

PROPERTY # 32414

LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease") is made and entered into on this 20th day of December, 1999, by and between WEC 991-21 LLC, a Delaware limited liability company, as Landlord, and 7-Eleven, Inc., a Texas corporation, as Tenant.

ARTICLE I**CERTAIN DEFINITIONS AND BASIC TERMS**

Landlord and Tenant hereby agree that for purposes of this Lease, the following capitalized terms shall mean:

- (a) **Additional Rent:** shall mean all amounts, costs, expenses, liabilities and obligations which Tenant is required to pay pursuant to the terms of this Lease other than Base Rent.
- (b) **Affiliate:** means, with respect to any Person, any other Person:
- (i) that directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, such Person; or
 - (ii) that, directly or indirectly, beneficially owns or holds 10% or more of any class of stock or any other ownership interest in such Person; or
 - (iii) 10% or more of the direct or indirect ownership of which is beneficially owned or held by such Person.

For purposes of this definition, the term "control" (and its correlative usages) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of stock, by contract or otherwise.

(c) **Commencement Date:** December 21, 1999.

(d) **Default Rate:** An annual rate of interest equal to (i) the highest rate of interest which may be contractually charged on amounts past due with respect to any loan which is secured by the Demised Premises or ownership interests in Landlord, or (ii) if, at any time, the Demised Premises or the ownership interests in Landlord do not serve as security for a loan, twelve percent (12%) per annum; provided that, in no event shall the Default Rate exceed the highest lawful rate of interest which may be charged.

(e) **Demised Premises:** The Property and the building and all other improvements now or hereafter located on the Property, together with any and all easements, appurtenances, refrigerated vault and compressor, HVAC equipment, the Motor Fuels Equipment (hereinafter defined), pole signs, fixtures and any other improvements and rights and privileges owned by Landlord, and now or hereafter appertaining thereto, including, without limitation, the property listed on Exhibit B-1 attached hereto, but excluding the

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property listed on Exhibit B-2 attached hereto.

(f) Initial Term: Commencement Date through December 31, 2015.

(g) Landlord:

(h) Landlord's Address for Notices:

WEC 991-21 LLC
15601 Dallas Parkway, Suite 400
Dallas, Texas 75001
Attention: David Stringfield

With a copy to:

Liechty & McGinnis, P.C.
10440 North Central Expressway, Suite 1100
Dallas, Texas 75231
Attention: Lorie O. Liechty

(i) Lease Term: Initial Term plus, at the option of Tenant as set forth in Section 2.2, one or more Renewal Terms.

(j) Legal Requirements: shall mean, as the case may be, any one or more of all present and future laws (whether constitutional, statutory or otherwise), codes, ordinances, orders, judgments, decrees, injunctions, rules, regulations and requirements, of every duly constituted governmental authority or agency (but excluding those which by their terms are not applicable to and do not impose any obligation on Tenant, Landlord or the Demised Premises) and all covenants, restrictions and conditions now of record which may be applicable to Tenant, Landlord (with respect to the Demised Premises) or to all or any part of or interest in Demised Premises, or to the use, manner of use, occupancy, possession, operation, maintenance, alteration, repair or reconstruction of the Demised Premises.

(k) Lender: shall mean any entity identified as such by Landlord in writing to Tenant which makes a loan secured by a deed of trust, mortgage or similar security instrument against the Demised Premises, and evidenced by a note or notes or which is the holder of the note or notes as a result of an assignment or purchase thereof, and which has executed and delivered to Tenant an SNDA as provided in Section 14.1 hereof.

(l) Motor Fuels Equipment: Equipment necessary for the storage and sale of motor fuels, including, without limitation, underground storage tanks, motor fuels dispensers, overflow protection equipment, leak detection equipment, pumps and compressors, and associated piping.

(m) Permitted Encumbrances: shall mean Taxes (as hereinafter defined), Legal Requirements, any matters consented to by Tenant, those covenants, restrictions, reservations, liens, conditions, encroachments, easements, encumbrances and other matters of title that affect the Demised Premises as of the date of this Lease or which arise due to the acts or omissions of Tenant, or due to the acts or omissions of Landlord with Tenant's consent, on or after the date hereof.

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(n) Person: means any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization, limited liability company, government or any agency or political subdivision thereof, or any other form of entity.

(o) Property: That certain real property described on Exhibit A attached hereto, which is a part of this Lease.

(p) Renewal Terms: At Tenant's option, as set forth in Section 2.2, up to six (6) additional terms of five (5) years each.

(q) Stipulated Loss Value: Those payments scheduled on Exhibit C attached hereto for early termination of this Lease by Tenant pursuant to Section 8.3 of this Lease.

(r) Tenant: Eleven, Inc., a Texas corporation

(s) Tenant's Address for Notices:

7-Eleven, Inc.
Attn: Corporate Real Estate
P.O. Box 711
Dallas, Texas 75221-0711

and:

7-Eleven, Inc.
Attn: Legal Department
P.O. Box 711
Dallas, Texas 75221-0711

and:

Haynes and Boone, LP
901 Main Street, Suite 3100
Dallas, Texas 75202
Attention: Steven L. Wilson

ARTICLE II

LEASE AND LEASE TERM

2.1 Lease of Demised Premises for Lease Term. Landlord leases the Demised Premises to Tenant and Tenant leases the Demised Premises from Landlord for the Initial Term stated in Article I, subject to the Permitted Encumbrances. The Commencement Date is the date specified in Article I, unless advanced or delayed under any provision of this Lease.

2.2 Renewal Terms. Tenant may, by written notice delivered to Landlord not less than one year prior to the end of the Initial Term, extend the Lease Term for an additional five years beginning on the day

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after the end of the Initial Term. Tenant also may, by written notice delivered to Landlord not less than one (1) year prior to the end of such first Renewal Term and of each subsequent Renewal Term, extend the Lease Term for another Renewal Term (up to a maximum of five subsequent periods), each 5 years in length, each beginning on the day after the end of the current Renewal Term. Notwithstanding the foregoing, Tenant may not extend the Lease Term for any Renewal Term if an Event of Default exists on the date that notice of such extension is given by Tenant to Landlord or on the last day of the Initial Term or the then current Renewal Term. Any Renewal Term shall be subject to all of the provisions of this Lease and all such provisions shall continue in full force and effect except that the Base Rent for each Renewal Term shall be the amount determined in accordance with Section 3.1 hereof. If Tenant shall fail to exercise any Renewal Term, then all options to extend the Lease for subsequent Renewal Terms shall expire and be null and void.

2.3 Holding Over: Tenant shall vacate the Demised Premises immediately upon the expiration of the Lease Term or earlier termination of this Lease. If Tenant does not vacate the Demised Premises upon the expiration of the Lease Term or earlier termination of this Lease, Tenant's occupancy of the Demised Premises shall be a month-to-month tenancy, subject to all of the terms of this Lease, except that the Base Rent during the holdover period shall be increased to an amount which is one hundred twenty-five percent (125%) times the Base Rent in effect on the expiration or termination of this Lease, computed on a daily basis for each day of the holdover period, plus all additional sums due under this Lease, and Tenant shall have no right to extend or renew this Lease.

ARTICLE III

BASE RENT

3.1 Amount. Tenant shall pay Landlord rent ("Base Rent") of \$9,400.00 per month during the Initial Term. For each Renewal Term, Base Rent shall be adjusted as hereinafter provided.

1 st Renewal	110% of Base Rent during Initial Term
2 nd Renewal	120% of Base Rent during Initial Term
3 rd Renewal	130% of Base Rent during Initial Term
4 th Renewal	140% of Base Rent during Initial Term
5 th Renewal	150% of Base Rent during Initial Term
6 th Renewal	160% of Base Rent during Initial Term

3.2 Manner of Payment. All sums payable under this Lease by Tenant (the "Rent") shall be made to Landlord at the address designated in Article I, or to any other party or address located in the United States of America as Landlord may designate in writing and may be made by check and sent by first class mail, provided that, notwithstanding the provisions of Section 15.7, Rent shall not be deemed to be paid until it is received by Landlord or a third party designated by Landlord (or by Lender as provided in Section 11.1). Any and all payments made to a designated third party for the account of Landlord shall be deemed made to Landlord when received by the designated third party. All sums payable by Tenant under this Lease, whether or not expressly denominated as rent, shall constitute rent for the purposes of Section 502(b)(6) of the Bankruptcy Code and for all other purposes. The Base Rent is the minimum rent for the Demised Premises and is subject to the terms and conditions contained in this Lease, together with the attached Addenda, if any.

3.3 Time of Payment. On or before the twenty-fifth day of the first full month after the Commencement Date, and on the twenty-fifth day of each month thereafter, and if the last day of the Lease

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Term precedes the 25th day of the month, on the last day of the Lease Term, the installment of Base Rent and other sums due under this Lease shall be due and payable for that calendar month, without offset, deduction or prior demand. If the Lease Term commences or ends on a day other than the first or last day of a calendar month, the Base Rent for any fractional calendar month following the Commencement Date or preceding the end of the Lease Term shall be prorated by days and, with respect to the fractional calendar month following the Commencement Date, shall be paid in advance on the Commencement Date.

3.4 Late Payments. Tenant acknowledges that any late payment by Tenant to Landlord of any amount owing hereunder will cause Landlord to incur costs not contemplated by this Lease, the amount of which will be difficult to ascertain, including administrative and accounting costs, and late payments under any financing by Landlord of the Demised Premises. Accordingly, if any installment of Base Rent is not paid within fifteen (15) days after the same is due, Tenant shall pay to Landlord, on demand, as Additional Rent, a late charge equal to four percent (4%) (the "Late Charge") on such overdue installment of Base Rent, provided that such fifteen (15) day period shall not be construed as in any way extending the due date of any payment. If Tenant shall fail to make payment of any installment of Base Rent or any Additional Rent after the date when each such payment is due, Tenant shall pay to Landlord interest at a per annum rate equal to the Default Rate on the amount unpaid computed from the date such payment of Base Rent or Additional Rent was due to and including the date of payment.

3.5 Net Lease, Non-Terminability

(a) This is an absolute net lease, and Base Rent, Additional Rent and all other sums payable hereunder by Tenant shall be paid without notice, demand, setoff, counterclaim, recoupment, abatement, suspension, deferment, diminution, deduction, reduction or defense.

(b) This Lease shall not terminate (except as otherwise expressly provided in Sections 8.3 of this Lease), and Tenant shall not have any right to terminate this Lease (except as expressly provided in Section 8.3) during the Lease Term. Except as expressly provided in Article VIII, obligations of Tenant under this Lease (including, without limitation, the obligations to pay Base Rent and Additional Rent) shall not be affected by any interference with Tenant's use of any of the Demised Premises for any reason, including but not limited to the following: (i) any damage to or destruction of any of the Demised Premises by any cause whatsoever; (ii) any condemnation; (iii) the prohibition, limitation or restriction of Tenant's use of the Demised Premises; (iv) any eviction by paramount title or otherwise; (v) Tenant's acquisition of ownership of any of the Demised Premises other than pursuant to an express provision of this Lease; (vi) any default on the part of Landlord under this Lease or under any other agreement; (vii) any latent or other defect in, or any theft or loss of any portion of the Demised Premises, or (viii) any cause, whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding. It is the intention of the parties hereto that the obligations of Tenant under this Lease shall be separate and independent covenants and agreements, and that Base Rent, Additional Rent and all other sums payable by Tenant hereunder shall continue to be payable in all events (or, in lieu thereof, Tenant shall pay amounts equal thereto), and that the obligations of Tenant under this Lease shall continue unaffected, unless this Lease shall have been terminated pursuant to Section 8.3 of this Lease.

(c) Tenant agrees that it shall remain obligated under this Lease in accordance with its covenants and that it shall not take any action to terminate, rescind or avoid this Lease, notwithstanding (i) the bankruptcy, insolvency, reorganization, composition, readjustment, liquidation, dissolution, winding-up, or other proceeding affecting Landlord; (ii) the exercise of any remedy

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including foreclosure, under any mortgage, deed of trust or similar instrument, so long as Tenant continues to enjoy quiet enjoyment of the Demised Premises (unless such quiet enjoyment is discontinued due to the occurrence of an Event of Default), or (iii) so long as Tenant continues to enjoy quiet enjoyment of the Demised Premises (unless such quiet enjoyment is discontinued due to the occurrence of an Event of Default), any action with respect to this Lease (including the disaffirmance hereof) which may be taken by Landlord under the Federal Bankruptcy Code or by any trustee, receiver or liquidator of Landlord or by any court under the Federal Bankruptcy Code or otherwise.

(d) Each party shall reflect the transactions represented by this Lease in all applicable books, records and reports (including, without limitation, income tax filings) in a manner consistent with "true lease" treatment rather than "financing" treatment.

ARTICLE IV

RENT

4.1 Payment of Taxes by Tenant. As Additional Rent, Tenant shall pay, before any interest or penalties are due thereon, all of the following (all of which are herein called "Taxes"): (i) all real estate taxes, personal property taxes, excise or sales taxes, special improvement and other assessments (ordinary and extraordinary) and all other taxes, duties, charges, fees and payments imposed by any governmental or public authority (other than Transfer Taxes (as hereinafter defined)) which shall be imposed, assessed or levied upon, or arising in connection with the ownership, use, occupancy, leasing or possession of the Demised Premises or any part thereof during or prior to the Lease Term, and (ii) the aggregate of all municipal, city, county, state or federal excise, sales, use or transaction privilege taxes, or other taxes, levied or imposed against or on account of the amounts payable under this Lease (including, without limitation, Base Rent and Additional Rent) or the receipt thereof by Landlord (excluding municipal, city, county, state, federal or other income taxes imposed or levied against the Landlord's income generally and not arising because of the source or nature of the amounts paid to or received by Landlord hereunder). Tenant shall deliver to Landlord evidence of timely payment of Taxes. Landlord shall, to the extent permitted by applicable Legal Requirements, direct the taxing jurisdiction(s) to send tax statements directly to Tenant at the address set forth in Article I to the attention of the Ad Valorem Tax Department and shall provide Tenant with a copy of such notice. Landlord shall promptly submit any tax statements received by Landlord to Tenant at that same address to the attention of the Ad Valorem Tax Department. If Tenant has delivered written notice to Landlord that Landlord needs to provide notice to any taxing jurisdiction (with the address of such jurisdiction included in such notice) that tax statements should be sent to Tenant and Landlord fails to send such notice and Landlord (and not Tenant) subsequently receives any tax statement and fails to forward same to Tenant as required hereby at least thirty (30) days before such statement becomes delinquent or, if later, within ten (10) days after Landlord receives such statement, Landlord and not Tenant shall be liable for payment of any penalties and interest assessed with respect to late payment thereof prior to the date which is thirty (30) days after Tenant receives such statement. If the Demised Premises are located in the State of Michigan then, notwithstanding anything to the contrary contained in this Lease, Tenant shall pay or reimburse any Michigan Single Business Tax levied or assessed on or with respect to, or payable by Landlord or the members, stockholders, partners or other direct or indirect beneficial owners of the Landlord, to the extent arising from, in connection with, or related to the ownership, leasing or operation of the Demised Premises.

4.2 Tax Protest. Tenant may contest any Taxes by appropriate proceedings conducted in accordance with governmental requirements at Tenant's expense in Tenant's name or, if required by law, in

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Landlord's name. Landlord shall cooperate with Tenant and execute any documents or pleadings reasonably required for such purpose, but Landlord shall not be obligated to incur any expense or liability in connection with such contest. Tenant may, to the extent permitted by applicable Legal Requirements, defer payment of the contested Taxes pending the outcome of such contest, if such deferral does not subject Landlord's interest in the Demised Premises to forfeiture or subject Landlord to any criminal liability or penalty or to any civil liability for which Tenant has not made provisions reasonably acceptable to Landlord. All refunds of Taxes shall be the property of Tenant to the extent they are refunds of or on account of payments made by Tenant. Tenant shall pay and save Landlord harmless against any and all losses, penalties, fines, interest, judgments, decrees and costs (including, without limitation, reasonable attorneys' fees and expenses) in connection with any such contest and shall, promptly after the final determination of such contest, fully pay and discharge the Taxes which shall be levied, assessed, charged or imposed or be determined to be payable therein or in connection therewith, together with all penalties, fines, interest, costs and expenses thereof or in connection therewith, and perform all acts the performance of which shall be ordered or decreed as a result thereof.

4.3 Utility Services. Tenant shall provide for and pay the cost of all utility services, including but not limited to initial connection charges, all charges for gas, water, sewerage, storm water disposal, communications and electricity used on the Demised Premises, and for replacing all electric lights, lamps and tubes. In the event that Landlord receives any utility billing statements, Landlord shall promptly forward same to Tenant.

4.4 Reciprocal Easements. Performance of, and compliance with any and all obligations (including payment obligations, if any) under reciprocal easement agreements and other instruments affecting the Demised Premises as of the Commencement Date (and any amendments thereto approved in writing by Tenant) or under any reciprocal easement agreements or other instruments entered into by Tenant in accordance with Section 7.5 shall be the sole obligation of Tenant during the Lease Term, at Tenant's expense, and Landlord agrees to cooperate with Tenant, at Tenant's sole cost and expense, to the extent necessary to permit Tenant to comply with such requirements.

ARTICLE V

INSURANCE AND INDEMNITY

5.1 Insurance: (a) During the Lease Term, the Tenant will purchase and maintain, or cause to be purchased and maintained, insurance with respect to the Demised Premises of the following types and in the following amounts, and in no event in amounts less than those maintained by the Tenant for other similar facilities owned and/or operated by it:

(i) **Property Insurance:** Property insurance against physical damage to the Demised Premises caused by perils now or hereafter embraced by or defined in Tenant's manuscript policy in effect on the Commencement Date, including such perils as are customarily insured against by Tenant for convenience store properties of Tenant, provided that earthquake and flood insurance shall be provided only to the extent provided by Tenant for similarly situated convenience store properties of Tenant and to the extent available for the Demised Premises on a commercially reasonable basis (except that flood insurance shall be required to be provided by Tenant if the primary building on the Property is located in a flood-prone or flood hazard area).

(ii) **General Liability Insurance:** Comprehensive general liability (including contractual, completed operations and products liability) insurance against claims for bodily injury (including

Leslie A. Szeman

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death), personal injury and property damage occurring in respect of the Demised Premises or resulting from activities related to the Demised Premises, in the minimum combined single limit amount of \$10,000,000 per occurrence and \$25,000,000 annual aggregate for bodily injury (or death) and/or property damage with a maximum self-insured retention allowable of \$500,000 per occurrence;

(iii) Environmental Liability Insurance: Pollution legal liability, on a claims-made policy form, with limits of \$15,000,000 for each incident and in the aggregate (as of each annual policy renewal date), with a deductible of not more than \$250,000 per incident with respect to the Demised Premises, providing coverage for certain on-site and off-site clean-up expenses and certain third party claims arising out of pollution conditions, as set forth in the form of policy provided to Landlord prior to the Commencement Date.

(iv) Other Insurance: Such other insurance, in such amounts and against such risks, as is customarily carried by Tenant for properties similar and/or similarly situated to the Demised Premises.

Such insurance will be written by companies that are nationally recognized (including Lloyd's of London or other recognized international insurers with an ISI rating of not less than BBB), primary insurance shall be written by companies rated at least B+VII in the most recent edition of Best's Key Rating Guide, or an equivalent rating from a nationally recognized rating agency or as otherwise agreed to by Landlord, selected by the Tenant and, other than the insurance specified in Section 5.1(a)(i), will name Landlord and Lender, as additional insureds, each as its interests may appear.

(b) The insurance referred to in Section 5.1(a)(i) may be a blanket policy and will (i) at all times be in an amount at least equal to one hundred percent (100%) of the full replacement cost value (without depreciation) of the Demised Premises; (ii) include a loss payable endorsement in favor of the Landlord and Lender and any loss or damage under such insurance policies will be payable to the Landlord to be held by the Landlord and applied pursuant to the terms of this Lease; (iii) provide that the interests of the Landlord will be insured regardless of any breach or violation by the Tenant of any warranties, declarations or conditions contained in such insurance subject to the conditions in the Landlord's loss payable endorsement, and (iv) provide that, as to the Landlord and Lender, such insurance will not be invalidated by any negligent act of the Tenant, nor by any proceedings or notices thereof relating to the Demised Premises or any portion thereof, nor by legal title to, or ownership of the Demised Premises or any portion thereof becoming vested in Landlord or its agents, nor by use of the Demised Premises or any portion thereof for purposes more hazardous than permitted by such policy.

All policies of insurance required to be maintained pursuant to Section 5.1(a)(ii) which cover liability for bodily injury or property damage will provide that all provisions of such insurance, except with respect to the limits of insurance and any rights or duties specifically assigned to the named insured will operate in the same manner as if there were a separate policy covering each such insured and/or additional insured, without right of contribution from any other insurance which may be carried by an insured and/or additional insured. The insurance will be primary for claims covered as described in Section 5.1(a)(ii).

Every policy required under Section 5.1(a) will (i) expressly provide that it will not be canceled or terminated except upon 30 days' written notice to the Landlord, Lender and the Tenant, except in the case of cancellation or termination due to a lapse for non-payment, in which case ten (10) days' written notice will be required; (ii) include a waiver of all rights of subrogation against the Landlord and a waiver of any recourse against the Landlord for payment of any premiums or assessments under any policy; and (iii) not contain a

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provision relieving the insurer thereunder of liability for any loss by reason of the existence of other policies of insurance covering the Demised Premises or any portion thereof against the peril involved, whether collectible or not, if such other policies do not name the Landlord as additional insureds with loss payable as provided in this Lease. The Tenant shall advise the Landlord promptly of any policy cancellation or any change adversely affecting the coverage provided thereby.

(c) The Tenant shall deliver to the Landlord the certificates of insurance evidencing the existence of all insurance which is required to be maintained by the Tenant hereunder, such delivery to be made (i) at the Commencement Date, and (ii) upon the expiration date of any such insurance. The Tenant shall notify the Landlord of any nonrenewal of any policy required hereunder and shall cause each insurer under each policy required hereunder to give the Landlord notice of any lapse under any such policy. The Tenant will not obtain or carry separate insurance concurrent in form, or contributing in the event of loss, with that required by this Section 5.1 unless the Landlord is named as additional insured therein, with loss payable as provided in this Lease. The Tenant shall immediately notify the Landlord whenever any such separate insurance is obtained and shall deliver to the Landlord the certificates of insurance and any other documentation (other than blanket policies) required by the Landlord evidencing the same as is required hereunder.

5.2 INDEMNITY. LANDLORD SHALL NOT BE LIABLE TO TENANT OR TO TENANT'S EMPLOYEES, SUBTENANTS, AGENTS, INVITEES OR VISITORS, OR TO ANY OTHER PERSON, FOR ANY INJURY TO OR DEATH OF PERSONS OR DAMAGE TO PROPERTY ON OR ABOUT THE DEMISED PREMISES CAUSED BY TENANT, TENANT'S EMPLOYEES, SUBTENANTS, INVITEES, VISITORS OR AGENTS, OR ANY OTHER PERSON OR ARISING OUT OF THE USE, NON-USE, OCCUPANCY, CONDITION, DESIGN, CONSTRUCTION, MAINTENANCE OR REPAIR OF THE DEMISED PREMISES, OR ARISING OUT OF ANY BREACH OR DEFAULT IN THE PERFORMANCE OF TENANT'S OBLIGATIONS UNDER THIS LEASE; AND TENANT HEREBY AGREES TO INDEMNIFY, DEFEND, AND HOLD LANDLORD HARMLESS FROM AND AGAINST ANY AND ALL DAMAGES, ACTIONS, CAUSES OF ACTION, LIABILITIES, LOSS, EXPENSE OR CLAIMS ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE DEMISED PREMISES ARISING DURING THE LEASE TERM OR DURING THE PRIOR PERIOD OF OWNERSHIP OF THE PROPERTY BY TENANT, INCLUDING WITHOUT LIMITATION, ANY AND ALL SUCH DAMAGE, INJURY OR DEATH (INCLUDING, WITHOUT LIMITATION, TO THE EXTENT ARISING FROM LANDLORD'S NEGLIGENCE; BUT NOT ITS GROSS NEGLIGENCE OR WILFUL MISCONDUCT). TENANT SHALL NOT BE LIABLE FOR (I) ANY INJURY, DEATH OR DAMAGE CAUSED BY THE GROSS NEGLIGENCE OR WILFUL MISCONDUCT OF LANDLORD, OR LANDLORD'S EMPLOYEES, CONTRACTORS OR AGENTS, (II) ACTS OR EVENTS OCCURRING AFTER EXPIRATION OR TERMINATION OF THE LEASE TERM AND THE REDELIVERY OF THE DEMISED PREMISES TO LANDLORD, (III) VOLUNTARY TRANSFERS (OTHER THAN BY REASON OF ANY EVENT OF DEFAULT) BY LANDLORD OF THE DEMISED PREMISES OR ANY PART THEREOF OR INTEREST THEREIN OR A TRANSFER OF ANY INTEREST IN ANY INDEBTEDNESS SECURED BY A LIEN AGAINST THE DEMISED PREMISES (INCLUDING, WITHOUT LIMITATION, ANY TAX [WHETHER A TRANSFER TAX, STAMP TAX, INTANGIBLES TAX OR OTHERWISE] IMPOSED BY ANY GOVERNMENTAL AUTHORITY IN CONNECTION WITH SUCH TRANSFER ["TRANSFER TAXES"]), (IV) ANY CLAIM RESULTING FROM THE IMPOSITION OF ANY LIEN ARISING FROM THE ACTS OF LANDLORD, OR (V) ANY OBLIGATION OR LIABILITY SPECIFICALLY ASSUMED BY LANDLORD UNDER ANY OTHER PROVISION OF THIS LEASE. ARTICLE XIV DESCRIBES THE PROCEDURES APPLICABLE TO ANY INDEMNIFICATION OBLIGATION HEREUNDER.

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NOTWITHSTANDING THE FOREGOING, "TRANSFER TAXES" SHALL NOT INCLUDE TAX INCREASES ARISING FROM ANY REASSESSMENT OR REAPPRAISAL OF THE VALUE OF THE DEMISED PREMISES CONDUCTED BY A TAXING OR OTHER GOVERNMENTAL AUTHORITY FOLLOWING ANY CHANGE IN OWNERSHIP OF THE DEMISED PREMISES (INCLUDING, FOR EXAMPLE, AS PROVIDED UNDER ARTICLE XIII A OF THE CALIFORNIA CONSTITUTION) AND SUCH INCREASE IN PROPERTY TAXES SHALL BE INCLUDED IN ADDITIONAL RENT PAYABLE UNDER SECTION 4.1 OF THIS LEASE.

5.3 Waiver of Subrogation. Each party to this Lease waives any and every claim which arises or may arise in its favor against the other party during the Lease Term for any and all loss of, or damage to, any of its property located within or upon, or constituting a part of, the Demised Premises, which loss or damage such party is required by this Lease to insure against. These mutual waivers shall be in addition to, and not in limitation or derogation of, any other waiver or release contained in this Lease with respect to any loss of, or damage to, property of the parties. Inasmuch as these mutual waivers will preclude the assignment of any aforesaid claim by way of subrogation or otherwise to an insurance company (or any other person), each party hereby agrees to give immediately to each insurance company (which has issued to such party [if any, in the case of Landlord] policies of fire and extended coverage insurance) written notice of the terms of such mutual waivers, and to cause such insurance policies to be properly endorsed to prevent the invalidation of the insurance coverage by reason of these waivers.

ARTICLE VI

USE OF DEMISED PREMISES

6.1 Permitted Uses. Except as hereinafter provided, Tenant may use and occupy the Demised Premises for all lawful uses or purposes, including, without limitation, the operation of a retail convenience store with sales of motor fuels, petroleum products, and alcoholic beverages. Notwithstanding the foregoing sentence, in no event shall the Demised Premises be used for (i) the sale or exhibition of pornographic materials (but this use limitation shall not be deemed to preclude any full line video store or full line bookstore or magazine store which incidentally includes some x-rated videos, books or magazines so long as the display of such items constitutes less than 5% of the floor area of such store), (ii) exotic dancing, nude modeling, or other similar prurient use, (iii) a dry cleaning plant (but this use limitation shall not be deemed to preclude dry cleaning pick-up or drop-off facilities), (iv) any use which would violate the provisions of any Permitted Encumbrance, any Legal Requirement, or any requirement of any insurance policy maintained with respect to the Demised Premises, or (v) any use which would have a material adverse effect upon the value of the Demised Premises at the conclusion of the Lease Term, provided that the burden of proof of material adverse effect shall be upon Landlord. Notwithstanding anything to the contrary contained herein, Tenant shall not be obligated to conduct business or to remain open for the conduct of any business upon the Demised Premises.

6.2 Compliance with Laws. Tenant agrees to comply and to cause the Demised Premises to comply in all material respects with all applicable Legal Requirements relating to the Demised Premises (including, without limitation, all capital repairs and improvements required by law during the Lease Term, such as seismic upgrades and building safety system improvements) and the conduct of business within the Demised Premises at all times during the Lease Term.

6.3 Signs. Tenant, at its expense and subject to its obtaining any required governmental permits and approvals, may place, maintain, repair and replace signage on the Demised Premises, which may include any such trade name(s) or corporate affiliations as Tenant chooses, provided that all signage shall be

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maintained in accordance with Legal Requirements. Landlord shall cooperate, at Tenant's sole cost and expense, with Tenant's efforts to obtain any permit, approval or consent necessary or desirable in connection with the installation of any sign. At the end of the Lease Term, Tenant shall, at its sole cost and expense, have the right, at Tenant's option, to remove any signage and trade dress it installs and upon removing any such items shall repair any damage to the Demised Premises caused by such removal; provided that all sign poles and fixtures are the property of Landlord and shall not be removed from the Demised Premises by Tenant without Landlord's written consent.

6.4 Gasoline. If the Demised Premises include Motor Fuels Equipment, or if Tenant installs Motor Fuels Equipment on the Demised Premises, Tenant agrees that, to the fullest extent permitted by applicable Legal Requirements, all permits, licenses and registrations necessary to the installation and operation of Motor Fuels Equipment shall be maintained by Tenant in Tenant's name. Landlord agrees to cooperate with Tenant and Tenant agrees to cooperate with Landlord (including preparation of all applicable applications, filings and reports), all at the sole cost and expense of Tenant, to the extent governmental requirements provide that any such permits, licenses and registrations must be maintained in Landlord's name or executed by Landlord. Without limitation of any other provision of this Lease, Tenant will pay, or on demand of Landlord reimburse Landlord for, and will indemnify, defend and hold harmless Landlord from, all fees, fines, penalties, losses, damages, cost and expenses arising from or in connection with Landlord's ownership of, and Tenant's operation of, the Motor Fuels Equipment and all permits, licenses and registrations required with respect thereto, except as to such fees, fines, penalties, losses, damages, cost or expense as result from Landlord's failure timely to execute and return to Tenant for filing any applications, filings or reports prepared by Tenant and delivered to Landlord pursuant to this Section 6.4.

6.5 Trade and Other Fixtures. Subject to the approval of local governing authorities and the acquisition of any required permits, Tenant may install or cause to be installed at its expense such equipment and trade and other fixtures as are reasonably necessary or desirable for the operation of its business.

6.6 Permits and Licenses. Landlord hereby grants to Tenant the right to apply for and obtain, in Landlord's name or otherwise, any permits, licenses and registrations (including, without limitation, permits, licenses and registrations with respect to the ownership or operation of Motor Fuels Equipment and applications for reimbursements) required by applicable governmental authorities necessary or desirable for Tenant to perform maintenance, remodeling, alterations and repairs to the Demised Premises, or to otherwise use the Demised Premises, in accordance with the terms and conditions of this Lease and Landlord agrees, at Tenant's sole cost and expense, to execute any documents reasonably requested by Tenant in connection therewith.

6.7 Landlord's Access. Landlord, any Lender, and their respective agents shall have the right, during normal business hours and upon not less than two (2) days advance written notice, and without unreasonably interfering with Tenant's business, to enter the Demised Premises: (a) to visually inspect the general condition and state of repair of the Demised Premises, (b) to make repairs required or permitted under this Lease to the extent Tenant fails to make any required repairs after written notice from Landlord specifying such failure as provided in Section 10.1(a)(3) (except that no notice shall be required under Section 10.1(a)(3) under this Section 6.7 if an emergency condition exists on the Demised Premises and Tenant has not taken on or is not taking all appropriate reasonable actions to address such condition and Landlord elects to enter onto the Demised Premises to repair such condition), and (c) to show the Demised Premises or the Property to any prospective purchaser or mortgagee, and during the final year of the Lease Term or after the occurrence and during the continuance of an Event of Default, to any prospective tenant. Upon expiration or termination of

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this Lease. Tenant must provide Landlord with a copy of each separate key to the Demised Premises. During the final 90 days of the Lease Term, Landlord and Landlord's agents may erect and maintain on or about the Demised Premises reasonable signage advertising the Demised Premises for lease or for sale.

6.8 Quiet Enjoyment. Landlord covenants that, so long as no Event of Default exists hereunder, and subject to the terms of this Lease, Tenant shall and may, at all times during the Lease Term, peaceably and quietly have, hold, occupy, and enjoy the Demised Premises, subject to the Permitted Encumbrances.

6.9 Exemptions from Liability. Landlord shall not be liable to Tenant for any damage or injury to the Person, business (or any loss of income), goods, inventory, furnishings, fixtures, equipment, merchandise or other property of Tenant, Tenant's employees, invitees, customers or any other Person in or about the Demised Premises, whether the damage or injury is caused by or results from any cause whatsoever, including, without limitation: (a) fire, steam, electricity, water, gas or wind; (b) the leakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures or any other cause; (c) conditions arising on or about the Demised Premises or upon other portions of any building of which the Demised Premises is a part, or from other sources or places; or (d) the presence or release of Hazardous Materials (as hereinafter defined). Landlord shall not be liable to Tenant for any and/or injury even though the cause of or the means of repairing the damage or injury are not accessible under Hazardous Materials Laws (as hereinafter defined). Landlord shall not be liable to Tenant for any damage or injury even though the cause of or the means of repairing the damage or injury are not accessible to Tenant. THE PROVISIONS OF THIS SECTION 6.9 SHALL EXEMPT LANDLORD FROM LIABILITY TO TENANT FOR LANDLORD'S NEGLIGENCE, BUT SHALL NOT EXEMPT LANDLORD FROM LIABILITY FOR LANDLORD'S GROSS NEGLIGENCE, WILFUL MISCONDUCT OR BREACH OF SOME OTHER PROVISION OF THIS LEASE.

ARTICLE VII

PROPERTY CONDITION, MAINTENANCE, REPAIRS AND ALTERATIONS

7.1 Property Condition. The Demised Premises are demised and let subject to the Permitted Encumbrances, all Legal Requirements (including any existing violation of any thereof), and the condition of the Demised Premises as of the commencement of the Lease Term.

TENANT ACKNOWLEDGES THAT THE DEMISED PREMISES WERE CONSTRUCTED AND SELECTED BY TENANT, AND LANDLORD LEASES AND WILL LEASE AND TENANT TAKES AND WILL TAKE THE DEMISED PREMISES "AS IS", AND TENANT ACKNOWLEDGES THAT LANDLORD (WHETHER ACTING AS LANDLORD HEREUNDER OR IN ANY OTHER CAPACITY) HAS NOT MADE AND WILL NOT MAKE, NOR SHALL LANDLORD BE DEEMED TO HAVE MADE, ANY WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, WITH RESPECT TO ANY OF THE DEMISED PREMISES, INCLUDING ANY WARRANTY OR REPRESENTATION AS TO ITS FITNESS FOR USE OR PURPOSE, DESIGN OR CONDITION FOR ANY PARTICULAR USE OR PURPOSE, AS TO THE QUALITY OF THE MATERIAL OR WORKMANSHIP THEREIN, LATENT OR PATENT, AS TO LANDLORD'S TITLE THERETO, OR AS TO VALUE, COMPLIANCE WITH SPECIFICATIONS, LOCATION, USE, CONDITION, MERCHANTABILITY, QUALITY DESCRIPTION, DURABILITY OR OPERATION, IT BEING AGREED THAT ALL RISKS INCIDENT THERETO ARE TO BE BORNE BY TENANT IN THE EVENT OF ANY DEFECT OR DEFICIENCY IN ANY OF THE DEMISED PREMISES OF ANY NATURE, WHETHER PATENT OR LATENT, LANDLORD SHALL NOT HAVE ANY RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO

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OR FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING STRICT LIABILITY IN TORT) ARISING THEREFROM, AND TENANT HEREBY WAIVES THE BENEFIT OF ANY LAW TO THE CONTRARY. THE PROVISIONS OF THIS PARAGRAPH HAVE BEEN NEGOTIATED, AND THE FOREGOING PROVISIONS ARE INTENDED TO BE A COMPLETE EXCLUSION AND NEGATION OF ANY WARRANTIES BY LANDLORD, EXPRESS OR IMPLIED, WITH RESPECT TO ANY OF THE DEMISED PREMISES, ARISING PURSUANT TO THE UNIFORM COMMERCIAL CODE OR ANY OTHER LAW NOW OR HEREAFTER IN EFFECT OR OTHERWISE. TENANT ACKNOWLEDGES AND AGREES THAT TENANT HAS EXAMINED THE TITLE TO THE DEMISED PREMISES PRIOR TO THE EXECUTION AND DELIVERY OF THIS LEASE AND HAS FOUND SUCH TITLE TO BE SATISFACTORY FOR THE PURPOSES CONTEMPLATED BY THIS LEASE.

7.2. Maintenance Obligations. After the commencement of the Lease Term, Tenant shall promptly, subject to Force Majeure, make or cause to be made all repairs and replacements necessary to maintain the Demised Premises in good condition, appearance, order and repair, subject to reasonable wear and tear. Landlord shall not be required to make any repairs or restoration to the Demised Premises or to maintain the Demised Premises in any way, and Tenant expressly waives the benefit of any statute, law or other legal requirement now or hereinafter in effect which would afford Tenant the right to make repairs at Landlord's expense or to terminate this Lease because of Landlord's failure to keep the Demised Premises in good order, repair or condition. If any Event of Default shall occur and be continuing with respect to any of the provisions of this Section 7.2 or of Article XII, Landlord may, pursuant to Section 10.1(b)(2), do whatever is necessary to cure such Event of Default as may be appropriate under the circumstances for the account of and at the expense of Tenant, provided, however, that in the event of an emergency, whether or not an Event of Default has occurred, Landlord may take such action as is necessary to address such emergency conditions, without notice to Tenant, if Tenant has not taken and is not taking all appropriate reasonable actions to address such condition. All reasonable sums so paid by Landlord and all reasonable costs and expenses (including, without limitation, attorneys' fees and expenses) so incurred, together with interest thereon at the Default Rate from the date of payment of the expense, shall constitute Additional Rent payable by Tenant under this Lease and shall be paid by Tenant to Landlord on demand.

7.3. Easements; Authority. Tenant shall have the right to grant easements or enter into reciprocal easements to the extent necessary for the use and operation of the Demised Premises, so long as such easements are commercially reasonable, do not adversely impact the value or utility of the Demised Premises in a manner that is not de minimis, and do not cause the use of the Demised Premises to be dependent upon other property in a manner that is not commercially reasonable. Landlord shall (at Tenant's sole cost and expense) join in the grant of such easements and shall use commercially reasonable efforts to cause the holder of any mortgage or deed of trust against the Landlord's interest in the Demised Premises to subordinate the lien of its mortgage or deed of trust thereto.

7.4. Alterations. Tenant may make alterations, improvements and additions ("Alterations") to the Demised Premises without the consent or approval of Landlord so long as such Alterations do not constitute waste or materially impair the structural soundness of the Demised Premises, materially decrease the floor area of the building constituting a portion of the Demised Premises, or result in more than a de minimis decrease of the value or useful life of the Demised Premises. Notwithstanding the foregoing limitation on Tenant's right to make Alterations to the Demised Premises, Tenant shall have the right, in Tenant's sole discretion, without the consent or approval of Landlord, to install and/or replace Motor Fuels Equipment on the Property in conformance with the Legal Requirements. All Alterations made by Tenant shall be made at Tenant's sole cost and expense, including all costs and expenses incurred in obtaining any required governmental consents, permits or approvals. Tenant may perform all Alterations with contractors and subcontractors of Tenant's own

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choosing. Landlord will cooperate, at Tenant's sole cost and expense, with Tenant's efforts to obtain any governmental permits or approvals or consents required therefor. Landlord shall not be entitled to impose upon Tenant any charges or fees of any kind in connection with any Alterations. If Tenant at any time determines that the operation of Motor Fuels Equipment on the Property is uneconomic, Tenant shall have the right, at Tenant's option, to remove and dispose of the Motor Fuels Equipment, at Tenant's sole expense, without recourse to Landlord (but without limitation of Tenant's obligations under Article XII of this Lease), provided that such removal and disposal are conducted in accordance with applicable governmental requirements. Tenant further agrees that in connection with any Alteration: (i) such Alteration shall be performed in a good and workmanlike manner, and shall be expeditiously completed, subject to Force Majeure, in compliance with all Legal Requirements; (ii) Tenant shall promptly pay all costs and expenses of any such Alteration, and shall discharge all liens filed against any of the Demised Premises arising out of the same; (iii) Tenant shall procure and pay for all permits and licenses required in connection with any such Alteration; and (iv) if the budgeted cost of such Alteration exceeds \$250,000.00, Tenant shall provide to Landlord a copy of the plans and specifications for such Alteration for Landlord's approval, prior to commencement of construction. If Tenant shall seek approval of Landlord with respect to any proposed Alteration, such consent shall not be unreasonably withheld or delayed. If Tenant undertakes any alterations, additions or improvements to the Demised Premises as permitted under this Lease, Tenant shall comply with all provisions of applicable law with respect to asbestos-containing materials present in the Demised Premises, if any.

7.5 Condition Upon Termination. Upon the expiration or termination of this Lease, Tenant shall surrender the Demised Premises to Landlord in the condition and maintained in accordance with the provisions of this Lease, except for ordinary wear and tear. Tenant may remove any Alterations prior to the expiration or termination of this Lease to the extent (i) such Alterations are removable without material damage to the Demised Premises, (ii) removal of such Alterations will not result in more than a de minimis decrease of the value or useful life of the Demised Premises, (iii) such Alterations are not necessary for occupancy of the Demised Premises in compliance with all applicable Legal Requirements, and, if removed, Tenant shall repair any damage to the Demised Premises resulting from such removal at Tenant's expense. All Alterations which Tenant has not removed shall become Landlord's property and shall be surrendered to Landlord upon the expiration or termination of this Lease. In no event, however, shall Tenant remove any of the following materials or equipment without Landlord's prior written consent: (i) any electrical wiring or power panels; (ii) lighting or lighting fixtures; (iii) wall coverings, drapes, blinds or other window coverings (except for items of trade dress); (iv) carpets or other floor coverings; (v) heating, ventilating or air conditioning equipment; (vi) fencing or security gates; (vii) any refrigerated vault; or (viii) any other fixtures, equipment or items which, if removed, would affect the structural integrity or the exterior appearance (other than signage and items of trade dress removable under Section 6.3) of the Demised Premises. Landlord acknowledges and agrees that the items listed on Exhibit B-2 attached hereto do not constitute part of the Demised Premises and may be removed by Tenant at or prior to expiration of this Lease, to the extent that such removal can be accomplished without contravening the preceding provisions of this Section 7.5. Unless otherwise agreed to in writing by Landlord, Tenant is expressly obligated and agrees, notwithstanding anything to the contrary herein, to remove, on or prior to the end of the Lease Term, all Motor Fuels Equipment, if any, constituting a part of the Demised Premises or installed by Tenant on the Property.

7.6 Tenant shall not directly or indirectly, create or permit to be created or to remain, and shall remove and discharge (including, without limitation, by any statutory bonding procedure or any other bonding procedure or security mechanism reasonably satisfactory to Landlord and Lender which shall be sufficient to protect any loss of the Landlord's or any Lender's interest in the Demised Premises) within thirty (30) days after obtaining a copy thereof, any mortgage, lien, encumbrance, or other charge on the Demised Premises which arises for any reason, other than the Landlord's mortgage given for the benefit of any Lender

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(and any assignment of leases or rents in connection therewith); the Permitted Encumbrances in existence on the Commencement Date of this Lease or which are otherwise permitted under this Lease, and any other mortgage, lien, encumbrance or other charge created by or resulting from any act or omission by Landlord or those obtaining by, through or under Landlord (other than Tenant); Landlord shall not be liable for any labor, services or materials furnished to Tenant or to any party holding any portion of the Demised Premises through or under Tenant and no mechanic's or other liens for any such labor, services or materials shall attach to the Landlord's interest in the Demised Premises. Nothing contained in this Section 7.6 shall limit or be deemed to limit Tenant's rights under Section 1.4 of this Lease.

ARTICLE VIII

EVENT OF LOSS

8.1 **Event of Loss.** An "Event of Loss" means the occurrence of either of the following events: (a) destruction or damage to a material part of the Demised Premises that (in the good faith opinion of Tenant) renders the Demised Premises unfit for normal use in Tenant's business and could not reasonably be repaired by Tenant within four (4) months of the casualty, or (b) the condemnation or other governmental seizure or taking of, in whole or in significant part, the Demised Premises, either permanently or for a period which extends either six months or beyond the expiration of the Lease Term, whichever is shorter. For purposes of clause (b) of the foregoing sentence, the condemnation, seizure, or taking of a portion of the Demised Premises will be deemed "significant" without limitation of other occurrences which might be significant in a particular situation if such event results in a decrease of available parking on the Demised Premises by thirty percent (30%) (or, if less than 30%, results in the Demised Premises not having sufficient parking to comply with applicable Legal Requirements) or results in the loss of any Motor Fuels Equipment or in the material impairment (in Tenant's good faith judgement, not to be arbitrarily or capriciously made) of access to Motor Fuels Equipment, or which results in loss of floor space in the primary building comprising a part of the Demised Premises, or results in a loss of access to any street or roadway abutting the Demised Premises.

8.2 **Notice.** If any buildings or other improvements situated on the Property are damaged or destroyed by fire, flood, windstorm, tornado or other casualty in other than a de minimis manner, Tenant shall immediately give written notice of the damage or destruction to Landlord, provided, however, that any failure of Tenant to provide any such notice with respect to any such event which does not constitute an Event of Loss shall not constitute an Event of Default hereunder if Tenant promptly repairs such damage in accordance with Tenant's obligations under this Lease.

8.3 **Termination.** Within sixty (60) days after the occurrence of any Event of Loss, Tenant may, at Tenant's option, terminate this Lease by delivery of written notice to Landlord of such termination, which notice shall specify a date of termination not earlier than sixty (60) days after the date of the notice. Tenant shall pay to Landlord, on the date of termination, the applicable Stipulated Loss Value calculated as of the date of termination. Base Rent and Additional Rent shall not be abated and shall remain payable through the date of termination, if Tenant fails to deliver a notice of termination or fails to pay to Landlord any amount due under this Section 8.3, the Lease shall not terminate and Tenant shall remain liable hereon. If Tenant terminates this Lease in accordance with this Section 8.3 then Tenant shall be entitled to receive any insurance proceeds and condemnation awards or settlements with respect to the Demised Premises (after deduction by Landlord of actual reasonable expenses of Landlord in clearing the Property of debris) up to the amount of the Stipulated Loss Value. The provisions of this Section 8.3 are intended to provide for all of Tenant's termination rights with respect to this Lease in the event of damage to or destruction of the Demised Premises, and Tenant waives all rights set forth in any applicable law which authorizes termination of this Lease on terms

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different than those set forth in this Section 8.3.

8.4 Repair. If Tenant does not terminate this Lease upon the occurrence of damage or destruction to the Demised Premises, no adjustment or abatement shall be made to the Rent payable under this Lease and Tenant shall proceed with reasonable diligence, subject to Force Majeure, to rebuild or repair the building and other improvements on the Demised Premises to substantially the condition in which they existed prior to the damage and in accordance with the standards of Section 7.2, and all insurance proceeds payable with respect to such damage or destruction shall be held by Landlord or any Lender prior to completion of rebuilding or repair. Upon delivery by Tenant to Landlord of a certificate of an officer of Tenant that all repairs and construction have been completed and have been or will be paid for so that no lien will attach to the Property, all insurance proceeds payable upon any such damage or destruction and received by Landlord or Lender and not previously delivered to Tenant shall promptly be delivered to Tenant. Tenant shall have the right to replace the Demised Premises, upon the occurrence of a casualty, with a different structure, so long as (i) the value of the Property with such structure is not less than the value of the Demised Premises immediately prior to the casualty (assuming maintenance of the Demised Premises to such date in compliance with the requirements of this Lease) and (ii) the new structure can be built and occupied under then applicable Legal Requirements.

8.5 Condemnation. If, during the Lease Term, all or a part of the Demised Premises are taken for any public or quasi-public use under any governmental law, ordinance or regulation or by right of eminent domain, or are conveyed to the condemning authority under threat of condemnation, and if Tenant does not terminate this Lease under Section 8.3, Tenant shall promptly, subject to Force Majeure, at Tenant's expense (and utilizing any condemnation award or settlement to the full extent necessary therefor), restore and reconstruct the buildings and improvements constituting a part of the Demised Premises in order to make the same a complete architectural unit with an appearance, character and commercial value as nearly as possible equal to the value of the Demised Premises prior to the taking. At the option of Landlord, either (i) the monthly installments of Base Rent payable under this Lease during the unexpired portion of the Lease Term shall not be adjusted after the taking and Tenant shall be entitled to receive and retain that portion of any award or settlement under any condemnation proceeding in excess of amounts utilized by Tenant in reconstructing the Demised Premises as is equal to the Rent payable under this Lease for the remaining Lease Term, discounted to then present value at a discount rate equal to the interest rate then in effect under any loan secured by a first priority lien on the Demised Premises (or if no such loan then exists, at a discount rate equal to the Prime Rate as published by the Wall Street Journal on the effective date of the taking or conveyance), and Landlord shall deliver to Tenant or allow Tenant to receive such of the award or settlement, if any, up to such discounted amount; or (ii) the monthly installments of Base Rent payable under this Lease during the unexpired portion of the Lease Term shall be adjusted equitably after the taking and Landlord shall be entitled to receive all awards under or in lieu of any condemnation proceeding (except that Tenant may receive any separate award which is payable to Tenant so long as such separate award is not in reduction of the award payable to Landlord). Landlord agrees that if this Lease is not terminated pursuant to Section 8.3 of this Lease, Tenant shall have the right, at Tenant's option, to prosecute to completion, at Tenant's cost and expense, all proceedings and negotiations with any governmental authority with respect to any condemnation award or settlement, and Landlord hereby appoints Tenant as Landlord's agent for such purpose. Tenant shall be entitled to reimbursement from such condemnation award or settlement for all reasonable costs and expenses incurred by Tenant in prosecuting such action or settlement.

8.6 Special Casualty and Condemnation Provision. If the Demised Premises are located in the State of New York, the parties intend that the terms of this Article VIII, and those of Section 3.5 of this Lease, constitute an express agreement to the contrary under Section 227 of the New York Real Property

Law.

ARTICLE IX

ASSIGNMENT AND SUBLETTING

Tenant may, without the consent of Landlord, assign this Lease or sublet the Demised Premises or any portion thereof. Any assignment or subletting shall be expressly subject to all terms and provisions of this Lease. Tenant may grant to any franchisee of Tenant a right to possession and operation of the Demised Premises (whether in the form of a sublease, assignment, license or otherwise) pursuant to Tenant's franchise agreement. In the event of any assignment or subletting to any Person, or any right of possession or operation granted to any franchisee, Tenant shall remain liable for the full performance of all Tenant's obligations under this Lease. Each sublease, license, assignment or franchise agreement shall be subject and subordinate to the provisions of this Lease, and no sublease, license, assignment or franchise agreement shall grant to any Person a right to possession of the Demised Premises beyond the Lease Term. No assignment, sublease, license or franchise agreement shall impose upon Landlord any obligations beyond those expressly provided in the Lease. Tenant agrees to provide to Landlord a copy of any assignment of this Lease within thirty (30) days after Tenant's execution thereof, and a copy of any sublease of the Demised Premises promptly upon Landlord's request, provided that Tenant shall have no obligation to provide to Landlord notice of or a copy of any franchise agreement of Tenant.

Tenant hereby assigns to Landlord, as security for payment of the Rent, all rents and other sums of money payable under any sublease or assignment (but excluding any amounts due under any franchise agreement) of this Lease. Landlord hereby grants to Tenant a license to collect and enjoy such rents and other sums of money and to retain and use same for any and all purposes of Tenant, provided, that such license may be revoked by Landlord by written notice upon the occurrence of any Event of Default and that any rents or other sums of money received by Landlord hereunder shall (without constituting a cure of any Event of Default) be credited against the Rent obligations of Tenant hereunder.

ARTICLE X

DEFAULT AND REMEDIES

10.1 Default by Tenant.

(a) The occurrence of any of the following shall constitute an Event of Default (herein so called) by Tenant:

(1) Tenant shall fail to pay any Base Rent when due and such failure shall continue for five (5) business days after written notice from Landlord of such failure, or Tenant shall fail to pay any Additional Rent when due and such failure shall continue for ten (10) business days after written notice from Landlord of such failure, or

(2) Tenant shall (a) consent to the appointment of a receiver for itself or a substantial part of its properties or the Demised Premises, (b) seek relief under the Federal Bankruptcy Code or any similar state statute, (c) be unable or admit in writing its inability to pay its debts as they become due, (d) make any assignment for the benefit of creditors generally, or (e) have filed against it a voluntary petition for bankruptcy under the Federal Bankruptcy Code or similar state statute

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and such involuntary petition shall not be dismissed within ninety (90) days of filing, or (f) have filed against it an order appointing a receiver and such order shall remain unvacated for a period of 45 days after the date of its entry, or Tenant shall take any corporate action to authorize any of the actions specified in clauses (a), (b), (c), or (d) preceding, or

(3) Tenant shall fail to perform or comply with any other covenant of this Lease and such failure shall continue for a period of 30 business days after Landlord delivers written notice thereof to Tenant specifying such failure and requiring it to be remedied; provided, however, that if any such failure cannot with due diligence be remedied by Tenant within a period of 30 business days, if Tenant commences to remedy such failure within such 30 business day period and thereafter prosecutes such remedy with reasonable diligence, the period of time for remedy of such failure shall be extended so long as Tenant prosecutes such remedy with reasonable diligence; provided that, except with respect to a failure of performance under Article XII hereunder which cannot, with reasonable diligence be completed within 120 business days, and which Tenant continues to prosecute with reasonable diligence to completion, no such cure period shall extend beyond 120 business days; or

(4) Tenant shall fail to maintain any insurance coverage required of Tenant hereunder and such failure shall continue for five (5) business days after written notice from Landlord; or

(5) Any representation of Tenant contained in this Lease or any certificate delivered hereunder shall have been incorrect in any material respect when made, shall remain material when discovered, and, if capable of cure, shall not have been cured within fifteen (15) business days after written notice from Landlord describing such incorrect representation in reasonable detail, unless Tenant shall diligently commence and prosecute to cure such misrepresentation and shall effect such cure within ninety (90) days of such written notice.

(b) Following the occurrence of any Event of Default, Landlord shall be entitled to exercise any of the following remedies:

(1) Terminate this Lease, in which event Tenant shall immediately surrender possession of the Demised Premises to Landlord, or, without terminating this Lease, terminate Tenant's right to possession of the Demised Premises, and in either case, reenter, take possession of, and change the locks on the doors of the Demised Premises;

(2) Enter the Demised Premises if need be, and/or do whatever Tenant is obligated to do under the terms of this Lease (and in that event Tenant shall reimburse Landlord on demand for any expenditures by Landlord in effecting compliance with Tenant's obligations under this Lease together with interest thereon at the Default Rate calculated from the date such expenditures are paid by Landlord until paid by Tenant);

(3) After repossession of any of the Demised Premises pursuant to clause (1) above, whether or not this Lease shall have been terminated, Landlord may relet the Demised Premises or any part thereof to such tenant or tenants for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the Lease Term) for such rent, on such conditions (which may include concessions or free rent) and for such uses as Landlord, in its reasonable discretion, may determine; and Landlord shall collect and receive any rents payable by reason of such reletting. The rents received on such reletting shall be applied (a) first to the reasonable

and actual expenses of such reletting and collection, including, without limitation, such renovation and alterations of the Demised Premises as Landlord shall reasonably deem appropriate, reasonable and actual attorneys' fees and any reasonable and actual real estate commissions paid, and (b) thereafter toward payment of all sums due or to become due Landlord hereunder. If a sufficient amount to pay such expenses and sums shall not be realized or secured, then Tenant shall pay Landlord any such deficiency monthly, and Landlord may bring an action therefor as such monthly deficiency shall arise and, at its option, may want to bring such action for cumulative monthly deficiencies. Landlord shall not, in any event, be required to pay Tenant any sums received by Landlord on a reletting of the Leased Premises in excess of the Rent provided in this Lease, but such excess shall reduce any accrued present or future obligations of Tenant hereunder. Landlord's re-entry and reletting of the Demised Premises without termination of this Lease shall not preclude Landlord from subsequently terminating this Lease as set forth above. Tenant agrees to pay Landlord, as Additional Rent, immediately upon demand, all reasonable expenses incurred by Landlord in obtaining possession, in performing, reasonable Alterations and in reletting any of the Demised Premises, including, without limitation, fees and commissions of attorneys, architects, agents and brokers. Notwithstanding the foregoing or any other provisions of this Lease, Landlord shall have no obligation or duty to mitigate its damages as a result of Tenant's default except as and to the extent expressly required by applicable Legal Requirements.

(4) If Landlord has terminated this Lease, recover all Rent owing and unpaid as of the date of termination plus damages measured by the amount, if any, (discounted to present value at a discount rate equal to the interest rate then in effect under any loan secured by a first priority lien on the Property) by which (A) the total amount of Base Rent and Additional Rent which would be payable if this Lease had been performed for the balance of the Lease Term (as then in effect at the time of such termination) exceeds (B) the fair market rental value of the Demised Premises for the same period (taking into account probable and commercially reasonable remodeling costs, lease commissions, allowances, inducements, and other costs of reletting).

(5) If Landlord has not terminated this Lease (whether or not Landlord has terminated Tenant's right to possession of the Demised Premises or actually retaken possession), recover (in one or more suits from time to time or at any time before or after the end of the Lease Term) all Rent owing and unpaid and all costs, if any, incurred in reletting the Demised Premises less all rent, if any, actually received from any reletting of the Demised Premises, and

(6) Exercise any and all other rights and remedies available to Landlord at law or in equity.

Forbearance by Landlord to enforce one or more of its remedies shall not constitute a waiver of any default or an election of remedies. If Landlord elects to retake possession of the Demised Premises without terminating this Lease, it may nonetheless at any subsequent time elect to terminate this Lease.

(c) No entry upon or possession of the Demised Premises by Landlord shall be construed as an election by Landlord to terminate this Lease unless Landlord gives a written notice of such termination to Tenant in accordance with Section 10.1(b)(1).

(d) No right or remedy conferred upon or reserved to Landlord in this Lease is intended to be exercised by Landlord in any event, and each and every right and remedy shall be cumulative and in addition to any other right or remedy contained in this Lease or available at law or in equity.

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In addition to the other remedies provided in this Lease, Landlord and Tenant shall be entitled, to the extent permitted by applicable Legal Requirements, to injunctive relief in case of the violation or attempted or threatened violation of any of the provisions of this Lease, or to specific performance of any of the provisions of this Lease.

(e) Tenant hereby waives and surrenders for itself and all those claiming under it, including creditors of all kinds, any right and privilege which it or any of them may have under any present or future law to redeem any of the Demised Premises or to have a continuance of this Lease after termination of this Lease or of Tenant's right of occupancy or possession pursuant to any court order or any provision hereof.

10.2 Default by Landlord. Notwithstanding any other provision of this Lease, if Landlord by any act or omission in breach or default of its obligations under this Lease renders the Demised Premises or any portion thereof untenable or unfit for Tenant's business operations or causes thereby Tenant to be in violation of any Legal Requirement, then Tenant may, as its sole and exclusive remedies, either (1) cure same and sue Landlord for damages, or (2) sue Landlord for injunctive relief or specific performance. In no event shall Tenant have the right (i) to offset such amounts against amounts owed by Tenant to Landlord hereunder or (ii) to terminate this Lease as a result of any default by Landlord.

10.3 Limitation of Landlord's Liability. As used in this Lease, the term "Landlord" means only the current owner or owners of the fee title to the Demised Premises at the time in question. Each Landlord is obligated to perform the obligations of Landlord under this Lease only during the time such Landlord owns such interest or title. Anything contained in this Lease to the contrary notwithstanding, any claim based on or in respect of any liability of Landlord under this Lease shall be enforced only against the Landlord's interest in the Demised Premises and shall not be enforced against the Landlord personally.

ARTICLE XI

PROTECTION OF LENDERS

11.1 Subordination and Attornment. Landlord shall have the right to subordinate this Lease to any future ground lease, deed of trust or mortgage encumbering the Demised Premises, and advances made on the security thereof and any renewals, modifications, consolidations, replacements or extensions thereof, whenever made or recorded. Landlord's right to obtain or grant such a subordination is subject to and conditioned upon Landlord's providing Tenant with a written Subordination, Nondisturbance and Attornment Agreement ("SNDA") from the ground lessor, beneficiary or mortgagee wherein Tenant's right to peaceable possession of the Demised Premises during the Lease Term shall not be disturbed if Tenant pays the Rent and performs Tenant's obligations under this Lease and is not otherwise in default, in which case Tenant shall attorn to the transferee or successor to Landlord's interest in the Demised Premises and recognize the transferee or successor as Landlord under this Lease. If any ground lessor, beneficiary or mortgagee elects to have this Lease superior to the lien of its ground lease, deed of trust or mortgage and gives Tenant written notice thereof, this Lease shall be deemed superior to the ground lease, deed of trust or mortgage whether this Lease is dated prior or subsequent to the date of the ground lease, deed of trust or mortgage or the date of recording thereof. If the Demised Premises or any portion thereof are subject to any ground lease, deed of trust or mortgage as of the Commencement Date, Landlord covenants and agrees to obtain from the ground lessor or holder of such deed of trust or mortgage an SNDA for the benefit of Tenant. Landlord agrees that, upon receipt by Tenant of written notice from any Lender requiring that Tenant make payment of Rent to said Lender or its designee, Tenant shall make payments of Rent to said Lender or its designee and that such payments shall

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satisfy Tenant's obligation to make payments of Rent hereunder to the full extent so made. Tenant agrees that any form of SNDA hereunder shall include Tenant's agreement that it will not, without in each case the prior written consent of Lender, amend or modify this Lease in any way which could alter the amount or time for payment of any Base Rent or Additional Rent payable hereunder, alter in any way the absolute and unconditional nature of Tenant's obligations hereunder (or materially diminish any such obligations), result in a termination hereof prior to the end of the Initial Term or any then current Renewal Term, or pay any installment of Base Rent more than one month in advance of the due date thereof.

11.2 Signing of Documents. Tenant shall sign and deliver any instruments or documents reasonably necessary or appropriate to evidence any attornment or subordination or any agreement to attorn or subordinate.

11.3 Estoppel Certificates. Upon Landlord's or Tenant's request, the other party shall execute, acknowledge and deliver to the requesting party (or to any Lender if so requested) a written statement certifying: (i) that none of the terms or provisions of this Lease has been changed (or if they have been changed, stating how they have been changed); (ii) that this Lease has not been canceled or terminated; (iii) the last date of payment of the Base Rent and other charges and the time period covered by that payment; (iv) that, to the best of such party's knowledge, neither party is in default under this Lease (or, if claimed to be in default, stating why); and (v) such other matters as may reasonably be requested by the party requesting the certificate. Landlord/Tenant shall deliver the statement to the other party within twenty days after request. Neither party may be required to deliver more than one such statement in any three month period.

11.4 Leasehold Mortgage. Tenant is hereby given the right by Landlord, to mortgage its leasehold estate created under this Lease, under one or more leasehold mortgage(s) upon the conditions that (i) all rights acquired under such leasehold mortgage(s) shall be subject and subordinate to each and all of the covenants, conditions and restrictions set forth in this Lease and to all rights and interests of the Landlord and any Lender in and to the Demised Premises and this Lease, none of which covenants, conditions, restrictions, rights or interests is or shall be waived by Landlord or any Lender by reason of the right given to Tenant in this Paragraph 11.4 to mortgage Tenant's leasehold estate created under this Lease, and (ii) such leasehold mortgage(s) shall be executed and delivered to Landlord and any Lender a subordination, non-disturbance and attornment agreement, and any other documents, instruments or agreements reasonably requested by Landlord and any Lender to evidence such subordination and such other matters as Landlord and any Lender may reasonably request in connection therewith. Landlord agrees to accept timely performance by a leasehold mortgagee of Tenant's obligations under this Lease. If Tenant shall lease or finance the acquisition of equipment, fixtures, trade fixtures or other personal property of a removable nature utilized by Tenant in the conduct of business on the Demised Premises, Tenant warrants that any financing statement executed by Tenant will upon its face or by exhibit thereto indicate that such financing statement is applicable only to removable personal property located within the Demised Premises. In no event shall the address or the Demised Premises be furnished on the financing statement without qualifying language as to the applicability of the lien only to removable personal property.

ARTICLE XII

ENVIRONMENTAL COMPLIANCE AND INDEMNITY

12.1 Tenant's Compliance with Environmental Laws. Tenant at Tenant's expense, shall comply and cause the Demised Premises to comply, in all material respects, with all applicable Legal

Requirements, rules, orders, ordinances, directions, regulations and requirements of Federal, State, county and municipal authorities pertaining to the Demised Premises and Tenant's use of the Demised Premises and with all recorded covenants, conditions and restrictions, as in effect prior to or during the Lease Term, including, without limitation, all applicable Federal, State and local laws, regulations or ordinances pertaining to air and water quality, Hazardous Materials (as defined in Section 12.3), waste disposal, air emissions and other environmental matters, all matters related to health and safety, all zoning and other land use matters, and with any direction of any public officer or officers, pursuant to law, which impose any duty upon Landlord or Tenant with respect to the ownership, use or occupancy of the Demised Premises.

12.2 Tenant's Obligation. Tenant shall not cause or permit any Hazardous Materials, other than Permitted Materials, to be brought upon, kept or used in or about the Demised Premises. At Tenant's expense, Tenant shall maintain in effect and comply with all conditions of any and all permits, licenses, and other governmental and regulatory approvals required in connection with the handling, disposal, use or sale of Hazardous Materials in connection with the use and operation of the Demised Premises. Tenant shall in all respects handle, deal with and manage any and all Hazardous Materials caused to be brought, used, generated, or disposed in, on, under or about the Demised Premises in conformity with all applicable Hazardous Materials Laws and prudent industry practices regarding management of such Hazardous Materials. Tenant shall promptly provide Landlord with a copy of any written notice of the release or discovery of Hazardous Materials on or about the Demised Premises received by Tenant from any governmental authority or which Tenant is obligated to provide to any governmental authority. Tenant shall promptly and diligently perform to Completion (hereinafter defined) any monitoring, investigation, containment, clean-up, removal and any other remedial work required (or which would be required if such authorities had knowledge of the event or condition) under Hazardous Materials Laws by the applicable regulatory authorities (the "Remedial Measures") as the result of any release or discharge of Hazardous Material by Tenant or any employee, contractor, agent or franchisee of Tenant, or any violation of Hazardous Materials Laws by Tenant or any employee, contractor, agent or franchisee of Tenant, affecting the Demised Premises which occurred during the Lease Term or during any period prior to the Lease Term during which Tenant owned or operated the Demised Premises, including, without limitation, any conditions resulting from the presence of or Tenant's operation of Motor Fuels Equipment on the Demised Premises ("Contamination"). Landlord grants to Tenant, its employees, agents, consultants and contractors, a right of access to the Demised Premises after termination or expiration of the Lease Term to the extent reasonably necessary to satisfy Tenant's obligations under this Article XII (the "Post Term Remedial Obligations"); provided that (i) Tenant has given Landlord at least ten (10) days advance written notice of the need for such access, (ii) Landlord has received a copy of the work plan approved by the appropriate governmental authority describing the work to be performed, and (iii) Tenant shall comply with its obligations under Sections 12.1, 12.2 and 12.4. Landlord agrees that Tenant at Tenant's sole cost and expense and solely on Tenant's own initiative and effort, shall be entitled to receipt of any reimbursement or contribution now or hereafter available from any governmental authority or other third party for the cost of any Remedial Measures performed by Tenant and Landlord agrees to execute all documents reasonably requested by Tenant in connection therewith. Neither this grant of a right of access nor the exercise of such right shall constitute "holding over" under Section 2.5 of this Lease. Notwithstanding anything to the contrary contained herein, except for claims which result from the gross negligence or willful misconduct of Landlord, Tenant shall have no claims or actions against Landlord for contribution with respect to any Remedial Measures, including but not limited to, claims of liability under the Comprehensive Environmental Response, Compensation and Liability Act, as amended, and any other Hazardous Materials Laws or for contribution, reimbursement or indemnity with respect to any Hazardous Materials located on or under the property or any Contamination, and Tenant waives and releases any such claims and actions.

12.3 Definitions. For purposes of Section 12.2, "Completion" means such time as when either

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(1) the appropriate governmental authority issues a "no further action" letter, "closure" letter, or other similar letter or written statement indicating that such agency will not require Tenant to perform further Remedial Measures in connection with the Contamination, or (ii) if such governmental action in subpart (i) preceding is unavailable or cannot be obtained in a reasonable period of time, a licensed consultant certifies that all obligations set forth in any remedial action plan which has been approved by the appropriate governmental authority have been performed by Tenant. For purposes of this Lease, the term "Hazardous Materials" means any one or more pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, solvent or oil as defined in, regulated by or pursuant to Hazardous Materials Laws, "Hazardous Materials Laws" means the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, the Federal Clean Water Act, as amended, or any other Federal, State or local law, regulation, ordinance or rule concerning protection of human health or the environment from Hazardous Materials, pollutants and contamination. For purposes of this Lease, the term "Permitted Materials" means Hazardous Materials which are motor fuels (and components thereof and additions thereto) stored or dispensed through any Motor Fuels Equipment, petroleum products for retail sale, other commercial products in retail packaging for sale which constitute or contain Hazardous Materials, or cleaning, maintenance and office supplies in reasonable commercial quantities utilized in the ordinary course of Tenant's business which constitute or contain Hazardous Materials.

12.4 TENANT'S INDEMNIFICATION. TENANT SHALL PROTECT, INDEMNIFY, DEFEND AND HOLD HARMLESS LANDLORD, ANY SUCCESSOR TO OR ASSIGNEE OF LANDLORD UNDER THIS LEASE, AND LANDLORD'S PARTNERS, MANAGERS, MEMBERS, TRUSTEES, BENEFICIARIES, AGENTS, CONTRACTORS, AND EMPLOYEES (COLLECTIVELY, THE "LANDLORD INDEMNITEES"), FOR, FROM, AGAINST AND WITH RESPECT TO, AND TENANT SHALL BE RESPONSIBLE FOR ANY AND ALL LOSSES, DAMAGES, COSTS, CHARGES, LIENS, DEBTS, FINES, PENALTIES, INJUNCTIVE RELIEF, CLAIMS, DEMANDS, EXPENSES, SUITS, ORDERS, JUDGMENTS, ADJUDICATIONS, LIABILITIES, OR INJURIES TO PERSON OR PROPERTY (INCLUDING REASONABLE ATTORNEY'S FEES AND CONSULTANT FEES ARISING OUT OF ANY CLAIMS BY ANY THIRD PARTY (OTHER THAN ANY LANDLORD INDEMNITEE), INCLUDING ANY CLAIM OF ANY APPLICABLE GOVERNMENTAL AGENCY), ARISING OUT OF (a) ANY BREACH BY TENANT OF ANY PROVISION OF THIS LEASE WITH RESPECT TO THE USE, GENERATION, STORAGE, RELEASE, DISPOSAL, MIGRATION, TRANSPORTATION OR REMEDIATION OF HAZARDOUS MATERIALS BY TENANT OR ITS AGENTS, CONTRACTORS, FRANCHISEES OR EMPLOYEES, OR, UNDER OR ABOUT THE DEMISED PREMISES DURING THE LEASE TERM OR TENANT'S OCCUPANCY OF THE DEMISED PREMISES PRIOR TO THE LEASE TERM DURING ANY PERIOD THAT THE PROPERTY, OR ANY PART THEREOF, WAS OWNED BY TENANT OR ANY OF ITS AFFILIATES, (b) THE RELEASE ON, TO OR FROM THE DEMISED PREMISES OF ANY HAZARDOUS MATERIAL DURING THE LEASE TERM OR TENANT'S OCCUPANCY OF THE DEMISED PREMISES PRIOR TO THE LEASE TERM DURING ANY PERIOD THAT THE PROPERTY, OR ANY PART THEREOF, WAS OWNED BY TENANT OR ANY OF ITS AFFILIATES, BUT EXCLUDING ANY HAZARDOUS MATERIAL RELEASED BY A PERSON OTHER THAN TENANT (OR TENANT'S AGENTS, EMPLOYEES, CONTRACTORS OR AFFILIATES WHILE OPERATING UNDER THE DIRECTION OF, UNDER CONTRACT TO OR IN THE EMPLOYMENT OF TENANT) UPON ANY PROPERTY OTHER THAN THE DEMISED PREMISES WHICH AFFECTS OR IMPACTS THE DEMISED PREMISES, OR ANY OTHER PROPERTY THROUGH MIGRATION THROUGH THE ENVIRONMENT, OR (iii) ANY FACTOR OR OMISSION OF TENANT OR ANY OF TENANT'S EMPLOYEES, AGENTS, CONTRACTORS OR CONTRACTORS IN PERFORMING THE POST TERM REMEDIAL

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OBLIGATIONS. NEITHER THE CONSENT BY LANDLORD TO THE USE, GENERATION, STORAGE, RELEASE, DISPOSAL OR TRANSPORTATION OF HAZARDOUS MATERIALS NOR THE STRICT COMPLIANCE WITH ALL HAZARDOUS MATERIALS LAWS SHALL EXCUSE TENANT FROM TENANT'S INDEMNIFICATION OBLIGATIONS PURSUANT TO THIS SECTION 12.4. THE FOREGOING INDEMNITY SHALL BE THE EXCLUSIVE INDEMNITY FOR LANDLORD FOR ENVIRONMENTAL CONDITIONS, NOTWITHSTANDING SECTION 5.2 OR ANY OTHER PROVISION OF THIS LEASE. ARTICLE XIV DESCRIBES THE PROCEDURES APPLICABLE TO ANY INDEMNIFICATION OBLIGATION HEREUNDER.

12.5 Proviso. Notwithstanding anything to the contrary contained in this Lease, Landlord acknowledges and agrees that Tenant shall have no obligation or responsibility to Landlord under this Article XII or otherwise, and no liability to indemnify Landlord under Section 12.4 or otherwise with respect to any claims of any governmental authority or any third party concerning or arising with respect to any Hazardous Materials which are released by a Person other than Tenant (or Tenant's agents, employees, contractors or affiliates while operating under the direction of, under contract to or in the employment of Tenant) upon any property other than the Demised Premises and which impact or affect the Demised Premises or any other property through migration through the Environment.

ARTICLE XIII

RIGHT OF FIRST REFUSAL

Should Landlord (or any successor or assign of Landlord under this Lease), at any time during the Lease Term after the fifth (5th) anniversary of the Commencement Date, receive a bona fide offer from a person or entity that is not an Affiliate of Landlord ("Purchase Offer") to purchase the Demised Premises, or any portion thereof, that Landlord is willing to accept, or should Landlord (or any successor or assign of Landlord under this Lease) during such period make a bona fide offer to sell the Demised Premises to any person or entity that is not an Affiliate of Landlord, ("Sales Offer") (each Purchase Offer or Sales Offer is referred to herein as an "Offer"), then before entering into a purchase and sale agreement embodying the terms of the Offer, Landlord shall deliver to Tenant a written notice of intent to sell ("Notice") with a copy of the Offer. Tenant shall have and may exercise an option to acquire the Demised Premises, or the portion thereof subject to the Offer, on the same terms and conditions, other than as to the identity of the purchaser and date of closing, as are set forth in the Offer. If Tenant does not, within 30 days after Landlord delivers the Notice and copy of the Offer, deliver to Landlord written notice of Tenant's exercise of such option, then subject to and as provided by the Offer, Landlord may sell the Demised Premises or the portion thereof covered by the Offer by no later than the 120th day after Landlord delivers to Tenant the Notice and copy of the Offer. If Landlord does not timely so sell the Demised Premises, or if Landlord wishes to sell the Demised Premises on terms that vary from the financial terms of the Offer for the benefit of the buyer thereunder, Landlord shall again comply with the terms of this Article 13 as if no Notice had ever been given. If Tenant timely notifies Landlord of its intent to exercise such option, then at such time as Tenant may specify, but no later than 90 days following delivery by Tenant of such notice to Landlord, Tenant shall purchase from Landlord, and Landlord shall sell to Tenant, the Demised Premises or portion thereof subject to the Offer in accordance with the terms of the Offer (provided that the purchase price thereunder shall be reduced by any real estate commissions or other expenses which Landlord would have been obligated to pay pursuant to the Offer, and only if Landlord is not obligated to pay such commissions and other expenses upon a sale to Tenant). Notwithstanding anything contained herein, (a) a foreclosure of any bona fide mortgage, deed of trust, or similar lien against the Demised Premises; or any conveyance in lieu of foreclosure thereof, shall not constitute an Offer and Tenant shall have no right of first refusal with respect thereto and (b) the right of first refusal

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granted to Tenant under this Article XIII shall not apply and may not be exercised by Tenant after the occurrence and during the continuance of any Event of Default. The right of first refusal granted to Tenant herein shall terminate only upon termination or expiration of this Lease and shall not terminate upon any conveyance or assignment by Landlord hereunder, whether or not pursuant to any Offer. Any conveyance of the Demised Premises by Landlord to Tenant hereunder shall be AS IS, WHERE IS AND WITH ALL FAULTS, AND WITHOUT ANY WARRANTY, EXPRESS OR IMPLIED, AS TO THE CONDITION OF THE DEMISED PREMISES AND SHALL BE MADE WITH WARRANTY OF TITLE ONLY BY THROUGH AND UNDER LANDLORD AND NOT OTHERWISE.

If any right of refusal or other right under this Lease would, in the absence of the limitation imposed by this sentence, be invalid or unenforceable as being in violation of the rule against perpetuities or any other rule of law relating to the vesting of an interest in property or other suspension of the power of alienation of property, then such right of refusal or other right hereunder shall be exercisable only during the period which shall begin on the Commencement Date and end twenty (20) years and six (6) months after the date of death of the last survivor of the descendants of President George H. W. Bush alive on the date of execution and delivery of this Lease.

ARTICLE XIV

INDEMNIFICATION

With respect to the obligation of either party to indemnify pursuant to this Lease:

(a) If any third party shall notify any person or entity entitled to indemnification under this Lease (the **Indemnified Party**) with respect to any matter (a **Third Party Claim**) which may give rise to a claim for indemnification against another party (the **Indemnifying Party**), then the Indemnified Party shall promptly notify the Indemnifying Party thereof in writing, provided however, that no delay on the part of the Indemnified Party in notifying the Indemnifying Party shall relieve the Indemnifying Party from any obligation hereunder unless, and then solely to the extent, the Indemnifying Party is prejudiced thereby.

(b) An Indemnifying Party will have the right to defend the Indemnified Party against the Third Party Claim with competent counsel of its choice reasonably satisfactory to the Indemnified Party, so long as (a) the Indemnifying Party notifies the Indemnified Party in writing, within 15 days after the Indemnified Party has delivered notice of the Third Party Claim, that the Indemnifying Party will indemnify the Indemnified Party in accordance with the requirements of this Lease as to the Third Party Claim, (b) the Indemnifying Party provides the Indemnified Party with evidence reasonably acceptable to the Indemnified Party that the Indemnifying Party will have the financial resources to defend against the Third Party Claim and fulfill its obligations under the provisions hereunder, and (c) the Indemnifying Party conducts the defense of the Third Party Claim in accordance with reasonable diligences.

(c) If for any reason the Indemnifying Party is conducting the defense of the Third Party Claim in accordance with (b) and (c), the Indemnified Party may retain separate co-counsel at its sole cost and expense to conduct the defense of the Third Party Claim. (b) the Indemnified Party will not consent to the entry of any judgment or settlement with respect to the Third Party Claim, without the prior written consent of the Indemnifying Party, nor to be withheld unreasonably, and (c) the Indemnifying Party will not consent to the entry of any judgment or settlement with respect to the Third Party Claim without the prior written admission of guilt by or on behalf of the Indemnified Party, without the prior written

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consent of the Indemnified Party, not to be withheld unreasonably.

(iv) If any of the conditions in clause (ii) above is or becomes unsatisfied, however, (a) the Indemnified Party may (after five (5) days written notice to the Indemnifying Party) defend against, and consent to the entry of any judgment or enter into any settlement with respect to, the Third Party Claim in any manner it may deem appropriate (and the Indemnified Party need not consult with, or obtain any consent from, any Indemnifying Party in connection therewith), (b) the Indemnifying Party will reimburse the Indemnified Party promptly and periodically for the costs of defending against the Third Party Claim (including attorneys' fees and expenses), and (c) the Indemnifying Party will remain responsible for any damages, penalties, fines, costs and expenses, including attorney's fees, the Indemnified Party may suffer resulting from, arising out of, relating to, or caused by the Third Party Claim to the fullest extent provided in this Lease.

(v) All of the indemnity obligations of Tenant contained in this Lease shall survive the expiration or any termination of this Lease. Further, all of Tenant's obligations in the Lease to indemnify, defend and hold harmless Landlord or any other Person shall accrue to the benefit of Landlord's and such other Person's lenders (including any Lenders), partners, Affiliates, officers, directors, shareholders, trustees, beneficial owners, members, managers, agents, employees and representatives **INCLUDING, WITHOUT LIMITATION, TO THE EXTENT THE MATTER INDEMNIFIED AGAINST IS THE RESULT OF THE NEGLIGENCE (BUT NOT THE GROSS NEGLIGENCE OR WILFUL MISCONDUCT) OF SUCH PERSON.**

ARTICLE XV

MISCELLANEOUS

15.1 **Force Majeure.** As used in this Lease, the term "Force Majeure" means that if performance by either Landlord or Tenant of the specified term, condition or covenant in this Lease (other than the payment of Rent) is delayed or prevented by any act of God, strike, lockout, shortage of material or labor, restriction by any governmental authority, civil riot, flood, or any other cause not within the control of such party, the period for performance of the term, condition or covenant shall be extended for a period equal to the period such party is so delayed or prevented.

15.2 **Interpretation.** The captions of the Articles or Sections of this Lease are to assist the parties in reading this Lease and are not a part of the terms or provisions of this Lease. Whenever required by the context of this Lease, the singular shall include the plural and the plural shall include the singular, and the masculine, feminine and neuter genders shall each include the other. When used herein, the word "including" means including without limitation.

15.3 **Waivers.** All waivers to provisions of this Lease must be in writing and signed by the waiving party. Delay or failure of either party hereto to enforce any provisions of this Lease or the acceptance of late installments of Rent shall not be a waiver and shall not prevent either party from enforcing that provision or any other provision of this Lease in the future.

15.4 **Severability.** A determination by a court of competent jurisdiction that any provision of this Lease is invalid or unenforceable shall not cancel or invalidate the remainder of that provision or this Lease, which shall remain in full force and effect.

15.5 **Rights and Remedies.** All rights and remedies of either party expressly set forth herein are

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intended to be cumulative and not in limitation of any other right or remedy set forth herein or otherwise available to such party at law or in equity. Notwithstanding the foregoing, in no event shall either party be liable to the other for consequential or punitive damages, in any way related to this Lease.

15.6 Amendments or Modifications. This Lease is the only agreement between the parties pertaining to the Lease of the Demised Premises and there are no oral agreements of the parties with respect to the subject matter hereof. All amendments to this Lease must be in writing and signed by all parties. Any other attempted amendment shall be void.

15.7 Notices. All notices and other communications required or permitted under this Lease must be in writing and shall be deemed delivered, whether actually received or not, on the earlier of: actual receipt or three days after deposit in the United States Mail as required below. Notices delivered by mail must be deposited with the U. S. Postal Service, postage prepaid, return receipt requested, and properly addressed to the intended recipient as set forth in Article 1. Any party may change its address for notice by delivering twenty (20) days written notice of its new address to all other parties in the manner set forth above.

15.8 Attorneys Fees. If on account of any breach or default by any party to this Lease in its obligations to any other party to this Lease, it becomes necessary for a party to employ an attorney to enforce or defend any of its rights or remedies under this Lease, the non-prevailing party agrees to pay the prevailing party its reasonable attorneys' fees as fixed by the court and court costs. As used herein, the term "prevailing party" shall mean the party which has succeeded upon a significant issue in the litigation and achieved a material benefit with respect to the claims at issue, taken as a whole.

15.9 Venue. All obligations under this Lease shall be performable and payable in the county in which the Property is located. The laws of the State in which the Property is located shall govern this Lease.

15.10 Survival. All obligations of any party to this Lease which are not fulfilled at the expiration or termination of this Lease shall survive such expiration or termination as continuing obligations of the party.

15.11 Binding Effect. This Lease shall inure to the benefit of and be binding upon each of the parties to this Lease and their respective heirs, representatives, successors and assigns. Any sale or transfer of the Demised Premises or any part thereof by Landlord during the term of this Lease shall be made by an instrument that expressly refers to this Lease as a burden upon the Demised Premises. Subject to Article XIV, the transferring Landlord shall provide to Tenant written notice if Landlord conveys title to the Demised Premises or assigns Landlord's interest in this Lease to any other person or entity, which notice shall include the transferee's tax identification number (including a W-9 form or similar income tax document). Should the transferring Landlord or its lawful agent fail to provide Tenant with such notice, Tenant may continue to pay the transferring Landlord Rent at the last address to which Tenant was properly paying Rent until Tenant furnishes the required notice and documentation of satisfactory notice of the party entitled thereto, provided that the transferee has provided written notice to Tenant of such payments in accordance with the instructions of such Landlord and Landlord hereby waives and relinquishes any and all claims which Landlord might have against Tenant with respect to any Rent so paid by Tenant to such Landlord to the full extent of such payments.

15.12 Brokers. Landlord and Tenant each represents and warrants to the other that it had no conversations or negotiations with any broker or finder concerning the consummation of this Lease other than Cincom Real Estate Inc. ("CINCOM"). Landlord and Tenant shall each indemnify and hold harmless the other

from and against any claims for brokerage commissions or finder's fees (together with all related expenses, including reasonable attorneys' fees) resulting from or arising out of any conversations or negotiations had by it with, or any agreement between it and, any broker or finder in connection with this Lease other than CREI.

15.13 Annual Report. To the extent required of Landlord by the holder of any mortgage or deed of trust against Landlord's interest in the Demised Premises, Tenant shall deliver to Landlord, upon Landlord's written request, a copy of Tenant's most recent annual report.

15.14 Recording. This Lease shall not be filed for public record. Landlord and Tenant shall execute and acknowledge a memorandum of lease in the form attached hereto as Exhibit D which Tenant may file for public record. In the event of any conflict between this Lease and the memorandum of lease, the terms of this Lease shall prevail.

15.15 Representations. Landlord and Tenant each represent to the other that it has full power and authority to execute and deliver this Lease and to perform its obligations thereunder, that the person executing this Lease on behalf of such party is/are duly authorized to do so under corporate resolutions or by other necessary entity action, and that execution, delivery and performance of this Lease is not prohibited by and shall not result in the breach of any other agreement or contract to which such party is a party or by which it is bound.

15.16 Costs and Expenses. Any act which Tenant is required to perform under this Lease shall be performed at Tenant's sole cost and expense.

15.17 Rule of Construction. The parties acknowledge that each party and its counsel have reviewed and revised this Lease, and the parties hereby agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Lease or any amendments or exhibits hereto.

15.18 Counterparts. This Lease will be simultaneously executed in several counterparts, each of which when so executed and delivered shall constitute an original, fully enforceable counterpart for all purposes.

15.19 No Merger of Title. There shall be no merger of this Lease nor of the leasehold estate created by this Lease with the fee estate in or ownership of any of the Demised Premises by reason of the fact that the same Person may acquire or hold or own, directly or indirectly, (a) this Lease or the leasehold estate created by this Lease or any interest in this Lease or in such leasehold estate and (b) the fee estate or ownership of any of the Demised Premises or any interest in such fee estate or ownership. No such merger shall occur unless and until all Persons having any interest in (i) this lease or the leasehold estate created by this Lease and (ii) the fee estate or ownership of the Demised Premises or any part thereof sought to be merged shall join in a written instrument effecting such merger and shall duly record the same.

15.20 Merger. This Lease shall remain effective with respect to any surviving entity of any merger of Tenant or with any other entity or resulting from any other corporate reorganization of Tenant and nothing contained herein shall be construed to limit or prohibit Tenant's right to merge or reorganize.

15.21 No Usury. The intention of the parties being to conform strictly to the applicable usury laws, if any provision herein provides for payment by Tenant to Landlord of interest at a rate in excess of the legal rate permitted to be charged, such rate herein provided to be paid shall be deemed reduced to such legal rate.

Legal & Accounting

15.22 Time of the Essence. Time is of the essence with respect to all matters under this Lease.

15.23 California Provisions. If the Demised Premises are located in California, certain provisions of this Lease are modified, amended and/or supplemented as set forth on Exhibit E attached to this Lease and incorporated herein.

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

LANDLORD:

WEC 991-21 LLC, a Delaware limited liability company

Attest:


Name: DAVID STRICKLAND
Title: ASSISTANT SECRETARY

By: 
Name: Elizabeth Stewart
Title: Vice President


[SEAL]

TENANT:

7-ELEVEN, INC., a Texas corporation

Attest:

Name: Edward J. Heriman
Title: Assistant Secretary

By: 
Name: Ezra Shashoua
Title: Treasurer

[SEAL]

Parcel No. 10-31-476-040

Doc# 20
D-725761

EXHIBIT A

Description of Demised Premises

Attached Hereto

EXHIBIT B-1

Included Property

The following fixtures and personal property constitute part of the Demised Premises owned by Landlord to the extent located on or about the Property:

Building

- building
- windows and doors, together with window coverings
- ceiling panels and lighting
- all wiring and electrical systems within the walls and ceiling
- plumbing systems, together with private water and private sewer/septic systems
- roof
- parking lot, together with tire stops and other parking lot improvements
- floor and floor coverings
- lighting systems and fixtures

Miscellaneous

- landscaping, sprinkler systems and drainage systems
- fence
- dumpster enclosure and gates
- car wash and vacuum systems and related equipment

Heating, Ventilating and Air Conditioning System

Underground Gas

- underground tanks and piping
- underground hardware, gauges and monitoring systems
- submersible pumps
- canopy (building and gas island)
- canopy lights (building and gas island)
- manholes and manhole covers

Storage Containers

- reinforced vault doors
- sliding door refrigerated vaults
- reinforced vaults
- vault heating/cooling system
- ventilation/air circulation system

Other Equipment

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D-7576

Additional Gas Equipment (to the extent Motor Fuels Equipment is specifically included as part of the Demised Premises)

- multiple dispenser units
- hanging hardware
- gas tank monitor
- leak detector
- intercom and communication system

Signage/Lights

- penumeter lights
- pole lights
- sign pole

Gas Signage

- electric price sign
- pole price sign

01092
3-2-2010

Refrigerated Equipment:

stirpee machine
post mixer
ice maker
prechiller
condiment station
novelty case
free standing freezer
open air case
dairy case
entree case

Signage and Trade Dress

trademarks, marks, design forms, patents, trade dress and copyrights and all items bearing any such trademarks, marks or trade dress
building signage
building trade dress fascia
interior stripe
canopy trade dress fascia
money order and printing slugs or credit card imprinter plates bearing the Cigo or 7-Eleven logo

Equipment Not Owned by Tenant

ATM machines
air and water dispensing units for vehicles
publi cannon and display racks
free standing ice merchandisers
pay telephones
consignment inventory
video cassette players and other electronic equipment and video tapes
dumpster

Exhibit AttachmentPage 34
D-7257611

EXHIBIT C

Stipulated Loss Value

Schedule of Stipulated Loss Values is attached following this page.

Stipulated Loss Value, as used in this Lease, shall include the sums set forth on the following schedule, plus, in each instance, the actual costs and expenses incurred by Landlord in connection with (i) terminating this Lease, and (ii) prepaying any loan then secured by a lien against the Property and any loan secured by any membership interests (together ownership interests) in Landlord, including, without limitation, any prepayment fees or brokerage costs, and the costs of releasing all such liens and security interests.

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0-725617

Exhibit C
Monthly Stipulated Loss Schedule

Store # 32214

Address: 14 Mile Road
City: Sterling Heights
State: MI

Month-Year	Shiploss Schedule	Appraised Value	Shiploss Payment
Dec-99/Jan-00	110.73%	\$ 1,200,000.00	\$ 1,328,762.61
Jan-00	110.87%	\$ 1,350,460.66	\$ 1,332,133.17
Feb-00	111.02%	\$ 1,333,920.19	\$ 1,335,671.86
Mar-00	111.16%	\$ 1,337,438.30	\$ 1,339,219.64
Apr-00	111.31%	\$ 1,341,016.01	\$ 1,342,827.53
May-00	111.45%	\$ 1,344,654.32	\$ 1,346,496.51
Jun-00	111.60%	\$ 1,350,227.63	\$ 1,350,227.63
Jul-00	111.75%	\$ 1,355,943.08	\$ 1,355,943.08
Aug-00	111.90%	\$ 1,357,880.44	\$ 1,357,880.44
Sep-00	112.05%	\$ 1,359,834.13	\$ 1,361,804.28
Oct-00	112.21%	\$ 1,363,791.03	\$ 1,365,794.52
Nov-00	112.36%	\$ 1,367,844.90	\$ 1,369,852.29
Dec-00	112.52%	\$ 1,371,906.85	\$ 1,373,978.72
Jan-01	112.68%	\$ 1,376,066.04	\$ 1,378,174.95
Feb-01	112.84%	\$ 1,380,298.61	\$ 1,382,442.17
Mar-01	113.00%	\$ 1,384,602.77	\$ 1,386,781.56
Apr-01	113.16%	\$ 1,388,978.68	\$ 1,391,194.33
May-01	113.32%	\$ 1,393,428.61	\$ 1,395,681.71
Jun-01	113.48%	\$ 1,397,953.77	\$ 1,400,244.96
Jul-01	113.65%	\$ 1,402,555.43	\$ 1,404,885.34
Aug-01	113.82%	\$ 1,407,234.86	\$ 1,409,604.16
Sep-01	114.00%	\$ 1,411,989.49	\$ 1,414,402.72
Oct-01	114.17%	\$ 1,416,812.32	\$ 1,419,282.36
Nov-01	114.35%	\$ 1,421,703.01	\$ 1,424,244.45
Dec-01	114.53%	\$ 1,426,656.84	\$ 1,429,290.36
Jan-02	114.72%	\$ 1,431,675.18	\$ 1,434,415.18
Feb-02	114.91%	\$ 1,436,756.59	\$ 1,439,617.59
Mar-02	115.10%	\$ 1,441,900.29	\$ 1,444,897.29
Apr-02	115.30%	\$ 1,447,107.65	\$ 1,450,254.65
May-02	115.50%	\$ 1,452,379.05	\$ 1,455,699.65
Jun-02	115.70%	\$ 1,457,714.96	\$ 1,461,231.66
Jul-02	115.90%	\$ 1,463,115.95	\$ 1,466,849.25
Aug-02	116.10%	\$ 1,468,583.50	\$ 1,472,543.00
Sep-02	116.30%	\$ 1,474,117.07	\$ 1,478,322.47
Oct-02	116.50%	\$ 1,479,717.04	\$ 1,484,187.24
Nov-02	116.70%	\$ 1,485,383.91	\$ 1,490,137.91
Dec-02	116.90%	\$ 1,491,117.28	\$ 1,496,174.28
Jan-03	117.10%	\$ 1,496,917.65	\$ 1,502,295.65
Feb-03	117.30%	\$ 1,502,784.52	\$ 1,508,501.52
Mar-03	117.50%	\$ 1,508,717.29	\$ 1,514,792.29
Apr-03	117.70%	\$ 1,514,716.46	\$ 1,521,168.46
May-03	117.90%	\$ 1,520,782.53	\$ 1,527,630.53
Jun-03	118.10%	\$ 1,526,916.00	\$ 1,534,178.00
Jul-03	118.30%	\$ 1,533,117.47	\$ 1,540,810.47
Aug-03	118.50%	\$ 1,539,386.29	\$ 1,547,528.29
Sep-03	118.70%	\$ 1,545,723.04	\$ 1,554,331.04
Oct-03	118.90%	\$ 1,552,128.25	\$ 1,561,219.25
Nov-03	119.10%	\$ 1,558,601.46	\$ 1,568,193.46
Dec-03	119.30%	\$ 1,565,143.21	\$ 1,575,254.21
Jan-04	119.50%	\$ 1,571,754.01	\$ 1,582,401.01
Feb-04	119.70%	\$ 1,578,434.46	\$ 1,589,634.46
Mar-04	119.90%	\$ 1,585,185.01	\$ 1,596,955.01
Apr-04	120.10%	\$ 1,592,006.16	\$ 1,604,362.16
May-04	120.30%	\$ 1,598,897.41	\$ 1,611,855.41
Jun-04	120.50%	\$ 1,605,859.26	\$ 1,619,435.26
Jul-04	120.70%	\$ 1,612,892.11	\$ 1,627,101.11
Aug-04	120.90%	\$ 1,620,000.00	\$ 1,634,853.00
Sep-04	121.10%	\$ 1,627,173.41	\$ 1,642,691.41
Oct-04	121.30%	\$ 1,634,412.86	\$ 1,650,615.86
Nov-04	121.50%	\$ 1,641,717.81	\$ 1,658,626.81
Dec-04	121.70%	\$ 1,649,088.66	\$ 1,666,724.66

	Store #	32414
Nov-04	121.32%	\$ 1,453,027.26
Dec-04	121.55%	\$ 1,458,605.19
Jan-05	121.78%	\$ 1,461,408.45
Feb-05	122.02%	\$ 1,464,231.26
Mar-05	122.26%	\$ 1,467,079.81
Apr-05	122.50%	\$ 1,469,952.28
May-05	122.74%	\$ 1,472,848.90
Jun-05	122.98%	\$ 1,475,769.85
Jul-05	123.23%	\$ 1,478,715.83
Aug-05	123.47%	\$ 1,481,685.97
Sep-05	123.72%	\$ 1,484,680.74
Oct-05	123.98%	\$ 1,487,701.08
Nov-05	124.23%	\$ 1,490,746.79
Dec-05	124.48%	\$ 1,493,818.07
Jan-06	124.74%	\$ 1,496,915.74
Feb-06	125.00%	\$ 1,500,036.22
Mar-06	125.27%	\$ 1,503,187.55
Apr-06	125.53%	\$ 1,506,363.97
May-06	125.80%	\$ 1,509,565.86
Jun-06	126.07%	\$ 1,512,794.97
Jul-06	126.34%	\$ 1,516,051.98
Aug-06	126.61%	\$ 1,519,335.17
Sep-06	126.88%	\$ 1,522,646.44
Oct-06	127.17%	\$ 1,525,985.50
Nov-06	127.45%	\$ 1,529,352.61
Dec-06	127.73%	\$ 1,532,747.98
Jan-07	128.01%	\$ 1,536,171.84
Feb-07	128.30%	\$ 1,539,624.43
Mar-07	128.59%	\$ 1,543,105.89
Apr-07	128.88%	\$ 1,546,616.76
May-07	129.18%	\$ 1,550,156.98
Jun-07	129.48%	\$ 1,553,726.90
Jul-07	129.78%	\$ 1,557,325.77
Aug-07	130.08%	\$ 1,560,956.83
Sep-07	130.38%	\$ 1,564,617.34
Oct-07	130.68%	\$ 1,568,308.55
Nov-07	131.00%	\$ 1,572,030.71
Dec-07	131.32%	\$ 1,575,784.09
Jan-08	131.63%	\$ 1,579,568.94
Feb-08	131.95%	\$ 1,583,385.53
Mar-08	132.27%	\$ 1,587,234.12
Apr-08	132.59%	\$ 1,591,114.97
May-08	132.92%	\$ 1,595,028.35
Jun-08	133.25%	\$ 1,598,974.55
Jul-08	133.58%	\$ 1,602,953.82
Aug-08	133.91%	\$ 1,606,966.44
Sep-08	134.25%	\$ 1,611,012.69
Oct-08	134.59%	\$ 1,615,092.86
Nov-08	134.93%	\$ 1,619,207.22
Dec-08	135.28%	\$ 1,623,356.06
Jan-09	135.63%	\$ 1,627,539.65
Feb-09	135.98%	\$ 1,631,758.31
Mar-09	136.33%	\$ 1,636,012.31
Apr-09	136.68%	\$ 1,640,301.95
May-09	137.03%	\$ 1,644,627.53
Jun-09	137.38%	\$ 1,648,989.34
Jul-09	137.73%	\$ 1,653,387.68
Aug-09	138.08%	\$ 1,657,822.97
Sep-09	138.43%	\$ 1,662,295.20
Oct-09	138.78%	\$ 1,666,804.99
Nov-09	139.13%	\$ 1,671,352.55
Dec-09	139.48%	\$ 1,675,938.19
Jan-10	139.83%	\$ 1,680,562.22
Feb-10	140.18%	\$ 1,685,224.97
Mar-10	140.53%	\$ 1,689,926.75
Apr-10	140.88%	\$ 1,694,667.62
May-10	141.23%	\$ 1,699,448.75

Month	Value	Month	Value
Jan-14	1704,269.03	Jan-14	1704,269.03
Feb-14	1708,180.84	Feb-14	1708,180.84
Mar-14	1714,032.75	Mar-14	1714,032.75
Apr-14	1718,973.65	Apr-14	1718,973.65
May-14	1723,893.99	May-14	1723,893.99
Jun-14	1728,806.00	Jun-14	1728,806.00
Jul-14	1734,094.08	Jul-14	1734,094.08
Aug-14	1744,317.80	Aug-14	1744,317.80
Sep-14	1754,753.99	Sep-14	1754,753.99
Oct-14	1760,037.68	Oct-14	1760,037.68
Nov-14	1765,963.52	Nov-14	1765,963.52
Dec-14	1770,737.96	Dec-14	1770,737.96
Jan-15	1776,355.33	Jan-15	1776,355.33
Feb-15	1781,618.01	Feb-15	1781,618.01
Mar-15	1787,126.39	Mar-15	1787,126.39
Apr-15	1792,650.81	Apr-15	1792,650.81
May-15	1798,281.70	May-15	1798,281.70
Jun-15	1803,929.42	Jun-15	1803,929.42
Jul-15	1809,624.36	Jul-15	1809,624.36
Aug-15	1815,366.92	Aug-15	1815,366.92
Sep-15	1821,157.49	Sep-15	1821,157.49
Oct-15	1826,896.47	Oct-15	1826,896.47
Nov-15	1832,684.26	Nov-15	1832,684.26
Dec-15	1838,321.28	Dec-15	1838,321.28
Jan-16	1844,007.94	Jan-16	1844,007.94
Feb-16	1850,244.59	Feb-16	1850,244.59
Mar-16	1856,331.72	Mar-16	1856,331.72
Apr-16	1862,069.72	Apr-16	1862,069.72
May-16	1867,939.02	May-16	1867,939.02
Jun-16	1873,500.03	Jun-16	1873,500.03
Jul-16	1881,793.20	Jul-16	1881,793.20
Aug-16	1888,138.95	Aug-16	1888,138.95
Sep-16	1894,537.72	Sep-16	1894,537.72
Oct-16	1900,989.95	Oct-16	1900,989.95
Nov-16	1907,493.09	Nov-16	1907,493.09
Dec-16	1914,056.57	Dec-16	1914,056.57
Jan-17	1920,671.85	Jan-17	1920,671.85
Feb-17	1927,342.40	Feb-17	1927,342.40
Mar-17	1934,068.66	Mar-17	1934,068.66
Apr-17	1940,851.10	Apr-17	1940,851.10
May-17	1947,690.18	May-17	1947,690.18
Jun-17	1954,586.37	Jun-17	1954,586.37
Jul-17	1961,540.15	Jul-17	1961,540.15
Aug-17	1968,552.00	Aug-17	1968,552.00
Sep-17	1975,622.39	Sep-17	1975,622.39
Oct-17	1982,751.81	Oct-17	1982,751.81
Nov-17	1989,940.75	Nov-17	1989,940.75
Dec-17	1997,189.72	Dec-17	1997,189.72
Jan-18	2004,499.20	Jan-18	2004,499.20
Feb-18	2011,869.70	Feb-18	2011,869.70
Mar-18	2019,901.71	Mar-18	2019,901.71
Apr-18	2026,755.76	Apr-18	2026,755.76
May-18	2034,332.35	May-18	2034,332.35
Jun-18	2041,972.01	Jun-18	2041,972.01
Jul-18	2049,655.25	Jul-18	2049,655.25
Aug-18	2057,402.62	Aug-18	2057,402.62
Sep-18	2065,214.65	Sep-18	2065,214.65
Oct-18	2073,091.92	Oct-18	2073,091.92
Nov-18	2081,034.74	Nov-18	2081,034.74
Dec-18	2089,043.92	Dec-18	2089,043.92
Jan-19	2097,119.95	Jan-19	2097,119.95
Feb-19	2105,263.90	Feb-19	2105,263.90
Mar-19	2113,474.51	Mar-19	2113,474.51
Apr-19	2121,754.40	Apr-19	2121,754.40
May-19	2130,103.26	May-19	2130,103.26

EXHIBIT D

MEMORANDUM OF LEASE AGREEMENT

STATE OF _____
COUNTY OF _____

This Memorandum of Lease Agreement (the "Memorandum") is made and entered into as of _____ 1999, by and between _____ a _____ (hereinafter called "Landlord"), and _____ Eleven, Inc. a Texas corporation (hereinafter called "Tenant").

1. Landlord and Tenant have as of _____, 1999 executed and entered into that certain Lease Agreement, (the "Lease") whereby Landlord has, subject to the terms and conditions of the Lease, leased and demised unto Tenant that certain tract or parcel of land and the improvements thereon located at [address] as more particularly described on Exhibit "A" attached hereto and made a part hereof for all purposes (the "Demised Premises").

2. The initial term of the Lease expires on _____
3. Under the Lease, Tenant is granted [six] options to extend the term of the Lease, each for a period of five additional years.

4. Tenant is granted a right of first refusal with respect to any offer to purchase or sell the Demised Premises or any portion thereof on the terms set forth in the Lease during the Lease Term at any time after the fifth anniversary of the Commencement Date. The right of first refusal shall survive any conveyance of the Demised Premises by Landlord except as otherwise set forth in the Lease.

5. The Lease sets forth the names and addresses of Landlord and Tenant as follows:

LANDLORD:

Attention: _____

TENANT:

7-Eleven, Inc.
Attn: Corporate Real Estate
P.O. Box 71
Dallas, Texas 75221-0711

4. This Memorandum shall survive to the benefit of and be binding upon Landlord and Tenant and

Witness my hand

their respective heirs, executors, administrators, successors and assigns; provided, however, that this Memorandum is not intended to, and shall not, modify, amend, limit or expand any of the terms or provisions of the Lease or any of the rights granted to Landlord or Tenant under the Lease. In the event of any conflict between the terms and provisions of this Memorandum and the terms and provisions of the Lease, the terms and provisions of the Lease shall prevail.

NOTICE IS HEREBY GIVEN THAT LANDLORD SHALL NOT BE LIABLE FOR ANY LABOR, SERVICES OR MATERIALS FURNISHED OR TO BE FURNISHED TO TENANT, OR TO ANYONE HOLDING ANY OF THE DEMISED PREMISES THROUGH OR UNDER TENANT, AND THAT NO MECHANIC'S OR OTHER LIENS FOR ANY SUCH LABOR, SERVICES OR MATERIALS SHALL ATTACH TO OR AFFECT THE INTEREST OF LANDLORD IN AND TO ANY OF THE DEMISED PREMISES.

Executed and effective as of the date first set forth hereinabove.

LANDLORD:

By: _____
a

By: _____
Name: _____
Title: _____

TENANT:

By: Elevan, Inc.
a Texas corporation

Name: _____
Title: _____

By: _____
Name: _____
Title: _____

2024-11-12 10:55 AM

THE STATE OF _____
COUNTY OF _____

6
6
8

BEFORE ME, the undersigned authority, on this day personally appeared _____ known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act of for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL of office on this the _____ day of _____, 1999.

Notary Public, State of _____

THE STATE OF TEXAS)
COUNTY OF DALLAS)

BEFORE ME, the undersigned authority, on this day personally appeared _____ Vice President of 7-Eleven, Inc. known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act of 7-Eleven, Inc., a Texas corporation, for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL of office on this the _____ day of _____, 1999.

Notary Public, State of Texas

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Exhibit A

[see attached]

Exhibit A

EXHIBIT A

EXHIBIT E

California Provisions

1. The second sentence of Section 7.2 of the Lease is amended to read, in its entirety, as follows:

Landlord shall not be required to make any repairs or restoration to the Demised Premises or to maintain the Demised Premises in any way, and Tenant expressly waives the benefit of any statute, law or other Legal Requirement now or hereinafter in effect which would afford Tenant the right to make repairs at Landlord's expense or to terminate this Lease because of Landlord's failure to keep the Demised Premises in good order, repair or condition (including, without limitation, Sections 1941 and 1942 of the California Civil Code)
2. The last sentence of Section 7.4 of the Lease is amended to read, in its entirety, as follows:

If Tenant undertakes any alterations, additions or improvements to the Demised Premises as permitted under this Lease, Tenant shall comply with all provisions of applicable law with respect to asbestos-containing materials present in the Demised Premises, if any (including, without limitation, giving all notices required by California Health & Safety Code §§25914.2 and 25916)
3. The last sentence of Section 8.3 of the Lease is amended to read, in its entirety, as follows:

The provisions of this Section 8.3 are intended to provide for all of Tenant's termination rights with respect to this Lease in the event of damage to or destruction of the Demised Premises, and Tenant waives all rights set forth in any applicable law which authorizes termination of this Lease on terms different than those set forth in this Section 8.3 (including, without limitation, Sections 1932, 1933 and 1935 of the California Civil Code, including any amendments thereto)
4. The following sentences are added to the end of Section 8.5 of the Lease

The terms and provisions of Article VIII are intended to provide all rights and obligations of the parties to this lease in the event of an acquisition of all or a portion of the Demised Premises pursuant to a taking as contemplated by Section 1265.160 of the California Code of Civil Procedure. Tenant hereby waives all rights it may have under Section 1265.130, or otherwise, to terminate this Lease based upon a partial taking of the Demised Premises
5. The notice required under subpart (4) of Section 10(a) of the Lease shall be in lieu of, and not in addition to, any notice required under Section 1161 of the California Code of Civil Procedure, and any similar or successor statute, and no such notice shall be deemed a forfeiture or a termination of this Lease unless Landlord so elects in such notice
6. The first sentence of Section 10.1(b)(6) of the Lease is amended by adding, to the end thereof, the following:

including, without limitation, the remedies provided for in: (i) California Civil Code Section 1951.2, including without limitation, paragraph (3) of subdivision (a) thereof; and (ii) California Civil Code Section 1951.4, which provides, in effect, that a lessor may continue a lease in effect after the

Lease AgreementPage 40
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lessee's breach and abandonment, and may recover rent as it becomes due, if the lessee has the right to sublet or assign, subject only to reasonable limitations. Notwithstanding anything set forth herein to the contrary, Landlord shall give such notice as may be required under California Code of Civil Procedure Section 1161 or as may otherwise be required under California law prior to instituting any action to recover possession of the Demised Premises or for the appointment of a receiver to take possession of the Demised Premises after the occurrence of any Event of Default or prior to instituting any action for damages as a consequence of any Event of Default.

STATE OF CALIFORNIA

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0-72576-1



April J. Nelson
Direct: (972) 828-6202
ajn@eleven.com

August 2, 2018

1Z 749 001 02 9754 4573

VIA UPS 2nd DAY DELIVERY

Susan Murphy
WEC 991-21, LLC
34 DeSilva Island Drive
Mill Valley, CA 94941

RE: 7-Eleven Store #32414
3909 Fourteen Mile Road - Sterling Heights, Michigan

Dear Susan:

Enclosed please find a fully executed original counterpart of the Amendment No. 2 to Lease. Thank you for your assistance in this matter.

Best regards,

7-ELEVEN, INC.

April J. Nelson
Executive Paralegal

encl:
cc:

- Darren Shephard (via email)
- Jessica Vo (via email)
- Ann Robertson (via email)
- Melinda Olive (via email)
- Property Accounting (via email)
- Ad Valorem Tax (via email)
- Robin Bryant (w/ file)

7-Eleven, Inc.
Cypress Waters 15200 Hockberry Road, Irvine, Texas 75065
Mailing Address: Box 111 Dallas, Texas 75221-0111



Store No. 32414

AMENDMENT NO. 2 TO LEASE

This Amendment No. 2 to Lease (this "Amendment") is executed to be effective as of January 1, 2021 (the "Effective Date"), by and between WEC 991-21, LLC, a Delaware limited liability company ("Landlord"), and 7-ELEVEN, INC., a Texas corporation ("Tenant").

RECITALS

WHEREAS, Landlord and Tenant are parties to that certain Lease Agreement dated December 20, 1999, as amended by that certain Amendment No. 1 dated June 11, 2013 ("Amendment No. 1") (collectively, the "Lease") covering the premises located at 3909 Fourteen Mile Road, Sterling Heights, Michigan, and more fully described in Exhibit A to the Lease, which Exhibit is attached to the Lease and made a part hereof by reference, and

WHEREAS, Landlord and Tenant presently desire to amend the Lease in the manner provided in this Amendment.

NOW THEREFORE, for and in consideration of the premises and Ten Dollars (\$10.00) in hand paid each to the other, receipt of which is hereby acknowledged, the Lease is hereby amended as follows:

1. TERM.

- (a) Landlord and Tenant hereby acknowledge the current term of the Lease will expire on December 31, 2020, and Tenant has five (5) remaining options to extend the term of the Lease to December 31, 2040, if exercised.
- (b) Landlord and Tenant agree that, by virtue of this Amendment, Tenant is exercising its next option and the Lease is hereby extended for a period of five (5) years commencing January 1, 2021 and ending December 31, 2025 (such exercised options referred to herein as the "Extended Term").
- (c) In addition to the four (4) remaining options under the Lease (each a "Remaining Option"), Landlord hereby grants to Tenant one (1) additional Option to extend the Lease for a period of five (5) years (an "Additional Option") at the rent stated in the rent table below. Each Remaining Option and the Additional Option, if exercised, shall commence and end as of the dates set forth in the rent table below. In order to exercise a Remaining Option and/or an Additional Option, Tenant shall notify Landlord in writing at least one (1) year prior to the expiration of the term in effect at the time of Tenant's notice.

Store No. 32414 - Amendment No. 2 to Lease

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2. RENT. The rent table in Section 2 of Amendment No. 1 is hereby deleted in its entirety and replaced with the following new rent table:

<u>Extended Term</u>	<u>Monthly Rent</u>
January 1, 2021 – December 31, 2025	\$7,800.00
<u>Remaining Option</u>	<u>Monthly Rent</u>
January 1, 2026 – December 31, 2030	\$8,580.00
January 1, 2031 – December 31, 2035	\$9,438.00
January 1, 2036 – December 31, 2040	\$10,381.80
January 1, 2041 – December 31, 2045	\$11,419.98
<u>Additional Option</u>	<u>Monthly Rent</u>
January 1, 2046 – December 31, 2050	\$12,561.97

3. TENANT'S NOTICE ADDRESSES. As of the Execution Date (as such term is defined below), Article 1(s) of the Lease (as amended) is deleted in its entirety and replaced with the following new Article 1(s):

TENANT

Tax statements and support to:

7-Eleven, Inc.
P.O. Box 711
Dallas, Texas 75221-0711
Attn: Ad Valorem Tax, Store #32414

ALL OTHER COMMUNICATIONS, INCLUDING ANY NOTICES OF DEFAULT, TO:

7-Eleven, Inc.
3200 Hackberry Road
Irving, Texas 75063
Attn: Corporate Real Estate, Store #32414

4. NOTICES. As of the Execution Date, Article 15.7 of the Lease is hereby deleted in its entirety and replaced with the following new Article 15.7:

NOTICES. Any notices required or permitted hereunder shall be in writing and delivered to the other party by (a) courier; (b) United States Certified Mail; Return Receipt, postage prepaid; or (c) a nationally recognized overnight courier, shipping charges prepaid, to the addresses set forth below or to such other addresses as either party may designate in writing and deliver as provided in this Article. Any notices provided via e-mail or facsimile will not constitute formal notice.

5. CONTROLLING DOCUMENT. Where inconsistent, the terms of this Amendment shall supersede and take precedence over the Lease. Unless the context requires otherwise, all terms used herein shall be construed in conformity with the applicable provisions of the Lease.

6. COUNTERPARTS. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute

one and the same instrument and any person intended to be a signatory hereto may execute this Amendment by signing any such counterpart. Notwithstanding the standing prohibition against notices via facsimile or electronic copy, a facsimile or electronic copy of this Amendment signed and delivered by the parties shall be binding upon the parties.

7. RAIIFICATION Except as modified by or where inconsistent with this Amendment, in all other respects the Lease is hereby ratified and reaffirmed. The "Execution Date" is the date of the last party's execution of this Amendment.

[The remainder of this page is intentionally left blank. The signature pages follow.]

IN WITNESS WHEREOF, this Amendment has been executed by Landlord as of the date first written above.

LANDLORD:

WEC 991-21, LLC,
a Delaware limited liability company

By: Susan Murphy
Name: Susan Murphy
Title:

Date: July 25, 2018

IN WITNESS WHEREOF, this Amendment has been executed by Tenant as of the date first written above.

ATTEST:

By: Billy King
Name: Billy King
Title: Assistant Secretary

TENANT:

7-ELEVEN, INC.,
a Texas corporation

By: William Kirshen
Name: William Kirshen
Title: Attorney-in-Fact
Date: August 3, 2018



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Tenant's Signature Page