

LEASE

THIS LEASE, as of this _____ day of _____, 2018 ("Effective Date") by and between **ITHACA MALL REALTY LLC**, a New York limited liability company ("Landlord"), **Running to Places Theatre Co., LTD.**, a **New York not-for-profit corporation** d/b/a Running ~~to~~ Places Theatre Company ("Tenant").

WITNESSETH:

IN CONSIDERATION of the mutual covenants hereinafter contained, and each act performed hereunder by either of the parties, Landlord and Tenant agree as follows:

- I. **BASIC LEASE PROVISIONS.** This Article I is an integral part of this Lease and all of the terms hereof are incorporated into this Lease in all respects. In addition to the other provisions which are elsewhere defined in this Lease, the following, whenever used in this Lease shall have the meanings set forth in this Article I:

A. **Shopping Center:** The Shops at Ithaca Mall Shopping Center situated in the City of Ithaca, State of New York (Article II) (as depicted on Exhibit "A").

B. **Premises:** Space No. 01A containing approximately 15,067 square feet of floor area (Article III) (as depicted on Exhibit "A").

C. **Lease Term:**

1. The terms and provisions of this Lease shall become effective on the Effective Date and continue for a period of ten (10) Lease Years following the Rent Commencement Date and expiring on October 31, 2028 (Article III).

2. **Rent Commencement Date:** November 1, 2018

3. **Landlord's Termination Right.** Landlord, in its sole discretion, shall have the right to replace Tenant with a bona fide third party. Prior to executing a lease with a bona fide third party for the Premises, Landlord shall deliver to Tenant a written notice (the "Offer Notice") identifying the proposed lease or letter of intent that Landlord is willing to accept from Tenant to allow Tenant to remain at the Premises. Tenant has ~~five (5)~~ **fifteen (15)** business days within which to notify Landlord of its election to enter into the new lease for the Premises and match the terms of the bona fide offer received by Landlord. If a notice of rejection, or if no notice, is received by Landlord within said ~~15~~ business day period (such lack of timely notice deemed a rejection), then such a rejection by Tenant shall terminate this Lease effective thirty (30) days following said rejection, allowing the Landlord to enter into and execute a lease for the Premises with said third party and Tenant shall vacate and surrender the Premises pursuant to and in the manner set forth herein.

D. **Rent:** (Article IV).

1. **Minimum Rent** (Article IV)

	\$ Annum	\$ Monthly
November 1, 2018 – October 31, 2019	\$30,000.00	\$2,500.00
November 1, 2019 – October 31, 2020	\$31,500.00	\$2,625.00
November 1, 2020 – October 31, 2021	\$33,075.00	\$2,756.25
November 1, 2021 – October 31, 2022	\$34,728.75	\$2,894.06

EMR: As a not-for-profit corporation with a staff of 1.5 people, my client will likely need more than 5 days to determine whether it can match such an offer. 15 should be doable.

November 1, 2022 – October 31, 2023	\$36,465.19	\$3,038.77
November 1, 2023 – October 31, 2024	\$38,288.45	\$3,190.70
November 1, 2024 – October 31, 2025	\$40,202.87	\$3,350.24
November 1, 2025 – October 31, 2026	\$42,213.01	\$3,517.75
November 1, 2026 – October 31, 2027	\$44,323.66	\$3,693.64
November 1, 2027 – October 31, 2028	\$46,539.85	\$3,878.32

2. Percentage Rent (Article IV, Section B): Tenant shall tender to Landlord Percentage Rent in an annual amount equal to six percent (6%) of Gross Sales to the extent Gross Sales exceed \$25,000.00 (the "Breakpoint") per calendar month. Landlord acknowledges that Tenant is a not-for-profit corporation and is heavily reliant on donations for its continued existence. Gross sales shall not include direct donations to the Tenant, nor grants, nor sponsorships.

E. Real Estate Tax Charge: (Article V). Parties acknowledge this is a Gross Lease and all Tax charges are included as Minimum Rent.

F. Landlord's Work: As Is. (Article VI).

G. Estimated Delivery of Possession Date: (Article VI). On or about September 1, 2018

H. Common Area Maintenance (CAM) Charge: (Article VII). Parties acknowledge this is a Gross Lease and all CAM charges are included as Minimum Rent.

I. Permitted Use: (Article IX): The Premises shall be used solely for conducting business therein for theater productions, rehearsals, costume and scene shops, sale of refreshments during shows, storage, and an administrative office and for no other purpose without the prior written consent of the Landlord. Such consent shall not be unreasonably withheld.

J. Tenant's Trade Name: Running to Places Theatre Company

K. N/A

L. Insurance Charge: (Article XII) Parties acknowledge this is a Gross Lease and all Insurance charges are included as Minimum Rent.

M. Notice Address: (Article XVII)

1. Tenant:

Running to Places Theatre Co. LTD

Attn:

Dick: Do't want to confuse "Costume Shop" with a Halloween store!

Maybe replace "shop" with "fabrication areas for costumes, props and scenery"

PHONE:
EMAIL:

Landlord:
ITHACA MALL REALTY LLC
c/o Namdar Realty Group
150 Great Neck Road
Suite 304
Great Neck, NY 11021

N. Security Deposit/Prepayment: One month Minimum Rent (\$2,500.00) as Security AND One month Minimum Rent (\$2,500.00) prepayment submitted upon execution of this Lease (Article XVIII).

II. **PREMISES.**

- A. Landlord leases to Tenant, and Tenant leases from Landlord, the premises described in Article I(B) ("Premises"), as measured from the exterior face of any exterior walls and to the centerline of common walls. The shopping center described in Article I(A) ("Shopping Center") is depicted on Exhibit "A" attached hereto. Landlord shall have the right from time to time, in its sole discretion, to increase, reduce and/or otherwise alter (i) the Shopping Center, including, without limitation, the sale and/ or acquisition of land, whether or not currently subdivided, and/or (ii) the buildings comprising the Shopping Center.
- B. Landlord reserves the right to maintain, repair, and replace utility lines under, over, upon or through the Premises as may be reasonably necessary or advisable for the servicing of the Premises or other portions of the Shopping Center. Landlord further reserves the right to use (or grant to other parties the right to use) and Tenant will have no right title or interest in (i) the roof of the buildings within the Shopping Center, including the Premises, (ii) exterior non-storefront portions of the Premises (including, without limitation, neutral piers, demising walls, and outer walls of buildings in which the Premises are located), (iii) air rights above the Shopping Center, including the Premises, and (iv) the right to land and improvements below the floor level of the Premises. Landlord shall have the exclusive right to lease any rooftop within the Shopping Center, including the rooftop of the Premises.
- C. Landlord and its agents/representatives shall have the right to enter upon the Premises at all reasonable hours, with reasonable prior notice, for the purpose of inspecting the Premises or to otherwise insure compliance with the provisions of this Lease and for any other lawful purpose, except in case of emergency in which case no notice shall be required.

III. **TERM.**

- A. **Lease Term.** The terms and provisions of this Lease (excluding specifically, payment of Minimum Rent) shall become effective on the Effective Date and shall expire on October 31, 2028, unless sooner terminated. The term "lease year" shall mean a period of twelve (12) consecutive full calendar months. If the Rent Commencement Date does not occur on the first day of a calendar month, the first lease year shall include any partial calendar month.

IV. **RENT.**

- A. **Minimum Rent.** Tenant agrees to pay to Landlord, at its office or other place as Landlord may from time to time designate, as "Minimum Rent" for the Premises during the Lease Term, without any deduction or setoff, the amount(s) set forth in Article 1, Section D (1), in advance, on the first day of each calendar month. Minimum Rent and Additional Rent (as hereinafter defined) shall be prorated on a per diem basis (based upon a thirty (30) day calendar month) for any partial month included in the first lease year.

Notwithstanding Tenant's obligation to pay Minimum Rent and/or Additional Rent as of the first day of each month during the Lease Term, in the event that an insolvency, bankruptcy or similar proceeding is filed by or against Tenant, Tenant shall be obligated to pay all such Minimum Rent and/or Additional Rent on a ratable basis from the date of the commencement of any such proceeding through the end of the month in which such proceeding is commenced.

- B. **Percentage Rent.** Tenant covenants and agrees to pay to Landlord, as Percentage Rent, an amount equal to the percent of Gross Sales (as hereinafter defined) during the applicable month in excess of the Breakpoint stated in Article I Section D(2). At such time during any month as Tenant's Gross Sales exceed the Breakpoint stated in Article I Section D(2), Tenant shall pay Landlord monthly within fifteen (15) days after the

end of each month the percent stated in Article I Section D(2) hereof multiplied by the excess, if any, of the monthly Gross Sales.

C. Gross Sales.

(a) **Definition of Gross Sales.** The term "Gross Sales" means the amount of the sales price of all merchandise, wares, food/beverages and other goods sold (including gift and merchandise certificates/cards when redeemed), leased, rented or licensed, and the actual charges for all services performed, business conducted by Tenant and by any subtenant, licensee, concessionaire and other occupant in, at, from, or arising out of the use of the Premises, whether wholesale or retail, whether for cash or credit, or otherwise, and including the value of all consideration other than money received for any of the foregoing, without reserve or deduction for inability or failure to collect, including but not limited to sales, leases and services:

- (i) where the orders originate in, at, from or arise out of the use of the Premises, whether delivery or performance is made from the Premises or elsewhere; or
- (ii) made or performed by mail, telephone, Internet, telecopy, fax, website or similar means and orders received, filled or delivered in, at or from the Premises; or
- (iii) made or performed by means of telephonic, mechanical or other vending means or devices in or for the Premises; or
- (iv) which Tenant, and any subtenant, licensee, concessionaire or other occupant, in the normal and customary course of its business, would or does credit or attribute to its operations at the Premises or any part thereof;
- (v) If any assignment or subletting is permitted, any income, or value of any other consideration received by Tenant as a result of such transaction shall be included in Gross Sales.

Gross Sales shall include any deposit accepted and retained by Tenant except for direct donations to Tenant, grants, or sponsorships. Each installment or credit sale shall be treated as a sale for the full price in the month during which such sale is made, regardless of whether or when Tenant receives payment. No franchise, value added tax, capital stock tax, tax based upon assets or net worth or gross receipt tax, and no income or similar tax based on income or profits shall be deducted from Gross Sales.

(b) **Gross Sales Exclusions.** Only the following shall be excluded from Gross Sales, provided that Tenant supplies records to Landlord, in form and substance reasonably acceptable to Landlord, which adequately support such exclusions:

- (i) exchanges of merchandise between Tenant's stores made solely for the convenient operation of Tenant's business and not to consummate a sale made in, at or from the Premises;
- (ii) returns to suppliers, shippers or manufacturers;
- (iii) cash or credit refunds to customers on transactions otherwise included in Gross Sales;
- (iv) sales of fixtures, machinery and equipment, which are not stock for sale or trade, after use in the conduct of Tenant's business in the Premises;
- (v) amounts separately stated in the sales receipt and collected from customers which are paid by Tenant to any government for any sales or excise tax imposed by law at the point of sale;
- (vi) sales to employees at a discount, not to exceed one percent (1%) of annual Gross Sales; and
- (vii) cash from permitted pay telephones and vending machines not located in the sales area and primarily for use by Tenant's employees.

- (viii) food/beverages bartered for services, not to exceed \$10,000.00 per annum in value
- ~~(ix) direct donations to Tenant~~
- ~~(x) grants received by Tenant~~
- ~~(xi) sponsorships of Tenant productions~~

(c) **Reporting of Gross Sales; Year End Adjustment.**

- (a) Monthly Report. Tenant shall furnish to Landlord within fifteen (15) days after the end of each calendar month during the Term a complete statement (the "Monthly Report"), certified by Tenant (or a responsible financial officer of Tenant if Tenant is a corporation), setting forth (i) the amount of Gross Sales during such month, (ii) the aggregate amount of Gross Sales during such Lease Year (or Partial Lease Year, as the case may be), including such month.
- (b) Yearly Report. Tenant will also furnish to Landlord within sixty (60) days after the end of each Lease Year a complete statement (the "Yearly Report") certified as a full, complete, and accurate report by Tenant's chief financial officer, showing in reasonable detail the amount of Gross Sales during such Lease Year and the amount of Minimum Rent paid to Landlord for such Lease Year. Tenant shall not be permitted to modify the Yearly Report once furnished to Landlord.
- (c) Delivery of Reports. The reports required by this Section shall be delivered to Landlord's Notice Addresses or to another person and/or place as Landlord may designate from time to time. If Tenant shall fail to deliver any Monthly Report and/or Yearly Report when due, in addition to all of Landlord's other rights and remedies hereunder, Tenant shall pay to Landlord, as Additional Rent, an amount equal to One Hundred Dollars (\$100.00) per day for each day such statement is overdue.
- (d) Tenant's Records. Tenant covenants and agrees that Tenant's business records and those of any subtenant, licensee or concessionaire upon the Premises shall be maintained in accordance with generally accepted accounting principles. Tenant shall keep, at the Premises or at Tenant's home or regional office, complete and accurate books of accounts and records with respect to all operations of the business conducted in or from the Premises, including the recording of Gross Sales and the receipt of all merchandise and other goods into and the delivery of all merchandise and other goods from the Premises during the Term. Tenant shall retain such books and records, copies of all tax reports and tax returns submitted to taxing authorities, as well as copies of contracts, vouchers, checks, inventory records and other documents and papers in any way relating to the operation of such business for at least three (3) years from the end of the period to which they are applicable or, if any audit is commenced or if a controversy should arise between the parties hereto regarding Rent, until such audit or controversy is terminated even though Tenant's retention period may continue after the expiration of the Term or earlier termination of this Lease.
- (e) Landlord's Right to Inspect. Landlord's acceptance of Rent payments shall be without prejudice to Landlord's examination and audit rights. Tenant's books and records (including the books and records of any subtenant, licensee, concessionaire and other occupant) shall be open at all reasonable times during the aforesaid retention period to the inspection of Landlord or its duly authorized representatives, upon ten (10) days prior notice to Tenant, and Tenant shall make such books, records and other materials available at the Premises for such examination and audit at Landlord's request. Landlord and its representatives shall have full and free access to such books and records and the right to require explanation from Tenant, its agents and employees. Provided that such information is not then part of the public domain, the information obtained through said inspection shall be held as confidential by Landlord and Landlord's officers, agents and employees and shall not be revealed, either verbally or in writing, except (i) upon the prior written consent of Tenant, or (ii) if required pursuant to any litigation, or (iii) to Landlord's advisors, accountants and attorneys, or (iv) to prospective

purchasers or current or prospective mortgagees of the Shopping Center or current or prospective investors in the Shopping Center, or (v) if otherwise required by law. If any such information subsequently becomes part of the public domain without the breach of the terms and conditions of this Lease, then Landlord and Landlord's officers, agents and employees shall no longer be bound by the requirements of the preceding sentence.

- (f) Tenant's Failure to Comply. If such audit shall disclose that (i) any of the Yearly Reports intentionally understate Gross Sales during the reporting period of the report to the extent of two percent (2%) or more; or (ii) Tenant has not recorded Gross Sales or kept books of accounts and records for the period as required herein; or (iii) if Tenant shall be delinquent in delivering to Landlord the Yearly Report or Monthly Reports for two (2) consecutive months or more than twice in any Lease Year, then such understatement, failure or delinquency shall be an "Event of Default". In addition, in the event of such understatement or failure, Landlord shall have the right to bill Tenant the amount of any Rent deficiency and the reasonable cost of said audit, all of which shall be paid by Tenant within ten (10) days after demand. Such deficiency will bear interest from and after the date it should have been paid until paid.
- (g) Remedy. In the event Tenant intentionally violates the provisions of this Article and, as a result of such violation, Landlord or its authorized representative is unable to conduct a proper examination and/or audit, the parties agree that Landlord shall have been deprived of an important right under this Lease and, as a result, will suffer damages in an amount which is not readily ascertainable. Therefore, in such event, Landlord shall have the right to collect and Tenant agrees to pay, as liquidated damages and not as a penalty, an amount equal to twenty percent (20%) of the greater of (i) Minimum Rent reported for the period or periods in question, or (ii) the annual Minimum Rent payable for the period or periods in question. Such liquidated damages are in addition to and not in lieu of any other remedies (at law or in equity) which Landlord may have under this Lease.

V. TAXES.

- A. Real Estate Taxes and Assessments.** Parties acknowledge this is a Gross Lease and all Real Estate Tax charges are included as Minimum Rent.
- B. Rental Taxes.** If any governmental taxing authority shall levy, assess, or impose any tax, excise or assessment (other than income or franchise tax) upon or against the rents payable by Tenant to Landlord ("Rent Tax"), either by way of substitution for or in addition to any existing tax on land, buildings or otherwise, Tenant shall directly pay, or reimburse Landlord for, the Rent Tax, as the case may be.
- C. Impact Fees.** Tenant shall pay all impact fees, including, without limitation, any commercial impact fees for water and sewer, attributable to Tenant's usage of such utilities at the Premises and/or based on the number of square feet within the Premises. Tenant shall reimburse Landlord for any such fees previously paid by Landlord and attributable to the Premises.
- D. Additional Tax Obligations.** Tenant shall be solely responsible for and shall pay before delinquency, all income taxes, sales taxes, excess profit taxes, or any franchise, capital stock, inheritance or estate taxes, license fees, inspection fees, and any special assessments not related to real estate taxes.

VI. CONSTRUCTION.

- A. Landlord's Work.** Landlord shall have no obligation to perform or cause the performance of construction of any improvements to the Premises prior to delivery thereof to Tenant.
- B. Delivery of Premises.** Landlord shall use reasonable efforts to deliver the Premises to Tenant on or before the Estimated Delivery of Possession Date set forth in Article I(G), herein, in an "as is" condition, subject to delays caused by any circumstances beyond Landlord's reasonable control. In no event shall Landlord be liable to Tenant for any failure or delay by Landlord in delivering the Premises to Tenant on the date set forth above. Tenant hereby acknowledges that Landlord has made no representations or warranties to Tenant with respect to the condition of the Premises or the working order of any systems or improvements therein existing as of the date of delivery.
- C. Tenant's Construction.** Within thirty (30) days from the date of this Lease, Tenant shall prepare and deliver

to Landlord detailed plans and specifications of the improvements to the Premises to be constructed by Tenant. Within fifteen (15) days following Landlord's receipt of Tenant's plans and specifications Landlord shall notify Tenant whether Tenant's plans and specifications are acceptable to Landlord. If Tenant's plans and specifications are not acceptable to Landlord, Landlord will advise Tenant of the required modifications to Tenant's plans and specifications. Tenant shall modify and deliver to Landlord its revised plans and specifications within five (5) days from receipt of Landlord's required modifications. Landlord and Tenant will continue this process until Landlord has approved Tenant's plans and specifications ("Tenant's Work"). Within five (5) days from receipt of Landlord's approval of Tenant's plans and specifications, Tenant will apply for any and all permits and other governmental approvals necessary to perform Tenant's Work and Tenant will diligently pursue such application until approved. Tenant shall not modify Tenant's plans and specifications approved by Landlord without Landlord's prior written consent. Upon Landlord's delivery of the Premises, and provided Landlord has approved Tenant's plans and specifications, Tenant will commence construction of Tenant's improvements to the Premises in accordance with the plans and specifications approved by Landlord. Tenant shall not commence any work in the Premises until Tenant delivers to Landlord a policy of public liability and property damage insurance in accordance with the requirements of Article XII of this Lease. In the event Tenant has not complied with each of the foregoing conditions, Landlord may, in its sole and absolute discretion, reasonably control Tenant's access to the Premises to the extent Landlord deems necessary without such actions resulting in any postponement or delay of the Rent Commencement Date set forth in Article I of this Lease.

Tenant hereby acknowledges that Tenant is responsible for any and all improvements of the systems and interior of the Premises under this Lease.

D. Signage. Tenant shall install no exterior sign without Landlord's prior written approval, which approval ~~may be withheld in Landlord's sole discretion~~ shall not be unreasonably withheld or delayed. Tenant shall submit to Landlord for Landlord's approval Tenant's plans and specifications for Tenant's exterior signage. If Landlord so approves, Tenant shall be permitted to erect a sign or signs upon the Premises at Tenant's sole cost and expense, provided all signage is in compliance with size, location and other requirements of Landlord and as may be set forth by applicable ordinances and regulations including, but not limited to, sign and design ordinances. All signage shall conform to aesthetic and design criteria, themes, and standards of the Shopping Center. Upon the expiration or earlier termination of this Lease and upon written demand therefor from Landlord, Tenant shall promptly remove all signage and return the Premises to its original condition. All signs shall be installed, and removed, at Tenant's sole cost and expense. At Landlord's discretion, Tenant shall remove all signage at the expiration or earlier termination of this Lease at its sole cost and expense.

E. Miscellaneous. Tenant shall be required to control and retain noise, dust or other materials within the Premises, subject to directives from Landlord. Tenant shall be required to clean all HVAC filters clogged with dust, or other materials resulting from its construction activities.

VII. COMMON AREAS.

A. Common Areas. Landlord grants to Tenant and Tenant's customers and invitees the non-exclusive right to use the areas designated by Landlord from time to time as Common Areas. The term "Common Areas" shall mean the parking areas, roadways, pedestrian sidewalks, loading docks, delivery areas, exterior surfaces of Shopping Center buildings, landscaped areas, service courts, open and enclosed courts and malls, fire corridors, meeting areas and public restrooms, and all other areas or improvements which may be provided by Landlord for the common use of the tenants of the Shopping Center. Landlord does not represent or warrant that the Common Areas will be free from interruption of service or use for reasons beyond Landlord's reasonable control. In no event shall Landlord be liable for compensatory, incidental or consequential damages by reason of such interruption. Landlord hereby reserves the following rights with respect to the Common Areas:

1. To establish reasonable rules and regulations for the use thereof;
2. To use or permit the use by others to whom Landlord may have granted such rights for promotional activities;
3. To close all or any portion thereof as may be deemed necessary by Landlord to prevent a dedication thereof or the accrual of any rights to any person or the public herein;
4. To change the layout of such Common Areas, including the right to reasonably add to or subtract from their shape and size, whether by the addition of building improvements or otherwise, and shall have the right to retain revenue from income producing events whether or not conducted for

promotional purposes;

5. To erect and install signs, kiosks, landscaping (including planters), fountains, sculptures, free standing buildings and other structures, additional stories to existing buildings or otherwise; and
6. To operate, manage, equip, light, repair and maintain said Common Areas for their intended purposes in such manner as Landlord shall in its sole discretion from time to time determine.

VIII. UTILITIES AND RUBBISH DISPOSAL.

- A. Utility Charges.** Commencing on the Effective Date, Tenant shall pay to Landlord in advance of the first day of each month throughout the Lease Term and any Option Period thereafter, the sum of \$12,000.00 per annum payable in equal monthly installments of \$1,000.00 in advance of the first day of each month as its contribution for electricity attributed to the Premises. Tenant shall, at its sole cost and expense, pay for the cost of installation of meters for the Premises and any and all related costs and expenses if such meters do not exist at the Premises on the date possession of the Premises is made available to Tenant.

If any utilities are not separately metered or are only partly separately metered and are used in common with other tenants of the Shopping Center, Tenant shall pay to Landlord its share of such utility costs computed by Landlord, in Landlord's sole discretion, to reasonably reflect Tenant's consumption of such utility from the Premises. Such payments shall be made pursuant to Section C of this Article VIII.

Notwithstanding the foregoing, Landlord shall have the right, but not the obligation, to supply Tenant with any or all utility services provided to or for the benefit of the Premises and Tenant shall pay to Landlord or Landlord's agent the cost of such utilities provided to Tenant at the Premises pursuant to Section C of this Article VIII. Landlord shall, in Landlord's sole discretion, compute Tenant's cost of such utilities to reasonably reflect Tenant's consumption of such utilities from the Premises. In no event, however, shall the cost of such utility service(s) supplied by Landlord exceed a rate which Tenant would otherwise pay for such utility service(s) if Tenant obtained such utility service(s) directly from the applicable utility supplier. Landlord and Tenant further agree that Landlord shall have the right to discontinue supplying such utility service(s) upon ten (10) days prior written notice to Tenant, provided Landlord shall not discontinue such utility service(s) until Tenant has obtained the discontinued utility service(s) from the applicable utility supplier and Tenant has provided Landlord with written notice thereof.

Landlord and Tenant hereby acknowledge that electrical service to the Premises may be furnished by one or more companies providing electrical generation, transmission and/or distribution services. Landlord hereby reserves the right to charge Tenant for the cost of electrical service to the Premises as a single charge or divided into and billed in a variety of categories such as distribution charges, transmission charges, generation charges, public good charges or other similar categories. Landlord further reserves the right, at its sole discretion, to select the company(ies) providing electrical service(s) to the Shopping Center, including the Premises, to aggregate the electrical service for the Premises and other premises within the Shopping Center, to purchase electricity for the Shopping Center, including the Premises, through a broker and/or buyers group and to change the providers and/or manner of purchasing electricity from time to time. Landlord shall be entitled to receive a reasonable fee (if permitted by law) for the services provided by Landlord in connection with the selection of utility companies and the negotiation and administration of contracts for the generation of electricity to the Shopping Center. In addition, if Landlord bills Tenant directly for the cost of electricity service to the Premises, the cost of electricity service may include (if permitted by law) an administrative fee to reimburse Landlord for the cost of reading meters, preparing invoices and related costs. Tenant shall be responsible for all improvements within the Premises.

- B. Rubbish Disposal.** Landlord reserves the right to implement a program of rubbish removal for the Shopping Center. Landlord shall implement such program by (i) the initial acquisition by purchase or lease of disposal facilities, including but not limited to, compactor(s), baling machine(s) and/or incinerator(s), and the cost of initial acquisition and installation of such equipment or facilities shall be reimbursable to Landlord within thirty (30) days from receipt of Landlord's invoice based upon a proration from each tenant according to the projected use of such facilities, (ii) the implementation of uniform and objective rules and regulations for the storage, separation and disposal of rubbish, and (iii) establishment of guidelines for the scheduled and permitted uses of any such facilities, alternate methods of disposing of any rubbish which is not compatible with the facility, and a schedule of costs and fees to each tenant for the use of said facilities (inclusive of the cost of any required maintenance of such facilities and the cost of removal of the by-product from the Shopping Center). Landlord, in its sole discretion, shall have the right to retain the services of an independent consultant the cost of which shall be included in the total cost of the program. Landlord reserves the right to utilize the facilities to dispose of Common Area rubbish and such cost, if any, shall be included in the Minimum Rent and/or Additional Rent.
- C. Payment.** If and to the extent Landlord shall bill Tenant for utilities and/or rubbish disposal pursuant to this Article VIII, such charges shall be paid by Tenant in monthly installments on the first day of each month based upon the annual amount to be reasonably estimated by Landlord from time to time. Subsequent to the

expiration of the period used by Landlord in estimating Tenant's share of such cost, Landlord shall furnish to Tenant a statement of the actual amount of Tenant's proportionate share of utilities and/or rubbish disposal for such period and within fifteen (15) days, Tenant shall pay to Landlord or Landlord shall remit to Tenant, as the case may be, the difference between the estimated amounts previously paid by Tenant and the actual amount of Tenant's utilities and/or rubbish disposal charges for such period as shown by Landlord's statement.

D. Landlord Utility Indemnification. In no event shall Landlord be liable for the quality, quantity, failure, or interruption of the foregoing utility and rubbish disposal services to the Premises.

IX. USE OF PREMISES BY TENANT.

A. Tenant's Use of Premises. Tenant shall use the Premises only for the uses set forth in Article I(l) of this Lease and for no other purpose.

B. Operation of Business. Tenant agrees to open the Premises for business fully fixtured, stocked and staffed and to continuously conduct ~~in 100% of the Premises, on all business days~~ during the Term of this Lease and any renewal or extension thereof, the business described above, except where Tenant is prevented from doing so by strikes, casualty or other causes beyond Tenant's control.

C. Tenant shall at all times conduct its business in a high grade and reputable manner, shall not violate any article of this lease agreement.

D. Tenant shall procure any licenses and permits required for the use made of the Leased Premises by Tenant.

X. TENANT'S COVENANTS WITH RESPECT TO OCCUPANCY. Tenant agrees:

1. To occupy the Premises in a safe and careful manner and in compliance with all laws, ordinances, rules, regulations and orders of any governmental bodies having jurisdiction over the Premises, and without committing or permitting waste;
2. To neither do nor suffer anything to be done or kept in or about the Premises which contravenes Landlord's insurance policies or increases the premiums therefor;
3. To keep its show or display windows, canopy and electric signs lighted until at least 9:30 P.M. local time of each day or until thirty (30) minutes after the close of each business day, whichever is the later;
4. To permit no reproduction of sound which is audible outside the Premises or permit odors to be unreasonably dispelled from the Premises;
5. To place no sign on the exterior of the Premises or on the interior surface of any windows of the Premises without Landlord's prior written consent. Tenant shall maintain all signs placed upon the Premises by Tenant in good condition and repair. Tenant agrees not to display any banners, pennants, search lights, window signs, balloons, or similar advertising media on or about the Premises. Upon vacating the Premises, Tenant agrees to remove all signs installed by Tenant and repair all damage caused by such removal;
6. To place no merchandise, sign or other thing of any kind in the vestibule or entry of the Premises or on the sidewalks or other Common Areas adjacent thereto;
7. To park Tenant's vehicles and to require all employees to park only in such places as may be designated from time to time by Landlord for the use of Tenant and its employees, and specifically not to permit parking of any Tenant or employee vehicles in any service court area. Landlord reserves the right to impose fines against Tenant for any violation of these parking restrictions by Tenant and/or Tenant's employees and to have towed, at Tenant's cost and expense, any automobile parked in violation of this Section;
8. To keep any rubbish, garbage and waste generated by Tenant from the Premises in proper dumpsters provided by Tenant adjacent to the Premises or such other area designated by Landlord from time to time until such rubbish, garbage and waste is removed from the Shopping Center and to permit no refuse to accumulate around the exterior of the Premises;
9. To neither load nor unload or permit the loading or unloading of merchandise, equipment or other property from any doors of the Premises that open onto the front sidewalk areas, nor from any other doors except from the rear of the Premises and to use its best efforts to prevent the parking or standing of vehicles and equipment upon Shopping Center land except when actually engaged in loading or unloading. In the event Tenant violates this covenant, Tenant shall have twenty-four

EMR: This is a theater. There will not be a show on all business days during the term of the lease. Therefore, business cannot be conducted in 100% of the premises on all business days.

Dick: Possible wording of note/text here in IX.B.:

Tenant is a performance theater company. Space will be open to the public when the house is open for performances. The space will be in use during other hours for activities such as, but not limited to, costuming, set construction, rehearsal, and office work consistent with its mission.

- (24) hours following receipt of notice from Landlord (which notice may be given by personal delivery to the Premises including, but not limited to, oral notice by Landlord's representative at the Shopping Center) to cease such activity or be deemed to be in default under this Lease, notwithstanding any cure periods set forth in Article XVI, and Landlord shall have the immediate right to invoke any legal or equitable remedies to enjoin Tenant from such activity;
10. To conduct no auction, fire, bankruptcy, liquidation, going-out-of-business, moving, relocating or any other similar sale without the prior written consent of Landlord;
 11. Not to permit to be attached or recorded against the Premises or any other portion of the Shopping Center any lien, encumbrance or charge arising out of any work performed or materials furnished by any contractor, mechanic, laborer, or materialman for or at the request of Tenant. Tenant will not enter into any mortgages, conditional sale, security agreement or like instrument nor suffer any other matter or thing whereby the estate, right and interest of Landlord in the Premises or any part thereof might be impaired or diminished. If any lien or notice of lien on account of an alleged debt of Tenant or any notice of contract by a party engaged by Tenant or Tenant's contractor to work on the Premises is filed against the Premises or any part of the Shopping Center, Tenant will, within ten (10) calendar days after notice of the filing thereof, cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction, letter of credit or other adequate security. If Tenant fails to cause such lien or notice of lien to be discharged within such period, Landlord, its managing agent, or Landlord's lender, may, but shall not be obligated to, discharge the same either by paying the amounts claimed to be due or by procuring the discharge of such lien by deposit, bond or otherwise, and Tenant shall, immediately upon demand, reimburse Landlord, its managing agent, or Landlord's lender for any and all costs and expenses incurred by Landlord, its managing agent, or Landlord's lender, to discharge such lien including, without limitation, all attorneys' fees, court costs and similar expenses, plus an administrative fee equal to One Thousand and 00/100 Dollars (\$1,000.00). In addition, Tenant shall indemnify and hold Landlord, its managing agent, and Landlord's lender, if any, harmless from and against all loss, cost, expense and liability whatsoever (including Landlord's or its managing agent's cost of defending against the foregoing, such cost to include attorneys' fees) resulting or occurring by reason of any claims or causes of actions that may arise as a result of any lien, notice of lien or claim relating to work and/or materials furnished to the Premises at the request of Tenant, its employees, agents or contractors;
 12. To solicit no business in the Common Areas, nor distribute handbills or other advertising matter to customers, nor place the same in or on automobiles in the Common Areas, nor conduct any promotional activity whatsoever in the Common Areas;
 13. To comply with all reasonable rules and regulations which Landlord may from time to time establish for the use and care of the Premises and the Common Areas;
 14. N/A;
 15. To shut off all exhaust fans, if any, servicing the Premises at all times when the Premises are closed; to keep the Premises adequately heated and cooled to comfortable room temperature year round and, if applicable, to at least the same minimum temperature (in the case of heat) or at the same maximum temperature (in the case of air-conditioning) as Landlord shall attempt to maintain in the enclosed Common Areas, if any;
 16. To prohibit the operation on the Premises or in any part of the Shopping Center of any coin or token- operated vending machines, video games or similar devices;
 17. To permit Landlord or its agents, during the ninety (90) day period preceding the expiration of the Term of this Lease, to show the Premises to potential tenants, and to place on the Premises notices offering the Premises for lease or sale; and
 18. That it shall make no installations upon or any penetrations through the roof or the exterior walls of the Premises without the prior written consent of Landlord. Any unauthorized roof installations or penetrations by Tenant shall be subject to immediate removal and repair, at Tenant's sole cost and expense, upon notice from Landlord. Repairs shall be made with materials of equal or better quality and by contractors approved by Landlord;
 19. In the event Landlord elects to make any additions or changes to the Premises and/or Shopping Center, Tenant shall, at its sole cost and expense, upon Landlord's request: (i) temporarily relocate Tenant's signage and/or remove Tenant's signage; and/or (ii) modify Tenant's signage to conform to Landlord's signage criteria, then in effect, that applies to the Shopping Center, provided such requirements are uniformly applied and enforced;
 20. Tenant shall, at its sole cost and expense, contract for termite and pest extermination services covering the Premises to be rendered as required by Landlord; provided, however, Landlord reserves the right to implement a program for termite and pest extermination for portions of the

Shopping Center and Tenant shall participate in such program at Tenant's sole cost and expense upon notice from Landlord.

21. Not to cause any nuisance or to become a blighting influence and a hazard to the health and safety of patrons, neighbors and the public.

XI. REPAIRS AND ALTERATIONS.

- A. Repairs by Landlord.** Landlord shall keep the foundations, roof, and structural portions of the outer walls of the Premises in working order, except for repairs required thereto by reason of the acts of Tenant, Tenant's employees, agents, invitees, licensees, or contractors. Notwithstanding anything herein to the contrary, some or all of these repairs will be subject to inclusion in Tenant's Minimum Rent or Additional Rent, including, but not limited to, the cost of painting of the outer walls of the Shopping Center buildings, including the Premises. Tenant shall give Landlord written notice of the necessity for repairs coming to the attention of Tenant following which Landlord shall have a reasonable time to undertake and complete such repairs. The provisions of this Article XI, Section A, shall not apply in the case of damage or destruction by fire or other casualty or by eminent domain, in which events the obligations of Landlord shall be controlled by either Article XIII or Article XV hereof.

It is expressly understood that Landlord shall not be responsible for any portions of the Premises constructed by Tenant or any prior occupant of the Premises.

Repairs by Tenant. Tenant shall keep the Premises and any fixtures, facilities, signs or equipment contained therein, in good condition and repair/replacement, including, but not limited to, exterior and interior portions of all doors, door checks and operations, windows, plate glass, and showcases surrounding the Premises, the heating, air conditioning, HVAC, electrical, plumbing, sprinkler and sewer systems, fire safety system, the exterior doors, window frames, and all portions of the store front area, and shall make any replacements of the foregoing and of all broken and/or cracked plate and window glass which may become necessary during the Term of this Lease, and any renewals thereof. In connection with Tenant's obligation to maintain the HVAC system serving the Premises, Tenant shall, during the Term of this Lease, and any renewals thereof, at its sole cost and expense, maintain a service contract for the routine performance of standard HVAC system maintenance, including but not limited to, periodic replacement of filters, oiling of mechanical components and inspection for wear and tear. Landlord reserves the right to designate an HVAC contractor with whom Tenant shall contract for such routine HVAC system maintenance so long as the fee charged by Landlord's designated contractor shall be the same or less than the fee charged by Tenant's contractor for similar services. If Tenant fails to commence or complete repairs promptly and adequately, Landlord may make or complete said repairs and Tenant shall pay the cost thereof to Landlord upon demand, together with the sum of fifteen percent (15%) of said costs for overhead and an additional sum equal to ten percent (10%) of said amount for profit. Tenant hereby acknowledges that Tenant is responsible for any and all repairs/replacements of the systems and interior of the Premises under this Lease.

E. Alterations or Improvements by Tenant. Tenant shall not, without Landlord's prior written consent, make, or permit to be made, any alterations, additions or improvements to the Premises, which consent Landlord may withhold in its sole discretion. Any alterations which may be permitted by Landlord shall be based upon plans and specifications submitted by Tenant and approved by Landlord and upon the condition that Tenant shall promptly pay all costs, expenses, and charges thereof, shall make such alterations and improvements in accordance with applicable laws and building codes and ordinances and in a good and workmanlike manner, and shall fully and completely indemnify Landlord, its managing agent, and Landlord's lender against any mechanic's lien or other liens or claims in connection with the making of such alterations, additions, or improvements. Tenant shall promptly repair any damages to the Premises, or to the buildings of which the Premises are a part, caused by any alterations, additions or improvements to the Premises by Tenant.

Tenant hereby acknowledges that Tenant is responsible for any and all improvements of the systems and interior of the Premises under this Lease.

- D. Removal of Improvements.** At the expiration or earlier termination of the Lease Term, all improvements included in Landlord's Work, if any, all heating and air conditioning equipment, and all alterations, additions and other improvements by Tenant shall become the property of Landlord and shall not be removed from the Premises. All trade fixtures, furniture, furnishings, and signs installed in the Premises by Tenant and paid for by Tenant shall remain the property of Tenant and shall be removed upon the expiration of the Lease Term, provided that Tenant shall repair any damage caused to the Premises by the removal of any such items that are affixed to the Premises. If Tenant fails to remove such items from the Premises prior to the expiration or earlier termination of this Lease, or if Tenant has not fully performed all of the covenants and agreements to be performed by Tenant under the provisions of this Lease, all such trade fixtures, furniture, furnishings, and signs shall become the property of Landlord. In such event, Landlord shall have the right to remove and sell

such trade fixtures, furniture, furnishings, and signs to pay for the cost of removal and/or repairs to the Premises. To the extent the revenue received by Landlord's sale of such trade fixtures, furnishings, and signs is insufficient to recover Landlord's cost of removing the same and/or repairs to the Premises, then Landlord shall have the right to proceed directly against Tenant to recover any balance. Notwithstanding anything contained to the contrary in this Lease, if Tenant removes such items from the Premises but fails to repair any damage caused by such removal, Landlord may make or complete said repairs without providing Tenant notice prior to the

reimburse Landlord the cost thereof upon demand, together with the sum of fifteen percent (15%) of said costs for overhead and an additional sum equal to ten percent (10%) of said amount for profit. Tenant's obligations under this Section D shall survive the termination of this Lease.

XII. INDEMNITY AND INSURANCE.

A. Indemnification by Tenant. Tenant will indemnify and hold Landlord, its managing agent, and Landlord's lender harmless from and against all loss, cost, expense, and liability whatsoever (including Landlord's cost of defending against the foregoing, such cost to include attorney's fees) resulting or occurring by reason of (i) the negligent or willful act or misconduct of Tenant, its employees, agents and contractors, occurring within the Shopping Center, and (ii) Tenant's construction, use or occupancy of the Premises.

B. Tenant's Insurance. Effective as of the date Tenant first enters the Premises and continuing throughout the Lease Term and any extensions or renewals thereof, including, without limitation, any holdover with or without Landlord's consent, Tenant shall procure, pay for and keep in full force and effect, the following types of insurance:

1. Commercial General Liability Insurance Policy insuring the Premises and Tenant's use thereof, together with contractual liability endorsements covering Tenant's obligations set forth in Article XII, Section A, above, in a form satisfactory to Landlord with companies having an A.M. Best Rating or its equivalent of A-VIII or better, and with a minimum limit of One Million and 00/100 Dollars (\$1,000,000.00) on account of bodily injuries to or death or property damage for each occurrence and a minimum limit of Two Million Dollars (\$2,000,000.00) annual general aggregate. The aggregate limit may be satisfied through a combination of primary and umbrella/excess liability insurance. Such insurance shall also provide that the general aggregate limits apply separately to each insured location, if applicable. The foregoing policy shall name Landlord and such other parties as Landlord may from time to time designate in writing to Tenant as additional insureds under Tenant's insurance policy and shall bear endorsements to the effect that the insurer agrees to notify all additional insureds not less than thirty (30) days in advance of any modification or cancellation thereof;
2. Special Form Cause of Loss Property Insurance Policy, including extended coverage endorsements insuring all leasehold and building improvements in the Premises, Tenant's stock-in-trade, trade fixtures, furniture, furnishings, special equipment, floor and wall coverings, and all other items of personal property of Tenant located on or within the Premises, such coverage to be in an amount equal to one hundred percent (100%) of the replacement cost thereof, and business interruption or loss of income insurance in an amount equal to the Minimum Rent and any other Additional Rent (hereunder defined) payable under this Lease for a minimum period of twelve (12) months. The foregoing policy shall name Landlord, and such other parties as Landlord may from time to time designate in writing to Tenant as loss payee under Tenant's insurance policy with regard to the permanent leasehold improvements within the Premises, including mechanical equipment and permanent fixtures and shall bear endorsements to the effect that the insurer agrees to notify all loss payees not less than thirty (30) days in advance of any modification or cancellation thereof;
3. Workers' compensation insurance (meeting the requirements of the workers' compensation laws of the State in which the Premises is located) and employer liability insurance covering all of Tenant's employees at the Premises. Tenant shall also use good faith efforts to ensure all contractors, sub-contractors, vendors, leased employees, and temporary employees are properly insured for workers' compensation;
4. Plate glass insurance covering all plate glass on the Premises at full replacement value; and,
5. Commercial automobile liability insurance for hired, owned/registered under Tenant's name and non-owned vehicles, including contractual liability with a single limit of liability not less than \$1,000,000 per accident for bodily injury and property damage combined; and
6. If Tenant is engaged in any way in the manufacture, sale or distribution of alcoholic beverages, either for consumption of alcoholic beverages on or off the Leased Premises, Tenant will also

maintain liquor liability insurance on an occurrence basis with the limits of not less than \$2,000,000 each common cause and \$3,000,000 aggregate

7. Any insurance policies reasonably designated necessary by Landlord with regard to Tenant's, or Tenant's contractors' construction of Tenant's Work, as well as with regard to the construction of alterations including, but not limited to, contingent liability and "all risk" builders' risk insurance.

Tenant shall deposit with Landlord prior to the date of any use or occupancy of the Premises by Tenant certificates evidencing Tenant's compliance with each of the required coverage's. To the extent that any of the foregoing policies shall change in name and/or coverage due to general changes in the insurance industry,

Tenant shall obtain and maintain the equivalent policies and coverage's as are then recognized in the insurance industry.

All certificates of insurance required of Tenant pursuant to this Article shall name each Landlord entity as well as the Namdar Realty Group LLC as Additional Insureds and Certificate Holders.

- C. **Mutual Waiver of Subrogation.** All insurance policies required to be carried by either party pursuant to the terms set forth in this Article XII shall, to the extent permitted by law, expressly waive any right on the part of the insurer against the other party. The parties hereto agree that their policies will include such waiver clause or endorsement. The failure of any insurance policy to include such waiver clause or endorsement shall not affect the validity of this Lease. Tenant and Landlord further agree to waive all claims, causes of action and rights of recovery against the other, and their respective agents, officers, and employees, for any injury to or death of persons or any damage or destruction of persons, property or business which shall occur on or about the Premises originating from any cause whatsoever including the negligence of either party and their respective agents, officers, and employees to the extent such injury, death or property damage is required to be covered by a policy or policies maintained by either Landlord or Tenant pursuant to this Lease. Notwithstanding the above, Landlord and Tenant agree and acknowledge that the waiver of subrogation herein contained shall expressly extend to and include any uninsured loss paid by the insured in the form of a deductible or self-funded retention cost.
- D. **Landlord's Liability.** Except for Landlord's gross negligence or willful misconduct, Landlord shall not be liable (i) for any damage to Tenant's property located in the Premises, regardless of the cause of such damage, (ii) for any acts or omissions of other tenants of the Shopping Center, nor (iii) for any condition of the Premises whatsoever unless Landlord is responsible for the repair thereof, and has failed to make such repair after notice from Tenant of the need therefor, and expiration of a reasonable time for the making of such repair.
- E. **Landlord's Insurance.** Landlord agrees to carry insurance under a Special Form Cause of Loss Policy (or an equivalent policy that becomes the insurance industry standard in the future) on the Shopping Center improvements constructed by Landlord in an amount equal to at least eighty percent (80%) of the insurable value of such improvements, together with endorsements insuring against such other risks as Landlord deems appropriate (including, but not limited to, earthquake, flood, boiler and machinery, plate glass, power failure, mold, windstorm, terrorism, seepage or leakage and loss of rent) and in such amounts, with such terms and with such insurers, all as Landlord deems appropriate in Landlord's sole discretion. Such insurance shall specifically exclude Tenant's personal property and the interior leasehold improvements, mechanical equipment and permanent fixtures that Tenant is obligated to maintain pursuant to the terms of this Lease. Landlord shall also maintain in full force and effect throughout the Term commercial general liability insurance with regard to the Common Areas with minimum limits of \$1,000,000.00 per occurrence, \$2,000,000.00 general aggregate, for bodily injury, death and property damage liability. Landlord shall have the right to carry its insurance under "blanket" and/or "umbrella" policies covering the Shopping Center and other properties. Any insurance policies maintained by Landlord may include deductibles, self-insured retentions or the like in amounts determined by Landlord, in Landlord's sole discretion. Landlord shall have the right, but not the obligation, to maintain commercial insurance policies covering some or all of the deductibles, self-insured retentions or the like which are provided in any of Landlord's other insurance policies. The insurance policies maintained by Landlord pursuant to this Section are individually and collectively referred to herein as "Landlord's Insurance." Tenant shall have no rights in said policy or policies maintained by Landlord and shall not, by reason of such reimbursement, be entitled to be a named insured thereunder.

- XIII. **DAMAGE AND DESTRUCTION.** In the event the Premises are damaged by any peril covered by the insurance policies that Landlord is required to maintain pursuant to Article XII of this Lease, the damage shall, except as hereinafter provided, promptly be repaired by Landlord, at Landlord's expense; provided, however that in no event shall Landlord be required to repair or replace any of the property or improvements described in Article XII, Sections (B)(2) and (B)(5) which shall be the obligation of Tenant to replace to at least equal

condition immediately prior to such damage. In the event (a) the Premises are damaged to the extent of twenty-five percent (25%) or more of the cost of replacement of the Premises, (b) the buildings on the Shopping Center are damaged to the extent of fifty percent (50%) or more of the cost of replacement, notwithstanding the extent of damages to the Premises, or (c) the building containing the Premises is damaged to the extent of fifty percent (50%) or more of the cost of replacement, notwithstanding the extent of damage to the Premises, or (d) any damage to the Premises occurs during the last three (3) years of the Term of this Lease, Landlord may elect either to repair or rebuild the Premises or the buildings on the Shopping Center, as the case may be or to terminate this Lease upon giving notice of such election in writing to Tenant within ninety (90) days after the event causing the damage. If the casualty, repairing, or rebuilding shall render the Premises untenantable, in whole or in part, a proportionate abatement of the Minimum Rent and Additional Rent in proportion to the sales floor area of the Premises rendered untenantable shall be allowed until the date Landlord completes the repairs or rebuilding.

XIV. ASSIGNMENT AND SUBLETTING. Tenant shall not assign this Lease nor sublet the Premises or any part thereof, without in each case the prior written consent of Landlord, which consent Landlord may withhold in its sole discretion. Tenant shall not permit any business to be operated in or from the Premises by any concessionaire or licensee without the prior written consent of Landlord, which consent Landlord may withhold in its sole discretion. The parties acknowledge that joint productions with other companies are an integral component of Tenant's business and the parties agree that Tenant's sharing portions of the Premises with other theater companies shall not be considered subletting provided that Tenant does not abandon the premises, regardless of any fees charged to said other theater companies to said other theater companies. In the event Tenant shall request Landlord's consent to an assignment of this Lease or subletting of the Premises, Tenant shall pay Landlord, as a condition to obtaining Landlord's consent the reasonable costs and expenses incurred by Landlord to review and/or prepare documents in connection with such assignment or sublease (including Landlord's reasonable attorneys' fees) and, in addition, a consent fee of Two Thousand Five Hundred and 00/100 Dollars (\$2,500.00) per request, regardless of whether such assignment or sublease is consummated by Tenant or consented to by Landlord. No consent by Landlord shall operate to relieve Tenant and/or Guarantor, if any, from primary liability for the performance of Tenant's obligations under this Lease.

Any sale, assignment, bequest, inheritance, transfer or other disposition of the ownership of Tenant's entity which shall result in a change in the effective control of Tenant including, without limitation, the sale of (a) stock in a corporate tenant, (b) partnership interests in a partnership tenant, or (c) member interests in a limited liability company tenant shall be deemed an assignment of this Lease requiring Landlord's prior written consent.

XV. EMINENT DOMAIN. In the event the Shopping Center or any part thereof shall be taken or condemned either permanently or temporarily for any public or quasi-public use or purpose by any authority in appropriate proceedings or by any right of eminent domain, the entire compensation award thereof, including, but not limited to, all damages as compensation for diminution in value of the leasehold, reversion and fee, shall belong to Landlord, without any deduction therefrom for any present or future estate of Tenant, and Tenant hereby assigns to Landlord all its right, title, and interest to any such award. Tenant shall have the right to recover from the condemning authority, but not from Landlord, such compensation as may be separately awarded to Tenant.

In the event of a taking under the power of eminent domain of (i) more than twenty-five percent (25%) of the Premises or (ii) a sufficient portion of the Shopping Center so that after such taking less than fifty percent (50%) of the leasable floor area within all buildings located on the Shopping Center (as constituted prior to such taking) are occupied by tenants, either Landlord or Tenant shall have the right to terminate this Lease by notice in writing given within ninety (90) days after the condemning authority takes possession, in which event all rents and other charges shall be prorated as of the date of such termination.

In the event of a taking of any portion of the Premises not resulting in a termination of this Lease, Landlord shall use so much of the proceeds of Landlord's award for the Premises as is required therefor to restore the

Premises to a complete architectural unit and this Lease shall continue in effect with respect to the balance of the Premises, with a reduction of Minimum Rent in proportion to the portion of the Premises taken.

XVI. DEFAULT BY TENANT. If Tenant defaults in the payment of Minimum Rent or other charges and such payment is not made within five (5) days following Landlord's written notice that same is due, or if Tenant shall default in the performance of any other of Tenant's obligations hereunder and Tenant fails to remedy such default within fifteen (15) days after written notice from Landlord, provided that in no event shall Landlord be obligated to provide Tenant with written notice of any default, monetary or otherwise, more than once per calendar year, or if a receiver of any property of Tenant on the Premises is appointed, or Tenant's interest in the Premises is levied upon by legal process, or Tenant be adjudged bankrupt and Tenant fails within thirty (30) days to cause the vacation of such appointment, levy or adjudication, or if Tenant files a voluntary petition in bankruptcy, disposes of all or substantially all of its assets in bulk, or makes an assignment for the benefit of its creditors, then and in any such instance, without further notice to Tenant, Landlord shall have the right to

Dick: Duplicated text "to said other theater companies".

exercise any and all rights or remedies available to Landlord at law, in equity or otherwise, arising from such default, including but not limited to the right to (i) terminate this Lease, or (ii) enter upon the Premises without terminating this Lease and relet the Premises in Landlord's name for the account of Tenant for the remainder of the Term upon terms and conditions reasonably acceptable to Landlord and immediately recover from Tenant any deficiency for the balance of the Term, plus expenses of reletting. In addition to the foregoing, any time after such default and the lapse of any applicable notice period, Landlord shall have the right to make such payments in default or perform such act in default for the account and at the expense of Tenant, and all unpaid Minimum Rent or other charges which are not paid when due and all sums paid by Landlord pursuant to this sentence, including reasonable attorneys' fees as specifically provided below, shall accrue interest at the annual rate of (i) fifteen percent (15%), or (ii) five percent (5%) above the prime lending rate most recently published by the Wall Street Journal, whichever is greater, which shall constitute Additional Rent under this Lease and shall be payable upon demand. Notwithstanding the foregoing, Landlord shall have no duty to mitigate the damages suffered by Landlord rising from the default by Tenant of any of its obligations under this Lease. If Tenant shall issue a check to Landlord which is dishonored by Tenant's depository bank and returned unpaid for any reason, including without limitation, due to insufficient funds in Tenant's checking account, Tenant shall (i) pay to Landlord as an administrative fee, the lesser of (a) the sum of Seventy-five and 00/100 Dollars (\$75.00), or (b) the maximum amount permitted by State law, and (ii) at Landlord's option, make all subsequent rental payments by bank certified check. The foregoing remedies shall be in addition to any other rights or remedies available to Landlord at law.

Tenant's failure to pay Rent, Additional Rent, or any other Lease costs when due under this Lease may cause Landlord to incur unanticipated costs. The exact amount of such costs is impractical or extremely difficult to ascertain. Such costs may include, but are not limited to, processing and accounting charges and late charges that may be imposed on Landlord by any ground lease, mortgage, or deed of trust encumbering the Shopping Center. Therefore, if Landlord does not receive the Rent, Additional Rent, or any other Lease costs in full on or before the fifth (5th) day of the month it becomes due, Tenant shall pay Landlord a late charge, which shall constitute liquidated damages, equal to Fifty Dollars (\$50.00) a day for each day rent is late after the first of the month ("Late Charge"), which shall be paid to Landlord together with such Rent, Additional Rent, or other Lease costs then in arrears. The parties agree that such Late Charge represents a fair and reasonable estimate of the cost Landlord will incur by reason of such late payment. All Late Charges and any returned check charges shall then become Additional Rent and shall be due and payable immediately along with such other Rent, Additional Rent, or other Lease costs then in arrears. Money paid by Tenant to Landlord shall be applied to Tenant's account in the following order: (i) to any unpaid Additional Rent, including, without limitation, Late Charges, returned check charges, legal fees and/or court costs legally chargeable to Tenant, and Common Area Maintenance Charges, and then (ii) to unpaid Minimum Rent. Nothing herein contained shall be construed so as to compel Landlord to accept any payment of Rent, Additional Rent, or other Lease costs in arrears or Late Charge or returned check charge should Landlord elect to apply its rights and remedies available under this Lease or at law or equity in the event of default hereunder by Tenant. Landlord's acceptance of Rent, Additional Rent, or other Lease costs in arrears or Late Charge or returned check charge pursuant to this clause shall not constitute a waiver of Landlord's rights and remedies available under this Lease or at law or equity.

At any time after the termination of this Lease, Landlord shall be entitled to additional damages ("Liquidated Damages"), which, at the election of Landlord shall be either:

(a) an amount equal to the Minimum Rent and Additional Rent (collectively "Rent"), which, but for the termination of this Lease, would have become due during the remainder of the Lease Term, less the amount of Rent, if any, which Landlord shall receive during such period from others to whom the Premises may be rented, in which case such Liquidated Damages shall be computed and payable in monthly installments, in advance, on the first day of each calendar month following termination of this Lease and continuing until the date on which the Lease Term would have expired but for such termination, and any suit or action brought to collect any such Liquidated Damages for any month shall not in any manner prejudice the right of Landlord to collect any Liquidated Damages for any subsequent month by a similar proceeding; or

(b) an amount equal to the present worth (as of the date of such termination) of Rent which, but for the termination of this Lease, would have become due during the remainder of the Lease Term, less the fair rental value of the Premises in which case such Liquidated Damages shall be payable to Landlord in one lump sum on demand and shall bear interest of five percent (5%) until paid. For purposes of this clause (b), "present worth" shall be computed by discounting such amount to present worth at a discount rate equal to one percentage point above the discount rate then in effect at the Federal Reserve Bank nearest to the location of the Shopping Center.

Tenant agrees to pay to Landlord upon demand, as Additional Rent, a sum equal to all costs and expenses (including attorney fees, professional fees, costs of investigation and disbursements) incurred by Landlord in enforcing any or all of its rights hereunder, specifically including the cost of collecting sums due, whether or

not an action or proceeding is commenced, or levying and collecting on any judgment or arbitration award in Landlord's favor, plus an additional sum equal to fifteen percent (15%) of all such costs and expenses representing the cost of Landlord's administrative expense to enforce its rights under this Lease.

All rights and remedies of Landlord herein enumerated shall be cumulative, and none shall exclude any other remedies allowed at law or in equity.

1. Legal Expenses

(a) In the event that Landlord should retain counsel and/or institute any suit against Tenant for violation of or to enforce any of the covenants or conditions of this Lease, or should Tenant institute any action against Landlord for violation of any covenants or conditions of this Lease, or should either party institute a suit against the other for a declaration of rights hereunder, or should either party intervene in any suit in which the other is a party, to enforce or protect its interests or rights hereunder, the prevailing party in any such suit shall be entitled to all its costs, expenses and reasonable fees to its attorney(s) in connection therewith.

(b) In the event that a bankruptcy proceeding is filed by or against Tenant under any chapter of the Bankruptcy Code, or Tenant makes an assignment for the benefit of creditors or commences or otherwise becomes the subject of any insolvency, receivership or similar proceeding, Landlord shall be entitled to recover its reasonable attorneys' fees and costs incurred in or in connection with any such proceeding from Tenant or any trustee, custodian, receiver, assignee or other representative acting on its behalf, all of which fees and expenses shall constitute, in addition to any other sums due and owing under this Lease (i) an obligation of Tenant hereunder, and (ii) a component of any cure claim assertable by Landlord under 11 U.S.C. § 365(b) or otherwise.

2. Confession of Judgment

(a) If Tenant shall default in the payment of the rent or any other sums due hereunder by Tenant, or in the event of any other event of default as defined herein, Tenant hereby irrevocably authorizes and empowers any prothonotary or attorney of any court of record within the United States of America, or elsewhere, to appear for Tenant, with or without complaint filed; and in said suits or actions to confess judgment, or a series of judgments, against Tenant and all persons claiming through or under Tenant, in favor of Landlord, for all or any part of said rental and/or said other sums, including, but not limited to, the amounts due from Tenant to Landlord under subsection (a) or subsection (b) of this section, and including any amount to which Landlord would be entitled as damages under the provisions of this Lease, including, but not limited to, Article XVI, and for interest and costs, and a reasonable attorney's commission not to exceed fifteen percent (15%) for collection, for which this Lease, or a true and correct copy thereof, shall be sufficient warrant, and such powers may be exercised as well after the termination or expiration of the term of this Lease.

Tenant hereby acknowledges that by agreeing to the foregoing confession of judgment and warrant of attorney, Tenant waives the right to notice and a prior judicial proceeding to determine its rights and liabilities, and further acknowledges that Landlord may, on default by Tenant under the Lease, subject to such notice requirements, if any, as are herein expressly provided, obtain a judgment against Tenant for all sums due hereunder, and levy execution on such judgment against any and all property of Tenant without any opportunity of Tenant to raise any defense, setoff, counterclaim or other claim that Tenant may have, and that Tenant knowingly, voluntarily and intelligently grants Landlord the foregoing right to confess judgment and warrant of attorney as an explicit and material part of the consideration bargained for between Tenant and Landlord. Tenant certifies that it has been represented by (or has had the opportunity to be represented) at the signing of this Lease and in the granting of this confession of judgment and warrant of attorney by independent legal counsel, selected of its own free will, and that it has had the opportunity to discuss the confession of judgment and warrant of attorney with counsel. Tenant further certifies that it has read and understands the meaning and effect of the foregoing confession of judgment and warrant of attorney.

(b) When this Lease or Tenant's right of possession shall be terminated by reason of the breach of any provision of the Lease, or in the event of a deliberate event of default as defined herein, either during the term or any renewal or extension thereof, and also when and as soon as the term shall have expired or been terminated, Tenant hereby irrevocably authorizes and empowers any prothonotary or attorney of any court of record as attorney for Tenant and any persons claiming through or under Tenant, with or without complaint filed, to confess judgment in ejectment against Tenant and all persons claiming through or under Tenant, in favor of Landlord, for the recovery by Landlord of possession of the Premises, for which this Lease, or a true and correct copy thereof, shall be sufficient warrant, whereupon if Landlord so desires, a writ of execution or of possession

may issue forthwith, without any prior writ or proceedings whatsoever, and provided that if for any reason after such action shall have been commenced the same shall be determined, canceled or suspended and possession of the Premises remain in or be restored to Tenant or any person claiming through or under Tenant, Landlord shall have the right upon any subsequent default or defaults, or upon any subsequent termination or expiration of this Lease, or any renewal or extension hereof, or of Tenant's right of possession as hereinbefore set forth, to confess judgment in ejectment as hereinbefore set forth one or more additional times to recover possession of the Premises.

Tenant hereby acknowledges that by agreeing to the foregoing confession of judgment and warrant of attorney, Tenant waives the right to notice and a prior judicial proceeding to determine its rights and liabilities, and further acknowledges that Landlord may, on default by Tenant under the Lease, subject to such notice requirements, if any, as are herein expressly provided, obtain a judgment against Tenant for possession of the Premises without any opportunity of Tenant to raise any defense, setoff, counterclaim or other claim that Tenant may have, and that Tenant knowingly, voluntarily and intelligently grants Landlord the foregoing right to confess judgment and warrant of attorney as an explicit and material part of the consideration bargained for between Tenant and Landlord. Tenant certifies that it has been represented by (or has had the opportunity to be represented) at the signing of this Lease and in the granting of this confession of judgment and warrant of attorney by independent legal counsel, selected of its own free will, and that it has had the opportunity to discuss the confession of judgment and warrant of attorney with counsel. Tenant further certifies that it has read and understands the meaning and effect of the foregoing confession of judgment and warrant of attorney.

(c) In any action of or for ejectment or for rent or other sums, if Landlord shall first cause to be filed in such action an affidavit made by it or someone acting for it setting forth the facts necessary to authorize the entry of judgment, such affidavit shall be conclusive evidence of such facts; and if a true copy of this Lease (and of the truth of the copy such affidavit shall be sufficient evidence) be filed in such action, it shall not be necessary to file the original as a warrant of attorney, any rule of court, custom or practice to the contrary notwithstanding. Tenant hereby waives and releases to Landlord, and to any and all attorneys who may appear for Landlord, all procedural errors in any proceedings taken by Landlord, whether by virtue of the warrants of attorney contained in this Lease or not, stay of execution and extension of time of payment, all laws exempting real or personal property from execution and all liability therefor, and no benefit of exemption will be claimed under and by virtue of any exemption law now in force or which may hereafter be passed.

3. Waivers.

Tenant expressly waives:

(a) The benefit of all laws, now or hereafter in force, exempting any goods on the Premises, or elsewhere, from distraint, levy or sale in any legal proceedings taken by Landlord to enforce any rights under this Lease.

(b) The benefit of all laws existing now or hereafter enacted regarding any limitation as to the goods upon which, or the time within which, distress is to be made after removal of goods of the Tenant

the goods distrained, it being the purpose and intent of this provision that all goods of Tenant, whether upon the Premises or not, shall be liable to distress for rent at any time after Tenant's default under this Lease, including particularly, but not limited to, those goods removed from the Premises clandestinely and fraudulently, as defined above in this Lease.

(c) The right to issue a writ of replevin for the recovery of any goods seized under a distress for rent or levy upon an execution for rent, damages or otherwise.

(d) The right to delay execution on any real estate that may be levied upon to collect any amount which may become due under the terms and conditions of this Lease and any right to have the same appraised, and Tenant authorizes any Prothonotary or clerk to enter a writ of execution or other process upon Tenant's voluntary waiver and further agrees that said real estate may be sold on a writ of execution or other process.

(e) All rights relating to the Landlord-Tenant relationship under any law, ordinance or statute, to the extent that they might limit Landlord's right to cause the distrained goods to be sold, Tenant now specifically and knowingly authorizes Landlord to sell any goods distrained for rent at a public auction sale to be held at any time at least seven (7) days after that distraint without appraisal and condemnation of the goods, but upon five (5) days' notice to Tenant of the date, place and terms of sale, including Landlord's right to purchase all or any of the property.

(f) If the Fee Owner's Property, the Building or the Project is located in Pennsylvania, the right to

~~any notices to quit as may be specified by the Landlord and Tenant Act of Pennsylvania, Act of April 6, 1951, as amended, or any similar or successor provision of law, and agrees that the notice provided for in this Lease shall be sufficient or if no such notice is provided that ten (10) days' notice shall be sufficient in either or any such case.~~

- XVII. NOTICES.** Any notice or consent required to be given by or on behalf of either party to the other shall be given in writing and mailed by certified mail or by overnight courier service which provides a receipt, at the addresses stated in Article I(M), of this Lease, or at such other address as may be specified, from time to time, by notice in the manner herein set forth. Notices shall be deemed given upon actual receipt or first rejection.
- XVIII. SECURITY DEPOSIT.** Tenant has deposited with Landlord, as security for Tenant's compliance with this Lease, the Security, in cash, equivalent to one month Minimum Rent. If Tenant defaults in performing any of its obligations under this lease, Landlord may use all or any portion of the Security to cure such breach or for the payment of any other amount due and payable from Tenant to Landlord in accordance with this lease. If Landlord uses all or any part of the Security, Tenant shall, within fifteen (15) days following Landlord's notice, deposit with Landlord an amount sufficient to restore the full amount of the Security. Landlord shall not, unless required by any Laws, pay interest to Tenant on the Security, and if Landlord is required to maintain the Security in an interest bearing account or pay any interest to Tenant, Landlord shall retain the maximum amount of interest permitted under any Laws (which Landlord may withdraw and retain annually or at any other times). Tenant shall not assign (other than to a permitted assignee of this lease) or encumber the Security, and no prohibited assignment or encumbrance by Tenant of the Security shall bind Landlord. Landlord shall not be required to exhaust its remedies against Tenant or the Security before having recourse to Tenant, any Guarantor, the Security or any other security held by Landlord, or before exercising any right or remedy, and recourse by Landlord to any one of them, or the exercise of any right or remedy, shall not affect Landlord's right to pursue any other right or remedy or Landlord's right to proceed against the others. If there is then no uncured breach, the Security and any accrued and unpaid interest thereon, or any balance, shall be paid or delivered to Tenant promptly after the Expiration Date and Tenant's vacating of the Premises in accordance with this lease. If Landlord's interest in the Real Property is sold or leased, Landlord shall transfer the Security and any accrued and unpaid interest thereon, or any balance, to the new Landlord and, upon such transfer, the assignor shall thereupon be automatically released by Tenant from all liability for the return of the Security or any interest (and Tenant agrees to look solely to the assignee for the return of the Security or any interest).
- XIX. MORTGAGE SUBORDINATION.** This Lease, and Tenant's rights hereunder shall be subject and subordinate to the lien of any mortgages, ground leases or deeds of trust or other similar instrument that may now exist or may hereafter be placed upon the Shopping Center and all renewals, replacements, and extensions thereof without further notice or action on the part of Landlord or Tenant. Tenant agrees to attorn to any underlying ground lessor, mortgagee or trustee, their respective affiliates, successors and assigns and any purchaser of the Shopping Center that shall succeed to Landlord's interest in this Lease in a foreclosure proceeding, by power of sale, by a deed in lieu of foreclosure or other proceeding or by any other action for the enforcement of such mortgages, deeds of trust or other similar instruments. Tenant shall execute and deliver to Landlord within fifteen (15) days from receipt of Landlord's request such instruments (including but not limited to a Memorandum of required by Landlord's mortgagee or trustee to evidence such subordination and attornment).
- XX. ESTOPPEL CERTIFICATES.** At any time and from time to time, Tenant agrees, upon request in writing from Landlord, to execute and deliver to Landlord, for the benefit of such persons as Landlord names in such request, a statement in writing and in substance satisfactory to Landlord certifying to such of the following information as Landlord shall request: (i) that this Lease constitutes the entire agreement between Landlord and Tenant and is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications); (ii) the dates to which the Minimum Rent and other charges hereunder have been paid, and the amount of any security deposited with Landlord; (iii) that the Premises have been completed on or before the date of such letter and that all conditions precedent to this Lease taking effect have been carried out; (iv) that Tenant has accepted possession, that the Lease Term has commenced, that Tenant is occupying the Premises, that Tenant knows of no default under the Lease by Landlord and that there are no defaults or offsets which Tenant has against enforcement of this Lease by Landlord; (v) the Rent Commencement Date of this Lease and the expiration date of this Lease; and (vi) that Tenant's store is open for business, provided such facts are true and ascertainable. Tenant acknowledges and agrees that Tenant's failure to execute and deliver to Landlord any estoppel certificate(s) requested by Landlord within fifteen (15) days from Tenant's receipt of Landlord's request shall be deemed Tenant's acknowledgement that the terms and conditions contained in such estoppel certificate are true and correct and that such terms and conditions may also be relied upon by any third party or parties identified in such estoppel certificate.
- XXI. QUIET ENJOYMENT.** Landlord hereby covenants and agrees that if Tenant shall perform all the covenants and agreements herein stipulated to be performed on Tenant's part, Tenant shall at all times during the continuance hereof have the peaceable and quiet enjoyment and possession of the Premises without any hindrance from Landlord or any person or persons lawfully claiming the Premises.

XXII. LIABILITY OF LANDLORD. Notwithstanding anything to the contrary provided in this Lease, it is specifically understood and agreed, such agreement being a primary consideration for the execution of this Lease by Landlord, that if Landlord shall fail to perform any covenant, term or condition of this Lease upon Landlord's part to be performed and, as a consequence of such default, Tenant shall recover a money judgment against Landlord, such judgment shall be satisfied only out of the proceeds of sale received upon execution of such judgment and levy thereon against the right, title, and interest of Landlord in the Shopping Center, as the same may then be encumbered, and neither Landlord nor any of its officers or shareholders shall be liable for any deficiency. It is understood that in no event shall Tenant have any right to levy execution against any property of Landlord other than its interest in the Shopping Center as hereinbefore expressly provided. In the event of the sale or other transfer of Landlord's right, title and interest in the Premises or the Shopping Center, Landlord shall be released from all liability and obligations under this Lease.

XXIII. MISCELLANEOUS PROVISIONS.

- A. Accord and Satisfaction.** No payment by Tenant, or anyone occupying the Premises by, through or under Tenant, or receipt by Landlord of a lesser amount than the rents stated herein shall be deemed to be other than on behalf of Tenant and on account of the next due rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy provided for in this Lease or available at law or in equity.
- B. Waiver.** No waiver of any condition or legal right or remedy shall be implied by the failure of Landlord to declare a forfeiture, or for any other reason, and no waiver of any condition or covenant shall be valid unless it be in writing signed by Landlord. No waiver by Landlord with respect to one or more tenants or occupants of the Shopping Center shall constitute a waiver in favor of any other tenant, nor shall the waiver of a breach of any condition be claimed or pleaded to excuse a future breach of the same condition or covenant. Tenant shall be deemed to have waived the right to dispute any matter relating to Tenant's obligation to pay or prior payment of Rent or Additional Rent including, without limitation, Minimum Rent, Taxes, Common Area Charges or Insurance Charges, unless Tenant provides notice to Landlord within twelve (12) months from earlier of (i) the date Tenant receives Landlord's billing statement setting forth the exact amount of such charge, or (ii) the date such payment is due pursuant to the terms of this Lease.
- C. Broker's Commission.** Tenant warrants that, except for any amounts payable by Landlord to its broker (the "Commission"), there are no claims for broker's commissions or finder's fees in connection with its execution of this Lease, and Tenant agrees to indemnify and save Landlord harmless from any liability that may arise from such claims, including reasonable attorney's fees. In the event this Lease shall be terminated for any reason prior to the natural expiration of the initial Term of this Lease, Tenant shall pay to Landlord the unamortized portion of the Commission, said amortization to be computed based upon a five (5) year term commencing on the Rent Commencement Date.
- D. No Partnership.** Landlord does not, in any way or for any purpose, become a partner of Tenant in the conduct of its business, or otherwise, or a joint venturer or a member of a joint enterprise with Tenant.
- E. Lease Inures to the Benefit of Assignees.** This Lease and all of the covenants, provisions, and conditions herein contained shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns respectively, of the parties hereto, provided, however, that no assignment by, from, through, or under Tenant in violation of the provisions hereof shall vest in the assigns any right, title, or interest whatsoever.
- F. Entire Agreement.** This Lease and the exhibits attached hereto set forth the entire agreement between Landlord and Tenant, and all prior promises and agreements, oral or written, between them are merged into this Lease. No amendment to this Lease shall be binding upon Landlord or Tenant unless in writing.
- G. Abandonment, Surrender and Holding Over.** Tenant shall deliver up and surrender to Landlord possession of the Premises upon the expiration of the Lease Term, or earlier termination for any reason, in as good condition and repair as the same shall be at the commencement of said Term (damage by fire and other perils covered by standard fire and extended coverage insurance and ordinary wear and decay only excepted). At the time Tenant shall deliver and surrender possession of the Premises to Landlord, Tenant shall provide Landlord with a written statement from an HVAC contractor reasonably acceptable to Landlord who shall certify that the HVAC system serving the Premises has been properly maintained and is in good working order. In the event Tenant shall fail to provide such statement to Landlord, Landlord shall have the right, but not the obligation without prior notice to Tenant to retain an HVAC contractor of Landlord's choosing who shall inspect the HVAC system serving the Premises and report to Landlord as to the condition of said HVAC system. If such report discloses the need for repair or maintenance, Landlord shall have the right, but not the obligation, without prior notice to Tenant, to cause such repairs or maintenance. Tenant shall reimburse Landlord for all costs and expenses so incurred by Landlord in performing the inspection,

maintenance and/or repairs plus an additional ten percent (10%) of such cost for and as Landlord's overhead. If Tenant remains in possession of the Premises after the expiration or earlier termination of this Lease, Tenant shall be bound by the terms and provisions of this Lease except that no tenancy or interest in the Premises shall result, but such holding over shall be an unlawful detainer and all such parties shall be subject to immediate eviction, and Tenant shall (with no additional notice required by Landlord) pay to Landlord, as liquidated damages, a sum equal to the greater of (i) double the fair market rental value of the Premises, as determined by Landlord, in its sole discretion, or (ii) two hundred percent (200%) of the Minimum Rent payable during the calendar month immediately preceding the expiration or earlier termination of this Lease for any period during which Tenant shall hold the Premises after the stipulated Term of this Lease shall expire or may have terminated. If Tenant vacates the Premises prior to the scheduled expiration of the Lease Term, Tenant shall be in default of this Lease, and if Tenant has not re-entered the Premises and resumed the operation of the business set forth in Article IX, Section B, of this Lease within the next thirty (30) consecutive days, Tenant shall be deemed to have abandoned the Premises, and Landlord shall have the right, but not the obligation, to take sole possession of the Premises on or after the tenth (10th) day following the expiration of said thirty (30) day period and Landlord may relet said Premises in accordance with the terms in Article XVI hereof.

- H. **No Option.** The submission of this Lease by Landlord for review by Tenant does not constitute a reservation of or option for the Premises, and shall vest no right in Tenant. This Lease becomes effective as a Lease only upon execution and delivery thereof by the parties hereto.
- I. **Additional Rent.** Any amounts to be paid by Tenant to Landlord pursuant to the provisions of this Lease, whether such payments are periodic or recurring, shall be deemed to be "Additional Rent" and otherwise subject to all provisions of this Lease and of law as to the default in the payment of rent.
- J. **Power of Attorney.** In the event Tenant fails to deliver any documents required to be delivered to Landlord under the terms herein within fifteen (15) days after Landlord's written request, Tenant does hereby make, constitute, and irrevocably appoint Landlord as its attorney-in-fact and in its place and stead to do so.
- K. **Financial Statements.** Tenant shall, within ten (10) days after receipt of a written request from Landlord, furnish to Landlord Tenant's current financial statement and such other financial information as Landlord may request. Landlord covenants that the financial information provided by Tenant shall be treated as confidential, except that Landlord may disclose such information to any prospective purchaser, prospective or existing lender or prospective or existing ground or underlying lessor upon the condition that the prospective purchaser, prospective or existing lender or underlying lessor shall also covenant to treat such information as confidential.
- L. **Severability.** In the event that any provision or section of this Lease is rendered invalid by the decision of any court or by the enactment of any law, ordinance or regulation, such provision of this Lease shall be deemed to have never been included therein, and the balance of this Lease shall continue in effect in accordance with its terms.
- M. **Option to Renew.** N/A
- N. **Gross Rent.** It is the intention of Landlord and Tenant that the rent herein specified shall be Gross to Landlord in each year of the Lease Term hereof, and that costs, expenses and obligations relating to the Premises (excluding utilities and except as herein specifically provided) are included as Minimum Rent and/or Additional Rent.
- O. **Counterparts.** This Lease may be executed in multiple counterparts, each of which shall constitute an original and all of which taken together shall constitute one and same agreement binding upon the parties, notwithstanding that all the parties are not signatories to the same counterpart. In order to facilitate the agreements contemplated by this Lease, signatures transmitted by facsimile machine or signatures transmitted via e-mail in a "PDF" format may be used in place of original signatures on this Lease. Each party intends to be bound by such party's facsimile or "PDF" format signature on this Lease, is aware that the other parties are relying on such party's facsimile or "PDF" format signature, and hereby waives any defenses to the enforcement of this Lease based upon the form of signature. Promptly following any facsimile transmittal or e-mail transmittal of "PDF" format signatures, the parties shall deliver to the other parties the original executed Lease by reputable overnight courier to the addresses shown in Article I(L).
- P. **Consents.** With respect to any provision of this Lease which provides or infers, in effect, that Landlord shall not unreasonably withhold or unreasonably delay its consent or approval, Tenant, in no event, shall be entitled to make, nor shall Tenant make, any claim against Landlord for money damages, and Tenant hereby waives any claim or assertion by Tenant that Landlord has unreasonably withheld or unreasonably delayed any consent or approval, but Tenant's sole remedy shall be an action or proceeding to enforce any such provision of this Lease, or for specific performance, injunction or declaratory judgment.
- Q. **Force Majeure.** In the event Landlord or Tenant is prevented or delayed in the performance of any

improvement or repair or fulfilling any other obligation required under this Lease due to delays caused by fire, catastrophe, strikes or labor trouble, civil commotion, acts of God, governmental prohibitions or regulation, inability or difficulty to obtain materials or other causes beyond the performing party's reasonable control, the performing party shall, within ten (10) days of the event causing such delay, provide written notice to the other party of the event causing the delay and the anticipated period of delay, and the period of such delay shall be added to the time for performance thereof. The performing party shall have no liability by reason of such permitted delays. In the event the performing party fails to provide notice to the other party of the force majeure delay within such ten (10) day period, the performing party shall not be excused from the timely performance of such obligation regardless of the cause. This provision shall not excuse Tenant from its obligation to pay Minimum Rent and Additional Rent, except when such payment is excused pursuant to other provisions of this Lease.

- R. Joint and Several Liability.** In the event Tenant shall be comprised of more than one (1) individual or business entity, each such individual or business entity comprising Tenant shall be jointly and severally liable for each and every obligation of Tenant under the terms of this Lease.
- S. Relocation.** As a material inducement for Landlord to enter into this Lease with Tenant, Landlord shall, throughout the Term of this Lease and any renewals thereof, have the right to relocate Tenant to another premises ("New Premises") within the Shopping Center. In the event Landlord elects to exercise the right of relocation to the New Premises, Landlord shall deliver written ninety (90) days' notice to Tenant identifying the location of the proposed New Premises ("Landlord's Notice"). Tenant shall, within 90 days after receipt of Landlord's Notice, vacate the Premises and relocate all of Tenant's trade fixtures, equipment and inventory to the new premises designated by Landlord. Tenant's reasonable and necessary expenses for moving such trade fixtures, equipment and inventory shall be reimbursed by Landlord within 90 days of Landlord's receipt of invoices for such moving expenses. All other costs of remodeling, outfitting and furnishing the New Premises shall be borne by Tenant. Tenant shall arrange for the transfer of all utilities to the New Premises.

In the event Tenant shall not agree to the New Premises proposed by Landlord within ten (10) days of receiving Landlord's Notice, Landlord shall have the right to terminate this Lease by delivering notice of termination ("Landlord's Termination Notice"), in which Landlord shall elect a Termination Date of not less than ninety (90) days from the date Tenant receives Landlord's Termination Notice. Tenant shall be liable for the payment of all Gross Rent, Minimum Rent, and/or Additional Rent and charges due under the Lease up to and including the Termination Date, even if such sums are billed subsequent to such date. Tenant shall vacate, surrender and deliver possession of the Premises to Landlord on or prior to the Termination Date in accordance with the terms of the Lease.

- T. Payment Under Protest.** All rent and other amounts payable hereunder shall be payable without demand, offset or deduction. If at any time a dispute shall arise as to any amount or sum of money to be paid by Tenant to Landlord under the provisions hereof, Tenant shall make such payment "under protest" and under no circumstances shall Tenant be entitled to withhold any payment due hereunder. If Tenant makes a payment "under protest" and it is subsequently determined that Tenant was not obligated to pay all or a portion of an amount paid "under protest," Landlord shall refund to Tenant the portion of the payment made "under protest" which Tenant was not obligated to pay.
- U. Waiver of Trial By Jury.** To the extent permitted by applicable law Landlord and Tenant waive all right to trial by jury in any claims, action, proceeding or counterclaim by either Landlord or Tenant against each other or any matter arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant or Tenant's use or occupancy of the Premises.
- V. Labor Disputes.** Tenant shall take no action which would violate Landlord's union contracts, if any, affecting the Shopping Center nor create any work stoppage, picketing, labor disruption or dispute or any interference with the business of the Landlord or any tenant or occupant in the Shopping Center or with the rights and privileges of any customer or other person lawfully in and upon said Shopping Center, nor cause the impairment or reduction of the goodwill of the Shopping Center.
- W. Hazardous Materials.** Tenant shall not permit or cause the presence of Hazardous Materials in, on or under the Premises or any other portion of the Shopping Center. Tenant shall defend, protect, indemnify and hold Landlord harmless from and against any and all claims, causes of action, liabilities, damages, costs and expenses, including, without limitation, attorney fees, arising because of any alleged personal injury, property damage, death, nuisance, loss of business or otherwise, by Landlord, any employee of Landlord, or from and against any governmental act or enforcement, arising from or in any way connected with conditions existing or claimed to exist with respect to Hazardous Materials (as hereinafter defined) within the Shopping Center which are the result of Tenant's use, occupancy or operation of the Premises. As used herein the term "Hazardous Materials" shall be defined as any hazardous substance, contaminant, pollutant or hazardous

release (as such terms are defined in any federal, state or local law, rule, regulation or ordinance, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended) and other said wastes. In the event Tenant shall cause or permit the presence of Hazardous Materials in, on or under the Premises or any other portion of the Shopping Center, Tenant shall promptly, at Tenant's sole cost and expense, take any and all action necessary (as required by appropriate government authority or otherwise) to return the areas affected thereby to the condition existing prior to the presence of any such Hazardous Materials thereon, subject to Landlord's prior written consent. The foregoing covenants shall survive termination of this Lease.

X. Payment By Third Party. In no event shall Landlord's acceptance of the payment of Minimum Rent or Additional Rent from any party other than Tenant constitute a release of Tenant's primary obligations under this Lease or Landlord's acceptance of any other party as an assignee or sublessee of Tenant, regardless of the number of payments accepted by Landlord or the length of time that said party made such payments.

Y. Recording. This Lease shall not be recorded in any public records office or department by Landlord or Tenant except as required by applicable law.

Z. Interpretation. This Lease, and any riders and exhibits hereto, have been mutually negotiated by Landlord and Tenant. Any ambiguities will not be interpreted in favor of either party. The captions contained herein are for convenience and reference only and will not be deemed as part of this Lease or construed in any manner limiting or amplifying the terms and provisions of this Lease to which they relate.

AA. Certification. Tenant represents and warrants to Landlord that (i) Tenant is not acting, directly or indirectly, for or on behalf of any person, group, entity, or nation, named by any Executive Order or the United States Treasury Department as a "terrorist", "Specially Designated National and Blocked Person", or other banned or blocked person, group, or nation (collectively, "Banned Persons") pursuant to any anti-terrorism law; (ii) Tenant is not engaged in this Lease transaction, or instigating or facilitating this Lease, directly or indirectly on behalf of any Banned Person; (iii) Tenant currently does not appear, and throughout the Lease Term, neither Tenant, nor any officer, director, shareholder, partner, member or other owner of Tenant shall appear, on any list of Banned Persons; (iv) no anti-terrorism law prohibits Landlord from doing business with Tenant; (v) Tenant, its officers, directors, or principal shareholders, partner, member, or other owner of Tenant, shall not, during the Lease Term, violate any anti-terrorism laws; and (vi) Tenant, its officers, directors, principal shareholders, partners or members shall not, during the Lease Term, do business with any party, individual, or entity that has violated or will violate any anti-terrorism laws. For purposes of this Lease, "anti-terrorism laws" shall mean Executive Order

13224 and related regulations promulgated and enforced by the Office of Foreign Assets Control, the Money Laundering Control Act, the United States Patriot Act, or any similar law, order, rule or regulation enacted in the future. Tenant hereby agrees to defend, indemnify, protect, and hold harmless Landlord from and against any and all claims, damages, losses, risks, liabilities, fines, penalties, expenses (including attorneys' fees) and costs arising from or related to a breach of the foregoing representations and warranties. The foregoing indemnity obligations of Tenant shall survive the termination or expiration of this Lease.

BB. Payment. All payments to be made to Landlord or Tenant pursuant to the terms of this Lease shall be made in lawful currency of the United States of America.

CC. Execution. The submission of this Lease to Tenant or its broker, or other agent, does not constitute an offer to Tenant to lease the Premises. This Lease shall have no force and effect until (a) it is executed and delivered by Tenant to Landlord, and (b) it is fully reviewed and executed by Landlord; provided, however, that upon execution of this Lease by Tenant and delivery to Landlord, such execution and delivery by Tenant shall, in consideration of the time and expense incurred by Landlord in reviewing the Lease and Tenant's credit, constitute an offer by Tenant to lease the Premises upon the terms and conditions set forth herein (which offer to lease shall be irrevocable for twenty (20) business days following the date of delivery).

DD. Exhibits. The following Exhibits are attached to this Lease and incorporated herein by reference:

Exhibit "A"- Site Plan of Shopping Center/Premises

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, Landlord and Tenant have caused this Lease to be signed, in triplicate, as of the date and year first above written.

WITNESSES AS TO LANDLORD:

LANDLORD:
ITHACA MALL REALTY LLC,
a New York limited liability company

By: _____
Igal Namdar, Managing Member

_____(Print Name)

_____(Print Name)

WITNESSES AS TO TENANT:

TENANT:
Running to Places Theatre Co. LTD

(Print Name)

By: _____
Name:
Title:

_____(Print Name)

(Print Name)

STATE OF _____)

_____) SS:
COUNTY OF _____)

Personally appeared before me, the undersigned, a Notary Public, in and for said County and State,

_____, known to me to be the _____ of _____ the corporation which executed the foregoing instrument, who acknowledged that he/she did sign the foregoing instrument for and on behalf of said corporation being thereunto duly authorized by its Board of Directors, and that the same is his/her free act and deed and the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at _____, this _____ day of _____, 2018.

Notary Public

STATE OF _____)

)SS:

COUNTY OF _____)

BEFORE ME, a Notary Public in and for said County and State, personally appeared _____, known to me to be the _____, _____ the corporation which executed the foregoing instrument, who acknowledged that he did sign the foregoing instrument for and on behalf of said corporation being thereunto duly authorized by its Board of Directors, and that the same is his free act and deed as such officer and the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at this _____ day of _____, 2018.

Notary Public

EXHIBIT A

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