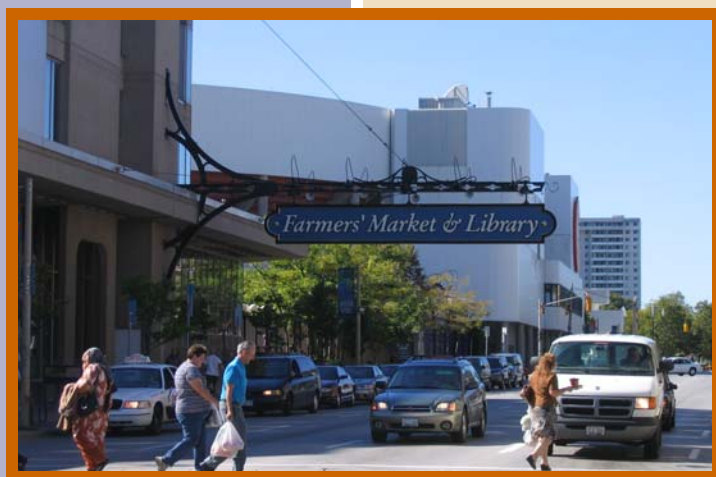


# Buffalo Broadway Market Evaluation Strategies and Recommendations Report



**February 2015**

Prepared by  
Urban Marketing Collaborative

# Buffalo Broadway Market Evaluation Strategies and Recommendations Report

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# Buffalo Broadway Market Evaluation Report

## INTRODUCTION

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## BACKGROUND

Established in 1888, the Broadway Market originally served the Eastern European residents who lived in the neighborhood and had a tradition of going to markets in their homeland. Many of these working class Eastern Europeans moved to the suburbs during the 1960s and 1970s, leaving the neighborhood underpopulated. Lower income residents who have higher poverty rates and are more likely to be headed by a single parent characterize the local neighborhood now.

This transition of the neighborhood has been hard on the Broadway Market. While it has kept the Eastern European tradition of an Easter market, it has lost many of its previous tenants either because their customers no longer live in the neighborhood or because of retirement. The Market is very vibrant during the Easter period, but for rest of the year the Market has a significant vacancy issue. For this and other reasons, the Market has been operating at a loss.



Before the City took over operations of the Broadway Market, a non-profit group called Broadway Market Management Corporation was running it. Unfortunately, this group was unable to make enough money to cover costs and left the City with a large unpaid utility bill as it dissolved.

The City has invested a significant amount of money to maintain the building, but has a goal of making the Market self-sustaining in the future. In addition, the City would like the Market to help contribute to the welfare of the neighborhood by helping to foster small businesses and provide jobs to local residents.

# Buffalo Broadway Market Evaluation Report

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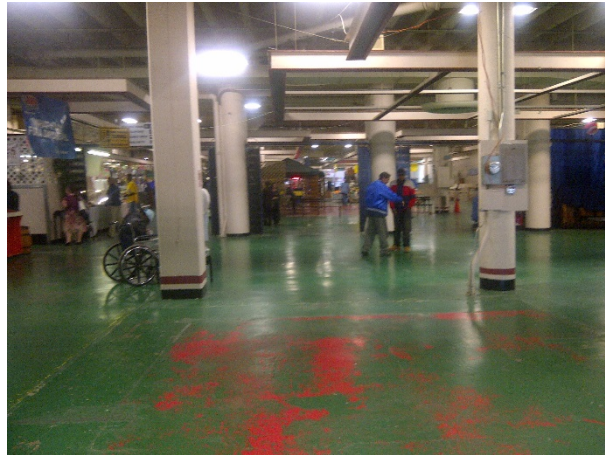
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### The Physical Plant and Layout

The Broadway Market building is very large by market standards with 90,000 sq. ft. and two levels of free parking for 1,000 cars. Typical market buildings range from 25,000 sq. ft. to 45,000 sq. ft. The challenge of this building is that it is much larger than what the Market needs for 11 months of the year. It is only around Easter that the Market fills with vendors and customers. The result is that it is a very expensive building to operate.



Costs that tend to be related to square footage such as utilities, security, and maintenance are massive compared to the ability to generate revenues. In addition, the floor space cannot be supported by the demand for market products in the neighborhood. Both the amount of space and the comparable rents in the area restrict the Market's ability to increase revenue.

Because the Market is operating at a loss without a clear view to becoming profitable, the city has not been encouraged to make investments in the building. As a result, the building has become shabby with peeling paint and repairs that address a single issue rather than solving a bigger issue; e.g., patch a leak rather than doing a full-scale repair.

An additional issue that makes the Market appear unloved is the fact that some tenants leave stalls that are only used at Easter in place during the rest of the year. These stalls are unadorned and unmanned, and collect the dust and grime of the Market. While these stalls are fully occupied during Easter, they detract from the Market for the rest of the year. Another problem with these stalls is the fact that the vendors only pay rent on these spaces during Easter. A further problem is that parts of the Market floor are used for storage during non-Easter times with the items stored in full or partial view. These issues only emphasize the shabbiness of the Market.

## BROADWAY MARKET ASSESSMENT



There have also been some problematic renovations at the Market, not in keeping with the openness of a typical market. An example is the unfortunate build outs on the south wall. These half walls restrict visibility of the stall and their products by building chest-high, partial walls that make display of products very difficult.

The layout of the Market makes the merchandising less intense and therefore less appealing to customers. The key meat/seafood and produce vendors and the entrance to Save-a-Lot (grocery) are at the far end of the Market close to the doors to the parking lot. Another group of vendors is close to the front, which includes some fast food vendors, Crushniki Bakery, and another produce vendor. The tenants on the street are all non-food retailers including the M&T Bank and Broadway Opticians.

Because of this layout, the Market does not signal food at the street entrance and the intensity of the food market experience is dissipated.



## Vendor Product Mix and Merchandising

The table below shows the count of permanent vendors in the Broadway Market and their uses. In total, 19 permanent vendors are considered market vendors because they sell either fresh or prepared food. In addition, there are six prepared food vendors, although some of the fresh food vendors also sell fast food like coffee and sandwiches.

Vendor Mix	
	Number of Permanent Vendors
Fruit and produce	2
Meat	3
Seafood	1
Cheese/Dairy	0
Bakery/Sweets	8
General Food/Grocery	1
Flowers	0
Ethnic Grocery	1
Other Specialty	3
Prepared Food	6
Non Food	5
Services	4
<b>Total</b>	<b>34</b>

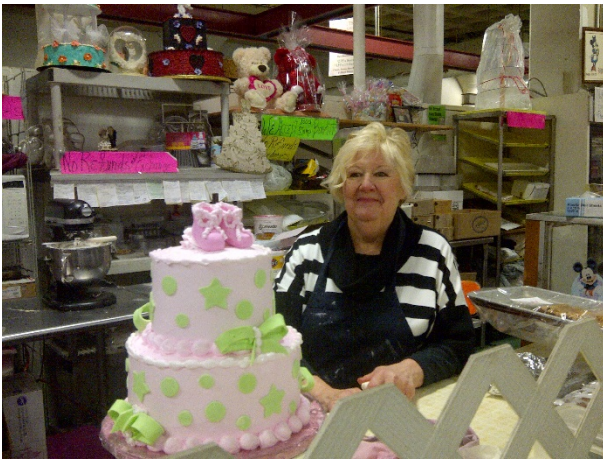
Meat and seafood vendors are the strongest year-round vendors and attract a devoted following from the neighborhood throughout the year as well as providing many of the typical Easter specialties at that time of year. They create the anchor for the Market and are very astute in catering to the local low-income population by creating special deals just for them.



## BROADWAY MARKET ASSESSMENT



Save-a-Lot, which is located across the aisle from the meat vendors and, together with Lewandowski Produce, Potts Deli and Melanie's Sweets, creates the core area of the Market and generates most of the traffic for the rest of the vendors. While this co-location is very important for the Market, it leaves the rest of the Market feeling empty and under-merchandised.



Financial Performance (2014)

Permanent Tenants

Permanent Tenant	Sq. ft. retail	Rent per sq. ft. (\$)	Sq. ft. non-retail	Rent per sq. ft. non-retail (\$)	Base rent per month (\$)	Cooler rental per month (\$)	CAM per sq. ft.	Total CAM per month (\$)	Utilities per month (\$)	Total occupancy per month (\$)	Occupancy per year (\$)	Retail and storage (sq. ft.)	Retail category
Chrusciki Bakery Retail #1	495	13.75	174	6.90	667.00	0.00	669	41.00	225.81	933.81	11,205.72	669	B/S
Chrusciki Bakery Production #2	0	0.00	1,090	6.90	627.00	0.00	1,090	92.00	199.42	918.42	11,021.00	1,090	B/S
Deb’s Delights	144	13.00	504	6.00	408.00	50.00	648	34.00	0.00	492.00	5,904.00	648	B/S
Lewiston Jellies	100	13.00	318	6.00	267.00	0.00	418	19.00	0.00	286.00	3,432.00	418	B/S
Melanie’s Sweets	265	13.75	265	6.90	455.00	0.00	530	44.00	195.00	694.00	8,328.00	530	B/S
Niagara Popcorn			242	6.90	139.31		242			139.31	1,671.72	242	B/S
Strawberry Island	264	13.75	351	6.90	465.00	50.00	615	49.00	111.00	675.00	8,100.00	615	B/S
White Eagle	286	13.75	0	0.00	327.70	30.00	286	23.00	21.97	403.50	4,842.00	286	B/S
Gelato Gypsy	100	13.00	110	6.00	163.00	0.00	210	11.00	0.00	174.00	2,088.00	210	B/S
Buffalo Sambusa	228	13.00	179	6.00	336.00	0.00	407	23.50	108.03	467.53	5,610.36	407	FF
DJ's Jamaican Kitchen	100	13.00	0	0.00	108.00	0.00	100	8.00		116.00	1,392.00	100	FF
East & West Café	230	13.75	137	6.90	342.31	100.00	367	12.00	187.59	641.90	7,702.80	367	FF
McKenzies Soul Food Shack	212	13.75	344	6.90	526.00		556	38.25	548.21	1,112.46	13,349.52	556	FF
Perogi by Paula	130	13.00	414	6.00	347.00	0.00	544	24.00	0.00	371.00	4,452.00	544	FF
Pott's Deli	563	13.00	219	6.00	720.00	0.00	782	50.00	178.75	948.75	8,385.00	782	FF
M&M Asian Fruits & Vegetables	200	13.00	0	0.00	217.00	0.00	200	15.00		232.00	2,784.00	200	G
Save-a-Lot	16,305	4.25	0	0.00	5,775.00	0.00	16,305	0.00	3,500.00	9,275.00	111,300.00	16,305	G
Broadway Seafood	520	13.75/8.25	240	6.88	536.25	50.00	660	49.00	338.70	973.70	11,684.40	660	M/F
Broadway Meats & Poultry	487	13.00	113	6.00	584.50	50.00	600	44.00	339.69	1,018.19	12,218.28	600	M/F
Camellia Meats	621	13.75	327	6.90	899.00	0.00	948	79.00	780.39	1,758.00	21,096.00	948	M/F
Lupus Meats	834	13.75	612	6.90	1,377.00	100.00	1,446	121.00	1,314.30	2,912.00	34,944.00	1,446	M/F
Broadway Optician	365	13.75	407	6.90	652.00	0.00	772	55.00	33.93	740.93	8,891.16	772	NF
Daily News & Numbers	854	13.75	4	25.00	1,004.00	0.00	854	69.00	129.87	1,202.87	14,434.43	960	NF
Enchanted Cards & Gifts	446	13.75	0	0.00	511.00	0.00	446	4.00	60.00	575.00	6,900.00	446	NF
Everything Very African & More	200	13.75	50	6.90	290.00	0.00	250	21.00	12.00	323.00	3,876.00	250	NF
E-Z Casual	210	13.75	0	0.00	240.00	0.00	210	17.00	0.00	257.00	3,084.00	210	NF
Hands on Watch Repair	210	13.75	0	0.00	315.00	0.00	210	29.00	7.92	352.00	4,224.00	210	NF
Jackson Hewitt	425	13.75	0		1,003.00	0.00	425	73.00	67.08	1,143.00	13,716.00	425	NF
Ladies of Charity	0			0.00	50.00					50.00	600.00		NF
M&T Bank	5,000	12.25	0	0.00	5,104.17		5,000	416.66	814.06	6,336.88	76,042.56	5,000	NF
Simpson & Associates	230	13.75	0	0.00	263.00	0.00	230	27.00	27.00	297.00	3,564.00	230	NF
Famous Horseradish	440	13.75	444	6.90	759.00	104.00	884	105.00	275.00	1,243.00	14,916.00	884	P
Lewandowski Produce	400	13.00	200	6.00	533.00	50.00	600	41.00	42.25	666.00	7,992.00	600	P
Total	30,864		6,744		26,011.24	584.00		1,634.41	9,517.97	37,729.25	449,750.95	37,610	

**Legend:**  
B/S – Bakery/sweets  
FF – Fast food  
G – Grocery  
M/F – Meat/fish  
NF – Non-food  
P - Produce

BROADWAY MARKET ASSESSMENT

Temporary Vendors

Temporary Vendors	Square feet retail	Base rent/month (\$)	CAM/ sq. ft.	Occupancy/year (\$)	Occupancy/sq. ft.
Audrey L. Maurer Custom Designed Crafts	100	800	100	800	100
Amber Gems & More	150	2,000	150	2,000	150
Bnuts Co.	100	200	100	200	100
Chateau Buffalo	100	1,000	100	1,000	100
Chautauqua Wine-Willow Creek	100	100	100	100	100
D’Avolio, Inc.	100	1,000	100	1,000	100
Designs by Dovi & Girls	130	1,300	130	1,300	130
Dorothy Coles/Susan Bender	100	150	100	150	100
Duke's Donuts	100	800	100	800	100
Franklins Honey & Apples	100	1,000	100	1,000	100
Gelato Gypsy	100	350	100	350	100
George Kunz	100	200	100	200	100
Go Veggies	100	800	100	800	100
Grape Country Soaps	100	800	100	800	100
Hands & Paws	100	800	100	800	100
Keeping Traditions	200	1,600	200	1,600	200
Kissed by the Sun	100	1,000	100	1,000	100
Kornerstone Coffee	100	1,000	100	1,000	100
Larry Leib	100	100	100	100	100
Merritt Estate Winery	100	100	100	100	100
Peppermint Farms	100	1,000	100	1,000	100
RWL ENTERPRISES	150	1,500	150	1,500	150
Spices by Milly	300	3,000	300	3,000	300
Sweet Temptations du Jour	100	560	100	560	100
Tammie’s Candies	100	1,000	100	1,000	100
Teresa's Treasures	100	500	100	500	100
The House of Olives	100	530	100	530	100
Unique Boutique	100	550	100	550	100
Vetter Vineyard	150	1,600	150	1,600	150
Total	3,380	25,340		25,340	3,380

The Total Revenue (i.e., occupancy/year) for the Market in 2014 is \$509,141.

(This calculation includes permanent vendors, former tenants, temporary vendors, and Easter vendors)

Easter Vendors

Coming in as permanent part time tenants in June 2014	Square feet retail	Base rent/month (\$)	CAM/ sq. ft.	Occupancy/year (\$)	Occupancy/sq. ft.
Adam’s Apples	100	900	100	900	100
Angel Lights	100	900	100	900	100
Becker Farms	100	900	100	900	100
Block Club Cards Inc.	100	150	100	150	100
Burning Asphalt	100	800	100	800	100
Buttermints	100	450	100	450	100
Jennifer Chojecki	100	300	100	300	100
Chesterton Academy	100	50	100	50	100
City Dining Cards	100	150	100	150	100
Cutco	100	900	100	900	100
Brad & Heidi Conschafter	100	850	100	850	100
Favors n Gifts	136	1,500	136	1,500	136
First Light Creamery	100	200	100	200	200
Gino’s Bakery	100	850	100	850	100
Got Toast	163	1,800	200	1,800	200
Grape Country Candles	100	900	100	900	100
Gridlock Laquer	100	450	100	450	100
Hanzlian's Sausage	100	900	100	900	100
Headstone Heat	65	650	65	650	65
Heintz & Weber Co., Inc.	100	900	100	900	100
Indian Hands	100	900	100	900	100
Kelly’s Country Store	1050	7,800	1050	7,800	1050
Tara Crenshaw-McCain	100	150	100	150	100
My Buffalo Shirt	100	900	100	900	100
Niagara Landing Wine Cellars	100	800	100	800	100
Our Traditions	100	900	100	900	100
Paragon Company	100	900	100	900	100
Pasta Temptations	100	900	100	900	100
Phil Martella	100	400	100	400	100
St. Adalberts	100	100	100	100	100
Sassy Sweets	50	450	50	450	50
Summerset Painting, Co. Inc.	50	50	50	50	50
Sunshine Wooden Roses	50	400	50	400	50
Sweet Melodies	100	900	100	900	100
The Craft Emporium	180	2,000	240	2,000	240
The Winery at Marjim Manor	100	1,000	100	1,000	100
Victorianbourg Wine Estate	100	1,000	100	1,000	100
Total	4,644	34,050		34,050	4,841
TOTAL without Easter	34,244	3,133		475,091	40,990
TOTAL with Easter	38,888	51,351		509,141	45,831



# BROADWAY MARKET ASSESSMENT

## Revenues

As the chart on the previous page shows:

- Revenues come primarily from permanent vendors (88%)
- An additional 5.0% comes from temporary vendors who come in on weekends during the year and full time at Easter



- 6.9% comes from Easter only vendors



## BROADWAY MARKET ASSESSMENT

The following chart shows a summary of financial performance numbers for permanent tenants by retail category for the Market.

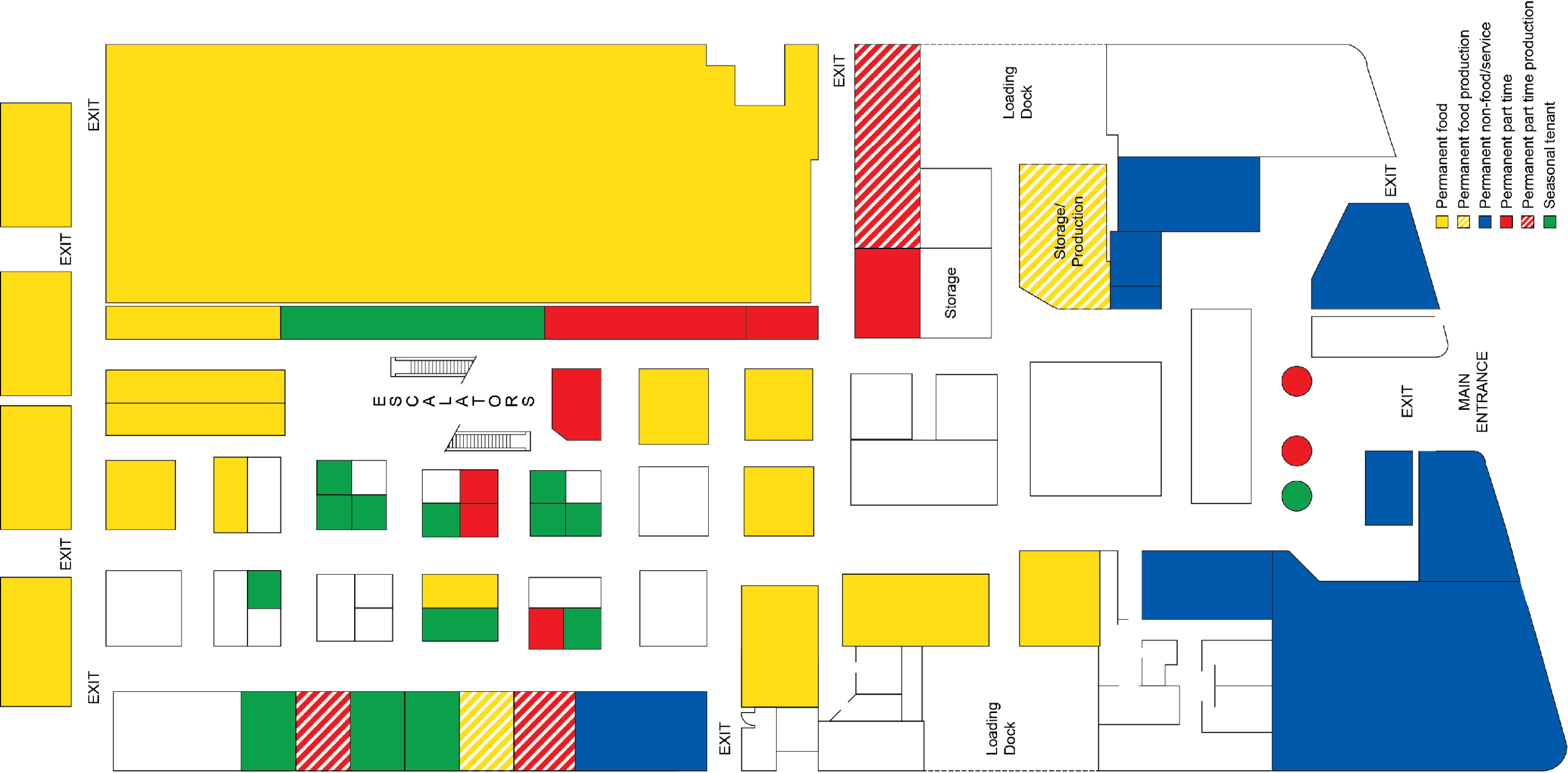
**Buffalo Market Financial Performance: Permanent Tenants by Retail Category (2014)**

Retail Category	Rents Occupancy per year (\$)	Rents Occupancy per year	Total retail space (sq. ft.)	Retail space (%)	Total non- retail space (sq. ft.)	Non-retail space (%)
Bakery/sweets	\$56,592.44	12.6%	1,654	5.4%	3,054	45%
Fast food	\$40,891.68	9.1%	1,463	4.7%	1,293	19%
Grocery	\$114,084.00	25.4%	16,505	53.5%	0	0%
Meat/fish	\$79,942.68	17.8%	2,462	8.0%	1,292	19%
Non-food	\$135,332.15	30.1%	7,940	25.7%	461	7%
Produce	\$22,908.00	5.1%	840	2.7%	644	10%
<b>Total</b>	<b>\$449,750.95</b>	<b>100%</b>	<b>30,864</b>	<b>100%</b>	<b>6,744</b>	<b>100%</b>

An analysis of permanent vendors by type shows that: *(Note: numbers do not include “former tenants”)*

- Permanent vendors occupy over 30,000 square feet of retail space and 6,744 square feet of non-retail space, which is made up of production areas and storage space, which goes for approximately one-half of retail space rents. Fresh food vendors, which are typically associated with markets (e.g., meat and produce), occupy less than one-quarter of the Market’s permanently occupied space.
- Permanent vendors are the only ones that have separate utilities associated with their operations. They contribute \$114,216 per year towards the cost of utilities or about 42% of the total amount.
- Non-food vendors contribute the highest amount of permanent occupancy revenues at 30.1% while occupying 25.7% of permanently occupied retail space.
- Grocery vendors (primarily Save-a-Lot) provide 25.4% of revenues while occupying 53.5% of retail space.
- Meat and seafood vendors contribute 17.8% of revenues and occupy 8.0% of retail space.
- Bakery, sweets, and savories as a group provide 12.6% of permanent vendor revenues and occupy 5.4% of retail space.
- Prepared food vendors generate 9.1% of permanent vendor revenues and occupy 4.7% of retail space.
- Produce vendors contribute 5.1% of revenues and occupy only 2.7% of the retail space.

Current layout is shown on next page.



## BROADWAY MARKET ASSESSMENT

The following chart shows the overall financial performance numbers for the Market for 2014.

### Buffalo Market Financial Performance

Fiscal Year 7/1/2013–6/30/2014

Revenue	Less Outstanding Rents	Including Outstanding Rents	
Rental Revenue	\$497,775	\$509,141	
CAM	Included in above		
<b>Total Revenue</b>	<b>\$497,775</b>	<b>\$509,141</b>	
<b>EXPENSES</b>			
<b>Market Operations</b>			
Salaries and wages	N/A	N/A	
Advertising	\$15,509	\$15,509	
Music and other services	\$16,280	\$16,280	
Insurance	Self-insured	Self-insured	
Vendor recruitment	N/A	N/A	
Office and administration	N/A	N/A	
<b>Total Market Operations Expenses</b>	<b>\$31,790</b>	<b>\$31,790</b>	
<b>Building Operations</b>			
Custodial and maintenance wages	\$1,024	\$1,024	Overtime, Operations and Maintenance
Miscellaneous Supplies	\$1,753	\$1,753	
Maintenance materials and equipment	\$8,442	\$8,442	Operations and Maintenance
Service Building Repair	\$19,702	\$19,702	
Outside service maintenance contract	\$65,706	\$65,706	
Electrical, heat, water	\$269,769	\$269,769	
Security & other services	\$195,186	\$195,186	
<b>Total Building Operations Expenses</b>	<b>\$561,582</b>	<b>\$561,582</b>	
<b>TOTAL EXPENSES</b>	<b>\$593,372</b>	<b>\$593,372</b>	
<b>Net Income (Loss)</b>	<b>(\$95,597)</b>	<b>(\$84,231)</b>	



The Market lost a significant amount of money in 2014. The biggest expense items are for utilities, security, and maintenance. The advertising and promotion budget is minimal and accounts for only 2.5% of revenues. The biggest issue is that revenues are significantly lower than required to support a building this size. This underperformance on the revenue line is a result of:

- Lack of demand for the space driven by a trade area that is very underpopulated and which has lower incomes, and
- Low rents in the area, which is a result of the overabundance of space and lack of demand.

Financial performance for Broadway Market is very hard to track because the revenues and expenses for the Market are in different accounts at the City and are not reported on a monthly basis, which is best practice in any retail management situation. In addition, the City only reports revenues on rents that they collect. Some vendors are chronic late payers and the Market management is not able to manage this situation since the City Finance Department is responsible for collections. Without the ability to terminate occupancy for non-payment of rent, Market management has very little leverage with tenants.

The City has taken time to ensure that the Market is stabilized and is now starting to take action on this issue.

### Lease Opportunities

When compared to other markets, Broadway Market is lacking in vendors that would normally be at a larger public market. These typical vendors include:

- Cheese/dairy
- Specialty produce
- Farmers
- Additional ethnic grocers
- Flowers/plants.

### Management Structure

Typically, a market would have at least two full time employees, the manager and an assistant; unless maintenance and security staff are employed in which case, there would be a higher head count. Many markets, particularly ones owned by cities, have moved to a contract model for maintenance and security because of flexibility and costs.

By any standards, the Broadway Market is understaffed to meet the needs of the operation. Currently, the Market has no full time employees that work for the Market itself. A single part time employee, the Market Manager, works part time at the Market and has additional duties within the City's Office of Strategic Planning. All other employees who work at the Market are either contractors; e.g., maintenance and security, or are City employees that provide services to other City facilities.

While these people do their best to ensure that the Market is well run, the existing structure means that there is a lack of accountability for the Market. As the City moves to increase its level of control, these issues will start to diminish.

### **Marketing and Promotions**

The Marketing budget for the Market is very low at \$15,500. While the budget is at this level to try to reduce the operating loss, this lack of marketing contributes to the low level of demand for the Market products and the lack of customer traffic. Other markets often have budgets that are over \$100,000 and have dedicated staff to ensure that the impact of the budget is maximized.

### **Community Connection**

The Market is clearly a community center for the neighborhood, providing not only food for local residents but also a social experience, shelter from bad weather, and meeting place that is unstructured. Regulars use the “food court” seating and the seniors’ center/reading area. In addition, the Market provides a place where local community organizations can interact with residents. A local group has started to grow produce on the roof of the Market. While this is a relatively small endeavor, it links well with a more social purpose for the Market.

The Market is good as a passive community center but it is less successful in providing entrepreneurial opportunities or employment for local residents. Given the current financial losses at the Market, meeting additional social-good goals are difficult without dedicated resources.

# Buffalo Broadway Market Evaluation Report

INTRODUCTION

BROADWAY MARKET ASSESSMENT

**BROADWAY MARKET TRADE AREA ASSESSMENT**

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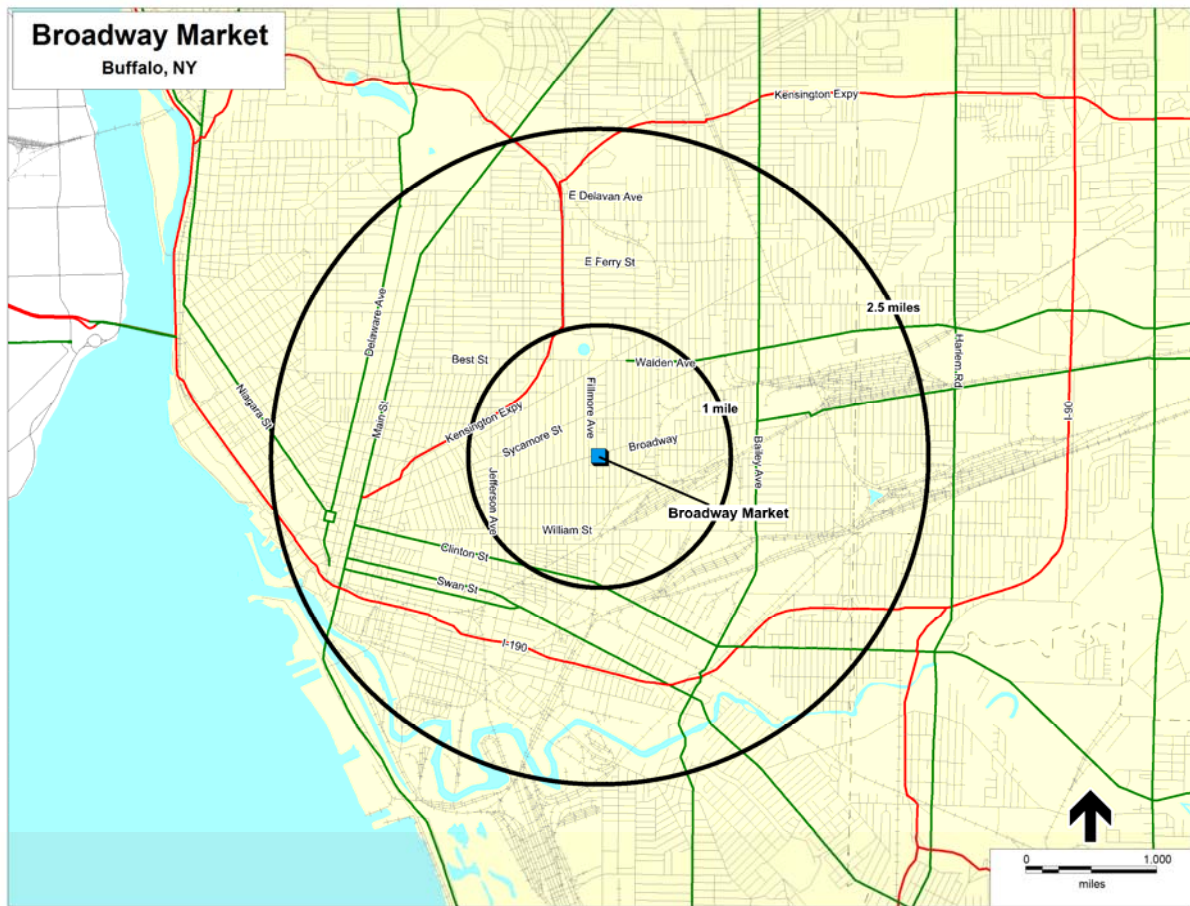
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## TRADE AREA ASSESSMENT

The customer trade area delineated for the Market is a 0 to 1 mile radius (primary trade area) and a 1 to 2.5 mile radius (secondary trade area). This is based on interviews with tenants as well as previous research. While customers who come to the Market at Easter would likely come from beyond this area, these areas are considered the normal trade areas. Based on UMC's experience with other markets, this relatively small trade area is not surprising since regular food shopping tends to be done close to home. The map below shows the extent of these trade areas.



## Demographics Analysis

	Broadway Market 0-1 Mile	Broadway Market 1-2.5 Miles	Broadway Market 0-2.5 Miles	Buffalo-Niagara Falls, NY Metro Area
Population 2013E	13,257	91,027	104,284	1,137,954
Annualized Decline	-4.5%	-1.4%	-1.9%	-0.3%
Household 2013E	5,869	41,630	47,499	474,676
Annualized Decline/ Growth	-4.3%	-1.0%	-1.5%	0.1%

## TRADE AREA ASSESSMENT

The region around Broadway Market and the Buffalo-Niagara Falls metro area have both experienced different levels of annualized population decline between 2000 and 2010. The primary trade area for Broadway Market experienced the biggest annualized decline of -4.5%, and has a projected 2013 population of 13,257. The secondary trade area and Buffalo-Niagara Falls metro area fared better with a -1% and -0.3% annualized decline respectively. The 2013 projected populations are 91,000 and 1.1 million respectively.

While these declines are significant, the depopulation of the primary trade area started much earlier with the 1990 population in the primary trade area being 30,354. The loss in population in this area alone is more than 17,000.

The immediate area surrounding Broadway Market (0-1 mile) experienced an annualized household decline of -4.3%.

Household size	Broadway Market 0-1 Mile	Broadway Market 1-2.5 Miles	Broadway Market 0-2.5 Miles	Buffalo-Niagara Falls, NY Metro Area
1	45%	45%	45%	33%
2	24%	27%	27%	33%
3	13%	13%	13%	15%
4 to 5	13%	12%	12%	17%
6+	4%	3%	3%	3%
Persons per household	2.15	2.09	2.09	2.36

Approximately one-half of the population (45%) who reside 0 to 2.5 miles from the Broadway Market live by themselves, and 27% live with one other person. In comparison, household size in the Buffalo-Niagara Falls region is larger. Only one-third of the households are one-person households, and its average persons per household (2.36) is higher than the Broadway Market total trade area region (2.09).

## TRADE AREA ASSESSMENT

	Broadway Market 0-1 Mile	Broadway Market 1-2.5 Miles	Broadway Market 0-2.5 Miles	Buffalo-Niagara Falls, NY Metro Area
<14	18%	17%	17%	15%
14 to 18	6%	5%	5%	5%
19 to 24	11%	12%	12%	11%
25 to 34	11%	15%	15%	12%
35 to 44	11%	12%	12%	11%
45 to 54	15%	13%	13%	15%
55 to 64	14%	13%	13%	14%
65+	14%	14%	14%	17%
Median Age	39.2	36.8	37.1	41

Residents who live in the primary trade area are slightly younger than Buffalo-Niagara Falls metro area residents, primarily because of a higher proportion of children. The median age for the two regions is 39.2 and 41 respectively.

	Broadway Market 0-1 Mile	Broadway Market 1-2.5 Miles	Broadway Market 0-2.5 Miles	Buffalo-Niagara Falls, NY Metro Area
Own	41%	39%	39%	66%
Rent	59%	61%	61%	34%

Home ownership is lower near the Broadway Market than elsewhere in the city. Nearly two-thirds (61%) of the homes found in the total trade area are rented, compared to 34% in the Buffalo-Niagara Falls metro area.

	Broadway Market 0-1 Mile	Broadway Market 1-2.5 Miles	Broadway Market 0-2.5 Miles	Buffalo-Niagara Falls, NY Metro Area
Under \$20,000	50%	37%	38%	20%
\$20,000 to \$39,999	26%	27%	27%	22%
\$40,000 to \$59,999	13%	16%	16%	18%
\$60,000 to \$79,999	5%	9%	8%	13%
\$80,000 to \$99,999	3%	5%	5%	9%
\$100,000+	4%	7%	7%	18%
Average HH Income	\$29,364	\$42,329	\$40,727	\$64,668

## TRADE AREA ASSESSMENT

Residents who live in the primary trade area are financially worse off than the rest of the city. Over three-quarters of the residents (76%) have average household incomes of \$39,999 or less, and one-half of the households earn less than \$20,000 per year. Average household income in the primary trade area (\$29,364) is less than one-half that of the metro area (\$64,668).

With an average household income of \$42,329, households found in the secondary trade area are slightly better off financially.

	Broadway Market 0-1 Mile	Broadway Market 1-2.5 Miles	Broadway Market 0-2.5 Miles	Buffalo-Niagara Falls, NY Metro Area
2013 Estimated Per Capita Income	\$13,285	\$20,167	\$19,292	\$27,449



## TRADE AREA ASSESSMENT

The majority of the population closest to Broadway Market (0–1 mile) works in Services (29%) and Production, Transportation, and Material Moving Occupations (22%), whereas the bulk of the metro area population works in Management, Professional, and Retail Occupations (36%) and the Professional and Related Occupations (23%).

Current Year Estimated Employed Population Age 16+ by Occupation	Broadway Market 0–1 Mile	Broadway Market 1–2.5 Miles	Broadway Market 0–2.5 Miles	Buffalo-Niagara Falls, NY Metro Area
Management, professional, and related occupations	19%	30%	29%	36%
Management, business, and financial operations occupations	7%	9%	9%	13%
Professional and related occupations	12%	21%	20%	23%
Service occupations	29%	24%	24%	18%
Healthcare support occupations	9%	5%	6%	3%
Protective service occupations	4%	2%	2%	2%
Food preparation and serving related occupations	6%	7%	7%	6%
Building and grounds cleaning and maintenance occupations	7%	6%	6%	3%
Personal care and service occupations	4%	4%	4%	3%
Sales and office occupations	23%	24%	24%	27%
Sales and related occupations	10%	9%	9%	11%
Office and administrative support occupations	13%	15%	15%	16%
Construction, extraction, and maintenance occupations	7%	5%	5%	7%
Production, transportation, and material moving occupations	22%	16%	17%	12%

## TRADE AREA ASSESSMENT

Education level in the 0 to 1 mile region is low. Over one-quarter of the residents did not graduate from high school, and 82% did not graduate from college. Residents in the metro area are better educated; 39% of the residents have some form of post-secondary degree.

	Broadway Market 0-1 Mile	Broadway Market 1-2.5 Miles	Broadway Market 0-2.5 Miles	Buffalo-Niagara Falls, NY Metro Area
Less than High School	27%	20%	21%	11%
High School Graduate & Some College	55%	53%	53%	50%
Associate Degree	9%	8%	8%	11%
Bachelor's Degree	6%	11%	10%	16%
More than Bachelor	3%	9%	7%	12%

While driving a car is the dominant method of transportation across the region, only 65% of the residents in the 0 to 1 mile range drive to work, while 25% use public transit.

	Broadway Market 0-1 Mile	Broadway Market 1-2.5 Miles	Broadway Market 0-2.5 Miles	Buffalo-Niagara Falls, NY Metro Area
Car	65%	76%	74%	91%
Public Transit	25%	15%	16%	4%
Walk	6%	6%	6%	3%
Bicycle	1%	0%	0%	0%
Other	3%	2%	3%	2%

In summary, the local trade area for the Broadway Market has:

- A population base that has declined precipitously in the past and is continuing to decrease in numbers
- Low income levels, which are tied to the relatively low education levels.

This challenging environment makes generating revenue and customer growth at the Market extremely difficult. Since the City has a policy of demolishing houses in the area and land banking the sites, it is unlikely that these trends are going to change dramatically in the future. The only new development that is happening close by is in Downtown Buffalo. However, these developments cannot replace the decline in the population.

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## PREVIOUS STUDIES

Several studies have been conducted on the Broadway Market. This section summarizes their recommended actions.

### **Project for Public Space's Broadway Market Strategic Business Development Plan (2001)**

- Update the Market facilities to achieve increased business operation efficiency, better space utilization and enhanced customer experience.
- Expand the Market hours, in particular on Sunday, and implement a Farmers' Market.

### **Broadway-Fillmore Neighborhood Food Alliance (2007)**

- Public markets had become far more popular in 2007 than 2001. The increasingly supportive environment for locally grown products doubled the number of farmers' markets across the country over the past 6 years.
- The recommendations below are categorized based on institutional responsibility:
  - The Broadway Market Management Corporation is responsible for market operations and maintaining the Market's mission and vision.
  - The City of Buffalo, the landlord, is responsible for the capital improvement of the building as well as neighborhood planning, improvement and beautification.
  - The Broadway Area Business Association is responsible for neighborhood business improvement and advertising.
  - The Buffalo Economic Renaissance Corporation oversees the CARE program, and thus technical assistance for enhancing business facades.

### **Recommendations for Broadway Market Management Corporation (now defunct)**

- Revisit the Broadway Market Strategy Business Development Plan to check off successful recommendation implementations and identify reasons for uncompleted tasks.
- Build on market assets to attract more customers through promotion:
  - PPS suggested May flower and garden events, farmers' market, and Christmas events
  - Since 2001, the Market has partnered with BSC for the Christmas Fair, Halloween events, and Christmas at the Market.
- Develop a communication strategy to promote the Market's strength and assets to the public, key local officials, and potential funders.
- Promote the Market's rich cultural history by:
  - Setting aside empty market space to display exhibits on the cultural history
  - Reaching out to neighborhood icon institutes to build the history of Broadway-Fillmore into the Market experience.
- Build on the synergy of Corpus Christi, Central Terminal, BABA, East Buffalo good Neighbors Planning Alliance, and Broadway Fillmore Alive to improve the Market perception as a culturally unique and viable shopping destination.

## PREVIOUS STUDIES

- Fill up the empty spaces during Easter off-season by reaching out to local non-profit organizations and have them sell their fundraising products at the non-profit market booths.
  - Establish a subcommittee to attract non-profit organizations and figure logistic of rental charge.
- Encourage regular meetings between Broadway Market executive directors and Central Terminal Director, Corpus Christi Pastor, and St. Stanislaus Pastor to cross promote each other's events and establish the immediate area as a tourist destination.
- Establish a Friend of the Market group to assist directors, staff, and tenant's associations in task organization and execution.
- Reach out to seasonal vendors in City of Buffalo farmers' market to identify interests in establishing temporary indoor stands on weekends.
- Work with non-profits and local health agencies to develop a healthy educational awareness program and promote the healthy food products at the Market through cooking demonstrations and coupons.
- Upgrade the Market layout to optimize space usage and enhance the old world market atmosphere.
  - Revisit Villa Maria's design recommendations or other local design educational institute.
- Reach out to local groups to sponsor special community art exhibits.
- Maintain the public market purpose to be sustainable as well as serving a public purpose.

### **Revisit recommendations from PPS study:**

- PPS suggested expanded market hours, in particular on Sunday, and establish a Farmers' Market.
  - However, vendors do not support the idea of extended market hours.
- A possible solution is to implement a Sunday Farmers' Market.
  - This is also an opportunity for the Market to take steps towards creating local wine cellars to sell local wines through New York State Farmers Markets.
- Current vendors' participation is optional.
- Possible sites include Save-a-Lot parking lot or the Kmart lot across from the Market.
- Partner with non-profit partners such as Queen City Farms to execute the plan.
- Reach out to Slow Food Buffalo and Buffalo First for local growers and producers.

### **Recommendations to the City of Buffalo Mayor, Fillmore District Councilman, Buffalo Economic Renaissance Corporation**

#### Neighborhood planning

- Recognize Broadway Market's role as a healthy neighborhood food-shopping destination and the potential for a community food industry neighborhood development strategy centered on the Market.
- Work with neighborhood groups to:
  - Develop an aesthetic "clean and seal" strategy for abandoned neighborhood buildings
  - Designate historic Broadway Fillmore neighborhood overlay and recognize the historic significance of the neighborhood.
- Clean up neighborhood business district and gateways.

## PREVIOUS STUDIES

- Develop a neighborhood retail business incubator by working with Senator Thompson, Buffalo Economic Renaissance Corporation, and local college and universities.
- Follow through on the recommendations from East Side Weed and Seed program to make the Market a hub for neighborhood community policing satellite and neighborhood crime watch.
- Work with Broadway Area Business Association to establish an East Buffalo Chamber of Commerce.
- Enhance communication and coordination with the Buffalo Police Department to enhance neighborhood safety and security.

### Landlord recommendations

- Design a facility modernization and upgrade plan by working with Broadway Market Management Corporation.
- Develop a strategy to make the building green and energy efficient, potentially put in a green roof.
- Enhance the security of the building and the surrounding business district.

### Community Collaboration recommendations

- Work with existing institutions engaged in community agriculture, farmers' markets and community food production to make City of Buffalo a showcase for a community based food industry.

Much of the responsibility for action from these studies rested with the Broadway Market Management Corporation, which no longer exists, leaving the City to implement the recommendations. A number of the recommendations have been implemented including:

- The development of a Friends of the Market organization
- The recruitment of many local wineries that occupy some of the space at the Market during peak times
- Adding a green roof (partially done through a neighborhood garden plot on the roof).

Some recommendations that have not been implemented include:

- Bringing in farmers
- Opening on Sundays
- Facility improvements.

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## HOW OTHER MARKETS WORK

In assessing the performance of Buffalo Broadway Market, it is important to look at the performance of public markets that are comparable. While we have selected a few public markets to highlight in this section, the comments here are based on our experience with the many public market projects where we have worked. Some of the key issues that are challenges for Buffalo Broadway Market include size, management, financing, and rents.

### Size

The Broadway Market is much larger than most public markets and not well designed to create the warm market feel that is enjoyed at other markets. At roughly 90,000 square feet of concrete, it is more than double the size of most public markets. Examples of sizes include:

- Milwaukee Public Market – 36,800 square feet
- Columbus Public Market (North Market) – 40,000 square feet plus outdoor vendors
- Hamilton Public Market – 45,200 square feet
- Nashville Public Market – 38,000 square foot building and four covered sheds
- Findlay Public Market (Cincinnati) – 12,000 square feet in market building plus outdoor vendors.

The only time that the large size of the Broadway Market is an advantage is the month before Easter when it can be fully leased. At other times, the large-scale building has the following disadvantages:

- Not enough tenants to fill the space due to the decreasing population in the trade area
- High operation costs for utilities, maintenance and security (the largest items in the budget).

### Learning for Buffalo Broadway Market

Rather than trying to fill 90,000 square feet with market vendors, the Broadway Market and the City of Buffalo should be trying to find other uses to either generate additional revenue or offset costs.

### Management

There is no single successful management structure for a public market and the markets cited above have different management structures that include:

- Milwaukee Public Market – managed by the adjacent business improvement district after the non-profit market almost went into bankruptcy
- Columbus Public Market (North Market) – independent non-profit market that has a relationship with the city’s parking authority
- Hamilton Public Market – city managed
- Nashville Public Market – arm’s length public market commission and separate management but staffing agreements governed by city agreements
- Findlay Public Market (Cincinnati) – within a development authority for the city properties in the downtown Cincinnati area called Over-the-Rhine.

While the management structures of these markets are different, what they all have in common is the fact that they have an on-site dedicated manager and staff. They all produce regular budgets and profit loss statements that let management monitor the ongoing health of the market.

#### Learning for Buffalo Broadway Market

The Market should have access to regular and frequent financial reporting that summarizes the key financial measures so progress on any plan for financial stability can be monitored closely. The Market needs dedicated on-site management staff in order to ensure that the Market operates at a consistent level of service at all times that it is open. On-site management ensures that tenants live up to the requirements of their leases all the time.

### Financing

While Broadway Market loses money, it is not unusual for public market operations to lose money, and it is important to understand this in the context of an oversize building, city staffing rates and the challenges of the neighborhood. Below are some of the ways that markets create revenues beyond their operations and how they deal with deficits:

- Milwaukee Public Market
  - Has moved from being a fresh food market to being more of a prepared food market supplying the needs of a growing and gentrifying neighborhood
  - BID provides services at private sector staffing rates.
- Columbus Public Market (North Market)
  - When the market was developed an adjacent parking lot was developed to provide parking for market customers (free for the first 2 hours) and an ongoing source of additional revenue for the market because it was recognized that the market would not be self-supporting with rental income alone
  - Market management organization also does fundraising through the Friends of the Market group.
- Hamilton Public Market
  - City offsets cost of free parking in city parking lots on the weekend for market customers
  - City subsidizes market operating losses.
- Nashville Public Market
  - Funding comes from the state
  - City subsidizes market operating losses.
- Findlay Public Market (Cincinnati)
  - Revenues from development deals in the market area help offset losses
  - Not clear if there are additional operating losses that are covered by the city since the development corporation is a city entity.

### Learning for Buffalo Broadway Market

The market needs additional sources of revenue if the city wants to move to a balanced budget. These revenues are likely to come from other city agencies rather than private sector organizations or parking fees since the demand for these services in the neighborhood are low.

### Rents

Typically, markets charge different rents depending on the margins associated with the products sold and the need for particular vendors. The lowest rents are reserved for produce vendors and farmers because of their higher waste issues and the appeal that they add to a market. Somewhat higher rents are charged for protein products (meat, fish, dairy) and bakery products because they have higher margins and higher sales than produce vendors. Prepared foods and giftware typically have the highest rents because they have higher margins. See Appendix 1 for examples.

#### Learning for Buffalo Broadway Market

The market should be considering scaled rents based on the product sold, particularly for Easter vendors. While it is difficult to raise rents to any great extent because the comparable rents in the neighborhood are low, the market should look at rents for non-food tenants particularly. Also, it will be important to keep the rents for fresh produce vendors and farmers as low as possible.

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## CONCLUSIONS

The biggest challenge for the Broadway Market is the continued depopulation of its core trade area. Markets depend on local residents for support and the Market has lost more than one-half of its potential shoppers in the past 20 years. Even if the trade area residents were more affluent, the Market would still experience loss of sales.

The loss of potential customers has affected the retailers in the Market making many of them very dependent on the Easter period. This over reliance on Easter has meant that many of these retailers do not provide the same level of products or service that they do for the one month of Easter. The meat vendors and Save-a-Lot are exceptions to this issue.

Clearly, the Market building is too large for the trade area that it now serves. The size of the building increases operating costs, leaving the building looking empty and too expensive to run.

While Easter provides the Market with an opportunity to shine as an active and exciting place, it does not provide a significant lift in revenues for the Market. The Easter-only vendors add less than 7% to Market revenues. However, it is clear that many other part-time vendors would not be at the Market without Easter. These part-time vendors add another 5% of revenues.

While it was important for the City to step in when the Broadway Market Management Corporation collapsed, the City did not immediately provide the manager with the tools required to operate the Market effectively. This situation is starting to change. The financial reporting, which makes sense for City departments, does not report the Market as a total entity on a timely basis. Also, reconciling reports from different departments with Market records is challenging. This makes evaluating the impact of any decision very difficult.

In general, the key issue for the Market is the difficulty in raising revenues to a level that would at least lead to a break-even situation. Even without paying a Market Manager salary, the Market requires an additional \$100,000 in revenues. Given the challenges in the trade area, this is unlikely to happen by depending strictly on food related revenues. While it may be possible to reduce the current loss by reducing costs, the existing costs are not out-of-line when compared to other markets.

Politically, the Market faces high expectations from its stakeholders without the resources to fulfill their wants. Stakeholders' expectations include:

- Vendors – minimize costs, increase the number of customers, improve the standard of the building, and ultimately sell more products.
- Customers – a high quality Market with low prices, the excitement of the Market as it is at Easter; a great, safe, clean local amenity.
- City – break-even financially, have a guaranteed return for any infrastructure investment, support small business.

## CONCLUSIONS

- Neighborhood – a safe, clean local amenity that helps local residents, provide high quality, healthy food at a good price, provide a gathering place for the neighborhood, and provide jobs for local residents.

While there are many challenges that the Market faces and many easy criticisms, it is important to keep in mind the accomplishments:

- The Market has more than 30,000 square feet of fully occupied, rent paying area along with a further 8,000 square feet occupied on a part time basis. This occupancy has continued despite the declining population in the area through the hard work of the current part time manager.
- The Market has provided a clean, safe place for local residents to come and get healthy food as well as interact socially with their neighbors.
- The Market has continued to be an important part of the heritage of Buffalo, not only for those who are of Eastern European extraction but also for those who love the richness of Buffalo's culture.



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## STRATEGY

The challenges that face the Broadway Market are huge. There is no guarantee that any strategy will fulfill the wishes of all of the stakeholders. This strategy is based on the need to keep the Market operating as an important year-round facility in the neighborhood and to reduce the overhead for the Market operations so that they can break even. The key to achieving these goals is to look at the Buffalo Broadway Market as two entities:

1. The Market building, which is owned by the City and includes the Market floor, the second floor entry space by the escalator and three levels of parking.
2. The Broadway Market operations, which includes the tenants, their equipment and merchandise as well as the Market management.

Rather than thinking about these as a single entity, the City should think about them separately because the Broadway Market operations do not need the entire building, except at Easter. The challenge will be to improve the operations of the Broadway Market while finding additional uses for the unused space in the Market building, which will help offset the crippling overhead costs that are currently being borne by the Market operations.

This strategy can be accomplished by taking the following actions:

- Relocate food vendors and cluster them at the western end of the Market floor close to the parking garage doors. This would build on the strength of the meat vendors and create more synergy among food vendors. The Market management would work on consolidating vendor space so that all permanent vendor space is used.
- The non- food vendors would be clustered at the Broadway end of the market where most of them are now.
- A farmers' market would be set up in the garage by the main doors for the growing season with the goal of attracting shoppers from beyond the neighborhood or at least downtown shoppers.
- Stalls that are only used at Easter would be removed from the Market floor at the vendor's expense and reassembled during Easter if space is available.
- Any space that is used for production would be opened up as much as possible so that it becomes part of the animation of the Market operations.
- The center part of the Market building and any other unused space would be cleared and would be open for new uses including temporary event space. This space would be used to accommodate the temporary Easter vendors if the space could be made available for the month before Easter. The Broadway Market operations team would manage the Easter vendors as it does now.
- The City would look for additional uses not only for the vacated Market floor space but also for the upper two levels of the parking garage.

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## ACTION PLAN

Based on the Strategy above, this section details the process and action plan for Broadway Market operations including:

- Financial pro forma and management
- Physical layout
- Vendor mix and display
- Marketing.

### Process

The reorganization of the Market operations and Market Building management will take time and considerable work to ensure that the operations stay strong throughout the process. Fundamental to making these changes will be to ensure that the changes have the complete support of the City management and politicians.

There will be opposition, especially from vendors who have occupied spaces throughout the year while paying rent only at Easter. If the City backs down in the face of opposition, the opportunity to improve fundamentally the finances of the Market operations and service to the neighborhood will be diminished.

### Tasks and Timeline

The following highlights the immediate, short-term, and long-term tasks that need to be completed for the Market redevelopment.

#### Immediate – within first year

The first year of this plan will be a time to make the most significant moves. The very first step will be to commit to the strategy laid out in this plan and to start with key implementation steps.

#### Financial Pro Forma and Management

- Separate building management from Market operations by creating a separate operations business.
- Develop a pro forma for the Market operations that reflects reduced overheads.
- Generate a consolidated pro forma for the Market operations that can be updated every month and start reporting on a regular basis.
- Create a commission at the City to look at the various options for using the excess Market building space.
- Hire a full time Market manager who will be responsible for implementing the strategy.

## ACTION PLAN

### Physical Layout

- Develop a detailed layout of the best way to separate the excess space in the Market building from the Market operations space.
- Ensure that all stalls created in the food area are fully serviced. This may mean creating new stall alignments.

### Vendor Mix and Display

- Remove any vendor stalls that are not being used. The vendors should do this themselves or the City should charge them for removal.
- Re-layout the vendor stall spaces so that the food vendors are closest to the meat vendors and non-food vendors are at the Broadway end of the Market building.
- Negotiate with each vendor as to the location and amount of space that they will occupy. Only vendors who are not in arrears should be considered for this negotiation process.
- Ensure that all vendors have leases. Duration and timing of the lease depends on the amount of investment made by the vendor. See Appendix 2 for sample lease.
- Create new standards for the tenant spaces to ensure some conformity while also allowing for creativity.
- Develop a vendor outreach program that will help ensure that all vendor stalls in the newly aligned area are occupied.

### Marketing

- Develop a marketing budget that will ensure that the additional marketing funds are deployed with maximum benefit.
- Create a Marketing Committee that includes the Market manager, vendor representatives and volunteers. Since volunteers have been very instrumental in creating and maintaining the website and social media, they should stay engaged with the process.
- Determine whether to retain a professional marketer to ensure that the marketing budget generates increased customer traffic and reaches out to strong vendors.
- Professionally review the website and social media efforts and determine what new efforts will be required to generate more activity at the Market.
- Reach out to partners who can help the Market marketing thrust, such as the Buffalo Place marketing department. It will be important to try to find activities and links that will be beneficial to both organizations and not competitive.

### **Medium Term – One to two years**

#### **Financial Pro Forma and Management**

At the end of the first year of reorganization, it will be important to do a full evaluation of the new setup of the Market. What has worked and what still needs to be changed? If the Market has evolved, the City should consider setting up a separate Market organization either within the City or as an arm of the City.

This organization would generate its own financial reports and not be dependent on the City to do this work. In addition, the organization would deal directly with tenants on issues like leases and rental payments. The Market management would then have much more authority to act to deal with tenant issues.

#### **Physical Layout**

- The Market layout will likely evolve as old tenants leave and new ones are brought on board.
- As the Market becomes more successful, the building should go through upgrades to increase its visual appeal.
- The Market management should work towards developing a farmers'/growers' market. This may only be as an outdoor market in the summer but it will be an important way to keep the momentum from Easter going. Growers' markets are important parts of all successful markets.

#### **Vendor Mix and Display**

- An ongoing vendor attraction program should be instituted. A package of information that can be downloaded from the website should be posted there so that potential vendors can understand the potential and requirements.
- The Market manager should do regular visits to vendor stalls to ensure that vendors abide by the requirements in their leases. It is important that there is discipline in the merchandise sold by vendors and the appearance of their stalls.

## ACTION PLAN

### **Marketing**

- An important goal for the Market manager is to grow the marketing spend and its effectiveness. A system of ongoing monitoring of events to understand their effectiveness should be implemented. This can be done through pedestrian counts and vendor reporting of sales increases. Tracking what works and does not work will indicate where marketing dollars should be spent.
- The Market manager should be looking for partnerships to expand the marketing budget. Finding sponsors and partnering on promotions with other organizations are just two of the many ways that a Market manager can increase the marketing budget.
- A plan for new banners and directional signs should be developed to help increase the visual appeal of the Market. The entire plan may be too expensive to implement in one year but a coordinated plan will help ensure that the money for these signs and banners is well spent.
- As the budget and complexity of the marketing program increases, the next step would be to hire a marketing assistant. This person would help with execution as well as liaising with sponsors and vendors.

### **Long Term – Two to Five years**

By the end of five years, this plan should be fully implemented. While it is unclear what additional uses will be in the Market building, the goal should be to ensure that the Market operations continue to be a strong commercial entity and a valuable neighborhood facility.

### Action Areas

#### Financials and Management

The chart below shows a revised financial pro forma based on existing results but assuming that at least 25% of the building costs will be offset by the City and that the Market operation will continue to occupy about 75% of the building. While these estimates are broad based, the Market should be able to operate within 60,000 square feet, which is about two-thirds of the building space.

This pro forma assumes that:

- The Market rents and utilities paid continue to be the same.
- There are no significant increases in building management costs.
- A significant budget for marketing will be set aside so that the Market can increase outreach to new potential customers. Note that this budget is larger than what has been spent in the past couple of years but is relatively small by the standards of other public markets where budgets are often over \$100,000.
- An allowance has been made for a full time Market Manager and possibly a part time assistant. The Market Manager would work onsite and will be responsible for recruiting new tenants, managing existing tenants, and administering the marketing budget.



## ACTION PLAN

Revenue		
Rental Revenue	\$509,141	
CAM		
Total Revenue	\$509,141	
EXPENSES		
Market Operations		
Salaries and wages	\$50,000	
Advertising	\$35,000	
Music and other services	\$16,280	
Insurance	Self-insured	
Vendor recruitment	N/A	
Office and administration	N/A	
Total Market Operations Expenses	\$101,280	
Building Operations		
Custodial and maintenance wages	\$76,800	Overtime, Operations and Maintenance
Miscellaneous Supplies	\$1,315	
Maintenance materials and equipment	\$6,332	Operations and Maintenance
Service Building Repair	\$14,777	
Outside service maintenance contract	\$49,280	
Electrical, heat, water	\$202,327	
Security & other services	\$146,390	
Total Building Operations Expenses	\$421,187	
TOTAL EXPENSES	\$522,467	
Net Income (Loss)	(\$13,326)	

With a relatively small deficit and the opportunity to increase rental income as the marketing program attracts more customers, the Broadway Market has an opportunity to break even. Like most public markets, the Broadway Market will likely face tenant turnover. While this is a risk, it is also an opportunity to rejuvenate the Market with new vendors who will attract more customers.

There is also the opportunity to generate income that will offset the marketing costs including finding sponsorships. Sponsorships are common among markets, especially when it comes to special events such as Easter. This is the time when a sponsor will find the most number of people at the Market.

## ACTION PLAN

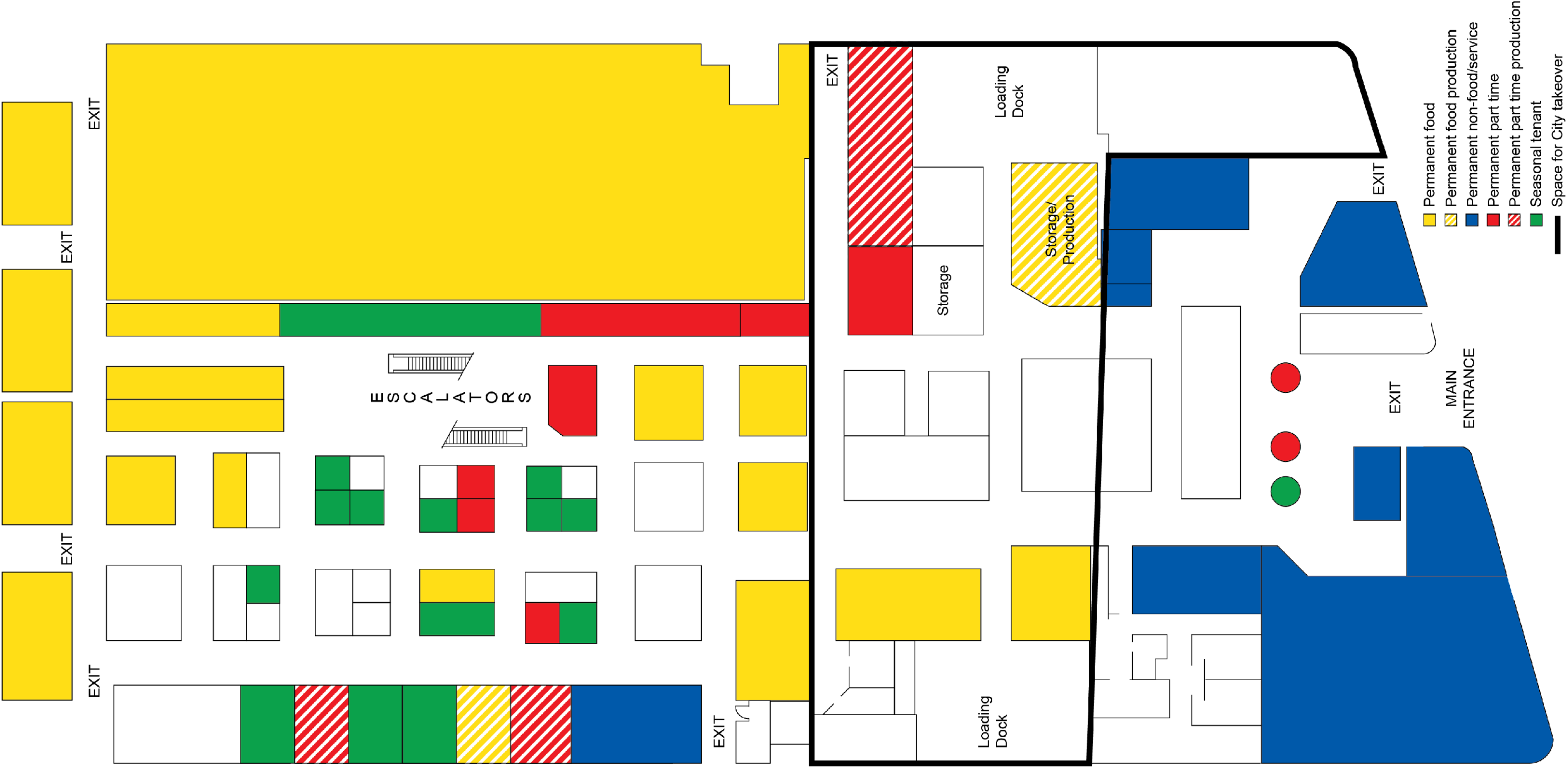
In order for the Market to become a commercial operation, a number of steps should be undertaken including the following:

- The ongoing financial reporting must be improved. Currently, reconciling data from the various sources within the City makes tracking the performance a challenge. A monthly profit and loss statement should be produced.
- Ongoing tracking of tenant rents and other costs should also be produced on a monthly basis. No tenants should be allowed to be in arrears with their rents. If a tenant does not pay their rent, they should be given a warning and after three months, actions should be taken to evict them.
- The Market Manager should be responsible for the financial performance of the Market operations. They should be given the authority that allows them to perform their duties.

### Physical Layout

As mentioned earlier, the current Broadway Market floor is too large for the trade area for most of the year. The floor plan below shows the current vendor layout and the potential to intensify the merchandising at either end of the floor. This would leave the central area marked on the floor plan available for other uses.

While this is a general layout, it will be very important to do detailed planning based on negotiations with vendors and the availability of services to various units, especially in the area designated for food vendors.



### Vendor Mix and Display

Regarding product and vendor mix, there are markets with carefully managed product lines and markets with a more laissez-faire attitude, allowing vendors to sell what they want. However, the most successful markets manage product lines and vendor mix carefully to create a diverse, specialized roster of vendors who are not allowed to wander across product categories. For example, a fruit and vegetable vendor sells fruits and vegetables, and not sweaters. This specialization has several advantages:

- It produces a larger number of small vendors rather than a smaller number of large vendors – this is good for diversity, which is key to a successful market.
- Specialization tends to produce better quality – the vendor is focused on good quality, good presentation, freshness, and variety; mass merchants do not have this level of focus.

There are two basic approaches to vendor space design. The classic market approach (e.g., Columbus North Market, St. Lawrence Market, and Milwaukee Public Market) has each vendor fronting onto aisles in which the customers circulate. Counters and display cases surround each stall. Customers do not go into the stall; they stay in the aisle and interact “over the counter.” This keeps activity in the aisles and is a large part of the market ambiance that people value. It also creates productive space for vendors as they are primarily leasing space that only has product for sale and not leasing visitor walking space.

In contrast, some markets allow vendors to create little walk-in shops. These interrupt the desired continuous-retail frontage, taking activity out of the aisles and creating the impression of a “warren of little” stores rather than an open, public market. One exception is produce vendors, who can merchandise from several display tables that allow shoppers to walk through. However, produce vendors do not require walls, upright display cases, or large equipment (e.g., ovens or walk-in coolers) that cut off sight lines; thus, they do not detract from the open character of the Market.

The preferable vendor space design of the Market food area is the classic approach with each stall surrounded by counters.

The vendor mix should include three main categories of vendors:

1. Fresh, processed food vendors: these will sell fresh foods (e.g., fruits and vegetables, meat, seafood, baked goods) and processed foods (e.g., cheese, deli, coffee/tea, spices, sauces), and/or some semi-prepared for home consumption (e.g., perogies, pre-made casseroles, salads, dinner entrees, marinated meats). Generally, these vendors will not sell any food for on premise consumption; however, there are exceptions such as delis and baked goods.
2. Prepared food vendors: these will sell food and beverages for on premise consumption. This group should account for at most 20% of the leasable area.

## ACTION PLAN

3. Non-food vendors: these are vendors who sell products and services that are not consumable. While many markets do not allow non-food vendors in order to ensure that the market stays a food experience, other markets allow non-food vendors that sell products or services that increase the appeal of the market to their local neighborhood.<sup>1</sup>

The tenant mix should include a core of basic food types that provides a complete food shopping experience, supplemented by specialized vendors that provide diversity and reflect the character of the neighborhood. These food vendors should be clustered together to get as much synergy as possible from each other while making the shopping experience most efficient for the customer. By locating close to the powerful meat vendors, the other food specialists will benefit from the drawing power of these vendors.

Food vendors' stall sizes average 450 to 500 square feet. Some are very small (e.g., 125 square feet) and others can be approximately 900 square feet. This does not include Save-a-Lot, which is closer to a small scale grocery store.

The physical presence of the building should be enlivened with signs, graphics, banners, and lights. Individual vendors should be encouraged to develop stalls including lighting that showcases the products they are selling.

- Entrances need to be large, bright, open, and welcoming.
- The vendor lease agreement must include common design guidelines. Guidelines on height, size, and colors need to be given to all vendors and prospective vendors. Signs should be creative and fun within these guidelines. Individuality should be encouraged.
- Vendors will pay for all the on-floor fixtures, coolers, furniture, and equipment. The central storage cooler will be owned or leased by the Market and vendors charged rent for its usage.
- Security should have strict policies on hours and access.

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<sup>1</sup> Non-food vendors at the Broadway Market are important because of the revenues that they generate as well as the services they provide to the neighborhood. Unfortunately, the non-food tenants are more visible than the food vendors are from the Broadway end of the market, but the Market requires them in order to be sustainable.

### Service Guidelines

- While the move in the strategy outlined here will not entail a full renovation of the Market, this section points out the most desirable state for the Market in the future. Since many of these issues are addressed in the current Market, these guidelines are meant to be a standard as future changes are made.
- In a market, it is important to maintain a high degree of flexibility to accommodate changes in occupancy. To the extent possible, basic services should be roughed into all vendor stalls including the following:
  - Electrical and telephone service to all stalls with enough service points to provide for the division of areas into smaller units. Electrical service must accommodate equipment such as ovens and coolers and high levels of lighting that are appropriate in stalls. Each stall should be metered for electricity consumption.
  - Floor drains to all stalls. Almost all vendor types can produce water on the floor that must be drained away. Floors should be water resistant for this reason.
  - Water service to all stalls. Each vendor should have an in-stall sink.
  - Special ventilation is only required in a few areas. The main requirement is for prepared food operations with grills, stoves, or deep fryers. The production areas will require ventilation.

### Examples of Stall Layouts, Display Units, Merchandising Techniques, Signage, and Customer Circulation

The following examples illustrate effective stall layouts and configurations that showcase the product, allow customers to remain in the aisles to create a vibrant atmosphere, and how to merchandise products that demonstrate the vendor as a specialist rather than a generalist.

## ACTION PLAN

**Portland Market: Portland, Maine**



**Atwater Market, Montreal, Quebec**





## ACTION PLAN

### Granville Island Public Market, Vancouver, B.C.





## ACTION PLAN



## ACTION PLAN

### North Market, Columbus, Ohio





## ACTION PLAN

### St. Lawrence Market, Toronto, Ontario



Pike's Place Market, Seattle, Washington





### Other Examples of Merchandising Display

The following examples from outdoor markets illustrate the requirement for proper merchandising. The two stalls have considerable “Wow” factor that not only drives sales but also helps build the experiential aspect that markets need.



The Market should always portray an image of plenty. While this is an example of an outdoor vendor, the merchandising elements need to be applied for indoor vendors as well. Also note the sample dishes near the product. This not only adds sales but it creates a greater experiential atmosphere.



The whole Market experience must go far beyond that of the vendors to include activities at and near the Market. It must be a center for food diversity, entertainment, and social celebrations. The Easter Market is only one event in a roster of many possible events. The Broadway Market has been able to excel bringing many events to the Market throughout the year and using them as a way to generate life and energy.

### **Merchandise**

The Lease Agreement must have specific product controls in order to ensure variety of products/vendors. This means that the tenant will specify the products to be sold and must receive permission from the Market management to sell any other products. Other “product line” specifications are as follows:

- Must be high quality
- Source/origin of product marked
- Prices must be clearly visible
- Pricing must be competitive with major supermarkets
- Weighing scales must have measurement visible to the customer

## ACTION PLAN

- All prepared foods (such as jams and pickles) must be properly labeled according to government and public health regulations
- Tainted, spoiled or wilted products must be removed and discarded to maintain fresh appearance
- Receipts must be given (or offered) for all customer sales, and cash registers used.

### Cleanliness

Rules and regulations regarding cleanliness must be specific and regularly monitored and enforced.

Recommended cleanliness regulations are as follows:

- Vendor practices must be in accordance with the Public Health Department food handling standards
- Management will provide regular central garbage removal and appropriate containers for recyclable materials
- Garbage must be removed from stalls at regular intervals (daily at a minimum)
- Waste from stalls must be put into proper containers (e.g., Recyclables and trash) and stall waste receptacles cleaned nightly
- No waste material may be thrown on the floors
- Cooking can be done only in designated food booths with proper ventilation
- Stalls, counters, coolers, and fixtures must be washed, and floors swept and washed daily after the Market closes
- Grease traps and hoods are to be cleaned monthly or more frequently if required.

### Vendor Recruitment

These are required elements of the vendor recruitment plan.

- A detailed floor plan should be available for discussions regarding potential stall locations.
- A firm schedule for renovation start, if required, substantial completion (so tenants can commence fit-out work), soft opening, and grand opening.
- A lease instrument must be available. Prospective tenants will want to see the form of lease that they will be expected to sign.
- Basic business terms such as rent rates, expected operating costs, and provisions (if any) for financial assistance with tenant fit-out must be in place so that prospective tenants can be advised of the expected total occupancy costs.
- Proposed days and hours of operation must be established.
- Tenant fit-out guidelines and requirements must be in place. These will include signage guidelines and regulations, design guidelines for vendor stalls (counters, display, and equipment), mechanical and electrical specs, etc.
- ALL TENANTS MUST HAVE CURRENT LEASES THAT SPECIFY THE ABOVE. This includes tenants who do not currently have a lease.



Once this information is in place, an ongoing recruitment effort should be part of the job of the Market manager. While many of the current tenants will continue in the Market, many in their existing space, it should be recognized that some of the existing vendors might choose to leave as their stalls are moved or as stricter enforcement of leases begin. The recruitment plan consists of the following:

- The Market website should be the base for recruiting new vendors. The current “Become a Vendor” page does not sell the benefits of being a vendor. The Findlay Market in Cincinnati has a robust “Become a Merchant” page with lots of information take-aways for the prospective vendor.
- Direct contact with potential vendors will be the most effective recruiting action. These include existing, well-known, and good quality retailers who may be looking for a new or multiple locations; wholesaler/processors who do not have a local retail outlet and, with caution, tenants at other markets.
- Ideally, all vendors will be owner-operated businesses with no or few other outlets in the region. Chains and franchises should be avoided.

### **Days/Hours of Operation**

The Market should operate at least five days per week, which must include Saturday. The Market could consider opening seven days a week in the month leading up to Easter. Market vendors should stay open until 6 pm in order to serve local residents who work during the day. Prepared and semi prepared foods are important additions to markets, allowing people heading home from work to pick up easy dinner options.

Overall, regardless of what hours are finally chosen, there is a need for consistency in the hours of operation. This means that all vendors must be operational during those hours except for part-time and Saturday-only vendors.

### **Lease Structure**

The Market should have a standard form of lease that will be used by all full-time and part-time vendors. This form of lease, in many ways, should be similar to a standard commercial lease used in shopping centers. Each tenant will have to sign the lease agreement, which will stipulate all the rights and expectations of the vendor. The following notes focus on elements that should be tailored to a market-leasing situation.

- Term: an initial term of three years for vendors who do not have significant investment in fit-out and equipment and five years for those who do. Current vendors who are in good standing<sup>2</sup> should automatically be given five year leases.

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<sup>2</sup> Rent is paid on time, and opens and closes as agreed with Market management.



## ACTION PLAN

- Renewal: tenants will want to know that, if they are successful, they will be able to continue to occupy their space. However, the Market needs to be able to manage actively the merchandising mix, eliminating or replacing weak performers. In this situation, leases need to be renewed on a regular basis (e.g., not automatically renewed). This ensures that vendors are operating to the Market's expectations and this is assessed on a regular interval. This helps to mitigate the risk of renewing a vendor who should be terminated.
- Renewal terms would be in the range of three to five years.
- Product lines: the leases must be very specific regarding the product lines the tenant is allowed to sell. There can be a tendency in markets for product lines to "wander" in ways that may benefit an individual merchant in the short term but are damaging to the overall Market concept in the long term. When several tenants act this way, duplication of products results. This can be prevented by drafting and enforcing specific clauses governing the vendor's allowable use and product lines.
- Exclusivity: generally, vendors should not be granted exclusive rights to any product. This does not mean that there should be overlap in categories, but that individual vendors should never be in a position to control or limit the addition of new vendors. Management has the responsibility to ensure that categories do not become overloaded.
- Rent structure: right now, the Market has very little leverage to increase rents to help offset increases in management costs because the competitive rents in the neighborhood are very low. However, the rents should be structured so that tenants pay according to what they sell so that the amounts paid range from lowest to highest in the following way:
  - Produce and fresh grown products
  - Fresh market products like cheese and eggs
  - Meat and seafood
  - Prepared foods
  - Non food
- Utilities: all indoor tenants should pay utilities. As much as possible, tenants' spaces should be metered so that tenants pay for the utilities that they actually use. Temporary tenants should pay a prorated amount for their utilities based on their space and hours of operations.
- Termination: leases should give the City the right to terminate the lease if a vendor does not live up to their obligations in the lease. The current practice of allowing tenants to slide from one year to the next with rental arrears is unfair to other tenants and encourages the offending tenants to continue this kind of activity.

**Trademark protection – trademark not used without protections.**

## ACTION PLAN

### Marketing, Promotions, and Special Events

In terms of market positioning, the image of Broadway Market should reflect the aspects that make it a special place and unique in comparison to other food stores. These include:

- Availability of fresh, high quality food products
- The personal contact with business owners
- Convenience and centrality in the neighborhood
- Historic and cultural authenticity
- A friendly, people place.

Building a focused brand that honors the long heritage of the Market but also builds on the new characteristics of the neighborhood is important. This should be done by establishing a program that is a mix of reality and perceptions in the minds of customers, such that they choose the Broadway Market over other options in the area. Broadway Market will be the place to go for fresh foods and specialty food items in a friendly, personal service oriented atmosphere.

There must be consistency in the positioning conveyed through a coordinated program of digital media, special events, and promotions.

### The Challenges

The challenges are many but not insurmountable:

- Vendors are generally responsible for their own operations and profitability, but without the knowledge and/or the understanding of what some marketing could or would do to improve their individual bottom line. As a result, the Market must do the marketing, as the vendors will not.
- The Market cannot single-handedly solve the problem of the depopulation of the neighborhood. However, it should be reaching out to the areas of new housing development close by in Downtown and the areas close to Downtown.
- The Market needs to be, as it is not now seen, as a “cool” place to go out to be entertained by events, activities, or even just to be seen at.
- The Market needs to build its reputation for quality, fresh, and unique products to compete with its competition, and to set itself apart from traditional and discount grocery stores within its trading zone.
- The issue of safety in the neighborhood and in the building is key to the enjoyment the Market. The challenge of communicating the safety of the Market without being defensive must be addressed.

### Meeting the Challenges

Broadway Market must emphasize several key messages in all its communications point of contact and interactions with the public:

- Ambience: Broadway Market must show a unique food shopping experience for the whole family. Festivals, events, and buskers are needed on a regular basis.
- Character: Broadway Market's vendors are usually owner-operators with unique personalities. The Market needs to convey a sense that this is a friendly, fun place with a sense of community. The messages include "We're a family," and "We are real."
- Quality: Broadway Market offers an abundance of fresh produce, meats, and baked goods that will last longer and are worth paying a little more.
- Connoisseurs: Broadway must present itself as the place to go for gourmet ideas and to be with people who just care about food and know what is good.
- Multi-cultural: Broadway Market must welcome all customers including newcomers as well as established Buffalo residents and let them know that the world of ethnic products await them. This multi-cultural approach includes the Market's past Eastern European heritage as well as the many other ethnic foods that are established and new to the neighborhood; e.g., Southern Soul Food, South Asian, Arabic, etc.

### The Marketing Plan

Currently, the marketing budget for the Market is very low at about \$15,500. Most of this is spent in the time around Easter to communicate what is happening. It is important to increase this budget significantly. Even with an increased budget of \$50,000, the Market will have to depend on mostly unpaid media in order to get its message out since the cost of paid media is not supportable at this point.

In the future, it may be possible to charge vendors a marketing fee, which is very common in other public markets and shopping centers. These funds are supplemented by the Market budget contributions to marketing funding. Usually, marketing is overseen by a Marketing Committee, which is made up of the Market manager, vendors and volunteers. They work together to develop successful and profitable marketing programs.

However, charging vendors additional amounts for marketing at this time may not be feasible without first developing a stronger marketing program and showing some successes. It would be a good idea to start with the Marketing Committee to get buy in from the most important vendors and working with them to support promotions and events on a coordinated basis.

## ACTION PLAN

This is a good time to be thinking about unpaid media since the effectiveness of social media and marketing web activities has proven to be very effective. The key vehicles for marketing at Broadway Market should be:

- Website
- Social media
- Events and activities
- In-house banners/signs.

### Website and Social Media

#### *Current Scenario*

Currently Broadway Market has 16,714 likes on Facebook and 3,820 followers on Twitter.

The Market is very active on social media posting almost daily and certainly weekly. The consistency of posting is good for gaining traction and continuing to build a following.

The existing site has a lot of good information and content, from historical information to a vendor directory and a calendar of events to information on a roof garden.



In looking at the main keywords that are driving traffic to the Broadway Market, 65% of the traffic is driven from searches for "broadway market." Meanwhile, 29% of the searches are driven by "Easter 2013."

### *Top Keywords Driving Traffic to the Website\*<sup>3</sup>*

- Broadway market (65.2%)
- Easter 2013 (29.0%)
- Beata Zatorska (2.3%)
- The broadway market buffalo new York (0.9%)
- Broadway market wine festival (0.8%).

### *Suggestions, Observations and Recommendations*

The overall look and feel of the website appears outdated and the Market manager should revisit the design of the site. It does not provide any sense of the personality of the Broadway Market. When thinking of personality it is important to understand that personality, which feeds design, provides the first impression for non-residents who are determining which activity they wish to pursue that day, during their online research.

The site provides sufficient information and just as important, it is easy to navigate. The site is also mobile optimized, which is good news as 90% of American adults have a cell phone and 54% have a smartphone.

We suggest the use of more images on the website. This will help to showcase not just the personality but the popularity of the events and the Broadway Market programming in general. Place images strategically within the content. For example, for the Roof Garden, which has its own photo page, there should be images within the actual Roof Garden page.

Currently the Roof Garden has its own Facebook page that is limited to 200+ followers. If the Broadway Market maintains this, it is recommended this be rolled up into the main Facebook page. A separate subpage can be established in Facebook within the main Facebook page with information on the Roof Garden. This will help the larger community be aware of the Roof Garden and garner more interest.

### *Events*

A review of the Yelp comments reveals at least two reviewers who mention the Easter market fondly while 29% of the traffic driven to the site is from the keyword “Easter Market 2013.” Easter provides a focal point of success. This can be used as a foundation to build similar events that drive traffic to the website.

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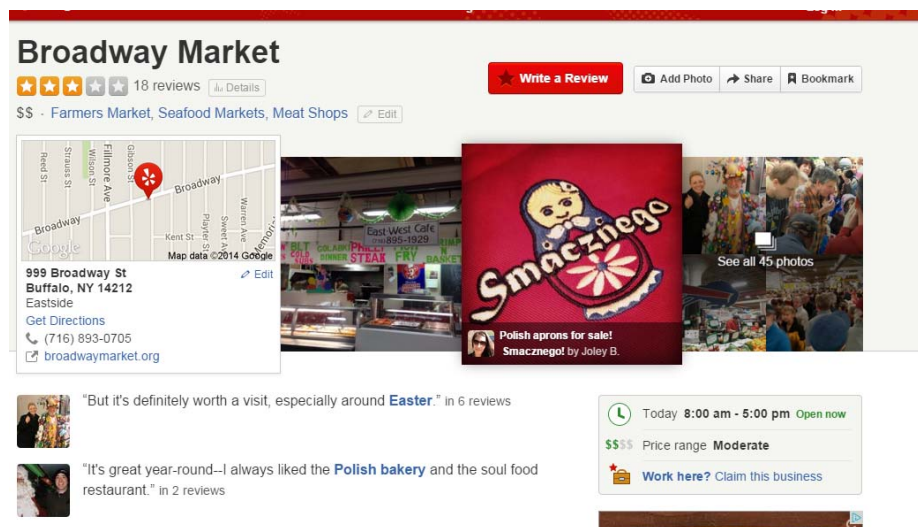
<sup>3</sup> Shows the top keywords that sent traffic to the site from major search engines over the past 6 months.

## ACTION PLAN

We recommend building other events throughout the year to gain visitors to the market and spread out the use and capacity of the Market's resources. Creating unique events will help the Market to further differentiate, not just in the immediate trade area but also beyond. We suggest an event that draws from the Easter European heritage of the market such as the Beate Zortorska event or Dingus Day. This will provide a unique event for locals to attend and participate in but it will also be a good way to draw residents and visitors from other towns who are looking for an interesting and unique activity or event to attend.

### Review Sites

A very important component of users' online research today is review sites. These hold greater importance for first time visitors who rely on the reviews and ratings of other attendees for information in their decision-making. Yelp is an example of one review site that is used widely in the United States and Canada. Currently the Broadway Market has 18 reviews, giving it an overall 3 star rating.



It is also rated #4 out of 25 shopping destinations in Buffalo by TripAdvisor and has a 3.5 rating out of 5 based on 23 user reviews. This indicates the marketing the Market has done to date has had impact in a positive manner. It is a matter of building further on this positive awareness of the market.

### Broadway Market

999 Broadway, Buffalo, NY 14212

716-893-0705 Website Improve this listing



60%

Ranked #4 of 24 Shopping in Buffalo

23 Reviews

Type: Speciality Shops

Activities: Shopping

[More attraction details](#)

Sav

Whether the Broadway Market participates or not in monitoring the reviews, they will be posted by users! The Market can use the comments as an opportunity to improve operations, reach out to users and also encourage other attendees to post reviews to increase the ratings and increase the visibility if the market.

#### *Partnerships*

Partnerships are an important element of a marketing plan that can have a much greater reach than other elements (e.g., paid advertising). Cross-promotion with partner vendors, businesses and even organizations in peripheral cities can help boost the attendance and overall awareness of the Broadway Market. For example, many business improvement districts now feature vendors on their website (e.g., a photo, description of the vendor, history, product information), on a rotating basis, to elicit participation, awareness, and increase traffic.

Given the strong Facebook presence the market has created, and the limited budget, the Market should look to leverage partnerships with entities that have a medium to large following and where cross-promotions can occur.

#### *Video*

Videos through YouTube can be used as a means to interact with the younger segment of the Market's audience. YouTube is used by 1 billion unique visitors each month and reaches more 18–34-year-old Americans than any cable network. Specifically for events like Dingus Day or other festivals, use of video media can be tested and the effectiveness determined, with the audience. This should be done as part of a larger marketing and social media campaign pre and post events.

While video usage can require a substantial budget for production and editing, working with local volunteers and/or universities, there is an opportunity to leverage resources without incurring a high monetary cost.



## ACTION PLAN

While the result may not be a top-notch, professional quality video, setting up guidelines from the Market, which keep with the brand of the Market and the messaging the Market wishes to send, can help ensure quality videos.

### ***Paid Advertisements Online***

Placing paid ads on various search engines (e.g., Google Ads) or social platforms (e.g., Facebook) is also recommended as part of an overall marketing campaign (either for an event, a program, etc.). This will require a consistent monetary budget and it can be set to be used weekly or monthly.

Given the built-up Facebook presence, it is recommended that the Market test a campaign with Facebook ads, as they will be able to reach friends of their 16,000+ followers; this way the ads will be reaching a more relevant audience who will be more closely associated with the Market. There is a higher chance that these targets would be interested in attending events at the Market.

All paid ads should be monitored and tested regularly in order to continuously optimize the ads, timing of ads, frequency, etc.

### ***Activities***

This has been how the Broadway Market primarily promotes itself with Easter being the biggest and most successful event. Other potential activities could be Eastern European related or other kinds of ethnic celebrations for Christmas, Eid festivals (Muslim), and Chinese New Year.

Other events and activities should relate to the calendar year when certain products are at their peak (e.g., Strawberry month in June, corn fest, garlic time, etc.) or celebrations for local specialties; e.g., wine making, beer making or Buffalo wings. These events can be fun for locals but also great for visitors.

Assuming that the website and social media tactics are in place, these events will ensure that there is a reason for customers to visit the Market for fun as well as shopping.

### ***Sponsorship***

Sponsorships can be an important source of revenues or activities for markets. Not all sponsors will provide revenue but they can provide in-kind services that will offset marketing costs. Potential sponsors for particular local food products include:

- Large upstate New York wineries
- Welch's (grape products)
- New York State Agriculture and Markets programs.



## ACTION PLAN

### *Other Activities*

- Announcement of new tenants as they come in
- Tie-in to events in the Downtown and region.

### *Vendor Communication and Motivation*

Vendors should be informed of and involved in all special events held at the Market. The focus behind this involvement is vendor representation on the Marketing Committee. A regular newsletter (can be electronic or email) to vendors should be used to provide timely information on upcoming events and instructions on how vendors should be participating.

Point-of-purchase materials, special signage, displays, and decorative themes are some of the instruments that can be used to involve each Market vendor in a given promotional event.

### *Marketing Calendar of Events*

The marketing plan for the Market should contain a regular schedule of annual events. This calendar is an important tool to communicate with both vendors and customers. It should be delivered to vendors (either by hand or electronically) and should be posted on the website so that customers can plan to come for events that are relevant to them.

### *In-house Banners and Signs*

This item will be particularly important as the Market is reorganized.

These banners and signs serve two purposes:

1. Give directions and information
2. Enliven the atmosphere and make the Market more colorful.

An annual amount should be set aside in the marketing budget for banners and signs even though many can be reused from year to year. Sponsors may contribute to this item.

### Evaluation Criteria

Another important element of any marketing plan is being able to provide evaluation criteria. Upon completion of all promotions, it is important to evaluate the success against the cost. A promotion evaluation worksheet should be developed with the following factors included:

1. **Date/day:** it is important to note both the date and day, as they may affect the promotion's results (e.g., an event may be made more successful if it is held next time on a Friday instead of a Saturday).
2. **Theme/Activities:** these are the very foundation of the promotion or event. If the theme is inappropriate, every other factor will be affected negatively.
3. **Targeted Market:** the success of the promotion depends on it being promoted/advertised to the right target market(s). Including this information helps determine if the theme/activity was right for the market you are trying to capture. Information on the types of visitors can be obtained through an informal survey of zip codes (then mapped) or by observation (this can later be used for direct marketing purposes).
4. **Types(s) of Advertising Used:** the sheet should include the types of advertising/promotions, when, where, cost, etc. to determine if it reached the target market. Did advertising make a significant contribution to the success of the promotion?
5. **Estimated Sales Percentage Variance:** the primary objective of many promotions is to increase sales. Information about sales variances helps determine the effectiveness of the promotion. The percentage variance of sales will tell you how close you were in estimating sales because of a particular promotion. Because the Market vendors do not record sales, this information will have to be collected anecdotally.
6. **Estimated Costs, Actual Costs, Dollar Variance, and Percentage Variance:** promotional costs are a key factor in deciding whether to repeat the promotion or not. If estimated costs were not accurate, determine what made the difference. If you are able to get sponsorship to offset costs, note this as well.
7. **Customer Comment Cards:** to evaluate the true success of a promotion, you need to know whether your customers like it or not. Comment cards will tell you if they liked it, disliked it, and reasons why. They will also tell you if they were not aware of a promotion. In the latter case, consider changing your promotional mix for future promotions.
8. **Results/General Comments:** be sure to include your own opinions, rate the promotion on a scale from excellent to poor, and include any general comments about other evaluation factors. Finally, comment on whether you feel you should repeat the promotion, modify it, or scrap it in the future, and why. This information will be invaluable in planning next year's promotions.

# Buffalo Broadway Market Evaluation Report

INTRODUCTION

BROADWAY MARKET ASSESSMENT

BROADWAY MARKET TRADE AREA  
ASSESSMENT

SUMMARY FROM PREVIOUS  
STUDIES

HOW OTHER MARKETS WORK

CONCLUSIONS

STRATEGY

ACTION PLAN

**APPENDICES**

## APPENDIX 1 – RENTAL RATES IN OTHER MARKETS

## RENTAL RATES

### North Market, Columbus, Ohio

Category	Indoor Rents per sq. ft.
Produce	\$18.75
Meat/flower	\$21.85
Dairy/bulk	\$24.96
Prepared food/gift	\$28.00

#### Notes:

- CAM – charge for half the aisle in front of stall E.g., a 400 sq. ft. stall (20' x 20') would be charged as though it were a 480 sq. ft. stall (24' x 20')
- All stalls are metered and pay their own water and electricity
- No property taxes on the City owned building Outdoor Saturday market
- \$340 to \$405 for 10' x 10' stall for the season

### St. Lawrence Farmer's Market, Toronto, Ontario

Category	Stall Fee per Saturday
Category A (Farmers)	\$19.74
Category B (Processors)	\$29.58
Category C (Resellers)	\$34.50



# Rates & Charges (1/1/15 summary listing)

Producer Only Shed - South Shed 1 (per rental space)	DEC - APRIL	MAY - NOV
Saturday	\$25/day	\$50/day
Sunday-Friday Per Day	\$20/day	\$25/day
Anchor Tenant	availability and rent estimate upon request	
Every Day Temporary Lease 3/6/9/12-month agreement	\$589/mo (5% discount)	\$807.50/mo (5% discount)

Enclosed Artisan Shed - South Shed 2 (per rental space)	
Saturday	\$65/Day
Sunday - Friday Per Day	\$30/Day
Every Day Temporary Lease 3/6/9/12-month agreement	\$988/mo (5% discount)

Producer/Craft & Flea Shed - North Shed 1 (per rental space)	DEC - APRIL	MAY - NOV
Producer: Saturday	\$25/day	\$50/day
Producer: Sunday-Friday	\$20/day	\$25/day
Craft & Flea: Fri-Sun	\$75/weekend	
Craft & Flea: Monday - Thursday Per Day	\$20/day	

Craft & Flea - North Shed 2 (per rental space)	DEC - APRIL	MAY - NOV
Craft & Flea: Fri-Sun	\$75/weekend	
Craft & Flea: Monday - Thursday Per Day	\$20/day	

Market House Set Up (per rental space)	
Saturday	\$65/Day
Sunday - Thursday Per Day	\$30/Day

Grow Local Kitchen Rent	
Standard, 8-Hour Shift	\$100 /shift
≥ 5 Shifts /Calendar Month Prepaid	\$85 /shift
Cooking Class *	\$100 /shift
Dinner Guests (24 guests maximum) **	\$75 /shift

\* includes GLK rental & participant space

\*\* includes space for dinner guests only-- GLK rental is separate

Special Event Rent (deposit & security/sanitation fees not included)	MON - WED	THURS - SUN
North Shed 1	\$1,000/day	\$3,000/day
North Shed 2	\$1,000/day	\$3,000/day
North Lawn	\$100/day	\$250/day
East Market House Patio	\$100/day	\$250/day
Artisan Shed Flex Space	\$2,000 /day (Mon - Thurs ONLY)	
Market House Common Area	\$1,700 /day	
Non Profit, Government or Sponsorship Discount	availability and rent estimate upon request	

Other Rates	
Food Truck (min of three spaces)	\$100/day
Specialty Vehicles (Airstreams, etc)	availability and rent estimate upon request
Special NFM Events/Festivals (Holiday Market, etc)	special rates may apply
Conference Room	\$20/day and reservations required to utilize Market House establishments for catering
Non Profit or Government Discount	availability and rent estimate upon request
Freezer, Cooler, Storage	
Market House or Artisan Shed Permanent Space Lease	

Fees & Deposits (summary listing only)	
Annual License Fee (renewals only)	\$5 /calendar year
Application Fee	\$20 /application
Special Event Refundable Deposit	\$250 /event
Special Event Security & Sanitation Fee	\$250 /event day with 150 or less projected attendees
Special Event Security & Sanitation Fee	\$500 /event day with 151 - 750 projected attendees
Special Event Security & Sanitation Fee	\$750 /event day with 751 - 1500 projected attendees
Special Event Security & Sanitation Fee	\$1000 /event day with 1501 - 3000 projected attendees
Special Event Security & Sanitation Fee	\$1500 /event day with more than 3001 - 5000 projected attendees
GLK Deposit	\$150 /application
GLK Time After Paid Shift	\$100 /hour or partial hour
Late Rent Payment	\$5 /day after unpaid occupancy of any number of temporary spaces
Reserved Merchant Parking	availability and rent estimate upon request
Overnight Vehicle Storage (210 sf max)	\$20 /day -OR- \$540 /3 calendar months prepaid (additional fees for unauthorized storage)
Returned Check	\$100 /check (and future payments ONLY by cashier's check, money order, or credit card)

Unless provided otherwise by lease or agreement, the total rent for every day of a calendar month may be paid semimonthly in advance — one-half the total monthly rent amount on or before the 1st and the 16<sup>th</sup> of that month.



## APPENDIX 2 – SAMPLE LEASE

**COVENT GARDEN MARKET CORPORATION**

**(Landlord)**

**and**

**Owner’s name  
operating as “ trade name”**

**(Tenant)**

**and**

**(Indemnifier)**

---

**LEASE**

**The COVENT GARDEN MARKET  
130 King Street  
London, Ontario, N6A 1C5**

**Store No. -**

---

**LERNER & ASSOCIATES  
Barristers & Solicitors  
80 Dufferin Avenue  
P.O. Box 2335  
London ON N6A 4G4  
James W. Dunlop**

**(July 7, 1999)**



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**THIS LEASE** is dated the [insert day] day of [insert month], 200 .

IN PURSUANCE OF THE *SHORT FORMS OF LEASES ACT* (ONTARIO)

B E T W E E N:

**COVENT GARDEN MARKET CORPORATION**

(hereinafter referred to as the "Landlord")

of the First Part;

- and -

**OWNER'S NAME**  
**operating as "TRADE NAME"**

(hereinafter referred to as the "Tenant")

of the Second Part.

**ARTICLE I**  
**Definitions**

The parties hereto agree that when used in this Lease or in any Schedule attached to this Lease the following words or expressions have the meanings hereinafter set forth.

1.1 "Additional Rent" means any and all sums of money or charges required to be paid by the Tenant under this Lease (except Minimum Rent) whether or not the same are designated "Additional Rent" or whether or not the same are payable to the Landlord or otherwise, and all such sums are payable in lawful money of Canada without deduction, abatement, set-off or compensation whatsoever. Additional Rent is due and payable with the next monthly instalment of Minimum Rent unless otherwise provided, but in any event is not payable as part of Minimum Rent. Additional Rent may be estimated by the Landlord from time to time and such estimated amount is payable in monthly instalments in advance with annual adjustments and all Additional Rent is deemed to be accruing due on a day-to-day basis.

1.2 "Arbitration" means that the specified dispute is to be resolved pursuant to either of the following procedures chosen at the option of the Tenant: (a) Section 197 of the *Municipal Act*, R.S.O. 1990, c.M.45, or any successor of such section as shall then be in force; or (b) the *Municipal Arbitrations Act*, R.S.O. 1990, c.M.48, or any successor thereto. Each party is to bear its own costs and share equally in the fees and expenses of the Arbitrator and the Arbitration. The Tenant may not seek Arbitration of a decision of the Landlord, (a) more than ninety (90) days after notice of any such decision has been given to the Tenant; or (b) before any amount claimed due by the Landlord is paid by the Tenant.

1.3 "Architect" means the architect from time to time named by the Landlord. The decision of the Architect whenever required hereunder and any certificate related thereto shall be final and binding on the parties hereto and shall be addressed to the Landlord and the Tenant.

1.4 "Common Areas and Facilities" means (a) those areas, facilities, utilities, improvements, equipment and installations in the Market which, from time to time, are not designated or intended by the Landlord to be leased to the Tenants of the Market, and (b) those areas, facilities,

utilities, improvements, equipment and installations which serve or are for the benefit of the Market, whether or not located within or adjacent to, the Market and which are designated from time to time by the Landlord as part of the Common Areas and Facilities and which are directly attributable, and of significant use and benefit, to the Market. Common Areas and Facilities includes, without limitation, all areas, facilities, utilities, improvements, equipment and installations which are provided or designated (and which may be changed from time to time) by the Landlord for the use or benefit of the Tenants and their employees, customers and other invitees in common with others entitled to the use or benefit thereof in the manner and for the purposes permitted by this Lease, the roof, exterior wall assemblies including weather walls, exterior and interior structural elements and bearing walls in the buildings and improvements comprising the Market; all vestibules for and entrances and exits of the Market and all structural elements thereof; truck courts; driveways; truckways; surface parking areas; delivery passages; loading docks and related areas; pedestrian sidewalks; landscaped and planted areas; all open and enclosed malls, courts and arcades; public seating and service areas; administrative offices and facilities; corridors; equipment, furniture, furnishings and fixtures; first aid stations; tenants' common and public washrooms; electrical, telephone, meter, valve, mechanical, mail, storage, service and janitor rooms and galleries; music, fire prevention, security and communication systems; general signs; columns; pipes; heating, ventilating, air-conditioning, electrical, plumbing, drainage, mechanical, and all other installations, equipment or services located therein or related thereto as well as the structures housing the same; but excluding the underground parking areas, the elevators, the mezzanine area (other than the administrative offices and facilities) and The Civic Square including the skating facility, the revenues and expenses for which will be maintained separate and apart from Market revenues and expenses and will not adversely affect the Tenant under this Lease.

1.5 "Costs and Expenses, Market, Common Areas" (see Section 6.2).

1.6 "Market" means all those lands and premises located at 130 King Street, in the City of London, in the Province of Ontario, which lands are more particularly described in Schedule "A" attached, or as such lands and premises may be altered, expanded or reduced from time to time, and the buildings, improvements, equipment and facilities erected thereon or situate from time to time therein, and includes those areas, if any, designated or intended to be leased for retail, service and storage purposes and those areas not so designated or intended and all Common Areas and Facilities, the whole being generally known as COVENT GARDEN MARKET.

1.7 "Gross Sales" means the aggregate of the total amount of the actual selling price of all goods sold and services performed from business conducted on, at or from the Leased Premises by the Tenant, and all licensees, concessionaires and subtenants of the Tenant and all departments or divisions of the Tenant's business operations on the Leased Premises, and any other person conducting business on or from the Leased Premises whether or not such sales are made or such services are performed at the Leased Premises or elsewhere, in the same manner and with the same effect as if such sales or services had been made or performed on the Leased Premises.

Without limiting the generality of the foregoing, Gross Sales includes:

- (a) the amounts received for the sale or leasing of goods, wares and merchandise on, at or from the Leased Premises;
- (b) the amounts received for services performed on, at or from the Leased Premises;
- (c) the amount of all orders taken or received at the Leased Premises, whether such orders are filled from the Leased Premises or elsewhere;
- (d) all deposits given on merchandise purchased from the Leased Premises and not refunded to purchasers;
- (e) the amounts received on account of loss of sales from the proceeds of any business interruption insurance; and

- (f) all other receipts and receivables whatsoever (including all interest, instalment and finance charges) from all business conducted upon or from the Leased Premises,

in each case whether such sales or other receipts or receivables are evidenced by cheque, cash, credit, charge account, debit card, exchange or otherwise and whether such sales are made by means of mechanical or other vending devices in the Leased Premises. There is no deduction allowed for bank charges or uncollected or uncollectible credit accounts or charges made by collection agencies and no allowances will be made for bad debts. In addition, each charge or sale made on instalment or credit will be treated as a sale for the full selling price in the month during which such charge or sale is made, irrespective of the time when the Tenant receives payment (whether full or partial) therefor.

Gross Sales does not include, or there shall be deducted from Gross Sales, as the case may be:

- (g) sales of merchandise for which cash has been refunded, but only to the extent of such refund, provided that the selling price of such merchandise shall have been previously included in Gross Sales;
- (h) the selling price of merchandise returned by customers for exchange, provided that the selling price of such merchandise shall have been previously included in Gross Sales and provided that the selling price of merchandise delivered to the customer in exchange shall be included in Gross Sales;
- (i) the amount of any retail tax imposed by any federal, provincial, municipal or other governmental authority directly on sales and collected from customers at the point of sale by the Tenant acting as agent for such authority, and provided that the amount thereof is added separately to the selling price and does not form part of the quoted price for the article or service and is actually paid by the Tenant to such authority;
- (j) any transfers of merchandise between the Tenant's stores and returns of merchandise to the Tenant's suppliers, provided that any such transfers or returns are carried out for convenience only and not for the purpose of reducing Gross Sales; and
- (k) discounts provided to employees, sales or transfers of redundant trade fixtures or equipment and delivery charges shown separately on the sales voucher.

1.8 "Indemnifier" means the Person who has executed or agreed to execute the Indemnity Agreement which is attached to this Lease as Schedule "E", if applicable.

1.9 "Land Surveyor" means the accredited land surveyor from time to time named by the Landlord. The decision of the Land Surveyor whenever required hereunder and any certificate related thereto shall be final and binding on the parties hereto and shall be addressed to the Landlord and the Tenant.

1.10 "Landlord" means the party of the First Part. Wherever the word "Landlord" is used in this Lease, it is deemed to have the same meaning as "lessor", and includes the Landlord, its duly authorized representatives and those for whom the Landlord is in law responsible.

1.11 "Lease Commencement Date" means the date set out in Section 3.3 for the commencement of the Term of the Lease.

1.12 "Leased Premises" means the premises leased to the Tenant as referred to and described in Section 3.1 hereof.

1.13 "Minimum Rent" means the annual rent payable by the Tenant pursuant to and in the manner set out in Section 4.2 hereof.

1.14 "Mortgagee" means any mortgage or hypothecary creditor (including any trustee for bondholders), from time to time, of the Market, or any part thereof.

1.15 "Opening Date" means a date established by the Landlord for the common or general opening for business of the Market or a phase or part of the Market in which the Leased Premises are located.

1.16 "Percentage Rent" means the rent payable by the Tenant pursuant to Section 4.3 hereof.

1.17 "Person", if the context allows, includes any person, firm, partnership, corporation, or other entity or any group of persons, firms, partnerships, corporations, or other entities or any combination thereof.

1.18 "Proportionate Share" means a fraction which has as its numerator the Rentable Area of the Leased Premises, and as its denominator the Rentable Area of the Market being approximately 29,900 square feet.

1.19 "Rent" means all Minimum Rent, Percentage Rent, Additional Rent and all other sums payable pursuant to this Lease.

1.20 "Rent Free Period" means the period of time, if any, as set out in Schedule "C".

1.21 "Rentable Area of the Market" means the aggregate of all areas as defined in Section 1.22, Rentable Area of the Leased Premises, excluding the mezzanine.

1.22 "Rentable Area of the Leased Premises" means the area expressed in square feet (or, at the Landlord's option, in square metres) as certified by the Architect or Land Surveyor of all floors of the Leased Premises, measured from (a) the exterior face of all exterior walls, doors and windows; (b) the exterior face of all interior walls, doors, counters, seating areas and windows separating the Leased Premises from Common Areas and Facilities, if any; and (c) the centre line of all interior walls or exclusive use areas separating the Leased Premises from adjoining leasable premises; but excluding the ground floor area of columns, structural or non-structural, which form part of the Common Areas and Facilities.

If the Leased Premises are a free-standing kiosk or area, all dimensions shall be determined by the Landlord in accordance with the Landlord's formula for the Market and shall be adjusted, if necessary, upon completion of construction and installation of the Leased Premises, but shall include all projections or extensions protruding from the kiosk or area, and all counter seating areas or adjacent table and seating areas designed to serve that kiosk or area.

1.23 "Rental Year" means from January 1st to December 31st and each twelve calendar months thereafter if the Lease Commencement Date is the first day of the calendar year. If the Lease Commencement Date is not the first day of a calendar year, then the first Rental Year shall commence on the Lease Commencement Date and end on the last day of the calendar year in which the Lease Commencement Date occurs and thereafter during the Term the Rental Year shall be a period of twelve calendar months from and including the first day of the calendar year, except for the last month of a Term that does not end on December 31st in which case the last Rental Year of the Term shall be the period between January 1st and the last day of the Term. The Landlord shall have the right from time to time by written notice to the Tenant, to designate any other twelve month period as the Rental Year for the purposes of administering this Lease.

1.24 "Retail Leasable Premises" means those premises located within the Market, other than the Common Areas and Facilities, designated or intended from time to time to be used and occupied by businesses which sell or lease goods or services to the public, and, in addition to retail, retail/wholesale stores include, without limitation, chartered banks, trust companies, finance companies, governmental agencies and public institutions (other than offices of such), launderers, laundromats, dry cleaners, restaurants and take-out food establishments, bowling lanes and other recreational sports and health facilities.

1.25 "Rules and Regulations" means the rules and regulations adopted and promulgated by the Landlord from time to time.



1.26 "Storage Areas" means those areas which (a) are used or intended from time to time by the Landlord to be used by the tenants or others for storage, and (b) are designated by the Landlord from time to time as Storage Areas.

1.27 "Tenant" means the party of the Second Part and is deemed to include the word "lessee" and to mean each and every Person mentioned as Tenant in this Lease, whether one or more. If there is more than one Tenant, any notice required or permitted by this Lease may be given by or to any one of them and has the same force and effect as if given by or to all of them. Any reference to "Tenant" includes, where the context allows (and it is agreed that in Section 10.5 the context allows), the servants, employees, agents, invitees and licensees of the Tenant and all others over whom the Tenant may reasonably be expected to exercise control and those for whom the Tenant is in law responsible.

1.28 "Term" means the period of time referred to and described in Section 3.3 hereof.

## ARTICLE II

### Intent and Interpretation

2.1 **Net Lease.** The Tenant acknowledges and agrees that it is intended that this Lease is a completely carefree net lease to the Landlord, except as expressly set out in this Lease, that the Landlord is not responsible during the Term for any costs, charges, expenses and outlays of any nature whatsoever arising from or relating to the Leased Premises, or the use and occupancy thereof, or the contents thereof or the business carried on therein, and the Tenant shall pay all charges, impositions, costs and expenses of every nature and kind relating to the Leased Premises except as expressly set out in this Lease.

2.2 **Obligations as Covenants.** Each obligation or agreement of the Landlord or the Tenant expressed in this Lease, even though not expressed as a covenant, is considered to be a covenant for all purposes.

2.3 **Captions and Section Numbers.** The captions, section numbers, article numbers and Table of Contents appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections or articles of this Lease nor in any way affect this Lease.

2.4 **Extended Meanings.** The words "hereof", "hereunder" and similar expressions used in any section or subsection of this Lease relate to the whole of this Lease and not to that section or subsection only, unless otherwise expressly provided. The use of the neuter singular pronoun to refer to the Landlord or the Tenant is deemed a proper reference even though the Landlord or the Tenant is an individual, a partnership, a corporation or any other entity, or a group of two or more individuals, partnerships, corporations or other entities. The necessary grammatical changes required to make the provisions of this Lease apply in the plural sense where there is more than one Landlord or Tenant and to either corporations, associations, partnerships, other entities, or individuals, males or females, shall in all instances be assumed as though in each case fully expressed.

## ARTICLE III

### Grant and Term

3.1 **Leased Premises.** In consideration of the rents, covenants and agreements herein contained on the part of the Tenant to be paid, observed and performed, the Landlord leases to the Tenant, and the Tenant leases from the Landlord, those certain premises (the "Leased Premises"), now or hereafter to be erected as part of the Market, which are presently designated as Store No., [insert store number], containing an area of approximately [insert square footage – proper words] ([square foot number]) square feet ( [insert number] square metres). The Rentable Area of the Leased Premises shall be measured or calculated by the Land Surveyor or Architect

and shall be certified by him in accordance with Section 1.22 and the Rent shall be adjusted accordingly. The approximate location of the Leased Premises is shown cross-hatched in black on the plan attached as Schedule "B".

If the Leased Premises are entirely self-enclosed, the boundaries of the Leased Premises extend (a) to the exterior face of all exterior walls, doors and windows; to the exterior face of all interior walls, doors and windows separating the Leased Premises from the Common Areas and Facilities, if any; and to the centre line of all interior walls separating the Leased Premises from adjoining Retail Leasable Premises; and (b) from the top surface of the structural subfloor to the bottom surface of the structural ceiling. If the Leased Premises have no ceiling abutting the demising walls or are open to the ceiling, the boundaries of the Leased Premises extend from the top surface of the structural subfloor to the height of the demising walls as determined by the Landlord.

If the Leased Premises are a kiosk, this Lease and the terms, covenants and conditions contained in this Lease shall be read, interpreted and applied, as determined by the Landlord, having regard to the fact that the Leased Premises are a kiosk.

**3.2 Use of Common Areas and Facilities.** The use and occupation by the Tenant of the Leased Premises includes the non-exclusive and non-transferable right or license to use the Common Areas and Facilities in common with others entitled thereto, and for the purposes for which they are intended and during such hours as the Market may be open for business, as determined by the Landlord from time to time, subject in each case to this Lease and to the Rules and Regulations.

**3.3 Commencement and Ending Date of the Term.** The Tenant shall have and hold the Leased Premises for and during the Term which shall be, unless sooner terminated pursuant to the other provisions hereof, the period of [insert term – proper words] ([number]) years, commencing on the [commencement day] day of [commencement month], 200 and to be fully completed and ended on the [ending day] day of [ending month], 200 .

**3.4 Notice and Certificates.** Within one hundred and twenty (120) days after the Lease Commencement Date, the Architect or Land Surveyor shall, unless previously certified, provide a certificate as to the Rentable Area of the Leased Premises measured in accordance with the provisions of Section 1.22 hereof, and such certificate shall form a part of this Lease.

**3.5 Supplemental Terms, Renewal Rights.** See Schedule "F".

**3.6 Special Amendments.** See Schedule "G".

## ARTICLE IV

### Rent

**4.1 Covenant to Pay.** The Tenant covenants to pay Rent. The Tenant waives the benefit of Section 35 of the *Landlord and Tenant Act*, R.S.O. 1990, c.L.7, or any statute that may be substituted therefor, as from time to time amended and agrees to pay Rent without any deduction, abatement or set-off whatsoever.

**4.2 Minimum Rent.** The Tenant shall pay from and after the Lease Commencement Date to the Landlord at the office of the Landlord, or at such other place designated by the Landlord, in lawful money of Canada, without any prior demand therefor and without any deduction, abatement, set-off or compensation whatsoever, as Minimum Rent, the annual sum of [annual rent – proper words] (\$[annual rent – number]) payable in equal consecutive monthly instalments of [monthly rent – proper words] (\$[monthly rent – number]) each in advance on the first day of each calendar month of each Rental Year. The Minimum Rent is based upon an annual rate [rent per square foot – proper words] Dollars (\$[rent per square foot – number]) per square foot of the Rentable Area of the Leased Premises and when the Rentable Area of the Leased Premises is certified by the Architect or Land Surveyor, the Minimum Rent shall, if necessary, be adjusted accordingly.

If the Lease Commencement Date is on a day other than the first day of the calendar month, then the Tenant shall pay, upon the Lease Commencement Date, a portion of the Minimum Rent pro-rated on a per diem basis from the Lease Commencement Date to the end of the month in which the Lease Commencement Date occurs, based upon a period of three hundred and sixty-five (365) or three hundred and sixty-six (366) days, as the case may be.

Unless other arrangements are agreed to in writing between the Landlord and Tenant, the Tenant shall at the Tenant's cost present to the Landlord thirty (30) days prior to the commencement of each Rental Year throughout the Term, a series of monthly postdated cheques for each such year of the Term, or by way of automatic debiting system by which payments are deducted from the Tenant's bank account and credited to the Landlord's bank account at Tenant's cost in respect of the aggregate of the monthly payments of annual Minimum Rent and any payments of Additional Rent and Percentage Rent estimated by the Landlord in advance, and any other payments required by this Lease to be paid by the Tenant monthly in advance. If the Tenant changes its bank or financial institution upon which such postdated cheques are drawn or debiting arranged, the Tenant shall immediately notify the Landlord in writing and provide the Landlord with new postdated cheques or debit authority to replace those in the Landlord's possession at that time, so that there is no gap in the continuity of payments to the Landlord.

#### **4.3 Percentage Rent.**

(a) In addition to the Minimum Rent, the Tenant shall pay to the Landlord, in the manner and upon the conditions and at the times hereinafter set forth during each Rental Year, Percentage Rent. Percentage Rent is the sum equivalent to the amount, if any, by which [percentage override – proper words] Percent ([percentage override – number]%) of Tenant's Gross Sales for any Rental Year exceeds the Minimum Rent for such Rental Year.

(b) Percentage Rent is to be calculated and payable monthly on a cumulative basis within fifteen (15) days of each month of the Term, based on the Gross Sales for such month, at the office of the Landlord or at such other place the Landlord designates, in lawful money of Canada, without any prior demand therefor and without any deduction, abatement, set-off or compensation whatsoever. The Landlord may, at its option, collect Percentage Rent at longer intervals.

(c) For the purpose of computing the Percentage Rent payable hereunder, if any Rental Year does not correspond to a twelve (12) month period, Percentage Rent shall be calculated for such Rental Year on a per diem basis based upon the number of days in such period.

**4.4 Reports by the Tenant.** The Tenant shall deliver to the Landlord on or before the fifteenth (15th) day following the end of each calendar month during the Term and including the fifteenth (15th) day of the month following the end of the Term, at the place then fixed for the payment of Rent, a written statement signed by the Tenant and certified by it to be true and correct and in such detail and form as the Landlord reasonably determines, showing the amount of Gross Sales for all preceding months of such Rental Year; and on or before the thirtieth (30th) day following the end of each Rental Year (including the last Rental Year of the Term) at the place then fixed for the payment of Rent, a written statement signed by the Tenant, certified to be true and correct and in such detail and form as the Landlord reasonably determines, showing the amount of Gross Sales during the preceding Rental Year, and duly audited by independent chartered accountants of recognized standing, whose professional opinion shall, without qualification, state specifically that they have examined the report of Gross Sales for the preceding Rental Year, and that their examination included a general review of the Tenant's accounting procedures and such tests of the Tenant's books and records and other supporting evidence as they or the Landlord considers necessary in the circumstances, and that in their opinion, such report presents fairly and accurately the Gross Sales of the preceding Rental Year in accordance with the provisions of this Lease and generally accepted accounting principles applied on a basis consistent with that of the Rental Year immediately preceding (if any), together with payments of the annual Percentage Rent. The Tenant will not change its procedure relating to any aspect of its reporting of Gross Sales without the prior written consent of the Landlord, which consent will not be unreasonably withheld.

**4.5 Electronic Sales Reports.** Tenant will install and maintain on the Leased Premises, at Tenant's cost, electronic sales registers or computerized cash registers.

**4.6 Tenant's Records.** For the purposes of ascertaining the amount payable as Percentage Rent, the Tenant shall prepare and keep on the Leased Premises or at the Tenant's principal office in the Province of Ontario for at least three (3) years following the end of each Rental Year, adequate books and records which shall show inventories and receipts of merchandise at the Leased Premises, and daily receipts from all sales, charges, services and other transactions on, at or from the Leased Premises made by the Tenant and any other Persons conducting any business upon or from the Leased Premises. Such records shall include all records an independent chartered accountant would normally require for review in order to prepare the written opinion referred to in Section 4.4 above and any of the following that are applicable to the Tenant's business:

- (a) purchase orders or packaging or delivery receipts of inventory and merchandise delivered to the Leased Premises;
- (b) cash register tapes;
- (c) serially-numbered sales slips;
- (d) the originals of all mail orders at and to the Leased Premises;
- (e) the original records of all telephone orders at and to the Leased Premises;
- (f) settlement report sheets of transactions with sublessees, concessionaires and licensees;
- (g) sales tax returns, goods and services tax returns;
- (h) the original records showing that merchandise returned by customers was purchased at the Leased Premises by such customers;
- (i) memorandum receipts or other records of merchandise taken out on approval;
- (j) such other sales and inventory records, if any, which would normally be examined by an independent chartered accountant qualified to practice publicly pursuant to accepted auditing standards in performing an audit of the entire business affairs and sales of the Tenant, at, in, upon or from the Leased Premises; and
- (k) the records specified above of sublessees, concessionaires or licensees, or other Persons doing business from the Leased Premises.

The Tenant and all other Persons conducting business on or from the Leased Premises shall record at the time of sale in the presence of the customer, all receipts from sales, charges, services or other transactions, whether for cash or credit, in its electronic sales registers or computerized cash registers having a sealed cumulative total and such other control features as are required and approved by the Landlord from time to time, acting reasonably.

**4.7 Right to Examine.** The receipt or use by the Landlord of any statement of Gross Sales from the Tenant or any payment of Percentage Rent based thereon, shall neither constitute acceptance of such statement or of the Percentage Rent payable with respect to any period, nor constitute a waiver by the Landlord of any obligation of the Tenant hereunder and shall be without prejudice to the Landlord's right to an examination of the Tenant's books and records relating to the Gross Sales and the inventories of merchandise at the Leased Premises and at the Tenant's principal office in the Province of Ontario for the period covered by any statement issued by the Tenant as above set forth. The Landlord and the Landlord's authorized representatives shall have the right to examine the Tenant's records and procedures aforesaid during regular business hours, and shall have the right to have a Person on the Leased Premises to check, verify and tabulate Gross Sales, or to examine accounting records and procedures including control features affecting the determination of Gross Sales.

4.8 **Audit.** The Landlord may at any reasonable time cause a complete audit to be made of the Tenant's business and records relating to the calculation of Gross Sales. If the auditor or chartered accountant performing such audit reports to the Landlord that in his opinion, the Tenant's records and procedures are insufficient to permit a determination of Gross Sales for any Rental Year, or part thereof, or if the Tenant is not complying with each of the provisions of Article IV hereof, the Tenant shall immediately after notice from the Landlord take such steps as are necessary to remedy such default. If the Tenant is unable to satisfy forthwith the objections contained in the auditor's report aforesaid, the Landlord may thereafter deliver to the Tenant an estimate by the Landlord of Gross Sales for the period under consideration (which estimate shall be based on any further information or records of the Tenant that have been made available and such other information as the Landlord considers relevant) and the Tenant shall immediately pay to the Landlord any amount shown thereby to be owing on account of Percentage Rent. The Landlord's estimate shall be final and binding on the Tenant, subject to the Tenant's right to proceed to Arbitration as defined in Section 1.2.

If the Landlord's auditor or chartered accountant reports that the Tenant is in default pursuant to the requirements of Article IV hereof, or that, in his opinion, the Tenant's records and procedures are insufficient to permit a determination of the Tenant's Gross Sales, or if such audit discloses that Gross Sales for the period in question is understated by three percent (3%) or more, the Tenant shall forthwith after notice from the Landlord pay to the Landlord as Additional Rent the cost of such audit in addition to the deficiency, which deficiency is payable in any event. If there is any substantial, continuing or repeated breach by the Tenant of the requirements of Article IV hereof, or if the Tenant substantially, continually or repeatedly fails to produce records and procedures sufficient to permit a determination of Gross Sales, or if Gross Sales is understated by three percent (3%) or more as aforesaid, then, in addition to any other remedies of the Landlord under this Lease or otherwise, the Landlord may terminate this Lease upon five (5) days notice to the Tenant. The report of the Landlord's auditor from time to time is final and binding on the parties hereto.

4.9 **Special Rent Provisions.** Despite anything contained in this Lease to the contrary, if in the third (3rd) Rental Year of the Term or in any Rental Year of the Term thereafter, the Tenant has not paid to the Landlord Percentage Rent equal to at least twenty-five percent (25%) of the Minimum Rent payable in respect of each such Rental Year, then the Landlord may, at its option, in addition to any other rights or remedies, (a) either require Tenant to pay such amount as will remedy the deficiency, or (b) terminate this Lease, upon giving the Tenant six (6) months written notice, in which event the Tenant shall surrender the Leased Premises and deliver up vacant possession thereof to the Landlord upon the expiration of such six (6) month notice period, and all rent shall be adjusted as of the expiration of such period, and the Tenant shall be liable for the deficiency in Percentage Rent.

4.10 **Tenant's Failure.** If the Tenant fails to deliver any of the statements to the Landlord provided for by this article and within the times herein provided, the Landlord, in addition to any other rights or remedies hereunder, has the right thereafter (provided the Landlord first gives the Tenant five (5) days written notice of any such failure) to employ a chartered accountant or auditor to examine such of the Tenant's books and records as are necessary to certify the amount of Gross Sales for such period as is related to the statement in question, and the Tenant shall pay to the Landlord on demand, as Additional Rent, the cost of any such examination, together with any and all sums shown to be owing on account of Percentage Rent pursuant thereto.

4.11 **Rent Past Due.** If the Tenant fails to pay, when the same is due and payable, any Minimum Rent, Percentage Rent, Additional Rent or other amount payable by the Tenant under this Lease or any Schedule, such unpaid amounts bear interest from the due date thereof to the date of payment at a rate of five (5) percentage points in excess of the minimum lending rate to prime commercial borrowers current at such time charged by any Canadian chartered bank designated by the Landlord from time to time.

4.12 **NSF Cheques.** If at any time the Tenant's Rent cheque or debit charge is returned or refused by the Tenant's bank due to insufficient funds in the Tenant's account, or the account is

inactive, or for any other reason whatsoever Rent is unpaid, the Tenant will within two (2) days after receiving written notice, provide the Landlord with a certified cheque for the amount of the unpaid Rent, as well as a service charge of Fifty (\$50.00) Dollars. The service charge will be due and collectible as Additional Rent.

## ARTICLE V

### Taxes

5.1 **Taxes - Definition.** "Taxes" means all real property taxes, rates, duties and assessments (including business taxes and local improvement taxes), impost charges or levies, whether general or special, that are levied, rated, charged or assessed against the Market or any part thereof from time to time (including, without limitation, the Common Areas and Facilities) by any lawful taxing authority whether federal, provincial, municipal, school or otherwise, and any taxes or other amounts which are imposed in lieu of, or in addition to, any such real property taxes whether of the foregoing character or not or whether in existence at the Lease Commencement Date or not, and any such real property taxes levied or assessed on account of the ownership or operation of the Market or the businesses and activities carried on therein.

5.2 **Taxes Payable by the Landlord.** The Landlord shall pay all Taxes which are levied, rated, charged or assessed against the Market or any part thereof, subject to Sections 5.3, 5.4 and 6.2 hereof. However, the Landlord may defer payment of any such Taxes, or defer compliance with any statute, law, by-law, regulation or ordinance in connection with the levying of any such Taxes, in each case to the fullest extent permitted by law, so long as it diligently prosecutes any contest or appeal of any such Taxes.

5.3 **Taxes Payable by the Tenant.** The Tenant shall pay all real property taxes, including local improvement charges and business taxes, levied, charged or assessed against the Leased Premises as attributed thereto by the Landlord, such attribution being based upon the Leased Premises being assessed as a separate tax lot and the cost of all appeals relating to such assessments; and pay as Additional Rent directly to the Landlord in each Rental Year during the Term the Tenant's Proportionate Share of that portion of the Taxes (as defined in Section 5.1) allocated by the Landlord to the Market, including the Common Areas and Facilities, whether or not there are separate real property tax bills or separate real property assessment notices issued by any lawful taxing authority for the Leased Premises.

5.4 **Business Taxes and Other Taxes of the Tenant.** In addition to the Taxes payable by the Tenant pursuant to Section 5.3, the Tenant shall pay as Additional Rent to the lawful taxing authorities, and shall discharge in each Rental Year when the same become due and payable all taxes, rates, duties, assessments and other charges that are levied, charged or assessed against or in respect of all improvements, equipment and facilities of the Tenant on or in the Leased Premises, the Storage Area, or the Market or any part or parts thereof; and every tax and license fee which is levied, rated, charged or assessed against or in respect of any and every business carried on in the Leased Premises or in respect of the use or occupancy thereof or any other part of the Market by the Tenant and every subtenant or licensee of the Tenant, as the case may be; all of the foregoing being collectively referred to as "Business Taxes", and whether in any case, any such taxes are rated, charged or assessed by any federal, provincial, municipal, school or other body during the Term. If there are not separate tax bills provided for Business Taxes, the Landlord is entitled to allocate Business Taxes to the Tenant on an equitable basis.

5.5 **Tenant's Responsibility.** The Tenant shall upon request by the Landlord promptly deliver to the Landlord for inspection, receipts for payment of all Taxes payable by the Tenant; promptly deliver to the Landlord notices of any assessments of any Taxes or other assessments received by the Tenant which relate to the Leased Premises; and furnish such other information in connection with any such Taxes and as the Landlord reasonably determines from time to time.

The Tenant shall deliver to the Landlord at least ten (10) days prior to the last day permitted for filing of an appeal, notice of any appeal or contestation the Tenant intends to institute with respect to any such Taxes payable, and consult with and obtain the prior written approval of the Landlord to any such appeal or contestation. If the Tenant obtains approval, the

Tenant shall deliver to the Landlord such security for the payment of such Taxes as the Landlord deems advisable and the Tenant shall diligently prosecute any such appeal or contestation to a speedy resolution and shall keep the Landlord informed of its progress in that regard.

The Tenant shall promptly indemnify and keep indemnified the Landlord from and against payment for all losses, costs, charges and expenses occasioned by or arising from all such Taxes and any taxes which may in future be levied in lieu of such Taxes or which may be assessed against any rentals including, without limitation, any increase whensoever occurring in Taxes arising directly or indirectly out of an appeal or contestation by the Tenant of the Taxes relating to the Leased Premises or the Market or any part thereof. The Tenant shall deliver to the Landlord such security for any such increase in Taxes as the Landlord deems advisable.

**5.6 Per Diem Adjustment.** If any Rental Year during the Term of this Lease is less than twelve (12) calendar months, the Taxes that the Tenant is required to pay shall be subject to a per diem adjustment on the basis of a period of three hundred and sixty-five (365) days or three hundred and sixty-six (366) days, as the case may be.

## **ARTICLE VI**

### **Market and Common Areas and Facilities - Control and Payment**

**6.1 Control of the Market by the Landlord.** The Landlord shall build, operate, maintain and repair the Market in such manner as the Landlord determines from time to time, and in a first-class and reputable manner as would a prudent municipality landlord of a similar commercial development having regard to size, age and location, in compliance with all relevant legislation.

The Market is at all times subject to the exclusive control and management of the Landlord. Without limiting the generality of the foregoing, the Landlord has the right, in its control, management and operation of the Market to establish Rules and Regulations and general policies with respect to the management and operation of the Market or any part thereof and at all times during the Rent Free Period and throughout the Term, to:

- (i) construct, maintain and operate lighting facilities and heating, ventilating, air-conditioning and central refrigeration systems;
- (ii) provide supervision, fire/sprinkler protection and security services;
- (iii) close all or any portion of the Market to such extent as may be necessary to prevent the acquisition of any property rights by any Person or Persons therein;
- (iv) grant, modify and terminate easements and other agreements pertaining to the use and maintenance of all or any part of the Market;
- (v) obstruct or close off all or any part of the Market for the purpose of repair or construction;
- (vi) employ all personnel, including supervisory personnel and managers necessary for the operation, maintenance and control of the Market. The Tenant acknowledges that the Market may be managed by such Person as the Landlord designates in writing from time to time;
- (vii) use any part of the Common Areas and Facilities, from time to time, for merchandising, display, decorations, entertainment and structures designed for retail selling or special features or promotional activities;
- (viii) designate the areas and entrances and the times in, through and at which loading and unloading of goods shall be carried out;
- (ix) control, supervise and regulate the delivery or shipping of merchandise, supplies and fixtures to and from the general shipping and receiving areas and Retail Leasable Premises and



Storage Areas in such manner as the Landlord determines is necessary for the proper operation of the Leased Premises and the Market;

(x) designate and specify the kind of container to be used for garbage and refuse and the manner and the times and places at which same is to be placed for collection. The Tenant shall not burn any trash or garbage of any kind in or about the Leased Premises or any part of or near the Market;

(xi) from time to time, change the area, level, location, arrangement or use of the Market or any part thereof;

(xii) construct other buildings, structures or improvements in the Market and make alterations thereof, additions thereto, subtractions therefrom, or re-arrangements thereof, build additional storeys on any building in the Market and construct additional buildings or facilities adjoining or proximate to the Market;

(xiii) construct multiple deck, elevated or underground parking facilities, and expand, reduce or alter same in any manner whatsoever;

(xiv) relocate or rearrange the various buildings, parking areas, pillars, columns, structures and other parts of the Market from those existing at the Lease Commencement Date and, with the consent of the Tenant, which consent shall not be unreasonably withheld, relocate or rearrange the Leased Premises. The Tenant acknowledges that the location of the Leased Premises shown on Schedule "B" is approximate as to location and configuration; and

(xv) do and perform such other acts in and to the Market as, in the use of its business judgment, the Landlord determines to be advisable for the more efficient and proper operation of the Market.

Notwithstanding anything contained in this Lease, it is understood and agreed that if as a result of the exercise by the Landlord of its rights set out in this section the Leased Premises are affected or the Common Areas and Facilities are affected, diminished or altered in any manner whatsoever, the Landlord is not subject to any liability, nor is the Tenant entitled to any compensation or diminution or abatement of Rent, nor is any alteration or diminution of the Common Areas and Facilities deemed constructive or actual eviction, or a breach of any covenant for quiet enjoyment contained in this Lease, provided the Tenant's business is not materially and adversely affected by such changes.

**6.2 Tenant to Bear Proportionate Share of Costs and Expenses.** In each Rental Year, the Tenant shall pay to the Landlord, as Additional Rent, its Proportionate Share of the costs and expenses incurred in maintaining and operating the Market and the Common Areas and Facilities, and incurred in maintaining and operating the Market which are applicable to or attributable by the Landlord to the maintenance and operation of the Market and the Common Areas and Facilities, and the costs and expenses of maintaining and operating other portions of the Market leased specifically to tenants but made available for use in common by the tenants of the Market for the period of such common use.

The costs and expenses incurred in maintaining and operating the Market will be attributed by the Landlord to the Market and the Common Areas and Facilities in accordance with reasonable and current retail commercial centre practices and on a basis consistent with the nature of the particular costs and expenses being attributed and major capital expenses shall be appropriately amortized.

The costs and expenses set out above include, without limitation, the total of:

(a) the total annual net costs and expenses of insuring lands, buildings, improvements and equipment and other property in the Market and the Common Areas and Facilities from time to time owned or operated by the Landlord or for which the Landlord is legally liable, in such manner and form, with such companies, funds, deductibles and coverage and in such amounts as the Landlord from time to time determines, and any other form of insurance which the Landlord

reasonably requires from time to time for insurable risks and in amounts against which a prudent municipality landlord would insure;

- (b) cleaning, sweeping, washing, snow removal, garbage and waste collection and disposal;
- (c) lighting, electricity, public utilities, loudspeakers, public address and musical broadcasting systems, and any telephone answering service facilities and systems used in or serving the Market and the Common Areas and Facilities and the cost of electricity for any signs designated by the Landlord as part of the Common Areas and Facilities;
- (d) policing, security, supervision and fire protection systems;
- (e) salaries of all personnel including on-site management staff and other supervisory personnel employed to carry out the maintenance and operation of the Market and the Common Areas and Facilities, including contributions and premiums towards fringe benefits, unemployment and Workers' Compensation insurance, pension plan contributions and similar premiums and contributions;
- (f) the cost of the rental of any equipment and signs, and the cost of building supplies used by the Landlord in the maintenance of the Market and the Common Areas and Facilities;
- (g) audit or accounting fees incurred by the Landlord in preparation of statements delivered or required to be delivered to the tenants of the Market;
- (h) all repairs (including major repairs), redecorating and replacements to and maintenance and operation of the Market and the Common Areas and Facilities and other systems, facilities, and equipment serving the Market and the Common Areas and Facilities, and the rentals of machinery and equipment in connection therewith (including, without limitation, all escalators, elevators and other transportation equipment and systems);
- (i) gardening, landscaping and pest control;
- (j) depreciation or amortization of those portions of the Market's Common Areas and Facilities which, by their nature, require periodic repair or replacement, determined by the Landlord in accordance with generally accepted sound accounting principles, unless they are charged fully in the Rental Year in which they are incurred;
- (k) that portion of the operating costs of the heating, ventilating, air-conditioning and central refrigeration equipment and systems and all other systems allocated by the Landlord;
- (l) all real property taxes, business taxes and other taxes, if any, from time to time allocated by the Landlord; and
- (m) an administration fee of fifteen percent (15%) of such total annual costs, excluding Common Area utilities costs and the costs of items (a) (e) (j) and (l) above.

From the total of the above costs and expenses set out above, there shall be deducted:

- (n) net recoveries, which reduce the expenses incurred by the Landlord in operating and maintaining the Market and the Common Areas and Facilities, received by the Landlord from any tenant not subject to Proportionate Share contribution and from any tenant as a result of any act, omission, or breach by such tenant of the provisions of its respective lease; and
- (o) net proceeds received by the Landlord for insurance policies taken out by the Landlord to the extent that such proceeds relate to costs and expenses incurred in the maintenance and operation of the Common Areas and Facilities.

**6.3 Payment of the Tenant's Proportionate Share.** The amounts of Additional Rent payable by the Tenant may be estimated by the Landlord for such period as the Landlord determines from time to time, and the Tenant agrees to pay to the Landlord the Tenant's

Proportionate Share, as so estimated, of such amounts in monthly instalments in advance during such period as Additional Rent. Notwithstanding the foregoing, after bills for all or any portion of the said amounts so estimated are received, the Landlord may bill the Tenant for the Tenant's Proportionate Share, but not more frequently than monthly, and the Tenant shall pay the Landlord such amounts so billed (less all amounts previously paid by the Tenant on the basis of the Landlord's estimate as aforesaid) as Additional Rent on demand.

Within a reasonable period of time after the end of the period for which such estimated payments have been made, the Landlord shall deliver to the Tenant (a) a statement of the amounts and costs of the Taxes payable by the Landlord, together with a statement of the Tenant's Proportionate Share of such amounts and costs pursuant to Section 5.3; and (b) a statement of the costs and expenses referred to in Article VI, together with a statement of the Tenant's Proportionate Share of such costs and expenses payable, all in reasonable detail. If necessary, an adjustment shall be made between the parties in the following manner. If the Tenant has paid in excess of the amounts due, the excess shall be applied to Rent or Additional Rent as it becomes due. If the amount the Tenant has paid is less than the amounts due, the Tenant agrees to pay such additional amounts due with the next monthly payment of Minimum Rent. If any Rental Year during the Term is greater or less than any such period determined by the Landlord as aforesaid, the Tenant's Proportionate Share shall be subject to a per diem, pro rata adjustment. It is hereby acknowledged and agreed that the statement delivered by the Landlord to the Tenant shall be final and binding between the parties as to all matters contained therein, unless the Landlord or the Tenant shall subsequently demonstrate that same is in error. The Tenant shall be entitled to review the Landlord's records of expenses upon reasonable written notice and during office hours.

## ARTICLE VII

### **Utilities, Heating, Ventilating and Air-Conditioning and Central Refrigeration**

7.1 **Charges for Utilities.** The Tenant shall be solely responsible for and shall promptly pay to the Landlord, or as it otherwise directs, in the manner hereinafter provided as a charge with respect to the Leased Premises (the "Charge") the aggregate, without duplication, of the total cost of supplying water, fuel, power, and other utilities (the "Utilities") used or consumed in or with respect to the Leased Premises, and all costs incurred by the Landlord in determining or allocating the Charge or determining the Utilities including, without limitation, professional, engineering and consulting fees, all costs incurred by the Landlord in connection with the installation, operation, maintenance, repair or replacement of energy saving equipment, machinery or other devices installed by the Landlord or the Tenant in or servicing the Leased Premises. The following conditions apply to the Charge for Utilities:

- (a) If the Landlord elects, for the more efficient and proper operation of the Market, or is required by municipal by-law or the suppliers of the Utilities to supply the Utilities or any of them for the Market, the Tenant shall purchase such Utilities and pay for such Utilities as Additional Rent forthwith on demand to the Landlord at rates not in excess of appropriate rates for such Utilities;
- (b) The Tenant shall pay to the Landlord, as Additional Rent, the Charge for Utilities in monthly instalments in advance based on estimates by the Landlord;
- (c) If required by the Landlord, the Tenant shall install at its own expense in a location designated by the Landlord its own separate check meter for the purpose of measuring, without limitation, the consumption of utilities in the Leased Premises;
- (d) In no event is the Landlord liable for, nor has the Landlord any obligation with respect to, an interruption or cessation of, or a failure in the supply of any such Utilities, services or systems in, to or serving the Market or the Leased Premises, whether or not supplied by the Landlord or others, other than to take prompt action to have same remedied;
- (e) In no event shall the Tenant be obligated to pay in respect of its consumption of the Utilities a rate exceeding that which would be payable by the Tenant to the applicable utility

authorities were such Utilities supplied by the utility authorities directly to the Leased Premises.

(f) The Landlord shall determine the Charge applicable to the Leased Premises by the connected load in the Leased Premises or by readings from the check meters installed in the Leased Premises.

(g) The Tenant shall pay its Proportionate Share of the Utilities or the Charge allocated to the Common Areas and Facilities pursuant to Article VI or to the Leased Premises.

**7.2 Heating, Ventilating, Air-Conditioning and Central Refrigeration.** The Landlord and the Tenant shall, throughout the Term, operate and regulate those portions of the heating, ventilating, air-conditioning and central refrigeration equipment, if any, within and serving the Leased Premises and the Common Areas and Facilities in such a manner as to maintain such reasonable conditions of temperature and humidity within the Market as determined by the Landlord. The Tenant shall comply with all Rules and Regulations of the Landlord pertaining to the operation and regulation of such equipment where the Tenant is provided with individual controls to regulate heating, ventilating, air-conditioning and central refrigeration equipment. If the Tenant fails to comply with such Rules and Regulations, the Landlord shall be entitled to take such steps as it deems advisable to correct such defaults (including, without limitation, entering upon the Leased Premises and assuming control of such equipment) without liability to the Tenant, and the Tenant will pay to the Landlord forthwith upon demand as Additional Rent all costs and expenses incurred by the Landlord in so doing.

## ARTICLE VIII

### **Promotion Fund and Merchants' Association**

**8.1 Promotion Fund.** The Tenant shall pay to the Landlord, as Additional Rent in each Rental Year for the purpose of the creation and maintenance of a common fund (the "Promotion Fund") for the promotion or benefit of the Market, an annual payment equal to the greater of:

(a) One Thousand Dollars (\$1,000.00), or

(b) The aggregate of \$1.50 per square foot (\$16.15 per square metre) for each of the first 1,000 square feet of the Rentable Area of the Leased Premises and \$1.00 per square foot (\$10.77 per square metre) for the balance of the Rentable Area of the Leased Premises.

The Promotion Fund payment shall be made in monthly instalments in advance as Additional Rent on the first day of each calendar month during each Rental Year of the Term. The Promotion Fund payment may be increased by the Landlord for each Rental Year following the first Rental Year by four percent (4%) compounded annually.

The Promotion Fund shall be used by the Landlord for the promotion or benefit of the Market in such a manner as the Landlord from time to time decides. The Landlord may pay all or any part of the Promotion Fund to any association which has or may be formed as hereinafter provided, and any such payment is a good and sufficient discharge of the Landlord's obligation in respect of the amount so paid. It is understood and agreed that if any such monies paid by the Tenant to the Landlord under this provision are paid by the Landlord to any such association, such payment to the association is in payment or in part payment of any assessment by such association upon the Tenant unless the assessment is levied by the association as supplementary to the Promotion Fund. It is understood and agreed that any and all amounts to the Landlord under this section are not deemed income of the Landlord but shall be expended by it as provided in this Section 8.1.

**8.2 Merchants' Association.** If and when an association or corporation of merchants or tenants (the "Association") is incorporated comprising all of the tenants of the Market, the Tenant shall forthwith become a member of such Association, or if such an Association has already been incorporated, the Tenant shall forthwith become a member thereof, and the Tenant shall retain its membership in such Association during the entire Term and shall abide by all rules, regulations, by-laws, decisions, directions, dues and assessments of the Association which

shall be in addition to the Tenant's Promotion Fund contribution. The Tenant shall join with other such tenants in an application for Letters Patent (in accordance with the provisions of the *Corporations Act* (Ontario), and amendments thereto) incorporating such an Association as a corporation. Nothing in the by-laws, rules and regulations of the Association shall be in conflict with or derogate from the provisions of this Lease, including any future Rules and Regulations, or in any way affect the rights of the Landlord, and all such by-laws, rules and regulations shall at all times be subject to the prior approval of the Landlord. The Landlord is entitled to be a member of the Association and to appoint representatives of the Landlord to the executive committee and board of directors and the Landlord will at all times be entitled to retain a majority voting control on the executive committee and board of directors.

## ARTICLE IX

### Use of the Leased Premises

9.1 **Use of the Leased Premises.** The Tenant shall use the Leased Premises solely for the purpose of conducting the business of the sale, at retail of [insert use clause] and the Tenant will not use or permit, or suffer the use of the Leased Premises or any part thereof for any other business or purpose. In connection with the business to be conducted by the Tenant on the Leased Premises, the Tenant shall only use the advertised name Trade Name and will not change the advertised name of the business to be operated in the Leased Premises without the prior written consent of the Landlord, not to be unreasonably withheld or delayed.

9.2 **Prohibited Activities.** The Tenant acknowledges and agrees that it is only one of many tenants in the Market. Therefore, the Tenant shall conduct its business in the Leased Premises in a good and efficient manner consistent with the best interests of the Tenant and the Market as a whole. Without limiting the generality of the foregoing and of the conditions of the use of the Leased Premises, the Tenant will not use or permit, or suffer the use of the Leased Premises, or any part thereof, for any of the following businesses or activities unless expressly permitted in writing by the Landlord:

- (a) the sale of second hand goods or surplus articles, insurance salvage stock, fire sale stock or bankruptcy stock;
- (b) the sale of firecrackers or fireworks of any kind;
- (c) an auction, bulk sale (other than a bulk sale made to an assignee or sublessee pursuant to a permitted assignment or subletting hereunder), liquidation sale, "going out of business" or bankruptcy sale, or warehouse sale;
- (d) any sale or business which, because of the merchandising methods or quality of operation likely to be used, would, in the Landlord's opinion, tend to lower the character of the Market;
- (e) any practice of unethical or deceptive advertising or selling procedures;
- (f) catalogue sales in or from the Leased Premises except for merchandise which the Tenant is permitted to sell "over the counter" in or at the Leased Premises pursuant to Section 9.1.

The Landlord shall have the right to cause the Tenant to discontinue and the Tenant shall thereupon forthwith discontinue the sale of any item, merchandise, commodity, or the supply of any service, or the carrying on of any business, any of which is either prohibited by this section or which the Landlord determines is not directly related to the business set out in this section dealing with the use of the Leased Premises.

9.3 **Conduct of Business.** The Tenant shall occupy the Leased Premises from and after the Lease Commencement Date and thereafter throughout the Term shall conduct continuously, diligently and actively the business set out for the use of the Leased Premises in the whole of the Leased Premises. In the conduct of the Tenant's business pursuant to this Lease, the Tenant shall:

- (a) operate its business with due diligence and efficiency and maintain an adequate staff to

properly serve all customers; install in the Leased Premises and keep in good order and condition, free from liens or rights of third parties, only fixtures and equipment of first-class quality and appearance; and carry at all times stock of goods and merchandise of such size, character and quality as is consistent with good business practices;

(b) conduct its business in the Leased Premises during such hours and on such days as the Landlord from time to time requires or permits and during hours that businesses in the trade area of the Market are customarily open; however, nothing herein requires the Tenant to carry on its business during any period prohibited by any law or by-law regulating the hours when such business may be carried on;

(c) install and maintain at all times displays of merchandise in the display window or areas (if any) of the Leased Premises. The Tenant shall keep the display windows and signs, if any, in the Leased Premises well lighted during such hours as the Landlord designates from time to time;

(d) store and stock in the Leased Premises only such goods, wares and merchandise as the Tenant intends to offer for sale at retail at, in, from or on the Leased Premises and the Tenant shall not use any portion of the Leased Premises for office, clerical or other non-selling purposes other than such minor parts as are reasonably required for the Tenant's business in the Leased Premises;

(e) abide by all Rules and Regulations and general policies formulated by the Landlord from time to time relating to the delivery of goods and merchandise between the general shipping and receiving areas and the Leased Premises. If the Landlord, from time to time, for the more efficient operation of the Market, requires that the movement of all goods and merchandise between such shipping and receiving areas and the Leased Premises be effected by the Landlord or any nominee of the Landlord, the Tenant shall reimburse the Landlord as Additional Rent payable forthwith on demand, for the actual cost incurred with respect to all deliveries to and from the Leased Premises and temporary holding of goods related thereto. Notwithstanding anything herein contained to the contrary, the Landlord is not liable for any material loss or damage to any of the goods and merchandise of the Tenant, or of others, which are received or handled, directly or indirectly, from any cause whatsoever, as a result of the delivery and shipping of such goods and merchandise by the Landlord or any nominee of the Landlord, unless the Landlord is negligent;

(f) not commit or suffer or permit to be committed any waste upon, or damage to, the Leased Premises or any nuisance or other act or thing which disturbs the enjoyment of any other tenant or occupant of premises in the Market or which unreasonably disturbs or interferes with or annoys any Person within 500 feet of the boundaries of the Market; and not perform any acts or carry on any practices which may damage the Market;

(g) not do, nor suffer or permit to be done, any act in or about the Common Areas and Facilities or the Market which, in the Landlord's opinion, hinders or interrupts the flow of traffic to, in and from the Market and not do, nor suffer or permit anything to be done which, in the Landlord's opinion, in any way obstructs the free movement of Persons doing business in the Market;

(h) not solicit business, nor shall it suffer or permit its employees or agents to solicit business or sell merchandise in any part of the Market other than the Leased Premises, nor display any merchandise elsewhere within the Market outside of the Leased Premises at any time;

(i) wherever possible, use the name "COVENT GARDEN MARKET" and all insignia and other identifying names and marks which the Landlord instructs the Tenant to use in connection with such name in the advertising of its business conducted in the Leased Premises. Notwithstanding the foregoing provisions of this subsection, the Tenant does not have nor will it acquire any rights in such names, marks or insignia and, at the option of the Landlord, the Tenant will promptly abandon or assign to the Landlord any such rights which the Tenant may acquire by operation of law, and will promptly execute such documents as in the opinion of the Landlord are or may be necessary to give effect to this subsection;

(j) not install or allow on the Leased Premises any transmitting device, other than normal telecommunication devices, nor erect any aerial on the roof of any building forming part of the Market or on any exterior walls of the Leased Premises or in any of the Common Areas and Facilities. Any such installation shall be subject to removal by the Landlord without notice at any time and such removal shall be done and all damages as a result thereof shall be made good, in each case, at the cost of the Tenant, payable as Additional Rent forthwith on demand;

(k) not use any travelling or flashing lights, or any signs, television or other audio-visual or mechanical devices in a manner so that they can be seen outside of the Leased Premises, and not use any loudspeakers, television, phonographs, radios or other audio-visual or mechanical devices in a manner so that they can be heard outside of the Leased Premises, without in each case the prior written consent of the Landlord. If the Tenant uses such equipment without receiving the prior written consent of the Landlord, the Landlord shall be entitled to remove such equipment without notice at any time and such removal shall be done and all damages as a result thereof shall be made good, in each case, at the cost of the Tenant, payable as Additional Rent forthwith on demand;

(l) co-operate with the Landlord in the conservation of all forms of energy in the Market, including, without limitation, in the Leased Premises; comply with all laws, by-laws, regulations and orders relating to the conservation of energy affecting the Common Areas and Facilities, the Leased Premises and the Market or any of them; and at its own cost and expense comply with all reasonable requests and demands of the Landlord made with a view to such energy conservation. It is understood and agreed that any and all costs with respect to and expenses incurred by the Landlord, so far as the same apply to or are reasonably apportioned to the Market by the Landlord, shall be included in the Landlord's costs and expenses of maintaining and operating the Market and the Common Areas and Facilities for the purposes of Article VI; and the Landlord shall not be liable to the Tenant in any way for any loss, costs, damages or expenses whether direct or consequential, paid, suffered or incurred by the Tenant due to any reduction in the services provided by the Landlord to the Tenant or to the Market or any part thereof as a result of the Landlord's compliance with such laws, by-laws, regulations or orders;

(m) not permit or allow any odours, vapours, steam, water, vibration, noises or other undesirable effects to emanate from the Leased Premises or any equipment or installation therein which, in the Landlord's opinion, are not normal for the Tenant's business and are objectionable or cause any interference with the safety, comfort or convenience of the Market by the Landlord or any occupants thereof or their customers or invitees. If the Tenant is in default of any of the foregoing, the Landlord shall have the right to verbally inform the Tenant's manager in the Leased Premises thereof, whereupon the Tenant shall forthwith take such steps as are necessary to cure any such default, and cease selling the offending item or items, as the case may be;

(n) not, nor shall it suffer or permit its employees or agents, to solicit business in any of the Common Areas and Facilities;

(o) not cause, permit or suffer any machines selling merchandise or vending services, including vending machines and machines operated by coins, credit cards or otherwise, to be present in the Leased Premises, unless expressly permitted by this Lease or in writing by the Landlord;

(p) not have or permit to be or suffer on the Leased Premises any machines providing entertainment, whether operated by coins, credit cards or otherwise, unless expressly permitted by this Lease or in writing by the Landlord; and

(q) not mortgage, charge or encumber this Lease or the Tenant's interest herein.

Any business, conduct or practice promulgated, carried on or maintained by the Tenant, whether through advertising or selling procedures or otherwise, which in the opinion of the Landlord, acting reasonably, may harm or tend to harm the business or reputation of the Landlord or reflect unfavourably on the Market, the Landlord or other tenants in the Market or which may tend to confuse, mislead, deceive or be fraudulent to the public, shall be immediately discontinued by the Tenant at the request of the Landlord.



9.4 **Concessions, Franchises and Licences.** The Tenant shall not permit any business to be operated in or from the Leased Premises by any concessionaire, franchisee, licensee or others.

9.5 **Observance of Law.** The Tenant shall, at its sole cost and expense and subject to the provisions of this Lease, promptly:

(a) observe and comply with all provisions of law including, without limitation, all requirements of all governmental authorities, including federal, provincial and municipal legislative enactments, by-laws and other regulations now or hereafter in force which pertain to or affect the Leased Premises, the Tenant's use of the Leased Premises or the conduct of any business in the Leased Premises, or the making of any repairs, replacements, alterations, additions, changes, substitutions or improvements of or to the Leased Premises;

(b) observe and comply with all requirements of, and pay for all costs and expenses in connection with the controls imposed by governmental authorities for ambient air and environmental standards;

(c) observe and comply with all police, fire and sanitary regulations imposed by any governmental authorities (whether federal, provincial or municipal), or made by fire insurance underwriters; and

(d) carry out all modifications, alterations or changes of or to the Leased Premises and the Tenant's conduct of business in or use of the Leased Premises which are required by any such authorities as are set out above.

9.6 **Licences.** If at any time during the Term, the Tenant is or becomes a corporation which, under the laws of the Province of Ontario, is required to obtain an extra-provincial license in order to carry on business in the Province of Ontario in a manner contemplated by this Lease and to hold the leasehold interest hereby granted throughout the Term, the Tenant shall obtain any such licences as are so required and shall promptly and at its sole cost and expense take all steps that are necessary to maintain same in good standing throughout the Term. The Tenant shall from time to time, at the request of the Landlord, provide the Landlord with evidence satisfactory to the Landlord and its solicitors of the status and the particulars of any such licences, or the basis on which the Tenant is not so obliged to maintain such licences.

9.7 **Radius Clause.** It is understood and agreed and it is a condition precedent to the execution of this Lease by the Landlord that the Tenant acknowledges that the Market draws its customers from a large geographic area and that the success of the Market is dependent upon the generation of Gross Sales. The Tenant agrees that throughout the Term it shall not suffer or permit any Person under its control or connected or affiliated with it whether as partner, shareholder, lender, employee or otherwise, to engage directly or indirectly in any business which is the same as or similar to, or in competition with, the Tenant's business in the Leased Premises within any building or building complex, any portion of which is located within a radius of one (1) mile from any point on the perimeter of the Market.

To give effect to the foregoing, if the Tenant shall breach the foregoing covenant, or if another business as described in this section is operated within the radius aforesaid, the Landlord, in addition to any other remedy available to it, is entitled to require that the gross sales (calculated in the same manner as Gross Sales) from and in respect of any such other business be included in the computation of Gross Sales hereunder, as though such gross sales had actually been made from the Leased Premises and the Landlord has the same rights of inspection and audit with respect to the gross sales of any such other business as it has with respect to Gross Sales pursuant to this Lease. The Tenant agrees that by entering into this Lease, it will not offend or be in breach of any restriction by which it is bound under any other lease or agreement to any other Person.

9.8 **Hazardous Substances.**

(a) Tenant will not bring upon the Market or any part thereof any Hazardous Substance.

(b) "Hazardous Substance" means any substance which is hazardous to persons or property and includes, without limitation: radioactive materials; explosives; any substance that, if added to water, would degrade or alter or form part of a process of degradation or alteration of the quality of that water to the extent that it is detrimental to its use by man or by any animal, fish or plant; any solid, liquid, gas or odour or combination of any of them that, if emitted into the air, would create or contribute to the creation of a condition of the air that endangers the health, safety or welfare of persons or the health of animal life, interferes with normal enjoyment of life or property or causes damage to plant life or property; toxic substances; and substances declared to be hazardous or toxic under any law or regulation now or hereafter enacted or promulgated by any governmental authority having jurisdiction over the Landlord, the Tenant or the Market; any waste composed in whole or in part of substances that are corrosive, ignitable, pathological, radioactive, reactive, toxic or liquid that cannot be disposed of through municipal sewers; and substances controlled under any environmental laws.

(c) Without limiting the generality of any other provision of this Lease, the Tenant will comply with all laws and regulations from time to time in force relating to the Leased Premises and Hazardous Substances and will immediately give written notice to the Landlord of the occurrence of any event on or about the Leased Premises constituting an offence thereunder or being in breach thereof and, if the Tenant, either alone or jointly with others, causes the happening of such event or brings any Hazardous Substance upon the Market or any part thereof, the Tenant will, at its own expense:

(i) immediately give the Landlord written notice to that effect and thereafter give the Landlord from time to time written notice of the extent and nature of the Tenant's compliance with the following provisions of this section;

(ii) promptly remove the Hazardous Substances from the Market in a manner which conforms with all laws and regulations governing movement of the same; and

(iii) if requested by the Landlord, obtain from an independent consultant designated or approved by the Landlord a report, verifying the complete and proper removal thereof or, if such is not the case, reporting as to the extent and nature of any failure of the Tenant to comply with this section.

Tenant will reimburse the Landlord for all of its costs and expenses in remedying any damage to the Market caused by such event or by the performance of the Tenant's obligations under this section as a result of such occurrence.

If any governmental authority having jurisdiction requires the cleanup of any Hazardous Substance held, released, spilled, abandoned or placed upon the Market by the Tenant or released into the environment by the Tenant or as a result of the Tenant's use or occupancy of the Leased Premises, then the Tenant will, at its own expense, prepare all necessary studies, plans and proposals and submit the same for approval, provide all bonds and other security required by governmental authorities having jurisdiction and carry out the work required and will keep the Landlord fully informed and provide to the Landlord full information with respect to proposed plans and comply with the Landlord's requirements with respect to such plans, provided that if the Landlord determines that the Landlord, its property or its reputation is placed in any jeopardy by the requirement for any such work, the Landlord may itself undertake such work or any part thereof at the cost and expense of the Tenant.

(d) The Tenant authorizes the Landlord to make enquiries from time to time of any government or governmental agency with respect to the Tenant's compliance with any and all laws and regulations pertaining to the operation of the Tenant's business at the Leased Premises including, without limitation, laws and regulations pertaining to Hazardous Substances and the protection of the environment, and the Tenant will provide to the Landlord, from time to time, such written authorization as the Landlord may reasonably require in order to facilitate the obtaining of such information.

(e) The Tenant will comply with all laws and regulations from time to time in force

regulating the manufacture, use, storage, transportation or disposal of Hazardous Substances and will make, obtain and deliver all reports and studies required by all governmental authorities having jurisdiction. The Landlord may at any time, and from time to time, inspect the Tenant's goods upon the Leased Premises and the Tenant's records relating thereto for the purpose of identifying the nature of the goods and the existence or absence of any Hazardous Substances and the Tenant will assist the Landlord in doing so.

(f) If the Tenant brings or creates upon the Leased Premises any Hazardous Substance or if the conduct of the Tenant's business causes there to be any Hazardous Substance upon the Leased Premises, then, notwithstanding any rule of law to the contrary, such Hazardous Substance will be and remain the sole and exclusive property of the Tenant, and will not become the property of the Landlord, notwithstanding the degree of affixation of the Hazardous Substance or the goods containing the Hazardous Substance to the Leased Premises and notwithstanding the expiry or earlier termination of this Lease.

(g) The obligations of the Tenant relating to Hazardous Substances will survive the expiry or earlier termination of this Lease, save only that, to the extent that the performance of those obligations requires access to or entry upon the Market or any part thereof, the Tenant will have such entry and access only at such times and upon such terms and conditions as the Landlord may from time to time specify, and the Landlord may, at the Tenant's cost and expense, undertake the performance of any necessary work in order to complete such obligations of the Tenant, provided that notwithstanding that the Landlord may have commenced such work, it will have no obligation to the Tenant to complete such work.

#### **9.9 Environmental Matters.**

(a) The Tenant will cooperate with the Landlord in the conservation of all forms of energy in the Market, including, without limitation, the Leased Premises, and in all recycling efforts and general environmental initiatives prescribed by the Landlord.

(b) The Tenant will comply with all laws, by-laws, regulations and orders relating to the conservation of energy, recycling and general environmental initiatives and affecting the Leased Premises or the Market. Notwithstanding any other provision of this Lease, the Tenant will fully comply with all applicable environmental laws. If Tenant is charged with any offence which relates to the Leased Premises or the Market, and which is contrary to any applicable environmental law, the Tenant shall immediately notify the Landlord in writing, shall provide a copy of such charge and related correspondence to the Landlord along with such notice in writing and shall proceed immediately to rectify any such alleged breach and continue diligently to rectify same, failing which the Landlord will have the option, at its sole discretion, to terminate this Lease forthwith by notice in writing and the Landlord will not be liable for damages of any kind however caused arising out of such termination.

(c) The Tenant will, at its own cost and expense, comply with all reasonable requests and demands of the Landlord made with a view to such energy conservation, recycling requirements and general environmental initiatives.

(d) Any and all costs and expenses paid or incurred by the Landlord in complying with such laws, regulations and orders so far as they same will apply to or reasonably be apportioned to the Market by the Landlord, will be included in the computation of cost of maintenance and operation of the Common Areas and Facilities and the Market.

(e) The Landlord will not be liable to the Tenant in any way for any loss, costs, damages or expenses whether direct or consequential, paid, suffered or incurred by the Tenant as a result of any reduction in the services provided by the Landlord to the Tenant or to the Market as a result of the Landlord's compliance with such laws, by-laws, regulations or orders provided the Landlord effects compliance in a manner that is as minimally adverse to the operations of the Tenant as is reasonably possible.

(f) The Tenant will obtain and comply with the terms of all licenses, certificates of approval, permits and other approvals necessary or appropriate under applicable environmental laws for

the safe and lawful conduct of its business at or from the Leased Premises.

(g) The Tenant will design, install, operate, repair, replace and maintain, or cause to be designed, installed, operated, repaired, replaced and maintained, all equipment located in the Leased Premises, and will train all of its staff, so as to minimize the risk of spills and other accidents, particularly those accidents which might result in a discharge of contaminants. If the Tenant uses pollution control equipment, or any pollution control equipment is located in the Leased Premises, the Tenant will conduct regular preventative maintenance of such equipment, and will keep it in good working order at all times.

(h) The Tenant will not use pesticides in the Leased Premises or the Market unless the Tenant has first obtained written consent from the Landlord to do so and all necessary permits under applicable environmental laws.

(i) The Tenant will store and dispose of all of its waste or Hazardous Substances in a lawful manner. In particular, the Tenant will use the garbage collection service provided by the Landlord only to dispose of solid waste (which is not a Hazardous Substance) which can lawfully be transported to, and dumped at, the closest landfill site without requiring payment of surcharges or penalties, and will use the sewers only to dispose of liquid waste (which is not Hazardous Waste) which may be lawfully discharged into the municipal sewer. All other wastes will be disposed of by the Tenant, at its expense, at least once every three months, using a properly licensed waste hauler retained by the Landlord, subject to the Landlord's right to require the Tenant, by giving the Tenant notice thereof, to retain a properly licensed waste hauler to take away all or part (as designated by the Landlord) of the Tenant's waste. Regardless of whether the waste hauler is retained by the Landlord or the Tenant, the Tenant and not the Landlord, shall be deemed to be the generator of the Tenant's waste.

(j) Where the Landlord provides separate waste collection facilities for different types of waste, the Tenant will separate its waste and will deliver each waste to the appropriate facility. If contamination of separated waste occurs as a result of the Tenant's failure to comply with the foregoing sentence, the Tenant will indemnify the Landlord for all damages and costs incurred by the Landlord with respect to such contamination, together with an administration fee equal to 20% of such costs. If the Tenant is required by environmental laws to keep any waste at the Market for more than three months, the waste will be stored in a manner and location which complies with all environmental laws, at the Tenant's expense. The Tenant will permit the Landlord to perform an audit of the Tenant's waste, its operation and the Leased Premises as may be required by the Landlord from time to time, at the Tenant's cost. The Tenant will comply with any waste reduction workplan prepared by the Landlord from time to time (if any), at the Tenant's cost. The Tenant will comply with all reasonable requirements imposed by the Landlord with respect to the implementation of a system for the storage, disposal, and separation of waste at the Market as contemplated by this Section.

(k) The Tenant will not authorize, cause or permit a discharge of contaminants except in accordance with environmental laws. Where a discharge does occur, the Tenant will immediately report the occurrence of the discharge to all authorities (governmental, court) to whom notification is required under environmental laws in the circumstances, and to the Landlord. The Tenant will then immediately clean up the discharge and restore the natural environment affected by the discharge to the satisfaction of the Landlord and all authorities, and will provide the Landlord with a certificate from the Tenant's duly qualified consulting engineer and/or the appropriate authorities confirming such authorities' satisfaction.

(l) If the Tenant fails or refuses to promptly clean up the discharge and to restore the natural environment affected by the discharge, or if, in the Landlord's opinion, the Tenant is not competent to do so, the Landlord:

- (i) may elect in writing to carry out the whole or any part of the clean up and restoration at the Tenant's expense, and
- (ii) will have the option, at its sole discretion, to terminate this Lease forthwith by notice in writing, and the Landlord will not be liable for any damages of any kind

however caused arising out of such termination.

The Tenant will permit the Landlord to perform an audit of the Tenant's discharges of contaminants into the natural environment, at the Tenant's cost. The Tenant will comply with a discharge reduction workplan prepared by the Landlord (if any).

(m) No refrigerant may be vented to the atmosphere at any time. When it is necessary to remove refrigerants from equipment for servicing, or when equipment containing refrigerant is to be removed from service, the Tenant will ensure that the refrigerants are recaptured into approved refrigerant recovery cylinders and drums. The Tenant will be responsible for complying with all environmental laws relating to the recapture and transportation of recaptured refrigerants.

(n) The Tenant will fully comply with all orders of an authority which may be directed to the Tenant and which relate to the Leased Premises or the Market, including orders to provide financial assurance, to perform studies, to improve pollution control, to remove waste, to conduct investigations or to prepare or perform an environmental cleanup of the Leased Premises or the Market. Should an order of an authority be issued to the Landlord, requiring the Landlord to do anything in relation to an environmental problem caused by the Tenant, the Tenant will, upon receipt of written notice from the Landlord, carry out the order at the Tenant's expense.

(o) If the Tenant fails or refuses to promptly and fully carry out an order referred to in this Section and where it is reasonably necessary to perform a cleanup or to carry out an order in order to prevent further environmental problems, the Landlord will have the right to prevent the Tenant from obtaining access to the Leased Premises for a reasonable period of time (taking into account the circumstances), but no such prevention from obtaining access will constitute an eviction or entitle the Tenant to any abatement of Rent. If the Tenant fails or refuses to promptly and fully carry out an order referred to in this Section the Landlord will have the option, at its sole discretion, to terminate this Lease forthwith by notice in writing, and the Landlord will not be liable for any damages of any kind however caused arising out of such termination.

(p) Upon the expiration of the Term or other termination of this Lease, the Tenant will leave the Leased Premises clean of contaminants and Hazardous Substances and suitable for immediate reuse for any commercial or residential purpose. The Tenant will be obliged to continue to pay Rent until it has removed from the Leased Premises and the Market and lawfully disposed of all such waste and other contaminants.

(q) The Landlord may, at any time, inspect the Leased Premises and the Tenant's records to determine whether the Tenant is fully complying with all environmental laws and its environmental obligations under this Lease. The Landlord may also, at any time, inspect the Leased Premises to evaluate the risk of discharges referred to in this Section. Where the Landlord reasonably considers it necessary, the inspection may be performed in whole or in part by experts, and may include sampling, monitoring, and other tests, all performed at the Tenant's expense. If the Landlord's inspection discloses a breach of an environmental law, or a fact situation which could reasonably be anticipated to result in a breach of an environmental law, the Landlord will have the right upon giving notice in writing to the Tenant to take whatever steps are reasonably required to rectify such breach, or prevent such breach from occurring, as the case may be.

(r) Where the Landlord has carried out an order referred to in this Section, or has cleaned up or restored a discharge referred to in this Section, or has otherwise incurred any expense or damage relating to an environmental problem caused by the Tenant, the Tenant will indemnify the Landlord for all costs incurred by the Landlord with respect to any of the foregoing including administration costs and legal fees.

(s) The provisions of this Section will survive and continue to apply following the expiry or earlier termination of this Lease.

## ARTICLE X

### **Insurance and Indemnity**

#### **10.1 Tenant's Insurance.**

(a) The Tenant shall during the Rent Free Period and throughout the entire Term, at its sole cost and expense, take out and keep in full force and effect, in the names of the Tenant, the Landlord and the Mortgagee, as their respective interests may appear, the following insurance:

(i) insurance upon property of every description and kind owned by the Tenant, or for which the Tenant is legally liable, or installed by or on behalf of the Tenant, and which is located within the Market including, without limitation, fittings, installations, alterations, additions, partitions, fixtures and anything in the nature of a leasehold improvement and the Tenant's stock-in-trade, furniture and movable equipment, in an amount of not less than the full replacement cost thereof, with coverage against at least, the perils of fire and standard extended coverage, including sprinkler leakages, earthquake, flood and collapse. If there is a dispute as to the amount which comprises full replacement cost, the decision of the Landlord shall be conclusive;

(ii) business interruption insurance in such amount to cover at least twelve (12) months projected revenue, as will reimburse the Tenant for direct or indirect loss of earnings attributable to all perils insured against in this section and other perils commonly insured against by prudent tenants or attributable to prevention of access to the Leased Premises or the Market as a result of such perils;

(iii) Comprehensive General Liability Insurance, on an occurrence basis, including personal injury liability, contractual liability, non-owned automobile liability, employers' liability, property damage, broad form property damage, products liability and owners' and contractors' protective insurance coverage with respect to the Leased Premises and the Tenant's use of the Common Areas and Facilities, all such coverage to include the activities and operations conducted by the Tenant and any other Person on the Leased Premises, and by the Tenant and any other Person performing work on behalf of the Tenant and those for whom the Tenant is in law responsible in any part of the Market; such policies shall be written on a comprehensive basis with inclusive limits of not less than \$5,000,000.00 and such higher limits as the Landlord, acting reasonably, requires from time to time and shall contain a severability of interests clause and a cross-liability clause; the Landlord is to be included as an additional insured, rather than a named insured, under all liability coverage under this subsection;

(iv) tenants' legal liability insurance for the replacement cost of the Leased Premises, including loss of use thereof;

(v) standard owner's form automobile policy providing third party liability insurance with Two Million (\$2,000,000.00) Dollars inclusive limits, and accident benefits insurance, covering all licensed vehicles owned or operated by or on behalf of the Tenant, provided such vehicles are used in connection with the operation of the Tenant's business; and

(vi) any other form of insurance as the Landlord or the Landlord's mortgagee requires from time to time, in forms, amounts and for insurance risks against which a prudent tenant should insure in similar circumstances.

(b) All policies required to be written on behalf of the Tenant pursuant to Sections 10.1(a)(i), 10.1(a)(ii) and 10.1(a)(iii) shall contain a waiver of any subrogation rights against the Landlord and against those for whom the Landlord is in law responsible, whether any such damage is caused by the act, omission or negligence of the Landlord or those for whom the Landlord is in law responsible.

(c) All policies shall be taken out with insurers acceptable to the Landlord, shall be in a form satisfactory from time to time to the Landlord, shall be non-contributing with, and shall apply only as primary and not as excess to any other insurance available to the Landlord, shall not be

invalidated as respects the interests of the Landlord by reason of any breach or violation of any warranties, representations, declarations or conditions contained in the policies and shall contain an undertaking by the insurers to notify the Landlord in writing no less than thirty (30) days prior to any material change, cancellation or termination thereof.

(d) The Tenant agrees that certificates of insurance of each such insurance policy will be deposited with the Landlord as soon as practicable after placing, renewing or replacing of the required insurance and that no review or approval of any such insurance certificate by the Landlord shall derogate from or diminish the Landlord's rights or the Tenant's obligations contained in this Lease including, without limitation, those contained in this article.

(e) The Tenant agrees that if the Tenant fails to take out or to keep in force any such insurance referred to in this section, or should any such insurance not be approved by the Landlord and should the Tenant not commence to diligently rectify (and thereafter proceed diligently to rectify) the situation within forty-eight (48) hours after written notice by the Landlord to the Tenant (stating if the Landlord does not approve of such insurance the reasons therefor) the Landlord has the right, without assuming any obligation in connection therewith, to effect such insurance at the sole cost of the Tenant and all outlays by the Landlord shall be immediately paid by the Tenant to the Landlord as Additional Rent to the first day of the next month following said payment by the Landlord, without prejudice to any other rights and remedies of the Landlord under this Lease.

**10.2 Increase in Insurance Premiums.** The Tenant shall not keep, use, sell or offer for sale in or upon the Leased Premises any article which may be prohibited by any property insurance policy in force from time to time covering the Leased Premises or the Market. If the occupancy of the Leased Premises, the conduct of business in the Leased Premises, the sale of any merchandise from or on the Leased Premises (whether or not the Landlord has consented to the sale of such merchandise) or in any other portion of the Market where permitted by the Landlord or any acts or omissions of the Tenant in the Market causes or results in any increase in premiums for the insurance carried from time to time by the Landlord with respect to the Market, the Tenant shall pay any such increase in premiums as Additional Rent forthwith after invoices for such additional premiums are rendered by the Landlord. In determining whether increased premiums are caused by or result from the use or occupancy of the Leased Premises, or the sale of any article therein or therefrom, a schedule issued by the organization computing the insurance rate on the Market showing the various components of such rate shall be conclusive evidence of the several items and charges which make up such rate. The Tenant shall comply promptly with all requirements of the Insurer's Advisory Organization or of any insurer now or hereafter in effect, pertaining to or affecting the Leased Premises.

**10.3 Cancellation of Insurance.** If any insurance policy upon the Market or any part thereof shall be cancelled or shall be threatened by the insurer to be cancelled, or the coverage thereunder reduced in any way by the insurer by reason of the use and occupation of the Leased Premises or any part thereof by the Tenant or by an assignee of the Tenant, or by anyone permitted by the Tenant to be upon the Leased Premises, and if the Tenant fails to remedy the condition giving rise to cancellation, threatened cancellation, or reduction of coverage within forty-eight (48) hours after notice thereof by the Landlord, or within such longer period of time as may be granted or set by the insurer, the Landlord may, at its option, either re-enter and take possession of the Leased Premises forthwith by levying upon the Leased Premises a notice in writing of its intention and thereupon the Landlord shall have the same rights and remedies as are contained in this Lease, or enter upon the Leased Premises and remedy the condition giving rise to such cancellation, threatened cancellation or reduction, and the Tenant shall forthwith pay the cost thereof to the Landlord, which cost may be collected by the Landlord as Additional Rent and the Landlord shall not be liable for any damage or injury caused to any property of the Tenant or of others located on the Leased Premises as a result of any such entry. The Tenant agrees that any such entry by the Landlord is not a re-entry or a breach of any covenant for quiet enjoyment contained in this Lease.

**10.4 Loss or Damage.** The Landlord shall not be liable for any death or injury arising from or out of any occurrence in, upon, at, or relating to, the Leased Premises or the Market, or damage to property of the Tenant or of others located on the Leased Premises, nor shall it be responsible



for any loss of or damage to any property of the Tenant or others from any cause whatsoever, unless such death, injury, loss or damage results from the negligence of the Landlord, its agents, servants or employees or other persons for whom it may, in law, be responsible. Except as aforesaid, the Landlord shall not be liable for any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain, flood, snow or leaks from any part of the Leased Premises or from the pipes, appliances, plumbing works, roof, or subsurface of any floor or ceiling, or from the street or any other place, or by dampness or by any other cause whatsoever. The Landlord shall not be liable for any such damage caused by other tenants to Persons in the Market or by occupants of adjacent property thereto, or the public, or caused by construction or by any private, public or quasi-public work. All property of the Tenant kept or stored on the Leased Premises shall be so kept or stored at the risk of the Tenant only and, except as aforesaid, the Tenant shall indemnify the Landlord and save it harmless from any claims arising out of any damages to the same, including, without limitation, any subrogation claims by the Tenant's insurers.

**10.5 Landlord's Insurance.** Notwithstanding the Landlord's insurance and notwithstanding any contribution by the Tenant to the cost of insurance premiums, the Tenant is not relieved of any liability arising from or contributed to by its negligence or its wilful acts or omissions, and no insurable interest is conferred upon the Tenant under any policies of insurance carried by the Landlord and the Tenant has no right to receive any proceeds of any such insurance policies carried by the Landlord and the Landlord is not accountable to the Tenant for the use of such proceeds.

**10.6 Indemnification of the Landlord.** Notwithstanding any other terms, covenants and conditions contained in this Lease including, without limitation, the Landlord's obligations to repair, to take out insurance and the Tenant's obligation to pay its Proportionate Share of the costs of insurance, the Tenant shall indemnify the Landlord and save it harmless from and against any and all loss (including loss of all Rent payable by the Tenant pursuant to this Lease), claims, actions, damages, liabilities and expenses in connection with loss of life, personal injury, damage to property or any other loss or injury whatsoever arising from or out of this Lease, or any occurrence in, upon or at the Leased Premises or the Market, or the occupancy or use by the Tenant of the Leased Premises or the Market, or any part thereof, or occasioned wholly or in part by any act or omission of the Tenant or by anyone permitted to be on the Leased Premises or the Market by the Tenant. If the Landlord shall, without fault on its part, be made a party to any litigation commenced by or against the Tenant, then the Tenant shall protect, indemnify and hold the Landlord harmless and shall pay all costs, expenses and reasonable legal fees incurred or paid by the Landlord in connection with such litigation. The Tenant shall also pay all costs, expenses and legal fees (on a solicitor and his client basis) that may be incurred or paid by the Landlord in enforcing the terms, covenants and conditions in this Lease, unless a Court shall decide otherwise.

## **ARTICLE XI**

### **Maintenance, Repairs and Alterations**

**11.1 Maintenance and Repairs by the Tenant.** The Tenant shall, at all times during the Term at its sole cost, keep and maintain in good order, first-class condition and repair (which shall include, without limitation, periodic painting and decorating) as determined by the Landlord, and shall, subject to the provisions of this Lease make all needed repairs and replacements with due diligence and dispatch to the whole of the Leased Premises (including, without limitation, entrances, all glass, show window mouldings, doors and store fronts), all signs, partitions, doors and fixtures (including the Tenant's fixtures) located in or upon the Leased Premises and all fixtures, equipment and systems, electrical, mechanical and plumbing within and serving the Leased Premises, appurtenances of the Leased Premises and improvements to the Leased Premises (including, without limitation, lighting, wiring, plumbing fixtures and equipment and those portions of HVAC system which are not part of the Common Areas and Facilities) if such fixtures, equipment and systems are located within or affixed to the Leased Premises. The Tenant covenants and agrees that it shall keep the Leased Premises in a

clean and sanitary condition and provide janitorial services for same at reasonably regular intervals.

**11.2 Landlord's Approval.** The Tenant shall not make any improvements, repairs, alterations, replacements, decorations or improvements to any part of the Leased Premises without first obtaining the Landlord's written approval. The Tenant shall submit to the Landlord, the proposed contractors, details of the proposed work, including drawings and specifications prepared by qualified architects or engineers and conforming to good engineering practice; such indemnification against liens, costs, damages and expenses as the Landlord requires; and evidence satisfactory to the Landlord that the Tenant has obtained, at its expense, all necessary consents, permits, licences and inspections from all governmental and regulatory authorities having jurisdiction.

All such contractors, repairs, replacements, alterations, decorations or improvements by the Tenant to the Leased Premises approved of by the Landlord shall be performed at the sole cost of the Tenant, by competent workmen, in a good and workmanlike manner, in accordance with the drawings and specifications approved by the Landlord and subject to the reasonable regulations, controls and inspection of the Landlord, as set out in Schedule "C".

Any such repair, replacement, alteration, decoration or improvement made by the Tenant without the prior written consent of the Landlord or which is not made in accordance with the drawings and specifications approved by the Landlord shall, if requested by the Landlord, be promptly removed by the Tenant at the Tenant's expense and the Leased Premises restored to their previous condition.

Notwithstanding anything contained in this Lease, if any maintenance, repairs, alterations, decorations, additions or improvements to the Leased Premises or to any improvements installed by or on behalf of the Tenant for the benefit of the Leased Premises which are approved by the Landlord affect the structure of the Leased Premises or any part of the Market other than the Leased Premises, or are installed outside of the Leased Premises, or are installed within the Leased Premises but are part of the Common Areas and Facilities, such work shall be performed only by the Landlord, or if they affect those portions of the HVAC System within the Leased Premises, such work may, at the Landlord's option, be performed only by the Landlord, but in all cases, at the Tenant's sole cost and expense. Upon completion thereof, the Tenant shall pay to the Landlord, upon demand, both the Landlord's costs relating to any such repairs, alterations, decorations, additions or improvements, including the fees of any architectural and engineering consultants, plus a sum equal to fifteen percent (15%) of the total cost thereof representing the Landlord's overhead. No repairs, alterations, additions, decorations or improvements to the Leased Premises by or on behalf of the Tenant shall be permitted which may weaken or endanger the structure or adversely affect the condition or operation of the Leased Premises or the Market or diminish the value thereof, or restrict or reduce the Landlord's coverage for zoning purposes.

**11.3 Maintenance and Repairs by the Landlord.** The Landlord shall, at all times throughout the Term, but subject to the provisions of this Lease, maintain and repair, or cause to be maintained and repaired, as would a prudent owner of a reasonably similar commercial development having regard to size, age and location, the structure of the Market including, without limitation, the foundations, exterior wall assemblies including weather walls, subfloor, roof, bearing walls, and structural columns and beams of the Market and all services and equipment, including the central refrigeration system, serving the Common Areas and Facilities and not exclusive to any particular Leased Premises. The cost of such maintenance and repairs shall be included in the Tenant's Proportionate Share of expenses as governed by this Lease, unless the Landlord is required, due to the business carried on by the Tenant, to perform such maintenance or make such repairs by reason of the application of laws or ordinances or the direction, rules or regulations of any duly constituted regulatory body, or by reason of any act, omission to act, neglect or default of the Tenant, or those for whom the Tenant is in law responsible, in which event the Tenant shall be liable and responsible for the total cost of any such maintenance and repairs, plus a sum equal to fifteen percent (15%) of the total cost of such repairs representing the Landlord's overhead, which shall immediately become due and payable to the Landlord as Additional Rent upon demand. Notwithstanding the Landlord's obligations

contained in this section, the Tenant shall be liable and responsible for the cost of any maintenance and repairs required to be made by the Landlord and which result from any of the circumstances referred to in the immediately preceding sentence.

If the Tenant refuses or neglects to carry out any maintenance, repairs and replacements properly as required pursuant to this article, and to the reasonable satisfaction of the Landlord, the Landlord may, but shall not be obliged to, perform such maintenance, repairs and replacements without being liable for any loss or damage that may result to the Tenant's merchandise, fixtures or other property or to the Tenant's business by reason thereof, and upon completion thereof, the Tenant shall pay to the Landlord on demand, both the Landlord's costs relating to any such maintenance, repairs and replacements, plus a sum equal to fifteen percent (15%) thereof representing the Landlord's overhead. The Tenant agrees that the making of any maintenance, repairs and replacements by the Landlord pursuant to this section is not a re-entry or a breach of any covenant for quiet enjoyment contained in this Lease.

**11.4 Repair on Notice.** In addition to the obligations of the Tenant contained in this article, the Tenant shall effect all work referred to therein according to notice from the Landlord, but failure to give such notice shall not relieve the Tenant from its obligations under this article.

**11.5 Surrender of the Leased Premises.** At the expiration or earlier termination of the Term, the Tenant shall peaceably surrender and yield up the Leased Premises to the Landlord in as good condition and repair as the Tenant is required to maintain the Leased Premises throughout the Term, and the Tenant shall surrender all keys for the Leased Premises to the Landlord at the place then fixed for the payment of Rent and shall inform the Landlord of all combinations of locks, safes and vaults, if any, in the Leased Premises. The Tenant shall, however, remove all its trade fixtures and equipment and any alterations or improvements if requested by the Landlord as provided in this article before surrendering the Leased Premises as aforesaid, and shall forthwith repair any damage to the Leased Premises caused by their installation or removal. The Tenant's obligation to observe and perform this covenant shall survive the expiration of the Term or earlier termination of this Lease.

**11.6 Repair Where the Tenant at Fault.** Notwithstanding any other terms, covenants and conditions contained in this Lease, or the Landlord's obligations to repair and to take out insurance, or the Tenant's obligation to pay its Proportionate Share of the cost of insurance for the Market or any part thereof including, without limitation, the Common Areas and Facilities (including those Common Areas and Facilities within or passing through the Leased Premises) or any equipment, machinery, facilities or improvements contained therein or made thereto, or the roof or outside walls of the Market or any other structural portions thereof, if any such repair, damage or destruction is caused by or through the negligence, carelessness or misuse of the Tenant or through it in any way stopping up or damaging the heating apparatus, water pipes, drainage pipes or other equipment or facilities or parts of the Market, the cost of the resulting repairs, replacements or alterations, plus a sum equal to fifteen percent (15%) of the cost thereof representing the Landlord's overhead shall be paid by the Tenant to the Landlord forthwith upon presentation of an account of such expenses incurred by the Landlord.

**11.7 Tenant Not to Overload Facilities.** The Tenant shall not install any equipment which will exceed or overload the capacity of any utility, electrical or mechanical facilities in the Leased Premises and the Tenant will not bring into the Leased Premises or install any utility, electrical or mechanical facility or service without prior written approval by the Landlord, which may be unreasonably withheld. The Tenant agrees that if any equipment installed by the Tenant requires additional utility, electrical or mechanical facilities, the Landlord may, in its sole discretion, if they are available, elect to install them at the Tenant's expense and in accordance with plans and specifications to be approved in advance in writing by the Landlord, and the cost of any such installation, plus a sum equal to fifteen percent (15%) of the cost thereof representing the Landlord's overhead shall be paid by the Tenant to the Landlord forthwith upon presentation of an account of such expenses incurred by the Landlord.

**11.8 Tenant Not to Overload Floors.** The Tenant shall not bring upon the Leased Premises or any part thereof, any machinery, equipment, article or thing that by reason of its weight, size or use, might in the opinion of the Landlord damage the Leased Premises and shall not at any

time overload the floors of the Leased Premises. If any damage is caused to the Leased Premises by any machinery, equipment, object or thing or by overloading, or by any act, neglect, or misuse on the part of the Tenant, or any of its servants, agents, or employees, or any person having business with the Tenant, the Tenant will forthwith repair such damage, or at the option of the Landlord, pay the Landlord forthwith on demand the cost of repairing such damage, plus a sum equal to fifteen percent (15%) of such costs representing the Landlord's overhead.

#### **11.9 Removal and Restoration by the Tenant.**

(a) All alterations, decorations, additions and improvements made by the Tenant, or made by the Landlord on the Tenant's behalf (other than the Tenant's trade fixtures, which include refrigerators, freezers, coolers and similar special equipment), shall immediately become the property of the Landlord upon affixation or installation, without compensation therefor to the Tenant. Such alterations, decorations, additions or improvements shall not be removed from the Leased Premises either during or at the expiration or earlier termination of the Term, except that the Tenant may during the Term in the usual or normal course of its business remove its trade fixtures, provided such trade fixtures have become excess for the Tenant's purposes or the Tenant is substituting new and similar trade fixtures therefor, and provided that in each case, the Tenant is not in default under this Lease and such removal is done at the Tenant's sole cost and expense; and the Tenant shall, at the expiration of the Term, at its own cost, remove all its trade fixtures and such of its leasehold improvements and fixtures installed in the Leased Premises as the Landlord requires to be removed.

(b) If the Tenant does not remove its trade fixtures at the expiration or earlier termination of the Term, the trade fixtures shall, at the option of the Landlord, become the property of the Landlord and may be removed from the Leased Premises and sold or disposed of by the Landlord in such manner as it deems advisable.

(c) The Tenant shall, in the case of every such installation or removal, either during or at the expiration of the Term, effect the same at times designated by the Landlord and promptly make good any damage caused to the Leased Premises or the Market by the installation or removal of any such alteration, decoration, addition or improvement.

(d) For greater certainty, the Tenant's trade fixtures shall not include any heating, ventilating or air-conditioning systems, facilities and equipment in or serving the Leased Premises, floor covering affixed to the floor of the Leased Premises, light fixtures, store front and doors or internal stairways, all of which are deemed to be leasehold improvements.

**11.10 Notice by the Tenant.** The Tenant shall, when it becomes aware of same or when the Tenant, acting reasonably, should have become aware of same, notify the Landlord of any damage to, or deficiency or defect in any part of the Market, including the Leased Premises, any equipment or utility systems, or any installations located therein, notwithstanding the fact that the Landlord may have no obligations with respect to same.

**11.11 Tenant to Discharge all Liens.** The Tenant shall at all times during the Rent Free Period and throughout the Term promptly pay all its contractors, suppliers and workers and all charges incurred by or on behalf of the Tenant for any work, materials or services which may be done, supplied or performed at any time in respect of the Leased Premises, and the Tenant shall do any and all things necessary so as to ensure that no lien is registered against the Market or any part thereof, against the Landlord's interest in the Market, or against the Tenant's interest in the Leased Premises, and if any such lien is made, filed or registered, the Tenant shall discharge it or cause it to be discharged forthwith at the Tenant's expense.

If the Tenant fails to discharge or cause any such lien to be discharged as aforesaid, then, in addition to any other right or remedy of the Landlord, the Landlord may, but it shall not be obligated to, discharge the same by paying the amount required to discharge the lien into Court or directly to any such lien claimant and the amount so paid by the Landlord and all costs and expenses, including solicitor's fees (on a solicitor and his client basis) incurred as a result of the registration of any such lien including, without limitation, the discharge of such lien, shall be immediately due and payable by the Tenant to the Landlord on demand.

**11.12 Signs and Advertising.** The Tenant shall not paint, affix, display or cause to be painted, affixed or displayed, any sign, picture, advertisement, notices, lettering or decoration on any part of the Leased Premises or any other part of the Market without, in each instance, obtaining the prior written approval of the Landlord. If the Landlord, acting reasonably, objects to any sign, picture, advertisement, notice, lettering or decoration which may be painted, affixed or displayed in any part of the interior of the Leased Premises and which is visible from the exterior thereof, the Tenant shall forthwith remove same at the Tenant's sole cost and expense. The Tenant shall erect and maintain an identification sign or signs of a type or types and in a location or locations specified in writing by the Landlord and in accordance with the Landlord's sign policy for the Market. The Landlord may require that any such sign be illuminated. Any such sign shall remain the property of the Tenant and shall be maintained by the Tenant at its sole cost and expense and the Tenant shall pay for the electricity consumed by such sign. If the electricity consumption for any of the Tenant's signs is not separately metered, the Tenant shall pay as Additional Rent, forthwith on demand, such portion of the cost of such electricity as is equitably apportioned to the Leased Premises by the Landlord. At the expiration or earlier termination of the Term, the Tenant shall remove any such sign from the Leased Premises at the Tenant's expense and shall promptly repair all damage caused by any such removal. The Tenant's obligation to observe and perform this covenant shall survive the expiration of the Term or earlier termination of this Lease.

The Tenant hereby waives any statutory right now or hereafter granted under any municipal by-law with respect to any sign erected by or on behalf of the Landlord, from time to time, in or on any portion of the Market, and the Tenant shall immediately execute any waivers, certificates or other documents which the Landlord requests in order to give effect to the foregoing.

**11.13 Pest Extermination.** In order to maintain satisfactory and uniform pest control throughout the Market, the Landlord shall engage for the Leased Premises at the Tenant's cost such pest extermination contractor as the Landlord directs and at such intervals as the Landlord requires and in accordance with appropriate procedures and safeguards having regard to the nature of the Tenant's use of the Leased Premises.

## **ARTICLE XII**

### **Damage and Destruction, Expropriation and Redevelopment**

#### **12.1 Destruction of the Leased Premises.**

(a) If the Leased Premises are at any time destroyed or damaged (including, without limitation, smoke and water damage) as a result of fire, the elements, accident or other casualty required to be insured against by the Landlord or otherwise insured against by the Landlord and if as a result of such occurrence:

(i) the Leased Premises are rendered untenable only in part, this Lease shall continue in full force and effect and the Landlord shall, subject to this article, commence diligently to reconstruct, rebuild or repair the Leased Premises to the extent only of the Landlord's work set out in Schedule "C" and then only to the extent of the insurance proceeds actually received by the Landlord, and exclusive of the Tenant's Work as therein set out, and only Minimum Rent (but not Additional Rent or Percentage Rent) shall abate proportionately to the portion of the Leased Premises rendered untenable from the date of the destruction or damage and until the Leased Premises have been restored or rendered tenantable by the Landlord to the extent required by this section;

(ii) the Leased Premises are rendered wholly untenable, the Landlord shall, subject to this article, commence diligently to reconstruct, rebuild or repair the Leased Premises to the extent of the Landlord's Work as set out in Schedule "C" and then only to the extent of the insurance proceeds actually received by the Landlord, and only Minimum Rent (but not Additional Rent or Percentage Rent) shall abate entirely from the date of the destruction or

damage and until the Leased Premises have been restored and rendered in whole or in part by the Landlord to the extent required by this section;

(iii) the Leased Premises are not rendered untenable in whole or in part, the Lease shall continue in full force and effect, the Rent and other amounts payable by the Tenant shall not terminate, be reduced or abate and the Landlord shall, subject to this article, commence diligently to reconstruct, rebuild or repair the Leased Premises to the extent required by this section;

(b) Upon the Tenant being notified in writing by the Landlord and the Landlord's Work as set out in Schedule "C" (to the extent required by this section) has been substantially performed within the meaning of the *Construction Lien Act*, R.S.O. 1990, c.C.30, the Tenant shall forthwith complete all Tenant's Work including, without limitation, such work as set out in Schedule "C", and all work required to fully restore the Leased Premises for business fully fixtured, stocked and staffed (in any case, without the benefit of any capital allowance or payments made at the time of original construction by the Landlord or the Tenant in connection with the work set out in Schedule "C"). The Tenant shall diligently complete the Tenant's Work and, if the Leased Premises have been closed for business, reopen forthwith for business, but in any event no later than thirty (30) days after notice that the Landlord's Work is substantially completed.

(c) Nothing in this section requires the Landlord to rebuild the Leased Premises in the condition and state that existed before any such occurrence and nothing in this section shall be construed to permit the abatement in whole or in part of Percentage Rent, but for the purpose of the computation of Percentage Rent shall be based upon the revised Minimum Rent as the latter is abated pursuant to this section.

## 12.2 Destruction of the Market.

(a) Notwithstanding anything contained in this Lease and specifically notwithstanding the provisions of this article, if:

(i) thirty-five percent (35%) or more of the Rentable Area of the Market is at any time destroyed or damaged (including, without limitation, smoke and water damage) as a result of fire, the elements, accident or other casualty, whether or not the Leased Premises are affected by such occurrence; or

(ii) thirty-five percent (35%) or more of the area of the Common Areas and Facilities is at any time destroyed or damaged (including, without limitation, smoke and water damage) as a result of fire, the elements, accident or other casualty, whether or not the Leased Premises are affected by such occurrence; or

(iii) thirty-five percent (35%) or more of the total area of the Market is at any time damaged or destroyed as aforesaid,

then and so often as any such event occurs, the Landlord may, at its option (to be exercised by written notice to the Tenant within ninety (90) days following any such occurrence), elect to terminate this Lease. In the case of such election, the Term and the tenancy hereby created shall expire on the thirtieth (30th) day after such notice is given, and subject to the provisions of this Lease, without indemnity or penalty payable or any other recourse by one party to or against the other and the Tenant shall, within such thirty (30) day period, vacate the Leased Premises and surrender them, the Landlord having the right to re-enter and repossess the Leased Premises discharged of this Lease and to expel all Persons and remove all property therefrom. Minimum Rent, Percentage Rent and Additional Rent shall be due and payable without reduction or abatement to the destruction or damage and until the date of termination, unless the Leased Premises shall have been destroyed or damaged as well, in which event Section 12.1 shall apply.

(b) If all or any part of the Market is at any time destroyed or damaged as set out in this section, and the Landlord does not elect to terminate the Lease in accordance with the rights hereinbefore granted, the Landlord shall, following such destruction or damage, commence

diligently to reconstruct, rebuild or repair, if necessary, that part of the Market immediately adjacent to the Leased Premises, but only to the extent of the Landlord's responsibilities pursuant to the terms of the various leases for the premises in the Market and exclusive of any tenant's responsibilities set out therein.

If the Landlord elects to repair, reconstruct or rebuild the Market or any part thereof, the Landlord may use plans and specifications and working drawings other than those used in the original construction of the Market, or any part thereof.

**12.3 Expropriation.** Both the Landlord and the Tenant agree to co-operate with each other in respect of any expropriation of all or any part of the Leased Premises or any other part of the Market, so that each may receive the maximum award to which they are respectively entitled at law. Subject as aforesaid, if and to the extent that any portion of the Market other than the Leased Premises is expropriated, then the maximum available proceeds accruing therefrom or awarded as a result, shall belong to the Landlord and the Tenant hereby assigns to the Landlord any rights which the Tenant may have or acquire by operation of law to such proceeds or award and will execute such documents as in the sole opinion of the Landlord are or may be necessary to give effect to this intention. If at any time during the Term: (a) more than twenty percent (20%) of the Rentable Area of the Market or (b) more than twenty percent (20%) of the area of the Common Area and Facilities or (c) more than twenty percent (20%) of the total area of the Market, is acquired or expropriated by any lawful expropriating authority, or if any reasonable access to the Leased Premises is materially and adversely affected by any such acquisition or expropriation, then in any of such events, at the option of the Landlord, this Lease shall cease and terminate as of the date of the interest acquired or expropriated vesting in such expropriating authority and the Tenant shall have no claim against the Landlord for the value of any unexpired Term or for damages or for any reason whatsoever. If the Landlord does not so elect to cancel this Lease by notice as aforesaid, this Lease shall continue in full force and effect without any reduction or abatement of Rent, provided that if any part of the Leased Premises is expropriated and as a result thereof the area of the Leased Premises is physically reduced, then from and after the date of such physical reduction, the Rentable Area of the Leased Premises shall be adjusted to take into account any such reduction in area, and the Minimum Rent payable by the Tenant shall be adjusted on the basis of the rental rate set out therein.

**12.4 Architect's Certificate.** The certificate of the Architect shall bind the parties as to the percentage of the Rentable Area of the Market or the percentage of the area of the Common Areas and Facilities or the total area of the Market damaged or destroyed; whether or not the Leased Premises are rendered untenable and the extent of such untenability; the date upon which the Landlord's Work or Tenant's Work of reconstruction or repair is completed and the date when the Leased Premises are rendered tenable; the state of completion of any work of either the Landlord or the Tenant under this Lease; whether reasonable access to the Leased Premises is materially and adversely affected by expropriation; and the percentage of the Rentable Area of the Market or the area of Common Areas and Facilities, or the Market which is acquired or expropriated pursuant to this Lease.

## **ARTICLE XIII**

### **Assignment and Subletting**

**13.1 Consent Required.** Subject to Sections 13.3 and 17.24 of this Lease, the Tenant may not assign this Lease in whole or in part, nor sublet all or any part of the Leased Premises, nor mortgage or encumber this Lease or the Leased Premises or any part thereof, nor suffer or permit the occupation of, or part with or share possession of all or any part of the Leased Premises by any Person (all of the foregoing being collectively referred to in this article as a "Transfer"), without the prior written consent of the Landlord in each instance. The consent by the Landlord to any Transfer, if granted, shall not constitute a waiver of the necessity of such consent to any subsequent Transfer. This prohibition against Transfer is construed so as to include a prohibition against any Transfer by operation of law and no Transfer shall take place by reason of failure by the Landlord to give notice to the Tenant as is required by this Article.



The Landlord may collect Rent from the assignee, subtenant or occupant (all of the foregoing being hereinafter collectively referred to as the "Transferee"), and apply the net amount collected to the Rent required to be paid pursuant to this Lease, but no acceptance by the Landlord of any payments by a Transferee shall be deemed a waiver of this covenant, or the acceptance of the Transferee as Tenant, or a release of the Tenant from the further performance by the Tenant of the covenants or obligations on the part of the Tenant herein contained. Any document or consent evidencing such Transfer of this Lease if permitted or consented to by the Landlord shall be prepared by the Landlord or its solicitors, and all legal costs with respect thereto shall be paid by the Tenant to the Landlord forthwith upon demand. Any consent by the Landlord shall be subject to the Tenant causing any such Transferee to promptly execute an agreement directly with the Landlord agreeing to be bound by all of the terms, covenants and conditions contained in this Lease as if such Transferee had originally executed this Lease as Tenant. Notwithstanding any such transfer permitted or consented to by the Landlord, the Tenant shall be jointly and severally liable with the Transferee on this Lease and shall not be released from performing any of the terms, covenants and conditions of this Lease.

If the Tenant is a corporation or if the Landlord has consented to a Transfer of this Lease to a corporation, the Tenant shall be prohibited from effecting or suffering or permitting to be effected any transfer or issue by sale, assignment, bequest, inheritance, operation of law or other disposition, or by subscription, from time to time of all or any part of the corporate shares of the Tenant or of any parent or subsidiary corporation of the Tenant or any corporation which is an associate or affiliate of the Tenant (as those terms are defined pursuant to *The Business Corporations Act* (Ontario) and amendments thereto), which results in any change in the present effective voting control of the Tenant by the Person holding such voting control at the date of execution of this Lease (or at the date a Transfer of this Lease to a corporation is permitted) without first obtaining the prior written consent of the Landlord in each instance, which consent may not be unreasonably withheld. If the Tenant receives consent pursuant to this section, it may be subject to the condition that the Minimum Rent payable pursuant to this Lease shall be increased in the manner and on the terms and conditions set out in this article. In addition, if any Transfer of all or any part of the corporate shares of the Tenant is attempted with the consent of the Landlord, the Landlord shall have the option to cancel this Lease as set out in Section 13.3.

A change in the membership of a Tenant, where it is a partnership, shall be deemed to constitute a Transfer.

The Tenant shall make available to the Landlord, or its lawful representative, all corporate or partnership books and records of the Tenant for inspection at all reasonable times, in order to ascertain whether there has been any Transfer or change in control of the Tenant corporation.

However, this section shall not apply to a Tenant which is a public corporation the shares of which are traded and listed on any recognized stock exchange in Canada or the United States; or to a Tenant which is a private corporation but is controlled by a public corporation defined as aforesaid; so long as in either case prior to or as soon as reasonably possible after any such change of control of the Tenant, the Landlord receives assurances satisfactory to the Landlord that there will be a continuity of the existing management of the Tenant and of its business practices and policies (including those affecting the advertising and promotion of the business in the Leased Premises), notwithstanding any such change of control. If the Tenant fails to supply such assurances satisfactory to the Landlord then the Landlord shall have the option to cancel this Lease as set out in Section 13.3.

**13.2 Condition of Consent.** If the Tenant requests consent to a Transfer, the Landlord may require as a condition of consent that the Minimum Rent payable by any such Transferee thereafter shall be not less than the greater of:

- (a) an amount equal to the average annual combined Minimum Rent and Percentage Rent payable by the Tenant during the three (3) full 12-month Rental Years immediately preceding any such Transfer, or

(b) the highest annual combined Minimum Rent and Percentage Rent since the Lease Commencement Date if the Tenant at the time of the Transfer has been occupying the Leased Premises less than three (3) full 12-month Rental Years.

The Tenant and the Transferee shall promptly execute an agreement prepared by the Landlord or its solicitors amending this Lease in order to provide for the payment of any revised Minimum Rent during the remainder of the Term and all legal costs with respect thereto shall be paid by the Tenant to the Landlord forthwith on demand.

**13.3 Landlord's Option.** If the Tenant intends to effect a Transfer of all or any part of the Leased Premises or this Lease, in whole or in part, or any estate or interest hereunder, then and so often as such event shall occur, the Tenant shall give sixty (60) days prior written notice to the Landlord of such intent. The notice shall specify therein the name of the Transferee and shall provide such information with respect thereto including, without limitation, information concerning the principals thereof and such credit, financial or business information relating to the proposed Transferee as the Landlord requires. It is understood that the commencement of the sixty (60) day notice period above referred to shall only occur after the Landlord has received all information with respect to the proposed Transferee as is satisfactory to the Landlord.

The Landlord shall within thirty (30) days after the expiry of the sixty (60) day notice period and receipt of all such necessary information, notify the Tenant in writing either that it consents or does not consent to the Transfer in accordance with the provisions and qualifications in this article, or that it elects to cancel this Lease in preference to the giving of such consent (together with any conditions or compensation the Landlord is willing to offer), the Landlord covenanting to act reasonably and fairly and in the best interests of the Market. If the Landlord elects to terminate this Lease as aforesaid, the Tenant shall notify the Landlord in writing within fifteen (15) days thereafter of the Tenant's intention either to refrain from such transfer or to accept the cancellation of this Lease. If the Tenant fails to deliver such notice within such period of fifteen (15) days, this Lease will thereby be terminated upon the expiration of the said fifteen (15) day period. If the Tenant advises the Landlord it intends to refrain from such transfer, then the Landlord's election to terminate this Lease as aforesaid shall become null and void in such instance.

**13.4 No Advertising of the Leased Premises.** The Tenant shall not advertise the whole or any part of the Leased Premises or this Lease for the purpose of a Transfer and shall not print, publish, post, display, or broadcast any notice or advertisement to that effect and shall not permit any broker or other Person to do any of the foregoing, unless the complete text and format of any such notice, advertisement or offer is first approved in writing by the Landlord. Without in any way restricting or limiting the Landlord's right to refuse any text or format on other grounds, any text or format proposed by the Tenant shall not contain any reference to the rental rate of the Leased Premises.

**13.5 Assignment by the Landlord.** The Landlord shall have the absolute right to assign its interest in this Lease to any assignee who agrees to assume the Landlord's obligations hereunder and gives notice thereof to the Tenant. The Landlord shall be liable for the performance of its covenants and obligations pursuant to this Lease only throughout the currency of its ownership of the Market, and in the event of any sale, lease or other disposition of the Market or any part thereof, or the assignment of this Lease or any interest of the Landlord hereunder, the Landlord shall, thereupon and without further agreement, be relieved of all liability with respect to such covenants and obligations.

## ARTICLE XIV

### Access and Alteration

**14.1 Right of Entry.** The Landlord and its agents have the right to enter the Leased Premises at all times to examine the same and to make such repairs, alterations, changes, adjustments, improvements or additions to the Leased Premises, the Market, or any part thereof or any

adjacent property as the Landlord considers necessary or desirable, including without limitation, the pipes, conduits, wiring, ducts and other installations of any kind in the Leased Premises where necessary to serve another part of the Market, and for such purpose, the Landlord may take all material into and upon the Leased Premises which is required therefor without this constituting a re-entry or a breach of any covenant for quiet enjoyment contained in this Lease or implied by law. The Rent required to be paid pursuant to this Lease shall not abate or be reduced while any such repairs, alterations, changes, adjustments, improvements or additions are being made due to loss or interruption of business of the Tenant or otherwise, and the Landlord shall not be liable for any damage, injury or death caused to any Person, or to the property of the Tenant or of others located on the Leased Premises as a result of such entry.

The Landlord and its agents have the right to enter the Leased Premises at all times to show them to prospective purchasers, lessees or mortgagees and during the twelve (12) months prior to the expiration of the Term, the Landlord may place upon the Leased Premises the usual "For Rent" or "For Sale" notices which the Tenant shall permit to remain thereon without molestation or complaint.

If the Tenant is not personally present to open and permit an entry into the Leased Premises at any time when for any reason an entry therein is necessary or permissible, the Landlord or its agents may forcibly enter the same without rendering the Landlord or such agents liable therefor, and without in any manner affecting the obligations and covenants of this Lease. Nothing herein contained, however, is deemed or construed to impose upon the Landlord any obligation, responsibility or liability whatsoever for the care, maintenance or repair of the Leased Premises, or any part thereof, except as otherwise herein specifically provided. The Tenant agrees that any entry by the Landlord upon the Leased Premises in accordance with this section is not a re-entry or a breach of any covenant for quiet enjoyment contained in this Lease or implied by law.

**14.2 Excavation.** If an excavation is made upon land adjacent to the Leased Premises, or is authorized to be made by the Landlord or its duly authorized representatives, the Tenant shall grant the Person making or authorized to make such excavation permission to enter upon the Leased Premises for the purpose of doing such work as the Landlord considers necessary to preserve the walls of the building, of which the Leased Premises form a part, from injury or damage and to support the same in any appropriate manner, without giving rise to any claim for damages or indemnification against the Landlord or any diminution or abatement of Rent. The Tenant agrees that any entry made and any work undertaken by or on behalf of the Landlord pursuant to this section is not a re-entry or breach of any covenant for quiet enjoyment contained in this Lease or implied by law.

## **ARTICLE XV**

### **Status Statement, Attornment and Subordination**

**15.1 Status Statement.** Within ten (10) days after written request therefor by the Landlord, the Tenant shall deliver, in a form supplied by the Landlord, a status statement or a certificate to any proposed assignee, lessee, mortgagee or purchaser, or to the Landlord, stating (if such is the case):

- (a) that this Lease is unmodified and in full force and effect (or if there have been modifications, that this Lease is in full force and effect as modified and identifying the modification agreements) or if this Lease is not in full force and effect, the certificate shall so state;
- (b) the Lease Commencement Date;
- (c) the date to which Rent has been paid under this Lease;
- (d) whether or not there is any existing default by the Tenant in the payment of any Rent or

other sum of money under this Lease, and whether or not there is any other existing or alleged default by either party under this Lease with respect to which a notice of default has been served and if there is any such default, specifying the nature and extent thereof;

(e) whether there are any set-offs, defences or counterclaims against enforcement of the obligations to be performed by the Tenant under this Lease; and,

(f) with reasonable particularity, details respecting the Tenant's and Indemnifier's financial standing and corporate organization.

## **15.2 Subordination and Attornment.**

(a) It is a condition of this Lease and the Tenant's rights granted hereunder, that this Lease and all of the rights of the Tenant hereunder are, and shall at all times be, subject and subordinate to any and all mortgages, trust deeds and the charge or lien resulting from, and any instruments of, any financing, refinancing or collateral financing and renewals or extensions thereof from time to time in existence against the lands, buildings and improvements forming the Leased Premises, or the Market. Upon request, the Tenant shall subordinate this Lease and all of its rights hereunder in such form as the Landlord requires to any and all mortgages, trust deeds and the charge or lien resulting from, and any instrument of, any financing, refinancing or collateral financing and to all advances made or hereafter to be made upon the security thereof, and, if requested, the Tenant shall attorn to the holder thereof or to the registered owners of the Market.

(b) The Tenant shall, if possession is taken under, or any proceedings are brought for the foreclosure of, or in the event of the exercise of the power of sale under any mortgage, charge, lease or sale and leaseback transaction, deed of trust, or the lien resulting from any other method of financing, refinancing or collateral financing made by the Landlord or otherwise in existence against the Leased Premises, or the Market, attorn to the Mortgagee, chargee, lessee, trustee, other encumbrancer or the purchaser upon any such foreclosure or sale and recognize such Mortgagee, chargee, lessee, trustee, other encumbrancer or the purchaser as the Landlord under this Lease.

(c) The foregoing rights shall only take effect if the Tenant is granted a non-disturbance agreement confirming the right of the Tenant to remain in possession of the Leased Premises so long as the Tenant complies with the terms of this Lease.

**15.3 Attorney.** The Tenant shall, upon request of the Landlord or the Mortgagee or any other Person having an interest in the Market, execute and deliver promptly such instruments and certificates to carry out the intent of Article XV as are requested by the Landlord. If ten (10) days after the date of such a request by the Landlord, the Tenant has not executed the same, the Tenant hereby irrevocably appoints the Landlord as the Tenant's attorney with full power and authority to execute and deliver in the name of the Tenant any such instruments and certificates provided Section 15.2(c) is complied with.

**15.4 Financial Information.** The Tenant shall, within ten (10) days after written request therefor by the Landlord, provide the Landlord with such information as to the Tenant's or the Indemnifier's financial standing and corporate organization as the Landlord or the Mortgagee requires. Failure of the Tenant to comply with the Landlord's request herein shall constitute a default under the terms of this Lease and the Landlord shall be entitled to exercise all of its rights and remedies provided for in this Lease.

## **ARTICLE XVI**

### **Default**

**16.1 Right to Re-enter.** Whenever one or more of the following occurs:

(a) the Tenant fails to pay any Rent on the day or dates appointed for the payment thereof;

- (b) the Tenant fails to observe or perform any other of the terms, covenants or conditions of this Lease to be observed or performed by the Tenant (other than the terms, covenants or conditions set out below in subsections (c) to (l), inclusive, for which notice shall not be required) provided the Landlord first gives the Tenant ten (10) days written notice, or such shorter period of time as is otherwise provided herein, written notice of any such failure to perform, and the Tenant within such period of ten (10) days fails to commence diligently and thereafter to proceed diligently to cure any such failure to perform;
- (c) the Tenant or any agent of the Tenant falsifies any report, oral conversation or other document required to be furnished to the Landlord pursuant to this Lease;
- (d) the Tenant or any Indemnifier of this Lease or any Person occupying the Leased Premises or any part thereof becomes bankrupt or insolvent or takes benefit of any act now or hereafter in force for bankrupt or insolvent debtors or files any proposal or makes any assignment for the benefit of creditors or any arrangement or compromise;
- (e) a receiver or a manager is appointed for all or a portion of the Tenant's, Indemnifier's or occupant's property;
- (f) any steps are taken or any action or proceedings are instituted by the Tenant or by any other party including, without limitation, any court of governmental body or competent jurisdiction for the dissolution, winding-up or liquidation of the Tenant or its assets;
- (g) the Tenant makes a sale in bulk of any of its assets at the Leased Premises, other than a bulk sale made to an assignee or sublessee pursuant to a permitted assignment or subletting hereunder and pursuant to *The Bulk Sales Act* (Ontario);
- (h) the Tenant abandons or attempts to abandon the Leased Premises, or sells or disposes of the goods and chattels of the Tenant or removes them from the Leased Premises, except that the Tenant may sell goods and chattels in the ordinary course of business if replacements therefor have been purchased and delivered to the Leased Premises before such sale, disposal or other removal;
- (i) the Leased Premises, not being subject to an event under Article XII, are not open for business for a period of five (5) consecutive days or are used by any Persons other than such as are entitled to use them hereunder;
- (j) the Tenant assigns, transfers, encumbers, sublets or permits the occupation or use of the parting with or sharing possession of all or any part of the Leased Premises by anyone or effects or permits to be effected a transfer or other disposition of the shares of the Tenant or any parent, subsidiary, associated or affiliated corporation except in a manner permitted by this Lease;
- (k) this Lease or any of the Tenant's assets are taken under writ of seizure and sale; or
- (l) re-entry is permitted under any other terms of this Lease,

then and in every such case the Landlord, in addition to any other rights or remedies it has pursuant to this Lease or by law, has the immediate right of re-entry upon the Leased Premises and it may repossess the Leased Premises and enjoy them as of its former estate, and may expel all Persons and remove all property from the Leased Premises and such property may be removed and sold or disposed of by the Landlord as it deems advisable or may be stored in a public warehouse or elsewhere at the cost and for the account of the Tenant, all without service of notice or resort to legal process and without the Landlord being considered guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby.

**16.2 Right to Relet.** If the Landlord elects to re-enter the Leased Premises as herein provided, or if it takes possession pursuant to legal proceedings or pursuant to any notice provided for by law, it may either terminate this Lease or it may from time to time without terminating this Lease make such alterations and repairs as are necessary in order to relet the Leased Premises, or any

part thereof for such term or terms (which may be for a term extending beyond the Term) and at such Rent and upon such other terms, covenants and conditions as the Landlord in its sole discretion considers advisable.

Upon each such reletting all Rent received by the Landlord from such reletting shall be applied, first to the payment of any indebtedness other than Rent due hereunder from the Tenant to the Landlord; second, to the payment of any costs and expenses of such reletting including brokerage fees and solicitor's fees and of 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 the Landlord and applied in payment of future Rent as the same becomes due and payable hereunder. If such Rent received from such reletting during any month is less than that to be paid during that month by the Tenant hereunder, the Tenant shall pay any such deficiency, which shall be calculated and paid monthly in advance on or before the first day of each and every month. No such re-entry or taking possession of the Leased Premises by the Landlord shall be construed as an election on its part to terminate this Lease unless a written notice of such intention is given to the Tenant. Notwithstanding any such reletting without termination, the Landlord may at any time thereafter elect to terminate this Lease for such previous breach.

If the Landlord at any time terminates this Lease for any breach, in addition to any other remedies it may have, it may recover from the Tenant all damages it incurs by reason of such breach, including the cost of recovering the Leased Premises, solicitor's fees (on a solicitor and his own client basis) and including the value, at the time of such termination of the excess, if any, of the amount of Rent required to be paid pursuant to this Lease and the remainder of the stated Term in excess of the then reasonable rental value of the leased Premises for the remainder of the stated Term, all of which amounts shall be immediately due and payable by the Tenant to the Landlord. If such termination takes place after the expiration of two or more 12-month Rental Years, the annual Rent for each Rental Year after such termination shall be equal to the average Minimum Rent and Percentage Rent payable by the Tenant during the last two 12-month Rental Years. If such termination takes place before the expiration of two 12-month Rental Years, the annual Rent so payable in each Rental Year after such termination shall be conclusively presumed to be equal to twelve (12) times the average monthly payments of Minimum Rent and monthly payments of Percentage Rent based on Gross Sales during each such month.

In any of the events referred to in Section 16.1 hereof, in addition to any and all other rights, including the rights referred to in this section and in Section 16.1 hereof, the full amount of the current month's instalment of Minimum Rent and Additional rent including, without limitation, the aggregate of the monthly contributions towards Taxes, insurance premiums, the Tenant's Proportionate Share of costs of maintaining and operating the Market and the Common Areas and Facilities, and any other payments required to be made monthly hereunder (the "Payments"), together with the next three (3) months' instalments of Minimum Rent and the aggregate of such Payments estimated for the next three (3) months, all of which shall be deemed to be accruing due on a day-to-day basis, shall immediately become due and payable as accelerated Rent, and the Landlord may immediately distrain for the same, together with any arrears then unpaid.

**16.3 Expenses.** If legal action is brought for recovery of possession of the Leased Premises, for the recovery of Rent or any other amount due under this Lease, or because of the breach of any other terms, covenants or conditions herein contained on the part of the Tenant to be kept or performed, the Tenant shall pay to the Landlord all expenses incurred therefor, including solicitor's fees (on a solicitor and his client basis), unless a court shall otherwise award.

**16.4 Removal of Chattels.** In case of removal by the Tenant of goods and chattels of the Tenant from the Leased Premises, the Landlord may follow same for thirty (30) days in the same manner as is provided for in the *Landlord and Tenant Act* (Ontario).

**16.5 Waiver of Exemption from Distress.** The Tenant hereby agrees with the Landlord that notwithstanding anything contained in section 30 of the *Landlord and Tenant Act* (Ontario), or any other statute or provision subsequently passed to take the place of or amend the said Act or section 30, none of the goods and chattels of the Tenant at any time during the continuance of the

Term hereby created on the Leased Premises shall be exempt from levy by distress for Rent in arrears by the Tenant as provided for by any section or sections of the said Act or any amendment or amendments thereto, and that if any claim is made for such exemption by the Tenant or if a distress is made by the Landlord, this covenant and agreement may be pleaded as an estoppel against the Tenant in any action brought to test the right to levy upon any such goods as are named as exempted in any sections of the said Act or any amendments thereto; the Tenant waiving, as it hereby does, all and every benefit that could or might have accrued to the Tenant under and by virtue of any sections of the said Act, or any amendments thereto but for this covenant.

**16.6 Landlord May Cure the Tenant's Default or Perform the Tenant's Covenants.** If the Tenant fails to pay, when due any Rent, the Landlord may, without notice, but shall not be obliged to, pay all or any part of the same. If the Tenant is in default in the performance of any of its covenants or obligations hereunder (other than the payment of Rent) the Landlord may from time to time after giving such notice as it considers sufficient (or without notice in the case of an emergency) having regard to the circumstances applicable, perform or cause to be performed any of such covenants, obligations, or any part thereof, and for such purpose may do such things as may be required including, without limitation, entering upon the Leased Premises and doing such things upon or in respect of the Leased Premises or any part thereof as the Landlord reasonably considers requisite or necessary. All expenses incurred and expenditures made pursuant to this section plus a sum equal to fifteen percent (15%) thereof representing the Landlord's overhead shall be paid by the Tenant as Additional Rent, or otherwise as may be the case, forthwith upon demand. The Landlord shall have no liability to the Tenant for any loss or damages resulting from any such action or entry by the Landlord upon the Leased Premises under Articles XIV and XVI and same is not a re-entry or a breach of any covenant for quiet enjoyment contained in this Lease.

**16.7 Lien on Trade Fixtures.** If the Tenant at any time during the Rent Free Period, or throughout the Term or at the expiration or earlier termination of the Term, is in default under any covenant or obligation contained in this Lease, the Landlord has a lien on all stock-in-trade, inventory and fixtures, equipment and facilities of the Tenant as security against loss or damage resulting from any such default by the Tenant and said stock-in-trade, inventory, fixtures, equipment or facilities shall not be removed by the Tenant until such default is cured, unless otherwise permitted in writing by the Landlord. The provisions of this section shall survive the expiration of the Term or the earlier termination of this Lease.

**16.8 Charges Collectible as Rent.** If the Tenant is in default in the payment of any amounts or charges required to be paid pursuant to this Lease, they shall, if not paid when due, be collectible as Rent with the next monthly instalment of Minimum Rent thereafter falling due hereunder, but nothing herein contained is deemed to suspend or delay the payment of any amount of money at the time same becomes due and payable hereunder, or limit any other remedy of the Landlord. The Tenant agrees that the Landlord may, at its option, apply or allocate any sums received from or due to the Tenant against any amounts due and payable hereunder in such manner as the Landlord sees fit.

**16.9 Failure of the Tenant to Carry on Business.**

(a) The Tenant shall take possession of the Leased Premises upon notification by the Landlord that the Leased Premises are ready for occupancy and shall open the whole of the Leased Premises for business, fully fixtured, stocked and staffed on the Lease Commencement Date (but in no event prior to the Opening Date as defined in Schedule "C"), and thereafter throughout the Term conduct continuously, diligently and actively on the whole of the Leased Premises at all times, its business operations duly and strictly in accordance with the terms, covenants and conditions of this Lease.

(b) If the Tenant fails to take possession of and to open or to re-open the Leased Premises for business, fully fixtured, stocked and staffed within the times herein provided, or to carry on business at all times during the Term duly and strictly in accordance with the terms, covenants and conditions contained in this Lease, the Landlord shall be entitled to collect (in addition to the Minimum Rent, Additional Rent and all other charges payable hereunder) an additional charge at

a daily rate of Ten Cents (\$0.10) per square foot of the Rentable Area of the Leased Premises or Three Hundred Dollars (\$300.00), whichever is the greater, for each and every day that the Tenant fails to commence to do or to carry on business as herein provided; such additional charge is a liquidated sum representing the minimum damages which the Landlord is deemed to have suffered, including damages as a result of the Landlord's failure to receive Percentage Rent under this Lease and is without prejudice to the Landlord's right to claim a greater sum of damages. The Landlord shall also be entitled to avail itself of any other remedies for the Tenant's breach hereunder, including obtaining an injunction or an order for specific performance in a court of competent jurisdiction to restrain the Tenant from breaching any of the provisions of this section and to compel the Tenant to comply with its obligations under this section, as the case may be, including a mandatory injunction to compel the Tenant to open or re-open the whole of the Leased Premises for business to the public fully fixtured, stocked and staffed, and the Tenant hereby consents to the Landlord obtaining such injunction, order or mandatory injunction upon establishing by affidavit or other evidence that the Tenant has breached or the Landlord has reasonable cause to believe that the Tenant is about to breach any of the provisions of this section. If the Tenant fails to open the Leased Premises for business within fifteen (15) days after the Lease Commencement Date, the Landlord may terminate this Lease without the necessity for any legal proceedings and without prejudice to any other rights or remedies.



#### 16.10 Security Deposit.

(a) The Tenant has deposited with the Landlord, the sum of [insert deposit – proper words] Dollars (\$insert deposit – number]), receipt of which is hereby acknowledged, as security for the faithful performance by the Tenant of all of the terms, covenants and conditions of this Lease by the Tenant to be kept, observed and performed. The Landlord shall accrue interest on the above sum at the rate of three (3%) per cent per annum on the last day of each Rental Year, such sum and interest being the "Security Deposit."

(b) If at any time during the Term the Rent or other sums payable by the Tenant to the Landlord hereunder are overdue and unpaid, or if the Tenant fails to keep and perform any of the terms, covenants and conditions of this Lease to be kept, observed and performed by the Tenant, then the Landlord at its option may, in addition to any and all other rights and remedies provided for in this Lease or by law, appropriate and apply the entire Security Deposit, or so much thereof as is necessary to compensate the Landlord for loss or damage sustained or suffered by the Landlord due to such breach on the part of Tenant. If the entire Security Deposit, or any portion thereof is appropriated and applied by the Landlord for the payment of overdue rent or other sums due and payable to the Landlord by the Tenant hereunder, then the Tenant shall, upon written demand of the Landlord, forthwith remit to the Landlord a sufficient amount in cash, money order or certified cheque to restore the Security Deposit to the original sum deposited, and the Tenant's failure to do so within five (5) days after receipt of such demand constitutes a breach of this Lease. If the Tenant complies with all of the terms, covenants and conditions and promptly pays all of the rent and other sums herein provided and payable by the Tenant to the Landlord, the Security Deposit shall be returned in full to the Tenant without interest within ninety (90) days after the end of the Term, or within ninety (90) days after the earlier termination of the Term, as the case may be.

(c) The Landlord may deliver the Security Deposit to any purchaser of the Landlord's interest in the Leased Premises or the Market, if such interest is sold, and thereupon the Landlord is discharged from any further liability with respect to the Security Deposit, subject to Section 13.5.

**16.11 Remedies Generally.** Mention in this Lease of any particular remedy of the Landlord in respect of the default by the Tenant does not preclude the Landlord from any other remedy in respect thereof, whether available at law or in equity or by statute or expressly provided for in this Lease. No remedy shall be exclusive or dependent upon any other remedy, but the Landlord may from time to time exercise any one or more of such remedies generally or in combination, such remedies being cumulative and not alternative. Whenever the Tenant seeks a remedy in order to enforce the observance or performance of one of the terms, covenants and conditions contained in this Lease on the part of the Landlord to be observed or performed, the Tenant's only remedy shall be for such damages as the Tenant shall be able to prove in a court of competent jurisdiction that it has suffered as a result of a breach (if established) by the Landlord in the observance and performance of any of the terms, covenants and conditions contained in this Lease on the part of the Landlord to be observed or performed.

### ARTICLE XVII

#### Miscellaneous

**17.1 Rules and Regulations.** The Rules and Regulations adopted and promulgated by the Landlord from time to time, acting reasonably and in such manner as would a prudent landlord of a reasonably similar commercial development, are hereby made a part of this Lease as if they were embodied herein, and the Tenant shall comply with and observe the same. The Rules and Regulations existing as at the Lease Commencement Date are contained in Schedule "D". The Rules and Regulations may differentiate between different types of business. The Tenant's failure to keep and observe the Rules and Regulations constitutes a default under this Lease in such manner as if the same were contained herein as covenants. The Landlord reserves the right

from time to time to amend or supplement the Rules and Regulations applicable to the Leased Premises or the Market. Notice of the Rules and Regulations and amendments and supplements, if any, shall be given to the Tenant and the Tenant shall thereupon comply with and observe all such Rules and Regulations.

**17.2 Overholding - No Tacit Renewal.** If the Tenant remains in possession of the Leased Premises after the end of the Term with the consent of the Landlord but without having executed and delivered a new lease or extension agreement after receipt thereof from the Landlord, there is no tacit renewal of this Lease and the Term hereby granted, notwithstanding any statutory provisions or legal presumption to the contrary, and the Tenant shall be deemed to be occupying the Leased Premises as a Tenant from month to month at a monthly Minimum Rent payable in advance on the first day of each month equal to the aggregate of the following:

- (a) the monthly amount of Minimum Rent payable during the last month of the Term;
- (b) one-twelfth (1/12th) of the highest amount of Percentage Rent payable for any Rental Year of the Term;
- (c) one-twelfth (1/12th) of the amount of Additional Rent payable by the Tenant in the last full twelve month Rental Year of the Term;

and otherwise upon the same terms, covenants and conditions as are set forth in this Lease (including the payment of all Percentage Rent and Additional Rent), so far as these are applicable to a monthly tenancy.

**17.3 Successors.** All rights and liabilities herein granted to, or imposed upon the respective parties hereto, extend to and bind the successors and assigns of the Landlord and the heirs, executors, administrators and permitted successors and assigns of the Tenant, as the case may be. No rights, however, shall enure to the benefit of any assignee or other successor of the Tenant unless the assignment or other succession to such assignee has been approved by the Landlord in writing as provided in this Lease. If there is more than one Tenant, all are bound jointly and severally by the terms, covenants and conditions herein.

**17.4 Tenant Partnership.** If the Tenant is a partnership (the "Tenant Partnership"), each Person who is presently a member of the Tenant Partnership, and each Person who becomes a member of any successor Tenant Partnership hereafter, shall be and continue to be liable jointly and severally for the full and complete performance of, and shall be and continue to be subject to, the terms, covenants and conditions of this Lease, whether or not such Person ceases to be a member of such Tenant Partnership or successor Tenant Partnership, and each Partner shall execute the Indemnity Agreement, Schedule "E".

**17.5 Waiver.** The waiver by the Landlord of any breach of any term, covenant or condition herein contained is not deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or of any other term, covenant or condition herein contained. The subsequent acceptance of Rent hereunder by the Landlord is not deemed to be a waiver of any preceding breach by the Tenant of any term, covenant or condition of this Lease, regardless of the Landlord's knowledge of such preceding breach at the time of acceptance of such Rent. No term, covenant or condition of this Lease is deemed to have been waived by the Landlord unless such waiver is in writing by the Landlord.

**17.6 Accord and Satisfaction.** No payment by the Tenant or receipt by the Landlord of a lesser amount than the Rent due hereunder is deemed to be other than on account of Rent due hereunder, nor is any endorsement or statement on any cheque or any letter accompanying any cheque or payment as Rent deemed an acknowledgement of full payment or an accord and satisfaction, and the Landlord may accept and cash such cheque or payment without prejudice to the Landlord's right to recover the balance of such Rent or pursue any other remedy whether available at law, or in equity or by statute or expressly provided for in this Lease.

**17.7 Brokerage Commissions.** The Tenant acknowledges and agrees that it has not dealt

with any agent or broker representing or purporting to represent the Landlord in connection with its leasing of the Leased Premises other than The L.J. Simmons Group Ltd. Any brokerage fees or commissions personal to the Tenant shall be paid for by the Tenant and the Tenant agrees to indemnify and hold harmless the Landlord therefrom.

**17.8 No Partnership or Agency.** The Landlord does not in any way or for any purpose become a partner of the Tenant in the conduct of its business, or otherwise, or a joint venture or a member of a joint enterprise with the Tenant, nor is the relationship of principal and agent created. The provisions of this Lease relating to Percentage Rent are included solely for the purpose of providing a method whereby the Rent is to be determined.

**17.9 Force Majeure.** Notwithstanding anything to the contrary contained in this Lease, if either party hereto is bona fide delayed or hindered in or prevented from the performance of any term, covenant or act required hereunder by reason of strikes, labour troubles, inability to procure materials or services, power failure, restrictive governmental laws or regulations, riots, insurrection, sabotage, rebellion, war, act of God, or other reason whether of a like nature or not which is not the fault of the party delayed in performing work or doing acts required under the terms of this Lease, then performance of such term, covenant or act is excused for the period of the delay and the party so delayed shall be entitled to perform such term, covenant or act within the appropriate time period after the expiration of the period of such delay; however, the provisions of this section do not operate to excuse the Tenant from the prompt payments of Minimum Rent, Percentage Rent, Additional Rent or any other payments required by this Lease.

**17.10 Notices.** Any notice, demand, request or other instrument which may be or is required to be given under this Lease shall be delivered in person or mailed by registered mail and shall be addressed.

- (a) to the Landlord, to: Market Manager,  
Covent Garden Market Corporation,  
130 King Street,  
London, Ontario N6A 1C5,

or to such other Person or at such other address as the Landlord designates by written notice in accordance with this section, and

- (b) to the Tenant, at the Leased Premises, with a copy to:

[Owner's Name]  
[Owner's address]  
[London, Ontario]  
[Postal Code]

Any such notice, demand, request or consent is conclusively deemed to have been given or made on the day upon which such notice, demand, request or consent is delivered or on the third day following posting by registered mail. The Landlord may at any time give notice in writing to the Tenant of any change of address for the Landlord and from and after the giving of such notice, the address therein specified is deemed to be the address of the Landlord for the giving of notices hereunder.

**17.11 No Option.** The submission of this Lease for examination does not constitute a reservation of or option to lease for the Leased Premises and this Lease becomes effective as a Lease only upon execution and delivery thereof by the Landlord and the Tenant.

**17.12 Registration.**

- (a) Neither the Tenant nor anyone on the Tenant's behalf or claiming under the Tenant shall register this Lease or any assignment or sublease of this Lease or any document evidencing any interest of the Tenant in the Lease or the Leased Premises, against the lands or any part thereof comprising the Market or the Leased Premises. If either party intends to register a document for the purpose only of giving notice of this Lease or of any assignment or sublease of this Lease,

then, upon request of such party, both parties shall join in the execution of a short form or notice of this Lease ("Short Form") solely for the purpose of supporting an application for registration of notice of this Lease or of any assignment or sublease against the interest of the Landlord, or any part thereof in the lands comprising the Market. The form of the Short Form and of the application to register notice of this Lease or of any assignment or sublease shall (i) be prepared by the Landlord or its solicitors at the Tenant's expense; (ii) include therein a provision for, and require consent to, such registration by or on behalf of the Landlord; and (iii) only describe the parties, the Leased Premises and the Lease Commencement Date and expiration date of the Term and any renewal rights.

(b) The Short Form shall contain a provision whereby the Tenant constitutes and appoints the Landlord and its nominees as the agent and attorney of the Tenant for the purpose of executing any instruments in writing required from the Tenant to give effect to the provisions of Section 15.2 of this Lease, including the right to make application at any time and from time to time to register postponements of this Lease or the Short Form in favour of any mortgage or other interest referred to in Article XV. All costs, expenses and taxes necessary to register or file the application to register notice of this Lease or of any assignment or sublease shall be the sole responsibility of the Tenant and the Tenant will complete any necessary affidavits required for registration purposes, including affidavits necessary to register the power of attorney contained in the Short Form. If requested by the Landlord, the Tenant shall execute promptly a power of attorney at any time and from time to time as may be required to give effect to this section.

**17.13 No Obligation.** The Landlord is not obligated to proceed with or complete the construction of the Market or any part thereof for any reason whatsoever as the Landlord, acting equitably, determines and, if (a) the Landlord decides not to proceed with or complete such construction, or (b) if such construction is not completed on or before the second (2nd) anniversary of the Opening Date, this Lease shall, after thirty (30) days notice from the Landlord in the case of subsection (a), or immediately in the case of subsection (b), cease and terminate and each of the parties hereto shall be relieved and discharged from any and all liability and responsibility hereunder. If this Lease is terminated as provided in this section, the Landlord and the Tenant are each relieved of all obligations and are completely discharged and relieved from all liability and all claims, rights or causes of action hereunder. If the Tenant is not in default hereunder, and has executed an instrument in registerable form containing a release and surrendered to the Landlord of all of its right, title and interest in and to the Leased Premises and the Market granted under this Lease, or otherwise, the Landlord shall return to the Tenant without interest the Security Deposit paid if any.

**17.14 Right of Early Termination Due to Redevelopment.**

(a) If, after the year 2009, the Landlord wishes to substantially renovate the Market in whole or in part or to extend the height of the Market or to erect a new building over the Market, the Landlord shall have the right to relocate the Tenant to leased premises of similar quality and size to the Leased Premises. If the Tenant chooses not to accept the relocation, the Tenant may cancel this Lease upon three (3) months' written notice to the Landlord.

(b) If, after the year 2009, the Landlord wishes to demolish the Market, in whole or in part, the Landlord shall have the right to require the Tenant to vacate the Leased Premises upon at least six (6) months' prior written notice given to the Tenant. The Tenant shall, upon the expiration of the said period of six (6) months, or such longer period as is stipulated in the said notice, give vacant possession of the Leased Premises to the Landlord.

(c) Upon the Tenant delivering vacant possession of the Leased Premises to the Landlord, Rent and Additional Rent shall be apportioned and paid as of such date and the Landlord shall not be liable for any compensation, damages, loss, costs or expenses whatsoever incurred or suffered by the Tenant and shall not be responsible for any property left in the Leased Premises.

**17.15 Metric Conversions.** If the Landlord elects to express measurements in metric measure in this Lease, the following conversion factors apply: 1 metre = 3.2808 feet; 1 square metre =

10.7639 square feet; 1 foot = .3048 metres; and 1 square foot = .0929 square metres.

**17.16 Quiet Enjoyment.** If the Tenant pays the Rent and other sums herein provided, and observes and performs all the terms, covenants and conditions on the Tenant's part to be observed and performed, the Tenant is entitled to peaceably and quietly hold and enjoy the Leased Premises for the Term without interruption by the Landlord or any other Person lawfully claiming by, through or under this Landlord subject, nevertheless, to the terms, covenants and conditions of this Lease.

**17.17 Partial Invalidity.** If for any reason whatsoever any term, covenant or condition of this Lease, or the application thereof to any Person or circumstance, is to any extent held or rendered invalid, unenforceable or illegal, then such term, covenant or condition:

(a) is deemed to be independent of the remainder of the Lease and to be severable and divisible therefrom, and its invalidity, unenforceability or illegality does not affect, impair or invalidate the remainder of the Lease or any part thereof; and

(b) continues to be applicable to and enforceable to the fullest extent permitted by law against any Person and circumstances other than those as to which it has been held or rendered invalid, unenforceable or illegal.

Neither party is obliged to enforce any term, covenant or condition of this Lease against any Person, if, or to the extent by so doing, such party is caused to be in breach of any laws, rules, regulations or enactments from time to time in force and nothing in this Lease entitles the Landlord to stipulate the price or price range at which any article or service is to be supplied, offered or advertised by the Tenant.

**17.18 Entire Agreement.** This Lease and the Schedules attached set forth all the covenants, promises, agreements, conditions and understandings between the Landlord and the Tenant concerning the Leased Premises and there are no covenants, promises, agreements, conditions or understanding, either oral or written, between them other than as herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon the Landlord or Tenant unless in writing and signed by the Tenant and a duly authorized representative of the Landlord.

**17.19 Governing Law.** This Lease shall be construed in accordance with and governed by the laws of the Province of Ontario.

**17.20 Time of the Essence.** Time is of the essence of this Lease and of every part hereof.

**17.21 Acknowledgement by Tenant.** The Parties acknowledge that nothing contained in this Lease fetters the rights of The Corporation of the City of London in its capacity as the registered owner of the Market.

**17.22 Rights, Obligations and Capacity of the Landlord.** The Landlord confirms its capacity to act as Landlord pursuant to the *City of London Act* (Covent Garden Market Corporation), 1993, S.O., 1993, C.Pr.4.

**17.23 Communication or Dealing with the Landlord.** No communication or dealing between the Tenant and any department, committee or body functioning under the administration of The Corporation of the City of London shall be deemed to be a communication or dealing under the provisions of this Lease between the Tenant and the Landlord as parties to this Lease or to affect the Landlord with notice of any such communication or dealing; it being intended and agreed that any communication or dealing between the Landlord and the Tenant as parties to this Lease shall only be effective if in the manner provided by this Lease. No communication or dealing between the Tenant as a party to this Lease and pursuant to the provisions of this Lease and the Landlord as a party to this Lease shall relieve the Tenant from the responsibility of discharging its lawful obligations to The Corporation of the City of London imposed by statute, regulation, by-law or by any other lawful manner separate and apart from the obligations of the Tenant imposed by this Lease.

17.24 **Landlord's Discretion.** In all its dealings with the Tenant in respect of this Lease and the Schedules hereto, the Landlord covenants and agrees to act reasonably, in the best interests of the Market and as minimally adverse to the operations of the Tenant's business as is reasonably practical, and acknowledges that its decisions may be subject to Arbitration as defined in Section 1.2.

**IN WITNESS WHEREOF** in the City of London the Landlord and the Tenant have executed this Lease as of the date first above written.

SIGNED, SEALED AND DELIVERED	)	COVENT GARDEN MARKET
in the presence of	)	CORPORATION
	)	
	)	
	)	Per: _____
	)	Name: _____
	)	Title: _____
	)	
	)	
	)	
	)	OWNER’S NAME
	)	operating as “TRADE NAME”
	)	
	)	
	)	Per: _____
	)	Name: _____
	)	Title: _____
	)	
	)	

**SCHEDULE "A"**

Attached to and forming part of this Lease

TENANT:     OWNER'S NAME  
              operating as "TRADE NAME"

STORE NO.: [ insert store number]

DATE:[insert date]

LEGAL DESCRIPTION OF THE MARKET LANDS registered in the name of the Corporation of the City of London.

In the City of London, in the County of Middlesex and Province of Ontario, being composed of part of Lots 12, 13, 14 and 15 south of west Dundas Street, Lots 13, 14 and 15 north of West King Street, Lots A, 1 and 8, Plan 160(W), Part of Lots B and 2, Plan 160(W), Part Lot 7, Plan 160(W), and Part 3 on Plan 33R-11363, save and except: together with as in EB2939, subject to as in EB2917, EA8520, EA8461, EC16052, LD2175, EA8630, EA8662, EA8471, EA8462; being the whole of P.I.N. 08321-0145(LT) and being those lands bounded on the South by the northerly limit of King Street, on the West by the easterly limit of Talbot Street and on the North and East by Market Lane.

SCHEDULE "B"

Attached to and forming part of this Lease

TENANT: OWNER’S NAME  
operating as “TRADE NAME”

STORE NO.: [ insert store number]

DATE:[insert date]

FLOOR PLAN OF THE MARKET

The Purpose of this plan is to identify the approximate location of the Leased Premises in the Market. The Landlord reserves the right at any time to relocate, rearrange or alter the buildings, structures, and Common Areas and Facilities as set out in the Lease.





## **SCHEDULE "C"**

### **Attached to and forming part of this Lease**

TENANT: OWNER'S NAME  
operating as "TRADE NAME"

STORE NO.: [insert store number]

DATE:[insert date]

### **CONSTRUCTION OF THE LEASED PREMISES - LANDLORD'S AND TENANT'S WORK**

#### **1. Landlord's Work**

1.01 The Landlord is not required to provide any materials or to do any work to or in respect of the Leased Premises except the work and materials listed below ("Landlord's Work") and Landlord's Work will be performed in accordance with Landlord's choice of materials and will comply with all laws.

1.02 The Landlord's work shall be as follows:

- (a) Floor - finished concrete
- (b) Plumbing - cold water and sanitary loop with tap in intervals at the Landlord's designated points for Tenant connections and floor drains as shown on the Landlord's drawings.
- (c) Electrical - 120/208 volt power at regular distribution points throughout the Market for the Common Areas and to the Landlord's designated point in the Leased Premises, with further distribution from such points at the cost of the Tenant, as shown on the Landlord's drawings. Bulk metering for Common Areas. Separate metering or sub-metering at the Leased Premises where practical in the discretion of the Landlord.
- (d) Sprinkler Main - a sprinkler system sufficient to protect the Common Areas and any undivided Leased Premises and as applicable to all governmental authorities having jurisdiction.
- (e) Heating, Ventilating, and Air-Conditioning System - heating, ventilating and air-conditioning equipment and distribution system, in accordance with Landlord's mechanical and design specifications.
- (f) Telephone line from the main junction box to the Leased Premises.
- (g) When the Landlord has substantially completed the Landlord's Work it will notify Tenant of a date (the "Inspection Date"), at least three (3) working days after the date of notification, for the Tenant to inspect the Leased Premises. On the Inspection Date, the Tenant or its authorized agent may inspect the Premises with a representative of the Landlord. The Tenant will notify Landlord in writing within five (5) days after the Inspection Date, setting out any defects in the Landlord's Work. If the Tenant does not so notify the Landlord, the Tenant will be considered for all purposes to have accepted the Leased Premises in their condition as of the Inspection Date and Landlord will not have any further obligation with respect to any defects, except latent defects, that would not be apparent on a careful inspection. If there are any defects in the Landlord's Work and

the Tenant notifies the Landlord as required, the Landlord will remedy the defects.

(h) Reviewing and approving Tenant's plans and work.

1.03 The Landlord reserves the right, at any time and from time to time, to make such changes in construction and material under section 1.02 of this Schedule "C" as it may deem necessary or desirable, without necessity of any formality, notice or recourse by the Tenant.

1.04 In addition to the Landlord's Work as outlined above, the Landlord agrees to supply and install at its sole cost and expense the following;

- (i) electrical panel or sub-panel, "check" meter and telephone line from main junction box to the Leased Premises; and
- (ii) access to floor drain, cold water "bib" and sanitary loop.

## 2. Tenant's Work

2.01 The Tenant's Work shall be in conformity with the "Tenant Design Criteria" prepared by the Landlord and shall comprise all work not included in the Landlord's Work under section 1 of this Schedule "C" which is necessary to complete the Leased Premises for the purposes for which it is leased under the Offer to Lease and the Lease. All Tenant's work is required to be submitted to the Landlord in the form outlined in the Tenant Design Criteria for the Landlord's prior written approval. The Tenant's Work will be at the Tenant's own expense and shall include, without limiting the generality of the foregoing, the following:

- (a) Storefront or Kiosk - The Tenant shall install its storefront or kiosk on or within the lease line as determined by the Landlord's architect or surveyor.
- (b) Plumbing - Except for the Landlord's Work under Section 1.02(b) of this Schedule "C", all internal plumbing, plumbing equipment and plumbing accessories and all other fixtures required by the Tenant to serve its own Leased Premises, all in accordance with the Landlord's specifications. If the Tenant is engaged in a business required by law to have public washroom accommodation within the Leased Premises, the installation of water-closets, wash-basins, water heaters and plumbing pertaining thereto and all finishing of such washrooms shall be carried out by the Tenant at the Tenant's expense and in accordance with the Landlord's specifications. Additional water and drainage lines, as may be required for such installation, will be brought by the Landlord to the Leased Premises at the Tenant's expense. Equipment to prevent clogging of the Landlord's drains shall be installed in the Leased Premises by the Tenant at the Tenant's expense.
- (c) Electrical - Except for the Landlord's Work under section 1.02(c) of this Schedule "C", all electrical work and installations shall be performed by contractors acceptable to the Landlord at the Tenant's Expense in accordance with the Landlord's specifications, and shall include signs, electrical distribution panel, all branch wiring, electrical lighting fixtures, lamps, time clock, exit signs if required, emergency lighting if required, appliances, a hydro check meter and other equipment required by the Tenant, including any light fixtures and lamps. Where the Tenant's electrical requirements exceed the capacity provided for by the Landlord, the upgrading of this service will be provided by the Landlord at the Tenant's expense. The Tenant shall make all necessary arrangements with and pay all fees to the local utility for the provision and connection of service.

- (d) Communications - Extension of the telephone conduit and lines terminated at the Leased Premises, all necessary conduits and wiring for security or fire alarm systems shall be terminated at the main junction box in the Market.
- (e) HVAC - Except where Landlord provides ventilation and exhaust systems under section 1.02(e) of this Schedule "C", Tenant to install all necessary ductwork, fans, openings and wiring and carry out such other work as may be required to exhaust any odours from the Leased Premises which the Landlord deems to be objectionable or as required by the governmental authority having jurisdiction. All such work and installations to be subject to prior approval of the Landlord.
- (f) Interior Finishes - Interior wall finishes on all sales areas of the Leased Premises. All other interior finishes and installations, including without limiting the generality thereof, storefront and sign, floor covering, painting, show windows, enclosures, display platforms, partitions, special wall or ceiling finishes, vertical and horizontal equipment, all trade fixtures and security vault (if any). Where the Tenant is handling perishable items, the Tenant shall install at the Tenant's expense refrigeration equipment for such items, if required by the Landlord or by any governmental authority having jurisdiction, subject to the Landlord's limitations and approval.
- (g) Sprinklers - Except for the Landlord's Work under Section 1.02(d) of this Schedule "C", all revisions or additions to the Landlord's sprinkler system in the Leased Premises will be approved by the Landlord and other governmental authorities having jurisdiction, and this work will be performed by the Landlord's sprinkler contractor at the Tenant's expense.
- (h) Other Fire Protection - The Tenant shall pay for any other fire-fighting and emergency-lighting equipment in and about the Leased Premises, whether required by the Landlord, any governmental authority having jurisdiction, or any insurer, and whether required before or during the Term of the Offer to Lease and Lease.
- (i) Any damage to the Premises or the Market caused during the performance of the Tenant's Work by the Tenant, its contractors, sub-contractors, tradesmen or material suppliers shall be repaired immediately, by the Tenant, or, at the Landlord's option, by the Landlord at the expense of the Tenant, and the Tenant shall also pay to the Landlord upon demand as Additional Rent an administration fee of 15% of the cost of the work and materials.

### 3. General Procedures

#### 3.01 Tenant Construction:

- (a) The Tenant will provide the Landlord with plans, drawings, specifications and other information describing the proposed contractors, work and repairs. The Tenant must also submit complete revisions if required by the Landlord, satisfactory to the Landlord.
- (b) Before the Tenant commences any work in the Leased Premises, the Tenant must first be in receipt of the Landlord's final written approval of all the Tenant's Work for the Leased Premises, including the Tenant's contractors.
- (c) When the Tenant has received the notification referred to in section 3.01(b) of this Schedule "C" the Tenant will proceed diligently to

complete the Tenant's Work within sixty (60) days or within such longer period as the Landlord determines (the Tenant's "Fixturing Period"). The Tenant's Fixturing Period must commence at least sixty (60) days prior to the Commencement Date.

- (d) Before the Tenant commences any work or repairs, the Tenant must first be in receipt of all necessary consents, approvals, permits licences and inspections from all governmental and regulatory authorities having jurisdiction and post in the Leased Premises all Permits as required and issued by the City of London and all other governmental authorities having jurisdiction. Should the Tenant fail to obtain any required permit, licence, or certificate, the Landlord may, but shall not be obligated to, obtain it on behalf of the Tenant at the Tenant's expense, and the Tenant will pay to the Landlord the costs and expenses thereof as Additional Rent on demand plus an administration fee of fifteen per cent (15%) of such costs and expenses.
- (e) Access to the Leased Premises - The Landlord or public utility companies shall have the right throughout the construction to perform all necessary work required to complete the Landlord's Work and the Tenant's Work.
- (f) Architect's Opinion - The opinion in writing of the Landlord's Architect shall be binding on both the Landlord and the Tenant respecting all matters of dispute regarding the Landlord's Work and the Tenant's Work including the state of completion and whether or not work is completed in a good and workmanlike manner and in accordance with this Schedule "C".
- (g) The Landlord, without prejudice to the Landlord's other remedies, may at the Tenant's expense, remove any Tenant's Work undertaken without the Landlord's prior written approval and restore the Leased Premises to their prior condition, and the Tenant will pay to the Landlord on demand the costs of removal together with an administration fee of 15% of such costs.
- (h) Tenant's Declaration - The Tenant shall provide the Landlord, within sixty (60) days after the completion of any work within the Leased Premises, with a statutory declaration (the "Declaration"): (i) stating that the Tenant's Work has been performed in accordance with all of the provisions of this Schedule "C" and that all deficiencies (if any) which the Landlord has brought to the Tenant's attention have been corrected and; (ii) stating that there are no Construction Liens, Worker's Compensation Liens, or other liens and encumbrances affecting the Leased Premises or the Market with respect to work, services or materials relating to the Tenant's Work. The Landlord agrees to pay to the Tenant its Fixturing Allowance forthwith upon presentation of such Declaration.

#### 4. Payment Schedule

Any equipment or work, other than that stipulated as Landlord's Work, which is supplied or performed by the Landlord at the request of the Tenant, or any excess or additional cost in the Landlord's Work occasioned by the Tenant's requirements or revisions to such requirements, shall be paid for by the Tenant as Additional Rent as follows:

- (i) Thirty-five per cent (35%) of the amount payable (as estimated by the Landlord) will be paid by the Tenant to the Landlord prior to the supply of the equipment of performance of the work; and
- (ii) The balance will be paid by the Tenant to the Landlord within fifteen (15) days after the receipt of a request for it.

The cost of the equipment or work will include (in addition to direct labour, materials and applicable taxes) architectural and contractor's fees, any costs to the Landlord which are attributable to changes requested by Tenant after approval of Tenant's Plans by the Landlord, and an additional overhead charge for the Landlord's supervision equal to fifteen per cent (15%) of the aggregate costs of the equipment and work.

5. Commencement Date

The first day of the Term of the Lease is the "Commencement Date". The Tenant's obligation to pay rent shall commence on the Commencement Date PROVIDED ALWAYS that if the Leased Premises are not ready for possession by the Tenant by the Commencement Date for any reason not attributable to any failure or neglect of the Tenant, the Commencement Date shall be postponed until the Leased Premises are ready for possession by the Tenant, but the date on which the Term shall be completed and ended shall not be varied as a result thereof nor shall the Tenant have any claim against the Landlord as a result of such postponement. In the event that the obligation to pay rent commences on a day other than the first day of a month, then all terms and conditions of this Lease shall apply from such date, and the Tenant shall pay upon the day the obligation to pay rent commences, a pro rata portion on a per diem basis of the fixed minimum monthly rent and estimated additional rent from such date until the last day of the month in which such date occurs. PROVIDED FURTHER HOWEVER, that if the Leased Premises are not ready for possession by the Tenant on the Commencement Date due to any act or failure to act on the part of the Tenant, then the rent and the Term shall commence on that date as though the Leased Premises were ready for possession by the Tenant and all the provisions of the Lease shall apply.

6. Tenant's Fixturing Allowance

The Landlord will pay [tenant allowance – proper words] Dollars (\$[tenant allowance – number]) per square foot of the Rentable Area of the Leased Premises as a Tenant's Allowance to be applied towards the actual costs of the Tenant's work hereunder including leasehold improvements, fixtures and equipment.

7. Tenant's Free Rent

- (a) the Fixturing Period of sixty (60) days Section 3.01(c) shall be Rent free;
- (b) the first [rent free period – proper words] ([rent free period]) months of the Term following the Commencement Date shall be free of Minimum Rent and Percentage Rent;

## **SCHEDULE "D"**

### **Attached to and forming part of this Lease**

TENANT: OWNER'S NAME  
operating as "TRADE NAME"

STORE NO.: [insert store number]

DATE:[insert date]

### **RULES AND REGULATIONS**

These rules and regulations made by the Landlord from time to time are applicable to any licensee, tenant, vendor or occupant of the Market building (the "Tenant") and the premises leased or licensed to them (the "Leased Premises"). A breach of these rules and regulations constitutes default under the licence or lease (the "Lease"), as applicable. The Landlord may remedy any breach by the Tenant and all costs thereof shall be charged to the Tenant as additional rent.

#### **1. HANGING ITEMS**

Tenant shall not hang or suspend from any wall or ceiling or roof, or any other part of the Leased Premises or the Market building, any equipment, fixtures, signs or displays without the prior written approval of the Landlord.

#### **2. ELECTRICAL EQUIPMENT**

If any Tenant requires additional electrical equipment, Tenant shall obtain the Landlord's written approval to perform electrical changes, which shall meet all the applicable regulations or requirements of any government or other competent authority, the Association of Insurance Underwriters and Landlord's insurers, all at the sole cost and expense of the Tenant.

#### **3. PLUMBING**

No plumbing facilities shall be used for any purpose other than that for which they were designed and no foreign substance of any kind shall be thrown therein, and the expense of any breakage, stoppage or damage resulting from a violation of this provision by a Tenant or by any person for whom the Tenant is responsible shall be borne by the Tenant. No garburators shall be installed by a Tenant without the prior written approval of the Landlord.

#### **4. HVAC OPERATION**

4.01 Tenant shall operate or permit to be operated its own heating, ventilating, air conditioning and other equipment, if any, in such manner that there will be no direct or indirect appropriation or dissemination of heating or cooling from or to other portions of the Market building.

4.02 Tenant shall not leave open any doors or windows to the exterior of the Market building which would adversely affect the performance of any heating, ventilating or air-conditioning equipment in the building.

#### **5. SIGNS, ADVERTISING, DISPLAY WINDOWS**

5.01 Tenant shall not erect or install any exterior signs or interior window or door signs or advertising media or window or door lettering or placards without the prior written consent of the Landlord.

5.02 Tenant shall not use any advertising media that the Landlord or other tenants shall

deem objectionable to it or to other tenants, such as, without limiting the generality of the foregoing, loudspeakers, phonographs, televisions, public address systems, sound amplifiers, radios, broadcasts, CD players or telecasts within the building in a manner capable of being heard or seen beyond the Leased Premises.

- 5.03 Tenant shall not install any exterior lighting, exterior decorations or build any aerial or mast, or make any change to the store front of the Leased Premises, without the prior written consent of the Landlord.
- 5.04 Tenant shall keep all display windows neatly dressed and, together with any other windows, store fronts and lighted signs in, upon or affixed to the Leased Premises, illuminated until such times as required by Landlord.
- 5.05 Any installation requiring Landlord's consent which has not received such consent shall be subject to immediate removal without notice at Tenant's cost.

6. **NO SOLICITATION**

The Tenant, or Tenant's employees and agents, shall not solicit business in the parking areas or other common areas of the Market building and shall not distribute any handbills or other advertising material therein without prior written consent of the Landlord.

7. **DELIVERIES**

- 7.01 The Tenant shall receive, ship, take delivery of, and allow and require suppliers and others to deliver or take delivery of, merchandise, supplies, fixtures, equipment, furnishings and materials only through the appropriate service and delivery facilities designated by the Landlord, at such times as the Landlord may reasonably specify and in accordance with the reasonable directives and further rules and regulations of the Landlord.
- 7.02 Tenants shall inform suppliers of such times and rules and regulations respecting delivery so as to accommodate the ease of delivery to and from the Market building.
- 7.03 Tenants shall remove all such merchandise and other delivered items from the loading area or other common areas immediately upon such delivery.
- 7.04 Boxes and empty cartons, and all other items are not permitted to be placed in the aisle adjacent to the Leased Premises except as being loaded or unloaded. Containers and garbage are to be disposed of promptly and in accordance with waste management guidelines issued by Landlord from time to time.
- 7.05 Tenant acknowledges passageways and aisles of the Market building must be kept clear of merchandise, deliveries, garbage or any other blockage unless in special circumstances, Landlord has given permission. Tenant shall comply with all regulations designated under the Ontario Fire Code, Ontario Building Code and all Public Health legislation.
- 7.06 Tenant acknowledges hand carts may be used for deliveries and unloading of merchandise only and that goods shall not be stored on hand carts or in aisle space outside the Leased Premises. While being unloaded at Leased Premises, Tenant will keep carts out of pedestrian flow.

8. **LOADING DOCK**

Any vehicle owned or operated by Tenant may be parked at the loading areas for a maximum of posted time limit for the purposes of delivering and unloading only. Tenant may move unloaded items to the Leased Premises, but shall remove the vehicle from the loading areas

before unpacking and set-up of delivered goods.

9. **PESTS**

Should the Leased Premises become infested with rodents, vermin or the like, Tenant shall forthwith remedy the same and shall use, at Tenant's cost, such pest extermination contractor as Landlord may direct and at such intervals as Landlord may require as being necessary by reason of the conditions in the Leased Premises.

10. **NOTICE OF ACCIDENT, DEFECTS**

The Tenant shall give immediate notice to Landlord in case of fire or accident in the Leased Premises or of defects therein or to any fixtures or equipment therein.

11. **EMERGENCY CONTACTS**

Tenant shall provide Landlord with the names, addresses and telephone numbers of two (2) authorized employees of the Tenant, who may be contacted by the Landlord in the event of an emergency relative to the Leased Premises.

12. **PERMITS, LICENCES**

Tenant shall be responsible for obtaining, from the appropriate governmental authority or other regulatory body having jurisdiction, all permits, licences or approvals as may be necessary for the operation of its business, the whole to the entire exoneration of the Landlord.

13. **PROHIBITED USES**

Tenant shall not allow the Leased Premises to be used for sleeping, nor shall any pets or animals be allowed on the Leased Premises without the consent of the Landlord.

14. **AFTERHOURS**

Tenant shall not be entitled to a key to the exterior doors of the building (except where Leased Premises exit to the street) and Tenant shall have no right or access to the Leased Premises before or after hours of business except as set out herein or in accordance with Landlord's Security Procedures or except with the express permission of a duly authorized representative of Landlord.

In the event that Tenant is permitted access to the Market building before or after hours, Tenant shall sign a "sign-in" sheet or adhere to any other means of monitoring or control that the landlord has in effect regarding entrance and exit from the building.

15. **HOURS OF BUSINESS**

Tenant shall carry on business from the Leased Premises, during the business hours of the market, being Monday to Friday from 8:00 a.m. to 7:00 p.m., Saturday from 8:00 a.m. to 6:00 p.m. and Sunday from 11:00 a.m. to 5:00 p.m. of every week (subject to statutory holidays). Any special request for variations shall be made in writing to the Landlord who shall have the authority to approve or deny any request. Tenants with exterior wall, self-contained premises may open earlier and stay open later. The Landlord may vary such hours of business from time to time, acting reasonably, as set out in Section 9.3 of the Lease.

16. **SMOKE FREE BUILDING**

Tenant acknowledges the Market building is a "smoke free" building subject to the by-laws of the City of London .



17. **CLEANLINESS**

In regard to the use and occupancy of the Leased Premises and the common areas and facilities, Tenant shall:

- 17.01 keep clean the inside and outside of all glass in the doors and windows of the Leased Premises;
- 17.02 keep clean all exterior storefront surfaces of the Leased Premises;
- 17.03 replace promptly, at its expense, any cracked or broken window glass of the Leased Premises with glass of like kind and quality;
- 17.04 keep all mechanical apparatus free of vibration and noise which may be transmitted beyond the Leased Premises; and
- 17.05 operate the stand or store of the Leased Premises in first class market vendor fashion, keep the same fully stocked and in a neat and tidy condition at all times, and adhere to the Landlord's policies regarding waste management and recycling programs.

In regard to the use and occupancy of the Leased Premises and the common areas and facilities, Tenant shall not:

- 17.06 cause, permit or suffer any machines selling merchandise, rendering services or providing, however operated, entertainment, including vending machines, to be present on the Leased Premises unless consented to in advance in writing by Landlord; and
- 17.07 abandon any equipment, materials or merchandise in any portion of the Market building, but shall have such equipment, materials or merchandise removed from the building at Tenant's own expense.

18. **POINT OF SALE EQUIPMENT**

Tenant shall install and maintain at Tenant's expense such point of sale/point of purchase electronic equipment (such as Interac or Equal) as is required by the Landlord from time to time to allow customers of the Tenant to use debit cards for purchases.

19. **CONFIDENTIALITY**

The details of Tenant's Offer to Lease and Lease with the Landlord and the negotiations leading to them are confidential and Tenant shall not disclose such details or negotiations to any person other than Tenant's necessary legal, financial and business advisers.

20. **FURTHER RULES AND REGULATIONS**

For the general benefit and welfare of the Landlord and the Tenants generally of the Market building, Landlord may amend these rules and regulations, by alteration or addition, and such amended rules and regulations shall be binding on Tenant.

21. **FINES**

Tenants shall be subject to the following fines for breaches of the Lease and these Rules and Regulations, which fines are in addition to and not in substitution for any other remedy of the Landlord under the Lease and are collectible as additional rent:

- 21.01 N.S.F. cheque - \$50.00 per cheque returned plus all bank charges;
- 21.02 late payment of rent unless prior arrangement made with Landlord - \$50.00 per

day;

- 21.03 opening for business late or closing for business early, without just cause in opinion of Landlord - \$50.00 per occurrence;
- 21.04 failing to be open for business without just cause in opinion of Landlord - \$300.00 per day or rateable part thereof;
- 21.05 blocking passageways or loading docks, setting displays in passageways or other common areas - \$50.00 per item per hour or part thereof; and
- 21.06 any other breach not listed above - \$50.00 per item per day.

22. **LANDLORD'S RIGHT TO REMEDY**

Notwithstanding the Landlord's right to levy fines against the Tenant for breaches of these rules and regulations, the Tenant acknowledges the right of the Landlord to remedy any default of the Tenant at the cost of the Tenant as set out in Section 16.6 of the Lease and the rights of the Landlord generally under Article XVI of the Lease in respect of any default of the Tenant.

23. **VIOLATIONS**

Violation of these rules and regulations may result in termination of the lease. Landlord will review each instance individually, taking into account past performance. Repeated violations may result in the Tenant being declared a troublesome tenant and as such in default of the Lease and not eligible for the renewal rights set out in Schedule "F" to the Lease.

**SCHEDULE "E"**

**INDEMNITY AGREEMENT**

THIS AGREEMENT is dated the       day of       , 199 .

BETWEEN:       **COVENT GARDEN MARKET CORPORATION**

(the "Landlord")

of the First Part

- and -

and

(the "Indemnifier")

of the Second Part

In order to induce the Landlord to enter into the lease (the "Lease") dated the       day of       , 199       and made between Covent Garden Market Corporation as Landlord and as Tenant, and for other good and valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, the Indemnifier hereby makes the following indemnity and agreement (the "Indemnity") with and in favour of the Landlord:

1.       The Indemnifier hereby agrees with the Landlord that at all times during the Term of the Lease and any extension or renewal of the Lease it will (a) make the due and punctual payment of all Rent, monies, charges and other amounts of any kind whatsoever payable under the Lease by the Tenant whether to the Landlord or otherwise and whether the Lease has been disaffirmed or disclaimed; (b) effect prompt and complete performance of all and singular the terms, covenants and conditions contained in the Lease on the part of the Tenant to be kept, observed and performed; and (c) indemnify and save harmless the Landlord from any loss, costs or damages arising out of any failure by the Tenant to pay the aforesaid Rent, monies, charges or other amounts due under the Lease or resulting from any default by the Tenant in observing or performing any of the terms, covenants and conditions contained in the Lease.

2.       This Indemnity is absolute and unconditional and the obligations of the Indemnifier shall not be released, discharged, mitigated, impaired or affected by (a) any extension of time, indulgences or modifications which the Landlord extends to or makes with the Tenant in respect of the performance of any of the obligations of the Tenant under the Lease; (b) any waiver by or failure of the Landlord to enforce any of the terms, covenants and conditions contained in the Lease; (c) any assignment of the Lease by the Tenant or by any trustee, receiver or liquidator; (d) any consent which the Landlord gives to any such assignment or subletting; (e) any amendment to the Lease or any waiver by the Tenant of any of its rights under the Lease; or (f) the expiration of the Term.

3.       The Indemnifier hereby expressly waives notice of the acceptance of this Agreement and all notice on non-payment or non-observance on the part of the Tenant of the terms, covenants and conditions contained in the Lease. Without limiting the generality of the foregoing, any notice which the Landlord desires to give to the Indemnifier shall be sufficiently given if delivered in person to the Indemnifier at the Leased Premises, and every such notice is deemed to have been given upon the day it was so delivered in person. The Indemnifier may designate by notice in writing a substitute for that set forth above and thereafter notices shall be directed to such substitute address. If two or more Persons are named as Indemnifier, any notice given hereunder or under the Lease shall be sufficiently given if delivered in the foregoing manner to anyone of such Persons.

4. In the event of a default under the Lease or under this Agreement, the Indemnifier waives any right to require the Landlord to (a) proceed against the Tenant or pursue any rights or remedies against the Tenant with respect to the Lease, (b) proceed against or exhaust any security of the Tenant held by the Landlord, or (c) pursue any other remedy whatsoever in the Landlord's power. The Landlord has the right to enforce this Indemnity regardless of the acceptance of additional security from the Tenant and regardless of any release or discharge of the Tenant by the Landlord or by others or by operation of any law.

5. Without limiting the generality of the foregoing, the liability of the Indemnifier under this Indemnity is not and is not deemed to have been waived, released, discharged, impaired or affected by reason of the release or discharge of the Tenant in any receivership, bankruptcy, winding-up or other creditors' proceedings or the rejection, disaffirmance or disclaimer of the Lease in any proceeding and shall continue with respect to the periods prior thereto and thereafter, for and with respect to the Term as if the Lease had not been disaffirmed or disclaimed, and in furtherance hereof, the Indemnifier agrees, upon any such disaffirmance or disclaimer, that the Indemnifier shall, at the option of the Landlord, become the Tenant of the Landlord upon the same terms and conditions as are contained in the Lease, applied mutatis mutandis. The liability of the Indemnifier shall not be affected by any repossession of the Leased Premises by the Landlord, provided, however, that the net payments received by the Landlord after deducting all costs and expenses of repossessing and reletting the Leased Premises shall be credited from time to time by the Landlord against the indebtedness of the Indemnifier hereunder and the Indemnifier shall pay any balance owing to the Landlord from time to time immediately upon demand.

6. No action or proceedings brought or instituted under this Indemnity and no recovery in pursuance thereof shall be a bar or defence to any further action or proceeding which may be brought under this Indemnity by reason of any further default hereunder or in the performance and observance of the terms, covenants and conditions contained in the Lease.

7. No modification of this Indemnity shall be effective unless the same is in writing and is executed by both the Indemnifier and the Landlord.

8. The Indemnifier shall, without limiting the generality of the foregoing, be bound by this Indemnity in the same manner as though the Indemnifier were the Tenant named in this Lease and principal obligor and not merely an indemnifier or surety.

9. If two or more individuals, corporations, partnerships or other business associations (or any combination of two or more thereof) execute this Indemnity as Indemnifier, the liability of each such individual, corporation, partnership or other business association hereunder is joint and several. In like manner, if the Indemnifier named in the Indemnity is a partnership or other business association, the members of which are by virtue of statutory or general law subject to personal liability, the liability of each such member is joint and several.

10. All of the terms, covenants and conditions of this Indemnity extend to and are binding upon the Indemnifier, his or its heirs, executors, administrators, successor and assigns, as the case may be, and enure to the benefit of and may be enforced by the Landlord, its successors and assigns, as the case may be, and any mortgagee, chargee, trustee under a deed of trust or other encumbrancer of all or any part of the Market referred to in the Lease.

11. The expressions "Landlord", "Tenant", "Rent", "Term", and "Leased Premises" and other terms or expressions where used in this Indemnity, respectively, have the same meaning as in the Lease.

12. This Agreement shall be construed in accordance with the laws of the Province of Ontario.

13. Wherever in this Indemnity reference is made to either the Landlord or the Tenant, the reference is deemed to apply also to the respective heirs, executors, administrators, successors and assigns and permitted assigns, respectively, of the Landlord and the Tenant, as the case maybe, named in the Lease. Any assignment by the Landlord of any of its interests in the Lease

operates automatically as an assignment to such assignee of the benefit of this Indemnity.

14. The Indemnifier agrees to execute such indentures and other assurances as may be reasonably required from time to time by the Landlord to more fully implement the intent of this Indemnity Agreement.

15. If any provisions of this Indemnity Agreement are determined to be illegal or unenforceable, all other provisions shall continue and remain in force and effect.

IN WITNESS WHEREOF all Indemnifiers have signed and sealed this Indemnity.

SIGNED, SEALED AND DELIVERED

in the presence of

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

Name: \_\_\_\_\_

Name: \_\_\_\_\_

## **SCHEDULE "F"**

### **Attached to and forming part of this Lease**

TENANT:     OWNER'S NAME  
              operating as "TRADE NAME"

STORE NO.: [ insert store number]

DATE:[insert date]

### **SUPPLEMENTAL TERMS, RENEWAL RIGHTS**

#### **ARTICLE III - Grant and Term**

The following Section is added at the end of Article III:

##### **Section 3.5 Renewal**

- (a) The Tenant will have the right to renew this Lease (the "First Renewal Lease") as at the expiration of the Term only if all of the following conditions are satisfied:
- (i) Tenant has delivered a written request for renewal of this Lease to Landlord not less than six (6) months before the end of the Term;
  - (ii) Tenant has not been in material default under the terms of this Lease at any time during the Term of this Lease and, in particular, is not in default under the terms of this Lease at the time Tenant delivers such written request for renewal to Landlord; and
  - (iii) Tenant has not assigned this Lease in whole or in part or sublet all or any part of the Premises without Landlord's consent.
- (b) The term of the First Renewal Lease (the "First Renewal Term") will be for a period of three (3) years.
- (c) Tenant will pay to Landlord as Minimum Rent under the First Renewal Lease the average of the Minimum Rent and Percentage Rent paid over the last two (2) years of the Term, but not less than 125% of the Minimum Rent in the last year of the Term.
- (d) Tenant will pay Percentage Rent as negotiated with the Landlord, but at a rate not less than the rate in Section 4.3 of this Lease.
- (e) The First Renewal Lease will be upon the same terms, provisos and conditions of this Lease excepting as aforesaid and except for rent-free periods, tenant allowances, Landlord's work and other similar inducements and as otherwise amended in this Section, and Tenant will have no further right of renewal.
- (f) If Tenant fails to exercise this right to renew this Lease within the time and in the manner as aforesaid, or if the other conditions set out in this Section are not satisfied, this renewal provision shall be null and void.

**SCHEDULE "G"**

**Attached to and forming part of this Lease**

TENANT:     OWNER’S NAME  
                  operating as “TRADE NAME”

STORE NO.: [ insert store number]

DATE:[insert date]

**SPECIAL AMENDMENTS**

Those Sections of the Lease listed below are hereby substituted for the original provisions of the Lease as amendments thereto:

Section Number of Lease	Amendment
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