

Additional
Rental
(Cont'd)

Should Tenant at its option operate its fountain and lunch counter prior to opening its store unit for other business, such operation shall not be an acceptance of the demised premises, or an acknowledgment that the representations and warranties of Article 11 shall have been fulfilled, or an opening for business under Article 10 or any other provision of this lease, but sales from such operation shall be included in Tenant's reported gross sales for the first lease year.

Landlord or its agent may inspect Tenant's record of gross sales in said store unit annually, provided such inspection shall be made at Tenant's principal office within six (6) months after the statement of sales shall be delivered to Landlord and shall be limited to the period covered by such statement. Except to the extent that disclosure shall be required for any bona fide sale or mortgage of demised premises or for legal proceedings in any court, at law or in equity, Landlord shall hold in confidence sales figures or other information obtained from Tenant's records.

The term "gross sales", as used herein, shall be the total sales of merchandise or service made by Tenant, or any occupant, in said store unit whether wholesale or retail, cash or credit (including merchandise ordered on the store unit premises and delivered from another place), except that the following shall be excluded:

- (a) Sales of merchandise subsequently returned for refund or credit, merchandise transferred to a warehouse or any allied or associated store of Tenant, sales to Tenant's employees, or to members of the medical profession at a discount, or merchandise which shall be issued in redemption of trading stamps, if any, which shall have been issued free of charge to Tenant's customers at the time of sale of other merchandise or services;
- (b) Any and all taxes levied upon, assessed against, or measured by the receipt or purchase of merchandise by any occupant of said store unit, and any and all occupational sales taxes and other taxes levied upon, assessed against, based upon, or measured by (i) such occupant's gross receipts, or any part thereof, or (ii) the sale or sales price of merchandise and services, or either, and which shall be payable by such occupant, whether or not collected by such occupant from its customers as reimbursement or as agent of the taxing authority, and whether or not the same shall be commonly known as a sales tax, use tax, retailer's occupational tax, gross receipt tax, state or local tobacco tax, or excise tax; provided, however, said taxes to be excluded from gross sales shall not include any net income tax, franchise tax, or any other tax not levied upon or computed upon gross sales or gross receipts, or any portion thereof; provided, further, said taxes to be excluded from gross sales shall be excludable regardless of whether imposed under any existing or future orders, regulations, laws, statutes or ordinances;
- (c) Receipts from cigarette, lockers, stamp machines and other similar coin operated devices, public telephones, pay toilets, "kiddie rides", money orders, cashing of checks, paying of utility bills or like services, and all licenses sold to the public;
- (d) Service and interest charges for time payment accounts and charge accounts; and

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(e) ~~All sales of convenience grocery items to be assumed off premises which shall occupy any portion or portions of said store unit, provided that the aggregate area of said portion or portions shall not exceed eight hundred (800) square feet of floor area.~~

The term "store unit" as utilized in this Article shall include trucks, trailers or vans from which sales are made directly to the public from anywhere on the "common facilities" areas as hereinafter defined.