

Leasing of New Construction

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I. The Threshold Issues

- A. Is the development to be single-tenant or multi-tenant? Is there a chance your single tenant development could become multi-tenant?
- B. What type of user is locating in the space? Retail, office, light-industrial, heavy industrial, flex-space, or mixed use are all options to consider.
- C. How are operating expenses to be dealt with? Gross lease, triple-net lease, or a base-year expense lease are among the options to consider.

Note: Keep in mind that all of these decisions are interrelated with zoning, financing, property management requirements, etc.

II. What Are The Important Lease Issues?

Unfortunately, for the lawyer, the “important” issues tend to be those the client does not focus on, because they want to “sign the lease.” Therefore, it is often the task of the lawyer to focus the client on the important issues. Invariably, those lawyer issues become important to the client two years into the lease, and the client then asks the lawyer: “Why didn't you deal with this in the lease?”

With that in mind, here are some selected “important” issues in no particular order of importance (there are, of course, many more):

- A. Term
- B. Base Rent
- C. Late Charge
- D. Taxes
- E. Definition of Operating Expenses; Repairs and Maintenance vs. Capital Improvements

- F. Description of the Leased Premises
- G. Rentable and Usable Floor Area for Calculation of Rent and Tenant's Proportionate Share of Operating Expenses
- H. Parking
- I. Right to Relocate
- J. Conduct of Business
- K. Common Areas
- L. Signage rights
- M. Expansion/Contraction rights
- N. Right of first refusal on adjacent/additional space
- O. Options to renew
- P. Surrender
- Q. Guaranty.
- R. Insurance
- S. Utilities
- T. Subordination and Attornment
- U. Assignment and Subletting
- V. Eminent Domain/Condemnation
- W. Bankruptcy
- X. Default
- Y. Alterations and Improvements by Tenant
- Z. Landlords' Lien/Security Interest on Tenant's Personal Property

III. Discussion of Selected "Important" Issues

A. Term

The important issue here is to coordinate the date of delivery of possession with the completion date in your construction contract. The tenant will obviously attempt to secure a date definite for possession. The landlord will ordinarily oppose this request in new construction. If there is a penalty in the lease for delay in delivery of possession, the landlord should attempt to secure an equal or greater penalty from the construction contractor. If the Tenant must approve plans for construction, make sure there are strict deadlines for approval, and the deadline for possession is extended if the deadlines are not met.

See Rhonda E. Schwartz, "How to Draft Delivery of Possession Clauses in Leases (With Forms)," 15 *The Practical Real Estate Lawyer* 9 (May 1999).

B. Base Rent

Determine whether a negotiated increase or CPI/Inflation-based increase is to be included on a year-to-year basis.

Although it sounds simple, many form leases merely outline the amount of rent during certain periods, and lack an affirmative obligation of the tenant to pay the rent. Be sure to include such an affirmative obligation.

Consider making the rent due in full upon execution of the lease, with monthly payments throughout the term of the lease. This may give some assistance upon default in actions to collect rent, and in the areas of mitigation of damages after surrender.

C. Late Charges

It is important to affirmatively state that the imposition and collection of a late charge does not waive a default due to a late payment. For example, if the ability to exercise a right of first refusal on adjacent space or an option to renew is contingent upon the absence of a certain number of defaults during the term, the payment of a late charge should not waive the late payment as counting towards the default threshold.

D. Taxes

One of the important issues here is the lifting of the cap on taxable value upon the transfer of the building. The lifting of the cap can have a significant impact on the economics of the lease for the landlord and/or the tenant, depending upon the type of lease (gross, triple net) and the language in the tax section of the lease. For that reason, this section deserves special attention.

See David E. Nykanen, "Proposal A of 1994 and Leases: Owner, Tenant and Buyer Beware," 28 *Michigan Real Property Review* 29 (Spring 2001).

E. Definition of Operating Expenses; Repairs and Maintenance vs. Capital Improvements

In a large, multi-tenant development, this can often be the biggest point of contention between the parties. In a nutshell, this argument usually comes down to the characterization of certain items as regular maintenance (and thus chargeable as operating expenses) or as capital expenses (and thus often not commonly charged as operating expenses).

Many landlords will attempt to include everything as an operating expense. Even certain capital expenses will be passed through on an amortized basis. The form of office lease attached reflects this approach when the expenses are due to added regulations (in recent history, this would include ADA requirements). Whether representing the landlord or the tenant, this is often a section that involves significant discussions.

Finally, be sure to define rent to include operating expenses.

See Michael E. Meyer, "Counseling the Client on Operating Expenses and Audit Rights (With Sample Clauses) (Part 2)," 15 *The Practical Real Estate Lawyer* 71 (March 1999); Gary Goldman, "Tenant Triage: Operating on a Landlord's Operating Expense Clause," 16 *The Practical Real Estate Lawyer* 19 (March 2000).

F. Description of the Leased Premises

It is extremely helpful, if possible, to attach a visual aid/sketch showing the location of the premises in the building, if a multi-tenant building.

G. Rentable and Usable Floor Area for Calculation of Rent and Tenant's Proportionate Share of Operating Expenses

For the measurement of the leased premises itself, there is an industry standard for such measuring, commonly referred to as the "BOCA Method." In addition to that measurement, most Class A space includes a "Building Factor" which is a percentage added to the actual, "Usable" space to achieve the "Rentable" square footage. The Factor is to compensate the Landlord for the Tenant's use of the common areas (i.e., restrooms, lobbies, corridors, etc.)

H. Parking

The landlord will usually want to refrain from identifying a specific number of parking spaces available to the tenant. The better approach for the landlord is to grant the tenant a non-exclusive license (refrain from granting an "easement") to use the parking facilities as they exist from time to time.

If there are reserved spaces, minimize the obligation of the landlord to monitor and regulate the usage of those spaces. The landlord does not want to be the traffic enforcement bureau in a multi-tenant office building.

I. Right to Relocate

This issue can cut both ways. More often, the landlord will want to reserve the right to relocate a smaller tenant to aggregate space for a larger tenant. However, in the retail setting, a tenant may desire the right to relocate to a better location within the development when another tenant's lease expires. The issues in either situation boil down to who foots the bill. The costs can include build out, moving expenses, etc.

J. Conduct of Business

The use of the tenant should be defined as narrowly as possible. A sample provision reads:

The Leased Premises shall be for office use for the operation of a law firm, and for no other use. Tenant shall not conduct its business in a manner that will cause an increase in fire and extended coverage insurance premiums for the Leased Premises or the Building, and Tenant will comply with all requirements of the insurance policies relating to the Leased Premises. Tenant shall not use the Leased Premises for any purpose in violation of any law, municipal ordinance, or regulation, nor shall Tenant perform any acts or carry on any practices that may injure the Leased Premises or the Building or be a nuisance, disturbance or menace to the other tenants of the Building. The Tenant shall not use or permit the use of the Leased Premises for governmental or quasi-governmental functions; any type of political or quasi-political organization or function; any manner of political activity; retail banking; food service (except vending machine operations and microwave ovens), or a medical or dental practice

The landlord wants to control the uses to prevent incompatible uses in the same building. For example, a silk-stocking law firm may not want a boiler room telemarketing operation located on the same floor, or even in the same building.

Another method to prevent unwanted uses is to include a density provision in the lease. For example, no more than X employees per Y square feet. This prevents bullpen type businesses (like telemarketing) from moving in even if the use provision is not perfectly drafted). This also protects the landlord as it relates to facilities issues (i.e. restrooms), and parking issues.

K. Common Areas

It is important to have a good definition of the common areas. A sample provision may look like the following:

“Common Area” shall mean that part of the interior and exterior of the Building designated by Landlord for the common use of all tenants, which includes parking area, sidewalks, landscaping, curbs, driveways, delivery passages, loading areas, private streets and alleys, lighting facilities, certain drinking fountains and the like. Landlord grants Tenant a nonexclusive license for the term of this Lease, to use and occupy in common with the invitees of Landlord and Tenant and such other persons as Landlord and Tenant shall designate, the Common Area, subject to the terms and conditions of this Lease and to the Rules and Regulations prescribed from time to time by Landlord. Tenant shall not solicit business within the Common Area, or distribute handbills therein, or take any action that would interfere with the rights of other persons to use the Common Area. Landlord reserves the right, at any time and from time to time, without incurring any liability to Tenant therefor, to change the arrangements, dimensions and/or location of public entrances, passageways, doors, doorways, corridors, elevators, stairs, toilets, parking areas or other parts of the Common Area so long as any changes shall not affect Tenant's reasonable use and occupancy of the Leased Premises and access to the Building and such services as are referred to in this Section are not unreasonably reduced beyond that which is contemplated herein. In such event, Landlord shall repair any physical damage caused to the Leased Premises, if any.

L. Signage rights

If the tenant is provided exterior signage rights (e.g., building signage or space on a monument sign), insure that the cost of removal of the sign and restoration of the building, if necessary, are to be borne by the tenant and survive the expiration or earlier termination of the lease. One way to do this is to tie this issue into the surrender section, as discussed in this outline.

If the tenant is receiving space on a building directory, provide that any changes to the directory after the initial inclusion will be paid for by the tenant. If the building is a multi-tenant office building, and directory space is limited, be explicit as to the amount of space provided to each tenant.

M. Expansion/Contraction rights

A tenant will desire these rights if it is a fast-growing business, or if it is a business that may suffer setbacks in the future. For example, local sales offices of out-of-state automotive suppliers may grow or shrink significantly based upon the

success or failure of the supplier in dealing with a specific automaker. Therefore, some tenants will desire to expand its space, or give up space at specific times during the lease.

If possible, the space into which expansion may occur, or the space to be given up, should be specifically identified (preferably with a sketch). Many times, if expansion is the possibility, the space will be adjacent, and the right will be subject to the expiration of the adjacent tenant's lease without renewal. If that is so, that right is really a right of first refusal on adjacent space, and should be treated as such.

These rights, if granted, should be subject to the tenant not having defaulted more than a set number of times during the term of the lease, and not being in default when the right is exercised.

N. Right of first refusal on adjacent/additional space

This right is similar to the expansion/contraction rights discussed above.

See Kathleen Hopkins and Cynthia Thomas, "Alligators in Commercial Leases: Transfers and Rights of First Refusal (With Sample Clauses)," 16 *The Practical Real Estate Lawyer* 43 (March 2000).

O. Options to renew

This right will give the tenant the ability to continue the lease for another term after the expiration of the current term.

The important issues to the landlord here are the timing of the notice of exercise of the option and the rental rate.

The landlord needs significant advance notice of the exercise of the option (a good minimum is six months), because the landlord will have to begin efforts to market the space for re-leasing if the tenant is not going to exercise the option to renew.

As to rental rate, many leases include a rental rate of the "prevailing market" rate, and provide a mechanism to determine the market rate. A lengthy provision to establish that rate is as follows:

The prevailing market rental rate shall be established by the following procedure:

(a) Not earlier than one hundred twenty (120) days nor later than ninety (90) days prior to the first day of the five (5) year Extended Term, Landlord shall give to Tenant written notice of the prevailing market rental rate which Landlord proposes to establish, together with such supporting information, if any, as Landlord shall elect to provide. Within thirty (30) days after receipt of Landlord's notice, Tenant shall give written notice to Landlord, either accepting the prevailing market rental rate proposed by Landlord or proposing such different prevailing market rental rate as Tenant shall be willing to accept, together with supporting information. Within fifteen (15) days after receipt of Tenant's notice proposing a different rate of prevailing market rental rate as aforesaid, Landlord shall give to Tenant a further written notice either accepting Tenant's counter-proposal or naming an appraiser; and in the latter case,

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within fifteen (15) days after receipt of Landlord's further notice, Tenant shall give written notice to Landlord either accepting the appraiser named by Landlord to act as the sole and exclusive appraiser or naming a second appraiser; in this latter case, the two appraisers thus named shall promptly proceed to select a third appraiser acceptable to both of them.

(b) Each appraiser shall be a duly-licensed Michigan real estate broker or an appraiser having the "M.A.I." designation granted by the American Institute of Real Estate Appraisers (or the then current equivalent of such designation) and in any case shall have been actively engaged in the leasing or determination of rental value of office and commercial space in the Southfield area for not less than five (5) years prior to the time of appointment of such appraiser, but shall not be employed by or have any material interest in either Landlord or Tenant or in any affiliates of either, or in the outcome of the appraisal proceeding.

(c) As promptly as possible after his or their appointment, the appraiser or appraisers, as the case may be, shall proceed to establish such "prevailing market rental rate" in his or their determination shall be effective as of the first day of the five (5) year Extended Term even though not established until after such date, and shall be binding and conclusive upon both Landlord and Tenant for all the purposes of this Lease. If there shall be more than two appraisers, the decision shall be made by a majority of them.

(d) If the appraisers' determination of "prevailing market rental rate" shall not be issued until after the first day of the five (5) year Extended Term, the fixed rent shall continue to be paid at the rate last in effect until such determination shall be issued, whereupon any amounts due from Tenant to give effect to such determination as of the first day of the five (5) year renewal term shall be paid forthwith upon demand.

(e) Landlord and Tenant shall each cooperate with the appraiser or appraisers in all reasonable respects and shall each bear one-half ($\frac{1}{2}$) of all costs of such appraisal proceeding except for the fees of the appraisers themselves: If there is only one appraiser, his fee shall be borne one-half ($\frac{1}{2}$) by each of Landlord and Tenant, and if there is more than one, each party shall bear the entire fee of the appraiser appointed by it and one-half ($\frac{1}{2}$) of the fee of any third appraiser.

P. Surrender

The Landlord should consider require the premises to be restored to its pre-leased state, if extensive or user-specific alterations are performed. If the restoration is not concluded before the end of the term, the rental obligation (or holdover rent) should continue until the tenant's restoration is completed.

The following is a basic provision:

Tenant shall not make any alterations, additions or improvements to the Leased Premises (whether or not the same may be structural in nature) without Landlord's prior written consent, and all alterations, additions or improvements made by either party hereto to the Leased Premises, except movable office furniture, Tenant owned fixtures and equipment installed at Tenant's expense, shall be the property of Landlord and remain upon and be surrendered with the Leased Premises at the expiration of the term hereof; provided, how-

ever, that Landlord may require Tenant to remove any additions made by Tenant or caused by Tenant to be made to the Leased Premises or any Tenant owned fixtures, and to repair any damage caused by such removal, and provided further, that if Tenant has not removed its property and equipment within ten (10) days after the expiration or termination of this Lease, Landlord may, at Landlord's sole discretion, elect either to retain the same as abandoned property, or to remove it at Tenant's expense

Q. Guaranty

The landlord will almost always want a personal guaranty from someone other than the tenant. If the tenant is a small company, the tenant will desire a personal guaranty from the principal(s). If the tenant is a subsidiary, the landlord will ask for a personal guaranty from the parent corporation.

See Shurlow v Bonthuis, 456 Mich. 730; 576 N.W.2d 159 (1998); Eric S. Bronstein, "Lease Guaranty May Be Enforceable Despite Landlord's Failure to Perfect Its Lien," 25 *Michigan Real Property Review* 179 (Fall 1998); Andrew R. Lubin, "Lease Guaranties – A Practical Approach (With Form)," 17 *The Practical Real Estate Lawyer* 27 (May 2001).

R. Insurance

It is important to coordinate the tenant's insurance obligations with the landlord's insurance obligation under any financing documents. Also, confirm that the landlord and the landlord's lender are named as additional insureds on the tenant's policies, and that the policy cannot be terminated without thirty days notice to the additional insureds.

See Karen J. Golden, "Burning Issues: The Role of Insurance in Commercial Leases (With Model Clauses)," 15 *The Practical Real Estate Lawyer* 27 (September 1999); Michael W. Maddin, "A Primer on Casualty Insurance and Miscellaneous Coverage," 24 *Michigan Real Property Review* 141 (Summer 1997).

S. Utilities

Be very specific about what utilities are and are not included, and the cost for such utilities, if any. The following is a very detailed utilities section:

Provided Tenant is not in default hereunder, Landlord agrees to furnish or cause to be furnished to the Leased Premises the utilities and services designated below, subject to the conditions and in accordance with the standards set forth in this Article.

(1) Landlord shall provide automatic elevator facilities on generally accepted business days from 7:30 a.m. to 6 p.m., and on Saturdays from 7:30 a.m. to 1 p.m. At least one (1) elevator shall be available for use at all other times;

(2) Landlord shall furnish heat or air conditioning on generally accepted business days from 7:30 a.m. to 6 p.m., and on Saturdays from 7:30 a.m. to 1 p.m., when, in the judgment of Landlord, it is required for the comfortable occupancy and use of the Leased Premises. Upon request, Landlord shall make available, at Tenant's expense, afterhours heat or air conditioning and the cost thereof shall be determined from time to time by the Landlord and Tenant;

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(3) At Tenant's sole cost and expense, Landlord shall supply and/or replace all fluorescent tubes, ballasts and electric bulbs, including their installation, and such service shall not be included in the Annual Base Rent, but rather, shall be separately invoiced to Tenant and shall be considered Additional Rent hereunder. Tenant shall give notice to Landlord as and when fluorescent tubes, ballasts or electric bulbs need replacing, and Landlord shall, within a reasonable time, replace such defective or worn out parts, tubes or bulbs.

(4) Landlord shall furnish to the Leased Premises, subject to interruptions beyond Landlord's control, such electricity as is required for the use of the office lighting and electrical outlets in the Leased Premises; provided, however, all electrical usage shall be separately metered for the Leased Premises and, in addition to all other amounts paid by Tenant under this Lease, Tenant shall separately pay for all electricity used by Tenant under the secondary rates as established by the Michigan Public Services Commission. The meter shall be read monthly by an independent reader and invoiced to Tenant as Additional Rent payable within ten (10) days of receipt. Tenant, at all times and, as reasonably necessary, shall allow Landlord and any electric service provider reasonable access to the Building's electric lines, feeders, risers, wiring, and any other machinery within the Leased Premises. In no event shall Landlord be liable for damages or otherwise for the quality, quantity, failure or interruption of such services to the Leased Premises nor shall any such interruption or termination be deemed an eviction of Tenant or relieve Tenant of the performance of any of its obligations hereunder.

(5) Landlord shall furnish water for drinking, cleaning and lavatory purposes only;

(6) In the event Tenant requires any utilities or services during periods other than as provided herein, and provided that Tenant shall have given Landlord notice no later than 2:00 p.m. of the last business day prior to Tenant's need for such services, Landlord shall provide Tenant with such services, and Tenant shall pay Landlord, as Additional Rent, Landlord's then existing charges in respect thereto.

Landlord may impose a reasonable charge for any utilities and services, including, without limitation, air conditioning and water, provided by Landlord by reason of: (a) any use of the Leased Premises at any time other than the hours set forth above; (b) any use beyond what Landlord agrees herein to furnish; or (c) special cooling and ventilating needs created by Tenant's telephone equipment, electronic data processing equipment, copying equipment and other such equipment or uses. Landlord, at its option, may require installation of metering devices, in addition to the electric meters, at Tenant's expense, for the purpose of metering Tenant's other utility consumption. The metering of electricity for the Leased Premises shall be at a secondary rate as required to be charged by the Michigan Public Service Commission even if the Building is receiving primary electricity.

Tenant agrees to cooperate fully at all times with Landlord and to abide by all regulations and requirements which Landlord may prescribe for the use of the above utilities and services. Tenant agrees to pay any charge imposed by Landlord pursuant to Section 9.2 above, and any failure to pay any excess costs as described above shall constitute a breach of the obligation to pay rent under this Lease and shall entitle Landlord to the rights herein granted for such

breach. Tenant's use of electricity shall at no time exceed the capacity of the service to the Building or the electrical risers or wiring installation.

Tenant agrees to cooperate fully at all times with Landlord and to abide by all regulations and requirements which Landlord may prescribe for the use of the above utilities and services. Tenant agrees to pay any charge imposed by Landlord pursuant to Section 9.2 above, and any failure to pay any excess costs as described above shall constitute a breach of the obligation to pay rent under this Lease and shall entitle Landlord to the rights herein granted for such breach. Tenant's use of electricity shall at no time exceed the capacity of the service to the Building or the electrical risers or wiring installation. Landlord shall not be liable for, and Tenant shall not be entitled to any abatement or reduction of rent by reason of, Landlord's failure to furnish any of the foregoing services when such failure is caused by accident, breakage, repairs, riots, strikes, lockouts or other labor disturbance or labor dispute of any character, governmental regulation, moratorium or other governmental action, inability by exercise of reasonable diligence to obtain electricity, water or fuel, or by any other cause beyond Landlord's immediate control or for stoppages or interruptions of any such services for the purpose of making necessary repairs or improvements. Failure, stoppage or interruption of any such service shall not be construed as an actual or constructive eviction or as a partial eviction of Tenant, or a release of Tenant's obligations under this Lease.

Anything hereinabove to the contrary notwithstanding, Landlord's obligation to furnish heat, electricity, air conditioning and/or water to the Leased Premises shall be subject to and limited by all laws, rules and regulations of any governmental authority affecting the supply, distribution, availability, conservation or consumption of energy, including, but not limited to, heat, electricity, gas, oil and/or water. If Landlord shall attempt to meet such governmental requirements, Landlord in so doing shall not be in default in any manner whatsoever under the terms of this Lease, and Landlord's compliance therewith shall not affect in any manner whatsoever Tenant's obligation to pay the full rental set forth in this Lease.

Tenant shall use only such electrical lighting fixtures and lamps as may be approved by Landlord in writing. Notwithstanding anything hereinabove to the contrary, Landlord reserves the right from time to time to make reasonable and nondiscriminatory modifications to standards for utilities and services.

T. Subordination and Attornment

It is important to require the tenant to execute estoppels, subordinations, etc., within very short time frames. When refinancing the development, these documents are almost always pre-closing conditions, and any delay in receiving these documents can delay closing.

A basic provision is as follows:

Landlord reserves the right to subject and subordinate this Lease at all times to the lien of any mortgage(s) now or hereafter placed upon Landlord's interest in the Leased Premises and on the Land and the Building, or upon any buildings hereafter placed upon the Land, and Tenant shall execute and deliver any and all documents necessary to evidence such subordination within three calendar days of request. Tenant hereby irrevocably appoints Landlord the

attorney-in-fact of Tenant to execute and deliver any such instrument or instruments for and in the name of Tenant as may be necessary to effect such subordination; provided, however, no default by Landlord under any such mortgage(s) shall affect Tenant's rights hereunder so long as Tenant is not in default under this Lease. Tenant shall, in the event any proceedings are brought for the foreclosure of, or in the event of exercise of the power of sale under any mortgage made by Landlord covering the Leased Premises attach to the purchaser upon any such foreclosure or sale and recognize such purchaser as Landlord under this Lease.

Although the above sample includes language about the landlord being appointed attorney-in-fact to execute estoppels and subordinations, such language is practically useless, because lenders want the tenant's signature.

See Richard H. Goldman, "Current Issues in Negotiating Commercial Leases From A Lender's Perspective and Subordination, Non-Disturbance and Attornment Agreements (With Form)," 15 *The Practical Real Estate Lawyer* 33 (July 1999); Diana C. Liu, "Counseling the Landlord on Tenant Estoppels and SNDAs (With Forms)," 16 *The Practical Real Estate Lawyer* 15 (July 2000).

U. Assignment and Subletting

Because most Landlords lease to tenants based on the financial status of the tenant, the landlord should treat a change in control (i.e., sale of assets, merger, sale of ownership) as an assignment of the lease. Such treatment will allow the landlord to make a determination regarding continuing the relationship. For example, if a highly liquid company is acquired as part of a leveraged transaction, and the company is now highly indebted, the landlord may wish to reconsider continuing the landlord-tenant relationship.

Even when there is no change of control, the landlord will desire to consent to any assignment. Most landlords are really concerned about one issue: creditworthiness.

Make sure that consent to an assignment is not a release from a personal guaranty, if any, without explicit language releasing the guarantor from his or her obligation.

If the tenant proposes an assignment or subletting, make sure that all profit from the transaction flows to the landlord. A sublease should act to benefit a tenant by replacing the party with the primary responsibility to pay rent, it should not be a profit center for the tenant. The landlord should benefit from the transaction.

The landlord should consider whether to allow partial subletting. The addition of a new tenant to the building may increase the landlord's overhead, and thus may be disfavored.

See Neil E. Botwinoff, "Handling Assignment Clauses in an Age of Chameleon Entities (Part 2)," 15 *The Practical Real Estate Lawyer* 45 (Nov. 1999); Richard M. Frome, "Handling Assignment Clauses in an Age of Chameleon Entities (Part 3) (With Sample Clauses)," 16 *The Practical Real Estate Lawyer* 49 (January 2000); Richard M. Frome, "Drafting Landlord Consent to Assignment and Subletting Clauses," 18 *The Practical Real Estate Lawyer* 7 (May 2002).

V. Eminent Domain/Condemnation

The landlord will want to insure that the only damages which the tenant can claim are business interruption, going concern and relocation damages. The tenant should be prohibited from claiming any damages due to the property interest itself. These damages should flow to the landlord.

A sample provision is as follows:

All damages awarded for such taking shall belong to and be the property of Landlord, whether such damages be awarded as compensation for diminution in value of the leasehold or to the fee of the Leased Premises; provided, however, Landlord shall not be entitled to any portion of the award made to Tenant for removal and reinstallation of Tenant's fixtures or moving expenses.

See Gary A. Taback, "Lease Condemnation Clauses – The Landlord's Wind-fall," *23 Michigan Real Property Review* 95 (Summer 1996).

W. Bankruptcy

The general view regarding bankruptcy is that a twenty page bankruptcy section really cannot change the impact of a tenant filing for bankruptcy. It is recommended that a bankruptcy practitioner periodically review your bankruptcy paragraphs, and that, upon filing of bankruptcy, the landlord's counsel should consult regularly with a bankruptcy practitioner.

X. Default

If the landlord provides a cure period, make it a one-time cure. In other words, if the tenant is late with rent, you have a ten day cure period, but only the first time the tenant is late with rent.

If there is a guarantor of the lease, consider having a decline in the guarantor's net worth trigger a default under the lease.

Y. Alterations and Improvements by Tenant

If the cost of the improvements are to be substantial, consider having the Tenant post a letter of credit to insure that the improvements are actually completed. The Landlord cares about this because the partially-finished space could drag down the rest of the building. In addition, the Landlord should insure that the Tenant has the financial wherewithal to complete the improvements.

The Landlord should retain the right to approve all plans and specifications for the improvements.

See also, Surrender.

Z. Landlords' Lien/Security Interest on Tenant's Personal Property

Most landlords seek a security interest on the tenant's personal property. In my mind, two issues arise: (a) Is the landlord receiving a first lien?: and (b) What is the personal property really worth? In most cases, the economic answer is that the lien is not worth much, but landlords still like the stick of holding the lien over the head of the tenant.

See *Shurlow v Bonthuis*, 456 Mich. 730; 576 N.W.2d 159 (1998); Eric S. Bronstein, "Lease Guaranty May Be Enforceable Despite Landlord's Failure to Perfect Its Lien," 25 *Michigan Real Property Review* 179 (Fall 1998).

SELECTED ADDITIONAL RESOURCES OF INTEREST

- A. Real Property Section Website. www.michbar.org. Includes valuable resources, such as selected Homeward Bound materials from previous years, and selected articles from the *Michigan Real Property Review*.
- B. Jerry D. Johnson and David N. Pace, "How to Handle Telecommunications Issues in Office Leases," 17 *The Practical Real Estate Lawyer*, 35 (Sept. 2001).
- C. S.H. Spencer Compton and Joshua Stein, "Landlord's Checklist of Silent Lease Issues," 18 *The Practical Real Estate Lawyer* 23 (July 2002).
- D. Dirt Home Page. www.umkc.edu/dirt. Selected forms available.
- E. John G. Cameron, Jr., *Michigan Real Property Law*, 2d ed.
- F. Clan Crawford, Jr., *Michigan Zoning and Planning*, 3rd ed.

EXHIBITS

- A. Single Tenant Lease, with new construction clause. Lease is triple-net, and drafted for a light industrial user.
- B. Multi Tenant Lease, without new construction clause. Lease is triple-net, and drafted for an office user.

Exhibit A
Single Tenant Lease with New Construction Lease

LEASE
Section 1—Schedule

LANDLORD: NAME: _____
ADDRESS: _____
TENANT: NAME: _____
ADDRESS: _____

DEMISED PREMISES: Land ("Site") as described in Exhibit A attached hereto and existing buildings and improvements, if any, or those certain buildings and/or improvements to be constructed or installed thereon ("Project"), located in _____, _____ County, Michigan, described as follows:

An office and distribution facility consisting of approximately _____ square feet of office space, including driveways, parking areas and related improvements.

PLANS: Plans and specifications for completion and construction of Project, as approved and initialed by the parties, dated _____, 20____, together with any subsequent plans and specifications approved in writing by the parties.

LEASE TERM: _____ (____) years

COMMENCEMENT DATE: _____, 20____

TERMINATION DATE: _____, 20____

ANNUAL BASE RENT: \$ _____

MONTHLY INSTALLMENT OF BASE RENT: \$ _____, first month paid on the date hereof

SECURITY DEPOSIT: \$ _____, paid on the date hereof

CREDIT CONSTRUCTION BY TENANT: \$ _____

USE OF DEMISED PREMISES: _____

DATED: _____, 20____

EXHIBITS ATTACHED: A Legal Description of Site

SECTION 2 — GRANT AND TERM

2.1 Demised Premises

Landlord, in consideration of the rents to be paid and the covenants, promises and agreements to be performed by Tenant, does hereby lease to Tenant and Tenant hereby rents from Landlord, the Demised Premises described in Section 1 hereof.

2.2 Term

The term of this Lease shall be for the Lease Term stated in Section 1 hereof, commencing on the Commencement Date stated in Section 1 hereof and expiring on the Termination Date stated in Section 1 hereof, unless delayed or sooner terminated as herein set forth.

SECTION 3 — CONSTRUCTION OF DEMISED PREMISES

3.1 Construction

Landlord agrees, prior to the Commencement Date, to construct and complete the Project on the Site, in accordance with the Plans as described in Section 1, at Landlord's sole cost and expense. Any changes made to the Plans, at the request of Tenant, after the date of this Lease, which result in increased costs shall be paid by Tenant; onehalf (1/2) of such amount at date of the request by Tenant and the balance to be paid on the Commencement Date. Minor changes from such plans and specifications which may be necessary to accommodate construction shall not affect, change or invalidate this Lease. The Project shall be constructed in a good and workmanlike manner, free of all liens, and in accordance with all laws, statutes, ordinances, building codes, rules and regulations of any federal, state or municipal body or other governmental agency having jurisdiction thereof then in effect. Landlord warrants against structural defects and further warrants that the entire Project will be free from defect in materials or workmanship for one (1) year.

3.2 Delays

Landlord's obligations under this section shall not require Landlord to incur overtime costs and expenses. In the event Landlord shall be delayed or hindered in the construction of the Project, or prevented from completing such construction, or prevented from delivering possession of the Demised Premises because of any strike, lockout, labor dispute, fire, damage or destruction or casualty, unavailability of material, weather, power failures, unavailability of utilities, restrictive governmental laws or regulations, riots, insurrection, war, a previous tenant holding over, or any other reason beyond its control, then Landlord shall be excused for the period of delay and the Commencement Date shall be postponed for such period of delay until such time as the Demised Premises are ready for occupancy, but no such failure to give Tenant occupancy shall extend the Termination Date.

3.3 Completion Date

Subject to Section 3.2, the Project shall be substantially completed on or before the Commencement Date. Substantially completed shall mean the date upon which Landlord delivers a Certificate of Occupancy (whether temporary or final) which permits Tenant to occupy the Demised Premises, or Tenant begins using or occupying any portion of the Demised Premises, whichever occurs first.

3.4 Settlement of Disputes

If Landlord is constructing the Project, any disagreement or dispute which may arise between Landlord and Tenant with reference to the work to be performed with respect to

the Project shall be submitted to Landlord's supervising architect, whose decision shall be final and binding on both Landlord and Tenant.

SECTION 4 — POSSESSION AND COMMENCEMENT OF TERM

4.1 Possession And Commencement Of Lease Term

Landlord shall deliver actual possession of the Demised Premises to Tenant on or before the completion date specified in Section 3.3, but if delivery is delayed by reason of Section 3.2 or by the Landlord for any reason whatsoever, the date upon which such possession is delivered shall constitute the "Commencement Date" in lieu of the date provided in Section 1; however, the Termination Date provided in Section 1 shall not change. Landlord shall, when construction progress so permits, notify Tenant of the anticipated completion date specified in Section 3.3. By occupying the Demised Premises, Tenant will be deemed to have accepted the Demised Premises and acknowledged that they are in substantially the condition required under this Lease except for incidental items of uncompleted contract work of which Tenant shall notify Landlord in a writing ("Punchlist") within ten (10) days after the Commencement Date. Landlord shall diligently pursue completion of such items of uncompleted contract work set forth in the Punchlist. If Tenant fails to deliver the Punchlist to Landlord within such ten (10) day period, Landlord shall not be required to complete any such items of uncompleted contract work. The Rent, as hereinafter defined, due under this Lease and the term of this Lease shall commence on the Commencement Date. If permission is given to Tenant to occupy all or part of the Demised Premises prior to the Commencement Date, Tenant covenants and agrees that such occupancy shall be governed by all terms and conditions of this Lease and the Termination Date shall not be changed. Such early occupancy shall not interfere with Landlord's completion of the Project. Tenant and its contractors shall have the right to install equipment, trade fixtures, furnishings and decorations in the Demised Premises for a period of thirty (30) days prior to the Commencement Date, provided such does not delay or interfere with Landlord's construction or delivery of possession and any such delay or interference shall not postpone the Commencement Date or the obligation to pay Rent.

4.2 Landlord Not Liable For Delays

Under no circumstances shall Landlord be liable for any delays in the delivery of possession to Tenant on the Commencement Date. Tenant's sole and exclusive remedy shall be the abatement of rent until the Demised Premises are ready for occupancy and possession is delivered to Tenant.

4.3 Memorandum

Within thirty (30) days after the delivery of possession to Tenant, Tenant shall join with Landlord in the execution of a written memorandum confirming the Commencement Date and Termination Date of the Lease Term. Tenant's failure to execute the memorandum shall be a default by Tenant under this Lease and Landlord's default under this Lease shall not relieve Tenant of the obligation to execute the memorandum within such thirty (30) day period.

SECTION 5 — RENT

5.1 Base Rent

Tenant shall pay to Landlord the Annual Base Rent stated in Section 1 hereof for the Demised Premises during the Lease Term. The Annual Base Rent shall be payable in

monthly installments equal to the Monthly Installment of Base Rent stated in Section 1 hereof, paid in advance, on the first day of each and every calendar month during the Lease Term, without any setoff or deduction whatsoever, at the office of Landlord stated in Section 1 hereof, or at such other place as Landlord may designate from time to time in writing. The first Monthly Installment of Base Rent shall be due and payable at the time of execution of this Lease. If the Lease Term shall commence on a day other than the first day of a calendar month or shall end on other than the last day of a calendar month, then the Monthly Installment of Base Rent due for such partial month shall be prorated.

5.2 Rent Adjustments

(a) The Annual Base Rent shall be increased on January 1, 20__ and every ____ (__) years thereafter ("Adjustment Date"), to an amount equal to the product obtained by multiplying _____ Dollars (\$_____) by a fraction, the numerator of which is the Consumer Price Index U.S. City Average For All Items For All Urban Consumers (19821984 = 100), published monthly in the "Monthly Labor Review" of the Bureau of Labor Statistics of the United States Department of Labor ("CPI"), for the month in which the Adjustment Date falls, and the denominator of which is the CPI for the first full calendar month immediately following the Commencement Date. In no event shall the Annual Base Rent as adjusted be less than the Annual Base Rent for the previous lease year. The Monthly Installment of Base Rent shall be increased on each Adjustment Date to an amount equal to onetwelfth (1/12) of the Annual Base Rent as increased on such Adjustment Date. References in this Lease to Annual Base Rent shall include adjustments thereto pursuant to this Section.

(b) Landlord shall, within a reasonable time after obtaining the appropriate data necessary for computing such increase, give Tenant written notice of any such increase, and Tenant shall commence paying the Monthly Installment of Base Rent as increased with the next Monthly Installment of Base Rent due hereunder. In the event the determination is made after the Adjustment Date, then Tenant shall pay the increase allocated for any prior periods with the next Monthly Installment of Base Rent or within five (5) business days after such notice of the increase, whichever occurs last.

(c) In the event the CPI is discontinued and not replaced by a successor index by the Bureau of Labor Statistics, the adjustments to be made hereunder shall be made based upon such comparable statistics on the cost of living for the City of Detroit which shall carry out the intent of this paragraph.

(d) In the event of any dispute between Landlord and Tenant with regard to such adjustment, such dispute shall be determined by arbitration under the then prevailing commercial arbitration rules of the American Arbitration Association. Such arbitration shall be final and binding upon the parties and a judgment may be entered upon it in accordance with the applicable law in any court having jurisdiction thereof.

5.3 Rent Net Of Expenses

Landlord and Tenant intend that the Annual Base Rent due hereunder, together with any adjustments during the Lease Term, shall be absolutely net of all costs, expenses, taxes (real and personal) and charges of every kind and nature whatsoever relating to the ownership, occupancy or use of the Demised Premises so that the Annual Base Rent, together with any adjustments, constitutes the minimum income realized by Landlord from the Lease of the Demised Premises. Tenant shall indemnify and hold Landlord harmless from and against any such costs, expenses, taxes (real or personal) and charges.

5.4 Additional Rent

All amounts due from Tenant and payable to Landlord, excluding Annual Base Rent, including, without limitation, if applicable, common facilities maintenance pursuant to Section 7 hereof, taxes and assessments pursuant to Section 8 hereof and insurance premiums pursuant to Section 13 hereof, shall be deemed to be additional rent and upon Tenant's failure to pay any such amount, Landlord, in addition to any other remedies, shall have the same remedies provided for Tenant's failure to pay the Annual Base Rent (the Annual Base Rent, together with the additional rent, shall be collectively referred to as "Rent"). Tenant shall pay any and all sums of money or charges required to be paid by Tenant under this Lease promptly when the same are due, without any deductions or set-off whatsoever.

5.5 Lease Year

Lease year shall mean a period of twelve (12) consecutive calendar months. The first lease year shall begin on the Commencement Date if the Commencement Date shall occur on January 1; if not, then the first lease year shall commence on January 1 following the Commencement Date. Each succeeding lease year shall commence on January 1. If the Commencement Date is other than January 1, then the period between the Commencement Date and the succeeding January 1 and between the last January 1 to occur during the Lease Term and the Termination Date shall be a partial lease year.

5.6 Default Charge

If Tenant shall fail to pay all or any portion of a Monthly Installment of Base Rent as and when the same is due, in addition to the Monthly Installment of Base Rent, Tenant shall pay a delinquency charge equal to five percent (5%) of the amount unpaid to reimburse Landlord for the costs incurred as the result of such late payment. If Tenant shall default in any payment or expenditure, other than Annual Base Rent, required to be paid or expended by Tenant under the terms hereof, then Landlord may, at its option, make such payment or expenditure in accordance with Section 22. In such event, the amount thereof shall be due and payable as additional rent to Landlord by Tenant with the next Monthly Installment of Base Rent, together with interest thereon at a rate equal to the sum of the then prevailing "prime interest rate" (as hereinafter defined) plus two percent (2%) from the date of such payment or expenditure by Landlord until the date of payment by Tenant, to cover Landlord's loss of the use of the funds and administrative costs resulting from Tenant's failure. The "prime interest rate" for purposes of this Lease shall mean the rate of interest announced by Comerica Bank from time to time as its "prime interest rate." The "prime interest rate" shall be determined as of the date of Landlord's payment or expenditure. If Comerica Bank ceases to publish its "prime interest rate," the most comparable interest rate to that known as the "prime interest rate" shall be used.

SECTION 6 — UTILITIES

Tenant agrees to pay all charges made against the Demised Premises for gas, heat, water, electricity, sewage disposition, telephone and all other utilities during the Lease Term as the same shall become due. Landlord shall not be liable to Tenant for the quality or quantity of any such utilities, or for any interruption in the supply of any such utilities.

SECTION 7 — COMMON FACILITIES MAINTENANCE

If the Demised Premises are a part of a larger parcel of land with common facilities, such as roadways, parking areas, sidewalks, sewers, water mains, lighting facilities and

signs, which are not used exclusively for the Demised Premises, Tenant shall pay as additional rent such costs as are assessed to the Demised Premises or Landlord for the operation, maintenance, repair or replacement of the common facilities. Such costs shall include the following by way of illustration, but not limitation: repairs to the common areas; license, permit and inspection fees; grounds care costs of the common areas, including snow removal, landscaping and lawn, tree and shrubbery care; water consumption in connection with the common areas; labor; supplies; materials; equipment; tools; insurance premiums; repairs and replacement of walks, drives and parking areas.

SECTION 8 — TAXES AND ASSESSMENTS

8.1 Obligation

Tenant agrees to pay to Landlord all Taxes, as defined in Section 8.2 hereof, on the Demised Premises for each lease year or partial lease years during the Lease Term.

8.2 Definition

“Taxes” shall be defined as: all taxes (either real or personal), assessments (general or specific), all water and sewer charges, and all other governmental impositions, which may be levied during the Lease Term upon the land, buildings or improvements comprising the Demised Premises or any part thereof; a tax or surcharge of any kind or nature upon, against or with respect to the parking areas or the number of parking spaces on the Demised Premises; and all costs and expenses incurred by Landlord during negotiations for or contests of the amount of such taxes and assessments, without regard to the result, including, without limitation, actual attorneys' fees.

8.3 Payments

Taxes on the Demised Premises levied or assessed for or during the Lease Term shall be paid to Landlord within ten (10) days after Landlord delivers to Tenant a statement for such Taxes. The Taxes for the years in which this Lease commences and terminates shall be prorated on a due date basis. On the Commencement Date, Tenant shall reimburse Landlord for the Taxes paid by Landlord for the calendar year in which the Commencement Date occurs and allocated to the calendar months occurring after the Commencement Date. Upon conclusion of this Lease, Landlord shall reimburse Tenant for Taxes paid by Tenant for the calendar year in which the Lease terminates and allocated to the calendar months occurring after the Termination Date. In the event a refund of Taxes previously paid is obtained, Landlord shall credit the portion which relates to the Demised Premises to the next payment due under this Section. A copy of a tax bill or assessment bill submitted by Landlord to Tenant shall at all times be sufficient evidence of the amount of Taxes assessed or levied against the property to which such bill or return relates.

8.4 Escrow

Landlord may, at its option and at any time upon written notice to Tenant, require that Taxes shall be paid to Landlord in monthly installments on or before the first day of each calendar month, in advance, in an amount estimated by Landlord; provided, that in the event Landlord is required under any mortgage covering the demised Premises, or any portion thereof, to escrow Real Estate Taxes, Landlord may, but shall not be obligated to, use the amount required to be so escrowed as a basis for its estimate of the monthly installments due from Tenant hereunder. If Landlord elects to require monthly installments, upon making such election, Tenant shall pay to Landlord an amount which when added to the installment payments to be paid by Tenant will be sufficient to provide Land-

lord with the amount required to pay the Taxes thirty (30) days before the Taxes are due. Subsequent to the end of each lease year or partial lease year, Landlord shall furnish Tenant with a written statement of the actual amount of the Taxes on the Demised Premises. In the event no tax bill is available, Landlord will compute the amount of such tax. If the total amount paid by Tenant under this Section 8.4 for any lease year during the Lease Term shall be less than the actual amount due from Tenant for such year, as shown on such statement, Tenant shall pay to Landlord the difference between the amount paid by Tenant and the actual amount due, such deficiency to be paid within fifteen (15) days after demand therefor by Landlord; and if the total amount paid by Tenant hereunder for any such year shall exceed such actual amount due from Tenant for such year, such excess shall be credited against the next installment of taxes and assessments due from Tenant to Landlord hereunder. In the event a refund of Taxes previously paid is obtained, Landlord shall credit the portion which relates to the Demised Premises to the next installments due under this Section.

8.5 Right to Contest Taxes

In the event the amount of the Taxes are not contested by Landlord, then Tenant, upon written notice to Landlord, shall have the right to contest the amount of the Taxes at Tenant's sole cost and expense, by the appropriate proceedings diligently contested in good faith and shall immediately pay any increases in the Taxes or shall be given a credit against monthly installments thereof subsequently due in the amount of any reductions in the Taxes. Notwithstanding such proceedings, Tenant shall promptly pay and discharge such Taxes and any penalties or interest assessed thereon, unless such proceedings and the posting of a bond or other security shall operate to prevent or stay the collection of the Taxes and secure any accruing penalties or interest and operate to cure Landlord's default in the payment of Taxes required under any mortgage upon the Demised Premises. Landlord agrees to join Tenant in such proceedings, if necessary, provided Tenant pays all costs and expenses incurred by Landlord, including actual attorneys' fees.

8.6 Tenant's Taxes

Tenant shall pay all real and personal property taxes levied or assessed against Tenant's property and improvements upon or affixed to the Demised Premises, including taxes attributable to all alterations, additions, or improvements made by Tenant.

8.7 Association Fees

In the event Landlord is required to maintain membership in an owner's association by reason of ownership of the Demised Premises, Tenant shall be obligated to pay to Landlord any and all association fees and other assessments levied against Landlord by such association, not in excess of _____ Dollars (\$_____) per lease year, which are attributable to the Demised Premises during the Lease Term. Tenant shall pay such amounts within ten (10) days after written demand therefor by Landlord.

SECTION 9 — USE OF DEMISED PREMISES

9.1 Use of Demised Premises

Tenant shall use and occupy the Demised Premises during the Lease Term only for the purpose stated in Section 1 hereof and attendant office use and for no other purpose without the prior written consent of the Landlord. Tenant shall not use or permit any person to use the Demised Premises or any part thereof for any use or purpose other than the use stated in Section 1 or in violation of any law, statute, order, ordinance, code, rule

or regulation of any federal, state or municipal body or other governmental agency or authority having jurisdiction thereof, including, without limitation, occupational safety and health requirements, community righttoknow requirements, requirements pertaining to the possession, generation, transportation, treatment and disposal of hazardous substances and hazardous wastes, or pollution standards or requirements ("Laws"), or any building and use restrictions ("Restrictions") affecting the Demised Premises, if any. Tenant shall comply with all such present and future Laws and Restrictions affecting the Demised Premises and the cleanliness, safety, occupation and use of the same, at Tenant's sole cost and expense. Tenant shall, at Tenant's expense, obtain such approvals, permits or certificates, including, without limitation, a certificate of occupancy if Tenant is constructing the Demised Premises, that may be required in order for Tenant to occupy and use the Demised Premises. Tenant shall promptly notify Landlord of, and provide Landlord with copies of, all notices, requests, orders, complaints or other correspondence directed to Tenant from any federal, state or municipal body or governmental agency or authority pertaining to any actual or alleged violation of Laws or Restrictions.

9.2 Care of Demised Premises

Tenant shall keep the Demised Premises orderly, neat, safe and clean and free from rubbish and dirt at all times and shall store all inventory, supplies, trash and garbage within the buildings on the Demised Premises. Tenant shall keep the driveways and walkways within the Demised Premises free from snow and ice, and shall arrange for the regular removal of snow during the winter months and the pick up of trash and garbage at Tenant's expense. Tenant shall not burn any trash or garbage at any time in or about the Demised Premises. At the expiration of the term of this Lease, or the sooner termination thereof, Tenant shall surrender the Demised Premises in as good condition and repair as existed at the time Tenant took possession, reasonable wear and tear excepted.

9.3 Hazardous Substances

Tenant shall not cause or permit the Demised Premises to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process hazardous substances as defined in Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §9601(14), hazardous wastes as defined in Section 1004(5) of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6903(5) and implementing regulations, hazardous wastes as defined in the Michigan Hazardous Waste Management Act, as amended, M.C.L. § 299.501 et seq., or extremely hazardous substances as defined in the Emergency Planning and Community RightToKnow Act of 1986, 42 U.S.C. § 11001 et seq. (hereinafter collectively referred to as "Hazardous Substances").

9.4 Affidavit And Questionnaire

Tenant shall submit to Landlord annually, or more often if reasonably requested by Landlord or Landlord's mortgagee, a sworn Affidavit signed by the Chief Officer of Tenant, setting forth in detail the identity, quantity and purpose of all Hazardous Substances and any similar substance used or present on the Demised Premises and the dates and period of time that such substances were brought onto or retained on the Demised Premises.

9.5 Environmental Report

Within sixty (60) days prior to the expiration of the Lease Term or any extension of the Lease Term pursuant to any properly exercised option to renew or extend (collectively "Lease Term"), if any, Tenant shall have the Demised Premises thoroughly inspected by an environmental consultant acceptable to Landlord for purposes of determining whether

the Demised Premises is free from all Hazardous Substances. Tenant shall deliver to Landlord a copy of the environmental consultant's report thirty (30) days prior to the expiration of the Lease Term, which report shall be acceptable to Landlord. In the event the report discloses the existence of any Hazardous Substances, requires any cleanup or any other form of response (collectively "Cleanup"), Tenant shall perform such immediately and deliver the Demised Premises with the conditions specified in the report "cleaned up," to the full satisfaction of Landlord. In the event the conditions specified in the report require Cleanup exceeding the sum of Ten Thousand Dollars (\$10,000.00) or which cannot be completed prior to the expiration of the Lease Term, Tenant shall be obligated to reimburse Landlord the greater of the fair market rental value of the Demised Premises, or the Annual Base Rent, as adjusted, for each day delivery of the Demised Premises in the required condition to Landlord is delayed beyond the expiration of the Lease Term. The Tenant shall also deliver to the Landlord a letter of credit in an amount equal to the costs of Cleanup plus either the fair market rental value of the Demised Premises or the Annual Base Rent, as adjusted, at least ten (10) days prior to the expiration of the Lease Term. The costs of Cleanup shall be that amount so determined by the environmental consultant.

9.6 Obligation Of Tenant

The obligations and liabilities of Tenant, under Sections 9.1 through 9.5, shall survive termination of this Lease.

SECTION 10 — INDEMNITY

10.1 Indemnity

Tenant shall defend, indemnify and hold harmless Landlord, and Landlord's officers, directors, employees and agents, from and against any and all claims, suits, liabilities, damages, losses, costs or expenses, including, without limitation, reasonable legal, accounting, consulting, engineering and other expenses which may be imposed upon, incurred by, or asserted against Landlord or Landlord's officers, directors, employees or agents, for personal injuries, death or property damage, damage to natural resources or environmental contamination ("Damages") occurring or originating on or about the Demised Premises from any cause whatsoever from and after the Commencement Date and during the Lease Term, including, without limitation, Tenant's failure to comply with any provision of this Lease. The indemnities provided herein shall include attorneys' fees incurred by Landlord, or Landlord's officers, directors, employees and agents, in connection with such Damages or to enforce the indemnity given hereunder.

10.2 Liability Insurance

Tenant shall procure and keep in effect during the Lease Term, for the benefit of Landlord and any mortgagee of the Demised Premises, general public and property damage insurance, including blanket contractual coverage in the amount of One Million Dollars (\$1,000,000.00) for personal injury or death resulting from one occurrence and the sum of Five Hundred Thousand Dollars (\$500,000.00) for property damage resulting from any one occurrence. In addition, Tenant shall maintain excess insurance or "umbrella" coverage in the amount of Two Million Dollars (\$2,000,000.00). Such insurance policies shall name Landlord and any mortgagee of the Demised Premises as additional insureds by specific endorsement.

10.3 Tenant's Contractor's Insurance

Tenant shall require any contractor of Tenant performing work on the Demised Premises to take out and keep in force, at no expense to Landlord, comprehensive general liability insurance, including contractor's liability coverage, contractual liability coverage, completed operations coverage, broad form property damage endorsement and contractor's protective liability coverage, to afford protection to the limit, for each occurrence, of not less than Three Million Dollars (\$3,000,000.00) with respect to personal injury or death and Five Hundred Thousand Dollars (\$500,000.00) with respect to property damage; and worker's compensation or similar insurance in form and amounts required by law. The liability insurance shall name Landlord and any mortgagee of the Demised Premises, or any portion thereof, as additional insureds by specific endorsement.

10.4 Delivery Of Policy And Special Endorsement

The insurance policies required by this Section 10 shall contain provisions satisfactory to Landlord prohibiting cancellation, alterations, changes, amendments, modifications, deletions or reductions in coverage either at the instance of Tenant or the insurance company issuing the policy, without at least thirty (30) days prior written notice having been given to Landlord at the address stated above. Copies of such insurance policies and all renewals thereof, together with receipts evidencing payment in full of the premiums thereon, shall be delivered promptly to Landlord and in no event less than thirty (30) days prior to expiration of such insurance.

SECTION 11 — MAINTENANCE AND REPAIRS

11.1 Maintenance And Repairs

Tenant shall, at its sole cost and expense, during the Lease Term, maintain and repair and keep neat and in good appearance and condition the Demised Premises, including, but not limited to, the roof, the exterior walls, the interior walls, ceiling, the electrical system, plumbing system, and heating, ventilating and air conditioning system, storm sewers, sanitary sewers, water main, the driveways, walkways, parking area, lighting facilities, landscaping and land, which are part of the Demised Premises. The plumbing system, including the sewage facility, serving the Demised Premises shall not be used for any purpose other than for which it was constructed and Tenant shall not introduce any matter therein which results in blocking such system. Tenant shall, at its sole cost and expense, also repair or replace the driveways, walkways, parking areas, or landscaping on the Demised Premises. Tenant shall, at its sole cost and expense, contract with contractors acceptable to Landlord for the performance of all maintenance and repairs required of Tenant under this Lease. Tenant shall perform such maintenance and repair so as to maintain the Demised Premises in a firstclass condition. Such maintenance and repair obligations shall include items deemed to be capital improvements for tax purposes. The maintenance and repair obligations of Tenant hereunder shall survive termination of this Lease.

11.2 Compliance With Laws

During the term of this Lease, Tenant shall make any repairs, additions, modifications or alterations to the Demised Premises, regardless of the nature thereof, which are required by any Laws or Restrictions (as defined in Section 9.1) and required by the insurance carrier to maintain the insurance required under this Lease.

SECTION 12 — TENANT'S ALTERATIONS

12.1 Alterations

Tenant shall not make any alterations, additions, modifications or improvements (“Alterations”) to the Demised Premises without the prior written consent of Landlord. Landlord will not unreasonably withhold its consent with respect only to nonstructural Alterations which do not modify the exterior of the buildings, which do not adversely affect the architectural design or systems as described in Section 11.1, or do not involve any demolition work or which do not change the character or use of the Demised Premises. Tenant shall notify Landlord in writing and obtain prior written consent of Landlord for any Alterations which involve asbestosbased fire retardants, ceiling tiles, pipes or other asbestoscontaining materials. All Alterations made by either Landlord or Tenant to the Demised Premises shall become the property of Landlord, shall remain upon and be surrendered with the Demised Premises at the termination of this Lease, without molestation or injury; unless Landlord consents in writing to Tenant's removal of such alterations and Tenant repairs any damage or injury caused thereby in a good and workmanlike manner. Notwithstanding anything to the contrary herein, Landlord, at its option, may at the expiration of the Lease Term require Tenant, at Tenant's sole cost and expense, to remove any Alterations made by Tenant during the Lease Term and to repair any damage or injury caused thereby in a good and workmanlike manner. All Alterations made by Tenant or the removal thereof shall be made free of all liens and encumbrances and in compliance with all Laws and Restrictions. Tenant hereby indemnifies and holds Landlord harmless from and against any such liens, encumbrances and violations of Laws and Restrictions. The filing of any lien or encumbrance, or the violation of Laws or Restrictions, shall constitute a default hereunder. The repair obligations of Tenant hereunder shall survive the termination of this Lease.

12.2 Construction Liens

Tenant shall not suffer or permit any construction liens to be filed against the Demised Premises or any part thereof by reason of work, labor, services or materials supplied or claimed to have been supplied to Tenant or anyone holding the Demised Premises or any part thereof through or under Tenant. If any such construction lien shall at any time be filed against the Demised Premises, Tenant shall cause the same to be discharged of record within twenty (20) days after the date of filing the same. If Tenant shall fail to discharge such construction lien within such period, then, in addition to any other right or remedy of Landlord, Landlord may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit in court or by giving security or in such other manner as is, or may be, prescribed by law. Any amount paid by Landlord for any of the aforesaid purposes, and all actual legal and other expenses of Landlord, including actual counsel fees, in or about procuring the discharge of such lien, together with all necessary disbursements in connection therewith, and together with interest thereon at the rate of eighteen percent (18%) per annum, but in no event higher than the legal limit, from the date of payment, shall be repaid by Tenant to Landlord on demand, and if unpaid may be treated as additional rent. Nothing herein contained shall imply any consent or agreement on the part of Landlord to subject Landlord's estate to liability under any construction lien law.

SECTION 13 — PROPERTY INSURANCE, REBUILDING AND WAIVER OF SUBROGATION

13.1 Property Insurance

(a) Tenant shall, during the Lease Term, carry at its expense insurance for the benefit of Landlord and any mortgagee of the Demised Premises, or a portion thereof, against fire, vandalism, malicious mischief and such other perils as are from time to time included in a standard extended coverage endorsement and, at Landlord's option, special extended coverage endorsements, insuring the Demised Premises in an amount determined solely by Landlord, but not less than an amount equal to the full replacement and reconstruction cost and valued on a replacement cost basis of the building and improvements which are a part of the Demised Premises. If Tenant fails to maintain such insurance coverage, Landlord may, at its option, procure such insurance for the account of Tenant and the cost thereof shall be paid by Tenant to Landlord upon delivery to Tenant of bills therefor. The insurer or insurers shall be such as may from time to time be approved by Landlord. The policies of all such insurance and all renewals thereof, together with receipts evidencing payment in full of the premiums thereon, shall be delivered promptly to Landlord and in no event less than thirty (30) days prior to the expiration of such insurance. The terms and conditions of all policies and endorsements thereto shall be in form and content satisfactory to Landlord. All of the required policies of insurance shall contain provisions satisfactory to Landlord prohibiting cancellation, alterations, changes, amendments, modifications, deletions or reductions in coverage, either at the instance of the Tenant or of the insurance company issuing the policy, without at least thirty (30) days prior written notice having been given to Landlord at the address of Landlord stated above, and shall name Landlord as a loss payee and any mortgagee of the Demised Premises as a loss payee under the standard mortgage loss payable endorsement. Tenant shall not, without the prior written consent of Landlord, cancel, alter, change, amend, modify, delete or reduce the coverage of any required policy of insurance which results in Tenant failing to have insurance coverage as required hereby. In the event of loss or damage, the proceeds of the insurance shall be paid to Landlord and such mortgagee alone. Landlord is authorized to adjust and compromise such loss without the consent of Tenant, to collect, receive and receipt for such proceeds in the name of Landlord and Tenant and to endorse Tenant's name upon any check in payment thereof. The power granted hereby shall be deemed to be coupled with an interest and shall be irrevocable.

(b) Landlord shall, during the Lease Term, carry rental interruption insurance, which insurance shall be carried in amounts equal to Tenant's Annual Base Rent for twelve (12) full months under this Lease plus the total of the estimated costs to Tenant of taxes, assessments, utilities, insurance premiums and common facilities maintenance costs for such twelve (12) month period. Tenant shall from time to time, reimburse Landlord for the total cost of such insurance, such reimbursement to be made within fifteen (15) days after receipt of a written statement from Landlord setting forth such cost.

(c) Tenant shall, during the Lease Term, carry, at its expense, insurance against fire, vandalism, windstorm, explosion, smoke damage, malicious mischief, and such other perils as are from time to time included in a standard extended coverage endorsement, insuring Tenant's merchandise, trade fixtures, furnishings, equipment and all other items of personal property of Tenant located on or within the Demised Premises, in an amount equal to not less than eighty percent (80%) of the actual replacement cost thereof and furnish Landlord with a certificate evidencing such coverage. If Tenant fails to maintain such insurance coverage, Landlord may, at its option, procure such insurance for the

account of Tenant and the cost thereof shall be paid by Tenant to Landlord upon delivery to Tenant of bills therefor.

(d) Tenant shall not carry any stock of goods or do anything in or about the Demised Premises which will in any way tend to increase the insurance rates on the Demised Premises. If Tenant installs any electrical equipment that overloads the electrical lines in the Demised Premises, Tenant shall at its own expense make whatever changes are necessary to comply with the requirements of the insurance underwriters or governmental authorities having jurisdiction.

13.2 Rebuilding

In the event, during the Lease Term, the improvements on the Demised Premises are damaged or destroyed in whole or in part by fire or other casualty insured under the insurance carried by Tenant pursuant to Section 13.1 and the insurance proceeds are not required to be paid to any mortgagee under any mortgage upon the Demised Premises, then Landlord shall, after the adjustment of the insurance loss, immediately commence and diligently pursue the restoration of such improvements to good and tenable condition unless Landlord shall elect not to rebuild as hereinafter provided. If: the insurance proceeds are insufficient to pay the full cost of the repairs (unless Tenant deposits sufficient funds pursuant to Section 13.3 to pay the full cost of the repairs), more than thirty-five percent (35%) of the improvements on the Demised Premises shall be destroyed by fire or other casualty, or during the last twentyfour (24) months of the Lease Term, more than twenty percent (20%) of the improvements on the Demised Premises shall be destroyed by fire or other casualty, Landlord may, at its option, terminate this Lease by notice in writing delivered to Tenant within one hundred twenty (120) days after the occurrence of such fire or other casualty or repair to the improvements on the Demised Premises. If Landlord is obligated, or elects, to perform such repairs, the improvements on the Demised Premises are partially or totally untenable, and the fire or other casualty occurred through no fault directly or indirectly of Tenant, its employees, customers or invitees or alternatively, Landlord shall receive payments under the rental interruption insurance, the Rent shall be proportionately reduced, based upon the untenable portion of the improvements on the Demised Premises.

13.3 Tenant's Deposit For Rebuilding

If the insurance proceeds available for rebuilding are insufficient to cover the cost of repair or restoration of the Demised Premises as required hereunder, Tenant, so long as Tenant is not in default, may elect to deposit with Landlord an amount which, in combination with the insurance proceeds, shall be sufficient for such repairs or restorations. In the event Tenant elects not to deposit such funds, then Landlord shall be relieved of any obligation to repair or restore the Demised Premises. Landlord shall have no obligation hereunder if the insurance proceeds are paid to any Mortgagee under any mortgage upon the Demised Premises.

13.4 Waiver of Subrogation

Any insurance policy carried by Landlord or Tenant or any policy covering both the interest of Landlord or Tenant under this Section 13 shall include a provision under which the insurance company waives all right of recovery by way of subrogation against Landlord or Tenant in connection with any loss or damage covered by any such policy. Landlord or Tenant hereby release and discharge each other from any liability whatsoever arising from any loss, damage or injury caused by fire or other casualty to the extent of the insurance covering such loss, damage or injury.

SECTION 14 — EMINENT DOMAIN

14.1 Total Condemnation

If the whole of the Demised Premises shall be taken by any condemning authority under the power of eminent domain, then the term of this Lease shall cease as of the date actual physical possession of the Demised Premises is transferred to such condemning authority and the Rent shall be paid up to that day with a proportionate refund by Landlord of such Rent as may have been paid in advance for a period subsequent to the date of the transfer of the actual physical possession.

14.2 Partial Condemnation

If only a part of the Demised Premises shall be taken by any condemning authority under the power of eminent domain, then, except as otherwise provided in this Section, this Lease and the term shall continue in full force and effect and there shall be no reduction in the Rent. From and after the date actual physical possession of a portion of the building or parking area on the Demised Premises is transferred to such condemning authority, the Rent shall be reduced in the proportion which the floor area of the part of the building on the Demised Premises so acquired, if any, bears to the total floor area of all buildings on the Demised Premises immediately prior to the date such physical possession is transferred. If more than thirtyfive percent (35%) of the floor area of all buildings on the Demised Premises shall be taken under eminent domain, or more than thirtyfive percent (35%) of the parking spaces on the Demised Premises shall be taken under eminent domain and Landlord is unable to provide parking spaces on land immediately contiguous to the Demised Premises equal to onehalf (1/2) of the number of parking spaces taken, Landlord and Tenant shall each have the right to terminate this Lease and declare the same null and void, by written notice of such intention to the other party within thirty (30) days after the date the order is entered in such eminent domain proceeding establishing the date upon which actual physical possession shall be transferred to the condemning authority. In the event neither party exercises said right of termination, the Lease Term shall cease only on the part of the Demised Premises so taken as of the date actual physical possession is transferred to the condemning authority and Tenant shall pay Annual Base Rent and additional rent up to that day, with appropriate refund by Landlord of such Rent as may have been paid in advance for a period subsequent to the date actual physical possession is transferred, and thereafter all the terms herein provided shall continue in effect, except that the Annual Base Rent and Tenant's Pro Rata Share shall be reduced in the proportion stated above and Landlord shall, at its own cost and expense, make all the necessary repairs or alterations to the remaining Demised Premises so as to cause it to be a complete architectural unit.

14.3 Landlord's and Tenant's Damages

All damages awarded for such taking under the power of eminent domain, whether for the whole or a part of the Demised Premises, shall belong to and be the property of Landlord whether such damages shall be awarded as compensation for diminution in value to the leasehold or to the fee of the Demised Premises; provided, however, that Landlord shall not be entitled to the award made for depreciation to, and cost of removal of, Tenant's stock and fixtures.

SECTION 15 — ACCESS TO PREMISES

Landlord or Landlord's agent shall have the right to enter the Demised Premises at all reasonable times to examine the same, and to show them to prospective purchasers or

mortgagees of the Demised Premises and to make such repairs, alterations, improvements or additions as Landlord may deem necessary or desirable, and Landlord shall be allowed to take all material into and upon the Demised Premises that may be required therefor without the same constituting an eviction of Tenant in whole or in part, and the Annual Base Rent and additional rent shall in no wise abate while said repairs, alterations, improvements, or additions are being made, by reason of loss or interruption of the business of Tenant, or otherwise. During the six (6) months prior to the expiration of the Lease Term or any renewal term, Landlord may exhibit the Demised Premises to prospective lessees and place upon the Demised Premises the usual notices "To Let" or "For Rent," which notices Tenant shall permit to remain thereon without molestation.

SECTION 16 — EQUIPMENT

All fixtures and equipment installed by Tenant during the term of this Lease which are incorporated and affixed to the buildings or improvements and cannot be removed without substantial damage or injury to the buildings or improvements shall not be removed without Landlord's consent, and all fixtures and equipment not removed shall remain the property of Landlord at the termination of the Lease Term. In the event Landlord consents to such removal, Tenant shall remove such fixtures in accordance with all applicable Laws and Restrictions and shall repair any such damage or injury in a good and workmanlike manner.

SECTION 17 — BANKRUPTCY AND INSOLVENCY

If the estate created hereby shall be taken in execution, or by other process of law, or if Tenant shall be declared bankrupt or insolvent, according to law, or if any receiver be appointed for the business and property of Tenant, or if any assignment shall be made of Tenant's property for the benefit of creditors (and as to such matters involuntarily taken against Tenant, Tenant has not within sixty (60) days thereof obtained a release or discharge therefrom), then this Lease may be cancelled at the option of Landlord. If, as a matter of law, Landlord has no right upon the bankruptcy of Tenant to terminate this Lease then, the rights of Tenant, as debtor, or its trustee, shall be deemed abandoned or rejected unless Tenant, as debtor, or its trustee, within sixty (60) days after the date of the order for relief under Chapter 7 of the Bankruptcy Code or sixty (60) days after the date the petition is filed under Chapter 11 of the Bankruptcy Code assumes in writing the obligations under this Lease cures or adequately assures the cure of all defaults existing under this Lease on Tenant's part within such sixty (60) days, and furnishes adequate assurance of future performance of the obligations of Tenant under this Lease. Adequate assurance of curing defaults means the posting with Landlord of a sum in cash sufficient to defray the costs of such cure. Adequate assurance of future performance of the Tenant's obligations under this Lease means increasing the existing security deposit or creating a security deposit in an amount equal to three (3) Monthly Installments of Base Rent.

Tenant shall not be permitted to assume and assign this Lease in connection with any bankruptcy or insolvency proceedings without full and complete compliance with the following provisions: Landlord is provided with the following information regarding the party desiring to assume the Lease ("Assumptor") which Landlord, in its sole and absolute discretion, deems sufficient: organizational information regarding the Assumptor, audited financial statements for the three (3) most recent fiscal years, and such other

information as Landlord deems appropriate, all existing defaults under this Lease are cured at least ten (10) days prior to any hearings in connection with Tenant's request to assume and assign the Lease, the Assumptor at any such hearing provides adequate assurance of its future performance of the Lease as determined by Landlord, in its sole and absolute discretion, which adequate assurance shall include at least the following: posting of security deposit equal to three (3) Monthly Installments of Base Rent, if such was not already posted by Tenant, paying in advance to Landlord the next six (6) Monthly Installments of Base Rent, or posting an irrevocable letter of credit for such amount to secure payment, establishing with Landlord an escrow in advance for the full cost of all real estate taxes, insurance, and common area maintenance charges as required under the Lease for the next twelve (12) months of the Lease and thereafter on an annual basis in advance, and providing Landlord with an unconditional continuing guarantee of the Lease executed by the owners or officers of the Assumptor as determined by Landlord, in its sole and absolute discretion, and the Assumptor executes a written agreement assuming the Lease and such Lease amendments as are necessary, which agreements and amendments are satisfactory to Landlord, in its sole and absolute discretion.

SECTION 18 — RIGHT TO MORTGAGE

Landlord reserves the absolute right to subject and subordinate this Lease, at all times, to the lien of any mortgage or mortgages now or hereafter placed upon the Demised Premises; provided Tenant's right of possession will not be disturbed by the mortgagee of any mortgage upon the Demised Premises in connection with any mortgage foreclosure proceedings so long as Tenant is not in default hereunder. In the event Landlord exercises its right hereunder, Tenant hereby agrees to execute and deliver, or join in the execution and delivery of an agreement which shall provide, among other things, that this Lease is subordinate to the lien of any mortgage or mortgages upon the Demised Premises, that the Tenant's right of possession will not be disturbed by the mortgagee in connection with any mortgage foreclosure proceedings, so long as Tenant is not in default, and that the Tenant shall attorn to any foreclosing mortgagee or purchaser at the foreclosure sale. Tenant hereby irrevocably appoints Landlord the attorney-in-fact of Tenant for purposes of executing and delivering in the name of Tenant such an agreement. Landlord shall give Tenant written notice of its exercise of such power of attorney and shall promptly provide Tenant with a copy of the executed agreement.

SECTION 19 — ASSIGNMENT AND SUBLETTING

Tenant shall not sell, assign, sublet, hypothecate, encumber, mortgage or in any manner transfer this Lease or any estate or interest therein (including any transfer by operation of law or otherwise), the Demised Premises or any part thereof, or permit the use of the Demised Premises by any third party (collectively "Transfer") without the prior written consent of Landlord. For purposes of this Paragraph, Transfer shall include the following events: the sale or liquidation of any assets not in the ordinary course of business, the merger, acquisition or consolidation of Tenant by or with any other person, corporation, partnership or other entity, the merger, acquisition or consolidation by Tenant of any other person, corporation, partnership or other entity, any sale, exchange, transfer, pledge or redemption of any stock of Tenant or the issuance of any stock, stock options, preference, warrants or other change in the capitalization or ownership of Tenant which

results in a change in the control of Tenant, or any other transaction resulting in a change of control or other material change in the structure of Tenant. In the event of a Transfer with Landlord's consent, Tenant shall remain and continue fully liable to perform all of Tenant's obligations under this Lease, unless Landlord releases Tenant in writing from such obligations. In the event of any Transfer by Tenant without Landlord's prior written consent, Landlord, at its option, may either: accelerate payment of all Rent payable during the balance of the unexpired Lease Term and receive immediately payment thereof, or terminate this Lease, reenter and repossess the Demised Premises, and enforce all other remedies available under this Lease or permitted by law, either individually or cumulatively, without such constituting an election of remedies. Consent by Landlord to one or more Transfers shall not operate to exhaust Landlord's rights hereunder. The acceptance of Annual Base Rent or additional rent from an assignee, subtenant or occupant shall not constitute a release of Tenant from the obligations and covenants in this Lease. Tenant shall remain liable under this Lease until Landlord executes and delivers a written release of such liability. Landlord's consent hereunder shall not be unreasonably withheld only in the event of the Transfer of all or any part of the Demised Premises to any parent corporation of Tenant, or wholly owned subsidiary of Tenant. In the event of a Transfer by Tenant, with or without Landlord's consent, all Annual Base Rent, additional rent, sums of money or other economic considerations received by Tenant, which exceed, in the aggregate, the total sums (Annual Base Rent, additional rent or otherwise) which Tenant is obligated to pay Landlord under this Lease shall be payable to Landlord as additional rent under this Lease without affecting or reducing any obligations of Tenant hereunder.

SECTION 20 — SALE OR TRANSFER

Landlord shall have the right to sell, transfer or assign the Demised Premises ("Conveyance"). In the event of a Conveyance, Tenant shall attorn to the purchaser, transferee or assignee ("Transferee") and recognize such Transferee as Landlord under this Lease and Landlord shall be relieved from all subsequent obligations and liabilities under this Lease, provided such obligations are assumed in writing by such Transferee and a copy thereof is provided to Tenant.

SECTION 21 — DEFAULT, REENTRY AND DAMAGES

21.1 Default

The following shall constitute a default under this Lease: Failure to pay when due any Annual Base Rent or additional rent due hereunder on the day the same shall be due; Failure to perform any of the terms and conditions under this Lease, other than the payment of Rent, and such failure remains uncured for fifteen (15) days following written notice; Landlord has elected to cure Tenant's default under Section 22 and Tenant has failed to pay Landlord the cost and expenses incurred to cure such default within fifteen (15) days after demand; Tenant has attempted to Transfer (as defined in Section 19) the Demised Premises or taken other actions requiring Landlord's consent, without receiving such consent; an event of bankruptcy or insolvency in violation of Section 17 has occurred; Tenant has committed waste, which shall include the failure to pay taxes, hazard insurance premiums and persistent failure to maintain and repair the Demised Premises; or Tenant has abandoned or vacated the Demised Premises.

21.2 ReEntry and Damages

In the event of Tenant's default, Landlord shall, in addition to all of its other remedies under this Lease, or permitted in law or equity, have the right to reenter the Demised Premises, with or without process of law, using such force as may be necessary to remove all persons and property therefrom. Upon such default, Landlord, at its option, may either terminate this Lease, or without terminating this Lease, relet the Demised Premises or any part thereof on such terms and conditions as Landlord deems advisable in its sole discretion. The proceeds of such reletting shall be applied: First, to the payment of any indebtedness due from Tenant to Landlord other than Rent hereunder; Second, to the payment of any reasonable costs of such reletting, including, without limitation, the cost of any reasonable alterations and repairs to the Demised Premises, brokerage fees and expenses, advertising expenses, inspection fees and attorneys' fees; Third, to the payment of Rent due and unpaid hereunder; Fourth, to any other damages, costs and expenses incurred by Landlord as a result of Tenant's breach; and The residue, if any, shall be held by Landlord and applied in payment of future Rent as the same may become due and payable hereunder. Should the proceeds of such reletting during any month be less than the Monthly Installment of Base Rent or additional rent required hereunder, then Tenant shall during such month pay such deficiency to Landlord upon demand. No reentry or taking possession of the Demised Premises by Landlord shall be construed as an election on its part to terminate this Lease unless written notice of such intention is given to Tenant. In the event Landlord elects to terminate this Lease, then Landlord shall have the right to accelerate all of the Rent due hereunder for the balance of the term of the Lease and Tenant shall forthwith pay to Landlord upon demand, as liquidated damages, the deficiency between the amount of said accelerated Rent and the proceeds of reletting, if any, for what would have otherwise constituted the balance of the Lease Term or the reasonable rental value of the Demised Premises for such balance of the Lease Term if the Demised Premises are not relet by Landlord within thirty (30) days following Tenant's default. Upon acceleration, for the purpose of determining the additional rent for the remainder of the Lease Term, the additional rent paid during the twelve (12) months immediately preceding the date of acceleration shall be assumed to be the amount of additional rent which Tenant would have paid during the remainder of the Lease Term. In computing such liquidated damages there shall be added to such deficiency any expenses incurred in connection with obtaining possession of the Demised Premises and reletting the Demised Premises, whether such reletting is successful or not, which expenses include, but are not limited to, attorneys' fees, brokerage fees and expenses, advertising expenses, reasonable alterations and repairs to the Demised Premises, and inspection fees.

21.3 Waiver of Landlord's Liability

Whether or not Landlord terminates the Lease because of Tenant's default, Landlord shall have no liability or responsibility in any way whatsoever for its failure to relet the Demised Premises or, in the event of reletting, for failure to collect the Rent under such reletting. The failure of Landlord to relet the Demised Premises or any part thereof shall not release or affect Tenant's liability for Rent or damages.

21.4 Landlord's Rights Cumulative

All the rights and remedies of Landlord hereunder shall be cumulative and in addition to all other rights and remedies allowed by law or equity and may be exercised separately or jointly without constituting an election of remedies.

21.5 Waiver of Jury Trial and Counterclaim

In the event Landlord commences any proceedings for nonpayment of Rent or any other amount payable to Landlord by Tenant, Tenant shall not interpose any counterclaim of whatever nature or description in any such proceeding. This shall not, however, be construed as a waiver of Tenant's right to assert such a claim in any separate action brought by Tenant. Landlord and Tenant waive trial by jury in any action or proceeding brought by either party on any matter whatsoever arising out of or in any way connected with this Lease, the relationship of lessor and lessee, Tenant's use or occupancy of the Demised Premises, or any claim of injury or damage.

21.6 NonLiability

Landlord shall not be responsible or liable to Tenant for any loss or damage that may be occasioned by or through the acts or omissions of persons occupying adjoining premises or for any loss or damage resulting to Tenant or its property from burst, stopped or leaking water, gas, sewer or steam pipes, or for any damage or loss of property within the Demised Premises from any cause whatsoever, and no such occurrence shall be deemed to be an actual or constructive eviction from the Demised Premises or result in an abatement of rental.

SECTION 22 — LANDLORD'S RIGHTS TO CURE DEFAULTS

If Tenant defaults in the performance of any provision of this Lease, Landlord shall have the right (but not the obligation) in addition to any other rights and remedies in the event of default, to cure such default for the account of Tenant, without prior notice to or demand upon Tenant and without waiving or releasing Tenant from any obligations of Tenant under the Lease, and Tenant shall, upon receipt of notice thereof and demand for payment from Landlord, pay any payment or expenditure made by Landlord with the next Monthly Installment of Base Rent, together with interest at a rate equal to the sum of the "prime interest rate" as defined in Section 5.6, plus two percent (2%).

SECTION 23 — SECURITY INTEREST

23.1 Grant of Security Interest

Tenant, for the purpose of securing payment of all sums for which Tenant may now be or may at any time hereafter become indebted to Landlord under this Lease and for the purpose of securing performance of Tenant's obligations to Landlord under this Lease, grants to Landlord a security interest in the following property ("Collateral"): all fixtures and goods, including all machinery, equipment, tools, dies, jigs, appliances, trucks, motor vehicles and office, store, and factory furniture and leasehold improvements to the Demised Premises now owned or held or hereafter acquired by Tenant and, without permitting a sale by Tenant, the proceeds thereof; and all goods hereafter added to, or affixed to, or acquired in replacement of, or used in connection with, said above described goods and without permitting a sale by Tenant, the proceeds thereof; and all inventory of goods held for sale or lease or to be furnished under contracts of service, including raw materials, work in process and finished products, now owned or held or hereafter acquired by Tenant, and the proceeds thereof; and all accounts receivable, accounts, chattel paper, security agreements, leases, instruments, contract rights, documents, and general intangibles (hereinafter sometimes collectively referred to as "Accounts") guaranties of Accounts, the proceeds of Accounts, goods, the sale of which resulted in an Account, but which are rejected, returned, repossessed or stopped in transit and all books

and records of Tenant which relate to Accounts now owned or hereafter acquired by Tenant; and all policies of insurance pertaining to the Collateral now or hereafter owned or held by Tenant, the proceeds thereof and the unearned premiums pertaining to such policies. At the request of Landlord, Tenant shall join with Landlord in executing one or more financing statements, pursuant to the applicable Uniform Commercial Code, in a form satisfactory to Landlord, and shall pay the cost of filing the same or filing or recording this Lease in all public offices wherever filing or recording is deemed by Landlord to be necessary or desirable.

23.2 Subordination

The security interest granted pursuant to Section 23.1 hereof shall be subordinate and inferior to all security interests in the Collateral or any portion thereof granted by Tenant to any bank, savings and loan association or finance company prior to, or after, the date of this Lease, which security interests are duly perfected prior to the date hereof or within ten (10) days after the date such security interest is so granted by Tenant. Landlord shall execute such agreement confirming this subordination as the secured party may reasonably request.

23.3 Remedies

In the event of default by Tenant under this Lease or at any time thereafter (such default not having previously been cured) Landlord shall have the remedies of a secured party under the Uniform Commercial Code, including, without limitations, the right to take possession of the Collateral by any lawful means, without notice, and for that purpose Landlord may enter upon any premises on which the Collateral or any part thereof may be situated and hold the Collateral upon said premises (without charge to Landlord), or remove the same to such other place or places as Landlord shall determine. Upon demand by Landlord, Tenant shall assemble the Collateral and make it available to Landlord at a place to be designated by Landlord which is reasonably convenient to both parties. Any requirement of notice under the Uniform Commercial Code shall be met if such notice is mailed, postage prepaid, to the address of Tenant shown at the beginning of this Lease at least five (5) days before the event with respect to which notice is required. Landlord shall be entitled to recover its reasonable attorneys' fees and expenses incurred in protecting and enforcing its rights and remedies with respect to the Collateral. Tenant recognizes that in the event of default no remedy at law will provide adequate relief to Landlord; therefore, Tenant agrees that Landlord shall be entitled to temporary and permanent injunctive relief in any such case without proving actual damages. Landlord shall have no duty to protect, insure or realize upon the Collateral. In the event of any default by Tenant, Landlord, in addition to the exercise of all rights and remedies available to Landlord by law, shall be entitled to enforce its rights hereunder and to avail itself of other security interests granted by Tenant to Landlord in assets of Tenant, simultaneously or successively, in such order as Landlord shall determine, and all such security interests, rights and remedies shall continue in full force and effect until all indebtedness of Tenant to Landlord is paid in full.

SECTION 24 — QUIET ENJOYMENT

Landlord covenants that so long as Tenant is not in default in the terms and conditions of this Lease, Tenant may peacefully and quietly hold and enjoy the Demised Premises for the Lease Term without interference by Landlord or any person claiming by, through or under Landlord.

SECTION 25 — HOLDING OVER

In the event of Tenant holding over after the expiration of the Term of this Lease, then the tenancy shall continue from month to month in the absence of a written agreement to the contrary, subject to all the terms and provisions hereof, except the Monthly Installment of Base Rent shall be equal to one hundred fifty percent (150%) of the Monthly Installment of Base Rent, due in the last full month of the Lease Term.

SECTION 26 — CUMULATIVE REMEDIES AND WAIVER

26.1 Cumulative Remedies

Each and every right, remedy and benefit provided by this Lease to Landlord shall be cumulative and shall not be exclusive of any other right, remedy or benefit allowed by law. These remedies may be exercised jointly or severally without constituting an election of remedies.

26.2 Waiver

One or more waivers by Landlord of any term and condition hereunder or default by Tenant hereunder shall not be construed as a waiver of such term and condition or default in the future or any subsequent default for the same cause. Any consent or approval given by Landlord requiring such consent or approval shall not constitute consent or approval to any subsequent similar act by Tenant. Tenant shall pay all attorneys' fees and expenses of Landlord in enforcing any of the obligations of Tenant under this Lease, or in any litigation or negotiation in which Landlord shall, without its fault, become involved through or on account of this Lease.

No payment by Tenant or receipt by Landlord of a lesser amount than the Monthly Installment of Base Rent shall be deemed to be other than on account of the earliest stipulated Rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as Rent be deemed an accord and satisfaction, and Landlord shall accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy in this Lease provided.

SECTION 27 — RESERVED

SECTION 28 — DEFINITION OF LANDLORD; LANDLORD'S LIABILITY

The term "Landlord" as used in this Lease so far as covenants or obligations on the part of Landlord are concerned shall be limited to mean and include only the owner or owners at the time in question of the fee of the Demised Premises, and in the event of any transfer or transfers of the title to such fee Landlord herein named (and in case of any subsequent transfers or conveyances, the then grantor) shall be automatically freed and relieved from and after the date of such transfer or conveyance of all personal liability as respects the performance of any covenants or obligations on the part of Landlord contained in this Lease thereafter to be performed, provided that any funds in the hands of such Landlord or the then grantor at the time of such transfer in which Tenant has an interest, shall be turned over to the grantee and any amount then due and payable to Tenant by Landlord or the then grantor under any provision of this Lease, shall be paid to Tenant, it being intended hereby that the covenants and obligations contained in this Lease on the part of Landlord shall, subject as aforesaid, be binding on Landlord, its successors

and assigns, only during and in respect of their respective successive periods of ownership.

If Landlord shall fail to perform any covenant, term or condition of this Lease upon Landlord's part to be performed, and if as a consequence of such default Tenant shall recover a money judgment against Landlord, such judgment shall be satisfied only out of the proceeds of sale received upon execution of such judgment and levied thereon against the right, title and interest of Landlord in the Demised Premises, and Landlord shall not be liable for any deficiency.

SECTION 29 — WASTE

Tenant shall not commit or suffer to be committed any waste upon the Demised Premises. Tenant shall not use or permit to be used, any medium that might constitute a nuisance, such as loud speakers, sound amplifiers, phonographs, radios, televisions, or any other sound producing device which will carry sound outside the Demised Premises.

SECTION 30 — RESERVED

SECTION 31 — SIGNS

Tenant will not place or cause to be placed or maintained any sign or advertising matter of any kind anywhere on the Demised Premises, except in the interior thereof, without Landlord's prior written approval. No illuminated signs located in the interior of the Demised Premises and which are visible from the outside shall advertise any product. All signs located in the interior of the Demised Premises shall be in good taste so as not to detract from the general appearance of the Demised Premises. Tenant further agrees to maintain in good condition and repair at all times any such sign or advertising matter of any kind which has been approved by Landlord for use by Tenant.

SECTION 32 — SECURITY DEPOSIT

The Landlord herewith acknowledges receipt of the Security Deposit in the amount stated in Section 1 hereof, which it is to retain as security for the faithful performance of all covenants, conditions and agreements of this Lease, but in no event shall the Landlord be obliged to apply the same upon Rent or other charges in arrears or upon damages for the Tenant's failure to perform the said covenants, conditions and agreements; the Landlord may so apply the Security Deposit, at its option; and the Landlord's right to the possession of the Demised Premises for nonpayment of Rent or for any other reason shall not in any event be affected by reason of the fact that the Landlord holds this Security Deposit. If the Security Deposit is not applied toward the payment of Rent in arrears or toward the payment of damages suffered by the Landlord by reason of the Tenant's breach of the covenants, conditions and agreements of this Lease, it shall be returned to the Tenant without interest when this Lease is terminated, according to these terms, and in no event is the Security Deposit to be returned until the Tenant has vacated the Demised Premises and delivered possession to the Landlord. In the event that the Landlord repossesses itself of the Demised Premises because of the Tenant's default or because of the Tenant's failure to carry out the covenants, conditions and agreements of this Lease, the Landlord may apply the Security Deposit upon all damages suffered to the date of said repossession.

sion and may retain the Security Deposit to apply upon such damages as may be suffered or shall accrue thereafter by reason of the Tenant's default or breach. The Landlord shall not be obliged to keep the Security Deposit as a separate fund or pay interest thereon but may mix the Security Deposit with its own funds.

SECTION 33 — MISCELLANEOUS

33.1 Condition of Demised Premises

Tenant is fully familiar with the physical conditions of the Demised Premises and Landlord has made no representations of whatever nature in connection with the condition of the Demised Premises.

33.2 Lease Changes Required By Lender

This Lease shall be subject to modification of noneconomic terms contained herein at the request of any first mortgage lender furnishing financing to Landlord in connection with the Demised Premises.

33.3 Entire Agreement

This Lease and exhibits attached hereto and forming a part hereof, set forth all of the covenants, agreements, stipulations, promises, conditions, understandings and representations, hereinafter collectively "Representations" between Landlord and Tenant concerning the Demised Premises and the buildings and improvements to be constructed thereon. Landlord and Tenant agree that there are no Representations other than set forth herein and agree to make no claims against each other based upon Representations not set forth herein.

33.4 Modification

This Lease shall not be modified or amended unless by a writing signed by Landlord and Tenant.

33.5 Joint Venture, Mortgage

Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of mortgagor and mortgagee, principal and agent or of partnership or of joint venture between the parties hereto, it being understood and agreed that neither the method of computation of Rent, nor any other provision contained herein, nor any acts of the parties herein, shall be deemed to create any relationship between the parties hereto other than the relationship of lessor and lessee.

33.6 Notices

Except as specifically provided otherwise in this Lease, any notices or demands required under this Lease shall be given in writing and either delivered personally or sent by certified mail, return receipt requested, postage prepaid and addressed to the address of Landlord or Tenant as set forth in Section 1 hereof or such other address as Landlord or Tenant shall designate from time to time by written notice to the other and shall be deemed received three (3) days after being deposited in the mail or upon personal hand-delivery.

33.7 Survival

Any obligation of Tenant under this Lease which is not performed in full prior to the termination of this Lease shall survive the termination of this Lease and continue in full force and effect until performed in full.

33.8 Estoppel Certificate

Upon request by Landlord, Tenant shall, from time to time, execute, acknowledge and deliver to Landlord a written statement certifying that this Lease is in full force and

effect and unmodified (or if modified specifying the nature of the modification), the dates to which Rent and other charges have been paid, that Landlord is not in default hereunder (or if in default, specifying the nature of any default) and such other matters pertaining to the Lease and Tenant's occupancy of the Demised Premises as Landlord may reasonably request. It is understood that such statement may be relied upon by Landlord, a prospective purchaser, mortgagee or assignee of any mortgagee of Landlord's interest in the Demised Premises or this Lease.

33.9 Gender

Whenever the singular is used herein, the same shall include the plural and the masculine, feminine and neuter genders.

33.10 Captions and Section Numbers

The captions, section numbers, article numbers, and index appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of such sections or articles of this Lease nor in any way affect this Lease.

33.11 Broker's Commission

Tenant represents and warrants unto the Landlord that there are no claims for brokerage commissions or finder's fees in connection with this Lease, and Tenant agrees to indemnify Landlord and hold it harmless from all liabilities arising from any such claim arising or from an alleged agreement or act by the indemnifying party, including, without limitation, the cost of counsel fees in connection therewith.

33.12 Recording

Tenant shall not record this Lease or any memorandum thereof without the prior written consent of Landlord.

33.13 Execution of Lease

The submission of this Lease for examination does not constitute a reservation of, or option for, the Demised Premises, and this Lease shall become effective as a lease only upon execution and delivery thereof by Landlord and Tenant.

33.14 Construction

This Lease shall be construed and enforced in accordance with the laws of the State of Michigan. If any provision of this Lease, or the application thereof to any person or circumstances, shall, to any extent be invalid or unenforceable, the remaining provisions of this Lease shall not be affected thereby and shall be valid and enforceable.

33.15 Binding Effect

This Lease shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors, assigns and permitted transferees.

33.16 Financial Statement

Within thirty (30) days after the request of Landlord, but not more frequently than annually, Tenant shall provide Landlord with a balance sheet as of Tenant's most recent fiscal year end and statement of profit or loss for Tenant's previous fiscal year prepared in accordance with GAAP and certified as true and complete by an officer of Tenant. Landlord agrees to keep such information confidential.

Leasing of New Construction

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

IN THE PRESENCE OF:

LANDLORD:

By: _____
Its: _____

IN THE PRESENCE OF:

TENANT:

By: _____
Its: _____

Exhibit B
Multi-Tenant Lease Without New Construction Clause

[NAME OF BUILDING]

LANDLORD: _____

TENANT _____

Dated: _____, 20____

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THIS LEASE is made this _____ day of _____, 20____, between _____, a _____ ("Landlord"), whose address is _____, and _____, a _____ ("Tenant"), whose address is _____.

In consideration of the rents to be paid and the covenants and agreements to be performed by Tenant, Landlord hereby leases to Tenant the use and occupancy of the Leased Premises described in Item C of Basic Lease Provisions upon the terms and conditions hereinafter set forth and, therefore, Landlord and Tenant agree as follows:

ARTICLE 1 --BASIC LEASE PROVISIONS

- Item 1.** THE BUILDING:
ADDRESS:
- Item 2.** TOTAL RENTABLE AREA
IN THE BUILDING: _____ sq. ft.
- Item 3.** LEASED PREMISES: _____, consisting of
_____ rentable square feet
- Item 4.** TERM: _____ (____) years and _____
(____) months
- Item 5.** COMMENCEMENT DATE: _____, 20____
TERMINATION DATE: _____, 20____
- Item 6.** BASIC ANNUAL RENT: Lease Year 1:
\$ _____
Lease Year 2: \$ _____
Lease Year 3: \$ _____
Lease Year 4: \$ _____
Lease Year 5: \$ _____
Lease Year 6: \$ _____
Lease Year 7: \$ _____
Lease Year 8: \$ _____
Lease Year 9: \$ _____
Lease Year 10: \$ _____
- Item 7.** MONTHLY INSTALL-
MENT OF RENT: Lease Year 1: \$ _____
Lease Year 2: \$ _____
Lease Year 3: \$ _____
Lease Year 4: \$ _____

Leasing of New Construction

Lease Year 5: \$ _____
Lease Year 6: \$ _____
Lease Year 7: \$ _____
Lease Year 8: \$ _____
Lease Year 9: \$ _____
Lease Year 10:
\$ _____

- Item 8.** TENANT'S SHARE OF APPLICABLE TAXES, UTILITY EXPENSES AND OPERATING EXPENSES:
_____ %
- Item 9.** SECURITY DEPOSIT: \$ _____
- Item 10.** AGENT FOR LANDLORD:
- Item 11.** TENANT'S PRELIMINARY FLOOR PLAN DUE: _____, 20____
- Item 12.** TENANT'S CONSTRUCTION FLOOR PLAN DUE: _____, 20____
- Item 13.** APPROVAL OF TENANT'S CONSTRUCTION FLOOR PLAN AND QUOTE DUE: _____, 20____
- Item 14.** LANDLORD'S MONIES ADVANCED (POTENTIALLY RECOVERABLE FROM TENANT) TO FIT THE LEASED PREMISES TO TENANT'S NEEDS:
\$ _____
- Item 15.** PLACE OF PAYMENT OF RENT:

- Item 16.** GUARANTOR:

ARTICLE 2 -- DEFINITION

2.1 Wherever the term "Basic Lease Provisions" or "Basic Lease Provision" is used in this Lease, said term refers to Basic Lease Provisions as set forth in Article 1, above.

2.2 Wherever the term "Leased Premises" is used in this Lease, said term refers to the premises designated in Item C of Basic Lease Provisions, which premises are located in the Building.

ARTICLE 3 -- [NAME OF BUILDING]

3.1 Landlord is the owner of the parcel of land shown and described on Exhibit A attached hereto and made a part hereof ("Land"), and Landlord intends to construct on such property _____. Landlord may, during the course of construction and thereafter, make such changes or additions to the Building and/or improve-

ments on the Land as Landlord may deem appropriate. Tenant's consent shall not be required for any additions, reductions or modifications thereto.

3.2 During the continuation of this Lease, the Leased Premises shall be used and occupied for office and incidental purposes and for no other purposes without the written consent of Landlord, nor shall Tenant conduct its business in a manner which will cause an increase in fire and extended coverage insurance premiums for the Leased Premises or the Building, and Tenant will comply with all requirements of the insurance policies relating to the Leased Premises. Tenant shall not use the Leased Premises for any purpose in violation of any law, municipal ordinance, or regulation, nor shall Tenant perform any acts or carry on any practices which may injure the Leased Premises or the Building, and Tenant will comply with all requirements of the insurance policies relating to the Leased Premises. Tenant shall not use the Leased Premises for any purpose in violation of any law, municipal ordinance, or regulation, nor shall Tenant perform any acts or carry on any practices which may injure the Leased Premises or the Building, or be a nuisance, disturbance or menace to the other tenants of the Building.

3.3 Tenant shall not use nor permit to be used the name "[NAME OF BUILDING]," nor any abbreviations or derivations thereof, nor any such word or words in connection with any business carried on or at the Building, nor any other style of name which will serve to indicate or imply that Tenant's business is connected with the business of Landlord, or with any of the successors or assigns of Landlord; nor shall Tenant use or permit to be used the name of the Building in any way, except as the address of the Tenant's business conducted at the Leased Premises.

ARTICLE 4 -- LEASED PREMISES

Landlord, in consideration of the rents to be paid and the covenants and agreements to be performed by Tenant, does hereby lease unto Tenant that certain suite specified in Item C of Basic Lease Provisions and located in the Building, as shown on the floor plan attached hereto as Exhibit B, constructed in accordance with the lease specifications showing interior improvements to be constructed by Landlord as set forth on Exhibit C attached hereto (hereinafter referred to as the "Leased Premises"), together with the non-exclusive right and easement to use the parking and common facilities which may from time to time be furnished by Landlord in common with Landlord and the other tenants and occupants (their agents, employees, customers, officers and invitees) of the Building; provided, however, that Landlord shall have the right to institute a paid or reserved parking program. Tenant acknowledges and agrees that Landlord shall have the right to make reasonable rules and regulations governing the location and use of all parking and common facilities on the Land, and Tenant shall be governed thereby.

ARTICLE 5 -- RENTABLE AREA OF THE LEASED PREMISES

The rentable area of the Leased Premises is designated at Item C of Basic Lease Provisions. If this Lease is for an entire floor of the Building, the rentable area shall be computed by measuring to the inside finished surface of the dominant portion of the permanent outer building walls, excluding any major vertical penetrations of the floor; provided, however, no deductions shall be made for columns and projections necessary to the Building. If this Lease is for less than an entire floor of the Building, the rentable area of the suite on the floor shall be computed by multiplying the usable area, as hereinafter

defined, of that suite by the quotient of the division of the rentable area of the floor by the usable area of the floor (the quotient shall always be greater than 1.0). The usable area of the suite shall be computed by measuring to the finished surface of the office side of the corridor and other permanent walls to the center of partitions that separate the suite from adjoining usable areas and to the inside of the finished surface of the dominant portion of the permanent outer building walls; provided, however, no deductions shall be made for columns or projections necessary to the Building. The usable area of a floor shall be equal to the sum of all usable areas on that floor.

ARTICLE 6 -- TERM

6.1 The term of this Lease shall be as shown in Item D of Basic Lease Provisions and shall commence on the Commencement Date as shown in Item E of Basic Lease Provisions and shall terminate on the Termination Date as shown in Item E of Basic Lease Provisions. In the event Landlord fails to deliver the Leased Premises on the Commencement Date because the Leased Premises are not then ready for occupancy, or because the previous occupant of the premises is holding over, or for any other cause beyond Landlord's control, Landlord shall not be liable to Tenant for any damages as a result of Landlord's delay in delivering the Leased Premises, nor shall any delay affect the validity of this Lease, and the Commencement Date of this Lease shall be postponed until such time as Landlord can deliver possession. No delay in delivery of possession shall operate to extend the term hereof, and the term hereof shall end on the Termination Date specified in Item E of Basic Lease Provisions. If permission is given to Tenant to enter into possession of the Leased Premises, or to occupy premises other than the Leased Premises, prior to the date specified as the Commencement Date of the term of this Lease, Tenant covenants and agrees that such occupancy shall be deemed to be under all the terms, covenants, conditions and provisions of this Lease.

6.2 Tenant shall furnish Landlord, upon request, on or before occupancy of the Leased Premises, a letter addressed to Landlord, in form supplied by or satisfactory to Landlord, stating: That Tenant has accepted the premises for occupancy, which premises have been completed per specifications and floor plans, and setting forth the commencement and expiration date of the Lease, the amount of the security deposit paid, if any, and such other information as either Landlord or the mortgagee of the Building shall request.

ARTICLE 7 -- RENT

7.1 Tenant shall pay to Landlord as rent for the Leased Premises during each year of the term of this Lease the sum shown in Item F of Basic Lease Provisions, payable in advance, in equal monthly installments in the amount shown in Item G of Basic Lease Provisions, upon the first day of each and every month throughout the term of this Lease, and without offset or deduction of any kind; provided, however, that if the Lease term shall commence on a day other than the first day of a calendar month, the rental for such first or last fractional month shall be such proportion of the monthly rental as the number of days in such fractional month bears to the total number of days in the calendar month. Rent shall be paid to the Place Of Payment Of Rent set forth at Item O of Basic Lease Provisions or such other place as shall be designated by Landlord.

7.2 Tenant further covenants to pay to Landlord as Additional Rent for the Leased Premises during each year of the term of this Lease, an amount calculated as hereafter

specified in Article 8 using the percentage figure set forth in Item H of Basic Lease Provisions, onetwelfth (1/12) of which said amount being payable in advance upon the first day of each and every month throughout the term of this Lease; provided, however, that if the Lease term shall commence on a day other than the first day of a calendar month, or shall end on a day other than the last day of a calendar month, the Additional Rent for such first or last fractional month shall be such proportion of the Additional Rent as the number of days in such fractional month bears to the total number of days in the calendar month. Additional Rent shall be paid to the Place Of Payment Of Rent set forth at Item O of Basic Lease Provisions or such other place as shall be designated by Landlord.

7.3 If Tenant shall fail to pay, when the same is due and payable, any rent or any Additional Rent, or any other amounts payable under the terms of this Lease, such unpaid amounts shall bear interest from the due date thereof to the date of payment at the rate of eighteen percent (18%) per annum, or if such rate shall be unlawful, then at the maximum rate permitted by law.

ARTICLE 8 -- ADDITIONAL RENT

8.1 For the purposes of this Article 8, the following terms shall have the meanings hereinafter set forth:

- (1)** "Tenant's Share of Applicable Taxes, Utility Expenses and Operating Expenses" shall be as shown at Item H of Basic Lease Provisions;
- (2)** "Applicable Taxes" shall mean all ad valorem real property taxes and assessments (both ordinary and extraordinary) and all Replacement Taxes, as hereinafter defined, attributed to or allocable to the Building and the Land;
- (3)** "Replacement Taxes" shall mean all taxes, levies and charges which may be assessed, levied or imposed by the State of Michigan or any political subdivision thereof or any governmental authority having jurisdiction thereover, in replacement of or in addition to any and all ad valorem real property taxes on which, in whole or in part, constitute: a tax on the rents or other revenue received from the Building and the Land; or a license fee measured by the rents received by Landlord from the Building or the Land;
- (4)** "Utility Expenses" shall mean the total cost or expense paid or incurred by Landlord for electricity, water and sewer, gas, heating oil, utility taxes, utility charges, and any other similar utility services or utility impositions, as the case may be, incurred by Landlord for the Building and the Land; and
- (5)** "Operating Expenses" shall mean:
 - (1)** the total cost or expense paid or incurred by Landlord for the Building and the Land which, under generally accepted accounting principles and practices, would be regarded as maintenance and operating expenses (including such costs, charges and expenses as would normally be amortized over a period not exceeding five (5) years), including, without limitation, charges and expenses for operation of the central system providing air conditioning and heating to the Building, insurance, administration, general maintenance, janitorial services, window washing, rubbish removal, snow removal and general landscape maintenance, and
 - (2)** the cost or portion thereof reasonably allocable to the Building amortized over such period as Landlord shall reasonably determine, together with inter-

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est at the rate of twelve percent (12%) per annum on the unamortized balance, of any capital improvement made by Landlord to the Building or the Land after the date of this Lease which is required under any governmental law or regulation that was not incorporated in or otherwise made a part of the Building and/or the Land at the time the Building was initially constructed, or which is installed as a laborsaving device or other equipment as described in the following paragraph.

If Landlord shall, at any time after the Commencement Date, install a laborsaving device or other equipment, for the purpose of improving the operating efficiency of the Building or the Land, including, without limitation, an energy management computer system, or electronic security devices, then Landlord may add to the Operating Expenses in each year during the useful life of such installed device or equipment an amount equal to the annual amortization allowance of the cost of such installed device or equipment as determined in accordance with applicable regulations of the Internal Revenue Service or generally accepted accounting principles, together with interest at the rate of twelve percent (12%) per annum on the unamortized balance thereof, or in the event that said laborsaving device or other equipment is leased, then Landlord may add to Operating Expenses each year an amount equal to the total annual lease payments.

8.2 In addition to the Basic Annual Rent specified in this Lease, Tenant covenants and agrees to pay to Landlord as Additional Rent for the Leased Premises in each calendar year or partial calendar year during the term of this Lease an amount equal to Tenant's Share of Applicable Taxes for each such calendar year. Tenant's Share of Applicable Taxes shall be determined by multiplying said Applicable Taxes by the percentage figure set forth at Item H of Basic Lease Provisions, which percentage represents the proportion that the rentable area of the Leased Premises bears to the total rentable area of the Building.

- (1)** Applicable Taxes and Tenant's Share of Applicable Taxes for each calendar year shall be estimated annually by Landlord, and written notice thereof shall be given to Tenant prior to the beginning of each calendar year. In the case of the calendar year in which the Lease Term commences, written notice of the estimated Applicable Taxes and Tenant's share thereof shall be given to Tenant prior to the Commencement Date. Tenant shall pay to Landlord each month, at the same time the Monthly Rental Installment is due, an amount equal to onetwelfth (1/12) of Tenant's Share of estimated Applicable Taxes;
- (2)** If at any time during any calendar year the Applicable Taxes for such year are increased to an amount in excess of the amount used in calculating the estimated Applicable Taxes for such year, then the amount payable by Tenant shall be likewise increased for the month in which such increase becomes effective and for each month thereafter;
- (3)** With reasonable promptness after the expiration of each calendar year, Landlord shall prepare and deliver to Tenant a statement showing Tenant's actual Share of Applicable Taxes. Within thirty (30) days after receipt of the aforementioned statement, Tenant shall pay to Landlord, or Landlord shall credit against the next installment of Tenant's Share of Applicable Taxes due from Tenant to Landlord hereunder,

as the case may be, the difference between Tenant's actual Share of Taxes for the preceding calendar year and the estimated amount paid by Tenant during such year. If this Lease shall commence, expire or be terminated on any date other than the last day of a calendar year, then Tenant's Share of Applicable Taxes for such partial calendar year shall be prorated on the basis of the number of days during the year this Lease commenced, expired or terminated in relation to the total number of days in such year.

8.3 In addition to the Basic Annual Rent specified in this Lease, and in addition to payments required under Article 8.2 of this Lease, Tenant covenants and agrees to pay to Landlord as Additional Rent for the Leased Premises in each calendar year or partial calendar year during the term of this Lease an amount equal to Tenant's Share of Utility Expenses and Operating Expenses for each calendar year attributable to the Building. Tenant's share of Utility Expenses shall be determined by multiplying said Utility Expenses by the percentage figure set forth at Item H of Basic Lease Provisions.

- (1) Utility Expenses and Operating Expenses and Tenant's Share of Utility Expenses and Operating Expenses for each calendar year shall be estimated annually by Landlord, and written notice thereof shall be given to Tenant prior to the beginning of each calendar year. In the case of the calendar year in which the Lease Term commences, written notice of the estimated Utility Expenses and Operating Expenses and Tenant's Share of Utility Expenses and Operating Expenses shall be given Tenant prior to the Commencement Date. Tenant shall pay to Landlord each month, at the same time the Monthly Rental Installment is due, an amount equal to onetwelfth (1/12) of Tenant's Share of estimated Utility Expenses and onetwelfth (1/12) of Tenant's Share of estimated Operating Expenses;
- (2) If at any time during any calendar year Landlord determines that the Utility Expenses and/or Operating Expenses for such year will exceed the amount estimated by Landlord in calculating the estimated Utility Expenses and/or Operating Expenses for such year, then the amount payable by Tenant shall be likewise increased for the month in which such increase becomes effective and for each month thereafter;
- (3) With reasonable promptness after the expiration of each calendar year, Landlord shall prepare and deliver to Tenant a statement showing Tenant's actual Share of Utility Expenses and Tenant's actual Share of Operating Expenses. Within thirty (30) days after receipt of the aforementioned statement, Tenant shall pay to Landlord, or Landlord shall credit against the next installment of Tenant's Share of Utility Expenses and/or Tenant's Share of Operating Expenses due from Tenant to Landlord hereunder, as the case may be, the difference between Tenant's actual Share of Utility Expenses and/or Operating Expenses for the preceding calendar year and the estimated amount paid by Tenant during such year. If this Lease shall commence, expire or be terminated on any date other than the last day of a calendar year, then Tenant's Share of Utility Expenses and Tenant's Share of Operating Expenses for such partial calendar year shall be prorated on the basis of the number of days during the year this Lease commenced, expired or terminated in relation to the total number of days in such year.

ARTICLE 9 -- UTILITIES AND SERVICES

9.1 Provided Tenant is not in default hereunder, Landlord agrees to furnish or cause to be furnished to the Leased Premises the utilities and services designated below, subject to the conditions and in accordance with the standards set forth in this Article 9.

- (1)** Landlord shall provide automatic elevator facilities on generally accepted business days from 8 a.m. to 6 p.m., and on Saturdays from 9 a.m. to 2 p.m. At least one (1) elevator shall be available for use at all other times;
- (2)** Landlord shall furnish heat or air conditioning on generally accepted business days from 8 a.m. to 6 p.m., and on Saturdays from 9 a.m. to 2 p.m., when, in the judgment of Landlord, it is required for the comfortable occupancy and use of the Leased Premises. Upon request, Landlord shall make available, at Tenant's expense, afterhours heat or air conditioning and the cost thereof shall be determined from time to time by Landlord and confirmed in writing to Tenant;
- (3)** Landlord shall furnish to the Leased Premises, subject to interruptions beyond Landlord's control, such electricity as is required for the use of the office lighting and electrical outlets specified in the Building Standards on attached Exhibit C; provided, however, the electrical usage shall be separately metered for the Leased Premises and, in addition to all other amounts paid by Tenant under this Lease, Tenant shall separately pay for the electricity used by Tenant;
- (4)** Landlord shall furnish water for drinking, cleaning and lavatory purposes only;
- (5)** Landlord shall provide janitorial services to the Leased Premises, as described in Exhibit D attached hereto and made a part hereof.

9.2 Landlord may impose a reasonable charge for any utilities and services, including, without limitation, air conditioning and water, provided by Landlord by reason of: (a) any use of the Leased Premises at any time other than the hours set forth above; (b) any use beyond what Landlord agrees herein to furnish; or (c) special cooling and ventilating needs created by Tenant's telephone equipment, electronic data processing equipment, copying equipment and other such equipment or uses. Landlord, at its option, may require installation of metering devices, in addition to the electric meters, at Tenant's expense, for the purpose of metering Tenant's other utility consumption.

9.3 Tenant agrees to cooperate fully at all times with Landlord and to abide by all regulations and requirements which Landlord may prescribe for the use of the above utilities and services. Tenant agrees to pay any charge imposed by Landlord pursuant to Section 9.2 above, and any failure to pay any excess costs as described above shall constitute a breach of the obligation to pay rent under this Lease and shall entitle Landlord to the rights herein granted for such breach. Tenant's use of electricity shall at no time exceed the capacity of the service to the Building or the electrical risers or wiring installation. Tenant shall not install or use or permit the installation or use of any computer or electronic data processing equipment in the Leased Premises without the prior written consent of Landlord.

9.4 Landlord shall not be liable for, and Tenant shall not be entitled to any abatement or reduction of rent by reason of, Landlord's failure to furnish any of the foregoing services when such failure is caused by accident, breakage, repairs, riots, strikes, lockouts or other labor disturbance or labor dispute of any character, governmental regulation, moratorium or other governmental action, inability by exercise of reasonable diligence to obtain electricity, water or fuel, or by any other cause beyond Landlord's immediate control or for

stoppages or interruptions of any such services for the purpose of making necessary repairs or improvements. Failure, stoppage or interruption of any such service shall not be construed as an actual or constructive eviction or as a partial eviction of Tenant, or a release of Tenant's obligations under this Lease.

9.5 Anything hereinabove to the contrary notwithstanding, Landlord's obligation to furnish heat, electricity, air conditioning and/or water to the Leased Premises shall be subject to and limited by all laws, rules and regulations of any governmental authority affecting the supply, distribution, availability, conservation or consumption of energy, including, but not limited to, heat electricity, gas, oil and/or water. If Landlord shall attempt to meet such governmental requirements, Landlord in so doing shall not be in default in any manner whatsoever under the terms of this Lease, and Landlord's compliance therewith shall not affect in any manner whatsoever Tenant's obligation to pay the full rental set forth in this Lease.

9.6 Tenant shall use only such electrical lighting fixtures and lamps as may be approved by Landlord in writing. Notwithstanding anything hereinabove to the contrary, Landlord reserves the right from time to time to make reasonable and nondiscriminatory modifications to standards for utilities and services.

ARTICLE 10 -- REPAIRS

10.1 Landlord shall make all necessary repairs and replacements to the Building and to the heating, air conditioning and electrical systems located therein, and Landlord shall also make all repairs to the Leased Premises which are structural in nature or required due to fire, casualty or other acts of God; provided, however, that Tenant shall make all repairs and replacements arising from its act, neglect or default. Except as provided above, Tenant shall keep the Leased Premises in good repair and Tenant shall, upon the expiration of the term of this Lease, yield and deliver up the Leased Premises in like condition as when taken, reasonable use and wear thereof and repairs required to be made by Landlord excepted. Anything hereinabove to the contrary notwithstanding, from and after the date Tenant has taken occupancy of the Leased Premises, any repairs, additions or alterations to the Leased Premises which are required by OSHA shall be promptly made by Tenant, at its sole expense, if or to the extent that such repairs, additions or alterations are required only with respect to the Leased Premises.

10.2 In the event that Landlord shall deem it necessary, or be required by any governmental authority, to repair, alter, remove, reconstruct or improve any part of the Leased Premises or of the Building (unless the same result from Tenant's act, neglect, default or mode of operation, in which event Tenant shall make all such repairs, alterations and improvements), then the same shall be made by Landlord with reasonable dispatch, and should the making of such repairs, alterations or improvements cause any interference with Tenant's use of the Leased Premises, such interference shall not relieve Tenant from the performance of its obligations hereunder, nor shall such interference be deemed an actual or constructive eviction or partial eviction or result in an abatement of rental. Notwithstanding the foregoing, Tenant shall, at its own cost and expense, make all repairs and provide all maintenance in connection with any alterations, additions or improvements made by Tenant pursuant to Article 11 hereof.

ARTICLE 11 -- ALTERATIONS

Tenant shall not make any alterations, additions or improvements to the Leased Premises (whether or not the same may be structural in nature) without Landlord's prior written consent, and all alterations, additions or improvements made by either party hereto to the Leased Premises, except movable office furniture and equipment installed at Tenant's expense, shall be the property of Landlord and remain upon and be surrendered with the Leased Premises at the expiration of the term hereof; provided, however, that Landlord may require Tenant to remove any additions made by Tenant or caused by Tenant to be made to the Leased Premises and to repair any damage caused by such removal, and provided further, that if Tenant has not removed its property and equipment within ten (10) days after the expiration or termination of this Lease, Landlord may elect to retain the same as abandoned property. Tenant shall only use contractors approved by Landlord for the permitted alterations to the Leased Premises and shall not permit any mechanic's liens to be placed or remain upon the Leased Premises. Landlord has no obligation and has made no promise to alter, remodel, improve, repair, decorate or paint the premises or any part thereof, except as designated in Item N of Basic Lease Provisions and building standard tenant improvements to the Leased Premises. No representations respecting the condition of the Leased Premises or the Building have been made by Landlord to Tenant, except as specifically herein set forth.

ARTICLE 12 -- ASSIGNMENT AND SUBLETTING

12.1 Tenant shall not assign or transfer this Lease or hypothecate or mortgage the same or sublet the Leased Premises or any part thereof without the prior written consent of Landlord. In the event of any such assignment or transfer with Landlord's consent, Tenant shall remain fully liable to perform all of the obligations under this Lease. In the event of any assignment, transfer (including transfers by operation of law or otherwise), hypothecation, mortgage or subletting without such written consent, in addition to any other right or remedy Landlord may have under the provisions of this Lease, Landlord shall have the right to terminate this Lease and/or to reenter and repossess the Leased Premises, but Landlord's right to damages shall survive and Tenant shall in no way be released from any of its obligations under this Lease. Consent by Landlord to one or more assignment of this Lease or to one or more subletting of said Leased Premises shall not be deemed to be a waiver of the requirement for consent of Landlord to any future assignment or subletting. The sale or sales aggregating fifty percent (50%) or more of: the capital stock of Tenant or its guarantor (if Tenant or its guarantor be a nonpublic corporation), or the partnership or joint venture interests of Tenant or its guarantor (if Tenant or its guarantor be a partnership or joint venture), shall be deemed to be an assignment of this Lease within the meaning of this Article.

12.2 Anything in Section 12.1 above to the contrary notwithstanding, if at any time or from time to time during the term of this Lease, Tenant desires to sublet all or any part of the Leased Premises, Tenant shall give written notice to Landlord setting forth the terms and conditions of the proposed subletting and the space so proposed to be sublet. Landlord shall have the option, exercisable by notice given to Tenant within twenty (20) days after Tenant's notice is given, either to sublet from Tenant such space at the rental and other terms set forth in Tenant's notice or, if the proposed subletting is for the entire premises for the balance of the term of this Lease, to terminate this Lease. In the event Landlord elects to sublet from Tenant, Landlord shall have the right to further sublet said

premises to any other party for such use, and upon such terms as Landlord herein may so elect. If Landlord does not exercise such option, Tenant shall be free to sublet such space to any third party subject to the following conditions:

- (1) The sublease shall be on the same terms set forth in the notice given to Landlord;
- (2) No sublease shall be made without the prior written consent of Landlord, which consent Landlord agrees will not be unreasonably withheld as to a subletting of the entire Leased Premises as long as the sublessee has a creditworthiness equal to, or greater than Tenant;
- (3) No sublease shall be valid and no sublessee shall take possession of the premises subleased until an executed counterpart of such sublease has been delivered to Landlord;
- (4) No sublessee shall have a right further to sublet; and
- (5) Any sums or other economic consideration received by Tenant herein as a result of such subletting (except rental or other payments received which are attributable to the amortization of the cost of leasehold improvements, other than building standard tenant improvements, made to the sublet portion of the premises by Landlord), whether denominated rentals under the sublease or otherwise, which exceed, in the aggregate, the total sums which Tenant is obligated to pay Landlord under this Lease (prorated to reflect obligations allocable to the portion of the premises subject to such sublease), shall be payable to Landlord as additional rental under this Lease without affecting or reducing any other obligation of Tenant hereunder.

12.3 If this Lease is assigned to any person or entity pursuant to the provisions of the Bankruptcy Code, 11 U.S.C. \ 101 et seq. (the "Bankruptcy Code"), any and all monies or other considerations payable or otherwise to be delivered in connection with such assignment shall be paid or delivered to Landlord, shall be and remain the exclusive property of Landlord and shall not constitute property of Tenant or of the estate of Tenant within the meaning of the Bankruptcy Code. Any and all monies or other considerations constituting Landlord's property under the preceding sentence not paid or delivered to Landlord shall be held in trust for the benefit of Landlord and be promptly paid to or turned over to Landlord. Any person or entity to which this Lease is assigned pursuant to the provisions of the Bankruptcy Code shall be deemed without further act or deed to have assumed all of the obligations arising under this Lease on or after the date of such assignment. Any such assignee shall upon demand execute and deliver to Landlord an instrument confirming such assumption.

ARTICLE 13 -- INSURANCE AND INDEMNIFICATION

13.1 Tenant hereby agrees to indemnify and hold harmless Landlord, its subsidiaries, directors, officers, agents and employees, from and against any and all damage, loss, liability or expense, including, but not limited to, attorneys' fees and legal costs suffered by same directly or by reason of any claim, suit or judgment brought by or in favor of any person or persons for damage, loss or expense due to, but not limited to, bodily injury, including death resulting anytime therefrom, and property damage sustained by such person or persons which arises out of, is occasioned by, or in any way attributable to the use or occupancy of the Leased Premises and adjacent areas by the Tenant or otherwise, the acts or omissions of the Tenant, its agents, employees or any contractors brought onto

said premises by the Tenant, except that caused by the sole negligence of Landlord or its employees, agents and customers. Such loss or damage shall include, but not be limited to, any injury or damage to Landlord's personnel (including death resulting anytime therefrom) or premises. Tenant agrees that the obligations assumed herein shall survive this Lease.

13.2 Tenant shall procure and keep in effect during the term hereof, as extended, at its own expense, the following insurance:

- (1)** Comprehensive general liability and property damage insurance protecting Landlord and Tenant from all causes, including their own negligence, having a combined single limit of liability of One Million Dollars (\$1,000,000.00) resulting from any one occurrence;
- (2)** Coverage for all perils included in the classification "fire and extended coverage" under the insurance industry practices in effect from time to time in the jurisdiction in which the Building is located for damage to, or destruction of, Tenant's fixtures, equipment, furnishings, merchandise and other contents in the Leased Premises for the full replacement cost; and
- (3)** Plate glass insurance, if available.

13.3 Tenant shall deliver to Landlord prior to the time such insurance is first required to be carried by Tenant, and thereafter at least thirty (30) days prior to the expiration of such policy, Certificates of Insurance evidencing the above coverage with limits not less than those specified above. The Certificate for the insurance required under Section 13.2(a) and 13.2(c) shall name Landlord, its subsidiaries, directors, agents and employees as additional insured and all Certificates shall expressly provide that no less than thirty (30) days prior written notice shall be given Landlord in the event of material alteration to or cancellation of the coverages evidenced by such Certificates. In the event Tenant shall fail to procure such insurance, Landlord may, at its option, procure the same for the account of Tenant, and the cost thereof shall be paid to Landlord as additional rent upon receipt by Tenant of bills therefor.

13.4 If, on account of the failure of Tenant to comply with the foregoing provisions, Landlord is adjudged a coinsurer by its insurance carrier, then any loss or damage Landlord shall sustain by reason thereof shall be borne by Tenant and shall be immediately paid by Tenant upon receipt of a bill therefor and evidence of such loss.

13.5 Landlord makes no representation that the limits specified to be carried by Tenant under the terms of this Lease are adequate to protect Tenant against Tenant's undertaking under this Article 13, and in the event Tenant believes that any such insurance coverage called for under this Lease is insufficient, Tenant shall provide, at its own expense, such additional insurance as Tenant deems adequate.

13.6 Anything in this Lease to the contrary notwithstanding, Landlord and Tenant hereby waive and release each other of and from any and all rights of recovery, claim, action or cause of action, against each other, their agents, officers and employees, for any loss or damage that may occur, including, without limitation, loss or damage to the Leased Premises, the Building, improvements to the Land, personal property (building contents) within the Building, any furniture, equipment, machinery, goods or supplies not covered by this Lease which Tenant may bring or obtain upon the Leased Premises, by reason of fire, the elements or any other cause which could be insured against under the terms of standard fire and extended coverage insurance policies, regardless of cause or

origin, including negligence of Landlord or Tenant and their agents, officers and employees. Because this Section will preclude the assignment of any claim mentioned in it by way of subrogation (or otherwise) to an insurance company (or any other person), each party to this Lease agrees immediately to give to each insurance company written notice of the terms of the mutual waivers contained in this Section, and to have the insurance policies properly endorsed, if necessary, to prevent the invalidation of the insurance coverages by reason of the mutual waivers contained in this Section. Tenant also waives and releases Landlord, its agents, officers and employees, of and from any and all rights of recovery, claim, action or cause of action for any loss or damage insured against under any other policies of insurance carried by Tenant.

ARTICLE 14 -- FIRE

14.1 In the event the Building or the Leased Premises, or any material portion of either, shall be damaged by fire or other casualty during the term hereof so as to render the Leased Premises untenable, and such premises cannot be made tenable within one hundred fifty (150) days after such damage, this Lease may be terminated by Landlord or Tenant by written notice thereof to the other party, within fifteen (15) days after the expiration of said one hundred fifty (150) day period, but shall continue unless so terminated. If, in the sole judgment of Landlord, such damage can be repaired within one hundred fifty (150) days after the date of such damage, Landlord may enter and make whatever repairs it deems necessary without affecting this Lease, but the rent payment hereunder shall abate in such proportion as the part of said Leased Premises thus destroyed or rendered untenable bears to the total Leased Premises while such repairs are being made. If said Leased Premises be so slightly damaged by such fire or other casualty as not to be rendered untenable, Landlord shall make the repairs it deems necessary with reasonable promptness and the payment of rent shall not be affected thereby. Tenant shall, at its own cost and expense, remove such of its furniture and furnishings and other belongings from the Leased Premises as Landlord shall require in order to repair and restore the Leased Premises. Landlord shall be the sole judge as to whether such destruction or damage has caused the Building or the Leased Premises to be untenable or whether the same cannot be rendered tenable within one hundred fifty (150) days from the date of such occurrence.

14.2 In the event the Building is destroyed or so substantially injured that Landlord deems it inadvisable to rebuild or reconstruct the Building, Landlord shall have the right to terminate this Lease upon written notice to Tenant, in which event any rent paid in advance of the date of such occurrence shall be refunded to Tenant and from thenceforth this Lease shall terminate.

14.3. If the Leased Premises are to be repaired under this Article 14, Landlord shall repair, as it deems necessary, at its cost and expense, any damage to the Building and building standard tenant improvements to the Leased Premises, Tenant shall pay the cost of repairing any other tenant improvements in the Leased Premises and shall be responsible for carrying such casualty insurance as Tenant deems appropriate with respect to such other tenant improvements.

ARTICLE 15 -- EMINENT DOMAIN

If the whole or any substantial part of the Leased Premises or the Building shall be taken by any public authority under the power of eminent domain, then the term of this Lease shall cease on the parts so taken on the date of taking of the part required for public use, and any rent paid in advance of such date shall be refunded to Tenant, and Landlord and Tenant shall each have the right to terminate this Lease upon written notice to the other, which notice shall be delivered within thirty (30) days following the date notice is received of such taking. In the event that neither party hereto shall terminate this Lease, Landlord shall make all necessary repairs to the Leased Premises and the Building to render and restore the same to a complete architectural unit and Tenant shall continue in possession of the portion of the Leased Premises not taken under the power of eminent domain under the same terms and conditions as are herein provided, except that the rent reserved herein shall be reduced in direct proportion to the amount of the Leased Premises so taken. All damages awarded for such taking shall belong to and be the property of Landlord, whether such damages be awarded as compensation for diminution in value of the leasehold or to the fee of the Leased Premises; provided, however, Landlord shall not be entitled to any portion of the award made to Tenant for removal and reinstallation of Tenant's fixtures or moving expenses.

ARTICLE 16 -- RULES AND REGULATIONS

The rules and regulations set forth in Exhibit E attached hereto, together with such other reasonable rules and regulations as Landlord shall make from time to time which are of uniform applicability to all tenants of the Building and of which Tenant shall have received notice, shall be binding upon Tenant and are hereby made a part of this Lease.

ARTICLE 17 -- QUIET ENJOYMENT

Landlord warrants that Tenant, upon paying the rents hereinbefore provided and in performing each and every covenant hereof, shall peacefully and quietly hold, occupy and enjoy the Leased Premises throughout the term hereof without molestation or hindrance by any person holding under or through Landlord.

ARTICLE 18 -- SUBORDINATION

Landlord reserves the right to subject and subordinate this Lease at all times to the lien of any first mortgage(s) now or hereafter placed upon Landlord's interest in the Leased Premises and on the Land and the Building, or upon any buildings hereafter placed upon the Land, and Tenant shall execute and deliver any and all documents necessary to evidence such subordination. Tenant hereby irrevocably appoints Landlord the attorneyin fact of Tenant to execute and deliver any such instrument or instruments for and in the name of Tenant as may be necessary to effect such subordination; provided, however, no default by Landlord under any such first mortgage(s) shall affect Tenant's rights hereunder so long as Tenant is not in default under this Lease. Tenant shall, in the event any proceedings are brought for the foreclosure of, or in the event of exercise of the power of sale under any mortgage made by Landlord covering the Leased Premises attend to the purchaser upon any such foreclosure or sale and recognize such purchaser as Landlord under this Lease.

ARTICLE 19 -- NONLIABILITY

Landlord shall not be responsible or liable to Tenant for any loss or damage that may be occasioned by or through the acts or omissions of persons occupying adjoining premises, or any part of the premises adjacent to or connected with the Leased Premises, or any part of the Building, or for any loss or damage resulting to Tenant or its property from burst, stopped or leaking water, gas, sewer or steam pipes, or for any damage or loss of property within the Leased Premises from any cause whatsoever, and no such occurrence shall be deemed to be an actual or construction eviction from the Leased Premises or result in an abatement of rental.

ARTICLE 20 -- NONWAIVER

20.1 Waiver of any one breach of the covenants or conditions of this Lease or the nonperformance of the same for any particular time shall not be construed as a waiver of any succeeding breaches of the same or other covenant or condition hereof, and the consent or approval by Landlord to or of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent or approval to or of any subsequent similar act by Tenant. Tenant shall pay all attorneys' fees and expenses of Landlord in enforcing any of the obligations of Tenant under this Lease, or in any litigation or negotiation in which Landlord shall, without its fault, become involved through or on account of this Lease.

20.2 No payment by Tenant or receipt by Landlord of a lesser amount than the monthly rent herein stipulated shall be deemed to be other than on account of the earliest stipulated rent nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Landlord shall accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy in this Lease provided.

ARTICLE 21 -- BANKRUPTCY OR INSOLVENCY

21.1. If a petition is filed by, or an order for relief is entered against Tenant under Chapter 7 of the Bankruptcy Code and the trustee of Tenant elects to assume this Lease for the purpose of assigning it, such election or assignment, or both, may be made only if all of the terms and conditions of Sections 21.2 and 21.3 below are satisfied. To be effective, an election to assume this Lease must be in writing and addressed to Landlord, and in Landlord's business judgment, all of the conditions hereinafter stated, which Landlord and Tenant acknowledge to be commercially reasonable, must have been satisfied. If the trustee fails so to elect to assume this Lease within sixty (60) days after his appointment, this Lease will be deemed to have been rejected, and Landlord shall then immediately be entitled to possession of the Premises without further obligation to Tenant or the trustee, and this Lease shall be terminated. Landlord's right to be compensated for damages in the bankruptcy proceeding, however, shall survive such termination.

21.2 If Tenant files a petition for reorganization under Chapters 11 or 13 of the Bankruptcy Code, or if a proceeding filed by or against Tenant under any other chapter of the Bankruptcy Code is converted to a Chapter 11 or 13 proceeding and Tenant's trustee, or Tenant as debtor in possession, fails to assume this Lease within sixty (60) days from the date of filing of such petition or conversion, then the trustee or the debtor in possession shall be deemed to have rejected this Lease. To be effective, any election to assume this

Leasing of New Construction

Lease must be in writing addressed to Landlord and, in Landlord's business judgment, all of the following conditions, which Landlord and Tenant acknowledge to be commercially reasonable, must have been satisfied:

- (1) The trustee or the debtor in possession has cured or has provided to Landlord adequate assurance, as defined in this Section 21.2, that:
 - (1) The trustee will cure all monetary defaults under this Lease within ten (10) days from the date of assumption; and
 - (2) The trustee will cure all nonmonetary defaults under this Lease within thirty (30) days from the date of assumption.
- (2) The trustee or the debtor in possession has compensated Landlord, or has provided Landlord with adequate assurance, as hereinafter defined, that within ten (10) days from the date of assumption Landlord will be compensated for any pecuniary loss it has incurred arising from the default of Tenant, the trustee, or the debtor in possession, as recited in Landlord's written statement of pecuniary loss sent to the trustee or debtor in possession.
- (3) The trustee or the debtor in possession has provided Landlord with adequate assurance of future performance of each of Tenant's obligations under this Lease; provided, however, that:
 - (1) From and after the date of assumption of this Lease, the trustee or the debtor in possession shall pay the Base and Additional Rents payable under this Lease in advance in equal monthly installments on each date that such rents are payable;
 - (2) The trustee or debtor in possession shall also deposit with Landlord, as security for the timely payment of Rent, an amount equal to three (3) months Base Rent, Additional Rent and other monetary charges accruing under this Lease;
 - (3) If not otherwise required by the terms of this Lease, the trustee or the debtor in possession shall also pay in advance, on each day that any installment of Base Rent is payable, one-twelfth (1/12) of Tenant's Share of Applicable Taxes, Utility Expenses and Operating Expenses; and
 - (4) The obligations imposed upon the trustee or the debtor in possession will continue for Tenant after the completion of bankruptcy proceedings.
- (4) For purposes of this Article 21, "adequate assurance" means that:
 - (1) Landlord determines that the trustee or the debtor in possession has, and will continue to have, sufficient unencumbered assets, after the payment of all secured obligations and administrative expenses, to assure Landlord that the trustee or the debtor in possession will have sufficient funds timely to fulfill Tenant's obligations under this Lease and to keep the Premises properly staffed with sufficient employees to conduct a fully operational, actively promoted, business in the Premises; and
 - (2) An order shall have been entered segregating sufficient cash payable to Landlord and/or valid and perfected first lien and security interest shall have been granted in property of Tenant, trustee or debtor in possession which is acceptable in value and kind to Landlord, to secure to Landlord the obligation of the trustee or debtor in possession to cure all monetary and nonmonetary defaults under this Lease within the time periods set forth above.

21.3 In the event this Lease is assumed by a trustee appointed for Tenant or by Tenant as debtor in possession under the provisions of Section 21.2 above and, thereafter, Tenant is either adjudicated a bankrupt or files a subsequent petition for arrangement under Chapter 11 of the Bankruptcy Code, then Landlord may, at its option, terminate this Lease and all the Tenant's rights under it, by giving written notice of Landlord's election so to terminate.

21.4 If the trustee or the debtor in possession has assumed this Lease, pursuant to Sections 21.1 or 21.2 above, to assign or to elect to assign Tenant's interest under this Lease or the estate created by that interest to any other person, such interest or estate may be assigned only if the intended assignee has also provided adequate assurance of future performance of all the terms, covenants and conditions of this Lease.

21.5 For the purposes of this Section 21.4, "adequate assurance of future performance" means that Landlord has ascertained that each of the following conditions has been satisfied.

- (1) The assignee has submitted a current financial statement, audited by a certified public accountant, which shows a net worth and working capital in amounts determined by Landlord to be sufficient to assure the future performance by the assignee of the tenant's obligations under this Lease;
- (2) If requested by Landlord, the assignee will obtain guarantees, in form and substance satisfactory to Landlord, from one or more persons who satisfy Landlord's standards of creditworthiness; and
- (3) Landlord has obtained consents or waivers from any third parties which may be required under any lease, mortgage, financing arrangement or other agreement by which Landlord is bound, to enable Landlord to permit such assignment.

21.6 When, pursuant to the Bankruptcy Code, the trustee or the debtor in possession is obligated to pay reasonable use and occupancy charges for the use of all or part of the Premises, it is agreed that such charges will not be less than the Base Rent as defined in this Lease, plus Additional Rent and other monetary obligations of Tenant included herein.

21.7 Neither Tenant's interest in this Lease nor any estate of Tenant created in this Lease shall pass to any trustee, receiver, assignee for the benefit of creditors or any other person or entity, nor otherwise by operation of law under the laws of any state having jurisdiction of the person or property of Tenant, unless Landlord consents in writing to such transfer. Landlord's acceptance of rent or any other payments from any trustee, receiver, assignee, person or other entity will not be deemed to have waived, or waive, either the requirement of Landlord's consent or Landlord's right to terminate this Lease for any transfer of Tenant's interest under this Lease without such consent.

ARTICLE 22 -- LANDLORD'S REMEDIES

22.1 The remedies set out in this Article 22 and in other provisions of this Lease shall be independent of one another, such that the exercise or attempting the exercise of one remedy shall not foreclose Landlord from exercising another or other remedies provided in this Lease or otherwise provided by law.

22.2 In the event Tenant shall fail to pay the rent reserved herein when due (including all Basic Annual Rent and Additional Rent and any other amounts payable under the

terms of this Lease), Landlord shall, in addition to its other remedies provided under this Lease or by law, have the remedies set forth in Section 22.4 below.

22.3 If Tenant shall be in default in performing any of the terms of this Lease other than the payment of rent, Landlord shall give Tenant written notice of such default, and if Tenant shall fail to cure such default within twenty (20) days after receipt of such notice, or if the default is of such a character as to require more than twenty (20) days to cure, then if Tenant shall fail within said twenty (20) day period to commence and thereafter proceed diligently to cure such default, then and in either of such events, Landlord may (at its option and in addition to its other remedies) cure such default for the account of Tenant and any sum so expended by Landlord shall be additional rent for all purposes hereunder, including Section 22.2 above, and shall be paid by Tenant with the next monthly installment of rent.

22.4 If any rent shall be due and unpaid or Tenant shall be in default upon any of the other terms of this Lease and such default has not been cured after notice and within the time provided in Section 22.3 above, or if the Leased Premises are abandoned or vacated, then Landlord, in addition to its other remedies, shall have the immediate right of reentry. Should Landlord elect to reenter or take possession pursuant to legal proceedings or any notice provided for by law, Landlord may either terminate this Lease without waiving its right to damages, or from time to time, without terminating this Lease, relet the Leased Premises, or any part thereof, on such terms and conditions as Landlord shall, in its sole discretion, deem advisable. The avails of such reletting shall be applied: first, to the payment of any indebtedness of Tenant to Landlord other than rent due hereunder, including all collection and court costs and attorneys' fees suffered in recovering and reletting the Leased Premises; second, to the payment of any reasonable costs of such reletting, including the cost of any brokerage fees and reasonable alterations and repairs to the Leased Premises; third, to the payment of rent due and unpaid hereunder; and the residue, if any, shall be held by Landlord and applied in payment of future rent as the same may become due and payable hereunder. If such rentals received from such reletting during any month be less than that to be paid during that month by Tenant hereunder or if Landlord does not relet the Leased Premises, Tenant shall pay any such rental deficiency to Landlord. Such deficiency shall be calculated and paid monthly. No such reentry or taking possession of said Leased Premises by Landlord shall be construed as an election on its part to terminate this Lease unless a written notice of such intention be given to Tenant or unless the termination thereof be decreed by a court of competent jurisdiction. Notwithstanding any such reentry or taking of possession of the Leased Premises by Landlord, the Tenant's covenant to pay rent will survive the said reentry of taking possession. Notwithstanding any such reletting without termination, Landlord may at any time thereafter elect to terminate this Lease for such previous breach. Should Landlord at any time terminate this Lease for any breach, in addition to any other remedies it may have, it may recover from Tenant all damages it may incur by reason of such breach, including the costs of recovering the Leased Premises, reasonable attorneys' fees incidental thereto, and including the worth at the time of such termination of the excess, if any, of the amount of rent and charges equivalent to rent reserved in this Lease for the remainder of the stated term over the then reasonable rental value of the Leased Premises for the remainder of the stated term, all of which amounts shall be immediately due and payable by Tenant hereunder.

22.5 Landlord or its attorneys, representatives and assigns, may reenter and repossess the Leased Premises, and declare the lease term forfeited if the Leased Premises

shall be deserted or vacated by Tenant for fifteen (15) days or more. Landlord may pursue all remedies available to it under this Lease or at law for a forfeiture by Tenant hereunder.

22.6 If Tenant vacates or abandons the Leased Premises, whether or not in violation of this Lease, any property or equipment or sign, interior or exterior, that Tenant leaves on the Leased Premises shall, at Landlord's option, be deemed to have been abandoned and may, at Landlord's option, either be retained by Landlord as the property of Landlord, or disposed of at public or private sale as Landlord sees fit, or declared by Landlord to continue to be Tenant's property. The proceeds from the sale of any property of Tenant sold at public or private sale or the then current fair market value of such property as may be retained by Landlord shall be applied by Landlord against the expenses of Landlord for removal, storage or sale of the property; the arrears of rent or future rent payable under this Lease; and any other damages to which Landlord may be entitled hereunder. The balance of such amounts, if any, shall be given to Tenant.

22.7 Tenant hereby grants Landlord, as further security for the payment of the rent reserved herein (including all Basic Annual Rent and Additional Rent and any other amounts payable under the terms of this Lease), a lien and/or mortgage upon all apparatus, equipment, fixtures, furnishings, furniture and other personal property of the Tenant at any time in or upon the Leased Premises, all at Landlord's option, but excepting therefrom the private papers of Tenant or of others in Tenant's possession in or upon the Leased Premises. In the exercise of its rights under this lien/mortgage, Landlord may, at any time eight (8) days after Tenant's receipt of written notice of such intent to exercise from Landlord, remove and store, as secured party, or as agent of Tenant, any and all personal property of Tenant not hereby exempted, and at the expiration of thirty (30) days thereafter, acting as secured party or as agent of Tenant, dispose of such personal property either by public or private sale as Landlord sees fit. In the event Landlord so disposes of any such property, Landlord shall be entitled to retain from the proceeds thereof the expenses of the sale, the cost of storage, compensation for any damage to the Leased Premises and to the Building, and any arrears of such rent or other amounts payable under the terms of this Lease. Tenant agrees that no such personal property or fixtures in the Leased Premises shall be removed therefrom in any event except upon the written permission of Landlord, and Landlord shall not be obliged to give its permission so long as any such rent and other amounts payable are delinquent and unpaid as herein provided. Tenant hereby appoints Landlord as Tenant's attorney in fact insofar as the operation of this Section 22.7 is concerned, and such appointment shall be irrevocable.

22.8 In the event this Lease shall for any reason be terminated prior to the termination date specified in Item E of Basic Lease Provisions, and in the further event that Landlord has advanced monies to fit the Leased Premises to the needs of Tenant, Tenant agrees to reimburse Landlord for a pro rata portion of Landlord's monies so advanced, including, for purposes of illustration but not by way of limitation, monies advanced for interior partitions, floor coverings, special paint, plaster or any counter, cabinet, shelving, paneling or other special work done at the request of Tenant and not previously paid for by Tenant, plus the estimated cost to Landlord of restoring the Leased Premises to their original standard condition whether Landlord shall choose so to restore the Leased Premises or not. Landlord and Tenant agree that the total monies advanced by Landlord for such work is that sum shown in Item N of Basic Lease Provisions, and the share payable by Tenant in the event of premature termination of tenancy, as mentioned above, shall be such proportion of that Item N sum as the number of days yet remaining of the original

stipulated lease term after such premature termination shall bear to the number of days in the term of the Lease as determined by reference to Item E of Basic Lease Provisions. It is agreed that in the event of such premature termination of this Lease, the pro rata proportion of the sum shown in Item N shall immediately become due and payable to Landlord.

ARTICLE 23 -- COUNTERCLAIM

In the event Landlord commences any proceedings for nonpayment of rent, Additional Rent or any other amount payable to Landlord by Tenant, Tenant shall not interpose any counterclaim of whatever nature or description in any such proceeding. This shall not, however, be construed as a waiver of Tenant's right to assert such claims in any separate action brought by Tenant.

ARTICLE 24 -- HOLDING OVER

If Tenant retains possession of the Demised Premises or any part thereof after the termination of the term or any extension thereof, by lapse of time or otherwise, the tenancy shall be from month to month in the absence of a written agreement to the contrary, and on the first day of each month Tenant shall pay Landlord the installments of Base Rent at triple the monthly rental specified in Item G of Basic Lease Provisions (plus all other charges payable by Tenant under this Lease) for each month or part thereof (without reduction for any such partial month) that Tenant thus remains in possession, and in addition thereto, Tenant shall pay Landlord all damages, consequential as well as direct, sustained by reason of Tenant's retention of possession. The provisions of this Article 24 do not exclude Landlord's right of reentry or any other right hereunder, or by law.

ARTICLE 25 -- ENTIRE AGREEMENT

This Lease sets forth all of the covenants, promises, agreements, conditions and understandings between Landlord and Tenant concerning the Leased Premises, and Landlord and Tenant respectively acknowledge that there are no covenants, promises, agreements, representations, inducements, conditions or understandings, either oral or written, between Landlord and Tenant other than are herein set forth. No alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by each party.

ARTICLE 26 -- NOTICES

Any notice, demand, request or other instrument which may be or is required to be given under this Lease shall be sent by United States certified mail, return receipt requested, postage prepaid, and shall be addressed if to Landlord, to the address set forth at Item O of Basic Lease Provisions, or at such other address as Landlord may designate by written notice; and if to Tenant, at the Leased Premises or at such other address as Tenant shall designate by written notice.

ARTICLE 27 -- SUCCESSORS

This Lease shall inure to the benefit of and be binding upon the parties hereto, their respective heirs, administrators, executors, representatives, successors and assigns.

ARTICLE 28 -- PREVENTING REMOTE VESTING

Notwithstanding any other provisions of this Lease, if the term of this Lease shall not commence within five (5) years from the date hereof, then this Lease shall be deemed cancelled and terminated five (5) years from the date hereof without the necessity of any notice or act by Landlord or Tenant. It is understood and agreed that the provisions of the preceding sentence are intended to prevent this Lease from becoming unenforceable by reason of claim that, without such provisions, this Lease might violate the rule against perpetuities, and such provisions shall not operate so as to relieve Landlord or Tenant from performing and observing their respective obligations which are to be performed or observed prior to the expiration of said five (5) year period.

ARTICLE 29 -- ACCESS TO PREMISES

Landlord and its agents shall have the right to enter upon the Leased Premises at all reasonable hours or at any time in case of emergency for the purpose of inspecting the Leased Premises, erecting and maintaining pipes and conduits in and through the Leased Premises and making any repairs, alterations, improvements or additions which Landlord may deem necessary for the safety, preservation or improvement of the Leased Premises or the Building, and Landlord shall be allowed to take all material into and upon the Leased Premises that may be required therefor and to perform such acts without the same constituting an eviction of Tenant in whole or in part, and the rent reserved shall in no wise abate while said inspections, repairs, alterations, improvements or additions are being made. Nothing herein contained shall be deemed to impose upon Landlord any obligation for the care, supervision or repair of the Building or the Leased Premises which is not elsewhere specifically set forth in this Lease.

ARTICLE 30 --ACKNOWLEDGMENT BY TENANT THAT LEASE IS IN FULL FORCE AND EFFECT

Tenant agrees at any time and from time to time upon not less than ten (10) days prior written request by Landlord to execute, acknowledge and deliver to Landlord a statement in writing, in form supplied by or satisfactory to Landlord, certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), and the dates to which the rent and other charges have been paid in advance, if any, it being intended that any such statement delivered pursuant to this Article 30 may be relied upon by any prospective purchaser of the Building or mortgagee or assignee of any mortgage upon the Building or the Leased Premises.

ARTICLE 31 -- DEFINITION OF LANDLORD; LANDLORD'S LIABILITY

The term "Landlord" as used in the Lease, so far as covenants or obligations on the part of Landlord are concerned, shall be limited to mean and include only the owner or

owners at the time in question of the Building, and in the event of any transfer or transfers of the title to the Building, Landlord herein named (and in case of any subsequent transfers or conveyances, the then grantor) shall be automatically freed and relieved from and after the date of such transfer or conveyance of all personal liability as respects the performance of any covenants or obligations on the part of Landlord contained in this Lease thereafter to be performed; provided that any funds in the hands of such Landlord or the then grantor at the time of such transfer in which Tenant has an interest shall be turned over to the grantee and any amount then due and payable to Tenant by Landlord or the then grantor under any provision of this Lease shall be paid to Tenant, it being intended hereby that the covenants and obligations contained in this Lease on the part of Landlord shall, subject as aforesaid, be binding on Landlord, its successors and assigns, only during and in respect of their respective successive periods of ownership.

If Landlord shall fail to perform any covenant, term or condition of this Lease upon Landlord's part to be performed, and if as a consequence of such default Tenant shall recover a money judgment against Landlord, such judgment shall be satisfied only out of the proceeds of sale received upon execution of such judgment and levied thereon against the right, title and interest of Landlord in the Building and the Land and out of rents or other income from such property receivable by Landlord, or out of the consideration received by Landlord from the sale or other disposition of all or any part of Landlord's right, title and interests in the Building and the Land, and Landlord shall not be liable for any deficiency.

ARTICLE 32 -- LAWS OF THE STATE OF MICHIGAN

This Lease shall be governed by, and construed in accordance with, the laws of the State of Michigan. If any provision of this Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease shall not be affected thereby and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

ARTICLE 33 -- GUARANTEE

In the event a guarantee is executed in connection with this Lease, said guarantee shall be deemed a part of this Lease.

ARTICLE 34 -- RELOCATION OF TENANT

Landlord reserves the right, during the term of this Lease or any renewal term, to relocate Tenant to other office space in the Building, so long as the number of square feet of space so substituted equals or exceeds the number of square feet of space in the original Leased Premises. Such relocation shall be performed through Landlord's personnel or contractors and Landlord shall pay or cause to be paid the following relocation expenses reasonably incurred by Tenant in connection with such substitution of Leased Premises: cost of moving, reconstruction of all Tenantfurnished and Landlordfurnished improvements and telephone relocation and reinstallation. Tenant waives any claim for damages, abatement of rent or loss of profits due to such relocation, provided that Landlord gives at least thirty (30) days prior written notice of its intention to relocate Tenant. In the event of such relocation, the rental rate per square foot shall remain the same as provided in this Lease only for the same number of substituted square feet as were previ-

ously occupied by Tenant, and all other terms and conditions of this Lease shall apply to the substituted Leased Premises. If requested by Landlord, Tenant shall promptly execute an amendment or other document confirming the relocation of Tenant to said substituted Leased Premises.

ARTICLE 35 -- SECURITY DEPOSIT

As security for the faithful performance by Tenant of all of the terms and conditions upon Tenant's part to be performed, Tenant has this date deposited with Landlord that sum of money set forth in Item I of Basic Lease Provisions, which shall be returned to Tenant, without interest, upon the expiration date of this Lease, provided that Tenant has fully and faithfully performed all of the terms, covenants and conditions on its part to be performed. Landlord shall have the right (but not the obligation) to apply any part of said deposit to cure any default of Tenant, and if Landlord does so, Tenant shall, upon demand, deposit with Landlord the amount so applied so that Landlord shall have the full deposit on hand at all times during the term of this Lease. Landlord shall not be obligated to keep such security deposit as a separate fund but may mix such security deposit with Landlord's own funds.

In the event of a sale of the Building, Landlord shall have the right to transfer the security deposit to the vendee or lessee and Landlord shall be considered released by Tenant from all liability for the return of the security deposit and Tenant shall look solely to the new Landlord for the return of the security deposit, and it is agreed that this shall apply to every transfer or assignment made of the security deposit to a new landlord. The security deposit shall not be mortgaged, assigned or encumbered by Tenant without the written consent of Landlord and any attempt to do so shall be void. In the event of any rightful and permitted assignment of this Lease, the security deposit shall be deemed to be held by Landlord as a deposit made by the assignee and Landlord shall have no further liability with respect to the return of the security deposit to the assignor. Any mortgagee of Landlord shall be relieved and released from any obligation to return the security deposit in the event such mortgagee comes into possession of the Leased Premises or the Building by reason of foreclosure of its mortgage or any proceeding in lieu thereof.

ARTICLE 36 -- BROKERAGE

Tenant represents that Tenant has dealt directly with and only with the party named in Item J of Basic Lease Provisions as a broker or brokers in connection with this Lease and that, insofar as Tenant knows, no other broker negotiated this Lease or is entitled to any commission in connection therewith. Tenant indemnifies and holds Landlord, its successors and assigns and their respective agents and employees, harmless from all claims of any other broker or brokers in connection with this Lease.

ARTICLE 37 -- WAIVER OF JURY TRIAL

To the extent permitted by law, Landlord and Tenant shall, and hereby do, waive trial by jury in any action, proceeding or counterclaim brought by either against the other on any matter whatsoever arising out of or in any way connected with this Lease.

ARTICLE 38 -- CAPTIONS

The captions of the various Articles of this Lease have been inserted only for the purpose of convenience and such captions are not a part of this Lease and shall not be deemed in any manner to modify, explain, enlarge or restrict any of the provisions of this Lease.

IN WITNESS WHEREOF, the parties have executed this Lease as of the day and year first written above.

By:_____

Its:_____

“LANDLORD”

By:_____

Its:_____

“TENANT”

**EXHIBIT D
JANITORIAL SERVICES**

SERVICES TO BE PERFORMED ON NORMAL BUSINESS DAYS AS DETERMINED BY LANDLORD, BUT NOT EXCEEDING FIVE (5) TIMES PER WEEK.

1. Empty all waste baskets.
2. Empty and clean ashtrays.
3. Dust desk tops that are clear of working paper.
4. Vacuum carpeted areas and dust mop resilient floors.
5. Restrooms:
 - (a) Empty all waste baskets.
 - (b) Dust mop and wet mop floors.
 - (c) Clean and disinfect all fixtures.
 - (d) Clean mirrors and shelves.
 - (e) Refill towel and soap dispensers.
6. Clean and disinfect drinking fountains and water coolers.
7. Clean lobby floor and all lobby door glass.

WEEKLY SERVICES:

1. Dust top of file cabinets, ledges and baseboards.
2. Clean and disinfect all ceramic tile, partitioning and wast receptacles in restrooms.
3. Remove smudges and scuff marks from walls.
4. Remove spots from partition glass.

5. Damp mop stairways as required.

MISCELLANEOUS SERVICES:

Wash exterior windows as needed; however, the number of washings will not exceed three (3) times per year.

SEASONAL SERVICES:

Snow removal from concrete walks as necessary.

Tenant understands that Landlord may substitute for any of the methods or devices set forth in this Exhibit E other methods or devices which will achieve substantially the same results.

**EXHIBIT E
RULES AND REGULATIONS**

1. The sidewalks, entrances, passages, courts, elevators, vestibules, stairways, corridors or halls shall not be obstructed or encumbered by any tenant or used for any purpose other than ingress or egress to and from the Leased Premises
2. No sign, picture, lettering, notice or advertisement of any kind shall be painted or displayed on or from the windows, doors, roof or outside walls of the Building in which the Leased Premises are located. All of Tenant's interior sign painting or lettering shall be done in a manner approved by Landlord, and the cost thereof shall be paid by Tenant. In the event of the violation of the foregoing by any tenant, Landlord may remove same without any liability and may charge the expense incurred for such removal to Tenant.
3. No curtains, blinds, shades, screens, awnings or other projections shall be attached to or hung in, or used in connection with, any window or door of the Leased Premises or outside wall of the Building without the prior written consent of Landlord.
4. Any carpeting cemented down shall be installed with a releasable adhesive.
5. The water and wash closets and other plumbing fixtures shall not be used for any purpose other than those for which they were constructed, and no sweepings, rubbish, rags or other substances shall be thrown therein. All damages resulting from any misuse of the fixtures shall be borne by Tenant who, or whose servants, employees, agents, visitors or licensees, shall have caused the same.
6. No electric or other wires for any purpose shall be brought into the Leased Premises without Landlord's written permission specifying the manner in which same may be done.
7. No tenant shall mark, paint, drill into or in any way deface any part of the Leased Premises or the Building of which they form a part. No boring, cutting or stringing of wires shall be permitted, except with the prior written consent of Landlord, and as Landlord may direct.
8. No bicycle or other vehicle, and no dog or other animal shall be allowed in offices, halls, corridors or elsewhere in the Building.

Leasing of New Construction

9. Tenant shall not cause or permit unusual or objectionable odor to be produced upon or permeate from the Leased Premises, including duplicating or printing equipment emitting noxious fumes. Tenant shall not disturb any occupants of this or neighboring buildings or premises by use of any musical instrument, radio, television, loudspeaker or by any unseemingly or disturbing noise.
10. No Tenant shall throw anything out of the doors, windows or down any passageways or elevator shafts.
11. All loading, unloading, receiving or delivery of goods, supplies or disposal of garbage or refuse shall be made only through entry ways provided for such purposes and indicated by Landlord.
12. Tenant is not permitted to use any part of the Building or the common areas for any manufacturing, storage or sale of merchandise or property of any kind, or for lodging or sleeping, or for any immoral or illegal purpose.
13. All safes, equipment or other heavy articles shall be carried in or out of the premises only at such times and in such manner as shall be prescribed in writing by Landlord, and Landlord shall in all cases have the right to specify the proper position of any such safe, equipment or other heavy article, which shall only be used by Tenant in a manner which will not interfere with or cause damage to the Leased Premises or the Building, or to the other tenants or occupants of the Building. Tenant shall be responsible for any damage to the Building or the property of its tenants or others and injuries sustained by any person whomsoever resulting from the use or moving of such articles in or out of the Leased Premises, and shall make all repairs and improvements required by Landlord or governmental authorities in connection with the use or moving of such articles.
14. Tenant shall not install or operate any steam or gas engine or boiler or carry on any mechanical business on the Leased Premises, or use oil, burning fluids, camphene or gasoline for heating or lighting or for any other purpose. No article deemed extra hazardous on account of fire or other dangerous properties or any explosive shall be brought into the Leased Premises. This prohibits the use of hot plates (cooking) and only approved electric percolators shall be permitted.
15. No additional locks or bolts of any kind shall be placed upon any of the doors or windows by any tenant, nor shall any changes be made in existing locks or the mechanism thereof. Each tenant must, upon the termination of his tenancy, restore to Landlord all keys of stores and offices, and in the event of the loss of any keys so furnished, such tenant shall pay the Landlord the cost thereof.
16. Landlord shall have the right to prohibit any advertising by Tenant which, in Landlord's opinion, tends to impair the reputation of the Building or its desirability as a building for offices, and upon written notice from Landlord, Tenant shall refrain from or discontinue such advertising.
17. Landlord reserves the right to exclude from the Building, between the hours of 6:00 p.m. and 8:00 a.m. on business days, 12:00 a.m. to 9:00 a.m. and 2:00 p.m. to 12:00 a.m. on Saturdays and at all hours on Sundays and legal holidays, all persons who do not present a pass to the Building signed by Landlord. Landlord will

- furnish passes to persons for whom Tenant requests such pass and Tenant shall be liable to Landlord for all acts of such persons.
18. No person shall be allowed to deliver beverages, food, food containers, etc., on any passenger elevator. The delivery of such items, which must be in covered containers, shall be via the service elevators only.
 19. Landlord is not responsible to any tenant for the nonobservance or violation of the rules and regulations by any other tenant.
 20. Canvassing, soliciting or peddling in the Building or parking areas is prohibited and each tenant shall cooperate to prevent the same.
 21. Vending machines will not be permitted to be installed by anyone but Landlord unless prior written consent is obtained from Landlord for the installation of such machines by others.
 22. Wherever the word "Tenant" occurs, it is understood and agreed that it shall mean Tenant's employees, associates, agents, clerks, servants and visitors. Wherever the word "Landlord" occurs, it is understood and agreed that it shall mean Landlord's assigns, clerks, servants and visitors.
 23. Water closets and other toilet fixtures shall not be used for any purpose other than that for which the same are intended, and any damage resulting to same from Tenant's misuse shall be paid for by Tenant. No person shall waste water by interfering or tampering with the faucets or otherwise.