and the square footage of the Premises, monthly charges for Taxes and CAM Expenses for the Premises initially are estimated to be \$674.13 per month.

EXHIBIT "E"

RULES AND REGULATIONS

1. All deliveries or shipments of any kind to and from the Premises including loading of goods shall be made only by way of the rear of the Premises or at any other location designated by Landlord, and only at such time designated for such purpose by Landlord.
2. Tenant shall not use the public or Common Areas in the Shopping Center for business purposes or special events unless prior approval in writing has been granted by the Landlord.
3. Plumbing facilities shall not be used for any other purpose than for which they are constructed, and no foreign substance of any kind shall be thrown therein.
4. Tenant shall use, at Tenant's cost, a pest extermination contractor at such intervals as Landlord may require, but no less often than once annually.
5. Tenant shall not place, or permit
  - (a) displays, decorations, or shopping carts on the sidewalk in front of the Premises or upon any of the Common Areas of the Shopping Center.
  - (b) anything to be displayed, stacked, hung from the ceiling, racked, stored, etc. on the sidewalks outside the shops unless the Tenant
    - (1) obtains the Landlord's prior written approval; and
    - (2) acquires adequate insurance coverage; and
    - (3) accepts all liability for the sidewalk outside the shops
  - (c) any bicycles, motorized and non-motorized vehicles to park on the sidewalks and only in designated places in Common Areas.
6. Prior to installations, the Landlord must approve in writing all signs of any type which are to be installed or displayed in the Common Areas. Unauthorized signs will be removed by Landlord without notice.
7. Soliciting for any reason in the Common Areas requires prior written approval from the Landlord.
8. Distribution of sales flyers, pamphlets, or any type of advertising literature in the Common Areas, on parked cars, etc. is only permitted with the prior written approval of the Landlord. Distribution of sales flyers, pamphlets, or any type of advertising literature by anyone other than the tenants in the Shopping Center is strictly prohibited.
9. Landlord reserves the right to change Landlord's sign criteria so long as the new sign criteria is uniformly enforced by Landlord.
10. Tenant agrees to participate in trash pick-up as directed by Landlord to the proportionate extent such trash arises out of Tenant's use of the Premises and Common Areas.
11. [INTENTIONALLY DELETED].
12. Tenant shall not walk upon the roof of the Shopping Center, nor make any installations upon or through the roof or walls of the Shopping Center, without the written consent of Landlord.
13. Upon request by Landlord, Tenant shall furnish to Landlord a complete list of the license numbers of all automobiles operated by Tenant, its licensees, concessionaires and employees. If Tenant, its licensees, concessionaires and employees fail to park their cars in the designated Common Areas, Landlord shall have the right in its sole discretion to (i) charge Tenant Ten and No/100 Dollars (\$10.00) per day per car parked in any Common Area other than those designated, and/or (ii) have such car(s) physically removed from the Shopping Center at Tenant's expense without any liability whatsoever to Landlord.
14. Tenant (i) will not represent or advertise that it regularly or customarily sells merchandise at "manufacturers", "distributors", "wholesale", "warehouse", "fire sale", "bankruptcy sale" or similar prices or other than at retail prices; (ii) will keep all mechanical apparatus free of vibration or noise which may be transmitted beyond the confines of the Premises; (iii) will not cause or permit odors to emanate from the Premises; (iv) will not load or unload or permit the loading or unloading of merchandise, supplies or other property except within the area designated by Landlord from time to time; and (v) will not permit the parking or standing, outside of such designated area, of trucks, trailers or other vehicles or equipment engaged in such loading or unloading.
15. If Tenant is engaged in retail sales, then Tenant shall install and maintain at all times displays of merchandise in display windows in the Premises. Tenant will light any electric signs and keep the display windows in the Premises well lighted during such times as the level of light outside the Premises is less than ten (10') foot candles of natural

light, except that Tenant shall not be required to keep its electric signs and windows lighted more than one (1) hour following the store closing hour.

16. Tenant shall not (i) use, or permit to be used, the Common Areas for sale, solicitation of sale or display of any merchandise or for any other business, occupation or undertaking, or for outdoor public meetings, circus or other entertainment (except for promotional activities in cooperation with the management of the Shopping Center or an association of merchants within the Shopping Center); or (ii) use or permit to be used any sound broadcasting or amplifying device which can be heard outside of the Premises.

## EXHIBIT "F"

### SIGN CRITERIA

As provided by the Lease, the Landlord must approve in writing all signs of any type the Tenant wishes to install or display in the Common Areas or on the building. Any sign displayed in the Common Areas or on the building is subject to the Landlord's written approval. Unauthorized signs will be removed by the Landlord without notice. Any charge or expense incurred due to removal and/or to repair any damage occasioned by that removal will be paid by Tenant and collected as additional rent under this Lease.

NOTICE: Written approval and conformance with these specifications does not imply conformance with local City and County sign ordinances. Please have your sign company check with local authorities to avoid non-compliance with local codes.

### TENANT SIGN BAND CRITERIA

#### TYPE OF SIGN

Tenant shall be requested to identify its premises by erecting one (1) sign and only one (1) sign (regardless of the number of suites Tenant may occupy), which shall be attached directly to the building façade.

Tenant shall not be allowed to open for business without approved required signs in place. Failure to open for this reason shall not excuse Tenant from the performance of its obligations under this Lease.

#### SIZE OF SIGN

TYPE A: Tenants of Suites 100, 110, 120, 150, 160, 200, 220, 230, 420, 430, and 440

Primary building sign is to be 3'-8" x 10'-0" Sandblasted Sign Foam 11 (Brand).

All Tenant copy and border to be raised ½" from secondary etched wood grain surface.

All Color Specifications to be finalized by Landlord and Tenant.

Overall length is based on 80% of frontage measurement.

Size must conform to Local City/County requirements.

TYPE B: Tenants of Suites 130, 140, 170, 210, 240, 400, and 410

Primary building sign is to be 4'-0" x 10'-0" Sandblasted Sign Foam.

All Tenant copy and border to be raised ½" from secondary etched wood grain surface.

All Color Specifications to be finalized by Landlord and Tenant.

Overall length is based on 80% of frontage measurement.

Size must conform to Local City/County requirements.

#### TYPE C:

Primary building sign for Fresh Market is to be 1" reverse channel letters.

The reverse channel letters are to have base primer coat, PPG system paint top coat with an UV protective overcoat.

All Color Specifications to be finalized by Landlord and Tenant.

Size must conform to Local City/County requirements.

#### TYPE D:

Primary building sign is to be Sandblasted Sign Foam.

All Tenant logo, copy, and border to be raised ½" from secondary etched wood grain surface.

All Color Specifications to be finalized by Landlord and Tenant.

Size must conform to Local City/County requirements.

### STOREFRONT ENTRANCE WAY IDENTIFICATION SIGNAGE

Tenant is allowed one (1) Storefront Entrance Way Vinyl Graphics in window pane directly above door.

#### TYPE A:

Exterior 3M Dusted Crystal (7725-314) vinyl graphics, reverse applied on glass window surface.

Tenant is allowed a maximum of 2' square feet of space, not in any way to detract from existing suite identification numbers.

Landlord shall supply suite identification numbers for each shop location; both front entrance and rear service entrance.

### MONUMENT SIGNAGE

Copy color and layout at Tenant's discretion with written approval of Landlord.

#### TYPE A:

4'-6" x 16'-6" internally illuminated cabinet sign. Cabinet to be an aluminum extrusion fabricated system with aluminum H-Bar divider system for eight (8) individual tenant panels per side. Panels are to be 3/16" fiberglass panels with translucent tenant copy.

### PLACEMENT & INSTALLATION

Sign to be centered horizontally and vertically on fascia of building provided for sign. All fasteners to be used are to be non-corrosive. Tenant will be responsible for all damage to the building incurred during sign installation or removal.

### NUMBER OF SIGNS

One sign per store frontage.

If lease space fronts on more than one side, another sign may be allowed on other wall, and size of sign will be determined by that wall on which it is mounted, subject to Landlord approval.

IMPORTANT NOTE

Three (3) sets of drawings are to be submitted and approved by Landlord prior to fabrication. Drawing shall indicate the following specifications: Type, color, type of materials, and mounting method. Any variations of the above specifications must be approved by Landlord. Drawings must include cross section.

All City permits and approvals from Landlord are required prior to sign fabrication.

Trailer Signs or Temporary Signs will not be permitted. No Window signs are permitted.

Landlord must approve all signage in writing prior to fabrication or installation.

EXHIBIT "G"

LEASE GUARANTY

[INTENTIONALLY DELETED]

EXHIBIT "H"

SPECIAL STIPULATIONS

To the extent that the following Special Stipulations conflict with any of the printed provisions of this Lease, the Special Stipulations shall control.

1. Minimum Rental. Minimum Rental payable by Tenant during the Lease Term shall be as follows and shall be paid by Tenant subject to and in accordance with the provisions of Article III of the Lease:

Lease Term	Annual Minimum Rental	Monthly Minimum Rental	Per Square Foot
Year 1	\$28,040.00	\$2,336.67	\$20.00
Year 2	\$28,040.00	\$2,336.67	\$20.00
Year 3	\$30,844.00	\$2,570.33	\$22.00
Year 4	\$30,844.00	\$2,570.33	\$22.00
Year 5 until the remainder of term	\$30,844.00	\$2,570.33	\$22.00

Annual Minimum Rental as set forth above shall be adjusted as appropriate if a Lease Year is less than or more than twelve (12) calendar months. Monthly Minimum Rental likewise shall be prorated for partial months.

2. Tenant agrees to accept the premises in an "as-is, where-is" condition. Landlord or Landlord's agents have made no representations, warranties or promises with respect to the Demised Premises or the building in which they are a part except as herein expressly set forth. It is agreed that this Lease contains no restrictive covenants or exclusives in favor of Tenant. Nothing contained in this Lease or any exhibit or rider attached hereto shall be construed, deemed or interpreted to be a warranty, representation or agreement on the part of Landlord that any local, regional or national chain store or any other merchant shall open or remain open for or operate a business, or occupy or continue to occupy any premises in or adjoining the Shopping Center during the Lease term or any renewal or extensions thereof.
3. In the event Tenant has multiple monetary defaults during the Lease term, Landlord shall have the right to pull a credit report on Tenant. Tenant must pay all delinquent rent, back rent, and any and all late fees as due immediately to Landlord or Landlord shall refer the delinquent account to Landlord's attorney.
4. Tenant Allowance. Provided Tenant is not then in default of any of its obligations under this Lease, Landlord will provide the Tenant with an allowance (the "Tenant Allowance") in the amount of Seven Thousand Ten and No/100 Dollars (\$7,010.00), based upon \$5.00 per square foot of Premises area, to be paid to Tenant within thirty (30) days after Tenant opens for business and Landlord has received the first (1<sup>st</sup>) month's Rent from Tenant, and (i) Tenant requests said Tenant Allowance in writing; and (ii) Tenant has completed all work required by the Lease and has submitted to Landlord copies of all receipts that evidence payment to contractors for materials and work performed in the Premises for an amount at least equal to the Tenant Allowance; and (iii) all punch list work (for damage to the Landlord's property or common areas caused by Tenant while doing its work) is completed; and (iv) Tenant has provided Landlord with final releases of lien from all materialmen and/or laborers, and (v) Tenant has provided Landlord with copy of Tenant's certificate of occupancy. In the event of a termination of the Lease either: (i) prior to the expiration of the Third (3<sup>rd</sup>) Lease Year, or (ii) due to Tenant default hereunder; Tenant shall, upon ten (10) days' written notice from Landlord, refund to Landlord the unamortized portion of the Tenant Allowance previously paid to Tenant. All amortizations in this Section shall be on a straight-line basis, over a period of five (5) years commencing from the Rental Commencement Date.

**EXHIBIT "I-A"**

**DISCLOSURE STATEMENT**

Intentionally deleted

**EXHIBIT "I-B"**

**POLICY STATEMENT REGARDING  
BROKERAGE MATTERS**

Intentionally deleted

**EXHIBIT "I-C"**

**BROKER EXPERTISE**

Intentionally deleted

**EXHIBIT "J"**

**STATEMENT OF COMMENCEMENT DATE  
AND EXPIRATION DATE**

THE COMMENCEMENT DATE of that certain Lease dated \_\_\_\_\_ by and between Old Alabama, LLC, Landlord, and City of Johns Creek, Georgia, Tenant, for Premises located at 3005 Old Alabama Road, Suite #120 Alpharetta, Georgia 30022 shall be December     , 2011 and the Term of said Lease shall expire on March 31, 2017, as provided in Section 1.1(e) of the Lease.

Signed the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

"LANDLORD"

Old Alabama, LLC

By: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

"TENANT"

By: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT "K"**

**DELIVERY OF POSSESSION DATE CERTIFICATE**

**LANDLORD:** Old Alabama, LLC

**TENANT:** City of Johns Creek, Georgia d/b/a/ Johns Creek Police Department

**LEASE DATE:** December [redacted], 2011

**CENTER:** Old Alabama Square

**STORE NUMBER:** Suite # 120

Landlord and Tenant confirm that the Delivery of Possession Date with respect to the above Lease and Premises is the [redacted] day of December, 2011.

"LANDLORD"

Old Alabama, LLC

By: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

"TENANT"

City of Johns Creek, Georgia

By: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**LANDLORD'S CERTIFICATION**

In addition, Landlord certifies that the leasable area of the Premises is 1,402 square feet. As set forth in the Lease, such amount shall be used for all purposes of the Lease unless Landlord shall later conclude that re-measurement of the Premises is necessary in order to accurately determine the actual square footage of the Premises, in which event such later measurement shall control.

**Lease Agreement Summary**

**LANDLORD:** Old Alabama, LLC

**LANDLORD’S ADDRESS for Rental Payments & Correspondence:** 3700 Airport Road, Suite 401, Boca Raton, FL 33431

**LANDLORD’S ADDRESS for copy of Correspondence:**

**TENANT:** City of Johns Creek, Georgia d/b/a/ Johns Creek Police Department

**GUARANTOR(S):**

**TENANT’S TELEPHONE:**

**STORE ADDRESS:** 3005 Old Alabama Road, Suite #120, Alpharetta, Georgia 30022

**SQUARE FEET:** 1,402 sqft

**SECURITY DEPOSIT:** None **ADVANCE DEPOSIT:** \$3,010.80

**LEASE TERM:** 5 years **OPENING DATE:** TBD

**RENT COMMENCEMENT DATE:** April 1, 2012

**DATE OF POSSESSION:** December 15, 2011

**LEASE EXPIRATION:** March 31, 2017

**RENEWAL OPTION:** None

**OPTION NOTICE:** Not Applicable

**RENT:**

Lease Term	Annual Minimum Rental	Monthly Minimum Rental	Per Square Foot
Year 1	\$28,040.00	\$2,336.67	\$20.00
Year 2	\$28,040.00	\$2,336.67	\$20.00
Year 3	\$30,844.00	\$2,570.33	\$22.00
Year 4	\$30,844.00	\$2,570.33	\$22.00
Year 5 until the remainder of term	\$30,844.00	\$2,570.33	\$22.00

Subject to Paragraph 1 of Exhibit “H”.

**ITEMS INCLUDED IN CAM:**

Trash: yes	Promo: No	Parking Lot Repairs: yes	Water/Sewer: yes
Admin: yes	Electric: yes	Mgt Fees: yes	Landscaping: yes
Paving: yes	Insurance: yes	Sweeping: yes	Striping: yes
Painting: yes	HVAC: No	Parking Lighting repl/repair: Yes	

**CAM:** \$3.00 psft; 350.50\$/month; \$4,206.00 /year

**TAXES:** \$2.77 psft; \$323.63/month; \$3,883.54/year

**INSURANCE:** Included in CAM; LL additional insured to \$1,000,000

**LATE FEES:** Fifteen percent (15%) late fee on any rents paid after the 5<sup>th</sup> of the calendar month.

**TENANT’S PRIMARY USE:** The Premises shall be used solely for the operation of a police precinct for the City of Johns Creek, and for no other purpose whatsoever.

**NOTICES TO: TENANT:**

City of Johns Creek  
12000 Findley Rd., Suite 400  
Johns Creek, GA 30097  
Attn: City Manager

With a copy to:

City of Johns Creek  
12000 Findley Rd., Suite 400  
Johns Creek, GA 30097  
Attn: City Attorney



Input:	
Document 1	file://N:/PERSONAL/Gourley Law Group/WESTPLAN/Old Alabama/City of Johns Creek/Old Alabama City of Johns Creek lease -FINAL 12.6.11.doc
Document 2	file://N:/PERSONAL/Gourley Law Group/WESTPLAN/Old Alabama/City of Johns Creek/Old Alabama City of Johns Creek lease -FINAL 12.8.11.doc
Rendering set	Standard

Legend:	
<u>Insertion</u>	
<del>Deletion</del>	
<del>Moved from</del>	
<u>Moved to</u>	
Style change	
Format change	
<del>Moved deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	1
Deletions	1
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	2

# AGENDA REPORT



**To:** Honorable Mayor and City Council Members

**From:** John Kachmar, City Manager

**By:** Joan Jones, City Clerk

**Date:** December 6, 2011

**Agenda:** December 12, 2011 Work Session Agenda Item: Planning Commission, Board of Zoning Appeals and the Johns Creek Convention and Visitors Bureau Nominees Requested

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**Issue:** The following posts to the Planning Commission, the Board of Zoning Appeals are expiring soon. Justin Kirouac has confirmed that Mr. Don Mairose has requested not be considered for reappointment to the BZA and Mr. Kirouac is not aware of any other members requesting not to be reappointed. In addition, JC Convention and Visitors Bureau Board Member Michael Cannady resigned as of 11-28-2011 to take another position in Fort Lauderdale.

**Planning Commission (Post to Expire 2/26/2012)**

- Post A – Current Member Mike Lackey
- Post B – Current Member Stan Hicks
- Post C – Current Member Kerry Middlebrooks

**Board of Zoning Appeals (Posts to Expire 1/15/2012)**

- Post A – Current Member Lea Taylor
- Post B – Current Member Don Mairose---Vacancy as of January 2012
- Post C – Current Member Mary Shelvin

**Convention and Visitors Bureau**

Michael Cannady – Resigned-transferred to Fort Lauderdale

**Recommendation:** Request Mayor Bodker to call for nominees at the December 12th Work Session with Appointments made at the January 9th Council Meeting