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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Marvin H. Dukes III, Master-in-Equity

Appellate Case No. 2020-001446
Trial Court Case No. 2020-CP-07-00155

South Carolina CVS Pharmacy, L.L.C.,.....Appellant,

v.

KPP Hilton Head, LLC,.....Respondent.

RECORD ON APPEAL - VOLUME 1 OF 1

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INDEX

RECORD VOLUME 1

ORDERS

PAGE

Order Denying Motion for Reconsideration, October 20, 2020	1
Order Granting Defendant's Motion for Summary Judgment, August 27, 2020	4
Order Extending the Temporary Restraining Order, February 11, 2020	12
Order Granting Temporary Restraining Order, January 30, 2020	15

PLEADINGS

Summons and Complaint (with exhibits), January 24, 2020	18
Motion for Temporary Restraining Order (with exhibit), January 29, 2020	130
Affidavit of Julie H. King (with exhibits), February 5, 2020	147
Answer, Affirmative Defenses, and Counterclaim (with exhibits), February 8, 2020	203
Plaintiff's Reply to Answer and Counterclaim of KPP Hilton Head, LLC, February 20, 2020	267
South Carolina CVS Pharmacy, L.L.C.'s Answers to Defendant's Interrogatories, May 7, 2020	273
Defendant's Motion for Summary Judgment (without exhibits), June 1, 2020	284
Plaintiff South Carolina CVS Pharmacy, L.L.C.'s Motion for Summary Judgment and Memorandum of Law in Support (with exhibits)	297
Second Affidavit of Peter J. Perry, July 7, 2020	312
Plaintiff South Carolina CVS Pharmacy, L.L.C.'s Response and Memorandum of Law in Opposition to Defendant's Motion for Summary Judgment, August 3, 2020	316
Plaintiff South Carolina CVS Pharmacy, L.L.C.'s Motion for Reconsideration, September 8, 2020	324

TRANSCRIPTS

Transcript of Hearing on cross-Motions for Summary Judgment before the Honorable Marvin H. Dukes, III, August 13, 2020	340

<u>CERTIFICATE OF COUNSEL</u>	371

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2020 CP-07-00155

South Carolina CVS Pharmacy, LLC

KPP Hilton Head, LLC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: BEAUFORT COUNTY MASTER IN EQUITY

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRCp; ☐ Rule 41(a), SCRCp (Vol. Nonsuit); ☐ Rule 43(k), SCRCp (Settled); ☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRCp; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

This came before me September 23rd, 2020 on Plaintiff's Motion for Reconsideration; filed September 8th, 2020. After hearing from parties and review of the file I find that it is clear from the lease that receipt was a requirement. Timing of the notice was important. "The date of service" was a defined term and was agreed to in the lease as the "...date of receipt of the notice...". The renewal letter arrived in the Post Office on Saturday, which is not a business day. The next business day, which was Monday, was beyond the renewal period. I respectfully deny the Motion to Reconsider.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	\$N/A
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.

	3069	
Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

 Jeffrey Evan Phillips

 Walter Hammond Cartin

ATTORNEY(S) FOR THE PLAINTIFF(S)

 Philip Benjamin Zuckerman

 Thomas A. Pendarvis

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: N/A



Beaufort Common Pleas

Case Caption: South Carolina Cvs Pharmacy Llc VS Kpp Hilton Head Llc

Case Number: 2020CP0700155

Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2020-10-20 09:10:46 page 3 of 3

ROA 000003

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2020-CP-07-00155

SOUTH CAROLINA CVS PHARMACY, L.L.C.,
Plaintiff,

vs.

KPP HILTON HEAD, LLC,
Defendant.

**ORDER GRANTING
DEFENDANT’S MOTION FOR
SUMMARY JUDGMENT**

THIS MATTER CAME BEFORE THE COURT for a hearing via WebEx on August 13, 2020, on the parties’ cross motions for summary judgment filed pursuant to Rule 56, SCRCF. Walt H. Cartin, Esq. with PARKER POE ADAMS & BERNSTEIN, LLP appeared on behalf of Plaintiff, SOUTH CAROLINA CVS PHARMACY, L.L.C. (“Tenant”), and Thomas A. Pendarvis, Esq., with PENDARVIS LAW OFFICES, P.C. and P. Benjamin Zuckerman, Esq., with BERGER SINGERMANN, LLP, appeared on behalf of Defendant, KPP HILTON HEAD, LLC (“Landlord”). Landlord and Tenant agreed that there were no disputed material facts and that the Court could rule on the record before it. Based on the undisputed facts and as a matter of law, and as stated below, the Court GRANTS Landlord’s motion for summary judgment and DENIES Tenant’s motion for summary judgment.

Introduction

This dispute involves the Tenant’s 20-year old lease (“the Lease”) of the CVS store on Pope Avenue on Hilton Head Island (the “Hilton Head Store”) from Landlord. The issue before the Court is whether Tenant’s attempt to exercise the first renewal option in the Lease was timely. As the record and undisputed facts before the Court make clear, it was not. Tenant did not exercise

its option to renew during the life of the option.

FINDINGS OF FACT

The following are undisputed facts in the record before the Court:

1. In May of 1998, Landlord's predecessor in interest and Tenant's predecessor in interest entered into the Lease. On or about July 23, 1998, Landlord's predecessor and Tenant's predecessor entered into the First Lease Amendment. The initial Lease had a 20-year term, which was to expire January 31, 2020. The Lease provides for four successive, five-year renewal options.
2. The Lease specifies that a renewal option must be exercised not later than 90 days before the expiration of the then current term. See (Lease Part I, Article 13 ("Required Advance Notice of Exercise of Renewal Option: 90 days prior to the expiration of the then-current term. (See Article 3 of Part II)"), and Lease Part II, Article 3 ("by giving Landlord notice of such election not later than the Required Advance Notice of Renewal Option (as defined in Section 13 of Part I).").
3. The Parties agree that the Lease required Tenant to give Landlord the Tenant's notice that it was exercising the option to renew the Lease "not later than" Sunday, November 3, 2019, and in conformity with the Lease terms.
4. On October 9, 2019, Landlord's property manager sent an email to Tenant asking whether Tenant intended to renew two CVS stores it managed for Landlord and Landlord's affiliate, both of which had identical January 31, 2020 renewal deadlines -- the Hilton Head Store at issue and the CVS Port Royal store. Tenant's Lease Administrator responded the next day that Tenant was renewing the CVS Port Royal store lease, but he was awaiting further instructions regarding the Hilton Head Store.
5. On October 10, 2019, Tenant posted its Registered Mail, Return Receipt Requested

renewal notice for the CVS Port Royal store. It was received (signed for) by the Landlord's agent on October 21, 2019, eleven days after posting, and an executed copy was forwarded to Tenant the next day.

6. Landlord's business hours as part of its ordinary course of business is Monday through Friday, except holidays. Tenant's own expert was of the opinion "that the ordinary course of business in the commercial real estate industry is that property owners/managers(or their designated agents), including those acting on behalf of landlords, check their mail, including post office boxes, on all non-holiday business days (generally Monday through Friday)." Landlord's property manager has no regular employees. It operates with a single independent contractor, Stefan Cap, who works on a part time basis. Neither Landlord, nor its property manager, receive mail in an office. Both use a Post Office Box for their mail. Mr. Cap's duties include checking Landlord's Post Office Box on weekdays for correspondence.

7. On Tuesday, October 29, 2019, Tenant executed its Notice of Renewal Letter ("the Renewal") for the Hilton Head Store, and the next day, Wednesday, October 30, 2019, Tenant mailed the Renewal, Registered Mail (Return Receipt Requested), to the proper address for the Landlord.

8. Tenant's Registered Mail, Return Receipt Requested Renewal arrived at the Hilton Head Post Office by 9:45 am on Saturday, November 2, 2019.

9. Landlord did not sign for and, therefore, did not receive the Renewal until Wednesday, November 6, 2019. Landlord thereafter notified Tenant it rejected the Renewal for the Hilton Head Store as being untimely.

10. There is no evidence (or allegation) that Landlord ignored any Return Receipt ticket that may have been in its Post Office Box after Tenant's Renewal arrived at the Hilton Head Post

Office on Saturday, November 2, 2019.

11. The Notice provision in the Lease provides,

Whenever, pursuant to this Lease, notice or demand shall or may be given to either of the parties by the other, and whenever either of the parties shall desire to give to the other any notice or demand with respect to this Lease or the Premises, each such notice or demand shall be in writing, and any Laws to the contrary notwithstanding, shall not be effective for any purpose unless the same shall be given or served as follows: by mailing the same to the other party by registered or certified mail, return receipt requested, or by overnight courier service provided a receipt is required, at its Notice Address set forth in Part I hereof, or at such other address as either party may from time to time designate by notice given to the other. The date of receipt of the notice or demand shall be deemed the date of the service thereof (unless the notice or demand is not received or accepted in the ordinary course of business, in which case the date of mailing shall be deemed the date of service thereof).

See (Lease Part II, Article 27.)

CONCLUSIONS OF LAW

I. Standard of Review.

“The purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder.” Prince v. Liberty Life Ins. Co., 390 S.C. 166, 169, 700 S.E.2d 280, 281 (Ct. App. 2010). “Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law.” Carolina Chloride, Inc. v. S.C. Dep't of Transp., 391 S.C. 429, 434, 706 S.E.2d 501, 504 (2011). “In determining whether a genuine issue of fact exists, the evidence and all reasonable inferences drawn from it must be viewed in the light most favorable to the nonmoving party.” Id. at 203, 743 S.E.2d at 852–53. “However, it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.” McMaster v. Dewitt, 411 S.C. 138, 143, 767 S.E.2d 451, 453–54 (Ct. App. 2014) (quoting Town of Hollywood v. Floyd, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013)). “Summary judgment is a drastic remedy that should be cautiously invoked in order not to improperly deprive a litigant of a trial of the disputed factual issues.” HK New Plan Exch. Prop.

Owner I, LLC v. Coker, 375 S.C. 18, 22, 649 S.E.2d 181, 183 (Ct. App. 2007).

II. Law Governing the Claims in this Dispute.

South Carolina law is clear that “[b]ecause of its unilateral nature, an option to renew a lease is strictly construed against the party claiming the option.” 33 Flavor Stores of Virginia, Inc. v. Hoffman’s Candies, Inc., 296 S.C. 37, 370 S.E.2d 293, 295 (Ct. App. 1988), citing Southern Silica Mining and Manufacturing Company v. Hoefer, 215 S.C. 480, 56 S.E. 2d 321, 328 (1949). The 33 Flavor Stores court went on to say:

Where, as in this case, notice of the exercise of the option is required in a certain manner, time is of the essence and exact compliance will be required. Pope v. Goethe, 175 S.C. 394, 179 S.E. 319 (1935). Where a lessee has a right to renew upon giving notice to the lessor at or before a specified time, in the absence of a waiver, the giving of notice is a condition precedent which must be complied with within the stipulated time; and, absent special circumstances warranting relief from a court of equity, the right of renewal is lost if notice is not given in accordance with the provisions of the lease.

III. Legal Analysis and Application of the Law to the Facts in this Case.

As is the custom and practice in most leases, the Lease at issue has specific and unambiguous receipt requirements: “return receipt” is required if using certified or registered mail, and “a receipt” is required if using a courier. The “date of receipt” is deemed the “date of service.” The Lease contains a limited exception to the receipt requirement. Tenant argues that the limited exception in the parenthetical contained in the last sentence of Lease Part II, Article 27, which reads “(unless the notice...is not received or accepted in the ordinary course of business...)” applies here so as to deem the date of mailing as the date of service. The Court disagrees with Tenant’s interpretation of the exception.

In the ordinary course of business, Tenant (and other businesses) keep regular weekday (Monday through Friday) hours, except holidays, and Tenant (and other businesses) accept mail during those hours and do not to refuse or reject mail or notices. It is this refusal, rejection, or

failure to abide by the normal method of mail or courier receipt that the parenthetical in the Lease addresses, not the fortuitous receipt of mail on a non-ordinary course of business day. Tenant seeks to expand this and relies on an interpretation that presumes that because the Renewal arrived at the Post Office on a weekend, that the Renewal was not received or accepted in the “ordinary course of business.” The Court does not agree. Moreover, such a reading would not amount to the strict construction “against the party claiming the [renewal] option” mandated by 33 Flavor Stores of Virginia, Inc. v. Hoffman, *supra*.

Here, the Lease expressly provides that all notices, including the Renewal at issue, be signed for by the notified party. See Lease Part II, Article 27 (a notice “shall not be effective for any purpose unless the same shall be given or served as follows: by mailing the same to the other party by registered or certified mail, *return receipt requested*, or by overnight courier provided a *receipt is required . . .*” (Emphasis added)). Regardless of the method selected to send any notice, the Lease unambiguously requires a signed receipt for that notice. No “special circumstances warranting relief from a court of equity” exist or are alleged regarding this signed receipt requirement. See 33 Flavor Stores of Virginia, Inc. v. Hoffman’s Candies, Inc., *supra*.

The Lease also unambiguously specifies that “[t]he date of receipt of the notice . . . shall be deemed the date of service thereof.” See (Lease Part II, Article 27). No “special circumstances warranting relief from a court of equity” exist or are alleged regarding the “deemed . . . date of service” as unambiguously expressed in the Lease. Id.

Although it is undisputed that the Renewal was received by the Hilton Head Post Office on Saturday, November 2, 2019, it is also undisputed that Landlord’s agent did not go to the Post Office that weekend day and did not actually receive the Renewal that day; it was not in the ordinary course of Landlord’s business to collect its mail on weekends, and the Renewal was not

signed for and received until the following week, Wednesday, November 6, 2019. As set forth in the Lease, November 6, 2019, therefore, was “deemed the date of service” of the notice. This was three (3) days after the deadline, and not “at least 90 days before expiration of the term” as required by the unambiguous and clear terms of the Lease for a notice of renewal. Had Landlord’s agent gone to the Post Office, signed for and received the Renewal on Monday, November 4, 2019, the Renewal would still have been untimely, that is, less than 90 days before the expiration of the lease term.

CONCLUSION

The undisputed factual record before the Court establishes Tenant did not timely exercise the right to renew the Lease as its required notice was not given in accordance with the provisions of the Lease. As stated in this Order, the Court GRANTS Landlord’s motion for summary judgment and DENIES Tenant’s motion for summary judgment.

AND IT IS SO ORDERED.

Master-in-Equity for Beaufort County

Beaufort, South Carolina

August 27, 2020



Beaufort Common Pleas

Case Caption: South Carolina Cvs Pharmacy Llc VS Kpp Hilton Head Llc
Case Number: 2020CP0700155
Type: Order/Summary Judgment

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2020-08-27 14:13:10 page 8 of 8

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Beaufort
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP0700155

South Carolina Cvs Pharmacy Llc
PLAINTIFF(S)

Kpp Hilton Head Llc
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

This matter came before the Court on February 10, 2020 for a hearing on Plaintiff's Motion for Temporary Restraining Order, filed January 29, 2020. Present on behalf of the Plaintiff was Walter Cartin, Esq. Present on behalf of the Defendant was Thomas Pendarvis, Esq. The Court signed an Order granting the Plaintiff's Motion on January 20, 2020. "Every temporary restraining order granted without notice shall... expire by its terms within such time after entry, not to exceed 10 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period." Rule 65, SCRCP.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☒ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 02/10/2020 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

Plaintiff has established that it will suffer irreparable harm, that it has a likelihood of success on the merits, and that there is no adequate remedy at law if the status quo is not preserved. Good cause having been shown, the Court hereby extends the temporary restraining order for one hundred and twenty (120) days or until a disposition on the merits is been rendered, whichever is later. The Court finds that such an extension is reasonable and will not prejudice the Defendant. Accordingly, it is ordered that the temporary restraining order is extended for one hundred and twenty (120) days or until a disposition on the merits is rendered, whichever is later.



Beaufort Common Pleas

Case Caption: South Carolina Cvs Pharmacy Llc VS Kpp Hilton Head Llc

Case Number: 2020CP0700155

Type: Order/Electronic Form 4

IT IS SO ORDERED.

s/D.L. Jefferson Ninth Judicial Circuit Judge 2128

Electronically signed on 2020-02-10 16:02:27 page 3 of 3

ELECTRONICALLY FILED - 2020 Feb 11 8:52 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700155

ROA 000014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	FOR THE FOURTEENTH JUDICIAL CIRCUIT
South Carolina CVS Pharmacy, L.L.C.,	)	CASE NO.: 2020-CP-07-00155
Plaintiff,	)	
vs.	)	ORDER GRANTING TEMPORARY
KPP Hilton Head, LLC,	)	RESTRAINING ORDER
Defendant.	)	

THIS MATTER CAME BEFORE THIS COURT on Plaintiff South Carolina CVS Pharmacy, L.L.C.'s ("Tenant" or "CVS") Motion for Temporary Restraining Order ("Motion"), pursuant to Rule 65(b) of the South Carolina Rules of Civil Procedure, preserving the status quo and enjoining Defendant KPP Hilton Head, LLC ("Landlord" or "KPP") from taking any action to remove Tenant from the Premises during the pendency of the above-captioned action.

Having considered the Complaint, Motion, Affidavit of Peter J. Perry, Affidavit of Bryan Cook, and the corresponding exhibits, the Court hereby finds and orders as follows:

1. To preserve the status quo pending litigation, a temporary restraining order is proper when the moving party has shown that (1) without such relief, it will suffer irreparable harm, (2) it has a likelihood of success on the merits, and (3) there is no adequate remedy at law. Strategic Resources Co. v. BCS Life Ins. Co., 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006) (citing Scratch Golf Co. v. Dunes West Residential Golf Props., 361 S.C. 117, 603 S.E.2d 905 (2004)).

2. A temporary restraining order is proper and necessary under the circumstances presented in this case in order to preserve the subject controversy in the condition that it is in at the time of this Order until opportunity is afforded for full and deliberate investigation and to preserve the status quo pending litigation.

3. Tenant has demonstrated that it will suffer irreparable harm before notice can be served and a hearing had on the Motion if Landlord is not enjoined from taking action to remove Tenant from the Premises.

4. Tenant has demonstrated a likelihood of success on the merits of its claim.

5. There is no adequate remedy at law that can remedy the harm that Tenant will suffer if Landlord is not enjoined from taking action to remove Tenant from the Premises during the pendency of this action.

NOW THEREFORE, having considered Tenant's Complaint, Motion for Temporary Restraining Order, Affidavit of Peter J. Perry, Affidavit of Bryan Cook, and all corresponding exhibits, it is hereby **ORDERED** that:

1. Landlord is enjoined and restrained from taking any action to remove Tenant from the Premises during the pendency of this action, including but not limited to: (i) marketing the Premises for rent, (ii) declaring Tenant in default under the Lease, (iii) initiating commercial ejectment proceedings; (iv) attempting to terminate the Lease, and (v) taking any action to forcibly remove Tenant's operations or property from the Premises.
2. Tenant and Landlord are directed to appear before this Court no more than 10 days from the date and time of this Order on Monday, February 10, 2020 at 10:00 A.M. for a hearing to determine if this temporary restraining order should be converted into a temporary injunction pending a trial on the merits of Tenant's claims.
3. Tenant is responsible for serving a copy of this Order on Landlord or Landlord's counsel.
4. Pursuant to Rule 65(c) of the South Carolina Rules of Civil Procedure, Tenant is hereby directed to file with the Clerk of Court a bond in the sum of \$54,000.00 as security for any costs and damages that may be incurred by Landlord as a result of the issuance of this temporary restraining order if it should be determined later such order should not have been issued.

The Honorable Deadra L. Jefferson
Chief Judge for Administrative Purposes
Fourteenth Judicial Circuit

Date: January 30, 2020; Time: 4:37 P.M.

Charleston, South Carolina



Beaufort Common Pleas

Case Caption: South Carolina Cvs Pharmacy Llc VS Kpp Hilton Head Llc

Case Number: 2020CP0700155

Type: Order/Temporary Restraining Order

IT IS SO ORDERED>

s/D.L. Jefferson Chief Administrative Judge 2128

Electronically signed on 2020-01-30 16:38:48 page 3 of 3

ELECTRONICALLY FILED - 2020 Jan 30 4:45 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700155

ROA 000017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	FOR THE FOURTEENTH JUDICIAL CIRCUIT
	)	
South Carolina CVS Pharmacy, L.L.C.,	)	CASE NO.: 2020-CP-07-_____
	)	
Plaintiff,	)	
	)	
vs.	)	SUMMONS
	)	
KPP Hilton Head, LLC,	)	
	)	
Defendant.	)	
_____	)	

TO THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your answer to the Complaint on the subscriber at his office in Columbia, South Carolina within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

Respectfully submitted,

s/J. Evan Phillips

Walter H. Cartin (S.C. Bar # 78405)

J. Evan Phillips (S.C. Bar # 103679)

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Attorneys for Plaintiff

South Carolina CVS Pharmacy, L.L.C.

January 24, 2020
Columbia, South Carolina

ROA 000018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	FOR THE FOURTEENTH JUDICIAL CIRCUIT
South Carolina CVS Pharmacy, L.L.C.,	)	CASE NO.: 2020-CP-07-_____
Plaintiff,	)	
vs.	)	COMPLAINT
KPP Hilton Head, LLC,	)	
Defendant.	)	

Plaintiff South Carolina CVS Pharmacy, L.L.C. (“Tenant” or “CVS”), complaining of Defendant KPP Hilton Head, LLC (“Landlord” or “KPP”), hereby alleges and shows unto this Court as follows:

PARTIES, JURISDICTION, AND VENUE

1. CVS is a limited liability company organized and existing under the laws of the State of South Carolina, with its principal place of business in the State of South Carolina. At all times relevant to this case, CVS transacted business in the State of South Carolina.

2. Upon information and belief, KPP is a limited liability company organized and existing under the laws of the State of South Carolina and, at the times relevant to this case, KPP transacted business in the State of South Carolina.

3. Based on the subject matter of this action, the activities of the parties, the contracts governing the parties’ relationship, and the residence of the parties, this Court has jurisdiction in this matter and venue is proper.

FACTS

I. THE LEASE

4. On or around May 7, 1998, KINPIN Partnership, as landlord, entered into a Lease (the “Lease”) with Revco Discount Drug Centers, Inc. (“Revco”), as tenant, for the property located at 10 Pope Avenue, Hilton Head Island, South Carolina 29928 (the “Premises”). A true and accurate copy of the Lease is attached hereto as **Exhibit A**.

5. On or around July 23, 1998, KINPIN Partnership and Revco entered into the First Lease Amendment (the “First Amendment”). A true and accurate copy of the First Amendment is attached hereto as **Exhibit B**.

6. KINPIN Partnership assigned all of its right, title, and interest in and to the Lease to KPP, and KPP assumed all of KINPIN Partnership’s duties and obligations under the Lease (the “KINPIN Assignment”).

7. On or around January 1, 2011, Revco assigned all of its right, title, and interest in and to the Lease to CVS, and CVS assumed all of Revco’s duties and obligations under the Lease (the “Revco Assignment”). A true and accurate copy of the Revco Assignment is attached hereto as **Exhibit C**.

8. Pursuant to the Rent Commencement – Lease Term Letter (the “Commencement Letter”) sent from Revco to KPP Hilton Head on May 25, 1999, the Lease’s term commenced on or around April 26, 1999, having an initial term of approximately 20 years, with an expiration of January 31, 2020 (the “Initial Term”). A true and accurate copy of the Commencement Letter is attached hereto as **Exhibit D**.

9. The Lease is governed by the laws of the State of South Carolina.

10. Tenant operates the Premises as a retail pharmacy.

11. Pursuant to the First Amendment, Tenant was to pay Landlord annual rent of \$257,860.97, payable in monthly installments of \$21,488.41, for the final 60 months of the Initial Term ("Fixed Rent"). (Ex. B, ¶ 1).

12. Part I, Paragraph 12 of the Lease provides Tenant with an option to extend the Lease for four extension periods, each with a term of five years (each an "Option," and collectively, the "Options").

13. Pursuant to the First Amendment, the rate of rent during all four extension periods is to remain the same as Fixed Rent. (Ex. B, ¶ 1).

14. In order for Tenant to exercise the Option and extend the Lease under one of the Lease's four extension periods, Part I, Paragraph 13 of the Lease requires that Tenant provide notice to Landlord 90 days prior to the expiration of the then-current term in accordance with the Lease's general notice provision.

15. The Lease's notice provision, which is generally applicable to all notices required under the Lease, is located at Part II, Paragraph 27 of the Lease, and states as follows:

Whenever, pursuant to this Lease, notice or demand shall or may be given to either of the parties by the other, and whenever either of the parties shall desire to give to the other any notice or demand with respect to this Lease or the Premises, each such notice or demand shall be in writing, and any Laws to the contrary notwithstanding, shall not be effective for any purpose unless the same shall be given or served as follows: by mailing the same to the other party by registered or certified mail, return receipt requested, or by overnight courier service provided a receipt is required, at its Notice Address set forth in Part I hereof, **or at such other address as either party may from time to time designate by notice given to the other.** The date of receipt of the notice or demand shall be deemed the date of the service thereof **(unless the notice or demand is not received or accepted in the ordinary course of business, in which case the date of mailing shall be deemed the date of service thereof).** (emphasis added).

16. Part II, Paragraph 50(f) of the Lease entitles the prevailing party of any action arising out of the Lease to recover its legal costs and attorneys' fees.

II. THE NOTICE

17. Pursuant to the Commencement Letter and the Lease, notice of Tenant's decision to exercise the Option to extend the Lease's term was to be served upon Landlord no later than November 3, 2019, in the manner specified under Part II, Paragraph 27 of the Lease.

18. On October 29, 2019, Lease Administration Manager for CVS Pharmacy, Inc., Peter J. Perry, reviewed and signed Tenant's written notice to Landlord electing to exercise the Option to renew the Lease and extend the Lease's term for an additional five-year period (the "Notice"). (Perry Aff. ¶ 12) (A copy of the Affidavit of Peter J. Perry is attached hereto as **Exhibit E**).

19. On October 30, 2019, and in accordance with the Lease's general notice provision prescribing the form and manner in which notices are to be delivered to Landlord, a copy of the Notice was placed in the mail with the United States Postal Service ("USPS") via certified mail, return receipt requested, and addressed as follows:

KPP Hilton Head, LLC
Attention: Ms. Anita Fullam
PO Box 23169
Hilton Head, SC 29925

(Ex. E, ¶ 13).

20. Pursuant to the tracking information provided by the USPS, the Notice was delivered to the Landlord's post office box and was available for pickup on Saturday, November 2, 2019. (Ex. E, ¶ 15).

21. Notwithstanding the fact that Landlord actually received the Notice a full day before the November 3, 2019 deadline, a notice that is received on a Saturday is "not received or accepted in the ordinary course of business," as contemplated by Part II, Paragraph 27 of the Lease.

22. Because the Notice was delivered to Landlord's post office box, and available for Landlord to pick up, on Saturday, November 2, 2019, the date the Notice was mailed is deemed the date the date of service upon Landlord. Therefore, the Notice was timely served upon Landlord on October 30, 2019, and Tenant properly exercised its option to extend the Lease's term for an additional five-year period at the rate of Fixed Rent.

23. Alternatively, even if service of the Notice is deemed to be the date it was received by Landlord, it was received in Landlord's post office box and was available for pick up on November 2, 2019. Thus, it was still timely served on Landlord prior to the November 3, 2019 deadline.

24. A copy of the Notice was also emailed to Ms. Anita Fullam at anitafullam@principaldevelopers.com on October 30, 2019. (Ex. E, ¶ 16).

25. On November 12, 2019, and December 12, 2019, Landlord sent two letters addressed to Mr. Perry, both of which purported to reject the Notice of Tenant's decision to exercise its option on the basis that the Notice was not timely delivered to Landlord. True and accurate copies of Landlord's November 12, 2019 and December 12, 2019 letters are attached hereto as **Exhibit F** and **Exhibit G**, respectively.

26. Landlord's December 12, 2019 letter stated that Landlord received the Notice on Monday, November 4, 2019. (Ex. G).

27. Landlord's December 12, 2019 letter shows that Landlord was and is using Tenant's alleged failure to timely deliver the Notice for the sole purpose of exacting higher rates of rent from Tenant. In pertinent part, the letter states that "**Landlord is willing to discuss a new Lease with CVS, but such Lease will have to be at current market rates**, and all other Lease

terms will need to be reviewed to make certain that any Lease reflects current circumstances.” (Ex. G, at 2) (emphasis added).

28. Landlord’s refusal to recognize Tenant’s valid exercise of the Option to extend the Lease for an additional five-year period is in breach of the Lease. The Lease provides Tenant with the unilateral right to exercise the Options and extend the terms of the Lease upon timely and properly served written notice of Tenant’s decision to Landlord.

29. Landlord has expressed its belief that the Lease’s term ends on January 31, 2020. (Ex. G). Tenant expects Landlord to enforce its purported rights under the Lease and attempt to retake possession of the Premises.

FIRST CAUSE OF ACTION
(Declaratory Judgment)

30. Tenant reasserts the facts and allegations contained in the previous Paragraphs and incorporates the same herein as if restated verbatim.

31. Tenant has, at all times, performed in accordance with the terms of the Lease.

32. The Notice was effective for Tenant to exercise its unilateral option under the Lease to extend the Lease’s term for an additional five-year period at an annual rent rate of \$257,860.97, payable in monthly installments of \$21,488.41.

33. At present, a real and justiciable controversy exists between Tenant and Landlord as to whether Tenant effectively delivered the Notice to Landlord and properly exercised the Option.

34. Pursuant to the Uniform Declaratory Judgment Act, S.C. Code Ann. §§ 15-53-10, *et seq.*, Tenant is entitled to a declaratory judgment declaring that:

(a) Tenant timely and effectively exercised the Option to renew the Lease for an additional five-year period.

(b) The Lease is in full force and effect for an additional five-year period at an annual rent rate of \$257,860.97, payable in monthly installments of \$21,488.41.

(c) Tenant, as the prevailing party, is entitled to its costs and attorneys' fees pursuant to the Lease.

SECOND CAUSE OF ACTION
(Injunctive Relief)

35. Tenant reasserts the facts and allegations contained in the previous Paragraphs and incorporates the same herein as if restated verbatim.

36. Tenant timely served the Notice upon the Landlord and effectively exercised the Option to renew the Lease for an additional five-year period.

37. Landlord has refused to recognize Tenant's valid exercise of the Option to extend the Lease and may wrongly take action to remove Tenant from the Premises.

38. Tenant will suffer irreparable harm if Landlord takes action to remove Tenant from the Premises because Tenant could be required to defend against an unnecessary action and forfeit its retail store at the Premises and relocate to another location. Even if Tenant could successfully defend against such an action, Tenant will be forced to begin preparing for a pharmacy relocation.

39. Tenant's retail store has been located at the Premises for over twenty years and has built a dedicated base of customers, many of whom have designated Tenant as their dedicated pharmacy on file with their physicians and routinely have their prescriptions filled at Tenant's pharmacy.

40. Additionally, if Landlord takes action to remove Tenant from the Premises, a writ of ejectment could be issued requiring Tenant to vacate the Premises within 48 hours of its issuance. Because these proceedings often take place through a very truncated process, such an order would likely prevent Tenant from being able to timely comply with required notifications

that must be given to the Drug Enforcement Agency upon a retail pharmacy's transfer of controlled substances to a new physical location or the pharmacy's decision to cease operations altogether.

41. Such harm is irreparable because it is impossible to:

(a) determine the impact that closing down this location will have on its current customers who regularly have their prescription medications filled at the Premises;

(b) measure the full extent of monetary damages Tenant will suffer if forced to forfeit its retail store location at the Premises which was carefully chosen based upon Tenant's specific retail store location criteria, such as high visibility from the surrounding roadways, easy access with traffic signals, high traffic intersections, freestanding sites with drive-thru pharmacy capability, sufficient parking for large numbers of vehicles, and sufficient population in a trade area;

(c) evaluate the impact that the loss of the business will have on Tenant's customers, employees, managers, and business relationships while Tenant is forced to relocate; and

(d) determine the harm the community will suffer because of a pharmacy shutting down after operating in the same location for over twenty years.

42. There is no adequate remedy at law if Landlord is able to take action to remove Tenant from the Premises during the pendency of this action, as Tenant will have no choice but to begin taking actions in order to move locations.

43. The above referenced irreparable harm that Tenant will suffer cannot be fully remedied by monetary damages or other traditional legal remedies.

44. Tenant is likely to succeed on the merits of its claims because Tenant timely and effectively caused the Notice to be served upon Landlord, and, therefore, properly exercised the Option to extend the Lease's term for an additional five-year period.

45. Tenant is entitled to have the Court enjoin Landlord from taking action to remove Tenant from the Premises during the pendency of this action.

WHEREFORE, Tenant respectfully prays that the Court:

- (a) Declare by Order of this Court that Tenant effectively exercised the Option to renew the Lease; the Lease is in full force and effect for an additional five-year period at an annual rent rate of \$257,860.97, payable in monthly installments of \$21,488.41; and Tenant is the prevailing party and is entitled to its costs and attorneys' fees of this action;
- (b) Issue an injunction barring Landlord from taking any action to remove Tenant from the Premises during the pendency of this action;
- (c) Award Tenant actual and consequential damages;
- (d) Award Tenant attorneys' fees pursuant to the terms of the Lease; and
- (e) Award Tenant such other and further relief as the Court deems just and proper.

Respectfully submitted,

s/J. Evan Phillips

Walter H. Cartin (S.C. Bar # 78405)
J. Evan Phillips (S.C. Bar # 103679)
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waltcartin@parkerpoe.com
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*Attorneys for Plaintiff
South Carolina CVS Pharmacy, L.L.C.*

January 24, 2020
Columbia, South Carolina

Exhibit A

To Complaint

CVS Lease

Lease5566-2
2/26/98

LEASE

This Lease is made on the Date of Lease specified below, between the Landlord and the Tenant specified below.

PART I

1. Date of Lease:

~~March~~ MAX 7TH, 1998 HLK PPF

2. Landlord name, and state of and type of entity:

KINPIN Partnership
a South Carolina partnership

3. Landlord business address:

Herb King
P.O. Box 6362
Hilton Head, SC 29938

4. Landlord notice address:

C-6 Village at Wexford
Hilton Head, SC 29928

5. Tenant name, and state of and type of entity:

Revco Discount Drug Centers, Inc.,
a Michigan corporation

6. Tenant business address:

One CVS Drive
Woonsocket, RI 02895

7. Tenant notice address:

One CVS Drive
Woonsocket, RI 02895
Attn: Property Administration
Department, Store No. 5566-2

8. Guarantor:

CVS Corporation,
a Delaware Corporation
One CVS Drive
Woonsocket RI 02895

9. Premises: that certain lot or parcel of real estate located at Pope Avenue Urgent Care Center, Hilton Head Island, County of Beaufort, South Carolina, as outlined in blue on Exhibit A, including the Building described in Section 10 below (which Building is outlined in red on Exhibit A), and including all improvements situated on said property, and all rights, easements, rights of way, and other appurtenances thereto.

10. Building: ground floor dimensions: 75' by 135'

ground floor total square footage: 10,125

ground floor is outlined in red on Exhibit A.

11. Initial Term: shall commence on the date of delivery of the Premises to Tenant in the manner and condition provided in Article 7(a) of Part II hereof, and shall expire 20 years from the "Date of Rent Commencement" (as defined in Article 5 of Part II hereof), plus any months necessary to have the term expire on the next January 31st; all subject to all terms and conditions of this Lease.

As used in this Lease, "Term" shall include the Initial Term and any Extension thereof pursuant to Article 3 of Part II.

12. Renewal Options: 4 Extension Periods, of 5 years each (See Article 3 of Part II)

13. Required Advance Notice of Exercise of Renewal Options: 90 days prior to the expiration of the then-current term. (See Article 3 of Part II)

14. Free Rent Period: the lesser of: 45 days commencing on the day on which Tenant shall accept possession of the Premises; or the number of days commencing on the day on which Tenant shall accept possession of the Premises and ending on the day on which Tenant shall open for business. (See Article 5 of Part II)

15. Fixed Rent (See Article 5 of Part II):

<u>PERIOD</u>	<u>ANNUAL FIXED RENT</u>	<u>MONTHLY INSTALLMENTS</u>
First 60 months from Date of Rent Commencement	\$212,625.00	\$17,718.75
Next 60 months	\$223,256.25	\$18,604.69
Next 60 months	\$234,419.06	\$19,534.92
Next 60 months and to end of initial term	\$246,140.02	\$20,511.67
First extension period	\$246,140.02	\$20,511.67
Second extension period	\$246,140.02	\$20,511.67
Third extension period	\$246,140.02	\$20,511.67
Fourth extension period	\$246,140.02	\$20,511.67

16. Percentage Rent (See Article 6(a) of Part II):

<u>PERIOD</u>	<u>BREAKPOINT</u>	<u>PERCENTAGE RENT RATE</u>
First 60 months from Date of Rent Commencement	\$10,631,250.00 up to \$12,131,250.00 Over \$12,131,250.00	2.00%
Next 60 months	\$11,162,812.50 up to \$12,662,812.50 Over \$12,662,812.50	2.00%
Next 60 months	\$11,720,953.13 up to \$13,220,953.13 Over \$13,220,953.13	2.00%

Next 60 months and to end of initial term	\$12,307,000.78 up to \$13,807,000.78 Over \$13,807,000.78	2.00%
First extension period	\$12,307,000.78 up to \$13,807,000.78 Over \$13,807,000.78	2.00%
Second extension period	\$12,307,000.78 up to \$13,807,000.78 Over \$13,807,000.78	2.00%
Third extension period	\$12,307,000.78 up to \$13,807,000.78 Over \$13,807,000.78	2.00%
Fourth extension period	\$12,307,000.78 up to \$13,807,000.78 Over \$13,807,000.78	2.00%

17. Intentionally omitted.

18. Construction Specifications: Prototype Construction Specifications dated January 1, 1998, attached hereto as Exhibit B.(See Article 7(a) of Part II)

19. Required Number of Parking Spaces: 45, for standard size automobiles. (See Article 7(a) and Article 14 of Part II)

20. Outside Delivery Date of Premises: ~~November 1, 1998~~ ^{FEBRUARY 15, 1999} (See Article 2 of Part II) H6A PVP

21. Outside Landlord Acquisition Date of Premises: ~~May 1, 1998~~ ^{JUNE 15, 1998} (See Article 2 of Part II) H6A PVP

22. Intentionally omitted.

23. Intentionally omitted.

24. Initial monthly charge for parking and other exterior maintenance: \$350.00 (See Article 33)

25. "Gross Sales" shall mean gross proceeds received for services rendered, and sales of merchandise made, in and from the Premises, subject to the following provisions of this Article. In the case of exchange of goods, only the amount of the excess of the price of the new goods sold over the allowance made for the return of the goods exchanged shall be included in Gross Sales.

Gross Sales shall also exclude: the amount of all sales taxes and other taxes imposed by any governmental authority with respect to sales of merchandise, or services rendered, in or from the Premises (provided, however, that no income tax and no tax based on income or profits as such shall be excluded); refunds or returns on goods returned; the amount of any discount, rebate or CVS generated promotional coupon; bad debts; proceeds from the collection of utility bills; proceeds from the operation of automated teller machines or postal units; proceeds received from the sale of insulin, postage stamps, money orders, lottery tickets, beer, wine, soda, and tobacco products; sales at a discount to employees; sales of trade fixtures or equipment; receipts from sales in the nature of a transfer to other stores operated by Tenant or its affiliated companies; all service charges paid to banks or other financial institutions based on credit card or other similar credit purchases made by customers; and proceeds received from the sale of prescription and other sales which are payable in whole, or in part, by any third party health plan/payor. (See Article 6 of Part II)

26. All exhibits to this Lease are incorporated herein by this reference.

LIST OF EXHIBITS:

Exhibit A - Site Plan: Building = red
Premises property line = blue

Exhibit B - Construction Specifications

PART II

PREMISES -

1. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, for the Term and on the conditions herein provided, the Premises described in Section 9 of Part I hereof.

CONDITIONS PRECEDENT - RIGHTS TO TERMINATE -

2. (a) If, on or before the Outside Delivery Date, possession of the Premises has not been delivered to Tenant in accordance with the terms of this Lease, then, at any time thereafter (until such possession is so delivered), Tenant may terminate this Lease upon 30 days' written notice to Landlord; and this Lease will so terminate unless, prior to the expiration of said 30 days, Landlord shall deliver possession of the Premises to Tenant in accordance with the terms hereof. Said right to terminate shall be Tenant's sole remedy if Landlord shall have acted in good faith and with due diligence to deliver the Premises to Tenant in accordance with the terms of this Lease.

(b) Intentionally Omitted.

(c) If, on or before the Outside Landlord Acquisition Date, Landlord shall not have acquired good and clear record and marketable title to the Premises (as such record and title are described in detail in Article 37 hereof), then, at any time thereafter (but prior to the acquisition by Landlord of such record and title), Landlord and Tenant each may terminate this Lease by 30 days' written notice to the other party; and this Lease will so terminate unless, prior to the expiration of said 30 days, Landlord shall acquire such record and title. Landlord may exercise the right of termination described in this subdivision (c) only if Landlord has diligently pursued, in good faith, the acquisition of said record and title, and has failed to acquire same for reasons beyond its reasonable control.

(d) Intentionally Omitted.

(e) Notwithstanding anything to the contrary in this Lease, in no event shall Tenant be obligated to accept possession of the Premises until Tenant shall have received an "SNDA Agreement", as set forth in Article 20, from any mortgagee existing prior to the date hereof.

RENEWAL OPTIONS -

3. Tenant may extend the Term of this Lease for each of the Renewal Options described in Section 12 of Part I hereof, upon all of the terms set forth in this Lease. Tenant may do

so only if Tenant shall not be in default (beyond applicable cure periods) under this Lease at the time of any such election, and by giving Landlord notice of each such election not later than the Required Advance Notice of Exercise of Renewal Options (as defined in Section 13 of Part I).

USE -

4. (a) Tenant may use the Premises for any lawful retail purpose.

(b) Without limiting any rights of Tenant under this Lease, Tenant, subject to Laws (as defined in Article 10), may: keep the Premises open for business on Sundays and/or holidays; and operate on an "extended-hours basis" (defined as being open for business in excess of 110 hours per week).

FIXED RENT -

5. (a) Commencing as of the Date of Rent Commencement, Tenant shall pay to Landlord, at the business address of Landlord specified on Page 1 hereof, or at such other address as Landlord shall, from time to time, designate by notice to Tenant, the Fixed Rent set forth in Section 15 of Part I hereof, payable to Landlord no later than the fifth day of each month in advance, without demand or set-off, except as otherwise expressly provided in this Lease.

(b) Fixed Rent and all other charges due under this Lease shall commence immediately upon the expiration of the Free Rent Period (as defined in Section 14 of Part I hereof), subject to all of the other terms of this Lease ("Date of Rent Commencement"). If the Date of Rent Commencement shall be on any day other than the first day of a calendar month, Fixed Rent and other charges for such month shall be pro rated on a per diem basis. The foregoing notwithstanding, Tenant's obligation to pay insurance charges pursuant to Article 35 shall commence upon the commencement of the Term.

(c) Notwithstanding anything to the contrary in this Lease, if the Date of Rent Commencement as calculated pursuant to subdivision (b) above would occur between November 15th and the succeeding December 31st, and if Tenant elects not to open for business during said period, then, in that event, the Date of Rent Commencement shall be the succeeding January 2nd. Tenant shall provide Landlord with written notice of such election.

PERCENTAGE RENT -

6. (a) In addition to Fixed Rent, if, in any calendar year following the Date of Rent Commencement, the annual "Gross Sales" in the Premises (as defined in subdivision (d) below) shall exceed the applicable breakpoint amount for the periods set forth (individually, "Breakpoint"),

Tenant agrees to pay to Landlord a sum equal to a percent ("Percentage Rent Rate") of such annual Gross Sales in excess of the applicable Breakpoint ("Percentage Rent"). The Breakpoints and Percentage Rent Rates are set forth in Section 16 of Part I.

Percentage Rent for any portion of a calendar year shall be determined by taking 1/12th of the applicable Breakpoint and multiplying the result by the number of months (and portions thereof) in said portion of the calendar year ("Pro-rated Breakpoint"). The Pro-rated Breakpoint shall be subtracted from the Gross Sales for said portion of the calendar year, and the result shall be multiplied by the Percentage Rent Rate to determine the amount of Percentage Rent due; and shall be paid by Tenant in the same manner as herein provided for the payment of Percentage Rent for a full calendar year.

(b) Intentionally Omitted.

(c) Tenant agrees to provide to Landlord, within 60 days after the end of each calendar year of the Term, and within 60 days following the expiration or earlier termination of this Lease, a statement, signed by an authorized representative of Tenant, certifying as to the amount of the Gross Sales for the preceding calendar year, or portion thereof; together with any Percentage Rent which is payable for the period referred to therein.

(d) "Gross Sales" shall be as defined in Section 25 of Part I.

Tenant makes no representation or warranty as to its expected Gross Sales.

(e) At Tenant's main accounting office, presently at One CVS Drive, Woonsocket, Rhode Island 02895, Tenant shall keep accurate records of Gross Sales, in accordance with GAAP.

Landlord may audit said Gross Sales records subject to the following limitations. Any such audit shall be at reasonable times; during Tenant's normal business hours; be conducted not more than once annually; be conducted within 36 months from the date of any Gross Sales statement of Tenant; none of said records (including photocopies of said records) shall be removed from Tenant's office; and no examination of records of other stores operated by Tenant or its affiliates or of the general books of account of Tenant shall be permitted.

If any audit shows that the amount of Gross Sales on any statement of Tenant was understated by more than 3% of Gross Sales, Tenant shall pay to Landlord the reasonable cost of Landlord's audit in addition to any amount of Percentage Rent which Tenant should have paid but did not pay, plus interest at the rate of 10% per annum on said underpaid amount.

Landlord shall hold all sales figures and other information obtained from Tenant's records in confidence, except as may be necessary for the enforcement of Landlord's rights under this Lease, or in connection with prospective financing or prospective sale of the Premises, or with respect to tax proceedings, or pursuant to any legal requirements.

(f) Notwithstanding the above, it is agreed that: Landlord shall not be construed or held to be a partner, joint venturer, or associate of Tenant in the conduct of its business; and the relationship between the parties hereto is, and shall at all times remain, that of landlord and tenant.

LANDLORD'S CONSTRUCTION - DELIVERY OF THE PREMISES -

7. (a) Landlord agrees, at its sole cost, to construct the Building and to develop the Premises as shown on Exhibit A, and to do all work as required in the Construction Specifications described in Section 18 of Part I hereof, and as shown on specific plans for the Building which are not yet complete and which are subject to the reasonable approval of Landlord and Tenant. In no event shall Landlord commence work until Landlord has provided Tenant with drawings for the Building and the specific plans for the Building are finalized. Any increased costs to Landlord, which are a result of any change orders to said specifications or plans made in writing by Tenant, shall be paid by Tenant within 30 days of receipt of demand therefor with supporting documentation, provided that Landlord bills Tenant for such increased costs within 120 days after the Date of Rent Commencement, and provided that Tenant has agreed to the amount of increased costs prior to Landlord commencing construction. Upon completion of Landlord's construction, the Building shall be of dimensions no less than described in Section 10 of Part I hereof. Landlord warrants and agrees that, at the time of delivery of the Premises to Tenant, the exterior areas of the Premises shall be in good condition, properly lighted, properly paved and line painted, with parking areas, curbs, curb cuts, sidewalks and roadways as designated in Exhibit A, in good repair and properly marked. Landlord warrants that the parking areas of the Premises shall accommodate the Required Number of Parking Spaces as shown on Exhibit A. All such work shall be substantially completed on the date of delivery of possession of the Premises to Tenant. Landlord agrees to give at least 30 days' prior written notice to Tenant of the date when such possession will be available to Tenant.

Tenant (including Tenant's contractors and vendors) may enter the Building approximately 15 days prior to the anticipated date of delivery of the Premises to Tenant for the following purposes, without such entry constituting acceptance of the Premises: to measure and inspect the Building in order to ensure that the Building will be delivered in accordance with this Article; to install carpeting, telephones, fixtures, equipment, and furniture and the like.

(b) "Substantially completed" shall mean full completion of Landlord's work except for minor incomplete items or deficiencies, provided that any such incomplete items or deficiencies

shall not hinder Tenant's work in or about the Premises, or prevent Tenant from opening for business.

In addition, in no event shall Landlord's work or the Premises be deemed to be substantially completed until a Certificate of Occupancy has been issued. A "Certificate of Occupancy" is a Certificate of Occupancy or any equivalent documentation which confirms that Landlord's work has been completed and that the Premises are available for Tenant to take possession, fixture, merchandise and open for business. If Tenant elects to take possession of the Premises prior to issuance of the Certificate of Occupancy, Fixed Rent and all other charges due under this Lease shall commence on the first to occur of the following, subject to the other terms of this Lease: the expiration of a number of days equal to the Free Rent Period, which time period commences on the date of the issuance of the Certificate of Occupancy; or on the date on which Tenant opens for business. If, upon the completion of Tenant's initial work, a Certificate of Occupancy is not issued due to items which are Landlord's responsibility, then, Landlord will correct same and the Date of Rent Commencement will be delayed for a number of days equal to the number of days that Tenant is delayed from opening for business.

(c) If Landlord shall fail to fully complete all of its work as specified in this Article on or before the date Tenant takes possession of the Premises, then Tenant may send Landlord a "punch list" of items which remain to be completed. On receipt of such punch list, Landlord shall have 14 days to complete the items designated therein; and if Landlord shall fail to do so within said 14 day period, then Tenant may complete the items on behalf of Landlord and deduct the entire cost of completion of such items from rent and other charges due hereunder. Notwithstanding anything to the contrary herein, if Tenant is unable to complete its work or open for business as a result of incomplete items on the punch list, then, in addition to any other rights Tenant may have hereunder, the Date of Rent Commencement will be delayed for a number of days equal to the number of days that Tenant is delayed from completing its work or from opening for business.

KEY TENANT - COTENANTS -

8. Intentionally omitted.

REPAIRS AND MAINTENANCE OF THE BUILDING -

9. (a) All obligations of Landlord pursuant to this subdivision (a) shall be performed by Landlord at Landlord's sole cost. Landlord shall maintain (including painting and cleaning), repair, and replace, as necessary, each of the exterior portions and structural portions of the Building, including, without limitation: the roof and roof supports, flashings, gutters, downspouts, footings, foundations, structural supports, columns, exterior walls, bearing walls, retaining walls, floor slab, and loading docks; so as to keep the same in good condition and repair.

The foregoing notwithstanding, Landlord's aforesaid obligations shall exclude the nonstructural portions of any storefront. Landlord also shall maintain, repair, and replace, as necessary, all plumbing, pipes, tubes and all other conduits and utility lines leading to or from the Building.

During the first full year of the Term, or during any longer period covered by any warranty, Landlord shall make all repairs required because of building settlement or defects in Landlord's materials or workmanship, other than with respect to the HVAC system. Landlord shall furnish Tenant with all guaranties and warranties relating to the HVAC system.

(b) All obligations of Tenant pursuant to this subdivision (b) shall be performed by Tenant at Tenant's sole cost. Except as provided in subdivision (a) above, Tenant shall take maintain, repair and replace, as necessary: the Building interior, including the fixtures and equipment therein; HVAC equipment; broken glass; and the nonstructural portions of any storefront. The foregoing notwithstanding, Tenant's obligations pursuant to this subdivision (b) shall exclude damage and injury arising under the provisions of Article 13 or Article 14 hereof.

(c) All of the foregoing notwithstanding, neither party shall be obligated to perform any maintenance, repair or replacement, the necessity of which shall have arisen solely due to the negligence or fault of the other, or of the other's employees or agents; and in such case, the party which shall have caused the need for such maintenance, repair or replacement shall be responsible for same, at its sole cost. This subdivision (c) shall apply only in any instance to which Article 12 shall not apply.

(d) If Landlord shall fail to make any of the repairs required to be made by Landlord under this Article within 30 days after receipt of written notice from Tenant of the need therefor, Tenant, in addition to any other rights it may have hereunder, may make said repairs on Landlord's behalf and charge Landlord for the reasonable cost thereof. Provided that Landlord has commenced to repair within said 30 days, and thereafter is diligently prosecuting same to completion, said 30 day period shall be extended, where, due to the nature of a repair, it cannot reasonably be completed within 30 days. If, in an emergency, in Tenant's reasonable opinion, any such repairs are immediately necessary, then, no prior 30 days' notice shall be required, but Tenant shall give Landlord whatever notice is reasonable in the circumstances and may make said repairs on Landlord's behalf and charge Landlord for the reasonable cost thereof. In either event, if Landlord shall not pay Tenant within 30 days after receipt of an invoice therefor with supporting documentation, Tenant may deduct the reasonable cost thereof from rent and other charges due hereunder.

(e) If Tenant shall fail to make any of the repairs required to be made by Tenant under this Article within 30 days after receipt of written notice from Landlord of the need therefor, Landlord, in addition to any other rights it may have hereunder, may make said repairs on Tenant's

behalf and charge Tenant for the reasonable cost thereof. Provided that Tenant has commenced to repair within said 30 days, and thereafter is diligently prosecuting same to completion, said 30 day period shall be extended, where, due to the nature of a repair, it cannot reasonably be completed within 30 days. If, in an emergency, in Landlord's reasonable opinion, any such repairs are immediately necessary, then, no prior 30 days' notice shall be required, but Landlord shall give Tenant whatever notice is reasonable in the circumstances and may make said repairs on Tenant's behalf and charge Tenant for the reasonable cost thereof. In either event, Tenant shall pay Landlord such reasonable cost within 30 days after Tenant receives Landlord's invoice therefor with supporting documentation.

COMPLIANCE WITH LAWS -

10. (a) Tenant shall comply with all laws, statutes, ordinances, and regulations (collectively, "Laws") relating to the physical condition of the Building, which Laws must be complied with solely due to the nature of Tenant's business. Tenant shall have no obligation with respect to Laws relating to buildings or to retail businesses in general; and compliance with such general Laws shall be Landlord's responsibility at Landlord's sole cost. Additionally, and notwithstanding the first sentence of this Article, Tenant shall not be required to make structural repairs or modifications; it being agreed that structural repairs and modifications shall be Landlord's responsibility at Landlord's sole cost, if same shall be necessary to comply with Laws.

(b) Except for those obligations delegated to Tenant pursuant to subdivision (a) above, Landlord shall comply with all Laws, which Laws shall impose any duty with respect to the Premises and/or with respect to Landlord's work or delivery of the Premises as described in Article 7.

ACCESS TO PREMISES -

11. Upon reasonable notice to Tenant, and during Tenant's business hours, Landlord may show the Premises to purchasers and potential purchasers, and to mortgagees and potential mortgagees. Upon reasonable notice to Tenant, during the last 6 months of the then-current term, unless Tenant shall have exercised any Renewal Option, Landlord also may show the Premises to persons wishing to rent the same.

WAIVER OF SUBROGATION -

12. Notwithstanding anything in this Lease to the contrary, Landlord and Tenant each waives any rights of action for negligence against the other party, which may arise during the Term for damage to the Premises or to the property therein resulting from any fire or other

casualty of the kind covered by All-Risk property insurance policies, regardless of whether or not, or in what amounts, such insurance is now, or may hereafter be, carried by the parties.

FIRE OR OTHER CASUALTY -

13. (a) If, at any time during the Term, the Building shall be damaged in whole or in part by fire, the elements or other casualty, Tenant promptly shall notify Landlord thereof. Upon receipt of such notice, Landlord, at Landlord's sole cost, as speedily as circumstances permit, shall repair said damage and restore the Building to the same condition which existed immediately prior to the occurrence of such damage. The Term shall be tolled by a period of time equal to the time between the date of the casualty and the date on which Landlord completes repair and restoration of the Building. During the restoration, Tenant may operate its business out of a temporary structure such as a trailer, subject to compliance with Laws. In addition, Tenant shall be entitled to an abatement of Fixed Rent and other charges payable hereunder for the period during which the Building is rendered incapable of use for the normal conduct of Tenant's business, including a reasonable period, not to exceed 30 days, for Tenant to refixture and restock. Said abatement will be pro rated, based on the number of square feet of the Building which are so rendered untenable or incapable of such use.

The foregoing notwithstanding, if the Building is partially or totally destroyed during the last 2 years of the initial term or during the last 2 years of any extension period, then, unless Tenant already has exercised its next remaining extension period, Landlord may terminate this Lease upon no fewer than 45 days prior written notice to Tenant, in which event this Lease shall terminate on the date specified in such notice. Notwithstanding the preceding sentence, if Tenant shall exercise its next remaining option to extend this Lease prior to the expiration of the 45 day notice, then Landlord's termination notice shall be void and Landlord shall be obligated to fulfill its repair and restoration obligations as set forth in this Article.

(b) If Landlord shall fail to commence to repair or restore the Building in the manner specified in this Article, within 90 days after the damage has occurred, and proceed to complete such repairs and restoration with due diligence, then, Tenant may give Landlord 30 days' prior written notice of Tenant's election to: (i) terminate this Lease on the date specified in such notice; or (ii) rebuild the Building itself on Landlord's behalf. If Tenant shall so rebuild the Building, Landlord shall assign any available insurance proceeds under Article 35 to Tenant to cover the cost of same.

CONDEMNATION -

14. (a) If the entire Building, or the use or possession thereof, is taken in condemnation proceedings, or by any right of eminent domain, or for any public or quasi-public

use, or if Landlord shall deliver to a governmental authority a deed in lieu of condemnation or eminent domain (individually or collectively, a "taking", or "taken"), then, this Lease shall terminate on the date when possession shall be taken by the condemnor, and rent and all other charges payable hereunder shall be apportioned and paid in full up to that date, and all prepaid unearned rent, and all other charges payable hereunder, shall promptly be repaid by Landlord to Tenant.

If more than 20% of the Building shall be so taken, then Tenant may terminate this Lease, if Tenant shall so notify Landlord within 45 days after such taking. If Tenant shall not so terminate this Lease, then this Lease shall continue in full force and effect, except that Fixed Rent and all other charges payable hereunder shall be reduced in the proportion that the gross floor area of the part so taken or condemned shall bear to the total gross floor area of the Building immediately prior to such taking. In such case, Landlord, at Landlord's own expense, as speedily as circumstances permit, shall repair all damage to the Building as shall have been caused by such partial taking, and shall restore the Building to a complete architectural unit. Fixed Rent and other charges payable hereunder shall abate until the Building shall have been restored to a tenantable condition, including a reasonable period, not to exceed 30 days, for Tenant to refixture and restock.

(b) For the purposes of this subdivision (b), in addition to the meaning set forth above, a "taking" shall mean any legal impediment which shall not be within Landlord's reasonable control.

If, due to a taking, the parking areas of the Premises shall be decreased below the Required Number of Parking Spaces (as defined in Section 19 of Part I), Tenant shall notify Landlord thereof. If, within 90 days after Landlord's receipt of such notice, additional parking is not provided within the Premises equal to the number by which it has been decreased below the Required Number of Parking Spaces, then Tenant may, upon 30 days' written notice to Landlord: (i) terminate this Lease; or (ii) pay to Landlord Fixed Rent reduced to the level of 2% of Gross Sales, and without any Percentage Rent obligation. If Tenant shall elect to so pay reduced rent, Tenant shall remain obligated for any other charges due under this Lease. Tenant's Fixed Rent shall be so reduced and Percentage Rent so eliminated until such time as said additional parking is provided within the Premises.

If, due to a taking, there shall be an impediment, which impediment shall materially adversely affect any means of ingress or egress between the Premises and any abutting street, then, Tenant shall notify Landlord thereof. If, within 30 days after Landlord's receipt of such notice, such impediment shall not be cured, then Tenant may, upon 10 days' written notice to Landlord: (i) terminate this Lease; or (ii) pay to Landlord Fixed Rent reduced to the level of 2% of Gross Sales, and without any Percentage Rent obligation. If Tenant shall elect to so pay reduced rent, Tenant shall remain obligated for any other charges due under this Lease. Tenant's Fixed Rent shall be so reduced and Percentage Rent so eliminated until such time as said impediment shall be removed.

(c) Tenant hereby waives all rights in condemnation awards, except awards for Tenant's fixtures and equipment, the unamortized costs of Tenant's leasehold improvements in the Building, if any, and any separate awards which may be made for Tenant's relocation expenses, business interruption, and the like.

ASSIGNMENT AND SUBLETTING -

15. (a) Tenant shall have the right to assign this Lease, or to sublet the whole or any part of the Premises, for use for any lawful retail purpose, provided: Landlord's consent is first obtained, which consent Landlord agrees not to unreasonably withhold, delay or condition; and that Tenant and Guarantor shall remain liable for the obligations of Tenant hereunder.

(b) Notwithstanding Article 15(a), Tenant shall have the right, without Landlord's consent, to: (i) assign this Lease, or sublet the whole or any part of the Premises, for any lawful retail purpose, to any corporation of which, at the time, Tenant shall be a subsidiary, or to any subsidiary of a corporation of which, at the time, Tenant shall be a subsidiary, provided that Guarantor (but not Tenant) remains fully liable for the obligations of Tenant hereunder; or (ii) assign this Lease to any party acquiring all or substantially all of the assets of Tenant's store at the Premises by purchase, merger, consolidation, or otherwise, provided that Guarantor (but not Tenant) remains fully liable for the obligations of Tenant hereunder.

ALTERATIONS -

16. Tenant shall not make any structural alterations or exterior alterations to the Building without, in each instance, obtaining Landlord's written consent, which consent Landlord agrees not to unreasonably withhold, delay or condition. However, Tenant may, without Landlord's consent, make non-structural alterations to the Building interior.

Tenant shall do all work in a good and workmanlike manner, at its own cost, and in accordance with Laws. Tenant shall discharge, within 30 days (by payment or by filing the necessary bond, or otherwise), any mechanics', materialmen's or other lien against the Premises and/or Landlord's interest therein, which lien may arise out of any payment due for, or purported to be due for, any labor, services, materials, supplies, or equipment alleged to have been furnished to or for Tenant in, upon, or about the Premises.

At Tenant's sole cost, Landlord agrees to cooperate with Tenant (including signing applications) in obtaining any necessary Permits for any alterations which Tenant is permitted to make hereunder.

SIGNS -

17. At Tenant's sole cost, Tenant may install, replace and relocate on the Building, such signs, awnings, lighting effects and fixtures as may be used from time to time by Tenant (collectively, "Signs"). Tenant shall maintain and repair such Signs. Tenant also may place in its windows: Tenant's standard paper signs in its windows in accordance with Tenant's regular advertising and promotional programs; and/or neon signs. At Tenant's sole cost, Landlord agrees to cooperate with Tenant (including signing applications) in obtaining any necessary Permits for Tenant's Signs. All Signs of Tenant shall comply with Laws.

PYLON SIGN -

18. If permitted by Laws, Tenant, at its sole cost, may: install its sign on any pylon sign structure located on the Premises; and, if no such pylon structure shall exist, construct its own pylon structure and install its sign thereon. At Tenant's sole cost, Landlord agrees to cooperate with Tenant (including signing applications) in obtaining any necessary Permits for any pylon sign and/or structure.

SURRENDER -

19. At the expiration or other termination of this Lease, Tenant shall surrender the Premises to Landlord in as good order and condition as they were at the commencement of the Term or may be put in thereafter, reasonable wear and tear and damage by casualty and/or the elements excepted. All alterations, additions, and improvements in or upon the Premises made by either party (except Tenant's furniture, trade fixtures, satellite communications dish and equipment, computer and other equipment and shelving), shall become the property of Landlord and shall remain upon and be surrendered with the Premises as a part thereof at the termination or other expiration of the Term. At the expiration or termination of the Term, Tenant shall remove the items enumerated in the parenthetical above, as well as its signs and identification marks, from the Premises. Tenant agrees to repair any and all damage caused by such removal.

At any time during the Term, Tenant may remove the items enumerated in the parenthetical above, as well as its signs and identification marks, from the Premises.

SUBORDINATION OF LEASE -

20. This Lease shall be subject and subordinate to the lien of any bank or institutional or other mortgage or mortgages now or hereafter in force against the Premises, and to all advances made upon the security thereof, provided that the holder of any such mortgage shall execute and deliver to Tenant an agreement ("SNDA Agreement"), in form satisfactory to Tenant, providing

that such holder will recognize this Lease and not disturb Tenant's possession of the Premises in the event of foreclosure if Tenant is not then in default hereunder beyond any applicable cure period. Tenant agrees, upon receipt of such SNDA Agreement, to execute such further reasonable instrument(s) as may be necessary to subordinate this Lease to the lien of any such mortgage. The term "mortgage" shall include deeds of trust or any other similar hypothecations.

21. Intentionally omitted.

UTILITIES -

22. Tenant agrees to pay for all utilities consumed by it in the Premises, prior to delinquency.

TENANT DEFAULT -

23. (a) If: (i) Tenant shall default in the payment of Fixed Rent or any item of additional rent payable hereunder, and such default shall continue for more than 15 days after written notice to Tenant; or (ii) Tenant shall default in fulfilling any of the other covenants of this Lease, and such default shall continue for more than 30 days after written notice thereof from Landlord, specifying such default (provided that if Tenant has commenced to cure within said 30 days, and thereafter is prosecuting same to completion, said 30 day period shall be extended, where, due to the nature of the default, it is unable to be completely cured within 30 days); then, in any such event, Landlord may give to Tenant notice of intention to end the Term hereof, and if Landlord shall do so, the Term shall expire as if that day were the day herein fixed for the expiration of the Term, and Tenant shall then quit the Premises and surrender the same, but shall remain liable as hereinafter provided.

(b) If the notices provided in subdivision (a) of this Article shall have been given and the Term shall expire as aforesaid, then Landlord may, without further notice, re-enter the Premises, either by force or otherwise, and dispossess Tenant by summary proceedings or otherwise, and remove Tenant's effects and hold the Premises as if this Lease had not been made; and Tenant hereby waives the service of notice of intention to re-enter or to institute legal proceedings to that end.

(c) In case of any such default, re-entry, expiration and/or dispossession by summary proceedings or otherwise (i) the rent shall become due and shall be paid up to the time of such re-entry, dispossession and/or expiration; (ii) Landlord shall make reasonable efforts to re-let the Premises or any part or parts thereof, either in its own name or otherwise, for a term or terms which may, at its option, be shorter or longer than the period which would otherwise have constituted the remainder of the Term, and may grant concessions or free rent, but only to such extent as Landlord,

in Landlord's reasonable judgment, considers advisable and necessary to re-let the same; and, (iii) Tenant, or its successors, shall also pay to Landlord, as liquidated damages for the failure of Tenant to observe and perform its covenants herein contained, any deficiency between the rent herein reserved and the net amount, if any, of the rents collected on account of the re-letting of the Premises for each month of the period which would otherwise have constituted the remainder of the then-current term. In computing such liquidated damages, there shall be added to said deficiency such reasonable expenses as Landlord may incur in connection with re-letting, such as legal expenses, attorney and broker fees, but excluding renovations. Any such liquidated damages shall be paid in monthly installments on the rent day specified in this Lease and any suit brought to collect the amount of the deficiency for any month shall not prejudice, in any way, the right of the Landlord to collect the deficiency for any subsequent month by a similar proceeding. However, if Tenant shall default on any such monthly installment, then, at Landlord's option, such liquidated damages shall be accelerated and paid immediately by Tenant, but discounted to their present value, using as the time remaining, the number of full calendar months remaining in the term of this Lease following default (beyond applicable cure periods), and using as the interest rate, the lesser of the following: (x) the rate (or the average of rates, if more than one rate appears) inserted in the blank of the "Money Rates" section of "The Wall Street Journal" (Eastern Edition) in the section reading "Prime Rate: _____%", or (y) the base rate on corporate loans posted by at least 75% of the nation's 30 largest banks. (If neither rate is available for any reason, then a reasonably equivalent rate shall be used).

Mention in this Lease of any particular remedy shall not preclude Landlord from any other remedy at law or in equity, including the right of injunction. Tenant waives any rights of redemption granted by any Laws if Tenant is evicted or dispossessed, for any cause, or if Landlord obtains possession of the Premises by reason of the violation by Tenant of any of the terms of this Lease.

LANDLORD DEFAULT -

24. In the event of any default by Landlord under this Lease ("Landlord Default"), Tenant may give Landlord written notice specifying such Landlord Default and, if Tenant shall do so, then Landlord shall have 30 days in which to cure any such Landlord Default; provided, however, that if the nature of the Landlord Default is such that more than 30 days are required for its cure, then Landlord shall not be in default if Landlord commences to cure within said 30 days and thereafter diligently prosecutes the same to completion. In the event that Landlord shall remain in default following its said right to cure, then, in addition to all other rights and remedies available to Tenant at law and in equity, Tenant may cure such Landlord Default on behalf of Landlord by doing the necessary work and/or making the necessary payments, and billing Landlord for the reasonable costs thereof, which Landlord agrees to pay to Tenant within 30 days of receipt of Tenant's demand therefor and reasonable evidence of the cost of the same. If Landlord shall fail to

pay within said 30 day period, Tenant may deduct the entire cost from any rent and other charges due hereunder.

RENT PAYMENTS -

25. If Landlord's interest in this Lease shall pass to another, or if the rent hereunder shall be assigned, or if a party, other than Landlord, shall become entitled to collect the rent due hereunder, then, notice thereof shall be given to Tenant by Landlord in writing, or, if Landlord is an individual and shall have died or become incapacitated, by Landlord's legal representative, accompanied by due proof of the appointment of such legal representative. Until such notice and proof shall be received by Tenant, Tenant may continue to pay the rent due hereunder to the one to whom, and in the manner in which, the last preceding installment of rent hereunder was paid, and each such payment shall fully discharge Tenant.

Tenant shall not be obligated to recognize any agent for the collection of rent or otherwise authorized to act with respect to the Premises until written notice of the appointment and the extent of the authority of such agent shall be given to Tenant by the one appointing such agent.

HOLDOVER -

26. If Tenant shall hold over after the expiration date of the Term, or if Tenant shall hold over after the date specified in any termination notice given by Tenant then, in either such event, Tenant shall be a month-to-month Tenant on the same terms as herein provided, except that the monthly Fixed Rent will be 1.5 times the monthly Fixed Rent payable by Tenant for the last full calendar month of Tenant's tenancy hereunder.

NOTICES -

27. Whenever, pursuant to this Lease, notice or demand shall or may be given to either of the parties by the other, and whenever either of the parties shall desire to give to the other any notice or demand with respect to this Lease or the Premises, each such notice or demand shall be in writing, and any Laws to the contrary notwithstanding, shall not be effective for any purpose unless the same shall be given or served as follows: by mailing the same to the other party by registered or certified mail, return receipt requested, or by overnight courier service provided a receipt is required, at its Notice Address set forth in Part I hereof, or at such other address as either party may from time to time designate by notice given to the other. The date of receipt of the notice or demand shall be deemed the date of the service thereof (unless the notice or demand is not received or accepted in the ordinary course of business, in which case the date of mailing shall be deemed the date of service thereof).

PARKING -

28. Intentionally omitted.

PROPERTY LAYOUT -

29. Intentionally omitted.

SATELLITE COMMUNICATIONS DISH AND EQUIPMENT -

30. Notwithstanding anything to the contrary in this Lease, Tenant may install, maintain, and replace, on the roof of the Building or in the Building, a satellite communications dish and related equipment. Tenant shall do so at its own cost and in accordance with all Laws, and shall defend, indemnify and hold Landlord harmless from and against any claims, costs or expenses incurred by Landlord as a result of such installation, maintenance or replacement by Tenant. At Landlord's request, Tenant shall coordinate any roof installation hereunder with Landlord's roofing contractor.

EXCLUSIVE -

31. (a) If Landlord or any of its officers, directors, trustees, individual members, or partners, hold or acquire any interest in any land immediately adjacent to the Premises (whether accomplished directly by direct ownership, or indirectly through the use of leases, cross-easement agreements or similar documents), during the Term, Landlord agrees that (unless any premises on said land are already so leased and/or used) Landlord shall not allow any of the premises on such land to be leased or to be used for the purpose of a health and beauty aids store, a drug store, and/or a pharmacy prescription department.

(b) As used in this Lease: the term "pharmacy prescription department" shall include the dispensing of prescription drugs by physicians, dentists, other health care practitioners, or entities such as health maintenance organizations, where such dispensing is for profit; and a "health and beauty aids store" shall mean a store which devotes more than 5% of its retail selling space to the display and sale of health and beauty aids.

(c) If Landlord shall violate any of the provisions of this Article and shall not cure such violation within 60 days after receipt of Tenant's notice thereof, Tenant, at any time thereafter, upon 10 days prior written notice to Landlord, may: (i) terminate this Lease; or (ii) pay to Landlord Fixed Rent reduced to a level equal to 50% of Fixed Rent due under this Lease and without any further Percentage Rent obligation. Tenant's Fixed Rent shall be so reduced and Percentage Rent so eliminated until such time as such violation is permanently cured.

RIGHT OF FIRST REFUSAL -

32. Intentionally omitted.

MAINTENANCE OF PARKING AND OTHER EXTERIOR AREAS -

33. (a) With respect to the parking and other exterior areas of the Premises, Landlord shall perform the following, pursuant to good and accepted business practices throughout the Term: repairing, resurfacing, repaving, re-striping, and resealing, of the parking areas; repair of all curbing, sidewalks and directional markers; removal of snow and ice; landscaping; and provision of adequate lighting during all hours of darkness that Tenant shall be open for business.

As used in this Article, the term “repair” or “repairing” shall include maintenance (including cleaning), repair, and replacement.

(b) Commencing as of the Date of Rent Commencement, Tenant shall pay Landlord for the maintenance costs incurred by Landlord from and after the Date of Rent Commencement in fulfilling Landlord’s obligations under subdivision (a) above; and for no other costs. The foregoing notwithstanding, Tenant shall not pay Landlord for any costs incurred by Landlord in connection with any capital expenditures or capital improvements made by Landlord, such as repaving or replacing the parking areas, except as follows: if, after obtaining Tenant’s consent to do so, Landlord shall repave or replace the parking areas, then Tenant agrees to pay the amortization costs thereof, over the useful life thereof, provided that: (i) Tenant shall do so only one time during the “useful life” (as defined below) of the improvement; and (ii) Tenant shall not so pay following the expiration or other termination of this Lease (in other words, for example, if Landlord shall replace the parking areas in year 8, and if such replacement shall have a 15 year useful life, and if the Term shall expire at the end of year 10, then Tenant shall pay its share of the annual amortization for years 8, 9, and 10 only (or a portion of year 8, as applicable.) If Tenant shall not consent to any request by Landlord to repave or replace the parking areas, then, Landlord shall not be obligated to perform same, and Landlord shall not be in default hereunder for failure to do so. Landlord shall repave or replace the parking areas at any time upon Tenant’s request to do so; and Tenant shall pay Landlord as set forth above. For the purposes hereof, useful life shall be determined as permitted under the Internal Revenue Code (including the regulations issued thereunder) in effect at the time of such repaving or replacing.

(c) Except for a 5% administrative fee on the charges (excluding electricity charges) payable by Tenant pursuant to this Article, Tenant shall not pay any management, administrative, accounting, data processing or audit fees.

(d) Tenant shall pay to Landlord, a monthly sum, as set forth herein, by the fifth day of each month and a pro rata sum for any partial month. For the first calendar year (or portion thereof) to occur during the Term, said monthly sum shall be as set forth in Section 24 of Part I. Said monthly sum may be adjusted once annually thereafter by Landlord to reflect any increased or decreased costs. Within 60 days after the end of each calendar year, and within 60 days after the expiration or termination of this Lease, Landlord shall submit to Tenant a statement of the maintenance costs for said calendar year or portion thereof, as applicable. If such a statement is not received by Tenant within 60 days after the end of any calendar year, Tenant shall be relieved of its obligation to make monthly payments hereunder until said statement is received from Landlord. Such statement shall contain detailed documentation including copies of receipted bills. If such statement indicates that the amount paid by Tenant on its account for said calendar year is less than actual costs for said calendar year, then Tenant shall pay the amount owing to Landlord within 30 days of receipt of such statement. If such statement shall indicate that Tenant has overpaid for said calendar year, then such overpayment shall be refunded, together with Landlord's annual statement, and the monthly payment due herein shall be proportionately reduced. For the first and last partial calendar year of the Term, Tenant will pay said costs for the entire year multiplied by a fraction, consisting of the number of days in the calendar year subsequent to the Date of Rent Commencement, or prior to the date of lease termination, as the case may be, and divided by 365.

(e) If Landlord shall fail to perform any of its obligations under this Article within 30 days after receipt of written notice from Tenant of the need therefor (except that no notice shall be required in the event of an emergency), then, Tenant may do so on Landlord's behalf.

TAXES -

34. (a) Landlord shall pay to all Tax authorities, all real estate taxes and all assessments which may be levied against the Premises (collectively, "Taxes").

(b) Commencing as of the Date of Rent Commencement, Tenant agrees to reimburse Landlord for all such Taxes levied against the Premises with respect to each tax fiscal year (or portion thereof) of the Term occurring after the Date of Rent Commencement. Tenant's obligation hereunder shall exclude: any assessment penalty added to the Taxes as a result of Landlord's failure to timely pay any such Taxes to the applicable governmental authority; and any Taxes payable over a period of more than one year, provided that Tenant shall pay the installments thereof due during the Term. At least 30 days prior to the commencement of the Term, Landlord shall submit to Tenant Landlord's estimate of Taxes for the first full tax fiscal year to occur during the Term.

(c) Any sum payable to Landlord under this Article shall be paid by Tenant within 30 days after receipt from Landlord of demand therefor, accompanied by copies of receipted Tax bills.

(d) At Tenant's sole cost, Tenant may contest (including seeking an abatement or reduction of) any Taxes agreed to be paid hereunder; provided that Tenant first shall satisfy any requirements of Laws, including, if required, that the Taxes be paid in full before being contested. At Tenant's sole cost, Landlord shall assist Tenant as reasonably necessary with respect to any such contest, including joining in and signing applications or pleadings. Any rebate received shall belong to Tenant.

(e) If Tenant shall become aware that the Premises is being sold at a tax sale due to Landlord's delinquent payment of Taxes, and if Tenant shall pay the delinquent Taxes in order to prevent such sale, then, Tenant may deduct the following amounts from rent and other charges due hereunder: an amount equal to the Taxes, interest, and penalties so paid by Tenant; all reasonable charges (including reasonable attorneys fees) incurred by Tenant in preventing such sale; and interest on all of the foregoing at the rate of 10% per annum.

(f) Notwithstanding anything to the contrary in this Article, if Landlord shall fail to bill Tenant for any Taxes within 24 months from the date the applicable Tax bill is issued, then Tenant shall not be obligated to pay Landlord for such Taxes.

(g) Tenant agrees to pay to all Tax authorities all personal property taxes which may be levied against Tenant's merchandise, trade fixtures, and other personal property in and about the Premises.

INSURANCE -

35. (a) Landlord shall maintain All-Risk insurance for the Building for at least 90% of its reasonable replacement value. Said All-Risk policy shall not exclude flood coverage if the Premises is located in a Flood Zone A or V, and shall not exclude earthquake coverage. Landlord warrants and agrees that all proceeds received from such insurance shall be used in the first instance in accordance with Landlord's obligations under Article 13 hereof. Landlord also shall maintain General Liability coverage, including Broad Form Endorsement, on an occurrence basis; in combined policy limits of not less than \$2,000,000.00 and not in excess of \$5,000,000.00 per occurrence for bodily injury and for property damage with respect to the Premises.

Commencing as of the commencement of the Term, Tenant shall pay to Landlord the cost of the insurance required to be maintained hereunder during the Term. In addition, if Landlord shall elect to carry rental value insurance for the Premises, Tenant shall pay Landlord for same, in limits of up to 12 months' worth of rent and other charges due to Landlord hereunder. Any sum payable to Landlord hereunder shall be paid by Tenant within 30 days after receipt from Landlord of demand therefor, but not more than once annually. Any such demand shall be

accompanied by: copies of receipted insurance bills; copies of the declaration pages of the applicable policies, with determinations of premium allocations, and any endorsements and exclusions; and by a certificate of all of Landlord's insurance; and such certificate shall name Tenant as an additional insured with respect to Landlord's General Liability policy. Landlord agrees to send to Tenant Landlord's estimate of the annual insurance expense hereunder at least 30 days prior to the commencement of the Term.

If Landlord shall receive a credit for any amount of the insurance premium paid by Landlord for the insurance required or permitted hereunder, then Landlord shall notify Tenant of such credit within 15 days after its receipt; and said amount shall be credited to Tenant for the next succeeding insurance payment required to be paid by Tenant hereunder, except that, at the expiration or termination of the Term, said amount will be refunded to Tenant.

At Tenant's election, Landlord shall obtain all of the insurance described in this subdivision (a) from an insurer designated by Tenant. If Tenant shall make such designation, then, the foregoing notwithstanding, Tenant shall pay such insurer directly.

(b) (i) Notwithstanding subdivision (a) above, at Tenant's sole cost, Tenant may elect to maintain, instead of Landlord and on behalf of Landlord, the All-Risk insurance and/or General Liability insurance described above. If Tenant shall make such election, then: Tenant shall give Landlord 30 days' prior written notice of the effective date of Tenant's insurance; as a rider to such All-Risk insurance, Tenant shall obtain rental value insurance for the Premises, in limits of 12 months' worth of rent and other charges due to Landlord hereunder; Tenant shall not be obligated to pay Landlord for any cost of Landlord's All-Risk or General Liability insurance, which cost is attributable to the period following the effective date of Tenant's insurance (and Landlord promptly shall refund to Tenant any such sums pre-paid by Tenant).

Any insurance maintained by Tenant pursuant to this subdivision (b) shall name Landlord as named insured and Tenant as an additional insured. Upon Landlord's request, Tenant shall deliver to Landlord a certificate of such insurance.

Landlord warrants and agrees that all proceeds received from such All-Risk insurance shall be used in the first instance in accordance with Landlord's obligations under Article 13 hereof.

Tenant may cease to carry insurance pursuant to this subdivision (b) upon at least 30 days prior written notice to Landlord. If Tenant shall so cease, then Landlord shall be obligated to maintain insurance pursuant to subdivision (a) above, so that there shall be no lapse in coverage; and Tenant will pay Landlord pursuant to said subdivision (a).

(ii) Tenant may carry such All-Risk and General Liability insurance by way of a Business Owners Policy ("BOP"), or any equivalent thereof.

Tenant may carry such All-Risk and/or General Liability insurance through blanket insurance covering the Premises and other locations of Tenant and/or of Tenant's affiliates; provided that such blanket insurance policy specifically designates the Premises and allocates specific coverage limits to the Premises as required hereunder, which shall not be reduced by claims as to other property covered by such blanket policy.

(c) Tenant shall maintain General Liability insurance, with combined policy limits of at least \$2,000,000.00 per occurrence for bodily injury and for property damage with respect to the Premises. Such insurance shall name Tenant as the named insured and Landlord as an additional insured. Upon Landlord's request, Tenant shall deliver to Landlord a certificate of such insurance.

(d) All insurance coverage required to be carried hereunder: shall be carried with insurance companies licensed to do business in the state in which the Premises is located; shall be rated in the then-most current Best's Insurance Guide (or any successor thereto) as having a general policyholder rating of A- or better and a financial rating of "VIII" or better; and shall require the insured's insurance carrier to notify the other party hereto at least 30 days prior to any cancellation or material modification of such insurance.

(e) Upon the request of either party, provided that such request shall be commercially reasonable, the other party shall: increase the limits of insurance carried by it pursuant hereto; and carry types of insurance in addition to the types required to be carried by it pursuant hereto.

TENANT'S AUDIT RIGHTS -

36. Tenant may audit Landlord's maintenance charges, Tax charges and insurance charges, but not more than once annually. Access to Landlord's records shall be provided to Tenant within 30 days after Tenant's request therefor. If such access is not provided, Tenant shall be relieved of its obligation to pay such charges until access is provided. Landlord agrees to maintain its maintenance, Tax and insurance records for at least 36 months from the date of each applicable invoice to Tenant. If any audit shall indicate that, in any of Landlord's statements, the charges were overstated by Landlord by an amount in excess of 3% of the actual costs, then Landlord shall pay to Tenant the reasonable cost of such audit, plus interest on the overstated amount at the rate of 10% per annum. In any event, Landlord shall repay any amount owing to Tenant as a result of any overstatement.

LANDLORD'S TITLE -

37. Landlord warrants and covenants that [,from and after the date on which Landlord shall tender delivery of possession of the Premises to Tenant, Landlord will have] [Landlord has] good and clear record and marketable title to the Premises, in fee simple absolute, free of liens and encumbrances (excluding mortgages). Landlord also warrants and covenants that: there are no restrictive covenants or other agreements, and no zoning or other Laws, and no other legal impediment, any of which would prevent Tenant from occupying the Premises for the purposes herein provided, or prevent the full use of the parking areas as herein set forth, or otherwise prevent the Premises from being developed in accordance with the layout shown on Exhibit A; and Landlord shall not enter into any restrictive covenants or other agreements, which would prevent Tenant from occupying the Premises for the purposes herein provided, or prevent the full use of the parking areas as herein set forth, or otherwise prevent the Premises from being developed in accordance with the layout shown on Exhibit A.

Landlord warrants and represents to Tenant that, on the date of delivery of possession of the Premises to Tenant, to the best of Landlord's knowledge, the Premises shall be free of all violations, orders, or notices of violations of Laws.

QUIET ENJOYMENT -

38. Landlord warrants and agrees that Tenant, on paying the rent and other charges due hereunder and performing all of Tenant's other obligations pursuant to this Lease, shall and may peaceably and quietly have, hold, and enjoy the Premises for the full Term, free from molestation, eviction, or disturbance by Landlord or by any other person(s) lawfully claiming to be the same.

EQUAL EMPLOYMENT OPPORTUNITY -

39. Tenant is an equal employment opportunity employer and is a federal contractor. Consequently, the parties agree that they will comply with Executive Order 11246, the Vietnam Era Veterans' Readjustment Assistance Act of 1974 and the Vocational Rehabilitation Act of 1973, if applicable, and also that these laws are incorporated herein by this reference.

The parties also agree that they will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, or any other characteristic protected by federal, state or local law.

BROKER -

40. Landlord and Tenant each represent and warrant that it has had no dealings or conversations with any real estate broker in connection with the negotiation and execution of this Lease, other than the Broker(s) named in Section 23 of Part I. Landlord and Tenant each agree to defend, indemnify and hold harmless the other against all liabilities arising from any claim of any other real estate brokers, including cost of counsel fees, resulting from their respective acts. Landlord warrants and agrees that it shall be solely responsible for any and all brokerage commissions owing to said Broker(s), as a result of the negotiation and execution of this Lease.

DISPUTES -

41. If any dispute shall arise as to any amount of money to be paid by one party to the other under this Lease, the party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest", and such payment shall not be regarded as a voluntary payment, and there shall survive the right on the part of said party to institute suit for the recovery of such sum. If it shall be judged that there was no legal obligation on the part of said party to pay such sum or any part thereof, said party shall be entitled to recover such sum(s), or so much thereof as it was not legally required to pay under this Lease, together with interest at the rate of 10% per annum. If any dispute shall arise between the parties hereto as to any work to be performed by either of them under this Lease, the party against whom the obligation to perform the work is asserted may perform such work and pay the cost thereof "under protest", and the performance of such work shall not be regarded as a voluntary performance, and there shall survive the right on the part of said party to institute suit for recovery of the cost of such work, and it shall be entitled to recover the cost of such work, or the cost of so much thereof, as said party was not legally required to perform under this Lease, together with interest at the rate of 10% per annum.

42. Intentionally omitted.

TRANSFER OF TITLE -

43. In the event of any transfer(s) of the title to the Premises, Landlord (and in the case of any subsequent transfer, the then-grantor) automatically shall be relieved from and after the date of such transfer, of all liability with respect to the performance of any obligations on the part of said Landlord contained in this Lease thereafter to be performed; provided that any amount then due and payable to Tenant by Landlord (or the then-grantor), and any other obligation then to be performed by Landlord (or the then-grantor) under this Lease, either shall be paid or performed by Landlord (or the then-grantor) or such payment or performance assumed by the transferee; it being intended hereby that the covenants, conditions and agreements contained in this Lease on the part of

Landlord shall, subject to the foregoing, be binding on Landlord, its successors and assigns, only during and with respect to their respective successive period of ownership.

NO CONTINUOUS OPERATION -

44. Anything in this Lease, express or implied, to the contrary notwithstanding (including without limitation, Tenant's obligation to pay Percentage Rent pursuant to Article 6), Landlord agrees that Tenant shall be under no duty or obligation, either express or implied, to open, or thereafter to continuously conduct, its business in the Premises at any time during the Term.

If Tenant shall cease to operate its business in the Premises for more than 60 consecutive days, Landlord shall have the right, at any time thereafter, for as long as Tenant's cessation to operate is still in effect, to terminate this Lease by giving Tenant 30 days' written notice of such election, and this Lease shall so terminate, unless Tenant has reopened the Premises for business during such 30 day period. For the purpose of this paragraph, Tenant shall not be deemed to have ceased operating its business in the Premises if Tenant is closed temporarily for remodeling or due to any fire or casualty, or if Tenant is closed due to strike, lockout, inability to obtain merchandise or any other cause beyond the reasonable control of Tenant.

HAZARDOUS MATERIALS -

45. (a) For the purposes hereof, the term "Hazardous Materials" shall include, without limitation, substances defined as "hazardous substances", "hazardous materials", or "toxic substances" in any Laws.

(b) Tenant represents and warrants that, except as herein set forth, it will not use, store or dispose of any Hazardous Materials in the Premises. Landlord agrees that Tenant may sell household and automotive cleaners and other chemicals (including motor oil) in standard retail containers as are commonly sold by supermarkets, discount stores, and/or drugstores. Additionally, Landlord agrees that Tenant may use such household cleaners and chemicals to maintain the Premises, and additional chemicals to perform on-site photo-processing. Storage of such chemicals is also permitted. Landlord and Tenant acknowledge that any or all of the cleaners and chemicals described in this paragraph may constitute Hazardous Materials. However, Tenant may sell, use, store and dispose of same as herein set forth, provided that in doing so, Tenant complies with Laws. For the purposes of subdivisions (c) through (g) of this Article, the term "Hazardous Materials" shall exclude the Hazardous Materials permitted in this paragraph.

(c) Landlord represents and warrants to Tenant that, as of the date on which Landlord shall deliver possession of the Premises to Tenant, the Premises shall be free from contamination by Hazardous Materials. Notwithstanding anything in this Lease to the contrary, Tenant shall not

be obligated to accept possession of the Premises until any Hazardous Materials found in or on the Premises have been removed, and Landlord has supplied Tenant with a certificate from the appropriate governmental authority that such removal has been completed, and Landlord has restored the Premises to the condition which existed immediately prior to such removal.

(d) If, at any time during the Term, Hazardous Materials shall be found in or on the Premises, then:

(i) with regard to any Hazardous Materials that Tenant shall not have caused, Landlord shall remove or remediate same to the extent required by Laws, and in compliance with Laws, and at Landlord's sole cost; and Landlord agrees to defend, indemnify, and hold each of Tenant and Guarantor harmless from and against any and all costs, damages, expenses, and/or liabilities (including reasonable attorneys' fees) which each of Tenant or Guarantor may suffer as a result of any claim, suit, or action regarding any such Hazardous Materials (whether alleged or real), and/or regarding the removal and remediation of same.

(ii) with regard to any Hazardous Materials caused by Tenant, Tenant shall remove or remediate same to the extent required by Laws, and in compliance with Laws, and at Tenant's sole cost; and Tenant agrees to defend, indemnify and hold Landlord harmless from and against any and all costs, damages, expenses, and/or liabilities (including reasonable attorneys' fees) which Landlord may suffer as a result of any claim, suit, or action regarding any such Hazardous Materials (whether alleged or real), and/or regarding the removal and remediation of same.

(e) If, prior to the Date of Rent Commencement, any Hazardous Materials are found in or on the Premises, and, as a result thereof, Tenant is prevented from doing its work in the Premises or from opening for business, then, notwithstanding anything to the contrary herein, the Date of Rent Commencement will be delayed for a number of days equal to the number of days that Tenant is delayed from opening for business in the Premises, subject to the other provisions of this Lease. If the Date of Rent Commencement shall be so delayed for 6 months, then, at any time thereafter until such delay shall cease, Tenant may terminate this Lease upon 15 days' prior notice to Landlord.

(f) If, on or after the Date of Rent Commencement, Tenant is prevented from operating its business as a result of the existence of such Hazardous Materials not caused by Tenant, then, Tenant's rent and all other charges due hereunder shall abate, until Tenant is able to resume the operation of its business, subject to the other provisions of this Lease. If Tenant's rent and other charges shall be so abated for 6 months, then, at any time thereafter until such abatement shall cease, Tenant may terminate this Lease upon 15 days' prior notice to Landlord.

(g) Each of Landlord's and Tenant's obligations pursuant to this Article shall survive any expiration and/or termination of this Lease.

TENANT'S INDEMNITY -

46. Except to the extent that such liability is caused by the negligence or tortious act or omission of Landlord, its agents, contractors, or employees, and subject to Article 12, Tenant shall defend, indemnify and hold Landlord harmless from all costs, expenses, claims or demands of whatever nature arising from the following:

(i) any willful, negligent or tortious act or omission on the part of Tenant, its agents, contractors, or employees; or

(ii) any failure on the part of Tenant to perform or comply with any of the covenants, agreements, terms, provisions, conditions or limitations contained in this Lease on its part to be performed or complied with.

In case any action or proceeding is brought against Landlord by reason of any such claim, Tenant, upon written notice from Landlord, shall, at Tenant's expense, resist or defend such action or proceeding.

LANDLORD'S INDEMNITY -

47. Except to the extent that such liability is caused by the negligence or tortious act or omission of Tenant, its agents, contractors or employees, and subject to Article 12, Landlord shall defend, indemnify and hold Tenant harmless from all costs, expenses, claims or demands of whatever nature arising from the following:

(i) any willful, negligent or tortious act or omission on the part of Landlord, its agents, contractors, or employees; or

(ii) any failure on the part of Landlord to perform or comply with any of the covenants, agreements, terms, provisions, conditions or limitations contained in this Lease on its part to be performed or complied with.

In case any action or proceeding is brought against Tenant by reason of any such claim, Landlord, upon written notice from Tenant, shall, at Landlord's expense, resist or defend such action or proceeding.

ESTOPPEL CERTIFICATE -

48. Landlord and Tenant agree to deliver to each other, from time to time as reasonably requested in writing, and within a reasonable period of time after receipt of such request, an estoppel certificate certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications), and the dates to which any rent due hereunder has been paid in advance, if any, together with such other information as Landlord or Tenant may reasonably require with respect to the status of the Lease and Tenant's use and occupancy of the Premises.

NOTICE OF LEASE -

49. Upon the request of either party hereto, Landlord and Tenant agree to execute a short form Notice of Lease in recordable form, setting forth information regarding this Lease, including, if available, the dates of commencement and expiration of the Term and the Date of Rent Commencement. Upon Tenant's request, Landlord shall record such Notice of Lease. As used herein, the term "Notice of Lease" shall mean a short form notice of lease, or declaration or similar document suitable to protecting Tenant's interest hereunder.

MISCELLANEOUS -

50. (a) This Lease shall be governed and construed in accordance with the laws of the state in which the Premises is located.

(b) The headings of the Sections of Part I, and of the Articles of Part II, are for convenient reference only, and are not to be construed as part of this Lease.

(c) The language of this Lease shall be construed according to its plain meaning, and not strictly for or against Landlord or Tenant; and the construction of this Lease and of any of its provisions shall be unaffected by any argument or claim that this Lease has been prepared, wholly or in substantial part, by or on behalf of Tenant.

(d) Landlord and Tenant each warrant and represent to the other, that each has full right to enter into this Lease and that there are no impediments, contractual or otherwise, to full performance hereunder.

(e) This Lease shall be binding upon the parties hereto and shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors and assigns of Landlord and the successors and assigns of Tenant.

(f) In the event of any suit, action, or other proceeding at law or in equity (collectively, "action"), by either party hereto against the other, by reason of any matter arising out of this Lease, the prevailing party shall recover, not only its legal costs, but also reasonable attorneys' fees (to be fixed by the Court) for the maintenance or defense of said action, as the case may be.

(g) A waiver by either party of any breach(es) by the other of any one or more of the covenants, agreements, or conditions of this Lease, shall not bar the enforcement of any rights or remedies for any subsequent breach of any of the same or other covenants, agreements, or conditions.

(h) This Lease and the referenced exhibits set forth the entire agreement between the parties hereto and may not be changed or terminated orally or by any agreement unless such agreement shall be in writing and signed by the party against whom enforcement of such change or termination is sought.

(i) If any provision of this Lease or the application thereof to any persons or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease or the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby, and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

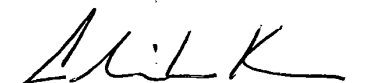
(j) The submission of this Lease for examination does not constitute a reservation of or agreement to lease the Premises; and this Lease shall become effective and binding only upon proper execution and unconditional delivery thereof by Landlord and Tenant.

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Lease on the day and year first above written.

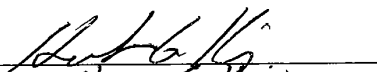
LANDLORD:

KINPIN PARTNERSHIP

WITNESS:



WITNESS

BY: 
NAME: HERB G. PINB
TITLE: MANAGING PARTNER

TENANT:

REVCO DISCOUNT DRUG CENTERS, INC.

ATTEST:


ASSISTANT SECRETARY

BY: 
~~FRANCIS J. HALL~~ PETER F
VICE PRESIDENT

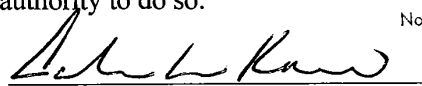
CVS LEGAL APPROVAL: 

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

On this 7th day of MAY, 1998, before me personally appeared HERB G. KING, personally known by me, who, being by me duly sworn, did depose and say that he/she resides at 26 THE VILLAGE AT WEXFORD HAZ, SC, and that he/she is THE MANAGING PARTNER of KEN PZ'S PARTNERSHIP, the PARTNERSHIP described in this instrument and that he/she executed this instrument on behalf of said PARTNERSHIP and that he/she had authority to do so.

Notary Public, South Carolina State # 1
My Commission Expires July 1, 2001


NOTARY PUBLIC

STATE OF RHODE ISLAND)

COUNTY OF PROVIDENCE)

On this 20th day of May, 1998, before me personally appeared ~~Francis J. Hall~~, personally known by me, who, being by me duly sworn, did depose and say that he resides at ~~Narragansett, Rhode Island~~; and that he is Vice President of Revco Discount Drug Centers, Inc., the corporation described in this instrument and that he executed this instrument on behalf of said corporation and that he had authority to do so.

Warring
PA

Peter F. Pecora


NOTARY PUBLIC **AUNE WESCOTT COLES**
STATE OF NEW JERSEY
My Commission Expires Feb. 14, 2000

GUARANTY

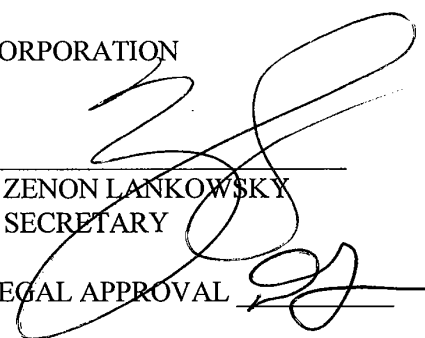
IN CONSIDERATION of the execution and delivery of the attached Lease by and between KINPIN PARTNERSHIP, as Landlord, and REVCO DISCOUNT DRUG CENTERS, INC., as Tenant, the undersigned, CVS CORPORATION ("Guarantor"), a Delaware corporation, having its office at One CVS Drive, Woonsocket, Rhode Island 02895, hereby guarantees to Landlord, its successors and assigns, the payment of the rent (including additional rent) reserved in the within Lease and the performance by Tenant of its covenants and agreements therein contained. Guarantor hereby expressly waives notice of all defaults, and hereby waives all suretyship defenses. Guarantor agrees that the waiver of any rights by Landlord against Tenant arising out of defaults by Tenant, shall not in any way modify or release the obligations of Guarantor.

This Guaranty shall be binding upon the Lease and upon all amendments and modifications thereto, except as set forth in the Lease or in any such amendment or modification; and except that Guarantor shall not be liable for any increase in Tenant's obligations under the Lease, which increase shall occur following any assignment of the Lease by the Tenant named in Part I thereof. This Guaranty shall inure to the benefit of the Landlord, and its heirs, legal representatives, successors and assigns; and shall be binding on the Guarantor and its successors and assigns.

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be executed by its duly authorized officers and its corporate seal to be hereunto affixed, at Woonsocket, Rhode Island, this 11 day of May, 1998.

GUARANTOR:

CVS CORPORATION

BY: 
ZENON LANKOWSKY
SECRETARY

CVS LEGAL APPROVAL 

Exhibit B

To Complaint

CVS Lease – First Amendment



CVS/pharmacy

RECEIVED
JUL 28 1998
LEGAL DEPT.

July 20, 1998

Mr. Herb King
KINPIN Partnership
C-6 Village at Wexford
Hilton Head, SC 29928

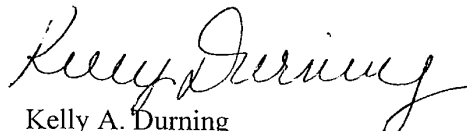
Re: Revco Discount Drug Centers, Inc. Store No. 5566-2
Hilton Head, South Carolina

Dear Mr. King:

Enclosed please find four (4) copies of the First Lease Amendment for the above-noted store which have been signed on behalf of CVS. Please sign all documents where indicated and return two (2) fully executed originals to my attention at your earliest convenience.

If you have any questions regarding the enclosed, please do not hesitate to call me.

Very truly yours,


Kelly A. Durning
Senior Legal Assistant

enclosures

*Kelly -
Thanks for your help
Hut/K*

cc: Sue Harrod (w/enc.)

Amendment
7/14/98

Store #5566-2

FIRST LEASE AMENDMENT

This First Lease Amendment dated this 23rd day of July, 1998 by and between KINPIN Partnership, with a place of business of C-6 Village at Wexford, Hilton Head, South Carolina 29928 ("Landlord") Revco Discount Drug Centers, Inc., with a place of business of One CVS Drive, Woonsocket, Rhode Island 02895 ("Tenant").

WITNESSETH:

WHEREAS, Landlord and Tenant entered into a certain Agreement dated May 7, 1998 (hereinafter collectively referred to as the "Lease") for premises located at Pope Avenue Urgent Care Center, Hilton Head Island, South Carolina (the "Premises"); and

WHEREAS, Landlord and Tenant desire that the Premises be built pursuant to plans and specifications provided by CVS Corporation and to revise the Fixed Rent and Percentage Rent specified in the Lease and to amend the Lease in certain other respects, all as more fully hereinafter set forth.

NOW, THEREFORE, for and in consideration of the Premises and the mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration, Landlord and Tenant agree that the Lease is hereby amended as follows:

1. The Fixed Rent specified in Article 15 of the Lease is deleted and there is substituted therefore the following:

<u>PERIOD</u>	<u>ANNUAL FIXED RENT</u>	<u>MONTHLY INSTALLMENT</u>
First 60 months from Rent Commencement	\$222,750.00	\$18,562.50
Next 60 months	\$233,887.50	\$19,490.63
Next 60 months	\$245,581.88	\$20,465.16

Next 60 months and to end of initial term	\$257,860.97	\$21,488.41
First Option Period	\$257,860.97	\$21,488.41
Second Option Period	\$257,860.97	\$21,488.41
Third Option Period	\$257,860.97	\$21,488.41
Fourth Option Period	\$257,860.97	\$21,488.41

2. The Percentage Rent specified in Article 16 of the Lease is deleted and there is substituted therefore the following:

<u>PERIOD</u>	<u>BREAKPOINT</u>	<u>PERCENTAGE RENT RATE</u>
First 60 months	\$11,137,500.00	2.00%
Next 60 months	\$11,694,375.00	2.00%
Next 60 months	\$12,279,093.75	2.00%
Next 60 months and to end of initial term	\$12,893,048.44	2.00%
First Option Period	\$12,893,048.44	2.00%
Second Option Period	\$12,893,048.44	2.00%
Third Option Period	\$12,893,048.44	2.00%
Fourth Option Period	\$12,893,048.44	2.00%

3. Article 21 is hereby revised to extend the Outside Delivery Date of Premises to April 15, 1999.

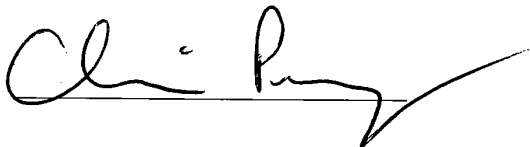
Except as expressly amended or modified therefore or by this First Lease Amendment, the Lease shall continue in full force and effect.

This First Lease Amendment shall be binding upon and inure to the benefit of the parties hereto, their respective successors and assigns and if applicable in the case of the Landlord, their heirs and personal representatives.

IN WITNESS WHEREOF, Landlord and Tenant have caused this First Lease Amendment to be executed as of the date and year first hereinabove written.

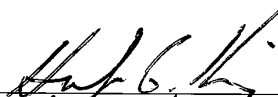
IN THE PRESENCE OF:





LANDLORD:

KINPIN PARTNERSHIP

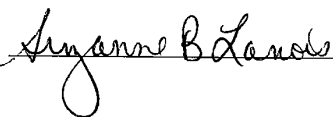
By: 

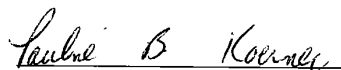
Name: Hens G. King

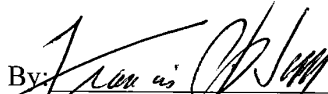
Title: MANAGING PARTNER

TENANT:

REVCO DISCOUNT DRUG CENTERS, INC.





By: 

Francis J. Hall
Vice President

CVS Legal Approval 

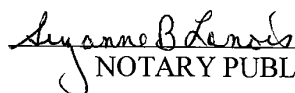
STATE OF South Carolina)
) ss:
 COUNTY OF Beaufort)

On this 23rd day of July, 1998, before me personally appeared HERB G. KZUB, personally known by me, who, being by me duly sworn, did depose and say that he/she resides at 26 The Village at Wexford Htz, SC, and that he/she is MANAGING Partner/LAWYER of KZUB Partnership, the MANAGING Partner/LAWYER described in this instrument and that he/she executed this instrument on behalf of said KZUB Partnership and that he/she had authority to do so.


 NOTARY PUBLIC
 Notary Public, South Carolina State at Large
 My Commission Expires July 1, 2002

STATE OF RHODE ISLAND)
) ss:
 COUNTY OF PROVIDENCE)

On this 20 day of July, 1998, before me personally appeared Francis J. Hall, personally known by me, who, being by me duly sworn, did depose and say that he resides at Narragansett, Rhode Island; and that he is Vice President of Revco Discount Drug Centers, Inc., the corporation described in this instrument and that he executed this instrument on behalf of said corporation and that he had authority to do so.


 NOTARY PUBLIC

SUZANNE B. LANOIS
 Notary Public State of Rhode Island
 My Commission Expires 12-11-0

Exhibit C

To Complaint

Revocation of Assignment to CVS

South Carolina 5566-02

CONFIRMATION OF TRANSFER OF LEASE INTEREST

This Agreement (the "Agreement"), effective as of the 1st day of January, 2011 (the "Effective Date"), is by and between REVCO DISCOUNT DRUG CENTERS, INC. (the "Former Tenant"), and South Carolina CVS Pharmacy, LLC, a South Carolina limited liability company (the "New Tenant").

RECITALS

WHEREAS, Former Tenant entered into that certain lease agreement with KPP Hilton Head, LLC with respect to that certain store located at 10 Pope Avenue, Hilton Head Island, South Carolina (as may have been amended from time to time, the "Lease").

WHEREAS, CVS Caremark Corporation (the "Company") is implementing a reorganization of numerous direct and indirect subsidiaries, including Former Tenant (collectively, the "CVS Entities"), in order to generate economic and operational efficiencies in its business (the "Reorganization"), which Reorganization is being accomplished through mergers or transfers of assets or stock between or among certain CVS Entities, as evidenced by merger or other transfer agreements all dated as of January 1, 2011 (collectively, the "Reorganization Documents").

WHEREAS, pursuant to the terms of one or more of the Reorganization Documents, New Tenant desires to accept all of Former Tenant's right, title and interest in and to the Lease and assume all of Former Tenant's duties and obligations under the Lease.

AGREEMENT

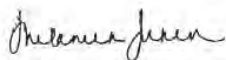
NOW, THEREFORE, in consideration of the mutual promises set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

On the Effective Date, Former Tenant shall be deemed to have transferred all of its right, title and interest in and to the Lease to New Tenant, and New Tenant shall be deemed to have succeeded to all of Former Tenant's right, title and interest therein and thereto in accordance with the applicable Reorganization Documents. As transferee of or successor to Former Tenant, New Tenant hereby confirms that as of the Effective Date, New Tenant shall have assumed and is responsible and liable for any and all duties, liabilities and obligations of Former Tenant under the Lease. Therefore, all right, title, interest, duties, liabilities and obligations of Former Tenant under the Lease shall be and become vested in New Tenant from and after the Effective Date.

The parties hereto have executed this Agreement as of the date set forth above.

REVCO DISCOUNT DRUG CENTERS, INC.

South Carolina CVS Pharmacy, LLC



By: _____
Name: Melanie K. Luker
Title: Assistant Secretary



By: _____
Name: Zenon P. Lankowsky
Title: President

BOS111 12545356.1

ROA 000072

Exhibit D

To

Complaint

CVS Lease

Commencement Letter

Lease Term/Rent Commencement Agreement

ELECTRONICALLY FILED - 2020 Jan 24 2:59 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700155



CVS/pharmacy

RENT COMMENCEMENT - LEASE TERM LETTER

May 25, 1999

KPP Hilton Head
C-6 Village at Wexford
P.O. Box 6362
Hilton Head, SC 29928

RE: REVCO DISCOUNT DRUG CENTERS, INC. (CVS#5566-02)
10 POPE AVENUE
HILTON HEAD ISLAND, SC

Dear Mr. King:

In accordance with the provisions of our Lease Agreement dated May 7, 1998, this is to confirm the following:

1. Possession of the above-referenced premises was rendered to CVS on April 26, 1999.
2. Minimum rent and other charges due under the Lease commenced on the store opening date, May 23, 1999. Minimum rent will escalate on, May 23, 2004, May 23, 2009 and May 23, 2014.
3. The lease term commenced on April 26, 1999 and shall expire on January 31, 2020, with four (4) option periods of five (5) years. The first option, if elected, shall be exercised no later than November 3, 2019, and will become effective on February 1, 2020.

If the above accurately reflects your understanding, please sign below, retain one copy, and return one copy to my attention.

AGREED AND CONSENTED TO:

By:

Date:

6-10-99

cc: Sue Harrod
Janis Paterson
Susan Fazio
Denise Boulet
S/L #5566-02

Sincerely,

Judy Lapierre
Lease Administrative Assistant

Exhibit E

To Complaint

Affidavit of
Peter J. Perry

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	
	)	CASE NO.: 2020-CP-07-_____
South Carolina CVS Pharmacy, L.L.C.,	)	
	)	
Plaintiff,	)	
	)	AFFIDAVIT OF PETER J. PERRY
vs.	)	
	)	
KPP Hilton Head, LLC,	)	
	)	
Defendant.	)	
_____	)	

Peter J. Perry, under oath, being first duly sworn, hereby deposes and says:

1. I am over eighteen (18) years of age, suffer from no known disability and am competent to testify to the facts set forth herein.
2. I make this affidavit upon personal knowledge and with access to the pertinent documents.
3. I am employed by CVS Pharmacy, Inc. ("CVS") as Lease Administration Manager.
4. Based on my position, I have firsthand knowledge of the facts and circumstances surrounding the lease agreement involved in the above-captioned lawsuit.
5. In my role as Lease Administration Manager, I am responsible for overseeing and managing the leases governing CVS Health Corporation locations, including preparing and providing all required notices under the leases.
6. I oversee and manage the lease between South Carolina CVS Pharmacy, L.L.C. ("Tenant"), as successor-in-interest to Revco Discount Drug Centers, Inc. ("Revco"), and KPP Hilton Head, LLC ("Landlord"), as successor-in-interest to KINPIN Partnership, for the CVS retail store located at 10 Pope Avenue, Hilton Head Island, South Carolina 29928, dated May 7, 1998 (the "Lease"). A true and accurate copy of the Lease is attached hereto as Exhibit A.

PPAB 5359330v1

7. The Lease provides Tenant with the option to extend the Lease for four extension periods, each with a term of five years.

8. To exercise the option to extend the Lease's initial 20-year term (the "Initial Term"), the Lease requires that Tenant provide notice to the Landlord at least 90 days prior to the expiration of the Initial Term.

9. The Lease provides that all notices be in writing and sent either registered or certified mail, return receipt requested, or by overnight courier service, provided a receipt is required.

10. Pursuant to the Rent Commencement – Lease Term Letter (the "Commencement Letter") sent from Revco to KPP Hilton Head, LLC on May 25, 1999, the Lease's Initial Term commenced on April 26, 1999, and is set to continue through January 31, 2020. A true and accurate copy of the Commencement Letter is attached hereto as Exhibit B.

11. Pursuant to Part I, Paragraph 13 and Part II, Paragraph 27 of the Lease, notice of Tenant's decision to exercise the option to extend the Lease's Initial Term was to be served on Landlord by November 3, 2019.

12. On October 29, 2019, I reviewed and signed Tenant's written notice to Landlord electing to exercise Tenant's option to renew the Lease and extend the Lease's term for an additional period of five years (the "Notice"). A true and accurate copy of the Notice is attached hereto as Exhibit C.

13. On October 30, 2019, and in accordance with the Lease's general notice provision, I caused a copy of the Notice to be mailed to the Landlord via certified mail, return receipt requested, and addressed as follows ("Address"):

KPP Hilton Head, LLC
Attention: Ms. Anita Fullam
PO Box 23169
Hilton Head, SC 29925

14. The Address is the address where the Landlord had previously indicated notices were to be sent.

15. Pursuant to the tracking information provided by the United States Postal Service ("USPS"), the Notice was delivered to the Landlord's post office box and was available for pickup on Saturday, November 2, 2019. A true and accurate copy of the USPS tracking information is attached hereto as **Exhibit D**.

16. A copy of the Notice was also emailed to Ms. Anita Fullam at anitafullam@principaldevelopers.com on October 30, 2019. The Tenant had previously sent correspondence to this electronic mail address, without any objection from the Landlord.

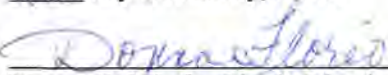
17. To the best of my knowledge, Tenant has, at all times, performed in accordance with the terms of the Lease.

FURTHER AFFIANT SAYETH NAUGHT.

This 23rd day of January, 2020.


Peter J. Perry

SWORN to before me this
23rd day of January, 2020.


Notary Public for Rhode Island
My Commission Expires: 01/10/2022

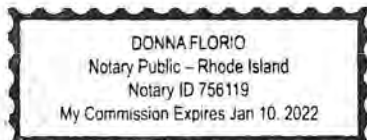


Exhibit A

To

Perry Affidavit

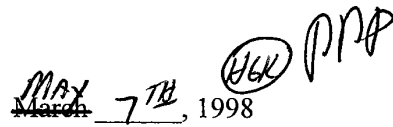
CVS Lease

Lease5566-2
2/26/98

LEASE

This Lease is made on the Date of Lease specified below, between the Landlord and the Tenant specified below.

PART I

1. Date of Lease:  ~~March~~ 7TH, 1998
2. Landlord name, and state of and type of entity: KINPIN Partnership
a South Carolina partnership
3. Landlord business address: Herb King
P.O. Box 6362
Hilton Head, SC 29938
4. Landlord notice address: C-6 Village at Wexford
Hilton Head, SC 29928
5. Tenant name, and state of and type of entity: Revco Discount Drug Centers, Inc.,
a Michigan corporation
6. Tenant business address: One CVS Drive
Woonsocket, RI 02895
7. Tenant notice address: One CVS Drive
Woonsocket, RI 02895
Attn: Property Administration
Department, Store No. 5566-2

8. Guarantor:

CVS Corporation,
a Delaware Corporation
One CVS Drive
Woonsocket RI 02895

9. Premises: that certain lot or parcel of real estate located at Pope Avenue Urgent Care Center, Hilton Head Island, County of Beaufort, South Carolina, as outlined in blue on Exhibit A, including the Building described in Section 10 below (which Building is outlined in red on Exhibit A), and including all improvements situated on said property, and all rights, easements, rights of way, and other appurtenances thereto.

10. Building: ground floor dimensions: 75' by 135'

ground floor total square footage: 10,125

ground floor is outlined in red on Exhibit A.

11. Initial Term: shall commence on the date of delivery of the Premises to Tenant in the manner and condition provided in Article 7(a) of Part II hereof, and shall expire 20 years from the "Date of Rent Commencement" (as defined in Article 5 of Part II hereof), plus any months necessary to have the term expire on the next January 31st; all subject to all terms and conditions of this Lease.

As used in this Lease, "Term" shall include the Initial Term and any Extension thereof pursuant to Article 3 of Part II.

12. Renewal Options: 4 Extension Periods, of 5 years each (See Article 3 of Part II)

13. Required Advance Notice of Exercise of Renewal Options: 90 days prior to the expiration of the then-current term. (See Article 3 of Part II)

14. Free Rent Period: the lesser of: 45 days commencing on the day on which Tenant shall accept possession of the Premises; or the number of days commencing on the day on which Tenant shall accept possession of the Premises and ending on the day on which Tenant shall open for business. (See Article 5 of Part II)

15. Fixed Rent (See Article 5 of Part II):

<u>PERIOD</u>	<u>ANNUAL FIXED RENT</u>	<u>MONTHLY INSTALLMENTS</u>
First 60 months from Date of Rent Commencement	\$212,625.00	\$17,718.75
Next 60 months	\$223,256.25	\$18,604.69
Next 60 months	\$234,419.06	\$19,534.92
Next 60 months and to end of initial term	\$246,140.02	\$20,511.67
First extension period	\$246,140.02	\$20,511.67
Second extension period	\$246,140.02	\$20,511.67
Third extension period	\$246,140.02	\$20,511.67
Fourth extension period	\$246,140.02	\$20,511.67

16. Percentage Rent (See Article 6(a) of Part II):

<u>PERIOD</u>	<u>BREAKPOINT</u>	<u>PERCENTAGE RENT RATE</u>
First 60 months from Date of Rent Commencement	\$10,631,250.00 up to \$12,131,250.00 Over \$12,131,250.00	2.00%
Next 60 months	\$11,162,812.50 up to \$12,662,812.50 Over \$12,662,812.50	2.00%
Next 60 months	\$11,720,953.13 up to \$13,220,953.13 Over \$13,220,953.13	2.00%

Next 60 months and to end of initial term	\$12,307,000.78 up to \$13,807,000.78 Over \$13,807,000.78	2.00%
First extension period	\$12,307,000.78 up to \$13,807,000.78 Over \$13,807,000.78	2.00%
Second extension period	\$12,307,000.78 up to \$13,807,000.78 Over \$13,807,000.78	2.00%
Third extension period	\$12,307,000.78 up to \$13,807,000.78 Over \$13,807,000.78	2.00%
Fourth extension period	\$12,307,000.78 up to \$13,807,000.78 Over \$13,807,000.78	2.00%

17. Intentionally omitted.

18. Construction Specifications: Prototype Construction Specifications dated January 1, 1998, attached hereto as Exhibit B.(See Article 7(a) of Part II)

19. Required Number of Parking Spaces: 45, for standard size automobiles. (See Article 7(a) and Article 14 of Part II)

20. Outside Delivery Date of Premises: ~~November 1, 1998~~ ^{FEBRUARY 15, 1999} (See Article 2 of Part II) H6A PVP

21. Outside Landlord Acquisition Date of Premises: ~~May 1, 1998~~ ^{JUNE 15, 1998} (See Article 2 of Part II) H6A PVP

22. Intentionally omitted.

23. Intentionally omitted.

24. Initial monthly charge for parking and other exterior maintenance: \$350.00 (See Article 33)

25. "Gross Sales" shall mean gross proceeds received for services rendered, and sales of merchandise made, in and from the Premises, subject to the following provisions of this Article. In the case of exchange of goods, only the amount of the excess of the price of the new goods sold over the allowance made for the return of the goods exchanged shall be included in Gross Sales.

Gross Sales shall also exclude: the amount of all sales taxes and other taxes imposed by any governmental authority with respect to sales of merchandise, or services rendered, in or from the Premises (provided, however, that no income tax and no tax based on income or profits as such shall be excluded); refunds or returns on goods returned; the amount of any discount, rebate or CVS generated promotional coupon; bad debts; proceeds from the collection of utility bills; proceeds from the operation of automated teller machines or postal units; proceeds received from the sale of insulin, postage stamps, money orders, lottery tickets, beer, wine, soda, and tobacco products; sales at a discount to employees; sales of trade fixtures or equipment; receipts from sales in the nature of a transfer to other stores operated by Tenant or its affiliated companies; all service charges paid to banks or other financial institutions based on credit card or other similar credit purchases made by customers; and proceeds received from the sale of prescription and other sales which are payable in whole, or in part, by any third party health plan/payor. (See Article 6 of Part II)

26. All exhibits to this Lease are incorporated herein by this reference.

LIST OF EXHIBITS:

Exhibit A - Site Plan: Building = red
Premises property line = blue

Exhibit B - Construction Specifications

PART II

PREMISES -

1. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, for the Term and on the conditions herein provided, the Premises described in Section 9 of Part I hereof.

CONDITIONS PRECEDENT - RIGHTS TO TERMINATE -

2. (a) If, on or before the Outside Delivery Date, possession of the Premises has not been delivered to Tenant in accordance with the terms of this Lease, then, at any time thereafter (until such possession is so delivered), Tenant may terminate this Lease upon 30 days' written notice to Landlord; and this Lease will so terminate unless, prior to the expiration of said 30 days, Landlord shall deliver possession of the Premises to Tenant in accordance with the terms hereof. Said right to terminate shall be Tenant's sole remedy if Landlord shall have acted in good faith and with due diligence to deliver the Premises to Tenant in accordance with the terms of this Lease.

(b) Intentionally Omitted.

(c) If, on or before the Outside Landlord Acquisition Date, Landlord shall not have acquired good and clear record and marketable title to the Premises (as such record and title are described in detail in Article 37 hereof), then, at any time thereafter (but prior to the acquisition by Landlord of such record and title), Landlord and Tenant each may terminate this Lease by 30 days' written notice to the other party; and this Lease will so terminate unless, prior to the expiration of said 30 days, Landlord shall acquire such record and title. Landlord may exercise the right of termination described in this subdivision (c) only if Landlord has diligently pursued, in good faith, the acquisition of said record and title, and has failed to acquire same for reasons beyond its reasonable control.

(d) Intentionally Omitted.

(e) Notwithstanding anything to the contrary in this Lease, in no event shall Tenant be obligated to accept possession of the Premises until Tenant shall have received an "SNDA Agreement", as set forth in Article 20, from any mortgagee existing prior to the date hereof.

RENEWAL OPTIONS -

3. Tenant may extend the Term of this Lease for each of the Renewal Options described in Section 12 of Part I hereof, upon all of the terms set forth in this Lease. Tenant may do

so only if Tenant shall not be in default (beyond applicable cure periods) under this Lease at the time of any such election, and by giving Landlord notice of each such election not later than the Required Advance Notice of Exercise of Renewal Options (as defined in Section 13 of Part I).

USE -

4. (a) Tenant may use the Premises for any lawful retail purpose.

(b) Without limiting any rights of Tenant under this Lease, Tenant, subject to Laws (as defined in Article 10), may: keep the Premises open for business on Sundays and/or holidays; and operate on an "extended-hours basis" (defined as being open for business in excess of 110 hours per week).

FIXED RENT -

5. (a) Commencing as of the Date of Rent Commencement, Tenant shall pay to Landlord, at the business address of Landlord specified on Page 1 hereof, or at such other address as Landlord shall, from time to time, designate by notice to Tenant, the Fixed Rent set forth in Section 15 of Part I hereof, payable to Landlord no later than the fifth day of each month in advance, without demand or set-off, except as otherwise expressly provided in this Lease.

(b) Fixed Rent and all other charges due under this Lease shall commence immediately upon the expiration of the Free Rent Period (as defined in Section 14 of Part I hereof), subject to all of the other terms of this Lease ("Date of Rent Commencement"). If the Date of Rent Commencement shall be on any day other than the first day of a calendar month, Fixed Rent and other charges for such month shall be pro rated on a per diem basis. The foregoing notwithstanding, Tenant's obligation to pay insurance charges pursuant to Article 35 shall commence upon the commencement of the Term.

(c) Notwithstanding anything to the contrary in this Lease, if the Date of Rent Commencement as calculated pursuant to subdivision (b) above would occur between November 15th and the succeeding December 31st, and if Tenant elects not to open for business during said period, then, in that event, the Date of Rent Commencement shall be the succeeding January 2nd. Tenant shall provide Landlord with written notice of such election.

PERCENTAGE RENT -

6. (a) In addition to Fixed Rent, if, in any calendar year following the Date of Rent Commencement, the annual "Gross Sales" in the Premises (as defined in subdivision (d) below) shall exceed the applicable breakpoint amount for the periods set forth (individually, "Breakpoint"),

Tenant agrees to pay to Landlord a sum equal to a percent ("Percentage Rent Rate") of such annual Gross Sales in excess of the applicable Breakpoint ("Percentage Rent"). The Breakpoints and Percentage Rent Rates are set forth in Section 16 of Part I.

Percentage Rent for any portion of a calendar year shall be determined by taking 1/12th of the applicable Breakpoint and multiplying the result by the number of months (and portions thereof) in said portion of the calendar year ("Pro-rated Breakpoint"). The Pro-rated Breakpoint shall be subtracted from the Gross Sales for said portion of the calendar year, and the result shall be multiplied by the Percentage Rent Rate to determine the amount of Percentage Rent due; and shall be paid by Tenant in the same manner as herein provided for the payment of Percentage Rent for a full calendar year.

(b) Intentionally Omitted.

(c) Tenant agrees to provide to Landlord, within 60 days after the end of each calendar year of the Term, and within 60 days following the expiration or earlier termination of this Lease, a statement, signed by an authorized representative of Tenant, certifying as to the amount of the Gross Sales for the preceding calendar year, or portion thereof; together with any Percentage Rent which is payable for the period referred to therein.

(d) "Gross Sales" shall be as defined in Section 25 of Part I.

Tenant makes no representation or warranty as to its expected Gross Sales.

(e) At Tenant's main accounting office, presently at One CVS Drive, Woonsocket, Rhode Island 02895, Tenant shall keep accurate records of Gross Sales, in accordance with GAAP.

Landlord may audit said Gross Sales records subject to the following limitations. Any such audit shall be at reasonable times; during Tenant's normal business hours; be conducted not more than once annually; be conducted within 36 months from the date of any Gross Sales statement of Tenant; none of said records (including photocopies of said records) shall be removed from Tenant's office; and no examination of records of other stores operated by Tenant or its affiliates or of the general books of account of Tenant shall be permitted.

If any audit shows that the amount of Gross Sales on any statement of Tenant was understated by more than 3% of Gross Sales, Tenant shall pay to Landlord the reasonable cost of Landlord's audit in addition to any amount of Percentage Rent which Tenant should have paid but did not pay, plus interest at the rate of 10% per annum on said underpaid amount.

Landlord shall hold all sales figures and other information obtained from Tenant's records in confidence, except as may be necessary for the enforcement of Landlord's rights under this Lease, or in connection with prospective financing or prospective sale of the Premises, or with respect to tax proceedings, or pursuant to any legal requirements.

(f) Notwithstanding the above, it is agreed that: Landlord shall not be construed or held to be a partner, joint venturer, or associate of Tenant in the conduct of its business; and the relationship between the parties hereto is, and shall at all times remain, that of landlord and tenant.

LANDLORD'S CONSTRUCTION - DELIVERY OF THE PREMISES -

7. (a) Landlord agrees, at its sole cost, to construct the Building and to develop the Premises as shown on Exhibit A, and to do all work as required in the Construction Specifications described in Section 18 of Part I hereof, and as shown on specific plans for the Building which are not yet complete and which are subject to the reasonable approval of Landlord and Tenant. In no event shall Landlord commence work until Landlord has provided Tenant with drawings for the Building and the specific plans for the Building are finalized. Any increased costs to Landlord, which are a result of any change orders to said specifications or plans made in writing by Tenant, shall be paid by Tenant within 30 days of receipt of demand therefor with supporting documentation, provided that Landlord bills Tenant for such increased costs within 120 days after the Date of Rent Commencement, and provided that Tenant has agreed to the amount of increased costs prior to Landlord commencing construction. Upon completion of Landlord's construction, the Building shall be of dimensions no less than described in Section 10 of Part I hereof. Landlord warrants and agrees that, at the time of delivery of the Premises to Tenant, the exterior areas of the Premises shall be in good condition, properly lighted, properly paved and line painted, with parking areas, curbs, curb cuts, sidewalks and roadways as designated in Exhibit A, in good repair and properly marked. Landlord warrants that the parking areas of the Premises shall accommodate the Required Number of Parking Spaces as shown on Exhibit A. All such work shall be substantially completed on the date of delivery of possession of the Premises to Tenant. Landlord agrees to give at least 30 days' prior written notice to Tenant of the date when such possession will be available to Tenant.

Tenant (including Tenant's contractors and vendors) may enter the Building approximately 15 days prior to the anticipated date of delivery of the Premises to Tenant for the following purposes, without such entry constituting acceptance of the Premises: to measure and inspect the Building in order to ensure that the Building will be delivered in accordance with this Article; to install carpeting, telephones, fixtures, equipment, and furniture and the like.

(b) "Substantially completed" shall mean full completion of Landlord's work except for minor incomplete items or deficiencies, provided that any such incomplete items or deficiencies

shall not hinder Tenant's work in or about the Premises, or prevent Tenant from opening for business.

In addition, in no event shall Landlord's work or the Premises be deemed to be substantially completed until a Certificate of Occupancy has been issued. A "Certificate of Occupancy" is a Certificate of Occupancy or any equivalent documentation which confirms that Landlord's work has been completed and that the Premises are available for Tenant to take possession, fixture, merchandise and open for business. If Tenant elects to take possession of the Premises prior to issuance of the Certificate of Occupancy, Fixed Rent and all other charges due under this Lease shall commence on the first to occur of the following, subject to the other terms of this Lease: the expiration of a number of days equal to the Free Rent Period, which time period commences on the date of the issuance of the Certificate of Occupancy; or on the date on which Tenant opens for business. If, upon the completion of Tenant's initial work, a Certificate of Occupancy is not issued due to items which are Landlord's responsibility, then, Landlord will correct same and the Date of Rent Commencement will be delayed for a number of days equal to the number of days that Tenant is delayed from opening for business.

(c) If Landlord shall fail to fully complete all of its work as specified in this Article on or before the date Tenant takes possession of the Premises, then Tenant may send Landlord a "punch list" of items which remain to be completed. On receipt of such punch list, Landlord shall have 14 days to complete the items designated therein; and if Landlord shall fail to do so within said 14 day period, then Tenant may complete the items on behalf of Landlord and deduct the entire cost of completion of such items from rent and other charges due hereunder. Notwithstanding anything to the contrary herein, if Tenant is unable to complete its work or open for business as a result of incomplete items on the punch list, then, in addition to any other rights Tenant may have hereunder, the Date of Rent Commencement will be delayed for a number of days equal to the number of days that Tenant is delayed from completing its work or from opening for business.

KEY TENANT - COTENANTS -

8. Intentionally omitted.

REPAIRS AND MAINTENANCE OF THE BUILDING -

9. (a) All obligations of Landlord pursuant to this subdivision (a) shall be performed by Landlord at Landlord's sole cost. Landlord shall maintain (including painting and cleaning), repair, and replace, as necessary, each of the exterior portions and structural portions of the Building, including, without limitation: the roof and roof supports, flashings, gutters, downspouts, footings, foundations, structural supports, columns, exterior walls, bearing walls, retaining walls, floor slab, and loading docks; so as to keep the same in good condition and repair.

The foregoing notwithstanding, Landlord's aforesaid obligations shall exclude the nonstructural portions of any storefront. Landlord also shall maintain, repair, and replace, as necessary, all plumbing, pipes, tubes and all other conduits and utility lines leading to or from the Building.

During the first full year of the Term, or during any longer period covered by any warranty, Landlord shall make all repairs required because of building settlement or defects in Landlord's materials or workmanship, other than with respect to the HVAC system. Landlord shall furnish Tenant with all guaranties and warranties relating to the HVAC system.

(b) All obligations of Tenant pursuant to this subdivision (b) shall be performed by Tenant at Tenant's sole cost. Except as provided in subdivision (a) above, Tenant shall take maintain, repair and replace, as necessary: the Building interior, including the fixtures and equipment therein; HVAC equipment; broken glass; and the nonstructural portions of any storefront. The foregoing notwithstanding, Tenant's obligations pursuant to this subdivision (b) shall exclude damage and injury arising under the provisions of Article 13 or Article 14 hereof.

(c) All of the foregoing notwithstanding, neither party shall be obligated to perform any maintenance, repair or replacement, the necessity of which shall have arisen solely due to the negligence or fault of the other, or of the other's employees or agents; and in such case, the party which shall have caused the need for such maintenance, repair or replacement shall be responsible for same, at its sole cost. This subdivision (c) shall apply only in any instance to which Article 12 shall not apply.

(d) If Landlord shall fail to make any of the repairs required to be made by Landlord under this Article within 30 days after receipt of written notice from Tenant of the need therefor, Tenant, in addition to any other rights it may have hereunder, may make said repairs on Landlord's behalf and charge Landlord for the reasonable cost thereof. Provided that Landlord has commenced to repair within said 30 days, and thereafter is diligently prosecuting same to completion, said 30 day period shall be extended, where, due to the nature of a repair, it cannot reasonably be completed within 30 days. If, in an emergency, in Tenant's reasonable opinion, any such repairs are immediately necessary, then, no prior 30 days' notice shall be required, but Tenant shall give Landlord whatever notice is reasonable in the circumstances and may make said repairs on Landlord's behalf and charge Landlord for the reasonable cost thereof. In either event, if Landlord shall not pay Tenant within 30 days after receipt of an invoice therefor with supporting documentation, Tenant may deduct the reasonable cost thereof from rent and other charges due hereunder.

(e) If Tenant shall fail to make any of the repairs required to be made by Tenant under this Article within 30 days after receipt of written notice from Landlord of the need therefor, Landlord, in addition to any other rights it may have hereunder, may make said repairs on Tenant's

behalf and charge Tenant for the reasonable cost thereof. Provided that Tenant has commenced to repair within said 30 days, and thereafter is diligently prosecuting same to completion, said 30 day period shall be extended, where, due to the nature of a repair, it cannot reasonably be completed within 30 days. If, in an emergency, in Landlord's reasonable opinion, any such repairs are immediately necessary, then, no prior 30 days' notice shall be required, but Landlord shall give Tenant whatever notice is reasonable in the circumstances and may make said repairs on Tenant's behalf and charge Tenant for the reasonable cost thereof. In either event, Tenant shall pay Landlord such reasonable cost within 30 days after Tenant receives Landlord's invoice therefor with supporting documentation.

COMPLIANCE WITH LAWS -

10. (a) Tenant shall comply with all laws, statutes, ordinances, and regulations (collectively, "Laws") relating to the physical condition of the Building, which Laws must be complied with solely due to the nature of Tenant's business. Tenant shall have no obligation with respect to Laws relating to buildings or to retail businesses in general; and compliance with such general Laws shall be Landlord's responsibility at Landlord's sole cost. Additionally, and notwithstanding the first sentence of this Article, Tenant shall not be required to make structural repairs or modifications; it being agreed that structural repairs and modifications shall be Landlord's responsibility at Landlord's sole cost, if same shall be necessary to comply with Laws.

(b) Except for those obligations delegated to Tenant pursuant to subdivision (a) above, Landlord shall comply with all Laws, which Laws shall impose any duty with respect to the Premises and/or with respect to Landlord's work or delivery of the Premises as described in Article 7.

ACCESS TO PREMISES -

11. Upon reasonable notice to Tenant, and during Tenant's business hours, Landlord may show the Premises to purchasers and potential purchasers, and to mortgagees and potential mortgagees. Upon reasonable notice to Tenant, during the last 6 months of the then-current term, unless Tenant shall have exercised any Renewal Option, Landlord also may show the Premises to persons wishing to rent the same.

WAIVER OF SUBROGATION -

12. Notwithstanding anything in this Lease to the contrary, Landlord and Tenant each waives any rights of action for negligence against the other party, which may arise during the Term for damage to the Premises or to the property therein resulting from any fire or other

casualty of the kind covered by All-Risk property insurance policies, regardless of whether or not, or in what amounts, such insurance is now, or may hereafter be, carried by the parties.

FIRE OR OTHER CASUALTY -

13. (a) If, at any time during the Term, the Building shall be damaged in whole or in part by fire, the elements or other casualty, Tenant promptly shall notify Landlord thereof. Upon receipt of such notice, Landlord, at Landlord's sole cost, as speedily as circumstances permit, shall repair said damage and restore the Building to the same condition which existed immediately prior to the occurrence of such damage. The Term shall be tolled by a period of time equal to the time between the date of the casualty and the date on which Landlord completes repair and restoration of the Building. During the restoration, Tenant may operate its business out of a temporary structure such as a trailer, subject to compliance with Laws. In addition, Tenant shall be entitled to an abatement of Fixed Rent and other charges payable hereunder for the period during which the Building is rendered incapable of use for the normal conduct of Tenant's business, including a reasonable period, not to exceed 30 days, for Tenant to refixture and restock. Said abatement will be pro rated, based on the number of square feet of the Building which are so rendered untenable or incapable of such use.

The foregoing notwithstanding, if the Building is partially or totally destroyed during the last 2 years of the initial term or during the last 2 years of any extension period, then, unless Tenant already has exercised its next remaining extension period, Landlord may terminate this Lease upon no fewer than 45 days prior written notice to Tenant, in which event this Lease shall terminate on the date specified in such notice. Notwithstanding the preceding sentence, if Tenant shall exercise its next remaining option to extend this Lease prior to the expiration of the 45 day notice, then Landlord's termination notice shall be void and Landlord shall be obligated to fulfill its repair and restoration obligations as set forth in this Article.

(b) If Landlord shall fail to commence to repair or restore the Building in the manner specified in this Article, within 90 days after the damage has occurred, and proceed to complete such repairs and restoration with due diligence, then, Tenant may give Landlord 30 days' prior written notice of Tenant's election to: (i) terminate this Lease on the date specified in such notice; or (ii) rebuild the Building itself on Landlord's behalf. If Tenant shall so rebuild the Building, Landlord shall assign any available insurance proceeds under Article 35 to Tenant to cover the cost of same.

CONDEMNATION -

14. (a) If the entire Building, or the use or possession thereof, is taken in condemnation proceedings, or by any right of eminent domain, or for any public or quasi-public

use, or if Landlord shall deliver to a governmental authority a deed in lieu of condemnation or eminent domain (individually or collectively, a "taking", or "taken"), then, this Lease shall terminate on the date when possession shall be taken by the condemnor, and rent and all other charges payable hereunder shall be apportioned and paid in full up to that date, and all prepaid unearned rent, and all other charges payable hereunder, shall promptly be repaid by Landlord to Tenant.

If more than 20% of the Building shall be so taken, then Tenant may terminate this Lease, if Tenant shall so notify Landlord within 45 days after such taking. If Tenant shall not so terminate this Lease, then this Lease shall continue in full force and effect, except that Fixed Rent and all other charges payable hereunder shall be reduced in the proportion that the gross floor area of the part so taken or condemned shall bear to the total gross floor area of the Building immediately prior to such taking. In such case, Landlord, at Landlord's own expense, as speedily as circumstances permit, shall repair all damage to the Building as shall have been caused by such partial taking, and shall restore the Building to a complete architectural unit. Fixed Rent and other charges payable hereunder shall abate until the Building shall have been restored to a tenantable condition, including a reasonable period, not to exceed 30 days, for Tenant to refixture and restock.

(b) For the purposes of this subdivision (b), in addition to the meaning set forth above, a "taking" shall mean any legal impediment which shall not be within Landlord's reasonable control.

If, due to a taking, the parking areas of the Premises shall be decreased below the Required Number of Parking Spaces (as defined in Section 19 of Part I), Tenant shall notify Landlord thereof. If, within 90 days after Landlord's receipt of such notice, additional parking is not provided within the Premises equal to the number by which it has been decreased below the Required Number of Parking Spaces, then Tenant may, upon 30 days' written notice to Landlord: (i) terminate this Lease; or (ii) pay to Landlord Fixed Rent reduced to the level of 2% of Gross Sales, and without any Percentage Rent obligation. If Tenant shall elect to so pay reduced rent, Tenant shall remain obligated for any other charges due under this Lease. Tenant's Fixed Rent shall be so reduced and Percentage Rent so eliminated until such time as said additional parking is provided within the Premises.

If, due to a taking, there shall be an impediment, which impediment shall materially adversely affect any means of ingress or egress between the Premises and any abutting street, then, Tenant shall notify Landlord thereof. If, within 30 days after Landlord's receipt of such notice, such impediment shall not be cured, then Tenant may, upon 10 days' written notice to Landlord: (i) terminate this Lease; or (ii) pay to Landlord Fixed Rent reduced to the level of 2% of Gross Sales, and without any Percentage Rent obligation. If Tenant shall elect to so pay reduced rent, Tenant shall remain obligated for any other charges due under this Lease. Tenant's Fixed Rent shall be so reduced and Percentage Rent so eliminated until such time as said impediment shall be removed.

(c) Tenant hereby waives all rights in condemnation awards, except awards for Tenant's fixtures and equipment, the unamortized costs of Tenant's leasehold improvements in the Building, if any, and any separate awards which may be made for Tenant's relocation expenses, business interruption, and the like.

ASSIGNMENT AND SUBLETTING -

15. (a) Tenant shall have the right to assign this Lease, or to sublet the whole or any part of the Premises, for use for any lawful retail purpose, provided: Landlord's consent is first obtained, which consent Landlord agrees not to unreasonably withhold, delay or condition; and that Tenant and Guarantor shall remain liable for the obligations of Tenant hereunder.

(b) Notwithstanding Article 15(a), Tenant shall have the right, without Landlord's consent, to: (i) assign this Lease, or sublet the whole or any part of the Premises, for any lawful retail purpose, to any corporation of which, at the time, Tenant shall be a subsidiary, or to any subsidiary of a corporation of which, at the time, Tenant shall be a subsidiary, provided that Guarantor (but not Tenant) remains fully liable for the obligations of Tenant hereunder; or (ii) assign this Lease to any party acquiring all or substantially all of the assets of Tenant's store at the Premises by purchase, merger, consolidation, or otherwise, provided that Guarantor (but not Tenant) remains fully liable for the obligations of Tenant hereunder.

ALTERATIONS -

16. Tenant shall not make any structural alterations or exterior alterations to the Building without, in each instance, obtaining Landlord's written consent, which consent Landlord agrees not to unreasonably withhold, delay or condition. However, Tenant may, without Landlord's consent, make non-structural alterations to the Building interior.

Tenant shall do all work in a good and workmanlike manner, at its own cost, and in accordance with Laws. Tenant shall discharge, within 30 days (by payment or by filing the necessary bond, or otherwise), any mechanics', materialmen's or other lien against the Premises and/or Landlord's interest therein, which lien may arise out of any payment due for, or purported to be due for, any labor, services, materials, supplies, or equipment alleged to have been furnished to or for Tenant in, upon, or about the Premises.

At Tenant's sole cost, Landlord agrees to cooperate with Tenant (including signing applications) in obtaining any necessary Permits for any alterations which Tenant is permitted to make hereunder.

SIGNS -

17. At Tenant's sole cost, Tenant may install, replace and relocate on the Building, such signs, awnings, lighting effects and fixtures as may be used from time to time by Tenant (collectively, "Signs"). Tenant shall maintain and repair such Signs. Tenant also may place in its windows: Tenant's standard paper signs in its windows in accordance with Tenant's regular advertising and promotional programs; and/or neon signs. At Tenant's sole cost, Landlord agrees to cooperate with Tenant (including signing applications) in obtaining any necessary Permits for Tenant's Signs. All Signs of Tenant shall comply with Laws.

PYLON SIGN -

18. If permitted by Laws, Tenant, at its sole cost, may: install its sign on any pylon sign structure located on the Premises; and, if no such pylon structure shall exist, construct its own pylon structure and install its sign thereon. At Tenant's sole cost, Landlord agrees to cooperate with Tenant (including signing applications) in obtaining any necessary Permits for any pylon sign and/or structure.

SURRENDER -

19. At the expiration or other termination of this Lease, Tenant shall surrender the Premises to Landlord in as good order and condition as they were at the commencement of the Term or may be put in thereafter, reasonable wear and tear and damage by casualty and/or the elements excepted. All alterations, additions, and improvements in or upon the Premises made by either party (except Tenant's furniture, trade fixtures, satellite communications dish and equipment, computer and other equipment and shelving), shall become the property of Landlord and shall remain upon and be surrendered with the Premises as a part thereof at the termination or other expiration of the Term. At the expiration or termination of the Term, Tenant shall remove the items enumerated in the parenthetical above, as well as its signs and identification marks, from the Premises. Tenant agrees to repair any and all damage caused by such removal.

At any time during the Term, Tenant may remove the items enumerated in the parenthetical above, as well as its signs and identification marks, from the Premises.

SUBORDINATION OF LEASE -

20. This Lease shall be subject and subordinate to the lien of any bank or institutional or other mortgage or mortgages now or hereafter in force against the Premises, and to all advances made upon the security thereof, provided that the holder of any such mortgage shall execute and deliver to Tenant an agreement ("SNDA Agreement"), in form satisfactory to Tenant, providing

that such holder will recognize this Lease and not disturb Tenant's possession of the Premises in the event of foreclosure if Tenant is not then in default hereunder beyond any applicable cure period. Tenant agrees, upon receipt of such SNDA Agreement, to execute such further reasonable instrument(s) as may be necessary to subordinate this Lease to the lien of any such mortgage. The term "mortgage" shall include deeds of trust or any other similar hypothecations.

21. Intentionally omitted.

UTILITIES -

22. Tenant agrees to pay for all utilities consumed by it in the Premises, prior to delinquency.

TENANT DEFAULT -

23. (a) If: (i) Tenant shall default in the payment of Fixed Rent or any item of additional rent payable hereunder, and such default shall continue for more than 15 days after written notice to Tenant; or (ii) Tenant shall default in fulfilling any of the other covenants of this Lease, and such default shall continue for more than 30 days after written notice thereof from Landlord, specifying such default (provided that if Tenant has commenced to cure within said 30 days, and thereafter is prosecuting same to completion, said 30 day period shall be extended, where, due to the nature of the default, it is unable to be completely cured within 30 days); then, in any such event, Landlord may give to Tenant notice of intention to end the Term hereof, and if Landlord shall do so, the Term shall expire as if that day were the day herein fixed for the expiration of the Term, and Tenant shall then quit the Premises and surrender the same, but shall remain liable as hereinafter provided.

(b) If the notices provided in subdivision (a) of this Article shall have been given and the Term shall expire as aforesaid, then Landlord may, without further notice, re-enter the Premises, either by force or otherwise, and dispossess Tenant by summary proceedings or otherwise, and remove Tenant's effects and hold the Premises as if this Lease had not been made; and Tenant hereby waives the service of notice of intention to re-enter or to institute legal proceedings to that end.

(c) In case of any such default, re-entry, expiration and/or dispossession by summary proceedings or otherwise (i) the rent shall become due and shall be paid up to the time of such re-entry, dispossession and/or expiration; (ii) Landlord shall make reasonable efforts to re-let the Premises or any part or parts thereof, either in its own name or otherwise, for a term or terms which may, at its option, be shorter or longer than the period which would otherwise have constituted the remainder of the Term, and may grant concessions or free rent, but only to such extent as Landlord,

in Landlord's reasonable judgment, considers advisable and necessary to re-let the same; and, (iii) Tenant, or its successors, shall also pay to Landlord, as liquidated damages for the failure of Tenant to observe and perform its covenants herein contained, any deficiency between the rent herein reserved and the net amount, if any, of the rents collected on account of the re-letting of the Premises for each month of the period which would otherwise have constituted the remainder of the then-current term. In computing such liquidated damages, there shall be added to said deficiency such reasonable expenses as Landlord may incur in connection with re-letting, such as legal expenses, attorney and broker fees, but excluding renovations. Any such liquidated damages shall be paid in monthly installments on the rent day specified in this Lease and any suit brought to collect the amount of the deficiency for any month shall not prejudice, in any way, the right of the Landlord to collect the deficiency for any subsequent month by a similar proceeding. However, if Tenant shall default on any such monthly installment, then, at Landlord's option, such liquidated damages shall be accelerated and paid immediately by Tenant, but discounted to their present value, using as the time remaining, the number of full calendar months remaining in the term of this Lease following default (beyond applicable cure periods), and using as the interest rate, the lesser of the following: (x) the rate (or the average of rates, if more than one rate appears) inserted in the blank of the "Money Rates" section of "The Wall Street Journal" (Eastern Edition) in the section reading "Prime Rate: _____%", or (y) the base rate on corporate loans posted by at least 75% of the nation's 30 largest banks. (If neither rate is available for any reason, then a reasonably equivalent rate shall be used).

Mention in this Lease of any particular remedy shall not preclude Landlord from any other remedy at law or in equity, including the right of injunction. Tenant waives any rights of redemption granted by any Laws if Tenant is evicted or dispossessed, for any cause, or if Landlord obtains possession of the Premises by reason of the violation by Tenant of any of the terms of this Lease.

LANDLORD DEFAULT -

24. In the event of any default by Landlord under this Lease ("Landlord Default"), Tenant may give Landlord written notice specifying such Landlord Default and, if Tenant shall do so, then Landlord shall have 30 days in which to cure any such Landlord Default; provided, however, that if the nature of the Landlord Default is such that more than 30 days are required for its cure, then Landlord shall not be in default if Landlord commences to cure within said 30 days and thereafter diligently prosecutes the same to completion. In the event that Landlord shall remain in default following its said right to cure, then, in addition to all other rights and remedies available to Tenant at law and in equity, Tenant may cure such Landlord Default on behalf of Landlord by doing the necessary work and/or making the necessary payments, and billing Landlord for the reasonable costs thereof, which Landlord agrees to pay to Tenant within 30 days of receipt of Tenant's demand therefor and reasonable evidence of the cost of the same. If Landlord shall fail to

pay within said 30 day period, Tenant may deduct the entire cost from any rent and other charges due hereunder.

RENT PAYMENTS -

25. If Landlord's interest in this Lease shall pass to another, or if the rent hereunder shall be assigned, or if a party, other than Landlord, shall become entitled to collect the rent due hereunder, then, notice thereof shall be given to Tenant by Landlord in writing, or, if Landlord is an individual and shall have died or become incapacitated, by Landlord's legal representative, accompanied by due proof of the appointment of such legal representative. Until such notice and proof shall be received by Tenant, Tenant may continue to pay the rent due hereunder to the one to whom, and in the manner in which, the last preceding installment of rent hereunder was paid, and each such payment shall fully discharge Tenant.

Tenant shall not be obligated to recognize any agent for the collection of rent or otherwise authorized to act with respect to the Premises until written notice of the appointment and the extent of the authority of such agent shall be given to Tenant by the one appointing such agent.

HOLDOVER -

26. If Tenant shall hold over after the expiration date of the Term, or if Tenant shall hold over after the date specified in any termination notice given by Tenant then, in either such event, Tenant shall be a month-to-month Tenant on the same terms as herein provided, except that the monthly Fixed Rent will be 1.5 times the monthly Fixed Rent payable by Tenant for the last full calendar month of Tenant's tenancy hereunder.

NOTICES -

27. Whenever, pursuant to this Lease, notice or demand shall or may be given to either of the parties by the other, and whenever either of the parties shall desire to give to the other any notice or demand with respect to this Lease or the Premises, each such notice or demand shall be in writing, and any Laws to the contrary notwithstanding, shall not be effective for any purpose unless the same shall be given or served as follows: by mailing the same to the other party by registered or certified mail, return receipt requested, or by overnight courier service provided a receipt is required, at its Notice Address set forth in Part I hereof, or at such other address as either party may from time to time designate by notice given to the other. The date of receipt of the notice or demand shall be deemed the date of the service thereof (unless the notice or demand is not received or accepted in the ordinary course of business, in which case the date of mailing shall be deemed the date of service thereof).

PARKING -

28. Intentionally omitted.

PROPERTY LAYOUT -

29. Intentionally omitted.

SATELLITE COMMUNICATIONS DISH AND EQUIPMENT -

30. Notwithstanding anything to the contrary in this Lease, Tenant may install, maintain, and replace, on the roof of the Building or in the Building, a satellite communications dish and related equipment. Tenant shall do so at its own cost and in accordance with all Laws, and shall defend, indemnify and hold Landlord harmless from and against any claims, costs or expenses incurred by Landlord as a result of such installation, maintenance or replacement by Tenant. At Landlord's request, Tenant shall coordinate any roof installation hereunder with Landlord's roofing contractor.

EXCLUSIVE -

31. (a) If Landlord or any of its officers, directors, trustees, individual members, or partners, hold or acquire any interest in any land immediately adjacent to the Premises (whether accomplished directly by direct ownership, or indirectly through the use of leases, cross-easement agreements or similar documents), during the Term, Landlord agrees that (unless any premises on said land are already so leased and/or used) Landlord shall not allow any of the premises on such land to be leased or to be used for the purpose of a health and beauty aids store, a drug store, and/or a pharmacy prescription department.

(b) As used in this Lease: the term "pharmacy prescription department" shall include the dispensing of prescription drugs by physicians, dentists, other health care practitioners, or entities such as health maintenance organizations, where such dispensing is for profit; and a "health and beauty aids store" shall mean a store which devotes more than 5% of its retail selling space to the display and sale of health and beauty aids.

(c) If Landlord shall violate any of the provisions of this Article and shall not cure such violation within 60 days after receipt of Tenant's notice thereof, Tenant, at any time thereafter, upon 10 days prior written notice to Landlord, may: (i) terminate this Lease; or (ii) pay to Landlord Fixed Rent reduced to a level equal to 50% of Fixed Rent due under this Lease and without any further Percentage Rent obligation. Tenant's Fixed Rent shall be so reduced and Percentage Rent so eliminated until such time as such violation is permanently cured.

RIGHT OF FIRST REFUSAL -

32. Intentionally omitted.

MAINTENANCE OF PARKING AND OTHER EXTERIOR AREAS -

33. (a) With respect to the parking and other exterior areas of the Premises, Landlord shall perform the following, pursuant to good and accepted business practices throughout the Term: repairing, resurfacing, repaving, re-striping, and resealing, of the parking areas; repair of all curbing, sidewalks and directional markers; removal of snow and ice; landscaping; and provision of adequate lighting during all hours of darkness that Tenant shall be open for business.

As used in this Article, the term “repair” or “repairing” shall include maintenance (including cleaning), repair, and replacement.

(b) Commencing as of the Date of Rent Commencement, Tenant shall pay Landlord for the maintenance costs incurred by Landlord from and after the Date of Rent Commencement in fulfilling Landlord’s obligations under subdivision (a) above; and for no other costs. The foregoing notwithstanding, Tenant shall not pay Landlord for any costs incurred by Landlord in connection with any capital expenditures or capital improvements made by Landlord, such as repaving or replacing the parking areas, except as follows: if, after obtaining Tenant’s consent to do so, Landlord shall repave or replace the parking areas, then Tenant agrees to pay the amortization costs thereof, over the useful life thereof, provided that: (i) Tenant shall do so only one time during the “useful life” (as defined below) of the improvement; and (ii) Tenant shall not so pay following the expiration or other termination of this Lease (in other words, for example, if Landlord shall replace the parking areas in year 8, and if such replacement shall have a 15 year useful life, and if the Term shall expire at the end of year 10, then Tenant shall pay its share of the annual amortization for years 8, 9, and 10 only (or a portion of year 8, as applicable.) If Tenant shall not consent to any request by Landlord to repave or replace the parking areas, then, Landlord shall not be obligated to perform same, and Landlord shall not be in default hereunder for failure to do so. Landlord shall repave or replace the parking areas at any time upon Tenant’s request to do so; and Tenant shall pay Landlord as set forth above. For the purposes hereof, useful life shall be determined as permitted under the Internal Revenue Code (including the regulations issued thereunder) in effect at the time of such repaving or replacing.

(c) Except for a 5% administrative fee on the charges (excluding electricity charges) payable by Tenant pursuant to this Article, Tenant shall not pay any management, administrative, accounting, data processing or audit fees.

(d) Tenant shall pay to Landlord, a monthly sum, as set forth herein, by the fifth day of each month and a pro rata sum for any partial month. For the first calendar year (or portion thereof) to occur during the Term, said monthly sum shall be as set forth in Section 24 of Part I. Said monthly sum may be adjusted once annually thereafter by Landlord to reflect any increased or decreased costs. Within 60 days after the end of each calendar year, and within 60 days after the expiration or termination of this Lease, Landlord shall submit to Tenant a statement of the maintenance costs for said calendar year or portion thereof, as applicable. If such a statement is not received by Tenant within 60 days after the end of any calendar year, Tenant shall be relieved of its obligation to make monthly payments hereunder until said statement is received from Landlord. Such statement shall contain detailed documentation including copies of receipted bills. If such statement indicates that the amount paid by Tenant on its account for said calendar year is less than actual costs for said calendar year, then Tenant shall pay the amount owing to Landlord within 30 days of receipt of such statement. If such statement shall indicate that Tenant has overpaid for said calendar year, then such overpayment shall be refunded, together with Landlord's annual statement, and the monthly payment due herein shall be proportionately reduced. For the first and last partial calendar year of the Term, Tenant will pay said costs for the entire year multiplied by a fraction, consisting of the number of days in the calendar year subsequent to the Date of Rent Commencement, or prior to the date of lease termination, as the case may be, and divided by 365.

(e) If Landlord shall fail to perform any of its obligations under this Article within 30 days after receipt of written notice from Tenant of the need therefor (except that no notice shall be required in the event of an emergency), then, Tenant may do so on Landlord's behalf.

TAXES -

34. (a) Landlord shall pay to all Tax authorities, all real estate taxes and all assessments which may be levied against the Premises (collectively, "Taxes").

(b) Commencing as of the Date of Rent Commencement, Tenant agrees to reimburse Landlord for all such Taxes levied against the Premises with respect to each tax fiscal year (or portion thereof) of the Term occurring after the Date of Rent Commencement. Tenant's obligation hereunder shall exclude: any assessment penalty added to the Taxes as a result of Landlord's failure to timely pay any such Taxes to the applicable governmental authority; and any Taxes payable over a period of more than one year, provided that Tenant shall pay the installments thereof due during the Term. At least 30 days prior to the commencement of the Term, Landlord shall submit to Tenant Landlord's estimate of Taxes for the first full tax fiscal year to occur during the Term.

(c) Any sum payable to Landlord under this Article shall be paid by Tenant within 30 days after receipt from Landlord of demand therefor, accompanied by copies of receipted Tax bills.

(d) At Tenant's sole cost, Tenant may contest (including seeking an abatement or reduction of) any Taxes agreed to be paid hereunder; provided that Tenant first shall satisfy any requirements of Laws, including, if required, that the Taxes be paid in full before being contested. At Tenant's sole cost, Landlord shall assist Tenant as reasonably necessary with respect to any such contest, including joining in and signing applications or pleadings. Any rebate received shall belong to Tenant.

(e) If Tenant shall become aware that the Premises is being sold at a tax sale due to Landlord's delinquent payment of Taxes, and if Tenant shall pay the delinquent Taxes in order to prevent such sale, then, Tenant may deduct the following amounts from rent and other charges due hereunder: an amount equal to the Taxes, interest, and penalties so paid by Tenant; all reasonable charges (including reasonable attorneys fees) incurred by Tenant in preventing such sale; and interest on all of the foregoing at the rate of 10% per annum.

(f) Notwithstanding anything to the contrary in this Article, if Landlord shall fail to bill Tenant for any Taxes within 24 months from the date the applicable Tax bill is issued, then Tenant shall not be obligated to pay Landlord for such Taxes.

(g) Tenant agrees to pay to all Tax authorities all personal property taxes which may be levied against Tenant's merchandise, trade fixtures, and other personal property in and about the Premises.

INSURANCE -

35. (a) Landlord shall maintain All-Risk insurance for the Building for at least 90% of its reasonable replacement value. Said All-Risk policy shall not exclude flood coverage if the Premises is located in a Flood Zone A or V, and shall not exclude earthquake coverage. Landlord warrants and agrees that all proceeds received from such insurance shall be used in the first instance in accordance with Landlord's obligations under Article 13 hereof. Landlord also shall maintain General Liability coverage, including Broad Form Endorsement, on an occurrence basis; in combined policy limits of not less than \$2,000,000.00 and not in excess of \$5,000,000.00 per occurrence for bodily injury and for property damage with respect to the Premises.

Commencing as of the commencement of the Term, Tenant shall pay to Landlord the cost of the insurance required to be maintained hereunder during the Term. In addition, if Landlord shall elect to carry rental value insurance for the Premises, Tenant shall pay Landlord for same, in limits of up to 12 months' worth of rent and other charges due to Landlord hereunder. Any sum payable to Landlord hereunder shall be paid by Tenant within 30 days after receipt from Landlord of demand therefor, but not more than once annually. Any such demand shall be

accompanied by: copies of receipted insurance bills; copies of the declaration pages of the applicable policies, with determinations of premium allocations, and any endorsements and exclusions; and by a certificate of all of Landlord's insurance; and such certificate shall name Tenant as an additional insured with respect to Landlord's General Liability policy. Landlord agrees to send to Tenant Landlord's estimate of the annual insurance expense hereunder at least 30 days prior to the commencement of the Term.

If Landlord shall receive a credit for any amount of the insurance premium paid by Landlord for the insurance required or permitted hereunder, then Landlord shall notify Tenant of such credit within 15 days after its receipt; and said amount shall be credited to Tenant for the next succeeding insurance payment required to be paid by Tenant hereunder, except that, at the expiration or termination of the Term, said amount will be refunded to Tenant.

At Tenant's election, Landlord shall obtain all of the insurance described in this subdivision (a) from an insurer designated by Tenant. If Tenant shall make such designation, then, the foregoing notwithstanding, Tenant shall pay such insurer directly.

(b) (i) Notwithstanding subdivision (a) above, at Tenant's sole cost, Tenant may elect to maintain, instead of Landlord and on behalf of Landlord, the All-Risk insurance and/or General Liability insurance described above. If Tenant shall make such election, then: Tenant shall give Landlord 30 days' prior written notice of the effective date of Tenant's insurance; as a rider to such All-Risk insurance, Tenant shall obtain rental value insurance for the Premises, in limits of 12 months' worth of rent and other charges due to Landlord hereunder; Tenant shall not be obligated to pay Landlord for any cost of Landlord's All-Risk or General Liability insurance, which cost is attributable to the period following the effective date of Tenant's insurance (and Landlord promptly shall refund to Tenant any such sums pre-paid by Tenant).

Any insurance maintained by Tenant pursuant to this subdivision (b) shall name Landlord as named insured and Tenant as an additional insured. Upon Landlord's request, Tenant shall deliver to Landlord a certificate of such insurance.

Landlord warrants and agrees that all proceeds received from such All-Risk insurance shall be used in the first instance in accordance with Landlord's obligations under Article 13 hereof.

Tenant may cease to carry insurance pursuant to this subdivision (b) upon at least 30 days prior written notice to Landlord. If Tenant shall so cease, then Landlord shall be obligated to maintain insurance pursuant to subdivision (a) above, so that there shall be no lapse in coverage; and Tenant will pay Landlord pursuant to said subdivision (a).

(ii) Tenant may carry such All-Risk and General Liability insurance by way of a Business Owners Policy ("BOP"), or any equivalent thereof.

Tenant may carry such All-Risk and/or General Liability insurance through blanket insurance covering the Premises and other locations of Tenant and/or of Tenant's affiliates; provided that such blanket insurance policy specifically designates the Premises and allocates specific coverage limits to the Premises as required hereunder, which shall not be reduced by claims as to other property covered by such blanket policy.

(c) Tenant shall maintain General Liability insurance, with combined policy limits of at least \$2,000,000.00 per occurrence for bodily injury and for property damage with respect to the Premises. Such insurance shall name Tenant as the named insured and Landlord as an additional insured. Upon Landlord's request, Tenant shall deliver to Landlord a certificate of such insurance.

(d) All insurance coverage required to be carried hereunder: shall be carried with insurance companies licensed to do business in the state in which the Premises is located; shall be rated in the then-most current Best's Insurance Guide (or any successor thereto) as having a general policyholder rating of A- or better and a financial rating of "VIII" or better; and shall require the insured's insurance carrier to notify the other party hereto at least 30 days prior to any cancellation or material modification of such insurance.

(e) Upon the request of either party, provided that such request shall be commercially reasonable, the other party shall: increase the limits of insurance carried by it pursuant hereto; and carry types of insurance in addition to the types required to be carried by it pursuant hereto.

TENANT'S AUDIT RIGHTS -

36. Tenant may audit Landlord's maintenance charges, Tax charges and insurance charges, but not more than once annually. Access to Landlord's records shall be provided to Tenant within 30 days after Tenant's request therefor. If such access is not provided, Tenant shall be relieved of its obligation to pay such charges until access is provided. Landlord agrees to maintain its maintenance, Tax and insurance records for at least 36 months from the date of each applicable invoice to Tenant. If any audit shall indicate that, in any of Landlord's statements, the charges were overstated by Landlord by an amount in excess of 3% of the actual costs, then Landlord shall pay to Tenant the reasonable cost of such audit, plus interest on the overstated amount at the rate of 10% per annum. In any event, Landlord shall repay any amount owing to Tenant as a result of any overstatement.

LANDLORD'S TITLE -

37. Landlord warrants and covenants that [,from and after the date on which Landlord shall tender delivery of possession of the Premises to Tenant, Landlord will have] [Landlord has] good and clear record and marketable title to the Premises, in fee simple absolute, free of liens and encumbrances (excluding mortgages). Landlord also warrants and covenants that: there are no restrictive covenants or other agreements, and no zoning or other Laws, and no other legal impediment, any of which would prevent Tenant from occupying the Premises for the purposes herein provided, or prevent the full use of the parking areas as herein set forth, or otherwise prevent the Premises from being developed in accordance with the layout shown on Exhibit A; and Landlord shall not enter into any restrictive covenants or other agreements, which would prevent Tenant from occupying the Premises for the purposes herein provided, or prevent the full use of the parking areas as herein set forth, or otherwise prevent the Premises from being developed in accordance with the layout shown on Exhibit A.

Landlord warrants and represents to Tenant that, on the date of delivery of possession of the Premises to Tenant, to the best of Landlord's knowledge, the Premises shall be free of all violations, orders, or notices of violations of Laws.

QUIET ENJOYMENT -

38. Landlord warrants and agrees that Tenant, on paying the rent and other charges due hereunder and performing all of Tenant's other obligations pursuant to this Lease, shall and may peaceably and quietly have, hold, and enjoy the Premises for the full Term, free from molestation, eviction, or disturbance by Landlord or by any other person(s) lawfully claiming to be the same.

EQUAL EMPLOYMENT OPPORTUNITY -

39. Tenant is an equal employment opportunity employer and is a federal contractor. Consequently, the parties agree that they will comply with Executive Order 11246, the Vietnam Era Veterans' Readjustment Assistance Act of 1974 and the Vocational Rehabilitation Act of 1973, if applicable, and also that these laws are incorporated herein by this reference.

The parties also agree that they will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, or any other characteristic protected by federal, state or local law.

BROKER -

40. Landlord and Tenant each represent and warrant that it has had no dealings or conversations with any real estate broker in connection with the negotiation and execution of this Lease, other than the Broker(s) named in Section 23 of Part I. Landlord and Tenant each agree to defend, indemnify and hold harmless the other against all liabilities arising from any claim of any other real estate brokers, including cost of counsel fees, resulting from their respective acts. Landlord warrants and agrees that it shall be solely responsible for any and all brokerage commissions owing to said Broker(s), as a result of the negotiation and execution of this Lease.

DISPUTES -

41. If any dispute shall arise as to any amount of money to be paid by one party to the other under this Lease, the party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest", and such payment shall not be regarded as a voluntary payment, and there shall survive the right on the part of said party to institute suit for the recovery of such sum. If it shall be judged that there was no legal obligation on the part of said party to pay such sum or any part thereof, said party shall be entitled to recover such sum(s), or so much thereof as it was not legally required to pay under this Lease, together with interest at the rate of 10% per annum. If any dispute shall arise between the parties hereto as to any work to be performed by either of them under this Lease, the party against whom the obligation to perform the work is asserted may perform such work and pay the cost thereof "under protest", and the performance of such work shall not be regarded as a voluntary performance, and there shall survive the right on the part of said party to institute suit for recovery of the cost of such work, and it shall be entitled to recover the cost of such work, or the cost of so much thereof, as said party was not legally required to perform under this Lease, together with interest at the rate of 10% per annum.

42. Intentionally omitted.

TRANSFER OF TITLE -

43. In the event of any transfer(s) of the title to the Premises, Landlord (and in the case of any subsequent transfer, the then-grantor) automatically shall be relieved from and after the date of such transfer, of all liability with respect to the performance of any obligations on the part of said Landlord contained in this Lease thereafter to be performed; provided that any amount then due and payable to Tenant by Landlord (or the then-grantor), and any other obligation then to be performed by Landlord (or the then-grantor) under this Lease, either shall be paid or performed by Landlord (or the then-grantor) or such payment or performance assumed by the transferee; it being intended hereby that the covenants, conditions and agreements contained in this Lease on the part of

Landlord shall, subject to the foregoing, be binding on Landlord, its successors and assigns, only during and with respect to their respective successive period of ownership.

NO CONTINUOUS OPERATION -

44. Anything in this Lease, express or implied, to the contrary notwithstanding (including without limitation, Tenant's obligation to pay Percentage Rent pursuant to Article 6), Landlord agrees that Tenant shall be under no duty or obligation, either express or implied, to open, or thereafter to continuously conduct, its business in the Premises at any time during the Term.

If Tenant shall cease to operate its business in the Premises for more than 60 consecutive days, Landlord shall have the right, at any time thereafter, for as long as Tenant's cessation to operate is still in effect, to terminate this Lease by giving Tenant 30 days' written notice of such election, and this Lease shall so terminate, unless Tenant has reopened the Premises for business during such 30 day period. For the purpose of this paragraph, Tenant shall not be deemed to have ceased operating its business in the Premises if Tenant is closed temporarily for remodeling or due to any fire or casualty, or if Tenant is closed due to strike, lockout, inability to obtain merchandise or any other cause beyond the reasonable control of Tenant.

HAZARDOUS MATERIALS -

45. (a) For the purposes hereof, the term "Hazardous Materials" shall include, without limitation, substances defined as "hazardous substances", "hazardous materials", or "toxic substances" in any Laws.

(b) Tenant represents and warrants that, except as herein set forth, it will not use, store or dispose of any Hazardous Materials in the Premises. Landlord agrees that Tenant may sell household and automotive cleaners and other chemicals (including motor oil) in standard retail containers as are commonly sold by supermarkets, discount stores, and/or drugstores. Additionally, Landlord agrees that Tenant may use such household cleaners and chemicals to maintain the Premises, and additional chemicals to perform on-site photo-processing. Storage of such chemicals is also permitted. Landlord and Tenant acknowledge that any or all of the cleaners and chemicals described in this paragraph may constitute Hazardous Materials. However, Tenant may sell, use, store and dispose of same as herein set forth, provided that in doing so, Tenant complies with Laws. For the purposes of subdivisions (c) through (g) of this Article, the term "Hazardous Materials" shall exclude the Hazardous Materials permitted in this paragraph.

(c) Landlord represents and warrants to Tenant that, as of the date on which Landlord shall deliver possession of the Premises to Tenant, the Premises shall be free from contamination by Hazardous Materials. Notwithstanding anything in this Lease to the contrary, Tenant shall not

be obligated to accept possession of the Premises until any Hazardous Materials found in or on the Premises have been removed, and Landlord has supplied Tenant with a certificate from the appropriate governmental authority that such removal has been completed, and Landlord has restored the Premises to the condition which existed immediately prior to such removal.

(d) If, at any time during the Term, Hazardous Materials shall be found in or on the Premises, then:

(i) with regard to any Hazardous Materials that Tenant shall not have caused, Landlord shall remove or remediate same to the extent required by Laws, and in compliance with Laws, and at Landlord's sole cost; and Landlord agrees to defend, indemnify, and hold each of Tenant and Guarantor harmless from and against any and all costs, damages, expenses, and/or liabilities (including reasonable attorneys' fees) which each of Tenant or Guarantor may suffer as a result of any claim, suit, or action regarding any such Hazardous Materials (whether alleged or real), and/or regarding the removal and remediation of same.

(ii) with regard to any Hazardous Materials caused by Tenant, Tenant shall remove or remediate same to the extent required by Laws, and in compliance with Laws, and at Tenant's sole cost; and Tenant agrees to defend, indemnify and hold Landlord harmless from and against any and all costs, damages, expenses, and/or liabilities (including reasonable attorneys' fees) which Landlord may suffer as a result of any claim, suit, or action regarding any such Hazardous Materials (whether alleged or real), and/or regarding the removal and remediation of same.

(e) If, prior to the Date of Rent Commencement, any Hazardous Materials are found in or on the Premises, and, as a result thereof, Tenant is prevented from doing its work in the Premises or from opening for business, then, notwithstanding anything to the contrary herein, the Date of Rent Commencement will be delayed for a number of days equal to the number of days that Tenant is delayed from opening for business in the Premises, subject to the other provisions of this Lease. If the Date of Rent Commencement shall be so delayed for 6 months, then, at any time thereafter until such delay shall cease, Tenant may terminate this Lease upon 15 days' prior notice to Landlord.

(f) If, on or after the Date of Rent Commencement, Tenant is prevented from operating its business as a result of the existence of such Hazardous Materials not caused by Tenant, then, Tenant's rent and all other charges due hereunder shall abate, until Tenant is able to resume the operation of its business, subject to the other provisions of this Lease. If Tenant's rent and other charges shall be so abated for 6 months, then, at any time thereafter until such abatement shall cease, Tenant may terminate this Lease upon 15 days' prior notice to Landlord.

(g) Each of Landlord's and Tenant's obligations pursuant to this Article shall survive any expiration and/or termination of this Lease.

TENANT'S INDEMNITY -

46. Except to the extent that such liability is caused by the negligence or tortious act or omission of Landlord, its agents, contractors, or employees, and subject to Article 12, Tenant shall defend, indemnify and hold Landlord harmless from all costs, expenses, claims or demands of whatever nature arising from the following:

(i) any willful, negligent or tortious act or omission on the part of Tenant, its agents, contractors, or employees; or

(ii) any failure on the part of Tenant to perform or comply with any of the covenants, agreements, terms, provisions, conditions or limitations contained in this Lease on its part to be performed or complied with.

In case any action or proceeding is brought against Landlord by reason of any such claim, Tenant, upon written notice from Landlord, shall, at Tenant's expense, resist or defend such action or proceeding.

LANDLORD'S INDEMNITY -

47. Except to the extent that such liability is caused by the negligence or tortious act or omission of Tenant, its agents, contractors or employees, and subject to Article 12, Landlord shall defend, indemnify and hold Tenant harmless from all costs, expenses, claims or demands of whatever nature arising from the following:

(i) any willful, negligent or tortious act or omission on the part of Landlord, its agents, contractors, or employees; or

(ii) any failure on the part of Landlord to perform or comply with any of the covenants, agreements, terms, provisions, conditions or limitations contained in this Lease on its part to be performed or complied with.

In case any action or proceeding is brought against Tenant by reason of any such claim, Landlord, upon written notice from Tenant, shall, at Landlord's expense, resist or defend such action or proceeding.

ESTOPPEL CERTIFICATE -

48. Landlord and Tenant agree to deliver to each other, from time to time as reasonably requested in writing, and within a reasonable period of time after receipt of such request, an estoppel certificate certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications), and the dates to which any rent due hereunder has been paid in advance, if any, together with such other information as Landlord or Tenant may reasonably require with respect to the status of the Lease and Tenant's use and occupancy of the Premises.

NOTICE OF LEASE -

49. Upon the request of either party hereto, Landlord and Tenant agree to execute a short form Notice of Lease in recordable form, setting forth information regarding this Lease, including, if available, the dates of commencement and expiration of the Term and the Date of Rent Commencement. Upon Tenant's request, Landlord shall record such Notice of Lease. As used herein, the term "Notice of Lease" shall mean a short form notice of lease, or declaration or similar document suitable to protecting Tenant's interest hereunder.

MISCELLANEOUS -

50. (a) This Lease shall be governed and construed in accordance with the laws of the state in which the Premises is located.

(b) The headings of the Sections of Part I, and of the Articles of Part II, are for convenient reference only, and are not to be construed as part of this Lease.

(c) The language of this Lease shall be construed according to its plain meaning, and not strictly for or against Landlord or Tenant; and the construction of this Lease and of any of its provisions shall be unaffected by any argument or claim that this Lease has been prepared, wholly or in substantial part, by or on behalf of Tenant.

(d) Landlord and Tenant each warrant and represent to the other, that each has full right to enter into this Lease and that there are no impediments, contractual or otherwise, to full performance hereunder.

(e) This Lease shall be binding upon the parties hereto and shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors and assigns of Landlord and the successors and assigns of Tenant.

(f) In the event of any suit, action, or other proceeding at law or in equity (collectively, "action"), by either party hereto against the other, by reason of any matter arising out of this Lease, the prevailing party shall recover, not only its legal costs, but also reasonable attorneys' fees (to be fixed by the Court) for the maintenance or defense of said action, as the case may be.

(g) A waiver by either party of any breach(es) by the other of any one or more of the covenants, agreements, or conditions of this Lease, shall not bar the enforcement of any rights or remedies for any subsequent breach of any of the same or other covenants, agreements, or conditions.

(h) This Lease and the referenced exhibits set forth the entire agreement between the parties hereto and may not be changed or terminated orally or by any agreement unless such agreement shall be in writing and signed by the party against whom enforcement of such change or termination is sought.

(i) If any provision of this Lease or the application thereof to any persons or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease or the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby, and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

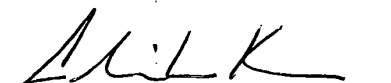
(j) The submission of this Lease for examination does not constitute a reservation of or agreement to lease the Premises; and this Lease shall become effective and binding only upon proper execution and unconditional delivery thereof by Landlord and Tenant.

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Lease on the day and year first above written.

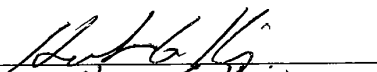
LANDLORD:

KINPIN PARTNERSHIP

WITNESS:



WITNESS

BY: 
NAME: HERB G. PINB
TITLE: MANAGING PARTNER

TENANT:

REVCO DISCOUNT DRUG CENTERS, INC.

ATTEST:


ASSISTANT SECRETARY

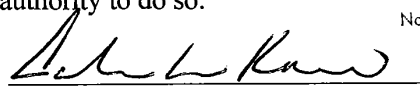
BY: 
~~FRANCIS J. HALL~~ PETER F
VICE PRESIDENT

CVS LEGAL APPROVAL: 

STATE OF SOUTH CAROLINA)COUNTY OF BEAUFORT)

On this 7th day of MAY, 1998, before me personally appeared HERB G. KING, personally known by me, who, being by me duly sworn, did depose and say that he/she resides at 26 THE VILLAGE AT WEXFORD HAZ, SC, and that he/she is THE MANAGING PARTNER of KEN PZ'S PARTNERSHIP, the PARTNERSHIP described in this instrument and that he/she executed this instrument on behalf of said PARTNERSHIP and that he/she had authority to do so.

Notary Public, South Carolina State # 1
My Commission Expires July 1, 2001


NOTARY PUBLIC

STATE OF RHODE ISLAND)

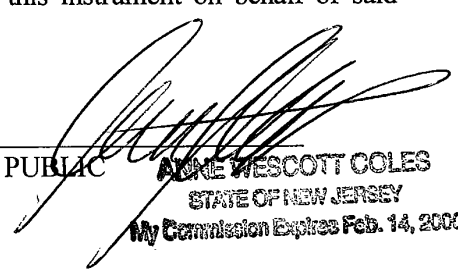
COUNTY OF PROVIDENCE)

On this 20th day of May, 1998, before me personally appeared ~~Francis J. Hall~~, personally known by me, who, being by me duly sworn, did depose and say that he resides at ~~Narragansett, Rhode Island~~; and that he is Vice President of Revco Discount Drug Centers, Inc., the corporation described in this instrument and that he executed this instrument on behalf of said corporation and that he had authority to do so.

Peter F. Pecora

Warring
PA

NOTARY PUBLIC


ADRIE WESCOTT COLES
STATE OF NEW JERSEY

My Commission Expires Feb. 14, 2000

GUARANTY

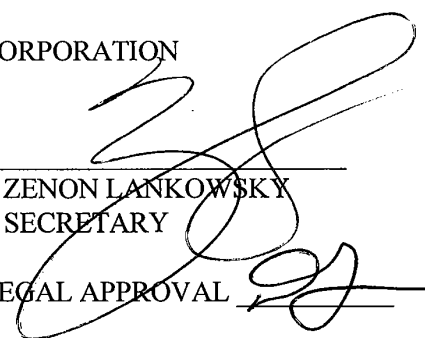
IN CONSIDERATION of the execution and delivery of the attached Lease by and between KINPIN PARTNERSHIP, as Landlord, and REVCO DISCOUNT DRUG CENTERS, INC., as Tenant, the undersigned, CVS CORPORATION ("Guarantor"), a Delaware corporation, having its office at One CVS Drive, Woonsocket, Rhode Island 02895, hereby guarantees to Landlord, its successors and assigns, the payment of the rent (including additional rent) reserved in the within Lease and the performance by Tenant of its covenants and agreements therein contained. Guarantor hereby expressly waives notice of all defaults, and hereby waives all suretyship defenses. Guarantor agrees that the waiver of any rights by Landlord against Tenant arising out of defaults by Tenant, shall not in any way modify or release the obligations of Guarantor.

This Guaranty shall be binding upon the Lease and upon all amendments and modifications thereto, except as set forth in the Lease or in any such amendment or modification; and except that Guarantor shall not be liable for any increase in Tenant's obligations under the Lease, which increase shall occur following any assignment of the Lease by the Tenant named in Part I thereof. This Guaranty shall inure to the benefit of the Landlord, and its heirs, legal representatives, successors and assigns; and shall be binding on the Guarantor and its successors and assigns.

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be executed by its duly authorized officers and its corporate seal to be hereunto affixed, at Woonsocket, Rhode Island, this 11 day of May, 1998.

GUARANTOR:

CVS CORPORATION

BY: 

ZENON LANKOWSKY
SECRETARY

CVS LEGAL APPROVAL 

ELECTRONICALLY FILED - 2020 Jan 24 2:59 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700155

Exhibit B

To

Perry Affidavit

Lease Commencement
Letter

Lease Term/Rent Commencement Agreement

ELECTRONICALLY FILED - 2020 Jan 24 2:59 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700155



CVS/pharmacy

RENT COMMENCEMENT - LEASE TERM LETTER

May 25, 1999

KPP Hilton Head
C-6 Village at Wexford
P.O. Box 6362
Hilton Head, SC 29928

RE: REVCO DISCOUNT DRUG CENTERS, INC. (CVS#5566-02)
10 POPE AVENUE
HILTON HEAD ISLAND, SC

Dear Mr. King:

In accordance with the provisions of our Lease Agreement dated May 7, 1998, this is to confirm the following:

1. Possession of the above-referenced premises was rendered to CVS on April 26, 1999.
2. Minimum rent and other charges due under the Lease commenced on the store opening date, May 23, 1999. Minimum rent will escalate on, May 23, 2004, May 23, 2009 and May 23, 2014.
3. The lease term commenced on April 26, 1999 and shall expire on January 31, 2020, with four (4) option periods of five (5) years. The first option, if elected, shall be exercised no later than November 3, 2019, and will become effective on February 1, 2020.

If the above accurately reflects your understanding, please sign below, retain one copy, and return one copy to my attention.

AGREED AND CONSENTED TO:

By:

Date:

6-10-99

cc: Sue Harrod
Janis Paterson
Susan Fazio
Denise Boulet
S/L #5566-02

Sincerely,

Judy Lapierre
Lease Administrative Assistant

Exhibit C

To

Perry Affidavit

CVS Lease Renewal
Letter



One CVS Drive
Woonsocket, RI 02895

ELECTRONICALLY FILED - 2020 Jan 24 2:59 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700155

LEASE RENEWAL

October 29, 2019

KPP Hilton Head, LLC
Attention: Ms. Anita Fullam
PO Box 23169
Hilton Head, SC 29925

RE: Lease Agreement dated May 7, 1998, as amended, by and between KPP Hilton Head, LLC, as "Landlord", and SOUTH CAROLINA CVS PHARMACY, L.L.C., as "Tenant", for the Premises located at 10 Pope Avenue, Hilton Head Island, South Carolina ("Lease") (CVS# 05566L02)

Dear Ms. Fullam:

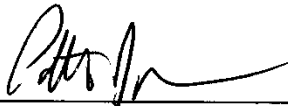
In accordance with the provisions of the Lease, as amended or supplemented, the undersigned hereby gives notice of its election to exercise the renewal option of said Lease for an additional period of 5 year(s) to commence on February 01, 2020 and expire on January 31, 2025, upon the same terms, covenants and conditions contained in said Lease, as amended.

If you have any questions please contact Mary Porter at (401) 770-7519.

Very truly yours,

SOUTH CAROLINA CVS PHARMACY, L.L.C.

By: _____


Peter J. Perry
Lease Administration Manager

While your acknowledgement of receipt of this letter is not required for its validity, we do request that, as a courtesy to us, you acknowledge receipt of the same by signing below, retaining one copy, and returning one copy to the attention of Mary Porter at the above address. This will ensure that we continue to maintain accurate records.

Receipt Acknowledged By: _____ Date: _____

cc: Jim Kurimcak, Brian Bosnic, Bryan Cook, Mary Porter and S/L# 05566L02

Sent via Certified Mail #7014 3490 0000 3641 4293

Exhibit D

To

Perry Affidavit

USPS Tracking History

Tracking Number: 70143490000036414293

Remove

Status

Your item was delivered at 8:37 am on November 6, 2019 in HILTON HEAD ISLAND, SC 29925.

 **Delivered**

November 6, 2019 at 8:37 am
Delivered
HILTON HEAD ISLAND, SC 29925



Tracking History

November 6, 2019, 8:37 am

Delivered

HILTON HEAD ISLAND, SC 29925

Your item was delivered at 8:37 am on November 6, 2019 in HILTON HEAD ISLAND, SC 29925.

November 2, 2019, 9:45 am

Available for Pickup

HILTON HEAD ISLAND, SC 29925

November 2, 2019, 9:45 am

Arrived at Unit

HILTON HEAD ISLAND, SC 29925

November 1, 2019, 7:39 pm

Departed USPS Regional Facility

CHARLESTON SC PROCESSING CENTER

November 1, 2019, 10:07 am

Arrived at USPS Regional Facility

CHARLESTON SC PROCESSING CENTER

October 31, 2019, 4:46 am

Departed USPS Regional Facility

PROVIDENCE RI DISTRIBUTION CENTER

October 30, 2019, 11:13 pm

Arrived at USPS Regional Facility

PROVIDENCE RI DISTRIBUTION CENTER

Product Information

See Less

Can't find what you're looking for?

Go to our FAQs section to find answers to your tracking questions.

FAQs

ROA 000123

Exhibit F

To
Complaint

Zuckerman Rejection
Letter

Peter

P. Benjamin Zuckerman
(954) 712-5107
bzuckerman@bergersingerman.com

December 12, 2019

RECEIVED

DEC 24 2019

BY: _____

VIA U.S. MAIL

South Carolina CVS Pharmacy, LLC
One CVS Drive
Woonsocket, RI 02895
Attn: Peter J. Perry, Lease Administration Manager

Re: Purported Lease Renewal of Lease Agreement Dated May 7, 1998, as amended, for the 10 Pope Avenue, Hilton Head Island, South Carolina Premises (CVS# 05566L02)

Dear Mr. Perry:

I have been retained by the Landlord, KPP Hilton Head, LLC (the "Landlord"), in connection with South Carolina CVS Pharmacy, LLC's purported Lease Renewal. All future communications regarding the matter should be made to me.

Your letter dated October 29, 2019, which purports to exercise a Lease Renewal of the above described Premises on behalf of South Carolina CVS Pharmacy, LLC ("CVS"), was untimely, and the Landlord rejects CVS' requested renewal on that basis. In this regard, the Lease specifies that a Renewal Option is to be exercised "by giving Landlord notice of each such election **not later than** the Required Advance Notice of Exercise of Renewal Options (as specified in Section 13 of Part I)" (Emphasis added). Section 13 of Part I requires notice "90 days **prior to** the expiration of the then current term" (Emphasis added). Given that the expiration of the now current term is January 31, 2020 (*see* Section 11 of Part I), CVS had to give the Landlord notice of the exercise of the Renewal Option **no later than** November 2, 2019 (a Saturday) to be timely.

The Lease also expressly provides that all notices be in writing, that "a receipt is required," and critically here, that "[t]he date of receipt of the notice or demand shall be deemed the date of service thereof." (*See* Section 27 of Part II). The Landlord received CVS's notice of renewal on Monday, November 4, 2019, two full days **after** the deadline for exercising the renewal option. The Renewal Option had expired on November 2, 2019. The notice was untimely, and the Landlord does not waive the untimeliness.

The Landlord is willing to discuss a new Lease with CVS, but any such Lease will have to be at current market rates, and all other Lease terms will need to be reviewed to make certain that any Lease reflects current circumstances.

Thank you.

Sincerely yours,

BERGER SINGERMANN LLP

P. Benjamin Zuckerman

PBZ/cap

cc: Julie King

Exhibit G

To Complaint

KPP Option Rejection *Letter*

KPP HILTON HEAD, LLC

PO Box 23169
Hilton Head Island, SC 29925-3169

Via USPS Certified Mail: 7017 2680 0000 0103 1778

Via email: Peter.Perry@CVSHealth.com

November 12, 2019

CVS Corporation
c/o Mr. Peter J. Perry
One CVS Drive
Woonsocket, RI 02895

*Re: Tenant's Lease Renewal Letter dated October 29, 2019, CVS #05566L02
("Tenant's Lease Renewal Letter")*

Dear Mr. Perry:

KPP Hilton Head, LLC, as successor in interest to KINPIN Partnership ("Landlord") and South Carolina CVS Pharmacy, LLC, as successor in interest to Revco Discount Drug Centers, Inc. ("Tenant"), are parties to a Lease dated May 7th, 1998 (the "Lease") pertaining to the Premises located at 10 Pope Avenue, Hilton Head Island, SC 29928 (the "Premises").

Article 27 of Part II, NOTICES of the Lease states as follows:

"Whenever, pursuant to his Lease, notice or demand shall or may be given to either of the parties by the other, and whenever either of the parties shall desire to give to the other any notice or demand with respect to this Lease or the Premises, each such notice or demand shall be in writing, and any Laws to the contrary notwithstanding, shall not be effective for any purpose unless the same shall be given or served as follows: by mailing the same to the other party by registered or certified mail, return receipt requested, or by overnight courier service provided a receipt is required, at its Notice Address set forth in Part I hereof, or at such other address as either party may from time to time designate by notice given to the other. **The date of receipt of the notice or demand shall be deemed the date of the service thereof** (unless notice or demand is not received or accepted in the ordinary course of business, in which case the date of mailing shall be deemed the date of service thereof)."

Tenant's Lease Renewal Letter was received by Landlord's administrative staff on November 6, 2019, making the date of service November 6, 2019.

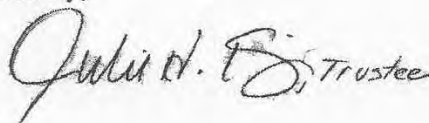
Article 13 of PART I of the Lease defines "Required Advance Notice of Exercise of Renewal Options" as "90 days prior to the expiration of the then-current term." The expiration date of the Lease is January 31, 2020, which would make the latest date of service for the Lease Renewal Letter November 2, 2019.

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Therefore, Tenant's alleged exercise of its renewal option fell outside of the Required Advance Notice of Exercise of Renewal Options and is not in accordance with the terms and provisions set forth in the Lease.

If you would like to discuss extending the term of the Lease, please feel free to call me at (843) 816-0667. If not, please let me know when you are scheduling to vacate the Premises so that I can plan accordingly.

Sincerely,

A handwritten signature in cursive script, appearing to read "Julie King", followed by the word "Trustee" in a smaller, less stylized font.

Julie King
Managing Member, KPP Hilton Head, LLC
843-816-0667
PO Box 23169
Hilton Head Island, SC 29925-3169

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	FOR THE FOURTEENTH JUDICIAL CIRCUIT
South Carolina CVS Pharmacy, L.L.C.,	)	CASE NO.: 2020-CP-07-00155
	)	
Plaintiff,	)	
	)	
vs.	)	MOTION FOR TEMPORARY
	)	RESTRAINING ORDER
KPP Hilton Head, LLC,	)	
	)	
Defendant.	)	

Plaintiff South Carolina CVS Pharmacy, L.L.C. (“Tenant” or “CVS”), by and through its undersigned counsel, moves this Court pursuant to Rule 65(b) of the South Carolina Rules of Civil Procedure to enter a temporary restraining order preserving the status quo and restraining Defendant KPP Hilton Head, LLC (“Landlord” or “KPP”) from taking any action to remove Tenant from the Premises during the pendency of this action. This Motion is supported by the Complaint, the Affidavit of Peter J. Perry, and the Affidavit of Bryan Cook.

In support of this Motion, Tenant shows the following to the Court:

1. On or around May 7, 1998, KINPIN Partnership, as landlord, entered into a Lease (the “Lease”) with Revco Discount Drug Centers, Inc. (“Revco”), as tenant for the property located at 10 Pope Avenue, Hilton Head Island, South Carolina 29928 (the “Premises”). (Compl. Ex. A).
2. On or around July 23, 1998, KINPIN Partnership and Revco entered into the First Lease Amendment (the “First Amendment”). (Compl. Ex. B).
3. KINPIN Partnership assigned all of its right, title and interest in and to the Lease to KPP, and KPP assumed all of KINPIN Partnership’s duties and obligations under the Lease. (Compl. ¶ 6).
4. On or around January 1, 2011, Revco assigned all of its right, title, and interest in and to the Lease to CVS, and CVS assumed all of Revco’s duties and obligations under the Lease. (Compl. Ex. C).

5. For nearly 20 years, Tenant has operated a retail store and pharmacy on the Premises.

6. The Lease commenced on April 26, 1999, having an initial term of 20 years, with an expiration of January 31, 2020 (the “Initial Term”). (See Compl. Exs. A & D; Perry Aff. ¶ 10).

7. The Lease provides Tenant with an option to extend the Lease for four extension periods, each with a term of five years (each an “Option,” and collectively, the “Options”). (Compl. ¶ 12; Perry Aff. ¶ 7).

8. Pursuant to the Lease, as amended, annual rent during the Initial Term and all four extension periods was set at \$257,860.97, payable in monthly installments of \$21,488.41 (“Fixed Rent”). (Compl. Ex. B, ¶ 1).

9. Part II, Paragraph 50(f) of the Lease entitles the prevailing party of any action arising out of the Lease to recover its legal costs and attorneys’ fees.

10. In order to exercise the Options, Tenant is required to provide notice to Landlord 90 days prior to the expiration of the then-current term in accordance with the Lease’s generally applicable notice provision. (Compl. ¶ 14; Perry Aff. ¶ 8).

11. Notice of Tenant’s election to exercise the Option to extend the Initial Term for an additional five-year period was required to be served upon Landlord by November 3, 2019. (Compl. ¶ 14; Perry Aff. ¶ 11).

12. The Lease’s notice provision provides that notices must be in writing and sent either registered or certified mail, return receipt requested, or by overnight courier, provided a receipt is required. (Compl. ¶ 15).

13. The Lease’s notice provision provides that for notices which are not received or accepted in the “ordinary course of business,” the date the notice was mailed shall be deemed the date of service. (Compl. ¶ 15).

14. Peter J. Perry is the Lease Administration Manager for CVS Health Corporation. Mr. Perry reviewed and signed Tenant's written notice that it was electing to exercise its option to renew the Lease and extend the Lease's term for an additional five-year period (the "Notice"). (Compl. ¶ 18; Perry Aff. ¶¶ 3 & 12).

15. On October 30, 2019, Mr. Perry caused a copy of the Notice to be placed in the mail with the United States Postal Service ("USPS") via certified mail, return receipt requested, to the Landlord's notice address. (Compl. ¶ 19; Perry Aff. ¶ 13).

16. The Notice was delivered to Landlord's post office box and was actually available for pickup on Saturday, November 2, 2019. (Compl. ¶ 20; Perry Aff. ¶ 15).

17. Notwithstanding the fact that Landlord *actually received the Notice* a full day before the November 3, 2019 deadline, notice that is received on a Saturday is "not received or accepted in the ordinary course of business," as contemplated by Part II, Paragraph 27 of the Lease.

18. Because the Notice was delivered to Landlord's post office box, and available for Landlord to pick up, on Saturday, November 2, 2019, the date the Notice was mailed is deemed the date the date of service. Therefore, the Notice was timely served upon Landlord on October 30, 2019, and Tenant properly exercised its option to extend the Lease's term for an additional five-year period at the rate of Fixed Rent.

19. Alternatively, even if Landlord's receipt of the Notice is deemed to be the date it was delivered to and available for pickup by Landlord, it was delivered to Landlord's post office box and was available for pick up on November 2, 2019. Thus, it was still timely served on Landlord prior to the November 3, 2019 deadline.

20. A copy of the Notice was also emailed to Ms. Anita Fullam at anitafullam@principaldevelopers.com on October 30, 2019. (Compl. ¶ 24; Perry Aff. ¶ 15).

21. On November 12, 2019, and December 12, 2019, Landlord sent two letters addressed to Mr. Perry, both of which purported to reject the Notice of Tenant's decision to exercise its option on the basis that the Notice was not timely delivered to Landlord. (Compl. ¶ 24).

22. Landlord's December 12, 2019 letter stated that Landlord received the Notice on Monday, November 4, 2019. (Compl. Ex. E).

23. Landlord's December 12, 2019 letter shows that Landlord was, and is, using Tenant's alleged failure to timely deliver the Notice for the sole purpose of exacting higher rates of rent from Tenant. In pertinent part, the letter states that "**Landlord is willing to discuss a new Lease with CVS, but such Lease will have to be at current market rates**, and all other Lease terms will need to be reviewed to make certain that any Lease reflects current circumstances." (Compl. Ex. E) (emphasis added).

24. Landlord's refusal to recognize Tenant's valid exercise of the Option to extend the Lease for an additional five-year period is in breach of the Lease. The Lease provides Tenant with the unilateral right to exercise the Options and extend the terms of the Lease upon timely and properly served written notice of Tenant's decision to Landlord.

25. Landlord has expressed its belief that the Lease's term ends on January 31, 2020. (Compl. Ex. E). Tenant expects Landlord to enforce its purported rights under the Lease and to take action to remove Tenant from the Premises.

26. Under the Lease, in the event of an uncured default by the Tenant, the Landlord has the following rights:

- (a) If: (i) **Tenant shall default in the payment of Fixed Rent or any item of additional rent payable hereunder**, and such default shall continue for more than 15 days after written notice to Tenant; **or (ii) Tenant shall default in fulfilling any of the other covenants of this Lease**, and such default shall continue for more than 30 days after written notice thereof from Landlord, specifying such default (provided that if Tenant has commenced to cure within said 30 days, and thereafter

is prosecuting same to completion, said 30 day period shall be extended, where due to the nature of the default, it is unable to be completely cured within 30 days); then, in any such event, **Landlord may give to Tenant notice of intention to end the Term hereof, and if Landlord shall do so, the Term shall expire as if that day were the day herein fixed for the expiration of the Term, and Tenant shall then quit the Premises and surrender the same,** but shall remain liable as hereinafter provided.

(b) **if the notices provided in subdivision (a) of this Article shall have been given and the Term shall expire as aforesaid, then Landlord may, without further notice, re-enter the Premises, either by force or otherwise, and dispossess Tenant by summary proceedings or otherwise, and remove Tenant's effects and hold the Premises as if this Lease had not been made;** and Tenant hereby waives the service of notice of intention to re-enter or to institute legal proceedings to that end.

(c) In case of any such default, re-entry, expiration and/or dispossession by summary proceedings or otherwise (i) the rent shall become due and shall be paid up to the time of such re-entry, dispossession and/or expiration; (ii) Landlord shall make reasonable efforts to re-let the Premises or any part or parts thereof, either in its own name or otherwise, for a term or terms which may, at its option, be shorter or longer than the period which would otherwise have constituted the remainder of the Term, and may grant concessions or free rent, but only to such extent as Landlord, in Landlord's reasonable judgment, considers advisable and necessary to re-let the same; and, (iii) Tenant, or its successors, shall also pay to Landlord, as liquidated damages for the failure of Tenant to observe and perform its covenants herein contained, any deficiency between the rent herein reserved and the net amount, if any, of the rents collected on account of the re-letting of the Premises for each month of the period which would otherwise have constituted the remainder of the then-current term. In computing such liquidated damages, there shall be added to said deficiency such reasonable expenses as Landlord may incur in connection with re-letting, such as legal expenses, attorney and broker fees, but excluding renovations. Any such liquidated damages shall be paid in monthly installments on the rent day specified in this Lease and any suit brought to collect the amount of the deficiency for any month shall not prejudice, in any way, the right of the Landlord to collect the deficiency for any subsequent month by a similar proceeding. However, if Tenant shall default on any such monthly installment, then, at Landlord's option, such liquidated damages shall be accelerated and paid immediately by Tenant, but discounted to their present value, using as the time remaining, the number of full calendar months remaining in the term of this Lease following default (beyond applicable cure periods), and using as the interest rate, the lesser of the following: (x) the rate (or the average of rates, if more than one rate appears) inserted in the blank of the "Money Rates" section of "The Wall Street Journal" (Eastern Edition) in the section reading "Prime Rate: ____%", or (y) the base rate on corporate loans posted by at least 75% of the nation's 30 largest banks. (If neither rate is available for any reason, then a reasonably equivalent rate shall be used).

Mention in this Lease of any particular remedy shall not preclude Landlord from any other remedy at law or in equity, including the right of injunction. Tenant waives any rights or redemption granted by any Laws if Tenant is evicted or dispossessed, for any cause, or if Landlord obtains possession of the Premises by reason of the violation by Tenant of any of the terms of this Lease.

(Compl. Ex. A, Part II, ¶¶ 23(a)–(c)) (emphasis added).

27. If Landlord wrongly maintains that the Tenant is in default for occupying the Premises beyond January 31, 2020, then it is possible that the Landlord might, among other things, (a) initiate a commercial ejectment action, (b) attempt to terminate the Lease, (c) take action to dispossess the Tenant of its rights in the Premises, including attempting to reenter the Premises without resorting to a formal ejectment proceeding, or (d) attempt to market and re-let the Premises.

Legal Standard

28. Temporary injunctive relief is appropriate when a plaintiff establishes that (1) it would suffer irreparable harm if the relief is not granted; (2) the plaintiff will likely succeed on the merits of its claims; and (3) there is no adequate remedy at law. *Strategic Resources Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006) (citing *Scratch Golf Co. v. Dunes West Residential Golf Props., Inc.*, 361 S.C. 117, 603 S.E.2d 905 (2004)). In cases involving property rights, the sole purpose of temporary injunctive relief “is to preserve the subject controversy in the condition which it is at the time of the Order until opportunity is offered for full and deliberate investigation and to preserve the existing status during litigation.” *Cty. Council of Charleston v. Felkel*, 244 S.C. 480, 483–84, 137 S.E.2d 577, 578 (1964). Temporary injunctive relief is appropriate here.

Irreparable Harm

29. Tenant will suffer irreparable harm if Landlord takes action to remove Tenant from the Premises, as Tenant could be required to defend against an unnecessary ejectment action and,

potentially, forfeit its retail store at the Premises and relocate to another location. “Whether ‘a wrong is irreparable, in the sense that equity may intervene, and whether there is an adequate remedy at law, are questions that are not decided by narrow and artificial rules.’” *Peek v Spartanburg Regional Healthcare System*, 367 S.C. 450, 455, 626 S.E.2d 34, 36 (Ct. App. 2005) (quoting *Kirk v. Clark*, 191 S.C. 205, 211, 4 S.E.2d 13, 16 (1939)).¹

30. The Lease gives Landlord certain rights (which are set forth above) when a breach of the Lease has occurred. If Landlord maintains that Tenant is not entitled to continue operating in the Premises, then Landlord may try to hold Tenant in breach and avail itself of the remedies for default set forth in the Lease. The remedies for default include, among other things, the right to terminate the Lease, the right to initiate a commercial ejectment action, and the right to dispossess Tenant of the Premises without resorting to summary ejectment proceedings. Moreover, Landlord might begin marketing the Premises, which would presumably involve the placement of a sign indicating that the Premises is available for rent.

31. If Landlord were to take any of these actions, Tenant will be forced to begin preparing for a pharmacy relocation. If Landlord were to attempt to dispossess Tenant, with or without initiating a commercial ejectment proceeding, then Tenant would have to take steps to protect its interest, including defending against an unnecessary commercial ejectment proceeding and/or beginning the process of relocating to another location. In any event, a disorderly process whereby Landlord attempts to re-take possession and re-let the Premises would be incredibly damaging to the Tenant’s business.

¹ See also *Peek*, 367 S.C. at 455, n.2, 626 S.E.2d at 37, n.2 (stating that “[t]he complete loss of a professional practice can be an irreparable harm,” and citing the following cases where courts have found “irreparable harm”: *District of Columbia v. E. Trans-Waste of Md., Inc.*, 758 A.2d 1, 15 (D.C. 2000) (“While economic loss does not, in and of itself, constitute irreparable harm, such harm will be found if economic loss threatens the very existence of [plaintiff’s] business.”); *Campbell Inns, Inc. v. Banholzer, Turnure & Co.*, 148 Ct. 1, 527 A.2d 1142, 1146 (1987) (“The potential loss of a business satisfies the irreparable harm requirement for the issuance of an injunction.”); *IAC, Ltd. v. Bell Helicopter Textron, Inc.*, 160 S.W.3d 191, 200 (Tex.App.2005) (“Loss of business goodwill or loss that is not easily calculated in pecuniary terms is sufficient to show irreparable injury for purposes of obtaining a temporary injunction.”)).

32. As noted in the Affidavit of Bryan Cook, Tenant's retail store has been located at the Premises for over twenty years and has built a dedicated base of customers, many of whom have designated Tenant as their dedicated pharmacy on file with their physicians and routinely have their prescription medications filled at Tenant's pharmacy. (Cook Aff. ¶ 9). A copy of the Affidavit of Bryan Cook is attached hereto as **Exhibit A**. As Tenant has invested a significant amount of time and energy into establishing a business at this particular location, requiring Tenant to move, or even begin the process of planning to move, prior to the Court resolving the declaratory judgment request in the Complaint would be highly disruptive—both to Tenant and Tenant's customers. (Ex. A ¶ 10). Even a sign marketing the Premises for rent could be damaging to Tenant's business, as Tenant's customers might seek the services of another pharmacy out of concerns that Tenant may not be operating in the Premises in the near future.

33. Additionally, if Landlord initiates an ejectment action to remove Tenant from the Premises, a writ of ejectment could be issued requiring Tenant to vacate within 48 hours of its issuance. Because ejectment proceedings often take place through a very truncated process, such an order would likely prevent Tenant from being able to timely comply with required notifications that must be given to the Drug Enforcement Agency upon a retail pharmacy's transfer of controlled substances to a new physical location or the pharmacy's decision to cease operations altogether. Additionally, if CVS were to relocate to another location, it would need to seek approval from the relevant South Carolina regulators to do so. (Ex. A ¶ 10).

34. Finally, if the Landlord were to dispossess Tenant of the Premises, Tenant would need to find an alternate location to operate its business. As referenced in the Affidavit of Bryan Cook, not every piece of commercial real estate is suitable to the Tenant's needs. (Ex. A ¶¶ 8–9). It is highly unlikely that Tenant will be able to find an exact substitute for the Premises and, even if it could do so, the site selection process is likely to take a significant time and resource

investment from CVS and its personnel. (*See* Ex. A ¶¶ 7–12). All of these factors warrant in favor of the Court issuing temporary injunctive relief to maintain the status quo.

35. Such harm is irreparable because it is impossible to:

(a) determine the impact that closing down this location, or even beginning the relocation process, will have on its current customers who regularly have their prescriptions filled at the Premises;

(b) measure the full extent of monetary damages Tenant will suffer if forced to forfeit its retail store location at the Premises which was carefully chosen based upon Tenant's specific retail store location criteria, such as high visibility from the surrounding roadways, easy access with traffic signals, high traffic intersections, freestanding sites with drive-thru pharmacy capability, sufficient parking for large numbers of vehicles, and sufficient population in a trade area;

(c) evaluate the impact that the loss of the business will have on Tenant's customers, employees, managers, and business relationships while Tenant is forced to relocate; and

(d) determine the harm the community will suffer as a result of a pharmacy, which has been in the same location for over twenty years, being forced to close down.

36. Unless restrained, Landlord's actions to remove Tenant from the Premises will likely harm Tenant's customers, employees, agents, business relationships, and the community at large.

Likelihood of Success on the Merits

37. Tenant is likely to succeed on the merits of its claims because Tenant timely and effectively caused the Notice to be served upon Landlord and, therefore, properly exercised the Option to extend the Lease's term for an additional five-year period. In order to support a motion

for temporary injunctive relief, a party need only show that it has made a prima facie case that it will succeed on the merits. *Helsel v. City of N. Myrtle Beach*, 307 S.C. 29, 413 S.E.2d 824 (1992) (“Once a prima facie showing has been made entitling the plaintiff to injunctive relief, a temporary injunction will be granted without regard to the ultimate termination of the case on the merits.”).

38. Here, Tenant’s Complaint alleges that (1) the Lease requires Tenant’s notice to extend the Lease’s term be served on Landlord at least 90 days prior to the expiration of the then-current term; (2) the expiration of the Initial Term is set for January 31, 2020, thus requiring the Notice to be served on Landlord by November 3, 2019; (3) pursuant to the Lease, Tenant’s mailing of the Notice to Landlord via certified mail, return receipt requested, effectuated service on the date the Notice was mailed—October 30, 2019; and (4) Landlord in fact received the Notice at its post office box on November 2, 2019. Therefore, Tenant has made a prima facie showing that it timely and effectively exercised its unilateral option to extend the Lease’s term for an additional five-year period at an annual rent rate of \$257,860.97, payable in monthly installments of \$21,488.41 pursuant to the terms of the Lease and First Amendment.

No Adequate Remedy at Law

39. Tenant does not have an adequate remedy at law. “The basis for granting equitable relief is the impracticability of obtaining full and adequate compensation at law.” *Nutt Corp. v. Howell Rd., LLC*, 396 S.C. 323, 327, 721 S.E.2d 447, 449 (Ct. App. 2011) (citation omitted). “An ‘adequate’ remedy at law is one which is certain, practical, complete and efficient to attain the ends of justice and its administration as the remedy in equity.” *Id.* at 328, 721 S.E.2d at 450 (citation omitted).

40. If Landlord takes action to remove Tenant from the Premises during the pendency of this action, Tenant will have no choice but to begin taking actions in order to move locations. As previously mentioned, this will disrupt, and could permanently damage, the customer base that

CVS has built over a 20 year period. Moreover, given the unique nature of commercial real estate, coupled with CVS's stringent site selection criteria, it is highly unlikely that CVS will be able to find another site that satisfies all of CVS's selection criteria in the same way. The subtle differences in one piece of real estate versus another are notoriously hard to quantify, such that our courts have routinely recognized that equitable relief is appropriate in the real estate context. *See, e.g. Cty. Council of Charleston*, 244 S.C. at 484, 137 S.E.2d at 578 (finding that temporary injunctive relief restraining defendants from continuing to sell residential real estate lots pending litigation was appropriate to maintain the status quo).

41. Therefore, Tenant is entitled to injunctive relief to maintain the status quo and avoid irreparable harm.

42. Pursuant to Rule 65(c) of the South Carolina Rules of Civil Procedure, Tenant is required to file with the Clerk of Court security for any costs or damages that may be incurred by Landlord as a result of the issuance of this temporary restraining order if it should be later determined such order should not have been issued. In the event that the Court later determines that this temporary injunctive relief was not appropriate, the Landlord has remedies under the Lease. Specifically, Landlord would be entitled to the rate of rent provided for holdover tenants under Part II, Paragraph 26 of the Lease. Accordingly, any bond required by the Court should be for a minimal amount, as the Lease provides the Landlord with a specific contractual remedy for the situation where a tenant occupies the premises beyond the end of the Lease term.² Because of the existence of this remedy, which would apply if the Tenant were later shown to be in error, the need for security to protect the Landlord is minimal.

² Landlord's ultimate parent corporation, CVS Health Corporation, is a publicly traded company that operates thousands of retail pharmacies across the United States, as well as a number of ancillary healthcare offerings. It is a financially healthy and stable company that has existed since the early 1960s. As such, there is very little risk that Tenant would or could not comply with the financial obligations of Tenant's Lease.

43. Due to the immediate and irreparable injury, loss, and damage that would result to Tenant before notice could be served and a hearing had on this Motion, as shown more particularly in Tenant's Complaint, Affidavit of Peter J. Perry, and Affidavit of Bryan Cook, notice of this Motion need not be given to adverse counsel or the adverse party pursuant to Rule 65(b) of the South Carolina Rules of Civil Procedure.

WHEREFORE, Tenant requests that the Court:

- (a) Enter a temporary restraining order prohibiting Landlord from taking any action to remove Tenant from the Premises during the pendency of this action, including but not limited to: (i) marketing the Premises for rent, (ii) declaring Tenant in default under the Lease, (iii) initiating commercial ejectment proceedings, (iv) attempting to terminate the Lease, and (v) taking any action to forcibly remove Tenant's operations or property from the Premises;
- (b) Award Tenant attorneys' fees pursuant to the terms of the Lease; and
- (c) Award Tenant such other and further relief as the Court deems just and proper.

Respectfully submitted,

s/J. Evan Phillips

Walter H. Cartin (S.C. Bar # 78405)
 J. Evan Phillips (S.C. Bar # 103679)
 Parker Poe Adams & Bernstein LLP
 Post Office Box 1509 (29202)
 1221 Main Street, Suite 1100
 Columbia, South Carolina 29201
 Telephone: 803.255.8000
 Facsimile: 803.255.8017
 waltcartin@parkerpoe.com
 evanphillips@parkerpoe.com

Attorneys for Plaintiff
South Carolina CVS Pharmacy, L.L.C.

January 29, 2020
 Columbia, South Carolina

Exhibit A

To

Motion for Temporary Restraining Order

Affidavit of Bryan Cook

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	
	)	CASE NO.: 2020-CP-07-00155
South Carolina CVS Pharmacy,	)	
L.L.C.,	)	
	)	AFFIDAVIT OF BRYAN COOK
Plaintiff,	)	
	)	
vs.	)	
	)	
KPP Hilton Head, LLC,	)	
	)	
Defendant.	)	

Bryan Cook, under oath, being first duly sworn, hereby deposes and says:

1. I am over eighteen (18) years of age, suffer from no known disability and am competent to testify to the facts set forth herein.
2. I make this affidavit upon personal knowledge and with access to pertinent information and documents.
3. I am employed by CVS Pharmacy, Inc. as a Regional Director of Real Estate ("Regional Director"). CVS Pharmacy, Inc. is the parent company of South Carolina CVS Pharmacy, L.L.C. (CVS Pharmacy, Inc. and South Carolina CVS Pharmacy, L.L.C. are, collectively, hereinafter referred to as "CVS").
4. In my role as Regional Director, I am responsible for overseeing the real estate operations for much of the southeastern United States, including the state of South Carolina. The territory I oversee includes approximately 1,800 CVS pharmacy locations.
5. As part of my job as Regional Director, I am responsible for: (a) selecting the physical site locations for the retail pharmacies CVS operates; (b) management and execution of the real estate development process; (c) deal negotiation; (d) executive/corporate presentation of

development and leasing projects; and (e) managing project permitting (with local, state and federal entities) for potential CVS pharmacy locations throughout the southeastern United States.

6. In my capacity as Regional Director, I oversee the CVS pharmacy located at 10 Pope Avenue, Hilton Head Island, South Carolina 29928 (the "Premises").

7. Prior to choosing a physical location for each of its retail pharmacies, CVS engages in a location analysis based on an established set of criteria in order to ensure adequate customer volume, sufficient accessibility, and financial viability.

8. In performing a location analysis, CVS focuses primarily on the following criteria: (a) high visibility from surrounding roadways; (b) easy access with traffic signals; (c) freestanding sites with drive-thru pharmacy capability; (d) sufficient parking for large numbers of vehicles; and (e) sufficient population in a trade area (collectively, the "Criteria"). The Criteria are highly specific to a particular physical location.

9. The purpose of performing a location analysis is to enable CVS to select a location which will best assist CVS in developing a dedicated clientele for both the retail and pharmacy portions of its business. CVS's customers often choose a pharmacy based on the pharmacy's physical proximity to their medical providers, physical proximity to their homes, and their travel patterns. Most CVS locations develop a significant customer base who consider a specific CVS pharmacy to be "their pharmacy." These customers will direct their medical providers to send prescriptions to their pharmacy electronically. The customers will then pick up their prescriptions from the CVS location. Customers routinely develop personal and professional relationships with their pharmacist and other CVS employees. As such, CVS and its employees invest significant time and resources into developing a customer base unique to each CVS location.

10. When a CVS location moves, it can be highly disruptive to customer utilization patterns. Even moving to a different side of the street can have drastic impacts on certain of the

Criteria, such that the viability of a pharmacy can be materially eroded or impaired. Moreover, because CVS's pharmacies sell controlled substances and other highly-regulated medications that exist in a volatile or sensitive state, it is not an easy task to move pharmacy locations. Moving locations is a process that can take weeks, if not months, to accomplish appropriately, ensuring that all regulatory filings have been made and approvals have been received.

11. Because the physical location of a pharmacy is vital to its success, and because CVS invests heavily in each pharmacy location, CVS prefers to negotiate long term leases, typically with a number of "options" for CVS to renew the lease. These options are vital to allowing CVS to realize the rewards of its investment and for CVS to get the benefit of its bargain from any lease arrangement. This is the case with the lease agreement governing the Premises, which is involved in the above-captioned action.

12. CVS has operated a pharmacy and retail store in the Premises for nearly 20 years. The Premises' attributes are consistent with the Criteria that CVS uses to select pharmacy locations, and the CVS pharmacy operated in the Premises has made investments in developing its clientele consistent with my statements about CVS locations generally. Due to its investments in the Premises, CVS has developed a successful pharmacy and retail location, with a dedicated customer base. If CVS is forced to move from the Premises prematurely, it will be highly damaging to CVS's operations and disruptive to CVS's customers. Certain CVS customers that have used the Premises for years may have to find a new pharmacy. These previously dedicated customers may be lost forever, so it is extremely difficult to monetize the long term impact of losing these customers.

13. Moreover, as Regional Director, I am familiar with the process of closing a CVS location and relocating to another location. Moving or closing a store is a costly and time-consuming process, which can take weeks, if not months, to accomplish. If CVS were required to

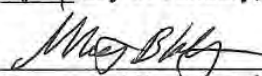
close out its operations at the Premises, it would likely have to liquidate certain inventory, arrange for the specialized transportation of any volatile or unstable medications, and make certain regulatory filings associated with its retail pharmacy license and the handling of controlled substances.

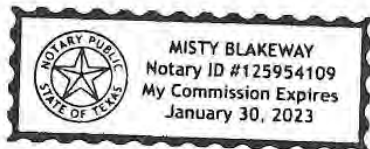
FURTHER AFFIANT SAYETH NAUGHT.

This 29 day of January, 2020.


Bryan Cook

SWORN to before me this
29 day of January, 2020.


Notary Public for: Texas - Montgomery Cty
My Commission Expires: January 30, 2023



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	FOR THE FOURTEENTH JUDICIAL CIRCUIT
	)	
South Carolina CVS Pharmacy, L.L.C.,	)	CASE NO.: 2020-CP-07-00155
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
KPP Hilton Head, LLC,	)	
	)	
Defendant.	)	

AFFIDAVIT OF JULIE H. KING

Julie King, being duly sworn, does depose as follows:

1. My name is Julie H. King. I am over the age of 18, and I make this Affidavit on my personal knowledge.

2. I am the Trustee of the King Family GST Exempt Trust under Agreement of Herb King dated August 25, 2000, as amended September 10, 2003 (the "King Family Trust"). The King Family Trust holds a 100% membership interest in KPP Hilton Head, LLC, a South Carolina limited liability company and the defendant above ("KPP"). KPP owns the property located at 10 Pope Avenue, Hilton Head Island, South Carolina ("10 Pope Ave."), which is leased as a pharmacy now operated by South Carolina CVS Pharmacy, LLC, the plaintiff above ("CVS"). I also do business as Principal Developers. Principal Developers manages real estate properties in South Carolina, including KPP's 10 Pope Ave.

3. In May of 1998, KPP's predecessor in interest entered into a lease (the "Lease") with CVS' predecessor in interest. KPP's predecessor was landlord; CVS's predecessor was tenant. A copy of the Lease is attached hereto as **Exhibit 1**.

4. In July of 1998, KPP's predecessor and CVS's predecessor entered into the First Lease Amendment, a copy of which is attached hereto as **Exhibit 2**.

5. The Lease was originally for a Revco Drug Store and eventually became a CVS store (store #5566, the "Hilton Head Store"), by merger of some sort. The Lease had a 20-year initial term and provided the tenant, now CVS, with four renewal options, each for five-year terms at rates specified in the 1998 First Lease Amendment.

6. If not timely renewed, the Lease provides for holdover rent of "1.5 times the monthly Fixed Rent payable by Tenant for the last full calendar month of Tenant's tenancy hereunder." *See* Lease Part II, Section 26.

7. Principal Developers has no employees. It operates with a single independent contractor, Stefan Cap. Mr. Cap works on a part-time basis and his duties include checking the post office box for correspondence, verifying invoices to pay, depositing checks, and reconciling bank statements.

8. On October 9, 2019, on my instruction, Mr. Cap emailed CVS' Lease Administration department asking whether CVS intended to renew two leases, both managed by Principal Developers and both with identical expiration dates (January 31, 2020) and identical renewal deadlines (November 3, 2019). The two stores were the Hilton Head Store (store #5566), whose lease renewal is at issue here, and a lease of the CVS store in Port Royal, South Carolina (store #3826, the "Port Royal Store"). Mr. Cap's email was forwarded to CVS's Peter Perry, CVS's Lease Administration Manager, on October 9, 2019, and Mr. Perry responded the next day that he had approved the renewal of the Port Royal Store (store #3826), but he was still waiting for instructions as to the Hilton Head Store at issue here (store #5566). *See* the email chain attached hereto as **Exhibit 3**.

9. The Port Royal Store renewal notice dated October 10, 2019 was signed for by Mr. Cap on October 21, 2019, and Landlord's executed copy was emailed to Peter Perry on October 22, 2019 by Mr. Cap.

10. At the time of the renewal deadline for the Hilton Head Store (November 3, 2019), we had never been advised in any fashion that CVS wished to renew the Hilton Head Store Lease.

11. On Wednesday, November 6, 2019, Mr. Cap went to the Post Office located at 213 William Hilton Parkway, Hilton Head Island, South Carolina, where KPP has its post office box. He signed for and received CVS's letter seeking to exercise the renewal option to the Hilton Head Store. Prior to November 6, 2019, although it had asked CVS, KPP was not aware that CVS wished to renew the Hilton Head Store Lease.

12. Neither Principal Developers nor KPP receive mail in an office; rather, both use a Post Office Box for their respective mail. Principal Developers and KPP do not generally conduct business on weekends or holidays or obtain their mail on weekends or holidays. It is Principal Developers and KPP's normal course of business to receive their mail once or twice per week during the customary work week (Monday through Friday) based upon Mr. Cap's schedule and availability to go to the Post Office.

13. In its Complaint in this case, CVS alleges (at paragraph 24) that it emailed "[a] copy of the Notice . . . to Ms. Anita Fullam at anitafullam@principaldevelopers.com on October 30, 2019." Ms. Fullam ceased working for Principal Developers (or any of its affiliates) in July of 2015, and CVS was notified of that and the fact that notices should go to Stefan Cap by emails dated March 25, 2016, November 22, 2017, October 11, 2018, copies of which are contained in

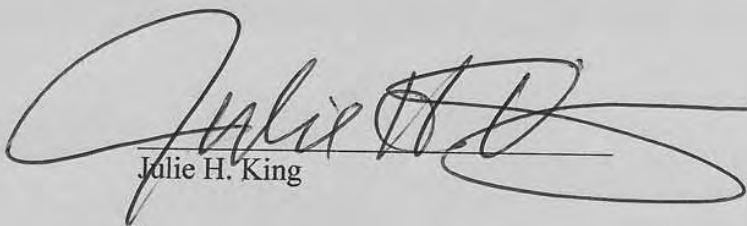
the email strings attached hereto as Exhibits 4, 5, and 6, respectively. Principal Developers did not receive the emailed notice.

14. The Lease expressly provides that notice of an exercise of a renewal option must be received (signed for) **not later than 90 days** before the expiration of the then-current lease term. This is a material term of the Lease. Here, 90 days prior to the expiration was November 3, 2019. As of the end of the day November 3, 2019, my company had not signed for any renewal of the Hilton Head Store's Lease; indeed, we were unaware of CVS' desire to renew at that time.

15. The renewal dispute is significant. There are renewal terms in most if not all of the properties Principal Developers manages, and it is very important to know if the contractual deadlines contained in those leases mean what they say. Here, Tenant's predecessor had bargained for renewal rates 20 years ago which are wholly inadequate to today's market. CVS nevertheless seeks to keep the benefit of the bargain its predecessor obtained without living up to the burdens required by that same bargain.

16. KPP is aware of the dispute with CVS over its delayed renewal notice, has received and reviewed the Complaint and has determined to defend and file a counterclaim seeking a declaration that it is entitled to the holdover rent called for by Part II, Paragraph 26 of the Lease and to seek its costs and attorneys fees. Landlord has not sought to obtain an ejectment of Tenant, and it has not threatened to do so, and unless and until CVS fails to pay any rent as ultimately determined to be due by this Court, there is no reason to believe that KPP will seek to obtain an order of ejectment.

Dated: February 5, 2020.

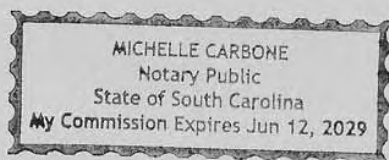

Julie H. King

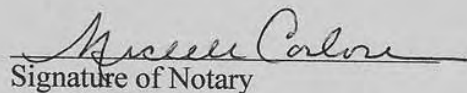
State of South Carolina _____)

County of Beaufort SS _____)

The foregoing instrument was acknowledged before me this 5 day of February, 2020
by Julie H. King.

(Seal)




Signature of Notary

Title: Head Teller

Serial Number: _____



Lease5566-2
2/26/98

LEASE

This Lease is made on the Date of Lease specified below, between the Landlord and the Tenant specified below.

PART I

1. Date of Lease: ~~MAY~~ 7TH, 1998 (HKK) PNP
2. Landlord name, and state of and type of entity: KINPIN Partnership
a South Carolina partnership
3. Landlord business address: Herb King
P.O. Box 6362
Hilton Head, SC 29938
4. Landlord notice address: C-6 Village at Wexford
Hilton Head, SC 29928
5. Tenant name, and state of and type of entity: Revco Discount Drug Centers, Inc.,
a Michigan corporation
6. Tenant business address: One CVS Drive
Woonsocket, RI 02895
7. Tenant notice address: One CVS Drive
Woonsocket, RI 02895
Attn: Property Administration
Department, Store No. 5566-2

8. Guarantor:

CVS Corporation,
a Delaware Corporation
One CVS Drive
Woonsocket RI 02895

9. Premises: that certain lot or parcel of real estate located at Pope Avenue Urgent Care Center, Hilton Head Island, County of Beaufort, South Carolina, as outlined in blue on Exhibit A, including the Building described in Section 10 below (which Building is outlined in red on Exhibit A), and including all improvements situated on said property, and all rights, easements, rights of way, and other appurtenances thereto.

10. Building: ground floor dimensions: 75' by 135'

ground floor total square footage: 10,125

ground floor is outlined in red on Exhibit A.

11. Initial Term: shall commence on the date of delivery of the Premises to Tenant in the manner and condition provided in Article 7(a) of Part II hereof, and shall expire 20 years from the "Date of Rent Commencement" (as defined in Article 5 of Part II hereof), plus any months necessary to have the term expire on the next January 31st; all subject to all terms and conditions of this Lease.

As used in this Lease, "Term" shall include the Initial Term and any Extension thereof pursuant to Article 3 of Part II.

12. Renewal Options: 4 Extension Periods, of 5 years each (See Article 3 of Part II)

13. Required Advance Notice of Exercise of Renewal Options: 90 days prior to the expiration of the then-current term. (See Article 3 of Part II)

14. Free Rent Period: the lesser of: 45 days commencing on the day on which Tenant shall accept possession of the Premises; or the number of days commencing on the day on which Tenant shall accept possession of the Premises and ending on the day on which Tenant shall open for business. (See Article 5 of Part II)

15. Fixed Rent (See Article 5 of Part II):

<u>PERIOD</u>	<u>ANNUAL FIXED RENT</u>	<u>MONTHLY INSTALLMENTS</u>
First 60 months from Date of Rent Commencement	\$212,625.00	\$17,718.75
Next 60 months	\$223,256.25	\$18,604.69
Next 60 months	\$234,419.06	\$19,534.92
Next 60 months and to end of initial term	\$246,140.02	\$20,511.67
First extension period	\$246,140.02	\$20,511.67
Second extension period	\$246,140.02	\$20,511.67
Third extension period	\$246,140.02	\$20,511.67
Fourth extension period	\$246,140.02	\$20,511.67

16. Percentage Rent (See Article 6(a) of Part II):

<u>PERIOD</u>	<u>BREAKPOINT</u>	<u>PERCENTAGE RENT RATE</u>
First 60 months from Date of Rent Commencement	\$10,631,250.00 up to \$12,131,250.00 Over \$12,131,250.00	2.00%
Next 60 months	\$11,162,812.50 up to \$12,662,812.50 Over \$12,662,812.50	2.00%
Next 60 months	\$11,720,953.13 up to \$13,220,953.13 Over \$13,220,953.13	2.00%

Next 60 months and to end of initial term	\$12,307,000.78 up to \$13,807,000.78 Over \$13,807,000.78	2.00%
First extension period	\$12,307,000.78 up to \$13,807,000.78 Over \$13,807,000.78	2.00%
Second extension period	\$12,307,000.78 up to \$13,807,000.78 Over \$13,807,000.78	2.00%
Third extension period	\$12,307,000.78 up to \$13,807,000.78 Over \$13,807,000.78	2.00%
Fourth extension period	\$12,307,000.78 up to \$13,807,000.78 Over \$13,807,000.78	2.00%

17. Intentionally omitted.

18. Construction Specifications: Prototype Construction Specifications dated January 1, 1998, attached hereto as Exhibit B.(See Article 7(a) of Part II)

19. Required Number of Parking Spaces: 45, for standard size automobiles. (See Article 7(a) and Article 14 of Part II)

20. Outside Delivery Date of Premises: ~~November 1, 1998~~ ^{FEBRUARY 15, 1999} (See Article 2 of Part II) H6A PVP

21. Outside Landlord Acquisition Date of Premises: ~~May 1, 1998~~ ^{JUNE 15, 1998} (See Article 2 of Part II) H6A PVP

22. Intentionally omitted.

23. Intentionally omitted.

24. Initial monthly charge for parking and other exterior maintenance: \$350.00 (See Article 33)

25. "Gross Sales" shall mean gross proceeds received for services rendered, and sales of merchandise made, in and from the Premises, subject to the following provisions of this Article. In the case of exchange of goods, only the amount of the excess of the price of the new goods sold over the allowance made for the return of the goods exchanged shall be included in Gross Sales.

Gross Sales shall also exclude: the amount of all sales taxes and other taxes imposed by any governmental authority with respect to sales of merchandise, or services rendered, in or from the Premises (provided, however, that no income tax and no tax based on income or profits as such shall be excluded); refunds or returns on goods returned; the amount of any discount, rebate or CVS generated promotional coupon; bad debts; proceeds from the collection of utility bills; proceeds from the operation of automated teller machines or postal units; proceeds received from the sale of insulin, postage stamps, money orders, lottery tickets, beer, wine, soda, and tobacco products; sales at a discount to employees; sales of trade fixtures or equipment; receipts from sales in the nature of a transfer to other stores operated by Tenant or its affiliated companies; all service charges paid to banks or other financial institutions based on credit card or other similar credit purchases made by customers; and proceeds received from the sale of prescription and other sales which are payable in whole, or in part, by any third party health plan/payor. (See Article 6 of Part II)

26. All exhibits to this Lease are incorporated herein by this reference.

LIST OF EXHIBITS:

Exhibit A - Site Plan: Building = red
Premises property line = blue

Exhibit B - Construction Specifications

PART II

PREMISES -

1. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, for the Term and on the conditions herein provided, the Premises described in Section 9 of Part I hereof.

CONDITIONS PRECEDENT - RIGHTS TO TERMINATE -

2. (a) If, on or before the Outside Delivery Date, possession of the Premises has not been delivered to Tenant in accordance with the terms of this Lease, then, at any time thereafter (until such possession is so delivered), Tenant may terminate this Lease upon 30 days' written notice to Landlord; and this Lease will so terminate unless, prior to the expiration of said 30 days, Landlord shall deliver possession of the Premises to Tenant in accordance with the terms hereof. Said right to terminate shall be Tenant's sole remedy if Landlord shall have acted in good faith and with due diligence to deliver the Premises to Tenant in accordance with the terms of this Lease.

(b) Intentionally Omitted.

(c) If, on or before the Outside Landlord Acquisition Date, Landlord shall not have acquired good and clear record and marketable title to the Premises (as such record and title are described in detail in Article 37 hereof), then, at any time thereafter (but prior to the acquisition by Landlord of such record and title), Landlord and Tenant each may terminate this Lease by 30 days' written notice to the other party; and this Lease will so terminate unless, prior to the expiration of said 30 days, Landlord shall acquire such record and title. Landlord may exercise the right of termination described in this subdivision (c) only if Landlord has diligently pursued, in good faith, the acquisition of said record and title, and has failed to acquire same for reasons beyond its reasonable control.

(d) Intentionally Omitted.

(e) Notwithstanding anything to the contrary in this Lease, in no event shall Tenant be obligated to accept possession of the Premises until Tenant shall have received an "SNDA Agreement", as set forth in Article 20, from any mortgagee existing prior to the date hereof.

RENEWAL OPTIONS -

3. Tenant may extend the Term of this Lease for each of the Renewal Options described in Section 12 of Part I hereof, upon all of the terms set forth in this Lease. Tenant may do

so only if Tenant shall not be in default (beyond applicable cure periods) under this Lease at the time of any such election, and by giving Landlord notice of each such election not later than the Required Advance Notice of Exercise of Renewal Options (as defined in Section 13 of Part I).

USE -

4. (a) Tenant may use the Premises for any lawful retail purpose.

(b) Without limiting any rights of Tenant under this Lease, Tenant, subject to Laws (as defined in Article 10), may: keep the Premises open for business on Sundays and/or holidays; and operate on an "extended-hours basis" (defined as being open for business in excess of 110 hours per week).

FIXED RENT -

5. (a) Commencing as of the Date of Rent Commencement, Tenant shall pay to Landlord, at the business address of Landlord specified on Page 1 hereof, or at such other address as Landlord shall, from time to time, designate by notice to Tenant, the Fixed Rent set forth in Section 15 of Part I hereof, payable to Landlord no later than the fifth day of each month in advance, without demand or set-off, except as otherwise expressly provided in this Lease.

(b) Fixed Rent and all other charges due under this Lease shall commence immediately upon the expiration of the Free Rent Period (as defined in Section 14 of Part I hereof), subject to all of the other terms of this Lease ("Date of Rent Commencement"). If the Date of Rent Commencement shall be on any day other than the first day of a calendar month, Fixed Rent and other charges for such month shall be pro rated on a per diem basis. The foregoing notwithstanding, Tenant's obligation to pay insurance charges pursuant to Article 35 shall commence upon the commencement of the Term.

(c) Notwithstanding anything to the contrary in this Lease, if the Date of Rent Commencement as calculated pursuant to subdivision (b) above would occur between November 15th and the succeeding December 31st, and if Tenant elects not to open for business during said period, then, in that event, the Date of Rent Commencement shall be the succeeding January 2nd. Tenant shall provide Landlord with written notice of such election.

PERCENTAGE RENT -

6. (a) In addition to Fixed Rent, if, in any calendar year following the Date of Rent Commencement, the annual "Gross Sales" in the Premises (as defined in subdivision (d) below) shall exceed the applicable breakpoint amount for the periods set forth (individually, "Breakpoint"),

Tenant agrees to pay to Landlord a sum equal to a percent ("Percentage Rent Rate") of such annual Gross Sales in excess of the applicable Breakpoint ("Percentage Rent"). The Breakpoints and Percentage Rent Rates are set forth in Section 16 of Part I.

Percentage Rent for any portion of a calendar year shall be determined by taking 1/12th of the applicable Breakpoint and multiplying the result by the number of months (and portions thereof) in said portion of the calendar year ("Pro-rated Breakpoint"). The Pro-rated Breakpoint shall be subtracted from the Gross Sales for said portion of the calendar year, and the result shall be multiplied by the Percentage Rent Rate to determine the amount of Percentage Rent due; and shall be paid by Tenant in the same manner as herein provided for the payment of Percentage Rent for a full calendar year.

(b) Intentionally Omitted.

(c) Tenant agrees to provide to Landlord, within 60 days after the end of each calendar year of the Term, and within 60 days following the expiration or earlier termination of this Lease, a statement, signed by an authorized representative of Tenant, certifying as to the amount of the Gross Sales for the preceding calendar year, or portion thereof; together with any Percentage Rent which is payable for the period referred to therein.

(d) "Gross Sales" shall be as defined in Section 25 of Part I.

Tenant makes no representation or warranty as to its expected Gross Sales.

(e) At Tenant's main accounting office, presently at One CVS Drive, Woonsocket, Rhode Island 02895, Tenant shall keep accurate records of Gross Sales, in accordance with GAAP.

Landlord may audit said Gross Sales records subject to the following limitations. Any such audit shall be at reasonable times; during Tenant's normal business hours; be conducted not more than once annually; be conducted within 36 months from the date of any Gross Sales statement of Tenant; none of said records (including photocopies of said records) shall be removed from Tenant's office; and no examination of records of other stores operated by Tenant or its affiliates or of the general books of account of Tenant shall be permitted.

If any audit shows that the amount of Gross Sales on any statement of Tenant was understated by more than 3% of Gross Sales, Tenant shall pay to Landlord the reasonable cost of Landlord's audit in addition to any amount of Percentage Rent which Tenant should have paid but did not pay, plus interest at the rate of 10% per annum on said underpaid amount.

Landlord shall hold all sales figures and other information obtained from Tenant's records in confidence, except as may be necessary for the enforcement of Landlord's rights under this Lease, or in connection with prospective financing or prospective sale of the Premises, or with respect to tax proceedings, or pursuant to any legal requirements.

(f) Notwithstanding the above, it is agreed that: Landlord shall not be construed or held to be a partner, joint venturer, or associate of Tenant in the conduct of its business; and the relationship between the parties hereto is, and shall at all times remain, that of landlord and tenant.

LANDLORD'S CONSTRUCTION - DELIVERY OF THE PREMISES -

7. (a) Landlord agrees, at its sole cost, to construct the Building and to develop the Premises as shown on Exhibit A, and to do all work as required in the Construction Specifications described in Section 18 of Part I hereof, and as shown on specific plans for the Building which are not yet complete and which are subject to the reasonable approval of Landlord and Tenant. In no event shall Landlord commence work until Landlord has provided Tenant with drawings for the Building and the specific plans for the Building are finalized. Any increased costs to Landlord, which are a result of any change orders to said specifications or plans made in writing by Tenant, shall be paid by Tenant within 30 days of receipt of demand therefor with supporting documentation, provided that Landlord bills Tenant for such increased costs within 120 days after the Date of Rent Commencement, and provided that Tenant has agreed to the amount of increased costs prior to Landlord commencing construction. Upon completion of Landlord's construction, the Building shall be of dimensions no less than described in Section 10 of Part I hereof. Landlord warrants and agrees that, at the time of delivery of the Premises to Tenant, the exterior areas of the Premises shall be in good condition, properly lighted, properly paved and line painted, with parking areas, curbs, curb cuts, sidewalks and roadways as designated in Exhibit A, in good repair and properly marked. Landlord warrants that the parking areas of the Premises shall accommodate the Required Number of Parking Spaces as shown on Exhibit A. All such work shall be substantially completed on the date of delivery of possession of the Premises to Tenant. Landlord agrees to give at least 30 days' prior written notice to Tenant of the date when such possession will be available to Tenant.

Tenant (including Tenant's contractors and vendors) may enter the Building approximately 15 days prior to the anticipated date of delivery of the Premises to Tenant for the following purposes, without such entry constituting acceptance of the Premises: to measure and inspect the Building in order to ensure that the Building will be delivered in accordance with this Article; to install carpeting, telephones, fixtures, equipment, and furniture and the like.

(b) "Substantially completed" shall mean full completion of Landlord's work except for minor incomplete items or deficiencies, provided that any such incomplete items or deficiencies

shall not hinder Tenant's work in or about the Premises, or prevent Tenant from opening for business.

In addition, in no event shall Landlord's work or the Premises be deemed to be substantially completed until a Certificate of Occupancy has been issued. A "Certificate of Occupancy" is a Certificate of Occupancy or any equivalent documentation which confirms that Landlord's work has been completed and that the Premises are available for Tenant to take possession, fixture, merchandise and open for business. If Tenant elects to take possession of the Premises prior to issuance of the Certificate of Occupancy, Fixed Rent and all other charges due under this Lease shall commence on the first to occur of the following, subject to the other terms of this Lease: the expiration of a number of days equal to the Free Rent Period, which time period commences on the date of the issuance of the Certificate of Occupancy; or on the date on which Tenant opens for business. If, upon the completion of Tenant's initial work, a Certificate of Occupancy is not issued due to items which are Landlord's responsibility, then, Landlord will correct same and the Date of Rent Commencement will be delayed for a number of days equal to the number of days that Tenant is delayed from opening for business.

(c) If Landlord shall fail to fully complete all of its work as specified in this Article on or before the date Tenant takes possession of the Premises, then Tenant may send Landlord a "punch list" of items which remain to be completed. On receipt of such punch list, Landlord shall have 14 days to complete the items designated therein; and if Landlord shall fail to do so within said 14 day period, then Tenant may complete the items on behalf of Landlord and deduct the entire cost of completion of such items from rent and other charges due hereunder. Notwithstanding anything to the contrary herein, if Tenant is unable to complete its work or open for business as a result of incomplete items on the punch list, then, in addition to any other rights Tenant may have hereunder, the Date of Rent Commencement will be delayed for a number of days equal to the number of days that Tenant is delayed from completing its work or from opening for business.

KEY TENANT - COTENANTS -

8. Intentionally omitted.

REPAIRS AND MAINTENANCE OF THE BUILDING -

9. (a) All obligations of Landlord pursuant to this subdivision (a) shall be performed by Landlord at Landlord's sole cost. Landlord shall maintain (including painting and cleaning), repair, and replace, as necessary, each of the exterior portions and structural portions of the Building, including, without limitation: the roof and roof supports, flashings, gutters, downspouts, footings, foundations, structural supports, columns, exterior walls, bearing walls, retaining walls, floor slab, and loading docks; so as to keep the same in good condition and repair.

The foregoing notwithstanding, Landlord's aforesaid obligations shall exclude the nonstructural portions of any storefront. Landlord also shall maintain, repair, and replace, as necessary, all plumbing, pipes, tubes and all other conduits and utility lines leading to or from the Building.

During the first full year of the Term, or during any longer period covered by any warranty, Landlord shall make all repairs required because of building settlement or defects in Landlord's materials or workmanship, other than with respect to the HVAC system. Landlord shall furnish Tenant with all guaranties and warranties relating to the HVAC system.

(b) All obligations of Tenant pursuant to this subdivision (b) shall be performed by Tenant at Tenant's sole cost. Except as provided in subdivision (a) above, Tenant shall take maintain, repair and replace, as necessary: the Building interior, including the fixtures and equipment therein; HVAC equipment; broken glass; and the nonstructural portions of any storefront. The foregoing notwithstanding, Tenant's obligations pursuant to this subdivision (b) shall exclude damage and injury arising under the provisions of Article 13 or Article 14 hereof.

(c) All of the foregoing notwithstanding, neither party shall be obligated to perform any maintenance, repair or replacement, the necessity of which shall have arisen solely due to the negligence or fault of the other, or of the other's employees or agents; and in such case, the party which shall have caused the need for such maintenance, repair or replacement shall be responsible for same, at its sole cost. This subdivision (c) shall apply only in any instance to which Article 12 shall not apply.

(d) If Landlord shall fail to make any of the repairs required to be made by Landlord under this Article within 30 days after receipt of written notice from Tenant of the need therefor, Tenant, in addition to any other rights it may have hereunder, may make said repairs on Landlord's behalf and charge Landlord for the reasonable cost thereof. Provided that Landlord has commenced to repair within said 30 days, and thereafter is diligently prosecuting same to completion, said 30 day period shall be extended, where, due to the nature of a repair, it cannot reasonably be completed within 30 days. If, in an emergency, in Tenant's reasonable opinion, any such repairs are immediately necessary, then, no prior 30 days' notice shall be required, but Tenant shall give Landlord whatever notice is reasonable in the circumstances and may make said repairs on Landlord's behalf and charge Landlord for the reasonable cost thereof. In either event, if Landlord shall not pay Tenant within 30 days after receipt of an invoice therefor with supporting documentation, Tenant may deduct the reasonable cost thereof from rent and other charges due hereunder.

(e) If Tenant shall fail to make any of the repairs required to be made by Tenant under this Article within 30 days after receipt of written notice from Landlord of the need therefor, Landlord, in addition to any other rights it may have hereunder, may make said repairs on Tenant's

behalf and charge Tenant for the reasonable cost thereof. Provided that Tenant has commenced to repair within said 30 days, and thereafter is diligently prosecuting same to completion, said 30 day period shall be extended, where, due to the nature of a repair, it cannot reasonably be completed within 30 days. If, in an emergency, in Landlord's reasonable opinion, any such repairs are immediately necessary, then, no prior 30 days' notice shall be required, but Landlord shall give Tenant whatever notice is reasonable in the circumstances and may make said repairs on Tenant's behalf and charge Tenant for the reasonable cost thereof. In either event, Tenant shall pay Landlord such reasonable cost within 30 days after Tenant receives Landlord's invoice therefor with supporting documentation.

COMPLIANCE WITH LAWS -

10. (a) Tenant shall comply with all laws, statutes, ordinances, and regulations (collectively, "Laws") relating to the physical condition of the Building, which Laws must be complied with solely due to the nature of Tenant's business. Tenant shall have no obligation with respect to Laws relating to buildings or to retail businesses in general; and compliance with such general Laws shall be Landlord's responsibility at Landlord's sole cost. Additionally, and notwithstanding the first sentence of this Article, Tenant shall not be required to make structural repairs or modifications; it being agreed that structural repairs and modifications shall be Landlord's responsibility at Landlord's sole cost, if same shall be necessary to comply with Laws.

(b) Except for those obligations delegated to Tenant pursuant to subdivision (a) above, Landlord shall comply with all Laws, which Laws shall impose any duty with respect to the Premises and/or with respect to Landlord's work or delivery of the Premises as described in Article 7.

ACCESS TO PREMISES -

11. Upon reasonable notice to Tenant, and during Tenant's business hours, Landlord may show the Premises to purchasers and potential purchasers, and to mortgagees and potential mortgagees. Upon reasonable notice to Tenant, during the last 6 months of the then-current term, unless Tenant shall have exercised any Renewal Option, Landlord also may show the Premises to persons wishing to rent the same.

WAIVER OF SUBROGATION -

12. Notwithstanding anything in this Lease to the contrary, Landlord and Tenant each waives any rights of action for negligence against the other party, which may arise during the Term for damage to the Premises or to the property therein resulting from any fire or other

casualty of the kind covered by All-Risk property insurance policies, regardless of whether or not, or in what amounts, such insurance is now, or may hereafter be, carried by the parties.

FIRE OR OTHER CASUALTY -

13. (a) If, at any time during the Term, the Building shall be damaged in whole or in part by fire, the elements or other casualty, Tenant promptly shall notify Landlord thereof. Upon receipt of such notice, Landlord, at Landlord's sole cost, as speedily as circumstances permit, shall repair said damage and restore the Building to the same condition which existed immediately prior to the occurrence of such damage. The Term shall be tolled by a period of time equal to the time between the date of the casualty and the date on which Landlord completes repair and restoration of the Building. During the restoration, Tenant may operate its business out of a temporary structure such as a trailer, subject to compliance with Laws. In addition, Tenant shall be entitled to an abatement of Fixed Rent and other charges payable hereunder for the period during which the Building is rendered incapable of use for the normal conduct of Tenant's business, including a reasonable period, not to exceed 30 days, for Tenant to refixture and restock. Said abatement will be pro rated, based on the number of square feet of the Building which are so rendered untenable or incapable of such use.

The foregoing notwithstanding, if the Building is partially or totally destroyed during the last 2 years of the initial term or during the last 2 years of any extension period, then, unless Tenant already has exercised its next remaining extension period, Landlord may terminate this Lease upon no fewer than 45 days prior written notice to Tenant, in which event this Lease shall terminate on the date specified in such notice. Notwithstanding the preceding sentence, if Tenant shall exercise its next remaining option to extend this Lease prior to the expiration of the 45 day notice, then Landlord's termination notice shall be void and Landlord shall be obligated to fulfill its repair and restoration obligations as set forth in this Article.

(b) If Landlord shall fail to commence to repair or restore the Building in the manner specified in this Article, within 90 days after the damage has occurred, and proceed to complete such repairs and restoration with due diligence, then, Tenant may give Landlord 30 days' prior written notice of Tenant's election to: (i) terminate this Lease on the date specified in such notice; or (ii) rebuild the Building itself on Landlord's behalf. If Tenant shall so rebuild the Building, Landlord shall assign any available insurance proceeds under Article 35 to Tenant to cover the cost of same.

CONDEMNATION -

14. (a) If the entire Building, or the use or possession thereof, is taken in condemnation proceedings, or by any right of eminent domain, or for any public or quasi-public

use, or if Landlord shall deliver to a governmental authority a deed in lieu of condemnation or eminent domain (individually or collectively, a "taking", or "taken"), then, this Lease shall terminate on the date when possession shall be taken by the condemnor, and rent and all other charges payable hereunder shall be apportioned and paid in full up to that date, and all prepaid unearned rent, and all other charges payable hereunder, shall promptly be repaid by Landlord to Tenant.

If more than 20% of the Building shall be so taken, then Tenant may terminate this Lease, if Tenant shall so notify Landlord within 45 days after such taking. If Tenant shall not so terminate this Lease, then this Lease shall continue in full force and effect, except that Fixed Rent and all other charges payable hereunder shall be reduced in the proportion that the gross floor area of the part so taken or condemned shall bear to the total gross floor area of the Building immediately prior to such taking. In such case, Landlord, at Landlord's own expense, as speedily as circumstances permit, shall repair all damage to the Building as shall have been caused by such partial taking, and shall restore the Building to a complete architectural unit. Fixed Rent and other charges payable hereunder shall abate until the Building shall have been restored to a tenantable condition, including a reasonable period, not to exceed 30 days, for Tenant to refixture and restock.

(b) For the purposes of this subdivision (b), in addition to the meaning set forth above, a "taking" shall mean any legal impediment which shall not be within Landlord's reasonable control.

If, due to a taking, the parking areas of the Premises shall be decreased below the Required Number of Parking Spaces (as defined in Section 19 of Part I), Tenant shall notify Landlord thereof. If, within 90 days after Landlord's receipt of such notice, additional parking is not provided within the Premises equal to the number by which it has been decreased below the Required Number of Parking Spaces, then Tenant may, upon 30 days' written notice to Landlord: (i) terminate this Lease; or (ii) pay to Landlord Fixed Rent reduced to the level of 2% of Gross Sales, and without any Percentage Rent obligation. If Tenant shall elect to so pay reduced rent, Tenant shall remain obligated for any other charges due under this Lease. Tenant's Fixed Rent shall be so reduced and Percentage Rent so eliminated until such time as said additional parking is provided within the Premises.

If, due to a taking, there shall be an impediment, which impediment shall materially adversely affect any means of ingress or egress between the Premises and any abutting street, then, Tenant shall notify Landlord thereof. If, within 30 days after Landlord's receipt of such notice, such impediment shall not be cured, then Tenant may, upon 10 days' written notice to Landlord: (i) terminate this Lease; or (ii) pay to Landlord Fixed Rent reduced to the level of 2% of Gross Sales, and without any Percentage Rent obligation. If Tenant shall elect to so pay reduced rent, Tenant shall remain obligated for any other charges due under this Lease. Tenant's Fixed Rent shall be so reduced and Percentage Rent so eliminated until such time as said impediment shall be removed.

(c) Tenant hereby waives all rights in condemnation awards, except awards for Tenant's fixtures and equipment, the unamortized costs of Tenant's leasehold improvements in the Building, if any, and any separate awards which may be made for Tenant's relocation expenses, business interruption, and the like.

ASSIGNMENT AND SUBLETTING -

15. (a) Tenant shall have the right to assign this Lease, or to sublet the whole or any part of the Premises, for use for any lawful retail purpose, provided: Landlord's consent is first obtained, which consent Landlord agrees not to unreasonably withhold, delay or condition; and that Tenant and Guarantor shall remain liable for the obligations of Tenant hereunder.

(b) Notwithstanding Article 15(a), Tenant shall have the right, without Landlord's consent, to: (i) assign this Lease, or sublet the whole or any part of the Premises, for any lawful retail purpose, to any corporation of which, at the time, Tenant shall be a subsidiary, or to any subsidiary of a corporation of which, at the time, Tenant shall be a subsidiary, provided that Guarantor (but not Tenant) remains fully liable for the obligations of Tenant hereunder; or (ii) assign this Lease to any party acquiring all or substantially all of the assets of Tenant's store at the Premises by purchase, merger, consolidation, or otherwise, provided that Guarantor (but not Tenant) remains fully liable for the obligations of Tenant hereunder.

ALTERATIONS -

16. Tenant shall not make any structural alterations or exterior alterations to the Building without, in each instance, obtaining Landlord's written consent, which consent Landlord agrees not to unreasonably withhold, delay or condition. However, Tenant may, without Landlord's consent, make non-structural alterations to the Building interior.

Tenant shall do all work in a good and workmanlike manner, at its own cost, and in accordance with Laws. Tenant shall discharge, within 30 days (by payment or by filing the necessary bond, or otherwise), any mechanics', materialmen's or other lien against the Premises and/or Landlord's interest therein, which lien may arise out of any payment due for, or purported to be due for, any labor, services, materials, supplies, or equipment alleged to have been furnished to or for Tenant in, upon, or about the Premises.

At Tenant's sole cost, Landlord agrees to cooperate with Tenant (including signing applications) in obtaining any necessary Permits for any alterations which Tenant is permitted to make hereunder.

SIGNS -

17. At Tenant's sole cost, Tenant may install, replace and relocate on the Building, such signs, awnings, lighting effects and fixtures as may be used from time to time by Tenant (collectively, "Signs"). Tenant shall maintain and repair such Signs. Tenant also may place in its windows: Tenant's standard paper signs in its windows in accordance with Tenant's regular advertising and promotional programs; and/or neon signs. At Tenant's sole cost, Landlord agrees to cooperate with Tenant (including signing applications) in obtaining any necessary Permits for Tenant's Signs. All Signs of Tenant shall comply with Laws.

PYLON SIGN -

18. If permitted by Laws, Tenant, at its sole cost, may: install its sign on any pylon sign structure located on the Premises; and, if no such pylon structure shall exist, construct its own pylon structure and install its sign thereon. At Tenant's sole cost, Landlord agrees to cooperate with Tenant (including signing applications) in obtaining any necessary Permits for any pylon sign and/or structure.

SURRENDER -

19. At the expiration or other termination of this Lease, Tenant shall surrender the Premises to Landlord in as good order and condition as they were at the commencement of the Term or may be put in thereafter, reasonable wear and tear and damage by casualty and/or the elements excepted. All alterations, additions, and improvements in or upon the Premises made by either party (except Tenant's furniture, trade fixtures, satellite communications dish and equipment, computer and other equipment and shelving), shall become the property of Landlord and shall remain upon and be surrendered with the Premises as a part thereof at the termination or other expiration of the Term. At the expiration or termination of the Term, Tenant shall remove the items enumerated in the parenthetical above, as well as its signs and identification marks, from the Premises. Tenant agrees to repair any and all damage caused by such removal.

At any time during the Term, Tenant may remove the items enumerated in the parenthetical above, as well as its signs and identification marks, from the Premises.

SUBORDINATION OF LEASE -

20. This Lease shall be subject and subordinate to the lien of any bank or institutional or other mortgage or mortgages now or hereafter in force against the Premises, and to all advances made upon the security thereof, provided that the holder of any such mortgage shall execute and deliver to Tenant an agreement ("SNDA Agreement"), in form satisfactory to Tenant, providing

that such holder will recognize this Lease and not disturb Tenant's possession of the Premises in the event of foreclosure if Tenant is not then in default hereunder beyond any applicable cure period. Tenant agrees, upon receipt of such SNDA Agreement, to execute such further reasonable instrument(s) as may be necessary to subordinate this Lease to the lien of any such mortgage. The term "mortgage" shall include deeds of trust or any other similar hypothecations.

21. Intentionally omitted.

UTILITIES -

22. Tenant agrees to pay for all utilities consumed by it in the Premises, prior to delinquency.

TENANT DEFAULT -

23. (a) If: (i) Tenant shall default in the payment of Fixed Rent or any item of additional rent payable hereunder, and such default shall continue for more than 15 days after written notice to Tenant; or (ii) Tenant shall default in fulfilling any of the other covenants of this Lease, and such default shall continue for more than 30 days after written notice thereof from Landlord, specifying such default (provided that if Tenant has commenced to cure within said 30 days, and thereafter is prosecuting same to completion, said 30 day period shall be extended, where, due to the nature of the default, it is unable to be completely cured within 30 days); then, in any such event, Landlord may give to Tenant notice of intention to end the Term hereof, and if Landlord shall do so, the Term shall expire as if that day were the day herein fixed for the expiration of the Term, and Tenant shall then quit the Premises and surrender the same, but shall remain liable as hereinafter provided.

(b) If the notices provided in subdivision (a) of this Article shall have been given and the Term shall expire as aforesaid, then Landlord may, without further notice, re-enter the Premises, either by force or otherwise, and dispossess Tenant by summary proceedings or otherwise, and remove Tenant's effects and hold the Premises as if this Lease had not been made; and Tenant hereby waives the service of notice of intention to re-enter or to institute legal proceedings to that end.

(c) In case of any such default, re-entry, expiration and/or dispossession by summary proceedings or otherwise (i) the rent shall become due and shall be paid up to the time of such re-entry, dispossession and/or expiration; (ii) Landlord shall make reasonable efforts to re-let the Premises or any part or parts thereof, either in its own name or otherwise, for a term or terms which may, at its option, be shorter or longer than the period which would otherwise have constituted the remainder of the Term, and may grant concessions or free rent, but only to such extent as Landlord,

in Landlord's reasonable judgment, considers advisable and necessary to re-let the same; and, (iii) Tenant, or its successors, shall also pay to Landlord, as liquidated damages for the failure of Tenant to observe and perform its covenants herein contained, any deficiency between the rent herein reserved and the net amount, if any, of the rents collected on account of the re-letting of the Premises for each month of the period which would otherwise have constituted the remainder of the then-current term. In computing such liquidated damages, there shall be added to said deficiency such reasonable expenses as Landlord may incur in connection with re-letting, such as legal expenses, attorney and broker fees, but excluding renovations. Any such liquidated damages shall be paid in monthly installments on the rent day specified in this Lease and any suit brought to collect the amount of the deficiency for any month shall not prejudice, in any way, the right of the Landlord to collect the deficiency for any subsequent month by a similar proceeding. However, if Tenant shall default on any such monthly installment, then, at Landlord's option, such liquidated damages shall be accelerated and paid immediately by Tenant, but discounted to their present value, using as the time remaining, the number of full calendar months remaining in the term of this Lease following default (beyond applicable cure periods), and using as the interest rate, the lesser of the following: (x) the rate (or the average of rates, if more than one rate appears) inserted in the blank of the "Money Rates" section of "The Wall Street Journal" (Eastern Edition) in the section reading "Prime Rate: _____%", or (y) the base rate on corporate loans posted by at least 75% of the nation's 30 largest banks. (If neither rate is available for any reason, then a reasonably equivalent rate shall be used).

Mention in this Lease of any particular remedy shall not preclude Landlord from any other remedy at law or in equity, including the right of injunction. Tenant waives any rights of redemption granted by any Laws if Tenant is evicted or dispossessed, for any cause, or if Landlord obtains possession of the Premises by reason of the violation by Tenant of any of the terms of this Lease.

LANDLORD DEFAULT -

24. In the event of any default by Landlord under this Lease ("Landlord Default"), Tenant may give Landlord written notice specifying such Landlord Default and, if Tenant shall do so, then Landlord shall have 30 days in which to cure any such Landlord Default; provided, however, that if the nature of the Landlord Default is such that more than 30 days are required for its cure, then Landlord shall not be in default if Landlord commences to cure within said 30 days and thereafter diligently prosecutes the same to completion. In the event that Landlord shall remain in default following its said right to cure, then, in addition to all other rights and remedies available to Tenant at law and in equity, Tenant may cure such Landlord Default on behalf of Landlord by doing the necessary work and/or making the necessary payments, and billing Landlord for the reasonable costs thereof, which Landlord agrees to pay to Tenant within 30 days of receipt of Tenant's demand therefor and reasonable evidence of the cost of the same. If Landlord shall fail to

pay within said 30 day period, Tenant may deduct the entire cost from any rent and other charges due hereunder.

RENT PAYMENTS -

25. If Landlord's interest in this Lease shall pass to another, or if the rent hereunder shall be assigned, or if a party, other than Landlord, shall become entitled to collect the rent due hereunder, then, notice thereof shall be given to Tenant by Landlord in writing, or, if Landlord is an individual and shall have died or become incapacitated, by Landlord's legal representative, accompanied by due proof of the appointment of such legal representative. Until such notice and proof shall be received by Tenant, Tenant may continue to pay the rent due hereunder to the one to whom, and in the manner in which, the last preceding installment of rent hereunder was paid, and each such payment shall fully discharge Tenant.

Tenant shall not be obligated to recognize any agent for the collection of rent or otherwise authorized to act with respect to the Premises until written notice of the appointment and the extent of the authority of such agent shall be given to Tenant by the one appointing such agent.

HOLDOVER -

26. If Tenant shall hold over after the expiration date of the Term, or if Tenant shall hold over after the date specified in any termination notice given by Tenant then, in either such event, Tenant shall be a month-to-month Tenant on the same terms as herein provided, except that the monthly Fixed Rent will be 1.5 times the monthly Fixed Rent payable by Tenant for the last full calendar month of Tenant's tenancy hereunder.

NOTICES -

27. Whenever, pursuant to this Lease, notice or demand shall or may be given to either of the parties by the other, and whenever either of the parties shall desire to give to the other any notice or demand with respect to this Lease or the Premises, each such notice or demand shall be in writing, and any Laws to the contrary notwithstanding, shall not be effective for any purpose unless the same shall be given or served as follows: by mailing the same to the other party by registered or certified mail, return receipt requested, or by overnight courier service provided a receipt is required, at its Notice Address set forth in Part I hereof, or at such other address as either party may from time to time designate by notice given to the other. The date of receipt of the notice or demand shall be deemed the date of the service thereof (unless the notice or demand is not received or accepted in the ordinary course of business, in which case the date of mailing shall be deemed the date of service thereof).

PARKING -

28. Intentionally omitted.

PROPERTY LAYOUT -

29. Intentionally omitted.

SATELLITE COMMUNICATIONS DISH AND EQUIPMENT -

30. Notwithstanding anything to the contrary in this Lease, Tenant may install, maintain, and replace, on the roof of the Building or in the Building, a satellite communications dish and related equipment. Tenant shall do so at its own cost and in accordance with all Laws, and shall defend, indemnify and hold Landlord harmless from and against any claims, costs or expenses incurred by Landlord as a result of such installation, maintenance or replacement by Tenant. At Landlord's request, Tenant shall coordinate any roof installation hereunder with Landlord's roofing contractor.

EXCLUSIVE -

31. (a) If Landlord or any of its officers, directors, trustees, individual members, or partners, hold or acquire any interest in any land immediately adjacent to the Premises (whether accomplished directly by direct ownership, or indirectly through the use of leases, cross-easement agreements or similar documents), during the Term, Landlord agrees that (unless any premises on said land are already so leased and/or used) Landlord shall not allow any of the premises on such land to be leased or to be used for the purpose of a health and beauty aids store, a drug store, and/or a pharmacy prescription department.

(b) As used in this Lease: the term "pharmacy prescription department" shall include the dispensing of prescription drugs by physicians, dentists, other health care practitioners, or entities such as health maintenance organizations, where such dispensing is for profit; and a "health and beauty aids store" shall mean a store which devotes more than 5% of its retail selling space to the display and sale of health and beauty aids.

(c) If Landlord shall violate any of the provisions of this Article and shall not cure such violation within 60 days after receipt of Tenant's notice thereof, Tenant, at any time thereafter, upon 10 days prior written notice to Landlord, may: (i) terminate this Lease; or (ii) pay to Landlord Fixed Rent reduced to a level equal to 50% of Fixed Rent due under this Lease and without any further Percentage Rent obligation. Tenant's Fixed Rent shall be so reduced and Percentage Rent so eliminated until such time as such violation is permanently cured.

RIGHT OF FIRST REFUSAL -

32. Intentionally omitted.

MAINTENANCE OF PARKING AND OTHER EXTERIOR AREAS -

33. (a) With respect to the parking and other exterior areas of the Premises, Landlord shall perform the following, pursuant to good and accepted business practices throughout the Term: repairing, resurfacing, repaving, re-striping, and resealing, of the parking areas; repair of all curbing, sidewalks and directional markers; removal of snow and ice; landscaping; and provision of adequate lighting during all hours of darkness that Tenant shall be open for business.

As used in this Article, the term “repair” or “repairing” shall include maintenance (including cleaning), repair, and replacement.

(b) Commencing as of the Date of Rent Commencement, Tenant shall pay Landlord for the maintenance costs incurred by Landlord from and after the Date of Rent Commencement in fulfilling Landlord’s obligations under subdivision (a) above; and for no other costs. The foregoing notwithstanding, Tenant shall not pay Landlord for any costs incurred by Landlord in connection with any capital expenditures or capital improvements made by Landlord, such as repaving or replacing the parking areas, except as follows: if, after obtaining Tenant’s consent to do so, Landlord shall repave or replace the parking areas, then Tenant agrees to pay the amortization costs thereof, over the useful life thereof, provided that: (i) Tenant shall do so only one time during the “useful life” (as defined below) of the improvement; and (ii) Tenant shall not so pay following the expiration or other termination of this Lease (in other words, for example, if Landlord shall replace the parking areas in year 8, and if such replacement shall have a 15 year useful life, and if the Term shall expire at the end of year 10, then Tenant shall pay its share of the annual amortization for years 8, 9, and 10 only (or a portion of year 8, as applicable.) If Tenant shall not consent to any request by Landlord to repave or replace the parking areas, then, Landlord shall not be obligated to perform same, and Landlord shall not be in default hereunder for failure to do so. Landlord shall repave or replace the parking areas at any time upon Tenant’s request to do so; and Tenant shall pay Landlord as set forth above. For the purposes hereof, useful life shall be determined as permitted under the Internal Revenue Code (including the regulations issued thereunder) in effect at the time of such repaving or replacing.

(c) Except for a 5% administrative fee on the charges (excluding electricity charges) payable by Tenant pursuant to this Article, Tenant shall not pay any management, administrative, accounting, data processing or audit fees.

(d) Tenant shall pay to Landlord, a monthly sum, as set forth herein, by the fifth day of each month and a pro rata sum for any partial month. For the first calendar year (or portion thereof) to occur during the Term, said monthly sum shall be as set forth in Section 24 of Part I. Said monthly sum may be adjusted once annually thereafter by Landlord to reflect any increased or decreased costs. Within 60 days after the end of each calendar year, and within 60 days after the expiration or termination of this Lease, Landlord shall submit to Tenant a statement of the maintenance costs for said calendar year or portion thereof, as applicable. If such a statement is not received by Tenant within 60 days after the end of any calendar year, Tenant shall be relieved of its obligation to make monthly payments hereunder until said statement is received from Landlord. Such statement shall contain detailed documentation including copies of receipted bills. If such statement indicates that the amount paid by Tenant on its account for said calendar year is less than actual costs for said calendar year, then Tenant shall pay the amount owing to Landlord within 30 days of receipt of such statement. If such statement shall indicate that Tenant has overpaid for said calendar year, then such overpayment shall be refunded, together with Landlord's annual statement, and the monthly payment due herein shall be proportionately reduced. For the first and last partial calendar year of the Term, Tenant will pay said costs for the entire year multiplied by a fraction, consisting of the number of days in the calendar year subsequent to the Date of Rent Commencement, or prior to the date of lease termination, as the case may be, and divided by 365.

(e) If Landlord shall fail to perform any of its obligations under this Article within 30 days after receipt of written notice from Tenant of the need therefor (except that no notice shall be required in the event of an emergency), then, Tenant may do so on Landlord's behalf.

TAXES -

34. (a) Landlord shall pay to all Tax authorities, all real estate taxes and all assessments which may be levied against the Premises (collectively, "Taxes").

(b) Commencing as of the Date of Rent Commencement, Tenant agrees to reimburse Landlord for all such Taxes levied against the Premises with respect to each tax fiscal year (or portion thereof) of the Term occurring after the Date of Rent Commencement. Tenant's obligation hereunder shall exclude: any assessment penalty added to the Taxes as a result of Landlord's failure to timely pay any such Taxes to the applicable governmental authority; and any Taxes payable over a period of more than one year, provided that Tenant shall pay the installments thereof due during the Term. At least 30 days prior to the commencement of the Term, Landlord shall submit to Tenant Landlord's estimate of Taxes for the first full tax fiscal year to occur during the Term.

(c) Any sum payable to Landlord under this Article shall be paid by Tenant within 30 days after receipt from Landlord of demand therefor, accompanied by copies of receipted Tax bills.

(d) At Tenant's sole cost, Tenant may contest (including seeking an abatement or reduction of) any Taxes agreed to be paid hereunder; provided that Tenant first shall satisfy any requirements of Laws, including, if required, that the Taxes be paid in full before being contested. At Tenant's sole cost, Landlord shall assist Tenant as reasonably necessary with respect to any such contest, including joining in and signing applications or pleadings. Any rebate received shall belong to Tenant.

(e) If Tenant shall become aware that the Premises is being sold at a tax sale due to Landlord's delinquent payment of Taxes, and if Tenant shall pay the delinquent Taxes in order to prevent such sale, then, Tenant may deduct the following amounts from rent and other charges due hereunder: an amount equal to the Taxes, interest, and penalties so paid by Tenant; all reasonable charges (including reasonable attorneys fees) incurred by Tenant in preventing such sale; and interest on all of the foregoing at the rate of 10% per annum.

(f) Notwithstanding anything to the contrary in this Article, if Landlord shall fail to bill Tenant for any Taxes within 24 months from the date the applicable Tax bill is issued, then Tenant shall not be obligated to pay Landlord for such Taxes.

(g) Tenant agrees to pay to all Tax authorities all personal property taxes which may be levied against Tenant's merchandise, trade fixtures, and other personal property in and about the Premises.

INSURANCE -

35. (a) Landlord shall maintain All-Risk insurance for the Building for at least 90% of its reasonable replacement value. Said All-Risk policy shall not exclude flood coverage if the Premises is located in a Flood Zone A or V, and shall not exclude earthquake coverage. Landlord warrants and agrees that all proceeds received from such insurance shall be used in the first instance in accordance with Landlord's obligations under Article 13 hereof. Landlord also shall maintain General Liability coverage, including Broad Form Endorsement, on an occurrence basis; in combined policy limits of not less than \$2,000,000.00 and not in excess of \$5,000,000.00 per occurrence for bodily injury and for property damage with respect to the Premises.

Commencing as of the commencement of the Term, Tenant shall pay to Landlord the cost of the insurance required to be maintained hereunder during the Term. In addition, if Landlord shall elect to carry rental value insurance for the Premises, Tenant shall pay Landlord for same, in limits of up to 12 months' worth of rent and other charges due to Landlord hereunder. Any sum payable to Landlord hereunder shall be paid by Tenant within 30 days after receipt from Landlord of demand therefor, but not more than once annually. Any such demand shall be

accompanied by: copies of receipted insurance bills; copies of the declaration pages of the applicable policies, with determinations of premium allocations, and any endorsements and exclusions; and by a certificate of all of Landlord's insurance; and such certificate shall name Tenant as an additional insured with respect to Landlord's General Liability policy. Landlord agrees to send to Tenant Landlord's estimate of the annual insurance expense hereunder at least 30 days prior to the commencement of the Term.

If Landlord shall receive a credit for any amount of the insurance premium paid by Landlord for the insurance required or permitted hereunder, then Landlord shall notify Tenant of such credit within 15 days after its receipt; and said amount shall be credited to Tenant for the next succeeding insurance payment required to be paid by Tenant hereunder, except that, at the expiration or termination of the Term, said amount will be refunded to Tenant.

At Tenant's election, Landlord shall obtain all of the insurance described in this subdivision (a) from an insurer designated by Tenant. If Tenant shall make such designation, then, the foregoing notwithstanding, Tenant shall pay such insurer directly.

(b) (i) Notwithstanding subdivision (a) above, at Tenant's sole cost, Tenant may elect to maintain, instead of Landlord and on behalf of Landlord, the All-Risk insurance and/or General Liability insurance described above. If Tenant shall make such election, then: Tenant shall give Landlord 30 days' prior written notice of the effective date of Tenant's insurance; as a rider to such All-Risk insurance, Tenant shall obtain rental value insurance for the Premises, in limits of 12 months' worth of rent and other charges due to Landlord hereunder; Tenant shall not be obligated to pay Landlord for any cost of Landlord's All-Risk or General Liability insurance, which cost is attributable to the period following the effective date of Tenant's insurance (and Landlord promptly shall refund to Tenant any such sums pre-paid by Tenant).

Any insurance maintained by Tenant pursuant to this subdivision (b) shall name Landlord as named insured and Tenant as an additional insured. Upon Landlord's request, Tenant shall deliver to Landlord a certificate of such insurance.

Landlord warrants and agrees that all proceeds received from such All-Risk insurance shall be used in the first instance in accordance with Landlord's obligations under Article 13 hereof.

Tenant may cease to carry insurance pursuant to this subdivision (b) upon at least 30 days prior written notice to Landlord. If Tenant shall so cease, then Landlord shall be obligated to maintain insurance pursuant to subdivision (a) above, so that there shall be no lapse in coverage; and Tenant will pay Landlord pursuant to said subdivision (a).

(ii) Tenant may carry such All-Risk and General Liability insurance by way of a Business Owners Policy ("BOP"), or any equivalent thereof.

Tenant may carry such All-Risk and/or General Liability insurance through blanket insurance covering the Premises and other locations of Tenant and/or of Tenant's affiliates; provided that such blanket insurance policy specifically designates the Premises and allocates specific coverage limits to the Premises as required hereunder, which shall not be reduced by claims as to other property covered by such blanket policy.

(c) Tenant shall maintain General Liability insurance, with combined policy limits of at least \$2,000,000.00 per occurrence for bodily injury and for property damage with respect to the Premises. Such insurance shall name Tenant as the named insured and Landlord as an additional insured. Upon Landlord's request, Tenant shall deliver to Landlord a certificate of such insurance.

(d) All insurance coverage required to be carried hereunder: shall be carried with insurance companies licensed to do business in the state in which the Premises is located; shall be rated in the then-most current Best's Insurance Guide (or any successor thereto) as having a general policyholder rating of A- or better and a financial rating of "VIII" or better; and shall require the insured's insurance carrier to notify the other party hereto at least 30 days prior to any cancellation or material modification of such insurance.

(e) Upon the request of either party, provided that such request shall be commercially reasonable, the other party shall: increase the limits of insurance carried by it pursuant hereto; and carry types of insurance in addition to the types required to be carried by it pursuant hereto.

TENANT'S AUDIT RIGHTS -

36. Tenant may audit Landlord's maintenance charges, Tax charges and insurance charges, but not more than once annually. Access to Landlord's records shall be provided to Tenant within 30 days after Tenant's request therefor. If such access is not provided, Tenant shall be relieved of its obligation to pay such charges until access is provided. Landlord agrees to maintain its maintenance, Tax and insurance records for at least 36 months from the date of each applicable invoice to Tenant. If any audit shall indicate that, in any of Landlord's statements, the charges were overstated by Landlord by an amount in excess of 3% of the actual costs, then Landlord shall pay to Tenant the reasonable cost of such audit, plus interest on the overstated amount at the rate of 10% per annum. In any event, Landlord shall repay any amount owing to Tenant as a result of any overstatement.

LANDLORD'S TITLE -

37. Landlord warrants and covenants that [,from and after the date on which Landlord shall tender delivery of possession of the Premises to Tenant, Landlord will have] [Landlord has] good and clear record and marketable title to the Premises, in fee simple absolute, free of liens and encumbrances (excluding mortgages). Landlord also warrants and covenants that: there are no restrictive covenants or other agreements, and no zoning or other Laws, and no other legal impediment, any of which would prevent Tenant from occupying the Premises for the purposes herein provided, or prevent the full use of the parking areas as herein set forth, or otherwise prevent the Premises from being developed in accordance with the layout shown on Exhibit A; and Landlord shall not enter into any restrictive covenants or other agreements, which would prevent Tenant from occupying the Premises for the purposes herein provided, or prevent the full use of the parking areas as herein set forth, or otherwise prevent the Premises from being developed in accordance with the layout shown on Exhibit A.

Landlord warrants and represents to Tenant that, on the date of delivery of possession of the Premises to Tenant, to the best of Landlord's knowledge, the Premises shall be free of all violations, orders, or notices of violations of Laws.

QUIET ENJOYMENT -

38. Landlord warrants and agrees that Tenant, on paying the rent and other charges due hereunder and performing all of Tenant's other obligations pursuant to this Lease, shall and may peaceably and quietly have, hold, and enjoy the Premises for the full Term, free from molestation, eviction, or disturbance by Landlord or by any other person(s) lawfully claiming to be the same.

EQUAL EMPLOYMENT OPPORTUNITY -

39. Tenant is an equal employment opportunity employer and is a federal contractor. Consequently, the parties agree that they will comply with Executive Order 11246, the Vietnam Era Veterans' Readjustment Assistance Act of 1974 and the Vocational Rehabilitation Act of 1973, if applicable, and also that these laws are incorporated herein by this reference.

The parties also agree that they will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, or any other characteristic protected by federal, state or local law.

BROKER -

40. Landlord and Tenant each represent and warrant that it has had no dealings or conversations with any real estate broker in connection with the negotiation and execution of this Lease, other than the Broker(s) named in Section 23 of Part I. Landlord and Tenant each agree to defend, indemnify and hold harmless the other against all liabilities arising from any claim of any other real estate brokers, including cost of counsel fees, resulting from their respective acts. Landlord warrants and agrees that it shall be solely responsible for any and all brokerage commissions owing to said Broker(s), as a result of the negotiation and execution of this Lease.

DISPUTES -

41. If any dispute shall arise as to any amount of money to be paid by one party to the other under this Lease, the party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest", and such payment shall not be regarded as a voluntary payment, and there shall survive the right on the part of said party to institute suit for the recovery of such sum. If it shall be judged that there was no legal obligation on the part of said party to pay such sum or any part thereof, said party shall be entitled to recover such sum(s), or so much thereof as it was not legally required to pay under this Lease, together with interest at the rate of 10% per annum. If any dispute shall arise between the parties hereto as to any work to be performed by either of them under this Lease, the party against whom the obligation to perform the work is asserted may perform such work and pay the cost thereof "under protest", and the performance of such work shall not be regarded as a voluntary performance, and there shall survive the right on the part of said party to institute suit for recovery of the cost of such work, and it shall be entitled to recover the cost of such work, or the cost of so much thereof, as said party was not legally required to perform under this Lease, together with interest at the rate of 10% per annum.

42. Intentionally omitted.

TRANSFER OF TITLE -

43. In the event of any transfer(s) of the title to the Premises, Landlord (and in the case of any subsequent transfer, the then-grantor) automatically shall be relieved from and after the date of such transfer, of all liability with respect to the performance of any obligations on the part of said Landlord contained in this Lease thereafter to be performed; provided that any amount then due and payable to Tenant by Landlord (or the then-grantor), and any other obligation then to be performed by Landlord (or the then-grantor) under this Lease, either shall be paid or performed by Landlord (or the then-grantor) or such payment or performance assumed by the transferee; it being intended hereby that the covenants, conditions and agreements contained in this Lease on the part of

Landlord shall, subject to the foregoing, be binding on Landlord, its successors and assigns, only during and with respect to their respective successive period of ownership.

NO CONTINUOUS OPERATION -

44. Anything in this Lease, express or implied, to the contrary notwithstanding (including without limitation, Tenant's obligation to pay Percentage Rent pursuant to Article 6), Landlord agrees that Tenant shall be under no duty or obligation, either express or implied, to open, or thereafter to continuously conduct, its business in the Premises at any time during the Term.

If Tenant shall cease to operate its business in the Premises for more than 60 consecutive days, Landlord shall have the right, at any time thereafter, for as long as Tenant's cessation to operate is still in effect, to terminate this Lease by giving Tenant 30 days' written notice of such election, and this Lease shall so terminate, unless Tenant has reopened the Premises for business during such 30 day period. For the purpose of this paragraph, Tenant shall not be deemed to have ceased operating its business in the Premises if Tenant is closed temporarily for remodeling or due to any fire or casualty, or if Tenant is closed due to strike, lockout, inability to obtain merchandise or any other cause beyond the reasonable control of Tenant.

HAZARDOUS MATERIALS -

45. (a) For the purposes hereof, the term "Hazardous Materials" shall include, without limitation, substances defined as "hazardous substances", "hazardous materials", or "toxic substances" in any Laws.

(b) Tenant represents and warrants that, except as herein set forth, it will not use, store or dispose of any Hazardous Materials in the Premises. Landlord agrees that Tenant may sell household and automotive cleaners and other chemicals (including motor oil) in standard retail containers as are commonly sold by supermarkets, discount stores, and/or drugstores. Additionally, Landlord agrees that Tenant may use such household cleaners and chemicals to maintain the Premises, and additional chemicals to perform on-site photo-processing. Storage of such chemicals is also permitted. Landlord and Tenant acknowledge that any or all of the cleaners and chemicals described in this paragraph may constitute Hazardous Materials. However, Tenant may sell, use, store and dispose of same as herein set forth, provided that in doing so, Tenant complies with Laws. For the purposes of subdivisions (c) through (g) of this Article, the term "Hazardous Materials" shall exclude the Hazardous Materials permitted in this paragraph.

(c) Landlord represents and warrants to Tenant that, as of the date on which Landlord shall deliver possession of the Premises to Tenant, the Premises shall be free from contamination by Hazardous Materials. Notwithstanding anything in this Lease to the contrary, Tenant shall not

be obligated to accept possession of the Premises until any Hazardous Materials found in or on the Premises have been removed, and Landlord has supplied Tenant with a certificate from the appropriate governmental authority that such removal has been completed, and Landlord has restored the Premises to the condition which existed immediately prior to such removal.

(d) If, at any time during the Term, Hazardous Materials shall be found in or on the Premises, then:

(i) with regard to any Hazardous Materials that Tenant shall not have caused, Landlord shall remove or remediate same to the extent required by Laws, and in compliance with Laws, and at Landlord's sole cost; and Landlord agrees to defend, indemnify, and hold each of Tenant and Guarantor harmless from and against any and all costs, damages, expenses, and/or liabilities (including reasonable attorneys' fees) which each of Tenant or Guarantor may suffer as a result of any claim, suit, or action regarding any such Hazardous Materials (whether alleged or real), and/or regarding the removal and remediation of same.

(ii) with regard to any Hazardous Materials caused by Tenant, Tenant shall remove or remediate same to the extent required by Laws, and in compliance with Laws, and at Tenant's sole cost; and Tenant agrees to defend, indemnify and hold Landlord harmless from and against any and all costs, damages, expenses, and/or liabilities (including reasonable attorneys' fees) which Landlord may suffer as a result of any claim, suit, or action regarding any such Hazardous Materials (whether alleged or real), and/or regarding the removal and remediation of same.

(e) If, prior to the Date of Rent Commencement, any Hazardous Materials are found in or on the Premises, and, as a result thereof, Tenant is prevented from doing its work in the Premises or from opening for business, then, notwithstanding anything to the contrary herein, the Date of Rent Commencement will be delayed for a number of days equal to the number of days that Tenant is delayed from opening for business in the Premises, subject to the other provisions of this Lease. If the Date of Rent Commencement shall be so delayed for 6 months, then, at any time thereafter until such delay shall cease, Tenant may terminate this Lease upon 15 days' prior notice to Landlord.

(f) If, on or after the Date of Rent Commencement, Tenant is prevented from operating its business as a result of the existence of such Hazardous Materials not caused by Tenant, then, Tenant's rent and all other charges due hereunder shall abate, until Tenant is able to resume the operation of its business, subject to the other provisions of this Lease. If Tenant's rent and other charges shall be so abated for 6 months, then, at any time thereafter until such abatement shall cease, Tenant may terminate this Lease upon 15 days' prior notice to Landlord.

(g) Each of Landlord's and Tenant's obligations pursuant to this Article shall survive any expiration and/or termination of this Lease.

TENANT'S INDEMNITY -

46. Except to the extent that such liability is caused by the negligence or tortious act or omission of Landlord, its agents, contractors, or employees, and subject to Article 12, Tenant shall defend, indemnify and hold Landlord harmless from all costs, expenses, claims or demands of whatever nature arising from the following:

(i) any willful, negligent or tortious act or omission on the part of Tenant, its agents, contractors, or employees; or

(ii) any failure on the part of Tenant to perform or comply with any of the covenants, agreements, terms, provisions, conditions or limitations contained in this Lease on its part to be performed or complied with.

In case any action or proceeding is brought against Landlord by reason of any such claim, Tenant, upon written notice from Landlord, shall, at Tenant's expense, resist or defend such action or proceeding.

LANDLORD'S INDEMNITY -

47. Except to the extent that such liability is caused by the negligence or tortious act or omission of Tenant, its agents, contractors or employees, and subject to Article 12, Landlord shall defend, indemnify and hold Tenant harmless from all costs, expenses, claims or demands of whatever nature arising from the following:

(i) any willful, negligent or tortious act or omission on the part of Landlord, its agents, contractors, or employees; or

(ii) any failure on the part of Landlord to perform or comply with any of the covenants, agreements, terms, provisions, conditions or limitations contained in this Lease on its part to be performed or complied with.

In case any action or proceeding is brought against Tenant by reason of any such claim, Landlord, upon written notice from Tenant, shall, at Landlord's expense, resist or defend such action or proceeding.

ESTOPPEL CERTIFICATE -

48. Landlord and Tenant agree to deliver to each other, from time to time as reasonably requested in writing, and within a reasonable period of time after receipt of such request, an estoppel certificate certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications), and the dates to which any rent due hereunder has been paid in advance, if any, together with such other information as Landlord or Tenant may reasonably require with respect to the status of the Lease and Tenant's use and occupancy of the Premises.

NOTICE OF LEASE -

49. Upon the request of either party hereto, Landlord and Tenant agree to execute a short form Notice of Lease in recordable form, setting forth information regarding this Lease, including, if available, the dates of commencement and expiration of the Term and the Date of Rent Commencement. Upon Tenant's request, Landlord shall record such Notice of Lease. As used herein, the term "Notice of Lease" shall mean a short form notice of lease, or declaration or similar document suitable to protecting Tenant's interest hereunder.

MISCELLANEOUS -

50. (a) This Lease shall be governed and construed in accordance with the laws of the state in which the Premises is located.

(b) The headings of the Sections of Part I, and of the Articles of Part II, are for convenient reference only, and are not to be construed as part of this Lease.

(c) The language of this Lease shall be construed according to its plain meaning, and not strictly for or against Landlord or Tenant; and the construction of this Lease and of any of its provisions shall be unaffected by any argument or claim that this Lease has been prepared, wholly or in substantial part, by or on behalf of Tenant.

(d) Landlord and Tenant each warrant and represent to the other, that each has full right to enter into this Lease and that there are no impediments, contractual or otherwise, to full performance hereunder.

(e) This Lease shall be binding upon the parties hereto and shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors and assigns of Landlord and the successors and assigns of Tenant.

(f) In the event of any suit, action, or other proceeding at law or in equity (collectively, "action"), by either party hereto against the other, by reason of any matter arising out of this Lease, the prevailing party shall recover, not only its legal costs, but also reasonable attorneys' fees (to be fixed by the Court) for the maintenance or defense of said action, as the case may be.

(g) A waiver by either party of any breach(es) by the other of any one or more of the covenants, agreements, or conditions of this Lease, shall not bar the enforcement of any rights or remedies for any subsequent breach of any of the same or other covenants, agreements, or conditions.

(h) This Lease and the referenced exhibits set forth the entire agreement between the parties hereto and may not be changed or terminated orally or by any agreement unless such agreement shall be in writing and signed by the party against whom enforcement of such change or termination is sought.

(i) If any provision of this Lease or the application thereof to any persons or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease or the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby, and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

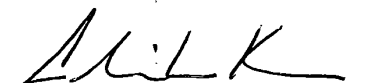
(j) The submission of this Lease for examination does not constitute a reservation of or agreement to lease the Premises; and this Lease shall become effective and binding only upon proper execution and unconditional delivery thereof by Landlord and Tenant.

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Lease on the day and year first above written.

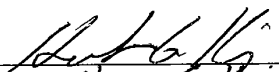
LANDLORD:

KINPIN PARTNERSHIP

WITNESS:



WITNESS

BY: 
NAME: HERB G. PINB
TITLE: MANAGING PARTNER

TENANT:

REVCO DISCOUNT DRUG CENTERS, INC.

ATTEST:


ASSISTANT SECRETARY

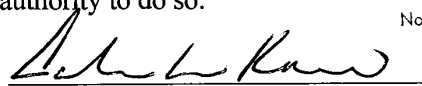
BY: 
~~FRANCIS J. HALL~~ PETER F
VICE PRESIDENT

CVS LEGAL APPROVAL: 

STATE OF SOUTH CAROLINA)COUNTY OF BEAUFORT)

On this 7th day of MAY, 1998, before me personally appeared HERB G. KING, personally known by me, who, being by me duly sworn, did depose and say that he/she resides at 26 THE VILLAGE AT WEXFORD HAZ, SC, and that he/she is THE MANAGING PARTNER of KEN PZ'S PARTNERSHIP, the PARTNERSHIP described in this instrument and that he/she executed this instrument on behalf of said PARTNERSHIP and that he/she had authority to do so.

Notary Public, South Carolina
My Commission Expires 1, 2001


NOTARY PUBLIC

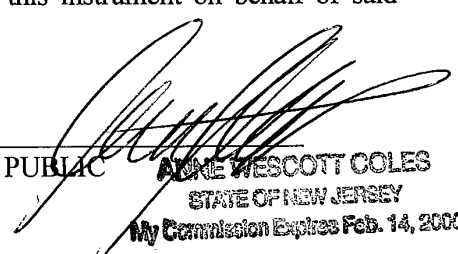
STATE OF RHODE ISLAND)

COUNTY OF PROVIDENCE)

On this 20th day of May, 1998, before me personally appeared Francis J. Hall, personally known by me, who, being by me duly sworn, did depose and say that he resides at Warrington, Rhode Island and that he is Vice President of Revco Discount Drug Centers, Inc., the corporation described in this instrument and that he executed this instrument on behalf of said corporation and that he had authority to do so.

Peter F. Rec 230

NOTARY PUBLIC


ADRIENNE WESCOTT COLES
STATE OF NEW JERSEY
My Commission Expires Feb. 14, 2000

GUARANTY

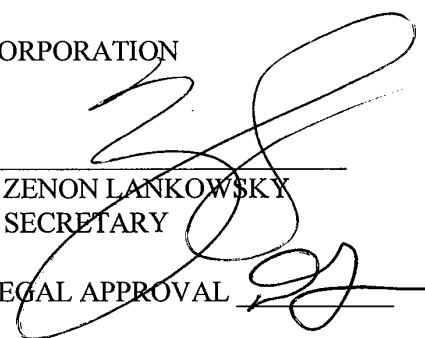
IN CONSIDERATION of the execution and delivery of the attached Lease by and between KINPIN PARTNERSHIP, as Landlord, and REVCO DISCOUNT DRUG CENTERS, INC., as Tenant, the undersigned, CVS CORPORATION ("Guarantor"), a Delaware corporation, having its office at One CVS Drive, Woonsocket, Rhode Island 02895, hereby guarantees to Landlord, its successors and assigns, the payment of the rent (including additional rent) reserved in the within Lease and the performance by Tenant of its covenants and agreements therein contained. Guarantor hereby expressly waives notice of all defaults, and hereby waives all suretyship defenses. Guarantor agrees that the waiver of any rights by Landlord against Tenant arising out of defaults by Tenant, shall not in any way modify or release the obligations of Guarantor.

This Guaranty shall be binding upon the Lease and upon all amendments and modifications thereto, except as set forth in the Lease or in any such amendment or modification; and except that Guarantor shall not be liable for any increase in Tenant's obligations under the Lease, which increase shall occur following any assignment of the Lease by the Tenant named in Part I thereof. This Guaranty shall inure to the benefit of the Landlord, and its heirs, legal representatives, successors and assigns; and shall be binding on the Guarantor and its successors and assigns.

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be executed by its duly authorized officers and its corporate seal to be hereunto affixed, at Woonsocket, Rhode Island, this 11 day of May, 1998.

GUARANTOR:

CVS CORPORATION

BY: 

ZENON LANKOWSKY
SECRETARY

CVS LEGAL APPROVAL 



CVS/pharmacy



RECEIVED
JUL 28 1998
LEGAL DEPT.

✓
ELECTRONICALLY FILED - 2020 Feb 05 4:46 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700155

July 20, 1998

Mr. Herb King
KINPIN Partnership
C-6 Village at Wexford
Hilton Head, SC 29928

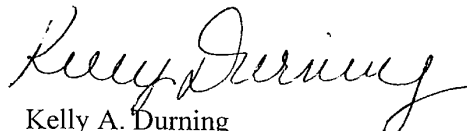
Re: Revco Discount Drug Centers, Inc. Store No. 5566-2
Hilton Head, South Carolina

Dear Mr. King:

Enclosed please find four (4) copies of the First Lease Amendment for the above-noted store which have been signed on behalf of CVS. Please sign all documents where indicated and return two (2) fully executed originals to my attention at your earliest convenience.

If you have any questions regarding the enclosed, please do not hesitate to call me.

Very truly yours,


Kelly A. Durning
Senior Legal Assistant

enclosures

*Kelly -
Thanks for your help
Hut/K*

cc: Sue Hamada (w/enc.)

Amendment
7/14/98

Store #5566-2

FIRST LEASE AMENDMENT

This First Lease Amendment dated this 23rd day of July, 1998 by and between KINPIN Partnership, with a place of business of C-6 Village at Wexford, Hilton Head, South Carolina 29928 ("Landlord") Revco Discount Drug Centers, Inc., with a place of business of One CVS Drive, Woonsocket, Rhode Island 02895 ("Tenant").

WITNESSETH:

WHEREAS, Landlord and Tenant entered into a certain Agreement dated May 7, 1998 (hereinafter collectively referred to as the "Lease") for premises located at Pope Avenue Urgent Care Center, Hilton Head Island, South Carolina (the "Premises"); and

WHEREAS, Landlord and Tenant desire that the Premises be built pursuant to plans and specifications provided by CVS Corporation and to revise the Fixed Rent and Percentage Rent specified in the Lease and to amend the Lease in certain other respects, all as more fully hereinafter set forth.

NOW, THEREFORE, for and in consideration of the Premises and the mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration, Landlord and Tenant agree that the Lease is hereby amended as follows:

1. The Fixed Rent specified in Article 15 of the Lease is deleted and there is substituted therefore the following:

<u>PERIOD</u>	<u>ANNUAL FIXED RENT</u>	<u>MONTHLY INSTALLMENT</u>
First 60 months from Rent Commencement	\$222,750.00	\$18,562.50
Next 60 months	\$233,887.50	\$19,490.63
Next 60 months	\$245,581.88	\$20,465.16

Next 60 months and to end of initial term	\$257,860.97	\$21,488.41
First Option Period	\$257,860.97	\$21,488.41
Second Option Period	\$257,860.97	\$21,488.41
Third Option Period	\$257,860.97	\$21,488.41
Fourth Option Period	\$257,860.97	\$21,488.41

2. The Percentage Rent specified in Article 16 of the Lease is deleted and there is substituted therefore the following:

<u>PERIOD</u>	<u>BREAKPOINT</u>	<u>PERCENTAGE RENT RATE</u>
First 60 months	\$11,137,500.00	2.00%
Next 60 months	\$11,694,375.00	2.00%
Next 60 months	\$12,279,093.75	2.00%
Next 60 months and to end of initial term	\$12,893,048.44	2.00%
First Option Period	\$12,893,048.44	2.00%
Second Option Period	\$12,893,048.44	2.00%
Third Option Period	\$12,893,048.44	2.00%
Fourth Option Period	\$12,893,048.44	2.00%

3. Article 21 is hereby revised to extend the Outside Delivery Date of Premises to April 15, 1999.

Except as expressly amended or modified therefore or by this First Lease Amendment, the Lease shall continue in full force and effect.

This First Lease Amendment shall be binding upon and inure to the benefit of the parties hereto, their respective successors and assigns and if applicable in the case of the Landlord, their heirs and personal representatives.

IN WITNESS WHEREOF, Landlord and Tenant have caused this First Lease Amendment to be executed as of the date and year first hereinabove written.

IN THE PRESENCE OF:

[Signature]

[Signature]

LANDLORD:

KINPIN PARTNERSHIP

By: [Signature]

Name: HONG G. KIN

Title: MANAGING PARTNER

TENANT:

REVCO DISCOUNT DRUG CENTERS, INC.

[Signature]

[Signature]

By: [Signature]

Francis J. Hall
Vice President

CVS Legal Approval [Signature]

ELECTRONICALLY FILED - 2020 Feb 05 4:46 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700155

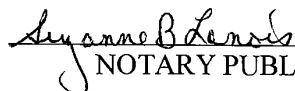
STATE OF South Carolina)
COUNTY OF Beaufort) ss:

On this 23rd day of July, 1998, before me personally appeared HERB G. KZUB, personally known by me, who, being by me duly sworn, did depose and say that he/she resides at 26 The Villages at Wexford Htz, SC, and that he/she is MANAGING Partner/LAWYER of KZUB Partnership, the MANAGING Partner/LAWYER described in this instrument and that he/she executed this instrument on behalf of said KZUB Partnership and that he/she had authority to do so.


NOTARY PUBLIC
Notary Public, South Carolina State at Large
My Commission Expires July 1, 2002

STATE OF RHODE ISLAND)
COUNTY OF PROVIDENCE) ss:

On this 20 day of July, 1998, before me personally appeared Francis J. Hall, personally known by me, who, being by me duly sworn, did depose and say that he resides at Narragansett, Rhode Island; and that he is Vice President of Revco Discount Drug Centers, Inc., the corporation described in this instrument and that he executed this instrument on behalf of said corporation and that he had authority to do so.


NOTARY PUBLIC

SUZANNE B. LANOIS
Notary Public State of Rhode Island
My Commission Expires 12-11-0



From: Pari, BRENDA J BRENDA.Pari@CVSHealth.com
Subject: RE: Store #5566 request for flood insurance reimbursement
Date: September 17, 2019 at 9:03 AM
To: Stefan Cap stefan.cap@hotmail.com

BP

Hello Stephan,

Please check with your Lease Administrator on your renewal options.

When it is renewed, please submit your invoice again for reimbursement from February 1, 2020 to August 20, 2020.

Feel free to contact me if you have any questions regarding this email. All other questions, please direct to the appropriate email address listed below.

Thank you
Brenda



| Brenda Pari | Sr. Assistant, Accounting Retail | Occupancy Expense MC 2320 | One CVS Drive | Woonsocket | RI |
02895 | Phone: (401) 770-6718 | Fax: (401) 652-9472 |

If you are emailing regarding the following matters, you may email the following teams directly:

Building Repairs & Maintenance	Landlord_Administration_Group@CVScaremark.com
Rent Check/Payment Questions:	Storeaccounting@CVScaremark.com
CAM/Ins, Trash, Condo/Utility Questions:	CVS_CAM/INS@CVScaremark.com
Real Estate Taxes:	CVS_RealEstatetax@CVScaremark.com
Estoppel/SNDA Requests:	lease_admin_snda@CVScaremark.com
Certificate of Insurance Requests:	Certificate_Requests@CVScaremark.com
Lease Admin or Prop. Mgmt Questions:	lease_admin_promgt@CVScaremark.com

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From: Stefan Cap [<mailto:stefan.cap@hotmail.com>]
Sent: Tuesday, September 17, 2019 9:01 AM
To: Pari, BRENDA J <BRENDA.Pari@CVSHealth.com>
Subject: [EXTERNAL] Re: Store #5566 request for flood insurance reimbursement

Hi Brenda, will this location not be renewed? Thanks.

Best Regards,

Stefan

On Sep 17, 2019, at 8:48 AM, Pari, BRENDA J
<BRENDA.Pari@CVSHealth.com> wrote:

Hello Stefan,

ROA 000193

ELECTRONICALLY FILED - 2020 Feb 05 4:46 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700155

I have reviewed and processed your Flood Insurance invoice with the policy period from August 20, 2019 to August 20, 2020 in which you are looking for a payment due of \$4,514.00.

Please note that upon my review of this location, the Lease is set to expire on January 31, 2020. Therefore, your invoice was pro-rated from August 20, 2019 to January 31, 2020 as follows:

Total Flood Insurance of \$4,514.00 / 365 = \$12.37 x 165 days (Aug 20, 2019 to Jan 31, 2020) = \$2,040.58

I have scheduled a check in the amount of \$2,040.58 for September 19, 2019. Please adjust our account accordingly.

Feel free to contact me if you have any questions regarding this email. All other questions, please direct to the appropriate email address listed below.

Thank you
Brenda

<image001.png>

| Brenda Pari | Sr. Assistant, Accounting Retail | Occupancy Expense MC 2320 | One CVS
Drive | Woonsocket | RI | 02895 | Phone: (401) 770-6718 | Fax: (401) 652-9472 |

If you are emailing regarding the following matters, you may email the following teams directly:

Building Repairs & Maintenance	Landlord_Administration_Group@CVScaremark.com
Rent Check/Payment Questions:	Storeaccounting@CVScaremark.com
CAM/Ins, Trash, Condo/Utility Questions:	CVS_CAM/INS@CVScaremark.com
Real Estate Taxes:	CVS_RealEstatetax@CVScaremark.com
Estoppel/SNDA Requests:	lease_admin_snda@CVScaremark.com
Certificate of Insurance Requests:	Certificate_Requests@CVScaremark.com
Lease Admin or Prop. Mgmt Questions:	lease_admin_propmgt@CVScaremark.com

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-----Original Message-----

From: Stefan Cap [<mailto:stefan.cap@hotmail.com>]

Sent: Sunday, June 23, 2019 9:38 PM

To: CAM, INS, Utilities <CVS_CAM/INS@CVScaremark.com>

Subject: [EXTERNAL] Store #5566 request for flood insurance reimbursement

Please see the attached request for reimbursement for the 2019 flood insurance premium for store #5566. Thanks.

<CVS Store 5566 6.23.2019 Flood Insurance KPP Hilton Head LLC.PDF>

From: **Capone, Mary Kay** MaryKay.Capone@CVSCaremark.com
Subject: RE: Phone Number Change CVS Store #3826
Date: April 4, 2016 at 8:52 AM
To: Stefan Cap stefan.cap@hotmail.com

Hi Stefan,

Thanks for getting back to me about the repairs!

I've made a note of it in the work order and closed it out so we should be all set.

The letter you received unfortunately is not part of my department and I'm not sure of where to refer you. I would contact the number/email provided with any questions and they should be able to provide help in obtaining your insurance information. Thanks!

Regards,
Mary Kay

Mary Kay Capone | Target Support Coordinator, Retail Facilities
p 401-770-4641 | f 401-652-2367
CVS Health | One CVS Drive, Mail Code 1190, Woonsocket, RI 02895

From: Stefan Cap [<mailto:stefan.cap@hotmail.com>]
Sent: Sunday, April 03, 2016 8:35 PM
To: Capone, Mary Kay
Subject: RE: Phone Number Change CVS Store #3826

Hi Mary Kay, the 3 ballasts and lights were changed out on 3/30/2016 for store #3826, so all exterior lights are operational. I apologize again that it took so long for me to get back to you.

I received the attached letter in the mail over the weekend regarding store #3826 stating that we need to add our lender as a loss payee for the property insurance policy. CVS carries the property insurance and I do not have the contact information for the insurance agent. Do you by any chance have it? Thanks.

Best Regards,

Stefan

From: MaryKay.Capone@CVSCaremark.com
To: stefan.cap@hotmail.com
Date: Fri, 25 Mar 2016 10:36:08 -0400
Subject: RE: Phone Number Change CVS Store #3826

Hi Stefan,

Thanks for the info! I passed this along to Marta and it should be fully updated within the hour.

ROA 000195

Hope this helps and you have a terrific weekend as well.

Regards,
Mary Kay

Mary Kay Capone | Target Support Coordinator, Retail Facilities
p 401-770-4641 | f 401-652-2367
CVS Health | One CVS Drive, Mail Code 1190, Woonsocket, RI 02895

From: Stefan Cap [<mailto:stefan.cap@hotmail.com>]
Sent: Friday, March 25, 2016 10:04 AM
To: Capone, Mary Kay
Subject: RE: Phone Number Change CVS Store #3826

Hi Mary Kay,

It was a pleasure speaking with you as well. Many thanks for looking into that. My cell phone number would be the best number to use - 843-290-7341. Could you please make this effective for store #5566 (10 Pope Ave.) and #7333 (85 Mathews Dr.) as well? We still have the office line, but we let our secretary go in July, 2015 and I'm almost never in the office, so this will be the best way to get an immediate response. Have a great weekend! Thanks again.

Best Regards,

Stefan Cap
Principal Developers
PO Box 23169
Hilton Head Island, SC 29925-3169
843-290-7341 (phone)
843-689-5523 (facsimile)

From: MaryKay.Capone@CVSCaremark.com
To: stefan.cap@hotmail.com
Date: Fri, 25 Mar 2016 09:40:36 -0400
Subject: Phone Number Change CVS Store #3826
Hi Stefan,

It was a pleasure speaking with you today! I just wanted to let you know that I did speak with Marta part of your leasing team, and all you need to do is send me the new phone number and we will update it into our system. Thanks for your time today and have a pleasant weekend.

Regards,
Mary Kay

Mary Kay Capone | Target Support Coordinator, Retail Facilities
ROA 000196

Mary Kay Capone | Target Support Coordinator, Retail Services
p 401-770-4641 | f 401-652-2367
CVS Health | One CVS Drive, Mail Code 1190, Woonsocket, RI 02895

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SR

From: Raymond, Shannon Shannon.Raymond@CVSCaremark.com
 Subject: RE: Store #5566, 10 Pope Avenue, Hilton Head Island, SC 29928
 Date: November 24, 2017 at 9:40 AM
 To: Stefan Cap stefan.cap@hotmail.com

I will have this updated; thank you.

Thank you,
 Shannon Raymond

Please note the new mailcode that needs to be included in all mailed correspondence

Shannon Raymond | CVS Health | Lease Administrator | 401-770-7018 | Fax 401-216-3351 | One CVS Drive, MC 1105, Woonsocket RI 02895 | Shannon.Raymond@CVSCaremark.com

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 **Our purpose:** Helping people on their path to better health.

From: Stefan Cap [<mailto:stefan.cap@hotmail.com>]
 Sent: Wednesday, November 22, 2017 3:28 PM
 To: Raymond, Shannon <Shannon.Raymond@CVSCaremark.com>
 Subject: [EXTERNAL] Re: Store #5566, 10 Pope Avenue, Hilton Head Island, SC 29928

Please see the attached and let me know if you need anything further. Thanks.

On Nov 22, 2017, at 1:43 PM, Raymond, Shannon
 <Shannon.Raymond@CVSCaremark.com> wrote:

Can you please provide an updated contact list on company letterhead so that I may update our records?

Thank you,
 Shannon Raymond

<image001.jpg>

Please note the new mailcode that needs to be included in all mailed correspondence

Shannon Raymond | CVS Health | Lease Administrator | 401-770-7018 | Fax 401-216-3351 | One CVS Drive, MC 1105, Woonsocket RI 02895 | Shannon.Raymond@CVSCaremark.com

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<image002.gif>

<image003.png>

ROA 000198

From: Stefan Cap [<mailto:stefan.cap@hotmail.com>]
Sent: Wednesday, November 22, 2017 1:36 PM
To: Raymond, Shannon <Shannon.Raymond@CVSCaremark.com>
Subject: [EXTERNAL] Re: Store #5566, 10 Pope Avenue, Hilton Head Island, SC 29928

Good afternoon, I'm the property manager for KPP Hilton Head, LLC. Anita Fullam is no longer with the company. Thanks.

Sent from my iPhone

On Nov 22, 2017, at 1:31 PM, Raymond, Shannon
<Shannon.Raymond@CVSCaremark.com> wrote:

Good Afternoon Stefan,

Can you please advise your relationship to this location? I apologize, I did not see your information in our file.

Thank you,
Shannon Raymond

<image002.jpg>

Please note the new mailcode that needs to be included in all mailed correspondence

Shannon Raymond | [CVS Health](#) | Lease Administrator | 401-770-7018 | Fax 401-216-3351 | One CVS Drive, **MC 1105**, Woonsocket RI

02895 | Shannon.Raymond@CVSCaremark.com

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<image003.gif>

<image004.png>

From: Lease_Admin_PropMgt
Sent: Friday, November 17, 2017 10:02 AM
To: Raymond, Shannon <Shannon.Raymond@CVSCaremark.com>
Subject: FW: Store #5566, 10 Pope Avenue, Hilton Head Island, SC 29928

For you....

Thank you

Ree G. McGrath | Property Management / Lease Administrator
P 401-770-4154 | F 401-216-0684 | ree.mcgrath@cvshealth.com
<image005.png> | One CVS Drive, | MC 1105 | Woonsocket, RI 02895

*"Attitude is a paintbrush that colors every situation."
~ Barbara Johnson*

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-----Original Message-----

From: Stefan Cap [<mailto:stefan.cap@hotmail.com>]
Sent: Friday, November 17, 2017 9:27 AM
To: Lease_Admin_PropMgt
<Lease_Admin_PropMgt@CVSHealth.com>
Subject: [EXTERNAL] Store #5566, 10 Pope Avenue,
Hilton Head Island, SC 29928

I spoke to David, the store manager, regarding an inspector being able to take pictures of the interior of the building for the property insurance carrier and he refused to allow access without a fax from the corporate office stating that the insurance inspector will be allowed to take pictures of the interior of the building. Would you please take care of this? Below is the insurance inspector's contact info-

Brian 678-517-4093



SC

ELECTRONICALLY FILED - 2020 Feb 05 4:46 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700155

From: Stefan Cap stefan.cap@hotmail.com
Subject: Re: Re: [EXTERNAL] CVS Store #3826, Port Royal, SC
Date: October 24, 2018 at 1:59 PM
To: Costa, Michael W. Michael.Costa@CVSHealth.com

Ok thanks. I called them and they will be sending someone out ASAP.

Sent from my iPhone

On Oct 24, 2018, at 1:40 PM, Costa, Michael W. <Michael.Costa@CVSHealth.com> wrote:

Stefan,

The store is aware that your landscapers need access to the roof to clear the drains.

Thank you,
Mike

Sent from my iPhone

On Oct 24, 2018, at 1:30 PM, Stefan Cap <stefan.cap@hotmail.com> wrote:

Hi Mike, I wasn't sure if you were able to relay to the store manager that the landscapers need access to the roof. I'll send the landscapers there as soon as I know they are allowed up there, and will then get the roofer back up there to fix the leak around the drain after it's been cleaned off. Thanks.

Sent from my iPhone

On Oct 24, 2018, at 12:57 PM, Costa, Michael W. <Michael.Costa@CVSHealth.com> wrote:

Good afternoon Stefan,

I've forwarded this info on to lease admin to change the contact information.

Can you let me know when they will be checking the roof at 3826, the store states no one has been on site yet.

Thank you,
Mike

Mike Costa | Senior Regional Facilities Manager- NC,SC, GA and VA
Cell 828-435-1241|Fax 401-652-2215
One CVS Drive, Woonsocket RI 02895
Michael.Costa@CVSCaremark.com

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-----Original Message-----

From: Stefan Cap [<mailto:stefan.cap@hotmail.com>]
Sent: Thursday, October 11, 2018 1:28 PM
To: Costa, Michael W. <Michael.Costa@CVSHealth.com>
Subject: [EXTERNAL] CVS Store #3826, Port Royal, SC

Hi Mike,

Thanks for your time over the phone this afternoon.

Please find attached the letter changing the contact information for store numbers 5566, 7333, and 3826. The response time will be much quicker on our end if this request is processed.

Also, as I mentioned to you over the phone, the store manager at 3826 isn't allowing our landscapers onto the roof to clean off the debris, which is likely causing the issues with the gutters backing up and water leaks. I will instruct the landscapers to go back up there to clean off the roof debris once I hear back from you that they are permitted to go onto the roof.

ROA 000201

Please let me know if there are any other maintenance requests for any of these three stores that are still pending. Thanks.

Best Regards,

Stefan Cap
843-290-7341

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	FOR THE FOURTEENTH JUDICIAL CIRCUIT
South Carolina CVS Pharmacy, L.L.C.,	)	CASE NO.: 2020-CP-07-00155
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
KPP Hilton Head, LLC,	)	
	)	
Defendant.	)	
_____	)	

ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIM

The Defendant KPP Hilton Head, LLC (“KPP” or “Landlord”), by and through its undersigned counsel, responds to the Complaint and alleges its Counterclaim, as follows:

PARTIES, JURISDICTION, AND VENUE

1. Admitted.
2. Admitted.
3. Admitted.

FACTS

4. Admitted.
5. Admitted.
6. Admitted.
7. Admitted.
8. Admitted.
9. Admitted.
10. Admitted.
11. Admitted.

12. Denied. Part I, Section 12 of the Lease merely describes what the Renewal Options are, that is “4 Extension Periods of 5 years each.” Part II, Section 3 sets out how the Renewal Options must be exercised. It provides that Tenant, here South Carolina CVS Pharmacy, LLC (“CVS” or “Tenant”), may elect to exercise one of the described Renewal Options “only . . . by giving Landlord notice of each such election [to renew] not later than the Required Advance Notice of Exercise of Renewal Options (as defined in Section 13 of Part I).” Section 13 of Part I then provides that the “Required Advance Notice of Exercise of Renewal Options . . .[is] 90 days prior to the expiration of the then current term. (See Article 3 of Part II).”

13. Admitted.

14. Admitted, but the statement is incomplete as made. Section 27 of Part II of the Lease expresses what “notice” means for “all purposes” of the Lease, and it specifies how that notice must be provided for that notice to have any effect. Article 27 provides as follows:

Whenever, pursuant to this Lease, notice or demand shall or may be given to either of the parties by the other, and whenever either of the parties shall desire to give the other any notice or demand with respect to the Lease of the Premises, each such notice or demand shall be in writing, and any Laws to the contrary notwithstanding, shall not be effective for any purpose unless the same shall be given or served as follows: by mailing the same to the other party by registered or certified mail, return receipt requested, or by overnight courier service provided a receipt is required, at its Notice Address set forth in Part I hereof, or at such other address as the other party may from time to time designate by notice to the other. The date of receipt of the notice or demand shall be deemed the date of the service thereof”

15. Admitted.

16. Admitted.

THE NOTICE HERE

17. Denied as written. Notice of Tenant’s exercise of its Renewal Option had to be **received** (signed for) by Landlord as specified in Article 27 no later than November 3, 2019.

18. Landlord lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 18 of the Complaint and, therefore, denies the same.

19. Landlord lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 18 of the Complaint and, therefore, denies the same. Further answering, Landlord avers that Tenant had been advised on numerous occasions that Anita Fullam was no longer the correct contact for Landlord, that she was no longer an employee, including *inter alia* on March 25, 2016, November 22, 2017, and October 11, 2018, and in all of those notices, Tenant was advised that the correct contact was Stefan Cap.

20. Denied. A registered letter, return receipt requested such as what Tenant sent as its notice of renewal, is not deposited into the addressee's post office box; it must be signed for at the post office counter. Further answering, mere delivery of notice to Landlord's post office does not satisfy the clear and ambiguous language as to what constitutes effective notice under the Lease.

21. Denied. Landlord did not receive actual notice of Tenant's notice until November 6, 2019, when the registered letter Tenant had posted was signed for. Further answering, the "not received or accepted in the ordinary course of business" language does not mean that every notice arriving on a non-business day is deemed received when sent; rather, it means that when the receiving party refuses to receive or accept notice in the ordinary course of business, notice is deemed given when sent. It is a "you cannot refuse to receive notice" provision, not a fortuitous "gotcha" provision.

22. Denied. See further answering response to Paragraph 21.

23. Denied. Article 27 expressly requires a receipt by the intended recipient of the notice. Moreover, by sending the notice by registered mail, return receipt requested, Tenant was itself requiring that it be received by a signing party.

24. Landlord lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 24 of the Complaint and, therefore, denies the same. Moreover, (i) Anita Fullam ceased being an employee/contact person for KPP or its property manager in July of 2015, and Tenant had been repeatedly so advised (see further answering response in Paragraph 19); (ii) Landlord denies receiving the email alleged; and (iii) the Lease clearly and unambiguously provides that notice provided by any means other than as specified in Article 27 is not effective for any purpose, so any such email would not have satisfied the notice requirements of the Lease in any event.

25. Admitted.

26. Admitted.

27. Denied. Landlord's December 12, 2019 letter indicates that the renewal notice was rejected as it was untimely. The language Tenant attempts to emphasize in the letter is simply an indication that Landlord is not intending to cause Tenant to vacate the premises and is willing to discuss entering into a lease term rather than have the parties' lease relationship be on a month-to-month hold-over basis.

28. Denied as written. Tenant's notice of its exercise of the renewal option was untimely, and at no fault of Landlord, who had sought to know Tenant's intentions regarding renewal in an email dated October 9, 2019. As such, Tenant had no right to a renewal extension.

29. The Lease term expired on January 31, 2020. Landlord lacks knowledge or information sufficient to form a belief as to Tenant's 'expectations,' but Landlord has not taken or threatened to take actions to dispossess Tenant from the Premises.

FIRST CAUSE OF ACTION
(Declaratory Judgment)

30. Landlord repeats its response to Paragraphs 1 through 29 above.

31. Denied. Tenant did not provide the Required Advance Notice of Exercise of Renewal Option as specified in the Lease. Landlord lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 31 of the Complaint and, therefore, denies the same.

32. Denied.

33. Admitted.

34. Denied. As set out in the Counterclaim following this Answer, Landlord is entitled to a declaratory judgement that Tenant did not timely renew and is a hold-over Tenant pursuant to Article 26 of Part II of the Lease, and that Landlord is entitled to its costs and attorneys fees.

SECOND CAUSE OF ACTION
(Injunctive Relief)

35. Landlord repeats its response to Paragraphs 1 through 29 above.

36. Denied.

37. Denied. Tenant did not validly exercise the Renewal Option.

38. Denied. Landlord has not taken or threatened to take actions to remove Tenant from the Premises. Tenant is not threatened with irreparable harm.

39. Landlord lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 39 and, therefore, denies the same. Further answering, presumably all retail tenants have customers who are aware of the tenant's physical location, but that does not provide the tenant with a right to remain at that location beyond the terms of its lease.

40. Denied as written, which is to intimate that statutory ejectment actions deny the party facing an ejectment action with due process. Any ejectment proceeding requires notice and provides the party facing ejectment with an opportunity to be heard, including regarding any

notifications which are required to regulatory authorities. Moreover and more importantly, Landlord has not filed or threatened to file any ejectment action.

41. Denied. Tenant will be able to raise any and all issues arising from any effort to dispossess it from the current location if, as, and when such a circumstance arises in the future, and the Court will be able to take all matters raised into account when fashioning an appropriate remedy. None of the issues presented in Paragraph 41 would justify forcing Landlord to keep Tenant other than as a hold-over tenant pursuant to the terms of the Lease for the reasonable time the Court found appropriate to deal with Tenant's entanglements, none of which are Landlord's responsibility.

42. Denied. Monetary damages for any wrongful act are available and an adequate remedy.

43. Denied.

44. Denied.

45. Denied. Tenant is not "special," and is subject to the terms of its contract with Landlord.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE: The Second Cause of Action fails to state a cause of action. An injunction is a remedy, not a cause of action.

SECOND AFFIRMATIVE DEFENSE: Tenant's complaint should be dismissed as conditions precedent have not been met, to wit: the timely signing of Tenant's attempted Renewal Notice by Landlord "not later than 90 days prior to the [Lease] term," a signing the Lease requires for notice to be effective "for any purpose."

THIRD AFFIRMATIVE DEFENSE: Tenant forfeited its Renewal Option rights by not providing notice of its exercise of the first renewal option as required by the Lease. Tenant was fully knowledgeable of the notice requirements of the Lease and the time its letters could take to be where Landlord could receive them by signing the required receipt, and did not provide a notice received and signed for by Landlord on or before November 3, 2019.

FOURTH AFFIRMATIVE DEFENSE: Tenant waived its right to demand renewal of the Lease: Tenant knew of the clear and unambiguous notice requirements of the Lease; had actual knowledge that it took some 11 days for its mail to be received by Landlord; and acted without regard to that knowledge by sending mail on October 30, 2019 which was due to be received (signed for) no later than November 3, 2019 (a Sunday), four days later, rather than using the overnight courier service alternative expressly called for by the Lease.

FIFTH AFFIRMATIVE DEFENSE: By waiting until October 29, 2019 to prepare its notice of renewal and sending its notice of renewal on October 30, 2019 by registered mail, return receipt requested, rather than sending the notice earlier or using the overnight courier service alternative expressed in the Lease, Tenant assumed the risk that its renewal notice would be untimely.

WHEREFORE, Landlord prays that it have judgement on both Causes of Action, and it have such other and further relief as is appropriate, including an award of its costs and attorneys fees.

COUNTERCLAIM

For its Counterclaim, KPP Hilton Head, LLC (“Landlord”) states as follows:

1. Landlord is a South Carolina limited liability company, with its principal place of business in Hilton Head Island, South Carolina.

2. South Carolina CVS Pharmacy, LLC (“Tenant”) is a South Carolina limited liability company, with its principal place of business in South Carolina and places of business in Beaufort County, South Carolina.

3. This Court has jurisdiction of this Counterclaim and venue is appropriate in this Court as the contract at issue, the lease of premises on Pope Avenue in Hilton Head Island, is in this jurisdiction and is the subject of the action to which this Counterclaim is asserted.

RELEVANT FACTS

4. In May of 1998, Landlord’s predecessor in interest entered into a lease (the “Lease”) with Tenant’s predecessor in interest. A copy of the Lease is attached to the Complaint as Exhibit A and here as **Exhibit 1**.

5. In July of 1998, Landlord’s predecessor in interest and Tenant’s predecessor in interest entered into the First Lease Amendment, a copy of which is attached to the Complaint as Exhibit B and here as **Exhibit 2**.

6. The Lease was originally for a Revco Drug Store and eventually became a CVS store (store #5566, the “Hilton Head Store”), by merger of some sort. The Lease had a 20-year initial term and provided the tenant, now CVS (“Tenant”), with four renewal options, each for five-year terms at rates specified in the 1998 First Lease Amendment.

7. If not timely renewed, the Lease provides for a month-to-month holdover tenancy with Fixed Rent at “1.5 times the monthly Fixed Rent payable by Tenant for the last full calendar month of Tenant’s tenancy hereunder.” *See* Lease Part II, Section 26.

8. Landlord has no employees. At all material times, Principal Developers, the doing business name of Landlord’s principal, has managed Landlord’s property. Tenant has always known that to be so and has communicated with Principal Developers as Landlord’s agent.

9. Principal Developers also has no employees. It operates with a single independent contractor, Stefan Cap. Mr. Cap works on a part-time basis and his duties include checking the post office box shared by Principal Developers and Landlord (the "Landlord's Post Office Box") for correspondence, verifying invoices to pay, depositing checks, and reconciling bank statements.

10. On October 9, 2019, Mr. Cap emailed Tenant's Lease Administration department asking whether Tenant intended to renew two leases, both managed by Principal Developers and both with identical term expiration dates (January 31, 2020) and identical renewal option deadlines (November 3, 2019). The two stores were the Hilton Head Store (store #5566), whose lease renewal is at issue here, and a lease of the CVS store in Port Royal, South Carolina (store #3826, the "Port Royal Store"). Mr. Cap's email was forwarded to Tenant's Peter Perry, CVS's Lease Administration Manager, on October 9, 2019, and Mr. Perry responded the next day that he had approved the renewal of the Port Royal Store (store #3826), but he was still waiting for instructions as to the Hilton Head Store at issue here (store #5566). *See* the email chain attached hereto as **Exhibit 3**.

11. The Port Royal Store renewal notice dated October 10, 2019 was signed for by Mr. Cap on October 21, 2019, and Landlord's executed copy was emailed to Tenant's Lease Administration Manager on October 22, 2019 by Mr. Cap.

12. At the time of the renewal deadline for the Hilton Head Store (November 3, 2019), Landlord had never been advised in any fashion that Tenant wished to renew the Hilton Head Store Lease.

13. Neither Principal Developers nor Landlord receive mail in an office; rather, both use a single Post Office Box for their respective mail. Principal Developers and Landlord do not generally conduct business on weekends or holidays, and they do not generally obtain their mail

on weekends or holidays. It is Principal Developers and Landlord's normal course of business to receive their mail once or twice per week during the customary work week (Monday through Friday) based upon Mr. Cap's schedule and availability to go to the Post Office. Mr. Cap has the only key to the Landlord's Post Office Box.

14. Upon information and belief, Tenant's corporate headquarters is generally only open Monday through Friday as well. The ordinary course of business for CVS corporate does not include Saturdays, Sundays, or holidays.

15. On Wednesday, November 6, 2019, Mr. Cap went to Landlord's Post Office Box at the Post Office located at 213 William Hilton Parkway, Hilton Head Island, South Carolina. Mr. Cap signed for and received Tenant's letter seeking to exercise the renewal option to the Hilton Head Store. Because Tenant had sent the renewal letter by registered mail, return receipt requested, it was not in Landlord's Post Office Box; rather, Mr. Cap had to go to the Post Office counter to sign for it. Prior to November 6, 2019, although it had asked Tenant if it intended to renew the Lease, Principal Developers and Landlord were not aware that Tenant wished to renew the Hilton Head Store Lease.

16. Tenant has alleged that it sent its notice of renewal by registered mail, return receipt requested on October 30, 2019, and that it emailed "[a] copy of the [Renewal] Notice . . . to Ms. Anita Fullam at anitafullam@principaldevelopers.com on October 30, 2019."

17. Ms. Fullam ceased working for Principal Developers (or any of its affiliates) in July of 2015, and Tenant had been notified of that and the fact that notices should go to Stefan Cap, not Ms. Fullam by emails dated March 25, 2016, November 22, 2017, October 11, 2018, copies of which are contained in the email strings attached hereto as Exhibits 4, 5, and 6, respectively. Principal Developers did not receive the allegedly emailed notice and, upon information and belief,

Tenant knows that to be so as it would have received an automatic ‘undeliverable message’ in response to any email directed to anitafullam@principaldevelopers.com.

18. Tenant had actual knowledge that its letters to Landlord took up to 11 days to be received (signed for). In this regard, its October 10, 2019 renewal letter regarding the Port Royal Store had been signed for by Landlord on October 21, 2019, and returned executed by Landlord on October 22, 2019.

19. The Lease expressly provides that notice of an exercise of a renewal option must be received (signed for) **not later than 90 days** before the expiration of the then-current lease term. This is a material term of the Lease. Here, 90 days prior to the expiration of Tenant’s Lease was November 3, 2019, a Sunday.

20. Article 50(c) of Part II of the Lease provides that ‘[t]he language of this Lease shall be construed according to its plain meaning.’

21. As of the end of the day November 3, 2019, no one had signed for any renewal of the Hilton Head Store’s Lease; indeed, neither Landlord nor Principal Developers was aware of Tenant’s desire to renew at that time.

22. The renewal dispute is significant to Landlord. There are renewal terms in most if not all of Landlord’s properties managed by Principal Developers, and it is very important for Landlord and its property manager to know if the contractual deadlines contained in those leases mean what they say.

23. Tenant has claimed that it is entitled to renew the Lease despite not complying with the notice requirements of the Lease. If renewed, the Fixed Rent payable by Tenant in January 2020 (\$21,488.41) will continue for the duration of the five-year renewal term.

24. If a holdover tenant, as Landlord contends, then the Fixed Rent payable by Tenant beginning February 1, 2020 is “1.5 times the monthly Fixed Rent payable by Tenant for the last full calendar month of Tenant’s tenancy hereunder” (\$32,232.62) for such time as Tenant remains a month-to-month holdover tenant. *See* Lease Part II, Section 26.

25. There is a real and justiciable controversy regarding the amount of rent due going forward and whether Tenant’s term is a five-year renewal term or a month-to-month holdover term.

26. Landlord is entitled to a declaratory judgement that Tenant is a holdover tenant obligated to pay holdover Fixed Rent of \$32,232.62 beginning February of 2020, being 1.5 times the monthly Fixed Rent payable by Tenant for the last full calendar month of Tenant’s tenancy.

27. Article 50(f), Part II of the Lease provides that “[i]n the event of any suit, action, or other proceeding . . . the prevailing party shall recover, not only its legal costs, but also reasonable attorneys’ fees . . .”

WHEREFORE, Landlord prays that the Court declare that Tenant is a month-to-month holdover tenant obligated to pay holdover Fixed Rent of \$32,232.62 beginning February of 2020, being 1.5 times the monthly Fixed Rent payable by Tenant for the last full calendar month of Tenant’s tenancy; award Landlord its costs and attorneys’ fees; and grant such other and further relief as is just and proper.

Dated: February 7, 2020.

Respectfully submitted,

KPP HILTON HEAD, LLC
By its Attorneys

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Lease5566-2
2/26/98

LEASE

This Lease is made on the Date of Lease specified below, between the Landlord and the Tenant specified below.

PART I

1. Date of Lease: ~~MAY~~ 7TH, 1998 (HKK) PNP
2. Landlord name, and state of and type of entity: KINPIN Partnership
a South Carolina partnership
3. Landlord business address: Herb King
P.O. Box 6362
Hilton Head, SC 29938
4. Landlord notice address: C-6 Village at Wexford
Hilton Head, SC 29928
5. Tenant name, and state of and type of entity: Revco Discount Drug Centers, Inc.,
a Michigan corporation
6. Tenant business address: One CVS Drive
Woonsocket, RI 02895
7. Tenant notice address: One CVS Drive
Woonsocket, RI 02895
Attn: Property Administration
Department, Store No. 5566-2

8. Guarantor:

CVS Corporation,
a Delaware Corporation
One CVS Drive
Woonsocket RI 02895

9. Premises: that certain lot or parcel of real estate located at Pope Avenue Urgent Care Center, Hilton Head Island, County of Beaufort, South Carolina, as outlined in blue on Exhibit A, including the Building described in Section 10 below (which Building is outlined in red on Exhibit A), and including all improvements situated on said property, and all rights, easements, rights of way, and other appurtenances thereto.

10. Building: ground floor dimensions: 75' by 135'

ground floor total square footage: 10,125

ground floor is outlined in red on Exhibit A.

11. Initial Term: shall commence on the date of delivery of the Premises to Tenant in the manner and condition provided in Article 7(a) of Part II hereof, and shall expire 20 years from the "Date of Rent Commencement" (as defined in Article 5 of Part II hereof), plus any months necessary to have the term expire on the next January 31st; all subject to all terms and conditions of this Lease.

As used in this Lease, "Term" shall include the Initial Term and any Extension thereof pursuant to Article 3 of Part II.

12. Renewal Options: 4 Extension Periods, of 5 years each (See Article 3 of Part II)

13. Required Advance Notice of Exercise of Renewal Options: 90 days prior to the expiration of the then-current term. (See Article 3 of Part II)

14. Free Rent Period: the lesser of: 45 days commencing on the day on which Tenant shall accept possession of the Premises; or the number of days commencing on the day on which Tenant shall accept possession of the Premises and ending on the day on which Tenant shall open for business. (See Article 5 of Part II)

15. Fixed Rent (See Article 5 of Part II):

<u>PERIOD</u>	<u>ANNUAL FIXED RENT</u>	<u>MONTHLY INSTALLMENTS</u>
First 60 months from Date of Rent Commencement	\$212,625.00	\$17,718.75
Next 60 months	\$223,256.25	\$18,604.69
Next 60 months	\$234,419.06	\$19,534.92
Next 60 months and to end of initial term	\$246,140.02	\$20,511.67
First extension period	\$246,140.02	\$20,511.67
Second extension period	\$246,140.02	\$20,511.67
Third extension period	\$246,140.02	\$20,511.67
Fourth extension period	\$246,140.02	\$20,511.67

16. Percentage Rent (See Article 6(a) of Part II):

<u>PERIOD</u>	<u>BREAKPOINT</u>	<u>PERCENTAGE RENT RATE</u>
First 60 months from Date of Rent Commencement	\$10,631,250.00 up to \$12,131,250.00 Over \$12,131,250.00	2.00%
Next 60 months	\$11,162,812.50 up to \$12,662,812.50 Over \$12,662,812.50	2.00%
Next 60 months	\$11,720,953.13 up to \$13,220,953.13 Over \$13,220,953.13	2.00%

Next 60 months and to end of initial term	\$12,307,000.78 up to \$13,807,000.78 Over \$13,807,000.78	2.00%
First extension period	\$12,307,000.78 up to \$13,807,000.78 Over \$13,807,000.78	2.00%
Second extension period	\$12,307,000.78 up to \$13,807,000.78 Over \$13,807,000.78	2.00%
Third extension period	\$12,307,000.78 up to \$13,807,000.78 Over \$13,807,000.78	2.00%
Fourth extension period	\$12,307,000.78 up to \$13,807,000.78 Over \$13,807,000.78	2.00%

17. Intentionally omitted.

18. Construction Specifications: Prototype Construction Specifications dated January 1, 1998, attached hereto as Exhibit B.(See Article 7(a) of Part II)

19. Required Number of Parking Spaces: 45, for standard size automobiles. (See Article 7(a) and Article 14 of Part II)

20. Outside Delivery Date of Premises: ~~November 1, 1998~~ ^{FEBRUARY 15, 1999} (See Article 2 of Part II) H6A PVP

21. Outside Landlord Acquisition Date of Premises: ~~May 1, 1998~~ ^{JUNE 15, 1998} (See Article 2 of Part II) H6A PVP

22. Intentionally omitted.

23. Intentionally omitted.

24. Initial monthly charge for parking and other exterior maintenance: \$350.00 (See Article 33)

25. "Gross Sales" shall mean gross proceeds received for services rendered, and sales of merchandise made, in and from the Premises, subject to the following provisions of this Article. In the case of exchange of goods, only the amount of the excess of the price of the new goods sold over the allowance made for the return of the goods exchanged shall be included in Gross Sales.

Gross Sales shall also exclude: the amount of all sales taxes and other taxes imposed by any governmental authority with respect to sales of merchandise, or services rendered, in or from the Premises (provided, however, that no income tax and no tax based on income or profits as such shall be excluded); refunds or returns on goods returned; the amount of any discount, rebate or CVS generated promotional coupon; bad debts; proceeds from the collection of utility bills; proceeds from the operation of automated teller machines or postal units; proceeds received from the sale of insulin, postage stamps, money orders, lottery tickets, beer, wine, soda, and tobacco products; sales at a discount to employees; sales of trade fixtures or equipment; receipts from sales in the nature of a transfer to other stores operated by Tenant or its affiliated companies; all service charges paid to banks or other financial institutions based on credit card or other similar credit purchases made by customers; and proceeds received from the sale of prescription and other sales which are payable in whole, or in part, by any third party health plan/payor. (See Article 6 of Part II)

26. All exhibits to this Lease are incorporated herein by this reference.

LIST OF EXHIBITS:

Exhibit A - Site Plan: Building = red
Premises property line = blue

Exhibit B - Construction Specifications

PART II

PREMISES -

1. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, for the Term and on the conditions herein provided, the Premises described in Section 9 of Part I hereof.

CONDITIONS PRECEDENT - RIGHTS TO TERMINATE -

2. (a) If, on or before the Outside Delivery Date, possession of the Premises has not been delivered to Tenant in accordance with the terms of this Lease, then, at any time thereafter (until such possession is so delivered), Tenant may terminate this Lease upon 30 days' written notice to Landlord; and this Lease will so terminate unless, prior to the expiration of said 30 days, Landlord shall deliver possession of the Premises to Tenant in accordance with the terms hereof. Said right to terminate shall be Tenant's sole remedy if Landlord shall have acted in good faith and with due diligence to deliver the Premises to Tenant in accordance with the terms of this Lease.

(b) Intentionally Omitted.

(c) If, on or before the Outside Landlord Acquisition Date, Landlord shall not have acquired good and clear record and marketable title to the Premises (as such record and title are described in detail in Article 37 hereof), then, at any time thereafter (but prior to the acquisition by Landlord of such record and title), Landlord and Tenant each may terminate this Lease by 30 days' written notice to the other party; and this Lease will so terminate unless, prior to the expiration of said 30 days, Landlord shall acquire such record and title. Landlord may exercise the right of termination described in this subdivision (c) only if Landlord has diligently pursued, in good faith, the acquisition of said record and title, and has failed to acquire same for reasons beyond its reasonable control.

(d) Intentionally Omitted.

(e) Notwithstanding anything to the contrary in this Lease, in no event shall Tenant be obligated to accept possession of the Premises until Tenant shall have received an "SNDA Agreement", as set forth in Article 20, from any mortgagee existing prior to the date hereof.

RENEWAL OPTIONS -

3. Tenant may extend the Term of this Lease for each of the Renewal Options described in Section 12 of Part I hereof, upon all of the terms set forth in this Lease. Tenant may do

so only if Tenant shall not be in default (beyond applicable cure periods) under this Lease at the time of any such election, and by giving Landlord notice of each such election not later than the Required Advance Notice of Exercise of Renewal Options (as defined in Section 13 of Part I).

USE -

4. (a) Tenant may use the Premises for any lawful retail purpose.

(b) Without limiting any rights of Tenant under this Lease, Tenant, subject to Laws (as defined in Article 10), may: keep the Premises open for business on Sundays and/or holidays; and operate on an "extended-hours basis" (defined as being open for business in excess of 110 hours per week).

FIXED RENT -

5. (a) Commencing as of the Date of Rent Commencement, Tenant shall pay to Landlord, at the business address of Landlord specified on Page 1 hereof, or at such other address as Landlord shall, from time to time, designate by notice to Tenant, the Fixed Rent set forth in Section 15 of Part I hereof, payable to Landlord no later than the fifth day of each month in advance, without demand or set-off, except as otherwise expressly provided in this Lease.

(b) Fixed Rent and all other charges due under this Lease shall commence immediately upon the expiration of the Free Rent Period (as defined in Section 14 of Part I hereof), subject to all of the other terms of this Lease ("Date of Rent Commencement"). If the Date of Rent Commencement shall be on any day other than the first day of a calendar month, Fixed Rent and other charges for such month shall be pro rated on a per diem basis. The foregoing notwithstanding, Tenant's obligation to pay insurance charges pursuant to Article 35 shall commence upon the commencement of the Term.

(c) Notwithstanding anything to the contrary in this Lease, if the Date of Rent Commencement as calculated pursuant to subdivision (b) above would occur between November 15th and the succeeding December 31st, and if Tenant elects not to open for business during said period, then, in that event, the Date of Rent Commencement shall be the succeeding January 2nd. Tenant shall provide Landlord with written notice of such election.

PERCENTAGE RENT -

6. (a) In addition to Fixed Rent, if, in any calendar year following the Date of Rent Commencement, the annual "Gross Sales" in the Premises (as defined in subdivision (d) below) shall exceed the applicable breakpoint amount for the periods set forth (individually, "Breakpoint"),

Tenant agrees to pay to Landlord a sum equal to a percent ("Percentage Rent Rate") of such annual Gross Sales in excess of the applicable Breakpoint ("Percentage Rent"). The Breakpoints and Percentage Rent Rates are set forth in Section 16 of Part I.

Percentage Rent for any portion of a calendar year shall be determined by taking 1/12th of the applicable Breakpoint and multiplying the result by the number of months (and portions thereof) in said portion of the calendar year ("Pro-rated Breakpoint"). The Pro-rated Breakpoint shall be subtracted from the Gross Sales for said portion of the calendar year, and the result shall be multiplied by the Percentage Rent Rate to determine the amount of Percentage Rent due; and shall be paid by Tenant in the same manner as herein provided for the payment of Percentage Rent for a full calendar year.

(b) Intentionally Omitted.

(c) Tenant agrees to provide to Landlord, within 60 days after the end of each calendar year of the Term, and within 60 days following the expiration or earlier termination of this Lease, a statement, signed by an authorized representative of Tenant, certifying as to the amount of the Gross Sales for the preceding calendar year, or portion thereof; together with any Percentage Rent which is payable for the period referred to therein.

(d) "Gross Sales" shall be as defined in Section 25 of Part I.

Tenant makes no representation or warranty as to its expected Gross Sales.

(e) At Tenant's main accounting office, presently at One CVS Drive, Woonsocket, Rhode Island 02895, Tenant shall keep accurate records of Gross Sales, in accordance with GAAP.

Landlord may audit said Gross Sales records subject to the following limitations. Any such audit shall be at reasonable times; during Tenant's normal business hours; be conducted not more than once annually; be conducted within 36 months from the date of any Gross Sales statement of Tenant; none of said records (including photocopies of said records) shall be removed from Tenant's office; and no examination of records of other stores operated by Tenant or its affiliates or of the general books of account of Tenant shall be permitted.

If any audit shows that the amount of Gross Sales on any statement of Tenant was understated by more than 3% of Gross Sales, Tenant shall pay to Landlord the reasonable cost of Landlord's audit in addition to any amount of Percentage Rent which Tenant should have paid but did not pay, plus interest at the rate of 10% per annum on said underpaid amount.

Landlord shall hold all sales figures and other information obtained from Tenant's records in confidence, except as may be necessary for the enforcement of Landlord's rights under this Lease, or in connection with prospective financing or prospective sale of the Premises, or with respect to tax proceedings, or pursuant to any legal requirements.

(f) Notwithstanding the above, it is agreed that: Landlord shall not be construed or held to be a partner, joint venturer, or associate of Tenant in the conduct of its business; and the relationship between the parties hereto is, and shall at all times remain, that of landlord and tenant.

LANDLORD'S CONSTRUCTION - DELIVERY OF THE PREMISES -

7. (a) Landlord agrees, at its sole cost, to construct the Building and to develop the Premises as shown on Exhibit A, and to do all work as required in the Construction Specifications described in Section 18 of Part I hereof, and as shown on specific plans for the Building which are not yet complete and which are subject to the reasonable approval of Landlord and Tenant. In no event shall Landlord commence work until Landlord has provided Tenant with drawings for the Building and the specific plans for the Building are finalized. Any increased costs to Landlord, which are a result of any change orders to said specifications or plans made in writing by Tenant, shall be paid by Tenant within 30 days of receipt of demand therefor with supporting documentation, provided that Landlord bills Tenant for such increased costs within 120 days after the Date of Rent Commencement, and provided that Tenant has agreed to the amount of increased costs prior to Landlord commencing construction. Upon completion of Landlord's construction, the Building shall be of dimensions no less than described in Section 10 of Part I hereof. Landlord warrants and agrees that, at the time of delivery of the Premises to Tenant, the exterior areas of the Premises shall be in good condition, properly lighted, properly paved and line painted, with parking areas, curbs, curb cuts, sidewalks and roadways as designated in Exhibit A, in good repair and properly marked. Landlord warrants that the parking areas of the Premises shall accommodate the Required Number of Parking Spaces as shown on Exhibit A. All such work shall be substantially completed on the date of delivery of possession of the Premises to Tenant. Landlord agrees to give at least 30 days' prior written notice to Tenant of the date when such possession will be available to Tenant.

Tenant (including Tenant's contractors and vendors) may enter the Building approximately 15 days prior to the anticipated date of delivery of the Premises to Tenant for the following purposes, without such entry constituting acceptance of the Premises: to measure and inspect the Building in order to ensure that the Building will be delivered in accordance with this Article; to install carpeting, telephones, fixtures, equipment, and furniture and the like.

(b) "Substantially completed" shall mean full completion of Landlord's work except for minor incomplete items or deficiencies, provided that any such incomplete items or deficiencies

shall not hinder Tenant's work in or about the Premises, or prevent Tenant from opening for business.

In addition, in no event shall Landlord's work or the Premises be deemed to be substantially completed until a Certificate of Occupancy has been issued. A "Certificate of Occupancy" is a Certificate of Occupancy or any equivalent documentation which confirms that Landlord's work has been completed and that the Premises are available for Tenant to take possession, fixture, merchandise and open for business. If Tenant elects to take possession of the Premises prior to issuance of the Certificate of Occupancy, Fixed Rent and all other charges due under this Lease shall commence on the first to occur of the following, subject to the other terms of this Lease: the expiration of a number of days equal to the Free Rent Period, which time period commences on the date of the issuance of the Certificate of Occupancy; or on the date on which Tenant opens for business. If, upon the completion of Tenant's initial work, a Certificate of Occupancy is not issued due to items which are Landlord's responsibility, then, Landlord will correct same and the Date of Rent Commencement will be delayed for a number of days equal to the number of days that Tenant is delayed from opening for business.

(c) If Landlord shall fail to fully complete all of its work as specified in this Article on or before the date Tenant takes possession of the Premises, then Tenant may send Landlord a "punch list" of items which remain to be completed. On receipt of such punch list, Landlord shall have 14 days to complete the items designated therein; and if Landlord shall fail to do so within said 14 day period, then Tenant may complete the items on behalf of Landlord and deduct the entire cost of completion of such items from rent and other charges due hereunder. Notwithstanding anything to the contrary herein, if Tenant is unable to complete its work or open for business as a result of incomplete items on the punch list, then, in addition to any other rights Tenant may have hereunder, the Date of Rent Commencement will be delayed for a number of days equal to the number of days that Tenant is delayed from completing its work or from opening for business.

KEY TENANT - COTENANTS -

8. Intentionally omitted.

REPAIRS AND MAINTENANCE OF THE BUILDING -

9. (a) All obligations of Landlord pursuant to this subdivision (a) shall be performed by Landlord at Landlord's sole cost. Landlord shall maintain (including painting and cleaning), repair, and replace, as necessary, each of the exterior portions and structural portions of the Building, including, without limitation: the roof and roof supports, flashings, gutters, downspouts, footings, foundations, structural supports, columns, exterior walls, bearing walls, retaining walls, floor slab, and loading docks; so as to keep the same in good condition and repair.

The foregoing notwithstanding, Landlord's aforesaid obligations shall exclude the nonstructural portions of any storefront. Landlord also shall maintain, repair, and replace, as necessary, all plumbing, pipes, tubes and all other conduits and utility lines leading to or from the Building.

During the first full year of the Term, or during any longer period covered by any warranty, Landlord shall make all repairs required because of building settlement or defects in Landlord's materials or workmanship, other than with respect to the HVAC system. Landlord shall furnish Tenant with all guaranties and warranties relating to the HVAC system.

(b) All obligations of Tenant pursuant to this subdivision (b) shall be performed by Tenant at Tenant's sole cost. Except as provided in subdivision (a) above, Tenant shall take maintain, repair and replace, as necessary: the Building interior, including the fixtures and equipment therein; HVAC equipment; broken glass; and the nonstructural portions of any storefront. The foregoing notwithstanding, Tenant's obligations pursuant to this subdivision (b) shall exclude damage and injury arising under the provisions of Article 13 or Article 14 hereof.

(c) All of the foregoing notwithstanding, neither party shall be obligated to perform any maintenance, repair or replacement, the necessity of which shall have arisen solely due to the negligence or fault of the other, or of the other's employees or agents; and in such case, the party which shall have caused the need for such maintenance, repair or replacement shall be responsible for same, at its sole cost. This subdivision (c) shall apply only in any instance to which Article 12 shall not apply.

(d) If Landlord shall fail to make any of the repairs required to be made by Landlord under this Article within 30 days after receipt of written notice from Tenant of the need therefor, Tenant, in addition to any other rights it may have hereunder, may make said repairs on Landlord's behalf and charge Landlord for the reasonable cost thereof. Provided that Landlord has commenced to repair within said 30 days, and thereafter is diligently prosecuting same to completion, said 30 day period shall be extended, where, due to the nature of a repair, it cannot reasonably be completed within 30 days. If, in an emergency, in Tenant's reasonable opinion, any such repairs are immediately necessary, then, no prior 30 days' notice shall be required, but Tenant shall give Landlord whatever notice is reasonable in the circumstances and may make said repairs on Landlord's behalf and charge Landlord for the reasonable cost thereof. In either event, if Landlord shall not pay Tenant within 30 days after receipt of an invoice therefor with supporting documentation, Tenant may deduct the reasonable cost thereof from rent and other charges due hereunder.

(e) If Tenant shall fail to make any of the repairs required to be made by Tenant under this Article within 30 days after receipt of written notice from Landlord of the need therefor, Landlord, in addition to any other rights it may have hereunder, may make said repairs on Tenant's

behalf and charge Tenant for the reasonable cost thereof. Provided that Tenant has commenced to repair within said 30 days, and thereafter is diligently prosecuting same to completion, said 30 day period shall be extended, where, due to the nature of a repair, it cannot reasonably be completed within 30 days. If, in an emergency, in Landlord's reasonable opinion, any such repairs are immediately necessary, then, no prior 30 days' notice shall be required, but Landlord shall give Tenant whatever notice is reasonable in the circumstances and may make said repairs on Tenant's behalf and charge Tenant for the reasonable cost thereof. In either event, Tenant shall pay Landlord such reasonable cost within 30 days after Tenant receives Landlord's invoice therefor with supporting documentation.

COMPLIANCE WITH LAWS -

10. (a) Tenant shall comply with all laws, statutes, ordinances, and regulations (collectively, "Laws") relating to the physical condition of the Building, which Laws must be complied with solely due to the nature of Tenant's business. Tenant shall have no obligation with respect to Laws relating to buildings or to retail businesses in general; and compliance with such general Laws shall be Landlord's responsibility at Landlord's sole cost. Additionally, and notwithstanding the first sentence of this Article, Tenant shall not be required to make structural repairs or modifications; it being agreed that structural repairs and modifications shall be Landlord's responsibility at Landlord's sole cost, if same shall be necessary to comply with Laws.

(b) Except for those obligations delegated to Tenant pursuant to subdivision (a) above, Landlord shall comply with all Laws, which Laws shall impose any duty with respect to the Premises and/or with respect to Landlord's work or delivery of the Premises as described in Article 7.

ACCESS TO PREMISES -

11. Upon reasonable notice to Tenant, and during Tenant's business hours, Landlord may show the Premises to purchasers and potential purchasers, and to mortgagees and potential mortgagees. Upon reasonable notice to Tenant, during the last 6 months of the then-current term, unless Tenant shall have exercised any Renewal Option, Landlord also may show the Premises to persons wishing to rent the same.

WAIVER OF SUBROGATION -

12. Notwithstanding anything in this Lease to the contrary, Landlord and Tenant each waives any rights of action for negligence against the other party, which may arise during the Term for damage to the Premises or to the property therein resulting from any fire or other

casualty of the kind covered by All-Risk property insurance policies, regardless of whether or not, or in what amounts, such insurance is now, or may hereafter be, carried by the parties.

FIRE OR OTHER CASUALTY -

13. (a) If, at any time during the Term, the Building shall be damaged in whole or in part by fire, the elements or other casualty, Tenant promptly shall notify Landlord thereof. Upon receipt of such notice, Landlord, at Landlord's sole cost, as speedily as circumstances permit, shall repair said damage and restore the Building to the same condition which existed immediately prior to the occurrence of such damage. The Term shall be tolled by a period of time equal to the time between the date of the casualty and the date on which Landlord completes repair and restoration of the Building. During the restoration, Tenant may operate its business out of a temporary structure such as a trailer, subject to compliance with Laws. In addition, Tenant shall be entitled to an abatement of Fixed Rent and other charges payable hereunder for the period during which the Building is rendered incapable of use for the normal conduct of Tenant's business, including a reasonable period, not to exceed 30 days, for Tenant to refixture and restock. Said abatement will be pro rated, based on the number of square feet of the Building which are so rendered untenable or incapable of such use.

The foregoing notwithstanding, if the Building is partially or totally destroyed during the last 2 years of the initial term or during the last 2 years of any extension period, then, unless Tenant already has exercised its next remaining extension period, Landlord may terminate this Lease upon no fewer than 45 days prior written notice to Tenant, in which event this Lease shall terminate on the date specified in such notice. Notwithstanding the preceding sentence, if Tenant shall exercise its next remaining option to extend this Lease prior to the expiration of the 45 day notice, then Landlord's termination notice shall be void and Landlord shall be obligated to fulfill its repair and restoration obligations as set forth in this Article.

(b) If Landlord shall fail to commence to repair or restore the Building in the manner specified in this Article, within 90 days after the damage has occurred, and proceed to complete such repairs and restoration with due diligence, then, Tenant may give Landlord 30 days' prior written notice of Tenant's election to: (i) terminate this Lease on the date specified in such notice; or (ii) rebuild the Building itself on Landlord's behalf. If Tenant shall so rebuild the Building, Landlord shall assign any available insurance proceeds under Article 35 to Tenant to cover the cost of same.

CONDEMNATION -

14. (a) If the entire Building, or the use or possession thereof, is taken in condemnation proceedings, or by any right of eminent domain, or for any public or quasi-public

use, or if Landlord shall deliver to a governmental authority a deed in lieu of condemnation or eminent domain (individually or collectively, a "taking", or "taken"), then, this Lease shall terminate on the date when possession shall be taken by the condemnor, and rent and all other charges payable hereunder shall be apportioned and paid in full up to that date, and all prepaid unearned rent, and all other charges payable hereunder, shall promptly be repaid by Landlord to Tenant.

If more than 20% of the Building shall be so taken, then Tenant may terminate this Lease, if Tenant shall so notify Landlord within 45 days after such taking. If Tenant shall not so terminate this Lease, then this Lease shall continue in full force and effect, except that Fixed Rent and all other charges payable hereunder shall be reduced in the proportion that the gross floor area of the part so taken or condemned shall bear to the total gross floor area of the Building immediately prior to such taking. In such case, Landlord, at Landlord's own expense, as speedily as circumstances permit, shall repair all damage to the Building as shall have been caused by such partial taking, and shall restore the Building to a complete architectural unit. Fixed Rent and other charges payable hereunder shall abate until the Building shall have been restored to a tenantable condition, including a reasonable period, not to exceed 30 days, for Tenant to refixture and restock.

(b) For the purposes of this subdivision (b), in addition to the meaning set forth above, a "taking" shall mean any legal impediment which shall not be within Landlord's reasonable control.

If, due to a taking, the parking areas of the Premises shall be decreased below the Required Number of Parking Spaces (as defined in Section 19 of Part I), Tenant shall notify Landlord thereof. If, within 90 days after Landlord's receipt of such notice, additional parking is not provided within the Premises equal to the number by which it has been decreased below the Required Number of Parking Spaces, then Tenant may, upon 30 days' written notice to Landlord: (i) terminate this Lease; or (ii) pay to Landlord Fixed Rent reduced to the level of 2% of Gross Sales, and without any Percentage Rent obligation. If Tenant shall elect to so pay reduced rent, Tenant shall remain obligated for any other charges due under this Lease. Tenant's Fixed Rent shall be so reduced and Percentage Rent so eliminated until such time as said additional parking is provided within the Premises.

If, due to a taking, there shall be an impediment, which impediment shall materially adversely affect any means of ingress or egress between the Premises and any abutting street, then, Tenant shall notify Landlord thereof. If, within 30 days after Landlord's receipt of such notice, such impediment shall not be cured, then Tenant may, upon 10 days' written notice to Landlord: (i) terminate this Lease; or (ii) pay to Landlord Fixed Rent reduced to the level of 2% of Gross Sales, and without any Percentage Rent obligation. If Tenant shall elect to so pay reduced rent, Tenant shall remain obligated for any other charges due under this Lease. Tenant's Fixed Rent shall be so reduced and Percentage Rent so eliminated until such time as said impediment shall be removed.

(c) Tenant hereby waives all rights in condemnation awards, except awards for Tenant's fixtures and equipment, the unamortized costs of Tenant's leasehold improvements in the Building, if any, and any separate awards which may be made for Tenant's relocation expenses, business interruption, and the like.

ASSIGNMENT AND SUBLETTING -

15. (a) Tenant shall have the right to assign this Lease, or to sublet the whole or any part of the Premises, for use for any lawful retail purpose, provided: Landlord's consent is first obtained, which consent Landlord agrees not to unreasonably withhold, delay or condition; and that Tenant and Guarantor shall remain liable for the obligations of Tenant hereunder.

(b) Notwithstanding Article 15(a), Tenant shall have the right, without Landlord's consent, to: (i) assign this Lease, or sublet the whole or any part of the Premises, for any lawful retail purpose, to any corporation of which, at the time, Tenant shall be a subsidiary, or to any subsidiary of a corporation of which, at the time, Tenant shall be a subsidiary, provided that Guarantor (but not Tenant) remains fully liable for the obligations of Tenant hereunder; or (ii) assign this Lease to any party acquiring all or substantially all of the assets of Tenant's store at the Premises by purchase, merger, consolidation, or otherwise, provided that Guarantor (but not Tenant) remains fully liable for the obligations of Tenant hereunder.

ALTERATIONS -

16. Tenant shall not make any structural alterations or exterior alterations to the Building without, in each instance, obtaining Landlord's written consent, which consent Landlord agrees not to unreasonably withhold, delay or condition. However, Tenant may, without Landlord's consent, make non-structural alterations to the Building interior.

Tenant shall do all work in a good and workmanlike manner, at its own cost, and in accordance with Laws. Tenant shall discharge, within 30 days (by payment or by filing the necessary bond, or otherwise), any mechanics', materialmen's or other lien against the Premises and/or Landlord's interest therein, which lien may arise out of any payment due for, or purported to be due for, any labor, services, materials, supplies, or equipment alleged to have been furnished to or for Tenant in, upon, or about the Premises.

At Tenant's sole cost, Landlord agrees to cooperate with Tenant (including signing applications) in obtaining any necessary Permits for any alterations which Tenant is permitted to make hereunder.

SIGNS -

17. At Tenant's sole cost, Tenant may install, replace and relocate on the Building, such signs, awnings, lighting effects and fixtures as may be used from time to time by Tenant (collectively, "Signs"). Tenant shall maintain and repair such Signs. Tenant also may place in its windows: Tenant's standard paper signs in its windows in accordance with Tenant's regular advertising and promotional programs; and/or neon signs. At Tenant's sole cost, Landlord agrees to cooperate with Tenant (including signing applications) in obtaining any necessary Permits for Tenant's Signs. All Signs of Tenant shall comply with Laws.

PYLON SIGN -

18. If permitted by Laws, Tenant, at its sole cost, may: install its sign on any pylon sign structure located on the Premises; and, if no such pylon structure shall exist, construct its own pylon structure and install its sign thereon. At Tenant's sole cost, Landlord agrees to cooperate with Tenant (including signing applications) in obtaining any necessary Permits for any pylon sign and/or structure.

SURRENDER -

19. At the expiration or other termination of this Lease, Tenant shall surrender the Premises to Landlord in as good order and condition as they were at the commencement of the Term or may be put in thereafter, reasonable wear and tear and damage by casualty and/or the elements excepted. All alterations, additions, and improvements in or upon the Premises made by either party (except Tenant's furniture, trade fixtures, satellite communications dish and equipment, computer and other equipment and shelving), shall become the property of Landlord and shall remain upon and be surrendered with the Premises as a part thereof at the termination or other expiration of the Term. At the expiration or termination of the Term, Tenant shall remove the items enumerated in the parenthetical above, as well as its signs and identification marks, from the Premises. Tenant agrees to repair any and all damage caused by such removal.

At any time during the Term, Tenant may remove the items enumerated in the parenthetical above, as well as its signs and identification marks, from the Premises.

SUBORDINATION OF LEASE -

20. This Lease shall be subject and subordinate to the lien of any bank or institutional or other mortgage or mortgages now or hereafter in force against the Premises, and to all advances made upon the security thereof, provided that the holder of any such mortgage shall execute and deliver to Tenant an agreement ("SNDA Agreement"), in form satisfactory to Tenant, providing

that such holder will recognize this Lease and not disturb Tenant's possession of the Premises in the event of foreclosure if Tenant is not then in default hereunder beyond any applicable cure period. Tenant agrees, upon receipt of such SNDA Agreement, to execute such further reasonable instrument(s) as may be necessary to subordinate this Lease to the lien of any such mortgage. The term "mortgage" shall include deeds of trust or any other similar hypothecations.

21. Intentionally omitted.

UTILITIES -

22. Tenant agrees to pay for all utilities consumed by it in the Premises, prior to delinquency.

TENANT DEFAULT -

23. (a) If: (i) Tenant shall default in the payment of Fixed Rent or any item of additional rent payable hereunder, and such default shall continue for more than 15 days after written notice to Tenant; or (ii) Tenant shall default in fulfilling any of the other covenants of this Lease, and such default shall continue for more than 30 days after written notice thereof from Landlord, specifying such default (provided that if Tenant has commenced to cure within said 30 days, and thereafter is prosecuting same to completion, said 30 day period shall be extended, where, due to the nature of the default, it is unable to be completely cured within 30 days); then, in any such event, Landlord may give to Tenant notice of intention to end the Term hereof, and if Landlord shall do so, the Term shall expire as if that day were the day herein fixed for the expiration of the Term, and Tenant shall then quit the Premises and surrender the same, but shall remain liable as hereinafter provided.

(b) If the notices provided in subdivision (a) of this Article shall have been given and the Term shall expire as aforesaid, then Landlord may, without further notice, re-enter the Premises, either by force or otherwise, and dispossess Tenant by summary proceedings or otherwise, and remove Tenant's effects and hold the Premises as if this Lease had not been made; and Tenant hereby waives the service of notice of intention to re-enter or to institute legal proceedings to that end.

(c) In case of any such default, re-entry, expiration and/or dispossession by summary proceedings or otherwise (i) the rent shall become due and shall be paid up to the time of such re-entry, dispossession and/or expiration; (ii) Landlord shall make reasonable efforts to re-let the Premises or any part or parts thereof, either in its own name or otherwise, for a term or terms which may, at its option, be shorter or longer than the period which would otherwise have constituted the remainder of the Term, and may grant concessions or free rent, but only to such extent as Landlord,

in Landlord's reasonable judgment, considers advisable and necessary to re-let the same; and, (iii) Tenant, or its successors, shall also pay to Landlord, as liquidated damages for the failure of Tenant to observe and perform its covenants herein contained, any deficiency between the rent herein reserved and the net amount, if any, of the rents collected on account of the re-letting of the Premises for each month of the period which would otherwise have constituted the remainder of the then-current term. In computing such liquidated damages, there shall be added to said deficiency such reasonable expenses as Landlord may incur in connection with re-letting, such as legal expenses, attorney and broker fees, but excluding renovations. Any such liquidated damages shall be paid in monthly installments on the rent day specified in this Lease and any suit brought to collect the amount of the deficiency for any month shall not prejudice, in any way, the right of the Landlord to collect the deficiency for any subsequent month by a similar proceeding. However, if Tenant shall default on any such monthly installment, then, at Landlord's option, such liquidated damages shall be accelerated and paid immediately by Tenant, but discounted to their present value, using as the time remaining, the number of full calendar months remaining in the term of this Lease following default (beyond applicable cure periods), and using as the interest rate, the lesser of the following: (x) the rate (or the average of rates, if more than one rate appears) inserted in the blank of the "Money Rates" section of "The Wall Street Journal" (Eastern Edition) in the section reading "Prime Rate: _____%", or (y) the base rate on corporate loans posted by at least 75% of the nation's 30 largest banks. (If neither rate is available for any reason, then a reasonably equivalent rate shall be used).

Mention in this Lease of any particular remedy shall not preclude Landlord from any other remedy at law or in equity, including the right of injunction. Tenant waives any rights of redemption granted by any Laws if Tenant is evicted or dispossessed, for any cause, or if Landlord obtains possession of the Premises by reason of the violation by Tenant of any of the terms of this Lease.

LANDLORD DEFAULT -

24. In the event of any default by Landlord under this Lease ("Landlord Default"), Tenant may give Landlord written notice specifying such Landlord Default and, if Tenant shall do so, then Landlord shall have 30 days in which to cure any such Landlord Default; provided, however, that if the nature of the Landlord Default is such that more than 30 days are required for its cure, then Landlord shall not be in default if Landlord commences to cure within said 30 days and thereafter diligently prosecutes the same to completion. In the event that Landlord shall remain in default following its said right to cure, then, in addition to all other rights and remedies available to Tenant at law and in equity, Tenant may cure such Landlord Default on behalf of Landlord by doing the necessary work and/or making the necessary payments, and billing Landlord for the reasonable costs thereof, which Landlord agrees to pay to Tenant within 30 days of receipt of Tenant's demand therefor and reasonable evidence of the cost of the same. If Landlord shall fail to

pay within said 30 day period, Tenant may deduct the entire cost from any rent and other charges due hereunder.

RENT PAYMENTS -

25. If Landlord's interest in this Lease shall pass to another, or if the rent hereunder shall be assigned, or if a party, other than Landlord, shall become entitled to collect the rent due hereunder, then, notice thereof shall be given to Tenant by Landlord in writing, or, if Landlord is an individual and shall have died or become incapacitated, by Landlord's legal representative, accompanied by due proof of the appointment of such legal representative. Until such notice and proof shall be received by Tenant, Tenant may continue to pay the rent due hereunder to the one to whom, and in the manner in which, the last preceding installment of rent hereunder was paid, and each such payment shall fully discharge Tenant.

Tenant shall not be obligated to recognize any agent for the collection of rent or otherwise authorized to act with respect to the Premises until written notice of the appointment and the extent of the authority of such agent shall be given to Tenant by the one appointing such agent.

HOLDOVER -

26. If Tenant shall hold over after the expiration date of the Term, or if Tenant shall hold over after the date specified in any termination notice given by Tenant then, in either such event, Tenant shall be a month-to-month Tenant on the same terms as herein provided, except that the monthly Fixed Rent will be 1.5 times the monthly Fixed Rent payable by Tenant for the last full calendar month of Tenant's tenancy hereunder.

NOTICES -

27. Whenever, pursuant to this Lease, notice or demand shall or may be given to either of the parties by the other, and whenever either of the parties shall desire to give to the other any notice or demand with respect to this Lease or the Premises, each such notice or demand shall be in writing, and any Laws to the contrary notwithstanding, shall not be effective for any purpose unless the same shall be given or served as follows: by mailing the same to the other party by registered or certified mail, return receipt requested, or by overnight courier service provided a receipt is required, at its Notice Address set forth in Part I hereof, or at such other address as either party may from time to time designate by notice given to the other. The date of receipt of the notice or demand shall be deemed the date of the service thereof (unless the notice or demand is not received or accepted in the ordinary course of business, in which case the date of mailing shall be deemed the date of service thereof).

PARKING -

28. Intentionally omitted.

PROPERTY LAYOUT -

29. Intentionally omitted.

SATELLITE COMMUNICATIONS DISH AND EQUIPMENT -

30. Notwithstanding anything to the contrary in this Lease, Tenant may install, maintain, and replace, on the roof of the Building or in the Building, a satellite communications dish and related equipment. Tenant shall do so at its own cost and in accordance with all Laws, and shall defend, indemnify and hold Landlord harmless from and against any claims, costs or expenses incurred by Landlord as a result of such installation, maintenance or replacement by Tenant. At Landlord's request, Tenant shall coordinate any roof installation hereunder with Landlord's roofing contractor.

EXCLUSIVE -

31. (a) If Landlord or any of its officers, directors, trustees, individual members, or partners, hold or acquire any interest in any land immediately adjacent to the Premises (whether accomplished directly by direct ownership, or indirectly through the use of leases, cross-easement agreements or similar documents), during the Term, Landlord agrees that (unless any premises on said land are already so leased and/or used) Landlord shall not allow any of the premises on such land to be leased or to be used for the purpose of a health and beauty aids store, a drug store, and/or a pharmacy prescription department.

(b) As used in this Lease: the term "pharmacy prescription department" shall include the dispensing of prescription drugs by physicians, dentists, other health care practitioners, or entities such as health maintenance organizations, where such dispensing is for profit; and a "health and beauty aids store" shall mean a store which devotes more than 5% of its retail selling space to the display and sale of health and beauty aids.

(c) If Landlord shall violate any of the provisions of this Article and shall not cure such violation within 60 days after receipt of Tenant's notice thereof, Tenant, at any time thereafter, upon 10 days prior written notice to Landlord, may: (i) terminate this Lease; or (ii) pay to Landlord Fixed Rent reduced to a level equal to 50% of Fixed Rent due under this Lease and without any further Percentage Rent obligation. Tenant's Fixed Rent shall be so reduced and Percentage Rent so eliminated until such time as such violation is permanently cured.

RIGHT OF FIRST REFUSAL -

32. Intentionally omitted.

MAINTENANCE OF PARKING AND OTHER EXTERIOR AREAS -

33. (a) With respect to the parking and other exterior areas of the Premises, Landlord shall perform the following, pursuant to good and accepted business practices throughout the Term: repairing, resurfacing, repaving, re-striping, and resealing, of the parking areas; repair of all curbing, sidewalks and directional markers; removal of snow and ice; landscaping; and provision of adequate lighting during all hours of darkness that Tenant shall be open for business.

As used in this Article, the term “repair” or “repairing” shall include maintenance (including cleaning), repair, and replacement.

(b) Commencing as of the Date of Rent Commencement, Tenant shall pay Landlord for the maintenance costs incurred by Landlord from and after the Date of Rent Commencement in fulfilling Landlord’s obligations under subdivision (a) above; and for no other costs. The foregoing notwithstanding, Tenant shall not pay Landlord for any costs incurred by Landlord in connection with any capital expenditures or capital improvements made by Landlord, such as repaving or replacing the parking areas, except as follows: if, after obtaining Tenant’s consent to do so, Landlord shall repave or replace the parking areas, then Tenant agrees to pay the amortization costs thereof, over the useful life thereof, provided that: (i) Tenant shall do so only one time during the “useful life” (as defined below) of the improvement; and (ii) Tenant shall not so pay following the expiration or other termination of this Lease (in other words, for example, if Landlord shall replace the parking areas in year 8, and if such replacement shall have a 15 year useful life, and if the Term shall expire at the end of year 10, then Tenant shall pay its share of the annual amortization for years 8, 9, and 10 only (or a portion of year 8, as applicable.) If Tenant shall not consent to any request by Landlord to repave or replace the parking areas, then, Landlord shall not be obligated to perform same, and Landlord shall not be in default hereunder for failure to do so. Landlord shall repave or replace the parking areas at any time upon Tenant’s request to do so; and Tenant shall pay Landlord as set forth above. For the purposes hereof, useful life shall be determined as permitted under the Internal Revenue Code (including the regulations issued thereunder) in effect at the time of such repaving or replacing.

(c) Except for a 5% administrative fee on the charges (excluding electricity charges) payable by Tenant pursuant to this Article, Tenant shall not pay any management, administrative, accounting, data processing or audit fees.

(d) Tenant shall pay to Landlord, a monthly sum, as set forth herein, by the fifth day of each month and a pro rata sum for any partial month. For the first calendar year (or portion thereof) to occur during the Term, said monthly sum shall be as set forth in Section 24 of Part I. Said monthly sum may be adjusted once annually thereafter by Landlord to reflect any increased or decreased costs. Within 60 days after the end of each calendar year, and within 60 days after the expiration or termination of this Lease, Landlord shall submit to Tenant a statement of the maintenance costs for said calendar year or portion thereof, as applicable. If such a statement is not received by Tenant within 60 days after the end of any calendar year, Tenant shall be relieved of its obligation to make monthly payments hereunder until said statement is received from Landlord. Such statement shall contain detailed documentation including copies of receipted bills. If such statement indicates that the amount paid by Tenant on its account for said calendar year is less than actual costs for said calendar year, then Tenant shall pay the amount owing to Landlord within 30 days of receipt of such statement. If such statement shall indicate that Tenant has overpaid for said calendar year, then such overpayment shall be refunded, together with Landlord's annual statement, and the monthly payment due herein shall be proportionately reduced. For the first and last partial calendar year of the Term, Tenant will pay said costs for the entire year multiplied by a fraction, consisting of the number of days in the calendar year subsequent to the Date of Rent Commencement, or prior to the date of lease termination, as the case may be, and divided by 365.

(e) If Landlord shall fail to perform any of its obligations under this Article within 30 days after receipt of written notice from Tenant of the need therefor (except that no notice shall be required in the event of an emergency), then, Tenant may do so on Landlord's behalf.

TAXES -

34. (a) Landlord shall pay to all Tax authorities, all real estate taxes and all assessments which may be levied against the Premises (collectively, "Taxes").

(b) Commencing as of the Date of Rent Commencement, Tenant agrees to reimburse Landlord for all such Taxes levied against the Premises with respect to each tax fiscal year (or portion thereof) of the Term occurring after the Date of Rent Commencement. Tenant's obligation hereunder shall exclude: any assessment penalty added to the Taxes as a result of Landlord's failure to timely pay any such Taxes to the applicable governmental authority; and any Taxes payable over a period of more than one year, provided that Tenant shall pay the installments thereof due during the Term. At least 30 days prior to the commencement of the Term, Landlord shall submit to Tenant Landlord's estimate of Taxes for the first full tax fiscal year to occur during the Term.

(c) Any sum payable to Landlord under this Article shall be paid by Tenant within 30 days after receipt from Landlord of demand therefor, accompanied by copies of receipted Tax bills.

(d) At Tenant's sole cost, Tenant may contest (including seeking an abatement or reduction of) any Taxes agreed to be paid hereunder; provided that Tenant first shall satisfy any requirements of Laws, including, if required, that the Taxes be paid in full before being contested. At Tenant's sole cost, Landlord shall assist Tenant as reasonably necessary with respect to any such contest, including joining in and signing applications or pleadings. Any rebate received shall belong to Tenant.

(e) If Tenant shall become aware that the Premises is being sold at a tax sale due to Landlord's delinquent payment of Taxes, and if Tenant shall pay the delinquent Taxes in order to prevent such sale, then, Tenant may deduct the following amounts from rent and other charges due hereunder: an amount equal to the Taxes, interest, and penalties so paid by Tenant; all reasonable charges (including reasonable attorneys fees) incurred by Tenant in preventing such sale; and interest on all of the foregoing at the rate of 10% per annum.

(f) Notwithstanding anything to the contrary in this Article, if Landlord shall fail to bill Tenant for any Taxes within 24 months from the date the applicable Tax bill is issued, then Tenant shall not be obligated to pay Landlord for such Taxes.

(g) Tenant agrees to pay to all Tax authorities all personal property taxes which may be levied against Tenant's merchandise, trade fixtures, and other personal property in and about the Premises.

INSURANCE -

35. (a) Landlord shall maintain All-Risk insurance for the Building for at least 90% of its reasonable replacement value. Said All-Risk policy shall not exclude flood coverage if the Premises is located in a Flood Zone A or V, and shall not exclude earthquake coverage. Landlord warrants and agrees that all proceeds received from such insurance shall be used in the first instance in accordance with Landlord's obligations under Article 13 hereof. Landlord also shall maintain General Liability coverage, including Broad Form Endorsement, on an occurrence basis; in combined policy limits of not less than \$2,000,000.00 and not in excess of \$5,000,000.00 per occurrence for bodily injury and for property damage with respect to the Premises.

Commencing as of the commencement of the Term, Tenant shall pay to Landlord the cost of the insurance required to be maintained hereunder during the Term. In addition, if Landlord shall elect to carry rental value insurance for the Premises, Tenant shall pay Landlord for same, in limits of up to 12 months' worth of rent and other charges due to Landlord hereunder. Any sum payable to Landlord hereunder shall be paid by Tenant within 30 days after receipt from Landlord of demand therefor, but not more than once annually. Any such demand shall be

accompanied by: copies of receipted insurance bills; copies of the declaration pages of the applicable policies, with determinations of premium allocations, and any endorsements and exclusions; and by a certificate of all of Landlord's insurance; and such certificate shall name Tenant as an additional insured with respect to Landlord's General Liability policy. Landlord agrees to send to Tenant Landlord's estimate of the annual insurance expense hereunder at least 30 days prior to the commencement of the Term.

If Landlord shall receive a credit for any amount of the insurance premium paid by Landlord for the insurance required or permitted hereunder, then Landlord shall notify Tenant of such credit within 15 days after its receipt; and said amount shall be credited to Tenant for the next succeeding insurance payment required to be paid by Tenant hereunder, except that, at the expiration or termination of the Term, said amount will be refunded to Tenant.

At Tenant's election, Landlord shall obtain all of the insurance described in this subdivision (a) from an insurer designated by Tenant. If Tenant shall make such designation, then, the foregoing notwithstanding, Tenant shall pay such insurer directly.

(b) (i) Notwithstanding subdivision (a) above, at Tenant's sole cost, Tenant may elect to maintain, instead of Landlord and on behalf of Landlord, the All-Risk insurance and/or General Liability insurance described above. If Tenant shall make such election, then: Tenant shall give Landlord 30 days' prior written notice of the effective date of Tenant's insurance; as a rider to such All-Risk insurance, Tenant shall obtain rental value insurance for the Premises, in limits of 12 months' worth of rent and other charges due to Landlord hereunder; Tenant shall not be obligated to pay Landlord for any cost of Landlord's All-Risk or General Liability insurance, which cost is attributable to the period following the effective date of Tenant's insurance (and Landlord promptly shall refund to Tenant any such sums pre-paid by Tenant).

Any insurance maintained by Tenant pursuant to this subdivision (b) shall name Landlord as named insured and Tenant as an additional insured. Upon Landlord's request, Tenant shall deliver to Landlord a certificate of such insurance.

Landlord warrants and agrees that all proceeds received from such All-Risk insurance shall be used in the first instance in accordance with Landlord's obligations under Article 13 hereof.

Tenant may cease to carry insurance pursuant to this subdivision (b) upon at least 30 days prior written notice to Landlord. If Tenant shall so cease, then Landlord shall be obligated to maintain insurance pursuant to subdivision (a) above, so that there shall be no lapse in coverage; and Tenant will pay Landlord pursuant to said subdivision (a).

(ii) Tenant may carry such All-Risk and General Liability insurance by way of a Business Owners Policy ("BOP"), or any equivalent thereof.

Tenant may carry such All-Risk and/or General Liability insurance through blanket insurance covering the Premises and other locations of Tenant and/or of Tenant's affiliates; provided that such blanket insurance policy specifically designates the Premises and allocates specific coverage limits to the Premises as required hereunder, which shall not be reduced by claims as to other property covered by such blanket policy.

(c) Tenant shall maintain General Liability insurance, with combined policy limits of at least \$2,000,000.00 per occurrence for bodily injury and for property damage with respect to the Premises. Such insurance shall name Tenant as the named insured and Landlord as an additional insured. Upon Landlord's request, Tenant shall deliver to Landlord a certificate of such insurance.

(d) All insurance coverage required to be carried hereunder: shall be carried with insurance companies licensed to do business in the state in which the Premises is located; shall be rated in the then-most current Best's Insurance Guide (or any successor thereto) as having a general policyholder rating of A- or better and a financial rating of "VIII" or better; and shall require the insured's insurance carrier to notify the other party hereto at least 30 days prior to any cancellation or material modification of such insurance.

(e) Upon the request of either party, provided that such request shall be commercially reasonable, the other party shall: increase the limits of insurance carried by it pursuant hereto; and carry types of insurance in addition to the types required to be carried by it pursuant hereto.

TENANT'S AUDIT RIGHTS -

36. Tenant may audit Landlord's maintenance charges, Tax charges and insurance charges, but not more than once annually. Access to Landlord's records shall be provided to Tenant within 30 days after Tenant's request therefor. If such access is not provided, Tenant shall be relieved of its obligation to pay such charges until access is provided. Landlord agrees to maintain its maintenance, Tax and insurance records for at least 36 months from the date of each applicable invoice to Tenant. If any audit shall indicate that, in any of Landlord's statements, the charges were overstated by Landlord by an amount in excess of 3% of the actual costs, then Landlord shall pay to Tenant the reasonable cost of such audit, plus interest on the overstated amount at the rate of 10% per annum. In any event, Landlord shall repay any amount owing to Tenant as a result of any overstatement.

LANDLORD'S TITLE -

37. Landlord warrants and covenants that [,from and after the date on which Landlord shall tender delivery of possession of the Premises to Tenant, Landlord will have] [Landlord has] good and clear record and marketable title to the Premises, in fee simple absolute, free of liens and encumbrances (excluding mortgages). Landlord also warrants and covenants that: there are no restrictive covenants or other agreements, and no zoning or other Laws, and no other legal impediment, any of which would prevent Tenant from occupying the Premises for the purposes herein provided, or prevent the full use of the parking areas as herein set forth, or otherwise prevent the Premises from being developed in accordance with the layout shown on Exhibit A; and Landlord shall not enter into any restrictive covenants or other agreements, which would prevent Tenant from occupying the Premises for the purposes herein provided, or prevent the full use of the parking areas as herein set forth, or otherwise prevent the Premises from being developed in accordance with the layout shown on Exhibit A.

Landlord warrants and represents to Tenant that, on the date of delivery of possession of the Premises to Tenant, to the best of Landlord's knowledge, the Premises shall be free of all violations, orders, or notices of violations of Laws.

QUIET ENJOYMENT -

38. Landlord warrants and agrees that Tenant, on paying the rent and other charges due hereunder and performing all of Tenant's other obligations pursuant to this Lease, shall and may peaceably and quietly have, hold, and enjoy the Premises for the full Term, free from molestation, eviction, or disturbance by Landlord or by any other person(s) lawfully claiming to be the same.

EQUAL EMPLOYMENT OPPORTUNITY -

39. Tenant is an equal employment opportunity employer and is a federal contractor. Consequently, the parties agree that they will comply with Executive Order 11246, the Vietnam Era Veterans' Readjustment Assistance Act of 1974 and the Vocational Rehabilitation Act of 1973, if applicable, and also that these laws are incorporated herein by this reference.

The parties also agree that they will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, or any other characteristic protected by federal, state or local law.

BROKER -

40. Landlord and Tenant each represent and warrant that it has had no dealings or conversations with any real estate broker in connection with the negotiation and execution of this Lease, other than the Broker(s) named in Section 23 of Part I. Landlord and Tenant each agree to defend, indemnify and hold harmless the other against all liabilities arising from any claim of any other real estate brokers, including cost of counsel fees, resulting from their respective acts. Landlord warrants and agrees that it shall be solely responsible for any and all brokerage commissions owing to said Broker(s), as a result of the negotiation and execution of this Lease.

DISPUTES -

41. If any dispute shall arise as to any amount of money to be paid by one party to the other under this Lease, the party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest", and such payment shall not be regarded as a voluntary payment, and there shall survive the right on the part of said party to institute suit for the recovery of such sum. If it shall be judged that there was no legal obligation on the part of said party to pay such sum or any part thereof, said party shall be entitled to recover such sum(s), or so much thereof as it was not legally required to pay under this Lease, together with interest at the rate of 10% per annum. If any dispute shall arise between the parties hereto as to any work to be performed by either of them under this Lease, the party against whom the obligation to perform the work is asserted may perform such work and pay the cost thereof "under protest", and the performance of such work shall not be regarded as a voluntary performance, and there shall survive the right on the part of said party to institute suit for recovery of the cost of such work, and it shall be entitled to recover the cost of such work, or the cost of so much thereof, as said party was not legally required to perform under this Lease, together with interest at the rate of 10% per annum.

42. Intentionally omitted.

TRANSFER OF TITLE -

43. In the event of any transfer(s) of the title to the Premises, Landlord (and in the case of any subsequent transfer, the then-grantor) automatically shall be relieved from and after the date of such transfer, of all liability with respect to the performance of any obligations on the part of said Landlord contained in this Lease thereafter to be performed; provided that any amount then due and payable to Tenant by Landlord (or the then-grantor), and any other obligation then to be performed by Landlord (or the then-grantor) under this Lease, either shall be paid or performed by Landlord (or the then-grantor) or such payment or performance assumed by the transferee; it being intended hereby that the covenants, conditions and agreements contained in this Lease on the part of

Landlord shall, subject to the foregoing, be binding on Landlord, its successors and assigns, only during and with respect to their respective successive period of ownership.

NO CONTINUOUS OPERATION -

44. Anything in this Lease, express or implied, to the contrary notwithstanding (including without limitation, Tenant's obligation to pay Percentage Rent pursuant to Article 6), Landlord agrees that Tenant shall be under no duty or obligation, either express or implied, to open, or thereafter to continuously conduct, its business in the Premises at any time during the Term.

If Tenant shall cease to operate its business in the Premises for more than 60 consecutive days, Landlord shall have the right, at any time thereafter, for as long as Tenant's cessation to operate is still in effect, to terminate this Lease by giving Tenant 30 days' written notice of such election, and this Lease shall so terminate, unless Tenant has reopened the Premises for business during such 30 day period. For the purpose of this paragraph, Tenant shall not be deemed to have ceased operating its business in the Premises if Tenant is closed temporarily for remodeling or due to any fire or casualty, or if Tenant is closed due to strike, lockout, inability to obtain merchandise or any other cause beyond the reasonable control of Tenant.

HAZARDOUS MATERIALS -

45. (a) For the purposes hereof, the term "Hazardous Materials" shall include, without limitation, substances defined as "hazardous substances", "hazardous materials", or "toxic substances" in any Laws.

(b) Tenant represents and warrants that, except as herein set forth, it will not use, store or dispose of any Hazardous Materials in the Premises. Landlord agrees that Tenant may sell household and automotive cleaners and other chemicals (including motor oil) in standard retail containers as are commonly sold by supermarkets, discount stores, and/or drugstores. Additionally, Landlord agrees that Tenant may use such household cleaners and chemicals to maintain the Premises, and additional chemicals to perform on-site photo-processing. Storage of such chemicals is also permitted. Landlord and Tenant acknowledge that any or all of the cleaners and chemicals described in this paragraph may constitute Hazardous Materials. However, Tenant may sell, use, store and dispose of same as herein set forth, provided that in doing so, Tenant complies with Laws. For the purposes of subdivisions (c) through (g) of this Article, the term "Hazardous Materials" shall exclude the Hazardous Materials permitted in this paragraph.

(c) Landlord represents and warrants to Tenant that, as of the date on which Landlord shall deliver possession of the Premises to Tenant, the Premises shall be free from contamination by Hazardous Materials. Notwithstanding anything in this Lease to the contrary, Tenant shall not

be obligated to accept possession of the Premises until any Hazardous Materials found in or on the Premises have been removed, and Landlord has supplied Tenant with a certificate from the appropriate governmental authority that such removal has been completed, and Landlord has restored the Premises to the condition which existed immediately prior to such removal.

(d) If, at any time during the Term, Hazardous Materials shall be found in or on the Premises, then:

(i) with regard to any Hazardous Materials that Tenant shall not have caused, Landlord shall remove or remediate same to the extent required by Laws, and in compliance with Laws, and at Landlord's sole cost; and Landlord agrees to defend, indemnify, and hold each of Tenant and Guarantor harmless from and against any and all costs, damages, expenses, and/or liabilities (including reasonable attorneys' fees) which each of Tenant or Guarantor may suffer as a result of any claim, suit, or action regarding any such Hazardous Materials (whether alleged or real), and/or regarding the removal and remediation of same.

(ii) with regard to any Hazardous Materials caused by Tenant, Tenant shall remove or remediate same to the extent required by Laws, and in compliance with Laws, and at Tenant's sole cost; and Tenant agrees to defend, indemnify and hold Landlord harmless from and against any and all costs, damages, expenses, and/or liabilities (including reasonable attorneys' fees) which Landlord may suffer as a result of any claim, suit, or action regarding any such Hazardous Materials (whether alleged or real), and/or regarding the removal and remediation of same.

(e) If, prior to the Date of Rent Commencement, any Hazardous Materials are found in or on the Premises, and, as a result thereof, Tenant is prevented from doing its work in the Premises or from opening for business, then, notwithstanding anything to the contrary herein, the Date of Rent Commencement will be delayed for a number of days equal to the number of days that Tenant is delayed from opening for business in the Premises, subject to the other provisions of this Lease. If the Date of Rent Commencement shall be so delayed for 6 months, then, at any time thereafter until such delay shall cease, Tenant may terminate this Lease upon 15 days' prior notice to Landlord.

(f) If, on or after the Date of Rent Commencement, Tenant is prevented from operating its business as a result of the existence of such Hazardous Materials not caused by Tenant, then, Tenant's rent and all other charges due hereunder shall abate, until Tenant is able to resume the operation of its business, subject to the other provisions of this Lease. If Tenant's rent and other charges shall be so abated for 6 months, then, at any time thereafter until such abatement shall cease, Tenant may terminate this Lease upon 15 days' prior notice to Landlord.

(g) Each of Landlord's and Tenant's obligations pursuant to this Article shall survive any expiration and/or termination of this Lease.

TENANT'S INDEMNITY -

46. Except to the extent that such liability is caused by the negligence or tortious act or omission of Landlord, its agents, contractors, or employees, and subject to Article 12, Tenant shall defend, indemnify and hold Landlord harmless from all costs, expenses, claims or demands of whatever nature arising from the following:

(i) any willful, negligent or tortious act or omission on the part of Tenant, its agents, contractors, or employees; or

(ii) any failure on the part of Tenant to perform or comply with any of the covenants, agreements, terms, provisions, conditions or limitations contained in this Lease on its part to be performed or complied with.

In case any action or proceeding is brought against Landlord by reason of any such claim, Tenant, upon written notice from Landlord, shall, at Tenant's expense, resist or defend such action or proceeding.

LANDLORD'S INDEMNITY -

47. Except to the extent that such liability is caused by the negligence or tortious act or omission of Tenant, its agents, contractors or employees, and subject to Article 12, Landlord shall defend, indemnify and hold Tenant harmless from all costs, expenses, claims or demands of whatever nature arising from the following:

(i) any willful, negligent or tortious act or omission on the part of Landlord, its agents, contractors, or employees; or

(ii) any failure on the part of Landlord to perform or comply with any of the covenants, agreements, terms, provisions, conditions or limitations contained in this Lease on its part to be performed or complied with.

In case any action or proceeding is brought against Tenant by reason of any such claim, Landlord, upon written notice from Tenant, shall, at Landlord's expense, resist or defend such action or proceeding.

ESTOPPEL CERTIFICATE -

48. Landlord and Tenant agree to deliver to each other, from time to time as reasonably requested in writing, and within a reasonable period of time after receipt of such request, an estoppel certificate certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications), and the dates to which any rent due hereunder has been paid in advance, if any, together with such other information as Landlord or Tenant may reasonably require with respect to the status of the Lease and Tenant's use and occupancy of the Premises.

NOTICE OF LEASE -

49. Upon the request of either party hereto, Landlord and Tenant agree to execute a short form Notice of Lease in recordable form, setting forth information regarding this Lease, including, if available, the dates of commencement and expiration of the Term and the Date of Rent Commencement. Upon Tenant's request, Landlord shall record such Notice of Lease. As used herein, the term "Notice of Lease" shall mean a short form notice of lease, or declaration or similar document suitable to protecting Tenant's interest hereunder.

MISCELLANEOUS -

50. (a) This Lease shall be governed and construed in accordance with the laws of the state in which the Premises is located.

(b) The headings of the Sections of Part I, and of the Articles of Part II, are for convenient reference only, and are not to be construed as part of this Lease.

(c) The language of this Lease shall be construed according to its plain meaning, and not strictly for or against Landlord or Tenant; and the construction of this Lease and of any of its provisions shall be unaffected by any argument or claim that this Lease has been prepared, wholly or in substantial part, by or on behalf of Tenant.

(d) Landlord and Tenant each warrant and represent to the other, that each has full right to enter into this Lease and that there are no impediments, contractual or otherwise, to full performance hereunder.

(e) This Lease shall be binding upon the parties hereto and shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors and assigns of Landlord and the successors and assigns of Tenant.

(f) In the event of any suit, action, or other proceeding at law or in equity (collectively, "action"), by either party hereto against the other, by reason of any matter arising out of this Lease, the prevailing party shall recover, not only its legal costs, but also reasonable attorneys' fees (to be fixed by the Court) for the maintenance or defense of said action, as the case may be.

(g) A waiver by either party of any breach(es) by the other of any one or more of the covenants, agreements, or conditions of this Lease, shall not bar the enforcement of any rights or remedies for any subsequent breach of any of the same or other covenants, agreements, or conditions.

(h) This Lease and the referenced exhibits set forth the entire agreement between the parties hereto and may not be changed or terminated orally or by any agreement unless such agreement shall be in writing and signed by the party against whom enforcement of such change or termination is sought.

(i) If any provision of this Lease or the application thereof to any persons or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease or the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby, and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

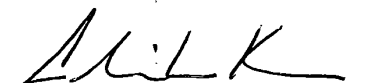
(j) The submission of this Lease for examination does not constitute a reservation of or agreement to lease the Premises; and this Lease shall become effective and binding only upon proper execution and unconditional delivery thereof by Landlord and Tenant.

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Lease on the day and year first above written.

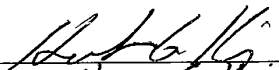
LANDLORD:

KINPIN PARTNERSHIP

WITNESS:



WITNESS

BY: 
NAME: HERB G. PINB
TITLE: MANAGING PARTNER

TENANT:

REVCO DISCOUNT DRUG CENTERS, INC.

ATTEST:


ASSISTANT SECRETARY

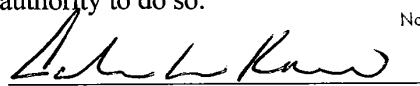
BY: 
~~FRANCIS J. HALL~~ PETER F
VICE PRESIDENT

CVS LEGAL APPROVAL: 

STATE OF SOUTH CAROLINA)COUNTY OF BEAUFORT)

On this 7th day of MAY, 1998, before me personally appeared HERB G. KING, personally known by me, who, being by me duly sworn, did depose and say that he/she resides at 26 THE VILLAGE AT WEXFORD HAZ, SC, and that he/she is THE MANAGING PARTNER of KEN PZ'S PARTNERSHIP, the PARTNERSHIP described in this instrument and that he/she executed this instrument on behalf of said PARTNERSHIP and that he/she had authority to do so.

Notary Public, South Carolina
My Commission Expires 1, 2001


NOTARY PUBLIC

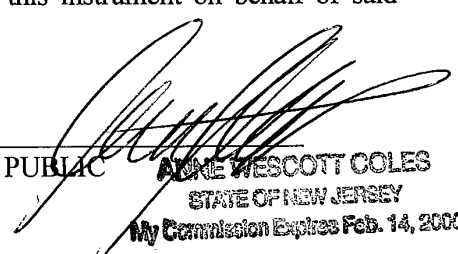
STATE OF RHODE ISLAND)

COUNTY OF PROVIDENCE)

On this 20th day of May, 1998, before me personally appeared Francis J. Hall, personally known by me, who, being by me duly sworn, did depose and say that he resides at Warrington, Rhode Island and that he is Vice President of Revco Discount Drug Centers, Inc., the corporation described in this instrument and that he executed this instrument on behalf of said corporation and that he had authority to do so.

Peter F. Rec 210

NOTARY PUBLIC


ADRIENNE WESCOTT COLES
STATE OF NEW JERSEY
My Commission Expires Feb. 14, 2000

GUARANTY

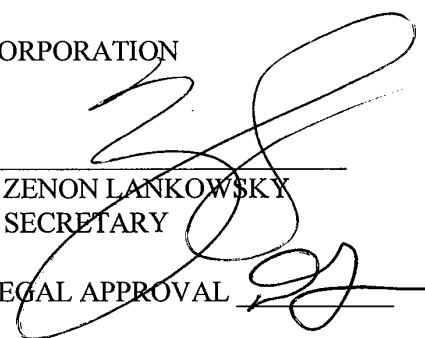
IN CONSIDERATION of the execution and delivery of the attached Lease by and between KINPIN PARTNERSHIP, as Landlord, and REVCO DISCOUNT DRUG CENTERS, INC., as Tenant, the undersigned, CVS CORPORATION ("Guarantor"), a Delaware corporation, having its office at One CVS Drive, Woonsocket, Rhode Island 02895, hereby guarantees to Landlord, its successors and assigns, the payment of the rent (including additional rent) reserved in the within Lease and the performance by Tenant of its covenants and agreements therein contained. Guarantor hereby expressly waives notice of all defaults, and hereby waives all suretyship defenses. Guarantor agrees that the waiver of any rights by Landlord against Tenant arising out of defaults by Tenant, shall not in any way modify or release the obligations of Guarantor.

This Guaranty shall be binding upon the Lease and upon all amendments and modifications thereto, except as set forth in the Lease or in any such amendment or modification; and except that Guarantor shall not be liable for any increase in Tenant's obligations under the Lease, which increase shall occur following any assignment of the Lease by the Tenant named in Part I thereof. This Guaranty shall inure to the benefit of the Landlord, and its heirs, legal representatives, successors and assigns; and shall be binding on the Guarantor and its successors and assigns.

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be executed by its duly authorized officers and its corporate seal to be hereunto affixed, at Woonsocket, Rhode Island, this 11 day of May, 1998.

GUARANTOR:

CVS CORPORATION

BY: 

ZENON LANKOWSKY
SECRETARY

CVS LEGAL APPROVAL 



CVS/pharmacy



RECEIVED
JUL 28 1998
LEGAL DEPT.

✓
ELECTRONICALLY FILED - 2020 Feb 07 1:03 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700155

July 20, 1998

Mr. Herb King
KINPIN Partnership
C-6 Village at Wexford
Hilton Head, SC 29928

Re: Revco Discount Drug Centers, Inc. Store No. 5566-2
Hilton Head, South Carolina

Dear Mr. King:

Enclosed please find four (4) copies of the First Lease Amendment for the above-noted store which have been signed on behalf of CVS. Please sign all documents where indicated and return two (2) fully executed originals to my attention at your earliest convenience.

If you have any questions regarding the enclosed, please do not hesitate to call me.

Very truly yours,

Kelly A. Durning
Senior Legal Assistant

enclosures

*Kelly -
Thanks for your help
Hut/K*

cc: Sue Harrod (w/enc.)

Amendment
7/14/98

Store #5566-2

FIRST LEASE AMENDMENT

This First Lease Amendment dated this 23rd day of July, 1998 by and between KINPIN Partnership, with a place of business of C-6 Village at Wexford, Hilton Head, South Carolina 29928 ("Landlord") Revco Discount Drug Centers, Inc., with a place of business of One CVS Drive, Woonsocket, Rhode Island 02895 ("Tenant").

WITNESSETH:

WHEREAS, Landlord and Tenant entered into a certain Agreement dated May 7, 1998 (hereinafter collectively referred to as the "Lease") for premises located at Pope Avenue Urgent Care Center, Hilton Head Island, South Carolina (the "Premises"); and

WHEREAS, Landlord and Tenant desire that the Premises be built pursuant to plans and specifications provided by CVS Corporation and to revise the Fixed Rent and Percentage Rent specified in the Lease and to amend the Lease in certain other respects, all as more fully hereinafter set forth.

NOW, THEREFORE, for and in consideration of the Premises and the mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration, Landlord and Tenant agree that the Lease is hereby amended as follows:

1. The Fixed Rent specified in Article 15 of the Lease is deleted and there is substituted therefore the following:

<u>PERIOD</u>	<u>ANNUAL FIXED RENT</u>	<u>MONTHLY INSTALLMENT</u>
First 60 months from Rent Commencement	\$222,750.00	\$18,562.50
Next 60 months	\$233,887.50	\$19,490.63
Next 60 months	\$245,581.88	\$20,465.16

Next 60 months and to end of initial term	\$257,860.97	\$21,488.41
First Option Period	\$257,860.97	\$21,488.41
Second Option Period	\$257,860.97	\$21,488.41
Third Option Period	\$257,860.97	\$21,488.41
Fourth Option Period	\$257,860.97	\$21,488.41

2. The Percentage Rent specified in Article 16 of the Lease is deleted and there is substituted therefore the following:

<u>PERIOD</u>	<u>BREAKPOINT</u>	<u>PERCENTAGE RENT RATE</u>
First 60 months	\$11,137,500.00	2.00%
Next 60 months	\$11,694,375.00	2.00%
Next 60 months	\$12,279,093.75	2.00%
Next 60 months and to end of initial term	\$12,893,048.44	2.00%
First Option Period	\$12,893,048.44	2.00%
Second Option Period	\$12,893,048.44	2.00%
Third Option Period	\$12,893,048.44	2.00%
Fourth Option Period	\$12,893,048.44	2.00%

3. Article 21 is hereby revised to extend the Outside Delivery Date of Premises to April 15, 1999.

Except as expressly amended or modified therefore or by this First Lease Amendment, the Lease shall continue in full force and effect.

This First Lease Amendment shall be binding upon and inure to the benefit of the parties hereto, their respective successors and assigns and if applicable in the case of the Landlord, their heirs and personal representatives.

IN WITNESS WHEREOF, Landlord and Tenant have caused this First Lease Amendment to be executed as of the date and year first hereinabove written.

IN THE PRESENCE OF:

[Signature]

[Signature]

LANDLORD:

KINPIN PARTNERSHIP

By: [Signature]

Name: HONG G. KIN

Title: MANAGING PARTNER

TENANT:

REVCO DISCOUNT DRUG CENTERS, INC.

[Signature]

[Signature]

By: [Signature]

Francis J. Hall

Vice President

CVS Legal Approval [Signature]

ELECTRONICALLY FILED - 2020 Feb 07 1:03 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700155

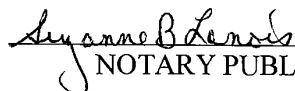
STATE OF South Carolina)
COUNTY OF Beaufort) ss:

On this 23rd day of July, 1998, before me personally appeared HERB G. KZUB, personally known by me, who, being by me duly sworn, did depose and say that he/she resides at 26 The Villages at Wexford Htz, SC, and that he/she is MANAGING Partner/LAWYER of KZUB Partnership, the MANAGING Partner/LAWYER described in this instrument and that he/she executed this instrument on behalf of said KZUB Partnership and that he/she had authority to do so.


NOTARY PUBLIC
Notary Public, South Carolina State at Large
My Commission Expires July 1, 2002

STATE OF RHODE ISLAND)
COUNTY OF PROVIDENCE) ss:

On this 20 day of July, 1998, before me personally appeared Francis J. Hall, personally known by me, who, being by me duly sworn, did depose and say that he resides at Narragansett, Rhode Island; and that he is Vice President of Revco Discount Drug Centers, Inc., the corporation described in this instrument and that he executed this instrument on behalf of said corporation and that he had authority to do so.


NOTARY PUBLIC

SUZANNE B. LANOIS
Notary Public State of Rhode Island
My Commission Expires 12-11-0



From: Pari, BRENDA J BRENDA.Pari@CVSHealth.com
Subject: RE: Store #5566 request for flood insurance reimbursement
Date: September 17, 2019 at 9:03 AM
To: Stefan Cap stefan.cap@hotmail.com

BP

Hello Stephan,

Please check with your Lease Administrator on your renewal options.

When it is renewed, please submit your invoice again for reimbursement from February 1, 2020 to August 20, 2020.

Feel free to contact me if you have any questions regarding [this email](#). All other questions, please direct to the appropriate email address listed below.

Thank you
Brenda



| Brenda Pari | Sr. Assistant, Accounting Retail | Occupancy Expense MC 2320 | One CVS Drive | Woonsocket | RI |
02895 | Phone: (401) 770-6718 | Fax: (401) 652-9472 |

If you are emailing regarding the following matters, you may email the following teams directly:

Building Repairs & Maintenance: Landlord_Administration_Group@CVScaremark.com
Rent Check/Payment Questions: Storeaccounting@CVScaremark.com
CAM/Ins, Trash, Condo/Utility Questions: CVS_CAM/INS@CVScaremark.com
Real Estate Taxes: CVS_RealEstatetax@CVScaremark.com
Estoppel/SNDA Requests: lease_admin_snda@CVScaremark.com
Certificate of Insurance Requests: Certificate_Requests@CVScaremark.com
Lease Admin or Prop. Mgmt Questions: lease_admin_promgt@CVScaremark.com

CONFIDENTIALITY NOTICE: This communication and any attachments may contain confidential and/or privileged information for the use of the designated recipients named above. If you are not the intended recipient, you are hereby notified that you have received this communication in error and that any review, disclosure, dissemination, distribution or copying of it or its contents is prohibited. If you have received this communication in error, please notify the sender immediately by email or telephone and destroy all copies of this communication and any attachments.

From: Stefan Cap [<mailto:stefan.cap@hotmail.com>]
Sent: Tuesday, September 17, 2019 9:01 AM
To: Pari, BRENDA J <BRENDA.Pari@CVSHealth.com>
Subject: [EXTERNAL] Re: Store #5566 request for flood insurance reimbursement

Hi Brenda, will this location not be renewed? Thanks.

Best Regards,

Stefan

On Sep 17, 2019, at 8:48 AM, Pari, BRENDA J
<BRENDA.Pari@CVSHealth.com> wrote:

Hello Stefan,

ROA 000257

ELECTRONICALLY FILED - 2020 Feb 07 1:03 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700155

I have reviewed and processed your Flood Insurance invoice with the policy period from August 20, 2019 to August 20, 2020 in which you are looking for a payment due of \$4,514.00.

Please note that upon my review of this location, the Lease is set to expire on January 31, 2020. Therefore, your invoice was pro-rated from August 20, 2019 to January 31, 2020 as follows:

Total Flood Insurance of \$4,514.00 / 365 = \$12.37 x 165 days (Aug 20, 2019 to Jan 31, 2020) = \$2,040.58

I have scheduled a check in the amount of \$2,040.58 for September 19, 2019. Please adjust our account accordingly.

Feel free to contact me if you have any questions regarding this email. All other questions, please direct to the appropriate email address listed below.

Thank you
Brenda

<image001.png>

| Brenda Pari | Sr. Assistant, Accounting Retail | Occupancy Expense MC 2320 | One CVS
Drive | Woonsocket | RI | 02895 | Phone: (401) 770-6718 | Fax: (401) 652-9472 |

If you are emailing regarding the following matters, you may email the following teams directly:

Building Repairs & Maintenance	Landlord_Administration_Group@CVScaremark.com
Rent Check/Payment Questions:	Storeaccounting@CVScaremark.com
CAM/Ins, Trash, Condo/Utility Questions:	CVS_CAM/INS@CVScaremark.com
Real Estate Taxes:	CVS_RealEstatetax@CVScaremark.com
Estoppel/SNDA Requests:	lease_admin_snda@CVScaremark.com
Certificate of Insurance Requests:	Certificate_Requests@CVScaremark.com
Lease Admin or Prop. Mgmt Questions:	lease_admin_propmgt@CVScaremark.com

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-----Original Message-----

From: Stefan Cap [<mailto:stefan.cap@hotmail.com>]

Sent: Sunday, June 23, 2019 9:38 PM

To: CAM, INS, Utilities <CVS_CAM/INS@CVScaremark.com>

Subject: [EXTERNAL] Store #5566 request for flood insurance reimbursement

Please see the attached request for reimbursement for the 2019 flood insurance premium for store #5566. Thanks.

<CVS Store 5566 6.23.2019 Flood Insurance KPP Hilton Head LLC.PDF>

From: **Capone, Mary Kay** MaryKay.Capone@CVSCaremark.com
Subject: RE: Phone Number Change CVS Store #3826
Date: April 4, 2016 at 8:52 AM
To: Stefan Cap stefan.cap@hotmail.com

Hi Stefan,

Thanks for getting back to me about the repairs!

I've made a note of it in the work order and closed it out so we should be all set.

The letter you received unfortunately is not part of my department and I'm not sure of where to refer you. I would contact the number/email provided with any questions and they should be able to provide help in obtaining your insurance information. Thanks!

Regards,
Mary Kay

Mary Kay Capone | Target Support Coordinator, Retail Facilities
p 401-770-4641 | f 401-652-2367
CVS Health | One CVS Drive, Mail Code 1190, Woonsocket, RI 02895

From: Stefan Cap [<mailto:stefan.cap@hotmail.com>]
Sent: Sunday, April 03, 2016 8:35 PM
To: Capone, Mary Kay
Subject: RE: Phone Number Change CVS Store #3826

Hi Mary Kay, the 3 ballasts and lights were changed out on 3/30/2016 for store #3826, so all exterior lights are operational. I apologize again that it took so long for me to get back to you.

I received the attached letter in the mail over the weekend regarding store #3826 stating that we need to add our lender as a loss payee for the property insurance policy. CVS carries the property insurance and I do not have the contact information for the insurance agent. Do you by any chance have it? Thanks.

Best Regards,

Stefan

From: MaryKay.Capone@CVSCaremark.com
To: stefan.cap@hotmail.com
Date: Fri, 25 Mar 2016 10:36:08 -0400
Subject: RE: Phone Number Change CVS Store #3826

Hi Stefan,

Thanks for the info! I passed this along to Marta and it should be fully updated within the hour.

ROA 000259

Hope this helps and you have a terrific weekend as well.

Regards,
Mary Kay

Mary Kay Capone | Target Support Coordinator, Retail Facilities
p 401-770-4641 | f 401-652-2367
CVS Health | One CVS Drive, Mail Code 1190, Woonsocket, RI 02895

From: Stefan Cap [<mailto:stefan.cap@hotmail.com>]
Sent: Friday, March 25, 2016 10:04 AM
To: Capone, Mary Kay
Subject: RE: Phone Number Change CVS Store #3826

Hi Mary Kay,

It was a pleasure speaking with you as well. Many thanks for looking into that. My cell phone number would be the best number to use - 843-290-7341. Could you please make this effective for store #5566 (10 Pope Ave.) and #7333 (85 Mathews Dr.) as well? We still have the office line, but we let our secretary go in July, 2015 and I'm almost never in the office, so this will be the best way to get an immediate response. Have a great weekend! Thanks again.

Best Regards,

Stefan Cap
Principal Developers
PO Box 23169
Hilton Head Island, SC 29925-3169
843-290-7341 (phone)
843-689-5523 (facsimile)

From: MaryKay.Capone@CVSCaremark.com
To: stefan.cap@hotmail.com
Date: Fri, 25 Mar 2016 09:40:36 -0400
Subject: Phone Number Change CVS Store #3826
Hi Stefan,

It was a pleasure speaking with you today! I just wanted to let you know that I did speak with Marta part of your leasing team, and all you need to do is send me the new phone number and we will update it into our system. Thanks for your time today and have a pleasant weekend.

Regards,
Mary Kay

Mary Kay Capone | Target Support Coordinator, Retail Facilities
ROA 000260

Mary Kay Capone | Target Support Coordinator, Retail Pharmacies
p 401-770-4641 | f 401-652-2367
CVS Health | One CVS Drive, Mail Code 1190, Woonsocket, RI 02895

ELECTRONICALLY FILED - 2020 Feb 07 1:03 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700155



SR

From: Raymond, Shannon Shannon.Raymond@CVSCaremark.com
 Subject: RE: Store #5566, 10 Pope Avenue, Hilton Head Island, SC 29928
 Date: November 24, 2017 at 9:40 AM
 To: Stefan Cap stefan.cap@hotmail.com

I will have this updated; thank you.

Thank you,
 Shannon Raymond

Please note the new mailcode that needs to be included in all mailed correspondence

Shannon Raymond | CVS Health | Lease Administrator | 401-770-7018 | Fax 401-216-3351 | One CVS Drive, MC 1105, Woonsocket RI 02895 | Shannon.Raymond@CVSCaremark.com

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Our purpose: Helping people on their path to better health.

From: Stefan Cap [<mailto:stefan.cap@hotmail.com>]
 Sent: Wednesday, November 22, 2017 3:28 PM
 To: Raymond, Shannon <Shannon.Raymond@CVSCaremark.com>
 Subject: [EXTERNAL] Re: Store #5566, 10 Pope Avenue, Hilton Head Island, SC 29928

Please see the attached and let me know if you need anything further. Thanks.

On Nov 22, 2017, at 1:43 PM, Raymond, Shannon
 <Shannon.Raymond@CVSCaremark.com> wrote:

Can you please provide an updated contact list on company letterhead so that I may update our records?

Thank you,
 Shannon Raymond

<image001.jpg>

Please note the new mailcode that needs to be included in all mailed correspondence

Shannon Raymond | CVS Health | Lease Administrator | 401-770-7018 | Fax 401-216-3351 | One CVS Drive, MC 1105, Woonsocket RI 02895 | Shannon.Raymond@CVSCaremark.com

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<image002.gif>

<image003.png>

ROA 000262

From: Stefan Cap [<mailto:stefan.cap@hotmail.com>]
Sent: Wednesday, November 22, 2017 1:36 PM
To: Raymond, Shannon <Shannon.Raymond@CVSCaremark.com>
Subject: [EXTERNAL] Re: Store #5566, 10 Pope Avenue, Hilton Head Island, SC 29928

Good afternoon, I'm the property manager for KPP Hilton Head, LLC. Anita Fullam is no longer with the company. Thanks.

Sent from my iPhone

On Nov 22, 2017, at 1:31 PM, Raymond, Shannon
<Shannon.Raymond@CVSCaremark.com> wrote:

Good Afternoon Stefan,

Can you please advise your relationship to this location? I apologize, I did not see your information in our file.

Thank you,
Shannon Raymond

<image002.jpg>

Please note the new mailcode that needs to be included in all mailed correspondence

Shannon Raymond | [CVS Health](#) | Lease Administrator | 401-770-7018 | Fax 401-216-3351 | One CVS Drive, **MC 1105**, Woonsocket RI

02895 | Shannon.Raymond@CVSCaremark.com

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<image003.gif>

<image004.png>

From: Lease_Admin_PropMgt
Sent: Friday, November 17, 2017 10:02 AM
To: Raymond, Shannon <Shannon.Raymond@CVSCaremark.com>
Subject: FW: Store #5566, 10 Pope Avenue, Hilton Head Island, SC 29928

For you....

Thank you

Ree G. McGrath | Property Management / Lease Administrator
P 401-770-4154 | F 401-216-0684 | ree.mcgrath@cvshealth.com
<image005.png> | One CVS Drive, | MC 1105 | Woonsocket, RI 02895

*"Attitude is a paintbrush that colors every situation."
~ Barbara Johnson*

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-----Original Message-----

From: Stefan Cap [<mailto:stefan.cap@hotmail.com>]
Sent: Friday, November 17, 2017 9:27 AM
To: Lease_Admin_PropMgt
<Lease_Admin_PropMgt@CVSHealth.com>
Subject: [EXTERNAL] Store #5566, 10 Pope Avenue,
Hilton Head Island, SC 29928

I spoke to David, the store manager, regarding an inspector being able to take pictures of the interior of the building for the property insurance carrier and he refused to allow access without a fax from the corporate office stating that the insurance inspector will be allowed to take pictures of the interior of the building. Would you please take care of this? Below is the insurance inspector's contact info-

Brian 678-517-4093



SC

ELECTRONICALLY FILED - 2020 Feb 07 1:03 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700155

From: Stefan Cap stefan.cap@hotmail.com
Subject: Re: Re: [EXTERNAL] CVS Store #3826, Port Royal, SC
Date: October 24, 2018 at 1:59 PM
To: Costa, Michael W. Michael.Costa@CVSHealth.com

Ok thanks. I called them and they will be sending someone out ASAP.

Sent from my iPhone

On Oct 24, 2018, at 1:40 PM, Costa, Michael W. <Michael.Costa@CVSHealth.com> wrote:

Stefan,

The store is aware that your landscapers need access to the roof to clear the drains.

Thank you,
Mike

Sent from my iPhone

On Oct 24, 2018, at 1:30 PM, Stefan Cap <stefan.cap@hotmail.com> wrote:

Hi Mike, I wasn't sure if you were able to relay to the store manager that the landscapers need access to the roof. I'll send the landscapers there as soon as I know they are allowed up there, and will then get the roofer back up there to fix the leak around the drain after it's been cleaned off. Thanks.

Sent from my iPhone

On Oct 24, 2018, at 12:57 PM, Costa, Michael W. <Michael.Costa@CVSHealth.com> wrote:

Good afternoon Stefan,

I've forwarded this info on to lease admin to change the contact information.

Can you let me know when they will be checking the roof at 3826, the store states no one has been on site yet.

Thank you,
Mike

Mike Costa | Senior Regional Facilities Manager- NC,SC, GA and VA
Cell 828-435-1241|Fax 401-652-2215
One CVS Drive, Woonsocket RI 02895
Michael.Costa@CVSCaremark.com

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-----Original Message-----

From: Stefan Cap [<mailto:stefan.cap@hotmail.com>]
Sent: Thursday, October 11, 2018 1:28 PM
To: Costa, Michael W. <Michael.Costa@CVSHealth.com>
Subject: [EXTERNAL] CVS Store #3826, Port Royal, SC

Hi Mike,

Thanks for your time over the phone this afternoon.

Please find attached the letter changing the contact information for store numbers 5566, 7333, and 3826. The response time will be much quicker on our end if this request is processed.

Also, as I mentioned to you over the phone, the store manager at 3826 isn't allowing our landscapers onto the roof to clean off the debris, which is likely causing the issues with the gutters backing up and water leaks. I will instruct the landscapers to go back up there to clean off the roof debris once I hear back from you that they are permitted to go onto the roof.

ROA 000265

Please let me know if there are any other maintenance requests for any of these three stores that are still pending. Thanks.

Best Regards,

Stefan Cap
843-290-7341

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	
	)	CASE NO.: 2020-CP-07-00155
South Carolina CVS Pharmacy, L.L.C.,	)	
	)	
Plaintiff,	)	
	)	PLAINTIFF'S REPLY TO ANSWER AND
vs.	)	COUNTERCLAIM OF KPP HILTON
	)	HEAD, LLC
KPP Hilton Head, LLC,	)	
	)	
Defendant.	)	
	)	

Plaintiff and Counterclaim Defendant South Carolina CVS Pharmacy, L.L.C. ("Tenant") replies to the Answer and Counterclaim (the "Counterclaim") of Defendant KPP Hilton Head, LLC ("Landlord") as follows:

GENERAL DENIAL

Tenant denies each and every allegation of Landlord's Counterclaim that is not hereinafter specifically admitted, modified, or explained.

FOR A FIRST DEFENSE

1. Paragraphs 1 through 45 of the Answer portion of the Counterclaim, along with the five paragraphs setting forth Landlord's affirmative defenses, are in response to Tenant's Complaint and, therefore, do not require a response from Tenant. To the extent any response is required, Tenant denies the allegations set forth in Paragraphs 1 through 45 and the affirmative defenses in the Answer portion of the Counterclaim, insofar as such allegations or defenses are inconsistent with the allegations set forth in Tenant's Complaint.

2. Responding to Paragraph 1 of the Counterclaim, Tenant admits that Landlord is a South Carolina limited liability company. Tenant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained therein and, therefore, denies the same.

3. Tenant admits the allegations contained in Paragraph 2 of the Counterclaim.

4. Answering Paragraph 3 of the Counterclaim, Landlord states a legal conclusion for which no response is required. To the extent that Paragraph 3 could be interpreted to require a response, Tenant does not contest that this Court has jurisdiction or that venue is appropriate in this Court.

5. Tenant admits the allegations contained in Paragraph 4 of the Counterclaim.

6. Tenant admits the allegations contained in Paragraph 5 of the Counterclaim.

7. Answering Paragraph 6 of the Counterclaim, Tenant admits that it acquired the Lease from Revco Discount Drug Centers, Inc. Tenant further admits that the Lease had a 20-year initial term and provides Tenant with four renewal options, each for five-year terms at the rates specified in the First Amendment. Tenant denies all remaining allegations contained in Paragraph 6 of the Counterclaim inconsistent with the foregoing limited admissions.

8. Answering Paragraph 7 of the Counterclaim, Tenant craves reference to the Lease for the terms and conditions thereof and denies any allegations contained in Paragraph 7 of the Counterclaim inconsistent therewith.

9. Answering Paragraph 8 of the Counterclaim, Tenant lacks knowledge or information sufficient to form a belief as to the number of employees Landlord employs. Tenant knew that Principal Developers managed Landlord's property. Tenant denies the remaining allegations contained in Paragraph 8 of the Counterclaim inconsistent with the foregoing limited admission.

10. Answering Paragraph 9 of the Counterclaim, Tenant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

11. Tenant admits the allegations contained in Paragraph 10 of the Counterclaim.

12. Tenant admits the allegations set forth in Paragraph 11 of the Counterclaim.

13. Tenant denies the allegations set forth in Paragraph 12 of the Counterclaim.

14. Answering Paragraph 13 of the Counterclaim, Tenant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

15. Answering Paragraph 14 of the Counterclaim, Tenant admits that the hours of operation for its corporate office staff at its corporate headquarters are 8:30 a.m. to 5:00 p.m. Monday through Friday (excepting certain state and federal holidays). The remainder of Paragraph 13 of the Counterclaim sets forth a legal conclusion for which no response is required. To the extent a response is required, the allegations contained therein are denied.

16. Answering Paragraph 15 of the Counterclaim, Tenant specifically denies that Principal Developers and Landlord were not aware that Tenant wished to renew the Lease prior to November 6, 2019. Tenant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained within Paragraph 15 of the Counterclaim and, therefore, denies the same.

17. Tenant admits the allegations contained in Paragraph 16 of the Counterclaim.

18. Answering Paragraph 17 of the Counterclaim, Tenant admits that Stefan Cap informed Shannon Raymond by email dated November 22, 2017, that Anita Fullam was no longer with the company. Tenant denies the remaining allegations contained in Paragraph 17 of the Counterclaim that are inconsistent with the foregoing limited admission.

19. Answering Paragraph 18 of the Counterclaim, Tenant specifically admits that it sent a renewal letter regarding the Port Royal Store, which was dated October 10, 2019, on October 16, 2019; Landlord signed for the letter on October 21, 2019; and the letter was returned, having been executed by Landlord on October 22, 2019. The remainder of Paragraph 18 of the Counterclaim

sets forth a legal conclusion for which no response is required. To the extent a response is required, the allegations contained therein are denied.

20. Answering Paragraph 19 of the Counterclaim, Tenant craves reference to the Lease for the terms and conditions thereof and denies any allegations contained in Paragraph 19 of the Counterclaim inconsistent therewith.

21. Answering Paragraph 20 of the Counterclaim, Tenant craves reference to the Lease for the terms and conditions thereof and denies any allegations contained in Paragraph 20 of the Counterclaim inconsistent therewith.

22. Answering Paragraph 21 of the Counterclaim, Tenant lacks knowledge or information sufficient to form a belief as to the truth of the allegations therein and, therefore, denies the same.

23. Answering Paragraph 22 of the Counterclaim, Tenant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

24. Answering Paragraph 23 of the Counterclaim, Tenant admits that Fixed Rent of \$21,488.41 per month is to continue for the duration of the five-year renewal term. Tenant specifically denies that Tenant did not comply with the notice requirements of the Lease. Tenant denies the remaining allegations contained in Paragraph 23 of the Counterclaim that are inconsistent with the foregoing limited admission.

25. Answering Paragraph 24 of the Counterclaim, Tenant craves reference to the Lease for the terms and conditions thereof and denies any allegations contained in Paragraph 24 of the Counterclaim inconsistent therewith.

26. Answering Paragraph 25 of the Counterclaim, Landlord states a legal conclusion for which no response is required. To the extent that Paragraph 25 of the Counterclaim could be

interpreted to require a response, Tenant admits that the controversy in this case involves the issue of whether Tenant and Landlord are in the first five-year extension period of the Lease.

27. Tenant denies the allegations in Paragraph 26 of the Counterclaim.

28. Answering Paragraph 27 of the Counterclaim, Tenant craves reference to the Lease for the terms and conditions thereof and denies any allegations contained in Paragraph 27 of the Counterclaim inconsistent therewith.

29. Tenant denies the allegations contained in the unnumbered “WHEREFORE” Paragraph of the Counterclaim.

FOR A SECOND DEFENSE

30. Landlord fails to state facts sufficient to constitute a cause of action, and the Counterclaim should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE

31. Landlord’s claims may be barred, in whole or in part, by the doctrines of waiver or estoppel.

FOR A FOURTH DEFENSE

32. Landlord breached its obligations and duties under the Lease between Landlord and Tenant, and such prior breach of the lease by Landlord constitutes a bar to its claims in this case.

WHEREFORE, having fully replied to Landlord’s Answer and Counterclaim, Tenant prays this Court enter its Order as follows:

- (a) Granting Tenant the relief sought against Landlord in the Complaint;
- (b) Denying Landlord any relief sought against Tenant in the Answer and Counterclaim;
- (c) Dismissing the Counterclaim against Tenant with prejudice;

- (d) Awarding Tenant its costs in defense of this action, including reasonable attorneys' fees; and
- (e) Awarding Tenant such other and further relief as may be just and proper.

Respectfully submitted,

s/J. Evan Phillips

Walter H. Cartin (S.C. Bar # 78405)
J. Evan Phillips (S.C. Bar # 103679)
Parker Poe Adams & Bernstein LLP
Post Office Box 1509 (29202)
1221 Main Street, Suite 1100
Columbia, South Carolina 29201
Telephone: 803.255.8000
Facsimile: 803.255.8017
waltcartin@parkerpoe.com
evanphillips@parkerpoe.com

Attorneys for Plaintiff
South Carolina CVS Pharmacy, L.L.C.

February 20, 2020
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	FOR THE FOURTEENTH JUDICIAL CIRCUIT
South Carolina CVS Pharmacy, L.L.C.,	)	CASE NO.: 2020-CP-07-07-00155
Plaintiff,	)	
vs.	)	SOUTH CAROLINA CVS PHARMACY,
KPP Hilton Head, LLC,	)	L.L.C'S ANSWERS TO DEFENDANT'S
Defendant.	)	INTERROGATORIES

Plaintiff South Carolina CVS Pharmacy, L.L.C. ("Plaintiff") submits the following answers to Defendant KPP Hilton Head, LLC's ("Defendant") First Set of Interrogatories.

RESERVATION OF RIGHTS

A. The following answers represent the best information available to Plaintiff at this time. These answers are believed to be true at the time the information is provided. Plaintiff reserves the right at any time to revise, correct, add to, supplement or clarify any of the answers provided herein.

B. The answers provided herein are subject to the right of Plaintiff to object on any ground, to demand for further answer to these or other interrogatories, or other discovery procedures involving or relating to the subject matter of the interrogatories herein.

C. By responding to these interrogatories, Plaintiff does not concede the relevancy or admissibility of the information provided.

GENERAL OBJECTIONS

A. Plaintiff objects to these interrogatories to the extent that they seek information protected from disclosure by the attorney-client privilege, the work product doctrine, or any other exemption or privilege.

B. Plaintiff objects to each interrogatory to the extent that it is overly broad in time and scope and to such extent that it becomes unduly burdensome for Plaintiff to answer.

C. Plaintiff objects to these interrogatories to the extent they are overly broad, unduly burdensome, or seek information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

Without waiving these objections, Plaintiff submits its answers to Defendant's Interrogatories.

ANSWERS TO INTERROGATORIES

1. Give the names, addresses, and telephone numbers of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER: South Carolina CVS Pharmacy, L.L.C. ("Plaintiff") reserves the right to call any witnesses identified by KPP Hilton Head, LLC ("Defendant") in this matter. At this time, however, Plaintiff believes that the majority of witnesses identified by Defendant possess only tangential knowledge and information related to the facts of this case, if any. Plaintiff believes the following witnesses possess substantive information related to the facts of this case:

- (A) **Peter J. Perry, Lease Administration Manager
CVS Pharmacy, Inc.
c/o Parker Poe Adams & Bernstein LLP**

Witness statement: None known

- (B) **Bryan Cook, Regional Director of Real Estate
CVS Pharmacy, Inc.
c/o Parker Poe Adams & Bernstein LLP**

Witness statement: None known

- (C) **Karen Fregeau, Lease Administration Assistant
CVS Pharmacy, Inc.
c/o Parker Poe Adams & Bernstein LLP**

Witness statement: None known

**(D) Stephan Cap
Principal Developers
PO Box 23169
Hilton Head Island, SC 29925-3169**

Witness statement: None known

**(E) Julie King, Landlord
KPP Hilton Head, LLC
PO Box 23169
Hilton Head Island, SC 29925-3169**

Witness statement: None known

(F) United States Postal Office Employee

Witness statement: None known

Plaintiff reserves the right to supplement this list during the course of discovery.

2. For each person known to You or Your counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

ANSWER:

(A) Peter J. Perry is employed by CVS Pharmacy, Inc. ("CVS") as Lease Administration Manager, and is responsible for overseeing and managing the leases governing CVS Health Corporation locations, including the Lease at issue in this case. In his role as Lease Administration Manager, Mr. Perry is also involved with preparing and providing required notices under the Lease. Mr. Perry is knowledgeable about the Lease at issue in this case, the facts and circumstances surrounding Tenant's decision to exercise its right to renew the Lease, and the written notice Tenant provided to Landlord renewing the Lease.

(B) Bryan Cook is employed by CVS as a Regional Director of Real Estate, and is responsible for overseeing the real estate operations for much of the southeastern United States,

including the state of South Carolina. In his role as Regional Director of Real Estate, Mr. Cook was responsible for informing CVS's Lease Administration department whether to exercise the lease renewal option in this case.

(C) Karen Fregeau is employed by CVS as Lease Administration Assistant, and is responsible for assisting with the management of the leases governing CVS Health Corporation locations, including the Lease at issue in this case. In her role as Lease Administration Assistant, Ms. Fregeau was responsible for preparing and mailing the Tenant's renewal letter.

(D) Stephan Cap serves as the property manager for Landlord's property management company, Principal Developers, and is responsible for, among other things, picking up Landlord's mail at Landlord's post office box and corresponding with Landlord's tenants regarding lease renewals, maintenance/repair requests, and other property management-related issues. Tenant believes Mr. Cap is knowledgeable about the Lease at issue in this case and the facts and circumstances surrounding the following: (1) Tenant's decision to exercise its right to renew the Lease; (2) the written notice Tenant provided to Landlord renewing the Lease; (3) the facts and circumstances surrounding the dates and times when either Landlord, Principal Developers, or Mr. Cap routinely checks, and previously checked, for mail at Landlord's post office box; and (4) when Mr. Cap signed for and received the return receipt accompanied by Tenant's written notice to renew the Lease.

(E) Julie King is the registered agent of Plaintiff and Landlord, KPP Hilton Head, LLC. Ms. King also does business as Principal Developers, which is the entity responsible for managing the premises subject to the Lease at issue in this case. Tenant believes Ms. King is knowledgeable about the Lease at issue in this case, and the facts circumstances surrounding the following: (1) Tenant's decision to exercise its right to renew the Lease; (2) the written notice Tenant provided to Landlord renewing the Lease; (3) the facts and circumstances surrounding

the dates and times when either Landlord, Principal Developers, or Mr. Cap routinely checks, and previously checked, for mail at Landlord's post office box; and (4) when Mr. Cap signed for and received the return receipt accompanied by Tenant's written notice to renew the Lease.

(F) United States Postal Office Employee. Tenant expects an employee of the United States Postal Service to be familiar with the practices, policies, and procedures related to the receipt and delivery of certified mail, return receipt requested, when mailed and delivered to post office boxes; the days and hours of operation for the Post Office at which Landlord's post office box is located; and the meanings of the designations given by the United States Postal Service in its online tracking system made available to customers, including but not limited to, the designations "Arrived at Unit," "Available for Pickup," and "Delivered."

3. Set forth a list of photographs, plats, sketches or other prepared documents in Your possession that relate to the claim or defense of this case.

ANSWER: Please see documents produced in Response to KPP Hilton Head, LLC's First Set of Requests for Production.

4. Set forth an itemized statement of all damages claimed to have been sustained by You.

ANSWER: Because this is a declaratory judgment action, damages are not required to be shown in this case. However, Plaintiff has incurred attorneys' fees and costs in connection with this lawsuit.

5. List the names, addresses, and telephone numbers of any expert witnesses whom You propose to use as a witness at the trial of this case. For each expert witness, set forth the following:

ANSWER:

**H. Haskell Kibler
WILSON / KIBLER, INC.
1111 Laurel Street
Columbia, SC 29201**

- a. the subject matter to which the expert is to testify;

Mr. Haskell Kibler is an expert in the field of commercial real estate and, in particular, the management and leasing of commercial real property. A summary of his training, education, and experience is set forth in his curriculum vitae, which is being produced in response to Defendant's Requests for Production.

- b. the substance of the facts, opinions and conclusions to which the expert is to testify;

Mr. Kibler is expected to testify regarding the following facts, opinions, and conclusions:

(i) Mr. Kibler will explain the activities, operations, and practices involved with the management of commercial real property, including without limitation checking the mail regularly and managing deadlines set by commercial leases.

(ii) Mr. Kibler will explain the normal process by which commercial leases are extended, including without limitation the ordinary and customary process of exercising an option and the importance of complying with the express terms of the notice provision.

(iii) Mr. Kibler will explain the differing interests between landlords and tenants with respect to the granting and exercise of options.

(iv) Mr. Kibler will testify that the ordinary course of business in the commercial real estate industry is that property owners/managers (or their designees/agents), including those acting on behalf of landlords, check their mail, including post office boxes, on all non-holiday business days (generally, Monday through Friday).

(v) With respect to the notice provision in this case, Mr. Kibler will testify that the language of the notice provision would be understood in the commercial real estate industry to protect a party providing notice in a situation where (1) the counterparty purposefully refused to check the mail on normal business days; (2) where the counterparty

failed to check the mail on normal business days, or (3) where the notice was timely sent, but not received on a normal business day, such that the receiving party would be expected to check the mail.

(vi) With respect to the option in this case, Mr. Kibler will express his opinion that the option was properly and timely exercised by Plaintiff.

(vii) In addition, Mr. Kibler may provide testimony responsive to fact or expert testimony proffered by Defendant.

c. a summary of the grounds for the expert's opinions or conclusions; and

Mr. Kibler's testimony is based on his experience in the commercial real estate industry, the observable prevailing practices in the commercial real estate industry, and his review of the documentary evidence in this case (including the documents produced by Plaintiff in response to Defendant's Requests for Production which are identified as documents having been provided to Plaintiff's expert witness).

d. whether the expert has prepared a written or recorded statement or report of his or her findings or opinions.

Mr. Kibler has not prepared any written or recorded statements or reports. In response to Defendant's Requests for Production, Plaintiff is producing a copy of all documents sent to, or received from, Mr. Kibler, which constitutes Mr. Kibler's file with respect to this matter.

6. Describe all regulations, laws, codes, customs, usages or standards that You contend are applicable to any claim or defense in the case.

ANSWER: Plaintiff directs Defendant to the common law of the State of South Carolina relating to the creation, execution, enforcement, and interpretation of contracts, including lease agreements. Plaintiff also directs Defendant to any statutes, regulations, rules, policies, and/or

procedures of the United States Postal Service related to the processes and procedures for the mailing, delivery, and receipt of certified mail, return receipt requested.

7. In accordance with Rule 26(f), SCRCp, describe:
- a. the discovery You anticipate will be necessary to prepare the case for trial;
 - b. how long You anticipate it will take to complete such discovery; and
 - c. any limitations You propose to be placed on discovery.

ANSWER: Plaintiff anticipates it will be necessary to take the depositions of Stefan Cap, Julie King, and a United States Postal Service employee. Pursuant to the Consent Scheduling Order entered by the Court, all discovery is to be completed on or before July 31, 2020. Plaintiff believes that it will accomplish all needed discovery by the July 31, 2020 deadline set forth in the Court's Order.

8. Identify each and every piece or information, document, and/or other tangible evidence relevant to any claim, defense, or issue in this case that has been altered, lost, destroyed, or cannot be found (including, but not limited to information or documents disposed or destroyed pursuant to a document retention or destruction policy). For each such document state:

- a. whether any copy of the document exists and, if so, the location of the copy and the name, address, and telephone number of the person in possession of the copy;
- b. the circumstances under which the document was altered, lost, or destroyed;
- c. if the document was destroyed, state why it was destroyed, whether it was destroyed pursuant to a written or unwritten document retention or destruction policy; the date it was destroyed, and the name, address, and telephone number of the person(s) who authorized its destruction and who actually destroyed it; and

- d. describe all efforts made by You to locate the document or a copy thereof, and provide the name, address, and telephone number of all persons who attempted to locate the document or a copy.

ANSWER: The only relevant evidence Plaintiff is aware of and is unable to locate is the documentation showing the assignment of KINPIN Partnership's interest in the Lease to KPP Hilton Head, LLC.

Respectfully submitted,

s/Walter H. Cartin

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Attorneys for Plaintiff
South Carolina CVS Pharmacy, L.L.C.

May 7, 2020
Columbia, South Carolina

CERTIFICATE OF SERVICE

Pursuant to agreement between the parties and the South Carolina Supreme Court Order 2020-04-03-01 (as amended by Order 2020-04-22-01) authorizing service by electronic mail, the undersigned hereby certifies that on May 7, 2020, he caused to be served a copy of the foregoing **SOUTH CAROLINA CVS PHARMACY, L.L.C'S ANSWERS TO DEFENDANT'S INTERROGATORIES** on all parties of record by electronic mail, addressed as follows:

P. Benjamin Zuckerman, Esq.
Berger Singerman, LLP
bzuckerman@bergersingerman.com

Thomas A. Pendarvis, Esq.
Pendarvis Law Offices, P.C.
Thomas@Pendarvislaw.com

s/ J. Evan Phillips

Columbia, South Carolina

VERIFICATION

I hereby swear under penalty of perjury that I have read the foregoing Answers to Defendant's First Set of Interrogatories to Plaintiff South Carolina CVS Pharmacy, L.L.C. and that the answers provided therein are true and correct to the best of my knowledge, information, and belief.

A handwritten signature in blue ink, appearing to read 'R. Meo', is written over a horizontal line.

R. Michael Meo, Jr.
Assistant Secretary
South Carolina CVS Pharmacy, L.L.C.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	FOR THE FOURTEENTH JUDICIAL CIRCUIT
	)	
South Carolina CVS Pharmacy, L.L.C.,	)	CASE NO.: 2020-CP-07-00155
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
KPP Hilton Head, LLC,	)	
	)	
Defendant.	)	
_____	)	

DEFENDANT’S MOTION FOR SUMMARY JUDGEMENT

The Defendant, KPP Hilton Head, LLC, by and through its undersigned counsel and pursuant to Rule 56(b) of the South Carolina Rules of Civil Procedure, moves for summary judgment on all claims asserted against it.

In support hereof, KPP states as follows:

INTRODUCTION

This dispute involves a 20-year old lease (the “Lease”) of the CVS store on Pope Avenue on Hilton Head Island (the “Hilton Head Store”) by South Carolina CVS Pharmacy LLC (“CVS” or “Tenant”), from KPP Hilton Head LLC (“KPP Hilton Head” or “Landlord”). The issue is whether CVS’s attempt to exercise the first renewal option contained in the Lease was timely. As detailed below, it was not. CVS did not exercise its option to renew during the life of the option.

The parties agree that the required renewal notice was due “*no later than*” Sunday, November 3, 2019. The parties further agree that CVS’ Registered Mail, Return Receipt Requested renewal letter arrived at the Hilton Head Post Office by 9:45 am on Saturday, November 2, 2019, but was not signed for by and “Delivered” to Landlord’s agent until Wednesday, November 6, 2019, as shown on the United States Postal Service Tracking History report attached

to the Affidavit of CVS's Lease Administration Manager, Peter J. Perry, filed with CVS' Complaint as Exhibit D.¹ There is no evidence (or allegation) that Landlord ignored the Return Receipt ticket that was apparently placed in its Post Office Box after the Registered Mail, Return Receipt renewal letter arrived at the Hilton Head Post Office that Saturday morning in the 2 hours and 15 minutes remaining before the Post Office counter closed at noon for the weekend.² The contractually required deadline was simply not met.

Where, as in this case, notice of the exercise of the option is required in a certain manner, time is of the essence and exact compliance will be required.

Pope v. Goethe, 175 S.C. 394, 179 S.E. 319 (1935).

The material facts are undisputed.

UNDISPUTED MATERIAL FACTS

1. In May of 1998, KPP Hilton Head's predecessor in interest and CVS's predecessor in interest entered into the Lease. A copy of the Lease is filed with this Motion as **Exhibit 1**. (*Complaint ¶4 and Exhibit A thereto; February 5, 2020 Affidavit of July H. King ("King Aff.") ¶3 and Exhibit 1 thereto*).
2. On or about July 23, 1998, KPP Hilton Head's predecessor and CVS' predecessor entered into the First Lease Amendment. A copy of the Amendment is filed with this Motion as **Exhibit 2**. (*Complaint ¶5 and Exhibit B thereto; King Aff. ¶4 and Exhibit 2 thereto*).
3. The initial Lease had a 20-year term, which was to expire January 31, 2020. (*Complaint ¶8, Injunction Motion ¶6, King Aff. ¶5*).

¹ Mr. Perry is CVS' Lease Administration Manager. See Perry Aff. ¶3.

² The U.S. Post Office hours for the Hilton Head Island office are shown at <https://www.postallocations.com/sc/hilton-head-island/hilton-head-island>.

4. The Lease provides for four, five-year renewal options. (*Complaint ¶12, Injunction Motion ¶7, King Aff. ¶5*).

5. The Lease specifies that a renewal option must be exercised **not later than** 90 days **before** the expiration of the then current term. (*See Lease Part I, Article 13* (“Required Advance Notice of Exercise of Renewal Option: 90 days **prior to** the expiration of the then-current term. (See Article 3 of Part II)” (emphasis added), and *Lease Part II, Article 3* (“by giving Landlord notice of such election **not later than** the Required Advance Notice of Renewal Option (as defined in Section 13 of Part I)” (emphasis added)).

6. The renewal notice deadline for the Hilton Head Store Lease was, therefore, **not later than** November 3, 2019, a Sunday. (*See Complaint ¶17, Injunction Motion ¶17, King Aff. ¶¶8, 10, and 14*).³

7. The Lease expressly provides that all notices, including the notice of renewal at issue, **be signed for** by the notified party. Specifically, the Lease provides that notice “shall not be effective **for any purpose** unless the same shall be given or served as follows: by mailing the same to the other party by registered or certified mail, **return receipt requested**, or by overnight courier **provided a receipt is required . . .**” (Emphasis added). The Lease unambiguously provides that “[t]he date of receipt of the notice . . . shall be deemed the date of service thereof.” (*See Lease Part II, Article 27*).

8. On October 9, 2019, KPP Hilton Head’s property manager sent an email to CVS asking whether CVS intended to renew two CVS stores it managed for KPP Hilton Head’s owner,

³ CVS initially contended that, since the deadline fell on a Sunday, the notice deadline should roll to the next Monday, which not only is not “not later than 90 days prior to the expiration” of the Lease term, but incorrectly attempts to import a Rule of Civil Procedure, Rule 6(a), SCRCP, into the Lease Agreement’s computation requirements.

both of which had identical January 31, 2020 renewal deadlines -- the Hilton Head Store at issue and CVS' Port Royal Store. CVS' Lease Administrator responded the next day that CVS was renewing the Port Royal Store lease, but he was awaiting further instructions regarding the Hilton Head Store. (*King Aff.* ¶8). A copy of Ms. King's affidavit is filed with this Motion as **Exhibit 3**.

9. CVS posted its Registered Mail, Return Receipt Requested renewal notice for the Port Royal Store on October 10, 2019. It was signed for by the landlord's agent on October 21, 2019, *eleven days after posting*, and an executed copy was forwarded to CVS the next day. (*King Aff.* ¶9).

10. CVS attempted to exercise the first renewal option for the Hilton Head Store after receiving the landlord's receipt of the Port Royal Store renewal: CVS signed a renewal notice letter (the "Renewal Notice") on October 29, 2019, posted it to KPP Hilton Head via Registered Mail, Return Receipt Requested the next day (October 30, 2019), and its Registered Mail, Return Receipt Requested Renewal Notice reached the Hilton Head Post Office on Saturday, November 2, 2019, at 9:45 am. (*See Injunction Motion* ¶¶14-17, *January 23, 2020 Affidavit of Peter J. Perry* ("Perry Aff.") ¶¶12-15, and *Exhibits C and D thereto*).

11. KPP Hilton Head's property manager has no regular employees. It operates with a single independent contractor, Stefan Cap, who works on a part time basis. Mr. Cap's duties include checking KPP Hilton Head's Post Office Box for correspondence. (*King Aff.* ¶7.)⁴

⁴ KPP Hilton Head's Interrogatory Responses indicated that Mr. Cap performed the following duties with respect to the KPP Hilton Head/CVS lease and its property: "a. Picking up mail at the post office one or two times per week. b. Paying invoices between one and two times per week. c. Depositing the rent check once per month. d. Reconciling the bank statement once per month. e. Corresponding with CVS regarding lease renewals, maintenance/repair requests, and other property management-related issues. This aggregates usually a few times per year. f. Contracting the landscaping and repair/maintenance requests to vendors as the need arises. This is usually a few times per year for this property. g. Providing common area maintenance reconciliations once

12. Neither KPP Hilton Head, nor its property manager receive mail in an office. Both use a Post Office Box for their mail. Neither KPP Hilton Head nor its property manager generally conduct business on weekends or holidays. In the normal course of their business, KPP Hilton Head and its property manager retrieve their mail from their Post Office Box once or twice per week during the customary (Monday – Friday) work week based upon the schedule and availability of the property manager’s part time agent, Mr. Cap. (*King Aff.* ¶12).

13. The only evidence is that not checking for mail on weekends is also the normal course of business for other real estate property managers. *See CVS’ Answers to Defendant’s Interrogatories No. 5, “Mr. Kibler [Plaintiff’s Expert] is expected to testify . . .that the ordinary course of business in the commercial real estate industry is that property owners/managers (or their designated agents), including those acting on behalf of landlords, check their mail, including post office boxes, on all non-holiday business days (generally, Monday through Friday.” (Emphasis added).*)

14. KPP Hilton Head signed for the Renewal Letter at the Hilton Head Post Office on Wednesday, November 6, 2019, and the Post Office recorded it “Delivered” that day. (*See King Aff.* ¶11, and *Exhibit D to Perry Affidavit, the United States Postal Service Tracking History*).

15. KPP Hilton Head thereafter notified CVS it rejected the Renewal Notice for the Hilton Head Store as being untimely. (*See Complaint* ¶25, and *Exhibits F and G thereto; Injunction Motion* ¶21.)

per year. h. Creating reimbursement requests for reimbursable expenses after the expenses have been paid, a few times per year.”

SUMMARY JUDGMENT STANDARD

“The purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder.” *Prince v. Liberty Life Ins. Co.*, 390 S.C. 166, 169, 700 S.E.2d 280, 281 (Ct. App. 2010). “Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law.” *Carolina Chloride, Inc. v. S.C. Dep’t of Transp.*, 391 S.C. 429, 434, 706 S.E.2d 501, 504 (2011). “In determining whether a genuine issue of fact exists, the evidence and all reasonable inferences drawn from it must be viewed in the light most favorable to the nonmoving party.” *Id.* at 203, 743 S.E.2d at 852–53. “However, it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.” *McMaster v. Dewitt*, 411 S.C. 138, 143, 767 S.E.2d 451, 453–54 (Ct. App. 2014) (quoting *Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013)). “Summary judgment is a drastic remedy that should be cautiously invoked in order not to improperly deprive a litigant of a trial of the disputed factual issues.” *HK New Plan Exch. Prop. Owner I, LLC v. Coker*, 375 S.C. 18, 22, 649 S.E.2d 181, 183 (Ct. App. 2007).

ARGUMENT

South Carolina law is clear that “[b]ecause of its unilateral nature, an option to renew a lease ***is strictly construed against the party claiming the option.***” *33 Flavor Stores of Virginia, Inc. v. Hoffman’s Candies, Inc.*, 370 S.E.2d 293, 295 (S.C. Ct. App. 1988) (emphasis added), citing *Southern Silica Mining and Manufacturing Company v. Hoefer*, 56 S.E. 2d 321, 328 (S.C. 1949). The *33 Flavor Stores* court went on to say:

Where, as in this case, notice of the exercise of the option is required in a certain manner, time is of the essence and ***exact compliance will be required.*** *Pope v. Goethe*, 175 S.C. 394, 179 S.E. 319 (1935). Where a lessee has a right to renew upon giving notice to the lessor at or before a specified time, in the absence of a waiver, the giving of notice is a condition precedent which must be complied with

within the stipulated time; and, absent special circumstances warranting relief from a court of equity, ***the right of renewal is lost if notice is not given in accordance with the provisions of the lease.*** (Emphasis added).

Here, the Lease specifies that a renewal option must be exercised **not later than** 90 days **before** the expiration of the then current term. *See Lease Part I, Article 13 (“Required Advance Notice of Exercise of Renewal Option: 90 days **prior to** the expiration of the then-current term. (See Article 3 of Part II)”)* (emphasis added), and *Part II, Article 3 (“by giving Landlord notice of such election **not later than** the Required Advance Notice of Renewal Option (as defined in Section 13 of Part I)”* (emphasis added). No “special circumstances warranting relief from a court of equity” exist or are even alleged regarding this deadline.

The renewal notice deadline for the Hilton Head Store Lease was, therefore, ***not later than*** Sunday, November 3, 2019. *See Complaint ¶17, Injunction Motion ¶17, King Aff. ¶¶8, 10, and 14.* CVS admits this deadline. *See Response to Request for Admission 5.*

The Lease expressly provides that all notices, including the notice of renewal at issue, ***be signed for*** by the notified party. *See Lease Part II, Article 27 (a notice “shall not be effective for any purpose unless the same shall be given or served as follows: by mailing the same to the other party by registered or certified mail, **return receipt requested**, or by overnight courier **provided a receipt is required** . . . ”* (Emphasis added)). Regardless of the method selected to send any notice, the Lease unambiguously requires a signed receipt for that notice. No “special circumstances warranting relief from a court of equity” exist or are alleged regarding this signed receipt requirement.

The Lease also unambiguously specifies that “[t]he date of receipt of the notice . . . **shall** be deemed the date of service thereof.” (Emphasis added). *See Lease Part II, Article 27.* No

“special circumstances warranting relief from a court of equity” exist or are alleged regarding the “deemed . . . date of service” as unambiguously expressed in the Lease.

Although it is undisputed that Tenant’s Registered Mail, Return Receipt Requested Renewal Letter was received **by the Hilton Head Post Office** on Saturday, November 2, 2019 by 9:45 am, it is also undisputed that Landlord did not sign the required Return Receipt for the letter or have it actually delivered to it that day. KPP Hilton Head’s agent did not go to the Post Office that morning. Rather, the agent went to the Post Office on Wednesday, November 6, 2019 in the ordinary course of Landlord’s business and signed for and received the Registered letter that day. As set forth in the Lease, November 6, 2019, therefore, was “*deemed the date of service*” of the notice. This was three (3) days *after* the deadline, and not “*at least 90 days before expiration of the term*” as required. Had Landlord’s agent gone to the Post Office, signed for and received the Registered letter on Monday, November 4, 2019, the Renewal Notice would still have been untimely, i.e., less than 90 days before the expiration of the lease term.

As the King Affidavit states, neither Principal Developers, which manages KPP Hilton Head’s property, nor KPP Hilton Head have weekend or holiday business hours; both use a Post Office Box, and neither obtains its mail on weekends or holidays. According to CVS’ expert, H. Haskell Kibler, that is neither surprising nor unusual: “*the ordinary course of business in the commercial real estate industry* is that property owners/managers (or their designated agents), including those acting on behalf of landlords, check their mail, including post office boxes, on all non-holiday business days (*generally, Monday through Friday.*” (Emphasis added). (CVS’ *Answers to Defendant’s Interrogatories No. 5*).⁵ Principal Developers’ part time agent, Stefan

⁵ CVS admits that “a notice that is received on a Saturday is ‘not received or accepted in the ordinary course of business,’ as contemplated by . . . the Lease.” *See Complaint ¶21*.

Cap, goes to the Post Office once or twice per week to pick up mail for KPP Hilton Head, *see King Aff.* ¶¶7 and 12, and he went to the Post Office on Wednesday, November 6, 2019 and signed for the Registered Mail, Return Receipt Renewal Letter that day. (*King Aff.* ¶11.)

The Renewal Letter for the Hilton Head Store was not timely; it was not signed for “not later than 90 days prior to the expiration of” the Lease Term as required by the Lease. As the 33 *Flavor Stores* court made clear, when examining whether an option to renew a lease has been properly exercised,

“exact compliance will be required. . . . Where a lessee has a right to renew upon giving notice to the lessor at or before a specified time, in the absence of a waiver, the giving of notice is a condition precedent which must be complied with within the stipulated time; and, absent special circumstances warranting relief from a court of equity, *the right of renewal is lost if notice is not given in accordance with the provisions of the lease.*” (Emphasis added).

There is no “special circumstance [here] warranting relief” from the precise requirements of the Lease. There is no allegation that KPP Hilton Head somehow lulled CVS into missing the deadline. In early October 2019, KPP Hilton Head’s property manager asked CVS whether it intended to exercise its renewal options on the Hilton Head Store and on the Port Royal Store, both of which the property manager managed and both of which had identical November 3, 2019 renewal deadlines, and CVS responded that it intended to renew its Port Royal Store lease, but Mr. Perry, who filed an Affidavit as the CVS Lease Administration Manager, said he was “still waiting on directions” regarding a renewal of the Hilton Head Store. *See King Aff.* ¶8. Principal Developers thereafter received a timely renewal option on the Port Royal Store. *Id.* ¶9.⁶

⁶ Notably, and as recited above, the King Affidavit reveals that CVS’ Registered Mail, Return Receipt Requested renewal notice letter regarding the Port Royal Store took 11 days to be received: CVS sent its notice on October 10th, and it was signed for October 21st. *See King Aff.* ¶9. Although the Port Royal landlord executed copy was then emailed CVS on October 22d, showing CVS that

There is no other allegation that KPP Hilton Head did *anything*, let alone anything untoward, to cause CVS to miss the Lease renewal deadline. KPP Hilton Head cannot reasonably be accused of bad faith actions because it did not have its agent go to the Post Office in the 1 ¼ hours between 9:45 am and noon on Saturday, November 2, 2019 to see if a Registered letter from CVS had come that morning. So, too, there is no other circumstance – no unusual weather or postal disruption -- which retarded delivery of CVS’ Renewal Letter. Rather, the meager 4 days CVS allowed for delivery (October 30 – November 2) was simply inadequate.⁷

CVS has taken different positions regarding the timeliness of its Renewal Letter regarding the Hilton Head Store, none of which permit a finding that its renewal attempt was timely:

(a) CVS first contended that, because the renewal deadline fell on a weekend, the renewal deadline rolled forward to the Monday following the weekend. Not only was that argument not recognizing that such a position would necessarily not satisfy the “not later than 90 days prior to the expiration of” the Lease Term deadline,⁸ but here the Renewal Letter was not signed for on the Monday following the weekend.

(b) CVS next contended that because the Renewal Letter was not signed for when received by the Post Office on a Saturday, the language in Part II, Paragraph 27 of the Lease meant

it had taken 11 days to be received, CVS waited an extra day, until October 30, 2019 to even send the October 29, 2019 Renewal Letter for the Hilton Head Store which was required to be received *and signed for* in less than 4 days (the 4th day being a Sunday) rather than send the Renewal Letter by overnight courier as Part II, Section 27 expressly authorized.

⁷ The fact that CVS actually waited a day to post the October 29, 2019 Renewal Letter under the time circumstances was either negligence or unfounded hubris.

⁸ Rule 6, SCRCP, which provides for a roll forward when the due date for a matter in litigation falls on a weekend or holiday, *adds* to the time needed to perform. This Lease renewal was not in litigation in October – November, 2019. For compliance with the Lease, in order to add time with respect to the renewal notice, the deadline would roll *back* to the previous business day, a Friday, which would then provide the “*at least 90 days*” required to comply with the Lease, not forward to Monday, which would provide less than 90 days.

that the “notice . . . [was] not received or accepted in the ordinary course of business . . . [so that] the date of mailing shall be deemed the date of service thereof.” *See Complaint* ¶15. This argument was readily defeated by the fact that it was not in the ordinary course of KPP Hilton Head’s business to collect mail from the Post Office on a weekend (and, notably, and not surprisingly, it is not in the ordinary course of CVS’ corporate office to work on a weekend either, and as CVS’ expert opines “*the ordinary course of business in the commercial real estate industry* is that property owners/managers (or their designated agents), including those acting on behalf of landlords, check their mail, including post office boxes, on all non-holiday business days (*generally, Monday through Friday*).” (Emphasis added).⁹

(c) CVS now argues that because the Renewal Letter arrived at the Hilton Head Post Office on Saturday morning, November 2, 2019, it “was delivered to Landlord’s post office box, which is entirely within Landlord’s dominion and control, prior to November 3, 2019.” This argument (i) improperly conflates the delivery *to the Post Office* of a Registered Letter, Return Receipt Requested *with the Registered Letter being placed into the addressee’s post office box*, (ii) completely disregards how Registered Letters are handled – *the green slip* is placed in the addressee’s post office box, not the Registered letter, and the addressee then has to go to the counter and sign for and then receive the letter itself,¹⁰ (iii) turns a blind eye to the Postal Service Tracking History CVS attached to Mr. Perry’s Affidavit, which clearly provides that the Registered letter was “Delivered” on Wednesday “November 6, 2019, 8:37 am,” and (iv) then simply ignores the language of Lease Part II, Article 27

⁹ To the extent there is any ambiguity about what the “notice . . . not received or accepted in the ordinary course of business” language in Part II, Article 27 of the Lease means, that ambiguity must be construed against CVS, as the *33 Flavor Stores* Court at 295 made it clear that “an option to renew a lease *is strictly construed against the party claiming the option.*”

¹⁰ Here the evidence will show that the Post Office Counter closes at noon on Saturdays. *See* <https://www.postallocations.com/sc/hilton-head-island/hilton-head-island>.

that notice “shall not be effective *for any purpose* unless the same shall be given or served as follows: by mailing the same to the other party by registered or certified mail, *return receipt requested*, or by overnight courier provided *a receipt is required* . . .” (Emphasis added). Article 27 unambiguously provides that “[t]he date of receipt of the notice . . . shall be deemed the date of service thereof.”

CONCLUSION

The simple fact is, CVS missed the requisite deadline, and it has no one to blame for missing that deadline but itself. CVS had 19 years and 9 months to exercise the renewal. KPP Hilton Head asked CVS in early October whether it intended to renew. CVS exercised its renewal of the Port Royal Store on October 10, 2019 and experienced that it took *11 days* for that renewal to be signed for by the same management entity that managed the Hilton Head Store, yet CVS still dithered with respect to the Hilton Head Store. Indeed, when CVS finally and belatedly decided to renew the Hilton Head Store lease, it did absolutely nothing to make sure its required notice would be timely: the October 29, 2019 Registered Mail, Return Receipt Renewal Letter was not even posted until *the next day*; the overnight courier option expressly authorized by Part II, Article 27 was not used, even knowing that it had taken 11 days for the Port Royal Store renewal to be signed for; and no other actions were taken to assure a timely renewal. CVS just acted as if it did not have to strictly comply with the deadline clearly and unambiguously contained in the Lease.¹¹ *33 Flavor Stores of Virginia, Inc. v. Hoffman’s Candies, Inc., supra*, mandates the result: CVS’s right of renewal with respect to the Hilton Head Store was lost as its required notice was “not given

¹¹ Financially, a renewal as opposed to a hold over tenancy or a new lease is highly significant to the Landlord. CVS seeks to renew at \$21,488.41 per month for 5 years and be able to renew 3 more times for 15 more years at the same \$21,488.42 per month rent. Landlord understands market rent to be some \$32,000 per month today, and Landlord would expect market rents to increase over the next 15 years, so more than \$2.5 million in gross rent is at stake, a significant amount to Landlord.

in accordance with the provisions of the lease.”

KPP Hilton Head should have summary judgment on CVS’s claims.

Respectfully submitted,

KPP HILTON HEAD, LLC

By its Attorneys

s/ P. Benjamin Zuckerman

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	FOR THE FOURTEENTH JUDICIAL CIRCUIT
	)	
South Carolina CVS Pharmacy, L.L.C.,	)	CASE NO.: 2020-CP-07-00155
	)	
Plaintiff,	)	
	)	
vs.	)	PLAINTIFF SOUTH CAROLINA CVS
	)	PHARMACY, L.L.C.'S MOTION FOR
KPP Hilton Head, LLC,	)	SUMMARY JUDGMENT AND
	)	MEMORANDUM OF LAW IN SUPPORT
	)	
Defendant.	)	
	)	

Pursuant to Rule 56 of the South Carolina Rules of Civil Procedure (“SCRCP”), Plaintiff South Carolina CVS Pharmacy, L.L.C. (“CVS”), by and through its undersigned counsel, hereby submits this Motion for Summary Judgment and Memorandum of Law in Support. CVS moves this Court for an Order granting summary judgment in its favor and against Defendant KPP Hilton Head, LLC (“KPP”) on the grounds that there is no genuine issue of material fact and CVS is entitled to judgment as a matter of law on all of its claims.

BRIEF OVERVIEW

This action arises out of a dispute involving the lease between CVS and KPP for the CVS Pharmacy located at 10 Pope Avenue, Hilton Head Island, South Carolina 29928 (the “Lease”). Both parties agree the sole disputed issue is whether CVS timely served written notice on KPP and effectively exercised CVS’s option to renew the Lease for an additional five-year term. The Lease explicitly and unambiguously sets forth the criteria for determining the date a notice was served on the receiving party. For notices received or accepted in the ordinary course of business, the date the notice was received is deemed the date of service. For notices not received or accepted in the ordinary course of business, the date the notice was mailed is deemed the date of service.

The undisputed facts show CVS served written notice exercising its option to renew the Lease for an additional five-year term on KPP on October 30, 2019 (the “Notice”)—well before

the Sunday, November 3, 2019 deadline. CVS mailed the Notice to KPP on Wednesday, October 30, 2019. The Notice was delivered to, and available for KPP to pick up at, the United States Post Office where KPP's post office box is located (the "Fairfield Post Office") on Saturday, November 2, 2019. Because KPP received the Notice on a Saturday, KPP did not receive the Notice in the ordinary course of business. Therefore, the date CVS mailed the Notice—October 30, 2019—is deemed the date of service.

There is no genuine issue as to any material fact related to (1) whether the Notice was in the proper form and mailed in the correct manner; (2) the date CVS mailed the Notice to KPP; (3) the date and time the Notice arrived at the Fairfield Post Office; (4) the date and time the Notice was available for KPP to pick up from the Fairfield Post Office; and (5) the date and time KPP visited the Fairfield Post Office and signed for the Notice.

In accordance with the Lease's terms, CVS timely served the Notice on KPP and effectively renewed the Lease for an additional five-year term. Therefore, CVS is entitled to judgment as a matter of law on all of its claims against KPP, and CVS's Motion for Summary Judgment should be granted.

UNDISPUTED FACTS

On May 7, 1998, KINPIN Partnership entered into the Lease with Revco Discount Drug Centers, Inc. ("Revco"). [Compl. ¶ 4; Def.'s Answer ¶ 4]. KINPIN Partnership subsequently assigned all of its right, title, and interest in and to the Lease to KPP, and KPP assumed all of KINPIN Partnership's duties and obligations under the Lease. [Compl. ¶ 6; Def.'s Answer ¶ 6].

On July 23, 1998, KINPIN Partnership and Revco entered into the First Lease Amendment (the "First Amendment"). [Compl. ¶ 5; Def.'s Answer ¶ 5]. The First Amendment set annual rent at \$257,860.97, payable in equal monthly installments of \$21,488.41 ("Fixed Rent"). [Compl. ¶

11; Def.'s Answer ¶ 11]. Fixed Rent continues through each of the four five-year option periods. [Compl. ¶ 13; Def.'s Answer ¶ 13].

On May 25, 1999, KPP sent a letter to Revco (the "Commencement Letter") and confirmed the Lease's initial term commenced on April 26, 1999, and expired on January 31, 2020 (the "Initial Term"). [Compl. Ex. D; Def.'s Answer ¶ 8]. On January 1, 2011, Revco assigned all of its right, title, and interest in and to the Lease to CVS, and CVS assumed all of Revco's duties and obligations under the Lease. [Compl. ¶ 7; Def.'s Answer ¶ 7].

The Lease contains four option periods, each with additional five-year terms. [Compl. Ex. A; Def.'s Answer ¶ 12]. In order for CVS to effectively renew the Lease for an additional five-year term, CVS was required to serve the Notice on KPP no later than 90 days prior to the expiration of the Initial Term (Sunday, November 3, 2019). [Compl. Exs. A, B, & C; King Aff. ¶¶ 8, 10, & 14; Def.'s Mot. Summ. J. 3, at ¶ 6].

Under the Lease's general notice provision, all notices, including Lease renewal notices, must be in writing and served on the other party as follows:

by mailing the same to the other party by registered or certified mail, return receipt requested, or by overnight courier service provided a receipt is required, at its Notice Address set forth in Part I hereof, or at such other address as either party may from time to time designate by notice given to the other. The date of receipt of the notice or demand shall be deemed the date of the service thereof (**unless the notice or demand is not received or accepted in the ordinary course of business, in which case the date of mailing shall be deemed the date of service thereof**).

[Compl. Ex. A 19, at ¶ 27 (emphasis added); Compl. ¶ 15; Def.'s Answer ¶ 15].¹

¹ Although KPP admitted in its Answer that the Lease's general notice provision contained the phrase "unless the notice or demand is not received or accepted in the ordinary course of business, in which case the date of mailing shall be deemed the date of service thereof," KPP states in the Undisputed Facts section of its Motion for Summary Judgment that "[t]he Lease unambiguously provides that '[t]he date of receipt of the notice . . . shall be deemed the date of service thereof.'" [Def.'s Mot. Summ. J. 3, at ¶ 7 (emphasis in original)]. KPP has omitted these material terms in numerous statements made to the Court. [See, e.g., Def.'s Opp. to Pl.'s Mot. Temp. Inj. 3, at ¶ 6; Def.'s Answer ¶ 14; Def.'s Mot. Summ. J. 3, 7, & 12].

On October 30, 2019, CVS Health Corporation's Lease Administration Manager, Peter J. Perry, caused a copy of the Notice to be placed in the mail with the United States Postal Service ("USPS") via certified mail, return receipt requested. [Compl. ¶ 19; Perry Aff. ¶ 13]. The Notice contained CVS's decision to exercise its option to extend the Lease for an additional five-year period. [Perry Aff. Ex. C].

At 9:45am on Saturday, November 2, 2019, the Notice was delivered to, and available for KPP to pick up at, the Fairfield Post Office. [See Second Perry Aff. Ex. A; Perry Aff. ¶ 15; Def.'s Mot. Summ. J. 4, at ¶ 10]. A copy of the Second Affidavit of Peter J. Perry is attached hereto as **Exhibit A**. On Wednesday, November 6, 2019, KPP's agent, Stefan Cap,² went to the Fairfield Post Office and signed for the Notice. [**Exhibit A**; Def.'s Mot. Summ. J. 5, at ¶ 14; King Aff. ¶ 11].

STANDARD OF REVIEW

Summary judgment should be granted when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issues as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in light most favorable to the nonmoving party. *Koester v. Carolina Rental Ctr.*, 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994). Although the moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact, the opposing party "must, under Rule 56(e), do more than simply show some metaphysical doubt as to the material facts but must come forward with specific facts showing that there is a *genuine issue for trial*." *Baughman v. American Tel. and Tel. Co.*, 306

² Stefan Cap is an independent contractor employed by KPP's property manager, Principal Developers, which has no regular employees. Mr. Cap works on behalf of KPP and Principal Developers on a part time basis, and his duties include checking KPP's post office box for correspondence. [King Aff. ¶ 7; Def.'s Mot. Summ. J. 4, at ¶ 11]. Mr. Cap is the only person with access to KPP's post office box. [Def.'s Resp. to Pl.'s Interrog. No. 15].

S.C. 101, 115, 410 S.E.2d 537, 545 (1991) (emphasis in original). The nonmoving party must specifically set forth such facts “as would be admissible in evidence” to show that a true jury issue exists. Rule 56, SCRCP.

ARGUMENT

CVS is entitled to judgment as a matter of law on all of its claims against KPP, and CVS’s Motion for Summary Judgment should be granted. The issue in this case is whether CVS timely served the Notice on KPP and effectively exercised its option to renew the Lease. The material facts related to when and how CVS exercised its option are not in dispute. The undisputed material facts show that CVS complied with the Lease’s notice requirements, timely served the Notice on KPP, and effectively exercised its option to renew the Lease for an additional five-year term at Fixed Rent.

The Lease’s general notice provision provides that “[t]he date of receipt of the notice or demand shall be deemed the date of the service thereof (**unless the notice or demand is not received or accepted in the ordinary course of business, in which case the date of mailing shall be deemed the date of service thereof**).” [Compl., Ex. A at 19, ¶ 27 (emphasis added)]. CVS believes the phrase “received or accepted in the ordinary course of business” is self-explanatory and means received or accepted on Monday through Friday from 9:00am to 5:00pm, with state and federal holidays excluded.

However, to the extent the Lease’s general notice provision requires interpretation, it is to be “interpreted according to its actual terms and the context in which the contract was made.” *Ingram v. Kasey’s Assocs.*, 340 S.C. 98, 110, 531 S.E.2d 287, 293 (2000).³ Unambiguous, clear,

³ While South Carolina law requires the party claiming an option to strictly comply with the requirements for exercising the option, this is not equivalent to KPP’s assertion that ambiguous Lease terms “must be construed against CVS.” [Compare Def.’s Mot. Summ. J. 11, n.9 with 33 *Flavor Stores of Virginia, Inc. v. Hoffman’s Candies, Inc.*, 296 S.C. 37, 40, 370 S.E.2d 293, 295 (Ct. App. 1988) (stating that “an option to renew a lease is strictly construed against the party claiming the option”)]. Part II, Paragraph 27 of the Lease is the Lease’s general notice and demand provision. Therefore, it is not only applicable to notices required for CVS to exercise renewal options under the Lease, but is,

and explicit contracts “must be construed according to the terms the parties have used, and the terms are to be taken and understood in their plain, ordinary, and popular sense.” *Id.* A contract is unambiguous when the meaning of its language is clear after being “viewed ***objectively*** by a reasonably intelligent person who (1) has examined the entire integrated agreement; and (2) is cognizant of the ***customs, practices, usages, and terminology as generally understood in the particular trade or business.***” *S.C. Dep’t of Natural Res. v. Town of McClellanville*, 345 S.C. 617, 623, 550 S.E.2d 299, 302–03 (2001) (emphasis added) (citing *Hawkins*, 328 S.C. 585, 592, 493 S.E.2d 875, 878 (Ct. App. 1997)).

The Court is to first look at the language of the Lease, and “the language alone, understood in its plain, ordinary, and popular sense, determines the [Lease’s] force and effect.” *McCord v. Laurens Cty. Health Care System*, 429 S.C. 286, 292, 838 S.E.2d 220, 223 (Ct. App. 2020). The Court “must enforce the language as written, for it is the objective expression of what the parties meant to agree upon when they made their contract, not the secret subjective meaning one party later reveals.” *Id.*

Furthermore, a contract should be interpreted in a manner which gives effect to all of its provisions. *Abel v. S.C. Dep’t of Health and Envtl. Control*, 419 S.C. 434, 441, 798 S.E.2d 445, 448 (Ct. App. 2017) (quoting *Ecclesiastes Prod. Ministries v. Outparcel Assocs., LLC*, 374 S.C. 483, 498, 649 S.E.2d 494, 502 (Ct. App. 2007)). “[A]n interpretation that gives meaning to all parts of the contract is preferable to one which renders provisions in the contract meaningless or superfluous.” *Stevens Aviation, Inc. v. DynCorp Intern. LLC*, 407 S.C. 407, 417, 756 S.E.2d 148, 153 (2014).⁴ “An interpretation which establishes the more reasonable and probable agreement of

instead, equally applicable to all notices and demands provided under the Lease. CVS believes the Lease’s terms, specifically those found in Part II, Paragraph 27, are clear and unambiguous; however, even if the terms were ambiguous, CVS has not located any South Carolina law standing for the proposition that ambiguous terms within the Lease’s general notice provision should be construed against, or in favor of, any particular party.

⁴ See also *Auto Owners Ins. Co., Inc. v. Newman*, 385 S.C. 187, 196 n.3, 684 S.E.2d 541, 545 n.3 (2009) (refusing to adopt any interpretation of the contract which rendered a significant provision meaningless).

the parties should be adopted while an interpretation leading to an absurd result should be avoided.” *Koon v. Fares*, 379 S.C. 150, 155, 666 S.E.2d 230, 234 (2008).⁵

In this case, the Lease’s general notice provision is clear and unambiguous. The Lease’s general notice provision provides that the date of service is either (1) the date the Notice was received or (2) the date the Notice was mailed. [See Compl., Ex. A at 19, ¶ 27]. Making this determination is dependent upon whether or not the Notice was “received or accepted in the ordinary course of business.” If the Notice was not received or accepted in the ordinary course of business, “the date of mailing shall be deemed the date of service thereof.” [*Id.*].

The phrase “received or accepted in the ordinary course of business,” as used in the Lease, refers to the receipt or acceptance of a notice (or demand) on Monday through Friday from 9:00am to 5:00pm, with state and federal holidays excluded. “Course of business” is defined as “[t]he normal routine in managing a trade or business.” *Course of business*, Black’s Law Dictionary (11th ed. 2019). Thus, in this case, “course of business” refers to the normal routine in managing a commercial real estate business. See *Town of McClellanville*, 345 S.C. at 623, 550 S.E.2d at 302–03 (concluding that interpreting contractual terms requires an understanding of the customs, practices, usages, and terminology ***as generally understood in the particular trade or business***).

CVS’s expert witness, H. Haskell Kibler testified that the phrase “ordinary course of business”—as used in the Lease’s general notice provision—is commonly understood within the commercial real estate industry to refer to the regular practice “that property owners/managers (or their designees/agents), including those acting on behalf of landlords, check their mail, including post office boxes, on all non-holiday business days (generally, Monday through Friday).” [Pl.’s

⁵ See also *Farr v. Duke Power Co.*, 265 S.C. 356, 362, 218 S.E.2d 431, 434 (1975) (“Common sense and good faith are the leading touchstones of the inquiry. Where a construction of a contract makes it unusual or extraordinary and another construction, equally consistent with the language employed, would make it reasonable, fair, and just, the latter construction must prevail.”).

Resp. to Def.'s Interrog. No. 5(b); Def.'s Mot. Summ. J. 5, at ¶ 13].⁶ Therefore, delivery of mail, including the Notice at issue in this case, on a Saturday, Sunday, or state or federal holiday, constitutes a receipt which did not occur in the ordinary course of business.

Additionally, CVS believes the operative words "received or accepted," when read in conjunction with the phrase "unless the notice or demand is not received or accepted in the ordinary course of business," are also self-explanatory and encompass the following three scenarios: (1) where the notice was timely mailed, but not received by the receiving party on a normal business day (i.e., a non-holiday Monday through Friday); (2) where the Notice was received on a normal business day, but the receiving party failed to check the mail; and (3) where the receiving party purposefully refused to accept the mail on a normal business day. Indeed, Mr. Kibler testified that the Lease's general notice provision would be commonly understood within the commercial real estate industry to protect parties providing notices under the above-mentioned scenarios. [Pl.'s Resp. to Def.'s Interrog. No. 5(b)].

Throughout the entirety of this case, KPP has failed to address the "unless the notice or demand is not received or accepted in the ordinary course of business" language of the Lease's general notice provision. Instead, KPP advances an interpretation which, if accepted, would not only render this provision entirely meaningless but would also lead to an absurd result. Such an interpretation does not comport with South Carolina law. *See, e.g., Abel*, 419 S.C. at 441, 798 S.E.2d at 448 (stating that a contract should be interpreted to give effect to all its provisions);

⁶ Pursuant to the Consent Scheduling Order filed by the Court on April 22, 2020, KPP's deadline for identifying an expert witness was within ten calendar days following service of CVS's written responses to KPP's First Set of Interrogatories. CVS served its written responses to KPP's First Set of Interrogatories on May 7, 2020, which contained the opinions of CVS's expert witness, H. Haskell Kibler. KPP, therefore, chose not to designate its own expert witness. Additionally, KPP relies on the opinions of Mr. Kibler in making its argument that KPP's normal course of business comports with the "ordinary course of business in the commercial real estate industry." [Def.'s Mot. Summ. J. 8]. Mr. Kibler's opinions, therefore, appear to be uncontroverted.

Koon, 379 S.C. at 155, 666 S.E.2d at 234 (concluding that interpretations which lead to absurd results should be avoided).

KPP interprets the Lease's general notice provision to require KPP to sign for, and take physical possession of, a notice before the notice will be deemed served on the receiving party. [See, e.g., Def.'s Mot. Summ J. 7]. Under KPP's interpretation, Mr. Cap could have knowledge a notice was delivered to the Fairfield Post Office and was available to be picked up, yet service would not be effected until Mr. Cap went to the Fairfield Post Office, signed for the return receipt, and took physical possession of the Notice. When KPP's argument is taken to its logical extreme, Mr. Cap could ignore a USPS certified mail notice placed in KPP's post office box, wait until the notice's deadline had passed before signing the certified mail return receipt, and then declare the notice untimely. This interpretation renders a significant provision within the Lease meaningless and also produces an unreasonable, absurd result.

On the other hand, CVS's interpretation gives effect and meaning to all provisions, is more consistent with the Lease's language, and produces a reasonable and fair result. Under these circumstances, CVS's interpretation must prevail. See, e.g., *Farr*, 265 S.C. at 362, 318 S.E.2d at 434.

The undisputed material facts show the following:

- (1) the Notice was required to be served on KPP no later than Sunday, November 3, 2019, [Compl., Exs. A, B, & C; King Aff. ¶¶ 8, 10, & 14; Def.'s Mot. Summ. J. 3, at ¶ 6];
- (2) Peter J. Perry caused a copy of the Notice to be placed in the Mail with the USPS via certified mail, return receipt requested on Wednesday, October 30, 2019, [Perry Aff. ¶ 13];
- (3) the Fairfield Post Office received the Notice at 9:45am on Saturday November 2, 2019, [see **Exhibit A**; Perry Aff. ¶ 15; Def.'s Mot. Summ. J. 4, ¶ 10]; and

(4) the Notice was available for KPP to pick up at 9:45am on Saturday, November 2, 2019. [*Id.*].

Delivery of the Notice to the Fairfield Post Office on Saturday, November 2, 2019, was a receipt which did not occur in the ordinary course of business. Pursuant to Part II, Paragraph 27 of the Lease, the date the Notice was mailed is deemed the date of service. CVS mailed the Notice on Wednesday, October 30, 2019. Thus, CVS served the Notice on KPP on Wednesday, October 30, 2019, which occurred prior to the November 3, 2019 deadline. Therefore, CVS timely served the Notice on KPP, and effectively exercised its option to renew the Lease for an additional five-year term at Fixed Rent.

CONCLUSION

The undisputed facts show that CVS timely and effectively exercised its option to renew the Lease for an additional five-year period at Fixed Rent. CVS respectfully requests that the Court issue an order granting summary judgment in CVS's favor and finding that CVS is entitled to a judgment as a matter of law.

Respectfully submitted,

s/ J. Evan Phillips

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J. Evan Phillips (SC Bar #103679)
Parker Poe Adams & Bernstein LLP
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1221 Main Street, Suite 1100
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Facsimile: 803.255.8017
waltcartin@parkerpoe.com
evanphillips@parkerpoe.com

*Attorneys for Plaintiff
South Carolina CVS Pharmacy, L.L.C.*

July 7, 2020
Columbia, South Carolina

Exhibit A to Plaintiff's Motion for
Summary Judgment

Second Affidavit of Peter J. Perry

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	FOR THE FOURTEENTH JUDICIAL CIRCUIT
South Carolina CVS Pharmacy, L.L.C.,	)	CASE NO.: 2020-CP-07-00155
Plaintiff,	)	
vs.	)	SECOND AFFIDAVIT OF PETER J. PERRY
KPP Hilton Head, LLC,	)	
Defendant.	)	

Peter J. Perry, under oath, being first duly sworn, hereby deposes and says:

1. I am over eighteen (18) years of age, suffer from no known disability and am competent to testify to the facts set forth herein.

2. I make this affidavit upon personal knowledge and with access to the pertinent documents.

3. I am employed by CVS Pharmacy, Inc. ("CVS") as Lease Administration Manager.

4. In my role as Lease Administration Manager, I am responsible for overseeing and managing the leases governing CVS Health Corporation locations, including preparing and providing all required notices under the leases.

5. I oversee and manage the lease between South Carolina CVS Pharmacy, L.L.C. and KPP Hilton Head, LLC for the CVS retail store located at 10 Pope Avenue, Hilton Head Island, South Carolina 29928, dated May 7, 1998 (the "Lease").

6. As part of my duties overseeing and managing the leases governing CVS Health Corporation locations, including the Lease at issue in this case, I am responsible for maintaining records related to when required notices under the leases were received by the respective landlord.

7. In order to determine when the notice exercising the option to renew the Lease for an additional five-year period (the "Notice") was received by KPP Hilton Head, LLC, I obtained

the tracking information for the Notice from the United States Postal Service's ("USPS") by entering the Notice's tracking number at: https://tools.usps.com/go/TrackConfirmAction_input.

8. The document attached to this Affidavit as **Exhibit A** is a true and accurate copy of the USPS tracking information for the Notice.

9. **Exhibit A** is a true and accurate copy of the business records of CVS, which were created at or near the time of the vent and were kept in the course of CVS's regularly conducted business activities. Further, it is CVS's regular business practice to retain copies of tracking information related to notices required under the leases governing CVS Health Corporation locations.

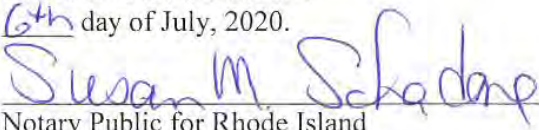
FURTHER AFFIANT SAYETH NAUGHT.

This 6th day of July, 2020.



Peter J. Perry

SWORN to before me this
6th day of July, 2020.



Notary Public for Rhode Island
My Commission Expires: _____

Susan M Schadone
Notary Public 46180
State of Rhode Island
My Comm exp 3/9/2024



Exhibit A to Second Affidavit of Peter
J. Perry

USPS Tracking Information

ELECTRONICALLY FILED - 2020 Jul 07 9:36 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700155

Tracking Number: 70143490000036414293

Remove

Status

Your item was delivered at 8:37 am on November 6, 2019 in HILTON HEAD ISLAND, SC 29925.

 **Delivered**

November 6, 2019 at 8:37 am
Delivered
HILTON HEAD ISLAND, SC 29925

Delivered

Tracking History

November 6, 2019, 8:37 am

Delivered

HILTON HEAD ISLAND, SC 29925

Your item was delivered at 8:37 am on November 6, 2019 in HILTON HEAD ISLAND, SC 29925.

November 2, 2019, 9:45 am

Available for Pickup

HILTON HEAD ISLAND, SC 29925

November 2, 2019, 9:45 am

Arrived at Unit

HILTON HEAD ISLAND, SC 29925

November 1, 2019, 7:39 pm

Departed USPS Regional Facility

CHARLESTON SC PROCESSING CENTER

November 1, 2019, 10:07 am

Arrived at USPS Regional Facility

CHARLESTON SC PROCESSING CENTER

October 31, 2019, 4:46 am

Departed USPS Regional Facility

PROVIDENCE RI DISTRIBUTION CENTER

October 30, 2019, 11:13 pm

Arrived at USPS Regional Facility

PROVIDENCE RI DISTRIBUTION CENTER

Product Information

See Less

Can't find what you're looking for?

Go to our FAQs section to find answers to your tracking questions.

FAQs

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	FOR THE FOURTEENTH JUDICIAL CIRCUIT
South Carolina CVS Pharmacy, L.L.C.,	)	CASE NO.: 2020-CP-07-00155
Plaintiff,	)	
vs.	)	SECOND AFFIDAVIT OF PETER J. PERRY
KPP Hilton Head, LLC,	)	
Defendant.	)	

Peter J. Perry, under oath, being first duly sworn, hereby deposes and says:

1. I am over eighteen (18) years of age, suffer from no known disability and am competent to testify to the facts set forth herein.

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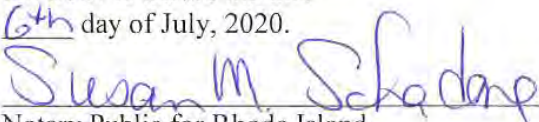
9. **Exhibit A** is a true and accurate copy of the business records of CVS, which were created at or near the time of the vent and were kept in the course of CVS's regularly conducted business activities. Further, it is CVS's regular business practice to retain copies of tracking information related to notices required under the leases governing CVS Health Corporation locations.

FURTHER AFFIANT SAYETH NAUGHT.

This 6th day of July, 2020.


Peter J. Perry

SWORN to before me this
6th day of July, 2020.


Notary Public for Rhode Island
My Commission Expires: _____

Susan M Schadone
Notary Public 46180
State of Rhode Island
My Comm exp 3/9/2024



**Exhibit A to Second Affidavit of Peter
J. Perry**

USPS Tracking Information

ELECTRONICALLY FILED - 2020 Jul 07 9:36 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0700155

Tracking Number: 70143490000036414293

Remove

Status

Your item was delivered at 8:37 am on November 6, 2019 in HILTON HEAD ISLAND, SC 29925.

 **Delivered**

November 6, 2019 at 8:37 am
Delivered
HILTON HEAD ISLAND, SC 29925

Delivered

Tracking History

November 6, 2019, 8:37 am

Delivered

HILTON HEAD ISLAND, SC 29925

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November 2, 2019, 9:45 am

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HILTON HEAD ISLAND, SC 29925

November 2, 2019, 9:45 am

Arrived at Unit

HILTON HEAD ISLAND, SC 29925

November 1, 2019, 7:39 pm

Departed USPS Regional Facility

CHARLESTON SC PROCESSING CENTER

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October 31, 2019, 4:46 am

Departed USPS Regional Facility

PROVIDENCE RI DISTRIBUTION CENTER

October 30, 2019, 11:13 pm

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Product Information

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Go to our FAQs section to find answers to your tracking questions.

FAQs

ROA 000315

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	FOR THE FOURTEENTH JUDICIAL CIRCUIT
South Carolina CVS Pharmacy, L.L.C.,	)	CASE NO.: 2020-CP-07-00155
Plaintiff,	)	
vs.	)	PLAINTIFF SOUTH CAROLINA CVS
KPP Hilton Head, LLC,	)	PHARMACY, L.L.C.'S RESPONSE AND
Defendant.	)	MEMORANDUM OF LAW IN
	)	OPPOSITION TO DEFENDANT'S MOTION
	)	FOR SUMMARY JUDGMENT

Plaintiff South Carolina CVS Pharmacy, L.L.C. ("CVS"), by and through its undersigned counsel, hereby submits CVS's Response and Memorandum of Law in Opposition to Defendant's Motion for Summary Judgment, and shows unto the Court the following:

INTRODUCTION

Both parties agree there are no disputed material facts. Both parties agree this case is a matter of contract interpretation. The Lease's¹ terms, including those terms within the Lease's general notice provision, are clear and unambiguous. Application of the undisputed material facts to the Lease's clear and unambiguous terms leads to only one result: CVS timely served the Notice on KPP, and effectively exercised its option to renew the Lease for an additional five-year term at Fixed Rent.

In Defendant's Motion for Summary Judgment ("KPP's Motion"), KPP primarily contends that CVS did not timely serve the Notice on KPP to renew the Lease because KPP (or its part-time agent, Stefan Cap) neither "signed for" nor took actual, physical possession of the Notice until Wednesday, January 6, 2020. According to KPP, CVS's right to renew the Lease is conditioned

¹ Any capitalized terms used in this Response and Memorandum of Law in Opposition to Defendant's Motion for Summary Judgment which are not otherwise defined herein, shall have the same meaning ascribed to them in CVS's Motion for Summary Judgment.

solely upon when KPP's part-time agent, Stefan Cap, decided to go physically sign for and retrieve mail from KPP's Post Office Box.

This argument advanced by KPP depends entirely upon (1) omitting material terms of the Lease, thereby rendering a significant portion of the Lease's general notice provision meaningless, while (2) simultaneously reading terms into the Lease and imposing conditions upon CVS which simply do not exist. KPP's self-serving method of contract interpretation is contrary to the Lease's clear and unambiguous terms, is in direct conflict with South Carolina law, and completely eviscerates CVS's contractual and unilateral right to renew the Lease. KPP's actions in this case, and the interpretation of the Lease offered in support of those actions, are nothing more than heavy-handed tactics employed for the sole purpose of coercing higher rent from CVS in excess of the rent originally agreed to under the Lease. Such an interpretation is unreasonable and must fail as a matter of law. For these reasons and the reasons more fully articulated below, CVS requests that this Court deny KPP's Motion for Summary Judgment.

ARGUMENT

I. The Lease Does Not Require the Notice Be "Signed For" or Actual, Physical Receipt of the Notice by KPP Before Service of the Notice Became Effective.

A. A Signature is Not Required for Effective Service of the Notice.

In KPP's Motion, KPP states "[t]he Lease expressly provides that all notices, including [the Notice] at issue, **be signed for** by the notified party." [Def.'s Mot. Summ. J. ¶ 7 (emphasis in original)]. This is a misstatement of what the Lease "expressly" provides. In totality, the Lease's general notice provision states the following:

Whenever, pursuant to this Lease, notice or demand shall or may be given to either of the parties by the other, and whenever either of the parties shall desire to give to the other any notice or demand with respect to this Lease or the Premises, each such notice or demand shall be in writing, and any Laws to the contrary notwithstanding, shall not be effective for any purpose unless that same shall be **given or served** as follows: by mailing the same to the other party by registered or certified mail, return receipt requested, or by overnight courier service provided a receipt is required, at

its Notice Address set forth in Part I hereof, or at such other address as either party may from time to time designate by notice given to the other. **The date of receipt of the notice or demand shall be deemed the date of service thereof (unless the notice or demand is not received or accepted in the ordinary course of business, in which case the date of mailing shall be deemed the date of service thereof).**²

[Compl. Ex. A 19, at ¶ 27 (emphasis added)].

While the Lease unambiguously requires a notice sent by certified mail to contain an accompanying return receipt, KPP improperly conflates this requirement with a requirement that a notice must also first be “signed for” by the notified party. The Lease clearly contemplates scenarios in which a notice will be deemed served prior to the date in which it was “signed for” by the notified party. Those scenarios are where a notice or demand is “not received or accepted in the ordinary course of business.” [*Id.*]. When that is the case, **“the date of mailing shall be deemed the date of service.”** [*Id.* (emphasis added)]. There is nothing within the Lease which unconditionally requires a notice first be “signed for” before service of the notice is deemed effective.

KPP’s interpretation imposes additional terms not otherwise present in the Lease. KPP advances this interpretation in order to impart a meaning wholly unexpressed when the Lease was first executed. Therefore, KPP’s interpretation of the Lease does not comply with South Carolina law. *Gilstrap v. Culpepper*, 283 S.C. 83, 86, 320 S.E.2d 445, 447 (1984) (quoting *Blakely v. Rabon*, 266 S.C. 68, 72, 221 S.E.2d 767 (1976)) (“Words cannot be read into a contract which impart intent wholly unexpressed when the contract was executed”).

² For concision, the Lease language “unless the notice or demand is not received or accepted in the ordinary course of business, in which case the date of mailing shall be deemed the date of service thereof” may be hereinafter referred to as the “Lease’s Service Upon Mailing Exception.”

B. Actual, Physical Receipt of the Notice by KPP is Not Required for Effective Service of the Notice.

KPP further states in the Undisputed Facts section of its Motion that “[t]he Lease unambiguously provides that ‘**[t]he date of receipt** of the notice . . . shall be deemed the date of service thereof.’” [Def.’s Mot. Summ. J. ¶ 7 (emphasis in original)]. KPP also argues that because Stefan Cap “went to the Post Office on Wednesday, November 6, 2019[,] in the ordinary course of Landlord’s business and signed for and received the Registered letter that day[,] . . . November 6, 2019, therefore, was ‘**deemed the date of service**’ of the notice.” [*Id.* at 8 (emphasis in original)]. Again, KPP misconstrues what the Lease “unambiguously” provides. [See Compl. Ex. A 19, at ¶ 27].

KPP continuously emphasizes when the Notice was physically “received by” KPP. The Lease, however, does **not** state “the date of receipt **by the Landlord**.” Rather, the Lease states, “the date of receipt of the notice or demand shall be deemed the date of service thereof.” [Compl. Ex. A 19, at ¶ 27]. Where a landlord chooses its service address to be a post office box, it must be true—without express terms in the Lease to the contrary—that “receipt” can only mean receipt by the Post Office, not by the landlord itself. If “receipt” referred only to KPP’s actual, physical receipt and possession of the Notice, and the ordinary course of KPP’s business was to only check its Post Office Box two days per week [King Aff. ¶ 12], then the language “(unless the notice or demand is not received or accepted in the ordinary course of business . . .),” would have no purpose because a notice would never be “not received” in the ordinary course of KPP’s business.³

³ Moreover, KPP asserts that CVS could have just instead sent the Notice “by overnight courier as Part II, Section 27 expressly authorized.” [Def.’s Mot. Summ J. 9, n.6]. However, as KPP admitted, “[n]either KPP Hilton Head, nor its property manager receive mail in an office. Both use a Post Office Box for their Mail.” [Def.’s Mot. Summ. J. 5, at ¶ 12]. According to the United States Postal Service, “Private shipping companies or carriers, such as UPS, FedEx and Amazon, are not able to deliver to (place mail in) a PO Box. Only the United States Postal Service® is permitted to deliver mail to (place mail in) a PO Box.” [<https://faq.usps.com/s/article/PO-Box-The-Basics#delivery> (last visited July 28, 2020)]. Therefore, KPP’s suggestion that there was an alternative method of delivering the Notice to KPP is false and without merit.

Given that the Lease undeniably contains the statement, “the date of mailing shall be deemed the date of service,” it is unclear why KPP continues to advance to the Court that “[t]he Lease unambiguously provides that ‘[t]he *date of receipt* of the notice . . . shall be deemed the date of service thereof.’” KPP’s argument begs the question: if all notices must first be signed for and physically received by the notified party before service is effective, when would the date of mailing ever be deemed the date of service?

In KPP’s Motion, KPP appears to at least acknowledge the possibility that a purposeful refusal of a notice would implicate the Lease’s Service Upon Mailing Exception. [See Def.’s Mot. Summ. J 10 (stating that “[t]here is no other allegation that KPP Hilton Head did *anything*, let alone anything untoward, to cause CVS to miss the Lease renewal deadline”) (emphasis in original)]. CVS agrees that a purposeful refusal of the Notice would implicate the Lease’s Service Upon Mailing Exception. However, the words “**received or accepted**,” when read together with the phrase “unless the notice or demand is not received or accepted in the ordinary course of business, in which case the date of mailing shall be deemed the date of service thereof” encompasses more scenarios than only a landlord’s purposeful refusal to accept the Notice.

CVS believes the Lease’s Service Upon Mailing Exception is clearly implicated upon at least three scenarios: (1) where the notice was timely mailed, but not received by the receiving party on a normal business day; (2) where the Notice was received on a normal business day, but the receiving party failed to check the mail; and (3) where the receiving party purposefully refused to accept the mail on a normal business day. Indeed, CVS’s expert witness, H. Haskell Kibler testified that the Lease’s general notice provision would be commonly understood within the commercial real estate industry to protect parties providing notices under the above-mentioned scenarios. [Pl.’s Resp. to Def.’s Interrog. No. 5(b)].

KPP's interpretation, which at most acknowledges that the Lease's Service Upon Mailing Exception applies only when a party purposefully refuses to accept a notice, does not give effect to the entirety of the Lease. KPP's interpretation, instead, renders a significant portion of the Lease entirely meaningless. Therefore, KPP's interpretation of the Lease does not comply with South Carolina law. *See, e.g., Abel v. S.C. Dep't of Health and Envtl. Control*, 419 S.C. 434, 441 798 S.E.2d 445, 448 (Ct. App. 2017) (stating that a contract should be interpreted in a manner which gives effect to all of its provisions); *Auto Owners Ins. Co., Inc. v. Newman*, 385 S.C. 187, 196 n.3, 684 S.E.2d 541, 545 n.3 (2009) (refusing to adopt any interpretation of the contract which rendered a significant provision meaningless).

II. Extrinsic Evidence Related to the Ordinary Course of KPP's Business and Prior Dealings is Inadmissible as a Matter of Law.

In KPP's Motion, KPP offers a number of facts related to the "ordinary course" of KPP's business, as well as prior dealings KPP had with CVS for an unrelated CVS Retail Pharmacy. It is unclear exactly what purpose these facts are offered for by KPP, but CVS presumes it is for the purpose of aiding the Court's interpretation of the phrase "ordinary course of business." For whatever purpose it is offered, this evidence should not be considered by the Court when interpreting the Lease or determining whether the Notice was timely served on KPP.

First, these facts are inadmissible as a matter of law. *See, e.g., Watson v. Underwood*, 407 S.C. 443, 455, 756 S.E.2d 155, 161 (Ct. App. 2014) ("If a contract is unambiguous, extrinsic evidence cannot be used to give the contract a meaning different from that indicated by its plain terms."); *Gordon Farms, Inc. v. Carolina Cinema Corp.*, 294 S.C. 158, 160, 363 S.E.2d 235, 237 (Ct. App. 1987) ("No authority is needed for the proposition that extraneous evidence is not admissible to alter or vary the terms of an unambiguous written contract."). KPP makes no argument that the Lease is ambiguous.

In fact, KPP repeatedly affirms that the Lease is unambiguous. [*E.g.*, Def.’s Mot. Summ. J. 7 (“The Lease **expressly** provides that all notices . . . be signed for by the notified party.”) (emphasis added); *id.* (“The Lease also **unambiguously** specifies that ‘[t]he date of receipt of the notice . . . shall be deemed the date of service.’”) (emphasis added); *id.* at 12 (“Article 27 **unambiguously** provides that ‘[t]he date of receipt of the notice . . . shall be deemed the date of service thereof.’”) (emphasis added); *id.* (“CVS just acted as if it did not have to strictly comply with the deadline **clearly and unambiguously** contained in the Lease.”) (emphasis added)]. Therefore, any evidence of KPP’s ordinary course of business or prior dealings which is offered to explain, alter, or vary the Lease’s terms is inadmissible as a matter of law.

Second, KPP’s normal routine of checking its Post Office Box once or twice per week does not change the manner in which the Lease’s terms are to be applied, nor does it alter the meaning of the Lease’s terms. In KPP’s Motion, KPP states that “[i]n the normal course of their business, KPP Hilton Head and its property manager retrieve their mail from their Post Office Box once or twice per week during the customary (Monday – Friday) work week based upon the schedule and availability of the property manager’s part time agent, Mr. Cap.” [Def.’s Mot. Summ. J. ¶ 12].

However, the phrase “ordinary course of business,” must be interpreted objectively and cannot be given the subjective meaning KPP attempts to assign to it over twenty years after the Lease was first formed. *See McCord v. Laurens Cty. Health Care System*, 429 S.C. 286, 294, 838 S.E.2d 220, 225 (Ct. App. 2020) (holding that unambiguous contract terms are to be interpreted in their “plain, ordinary, and popular sense,” and refusing to adopt a party’s alleged subjective intent of those terms when “no language in the [contract] resembled such a requirement”). KPP’s subjective meaning of the phrase “ordinary course of business” is irrelevant to the Court’s determination. *See id.* at 292, 838 S.E.2d at 223 (stating that courts “must enforce the language as written, for it is the objective expression of what the parties meant to agree upon when they made

their contract, not the secret subjective meaning one party later reveals”); *Silver v. Abstract Pools and Spas, Inc.*, 376 S.C. 585, 593, 658 S.E.2d 539, 543 (Ct. App. 2008) (“Interpretation of the contract is governed by the objective manifestation of the parties’ assent at the time the contract was made. It does not depend on the subjective, after the fact meaning one party assigns to it.”) (quoting *Bannon v. Knauss*, 282 S.C. 589, 593, 320 S.E.2d 470, 472 (Ct. App. 1984)). Neither KPP nor CVS were the original parties to the Lease. [Compl. Ex. A]. Both KPP and CVS became parties to the Lease via assignment from separate, distinct entities. Therefore, to argue that the Lease’s terms—which have not been modified since the Lease was first executed—should now be interpreted to encompass KPP’s subjective ordinary course of business specifically, rather than the ordinary course of business of the commercial real estate industry generally, is illogical.

CONCLUSION

For all of the reasons explained above, as well as the reasons contained within CVS’s Motion for Summary Judgment, CVS respectfully requests that the Court deny KPP’s Motion for Summary Judgment.

Respectfully submitted,

s/ J. Evan Phillips

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August 3, 2020
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	FOR THE FOURTEENTH JUDICIAL CIRCUIT
South Carolina CVS Pharmacy, L.L.C.,	)	CASE NO.: 2020-CP-07-00155
Plaintiff,	)	
vs.	)	PLAINTIFF SOUTH CAROLINA CVS
KPP Hilton Head, LLC,	)	PHARMACY, L.L.C.'S MOTION FOR
Defendant.	)	RECONSIDERATION

Plaintiff South Carolina CVS Pharmacy, L.L.C. ("CVS"), by and through its undersigned counsel, moves the Court pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure ("SCRCP") to reconsider, alter or amend its Order granting Defendant KPP Hilton Head, LLC's ("KPP") Motion for Summary Judgment and denying CVS's Motion for Summary Judgment, which was entered on August 27, 2020.

CVS requests that the Court reconsider its decision and alter or amend its Order to (1) grant CVS's Motion for Summary for Judgment and (2) deny KPP's Motion for Summary Judgment. Additionally, CVS requests that the Court reconsider, alter or amend a number of specific factual findings and legal conclusions contained within the Court's Order.

INTRODUCTION

The primary grounds for CVS's request for this Court to reconsider its decision derive from (1) the misapplication of the legal standard for interpreting the Lease's¹ general notice provision; (2) imposing additional terms into the Lease's general notice provision that are not expressed in

¹ Unless otherwise defined in this Motion, the terms used herein have the same meaning ascribed to them in CVS's Motion for Summary Judgment and CVS's Response and Memorandum of Law in Opposition to KPP's Motion for Summary Judgment.

the Lease; (3) the failure to give full effect to all terms of the Lease's general notice provision; and (4) interpreting the Lease's general notice provision in such a way that leads to an absurd result.

First, the Court employed a "strict construction" method of interpreting the Lease's general notice provision. The Lease's general notice provision applies to all notices and demands required to be provided by the Lease. The Court strictly construed the terms of the Lease against CVS merely because CVS was the party claiming its option to renew the Lease. South Carolina law requires the unambiguous terms of an option contract to be interpreted according to the contract's actual terms in the context in which the contract was made, and those terms are to be construed as understood in their plain, ordinary, and popular sense. The Lease's general notice provision should not be strictly construed against, or in favor of, either party.²

Next, the Court's interpretation requires all notices or demands be signed for by the receiving party before a notice or demand is deemed served. The Lease's requirement that the notifying or demanding party send its notice or demand by either certified mail, return receipt requested, or by overnight courier service, provided a receipt is required, does not impose a requirement that the receiving party sign for the notice or demand prior to effective service. This requirement imposes additional terms that are not expressed in the Lease.

Additionally, the Court's interpretation does not give full effect to the Lease's Service Upon Mailing Exception. The Lease's Service Upon Mailing Exception is implicated when a notice or demand is not **received or accepted** in the ordinary course of business. The Court interpreted the exception to apply only when a receiving party purposefully refuses to accept its mail. This interpretation does not give effect to all of the Lease's terms, and nullifies the other

² CVS further believes that even if the Court applied the "strict construction" contract interpretation principle, a proper, fair, and common sense reading of the Lease would result in the same outcome: the Lease's Service Upon Mailing Exception applies to notices or demands received on a Saturday and other non-business days, such that the date of mailing is deemed the date of service when a notice or demand is received on a Saturday. This argument is more fully addressed within this Motion at Section II(A).

circumstances clearly contemplated by the Lease's Service Upon Mailing Exception, such as the arrival of the Notice on a weekend or a party's failure to check for its mail on weekdays.

Finally, the Court's interpretation leads to an absurd result. The Court's interpretation leads to the conclusion that had KPP never picked up its mail, CVS's notice would have been timely. However, the Court's interpretation also leads to the conclusion that a notifying party could fully comply with the requirements of the Lease's general notice provision, but the timeliness of the notice is then entirely dependent upon when the receiving party checks (and signs for) its mail. For example, if the receiving party checks its mail, finds a notice, and signs for the notice before the notice's deadline, the Court's interpretation would deem the notice timely. Yet if the receiving party never checked its mail, then the Court's interpretation would deem the notice untimely. If, however, a notice provided under the Lease arrived at the Post Office on a Monday, the notice's deadline was Wednesday, and the receiving party did not check its mail and sign for the notice until Friday, the Court's interpretation would declare the notice untimely. The Court's interpretation would apply in every scenario where a receiving party did not check and sign for its mail until after the notice deadline, so long as the receiving party did not purposefully refuse to accept its mail. This is an absurd result that the drafting parties of the Lease could not possibly have intended.³

For these reasons, and for the reasons more fully articulated below, CVS requests that the Court reconsider its decision and alter or amend its Order to (1) grant CVS's Motion for Summary Judgment and (2) deny KPP's Motion for Summary Judgment.

³ Under the Lease's general notice provision, the notifying party is only required to mail the notice or demand by certified mail, return receipt requested (or, when possible, by overnight courier service provided a receipt is required). Arguably, the Lease's general notice provision could be construed to deem a notice sufficiently provided once the notifying party satisfies all conditions precedent for effectively giving or serving the notice on the receiving party. Thus, the notice could be deemed "given or served" on the day the notice is placed in the mail.

ARGUMENT

I. Factual Findings

A. The Lease Requires Notices be Given or Served on the Notified Party.

The Order states that “[t]he Parties agree that the Lease required Tenant to give Landlord Tenant’s notice that it was exercising the option to renew the Lease ‘not later than’ Sunday November 3, 2019, and in conformity with the Lease terms.” [Order p. 2, ¶ 3]. CVS believes this is an incomplete statement of the Lease. CVS requests that the Court alter or amend its Order to find that the Lease required Tenant to “give or serve” the Notice no later than Sunday November 3, 2019.

The Lease’s general notice provision at Part II, Paragraph 27 of the Lease provides that “each such notice or demand shall be in writing, and . . . shall not be effective for any purposes unless the same shall be **given or served**. . . .” (emphasis added). [Compl. Ex. A 19, ¶ 27]. Further, the Lease’s general notice provision states “[t]he date of receipt of the notice or demand shall be deemed the date of **service** thereof (unless the notice or demand is not received or accepted in the ordinary course of business, in which case the date of mailing shall be deemed the date of **service** thereof).” [*Id.*] (emphasis added).

Accordingly, the factual finding that “the Lease required Tenant to **give** Landlord Tenant’s notice” is an incomplete statement. Therefore, CVS respectfully requests that the Court alter or amend its Order to reflect that CVS was required to give **or serve** the Notice, in accordance with the Lease’s terms, no later than Sunday, November 3, 2019.

B. Evidence of KPP’s and CVS’s Prior Dealings Related to the Port Royal Store is Inadmissible Extrinsic Evidence.

The Order includes factual findings of KPP’s and CVS’s prior dealings related to the renewal process that took place between the two parties for CVS’s Port Royal Store. [Order p. 2–

3, ¶¶ 4 & 5]. To the extent the Court relied on these facts, CVS would respectfully request that the Court reconsider its decision. This case deals with the interpretation of the unambiguous language of CVS's Hilton Head Lease, and no other lease. Therefore, extrinsic evidence is not admissible to explain, alter, or vary the Lease's terms. *E.g., Progressive Max Ins. Co. v. Floating Caps, Inc.*, 405 S.C. 35, 46, 747 S.E.2d 178, 184 (2013) (quoting *C.A.N. Enterprises, Inc. v. South Carolina Health and Human Servs. Fin. Com'n*, 296 S.C. 373, 377, 373 S.E.2d 584, 586 (1988)) (stating that "[e]xtrinsic evidence giving the contract a different meaning from that indicated by its plain terms is inadmissible"). Even if the Court did not rely on these facts in making its decision, CVS requests that the Court remove these findings from the Order, as these facts are not only inadmissible but irrelevant to this case.

C. Mr. Cap's Duties Include Checking Landlord's Post Office Box Once or Twice Per Week.

The Order states that "Mr. Cap's duties include checking Landlord's Post Office Box on weekdays for correspondence." [Order p. 3, ¶ 6]. This factual assertion is not correct, and, if previously asserted by KPP, would have been disputed by CVS. CVS requests that the Court alter or amend its Order to comport with the evidence put forth by KPP in this case, and find that KPP's agent, Mr. Cap, checks KPP's Post Office Box for mail once or twice per week.

At every stage of this case, KPP asserted that Mr. Cap only checks KPP's Post Office Box for mail once or twice per week. [Def.'s Answer and Countercl. 9, ¶ 13 ("It is Principal Developers and Landlord's normal course of business to receive their mail once or twice per week during the customary work week (Monday through Friday) based upon Mr. Cap's schedule and availability to go to the Post Office. Mr. Cap has the only key to the Landlord's Post Office Box.") (emphasis added); King Aff. ¶ 12 ("It is Principal Developers and KPP's normal course of business to receive their mail once or twice per week during the customary work week (Monday through

Friday) based upon Mr. Cap's schedule and availability to go to the Post Office.") (emphasis added); Def.'s Mot. Summ. J. 4, n.4 ("KPP Hilton Head's Interrogatory Responses indicated that Mr. Cap performed the following duties with respect to the KPP Hilton Head/CVS lease and its property: 'a. Picking up mail at the post office one or two times per week. . . .') (emphasis added); Def.'s Resp. Opp. Pl.'s Mot. Summ. J. ("It is Principal Developers and KPP's normal course of business to receive their mail once or twice per week during the customary work week (Monday through Friday).") (emphasis added)].

CVS believes the factual finding in the Order could be construed to stand for the proposition that it is undisputed that KPP (through its agent, Mr. Cap) checks its Post Office Box every weekday, in accordance with the ordinary course of business for the commercial real estate industry generally. As shown above, at no point did KPP put forth any evidence to support a finding that either KPP or Mr. Cap (on KPP's behalf) checks KPP's Post Office Box for correspondence on all weekdays. Therefore, CVS requests that the Court alter or amend its Order to reflect that it is KPP's ordinary course of business to check its Post Office Box for mail, through its agent Mr. Cap, once or twice per week.

D. The Date KPP "Received" the Notice is Not a Factual Finding.

The Order states "Landlord did not sign for and, therefore, did not receive the Renewal until Wednesday, November 6, 2019." [Order p. 3, ¶ 9]. CVS does not dispute that KPP's agent, Stefan Cap, did not sign the Notice's return receipt until Wednesday, November 6, 2019. However, it is CVS's contention that KPP received the Notice when the Notice arrived at the Post Office where KPP's Post Office Box was located on Saturday, November 2, 2019.

Whether or not a signature and actual, physical possession of the Notice by Mr. Cap is required for the Notice to be deemed "received" by KPP under the Lease, is not an undisputed fact, but is, rather, a legal conclusion dependent upon interpreting the Lease's terms. Therefore, CVS

requests that the Court alter or amend the factual findings section of its Order to reflect that KPP's agent, Stefan Cap, did not sign the Notice's return receipt and did not take actual, physical possession of the Notice until Wednesday, November 6, 2019.

Moreover, the Order states that "[t]here is no evidence (or allegation) that Landlord ignored any Return Receipt ticket that may have been in its Post Office Box after Tenant's Renewal arrived at the Hilton Head Post Office on Saturday, November 2, 2019." [Order p. 3–4, ¶ 10]. While CVS acknowledges that it has made no allegation that KPP **purposefully refused** to go pick up the Notice after it was delivered to the Post Office on Saturday, November 2, 2019, the undisputed facts show that Stefan Cap did not check KPP's Post Office Box for mail until Wednesday, November 6, 2019. [*E.g.*, Def.'s Mot. Summ. J.5, ¶ 14]. Thus, KPP admitted that neither KPP nor Mr. Cap checked for KPP's mail on Monday November 4, 2019, or Tuesday, November 5, 2019. [*Id.*]. Therefore, CVS requests that the Court alter or amend the factual finding section of its Order to find that KPP failed to check its mail on Monday, November 4, 2019, and Tuesday, November 5, 2019.

II. Conclusions of Law

A. South Carolina Law Does Not Require the Language of the Lease's General Notice Provision to Be Strictly Construed Against CVS.

The Order concludes that the language of the Lease's general notice provision is to be strictly construed against CVS. Specifically, the Order finds that CVS's interpretation of the Lease, which concludes notices and demands that arrive at the Post Office on a weekend are "not received or accepted in the 'ordinary course of business' . . . would not amount to the strict construction 'against the party claiming the renewal option mandated by 33 Flavor Stores of Virginia, Inc. v. Hoffman.'" [Order p. 6]. CVS believes the language of the Lease's general notice provision should not be construed against, or in favor of, either party.

Strictly construing the requirements of an option against the party claiming the option is not equivalent to the contract interpretation principle of strictly construing the contract's language against a particular party. Under South Carolina law, it is true that the requirements of exercising an option are to be strictly construed against the party claiming the option. *Ingram v. Kasey's Associates*, 340 S.C. 98, 108, 531 S.E.2d 287, 292 (2000). However, it is equally true that South Carolina law requires an option contract be "interpreted according to its actual terms and the context in which it was made," and "if the contract is unambiguous, clear, and explicit, it must be construed according to the terms the parties have used, and the terms are to be taken and understood in their plain, ordinary, and popular sense." *Id.* at 110, 531 S.E.2d at 293.

In this case, the Court must interpret the Lease's general notice provision. The Lease's general notice provision applies to all notices or demands required to be given or served under the Lease. The notice required to effectively exercise CVS's renewal option is just one of many scenarios identified under the Lease when a notice or demand must be given or served on the other party to the Lease. [*E.g.*, Compl. Ex. A 6, ¶ 2 (stating that "Landlord and Tenant each may terminate this Lease by 30 days' written notice to the other party"); *id.* at 9, ¶ 7(a) ("Landlord agrees to give at least 30 days' prior written notice to Tenant of the date when such possession will be available to Tenant."); *id.* at 13, ¶ 13(a) ("Landlord may terminate this Lease upon no fewer than 45 days' prior written notice to Tenant, in which event this Lease shall terminate on the date specified in such notice."); *id.* at 28, ¶ 44 ("If Tenant shall cease to operate its business in the Premises for more than 60 consecutive days, Landlord shall have the right, at any time thereafter, for as long as Tenant's cessation to operate is still in effect, to terminate this Lease by giving Tenant 30 days' written notice of such election. . . .")].

CVS has been unable to locate any South Carolina case law standing for the proposition asserted in the Court's Order that the language of the Lease's general notice provision is to be

strictly construed against CVS. Therefore, CVS requests that the Court alter or amend its order to find that the Lease's general notice provision is not to be strictly construed against, or in favor of, either party. CVS also requests that the Court interpret the Lease's general notice provision without strictly construing the words in favor of either party and reconsider its decision to grant KPP's Motion for Summary Judgment and to deny CVS's Motion for Summary Judgment.

However, even if the Court were to again find that the terms of the Lease's general notice provision should be strictly construed against CVS, the Court's interpretation of the Lease should still result in a finding that the Notice was timely served because the Notice was not received or accepted in the ordinary course of business. Application of the "strict construction" contract interpretation principle should not entirely negate the protections afforded to both parties to the Lease when either party is required to give or serve a notice or demand on the other party.

"The canon in favor of strict construction is not an inexorable command to override common sense and evident [] purpose." *U.S. v. Brown*, 338 U.S. 18, 25–26, 68 S.Ct. 376, 380, 92 L.Ed. 442 (1948) (emphasis added); *see also Thomas v. Davis*, 192 F.3d 445, 456 (4th Cir. 1999) (quoting *U.S. v. Brown*, interpreting a South Carolina statute, and stating that the canon in favor of strict construction does not demand words **"be given the narrowest meaning; it is satisfied if the words are given their fair meaning in accord with the manifest intent of the [drafters]"**) (emphasis added).

In this case, one party was required to give or serve a notice upon the other party before a certain deadline. That deadline was November 3, 2019. The required notice fully complied with the Lease and was given in the correct form (i.e., in writing), addressed to the correct notice addressee (i.e., the party's United States Post Office Box), and mailed in the only proper and possible manner under the facts of this case (i.e., United States certified mail, return receipt requested). The required notice was placed in the mail with the United States Postal Service on

October 30, 2019—four days before the deadline expired. The required notice arrived at the only place where the receiving party receives, accepts, and picks up its mail at 9:45am on Saturday, November 2, 2019—one day before the deadline expired.

The Court states that the Lease’s Service Upon Mailing Exception does not operate to include “the fortuitous receipt of mail on a non-ordinary course of business day.” [Order p. 5–6]. However, CVS continues to maintain that the Lease’s Service Upon Mailing Exception is intended to apply in that very scenario, in addition to a party’s purposeful refusal to accept its mail or a party’s failure to check for its mail on a weekday.

The Court’s interpretation does not simply negate “the fortuitous receipt of mail on a non-ordinary course of business day.” In actuality, the Court’s interpretation permits parties under the Lease to create a “gotcha” moment simply because the party did not check and sign for its mail on the day a notice arrived, so long as the party claims that it did not purposefully refuse to do so. The original parties to the Lease were sophisticated business entities entering into a negotiated twenty-year lease with the possibility of twenty more years upon the renewal of four separate five-year option periods. The Court’s interpretation of the Lease leads to the conclusion that the original Lease parties intended for a party receiving a notice to be able to claim the notice untimely, when the notice arrived at the receiving party’s mailbox prior to the notice’s deadline, in every instance where the party did not purposefully refuse to accept its mail so long as the notice was not “signed for” and in someone’s physical possession prior to the deadline. This result is not only unreasonably harsh and inequitable, but is manifestly contrary to what the Lease states and what the original Lease parties must have intended.

Therefore, CVS requests that the Court interpret the Lease’s general notice provision, taking into account the likeliest intention of the original Lease parties, and reconsider its decision to grant KPP’s Motion for Summary Judgment and to deny CVS’s Motion for Summary Judgment.

B. KPP Received the Notice on Saturday, November 2, 2019.

CVS requests that the Court reconsider its decision that the Notice was not received until Wednesday, November 6, 2019, and alter or amend its Order to find that the Notice was received by KPP on Saturday, November 2, 2019, at 9:45am. Although the Lease provides that notices or demands may be given or served by either certified mail, return receipt requested, or by overnight courier service, the fact that KPP only accepts and receives mail at its Post Office Box necessarily means that CVS could only give or serve the Notice on KPP by certified mail, return receipt requested. Overnight courier services cannot, by law, deliver mail to United States Post Office Boxes.⁴

When the Notice arrived at the Post Office where KPP's Post Office Box was located, the Notice was "received" as that term is contemplated under the Lease's general notice provision. Accordingly, the Notice was received by KPP on the day the Notice arrived at the Post Office where KPP's Post Office Box is located and was available for KPP to pick up. Therefore, CVS requests that the Court alter or amend its Order to find the Notice was received by KPP on Saturday, November 2, 2019.

C. A Signature is Not Required for Effective Service of the Notice.

The Order states "the Lease expressly provides that all notices, including the [Notice] at issue, be signed for by the notified party." [Order p. 6 (citing Lease Part II, Article 27)]. The Order further states that "[r]egardless of the method selected to send any notice, the Lease unambiguously requires a signed receipt for that notice." [*Id.*]. CVS requests that the Court alter or amend its Order to reflect that the Lease does not require notices or demands be signed for by the notified party.

⁴ "Private shipping companies or carriers, such as UPS, FedEx and Amazon, are not able to deliver to (place mail in) a PO Box. Only the United States Postal Service® is permitted to deliver mail to (place mail in) a PO Box." [<https://faq.usps.com/s/article/PO-Box-The-Basics#delivery> (last visited July 28, 2020)].

The Lease's general notice provision provides that "each such notice or demand shall be in writing, and any Laws to the contrary notwithstanding, shall not be effective for any purpose unless the same shall be given or served as follows: by mailing the same to the other party by registered or certified mail, return receipt requested, or by overnight courier service, provided a receipt is required. . . ." [Compl. Ex. A 19, ¶ 27]. There is nothing expressed within the Lease's general notice provision, or the Lease in general, that requires the Notice, a certified mail return receipt, or an overnight courier's receipt be "signed for" by the receiving party. The Lease only requires that the party mailing the notice or demand send it by certified mail, return receipt requested, or by overnight courier service, so long as a receipt is required.

Along with there being no signature requirement, there is no requirement within the Lease that notices and demands be sent restricted delivery. For example, if KPP had a physical place to accept mail deliveries aside from its Post Office Box (i.e., a regular mailbox or an office location), CVS could have therefore used the overnight courier service option provided by the Lease. Under this example, it is entirely plausible that a notice or demand sent by an overnight courier service, such as FedEx, would contain an accompanying "receipt" stating that the mailing was delivered once it was placed in KPP's hypothetical mailbox or at its front reception desk. This delivery "receipt" would comply with the Lease's language "provided a receipt is required," and, yet, no signature would ever be provided.

Interpreting the Lease in such a way that requires a signature be placed on a notice or demand, a certified mail return receipt, or an overnight courier's receipt imposes additional terms into the Lease which are otherwise not expressed in the Lease. Such a method of contract interpretation conflicts with well-settled South Carolina law. *See, e.g., Auto Now Acceptance Corp. v. Catawba Ins. Co.*, 351 S.C. 377, 382, 570 S.E.2d 168, 171 (2002) ("Words cannot be read into a contract which impart intent wholly unexpressed when the contract was executed.") (citing

Blakely v. Rabon, 266 S.C. 68, 72, 221 S.E.2d 767, 769 (1976)); *Radalytic Labs, Inc. v. Culver*, 329 S.C. 380, 384, 495 S.E.2d 782, 784 (1998). Therefore, CVS requests that the Court alter or amend its Order to find that a signature was not required for effective service of the Notice.

D. The Date of Mailing is the Date of Service Because the Notice Was Not Received or Accepted in the Ordinary Course of Business.

CVS requests that the Court alter or amend its Order to find that when a notice is received on a Saturday or Sunday, the notice was not received or accepted in the ordinary course of business as contemplated by the Lease. The Lease's general notice provision unambiguously provides that when a notice or demand is not **received or accepted** in the "ordinary course of business," the date of mailing shall be deemed the date of service (the "Lease's Service Upon Mailing Exception"). CVS believes the Lease's Service Upon Mailing Exception applies to three scenarios: (1) where a notice or demand was timely mailed, but not received by the receiving party on a normal business day (i.e., a non-holiday Monday through Friday); (2) where a notice or demand was received on a normal business day, but the receiving party failed to check the mail; and (3) where the receiving party purposefully refused to accept the mail on a normal business day.

In this case, the Notice arrived at the Post Office where KPP's Post Office Box was located on Saturday, November 2, 2019. The Notice was available for KPP to pick up at 9:45am on Saturday, November 2, 2019. Thus, the arrival of the Notice and the Notice's availability to be picked up at the Post Office where KPP's Post Office Box is located on a Saturday was a receipt of the Notice which did not occur in the ordinary course of business. Therefore, the date of mailing (October 30, 2019) is to be deemed the date of service under the Lease's Service Upon Mailing Exception.

In addition to the Notice not being received in the ordinary course of business because it was received on a Saturday, even if the Court's interpretation is accepted (which CVS maintains

it should not be), the Notice still was not received or accepted by KPP in the ordinary course of business. KPP waited three business days to go to the Post Office, physically sign the Notice's return receipt, and take physical possession of the Notice. The Order states that "[Landlord]"⁵ (and other businesses) keep regular weekday (Monday through Friday) hours, except holidays, and [Landlord] (and other businesses) accept mail during those hours and do not to [sic] refuse or reject mail or notices."⁶ [Order p. 5]. The Order further states that "[i]t is this refusal, rejection, or failure to abide by the normal method of mail or courier receipt that the parenthetical in the Lease addresses, not the fortuitous receipt of mail on a non-ordinary course of business day." [*Id.* at 5–6]. Even under the Court's limited interpretation, KPP failed to abide by the ordinary course of business for receiving and accepting mail in this case because KPP failed to check for its mail on all non-holiday business days (i.e., Monday, November 4, 2019, and Tuesday, November 5, 2019).

Thus, the Notice was neither received nor accepted by KPP in the ordinary course of business because (1) it was received by KPP on a Saturday, and (2) KPP failed to accept its mail and take physical possession of the Notice until Wednesday, November 6, 2019. Application of these facts to the Lease's general notice provision requires a finding that the Notice was not received or accepted in the ordinary course of business, and the date of mailing is deemed the date of service.

Further, under the Court's interpretation, only a party's purposeful refusal to accept mail triggers the Lease's Service Upon Mailing Exception. This interpretation requires the conclusion that the terms "received" and "accepted" are synonymous and have no independent meaning. The use of the disjunctive "or," at a minimum, necessarily encompasses more than one scenario for

⁵ The Court's Order states "Tenant" in the places where "[Landlord]" is inserted above. CVS presumes this is a scrivener's error and adjusts the language in this Motion accordingly.

⁶ There is no evidence in the record to support a finding that KPP accepts mail during all business hours on Monday through Friday. As explained above and as asserted throughout this case by KPP, KPP's agent, Mr. Cap, is the only one with a key to KPP's Post Office Box, and Mr. Cap only checks for mail once or twice per week.

implicating the Lease's Service Upon Mailing Exception or one of the words is rendered entirely meaningless.

Moreover, the Court's interpretation also goes against a common sense reading of the Lease, contradicts the manifest intent of the original drafting parties to the Lease, and leads to absurd results. The Court's interpretation leads to the conclusion that had KPP never picked up the mail, CVS's Notice would have been timely. However, the Court's interpretation also leads to the conclusion that in every instance where a notice was not signed for by KPP prior to the notice's deadline, the notice would be untimely, so long as KPP did not purposefully refuse to accept its mail.

For example, if a notice provided under the Lease arrived at the Post Office on a Monday with a Wednesday deadline, and KPP did not check its mail and sign for the notice until Friday, the notice would be untimely under the Court's interpretation. Or, consider that a notice to be provided under the Lease had a deadline that fell on a Friday, and the notice was delivered to the Post Office and available for KPP to pick up on that same Friday. If Mr. Cap checked for KPP's mail on the immediately preceding Thursday, but did not check for KPP's mail again until the following Wednesday, the Court's interpretation would deem that notice untimely as well, simply because Mr. Cap did not sign for the notice until after the notice's deadline had passed.

The original parties to the Lease could not have intended an interpretation for the Lease's general notice provision that makes determining the date the notice was given or served almost entirely dependent upon the actions of the party receiving the notice. This interpretation leads to absurd results and is inconsistent with South Carolina law. *E.g., Koon v. Fares*, 379 S.C. 150, 155, 666 S.E.2d 230, 234 (2008) ("An interpretation which establishes the more reasonable and probable agreement of the parties should be adopted while an interpretation leading to an absurd result should be avoided.").

CONCLUSION

For all of the reasons explained above, CVS respectfully requests that the Court reconsider its decision and alter or amend its Order to (1) grant CVS's Motion for Summary Judgment and (2) deny KPP's Motion for Summary Judgment.

Respectfully submitted,

s/ J. Evan Phillips

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September 8, 2020
Columbia, South Carolina

1 State of South Carolina) Court of Common Pleas
2 County of Beaufort) 14th Judicial Circuit
3 No. 2020-CP-07-00155

4 South Carolina CVS)
5 Pharmacy, LLC,)

6 Plaintiff,)

7 vs.)

8 KPP Hilton Head, LLC,)

9 Defendant.)
10

HEARING

August 13, 2020

11 Hearing reported by Deborah S. Thomas,
12 Certified Verbatim Reporter and Notary Public in and
13 for the State of South Carolina; said hearing held
14 before Honorable Marvin H. Dukes, III, Beaufort
15 County Master in Equity and Special Circuit Court
16 Judge in accordance with the South Carolina Rules of
17 Civil Procedure, at the Beaufort County Courthouse,
18 102 Ribaut Road, Room 212, Beaufort, South Carolina
19 on August 13, 2020, at the hour of 10:13 a.m.

20
21 Deborah S. Thomas, CVRM
22 80 Plymouth Lane
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1	CONTENTS	
2		Page
3	Exhibit Index	03
4	Certificate of Reporter	31
5	Word Index	
6	* * * * *	
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

EXHIBIT INDEX

Exhibits:

} Marked at Page

(Exhibits retained by Clerk of Court.)

None Proffered.

* * * * *

1 This hearing is conducted in
2 accordance with the South Carolina Rules of Civil
3 Procedure.

4 JUDGE DUKES: Good morning. We're
5 here in 2020-CP-07-00155. This is SC CVS Pharmacy
6 LLC versus KPP Hilton Head, LLC. This is a lease
7 renewal dispute. And the parties have -- each have
8 summary judgment motions. And I believe that the
9 Defendant has filed theirs first, and so we will
10 hear that one first. And Mr. Pendarvis, I'm happy
11 to hear from you, sir.

12 MR. PENDARVIS: Thank you, Your
13 Honor. May it please the court. My name is Thomas
14 Pendarvis. I, along with my co-counsel Ben
15 Zuckerman are representing KPP Hilton Head, LLC, a
16 local LLC that owns and operates as a commercial
17 lease landlord, has a couple of properties. It's
18 owned by Julie King and her dad. And one thing we
19 want to make clear from the very beginning, there's
20 no eviction in process. KPP Hilton Head is ready to
21 renew the lease on some commercially reasonable
22 terms -- under 2020 commercially reasonable terms.

23 The thrust of KPP Hilton Head's motion is
24 it's crystal clear from the record before the
25 courts, terms of the lease agreement that CVS did

1 not timely renew its lease. It had (inaudible) to
2 do so and it didn't.

3 Some important timeline things that I
4 think might be helpful, I'm going to share a
5 timeline that I developed that I think will help the
6 parties -- this timeline, I think, will help the
7 court to have a better understanding of some of the
8 key events. And much of the -- much of the argument
9 here to focuses around some undisputed facts that,
10 one, the deadline for the renewal was 90 days before
11 the lease expired on January 1.

12 That 90th day under this lease agreement
13 from 1998, Your Honor, by the way, 20-year lease
14 agreement, is -- was a Sunday, November 3rd, 2019.
15 No one disputes that. No one disputes that KPP
16 Hilton Head -- and its ordinary course of business
17 is, basically, Monday to Friday, 8:00 to 5:00. And
18 I've put in an entry here. So the last business day
19 available for CVS to have -- for KPP to have
20 received notice for the lease renewal was Friday,
21 November 1, 2019, at 5:00 p.m. That was the last
22 business day inside the time period available for
23 CVS to renew the lease.

24 On which, KPP could have received the
25 notice, signed for it and CVS properly exercise its

1 rights to renew. The -- and just for the
2 background, Your Honor, this all through the motion
3 papers.

4 The -- because the option can be
5 unilaterally renewed by the tenets, the courts in
6 South Carolina -- 33 flavors store makes it clear
7 that the option to renew is strictly construed
8 against the tenant for strict construction and
9 strict compliance with the lease itself to effect a
10 renewal.

11 So, rewinding a little bit -- and another
12 background point that I think is important here.
13 This is not a circumstance. There is no evidence
14 before the court that KPP, you know, hid in the
15 bushes, waited for the deadline to reply and signed
16 for the lease and said, oh, you're late. That's not
17 it at all.

18 In fact, in early as October 9th, 2019,
19 more than a month before the renewal deadline, KPP
20 sent an e-mail to CVS reaching out to inquire as to
21 the renewal. There were two stores that were --
22 that KPP had leased to CVS, one in Port Royal.
23 Right when you come over the bridge into Port Royal
24 on your left at that intersection, Your Honor, is
25 the CVS store that was part of it -- October 9th

1 e-mail that was renewed timely by CVS.

2 It sent -- it took about 11 days between
3 the date it was sent it's renewal for the Port Royal
4 store until KPP signed for it. So, again, it's not
5 as though KPP was trying to hide and lay in the
6 weeds and wait until the lease expired. So, we
7 know, undisputed, that on Wednesday, October 30th,
8 CVS sent its certified mail return receipt requested
9 to KPP to renew its lease. Undisputed that it
10 arrived in the mailbox at Hilton Head, a mailbox
11 where CVS gets its mail and was available for about
12 two hours and fifteen minutes.

13 The post office on Hilton Head closes at
14 noon on Saturdays. And again, this is not a
15 business day, but it was sitting in -- a green card
16 was sitting in the mailbox for KPP so that when
17 business resumed on Monday, it would have been
18 available for signature and receipt. And the -- in
19 the ordinary course -- the agent for KPP's manager
20 came to the post office in the ordinary course,
21 picked up the receipt and signed for it. And it was
22 marked received by the post office on that date
23 which was November 6, 2019.

24 And critically important to the
25 counterargument CVS is making is the notice was

1 received by KPP in the ordinary course of business.
2 It was a Wednesday, normal business day. So the day
3 KPP received it was, again, in the ordinary course.

4 There is -- I'm sure Your Honor's had a
5 chance to look at the -- at the lease provision.
6 The notice that we're talking about that required --
7 I'm sorry, Your Honor. If we look at the language
8 in the notice section that governs whether the
9 notice is timely or not, two points are important.
10 Because this is -- again, and the court understands
11 construction for contract interpretation, the intent
12 of the parties.

13 And the party's intended that there be a
14 return receipt requested if the notice is mailed to
15 the other party by registered certified mail return
16 receipt requested or by overnight courier provided a
17 receipt is required. So a signature and an -- a
18 effect of acceptance of the notice was a component
19 of the agreement, mandatory component.

20 CVS's arguments throughout its motion and
21 in opposition to KPP's motion says, well, the notice
22 was received within the renewal period because it
23 was in the mailbox at the post office for at least
24 two hours and fifteen minutes on Saturday, even
25 though they acknowledge and their own expert agrees

1 that was not a business day for KPP. And the real
2 crux of this goes to whether the fact that a green
3 car was in the -- in the mailbox was sufficient
4 receipt by the landlord, KPP. And it wasn't.

5 And if we look carefully at the unless
6 language, and that -- and this unless argument --
7 really the focus of CVS's argument, it says unless
8 the notice or demand is not received or accepted in
9 the ordinary course of business. Well, there's
10 several problems with that. But one central problem
11 is the notice was received in the ordinary course.
12 It was just late.

13 So again, this is -- this provision --
14 it's clear that the parties intended that if the
15 landlord or the tenant, if the landlord had been
16 giving notice, but if either party to this lease
17 agreement had basically tried to avoid service and
18 didn't accept on a timely fashion that this is the
19 unless provision to kick in and the date of the
20 mailing should be the date of service. But again,
21 that's not date of receipt, but date of service.

22 But because the notice was received in the
23 ordinary course, this provision simple doesn't kick
24 in. And there's no return receipt that was received
25 by -- or signed by KPP within the lease provision.

1 And that -- and, Your Honor, that's that.

2 It was received in the ordinary course of
3 business. But it was three days too late. And we
4 believe that based on strict construction of the
5 lease agreement itself and the undisputed facts, the
6 lease was not timely renewed. KPP Hilton Head's
7 motion for summary judgment should be granted. And
8 that CVS's motion should be denied.

9 JUDGE DUKES: All right. Thank you
10 so much. I guess what we can do is hear the
11 response from CVS. And then we'll just launch then
12 into the CVS motion. I understand there'll probably
13 be some overlap, so just treat it however you would
14 like.

15 MR. CARTIN: Your Honor, I think I'll
16 probably start with my motion and then sort of enter
17 some responsive points so I build the background for
18 you about some of the points we want to make, if
19 that's all right.

20 JUDGE DUKES: Any way you want to do
21 it. No problem.

22 MR. CARTIN: The first thing I want
23 to say, it's been a real pleasure to work with Mr.
24 Pendarvis and Mr. Zuckerman. Not every (inaudible)
25 is always a pleasure to work with opposing counsel.

1 But it's been -- it's been nice here. And they've
2 been very accommodating, good to work with. I just
3 want to make sure I said that and acknowledge that.

4 (Inaudible) I need to address is
5 (inaudible) and interrogatory responses. These were
6 both referenced in the party's respective motions.
7 We've been corresponding with Mr. McLeod about this.
8 We've been attempting to get them uploaded to the
9 e-file system. I expect we'll get that done some
10 time today before the record.

11 We would like those interrogatory response
12 from both KPP and CVS to be part of the record at
13 this summary judgment hearing. And I suppose I
14 should ask if there's any objection to that from
15 opposing counsel.

16 MR. PENDARVIS: None, Your Honor.

17 MR. CARTIN: Okay. Thank you, Mr.
18 Pendarvis. Your Honor, I agree that there's not a
19 whole lot of facts here. I would even (piercing
20 noise) pertinent facts that are a much more narrow
21 scope than Mr. Pendarvis did.

22 And I think the facts are this. Under the
23 20-year lease that was entered into back in the
24 1990s by Revco and KPP's predecessor in interest,
25 there were a potential for four option periods of

1 five years each.

2 Now, in order to effectively exercise that
3 option, we had to, before the end of the then
4 current term, give written notice in accordance with
5 the lease that we wanted to exercise that option.
6 We believe CVS has effectively done that here.

7 As Mr. Pendarvis said, there's no dispute
8 that November 3rd, 2019, which was a Sunday was in
9 fact the date by which the option had to be
10 exercised. And so CVS on the prior Wednesday,
11 that's one, two, three full business days before the
12 weekend, placed it's written notice in the mail.

13 Now, there's no dispute that CVS didn't
14 use the right kind of mailing. We've sent certified
15 mail return receipt requested. There's no dispute
16 that we didn't send it to the right address or we
17 didn't -- or we somehow tried to, you know, obscure
18 the notice in any way, shape or form or anything
19 like that. So it's toward the form of the notice
20 itself. There's no dispute that it wasn't in
21 appropriate form that I have been able to discern so
22 far.

23 The tracking information which we made
24 part of the record, as most commercial landlords
25 will do, CVS wanted to make sure that it had a

1 record of where its letter was, where it was going.
2 So we signed up for the extra service with the
3 United States Postal Service to get the tracking
4 information which included as part of the record --
5 actually the business record with the affidavit of
6 our lease manager for authentication purposes.

7 This shows that the letter actually
8 (inaudible) for the Hilton Head post office on
9 November 2nd, 2019. Now, that is a Saturday. I
10 believe the post office hours ended at 12:30, but I
11 won't quibble about what hours were because,
12 frankly, for our argument, it really doesn't matter.
13 The tracking information said that it actually
14 arrived at the unit and was available for pick up on
15 November 2nd at 9:45 a.m.

16 Now, of course, the landlord's agent
17 didn't go to the post office until the following
18 Thursday, November 6th to pick up the notice. I --
19 we don't think it is material when it was signed for
20 under the language of the lease which I'll go over
21 short.

22 The only dispute here is whether those
23 facts result in a timely exercised option. In order
24 to do this, Your Honor, I think we've got to look at
25 the lease provision that Mr. Pendarvis (inaudible)

1 earlier. We would just disagreeable about the way
2 could be interpreted.

3 First, the concept under the notice
4 provision know it's important, that not signing for
5 -- it's not when did the guy go pick it up
6 physically. It is when was it served. And there's
7 a very specific way in which it can be served. One
8 way is, of course, actual physical receipt by the
9 landlord. But that is no required under the lease,
10 Your Honor. In fact, the way that we believe it was
11 served hinges on this language which we have
12 stressed. And that is specifically the date of
13 receipt of the notice or demand shall be deemed the
14 date of service thereof unless the notice or demand
15 is not received or accepted in the ordinary course
16 of business. In which case, the date of mailing
17 shall be deemed the date of service.

18 Now, what does this language mean? I did
19 a lot of commercial landlord/tenant law. And to me,
20 it's plain and obvious that this language is meant
21 to protect against two different situations. One,
22 you mailed the notice and get there on a weekend.
23 Ordinary course of business, I think the court could
24 take -- judicially do this. It feels it doesn't --
25 it seems to be undisputed to me.

1 The ordinary course of business means
2 Monday through Friday excepting only state and
3 federal holidays. The court needs to take judicial
4 notice of that. I think that would be appropriate.

5 But essentially what this means is that if
6 it gets there on a weekend, we're going to let the
7 mailing date be the date of service. We're going to
8 let it relate back. We're not going to let a
9 intervening weekend completely derive -- or deprive
10 a party of it's contractual right. That wouldn't
11 make any sense in the law that just because you sent
12 it on a Wednesday and it gets there on a Saturday
13 that, well, we got you. The landlord's going to
14 raise your rent now. And try to, you know,
15 potentially evict you if you don't play their --
16 play their game. That's not how things work in the
17 commercial real estate industry.

18 And this is exactly the situation that
19 that language tends to fit. Alternatively, that
20 language is also meant to deal with, I'd say the bad
21 faith number which nobody's alleged this landlord's
22 acting in bad faith here. But it's intended to
23 prevent a landlord from sort manipulating the
24 service of the notice by just never going to pick up
25 of the mail.

1 Now, there's been a lot of discussion here
2 that they were in the ordinary course of business.
3 I think, Your Honor, if you really examine their
4 arguments, what they're arguing that there is some
5 sort of subjected ordinary course of business at
6 play here. I just don't think that's what this
7 language means. You know, they're basically saying
8 that -- if you look at their affidavits, KPP does
9 this. We pick up our mail twice a week. And
10 therefore, it -- you know, we were in the ordinary
11 course of business when we picked this up, you know,
12 once or twice a week.

13 I think in most normal situations out
14 there I think it's pretty and obvious. And we
15 included some interrogatory responses that deal with
16 this. But in the business world, especially
17 commercial real estate, ordinary course has an
18 objective meaning. I think we've got to look at
19 that objective meaning because here -- I mean, the
20 parties that are the parties of this lease now
21 aren't the party that were originally the parties to
22 the lease. So it would make sense if they'd have --
23 you know, if we were really -- there was subjective
24 intent at the time the parties executed this, we'd
25 have to go back and figure out what Revco and KPP

1 Partners -- I don't even know if they exist to this
2 day -- thought that meant.

3 So, I think the case law that we've cited,
4 everything and just the common practice and trade
5 usage in the industry says that the ordinary course
6 of business has to have an objective meaning. So, I
7 believe that because -- well, there are two things
8 the court will decide. As Mr. Pendarvis mentioned,
9 the court could find that receipt of contemplative
10 by this notice provision means that it was available
11 for pick up in the post office box. There's nothing
12 in this language that said it must be signed for
13 before it's received. And I think it comports with
14 a common sense of fairness just to think that, okay,
15 if it's sitting in your mailbox and you could get
16 it, you have access to it before the actual date
17 that the auction runs, why couldn't you pick it up?
18 What prejudice is there to the landlord and
19 interpretation that looks that way?

20 In addition, I think the court could find
21 -- I think the better argument is that it was
22 received on a Saturday, so it relates back to the
23 date of mailing which means it had been served again
24 which is the important conduct under the notice
25 provision on October 30th.

1 So, it's a couple of things -- that's our
2 argument. A couple of things that I do want to
3 address. As I mentioned, there is absolutely
4 nothing in this lease signed for anywhere in this
5 lease, (inaudible) notice provision. It's just not
6 in there. That concept is not there. The concept
7 (inaudible) there and then the ordinary course of
8 business. But we've discussed it that it's all
9 packed in there, but the (inaudible) that has to be
10 signed for is not.

11 The (inaudible) some language about the
12 return receipts. And it said -- the specific
13 language is by mailing the same to the other party
14 and by registered or certified mail, return receipt
15 requested or by overnight courier service provided a
16 receipt is required. The return receipt requested
17 doesn't mean actually has to be signed for. You
18 just got to ask for it.

19 And as far as by the other part about the
20 overnight courier service provided (inaudible)
21 required, that just means if you're going to use
22 FedEx or UPS, you've got to require a notification
23 that it was actually received by the party. It
24 doesn't say anything about you actually have to see
25 -- use that, have to prove it and the date that it

1 actually arrives is the date that it counts for
2 service here. And so that's an argument that I
3 don't think holds a whole lot of water.

4 Bear with me one moment, Your Honor. Make
5 sure I addressed everything. The concept that an
6 option is to be strictly construed against the
7 tenant or the party in the favor the option works is
8 being misapplied in this particular case.

9 First of all, I would argue that this is
10 general notice provision that the court's going to
11 have to construe here. It applies to everything
12 from renewing option to providing notice that the
13 toilet clogged up or some other problem with the
14 premises out there. So to say that an option has to
15 be strictly construed against the optionor, it's not
16 the same as a general notice provision. There's
17 nothing in the law or in the case law that said the
18 general notice provision should be construed against
19 any particular party. I think it should be
20 construed reasonably in accordance with the rest of
21 the contract.

22 And I would also -- the cases that are
23 cited, 33 Flavors, that the notice was actually
24 sent, put in the mail four days after the option
25 period expired. In the Pope v. Gerta case, my

1 English major was good for something because I know
2 how to pronounce Gerta, which is a case cited in the
3 briefs. But it was sent actually 90 days late. And
4 that's when the court found it should be strictly
5 construed against the optionor.

6 So the situation here is very different.
7 You've got a party that did their level-headed best,
8 put it in the mail a full three business days before
9 the deadline with an intervening weekend day in
10 between and because of the U.S. Postal Service, it
11 just didn't get there on a Friday.

12 And would ask the court this. What if had
13 gotten there on Friday, that Friday, November 1st?
14 Well, KPP says it doesn't pick up it's mail except
15 once or twice a week and didn't pick it up until
16 Thursday the next week. So, if they'd picked it up
17 on Thursday, would they still be able to make the
18 same argument? It seems like they could if you --
19 if the court adopts their construction.

20 So, in summary, Your Honor, I don't want
21 to berate this. I think it's a relatively simple
22 case of contract construction. But essentially, we
23 believe that that exception be, unless the notice of
24 demand is not received, (inaudible) ordinary course
25 of business. In which case, the date of mailing

1 shall be deemed the date of service there. That
2 language essentially mean that October 30th was the
3 date on which it was served timely under the notice
4 provision.

5 JUDGE DUKES: All right. Thank you
6 so much. Now, was that your response and your
7 argument in favor of summary judgment or did you
8 have more because certainly you're entitled to do
9 both. But you made -- the issues are the same, so
10 you may have broached the two.

11 MR. CARTIN: I think I hit everything
12 that I needed to. Thank you.

13 JUDGE DUKES: Okay. All right.
14 Thank you. Mr. Pendarvis, anything else?

15 MR. PENDARVIS: I do have a short
16 response, Your Honor. And I'm going to point out
17 again the language in the lease itself. Let's look
18 carefully at the last sentence of Section 27 on
19 notices. The date of receipt of the notice on the
20 demand shall be deemed (inaudible) or first thereof.
21 (Inaudible) date of receipt was November 6 after the
22 expiration. The next -- in the parenthetical it
23 says unless the notice or demand is not received or
24 accepted in the ordinary course of business in which
25 case the date of mailing shall be deemed the date of

1 service thereof.

2 Well, the date of the notice of demand was
3 received in the ordinary course and that was a
4 Wednesday. I think Paul pointed out Thursday.
5 That's not exactly right. But anyway, the date of
6 notice was -- received -- was a business day. It
7 was -- the date of service, this whole parenthetical
8 does not apply. The date of receipt of the notice,
9 the date of service, and that was November 6, it was
10 untimely.

11 And one really important provision, Your
12 Honor, that I think makes a big difference here is
13 the Port Royal store. The Port Royal store had an
14 identical expiration date. Identical. It was
15 effective -- that lease for the Port Royal store was
16 effectively renewed months -- a month or so before
17 this. So, it's not as though this is some really,
18 you know, devious scheme by KPP to just, you know,
19 hide the Port -- I mean, Hilton Head store from the
20 renewal. That was simply not it at all.

21 Another that's important for consideration
22 as to how this lease should be interpreted in terms
23 of the notice provision in Section 27, is the
24 parties could have easily worked in a weekend
25 rollover date or some provisions to provide if the

1 notice had been received on a weekend. You know, I
2 think it's fairly reasonable for the court to
3 interpret the parties, any commercially reasonable
4 parties negotiating a 20-year lease to presume that
5 20 years gives everybody plenty enough (inaudible)
6 to effectively exercise an option to renew if they
7 chose to do it. And as an example of that, the
8 (inaudible).

9 So, end of the day, the delay by CVS was a
10 mistake of their own making. It would have been
11 easy -- they could have included that with a notice
12 package that renewed the Port Royal store. They
13 chose not to. So, the idea that this is some gotcha
14 moment that KPP Hilton Head was trying to pull over
15 on CVS is just not true. It -- we're ready to enter
16 into some commercially reasonable negotiations. It
17 knew, you know, modern rates in place had CVS
18 continued its tenancy of the building. And this
19 motion by Defendants should be granted. And CVS's
20 motion should be denied.

21 JUDGE DUKES: Let me ask a question
22 or two if you all don't mind. Mr. Pendarvis, can
23 you give me an example of a situation that would
24 fall under the unless than notice or demand is not
25 received or accepted in the ordinary course of

1 business?

2 MR. PENDARVIS: Sure. This -- the
3 package by courier or by return receipt requested is
4 simply refused. The landlord -- I actually -- I've
5 had, Your Honor, used to practice, and I had plenty
6 of people that I tried to serve by certified mail
7 and they refused to sign. Refused to sign the green
8 card. And if you have that -- that's what I believe
9 this was intended to reflect, an option -- a
10 circumstance where one of the parties, landlord or
11 tenant, was making, you know, commercially
12 unreasonable -- making -- taking efforts to be
13 unavailable, not signing for it, a green card,
14 avoiding service by UPS or something like that. And
15 this is the absolute converse of that.

16 KPP was the one reaching out in early
17 October asking are you guys going to renew? So,
18 that circumstance that Ms. (inaudible) unless was --
19 and designed to protect against, is just not in
20 play. As counsel for CVS pointed out, there's no
21 evidence that there was any bad faith by any party
22 really. It was just neglect while CVS wasn't acting
23 in bad faith, nor was KPP.

24 MR. CARTIN: Your Honor, may I say
25 something to that point?

1 JUDGE DUKES: Yeah, please. I was
2 going to turn to you and let you respond if you'd
3 like. So please go ahead.

4 MR. CARTIN: Just very quickly, Your
5 Honor, I think Mr. Pendarvis' argument would make
6 complete sense if just one thing. It says received
7 or accepted. Clearly, accepted contemplates the
8 scenario that Mr. Pendarvis just outlined where
9 someone refuses to go to their mailbox or, you know,
10 tries to run away from the process server or
11 whatever. I agree that's what that means.

12 But receive is a different concept. It
13 just means not there, yet, or it is there. It's not
14 the same thing as accepted. (Inaudible) in its
15 original lease use two different terms for two
16 different concepts. So in order to give effect to
17 all of the language, it has to be interpreted.

18 You know, Mr. Pendarvis said the parties
19 could have easily contemplated some sort of language
20 to handle what happens if something appears on a
21 weekend. They did. And they put it right here in
22 this clause. And that's what it's suppose to be.
23 So, Your Honor, I think if you look at and give
24 effect to all the words in that sentence where
25 (inaudible) something different than accepted.

1 (Inaudible).

2 JUDGE DUKES: Let me ask a quick
3 question because I think the issue of subjective
4 versus objective in ordinary course of business came
5 up. And I want to make sure we're dealing with the
6 situation where there's truly not a scintilla to
7 deal with on that. And any time somebody brings up
8 subjective, I think scintilla.

9 So, is it agreed and a factual issue that
10 the ordinary course of business is Monday through
11 Friday from whatever hours you all choose -- 9:00 to
12 5:00, Monday through Friday? Is that the ordinary
13 course of business or is that a factual dispute?

14 MR. CARTIN: That is our contention,
15 Your Honor, that it's Monday through Friday and the
16 hours don't really matter here in this case. I
17 would just say Monday through Friday excepting only
18 state or federal holidays.

19 JUDGE DUKES: Okay.

20 MR. PENDARVIS: And I'd go 9:00 to
21 5:00 Monday through Friday excepting federal
22 holidays or state holidays if they -- neither of
23 those -- there were no holidays involved here. But
24 we think there is no subjective ordinary course. I
25 think ordinary course if Monday through Friday.

1 JUDGE DUKES: Okay. And there's no
2 -- I was just being clear anytime
3 subjective/objective comes up. I have to think
4 about which is which for a second and try to decided
5 whether or not there's a -- there's a factual
6 dispute. But in this particular case, there's no
7 factual daylight between the parties' positions as
8 to what the definition (inaudible) of ordinary
9 course of business it sounds like. So, okay.

10 MR. PENDARVIS: One more definitional
11 moment, Your Honor, I think I'd like to point out is
12 you can't receive a certified registered mail item
13 until you sign for it. All you can get is the green
14 card. It's in your mailbox. But you haven't
15 received -- you can't look at what envelope
16 contains. You can't do anything. You can't receive
17 it until you sign for it. And two places -- prior
18 to this middle sentence, two places in Section 27,
19 the parties contemplated a receipt required --
20 provided a receipt is required.

21 And it just can't be that that is -- can
22 be ignored. If the parties were contemplating a
23 receipt and receipt of the certified mail requires
24 signature and that receipt of certified mail,
25 there's no dispute, did not come in within the lease

1 period, time period available to renew the lease.

2 It just didn't get there.

3 JUDGE DUKES: Thank you so much.

4 Anything else from anyone? Yes?

5 MR. CARTIN: (Inaudible), Your Honor.

6 You know, let's really think about what happens when
7 you get a certified mail receipt in a post office
8 box. You walk 15 feet and present it to the teller
9 and they give you your letter. That's like saying
10 something wasn't received in your mailbox at home
11 because you didn't want to walk out there and pick
12 it up. I just think that argument can't possibly
13 hold water.

14 But again, I thank you for your
15 consideration today.

16 JUDGE DUKES: All right. Thank you
17 all so much. I will take a look at it. Have the
18 parties mediated this, yet?

19 MR. PENDARVIS: Yes, Your Honor, we
20 have. Unsuccessful, but we did.

21 JUDGE DUKES: No, joy? Okay. All
22 right. Well, let me do this. I'll try to look at
23 it. If you haven't heard from me in ten day, please
24 send me a nice e-mail reminding me that I still have
25 this under consideration. If it goes ten days

1 beyond that, become more progressively assertive as
2 to the need for a ruling. And I'll promise you will
3 get to it as quickly as I can.

4 Anything else for this record then?

5 MR. PENDARVIS: None from the
6 Defendant, Your Honor.

7 JUDGE DUKES: All right. You all
8 have a great day and a great weekend and everybody
9 stay healthy and safe.

10 (Whereupon, the hearing was concluded
11 at 10:48 a.m.)
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Certificate of Reporter

I, Deborah S. Thomas, Certified Verbatim Reporter and Notary Public in and for the State of South Carolina, do hereby certify that I reported the hearing of 2020-CP-07-00155, South Carolina CVS Pharmacy, LLC v. KPP Hilton Head, LLC, on the 13th day of August, 2020: and that the foregoing pages constitute a true and correct transcription of the said hearing.

I further certify that I am neither attorney nor counsel for, nor related to or employed by, any of the parties connected with this action, nor am I financially interested in said cause.

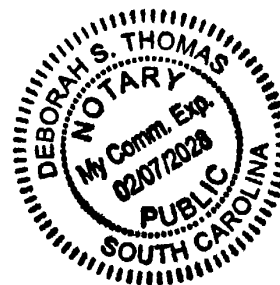
I further certify that the original of said transcript shall be hereafter delivered to J. Evan Phillips, Esquire, Parker Poe Adams & Bernstein, LLP, Post Office Box 1509 (29202), 1221 Main Street, Suite 1100, Columbia, South Carolina 29201.

In witness whereof, I set my hand and sealed this 31st day of December, 2020.



Deborah S. Thomas, CVRM
and Notary Public for the
State of South Carolina

My Commission
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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Marvin H. Dukes III, Master-in-Equity

Appellate Case No. 2020-001446
Trial Court Case No. 2020-CP-07-00155

South Carolina CVS Pharmacy, L.L.C.,.....Appellant,

v.

KPP Hilton Head, LLC,.....Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



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