

12.9 MAINTENANCE AND TAXES. MERCANTILE will pay all charges, assessments and ad valorem property taxes on MERCANTILE TRACT and MERCANTILE BUILDING and will maintain MERCANTILE BUILDING in a good state of repair.

ARTICLE XIII

MERCHANTS' ASSOCIATION

13.1 FORMATION. If DEVELOPER establishes a Merchants' Association (the MERCHANTS' ASSOCIATION) composed of DEVELOPER, WARD, and the operators of stores occupying not less than 90% of the balance of the rented GLA of DEVELOPER TRACT for the development of an effective joint promotional and public relations program, MERCANTILE agrees that it will become a member of the MERCHANTS' ASSOCIATION and will remain a member thereof so long as WARD and tenants occupying not less than 90% of the balance of the rented GLA of DEVELOPER TRACT are members thereof and are from time to time paying their share of expenses thereof, and so long as DEVELOPER is complying with its obligations under this ARTICLE; the annual contribution (which shall be deemed to include all payments of any nature whatsoever) to the MERCHANTS' ASSOCIATION required of MERCANTILE shall not exceed the sum set forth in 13.2. Anything contained in this ARTICLE to the contrary notwithstanding, MERCANTILE shall have the right to withdraw from the MERCHANTS' ASSOCIATION at any time after the end of the second lease year of the term hereof.

13.2 OPERATIONS. The MERCHANTS' ASSOCIATION shall be operated and supported in the following manner:

- (i) DEVELOPER will require each member of the MERCHANTS' ASSOCIATION to pay, and MERCANTILE agrees to pay, a just and fair share of the total expenses of the MERCHANTS' ASSOCIATION as determined in accordance with the MERCHANTS' ASSOCIATION'S by-laws; provided, however, that MERCANTILE'S required annual contribution to the MERCHANTS' ASSOCIATION shall not exceed the lower of the following: (a) 10 cents for the first year and 5 cents each year thereafter per square foot of GLA in the MERCANTILE BUILDING, or (b) the lowest per square foot contribution of any other member of the MERCHANTS' ASSOCIATION except DEVELOPER. MERCANTILE'S annual contribution to the MERCHANTS' ASSOCIATION shall be payable in equal monthly installments based on ASSOCIATION estimates with an annual accounting and adjustment;
- (ii) DEVELOPER agrees that as long as MERCANTILE is a member of the ASSOCIATION and pays to it the sum described in 13.2(i) above, it will make an annual contribution to the MERCHANTS' ASSOCIATION each fiscal year of its operation in an amount equal to 25% of the aggregate amounts of the annual contributions paid to the MERCHANTS' ASSOCIATION by all the other members

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