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2001-04-12 13:49:56
Cook County Recorder 51.50

Record and return to:

Prepared By:



0010296623

Brownstein Hyatt & Farber, P.C.
410 Seventeenth Street, 22nd Floor
Denver, Colorado 80202-4437
Attn: Ann B. Riley, Esq.

RESTRICTIVE COVENANT AGREEMENT

THIS RESTRICTIVE COVENANT AGREEMENT (this "Covenant") is entered into as of the ~~30th~~ day of March, 2001, by and between OPUS NORTH CORPORATION, an Illinois corporation, ("Opus") and PERA WILLOW CREEK, INC., a Delaware corporation, ("PERA") with respect to the following facts:

A. Opus and PERA's predecessor-in-interest have entered into that certain Purchase Agreement dated as of February 1, 2001, as amended (the "Purchase Agreement") pursuant to which PERA has purchased that certain real property (the "PERA Property") described on Exhibit A attached hereto and incorporated herein by this reference.

B. Opus is the owner of certain real property (the "Outlots") adjacent to the PERA Property and described on Exhibit B attached hereto and incorporated herein by this reference.

C. The Outlots are included as part of the "Shopping Center" under the terms and provisions of the existing tenant leases of space in the buildings on the PERA Property (such existing leases as extended or renewed in accordance with the terms thereof are hereafter collectively referred to as the "Leases").

D. The Leases contain certain "exclusive use" restrictions (the "Exclusives") and certain other use restrictions (the "Restrictions") as set forth on Exhibit C attached hereto and incorporated herein by this reference, which restrictions apply to the entire Shopping Center under the terms of the Leases and Opus and PERA desire by this Covenant to obligate Opus and all future owners of the Outlots to comply with the Exclusives for so long as the applicable Lease remains in effect and to comply with the Restrictions for so long as any of the Leases remain in effect.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Opus and PERA covenant and agree as follows:

1. Restrictive Covenant. From and after the date hereof, Opus, for itself and all future owners of the Outlots, agrees to be bound by (and to cause all tenants of space in the Outlots to be bound by):

(a) all of the Restrictions for so long as any of the Leases remains in effect; and

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(b) each Exclusive for so long as the applicable Lease remains in effect.

2. Removal of Exclusives or Restrictions. At any time and from time to time, upon request from Opus or any other then owner of any portion of the Outlots, the then owner of the PERA Property shall execute and record against the Outlots a "Statement of Termination of Exclusive or Restriction" which shall remove from the list of Exclusives or Restrictions each Exclusive or Restriction for which the applicable Lease(s) has terminated or been amended to allow the applicable Restriction or delete the applicable Exclusive.

3. Termination. This Covenant shall automatically terminate and be of no further force and effect upon termination or expiration of all of the Leases at which time, upon request from any of the then owners of any portion of the Outlots, the then owner of the PERA Property shall execute and record against the Outlots a document evidencing such termination.

4. Covenant to Run with the Land. This Covenant shall run with the land comprising the Outlots, shall be binding upon the Outlots and on the present and all future owners and tenants of the Outlots (or any portion thereof) and shall be appurtenant to and run with the land comprising the PERA Property for the benefit of the present and all future owners and tenants of the PERA Property

5. Enforcement. This Covenant may be enforced by PERA or any other owner of a portion of the PERA Property by a proceeding at law or in equity, including without limitation, specific performance, restraining order and recovery of damages and costs. Failure to enforce this Covenant in any instance shall not be or be deemed to be a waiver or abandonment of any rights of such owners hereunder.

6. Notices. Any notice or other communication in connection with this Covenant shall be in writing and shall be sent by United States Certified Mail, return receipt requested, postage prepaid, by nationally recognized overnight courier guaranteeing next day delivery, by telecopy, or by personal delivery, properly addressed as follows:

If to Opus:

Opus North Corporation
9700 West Higgins Road, Suite 900
Rosemont, Illinois 60018
Attn: President
Facsimile No.: (847) 318-1127

With a copy to:

Opus Corporation
10350 Bren Road West
Minnetonka, Minnesota 55343
Attn: Legal Department -
Thomas Hoben
Facsimile No.: (952) 656-4529

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And a copy to:

McBride, Baker & Coles
One Mid America Plaza, Suite 1000
Oakbrook Terrace, Illinois 6060181
Attn: D. Albert Daspin, Esq.,
Facsimile No.: (630) 954-2112

If to PERA:

PERA Willow Creek, Inc.
c/o LaSalle Investment Management
950 17th Street, Suite 1850
Denver, Colorado 80202
Attn: James P. Creighton
Facsimile No.: (303) 260-6501

With a copy to:

Brownstein, Hyatt & Farber, P.C.
410 17th Street, 22nd Floor
Denver, Colorado 80202
Attn: Ann B. Riley, Esq.
Facsimile No.: (303) 223-1111

All notices shall be deemed given three (3) business days following deposit in the United States mail with respect to certified or registered letters or earlier upon receipt, one (1) business day following deposit if delivered to an overnight courier guaranteeing next day delivery and on the same day if sent by personal delivery or telecopy (with proof of transmission). Attorneys for each party shall be authorized to give and receive notices for each such party. Any party may change its address for the service of notice by giving written notice of such change to the other party, in any manner above specified.

EXECUTED as of the date above first written.

[SIGNATURE PAGE FOLLOWS]

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OPUS NORTH CORPORATION, an Illinois corporation

CSB
By: John M. Crocker, Jr.
Name: John M. Crocker, Jr.
Its: President

PERA WILLOW CREEK, INC., a Delaware corporation

By: _____
Name: _____
Its: _____

STATE OF ILLINOIS

COUNTY OF COOK

} ss.

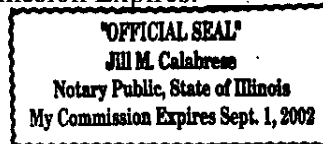
I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that John M. Crocker, Jr., personally known to me to be the _____ President of OPUS NORTH CORPORATION, an Illinois corporation, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such _____ President, he signed and delivered the said instrument, pursuant to authority given by the Board of Directors of said corporation, as his free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and official seal, this 27th day of March, 2001

Jill M. Calabrese
Notary Public

[NOTARIAL SEAL]

My Commission Expires: _____



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1, J. J. ...
...
...

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OPUS NORTH CORPORATION, an Illinois corporation

By: _____
Name: _____
Its: _____

PERA WILLOW CREEK, INC., a Delaware corporation

By: *Kathryn G. Spritzer*
Name: Kathryn G. Spritzer
Its: Vice President

Property of Cook County Clerk's Office

STATE OF ILLINOIS
COUNTY OF COOK

}
}
} ss.

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that _____, personally known to me to be the _____ President of OPUS NORTH CORPORATION, an Illinois corporation, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such _____ President, he signed and delivered the said instrument, pursuant to authority given by the Board of Directors of said corporation, as his free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and official seal, this _____ day of March, 2001.

[NOTARIAL SEAL]

Notary Public

My Commission Expires: _____

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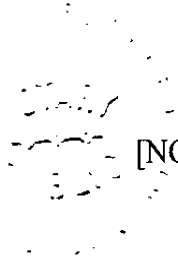
STATE OF COLORADO
CITY AND
COUNTY OF DENVER

}
} ss.
}

0010296623

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that Kathryn B. Spritzer, personally known to me to be the Vice President of PERA WILLOW CREEK, INC., a Delaware corporation, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such Vice President, he signed and delivered the said instrument, pursuant to authority given by the Board of Directors of said corporation, as his free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and official seal, this 28th day of March, 2001.



[NOTARIAL SEAL]

Toni J. Welchlin
Notary Public

My Commission Expires: _____

My Commission Expires July 3, 2002
410 17th St. #2200
Denver, Colorado 80202

PREPARED BY:
Brownstein Hyatt & Farber, P.C.
410 Seventeenth Street, 22nd Floor
Denver, Colorado 80202-4437
Attn: Ann B. Riley, Esq.

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EXHIBIT A

0010296623

Lots 1 and 2 in Willow Creek Center, being a resubdivision of Lots R-1, R-2 and R-3 in North Shore Corporate Park, being a resubdivision recorded December 23, 1999 as Document Number 09192216, in the Northeast $\frac{1}{4}$ and the Southeast $\frac{1}{4}$ of Section 22, Township 42 North, Range 12 East of the Third Principal Meridian, in Cook County, Illinois.

Permanent Index Nos.: 04-22-202-011 and 04-22-202-012

Property Address: Part of Willow Creek Center, located at the southwest corner of the intersection of Willow Road and Ravine Way, Glenview, IL

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EXHIBIT B

0010296623

Outlots 1 and 3 in Willow Creek Center, being a resubdivision of Lots R-1, R-2 and R-3 in North Shore Corporate Park, being a resubdivision recorded December 23, 1999 as Document Number 09192216, in the Northeast $\frac{1}{4}$ and the Southeast $\frac{1}{4}$ of Section 22, Township 42 North, Range 12 East of the Third Principal Meridian, in Cook County, Illinois.

Permanent Index Nos.: 04-22-202-014 and 04-22-202-016

Property Address: Part of Willow Creek Center, located at the southwest corner of the intersection of Willow Road and Ravine Way, Glenview, IL

Property of Cook County Clerk's Office

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EXHIBIT C

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EXISTING EXCLUSIVES

1. Kohl's:

Landlord covenants and agrees that until the expiration of the Term or the earlier termination of this Lease, so long as Tenant is operating a specialty department store within the entire Premises and is not itself violating the restrictions in this Section ..., Landlord shall not enter into any lease or other agreement that permits any occupant of space within the Shopping Center to operate a retail operation in the Shopping Center in which more than twenty percent (20%) of such occupant's sales (based on Dollar Value) is derived from the display and sale of clothing commonly referred to as close outs, manufacturer's overruns, other retailer's returned or excess inventory or manufacturer's seconds or imperfect merchandise.

2. Michaels:

Neither Landlord nor any entity controlled by Landlord will use, lease (or permit the use, leasing or subleasing of) or sell any space in or portion of the Shopping Center or any property contiguous to the Shopping Center owned or controlled now or at any time hereafter by Landlord or any affiliate of Landlord, to any "craft store", or store selling picture frames or picture framing services, or store selling artificial flowers, or artificial floral arrangements, or wedding or party goods (except apparel); provided, however, that it shall not be deemed a violation of this Section ... for a tenant of the Shopping Center or any such contiguous property to devote not more than an aggregate (including applicable aisle space) of the lesser of (i) 1,000 Leasable Square Feet, or (ii) ten percent (10%) of the total Leasable Square Feet in its premises, to the retail sale of crafts, picture frames, artificial flowers, artificial floral arrangements or wedding or party goods, so long as no space is devoted to custom framing services, it being the intent that no other lessee or occupant of the Shopping Center be permitted to offer or render custom framing services. This Section ... shall not apply to any lessee or purchaser whose lease or purchase agreement was fully executed on the Effective Date hereof ... or to any assignee, sublessee or successor of such lessee or purchaser; provided, however, that this exception shall not apply with respect to leases if (a) Landlord consents or agrees to the change of a permitted use by any such lessee or its successors or assigns if Landlord may avoid the granting of such permission pursuant to the terms of the existing lease, or (b) Landlord has the right, by virtue of the provisions of the existing lease, to cause said lessee to honor the exclusive granted to granted to Tenant by giving said existing lessee notice of this exclusive or otherwise.

3. First American Bank:

For so long as First American Bank, an Illinois banking corporation ("Purchaser") or its successors or assigns is operating the Premises primarily as a banking facility, no other part of the Shopping Center will be used for the operation of a retail banking facility ("Use Restriction") ... provided, however, that:

(a)... the Use Restriction ...will [not] apply to or bind in any way either that portion of the Shopping Center depicted on the Site Plan as the "Target Tract" or that portion of the Shopping Center depicted on the Site Plan as the "Kohl's Tract;"

(b)... the Use Restriction ... will [not] apply to or be of any force or effect with respect to any existing tenant or occupant of the Shopping Center or any successor, assignee or sublessee of such existing tenant or occupant or any premises owned or leased by any of the foregoing (so long as any such lease is in effect including any renewal, extension or replacement thereof (in connection with a bankruptcy or leasehold mortgage foreclosure proceeding) and so long as the permitted uses under any such lease are not subsequently modified or amended in connection with an assignment or sublease to permit a use that will violate the Use Restriction);

(c) the Use Restriction does not prohibit the operation in the Shopping Center of retail investment or brokerage offices, including without limitation Charles Schwab & Co., Merrill Lynch, Paine Webber and H & R Block (provided that such retail investment or brokerage offices do not provide "banking type" checking accounts to customers in the Shopping Center) ...

(d) if a retail banking facility is not operated at the Premises for nine (9) months or more, the Use Restriction ... will automatically cease and will thereafter be null and void and of no further force or effect; and

(e) The Use Restriction ... will automatically expire and be of no further force or effect without any further action on the part of either Purchaser or Seller on December 31, 2049 and will only apply to the extent it is not deemed by a final judgement of a court of law to be contrary to public policy or contrary to law.

4. Sprint:

Lessor agrees that during the time that SprintCom, Inc. is the Lessee under the terms of this Lease and has not assigned or otherwise transferred its interest in this Lease or sublet the Premises or any part thereof ([other than to an affiliate or subsidiary more than fifty percent (50%) of the ownership interest of which is owned directly or indirectly by the direct or remote parents of Lessee, or to such parents of Lessee or to a successor to Lessee pursuant to a purchase of all or substantially all of the assets of Lessee in Illinois provided the successor has a financial net worth in excess of Ten Million and 00/100 Dollars (\$10,000,000.00) as certified by such successor's chief financial officer]), and so long as SprintCom, Inc. is selling and providing cellular and wireless communication equipment and wire line communication and services as primary items, Lessor will refrain from leasing any space in the Shopping Center to any future tenant for the permitted purpose of selling or furnishing at retail in the Shopping Center, cellular and wireless communication equipment and wire line communication and services, as primary items; provided, however, (i) the

terms and provisions of this Article ... shall not apply and be of no force or effect with respect to (a) any existing tenant or occupant of the Shopping Center (i.e., any existing tenant under an executed lease or any purchaser under an executed purchase agreement) or any successor, assignee or sublessee of any such tenant or occupant or to the premises leased (so long as such lease or any renewal, extension or replacement thereof (in connection with a bankruptcy or leasehold mortgage foreclosure proceeding) is in effect) or owned by any such tenant or occupant, (b) The Gap, Inc. or any successor, assignee or sublessee of The Gap, Inc., for so long as such lease is in effect, or to the premises demised thereunder, or (c) any tenant or occupant of the Shopping Center occupying more than 10,000 square feet of floor area, (ii) Lessor's covenant to refrain from leasing space as aforesaid shall expire without further act of the parties by the date six (6) months prior to the expiration of the Term or any renewal or extension thereof if Lessee has not by said date extended the Term ..., and (iii) the terms of this Article ... shall expire without further act of the parties if Lessor terminates Lessee's right to possession of the Premises (with or without a termination of the Lease) or if Lessee breaches its covenant of continuous operation. For purposes hereof, the sale and furnishing of cellular and wireless communication equipment and wire line communication and services as primary items shall mean that the greater of 70% or more of SprintCom, Inc.'s gross sales consist of or 70% or more of the retail floor area of the Premises is dedicated by SprintCom, Inc. to the sale or service of such primary items (or the greater of 10% or more of any future tenant's gross sales consist of or 10% or more of the retail floor area of such future tenant's premises is dedicated to the sale or service of such primary items).

5. Famous Footwear:

Lessor agrees that during the Term, so long as Lessee is selling branded footwear as a primary item, Lessor will refrain from leasing any space in the Shopping Center to any future tenant for the permitted purpose of selling at retail in the Shopping Center, branded footwear at a discount, as a primary item; provided, however, (i) the terms and provisions of this Article ... shall not apply and be of no force and effect with respect to (a) any existing tenant or occupant at the Shopping Center (i.e., any existing tenant under an executed lease or any purchaser under an executed purchase agreement) or any successor, assignee or sublessee of such existing tenant (for so long as any such existing tenant's lease or any renewal, extension or replacement (in connection with a bankruptcy or leasehold mortgage foreclosure proceeding) thereof is in effect) or occupant or any premises leased or owned by any of the foregoing, and (b) The Gap, Inc. or Old Navy, Inc. (collectively, "Gap") or any successor, assignee or sublessee of Gap, or any premises leased or owned by any of such parties, (ii) Lessor's covenant to refrain from leasing space as aforesaid shall expire without further act of the parties by the date three (3) months prior to the expiration of the Term or any renewal or extension thereof if Lessee has not by said date extended the Term ...; provided, however, and subject to the terms of this Article ..., any lease entered into by Lessor after said date under which the tenant is permitted to sell at retail in the Shopping Center branded footwear at a discount as a primary item shall not permit the tenant thereunder to open for business to the general public prior to the scheduled expiration date of the Term, and (iii) the terms of this Article ... shall expire without further act of the parties if Lessor terminates Lessee's right to possession of the Premises (with or without a termination of the Lease) or if Lessee breaches its covenant of continuous operation. For

purposes hereof, the sale of branded footwear at a discount as a primary item shall mean that 50% or more of the square foot area of the Premises (or the premises of any future tenant) shall be dedicated to the sale of such primary item.

6. OfficeMax:

Subject to the provisions contained in the next paragraph, during the initial term of this lease or during any renewal period hereunder, no portion of the Shopping Center (excluding the Demised Premises) shall be used:

(i) For the primary purposes (in excess of five percent 5% of such user's floor area) of, or which is permitted to be, the sale of office, home office, school or business products; office, home office, school or business supplies or equipment; or office furniture (including by way of example those businesses operated by Office Depot, Staples, Office Shop Warehouse, and Workplace) or for use as a copy center or "Kinko" type of operation (all of which are hereinafter referred to as the "Prohibited Uses") or for use as a cellular or portable phone store; or

(ii) For any purpose which would permit more than (A) one thousand (1,000) square feet of space to be used for any Prohibited Uses, or (B) five percent (5%) of such user's floor area to be used for purposes of any Prohibited Uses, whichever is less. If a user at the Shopping Center permits five percent (5%) or less of such user's floor area to be used for Prohibited Uses, such user shall be deemed not to be in direct competition with Tenant, and the provisions of this Article shall not prohibit such user from engaging in such Prohibited Uses.

...

Notwithstanding any other provisions of this Article ..., a lease may be executed with a tenant for purposes of the Prohibited Uses upon the satisfaction of the following conditions:

(i) Tenant shall discontinue its operations in the Demised Premises for a continuous period in excess of six (6) months (excluding any such discontinuance due to damage or destruction of the Demised Premises, condemnation, or any other causes beyond Tenant's reasonable control, herein "Temporary Discontinuances");

(ii) Landlord shall have delivered written notice to Tenant of such proposed lease, which notice shall also set forth the proposed use by such tenant and the actual "use" clause contained in such proposed lease, to the extent such clause has been negotiated by Landlord (the "Proposed Use"); and

(iii) Within fifteen (15) days after receipt of such written notice from Landlord, Tenant shall not have delivered written notice to Landlord

either that (A) Tenant shall reopen for business in the Demised Premises for a period of no less than six (6) months, within sixty (60) days after the date of such written notice to Landlord, or (B) Tenant has assigned the lease or sublet the Demised Premises to an assignee or subtenant who shall reopen for business in the Demised Premises within sixty (60) days after the date of such written notice to Landlord.

If all of the conditions set forth in (i) – (iii) above are satisfied, then such proposed lease may be executed with such proposed tenant for purposes of the Proposed Use, and the restrictions set forth ... above shall not be applicable to such proposed lease to the extent the Proposed Use permits the use of such premises by such tenant for purposes of the Prohibited Uses; provided, however, that to the extent Landlord has the right to approve or consent to any assignment or subletting under such proposed lease, and to limit or restrict the use in conjunction with such consent, Landlord shall again enforce Tenant's rights set forth above unless (A) such assignment or subletting is for a purpose permitted by such lease or (B)(1) Landlord is not permitted, pursuant to the terms of such lease, to enforce Tenant's rights hereunder in connection with such assignment or sublease, or (2) the enforcement of such rights would be unreasonable under the terms of any such lease for which Landlord's consent is required to be reasonable with respect to any assignment or sublease. Notwithstanding the foregoing, if Landlord does not execute such proposed lease within sixty (60) days after the expiration of Tenant's fifteen (15) day notice period set forth in (iii) above, or if the Landlord and the tenant amend the lease such that the use of the premises by such proposed tenant is materially changed or modified from the Proposed Use set forth in Landlord's notice to Tenant under (ii) above, then Landlord shall again deliver the written notice to Tenant of such proposed lease in accordance with (ii) above prior to the execution of such proposed lease by Landlord, and the execution of such proposed lease shall again be subject to the terms and conditions of (i) – (iii) above.

In the event Tenant defaults under this lease, and Landlord either terminates this lease and/or recaptures possession of the Demised Premises without terminating this lease, ..., the restrictions set forth above shall terminate and be of no further force or effect. Notwithstanding anything herein to the contrary, the restrictions set forth above shall not apply and shall be of no further force or effect if the Demised Premises ceases to be used for the primary purpose of an office products retail store (excluding periods of Temporary Discontinuances).

...

7. Chipotle Mexican Grill:

Landlord agrees that so long as Tenant is conducting as a primary business in the Premises the operation of a Mexican restaurant selling specialty burritos and/or wraps, fajitas and tacos under the trade name Chipotle Mexican Grill (or such other trade name employed by Tenant ...), Landlord will refrain from leasing any space in the ... [Outlots] ... (... "Exclusive Area") to any future tenant for the permitted purpose of conducting as a primary business the retail sale of specialty burritos and/or wraps, fajitas and tacos; provided, however: (i) the terms and provisions of this Article ... shall not apply to nor be of any force or effect with respect to (a) any existing tenant or occupant of the Shopping

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Center (i.e. any tenant under an executed lease), or any successor, assignee or sublessee of such existing tenant or occupant, for so long as any such existing tenant's or occupant's lease or occupancy or any renewal, extension or replacement (in connection with a bankruptcy or leasehold mortgage foreclosure proceeding) thereof is in effect, or to the premises demised thereunder, (b) any portion of the Shopping Center not within the Exclusive Area, and (c) any occupant of any premises leased or owned by any of the foregoing; (ii) Landlord's covenant to refrain from leasing space as aforesaid shall expire without further act of the parties by the date that is one hundred fifty (150) days prior to the expiration of the Term or any renewal or extension thereof; and (iii) the terms of this Article ... shall expire without further act of the parties if Landlord terminates Tenant's right to possession of the Premises (with or without a termination of the Lease) or if Tenant breaches its covenant of continuous operation. For purposes hereof, the retail sale of specialty burritos and/or wraps, fajitas and tacos as a primary purpose shall mean that sixty percent (60%) or more of Tenant's sales of merchandise and revenue derived from the business conducted on the Premises results from the operation of such primary purpose (or ten percent (10%) or more of any future tenant's or occupant's revenues results from the operation of such primary purpose).

8. Sweet Tomatoes:

Landlord agrees that during the time that Garden Fresh Restaurant Corp. is the Tenant under the terms of this Lease and has not assigned or otherwise transferred its interest in this Lease or sublet the Premises or any part thereof, and so long as Garden Fresh Restaurant Corp. is conducting as a primary business in the Premises the operation of a buffet-style restaurant selling, at retail in the Shopping Center, a variety of dishes from a broadly-based menu for on-premises consumption, where customers serve themselves, under the trade name Sweet Tomatoes Restaurant or, in the event Garden Fresh Restaurant Corp. is transacting business in the majority of its stores in the greater Chicago, Illinois metropolitan area under a different trade name, such trade name as is used in the majority of Garden Fresh Restaurant Corp. stores, Landlord will refrain from leasing any space in the Shopping Center to any future tenant for the permitted purpose of conducting as a primary business the operation of a buffet-style restaurant selling a variety of dishes from a broadly-based menu for on-premises consumption where customers serve themselves; provided, however: (i) the terms and provisions of this Article ... shall not apply to nor be of any force or effect with respect to: (a) any existing tenant or occupant of any Shopping Center (i.e., any tenant under an executed lease or any purchaser under an executed purchase agreement), or any successor, assignee or sublessee of such existing tenant, for so long as any such existing tenant's lease or any renewal, extension or replacement (in connection with a bankruptcy or leasehold mortgage foreclosure proceeding) thereof is in effect, or to the premises demised thereunder; or (b) any occupant of any premises leased or owned by any of the foregoing; (ii) Landlord's covenant to refrain from leasing space as aforesaid shall expire without further act of the parties by the date twelve (12) months prior to the expiration of the Term or any renewal or extension thereof if Garden Fresh Restaurant Corp. has not by such date exercised its right to renew the Term ...; and (iii) the terms of this Article ... shall expire without further act of the parties if Landlord terminates Garden Fresh Restaurant Corp.'s right to possession of the Premises (with or without a termination of the Lease) or if Garden Fresh Restaurant Corp. breaches its covenant of continuous operation. For purposes hereof, the operation of a buffet-style restaurant selling a variety of dishes from a broadly-based

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menu where customers serve themselves for on-premises consumption as a primary business shall mean that seventy percent (70%) or more of Garden Fresh Restaurant Corp.'s revenue derived from the business conducted at the Premises is generated by the operation of such primary business (or twenty-five percent (25%) or more of any future tenant's revenues is generated by the operation of such primary business). The exclusive rights granted under this Article ... are personal to Garden Fresh Restaurant Corp. and shall not be assigned to nor inure to the benefit of any other party.

9. Payless Shoe Source, Inc.

Landlord agrees that during the time that Payless ShoeSource ("Payless") is the Tenant under the terms of this Lease and has not assigned or otherwise transferred its interest in this Lease or sublet the Premises or any part thereof, and so long as Payless is conducting as a primary business in the Premises the retail sale of shoes under the trade name Payless, Landlord will refrain from leasing any space in the Shopping Center to any future tenant for the permitted purpose of conducting as a primary business the retail sale of shoes; provided, however: (i) the terms and provisions of this Section ... shall not apply to nor be of any force or effect with respect to (a) any existing tenant or occupant of the Shopping Center (i.e., any tenant under an executed lease or outlot under an executed purchase agreement), including Famous Footwear retailer, or any successor, assignee or sublessee of any such existing tenant, for so long as any such existing tenant's lease or any renewal, extension or replacement (in connection with a bankruptcy or leasehold mortgage foreclosure proceeding) thereof is in effect, or to the premises demised thereunder, (b) any occupant of any premises leased or owned by any of the foregoing; or (c) any tenant or occupant leasing over 10,000 square feet at space; (ii) Landlord's covenant to refrain from leasing space as aforesaid shall expire without further act of the parties by the date one (1) year prior to the expiration of the Term or any renewal or extension thereof; and (iii) the terms of this Section ... shall expire without further act of the parties if Landlord terminates Payless's right to possession of the Premises (with or without a termination of the Lease). For purposes hereof, a party (including Tenant) shall be considered to be conducting as a primary business the retail sale of shoes if (a) 80% or more of the retail floor area occupied by such party is dedicated to the display and sale of footwear or (b) 80% or more of a party's annual Gross Sales are derived from the sale of footwear.

EXISTING RESTRICTIONS

The Shopping Center shall not be used in whole or in part for any of the following purposes:

(a) General office facility other than the Landlord's office located on the Shopping Center and used for the purposes of managing the Shopping Center and any office used by any other Tenant so long as any such office is incidental to such Tenant's use of any portion of the Shopping Center and also excepting the following offices that provide services to the general public; banking or financial services, real estate services, security brokerage services, financial or tax planning services, accounting, insurance, optical or dental services, travel agencies or savings and loan association offices;

(b) No tenant or occupant shall take any action which would constitute a nuisance or would disturb or endanger other tenants of the Shopping Center or interfere with their use of their respective premises.

(c) All businesses operated on the Outlots shall be operated on a full-time basis during at least normal business hours Monday through Saturday and no business shall be operated on a part-time basis (i.e., for only a portion of the week or month). The foregoing shall not require the continuous use or occupation of any portion of the Outlots but is only intended to prohibit businesses on the Outlots which operate on a part-time basis for only a portion of the week or month, such as a discount store operation which is open only as it has stock available to sell.