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Attorneys for Plaintiff

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DISTRICT COURT  
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CENTRAL DISTRICT OF CALIF.  
LOS ANGELES

IN THE UNITED STATES DISTRICT COURT  
 FOR THE CENTRAL DISTRICT OF CALIFORNIA

STATE OF CALIFORNIA, ex rel **BILL LOCKYER**,

Plaintiff,

v.

THE VONS COMPANIES, INC.

Defendant.

Case No.

CV 05-8972

DSF

**CONSENT DECREE AND FINAL JUDGMENT**

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**JAN 5 2006**  
 BY [Signature] 006

I.

**PARTIES AND BACKGROUND**

Plaintiff, the State of California, has filed a Complaint, alleging violations of Section 7 of the Clayton Act as amended, (15 U.S.C. § 18). Defendant The Vons Companies, Inc. ("Vons") by and through its attorneys, has reviewed this Complaint and consented to the entry of this Consent Decree and Final Judgment

(Handwritten mark)

1 (“Consent Decree”) without trial or adjudication of any issue of fact or law herein  
2 and has waived notice of presentation of this Consent Decree, Complaint, and  
3 service of summons. This Consent Decree does not constitute any evidence  
4 against or an admission by any party with respect to any issue of law or fact,  
5 herein.

6 Santa Catalina Island Company (“SCICo”), as a Settling Third Party Lessor,  
7 consents to the entry of those Consent Decree provisions applicable to it without  
8 the filing of a complaint against it, the trial or adjudication of any issue of law or  
9 fact herein, and has waived the filing of a Complaint against it as well as notice of  
10 the presentation of this Consent Decree and service of summons. It has reviewed  
11 the Complaint on file in this case.

12 Vons has owned and operated a grocery store located at 123 Metropole, in  
13 the City of Avalon from at least 1987.

14 Prior to 1999, there was a second grocery store, known as Fred & Sally’s,  
15 that was independently operated on a site leased from SCICo at 117-119 Catalina  
16 Avenue in the City of Avalon (the “Property”).

17 On or around March 1, 1999, SCICo offered the lease for the Fred & Sally’s  
18 grocery store, located on the Property, to Vons who accepted the offer and leased  
19 the Property, renaming it “Vons Express.”

20 SCICo and Vons renewed the lease on an annual basis until December 31,  
21 2004, and, as of January 1, 2005, have continued to renew the lease on a  
22 month-to-month basis.

23 The State of California, through its Attorney General, has alleged that this  
24 lease constitutes an “acquisition” within the meaning of section 7 of the Clayton  
25 Act and is unlawful under that statute.

26 The State of California contends that Vons should be required to agree to  
27 certain procedures, prohibitions, transfer of assets, and surrender of the lease and  
28 premises of the Property for the purpose of rectifying the loss of competition

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1 alleged in the Complaint.

2 Vons does not admit and continues to deny that the law has been violated as  
3 alleged in the Complaint, or that the facts as alleged in this Complaint, other than  
4 jurisdictional facts, are true.

5 The State of California also contends that SCICo should be required to  
6 agree to certain procedures regarding the lease of the Property to a new,  
7 independent, grocery store operator also for the purpose of restoring the  
8 seven-year loss of competition from the lease of the Property to Vons alleged in  
9 the Complaint.

10 SCICo does not admit and continues to deny that this transaction, the lease  
11 of the Property to Vons, is unlawful and asserts that it has not violated any law  
12 with respect to the subject matter of the Consent Decree.

13 The State of California, Vons, and SCICo, wish to avoid litigation and to  
14 resolve this controversy on mutually acceptable terms.

15 After being notified of the provisions of this Consent Decree, Vons and  
16 SCICo have agreed to be bound by the Consent Decree and there is no just reason  
17 for delay in its entry. SCICo has also agreed not to challenge this Court's  
18 jurisdiction to enter and enforce it.

19 Insofar as Vons is concerned, the divestiture of certain assets forms the  
20 essence of this agreement and the parties intend that Vons divest itself of these  
21 assets within the time prescribed by Paragraph V(A) herein if SCICo finds an New  
22 Tenant as that term is defined herein; the State of California intends to require  
23 Vons to attempt to divest these assets, including the lease of the Property, upon the  
24 occurrence of the conditions set forth herein, so that the site can be operated as a  
25 competitive, viable and ongoing grocery store; and Vons has represented to the  
26 State of California that it can comply with the obligations set forth in this Consent  
27 Decree.

28 Insofar as SCICo is concerned, the lease of the Property to a new,

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1 independent, and viable grocery store operator under certain procedures and  
2 conditions, if such an operator can be found by SCICo, forms the essence of this  
3 agreement; the State of California requires SCICo to lease the Property under  
4 certain procedures and conditions set forth herein so that the Property can be  
5 maintained as a competitive, viable, and ongoing grocery store; and SCICo has  
6 represented to the State of California that it can comply with the procedures  
7 required below.

8 NOW, THEREFORE, before the taking of any testimony, and without trial  
9 or adjudication of any issue of fact or law herein, and upon consent of the State of  
10 California, Vons, and SCICo hereto, it is hereby

11 ORDERED, ADJUDGED, AND DECREED as follows:

12 **II.**

13 **JURISDICTION**

14 This Court has jurisdiction over the subject matter of this action and over  
15 each of the parties hereto. The Complaint states a claim upon which relief may be  
16 granted against the Defendant under section 7 of the Clayton Act (15 U.S.C. § 18).  
17 The Attorney General for the State of California, Bill Lockyer, has authority to  
18 bring this action on behalf of the State of California in its sovereign capacity  
19 pursuant to Section 16 of the Clayton Act (15 U.S.C. § 26). Although section 7 of  
20 the Clayton Act expressly proscribes only the act of acquiring or accepting a lease,  
21 not selling or offering a lease, the courts can, when the interests of justice require  
22 it, summon third parties before the court to fashion appropriate relief.

23 Accordingly, this Court has personal and subject matter jurisdiction over the  
24 Settling Third Party Lessor, SCICo. This Court also finds that the Settling Third  
25 Party Lessor has agreed the terms of this Consent Decree applicable to it and has  
26 agreed not to challenge this Court's jurisdiction to enter and enforce it.

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III.

DEFINITIONS

As used in this Consent Decree:

A. "Approved List" means the notice supplied by SCICo of Prospective New Tenants pursuant to Paragraph VI (F) of the Consent Decree and approved, by the Attorney General pursuant to that paragraph, as well as any Prospective New Tenants identified by the Attorney General in accordance with the procedures detailed in Paragraph VI(F) of this Consent Decree and subject to Court review.

B. "Assets" means the leasehold interest of Vons in the Property, any and all Fixtures and Equipment contained therein as set out in Paragraph III(G) below, and the Liquor License.

C. "Attorney General" means the Attorney General of the State of California.

D. "Candidate New Tenant" means a person or entity which is interested in leasing the Property for use as a Grocery Store, which has so informed Vons of that interest, and which has been specifically designated in writing as a person or entity which is interested in leasing the Property (e-mail, facsimile, or first class mail all being acceptable as a means of effectuating such a designation) by either SCICo or the Attorney General.

E. "CPI-U" means the Consumer Price Index (CPI - U, 1982-84 = 100) for the Los Angeles - Anaheim - Riverside metropolitan area published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued, a comparable Index shall be chosen by SCICo subject to the approval of the Attorney General. If the base period of the Index is changed, the conversion factor published by the United States government shall be used to make the necessary adjustment.

F. "Divestiture" means the return or surrender of the leasehold interest in Vons Express by Vons to SCICo for use by the New Tenant, as well as the

1 transfer of the Fixtures and Equipment and Liquor License to the New Tenant.

2 G. "Fixtures and Equipment" means the items delineated in Exhibit A,  
3 and which for purposes of this Consent Decree are valued by Vons and the  
4 Attorney General at the aggregate sum of \$20,000.

5 H. "Grocery Store" means a full-line retail store that carries a wide  
6 variety of food and drink items in standard consumer sizes in particular product  
7 categories, including bakery goods, dairy products, refrigerated and frozen foods  
8 and beverages, fresh and prepared meats and poultry, produce, beverages,  
9 shelf-stable foods, stable food stuffs (such as flour, sugar, coffee, and tea) and  
10 non-food grocery items in standard consumer sizes in particular product categories  
11 (such as soaps, detergent, child care items, paper goods, and health and beauty  
12 aids).

13 I. "Lease" means the document attached hereto as Exhibit B.

14 J. "Liquor License" means the alcoholic beverage license associated  
15 with the Vons Express at 117-119 Catalina Avenue in the City of Avalon on Santa  
16 Catalina Island, Alcoholic Beverage License Number 21-358292, attached hereto  
17 as Exhibit C, which, for purposes of this Consent Decree, is valued by Vons and  
18 the Attorney General in the sum of \$20,000.

19 K. "New Tenant" means a person or entity that, with the prior approval  
20 of the Attorney General, takes tenancy from SCICo of the Property for use as a  
21 Grocery Store under the terms of this Consent Decree at any point within a six  
22 month period following entry of this Consent Decree.

23 L. "Prospective New Tenant" means a person or entity which is  
24 interested in leasing the Property for use as a Grocery Store

25 M. "SCICo" means the Santa Catalina Island Company.

26 N. "Search Period" means the period of time set forth in Paragraph VI(E)  
27 of this Consent Decree.

28 O. "Substantially Continuous" means being physically present at the

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1 Vons Express for more than fifty percent (50%) of the time the store is required by  
2 the Lease to be open for business.

3 P. "Vons" means The Vons Companies, Inc., a Michigan corporation,  
4 with its principal place of business located at 618 Michillinda Avenue, Arcadia,  
5 California 91007-1734.

6 Q. "Property" means the property, currently known as the "Vons  
7 Express" store, located at 117-119 Catalina Avenue, in the City of Avalon on  
8 Santa Catalina Island.

9 R. "Vons Metropole" means the store located at 123 Metropole, in the  
10 City of Avalon on Santa Catalina Island.

11 **IV.**

12 **APPLICABILITY**

13 A. The provisions of this Consent Decree apply to Vons and SCICo,  
14 their successors and assigns, subsidiaries, affiliates, directors, officers, managers,  
15 agents, and employees, and all other persons in active concert or participation with  
16 any of them who have received actual notice of this Consent Decree by personal  
17 service or otherwise.

18 B. Vons shall require, as a condition of the sale or other disposition of  
19 Vons Metropole, that the purchaser agrees to be bound by the provisions of  
20 Paragraphs V(H) and V(I) of this Consent Decree.

21 C. SCICo shall require, as a condition for the sale or other disposition of  
22 the Property, that the purchaser thereof agrees to be bound by the provisions of  
23 this Consent Decree.

24 D. Entry of this Consent Decree does not constitute a trial or an  
25 adjudication of any issue of fact or law, any evidence against, or any admission by,  
26 the State of California, Vons, or SCICo regarding any such issue of fact or law.

27 E. Nothing in this Consent Decree creates any rights for any parties  
28 other than the Attorney General, SCICo, and Vons.

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V.

**VONS'S OBLIGATIONS**

**Vons Express ("Property")**

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A. Vons is directed to continue to operate the Property in a commercially reasonable manner consistent with its past practice for a period of six (6) months from the entry of this Consent Decree, or until Vons vacates the Property following the issuance of a Thirty Day Notice to Quit by SCICo, whichever is sooner.

B. For a period of six (6) months from the entry of this Consent Decree or until Vons vacates the Property following the issuance of a Thirty Day Notice to Quit from SCICo, whichever is sooner, Vons shall maintain the viability, marketability and competitiveness of the Property in a commercially reasonable manner consistent with its past practice and shall not cause the wasting or deterioration of the Property, nor shall it cause the Property to be operated in a manner inconsistent with applicable laws, nor shall it sell, transfer, encumber or otherwise impair the viability, marketability, or competitiveness of the Assets. Vons shall conduct or cause to be conducted the business of the Property in the regular and ordinary course and in accordance with past practice (including regular repair and maintenance efforts) and shall use reasonable commercial efforts to preserve existing relationships with third party suppliers, customers, employees, and others having business relations with the Property, in the ordinary course of the Property's business and in accordance with past practice. Vons shall continue to maintain the inventory of the Property at levels and selection (e.g., stock keeping units) consistent with those maintained by Vons at the Property in the ordinary course of business, consistent with past practice. Vons shall use reasonable commercial efforts to keep business operations, physical facilities, working conditions, and a work force of equivalent size, training, and expertise associated with the Property. Included in the above obligations, Vons shall,



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1 without limitation:

2 (1) maintain operations and departments and not reduce hours at the  
3 Property in accordance with reasonable commercial practices and consistent with  
4 past practices;

5 (2) not transfer inventory from the Property other than in the regular  
6 course of business consistent with past practice;

7 (3) maintain the books and records for the Property to the extent any exist  
8 in accordance with reasonable commercial practices and consistent with past  
9 practices;

10 (4) make any payment required to be paid under any contract or lease  
11 when due, and otherwise pay all liabilities and satisfy all obligations in a manner  
12 consistent with past practice;

13 (5) not display any signs or conduct any advertising (e.g., direct mailing,  
14 point-of-purchase coupons) that indicates that Vons is vacating the Property;

15 (6) not conduct any "going out of business," "close out," "liquidation," or  
16 similar sales or promotions at or relating to the Property; and

17 (7) not change or modify in any material respect the existing advertising  
18 practices, programs and policies for the Property, other than changes in the  
19 ordinary course of business.

20 C. Vons shall vacate the Property by the date stated in a Thirty Day  
21 Notice to Quit to be given by SCICo upon execution of the Lease with the New  
22 Tenant, which date shall not be less than thirty (30) calendar days after the Thirty  
23 Day Notice to Quit is given to Vons. Vons agrees that when it vacates the  
24 Property, it will leave the Property in the condition required pursuant to its lease  
25 agreement with SCICo and the provisions of this Consent Decree regarding  
26 Fixtures and Equipment.

27 D. Vons shall permit any Candidate New Tenant to have access to  
28 specifically-prepared financial documents for the Property, broken down by

1 quarter, from the first quarter of 2003 to the last quarter of 2005, as well as a  
2 specifically-prepared annual financial statement for the year 2002, in accordance  
3 with a methodology separately agreed to between itself and the Attorney General,  
4 subject to Vons' right to have a Candidate New Tenant sign the confidentiality  
5 agreement approved by the Attorney General and attached hereto as Exhibit D.

6 E. Vons shall permit any such Candidate New Tenant to conduct an  
7 inspection of the physical facilities upon reasonable notice, at a reasonable time,  
8 and for a reasonable duration.

9 F. Vons shall not remove any Fixtures or Equipment from the Property  
10 for a six (6) month period following entry of this Consent Decree; if a New Tenant  
11 is found, ownership of said Fixtures and Equipment shall be transferred to SCICo,  
12 at no cost to either SCICo or, if SCICo so elects, to the New Tenant of the  
13 Property, for use by the New Tenant or any successors to the lease of the Property.  
14 If a New Tenant is not found, Vons will retain ownership of said Fixtures and  
15 Equipment.

16 G. Vons shall take all steps necessary for it to transfer the Liquor  
17 License associated with the Property to the New Tenant of the Property, including,  
18 but not limited to, selecting an escrow agent to enable the transfer of the Liquor  
19 License. The New Tenant shall be required to pay all transaction and inventory  
20 fees and costs associated with the transfer of the Liquor License, including, but  
21 not limited to, transfer fees, registration fees, inventory-related charges and fees,  
22 and escrow fees, up to a maximum of \$2,750.00 exclusive of inventory-related  
23 charges or fees. All other transaction, registration, and escrow costs or fees above  
24 \$2,750.00 shall be borne by Vons with the exception of inventory-related charges  
25 or fees. If a New Tenant has not been found within fifteen (15) days after Vons  
26 has vacated the Vons Express in accordance with Paragraph V(A) of this Consent  
27 Decree upon the expiration of the six (6) month period set out therein, then Vons  
28 shall surrender the Liquor License in accordance with state law to the California

1 Department of Alcoholic Beverage Control ("ABC") in lieu of transferring it to  
2 the New Tenant; however Vons shall not seek reinstatement of said Liquor  
3 License with the ABC unless SCICo has exhausted the Approved List and has  
4 been unable to obtain a signed lease with a Prospective New Tenant on that List.  
5 If a New Tenant is not found, Vons will retain ownership of the Liquor License or,  
6 in the event that it has already surrendered the Liquor License pursuant to the  
7 provisions of this paragraph, it may seek reinstatement of said Liquor License.

8 **Vons Metropole**

9 H. If Divestiture occurs, Vons shall notify its employees that, in the  
10 course and scope of their employment, they are not authorized to and shall not  
11 illegally interfere with the negotiation or establishment of relations between the  
12 New Tenant and any cash-and-carry business, restaurant, or shipping/freight  
13 company, doing business with or located on Santa Catalina Island, for the  
14 shipment, sale and/or storage of Grocery Store products by the New Tenant. For a  
15 period of two (2) years, Vons shall post this notice in a prominent and visible  
16 position in its Metropole Store in any area where it posts messages, directives, and  
17 requirements to employees from Vons management. Provided however that this  
18 language shall not be construed to apply to any activities conducted or directed by  
19 any labor unions representing Vons employees even if said activities involve those  
20 employees.

21 I. Vons will not close or otherwise dispose of the Metropole Store  
22 within the six (6) month period referenced in Paragraph V(A) (Vons Express),  
23 above. It warrants that it has no intention as of the date of signing of this Consent  
24 Decree of closing down or otherwise disposing of the Metropole Store, even after  
25 the six (6) month period referenced in Paragraph V(A) (Vons Express), above  
26 expires.

27 J. For a period of five (5) years from the date of entry of the Consent  
28 Decree, Vons shall not place a restrictive covenant or any similar provision in the

1 deed for the Metropole Store property or in any contract for sale or lease of the  
2 Metropole Store, which would prevent such store from being used as a Grocery  
3 Store by any purchaser, acquirer, or lessee of that property unless there are two or  
4 more other Grocery Stores doing business in the City of Avalon at that time.

5 **Other**

6 K. Vons shall contribute the sum of \$60,000 payable to the City of  
7 Avalon within 15 days of the date of entry of the Consent Decree to be used for  
8 the benefit of consumers who purchased Grocery Store products in Avalon.

9 L. Vons shall pay to the Attorney General, within 15 days of the date of  
10 entry of the Consent Decree, the sum of \$25,000 for reimbursement of  
11 investigatory costs.

12 M. For the purpose of determining or securing compliance with this  
13 Consent Decree, and subject to any legally recognized privilege, and upon written  
14 request with reasonable notice to Vons, Vons shall permit any duly authorized  
15 representative of the Attorney General access, during office hours and in the  
16 presence of counsel, to all facilities and access to inspect and copy all books,  
17 ledgers, accounts, correspondence, memoranda, and all other records and  
18 documents in the possession or under the control of Vons related to compliance  
19 with this Consent Decree.

20 N. On five (5) days' notice to Vons, Plaintiff shall, without restraint or  
21 interference from Vons, be permitted to interview officers, directors, or employees  
22 of Vons, who may have counsel present, regarding compliance with this Consent  
23 Decree.

24 **Termination**

25 O. Unless specified by other provisions herein, this Consent Decree will  
26 expire and terminate with regard to Vons five (5) years from the date of its entry  
27 unless a New Tenant has not been found within the six (6) month period  
28 referenced in Paragraph V(A) (Vons Express), above. If a New Tenant has not

1 been found within the six (6) month period referenced in Paragraph V(A) (Vons  
2 Express), above, then all provisions of this Consent Decree addressed to Vons  
3 shall terminate immediately with the exception of Paragraphs V(F) and (G) (Vons  
4 Express) which will terminate when, either a New Tenant has been found and the  
5 provisions contained in those paragraphs have been carried out, or when SCICo  
6 has exhausted the Approved List but has been unable to obtain a signed lease with  
7 a Prospective New Tenant on that List, Paragraphs V(I) and (J) (Vons Metropole),  
8 and V(K)-(O), all of which will terminate five (5) years from the date of entry of  
9 the Consent Decree, and Paragraphs VII-IX of the Consent Decree, which will  
10 terminate five (5) years from the date of entry of the Consent Decree insofar as  
11 Vons is concerned.

12 **VI.**

13 **SCICo'S OBLIGATIONS**

14 **Process for Finding a New Tenant to Lease the Property**

15 A. SCICo will commence the search for a third party lessee, the New  
16 Tenant, to operate a Grocery Store on the Property in accordance with the  
17 provisions of this Consent Decree promptly upon receipt of written notice from the  
18 Attorney General to proceed; said notice cannot be issued until after the entry of  
19 this Consent Decree.

20 B. SCICo will hire a commercial real estate broker at its own expense to  
21 search for a New Tenant. SCICo will pay all of the expenses related to use of such  
22 a commercial real estate broker, including the commission.

23 C. SCICo will place one advertisement each week for six (6) consecutive  
24 weeks, or until a lease or letter of intent to lease is signed with a New Tenant,  
25 whichever occurs first, in the Los Angeles Times, the Orange County Register, the  
26 Long Beach Press-Telegram, the Catalina Islander, the California Centers trade  
27 publication, and La Opinion at its own expense in the commercial real estate  
28 section or its equivalent of each newspaper stating that the Property is now

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1 available to be leased for use as a Grocery Store. SCICo, however, is under no  
2 obligation to undertake such advertisement if the commercial real estate broker  
3 hired by it does so at the broker's own expense.

4 D. The Attorney General may provide information to SCICo on contacts  
5 that may reasonably lead to the discovery of New Tenants or on New Tenants  
6 whom the Attorney General has reason to believe meet the New Tenant  
7 qualification requirements set forth in Paragraphs VI(Q)(1)-(6) of this Consent  
8 Decree. SCICo will make good faith efforts to follow-up on this information in a  
9 reasonable and prompt manner.

10 E. SCICo shall be required to devote up to, but no more than, four (4)  
11 months from the date of the Attorney General's notice to proceed under Paragraph  
12 VI(A) of this Consent Decree to a search for a New Tenant of the Property  
13 ("Search Period"). SCICo will give the Attorney General a report every 30 days  
14 on its efforts in finding a New Tenant. Said reports will include the names and  
15 relevant contact information of any individuals SCICo or its broker have contacted  
16 and/or who have contacted them regarding a lease of the Property; whether SCICo  
17 or its broker has engaged in any follow-up with each such individual regarding a  
18 lease and his/her qualifications and if not, why not; the status of any such  
19 follow-up; and the nature and substance of any communications between SCICo  
20 and said individuals. The Attorney General may contact, at any point in time, the  
21 commercial real estate broker whom SCICo will hire to ascertain the status of the  
22 broker's efforts to find a New Tenant; for these purposes, SCICo waives any  
23 confidentiality rights and/or privileges it may have in the information gathered by  
24 itself or its broker.

25 F. Not less than forty-five (45) days prior to the expiration of the Search  
26 Period, SCICo will identify, by written notice to the Attorney General, every  
27 Prospective New Tenant who has expressed interest to SCICo or its broker in  
28 leasing the Property, and who, in SCICo's opinion, meets the minimum

1 qualification requirements of Paragraphs VI (Q)(1)-(6). The notice will provide  
2 contact information for each Prospective New Tenant and will set forth SCICo's  
3 order of preference with respect to the listed Prospective New Tenants. The  
4 Attorney General shall have the right to disapprove any one or more of the listed  
5 Prospective New Tenants (including, pursuant to Paragraph VI(N)(4)(a)-(d) of this  
6 Consent Decree, the designated member subtenant or sublessee of a Prospective  
7 New Tenant which is a co-operative or company comprised of entities or persons  
8 who independently own and/or operate grocery stores), in the reasonable exercise  
9 of its discretion. In addition, if SCICo's notice states that none of the Prospective  
10 New Tenants meets the minimum qualification requirements in Paragraphs  
11 VI(Q)(1)-(6) of this Consent Decree in SCICo's opinion, the Attorney General  
12 shall have the right to identify any Prospective New Tenants whom the Attorney  
13 General believes were wrongly rejected by SCICo and who will agree to the Lease  
14 provisions set out in Paragraphs VI(K)-(P) of this Consent Decree. Any  
15 unresolved disagreement concerning the qualifications of a Prospective New  
16 Tenant so identified by the Attorney General shall be submitted to the Court for  
17 resolution. Provided SCICo has provided its list of Prospective New Tenants to  
18 the Attorney General within the time required, the Attorney General shall act on  
19 such list in a timely manner such that an Approved List will be arrived at prior to  
20 the expiration of the Search Period.

21 G. SCICo shall offer to enter into a Lease of the Property, using the  
22 proposed Lease attached hereto as Exhibit B, with any Prospective New Tenant  
23 that it selects from the Approved List. The offer shall be made by SCICo's  
24 sending the proposed Lease to the selected Prospective New Tenant via overnight  
25 mail, executed by SCICo, with instructions as to when the offer will expire and  
26 how the offer may be accepted in accordance with the provisions of this Consent  
27 Decree. The Prospective New Tenant shall be afforded ten (10) days to accept the  
28 offer by signing and returning the lease to SCICo together with a check for the

1 first month's rent and security deposit unless the Prospective New Tenant falls  
2 within one of the exceptions set out in Paragraph VI(N)(3) of this Consent Decree  
3 in which case a greater security deposit may be required. If the Prospective New  
4 Tenant fails to accept the offer in a timely manner, SCICo shall make an offer, in  
5 the manner stated above, to another Prospective New Tenant on the Approved List  
6 and this process shall be repeated until an offer to lease is accepted in a timely  
7 manner or all Prospective New Tenants on the Approved List have failed to accept  
8 SCICo's offer to lease in a timely manner, whichever occurs first.

9 H. The requirement of acceptance of the proposed Lease, as set forth in  
10 Paragraphs VI(F) and (G) of this Consent Decree, shall not be interpreted to bar  
11 good faith negotiations between SCICo and Prospective New Tenants on the hours  
12 of operation; and the types of merchandise that can be sold consistent with a  
13 Grocery Store lease. Furthermore, the requirement of acceptance of the proposed  
14 Lease shall not also be interpreted to bar Prospective New Tenants from  
15 suggesting reasonable changes to the lease; however, SCICo is under no  
16 obligation to negotiate on or accept said suggestions.

17 I. Upon full execution of the Lease with the New Tenant, SCICo will  
18 give Vons the Thirty Day Notice to Quit the Property.

19 J. If the Approved List has been exhausted and a Lease has not been  
20 executed in a timely manner, or if there is no Approved List, and provided SCICo  
21 has fulfilled its obligations under this Consent Decree with respect to the search  
22 for, and offer to lease to, a New Tenant, this Consent Decree shall be terminated as  
23 to SCICo, and SCICo's use of the Property shall be free of any restrictions under  
24 this Consent Decree.

25 **Lease Provisions Applicable to the New Tenant**

26 K. The rent charged to the New Tenant of the Property shall be  
27 \$7,232.00 per month, increasing each year commencing January 1, 2007, by the  
28 percentage increase in the CPI-U. For the last year of the Lease, the rent can be



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1 increased up to 20% over the previous year.

2 L. The Lease term shall commence on the first day of the first month  
3 after an offer to lease is accepted by the New Tenant or on such date as Vons  
4 vacates the Property, whichever occurs later, and shall end on the earlier of six (6)  
5 years after commencement or on April 30, 2012, unless sooner terminated in  
6 accordance with the Lease provisions. SCICo may require that the New Tenant be  
7 open for business no later than ninety (90) days after the commencement date of  
8 the Lease.

9 M. SCICo shall make available to the New Tenant for its use, without  
10 additional charge, all Fixtures and Equipment that Vons conveys to SCICo at the  
11 time Vons vacates the Property. Insofar as any additional fixtures and equipment  
12 on the Property are actually owned by SCICo by virtue of its purchase of said  
13 fixtures and equipment from former tenants (excluding Vons) of the Property,  
14 SCICo will provide use of these items at no charge to the New Tenant.

15 N. The following lease provisions apply to the selection process  
16 involving a New Tenant:

17 (1) With the exceptions set out in Paragraph VI(H) above regarding those  
18 provisions that are subject to negotiation between SCICo and the New Tenant,  
19 SCICo must offer, for execution by the New Tenant, the proposed Lease as set  
20 forth in Exhibit B to this Consent Decree or such other form of Lease as has been  
21 approved by the Attorney General;

22 (2) At the time that the offer to lease is accepted by the New Tenant  
23 through the execution of the proposed Lease as modified through any negotiations  
24 that occurred pursuant to Paragraph VI(H) of this Consent Decree (no other means  
25 for acceptance of the offer being permitted), then SCICo can only demand one  
26 month's advance rent plus a security deposit equal to one (1) month's rent from a  
27 New Tenant, subject to the exception set out in Paragraph VI(N)(3) of this  
28 Consent Decree;

1 (3) If the New Tenant is a limited liability entity, then SCICo can require  
2 the Lease obligations to be guaranteed by the principals of that entity by their  
3 executing a guaranty agreement as attached as Exhibit E to this Consent Decree, or  
4 such other form of guaranty as has been approved by the Attorney General, unless  
5 (a) the New Tenant has a verified net worth equal to the amount called for by  
6 Paragraph VI(Q)(4)(a)-(d) of this Consent Decree and posts a security deposit  
7 equal to six months' rent or (b) the New Tenant has a verified net worth of \$1  
8 million or more. If the New Tenant has a verified net worth of \$1 million or more,  
9 then SCICo may only require it to put up one month's security deposit;

10 (4) If a New Tenant is a company or co-operative comprised of members  
11 who independently own and/or operate grocery stores, then the following  
12 provisions apply to that New Tenant:

13 (a) SCICo can require such a New Tenant to disclose the identity  
14 of the member who will be the subtenant or sublessee on the Lease prior to the  
15 execution of the proposed Lease;

16 (b) SCICo can require the member so identified to meet the  
17 qualification requirements set forth in Paragraphs VI(Q)(1)-(6) of this Consent  
18 Decree;

19 (c) SCICo must allow such a New Tenant to exercise, as a matter  
20 of right, one (1) assignment or sublease of the Lease in order to assign or sublease  
21 the Property to the member so identified; and

22 (d) SCICo may require the member so identified to comply with  
23 those provisions of this Consent Decree applicable to the New Tenant of the  
24 Property as if it were the New Tenant itself.

25 O. SCICo may require that the Grocery Store on the Property be  
26 managed on a Substantially Continuous basis by person(s), whether owner(s) of  
27 the New Tenant and/or employee(s) having at least five (5) years combined  
28 experience as an owner/operator and/or manager of a Grocery Store, supermarket,

1 convenience store, cash and carry business or liquor store; provided that in the  
2 event of the death, illness or termination of the manager or owner with the  
3 requisite experience, the New Tenant shall have ninety (90) days to replace the  
4 former manager or owner with a new manager or owner having the requisite  
5 experience, failing which SCICo shall have the right to terminate the Lease. This  
6 provision shall not be interpreted by SCICo so as to preclude the New Tenant from  
7 promoting an employee with the requisite experience to the manager position  
8 referenced in this paragraph.

9 P. If SCICo desires to develop the Property during the Lease term and  
10 has filed and received approval of an application for a local coastal plan or a  
11 California Coastal Commission approval, a general plan amendment, a specific  
12 plan approval, and a zoning change, as may be necessary, SCICo shall have the  
13 right to relocate the New Tenant, at SCICo's expense, to a location substantially  
14 equivalent to or superior to the Property, provided that either (1) the relocation  
15 does not necessitate the interruption of the New Tenant's business for more than  
16 three (3) days or (2) if the New Tenant's business will necessarily be interrupted  
17 for more than three (3) days, then SCICo will promptly pay the New Tenant the  
18 sum of \$2,000 per diem for the fourth and each subsequent day that the New  
19 Tenant was unable to conduct business at the new location with the understanding  
20 that the interruption shall not last longer than seven (7) days. No rent will be due  
21 for any period of interruption of the New Tenant's business, but no compensation  
22 shall be due the New Tenant for any lost profits during the first (3) days period  
23 with the exception of the per diem payment set out above if the interruption lasts  
24 more than (3) days but less than seven (7) days. SCICo must apply the Lease terms  
25 previously applicable to the New Tenant at the Property at the new location for the  
26 remainder of the original Lease term.

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**Prospective New Tenant Qualifications**

Q. Any Prospective New Tenant must have the operational, financial, and managerial ability to operate a Grocery Store (“viability”). The criteria for assessing viability to be used by the parties and the Court shall include, but not be limited to, the following:

(1) A Prospective New Tenant has demonstrated that the store will be managed on a Substantially Continuous basis by a person having the experience required by Paragraph VI(O) of this Consent Decree;

(2) A Prospective New Tenant has shown a reasonably satisfactory business and credit history. No owner or proposed manager of the New Tenant shall have been convicted of a felony;

(3) A Prospective New Tenant has met the State of California Department of Alcoholic Beverage Control’s prerequisites for an off- site beer and wine license for the Property;

(4) A Prospective New Tenant has demonstrated that it has working capital in hand or committed from a commercial lender in an amount at least equal to the sum of the following:

- (a) the cost of the initial inventory for four weeks of operation;
- (b) the purchase of fixtures and equipment not already present in the store;
- (c) the payment of fees and expenses for all required licenses and permits; plus
- (d) One Hundred Fifty Thousand Dollars (\$150,000).

(5) A Prospective New Tenant has affirmed that it is not an entity controlled by Vons, any parent or affiliated companies of Vons, or any entity that has already purchased, or has executed an agreement to purchase, another Grocery Store located in the City of Avalon; and

(6) A Prospective New Tenant has indicated its willingness to

1 enter into a Lease in form and content as attached hereto as Exhibit B, subject to  
2 Paragraph VI(H) above.

3 R. The parties and the Court may examine any Prospective New  
4 Tenant's business plan for the Property in assessing the qualifications of that  
5 Prospective New Tenant.

6 **Special SCICo Consent Decree Termination Provisions**

7 S. If the New Tenant defaults under the Lease after giving effect to all  
8 notice and grace provisions under the terms of the Lease, or if the New Tenant  
9 exercises a termination right under any provision of the terms of the Lease, this  
10 Consent Decree will be terminated as to SCICo and SCICo's use of the Property  
11 will not be subject to any restrictions under the Consent Decree.

12 T. Notwithstanding paragraph VI(S) of this Consent Decree, if the cause  
13 of the default or reason for the termination by the New Tenant was dishonesty of  
14 an employee (but not an owner) of the New Tenant, death or illness of an owner of  
15 the New Tenant, or other event beyond the New Tenant's control (which shall not  
16 include inability to operate the store profitably because of insufficient sales,  
17 inability to control costs or lack of sufficient working capital), or the reason for  
18 the termination by the New Tenant was SCICo's breach of the terms of the Lease,  
19 then after obtaining possession of the Property, and if more than two (2) years  
20 remained of the Lease term immediately prior to termination of the initial New  
21 Tenant's Lease, SCICo will then search for another New Tenant to lease the  
22 Property for the remaining term of the Lease on the same terms and conditions as  
23 those governing the original New Tenant, including Paragraphs VI(A)-(J)  
24 governing the search for a New Tenant, Paragraphs VI (K)-(P) governing the lease  
25 provisions applicable to the New Tenant, and Paragraphs VI (Q)-(R) governing the  
26 qualifications of the New Tenant, subject to the following exceptions: (1) the  
27 period of time that SCICo is required to search for a New Tenant shall last only  
28 three (3) months and shall commence upon termination of the New Tenant's lease;

1 (2) the advertisements shall run for three (3) consecutive weeks; (3) and SCICo's  
2 notice to the Attorney General of acceptable New Tenants as set forth in Paragraph  
3 VI(F) shall be given at least thirty (30) days before expiration of the three (3)  
4 month leasing period.

5 U. If despite fulfillment of its obligations under Paragraph VI(T) of this  
6 Consent Decree, a second New Tenant has not accepted an offer from SCICo to  
7 enter into the Lease within the three (3) month leasing period, or if the offer is  
8 accepted but the second New Tenant thereafter defaults under the Lease after  
9 giving effect to all notice and grace provisions under the Lease, or if the Second  
10 New Tenant terminates the Lease for any reason other than SCICo's default, the  
11 Consent Decree will be terminated as to SCICo and SCICo's use of the Property  
12 shall not be subject to any restrictions under this Consent Decree.

13 V. Unless specified by other provisions herein, this Consent Decree will  
14 expire and terminate with regard to SCICo's obligations herein six (6) years from  
15 the date of its entry.

16 VII.

17 NOTICES

18 A. Any notice required to be given from/ to the parties hereto shall be in  
19 writing and shall be deemed duly given and received upon delivery, addressed as  
20 set forth below, by any form of receipted mail or receipted commercial delivery  
21 service:

22 To Vons: Robert A. Gordon  
23 Senior Vice-President and Secretary  
24 The Vons Companies, Inc.  
618 Michillinda Avenue  
Arcadia, California 91007-1734

25 To SCICo: John M. Anglin  
26 Counsel and Assistant Secretary  
Santa Catalina Island Company  
27 Anglin, Flewelling, Rasmussen, Campbell & Trytten LLP  
199 South Los Robles Avenue, Suite 600  
28 Pasadena, California 91101-2459

1 To Attorney General: Emilio E. Varanini, Deputy Attorney General  
2 Antitrust Law Section  
3 State of California Department of Justice  
4 Office of the Attorney General  
5 300 South Spring Street, Suite 1702  
6 Los Angeles, California 90013

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7 B. A party may change its address for notice purposes by notice given  
8 pursuant to Paragraph VII(A).

9 **VIII.**

10 **RETENTION OF JURISDICTION**

11 A. Jurisdiction is retained by this Court for five years following entry of  
12 this Consent Decree, unless specific provisions of this Consent Decree last for a  
13 longer period of time in which case this Court shall retain jurisdiction to enforce  
14 this Consent Decree with respect to those provisions for their duration, for the  
15 purpose of enabling any of the parties to this Consent Decree to apply to this Court  
16 at any time for such further orders or directions as may be necessary or appropriate  
17 for the construction, implementation, or modification of any of the provisions of  
18 this Consent Decree, for the enforcement of compliance herewith, and for the  
19 punishment of any violations hereof.

20 B. In the event that there is a dispute between the parties regarding any  
21 term of this Consent Decree, counsel must make a reasonable and good faith effort  
22 to resolve the issues before seeking relief from the Court. Counsel contemplating  
23 the filing of any motion (the term "motion" including motions, applications,  
24 petitions, orders to show cause, and all other proceedings before the Court) shall  
25 first contact opposing counsel to discuss thoroughly the substance of the  
26 contemplated motion. If the parties fail to resolve the issue, the moving party shall  
27 include in the notice of motion a statement to this effect. The parties understand  
28 and agree that, notwithstanding the foregoing provision, either party may move for  
appropriate ex parte relief provided that there is either an actual or reasonably  
imminent change in the status quo ante that would frustrate the objectives of the

SCANNED

1 Consent Decree or prejudice not attributable to the moving party's own lack of  
2 diligence.

3 IX.

4 RELEASE

5 A. All common law, state, and federal antitrust and unfair competition  
6 claims of the State of California in its sovereign capacity that it now has or  
7 hereinafter may have against Vons or SCICo, their successors and assigns,  
8 subsidiaries, affiliates, directors, officers, managers, agents, and employees  
9 (collectively the "Releasees"), arising from or in any way concerning the 1999  
10 lease of the Vons Express, subsequent renewals and/or extensions of that 1999  
11 lease, and/or, as alleged in the Complaint, the resulting operation of the Property  
12 are released. The Attorney General expressly waives the benefit of California  
13 Civil Code section 1542 which provides:

14 A GENERAL RELEASE DOES NOT EXTEND TO  
15 CLAIMS WHICH THE CREDITOR DOES NOT  
16 KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT  
17 THE TIME OF EXECUTING THE RELEASE WHICH  
18 IF KNOWN BY HIM MUST HAVE MATERIALLY  
19 AFFECTED THE SETTLEMENT WITH THE  
20 DEBTOR.

21 X.

22 PUBLIC INTEREST

23 The Court finds that entry of this Consent Decree is in the public interest.

24 Dated this day 3d, of January 2006  
25 December 2005

26 UNITED STATES DISTRICT COURT JUDGE

27 Walter J. Lusche  
28



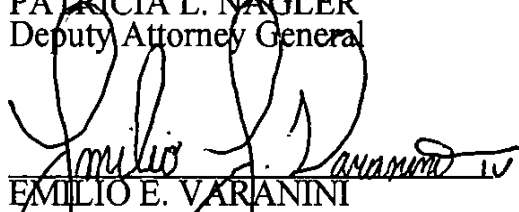
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Presented By:

STATE OF CALIFORNIA, BY:

BILL LOCKYER  
Attorney General of the State of California  
RICHARD M. FRANK  
Chief Deputy Attorney General  
TOM GREENE  
Chief Assistant Attorney General  
KATHLEEN FOOTE  
Senior Assistant Attorney General  
BARBARA M. MOTZ  
Supervising Deputy Attorney General  
EMILIO E. VARANINI  
Deputy Attorney General  
PATRICIA L. NAGLER  
Deputy Attorney General

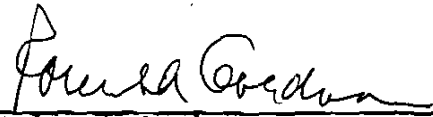


EMILIO E. VARANINI

Attorneys for the Plaintiff  
STATE OF CALIFORNIA, ex rel  
BILL LOCKYER

SCANNED

1 THE VONS COMPANIES, INC., BY:

2   
3 \_\_\_\_\_

4 Robert A. Gordon  
5 Senior Vice-President and Secretary  
6 The Vons Companies, Inc.  
7 618 Michillinda Avenue  
8 Arcadia, California 91007-1734

9   
10 \_\_\_\_\_

11 GREGORY P. STONE  
12 Counsel for The Vons Companies, Inc.  
13 State Bar No. 78329  
14 MUNGER, TOLLES, & OLSON LLP  
15 355 South Grand Avenue, 35<sup>TH</sup> Floor  
16 Los Angeles, California 90071-1560  
17  
18 Attorney for Defendant Vons, Inc.  
19  
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26  
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1 SANTA CATALINA ISLAND COMPANY BY:

2

3

4 W. F. Olsen  
5 Group Vice President of Operations  
6 Santa Catalina Island Company

6

7 *John M. Anglin*

8 John M. Anglin  
9 Assistant Secretary and Counsel  
10 Santa Catalina Island Company  
11 State Bar No. 53075  
12 Anglin, Flewelling, Rasmussen, Campbell & Trytten LLP  
13 199 South Los Robles Avenue, Suite 600  
14 Pasadena, California 91101-2459

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SCANNED

1 SANTA CATALINA ISLAND COMPANY BY:

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4 W. F. Olsen  
5 Group Vice President of Operations  
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6

7

8 John M. Anglin  
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## Fixtures and Equipment

DESCRIPTION	ITEM MODEL-NUM
SCANNER PERIPHERAL	
COMPUTER-MINI STORE	PROLIANT1600
CHECK STAND	SINGLE BELT
CHECK STAND	SINGLE BELT
DESK	FO2295
OVEN - DELI	BKY/OV300E-2
OVEN - DELI	HRW220-1
OVEN - DELI	BKY/OV300E-2
PROOF BOX	PC800-1
SCALE	8461
SHELVING	
SHELVING	
SHELVING	
SINK	HAND
SINK	PREP
SINK	UTNSL
TABLE	ENCL
WRAPPING STATION	660
BATTERY	12C085E 13
CHARGER - BATTERY	FR12SC450
BATTERY	6C085E13
CHARGER - BATTERY	FRO6AC510
CABINET/COUNTERS	FILM
TRUCK - PALLET	WP60
BALER	1800IHD
BALER	1800IHD
COIL	
COIL	
COMPRESSOR	MCS300H22
COMPRESSOR	MCS202L22
COMPRESSOR	MCS300L22
COMPRESSOR	MCS300H22
FRYERS	CF500VH
FRYERS	CF500VH
ITEMS UNDER \$500	
ITEMS UNDER \$500	
ITEMS UNDER \$500	
TRUCK - FORK LIFT	WC30
DISPLAY END	BAKERY
DELI CASE	RGSSFP
DELI CASE	LLD
ISLAND CHIX. WARMER	ALTO SHAAM
DELI COOLER W/DOORS	
36' BEVERAGE CASES	
5 DR. FROZEN FOOD CASE	HUSSMANN NRCV
DELI MERCHANDISER	AP51-30

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**COMMERCIAL LEASE**

between

**SANTA CATALINA ISLAND COMPANY**

and

«Customer\_Name»,  
dba «DBA»



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**COMMERCIAL LEASE**

«Customer\_Name», dba «DBA»

SCANNED

**1. Basic Provisions ("Basic Provisions")**

**1.1 Parties:**

This Lease, dated for reference purposes only, «Lease\_Date», (herein called the "Lease"), is made by and between the Santa Catalina Island Company, a Delaware corporation, ("Lessor") and «Customer\_Name», dba «DBA»("Lessee"), (collectively the "Parties", or individually a "Party").

**1.2 Premises:**

That certain real property, including all improvements therein or to be provided by Lessor under the terms of this Lease, and commonly known as 117-119 Catalina Avenue, located in the City of Avalon, County of Los Angeles, State of California on Exhibit A, attached hereto ("Premises"). Lessor grants to Lessee, for a term coextensive with this Lease, a non-exclusive license to use the area identified as the parking area on Exhibit A, attached hereto, for parking and other uses ancillary to the Licensee's use of the Premises. The parking area shall otherwise be considered to be a part of the Premises except that Lessee shall not have any liability with respect to the use of the parking area by any other licensee of Lessor. (See also Article 2).

**1.3 Term:**

Approximately six (6) years ("Term") commencing on the first to occur of (i) the first day of the first month after full execution of this Lease or (ii) upon vacation of the Premises by the current lessee and tender by Lessor of possession to Lessee ("Commencement Date") and ending on the earlier of (x) six (6) years after the Commencement Date or (y)April 30, 2012.("Expiration Date"). (Also see Article 3.)

**1.4 Early Possession:**

Not applicable.

**1.5 Base Rent:**

Seven Thousand Two Hundred Thirty-two Dollars (\$7,232) ("Base Rent") per month, payable on the first day of each month commencing «Lease\_Date» (Also see Article 4.)

**1.6 Base Rent Upon Execution:**

\$7,232 applicable to the first full month of the Original Term.

**1.7 Security Deposit**

Security Deposit: \$ \_\_\_\_\_ ("Security Deposit").

**1.8 Permitted Use:**

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Grocery store ("Permitted Use") (Also see Article 5.)

1.9 Insurance.

Lessee shall provide insurance as specified in Article 8.

1.10 Guarantors.

The guarantor(s) of this Lease ("Guarantor") are \_\_\_\_\_.

1.11 Exhibits.

Attached hereto are Exhibits A, B, C, and D which constitute a part of this Lease.

1.12 Brokers.

\_\_\_\_\_ represents Lessor, and \_\_\_\_\_ represents Lessee in connection with this Lease. Commission on this Lease is payable by Lessor under separate agreement. Lessee agrees to indemnify Lessor from any claim, loss and expense, including costs of defense and reasonable attorneys' fees, incurred by Lessor if Lessee has had dealings with any other brokers or finders in connection with this Lease.

2. Premises.

2.1 Letting.

Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. Unless otherwise provided herein, any statement of square footage set forth in this Lease is an approximation which Lessor and Lessee agree is reasonable. No rental adjustment shall be made if the actual square footage is more or less than the approximation.

2.2 Condition.

The Premises have been examined by Lessee and are accepted "as is" in their present condition, and Lessor makes no representation as to the condition of the Premises, their fitness for any purpose, or whether the Premises or Lessee's contemplated use are in compliance with Applicable Requirements, as defined in this Lease. Lessor shall not be liable for any defect, latent or otherwise, or change of conditions resulting from any cause whatsoever.

2.3 Personal Property.

(a) This Lease includes Lessee's use of fixtures and equipment described in Exhibit B hereto ("Personal Property"). Lessee shall maintain the Personal Property under Paragraph 7.1 and shall insure it under Paragraph 8.2 (Lessor shall be named as an additional insured and loss payee). Lessor shall make any insurance proceeds received under such insurance available for replacement of Personal Property, provided this Lease has not terminated. Lessee shall surrender all Personal Property and replacements thereof provided by Lessor at the end of the Lease term in the condition required by Section 7.1.

(b) Any lessor of, or party financing, Tenant's trade fixtures or other personal property shall have the right to enter the Premises and remove such trade fixtures and other personal property upon Tenant's default under such lease or financing arrangement, provided only that such lessor or financing party repairs in a workmanlike manner all damage to the Premises caused by such removal. Landlord waives any landlord's lien and right of distraint with

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respect to any such leased or financed trade fixtures or other personal property.

**3. Term.**

**3.1 Term of Lease.**

The Commencement Date, Expiration Date and Term of this Lease are as specified in Paragraph 1.3.

**3.2 Delay in Commencement.**

If the Commencement Date has not occurred within sixty (60) days after Lessee's execution of this Lease because the existing lessee has not vacated, Lessee shall have the right to terminate this Lease upon written notice to Lessor and the California Attorney General before the existing lessee vacates and Lessor tenders possession of the Premises to Lessee. If the Commencement Date has not occurred by July 1, 2006, this Lease shall terminate automatically. Upon termination under this Paragraph 3.2, Lessor shall promptly refund all prepaid Rent and the Security Deposit. Lessor shall have no liability to Lessee if the current lessee does not surrender possession voluntarily.

**4. Rent and Security Deposit.**

**4.1 Base Rent.**

(a) Lessee shall pay Base Rent and other rent or charges, as the same may be adjusted from time to time, to Lessor in lawful money of the United States, without offset or deduction, in advance, on or before the day on which it is due under the terms of this Lease. Base Rent and all other rent and charges for any partial period during the term hereof shall be prorated based upon the actual number of days elapsed in the period. If the first month of the Original Term is not a full calendar month, prorated rent for the first partial month shall be paid on or before the Commencement Date. Payment of Base Rent and other charges shall be made to Lessor at its address stated herein or to such other persons or at such other addresses as Lessor may from time to time designate in writing to Lessee.

(b) As of January 1 of 2007, 2008, 2009 and 2010 (each an "Adjustment Date"), the Base Rent shall be increased (never decreased) to an amount equal to 100%, plus the percentage increase in the Index during the preceding calendar year, of the Base Rent amount immediately prior to the Adjustment Date. The Index is the Consumer Price Index (CPI - U, 1982-84 = 100) for the Los Angeles - Anaheim - Riverside metropolitan area published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued, a comparable Index chosen by Lessor shall become the Index. If the base period of the Index is changed, the conversion factor published by the government shall be used to make the necessary adjustment. Lessor shall give Lessee written notice of the increased Base Rent, the increase shall be retroactive to the January 1 Adjustment Date and Lessee shall pay to Lessor the accrued increase within twenty (20) days after receipt of the notice from Lessor.

(c) The Base Rent for the last year of the Term shall be the adjusted Base Rent amount in effect for calendar year 2010 plus twenty percent (20%).

**4.2 Percentage Rent**

In addition to the Base Rent, Lessee [shall () /shall not (X)]pay to Lessor for each lease year or partial lease year during the lease term Percentage Rent in the amount and upon the terms and conditions set forth in the Percentage Rent Rider attached hereto as an exhibit (if applicable).

**4.3 Security Deposit.**

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Lessee shall deposit with Lessor upon execution hereof the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise Defaults under this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount due Lessor or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of the Security Deposit, Lessee shall within ten (10) days after written request therefore deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. If the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional moneys with Lessor so that the total amount of the Security Deposit shall at all times bear the same proportion to the increased Base Rent as the initial Security Deposit bore to the initial Base Rent. Should the agreed use be amended to accommodate a material change in the business of Lessee or to accommodate a sublessee or assignee, Lessor shall have the right to increase the Security Deposit to the extent necessary, in Lessor's reasonable judgment, to account for any increased wear and tear that the Premises may suffer as a result thereof. If a change in control of Lessee occurs during this Lease and following such change the financial condition of Lessee is, in Lessor's reasonable judgment, significantly reduced, Lessee shall deposit such additional monies with Lessor as shall be sufficient to cause the Security Deposit to be at a commercially reasonable level based on such change in financial condition. Lessor shall not be required to keep the Security Deposit separate from the general accounts. Within fourteen (14) days after the expiration or termination of this Lease, if Lessor elects to apply the Security Deposit only to unpaid Rent, and otherwise within thirty (30) days after the Premises have been vacated pursuant to Paragraph 7.4 (c) below, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Lessee under this Lease.

#### 4.4 Late Charge

If Lessee fails to pay to Lessor any payment of Base Rent, Percentage Rent or other charge or payment due Lessor under this Lease within 10 days after the due date thereof, Lessee shall pay to Lessor, within seven (7) days after receipt or deemed receipt of demand (which demand shall be in lieu of and not in addition to any notice required under California Code of Civil Procedure §1161), a late charge of six percent (6%) of the delinquent amount or \$100.00, whichever is greater, as liquidated damages to compensate Lessor for the inconvenience and additional expense, including administrative expense, incurred by Lessor. Lessor's acceptance of a late charge on one or more occasions shall not constitute a waiver of Lessor's right to insist on timely payment thereafter. The late charges shall, for purposes of Lessor's remedies, constitute additional rent and shall be in addition to any interest charge or returned check charge that also may be applicable to the delinquency.

### 5. Use.

#### 5.1 Permitted Use/Restrictions.

Lessee shall use and occupy the Premises only for the Permitted Use set forth in Paragraph 1.8, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates waste or a nuisance, that disturbs owners and/or occupants of, or causes damage to, neighboring premises or properties, that reasonably tends to injure the reputation of Lessor or which is offensive or immoral, that causes alterations to the Building to be required, or that causes cancellation of property insurance on the Building or an increase in the cost thereof. Lessee shall not, without Lessor's prior written consent, (i) install or affix to the Building any exterior fixtures, shades, awnings or exterior decorations, (ii) paint or otherwise alter the exterior of the Building, (iii) display or sell any merchandise outside of the Premises interior, (iv) use any loudspeakers or mechanical or moving display, flashing lights or similar devices or (v) solicit business, distribute handbills, post signs or obstruct any area outside of the Premises interior (except use of exterior signage otherwise permitted by this Lease). Sale of beer and wine for consumption off the Premises is permitted provided Lessee has the appropriate license; sale of distilled spirits is prohibited. See also Article 45.

#### 5.2 Hazardous Substances.

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(a) Without Lessor's prior written consent, Lessee shall not keep store, use or generate on the Premise or on property adjacent to the Premises any hazardous waste, material, substance or contaminant, as so defined or treated by any Applicable Law, including petroleum products (collectively "Hazardous Substance") nor shall Lessee install or use on the Premises or on land adjacent to the Premises any underground storage tank for any Hazardous Substance; provided, however, that without Lessor's prior consent, Lessee may use any ordinary and customary Hazardous Substance reasonably required for Lessee's use permitted by this Lease, including motor and heating fuels, so long as (i) the quantities are limited to Lessee's reasonable needs and do not pose a risk of material contamination from a spill or discharge, (ii) no underground storage tank is used, (iii) permits from governmental authorities are obtained if required by Applicable Laws and (iv) Lessee complies strictly with all Applicable Laws relating to its use or storage of Hazardous Substances.

(b) Lessee indemnifies and agrees to hold Lessor, the Premises and Lessor's affiliates, as defined in this Lease, entirely free and harmless from all claims and liabilities, and all fines, penalties and costs of investigation, containment and remediation, including without limitation consultants' fees (collectively "environmental costs") arising from or related to any Hazardous Substance brought onto the Premises by, or generated on the Premises, by Lessee or any employee, guest or other invitee of Lessee. In the event a claim is asserted against Lessor, the Premises or Lessor's affiliates that is within the scope of the foregoing indemnity, Lessor and Lessor's affiliates may elect either to tender the claim to Lessee, or Lessor and Lessor's affiliates may elect to defend the claim through Lessor's counsel.

(c) The party receiving such a claim, agrees to give the other party prompt notice thereof, but no failure or delay on the part of Lessor to so notify Lessee shall absolve Lessee of its indemnity obligations unless substantial prejudice to Lessee results. Lessor and Lessee further agree to cooperate reasonably but without expense to Lessor, in dealing with any such claims. If the claim is tendered to Lessee, Lessee shall retain counsel and environmental consultants reasonably satisfactory to Lessor to represent Lessor and Lessor's affiliates. Lessee shall not make any admissions of liability. A settlement may be made without Lessor's consent if the settlement involves only the payment of money by Lessee and Lessor is afforded a full and complete release as part of the settlement. If Lessor elects not to tender the claim, the actual cost of the attorneys and environmental consultants retained by Lessor shall be reimbursed to Lessor on a monthly or other periodic basis as Lessor elects. Lessor shall be free to settle the claim on such basis as Lessor deems appropriate, and Lessee shall indemnify Lessor from all liabilities and environmental costs incurred in connection with a claim within the scope of subsection (b) above and the settlement thereof.

(d) The indemnity set forth in this Section 5.2 shall survive the expiration or earlier termination of this Lease.

**5.3 Applicable Requirements.**

(a) Lessee shall, at Lessee's sole cost and expense, fully, diligently and in a timely manner, comply with all current and future "Applicable Requirements," which term is used in this Lease to mean all laws, rules, regulations, ordinances, directives, covenants, easements and restrictions of record, permits, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Lessor's engineers and/or consultants, relating in any manner to the Premises (including, but not limited to, matters pertaining to (i) industrial hygiene; (ii) environmental conditions on, in, under or about the Premises, including soil and groundwater conditions; and (iii) the use, generation, manufacture, production, installation, maintenance, removal, transportation, storage, spill, or release of any Hazardous Substance. Lessee shall, within five (5) days after receipt of Lessor's written request, provide Lessor with copies of all documents and information, including, but not limited to, permits, registrations, manifests, applications, reports and certificates, evidencing Lessee's compliance with any Applicable Requirements specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving failure by Lessee or the Premises to comply with any Applicable Requirements.

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(b) Anything in Paragraph 5.3(a) or elsewhere in this Lease notwithstanding:

- (i) Lessee shall be responsible for making, in compliance with Article 7, (A) any alterations to the Premises necessitated by any changes in Applicable Requirements after the date of execution of this Lease and (B) any alterations to the remainder of the Building to conform to any existing or future Applicable Requirements, which are necessitated by either Lessee's special use of the Premises (as opposed to the use of commercial tenants generally) or other alterations or improvements made by Lessee;
- (ii) Lessor shall be responsible for making alterations to the Building elements for which Lessor is responsible under Paragraph 7.2 to conform to existing or future Applicable Requirements, provided such alterations are not Lessee's responsibility under subparagraph (b)(i); and
- (iii) A party which has obligations to make alterations under this subparagraph (b) may instead elect to terminate this Lease upon written notice to the other party if either the reasonably estimated cost of such alterations exceeds six (6) months' Base Rent at the rate then applicable or the reasonably estimated cost of such alterations exceeds three (3) months' then Base Rent and there is less than one (1) year remaining of the Lease Term.

5.4 Inspection.

Lessor, Lessor's agents, employees, contractors and designated representatives, and the holders of any mortgages, deeds of trust or ground leases on the Premises ("Lenders") shall have the right to enter the Premises at any time in the case of an emergency, and otherwise at reasonable times, for the purpose of inspecting the condition of the Premises and for verifying compliance by Lessee with this Lease and all Applicable Requirements (as defined in Paragraph 5.3), and Lessor shall be entitled to employ experts and/or consultants in connection therewith to advise Lessor with respect to Lessee's activities, including but not limited to Lessee's use, storage or suspected release of any Hazardous Substance on or from the Premises. The costs and expenses of any such inspections shall be paid by the party requesting same, unless a Default or Breach of this Lease by Lessee or a violation of Applicable Requirements or a release of Hazardous Substances, caused or materially contributed to by Lessee, is found to exist or to be imminent, or unless the inspection is requested or ordered by a governmental authority as the result of any such existing or imminent violation or release. In such case, Lessee shall promptly upon request reimburse Lessor or Lessor's Lender, as the case may be, for the costs and expenses of such inspections.

5.5 No Outside Storage.

Lessee shall not store or permit the storage of goods, materials, equipment or property of any kind whatsoever upon the Premises unless such property is stored within buildings or structures located thereon or unless outside storage is specifically authorized under this Lease.

5.6 Garbage Cans.

Lessee shall provide and use garbage cans of proper size, and equipped with such covers as will prevent offensive odors from escaping from and the same and shall see that said garbage cans are thoroughly cleaned daily and are kept covered excepting such times as garbage is being deposited in them or they are being cleaned or emptied.

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**6. Taxes.**

**6.1 Real Property Taxes.**

Lessor shall pay all general real property taxes attributable to the Premises.

**6.2 Other Taxes.**

Lessee shall be responsible for and shall pay before delinquency all municipal, county or state taxes, levies and fees of every kind and nature, including, but not limited to, general or special assessments, assessed during the term of this Lease against any leasehold interest, leasehold improvement or personal property of any kind, owned by or placed in, upon or about the Premises by Lessee. If such taxes, levies or fees are not separately assessed to Lessee, Lessee shall pay such taxes as Lessor shall direct from time to time:

(a) Directly to the taxing authority in which event Lessor shall furnish or cause to be furnished the tax bill to Lessee and lessee shall pay such taxes semi-annually and at least twenty (20) days prior to the taxing authority's delinquency date and furnish Lessor with written evidence satisfactory to Lessor that such taxes have been timely paid, such evidence to be furnished to Lessor at least ten (10) days prior to the delinquency date.

(b) To Lessor semi-annually and at least twenty (20) days prior to the taxing authority's delinquency date in which event Lessor shall have furnished to Lessee a copy of the tax bill (if the Premises are separately assessed) or a copy of the calculation of Lessee's proportionate share of the total property taxes attributable to the property of which the Premises are a part (if Premises are not separately assessed); or

(c) To Lessor in monthly or other periodic installments as Lessor may specify, in which event Lessor shall have furnished to Lessee the basis for calculation of the periodic sums due. Any sums so paid to Lessor need not be impounded or segregated from other funds of Lessor and shall not be deemed to be held in trust for Lessee's benefit, and no interest thereon shall be payable to Lessee.

A reasonable determination by Lessor in good faith of the amount attributable to Lessee shall be conclusive and binding on Lessee.

Should Lessee default in making any tax payment as required by this paragraph, the amount of such payment, together with any penalty or other charge incurred by Lessor to the taxing authority, shall be immediately due and payable by Lessee upon demand.

**6.3 Special Assessments.**

Notwithstanding anything to the contrary in this Lease, and regardless that Lessee is not obligated to pay general real property taxes, Lessee shall pay all special assessments, expressly including, but not limited to, sewer assessments, levied upon or with respect to the Premises by any governmental authority during the term of this Lease. Such payments shall be made in accordance with the provisions of Paragraph 6.2, above.

**7. Maintenance, Repairs, Utility Installations, Trade Fixtures and Alterations.**

**7.1 Lessee's Obligations.**

(a) Subject to the provisions of Paragraphs 2.2 (Condition), 5.3 (Applicable Requirements), 7.2 (Lessors Obligations), 9 (Damage or Destruction), and 13 (Condemnation), Lessee shall, at Lessee's sole cost and expense and at all times, keep the Premises and every part thereof in good order, condition and repair (whether or not

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such portion of the Premises requiring repair, or the means of repairing the same, are reasonably or readily accessible to Lessee, and whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or the age of such portion of the Premises), including, without limiting the generality of the foregoing, all equipment or facilities specifically serving the Premises, such as plumbing, heating, air conditioning, ventilating, electrical, lighting facilities, boilers, fired or unfired pressure vessels, fire hose connections if within the Premises, fixtures, interior walls, interior surfaces of exterior walls, ceilings, floors, windows, doors, plate glass, and skylights, but excluding any items which are the responsibility of Lessor pursuant to Paragraph 7.2 below. Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices. Lessee's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair.

(b) Lessee shall, at Lessee's sole cost and expense, procure and maintain a contract, with copies to Lessor, in customary form and substance for and with a contractor specializing and experienced in the inspection, maintenance and service of the heating, air conditioning and ventilation system for the Premises. However, Lessor reserves the right, upon notice to Lessee, to procure and maintain the contract for the heating, air conditioning and ventilating systems, and if Lessor so elects, Lessee shall reimburse Lessor, upon demand, for the cost thereof.

(c) If Lessee fails to perform Lessee's obligations under this Paragraph 7.1, Lessor may enter upon the Premises after ten (10) days' prior written notice to Lessee (except in the case of an emergency, in which case no notice shall be required), perform such obligations on Lessee's behalf, and put the Premises in good order, condition and repair, in accordance with Paragraph 12.2 below.

(d) Lessor may elect to perform any alteration work which is Lessee's responsibility under Paragraph 5.3(b) at Lessee's expense and may require such deposits from Lessee, in advance of commencing or continuing work, toward the cost of such alterations as Lessor in its discretion determines.

7.2 Lessor's Obligations.

Subject to the provisions of Paragraphs 2.2 (Condition), 5.3 (Applicable Requirements), 5 (Use), 7.1 (Lessee's Obligations), 9 (Damage or Destruction) and 13 (Condemnation), Lessor shall keep in good order, condition and repair the foundations, exterior walls, structural condition of interior bearing walls and exterior roof. Lessor shall not be obligated to paint the interior surfaces of exterior walls nor shall Lessor be obligated to maintain, repair or replace windows, doors or plate glass of the Premises. Lessee expressly waives the benefit of any statute now or hereafter in effect which would otherwise afford Lessee the right to make repairs at Lessor's expense.

7.3 Utility Installations, Trade Fixtures, Alterations.

(a) Definitions: Consent Required. The term "Utility Installations" is used in this Lease to refer to all air ducts, power panels, electrical distribution, security systems, fire protection systems, communications systems, lighting fixtures, heating, ventilating and air conditioning equipment, plumbing, and fencing in, on or about the Premises. The term "Trade Fixtures" shall mean Lessee's machinery and equipment which can be removed without doing material damage to the Premises. The term "Alterations" shall mean any modification of the improvements on the Premises other than Utility Installations or Trade Fixtures. Lessee shall not make or cause to be made any Alterations or Utility Installations in, on, under or about the Premises without Lessor's prior written consent. Lessee may, however, make non-structural Utility Installations to the interior of the Premises (excluding the roof) without Lessor's consent but upon notice to Lessor, so long as they are not visible from the outside of the Premises, do not involve puncturing, relocating or removing the roof or any existing walls, or changing or interfering with the fire sprinkler or fire detection systems and the cumulative cost thereof during the term of this Lease as extended does not exceed \$10,000.00.

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(b) Consent. Any Alterations or Utility Installations that Lessee shall desire to make and which require the consent of the Lessor shall be presented to Lessor in written form with detailed plans. Lessee's right to make Alterations or Utility Installations is further conditioned upon: (i) Lessee's acquiring all applicable permits required by governmental authorities; (ii) the furnishing of copies of such permits together with a copy of the plans and specifications for the Alteration or Utility Installation to Lessor prior to commencement of the work thereon; and (iii) the compliance by Lessee with all conditions of said permits in a prompt and expeditious manner. Any Alterations or Utility Installations by Lessee during the term of this Lease shall be done in a good and workmanlike manner, with good and sufficient materials, and be in compliance with all Applicable Requirements. Lessee shall promptly upon completion thereof furnish Lessor with as-built plans and specifications therefor.

(c) Lien Protection. Lessee shall pay when due all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use on the Premises, which claims are or may be secured by any mechanic's or materialmen's lien against the Premises or any interest therein. Lessee shall give Lessor not less than ten (10) days' notice prior to the commencement of any work in, on, or about the Premises, and Lessor shall have the right to post notices of non-responsibility in or on the Premises as provided by law. If Lessee shall, in good faith, contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense, defend and protect itself, Lessor and the Premises against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof against the Lessor or the Premises, or, at Lessor's option, Lessee shall furnish to Lessor, upon demand, a surety bond satisfactory to Lessor, in an amount equal to one and one-half times the amount of such contested lien claim or demand, indemnifying Lessor against liability for the same, as required by law for the holding of the Premises free from the effect of such lien or claim. In addition, Lessor may require Lessee to pay Lessor's attorneys' fees and costs in participating in such action if Lessor shall decide it is to its best interest to do so.

7.4 Ownership, Removal, Surrender, and Restoration.

(a) Ownership. Subject to Lessor's right to require their removal, all Alterations and Utility Installations made to the Premises by Lessee shall be the property of and owned by Lessee, but considered a part of the Premises. Unless otherwise instructed per Subparagraph 7.4(b) hereof, all Lessee Owned Alterations and Utility Installations shall, at the expiration or earlier termination of this Lease, become the property of Lessor and remain upon the Premises and be surrendered with the Premises by Lessee.

(b) Removal. Unless otherwise agreed in writing, Lessor may require that any or all Lessee-Owned Alterations or Utility Installations be removed by the expiration or earlier termination of this Lease, notwithstanding that their installation may have been consented to by Lessor. Lessor may require the removal at any time of all or any part of any Alterations or Utility Installations made without the required consent of Lessor.

(c) Surrender/Restoration. Lessee shall surrender the Premises by the end of the last day of the Lease term or any earlier termination date, clean and free of debris and in good operating order, condition and state of repair, ordinary wear and tear excepted. Ordinary wear and tear shall not include any damage or deterioration that would have been prevented by good maintenance practice or by Lessee's performing all of its obligations under this Lease. Except as otherwise agreed or specified herein, the Premises, as surrendered, shall include the Alterations and Utility Installations. The obligation of Lessee shall include the repair of any damage occasioned by the installation, maintenance or removal of Lessee's Trade Fixtures, furnishings, equipment, and Alterations and Utility Installations, as well as the removal of any storage tank installed by or for Lessee, and the removal, replacement, or remediation of any soil, material or ground water contaminated by Lessee, all as may then be required by Applicable Requirements and/or good practice. Lessee's Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee subject to its obligation to repair and restore the Premises per this Lease.

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**8. Insurance; Indemnity.**

**8.1 Liability Policies.**

Lessee shall at all times during the term hereof, at its cost and expense, maintain in effect broad form comprehensive commercial general liability insurance with respect to the Premises and Lessee's operations naming Lessor as an additional insured in the policy, and insuring Lessee's indemnity obligations under Paragraph 8.6 below, with a combined single limit for bodily injury (including death) and property damage of not less than Two Million Dollars (\$2,000,000) and a deductible not exceeding \$2,500 per occurrence. Said liability insurance shall be the primary and non-contributing insurance with respect to any other insurance available to Lessor and shall contain a provision that Lessor shall be entitled to recover under said policy for any loss, injury or damage to Lessor, its agents and employees or the property of said persons by reason of the negligence of Lessee. In no event shall the limits of said policies be considered as limiting the liability of Lessee under this Lease. Lessor shall have the right to require Lessee to increase the limits of the liability coverage not more frequently than once each eighteen (18) month period if in Lessor's opinion existing limits are not adequate, but in no event shall such increases exceed 25% of the previously required limits in any one eighteen (18) month period.

**8.2 Property Insurance.**

Lessee shall at all times during the term of this Lease, at its sole cost and expense, maintain in effect a policy or policies of insurance covering all of its stock of merchandise, furniture, fixtures, improvements and equipment now or at any time during the term of this Lease located within or upon the Premises with a reputable insurance company (see Paragraph 8.4, below) for the full insurable value of such stock or merchandise, furniture, fixtures, improvements and equipment providing protection against any peril included within the classification "Fire and Extended Coverage", together with insurance against sprinkler damage (if applicable), vandalism and malicious mischief.

**8.3 Workers' Compensation Insurance.**

Lessee shall maintain workers' compensation insurance and employer's liability insurance as required by the Applicable Requirements.

**8.4 Carriers.**

All insurance required to be carried by Lessee hereunder shall be with companies admitted to transact business in the State of California with a Best's Insurance Guide rating of not less than A-VII. Copies of policies of such insurance or certificates evidencing such insurance shall be delivered to Lessor by Lessee prior to the commencement date of this Lease. Thereafter and throughout the term of this Lease, evidence of renewal or replacement coverage meeting the requirements of this Lease shall be delivered to Lessor at least thirty (30) days prior to the expiration of the prior coverage. No such policy shall be cancelable or the coverage reduced thereunder except after thirty (30) days' written notice to Lessor.

**8.5 Subrogation Waiver.**

With respect to any insurance maintained by Lessee pursuant to Sections 8.2 and 8.3, Lessee hereby waives all subrogation rights of its insurers, unless such waiver would violate the terms and conditions of such insurance policy, against Lessor or against the officers, employees, agents, representatives, customers and business visitors of Lessor for bodily injury or for loss of or damage to Lessee or its property or the property of others under its control, arising from any cause, including negligent acts, required to be insured against under Paragraphs 8.1 and 8.2 or actually insured against under any policy of insurance carried by Lessee, to the full extent of such insurance. If Lessee is precluded from

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waiving its insurer's subrogation rights, Lessee shall procure from its property insurers and deliver to Lessor an express subrogation waiver, reading as follows:

"Any right of subrogation this Company may have against the Santa Catalina Island Company, its officers, agents or employees is hereby waived."

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8.6 Waiver and Indemnity.

(a) The provisions of this Paragraph 8.6 are a material part of the consideration to Lessor for this Lease. As used in this paragraph, the following terms shall have the meanings indicated: (i) "claims" includes all claims, demands, causes of action, legal actions and proceedings, arbitrations, and governmental administrative proceedings; (ii) "Lessor's affiliates" means Lessor's subsidiaries, parents, affiliated corporations, and the past, present and future shareholders, directors, officers, employees and agents of Lessor and Lessor's affiliates; (iii) "liabilities" means judgments, losses, awards, damages, and expenses, including attorney's fees; (iv) "personal injury" means bodily injury to or wrongful death of, Lessee, Lessee's members, directors, officers, shareholders, partners, employees, guests, other invitees of Lessee, or other persons. (v) "Premises-related" means arising in any manner from, or otherwise related to (A) the use or occupancy of the Premises by any person; (B) the condition of the Premises; (C) the use by Lessee, its members, directors, officers, shareholders, partners, employees, guests and other invitees of adjacent realty; (D) Lessee's failure to properly perform and otherwise observe all of its obligations under this Lease; or (E) any negligence or willful misconduct on the part of Lessee or Lessee's members, directors, officers, shareholders, partners, guests, employees or other invitees; (vi) "property damage" means loss of, or damage to or interference with any real or personal property of Lessee or of Lessee's members, directors, officers, shareholders, partners, employees, guests, other invitees or other persons. "Property damage" also includes all losses, injuries and invasions of legally protected interests other than personal injuries, including without limitation economic losses and liabilities for violations of Applicable Requirements.

(b) Lessee assumes the risk of all Premises-related liabilities for personal injury and property damage and agrees that neither Lessor nor Lessor's affiliates shall be liable therefor.

(c) Lessee waives all claims against Lessor and Lessor's affiliates for Premises-related personal injury and property damage. The foregoing assumption of risk and waiver includes, without limitation, claims for personal injury and property damage arising from criminal assaults or other criminal acts of third parties. Lessee waives all claims against Lessor and Lessor's affiliates for lost profits or other consequential economic damages, regardless of the cause, in excess of two hundred thousand dollars (\$200,000) in the aggregate. (d) Lessee indemnifies and agrees to hold Lessor and Lessor's affiliates entirely free and harmless from all claims for Premises-related personal injury and property damage, from all other claims allegedly arising from Lessee's failure to perform properly Lessee's obligations under this Lease, and from all liabilities resulting from such claims. In the event of a claim against Lessor or Lessor's affiliates which is within the scope of this indemnity, Lessor shall tender the defense of same to Lessee who shall provide a defense through counsel reasonably satisfactory to Lessor and Lessee shall not make any admission of liability. A settlement may be made without Lessor's consent only if the settlement involves only the payment of money by Lessee and Lessor is afforded a full and complete release as part of the settlement. Lessor and Lessee agree to give one another prompt written notice of any claim which appears to be within the scope of the foregoing indemnity, but no failure or delay on the part of Lessor to so notify Lessee shall absolve Lessee of its indemnity obligations unless substantial prejudice to Lessee results. Lessor and Lessee further agree to cooperate reasonably, but without expense to Lessor, in the defense of any claim within the scope of the foregoing indemnity. The foregoing indemnity shall survive the expiration or earlier termination of this Lease with respect to all claims based upon occurrences ante-dating the expiration or earlier termination of this Lease.

(e) The protection afforded Lessor and Lessor's affiliates under the foregoing provisions of this Paragraph 8.6 is intended to include protection from claims arising from Lessor's or Lessor's affiliates' negligence of any kind or degree, or that of any party for whose negligence Lessor or Lessor's affiliates are liable, except in the case where the limits of insurance required to be maintained or actually maintained, whichever limits are higher, by Lessee have been exhausted in which case Lessee shall not be obligated to indemnify Lessor or Lessor's affiliates from their active or gross negligence

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or willful misconduct or that of any person for which they are liable. However, if a court of competent jurisdiction determines that such intended scope of protection is in excess of that permitted by applicable law, this Paragraph 8.6 shall be deemed to be amended automatically to reduce the scope of the protection afforded to Lessor and Lessor's affiliates to the maximum scope permitted by applicable law. This provision shall govern any inconsistent severability provision of this Lease.

(f) Lessee waives all claims against Lessor and Lessor's affiliates for any personal injury, property damage or interference with Lessee's quiet enjoyment of the Premises caused by other lessees or other lessees of other properties of Lessor.

(g) The provisions of this Paragraph 8.6 shall survive and remain in full force and effect after the expiration or earlier termination of this Lease. No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its indemnification obligations under this Lease, unless specifically so agreed by Lessor in writing at the time of such agreement.

8.7 Lessor Administered Programs.

From time to time, during the term hereof, Lessor may elect, with Lessee's consent, to obtain on Lessee's behalf one or more of the policies of insurance or coverages required to be obtained by Lessee under this Article 8 provided that Lessee need only pay for such insurance up to the amount that it would have had to pay if it had secured the aforementioned policies of insurance or coverages itself. In the event Lessor so elects, Lessee shall be relieved of its obligation to obtain that particular type of policy or coverage. Lessee agrees to reimburse Lessor therefore up to the amount that Lessee would have paid for that particular type of policy or coverage had it secured the aforementioned policy or coverage itself within ten (10) days of receipt of written notice from Lessor. In the event any such policy or coverage is obtained on a group basis (i.e., properties in addition to the Premises demised under this Lease are insured under the policy), Lessor shall allocate an equitable portion of the premium to Lessee and such allocation shall be conclusive and binding on Lessee. With respect to any coverage so procured by Lessor in lieu of the coverage otherwise required by Paragraph 8.2 above, Lessor makes no representation or warranty concerning the adequacy of such coverage to protect Lessee's interests and Lessor shall have no liability in the event such coverage is inadequate. Lessee shall procure and maintain at its expense any excess coverage Lessee deems necessary to protect its interests.

9. Damage or Destruction.

9.1 Definitions.

(a) "Premises Partial Damage" shall mean damage or destruction to the Premises, other than Lessee-Owned Alterations and Utility Installations, the repair cost of which damage or destruction is less than fifty percent (50%) of the then Replacement Cost of the Premises (excluding Lessee's Alterations and Utility Installations and Trade Fixtures) immediately prior to such damage or destruction.

(b) "Premises Total Destruction" shall mean damage or destruction to the Premises, other than Lessee's Alterations and Utility Installations, the repair cost of which damage or destruction is fifty percent (50%) or more of the then Replacement Cost of the Premises (excluding Lessee's Alterations and Utility Installations and Trade Fixtures) immediately prior to such damage or destruction. In addition, if the Premises are located in a multi-tenant building (the "Building") damage or destruction to the Building, other than Alterations and Utility Installations and Trade Fixtures of any lessees of the Building, the cost of which damage or destruction is fifty percent (50%) or more of the then Replacement Cost (excluding Alterations and Utility Installations and Trade Fixtures of any lessees of the Building) of the Building shall, at the option of Lessor, be deemed to be Premises Total Destruction.

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(c) "Insured Loss" shall mean damage or destruction to the Premises, other than Lessee's Alterations and Utility Installations and Trade Fixtures, which was caused by an event covered by property insurance maintained by Lessor irrespective of any deductible amounts or coverage limits involved.

(d) "Replacement Cost" shall mean the cost to repair or rebuild the improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of applicable building codes, ordinances or laws, and without deduction for depreciation.

(e) "Hazardous Substance Condition" shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance as defined in Paragraph 5.2, in, on, or under the Premises.

9.2 Premises Partial Damage - Insured Loss.

If Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee-Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect. In the event, however, that there is a shortage of insurance proceeds and such shortage is due to the fact that, by reason of the unique nature of the improvements in the Premises, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or satisfactory assurance thereof, within ten (10) days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or satisfactory assurance thereof within said ten (10) day period, Lessor shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If Lessor does not receive such funds or assurance within said period, Lessor may nevertheless elect by written notice to Lessee within ten (10) days thereafter to make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect. If Lessor does not receive such funds or assurance within such ten (10) day period, and if Lessor does not so elect to restore and repair, then this Lease shall terminate sixty (60) days following the occurrence of the damage or destruction. Unless otherwise agreed, Lessee shall in no event have any right to reimbursement from Lessor for any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3 rather than Paragraph 9.2, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

9.3 Partial Damage - Uninsured Loss.

If Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense and this Lease shall continue in full force and effect), Lessor may, at Lessor's option, either (i) repair such damage as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) give written notice to Lessee within thirty (30) days after receipt by Lessor of knowledge of the occurrence of such damage of Lessor's desire to terminate this Lease as of the date sixty (60) days following the date of such notice unless the reason for the lack of insurance coverage is that Lessor chose not to purchase cost insurance coverage that was commercially reasonable and available. In the event Lessor elects to give such notice of Lessor's intention to terminate this Lease, Lessee shall have the right within ten (10) days after the receipt of such notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage totally at Lessee's expense and without reimbursement from Lessor. Lessee shall provide Lessor with the required funds or satisfactory assurance thereof within thirty (30) days following such commitment from Lessee. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the funds or assurance thereof within the times specified above, this Lease shall terminate as of the date specified in Lessor's notice of termination.

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9.4 Total Destruction.

Notwithstanding any other provision hereof, if Premises Total Destruction occurs (including any destruction required by any authorized public authority), this Lease shall terminate sixty (60) days following the date of such Premises Total Destruction, whether or not the damage or destruction is an Insured Loss or was caused by a negligent or willful act of Lessee. In the event, however, that the damage or destruction was caused by Lessee, Lessor shall have the right to recover Lessor's damages from Lessee.

9.5 Damage Near End of Term.

If at any time during the last six (6) months of the term of this Lease there is damage for which the cost to repair exceeds one month's Base Rent, whether or not an Insured Loss, Lessor may, at Lessor's option, terminate this Lease effective sixty (60) days following the date of occurrence of such damage by giving written notice to Lessee of Lessor's election to do so within thirty (30) days after the date of occurrence of such damage. Provided, however, if Lessee at that time has an exercisable option to extend this Lease, then Lessee may preserve this Lease by (a) exercising such option, and (b) providing Lessor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs on or before the earlier of (i) the date which is ten (10) days after Lessee's receipt of Lessor's written notice purporting to terminate this Lease, or (ii) the day prior to the date upon which such option expires. If Lessee duly exercises such option during such period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor's expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate as of the date set forth in the first sentence of this Paragraph 9.5.

9.6 Abatement of Rent; Lessee's Remedies.

In the event of (i) Premises Damage or (ii) Hazardous Substance Condition not caused by Lessee, its employees, agents or invitees, the Base Rent, payable by Lessee hereunder for the period during which such damage or condition, its repair, remediation or restoration continue, shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired. Except for abatement of Base Rent, as aforesaid, all other obligations of Lessee hereunder shall be performed by Lessee, and Lessee shall have no claim against Lessor for any damage suffered by reason of any loss of use of the Premises during such repair, remediation or restoration period unless such Premises Damage or Hazardous Substance condition was due to a grossly negligent or willful act of Lessor.

9.7 Hazardous Substance Conditions.

If a Hazardous Substance Condition occurs, unless caused by Lessee, its employees, agents or invitees (in which case Lessee shall make the investigation and remediation thereof required by Applicable Requirements and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 5.2 and Paragraph 12), Lessor may, at Lessor's option, either (i) investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated cost to investigate and remediate such condition exceeds six (6) times the then monthly Base Rent or \$25,000, whichever is less, give written notice to Lessee within thirty (30) days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition of Lessor's desire to terminate this Lease as of the date sixty (60) days following the date of such notice. In the event Lessor elects to give such notice of Lessor's intention to terminate this Lease, Lessee shall have the right within ten (10) days after the receipt of such notice to give written notice to Lessor of Lessee's commitment to pay for the excess costs of (a) investigation and remediation of such Hazardous Substance Condition to the extent required by Applicable Requirements, over (b) an amount equal to six (6) times the then monthly Base Rent or \$25,000, whichever is less. Lessee shall provide Lessor with the funds required of Lessee or satisfactory assurance thereof within thirty (30) days following said commitment by Lessee. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such investigation and remediation as soon as reasonably possible

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after the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the time period specified above, this Lease shall terminate as of the date specified in Lessor's notice of termination.

**9.8 Termination - Advance Payments.**

Upon termination of this Lease pursuant to this Article 9, Lessor shall return to Lessee any advance payment made by Lessee to Lessor and so much of Lessee's Security Deposit as has not been, or is not then required to be, used by Lessor under the terms of this Lease.

**9.9 Waiver of Statutes.**

Lessor and Lessee agree that the terms of this Lease shall govern the effect of any damage to or destruction of the Premises and the Building with respect to the termination of this Lease and hereby waive the provisions of any present or future statute to the extent it is inconsistent herewith.

**10. Utilities.**

Lessee shall pay for all water, gas, salt water, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon. If any such services are not separately metered to Lessee, Lessee shall pay a proportion, to be determined by Lessor, of all charges jointly metered. Lessor's good faith reasonable determination of Lessee's portion shall be conclusive and binding.

**11. Assignment and Subletting.**

**11.1 Lessor's Consent Required.**

(a) Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or encumber (collectively, "assign or assignment") or sublet or permit anyone other than Lessee and its employees to use or occupy (collectively, "sublet or sublease") all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent which Lessor may grant or withhold in its sole and absolute discretion, except if the Lessee is a company or co-operative comprised of members who independently own and/or operate grocery stores, it may assign or sublet the Lease to \_\_\_\_\_, but no other sublease or assignment shall be permitted without Lessor's prior written consent as aforesaid.

(b) A change in the control of Lessee shall constitute an assignment requiring consent. The transfer, on a cumulative basis, of twenty-five percent (25%) or more of the voting control of Lessee shall constitute a change in control for this purpose.

(c) Intentionally omitted.

(d) An assignment or sublease without consent shall, at Lessor's option, be a Default curable after notice per Paragraph 12.1(d), or a noncurable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unapproved assignment or sublease as a noncurable Breach, Lessor may either: (i) terminate this Lease, or (ii) upon thirty (30) days written notice, increase the monthly Base Rent to one hundred ten percent (110%) of the Base Rent then in effect. Further, in the event of such Breach and rental adjustment, all fixed and non-fixed rental adjustments scheduled during the remainder of the Lease term shall be increased to one hundred ten percent (110%) of the scheduled adjusted rent.

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(e) Notwithstanding the foregoing, allowing a de minimus portion of the Premises, i.e., 20 square feet or less, to be used by a third party vendor in connection with the installation of a vending machine shall not require Lessor's consent.

11.2 Terms and Conditions Applicable to Assignment and Subletting.

(a) Regardless of Lessor's consent, any assignment or sublease shall not (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease, (ii) release Lessee of any obligations hereunder, nor (iii) alter the primary liability of Lessee for the payment of Base Rent and other sums due Lessor hereunder or for the performance of any other obligations to be performed by Lessee under this Lease.

(b) Lessor may accept any rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of any rent for performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for the Default or Breach by Lessee of any of the terms, covenants or conditions of this Lease.

(c) The consent of Lessor to any assignment or sublease shall not constitute a consent to any subsequent assignment or sublease by Lessee or to any subsequent or successive assignment or sublease by the assignee or sublessee. However, Lessor may consent to subsequent subleases and assignments of the sublease or any amendments or modifications thereto without notifying Lessee or anyone else liable under this Lease or the sublease and without obtaining their consent, and such action shall not relieve such persons from liability under this Lease or the sublease.

(d) In the event of any Default or Breach of Lessee's obligation under this Lease, Lessor may proceed directly against Lessee or anyone else responsible for the performance of the Lessee's obligations under this Lease, including any sublessee, without first exhausting Lessors remedies against any other person or entity responsible therefor to Lessor, or any security held by Lessor.

(e) Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment or entering into such sublease, be deemed, for the benefit of Lessor, to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented in writing.

- (f) In connection with any request for Lessor's consent under this Paragraph 11.2,
- (g) and other out-of-pocket expenses incurred in dealing with the proposed assignment or sublease not to exceed \$1,000 in the aggregate.

11.3 Additional Terms and Conditions Applicable to Subletting.

The following terms and conditions shall apply to any subletting by Lessee of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein:

(a) Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all rentals and income arising from any sublease of all or a portion of the Premises heretofore or hereafter made by Lessee save only for the customary fee, not to exceed five (5) percent of the Base Rent due under this Lease, that a Lessee charges one of its members to assign it the lease in the event that the Lessee is a cooperative or company comprised of independent grocery store owner/operators, and Lessor may collect such rent and income and apply same toward Lessee's obligations under this Lease; provided, however, that until a Breach (as defined in Paragraph 12.1) shall occur in the performance of

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Lessee's obligations under this Lease, Lessee may, except as otherwise provided in this Lease, receive, collect and enjoy the rents accruing under such sublease. Lessor shall not, by reason of the foregoing provision or any other assignment of such sublease to Lessor, nor by reason of the collection of the rents from a sublessee, be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of Lessee's obligations to such sublessee under such Sublease. Lessee hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Lessor stating that a Breach exists in the performance of Lessee's obligations under this Lease, to pay to Lessor the rents and other charges due and to become due under the sublease save only for the customary fee, not to exceed five (5) percent of the Base Rent due under this Lease, that a Lessee charges one of its members to assign it the lease in the event that the Lessee is a cooperative or company comprised of independent grocery store owner/operators,. Sublessee shall rely upon any such statement and request from Lessor and shall pay such rents and other charges to Lessor without any obligation or right to inquire as to whether such Breach exists and notwithstanding any notice from or claim from Lessee to the contrary. Lessee shall have no right or claim against such sublessee, or, until the Breach has been cured, against Lessor, for any such rents and other charges so paid by said sublessee to Lessor.

(b) In the event of a Breach by Lessee in the performance of its obligations under this Lease, Lessor, at its option and without any obligation to do so, may require any sublessee to attorn to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any other prior defaults or breaches of such sublessor under such sublease.

(c) Any matter or thing requiring the consent of the sublessor under a sublease that involves a provision of the Lease itself shall also require the consent of Lessor herein.

(d) No sublessee under a sublease approved by Lessor shall further assign or sublet all or any part of the Premises without Lessors prior written consent.

(e) Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, who shall have the right to cure the Default of Lessee within the grace period, if any, specified in such notice. The sublessee shall have a right of reimbursement and offset from and against Lessee for any such Defaults cured by the sublessee.

**12. Default; Breach; Remedies.**

**12.1 Default; Breach.**

Lessor and Lessee agree that if an attorney is consulted by Lessor in connection with a Lessee Default or Breach (as hereinafter defined), \$350.00 is a reasonable minimum sum per such occurrence for legal services and costs in the preparation and service of a notice of Default, and that Lessor may include the cost of such services and costs in said notice as rent due and payable to cure said default. A "Default" by Lessee is defined as a failure by Lessee to observe, comply with or perform any of the terms, covenants, conditions or rules applicable to Lessee under this Lease. A "Breach" by Lessee is defined as the occurrence of any one or more of the following Defaults, and, where a grace period for cure after notice is specified herein, the failure by Lessee to cure such Default prior to the expiration of the applicable grace period, and shall entitle Lessor to pursue the remedies set forth in Paragraphs 12.2 and/or 12.3:

(a) The vacating of the Premises without the intention to reoccupy same, or the abandonment of the Premises.

(b) Except as expressly otherwise provided in this Lease, the failure by Lessee to make any payment of Base Rent, or any other monetary payment required to be made by Lessee hereunder when due, the failure by Lessee to provide Lessor with reasonable evidence of insurance or surety bond required under this Lease, or the failure of

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Lessee to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of five (5) days following receipt or deemed receipt of written notice thereof by or on behalf of Lessor to Lessee.

(c) Except as expressly otherwise provided in this Lease, the failure by Lessee to provide Lessor with reasonable written evidence (in duly executed original form, if applicable) of (i) compliance with Applicable Requirements per Paragraph 5.3, (ii) the inspection, maintenance and service contracts required under Paragraph 7.1(b), (iii) the rescission of an unauthorized assignment or subletting per Paragraph 11.1, (iv) an Offset Statement per Paragraph 44.1, (v) the subordination or non-subordination of this Lease per Paragraph 26, (vi) the execution of any document requested under Paragraph 37 (easements), or (vii) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of ten (10) days following receipt or deemed receipt of written notice by Lessee.

(d) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 35 hereof that are to be observed, complied with or performed by Lessee, other than those described in Subparagraphs 12.1(a), (b) or (c), above, where such Default continues for a period of ten (10) days after receipt or deemed receipt of written notice thereof by Lessee from or on behalf of Lessor; provided, however, that if the nature of Lessee's default is such that more than ten (10) days are reasonably required for its cure, then it shall not be deemed to be a Breach of this Lease by Lessee if Lessee commences such cure within said ten (10) day period and thereafter diligently prosecutes such cure to completion.

(e) The occurrence of any of the following events: (i) the making by Lessee or any Guarantor of any general arrangement or assignment for the benefit of creditors; (ii) Lessee's or a Guarantor's becoming a "debtor" as defined in 11 U.S. Code §101 or any successor statute thereto (unless, in the case of a petition filed against Lessee or a Guarantor, the same is dismissed within sixty (60) days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within thirty (30) days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within thirty (30) days; provided, however, in the event that any provision of this Subparagraph 12.1(e) is contrary to any applicable law, such provision shall be of no force or effect, and shall not affect the validity of the remaining provisions. The foregoing notwithstanding, no default shall occur with respect to an event under (i) or (ii) involving a Guarantor unless Lessor reasonably determines that the effect is to impair Lessor's security for the performance of Lessee's obligations under this Lease and Lessee fails to provide equivalent replacement security, in Lessor's reasonable opinion, within thirty (30) days after written notice to Lessee that the security has been so impaired and that replacement security is required. Without limiting what might constitute equivalent replacement security, the guaranty of a person having at least an equal net worth and liquidity of the Guarantor being replaced or an additional security deposit equal to six (6) months Base Rent is deemed to be equivalent replacement security.

(f) The discovery by Lessor that any financial statement of Lessee or any Guarantor, given to Lessor by Lessee or any Guarantor, was materially false.

The notices permitted to be given by Lessor under this Paragraph 12.1 shall constitute, and shall not be in addition to, the notices required by California Code of Civil Procedure §1161.

12.2 Remedies.

If Lessee fails to perform any affirmative duty or obligation of Lessee under this Lease, within ten (10) days after written notice to Lessee (or in case of an emergency, without notice), Lessor may at its option (but without obligation to do so), perform such duty or obligation on Lessee's behalf, including, but not limited to, the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. The costs and expenses of any such performance by Lessor shall be due and payable by Lessee to Lessor upon receipt of invoice therefor. If any

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check given to Lessor by Lessee shall not be honored by the bank upon which it is drawn, Lessor, at its own option, may require all future payments to be made under this Lease by Lessee to be made only by cashier's check. In the event of a Breach of this Lease by Lessee (as defined in Paragraph 12.1), with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach, Lessor may:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease and the term hereof shall terminate and Lessee shall immediately surrender possession of the Premises to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the worth at the time of the award of the unpaid rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Lessee proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to, the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iv) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco or the Federal Reserve Bank District in which the Premises are located at the time of award plus one percent (1%). Efforts by Lessor to mitigate damages caused by Lessee's Default or Breach of this Lease shall not waive Lessor's right to recover damages under this Paragraph 12.2. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding the unpaid rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any part thereof in a separate suit for such rent and/or damages. If a notice and grace period required under Subparagraphs 12.1 (b), (c) or (d) was not previously given, a notice to pay rent or quit, or to perform or quit, as the case may be, given to Lessee under any statute authorizing the forfeiture of leases for unlawful detainer shall also constitute the applicable notice for grace period purposes required by Subparagraph 12.1 (b), (c) or (d). In such case, the applicable grace period under the unlawful detainer statute shall run concurrently after the one such statutory notice, and the failure of Lessee to cure the Default within the greater of the two (2) such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

(b) Continue the Lease and Lessee's right to possession in effect (in California under California Civil Code §1951.4) after Lessee's Breach and recover the rent as it becomes due. If Lessor elects this remedy, Lessee shall have the right to assign this Lease or sublet the Premises with Lessor's prior written consent, not to be withheld unreasonably, notwithstanding any other provision of this lease to the contrary. Lessor and Lessee agree that the limitations on assignment and subletting in this Lease are reasonable. Acts of maintenance or preservation, efforts to relet the Premises, or the appointment of a receiver to protect the Lessors interest under this Lease, shall not constitute a termination of the Lessee's right to possession.

(c) Pursue any other remedy now or hereafter available to Lessor under the laws or judicial decisions of the state wherein the Premises are located.

(d) The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises.

### 12.3 Inducement Recapture in Event of Breach.

Any agreement by Lessor for free or abated rent or other charges applicable to the Premises, or for the giving or paying by Lessor to or for Lessee of any cash or other bonus, inducement or consideration for Lessee's entering into this Lease, all of which concessions are hereinafter referred to as "Inducement Provisions" shall be deemed conditioned

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upon Lessee's full and faithful performance of all of the terms, covenants and conditions of this Lease to be performed or observed by Lessee during the term hereof as the same may be extended. Upon the occurrence of a Breach (as defined in Paragraph 12.1) of this Lease by Lessee, any such Inducement Provision shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration theretofore abated, given or paid by Lessor under such an Inducement Provision shall be immediately due and payable by Lessee to Lessor, and recoverable by Lessor, as additional rent due under this Lease, notwithstanding any subsequent cure of said Breach by Lessee. The acceptance by Lessor of rent or the cure of the Breach which initiated the operation of this Paragraph 12.3 shall not be deemed a waiver by Lessor of the provisions of this Paragraph 12.3 unless specifically so stated in writing by Lessor at the time of such acceptance.

**12.4 Breach by Lessor.**

Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this Paragraph, a reasonable time shall in no event be less than twenty (20) days after receipt or deemed receipt by Lessor, and by any Lender(s) whose name and address shall have been furnished to Lessee in writing for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed; provided, however, that if the nature of Lessor's obligation is such that more than twenty (20) days after such notice is reasonably required for its performance, then Lessor shall not be in breach of this Lease if performance is commenced within such twenty (20) day period and thereafter diligently pursued to completion.

**13. Condemnation.**

If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (all of which are herein called "condemnation"), this Lease shall terminate as to the part so taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than ten percent (10%) of the floor area of the Premises is taken by condemnation, Lessor or Lessee may, at its option, (to be exercised in writing within ten (10) days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessor or Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in the same proportion as the rentable floor area of the Premises taken bears to the total rentable floor area of the Premises. No reduction of Base Rent shall occur if the condemnation does not apply to any portion of the Premises. Any award for the taking of all or any part of the Premises under the powers of eminent domain or any payment made under threat of the exercise of such power shall be the property of Lessor, whether such award shall be made as compensation for any bonus value of the leasehold or for the taking of the fee, or as severance damages; provided, however, that Lessee shall be entitled to any compensation, separately awarded to Lessee for Lessee's relocation expenses and/or loss of Lessee's Trade Fixtures or goodwill. In the event that this Lease is not terminated by reason of such condemnation, Lessor shall to the extent of its net severance damages received, repair any damage to the Premises caused by such condemnation authority. Lessee shall be responsible for the payment of any amount in excess of such net severance damages required to complete such repair, or Lessee may elect to terminate this Lease under paragraph 46.3.

**14. Lessor's Liability.**

The term "Lessor" as used herein shall mean the owner or owners at the time in question of the fee title to the Premises. In the event of a transfer of Lessor's title or interest in the Premises or in this Lease, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined.

**15. Severability.**

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The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

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**16. Interest on Past-Due Obligations.**

Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor within fourteen (14) days following the date on which it was due ("delinquency date"), shall bear interest from the delinquency date at the "prime rate" of interest as published in The Wall Street Journal on the date the payment became due or, if not published on that date, on the next publication date, plus four percent (4%) per annum, but not exceeding the maximum rate allowed by law, in addition to the late charge provided for in Paragraph 4.4.

**17. Time of Essence.**

Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

**18. Rent Defined.**

All monetary obligations of Lessee to Lessor under the terms of this Lease are deemed to be Rent.

**19. Notices.**

**19.1 Notice Requirements.**

All notices required or permitted by this Lease shall be in writing and may be delivered in person (by hand or by messenger or courier service) or may be sent by certified mail, return receipt requested, with postage prepaid, and shall be deemed received if served in a manner specified in this Paragraph 19. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notice purposes. Either Party may by written notice to the other specify a different address for notice purposes, except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for the purpose of mailing or delivering notices to Lessee. A copy of all notices required or permitted to be given to Lessor hereunder shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate by written notice to Lessee. A party giving notice shall also give notice under this Article 19 to the California Attorney General at the address specified here or at such other address as the Attorney General may specify by notice to the parties: Emilio Varanini, Esq., Deputy Attorney General, Antitrust Section, Public Rights Division, California Attorney General's Office 300 South Spring Street, Los Angeles, Ca. 90013.

**19.2 Date of Notice.**

Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. Notices delivered by United States Express Mail or overnight courier that guarantees next day delivery shall be deemed given twenty-four (24) hours after delivery of the same to the United States Postal Service or courier. If notice is received on a Saturday or a Sunday or a legal holiday, it shall be deemed received on the next business day.

**20. Waivers.**

No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or any other term, covenant or condition hereof. Lessor's consent to, or approval of, any such act shall not be

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deemed to render unnecessary the obtaining of Lessor's consent to, or approval of, any subsequent or similar act by Lessee, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent. Regardless of Lessor's knowledge of a Default or Breach at the time of accepting rent, the acceptance of rent by Lessor shall not be a waiver of any Default or Breach by Lessee of any provision hereof. Any payment given Lessor by Lessee may be accepted by Lessor on account of monies or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such payment.

**21. Non-Recording.**

Neither this Lease nor any memorandum hereof shall be recorded.

**22. Holdover.**

If Lessee remains in possession of the Premises after the expiration of the term of the Lease with the written consent of Lessor, such holding over shall not operate as a renewal of this Lease, but shall create a month-to-month tenancy, terminable by either party upon thirty (30) days' written notice to the other, on the same terms and conditions as contained herein except that monthly rent equal to 125% the monthly Base Rent for the last year of the term of this Lease shall be paid in advance on the first day of each month. Any holdover without Lessor's written consent shall constitute a tenancy at sufferance.

**23. Cumulative Remedies.**

No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

**24. Covenants and Conditions; Construction of Agreement.**

All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions. In construing this Lease, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Lease. Whenever required by the context, the singular shall include the plural and vice versa. This Lease shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.]

**25. Binding Effect; Choice of Law.**

This Lease shall be binding upon the Parties, their personal representatives, successors and assigns and be governed by the laws of the State of California. Any litigation between the Parties hereto concerning this Lease shall be initiated in Los Angeles County.

**26. Subordination; Attornment; Non-Disturbance.**

**26.1 Subordination.**

This Lease and any Option granted hereby shall, at the option of any lender ("Lender") to Lessor or ground Lessor, be subject and subordinate to any ground lease, mortgage, deed of trust, or other hypothecation or security device (collectively, "Security Device"), now or hereafter placed upon the Premises, to any and all advances made on the security thereof, and to all renewals, modifications, and extensions thereof, provided that the Lender shall have provided to Lessee a commercially reasonable non-disturbance agreement with respect to a subordination of this Lease to a

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Security Device. Lessee agrees that the Lenders holding any such Security Device shall have no duty, liability or obligation to perform any of the obligations of Lessor under this Lease, but that in the event of Lessor's default with respect to any such obligation, Lessee will give any Lender whose name and address have been furnished Lessee in writing for such purpose notice of Lessor's default pursuant to Paragraph 12.4. If any Lender shall elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device and shall give written notice thereof to Lessee, this Lease and such Options shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof.

**26.2 Attornment.**

Lessee agrees to attorn to a Lender or any other party who acquires ownership of the Premises by reason of a foreclosure of a Security Device, and that in the event of such foreclosure, such new owner shall not: (i) be liable for any act or omission of any prior Lessor or with respect to events occurring prior to acquisition of ownership, (ii) be subject to any offsets or defenses which Lessee might have against any prior Lessor, or (iii) be bound by prepayment of more than one (1) month's rent.

**26.3 Self-Executing.**

The agreements contained in this Article 26 shall be effective without the execution of any further documents; provided, however, that upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any such subordination or non-subordination, adornment and/or non-disturbance agreement as is provided for herein.

**27. Attorneys' Fees.**

If any Party brings an action or proceeding to enforce the terms hereof or declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term "Prevailing Party" shall include, without limitation, a Party who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party of its claim or defense. The attorneys' fee award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. Lessor shall be entitled to attorneys' fees, costs and expenses incurred in preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such Default or resulting Breach.

**28. Lessor's Access; Showing Premises; Repairs.**

Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times for the purpose of showing the same to prospective purchasers, lenders, or lessees, and making such alterations, repairs, improvements or additions to the Premises or to the Building, as Lessor may reasonably deem necessary. Lessor may at any time place on or about the Premises or Building any ordinary "For Sale" signs and Lessor may at any time during the last one hundred eighty (180) days of the term hereof place on or about the Premises any ordinary "For Lease" signs. All such activities of Lessor shall be without abatement of Rent or liability to Lessee.

**29. Auctions.**

Lessee shall not conduct, nor permit to be conducted, either voluntarily or involuntarily, any auction upon the Premises without first having obtained Lessor's prior written consent.

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**30. Signs.**

Lessee shall not place any sign upon the exterior of the Premises or the Building, except that Lessee may, with Lessor's prior written consent not to be withheld unreasonably, install (but not on the roof) such signs as are reasonably required to advertise Lessee's own business so long as such signs are in a location designated by Lessor, comply with Applicable Requirements and are satisfactory to Lessor in terms of quality, style and materials. The installation of any sign on the Premises by or for Lessee shall be subject to the provisions of Paragraph 7 (Maintenance, Repairs, Utility Installations, Trade Fixtures and Alterations). Unless otherwise expressly agreed herein, Lessor reserves all rights to the use of the roof of the Building, and the right to install advertising signs on the Building, including the roof, which do not unreasonably interfere with the conduct of Lessee's business; Lessor shall be entitled to all revenues from such advertising signs.

**31. Termination; Merger.**

Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the mutual termination or cancellation hereof, or a termination hereof by Lessor for Breach by Lessee, shall automatically terminate any sublease or lesser estate in the Premises; provided, however, Lessor shall, in the event of any such surrender, termination or cancellation, have the option to continue any one or all of any existing subtenancies. Lessor's failure within ten (10) days following any such event to make a written election to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such event constitute the termination of such interest.

**32. Consents.**

(a) Unless expressly provided otherwise herein, wherever in this Lease the consent of Lessor is required, Lessor's satisfaction is required, or Lessor's judgment or discretion are to be exercised, such matter shall be within the reasonable exercise of Lessor's discretion. Lessor's actual reasonable costs and expenses (including, but not limited to, architects', attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Lessee for any Lessor consent pertaining to this Lease or the Premises, including, but not limited to, consents to an assignment, a subletting or the presence or use of a Hazardous Substance, shall be paid by Lessee to Lessor upon receipt of an invoice and supporting documentation therefor. Lessor may, as a condition to considering any such request by Lessee, require that Lessee deposit with Lessor an amount of money reasonably calculated by Lessor to represent the cost Lessor will incur in considering and responding to Lessee's request. Any unused portion of said deposit shall be refunded to Lessee without interest. Lessor's consent to any act, assignment of this Lease or subletting of the Premises by Lessee shall not constitute an acknowledgment that no Default or Breach by Lessee of this Lease exists, nor shall such consent be deemed a waiver of any then existing Default or Breach, except as may be otherwise specifically stated in writing by Lessor at the time of such consent.

(b) The failure to specify herein any particular condition to Lessor's consent shall not preclude the impositions by Lessor at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given.

**33. Quiet Possession.**

Upon payment by Lessee of the Rent for the Premises and the performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession of the Premises for the entire term hereof subject to all of the provisions of this Lease.

**34. Intentionally omitted.**

**35. Rules and Regulations.**

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Lessee agrees that it will abide by, and keep and observe all reasonable rules and regulations ("Rules and Regulations") which Lessor may make from time to time for the management, safety, care, and cleanliness of the grounds, the parking and unloading of vehicles and the preservation of good order, as well as for the convenience of other occupants or lessees of the Building and their invitees.

**36. Security Measures.**

Lessee hereby acknowledges that the rental payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties.

**37. Reservations.**

Lessor reserves the right, from time to time, to grant, without the consent or joinder of Lessee, such easements, rights of way, utility raceways, and dedications that Lessor deems necessary, and to cause the recordation of parcel maps and restrictions, so long as such easements, rights of way, utility raceways, dedications, maps and restrictions do not unreasonably interfere with the use of the Premises, including the parking lot, by Lessee. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate any such easement rights, dedication, map or restrictions. Lessor also reserves (i) the right of ingress and egress through the Premises to other parts of the building, (ii) the exclusive use of all exterior walls and roof of the Building, (iii) the rights to install, maintain, replace and use pipes, ducts, conduits, and wires through the Premises, and (iv) space for shaft ways, hallways, stairs and the like substantially as presently located.

**38. Performance Under Protest.**

If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay under the provisions of this Lease.

**39. Authority.**

If either Party hereto is a corporation, trust, general or limited partnership, or limited liability company or partnership, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on its behalf. If Lessee is a corporation, trust, partnership, or limited liability company or partnership, Lessee shall, within thirty (30) days after request by Lessor, deliver to Lessor evidence satisfactory to Lessor of such authority.

**40. Conflict.**

Any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

**41. Offer.**

Preparation of this Lease by either Lessor or Lessee or Lessor's agent or Lessee's agent and submission of same to Lessee or Lessor shall not be deemed an offer to lease. This Lease is not intended to be binding until executed and delivered by all Parties hereto.

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**42. Amendments.**

This Lease may be modified only in writing, signed by the Parties in interest at the time of the modification. The Parties shall amend this Lease from time to time to reflect any adjustments that are made to the Base Rent or other rent payable under this Lease. As long as they do not materially change Lessee's obligations hereunder, Lessee agrees to make such reasonable non-monetary modifications to this Lease as may be reasonably required by an institutional insurance company or pension plan Lender in connection with the obtaining of normal financing or refinancing of the property of which the Premises are a part.

**43. Multiple Parties.**

Except as otherwise expressly provided herein, if more than one person or entity is named herein as Lessee, the obligations of such multiple parties shall be the joint and several responsibility of all persons or entities named herein as such Lessee, and each named Lessee irrevocably constitutes and appoints each other named Lessee as his attorney-in-fact and agent for all purposes related to this Lease, including without limitation the service of any notice or process.

**44. Miscellaneous.**

**44.1 Offset Statement.**

(a) Lessee shall at any time and from time to time upon not less than ten (10) days<sup>1</sup> after the receipt or deemed receipt of prior written notice from Lessor execute, acknowledge and return to Lessor a written statement in form as requested by Lessor:

(i) Certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the dates to which the Base Rent and other charges are paid, if any.

(ii) Acknowledging that there are not, to Lessee's knowledge, any uncured defaults on the part of Lessor hereunder, or specifying such defaults if any are claimed.

(iii) Stating the amount of any security deposit or last month's rent deposit; and

(iv) Containing such other information concerning the Lease as Lessor may request.

Any such statement may be relied upon by any prospective purchaser or encumbrancer of the Premises or of all or any portion of the real property of which the Premises are a part.

(b) Lessee's failure to deliver such statement within such time shall be conclusive upon Lessee:

(i) That this Lease is in full force and effect, without modification except as may be represented by Lessor;

(ii) That there are no uncured defaults in Lessor's performance;

(iii) That not more than one month's Minimum Rent has been paid in advance; and

(iv) That all other statements contained in the certificate requested by Lessor are true and correct.

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44.2 Health and Safety.

Lessee covenants at all times during the term of this Lease to comply with the requirements of the Occupational Safety and Health Act of 1970, 29 U.S.C. §651 *et seq.*, and any analogous legislation in California (collectively, the "Act"), to the extent that the Act applies to the Premises and any activities thereon. Without limiting the generality of the foregoing, Lessee covenants to maintain all working areas, all machinery, structures, electrical facilities and the like upon the Premises in a condition that fully complies with the requirements of the Act, including such requirements as would be applicable with respect to agents, employees or contractors of Lessor who may from time to time be present upon the Premises, and Lessee agrees to indemnify and hold harmless Lessor from any liability, claim or damages arising as a result of a breach of the foregoing covenant and from all costs, expenses and charges arising therefrom including, without limitation, attorneys' fees and court costs incurred by Lessor in connection therewith, which indemnity shall survive the expiration or termination of this Lease.

44.3 Water Allocations.

All water and other utility allocations available with respect to Lessee's use and occupancy of the Premises are, and upon termination of this Lease shall remain, Lessor's sole and exclusive property, Lessee hereby irrevocably assigning to Lessor all of lessee's rights and interest in and to such allocations.

44.4 No Easements for Light or Air.

Any diminution or shutting off of light, air or view by any improvement made on lands adjacent to the Premises, whether or not owned by Lessor, shall in no way affect this Lease or impose any liability on Lessor.

45. Merchandising Covenants.

45.1 Opening for Business.

Lessee shall open the Premises for business to the general public ("Opening") within ninety (90) days after the Commencement Date, except that this Opening covenant shall be suspended during such period that Opening is prevented by occurrence of one or more events of force majeure (i.e., acts of God, labor strikes and actions, civil commotion and other events beyond Lessee's control [excluding financial difficulties]), provided that Lessee gives Lessor written notice of the occurrence and nature of an event of force majeure within ten (10) days after the occurrence thereof.

45.2 Covenant of Continuous Operation.

Whether or not Percentage Rent is payable under this Lease, after the Opening Lessee shall continuously operate and use the Premises for the uses specified in this Lease on the days and during the time specified in Exhibit C attached hereto except when the Premises cannot be open for business because of fire, flood, utility interruption or other event beyond Lessee's control which precludes operation of the Premises. Notwithstanding the foregoing the Lessee may, with the prior written approval of Lessor, cease operations for a period of not more than five (5) consecutive days or in the aggregate not more than ten (10) days during any consecutive twelve (12) month period during the term of this Lease. The failure of the Lessee to comply with this covenant shall constitute a material default under this Lease and, if such default is not cured by reopening within a period of three (3) days after receipt or deemed receipt of written notice thereof from Lessor to Lessee, Lessor may exercise any of the rights or remedies under Paragraph 12.2 above. Any subsequent default within one (1) year shall be deemed a non-curable Breach of this Lease.

45.3 Inventory, etc.

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After the Opening Lessee shall maintain a complete inventory of products appropriate for a grocery store, which shall include, without limitation, the categories listed in Exhibit D hereto. Additional categories can be added and categories can be deleted with Lessor's consent. Lessee shall maintain an adequate staff of trained personnel and sufficient trade fixtures and equipment to serve customers efficiently. Lessee acknowledges and agrees that the business is seasonal and that more inventory and staff are required for the months of June-September.

#### 45.4 Management.

Lessee shall cause the Premises to be managed "substantially continuously" by a person, whether one or more owners of Lessee and/or employees each having at least five (5) years combined experience as an owner/operator and/or manager of a grocery store, supermarket, convenience store, cash and carry business or liquor store; provided that in the event of the death, illness or termination of the manager, Lessee shall have ninety (90) days to replace the former manager with a new manager having the requisite experience. "Substantially continuously" means that at least one manager is physically present at the Premises at least fifty (50%) of the time the Premises are required to be open for business under the terms of this Lease. This provision shall not be interpreted so as to bar a Lessee or Sublessee from promoting an employee to this position who otherwise has the requisite experience.

#### 46. Relocation and Additional Termination Rights.

##### 46.1 Development.

If Lessor desires to develop the Property during the lease term and has filed and received approval on an application for a local coastal plan or California Coastal Commission approval, a general plan amendment, a request for a specific plan approval, and a request for a zoning change, as may be necessary to develop the Property, Lessor shall have the right to relocate Lessee, at Lessor's expense, to a location substantially equivalent to or superior to the Premises, provided that either (i) the relocation does not necessitate the interruption of Lessee's business for more than three (3) days or (ii) if the New Tenant's business will be interrupted for more than three (3) days, SCICo has agreed to pay the New Tenant promptly the sum of \$2,000 per diem for the fourth and each subsequent day that the New Tenant was unable to conduct business at the new location with the understanding that the interruption shall not last longer than seven (7) days. All of the terms and conditions of this Lease shall continue to apply except that the Premises shall be the location. No Base Rent will be due for any period of interruption of the Lessee's business, but no compensation shall be due Lessee for any operating expenses or lost profits during that period.

##### 46.2 Lessee's Financial Condition.

(a) Financial Information. Within one hundred twenty (120) days after the end of each fiscal year of Lessee during the term of this Lease, Lessee shall furnish to Lessor a balance sheet, income statement and statement of changes in financial position for the business conducted on the Premises as of and for the fiscal year then ended ("financial statements"). The financial statements shall be true and correct in all material respects and shall fairly present the financial condition of Lessee's business at year-end. The financial statements shall be prepared in conformance with generally accepted accounting principles consistently applied except as may be noted in the report of the accountant accompanying the financial statements. If Lessee has audited financial statements, the financial statements furnished to Lessor shall be audited; otherwise the financial statements shall be prepared on a compilation or review basis by a public accountant or certified public accountant.

(b) Change in Lessee's Financial Condition. If at any time during the term of this Lease, Lessor determines that a material adverse change in the financial condition of Lessee has occurred, and if in Lessor's reasonable judgment such change exposes Lessor to materially greater risk that Lessee will become insolvent or declare bankruptcy,

DECEMBER 21, 2005

Initials: \_\_\_\_\_  
\_\_\_\_\_

Lessor shall have the right to require an increase to Lessee's security deposit, in the form of cash or an irrevocable standby letter of credit, which shall be renewed periodically at least thirty (30) days prior to its expiry date, to an amount equal to six (6) months Base Rent at the rate then in effect within twenty (20) days after written notice to Lessee or, if Lessee fails to provide such increased security deposit in a timely manner, to terminate this Lease forthwith or to convert the term of this Lease to a month-to-month tenancy, terminable upon thirty (30) days notice by either party, on and subject to all of the other terms and conditions of this Lease..

46.3 Lessee Termination Right. Lessee shall have the right to terminate this Lease at any time prospectively upon written notice to Lessor and conditioned upon (i) surrender of the Premises on or before the effective termination date in the condition required by this Lease and (ii) the absence of any default or breach on the part of Lessee on the date the termination notice is given and on the effective termination date.

**47. Limitation on Recourse; Waiver of Jury Trial.**

(a) As a material part of the consideration to Lessor under this Lease, Lessee agrees to look solely to Lessor's interest in the Premises and the real property of which the Premises are a part for the recovery of any monetary judgments against Lessor and further agrees that neither Lessor nor any of Lessor's past, present or future shareholders, directors, officers, agents or employees (collectively called "Lessor affiliates") shall have any personal liability to Lessee with respect to matters arising from or in any way related to this lease, the Lessor-Lessee relationship between the parties or to Lessee's use or occupancy of the Premises or the real property of which the Premises are a part. Lessee further agrees that no Lessor affiliate shall be named as a party defendant in any action brought by or on behalf of Lessee; and

(b) If permitted by law, Lessor and Lessee each hereby waives all rights to a trial by jury of any action, proceeding or cross-complaint arising from or in any way related to this lease, the landlord-tenant relationship between the parties or to Lessee's use or occupancy of the Premises or the real property of which the Premises are a part.

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

The Parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.

Executed at: \_\_\_\_\_

Address:

on: \_\_\_\_\_

150 Metropole Avenue  
Post Office Box 737

By LESSOR:

Avalon, California 90704

Santa Catalina Island Company

Telephone: (310) 510-2000

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

Facsimile: (310) 510-2300

Name Printed: \_\_\_\_\_

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

DECEMBER 21, 2005

Initials: \_\_\_\_\_



Executed at: \_\_\_\_\_

on: \_\_\_\_\_

By LESSEE:

\_\_\_\_\_

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

Name Printed: \_\_\_\_\_

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

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone: ( ) \_\_\_\_\_

Facsimile: ( ) \_\_\_\_\_

DECEMBER 21, 2005

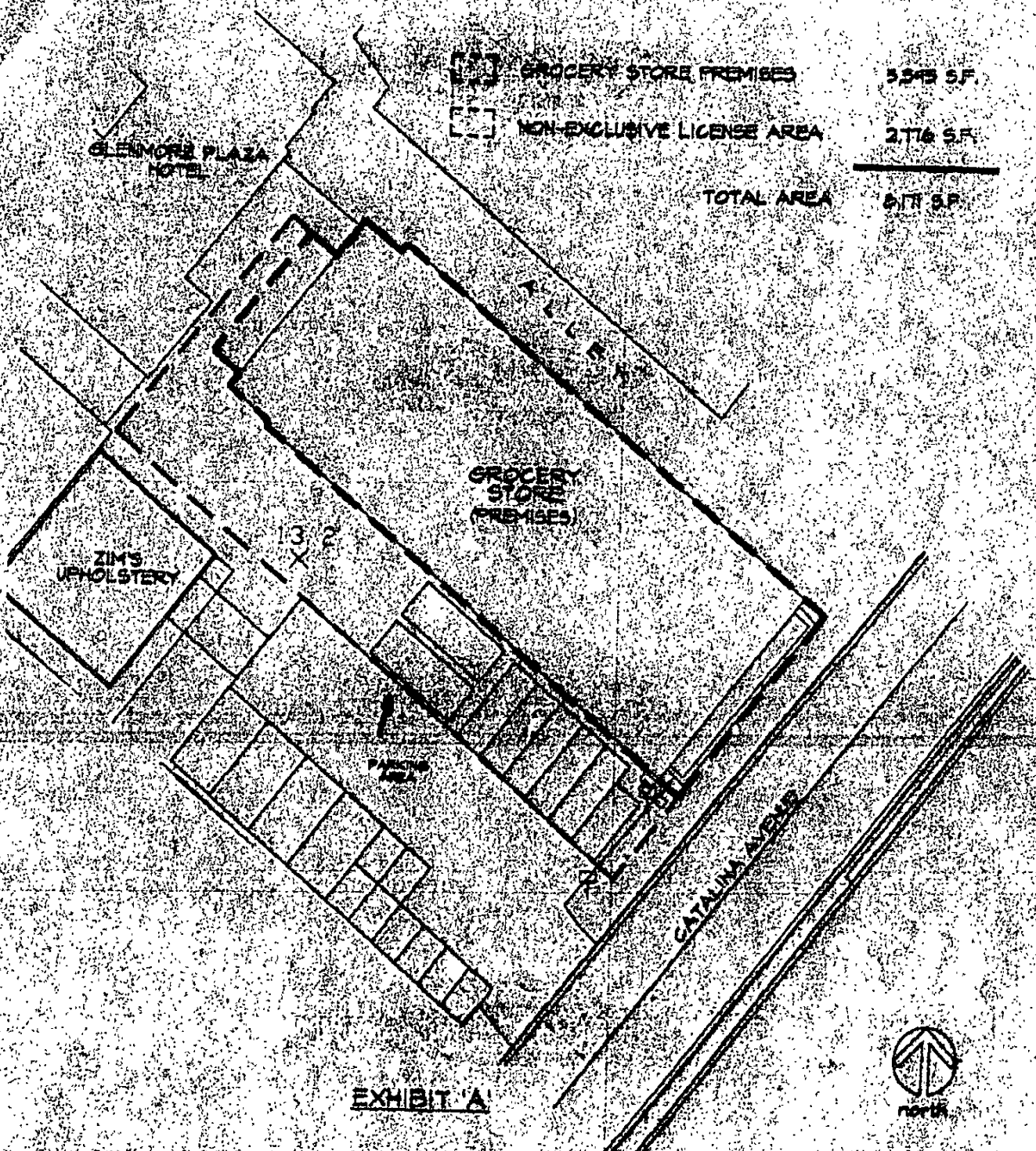
Initials: \_\_\_\_\_  
\_\_\_\_\_

DEC 21 2006 3:01 PM

Operations

15100612

1



[Solid Line Box]	GROCERY STORE PREMISES	5,948 S.F.
[Dashed Line Box]	NON-EXCLUSIVE LICENSE AREA	2,716 S.F.
<b>TOTAL AREA</b>		<b>8,671 S.F.</b>

GROCERY STORE, 117-118 CATALINA AVE.		LEASE BOUNDARY	
SANTA CATALINA ISLAND COMPANY		8,171 S.F.	1
		DEC 09	



SCANNED

STATE OF CALIFORNIA  
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL  
**ALCOHOLIC BEVERAGE LICENSE**  
OFF-SALE GENERAL

RECORDED

VALID FROM

JUL 01, 2005

VONS COMPANIES INC THE  
P O BOX 29096 MS 6516 TAX NASC  
PHOENIX, AZ 85038-9096

EXPIRES

JUN 30, 2006

TYPE NUMBER DUP

21-358292 -

1903-03

AREA CODE

RENEWAL

BUSINESS ADDRESS  
(IF DIFFERENT)

DBA: VONS 2272  
117-19 CATALINA AVE  
AVALON, CA 90704

OWNERS:

VONS COMPANIES INC THE

CONDITIONS

7



**IMPORTANT INFORMATION**

**EFFECTIVE PERIOD** This license is effective only for the operating period shown above. A new license will be sent to you within 30 days of the expiration date on your license if payment is timely.

**POSTING** Cover this license with glass or other transparent material and post it on premises in a conspicuous place

**RENEWAL NOTICES** Renewal notices are sent to premises address unless a specific mailing address is requested. If a notice is not received 30 days before expiration date shown above, contact the nearest ABC office. To assure receipt of notices, advise your local ABC office of any change in address.

**RENEWAL DATES** It is the licensee's responsibility to pay the required renewal fee by the expiration date shown above. A penalty is charged for late renewal and the license can be automatically revoked for failure to pay.

**SEASONAL LICENSES** It is the licensee's responsibility to pay the required renewal fee prior to the next operating period.

**CONDITIONS** A copy of all applicable conditions must be kept on premises

**LICENSEE NAME** Only 10 names will be printed on each license. If there are more names associated with the license, they will be indicated by "ET AL". All names are on file and available upon request from your local ABC office.

**DBA** If you change your business name please notify your local ABC office

If you have any questions regarding this license, contact your local ABC office.

**NOTE:** CONTACT YOUR LOCAL ABC OFFICE IF YOUR LICENSED PREMISES WILL BE TEMPORARILY CLOSED FOR MORE THAN 15 DAYS OR WILL BE PERMANENTLY CLOSED.

SCANNED

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**EXHIBIT A**

[Date]

[Potential Acquiror]  
[Address]

**CONFIDENTIALITY AGREEMENT**

Dear Sirs:

In connection with your consideration of a possible grocery store operation in the current Vons Express location at 117-119 Catalina Avenue, in the City of Avalon on Catalina Island (the "Transaction"), and pursuant to the [DATE] Consent Decree entered into by the Vons Companies, Inc. with the Attorney General of the State of California, we have agreed to furnish you or your representatives with certain information relating to the past operations at the Vons Express location at 117-119 Catalina Avenue, in the City of Avalon on Catalina Island (the "Vons Express location").

The Vons Companies, Inc. and its applicable subsidiaries and affiliates are collectively referred to herein as the "Company" or "we" "us" and "our." All such information (whether written or oral) furnished (whether before or after the date hereof) by us or our directors, officers, employees, affiliates, representatives (including, without limitation, financial advisors, attorneys and accountants) or agents (collectively, "our Representatives") to you or your directors, officers, employees, affiliates, partners, representatives (including, without limitation, financial advisors, attorneys and accountants) or agents or your potential sources of financing for the Transaction (collectively, "your Representatives") and all notes, analyses, compilations, forecasts, studies or other documents prepared by you or your Representatives in connection with your or their review of, or your interest in, the Transaction which contain or reflect any such information, is hereinafter referred to as the "Information". The term Information will not, however, include information which (i) is or becomes publicly available other than as a result of a disclosure by you or your Representatives; or (ii) is or becomes available to you on a non-confidential basis from a source (other than us or our Representatives) which is not known to you, after reasonable inquiry, to be prohibited from disclosing such information to you or your representatives by a legal, contractual or fiduciary obligation to us or any other person; or (iii) is currently in your possession and not known to you, after reasonable inquiry, to be subject to any restriction on confidentiality.

Accordingly, you hereby agree that:

1. You and your Representatives (i) will keep the Information confidential and will not (except as required by applicable law, regulation or legal process, and only after compliance with paragraph 3 below), without our prior written consent, disclose any Information in any manner whatsoever, and (ii) will not use any Information other than in connection with the Transaction; provided, however, that you may reveal the Information to your Representatives (a) who need to know the Information for the purpose of evaluating the Transaction, (b) who are informed by you of the confidential nature of the Information, and

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- (c) who agree to act in accordance with the terms of this letter agreement. You will use reasonable efforts to cause your Representatives to observe the terms of this letter agreement, and regardless of the level of those efforts you will be responsible for any breach of this letter agreement by any of your Representatives.
2. You will take all commercially reasonable steps to protect the secrecy of and avoid disclosure and unauthorized use of the Information. You shall not use any Information for any purpose other than the consideration of the Transaction.
  3. In the event that you or any of your Representatives are requested pursuant to, or required by, applicable law, regulation or legal process (including, without limitation, by oral questions, interrogatories, request for information or documents in legal proceedings, civil investigation demands or other similar process) to disclose any of the Information, you will notify us promptly so that we may seek a protective order or other appropriate remedy or, in our sole discretion, waive compliance with the terms of this letter agreement. In the event that no such protective order or other remedy is obtained, or that the Company does not waive compliance with the terms of this letter agreement, you will furnish only that portion of the Information which you reasonably believe (after consulting with legal counsel) is legally required and will exercise all reasonable efforts (subject to the understanding that we will promptly reimburse you for any out-of-pocket expenses you incur for efforts requested by us) to obtain reliable assurance that confidential treatment will be accorded the Information.
  4. If you determine not to proceed with the Transaction, or if you complete the Transaction and commence to occupy the space currently occupied by the Vons Express, you will promptly inform us of that fact and, in that case, and at any time upon the written request of the Company or any of our Representatives, you will either (i) promptly destroy all copies of the written Information in your or your Representatives' possession and confirm such destruction to us in writing, or (ii) promptly deliver to the Company at your own expense all copies of the written Information in your or your Representatives' possession. Notwithstanding the return or destruction of the Information, you or your Representatives will continue to be bound by your obligations of confidentiality and other obligations hereunder.
  5. You acknowledge that neither we, nor our Representatives, nor any of our officers, directors, employees, agents or controlling persons within the meaning of Section 20 of the Securities Exchange Act of 1934, as amended, makes any express or implied representation or warranty as to the accuracy or completeness of the Information, and you agree that no such person (including Vons, its affiliated companies and the persons described in this paragraph) will have any liability relating to the Information, any errors therein or omissions therefrom, the Transaction, or this Agreement.
  6. You acknowledge that remedies at law may be inadequate to protect us against any actual or threatened breach of this letter agreement by you or by your Representatives, and, without prejudice to any other rights and remedies otherwise available to us, you agree to the granting of injunctive relief (upon a breach of or threatened breach of this Agreement) in our favor without proof of actual damages. In the event of litigation relating to this letter

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agreement, if a court of competent jurisdiction determines in a final, non-appealable order that this letter agreement has been breached, then the non-prevailing party will reimburse the prevailing party and its Representatives for its reasonable costs and expenses (including, without limitation, reasonable legal fees and expenses) incurred in connection with all such litigation.

- 7. You agree that no failure or delay by us in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right power or privilege hereunder.
- 8. This letter agreement will be governed by and construed in accordance with the laws of the State of California applicable to contracts between residents of that State and executed in and to be performed in that State.
- 9. This letter agreement contains the entire agreement between you and us concerning the confidentiality of the Information. No modifications of this letter agreement or waiver of any of the terms and conditions hereof will be binding upon you or us, unless approved in writing by each of you and us.
- 10. All provisions of this Agreement shall remain in full force and effect for two (2) years from the date of this Agreement.

Please confirm your agreement with the foregoing by signing and returning to the undersigned the duplicate copy of this letter enclosed herewith.

Very truly yours,

THE VONS COMPANIES, INC.

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

Accepted and Agreed as of the date first written above:

[POTENTIAL ACQUIROR]

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_





Star Office Supplies, Inc.  
310-473-9687



Recycled Paper

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**AIR COMMERCIAL REAL ESTATE ASSOCIATION  
GUARANTY OF LEASE**

SCANNED

WHEREAS, \_\_\_\_\_, hereinafter "Lessor", and \_\_\_\_\_, hereinafter "Lessee", are about to execute a document entitled "Lease" dated \_\_\_\_\_ concerning the premises commonly known as \_\_\_\_\_ wherein Lessor will lease the premises to Lessee, and

WHEREAS, \_\_\_\_\_ hereinafter "Guarantors" have a financial interest in Lessee, and

WHEREAS, Lessor would not execute the Lease if Guarantors did not execute and deliver to Lessor this Guarantee of Lease.

NOW THEREFORE, in consideration of the execution of the foregoing Lease by Lessor and as a material inducement to Lessor to execute said Lease, Guarantors hereby jointly, severally, unconditionally and irrevocably guarantee the prompt payment by Lessee of all rents and all other sums payable by Lessee under said Lease and the faithful and prompt performance by Lessee of each and every one of the terms, conditions and covenants of said Lease to be kept and performed by Lessee.

It is specifically agreed that the terms of the foregoing Lease may be modified by agreement between Lessor and Lessee, or by a course of conduct, and said Lease may be assigned by Lessor or any assignee of Lessor without consent or notice to Guarantors and that this Guaranty shall guarantee the performance of said Lease as so modified.

This Guaranty shall not be released, modified or affected by the failure or delay on the part of Lessor to enforce any of the rights or remedies of the Lessor under said Lease, whether pursuant to the terms thereof or at law or in equity.

No notice of default need be given to Guarantors, it being specifically agreed that the guarantee of the undersigned is a continuing guarantee under which Lessor may proceed immediately against Lessee and/or against Guarantors following any breach or default by Lessee or for the enforcement of any rights which Lessor may have as against Lessee under the terms of the Lease or at law or in equity.

Lessor shall have the right to proceed against Guarantors hereunder following any breach or default by Lessee without first proceeding against Lessee and without previous notice to or demand upon either Lessee or Guarantors.

Guarantors hereby waive (a) notice of acceptance of this Guaranty, (b) demand of payment, presentation and protest, (c) all right to assert or plead any statute of limitations relating to this Guaranty or the Lease, (d) any right to require the Lessor to proceed against the Lessee or any other Guarantor or any other person or entity liable to Lessor, (e) any right to require Lessor to apply to any default any security deposit or other security it may hold under the Lease, (f) any right to require Lessor to proceed under any other remedy Lessor may have before proceeding against Guarantors, (g) any right of subrogation.

Guarantors do hereby subrogate all existing or future indebtedness of Lessee to Guarantors to the obligations owed to Lessor under the Lease and this Guaranty.

If a Guarantor is married, such Guarantor expressly agrees that recourse may be had against his or her separate property for all of the obligations hereunder.

The obligations of Lessee under the Lease to execute and deliver stoppage statements and financial statements, as therein provided, shall be deemed to also require the Guarantors hereunder to do and provide the same.

The term "Lessor" refers to and means the Lessor named in the Lease and also Lessor's successors and assigns. So long as Lessor's interest in the Lease, the leased premises or the rents, issues and profits therefrom, are subject to any mortgage or deed of trust or assignment for security, no acquisition by Guarantors of the Lessor's interest shall affect the continuing obligation of Guarantors under this Guaranty which shall nevertheless continue in full force and effect for the benefit of the mortgagee, beneficiary, trustee or assignee under such mortgage, deed of trust or assignment and their successors and assigns.

The term "Lessee" refers to and means the Lessee named in the Lease and also Lessee's successors and assigns.

In the event any action be brought by said Lessor against Guarantors hereunder to enforce the obligation of Guarantors hereunder, the unsuccessful party in such action shall pay to the prevailing party therein a reasonable attorney's fee which shall be fixed by the court.

If this Form has been filled in, it has been prepared for submission to your attorney for his approval. No representation or recommendation is made by the AIR Commercial Real Estate Association, the real estate broker or its agents or employees as to the legal sufficiency, legal effect, or tax consequences of this Form or the transaction relating thereto.

Executed at: \_\_\_\_\_  
On: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
"GUARANTORS"