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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

HIBBETT SPORTING GOODS, INC.,)
)
 Plaintiff,)
)
 v.)
)
 WEATHERFORD DUNHILL LLC)
 c/o DUNHILL PROPERTY)
 MANAGEMENT SERVICES, INC.,)
)
 Defendant.)

Civil Action No. _____

PLAINTIFF’S ORIGINAL COMPLAINT

Plaintiff, Hibbett Sporting Goods, Inc. (“Hibbett”), by and through its attorneys, hereby files its Petition for Declaratory Judgment and in support thereof alleges as follows:

1. This is an action for Declaratory Judgment pursuant to Rule 57 of the Federal Rules of Civil Procedure, wherein Hibbett seeks a declaration establishing its rights and obligations under a certain Agreement of Lease, dated November 5, 2009, between Hibbett and Defendant Weatherford Dunhill LLC c/o Dunhill Property Management Services, Inc., successor-in-interest to Weatherford I-20/Main St, Ltd. (the “Lease”).

I. PARTIES

2. Hibbett is a corporation formed under the laws of Delaware, with its principal place of business in Alabama. Hibbett has in excess of 1,000 retail locations, selling sporting goods equipment, athletic apparel, athletic shoes and sports fan-licensed products. Hibbett operates a

store in Weatherford Ridge Shopping Center (the “Center”) in Weatherford, Texas pursuant to the Lease.

3. Weatherford Dunhill LLC c/o Dunhill Property Management Services, Inc. (“Dunhill”) is a limited liability company formed under the laws of the State of Texas. Its manager is William Hutchison, who is a citizen of Texas. On information and belief, all members of Dunhill are also citizens of Texas.

II. JURISDICTION

4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship between the parties and the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

5. This Court has personal jurisdiction over Defendant because (1) its principal place of business is in Texas; (2) it transacts business within the State of Texas; (3) it has continuous and systematic contacts with the State of Texas; (4) it has purposefully availed itself of the privileges and benefits of conducting business in the State of Texas; and (5) a substantial part of the events or omissions giving rise to Plaintiff’s claims occurred in Texas and involved Defendant.

6. Venue is proper pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions given prior to the claims herein occurred in this district.

III. FACTUAL BACKGROUND

7. On or about November 5, 2009, Hibbett and Dunhill entered into an Agreement of Lease (the “Lease”), which is attached hereto as Exhibit “A.” Under the terms of the Lease, Hibbett (referred to as “Tenant” in the Lease) leased approximately 6,068 gross leasable square feet of space in the Center from Dunhill (referred to as “Landlord” in the Lease).

8. The Lease includes a Main Term of five (5) years and two (2) option terms of five (5) years each. Accordingly, if all three (3) option terms are exercised, the Lease runs from 2009 to 2024. Exhibit "A" at ¶ 5, Lease. On February 21st of this year Hibbett exercised the second of these two option terms and extended its lease for another five (5) years.

9. On December 5, 2011, the parties entered a Second Amendment to Lease Agreement, which amended Paragraph 27 of the Lease, among other things. Paragraph 27 of the Lease includes a Co-Tenancy provision that specifies that Hibbett has certain remedies if Belk, JCPenney, TJ Maxx and at least 55,000 square feet of the remaining gross leasable area of the Center is not open and operating:

Continuing Co-Tenancy.

Landlord agrees that (1) Belk or its Comparable Replacement (as hereinafter defined), in its current location shown on the Site Plan, (2) JCPenney or its Comparable Replacement, in its current location shown on the Site Plan, (3) TJ Maxx or its Comparable Replacement and (4) at least fifty five thousand (55,000) square feet of the remaining gross leasable area of the Center (excluding the Leased Premises) shall be open and operating in a manner consistent with such tenants' other locations (each the "Continuing Co-Tenancy Requirement"); provided, however, in no event shall the square footage occupied by a Temporary Tenant be used to calculate the square footage of the Center which is open and operating. For purposes of this Paragraph 27.2 only, a Comparable Replacement shall be defined as a regional or national tenant with similar customer demographics, customer profiles, price points and merchandise of the same or better quality than the tenant being replaced and which occupies at least ninety percent (90%) of the space previously occupied by the tenant being replaced. In the event one of requirements (1), (2) and (3) of the Continuing Co-Tenancy Requirement is not satisfied, then Tenant may elect to reduce the then-current Minimum Rent by Two and 00/100 Dollars (\$2.00) per square foot in the Leased Premises per annum until the condition giving rise to such reduction is satisfied. There is no termination right applicable to the immediately preceding provision. However, in the event two of requirements (1), (2) and (3) of the Continuing Co-Tenancy Requirement are not satisfied, then Tenant may elect to pay the Alternative Rent in lieu of all Minimum Rent, Percentage Rent and all other charges due hereunder. In the event requirement (4) of the Continuing Co-Tenancy Requirement is not satisfied, then Tenant may elect to pay the Alternative Rent in lieu of all Minimum Rent, Percentage Rent and all other charges due hereunder. In the event Tenant has been

paying Alternative Rent for a period of six (6) months due to a Continuing Co-Tenancy Requirement violation, Tenant may, at any time thereafter until five (5) business days following its receipt of notice from Landlord that the condition resulting in the violated Continuing Co-Tenancy Requirement has been satisfied, elect to (i) terminate this Lease upon thirty (30) days written notice to Landlord or (ii) continue to pay Alternative Rent. Tenant's termination right for failure of any Continuing Co-Tenancy Requirement is ongoing. In the event that Tenant has been paying Alternative Rent for a period of twenty four (24) months due to a Continuing Co-Tenancy Requirement violation ("Alternative Rent Period"), Tenant, upon thirty (30) days notice from Landlord, must elect to: (a) pay Rent as provided in this Lease or (b) terminate this Lease, pursuant to Tenant's ongoing termination right stated above, upon thirty (30) days written notice to Landlord. Notwithstanding the foregoing, in the event of a subsequent failure of any of the Continuing Co-Tenancy Requirements, Tenant's remedies as set forth in this paragraph shall be reinstated, with the Alternative Rent Period restarted, and shall apply to each and every subsequent failure of any of the Continuing Co-Tenancy Requirements."

Exhibit "B" at ¶ 1, Second Amendment to Lease Agreement.

10. In March 2020, the President of the United States of America declared a national emergency due to the coronavirus pandemic. Shortly thereafter, the State of Texas and Parker County, Texas declared a local disaster and public health emergency and ordered that individuals could not occupy nor could individuals be permitted to occupy various establishment, including, but not limited to, malls and retail stores that do not sell essential household goods. As such, Hibbett was unable to access the premises or conduct business. See <https://www.parkercountytexas.com/CivicAlerts.aspx?AID=416>.

11. On March 24, 2020, Hibbett sent correspondence to Dunhill via electronic mail, stating that Hibbett's closure was due to one or more of the following (as addressed in the Lease): "an event of force majeure, a casualty, the discovery of hazardous substances within the Center and/or the Premises, loss of the right of quiet enjoyment and/or access and visibility to the Premises being materially and adversely affected." Hibbett went on to note that its rental and payment obligations, as well as any obligation to continuously operate from within the Premises, were

abated during the closure of its business. Exhibit “C,” Letter from Hibbett to Dunhill, dated March 24, 2020.¹

12. More than a month later, on May 7, 2020, Hibbett received correspondence from Dunhill, stating that Hibbett’s failure to immediately remit rent for April 2020 would constitute a default under the Lease. Dunhill did not acknowledge receipt of Hibbett’s correspondence or dispute that Hibbett had the right to abate its rental and payment obligations under the Lease. Exhibit “D,” Letter from Dunhill to Hibbett, dated April 30, 2020.

13. Immediately, on May 8, 2020, Hibbett sent correspondence to Dunhill via electronic mail, advising that Hibbett had become aware that, as of March 16, 2020, the Continuing Co-Tenancy Requirement in the Lease was not satisfied. The local disaster and public health emergency declared by Parker County prohibited Hibbett and its co-tenants, including Belk, JCPenney, and TJ Maxx, from operating their businesses. As such, under the “Continuing Co-Tenancy” provision, Hibbett was entitled to pay Alternative Rent (in lieu of Minimum Rent) starting in April of 2020. Hibbett reminded Dunhill that Hibbett retained all rights and remedies under the Lease. Exhibit “E,” Letter from Hibbett to Dunhill, dated May 8, 2020.

14. On June 1, 2020, after not receiving any response to its most recent correspondence, Hibbett fully paid its rent and other charges for the months of April, May, and June 2020 to Dunhill.

15. On June 5, 2020, Hibbett received correspondence from Dunhill, stating that it was terminating the Lease and seeking to retake possession of the premises. Dunhill further acknowledged receipt of Hibbett’s payments but stated that it was rejecting the payments. Exhibit

¹ On April 1, 2020, Hibbett paid common area maintenance costs and insurance charges to Dunhill.

“F,” Letter from Dunhill to Hibbett, dated June 2, 2020. This, despite Hibbett’s notice to Dunhill that it intended to pay “Alternative Rent” under the “Continuing Co-Tenancy” provision and ultimate payment in full. On June 10, 2020, Hibbett received the returned rent check. Exhibit “G,” Hibbett Returned Rent Check.

16. Dunhill’s correspondence to Hibbett relating to its payment obligations was not in compliance with the notice requirements of the Lease because the correspondence was sent to the wrong address. *See* Exhibit “D,” Letter from Dunhill to Hibbett, dated April 30, 2020; Exhibit “F,” Letter from Dunhill to Hibbett, dated June 2, 2020.

17. In or about 2014, pursuant to the Lease, Hibbett sent notice to Dunhill, updating its notice addresses to its current mailing address, 2700 Milan Court, Birmingham, Alabama 35211. Exhibit “A” at ¶ 32, Lease. Dunhill is aware of this change of address, as Dunhill has corresponded with Hibbett at its current mailing address for years. Dunhill intentionally forwarded notices related to Hibbett’s payment obligations and potential default to an address at which it knew Hibbett no longer occupied.

18. As Dunhill has not complied with the notice provisions of the Lease, the time in which Hibbett can cure any purported default has not yet began to run. As such, Hibbett’s payment in full cured any alleged default.

19. Even if the purported notice of default is valid and complies with the terms of the Lease, Hibbett still cured the alleged default when it tendered its full rent and other charges to Dunhill.

IV. COUNT ONE – DECLARATORY JUDGMENT

20. Hibbett hereby incorporates by reference and restates as if more fully stated herein paragraphs 1 through 19 of this Complaint.

21. Hibbett requests declaratory judgment, pursuant to 28 U.S.C. § 2201 et seq., stating that Hibbett is not in default of its obligations under the Lease because neither it nor its co-tenants were able to conduct business, pursuant to government order.

22. Hibbett requests declaratory judgment, pursuant to 28 U.S.C. § 2201 et seq., stating that Hibbett is not in default of its obligations under the Lease because its rental and payment obligations were abated due to the government closure of its business and/or due to Dunhill's failure to satisfy the co-tenancy requirements of the Lease.

23. Hibbett requests declaratory judgment, pursuant to 28 U.S.C. § 2201 et seq., stating that Dunhill has not complied with the notice requirements of the Lease. In the alternative, Hibbett requests declaratory judgment stating that even if Dunhill has complied with the notice requirements of the Lease, Hibbett has timely cured any purported default by fully paying its rent and other charges for the months of April, May and June 2020.

24. Hibbett requests declaratory judgment, pursuant to 28 U.S.C. § 2201 et seq., stating that Dunhill is not entitled to terminate the Lease .

V. PRAYER

25. WHEREFORE, Hibbett prays that declaratory judgment be entered in its favor and against Dunhill providing that (i) Dunhill is not entitled to terminate the Lease; and (ii) Hibbett is not in default of its obligations under the Lease because its rental and payment obligations were abated due to the government closure of its business and/or due to Dunhill's failure to satisfy the co-tenancy requirements of the Lease.

26. In the alternative, Hibbett prays that declaratory judgment be entered in its favor and against Dunhill providing that (i) Dunhill is not entitled to terminate the Lease; and (ii) Hibbett

is not in default of its obligations under the Lease because Dunhill's default notice is invalid under the Lease.

27. In the alternative, Hibbett prays that declaratory judgment be entered in its favor and against Dunhill providing that (i) Dunhill is not entitled to terminate the Lease; and (ii) Hibbett is not in default of its obligations under the Lease because Hibbett paid the disputed rent and other charges.

28. Hibbett also seeks an award of its attorneys' fees and costs, pursuant to the Lease.² Hibbett seeks such other further and different relief that the Court deems appropriate, premises considered.

Date: June 10, 2020

Respectfully submitted,

By: /s/ William S. Snyder

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ATTORNEYS FOR PLAINTIFF

² Paragraph 42 of the Lease specifies that the prevailing party in any action or proceeding is entitled to recover its attorneys' fees:

In the event of any action or proceeding brought by either party hereto against the other based upon or arising out of any breach of the terms and conditions hereof, the prevailing party shall be entitled to recover all costs, including reasonable attorneys' fees, from the other. To the extent any attorneys' fees or other legal fees, costs or expenses are incurred by either party for which the other party shall be liable under the terms of the Lease, any such fees, costs or expenses shall be limited to reasonable amounts under the circumstances.

Exhibit "A" at ¶ 42, Lease.

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of June 2020, I electronically filed the foregoing document with the Clerk of the Court for the U.S. District Court, Northern District of Texas, using the electronic case filing system for the Court, which will send a “Notice of Electronic Filing” to the attorneys who have consented in writing to accept this notice as service of this document by electronic means.

/s/ William S. Snyder

William S. Snyder

AGREEMENT OF LEASE

November 5, 2009

WEATHERFORD I-20/MAIN ST, LTD

and

HIBBETT SPORTING GOODS, INC.

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3 **AGREEMENT OF LEASE**

4 **THIS AGREEMENT OF LEASE ("Lease")** made as of November 5, 2009 (the "Effective
5 Date"), between WEATHERFORD I-20/MAIN ST, LTD, a Texas limited partnership ("Landlord"),
6 and HIBBETT SPORTING GOODS, INC., a Delaware corporation ("Tenant"), provides:

7 **1. DEFINITIONS.**

8
9 **1.1 Fundamental Terms.**

10
11 1.1.1 "Commencement Date" means the first (1st) day of the Term (as
12 hereinafter defined) as described in Subparagraph 4.1 below.

13
14 1.1.2 "CAM Fee" means the fee to be paid by Tenant for the Common Area
15 Costs (as hereinafter defined) as outlined in Subparagraph 16.2.

16
17 1.1.3 "Delivery Date" means the date Landlord delivers (i) the Leased Premises
18 (as hereinafter defined) to Tenant with Landlord's Work (as hereinafter defined) substantially
19 complete and (ii) the keys to the Leased Premises to Tenant.

20
21 1.1.4 "Lease Year" means (i) the time from the Rent Commencement Date (as
22 hereinafter defined) through the first (1st) full twelve (12) calendar month period, with respect to
23 the first (1st) Lease Year, and (ii) each subsequent twelve (12) calendar month period.

24
25 1.1.5 "Leased Premises" means those certain premises more particularly
26 described as part of Exhibit "A" attached hereto and cross-hatched on the copy of the Site Plan
27 attached hereto as Exhibit "B," together with all further improvements now or to be constructed
28 thereon, the address of which is 225 Adams Drive, Suite 243, Weatherford, Texas 76086.

29
30
31 1.1.6 "Main Term" means that period of time from the Rent Commencement
32 Date through and including the last day of the fifth (5th) full Lease Year.

33
34 1.1.7 "Minimum Rent" means the minimum rent payable by Tenant pursuant to
35 Subparagraph 5.1 below, subject to all other applicable provisions of this Lease.

36
37 1.1.8 "Percentage Rent" means rent to be paid by Tenant in an amount equal
38 to four percent (4%) of the amount by which Gross Sales (as hereinafter defined) exceed the
39 Sales Base (as hereinafter defined) for each Lease Year.

40
41 1.1.9 "Rent Commencement Date" means one hundred twenty (120) days
42 after all of the following have occurred: (a) the Delivery Date; (b) Tenant is in receipt of a fully
43 executed original Lease; (c) all governmental authorities have approved all of Tenant's plans and
44 construction, including signs and storefronts (so long as Tenant has worked in a diligent manner to
45 submit said plans); and (d) Landlord has removed all asbestos and Hazardous Substances (as
46 hereinafter defined) from the Leased Premises and structural support systems. Notwithstanding
47 the foregoing, this definition of Rent Commencement Date shall be subject to all other applicable
48 provisions of this Lease.

49
50 1.1.10 "Tenant's Percentage Share" means a fraction: (a) the numerator of
51 which shall be the gross leaseable area of the Leased Premises and (b) the denominator of which
52 shall be the total square footage of gross leaseable area in all buildings in the Center, which shall
53 be deemed as a minimum of two hundred fifty thousand (250,000) square feet for purposes of the
54 calculation of Tenant's Percentage Share. The gross leaseable area of the Center shall be the
55 sum of the gross leaseable area of all substantially completed buildings in the Center,
56 commencing as of the date that such building is substantially completed, but in any event the
57 denominator used for calculating Tenant's Percentage Share shall exclude mezzanines, outdoor
58 patios or outdoor sales areas. Tenant acknowledges that the gross leaseable area for the Center,
59 as used for the purposes of calculating Tenant's Percentage Share, shall be reduced by the gross
60 leaseable area of the premises of any tenant or occupant within the Center to the extent that such
61 tenant or occupant self-maintains or separately maintains its premises or any portion or item
62 thereof (e.g. trash collection), with respect to any such portion of the CAM Fee and maintenance
63 obligations which are assumed by and performed by such party and not incurred by Landlord,
64 provided the Common Area Costs are decreased by the same amount of the associated costs
65 thereof. Nothing contained herein shall be construed as permitting Landlord to increase Tenant's
66 Percentage Share.

67
68 **1.2 Other Definitions.**

1 **AGREEMENT OF LEASE**

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27 attached hereto as Exhibit "B," together with all further improvements now or to be constructed
28 thereon, the address of which is 225 Adams Drive, Suite _____, Weatherford, Texas 76086.
29 **[LLNOTE: please provide suite # of Leased Premises]**

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31 1.1.6 "**Main Term**" means that period of time from the Rent Commencement
32 Date through and including the last day of the fifth (5th) full Lease Year.

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44 construction, including signs and storefronts (so long as Tenant has worked in a diligent manner
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53 be deemed as a minimum of two hundred fifty thousand (250,000) square feet for purposes of the
54 calculation of Tenant's Percentage Share. The gross leaseable area of the Center shall be the
55 sum of the gross leaseable area of all substantially completed buildings in the Center,
56 commencing as of the date that such building is substantially completed, but in any event the
57 denominator used for calculating Tenant's Percentage Share shall exclude mezzanines, outdoor
58 patios or outdoor sales areas. Tenant acknowledges that the gross leaseable area for the Center,
59 as used for the purposes of calculating Tenant's Percentage Share, shall be reduced by the gross
60 leaseable area of the premises of any tenant or occupant within the Center to the extent that such
61 tenant or occupant self-maintains or separately maintains its premises or any portion or item
62 thereof (e.g. trash collection), with respect to any such portion of the CAM Fee and maintenance
63 obligations which are assumed by and performed by such party and not incurred by Landlord,
64 provided the Common Area Costs are decreased by the same amount of the associated costs
65 thereof. Nothing contained herein shall be construed as permitting Landlord to increase Tenant's
66 Percentage Share.

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68 **1.2 Other Definitions.**

Weatherford, Texas

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1.2.1 **"Center"** means that certain shopping center constructed in 2007 and known as Weatherford Ridge and located in Weatherford, Texas, which is more particularly shown on the Site Plan attached hereto as Exhibit "B".

1.2.2 **"Common Areas"** means the parking areas, driveways, private streets and alleys, loading areas not exclusively reserved for the use of a single tenant, outdoor lighting facilities, sidewalks, service areas, landscaped areas (including all landscaped areas adjacent to the Leased Premises), footpaths, corridors, drinking fountains, public toilets and the like and other areas intended for the non-exclusive use of the tenants and/or occupants of the Center. In addition, although the roof(s) of the building(s) in the Center are not literally part of the Common Area, they will be deemed to be so included for purposes of (i) Landlord's ability to prescribe rules and regulations regarding same and (ii) their inclusion for purposes of Common Area Costs reimbursements, when permissible.

1.2.3 **"Common Area Costs"** means the cost of maintaining, repairing, replacing, landscaping, painting and operating the Common Areas and Common Area Improvements, including repairs and seal coating (as opposed to repaving of) the parking areas or other Common Areas, lighting, minor roof repairs and preventative maintenance and removal of snow, ice, trash, and rubbish and other refuse. Common Area Costs shall specifically exclude the following: (i) roof or parking lot replacement (except as provided above) and any Center administrative or management fees or the like in excess of ten percent (10%) of Common Area Costs; advertising; seasonal decorations; (ii) the cost of any item for which Landlord is reimbursed by insurance or otherwise; (iii) the cost of loss of rents insurance; (iv) the cost of any additions to the Common Areas pursuant to an expansion of the Center's leasable square footage; (v) the cost of any alterations, additions, changes, replacements, improvements and repairs and other items which, under generally accepted accounting and auditing principles consistently applied (as pertaining to the real estate industry), are properly classified as capital expenditures or which are made in order to prepare space for occupancy by a new tenant or other occupant of the Center; (vi) the cost of any initial installations for any tenant or other occupant of the Center; (vii) the cost of leasing, or any depreciation on, any equipment used in connection with the Center; (viii) reserves for the replacement or repair of portions of, or equipment and machinery used in connection with, the Center; (ix) legal, accounting and other professional fees; (x) interest or amortization payments in connection with the Center; (xi) leasing commissions, advertising expenses and other costs incurred in leasing or attempting to lease any portion of the Center; (xii) the cost of any services performed exclusively for certain tenants of the Center; (xiii) the cost of correcting defects in the construction of the buildings, improvements and equipment of the Center or complying with any applicable laws, regulations or ordinances; (xiv) the cost of Landlord's membership (and related costs thereto) in any organizations representing shopping center owners; (xv) any political or charitable contributions; (xvi) any compensation paid to clerks, attendants or other persons in commercial concessions operated by Landlord; (xvii) repairs and other work occasioned by fire, windstorm or other casualty, which is reimbursed by insurance; (xviii) wages, salaries or other compensation paid to any executive employees above the grade of building manager; and (xix) costs attributable to repairing items that are covered by warranties.

1.2.4 **"Common Area Improvements"** means any improvements to, on or in the Common Areas, including, without limitation, any buildings, walls, fences, pylons, parking, sign areas, Common Area signage, traffic controls, roofs, Common Area utilities, landscaped areas and sidewalks in the Center.

1.2.5 **"Early Cessation Expenses"** means all actual costs related to the failure to open or the closing of Tenant's business in the Leased Premises, including but not limited to any fees associated with the early termination of any service contracts, not to exceed Twenty Thousand and 00/100 Dollars (\$20,000.00). Early Cessation Expenses shall specifically exclude any expenses associated with the termination of any of Tenant's employees at the Leased Premises or relocation of any of the same.

1.2.6 **"Gross Sales"** means the amount of gross sales and receipts for all merchandise and services sold in or from the Leased Premises by Tenant, whether for cash or otherwise, and reported pursuant to Subparagraph 5.3 below. Notwithstanding the foregoing, Gross Sales shall specifically exclude (or if already included therein, cause to be deducted therefrom): (i) sums collected and paid out for any sales, use, gross receipts or retail excise tax imposed by any duly constituted governmental authority; (ii) sales to employees, charities, senior citizens, religious groups or governmental agencies, not to exceed ten percent (10%) of Gross Sales; (iii) the value of exchanged or returned merchandise and the value of redeemed coupons; (iv) sales of trade fixtures or store equipment after use in the Leased Premises; (v) transfers of merchandise among stores of Tenant; (vi) finance, interest, service or carrying charges on credit

1 cards or charges related to electronic fund transfers, check cashing or returned checks; (vii)
2 charges for mailing, gift wrapping and other services provided for the convenience of customers at
3 no or nominal profit to Tenant; (viii) vending and coin-operated machine sales to employees; (ix)
4 uncollectible credit accounts, credit card charge-backs, and bad checks when written off by
5 Tenant; (x) receipts from public telephones; (xi) all sums received in settlement of claims for loss
6 or damage to merchandise; (xii) gift certificates or gift cards until redeemed; (xiii) sales not in the
7 ordinary course of business or sales by concessionaires or licensees; (xiv) returns to vendors; (xv)
8 disallowed amounts and discount payments and service charge for credit card charges; (xvi) value
9 added taxes; and (xvii) coupons.

10
11 1.2.7 "**Hazardous Substances**" means all (i) "hazardous substances" [as
12 defined in the Comprehensive Environmental Response Compensation and Liability Act of 1980,
13 42 U.S.C. paragraph 9601 et seq. and the regulations promulgated pursuant thereto, as amended
14 the "Act"]; (ii) any other toxic or hazardous waste, material, mold, fungus, spore or substance as
15 defined under any other federal, state or local law, rule, regulation or ordinance; and (iii) petroleum
16 products.

17
18 1.2.8 "**Landlord's Work**" means (i) the improvements to the Leased Premises
19 described on Exhibit "C" attached hereto; (ii) work necessary to cause the Leased Premises, as
20 improved pursuant to Paragraph 9 below, to comply with all current building code requirements,
21 laws, ordinances and regulations; (iii) Intentionally Omitted; and (iv) removal of all asbestos and
22 floor tile from the Leased Premises, regardless of whether or not such asbestos, if any, is
23 encapsulated.

24
25 1.2.9 "**Sales Base**" means for any Lease Year an amount equal to (i) the
26 Minimum Rent payable for such Lease Year (plus the amount of any "free rent" to which Tenant
27 was entitled for such Lease Year, as if it were in fact paid) divided by (ii) four percent (4%).

28
29 1.2.10 "**Site Plan**" means the Site Plan, a copy of which is attached hereto as
30 Exhibit "B".

31
32 1.2.11 "**Tenant's Parking Area**" means the cross-hatched area shown on the
33 copy of the Site Plan attached as Exhibit "B-1", and further described in Paragraph 3 below.

34
35 1.2.12 "**Tenant's Work**" means the improvements to be made to the Leased
36 Premises by Tenant pursuant to Paragraph 9 below.

37
38 1.2.13 "**Term**" or "**term**" means the Delivery Date through the beginning of the
39 Main Term, the Main Term and any renewal terms pursuant to Subparagraph 4.3 below.

40
41 1.2.14 "**Tenant's Structure Free Zone**" means the cross hatched area shown on
42 the copy of the Site Plan attached as Exhibit "B-2" and further described in Paragraph 3 below.

43
44 1.2.15 "**Taxes**" means all real estate taxes and other ad valorem taxes, public
45 charges and assessments, directly or indirectly assessed, levied, or imposed upon the land
46 (excluding unimproved land), buildings or other improvements of the Center during the Term, and
47 any taxes, assessments or impositions substituted in whole or in part therefor, net of available
48 discounts. Taxes shall specifically exclude and Tenant shall not be responsible for payment to
49 Landlord of: (i) income, margin, profits, intangible, documentary stamps, franchise, corporate,
50 capital stock, succession, estate, gift or inheritance taxes or taxes substituted for or in lieu of the
51 foregoing exclusions; (ii) sales taxes on rents, gross receipts or revenues of Landlord from the
52 Center; and (iii) any penalties, late charges or the like attributable to the late payment by Landlord
53 of Taxes.

54
55 **2. GRANT OF LEASEHOLD INTEREST.**

56
57 **2.1 Leased Premises.**

58
59 Landlord hereby grants to Tenant, and Tenant rents from Landlord, the Leased Premises
60 for the Term of the Lease. The Leased Premises constitutes a portion of the Center and contains
61 approximately six thousand sixty eight (6,068) gross leasable square feet. Within thirty (30) days
62 of the Delivery Date, Tenant shall be entitled to measure the Leased Premises, and, in the event
63 that the square footage is greater or less than the square footage stated herein by more than five
64 percent (5%), the rental obligations (including all additional rental and other charges) and Tenant's
65 Percentage Share shall be adjusted accordingly; however, if the remeasurement of the Leased
66 Premises results in a discrepancy in excess of ten percent (10%), then Tenant shall have the right
67 to immediately terminate this Lease and Landlord shall reimburse Tenant for any Early Cessation
68 Expenses incurred.

1
2 **2.2 Common Areas.**

3
4 Landlord also grants to Tenant, its customers, employees, licensees, invitees and sub-
5 tenants a non-exclusive easement in common with the other tenants of the Center for the use of
6 the Common Areas.
7

8 **2.3 Landlord's Representations Regarding Leased Premises.**

9
10 Landlord represents and warrants that to Landlord's actual knowledge (i) it has the right to
11 enter into this Lease; (ii) it has good title to the Leased Premises; (iii) as of the Delivery Date, the
12 Leased Premises, including without limitation, the foundation, the structure, the roof and HVAC
13 system, is in good condition and repair; (iv) the Leased Premises is properly zoned for use by
14 Tenant for the retail location in accordance with Subparagraph 8.1 below; (v) Landlord has
15 obtained all necessary approvals and permits from appropriate governmental authorities for the
16 development of the Center in accordance with the Site Plan and for the construction of Landlord's
17 Work in the Leased Premises; (vi) to Landlord's knowledge (without duty of further investigation)
18 the Leased Premises is not located within a flood zone, plain or area; (vii) except as set forth
19 herein, Landlord has entered into no leases, agreements or restrictive covenants in the Center
20 that would prohibit or adversely interfere with the Use (as hereinafter defined) of the Leased
21 Premises by Tenant in accordance with Subparagraph 8.1 below other than the Existing
22 Restrictions (as hereinafter defined) and that certain Operation and Easement Agreement
23 between J.C. Penney Corporation, Inc. and Weatherford I-20/Main St., L.P. recorded February 23,
24 2007 as Document #629668 in Book 2514, Page 572 in the Official Records of Parker County,
25 Texas (the "OEA"); and (viii) Intentionally Omitted.
26

27 **3. CENTER AND SITE PLAN.**

28
29 **3.1 Site Plan.**

30
31 Landlord represents and covenants that the Center has been or shall be developed in
32 substantial accordance with the Site Plan and that it shall be used as a retail shopping center
33 throughout the term of this Lease. Landlord reserves the right to modify or replace the Site Plan
34 without the prior written consent of Tenant, provided no such modification or replacement of the
35 Site Plan shall (i) reduce the ratio of parking spaces to gross leasable area of buildings in the
36 Center below that required by applicable law; (ii) reduce or rearrange the parking spaces in
37 Tenant's Parking Area; (iii) materially and adversely interfere with truck access to the loading
38 doors of the Leased Premises; (iv) materially and adversely interfere with customer access to the
39 Leased Premises or Tenant's Parking Areas; (v) Intentionally Omitted; (vi) result in the
40 construction of any buildings in Tenant's Structure Free Zone; or (vii) operate to change the
41 definition of Center as used herein.
42

43 **3.2 Tenant's Parking Area.**

44
45 Landlord agrees not to rearrange such spaces without the consent of the Tenant, which
46 consent will not be unreasonably withheld or delayed and, unless required by applicable
47 government authorities, not to locate Center handicap parking directly in front of the Leased
48 Premises.
49

50 **3.3 Tenant's Structure Free Zone.**

51
52 Landlord shall not enter into any lease agreement or allow on a permanent or temporary
53 basis any building, structure, tent, dumpster, recycling bin, Christmas tree sale, pumpkin sale or
54 other temporary or permanent retail or other use in Tenant's Structure Free Zone, without
55 Tenant's prior written approval, such approval not to be unreasonably withheld or delayed.
56

57 **4. TERM.**

58
59 **4.1 Commencement of Term.**

60
61 The Commencement Date shall be the date on which Tenant commences Tenant's Work
62 in the Leased Premises but in no event prior to the completion of Landlord's Work.
63

64 **4.2 Main Term.**

65
66 The Main Term of the Lease shall (i) commence on the Rent Commencement Date and (ii)
67 end on the last day of the fifth (5th) full Lease Year.
68

1 **4.3 Option Terms.**

2
3 Tenant shall have three (3) consecutive separate options to extend the term of this Lease
4 for successive option terms of five (5) Lease Years each. Provided Tenant is open and operating
5 at the time Tenant exercises its option right (as herein described) and is not in default beyond any
6 applicable notice and cure period, Tenant may exercise each such option by giving written notice
7 to Landlord at least one hundred twenty (120) days prior to the end of the then current term. Each
8 option term shall be upon the same terms, conditions and requirements, except that (i) Tenant
9 shall have no further right of renewal herein following the last option term and (ii) the Minimum
10 Rent payable shall be as set forth in Subparagraph 5.1 below.

11 **4.4 Intentionally Omitted.**

12
13
14 **5. RENT.**

15 **5.1 Minimum Rent.**

16 During the Main Term and any option term hereof, Tenant shall pay to Landlord Minimum
17 Rent, except as set forth herein, in the amounts and for the periods set forth below.

	PERIOD	ANNUAL RENT PER SQUARE FOOT OF LEASED PREMISES	ANNUAL RENT	MONTHLY RENT
Main Term	Years 1-5	\$15.00	\$91,020.00	\$7,585.00
Option Term	Years 6-10	\$16.00	\$97,088.00	\$8,090.67
	Years 11-15	\$17.00	\$103,156.00	\$8,596.33

18
19
20
21 **5.2 Payment of Minimum Rent.**

22 Minimum Rent shall be payable in advance in equal monthly installments payable on or
23 before the first (1st) day of each calendar month during the term hereof, commencing on the first
24 (1st) day of first (1st) full calendar month following the Rent Commencement Date. The rental due
25 for the period from the Rent Commencement Date to the first (1st) day of the first (1st) full
26 calendar month following the Rent Commencement Date shall be prorated (by using the number
27 of days in such partial month as the numerator and the number of days in the entire calendar
28 month as the denominator) and paid together with the first (1st) full monthly installment of Rent
29 due hereunder. All payments of Rent shall be made to Landlord at the address specified in
30 Paragraph 32 below or as Landlord otherwise notifies Tenant in writing. In the event that Rent
31 has been past due more than twice during any Lease Year and Landlord has given notice
32 pursuant to Paragraph 32 thereof to Tenant for the first two (2) such delinquent payments,
33 Landlord shall be entitled to a late charge of five percent (5%) per each future installment of Rent
34 past due during such Lease Year, accruing as of the past due date until paid. Tenant shall be
35 notified of any changes in monthly installments due hereunder in the form of a letter directed to
36 the attention of the Lease Administrator. The term "Additional Rent" as used in this Lease shall
37 include the CAM Fee, Tenant's Percentage Share of Taxes and Tenant's Percentage Share of
38 Insurance. Landlord hereby agrees not to send a regular monthly statement to Tenant. The term
39 "Rent" as used in this Lease shall include Minimum Rent, Additional Rent and any other amounts
40 payable by Tenant pursuant to this Lease.

41
42
43 Notwithstanding provisions herein to the contrary, Tenant shall also be entitled to rent
44 credits equal to Sixty One Thousand Five Hundred Forty and 56/100 Dollars (\$61,540.56) ("Rent
45 Credit") following the Rent Commencement Date. Upon thirty (30) days notice to Tenant and prior
46 to the full recoupment of the Rent Credit by Tenant, Landlord shall have the right to pay any
47 remaining balance of the Rent Credit in a lump sum payment to Tenant. In the event that, at the
48 expiration or sooner termination of this Lease, Tenant has not fully recouped the Rent Credit, any
49 remaining balance thereof shall become due and payable by Landlord to Tenant within thirty (30)
50 days of the expiration or sooner termination of this Lease.

51
52 **5.3 Payment of Percentage Rent.**

53 Beginning with the first (1st) full Lease Year, Tenant shall send to Landlord a written report
54 of its Gross Sales for such Lease Year and, if applicable, pay to Landlord the Percentage Rent
55 due within ninety (90) days after the end of each full Lease Year. In addition, Tenant shall send to
56 Landlord a written report of its Gross Sales for each Lease Year within thirty (30) days of
57 Landlord's written request. With respect to Percentage Rent for any period of less than twelve
58
59

1 (12) months accruing prior to the expiration or earlier termination of the Lease (a "Partial Lease
 2 Year"). Percentage Rent shall be payable, provided Percentage Rent has been payable in the
 3 previous Lease Year. In the event that Percentage Rent for a Partial Lease Year is payable, such
 4 amount shall be equal to the amount of Gross Sales for the Partial Lease Year which is in excess
 5 of the amount arrived at by multiplying the then-current Sales Base for the appropriate Lease Year
 6 by a fraction, the numerator of which shall be the number of days in the Partial Lease Year and
 7 the denominator of which shall be three hundred sixty-five (365) (the "Partial Year Breakpoint")
 8 multiplied by four percent (4%). For purposes of permitting verification by Landlord of the Gross
 9 Sales reported by Tenant, Landlord shall have the right, upon not less than thirty (30) days written
 10 notice to Tenant, to audit Tenant's books and records relating to the Gross Sales for previous two
 11 (2) Lease Years after the end of each Lease Year. Landlord's right to conduct such audit is
 12 limited to once per Lease Year. If such an audit reveals that Tenant has understated its Gross
 13 Sales by more than three percent (3%) in any Lease Year, Tenant, in addition to paying the
 14 additional Percentage Rent due, shall pay the reasonable cost of the audit not to exceed Fifteen
 15 Hundred and 00/100 Dollars (\$1500.00) (provided that the audit in fact resulted in the payment of
 16 Percentage Rent or additional Percentage Rent). If Tenant ceases operation of the Leased
 17 Premises, pursuant to an applicable right provided in this Lease, this provision requiring payment
 18 of Percentage Rent shall not be applicable from and after the date of said termination, if Tenant's
 19 Rent obligations are also thereby terminated. Tenant makes no representation or warranty as to
 20 expected sales at the Leased Premises.

21
 22 **6. TAXES.**

23
 24 **6.1 Payable by Landlord.**

25
 26 Landlord shall pay, as and when they become due, all Taxes payable upon or with respect
 27 to the Center, net of any discounts. Landlord shall pay or cause the payment of, all Taxes before
 28 any fine, penalty, interest or cost may be added thereto, become due or be imposed by operation
 29 of law for the nonpayment or late payment thereof or otherwise. In no event shall Tenant be liable
 30 for any discount forfeited or penalty incurred as a result of late payment by Landlord or by another
 31 tenant.

32
 33 **6.2 Tenant Reimbursement.**

34
 35 Tenant shall reimburse Landlord for Tenant's Percentage Share of Taxes (as calculated in
 36 Subparagraph 6.3), net of discounts, within thirty (30) days after Tenant's receipt of Landlord's
 37 written invoice of such amount and a copy of the applicable tax bill corresponding to Exhibit "A".

38
 39 **6.3 Calculation of Tenant's Percentage Share of Taxes.**

40
 41 Tenant's Percentage Share of Taxes shall be calculated by multiplying (i) the total Taxes,
 42 net of discounts, for which Landlord is responsible, by (ii) Tenant's Percentage Share. Tenant's
 43 Percentage Share of Taxes shall be prorated on a per diem basis as of the Rent Commencement
 44 Date and the expiration or earlier termination of this Lease, and, if applicable, Landlord shall
 45 promptly return to Tenant any overpayment made by Tenant. Notwithstanding the foregoing,
 46 Tenant's Percentage Share of Taxes for the first (1st) Lease Year shall not exceed the amount
 47 described in Paragraph 47 below, payable by Tenant in accordance with this Paragraph 6.

48
 49 **6.4 Intentionally Omitted.**

50
 51 **7. UTILITIES.**

52
 53 Tenant shall pay, to the applicable utility provider, all utility charges and deposits
 54 required to establish accounts for gas, heat, light, water, sewer, electricity, garbage and other
 55 utility use services supplied to the Leased Premises during the term of this Lease.
 56 Notwithstanding the foregoing, Landlord shall supply all utility service required pursuant to
 57 Exhibit "C" to the Leased Premises and be directly responsible for any contracts for the
 58 recoupment of any investments by the provider in supplying utility service to the Leased
 59 Premises and for the cost of any tap-on fees or so-called "impact fees" associated with the
 60 Leased Premises or the Center. Landlord represents and warrants that the Leased Premises is
 61 separately metered for utilities as set forth in Exhibit "C". If any disruption or interruption of utility
 62 service shall occur by or at Landlord's direction and continue for more than three (3) days and
 63 prohibit Tenant from operating its business in the Leased Premises, Tenant shall notify Landlord
 64 in writing and Rent shall abate until the date of restoration of service.

65
 66 **8. USE.**

67
 68 **8.1 Tenant's Use.**

1 8.1.1 Tenant shall have the right to use the Leased Premises for the retail sale of sporting goods,
 2 athletic shoes, apparel, sports fan licensed products and such other items as sold in other retail locations and for any
 3 lawful purpose not prohibited by Existing Restrictions (as hereinafter defined) (the "Use"). Tenant shall not permit or
 4 suffer the use of the Leased Premises for any unlawful purpose. Landlord represents and warrants to Tenant that all
 5 existing use restrictions which have been granted to any party regardless of such parties' use or business and which are
 6 applicable to the Center (the "Existing Restrictions") are set forth in Exhibit "D" herof and that, to Landlord's actual
 7 knowledge, Tenant's Use of the Leased Premises will not violate any such Existing Restrictions. With respect to any
 8 Existing Restriction which applies to or restricts in any manner Tenant's Use, Landlord has obtained an express, limited
 9 waiver and consent duly executed by the beneficiary of the Existing Restriction, pursuant to which such beneficiary
 10 waives the application of such Existing Restriction to Tenant's Use of the Leased Premises during the Term (as the
 11 same may be extended pursuant to this Lease or otherwise) for so long as Tenant operates in a manner substantially
 12 similar to the majority of its other "Hibbett Sports" retail stores; such waivers are attached hereto as Exhibit "D-1".
 13 Except as permitted by Exhibit "D-1", Tenant shall not violate the OEA or Existing Restrictions set forth in Exhibit "D".
 14

15 8.1.2 Tenant does not agree to any radius restriction or other similar non-
 16 compete restriction.
 17

18 8.1.3 Provided (1) the Opening Co-Tenancy Requirement has been met and (2),
 19 no Big Box Competitor (as hereinafter defined) has announced the opening of a store in the city of
 20 Weatherford, Texas between the Effective Date and Planned Delivery Date (as defined below),
 21 Tenant shall open for a minimum of one (1) business day as a fully stocked and staffed,
 22 prototypical Hibbett Sports store within one hundred twenty (120) days following the Planned
 23 Delivery Date. Nothing contained in this Lease shall be construed as requiring Tenant to operate
 24 continuously its business from the Leased Premises. In the event Tenant elects to cease to
 25 operate its business in the Leased Premises (other than for an Exempted Discontinuance, as
 26 defined below) and such closure of business continues for one hundred twenty (120) consecutive
 27 days, Landlord shall have the right, but not the obligation, at anytime thereafter to recapture the
 28 Leased Premises and terminate this Lease upon ten (10) days written notice to Tenant,
 29 whereupon Tenant shall vacate the Leased Premises and Tenant and Landlord shall be relieved
 30 of any further obligations under this Lease except for obligations and liabilities with respect to any
 31 state of facts that arose during the Term. For purposes hereof, a Big Box Competitor shall be
 32 defined as a business operating primarily in the sale of sporting goods, athletic apparel, athletic
 33 shoes or sports fan licensed products in a space equal to or greater than twenty five thousand
 34 (25,000) square feet, such as, by way of example but not in limitation, Dick's Sporting Goods,
 35 Academy Sports, Modell's, Dunham's or Sports Authority. Tenant shall present written evidence
 36 of such announcement.
 37

38 The following discontinuances of retail operations shall be exempted from
 39 applicability of Landlord's right to terminate hereunder ("Exempted Discontinuance"): (i) any good
 40 faith discontinuance occasioned by a force majeure event as herein described; (ii) cessation of
 41 retail operations not to exceed sixty (60) days in connection with a transfer of possession caused
 42 by a permitted assignment or sublet; (iii) any discontinuance not to exceed thirty (30) days in
 43 connection with a remodeling; or (iv) a period not to exceed three (3) days per year to conduct
 44 inventory.
 45

46 8.2 Landlord's Use Covenants.

47
 48 8.2.1 Neither Tenant nor Landlord shall use or permit the use of any portion of
 49 the Leased Premises or Center as any of the Use Restrictions set forth on Exhibit "D" hereto.
 50

51 8.2.2 Landlord shall not permit any other tenant or other user in the Center (or in
 52 any other premises owned in whole or in part, or controlled, directly or indirectly, by Landlord or
 53 any person or entity which is an affiliate of Landlord outside the confines of the Center, but
 54 within a one (1) mile radius thereof) to conduct the Exclusive Use (defined below) either as its
 55 principal use or within a gross leaseable area exceeding the lesser of one thousand (1,000)
 56 square feet or more than twenty percent (20%) of such other tenant's respective premises
 57 ("Exclusive Covenant"). For purposes hereof, the Exclusive Use shall be defined as the retail sale
 58 of sporting goods, athletic apparel, athletic shoes or sports fan licensed products.
 59 Notwithstanding the foregoing, (a) Woly-Board Co and (b) all existing tenants as of the Effective
 60 Date shall be excepted from the Exclusive Covenant provided such existing tenants operate within
 61 their current permitted use. In the event of the first violation of the Exclusive Covenant, Tenant
 62 shall be entitled to (i) terminate this Lease upon thirty (30) days prior written notice to Landlord, or
 63 (ii) pay One and 00/100 Dollar (\$1.00) per square foot in the Leased Premises per annum in lieu
 64 of Minimum Rent, Percentage Rent and all other charges due hereunder ("Remedy Rent")
 65 (provided that in no event shall this amount exceed the amount Tenant would otherwise has been
 66 obligated to pay as Minimum Rent, Percentage Rent and all other charges due hereunder) until
 67 the condition resulting in the violation ceases to exist. In the event Tenant elects to terminate this
 68 Lease pursuant to this Subparagraph 8.2.2, Landlord shall pay to Tenant Fifty Thousand and
 69 00/100 Dollars (\$50,000.00) within sixty (60) days of receipt of Tenant's termination notice and
 70 Tenant's termination of operations and vacancy of the Leased Premises.

1
2
3 Notwithstanding the foregoing, in the event Tenant's Exclusive Use is violated due
4 to a tenant of the Center operating outside its permitted use (a "Rogue Tenant"), Tenant shall
5 provide Landlord with a written notice of such violation. In the event that the violation of the
6 Exclusive Use by a Rogue Tenant continues for a period of thirty (30) days beyond Tenant's
7 written notice to Landlord of same, Tenant shall have the right to pay five percent (5%) of Gross
8 Sales in lieu of Minimum Rent, Percentage Rent and all other charges hereunder ("Rogue
9 Remedy Rent") until the condition resulting in the violation by the Rogue Tenant ceases to exist.
10 In the event such condition exists for a period of six (6) months, Tenant, at its option, shall be
11 entitled to: (1) terminate this Lease upon sixty (60) days prior written notice to Landlord or (2)
12 continue paying Rogue Remedy Rent until such violation is cured.

13 Notwithstanding any of the foregoing, in the event of a violation of the Exclusive
14 Covenant while either (x) Tenant is not open and operating in the Leased Premises or (y) Tenant
15 is in default beyond any applicable notice and cure period and is not actively contesting such
16 default, Tenant may not exercise its remedies for any violation of the Exclusive Covenant until
17 such time as Tenant is either open and operating in the Leased Premises or no longer in default,
18 as applicable. Further, during any period in which Tenant is not open and operating or is in
19 default beyond any applicable notice and cure period and not contesting such default, should
20 Landlord desire to permit any other tenant or other user in the Center to conduct the Exclusive
21 Use either as its primary use or within an area exceeding the lesser of one thousand (1,000)
22 square feet or more than twenty percent (20%) of such other tenant's respective Leased
23 Premises, in violation of the Exclusive Covenant (a "Excused Exclusive Violator"), Landlord must
24 first give Tenant thirty (30) days notice (the "Excused Violation Notice") during which time Tenant
25 may elect to either open and operate in the Leased Premises or cure such default, as applicable,
26 and Landlord may not permit such violation of the Exclusive Covenant; provided however if
27 Tenant does not elect to open and operate in the Leased Premises or does not cure such default,
28 as applicable, within thirty (30) days after Landlord's delivery of the Excused Violation Notice to
29 Tenant, or if Tenant fails to respond within thirty (30) days of receipt of Landlord's notice, Landlord
30 may permit such violation of the Exclusive Covenant and Tenant shall be barred from any claim
31 of, or remedies for, the same as a violation of the Exclusive Covenant (an "Excused Violation");
32 provided, however, nothing herein shall be construed as obligating Tenant to continuously operate
33 in the Leased Premises nor as having any effect on Landlord's rights under Paragraph 25.

34
35 8.2.3 Intentionally Omitted.

36
37 **9. LANDLORD'S AND TENANT'S WORK.**

38
39 **9.1 Landlord's Work.**

40
41 Landlord shall provide Landlord's Work, at its expense, in accordance with plans and
42 specifications approved by Tenant, which approval shall not be unreasonably withheld or delayed.
43 All electrical and plumbing work by Landlord shall be in compliance with all applicable codes and
44 Landlord will be responsible for delivering the Leased Premises in compliance with all applicable
45 federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations,
46 ordinances and codes. In the event that Landlord anticipates delivering the Leased Premises
47 more than sixty (60) days before or after the Planned Delivery Date (as hereinafter defined),
48 Landlord shall immediately send a written notice to Tenant not less than thirty (30) days prior to
49 the Delivery Date. Subject to Force Majeure and delays directly occasioned or caused by Tenant,
50 if Landlord's Work shall not be completed on or before March 1, 2010 (time being of the essence)
51 (the "Planned Delivery Date"), Tenant shall have the right at its election to either (i) cancel and
52 terminate this Lease or (ii) continue the Lease in which event the annual Minimum Rent and all
53 other charges due hereunder shall be adjusted so that, after the Rent Commencement Date,
54 Tenant shall receive rent credits equivalent to one (1) day free rent for each day the completion of
55 the Leased Premises is delayed beyond the Planned Delivery Date. In the event Tenant elects to
56 terminate this Lease pursuant to this Subparagraph 9.1, Landlord shall reimburse Tenant, within
57 sixty (60) days of receipt of Tenant's written termination notice, for any Early Cessation Expenses
58 incurred. Landlord's Work shall be deemed completed when all of Landlord's Work shall have
59 been completed except for punchlist items that shall not affect Tenant's Use or ability of Tenant to
60 commence with Tenant's Work in the Leased Premises. In the event such punchlist items or any
61 portion of Landlord's Work (including any items to be purchased by Landlord) are not completed
62 within thirty (30) days of the date Tenant opens for business in the Leased Premises, Tenant shall
63 have the right, but not the obligation, to complete all or a portion of the aforementioned items and
64 invoice Landlord for the actual and reasonable cost of such work. Thereafter, if Landlord has not
65 paid such invoice within thirty (30) days of its receipt of same, Tenant shall have the right to offset
66 the actual and reasonable cost of such work against the Rent due hereunder.
67
68

1 **9.2 Tenant's Work.**

2
3 After the Delivery Date, Tenant shall provide Tenant's Work, at its expense and in a
4 manner Tenant deems necessary for the operation of a sporting goods store. In the event that
5 Tenant discovers asbestos or Hazardous Substances in the Leased Premises (not caused by
6 Tenant, its contractors or employees) during the course of Tenant's Work, Tenant shall be
7 entitled, without waiver of any of Tenant's indemnification rights pursuant to Subparagraph 24.6
8 below, to (i) terminate this Lease or (ii) adjust the Rent Commencement Date accordingly and to
9 require Landlord, at its expense, to remove such asbestos or Hazardous Substance within a
10 reasonable period of time. In the event Tenant elects to terminate this Lease pursuant to this
11 Subparagraph 9.2, Landlord shall reimburse Tenant, within sixty (60) days of receipt of Tenant's
12 termination notice, for any Early Cessation Expenses incurred. In the event Tenant requires
13 Landlord to remove such asbestos or Hazardous Substance, the annual Minimum Rent and all
14 other charges due hereunder shall be adjusted so that, after the Rent Commencement Date,
15 Tenant shall receive rent credits equivalent to one (1) day free rent for each day needed by
16 Landlord to complete such remediation in a manner reasonably satisfactory to Tenant.

17
18 **9.3 Quality of Work and Plans and Specifications.**

19
20 Landlord's Work and Tenant's Work shall be done in a good and workmanlike manner and
21 shall be in compliance with all applicable building codes, laws, ordinances and regulations.
22 Landlord and Tenant shall obtain, at their own expense, all necessary building permits for their
23 respective work.

24
25 **9.4 Intentionally Omitted.**

26
27 **9.5 Liens.**

28
29 Tenant shall not suffer, permit or give cause for the filing of a lien against the Leased
30 Premises or the Center. If any mechanic's or materialman's lien or notice of lien shall at any
31 time be filed against the Leased Premises or the Center by reason of work, labor, services or
32 materials performed or furnished to Tenant or to anyone holding the Leased Premises through
33 or under Tenant, Tenant shall immediately cause the same to be bonded or discharged of
34 record. If Tenant shall fail to cause such lien or notice of lien to be discharged or bonded within
35 ten (10) days after the filing thereof, then, in addition to any other rights and remedies available
36 to Landlord at law, in equity, and/or under this Lease, Landlord may, but shall not be obligated
37 to, discharge or bond off the same by paying the amount claimed to be due or posting a bond,
38 and the amounts so paid by Landlord and all costs and expenses, including reasonable
39 attorneys' fees, incurred by Landlord in paying, bonding off or procuring the discharge of such
40 lien or notice of lien, shall be due and payable by Tenant to Landlord, as Additional Rent, within
41 thirty (30) days of Landlord's demand therefor.

42
43 **9.6 Delivery Date Notice.**

44
45 Landlord shall send a written notice to Tenant not less than sixty (60) days nor more than
46 ninety (90) days from the actual date that Landlord will deliver the Leased Premises to Tenant
47 with Landlord's Work completed. Landlord recognizes that this notice is required in order for
48 Tenant to schedule construction and to properly merchandise the Leased Premises. Failure to
49 timely provide the notice as described herein will result in an adjustment to the Delivery Date so
50 that that Delivery Date is sixty (60) days after the Tenant's receipt of the Delivery Date Notice.

51
52 **10. ALTERATIONS AND IMPROVEMENTS.**

53
54 Tenant may, from time to time, make or cause to be made any interior nonstructural
55 alterations, additions or improvements to the Leased Premises without Landlord's consent;
56 provided, however, that the construction of interior demising walls, interior doors and a second
57 entrance to the Leased Premises shall be deemed nonstructural. Tenant may make interior
58 structural and exterior alterations, additions or improvements to the Leased Premises, only with
59 Landlord's prior written consent, which consent will not be unreasonably withheld or delayed. In
60 the event that Landlord has not responded to any request to make such interior structural or
61 external alterations, additions or improvements within fifteen (15) days of approval request,
62 Tenant will submit a second written request to Landlord. Any second request to make such
63 interior structural or external alterations, additions or improvements shall be deemed approved if
64 not rejected in writing within fifteen (15) days following such second request for approval.
65 Landlord shall promptly execute and deliver, upon Tenant's request and at no cost to Landlord,
66 any instrument or instruments which may be required by any public or quasi-public authority for
67 the purpose of obtaining any license or permit for the making of such alterations or improvements.

1 11. **TENANT'S PROPERTY.**
2

3 All equipment, inventory, trade fixtures and other property owned by Tenant and located in
4 the Leased Premises shall remain the personal property of Tenant and shall be exempt from the
5 claims of Landlord or any mortgagee or lienholder of Landlord, without regard to the means by
6 which the aforementioned property is installed or attached. Landlord will, upon written request,
7 subordinate its statutory or common law landlord's lien rights, and any and all rights granted under
8 any present or future laws, to levy or distraint for Rent (whether in arrears or in advance) against
9 the aforesaid property of Tenant on the Leased Premises and shall execute any reasonable
10 instruments evidencing such subordination, at any time or times hereafter upon Tenant's request.
11 Tenant shall have the right, at any time or from time to time, to remove such trade fixtures or
12 equipment. If such removal damages any part of the Leased Premises, Tenant shall repair such
13 damages.
14

15 12. **SIGNS.**
16

17 12.1 **Tenant's Signs.**
18

19 Subject to the OEA, applicable laws, codes and rules affecting same and Landlord's Sign
20 Criteria (attached hereto as Exhibit "E-1"), Tenant, at its expense, shall have the right to (i) install,
21 maintain and replace (a) Tenant's standard sign and logo (attached as Exhibit "E") on and over
22 the Leased Premises, at the maximum size allowable under the applicable local ordinances and
23 (b) Tenant's standard LED sign in the window of the Leased Premises; (ii) display signs in the
24 Leased Premises store front windows advertising the sale of sporting goods and related
25 equipment and apparel, sports fan licensed products and athletic shoes and (iii) hang
26 professionally prepared banners on its parapet advertising special events up to four (4) times for
27 no longer than ten (10) days at a time during any given Lease Year. Further, Tenant shall have
28 the right to install and replace Tenant's standard sign and logo on the pylon for the Center, at no
29 cost to Tenant other than the cost of producing and installing the sign panel. The Center pylon
30 shall be maintained and lighted as part of the Common Area Improvements in accordance with
31 Paragraph 16 below.
32

33 12.1.1 Subject to the OEA, applicable laws, codes and rules affecting same and
34 Landlord's Sign Criteria, Tenant shall have the right to place professionally prepared temporary
35 signage announcing the opening of the new store in front of the Leased Premises for a period not
36 to exceed thirty (30) days prior to Tenant's opening for business in the Leased Premises.
37

38 12.1.2 Intentionally Omitted.
39

40 12.2 **Landlord's Signs.**
41

42 In no event shall Landlord have the right, during the Term of this Lease, to (i) place and
43 maintain any "For Rent" or "For Lease" or comparable sign in any location on the doors, windows
44 or any other location within the Leased Premises or in Tenant's Structure Free Zone or (ii) place
45 or maintain in any of the remaining areas of the Center, any "For Rent" or "For Lease" or
46 comparable sign which directly indicates such vacancy is the Leased Premises or which violates
47 the provisions of Paragraph 36.
48

49 13. **ASSIGNMENT AND SUBLETTING.**
50

51 Tenant shall not assign this Lease or sublet the Leased Premises without the prior written
52 consent of Landlord, which consent will not be unreasonably withheld, delayed or conditioned.
53 Notwithstanding the foregoing, Tenant shall have the right without Landlord's consent (i) to assign
54 this Lease or sublet all or any portion of the Leased Premises to a parent, subsidiary or affiliate
55 corporation of Tenant, a subsidiary of Tenant's parent corporation, a successor by merger,
56 acquisition or consolidation of Tenant, its parent or subsidiary, a corporation acquiring all or
57 substantially all of the assets of Tenant, its parent or subsidiary or a corporation acquiring ten (10)
58 or more stores in Texas (including the Leased Premises) from Tenant or (ii) to assign this Lease
59 or sublet any portion thereof to any unrelated entity with a net worth of Ten Million and 00/100
60 Dollars (\$10,000,000.00) or more. Any such assignment or subletting shall be to a tenant whose
61 use is not in conflict with the exclusive uses granted to other tenants in the Center. In the event of
62 an assignment pursuant to (i) or (ii), Tenant shall be released from all non-monetary obligations as
63 Tenant under this Lease. Notwithstanding the foregoing, in the event of an assignment pursuant
64 to (i) or (ii), Landlord agrees to provide notice of the default giving rise to such obligation in
65 accordance with the applicable provisions of the Lease and Tenant shall have the requisite cure
66 period provided in the Lease, but in any event at least thirty (30) days after the date of the notice
67 to Tenant.
68

1 Landlord shall be permitted to assign this Lease, provided Landlord supplies Tenant with
2 notice of such assignment, including the name and address of such assignee and such other
3 information regarding such assignment as either party deems appropriate.
4

5 **14. MAINTENANCE.**

6
7 **14.1 Tenant's Obligations.**

8
9 Tenant shall maintain at its expense the interior of the Leased Premises, including the doors and
10 windows therein in good condition and repair. Tenant shall repair defective work performed as
11 part of Tenant's Work but shall have no obligation to repair any defective work performed by
12 Landlord as part of Landlord's Work. If Tenant's heating and air conditioning system is replaced,
13 in whole or in part, by Tenant during the then current term of this Lease, Landlord shall, within
14 forty-five (45) days of the expiration of Tenant's Lease or any extensions thereof, reimburse
15 Tenant for the remaining unamortized cost based on a five (5) year straight-line method.
16

17 **14.2 Landlord's Obligations.**

18
19 Landlord shall (i) maintain at its expense the structure, roof and exterior of the Leased
20 Premises, (ii) warrant the mechanical systems and the HVAC system, for a period of one (1) year
21 from the Delivery Date, (iii) Intentionally Omitted, (iv) repair any defective work performed as part
22 of Landlord's Work of which Landlord has been notified in writing no later than one (1) year
23 following the Delivery Date and (v) Intentionally Omitted.
24

25 **14.3 Assignment of Warranties.**

26
27 To the extent they are assignable, Landlord shall assign to Tenant all manufacturers'
28 and other warranties applicable to that portion of the Leased Premises, and the equipment and
29 systems therein that were installed as a part of Landlord's Work and that Tenant is obligated to
30 maintain. Landlord represents and warrants that the major component parts of the HVAC
31 system are covered by a manufacturer's warranty of at least five (5) years and that such
32 warranty is assignable to Tenant.
33

34 **14.4 HVAC Maintenance.**

35
36 Tenant shall maintain the HVAC system exclusively servicing the Leased Premises
37 provided that Landlord warrants that it is in good condition and repair as of the Commencement
38 Date and for a period of one (1) year thereafter. Tenant shall obtain and maintain throughout the
39 term of this Lease, at Tenant's sole cost, a service contract with a reputable, licensed mechanical
40 contractor to carry out a program of regular maintenance and repair of the HVAC. From time to
41 time, within thirty (30) days after Landlord's request, Tenant shall provide copies of such contract
42 to Landlord.
43

44 **14.5 Failure to Perform.**

45
46 If either party fails to perform its maintenance obligations hereunder, the nondefaulting
47 party, after thirty (30) days written notice to the defaulting party (or upon such notice as may be
48 reasonable in the event of an emergency or in the event such repairs are necessary in order to
49 avoid damage to Tenant's merchandise or interference with Tenant's business) may perform such
50 unperformed maintenance at the cost of the defaulting party. If the defaulting party is Tenant, the
51 cost to Landlord of performing Tenant's maintenance obligations shall be Additional Rent due
52 hereunder. If the defaulting party is Landlord, Tenant may offset the cost of performing Landlord's
53 maintenance obligations against the rent due hereunder.
54

55 **15. LANDLORD'S RIGHT OF ENTRY.**

56
57 Landlord and its authorized agents shall have the right to enter the Leased Premises
58 during Tenant's normal business hours upon reasonable notice to Tenant, for the following
59 purposes: (i) inspecting the general condition and state of repair of the Leased Premises, (ii)
60 making any repairs required of Landlord, and (iii) showing the Leased Premises to any
61 prospective purchaser or lender. Notwithstanding the foregoing, Landlord shall not have the right
62 to perform any repair or other work in the Leased Premises during the months of October through
63 December without first obtaining Tenant's consent, except in case of emergency, which consent
64 will not be unreasonably withheld, conditioned or delayed. Landlord and its authorized agents
65 shall have the right to enter the Leased Premises at any time during which an apparent
66 emergency exists. During any period in which Landlord enters the Leased Premises, Landlord
67 shall use reasonable efforts to keep interference to Tenant's business to a minimum and shall
68 diligently prosecute to completion any repairs, alterations, additions or improvements which

1 involve the Leased Premises and for which it is responsible.

2
3 **16. COMMON AREA MAINTENANCE.**

4
5 **16.1 Landlord to Maintain.**

6
7 Landlord shall operate, manage and maintain the Common Areas and the Common Area
8 Improvements for which Landlord is responsible (i) free from trash, ice and snow, (ii) in good
9 repair and condition and (iii) in compliance with all applicable laws and regulations.

10
11 **16.2 CAM Fee.**

12
13 Tenant shall pay the CAM Fee in monthly installments together with the Minimum Rent.
14 Each such monthly installment shall be equal to one-twelfth (1/12th) of Landlord's estimate for
15 CAM Fee or, if unavailable, the actual annual CAM Fee for the previous Lease Year. The CAM
16 Fee for the period from the Rent Commencement Date through the first (1st) full Lease Year shall
17 not exceed the amount specified in Paragraph 47 below. Notwithstanding the foregoing, the
18 maximum annual CAM Fee payable by Tenant hereunder shall not increase by more than five
19 percent (5%) over the CAM Fee paid during the preceding Lease Year (the "CAM Fee Cap").
20 Further, the annual CAM Fee Cap shall not apply to the non-controllable costs which are strictly
21 defined as only those costs associated with providing electricity to the Common Area and the
22 removal of snow and ice from the Common Area. The CAM Fee Cap will be prorated for years
23 containing any period of time in which Tenant's obligations to make payments are suspended or
24 abated (e.g., casualty).

25
26 **16.3 CAM Fee Reconciliation.**

27
28 Within ninety (90) days after the end of each calendar year, Landlord shall give Tenant an invoice
29 (the "CAM Invoice") setting forth in reasonable detail (i) the Common Area Costs for such period,
30 together with supporting invoices, (ii) the actual amount of the CAM Fee for such period and (iii)
31 the monthly installments of the CAM Fee due from Tenant for the following year. Landlord shall
32 be obligated to send a copy of this yearly reconciliation to Tenant, attention: Lease Administrator.
33 If the amount of the actual CAM Fee exceeds the sum of the monthly installments paid by Tenant
34 for the applicable period, Tenant shall pay the excess to Landlord within thirty (30) days after the
35 CAM Invoice is received by Tenant (subject to applicable maximum CAM Fee amounts). If the
36 sum of such monthly installments exceeds the actual CAM Fee, Landlord shall credit the amount
37 of such excess to Tenant within thirty (30) days after Landlord delivers the CAM Invoice to Tenant.
38 Tenant shall have the right, no more than once per calendar year, to inspect Landlord's records of
39 Common Area Costs for a given fiscal year, at Landlord's offices during normal business hours,
40 on at least thirty (30) days prior written notice. Landlord shall refund any excess amount of CAM
41 Fee paid by Tenant and disclosed in such audit within thirty (30) days following demand and
42 Tenant shall pay any unpaid amount of CAM Fee within thirty (30) days after such audit. In the
43 event such audit reveals that Landlord overcharged Tenant by more than five percent (5%) of the
44 amount payable by Tenant, Landlord shall reimburse Tenant all reasonable costs incurred by
45 Tenant with respect to its audit, not to exceed Fifteen Hundred and 00/100 Dollars (\$1500.00). If
46 such refund is not made within such thirty (30) day period, Tenant shall, in addition to other
47 remedies available hereunder, be entitled to offset such refund against Minimum Rent,
48 Percentage Rent and all other charges due hereunder. Tenant shall also have the right to inquire
49 as to any charges hereunder and any such inquiries of Tenant shall be addressed by Landlord to
50 the best of its ability within fifteen (15) days of written request. In the event that Landlord has not
51 responded to any such inquiry within fifteen (15) days of the same, Tenant will submit a second
52 inquiry to Landlord. Landlord's failure to reply to any second inquiry as to any charges hereunder
53 shall be deemed an agreement with any proposed revision or corrections by Tenant if not rejected
54 in writing within fifteen (15) days following such second inquiry. In addition, Landlord shall make
55 no adjustments for underbilled and underpaid Common Area Costs, Taxes or Insurance more
56 than twelve (12) months following the expiration of the period with respect to which such amounts
57 would be due.

58
59 **17. SURRENDER OF LEASED PREMISES.**

60
61 At the expiration of the term, Tenant shall surrender the Leased Premises in good
62 condition and repair, ordinary wear and tear and damages by fire or the elements and other
63 casualties excepted.

64
65 **18. INSURANCE.**

66
67 **18.1 General Liability.**

68

1 18.1.1 Tenant shall maintain and keep in full force and effect during the term of
2 this Lease a policy of commercial general liability insurance with respect to the Leased Premises
3 and the business operated by Tenant thereon, naming Landlord and/or Landlord's lender, if
4 requested, as an additional insured, in which the combined limit is not less than Two Million and
5 00/100 Dollars (\$2,000,000.00) per occurrence with respect to bodily injury and property damage.
6 These limits may be provided by a general liability policy and/or an excess liability policy.
7

8 18.1.2 Landlord shall maintain and keep in full force and effect during the term of
9 this Lease a policy of commercial general liability insurance with respect to the Common Areas
10 and the Common Area Improvements, in which the combined limit is not to be less than Two
11 Million and 00/100 Dollars (\$2,000,000.00) per occurrence with respect to bodily injury and
12 property damage.
13

14 **18.2 Fire and Extended Property Coverage.**
15

16 18.2.1 Landlord shall maintain and keep in full force and effect during the term of
17 this Lease a policy or policies of standard fire and extended coverage insuring the Center
18 (including the Leased Premises) and the Common Area Improvements in an amount equal to or
19 greater than eighty percent (80%) of the replacement value thereof, provided that such amount is
20 sufficient to prevent the need for the application of coinsurance under the terms of the applicable
21 policy.
22

23 18.2.2 Tenant shall reimburse Landlord for Tenant's Percentage Share of such
24 coverage in monthly installments together with the Minimum Rent. Each such installment shall be
25 one-twelfth (1/12th) of Tenant's Percentage Share of the actual premium for the previous Lease
26 Year. Notwithstanding the foregoing, Tenant's Percentage Share of such premium for the first
27 (1st) Lease Year shall not exceed the amount specified in Paragraph 47 below. Annually, within
28 sixty (60) days following the end of each calendar year, Landlord shall provide to Tenant a
29 statement of the actual insurance costs payable for such calendar year. If applicable, Landlord
30 shall return to Tenant any overpayment made by Tenant upon delivery of such statement and
31 Tenant shall pay any deficiency within forty-five (45) days following the receipt of an invoice of
32 actual insurance costs owed by Landlord. Tenant's Percentage Share of such premium shall be
33 prorated on a per diem basis as of the Rent Commencement Date and the expiration or earlier
34 termination of this Lease and, if applicable, Landlord shall promptly return to Tenant any
35 overpayment made by Tenant.
36

37 18.2.3 Tenant's Use of the Leased Premises as set forth herein shall not be
38 deemed to increase Landlord's insurance premiums for fire and extended coverage insurance.
39

40 **18.3 Certificates.**
41

42 The party obligated to maintain the insurance policies hereunder shall, within fifteen (15)
43 days after request therefor, deliver to the other party a certificate of insurance naming the requisite
44 parties (as discussed in Subparagraph 18.1 above) as additional insured(s) evidencing that the
45 insurance required hereunder is in full force and effect, including the provision required under
46 Subparagraph 18.4. All insurance required hereunder may be carried under blanket policies
47 maintained by the party required to maintain such insurance.
48

49 **18.4 Subrogation.**
50

51 With respect to any loss which is covered by insurance required to be carried in this
52 Paragraph 18, the party carrying or required to carry such insurance and suffering such loss shall
53 release the other party of and from any and all claims with respect to such loss. Further, each
54 party's respective insurance policy shall provide for an appropriate waiver of subrogation reflecting
55 this release.
56

57 **19. COMPLIANCE WITH GOVERNMENTAL REGULATIONS.**
58

59 **19.1 Tenant's Obligation to Comply.**
60

61 Except as provided in Subparagraph 19.3 below, Tenant shall, at its cost and expense,
62 comply with all laws, codes rules, ordinances or requirements of all municipal, state, federal and
63 other applicable governmental authorities governing Tenant's Use or alterations of the Leased
64 Premises.
65

66 **19.2 Landlord's Obligation to Comply.**
67

68 Except as provided in Subparagraph 19.3 below, Landlord shall, at its sole cost and

1 expense, comply with laws, codes rules, ordinances or requirements of all municipal, state,
2 federal or other applicable governmental authorities arising as a result of or in connection with the
3 Leased Premises and the Common Areas or the failure of Landlord's Work to comply with such
4 requirements.

5
6 **19.3 ADA Compliance.**

7
8 As used in this Paragraph, the Americans with Disabilities Act ("ADA") shall mean the
9 Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq. and all implementing
10 regulations. Landlord and Tenant intend to comply with the ADA and shall allocate responsibility
11 for such compliance as follows:

12
13 (i) Except as provided in Subparagraph 19.3(ii) below, Landlord shall have
14 responsibility to comply with the requirements of the ADA in all Common Areas and in the
15 Leased Premises if attributable to the construction of the Center or Landlord's Work. Such
16 compliance responsibility shall include, but shall not be limited to, the obligation to remove
17 architectural and communication barriers in the Common Areas and the Leased Premises,
18 where such removal is readily achievable.

19
20 (ii) Except as provided in Subparagraph 19.3(i) above, Tenant shall have
21 responsibility to comply with the requirements of the ADA in the Leased Premises to the
22 extent that such requirements require Tenant to make interior nonstructural changes or
23 improvements to the Leased Premises. Such responsibility shall include, but shall not be
24 limited to, the obligation to remove architectural and communication barriers in the Leased
25 Premises created by Tenant's trade fixtures and leasehold improvements made by
26 Tenant, where such removal is readily achievable.

27
28 (iii) If building alterations involve the Common Areas, it shall be Landlord's
29 responsibility to comply with the standards of accessibility required under the ADA and its
30 implementing regulations.

31
32 (iv) In the event Landlord and Tenant shall agree, as part of the terms and
33 conditions of the Lease, that Landlord, at Landlord's expense, shall construct
34 improvements on the Leased Premises or any part thereof, it shall be Landlord's
35 responsibility to comply with the standards of accessibility for the new construction.

36
37 (v) Each party shall be responsible for the ADA compliance of its own
38 standards, criteria, administrative methods, eligibility criteria, policies, practices and
39 procedures.

40
41 (vi) Tenant shall be responsible for the provisions of any "auxiliary aids and
42 services", as such term is defined and used in the ADA, to its customers, clients and
43 patrons, if and to the extent required, in connection with the operation of its business or
44 occupancy of the Leased Premises.

45
46 (vii) To the extent permitted by the ADA, if either Landlord or Tenant can
47 demonstrate that barrier removal is not readily achievable in an area in which either party
48 has responsibility for ADA compliance, the party responsible for compliance, as herein
49 provided, shall make use of alternatives to barrier removal, if such alternatives are readily
50 achievable.

51
52 (viii) Where alterations made by either party trigger "path of travel" requirements
53 under the ADA, the party making such modifications shall be responsible for satisfying
54 such requirements.

55
56 **20. DAMAGE OR DESTRUCTION.**

57
58 If the Leased Premises or any building in the Center shall be damaged by fire or other
59 casualty insurable under standard fire and extended coverage insurance, provided Landlord
60 collects the proceeds of such insurance adequate to do so and does not elect to terminate the
61 Lease as provided below, Landlord shall commence to repair such damage, at its expense.
62 Upon completion of Landlord's restoration work, Tenant shall diligently perform such interior
63 work and storefront promptly, which such storefront work shall be in accordance with plans and
64 specifications approved by Landlord and Tenant, which approval will not be unreasonably
65 withheld, delayed or conditioned. From the date the damage occurs to the date Tenant reopens
66 for business in the entire Leased Premises, the Rent due hereunder shall be reduced by the
67 same percentage as the percentage of the Leased Premises which, in Tenant's judgment,
68 cannot be safely, economically or practically used for Tenant's Use. Anything herein to the

1 contrary notwithstanding, if, in Tenant's reasonable judgment, any damage or destruction to the
 2 Leased Premises or the Center from any cause whatsoever cannot be repaired within one
 3 hundred eighty (180) days following the date such damage occurs, Tenant may terminate this
 4 Lease by written notice to Landlord, given within sixty (60) days following the occurrence of
 5 such damage. In addition, if, in Landlord's reasonable judgment, any damage or destruction to
 6 the Leased Premises from any cause whatsoever cannot be repaired within one hundred eighty
 7 (180) days following the date such damage occurs and Landlord elects not to repair such
 8 damage, Landlord shall have the right to terminate this Lease by written notice to Tenant, given
 9 within sixty (60) days after the date such damage occurred. Notwithstanding the foregoing, if, at
 10 the time Landlord gives such termination notice, any of the renewal options provided for in the
 11 Lease have not yet been exercised and, subject to the terms and conditions provided therefor,
 12 Tenant exercises a renewal option within thirty (30) days after receipt of Landlord's termination
 13 notice, then this Lease shall not be terminated and Landlord shall promptly commence
 14 restoration of the Leased Premises following which Tenant shall diligently complete Tenant's
 15 reconstruction work of the Leased Premises and re-open for business. In the event of a
 16 termination of the Lease pursuant to this Paragraph, all insurance proceeds payable by reason
 17 of damage under policies required to be carried hereunder (excluding any insurance proceeds
 18 attributable to damage to Tenant's inventory, trade fixtures, business or leasehold
 19 improvements paid for by Tenant) shall be paid to Landlord.

20
 21 Whenever Landlord shall have the right to cancel Tenant's lease by reason of damage or
 22 destruction to or condemnation of the Center or the Leased Premises, it will not do so unless it
 23 shall likewise cancel the leases of all other similarly-situated tenants in the Center. As used
 24 herein, tenants that are "similarly situated" means tenants with (i) leases under which Landlord
 25 has a right to terminate by reason of damage or destruction to their leased premises and (ii)
 26 damage or destruction to their leased premises that is approximately equal to or greater than the
 27 damage or destruction to the Leased Premises.

28
 29 **21. CONDEMNATION.**

30
 31 If all or any part of the Leased Premises or if greater than fifty percent (50%) of the Center
 32 shall be taken under the power of eminent domain or if a Major Common Area Taking (as
 33 hereinafter defined) shall occur, (i) this Lease shall terminate as to the part so taken on the date
 34 on which Tenant is required to yield possession thereof, (ii) Landlord shall make such repairs and
 35 alterations as may be necessary in order to restore the part not taken to a condition satisfactory
 36 for Tenant's Use, (iii) the Rent due hereunder shall be equitably reduced by the same percentage
 37 as the percentage of the Leased Premises so taken, and (iv) the square footage of the Leased
 38 Premises shall be deemed equal to that of the part of the Leased Premises not taken, and (v) the
 39 gross leasable area of the Center shall be deemed equal to that part of the Center not taken and
 40 still leaseable and available for occupancy. If, (a) in Tenant's reasonable opinion, the portion so
 41 taken of the Leased Premises or the Center materially and adversely impairs Tenant's access to
 42 and use of the Leased Premises or (b) in the event of a Major Common Area Taking, Tenant shall
 43 have the option to terminate this Lease any time following the date on which Landlord or Tenant is
 44 required to yield possession of the area so taken. Tenant shall be entitled to receive from the
 45 condemnation award those amounts specifically paid for and attributable to Tenant's leasehold
 46 improvements, property, relocation expenses and goodwill, to the extent Tenant files a claim at its
 47 sole cost and expense, and provided further that Tenant's award not diminish the value of
 48 Landlord's award. As used herein, the term "Major Common Area Taking" means a
 49 condemnation or other taking of part of the Common Area so as to reduce parking below
 50 applicable code requirements or materially and adversely affect access to the Leased Premises.

51
 52 **22. INDEMNIFICATION.**

53
 54 To the fullest extent permitted by law and subject to the terms of Subparagraph 18.4,
 55 Landlord hereby indemnifies Tenant, its officers, stockholders, employees, contractors, and
 56 agents and Tenant hereby indemnifies Landlord, its officers, stockholders, employees,
 57 contractors, and agents for any cost, damage or expense incurred or suffered by the other as a
 58 result of the negligence or other act or omission of the indemnifying party or any
 59 misrepresentation or breach herein, including reasonable attorneys' fees, for losses not otherwise
 60 insured. Landlord shall indemnify, defend and hold harmless Tenant against every loss, cost,
 61 damage, expense and liability in connection with the Common Areas and Tenant shall indemnify,
 62 defend and hold harmless Landlord against every loss, cost, damage, expense and liability in
 63 connection with the Leased Premises, provided, however, in no event shall either party be liable
 64 for, nor shall either party be entitled to recover any punitive, speculative, or consequential
 65 damages hereunder. The obligations of Landlord and Tenant under this Paragraph 22 shall
 66 survive the expiration of the Term or earlier termination of this Lease and any extensions hereof.

67
 68 **23. QUIET ENJOYMENT.**

1
2 Subject to Tenant's compliance with all of the terms of this Lease, Landlord warrants and
3 represents that Tenant shall have quiet and peaceful enjoyment of the Leased Premises during
4 the term of this Lease.

5
6 **24. HAZARDOUS SUBSTANCES.**

7
8 **24.1 Tenant Covenants.**

9
10 During the term of the Lease, Tenant shall not: (i) release, spill, leak, store, generate or
11 accumulate any Hazardous Substances in, on or under the Leased Premises (except that Tenant
12 may store ordinary and necessary quantities of cleaning, office and pest control supplies stored in
13 compliance with all environmental laws on the Leased Premises; (ii) install any underground
14 storage tanks in, on or under the Leased Premises; (iii) Intentionally Omitted; or (iv) Intentionally
15 Omitted.

16
17 **24.2 Tenant's Duty to Notify.**

18
19 During the term of this Lease, Tenant shall notify Landlord in writing immediately upon
20 Tenant's learning that: (i) any duty in Subparagraph 24.1 has been violated; (ii) there has been a
21 release, discharge or disposal of any Hazardous Substance on the Leased Premises such that
22 contamination of the Leased Premises or any portion of the Center has occurred; or (iii) the
23 Leased Premises is the subject of any third party claim or action because of any environmental
24 condition on or originated by Tenant, its employees, agents, contractors or representatives from
25 the Leased Premises. Tenant shall promptly provide Landlord with copies of all correspondence
26 to or from such third parties, including, but not limited to, governmental agencies, regarding
27 environmental conditions on or originating from the Leased Premises or as a result of Tenant's or
28 Tenant's employees, agents or contractors.

29
30 **24.3 Tenant Indemnification.**

31
32 If (i) any Hazardous Substances are introduced in the Leased Premises by Tenant, its
33 agents contractors or employees; or (iii) any Hazardous Substances or asbestos or asbestos
34 containing material is introduced in the Center by Tenant, its agents, contractors or employees, all
35 costs incurred by Landlord as the result of such Hazardous Substances or asbestos shall be
36 borne by Tenant. Further, Tenant hereby indemnifies and holds Landlord and Landlord's officers,
37 directors, stockholders, employees and agents harmless from and against all such costs, liability
38 and damages (including, without limitation, sums paid in settlement thereof, with or without legal
39 proceedings, and all third-party claims) for personal injury or property damage and all judgments,
40 penalties, fines, costs, losses, attorneys' fees (through all levels of proceedings), costs of
41 remediation and removal, consultants' and experts' fees and all actual costs incurred in enforcing
42 this indemnity. Notwithstanding anything herein or elsewhere in the Lease to the contrary, in no
43 event shall Tenant be liable for nor shall Landlord be entitled to punitive, consequential or
44 speculative damages of Landlord as a result of any claim arising hereunder.

45
46 **24.4 Landlord Representations and Warranties.**

47
48 Landlord hereby represents and warrants that: (i) it has not used, generated, discharged,
49 released or stored any Hazardous Substances on, in or under the Center and has received no
50 notice and has no knowledge of the presence in, on or under the Center of any such Hazardous
51 Substances; (ii) there have never been any underground storage tanks at the Center, whether
52 owned by Landlord or his predecessors in interest; (iii) there are not and have never been
53 accumulated tires, spent batteries, mining spoil, debris or other solid waste (except for rubbish
54 and containers for normal scheduled disposal in compliance with all applicable laws) in, on or
55 under the Center; (iv) it has not spilled, discharged or leaked petroleum products other than de
56 minimis quantities in connection with the operation of motor vehicles on the Center; (v) there has
57 been no draining, filling or modification of wetlands (as defined by federal, state or local law,
58 regulation or ordinance) at the Center; and (vi) there is no asbestos or asbestos-containing
59 material in the Leased Premises. The representations and warranties set forth in this
60 Subparagraph 24.4 shall apply to any contiguous or adjacent property owned by Landlord,
61 whether or not Landlord is in possession.

62
63 **24.5 Landlord Obligations.**

64
65 If any such Hazardous Substances are discovered at the Center, or adjacent property
66 owned, directly or indirectly, in whole or in part, by Landlord (unless introduced by Tenant, its
67 contractors, agents or employees) or if any asbestos or asbestos containing material is
68 discovered in the Leased Premises (not caused by Tenant or resulting from Tenant's Work in the

1 Leased Premises) and, in either case, if removal, encapsulation or other remediation of any of the
 2 foregoing is required by applicable laws, Landlord shall immediately and with all due diligence,
 3 and at no expense to Tenant (unless introduced by Tenant, its contractors, agents or employees),
 4 take all measures necessary to comply with all applicable laws to (i) remove such Hazardous
 5 Substances or asbestos from the Center, or adjacent property owned, directly or indirectly, in
 6 whole or in part, by Landlord and/or (ii) encapsulate or remediate such Hazardous Substances or
 7 asbestos (unless introduced by Tenant, its contractors, agents or employees). All such removal
 8 and/or encapsulation or remediation shall be of a permanent and nonrecurring nature and in
 9 compliance with all environmental laws and regulations and at Landlord's expense. From the date
 10 such Hazardous Substances are discovered at the Center to the date such removal,
 11 encapsulation, remediation and restoration are complete, all rent due hereunder shall be reduced
 12 by the same percentage as the percentage of the Leased Premises which, in Tenant's reasonable
 13 judgment, cannot be safely, economically or practically used for the operation of Tenant's
 14 business. Anything herein to the contrary notwithstanding, if, in Tenant's reasonable judgment,
 15 such removal, encapsulation, remediation and restoration cannot be completed within one
 16 hundred eighty (180) days following the date such Hazardous Substances or asbestos are
 17 discovered, Tenant may terminate this Lease by written notice to Landlord which notice shall be
 18 effective on Landlord's receipt thereof. In the event this Lease is terminated pursuant to this
 19 Paragraph 24, Landlord shall reimburse Tenant, within sixty (60) days of receipt of such
 20 termination notice, for any Early Cessation Expenses incurred.

21 22 **24.6 Landlord Indemnification.**

23
24 If (i) any of the representations or warranties set forth in Subparagraph 24.4 are incorrect,
 25 misleading or breached; (ii) any Hazardous Substances are discovered at the Center or adjacent
 26 property owned, directly or indirectly, in whole or in part, by Landlord (unless introduced by
 27 Tenant, its agents, contractors or employees); or (iii) Hazardous Substances or any asbestos or
 28 asbestos containing material is discovered in the Leased Premises (unless introduced by Tenant,
 29 its agents, contractors or employees), all costs incurred by Tenant as the result of such breach or
 30 discovery of such Hazardous Substances or asbestos shall be borne by Landlord. Further,
 31 Landlord hereby indemnifies and holds Tenant and Tenant's officers, directors, stockholders,
 32 employees and agents harmless from and against all such costs, liability and damages including,
 33 without limitation, all third-party claims (including, without limitation, sums paid in settlement
 34 thereof, with or without legal proceedings, and all third-party claims) for personal injury or property
 35 damage and all judgments, penalties, fines, costs, losses, attorneys' fees (through all levels of
 36 proceedings), costs of remediation and removal, consultants' and experts' fees and all actual
 37 costs incurred in enforcing this indemnity. Notwithstanding anything herein or elsewhere in the
 38 Lease to the contrary, in no event shall Landlord be liable for nor shall Tenant be entitled to
 39 punitive, consequential or speculative damages of Tenant as a result of any claim arising
 40 hereunder.

41 42 **24.7 Survival.**

43
44 The obligations of Landlord and Tenant under this Paragraph 24 shall survive the
 45 expiration or earlier termination of this Lease and any extensions hereof.

46 47 **25. TENANT'S DEFAULT.**

48
49 It shall be an event of default under this Lease (i) if Tenant fails to pay Rent within ten (10)
 50 days after the receipt of a written default notice from Landlord (provided Landlord shall not be
 51 required to provide notice more than once per Lease Year and such event of default will then
 52 occur on the tenth (10th) day following the date on which such Rent was due), (ii) if Tenant
 53 breaches any of its obligations hereunder and fails to cure such breach within thirty (30) days after
 54 the receipt of a written default notice from Landlord; provided, however, that if such default is not
 55 reasonably capable of being cured within thirty (30) days, such cure period shall be extended for
 56 so long as Tenant is proceeding with reasonable diligence to cure such default, (iii) if Tenant
 57 makes a general assignment for the benefit of its creditors, (iv) Tenant shall become insolvent or
 58 shall make a transfer in fraud of creditors, (v) Tenant shall file a petition under any section or
 59 chapter of the federal Bankruptcy Code, as amended, or under any similar law or statute of the
 60 United States or any state thereof; or Tenant shall be adjudged bankrupt or insolvent in
 61 proceedings filed against Tenant, or (vi) a receiver or Trustee shall be appointed for the Leased
 62 Premises or for all or substantially all of the assets of Tenant or any guarantor of Tenant's
 63 obligation under this Lease. Upon the occurrence of an event of default by Tenant, Landlord
 64 shall have, in addition to all other rights and remedies provided by law, the right to terminate this
 65 Lease and/or to re-enter and take possession of the Leased Premises.

66
67 Should the Landlord elect to re-enter the Leased Premises pursuant to the provisions of
 68 this Paragraph 25, or if Landlord takes possession pursuant to legal proceedings or otherwise,

1 Landlord may either (i) keep the Lease in full force and effect, in which case Tenant shall pay
 2 Rent as and when due, or (ii) terminate this Lease and relet the Leased Premises or any part
 3 thereof on behalf of Landlord for such term as remains in the Tenant's then current term at a
 4 rental equivalent to the then generally accepted fair market value and upon such other terms and
 5 conditions as Landlord in its reasonable discretion deems advisable, in which case Tenant shall
 6 remain monetarily liable for the difference in the Rent that it is obligated to pay under the Lease
 7 and the rent and other charges which the successor tenant (hereinafter defined as "Successor
 8 Tenant") is obligated to pay for the duration of the then current Term as and when due, and such
 9 monetary obligation to the Landlord shall survive the termination of this Lease if the termination is
 10 due to an event of default by Tenant. All rentals received by Landlord from such Successor
 11 Tenant shall be applied, first, to any indebtedness other than Rent due hereunder from Tenant to
 12 Landlord; second, to pay any costs of reasonable alterations and repairs made by Landlord in
 13 order to relet the Leased Premises; and third, to Rent. The excess, if any, shall be held by
 14 Landlord and applied in payment of future rent as it becomes due under this Lease. In no event
 15 shall Tenant be obligated or in any way responsible for any damages, loss, costs or expenses
 16 caused by any Successor Tenant to whom Landlord has relet the Leased Premises on Landlord's
 17 behalf.

18
 19 **26. LANDLORD'S DEFAULT.**

20
 21 In the event that Landlord defaults in the performance of any of its obligations hereunder
 22 and such default continues uncured (by Landlord or any mortgagee of the Center) for thirty (30)
 23 days after written notice from Tenant to Landlord (and to any mortgagee of the Center for whom
 24 Tenant has been provided a name and address), provided, however, that if such default is not
 25 reasonably capable of being cured within thirty (30) days, the period for curing such default shall
 26 be extended for so long as Landlord (or its mortgagee) is proceeding with reasonable diligence to
 27 cure such default and provided further that in the case of an emergency, Tenant shall be required
 28 to give only such notice as is reasonable under the circumstances, then (i) to cure such default
 29 and offset the cost of such cure against the rents and other amounts due hereunder; (ii) to pay
 30 two percent (2%) of Gross Sales in lieu of Minimum Rent, Percentage Rent and all other charges
 31 due hereunder (provided that in no event shall this amount exceed the amount Tenant would
 32 otherwise have been obligated to pay as Minimum Rent, Percentage Rent and all other charges
 33 due hereunder) until the condition resulting in the breach ceases to exist or Tenant elects to
 34 terminate, and (iii) to terminate this Lease upon an additional fifteen (15) day written notice to
 35 Landlord (subject to any right to cure provided herein or within such additional notice period). In
 36 the event this Lease is terminated pursuant to this Paragraph 26, Landlord shall reimburse
 37 Tenant, within sixty (60) days of receipt of such termination notice, for any Early Cessation
 38 Expenses incurred.

39
 40 **27. CO-TENANCY.**

41
 42 **27.1 Opening Co-Tenancy.**

43
 44 As of the date Tenant is required to open its business in the Leased Premises pursuant to
 45 Subparagraph 8.1.3, (1) Belk, in its current location shown on the Site Plan, (2) JCPenney, in its
 46 current location shown on the Site Plan, and (3) at least fifty five thousand (55,000) square feet of
 47 the remaining gross leasable area of the Center (excluding the Leased Premises) shall be open
 48 and operating in a manner consistent with their other Texas locations (each an "Opening Co-
 49 Tenancy Requirement"); provided, however, in no event shall the square footage occupied by a
 50 "Temporary Tenant" (as hereinafter defined) be used to calculate the square footage of the Center
 51 which is open and operating. For the purposes of this Lease, a Temporary Tenant shall be
 52 defined as any tenant occupying space in the Center under an occupancy agreement with an
 53 original guaranteed term of less than twelve (12) full calendar months. In the event, that any
 54 Opening Co-Tenancy Requirement is not satisfied, then Tenant may, at its option, either elect to
 55 (i) delay its opening date and Rent Commencement Date until such Opening Co-Tenancy
 56 Requirement is satisfied or (ii) open the Leased Premises and pay, in lieu of Minimum Rent,
 57 Percentage Rent and all other charges due hereunder, five percent (5%) of Gross Sales (provided
 58 that in no event shall this amount exceed the amount Tenant would otherwise have been obligated
 59 to pay as Minimum Rent, Percentage Rent and all other charges due hereunder) (the "Alternative
 60 Rent") until such Opening Co-Tenancy Requirement has been satisfied. Alternative Rent shall be
 61 paid in arrears, on or before the twentieth (20th) day of the following calendar month. If any
 62 Opening Co-Tenancy Requirement remains unsatisfied for a period of six (6) months or more,
 63 then, in such event, Tenant, upon thirty (30) days notice from Landlord, shall elect to (a) terminate
 64 this Lease upon thirty (30) days written notice to Landlord or (b) commence paying full Minimum
 65 Rent, Percentage Rent (if any) and all other charges due hereunder and Tenant's termination right
 66 pursuant to this Subparagraph 27.1 shall be deemed null and void.

67
 68 **27.2 Continuing Co-Tenancy.**

1
2 Landlord agrees that (1) Belk or its Comparable Replacement (as hereinafter defined), in
3 its current location shown on the Site Plan, (2) JCPenney or its Comparable Replacement, in its
4 current location shown on the Site Plan, and (3) at least fifty five thousand (55,000) square feet of
5 the remaining gross leasable area of the Center (excluding the Leased Premises) shall be open
6 and operating in a manner consistent with such tenant's other locations (each the "Continuing
7 Co-Tenancy Requirement"); provided, however, in no event shall the square footage occupied
8 by a Temporary Tenant be used to calculate the square footage of the Center which is open and
9 operating. For purposes of this Paragraph 27.2 only, a Comparable Replacement shall be
10 defined as a regional or national tenant with similar customer demographics, customer profiles,
11 price points and merchandise of the same or better quality than the tenant being replaced and
12 which occupies at least ninety percent (90%) of the space previously occupied by the tenant
13 being replaced. In the event either (1) or (2) of the Continuing Co-Tenancy Requirement is not
14 satisfied, then Tenant may elect to reduce the then-current Minimum Rent by Two and 00/100
15 Dollars (\$2.00) per square foot in the Leased Premises per annum until the condition giving rise
16 to such reduction is satisfied. There is no termination right applicable to the immediately
17 preceding provision. In the event both (1) and (2) of the Continuing Co-Tenancy Requirement
18 are not satisfied, then Tenant may elect to pay the Alternative Rent in lieu of all Minimum Rent,
19 Percentage Rent and all other charges due hereunder. In the event (3) of the Continuing Co-
20 Tenancy Requirement is not satisfied, then Tenant may elect to pay the Alternative Rent in lieu
21 of all Minimum Rent, Percentage Rent and all other charges due hereunder. In the event
22 Tenant has been paying Alternative Rent for a period of six (6) months due to a Continuing Co-
23 Tenancy Requirement violation, Tenant may, at any time thereafter until five (5) business days
24 following its receipt of notice from Landlord that the condition resulting in the violated Continuing
25 Co-Tenancy Requirement has been satisfied, elect to (i) terminate this Lease upon thirty (30)
26 days written notice to Landlord or (ii) continue to pay Alternative Rent. Tenant's termination right
27 for failure of any Continuing Co-Tenancy Requirement is ongoing. In the event that Tenant has
28 been paying Alternative Rent for a period of twenty four (24) months due to a Continuing Co-
29 Tenancy Requirement violation ("Alternative Rent Period"), Tenant, upon thirty (30) days notice
30 from Landlord, must elect to: (a) pay Rent as provided in this Lease or (b) terminate this Lease,
31 pursuant to Tenant's ongoing termination right stated above, upon thirty (30) days written notice to
32 Landlord. Notwithstanding the foregoing, in the event of a subsequent failure of any of the
33 Continuing Co-Tenancy Requirements, Tenant's remedies as set forth in this paragraph shall be
34 reinstated, with the Alternative Rent Period restarted, and shall apply to each and every
35 subsequent failure of any of the Continuing Co-Tenancy Requirements.

36 37 **27.3 Co-Tenancy Verification.**

38
39 Landlord shall, within thirty (30) days after Tenant's request, deliver to Tenant a notice
40 certifying the then-current trade name and gross leasable area of each tenant of the Center.
41 Tenant, or its designated agent, shall have the right at its own cost and expense to audit and/or
42 inspect current certified site plans, which shall include square footages and a list of tenants which
43 are currently open and operating. Tenant shall give Landlord not less than thirty (30) days written
44 notice of its intention to conduct any such audit. If such audit discloses a violation of the Opening
45 Co-Tenancy Requirement or the Continuing Co-Tenancy and Tenant elects to pay Alternative
46 Rent for such period of violation in accordance with this Paragraph 27, Landlord shall promptly
47 rebate to Tenant the overcharge or, at Tenant's election, Tenant may offset the amount of the
48 overcharge against the next installment of rental due.

49 50 **28. NONDISTURBANCE AND ESTOPPEL.**

51 52 **28.1 Nondisturbance Agreement.**

53
54 This Lease or rights hereunder of Tenant's are to be subordinate to an Existing Lien (as
55 hereinafter defined), Landlord shall use commercially reasonable efforts to obtain for the benefit of
56 Tenant a subordination, nondisturbance and attornment agreement (an "SNDA") substantially in
57 the form attached hereto as Exhibit "G". For purposes of this Paragraph, an Existing Lien shall be
58 defined as either a (i) lien of any deed of trust, mortgage or any other security instrument or lien,
59 and any renewals and extensions thereof, encumbering the Leased Premises or the Center, or (ii)
60 ground lease or other lease for any portion of the Center, provided the foregoing is in existence as
61 of the Effective Date. Such SNDA shall provide that if a foreclosure or other proceeding is
62 brought to enforce an Existing Lien, then the holder thereof or the purchaser at a sale pursuant to
63 such foreclosure shall recognize this Lease and all the rights of any tenant hereunder shall
64 continue in full force and effect so long as Tenant shall recognize, continue to recognize and
65 perform all of the applicable covenants and conditions of this Lease.

66
67 In the event that Landlord desires that this Lease or the rights hereunder of Tenant's be
68 subordinate to a Future Lien (as hereinafter defined), Tenant shall, upon thirty (30) days written

1 request from Landlord, execute such agreement on the form attached hereto as Exhibit "G". For
2 purposes of this Paragraph, a Future Lien shall be defined as either a (i) lien of any deed of trust,
3 mortgage or any other security instrument or lien encumbering the Leased Premises or the
4 Center, or (ii) ground lease or other lease for any portion of the Center, provided the foregoing is
5 in existence after the Effective Date.

6
7 **28.2 Estoppel Certificate.**

8
9 Tenant shall, within thirty (30) days of Landlord's written request (but not more than once
10 per Lease Year), deliver to Landlord, or any prospective assignee, mortgagee or purchaser of the
11 Center or Leased Premises, a statement, on the form attached hereto as Exhibit "H", setting forth
12 (i) the commencement and termination dates of this Lease; (ii) whether this Lease is or is not in
13 full force and effect; (iii) whether this Lease has been changed, modified or amended and any
14 specific changes, modifications or amendments so made; (iv) whether, as of the date of
15 certification, Tenant has paid rental for more than the current month and any amount of rental so
16 paid; (v) whether there are defaults hereunder or defenses or offset thereto and any such specific
17 defaults, defenses or offsets claimed by Tenant; and (vi) such other information as Landlord may
18 reasonably require.

19
20 **29. HOLDING OVER.**

21
22 Any holding over after the expiration of the term shall be construed to create a tenancy
23 from month-to-month at one hundred twenty five percent (125%) of the Minimum Rent herein
24 specified (prorated on a monthly basis) and shall otherwise be on the terms and conditions
25 specified in this Lease as far as applicable. There shall be no increase in Minimum Rent for a
26 period of sixty (60) days following the expiration of the then current Lease Term, provided the
27 parties hereto are conducting good faith negotiations for an extension of the Lease Term, and in
28 no event shall there be an increase in rent without thirty (30) days written notice to Tenant.

29
30 **30. SUCCESSORS.**

31
32 The covenants, conditions and terms contained in this Lease shall bind and inure to the
33 benefit of Landlord, Tenant and their respective successors and assignees.

34
35 **31. WAIVER AND REMEDIES CUMULATIVE.**

36
37 The waiver by Landlord or Tenant of any breach of any provision of this Lease or the
38 failure by Landlord or Tenant to insist upon the strict observance of any provision shall not be
39 deemed to be a waiver of such provision or any subsequent breach thereof. Any and all rights,
40 remedies and options given in this Lease to Landlord or Tenant shall be cumulative.

41
42 **32. NOTICES.**

43
44 Any notice, demand, request or other instrument which may be, or is required to be, given
45 under this Lease shall be (i) in writing, (ii) delivered in person or by courier service or by United
46 States certified mail, postage prepaid, and (iii) shall be addressed:

47
48 32.1 if to Landlord, at 2525 McKinnon Street, Suite 700, Dallas, Texas 75201, Re:
49 **Weatherford Ridge, Weatherford, Texas** or at such other address as Landlord may designate
50 by written notice; or

51
52 32.2 if to Tenant, at 451 Industrial Lane, Birmingham, Alabama 35211, Attention: Lease
53 Administrator, Re: **Weatherford Ridge, Weatherford, Texas** with a copy to Legal Department,
54 451 Industrial Lane, Birmingham, Alabama 35211, or to such other address as Tenant may
55 designate by written notice.

56
57 In no event shall Landlord deliver any notice, demand, request or other instrument which
58 may be, or is required to be, given under this Lease to Tenant at the Leased Premises. Landlord
59 shall not send monthly statements reflecting Tenant's statement balance unless there is a year
60 end adjustment or authorized increase or decrease in Tenant's Minimum Rent or any other
61 additional charges hereunder.

62
63 **33. BROKER.**

64
65 Landlord (on behalf of itself and its successors and assigns), under separate agreement,
66 shall pay a brokerage commission in accordance with the terms of such agreement. No other
67 broker has been involved in this transaction and if any claims for brokerage commissions or fees
68 are ever made in connection with this transaction, each party shall indemnify and hold harmless

1 the other from and against any and all such claims or demands with respect to any brokerage fees
2 or agent's commissions or other compensation asserted by any person, firm or corporation in
3 connection with this Lease.

4
5 **34. DELIVERY DATE AGREEMENT; MEMORANDUM OF LEASE.**

6
7 Landlord and Tenant shall execute any delivery date agreement provided by Tenant,
8 setting forth the Delivery Date and the last day of the Main Term and no fees shall be due or
9 owing to Landlord by Tenant associated with the execution of said agreement. Upon request of
10 either party, a memorandum of lease will be executed and recorded in the local records of the
11 county or city in which the Leased Premises is located. The cost of recording the memorandum of
12 lease and removal of same from the public record at the expiration or sooner termination of this
13 Lease shall be borne by the requesting party.

14
15 **35. DISPUTE RESOLUTION.**

16
17 This Lease shall be governed by and construed in accordance with the laws of the state in
18 which the Leased Premises is located. Any controversy or claim arising out of or relating to this
19 Lease shall be settled by arbitration administered by the American Arbitration Association in
20 accordance with its Expedited Procedures for Commercial Arbitration Rules, and judgment on the
21 award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Such
22 arbitration shall be conducted in the nearest metropolitan area to the Leased Premises.

23
24 **36. CONFIDENTIALITY.**

25
26 In the event that Tenant should disclose any non-public financial information, including
27 without limitation, corporate balance sheet and income statement information, and/or individual
28 store performance, gross sales reports and/or projections, such information shall be kept in
29 strictest confidence and shall not be disclosed to any person or entity. Additionally, all terms and
30 conditions of this Lease shall be deemed confidential and shall likewise be held in strictest
31 confidence by Landlord and Tenant. Further, any and all such financial information, including all
32 originals, photocopies, facsimiles, or other duplicates thereof, shall be kept in locations sufficiently
33 secure so as to prevent any inappropriate disclosure. In the event of a violation of the foregoing
34 provisions by either Landlord or Tenant, the non-violating party shall be entitled to injunctive relief.
35 Landlord, its agents, contractors or employees shall not disclose Tenant's election to terminate
36 this Lease to any employee or manager at the Leased Premises or any store operated by Tenant,
37 directly or indirectly. In the event Landlord violates this Paragraph, Tenant shall have the right, but
38 not the duty, to immediately close the store and cease paying all Minimum Rent, Percentage Rent
39 and all other charges due hereunder as of that date.

40
41 **37. FORCE MAJEURE.**

42
43 In the event Landlord or Tenant shall be delayed, hindered in or prevented from the
44 performance of any act required hereunder (not including the payment of any monetary
45 obligations) by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of
46 power, unavailability of any utility service, restrictive governmental laws or regulations, riots,
47 insurrections, the act, the failure to act, or default of another party or a material worsening of
48 current conditions caused by acts of terrorism or war (whether or not declared) occurring after the
49 execution of the Lease, which materially impair Landlord or Tenant's ability to conduct its
50 operations then performance of such act shall be excused for the period of the delay, and the
51 period of the performance of any such act shall be extended for a period equivalent to the period
52 of such delay. In such event, either party experiencing a force majeure event shall notify the other
53 party of such event within forty-eight hours of such event, or forever waive its rights to claim force
54 majeure as a defense, or as a justifiable delay, under this section.

55
56 **38. TRADE NAME AND TRADEMARKS.**

57
58 **38.1 Trade Name**

59
60 Tenant or any permitted sublessee or assignee shall have the right to conduct its business
61 in the Leased Premises under any trade name under which (i) it is conducting or has conducted
62 business previously in its other locations or (ii) a majority of its stores have utilized, are utilizing or
63 will utilize; including, but not limited to Sports Additions, Hibbett Super Sport, Hibbett Sports, or
64 Sports & Co.

65
66 **38.2 Trademarks**

67
68 Notwithstanding anything contained herein to the contrary, Tenant shall have absolute,

1 sole and complete control over the use of Tenant's trade name and any other trade names,
2 trademarks, servicemarks, logos and/or insignias ("Intellectual Property") used in connection with
3 the business of Tenant, its affiliates and/or its licensees. Neither Landlord, its mortgages, any
4 merchants' association or any promotion or media fund (or any other entity not solely controlled by
5 Tenant or its affiliates) shall at any time prior to, during or after the Term use, photograph, or refer
6 to Tenant's Intellectual Property or Tenant's use of the Leased Premises, in any manner, without
7 Tenant's prior written permission in each and every instance, which may be withheld in Tenant's
8 sole discretion. Notwithstanding the foregoing, Landlord shall have permission to use Tenant's
9 trade name in publications such as leasing brochures.

10
11 **39. LANDLORD'S ACTIONS.**

12
13 **39.1 Minimize Interference.**

14
15 Any actions taken by, or on behalf of, Landlord or Tenant by reason of the provisions
16 contained in this Lease, including but not limited to actions related to repairs, alterations,
17 improvements, additions or maintenance of the Center, the Common Areas, the Leased Premises
18 or any fixture or element thereof, shall be performed at such times and in such manner so as to
19 minimize interference with Tenant's or any other tenant's or occupant's, as applicable, business
20 operations from within the Leased Premises. Landlord shall use commercially reasonable efforts
21 to ensure that access to or visibility of the Leased Premises or the frequency or ease of
22 pedestrian traffic passing in front of the Leased Premises is not materially and adversely
23 interfered with by reason of any of the foregoing.

24
25 **39.2 Obligation to Mitigate Damages.**

26
27 Landlord shall use commercially reasonable efforts in order to mitigate its damages
28 following any default by Tenant under the Lease.

29
30 **40. RULES AND REGULATIONS.**

31
32 All Rules and Regulations (attached hereto as Exhibit "F") that are applicable to the Center
33 shall be reasonable and uniformly enforced among all of the tenants in the Center. Tenant shall
34 not violate the Rules and Regulations. Tenant shall be notified in writing of any alleged breach by
35 Tenant of the rules and regulations, and Tenant shall be given thirty (30) days to cure such breach
36 before any such breach shall be deemed a default under the Lease.

37
38 **41. OVERPAYMENT DURING FINAL LEASE YEAR.**

39
40 Any overpayment by Tenant of CAM Fees, Taxes, Insurance or other charges concerning
41 the final Lease Year of the Term shall be refunded by Landlord to Tenant within thirty (30) days
42 following the expiration of the Term. Any underpayment by Tenant of CAM Fees, Taxes,
43 Insurance or other charges concerning the final Lease Year of the Term shall be paid to Landlord
44 within thirty (30) days following the expiration of the Term. The provisions hereof shall survive any
45 termination of this Lease.

46
47 **42. RIGHTS TO ATTORNEY'S FEES.**

48
49 In the event of any action or proceeding brought by either party hereto against the other
50 based upon or arising out of any dispute of the terms and conditions hereof, the prevailing party
51 shall be entitled to recover all costs, including reasonable attorneys' fees, from the other. To the
52 extent any attorneys' fees or other legal fees, costs or expenses are incurred by either party for
53 which the other party shall be liable under the terms of the Lease, any such fees, costs or
54 expenses shall be limited to reasonable amounts under the circumstances.

55
56 **43. INTENTIONALLY OMITTED.**

57
58 **44. REVIEW FEE.**

59
60 If either party requests the other's execution of any document hereunder, the requesting
61 party shall pay a review fee of Five Hundred and 00/100 Dollars (\$500.00) to reimburse the other
62 for its administrative and legal expenses associated with the review, preparation and/or
63 processing of such document, whether or not such other party's consent to such document is
64 required or obtained.

65
66 **45. LEASE OFFER.**

67
68 If this Lease is not returned to Tenant fully executed within thirty (30) days after it has been

1 executed by Tenant and received by Landlord, Tenant shall have the right, at its option, to declare
2 this Lease null and void.

3
4 **46. SEVERABILITY.**

5
6 If any provision of this Lease is held unenforceable by a court or governmental agency of
7 competent jurisdiction, then such provision will be modified to reflect the parties' intentions. All
8 remaining provisions of this Lease shall remain in full force and effect.

9
10 **47. CAP ON CAM FEE, TAXES AND INSURANCE.**

11
12 Notwithstanding anything contained herein to the contrary Tenant's Percentage Share of
13 the CAM Fee as described in Subparagraph 16.2 of this Lease, Taxes as described in Paragraph
14 6 of this Lease, and Insurance as described in Subparagraph 18.2.2 of this Lease, for the period
15 from the Rent Commencement Date through the first (1st) full Lease Year shall not exceed, in the
16 aggregate, the sum of Four and 35/100 Dollars (\$4.35) per square foot. Thereafter, (a) the
17 maximum annual CAM Fee payable by Tenant shall not increase by more than the CAM Fee Cap,
18 and (b) Tenant shall pay Tenant's Percentage Share of the Taxes and Insurance as provided in
19 this Lease.

20
21 **48. ACCORD AND SATISFACTION.**

22
23 Tenant shall be entitled to accept, receive and cash or deposit any payment made by
24 Landlord for any reason or purpose or in any amount whatsoever, and apply the same at Tenant's
25 option to any obligation of Landlord and the same shall not constitute payment of any amount
26 owed except that to which Tenant has applied the same. No endorsement or statement on any
27 check or letter of Landlord shall be deemed an accord and satisfaction or otherwise recognized for
28 any purpose whatsoever. The acceptance of any such checks or payments shall not prejudice
29 Tenant's right to recover any and all amounts owed by Landlord under this Lease and Tenant's
30 right to pursue any other available remedy.

31
32 Landlord shall be entitled to accept, receive and cash or deposit any payment made by
33 Tenant for any reason or purpose or in any amount whatsoever, and apply the same at Landlord's
34 option to any obligation of Tenant and the same shall not constitute payment of any amount owed
35 except that to which Landlord has applied the same. No endorsement or statement on any check
36 or letter of Tenant shall be deemed an accord and satisfaction or otherwise recognized for any
37 purpose whatsoever. The acceptance of any such checks or payments shall not prejudice
38 Landlord's right to recover any and all amounts owed by Tenant under this Lease and Landlord's
39 right to pursue any other available remedy.

40
41 **49. AMBIGUITIES.**

42
43 Each party and its counsel have participated fully in the review and revision of this
44 Lease. Any rule of construction to the effect that ambiguities are to be resolved against the
45 drafting party shall not apply in interpreting this Lease. The language in this Lease shall be
46 interpreted as to its fair meaning and not strictly for or against any party. No inferences shall be
47 drawn against either party.

48
49 **50. TIME IS OF THE ESSENCE.**

50
51 Time is of the essence with respect to the performance of each of the conditions,
52 covenants and agreements under this Lease.

53
54 **51. INTENTIONALLY OMITTED.**

55
56 **52. SUCCESSORS AND ASSIGNS.**

57
58 The terms, provisions and covenants contained in this Lease shall apply to, inure to the
59 benefit of and be binding upon the parties hereto and their respective heirs, successors-in-interest
60 and legal representatives except as otherwise provided herein.

61
62 **53. ENTIRE AGREEMENT.**

63
64 This Lease contains the entire agreement between the parties and no rights are created in
65 favor of either party other than as specified or expressly contemplated in this Lease. NO
66 brochure, rendering, information or correspondence shall be deemed to be a part of this
67 agreement unless specifically incorporated herein by reference. In addition, no agreement shall
68 be effective to change, modify or terminate this Lease, in whole or in part, unless such is in writing

1 and duly signed by the party against whom enforcement of such change, modification or
2 termination is sought.

3

4

SIGNATURES AND ACKNOWLEDGEMENTS ON FOLLOWING PAGES

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WITNESS the following signatures.

WITNESS:

[Landlord Signature
on Following Page]

WITNESS:

Christie Wilson

LANDLORD:

WEATHERFORD I-20/MAIN ST, LTD
a Texas limited partnership

**BY: WEATHERFORD I-20 MAIN ST
GR, LLC**
a Texas limited liability company

Name: *David C. Wilson*
Title: *Manager*
Date: *November 5, 2009*

TENANT:

HIBBETT SPORTING GOODS, INC.,
a Delaware corporation

Jeff Rosenthal
Name: *Jeff Rosenthal*
Title: *President*
Date: *7/14/09*

ACKNOWLEDGEMENTS ON FOLLOWING PAGE

1 STATE OF _____)
2
3 _____ COUNTY)
4

5
6 I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify
7 that _____, whose name as _____ of
8 **Weatherford I-20/Main St, LTD**, a Texas corporation, is signed to the foregoing Agreement of
9 Lease and who is known to me, acknowledged before me on this day that, being informed of the
10 contents of said Agreement of Lease, he/she, in his/her capacity as such officer and with full
11 authority, executed the same voluntarily for and as the act of said corporation on the day the
12 same bears date.

13
14 Given under my hand this the _____ day of _____, 2009.
15

16
17
18 _____
19 Notary Public
20 My Commission Expires: _____
21

22
23
24 STATE OF ALABAMA)
25
26 JEFFERSON COUNTY)
27
28

29
30 I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify
31 that Jeff Rosenthal, whose name as President of
32 **Hibbett Sporting Goods, Inc.**, a Delaware corporation, is signed to the foregoing Agreement of
33 Lease and who is known to me, acknowledged before me on this day that, being informed of the
34 contents of said Agreement of Lease, he, in his capacity as such officer and with full authority,
35 executed the same voluntarily for and as the act of said corporation on the day the same bears
36 date.

37
38 Given under my hand this the 30th day of July, 2009.
39

40
41 *Quila Bethel*
42 Notary Public
43 My Commission Expires: 1-22-11
44
45

WITNESS the following signatures.

LANDLORD:

WEATHERFORD I-20/MAIN ST, L.P.,
a Texas limited partnership

By: Weatherford I-20/Main St GP, LLC
a Texas limited liability company,
Its: General Partner

By: Weatherford I20 Partners, Ltd.,
a Texas limited partnership.
Its: Member

By: Weatherford I20 GP, LLC
a Texas limited liability company,
Its: General Manager

By: David C. Wilson
Name: David C. Wilson
Title: manager

LANDLORD ACKNOWLEDGEMENT

THE STATE OF TEXAS §
 §
COUNTY OF DALLAS §

I, the undersigned, a Notary Public for said County, in said State, hereby certify and acknowledged that David C. Wilson, Manager of Weatherford I20 GP, LLC, a Texas limited liability company, general partner of Weatherford I20 Partners, Ltd., a Texas limited partnership, member of Weatherford I-20/Main St GP, LLC, a Texas limited liability company, general partner of WEATHERFORD I-20/MAIN ST L.P., a Texas limited partnership for the consideration therein expressed, and in the capacity therein stated, has signed the foregoing agreement in the capacity set forth herein, being informed of the contents of the agreement, he, as such officer and with full authority, executed the same voluntarily and as the act of said entity on the day the same bears date.

Given under my hand this the 5th day of November, 2009.



Diana Lynn Blundell
Notary Public, State of Texas
My Commission Expires: 6-16-12

EXHIBIT "A"

LEGAL DESCRIPTION OF SHOPPING CENTER

FIELD NOTE DESCRIPTION
LOT 1

STATE OF TEXAS
COUNTY OF PARKER

BEING a tract of land situated in the I. & G. N.N. R.R. Company Survey Abstract No. 1823 Parker County, Texas and being all of Lot 1, Block A of Weatherford Ridge Addition an addition to the City of Weatherford according to the plat recorded in Cabinet C Slide 501 of the Plat Records of Parker County, Texas and being more particularly described as follows:

BEGINNING at a ½ inch iron rod set with red plastic cap stamped W.A.I. in the easterly line of Lot 3B, Block 4 of Southpark Addition an addition to the City of Weatherford according to the plat recorded in Cabinet B, Page 547 of the Plat Records of Parker County, Texas, said iron rod being North 08 degrees 21 minutes 34 seconds West a distance of 8.65 feet from the southeast corner of said Lot 3B;

THENCE along the easterly line of said Lot 3B and Lot 3A, Block 4 of said Southpark Addition as follows:

North 08 degrees 21 minutes 34 seconds West a distance of 141.35 feet to a ½ inch iron rod set with red plastic cap stamped W.A.I. for corner;

North 28 degrees 04 minutes 24 seconds West a distance of 150.00 feet to a ½ inch iron rod set with red plastic cap stamped W.A.I. for corner;

North 39 degrees 30 minutes 05 seconds West a distance of 150.00 feet to a 60d nail found for corner;

North 54 degrees 07 minutes 21 seconds West a distance of 128.14 feet to a ½ inch iron rod set with red plastic cap stamped W.A.I. for corner;

North 55 degrees 50 minutes 20 seconds West a distance of 172.84 feet to a ½ inch iron rod set with red plastic cap stamped W.A.I. in the southerly line of Lot 2C2-B, Block 4 of Southpark Addition on additions to the City of Weatherford according to the plat recorded in Cabinet B, Page 594 of the Plat Records of Parker County, Texas;

THENCE along the southerly line of said Lot 2C2-B North 64 degrees 05 minutes 16 seconds East a distance of 569.05 feet to a ½ inch iron rod set with red plastic cap stamped W.A.I. for corner in the southerly right of way line of said Red Oak Lane (50 feet right of way) said iron rod also being the beginning of a curve to the left having a radius of 376.60 feet, a chord bearing of South 52 degrees 35 minutes 57 seconds East and a chord length of 110.92 feet;

THENCH along the southerly right of way line of said Red Oak Lane and said curve to the left through a central angle of 16 degrees 56 minutes 13 seconds for an arch length of 111.33 feet to a ½ inch iron rod set with red plastic cap stamped W.A.I. for the northwest corner of Lot 2, Block 4 of said Weatherford Ridge Addition;

THENCE along the common line of said Lot 1 and Lot 2 as follows:

South 63 degrees 57 minutes 46 seconds West a distance of 105.08 feet to a ½ inch iron rod set with red plastic cap stamped W.A.I. for corner;

South 26 degrees 02 minutes 14 seconds East a distance of 102.79 feet to a ½ inch iron rod set with red plastic cap stamped W.A.I. for corner;

South 63 degrees 57 minutes 46 seconds West a distance of 10.00 feet to a ½ inch iron rod set with red plastic cap stamped W.A.I. for corner;

South 26 degrees 02 minutes 14 seconds East a distance of 175.38 feet to a ½ inch iron rod set with red plastic cap stamped W.A.I. for corner;

North 63 degrees 57 minutes 46 seconds East a distance of 4.50 feet to a ½ inch iron rod set with red plastic cap stamped W.A.I. for corner;

South 26 degrees 36 minutes 03 seconds East a distance of 147.51 feet to a ½ inch iron rod set with red plastic cap stamped W.A.I. for corner;

South 63 degrees 57 minutes 46 seconds West a distance of 60.00 feet to a ½ inch iron rod set with red plastic cap stamped W.A.I. for corner;

South 26 degrees 02 minutes 14 seconds East a distance of 171.53 feet to a ½ inch iron rod set with red plastic cap stamped W.A.I. for corner;

South 00 degrees 02 minutes 14 seconds East a distance of 130.38 feet to a ½ inch iron rod set with red plastic cap stamped W.A.I. for corner in the northerly right of way line of Adams Drive (variable width right of way);

THENCE along the northerly right of way line of said Adams Drive South 89 degrees 57 minutes 46 seconds West a distance of 276.82 feet to the POINT OF BEGINNING;

CONTAINING within these metes and bounds 6.332 acres or 275,816 square feet of land more or less. Bearings cited herein are based on the plat of Weatherford Ridge Addition an addition to the City of Weatherford as recorded in Cabinet C, Slide 501 of the Plat Records of Parker County, Texas.

FIELD NOTE DESCRIPTION
LOT 2

STATE OF TEXAS
COUNTY OF PARKER

BEING a tract of land in the I. & G. N. R.R. Company Survey, Abstract No. 1823 Parker County, Texas and being all of Lot 2, Block A, of Weatherford Ridge Addition, an addition to the City of Weatherford according to the Plat recorded in Cabinet C, Slide 501 of the Plat Records of Parker County, Texas and being more particularly described as follows;

BEGINNING at a 1/2 inch iron rod set with a red plastic cap stamped W.A.I. in the northerly right of way line of Adams Drive (variable width right of way) said iron being the southeast corner of Lot 1, Block A, of said addition;

THENCE along the common line of said Lot 1 and Lot 2 as follows:

North 00 degrees 02 minutes 14 seconds West, a distance of 130.38 feet to a 1/2 inch iron rod set with red plastic cap stamped W.A.I. for corner;

North 26 degrees 02 minutes 14 seconds West, a distance of 171.53 feet to a 1/2 inch iron rod set with red plastic cap stamped W.A.I. for corner;

North 63 degrees 57 minutes 46 seconds East, a distance of 60.00 feet a 1/2 inch iron rod set with red plastic cap stamped W.A.I. for corner;

North 26 degrees 36 minutes 03 seconds West, a distance of 147.51 feet to a 1/2 inch iron rod set with red plastic cap stamped W.A.I. for corner;

South 63 degrees 57 minutes 46 seconds West, a distance of 4.50 feet to a 1/2 inch iron rod set with red plastic cap stamped W.A.I. for corner;

North 26 degrees 02 minutes 14 seconds West, a distance of 175.38 feet to a 1/2 inch iron rod set with red plastic cap stamped W.A.I. for corner;

North 63 degrees 57 minutes 46 seconds East, a distance of 10.00 feet to a 1/2 inch iron rod set with red plastic cap stamped W.A.I. for corner;

North 26 degrees 02 minutes 14 seconds West, a distance of 102.79 feet to a 1/2 inch iron rod set with red plastic cap stamped W.A.I. for corner;

North 63 degrees 57 minutes 46 seconds East, a distance of 105.08 feet to a 1/2 inch iron rod set with red plastic cap stamped W.A.I. in the southerly right of way line of Red Oak Lane (50 feet right of way), said iron rod also being the beginning of a curve to the left having a radius of 376.60 feet, a chord bearing of South 74 degrees 23 minutes 38 seconds East and a chord length of 173.61 feet;

THENCE along said southerly right of way as follows:

Along said curve to the left through a central angle of 26 degrees 39 minutes 06 seconds of an arc length of 175.18 to a 1/2 inch iron rod set with red plastic cap stamped W.A.I. for corner;

South 87 degrees 43 minutes 12 seconds East a distance of 430.95 feet to a 1/2 inch iron rod set with red plastic cap stamped W.A.I. for corner;

THENCE South 01 degrees 29 minutes 01 seconds West a distance 128.57 feet to a point for corner which a Fence Post found bears South 81 deg 24 min 25 sec East a distance of 1.83 feet.;

THENCE South 89 degrees 25 minutes 56 seconds East, a distance of 614.41 feet to a 1/2 inch iron rod set with red plastic cap stamped W.A.I. for corner in the westerly line of Lot 3, Block A of said addition;

THENCE along the common line of said Lot 2 and Lot 3 as follows;

THENCE South 01 degrees 32 minutes 37 seconds East, a distance of 52.05 feet to a 1/2 inch iron rod set with red plastic cap stamped W.A.I. for corner;

South 00 degrees 00 minutes 00 seconds East, a distance of 169.00 feet to a 1/2 inch iron rod set with red plastic cap stamped W.A.I. for corner;

South 89 degrees 57 minutes 46 seconds West, a distance of 17.21 feet to a 1/2 inch iron rod set with red plastic cap stamped W.A.I. for corner.;

South 00 degrees 02 minutes 14 seconds East, a distance of 281.00 feet to a 1/2 inch iron rod set with red plastic cap stamped W.A.I. for corner;

North 89 degrees 57 minutes 46 seconds East, a distance of 33.00 feet to a 1/2 inch iron rod set with red plastic cap stamped W.A.I. for corner;

South 00 degrees 02 minutes 14 seconds East, a distance of 40.00 feet to a 1/2 inch iron rod set with red plastic cap stamped W.A.I. in the northerly right of way line of said Adams Drive;

THENCE along the northerly right of way line of said Adams Drive South 89 degrees 57 minutes 46 seconds West, a distance of 1116.00 feet to the POINT OF BEGINNING;

CONTAINING within these metes and bounds 16.560 acres or 721,340 square feet of land, more or less. Bearings herein are based on the plat of Weatherford Ridge Addition an addition to the City of Weatherford as recorded in Cabinet C, Slide 501 of the Plat Records of Parker County, Texas.

FIELD NOTE DESCRIPTION
LOT 3

STATE OF TEXAS
COUNTY OF PARKER

BEING a tract of land in the Rufus Inman Survey, Abstract No. 726, and being all of Lot 3, Weatherford Ridge Addition, an addition to the City of Weatherford, recorded in Cabinet C, Slide 501, Plat Records of Parker County, Texas and being more particularly described as follows:

BEGINNING at a 1/2 inch iron rod set with a red plastic cap stamped W.A.I. for the northeasterly corner of Lot 3, Block A, Weatherford Ridge Addition, said iron being the southwesterly corner of the intersection of Washington St. (50' ROW) and Texas Drive (100' ROW);

THENCE, departing the southerly right of way of said Washington Street, along the westerly right of way of said Texas Drive, South 01 deg 02 min 52 sec East, a distance of 131.26 feet to a 1/2 inch iron rod set with a red plastic cap stamped W.A.I. for corner, said iron being the northeasterly corner of Lot 4, said Weatherford Ridge Addition;

THENCE, along the common line of said Lot 3 & Lot 4 as follows:

Departing the westerly line of said Texas Drive, South 89 deg 57 min 46 sec West, a distance of 208.51 feet to a 1/2 inch iron rod set with a red plastic cap stamped W.A.I. for corner;

South 00 deg 02 min 14 sec East, a distance of 17.00 feet to a 1/2 inch iron rod set with a red plastic cap stamped W.A.I. for corner;

South 89 deg 57 min 46 sec West, a distance of 15.09 feet to a 1/2 inch iron rod set with a red plastic cap stamped W.A.I. for corner;

South 00 deg 02 min 14 sec East, a distance of 177.00 feet to a 1/2 inch iron rod set with a red plastic cap stamped W.A.I. for corner;

North 89 deg 57 min 46 sec East, a distance of 3.76 feet to a 1/2 inch iron rod set with a red plastic cap stamped W.A.I. for corner;

South 00 deg 02 min 14 sec East, a distance of 88.00 feet to a 1/2 inch iron rod set with a red plastic cap stamped W.A.I. for corner;

North 89 deg 57 min 46 sec East, a distance of 224.81 feet to a 1/2 inch iron rod set with a red plastic cap stamped W.A.I. for corner in the westerly right of way line of said Texas Drive;

THENCE, along the westerly line of said Texas Drive as follows:

South 01 deg 02 min 52 sec East, a distance of 38.84 feet to the beginning of a curve to the left with a radius of 1859.60 feet, a chord bearing of South 02 deg 36 min 52 sec East, a chord length of 101.68 feet, which a Railroad Spike found in the base of a 46 inch Oak Tree bears South 55 deg 09 min 52 sec West a distance of 0.65 feet;

Continuing along said curve to the left through a central angle of 03 deg 07 min 59 sec and an arc length of 101.69 feet to a 1/2 inch iron rod set with a red plastic cap stamped W.A.I. for corner in the northerly right of way of Adams Drive (60' Right-of-Way), said iron being the beginning of a curve to the left with a radius of 530.00 feet, a chord bearing of South 74 deg 52 min 39 sec West, and a chord length of 184.87 feet;

THENCE, along the northerly right of way line of said Adams Drive as follows:

Continuing along said curve to the left through a central angle of 20 deg 05 min 16 sec and an arc length of 185.82 feet to a 1/2 inch iron rod set with a red plastic cap stamped W.A.I. for the beginning of a curve to the right with a radius of 470.00 feet, and a chord bearing of South 77 deg 23 min 54 sec West, and a chord length of 204.49 feet;

Continuing along said curve to the right through a central angle of 25 deg 07 min 45 sec and an arc length of 206.14 feet to a 1/2 inch iron rod set with a red plastic cap stamped W.A.I. for corner;

South 89 deg 57 min 46 sec West, a distance of 232.99 feet to a 1/2 inch iron rod set with a red plastic cap stamped W.A.I. for corner, said iron being the southeasterly corner of Lot 2, said Weatherford Ridge Addition;

THENCE, along the common line of said Lot 2 & Lot 3 as follow:

Departing the northerly right of way line of said Adams Drive, North 00 deg 02 min 14 sec West, distance of 40.00 feet to a 1/2 inch iron rod set with a red plastic cap stamped W.A.I. for corner;

South 89 deg 57 min 46 sec West, a distance of 33.00 feet to a 1/2 inch iron rod set with a red plastic cap stamped W.A.I. for corner;

North 00 deg 02 min 14 sec West, a distance of 281.00 feet to a 1/2 inch iron rod set with a red plastic cap stamped W.A.I. for corner;

North 89 deg 57 min 46 sec East, a distance of 17.21 feet to a 1/2 inch iron rod set with a red plastic cap stamped W.A.I. for corner;

North 00 deg 00 min 00 sec West, a distance of 169.00 feet to a 1/2 inch iron rod set with a red plastic cap stamped W.A.I. for corner;

North 01 deg 32 min 37 sec West, a distance of 52.05 feet to a 1/2 inch iron rod set with a red plastic cap stamped W.A.I. for corner in the southerly right of way line of said Washington Street;

THENCE, along the southerly right of way line of said Washington Street as follows:

North 00 deg 17 min 37 sec West, a distance of 1.91 feet to a 1/2 inch iron rod set with a red plastic cap stamped W.A.I. for the beginning of a curve to the right with a radius of 92.34 feet, a chord bearing of North 44 deg 18 min 47 sec East, and a chord length of 129.69 feet;

Continuing along said curve to the right through a central angle of 89 deg 12 min 49 sec and an arc length of 143.78 feet to a 1/2 inch iron rod set with a red plastic cap stamped WAI for corner;

North 88 deg 55 min 12 sec East, a distance of 525.01 feet to the POINT OF BEGINNING;

CONTAINING within these metes and bounds is 7.365 acres or 320,804 square feet of land, more or less. Bearings herein are based upon the plat recorded in Cabinet C, Slide 501, Plat Records of Parker County, Texas.

FIELD NOTE DESCRIPTION
LOT 4

STATE OF TEXAS
COUNTY OF PARKER

Being a tract of land situated in the RUFUS INMAN SURVEY, ABSTRACT NO. 726, Parker County, Texas and being all of Lot 4, Block A of Weatherford Ridge Addition an addition to the City of Weatherford according to the plat recorded in Cabinet C, Slide 501 of the Plat Records of Parker County, Texas and being more particularly described as follows:

COMMENCING at the intersection of the southerly right of way line of Washington Street (50 feet right of way) and the westerly right of way line of Texas Drive (100 feet right of way), said point also being the northeast corner of Lot 3, Block A of said Addition;

THENCE along the westerly right of way line of said Texas Drive as follows:

South 01 degrees 02 minutes 52 seconds East a distance of 131.26 feet to the a 1/2 inch iron rod set with red plastic cap stamped W.A.I. for the POINT OF BEGINNING;

South 01 degrees 02 minutes 52 seconds East a distance of 282.04 feet to a 1/2 inch iron rod set with red plastic cap stamped W.A.I. for corner;

Thence along the common line of said Lot 3 and Lot 4 as follows:

South 89 degrees 57 minutes 46 seconds West a distance of 224.81 feet to a 1/2 inch iron rod set with red plastic cap stamped W.A.I. for corner;

North 00 degrees 02 minutes 14 seconds West a distance of 88.00 feet to a 1/2 inch iron rod set with red plastic cap stamped W.A.I. for corner;

South 89 degrees 57 minutes 46 seconds West a distance of 3.76 feet to a 1/2 inch iron rod set with red plastic cap stamped W.A.I. for corner;

North 00 degrees 02 minutes 14 seconds West a distance of 177.00 feet to a 1/2 inch iron rod set with red plastic cap stamped W.A.I. for corner;

North 89 degrees 57 minutes 46 seconds East a distance of 15.09 feet to a 1/2 inch iron rod set with red plastic cap stamped W.A.I. for corner;

North 00 degrees 02 minutes 14 West seconds a distance of 17.00 feet to a 1/2 inch iron rod set with red plastic cap stamped W.A.I. for corner;

North 89 degrees 57 minutes 46 seconds East a distance of 208.51 feet to the POINT OF BEGINNING;

CONTAINING within these metes and bounds 1.450 acres or 63,168 square feet of land more or less. Bearings cited herein are based on the plat of Weatherford Ridge Addition an addition to the City of Weatherford as recorded in Cabinet C, Slide 501 of the Plat Records of Parker County, Texas.

EXHIBIT "B"

SITE PLAN

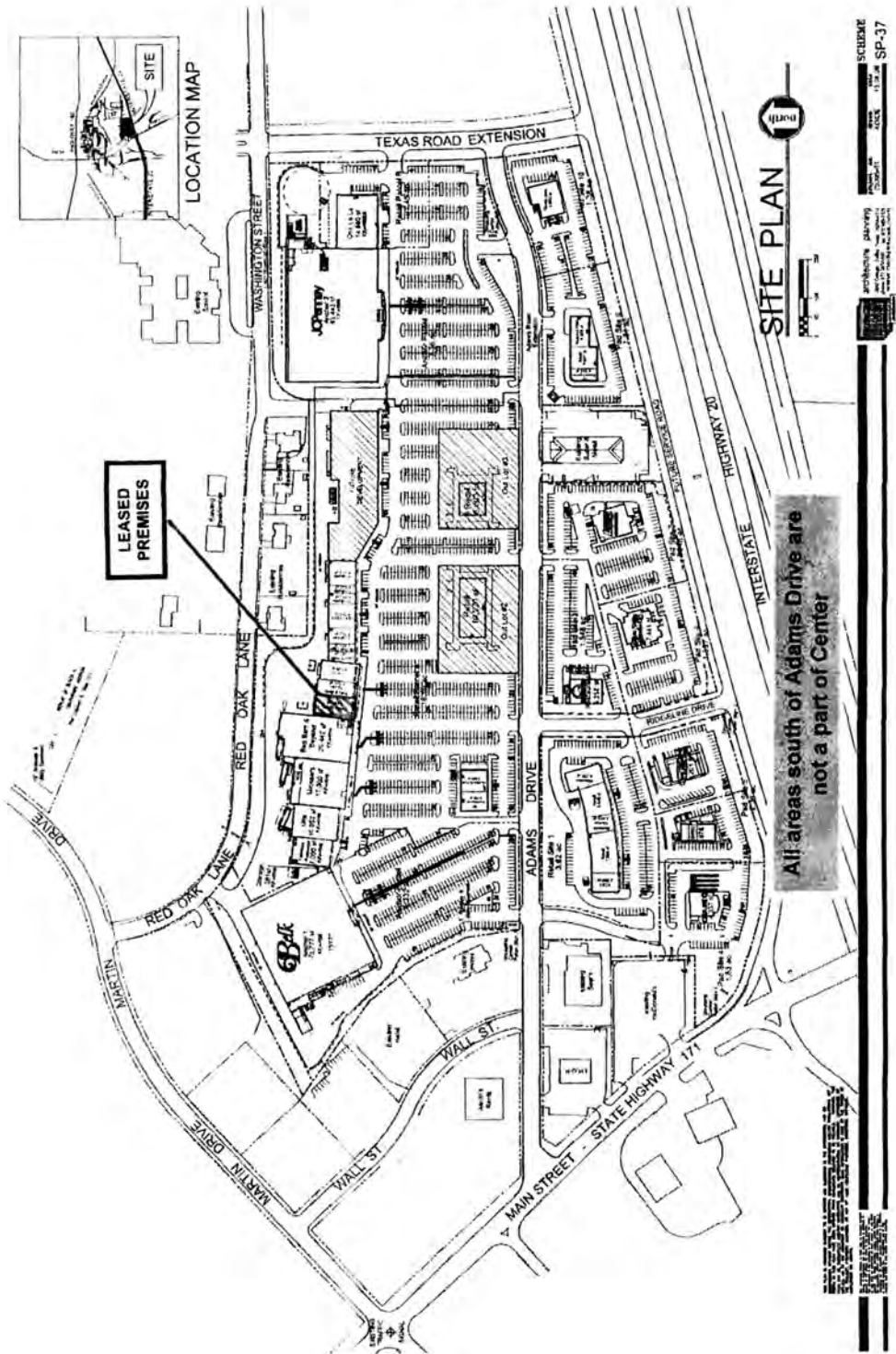


EXHIBIT "B-1"

TENANT'S PARKING AREA

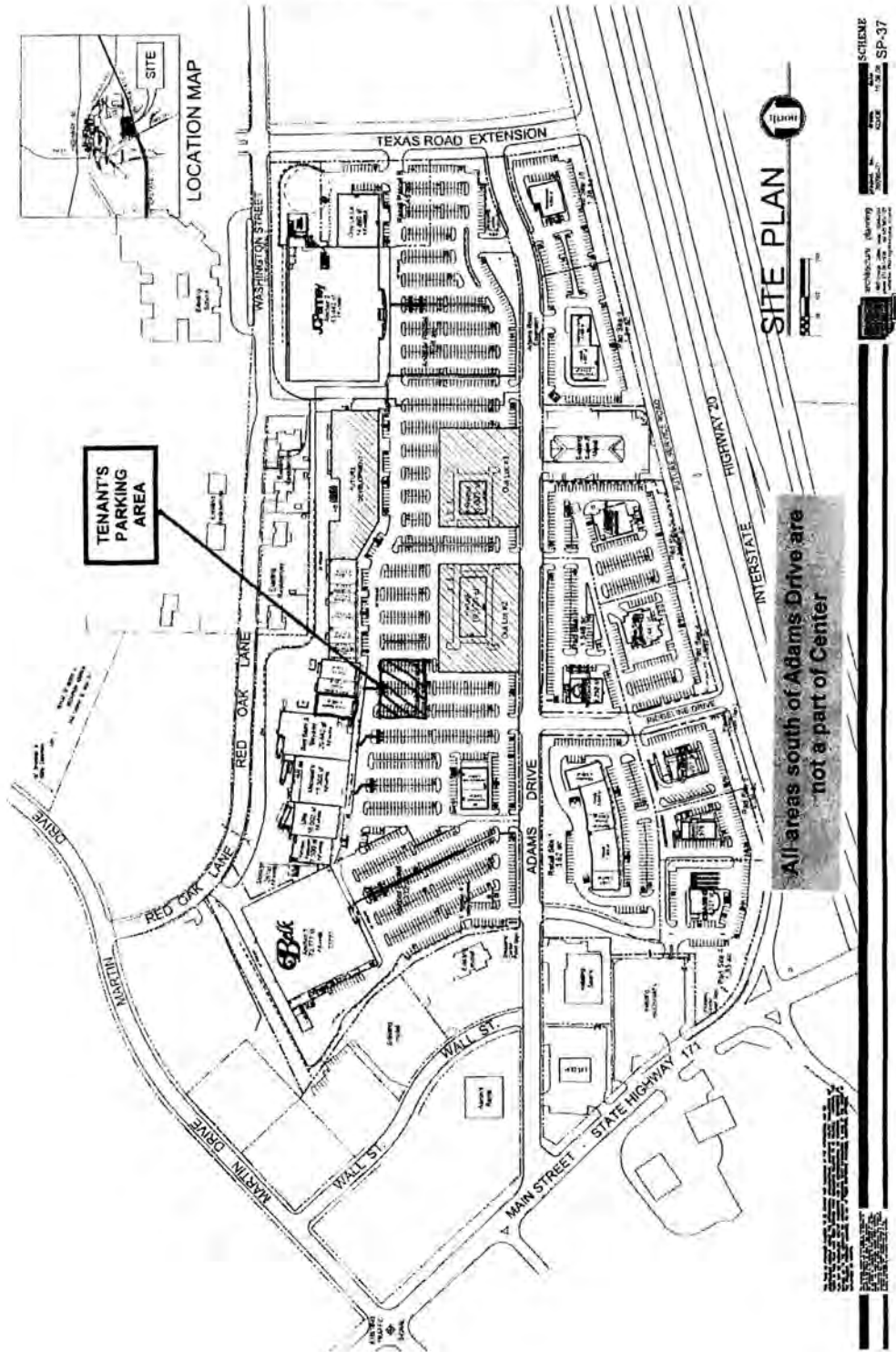


EXHIBIT "B-2"

TENANT'S STRUCTURE FREE ZONE

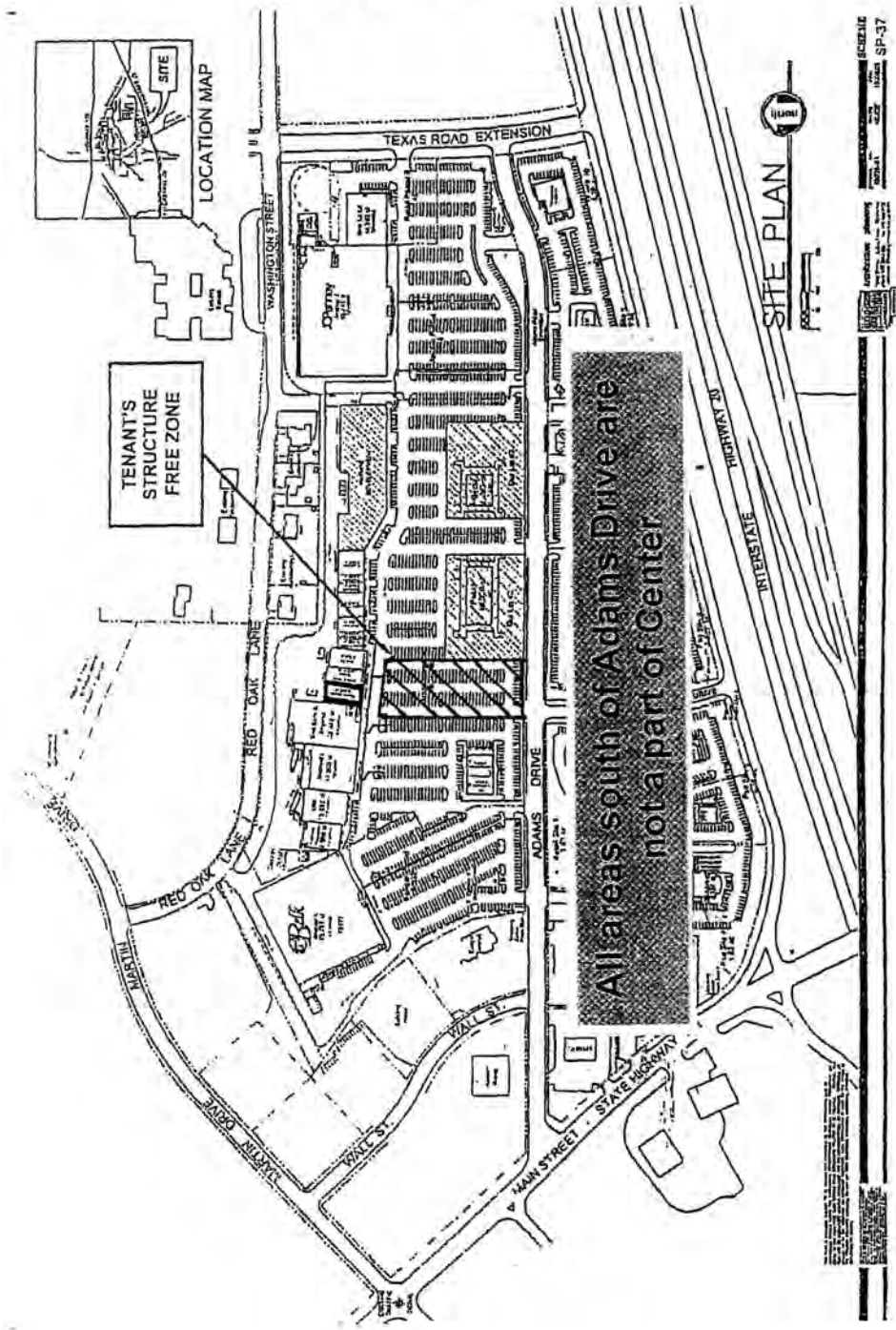


EXHIBIT "C"
VANILLA BOX CRITERIA

DESCRIPTION OF LANDLORD RESPONSIBILITY

PLANS FOR TENANT FINISH:

Landlord is required to provide Tenant with a set of computer-aided design (CAD) drawings of the Leased Premises, including a storefront elevation, no later than seven (7) days following the Effective Date. Tenant will provide Landlord with detailed plans and specifications for the finish construction of the store ("Tenant's Plans"). Landlord is responsible for distributing Tenant's Plans to any of Landlord's architects. Landlord shall submit its resulting final plans for construction of the Leased Premises to Tenant for review ("Final Plans") prior to the start of any construction at the Leased Premises. Landlord is also responsible for distributing Tenant's Plans to any of Landlord's general contractors in order to ensure proper and timely construction of the Leased Premises. Landlord acknowledges Tenant to put in one of its typical stores. The Leased Premises is approximately 58' x 105' for a total of approximately 6,068 square feet. Landlord's contractor shall verify all dimensions and field conditions, notifying Tenant of any discrepancies before proceeding with this project. For each change to this Exhibit "C" or to the Final Plans submitted for Tenant's review, Landlord shall give Tenant seven (7) days prior written notice, pay a change fee of Five Hundred and 00/100 Dollars (\$500.00) and reimburse Tenant for Tenant's design and construction expenses associated with the additional revisions and Tenant's labor and materials associated with any such change.

PERMITS:

Landlord will be responsible for any architectural or engineering drawings and any fees required to obtain its own permit and for compliance with all state and local codes with respect to its work. In no event shall Tenant's Plans be used to obtain Landlord's permit.

CERTIFICATE OF OCCUPANCY:

Landlord will be responsible for obtaining from the city or local authorities a certificate of occupancy after the completion of Landlord's Work or as required by code (the "Final Certificate of Occupancy"). Landlord must fax the Final Certificate of Occupancy within three (3) days of the completion of Landlord's Work to (205)912-7310 Attn: Construction Department. In the event that Tenant is not in receipt of the Final Certificate of Occupancy on the date Tenant is ready to open for business in the Leased Premises, Minimum Rent and all other charges due hereunder shall be adjusted so that, after the Rent Commencement Date, Tenant shall receive rent credits equivalent to three (3) days free rent for each day the opening of the Leased Premises is delayed. In addition, Landlord will reimburse Tenant for any and all costs incurred by Tenant for Tenant's inability to open its store as planned.

FEES AND DEPOSITS:

Landlord shall supply all utility service to the Leased Premises and be directly responsible for any contracts for the recoupment of any investments by the provider in supplying utility service to the Leased Premises and the cost of any tap-on fees or so-called "impact fees" associated with the Leased Premises or the Center.

WARRANTIES:

Landlord shall provide to Tenant a copy of all warranties or guarantees on Landlord-supplied equipment, including the HVAC system. Landlord shall require any person performing work to the Leased Premises to guarantee that the work is free from any and all repairs or defects in workmanship and materials for one (1) year from the Delivery Date. Landlord shall also require any such person to be responsible for the replacement or repair and labor, without additional charge, of work done or furnished by or through such person within one (1) year from the Delivery Date. The correction of work shall include, without additional charge, all expenses and damages in connection with the removal, replacement or repair of any part of work which may be damaged or disturbed.

WORKMANSHIP:

All work done by Landlord will comply with all local, state and national codes for a finished and occupied retail space and must be done in a good workmanship-like manner using all new materials.

DEMOLITION:

Any and all demolition required to prepare the store for construction will be done by Landlord.

STORE FRONT:

Landlord will supply a complete store front with glass and entrance doors, or rolling grille, as

noted on Tenant's Plans. Landlord will furnish and install all government-required address identification and mailboxes. Landlord will be responsible for removal of previous store tenant's signage and do all necessary repairs to and painting of entire sign band to match existing wall color.

CLEANING:

Landlord must remove all trash, dirt, sheetrock mud, paint overspray, excrements, etc. from the Leased Premises and from all fixtures prior to the Delivery Date. All items installed by Landlord must be cleaned prior to the Delivery Date; such items include, but are not limited to: windows (both inside and out); light fixture lenses; concrete floors; water cooler; restroom toilets, sinks and mirrors; VCT floors and bases; and security bubbles and panels.

SUB-GRADE:

Landlord will do any sub-grade or fill work required to bring the sub-grade to the proper height for the installation of the concrete slab. Soil treatment and termite protection shall be completed by Landlord prior to installation of the vapor barrier hereinafter described. Landlord shall forward a copy of soil treatment to Tenant prior to the Delivery Date.

CONCRETE SLAB:

Landlord will supply a four inch (4") thick, three thousand (3000) pounds per square inch concrete slab. Any newly laid concrete slab is to be installed on a vapor barrier with four foot (4') by four foot (4') welded wire mesh or fiber mesh. If there is a pre-existing concrete slab, Landlord will put it into a like-new condition with all cracks and depressions filled and all floor coverings removed. Any concrete slab must be level within the Leased Premises and with all entrance and exits to the Leased Premises. Concrete sealer will be applied to all concrete slabs, whether new or pre-existing, in the stockroom only.

CONDUIT IN SLAB:

Landlord will do any cutting or patching required to install Tenant's conduit requirements. Floor cut outs and requirements are shown on Tenant's Plans. If new space, Landlord will install conduits as required before concrete is poured as per Tenant's Plans.

DEMISING AND EXTERIOR WALLS:

Subject to the Storefront provision herein, Landlord will furnish and install all demising and exterior walls constructed of metal studs or concrete block. Demising and exterior walls are to be covered with five-eighths inch (5/8") fire rated drywall on Tenant's side. This drywall must be installed to the roof deck and be fire caulked, taped, finished smooth and ready to receive wall treatment. Prior to the installation of drywall, furring strips must be installed vertically at twenty four inches (24") on center (O.C.) on block walls. Notwithstanding the foregoing, Landlord is not required to install drywall over concrete block in the stockroom. In the event that an in-wall structure reduces the usable square footage of the Leased Premises by more than three percent (3%), the rental obligations (including all additional rental and other charges) and Tenant's Percentage Share shall be adjusted accordingly.

INTERIOR PARTITIONS:

Landlord shall furnish and install all interior partitions as per Tenant's Plans, including, but not limited to, stockroom, fitting room, toilet room, columns and furring walls. In the event that furring walls are required in Tenant's Plans, all windows that will be covered by such furring walls must be prepared as per Tenant's Plans prior to the installation of such furring walls. Landlord must install, tape and make "paint-ready" all drywall in the Leased Premises in preparation for Tenant's wall treatment. Further, in the event that a sheetrock corridor from the sales floor through the stockroom is required by applicable code, Landlord will be responsible for providing and painting the same, as per Tenant's Plans.

FITTING ROOM BENCH:

Landlord will be responsible for building and installing an ADA-compliant bench in the fitting room as per Tenant's Plans.

DOORS:

Landlord is to supply and install a rear service door as per Tenant's Plans to meet any and all building code requirements. Landlord is to furnish and install doors, door jambs and door hardware as per Door Finish schedule on Tenant's Plans. If there is more than one door on the store front or in the rear of the Leased Premises, Landlord shall be responsible for removing the existing hardware and bolting all additional doors as per Tenant's Plans.

SECURITY:

Intentionally Omitted.

CEILING:

Landlord is to supply and install an acoustical ceiling tile and grid assembly in the Leased Premises at twelve feet (12') above finished floor ("Planned Ceiling Height"), as shown on Tenant's Plans. In the event that the ceiling height of the Leased Premises is less than the Planned Ceiling Height, then any Minimum Rent due hereunder throughout the terms shall be (1) converted into a per-cubic-foot dollar amounts using the Planned Ceiling Height and (2) adjusted using the planned per-cubic-foot dollar amount and the actual cubic feet of the Leased Premises. Notwithstanding the foregoing, Landlord is to supply and install a gypsum board ceiling in each toilet room, as per Tenant's Plans. Ceiling is to meet all state and local codes as to fire ratings. Landlord shall furnish and install two foot (2') by four foot (4') mirrored security panels and two foot (2') by two foot (2') mirrored security bubbles as per Tenant's Plans. Landlord shall also provide two full bundles of ceiling tile for Tenant's future use.

FLOOR COVERING:

Landlord is to furnish and install vinyl composition tile (VCT) and cove base in the toilet room, as per Tenant's Plans. In the event that a sheetrock corridor from the sales floor through the stockroom is required by applicable code, Landlord is to furnish and install cove base in same, as per Tenant's Plans. Landlord is to furnish from Tenant-specified vendors and install per Tenant's Plans a walk-off mat for each front entrance; carpet and vinyl wood flooring for the Leased Premises; all carpet glue, carpet seam sealer, walk-off mat glue and vinyl wood floor glue; and reducer strips and transition strips for such floor covering. In the event that the Center is an enclosed mall, Landlord must furnish and install the mall's floor covering to the lease line of the Leased Premises.

PAINTING:

Notwithstanding anything contained herein to the contrary, in lieu of making the same "paint-ready", Landlord will be required to paint as per Tenant's Plans the toilet room ceiling, the toilet room and interior fitting room walls, all trim boards and the inside of the storefront, above the glass.

LANDLORD PROVIDED ITEMS:

Slatwall: Landlord shall furnish from Tenant-specified vendors and install per Tenant's Plans all slatwall needed to build the Leased Premises.

Furring Strips: Landlord shall furnish and install one inch (1") by ten inch (10') by twelve foot (12') furring strips, as per Tenant's Plans. Furring strips are to be treated for bug control.

Fitting Room Hook: Landlord shall furnish and install fitting room hooks, as per Tenant's Plans.

Mirrors: Landlord shall furnish and install all mirrors, as per Tenant's Plans.

Sales Floor Uprights: Landlord shall furnish all sales floor uprights that will be attached to interior partitions from Tenant-specified vendors and install the same as per Tenant's Plans.

Trim Boards: Landlord shall furnish and install all trim boards as per Tenant's Plans.

Stock Room Shelving: Landlord shall install all Tenant-provided stock room shelving as per Tenant's Plans.

TOILET ROOM:

Landlord will provide the minimum number of toilet rooms required by code, but in no event less than one (1) toilet room, and each toilet room will be in accordance with Tenant's Plans. Landlord will provide hot water to each toilet room, as per Tenant's Plans.

FIRE PROTECTION:

If required by any applicable code, Landlord shall furnish and install a fully operational fire protection system throughout the Leased Premises. Landlord must install any code-required wall attachments for such fire protection system to extend one and one-half (1½) inch from the drywall in the sales floor area. Landlord shall furnish the minimum number of fire extinguishers required by code, but in no event less than three (3), and ensure that the same are properly tagged for the state in which the Leased Premises is located. Any code-required sprinkler system is to be installed in conjunction with Tenant's ceiling, lighting and HVAC layouts.

HVAC:

Landlord is to furnish and install in the Leased Premises a complete mechanical/HVAC system,

with a minimum of one (1) ton of air conditioning per three hundred fifty (350) square feet of the Leased Premises. Any required duct work, diffusers and return air grilles for such system must be installed in conjunction with Tenant's ceiling and lighting layouts. Prior to the installation of any of the foregoing, Landlord must submit two (2) sets of the mechanical layout for the Leased Premises for Tenant's prior written approval. Landlord must furnish and install a Lightstat thermostat with automatic set back and remote sensor as located on Tenant's Plans, provided, however, Tenant specifically reserves the right to change the location of such thermostat and Landlord must verify such location prior to installation. Landlord must have the HVAC system serviced and its filters changed by a certified technician within one (1) day of the Delivery Date to verify that such system is in excellent working condition. Landlord must provide paperwork from such service to Tenant on the Delivery Date.

ROOFING:

Landlord is responsible for any and all roof penetrations, including those required by the installation of the HVAC system. Any roof leaks are to be repaired and warranted by Landlord. Landlord agrees to be responsible for any items or merchandise damaged by roof leaks.

WATER COOLER:

Landlord shall furnish and install a handicap-accessible, electric water cooler as noted on Tenant's Plans and ensure that the same is cleaned to showroom specifications and ready for public use as of the Delivery Date.

ELECTRICAL AND TELEPHONE SERVICE:

Landlord shall furnish and install all transformers, service conduits, connectors, outlets, breakers (and any required lock-outs) and an electrical panel inside the Leased Premises on the back wall, all sufficient to install Tenant's electrical and HVAC requirements as per Tenant's Plans. In the event that multiple existing spaces in the Center are being combined to demise the Leased Premises, Landlord will be responsible to combine the electrical services of each space into one (1) electrical service for the Leased Premises, as per code. No other electrical service shall be connected to Tenant's panel except service required exclusively for the Leased Premises. Landlord shall furnish and install a conduit and bring telephone service/wiring from the telephone demark into the Leased Premises. Landlord shall furnish and install a four foot (4') by four foot (4') plywood telephone backboard as per Tenant's Plans. Landlord shall furnish and install the telephone jacks and wiring and ensure that the same are live and in working condition as per Tenant's Plans. For more detailed requirements, see Tenant's Plans listed as "Power Keyed Notes" under the Electrical Power Plans for electrical service to be furnished and installed by Landlord.

SIGNS:

Tenant will supply and install Tenant's standard sign and logo on and/or over the Leased Premises, at the maximum size allowable under the applicable local ordinances. Each Tenant sign will be individually lit letters for a strip center or reverse channel back lit for a mall. For each sign, Landlord must furnish and install plywood backing upon which Tenant will install each sign. Landlord must furnish and install electrical connection for all signs, including final connection once each sign is installed. Landlord must furnish and install one (1) twenty (20) amp, one hundred twenty (120) volt circuit for each sign Tenant will install. Landlord will install a twenty four (24) hour timer for all lit signs as per Tenant's Plans. Landlord will furnish and install access panels necessary to make final connections. Landlord will furnish and install a pylon sign cabinet and face for Tenant's use at no charge to Tenant, including, but not limited to, no monthly fees. Landlord will furnish and install ceiling-mounted exit signs, as per code.

LIGHT FIXTURES:

Landlord is to furnish and install with bulbs all light fixtures with T-8 energy saving ballasts and track lighting, as shown on Tenant's Plans. All such lighting shall be controlled by light switches as per Tenant's Plans. Landlord is to provide two full cases of each bulb for future use.

MISCELLANEOUS:

If, upon the request of Landlord or Landlord's contractor(s), Tenant performs any of Landlord's Work or supplies any material required to complete Landlord's Work, Tenant shall invoice Landlord or Landlord's contractor(s), as applicable, for the cost of such work or material. In the event Tenant has not received payment of said invoice within thirty (30) days, Tenant shall have the right to offset the amount of such invoice against the rentals due under the Lease until it has received the entire amount of the invoice.

EXHIBIT "D"

USE RESTRICTIONS

1. Any use which emits an obnoxious odor, noise or sound which can be heard or smelled outside of any building in the Center, provided that normal and customary odors from restaurants and reasonable levels of music and other noises from restaurant patios shall not be considered obnoxious.
2. Any operation primarily used as a storage warehouse operation and any assembling, manufacturing, distilling, refining, smelting, agricultural or mining operation.
3. Any "second hand" store, "surplus" store, or pawn shop; provided, however, this prohibition shall not apply to a consignment store or other second hand store of the type located at other projects similar to the Center within the Dallas/Fort Worth Metroplex area; and further provided that this prohibition shall not be construed to prohibit any "name brand" national retailers from operating an outlet store.
4. Any mobile home park, trailer court, labor camp, junkyard, or stockyard; provided, however, this prohibition shall not be applicable to the temporary use of construction trailers during periods of construction, reconstruction or maintenance.
5. Any dumping, disposing, incineration or reduction of garbage; provided, however, this prohibition shall not be applicable to garbage compactors located near the rear of any building.
6. Any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation.
7. Any central laundry, dry cleaning plant or Laundromat; provided, however, this prohibition shall not be applicable to nominal supportive facilities for on-site service oriented to pickup and delivery by the ultimate consumer as the same may be found in retail shopping center in the metropolitan area where the Center is located.
8. Any automobile, truck, trailer or recreational vehicle sales, leasing, display or body shop repair operation.
9. Any bowling alley or skating rink.
10. Any movie theater or live performance theater.
11. Any hotel, motel, short or long term residential use, including but not limited to: single family quarters, sleeping apartments or lodging rooms. This limitation shall not apply to the existing "Super 8 Motel."
12. Any veterinary hospital or animal raising or boarding facility; provided, however, this prohibition shall not be applicable to pet shops. Notwithstanding the foregoing exception, any veterinary or boarding services provided in connection with the operation of a pet shop shall only be incidental to such operation; the boarding of pets as a separate customer service shall be prohibited; all kennels, runs and pens shall be located inside the building; and the combined incidental veterinary and boarding facilities shall occupy no more than fifteen percent (15%) of the floor area of the pet shop. It is specifically agreed that the operation of a PetsMart or Petco in the normal course of such companies' operations shall be permitted.
13. Any mortuary or funeral home.
14. Any establishment selling or exhibiting pornographic materials or which sells drug-related paraphernalia or which exhibits either live or by other means to any degree, nude or partially clothed dancers or wait staff and/or any massage parlors or similar establishments, provided that therapeutic, non-sensual massage operators, shall be permitted, and further provided that the incidental sales of adult-oriented magazines or periodicals by national or regional bookstores and the sale or rental of adult-oriented videos or DVDs by national or regional video stores, so long as such stores are of the type customarily located in projects similar to the Center, shall be permitted.
15. Any bar, tavern, restaurant or other establishment whose reasonably projected annual gross revenues from the sale of alcoholic beverages for on-premises consumption exceeds forty percent (40%) of the gross revenues of such business, provided that the

foregoing limitations shall be increased to fifty percent (50%) for a casual dining restaurant or a sports bar such as TGI Friday's or Buffalo Wild Wings, or for Dave and Buster's or a similar establishment, and further provided that the foregoing limitation shall not prohibit a wine bar whose primary business is the sale of wine for on or offsite consumption.

16. Any health spa, fitness center or workout facility of greater than 10,000 square feet of floor area; provided, however, this restriction shall not prevent the operation of a salon/day spa.

17. Any flea market, amusement or video arcade, pool or billiard hall, car wash or dance hall, except that an amusement or video arcade or pool tables incidental to a restaurant shall be permitted, and further provided that retail facilities may operate no more than four (4) electronic games per such facility incidentally to primary operations.

18. Any training or educational facility, including but not limited to: beauty schools, barber colleges, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers; provided, however, this prohibition shall not be applicable to on-site employee training by an occupant incidental to the conduct of its business at the Center, nor shall it be applicable to children's education centers such as Sylvan Learning Center.

19. Any gambling facility or operation, including, but not limited to: off-track or sports betting parlor; table games such as blackjack or poker; slot machines, video poker/blackjack/keno machines or similar devices; or bingo hall. Notwithstanding the foregoing, this prohibition shall not be applicable to governmental sponsored gambling activities or charitable gambling activities, so long as such activities are incidental to the business operation being conducted by an occupant.

20. **Famous Footwear.** Landlord covenants, warrants, and agrees that it has not and shall not, throughout the term hereof, lease space in the Shopping Center to another tenant that devotes more than fifteen percent (15%) of its gross leasable area to the sale of shoes or other footwear, nor shall Landlord permit any tenant or occupant of the Shopping Center to use more than fifteen percent (15%) of its gross leasable area for the sale of shoes or other footwear.

21. **Ulta Salon.** Tenant shall have the exclusive right to conduct any portion of Tenant's Primary Business (with the exception of the operation of a nail salon, which shall be permitted, and with the exception of the operation of a day spa which shall also be permitted) in the Shopping Center and any land adjacent or contiguous (but for roadways or access ways) to the Shopping Center which is owned or otherwise controlled by Landlord or a parent, subsidiary or affiliate of Landlord or in which any officer, partner, director or owner of Landlord has any interest, and all other tenants or other occupants of any portion of the Shopping Center or any adjacent or contiguous land (provided such land is owned or otherwise controlled by Landlord, as provided above) shall be prohibited from engaging in any portion of such Primary Business. Further, Landlord covenants that it will not lease any space in the Shopping Center or any adjacent or contiguous land (provided such land is owned or otherwise controlled by Landlord, as provided above) to tenants whose primary use is substantially similar to Tenant's Primary Business, such as: Beauty Brands, Beauty First, Pure Beauty, Sephora, or Trade Secret. Notwithstanding the foregoing, Tenant's exclusive right shall not apply to uses associated with (a) existing tenants in the Shopping Center who are entitled to sell such products and/or provide the services that are covered by Tenant's exclusive rights, (b) family hair care such as Great Clips, Fantastic Sam's, or other similar value oriented type operations, (c) any national retail tenant in excess of twenty-five thousand (25,000) square feet that sells the goods and/or provides the services that are covered by Tenant's exclusive rights as a part of its normal business operations, but not as its primary use, or (d) incidental sales (less than 200 square feet total of such tenant's premises is used to sell of the products that comprise Tenant's Primary Business).

22. **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 (other than the Premises) or any property contiguous to the Shopping Center (including, without limitation, any property that would be contiguous or adjacent to the Shopping Center but for any intervening road, street, alley or highway) owned or controlled now or at any time hereafter by Landlord or any affiliate of Landlord, to any "craft store", store selling arts and crafts, art supplies, craft supplies, picture frames or picture framing services, framed art, artificial flowers and/or plants, artificial floral and/or plant arrangements, wedding or party goods (except apparel), scrapbooking/memory book store, or a store selling scrapbooking/memory book supplies, accessories, and/or decorations or other papercrafting (e.g. making greeting cards, gift

bags, tags, and other related or similar items) supplies, accessories and/or decorations associated with the foregoing, or providing classes on any of the foregoing or any combination of the foregoing categories, or any store similar to Tenant in operation or merchandising.

23. **Bed Bath & Beyond**. Landlord shall not lease, rent or occupy or permit any other premises in the Shopping Center or on any Related Land to be occupied, whether by a tenant, sublessee, assignee, licensee or other occupant or itself, for the sale, rental or distribution, at retail or at wholesale, either singly or in any combination, of items contained in any of the following respective categories of merchandise: (a) linens and domestics; (b) bathroom items (excluding plumbing hardware); (c) housewares (excluding furniture, and major appliances or "white goods"); (d) frames and wall art (provided that a fine art gallery shall not be precluded); (e) window treatments; and/or (f) closet, shelving and storage items. Notwithstanding the foregoing, any tenant or subtenant in the Shopping Center or the Related Land shall have the right to utilize its respective premises for the sale, rental and/or distribution of items listed above within an aggregate area (which shall include an allocable portion of the aisle space adjacent to such sales, rental and/or distribution area) not to exceed the lesser of (x) ten percent (10%) of the Floor Area of such tenant's or subtenant's premises, or (y) two thousand (2,000) square feet of Floor Area within such tenant's or subtenant's premises. [For example only, a tenant occupying premises containing a total of five thousand (5,000) square feet of Floor Area could sell Exclusive Items (either singly or in any combination) so long as the aggregate area within its entire demised premises in which any and all of the items listed above are sold shall not exceed five hundred (500) square feet.]. This restriction shall not apply to (i) Belk's (as such store is currently operated [as of the Effective Date]), provided that Belk's occupies at least 70,000 square feet of Floor Area on the Belk Parcel within the Shopping Center, (ii) a full-line national or regional: (a) department store [for example, Wal-Mart, Macy's, Kohl's or Target], (b) discount club [for example, Costco, BJ's Wholesale Club, or Sam's Club], or (c) home improvement center [for example, Home Depot or Lowe's], commonly located in first-class shopping centers in the state in which the Shopping Center is located, each occupying at least 80,000 square feet of Floor Area within the Shopping Center, as such stores are currently operated (as of the Effective Date), (iii) Bath & Body Works, as such store is currently operated (as of the Effective Date) and provided such retailer sells only private label merchandise, (iv) Michael's Arts & Crafts, to the extent set forth in that certain "side letter agreement", dated July 11, 2007, or (v) full line furniture stores such Ethan Allan, Storehouse, Broyhill & Thomasville, and (B) the restriction against the sale of bathroom items shall not apply to the operation of a typical *Ulta* store, as same currently operates as of the Effective Date, provided that the Floor Area of such store shall not exceed ten thousand three hundred (10,300) square feet of Floor Area.

24. **Belks**. Landlord agrees not to lease (nor otherwise permit the occupancy of) any Floor Area within 100 feet of the main entrance to the Demised Premises to any restaurant (i) which is typically referred to as a "fast food" restaurant (excluding sandwich shops), or (ii) which does not have restroom facilities which are open to such restaurant's Occupants and Permittees, nor to lease (or otherwise permit the occupancy of) within such restricted area to or for any supermarket, ice cream parlor, or amusement center. No kiosks shall be constructed anywhere in the Belk Primary Parking Area. Landlord agrees not to lease to (or otherwise permit the occupancy of) a movie theater in the Shopping Center within 500 feet of the main customer entrance to the Belk Store.

25. **McAlister's Deli**. Landlord agrees not to lease space within the Shopping Center with Jason's Deli, Panera Bread, Corner Bakery, Baker's Brothers, Newk's Express Café or any fast-casual restaurant with more than fifty percent (50%) of sales coming from deli sandwiches (excluding burgers). This exclusive does not apply to fast food restaurants serving sandwiches, including without limitation, Subway, Potbelly, Quiznos, Which Which, and Firehouse Subs.

26. **All Star Clips**. Landlord agrees that during the original term of this lease, Landlord will not execute any lease for space within the Shopping Center with a tenant whose principal business activity is the operation of a walk-in, no appointment, discount haircutting salon such as, but not limited to, Fantastic Sams, Great Clips, Knockouts, etc. This provision shall not apply to a full service beauty salon.

27. **Lady's Nails**. Landlord agrees that during the original term of this lease, Landlord will not execute any lease for space within the Shopping Center with a tenant whose principal business activity is manicures and pedicures. This provision shall not apply to any tenant greater than 7,000 square feet and any tenant under 3,000 square feet; provided that the manicure/pedicure is limited to 300 square feet of the floor area.

28. **Logan's Roadhouse**. Landlord agrees not to lease or sell any other parcel within a 3 mile radius to a steakhouse or roadhouse restaurant featuring grilled red meats, such as,

but not limited to, "Outback", "Roadhouse Grille", "Texas Roadhouse", "Longhorn", "Lonestar", "Ryan's", "Colton's", "Western Sizzlin", or "Golden Corral". For these purposes, "steakhouse" is defined as any establishment deriving thirty-five (35%) percent or more of its store revenues from grilled red meats. As used herein, "roadhouse" is defined as any establishment featuring a facility with a rustic appearance and incorporating the word "roadhouse" as a part of its name, trademark, or advertising slogan.

29. **Buffalo Wild Wings.** Landlord agrees not to allow any other space in the Shopping Center to be used by a person or entity whose business is (i) a restaurant or bar with a sports theme or concept as a "sports bar" (defined below) or (ii) a restaurant or bar which features chicken wings as the primary menu item, serves them with two (2) or more types of sauces, or serves them as an entrée, and Landlord shall include a provision in future leases in the Shopping Center prohibiting the use of such leased space for the purposes described in this section. A "sports bar" is defined as a restaurant or bar, which has five (5) or more televisions, or any projection programming or broadcasting, any of which exceed 42" diagonal, for viewing sporting events and regularly markets itself to the public for the viewing of sporting events. Competing businesses prohibited by the foregoing shall include, without limitation, Champs, Hooters, Wing Stop and Wing Zone.

30. **Kincaids.** Landlord agrees that (i) during the original term of this lease Landlord will not execute any lease for space within the Shopping Center to Tenant's primary competitors such as Chapp's, Fuddrucker's, Al's, Jake's Burger House and like or other similar hamburger restaurants; and (ii) during the first five (5) years of this lease Landlord will not execute any lease for space within the Shopping Center to Tenant's secondary competitors such as McDonald's or Burger King. The foregoing exclusive shall not apply to fast casual restaurants such as Chili's or Cheddar's.

31. **CiCi's Pizza.** Landlord hereby agrees that it shall not lease space in the Shopping Center to a tenant who shall carry on, as its primary business, the sale of pizza where "primary business" means greater than 15% of gross sales derived from such use (provided that Landlord has approval or consent rights regarding such use). Specifically, Landlord shall not lease, sell, or allow occupancy of space in the Shopping Center by Little Caesar's or Pizza Patron. However, notwithstanding the foregoing, Landlord reserves the right to lease space to tenants whose primary business (primary being defined as 40% or more of its gross profits) is the sale of cooked pizza for delivery only (and does not include the operation of an actual "sit-down" restaurant in that space, which space shall be limited to 2,000 square feet or less).

EXHIBIT D-1

LIMITED WAIVER AND CONSENT REGARDING EXCLUSIVE USE RIGHTS

LIMITED WAIVER AND CONSENT REGARDING EXCLUSIVE USE RIGHTS

THIS LIMITED WAIVER AND CONSENT ("Consent") is entered into this ____ day of _____, 2009, by Brown Group Retail, Inc., a Pennsylvania corporation ("Tenant"), for the benefit of Weatherford I-20/Main St GP, LLC ("Landlord") and Hibbett Sporting Goods, Inc., a Delaware corporation ("Hibbett").

WITNESSETH:

WHEREAS, Landlord and Tenant have entered into a lease agreement dated November 5, 2007 (the "Lease"), for certain premises in the Weatherford Ridge Shopping Center (the "Center"); and

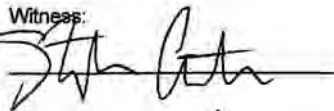
WHEREAS, Section 11 of the Lease contains an exclusive use restriction related to the sale of shoes in the Center, which proposed provision is more particularly set forth in Exhibit "A" hereto (the "Famous Footwear Exclusive"); and

WHEREAS, Hibbett desires to enter into a lease with Landlord for premises in the Center containing approximately 6,068 square feet and located in Suite 243 as shown on the site plan attached hereto as Exhibit "B"; and

WHEREAS, Hibbett and Landlord have requested a limited waiver and consent from Tenant in order to assure that Hibbett's operation in the Center will not be deemed to constitute a breach or violation of the Famous Footwear Exclusive.

Now, in consideration of the foregoing promises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Tenant hereby waives any right to assert or enforce the Famous Footwear Exclusive against Landlord or Hibbett for so long as Hibbett operates in a manner substantially similar to the majority of its other "Hibbett Sports" retail stores.

IN WITNESS WHEREOF, Tenant has hereunto executed this Consent as of the date and year first above written.

Witness:


Brown Group Retail, Inc.

By: 
Name: Todd P. Kohlhauser, CCIM
Title: Vice President, Corporate Real Estate
Brown Shoe Company

EXHIBIT A
Famous Footwear Exclusive

Landlord covenants, warrants, and agrees that it has not and shall not, throughout the term hereof, lease space in the Shopping Center to another tenant that devotes more than fifteen percent (15%) of its gross leasable area to the sale of shoes or other footwear, nor shall Landlord permit any tenant or occupant of the Shopping Center to use more than fifteen percent (15%) of its gross leasable area for the sale of shoes or other footwear.

Exhibit B

Site Plan

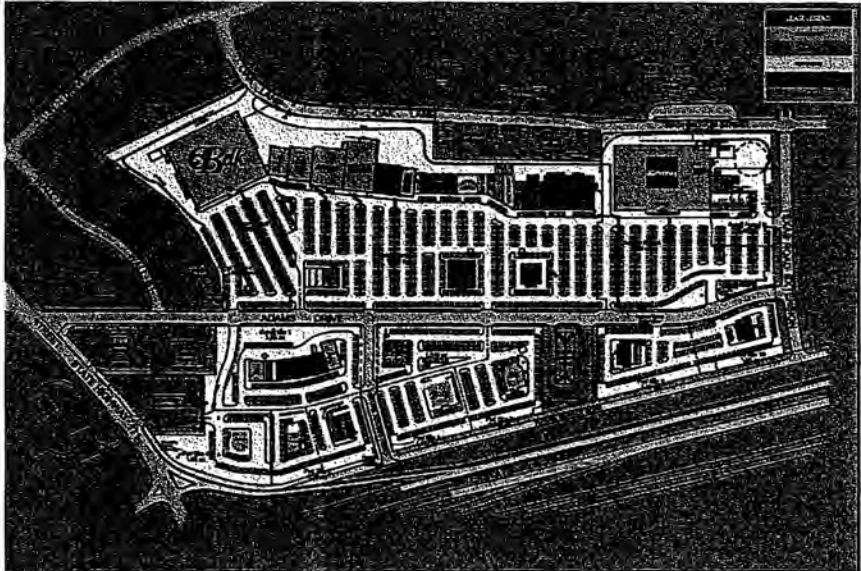
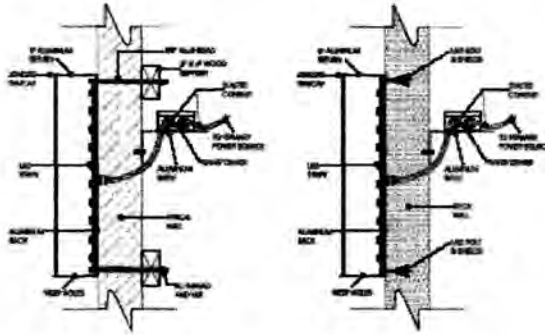


EXHIBIT "E"
TENANT SIGN PLANS



LETTER SIZE:
H = 4'-0"

INT.-ILLUM. CHANNEL LETTERS:
FACES: 3/16" Red #2793 Plat.
RETURNS: 9" Deep Painted Black.
TRIM: 1" Black Jowells.
LED: Galcore Red

REGISTRATION MARK:
1/4" Hibbett Red Alum. Disc w/ Negative-Cut White Vinyl
on Top: Alum. Extension to Support From the Letter "S".

SQ. FOOTAGE: 172.00

EXHIBIT "E-1"
LANDLORD'S SIGN CRITERIA

WEATHERFORD RIDGE SHOPPING CENTER
WEATHERFORD, TEXAS
SIGNAGE CRITERIA
11/10/06

The purpose of this Signage Criteria is to create a graphic environment that is individual and distinctive in identity for each occupant (each, a "Tenant") of Weatherford Ridge (the "Shopping Center") and also compatible with other signs within the Shopping Center. All signage and related improvements should give an impression of quality, professionalism and instill a good business image. Lettering shall be well proportioned and signage design, spacing and legibility shall be a major criterion for approval.

The following specifications are to be used for the design of all Tenant signage; however, in all cases, final written approval must be obtained from Weatherford I-20/Main St., L.P. prior to the manufacturing or installation of any signage. Weatherford I-20/Main St., L.P. shall make all final and controlling determinations concerning any questions or interpretations of Signage Criteria.

NOTICE: Written approval of Tenant signage and conformance with this Signage Criteria does not imply conformance with local City of Weatherford, Texas ("City") sign ordinances. Please have your sign company check with local authorities to avoid non-compliance with local codes. If this Signage Criteria and the City code vary, the more restrictive requirement will apply.

I. Building Fascia Signage

A. REQUIRED SIGNS

1. Tenant shall be required to identify its premises by erecting one (1) sign which shall be attached directly to the building fascia or as hereafter described. Where the leased premises is a corner store, the Tenant shall install fascia sign on each fascia when the leased premises frontage exceeds 15', and the criteria shall govern each frontage respectively; however, a maximum of two signs will be permitted for a corner store location.
2. Tenant shall not be allowed to open for business without approved required signs in place. Failure to open for this reason shall not excuse the Tenant from the performance of its obligations under its lease.

B. TYPE OF SIGN

1. Signage style and source of illumination will be reviewed on an individual Tenant basis. Individual channel letters mounted to a 1/8" black painted aluminum plate. Plate shall be bolted to the building fascia with non-corrosive stainless steel bolts. Illumination can be provided by non-exposed neon tubing within the letters.
2. Any style (block or script) may be used. Upper and lower case letters are allowed. Weatherford I-20/Main St., L.P. will have final review over height increases for script letters.
3. Logos in addition to signage must be approved. They must be proportionate to height of fascia and sign and the same color as signage and will be included in the maximum area calculation as described above. If logos are used, a color rendering must be provided for review and approval.
4. All lines of lettering shall run horizontally.
5. Box type signs will not be permitted.
6. Refer to attached drawings for additional information and requirements.

C. SIZE OF SIGN

1. Depth-5" channel letters.
Maximum Height - **42"** tall letters for single lines of copy.
 - Signs proposed with multiple lines of copy shall be limited to an overall height of 40".
 - A minimum of 3" between rows is required.
2. Allowable Sign Area. Refer to attached building elevation exhibits to determine allowable sign areas. Overall length of sign shall not exceed 0.75 square feet for every linear foot of width of available wall face of the

building or lease space: not to exceed four hundred (400) square feet. The area of two or more signs attached to a single wall façade shall be calculated using the sum of each of the calculated sign areas together, which shall be equal to or less than the maximum area permitted for a sign wall sign. Any second or third sign shall be equal to or less than seventy five (75%) of the primary sign. Height of sign is dictated by paragraph C I.

3. In the case of an irregularly shaped sign or a sign with letters and/or symbols directly affixed to the wall of a building, the area of the sign shall be the entire area within a single continuous rectilinear perimeter of not more than four (4) straight lines enclosing the extreme limits or writing, representation, emblem or any figure of similar character, together with any material or color forming an integral part or background of the display or used to differentiate such sign from the backdrop or structure against which it is placed.

D. COLOR OF SIGN

If Plexiglas faces are used:

1. Face is to be Rohm & Haas Plexiglas. Colors permitted are:
 - a. White #7328
 - b. Red #2793
 - c. Green #2108
 - d. Yellow #2465
 - e. Blue #2051
2. Background plate color to be black.
3. Returns to be black anodized.
4. Trim Cap, Jewelite 1"-match letter face.
5. Raceway painted to match background plate.

E. CONSTRUCTION OF LETTERS

Individual channel letters 24" or less will have 1/8" Plexiglas faces; 24" or larger will have 3/16" Plexiglas faces. Cover interior of signs with reflective white paint ("Starbrite Finish")

1. Returns - Back: .063 aluminum gauge (minimum). Cover interior faces of returns with reflective white paint. ("Starbrite Finish").
2. Returns and Backs
 - a. 24" tall letters or smaller, use .063 aluminum backs and .040 aluminum sides.
 - b. 24" tall letters or larger, use .063 aluminum backs and .040 aluminum sides.
3. No armorplate or wood in the manufactured returns may be used.
4. Letters are to be mounted 2" off background plate for halo signs.

F. ILLUMINATION AND WIRING

1. Illumination shall be with 15mm and 30mm non-exposed neon tubing, color according to Plexiglas, as follows:
 - a. White Plex or backlite letters: 6500 degrees white
 - b. Red Plex: Clear Red Neon
 - c. Orange Plex: 6500 degrees white
 - d. Green Plex: Powder Green
 - e. Yellow Plex: Clear Gold II
 - f. Blue Plex: Powder Blue.
2. Secondary Wiring - All transformers and secondary wiring are to be concealed within electrical raceways.
3. Electrical power shall be brought to required location at Tenant's expense. Routing and location of conduit and other required items shall not be visible on front of fascia. Only two-wall penetration per transformer will be permitted for electrical wiring. Signs should be pre-wired in the shop. Signs will backplate shall provide wiring between letters in 2" wiring channel behind mounting plate. Reference the attached drawings for the location and additional requirements for the wiring channel.
4. Final electrical connection of sign to transformer box will be performed by a licensed electrician.

Notwithstanding any of the foregoing in this Section F, Tenant will be permitted to use LED illumination in lieu of neon tubing.

G. PLACEMENT AND INSTALLATION

1. **General Notes**

- a. Letters are to be located on signage area of building as determined by Weatherford I-20/Main St., L.P. The assigned position for each Tenant shall be as close to a center-of-frontage location as possible, subject to allowance for positioning corner store signs and suitable space between adjacent Tenant signs, as determined by Weatherford I-20/Main St., L.P.
- b. Attachment of signage to meet U.L. Standards. No exposed wiring is permitted. All signs to be U.L. labeled.
- c. All fasteners used are to be non-corrosive.
- d. Tenant will be responsible for all damage to the building incurred during sign installation or removal.
- e. Mount 1/8" aluminum plate background plate to wall using 3/8" stainless steel anchor bolts mounted in grout lines. See detail for proper placement of bolts. Indicate number and location on shop drawings. No anchor bolts shall be exposed to view. Provide 2" deep raceway box between wall and back plate. Provide gasketing between aluminum plate and raceway. Letters and background plate to be pre-assembled.

H. **SUBMITTAL FOR APPROVAL**

- I. Prior to awarding a contract for fabrication and installation, Tenant shall submit (3) three drawings for final review and written approval to:

Weatherford I-20/Main St., L.P.
Attn.: Construction Department
2525 McKinnon Street, Suite 700
Dallas, TX 75201

2. Elevation of building fascia and sign shall be drawn using a minimum 1/4" = 1'-0" scale. Provide section drawn at min. 3/4" = 1'-0".
3. Drawing shall indicate the following specifications: type, color and thickness of Plexiglas/Lexan type of materials, finish used on return, type of illumination and mounting method and height. Tenant's sign contractor shall first visit the site to verify existing conditions prior to preparation of shop drawings; information needed to prepare submittals shall also be obtained during this visit.
4. Drawings must include fascia cross section showing electrical connections. Building cross section details may be requested from Weatherford Ridge, Ltd. to facilitate the preparation of submittal details.

I. **PERMITS** –

All City of Weatherford permits and written approval from Weatherford I-20/Main St., L.P. are required prior to sign fabrication.

J. **TRAILER SIGNS OR TEMPORARY SIGNS** –

WILL NOT BE PERMITTED

K. **ADDRESS SIGNAGE** –

Street address shall be installed by Tenant using 6" helvetica bold vinyl letters located on glass transom above doors, centered on doors. Use 3M white opaque vinyl only.

L. **WINDOW SIGNS** –

The Tenant may apply maximum 2" high vinyl die-cut letters on its rear door with its name and suite number only. Tenant shall not post any additional signs in the service area. Submit three (3) copies of 1/4" = 1' 0" scaled drawings for approval. Tenant shall not apply any other signs to the interior or exterior face of the storefront glass or other materials, unless specifically permitted in the lease, provided Tenant shall be permitted to apply window vinyl on the storefront window.

M. **THE FOLLOWING ARE NOT PERMITTED:**

1. Roof signs or box signs
2. Cloth signs hanging in front of business
3. Exposed seam tubing
4. Animated or moving components
5. Intermittent or flashing illumination

6. Iridescent painted signs
7. Letter mounted or painted on illuminated panels
8. Signs or letters painted directly on any surface except as herein provided
9. Signs installed or placed along perimeter of shopping center
10. The names, stamps or decals of manufacturers or installers shall not be visible except for technical data (if any) required by governing authorities.
11. Exposed neon tubing
12. Obscene, indecent, unlawful, or immoral signs
13. Window neon signs

N. ATTACHMENTS:

1. S-1 Elevation Sign Detail
2. S-2 Sign Section Detail

NOTICE: Unless otherwise indicated by separate written agreement, all costs of Tenant's fascia signage as described above shall be borne by the Tenant and not Weatherford I-20/Main St., L.P. Weatherford I-20/Main St., L.P. expressly reserves the right to consent to modifications to this Signage Criteria, in its sole and absolute discretion, including, but not limited to, in connection with the preservation of a Tenant's prototypical signage design subject to City ordinance.

EXHIBIT "F"
RULES AND REGULATIONS

Subject to all applicable provisions of the Lease, Tenant agrees to comply with, abide and be bound by the following Rules and Regulations established for the use of the Center, as the same may be amended, supplemented and/or modified from time to time by Landlord pursuant to the Lease.

1. All trash pick-up shall be made during the hours and in the areas designated by Tenant's service provider.
2. Except as otherwise designated by Landlord in writing, the minimum hours of business during which Tenant shall be open shall be from 10:00 a.m. to 9:00 p.m. from Monday through Friday, and 10:00 a.m. to 6:00 p.m. on Saturday.
3. The hours for the lighting of display windows shall be from dusk until 11:00 p.m. Tenants will be required to illuminate their fascia signage during such times as Landlord determines from time to time. Landlord retains the right at any time to centralize the switching and metering for all or a part of the Center fascia signage or to decentralize the system to individual metering and switching.
4. The parking of vehicles used by Tenant and the Tenant's employees shall be restricted to the area along the perimeter of the Center and for each contravention of this rule such Tenant shall be obligated to pay Landlord Ten and No/100 Dollars (\$10.00) for each such contravention.
5. No person shall use any roadway, sidewalk, or walkway, except as a means of egress or ingress to any floor area and automobile parking areas within the Center or adjacent to public streets. Such use shall be in an orderly manner and in accordance with the directional or other signs or guides. Such roadways shall not be used at a speed in excess of thirty (30) miles per hour and shall not be used for parking or stopping except for the immediate loading or unloading of passengers. No sidewalk or walkway shall be used for other than pedestrian travel.
6. No person shall use any automobile parking areas except for the parking of motor vehicles during the period of time such person or the occupants of such vehicles are customers or business invitees of establishments within the Center. All motor vehicles shall be parked in an orderly manner within the appointed lines defining the individual parking space.
7. No person, without the prior written consent of Landlord, shall, in or on any part of the Common Areas and facilities:
 - (a) Vend, peddle, or solicit orders for sale or distribution of any merchandise, device service, periodical, book, pamphlet, or other matter whatsoever.
 - (b) Exhibit any sign, placard, banner, notice or other written material.
 - (c) Solicit signatures on any petition or for any other purpose, disseminate any information in connection therewith, or distribute any circular, booklet, handbill, placard, or other material.
 - (d) Solicit membership in any organization, group, or association, or solicit contributions for any purpose which has no relationship to the Center.
 - (e) Parade, rally, patrol, picket, demonstrate, or engage in any conduct that might tend to interfere with or impede the use of any of the Common Areas by any customer, business invitee, employee or tenant of the Center, create a disturbance, attract attention, or harass, annoy, disparage, or be detrimental to the interest of any of the establishments within the Center.
 - (f) Use any portion of the Common Areas for any purpose other than that for which they are intended when any of the establishments within the Center are open for business or employment.
 - (g) Throw, discard, or deposit any paper, glass, or extraneous matter of any kind, except in designated receptacles, or create litter or hazards of any kind.
 - (h) Use any sound making device of any kind or create and produce in any manner

noise or sound that is annoying, unpleasant, or distasteful to any other tenant, occupant or adjacent resident.

- (i) Deface damage, or demolish any sign, light standard or fixture, landscaping material, or other improvement within the Center or the property of customers, business invitees, or employees situated within the Center.

8. Landlord shall have the right to remove or exclude from or to restrain (or take legal action to do so) any unauthorized person from, or from coming upon, the Center or any portion thereof, and to prohibit, abate, and recover damages arising from any unauthorized act, whether or not such act is in express violation of the rules and regulations set forth herein.

EXHIBIT "G"
FORM OF SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

Prepared By

David Benck
Vice President & General Counsel
Hibbett Sporting Goods, Inc.
451 Industrial Lane
Birmingham, Alabama 35211

STATE OF TEXAS)
COUNTY OF PARKER)

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT, made and entered into as of this ___ day of _____, 2009 by and among WEATHERFORD I-20/MAIN ST, LTD, a Texas limited partnership ("Landlord"), HIBBETT SPORTING GOODS, INC., a Delaware corporation ("Tenant"), and WACHOVIA BANK, N.A. ("Lender").

RECITALS:

Tenant and Landlord entered into that certain Lease, dated _____ (hereinafter referred to as the "Lease"), with respect to approximately six thousand sixty eight (6,068) square feet (in "Premises") in the Shopping Center known as Weatherford Ridge Shopping Center located in Weatherford, Texas, (the "Property"), such Premises being more particularly described in the Lease.

Landlord is indebted to Lender for a mortgage loan, which is secured by a lien on the Property (the "Mortgage"). The Mortgage and any related Assignment of leases and rents are hereinafter referred to as the "Security Instruments."

AGREEMENT

NOW, THEREFORE, in consideration of the mutual premises and covenants of the parties hereto, the parties hereto do mutually covenant and agree as follows:

1. Subject to the terms and conditions of this Agreement, the Lease and Tenant's leasehold estate created thereby and any renewals, extensions, amendments or modifications

thereof, shall be and are completely and unconditionally subject and subordinate to the lien of the Security Instruments, and to all the terms, conditions and provisions thereof, to all advances made or to be made thereunder, and to any renewals, extensions, modifications or replacements thereof.

2. Tenant shall give prompt written notice to Lender of all defaults by Landlord of those obligations under the Lease which are of such a nature as to give Tenant a right to terminate the Lease, and shall allow Lender to cure such defaults during the cure period, if any, granted Landlord under the Lease.

3. So long as Tenant is not in default in the payment of rent, additional rent or other charges or conditions of the Lease beyond any applicable notice and cure period, Tenant shall not be disturbed by Lender in Tenant's possession, enjoyment, use and occupancy of the Premises during the original or any renewal term of the Lease or any extension or modification thereof.

4. Landlord and Tenant agree that Tenant shall make the payments to be made by Tenant under the Lease to Lender upon receipt of written notice of the exercise of its rights arising under the Security Instruments, and Tenant agrees not to prepay by more than one (1) day any sums payable by Tenant under the Lease.

5. If the interest of Landlord shall be acquired by Lender by reason of foreclosure of its mortgage or other proceedings brought to enforce the rights of the holder thereof, by deed in lieu of foreclosure or by any other method, and Lender succeeds to the interest of Landlord under the Lease, the Lease shall continue in full force and effect and shall not be terminated or disturbed except in accordance with the terms of the Lease. Tenant shall thereupon be bound to Lender under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining, and any extensions or renewals thereof which may be effected in accordance with any option therefor contained in the Lease, with the same force and effect as if Lender were the landlord under the Lease. Tenant does hereby attorn to Lender as its landlord and Lender shall attorn to Tenant, said attornment to be effective and self-operative without the execution of any other instruments on the part of either party hereto immediately upon Lender's succeeding to the interest of Landlord under the Lease, and notice thereof to Tenant.

6. In addition to and not in lieu of all the provisions of this Agreement, Lender shall not in any way or to any extent be:

(a) liable for damages for any act or omission of any prior landlord (including Landlord) (subject to any rights under the Lease for the payment of alternative or reduced rent under certain conditions); or

(b) bound by any rent or additional rent which Tenant might have paid for more than one (1) day in advance to any prior landlord (including Landlord); or

(c) in any way responsible for any deposit or security which was delivered to Landlord but which was not subsequently delivered to Lender.

7. All notices, demands, or requests, and responses thereto, required or permitted to be given pursuant to this Agreement shall be in writing and shall be deemed to have been

properly given or served and shall be effective upon being deposited in the United States mail, postage prepaid and registered or certified with return receipt requested; provided, however, the time period in which a response to any notice, demand, or request must be given shall commence on the date of the return receipt of the notice, demand, or request by the addressee thereof. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice has been given shall constitute receipt of the notice, demand, or request sent. Any such notice if given to Landlord shall be addressed as follows:

2525 McKinnon Street
Suite 700
Dallas, Texas 75201

if given to Lender shall be addressed as follows:

if given to Tenant shall be addressed as follows:

Hibbett Sporting Goods, Inc.
451 Industrial Lane
Birmingham, Alabama 35211
Attention: Legal Department

With a copy to: Lease Administrator

or at such other address in the United States as Landlord, Lender or Tenant may by notice in writing designate for notice.

8. This Agreement shall be binding upon and inure to the benefit of the parties, their respective heirs, successors and assigns.

9. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same agreement.

10. In the event anyone or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision unenforceable provision had never been contained herein. Notwithstanding the foregoing, the subordination provisions of this Agreement are expressly conditioned on the effectiveness of all the provisions of Paragraph 3 hereof.

11. Notwithstanding anything herein to the contrary, this Agreement shall be effective only upon full execution and delivery by the parties to this Agreement, and if not fully executed and delivered on or before December 31, 2009 shall be deemed automatically withdrawn and revoked.

SIGNATURES AND ACKNOWLEDGEMENTS ON FOLLOWING PAGES

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

LANDLORD:


WEATHERFORD I-20/MAIN ST, LTD
a Texas limited partnership

BY: WEATHERFORD I-20 MAIN ST GP, LLC
a Texas limited liability company

By: _____
Its: _____

TENANT:

HIBBETT SPORTING GOODS, INC.
a Delaware corporation


By: David M Benck
Its: VP & General Counsel

LENDER:

WACHOVIA BANK, N.A.

By: _____
Its: _____

ACKNOWLEDGEMENTS ON FOLLOWING PAGE

[Landlord Acknowledgment]

STATE OF _____)
COUNTY OF _____)

I, the undersigned, a Notary Public for said County, in said State, hereby certify that _____ whose name as _____ of **Weatherford I-20 Main St GP, LLC**, is signed to the foregoing agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of the agreement, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said entity.

Given under my hand and official seal, this ____ day of _____, 2009.


Notary Public
My commission expires: _____

[Tenant Acknowledgment]

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public for said County, in said State, hereby certify that **David Benck** whose name as **Vice President & General Counsel of Hibbett Sporting Goods, Inc.**, a Delaware corporation, is signed to the foregoing agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of the agreement, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal, this 30th day of July, 2009.



Notary Public
My commission expires: **January 22, 2011**

[Lender Acknowledgment]

STATE OF _____)
COUNTY OF _____)

I, the undersigned, a Notary Public for said County, in said State, hereby certify that _____ whose name as _____ of **Wachovia Bank, N.A.**, is signed to the foregoing agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of the agreement, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said entity.

Given under my hand and official seal, this ____ day of _____, 2009.

Notary Public
My commission expires: _____

EXHIBIT "H"
FORM OF ESTOPPEL CERTIFICATE

ESTOPPEL CERTIFICATE

[Address of Bank]

Re: Lease dated , between **Weatherford I-20/Main St, LTD**, a Texas limited partnership ("Landlord") and **Hibbett Sporting Goods, Inc.**, a Delaware corporation, in a shopping center located in Weatherford, Texas and known as Weatherford Ridge (the "Shopping Center")

Ladies and Gentlemen:

The undersigned, as Tenant under the above-described Lease, hereby confirms and certifies to you the following:

1. The Lease is in full force and effect and has not been modified, altered or amended, except as follows:
2. No rentals have been prepaid except as provided by the terms of the Lease.
3. The term of the Lease commenced on _____, _____, and the lease term expires on _____, _____, subject to renewals as contained in the Lease.
4. Landlord is holding a security deposit of \$ 0.
5. Rentals of \$ _____ are payable monthly in advance under the Lease, subject however to any right under the Lease to pay alternative or reduced rent of which Tenant is not currently aware.
6. There are no actions, either voluntary or involuntary, pending against the undersigned under the bankruptcy laws of the United States, or under the bankruptcy laws of any state.
7. To the best of our knowledge without benefit of investigation, there is no event of default by the Tenant under the Lease.
8. All rentals due under the Lease are currently paid to Landlord.
9. Tenant has not assigned the Lease and has not subleased the Leased Premises or any part thereof.

This ___ day of _____, _____.

HIBBETT SPORTING GOODS, INC.

By: _____
Its: _____

SECOND AMENDMENT TO LEASE AGREEMENT

THIS SECOND AMENDMENT TO LEASE AGREEMENT (the "Amendment") dated on this 5th day of December, 2011 (the "Effective Date") by and between **WEATHERFORD I-20/MAIN ST, LTD**, a Texas limited partnership (the "Landlord") and **HIBBETT SPORTING GOODS, INC.**, a Delaware corporation (the "Tenant").

RECITALS:

A. Landlord and Tenant are parties to that certain Agreement of Lease dated November 5, 2009, as amended by that certain First Amendment to Lease Agreement dated April 20, 2010 (collectively, the "Lease"), for the lease of approximately 6,068 square feet of gross leaseable area, located in the shopping center known as Weatherford Ridge in Weatherford, Parker County, Texas, as more particularly described in the Lease.

B. Landlord and Tenant then entered into a First Amendment on or about April 20, 2010 amending the definition of Common Area Costs and the deletion and replacement of Paragraph 7 of the Lease, as set forth therein.

C. Landlord and Tenant desire to amend and clarify specific provisions of the Lease as set forth herein below.

D. All capitalized terms used and not otherwise defined herein shall have the respective meaning given to such terms in the Lease.

NOW THEREFORE, in consideration of the premises, the mutual covenants stated herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. Upon the satisfaction of the contingencies set forth in Paragraph 9 below and upon satisfaction of the contingencies set forth in Paragraph 9 of this Second Amendment, Paragraph 27.2 of the Lease is hereby amended to read:

"Continuing Co-Tenancy.

Landlord agrees that (1) Belk or its Comparable Replacement (as hereinafter defined), in its current location shown on the Site Plan, (2) JCPenney or its Comparable Replacement, in its current location shown on the Site Plan, (3) TJ Maxx or its Comparable Replacement and (4) at least fifty five thousand (55,000) square feet of the remaining gross leasable area of the Center (excluding the Leased Premises) shall be open and operating in a manner consistent with such tenants' other locations (each the "Continuing Co-Tenancy Requirement"); provided, however, in no event shall the square footage occupied by a Temporary Tenant be used to calculate the square footage of the Center which is open and operating. For purposes of this Paragraph 27.2 only, a Comparable Replacement shall be defined as a regional or national tenant with similar customer demographics, customer profiles, price points and merchandise of the same or better quality than the tenant being replaced and which occupies at least ninety percent (90%) of the

space previously occupied by the tenant being replaced. In the event one of requirements (1), (2) and (3) of the Continuing Co-Tenancy Requirement is not satisfied, then Tenant may elect to reduce the then-current Minimum Rent by Two and 00/100 Dollars (\$2.00) per square foot in the Leased Premises per annum until the condition giving rise to such reduction is satisfied. There is no termination right applicable to the immediately preceding provision. However, in the event two of requirements (1), (2) and (3) of the Continuing Co-Tenancy Requirement are not satisfied, then Tenant may elect to pay the Alternative Rent in lieu of all Minimum Rent, Percentage Rent and all other charges due hereunder. In the event requirement (4) of the Continuing Co-Tenancy Requirement is not satisfied, then Tenant may elect to pay the Alternative Rent in lieu of all Minimum Rent, Percentage Rent and all other charges due hereunder. In the event Tenant has been paying Alternative Rent for a period of six (6) months due to a Continuing Co-Tenancy Requirement violation, Tenant may, at any time thereafter until five (5) business days following its receipt of notice from Landlord that the condition resulting in the violated Continuing Co-Tenancy Requirement has been satisfied, elect to (i) terminate this Lease upon thirty (30) days written notice to Landlord or (ii) continue to pay Alternative Rent. Tenant's termination right for failure of any Continuing Co-Tenancy Requirement is ongoing. In the event that Tenant has been paying Alternative Rent for a period of twenty four (24) months due to a Continuing Co-Tenancy Requirement violation ("Alternative Rent Period"), Tenant, upon thirty (30) days notice from Landlord, must elect to: (a) pay Rent as provided in this Lease or (b) terminate this Lease, pursuant to Tenant's ongoing termination right stated above, upon thirty (30) days written notice to Landlord. Notwithstanding the foregoing, in the event of a subsequent failure of any of the Continuing Co-Tenancy Requirements, Tenant's remedies as set forth in this paragraph shall be reinstated, with the Alternative Rent Period restarted, and shall apply to each and every subsequent failure of any of the Continuing Co-Tenancy Requirements."

2. FULL FORCE AND EFFECT. Except as hereinabove amended, the Lease, and all other provisions therein are, and shall remain in full force and effect during the Lease Term (as defined in the Lease). Landlord and Tenant hereby ratify and confirm their obligations under the Lease.

3. AUTHORIZATIONS OR APPROVALS. Tenant and Landlord each represent and warrant to the other that it has taken all corporate, partnership or other action necessary, including receiving approval from its Lender if required, to execute and deliver this Amendment, and that this Amendment constitutes the legally binding obligations of Tenant and Landlord enforceable in accordance with its terms. Tenant and Landlord shall save and hold the other harmless from any claims, or damages including reasonable attorneys' fees arising from Tenant's or Landlord's misrepresentation of its authority to enter into and execute this Amendment.

4. ENTIRE AGREEMENT. This represents the entire agreement with respect to the subject matter hereof and cannot be amended or modified except in a written instrument signed by both parties hereto.

5. SUCCESSORS AND ASSIGNS. All of the covenants and agreements contained herein shall be binding upon and shall inure to the benefit of the parties hereto and their respective representatives, successors and assigns, to such extent that any such transfer of interest may be allowed under the terms of the Lease.

6. DEFINED TERMS. Unless otherwise indicated herein, all initially-capped terms used herein shall have the same meanings as ascribed to them in the Lease. In the event of a conflict between the provisions of this Amendment and the terms of the Lease, the provisions of this Amendment shall control.

7. COUNTERPARTS. This Amendment may be executed in several counterparts and all so executed shall constitute one agreement, binding on the parties hereto, notwithstanding that all parties hereto have not signed the same counterpart. Signatures on this Amendment that are transmitted via facsimile shall be valid for all purposes; provided, however, each party shall deliver an executed original Amendment to the other party promptly following receipt of written request for same.

8. SEVERABILITY. If any portion of this Amendment is deemed by a court of competent jurisdiction to be unenforceable, the remaining portions thereof shall remain in full force and effect.

9. CONTINGENCIES. This Amendment is contingent upon (i) the full execution of the lease between Marmaxx Operating Corp. (TJ Maxx) and Landlord (the "TJ Maxx Lease") for premises in the Center (the "TJ Maxx Premises"), (ii) construction of the portion of the Center in which the TJ Maxx Premises will be located, (iii) the full execution of the Letter Agreement between Landlord and Tenant which was signed by Tenant on November 30, 2011 and forwarded to Landlord for execution (the "Letter Agreement"); and (iv) TJ Maxx opening of business in the TJ Maxx Premises. In the event that the TJ Maxx Lease or the Letter Agreement is not fully executed on or before December 15, 2011, and/or construction of the portion of the Center in which the TJ Maxx Premises will be located has not commenced on or before October 31, 2012, and/or TJ Maxx is not open for business in the TJ Maxx Premises on or before May 1, 2013, this Amendment and the Letter Agreement shall be void unless otherwise agreed upon by the parties hereto in writing.

[Signature Page to Follow]

IN WITNESS WHEREOF, the parties have executed this Amendment on the date first above written.



ATTEST OR WITNESS


LANDLORD:

WEATHERFORD I-20/MAIN ST, L.P.,
a Texas limited partnership

By: Weatherford I-20/Main St GP, LLC
a Texas limited liability company,
Its General Partner


By: Weatherford I20 Partners, Ltd.,
a Texas limited partnership,
Its: Member

By: Weatherford I20 GP, LLC
a Texas limited liability company,
Its General Manager

By: 

David C. Wilson
Its: Manager

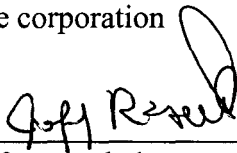
Tax ID#: 20-3880721



WITNESS

TENANT:

HIBBETT SPORTING GOODS, INC.,
a Delaware corporation

By: 

Jeff Rosenthal
CEO

Date: 11/30/11



Via Email: shagara@dunhillpartners.com

March 24, 2020

Weatherford Dunhill LLC
c/o Dunhill Property Management Services, Inc.
3100 Monticello Ave., Suite 300
Dallas, Texas 75205

RE: Hibbett Sports, Sports Additions and/or City Gear (each individually, "Tenant") under a certain occupancy agreement, as may have been amended and/or modified (collectively, the "Lease") for a certain location (the "Premises") within landlord's shopping center, Weatherford, Texas, located in Weatherford, Texas (the "Center").

Dear Sir or Madame:

As a result of the current coronavirus pandemic and the election to close the Center by Landlord and/or the government, Tenant is currently unable to access the Premises or conduct Tenant's business from within the Premises. Said situation is due to one or more of the following (as each such conditions may be addressed in the Lease): an event of force majeure, a casualty, the discovery of hazardous substances within the Center and/or the Premises, loss of the right of quiet enjoyment, and/or access and visibility to the Premises being materially and adversely affected. Pursuant to the terms and conditions of the Lease, Tenant's rental and payment obligations, as well as any obligation of Tenant under the Lease to continuously operate its business from within the Premises, shall abate for the period of such closure of its business operations from within the Premises. Further, Tenant retains all rights and remedies set forth in the Lease related in any way to (i) Tenant's inability to utilize the Premises for the operation of the use granted Tenant under the Lease and (ii) a failure of the co-tenancy provision.

I am sure that you can appreciate that Tenant's ability to conduct its normal operations, both within the Premises and Tenant's corporate office, have been, and, as of the date hereof, continue to be impaired due to the on-going pandemic. As such, we request that this letter serve as notice under the Lease of the above referenced event(s). However, should an original of this letter be required, please make such request, and provide Landlord's current notice address, via email at legalnotices@hibbett.com.

In the event you are not the person within your organization that handles this information, I would appreciate you forwarding this letter to the correct person.

Sincerely,

A handwritten signature in blue ink that reads "David Benck". The signature is written in a cursive style and is positioned above a horizontal line.

David Benck
Vice President and General Counsel Hibbett Sporting Goods, Inc.

DUNHILL PROPERTY MANAGEMENT
Commercial Brokerage & Investments

VIA FEDEX or CMRRR

Hibbett Sporting Goods, Inc.
451 Industrial Lane
Birmingham, Alabama 35211
Attention: Lease Administrator

With a copy to:

Hibbett Sporting Good, Inc.
451 Industrial Lane
Birmingham, Alabama 35211
Attention: Legal Department

April 30, 2020

Re: Notice of Unpaid Rent under Lease dated November 5, 2009, for Hibbett Sporting Goods, Inc. located at Weatherford Ridge, 225 Adams Drive, Suite 243, Weatherford, Texas 76086

Dear Hibbett Sporting Goods, Inc.,

In reviewing our accounts receivable for April 2020, we did not receive the full amount of rent due under your lease. Please remit the amount due immediately. Your failure to immediately remit such payment constitutes an Event of Default under your lease, with all the resulting rights and remedies available to Landlord.

The description herein of the delinquencies which have occurred shall not be to the exclusion of any other delinquencies now existing or hereafter occurring under the lease. Nothing herein is intended as, constitutes, or should be construed as, an election of remedies or a waiver of any of Landlord's rights or remedies. Landlord expressly reserves its rights and remedies that may be or may become entitled to under the lease, at law, in equity, or otherwise.

Thank you for your immediate attention to this matter.

Sincerely,

WEATHERFORD DUNHILL LLC

ORIGIN ID: TRLA (214) 373-7500
KAREN MORGAN
3100 MONTICELLO AVENUE
SUITE 300
DALLAS, TX 75205
UNITED STATES US

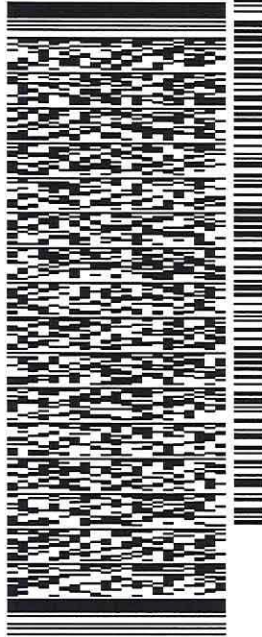
SHIP DATE: 30APR20
ACTWGT:
CAD: 109997831/NET4220

BILL SENDER

TO ATTENTION: LEASE ADMINISTRATOR
HIBBETT SPORTING GOODS, INC.
451 INDUSTRIAL LANE

BIRMINGHAM AL 35211
REF: (214) 373-7500

PO: INV: DEPT:



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As a result of Government mandated business closures and other reasonable safety measures in response to the COVID-19 pandemic, Tenant is unable to deliver this Notice by the means set forth in the Lease and is delivering this Notice to you by email in lieu of any means of hard copy delivery.

Via Email

May 8, 2020

Dunhill Prop. Mgmt Srves, Inc
3100 Monticello Ave, Suite 300
Dallas TX, 75205

RE: Hibbett Sports ("Tenant") under a certain occupancy agreement, as such agreement may have been amended and/or modified, (collectively, the "Lease") for a certain location (the "Premises") in Weatherford, TX (Tenant's Store # 545).

Dear Sir or Madame:

Tenant has become aware that, as of March 16, 2020, the Continuing Co-Tenancy Requirement, as set forth in the Lease, was not satisfied. As a result of such failure, effective retroactive to March 16, 2020, Tenant shall pay Alternative Rent pursuant to the terms of such applicable provision of the Lease. Additionally, Tenant may have a rent credit due to overpayment of rent for the month(s) of March and/or April 2020. Upon the satisfaction of the Continuing Co-Tenancy Requirement, Tenant shall inform Landlord of any such rent credit. Further, Tenant retains all rights and remedies provided in the Lease related to the failure of the Continuing Co-Tenancy Requirement.

In the event Landlord's records indicate a different date as the beginning of the failure of the Continuing Co-Tenancy Requirement, please forward all applicable documentation thereof to Tenant at Lease.Admin@hibbett.com.

Please be advised that Tenant retains all rights and remedies provided in the Lease related to the failure of the Continuing Co-Tenancy Requirement. Further, Tenant retains all rights and remedies related to the following provisions in the Lease (whether specifically named or similarly named or described) and/or at law or in equity: force majeure, the operating covenant, loss of access, covenant of quiet enjoyment, impossibility/impracticability of performance, and/or frustration of purpose.

In the event you are not the person within your organization that handles this information, I would appreciate you forwarding this letter to the correct person. Should you have any questions concerning this issue, please contact Tenant via email at legalnotices@hibbett.com.

Sincerely,


David Benck
Vice President and General Counsel Hibbett Sporting Goods, Inc.

MCCATHERN

LEVI G. MCCATHERN, II
Partner
Board Certified – Civil Trial Law
Board Certified – Labor and Employment Law
Texas Board of Legal Specialization
lmccathern@mccathernlaw.com

June 2, 2020

VIA FEDEX

Hibbett Sporting Goods, Inc.
ATTN: Lease Administrator
451 Industrial Lane
Birmingham, Alabama 35211

VIA FEDEX

Hibbett Sporting Goods, Inc.
ATTN: Legal Department
451 Industrial Lane
Birmingham, Alabama 35211

Re: Notice of Lease Termination – Weatherford Ridge

Dear Hibbett Sporting Goods, Inc.:

Please be advised that the undersigned law firm represents Weatherford Dunhill, LLC and Dunhill Property Management Services, Inc. (collectively, “Dunhill”) in this matter. Please direct any communications, be they written or oral, about this matter to my attention.

As you know, Hibbett Sporting Goods, Inc. agreed to lease approximately 6,068 square feet within the Weatherford Ridge shopping center in Weatherford, Parker County, Texas (the “Premises”). Pursuant to the lease agreement, installments of Minimum Rent are to be paid on the first day of each calendar month.

Hibbett Sporting Goods, Inc. failed to pay rent for the months of April and May. On April 30, 2020, Dunhill issued written notice of unpaid rent. Pursuant to the Lease, Hibbett Sporting Goods, Inc. had ten (10) days after receipt of the notice to cure its failure to timely pay rent. Hibbett Sporting Goods, Inc. failed to make any payment within, that ten (10) day cure period. The failure to pay rent past the cure period constitutes an Event of Default, as described in Section 25 of the Lease. Upon the occurrence of an Event of Default, Dunhill may terminate the lease without notice.

Additionally, it has come to my attention that Hibbett Sporting Goods, Inc. has attempted to pay its past due rent. Dunhill rejects that payment and intends to move forward with termination of the Lease. Accordingly, Dunhill will be seeking to retake possession of the Premises and recover its damages.

Please note that Dunhill reserves all rights and remedies available to it under the Lease, at law or in equity, or otherwise. Nothing herein is intended as, constitutes, or should be construed as an election of remedies or a waiver of any of Dunhill’s rights or remedies. Thank you for your attention to this matter. Please so not hesitate to contact me if you have any questions.

Best regards,

Hibbett Sporting Goods, Inc.

June 2, 2020

Page 2

/s/ Levi G. McCathern, II

Levi G. McCathern, II

ORIGIN ID:KIPA
MCCATHERN PLLC
MCCATHERN PLLC
3710 RAWLINS
SUITE 1600
DALLAS, TX 75219
UNITED STATES US

(214) 741-2662

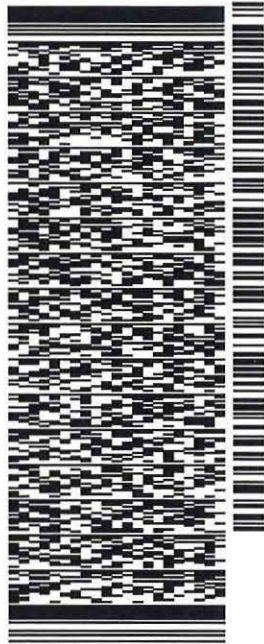
SHIP DATE: 02 JUN 20
ACTWGT: 0.10 LB
CAD: 2448320/NET4220
BILL SENDER

TO **ATTN: LEASE ADMINISTRATOR**
HIBBETT SPORTING GOODS, INC.
451 INDUSTRIAL LANE

BIRMINGHAM AL 35211

PO: (205) 942-4252
INV: REF:

DEPT:



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WED - 03 JUN 3:00P
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