

# BLDC

Binghamton Local Development Corporation

Regular Meeting of the Board of Directors of the BLDC

Thursday November 14, 9:15 AM

Mayor's Conference Room, City Hall, 4th floor

## PROPOSED AGENDA

- I. Call to order: President, Patrick Doyle
- II. Approval of the Minutes of the September 26<sup>th</sup> Regular Meeting
- III. Presentation of the September and October 2024 Treasurer Report
- IV. Old Business:  
  
None
- V. New Business:

**RESOLUTION 25-3 A RESOLUTION OF THE BINGHAMTON LOCAL DEVELOPMENT CORPORATION TO ACCEPT THE RECOMMENDATION OF THE LOAN COMMITTEE TO AWARD TWO COMMERCIAL FAÇADE IMPROVEMENT GRANTS.**

**RESOLUTION 25-4: A RESOLUTION OF THE BINGHAMTON LOCAL DEVELOPMENT CORPORATION AUTHORIZING REIMBURSEMENT TO BOSCOV'S DEPARTMENT STORE, LLC, FOR MAINTENANCE ON THE BOILER AND FREIGHT ELEVATOR**

**RESOLUTION 25-5: A RESOLUTION OF THE BINGHAMTON LOCAL DEVELOPMENT CORPORATION ("BLDC") AUTHORIZING THE PRESIDENT OF THE BLDC TO EXECUTE A LEASE OF PREMISES LOCATED AT 11-13 COURT STREET IN THE CITY OF BINGHAMTON, NEW YORK, MORE PARTICULARLY DESCRIBED AS BROOME COUNTY TAX MAP PARCEL NUMBERS 160.40-2-5 AND 160.40-2-4 WITH BOSCOV'S DEPARTMENT STORE, LLC**

- VI. Mayor's Remarks
- VII. Executive Director's Remarks
- VIII. Adjourn

**REMINDER: Next BLDC Board Meeting, December 19, 9:00 AM**

**BINGHAMTON LOCAL DEVELOPMENT CORPORATION  
REGULAR MEETING MINUTES  
Thursday September 26, 2024**

ATTENDANCE	2024											
	1/25	2/22	3/28	4/25	5/23	6/27	7/25	8/22	9/26	10/24	11/14	12/19
<b>Directors</b>												
Kraham, Jared	P	P	P	P	P	P		P	P			
Berling, Juliet	P	P	P	P	P	P		P	P			
Cavanaugh, Robert	P	P	P	P	P	Ex		P	P			
Doyle, Patrick	P	P	P	P	Ex	Ex		P	P			
Farrell, Susan	P	P	P	P	P	P		P	P			
Grant, Wesleigh	NA	P	P	Ex	P	P		P	Ex			
Koffman, Betsy	P	P	Ex	P	P	P		P	P			
Kosty, Michael	NA	NA	Ex	P	P	Ex		P	P			
Sall, Ron	P	P	P	P	Ex	P		P	Ex			
Bergman, Sophie	P	P	P	P	Ex	P		P	Ex			
Robinson, Chuck	P	P	P	P	P	P		P	P			
Stento, Frank	P	P	P	P	P	Ex		P	P			
Stromhaug, Per	P	Ex	P	Ex	Ex	P		P	NA			
<b>Staff</b>												
Sarah Glose	P	P	P	P	Ex	P		P	P			
Joel Boyd	P	P	P	P	P	P		P	P			
Rachel Priest	P	P	P	P	P	P		P	P			
Janine Faulkner	P	P	P	P	P	Ex		P	P			
<b>Other</b>												
Steve Carson	P	P	P	P	NA	NA		NA	NA			

President Patrick Doyle called the Meeting to order at 9:09 AM.

**APPROVAL OF THE MINUTES OF THE AUGUST 22 REGULAR MEETING**

J. Kraham moved, seconded by S. Farrell. The motion was approved (9:0:0)

**PRESENTATION OF THE JUNE 2024 TREASURER REPORT**

R. Priest presented the financial report. At the end of July 2024, the end of month balance in the Restricted Account was \$491,520.05. The end of month balance in the UDAG account was \$662,732.16. There were no new delinquencies. Collection efforts continue for loans still in default. At the end of August 2024, the end of month balance in the Restricted Account was \$496,767.10. The end of month balance in the UDAG account was \$565,876.94.

**RESOLUTION 24-24: A RESOLUTION OF THE BINGHAMTON LOCAL DEVELOPMENT CORPORATION TO ACCEPT THE RECOMMENDATION OF THE**

STRATEGIC PRIORITIES COMMITTEE TO AUTHORIZE THE PURCHASE OF HOLIDAY LIGHTS FROM ILLUMINATIONS LIGHTING, INC. NOT TO EXCEED \$11,363.00 TO BE INSTALLED ON DOWNTOWN LIGHT POLES DURING THE HOLIDAY SEASON.

S. Glose summarized the Strategic Priorities Committee's desire to support retail in the Downtown district during the Holiday season. Lighting will support the experience of downtown shopping during the holidays.

F. Stento moved, seconded by M. Kosty. The motion was approved (9:0:0)

Mayor Kraham gave a brief update on the renovation at Town and Country Apartments. Several housing projects across the City are in the pipeline and are expected in the next few years. The Mayor mentioned that several large employers are continuing to expand in the urban core of Binghamton adding manufacturing jobs. The City continues to invest infrastructure to support the City's development strategy. The Mayor gave a brief summary of the City's budget process.

S. Glose discussed the need for flexible manufacturing space within the City, and summarized plans to apply for an EPA grant for pre-development site work for brownfield sites.

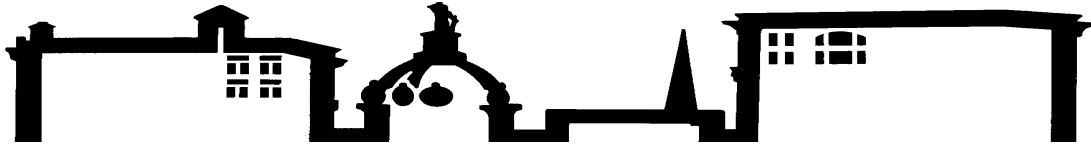
S. Glose discussed the pipeline for affordable housing projects in the area. The pipeline for these projects is built out for the next several years. The City is also prioritizing affordable home ownership.

The City will submit an application for the DRI for the Clinton Street Neighborhood Business District that is similar to the previous year's application. Work on projects in that area continue to advance.

There being no further business, J. Kraham made a motion to adjourn, R. Sall seconded, and the meeting adjourned (9-0-0) at 9:40 AM.

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Ron Sall, Secretary  
Binghamton Local Development Corporation



BLDC

BINGHAMTON LOCAL DEVELOPMENT CORPORATION

MONTHLY FINANCIAL REPORT  
SEPTEMBER 2024  
FISCAL YEAR 9/1/24—8/31/25  
CDBG YEAR 50

JARED M. KRAHAM, MAYOR

**BINGHAMTON LOCAL DEVELOPMENT CORPORATION**  
**FISCAL ACTIVITY**

September 1, 2024 through August 31, 2025

<b>Borrower</b>	<b>Amount</b>	<b>Date Approved</b>	<b>Expended Amount</b>	
Marketing Budget	\$ 25,000.00	June 22, 2023	\$18,092.04	UDAG

**BINGHAMTON LOCAL DEVELOPMENT CORPORATION**  
**Restricted Account Annual Income and Expenses- CDBG YEAR 48**  
September 1, 2022 to August 31, 2023

**Beginning Balance CDBG Fiscal Year 47 (2021-2022)** \$87,030.00

**Total** \$ 87,030.00

**Projected Income**

2018-2019 BLDC Restricted Account Projected Loan Income (Principal & Interest)	\$ 65,187.70
2018-2019 BLDC Restricted Account Actual Loan Income (Principal & Interest)	\$ 87,030.00
2019-2020 BLDC Restricted Account Projected Loan Income (Principal & Interest)	\$ 86,727.72
2019-2020 BLDC Restricted Account Actual Loan Income (Principal & Interest)	\$ 14,982.98
2020-2021 BLDC Restricted Account Projected Loan Income (Principal & Interest)	\$ 14,982.96
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2023-2024 BLDC Restricted Account Projected Loan Income (Principal & Interest)	\$ 272,884.98
2023-2024 BLDC Restricted Account Actual Loan Income (Principal & Interest)	\$ 157,032.63
2024-2025 BLDC Restricted Account Projected Loan Income (Principal & Interest)	\$ 204,251.64
2024-2025 BLDC Restricted Account Actual Loan Income (Principal & Interest)	\$ 14,078.52

**BINGHAMTON LOCAL DEVELOPMENT CORPORATION - REAL PROPERTY ASSET**

10 W. State Street & 12 W. State \$136,955.00  
445 State St

Charles St. and Satellite Propertie	\$435,000.00	Total Purchase Price (\$30,000/acre)
		\$50,000 of the total purchase price was paid 5/29/19
Charles St Lot #3	\$186,342.00	Total Purchase Price (\$30,000/acre)
		\$20,000 of the total purchase price was paid 6/24/2020
Closing Costs	\$2,684.25	
Total Real Property for BLDC	\$760,981.25	

**BINGHAMTON LOCAL DEVELOPMENT CORPORATION**

Statement of Income and Expense

**Restricted Account**

Sep-24

	<u>Sep-24</u>	<u>Year To Date</u>
Beginning of Month Balance	\$ 496,767.10	
Fiscal Year Beginning Balance		\$ 496,767.10
<b>Income</b>		
Loan Interest	\$ 1,487.55	\$ 1,487.55
Bank Interest	\$ 310.26	\$ 310.26
Penalties/Late Fees	\$ 25.00	\$ 25.00
Loan Principal	\$ 2,333.46	\$ 2,333.46
<b>Total Income</b>	<u>\$ 4,156.27</u>	<u>\$ 4,156.27</u>
<b>Expense</b>		
NYS Tax Filing Fee	\$ -	\$ -
Internal Revenue Service	\$ -	\$ -
Annual Interest Payment to HUD	\$ -	\$ -
Loan	\$ -	\$ -
CDBG	\$ -	\$ -
Misc	\$ -	\$ -
<b>Total Expense</b>	<u>\$ -</u>	<u>\$ -</u>
<b>Net Gain (Loss)</b>	<u>\$ 4,156.27</u>	<u>\$ 4,156.27</u>
<b>End of Month Balance</b>	<u><u>\$ 500,923.37</u></u>	<u><u>\$ 500,923.37</u></u>
Encumbered For All Loans	\$ -	
Interest committed to HUD 2023-2024 Fiscal Yr.	\$ 5,307.22	
<b>Available Cash</b>	<u>\$ 495,616.15</u>	

**Checks:**

**BINGHAMTON LOCAL DEVELOPMENT CORPORATION**

Accounts Receivable Report

Sep-24

**RESTRICTED ACCOUNT**

<b>Borrower</b>	<b>Original Loan Amount</b>	<b>Closing Date</b>	<b>Payment Amount</b>	<b>Amount Paid</b>	<b>Balance</b>
<b>REVOLVING LOANS</b>					
Hanrahan Enterprise	\$ 250,000.00	01/31/23	\$ 2,729.29	\$ 2,729.29	\$ 219,138.84
KLAW Industries	\$ 100,000.00	02/01/24	\$ 1,091.72	\$ 1,091.72	\$ 95,580.35
<b>IN DEFAULT:</b>					
VMR Electronics, LLC	\$ 108,000.00	05/04/09	\$ 1,475.90	\$ -	<b>\$ 65,366.19</b>
VMR Realty Management, LLC	\$ 292,000.00	05/04/09	\$ 1,769.07	\$ -	<b>\$ 261,544.52</b>
<b>TOTAL</b>	<b>\$ 750,000.00</b>		<b>\$ 7,065.98</b>	<b>\$ 3,821.01</b>	<b>\$ 641,629.90</b>

**Total Active Loans**           **0**  
**Total Loans**                   **4**



**BINGHAMTON LOCAL DEVELOPMENT CORPORATION**

## Statement of Income and Expense

**UDAG Account**

Sep-24

	<u>Sep-24</u>	<u>Year To Date</u>
Beginning of Month Balance	\$565,876.94	
Fiscal Year Beginning Balance		\$565,876.94
<b>INCOME</b>		
Principal Paid on Loans	\$ 7,344.88	\$ 7,344.88
Loan Interest	\$ 2,912.63	\$ 2,912.63
Bank Interest	\$ 2,112.60	\$ 38.24
Late Penalties	\$ 25.00	\$ 25.00
Other Income	\$ -	\$ -
Administrative Reimbursement	\$ -	\$ -
Main Street Grant Reimbursement	\$ -	\$ -
Parade Grant	\$ -	\$ -
<b>Total Income</b>	<u>\$12,395.11</u>	<u>\$10,320.75</u>
<b>EXPENSES</b>		
Loans	\$ -	\$ -
BLDC-City of Binghamton Contract	\$ -	\$ -
Professional Services	\$ -	\$ -
Insurance Expense	\$ -	\$ -
Accounting Expense	\$ -	\$ -
Marketing Expense	\$ 2,000.00	\$ 2,000.00
Property Maintenance Expense	\$ 5,775.38	\$ 5,775.38
Office Supplies	\$ -	\$ -
Community Event	\$ 45.00	\$ 45.00
Payroll Expense	\$ -	\$ -
Other	\$ -	\$ -
Utility Bill	\$ 5,997.92	\$ 5,997.92
Liabilites Paid	\$ -	\$ -
<b>Total Expenses</b>	<u>\$13,818.30</u>	<u>\$13,818.30</u>
<b>Net Gain (Loss)</b>	<u>(\$1,423.19)</u>	<u>(\$3,497.55)</u>
<b>End of Month Balance</b>	<u><u>\$564,453.75</u></u>	<u><u>\$562,379.39</u></u>
Encumbered For All Loans	\$0.00	
Encumbered For Marketing 2023-2024	\$25,000.00	
Encumbered for Bus. Restart - Disaster Loans	\$100,000.00	
Available Cash	\$439,453.75	

**BINGHAMTON LOCAL DEVELOPMENT CORPORATION**

Accounts Receivable Report

Sep-24

**UDAG ACCOUNT**

<b>Borrower</b>	<b>Loan Amount</b>	<b>Closing Date</b>	<b>Payment Amount</b>	<b>Amount Paid</b>	<b>Balance</b>
<b>Repayment Loans</b>					
142 Court Street, LLC #2	\$ 41,467.98	06/01/17	\$ -	\$ -	\$ -
Ellis Brothers	\$ 400,000.00	10/10/18	\$ 2,908.89	\$ 2,908.89	\$ 270,741.42
Emma St., LLC	\$ 140,000.00	04/01/19	\$ 1,031.22	\$ 1,031.22	\$ 96,738.78
Tom Haines	\$ 229,790.00	04/20/18	\$ 1,559.51	\$ 1,559.51	\$ 167,437.70
Renkan Holdings	\$ 200,000.00	09/05/22	\$ 1,931.21	\$ 1,931.21	\$ 166,142.44
Broome County Council of Church	\$ 150,000.00	06/15/20	\$ -	\$ -	\$ <b>150,000.00</b>
KLAW Industries	\$ 150,000.00	03/10/23	\$ 1,637.57	\$ 1,637.57	\$ 134,507.41
L2 Properties	\$ 100,000.00	07/30/24	\$ -	\$ -	\$ 100,000.00
<b>TOTAL</b>	<b>\$ 1,411,257.98</b>		<b>\$ 9,068.40</b>	<b>\$ 9,068.40</b>	<b>\$ 1,085,567.75</b>
<b>Total number of loans</b>		<b>8</b>			
<b>Mini Micro Loans</b>					
Zachary Salisbury - QOLA	\$ 5,000.00	05/23/18	\$ 150.42	\$ 600.00	\$ <b>1,042.97</b>
Ariel Hendricks CPT LLC	\$ 5,000.00	06/29/20	\$ 147.06	\$ -	\$ <b>4,071.25</b>
<b>TOTAL</b>	<b>\$ 10,000.00</b>		<b>\$ 297.48</b>	<b>\$ 600.00</b>	<b>\$ 5,114.22</b>
<b>Total Number of Loans</b>		<b>2</b>			
<b>Façade Loans</b>					
The Garland, LLC	\$ 58,875.00	08/31/20	\$ 589.11	\$ 589.11	\$ <b>53,936.73</b>
<b>TOTAL</b>	<b>\$ 58,875.00</b>		<b>\$ 589.11</b>	<b>\$ 589.11</b>	<b>\$ 53,936.73</b>
<b>Total number of loans</b>		<b>1</b>			
<b>Total Open Loans</b>	<b>\$ 1,480,132.98</b>		<b>\$ 9,954.99</b>	<b>\$ 10,257.51</b>	<b>\$ 1,144,618.70</b>
		<b>11</b>			

**BINGHAMTON LOCAL DEVELOPMENT CORPORATION**

Statement of Income and Expense

**Unrestricted Account**

Sep-24

	<u>Sep-24</u>	<u>Year To Date</u>
Beginning of Month Balance	\$3,591,559.06	
Fiscal Year Beginning Balance		\$3,591,559.06

**INCOME**

Application/ Commitment Fee	\$0.00	\$0.00
Filing Fees	\$0.00	\$0.00
Admin Fees (SUNY Broome Contract)	\$0.00	\$0.00
Misc. Income	\$0.00	\$0.00
Grant Income	\$0.00	\$0.00
Interest Income	\$14,647.35	\$14,647.35

<b>Total Income</b>	<u>\$14,647.35</u>	<u>\$14,647.35</u>
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**EXPENSES**

Marketing Expense	\$5,681.50	\$5,681.50
Chamber Events/ GWSA Membership	\$0.00	\$0.00
Professional Services	\$0.00	\$0.00
Columbus Day Parade Expense	\$0.00	\$0.00
Loan App Research Expense	\$0.00	\$0.00
Misc. Expenses	\$0.00	\$0.00
Insurance	\$0.00	\$0.00
BLDC Training	\$0.00	\$0.00

<b>Total Expense</b>	<u>\$5,681.50</u>	<u>\$5,681.50</u>
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<b>End of Month Balance</b>	<u><u>\$3,600,524.91</u></u>	<u><u>\$3,600,524.91</u></u>
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**Checks:**

**BINGHAMTON LOCAL DEVELOPMENT CORPORATION**  
 Statement of Income and Expense  
**Broome Enterprise Triad - New York State Account**  
 Sep-24

	<u>Sep-24</u>	<u>Year To Date</u>
Beginning of Month Balance	\$36,750.00	
Fiscal Year Beginning Balance		\$0.00
<b>Income:</b>		
State Checks	\$0.00	\$0.00
<b>Total Income</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>Expense:</b>		
SUNY Broome	\$0.00	\$0.00
NYS EAP Funding 1% Fee	\$0.00	\$0.00
<b>Total Expense</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>End of Month Balance</b>	<b>\$36,750.00</b>	<b>\$0.00</b>

**Checks:**

**BINGHAMTON LOCAL DEVELOPMENT CORPORATION**

Statement of Income and Expense

**Mayor's Veterans Initiatives**

Sep-24

	<u>Sep-24</u>	<u>Year To Date</u>
Beginning of Month Balance	\$ 24,048.01	
Fiscal Year Beginning Balance		\$ 24,048.01
<b>Income:</b>		
Mudcat Grant	\$ -	\$ -
NY Veterans of Foreign Wars	\$ -	\$ -
Interest	\$ -	\$ -
	<hr/>	
<b>Total Income</b>	<b>\$ -</b>	<b>\$ -</b>
	<hr/>	
<b>Expense:</b>		
Opportunities for Broome	\$ -	\$ -
	<hr/>	
<b>Total Expense</b>	<b>\$ -</b>	<b>\$ -</b>
	<hr/>	
<b>End of Month Balance</b>	<b>\$ 24,048.01</b>	<b>\$ 24,048.01</b>
	<hr/> <hr/>	

**BINGHAMTON LOCAL DEVELOPMENT CORPORATION**

Statement of Income and Expense

**GRANT ACCOUNT**

Sep-24

	<u>Sep-24</u>	<u>Year To Date</u>
Beginning of Month Balance	\$4,812.76	
Fiscal Year Beginning Balance		\$4,812.76
<b>Income:</b>		
State Funding Main Street Grant	\$0.00	\$0.00
Mudcat Grant deposit to wrong account	\$0.00	\$0.00
	<hr/>	<hr/>
<b>Total Income</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>Expense:</b>		
Main Street Gant Recording w/ Broome Count	\$0.00	\$0.00
Main Street payments to property owners	\$0.00	\$0.00
Mudcat Grant Transfer	\$0.00	\$0.00
DERO (Wire to Unrestricted)		\$0.00
	<hr/>	<hr/>
<b>Total Expense</b>	<b>\$0.00</b>	<b>\$0.00</b>
	<hr/>	<hr/>
<b>End of Month Total Grant Account</b>	<b>\$4,812.76</b>	<b>\$4,812.76</b>

**Expense Detail: (Paid from 9/1/23 to 8/31/24)**

None

**BINGHAMTON LOCAL DEVELOPMENT CORPORATION**

Delinquent Loan Status - 30 or More Days Overdue

Sep-24

<b>Borrower</b>	<b>Amount Delinquent</b>	<b>Balance</b>	<b>Account</b>
<b><u>VMR Electronics, LLC</u></b> Default	\$65,366.19	\$65,366.19	Restricted
<b><u>VMR Realty Management, LLC</u></b> Default	\$261,544.52	\$261,544.52	Restricted
<b><u>Ariel Hendricks CPT LLC</u></b>	\$4,071.25	\$4,071.25	UDAG
<b>Totals</b>	<b>\$330,981.96</b>	<b>\$330,981.96</b>	

NOTE:

UDAG Receivables: \$1,144,618.70

Rest Receivables: \$641,629.90

The total of outstanding balances in the BLDC portfolio: \$1,786,248.60

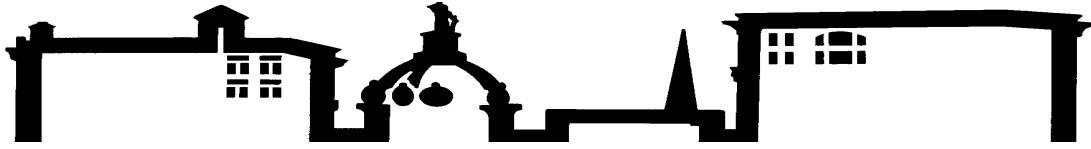
The total of the delinquent outstanding balances are \$330,981.96 \*\*

**The current delinquency percentage of the portfolio is:** 18.53%

The BLDC Portfolio outstanding balance total is made up of Restricted and UDAG Loans.

**Note:** These figures do not include late fees or other fees owed

\*\*Effective 01/31/2023 the delinquency percentage of all loans not designated as non-performing is 0.23%



BLDC

BINGHAMTON LOCAL DEVELOPMENT CORPORATION

MONTHLY FINANCIAL REPORT

OCTOBER

2024

FISCAL YEAR 9/1/24—8/31/25

CDBG YEAR 50

JARED M. KRAHAM, MAYOR



**BINGHAMTON LOCAL DEVELOPMENT CORPORATION**  
**FISCAL ACTIVITY**

September 1, 2024 through August 31, 2025

<b>Borrower</b>	<b>Amount</b>	<b>Date Approved</b>	<b>Expended Amount</b>	
Marketing Budget	\$ 25,000.00	June 22, 2023	\$23,392.04	UDAG

**BINGHAMTON LOCAL DEVELOPMENT CORPORATION**  
**Restricted Account Annual Income and Expenses- CDBG YEAR 48**  
September 1, 2022 to August 31, 2023

**Beginning Balance CDBG Fiscal Year 47 (2021-2022)** \$87,030.00

**Total** \$ 87,030.00

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**BINGHAMTON LOCAL DEVELOPMENT CORPORATION - REAL PROPERTY ASSET**

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Charles St. and Satellite Propertie	\$435,000.00	Total Purchase Price (\$30,000/acre)
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Closing Costs	\$2,684.25	
Total Real Property for BLDC	\$760,981.25	

**BINGHAMTON LOCAL DEVELOPMENT CORPORATION**

Statement of Income and Expense

**Restricted Account**

Oct-24

	<u>Oct-24</u>	<u>Year To Date</u>
Beginning of Month Balance	\$ 500,923.37	
Fiscal Year Beginning Balance		\$ 496,767.10
<b>Income</b>		
Loan Interest	\$ 1,476.60	\$ 2,964.15
Bank Interest	\$ 297.79	\$ 608.05
Penalties/Late Fees	\$ -	\$ 25.00
Loan Principal	\$ 2,344.41	\$ 4,677.87
	<hr/>	<hr/>
<b>Total Income</b>	\$ 4,118.80	\$ 8,275.07
<b>Expense</b>		
NYS Tax Filing Fee	\$ -	\$ -
Internal Revenue Service	\$ -	\$ -
Annual Interest Payment to HUD	\$ -	\$ -
Loan	\$ -	\$ -
CDBG	\$ -	\$ -
Misc	\$ -	\$ -
	<hr/>	<hr/>
<b>Total Expense</b>	\$ -	\$ -
<b>Net Gain (Loss)</b>	<hr/>	<hr/>
	\$ 4,118.80	\$ 8,275.07
<b>End of Month Balance</b>	<hr/>	<hr/>
	\$ 505,042.17	\$ 505,042.17
Encumbered For All Loans	\$ -	
Interest committed to HUD 2023-2024 Fiscal Yr.	\$ 5,605.01	
<b>Available Cash</b>	<hr/>	
	\$ 499,437.16	

**Checks:**

**BINGHAMTON LOCAL DEVELOPMENT CORPORATION**

Accounts Receivable Report

Oct-24

**RESTRICTED ACCOUNT**

<b>Borrower</b>	<b>Original Loan Amount</b>	<b>Closing Date</b>	<b>Payment Amount</b>	<b>Amount Paid</b>	<b>Balance</b>
<b>REVOLVING LOANS</b>					
Hanrahan Enterprise	\$ 250,000.00	01/31/23	\$ 2,729.29	\$ 2,729.29	\$ 217,437.71
KLAW Industries	\$ 100,000.00	02/01/24	\$ 1,091.72	\$ 1,091.72	\$ 94,937.07
<b>IN DEFAULT:</b>					
VMR Electronics, LLC	\$ 108,000.00	05/04/09	\$ 1,475.90	\$ -	<b>\$ 65,366.19</b>
VMR Realty Management, LLC	\$ 292,000.00	05/04/09	\$ 1,769.07	\$ -	<b>\$ 261,544.52</b>
<b>TOTAL</b>	<b>\$ 750,000.00</b>		<b>\$ 7,065.98</b>	<b>\$ 3,821.01</b>	<b>\$ 639,285.49</b>

**Total Active Loans**           **0**  
**Total Loans**                   **4**

**BINGHAMTON LOCAL DEVELOPMENT CORPORATION**

Statement of Income and Expense

**UDAG Account**

Oct-24

	<u>Oct-24</u>	<u>Year To Date</u>
Beginning of Month Balance	\$564,453.75	
Fiscal Year Beginning Balance		\$565,876.94

**INCOME**

Principal Paid on Loans	\$ 6,092.52	\$ 13,437.40
Loan Interest	\$ 3,103.89	\$ 6,016.52
Bank Interest	\$ 2,051.01	\$ 4,163.61
Late Penalties	\$ -	\$ 25.00
Other Income	\$ -	\$ -
Administrative Reimbursement	\$ -	\$ -
Main Street Grant Reimbursement	\$ -	\$ -
Parade Grant	\$ -	\$ -
<b>Total Income</b>	<u>\$11,247.42</u>	<u>\$23,642.53</u>

**EXPENSES**

Loans	\$ -	\$ -
BLDC-City of Binghamton Contract	\$ -	\$ -
Professional Services	\$ -	\$ -
Insurance Expense	\$ -	\$ -
Accounting Expense	\$ -	\$ -
Marketing Expense	\$ 5,300.00	\$ 7,300.00
Property Maintenance Expense	\$ 1,858.46	\$ 7,633.84
Office Supplies	\$ -	\$ -
Community Event	\$ 141.00	\$ 186.00
Payroll Expense	\$ -	\$ -
Other	\$ -	\$ -
Utility Bill	\$ -	\$ 5,997.92
Liabilites Paid	\$ -	\$ -
<b>Total Expenses</b>	<u>\$7,299.46</u>	<u>\$21,117.76</u>

**Net Gain (Loss)**

\$3,947.96      \$2,524.77

**End of Month Balance**

\$568,401.71      \$568,401.71

Encumbered For All Loans	\$0.00
Encumbered For Marketing 2023-2024	\$25,000.00
Encumbered for Bus. Restart - Disaster Loans	\$100,000.00
Available Cash	\$443,401.71

# BINGHAMTON LOCAL DEVELOPMENT CORPORATION

## Accounts Receivable Report

Oct-24

### UDAG ACCOUNT

Borrower	Loan Amount	Closing Date	Payment Amount	Amount Paid	Balance
<b>Repayment Loans</b>					
142 Court Street, LLC #2	\$ 41,467.98	06/01/17	\$ -	\$ -	\$ -
Ellis Brothers	\$ 400,000.00	10/10/18	\$ 2,908.89	\$ 2,908.89	\$ 270,741.42
Emma St., LLC	\$ 140,000.00	04/01/19	\$ 1,031.22	\$ 1,031.22	\$ 96,028.97
Tom Haines	\$ 229,790.00	04/20/18	\$ 1,559.51	\$ 1,559.51	\$ 166,349.12
Renkan Holdings	\$ 200,000.00	09/05/22	\$ 1,931.21	\$ 1,931.21	\$ 164,667.69
Broome County Council of Church	\$ 150,000.00	06/15/20	\$ -	\$ -	\$ <b>150,000.00</b>
KLAW Industries	\$ 150,000.00	03/10/23	\$ 1,637.57	\$ 1,637.57	\$ 133,496.24
L2 Properties	\$ 100,000.00	07/30/24	\$ 1,198.60	\$ 1,060.16	\$ 98,801.40
<b>TOTAL</b>	<b>\$ 1,411,257.98</b>		<b>\$ 10,267.00</b>	<b>\$ 10,128.56</b>	<b>\$ 1,080,084.84</b>
<b>Total number of loans</b>		<b>8</b>			
<b>Mini Micro Loans</b>					
Zachary Salisbury - QOLA	\$ 5,000.00	05/23/18	\$ 150.42	\$ 600.00	\$ <b>853.94</b>
Ariel Hendricks CPT LLC	\$ 5,000.00	06/29/20	\$ 147.06	\$ -	\$ <b>4,071.25</b>
<b>TOTAL</b>	<b>\$ 10,000.00</b>		<b>\$ 297.48</b>	<b>\$ 600.00</b>	<b>\$ 4,925.19</b>
<b>Total Number of Loans</b>		<b>2</b>			
<b>Façade Loans</b>					
The Garland, LLC	\$ 58,875.00	08/31/20	\$ 589.11	\$ 589.11	\$ <b>53,516.15</b>
<b>TOTAL</b>	<b>\$ 58,875.00</b>		<b>\$ 589.11</b>	<b>\$ 589.11</b>	<b>\$ 53,516.15</b>
<b>Total number of loans</b>		<b>1</b>			
<b>Total Open Loans</b>	<b>\$ 1,480,132.98</b>		<b>\$ 11,153.59</b>	<b>\$ 11,317.67</b>	<b>\$ 1,138,526.18</b>
		<b>11</b>			

**BINGHAMTON LOCAL DEVELOPMENT CORPORATION**

Statement of Income and Expense

**Unrestricted Account**

Oct-24

	<u>Oct-24</u>	<u>Year To Date</u>
Beginning of Month Balance	\$3,600,524.91	
Fiscal Year Beginning Balance		\$3,591,559.06

**INCOME**

Application/ Commitment Fee	\$0.00	\$0.00
Filing Fees	\$0.00	\$0.00
Admin Fees (SUNY Broome Contract)	\$0.00	\$0.00
Misc. Income	\$500.00	\$500.00
Grant Income	\$0.00	\$0.00
Interest Income	\$14,239.12	\$28,886.47

<b>Total Income</b>	<u>\$14,739.12</u>	<u>\$29,386.47</u>
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**EXPENSES**

Marketing Expense	\$0.00	\$5,681.50
Chamber Events/ GWSA Membership	\$0.00	\$0.00
Professional Services	\$0.00	\$0.00
Columbus Day Parade Expense	\$5,704.00	\$5,704.00
Loan App Research Expense	\$0.00	\$0.00
Misc. Expenses	\$0.00	\$0.00
Insurance	\$0.00	\$0.00
BLDC Training	\$0.00	\$0.00

<b>Total Expense</b>	<u>\$5,704.00</u>	<u>\$11,385.50</u>
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<b>End of Month Balance</b>	<u><u>\$3,609,560.03</u></u>	<u><u>\$3,609,560.03</u></u>
-----------------------------	------------------------------	------------------------------

**\$0.00**

**Checks:**

**BINGHAMTON LOCAL DEVELOPMENT CORPORATION**  
 Statement of Income and Expense  
**Broome Enterprise Triad - New York State Account**  
 Oct-24

	<u>Oct-24</u>	<u>Year To Date</u>
Beginning of Month Balance	\$36,750.00	
Fiscal Year Beginning Balance		\$36,750.00
<b>Income:</b>		
State Checks	\$0.00	\$0.00
<b>Total Income</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>Expense:</b>		
SUNY Broome	\$0.00	\$0.00
NYS EAP Funding 1% Fee	\$0.00	\$0.00
<b>Total Expense</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>End of Month Balance</b>	<b>\$36,750.00</b>	<b>\$36,750.00</b>

**Checks:**



**BINGHAMTON LOCAL DEVELOPMENT CORPORATION**

Statement of Income and Expense

**Mayor's Veterans Initiatives**

Oct-24

	<u>Oct-24</u>	<u>Year To Date</u>
Beginning of Month Balance	\$ 24,048.01	
Fiscal Year Beginning Balance		\$ 24,048.01
<b>Income:</b>		
Mudcat Grant	\$ -	\$ -
NY Veterans of Foreign Wars	\$ -	\$ -
Interest	\$ -	\$ -
	<hr/>	
<b>Total Income</b>	<b>\$ -</b>	<b>\$ -</b>
	<hr/>	
<b>Expense:</b>		
Opportunities for Broome	\$ -	\$ -
	<hr/>	
<b>Total Expense</b>	<b>\$ -</b>	<b>\$ -</b>
	<hr/>	
<b>End of Month Balance</b>	<b>\$ 24,048.01</b>	<b>\$ 24,048.01</b>
	<hr/> <hr/>	

**BINGHAMTON LOCAL DEVELOPMENT CORPORATION**

Statement of Income and Expense

**GRANT ACCOUNT**

Oct-24

	<u>Oct-24</u>	<u>Year To Date</u>
Beginning of Month Balance	\$4,812.76	
Fiscal Year Beginning Balance		\$4,812.76
<b>Income:</b>		
State Funding Main Street Grant	\$0.00	\$0.00
Mudcat Grant deposit to wrong account	\$0.00	\$0.00
	<hr/>	<hr/>
<b>Total Income</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>Expense:</b>		
Main Street Gant Recording w/ Broome Count	\$0.00	\$0.00
Main Street payments to property owners	\$0.00	\$0.00
Mudcat Grant Transfer	\$0.00	\$0.00
DERO (Wire to Unrestricted)	\$0.00	\$0.00
	<hr/>	<hr/>
<b>Total Expense</b>	<b>\$0.00</b>	<b>\$0.00</b>
	<hr/>	<hr/>
<b>End of Month Total Grant Account</b>	<b>\$4,812.76</b>	<b>\$4,812.76</b>

**Expense Detail: (Paid from 9/1/23 to 8/31/24)**

None

**BINGHAMTON LOCAL DEVELOPMENT CORPORATION**

Delinquent Loan Status - 30 or More Days Overdue

Oct-24

<b>Borrower</b>	<b>Amount Delinquent</b>	<b>Balance</b>	<b>Account</b>
<b><u>VMR Electronics, LLC</u></b> Default	\$65,366.19	\$65,366.19	Restricted
<b><u>VMR Realty Management, LLC</u></b> Default	\$261,544.52	\$261,544.52	Restricted
<b><u>Ariel Hendricks CPT LLC</u></b>	\$4,071.25	\$4,071.25	UDAG
<b>Totals</b>	<b>\$330,981.96</b>	<b>\$330,981.96</b>	

NOTE: UDAG Receivables: \$1,138,526.18  
 Rest Receivables: \$639,285.49  
 The total of outstanding balances in the BLDC portfolio: \$1,777,811.67  
 The total of the delinquent outstanding balances are \$330,981.96 \*\*  
**The current delinquency percentage of the portfolio is:** 18.62%

The BLDC Portfolio outstanding balance total is made up of Restricted and UDAG Loans.

**Note:** These figures do not include late fees or other fees owed  
 \*\*Effective 01/31/2023 the delinquency percentage of all loans not designated as non-performing is 0.23%

**Binghamton Local Development Corporation**

**November 14, 2024**

**RESOLUTION 25-3 A RESOLUTION OF THE BINGHAMTON LOCAL DEVELOPMENT CORPORATION TO ACCEPT THE RECOMMENDATION OF THE LOAN COMMITTEE TO AWARD TWO COMMERCIAL FAÇADE IMPROVEMENT GRANTS.**

**WHEREAS**, the Binghamton Local Development Corporation (“BLDC”) approved the creation of a Commercial Façade Improvement Grant Program at a regular meeting on April 28, 2022; and

**WHEREAS**, the BLDC received certain applications for funding though the Commercial Façade Improvement Grant Program; and

**WHEREAS**, the BLDC Loan Committee has recommended funding the applications listed in Attachment A attached hereto; and

**WHEREAS**, the applications meet the criteria outlined in the Program Guidelines for the Commercial Façade Improvement Grant Program;

**NOW, THEREFORE**, the Board of Directors of the Binghamton Local Development Corporation duly convened at a regular meeting, does hereby:

**RESOLVE**, to accept the recommendation of the Loan Committee to award Commercial Façade Improvement Grant funds to the applicants listed in Attachment A; and be it further:

**RESOLVED** that reasonable changes to the scope of the approved applications may be made at the discretion of the President.

I, Ron Sall, hereby certify the above resolution was approved by the Binghamton Local Development Corporation at a regular meeting held on November 14, 2024

---

Ron Sall, Secretary  
Binghamton Local Development Corporation

# Binghamton Local Development Corporation

## Attachment A

<b>Month of Loan Committee Application</b>	<b>Applicant</b>	<b>Address</b>	<b>Scope</b>	<b>Total Project Cost</b>	<b>BLDC Funding Request</b>	<b>Amount Approved</b>
April, 2024	82 Court Street, LLC (Mark Yonaty)	80-82 Court Street, 13901	Awning improvements	\$14,500.00	\$7,250.00	\$7,000.00
October, 2024	Winederlust (Amanda O'Neil)	7 Court Street, 13901	Awning improvements	\$10,000.00	\$5,000.00	\$5,000.00

## Binghamton Local Development Corporation

November 14, 2024

### **RESOLUTION 25-4: A RESOLUTION OF THE BINGHAMTON LOCAL DEVELOPMENT CORPORATION AUTHORIZING REIMBURSEMENT TO BOSCOV'S DEPARTMENT STORE, LLC, FOR MAINTENANCE ON THE BOILER AND FREIGHT ELEVATOR**

**WHEREAS**, the Binghamton Local Development Corporation ("BLDC") owns certain real property located at 11-13 Court Street, 160.40-2-5, and 13 Court Street, 160.40.2- 4; and

**WHEREAS**, The Amendment to Lease Agreement dated September 28, 2022 ("Amended Lease") requires the BLDC to reimburse Boscov's Department Store, LLC for Major Replacements pursuant to Section 4 of the Amended Lease; and

**WHEREAS**, Boscov's Department Store, LLC ("Boscov's") has contracted with qualified vendors and payment has been made by Boscov's Department Store, LLC to those vendors for the scope of work outlined in the invoices attached here as Attachment A; and

**WHEREAS**, the BLDC Board of Directors voted to approve Resolution 23-18 authorizing the reimbursement of such Major Replacements in an amount of \$563,888.01 on July 27, 2023, and

**WHEREAS**, to date, the BLDC has paid out \$424,838.01 of the authorized amount; and

**WHEREAS**, the BLDC desires to fulfil the terms of the Amended Lease to reimburse the previously approved \$139,050.00 and an additional \$46,064.46 for a total of \$185,114.46 for new eligible expenses from the UDAG fund; and

**WHEREAS**, \$20,047.53 will be withheld until and unless eligible expenses are submitted for reimbursement by Boscov's and subsequently approved by the BLDC; and

**NOW, THEREFORE**, the Board of Directors of the Binghamton Local Development Corporation duly convened at a regular meeting, does hereby:

**RESOLVE**, to reimburse Boscov's Department Store, LLC for Major Replacements as more fully described in Attachment A.

I, Ron Sall, hereby certify the above resolution was approved by the Binghamton Local Development Corporation at its regular meeting held on November 14, 2024

---

Ron Sall, Secretary  
Binghamton Local Development Corporation

**Attachment A**  
Invoices for Reimbursement

<b>Vendor</b>	<b>Description</b>	<b>Amount</b>	<b>Invoice Number</b>
Kone	Freight Elevator	\$ 25,371.00	915217967
Kone	Freight Elevator	\$ 10,147.50	915220243
Kone	Freight Elevator	\$ 40,594.50	915222681
Kone	Freight Elevator	\$ 25,371.00	915225379
Kone	Freight Elevator	\$ 38,180.00	915239782
Panko Electrical	Freight Elevator Electric	\$ 32,096.75	3870
Panko Electrical	Freight Elevator Electric	\$ 11,027.94	3893
Cooper Electric	Freight Elevator Electric	\$ 2,325.77	S049734803.004
	<b>TOTAL</b>	<b>\$ 185,114.46</b>	

**Binghamton Local Development Corporation**

**November 14, 2024**

**RESOLUTION 25-5: A RESOLUTION OF THE BINGHAMTON LOCAL DEVELOPMENT CORPORATION (“BLDC”) AUTHORIZING THE PRESIDENT OF THE BLDC TO EXECUTE A LEASE OF PREMISES LOCATED AT 11-13 COURT STREET IN THE CITY OF BINGHAMTON, NEW YORK, MORE PARTICULARLY DESCRIBED AS BROOME COUNTY TAX MAP PARCEL NUMBERS 160.40-2-5 AND 160.40-2-4 WITH BOSCOV’S DEPARTMENT STORE, LLC**

**WHEREAS**, on April 22, 2021, the Binghamton Local Development Corporation (“BLDC”) Board of Directors voted to approve Resolution 21-5 authorizing the President to execute an extension of the 2013 Lease Agreement (“2013 Lease”) with Boscov’s Department Store, LLC (“Boscov’s”) for a one-year period from May 1, 2021, to April 30, 2022; and

**WHEREAS**, at the agreement of all parties, the 2013 Lease was extended from May 1, 2022 to April 30, 2023;

**WHEREAS**, at the agreement of all parties, the 2013 Lease was replaced by an Amended Lease Agreement (“Amended Lease”) with a term of September 28, 2022 to April 30, 2023; and subsequently extended from May 1, 2023 to April 30, 2024 and May 1, 2024 to April 30, 2025; and

**WHEREAS**, the Amended Lease contained the same terms and condition of the 2013 Lease and added the reimbursement of Major Replacements, and

**WHEREAS**, the BLDC Board of Directors voted to approve Resolution 23-18 authorizing the reimbursement of such Major Replacements on July 27, 2023, and

**WHEREAS**, on February 22, 2024, the BLDC Board of Directors voted to approve Resolution 24-10 to accept the transfer by quit claim deed of all right title and interest in and to premises located at 11-13 Court St., Binghamton 13901; and

**WHEREAS**, the BLDC and Boscov’s wish to enter into a New Lease Agreement (“New Lease”) under the terms and conditions proposed in a non-binding letter of intent dated December 14, 2023, and further codified in the Lease Agreement attached hereto as Attachment A for the space at 11-13 Court Street (Parcel ID # 160.40-2-4 and Parcel ID # 160.40-2-5); and

**WHEREAS**, the New Lease would replace both the 2013 Lease and the Amended Lease; and



**NOW, THEREFORE;** the Board of Directors of the BLDC duly convened at a regular meeting hereby does:

**RESOLVE,** to authorize the President of the BLDC to execute a New Lease Agreement with Boscov's according to the agreement attached hereto and that reasonable changes to the language may be made at the discretion of the President in coordination with Counsel and Boscov's.

I, Ron Sall, hereby certify the above resolution was approved by the Binghamton Local Development Corporation at a regular meeting held on November 14, 2024

---

Ron Sall, Secretary  
Binghamton Local Development Corporation



## LEASE AGREEMENT

DATED: \_\_\_\_\_, 20\_\_\_\_

BINGHAMTON, NEW YORK

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## LEASE AGREEMENT

**THIS LEASE AGREEMENT** ("Lease") is made by and between **BINGHAMTON LOCAL DEVELOPMENT CORPORATION** (together with its permitted successors and/or assigns, the "Landlord"), and **BOSCOV'S DEPARTMENT STORE, LLC**, a Delaware limited liability company (together with its permitted successors and/or assigns, the "Tenant").

### BACKGROUND:

A. Landlord is the owner of: (1) certain property in the City of Binghamton, New York previously known as the Fowlers and Johnson building sites and a closed portion of Dwight Street and currently identified as Parcel ID Numbers: 160.40-2-5 [11 Court St.] and 160.40-2-4 [13 Court St.] (the "Demised Building") containing approximately one hundred eighty thousand seven hundred twenty (180,720) square feet of Floor Area as described further on Exhibit "A" and depicted on Exhibit "B" hereto (the "Site Plan") attached hereto and incorporated herein by reference.

B. Tenant desires to lease from Landlord, and Landlord desires to lease to Tenant the Demised Building (together with any truck docks, delivery facilities and trash compactor areas that are intended to exclusively serve the Demised Building), as the same may be further improved, expanded and/or altered, in accordance with the terms of this Lease, all as more particularly identified as "Boscov's" on the Site Plan (collectively, the "Demised Premises").

C. Tenant and Landlord have a pre-existing relationship with regard to the lease and occupancy by Tenant of the Demised Premises, beginning with a lease dated March 1, 1984 between Tenant and Bing Realty Company, the predecessor in interest to the Landlord and such relationship has continued to the current date under subsequent sublease dated March 1, 1984, lease dated May 1, 2013, and lease amendment dated September 28 2022, to which both Landlord and Tenant are currently parties.

NOW, THEREFORE, the parties hereto, intending to be legally bound, agree as follows:

### **1. GLOSSARY OF TERMS**

The following is a glossary containing definitions of most of the words and phrases used in this Lease:

1.1 Arbitrator. The American Arbitration Association; provided, however, if the American Arbitration Association is no longer in existence, the term "American Arbitration Association" as used in this Lease shall include any organization which at the time in question is performing the services with respect to commercial arbitration in the State of New York being performed by the American Arbitration Association on the Effective Date.

1.2 Intentionally Omitted.

1.3 Additional Rent. All sums payable by Tenant to Landlord under this Lease other than Percentage Rent (as hereinafter defined), whether or not designated as Additional Rent, shall be deemed Additional Rent.

1.4 Affiliate. A Person (as hereinafter defined) that directly or indirectly through one or more intermediaries, Controls or is Controlled by, or is under common Control with another Person.

1.5 Intentionally Omitted.

1.6 Intentionally Omitted.

1.7 Intentionally Omitted.

1.8 Intentionally Omitted.

1.9 any. As defined in Section 24.19.

1.10 Intentionally Omitted.

1.11 Applicable Law. Any federal, state or local law, statute, regulation, rule, order, ordinance or requirement now or hereafter in effect, of any governmental or municipal authority having jurisdiction over the particular matter in question, including applicable decisions by courts in cases where such decisions are binding precedents in the state where the Demised Premises is located, and decisions of federal courts applying the laws of such state, at the time in question.

1.12 Approving Party. The party to whom the Originating Party is required to submit plans and specifications and whose review and/or approval of such plans and specifications is required hereunder.

1.13 Appurtenances. Any rights, licenses, privileges, easements and appurtenances, now or hereafter used in connection with the Demised Premises, including the easements and rights granted to Tenant pursuant to Section 2.2.

1.14 Intentionally Omitted.

1.15 Intentionally Omitted.

1.16 Intentionally Omitted.

1.17 Intentionally Omitted.

1.18 CPI. The Consumer Price Index for All Urban Consumers, U.S. City Average, All Items (Base Year 1982-84=100) for the applicable month published by the Bureau of Labor Statistics of the United States Department of Labor or similar index agreed to by the parties hereto if such index is changed or is no longer available.

1.19 Common Area. Those areas, facilities and improvements which are intended to be used by the public, but not including the Demised Premises.

1.20 Intentionally Omitted.

1.21 Condemnation. Any taking or takings of any interest in property by any right of eminent domain or the granting or conveying of such interest pursuant to the threat thereof at any time or cumulatively from time to time.

1.22 Constant Dollars. The equivalent purchasing power at any time of the value of One Dollar (\$1.00) in 2024. The Constant Dollars of any amount shall be determined by multiplying said amount by one (1) plus a fraction, the numerator of which is the difference between: (a) the average CPI for the twelve (12) months last published prior to the date of such determination; and (b) the average CPI for 2024, and the denominator of which is the average CPI for 2024.

1.23 Control. The right and power, direct or indirect, to direct or cause the direction of the management and policies of a Person through ownership of voting securities, by contract, or otherwise.

1.24 Intentionally Omitted.

1.25 Intentionally Omitted.

1.26 Intentionally Omitted.

1.27 Default. A Tenant Default (as hereinafter defined) or a Landlord Default (as hereinafter defined), as the context so requires.

1.28 Intentionally Omitted.

1.29 Intentionally Omitted.

1.30 Intentionally Omitted.

1.31 Intentionally Omitted.

1.32 Demised Building. As defined in Background Recital A.

1.33 Demised Premises. As defined in Background Recital B.

1.34 Department Store. An integrated conventional store comprised of a number of departments for the sale of diversified goods and that contains at least one hundred thousand (100,000) square feet of Floor Area.

1.35 Effective Date. If the parties hereto do not execute and deliver this Lease on the same date, then the Effective Date shall be the date that the last party (whether that be Landlord or Tenant) shall have executed and delivered this Lease, or if this Lease is executed by the parties hereto and deposited in escrow, then the Effective Date shall be the date on which this Lease shall be delivered out of escrow, and in any such event such date shall be inserted on the cover page of this Lease.

1.36 Intentionally Omitted.

1.37 Expiration Date. The date on which the Term (as hereinafter defined) shall end or terminate.

1.38 Extended Term. The portion (if any) of the Term described in Section 3.2 commencing on the expiration of the Initial Term and ending on the Expiration Date.

1.39 Floor Area. The sum of the gross horizontal areas of the several floors of a building and its accessory buildings on the same lot, excluding cellar and basement floor areas not used for retail sales, parking garage structures and appurtenances, and intermodal transportation facilities, but including the area of roofed terraces. All dimensions shall be measured between the exterior face of each exterior wall and to the centerline of each interior common wall.

1.40 Foreclosure. An execution sale, including a sheriff's sale, Marshall's sale, trustee's sale pursuant to a deed of trust, or other similar realization proceedings relating to a Mortgage (as hereinafter defined), including a transfer or assignment in lieu of Foreclosure.

1.41 Formal Reminder Notice. As defined in Section 3.2.

1.42 Intentionally Omitted.

1.43 Intentionally Omitted.

1.44 Gross Sales. As defined in Sections 4.4 and 4.5.

1.45 Hazardous Substances. (a) Any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6902 *et seq.*), as amended from time to time, and regulations promulgated thereunder, (b) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 *et seq.*), as amended from time to time, and regulations promulgated thereunder, (c) any waste, material or pollutant defined as or included in the definition of "hazardous wastes," "hazardous substances," "hazardous materials" or toxic substances or words of similar import under any other applicable federal, state, municipal or local law or regulation, (d) oil or petroleum or petroleum products, (e) any quantity of asbestos, (f) any quantity of polychlorinated biphenyls, (g) underground storage tanks, whether empty, filled or partially filled with any substance, (h) storage of any quantity of any substance which is prohibited by any law or regulation relating to hazardous or toxic substances or materials, and (i) the quantity of a substance which is inherently dangerous and which by any law or regulation from time to time requires special handling or notification of any federal, state or local governmental entity in its collection, storage, treatment or disposal; but not including such substances customarily used or sold in typical tire, battery and auto stores or gasoline stations or dispensing facilities.

1.46 Hazardous Substances Contamination. The presence on, under or in, or the release or emanation from, the Demised Premises, of Hazardous Substances in quantities or at levels which exceed those permitted by Applicable Law.

1.47 hereby. As defined in Section 24.19.

1.48 herein. As defined in Section 24.19.

1.49 hereof. As defined in Section 24.19.

1.50 hereunder. As defined in Section 24.19.

1.51 include. As defined in Section 24.19.

1.52 including. As defined in Section 24.19.

1.53 Initial Term. The portion of the Term (as hereinafter defined) commencing on the Rent Commencement Date and ending on the date set forth in Section 3.1.

1.54 Institutional Lender. A bank, trust company, mutual savings bank, savings and loan association, insurance company, mortgage or real estate investment trust, pension trust fund, college or university endowment fund or other entity commonly recognized as an “institutional lender” and having sufficient available funds and lending experience so as to be recognized in the business community as an institutional lender in commercial transactions involving loan amounts similar in size to the loan to the party in question. In addition to the foregoing, an “Institutional Lender” may also be any Person that is a partnership, corporation, trust or other legally recognized entity formed for the purpose of issuing debt, securities or other obligations, the proceeds of the sale of which shall be used to make a loan to be secured by, among other things, a Mortgage; provided, however, that such special purpose lender is a subsidiary of or under direct or indirect control of one or more of the entities described in the immediately preceding sentence which otherwise qualify as an Institutional Lender.

1.55 Interest Rate. An annual rate of interest which is two hundred (200) basis points above the “prime rate” as reported in the “Money Rates” section of *The Wall Street Journal*, but not more than the highest legal rate of interest then chargeable to commercial borrowers under the laws of the State of New York.

1.56 Landlord Default. As defined in Section 20.3.

1.57 Landlord Indemnitee. As defined in Section 15.10.1.

1.58 Intentionally Omitted.

1.59 Intentionally Omitted.

1.60 Intentionally Omitted.

1.61 Lease Year. Each successive period of twelve (12) consecutive calendar months commencing February 1 and ending January 31. Any period of time Tenant is open in the Demised Premises prior to February 1, 2025 shall be considered a partial Lease Year.

1.62 Intentionally Omitted.

1.63 Intentionally Omitted.

1.64 Minimum Net Worth Test. A net worth equal to or greater than One Hundred Million (\$100,000,000.00) Constant Dollars.



1.65 Minimum Parking Requirements. As set forth in the Parking Agreement.

1.66 Mortgage. Any mortgage, deed to secure debt, deed of trust, trust deed, or other collateral conveyance, assignment or agreement, including any amendment, modification, restatement, extension, consolidation or renewal thereof.

1.67 Mortgagee. The holder of a Mortgage or the lender in whose favor a Mortgage shall have been created (or if such Mortgage is a deed of trust or trust indenture, the holder of any note, bond or other evidence of indebtedness secured thereby), the fee owner or sublessor following a sale-leaseback or lease-subleaseback, or any equity participant or joint owner (other than the mortgagor) in a partnership agreement, joint venture agreement or joint ownership agreement which constitutes a Mortgage and provided such equity participant or joint owner is an Institutional Lender, together with any successor, assignee or designee selected by the Mortgagee to take title to the property that was encumbered by the Mortgage upon foreclosure or deed or assignment in lieu thereof, or conveyance under any joint venture, partnership agreement or joint ownership agreement constituting a Mortgage.

1.68 New Lease. As defined in Section 13.5.

1.69 Intentionally Omitted.

1.70 Intentionally Omitted.

1.71 Non-Disturbance Agreement. As defined in Section 21.

1.72 Intentionally Omitted.

1.73 OFAC List. As defined in Section 24.26.1.

1.74 Offered Space. As defined in Section 13.2.2.

1.75 Originating Party. The party that is required to prepare plans and specifications hereunder and submit same to the Approving Party.

1.76 Parking Agreement and Parking Area. The Parking Agreement means that certain New Parking Agreement between the City of Binghamton and the Tenant dated May 1, 2013, as amended. Parking Area means the "Structure", as defined in the Parking Agreement.

1.77 Percentage Rent. As defined in Section 4.2.

1.78 Permitted Title Exceptions. The encumbrances and other matters affecting Landlord's title to the Demised Premises, described in Exhibit "E."

1.79 Person. An individual, corporation, association, partnership or any other form of business organization or entity, or any one or more of them, as the context may require.

1.80 Pre-Transfer Notice. As defined in Section 13.2.2.

1.81 Property Reports. The reports listed on Exhibit "C."

1.82 Intentionally Omitted.

1.83 Recapture Event. As defined in Section 12.5.2.

1.84 Recapture Period. As defined in Section 12.5.3.

1.85 Intentionally Omitted.

1.86 Released Party. As defined in Section 15.6.

1.87 Releasing Party. As defined in Section 15.6.

1.88 Reletting Expenses. All reasonable expenses, including reasonable attorneys' fees, reasonable alteration costs and reasonable brokerage commissions, incurred by Landlord to relet the Demised Premises as a direct result of a Tenant Default; provided, however, if the term of any reletting is greater than the amount of time remaining on the then current Term, then the Reletting Expenses (excluding attorney fees incurred by Landlord to enforce this Lease) shall be reasonably allocated throughout the entire reletting term for purposes of determining the amount of the deduction from reletting proceeds.

1.89 Rent. Percentage Rent and/or Additional Rent.

1.90 Rent Commencement Date. May 1, 2024.

1.91 Intentionally Omitted.

1.92 Intentionally Omitted.

1.93 Intentionally Omitted.

1.94 Site Plan. As defined in Background Recital A.

1.95 Substantial Condemnation. A Condemnation which results in the taking of any portion of the Demised Premises; unless in any such case Landlord shall replace the impaired or affected area by comparable facilities approved by Tenant which shall not be unreasonably withheld within thirty (30) days after such Condemnation.

1.96 Substantially Complete. Intentionally Omitted.

1.97 Intentionally Omitted.

1.98 Temporary Closures. Reasonable and customary operational closing, such as holidays, inventory periods; the making of alterations, modifications, expansions, improvements, installations, repairs or renovations which are diligently prosecuted to completion.

1.99 Tenant Default. As defined in Section 20.1.

1.100 Tenant Indemnitee. As defined in Section 15.10.2.

1.101 Tenant's Construction Completion Deadline. Intentionally Deleted.

1.102 Intentionally Omitted.

1.103 Tenant's Plans. Exterior elevations for Tenant's exterior building signage prepared by an architect selected by Tenant, which plans shall be submitted to Landlord pursuant to Article 6.

1.104 Tenant's Property. As defined in Section 14.1.

1.105 Tenant's Staging Area. The area or areas, if any, identified on the Site Plan as "Tenant's Staging Area" for the temporary storage of construction materials and equipment for Tenant's construction activities in the Demised Premises, to be suitably fenced and protected by Tenant at Tenant's sole cost.

1.106 Tenant's Trade Name. "Boscov's" or such other trade name as is from time to time used to identify a chain of at least twenty-one (21) retail stores under common ownership and operation by Tenant or Tenant's Affiliate.

1.107 Intentionally Omitted.

1.108 Term. The Initial Term plus each Extended Term from time to time exercised hereunder.

1.109 Intentionally Omitted.

1.110 Total Condemnation. Any Condemnation of the character referred to in Section 17.1 that results in the termination of this Lease.

1.111 Intentionally Omitted.

1.112 Transfer. As defined in Section 13.1.

1.113 Transferee. As defined in Section 13.1.

1.114 Transfers. As defined in Section 13.1.

1.115 Unavoidable Delay(s). As defined in Section 24.12.

1.116 worth at the time of award. As defined in Section 20.2.1.

## **2. DEMISED PREMISES**

2.1 Demised Premises. Pursuant to the terms and provisions of this Lease, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord the Demised Premises.

2.2 Easements Included in Demise. The easements granted to Tenant by Landlord pursuant to this Section 2.2 shall be deemed to be included within the meaning of the term "Appurtenances", shall be held and enjoyed by Tenant during the Term, and shall be surrendered by Tenant upon expiration or termination of the Term as provided in Article 22. The easements granted to Tenant hereby are subject and subordinate to all Permitted Title Exceptions.

2.2.1 Common Area Easements. Landlord hereby grants to Tenant, and to Tenant's successors and assigns, their tenants, subtenants, concessionaires, licensees, and the respective officers, employees, agents, customers, and invitees of each, the non-exclusive right, privilege and easement to use the Common Area for the respective purposes for which such Common Area are designed in common with Landlord and Landlord's officers, employees, customers, agents, and invitees of each, without payment of any fee or other charge being made therefor.

2.2.2 Intentionally Omitted.

2.2.3 Maintenance, Repair and Construction Easements. Landlord hereby grants to Tenant, and to Tenant's successors and assigns, the non-exclusive right, privilege and easement for the purpose of maintaining, repairing, constructing, reconstructing or altering any of the Demised Premises, to the extent that the Demised Premises can, as a practical matter, be so maintained, repaired, constructed, reconstructed or altered only from outside the boundaries of the Demised Premises and only to the extent that any such maintenance, repair, construction, reconstruction or alteration is required or permitted hereunder; such easements shall permit Tenant and its employees, agents and contractors to enter upon and use such parts of the Common Area as are adjacent to the Demised Premises to such extent, in such manner (including the erection of scaffolding) and for so long as is reasonably necessary to the accomplishment of said purposes.

2.2.4 Intentionally Omitted.

2.3 Landlord's Representations and Warranties. Landlord hereby represents and warrants to Tenant that, subject to the matters disclosed in Section 2.4:

2.3.1 Landlord's Title. Landlord is the owner of the real property on which the Demised Premises is located, free and clear of all Mortgages, liens, claims, judgments, encumbrances, ground rents, leases, tenancies, licenses, security interests, covenants, conditions, restrictions, rights of way, easements, encroachments and any other matters affecting title, except only the Permitted Title Exceptions, and to Landlord's actual knowledge the Parking Areas are entirely within the land over which the Demised Premises is benefitted by a perpetual appurtenant easement, lease and/or public roadways.

2.3.2 Use of the Demised Premises. The Permitted Title Exceptions: (a) do not prevent or restrict the use of the Demised Premises as and for a Department Store; (b) conflict with any right granted Tenant under this Lease; or (c) impose on Tenant any obligation(s) in excess of those set forth in this Lease.

2.3.3 Third Party Consents. Except for consent of Landlord's Mortgagee and any other governmental agencies with approval rights over this Lease, Landlord does not need the consent or approval of any third party to enter into this Lease or perform its obligations hereunder. This Lease does not violate any agreement to which Landlord is a party or by which Landlord's real property is encumbered.

2.3.4 Right to Lease. Landlord and no other party, has the right to lease the Demised Premises and grant the easements described in Section 2.2, and to Landlord's actual

knowledge neither the Demised Premises nor any portion thereof is subject to any option to buy or lease or right of first refusal or right of first offer to buy or lease.

2.3.5 Zoning. The zoning for the real property on which the Demised Premises is located permits the use of the Demised Premises as a Department Store.

2.3.6 Intentionally Omitted.

2.3.7 No Litigation. No litigation or other proceedings are: (a) pending against Landlord with respect to Landlord's interest in the real property on which the Demised Premises is located, or (b) to Landlord's actual knowledge, threatened against Landlord, in either case that could have a material adverse effect on the transactions contemplated by this Lease.

2.3.8 Hazardous Substances. To Landlord's actual knowledge, except as disclosed in the Property Reports, the Demised Premises are free of Hazardous Substances Contamination.

Landlord agrees to indemnify and hold Tenant harmless from and against any liability, loss, cost, damage, expense and reasonable attorney fees incurred by Tenant by reason of the breach of any of the representations and warranties set forth in this Section 2.3. However, to the extent that Tenant and/or Tenant's Affiliate is aware of any inaccuracy in the foregoing representations and warranties, or any other representations or warranties of Landlord in this Lease, or if a breach or inaccuracy in any of said representations or warranties is due to any act, omission or unfulfilled obligation of Tenant or its Affiliates, then Landlord shall have no liability or obligation to Tenant with respect to the warranty or representation in question.

### **3. TERM**

3.1 Initial Term. The Initial Term of this Lease shall commence on the Rent Commencement Date and, unless sooner terminated pursuant to the provisions hereof, automatically shall end on (and shall include) the last day of the tenth (10<sup>th</sup>) Lease Year.

3.2 Extended Term. Tenant shall have two (2) consecutive, separate options to extend the Term beyond the Initial Term for successive periods of five (5) Lease Years each. If Tenant desires to exercise an extension option, then Tenant shall do so by giving written notice to Landlord at least nine (9) months prior to the end of the then current Term. However, it is the intention of the parties to avoid a forfeiture of this Lease through the inadvertent failure of Tenant to provide notice of extension. Therefore, if Tenant fails to give notice of its intention to exercise any extension option within the time herein set forth, and if a Formal Reminder Notice (as hereinafter defined) has not been furnished, this Lease shall not end, but this Lease and all unexercised extension options of Tenant shall continue in full force and effect until terminated by written notice by either party to the other fixing a termination date which shall be the later of the date on which the Term would otherwise have ended or three hundred sixty-five (365) days after service of the termination notice, and this Lease shall then terminate on the date fixed in the termination notice; provided, however, if notice terminating this Lease as aforesaid is given by Landlord, then Tenant shall have the right to exercise the extension option and extend the Term as to which Tenant failed to give notice as aforesaid, with the same force and effect as if Tenant had in fact given Landlord proper and timely notice of the intention of Tenant to exercise the option to extend the Term, such right to be exercised by written notice to Landlord at any time prior to the thirtieth (30<sup>th</sup>) day after Tenant receives Landlord's

termination notice. A “Formal Reminder Notice” means a written notice from Landlord to Tenant that is sent between sixteen (16) and ten (10) months prior to the then scheduled expiration of the Term, and which contains a clear and conspicuous reminder of the upcoming deadline to exercise Tenant’s next extension option by nine (9) months prior to the end of the then current Term.

3.3 Early Termination Right. Notwithstanding the foregoing in Section 3.1 and Section 3.2, if Gross Sales achieved by Tenant in the Demised Premises in a particular calendar year, other than a calendar year that includes a partial Lease year, do not meet or exceed \$15 million, then within ninety (90) days following the expiration of such calendar year, Tenant shall have the right, but not the obligation, to terminate this Lease upon sixty (60) days’ prior written notice to Landlord.

#### 4. RENT

4.1 Base Rent. Intentionally Omitted.

4.2 Percentage Rent. Tenant covenants and agrees to pay to Landlord, beginning on the Rent Commencement Date, annual percentage rent (“Percentage Rent” or “Rent”) for each Lease Year in an amount equal to one percent (1%) of Gross Sales for each Lease Year, less the Parking Payment of \$25,000.00 as set forth in the Parking Agreement. With respect to the first Lease Year, no Gross Sales attributable to the portion of the first Lease Year preceding the Rent Commencement Date shall be included in Gross Sales. Percentage Rent shall be paid by Tenant to Landlord on a quarterly basis within forty-five (45) days after the end of each fiscal quarter with the first quarter ending April 30, the second ending July 31, the third ending October 30, and the fourth ending January 31, except that Tenant will make the payment for the fourth fiscal quarter within ninety (90) days after the end of each Lease Year and each such payment shall be accompanied by a statement setting forth Gross Sales for such Lease Year and a certification that such Gross Sales are true and correct, such certification to be signed by an authorized officer of Tenant. Tenant shall deliver to Landlord quarterly statements of Tenant’s Gross Sales using the date schedule above for disclosing information relevant to the prior quarter.

4.3 Maintenance of Records; Audit. Tenant agrees to keep upon the Demised Premises or at Tenant’s main administrative offices, records of all Gross Sales (including deductions or exclusions therefrom). Such records shall be retained by Tenant for not less than three (3) years after the expiration of the Lease Year to which they relate, and, if Landlord shall inspect and/or audit Gross Sales for such Lease Year, such books and records shall continue to be kept until such inspection and/or audit has been concluded (provided, that Landlord shall use diligent efforts to conclude such inspection and/or audit within a reasonable period of time). For purposes of permitting verification by Landlord of the Gross Sales reported by Tenant, Landlord shall have the right for a period of three (3) years after Landlord’s receipt of Tenant’s annual statement of Gross Sales, and upon not less than thirty (30) days’ notice to Tenant, to conduct a single audit of all books and records relating to Gross Sales for the Lease Year to which Tenant’s annual statement relates. Sales. If such audit discloses that Tenant has underpaid any Percentage Rent due hereunder, then Tenant shall cause the same to be paid together with interest at the Interest Rate from the date such Percentage Rent was due, and in addition, if such audit discloses that Gross Sales were understated by more than three percent (3%) of the Gross Sales actually reported to Landlord and additional Percentage Rent is due, then Tenant also shall pay Landlord’s reasonable out-of-pocket cost for such audit. Tenant shall be furnished with a copy of the final audit report regardless of whether Landlord claims that Tenant owes additional Percentage Rent. If Tenant disputes the findings of Landlord’s audit, Tenant shall so notify Landlord

within thirty (30) days after Tenant's receipt of Landlord's demand for additional Percentage Rent and the final audit report. Tenant shall pay, as and when due, any undisputed portion of any amounts determined by Landlord's audit to be due from Tenant together with interest as aforesaid. However, Tenant's failure to make payment of any amount about which Tenant timely raises a bona fide dispute shall not be deemed to be a Tenant Default, but upon final determination herein that any such amount was properly due from Tenant, said amount shall be paid by Tenant promptly upon such final determination, and bear interest thereon as provided in Section 4.7 from the date same was originally due until paid by Tenant. Landlord agrees to hold in confidence all sales figures and other information with respect to Tenant's business which may be obtained from Tenant or by means of an inspection or audit of Tenant's books and records, except that Landlord may disclose such sales figures to prospective bona fide Mortgagees, purchasers of Landlord's interest in the Demised Premises, Landlord's professional advisors (such as attorneys and accountants) or pursuant to court order. Prior to revealing any such sales figures, Landlord shall obtain confidentiality letters from any such purchaser.

4.4 "Gross Sales" Defined. Subject to Section 4.5, "Gross Sales" shall mean the aggregate amount, expressed in dollars, of all sales, rentals, licenses or concessions of goods or services, whether made at full or discount prices, wholesale or retail, or for cash or credit or by way of exchange, made in, on or from or arising out of the use of the Demised Premises by Tenant or any subtenant, licensee or concessionaire of Tenant, including sales and services: (a) where the orders therefor originate in, at, from, or arise out of the use of the Demised Premises whether delivery or performance is made from the Demised Premises or from some other place; (b) made or performed online by email, mail, telephone, or telegraph orders; (c) made or performed by means of mechanical or other vending devices in the Demised Premises; (d) made from the application and use of all gift certificates and gift cards when redeemed at the Demised Premises; or (e) which Tenant or any subtenant, licensee or concessionaire of Tenant in the normal and customary course of its business would credit or attribute to its operations in any part of the Demised Premises. Each installment or credit sale shall be treated as a sale for the full price in the month during which such sale is made, regardless of whether or when Tenant receives payment therefor. No franchise, occupancy or capital stock tax and no income or similar tax based on income or profits shall be deducted from Gross Sales.

4.5 Exclusions from Gross Sales. The following shall be excluded from Gross Sales (to the extent they are documented as required herein): (a) sales of merchandise for which cash has been refunded (limited to the amount of cash refunded); (b) refunds or allowances made on merchandise claimed to be defective or unsatisfactory; (c) the sales price of merchandise returned by customers for exchange, but only to the extent the value of said merchandise thereafter tendered to customer as an exchange is of equal value; (d) deliveries and exchanges of merchandise between the Demised Premises and a warehouse or other store and other similar movements of merchandise; (e) returns to suppliers; (f) any excise, sales, use or value added tax which is levied directly on sales to the extent separately stated and is added to the sales price as a distinct amount in addition to the regular price; (g) travel service center and ticket agency sales, except that any attributable commission or fees earned by Tenant will be included in Gross Sales; (h) sales of fixtures, furniture and equipment previously used in the Demised Premises or not made in the ordinary course of business; (i) finance charges on in-house charge accounts and fee or charges paid to outside credit card companies (to the extent that such charges do not exceed the charges paid to outside credit companies); (j) discount sales made to employees of Tenant and its subsidiary and affiliated companies; (l) intentionally omitted; (m) sales of gift certificates, gift cards and store value cards or gift certificates (but such certificates and cards shall be included in Gross Sales when redeemed at the Demised Premises regardless of the origin or point

of sale of such gift card or store value card or gift certificate); (n) sales of hunting and fishing licenses; (o) bad debts which are actually written off for Federal income tax purposes for this store; (p) sales of lottery tickets and other games of chance, except that any commission paid by the lottery commission to the Tenant shall be included within Gross Sales; (q) income relating to delivery charges and/or charges for labor in any work or service performed outside the Demised Premises; (r) income from gift wrapping; (s) fees charged for cashing and issuing of checks; (t) sale of postage stamps (other than those merchandised as being for stamp collectors); (u) receipts from snack bars, cafeterias and/or vending machines maintained primarily for the use and convenience of Tenant's or any subtenant's, licensee's or concessionaire's employees and incidental convenience of customers; (v) receipts from public telephones; (w) premiums and other amounts received from or in connection with: (1) the sale of policies of insurance, mutual funds, stocks, bonds and other securities; (2) making of personal loans; (3) operation of savings plans; and (4) sale or rendition of any other financial services; (x) wholesale sales made through the commercial and industrial sales department of Tenant; (y) sale of any service contracts, extended warranties and any other accidental damage and handling plans; (z) sums and credits received in settlement of claims for loss or damage to merchandise; (aa) sales made by any subtenant, licensee, franchisee or concessionaire, but any attributable commissions or fees earned by Tenant shall be included within Gross Sales; (ab) donations of merchandise or sales at discount (provided no profit is derived from such discount sales) of merchandise to non-profit charitable and religious organizations; (ac) sums received in partial payment for merchandise sold upon the "layaway" or "will call" basis, provided said sum will be included in Gross Sales when the sale has been concluded by delivery of merchandise to the customer (any partial payments which are forfeited by customers shall not be included in Gross Sales); (ad) merchandise or other items of value issued in redemption of trading stamps or coupons in connection with any sales promotion program; (ae) sales of merchandise or service rendered on, in, or from any of Tenant's other stores, and sales and of merchandise or service on orders which are solicited, taken, or received at, by, or from any of Tenant's other stores, whether or not the merchandise in question is transferred from the Demised Premises; (af) income from alteration services and workroom operations, shoe repair, hat repair, engraving, monogramming, pressing, cleaning, mending and similar minor auxiliary services, provided such services and operations are rendered primarily with respect to merchandise sold at or from the Demised Premises and such receipts are not included in sales under Tenant's customary retail accounting procedures; (ag) sales of merchandise or other items that are sold at below cost and relate to the annual sales promotional program known as "Did You Boscov Today", and other promotional below cost sales.

4.6 Payment of Rent. Tenant shall pay all Rent to Landlord at the Rent payment address set forth in Section 24.5. Tenant shall pay all Rent when due and payable, without any set off (unless expressly permitted hereunder), deduction or prior demand therefor. If any Person to whom Tenant shall not then be paying Rent under this Lease shall demand payment of Rent from Tenant alleging such Person's right to receive such Rent as a result of a collateral or absolute assignment and/or transfer of Landlord's interest in this Lease, then Tenant shall not be obligated to honor such demand unless Tenant shall receive written instructions to do so from the Landlord.

4.7 Interest. If any Rent is not paid within ten (10) days after its due date, then, in consideration of Landlord's additional expense caused by such failure to pay such sums, such arrearage shall bear interest from its due date at the Interest Rate until paid and such interest shall be payable without demand simultaneously with the Rent arrearage.

4.8 Tenant Representations. Tenant hereby represents to Landlord that:



4.8.1 As of the date of this Lease, to Tenant's actual knowledge, there is no action, suit, inquiry, notice of violation, proceeding or investigation completed, pending or, to the knowledge of Tenant, contemplated or threatened against or affecting Tenant, before or by any court, arbitrator, governmental or administrative agency or regulatory authority, which would reasonably be expected to have a material adverse effect on the financial condition of Tenant and its ability to performed its obligations under this Lease.

4.8.2 The sales statements for February, 2023 through January, 2024 that Tenant submitted to Landlord are materially accurate. Tenant is not aware of any agreement that materially and adversely affects its assets or financial condition.

4.8.3 As of the date of this Lease, to Tenant's actual knowledge, Tenant has timely filed all necessary tax and similar returns (or extensions, if applicable) and provisions have been made for the timely payment of any and all taxes and assessments.

## **5. ADDITIONAL RENT**

5.1 Intentionally Omitted.

## **6. CONSTRUCTION MATTERS**

6.1 Planning and Construction Process. If either party is at any time performing any work to the exterior or structural components of the Demised Premises, any work to the Demised Building, or any other work as to which the consent of the other party is required by the provisions of this Lease, then such work shall be coordinated through consultation of the parties' respective architects and engineers with one another and the exchange of any revisions to their respective plans for such work to the end that all such facilities and improvements shall be architecturally and functionally harmonious. In order to assure such coordination, plans shall be submitted to Landlord in accordance with the following procedure:

6.1.1 The Originating Party shall prepare its plans and specifications and submit them to the Approving Party.

6.1.2 Within thirty (30) business days after such plans and specifications have been received by the Approving Party, the Approving Party shall give the Originating Party notice of its approval or disapproval thereof, specifying in the case of the latter its reasons therefor. Approval of the Originating Party's plans and specifications by the Approving Party may be withheld only if: (a) the plans and specifications do not materially conform to the Site Plan or other plans and specifications (if any) of the Originating Party previously approved by the Approving Party; or (b) the plans and specifications do not otherwise materially meet the requirements of this Lease (including, without limitation, Section 8.2). In no event shall Landlord have the right to disapprove Tenant's Plans if Tenant's Plans are substantially consistent with Tenant's current store prototype and are otherwise in conformity with the requirements of this Lease.

6.1.2.1 If the Landlord is the Approving Party, the Landlord will have the right to retain an engineering and construction consultant (the "Construction Consultant") to assist in the review of any plans and specification submitted by Tenant pursuant to this Article 6. Where Landlord objects or disapproves of any plans or specifications based on a written opinion from the

Construction Consultant, such objection or disapproval will have a presumption of being reasonable for purposes of Section 6.1.6.

6.1.3 The Originating Party will, promptly following receipt of a notice of disapproval, undertake to amend and modify the plans and specifications so as to conform to the requirements of this Lease and, upon completion thereof, the same shall be approved in writing by the Approving Party.

6.1.4 If the Approving Party shall fail to give notice of its approval or disapproval within thirty (30) business days after receipt of any plans and specifications submitted to it for its approval, or of any required modification or amendment thereof, the Originating Party shall so notify the Approving Party, in accordance with the requirements of Section 24.5 (but copies need not be given to each party's legal counsel), and if the Approving Party shall continue to fail to give notice of its approval or disapproval within five (5) business days after receipt of such second notice, the same shall be deemed to have been approved by the Approving Party.

6.1.5 Upon approval of the plans and specifications by the Approving Party as provided herein, the same shall not be materially modified or amended thereafter by the Originating Party without the approval of the Approving Party.

6.1.6 If there shall be a bona fide dispute between the Originating Party and the Approving Party as to whether the plans and specifications or any amendment or modification thereof conform to the requirements of this Lease, or if Landlord and Tenant cannot resolve any other dispute that this Lease requires them to arbitrate, then such dispute shall be submitted for arbitration in accordance with the expedited commercial arbitration rules of the Arbitrator by a panel of three (3) neutral arbitrators, each with at least ten (10) years experience in the commercial construction appointed in the manner specified in such rules. The decision rendered in such arbitration shall be final and binding upon the parties and shall be enforceable in any court of competent jurisdiction.

6.2 Compliance With Underlying Process. Each party's plans and specifications which pertain to the work to be performed pursuant to this Article 6 shall not materially deviate from the Site Plan and will otherwise conform to the provisions of this Lease, all Applicable Laws and shall be in accordance with the orders, rules and regulations of each party's respective fire insurance rating organization. Notwithstanding the foregoing, however, either party's plans may depart from the orders, rules, or regulations of its fire insurance rating organization but only if such party bears any additional cost incurred by the other party resulting from such departure and such departure shall not adversely affect the functionality of the Demised Premises or result in the Demised Premises being uninsurable.

6.3 Landlord Work. Intentionally Omitted.

6.4 Tenant's Work. Intentionally Omitted.

6.5 Public Funds and other Reimbursements. The following funds ("Public Funds") once received by Landlord shall be paid by Landlord upon invoice from Tenant for work performed on the Demised Premises in consideration of Tenant's guiding Landlord's re-development project which consists of, among other work, constructing leasehold improvements in the Demised Premises:

- a. State of New York (“State Funds”): \$5,000,000.00. As more fully set forth in Schedule 6.5 attached hereto, these funds are being processed by the State at the time of signing of this Agreement and the parties are awaiting a grant disbursement agreement from the State regarding the State Funds. It is anticipated that these funds may be used only for reimbursement of permissible and allowable work performed as outlined herein in Schedule 6.5. The parties shall use reasonable efforts to cooperate in the submission of proof of work completed for reimbursement of State Funds. In the event that there is a substantial delay in reimbursement of State funds, defined as 90-days or more, the Landlord reserves the right to assign this Lease from the BLDC to the City of Binghamton should a bond be required for timely completion of the work and improvements contemplated herein. The parties agree not to spend the State Funds until a signed grant agreement is received from the State. In the event that the signing of the grant disbursement agreement from the State regarding the release of the reimbursable State Funds is delayed for more than six-months from the signing of this lease, then Tenant shall have the right, but not the obligation, to send Landlord a written notice terminating this Lease within ninety (90) days following the date of such notice (the “SF Termination Notice”). In this 90-day period following receipt of the SF Termination the parties shall engage in reasonable negotiations regarding the reallocation of existing funds and feasibility of obtaining funds from additional sources, failing which, this Lease shall terminate and the parties shall have no further obligations hereunder, except for any obligations that expressly survive the expiration or earlier termination of this Lease. .
- b. City of Binghamton (a Grant): \$2,500,000.00. These funds have been received.
- c. Broome County, New York (a Grant): \$1,000,000.00. These funds have been received.

6.5.1 Landlord is not providing any Public Funds directly to Tenant under this Lease, and Tenant has no right, power, or authority to cause any other entity to provide any of the Public Funds, and will not be liable to Tenant for the failure of any other entity to pay any of the Public Funds to Tenant.

6.5.2 In no event shall Landlord use or pay for at the request of Tenant any Public Funds for fixtures, furniture, equipment or inventory. Tenant understands and agrees that the State Funds are reimbursement grants that are released to the grant recipient after the recipient has provided proof of compliance with the requirements of the specific grant programs and that these State Funds shall only be released to Landlord to pay for such reimbursable expenses as allowed under the grant for State Funds. Landlord and Tenant shall cooperate to develop the requirements of Tenant’s leasehold improvements, construction of which is required in order for the State Funds to be paid to Landlord to reimburse work allowable work performed. Landlord, with Tenant’s reasonable cooperation as needed, will apply for the State Funds.

6.5.3 Reference is made to that certain Amendment to Lease Agreement dated September 28, 2022 by and among Landlord, Tenant, and the Broome County Industrial Development Agency, a copy of which is attached to this Lease as Schedule 6.5.3. It is acknowledged and agreed that to the extent Tenant has not been reimbursed the amounts set forth in Section 2 thereof for certain Major Replacements, such amounts will be reimbursed no later than

thirty (30) days following the Effective Date or as per the terms of the Grant money listed in section 6.5, above; provided that Tenant has submitted to Landlord the documentation required for such reimbursement under said Amendment to Lease Agreement dated September 28, 2022.

6.6 Funds committed by Tenant. Tenant agrees to contribute funds in the amount of \$1,500,000.00 in addition to the Public Funds described in section 6.5, above, which funds shall be used for, and subject to, the same guidelines as the aforementioned Public Funds. Tenant shall pay these funds to Landlord for work performed as expenses are accrued, with the right to request accounting of same every thirty (30) days.

6.7 Mechanic's Liens. No work performed by Tenant, whether in the nature of erection, construction, alteration or repair, shall be deemed to be for the immediate use and benefit of Landlord so that no mechanic's or other lien shall be allowed against the estate of Landlord by reason of any consent given by Landlord to Tenant to perform such work. If permitted by Applicable Law, Tenant shall place contractual provisions in all contracts for any work performed by Tenant at the Demised Premises, assuring Landlord that no mechanic's liens will be asserted against Landlord's interest in the Demised Premises. If any mechanic's or other liens shall at any time be filed against the Demised Premises by reason of work, labor, services or materials performed or furnished, or alleged to have been performed or furnished, to the Demised Premises, and regardless of whether any such lien is asserted against the interest of Landlord or Tenant, the party who contracted for such work that gave rise to the lien shall cause the same to be discharged of record or bonded to the reasonable satisfaction of the other party within thirty (30) days of the date such party receives written notice of the filing of such lien.

## 7. UTILITIES

7.1 Landlord's Covenant's Representations and Warranties. Landlord covenants, represents and warrants to Tenant that: (a) to Landlord's actual knowledge, all gas, electric, water, telephone and sanitary and storm sewer lines and equipment required to provide the Demised Premises with such utilities and service at customary rates and charges are available, and Landlord will maintain and repair within the ownership or control of Landlord or its Affiliates without expense to Tenant, and (b) all utility lines serving the Demised Premises except telephone lines and utility lines within or on buildings shall be installed underground. Landlord agrees, in the event of any failure or suspension of utility services, to cooperate with Tenant in good faith to restore or cause restoration of utility services as soon as is reasonably practicable under the circumstances, and Landlord shall not be liable for any such failure or suspension by reason of any cause beyond Landlord's reasonable control. If Landlord fails to promptly proceed to effect necessary maintenance, repairs or replacements of utility lines and the electric transformer serving the Demised Premises and within the ownership or control of Landlord or its Affiliates, then Tenant may enter upon that part of the adjacent real property owned by Landlord for the purpose of performing such maintenance, repairs or replacements at the expense of Landlord; provided such maintenance, repairs or replacements performed by Tenant in compliance with all Applicable Laws. If Landlord fails to reimburse Tenant for the actual, incurred costs of such maintenance, repairs or replacements (together with interest thereon from the date of expenditure at the Interest Rate until paid) within five (5) days after Tenant shall have made a demand therefor, then Tenant may, in addition to any other rights it may have, offset the amount of reimbursement against the Rent otherwise due hereunder.

7.2 Charges for Utilities. From and after the Rent Commencement Date until the end of the Term, Tenant will pay all service and usage charges for telephone, telecommunications, gas, electricity and water and sewer service used at the Delivered Premises, either directly to the service provider or, if furnished by Landlord, then promptly after billing by Landlord. All such services shall be separately metered or submetered to the Demised Premises to the fullest extent practicable. To the extent of any common utility charges (if any) as between the Demised Premises and other premises of Landlord, the charges allocable to the Demised Premises shall be fairly determined by Landlord and Tenant in a mutually approved manner.

7.3 Designation of Utility Providers. To the extent feasible, Tenant shall purchase, acquire or otherwise obtain any or all utilities directly from the service provider, supplier, and such supplier's distributor and/or transmitter for any or all utilities servicing the Demised Premises. The foregoing shall not abrogate Landlord's obligation to furnish, install and maintain or cause to be furnished, installed and maintained without expense to Tenant all gas, electric, water and sanitary and storm sewer lines and equipment required to provide the Demised Premises with such utilities and service as described above. If Landlord furnishes or supplies any utility, Landlord agrees to furnish to Tenant, upon request, information regarding the availability, price and other service related information regarding such utility service. The charges for any such utility service furnished to the Demised Premises by Landlord shall be equal to Landlord's actual out-of-pocket cost per measuring unit of utility consumption. Landlord shall endeavor to provide to Tenant, or cause the utility provider to provide to Tenant, the same level of service and maintenance service as if a public utility company was directly furnishing such services. If Landlord is furnishing any utility services and Tenant is able to obtain same directly from the provider, Tenant may at any time elect to terminate Landlord as Tenant's supplier by so notifying Landlord. In the event any addition, improvement or alterations performed by Tenant necessitates new or additional lines and/or equipment or requires that additional costs of any type be paid, including without limitation any additional transformers, Tenant shall be solely responsible for the cost thereof (including without limitation all installation costs, permit and approval costs, engineering costs and costs imposed by governmental authorities) and also including without limitation all ongoing costs for repair, maintenance and/or replacement of all such items.

## **8. ALTERATIONS, ADDITIONS AND IMPROVEMENTS**

8.1 Alterations Permitted Without Landlord's Consent. Subject to Section 8.2, Tenant may, at its own expense and at any time and from time to time following the Rent Commencement Date, make any alterations, additions or improvements in, on, to or of the Demised Premises which Tenant, in its sole discretion, may deem necessary or desirable; provided any such alteration, addition, or improvement do not have a material, adverse impact on Landlord's ability to reuse or re-let the Demised Premises. All such repairs, alterations, additions, improvements and replacements shall be completed in a good and workmanlike manner, and shall be constructed in accordance with all Applicable Laws.

8.2 Alterations that Require Landlord's Consent. Tenant shall not make any structural or exterior alterations, additions or improvements to the Demised Premises, unless Tenant first obtains Landlord's prior written consent; provided, however, nothing contained in this Section is intended to restrict Tenant from making any non-structural exterior change to the Demised Premises which is generally consistent with Tenant's then current prototypical Department Store exterior. In those circumstances where Landlord's consent is required, Tenant shall provide Landlord with a

complete set of plans and specifications relating to such work pursuant to the process outlined in Sections 6.1.1 through 6.1.6 above.

## **9. MAINTENANCE OF THE DEMISED PREMISES**

9.1 Maintenance Covenants of Tenant Relating to the Demised Premises. Subject to the provisions of Section 9.2 and Articles 16 and 17, from and after the Rent Commencement Date, Tenant shall perform all maintenance, repairs and/or replacements to the Demised Premises (including, without limitation, the electrical, plumbing, heating, ventilating, sprinkler, life-safety, telecommunications, mechanical, air-conditioning and vertical transportation systems; it being understood that any HVAC systems and units, as well as any vertical transportation systems, are improvements to the Demised Premises and not equipment) and equipment in the Demised Premises and keep the Delivered Premises in a clean, orderly and sanitary condition, reasonable wear and tear excepted at Tenant's sole costs and expense; provided, however if any such maintenance, repairs and/or replacements are required because of the negligence or fault of Landlord, but subject to the provisions of Section 15.6 below, Tenant shall perform such maintenance, repairs and/or replacements and Landlord will reimburse Tenant for the actual, incurred costs of such maintenance, repairs and/or replacements. Tenant also shall be responsible for the maintenance and repair, at Tenant's sole cost and expense, of any canopies or overhangs that are altered by Tenant.

Notwithstanding the foregoing, although Tenant shall perform ongoing maintenance and repair of the Demised Premises, the first time during the Term that any structural portion of the Demised Premises requires replacement, Tenant shall first obtain Landlord's consent for such replacement and the budget therefor, and Landlord shall reimburse Tenant for same following Tenant's completion of such replacement and issuance of written request therefor, within thirty (30) days following Landlord's next subsequent board meeting where the payment is approved. At such time as a structural portion of the Demised Premises is replaced, Tenant shall assume the maintenance and repair of such structural portion until the next required replacement at the end of such structural portion's useful life. To the extent that such maintenance may be subject to Landlord's procurement policy, Tenant agrees to comply with the policy in all respects.

Tenant, at Tenant's sole cost and expense, further covenants that:

9.1.1 Trash. Tenant will not permit undue accumulation of garbage, trash, rubbish and other refuse, but shall remove the same and shall keep such refuse in proper containers, and Tenant shall avail itself of a refuse disposal service at Tenant's cost.

9.1.2 Glass Replacement. Tenant will promptly replace with glass of like kind and quality, any plate glass, door or window glass in the Demised Premises which may become cracked or broken;

9.1.3 Sound Reproduction. Tenant will not use and/or permit the use of any apparatus for sound reproduction or transmission, or any musical instrument, in such manner that the sound so reproduced, transmitted or produced shall be audible outside the Demised Premises (except low level music);

9.1.4 Mechanical Apparatus. Tenant will keep all mechanical apparatus free of unreasonable vibrations and noise which may be transmitted beyond the confines of the Demised Premises;

9.1.5 Odors. Tenant will not cause any objectionable odors to emanate or be dispelled from the Demised Premises;

9.1.6 Intentionally Omitted;

9.1.7 Compliance With Applicable Law. Tenant will comply with all Applicable Laws with respect to the use or occupancy of the Demised Premises;

9.1.8 Pest Extermination. Tenant will cause the Demised Premises to be exterminated from time to time as may be necessary to keep the Demised Premises reasonably free of insects, rodents and other so-called pests; and

9.1.9 HVAC. Tenant will perform all maintenance, repairs and/or replacements to the heating, ventilating and/or air conditioning system for the Demised Premises, whether the same is inside or outside of the Demised Premises, and Tenant balance the heating, ventilating and/or air conditioning system for the Demised Premises.

9.2 Intentionally Omitted.

## 10. SIGNS

10.1 Generally. Tenant, shall have the right, subject to Applicable Laws, to install on the exterior of Demised Premises Tenant's standard signs and logos.

10.2 Intentionally Omitted.

10.3 Allocation of Signage Rights. The signage rights granted to Tenant pursuant to Section 10.1 may, at Tenant's option and at Tenant's sole cost, be allocated to or between Tenant and/or any subtenant of all or any portion of the Demised Premises occupying at least 50,000 square feet of Floor Area that has an exterior storefront entrance.

## 11. OPERATION OF LANDLORD'S BUILDINGS AND COMMON AREA

11.1 Intentionally Omitted.

## 12. ADDITIONAL SITE COVENANTS

12.1 Modifications. Subject to Section 12.2, Landlord shall not, without obtaining Tenant's prior written consent: (a) change or allow to be changed: (i) any aspect of the Common Area to the extent such changes materially negatively interfere with Tenant's use of the Demised Premises, and/or (ii) any loading area, loading facility, or receiving area serving the Demised Premises; or (b) locate, install or construct or allow to be located, installed or constructed any structures (including, without limitation, any kiosks, booths, signs or similar structures, or any expansions of any existing structures) within fifty (50) feet from the entrance of the Demised Premises.

12.2 Authorized Modifications. Notwithstanding Section 12.1, Landlord shall have the right from time to time, perform such work as may be reasonably required in order to comply with Applicable Law, to avoid imminent damage or injury to persons or property. None of the foregoing actions shall be performed or implemented in a manner that has a material adverse effect on the visibility, accessibility or operation of, or the parking for, the Demised Premises, and except for emergencies, Landlord shall endeavor, to the extent within its reasonable control, to avoid performing any of the aforesaid modifications which would cause substantial disruption to Demised Premises operations, during August, November and December of any year.

12.3 Parking Spaces. Notwithstanding any provision in this Lease to the contrary, in the event the Parking Area is either: (i) destroyed; (ii) taken via condemnation or other proceeding, or (iii) rendered unavailable to Tenant, its employees, and customers for a period of time exceeding thirty (30) consecutive days, then unless Landlord is able to provide Tenant with a comparable number of parking spaces in a reasonable amount of time at no greater cost to Tenant than that payable by Tenant at the time the applicable event in (i), (ii) or (iii) above occurs, Tenant may, at any time prior to the Parking Area being restored or a comparable number of parking spaces being made available, terminate this Lease upon 60 days written notice to Landlord. Landlord and Tenant shall cooperate and use reasonable efforts to exhaust all other possible reasonable remedies prior to terminating this Lease.

12.4 Tenant's Operating Covenant. During the Term, except for Unavoidable Delays and Temporary Closures, Tenant shall operate (or cause to be operated) not less than 100,000 square feet of Floor Area in the Demised Premises as a Department Store under Tenant's Trade Name in a manner similar to a majority of Tenant's other Department Stores (which, for purposes of this Section 12.4, shall be deemed to occur so long as Tenant has multiple departments operating in the Demised Premises under what appears to the general public as an integrated department store, regardless of what departments are actually operated in any store) for at least fifty (50) hours each week. Tenant's Operating Covenant as set forth in this Section 12.4 is personal to Landlord and its affiliates. Upon any sale or transfer by Landlord to an unaffiliated third party, the terms and conditions of this Section 12.4 shall, *ipso facto*, be null and void.

See comment

12.5 Recapture.

12.5.1 If: (a) Tenant ceases (other than a Temporary Closure) to use the Demised Premises as a Department Store; or (b) Tenant desires to enter into a Transfer as to which a Pre-Transfer Notice is required pursuant to Section 13.2.2; then in any such case Landlord shall have the right, but not the obligation, to terminate this Lease and recapture the Demised Premises by giving Tenant written notice of its election to do so on a date certain, and all other applicable provisions of Section 12.5.2 below shall apply. If Landlord elects to terminate this Lease pursuant to clause (b) of this Section 12.5.1, then Tenant shall have the right to nullify Landlord's termination notice if Tenant withdraws the consent request within ten (10) business days after Tenant's receipt of Landlord's termination notice. Nothing contained in this Section 12.5.1 is intended to limit Landlord's rights or remedies in the event of a Tenant Default.

12.5.2 If: (a) Tenant gives Landlord a Pre-Transfer Notice pursuant to Section 13.2.2; or (b) the Demised Premises or at least a full floor of the Demised Premises remains vacant



for a continuous period of one hundred eighty (180) days (other than for a Temporary Closure); or (c) Tenant ceases (other than a Temporary Closure) to use the Demised Premises as a Department Store; or (d) after Tenant has made a Transfer to an Affiliate of Tenant: (i) such Transferee ceases to be an Affiliate of Tenant; and (ii) the Demised Premises then or at any time thereafter is not operated as one of a chain of at least twenty-one (21) retail stores under common ownership by such Transferee or such Transferee's Affiliates (each of the events described in clauses (a), (b), (c) and (d) are a "Recapture Event"); then Landlord shall have the right to exercise a recapture right as follows:

in the case of a Pre-Transfer Notice that applies to all of the Demised Premises or in the case of a vacancy of all of the Demised Premises or a cessation of Department Store operations in all of the Demised Premises, Landlord may terminate this Lease and recapture the entire Demised Premises;

in the case of a Pre-Transfer Notice that applies to less than all of the Demised Premises, or in the case of a vacancy of at least a full floor of the Demised Premises or a cessation of Department Store operations in at least a full floor of the Demised Premises, Landlord may terminate this Lease in part and recapture the space which is the subject of the Pre-Transfer Notice or the vacancy.

12.5.3 If exercised, the recapture right shall be exercised by Landlord by giving Tenant written notice of its election to do so on a date certain, such notice to be given, if at all, within sixty (60) days after Tenant gives Landlord notice of the occurrence of the Recapture Event (except that no such notice shall be required in the case of a Recapture Event described in Section 12.5.2(a)) (the "Recapture Period"). The scheduled date of termination set forth in Landlord's Notice shall be a date no earlier than thirty (30) days prior to and no later than thirty (30) days after the expiration of the Recapture Period. If Landlord fails to exercise its termination right within the Recapture Period, then Landlord's termination right shall lapse, expire and otherwise become null and void with respect to that particular Recapture Event, but not as to any new Recapture Event, it being agreed that the following shall constitute new Recapture Events: (i) each separate issuance of a Pre-Transfer Notice; (ii) the expiration of three hundred sixty-five (365) days after Landlord has declined to exercise a right of recapture following the giving of a Pre-Transfer Notice (measured from the time that Landlord has declined or is deemed to decline), but only if Tenant: (1) has not within such time effectuated an assignment or sublease of the space in question; and (2) is still making the space in question available for lease by a third party; or (iii) each successive continuous period of three hundred sixty-five (365) days that the Demised Premises or at least a full floor thereof remains vacant after the expiration of the applicable period for recapture on account of a Recapture Event described in Section 12.5.2(b). If this Lease or portion thereof is terminated as aforesaid, then neither party shall have any further liability to the other party from and after the date of termination with respect to the recaptured premises except for Lease defaults that pre-date the Lease termination date, monies owed on the date of termination and indemnities given by each of the parties to the other pursuant to this Lease with respect to any liability or obligation arising or to be performed under this Lease prior to the date of termination, all of which are intended to survive such termination, and except for Landlord's rights and remedies in the case of a Tenant Default.

### 13. ASSIGNMENT AND SUBLETTING

13.1 General Prohibition. Except as expressly permitted in Section 13.2, Tenant shall not: (a) sell, assign, mortgage, pledge or in any manner transfer this Lease or any interest therein; or (b) sublet all or any portion of the Demised Premises (any of which is herein referred to as a “Transfer” or “Transfers”, as the case may be, and the Person or Persons to whom a Transfer is made is hereinafter referred to as the “Transferee”); without Landlord’s prior written consent, such consent not to be unreasonably withheld, conditioned or delayed. Consent by Landlord to any Transfer shall not waive the necessity for consent to any subsequent Transfer. Except as otherwise provided in this Lease, no Transfer, including a Transfer permitted under Section 13.2, shall be deemed a waiver of any restrictive covenant contained in this Lease, or a release of Tenant from the performance by Tenant of any covenants on the part of Tenant contained in this Lease. Contemporaneously with any permitted assignment, the Transferee shall assume and agree, in writing, to be bound by and perform, observe and comply with all terms, covenants and agreements contained in this Lease to be performed, observed or complied with after the effective date of such assignment. At Landlord’s request, Tenant shall furnish a copy of the assignment and assumption agreement to Landlord.

#### 13.2 Exceptions.

13.2.1 Tenant may, without Landlord’s consent, effect the following Transfers for the uses permitted under this Lease:

a. assign this Lease or sublease the Demised Premises to any Affiliate of Tenant, to any Person resulting from the consolidation or merger of Tenant into or with any other Person, or to any Person acquiring a majority of the store locations operating under Tenant’s Trade Name and such acquired store locations will be part of a chain of not less than twenty (21) store locations under common ownership or control and operating under the same trade name (which may be different from the trade name used to identify any stores that Tenant retains); provided, however: (a) in the case of an assignment the assignee shall assume this Lease and agree, in writing, to be bound by and to perform, observe and comply with all terms, covenants and agreements contained in this Lease accruing from and after the effective date of such assignment; and (b) in the case of a sublease, the sublessee shall agree, in writing, that the sublease is subject to this Lease; and

b. sublease, franchise, or license the use of a portion of the Demised Premises for use as a department or subdepartment of Tenant’s operation (which portion may include multiple floors or levels of the Demised Premises), provided: (a) the Demised Premises shall at all times thereafter appear to the public as a single Department Store; and (b) the rights of such sublessee, franchisee or licensee are subject and subordinate to this Lease.

#### 13.2.2 Intentionally Deleted.

13.3 Release of Assignor. If the assignee of Tenant’s entire interest in this Lease (or any guarantor of the assignee’s obligations under this Lease) has a net worth equal to or greater than One Hundred Million (\$100,000,000.00) Constant Dollars (the “Minimum Net Worth Test”) determined at the time of the assignment, and if Tenant (assignor) is not then in default under the provisions of this Lease, then the assignor (and any guarantor of the assignor’s obligations under this Lease) shall be released from liability for the performance of all terms, covenants and provisions of the Lease accruing after the effective date of the assignment, provided the assignee assumes all of Tenant’s

obligations under this Lease, Landlord shall have been provided with financial information evidencing compliance with the Minimum Net Worth Test and other information required by Section 13.1, and any guaranty shall be in a form reasonably acceptable to Landlord. If such assignee (or guarantor of the assignee's obligations under this Lease) does not pass the Minimum Net Worth Test at the time of the assignment, but such assignee (or guarantor of the assignee's obligations under this Lease) thereafter passes the Minimum Net Worth Test, and if proof thereof shall have been provided to Landlord as set forth above and all other conditions to release, as set forth above, are then satisfied, then the assignor (and any guarantor of the assignor's obligations under this Lease) shall be released from any further liability for the performance of all terms, covenants and provisions hereunder accruing from and after such subsequent date.

13.4 Cure Rights of Original Tenant. If Tenant assigns Tenant's interest in this Lease and provided Tenant has not been released of its liability as set forth herein, then Landlord, when giving notice to said assignee or any future assignee in respect of any default, shall also give a copy of such notice to all Persons that continue to have liability under this Lease provided Landlord has been furnished the address for such notices, and no notice of default shall be effective until a copy thereof is so given to each such Person so liable. Each Person that continues to have liability under this Lease shall have the same period after receipt of such notice to cure such default as is given to Tenant under this Lease.

13.5 New Lease. Provided Tenant has not been released of its liability as set forth herein, if this Lease is terminated because of: (a) a Tenant Default of an assignee of Tenant, or (b) the rejection, disaffirmation, or other termination of this Lease by or on behalf of an assignee of Tenant pursuant to any proceeding in bankruptcy under any Applicable Law of any State or of the United States, or any other Applicable Law affecting creditors' rights, then unless Landlord releases Tenant of its liability under this Lease, Landlord shall promptly give to the original Tenant named herein notice thereof, and such original Tenant shall have the right, exercisable by notice given to Landlord within fifteen (15) days after receipt by the original Tenant of Landlord's notice, to enter into a new lease ("New Lease") of the Demised Premises with Landlord; provided that: (1) the original Tenant shall have remedied all Tenant Defaults of the assignee hereunder; (2) the assignee shall have surrendered and delivered possession of the Demised Premises to Landlord in accordance with Section 20.1; and (3) all of the rights of the assignee in and to this Lease and the Demised Premises shall have ceased to exist. Upon the fulfillment of the conditions described in clauses (1), (2) and (3) as aforesaid, Landlord shall assign to Tenant all of Landlord's rights against such assignee (whether arising as a result of bankruptcy court proceedings or otherwise); provided that such assignment shall be subordinate to any other applicable claims of Landlord in such bankruptcy proceedings or otherwise. The term of the New Lease shall begin on the date of termination of this Lease and shall continue for the remainder of the Term (including any renewal periods). The New Lease shall otherwise contain the same terms and conditions as those set forth herein, except for requirements which are no longer applicable or have already been performed. It is the intention of the parties hereto that the New Lease shall have the same priority relative to other rights or interests in or to the Demised Premises as this Lease. The provisions of this Section 13.5 shall survive the termination of this Lease and shall continue in full force and effect thereafter to the same extent as if this Section 13.5 were a separate and independent contract between Landlord and the original Tenant. From the later of: (x) the date on which the original Tenant shall serve Landlord with the aforesaid notice of the exercise of its right to a New Lease; (y) the date when all of the conditions described in clauses (1), (2) and (3) are satisfied; and (z) the date the date on which the original Tenant shall execute the New Lease; the

original Tenant or its successor shall have quiet and undisturbed use and possession of the Demised Premises as contemplated in this Lease.

13.6 Sublease Recognition Agreement. If Tenant subleases an entire floor of the Demised Building, or the entire Demised Premises for a term of at least five (5) years to a sublessee that has a net worth of at least Fifty Million Dollars (\$50,000,000.00) (it being agreed that a sublessee shall be deemed to have satisfied such net worth test if any guarantor of the sublessee's obligations under the sublease satisfies such net worth test), and if Landlord has theretofore received a Pre-Transfer Notice with respect to the sublease space and has declined to exercise its recapture rights in Section 12.5 above, and if such sublease: (a) obligates the sublessee to pay annual rent in an amount not less than a proportionate share of the Rent payable under this Lease (which proportionate share shall be based upon the Floor Area of the Demised Premises sublet by any sublessee as compared to the total Floor Area of the Demised Premises), or (b) obligates the sublessee to agree with Landlord in the non-disturbance agreement that if the sublessee's monetary obligations to Tenant are less than that described in clause (a)(1) above, then upon termination of this Lease sublessee's monetary obligations to Landlord shall equal (or, in the case of a partial sublease, equal a proportionate share of) Tenant's Rent obligations under this Lease then, notwithstanding any other provisions of this Lease, Landlord shall, upon Tenant's request, execute and deliver a recognition agreement between Landlord and each such subtenant in the form of Exhibit "H" hereto.

#### 14. TENANT'S PROPERTY

14.1 Tenant's Property. All machinery, equipment, furniture, furnishings, trade fixtures, inventory and other personalty installed, attached or placed upon, the Demised Premises by Tenant or any subtenant, licensee or concessionaire of Tenant (collectively, "Tenant's Property") shall remain the property of Tenant or any subtenant, licensee or concessionaire of Tenant, as the case may be, without regard to the means by which the same are installed or attached to the Demised Premises. Notwithstanding the foregoing, Tenant Property does not include any HVAC systems, electrical, plumbing, heating, ventilating, sprinkler, life-safety, telecommunications, mechanical, or other systems that form an integral part of the structure of the Demised Premises. Tenant, or any party claiming by, through or under Tenant, shall have the right, at any time or from time to time to remove any or all of Tenant's Property and shall, unless otherwise agreed by Landlord, remove same within ten (10) business days after the end of the Term; provided, however, if such removal results in material physical injury to the Demised Premises, then Tenant shall repair such physical injury (but Tenant shall not be liable for any diminution of value resulting from the absence of Tenant's Property so removed). The failure to remove Tenant's Property upon the expiration of the Term shall be deemed a forfeiture or abandonment of Tenant's Property and Landlord may use, sell or otherwise dispose of the same or at Landlord's election Landlord may cause same to be removed and/or disposed of at Tenant's cost.

14.2 Landlord Waiver. Landlord hereby waives all contractual, statutory and common law liens, claims, rights of distraint or levy, which Landlord now has or may hereafter acquire with respect to Tenant's Property. Within ten (10) days after Landlord's receipt of a request therefor, Landlord agrees to execute a so-called landlord waiver in the form attached hereto as Exhibit "I".

14.3 Personal Property Taxes. Tenant shall be responsible for and shall pay, before delinquency, all municipal, county or state taxes, levies and fees of every kind and nature, including

business license taxes and general or special assessments levied during the Term against Tenant's Property.

**15. INSURANCE & MUTUAL INDEMNIFICATION**

15.1 Tenant's Liability Insurance. Commencing on the Effective Date and continuing at all times during the Term, Tenant shall maintain and keep in full force and effect, at no cost to Landlord:

15.1.1 Commercial General Liability Insurance. Commercial General Liability Insurance on an occurrence basis with respect to the Demised Premises and the business operated by Tenant therein. This policy shall be endorsed to include the Landlord Indemnitees as an additional insured on a primary noncontributory basis, contain cross-liability and severability of interests endorsements, state that this insurance is primary insurance and noncontributory as regards any other insurance carried by Landlord with respect to occurrences within the Demised Premises, and shall provide coverage as broad as the current ISO Form CG 00 01 10 01 or its equivalent. The minimum policy limits (which may be satisfied through a combination of self-insurance (except as provided in Section 15.9, not to exceed Three Hundred Thousand Constant Dollars (\$300,000.00 per occurrence), primary and excess policies), shall be as follows:

	<u>Constant Dollars</u>
General Aggregate	\$5,000,000.00
Products - Completed/Operations Aggregate	\$5,000,000.00
Personal and Advertising Injury	\$5,000,000.00
Each Occurrence	\$5,000,000.00
Fire Damage (any one fire)	\$ 500,000.00

15.1.2 Workers' Compensation Insurance. Workers' compensation in form and amounts required by law and Employer's Liability Insurance with minimum limits of \$1,000,000 per accident, \$1,000,000 disease per employee and \$1,000,000 disease policy limit.

15.2 Tenant's Contractors' Liability Insurance. Tenant shall require any contractor of Tenant performing work in, on or about the Demised Premises to maintain and keep in full force and effect, at no cost to Landlord:

15.2.1 Commercial General Liability Insurance. Commercial General Liability Insurance with limits of not less than Five Million Dollars (\$5,000,000.00) per occurrence with respect to bodily injury or death, personal injury and property damage. This policy shall be endorsed to include Tenant and the Landlord Indemnitees as additional insureds on a primary noncontributory basis, contain cross-liability and severability of interests endorsements and state that this insurance is primary insurance as regards any other insurance carried by Tenant or Landlord.

15.2.2 Workers' Compensation Insurance. Workers' compensation in form and amounts required by law and Employer's Liability Insurance with minimum limits of \$1,000,000 per accident, \$1,000,000 disease per employee and \$1,000,000 disease policy limit.

15.2.3 Commercial Automobile Liability. Commercial automobile liability insurance covering any and all vehicles brought onto the Demised Premises by Contractor with a minimum limit of \$1,000,000 combined single limit.

15.2.4 Evidence of Insurance. Tenant shall require all contractors to provide Landlord with certificates of insurance and copies of additional insured endorsements evidencing coverages above prior to the start of any work. Tenant shall require the contractors provide replacement certificates prior to the expiration of any policy. Notwithstanding the fact that any liability may be covered by insurance, liability shall in no way be limited by the amount of insurance recovery or the amount of insurance in force or required herein. All limits are considered minimum.

15.3 Landlord's Liability Insurance. Landlord shall maintain and keep in full force and effect during the Term a policy of Commercial General Liability Insurance on an occurrence basis with respect to the Demised Premises, in which the limits shall be no less than that applicable to Tenant under Section 15.1.1. The remainder of this Section 15.3, Section 15.4, and the applicability of Section 15.5 to Landlord shall not apply to Landlord if the Landlord is the Landlord executing this Lease hereunder, or any governmental agency, but shall apply if the Landlord is any other individual or entity: These policies shall be endorsed to include Tenant as additional insured, contain cross-liability and severability of interests endorsements, state that this insurance is primary insurance as regards any other insurance carried by Tenant with respect to occurrences within the Common Area (excluding occurrence within the Demised Premises), and shall provide coverage as broad as the current ISO Form CG 00 01 10 01 or its equivalent.

15.4 Landlord's Property Insurance. Landlord shall keep or cause to be kept in full force and effect during the Term, one or more property insurance policies providing coverage for the following: (a) special form loss perils; (b) boiler and machinery perils; (c) loss of business income in the amount of the actual business income loss sustained; and (d) builder's risk coverage during periods of Landlord's construction (written on a completed value basis); insuring the Demised Premises in an amount equal to the reasonable estimate of the replacement cost thereof (exclusive of foundations and footings), but in any event, in such amounts as may be necessary to prevent the application of co-insurance under the terms of the applicable policy. In no event shall Landlord's property insurance cover any of Tenant's Property.

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15.5 Evidence of Insurance. Tenant and Landlord shall cause to be issued to each other reliable evidence of insurance regarding the applicable covenants of this Article 15. Tenant and Landlord each shall request that their respective insurance carrier include a provision in their respective insurance policies that the each additional insured will be provided with thirty (30) days (ten (10) days for non-payment of premium) prior written notice of cancellation. Notwithstanding the prior sentence, Landlord and Tenant each agree to provide one another within five (5) business days of receipt, copies of any notice it receive from its insurers regarding cancellation of any insurance policy required by this Lease. If either party fails, within fifteen (15) days after written request therefor, to supply such evidence of insurance to the other party, the other party may, but is not obligated to, obtain and pay for such insurance and receive reimbursement therefor from the other party upon demand, together with interest on the amount so expended at the Interest Rate.

15.6 Mutual Waiver of Right of Recovery. Neither Landlord nor Tenant nor their respective lenders (in each case, a “Released Party”) shall be liable to the other (the “Releasing Party”) or to any insurance company (by way of subrogation or otherwise) insuring the Releasing Party for any loss or damage to the Releasing Party’s property (including any building, structure, business or loss of income arising therefrom) which is covered by insurance maintained by the Releasing Party (including any deductible or self-insured retentions) or would have been covered by insurance if the Releasing Party had maintained the insurance required hereunder, or which is the subject of self-insurance provided by the Releasing Party in lieu of third-party insurance, even though such loss or damage might have been occasioned by the fault or negligence of the Released Party, its agents, contractors or employees.

15.7 General Provisions. Subject to the provisions of Section 15.9, all insurance policies required hereunder shall be issued by an insurance company or companies with a general rating classification of not less than “A-” and a financial size category of not less than “VIII” in the most current available Best’s Key Rating Guide Property-Casualty, and be licensed to do business in the State where the Demised Premises are located. A party’s obligation to carry the insurance required under this Article 15 may be brought within the coverage of a so-called “blanket” policy or policies, provided the coverage afforded the other party is not reduced or diminished by the blanket policy of insurance, an endorsement to that effect is provided and such blanket policy otherwise conforms to the requirements set forth herein.

15.8 Increase in Insurance Premiums. Neither Tenant nor Landlord will do or suffer to be done, or keep or suffer to be kept, anything in, upon or about the Demised Premises or adjacent real property owned by Landlord which will violate the other party’s policies of property or liability insurance or which will prevent the other party from procuring such policies in companies that satisfy the requirements of this Lease. If anything done, omitted to be done or suffered by Tenant to be kept in, upon or about the Demised Premises shall cause the rate of fire or other insurance on the property of Landlord to be increased beyond the minimum rate from time to time applicable to any such property for the use or uses made thereof, Tenant will pay, as Additional Rent, the amount of any such increase within ten (10) days of Landlord’s demand. If anything done, omitted to be done or suffered by Landlord to be kept in, upon or about the Common Area or other property of Landlord shall cause the rate of fire or other insurance on the Demised Premises or on other property of Tenant within the Demised Premises to be increased beyond the minimum rate from time to time applicable to any such property for the use or uses made thereof, Landlord will pay the amount of any such increase within ten (10) days of Tenant’s demand, failing which Tenant may, in addition to any other rights it may have, offset the amount due against the Rent otherwise due hereunder.

15.9 Self-Insurance. In addition to the self-insurance permitted in Section 15.1.1, Tenant shall have the right to self-insure the risks covered by the insurance policies described in all of Section 15.1 provided Tenant (or any guarantor of Tenant’s insurance obligations hereunder) satisfies the Minimum Net Worth Test. Landlord shall have the right to self-insure the risks covered by the insurance policies described in Sections 15.3 and 15.4; however, if Landlord is not the entity signing this Lease or another governmental agency, such right of Landlord is conditioned upon Landlord (or any guarantor of Landlord’s insurance obligations hereunder) satisfying the Minimum Net Worth Test.

15.10 Mutual Indemnification.

15.10.1 To the fullest extent allowed by Applicable Law, Tenant covenants to defend and indemnify Landlord, Landlord's managing agent and their respective owners, members, partners, directors, officers and employees and any master landlord and Landlord's Mortgagee (collectively, the "Landlord Indemnitees" and individually "Landlord Indemnitee") and hold Landlord Indemnitees harmless from and against any and all claims, actions, damages, liability and expense, including reasonable attorneys' fees: (a) in connection with loss of life, personal injury and/or damage to property of third parties arising from or out of any occurrence in or upon the Demised Premises or any part thereof; or (b) occasioned wholly or in part by any act or omission of Tenant, its agents, contractors, employees, servants, or licensees; except to the extent such claims, actions, damages, liability and expense are: (i) waived pursuant to Section 15.6; or (ii) proximately caused by the acts or omissions of such Landlord Indemnitee, its agents, contractors or employees or for which any of said parties may be statutorily liable.

15.10.2 To the fullest extent allowed by Applicable Law, Landlord covenants to defend and indemnify Tenant and its owners, members, partners, directors, officers and employees (collectively, the "Tenant Indemnitees" and individually "Tenant Indemnitee") and hold Tenant Indemnitees harmless from and against any and all claims, actions, damages, liability and expense, including reasonable attorneys' fees: (a) in connection with loss of life, personal injury and/or damage to property of third parties arising from or out of any occurrence in or upon any portion(s) of the Common Area (excluding the Demised Premises); or (b) occasioned wholly or in part by any act or omission of Landlord, its agents, contractors, employees, servants; except to the extent such claims, actions, damages, liability and expense are: (i) waived pursuant to Section 15.6; or (ii) proximately caused by the acts or omissions of such Tenant Indemnitee, its agents, contractors or employees or for which any of said parties may be statutorily liable.

15.10.3 The indemnities contained in this Section 15.10 shall survive the expiration or termination of this Lease.

**16. DAMAGE OR DESTRUCTION**

16.1 Intentionally Deleted.

16.2 Of the Demised Premises.

16.2.1 Insubstantial Damage. If the Demised Premises or any part thereof is insubstantially damaged and as often as the Demised Premises or any part thereof is so insubstantially damaged, Landlord shall rebuild and repair the same to as good a condition, to the same general appearance, on the same level or levels and to the same size immediately prior to such damage. In no event, whether in the case of insubstantial damage or substantial damage, shall Landlord have any responsibility to repair, restore, replace or rebuild Tenant's Property. Landlord agrees that all work of repair or reconstruction on any portion of the Demised Premises that it is required to rebuild or repair pursuant to this Lease shall be commenced promptly following any damage and shall be carried through diligently to conclusion (and in any event within six (6) months after the occurrence of the damage (subject to Unavoidable Delay or to reasonable additional time if the nature of the damage is not reasonably susceptible of restoration within six (6) months)). Any such damage shall be deemed to be insubstantial if the cost to repair the same shall be less than



fifteen percent (15%) of the full assessed value of the Demised Premises at the time such damage occurs. Any damage to the Demised Premises that is not insubstantial, shall be deemed substantial.

16.2.2 Substantial Damage. If the Demised Premises is substantially damaged, then either party shall have the right to terminate this Lease by giving written notice thereof to the other party within sixty (60) days after the date of such substantial damage, provided, however, that: Landlord may nullify any such termination notice given by Tenant if: (i) Tenant's Operating Covenant period will not expire within five (5) years after the completion of such rebuilding and repair; and (ii) Landlord also agrees to rebuild and repair any damage to the Demised Premises. If this Lease is terminated pursuant to the prior sentence, then neither party shall have any further obligation to the other hereunder, except that no such termination shall extinguish, reduce or otherwise affect: (1) indemnities given by each of the parties to the other pursuant to this Lease with respect to any liability or obligation arising or to be performed under this Lease prior to the date of termination; and (2) any remedy at law, or in equity, or under this Lease, of any party against any other party with respect to any liability or obligation arising or to be performed under this Lease prior to the date of termination. If neither party terminates this Lease pursuant to this paragraph, or if Landlord so nullifies Tenant's termination notice, then Landlord shall repair or rebuild the Demised Premises to as good a condition, to the same general appearance, on the same level or levels and to substantially the same size immediately prior to such damage or destruction. Landlord agrees that all work of repair or reconstruction on any portion of the Demised Premises that it is required to rebuild or repair pursuant to this Lease shall be commenced promptly following any damage and shall be carried through diligently to conclusion (and in any event within twelve (12) months after commencement thereof (subject to Unavoidable Delay). Tenant shall have the right to approve any material change in the overall appearance, level, or size of the Demised Premises pursuant to the plan and specification submission and approval process described in Section 6.1.

16.2.3 Intentionally Omitted.

16.3 Rent Abatement.

16.3.1 If any part of the Demised Premises shall be damaged or destroyed by fire or other casualty such that Tenant is, in Tenant's reasonable opinion, unable to do business with the general public in the Demised Premises, or any portion thereof, then Additional Rent shall be abated or adjusted, as the case may be, in proportion to that portion of the Demised Premises of which Tenant shall be deprived on account of such damage or destruction or the performance of any casualty repairs. In addition, if Tenant shall be deprived of its use of all or substantially all of the Demised Premises as hereinabove provided for a period of thirty (30) days or more, the Term shall toll, at Tenant's option exercisable by written notice to Landlord within sixty (60) days after the casualty.

16.3.2 Intentionally Omitted.

16.3.3 If the Rent due under this Lease shall partially or fully abate pursuant to the terms of Section 16.3.1, Tenant shall recommence paying Rent, without any such abatement, at such time as the restoration of the damage or destruction in question shall have been substantially completed, and (if applicable) the expiration of a reasonable period of time, not in excess of one hundred twenty (120) days (subject to Unavoidable Delays), for any re-stocking or re-fixturing by Tenant prior to reopening for business to the general public.

16.3.4 If this Lease is terminated pursuant to Sections 16.1.2 or 16.2.2, then Landlord shall refund to Tenant any unearned Rent or other charges paid in advance by Tenant.

## **17. CONDEMNATION**

17.1 Insubstantial Condemnation. If any Condemnation of the Demised Premises occurs, other than a Substantial Condemnation, then this Lease shall continue in full force and effect and, such party shall, to the extent within its right to do so, promptly repair and/or replace the buildings and/or facilities so taken to the same general appearance as prior to such Condemnation..

17.2 Substantial Condemnation. If a Substantial Condemnation occurs, then Tenant may terminate this Lease by notice given to Landlord within sixty (60) days after the occurrence of the Substantial Condemnation. If this Lease is terminated by Tenant pursuant to this Section 17.2, then neither party shall have any further obligation to the other hereunder, except that no such termination shall extinguish, reduce or otherwise affect: (a) indemnities given by each of the parties to the other pursuant to this Lease with respect to any liability or obligation arising or to be performed under this Lease prior to the date of termination; and (b) any remedy at law, or in equity, or under this Lease, of any party against any other party with respect to any liability or obligation arising or to be performed under this Lease prior to the date of termination.

17.3 Intentionally Omitted.

17.4 Intentionally Omitted.

17.5 Condemnation Awards. Any compensation awarded for any Condemnation, whether for the whole or a portion of the Demised Premises, shall be the sole property of Landlord whether such compensation shall be awarded for diminution in the value of, or loss of, the fee, or otherwise, Tenant hereby assigns to Landlord all of Tenant's right and title to and interest in any such compensation.

17.6 Separate Award. Tenant also may apply for reimbursement from the condemning authority (if permitted by Applicable Law) for moving expenses, the expense of removal of Tenant's Property, and the loss of Tenant's business good will, but only if such application will not reduce the amount of the compensation and damages otherwise recoverable by Landlord from the condemning authority under Section 17.5.

17.7 Condemnation Proceedings. Tenant shall have the right to participate in any Condemnation proceeding affecting the Demised Premises to the extent such proceedings relate to Tenant's interest in any award as set forth in Section 17.6 above.

## **18. COMPLIANCE WITH GOVERNMENTAL REGULATIONS; HAZARDOUS SUBSTANCES**

18.1 Generally. Tenant shall comply with the lawful requirements of all applicable governmental authorities arising as a result of Tenant's or Tenant's subtenants', licensees' or concessionaires' particular use of the Demised Premises or to the extent same relates to repairs, maintenance and other responsibilities of Tenant under this Lease. Landlord shall comply in all material respects with all lawful requirements of all applicable governmental authorities arising as a

result of, or in connection with, the use or occupancy of the Common Area or to the extent same relates to repairs, maintenance and other responsibilities of Landlord under this Lease.

## 18.2 Hazardous Substances.

18.2.1 Tenant shall not transport, use, store, maintain, generate, manufacture, handle, dispose, release or discharge any Hazardous Substances upon or about the Demised Premises in violation of Applicable Law, or permit its employees, agents, contractors, tenants, subtenants or licensees to engage in such activities upon or about the Demised Premises. Tenant shall promptly notify Landlord of: (a) any enforcement, cleanup or other regulatory action taken or threatened by any governmental or regulatory authority with respect to the presence of any Hazardous Substance Contamination on the Demised Premises or the migration thereof from or to other property, of which Tenant becomes aware and which might reasonably have an impact on Landlord; and (b) any matters where Tenant is required by Applicable Law to give notice to any governmental or regulatory authority respecting any Hazardous Substances on the Demised Premises and which might reasonably have an impact on Landlord. Landlord shall have the right (but not the obligation) to join and participate, as a party, in any legal proceedings or actions affecting the Demised Premises initiated in connection with any Applicable Law relating to environmental, health or safety matters. If Tenant or any subtenant or licensee of Tenant, or any employee, agent or contractor of any of the aforesaid Persons causes any Hazardous Substance Contamination on or about the Demised Premises in violation of the foregoing provisions, then Tenant shall immediately, properly and in compliance with all Applicable Laws clean up and remove the Hazardous Substance Contamination from the Demised Premises and any other affected property and clean or replace any affected personal property (whether or not owned by Landlord), at Tenant's expense. Such clean up and removal work shall be subject to Landlord's prior written approval, and shall include, without limitation, any testing, investigation, and the preparation and implementation of any remedial action plan required by any court or governmental body having jurisdiction. If Landlord or Landlord's Mortgagee arranges for any test or studies showing that Tenant has violated this Section, then Tenant shall pay for the reasonable costs of such tests.

18.2.2 Landlord shall not transport, use, store, maintain, generate, manufacture, handle, dispose, release or discharge any Hazardous Substances upon or about the Demised Premises in violation of Applicable Law, or permit its employees, agents, or contractors, to engage in such activities upon or about the Demised Premises; and Landlord shall use commercially reasonable efforts to prohibit its other tenants and subtenants from doing so. Landlord shall promptly notify Tenant of: (a) any enforcement, cleanup or other regulatory action taken or threatened by any governmental or regulatory authority with respect to the presence of any Hazardous Substance Contamination on the Demised Premises or the migration thereof from or to other property, of which Landlord becomes aware and which might reasonably have an impact on Tenant, and (b) any demands or claims against Landlord made or threatened by any Person relating to any loss or injury resulting from any Hazardous Substances in the Demised Premises, (c) any release, discharge or non-routine, improper or unlawful disposal or transportation of any Hazardous Substances on or from the Demised Premises or in violation of this Section of which Landlord becomes aware and which might reasonably have an impact on Tenant, and (d) any matters where Landlord is required by Applicable Law to give notice to any governmental or regulatory authority respecting any Hazardous Substances in or about the Demised Premises and which might reasonably have an impact on Tenant. Tenant shall have the right (but not the obligation) to join and participate, as a party, in any legal proceedings or actions affecting the Demised Premises

initiated in connection with any Applicable Law relating to environmental, health or safety matters if Landlord has reasonable grounds for believing that Tenant would be liable for remediation. Subject to the last three sentences in Section 18.2.1, if any Hazardous Substance Contamination now or hereafter exists on or about the Demised Premises in violation of the foregoing provisions, but only to the extent that Landlord or Landlord's Affiliate, and not another Person, has legal liability therefor, Landlord shall promptly, properly and in compliance with all Applicable Laws clean up and remove the Hazardous Substance Contamination from the Demised Premises and any other affected property and clean or replace any affected personal property (whether or not owned by Tenant), at Landlord's expense. Such clean up and removal work shall be subject to Tenant's prior written approval if such remediation would involve any portion of the Demised Premises and shall include, without limitation, any testing, investigation, and the preparation and implementation of any remedial action plan required by any court or governmental body having jurisdiction. If Tenant arranges for any test or studies showing that Landlord has violated this Section, then Landlord shall pay for the reasonable costs of such tests.

### 18.3 Mutual Indemnification.

18.3.1 To the fullest extent allowed by Applicable Law, Tenant covenants to defend and indemnify Landlord Indemnitees and hold Landlord Indemnitees harmless from and against any and all claims, actions, damages, liability and expense, including reasonable attorneys' fees occasioned wholly or in part by Tenant's failure to comply with Section 18.1 or Section 18.2.1; except to the extent such claims, actions, damages, liability and expense are proximately caused by the acts or omissions of such Landlord Indemnitee, its agents, contractors or employees or for which any of said parties may be statutorily liable.

18.3.2 To the fullest extent allowed by Applicable Law, Landlord covenants to defend and indemnify Tenant Indemnitees and hold Tenant Indemnitees harmless from and against any and all claims, actions, damages, liability and expense, including reasonable attorneys' fees occasioned wholly or in part by Landlord's failure to comply with Section 18.1 and/or Section 18.2.2; except to the extent such claims, actions, damages, liability and expense are proximately caused by the acts or omissions of such Tenant Indemnitee, its agents, contractors or employees or for which any of said parties may be statutorily liable.

## 19. QUIET ENJOYMENT

Landlord warrants and covenants that, so long as no Tenant Default then exists and is continuing, Tenant shall have quiet, peaceful, undisturbed possession and enjoyment of the Demised Premises throughout the Term.

## 20. DEFAULT AND REMEDIES

20.1 Tenant Defaults. Any one or more of the following events shall constitute a "Tenant Default":

20.1.1 Monetary Default. The failure of Tenant to pay any Rent within ten (10) business days after notice to Tenant that the same is due.

20.1.2 Non-Monetary Default. The failure of Tenant to perform or observe any covenant or agreement in this Lease on Tenant's part to be performed or observed (other than a

default involving the payment of Rent), which is not cured within thirty (30) days after the giving of notice to Tenant, unless the default is of such nature that it cannot reasonably be cured within such thirty (30) day period, in which case no Tenant Default shall exist so long as Tenant shall commence the curing of the default within such thirty (30) day period and shall thereafter diligently prosecute the curing of same to completion.

20.2 Landlord's Remedies. Upon the occurrence of a Tenant Default, Landlord shall have the right to do any one or more of the following:

20.2.1 Termination of Lease. Landlord may terminate this Lease on not less than thirty (30) days' notice to Tenant, and on the date specified in said notice, the Term of this Lease shall expire and come to an end as fully as if that were the date fixed in this Lease as the Expiration Date. On the Expiration Date, Tenant shall quit and surrender the Demised Premises to Landlord, subject to Tenant's continuing obligations under this paragraph and any other provisions of this Lease that are intended to survive the Expiration Date. If this Lease shall have been so canceled and terminated by Landlord, Landlord may at any time thereafter, by detainer suit, summary proceedings or other lawful means, which may include re-entry without further notice, resume possession of the Demised Premises and remove Tenant and their effects (including Tenant's Property as provided in Section 14.1) and hold the Demised Premises as if this Lease had not been made. If Landlord elects to terminate this Lease, Landlord shall have the right to recover from Tenant as damages: (a) the worth at the time of an award of all unpaid Rent which had been earned as of the Expiration Date for purposes of this Section 20.2.1 Rent shall be the lesser of: (x) \$150,000.00 Constant Dollars per year; or (y) the average actual Rent payable by Tenant in the preceding three (3) years (such amount, the "Stipulated Rent"); plus (b) the worth at the time of an award of the amount by which the unpaid Rent which would have been payable after the Expiration Date (had Landlord not elected to terminate this Lease pursuant to this paragraph); plus (c) the worth at the time of an award of the amount by which the unpaid Rent due and payable for what would have been the balance of the Term (had Landlord not elected to terminate this Lease pursuant to this paragraph); plus (d) any other amount reasonably necessary to compensate Landlord for all damages proximately caused by the Tenant Default, including, but not limited to, Reletting Expenses. The "worth at the time of an award" of the amounts referred to in clauses (a) and (b) shall be calculated by allowing interest at the Interest Rate on the unpaid Rent and other sums due and payable from the termination date through the date of an award of such damages. The "worth at the time of an award" of the amount referred to in clause (c) shall be calculated by discounting the amount at a discount rate equal to the yield to maturity at the time of the award of a U.S. Treasury obligation that has a maturity date equal or approximately equal to the Expiration Date (had Landlord not elected to terminate this Lease pursuant to this paragraph) plus three hundred-fifty (350) basis points.

20.2.2 Reletting. If Applicable Law permits, and Landlord shall not have terminated this Lease, Landlord may, without terminating this Lease or Tenant's continuing liability, irrevocably terminate Tenant's rights to possession only, and Landlord may re-enter and repossess the Demised Premises, or any part thereof and remove Tenant and their effects (including Tenant's Property as provided in Section 14.1), by detainer suit, summary proceedings or other lawful means, and lease the Demised Premises to any other Person upon such terms as are reasonable, for a term within or beyond the Term. Any such reletting shall be for the account of Tenant and Tenant shall remain liable for the excess, if any, of: (a) all Rent which would be payable from time to time under this Lease by Tenant in the absence of such repossession during the balance of the then current Term, for purposes of this Section 20.2.2 Rent shall be Stipulated Rent; less (b) the proceeds, if any,

of any reletting effected for the account of Tenant after deducting from such proceeds all of Landlord's Reletting Expenses. If the Demised Premises are, at the time of the Tenant Default, sublet by Tenant to others, Landlord may, as Tenant's agent, collect rents due from any subtenant and apply such rents to the Rent and Reletting Expenses due hereunder without in any way affecting Tenant's obligation to Landlord hereunder. No repossession of the Demised Premises or any part thereof pursuant to this Section 20.2.2 shall relieve Tenant of its liabilities and obligations hereunder, all of which shall survive such repossession, and Landlord may, at its option, sue for and collect all Rent and Reletting Expenses due hereunder at any time as when such charges accrue, and any suit brought to collect such charges for any month shall not prejudice in any way the rights of Landlord to collect such charges for any subsequent month by a similar proceeding. In no event shall Tenant be entitled to any excess of any rent obtained by such reletting over and above the Rent herein reserved.

20.2.3 Self Help. Exercise self help pursuant to Section 20.4.

20.3 Landlord Default. If Landlord fails to observe or perform any covenant, condition, restriction or term required to be observed or performed by Landlord under this Lease ("Landlord Default") within ten (10) business days (in the case of a monetary default) or thirty (30) days (in the case of a non-monetary default) after written notice from Tenant, unless, and only to the extent, expressly precluded by the terms and conditions of this Lease (i.e., language that limits a particular remedy as a party's "sole and exclusive remedy"), then Tenant may: (a) in the case of a monetary default, deduct the money owed by Landlord to Tenant from the Rent owed by Tenant to Landlord; or (b) in the case of a non-monetary default, exercise its right of self-help pursuant to Section 20.4; provided, however, if the non-monetary default is of such nature that it cannot reasonably be cured within such thirty (30) day period, then no such non-monetary default shall exist so long as Landlord shall commence the curing of the non-monetary default within such thirty (30) day period and shall thereafter diligently prosecute the curing of same to completion. Landlord's liability for a Landlord Default shall survive the expiration or termination of this Lease.

20.4 Self-Help. After the passage of the applicable cure periods described in Section 20.1.2 and Section 20.3(b), either party hereto may perform, on behalf and at the expense of the other party, any obligation of such other party under this Lease which such other party has failed to perform and the reasonable expense incurred by the party in so performing such obligation of the other party, together with interest thereon at the Interest Rate from the date of such expenditure, shall be deemed Additional Rent and shall be payable by Tenant to Landlord upon demand (if Landlord performed Tenant's obligation), or an item of reimbursement which may be offset against the Rent due under this Lease after Tenant shall have demanded reimbursement (if Tenant performed Landlord's obligation). Notwithstanding the prior sentence, either party may exercise its rights set forth above without any prior notice to the other party, if the party, in its good faith judgment, reasonably believes it would be materially injured by failure to take rapid action or if the unperformed obligation of the other party constitutes an emergency.

20.5 Remedies Are Cumulative. Unless otherwise provided, no right or remedy herein conferred upon or reserved to either party is intended to be exclusive of any other right or remedy herein provided, but each shall be cumulative and in addition to any other right or remedy given herein or available at law or in equity. Such remedies include, without limitation, the right to: (a) seek any declaratory, injunctive or other equitable relief, and specifically enforce this Lease or restrain or enjoin a violation of any provision hereof; and (b) sue for and collect any unpaid money owed.

Landlord and Tenant may each bring actions to collect amounts due under this Lease, from time to time, prior to or after the expiration of the Term.

20.6 Mitigation of Damages. Landlord and Tenant each shall endeavor in good faith to mitigate any damages for which the other party may be liable upon the occurrence of a Default of this Lease by such other party. Landlord and Tenant understand and agree that Landlord shall not be obligated to mitigate Rent loss damages by reletting the Demised Premises to a new tenant: (a) Intentionally Omitted; (b) who does not have suitable business experience or a reputable business reputation within the community for their proposed use of the Demised Premises; (c) whose use would place an undue burden on the Common Area; (d) whose use would violate Landlord's Mortgage with its Mortgagee; or (e) whose use violates any restrictive or exclusive use provisions that burden the Demised Premises.

20.7 No Consequential or Indirect Damages. Notwithstanding anything contained in this Lease to the contrary, Landlord and Tenant agree that as to the other, Landlord and Tenant shall not have any right to sue for or collect, and Landlord and Tenant shall never have any liability or responsibility whatsoever for, any consequential or indirect damages, related to any Default or other failure to observe or perform any obligation of the other under this Lease, and Landlord and Tenant hereby waive any and all such rights.

## **21. SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT**

This Lease shall be subject and subordinate to the lien of any first or second lien Mortgages now or hereafter encumbering the Demised Premises and placed thereon by Landlord; provided, however, that the subordination as to any future Mortgage shall not be effective unless the holders of each such Mortgage execute and deliver to Tenant a non-disturbance agreement in the form of Exhibit "J" or such other form as may be reasonably acceptable to Tenant, Landlord and such mortgagee(s) (the "Non-Disturbance Agreement"). If Landlord is unable to deliver to Tenant Non-Disturbance Agreements executed by the following holders of the following by the Rent Commencement Date, Tenant may upon thirty (30) days' written notice to Landlord, terminate this Lease and this Lease shall thereupon terminate unless, within said thirty (30) day period, each missing Non-Disturbance Agreement is delivered. If the holder of any first or second lien Mortgage encumbering Landlord's interest in the Demised Premises shall so elect by notice to Tenant or by the recording of a unilateral declaration or subordination, this Lease shall be prior in right to the Mortgage of which such holder has the benefit, with the same force and effect as if this Lease had been executed, delivered and recorded prior to the execution, delivery and recording of such first or second lien Mortgage.

## **22. SURRENDER OF DEMISED PREMISES**

At the expiration or sooner termination of this Lease, Tenant shall surrender the Demised Premises in reasonably good condition and repair, with all of Tenant's Property, including Tenant's signs removed therefrom, ordinary wear and tear and (subject to Article 16) damage by fire or other casualty excepted; provided, however, nothing contained herein shall obligate Tenant to remove any permitted alterations or improvements to the Demised Premises of a permanent nature.

**23. HOLDING OVER**

If Tenant continues to occupy the Demised Premises after the expiration of the Term or any earlier termination of this Lease without having obtained Landlord's written consent thereto, then without altering or impairing any of Landlord's rights under this Lease or applicable law and without further notice: (a) such occupancy shall be construed to create a tenancy from month-to-month at 2.0% of Gross Sales and shall otherwise be on the terms and conditions specified in this Lease so far as applicable; and (b) Tenant shall surrender possession of the Demised Premises to Landlord immediately on Landlord's having demanded the same. Nothing in the provisions of this Lease shall be deemed in any way to give Tenant any right to remain in possession of the Demised Premises after such expiration or termination, regardless of whether Tenant has paid any such Rent to Landlord.

**24. MISCELLANEOUS**

24.1 Incorporation of Background. The Background section of this Lease shall be considered a part of this Lease for all purposes.

24.2 Successors. Except as provided herein, the covenants, conditions and terms contained in this Lease shall bind and inure to the benefit of Landlord and Tenant and their respective permitted successors and assigns.

24.3 Waiver. The waiver by Landlord or Tenant of any breach of any provision of this Lease or the failure by Landlord or Tenant to insist upon the strict observance of any provision shall not be deemed to be a waiver of any subsequent breach thereof.

24.4 Covenants That Run With the Land. To the fullest extent legally possible, all covenants relating to Landlord's construction, development, use and operation of the Common Area shall run with the real property benefited and burdened thereby, and shall inure to the benefit of, and be binding upon, Landlord, Tenant and their respective successors in title. Enforcement may be had by actions at law or in equity (including, but not limited to, specific performance and injunctive relief), and the party seeking enforcement shall not be required to prove special damages. The memorandum of lease referred to in Section 24.6 shall contain provisions to confirm the intent of the parties in the foregoing regard.

24.5 Notices. Any document required to be submitted for approval by any party under Articles 6 and 8 or under any other provision of this Lease where a failure to respond within a prescribed period of time would constitute a deemed approval, shall be accompanied by a letter stating that such document is submitted for approval and the time within which such approval is required to be given hereunder and containing the following legend "**FAILURE TO DISAPPROVE THIS SUBMISSION WITHIN THE TIME INDICATED BELOW SHALL RESULT IN AUTOMATIC APPROVAL**"; and unless accompanied by such a letter, such document shall not be deemed to have been submitted for approval. Any other notice or request given or demand made under this Lease by one party to the other shall be in writing, and shall be given or be served by hand delivered personal service, or by depositing the same with a reliable overnight courier service or by deposit in the United States mail, postpaid, registered or certified mail, and addressed to the party to be notified, with return receipt requested. Notices shall be effect upon actual receipt or refusal to



accept delivery. For purposes of notice, the addresses of the parties shall, until changed as herein provided, be as follows:

24.5.1 If to Landlord, at:

Binghamton Local Development Corporation  
City Hall  
38 Hawley Street  
Binghamton, New York 13901

with a copies to:

The City of Binghamton  
City Hall  
38 Hawley Street  
Binghamton, New York 13901  
Attention: Corporation Counsel

For Rent Payment Only:

24.5.2 If to Tenant, at:

Boscov's Department Store, LLC  
4500 Perkiomen Avenue  
P.O. Box 4116  
Reading, PA 19606-0516  
Attention: Jacob M. Stein

with copies to:

Boscov's Department Store, LLC  
4500 Perkiomen Avenue  
P.O. Box 4116  
Reading, PA 19606-0516  
Attention: Chief Financial Officer

and

Boscov's Department Store, LLC  
4500 Perkiomen Avenue  
P.O. Box 4116  
Reading, PA 19606-0516  
Attention: \_\_\_\_\_

and

Ruda Hirschfeld Papera & Hoffman  
909 Rose Avenue  
Suite 400  
Bethesda, MD 20852  
Attention: Adam C. Hirschfeld, Esquire

24.6 Recording. This Lease shall not be recorded; provided, however, upon request by either party, a memorandum or short form of lease in the form attached hereto as Exhibit "K" (or such other form as is acceptable to Landlord and Tenant) will be executed and recorded in the appropriate governmental office in the jurisdiction in which the Demised Premises is located. The cost of recording the memorandum or short form of lease shall be borne solely by the party requesting said recording; provided, however, that Landlord shall pay one hundred percent (100%) of any leasehold, documentary stamp and/or realty transfer taxes relating to the making of this Lease or the recording of the memorandum or short form of lease, such obligation to survive any such recording and/or execution, termination or expiration of this Lease.

24.7 Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State of New York, excepting, however, its laws or principles regarding conflicts of laws or choice of laws. Venue for any action or proceeding under this Lease shall be in Broome County, New York.

24.8 Broker's Fees. Each of the parties hereto represents and warrants to the other party that they have not retained any brokers or finders in connection with this transaction and that there are no claims asserted against them for brokerage commissions or finder's fees in connection with the execution of this Lease, and each party agrees to indemnify the other party against, and hold the other party harmless from, all liabilities arising from any such claim (including the cost of counsel fees in connection therewith).

24.9 Attorney's Fees. In any litigation or arbitration between the parties regarding this Lease, the losing party shall pay to the prevailing party all reasonable expenses and court or arbitration costs including attorneys fees incurred by the prevailing party. A party shall be considered the prevailing party if: (a) it initiated the arbitration or litigation and substantially obtains the relief it sought, either through a judgment or the losing party's voluntary action before the entry of a judgment; (b) the other party withdraws its action without substantially obtaining the relief it sought; or (c) it did not initiate the arbitration or litigation and judgment is entered for either party, but without substantially granting the relief sought.

24.10 Estoppel Certificates. Each party shall, without charge and within twenty (20) days after request therefor by the other party, certify by written instrument duly executed and acknowledged to any Mortgagee, purchaser/assignee/subtenant of such party's interest or its lenders (or proposed Mortgagee, purchaser/assignee/subtenant of such party's interest or lenders): (a) as to whether this Lease has been supplemented or amended, and if so, a description of each such supplement or amendment; (b) as to the validity and force and effect of this Lease, in accordance with its terms; (c) as to the existence of any Default on the part of the other party; (d) as to the existence of any offsets, counterclaims or defenses hereto on the part of the other party; (e) as to the Rent Commencement Date and Expiration Date; and (f) as to any other matters as may be reasonably so requested. Any such certificate may be relied upon by the Person to whom the same shall be issued

and any assignee of any such Person if such Person is a Mortgagee of the party requesting the certificate.

24.11 Written Amendments. This Lease is transmitted for examination only and does not constitute an offer to lease. This Lease shall become effective only upon execution and unconditional delivery thereof by both parties hereto. This Lease contains the entire agreement between Landlord and Tenant and cannot be amended or modified except by written instrument executed by both parties hereto.

24.12 Unavoidable Delay. Except as otherwise expressly set forth herein, if either party hereto is delayed or hindered in, or prevented from, performing any act required hereunder by reason of an Unavoidable Delay (as hereinafter defined), then the performance of any such act shall be excused for the period of the Unavoidable Delay and the period of the performance of any such act shall be extended for a period equivalent to the period of such delay; provided, however, that no party shall be entitled to relief under this Section by reason of any such event unless such party shall have given the other party notice of such Unavoidable Delay and the nature of such Unavoidable Delay within ten (10) business days after the occurrence of such Unavoidable Delay. “Unavoidable Delay” means any delay by any cause which is beyond the reasonable control of a party which prevents such party from performing its obligations under this Lease (except any of such party’s obligations to pay any sums of money under the applicable provisions hereof) for so long as the performance of such obligation is so delayed or prevented, including such of the following as may be beyond the reasonable control of such party: fire; earthquake; flood; explosion; severe weather such as hurricanes, tornados; Acts of God; war; invasion; terrorism; insurrection; riot; mob violence; sabotage; malicious mischief; industry-wide inability to procure sufficient labor, equipment, facilities, sources of energy (including electricity, gas, gasoline or steam), materials or supplies in the open market; strikes; lockouts; action of labor unions; condemnation; requisition; order of government or civil or military or naval authorities; inability to obtain government permits or approvals provided a party promptly applies for, and diligently pursues, such permits and approvals; or any other cause, whether similar or dissimilar to the foregoing, not within the reasonable control of such party.

24.13 Consents, Approvals and Permission. Unless otherwise specifically set forth herein, whenever the consent, approval or permission of either party is specifically required, such consent, approval or permission shall not be unreasonably withheld, conditioned or delayed.

24.14 Cost and Expense. Unless otherwise specifically set forth herein, wherever in this Lease provision is made for the doing of any act by any Person it is understood and agreed that such act shall be done by such Person at its own cost and expense.

24.15 Relationship of the Parties. Nothing in this Lease shall be deemed or construed as creating a partnership, joint venture, principal-agent or employer-employee relationship between Landlord and Tenant or as causing Landlord or Tenant to be responsible for the other party’s debts or obligations.

24.16 Use of Language. Unless the context otherwise requires, words of any gender used in this Lease shall be construed to include any other gender and words in the singular shall be construed to include the plural.

24.17 Exhibits. All exhibits, attachments, annexed instruments and addenda referred to herein shall be considered a part of this Lease for all purposes.

24.18 Severability. It is agreed that, if any provision of this Lease shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of this Lease and all other provisions shall remain in full force and effect. It is the intention of the parties hereto that, if any provision of this Lease is capable of two (2) constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

24.19 Headings; Cross-References; Miscellaneous Definitions. Headings and captions throughout this Lease and the table of contents are inserted only as a matter of convenience and are not to be given any effect whatsoever in construing this Lease. Unless the context specifically provides otherwise, all internal references to Articles, Sections, paragraphs, clauses and exhibits, shall be deemed to refer to the Articles, Sections, paragraphs, clauses and exhibits of this Lease. Use of the terms “hereby”, “herein”, “hereof” and “hereunder” shall refer to this Lease as a whole, inclusive of the Exhibits, and not merely to the Article, Section, paragraph or clause where such word appears, except when noted otherwise. The word “any” means “any and all”. The words “include” and “including” shall be deemed to contain the phrase “without limitation”.

24.20 Performance. Whenever in this Lease it is provided that a particular party shall or may perform or take any action, in the absence of any provision to the contrary, such action may be performed or taken by an Affiliate or agent of, or independent contractor or attorney for, such party.

24.21 Intentionally Omitted.

24.22 Trial by Jury. Landlord and Tenant do hereby waive trial by jury in any action, suit, proceeding, and/or counterclaim brought by either of the parties hereto against the other or any guarantor of their respective obligations on any matters relating to the interpretation or enforcement of this Lease.

24.23 Multiple Counterparts. This Lease may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. In order to facilitate the agreements contemplated by this Lease, signatures transmitted by facsimile machine or signatures transmitted via e-mail in a “PDF” format may be used in place of original signatures on this Lease. Each party intends to be bound by such party’s facsimile or “PDF” format signature on this Lease, is aware that the other parties are relying on such party’s facsimile or “PDF” format signature, and hereby waives any defenses to the enforcement of this Lease based upon the form of signature. Promptly following any facsimile transmittal or e-mail transmittal of “PDF” format signatures, each party shall deliver to the other party the original executed Lease by reputable overnight courier to the addresses shown in Section 24.5.

24.24 No Presumption. If there is any ambiguity in this Lease, it shall not be construed in accordance with any presumption against either party as a result of its having drafted or participated in the drafting of this Lease. No inference shall be made from any item that has been stricken from this Lease other than the deletion of such item.

24.25 Authority and Execution. Landlord and Tenant represent and warrant to each other that: (a) it has the full power and authority to enter into this Lease, and perform its obligations hereunder; (b) it has validly executed and delivered this Lease; and (c) this Lease constitutes binding obligations against it. Each party agrees, upon request of the other party, to provide the other party with executed copies of corporate or partnership resolutions and other documentation authorizing the execution of this Lease, such resolutions and documentation to be certified to be true and correct by their respective corporate secretaries or general partners.

**[THIS SPACE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, Landlord has caused this Lease to be executed as of  
\_\_\_\_\_, 202\_\_\_\_\_

BINGHAMTON LOCAL DEVELOPMENT  
CORPORATION, a New York corporation

By: \_\_\_\_\_  
Patrick J. Doyle  
President

IN WITNESS WHEREOF, Tenant has caused this Lease to be executed as of  
\_\_\_\_\_, 202\_\_\_\_\_

TENANT:

BOSCOV'S DEPARTMENT STORE, LLC, a  
Delaware limited liability company

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

## LIST OF EXHIBITS

If any exhibit is not attached hereto at the time of execution of this Lease, it may thereafter be attached by written agreement of the parties, evidenced by initialing said exhibit.

Exhibit "A"	-	Description of Tax Parcel
Exhibit "B"	-	Site Plan
Exhibit "C"	-	Property Reports
Exhibit "D"	-	Intentionally Omitted
Exhibit "E"	-	Permitted Title Exceptions
Exhibit "F"	-	Intentionally Omitted
Exhibit "G"	-	List of Prohibited Uses
Exhibit "H"	-	Form of Recognition Agreement (Sublease)
Exhibit "I"	-	Form of Landlord Waiver
Exhibit "J"	-	Form of Non-Disturbance Agreement
Exhibit "K"	-	Form of Memorandum of Lease

## Schedule 6.5 Flow of State Funds

The Landlord has applied for, and been preliminarily approved, to receive a grant from the Dormitory Authority of the State of New York (DASNY) to use for the Demised Premises for necessary and authorized improvements as permitted under the Grant Disbursement Agreement (“Grant Agreement”), which has yet to be signed.

It is anticipated that the parties shall receive funds through the Grant Agreement on a reimbursement basis in the total amount of five million dollars (\$5,000,000.00). This being the same \$5,000,000.00 in State Funds referenced in Section 6.5.a of the Lease. The parties agree that the funds under the Grant Agreement shall be limited to only allowable expenses under the Grant Agreement and shall in no event exceed \$5,000,000.00.

Allowable expenses include:

- Hydraulic passenger elevators and Options
- VRF and ventilation equipment
- HVAC equipment
- Cabling for the fire, CCTV, and data systems as well as hardware
- Full replacement of ceiling including grid and support system
- Fire alarm system
- Any other improvement deemed eligible by DASNY

The parties agree that if contemplated reimbursable work is not included in the above they will seek prior approval from DASNY in order to be reimbursed from funds under the Grant Agreement.

The parties acknowledge that reimbursement turnaround time for allowable expenses under the Grant Agreement shall be between six to twelve weeks.



Schedule 6.5.3

**AMENDMENT TO LEASE AGREEMENT**

This AMENDMENT TO LEASE AGREEMENT ("Amendment") is made as of this <sup>28th</sup> day of September, 2022 (the "Effective Date"), by and among BROOME COUNTY INDUSTRIAL DEVELOPMENT AGENCY (the "BCIDA"), the BINGHAMTON LOCAL DEVELOPMENT CORPORATION (the "BLDC"), and BOSCOV'S DEPARTMENT STORE, LLC, a Delaware limited liability company ("Boscov's"). The BCIDA, Boscov's and the BLDC are sometimes referred to hereinafter as the "Parties".

**BACKGROUND**

A. The Parties are parties to that certain Lease Agreement dated May 1, 2013 (incorporating, but terminating, that certain Original Lease and Original Sublease as therein defined) (as amended, the "Lease").

B. Pursuant to the Lease, Boscov's leases certain premises commonly referred to therein as the Project Property.

C. The Parties desire to modify the Lease in certain respects.

D. Unless otherwise defined in this Amendment, words with initial capital letters shall have the meanings respectively given to them in the Lease

**NOW THEREFORE**, the Parties hereto, for good and valuable consideration and intending to be legally bound, agree as follows:

1. Term. The current term of the Lease is hereby extended until April 30, 2023 (the term, as extended, referred to as the "Modified Term"). Thereafter, the term of the Lease will automatically extend annually for additional extensions of one (1) additional year, unless Boscov's, in its sole and absolute discretion, gives at least ninety (90) days' prior written notice to the other Parties electing to not extend the term of the Lease and thereby terminating the same effective at the end of the applicable one (1) year period.

2. Major Replacements. Pursuant to Section 4 of the Lease, the following Major Replacements are due, and shall be performed by Boscov's:

- a. The Freight Elevator: \$375,000.00, based upon the proposal from Kone dated June 2, 2022, a copy of which has been provided to and approved by the BCIDA and BLDC pursuant to Section 4 of the Lease; and
- b. The Boiler: \$255,500.00, based upon the \$175,500 proposal from J & K Plumbing and Heating Co, Inc. dated June 14, 2022 for labor and \$80,000.00 in material costs, a copy of which has been provided to and approved by the BCIDA and BLDC pursuant to Section 4 of the Lease.

The BLDC shall be required to reimburse Boscov's for such Major Replacements (which reimbursement may be requested in one (1) or more installments for one (1) or both Major Replacements) within fifteen (15) days following receipt of an invoice therefor from Boscov's (which invoice must be accompanied by proof of payment by Boscov's to the appropriate vendors and/or contractors performing such Major Replacement); provided, however, Boscov's may not invoice the BLDC for more than ninety (90%) of either Major Replacement until completion thereof.

3. Modification. Except as expressly modified by this Amendment, the terms and conditions of the Lease shall remain in full force and effect, without change.

4. Binding Effect. This Amendment shall be binding upon, and shall inure to the benefit of the parties hereto and their respective successor and assigns.

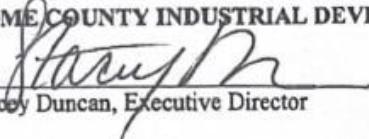
5. Counterparts. This Amendment may be executed in any number of duplicate counterparts, including .pdf signatures, each of which shall be deemed an original.

6. No Brokers. Each Party represents to the other that it has not engaged any broker, finder or agent in connection with the transactions contemplated by this Amendment nor incurred (and will not incur) any unpaid liability to any broker, finder or agent for any brokerage fees, finders' fees or commissions, with respect to the transactions contemplated by this Agreement.

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY; SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed by their duly authorized representatives.

**BROOME COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

By:   
Stacy Duncan, Executive Director

**BOSCOV'S DEPARTMENT STORE, LLC**

By: 

Name: Russell C. Diehm

Title: EVP Finance, CAO

**BINGHAMTON LOCAL DEVELOPMENT CORPORATION**

By: 

Name: Patrick J. Doyle

Title: President

Exhibit "A"

Description of Tax Parcel

Exhibit "B"

Site Plan

Exhibit "C"

Property Reports

Exhibit "D"

Intentionally Omitted

Exhibit "E"

Permitted Title Exceptions



Exhibit "F"

Intentionally Omitted

Exhibit "G"

List of Prohibited Uses

Intentionally Omitted

Exhibit "H"

Form of Recognition Agreement (Sublease)

**SUBLEASE RECOGNITION AGREEMENT**

**THIS SUBLEASE RECOGNITION AGREEMENT** ("Agreement"), made as of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_, a \_\_\_\_\_ ("Landlord") and \_\_\_\_\_, a \_\_\_\_\_ ("Subtenant").

**BACKGROUND:**

A. Landlord and Boscov's Department Store, LLC ("Tenant") entered into a certain lease agreement (the "Lease") dated as of \_\_\_\_\_, 20\_\_\_\_, a memorandum of which is recorded with the Register of Deeds in and for Broome County, New York at Book \_\_\_\_\_, Page \_\_\_\_\_, which Lease demises to Tenant a certain premises containing approximately \_\_\_\_\_ square feet (the "Demised Premises") located in the City of Binghamton, New York. The Demised Premises is shown graphically on Exhibit "A" hereto (the "Site Plan").

B. Pursuant to a Sublease dated as of \_\_\_\_\_, 20\_\_\_\_ (the "Sublease"), Tenant (also referred to herein, in its capacity as lessor under the Sublease, as "Sublandlord") has leased to Subtenant the entire **[first floor of the Demised Building] [second floor of the Demised Building] [Demised Premises]** (the "Subleased Premises").

C. The parties hereto desire to effectuate the provisions of Section 13.6 of the Lease with respect to the Sublease and the Subleased Premises.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto, intending to be legally bound hereby, agree as follows:

Simultaneously with the execution of this Agreement, Landlord shall provide Subtenant with an estoppel certificate that complies with Section 24.10 of the Lease. After the execution of this Agreement, at Subtenant's request from time to time, Landlord shall, within the time frame set forth in Section 24.10 of the Lease, provide Subtenant with an estoppel certificate that complies with Section 24.10 of the Lease.

Subtenant warrants and represents as follows:

that it is the subtenant under the Sublease, a true and correct copy of which is attached hereto as Exhibit "D" annexed hereto;

that the Sublease is in full force and effect, and has not been amended except as set forth on said Exhibit "D";

that Subtenant is not an Affiliate (as that term is defined in the Lease) of Tenant;

that Subtenant or any guarantor of Subtenant's obligations under the Sublease has a net worth of at least Fifty Million Dollars (\$50,000,000.00); and

that **[state here any information reasonably requested by Landlord relating to the Sublease that is not ascertainable from the Sublease or Subtenant itself];**

Landlord hereby acknowledges receipt of a copy of the Sublease, and agrees the making of such Sublease shall not constitute a default under the Lease. Subtenant acknowledges receipt of a copy of the Lease and agrees that the Sublease is, except as set forth in this Agreement, subject and subordinate to the Lease and that except as set forth in Paragraph 5 below, Landlord assumes no obligation, directly or indirectly, to Subtenant with respect to the Sublease or Subleased Premises and Subtenant shall look solely to Tenant for performance of the Sublandlord's obligations.

Landlord agrees that whenever it has an obligation with respect to the Demised Premises, or its consent or approval is required for any action of Tenant under the Lease, then, to the extent such obligation, consent or approval relates to the Subleased Premises or Subtenant's use and occupation thereof, it will perform such obligation with respect to the Subleased Premises in accordance with the terms and conditions of the Lease and that, to the extent any approval or consent is required on the part of Landlord, the applicable consent standards as set forth in the Lease shall apply; provided that unless Paragraph 5 below applies, Landlord shall deal solely with Tenant with respect to any such requested consents or approvals.

As used herein, the term "Enforcement Event" shall mean any of the following:

The termination of the Lease by reentry, notice, conditional limitation, surrender, summary proceeding or other action or proceeding, or otherwise, whether or not on account of a default by Tenant, or by reason of the rejection of the Lease in Tenant's bankruptcy proceedings; or

The exercise by Landlord of any other rights or remedies on account of a default by Tenant under the Lease which do not result in or involve termination of the Lease (including without limitation the right of Landlord to retake possession and keep the Lease in effect).

If there shall occur any Enforcement Event, and if immediately prior thereto the Sublease shall be in full force and effect without default on the part of Subtenant remaining uncured beyond any applicable period of grace, then Subtenant shall not be made a party in any removal or eviction action or proceeding nor shall Subtenant be evicted or removed of its possession nor shall its right of possession of the Subleased Premises be disturbed or in any way interfered with, and the Sublease shall continue in full force and effect as a direct lease between Landlord and Subtenant; provided that in such event:

(A) Subtenant shall, for the then remainder of the term of the Sublease, and any extensions thereof, pay rent to Landlord in an amount equal to the greater of (x) **[a proportionate share of Tenant's rent obligations under the Lease]** **[the rent then payable under the Lease]**, or (y) the rent then payable under the Sublease. The term "rent" as used in this Paragraph means all basic rent, **[percentage rent utilizing a proportionate breakpoint]**, plus additional rent of every type. **[The term "proportionate" as used in this Paragraph means a proportion of the amount specified in the Lease, based on the ratio of Floor**

**Area (as defined in the Lease) of the Subleased Premises to the Floor Area of the Demised Premises];**

(B) Landlord shall have no liability for any prior default, obligation, representation, warranty or liability of Tenant under the Sublease nor for any offsets or counterclaims regarding same, nor for any security deposit paid by Subtenant (unless such security deposit was paid to Landlord and has not been applied on account of a prior default), nor for any prepaid rent by Subtenant, nor for any construction or construction allowance obligations of Tenant, nor for any sub-metering that may be required with respect to any utilities (which sub-metering shall be undertaken at the sole cost of Subtenant);

(C) to the extent that any rights, privileges or options of Subtenant under the Sublease with respect to the Subleased Premises are greater than those which Tenant would have had under the Lease had the Lease remained in effect, including without limitation any restrictions or limitations relating to the Demised Premises benefiting Subtenant, the applicable provisions of the Lease shall be deemed incorporated into the Sublease and shall control; and without limiting the foregoing, to the extent Subtenant has any rights of approval under the Sublease regarding any changes, construction or activities in the "No Change Area" as that term is defined in the Lease, Subtenant's approval rights shall not be unreasonably withheld or delayed notwithstanding any different standard set forth in the Sublease; and

(D) to the extent that any obligations or liabilities of the Sublandlord under the Sublease with respect to the Subleased Premises are greater than those which Landlord would have had under the Lease had the Lease remained in effect, the applicable provisions of the Lease shall be deemed incorporated into the Sublease and shall control.

Without limiting the effect of the preceding subclauses (C) and (D), and for purposes of example only, (x) Landlord shall have no responsibility to furnish any services, perform any repairs or maintenance, or provide any construction or allowances, to the extent it would not be responsible to do so for the Subleased Premises under the Lease, (y) Subtenant shall have no options, nor be entitled to more favorable time periods or conditions for exercising same, than as would have applied under the Lease, nor be entitled to grace periods for default in excess of the applicable grace periods set forth in the Lease for a comparable default, nor shall the term or extension term of the Sublease extend beyond the term that would have been applicable under the Lease had it remained in effect and any necessary extension option thereunder been timely exercised, and (z) Subtenant shall be bound by, and shall not violate, any applicable restrictions on use of the Subleased Premises, requirements for compliance with laws, conditions or requirements for subleasing or assignment, or provisions for recapture by Landlord of the Subleased Premises (if applicable), all as specified in the Lease.

Landlord hereby subordinates to Subtenant's lenders all contractual, statutory and common law liens, claims, rights of distraint or levy, which Landlord now has or may hereafter acquire with respect to the personal property, goods or chattels of Subtenant in or on the Subleased Premises. Within twenty (20) days after Landlord's receipt of a request therefor, Landlord agrees to execute for the benefit of Subtenant's lenders a so-called landlord waiver substantially in the form attached to the Lease as Exhibit "P".

Any notices, consents, approvals, submissions, demands or other communications (hereinafter collectively referred to as “Notice”) given under this Agreement shall be in writing, and may be given or be served by hand delivered personal service, or by depositing the same with a reliable overnight courier service or by deposit in the United States mail, postpaid, registered or certified mail, and addressed to the party to be notified, with return receipt requested. Notice shall be effective upon actual receipt or refusal to accept delivery. For purposes of notice, the addresses of the parties shall, until changed as herein provided, be as follows:

If to Landlord, at:

Binghamton Local Development Corporation  
City Hall  
38 Hawley Street  
Binghamton, New York 13901

with a copies to:

The City of Binghamton  
City Hall  
38 Hawley Street  
Binghamton, New York 13901  
Attention: Corporation Counsel

If to the Subtenant, at:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

If to Tenant:

Boscov’s Department Store, LLC  
4500 Perkiomen Avenue  
P.O. Box 4116  
Reading, PA 19606-0516  
Attention: Chairman & CEO

with a copy to:

Boscov’s Department Store, LLC  
4500 Perkiomen Avenue  
P.O. Box 4116  
Reading, PA 19606-0516  
Attention: Senior Vice President – Real Estate & Development

And

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

No modification, amendment, waiver or release of any provision of this Agreement or of any right, obligation, claim or cause of action arising hereunder shall be valid or binding for any purpose whatsoever unless in writing and duly executed by the party against whom the same is sought to be asserted.

This Agreement shall be binding on and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors, assigns and sublessees. The provisions hereof shall survive termination of the Lease.

[THIS SPACE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed under seal the date first above written.

WITNESS/ATTEST:

LANDLORD:

\_\_\_\_\_, a \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_

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

SUBTENANT:

\_\_\_\_\_, a \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_

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



**TENANT'S CONSENT**

Tenant consents and agrees to the foregoing Agreement, which was entered into at Subtenant's request. The foregoing Agreement shall not alter, waive or diminish any of Tenant's obligations under the Lease or Sublease. Tenant is not a party to the above Agreement.

TENANT:

BOSCOV'S DEPARTMENT STORE, LLC,  
a Delaware limited liability company

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

Name:

Title:





Exhibit "T"

Form of Landlord Waiver

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**LANDLORD'S WAIVER**

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For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, BINGHAMTON LOCAL DEVELOPMENT CORPORATION, a New York corporation, with offices located at \_\_\_\_\_ (the "Landlord"), executes this subordination in favor of **BANK OF AMERICA, N.A.**, a national banking association with offices at 100 Federal Street, Boston, Massachusetts 02110, as collateral agent (in such capacity herein, the "Agent"), for its own benefit and the benefit of certain other credit parties (the "Credit Parties").

WITNESSETH:

WHEREAS, Landlord owns the ground tenant interest in that certain property located in Binghamton, Broome County, New York a certain portion of which (as more particularly described in the Lease, the "Demised Premises"), Landlord has leased to Boscov's Department Store, LLC, a limited liability company organized and existing under the laws of Delaware (the "Tenant"), pursuant to a lease agreement dated as of \_\_\_\_\_, 20\_\_\_\_ (the "Lease"); and

WHEREAS, Tenant has entered into or intends to enter into loan arrangements with the Agent and certain of the other Credit Parties, pursuant to which the Agent and the other Credit Parties have agreed to make revolving credit loans or furnish other financial accommodations to Tenant, among others; and

WHEREAS, loans and financial accommodations under the loan arrangements will be secured by, among other things, all of Tenant's present and after acquired assets (the "Collateral"), including, without limitation, Tenant's inventory and equipment located, and to be located, upon the Demised Premises; and

WHEREAS, in order to induce the Agent and the other Credit Parties to make loans or furnish other financial accommodations to Tenant, Landlord hereby represents, warrants, covenants and agrees as follows:

1. Simultaneously with the execution of this instrument, Landlord shall provide Agent and the Other Credit Parties with an estoppel certificate that complies with Section 24.10 of the Lease. After the execution of this instrument, at Agent's request from time to time, Landlord shall, within the time frame set forth in Section 24.10 of the Lease, provide Agent and the other Credit Parties with an estoppel certificate that complies with Section 24.10 of the Lease.
2. Until such time as Landlord receives written notice from an officer of the Agent that all obligations of Tenant to the Agent and the other Credit Parties have been paid in full and that the commitment of the Agent and the other Credit Parties to make loans or furnish

other financial accommodations to Tenant has been terminated, Landlord hereby waives and releases in favor of the Agent (for its own benefit and the benefit of the other Credit Parties): (a) any and all rights of distraint, levy, and execution which Landlord may now or hereafter have against the Collateral; (b) any and all statutory liens, security interests, or other liens which Landlord may now or hereafter have in the Collateral; and (c) any and all other interests or claims of every nature whatsoever which Landlord may now or hereafter have in or against the Collateral for any rent, storage charges, or other sums due, or to become due, to Landlord by Tenant. The foregoing waiver is for the benefit of the Agent and the other Credit Parties and their respective successors and assigns only and does not affect the obligations of Tenant to Landlord.

3. In the event of the exercise by the Agent of its rights upon default with respect to the Collateral, the Agent shall have a reasonable time, not to exceed ninety (90) days, in which to repossess the Collateral from, and/or dispose of the Collateral on, the Demised Premises. In those circumstances, Landlord will (a) cooperate with the Agent in gaining access to the Demised Premises for the purpose of repossessing said Collateral and (b) if requested by the Agent, permit the Agent or its agents or nominees, to dispose of the Collateral on the Demised Premises in a manner reasonably designed to minimize any interference with any of Landlord's other tenants at the Demised Premises or the project within which the Demised Premises are located. Notwithstanding anything to the contrary herein, at no time shall Agent have any obligation to dispose or remove the Collateral. The Agent shall promptly repair, at the Agent's expense, any physical damage to the Demised Premises actually caused by removal of the Collateral, but shall not be liable for any diminution in value of the Demised Premises caused by the removal or absence of the Collateral. The Agent shall also indemnify Landlord for any third party claims asserted against Landlord that are proximately caused by the Agent's exercise of the rights described in this paragraph.
4. To the extent not paid or prepaid by Tenant, the Agent shall pay Landlord a reasonable sum for its use and occupancy of the Demised Premises on a per diem basis in an amount equal to the Stipulated Rent (as defined in the Lease) from the date on which the Agent shall have taken possession of the Collateral on the Demised Premises until the date on which the Agent vacates the Demised Premises (but in no event to exceed the time period set forth in paragraph 3 above), *it being understood, however*, that the Agent shall not thereby have assumed any of the obligations of Tenant to Landlord, including, without limitation, any obligation to pay any past due rent owing by Tenant.
5. Landlord shall give Agent written notice of any event which, with the giving of notice or the passage of time or both, would constitute a Tenant default, such notice to be given to Agent at the address set forth below at the same time that Landlord furnishes such default notice to Tenant, and Landlord shall afford Agent the same opportunity to cure the Tenant default (if Agent so elects) as the Lease afford to Tenant. Prior to Landlord's taking any action to terminate the Lease or to evict Tenant from the Demised Premises following an event of default under the Lease, Landlord shall give the Agent the same notice that it is required to give Tenant and the opportunity to preserve, protect, liquidate, or remove any Collateral on the Demised Premises (but in no event less than the time period set forth in paragraph 3 above). Notwithstanding the provisions of this paragraph, the Agent shall not have any obligation to cure any such event of default. The cure of any such breach or default by the

Agent on any one occasion shall not obligate the Agent to cure any other breach or default or to cure such default on any other occasion.

6. All notices under this waiver shall be made to the following addresses by recognized overnight courier, by hand delivery, by certified mail, return receipt requested or by facsimile transmission:

If to the Agent:

Bank of America Merrill Lynch  
MA5-100-09-09  
100 Federal Street  
Boston, Massachusetts 02110  
Attention: Christine Hutchinson, Principal

If to Landlord:

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7. This waiver shall inure to the benefit of the Agent and each of the other Credit Parties and each of their respective successors and assigns, and shall be binding upon Landlord, its heirs, assigns, representatives, and successors.
8. This waiver may not be amended or waived except by an instrument in writing signed by the Agent, Landlord and Tenant. This waiver shall be governed by, and construed in accordance with, the laws of the State of New York. This waiver may be executed in any number of counterparts, each of which shall be an original, and all of which, when taken together, shall constitute one agreement. Delivery of an executed signature page of this waiver by facsimile transmission shall be binding on Landlord as if the original of such facsimile had been delivered to the Agent.

**[THIS SPACE INTENTIONALLY LEFT BLANK]**

Dated as of \_\_\_\_\_, 20\_\_\_\_\_.

LANDLORD:

BINGHAMTON LOCAL DEVELOPMENT  
CORPORATION, a New York

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

Name:

Title: Authorized Signatory

Acknowledged and agreed:

TENANT:

BOSCOV'S DEPARTMENT STORE, LLC

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

Name:

Title:

Date: \_\_\_\_\_, 20\_\_\_\_\_

Exhibit “J”

Form of Non-Disturbance Agreement



Exhibit "K"

Form of Memorandum of Lease

**MEMORANDUM OF LEASE**

**THIS MEMORANDUM OF LEASE** ("Memorandum") is made by and between **BINGHAMTON LOCAL DEVELOPMENT CORPORATION**, a New York corporation (together with its permitted successors and/or assigns, the "Landlord"), and **BOSCOV'S DEPARTMENT STORE, LLC**, a Delaware limited liability company (together with its permitted successors and/or assigns, the "Tenant") with reference to the following facts:

A. Landlord is the owner of: (1) certain property in the City of Binghamton, New York previously known as the Fowlers and Johnson building sites and a closed portion of Dwight Street and currently identified as Parcel ID Numbers: 160.40-2-5 [11 Court St.] and 160.40-2-4 [13 Court St.] (the "Demised Building") containing approximately \_\_\_\_\_ square feet of Floor Area as described further on Exhibit "A" and depicted on Exhibit "B" hereto (the "Site Plan") attached hereto and incorporated herein by reference.

B. Pursuant to a lease agreement (the "Lease") dated as of \_\_\_\_\_, \_\_\_\_\_, Landlord leased to Tenant: (i) the Demised Building (together with any truck docks, delivery facilities and trash compactor areas that are intended to exclusively serve the Demised Building), as the same may be further improved, expanded and/or altered, in accordance with the terms of the Lease, all as more particularly identified as "Boscov's" on the Site Plan (the "Demised Premises").

C. Landlord and Tenant desire to file a memorandum of the Lease with the appropriate governmental office for the jurisdiction in which the Demised Premises is located.

NOW, THEREFORE, Landlord and Tenant, intending to be legally bound, state the following for recording:

1. Other Capitalized Terms. If the initial letter of any word or phrase used in this Memorandum is capitalized and no separate definition is contained in this Memorandum, then such term shall have the same respective definition as set forth in the Lease.

2. Name and Address of Landlord. The name of the landlord under the Lease is Binghamton Local Development Corporation, a New York corporation. The address of Landlord as it appears in the Lease is City Hall, Governmental Plaza, Binghamton, New York 13901.

3. Name and Address of Tenant. The name of the tenant under the Lease is Boscov's Department Store, LLC. The address of Tenant as it appears in the Lease is 4500 Perkiomen Avenue, P.O. Box 4116, Reading, PA 19606-0516, Attention: Chairman & CEO.

4. Effective Date of Lease. The effective date of the Lease is \_\_\_\_\_, 202\_\_\_\_.

5. Description of Demised Premises. The Demised Premises are described in Recital C above.

6. Commencement Date and Term. The Initial Term of the Lease shall commence on the \_\_\_\_\_ and, unless sooner terminated pursuant to the provisions thereof, automatically shall end on (and shall include) the last day of the tenth (10<sup>th</sup>) Lease Year. Tenant shall have two (2) consecutive separate options to extend the Term beyond the Initial Term for successive periods of five (5) Lease Years each.

8. Covenants That Run With the Land. To the fullest extent legally possible, all covenants relating to Landlord's obligations under the Lease shall run with the real property benefited and burdened thereby, and shall inure to the benefit of, and be binding upon, Landlord, Tenant and their respective successors in title. Enforcement may be had by actions at law or in equity (including, but not limited to, specific performance and injunctive relief), and the party seeking enforcement shall not be required to prove special damages.

9. Purpose of Memorandum. The sole purpose of this Memorandum is to give notice of the Lease and its terms, covenants and conditions to the same extent as if the Lease were fully set forth herein. Nothing contained in this Memorandum is intended to amend, modify, supplement, amplify, negate or contradict anything contained in the Lease, and the parties agree that this Memorandum is not intended nor shall it be used to interpret the Lease or determine the intent of the parties under the Lease.

**[THIS SPACE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, Landlord has caused this Memorandum to be executed on \_\_\_\_\_, 202\_\_\_\_.

LANDLORD:

BINGHAMTON LOCAL DEVELOPMENT CORPORATION, a New York corporation

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

Name: Patrick J. Doyle

Title: President

STATE OF New York :

: SS

COUNTY OF Broome :

On the \_\_\_ day of \_\_\_\_\_ in the year 202\_\_, before me, the undersigned, a Notary Public in and for said state, personally appeared Patrick J. Doyle, proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

IN WITNESS WHEREOF, Tenant has caused this Memorandum to be executed on \_\_\_\_\_, 20\_\_\_\_.

TENANT:

BOSCOV'S DEPARTMENT STORE, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Jim Boscov, Chairman & CEO

COMMONWEALTH OF PENNSYLVANIA :  
: SS  
COUNTY OF BERKS :

On this, the \_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me a Notary Public in and for the Commonwealth of Pennsylvania, the undersigned officer, personally appeared \_\_\_\_\_, who acknowledged himself/herself to be the/a \_\_\_\_\_ of **BOSCOV'S DEPARTMENT STORE, LLC**, a Delaware limited liability company, and that he/she as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the company.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_ [Seal]  
Notary Public

My Commission Expires: \_\_\_\_\_