

Florida Landlord-Tenant Law Update

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Landlord and Tenant Obligations



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PART II

LANDLORD AND TENANT OBLIGATIONS

INTRODUCTION

The common-law obligation of the landlord and tenant relationship was one in which the predominant theme was caveat emptor. The law held the Landlord to an implied covenant of quiet enjoyment and the Tenant to implied covenants to pay the rent and not commit waste of the premises. Beyond those obligations, the parties were at liberty to contract as they wished.

Today, issues involving the landlord-tenant relationship can be found in the Landlord Tenant Act (Chapter 83).

- Part I (§83.001-83.251) deals with Commercial Leases. Among other things it provides the essential law on removal of tenants and on landlord's liens and distress.

- Part II (§83.40-83.682) deals with Residential Leases. It imposes duties on both the landlord and tenant and provides for termination of the rental agreement and removal of the tenant, abrogates distress for residential rent, and provides conditions for holding and returning security deposits. Part II of *F. S.* Chapter 83 is a version of the Uniform Residential Landlord and Tenant Act.

A. DUTIES AND OBLIGATIONS OF LANDLORD

1. Possession. The Landlord has either an express or an implied duty to timely deliver possession of the premises. During the term of the lease, the lease the tenant's

interest is equivalent to ownership of the fee simple title. At common law, the Landlord could remove the tenant only

a. for nonpayment of rent

b. expiration of the term. The tenant could refuse to pay the rent only if dispossessed by the landlord. If the tenant breached any covenant (other than payment of rent), the landlord could sue for damages but could not remove the tenant. The tenant's obligation to pay the rent was unconditional and ended only if the landlord ousted the tenant before expiration of the term. If the landlord failed to maintain the property as agreed, the tenant might have an action in damages but could not terminate the lease for the breach.

Strict application of these rules often produced harsh results for the tenant and led to wide-ranging exceptions in nearly every aspect of the relationship. For example, if the improvements were destroyed through no fault of the tenant, the tenant remained liable for the rent on the theory that the tenant still retained the estate. *Robinson v. L'Engle*, 13 Fla. 482 (1869). A special case was carved out for multi-unit structures. The landlord had the risk of loss but was given a reasonable time in which to rebuild. If the landlord did not timely rebuild, the tenant was deemed evicted and relieved of the rental obligation.

2. Quiet Enjoyment. Quiet enjoyment is a covenant that the Landlord has the title and right to deliver possession of the premises to the Tenant and once delivered, the Tenant's right of possession will not be disturbed. The duty to secure quiet enjoyment is a continuing covenant throughout the term of the lease and extends to subtenants.

Unless a lease states otherwise, a lease contains a covenant of quiet enjoyment by implication. *Hankins v Smith*, 138 So. 494 (Fla. 1931) ("While the lease does not in terms

covenant for peaceable and quiet enjoyment, the rule seems to be generally established that such is implied in every lease, from the very use of such words as ‘lease’ or ‘demise.’”).

In the absence of an express agreement to the contrary, the landlord impliedly covenants to protect the tenant from removal by anyone having an interest in the premises that is superior to the interest of the landlord. *Hankins v. Smith*, 103 Fla. 892, 138 So. 494 (1931).

The landlord’s obligation is limited to protecting the tenant from removal by the holder of an interest superior to the landlord’s. This implied covenant does not impose on the landlord any liability for defects of title even though such defects may make it impossible for the tenant to sell or mortgage the leasehold interest.

Before there can be a breach of the covenant for quiet enjoyment the tenant must show:

- a. The lease term has commenced.
- b. The tenant’s possession of the property has actually been interfered with.
- c. The interference was within the control of the landlord.

Bermuda Avenue Shopping Center Associates, L.P. v Rappaport, 565 So.2d805 (Fla 5th DCA 1990); *Fountas v. Ziegler*, 305 So..2d 864 (Fla 3d DCA 1975)

The implied covenant of quiet enjoyment provides little protection to the tenant. The tenant’s interest is better protected if the condition of the title at the outset of the transaction is ascertained and nondisturbance agreements are obtained from the holders of superior interest.

SAMPLE LEASE PROVISION

Quiet Enjoyment:

1. Landlord covenants that as long as tenant faithfully performs the covenants that are tenant’s obligation under this lease, landlord will assure tenant’s quiet and peaceable possession of the premises for the lease term.

2. Landlord warrants that he or she is the owner in fee simple of the premises, subject only to those matters described in Appendix B (Exceptions to Title).

3. Landlord will put tenant into possession of the premises at the beginning of the term, but will not be liable to tenant if possession is delayed by holdover of the present tenant. If possession is delayed, the rent will abate for the period from the beginning of the term until the present tenant is removed. The term of this lease will not change by reason of such delay.

Violations of Covenant of Quiet Enjoyment.

1. Unlawful ouster of the Tenant.
2. Constructive eviction.

“A constructive eviction occurs when a Tenant is essentially deprived of the beneficial enjoyment of the leased premises where they are rendered unsuitable for occupancy for the purposes for which they are leased.” Barton v Mitchell Co., 507 So. 2d 148 (Fla. 4th DCA 1987) (citing Hankins v Smith, 138 So. 494 (Fla. 1931); Berwick Corp v. Kleinginna Investment Corp., 143 So. 2d 684 (Fla. 3d DCA 1962); Wade v. Herndl, 107 N.W. 4 (Wisc. 1906); and Eskanos and Supperstein v Irwin, 637 P. 2d 403 (Colo.Ct.App.1981)).

“A “constructive eviction” is an act which, although not amounting to an actual eviction, is done with the expressed or implied intention and has the effect of essentially interfering with the Tenant’s beneficial enjoyment of the leased premises.” Bermuda Ave. Shopping Center Associates, L.P., v Rappaport, 565 So. 2d 805, 806 (Fla. 5th DCA 1990).

Four Examples of Constructive Eviction

(1.) Hankins, 138 So. 494 (Fla. 1931) – Where successor Landlord tore the roof of leased premises, Supreme Court of Florida affirmed finding of constructive eviction.

(2.) Barton v Mitchell Co., 507 So. 2d 148 (Fla. 4th DCA 1987) – Tenant who operated furniture store was constructively evicted by Landlord where adjacent space was leased to body shop and operation of body shop caused excessive noise and vibration where leases contained clause prohibiting excessive noise. But see Stinson, Lyons, Gerlin & Bustamante, P.A. v Brickell Bldg. 1 Holding Co., Inc., 747 F. Supp. 1470 (S.D. Fla., 1990) (renovations did not cause constructive eviction where Landlord made reasonable concessions, Tenant only saw a 10 percent decrease in profit and lease contemplated renovations.)

(3.) Bermuda Ave. Shopping Center Associates, L.P., v Rappaport, 565 So. 2d 805 (Fla. 5th DCA 1990) – Tenant was constructively evicted where Tenant leased space in mall which was thereafter entirely renovated. The Court held that the dust, debris, removal of sidewalk and parking spaces constituted constructive eviction. Landlord was liable to Tenant for damages as a result of constructive eviction.

(4.) Where a Landlord is responsible for the creation of a nuisance or the leasing of premises to an adjoining Tenant causing a nuisance, said nuisance can be a violation of the covenant of quiet enjoyment. See McClosky v Martin 56 So. 2d 916 (Fla. 1952).

Constructive eviction requires an element of express or implied intent on the part of the Landlord. Thus, where a neighborhood was crime ridden to the point where Tenant could not reasonably maintain its business, constructive eviction did not occur because actions complained of were “beyond the control of the Landlord.” Fountas v Ziegler, 305 So. 2d 864 (Fla. 3d DCA 1974).

3. Fitness.

A. Common Law. “The common law rule of caveat emptor provides that once a Landlord delivers possession and control of the leased premises, including the plumbing,

drains, and appliances for heating, lighting and power to the Tenant, the Landlord is not liable for injury to the property or person of the Tenant or those on the premises with the permission of the Tenant, even though such injuries are attributable to defects in such apparatus, appliances or fixtures. In other words, once the Landlord surrenders possession and control of the leased premises to the Tenant, absent fraud or concealment, the Tenant assumes the risk as to the condition of the premises, including the heating, lighting apparatus, plumbing, water pipes, sewer, etc.” Veterans Gas Co. v Gibbs, 538 So. 2d 1325, 1327 (Fla. 1st DCA 1989).

The common law rule does not apply to residential leases. Mansur v Eubanks, 401 So. 2d 1328 (Fla. 1981) held that an owner of residential premises has a duty to inspect, make repairs and continue to make repairs to keep the residential property habitable.

4. Duty to Maintain (Repaid and Maintenance)

At Common Law, the Landlord had no duty to maintain the leased premises. The Tenant had the duty to maintain the leased premises and prevent waste; which duty included returning the premises in the same condition as they were leased. Stephenson v National Bank of Winter Haven, 109 So. 424 (Fla. 1926). Thus, the Tenant bore the responsibility of maintenance unless the obligation was altered at contract.

STATUTORY DUTIES

Commercial Leases: Fla. Stat. §83.201 (2009) states the Landlord has no duty to repair or maintain the premises unless the lease affirmatively or expressly places the obligation upon the Landlord. Where the lease does create an obligation but is silent on the procedure to be followed in the event of a repair, the Tenant may withhold rental until the repair is completed by serving 20 days notice on the Landlord stating that the premises are wholly untenable. Id. If

the Landlord fails to make the repair, the Tenant may terminate the lease and abandon the premises without liability. Id. The statute is cumulative to other remedies. Id.

Florida Statute 83.201 — Applies only where Landlord has EXPRESS OBLIGATION TO REPAIR.

"**83.201 Notice to landlord of failure to maintain or repair, rendering premises wholly untenable; right to withhold rent.--When** the lease is silent on the procedure to be followed to effect repair or maintenance and the payment of rent relating thereto, yet affirmatively and expressly places the obligation for same upon the landlord, and the landlord has failed or refused to do so, rendering the leased premises wholly untenable, the tenant may withhold rent after notice to the landlord. The tenant shall serve the landlord, in the manner prescribed by s. 83.20(3), with a written notice declaring the premises to be wholly untenable, giving the landlord at least 20 days to make the specifically described repair or maintenance, and stating that the tenant will withhold the rent for the next rental period and thereafter until the repair or maintenance has been performed. The lease may provide for a longer period of time for repair or maintenance. Once the landlord has completed the repair or maintenance, the tenant shall pay the landlord the amounts of rent withheld. If the landlord does not complete the repair or maintenance in the allotted time, the parties may extend the time by written agreement or the tenant may abandon the premises, retain the amounts of rent withheld, terminate the lease, and avoid any liability for future rent or charges under the lease. This section is cumulative to other existing remedies, and this section does not prevent any tenant from exercising his or her other remedies."

SHOPPING CENTERS:

Customarily divided between Landlord and Tenant:

Landlord —

- Structural —

- Footings;

- Foundations;

- Load bearing walls;

- Columns and beams;

- Non Structural —

- Roof;

- Floor Slab;

- Exterior walls.

Tenant —

- Decoration;

- Carpet;

- Interior Partitions.

SINGLE TENANT REATAIL OR OFFICE:

Triple Net – See Exhibit A-1 – Repair and Maintenance – Single Tenant **MULTI TENANT**

OFFICE BUILDING:

See Exhibit A-2 – Repair and Maintenance – Multi Tenant Office

Residential Leases of Landlord: Section 83.51, Florida Statutes (2009):

Affirmative duties for all residential units except mobile homes (unless waived in writing with regard to single-family home or duplex):

- Comply with building, housing and health codes.
- Where none are applicable, maintain the roofs, windows, screens, doors, floors, steps, porches, exterior walls, foundations and all other structural components in good repair and capable of resisting normal forces and loads
- maintain the plumbing in reasonable working condition.

Affirmative duties of Landlord applying to everything but a single-family home or duplex:

- Extermination of rats, mice roaches, ants, wood-destroying organisms, and bedbugs.
- Abatement of rental when vacation of premises is required.
- Tenant to vacate for a period not to exceed 4 days on 7 days written notice.
- Provide lock and keys.
- Clean and safe condition of common areas.

- Garbage removal and outside receptacles.
- Functioning heat, running water and hot water.

If Landlord fails to comply with Section 83.51, Florida Statutes, Tenant may deliver a notice to Landlord providing 7 days to cure after which Tenant may terminate the lease. Fla. Stat. §83.56. If the lease is not terminated, rent may be abated or reduced depending on the severity of the issue.

Negative duties applying to Landlord:

- Cannot interrupt utility service.
- Cannot lock the Tenant out without court order.
- Cannot discriminate against a service member.
- Cannot prohibit displaying American flags (subject to size limit).
- Cannot remove the outside doors, locks, roof, walls or windows except for maintenance.

Severe penalties apply to violating the negative duties. Fla. Stat. §83.67.

5. Suitability.

Zoning laws: Absent language in the lease addressing a duty to investigate or right to terminate, if a zoning law does not permit the operation of the Tenant's intended business, the lease is void as the consideration for the lease was wholly absent. Marks v Fields, 36 So. 2d 612 (Fla. 1948); La Rosa Del Monte Express, Inc., v G.S.W. Enterprises Corp., 483 So. 2d 472 (Fla. 3d DCA 1986). However, where the lease contemplates a change in zoning and provides Tenant with a due diligence period, said provisions shift the risk to the Tenant and the lease is not void despite failure to obtain zoning approval for requested use. (For an upcoming

oral argument regarding this issue, please see 1700 Rinehart, LLC v Advance America, Cash Advance Centers, Etc., Fla. 5th DCA Case No. 5D09-3759).

B. DUTIES AND OBLIGATIONS OF TENANT.

1. Duty to Pay Rental.

“Rent means the periodic payments due the Landlord from the Tenant for occupancy under a rental agreement and any other payments due the Landlord from the Tenant as may be designated as rent in a written rental agreement.” Fla. Stat. §83.43(6).

2. Occupancy and Use for a Purpose.

At common law, there is no obligation for the Tenant to occupy the leased premises despite the fact that the Tenant has the right to do so. Similarly, where the lease is silent, the Tenant has no obligation to operate a particular kind of business and there is no penalty for vacating the premises. Diltz v J & M Corp., 381 So. 2d 272 (Fla. 3d DCA 1980). However, where a lease specifically contemplates the operation of a particular business, the Tenant is obligated to occupy the premises and run the business. Jerrico, Inc., v Washington Nat. Ins. Co., 400 So. 2d 1316 (Fla. 5th DCA 1981).

GENERAL RULE:

- Tenant may use leased premises for any lawful purpose, assuming no waste or nuisance.
- Provisions restricting uses overcoming the common-law are enforceable in Florida if they do not contravene or violate anti-trust laws, trade regulations and Public policies. Arno Enterprises, Inc. v. Nathida, Inc. 302 S. 2nd 146.

- **Permitted use clause must do 2 things:**

1. It must REQUIRE the tenant to use the premises only for a specific purpose, merely stating the use permitted, is not a requirement, and does not restrict the tenant from other uses; and
2. It must clearly RESTRICT the tenant from using the premises for any other purpose.

SHOPPING CENTER:

- **Permitted use clauses:**
- More important in shopping and strip center leases than in other commercial types of leases.
- Tenant mix is an important component of shopping center.
- Blending of various uses in the shopping center will result an optimal tenant mix and hopefully maximize revenues.

See Exhibit C-1 – Permitted Use – Shopping Center

OFFICE BUILDING:

- The Primary purpose of a permitted use clause in an office building is to control expenses, repairs and services.
- **Example:** A tenant engaged in telemarketing will have many more employees per square foot than a law-firm. These employees will consume services in a much higher volume per square foot as they will demand more electricity, elevator use, and parking space per square foot than general office occupants.
- If tenant is sharing the common area expenses, elevator, and utilities,

tenant should also be concerned that the landlord prohibits certain uses of the premises.

See Exhibit C-2 – Permitted Use – Commercial Building

EXCLUSIVES:

Generally in a shopping center complex, tenants, particularly anchors, seek the exclusive right to engage in a certain use. **See Exhibit C-3 – Exclusive Use**

- Florida Statute 542.335 enacted in 1996 allows any restrictive covenant to be enforced, if it is not per say illegal and reasonably necessary to protect legitimate business interests:

3. Duty to Avoid Waste.

Waste involves abuse or destructive use of the leased premises and does not apply to normal wear and tear or depreciation. A Tenant has a duty not to commit waste and bears the burden of proving that damages resulted from normal wear and tear as opposed to waste. Stegeman v Burger Chef Systems, Inc., 374 So. 2d 1130 (Fla. 1st DCA 1979).

4. Duty to Maintain.

A. Common law: The Tenant stands in the same shoes as an owner subject to reversionary interest and therefore bears the burden of maintenance.

B. Statutory duty of residential Tenant: Section 83.52, Florida Statutes requires the Tenant to do the following at all times during a tenancy:

- Comply with building, housing and health codes.
- Keep the premises clean and sanitary.
- Remove garbage from the dwelling unit.
- Maintain all plumbing fixtures in a clean and sanitary fashion.

- Use and operate all electrical, plumbing, sanitary, heating, ventilating, air conditioning and appliances in a reasonable fashion.
- Not destroy, deface, or damage any part of the premises or property.
- Conduct him or herself in a manner than does not unreasonably disturb the neighbors.

Fla. Stat. §83.56. If Tenant fails to comply with Section 83.52, Florida Statutes, and the non-compliance is of a nature that Tenant should not be given an opportunity to cure, Landlord may terminate the rental agreement on 7 days notice. If the noncompliance is of a nature that the Tenant should be allowed to cure, Tenant should be given 7 days to cure prior to Landlord electing to terminate the lease.

If Landlord accepts rent or Tenant pays rent when aware of a non-compliance, said non-compliance is waived at the time of paying rental, but future or continuing non-compliance can still be the still be the subject of a notice.

C. SECURITY DEPOSITS.

Commercial Leases: There are no statutes governing the treatment of non-residential security deposits; therefore the lease governs the treatment of security deposits.

Residential Leases: Section 83.49, Florida Statutes, requires that security deposits either:

- a) be held in a separate non-interest bearing account and not comingled with other funds

b) held in a separate interest bearing account in which case the Tenant shall receive at least 75% of the annualized average interest rate or 5% per year, whichever the Landlord elects (funds still cannot be comingled); or

c) post a surety bond, executed by the Landlord as principal, and pay the Tenant interest.

Notification: Landlord must notify the Tenant within 30 days of its election of one of the options above, including who is holding the deposit. If the Landlord changes the location or election, the Landlord must send a new notice to the Tenant within 30 days. Failure to provide the notice, however, is not a defense to the payment of rent when due.

Return: If the Landlord does not intend to make a claim for the deposit, the Landlord shall have 15 days from the termination of the lease to return the deposit.

Claims: Upon vacation or termination of lease, the Landlord shall provide notice to the Tenant of its claim upon the security deposit on or before 30 days. Said notice shall be sent by certified mail to the Tenant's last known mailing address and shall state the intention and reason for imposing a claim. The statutory form is as follows:

“This is a notice of my intention to impose a claim for damages in the amount of _____ upon your security deposit, due to _____. It is sent to you as required by s. 83.49(3), Florida Statutes. You are hereby notified that you must object in writing to this deduction from your security deposit within 15 days from the time you receive this notice or I will be authorized to deduct my claim from your security deposit. Your objection must be sent to (Landlord's address).”

Objection: The Tenant has 15 days to send a notice objecting to the Landlord's claim. If Tenant fails to send an objection, the objection is waived and Landlord may distribute

the deposit. If the Landlord fails to provide notice, the Landlord waives the ability to impose a claim.

Attorneys' Fees: The prevailing party in a security deposit dispute is entitled to fees.

D. PROTECTING TENANTS AT FORECLOSURE ACT OF 2009.

Applies to all residential properties in foreclosure and requires that the Tenant receive a notice to vacate the premises that is the longer of 90 days or the remaining term of the lease. However, if the purchaser at the foreclosure sale intends to occupy the property, the new owner may terminate the lease on 90 days notice even if the remaining term is longer. Only applies to bona fide Tenants that are in leases resulting from an arms length transaction.

E. FAIR CREDIT REPORTING AND ADVERSE ACTIONS BASED ON REPORTS.

Denial of a Tenant's application or increased security deposit is considered an adverse action under the FCRA and requires a statutory notice. The notice must include the name, address and telephone number of the credit reporting agency, a statement that the CRA supplied the report, but did not make the decision and a notice of the individual's right to dispute the accuracy or completeness of the information. For more information on the FCRA, please visit <http://www.ftc.gov/bcp/edu/pubs/business/credit/bus49.shtm>.

EXHIBIT A-1
(Repair and Maintenance – Single Tenant)

10. REPAIR AND MAINTENANCE.

10.1. TENANT OBLIGATION: Tenant shall, at its own cost and expense, maintain the Building and the Premises in the same condition they are in as of the date of this Lease (normal wear and tear excepted) and shall provide all required repairs, and maintenance to Building, provided, without limitation, all floor coverings, windows, glass, plate glass, ceiling, interior walls, doors, electrical wiring and lighting equipment, plumbing and fixtures, sprinkler systems, heating, ventilating, and air conditioning, loading dock areas and doors, signs shrubbery, lawns, landscaping, fencing, sidewalks, and parking areas. Tenant shall provide and maintain, at Tenant's sole cost and expense, maintenance contracts on a quarterly basis for all air-conditioning, heating, and ventilating systems, and elevators serving the Premises. Tenant shall be responsible for providing janitorial service for the Premises, at Tenant's sole cost and expense. HVAC and elevator maintenance shall be performed by companies and pursuant to contracts and programs reasonably satisfactory to Landlord. Copies of all such maintenance and service contracts shall be delivered to Landlord. Tenant shall be responsible for providing all janitorial, cleaning, and sanitation service to the Premises. On terminating this lease, Tenant must deliver Premises to Landlord in the same condition they were in at commencement of Term.

10.2. LANDLORD OBLIGATIONS: Landlord shall, at its own cost and expense, maintain the following with respect to the Premises:

a. the roof of the Building (including structural members and roof deck, membrane and sheathing), all exterior load bearing walls, the foundations of the Building and all other structural elements of the Building,

b. except to the extent of Tenant's obligations, parking areas (including repair and resurfacing, as required).

c. replacement of operational systems including water and plumbing, septic and elevators as necessary.

10.3. LANDLORD'S WARRANTY OF EXISTING CONDITIONS: Landlord warrants that as of the effective date of this Lease the Premises (including Building) comply with all applicable laws and codes and all standard insurance company requirements. All systems in the Building and all equipment used in the operation of the Building are in good operating condition, and have been maintained in accordance with applicable manufacturers' instructions or otherwise in accordance with best practices.

10.4. TENANTS ACCEPTANCE OF EXISTING CONDITIONS: Tenant accepts the Premises in their condition as of the execution of this Lease, except as expressly provided in Paragraph 10.4.1 or elsewhere, Tenant acknowledges that neither Landlord nor any agent of Landlord has made any representation, express or implied, as to the condition of the Premises or the suitability of the Premises for Tenant's intended use.

10.4.1 INSPECTION AND APPROVAL OF PREMISES: The Tenant, at his expense shall have the Premises described herein inspected and any items identified for repair or replacement by the Landlord, and agreed to by the Landlord shall be listed in Exhibit "B" and such repairs or replacements shall be completed, and accepted by the Tenant, by _____. The Tenant admits that the Premises are in a tenantable condition, and agrees that at the end of the occupancy hereunder to deliver up and surrender said Premises to the Landlord in as good condition as when received, reasonable wear and tear accepted.

EXHIBIT A-2
(Repair and Maintenance – Multi-Tenant Office)

15. REPAIR AND MAINTENANCE.

- 15.1 Landlord's Obligations. Landlord shall repair and maintain in good order and condition, ordinary wear and tear excepted, the Common Areas, mechanical and equipment rooms, the roof of the Building, the exterior walls of the Building, the exterior windows of the Building, the structural portions of the Building, the elevators, and the electrical, plumbing, mechanical, fire protection, and HVAC systems servicing the Building. However, unless the waiver of subrogation section of this Lease applies, Tenant shall pay the cost of any such repairs or maintenance resulting from acts or omissions of Tenant, its employees, agents, or contractors. Additionally, Landlord shall replace the Building Standard fluorescent light tubes in the Premises. "Building Standard" shall mean the type, brand, grade, or quality of materials Landlord designates from time to time to be the minimum quality to be used in the Building Project or, as the case may be, the exclusive type, brand, grade, or quality of material to be used in the Building Project. Tenant waives the provisions of any law, or any right Tenant may have under common law, permitting Tenant to make repairs at Landlord's expense, to withhold rent, or to terminate this Lease based on any alleged failure of Landlord to make repairs. All costs associated with the repair and maintenance obligations of Landlord under this article shall be included in and constitute Operating Costs.
- 15.2 Tenant's Obligations. Except to the extent Landlord is obligated to repair and maintain the Premises as provided in the Landlord's Obligations section of this article, Tenant shall, at its sole cost, repair, replace, and maintain the Premises (including the walls, ceilings and floors in the Premises, and any specialized electrical, plumbing, mechanical, fire protection, and HVAC systems servicing the Premises requested by Tenant exclusively for their use) in a clean, attractive, first-class condition. All replacements shall be of equal quality and class to the original items replaced. Tenant shall not commit or allow to be committed any waste on any portion of the Premises.

EXHIBIT C-1
(Permitted Use – Shopping Center)

[§2.76] Use of Premises

The Premises shall be used, subject to all applicable laws, solely for the display and sale, at retail, of (the "Permitted Use"). The entire Premises shall be occupied and used only for the Permitted Use and for no other use or purpose, and only under the permitted Trade Name, which Tenant represents it has the exclusive right to use. If any governmental licenses or permits shall be required for the proper and lawful conduct of Tenant's business or other activity carried on in the Premises, or if a failure to procure such a license or permit might, or would in any way, adversely affect Landlord or the Shopping Center, then Tenant, at Tenant's sole cost and expense, shall procure and thereafter maintain all such licenses and permits and submit them for inspection by Landlord. Tenant shall pay when due all license fees, permit fees, and charges of a similar nature for the conduct by Tenant or any subtenant or concessionaire or licensee of any business or undertaking authorized under this Lease to be conducted in or from the Premises. Tenant, at Tenant's sole cost and expense, shall at all times comply with the requirements of all such licenses and permits. Tenant acknowledges and agrees that the Permitted Use set forth in this Article is a critical element of the bargain of the parties to this Lease and that actual and substantial detriment will result to Landlord and the other tenants and occupants of the Shopping Center if a change or deviation in such use shall occur.

EXHIBIT C-2
(Permitted Use – Commercial Building)

6. PERMITTED USE OF PREMISES: The Premises are leased to be used as _____ . Tenant agrees to restrict its use to such purpose, and not to use, or permit the use of the premises, for any other purpose without obtaining the prior written consent of Landlord.

6.1 VIOLATION OF LAWS: The Tenant shall not conduct on the Premises, or permit to be conducted on the Premises, any business which is in violation of the laws of the State of Florida or any law or ordinance of any political subdivision having jurisdiction over the Premises. The Tenant shall keep the Premises neat, clean and free from all trash, refuse and offensive odors. Tenant shall, at its sole cost and expense, comply with all laws pertaining to Tenant's use of the Premises. The judgment of any court of competent jurisdiction, or the admission of Tenant in any action or proceeding against Tenant, whether the Landlord is a party to it or not, that Tenant has violated any law in the use of the Premises shall be conclusive of that fact as between Landlord and Tenant. Without limiting the generality of the foregoing, the duties of Tenant under this provision shall include the making of all such alterations of the Premises as may be required by law by reason of the particular manner or mode of use of the Premises by Tenant other than the permitted use, or occasioned by reason of the failure of Tenant to maintain or repair the Premises as required under this lease.

EXHIBIT C-3
(Exclusive Use)

During the Term of this Lease (as the same may be earlier terminated or extended), and provided that Tenant is engaged in the Permitted Use and has not defaulted under any of the terms of this Lease, Landlord agrees hereafter not to enter into any lease for space in the Shopping Center with any tenant whose primary business is that of _____. Nothing contained in this Article shall limit, impair, or otherwise affect:

1. Landlord's leases existing on the date of this Lease or any extensions, renewals, modifications, assignments, and/or subletting of such existing leases; or

2. the continuation of uses permitted under such existing leases within the premises demised thereunder. For purposes of this Paragraph, the term "primary business" shall mean a commercial activity of another tenant for which that tenant uses more than % of the sales area of its premises in the Shopping Center.