



Doc# 1806662008 Fee \$64.00

RHSP FEE:\$9.00 RPRF FEE: \$1.00

KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 03/07/2018 02:36 PM PG: 1 OF 14

Record and Return To:

Burlington Coat Factory Warehouse Corporation  
1830 Route 130 North  
Burlington, NJ 08016  
Attn: Legal Department

9550 South Western Avenue, Evergreen Park, IL  
24-12-236-008

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE ("Memorandum") is made this 12<sup>th</sup> day of October, 2017, by and between **CFLS EVERGREEN LLC**, a Delaware limited liability company, having an address at c/o Lormax Stern Development Company, 38500 Woodward Avenue, Suite 200, Bloomfield Hills, Michigan 48304 ("Landlord") and **BURLINGTON COAT FACTORY OF TEXAS, INC.**, a Delaware corporation, having an address at 1830 Route 130, Burlington, New Jersey 08016 ("Tenant").

WITNESSETH:

1. Demised Premises and Shopping Center. Landlord has leased to Tenant and Tenant has leased from Landlord, pursuant to certain Lease ("Lease"), dated October 12, 2017, that certain building of approximately forty-five thousand one (45,001) square feet of ground floor space, with a frontage of approximately 182 lineal feet, located in the Building, as defined in Article 27 of the Lease, with a street address of 9550 South Western Avenue, Evergreen Park, Illinois 60805, which premises are shown on Exhibit "A" to the Lease ("Demised Premises"), together with the exclusive right to the use of the loading dock adjoining the Demised Premises and the non-exclusive right to the use of all alley rights, if any, easements, and rights, privileges and appurtenances in connection therewith or thereunto belonging or herein granted. The Demised Premises are located in the shopping center known as Evergreen Plaza in the Village of Evergreen Park, County of Cook and State of Illinois, as such shopping center is depicted on Exhibit "A" to the Lease, which shopping center is located on the land more particularly described in Exhibit "A-1" annexed hereto and made a part hereof ("Shopping Center").

2. Term. The "Initial Term" of the Lease is that period commencing on the Commencement Date (as defined in the Lease) and ending at the very end of the day on February 28th (or February 29th during a leap year) next following the tenth (10<sup>th</sup>) anniversary of the Rent Commencement Date (as defined in the Lease).

S X  
P 19  
S N  
M N  
SC Y  
E Y  
INT Dec

# UNOFFICIAL COPY

3. Options for Renewal. Tenant, at Tenant's option, may extend the Initial Term of the Lease for four (4) successive options of five (5) years on each.

4. Inquiries. Inquiries concerning the precise terms of the Lease may be made to:

"Landlord's Notice Address":

Name: CFLS EVERGREEN LLC  
 Address: c/o Lormax Stern Development Company  
 38500 Woodward Avenue, Suite 200  
 Bloomfield Hills, Michigan 48304

"Tenant's Notice Address: means:

BURLINGTON COAT FACTORY OF TEXAS, INC.  
 1870 Route 130 North  
 Burlington, NJ 08016  
 Attention: Lease Administration

5. Condemnation. Notwithstanding the foregoing, if, after or in connection with any condemnation: (a) Landlord; (b) any entity related to Landlord; (c) any person or entity having either or both a legal or beneficial ownership interest in Landlord; (d) any person or entity in which Landlord has either or both a legal or beneficial ownership interest; or (e) any person or entity controlled by or under common control with any of the preceding persons or entities [each of (b) through (e), a "Landlord Affiliate"] or an unaffiliated person or entity succeeding to Landlord's interest (e.g., acquiring an interest in the property consisting of any portion of the Shopping Center) ["Landlord Successor"] participates, or in any way directly or indirectly has an interest in the redevelopment of any portion of the Shopping Center, then, Landlord, Landlord's Affiliate, or Landlord's Successor, as the case may be, shall deliver written notice to Tenant if its intent to redevelop. Tenant (but not Landlord), within thirty (30) days of receipt of such notice to redevelop, shall have the right to terminate the Lease. Tenant's failure to respond to such notice within said thirty (30) day period shall result in Tenant's waiver of such right to terminate and the Lease shall continue in full force and effect. If the Lease terminates as a matter of law notwithstanding the immediately preceding sentence, or if Tenant elects to terminate the Lease, then notwithstanding any provision of the Lease granting or reserving any portion of any award for Landlord, the entire award with respect to any Tenant costs or losses shall be payable to Tenant.

In the event the Lease terminates as hereinabove provided in Article 20 and within two (2) years following such termination of the Lease, Landlord or a Landlord Affiliate or a Landlord Successor: (m) restores the Shopping Center or the Building or erects any replacement thereof; (n) commences to rebuild; (o) files plans to rebuild or rebuilds on any portion of the land forming part of the former Shopping Center, in whole or in part for retail uses, mixed use consisting partially of retail, Landlord or such Landlord Affiliate or such Landlord Successor, as the case may be, shall grant, and hereby does grant to Tenant, and Tenant hereby reserves the right to lease the Demised Premises or comparable premises at the Shopping Center for the balance of what would have been the remaining Term plus: (x) any unexercised extension rights

# UNOFFICIAL COPY

set forth in the Lease; and (y) one (1) additional, optional extension term of five (5) years, on the same terms and conditions as set forth in the Lease, including without limitation, the square foot annual rental payable under the Lease (with an increase in Annual Minimum Rent per square foot in the additional extension term equal to the per square foot increase for the immediately preceding extension term). Any taking, sale or lease of the Shopping Center within such two (2) year period shall be subject to the rights granted to Tenant in this paragraph. Landlord or any Landlord Affiliate or Landlord Successor, as the case may be, shall notify Tenant when the Building is substantially restored or if retail premises are to be built and Tenant shall have thirty (30) days to notify Landlord or any such Landlord Affiliate or Landlord Successor of its election to lease the Demised Premises or comparable premises.

None of Landlord, any Landlord Affiliate or Landlord Successor, as the case may be, shall be excused from performance hereunder by reason of the fact that the condemning authority requires the termination of the lease of any tenant in order to redevelop or improve the area being redeveloped if any retail use shall thereafter be permitted. It shall also be evidence of the bad faith of Landlord or of any Landlord Affiliate or Landlord Successor, as the case may be, if any other retail tenant who was a retail tenant at any time within two (2) years prior to the condemnation is offered space in the redeveloped Shopping Center or in any area of which the former Shopping Center forms a part if Tenant is not also offered space in the redeveloped area on the terms herein provided. Tenant shall have the right to participate in any condemnation proceedings, negotiations or discussion concerning the threatened, potential or actual condemnation of the Demised Premises. Article 20 shall survive the termination of the Lease.

6. Use of Common Facilities. Landlord agrees during Tenant's normal business hours and for one hour thereafter to:

- (i) Keep all Common Facilities open to the public with the entrances and exits shown on Exhibit "A."
- (ii) Keep all Common Facilities adequately lighted, safe, and maintained in a clean, uniform and orderly condition.
- (iii) Provide heating and air-conditioning to any enclosed Common Facilities, if any, equal to the heating and air-conditioning that Tenant provides for its store in the Demised Premises.

Landlord covenants and agrees it will not erect and maintain, or permit the erection and maintenance of any shops, stalls, stands or kiosks in the Common Facilities (or in the enclosed Common Facilities, if any) within fifty (50) feet of any part of the Demised Premises or any Protected Parking Area and will not permit any selling in the Common Facilities (or in the enclosed Common Facilities, if any) within fifty (50) feet of any part of the Demised Premises or any Protected Parking Area. Landlord further covenants and agrees: (i) to use commercially reasonable efforts to restrict all occupants of the Shopping Center and their employees or any non-customer from parking within Tenant's Protected Parking Area, (ii) to use commercially reasonable efforts to prevent commuter parking and/or overnight parking, (iii) that no loading and/or delivery trucks or trailers will be permitted to park, stand or idle in the parking areas, (iv) that no portions of the Common Facilities may be leased or licensed in any way to third parties

# UNOFFICIAL COPY

who are not occupants or tenants of the Shopping Center, (v) not to charge a fee for use of the parking areas; and (vi) to the extent permitted under applicable law, to maintain a no solicitation policy within the Shopping Center. Tenant shall have the right, but not the obligation, to enforce such no solicitation and parking policy against violators located anywhere within the Shopping Center.

The limitation on the use of enclosed Common Facilities shall not apply to any seating arrangements that may be erected or installed and maintained by Landlord for the comfort and convenience of customers, nor to the planters or other decorative installations that may be placed therein provided such seating arrangements, planters or decorative installations do not obliterate, hinder or obstruct full customer visibility of the Demised Premises or accessibility between stores located adjacent to the Common Facilities.

7. Restrictive Covenants. The foregoing restrictions and exclusives shall be deemed covenants running with the land of the Shopping Center for the Term of the Lease. So long as Tenant, its successors, assigns or subtenants lease, use or occupy any space in the Shopping Center, Landlord covenants that notwithstanding the amendment, cancellation, termination or expiration of the herein Lease: (a) no covenant or agreement made by Landlord or any predecessor in title with any other person or entity restricting the use or occupancy of all or part of the Shopping Center shall be of any force or effect against Tenant except as set forth in Exhibit "B" in the Lease; (b) no building or structure shall be demolished nor shall any building or structure be hereafter erected or maintained on any part of the Shopping Center except in an area with an existing building shown on Exhibit "A" ("Building Area") or designated as a "Future Building Area" on Exhibit "A" hereof; (c) except for buildings and structures existing on the Effective Date of the Lease (and replacements of same pursuant to Articles 17 and 20), no single story building or other structure (including architectural features) shall exceed the height of the Demised Premises (including architectural features) and except buildings existing on the Effective Date of the Lease (and replacements of same pursuant to Articles 17 and 20), no building on an outparcel shall exceed twenty-six (26) feet in height, including architectural features (the height of the buildings shall be measured perpendicular from the finished floor elevation to the top of the highest point of the building, including any screening, parapet, penthouse, mechanical equipment or similar appurtenance located on the roof of such building) nor shall any in-line building "bump out" further than the Demised Premises; (d) no portion of any Protected Parking Area, the Critical Areas or Critical Building Facilities may be modified (including by way of example any change in the configuration of the parking stalls, access to the Protected Parking Areas, roadways, Common Facilities and other items included therein) without Tenant's consent, which consent Tenant may grant or withhold in its sole and absolute discretion; (e) no places of public assembly (e.g., movie theaters, bowling alleys, supermarkets, gymnasiums, fitness centers, and the like) shall be erected or maintained in any part of the Shopping Center, except as shown on Exhibit "A"; (f) no restaurant or other premises for on or off premises food or beverage consumption may be erected or maintained within 150 feet of any part of the Demised Premises; (g) no building, store or premises in the Shopping Center shall be leased, used or occupied as other than a "retail store" as such term is defined in Article 27 hereof; (h) no building in the Shopping Center shall be leased, used or occupied by an infant furniture and accessories store (such as buy buy Baby or Babies R Us) or for the sale of any of the items set forth on Exhibit D; and (i) no building in the Shopping Center shall be leased, used

# UNOFFICIAL COPY

or occupied for the sale of any of the items set forth on Exhibit F. The foregoing restrictions and exclusives shall be deemed covenants running with the land of the Shopping Center for the Term of the Lease.

8. Retail Use and Prohibited Uses. The term “retail stores” shall mean bona fide tenants, of a character consistent with a first class shopping center, whose businesses consist principally of the sale of goods or the purveying of services (principally to household consumers as contrasted with business consumers) at retail, and specifically shall exclude the uses set forth in Exhibit “F” hereto and all other establishments which purvey goods or services which are offensive, obnoxious, illegal or not consistent with a first class shopping center.

9. Lease Controls. This Memorandum is for informational purposes only and nothing contained herein shall be deemed to in any way modify or otherwise affect any of the terms and conditions of the Lease, the terms of which are incorporated herein by reference. Any capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Lease. In the event of any inconsistency between the terms of the Lease and this instrument, the terms of the Lease shall prevail.

10. Successors and Assigns. The rights and obligations set forth herein shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.

SIGNATURE PAGE TO MEMORANDUM OF LEASE FOLLOWS

# UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties have executed this Memorandum of Lease as of the day and year first above written.

**LANDLORD:**

CFLS EVERGREEN LLC,  
a Delaware limited liability company

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

Name: CONSTANTINE M. DAKOLIAS  
PRESIDENT

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

**TENANT:**

BURLINGTON COAT FACTORY  
OF TEXAS, INC.  
a Delaware limited liability company

By: Gayle Aertker

Name: Gayle Aertker

Title: SVP Real Estate Dev

Property of Cook County Clerk's Office

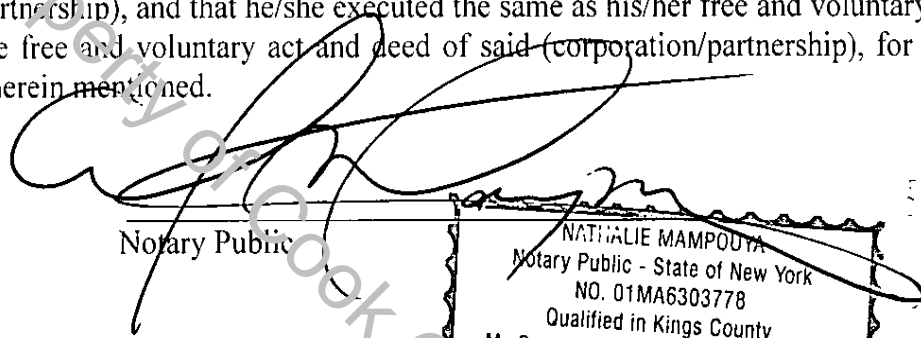


# UNOFFICIAL COPY

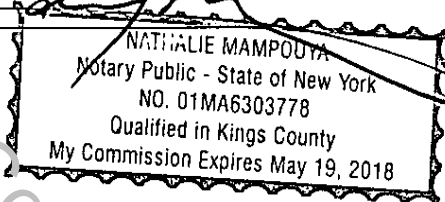
## ACKNOWLEDGEMENT TO MEMORANDUM OF LEASE

STATE OF New York )  
COUNTY OF New York ) ss.:

Before me, the undersigned Notary Public in and for said State and County, on this 13<sup>th</sup> day of October, 2017, personally appeared Christanne M. Dakones to me known to be the President of CFLS EVERGREEN LLC, and known to be the identical person who signed and severally acknowledged that he/she signed the foregoing instrument as such officer of said (corporation/partnership) for and in behalf of said (corporation/partnership), and that he/she executed the same as his/her free and voluntary act and deed and as the free and voluntary act and deed of said (corporation/partnership), for the uses and purposes therein mentioned.

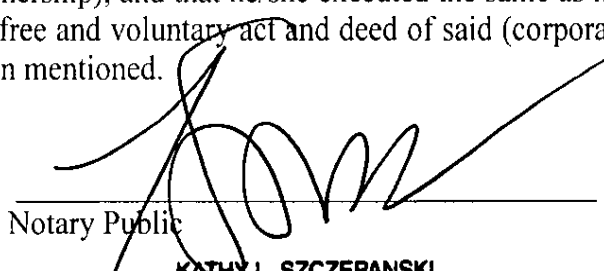


Notary Public



STATE OF NEW JERSEY )  
COUNTY OF BURLINGTON ) ss.:

Before me, the undersigned Notary Public in and for said State and County, on this 9 day of October, 2017, personally appeared Gayle Aertke, to me known to be the Senior Vice President, Real Estate Development of BURLINGTON COAT FACTORY OF TEXAS, INC., and known to be the identical person who signed and severally acknowledged that he/she signed the foregoing instrument as such officer of said (corporation/partnership) for and in behalf of said (corporation/partnership), and that he/she executed the same as his/her free and voluntary act and deed and as the free and voluntary act and deed of said (corporation/partnership), for the uses and purposes therein mentioned.



Notary Public

**KATHY L. SZCZEPANSKI**  
Notary Public, State of New Jersey  
My Commission Expires 5/19/2019

# UNOFFICIAL COPY

## EXHIBIT "A"

Site Plan of Shopping Center with Demised Premises, Protected Parking Area, Critical Areas, Building Area, Future Building Area (if any) and Critical Building Facilities Identified

[See attached 1 page]









Property of Cook County Clerk's Office

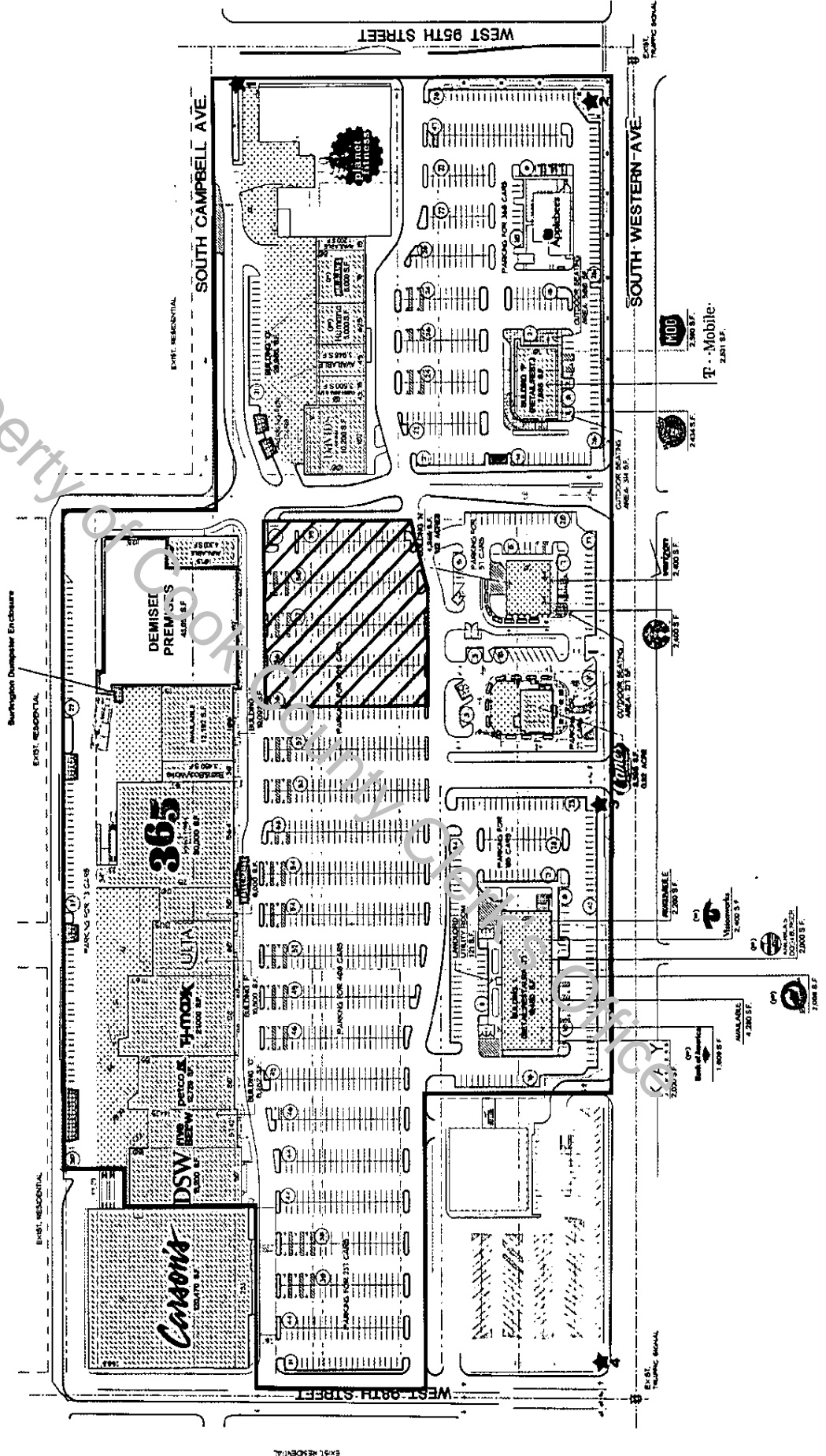
**COOK COUNTY  
RECORDER OF DEEDS**

**COOK COUNTY  
RECORDER OF DEEDS**



# UNOFFICIAL COPY

-  - SHOPPING CENTER
-  - COMPACTOR & DUMPSTER AREAS
-  - BUILDING AREAS
-  - DEMISED PREMISES
-  - PROTECTED PARKING
-  - FUTURE BUILDING AREAS
-  - CRITICAL AREAS
-  - PYLON & MONUMENT SIGNS



# UNOFFICIAL COPY

## EXHIBIT "A-1"

### Legal Description of Shopping Center

The land referred to is described as follows:

Lots 2 and 3 in Evergreen Plaza Subdivision, being a resubdivision of various subdivisions and vacated alleys lying in the northeast  $\frac{1}{4}$  of Section 12, Township 37 North, Range 13, east of the Third Principal Meridian, in Cook County, Illinois, according to the Plat thereof recorded October 21, 2016 as Document 1629534030.

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## EXHIBIT "D"

### Baby Depot Exclusives

1. cribs
2. changing tables
3. toy boxes
4. children's and adult rocking chairs
5. glider/rockers
6. juvenile furniture
  - a. tables
  - b. chairs
  - c. chests
  - d. dressers
  - e. bean bags
7. crib comforters, dust ruffles, bumpers, sheets and mattress pads
8. diaper stackers and diaper bags
9. strollers
10. high chairs
11. car seats
12. play pens
13. walkers and entertainers
14. infant swings
15. infant and layette clothing
16. infant toys
17. children's books
18. diapers
19. such additional items that are typically sold in an infant and children toys, furnishings and furniture store

# UNOFFICIAL COPY

## EXHIBIT "F"

### Prohibited Uses

1. A tavern, bar, nightclub, cocktail lounge, discotheque, dance hall or any other establishment selling alcoholic beverages for on-premises consumption; provided, however, the foregoing shall not prohibit the operation of a restaurant where the sale of alcoholic beverages therein comprises less than forty (40%) percent of the restaurant's gross revenues, or a restaurant of the type operated on the date hereof under the trade names "Chili's" or "TGI Friday's."
2. A billiards parlor, pool hall, arcade, video or game room.
3. A theater (for live performance), an auditorium, a convention or exhibition hall or the like in Buildings A-K.
4. A fairground.
5. A service station, automotive repair shop, truck stop or vehicle fueling station.
6. A flea market or pawnshop.
7. A training or educational facility (including without limitation, a school, college, reading room or other facility catering primarily to students and trainees rather than to customers or employees employed on premises) in Buildings A-K, provided that the following shall be permitted: (i) educational or training classes as part of a permitted use; and (ii) after-school math, reading, writing or test-prep enrichment or tutoring programs, such as Kumon or similar program, so long as such program is not within 150 feet of any part of the Demised Premises.
8. A car wash.
9. A medical clinic or medical office in Buildings A-K, provided that the following shall be permitted: (i) a medical clinic or office that is not located within 150 feet of any part of the Demised Premises so long as the total gross leasable area of such businesses in the aggregate does not exceed 5,000 square feet in the Project and such businesses are typically found in first class shopping centers in the Evergreen Park, Illinois area; and (ii) an optometrist's office located in a store selling eyeglasses, contact lenses and similar eye ware products or a person who may, by law, write prescriptions in connection with the operation of a pharmacy or a medical or a medically-related activity then being conducted in, and incidental to, retail drug stores.
10. An office building or any office of any kind not used principally for the purveying of products or services to walk-in consumers at retail in Buildings A-K, provided that the following shall be permitted: (i) back room offices incidental to a retail use; (ii) a bank,

# UNOFFICIAL COPY

insurance company, brokerage service or title or escrow company, so long as such businesses are not located within 150 feet of any part of the Demised Premises, the total gross leasable area of such businesses in the aggregate does not exceed 5,000 square feet in the Project and such businesses are typically found in first class shopping centers in the Evergreen Park, Illinois area).

11. Any governmental or political operation of any kind, including without limitation post office, welfare office, motor vehicle or other licensing, testing or inspection operation, or any political or candidate office or operation.
12. A dry cleaning plant, central laundry or laundromat (which shall not preclude a "drop off" and "pick up" dry cleaning service where all dry cleaning processes shall be located outside of such premises).
13. An establishment for sale of automobiles, trucks, mobile homes, recreational motor vehicles.
14. A piercing pagoda or tattoo parlor or similar establishment.
15. An adult type bookstore or other establishment selling, renting, displaying or exhibiting pornographic or obscene materials (including without limitation: magazines, books, movies, videos, photographs or so called "sexual toys") or providing adult type entertainment or activities (including, without limitation, any displays of a variety involving, exhibiting or depicting sexual themes, nudity or lewd acts. [This clause shall not prohibit or limit the items typically sold by a business of the type operated on the date hereof under the trade names "Barnes & Noble" or "Books-A-Million."])
16. A massage parlor or any establishment purveying similar services, provided that the foregoing does not apply to a national or regional operator such as Massage Envy or Massage Green) so long as such business is not located within 150 feet of any part of the Demised Premises, the total gross leasable area of such business in the aggregate does not exceed 3,500 square feet in the Project and such business is typically found in first class community shopping centers in the Chicago area.
17. A skating rink of any type.
18. A house of worship, church, reading room, mortuary, crematorium or funeral home.
19. A mobile home or trailer court, labor camp, junkyard or stockyard.
20. A motel or hotel or a lodging establishment of any kind.
21. A landfill, garbage dump or for the dumping, disposing, incineration or reduction of garbage.

# UNOFFICIAL COPY

22. A telephone call center (which shall not preclude a telephone store, cellular and otherwise).
23. A gambling establishment of any kind including, without limitation, a casino, bingo parlor or betting parlor (but lottery tickets may be sold and government sponsored lottery and similar gaming devices may be operated incidental to non-casino and non-hotel primary business at the premises).
24. An assembling, manufacturing, industrial, distilling, refining or smelting facility.
25. A storage warehouse or storage facility, except for storage incidental to a permitted use.
26. The conduct of any "fire sale," going out of business sale or bankruptcy sale (except pursuant to a court order) or any auction house operation.
27. Any use which regularly emits a noxious odor, loud noises or sounds which can be heard or smelled outside of the occupant's premises.
28. A "so called" head shop or any business selling marijuana or any type of drug rehab clinic or counseling service, including without limitation a methadone clinic.
29. Operation of a business which performs medical procedures, consulting or activities related to abortion, birth control or euthanasia, drug or alcohol addiction.