

cc: CLK
JML
J. Coomes

CONFIDENTIAL

GROUND LEASE
between
ROUSE-PORTLAND, INC.
and
SAKS FIFTH AVENUE-OHIO, INC.
_____, 1986

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CONFIDENTIAL

GROUND LEASE

THIS LEASE, made and entered into this _____ day of _____, 198__, by and between ROUSE-PORTLAND, INC., a Maryland corporation having an office at c/o The Rouse Company Building, Columbia, Maryland (hereinafter called the "Landlord") and SAKS FIFTH AVENUE-OHIO, INC., an Ohio corporation having an office at 1270 Avenue of the Americas, New York, New York 10020 (hereinafter called the "Tenant"). Landlord and Tenant are hereinafter sometimes referred to individually as "Party" and together as the "Parties".

STATEMENT OF BACKGROUND AND PURPOSE

A. Pursuant to the terms of that certain Agreement for Sale and Redevelopment of Land between Landlord and the City of Portland Development Commission (the "Agency") dated May 9, 1984 as amended by that certain First Amendment to Agreement of Sale and Redevelopment of Land between Agency and Landlord dated _____, 1986 (collectively, the "Disposition Agreement"), Landlord has purchased from the Agency certain land in the City of Portland, Oregon comprising approximately two (2) acres identified in the Portland, Oregon land records as Blocks 60 and 61. Landlord has certain development rights pursuant to the Disposition Agreement with regard to the surface and subsurface on portions of Block 51 and with regard to an option to develop Block 50. A site plan (the "Site Plan") depicting, among other things, Blocks 50, 60 and 61 (the "Entire Site") is attached to this Agreement as Exhibit A.

B. Landlord has also taken assignment from the Agency of all of the Agency's right, title and interest in and to certain subsurface rights and air-rights under a certain Subsurface Lease and a certain Air Rights Lease between the Agency and the City dated December 17, 1984 [as amended on _____] and _____, respectively. Pursuant to the Subsurface Lease, Landlord holds leasehold title to certain subsurface areas (the "Subsurface Parcels"), including areas beneath the City's sidewalk and street rights of way in S.W. Yamhill Street between Blocks 60 and 61 and beneath the City's sidewalk rights of way surrounding Blocks 60 and 61 for the purpose of constructing therein a portion of the improvements to be constructed by Landlord under the Disposition Agreement. Pursuant to the Air-Rights Lease, Landlord holds leasehold title to certain air rights (the "Air Rights Parcels") above the City's sidewalk and street rights of way in S.W. Yamhill Street, S.W. Fourth Avenue and S.W. Morrison Street for the purpose of constructing overhead pedestrian bridges to connect the improvements to be developed on the Entire Site as further described below.

C. The Entire Site comprises the following individual parcels:

1. The Developer Parcels, which include the following:

(a) The Subsurface Parcels;

(b) The Specialty Retail Areas (hereinafter defined);

(c) The Air Rights Parcels;

(d) The "Future Development Parcel" shown on Exhibit A consisting of certain parcels on Block 50 and air rights or subsurface rights related thereto for future development of parking, retail, a department store, a hotel or an office tower, or any combination thereof, all in accordance with Landlord's option relating thereto under the Disposition Agreement or otherwise granted by the City; and

(e) The Office Tower Parcel shown on Exhibit A consisting of a certain air rights parcel on Block 60 owned in fee simple by Landlord.

2. The "Saks Parcel" demised hereunder consisting of a certain air-rights parcel on Block 60, as further described in Exhibit B.

D. Landlord intends to develop an integrated mixed-use real estate project on the Entire Site pursuant to the terms and provisions of the Disposition Agreement which will consist initially of Tenant's department store on Block 60, a collection of retail shops and food services in a subsurface concourse on Blocks 60 and 61, incidental retail shops on Block 60, a retail pavilion on Block 61, and an office building on Block 60.

E. The retail shops and food services (including, without limitation, restaurants, fast food establishments, a food court, packaged foods and beverages) will be located (i) on a

subsurface concourse level connecting and under Blocks 60 and 61 ("Retail Concourse"), (ii) on a portion of the ground level and second level of the Developer Parcels on Block 60 containing approximately 4,000 square feet of retail and management offices (the "Block 60 Retail") and (iii) in a retail building of approximately three (3) stories located on Block 61 (the "Retail Pavilion"). The Retail Pavilion, Block 60 Retail and Retail Concourse are collectively hereinafter referred to as "Specialty Retail Areas". Portions of the Specialty Retail Areas, Saks Improvements and the Retail Concourse will be located in the Subsurface Parcels to be leased from the City. The Retail Concourse will open into an atrium in the Retail Pavilion on Block 61 around which will be located on four levels (including the Retail Concourse level) the largest portion of the Specialty Retail Area.

F. The Saks Department Store (the "Saks Improvements") will be located on Block 60 in the Saks Parcel in the location shown therefor on Exhibit A, and constructed or caused to be constructed by Tenant pursuant to this Lease. The Saks Improvements will be connected to the Retail Pavilion by a pedestrian bridge in one of the Air Rights Parcels as shown on the Site Plan (the "Pedestrian Bridge").

G. Office Improvements containing not less than two hundred and fifty thousand (250,000) square feet of leasable area shall be located on the Office Tower Parcel above the Saks Improvements on Block 60 in the location shown therefor on

Exhibit A and shall have a lobby area on Fifth Avenue and Taylor Street. The Office Improvements shall rely on the Saks Improvements and a portion of the Retail Concourse for structural support.

H. Landlord shall initially construct the Specialty Retail Areas and the Shell Building, and the Office Improvements. (The Project consisting of such Improvements is hereinafter collectively called the "Initial Project".)

I. The Initial Project may be expanded in one or more later phases to include on Block 50 and on subsurface and air rights parcels between Blocks 50 and 61 the development, construction and operation of any one or more of the following uses: department store, hotel, office tower or office towers, parking or retail.

J. All of the improvements to be developed by Landlord in the Initial Project will be connected at various points by common areas and facilities, including various pedestrian walkways and concourses, elevators, and escalators.

K. Tenant desires to lease from Landlord the Saks Parcel upon which Tenant intends to construct or cause to be constructed the Interior Improvements (as hereinafter defined). Landlord desires to reserve to itself and others certain rights of use and support in the Saks Parcel and Saks Improvements. Both parties desire to coordinate the design, planning, construction, use and operation of the Saks Improvements and the other components of the Project, including the Common Areas.

This Lease is being entered into by Landlord and Tenant for those purposes.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

ARTICLE I

EXHIBITS AND DEFINITIONS

Section 1.1. Exhibits: Attached hereto and forming a part of this Lease are the following exhibits, which, for the purpose of identification, have been signed or initialled by the Parties hereto or their attorneys:

- Exhibit A - Site Plan
- Exhibit B-1 - Legal Description of the Saks Parcel
- Exhibit B-2 - Legal Description of the Office Tower Parcel
- Exhibit B-3 - Legal Description of the Specialty Retail Areas
- Exhibit C - Schematic Plans and Specifications for the Exterior Skin of Shell Building
- Exhibit D - List of Title Exceptions
- Exhibit E - Form of Saks & Company Guaranty
- Exhibit F - Form of The Rouse Company Guaranty
- Exhibit G - Scope of Work

Section 1.2. Certain Defined Terms: As used herein the term:

"Additional Rent" has the meaning ascribed to it in Section 5.7 of this Lease.

"Additional Renewal Period(s)" has the meaning ascribed to it in Section 3.2 of this Lease.

"Adjusted Rent" has the meaning ascribed to it in Section 6.4 of this Lease.

"Affiliate" means a corporation controlling, controlled by or under common control with Tenant. For purposes of this definition "Control" means actual direction or power to direct the affairs of the controlled Person, and no Person shall be deemed in control of another solely by virtue of being a director, officer or holder of voting securities of any entity; provided, however, that a Person shall be deemed to control any entity of which it owns 50% or more of the voting securities or of which it is a general partner.

"Agency" means the City of Portland Development Commission.

"Air Rights Parcels" has the meaning ascribed to it in paragraph B of the Statement of Background and Purpose of this Lease.

"Alterations" has the meaning ascribed to it in Section 4.20 of this Lease.

"Approved Final Plans" has the meaning ascribed to it in Section 4.1 of this Lease.

"Approving Party" has the meaning ascribed to it in Section 4.1 of this Lease.

"Average Rent" has the meaning ascribed to it in Section 16.3 of this Lease.

"Block 60 Retail" has the meaning ascribed to it in paragraph E of the Statement of Background and Purpose.

"Block 60 Common Lobby Area" shall mean that certain Common Area designated as such on the Site Plan comprised of the street level interior lobby between the interior entrance to the Saks Improvements and the street level access to the Retail Concourse.

"Certificate of Completion" means any such certificate issued by the Agency pursuant to Section 3.4 of the Disposition Agreement.

"City" shall mean the City of Portland, Oregon.

"Common Area" means those areas designated as such on the Site Plan and any facilities located on the Developer Parcel or Developer Parcels or the Saks Parcel which are designed or intended to be made available for the non-exclusive general use, convenience and benefit of Landlord and Tenant or the general public or business invitees of Landlord, Tenant or their respective tenants, subtenants and licensees, including, without limiting the generality of the foregoing, the Retail Concourse, the Block 60 Common Lobby Area, driveways, truckways, delivery passages, exterior sidewalks, pedestrian bridges, walkways, exit corridors, planted areas, landscaped areas, elevators, escalators, stairways, service corridors, public meeting rooms and facilities, public rest rooms, and Common Utility

Facilities, but not including (i) the truck docks and truck loading areas designed or intended for the exclusive use of either party and (ii) areas within the Retail Concourse or Retail Pavilion designated as "Specialty Retail Area" on the Site Plan set aside to be leased or licensed to tenants or other occupants under leases or other occupancy agreements with Landlord.

"Common Area Maintenance Costs" means, without duplication, all monies payable by Landlord during any year accounted for on an accrual basis in accordance with generally accepted accounting principles for all reasonable and necessary expenditures made by Landlord or which the Landlord is obligated to make related to the operation, maintenance and repair of the Common Area developed as part of the Initial Project, excluding, however, Common Area in the Office Improvements, in such Fiscal Year, including, but not limited to:

- (i) Costs and expense actually incurred or reasonably allocated and directly related to the operation, maintenance, and repair of the Common Area in fulfilling Landlord's obligations under this Lease;
- (ii) The total costs and expenses for comprehensive public liability and property damage insurance, fire and extended coverage and all risk insurance and earthquake insurance, covering the Common Area;

- (iii) All real property taxes and other assessments covering the Common Area;
- (iv) All utility charges for Common Utility Facilities used in the Common Area;
- (v) All rental charges for equipment and costs of small tools and supplies;
- (vi) All acquisition costs of maintenance equipment;
- (vii) Policing, security protection, control and regulation of the Common Area;
- (viii) All costs of cleaning and removal of ice, snow, rubbish, dirt and debris from the Common Area;
- (ix) The cost of landscape maintenance and supplies for the Common Area; and
- (x) All costs of the annual audit of Common Area Maintenance Costs.

In lieu of any other charge for indirect costs (including, but not limited to, the cost of the operation of any office, accounting services and other services not directly involved with maintenance and operation), Common Area Maintenance Costs shall include an allowance to Landlord for Landlord's supervision of the Common Area equal to fifteen percent (15%) of the total of the aforementioned costs and expenses for each Lease Year. Depreciation or amortization shall not be

included in Common Area Maintenance Costs, except that the depreciation of the cost of equipment for maintenance of the Common Area and the cost of benches and other street furniture shall be included in Common Area Maintenance Costs.

"Common Building Component" means any single improvement or portion thereof, which is located partly on one or more of the Developer Parcels and on the Saks Parcel or which is shared in common by Tenant and Landlord, such as a common wall, columns, floor slabs, roof flashings, membranes and electrical or similar vaults, but in any event specifically includes the building elements referred to in subparagraphs 1, 2, 3, and 4 of Section 27.4 of this Lease.

"Common Utility Facilities" means all: (i) storm drainage facilities, sanitary sewer systems, natural gas systems, domestic water systems, fire protection water systems, electrical systems, telephone systems, and cable television systems and (ii) other utility systems and facilities to be located or situated on the Entire Site, but shall not include any of the foregoing designed or intended for the exclusive use of Tenant or any other occupant.

"Compatible Use" and "Compatible Uses" shall have the meaning ascribed to them in Section 6.2(d) of this Lease.

"Complex" has the meaning ascribed to it in Section 3.2 of this Lease.

"Condemnation" has the meaning ascribed to it in Section 16.1 of this Lease.

"Condemnation Architect" has the meaning ascribed to it in Section 16.6 of this Lease.

"Condemnation Trustee" has the meaning ascribed to it in Section 16.3 of this Lease.

"Consent Order(s)" has the meaning ascribed to it in Section 26.16 of this Lease.

"Consumer Price Index" means the Consumer Price Index for All Areas, All Items, All Urban Consumers published from time to time by the Bureau of Labor Statistics of the United States Department of Commerce, or any successor index containing substantially the same information published by the United States.

"Default Rate" means an annual rate of interest equal to two (2) percentage points higher than the rate of interest announced from time to time by The Chase Manhattan Bank (National Association) (or some other bank agreed upon by the Parties) on short term loans to large businesses having the highest credit standing.

"Demised Premises" has the meaning ascribed to it in Section 2.1 of this Lease.

"Developer Improvements" means the building, buildings, improvements or other facilities from time to time

constructed on the Developer Parcels, including without limitation the Retail Concourse and other Specialty Retail Areas, the Office Improvements, and such other buildings or facilities to be constructed by Landlord pursuant to Section 4.8 hereof.

"Developer Operating Covenant" has the meaning ascribed to it in Section 6.1 of this Lease.

"Developer Operating Covenant Period" has the meaning ascribed to it in Section 6.1 of this Lease.

"Developer Parcel" or "Developer Parcels" means all of those certain tracts of land or portions thereof purchased by Landlord or leased from time to time by Landlord pursuant to the Disposition Agreement and located on the Entire Site.

"Developer Leasing Requirement" means that at least sixty-five percent (65%) of the Floor Area in the Specialty Retail Areas shall be open for business.

"Disposition Agreement" has the meaning ascribed to it in paragraph A of the Statement of Background and Purpose.

"Entire Site" has the meaning ascribed to it in paragraph A of the Statement of Background and Purpose of this Lease and includes that area designated as "Entire Site" on Exhibit A.

"Event of Tenant's Default" has the meaning ascribed to it in Section 17.1 of this Lease.

"Fair Market Value" has the meaning ascribed to it in Section 16.4 of this Lease.

"Fair Rental Value" has the meaning ascribed to it in Section 6.4. of this Lease.

"Fiscal Year" means each period between January 1 and December 31 of each year.

"Floor Area" means the area of square feet of floor covered and enclosed within buildings, whether rented or rentable or not, measured to the exterior faces of the exterior walls of the buildings and to the center lines of interior common walls, without deduction for elevators, walls, columns, stairs, escalators, utility shafts or risers or other interior construction, but not including (i) Common Area, (ii) mechanical equipment penthouses, (iii) non-structural mezzanines used exclusively for storage, (iv) truck docks and truck loading areas, including covered (but not enclosed) receiving areas adjacent thereto and (v), as to the Specialty Retail Areas, Landlord's management offices.

"Future Development Parcel" has the meaning ascribed to it in Section C of the Statement of Background and Purpose.

"Guarantor" means Saks & Company, a New York corporation, as guarantor of Tenant's performance under this Lease pursuant to the Guaranty.

"Guaranty" means the Guaranty of Saks & Company provided to Landlord pursuant to Article XXVIII hereof.

"Improvements" means the building and improvements originally constructed upon a Parcel, and includes all subsequent repairs and alterations to such buildings and improvements, and all rebuilding and replacing thereof, and all additional improvements erected thereon from time to time.

"Initial Project" has the meaning ascribed to it in paragraph H of the Statement of Background and Purpose.

"Initial Term" has the meaning ascribed to it in Section 2.1 of this Lease.

"Institutional Lender" has the meaning ascribed to it in Section 12.5 of this Lease.

"Interior Improvements" has the meaning ascribed to it in Section 4.3 of this Lease.

"Landlord's Agent" has the meaning ascribed to it in Section 28.1 of this Lease.

"Leasehold Mortgage" means any one or more mortgages, deeds of trust, deeds to secure debt, loan deeds, trust indentures, security agreements or any similar security or title retention device which shall, from time to time, affect, encumber or create a lien upon the leasehold estate created by this Lease and which shall be given to secure one or more notes, bonds or other evidences of indebtedness or obligation made or issued by Tenant.

"Leasehold Mortgagee" means an entity in whose favor a Leasehold Mortgage shall have been created.

"Lease Year" has the meaning ascribed to it in Section 5.3 of this Lease.

"Merchants' Association" has the meaning ascribed to it in Article XXIV of this Lease.

"Mortgage" means means any one or more mortgages, deeds of trust, deeds to secure debt, loan deeds, trust indentures, security agreements or any similar security or title retention device which shall, from time to time, affect, encumber or create a lien upon the Saks Parcel and which shall be given to secure one or more notes, bonds or other evidences of indebtedness or obligation made or issued by Landlord.

"Mortgagee" means any holder of a Mortgage.

"Net Awards" has the meaning ascribed to it in Section 16.3 of this Lease.

"Net Sales" has the meaning ascribed to it in Section 5.4 of this Lease.

"Office Improvements" has the meaning ascribed to it in Paragraph G of the Statement of Background and Purpose.

"Office Tower Parcel" means that parcel of land designated "Office Tower Parcel" on Exhibit A and described in Exhibit B-2 and described in Section C of the Statement of Background and Purpose.

"Open for business" or "is open for business" or "shall be open for business" and like references means (i) with respect to the Landlord the time when construction of the shell of the Specialty Retail Areas has been substantially completed and the Developer Leasing Requirement has been satisfied, (ii) with respect to Saks when the Saks Improvements, or any part thereof, open for business with the public, (iii) with respect to the Office Improvements when the Office Improvements, or any substantial portion thereof, opens for business with the public.

"Opening Date" means the earlier to occur of (i) the date the Saks Improvements are open for business or (ii) _____, 1990; provided, however, should Landlord not substantially complete that portion of the Shell Building described in Section 4.8(c)(1) by _____, 19__ [nine (9) months prior to the Opening Date] or that portion of the Shell Building described in Section 4.8(c)(2) by _____, 19__ [three (3) months prior to the Opening Date], all in accordance with Section 4.8 of this Lease, then the Opening Date shall be postponed for each day of such delay to a date extended by the period of delay.

"Originating Party" shall have the meaning ascribed to it in Section 4.1 of this Lease.

"Parcel" or "Parcels" means one or more of the Developer Parcels, the Saks Parcel, the Office Tower Parcel, the Specialty Retail Areas Parcel, the Future Development Parcel and any lot or air rights parcel of real property created in the Entire Site.

"Pedestrian Bridge" has the meaning ascribed to it in Paragraph F of the Statement of Background and Purpose.

"Percentage Rent" has the meaning ascribed to it in Section 5.2 of this Lease.

"Plans and Specifications" has the meaning ascribed to it in Section 4.1 of this Lease.

"Project" shall mean the Initial Project as it may be expanded on the Entire Site by Landlord from time to time pursuant to the rights granted to Landlord under the Disposition Agreement.

"Renewal Period(s)" has the meaning ascribed to it in Section 3.1. of this Lease.

"Rent Commencement Date" has the meaning ascribed to it in Section 5.2 of this Lease.

"Restored" and "Restoration" has the meaning ascribed to them under Section 13.2 of this Lease.

"Retail Concourse" has the meaning ascribed to it in paragraph E of the Statement of Background and Purpose.

"Retail Pavilion" has the meaning ascribed to it in Paragraph E of the Statement of Background and Purpose.

"Saks & Company" means Saks & Company, a New York corporation.

"Saks Additional Operating Covenant Period" has the meaning ascribed to it in Section 6.2 of this Lease.

"Saks Improvements" means the building, improvements and other facilities described in Section 4.3 and such replacement building, buildings, improvements or facilities from time to time constructed in the Saks Parcel.

"Saks Initial Operating Covenant Period" has the meaning ascribed to it in Section 6.2 of this Lease.

"Saks Operating Covenant Period" means the period of time equal to Saks Initial Operating Covenant Period as extended by the Saks Additional Operating Covenant Period.

"Saks Parcel" means that parcel of land which is demised and let hereunder, the same being designated as "Saks Parcel" on Exhibit A and described in Exhibit B-1.

"Separate Utility Facilities" has the meaning ascribed to it in Section 27.1(a)(4) of this Lease.

"Shell Building" means the structural and exterior elements of the Saks Improvements, including, without limitation, columns, girders, pads, beams, joists, floors and floor slabs, structural framed openings, elevator and escalator pits, structural provisions for systems to be installed later by Tenant (but excluding minor structural pads, penetrations, brackets, hangers

and other provisions for systems to be installed by Tenant), exterior walls, roofs, the subsurface chiller room, domestic and sprinkler water room, and electrical switchgear room (without equipment), steel or precast stairs (unenclosed and otherwise unfinished), the outside line of fenestration and glass, external doors, permanent canopies over store entrances, structural support for awnings, mechanical grills and secured truck dock intended for the exclusive use of Tenant, excluding, however, signage and graphics, awnings and flagpoles.

"Shell Contribution Repayment" has the meaning ascribed to it in Section 4.5 of this Lease.

"Sign Criteria" means that certain sign criteria attached hereto as Exhibit C.

"Site Development Improvements" has the meaning ascribed to it in Section 4.7 of this Lease.

"Site Plan" has the meaning ascribed to it in the Statement of Background and Purpose.

"Specialty Retail Areas" has the meaning ascribed to it in paragraph E of the Statement of Background and Purpose.

"Specialty Retail Areas Parcel" means the parcels of land designated as "Specialty Retail Areas Parcel" on Exhibit A and described in Exhibit B-3.

"Structural Support System" means the system of load-bearing support elements of a party's Improvements,

including without limitation columns, girders, pedestals, slabs, supports and foundations.

"Subsurface Parcels" has the meaning ascribed to it in the Statement of Background and Purpose.

"Tax" or "Taxes" has the meaning ascribed to them in Section 7.1 of this Lease.

"Tenant's Common Area Contribution" shall have the meaning ascribed to it in Section 21.1 of this Lease.

"Tenant's Drawings" shall have the meanings ascribed to it in Section 4.1(g) of this Lease.

"Tenant's Share" has the meaning ascribed to it in Section 4.4. of this Lease.

"the term," "demised term" and "term of this Lease" has the meaning ascribed to them in Section 2.1 of this Lease.

"Total Condemnation" has the meaning ascribed to it in Section 16.1 of this Lease.

"Unavoidable Delay" has the meaning ascribed to it in Section 26.9 of this Lease.

ARTICLE II

PREMISES AND TERM

Section 2.1. Demise and Term: Landlord hereby leases and demises unto Tenant and Tenant hereby leases and takes from Landlord for the term, at the rental, and upon the covenants, terms and conditions hereinafter set forth, the Saks Parcel described in Exhibit B hereof (which, together with the Saks Improvements, is hereinafter called the "Demised Premises").

Landlord and Tenant acknowledge that as of the date of this Lease the Saks Parcel is situated on an unsubdivided parcel of land. Tenant agrees to cooperate with Landlord on the creation and recordation of a subdivision plat for Block 60 which would, among other things, subdivide the Saks Parcel by horizontal subdivision and, to the extent permitted by applicable law, by vertical subdivisions. Upon recordation of such subdivisions the parties agree to execute an amendment to this Lease if necessary so that these Exhibits will be consistent with the subdivision.

TO HAVE AND TO HOLD, together with all and singular the appurtenances, easements, rights, privileges and immunities thereunto belonging or in anywise appertaining, unto Tenant, its successors and assigns, and subject to the easements and other rights granted or reserved in this Lease or other restrictions set forth on Exhibit D for an initial term beginning with the date of this Lease and ending at midnight on the 20th anniversary of the day preceding the earlier to occur of (i) the day on which Tenant shall open the Saks Improvements to the general public for business or (ii) the day on which Tenant shall be obligated to open the Saks Improvements for business with the general public pursuant to Section 6.1 of this Lease (hereinafter called the "Initial Term"); and with the renewal and other options hereinafter contained. Upon occurrence of the commencement of the Initial Term, Landlord and Tenant agree to execute a letter agreement which specifies the date of commencement of the Initial Term. The expressions "the term," "demised term" and "the term of this Lease" are used interchangeably herein and whenever used

in this Lease shall be deemed to refer not only to the Initial Term but to any and all extensions and renewals thereof as well.

ARTICLE III

OPTIONS TO RENEW

Section 3.1. Grant of Renewal Options: Provided Tenant is not in default of the Saks Operating Covenant, Tenant shall have, and is hereby given, five (5) separate options to extend the Initial Term upon the terms, covenants, and provisions herein contained, for five (5) separate, successive periods of ten (10) years each (hereinafter each individually called the "Renewal Period" and collectively called "Renewal Periods") to follow consecutively upon the Initial Term. Such options shall be exercisable by Tenant's giving notice to Landlord of its intention to exercise the same not less than eighteen (18) months prior to the expiration date of the Initial Term, or the expiration date of any Renewal Period thereof, as the case may be; provided, however, that if Tenant shall fail to give any such notice within the aforesaid time limit, Tenant's right to exercise its option shall nevertheless continue until ninety (90) days after Landlord shall have given Tenant notice of Landlord's election to terminate such option and Tenant may exercise such option at any time until the expiration of said ninety (90) day period.

Section 3.2. Effect of Failure to Give Notice: It is the intention of the parties to avoid forfeiture of Tenant's rights to extend the term of this Lease under any of the options set forth in Section 3.1 through inadvertent failure to give

notice of exercise thereof within the time limits prescribed. Accordingly, if Tenant shall fail to give notice to Landlord of Tenant's election to extend the term of this Lease for any of the aforesaid Renewal Periods or if Landlord shall fail to give notice to Tenant of Landlord's election to terminate Tenant's right to extend this Lease under the option applicable thereto, then and so often as such event shall occur, the term of this Lease shall be automatically extended from year to year (such years to be deemed to be part of the Additional Renewal Term covered thereby) upon all of the terms and conditions then in effect, subject to Tenant's right under such option to extend the term of this Lease for the remainder of the Renewal Period covered thereby and to Landlord's right to place the ninety (90) day limit on such option by a notice in the manner provided in Section 3.1. If Landlord shall give notice to Tenant placing the ninety (90) day limit on such option and if Tenant shall fail to exercise such option, then such option and all subsequent options to renew and extend the term shall be deemed forfeited by Tenant.

Section 3.3. Continued Operations: Notwithstanding the foregoing Section 3.1, if upon expiration of the fifth (5th) Renewal Period granted under Section 3.1 and provided Tenant shall have exercised its option to extend the terms for each of the four preceding Renewal Periods (provided that this Lease shall not have theretofore terminated in accordance with its terms) and Landlord shall continue to own and operate or cause to be operated anywhere on the Entire Site a unified development

consisting of either (i) retail stores and a hotel, or (ii) retail stores and an office building, or (iii) an office building and hotel, or (iv) retail stores, an office building and a hotel or (v) a collection of retail stores (any such combination hereinafter called "Complex"), then in such event Tenant shall have successive options to extend the term of this Lease for additional five (5) year periods each (hereinafter "Additional Renewal Periods") following consecutively upon the end of the then current Renewal Period not to exceed a term of 99 years from the date of the commencement of the Initial Term. For the purpose of this Section "retail stores" shall mean at least 75,000 square feet of Floor Area operated by Landlord or tenants or licensees of Landlord for retail purposes. The right of Tenant to extend the term for an Additional Renewal Period and the exercising of the option to extend for an Additional Renewal Period shall arise and must be exercised separately for each Additional Renewal Period.

At least twelve (12) months prior to the expiration of the fifth (5th) Renewal Period or any Additional Renewal Period, as the case may be, Landlord shall notify Tenant whether or not Landlord shall continue to operate a Complex as provided in this Section, and Tenant shall have ninety (90) days from receipt of such notice, if such notice states that Landlord intends to continue to operate a Complex, to notify Landlord of Tenant's intention to exercise its option to extend the term of this Lease for an Additional Renewal Period. If such notice states that

Landlord does not intend to operate a Complex, then this Lease shall terminate at the end of the then current Renewal Period and Landlord shall not commence operation nor design and construct a Complex for a period of one (1) year after the Landlord's cessation of operation of a Complex. Notwithstanding the foregoing, if Landlord shall continue to operate a Complex or shall design or construct a Complex during the one (1) year period following Landlord's cessation of operation of a Complex, Tenant shall have an option for a period of sixty (60) days following the end of such one (1) year period to extend the term of this Lease for an Additional Renewal Term.

If Landlord shall fail to notify Tenant whether or not it intends to operate a Complex, Tenant's right to exercise its option shall nevertheless continue until ninety (90) days after Landlord shall subsequently have given Tenant notice of Landlord's intent to continue to operate a Complex, in which event Tenant must exercise such option to renew as provided for in the preceding paragraph by the expiration of said ninety (90) day period. Upon Landlord's receipt of Tenant's timely election to renew this Lease for an Additional Renewal Period, the term hereof shall be deemed to be extended for an additional five (5) years, which period shall be deemed to have commenced the day following the end of the prior Additional Renewal Period. If, however, Tenant fails to elect to renew or elects not to renew in accordance with this paragraph or Landlord elects not to continue to operate a Complex, the Lease shall terminate on the later to

occur of the following January 31 or six (6) months from the date Tenant elects not to renew or is obligated to make the election and fails to do so or Landlord elects not to continue to operate a Complex.

ARTICLE IV

DESIGN AND CONSTRUCTION

Section 4.1. Plans and Specifications:

(a) Landlord and Tenant agree that the planning of the Improvements initially to be constructed on the Entire Site shall be coordinated through consultation of their respective architects and engineers with one another to the end that, although a party's Improvements may be different from the Improvements of the other party, they nevertheless shall be architecturally and functionally harmonious with such other party's Improvements. In order to assure such coordination, the submission and approval of same shall be accomplished in accordance with the following procedure:

- (1) The party required to prepare such plans and Specifications (the "Originating Party") shall submit the same to the other party whose approval thereof is required (the "Approving Party") not later than the dates provided for in this Section 4.1.
- (2) Within fifteen (15) business days after such plans and specifications required to be submitted by the Originating Party (hereinafter referred to as "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 such Plans and Specifications shall not be unreasonably withheld by the Approving Party except that Tenant's approval rights related to the exterior of the Shell Building may be withheld at Tenant's sole and absolute discretion in any instance where the plans or specifications are either (i) inconsistent with the Schematic Plans and Specifications for the Exterior Skin of the Shell Building attached hereto as Exhibit C or (ii) inconsistent with plans and specifications therefore previously approved by Tenant.

(3) The Originating Party will, within fifteen (15) business days following receipt of a notice of disapproval, notify the Approving Party whether or not it agrees with the Approving Party's objection, and, if the Originating Party does agree, promptly undertake to amend and modify the Plans and Specifications so as to conform to the requirements of this Lease. Upon completion

thereof, the same shall be approved in writing by the Approving Party. 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, such dispute shall be submitted for arbitration to RTKL, Inc., AIA of Baltimore, Maryland, or if he shall refuse or be unable to serve as such arbitrator, then to Anthony Callison, AIA of The Callison Partnership, Seattle, Washington or, if he shall refuse or be unable to serve as such arbitrator, then to some impartial member of the American Institute of Architects mutually satisfactory to the Originating Party and the Approving Party. The decision of the arbitrator in any such dispute shall be final and binding upon the Parties and shall be enforceable in a court of competent jurisdiction.

- (4) If the Approving Party shall fail to give notice of its approval or disapproval within fifteen (15) business days after receipt of any Plans and Specifications submitted to it

for its approval, or of any required modification or amendment thereof, the same shall be deemed to have been approved by the Approving Party.

- (5) Upon approval of the Plans and Specifications by the Approving Party as provided herein, the same shall not be modified or amended thereafter by the Originating Party without the approval of the Approving Party, which approval shall not be unreasonably withheld.

Promptly after receipt of request therefor by Landlord, Tenant shall furnish information to Landlord regarding construction of the Saks Improvements necessary to enable Landlord to coordinate the phasing of construction of the Project.

(b) It is the intent of the parties that the type of materials used in construction of the exterior of the Shell Building shall be those specified in Exhibit C and that the quality of the exterior materials shall be comparable to the quality used in construction of the Saks Fifth Avenue store at Union Square in San Francisco, California. In the event that on or before substantial completion of the Shell Building, Tenant shall request Landlord to use different furnishings, materials, structural or exterior elements or other components in the exterior of the Shell Building than Landlord is required to in the construction of the Shell Building in accordance with Exhibit C, or use a different quality of finishes, materials, structural or external elements or other components for the exterior of the

Shell Building other than used in constructing the Saks Fifth Avenue store at Union Square in San Francisco, California, and if any such finishing, materials, structural or exterior elements or other components would result in any material increase in the costs of the Shell Building, then Landlord shall use such more expensive treatments in Landlord's construction of the Shell Building provided (i) Tenant specifies its request to Landlord in writing, and (ii) Tenant reimburses Landlord for the design and construction costs together with any damages suffered by Landlord as a result of requested changes in the Shell Building, in accordance with the invoice procedure set forth in Section 6.5. of this Lease. Any dispute related to this paragraph shall be resolved by the arbitration procedures set forth in Section 4.1(a)(2) of this Lease.

(c) Notwithstanding the dates for delivery of Plans and Specifications set out in the foregoing subsection (a), the parties understand that successful completion of the Initial Project in accordance with the terms of this Lease shall require continued cooperation at all stages of the preparation of the Plans and Specifications, and each party shall use its best efforts to keep the other fully informed as to the progress of its design responsibilities hereunder.

(d) Notwithstanding anything herein to the contrary, the parties understand that certain portions of the Plans and Specifications for the design of the Project are subject to Agency approval pursuant to the terms of the Disposition

Agreement, and that all Plans and Specifications for the exterior design of the Project shall be reviewed and approved by the City's Historic Landmarks and Design Commission and Designated Hearings Officer (hereinafter collectively the "City Design Review Agencies") pursuant to the terms and conditions of the Disposition Agreement. Landlord's approval of any Plans and Specifications of Tenant hereunder shall not constitute approval of the Agency or the City Design Review Agencies of such Plans and Specifications, and no Plans and Specifications which require approval of the Agency or City Design Reveiw Agencies shall be deemed approved hereunder until the approvals of the City Design Review Agencies and the Agency are received. Landlord shall be primarily responsible, with the assistance and cooperation of Tenant, for obtaining the Agency's and City Design Review Agencies' approval of Plans and Specifications submitted by any Party hereunder and approved by the Parties hereto which require such approval, including, without limitation, the initiation of any appeals, arbitration or administrative proceedings necessary to obtain such approvals. In the event that any Plans and Specifications approved hereto are submitted to and disapproved by the City Design Review Agencies and/or the Agency, the Originating Party will, with the assistance of the Approving Party, make good faith efforts to cooperate to respond to the City Design Review Agencies' or the Agency's objections in the manner provided in the Disposition Agreement, and shall submit any disputes regarding such Plans and Specifications to

arbitration in accordance with the provisions of the Disposition Agreement and be bound by the decision of the arbitrators in any such arbitration. Nothing in this Lease is intended to expand, restrict or otherwise modify the rights and obligations of the Agency, the City or Landlord under the Disposition Agreement or to modify the procedure for Agency and City approval of Plans and Specifications provided therein.

(e) Any delay caused by failure of the City Design Review Agencies or the Agency to approve Plans and Specifications, including without limitation delay incurred in any arbitration, appeal, or administrative proceeding shall be deemed to be delay caused by Unavoidable Delay hereunder, provided that the party to this Lease involved in such delay or proceedings had acted in good faith and with due diligence to resolve any disputes with the Agency or the City Design Review Agencies.

(f) The following Plans and Specifications are to be prepared by Landlord for the Initial Project and submitted to Tenant:

(i) Not later than _____ [thirty-two (32) months prior to the Opening Date], schematic design drawings and plans consisting of a site plan showing the Developer Improvements (including the Retail Concourse, Office Improvements, Shell Building, and Site Development Improvements) required to be

constructed by Landlord on Blocks 60 and 61 and their mass in relation to adjoining Improvements, existing grades, roadways, utilities and other land use factors; plans, elevations and sections of the Developer Improvements; construction specifications outline; and a description of the structural, electrical, mechanical and life safety systems.

- (ii) Not later than _____ [twenty-six (26) months prior to the Opening Date], design development drawings and outline specifications consisting of plans, elevations, sections, outline specifications and material samples, all in sufficient detail to fix and describe the design scope and character of all architectural, structural, mechanical, electrical, life safety and engineering aspects of the Developer Improvements (including Site Development Improvements) required to be constructed by Landlord, including, without limitation, a site plan showing the Developer Improvements in relation to projected final grades with proposed connections to roads and utilities and landscaping blocked in, architectural design

and layout, typical floor plan, materials, building construction, access, public facilities and streets and sidewalks for the Developer Improvements.

- (iii) Not later than _____ [twenty (20) months prior to the Opening Date], final working drawings and specifications for the Developer Improvements on Blocks 60 and 61, which shall be complete in every respect and include plans, elevations, sections, detailed specifications and samples, and shall fully define the scope of the work, methods of construction, materials to be used and the size, location and dimensions of all parts of the work. As approved by Tenant, the Agency and the City Design Review Agencies, Landlord's final construction Plans and Specifications are herein referred to as "Approved Final Plans."

Tenant's right of approval with respect to any of the foregoing Plans and Specifications prepared by Landlord related to construction of the Shell Building shall be subject to the provisions of Section 4.1 hereof. With respect to any other element or aspect of the foregoing Plans and Specifications not related to the Shell Building, Tenant's right of approval with respect to such Plans and Specifications shall be obtained in

accordance with the procedures set forth in Section 4.1 hereof but shall be limited in scope to the Block 60 Common Lobby Area, the Pedestrian Bridge the exterior of the Developer Improvements to be constructed in the Initial Project and those interior portions of the Developer Improvements (other than Tenant's Shell Building) which are Common Building Components or Common Utility Facilities with respect to such Saks Improvements and the Developer Improvements.

(g) The following plans and specifications are to be prepared by Tenant for the Initial Project and submitted to Landlord:

- (i) On a timely basis Tenant shall supply Landlord with all necessary information related to the Interior Improvements or any furnishings, equipment or finishes which affect the Shell Building or the design of the Developer's Improvements.
- (ii) Upon completion of construction of the Interior Improvements by Tenant, final working drawings and specifications for the mechanical and electrical elements of the Saks Improvements (collectively called "Tenant's Drawings").

Landlord's right of approval with respect to any of the foregoing Plans and Specifications prepared by the Tenant shall be obtained in accordance with Section 4.1, but shall be limited in scope to any portions of the Interior Improvements which

adversely affect Common Building Components or Common Utility Facilities to the Developer Improvements or are Separate Utility Facilities serving Tenant and are located in the Developer Improvements.

(h) Tenant and Landlord shall have a right to approve changes to Landlord's Approved Final Plans and Tenant's Drawings which approval shall be based upon the procedures and approval rights set forth in this Section 4.1. Upon approval of changes the Approved Final Plans shall be deemed to include the approved changes.

(i) Each party's Plans and Specifications provided for in this Lease shall conform to the Site Plan, and shall comply with all building, zoning, environmental and other laws, regulations and orders applicable to its Parcel and Improvements and shall be in accordance with the orders, rules and regulations of each party's respective fire insurance rating organization and the life safety program approved by the City for the Entire Site. Notwithstanding the foregoing, however, any party's Plans and Specifications may depart from the orders, rules or regulations of its fire insurance rating organization but only if such party bears any additional cost to the other parties resulting from such departure and only if such departure shall not result in any party's Improvements being uninsurable.

(j) Any document required to be submitted for approval by any party under Article IV of this Lease shall be in reproducible form and 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 unless accompanied by such a letter, such document shall not be deemed to have been submitted for approval. Any such document shall be deemed to have been submitted on the date of receipt. All such documents shall be sent to the following representatives of the Parties at the following addresses (unless or until some other representative or address is specified for same in accordance with Section 26.14 of this Lease):

If to Landlord: Rouse-Portland, Inc.
10275 Little Patuxent Parkway
Columbia, Maryland
Attention: General Counsel

With copy to: Rouse-Portland, Inc.
c/o Santa-Monica Place
395 Santa Monica Place
Santa Monica, California 90401-2343
Attention: Perry Page

If to Tenant:

Section 4.2. Landlord to Construct Shell Building:

Subject to the terms of this Article IV, Landlord shall cause to be constructed on the Saks Parcel, in accordance with the Approved Final Plans therefor, a Shell Building containing approximately sixty thousand (60,000) square feet of Floor Area. In connection with the construction of the Shell Building, Landlord shall select all personnel, labor, materials, services and other elements of the construction, enter into contracts therefor, and determine and do any and all matters or things which Landlord shall deem necessary or advisable in connection

with construction of the Shell Building, subject to the terms and provisions of this Article IV, it being the intention of the parties that, except as otherwise provided herein, Landlord shall be primarily responsible for the planning, design and construction of the Shell Building. Landlord shall provide Tenant with weekly reports during construction of the Shell Building and Tenant and its designated representatives shall have the right to inspect the Shell Building during construction.

Section 4.3. Tenant to Construct Interior Improvements: Tenant shall be responsible for constructing the Interior Improvements at its expense consistent with Tenant's Drawings. The "Interior Improvements" of the Saks Improvements shall include generally all portions of the Saks Improvements not included in the Shell Building, including without limitation all internal layout and walls, utilities serving the Demised Premises and not required by this Lease to be constructed by Landlord, vertical transportation (including elevators and escalators), finishes, furnishings, fixtures and equipment.

Section 4.4. Tenant's Share: In addition to the additional exterior Shell Building costs, if any, set forth in Section 4.1(b) of this Lease, Tenant shall contribute to Landlord (i) with respect to the costs associated with the Shell Building, the sum of Two Million Two Hundred Twenty-Four Thousand Dollars (\$2,224,000) and (ii) with respect to the costs associated with construction of the Site Development Improvements, the sum of Four Hundred Fifty Thousand Dollars (\$450,000) (which contri-

butions are hereinafter collectively referred to as the "Tenant's Share" and total \$2,674,000).

Section 4.5. Shell Contribution Repayment: Tenant shall elect by giving notice thereof to Landlord on or before November 1, 1987 to pay the Tenant's Share based upon one of the following methods of repayment (the selected method hereinafter referred to as "Shell Contribution Repayment"):

- (i) One and one-half percent (1.5%) of annual Net Sales from the Opening Date until \$2,674,000 plus interest on the unpaid balance at a rate of ten percent (10%) per annum compounded annually calculated from the Opening Date has been fully paid to Landlord;
- (ii) \$2,674,000 shall be paid in cash to Landlord (based upon quarterly invoices of work in place and percentage of completion evidenced by a certificate from Landlord's architect) commencing on the date of commencement of construction of the Shell Building with the balance due on the Opening Date; or
- (iii) (a) \$1,800,000 shall be paid in cash to Landlord (based on quarterly invoices of work in place and percentage of completion evidenced by a certificate from Landlord's architect) over a period of time commencing on the date of commencement of construction of

the Shell Building with the balance of the \$1,800,000 due on the Opening Date and (b) one half of one percent (.5%) of annual Net Sales commencing on the fifteenth anniversary of the Opening Date until \$874,000 with interest thereon at ten percent (10%) per annum compounded annually calculated from the Opening Date has been fully paid to Landlord; provided, however, except where Tenant may be in default in making any payments of the Shell Contribution Repayment, to the extent that Tenant chooses not to extend the term of this Lease as herein provided beyond the Initial Term or a particular Renewal Period, any outstanding balance of the Shell Contribution Repayment, plus accrued interest unpaid at the expiration of the term of this Lease shall be forgiven by Landlord. To the extent that Tenant chooses to extend the Term of the Lease beyond the Initial Term or any Renewal Period, then Tenant shall continue to make the additional rent payments representing Shell Contribution Repayment until the total amount with interest thereon has been paid in full. Payments (other than the cash payment of \$1,800,000 set forth in (iii) above) shall be applied first to interest and then to the unpaid principal balance. Nothing herein shall prohibit Tenant from prepaying any amount of the Shell Contribution Repayment after giving five (5) days notice to Landlord.

Should Tenant fail to make the election by November 1, 1987, the method of repayment shall be deemed to be the one set forth in Section 4.5(i) above. All invoices submitted pursuant to (ii) or (iii) above and any additional invoices covering the additional exterior Shell Building costs under Section 4.1(b) of this Lease, shall be submitted by Landlord on a quarterly calendar basis and shall be paid in full within fifteen (15) days of the date of receipt by Tenant which invoices shall, where applicable, be accompanied by the required Landlord's architect's certificate. Any installments of the Shell Contribution Repayment which remain unpaid after the fifteen (15) day period or after it is otherwise due, shall earn interest at the Default Rate until paid in full. Landlord shall maintain adequate records and books of account reflecting all costs for the Shell Building to be paid by Tenant, and Tenant and its representatives shall have the right to inspect such books and records during business hours upon reasonable notice to Landlord. Landlord shall retain such books and records for a period of three (3) years from the date of substantial completion of the Shell Building.

Section 4.6. Landlord's Indemnification: Landlord shall indemnify and hold harmless Tenant from and against, and shall reimburse Tenant with respect to, any and all claims, demands, causes of action, loss, damage, liabilities, costs and expenses (including attorneys' fees and court costs) assessed against or incurred by Tenant by reason of or arising out of

failure of Landlord to construct the Shell Building in accordance with the Approved Plans and Specifications; provided, however, the foregoing indemnification is not intended to be an indemnification or warranty of fitness for a particular purpose or use. In furtherance of the foregoing, and not in limitation thereof, Landlord specifically agrees to refrain from making any claim for loss or damage, and to indemnify and hold Tenant harmless from any claims of others with respect to, failure of Tenant to construct or complete the Saks Improvements in accordance with the terms of this Lease, which failure is caused by Landlord's failure to construct and complete the Shell Building in accordance with the terms of this Lease.

Section 4.7. "Site Development Improvements" Defined:
The term "Site Development Improvements" means such of the following improvements not presently in place and, except where otherwise noted, to be installed in the Entire Site by Landlord as part of the Initial Project:

(1) Installations of Common Utility Facilities and/or Separate Utility Facilities serving the Tenant necessary to serve the Initial Project, including the following:

(i) A water line and sprinkler water line, which shall connect to a public water facility, running to each Parcel at the location shown on Landlord's Approved Final Plans.

- (ii) A sanitary sewer line, which shall connect to public sewage facilities, running to each Parcel at the location shown on Landlord's Approved Final Plans with two reasonably remote connections.
- (iii) A storm drainage system, accessible from each Parcel at the location shown on Landlord's Approved Final Plans with two reasonably remote connections.
- (iv) An electric service running to each Parcel at the location shown on Landlord's Approved Final Plans.
- (v) If gas is available for use within the Entire Site, a gas line running to each Parcel at the location shown on Landlord's Approved Final Plans.
- (vi) A telephone service running to each Parcel at the location shown on Landlord's Approved Final Plans.
- (vii) Connections of the life safety system running to each Parcel.

Unless otherwise agreed to by the Parties as part of the approval of plans and specifications, all utilities serving the Demised Premises shall be in a size and with a capacity as required by Tenant and shall be

designed and constructed in conformance with the Scope of Work attached hereto as Exhibit G. All Site Development Improvements and construction of the Shell Building and Tenant Improvements shall be constructed in conformance with Exhibit G unless otherwise agree to by the parties.

It shall be the responsibility of Tenant, at Tenant's expense, to bring all utility lines from their points of entry on the Saks Parcel as shown on Landlord's Approved Final Plans to the point or points of connection within the Saks Improvements, provided, however, Landlord shall run the electrical line to Tenant's subsurface meter room and construct empty conduits, as required, for utility lines connecting the meter room to the Saks Parcel.

- (2) Demolition, excavation and grading of the Entire Site, including clearing and grubbing, removal of top soil, rock removal, cutting, subsoil drainage, filling, compaction of fill, compaction tests by a testing laboratory, subsoil studies, and surveying and engineering work in connection therewith.

- (3) Construction and installation of the improvements constituting the Common Area including (without limitation) the Retail Concourse, the Pedestrian Bridge, landscaping and planting, sidewalks and walkways, sculpture, flags, planters, benches, paving, concrete curbing and gutters, traffic controls and signs and lighting fixtures with electrical wiring therefor, for the Common Area; but not including any truck docks, passageways or delivery facilities which are designed or intended for the exclusive use of one occupant or any cost or expense related thereto (except to the extent that Landlord may be required to construct the same in connection with the construction of the Shell Building).

Landlord shall use its best efforts, consistent with prudent business practices (which shall not be deemed to require the use of premium time or overtime), subject to Unavoidable Delay, to complete the construction and installation of or cause the construction and installation of the Site Development Improvements to be completed (except for minor punch list items) by thirty (30) days prior to the Opening Date with respect to Block 60 and by one (1) week prior to the Opening Date with respect to the balance of the Project, in accordance with

Landlord's Approved Final Plans and in accordance with the following schedule of completion:

- | | | |
|--|-------|--|
| (1) Demolish existing structures | _____ | [not later than twenty-four (24) months prior to the Opening Date] |
| (2) Relocate street utilities | _____ | [not later than twenty (20) months prior to the Opening Date] |
| (3) Bring street utilities to Parcels | _____ | [not later than nine (9) months prior to the Opening Date] |
| (4) Substantially complete street surface improvements | _____ | [not later than one (1) month prior to the Opening Date] |

Landlord shall enter into contracts for construction of the Site Development Improvements with responsible contractors chosen by Landlord. As used in this Section, the word "construction" means initial construction under this Lease, and, except where otherwise specified, subsequent construction, alterations, repair, replacement, rebuilding, demolition and razing permitted or required under this Lease.

Section 4.8. Construction of Developer Improvements:

(a) After approval of the Approved Final Plans in accordance with the provisions of this Article, Landlord shall cause to be commenced and prosecuted with due diligence to completion the construction of the Developer Improvements to be constructed as part of the Initial Project in accordance with the Approved Final Plans; provided, however, that nothing herein shall prevent commencement of construction of the Developer

Improvements prior to approval of the Approved Final Plans if such early commencement shall be agreeable to the Parties, the City and the Agency. Landlord shall cause the construction of the Developer Improvements to proceed in an orderly and coordinated manner and shall take care to avoid unnecessary and unreasonable interference with the construction of the Saks Improvements. The Developer Improvements to be constructed by Landlord pursuant to this Section 4.8 are as follows:

- (1) the Site Development Improvements;
- (2) the Specialty Retail Areas;
- (3) the Shell Building;
- (4) the Common Area for the Initial Project; and
- (5) the Office Improvements.

(b) Landlord shall use its best efforts, consistent with prudent business practices (which shall not be deemed to require the use of premium time or overtime), subject to Unavoidable Delay, to cause the Specialty Retail Areas to be substantially complete no later than the Opening Date.

(c) Landlord shall use its best efforts, consistent with prudent business practices (which shall not be deemed to require the use of premium time or overtime), subject to Unavoidable Delay, to cause the Shell Building to be completed (except for minor punch list items) in accordance with the following schedule and in accordance with Landlord's Approved Final Plans.

- (1) No later than _____, 1989 [nine (9) months prior to the Opening Date]:
- (i) all structural systems, including spray on fireproofing and structural blockouts;
 - (ii) permanent exterior skin and roofing so that a watertight envelope is provided (but not including any doors or glazing installation, which Tenant requests be delayed);
 - (iii) steel or precast stairs (unenclosed and otherwise unfinished);
 - (iv) fire protection risers;
 - (v) metered temporary electric power for construction occupancy;
 - (vi) interior common walls; and
 - (vii) temporary electricity and water for use by Tenant during Tenant's construction.
 - (viii) all utilities stubbed to their points of entry on the Saks Parcel as shown on Landlord's Approved Final Plans (but not activated).
- (2) No later than _____, 1990 [three (3) months prior to the Opening Date] exterior skin (including installation of glazing or doors which Tenant requested be delayed).

(d) Landlord shall use its best efforts, consistent with prudent business practices (which shall not be deemed to require the use of premium time or overtime), subject to Unavoidable Delay, to enclose the shell of the Office Improvement substantially in accordance with Landlord's Approved Final Plans by _____, 1990 [thirty (30) days prior to the Opening Date].

(e) Notwithstanding the foregoing, nothing herein is intended to prevent Tenant, with the approval of Landlord (which approval shall not be unreasonably withheld or delayed) from commencing construction of the Interior Improvements at any time which the Tenant may deem necessary or desirable.

Section 4.9. Construction of Saks Improvements: No later than thirty (30) days after Landlord's completion of the Shell Building to the extent required in Section 4.8(c)(1), Tenant shall, at its sole cost and expense, consistent with prudent business practices (which shall not be deemed to require the use of premium time or overtime), subject to Unavoidable Delay, commence construction and thereafter cause the Interior Improvements to be completed (subject to punch list items) no later than one (1) month prior to the Opening Date. Landlord agrees to give Tenant at least thirty (30) days and not more than ninety (90) days prior notice of the date the Shell Building is anticipated to be substantially complete. Prior to commencement of construction of the Interior Improvements, Tenant shall deliver to Landlord the certificates of insurance required to be

obtained by Tenant under this Lease. Tenant shall cause its construction to proceed in an orderly and coordinated manner and shall take care to avoid unnecessary and unreasonable interference with the construction and normal operations of the Improvements of Landlord.

Section 4.10. Construction of Office Improvements:

Landlord shall construct the Office Improvements in the Office Parcel in accordance with the terms of the Disposition Agreement. Landlord shall use its best efforts, consistent with prudent business practices (which shall not be deemed to require use of premium time or overtime), subject to Unavoidable Delay, to cause the Office Improvements to be substantially complete no later than _____, 1990 [three (3) months after the Opening Date]. Landlord shall cause such construction and all other construction by Landlord to proceed in an orderly and coordinated manner and shall take care to avoid unnecessary and unreasonable interference with the construction and normal operations of the Saks Improvements.

Section 4.11. Substantial Completion Defined:

Improvements shall be deemed to be substantially complete when construction is sufficiently complete in accordance with the Approved Final Plans and consistent with Tenant's Drawings, where applicable, so such Improvements can be used for the purposes intended under this Lease. Notwithstanding the foregoing, nothing in this Section is intended to modify a party's obligation to complete its Improvements in accordance with the

Approved Final Plans and otherwise in accordance with the provisions of this Lease.

Section 4.12. Zoning; Permits; Compliance with Laws:

Landlord represents and warrants to Tenant that the zoning applicable to the Entire Site permits the construction and operation thereon of the Initial Project contemplated by this Lease, including (without limitation) the Saks Improvements, Office Improvements and Specialty Retail Area. Each party shall obtain, at its expense, all governmental approvals, authorizations, permits and certificates which may be necessary to permit it to carry out and complete its construction obligations hereunder. After completion of construction, Landlord shall furnish to Tenant one complete reproducible set of the Approved Final Plans for all Improvements to be constructed hereunder and Tenant shall furnish Landlord one complete reproducible set of Tenant's Drawings. In addition, upon request, Landlord shall furnish to Tenant, at Tenant's expense, with such additional copies of those portions of Approved Final Plans relating to the Site Development Improvements (including site plans, traffic plans showing curb cuts, and drainage plans) as may be required by Tenant in order to obtain the approvals, authorizations, permits or certificates mentioned in the second sentence of this Section.

Section 4.13. Construction Agreements: With respect to its construction hereunder, Landlord and Tenant agree that such construction:

- (1) will comply with all laws, ordinances, orders, rules, regulations and requirements of all applicable governmental authorities and with such orders, rules and regulations as may now or hereafter be adopted by its respective fire insurance rating organization, except that a party need not comply with the orders, rules or regulations of its fire insurance rating organization if such party bears any additional cost to the other parties resulting from such non-compliance and if such non-compliance does not result in any party's Improvements being uninsurable;
- (2) will not cause any substantial increase in the cost of construction of the other parties, except as such increased cost may be expressly provided for herein;
- (3) will not unreasonably interfere with any other construction being performed in the Entire Site;
- (4) will not unreasonably impair the use, occupancy or enjoyment of the Project or any part thereof as permitted or contemplated by this Lease; or
- (5) will not interrupt the supply of utility services to any party during any time when

such party's Improvements are open for business, without such party's consent, or at any other time without such party's consent, not to be unreasonably withheld, with due regard for fire protection and security during any interruption.

Section 4.14. Coordination of Construction Activities:

In order to facilitate the coordination of construction of the Initial Project, each party will consult, and will require its architects, engineers, contractors, subcontractors or construction managers to consult, with the other parties and their architects, engineers, contractors, subcontractors or construction managers from time to time during the course of construction and will use reasonable efforts to coordinate its construction with those of the other parties. Landlord and Tenant shall cooperate with each other to ensure the compatibility of labor forces including, without limitation, the creation and use of separate entries into the job sites for use by their respective labor forces, if necessary. Prior to commencement of construction on the Entire Site, and from time to time thereafter as the parties deem necessary or desirable, the parties will jointly prepare a construction schedule which will provide, among other things, for a timely exchange of information and approvals in order to enable each party to meet its planning and construction obligations under this Lease.

Section 4.15. Construction Storage and Time Schedule:

No later than _____, 198_ [twenty (20) months prior to the Opening Date], Landlord shall prepare and provide Tenant a plan showing construction staging areas, of a size and in a location reasonably acceptable to Tenant, which will be available on or around the Entire Site for use by Tenant and the periods of time during which such areas shall be available. Based on the aforesaid plan, and before Tenant commences any construction, it shall submit to Landlord:

- (1) a proposed staging plan, showing, as respects the construction in question, material and equipment storage sites, construction shacks and trailers and temporary improvements incidental to its construction, and
- (2) a time schedule containing approximations of the period of time the areas referred to in subparagraph (1) hereof shall be so used.

Tenant shall not be required to move its staging area more than once (excluding the move into the Shell Building). Landlord shall use reasonable efforts to accommodate the needs of Tenant as reflected in Tenant's staging plan and to provide Tenant's contractors, subcontractors, suppliers and agents with equal opportunity for access to the Entire Site. Landlord shall coordinate all access to the Entire Site by Tenant's contractors, subcontractors, suppliers and agents in order to prevent unnecessary conflicts with the performance of construction by

Landlord or Tenant. Notwithstanding the above, Tenant shall be afforded reasonable and continuous access to the Shell Building in order for Tenant to perform its work required under this Lease.

Section 4.16. Certificates as to Floor Area: Upon completion of construction of each party's Improvements, and as often thereafter as there shall be any change in the Floor Area therein, Landlord and Tenant shall furnish to the other the certificate of a registered architect, engineer or surveyor showing, in reasonable detail, the number of square feet of Floor Area contained in their respective Improvements. Each such certificate shall be presumed to be correct unless challenged by the other party within ninety (90) days of receipt thereof.

Section 4.17. Safety Matters; Indemnification: Each party initiating or being responsible for construction shall:

- (1) Take all safety measures necessary to protect the other and the Improvements of the other and each party's agents, employees, contractors, subcontractors, licensees and invitees from injury or damage caused by or resulting from the performance of its construction;
- (2) If any construction hereunder begins after the Improvements of any other party has opened for business, to take such steps as may be reasonably necessary to avoid interference

with the normal operations of such party's business;

- (3) Indemnify and hold the other harmless from all claims, costs, expenses and liabilities arising from the death of or accident, injury, loss or damage whatsoever caused to any person or to the property of any person as occurs in the process of construction work (a party whose negligence or wilfull act caused such death, accident, injury, loss or damage shall be excluded from the benefit of the indemnification provisions of this Section as to the event resulting in such death, accident, injury, loss or damage), subject to Section 12.7; and
- (4) Indemnify and hold the other parties harmless from and against all mechanics', materialmen's and laborers' liens and all costs, expenses and liabilities arising from its construction.

At Landlord's option, Tenant may use construction devices of the Landlord (including but not limited to hoists and lifts) at Tenant's own risk and expense and Landlord makes no representations or warranties as to the fitness for use of such devices nor may Tenant rely upon Landlord making such construction devices available.

Section 4.18. Evidence of Compliance with Construction Requirements: Each party shall, upon completion of such party's Improvements, and within sixty (60) days after the request of the other, deliver to the other evidence that the construction of such party has been completed in compliance with the Approved Final Plans and consistent with Tenant's Drawings, where applicable, and with all applicable laws, ordinances, rules and regulations. A certificate issued by the City or the Agency stating that the Improvements of such party do so comply shall be deemed satisfactory evidence of compliance with the requirements of the immediately preceding sentence as to plans required to be approved by the City or the Agency. Landlord shall within one hundred twenty (120) days after completion of the Initial Project and the Interior Improvements provide Tenant with an "as built" survey of the Initial Project prepared by a registered land surveyor. Each party shall within ninety (90) days after completion of Restoration or Alterations to any Improvements, Separate Utility Facilities or Common Utility Facility shown on the "as built" survey prepared by Landlord, deliver an "as built" survey prepared by a registered land surveyor to the other party showing the changes made due to the Restoration or Alteration.

Section 4.19. Liens: Each party agrees that in the event any mechanic's lien or other statutory lien shall be filed during the term of this Lease against any portion of its Parcel or Improvements or the Parcel or Improvements of the other party, by reason of labor, services, or materials supplied to or at the

request of said party or pursuant to any construction on its Parcel, or supplied to or at the request of any tenant or party pursuant to any construction by said tenant or party, it shall pay and discharge the same of record within thirty (30) days after the filing thereof, subject also to the provisions of the following sentence. Each such party shall have the right to contest the validity, amount or applicability of any such respective liens by appropriate legal proceedings, and so long as it shall furnish bond or indemnity as hereinafter provided, and be prosecuting such contest in good faith, the requirement that it pay and discharge such items within said thirty (30) day period shall not be applicable; provided, however, that in any event such party shall within thirty (30) days after the filing thereof bond in accordance with any applicable statute or in the alternative indemnify against such liens in amount and form satisfactory to induce the title insurance company which insured title to the respective Parcel to each of the parties hereto to insure over such liens or to reissue or update its existing policy, binder or commitment without showing any title exception by reason of such liens and shall indemnify and save harmless the other hereto from all loss, damage, liability, expense or claim whatsoever (including attorneys' fees and other costs of defending against the foregoing) resulting from the assertion of any such liens. In the event such legal proceedings shall be finally concluded (so that no further appeal may be taken) adversely to the party contesting such liens, such party shall

within five (5) days thereafter cause the lien(s) to be discharged of record. Notwithstanding the foregoing, Landlord shall be responsible for any mechanic's liens or other liens filed against the Saks Parcel with respect to any labor, services or material supplied in connection with Landlord's construction of the Shell Building. The parties will cooperate in executing and filing such notices as may be required to limit rights of others to file mechanic's liens.

Section 4.20. No Change Unless Permitted Hereunder:

Landlord and Tenant agree that, upon completion of the Improvements to be constructed by them pursuant to Article IV, without the prior approval of the other, each will not alter, modify or change the exterior architectural design or change the level, size or location of any building, or erect additional buildings, or change the size, location, arrangement or level of any Common Area originally constructed under the Initial Project on its Parcel (the foregoing being hereinafter collectively referred to as "Alterations").

Section 4.21. Expansion of Developer Improvements:

Subject to the Disposition Agreement and to Section 4.20 hereof, at any time following the expiration of the Developer Operating Covenant Period, Landlord shall have the right to expand the Developer Improvements on Block 61, including without limitation by demolition of the existing Retail Pavilion and Retail Concourse thereon and reconstructing a new building or buildings or by adding floors to the existing Retail Pavilion. In addition to

the foregoing and notwithstanding anything to the contrary in this Lease, Landlord shall have a right at any time to develop Blocks 50 and 51 in accordance with the Disposition Agreement without requiring the approval of Tenant as to any Plans and Specifications provided that the exterior of any such development shall be architecturally harmonious with the Approved Final Plans for the Initial Project. No later than six (6) months prior to the anticipated commencement of construction on Blocks 50 or 51, Landlord agrees to submit to Tenant design development drawings and preliminary specifications showing, among other things, exterior elevations and exterior material treatment. Within thirty (30) days of receipt of the Plans and Specifications Tenant shall notify Landlord if Tenant approves the Plans and Specifications or if Tenant disapproves, Tenant shall specify the reason therefor in the notice. If Tenant disapproves the Plans and Specifications in accordance with Tenant's rights to do so in this Section 4.21, Landlord shall revise the Plans and Specifications and resubmit them to Tenant pursuant to the above thirty (30) day review procedure. Failure to approve or disapprove within such thirty (30) day period shall be deemed to be approval.

Section 4.22. Approval of Plans and Specifications for Alterations and Restoration: If either Landlord or Tenant desires to make Alterations to its Improvements constructed as part of the Initial Project, such party shall first obtain approval of the other as to the following plans and

specifications therefor in accordance with the procedures set forth therefor under Section 4.1:

(1) Such preliminary plans and specifications shall be basic architectural and engineering plans and specifications providing for workmanship and materials at least equivalent to the structure, workmanship and materials of and harmonious in design and exterior appearance with construction already completed on the Entire Site. The preliminary plans and specifications for Alterations shall comply with all building, zoning and environmental laws applicable to the party's Parcel and with all other laws, ordinances, orders, rules and regulations and requirements of any applicable unit of government or department or agency thereof, and shall be in accordance with reasonable orders, rules and regulations of the party's fire insurance rating organization, except that such plans and specifications need not comply with the orders, rules or regulations of the party's fire insurance rating organization if the Originating Party bears any additional cost to the other resulting from such non-compliance and if such non-compliance does not result in either party's Improvements being uninsurable.

(2) Within fifteen (15) business days after the preliminary plans and specifications have been received by the Approving Party for approval, the Approving Party shall give to the Originating Party the notice of its approval or disapproval thereof, specifying in the latter event its reasons therefor. Such approval shall not be unreasonably withheld and the right to

disapprove the preliminary plans and specifications shall be limited to objections that such plans and specifications do not conform to the Site Plan or do not provide for workmanship or materials equivalent to those already contained within the Improvements on the Entire Site or do not provide for construction which will be harmonious with the design or overall appearance of the Improvements on the Entire Site or do not otherwise comply with the terms of this Lease. If the Originating Party elects to proceed after receipt of any notice of disapproval as aforesaid, the Originating Party shall undertake, in conjunction with the Approving Party to amend and modify the preliminary plans and specifications so as to conform the same to the requirements of this Article. Upon the completion thereof, the preliminary plans and specifications shall be approved by the Approving Party. In the event of the Approving Party's failure to give notice of approval or disapproval of preliminary plans and specifications within such fifteen (15) business day period, the same shall be deemed to have been approved by the Approving Party.

(3) Following approval of the preliminary plans and specifications by the Approving Party, if the Originating Party desires to proceed with the Alterations, it shall proceed, at its expense, with preparation of final working drawings and specifications for such portions of the Alterations as were covered by the preliminary plans and specifications approved by the Approving Party and shall submit the same to the Approving

Party for approval.

(4) Within fifteen (15) business days after the final working drawings and specifications have been received by the Approving Party for approval, the Approving Party shall give to the Originating Party notice of its approval or disapproval thereof, specifying in the latter event its reasons therefor. Such approval shall not be unreasonably withheld and the right to disapprove the final working drawings and specifications shall be limited to objections that such plans and specifications are not consistent developments of the preliminary plans and specifications already approved or that they do not otherwise comply with the terms of this Lease. If the Originating Party elects to proceed after receipt of any notice of disapproval as aforesaid, the Originating Party shall undertake, in conjunction with the Approving Party to amend and modify the final working drawings and specifications so as to conform the same to the requirements of this Article. Upon the completion thereof, the final working drawings and specifications shall be approved in writing by the Approving Party. In the event of the Approving Party's failure to give notice of approval or disapproval of the final working drawings and specifications within such fifteen (15) business day period, the same shall be deemed to have been approved by the Approving Party.

(5) If there shall be a bona fide dispute between the Originating Party and the Approving Party as to whether the preliminary plans and specifications or the final working working

drawings and specifications or any amendment or modification of either, conform to the requirements of this Article, such dispute shall be submitted for arbitration to some impartial member of the American Institute of Architects mutually satisfactory to the Originating Party and the Approving Party. Should the Originating Party and the Approving Party be unable to select a mutually acceptable member, the President of the American Institute of Architects shall be requested to select an impartial member to act as arbitrator. The decision of the arbitrator in any such dispute shall be final and binding upon the Parties and shall be enforceable in a court of law.

(6) Following approval of the final working drawings and specifications by the Approving Party, the Originating Party may proceed, at its expense, with preparation for and implementation of the Alterations in accordance with the approved final working drawings and specifications and shall pursue such additional construction diligently until the completion thereof. If such construction is not commenced within eighteen (18) months from the date of the Approving Party's approval of the final working drawings and specifications, the approval of both preliminary plans and specifications and final working drawings and specifications shall no longer be effective.

(7) The Originating Party will cause the construction to proceed in a coordinated and orderly manner in accordance with the provisions of this Lease.

(8) Restoration of the Saks Improvements and the Specialty Retail Area located underneath the Saks Improvements shall be in accordance with the Approved Final Plans and consistent with the Tenant's Drawings. The party Restoring its Improvements shall submit Plans and Specifications including the design development plans and specifications and final working drawings and specifications for the other party's approval in accordance with the procedure set forth in this Section 4.22, which submission shall be made prior to commencement of Restoration. The Approving Party may disapprove the Plans and Specifications if they are not in conformance with the Approved Final Plans for the Initial Project or are inconsistent with the Tenant's Drawings or if the Plans and Specifications change the quality or location of the access or utility easements or the Common Building Components, Separate Utility Facilities or Common Utility Facilities located in or servicing the Approving Party's Improvements or the Plans and Specifications do not conform with the Site Plan or the Plans and Specifications provide workmanship or materials which would not be harmonious with the design and overall appearance with the Improvements on the Entire Site or do not otherwise comply with the terms of this Lease.

ARTICLE V

RENT

Section 5.1. Payment of Percentage Rent: In addition to the Shell Contribution Repayment, Tenant covenants and agrees to pay Percentage Rent (hereinafter defined) at the times, in the

amounts and in the manner hereinafter provided without any set-off, deduction or demand whatsoever, except as otherwise provided in this Lease.

Section 5.2. Percentage Rent: Commencing on the date Tenant shall open the Saks Improvements for business (hereinafter called the "Rent Commencement Date"), Tenant shall pay, as rent for the Demised Premises, at such place as Landlord may from time to time designate, rent (hereinafter called the "Percentage Rent") equal to the following percentages of Net Sales (as hereinafter defined) in each Lease Year (as hereinafter defined):

- (i) Zero percent (0%) of Net Sales in each Lease Year from the Opening Date until the fifth anniversary of the Opening Date, plus
- (ii) One-half of one percent (0.50%) of Net Sales in each Lease Year from the fifth anniversary of the Opening Date until the tenth anniversary of the Opening Date, plus
- (iii) One percent (1.0%) of Net Sales in each Lease Year from the tenth anniversary of the Opening Date until the term of the Lease expires or this Lease is terminated.
- (iv) In addition, should the Shell Contribution Repayment be based upon Section 4.5(i) above, upon repayment in full of the Shell Contribution Repayment, Tenant shall pay an additional one-half of one percent (0.50%) of Net Sales

in each Lease Year calculated commencing on the date the Shell Contribution Repayment is repaid to Landlord and continuing until the term of the Lease expires or the Lease terminates.

Section 5.3. "Lease Year" Defined: The term "Lease Year" as used in this Lease refers to the period from the Rent Commencement Date to the following December 31; to each successive twelve month period thereafter; and if this Lease shall expire or be terminated on a date which is other than December 31 then to the period beginning at the end of the last preceding Lease Year and ending on the date of such expiration or termination; provided, however, that at the option of Tenant, exercisable by notice given to Landlord at any time, the term "Lease Year" shall mean the fiscal year, not in excess of 53 weeks, observed by Tenant in the conduct of its business and used by it for federal income tax purposes, except that the first Lease Year shall be the period from the Rent Commencement Date to the end of the fiscal year of Tenant in which the Rent Commencement Date occurs and the last Lease Year shall be the period from the end of the preceding fiscal year of Tenant to the date of expiration or termination of this Lease. In the event Tenant elects to change the Lease Year to the Tenant's Fiscal Year, the Tenant's Common Area Contribution and contribution to the Merchant's Association shall be prorated accordingly for the change in the length of the Lease Year. In the event that the

fiscal year of Tenant is changed, the period from the last preceding fiscal year of Tenant to the commencement of the new fiscal year of Tenant shall be considered a separate Lease Year. Notice of any proposed change in the Lease Year shall be given by Tenant to Landlord not less than thirty (30) days prior to the effective date of such change.

Section 5.4. "Net Sales" Defined: The term "Net Sales" as used in this Lease means the actual sale price of all goods, wares and merchandise sold in, upon or from any part of the Demised Premises, including actual receipts from services rendered by Tenant as well as the total actual sales and services rendered by any licensee, subtenant or concessionaire occupying any portion of the Demised Premises, all of which Tenant covenants shall be recorded on the books of Tenant; provided, however, that the term "Net Sales" shall not be deemed to mean and there shall be excluded from "Net Sales" amounts representing: amounts credited by Tenant for returned or defective merchandise; sales to employees at a discount; allowances to customers; trade and other discounts; sales, excise and similar taxes levied upon sales made at the Demised Premises; workroom charges for alterations, repairs or installation of merchandise sold, or similar services rendered in connection with merchandise sold; charges for services rendered primarily to accommodate customers or employees and on which Tenant makes no profit; charges for making deliveries, shipments, or transfers of merchandise; charges for meals served in employees' cafeteria;

carrying charges on time sales; charges for interstore transfers of merchandise; and the proceeds of sales of trade fixtures, operating equipment or other property used by Tenant in the operation of its business and not acquired by it for the purpose of sale.

Sales shall be deemed to have been made when merchandise has been shipped or delivered, and services shall be deemed to have been rendered when completed, or when such sales or services, as the case may be, have been charged against the purchaser or customer on the books of Tenant, whichever of such events shall be the first to occur. Transactions shall be included whether for cash or on credit and whether the amount thereof is collected or uncollected.

The phrase "sold in, upon or from any part of the Demised Premises" as used herein to modify "Net Sales" shall include such sales as shall be in good faith credited by Tenant in the regular course of its business to personnel employed at the time of sale in, at or in connection with the department or specialty store to be operated by Tenant in the Demised Premises. Said phrase shall include mail, telephone and other orders received at the Demised Premises even though filled elsewhere, provided the particular items ordered are ones which are at the time being sold in the regular course of business in the Demised Premises. Said phrase shall not include, in any event, mail, telephone or other orders received at a place other than the Demised Premises even though the same may be filled from stocks at the Demised Premises.

Tenant makes no representation or warranty as to the Net Sales which it expects to make in the Demised Premises.

Section 5.5. Books and Records: Tenant covenants that, for the purpose of ascertaining the amount payable to Landlord as Percentage Rent, it will keep accurate books and records in the continental United States which shall, for the purposes of verifying the Percentage Rent, be subject to examination and audit by Landlord, its authorized representatives or accountants, at reasonable times during business hours, and in a manner which does not unreasonably interfere with the conduct of business, but only during the period of three (3) years after receipt of the respective yearly statements (hereinafter referred to) certified by any officer or the Controller of Tenant; and at the expiration of such three (3) year period Tenant may dispose of such records. Any claim by Landlord for a revision of any statement of Net Sales which is not made to Tenant within three (3) years after receipt of the respective yearly statements shall be deemed and hereby is waived by Landlord. All examinations and audits of Tenant's books and records shall be solely at Landlord's expense, provided that if any such examination or audit shall disclose a liability in any Lease Year for Percentage Rent in excess of three percent (3%) of the Percentage Rental previously paid for such Lease Year, Tenant shall promptly pay Landlord's reasonable cost of such examination or audit, together with the additional Percentage Rent with interest thereon from the date such additional Percentage Rent should have been paid hereunder at the

Default Rate. Landlord agrees to hold in confidence all sales figures and other information obtained from Tenant's records except to the extent that it may be necessary to divulge them to authorized governmental agencies, lenders, prospective purchasers or for the purpose of obtaining financing.

Section 5.6. Computation and Payment of Percentage

Rent: Percentage Rent shall be computed and paid quarterly, the amount due on account of Tenant's Net Sales in any calendar month being due and payable for the previous quarter on the twentieth (20th) day of January, April, July and October in each Lease Year. Each quarterly payment of Percentage Rent shall be accompanied by an unaudited statement of Tenant's Net Sales during such month which shall be certified to by the Controller or by a duly authorized officer of Tenant. If the twentieth (20th) day of January, April, July or October in any Lease Year shall fall on a day Tenant shall not be open for business, then the payment and statement due thereon shall become due and payable on the next day which Tenant shall be open for business. Within ninety (90) days after the end of each Lease Year, Tenant shall furnish Landlord a statement, certified to be true and correct by the Controller or by a duly authorized officer of Tenant, showing the Net Sales during such year, the amounts paid Landlord by way of quarterly Percentage Rent payments for such year and the adjustments, if any, required to be made between Landlord and Tenant to the end that, after first giving effect to all quarterly Percentage Rent payments, Landlord

will receive, and Tenant will pay, no more than the amount of Percentage Rent to which Landlord is entitled pursuant to this Article. Any balance of Percentage Rent due Landlord as shown by said statement shall be forthwith paid by Tenant to Landlord within thirty (30) days after such statement is rendered, and any excess or overpayment of Percentage Rent shall be forthwith paid by Landlord to Tenant and if not paid within thirty (30) days after such statement is rendered, the same may be deducted by Tenant from any one or more installments of Percentage Rent coming due thereafter.

Section 5.7. Additional Rent: Any monies paid or expenses incurred by Landlord in order to perform any obligation of Tenant or to cure any of Tenant's defaults hereunder, after notice and opportunity to cure as provided herein, together with interest on the same at the Default Rate, shall be payable to Landlord as additional rent, the same being referred to herein as "Additional Rent". Unless otherwise provided herein, any such Additional Rent shall become due with the next monthly installment of Percentage Rent due after Landlord shall give notice of such Additional Rent due, together with reasonable evidence that the same is due and owing.

Section 5.8. Late Payment of Rent and Other Sums: If any Percentage Rent, Additional Rent or other sums payable to Landlord hereunder by Tenant shall not be paid when due and payable, the same shall bear interest at the Default Rate from the date when the same are due until paid. For purposes of this

Section 5.8, any payment of Percentage Rent payable to the Landlord pursuant to the last sentence of Section 5.6 shall not be deemed to have become due until such time as the statement showing the same to be payable shall have been rendered.

ARTICLE VI

OPERATION OF THE SHOPPING CENTER

Section 6.1. Developer's Operating Covenant:

(a) For a period of twenty (20) years from and after the opening for business of the Specialty Retail Areas, and thereafter for such additional one (1) year periods that (i) Tenant has notified Landlord that Tenant will operate the Saks Improvements pursuant to Section 6.2 either as a Saks retail specialty store or as some other fashion oriented retail department or specialty store conforming to the quality standards of this Lease, Landlord shall continuously manage and operate the Specialty Retail Areas as a quality fashion oriented urban retail center having a broad range of merchandise and services consistent with the size of the Project and for no other purpose, except as may be otherwise herein provided. The period during which Landlord is required to so manage and operate the Specialty Retail Areas pursuant to this subsection (a) is referred to herein as the "Developer Operating Covenant Period". Tenant shall notify Landlord of its intention to extend its Operating Covenant Period for an additional period of one (1) year at least six (6) months prior to the expiration of Saks Initial Operating Covenant Period or any Additional Operating Covenant Period;

provided, however, that in the event that Tenant fails to so notify Landlord, Developer's Operating Covenant Period shall continue for a period of ninety (90) days after the date that Landlord provides Tenant with a request that Tenant notify Landlord whether Tenant intends to extend the Saks Operating Covenant Period as called for in this Section which election must be made within the ninety (90) day period. If Tenant fails to elect to extend the Operating Period or elects not to extend the Saks Operating Covenant, the Developer Operating Covenant shall cease at the end of the one year period. The obligations of Landlord contained in this subparagraph (a) to operate the Specialty Retail Areas is referred to herein as the "Developer Operating Covenant".

(b) Subsequent to the Opening Date, Landlord covenants to keep the Block 60 Common Lobby Area and the Pedestrian Bridge open to the public and lighted, heated or cooled in accordance with the standards of this Lease one-half hour before and one half hour after all periods that Tenant is open for business (limited however, on Monday through Saturday, to the hours between 8:30 a.m. and 9:30 p.m., prevailing time, and on Sunday to the hours between 11:30 a.m. and 6:00 p.m.). Landlord shall not lease or license the Pedestrian Bridge for any purpose and Landlord covenants not to permit retail uses on the Pedestrian Bridge, subject to the rights granted to the general public under applicable law to solicit and use public places. If Tenant, on any occasion, shall request Landlord to open the Block 60 Common

Lobby Area and the Pedestrian Bridge to the public at any times other than those specified in the preceding sentence, Landlord shall do so provided Tenant shall pay to Landlord the direct, reasonable cost of so doing.

(c) Landlord agrees that for the duration of the Developer Operating Covenant Period the Specialty Retail Areas will be maintained and used primarily for retail businesses, but may also include from time to time such non-retail businesses and uses as are customarily found in urban retail centers having regard for the then current practice of urban retail centers; that all portions of the Specialty Retail Areas will be operated in accordance with high standards of retail center operations; and that all reasonable means will be taken to prevent any manner of operation or use not in accordance with such standards. If a dispute shall arise under this subsection (c) with respect to whether the Specialty Retail Areas are being operated in accordance with high standards of retail center operations, the dispute shall be determined by arbitration in accordance with the provisions of Article XXV hereof. The decision of the arbitrators shall be final and binding on the Parties and may be enforced by any court having jurisdiction.

(d) Landlord will use reasonable efforts to lease Floor Area in the Specialty Retail Areas to tenants who will provide a balanced mix of goods and services appropriate to a quality, fashion oriented urban retail center and will use reasonable efforts to provide an equitable distribution of shops along all

levels and portions of the Specialty Retail Areas so as to concentration of particular uses, except that Landlord may concentrate food related uses in the area designated on the Site Plan as the "Food Court".

Section 6.2. Tenant's Operating Covenant:

(a) For a period of twenty (20) years from and after the opening for business of the Saks Improvements (the "Saks Initial Operating Covenant Period") and thereafter during the term of this Lease for such additional periods of one (1) year as Tenant may, in its sole discretion, notify Landlord that it intends to operate the Saks Improvements as required under this Section 6.2 (such subsequent one (1) year periods being referred to herein as "Saks Additional Operating Covenant Periods"), Tenant, or its successors, shall continuously operate a quality retail department or specialty store of at least fifty-five thousand (55,000) square feet of Floor Area in the Saks Improvements, and during the first fifteen (15) years of the Saks Initial Operating Covenant Period, such retail specialty store shall be operated under the name "Saks Fifth Avenue," "Saks," or "Saks & Company," the name used in the final five (5) years of the Saks Initial Operating Covenant Period being in the discretion of Tenant. During the Saks Operating Covenant Period, Tenant shall cause such retail department or specialty store to be open for business with the public during such days and hours as Tenant shall determine, but for at least forty-eight (48) hours each week (excluding holiday weeks), provided, however,

that Tenant may close any portion or all of such retail department or specialty store for such periods (not to exceed one (1) year) as may be reasonably necessary in order to allow Tenant to make repairs, alterations, improvements, replacements and additions to the Saks Improvements as permitted or required herein. Notwithstanding the foregoing, for a period of one (1) year from the Opening Date, Tenant shall cause its retail department or specialty store to be open for business with the public for at least fifty-nine (59) hours each week (excluding holiday weeks), including (i) at least two (2) week days from 10:00 a.m. until at least 9:00 p.m., (ii) Saturdays from 10:00 a.m. to at least 6:00 p.m., and (iii) Sundays from 12:00 noon to at least 5:00 p.m.; provided, however, that subsequent to one year from the Opening Date, and subject to the minimum opening period of forty-eight (48) hours each week set out in the second sentence of this Section, opening and closing hours shall be solely within Tenant's discretion. Tenant and Landlord shall maintain the openings between the Saks Improvements, the Block 60 Common Lobby Area, the Retail Concourse and the Pedestrian Bridge, as shown in Landlord's Approved Final Plans, during all periods when the Saks Improvements and the Specialty Retail Areas are open for business. The opening from the Saks Improvements onto the Block 60 Common Lobby Area shall either (i) be designed as a revolving door or doors or (ii) designed and maintained as a single or double door entrance with the door to be kept open during the time periods that Tenant shall be open for business.

The obligations of Tenant contained in this subparagraph (a) with regard to the operation of the Saks Improvements are referred to herein as the "Saks Operating Covenant".

(b) Tenant may, notwithstanding contrary provisions of this Section, change the name under which operations in the Saks Improvements are carried on if such name change applies to substantially all Saks stores in the states of California, Oregon, Washington, Arizona and Nevada previously operated under the name "Saks Fifth Avenue", "Saks" or "Saks & Company".

(c) The City of Portland and the Association for Portland Progress presently operate shopper parking validation programs for, respectively, the City's two public garages known as Morrison Park East and Morrison Park West and all other private and public parking facilities located in downtown Portland. For a period of one (1) year following the Opening Date, Tenant shall participate in such shopper parking validation programs or any equivalent successor to such programs.

(d) After the Saks Operating Covenant Period and during the remainder of the term of this Lease, Tenant shall remain subject to the terms of this Lease, except that Tenant shall not be required to operate a single retail department or specialty store in the Demised Premises; provided, however, (i) that any use of the Demised Premises other than as a single retail department or specialty store shall be consistent with and not incompatible with the use and operation of the balance of the Project, having due regard for the overall character and level of

quality of the operation and maintenance of the balance of the Project then existing, including the prevailing level of quality of the merchandise and services sold or furnished by tenants of the balance of the Project and the mix of such goods and services (such use or uses hereafter referred to as "Compatible Use" or "Compatible Uses"), (ii) that Tenant shall give Landlord notice of Tenant's election to use the Demised Premises for a Compatible Use in each instance not less than six (6) months prior to commencement of the Compatible Use, and (iii) that there shall be an adjustment in rent pursuant to Section 6.4. If Tenant shall elect to use the Demised Premises for Compatible Uses, Tenant's notice shall specify in reasonable detail the Compatible Uses to which it proposes to put the Demised Premises. Landlord shall have a right to terminate this Lease by giving Tenant notice of Landlord's election to terminate this Lease sixty (60) days from the date of Tenant's notice and by paying to Tenant the Fair Market Value of Tenant's interest in the Demised Premises and in this Lease in the manner provided in Section 6.5 of this Lease. If Landlord fails to make such election within the sixty (60) day period or elects not to terminate this Lease, then this Lease shall continue. Tenant's right to commence use of the Demised Premises for the Compatible Uses is further conditioned upon there being no Event of Tenant's Default under this Lease at the time of commencement of such use.

Any dispute arising with regard to whether a use is a Compatible Use, or arising regarding adjustment in rent shall be

subject to arbitration pursuant to the procedures set forth in Article XXV. Any failure of Landlord to elect to terminate or any election by Landlord not to terminate in any one instance shall not affect Landlord's rights in any other instance.

Section 6.3. Supervening Illegality: Notwithstanding any other provision contained in this Lease, in the event that there shall exist at any time during the term of this Lease any law, ordinance, rule, regulation, or order of any competent and duly constituted governmental authority having jurisdiction, which prevents, finally or absolutely, the operation of the Demised Premises as a single retail department or specialty store, or which prevents use of the Landlord's Specialty Retail Areas for their intended purposes as defined in Section 6.1, and the time for appeal therefrom or for application to any court, board, or other competent and duly constituted governmental authority having jurisdiction for relief therefrom shall have expired, or no such right of appeal or application for relief shall exist and all possible legal, equitable, and administrative remedies shall have been exhausted, then, Tenant shall have the right and option, exercisable by Tenant within thirty (30) days thereafter, to terminate this Lease by giving notice to Landlord of its decision to terminate and upon the date set forth in such notice, this Lease shall terminate.

If Tenant does not exercise its option to terminate this Lease, Tenant may use the Demised Premises for a Compatible Use or Compatible Uses (for so long as and to the extent that the

Disposition Agreement shall remain in effect), including those purposes set forth as (i) through (iii) below, and this Lease shall remain in full force and effect subject to modification of the rent provisions hereof in accordance with Section 6.4. The use of the Demised Premises for any of the following purposes shall be deemed to be a Compatible Use under this Section 6.3:

- (i) offices;
- (ii) theatre;
- (iii) retail stores.

The provisions of this Section shall not apply to a condemnation, which shall be governed exclusively by the provisions of Article XVI of this Lease.

Section 6.4. Adjustments to Rent:

(a) Subject to the rights of Landlord under Section 6.5 hereof, in the event that, pursuant to Section 6.2 or Section 6.3 or any other provision of this Lease, Tenant ceases to use the Demised Premises for operation of a single retail department or specialty store in accordance with Section 6.2, the rent payable by Tenant hereunder shall be adjusted to a Fair Rental Value (herein the "Adjusted Rent") in the City of Portland, Oregon, for a lease of the Saks Parcel (taking into account that Tenant shall have paid for the Saks Improvements) for the Compatible Use operated on the Saks Parcel by Tenant and permitted under this Lease. For the purpose of this Lease, the term "Fair Rental Value" means the rental (whether minimum rental, percentage rental or both), as of the date in question, which a tenant,

willing but not obligated to lease, would accept for leasing the Demised Premises in accordance with the terms of this Lease (including, without limitation, taking into consideration the Shell Contribution Payment, other payments, and the respective construction and operational obligations of the parties) and which a landlord, willing but not obligated to lease, would charge as rental therefor in an arm's length transaction. Fair Rental Value shall be determined by the parties or, if the parties are unable to agree thereon, by arbitration in accordance with the provisions of Article XXV hereof. Except in the situation where Tenant elects to operate a Compatible Use under Section 6.3 (in which case the Adjusted Rent shall be the Fair Rental Value), the Adjusted Rent shall never be less than the average annual Percentage Rent payable by Tenant hereunder for the three (3) complete preceding Lease Years prior to the date Tenant ceases to use the Demised Premises for operation of a single retail department or specialty store in accordance with Section 6.2. Such Adjusted Rent shall become payable from the time of the opening for business of any such Compatible Use, or any portion thereof, and prior to such time Tenant shall continue to pay Percentage Rent in accordance with Section 5.2 hereof, except that, if by reason of Compatible Uses Tenant ceases operation of the Saks Improvements for any period of construction and renovation, the rent to be paid hereunder for such period shall be an annual rate equal to the average annual Percentage Rent payable by Tenant hereunder for the three (3) complete Lease

Years prior to the date on which cessation of operations occurs, prorated for any portion of a year during which such cessation of operation shall continue. In no event shall such period of construction or renovation exceed one (1) year as permitted under Section 6.2. Any dispute between Landlord and Tenant with respect to the amount of Adjusted Rent payable hereunder shall be submitted to arbitration pursuant to the provisions of Article XXV of this Lease.

(b) In the event that, for any reason, an Adjusted Rent for the Saks Parcel has not been agreed to by the parties prior to the opening for business of any Compatible Use, Tenant shall, upon setting of such Adjusted Rent, pay to Landlord the difference, if any, between the rent actually paid by Tenant as rent hereunder from the date that the Compatible Use was opened for business and the amount which would have been paid had the Adjusted Rent been in effect for such period or, in the event of an overpayment of rent by Tenant during such period, Landlord shall pay Tenant the amount of such overpayment.

Section 6.5. Landlord's Option to Terminate Lease:

(a) Notwithstanding anything herein to the contrary, in the event that Tenant shall (i) subsequent to the expiration of the Saks Operating Covenant Period, elect to use the Demised Premises for other than a single retail department or specialty store, or (ii) at any time prior to expiration of the Saks Operating Covenant Period, elect to terminate the Saks Operating Covenant as permitted under Section 6.7 of this Lease, then in

either of such events, Tenant shall give prior notice thereof to Landlord and upon receipt of such notice from Tenant, Landlord shall have the option to terminate this Lease by paying to Tenant the Fair Market Value of Tenant's interest in the Demised Premises and in this Lease (as determined pursuant to Section 16.9 hereof). Upon receipt of notice from Tenant pursuant to the previous sentence, Landlord shall have sixty (60) days in which to notify Tenant whether or not Landlord intends to terminate this Lease and, if Landlord elects to terminate this Lease, an additional ninety (90) days in which to pay to Tenant the Fair Market Value of Tenant's interest in the Demised Premises and in this Lease. Payment of the Fair Market Value of Tenant's interest in the Demised Premises and in this Lease to Tenant shall be made in immediately available funds and upon receipt thereof by Tenant this Lease shall terminate and be of no further force and effect and Tenant shall surrender the Demised Premises to Landlord free and clear of all liens and encumbrances other than any such liens and encumbrances affecting the Demised Premises on the date of this Lease and identified in Exhibit D, or which are hereafter permitted or caused to be placed on the Demised Premises by Landlord.

Notwithstanding the foregoing, in the event that Tenant has placed a Leasehold Mortgage on the Demised Premises permitted pursuant to Section 18.1 hereof, this Lease shall not terminate until such time as Tenant's Leasehold Mortgage debt, including any unpaid interest thereon and other charges with respect

thereto, has been paid in full. In this regard, Landlord shall hold any payment due to Tenant under this Section in trust for the benefit of Tenant's Leasehold Mortgagee (who shall be an express third party beneficiary of this provision) and shall make such payment directly to such Leasehold Mortgagee within the ninety (90) day period after Landlord elects to terminate this Lease and such payments shall be made to the extent of Tenant's Leasehold Mortgage debt, and the remainder of the amount due to Tenant hereunder, if any, shall be paid directly to Tenant. Tenant hereby authorizes Landlord to make such payment directly to such Leasehold Mortgagee. In the event that the Fair Market Value of Tenant's interest in the Demised Premises and in this Lease is less than the amount of Tenant's Leasehold Mortgage debt, Landlord shall pay the difference to the Leasehold Mortgagee at such time as payment, if any, would be due to Tenant hereunder; provided, however, that Tenant shall repay to Landlord on demand such portion of any such payment to Tenant's Leasehold Mortgagee which is in excess of the Fair Market Value of Tenant's interest in of the Demised Premises and in this Lease. Tenant's obligation to pay the aforesaid amount to Landlord and Guarantor's obligations under the Guaranty shall survive termination of this Lease.

(b) Any dispute between Landlord and Tenant with regard to calculation of Fair Market Value shall be submitted to arbitration in accordance with the provisions of Article XXV hereof.

(c) In the event that Landlord declines to exercise the option granted under subsection (a) of this Section 6.5, this Lease shall remain in full force and effect and Tenant shall use the Demised Premises in accordance with Section 6.2 hereof; provided, however, that the rent payable to Landlord for the Demised Premises shall be adjusted between Landlord and Tenant in the manner provided in Section 6.4 hereof.

Section 6.6. Grand Opening: Landlord and Tenant shall each use its best efforts, consistent with prudent business practices (which shall not be deemed to require the use of premium time or overtime), subject to Unavoidable Delay, to cause all construction related to the Initial Project for which they are responsible hereunder to be completed on a schedule to allow Tenant to open the Saks Improvements and Landlord to open the Specialty Retail Areas for business with the public at a coordinated grand opening of the Specialty Retail Areas and the Saks Improvements. Subject to Unavoidable Delay, the Opening Date shall occur on _____, 1990, or on such other earlier or later date as may be mutually agreed upon by Landlord and Tenant. Any date other than _____, 1990 agreed to by Landlord and Tenant for the coordinated grand opening shall become the "Opening Date" for purposes of this Lease. In the event either Landlord or Tenant fails or is unable to open the Specialty Retail Areas or Saks Improvements, respectively, for business on the Opening Date, the other will nevertheless open its Improvements for business on the Opening Date; provided

however, in any event, Tenant shall not be obligated to open for business until (i) construction of the Specialty Retail Areas has been substantially completed and the Specialty Retail Areas are available for use by Landlord's tenants and construction of the Block 60 Common Lobby Area and Pedestrian Bridge has been substantially completed and the Block 60 Common Lobby Area and Pedestrian Bridge are functional and usable for the purposes intended and open for pedestrian use; (ii) eight (8) months shall have elapsed from the date when Tenant's Shell Building has been brought to the stage of completion described in Section 4.8(c)(1); and (iii) tenants occupying at least sixty-five percent (65%) of the Floor Area in the Specialty Retail Areas shall be open or ready to open to the public. Notwithstanding the foregoing provisions of this Section, unless otherwise agreed to by the parties, neither the Landlord nor Tenant shall be required to open its facilities for business with the public between November first (1st) of any year and January thirty-first (31st) of the following year or during the thirty (30) day period prior to Easter Sunday in any year, or during the months of June, July or August in any year, if, as a result of Unavoidable Delay, or by reason of the operation of the provisions of the next preceding sentence, such party's opening of its Improvements for business with the public would otherwise be required to occur during one of such periods. Commencing in January of 1989, Landlord and Tenant shall periodically on a monthly basis notify each other respecting the status of their construction and whether each expects to meet the Opening Date.

(b) Landlord shall use its best efforts consistent with prudent business practices (which shall not be deemed to require the use of premium time or overtime), subject to Unavoidable Delay, to cause all construction of the Office Improvements to be completed and the Office Improvements to be open for business with the public no later than twelve (12) months following the date of substantial completion of the Office Shell Building, but in no event later than _____, 19__ [fifteen (15 months prior to the Opening Date)]; provided, however, in no event shall the Landlord be required to lease the Office Improvements until the Developer Improvements in the Initial Project (other than the Office Improvements) and the Saks Improvements are open for business with the general public.

(c) Each party shall, following the opening for business of each party's Improvements, execute and exchange a written agreement in recordable form which will set forth the Opening Date, which date shall be the Opening Date of such party's Improvements referred to herein.

Section 6.7. Termination of Saks Operating Covenant:
The Saks Operating Covenant may be terminated by Tenant by notice given to Landlord if, at any time after the first anniversary of the Opening Date, Landlord has not met the Developer Leasing Requirement, provided, however, that Tenant may not terminate its Operating Covenant because of failure by Landlord to meet the Developer's Leasing Requirement or because of an alleged default by Landlord in the Developer Operating Covenant unless Tenant

shall have given notice to Landlord specifying the nature of such default, and, if the default is a failure to meet Developer's Leasing Requirements, such failure continues for a period of one (1) year or more after the giving of such notice, or if a default shall be the failure of Landlord to perform its Operating Covenant, such failure continues for a period of thirty (30) days or more after giving notice thereof; provided, however, that no such notice may be given prior to the first anniversary of the Opening Date.

Section 6.8. Standards of Operations: The parties acknowledge that it is their mutual intent that the Project be operated as a quality, fashion oriented, urban retail center with complementary office and other uses which shall provide a broad range of merchandise and services consistent with the size of the Project and which shall be attractive both in its physical characteristics and in its appeal to customers and trade. In furtherance of this intent, each party covenants that in connection with its operation of its Improvements on its Parcel, Landlord and Tenant will not, and Landlord will exert diligent good faith efforts against the tenants, licensees and other occupants of its Improvements so that they will not:

- (1) Use or permit the use of any objectionable advertising medium such as, without limitation, loudspeakers, phonographs, public address systems, sound amplifiers, radio or broadcast within the Project in such manner

that any sounds reproduced, transmitted or produced shall be directed primarily beyond the interior of its Improvements or any leasable areas, and will keep all mechanical apparatus free of vibration and noise which may be transmitted beyond the interior of its Improvements or any leasable areas;

- (2) cause or permit objectionable odors to emanate or be dispelled upon its premises;
- (3) permit the parking of delivery vehicles so as to unreasonably interfere with the use of any driveway, walk, Common Area or receive or ship articles of any kind outside the designated loading areas for its Improvements;
- (4) to the extent permitted by law, permit any solicitations, demonstrations or itinerant vending in the Common Area, unless the same shall be part of promotional activities of the Project and do not unreasonably interfere with the commercial operations of any Party or any Tenant;
- (5) permit any use of its Parcel or any part thereof in a manner likely to injure the reputation of the Project or which will violate the laws of any applicable unit of government; nor permit any part of its Parcel

to be used for any disreputable or immoral purpose;

- (6) permit undue accumulations of garbage, trash, rubbish or any other refuse, and will remove the same at its own expense, and will keep such refuse in proper containers in the interior of its buildings or other places designated therefor until called for to be removed;
- (7) cause or permit any obstruction in any manner of any portion of Common Area, except as permitted herein;
- (8) conduct or permit any bankruptcy sale, unless directed by order of court, or any fire or "going out of business" sale;
- (9) permit any sign, symbol or advertisement to be placed on or adjacent to the exterior walls (including both interior and exterior surfaces of windows and all surfaces facing the Retail Concourse), of, or above, any building or structure in the Project, except signs complying with the Sign Criteria attached hereto as Exhibit C or which are included in the Approved Final Plans; and
- (10) operate its heating or air-conditioning equipment in such a manner as to drain heat or

air-conditioning from the other party's
Improvements or unreasonably burden the other
party's heating and air-conditioning system.

Section 6.9. Common Area Use: To the extent permitted by law and subject to the City's rights with respect to the public sidewalks surrounding Blocks 50, 60 and 61, Landlord will take such action as may be reasonable to confine the use of the Common Area to those persons to whom easements and rights of use are granted under this Lease and to those uses and purposes for which the Common Area is intended and in no event shall Landlord authorize the use of its Common Area by others. The parties agree that, unless otherwise specifically provided herein or required or permitted by law, no person shall be permitted to do any of the following in or about any part of the Common Area without the consent of the parties hereto:

- (1) Vend, peddle or solicit orders for sale or distribution of any merchandise, device, service, periodical, book, pamphlet or other matter whatsoever except in the Retail Concourse at a distance of not less than twenty-five (25) feet from the entrances to the Saks Improvements or on the Pedestrian Bridge and under the supervision and control of the Landlord;
- (2) Exhibit or distribute any sign, placard, banner, notice, circular, booklet, pamphlet,

handbill or other written material, except in the Retail Concourse at a distance of not less than twenty-five (25) feet from the entrances to the Saks Improvements or on the Pedestrian Bridge and under the supervision and control of the Landlord;

- (3) Parade, rally, patrol, picket, demonstrate or engage in any conduct that might tend to interfere with or impede the use of the Common Area by persons entitled to use the same, create a disturbance, attract attention or harass, annoy, disparage or be detrimental to the interests of any of the retail establishments within the Project;

provided, that Landlord shall not be deemed to be in default hereunder so long as Landlord uses reasonable efforts to halt or prevent any such act or acts from taking place. To the extent permitted by law, Landlord shall have the right to remove or exclude from the Project any person engaged in the commission of any such act or acts or threatening to commit the same or to restrain any such person from coming upon the Project and, in connection therewith, may utilize any legal process including (without limitation) injunction and recovery of damages. In so acting, Landlord shall not be deemed to be the agent of Tenant or any other tenant of Landlord, unless expressly authorized or directed in writing to do so by such other party or tenant.

ARTICLE VII

TAXES

Section 7.1. Tenant to Pay All Taxes, Etc.: Commencing on the date of Landlord's commencement of construction of the Shell Building (which shall for the purpose of this Section 7.1 have occurred when work above grade for the Shell Building, excluding utility relocations and installations, has commenced) and continuing throughout the term of this Lease, Tenant shall pay as and when the same become due and payable, and prior to the assessment of any penalties or late charges, and in any event before the Demised Premises may become subject to a sale by a governmental authority by reason of non-payment thereof, and in time to avoid acceleration of the due date of any Mortgage or Leasehold Mortgage by reason of such non-payment, all real estate taxes, personal property taxes, privilege taxes, excise taxes, business and occupation taxes, gross sales taxes, occupational license taxes, water charges, sewer charges, assessments and other taxes, duties and charges in the same category imposed by any governmental or public authority, which shall be levied against or assessed upon the Demised Premises or any part thereof, or any appurtenances thereto or equipment therein or any tax, charge or duty which may be imposed, levied or be or become a charge in lieu of any such present tax, charge or duty (all being in this Lease collectively referred to as "Tax" or "Taxes"). The term "Taxes," however, shall not include any capital stock, franchise, estate, inheritance, devolution,

succession, transfer, gift or income tax or tax of a similar nature which is or may become payable by Landlord or which may be imposed against Landlord or upon the income or profits of Landlord by reason of any law now in force or hereafter enacted.

Section 7.2. Allocation of Taxes If No Separate

Assessment: If the Demised Premises are not separately assessed but are assessed as a part of a larger parcel, neither Landlord nor Tenant will make any unilateral application to have the Demised Premises assessed as a separate tax lot apart from the larger parcel nor take steps preliminary to any such application without first notifying the other party thereof and giving such other party an opportunity to join in such application or conferences with the taxing authority preliminary thereto. The parties shall cooperate with each other on the submission of information to the taxing authority with respect to any Tax. Until the Demised Premises are separately assessed, Tenant shall pay a portion of any Tax levied against such larger parcel allocated to the Demised Premises as further provided in this Section. The portion of such Tax allocable to the Demised Premises shall be determined from the records of the tax assessor of Multnomah County, Oregon, and if the amount of Taxes allocable to the Demised Premises cannot be determined from the records of such tax assessor and the Parties cannot otherwise agree on a fair and equitable allocation of such Taxes, such allocation shall be allocated to the Saks Improvements in the same proportion that the Fair Market Value of both Landlord's and

Tenant's interests in the Demised Premises (as determined pursuant to Section 16.4 hereof) bears to the aggregate Fair Market Value of all Improvements situated on the larger parcel. To the extent that the Improvements on the Saks Parcel are separately assessed from the land underneath the Improvements, the Taxes Tenant is obligated to pay hereunder shall include an amount equal to the product of the amount of the taxes on the land underneath the Improvements multiplied by a fraction, the numerator of which is Fair Market Value of the Saks Improvements and the denominator is the Fair Market Value of the Improvements on the Saks Parcel or any larger parcel of which the Saks Parcel is a part.

Section 7.3. Payment in Installments: In the event that any Tax, even though the entire amount thereof shall have become due, may be paid in installments, Landlord agrees that Tenant shall not be required to pay the portion of any such Tax allocable to Tenant until such installment shall become due.

Section 7.4. Evidence of Payment of Taxes: With respect to any Tax other than a Tax assessed against the Demised Premises as part of a larger parcel, Tenant will furnish to Landlord, within thirty (30) days after the date when any such Tax is due and payable, copies of official receipts, if such receipts are then available to Tenant, of the appropriate taxing authority or other proof satisfactory to Landlord, evidencing the payment thereof.

Section 7.5. Payment of Tenant's Share of Taxes: With respect to any Tax assessed against the Demised Premises as part of a larger parcel, Tenant's share of such Tax, determined pursuant to Section 7.2, shall become due from Tenant upon presentation of a copy of the tax bill claimed to be due, together with a report showing all information in any way relevant or necessary to the calculation and determination of the amount thereof allocable to Tenant and accompanied by a bill to Tenant for the portion of such Tax payable by Tenant, and Tenant shall pay the same at least ten (10) days before Landlord shall be required to pay such Tax; provided, however, that if for any reason whatever Landlord shall defer payment of any such Tax, then Landlord agrees to give Tenant notice of such intention to defer payment, which notice shall state the day on which Landlord proposes to pay such Tax, and Tenant shall not be required to pay to Landlord the portion of such payment allocable to Tenant until ten (10) days before Landlord's intended date of payment. Pending payment of any such Tax, Landlord shall hold such funds in trust. Landlord shall not be required to invest such funds nor to pay interest thereon, but if such funds shall be invested any earnings resulting therefrom shall be paid over to Tenant. Except to the extent Landlord may defer payment of any Taxes in connection with a contest initiated by Landlord on its own motion or under the provisions of Section 7.6 (and, in either of such cases, only to the extent deferment is authorized in Section 7.6), and provided Tenant shall pay to Landlord its share thereof

as provided herein, Landlord agrees throughout the term to pay any such Tax assessed against the Demised Premises as part of a larger parcel, as well as any Tax assessed against any other part of the Developer Parcels, before such Tax becomes delinquent and Landlord agrees to exhibit to Tenant receipted bills or other evidence of payment of such Taxes from time to time at Tenant's request.

Section 7.6. Contests:

(a) At Tenant's request, which Tenant agrees not to make unreasonably, Landlord shall contest in good faith by appropriate proceedings, or in any other manner permitted by law, in Landlord's name, any Taxes assessed or levied against the Demised Premises as part of a larger parcel, and Tenant agrees to cooperate with Landlord and to execute any documents reasonably required for such purpose. Such contest shall include appeals from any judgments, decrees or orders until a final determination shall be made by a court or governmental department or authority having final jurisdiction in the matter. Payment may be deferred of any such Tax pending such contest. Notwithstanding such contest, Landlord shall pay such Taxes (and Tenant's payment of its allocable share of such Taxes shall be due and payable by Tenant) before the Demised Premises may become subject to a sale by governmental authority by reason of the nonpayment thereof, and in time to avoid acceleration of the due date of any Mortgage or Leasehold Mortgage by reason of such nonpayment. Upon the final determination of any such contest by a court or

governmental department or authority having final jurisdiction in the matter, Landlord shall pay the same, together with such fines, interest, penalties, cost and charges as may, in accordance with such determination, be payable in connection therewith. Any tax refund, and all costs, fees and expenses (including fines, interest, penalties, and reasonable counsel fees, consultant fees, appraisal fees and any of Landlord's inhouse tax specialists' costs directly related to the contest or tax refund) actually incurred and paid by Landlord in connection with such contest (whether or not resulting in a tax refund or a lowering of assessment) shall be apportioned between Landlord and Tenant upon the basis of the allocability of such taxes under Section 7.2.

(b) With respect to any Tax other than a Tax assessed against the Demised Premises as part of a larger parcel, Tenant shall have the right to contest or review the amount or validity of any such Tax by appropriate legal proceedings (but which right shall not be deemed construed in any way as relieving, modifying or extending Tenant's covenants to pay any such Tax at the time and in the manner as provided herein), on condition, however, that if such contested Tax is not paid beforehand, and if such legal proceedings shall not operate to prevent the enforcement of the collection of the Tax so contested and shall not prevent the sale of the Demised Premises, or any part thereof, to satisfy the same, and if neither Tenant nor the Guarantor has a net worth (calculated in accordance with generally accepted accounting

principles) in excess of Fifty Million Dollars (\$50,000,000) at the time of such contest, then before instituting any such proceedings, Tenant shall furnish to Landlord a surety company bond, cash deposit or other security reasonably satisfactory to Landlord, as security for the payment of such Tax in an amount sufficient to pay such Tax, together with all interest and penalties in connection therewith and all charges that may or might be assessed against or be charges on the Demised Premises or any part thereof in said legal proceedings. Upon termination of such legal proceedings or at any time when the Landlord shall reasonably deem the security to be insufficient for the purpose, Tenant shall forthwith, upon demand, deliver to Landlord such additional security as is sufficient and necessary for the purpose, and upon failure of the Tenant so to do, the security originally deposited, at Landlord's option, may be applied to the payment, removal and discharge of said Tax and the interest and penalties in connection therewith and the charges and costs accruing in such legal proceedings and the balance, if any, shall be paid to Tenant provided the Tenant is not in default under this Lease. In the event that such security shall be insufficient for such purpose, Tenant shall forthwith pay over to Landlord an amount sufficient, together with the security originally deposited hereunder, to pay the same. In the event of any default by Tenant under this Lease, Landlord is authorized to use the security deposited under this Section to apply on account of such default or to pay the said Tax. All interest earned on

any monies deposited with Landlord pursuant to this Section shall belong to Tenant, but Landlord shall not be required to invest such monies. Any contest as to the validity or amount of any Tax, or assessed valuation upon which such Tax was computed or based, whether before or after payment, may be made by Tenant, in the name of Landlord or of Tenant, or both, as Tenant shall determine, and Landlord agrees that it will, at Tenant's expense, cooperate with Tenant in any such contest to such extent as Tenant may reasonably request, it being understood, however, that Landlord shall not be subject to any liability for the payment of any costs or expenses in connection with any proceeding brought by Tenant, and Tenant covenants to indemnify and save harmless Landlord from any such costs or expenses. Tenant shall be entitled to any refund of any such Tax and penalties or interest thereon which have been paid by Tenant or by Landlord and reimbursed to Landlord by Tenant.

Section 7.7. Landlord May Pay Tax: Except with respect to any Tax which may be deferred pending contest pursuant to this Article, in the event that Tenant shall fail to pay any Tax which Tenant is obligated to pay hereunder when the same shall become due and payable, and such failure shall continue for five (5) days after notice by Landlord, Landlord shall have the right, at its option, to pay the same with all interest and penalties thereon, and the amount so paid, with interest thereon from the date of such payment at the Default Rate shall be deemed to be Additional Rent.

Section 7.8. Apportionment: Any Tax relating to a fiscal period of the taxing authority, a part of which is prior to commencement of construction of the Shell Building or subsequent to expiration of the term of this Lease shall, whether or not such Tax shall be assessed, levied, imposed or become a lien upon the Demised Premises, or shall become payable during the term hereof, be apportioned and adjusted between Landlord and Tenant as of the date of commencement of construction of the Shell Building or expiration of the term, as the case may be, so that Landlord shall pay that portion of such Tax which that part of such fiscal period included in the period of time prior to commencement of construction of the Shell Building or subsequent to the expiration of the term bears to such fiscal period, and Tenant shall pay the remainder thereof.

With respect to any such Tax for public improvements or benefits which by law is payable, or at the option of the taxpayer may be paid, in installments, Landlord shall pay the installments thereof which become due and payable prior to commencement of construction of the Shell Building or subsequent to the expiration of the term, and Tenant shall pay all such installments which become due and payable at any time during the term.

ARTICLE VIII

UTILITIES

Tenant agrees to pay for all water, gas, electricity and utility services furnished to or used by Tenant in the Demised

Premises. In the event that any such utility services are furnished by Landlord or are submetered by Landlord, the cost thereof shall not exceed what such cost would be if Tenant purchased the same directly from the utility company which supplies the same to Landlord but in no event shall the cost be greater than Landlord's actual cost of supplying such utility.

ARTICLE IX

REPAIRS, ALTERATIONS, IMPROVEMENTS AND REPLACEMENTS

Section 9.1. Repairs: Tenant, at its own expense, throughout the term shall take good care of the Demised Premises and shall promptly make all repairs, interior and exterior, structural and nonstructural, ordinary as well as extraordinary, necessary to keep the Demised Premises in good and lawful order and condition; provided, however, that (i) Landlord shall obtain from its general contractor for the Shell Building for the benefit of Tenant a construction warranty in the construction contract between Landlord and the general contractor, and (ii) Landlord shall further provide that Tenant shall have full benefit of Landlord's interest in any construction or materials warranties provided to Landlord from contractors, architects, engineers and material suppliers in connection with construction of the Shell Building as identified in the construction documents executed by and between Landlord and its general contractor for the Shell Building. The provisions of this Section shall not apply in the event of fire or other casualty, condemnation or in any other event or contingency specifically provided for elsewhere in this Lease.

Section 9.2. Alterations, Improvements and

Replacements: Tenant may, at its own expense and at any time and from time to time during the term of this Lease, make any repairs, alterations, improvements, restorations or replacements, structural and nonstructural, ordinary as well as extraordinary, in, on, to or of the Saks Improvements, in whole or in part, which Tenant, in its sole discretion, may deem necessary or desirable, and provided that any such alteration, improvement or replacement shall be subject to the rights and easements of other parties granted under this Lease in the Saks Parcel and Saks Improvements. Notwithstanding the foregoing, any alteration, improvement, restoration or replacement to the exterior portions of the Demised Premises or to any Common Building Component, which would be of a greater load bearing nature or which would have an adverse affect on the design, maintenance or operation of the Developer Improvements on Block 60 shall be made only with Landlord's prior approval, which approval shall not be unreasonably withheld.

Section 9.3. Permits: Landlord shall cooperate with Tenant in securing, at no expense to Landlord, any building or other permits or authority necessary from time to time for any repair, alteration, improvement, restoration or replacement in, on, to or of the Demised Premises permitted hereunder.

Section 9.4. Quality of Workmanship: Any repair, alteration, improvement, restoration or replacement shall be at least of the same quality as the initial improvement and shall be

executed by Tenant in a good and workmanlike manner and in accordance with this Lease and all applicable regulations and requirements of any state or local government.

Section 9.5. Trade Fixtures: Tenant may at any time during the term install upon the Demised Premises any and all trade fixtures and operating equipment which it may deem necessary or advisable in connection with the conduct of its business. Any and all of such fixtures and equipment may, at any time and from time to time during the term and for thirty (30) days thereafter, be removed by Tenant from the Demised Premises and Tenant shall promptly repair any structural damage to the Demised Premises resulting from such removal. Any such fixtures or equipment remaining on the Demised Premises after the end of such thirty (30) day period shall be deemed abandoned by Tenant.

Section 9.6. Maintenance, Lighting and Security of Improvements and Common Area:

(a) Except as otherwise provided in Section 9.7, each party shall, at no expense to the other, maintain or cause to be maintained, its Parcel and the Improvements thereon in good order, condition and state of repair in accordance with the highest standards of mixed-use project operations, and will keep, or cause to be kept, all display windows and signs well lighted during any period when that party is open for business and for reasonable periods after such business hours. Without limiting the generality of the foregoing, the obligations of the parties under this Section shall include the following specific items:

- (1) Keeping and maintaining such party's Improvements in the Project in a safe and clean condition;
- (2) Keeping and maintaining the mechanical and electrical facilities and systems serving such party's Improvements in the Initial Project, including (without limitation) all Separate Utility Facilities, and activated or manually operated exterior doors in good condition and repair;
- (3) As to the Common Area in the Specialty Retail Areas and the Office Improvements, and as to the Saks Improvements, painting or otherwise refinishing all wall surfaces and ceilings of such party's Improvements from time to time as necessary;
- (4) Regularly cleaning, sealing and waxing of the floor of the Saks Improvements and the Common Area of the Office Improvements and the Specialty Retail Areas or conduct other similar cleaning and maintenance appropriate for the type of floor materials utilized;
- (5) Removing promptly, to the extent reasonably practicable, snow, ice, surface water, rubbish, litter, and debris;

- (6) Repairing, replacing, and renewing lighting in the Saks Improvements and the Common Area of the Office Improvements and the Specialty Retail Areas, and the tubes, bulbs and ballasts therefor, as may be necessary;
- (7) The employment of such security personnel as shall be deemed adequate by the party employing same for the purpose of maintaining a reasonable degree of order in and on Saks Improvements, the Office Improvements and the Specialty Retail Areas;

(b) In addition to complying with the foregoing requirements of Section 9.6 with respect to its own Improvements, Landlord shall provide heating, cooling and ventilating for the Block 60 Common Lobby Area and the Pedestrian Bridge onto Saks Improvements at such times and manner, subject to the requirements of any federal, state and local governmental or other bodies exercising jurisdiction, as shall be required to maintain the temperature throughout the Block 60 Common Lobby Area at a reasonable comfort level by a uniform distribution of air so as to keep the Block 60 Common Lobby Area and Pedestrian Bridge at a comfortable temperature index as defined in the American Heating, Ventilating and Cooling Guide published by the American Society of Heating, Ventilating and Air-Conditioning Engineers.

(c) Landlord shall not be deemed in default of the foregoing obligations at such times as the outside temperature conditions exceed the design conditions set forth in Approved Final Plans, if the heating or cooling equipment, as the case may be, is being utilized to such full design capacity so as to produce the most comfortable conditions within the Block 60 Common Lobby Area and Pedestrian Bridge which such equipment is capable of producing under such outside temperature conditions.

Section 9.7. Landlord's Obligations: During the periods hereinafter described, Landlord shall perform and provide all management, maintenance, cleaning, lighting, heating, cooling and security of the Common Area under this Lease, other than the repair of any damage to any of the Common Area caused by the activities of Tenant or its agents, servants, employees or contractors, which damage shall be repaired by and at the cost and expense of the party causing such damage. No default by Landlord in the performance of such obligation shall be deemed to be a default by Tenant. Landlord's obligation to maintain the Common Area shall begin not later than the Opening Date and shall terminate upon termination of the Developer Operating Covenant Period. Thereafter and until Tenant ceases to operate a retail department or specialty store in its Improvements in accordance with the provisions of this Lease, Landlord shall be obligated to continue to operate and maintain only the Block 60 Common Lobby Area and Pedestrian Bridge.

Section 9.8. Common Utility Facilities: Except as otherwise provided in Article VIII, to the extent that the Saks Improvements are serviced by Common Utility Facilities, Tenant shall pay to Landlord the actual cost of utility services used by Tenant to the extent such actual costs can be determined, or, if actual cost of usage cannot be determined, on the basis of independent engineering analysis conducted from time to time by Landlord, the cost of such analysis to be included in Common Area Maintenance Costs. Utility charges to Tenant shall be the same rate as charged by the utility supplier to Landlord.

Section 9.9. Common Building Components: The following provisions of this Section 9.9 shall apply to the repair or Restoration of Common Building Components, and to the extent not inconsistent therewith are in addition to the provisions of Section 27.4:

- (1) Except in an event of a Restoration, Landlord shall maintain the Common Building Components in such state of repair that the Common Building Components shall continue to have the capacity to be so used in common with any benefited Improvement (subject to the provisions of subparagraph (3) herein) and if Tenant shares the Common Building Components, Tenant shall contribute its proportionate share of the cost and expense of such maintenance based upon the percentage of building load on the Common

Building Components shared by the contributing party as determined by a structural engineer mutually acceptable to both parties. Tenant shall notify Landlord promptly of the need for maintenance and repair of the Common Building Components located in the Demised Premises. In the event of Restoration of a Common Building Component the party receiving the benefit of the Restoration shall contribute its proportionate share of the cost thereof as provided for in the preceding sentence.

- (2) Each party owning any Improvement which is benefited by any Common Building Component contained in an Improvement which is not owned in whole or in part by it shall not place upon the Common Building Component in question any burden which at the time of placement thereof is in excess of the capacity of the Common Building Component therefor, or will prevent the use of the Improvement containing the Common Building Component in question for its intended purposes.
- (3) Nothing in subparagraphs (1) or (2) of this Section shall be deemed to preclude any party owning either an Improvement containing a Common Building Component or a benefited Improvement, as the case may be, from doing or causing to be

done any work (whether of repair, alteration, Restoration or otherwise), with respect to its Improvements (notwithstanding that during the course of performing such work a condition otherwise prohibited by the provisions of this Section may result) if:

(i) During the course of performance of such work the party by whom or on whose behalf such work is being done shall, at its own cost and expense, provide such temporary facilities as may be necessary:

(A) To perform the function performed by the Common Building Component in question if such work is performed with respect to the Improvement containing the Common Building Component in question, or

(B) To increase the capacity of, or supplement, the Common Building Component in question to the extent necessary so that the benefited Improvement shall not, during the course of performance of such work, either place on such Common Building Component a burden in excess of the capacity thereof for such purpose or

otherwise prevent the use of the Improvement containing the Common Building Component in question for its intended purposes, if such work is performed with respect to the benefited Improvements in question; and

- (ii) At the conclusion of such work there is compliance with the provisions of whichever of subparagraphs (1) or (2) of this Section is appropriate to the Improvement with respect to which the work in question was done; and
- (iii) Any such work shall be undertaken in compliance with the applicable provisions of Article IV hereof.

- (4) The party owning the Improvement with respect to which work was performed pursuant to subparagraph (3) of this Section 9.9 shall not be liable to the party owning such other Improvement affected by such work for any inconvenience, annoyance, disturbance or loss of business to such other party arising out of and during the performance of such work (unless occasioned by the negligence or fault of the party performing such work, or its agents), provided the party owning the Improvement with

respect to which such work is being performed shall have made all reasonable efforts to keep any such inconvenience, annoyance, disturbance or loss of business to the minimum reasonably required by the work in question.

ARTICLE X

CONFORMITY TO LAW

Section 10.1. Tenant to Comply with all Laws, Etc.:

Throughout the term of this Lease, Tenant shall cause prompt compliance with any and all notices of violation of any law, ordinance, order, rule, regulation or requirement, noted in or issued by any and all Federal, state, county or municipal governments having jurisdiction, and the appropriate departments, commissions, boards and officers thereof, and also the requirements of the carriers of all insurance applicable to the Demised Premises, or to the use, or manner of use, of the Demised Premises, whether the same be foreseen or unforeseen, ordinary or extraordinary, and whether or not the same shall presently be within the contemplation of the Parties hereto, or shall involve any change of governmental policy, or require structural or extraordinary repairs, alterations or additions, and irrespective of the cost thereof; provided, however, that Landlord shall be responsible for complying with any of the aforesaid with respect to the construction of the Shell Building under this Lease.

Section 10.2. Contests: Tenant may contest, or cause to be contested, the validity of any notice of violation referred to in Section 10.1 and may defer, or cause to be deferred,

compliance pending such contest and, if compliance is so deferred, the deferment shall not be deemed a breach of the provisions of Section 10.1, provided proceedings shall be prosecuted diligently and in good faith. Notwithstanding the foregoing, Tenant shall promptly comply with such notice of violation (other than any such notice relating to Landlord's obligations under Section 10.1) if any time the Demised Premises or any part thereof shall be in danger of being forfeited or lost through foreclosure of any mortgage, trust deed or similar security instrument affecting the Demised Premises or if Landlord shall be in danger of being subjected to criminal liability or penalty by reason of non-compliance therewith.

ARTICLE XI

SUBLETTING AND ASSIGNING

Section 11.1. Permitted Assignments, Subleases, Etc.:

(a) Without the prior written consent of Landlord, Tenant shall not assign this Lease or sublet any portion of the Demised Premises except that Tenant may without Landlord's consent:

- (i) grant licenses or subleases of departments or concessions for the sale of merchandise and services in or from the portions of the Saks Improvements covered by such departments or licenses;
- (ii) assign this Lease or sublet the Demised Premises, in each case in whole or in part, to any Affiliate; and

(iii) after the Opening Date assign this Lease (w) to any corporation resulting from the merger of Saks & Company with any one or more corporations or (x) to any corporation resulting from consolidation of Saks & Company with or into any one or more corporations, or (y) to any corporation which acquires all or substantially all of the business and operating assets of Saks & Company or (z) after the fifth (5th) anniversary of the Opening Date to a corporation or partnership which purchases all of the assets of the stores owned by Tenant or Saks & Company, including the Demised Premises, located in the States of California, Washington and Oregon, which stores shall include at least six (6) stores out of the following then being operated as a "Saks" or "Saks Fifth Avenue" located in the cities of San Francisco, Carmel, Palo Alto, San Diego (two locations), Palm Springs, Los Angeles, Woodland Hills, Beverly Hills, California and at South Coast Plaza in Orange County, California, provided that (A) immediately after any such assignment shall have been effected the merged or consolidated company or the acquiring company shall have a

net worth of at least Fifty Million Dollars (\$50,000,000) as such amount of net worth shall be adjusted by the Consumer Price Index on the fifth anniversary of the Opening Date and each fifth anniversary thereafter, which Consumer Price Index adjustment shall be based upon multiplying Fifty Million Dollars (\$50,000,000) by a fraction, the numerator of which shall be the Consumer Price Index in the month and year the adjustment is to occur and the denominator of which shall be the Consumer Price Index in month and year of the Opening Date, and (B) such assignee shall have the experience, qualifications and ability to perform the obligations of Tenant under this Lease, (C) Tenant shall pay Landlord the unpaid balance of and interest due on the Shell Contribution Repayment if as a result of transfer the Demised Premises shall not be operated under the name "Saks", "Saks Fifth Avenue" or "Saks & Company", and (D) if the Saks Operating Covenant shall still be in effect, such assignee shall comply with the Saks Operating Covenant except the Demised Premises shall be operated under the same name under which the other acquired stores in

California, Oregon and Washington referred to in subclause (2) above are being operated, or if the Saks Operating Covenant shall no longer be in effect, such assignee shall operate a single retail department store or specialty store in the Demised Premises compatible with the quality of merchandising of the balance of the Project and such assignee shall acquire all of Tenant's rights and assume all of Tenant's obligations under this Lease, including (without limitation) the right to elect to use the Demised Premises for a Compatible Use in accordance with this Lease; and

- (iv) If Tenant elects, pursuant to Section 6.2(d) of this Lease, to change the use of the Demised Premises to a Compatible Use and if Landlord fails to terminate this Lease and to purchase Tenant's interest in the Demised Premises pursuant to Section 6.5, then Tenant may sublet the Demised Premises to one or more subtenants for the Compatible Uses specified in Tenant's notice to Landlord.

Tenant shall notify Landlord within thirty (30) days of the date of any anticipated permitted assignment and shall submit documentation to Landlord evidencing that the assignment is permitted as provided for in this subsection (a). Notwith-

assignment and an executed copy of such assignment and assumption shall be forthwith delivered to Landlord; provided, however, until a disputed assignment shall become effective pursuant to subsection (b) above and until the assignee shall assume the obligations of Tenant in writing and the executed copy is delivered to Landlord, Tenant and Guarantor, to the extent Tenant or Guarantor would otherwise be relieved of their liability, shall remain liable under this Lease.

(d) Tenant shall also have all of the rights granted to Tenant pursuant to Article XVIII of this Lease.

Section 11.2. Transfer by Landlord: In the event that Landlord transfers the fee title of the Saks Parcel to a transferee and the transferee leases back to Landlord the Saks Parcel, Landlord, as the tenant under such underlying lease, and not the transferee, shall thereafter be deemed Landlord hereunder. If Landlord thereafter transfers such underlying leasehold interest or if at any time Landlord transfers fee title to the Saks Parcel without taking back a leasehold interest, Landlord shall thereafter be entirely relieved of all covenants and obligations thereafter to be performed by Landlord under this Lease; provided, however, that no later than the date of such transfer (i) any amount then due and payable to Tenant or for which Landlord would otherwise be liable to Tenant shall be paid to Tenant; (ii) any funds then in the hands of Landlord in which Tenant has an interest shall be turned over, subject to such interest, to the transferee of such leasehold interest or fee

standing anything to the contrary in this Section 11.1, if Landlord shall notify Tenant that, in the good faith opinion of Landlord, the assignment is not permitted under this Section 11.1, then if Tenant shall dispute Landlord's claim by giving notice thereof to Landlord within thirty (30) days of receipt of Landlord's notice, then Landlord or Tenant shall submit the dispute to arbitration pursuant to the procedures set forth in Section XXV of this Lease.

Any license, sublease or assignment pursuant to subsection (i), (ii) or (iv) of this Section 11.1(a) shall not release Tenant or the Guarantor from their obligations under this Lease, or the Guaranty.

Any assignment pursuant to Section 11.1(a)(iii) shall, from and after the date thereof except as otherwise provided in subsection (c) of this Section 11.2, release Tenant and the Guarantor from their respective obligations thereafter accruing under this Lease and the Guaranty.

(b) If Landlord shall dispute the assignment or if Landlord or Tenant shall have submitted the disputed assignment to arbitration, the assignment shall not become effective unless and until the arbitrator provided for in Article XXV hereof shall determine that the assignment is permitted under this Lease.

(c) In the case of any assignment pursuant to the provisions of this Section 11.1, the assignee shall assume this Lease and agree to perform and be bound by all of the terms, covenants and conditions herein contained from the date of such

title; (iii) such transferee shall in writing expressly assume and agree to be bound by all covenants and obligations to be performed by Landlord under this Lease; and (iv) a duplicate executed copy of such transfer and assumption shall be delivered to Tenant. Notwithstanding the foregoing, in no event shall Landlord transfer its fee interest in the Saks Parcel prior to completion of the Developer Improvements constructed as part of the Initial Project and issuance of a Certificate of Completion therefor, except any such transfer to an Affiliate of Landlord or to a Mortgagee by way of security for a loan or in connection with foreclosure or conveyance in lieu of foreclosure under the terms of any Mortgage. Except as otherwise expressly provided for in this Lease as to the Saks Parcel, nothing herein shall limit the Landlord's right to transfer or mortgage any interest it may have in any Developer Parcel; provided, however, if there are obligations to Tenant related to such Parcel under this Lease, in the event of an assignment, until such assignee shall assume the obligations of Landlord in writing with respect to such Parcel and the Improvements thereon, and an executed copy of such assignment and assumption shall forthwith be delivered to Tenant, Landlord shall remain liable for performing the covenants and obligations relating thereto under this Lease.

ARTICLE XII

INSURANCE

Section 12.1. Casualty Insurance: Each party shall, at all times, including periods of construction, have all

Improvements on its Parcel insured, at its expense, against loss or damage by fire, earthquake, flood, windstorm, lightning, hail, explosion, riot or civil commotion, damage from aircraft and vehicles, smoke damage, and such other risks as are from time to time included in the usual form of "all risk" endorsement in Portland, Oregon, in an amount not less than the full cost of replacement of such Improvements (including foundation and excavation costs and cost of underground flues, pipes and drains) but in any event in an amount sufficient to prevent either party from being a co-insurer, and shall also maintain comprehensive boiler and machinery insurance with a repair and replacement endorsement and a limit of not less than \$5,000,000.

Section 12.2. Liability Insurance: At all times during the term of this Lease, Landlord and Tenant each will, at its own cost and expense, provide and keep in force comprehensive general liability insurance policies, in standard form, (which policies shall include, without limitation, coverage against contractual or assumed liability) protecting such party against liability in an amount of not less than \$10,000,000, with respect to any one occurrence, and in an amount of not less than \$10,000,000, with respect to injuries to or death of any one person, and in an amount of not less than \$10,000,000 with respect to damage to or destruction of property of others. Such policies of insurance may include a deductible clause of not more than \$500,000 per individual claim. The amounts of \$10,000,000, \$10,000,000, \$10,000,000 and \$500,000 set forth above shall be subject to

review on the fifth anniversary of the Opening Date, and on each subsequent fifth anniversary during the term of this Lease in order to determine the adequacy of such amounts in light of the then existing circumstances. If the parties are unable to agree as to the adequacy of such amounts, the dispute shall be determined by arbitration in accordance with the provisions of Article XXV hereof.

Section 12.3. Indemnity: Except as set forth in Section 12.7, each party agrees to and does hereby indemnify and save the other harmless from and against any and all claims, actions, damages, liability and expense occasioned wholly or in part, directly or indirectly, by any act or omission of it, its tenants, subtenants, agents, contractors or employees, unless attributable to the acts or omissions of the party claiming the benefit of such indemnity or of its tenants, subtenants, agents, contractors or employees.

Section 12.4. Policy Requirements: All insurance provided for in this Article shall be effected under valid and enforceable policies issued by financially responsible insurers which are subject to the service of legal process in the State of Oregon and have a general policyholders rating of "A" XII or better, as classified and rated in the edition of "Best's Key Rating Guide of Property and Liability Insurers" most recently published by A. M. Best Company as of the date of issue of such policies or with equivalent policyholders rating if the present rating and classification system utilized by the said A. M. Best

Company shall be changed or if such Guide shall no longer be published. Evidence of the initial policies or renewal policies, if any, as the case may be, required to be carried by each party, shall be delivered to each other party prior to initiation of construction on the first party's Improvements and thereafter not less than fifteen (15) days prior to the expiration dates of the expiring policies. Any party whose net worth, or the net worth of any guarantor of the obligations of such party hereunder, shall be equal to at least \$50,000,000, which amount shall be adjusted every five (5) years by the Consumer Price Index based upon the formula set forth in Section 11.1(a)(iii), may carry any insurance required to be maintained under Sections 12.1 and 12.2 either in whole or in part under any plan of self-insurance which such party may have in effect. Any party may carry any insurance required to be maintained under this Article XII under a "blanket policy" covering other properties of such party or its affiliates.

Section 12.5. Disposition of Insurance Proceeds: Any loss covered by insurance provided for in Section 12.1 shall be adjusted with the insured. If the loss shall be in excess of \$500,000 (as such amount shall be adjusted in proportion to increases and decreases in the Consumer Price Index on each anniversary of the Opening Date using the month and year of the Opening Date as the base year) and the damaged Improvements shall be required to be Restored under the terms of this Lease and the insured or its guarantor hereunder shall not have a net worth

equal to at least \$50,000,000, which amount shall be adjusted every five (5) years by the Consumer Price Index based upon the formula set forth in Section 11.1(a)(iii), then the insurance proceeds shall be deposited with the Developer's Lender (as hereinafter defined), if any, should such loss occur on any of the Developer Parcels or if there shall be no Developer's Lender or if such loss shall not occur on the Developer Parcels, with an Institutional Lender (as hereinafter defined) to be selected by the insured and approved by the other party (which approval shall not be unreasonably withheld). For purposes of this Section, any Institutional Lender holding a Mortgage on a party's Parcel or Improvements upon which Restoration is to occur shall be an approved depository for insurance proceeds. Such insurance proceeds shall be held in trust by such depository and disbursed for application to the work of repair or restoration as such work progresses or otherwise as provided herein subject to such reasonable conditions for disbursements as such depository may require; if the loss shall not exceed \$500,000.00 (as adjusted in accordance with the Consumer Price Index as aforesaid) or if the damaged property shall not be required to be Restored under the terms of this Lease or the insured or its guarantor shall have a net worth equal to at least \$50,000,000, which amount shall be adjusted every five (5) years by the Consumer Price Index based upon the formula set forth in Section 11.1(a)(iii), the insurance proceeds shall be paid to the insured and first applied by it toward the repair and restoration of such damage or otherwise as

required or permitted by the terms of this Lease. "Developer's Lender" means any Institutional Lender (as hereinafter defined) which is unrelated to Landlord and which holds a senior security interest in the Developer Parcels, whether by way of Mortgage, deed of trust, trust indenture, sale and leaseback, or similar device. "Institutional Lender" means 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 financial institution entity commonly recognized as an "institutional lender".

Section 12.6. Certificate of Insurance. Each party shall, on the request of the other, promptly furnish the requesting party a certificate evidencing the former party's compliance with the insurance coverage requirements of this Article or a statement that such party is a self-insurer. Each certificate of insurance shall stipulate therein that the insurance evidenced thereby shall not be materially reduced, cancelled or not renewed unless thirty (30) days' prior written notice shall have been given by the insurer to all other parties. Neither party shall be required during any given 360-day period to honor more than one such request.

Section 12.7. Waiver of Recovery and Waiver of Subrogation: Neither Tenant or Landlord or Landlord's tenants or licensees shall be liable to the other party or Landlord's tenants, or to any insurance company (by way of subrogation or

otherwise) insuring either Landlord or Tenant, for any loss or damage to any Improvements or other tangible property or loss of income arising therefrom even though such loss or damage might have been occasioned by the negligence of Tenant or Landlord or Landlord's tenants, their agents or employees, and each party hereby waives all rights of recovery and causes of action, and releases the other parties, and Landlord's tenants, from any liability and from all losses and damages occasioned to persons and property within or upon such party's Parcel, provided, however, that if, by reason of the foregoing waiver, the other party hereto shall be unable to obtain any of the insurance required by this Article, such waiver will not be deemed to have been made by such party, and, provided, further, that if either party shall be unable to obtain any of the insurance required by this Article without the payment of an additional premium therefor, then, the party claiming the benefit of such waiver shall have the option of paying such party for the cost of such additional premium within thirty (30) days after notice of the statement setting forth such requirement, but if the party claiming the benefit shall not elect to pay the cost of the additional premium and shall actually pay the premium, such waiver shall be of no force and effect between such party and such claiming party. Both parties agree that each will include in each lease of all or any part of its Parcel provisions substantially similar to those contained in the next preceding sentence which shall be binding upon its tenants under any such lease and which shall be for the benefit of the other party.

Section 12.8. Common Building Components: Each party shall pay to the other party (the "Insuring Party") its proportionate share of any additional costs of casualty insurance incurred by the Insuring Party caused by Common Building Components in the Insuring Party's Improvements which are designed and constructed in whole or in part to benefit and support the Improvements of the other party.

ARTICLE XIII

DAMAGE AND DESTRUCTION

Section 13.1. Insubstantial Damage or Destruction: Except as otherwise provided in this Section 13.1., in the event of insubstantial damage to or destruction of either party's Improvements as a result of casualty (the term "damage or destruction" as used in this Article being limited to damage or destruction resulting from a casualty), and as often during such party's Operating Covenant Period as such party's Improvements shall be insubstantially damaged or destroyed, such party shall as promptly as reasonably possible rebuild, repair and restore its Improvements to as good a condition, to the same general appearance, and to not less than the same size as such party's Improvements prior to such damage or destruction. For purposes of this Article damage or destruction shall be deemed to be "insubstantial" if the cost to repair the same shall be less than fifty percent (50%) of the full insurable value of such party's Improvements on each Parcel at the time of such damage or destruction. Any other damage or destruction shall be deemed to

be substantial damage or destruction and shall be subject to the following provisions of this Article.

Each party shall notify the other within sixty (60) days of the occurrence of any substantial damage and destruction of its Improvements. Notwithstanding anything to the contrary in this Article XIV, in the event of substantial damage and destruction of the portion of the Specialty Retail Area which is located in the Retail Concourse below the Office Improvements and Saks Improvements, Landlord may elect not to Restore all or part of that portion of the Specialty Retail Area below the Office Improvements and the Saks Improvements so long as Landlord provides Tenant with reasonable access to the Saks Improvements and to the Common Building Components located below the street level (to the extent access to the Common Building Components was available prior to the damage and destruction), and provided Landlord Restores, at Landlord's expense, the Common Building Components located in that portion of the Retail Concourse not Restored.

Section 13.2. Substantial Damage to, or Destruction of, Specialty Retail Areas: Landlord hereby agrees that in the event of substantial damage or destruction (which, for the purpose of this Lease shall be one which is other than an "insubstantial" damage or destruction) as a result of a casualty of all or any part of the Developer Improvements in the Specialty Retail Areas from perils required to be insured against under this Lease (or a peril for which Landlord has in fact in force a policy of

insurance with an insurance company to the extent of proceeds actually received), Landlord shall promptly commence reconstruction (such reconstruction being sometimes referred to herein as "Restoration" or "to Restore" as the context requires) of the Developer Improvements and shall diligently prosecute such Restoration to completion to the extent hereinafter provided:

- (1) If such substantial damage or destruction occurs prior to the expiration of the Developer Operating Covenant Period, Landlord shall Restore the Developer Improvements in the Specialty Retail Areas in their entirety, provided, however, that if such substantial damage or destruction shall occur during the two (2) year period prior to the expiration of the Saks Initial Operating Covenant Period, or during any Saks Additional Operating Covenant Periods, Landlord shall be required to Restore only such portions as Landlord would have been required to Restore under subparagraph (2) below;
- (2) If such substantial damage or destruction occurs during the two (2) year period prior to the expiration of the Saks Initial Operating Covenant Period, or during any Saks Additional Operating Covenant Periods, but prior to expiration of the Developer Operating Covenant

Period, Landlord shall Restore the Block 60 Common Lobby Area and the Pedestrian Bridge and the Specialty Retail Areas containing not less than eighty percent (80%) of the Floor Area which was contained within the Specialty Retail Area prior to such damage and destruction, provided if the Saks Improvements have been substantially damaged or destroyed, Tenant upon request from Landlord, notifies Landlord that Tenant intends to Restore the Saks Improvements containing at least 55,000 square feet of Floor Area;

- (3) If such substantial damage or destruction occurs on or subsequent to the expiration of the Saks Initial Operating Covenant Period and any Additional Operating Covenant Period of Tenant, if within ninety (90) days after request by Landlord, Tenant notifies Landlord that Tenant intends to operate its Improvements as a retail department store in accordance with the terms of the Saks Operating Covenant for an additional period of ten (10) years dating from the date of such damage or destruction to the Specialty Retail Areas, Landlord shall Restore the Block 60 Common Lobby Area, the Pedestrian Bridge and

- the Specialty Retail Areas containing not less than eighty percent (80%) of the Floor Area which was contained in the Specialty Retail Areas prior to such damage or destruction;
- (4) Nothing contained in this Section 13.2 shall obligate the Landlord to Restore the Office Improvements or all or part of that portion of the Specialty Retail Area located in the Retail Concourse underneath the Saks Improvements and the Office Improvements, so long as Landlord provides Tenant with reasonable access to the Saks Improvements and to the Common Building Components located below street level (to the extent such access to the Common Building Components was available prior to the damage and destruction), and provided Landlord Restores, at Landlord's expense, the Common Building Components located in that portion of the Retail Concourse not Restored; and
- (5) Nothing contained in this Section 13.2 shall in any way modify Landlord's right to increase the size of the Specialty Retail Areas to the extent permitted in this Lease.

Section 13.3. Substantial Damage to, or Destruction of, Saks Improvements:

(a) Tenant hereby agrees that in the event of substantial damage to or destruction as a result of casualty of all or any part of the Saks Improvements during the time periods hereinafter provided from perils required to be insured against under this Lease (or a peril for which Tenant has in fact in force a policy of insurance with an insurance company to the extent of proceeds actually received), Tenant shall promptly commence Restoration of the Saks Improvements within the Saks Parcel and shall diligently prosecute such Restoration to completion to the extent hereinafter provided:

- (1) If such substantial damage or destruction occurs prior to the expiration of the Saks Initial Operating Covenant Period or any Additional Operating Covenant Periods, Tenant shall Restore such Improvements so as to contain not less than fifty-five thousand (55,000) square feet of Floor Area; and
- (2) If such substantial damage or destruction occurs subsequent to the expiration of the Saks Initial Operating Covenant Period or any Saks Additional Operating Covenant Periods, Tenant shall have no obligation to reconstruct the Improvements. Within ninety (90) days after request from Landlord as to Tenant's

intentions to Restore, Tenant shall notify Landlord of its intentions, and if Tenant shall fail to give such notice to Landlord within ninety (90) days Landlord shall be entitled to conclusively presume for purposes of the applicable provisions of this Article XIII that Tenant does not intend to Restore its Improvements. If Tenant shall fail to elect to Restore or elect not to Restore as provided in this Article XIII, then this Lease shall automatically terminate; provided, however, Tenant, at the request from Landlord given to Tenant within thirty (30) days after termination, shall clear debris and raze the Saks Improvements in accordance with Section 13.6 and during the period of time Tenant is conducting such work, Tenant and Landlord shall carry the insurance required by the provisions of Article XII and the provisions of Sections 12.3 and 12.7 shall be applicable.

- (3) The Saks Improvements restored as required hereunder shall have the same entrances in terms of approximate location onto the Common Area as existed before the damage or destruction.

(b) Notwithstanding anything contained in Section 13.2 or this Section 13.3 to the contrary, Tenant shall not have the obligation to Restore in the event that:

(1) at the time of such damage or destruction Landlord is in default under its Operating Covenant, which default has not been cured pursuant to applicable grace periods under this Lease; or

(2) the Saks Initial Operating Covenant Period and any Saks Additional Operating Covenant Periods has expired at the time of, or will expire within two (2) years after the date of, the occurrence of such damage or destruction.

(c) If the Specialty Retail Areas shall have been damaged or destroyed, Tenant shall not be obligated to commence Restoration until Landlord commences Restoration in accordance with the provisions of Section 13.2.

(d) Nothing contained in this Section 13.3 shall in any way modify Tenant's obligation to restore Common Building Components located in its Improvements.

Section 13.4. Substantial Damage to, or Destruction of, Office Improvements:

(a) In the event of substantial damage to or destruction as a result of a casualty of any part of the Office Improvements prior to termination of the Saks Initial Operating Covenant Period, Landlord shall Restore the Office Improvements.

(b) In the event of substantial damage to or destruction as a result of casualty of all or any part of the Office Improvements after termination of the Saks Initial Operating Covenant Period, Landlord shall not be obligated to Restore the Office Improvements.

(c) If Landlord elects not to Restore the Office Improvements, Landlord may improve the real estate upon which the Office Improvements were located by constructing any use which would be a Compatible Use provided the design and load of such improvement does not adversely affect the Common Building Components or the Saks Improvements and the improvements shall be designed and constructed in accordance with the provisions of Article IV for the approval of Plans and Specifications and construction generally and construction shall be completed in accordance with Section 13.5.

If Landlord elects to Restore the Office Improvements, Landlord may Restore the Office Improvements containing less square footage than constructed as part of the Initial Project.

(d) Landlord's election to Restore the Office Improvements or to improve the Office Parcel as permitted under subsection (c) above, must be made within six (6) months of the date of the damage or destruction.

(e) Nothing contained in this Article XIII shall require Landlord to Restore any of the Improvements on the Future Development Parcel.

Section 13.5. Duty to Complete Improvements: The parties agree to use due diligence in order to cause any building or other improvement which a party is required or elects to Restore or is permitted to construct pursuant to this Article XIII to be completed and ready for occupancy within twenty-four (24) months after such damage or destruction occurs. Each party agrees that any Restoration or construction will be undertaken in compliance with the provision of Article IV hereof with respect to approval of Plans and Specifications and construction generally.

Section 13.6. Clearing Debris from Razed Improvements: To the extent a party is not expressly required pursuant to the provisions of Sections 13.2, 13.3 or 13.4 to Restore all or a portion of its Improvements which are substantially damaged or destroyed by a casualty, and does not elect to Restore such damaged or destroyed Improvements, such party shall, subject to Landlord's right to construct other improvements on the Office Parcel set forth in Section 13.4(c), raze the portions thereof which are not Restored, clear away all debris and take all other action (including landscaping, weatherproofing, roofing and finishing such surface in a material compatible with, in color and quality, the exterior surface of the adjoining Improvement after review and approval of Plans and Specifications therefor by the other party pursuant to the provisions for approval set forth in Article IV) so that the appearance of the area which had been occupied by the razed Improvements and the surface of the

adjacent Improvement will not detract from the appearance of the Project.

ARTICLE XIV

QUIET ENJOYMENT

Landlord covenants, warrants and represents that it has full right and power to execute and perform this Lease and to grant the estate demised herein, and Landlord further covenants that Tenant on paying the rent reserved and performing the covenants and agreements hereof shall peaceably and quietly have, hold and enjoy the Demised Premises and all rights, easements, appurtenances and privileges belonging or in anywise appertaining thereto, during the full term of this Lease, (subject however, to the operation and effect of the matters listed in Exhibit D hereof), and, to the extent not prohibited by the United States Bankruptcy Code or a Bankruptcy Court, notwithstanding the happening of any of the following events: the filing by Landlord of a voluntary petition in bankruptcy, or the adjudication that Landlord is bankrupt or insolvent, or the filing by Landlord of any petition or answer seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief for itself under any present or future Federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, or the seeking by Landlord of, or the consent of Landlord to, or the acquiescence by Landlord in the appointment of any trustee, receiver, or liquidator of Landlord or of all or a substantial part of its

properties, or the making by Landlord of any general assignment for the benefit of creditors, or the admission by Landlord in writing of its inability to pay its debts generally as they become due, or the entering by a court of competent jurisdiction of any order, judgment, or decree approving a petition filed against Landlord seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future Federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors or the appointment of any trustee, receiver or liquidator of Landlord or of all or a substantial part of its properties, without the consent or acquiescence of Landlord.

ARTICLE XV

SURRENDER OF DEMISED PREMISES

At the expiration or earlier termination of the term of this Lease, Tenant covenants that it will peaceably and quietly leave and surrender the Demised Premises together with all alterations, enlargements and Improvements then a part of the Demised Premises in good order and condition; reasonable wear and tear, loss or damage by fire or casualty not required to be repaired by Tenant, and condemnation excepted. To the extent permitted by law, Tenant hereby waives notice to quit or similar notices required to be given by Landlord.

ARTICLE XVI

CONDEMNATION

Section 16.1. "Condemnation", Defined: The term "Condemnation" means 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. A Condemnation shall be effective as of the date (the "Condemnation Date") on which possession is required to be surrendered to the condemning authority.

Section 16.2. Condemnation of Improvements:

(a) Subject to the further provisions of this Section, if any part of the Improvements of a party shall be taken by Condemnation during any period when the party in question (the "Condemned Party") would have been required to rebuild in whole or in part its Improvements under the applicable provisions of this Lease had said Improvements been damaged or destroyed by a casualty, then, except as hereinafter provided in this Section 16.2, the Condemned Party whose Improvements were so taken shall proceed to Restore the same so as to constitute a complete architectural unit (taking into consideration the nature and scope of the Condemnation). In the event a party is obligated or elects to Restore the Improvements so taken, such Restoration shall be done in accordance with the provisions set forth in Article IV of this Lease, and shall be completed within twenty-four (24) months of the Condemnation Date; provided, however,

that nothing herein shall require a party to Restore any Improvements so as to contain more Floor Area than would be required in the event of a Restoration at that time pursuant to Article XIII hereof.

(b) Notwithstanding the foregoing, in the event that Landlord's fee interest in an entire Parcel or Improvements is taken by Condemnation, or such a portion of Developer's Parcel or Tenant's Parcel or Improvements thereon is taken that in the good faith judgment of the Condemned Party reasonably exercised such Parcel and Improvements are no longer suitable for the uses intended in this Lease and to which they were put prior to such Condemnation, the Condemned Party shall not be obligated to Restore its Improvements, and in such event the Condemned Party shall notify the other party within ninety (90) days after the Condemnation Date whether or not the Condemned Party intends to Restore its Improvements and in the event the Tenant is the Condemned Party, this Lease shall automatically terminate if Tenant elects not to Restore.

Section 16.3. Awards as to Developer Improvements:

All compensation awarded for any Condemnation of the Developer Improvements or Developer Parcels shall belong to and be the property of Landlord, Tenant hereby assigning to Landlord all rights with respect thereto; provided, however, nothing contained herein shall prevent Tenant from applying for reimbursement from the condemning authority (if permitted by law) for loss of Tenant's easement rights, but if and only if such

action shall not reduce the amount of the award or other compensation otherwise recoverable from the condemning authority by Landlord or the owner of the fee simple estate in any Developer Parcel.

Section 16.4. Award and Use for Restoration:

(a) Except with respect to an award to a party who would not be required to so deposit funds in accordance with Section 12.5, in the event of an award to any party in excess of Five Hundred Thousand Dollars (\$500,000) (as such amount shall be adjusted every five (5) years in proportion to increases or decreases in the Consumer Price Index pursuant to the formula set forth in Section 11.1(a)(iii)), the proceeds thereof shall be deposited with an Institutional Lender reasonably satisfactory to each of the parties hereto (which may be a Mortgagee of the party's Parcel or interest therein which was taken by Condemnation) and shall be held and disbursed as required under this Article in accordance with the procedure set forth in Section 12.5, and a party's Mortgage shall so provide.

(b) Notwithstanding any provision herein to the contrary, a party shall not be required to expend any funds for Restoration in excess of the available Condemnation award.

Section 16.5. Notice of Proposed Condemnation: If either party shall receive official notice from a condemning authority of a proposed Condemnation of any of the Condemned Party's Parcel or interest therein, such party shall inform the other party of such fact, and when known, of the portion or

portions of the Parcel or interest therein to be so condemned and the date upon which it is anticipated that the Condemned Party will be required to surrender possession thereof to the condemning authority.

Section 16.6. Total Condemnation: In case of a Condemnation (other than for temporary use) of the fee estate of the entire Demised Premises, this Lease shall terminate as of the date on which such Condemnation shall be effective. In case of a Condemnation (other than for temporary use) under Section 16.2(b) above as a result of which Tenant elects to not Restore, Tenant at its option, may terminate this Lease within sixty (60) days after such Condemnation. Any Condemnation of the character referred to in this Section 16.6 which results in the termination of this Lease is referred to as a "Total Condemnation".

Section 16.7. Partial Condemnation: In case of a Condemnation for temporary use or a Condemnation of a portion of the Demised Premises which is not a Total Condemnation, this Lease shall remain in full force and effect as to the portion of the Demised Premises remaining immediately after such Condemnation, without any abatement or reduction of rent or any other sum payable hereunder (except as otherwise provided in Section 16.3 hereof) and Tenant will promptly repair, reconstruct and restore the Saks Improvements to the extent and in the manner required under Section 16.2 above; provided, that, in case of a Condemnation for temporary use, Tenant shall not be required to effect such restoration until such Condemnation is terminated.

Any such repair, reconstruction or restoration shall be performed in a good and workmanlike manner and undertaken in accordance with plans and specifications submitted to and approved by Landlord in the manner provided in Article IV of this Lease, which approval shall not be unreasonably withheld.

Section 16.8. Application of Awards: The awards and other payments on account of a Condemnation, less costs, fees and expenses incurred by Landlord, Tenant and the "Condemnation Trustee," as hereinafter defined, in connection with the collection thereof (hereinafter "Net Awards") shall be applied as follows:

(1) Net Awards received on account of a Condemnation, other than a Condemnation for temporary use or a Total Condemnation, shall be held and applied to pay the cost of repair, reconstruction and restoration of the Saks Improvements. The balance, if any, remaining shall be divided between Landlord and Tenant as they may agree and, in the absence of such agreement, such balance shall be paid to Landlord and Tenant in the ratio, as nearly as practicable, which (i) the then Fair Market Value of Landlord's interest in the Saks Parcel and the Saks Improvements bears to (ii) the then Fair Market Value of Tenant's interest in the remainder of the term of this Lease including all option periods, provided, however; that Tenant's share of any such balance shall be applied first to the payment of any past due Percentage Rent or Additional Rent.

(2) Net Awards received on account of a Condemnation for temporary use of the entire Demised Premises shall be paid to Tenant for the duration of such Condemnation for temporary use and Tenant shall pay to Landlord as Percentage Rent hereunder an amount equal to the average Percentage Rent for the last three (3) years prior to the Condemnation Date (which amount shall be referred to hereinafter as the "Average Rent"); provided, however, that (x) if any portion of any such Net Award is paid by the condemnor by reason of any damage to or destruction of the Saks Improvements, such portion shall be held by Tenant and applied to the cost of repair, reconstruction and restoration thereof provided no Event of Tenant's Default has occurred hereunder and is continuing; (y) if any portion of a Net Award on account of a Condemnation for temporary use relates to a period beyond the date of termination of the Term hereof, such portion shall be paid to Landlord; and (z) in no event shall the Average Rent payable by Tenant over the duration of a Condemnation for temporary use exceed the actual amount of the Net Award for such Condemnation less the amount actually expended by Tenant pursuant to (x) above. If an Event of Tenant's Default by Tenant shall have occurred and is continuing, the amount of the Net Award shall be retained by Landlord and applied against any sums due Landlord hereunder, and upon payment of all such sums then due and owing the balance shall be paid to Tenant and applied by Tenant pursuant to (x) above. In the event that less than the entire Demised Premises is taken for temporary use then in such

event the amount of any Net Award for such taking shall be included in Net Sales for purposes of calculating Percentage Rent under Section 5.2 hereof.

(3) Net awards and payments received on account of a Total Condemnation shall be paid as set forth in the second sentence of clause (1) of this Section 16.8, provided that any determination of the respective Fair Market Value of Landlord's and Tenant's interests shall be made as if the term had not terminated and the Demised Premises had not been condemned.

Section 16.9. "Fair Market Value" Defined: The term "Fair Market Value" as used in this Lease means the highest price in terms of money that the Demised Premises will bring in a competitive and open market assuming that the buyer and seller are acting prudently and knowledgeably allowing sufficient time for the sale and assuming that the price is not affected by undue stimulus and assuming that the buyer is purchasing the Landlord's interest or the Tenant's interest, as the case may be, in the Demised Premises for the remainder of the term of this Lease and would be assuming all of Landlord's or the Tenant's rights and obligations under this Lease for the use then being made of the Demised Premises. Fair Market Value shall be determined by the parties or, if the parties are unable to agree thereon, by arbitration in accordance with the provisions of Article XXV hereof. The award rendered in such arbitration shall be binding on the parties hereto and judgment upon the award may be entered by any court having jurisdiction thereof.

Section 16.10. Notice of Condemnation: In case of a Condemnation of all or any part of the Saks Parcel or the commencement of any proceedings or negotiations which might result in such Condemnation, the party having notice of such Condemnation or of the commencement of any such proceedings or negotiations shall promptly give notice thereof to the other party. Landlord and Tenant shall jointly prosecute their claims for an award in a single proceeding, in which any Mortgagee or Leasehold Mortgagee may join. Landlord and Tenant shall not prosecute separate claims for an award.

Section 16.11. Awards to be Held by Condemnation
Trustee:

(a) All awards or other payments received on account of a Condemnation shall be paid to the holder of the first Mortgage on the Demised Premises, or, if there shall be none, then to the holder of the first Leasehold Mortgage on Tenant's interest in the Demised Premises, or, if there shall be none, then to a bank or trust company selected by Tenant and approved by Landlord. Such Mortgagee, Leasehold Mortgagee, bank or trust company, as the case may be, is referred to herein as the "Condemnation Trustee". All such awards or other payments made by reason of any Condemnation shall be held in trust by the Condemnation Trustee until applied to the cost of restoration or payable to Landlord and/or Tenant pursuant to the provisions hereof. Any awards or payments which are to be held and applied to pay the cost of restoration pursuant to clause (1) or clause (2) of

Section 16.8, if held by the Condemnation Trustee, shall be disbursed by the Condemnation Trustee to Tenant as follows: From time to time as the work of restoration progresses, Tenant shall submit to the Condemnation Trustee a certificate of Tenant, signed by an executive officer thereof, and approved by an architect selected by Tenant and reasonably approved by Landlord (the "Condemnation Architect") which certificate shall (i) accurately describe the work for which Tenant is requesting payment and the cost incurred by Tenant in connection therewith, (ii) certify that Tenant has not theretofore received payment for such work, and (iii) contain or be accompanied by a statement by Landlord (which Landlord shall be obligated to give, if such be the case) that the work for which Tenant is requesting payment has been performed in accordance with plans and specifications therefor approved by Landlord pursuant to the procedures set forth in Article IV of this Lease. Within five (5) days after receipt of any such certificate, the Condemnation Trustee shall pay to Tenant, from the awards or payments on hand, an amount equal to ninety percent (90%) of the amount of the cost of the work for which Tenant is requesting payment, as shown on such certificate. Upon completion of such work, the remainder of such cost (to the extent of the balance of the awards or payments held by the Condemnation Trustee) shall be paid to Tenant within five (5) days after the delivery to the Condemnation Trustee of a certificate of the Tenant, signed by an executive officer thereof, approved by the Condemnation Architect, stating that the

work has been completed and setting forth the total cost thereof, which certificate shall: (a) contain or be accompanied by a statement by Landlord (which Landlord shall be obligated to give, if such be the case) that the work has been completed substantially in accordance with plans and specifications therefor approved by Landlord, and (b) be accompanied by either (i) an unconditional waiver or release of mechanics' and materialmen's liens executed by all persons or entities supplying labor and/or materials in connection with such work, or (ii) other evidence, reasonably satisfactory to Landlord, that the period for filing any such lien has expired and no such lien has been filed, or, if filed, has been bonded by Tenant to Landlord's and the Condemnation Trustee's reasonable satisfaction. The Condemnation Trustee shall be required to invest the Condemnation Award in an interest bearing account and any earnings thereon shall be paid over to Tenant.

(b) Anything in this Lease to the contrary notwithstanding, in the event that at the time of any Condemnation Award Tenant or the Guarantor shall have a net worth (calculated in accordance with generally accepted accounting principles) in excess of Fifty Million Dollars (\$50,000,000) as such net amount is adjusted by the Consumer Price Index pursuant to Section 11.1(a)(iii), or that any award from Condemnation required to be used for repair, reconstruction and restoration of the Saks Improvements hereunder shall be less than Five Hundred Thousand Dollars (\$500,000) (as such amount shall be adjusted in

proportion to increases or decreases in the Consumer Price Index), then in either of such events any such award shall be paid directly to Tenant to be applied by Tenant in accordance with the provisions hereof.

ARTICLE XVII

DEFAULTS AND REMEDIES

Section 17.1. Events of Default: Each of the following events shall constitute an Event of Tenant's Default hereunder:

- (a) the failure by Tenant to pay any Percentage Rent, Additional Rent or other sum of money required to be paid hereunder, whether to Landlord or to some third party, within five (5) days after Landlord shall have given Tenant notice thereof;
- (b) default by Tenant in the performance or observance of any other term, covenant, agreement or condition of this Lease, which default shall not be cured within thirty (30) days after notice thereof given by Landlord, or, if such default is of such nature that it cannot be cured with the exercise of reasonable diligence within such thirty (30) day period, then the failure of Tenant to commence the curing of same within such thirty (30) day period and thereafter diligently prosecute the curing of same to completion;
- (c) vacation or abandonment at any time by Tenant of the Demised Premises, except for purposes of

restoration, repairs, replacements, alterations or additions as permitted under this Lease, which continues for thirty (30) days after notice thereof is given by Landlord to Tenant;

- (d) the filing of a petition in bankruptcy by Tenant or an adjudication that Tenant is bankrupt or a general assignment by Tenant for the benefit of creditors or the appointment of a receiver of substantially all of the property of Tenant including, in any event, this Lease in a proceeding based upon Tenant's insolvency which shall not be discharged within ninety (90) days after such appointment; but neither bankruptcy nor insolvency nor an assignment for the benefit of creditors nor the appointment of a receiver shall affect this Lease or constitute an Event of Tenant's Default hereunder so long as the covenants on the part of Tenant to be performed are being performed by Tenant or a person, firm or corporation claiming under it;

provided however, that none of the events described in clauses (a), (b) or (c) shall constitute an Event of Tenant's Default if and so long as Tenant shall (i) in the case of an event of default under clause (a) pay the amount claimed as due and owing and (ii) in good faith, upon receipt of any notice of default dispute the existence of such default by promptly commencing an

appropriate proceeding in a court of competent jurisdiction to determine whether such default has legally occurred and shall thereafter diligently prosecute such proceeding to its conclusion. If such court shall either determine that such default exists or refuse to restrain or enjoin Landlord from pursuing its remedies under this Lease, no Event of Tenant's Default shall be deemed to exist during such period of time within which to cure such default as shall be specified by such court or, if no period or a shorter period is specified, then during a period of ten (10) days from and after such court's decision, but, if such default is of a nature that the same cannot be cured within such ten (10) day period, then no Event of Tenant's Default shall be deemed to exist if and so long as Tenant shall commence the curing thereof within such ten (10) day period and shall prosecute the same to completion with diligence.

Section 17.2. Landlord's Right to Terminate Lease: If an Event of Tenant's Default shall occur at any time, Landlord may, at any time thereafter (but prior to any curing of the default giving rise to the existence of such Event of Tenant's Default), give Tenant a notice of intention to end the term, specifying a day not less than three (3) days nor more than ninety (90) days after the giving of such notice when the term shall end, and upon the day so specified in such notice the term shall expire as fully and completely as if that day were the day herein originally fixed for such expiration, and Tenant shall then quit and surrender the Demised Premises to Landlord, but

Tenant shall remain liable as hereinafter in Section 17.5 provided; and Landlord, without prejudice to any other right or remedy of Landlord hereunder or by law, and notwithstanding any waiver of any prior breach of condition or Event of Tenant's Default hereunder, may re-enter the Demised Premises either by force or otherwise, or dispossess Tenant or any legal representative of Tenant or other occupant of the Demised Premises by a summary proceeding or other appropriate suit, action or proceeding or otherwise, and remove their effects and hold the Demised Premises as if this Lease had not been made, and Tenant hereby expressly waives the service of notice of intention to re-enter or to institute legal proceedings to that end.

Section 17.3. Waiver of Right of Redemption: Tenant, for itself and any and all persons claiming under or through Tenant, including its creditors and any Leasehold Mortgagee, upon the termination of this Lease in accordance with the terms hereof, or in the event of entry of judgment for the recovery of the possession of the Demised Premises in any action or proceeding, or if Landlord shall enter the Demised Premises by process of law or otherwise, hereby waives any right of redemption provided or permitted by any statute, law or decision now or hereafter in force, and does hereby waive, surrender and give up all rights or privileges which it or they may or might have under and by reason of any present or future law or decision, to redeem the Demised Premises or for a continuation of this Lease for the term hereby demised after having been dispossessed or ejected therefrom.

Section 17.4. Landlord's Right of Self-Help:

(a) In the event of (i) the failure by Tenant to perform any of the provisions, covenants, agreements or conditions of this Lease on its part to be performed (but only after the occurrence of an Event of Tenant's Default), or (ii) the receipt by Landlord of a notice from or on behalf of a Leasehold Mortgagee to the effect that Tenant is in default in the performance of any of its obligations under a Leasehold Mortgage; but, in either of the events specified in (i) or (ii), only as provided in subsection (b) of this Section 17.4, Landlord may, in addition to any remedies available to it at law or in equity, perform the same for and on behalf of Tenant, the cost of which performance, upon the proper payment thereof, together with all interest and penalties necessarily paid in connection therewith, and together with such reasonable attorneys' fees and disbursements as may have been incurred by Landlord in connection therewith, shall be paid to Landlord by Tenant upon demand, with interest thereon at the Default Rate from the date of each expenditure or, at the continuing option of Landlord, the same may (in whole or in part), with interest as aforesaid, be collected as Additional Rent.

(b) Upon the failure of Tenant, within thirty (30) days after receipt of notice from Landlord (or such shorter or longer period as is required by the nature of the condition necessitating such action, but in no event less than five (5) days) to correct or commence the correction of the condition

complained of in such notice, Landlord may cure such failure, as above provided. Notwithstanding the foregoing provisions of this Section and regardless of whether an Event of Tenant's Default shall have occurred, such action may be taken without any notice if Landlord, in its bona fide opinion, believes (i) it would be materially injured by failure to take rapid action, or (ii) the condition complained of constitutes an emergency.

(c) In order to effectuate the curing of any failure referred to in subsections (a) and (b) of this Section 17.4 Tenant shall take any and all action (including, without limitation, the execution of appropriate documents) necessary in order to assign, to the extent permitted by law, to Landlord the right to take action to effectuate such curing for and on behalf of Tenant, and Tenant hereby authorizes Landlord to take such action as attorney-in-fact for Tenant.

Section 17.5. Damages:

(a) If Landlord shall terminate this Lease as provided in Section 17.2, Tenant, whether or not the Demised Premises or any part thereof be relet and regardless of the terms of any such reletting (it being agreed that Landlord shall not be obligated to relet the Demised Premises and that, if Landlord shall choose to do so, the terms of any such reletting shall be as Landlord, in its uncontrolled discretion, may determine) shall pay to Landlord the Percentage Rent and any other sums due and owing to Landlord, with interest thereon at the Default Rate, if applicable, up to the time of Landlord's termination of this

Lease (by recovery of possession of the Demised Premises, or otherwise) and thereafter, if required by Landlord, (i) shall pay to Landlord throughout the balance of the term (as if the term had not been ended by Landlord's termination) Percentage Rent, computed at an annual rate equal to the average annual Percentage Rent paid by Tenant over the three (3) most recent full Lease Years of the term, less the net proceeds of reletting, if any, or (ii) shall pay to Landlord the worth, discounted at the rate of ten percent (10%) per annum, at the time of Landlord's termination, of the excess, if any, of the amount of Percentage Rent, computed at an annual rate equal to the average annual Percentage Rent paid by Tenant over the three (3) most recent full Lease Years of the term, throughout the balance of the term (as if the term had not been ended by Landlord's termination) over the then reasonable rental value of the Demised Premises for the same period.

(b) The provisions of this Section 17.5 shall survive any termination of this Lease and shall continue as a covenant between Landlord and Tenant and the Guarantor.

Section 17.6. Tenant's Remedies; Right of Self-Help:

(a) In the event of the failure by Landlord to perform any of the provisions, covenants, agreements or conditions of this Lease on its part to be performed, Tenant may, in addition to any remedies available to it at law or in equity, but only as provided in subsection (b) of this Section 17.6, perform the same for and on behalf of Landlord, the cost of which performance upon

the proper payment thereof, together with all interest and penalties necessarily paid in connection therewith, and together with such reasonable attorneys' fees and disbursements as may have been incurred by Tenant in connection therewith, shall be paid to Tenant by Landlord upon demand, with interest thereon at the Default Rate from the date of each expenditure (unless the default was based upon Landlord's failure to complete the Shell Building, in which event the cost shall exclude the amount of the Tenant's Share).

(b) Upon the failure of Landlord, within thirty (30) days after receipt of notice from Tenant to Landlord and to any Mortgagee of Landlord which has furnished Tenant with its address for notices (or such shorter or longer period as is required by the nature of the condition necessitating such action, but in no event less than five (5) days) to correct or commence the correction of the condition complained of in such notice, Tenant may cure such failure, as above provided. Notwithstanding the foregoing provisions of this Section, such action may be taken without any notice if Tenant, in its bona fide opinion, believes (i) it would be materially injured by failure to take rapid action, or (ii) the condition complained of constitutes an emergency.

(c) In order to effectuate the curing of any failure referred to in subsections (a) and (b) of this Section 17.6, Landlord shall take any and all action (including, without limitation, the execution of appropriate documents) necessary in

order to assign, to the extent permitted by law, to Tenant the right to take action to effectuate such curing for and on behalf of Landlord, and Landlord hereby authorizes Tenant to take such action as attorney-in-fact for Landlord.

ARTICLE XVIII

LEASEHOLD MORTGAGES

Section 18.1. Leasehold Mortgages: Tenant shall have the right at any time or times and from time to time, without the consent of Landlord, to encumber the leasehold interest and estate hereby created in the Demised Premises by way of a Leasehold Mortgage or Leasehold Mortgages to any Institutional Lender as Leasehold Mortgagee; provided, that Tenant, at the time any such Leasehold Mortgage shall be made and delivered, shall not be in default in any of the covenants or agreements herein contained to be kept, observed and performed by Tenant, and provided further that, prior to completion of construction of the Saks Improvements and issuance of a Certificate of Completion therefor in accordance with the terms of the Disposition Agreement, no Leasehold Mortgage shall be for an amount in excess of the value of the Tenant's leasehold interest in the Demised Premises. Any Leasehold Mortgage shall contain a clause or clauses to the effect that it conveys to the Leasehold Mortgagee, and to the holder of any security issued thereunder, no rights in the Demised Premises greater than or extending beyond the rights of Tenant under this Lease, and that, subject to Section 18.2 hereof, said Leasehold Mortgage shall be subject to all and each

of the rights of Tenant herein and to all and each of the conditions, covenants, agreements and obligations in this Lease contained. Landlord shall, in the event Tenant makes any Leasehold Mortgage, if requested by the holder or holders thereof, deliver to such holder of the indebtedness (the name and address of which shall be furnished to Landlord by Tenant) copies of all notices sent to Tenant under and with respect to this Lease at the same time and in the same form and manner as sent to Tenant and in the event Landlord shall fail to do so, and as often as the same shall occur, it shall be deemed that such notice shall not have been given to Tenant. In the event Tenant shall be in default under this Lease and Landlord shall notify in writing the holder or holders of record of any such Leasehold Mortgage of the same and any other holder who shall have requested copies of notices pursuant to this Section 18.1, then for a period of thirty (30) days after the giving of such notice such holder shall have the right to cure such default for the account of Tenant and, if more than thirty (30) days shall be required to cure the same with reasonable diligence, such holder shall have such additional time (beyond said thirty (30) days) as may be reasonably necessary to cure the same. Landlord shall not be liable for failure to give any such notice, but if Landlord shall fail to notify such holder of the existence of a default hereunder, the time within which such holder shall have the right to cure such default shall not commence to run until such holder shall have been notified of such default by Landlord. In the

event this Lease shall be terminated at any time during the term hereof by reason of a default by Tenant which shall be incurable by the Leasehold Mortgagee, then Landlord agrees to enter into a new lease with such Leasehold Mortgagee or with any nominee of such Leasehold Mortgagee (which nominee may have a nominal capital), for the remainder of the term of this Lease effective as of the date of such termination, upon all the same terms and conditions as are contained in this Lease (except that such Leasehold Mortgagee, or its nominee, shall not be required to use the Tenant's trade name in connection with its operation of the Demised Premises); provided (i) such Leasehold Mortgagee makes written request upon Landlord for such new lease within sixty (60) days after the giving of such notice of termination and such written request is accompanied by payment to Landlord of all amounts then due to Landlord of which Landlord shall have given the Leasehold Mortgagee notice, (ii) such Leasehold Mortgagee pays or causes to be paid to Landlord at the time of the execution and delivery of such new lease any and all additional sums which would at the time of the execution and delivery thereof be due under this Lease but for such termination less the net income from the Demised Premises, if any, collected by Landlord subsequent to the date of the termination of this Lease and prior to the execution and delivery of such new lease, and (iii) such Leasehold Mortgagee agrees to cure, within thirty (30) days after the execution and delivery of such new lease, all uncured Events of Tenant's Default of which Landlord shall have

given the Leasehold Mortgagee notice (except any Event of Tenant's Default which is not capable of being cured by a Leasehold Mortgagee, even if possession of the Demised Premises were obtained, which Event of Tenant's Default, if any, shall be deemed to have been waived), or if any such Event of Tenant's Default cannot be cured within such period, such Leasehold Mortgagee agrees to commence, within such period, to cure such Event of Tenant's Default and thereafter pursues the same with due diligence.

Section 18.2. Liability of Leasehold Mortgagee: No Leasehold Mortgagee shall be liable for any of Tenant's obligations hereunder, unless and until such Leasehold Mortgagee shall acquire Tenant's interest in this Lease. In no event and at no time, however, shall any Leasehold Mortgagee or any person, firm or corporation claiming through or under such Leasehold Mortgagee be liable for Tenant's obligations respecting the name under which the business being conducted in the Saks Improvements shall be operated. In the event the Leasehold Mortgagee shall acquire Tenant's interest in this Lease as a result of a sale under such Leasehold Mortgage pursuant to a judgment of foreclosure and sale, or through any transfer or assignment in lieu of foreclosure, or through settlement of or arising out of any pending or contemplated foreclosure action, or otherwise, such Leasehold Mortgagee shall have the privilege of transferring its interest in this Lease to any other person, firm or corporation, including but not limited to a nominee of such

Leasehold Mortgagee (which nominee may have a nominal capital) all without the prior consent of Landlord and free and clear of any control of Tenant, and such Leasehold Mortgagee shall be relieved of any liability arising under this Lease from and after such transfer, provided that such transferee shall have entered into an agreement reasonably satisfactory to Landlord whereby such transferee agrees that from and after such transfer it shall be liable for Tenant's obligations under this Lease.

Section 18.3. Third Party Rights of Agency: Notwithstanding the foregoing, in the event of a failure of the parties to complete construction of the Saks Improvements in accordance with the terms of the Disposition Agreement, the right of any Leasehold Mortgagee to complete construction of the Saks Improvements shall be subject to Section _____ [6.5(C)] of the Disposition Agreement. In the event that prior to completion of the Saks Improvements and issuance of a Certificate of Completion therefor in accordance with the provisions of the Disposition Agreement, a Leasehold Mortgagee shall come into possession of Tenant's interest in this Lease, through foreclosure, assignment in lieu of foreclosure or otherwise, and such Leasehold Mortgagee shall fail to complete or be prevented by the Agency from completing the Saks Improvements as provided in Section _____ [6.7(C)] of the Disposition Agreement, the Agency shall (and every Leasehold Mortgage instrument made by Tenant shall so provide) have the option of either paying to the Leasehold Mortgagee the amount of its outstanding Leasehold Mortgage debt

and the interest and the other charges accrued thereunder at the time of such payment and obtain an assignment of such debt and of the Leasehold Mortgage, or, in the event ownership of Tenant's interest in this Lease has vested in such Leasehold Mortgagee or an affiliate or subsidiary of or agent for such Leasehold Mortgagee by way of foreclosure or action in lieu thereof, the Agency or its designee shall be entitled to a conveyance to it of such interest upon payment to the holder of such Leasehold Mortgage of an amount equal to the sum of:

- (i) the Leasehold Mortgage debt at the time of foreclosure or action in lieu thereof (less all appropriate credits, including, without limitation those resulting from collection and application of rentals received by it);
- (ii) all expenses with respect to the foreclosure;
- (iii) the net expenses, if any (exclusive of general overhead), incurred by such holder in and as a direct result of the subsequent management of the Saks Improvements;
- (iv) the costs of any permitted improvements made by such Leasehold Mortgagee; and
- (v) an amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the Leasehold Mortgage debt and such debt had continued in existence. The Agency shall be

an express third party beneficiary of the covenants of this Section 18.3.

Section 18.4. Landlord's Mortgage: Landlord covenants that any Mortgage which Landlord may place on its fee interest in the Demised Premises or on its interest in the remainder of the Developer Improvements shall be subject and subordinate to this Lease, and Landlord covenants that any Mortgage on its Landlord's interest in the Demised Premises and/or the Developer Improvements will so provide.

ARTICLE XIX

MECHANIC'S LIENS

Neither Tenant nor Landlord shall permit any mechanic's, laborer's or materialman's lien to be filed at any time against the Demised Premises or any part thereof in connection with the work to be performed by them on the Demised Premises under the terms of this Lease. If any such lien shall be filed in connection with the work to be performed by a party hereunder, such party shall promptly cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. If such party shall fail to cause such lien to be so discharged then, in addition to any other right or remedy which the other party may have, such other party may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings, and in any such event such party shall be entitled, if it so elects, to

compel the prosecution of an action for the foreclosure of such lien by the lienor and to pay the amount of the judgment in favor of the lienor with interest, costs and allowance. Any amount so paid by a party to remove a lien permitted or caused to be filed by the other party and all costs and expenses (including reasonable counsel fees) incurred by such party in connection therewith, together with interest thereon at the Default Rate from the respective dates of such party's making of the payment or incurring of the cost and expense, shall be repaid by the party failing to remove the lien on demand of the other party, and in the case of any such amounts owed by Tenant to Landlord shall constitute Additional Rent under this Lease.

ARTICLE XX

TITLE TO THE SAKS IMPROVEMENTS

The Saks Improvements erected within the Demised Premises and all alterations, additions, equipment and fixtures built, made or installed by Tenant in, on, under or to the Saks Improvements or elsewhere on the Demised Premises shall be the sole property of Tenant until the expiration or other termination of the term hereof for any reason whatsoever. The Saks Improvements and all of said alterations, additions, equipment, including air conditioning equipment and fixtures (other than trade fixtures, operating equipment, including but not limited to moveable machinery, and other personal property of Tenant) shall be deemed to be and shall automatically become the property of Landlord, without cost or charge to Landlord, upon the expiration or other termination of the term hereof for any reason whatsoever.

ARTICLE XXI

TENANT'S COMMON AREA CONTRIBUTIONS

Section 21.1. Amount of Contributions: Commencing with the Opening Date and continuing through the day before the third anniversary of the Opening Date, Tenant will pay to Landlord an amount equal to fifty cents (\$.50) per square foot of Floor Area in the Demised Premises as Tenant's contribution to Common Area Maintenance Costs (hereinafter "Tenant's Initial Common Area Contribution"). Tenant's Initial Common Area Contribution shall be adjusted on the third anniversary of the Opening Date and at three year intervals thereafter during the term of this Lease, for so long as Landlord shall manage and maintain the Common Area on Blocks 60 and 61, to an amount equal to Tenant's Common Area Contribution multiplied by a fraction, the numerator of which is the total amount of Common Area Maintenance Costs for the last complete Lease Year prior to the date of such adjustment and the denominator of which is the total amount of Common Area Maintenance Costs for the first complete Lease Year following the Opening Date.

Section 21.2. Payment of Contributions: Tenant's payment of its allocated portion of Common Area Maintenance Costs pursuant to Section 21.1 shall be made in twelve (12) equal monthly payments no later than the fifteenth (15th) day of each calendar month, and shall be deemed to be Additional Rent under this Lease.

Section 21.3. Books and Records: Landlord shall keep accurate books and records with respect to Common Area Maintenance Costs, which books and records will be available for inspection by Tenant or Tenant's authorized representatives during business hours upon reasonable prior notice to Landlord. Landlord shall maintain its books and records pertaining to Common Area Maintenance Costs for any Lease Year for not less than three (3) years from the expiration of such Lease Year. All books and records pertaining to Common Area Maintenance Costs shall be kept on the accrual basis of accounting and in accordance with generally accepted accounting principles.

ARTICLE XXII

TITLE INSURANCE

Landlord shall cause to be delivered to Tenant at the time of execution of this Lease a certificate of title of Safeco Title Insurance Company or other title insurance company reasonably acceptable to Tenant binding said title company to issue a policy of title insurance, subject only to the matters set forth in Exhibit D, insuring Tenant's interest in the Demised Premises, including the rights of Tenant in the Common Area arising under this Lease, in the amount of Ten Million Dollars (\$10,000,000) or such lesser sum as said title company shall determine to be the maximum insurable value of Tenant's leasehold estate under this Lease and committing said title company to increase said policy to Ten Million Dollars (\$10,000,000) on completion of Saks Improvements. The premiums for such policy of

title insurance shall be shared by Landlord and Tenant on the following basis: Landlord shall pay that portion of such premium for title insurance, without special endorsements, for title insurance coverage up to One Million Dollars (\$1,000,000) and Tenant shall pay the balance of such premium.

ARTICLE XXIII

SHORT FORM LEASE

Landlord acknowledges that Tenant may wish to record this Lease or a memorandum or short form thereof for record. Landlord represents and agrees that Landlord will execute and deliver such memorandum or short form agreement as Tenant shall reasonably request from Landlord in order to record the provisions of this Lease which Tenant may deem necessary or desirable to make a matter of record; provided, however, that the relations between Landlord and Tenant shall be governed solely by the provisions of this Lease and not by any memorandum or short form which may be executed, delivered and recorded for the purpose of record. All recording fees, taxes or charges shall be borne by Tenant.

ARTICLE XXIV

MERCHANTS' ASSOCIATION

(a) In order to maximize retail sales in general for the retail tenants of the Project and for Tenant, Landlord will establish, prior to the Opening Date, a merchants' association ("Merchants' Association") which shall have the responsibility to formulate and carry out an ongoing program of promotion for the

Project. Tenant shall become a member of the Merchants' Association for at least three (3) years following the Opening Date and will contribute to the operations of the Merchants' Association, at such times and in such manner as may be established in the by-laws of the Merchants' Association, at the rate of seven cents (\$.07) per square foot of Floor Area of the Demised Premises; provided, however, that Tenant's membership in the Merchants' Association shall be contingent upon (i) seventy-five percent (75%) of the tenants in Landlord's Specialty Retail Areas being members of the Merchants' Association and making financial contributions thereto, and (ii) Landlord's contribution to the Merchants' Association in the amount equal to twenty percent (20%) of the aggregate contributions of all other members of the Merchants' Association. After expiration of three (3) years from the Opening Date, Tenant may maintain membership in or withdraw from the Merchants' Association in its discretion; provided, however, that in the event the Tenant elects to maintain its membership in the Merchants' Association, Tenant's financial contribution to the Merchants' Association shall be initially increased proportionately commensurate with prior increases in the contributions of other members of the Association and thereafter shall increase at a rate proportionately commensurate with increases in the contributions of members of the Merchants' Association generally. Notwithstanding the foregoing, in no event shall Tenant's contribution per square foot of Floor Area to the Merchants' Association at any time be

higher than the contribution per square foot of Floor Area paid by any other member of the Merchants' Association.

(b) In addition to annual contributions as described in the foregoing subsection (a), Tenant shall cooperate with Landlord to plan and implement grand opening ceremonies for the Initial Project and in connection therewith shall devote to the opening of the Saks Improvements for purposes of pre-opening advertising, publicity and marketing the level of resources customarily devoted by Tenant to such purposes in connection with the opening of comparable "Saks Fifth Avenue" stores.

ARTICLE XXV

ARBITRATION

Section 25.1. Disputes Subject to Arbitration:

Whenever any matter or dispute is to be determined by arbitration as provided in this Lease, such matter shall be submitted for resolution by arbitration as provided in this Article, but nothing herein contained shall be deemed to limit the right of a Party to proceed under Article XVII hereof. Any such arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association by a panel of three (3) neutral arbitrators with experience in commercial real estate appointed in the manner specified in such Rules, except for disputes over permitted assignments set forth in Article XI which shall be submitted to one (1) arbitrator in accordance with expedited arbitration procedures, and except for disputes over Fair Market Value and Fair Rental Value which shall be determined

in accordance with the Real Estate Valuation Rules of the American Arbitration Association.

In the event that at the time of any arbitration hereunder, the American Arbitration Association is no longer in existence for the purpose of determining the method of conducting the arbitration including, but not limited to, the manner of selecting the arbitrators, the term "American Arbitration Association" as used in this Article shall include any organization which at the time in question is performing the services with respect to commercial arbitration in the State of Oregon being performed by the American Arbitration Association on the date of this Lease.

Section 25.2. Arbitration Procedures: In determining any question, matter or dispute before them, the arbitrators shall apply the provisions of this Lease without varying therefrom in any respect and they shall not have the power to add to, modify or change any of the provisions of this Lease.

Section 25.3. Arbitration Award: Any award, decision or determination rendered in accordance with the provisions of this Article in an arbitration held under this Lease shall be controlling and decisive of any question, matter or dispute thereafter arising under this Lease, if and to the extent that such question, matter or dispute thereafter arising involves the same issue between the same Parties.

The award rendered in such arbitration shall be binding on the Parties thereto and judgment upon the award may be entered by a court having jurisdiction thereof.

Section 26.4. Covenants and Conditions: Each provision hereof shall be deemed both a covenant and a condition.

Section 26.5. Successors and Assigns: Subject to the other provisions of this Lease, this Lease and all of the covenants and provisions thereof shall inure to the benefit of and be binding upon the respective legal representatives, successors and assigns of the parties hereto; provided, however, that in the event that the Agency shall succeed to Landlord's interest in the Saks Parcel pursuant to the provisions of the Disposition Agreement the Agency shall have no obligation with respect to construction of the Saks Improvements pursuant to Article IV of this Lease.

Section 26.6. No Brokers: Tenant warrants and represents that Tenant has dealt with no real estate broker with respect to this Lease or the negotiation thereof. Landlord agrees that Tenant shall not be responsible for the payment of any commission or brokerage fee due and owing to any broker or agent dealing with Landlord with respect to this Lease or the negotiation thereof, including any extensions or renewals.

Section 26.7. Headings: The headings in and table of contents to this Lease are solely for convenience in locating its various provisions and shall not be considered or referred to in resolving questions of interpretation or construction.

Section 26.8. Counterparts: This Lease may be executed in several counterparts each of which shall be deemed an original, and such counterparts shall constitute but one and the same instrument.

Section 26.9. Unavoidable Delay: Each party hereto shall be excused from performing any of its obligations or undertakings provided in this Lease (except any of its obligations to pay any sums of money under the applicable provisions hereof) for so long as the performance of such obligation is prevented or delayed by any cause which is beyond the control of such party, including but not limited to such of the following as may be beyond the control of such party: Acts of God; acts of the other party; fire; earthquake; flood; explosion; action of the elements; war; invasion; insurrection; riot; mob violence; sabotage; malicious mischief; inability to procure or general shortage or rationing or regulation of labor, equipment, facilities, sources of energy (including, without limitation, electricity, gas, gasoline or steam), materials or supplies in the open market; failure of transportation; strikes; lockouts; action of labor unions; condemnation; requisition; order of government or civil or military or naval authorities; litigation or administrative proceedings involving a party or others relating to zoning, subdivision, approval of Plans and Specifications or other governmental action or inaction pertaining to the Complex or any portion thereof; inability to obtain government permits or approvals; or any other cause, whether similar or dissimilar to the foregoing, not within the control of such party; provided, however, that no party shall be entitled to relief under this Section by reason of any event unless such party shall have given the other parties notice of

such event and the nature of such event within a reasonable time after the occurrence of such event. Any delay or cause excusing performance pursuant to the terms of this Section 26.9 is referred to herein as an "Unavoidable Delay".

Section 26.10. Covenants Running With the Land:

Subject to Section 26.5, all the covenants, agreements, conditions and restrictions set forth in this Lease are intended to be and shall be construed as covenants running with the land, binding upon, inuring to the benefit of and enforceable by the parties hereto and all subsequent owners of their respective interests or estates in the Demised Premises or any part thereof, but shall not be enforceable by any tenant, subtenant, licensee or concessionaire of any such party or subsequent owner.

Section 26.11. Additions to Developer Parcels:

Anything in this Lease to the contrary notwithstanding, Landlord covenants and agrees that no expansion of the Project by addition to the Developer Parcels of land which is not part of the Entire Site:

- (i) will unreasonably interfere with efficient automobile and pedestrian traffic flow into and out of the Initial Project or between the Saks Improvements and Retail Concourse and other portions of the Common Area of the Initial Project or the public streets immediately adjacent to Block 60; or

- (ii) will unreasonably interfere with the efficient operation of the Saks Improvements, including its utilities or its visibility from within the Initial Project or from public streets adjacent thereto; or
- (iii) will result in an adverse change of the entrances and exits which substantially serve the Saks Improvements.

Landlord agrees to use diligent good faith efforts to cause such construction to have as little impact as reasonably practicable on vehicular and pedestrian access to and from the Saks Improvements.

Section 26.12. Partial Invalidity: If any term, covenant or condition of this Lease or the application thereof to any person or circumstances shall, to any extent, be illegal, invalid or unenforceable because of present or future laws or any rule or regulation of any governmental body or entity or become unenforceable because of judicial construction, the remaining terms, covenants and conditions of this Lease, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

Section 26.13. Estoppel Certificates: Each party agrees that at any time and from time to time at reasonable

intervals, within ten (10) days after request by the other party, it will execute, and deliver to the requesting party, or to any prospective mortgagee, assignee or subtenant, designated by such requesting party, a certificate stating (i) that this Lease is unmodified and in force and effect (or if there have been modifications, that this Lease is in force and effect as modified, and identifying the modification agreements, or if this Lease is not in force and effect the certificate shall so state); (ii) whether or not there is any existing default by the requesting party in the performance of any of its obligations under this Lease and whether or not there is any other existing default by either party under this Lease with respect to which notice of default has been served, and if there is any such default, specifying the nature and extent thereof; and (iii) whether or not there are any setoffs, defenses or counterclaims against enforcement of the obligations of the requesting party.

Section 26.14. Manner of Giving Notice: Any notice, demand, consent, approval, statement or request given, served, made or obtained or required to be given, served, made or obtained hereunder shall be in writing and shall be sent by mailing the same by registered or certified mail, postage prepaid, addressed as follows:

if to Landlord: Rouse-Portland, Inc.
10275 Little Patuxent Parkway
Columbia, Maryland 21044
Attention: General Counsel

if to Tenant:

c/o Batus Retail Group
1270 Avenue of the Americas
New York, New York 10020
Attention: Senior Vice President
Corporate Real Estate

with a copy to:

Chairman of the Board
Saks & Company
611 5th Avenue
New York, New York 10022

or to such other address or addresses or person or persons as either Party may hereafter designate by like notice. Any such notice, demand, consent, approval, statement or request shall be deemed to have been given, served, made or obtained when deposited in a United States general or branch post office enclosed in a registered or certified prepaid wrapper addressed as hereinabove provided.

Section 26.15. Equal Treatment: Landlord will not discriminate against Tenant in the treatment accorded to it with respect to the time when, and the manner in which the Common Area will be operated, maintained, repaired, or furnished with any service, including the restoration of any service which may have been interrupted or impaired.

Section 26.16. Consent Orders: Landlord and Tenant acknowledge that certain of Landlord's activities with respect to the development of the Project are or may be subject to the provisions of a certain Agreement Containing Consent Order to Cease and Desist with the Federal Trade Commission of the United States in the matter of The Rouse Company, a corporation, File No. 721,0067 and that certain of Tenant's activities with respect to the Demised Premises are or may be subject to a certain

Agreement Containing Consent Order to Cease and Desist with the Federal Trade Commission of the United States in the matter of Gimbel Brothers, Inc., a corporation, Docket No. 8885 (said Agreements being referred to herein as the "Consent Orders" or individually as a "Consent Order"). Notwithstanding anything herein to the contrary, neither party shall be required to do any act as the result of any term, provision, covenant or agreement herein which would constitute a violation or breach of the Consent Order by which it is bound or to which it is subject.

Section 26.17. Reciprocal Easement Agreement and Condominium Regime: At the election of the Landlord, Landlord may subject its interest in all or part of the Entire Site to a reciprocal easement agreement or a commercial condominium regime or both under Oregon law and the Tenant agrees to execute such amendments to this Lease as may be necessary to effectuate such reciprocal easement agreement or condominium regime, including, without limitation, entering into a reciprocal easement agreement and/or a separate condominium declaration with one or more entities other than Landlord and executing related consents and agreements, provided that no such agreement increases any of Tenant's obligations or reduces any of Tenant's rights and remedies under this Lease without Tenant's prior written consent.

ARTICLE XXVII

EASEMENTS

Section 27.1. Definitions and Documentation:

(a) Tenant and Landlord acknowledge that the development of the Project requires the granting and reservation by

Landlord of certain easements for the benefit of the Parcels, their successors and assigns. For the purposes of this Article, the following will apply:

(1) Where Landlord is granting an easement, Landlord and its successor and assigns in interest are a "Grantor".

(2) The grant of an easement by Grantor in, over or through all or a portion of a Parcel shall bind and burden such Parcel, which Parcel shall, for the purpose of this Lease, be the servient tenement (where only a portion of the Parcel is bound and burdened by the easement, only that portion shall be the servient tenement). The Parcel receiving the benefit of an easement, shall, for the purpose of this Lease, be the dominant tenement (where only a portion of the Parcel is so benefited, only that portion shall be the dominant tenement). The Parcel (or portion thereof) upon which an easement may be granted or reserved by Landlord may be located anywhere on the Entire Site. The party to whom the easement is granted, and its successors and assigns, shall for the purpose of this Article be "the Grantee".

(3) To the extent that any easement rights granted under this Article benefit the Saks Parcel, for the purpose of this Article, Tenant shall be deemed to be a Grantee. The benefits and burdens of all easements, covenants and agreements contained in this Article shall run with and bind the respective dominant and servient tenements.

(4) The term "Separate Utility Facilities" means the following (i) sewers (including, without limitation, storm drainage and sanitary sewer systems), natural gas systems, domestic water systems, fire protection water systems, electrical systems, safety systems, telephone systems, cable television systems, (ii) cooling towers and condenser water pipes servicing the Demised Premises to the extent located on the roof of the Office Improvements, and (iii) all other utility systems and facilities connecting Common Utility Facilities to the Improvements or any portion thereof, when designed or intended for the exclusive use of any single Party.

(5) The word "in" with respect to an easement granted "in" a particular Parcel means, as the context may require, "in", "to", "on", "over", "through", "upon", "across" and "under", or any one or more of the foregoing.

(6) Unless provided otherwise, all easements granted hereunder are nonexclusive and irrevocable.

(7) All easements shall terminate upon the termination of this Lease.

(b) Landlord reserves the right to record an instrument evidencing easements granted hereunder. Landlord and Tenant agree that upon the termination of any easement (in whole or in part) or its release in respect of all or any part of any Parcel, the same shall be deemed to have been terminated or released without the necessity of confirmation by any other document. However, upon the request of Tenant or Landlord or any Grantor or

ARTICLE XXVI

MISCELLANEOUS

Section 26.1. No Partnership: It is the intention of the parties to create the relationship of Landlord and Tenant and no other relationship whatsoever and nothing herein shall be construed to constitute the parties hereto partners or joint venturers, or to render either party hereto liable for any of the debts or obligations of the other party.

Section 26.2. No Other Understandings: There are no oral agreements or understandings between the parties hereto affecting this Lease and this Lease supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings between Landlord and Tenant, and none thereof shall be used to interpret or construe this Lease. This Lease cannot be amended, changed or terminated orally but only by an agreement in writing signed by the parties.

Section 26.3. No Waiver: The failure of either party hereto to insist upon a strict performance of any of the terms, provisions, conditions or covenants herein shall not be deemed a waiver of any subsequent or continuing breach of the terms, provisions, conditions or covenants herein contained. The receipt by either party from the other of any payment, or the acceptance of performance of anything required by this Lease to be performed, with knowledge of the breach of a term, provision, condition or covenant of this Lease shall not be deemed a waiver of such breach.

Grantee, Tenant or Landlord will sign and acknowledge a document memorializing the existence (including the location and any conditions to the granting or exercise), or the termination (in whole or in part), or the release (in whole or in part), as the case may be, of any easement, provided the form and substance of the document shall be reasonably acceptable to each party.

Section 27.2. Easements for Access to Common Area:

(a) Landlord hereby grants to Tenant as Grantee the following easements:

- (1) during the hours prescribed under Section 6.1(b) of this Lease, pedestrian ingress to and egress from the Saks Improvements where it fronts onto the Block 60 Common Lobby Area and the Pedestrian Bridge;
- (2) easements through such portions of the Common Area as may be designated by Landlord to the trash compactor used in common by Landlord and Tenant and to Tenant's subsurface chiller room;
- (3) easement for the loading and unloading of trucks and related truck and service elevators and delivery of goods and materials to its Improvements in and through such portions of the Common Area as shall be designated by Landlord for such loading, unloading and delivery;

(4) to the extent shown on the Approved Final Plans, easements to have its Improvements connect to and open on, and exit into, any fire corridors, service corridors and other corridors included in Common Area and exits therefrom, between any such fire corridors, service corridors and other corridors included in Common Area, and all entrances and exits between such Improvements and/or such corridors and the outside.

(b) Landlord hereby reserves unto itself as Grantee for the benefit of Landlord and any successors in interest in the Office Tower Parcel or Office Improvements or the Specialty Retail Area the following easements as to the Saks Parcel:

- (1) during the hours prescribed under Section 6.2 of this Lease, pedestrian ingress to and egress from the Saks Improvements where it fronts onto the Block 60 Common Lobby Area and the Pedestrian Bridge; and
- (2) to the extent shown on Approved Final Plans, easements to have its Improvements connect to and open on, and exit into, any fire corridors, service corridors and other corridors included in Common Area and exits therefrom between any such fire corridors, service corridors and other corridors included

in Common Area, and all entrances and exits between such Improvements and/or such corridors and the outside.

(c) Enjoyment of the easements granted by this Section 27.2 shall commence on the earlier to occur of the date of recording of a short form memorandum of this Lease in the Official Records of the City of Portland, Oregon or the date the Improvements burdened by each easement are open for business or otherwise obligated under this Lease to be open for business.

(d) Landlord hereby reserves the right to eject from the portions of the Common Area or other areas designated for the use by others on its Parcels any persons not authorized to use the same. In addition, Landlord reserves the right to close off the Common Area or other areas designated for the use by others on its Parcels for such reasonable periods of time as may be legally necessary to prevent the acquisition of prescriptive rights by anyone; provided, however, that before closing off any part of the portions of the Common Area or other areas designated for the use by others as provided above, Landlord must give notice to Tenant of its intention to do so and must coordinate its closing with the activities of Tenant so that no unreasonable interference with the operation of the Saks Improvements shall occur.

(e) The easements provided for in this Section 27.2 are subject to the rights to use the Common Area or other areas designated for the use by others for other purposes provided for

in this Lease or under a reciprocal easement agreement or condominium regime documentation entered into pursuant to Section 26.17 of this Lease and recorded in the Official Records of the City of Portland, Oregon.

Section 27.3. Easements for Utility Facilities:

(a) Landlord hereby grants to Tenant and reserves for itself as Grantee easements in such portions of the Saks Parcel or the Developer Parcels, as the case may be, from time to time, as may be necessary for the installation, use, operation, maintenance, repair, replacement, relocation, and removal of Separate Utility Facilities and Common Utility Facilities serving an Improvement located on the Entire Site. Landlord is responsible for the initial installation of all Common Utility Facilities, and shall be responsible for the maintenance and repair of all Common Utility Facilities as provided in Section 9.8 hereof.

(b) Except as may otherwise be provided herein, the location of Separate Utility Facilities and Common Utility Facilities shall be in the locations shown on Exhibit C and as more particularly shown on the Approved Final Plans, unless otherwise approved by Tenant. No Separate Utility Facilities or Common Utility Facilities shall interfere with the operation of the servient tenement or affect the structural integrity of the Improvements on the servient tenement.

(c) Except as otherwise provided herein, the Grantee of any easement for Separate Utility Facilities under this Section

shall be responsible, as between such Grantee and the Grantor, for the installation, maintenance, repair, replacement, relocation and removal of all Separate Utility Facilities installed by or on behalf of the Grantee within such easements, as well as for all Separate Utility Facilities installed by the Grantee on its own Parcel. After initial installation thereof is completed, any installation, maintenance, repair, replacement, relocation and removal of Separate Utility Facilities that is required to be performed by the Grantee must be performed by the Grantee and then only after two (2) weeks' advance notice to the Grantor of the Grantee's intention to do such work. However, in the case of an emergency, any such work may be immediately performed after such advance notice to Grantor as is practicable under the circumstances. Except in the case of emergency, access to utilities serving a Grantee's Improvements shall not be in the selling area of the Grantor's Improvements unless approved by the other party. Grantor shall also have the right, in the case of an emergency, to repair or replace any Separate Utility Facilities or Common Utility Facilities within its own parcel and charge the user (or users, as the case may be) for the costs of such repair or replacement. In addition, the parties agree that all such installation, maintenance, repair, replacement, relocation and removal shall be performed in a manner that causes as little disturbance to the parties as may be practicable under the circumstances and any and all portions of the Grantor's Parcel which may have been excavated, damaged or otherwise

disturbed as a result of such work shall be restored at the sole cost and expense of the users to essentially the same condition as the same were in prior to the commencement of any such work. The Grantee shall hold the Grantor harmless from all loss, liability, cost or expense incurred in connection with the Grantee's exercise of Separate Utility Facilities easements under this Section, unless occasioned by the Grantor's sole negligence or willful misconduct.

(d) The Grantor of any easement for Separate Utility Facilities under this Section may use the Separate Utility Facilities as so installed, provided the increase in costs incurred in order to make such Separate Utility Facilities adequate to serve any such additional use by the Grantor shall be borne by such Grantor and, provided, further, that such Grantor complies with the requirements of subparagraphs (e)(1), (e)(2) and (e)(3) of this Section 27.3.

(e) The Grantor of any easement under this Section may, if reasonably required, relocate on its Parcel any Separate Utility Facilities or Common Utility Facilities installed thereon under any easement granted by it, provided such relocation:

- (1) May be performed only after the Grantor has given the Grantee thirty (30) days' notice of its intention to relocate such facilities and has set forth in such notice the reasons why such relocation is reasonably required;

- (2) Shall not interfere with or diminish the utility services to the Grantee; however temporary interferences with and diminutions in utility services shall be permitted if:
 - (i) they occur during the hours that least interfere with the business of the Grantee,
 - and (ii) the Grantor promptly reimburses the Grantee for the cost, expense and loss (excluding any estimated unrealized operating profits) incurred by the Grantee as a result of such interferences or diminutions, or both;
- (3) Shall not reduce or unreasonably interfere with the usefulness or function of the facilities in question; and
- (4) Shall be performed at the sole cost of the Grantor.

Section 27.4. Construction and Support Easements:

(a) Landlord hereby grants to Tenant for the Saks Parcel and reserves for itself as Grantee for the Office Tower Parcel and the Specialty Retail Area easements for:

- (1) The installation, use, maintenance, repair, replacement and removal of the following common construction improvements: common walls, common footings, common structural supports and foundations extending into the Parcel of another party as shown on the

Approved Final Plans (plus such minor encroachments as may arise as a result of construction errors); provided, however, that such common construction Improvements may extend vertically into the parcel of another party to the extent shown in the Approved Final Plans;

- (2) The attachment and, subject to the provisions below, support of Improvements constructed on the Grantee's Parcel (including, without limitation, the Pedestrian Bridge) to and on Improvements of the Grantor, provided the manner of attachment shall be designed in accordance with the Approved Final Plans.
- (3) The right of support and the right of use in respect of and to maintain on the Grantor's Parcel the drains, utility lines and conduits, stairways, elevator shafts, mechanical equipment and pits and other Improvements required in connection with use of or access to such Grantee's Improvements, all as set forth in Exhibit C and more particularly described in the Approved Final Plans or Tenant's Drawings, where applicable, provided for herein in connection with the initial construction of the Improvements, together with the right

of access to install, use, maintain, repair, replace and remove such facilities, subject to the provisions of this Section;

- (4) Where Improvements on a Parcel are built over the Improvements on another Parcel, the right of support and the right of use in respect of the Structural Support System of the Improvements on the lower Parcel, to join and to obtain load-bearing support from said Structural Support System in accordance with the Approved Final Plans, and to use said Structural Support System for all necessary access to said Structural Support System for the inspection, maintenance, repair and replacement of said Structural Support System and the Improvements above the Grantor's Parcel, provided that such use shall not materially interfere with the use of the Grantor's Parcel; and
- (5) The installation, use, maintenance, repair, replacement and removal of any Improvements such as entrances, vents, marquees, canopies, lights and lighting devices, awnings, alarm bells, electrical or similar vaults, roof flashings, roof and building overhangs and other overhangs encroaching upon the Parcel of

the Grantor, provided such encroachments described in this subparagraph only encroach as shown on the Approved Final Plans (plus such minor encroachments as may arise as a result of construction errors) and are attached to buildings constructed by the Grantee;

- (6) In addition to the foregoing, Landlord and Tenant agree only to permit to occur on its Parcel such unavoidable and reasonable dust, dirt, construction noise, visual obstructions or construction barricades which might temporarily interfere with the operation of any Improvements already constructed on the Entire Site arising out of or in connection with any future construction to be carried out in the Entire Site subject to the provisions of Article IV of this Lease.

(b) The Approved Final Plans showing the approximate location of the easements granted under this Section shall constitute designation by each Grantor of the portions of its Parcel and Improvements to be used for such easements.

(c) Each Grantee further agrees to use due care in the exercise of the rights granted in this Section and to comply with all conditions of any approval, permit or license of any public body having jurisdiction and, in the event the exercise of the rights granted under this Section requires Grantee to enter upon

the Parcel of the Grantor, to first obtain the consent of the Grantor as to the methods and timing in the exercise of such rights, which consent shall not be unreasonably withheld or delayed.

(d) The exercise of easements under this Section must not result in damage or injury to the Improvements of any other Party and must not unreasonably interfere with or interrupt the business operations or the construction or Restoration conducted by any other Party in the Entire Site. In addition, each Grantee, at its expense, shall promptly repair, replace or restore any and all Improvements of the Grantor which have been damaged or destroyed by the Grantee in the exercise of the easements granted under this Section and shall hold the Grantor harmless from all loss, claim, damage, liability, cost or expense (including attorneys' fees) incurred in connection with the Grantee's exercise of said easements, unless occasioned by the Grantor's sole negligence or willful misconduct.

(e) Subject to the limitations contained in Section 27.8 hereof:

(1) Each party severally covenants that if all or any part of the Improvements on its Parcel are removed or destroyed at a time when it is not required to Restore the same under this Lease, it will leave in place any Common Building Components on its Parcel (or portions thereof) not destroyed if immediately before such removal or destruction, such Common Building Components (or portions thereof) were shared jointly

between one or more of the parties hereto. Each party shall be required to leave such Common Building Components in place only so long as the Improvements of the Grantee remain in existence and reasonably require such easements. The Grantee's Improvements shall be deemed to remain in existence even if damaged or destroyed if the Grantee commences Restoration thereof within one (1) year of the date of such damage or destruction, subject to Unavoidable Delay, and thereafter diligently pursues such Restoration to completion.

(2) Each party severally covenants that in the event of damage or destruction to the Improvements on its Parcel which are Common Building Components for a Grantee's Improvements, and which said party is not required to Restore under the provisions of this Lease, it shall, nonetheless, Restore such Common Building Components to the extent of insurance proceeds received and the easements of the benefitted Parcel shall be left in place; provided, however, that such easements and the obligation to so Restore, shall remain in existence only so long as the Improvements of the Grantee shall remain in existence and reasonably require such easements. In the event the party required to Restore under this subsection shall fail to diligently commence and complete such Restoration (subject to Unavoidable Delay), the Grantee is hereby granted an easement for access in the servient tenement for the purpose of the Restoration of such Common Building Components. Costs incurred by any such Grantee shall be paid by the party which would have been required to Restore under this subsection.

Except as provided in this subsection (2), nothing in this Section imposes any obligation on any Party to Restore all or any part of its Improvements beyond the Restoration obligations otherwise contained in Article XIII of this Lease.

Section 27.5. Easements to Perform Right of Self-Help:

(a) Landlord and Tenant grant to each other, and their respective employees, agents and contractors, easements to enter upon that portion of the Grantor's Parcel necessary for the purpose of performing any obligation which is required to be performed on the Grantor's Parcel (whether by Grantor or another party), but which Grantor, or such other party, fails or refuses to do after ten (10) days notice (except no notice shall be required in the event of an emergency), and which the Grantee has the right then so to perform under any other provision of this Lease.

(b) Notwithstanding the foregoing, a Grantee shall not have the right to enter into any portion of a building containing Floor Area unless required by an emergency. In exercising these easement rights, the Grantee shall perform the work in accordance with Final Plans and, subject to Unavoidable Delay, shall complete the work with reasonable promptness.

Section 27.6. Indemnification: A Grantee shall exercise its rights hereunder in such manner so as to cause a minimum of interference with the use and operation of the Grantor's Parcel and shall defend, indemnify and hold the Grantor harmless from all loss, liability, cost or expense incurred in connection with Grantee's exercise of said easements.

Section 27.7. Location of Easements: The exact location (including, where applicable, width, height and depth) of an easement granted pursuant to this Article shall be determined by Landlord with the approval of Tenant, if Grantee, and which locations shall be specifically shown on "as built" surveys. The cost of making any survey to determine such location shall be borne by the Grantee of the easement or the party requesting a change in such easement, as the case may be. Any dispute regarding such surveys shall be arbitrated in accordance with Article XXV.

Section 27.8. Termination of Easements by Abandonment: Any easement granted pursuant to this Article XXVII, or any part thereof, may be abandoned and terminated if the use thereof shall have ceased for a period of two (2) years after the Improvements relating to the use of easement have been completed and the Grantor gives written notice by United States registered or certified mail, return receipt requested, mailed to the Grantee and any record holder, if any, of any mortgage or leasehold interest of which the Grantor has actual notice in such benefitted Parcel stating that such easement has been abandoned, and places of record in the Land Records in the City of Portland, Oregon, an affidavit that such abandonment has taken place and that such notice has been properly given, and any Grantee of, or record holder of a Mortgage or leasehold interest of which the Grantor has actual notice in, the benefitted Parcel within six (6) months of the recording of such affidavit fails to place of

record in the Land Records in the City of Portland, Oregon, an affidavit that such easement has been used within such two (2) year period ("Affidavit of Use"). Any person at any time acquiring an interest in any Parcel after the first such notice described above has been placed of record shall be entitled to rely absolutely upon the failure of the person or persons receiving the first such notice to have placed of record an Affidavit of Use within six (6) month period as being conclusive evidence that such easement has been abandoned. If an Affidavit of Use is filed and the Grantor disputes same, the dispute shall be resolved by arbitration as provided in Article XXV hereof.

Section 27.9. No Merger: The easements created and the covenants herein described shall not be extinguished by merger of any or all of the ownership or leasehold interest in any Parcel in any one party.

Section 27.10. Tenant Signs and Devices:

(a) Landlord and Tenant hereby grant to each other the right and easement to install, maintain, relocate, use and operate, a sign or signs in the Block 60 Common Lobby Area, the Pedestrian Bridge, and one (1) sign in the Saks Improvements where it opens onto the Pedestrian Bridge for the purpose of directing pedestrians and/or identifying such party as the occupant of such Improvements, together with the right of access (provided the same does not unreasonably interfere with the operations of any party or any tenant) to such sign or signs by employees, agents and contractors of such party for any of the

purposes for which such right and easement is granted; provided, however, that all such signs shall at all times comply with the sign criteria developed as part of Landlord's Approved Final Plans and shall be shown on the Approved Final Plans. Any change in the number, size, location, type and intensity of lights and fixturing thereof from the Approved Final Plans, shall be subject to the approval of the party on whose Parcel the signs are located or to be located, which approval shall not be unreasonably withheld provided, however, approval of the design of the sign within the Saks Improvements shall be at Tenant's sole discretion. In no event shall any such sign interfere with or obstruct pedestrian circulation.

(b) Landlord hereby grants to Tenant the right and easement to install, maintain, relocate, use and operate in the Block 60 Common Lobby Area such protective devices and installations (the "Devices") (including, without limitation, smoke curtains, fire shutters, smoke detectors and water deluge curtains) as may be necessary for Tenant to obtain a separate minimum rate for fire insurance for its Improvements; provided, however, that the type, design and location of the Devices shall be approved by Landlord prior to the installation or any relocation thereof, which approval shall not be unreasonably withheld. Any installation of the Devices shall be shown on the Approved Final Plans and shall be accomplished at the time of construction of the Developer Improvements on Block 60, in such manner as not to interfere with such construction, and in accordance with good construction practice.

ARTICLE XXVIII

GUARANTY

Simultaneously herewith, Saks & Company has guaranteed the performance of Tenant, and The Rouse Company has guaranteed the performance of Landlord, under this Lease pursuant to the forms of guarantees attached hereto as Exhibits E and F, respectively.

ARTICLE XXIX

LANDLORD'S AGENT

Section 29.1. Designation of Landlord's Agent: If, at any time, the Demised Premises shall be held by more than one legal entity, Landlord by notice to Tenant shall designate a legally competent individual or corporation having an office and subject to service of process in the State of Oregon as Landlord's agent (hereinafter referred to as "Landlord's Agent"). All notices, payments and agreements given or made by, with or to Landlord's Agent shall be deemed to be given or made by, with, or to all of the persons constituting Landlord hereunder. Landlord's Agent may be changed at any time, by notice to that effect given to Tenant by Landlord, to any legally competent individual or corporation having an office and subject to service of process in the State of Oregon and such agent shall continue to act as Landlord's Agent until Tenant shall receive a further notice changing such agent. If, at any time hereafter while Landlord shall consist of more than one legal entity, there shall, for any reason whatsoever, be no duly designated

Landlord's Agent, then Tenant may itself, but shall not be required to, designate in Landlord's place and stead a corporation or individual having the qualifications set forth in this Section as Landlord's Agent by notice to the last duly designated Landlord's Agent, or if no Landlord's Agent has been designated, to all persons then included in the term "Landlord".

Section 29.2. Authority of Landlord's Agent: Any Landlord's Agent designated pursuant to the provisions of Section 29.1 shall act for and on behalf of Landlord under this Lease, with exclusive and full authority and power to the same extent as if it were the sole Landlord. All acts and omissions of Landlord's Agent done or omitted to be done pursuant to the provisions of this Section shall be binding upon Landlord and inure to the benefit of Tenant as if done or omitted by each and all of the persons comprising Landlord. All charges of Landlord's Agent shall be paid by Landlord. Landlord's Agent shall be the agent of Landlord, hereby irrevocably appointed for such purpose, upon whom service of any process, writ, summons, order or other mandate of any nature of any court, in any action, suit or proceeding arising out of this Lease in any court, or of any demand for, or other matter in, an arbitration, may be made, and service upon Landlord's Agent shall constitute due and proper service of any of the foregoing upon Landlord and upon each and all of the persons comprised within the term Landlord hereunder.

Section 29.3. Liability of Landlord's Agent: Landlord's Agent, in the performance of, or any failure or refusal to

perform, any matter or thing pursuant to its authority herein conferred, shall, notwithstanding any other provision contained in this Lease, be acting or failing or refusing to act solely in its capacity as agent of Landlord hereunder and not in its individual capacity, and shall not be under any personal liability in connection therewith to Tenant or Landlord except with respect to any willful misconduct of Landlord's Agent or any attorney-in-fact or officer thereof or for gross negligence in the performance of its duties to the detriment of Tenant or Landlord; provided, however, that while any individual, partnership or corporation comprised within the term Landlord shall be acting as Landlord's Agent it shall not be relieved by the provisions of this Section of any liability which it shall have as a Landlord.

IN WITNESS WHEREOF the parties hereto have caused these presents to be signed by their proper corporate officers and caused their proper corporate seals to be hereunto affixed the day and year first above written.

ATTEST:

ROUSE-PORTLAND, INC., Landlord

Assistant Secretary

Vice-President

SAKS FIFTH AVENUE-OHIO, INC.,
Tenant

STATE OF)
COUNTY OF) ss.
)

Personally appeared before me _____
and _____ who, being duly sworn, did say that they are
the _____ and _____, respectively of Rouse-
Portland, Inc. and that the foregoing was signed on behalf of
said corporation by authority of its board of directors; and
acknowledged said instrument to be its voluntary act and deed.

(SEAL)

Notary Public

My Commission Expires: _____

STATE OF)
COUNTY OF) ss.
)

Personally appeared before me _____
and _____ who, being duly sworn, did say that they are
the _____ and _____, respectively of Saks
Fifth Avenue-Ohio, Inc. and that the foregoing was signed on
behalf of said corporation by authority of its board of
directors; and acknowledged said instrument to be its voluntary
act and deed.

(SEAL)

Notary Public

EXHIBIT A

SITE PLAN

EXHIBIT B-1

LEGAL DESCRIPTION OF THE SAKS PARCEL

EXHIBIT B-2

LEGAL DESCRIPTION OF THE OFFICE TOWER PARCEL

EXHIBIT B-3

LEGAL DESCRIPTION OF THE SPECIALTY RETAIL AREAS PARCEL

EXHIBIT C

SCHEMATIC PLANS AND SPECIFICATIONS
FOR THE EXTERIOR SKIN OF SHELL BUILDING

EXHIBIT D

LIST OF TITLE EXCEPTIONS

EXHIBIT E

FORM OF SAKS & COMPANY GUARANTY

In order to induce ROUSE-PORTLAND, INC. (hereinafter referred to as Landlord) to enter into the foregoing Lease with SAKS FIFTH AVENUE-OHIO, INC. (hereinafter referred to as Tenant) dated _____, 19__ (hereinafter referred to as the Lease), the undersigned hereby guarantees to Landlord the full, faithful and timely performance by Tenant of all of the terms, covenants, conditions, representations and warranties provided in such Lease to be performed by Tenant, expressly waiving any notice of nonperformance and expressly agreeing that the validity of this guaranty and the obligations of the guarantor hereunder shall in no way be terminated, affected or impaired by reason of the assertion or non-assertion by Landlord against Tenant of any of the rights or remedies available to or reserved by Landlord. The undersigned further agrees that this guaranty shall continue in full force and effect as to any renewal, modification or extension of the Lease without the necessity for any joinder therein or approval thereof by the undersigned except as hereinafter provided.

The undersigned expressly agrees that Landlord may without notice to the undersigned modify the Lease by agreement with Tenant or any Affiliate (as such Term is defined in the Lease) without affecting the liability of the undersigned hereunder. In the event of an assignment permitted under the Lease, other than an assignment pursuant to Section 11.1(a)(iii) of the Lease, to an entity other than an Affiliate and a subsequent modification of the Lease between the assignee and Landlord without the undersigned's consent, the undersigned's liability shall be limited to the amount and extent of its liability under the Lease had the modification not been made, but if the modification is consented to by the undersigned, the liability of the undersigned shall not be so limited.

ATTEST:

SAKS & COMPANY

(TITLE)

By: _____ (SEAL)
(TITLE)

EXHIBIT F

FORM OF THE ROUSE COMPANY GUARANTY

IN ORDER to induce SAKS FIFTH AVENUE-OHIO, INC. ("Tenant") to enter into a certain Lease ("Lease") of even date herewith with ROUSE-PORTLAND, INC. ("Landlord"), the undersigned hereby guarantees to the Tenant the full, faithful and timely performance by Landlord of all of the terms, covenants, conditions, representations and warranties provided in the Lease to be performed by Landlord up to and including (but not after) the "Saks Improvements" and the "Developer Improvements" are completed and "opened for business" (as such terms are defined in the Lease of even date with this Guaranty entered into by Landlord and Tenant, among other parties). The undersigned waives any notice of nonperformance and agrees that the validity of this guaranty and the obligations of the guarantor hereunder shall in no way be terminated, affected or impaired by reason of the assertion or non-assertion by Tenant against Landlord of any of the rights or remedies available to or reserved by Tenant. The undersigned further agrees that this guaranty shall continue in full force and effect as to any modification or amendment of the Lease without the necessity for any joinder therein or approval thereof by the undersigned.

DATED this _____ day of _____, 19__.

ATTEST:

THE ROUSE COMPANY

Assistant Secretary

By: _____ (SEAL)
Vice-President

EXHIBIT G
SCOPE OF WORK