

**NEGOTIATING THE
GROUND LEASE FOR A
COMMERCIAL DEVELOPMENT
PROJECT**

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Robert R. Nix, II, Esq.
Kerr, Russell and Weber, PLC
500 Woodward Avenue, Suite 2500
Detroit, Michigan 48226

Mark P. Krysinski, Esq.
Jaffe, Raitt, Heuer & Weiss, P.C.
The American Center
27777 Franklin Road, Suite 2500
Southfield, Michigan 48034

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Exhibits:

- A. Landlord's Form of Ground Lease
- B. Negotiated Ground Lease

NEGOTIATING THE GROUND LEASE FOR A COMMERCIAL DEVELOPMENT PROJECT

1. Nature of the Ground Lease.

- A. **Definition.** A ground lease is a long term lease of vacant property. The aggregate term of a ground lease (the initial term and extension terms) is generally in the range of thirty-five (35) years to ninety-nine (99) years. A ground lease could include land with a building or improvements if the building or improvements are to be demolished or substantially renovated by the ground lessee.
- B. **Recording.** The recording statute (MCL 563.35) provides that a lease for a term in excess of three (3) years constitutes a “conveyance” which is void against subsequent good faith purchasers for value unless recorded. A memorandum of the ground lease is often recorded to satisfy the requirements of this statutory provision.
- C. **Uncapping of Real Property Taxes.** PA Act 415 1994 (“Act 415”), MCL 211.27a(6)(d), provides that a lease with a term (including Extension Terms) which exceeds thirty-five (35) years or contains a bargain purchase option exercisable at the end of the ground lease term constitutes a “transfer of ownership”. A “transfer of ownership” “uncaps” real estate taxes upon the real property and permits the assessor to assess the real property at its then fair market value. The ground lessee is the conceptual equivalent of a purchaser and will be required to file a Real Property Transfer Affidavit (Form No. L-4260) with the local assessor.
- i. Completing Form No. L-4260 presents a challenge in identifying the consideration to be inserted in box no. 5 because the form contemplates a sale and not a lease. Arguably, the “consideration” is the aggregate income stream under the ground lease. However, should the income stream be discounted to present value and at what rate to achieve a fair calculation of the “consideration”?
 - ii. An assignment of the ground lease by the ground lessee will constitute a “transfer of ownership” if the remaining ground lease term (including extension options) exceeds thirty-five (35) years. See State Tax Commission (“STC”) “Transfer of Ownership and Taxable Value Uncapping Guidelines”, March 31, 2001. Such assignment may result in a reassessment of the real property, including any then constructed buildings or improvements.
 - iii. Act 415 does not specify whether the ground lessee’s surrender of possession at the expiration of the ground lease term or upon earlier termination resulting from a default constitutes a “transfer of ownership”. However, STC Bulletin No. 16, September 20, 1995 advises that a

“transfer of ownership” does not occur when a lease expires or the use of the property returns to the ground lessor.

- D. **Transfer Tax.** Ground leases are generally exempt for transfer taxes. MCLA Section 207.505(5)(e) and Sections 207.526(6)(e) provide that instruments evidencing a lease (including oil and gas leases) are transfers of leaseholds interest and are exempt from transfer taxes.

- E. **Basic Federal Income Tax Consequences.** The ground lessor will recognize income from the ground lessee’s payment of rent. The ground lessor should not have additional taxable income from the ground lessee’s construction of improvements (either at the time that they are constructed or at the end of the ground lease term), so long as the improvements are not a “substitute for rent”. To the extent that it does not recognize income with respect to the ground lessee-constructed improvements, the ground lessor will not be entitled to claim depreciation deductions with respect thereto after the termination of the ground lease. The ground lessee will be entitled to claim deductions for payments of rent under the ground lease. In addition, the ground lessee will be able to depreciate the cost of the lessee-constructed improvements, on a straight-line basis, over the applicable cost recovery period for such improvements (39 years for nonresidential real property, 27.5 years for residential property), even if the term of the ground lease is shorter. At the termination of the ground lease, the ground lessee will be able to claim a deduction for the amount of any unrecovered basis in the improvements. The ground lessee generally can take a deduction for demolition costs only at the termination of the ground lease.

2. Purpose of a Ground Leases.

- A. **Financing Device.** A ground lease is used as a form of financing device permitting the ground lessee to acquire real property upon which an office building, shopping center or other commercial development (the “Project”) may be constructed by converting the land acquisition costs to quarterly, semi-annual or annual installment payments during the ground lease term. Thus, the rental payments become the conceptual equivalent of seller financing pursuant to a purchase money mortgage or land contract. The ground lease is also a substitute for a land acquisition loan.

- B. **Determination of Ground Lease Rent.** The ground lease payments are typically determined by establishing the current value of the property (assuming a third party fair market value sale) and adding an appropriate interest factor for the payment of such value over the ground lease term. Some ground leases consists of “fixed rent” based upon such calculations and others included both “fixed rent” and “additional rent” based upon either the gross rental income or net rental income produced by the Project to be built by the ground lessee. The use of a lower percentage of gross rental income is used more often than a higher percentage of the net rental income because of the need to negotiate the definition of net rental income, appropriate exclusions, audit rights, etc.

- C. **Retained Ownership Interest by Ground Lessor.** A ground lease provides a “stream of income” to a property owner for a fixed period of time with the benefit of retaining ownership of the real property and receiving the surrender of the real property with improvements constituting the Project at the expiration of the ground lease term. These rights are valuable and can be sold, assigned or mortgaged by the ground lessor.
- i. The return of the real property with improvements at the end of the ground lease term can either be a benefit or detriment depending upon the nature and quality of the improvements constructed, the effect of obsolescence, available uses for the improvements at the expiration of the ground lease term and the costs for demolition or renovation of such improvements.
 - ii. If the improvements are not likely to have residual value or usefulness at the expiration of the ground lease term, the ground lessor can either require the ground lessee to demolish the improvements and return the property in the same condition as existing at the commencement of the ground lease term or establish a reserve fund or escrow funded over the ground lease term to provide sufficient funds for demolition.
 - iii. Letters of credit, other credit enhancements, guarantees, etc. to assure performance of such demolition obligations may also be negotiated.
- D. **Priority of Ground Lessor’s Interest.** Since ground leases are a form of financing device providing a guaranteed income stream to the property owner, the ground lessor typically does not subordinate its interest to subsequent financing by the ground lessee.
- i. Commercial lenders will generally accept the priority of the ground lease because the ground lease payments, like real estate taxes, represents minimal financial obligations in the context of the entire Project.
 - ii. Commercial lenders will require either a Subordination, Nondisturbance and Attornment Agreement or a Tri-Party Agreement which permit the lenders to cure any ground lessee defaults, make the ground lease payments to preserve the ground lease, enter into a substitute ground lease with the ground lessor, etc.
 - iii. Commercial lenders may also secure the ground lease obligations of the ground lessee by guarantees, credit enhancements, collateral support, etc.
 - iv. A ground lessor agreeing to subordinate the ground lease to such commercial financing places the entire real property at risk in the event of a default by the ground lessee or the failure of the Project to be successful.
- E. **Uses of Ground Leases.** Ground leases can be used for various Projects, including, office buildings, shopping centers, and commercial mixed-use Projects.

- i. Governmental entities and public universities use ground leases to facilitate the development of excess real property while retaining control of the property and the uses within the development to ensure that such are compatible with the uses of such governmental entities or universities upon adjacent properties.
 - a. Examples (1) include ground leases of property used for airport hangars at Metro Airport, (2) a ground lease by Schoolcraft Community College of excess property for the development of office buildings and a restaurant known as the Seven Mile Crossing Project and (3) a ground lease of additional property by Schoolcraft Community College for the development of office buildings, residential structures, restaurants, strip center, and a bank known as the College Park Project.
- ii. Individual property owners and developers may use ground leases for a variety of reasons. In the retail setting, the cost of building from the developer's point of view may result in rental rates leases that are far above market. In this case the developer may be unwilling to take the risk that upon the ground lessee's default (under a lease with above market rental rates), a substitute ground lessee could be found that would provide the similar cash flow necessary to support the debt services incurred to originally construct the building. Similar concerns may result in ground leases for department store leases in shopping centers, or specialty buildings in outlet retail developments. In office and industrial settings, the new development may be part of an overall campus project over which the owner may wish to maintain control of the land given its investment in the surrounding property, or may not be willing to incur the tax consequences of a sale. Examples of projects of private ground leases include the Nordstrom and Marshall Field's building at Somerset Collection, most fitness facilities adjacent to office building and the new PriceWaterhouseCooper's office building being built adjacent to Ford Field.

3. Fundamental Terms of the Ground Lease for the Commercial Project.

- A. **Commercial Project.** The commercial project presented (the "Office Project") is a ground lease on which the ground lessee will build a first class office building containing approximately 150,000 square feet including a sundry retail shop, cafeteria or similar type of food service facility (the "Office Building"). At the time the ground lease is being negotiated, the ground lessee has entered into a conditional sublease with a law firm to rent 85,000 square feet of office space in the Office Building. The Office Building is located in a campus setting (the "Surrounding Development") owned by the ground lessor, who controls certain buildings within the surrounding area and the Office Project contemplates shared access and easements to facilitate development and use of the Office Building and the surrounding area. The ground lessor will also construct a parking garage in

the Surrounding Development and some of the parking spaces in the parking garage will be made available to the ground lessee for the Office Building.

- B. **Form of Ground Lease.** The ground lessor's initial form of ground lease is attached as Exhibit A and a negotiated version of the ground lease blacklined to incorporate proposed changes by the ground lessee is attached as Exhibit B (collectively referred to as the "Ground Lease").
- C. **Due Diligence.** Entering into a Ground Lease is tantamount to purchasing a piece of real property from a due diligence prospective. Thus, the typical provisions for due diligence conditions, a right to terminate if the conditions are not met, warranties and representations, title, survey, and other conditions found in a purchase agreement for a similarly situated piece of property should be incorporated in a preliminary agreement for entering into a Ground Lease or the actual Ground Lease. These provisions should include the following:
- i. A description of the land plus any easements, improvements, appurtenances and other privileges in the demising clause.
 - ii. A due diligence period to inspect the property, obtain governmental approvals (zoning changes, variances, site plan approval), secure financing, obtain wetlands determinations, etc. Depending upon the nature of the Project, the due diligence period could vary between 45 days and one year.
 - iii. Title insurance, ALTA survey, determination of permitted encumbrances, judgment lien and UCC searches. The party to bear the costs of each of these items is subject to negotiation. Typically, the ground lessor will provide title insurance (but not special endorsements) and the ground lessee will pay for the costs of the remaining items.
 - iv. An environmental audit and if necessary, Baseline Environmental Assessment ("BEA").
 - v. Appropriate representations and warranties (good title, no adverse agreements, good standing and authority, no violation, no litigation, no knowledge of environmental problems, zoning, governmental approvals, absence of litigation, Land Division Act compliance, no unrecorded assessments, tap fees or payback agreements).
 - vi. An indemnity and a right of setoff for breach.
 - vii. Closing, execution of the lease, delivery of the legal opinion by ground lessor and ground lessee as to the litigating and binding effect, provisions for title insurance, bring down certificate for representations and warranties, compliance with Patriot Act and FIRPTA requirements.

- D. **Term and Extension Terms.** The initial term (the “Initial Term”) of the Ground Lease is thirty-five (35) years (the “Ground Lease Term”) and may be extended for three (3) additional periods of twenty (20) years each (each constituting an “Extension Term”).
- i. Written notice of renewals must be provided by the ground lessee ninety (90) days prior to the expiration of the Initial Term or the then expiring Extension Term.
 - ii. Conditions for renewals could be imposed. Such conditions could include the following (a) there is no default by the ground lessee, or if there is a default, such default is cured as a condition of the renewal, (b) the ground lessee has not been in default on more than two (2) occasions (whether cured or not) within any consecutive twenty-four (24) month period, (c) the ground lessee satisfies certain financial creditworthiness standards and (d) the ground lessee has satisfied minimum leasing requirements, etc.
- E. **Rent, Real Estate Taxes and Utility Expenses.** The Ground Lease requires the ground lessee to pay Basic Rent, Additional Basic Rent, Taxes and Utility Expenses.
- i. The payment of Basic Rent, as negotiated in the Tenant form of Ground Lease, commences upon the Rent Commencement Date which is the earlier of the following to occur (a) January 1, 2007, (b) the date upon which office ground lessees of more than thirty (30%) of the space in the Office Building commence using and occupying the Office Building, or (c) the date upon which office ground lessees commence paying rent to the ground lessee.
 - ii. The Basic Rent is five hundred thousand (\$500,000) dollars for each Lease Year (which is twelve (12) calendar months), except the first Lease Year which may be less if the Commencement Date occurs on other than January 1). The Basic Rent has annual increases or “step ups” of two (2%) percent of the Basic Rent for the preceding year commencing in the third Lease Year and three (3%) percent for each Lease Year thereafter. Basic Rent is also adjusted (increased or decreased) at the rate of one (\$1.00) dollar per square foot for every square foot by which the gross square footage of the Office Building is less than one hundred thousand (1,000) square feet or more than one hundred twenty five thousand (125,000) square feet during the Lease Term. Basic Rent is paid monthly.
 - iii. Negotiated variations can include the following (a) payment of rent on a monthly, quarterly or annual basis, (b) rent commencing at the time the ground lease is signed, (c) percentage rent based upon either gross income or net income received by the ground lessee, or (d) a percentage or fixed amount of future sale or refinancing proceeds (the conceptual equivalent of an equity participation interest).

- iv. Similar to most commercial leases, ground leases generally do not and the Ground Lease does not permit any off-sets, deductions or abatements to rent. However, such off-sets, deductions or abatements maybe appropriate if the ground lessor is providing critical services or components serving the development, such as access roads, utilities, drainage systems and retention ponds, parking, etc.
- v. The ground lessee is required to pay all real and personal property taxes, special assessments, general assessments, water rents, rates and charges, sewer rents and all other governmental impositions and charges (collectively “Taxes”). These Taxes apply to both the real property and all improvements, all penalties and costs and expenses to comply with all federal, state, and local laws. The ground lessee is also required to pay for all water, sewer, gas, electricity, communications, utilities and services furnished to either the real property or the Office Building (collectively “Utility Expenses”).
 - a. If the ground lessor is providing any utilities or services to the Office Building, such should be separately metered and provisions for the payment of costs, performance of maintenance, remedies for interruptions, etc., should be negotiated.
- vi. Taxes are prorated for the year in which the ground lease commences and terminates.
 - a. The ground lessor’s obligation to reimburse the ground lessee for Taxes paid in the year in which the ground lease terminates should be conditioned upon ground lessee’s payment of all payment of all Basic Rent, Additional Basic Rent and all other payments required under the ground lease and performance of all the obligations under the ground lease.
- vii. Ground leases are typically the equivalent of triple net leases with the result that the income received by the ground lessor as a result of Basic Rent, Additional Rent, Percentage Rent, etc. is net of all costs and expenses and the ground lessee is required to pay all categories of costs and expenses and indemnify the ground lessor from all such costs and expenses.

F. **Condition of Ground Lease Premises.** The Ground Lease should clearly identify the real property and any buildings or improvements (either to be demolished or renovated) constituting the premises to be leased under the Ground Lease, including easements for roads, utilities, drainage system, offsite parking, etc. (collectively the “Ground Lease Premises”). The Ground Lease Premises are leased “as is, where is”, with no warranty or representation with regard to condition, including environmental condition.

- i. The ground lessee may require the ground lessor to provide copies of any existing physical inspection reports, surveys, appraisals, environmental reports and other information regarding the condition of the Ground Lease Premises.
- ii. Similar to other leases, the ground lessee may negotiate limited warranties, representations and indemnities with respect to the physical condition of the Ground Lease Premises, compliance with laws, etc.
- iii. Since the Ground Lease is a “quasi purchase”, the ground lessee should perform the same level of due diligence that would be performed in connection with the purchase of the real property. If the presence of any hazardous materials or substances in violation of environmental laws is discovered, the ground lessee should obtain and submit a baseline environmental assessment to the Michigan Department of Environmental Quality for approval for purposes of limiting environmental liability. Unless a ground lessor breaches its environmental representations, the ground lease will require the ground lessee to perform any remediation or clean up in order to comply with environmental laws. As a practical matter, such clean up or remediation will be required by the ground lessee to maintain its ground lessee’s in the Office Building and to comply with its mortgage loan requirements.

G. Construction of Improvements. The ground lessee is required to construct, at its sole cost and expense, the Office Building, an Access Road, utilities, landscaping and other improvements (collectively “Improvements”) pursuant to construction Plans approved by the ground lessor. Procedures for obtaining the ground lessor’s approval for construction activities (the “Construction Approval Procedures”) are set forth in the Ground Lease. The ground lessee is required to obtain all permits and approval prior to commencing construction, commence and complete construction with specified time frames, complete construction of the Office Project free of all construction liens, and provide the ground lessor with “as built” drawings for the complete Office Project. Construction of the Access Road is necessary for the Office Project to provide access to a utility building needed by the ground lessor.

- i. If the ground lessor does not have a financial or other interest in the construction of the Office Project, the Ground Lease may not contain construction and commencement deadlines.
- ii. If the Ground Lease contains construction commencement and completion deadlines, remedies for failure to meet such deadlines may include the following: (a) a right to terminate the lease if the commencement deadline is not met, with the ground lessee being required to surrender the Ground Lease Premises in the same condition, free and clear of all mortgages, liens, encumbrances, etc., (b) a right of the ground lessor to complete construction and assume the existing financing if construction is

commenced but not pursued or completed by the ground lessee, or (c) the right to recover liquated damages, secured by letters of credit, guarantees, etc. Completion guarantees from creditworthy individuals or entities may also be required.

- iii. During the Ground Lease Term, title to the Office Building and all Improvements remain with the ground lessee, the ground lessee has the right to all income, depreciation and other benefits of the Office Building and Improvements. Upon the expiration or earlier termination of the Ground Lease, title to the Office Building and Improvements vests in and becomes a part of the property of the ground lessor, **without payment or any additional compensation required**. The ground lessee is obligated to provide the ground lessor with a deed of conveyance or other confirmation if required by the ground lessor.
 - a. This reversionary interest of the ground lessor in the Office Building and Improvements and the Ground Lease insurance provisions will be critically important to the ground lessor.
 - b. The trade fixtures and personal property of ground lessee in the Office Building are excluded from the definition of Office Building and Improvements.
 - c. The ground lessee is required to surrender the Office Building and Improvements free and clear of all mortgages, liens, claims and liabilities and the condition in which such is to be surrendered should be specified with reasonable detail.
 - d. The reversionary interest of the ground lessor must be protected by prohibiting the ground lessee from committing waste (which should be carefully defined) or the right to remove, demolish or materially alter the Office Building and Improvements without the ground lessor's consent.
 - e. Similarly, the ground lessor's consent to any condominiumization of the Office Building should be required to protect the reversionary interest of the ground lessor.
 - f. The nature of the Office Project and the Ground Lease Term should be carefully considered to determine whether the Office Project has residual value or is a liability at either the expiration of the term or earlier termination as a result of default. This analysis may result in the ground lessor insisting upon the establishing of a reserve funded over the Ground Lease Term for either demolition or renovation of the Office Building and Improvements (with an acceleration of such amount in the event of default), imposing the obligation to demolish or renovate the Office Building and

Improvements upon the ground lessee, and establishing remedies for noncompliance.

- iv. All leases and agreements entered into by the ground lessee should terminate upon the expiration of the Initial Term (unless an Extension Term is exercised) or the last day of the last Extension Term.

H. **Repairs and Alterations.** Except for any specific obligations retained by the ground lessor with regard to environmental matters, or providing utilities, the ground lessee assumes all obligations to repair and maintain the Office Building and Improvements and to construct any alterations or improvements required to comply with laws.

- i. The ground lessor should have the right to approve all material alterations in connection with the Construction Approval Procedures.
- ii. The ground lessor should be provided with “as built” drawings following the completion of such alterations, certificates of occupancy or other permits and approvals required in connection with such alterations.

I. **Access to Demised Premises.** The ground lessor and its agents and designees have the right to enter upon the Ground Lease Premises at all reasonable times (or at any time in the event of an emergency). Such access requires 24 hours advanced notice to the ground lessee and is subject to the rights of any of the Office Building ground lessees. The ground lessor is also entitled to access during the last six (6) months of the Ground Lease Term to exhibit the property to perspective purchasers and prospective ground lessees.

- i. The ground lessor’s right to access to show the ground lease property to perspective purchasers or lenders should not be limited and should apply at any time during the Ground Lease Term. Any necessary access easements, utility easements, reciprocal easements, shared parking arrangements, parking garages, drainage facilities, etc. should be specifically addressed. This should include the following:
 - a. A description of the easement.
 - b. Identification of the party required to construct the improvements, such as a parking garage, drainage facilities, access roads, etc.
 - c. Identification of the parties responsible for the maintenance of any utilities, roads, parking areas, parking garages, drainage facilities and the allocation of costs between the ground lessor and the ground lessee. See, Section 12 of the attached Ground Lease addressing some of these issues for the Office Building.

J. **Assignment and Subletting.** The ground lessee has the right to assign the Ground Lease as collateral for financing to construct the Office Building. The

ground lessee has the right to assign the lease or sublet all or any portion of the Office Building with the ground lessor's consent, which consent shall not unreasonably withheld. The ground lessor's consent is not required for a Permitted Assignment. A Permitted Assignment is defined as an assignment or subletting to an affiliate or a sublease comprising less than seventy-five (75%) percent of the total rental square footage in the Office Building. Section 13 of the Ground Lease also specifies that the ground lessor is not deemed to be unreasonably withholding consent to an assignment if the proposed assignee is not creditworthy or does not satisfy other specific negotiated limitations. Since subleases to office ground lessees are permitted, the rights of the sub-tenant will not be terminated upon a termination of the Ground Lease so long as the sub-tenants are not in default (beyond any applicable notice and cure period) and the sublease contains the following required provisions: (a) payment of the rent to the ground lessor instead of the ground lessee upon written direction, (b) attornment to the ground lessor as the ground lessor under the sublease, and (c) no assumption by the ground lessor of any of the obligations of the ground lessee, as ground lessor prior to such termination.

- i. These provisions may conflict with the provisions of the ground lessee's mortgage loan documents pursuant to which the ground lessee assigns all of the rent under the office leases to the mortgage lender. Although the Ground Lease and ground lessor's interest has priority over the ground lessee's mortgagee, the ground lessor may agree to refrain from exercising these rights and remedies so long as such mortgage lender timely pays all of the rent and payment obligations (Basic Rent, Additional Basic Rent, Taxes and Utility Expense) and performs the obligations of the ground lessee under the Ground Lease.
- ii. Negotiated alternatives may include the following: (a) the ground lessee not being released from liability in connection with any assignment or sublease, (b) the requirement for minimum net worth and cash flow standards for any assignment resulting in a release of the ground lessee, (c) a requirement for a minimum net worth and cash flow requirements in the event of merger, acquisitions, change of control or other change in the identity of the ground lessee, (d) delivery of replacement or supplemental guarantees, or (e) payment of a negotiated fixed dollar amount in connection with a sale or transfer.
- iii. Since the interest of the ground lessor is superior to the ground lessee and its mortgage lender, the ground lessor typically has the right to sell, assign, transfer and finance the ground lessor's interest without limitations or consent of the ground lessee or its mortgagee. However, the ground lessor's mortgagee should agree to execute and deliver an agreement to the ground lessee which recognizes its rights under the Ground Lease and agrees not to disturb its possession so long as the ground lessee is not in Default in the Ground Lease beyond any applicable notice and cure period

(a “Recognition or Subordination, Non-disturbance Attornment Agreement”).

- K. **Insurance.** The ground lessee is required to carry builder’s risk insurance during the period of construction, property insurance for the full replacement value, comprehensive general liability insurance, workman compensation insurance, rental insurance in an amount equal to the amount of Basic Rent and Additional Basic Rent for one (1) year, special extended coverages and such other insurance as the ground lessor reasonably requires. In addition to this primary insurance, an umbrella insurance policy in the amount of five million (\$5,000,000) dollars is required.
- i. All insurance coverages should name the ground lessor as an additional insured and provide the ground lessor with at least thirty (30) days prior written notice of cancellation, modification or amendment in coverages.
 - ii. The ground lessor should be provided with copies of the insurance policies together with insurance certificates to ensure that the proper coverages are maintained.
 - iii. The amount of deductibles should be reasonably limited and self insurance should be prohibited.
 - iv. Blanket insurance should not be permitted unless the insurance company provides guaranteed limits of coverage for the Office Building, the amounts of insurance are reasonably sufficient for the multiply properties covered, annual reporting of insurance claims and reassessment of the adequacy of insurance are be required and the right to use blanket insurance if granted, are rescinded if the insurance coverages prove insufficient.
 - v. All insurance carriers are licensed in Michigan and should contain a Best Rating of at least A and a financial rating of not less than X.
 - vi. All insurance policies should contain a waiver of subrogation and the Ground Lease should provide for mutual releases of liability of the ground lessor and the ground lessee. However, the ground lessee should not be released from liability if its fails to procure and maintain the insurance required under the Ground Lease.
- L. **Destruction and Rebuilding.** The Ground Lease provides that in the event of damage or destruction covered by the insurance carried by the ground lessee, the ground lessee is required to repair and restore the Office Building. The repair and restoration obligation can be avoided and the Ground Lease terminated upon the following events: (a) More than thirty (30%) percent of the gross square footage of the Office Building is damaged, (b) the office lease for the primary ground lessee is terminated as a result of such damage or destruction or (c) the damage or destruction occurs during the last five (5) years of the Initial Term or any

Extended Term. If the Ground Lease is terminated, the ground lessee is required to raze the Office Building and the Improvements and restore the real property to a safe condition suitable for a new development. Any excess insurance proceeds are paid to the ground lessee.

- i. The ground lessor has a significant interest in the Office Building and Improvements since they are to be surrendered to the ground lessor at the expiration of the Ground Lease Term. Thus, this clause will be subject to extensive negotiations.
- ii. Negotiated variations can include the following:
 - a. An obligation to rebuild under all circumstances except for the last twelve (12) months of the Initial Term or Extended Term.
 - b. The right of the ground lessor to “take over” and rebuild the Office Project. The ground lessor would need the right to terminate the Ground Lease, the right to the assignment and assumption of the office leases, the right to assume the existing financing and the right to use the insurance proceeds for rebuilding. These are extraordinary remedies which would only be available if the ground lessor was a sophisticated developer and the Office Project was either “tied into” or played a significant role in an adjacent Office Project operated by the ground lessor.
- iii. If the project is not repaired or restored, the insurance proceeds must be sufficient to pay off the ground lessee’s mortgage and pay all of the costs and expenses to raze the Office Project and restore the real property to its original condition.

M. **Eminent Domain.** The Ground Lease terminates upon condemnation of the entire Office Building and Improvements. In the event of a partial taking resulting in the ground lessee’s inability to operate the Office Building, the ground lessee has the right to terminate the Ground Lease. If the Ground Lease is not terminated, the ground lessee is required to repair and restore the Office Building and Improvements. In the event of an entire taking without a termination of the Ground Lease, the condemnation proceeds are allocated between the ground lessor and ground lessee pursuant to a negotiated formula. In the event of a partial taking without a termination of the Lease, the condemnation proceeds are used for repair and restoration. If the insurance proceeds are insufficient, the ground lessee must pay any “shortfall”. Any excess condemnation proceeds are allocated in the same manner as a complete condemnation.

- i. Regulatory takings or takings for a temporary period of time should be addressed. The attached Ground Lease provides that any damage for such temporary takings is allocated to the ground lessee unless such extends

beyond the expiration of the Ground Lease Term. In that event the ground lessor is entitled to a portion of the award necessary to restore the Office Project only, if the award is specifically allocated for restoration and the balance is apportioned between the ground lessor and ground lessee as of the date of the expiration of the Ground Lease Term. If the taking for such limited period of time ends prior to the expiration of the Ground Lease Term, the ground lessee is required to restore the property to the condition prior to such temporary taking.

- ii. The formula used for allocating condemnation awards between the ground lessor and ground lessee should be consistent with the methodology used to establish the Basic Rent and Additional Basic Rent. Alternatively, the current value of the Office Project could be used by apportioning such value for the balance of the Ground Lease Term to the ground lessee.

N. **Leasehold Mortgages.** The Ground Lease permits the ground lessee to assign or pledge its interest in the Ground Lease and any office leases in the Office Building under one or more leasehold mortgages (a "Leasehold Mortgage") to one or more lenders (a "Leasehold Mortgagee") without the prior consent of the ground lessee. This right is conditioned upon the Leasehold Mortgage being subordinate and subject to the Ground Lease and the rights of the ground lessor. A copy of the Leasehold Mortgage, identity of the Leasehold Mortgagee and recording information must be provided to the ground lessor. The ground lessee is not permitted to create any lien, mortgage, pledge or encumbrance upon the interest of the ground lessor in the Ground Lease or Office Project.

- i. The Ground Lease contains the following provisions to protect the Leasehold Mortgagee:
 - a. The Ground Lease cannot be cancelled, surrendered or modified by the ground lessor and the ground lessee without the prior written consent of the Leasehold Mortgagee.
 - b. Any notices of default by the ground lessor served upon the ground lessee must be simultaneously served upon the Leasehold Mortgagee and the Leasehold Mortgagee is provided with a "cure period". The cure period is ninety (90) days which is extended for an additional period of time if the default cannot be cured within 90 days or the cure requires possession of the Demised Premises.
 - c. The Leasehold Mortgagee also has the right to avoid such termination for a period of six (6) months by curing existing monetary defaults and initiating foreclosure of the Leasehold Mortgagee. The six (6) month period can be extended for a reasonable period of time if the Leasehold Mortgagee is diligently pursuing such foreclosure.

- d. The purchaser at a foreclosure sale has the unrestricted right to acquire the ground lessee's interest under the Ground Lease without the acquisition requiring the ground lessor's consent or constituting a default under the Ground Lease. Such purchaser is entitled to possession of the Office Project, assumes the ground lessee's obligations under the Ground Lease and must cure all defaults of the ground lessee.

- e. The negotiated version of the Ground Lease provides the Leasehold Mortgagee with the additional remedy of requiring the ground lessor to enter into a new Ground Lease with the Leasehold Mortgagee or its nominee for the remainder of the Ground Lease Term if the Ground Lease is terminated (except for a monetary default which the Leasehold Mortgagee fails to cure). The Leasehold Mortgagee or its nominee must pay all sums then due to the ground lessor (including expenses and attorney fees) and remedy all other defaults under the Ground Lease. If the office leases were previously assigned to the ground lessor as additional security for the ground lessee's performance under the Ground Lease such remains security for the ground lessor for the performance of the obligations of the new ground lessee under the "new ground lease". **Any provision providing for the assignment of office leases to the ground lessor as additional collateral or security may create a problem for a new ground lessee financing the acquisition with a new Leasehold Mortgagee that requires a collateral assignment of the office leases.**

- f. The ground lessor agrees to modify the Ground Lease if required by the Leasehold Mortgagee provided the modifications do not decrease the ground lessee's obligation, decrease the ground lessor's rights, or increase the ground lessor's obligations. **The ground lessor will likely challenge this provision.**

- g. The ground lessor agrees that the Leasehold Mortgagee may be added to the "Lost Payable Endorsement" of any and all insurance policies required to be carried by the ground lessee upon the condition that the insurance proceeds are applied in the manner required by the Ground Lease and that the Ground Lease Mortgage or other collateral documents so provides. The negotiated version of the Ground Lease places control of the insurance proceeds in the Leasehold Mortgagee and gives the Leasehold Mortgagee the right to apply any insurance proceeds not required for restoration pursuant to the Leasehold Mortgage (not the Ground Lease) to the mortgage debt.

- h. The ground lessor is required to enter into an agreement with the ground lessee and Leasehold Mortgagee confirming these rights of the Leasehold Mortgagee.
 - i. The negotiated form of the Ground Lease contains the following additional remedy for the Leasehold Mortgagee. The Leasehold Mortgagee (but not any purchaser at a foreclosure sale) has the right for one (1) year after acquiring the ground lessee's interest to reduce the Basic Rent and Additional Rent by one/half (1/2). This waiver is revoked in the event of any default. **This provision will likely be challenged by the ground lessor.**
 - ii. These protective provisions for the Leasehold Mortgagee will be the subject of substantial negotiations. A ground lessor will likely insist upon the following as conditions to the Leasehold Mortgagee being entitled to the benefit of these protective provisions:
 - a. Cure of all monetary defaults. This should include all Fixed Rent, Additional Rent, payment of Taxes, Utility Expenses, environmental clean up or remediation, etc.
 - b. Commencement and diligent pursuit of the cure of all other defaults. The Ground Lease should provide that the ground lessee agrees that the Leasehold Mortgagee has the right of access to the Office Project to implement any such cure. If the lack of access or possession precludes a cure by the Leasehold Mortgagee, the Leasehold Mortgagee should be required to seek the appointment of a receiver for the Office Project.
 - c. Any negotiated provision providing a Leasehold Mortgagee with the right to require the ground lessor to enter into a new lease may expose the ground lessor to liability to the ground lessee if the ground lessee contests the foreclosure, default, and remedies of the Leasehold Mortgagee. This provision should contain an express waiver by the ground lessee of any right against the ground lessor and the Leasehold Mortgagee, the purchaser at the foreclosure sale and all successors and assigns should indemnify, defend and hold the ground lessor harmless from any and all such claims by the ground lessee as a condition of entering into the "new ground lease".
- O. **Default and Default Remedies.** The Ground Lease defines default as the failure to pay rent which is not cured within fifteen (15) days of written notice, failure to cure covenant defaults within sixty (60) days (which is extended up to one hundred twenty days (120) days) abandonment of the property for sixty (60) consecutive days, bankruptcy event, the failure to comply with the provisions governing construction of the Office Building, failure to maintain insurance, etc.

The ground lessor remedies include terminating the Ground Lease, recovering possession, reletting, cure the ground lessee's default, and sue to recover damages.

- i. Events of default and remedies are similar to most commercial leases. A negotiated alternative could include the right of the ground lessor to terminate the ground lessee's interest, assume the Leasehold Mortgage, receive an assignment of the ground lessee's leases, receive an assignment of all other contracts for the Office Project and sue the ground lessee and any guarantors for any damages. This is an extraordinary remedy which would only be available if the ground lessor was a sophisticated developer and the Office Project was either "tied into" or played a significant role in an adjacent project operated by the ground lessor.
- ii. The negotiated version of the Ground Lease seeks the right to extend the cure period from sixty (60) days to one hundred twenty (120) days if the Default is of such a nature that it cannot be cured within sixty (60) days, the cure is immediately commenced and the cure is diligently pursued.
- iii. The combination of the Tenant's cure right and the cure rights of the Leasehold Mortgagee will substantially delay enforcement remedies by the ground lessor. Thus, all cure periods provided to the Leasehold Mortgagee should be conditioned upon the immediate payment of any delinquencies in Rent, Additional Rent, Taxes, insurance, construction liens and all provisions creating a financial obligation together with interest at a default rate, such as the prime interest rate plus five (5%) percent.

P. **Bankruptcy Considerations.** Section 365 of the Bankruptcy Code (11 U.S.C. § 101, *et seq.*) governs the treatment of leases in a bankruptcy context. Regardless of whether the debtor is the ground lessor, the tenant or the sub-tenant, section 365(d)(4) provides that the debtor must assume the lease within the first 60 days of the bankruptcy proceeding or it will be deemed rejected. These bankruptcy provisions apply to both the ground lease and subleases between the ground lessee and sub-tenants (such as the office tenants in the Office Project). Thus, the acceptance and rejection issues are reviewed in the context of the ground lease and the subleases (leases with office tenants) as follows:

- i. The 60-day deadline may be extended but it still provides the debtor with a tight deadline to take action. Similarly, the framework regarding the assumption of the ground lease or sublease, and possible assignment, is the same regardless of the debtor's interest in the property. Generally, unless the other parties to the ground lease or sublease agree otherwise, the debtor must be in a position to cure all defaults under the ground lease or sublease, at the time of assumption, whether they occurred before or after the filing of the case. A ground lease or sublease may only be assigned if it is first assumed. In the case of an assignment after

assumption, the debtor must also provide proof that the assignee has the ability to perform under the lease. On the other hand, the impact of a lease (“ground lease” or “sublease”) rejection is different depending upon the debtor’s interest in the property.

- ii. The rejection of the ground lease terminates the ground lessee’s leasehold interest and provides the ground lessor with a general unsecured rejection damage claim and possession of the property. If the debtor is the ground lessor, a rejection of the ground lease provides the ground lessee with an option. Provided the ground lease treats the rejection as a breach, which is the standard case, the ground lessee can opt to terminate the lease and move out. The ground lessee also has the option to maintain its leasehold interest and continue paying rent as if nothing occurred for the balance of the Ground Lease Term.
- iii. The situation involving a ground lessee as the debtor with a sub-tenant is the murkiest. The ground lessee/sub-landlord has two leases subject to rejection. The ground lessee may reject the ground lease with the ground lessor, which could result in the ground lessor’s right to possession because the sub-tenant’s interest is tied to the ground lessee’s decision and a decision to terminate the ground lease results in a termination of the subordinate sublease ending the sub-tenant’s right to possession. In this context, the sub-tenant may have a cause of action against the ground lessee for ending its right of possession. The ground lessee/sub-landlord may reject the sublease which provides the sub-tenant with the option of terminating or remaining in possession. If the sub-tenant opts to remain in possession, the result under the bankruptcy code is that the ground lessor and sub-tenant may both claim possession. The ultimate right to possession then depends on the ground lease language and applicable nonbankruptcy law. If the sub-tenant obtained a non-disturbance agreement from the ground lessor, the sub-tenant should prevail. If not, the sub-tenant’s right to possession depends on its ability to comply with the terms of the ground lease between the now-defunct ground lessee and ground lessor. If the sub-tenant maintains all payments and complies with all other obligations due to the ground lessor, then there is no actual breach of the ground lease and the sub-tenant should be able to maintain possession. However, if the sub-tenant is unable to meet the terms of the ground lease, the ground lessor will be able to terminate it and the related sublease.
- iv. If the debtor is the sub-tenant, the sub-tenant will have a right to reject the sublease giving the ground lessee/sub-landlord the right to obtain possession and the general bankruptcy rules discussed above apply. So long as there is no default in the ground lease, the ground lessor will be unaffected by the sub-tenant’s bankruptcy. However if the ground lessee is in default and the ground lessor has rights under the ground lease or under a non-disturbance agreement with the sub-tenant, the application of

the bankruptcy rejection rules become more complex. From the ground lessor's prospective, the bankruptcy of the ground lessee or a sub-tenant and the resulting automatic stay will prohibit the ground lessor from obtaining possession of the property. If the ground lessee rejects the ground lease, the ground lessor will regain possession and it will have an unsecured claim against the ground lessee subject to normal bankruptcy limitations on the amount of the claim. If the sub-tenant rejects the sublease, the automatic stay will be lifted and the ground lessor may be able to regain possession if there a default under the ground lease. The ground lessee/sub-landlord will have an unsecured claim against the sub-tenant subject to the normal bankruptcy limitations on the amount of the claim.

- v. In the event the ground lessor files for bankruptcy, it may reject the ground lease. If the ground lessor rejects the ground lease, the Code provides that the ground lessee will have an option to either terminate lease or remain in possession and perform the obligations of the ground lessor under the ground lease. However, the rejection of the ground lease, relieves the ground lessor from its obligation under the ground lease including any obligation to deliver any services. The Code also provides that the ground lessee may perform those obligations and offset the amounts incurred against the rent. If the ground lessee terminates the ground lease, this will similarly terminate the sublease and the rights of the sub-tenant are governed by State Law and the terms of the sublease. If the sublease contains a covenant of quiet enjoyment or a more direct covenant which would state that the rejection by ground lessee of the ground lease constitutes a breach then the sub-tenant will have a claim against ground lessee. It is not clear whether this covenant of quiet enjoyment could be specifically enforced and prevent the ground lessee/sub-landlord from terminating the ground lease. Thus, a sub-tenant is well advised to obtain a non-disturbance agreement or recognition agreement from the ground lessor.
- vi. The bankruptcy of a ground lessee can present interesting challenges to Leasehold Mortgagees. Leasehold Mortgagees who use fully owned subsidiaries to take an assignment of the ground lessee's interest in a ground lease in connection with a foreclosure of the leasehold mortgage should be careful in the foreclosure structure to avoid becoming liable to the ground lessor for ground lease rental payments. In *Valley Investments L.L.C. v. Bancamerica Commercial Corp.*, 88 Cal. App. 4th 816 (2001) the court held that an assignee of the ground lessee was liable to the ground lessor following a foreclosure of the leasehold mortgage. In this case Valley Investments L.C., the ground lessor ("Valley") entered into a long-term ground lease with a developer in 1978 which following a series of assignments resulted in Balboa Landing L.P. ("Balboa") succeeding to the ground lessee's interest. Balboa entered into a leasehold mortgage with BA Mortgage and International Realty Corp. ("BA Mortgage") to develop

the property. In connection with a workout, BA Mortgage refused Balboa's offer of a deed in lieu of foreclosure because of its concern that the assignment would result in a merger of the leasehold mortgage and prevent it from foreclosing junior mechanics liens. As a result, the ground lease was assigned to BancAmerica Commercial Corp. ("BACC"), a wholly owned Bank of America subsidiary. BACC assumed all of the obligations of the ground lessee but did not provide the ground lessor notice of the assignment. BA Mortgage subsequently foreclosed the property (thereby eliminating the subordinate mechanics liens) and sold the leasehold interest to Edgewater Place ("Edgewater") in 1994. Edgewater filed for bankruptcy in 1996 and rejected the lease. Valley retook possession of the property and sought the recovery of ground rent from BACC, the assignee assuming the lease prior to the foreclosure assignment to Edgewater. The court held that BACC was liable for the ground rent notwithstanding the foreclosure proceedings because it was an interim assignee that assumed the obligations under the ground lease including the obligation to pay ground rent.

Q. Miscellaneous Provisions.

- i. The ground lessee should indemnify, defend and hold the ground lessor harmless from all claims involving personal injury and property damage, use and occupancy of the Ground Lease Premises, violations of law, construction liens and other claims involving construction of improvements, acts or omissions of any sub-tenant and all environmental matters. The negotiated version of the Ground Lease provides for an indemnification provision by the ground lessor with regard to environmental matters. If the ground lessor is not a developer, the ground lessee would typically be responsible for all environmental matters in connection with its due diligence and an indemnity would not be provided by the ground lessor. Similar to a purchase and sale transaction, the ground lessor (like the seller) may be willing to provide limited environmental representations based upon actual knowledge or best of knowledge.
- ii. The negotiated form of ground lease includes a provision addressing the manner and timing for providing required consents or approvals. Consents or approvals are required to be provided within ten (10) days or the consent or approval is deemed given. The ground lessor and the ground lessee are required to "act in good faith and in a commercially reasonable manner". Claims that parties are not acting in good faith are submitted to arbitration.
- iii. The negotiated form of ground lease contains a right of first refusal for the ground lessee to purchase the Ground Lease Premises on the same terms and conditions offered by a bona fide purchaser. The ground lessee has a period of thirty (30) days within which to exercise the right of first offer.

Upon such failure by the ground lessee, the ground lessor has the right to sell to the bona fide purchaser pursuant to the terms and conditions of the original offer (which may be modified by nonmaterial changes). The right of first refusal does not apply to a foreclosure, deed in lieu of foreclosure, conveyance by Landlord's mortgagee, or a bona fide sale to trusts, individuals and entities comprising of the Landlord. Alternative negotiated provisions could include either an option to purchase or right of first offer. The option would provide the ground lessee with an absolute right to purchase at a negotiated price (either fixed or based upon a formula tied to the income stream or appraised value) and at a fixed date (e.g. tenth lease year, commencement of each option term, etc.). A right of first offer may be more acceptable to the ground lessor because it provides the ground lessee with only the right to make an offer to purchase without the ground lessor being obligated to accept the proposed purchase price. A right of first offer provision usually requires a notice by the ground lessor that it desires to sell the Ground Lease Premises and a short timeframe (10 – 30 days) for the ground lessee to submit a written offer. Each of these provisions restrict the ground lessor's absolute right to sell, with the option to purchase being the most restrictive and the right of first offer being the least restrictive.

- iv. Neither the ground lease nor negotiated ground lease requires a personal guaranty. However, personal guarantees by creditworthy individuals may be required depending upon the circumstances of the transaction.

EXHIBIT A

**LANDLORD'S FORM OF GROUND LEASE
GROUND LEASE**

THIS GROUND LEASE, dated the _____ day of _____, 20__ (this "**Lease**"), by and between _____, whose address is _____ (hereinafter referred to as "**Landlord**"), and _____, whose address is _____ (hereinafter referred to as "**Tenant**").

SECTION 1. Premises:

Landlord hereby leases and lets to Tenant, and Tenant hereby takes and hires from Landlord, upon and subject to the terms, conditions, covenants and provisions hereof, all of Landlord's interest in that certain tract, piece or parcel of land, situate in the City of _____, County of _____, and State of Michigan, more particularly described on Exhibit A annexed hereto and made part hereof, together with any and all of the currently existing improvements, appurtenances, rights, privileges and easements benefiting, belonging or pertaining thereto, and any right, title and interest of Landlord, if any, in and to any land lying in the bed of any street, road or highway (open or proposed) to the center line thereof, in front of or adjoining said tract, piece or parcel of land and together with any strips and gores relating to said tract, piece or parcel of land (all the foregoing hereinafter sometimes referred to as the "**Demised Premises**"). The lease of the Demised Premises is subject to all zoning ordinances affecting the Demised Premises, building, use and other restrictions and matters of record. The Demised Premises together with any improvements which are constructed by Tenant after the date of this Lease shall be hereinafter referred to as the "**Property**." Landlord and Tenant acknowledge that Tenant has entered into a lease (the "**Office Lease**") for _____ the space in the Building with _____ (the "**Office Tenant**")

SECTION 2. Term:

(a) The term of this Lease shall commence on the date of the execution and delivery of this Lease (hereinafter referred to as the "**Commencement Date**").

(b) The initial term of this Lease shall commence on the Commencement Date and expire thirty-five (35) years after the Commencement Date, unless sooner terminated or extended as herein provided (the "**Initial Term**").

(c) Provided Tenant is not in default at the expiration of the Initial Term or any Extension Term (as hereinafter defined), as applicable, after notice and the expiration of any applicable cure periods, Tenant shall have the right to extend the Initial Term or Extension Term, as applicable, for three (3) additional periods of twenty (20) years each (each such renewal referred to as an "**Extension Term**"), upon all of the terms and conditions of this Lease (other than the further right to extend after such three (3) Extension Terms), and at the Basic Rent set forth in Section 3(b) hereof. Each such extension shall automatically be exercised unless Tenant

delivers written notice of termination to Landlord given no later than ninety (90) days before the date on which this Lease would otherwise extend.

(d) The Initial Term of this Lease and the Extension Terms (unless Tenant elects not to extend), are collectively herein referred to as the "**Term**."

SECTION 3. Rent:

(a) Tenant covenants and agrees to pay Landlord for the Demised Premises, without any offset, abatement or deduction whatsoever, and without previous demand therefor, basic rent ("**Basic Rent**") as set forth below. For purposes of this Lease, each consecutive twelve month period shall be referred to hereafter as a "**Lease Year**"). Provided, however, the first (1st) Lease Year shall be a long Lease Year and shall commence on the Commencement Date of this Lease and shall expire on December 31, 20____. Tenant's payment of Basic Rent shall commence on the Commencement Date. The Basic Rent shall be \$_____. Commencing on the first (1st) day of the third (3rd) Lease Year and on the first (1st) day of each Lease Year thereafter throughout the entire Term of this Lease (including any Extension Terms), the Basic Rent shall increase by (i) ____ percent (____%) over the Basic Rent that had been owing during the preceding Lease Year during the term of the Office Lease on the commencement of the new Lease Year, and (ii) thereafter ____ percent (____%) over the Basic Rent that had been owing during the preceding Lease Year. Notwithstanding anything herein to the contrary, the Basic Rent shall be adjusted up by \$1.00 per square foot for every square foot by which the gross square footage of the Building shall be more than _____ square feet at any time during the Term of this Lease.

(b) As of the date the payment of Basic Rent commences under this Lease, all Basic Rent per annum shall be payable by Tenant in monthly installments on the first day of each month of each Lease Year during the Term, and shall be payable at the office of Landlord first above set forth or at such other place of which Landlord shall have given Tenant written notice at least thirty (30) days in advance. If the date the payment of Basic Rent commences under this Lease is not the first day of the first month of a Lease Year, then the Basic Rent due hereunder shall be prorated for the balance of the current month.

(c) As hereinafter used the term "**Rent**" shall be deemed to include the Basic Rent and any other additional rent, if any, payable by Tenant to Landlord hereunder.

SECTION 4. Rent to Be Net to Landlord:

The purpose and intent of this Lease is that the Basic Rent provided for in Section 3 hereof shall be, an absolutely net return to Landlord and shall continue unreduced and unabated throughout the entire Term and shall be absolutely net of all costs, expenses, taxes (real and personal), assessments and charges of every kind and nature whatsoever relating to the ownership, occupancy, use, maintenance, upkeep and preservation of the Demised Premises and of said leasehold interest and of this Lease shall be borne and paid by Tenant so that the rental together with any such adjustments constitute the minimum income realized by Landlord from the Premises. Tenant will indemnify and hold harmless Landlord from and against such costs, expenses and charges.

SECTION 5. Use of Demised Premises:

Pursuant to the Plans (as hereinafter defined), approved by Landlord, the Demised Premises shall initially be used by Tenant solely for the operation of a first-class, non-high rise office building (per City of _____ ordinances). The cafeteria or similar type of food service facilities shall require the consent of Landlord serve only the Building and shall be of a type customary in first-class downtown _____ office buildings or otherwise in keeping with the character and quality of uses in the immediately surrounding development commonly referred to as "_____" (collectively, the "**Surrounding Development**"). As of the date hereof, "first-class office building" shall mean a building comparable to _____, _____ and _____.

SECTION 6. Taxes and Utility Expenses:

(a) (i) From and after the Commencement Date, Tenant shall, during the Term, as additional rent, pay and discharge punctually, as and when the same shall become due and payable, all taxes, special and general assessments, water rents, rates and charges, sewer rents and other governmental impositions and charges of every kind and nature whatsoever, extraordinary as well as ordinary (hereinafter referred to as "**Taxes**"), and each and every installment thereof which shall or may during the term of this Lease be charged, levied, laid, assessed, imposed, become due and payable, or liens upon or for or with respect to the Demised Premises or any part thereof, or any buildings, appurtenances or equipment owned by Tenant thereon or therein or any part thereof, taxes based upon the receipt of rent (including the Michigan Single Business Tax), and any other federal, state or local charge (general, special, ordinary or extraordinary) which may now or hereafter be imposed, levied or assessed against the Property or any part thereof, together with all interest and penalties thereon, under or by virtue of all present or future laws, ordinances, requirements, orders, directives, rules or regulations of the Federal, State, County, Town and City governments and of all other governmental authorities whatsoever (all of which shall also be included in the term "Taxes" as heretofore defined) and all sewer rents and charges for water, steam, heat, gas, hot water, electricity, light and power, cable, internet and other service or services, furnished to the Demised Premises or the occupants thereof during the term of this Lease (hereinafter referred to as "**Utility Expenses**"). To the extent Landlord or Landlord's Affiliate will supply any of the utility services to Tenant, Landlord or Landlord's Affiliate, as applicable, and Tenant shall enter into a separate agreement with respect to such service.

(ii) If any present or future enactment of the State of Michigan or any political subdivision thereof or any governmental authority having jurisdiction thereof imposes a tax and/or assessment of any kind or nature upon, against or with respect to the Rent payable by Tenant to Landlord hereunder or on the income of Landlord derived from the Demised Premises, or with respect to Landlord's, or the individuals' or entities' which form Landlord herein, ownership of the land and buildings comprising the Demised Premises, and/or impose a tax or surcharge of any kind or nature upon, against or with respect to the Demised Premises, either in addition to or by way of substitution for all or any part of the taxes and assessments levied or assessed against such land and such buildings, then for the purpose of this Section 6, such amount shall be calculated on a calendar year basis and Tenant shall be obligated to pay the same

to Landlord within thirty (30) days after Tenant receives a written invoice therefor from Landlord.

(iii) Tenant shall promptly deliver to Landlord copies of paid real property tax bills as soon as the same are received by Tenant.

(b) Tenant shall be deemed to have complied with the covenants of this Section 6(b) if payment of such Taxes shall have been made thirty (30) days prior to the end of any period allowed by law or by the governmental authority imposing the same during which payment is permitted without penalty before the same are deemed delinquent.

(c) All such Taxes which shall become payable during each of the calendar or fiscal tax years, as the case may be, in which the Commencement Date occurs and in which the Term of this Lease terminates, shall be apportioned prorata between Landlord and Tenant in accordance with the respective portions of such year before and after the Commencement Date and before and after the termination date, as the case may be.

(d) Taxes for the first and last Lease Year shall be appropriately prorated based on the most recent real estate tax bill then available.

SECTION 7. Tenant Taking Demised Premises "AS IS, WHERE IS":

Tenant acknowledges that as of the date of this Lease it has inspected, analyzed, reviewed and evaluated the Demised Premises, that it and its representatives will have conducted such investigation of the Demised Premises as deemed necessary by Tenant and that it is thoroughly aware of the condition of the Demised Premises. The Demised Premises and any other property or rights furnished or to be furnished under or in connection with this Lease to Tenant are furnished "AS IS", "WHERE IS" AND WITH ALL FAULTS AND WITHOUT ANY REPRESENTATION OR WARRANTY OF ANY NATURE WHATSOEVER, EXPRESS OR IMPLIED, ORAL OR WRITTEN, AND IN PARTICULAR, WITHOUT ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; AND, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED FOR IN THIS LEASE, LANDLORD DISCLAIMS AND TENANT HEREBY WAIVES ANY OBLIGATION, LIABILITY, RIGHT, CLAIM OR DEMAND IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE WITH RESPECT TO THE DEMISED PREMISES EXCEPT AS EXPRESSLY SET FORTH HEREIN. Without limiting the generality of the foregoing, Tenant acknowledges and agrees: (i) that Landlord neither represents nor warrants that the Demised Premises or any part thereof leased under this Lease will operate satisfactorily; (ii) that, except as specifically set forth herein, Landlord shall have no liability or responsibility for the condition and/or operation of the Demised Premises; and (iii) that Tenant is leasing the Demised Premises based solely upon its own inspection, evaluation, review and analysis, and Tenant assumes the entire risk associated with such inspection, evaluation, review and analysis being incomplete or inaccurate.

SECTION 8. Construction of Improvements:

(a) Landlord shall not be required to perform any construction upon or in connection with the Demised Premises or supply any utilities or facilities thereto and Tenant shall be solely responsible therefor at Tenant's sole cost and expense.

(b) Tenant shall, at its sole cost and expense, raze any existing improvements upon the Demised Premises and provide all work and materials of whatsoever nature in order to construct a first class office building (referred to herein as the "**Building**") of not less than _____ thousand (_____) gross square feet and not more than _____ thousand (_____) gross square feet, the Access Road (as hereinafter defined) and site preparation, utilities, landscaping, irrigation, and all other improvements whatsoever in connection therewith, as approximately set forth on the preliminary design plan attached hereto as Exhibit D (the Building and all other such improvements are herein collectively referred to as the "**Improvements**").

(c) Notwithstanding anything herein contained to the contrary, any change to the Improvements shall be subject to Landlord's prior written approval. Tenant agrees that Landlord may unreasonably withhold its approval to the extent that the materials and signage utilized on the exterior of the Building are changed in any respect. Tenant shall submit details constructions drawings, plans and specifications (together with all supporting documentation and information necessary for Landlord to review the plans) relating to the Improvement (the "**Plans**"), to Landlord for Landlord's written approval, before submitting the Plans for building permits and shall not construct any Improvements unless and until Landlord has approved the same in writing. Landlord shall review such Plans, as revised from time to time, and advise Tenant of any changes required by Landlord. In the event that Landlord rejects the Plans or requests additional information to complete its review, Tenant shall revise the Plans or submit such additional information as reasonably required by Landlord in order to obtain Landlord's approval of the Construction Approval Matters. No change shall be made with respect to any Improvements without Landlord's prior written approval.

(d) Tenant shall, at its sole cost and expense obtain any and all requisite building, construction, zoning and other licenses, variances, permits and approvals relating to the construction of the Improvements.

(e) Upon issuance of such building permits, Tenant shall promptly undertake the construction of the Improvements and diligently prosecute such construction to completion. All construction of the Improvements shall be performed in accordance with the Plans relating thereto as approved by Landlord. The following provisions shall govern the construction of the Improvements.

(i) To the end that there shall be no labor disputes which would interfere with any construction or operation of the Improvements, Tenant agrees to engage the services of only such contractors or subcontractors covered by a collective bargaining agreement with the appropriate jurisdictional trade union, and, that will work in harmony and without causing any labor dispute with each other and with the employees, contractors and subcontractors of all others working in or upon the Building or any part thereof, and Tenant shall require its contractors and subcontractors to employ only such labor as will work in harmony and without causing any labor dispute with each other, with Tenant's employees, contractors and

subcontractors and with the employees, contractors and subcontractors of all others working in or upon the Building or any part thereof. Tenant shall be solely responsible for the negotiation and preparation of all development, architectural and construction contracts. Tenant shall enter into a fixed sum or stipulated sum construction contract with a general contractor satisfactory to Landlord.

(ii) During construction, Tenant shall pay for all electricity, water and other utilities consumed in performing such construction. Tenant shall be responsible for the removal of all construction debris and trash relating to the construction of the Improvements.

(iii) Tenant agrees not to commence construction of the Improvements until Tenant has secured a building permit and all other applicable permits, Landlord's approval of the Plans and a certificate of insurance naming all appropriate parties as additional insured and evidencing the coverage required by Section 16(b) of this Lease.

(iv) All such work shall conform to applicable statutes, ordinances, laws, codes and governmental regulations. Tenant shall obtain and convey copies to Landlord of all applicable permits and all approvals as may be required by local or state authorities and utility companies. Meter cost fees, tapping, use and capital charges incurred by reason of supplying utilities to the Demised Premises are to be paid by Tenant.

(v) All of the contractors performing any such work shall be licensed contractors, capable of performing quality workmanship. Landlord shall be entitled to rely on the same completion security provided by Tenant to its lender (although Landlord's interest may be subordinated to that of the Lender's), including without limitation, a guaranty from the parent organization for the general contractor and/or payment and performance bonds ensuring completion of the Improvements.

(vi) No approval by Landlord shall be deemed valid unless the same shall be in writing.

(vii) All of such work shall be performed in a first-class, workmanlike manner and shall be in good and usable condition at the date of completion.

(viii) Tenant shall take all reasonably necessary measures to minimize any damage, disruption or inconvenience in the area of the Demised Premises caused by such construction, and make adequate provision for the safety and convenience of all persons affected thereby. Dust, noise and other effects of such construction shall be controlled using accepted methods customarily utilized in order to control such conditions. Tenant shall not permit dirt, debris, equipment, trash or the like to be located outside of the Demised Premises, except as otherwise agreed to by Landlord and Tenant.

(ix) After completion of the Building, and upon receipt by Tenant, Tenant shall supply Landlord with a copy of the Certificate of Occupancy from the local building department and one (1) set of "as-built" drawings for record purposes.

(x) Simultaneously with the execution of this Lease, Tenant shall enter into a collateral assignment with Landlord, which shall assign to Landlord all permits, contracts, plans,

specifications, reports, and other contract rights relating to the construction of the Improvements. An event of default under this Lease shall be an event of default under the collateral assignment.

(xi) Construction of the Improvements shall commence on or before _____, and shall be substantially completed by the earlier of (i) _____, or (ii) the date the Building is required to be completed pursuant to the terms of the Office Lease (the earlier of such dates hereafter referred to as the "**Completion Date**"). For purposes of this provision, "commencement" shall mean the beginning of installation of the foundation for the Building. Once commenced, Tenant shall diligently proceed with the construction of the Improvements. For purposes of this provision, "completion" shall mean the earlier of (a) use and occupancy of the Building by Office Tenant, or (b) issuance of a final certificate of occupancy for the Building.

(f) Tenant intends to construct an access road for the ingress to and from the Building at a location and of a size necessary for Landlord's intended use and in compliance with all applicable Laws and otherwise of a mutually agreeable nature, as reflected on the approved Plans (the "**Access Road**"). Tenant shall be responsible for all costs to construct the Access Road. Tenant shall coordinate the design of the Access Road with Landlord in order to incorporate such Access Road within the Improvements. The Access Road shall be constructed on or before the Completion Date; provided, however, that at all times prior to installation of the Access Road Landlord shall be provided, and Tenant shall cause to be maintained, free and clear access to the Building which is of a nature and quality equal to the access available to Landlord as of the date of this Lease. Landlord and Tenant agree to maintain those portions of the Access Road allocated to each party in accordance with Exhibit C attached hereto.

(g) Upon expiration or the earlier termination of the Term, title to all Improvements, including fixtures shall vest in and become the property of Landlord without any additional compensation or further instrument of conveyance. Tenant shall, if so requested, deliver, at no cost or expense to Landlord, a confirmatory deed or other document requested by Landlord of the foregoing. The Improvements shall be surrendered and transferred to Landlord free and clear of all liens or claims to or against them by Tenant or any third persons, and Tenant shall defend and indemnify Landlord against all liability or loss arising from such liens or claims. Notwithstanding the foregoing, until such expiration or earlier termination of the Term, Tenant alone shall have the right to deduct all depreciation on Tenant's income tax returns for the Improvements and any alterations, improvements or additions thereto and title to all Improvements shall be vested in Tenant. Provided, however, Tenant shall not waste or destroy the Improvements and the Improvements shall not be removed or severed from the Demised Premises.

(h) The parties covenant and agree for themselves and all parties claiming under them that the Improvements are real property. It is the intent of the parties that the separation of title to the Improvements and the Demised Premises is not to change the character of the Improvements as real property. It is also the intention and agreement of the parties that the ownership of Tenant's leasehold estate and all of Tenant's right, title and interest in and to the Improvements shall be non-separable and that any attempt to transfer such right, title and interest in the Improvements shall be void and ineffective unless accompanied by a complete transfer of Tenant's leasehold estate in accordance with the terms hereof.

SECTION 9. Repairs and Alterations:

(a) Landlord shall have absolutely no obligation to make any repairs, replacements or improvements in and to the Demised Premises or to maintain the same.

(b) Tenant, at Tenant's sole cost and expense, shall keep and maintain in first-class appearance, in a condition consistent with the adjacent Surrounding Development or, to the extent Landlord or Landlord's Affiliate does not have a significant interest in a portion of the Surrounding Development, a first-class, non-high rise office building and in good order, condition and repair (including replacement of parts and equipment, if necessary) the Demised Premises, the Access Road and every part thereof and any and all appurtenances thereto wherever located, and all other repairs, replacements, renewals and restorations, interior and exterior, ordinary and extraordinary, foreseen and unforeseen, including, without limitation, all maintenance, replacements and repairs of the foundation, all structural portions, exterior walls and roof of the Building, heating and air conditioning, plumbing and all electrical systems, sprinkler systems, walls, floors and ceilings and all parking, landscaping, drives and other common areas upon the Demised Premises. The duty to repair shall include the duty to replace whenever necessary or appropriate.

(c) Tenant shall not have the right to make any and all alterations, improvements and/or additions to the Improvements without first obtaining Landlord's prior written approval. Prior to making any alterations, improvements or additions, Tenant shall submit to Landlord plans and specifications therefor for Landlord's prior written approval. Tenant shall not make any alterations, improvements or additions prior to receiving Landlord's prior written approval.

(d) At the expiration or earlier termination of the Term, Tenant shall surrender the Demised Premises and all improvements in good order, condition and repair, subject to normal wear and tear and the provisions of Sections 17 and 18 hereof.

SECTION 10. Requirements of Public Authority:

(a) Subject to the terms and conditions contained in Section 24 below, during the Term of this Lease, Tenant shall, at its own cost and expense, promptly observe and comply with all present and future laws, ordinances, requirements, orders, directives, rules and regulations of the Federal, State, County and City governments and of all other governmental authorities affecting the Property or appurtenances thereto or any part thereof (including the structural portions thereof) whether the same are in force as of the Commencement Date or any in the future be passed, enacted or directed (hereinafter referred to as the "Laws"), and Tenant shall pay all costs, expenses, liabilities, losses, damages, fines, penalties, claims and demands, including reasonable counsel fees, that may in any manner arise out of or be imposed because of the failure of Tenant to comply with the covenants of this Section 10. The term "Laws" shall include all Environmental Laws (as hereinafter defined).

SECTION 11. Covenant Against Liens:

Except as provided in Section 20 below and liens for taxes not yet due and payable, Tenant shall not allow any liens to attach to the Property or any leasehold estates created pursuant to this Lease. If, because of any act or omission of Tenant or any person claiming an

interest in the Property through Tenant (such as contractors and subcontractors), any mechanic's lien or other lien, charge or order for the payment of money shall be filed against the Property or any leasehold estates created pursuant to this Lease, Tenant shall, at its own cost and expense, cause the same to be discharged of record or bonded over in compliance with the Michigan Construction Lien Act within ten(10) days after of the filing thereof. Tenant shall indemnify and save harmless Landlord against and from all costs, liabilities, suits, penalties, claims and demands, including reasonable counsel fees, resulting from any liens that attach to the Property or any leasehold estates created pursuant to this Lease.

All materialmen, contractors, artisans, mechanics, laborers and any other persons or entities now or hereafter contracting with Tenant (or Tenant's contractors or agents) for the furnishing of any labor, services, materials, supplies or equipment with respect to any portion of the Property, are hereby charged with notice that they must look exclusively to Tenant to obtain payment and/or security for the same. Landlord shall be entitled to file and/or post on the Property such notices, including notices of non-responsibility and other similar notices, evidencing Tenant's obligations with respect to any of the matters covered by this Section 11.

SECTION 12. Access to Demised Premises:

(a) Subject to the limitations set forth herein, Landlord or Landlord's agents and designees shall have the right, but not the obligation, to enter upon the Property at all reasonable times (or at any time in the event of an emergency) to examine same and to exhibit the Property to prospective purchasers and prospective tenants.

(b) Landlord hereby reserves the right to access the portion of the Demised Premises not improved with the Building at any and all times for the use, operation, maintenance, construction and replacement of the Access Road. Landlord shall also have the right, at its sole cost and expense, to construct on the Demised Premises in a location near the Building, such additional (permanent or temporary) communication, broadcast or electronic devices deemed necessary by the Landlord for the Surrounding Development. Tenant shall not alter the Access Road without Landlord's prior written approval. Tenant shall in no way interfere with, limit or block use of the Access Road by Landlord.

(c) Landlord shall construct a parking garage on the land identified as _____ of Exhibit B and may construct roadway and pathway improvements within the Easement Area in connection with the development of the Landlord Improvements. Landlord shall grant to Tenant, a non-exclusive license throughout the term of this Lease for use of all roadways and pathways as may exist from time to time within the Easement Area (the "**Road License**") pursuant to a separate license agreement dated as of the date hereof (the "**Road License Agreement**"). The Road License Agreement shall provide, in part, that for so long as Landlord or Landlord's Affiliates own _____, Landlord shall maintain such portions of the Easement Area which are used for the Landlord Improvements, in a condition commensurate with the rest of the Surrounding Development at Landlord's sole cost and expense (subject to such exclusions as set forth in the Road License Agreement, such as Tenant's liability for any damage to the Landlord Improvements caused by Tenant, its employees, contractors or agents). Upon completion of the design of the Landlord Improvements, to the extent any of the roadways and pathways to be constructed by Landlord on _____ are not located within the

Easement Area, or to the extent such roadways and pathways to be constructed thereon will not abut the Demised Premises, Landlord shall grant to Tenant a license to enter upon the Easement Area and construct any roadways and pathways necessary to connect with _____ Street or the Landlord Improvements, at Tenant's sole cost and expense. Upon constructing such roadways and pathways necessary to connect to the Demised Premises, Tenant shall maintain such roadways and pathways throughout the term of this Lease. Landlord and Tenant each agree, with respect to the design, plans and specifications of all such roadways and pathways to be located within the Easement Area, regardless of which party is actually constructing such roadways and pathways, the non-constructing party shall have a right of approval of such design, plans and specifications, which approval shall not be unreasonably withheld.

(e) In addition to the Access Easement, Landlord shall use good faith efforts to assist Tenant in obtaining a perpetual, non-exclusive easement located within the Easement Area for the benefit of the Demised Premises (the "**Drainage Easement**") from _____ for the construction and maintenance of certain drainage facilities as are required for the development of the Demised Premises. The exact location of the drainage facilities within the Easement Area will be subject to Landlord's reasonable approval for purposes of confirming that the drainage facilities will not interfere with the Landlord Improvements. The terms and conditions of the easement agreement shall be subject to Landlord's review and approval for purposes of confirming Landlord's ability to continue to use the Easement Area for the Landlord Improvements. Subject to the foregoing, Landlord further agrees to join in the granting of the Drainage Easement for purposes of granting its consent to the Drainage Easement and for any other purpose reasonably required by Tenant or _____.

(f) Landlord shall grant to Tenant a license for the term of this Lease for the construction and maintenance of such drainage facilities within the Drainage Easement pursuant to a separate license agreement dated as of the date hereof (the "**Drainage License Agreement**"). The Drainage License Agreement shall provide, in part, that Tenant shall restore the surface of the Drainage Easement after construction and after any future maintenance, to the condition which existed prior to construction or maintenance, as applicable, to the extent reasonably practicable. To the extent Landlord has approved the location of the drainage facilities, Landlord agrees not to build any portion of the parking garage or other structures over the location of the drainage facilities.

(g) Upon execution of the Road License Agreement and the Drainage License Agreement, such licenses, or a short form version thereof, shall be recorded in the real estate records of _____ County, Michigan. Under no circumstances shall Landlord be required to commence a lawsuit or legal action to obtain the Access Easement or Drainage Easement.

SECTION 13. Assignment and Subletting:

(a) Subject to the provisions of Section 13(b) hereof, Tenant shall have the right to assign this Lease or sublet all or any portion of the Building with Landlord's consent. Landlord may withholding its consent to any assignment of this Lease for any reason, including but not limited to, if the proposed transferee (1) is not creditworthy; (2) is not in good standing with the State in which it is formed (to the extent the transferee is an entity which is created by filing with

a State); (3) does not have experience owning or operating buildings similar in nature to the Building; (4) is a tenant or occupant in the Surrounding Development, if such party would be relocating from the Surrounding Development to the Building; (5) is a company in competition with Landlord's affiliates; or (6) is a federal, state, county, or local governmental body.

Consent by Landlord to one or more assignments of this Lease or to one or more sublettings of the Building shall not operate to exhaust Landlord's rights under this Section 13(a). If Tenant desires to assign this Lease or sublet all or any portion of the Building, Tenant shall give notice to Landlord setting forth the terms of the proposed assignment or subletting. Notwithstanding any assignment or subletting, Tenant shall not be released from any and shall be responsible for the performance of all of Tenant's obligations under this Lease.

(b) Except for collateral assignments granted in connection with financings, Tenant shall not have the right to assign this Lease until after the completion of the Building.

(i) Notwithstanding anything in this Lease or the sublease to the contrary Landlord shall not in any event be (a) liable for any act, omission or default of Tenant; (b) subject to any claims, abatements, offsets, counterclaims or defenses that subtenant may have against Tenant; (c) bound by any rent, additional rent or other charges that subtenant may have paid for more than the then current month to Tenant; (d) bound by any amendment, modification, of the sublease; (e) liable for any security or other deposit; (f) liable for any covenant or agreement to undertake or complete demolition, construction or installation of improvements on the Demised Premises or any part thereof; (g) liable for any payment to subtenant of any sums, or granting to subtenant of any credit, with respect to the cost of preparing, furnishing or moving in to the Building or any part thereof; (h) liable for any obligation of Tenant under the sublease; or (i) liable for any representation or warranty given or made by Tenant, including without limitation, any representation or warranty with respect to the environmental or other condition of the Demised Premises, construction, zoning, compliance with laws or building codes, or title, or any indemnity, hold harmless or defense obligation with respect thereto; and

(ii) If Landlord becomes liable to subtenant under the sublease for any claim, loss or damage, subtenant shall look solely to the Property for recovery of any judgment or damages from Landlord, and Landlord shall have no personal liability, directly or indirectly, under or in connection with the sublease. Nothing in this Lease shall impose any obligation on Landlord for the management, control or condition of the Property prior to the time, if any.

(c) In the event of a Sale (as defined below) by Tenant of this Lease, Tenant hereby covenants and agrees to pay to Landlord, in cash, 1/3 of the Available Proceeds (as defined below). Such amount shall be paid immediately following Landlord's assignment of the Ground Lease and the closing of the Sale. Tenant shall provide Landlord with written notice of any proposed Sale at least thirty (30) days prior to the intended closing date for the Sale (the "Sale Notice"). In the event that no Available Proceeds are available, then the Tenant has no obligation to pay Landlord as described above and any obligation of any party to pay Landlord such amount shall cease.

(i) The term "Available Proceeds" shall mean the cash value of all consideration received by Tenant for the Sale (including, but not limited to, cash, stock or other

ownership interests in an entity, real or personal property or debt relief), less (a) the amounts paid or to be paid for the expenses of Tenant incurred in connection with the Sale, including, without limitation, legal and accounting fees, brokerage commissions, transfer taxes (or similar impositions), prorations, title and survey charges, and repayment of any loan (including accrued but unpaid interest and including any prepayment penalties) made to Tenant, (b) the amounts of any payments due to members of Tenant which are project costs as defined in the project budget provided to the lender; and (c) the return of \$3 million of equity to the members of Tenant.

(ii) The term "Sale" shall mean: (a) an assignment of this Lease by Tenant which requires Landlord's consent which is made in connection with the sale of all or substantially all of the assets of Tenant, (b) any sale, in one or more related transactions, of more than 50% of the membership interests of Tenant, or (c) any merger or consolidation of Tenant with another entity which results in any party other than the current members of Tenant owning more than 50% of the ownership interests in the surviving entity. For purposes of this provision, a Sale will not be deemed to occur upon the assignment or transfer of this Lease to (a) a Leasehold Mortgagee, (b) a purchaser at a foreclosure sale with respect to a Leasehold Mortgage, or (c) a purchaser/assignee acquiring the Lease from a Leasehold Mortgagee or other purchaser at a foreclosure sale (provided, however, this provision and the obligation to make the payments described herein to Landlord shall be binding upon and assumed by such purchaser/assignee).

SECTION 14. Signs:

(a) Subject to Landlord's rights of approval as herein provided with respect to exterior signs, Tenant and Tenant's subtenants shall have the right to install, maintain and replace in, on or over or in front of the Property or in any part thereof such signs and advertising matter as Tenant may desire, and Tenant shall comply with any applicable requirements of governmental authorities having jurisdiction and shall obtain any necessary permits for such purposes. As used in this Section 14, the word "sign" shall be construed to include any placard, light or other advertising symbol or object, irrespective of whether same be temporary or permanent.

(b) Tenant shall not sell or grant naming and/or exterior signage rights other than to tenants within the Building. So long as Landlord or Landlord's Affiliate owns, controls or has some other meaningful interest (whether by title, lease or concession right) in all or a part of the Surrounding Development, Tenant shall not, without Landlord's prior written consent, provide signage on the Building or the Demised Premises (other than on the interior of the Building to the extent not visible from the exterior) to any entity whose primary business is as owner of a _____, _____, _____ or _____, although Tenant may provide signage to any subsidiary or related entities, so long as such subsidiary or related entities' business is not _____ itself. By way of example only, Tenant shall not provide signage to _____ so long as it is still in the _____ business, but may provide signage to subsidiaries of _____ that may _____ but do not _____. "**Landlord's Affiliate**" means (i) the _____, (ii) _____ or _____, (iii) any lineal descendants of _____ or _____, (iv) any entity that is majority or wholly owned or controlled by, or is under common control with,

Landlord or the _____ or (v) any entity that is majority or wholly owned or controlled by _____ and/or _____ and/or any of their lineal descendants.

(c) Tenant shall have such other signage rights with respect to the adjacent Surrounding Development as set forth in any separate agreement now or in the future entered into by Tenant and Landlord or any of Landlord's Affiliates.

SECTION 15. Indemnity:

Tenant shall indemnify, defend, and hold harmless Landlord and its members, partners, directors, officers, stockholders, employees, legal representatives, agents, successor or assigns from and against any and all claims, actions, obligations, judgments, damages, liability, cost and expense, including attorneys' fees, arising from or related to (a) any occurrence in, upon or at the Demised Premises (including loss of life, personal injury and/or damage to property), (b) the occupancy or use by Tenant or any subtenant of the Demised Premises or any part thereof, (c) Tenant's failure to comply with any provision of this Lease, and/or (d) any act or omission of Tenant, its subtenants, agents, contractors, suppliers, employees, servants, customers or licensees and any person or entity conducting business in the Demised Premises. Any defense obligation shall be undertaken with legal counsel reasonably approved by Landlord. Tenant's obligation under this Section 15 shall survive the termination or expiration of this Lease.

SECTION 16. Insurance:

(a) Tenant shall, at its sole cost and expense, from and after the Commencement Date, and during the entire term hereof, procure, pay for and keep in full force and effect: (i) an occurrence form commercial general liability policy, including insurance against assumed or contractual liability under this Lease with respect to the Demised Premises and the operations of Tenant and any person or entity conducting business in, on or about the Demised Premises in which the limits with respect to personal liability and property damage shall not be less than Five Million Dollars (\$5,000,000) combined single limit for bodily injury and property damage per occurrence; (ii) special causes of loss property insurance for the full replacement value (without any deductions for depreciation or otherwise) of the Property, including business interruption insurance for a period of at least one (1) year; (iii) special extended coverage property insurance, including theft and, if applicable, boiler and machinery coverage, written at a replacement cost value in an adequate amount to avoid coinsurance and a replacement cost endorsement insuring Tenant's trade fixtures, furnishings, equipment, plate glass, signs and personal property of Tenant; (iv) workers' compensation coverage as required by law; (v) with respect to alterations, improvements and the like required or permitted to be made by Tenant hereunder, contractor's protective liability and builder's risk insurance, in amounts satisfactory to Landlord; and (vi) product liability coverage, including, without limitation, if liquor or food is sold upon the Demised Premises, liquor liability coverage and coverage for liability arising out of the consumption of food and/or alcoholic beverages on or obtained at the Demised Premises, of not less than Two Million Dollars (\$2,000,000) combined single limit per occurrence for personal injury and death and property damage. From time to time during the Term of this Lease, at Landlord's request, Tenant shall (1) procure, pay for and keep in full force and effect such other insurance as Landlord shall reasonably require, and (2) increase the limits of such insurance as Landlord shall reasonably require. The above required liability coverage of \$5,000,000 may be

achieved by using an umbrella liability policy in combination with Tenant's primary liability policy.

(b) Prior to commencement of the construction of the Improvements and until full completion thereof, Tenant shall secure, pay for and maintain or cause its contractor to secure, pay for and maintain, as the case may be, during the construction of and fixturing work within the Demised Premises, the following forms of insurance coverage:

(i) Workmen's Compensation Insurance—statutory limits;

(ii) Commercial General Liability Insurance—(including Contractor's Protective Liability, Completed Operations, Contractual Liability, Explosion and Collapse coverage), with a combined single limit of Five Million Dollars (\$5,000,000) each occurrence with respect to bodily injury and/or property damage (which coverage may be achieved by using an umbrella liability policy in combination with Tenant's primary liability policy); and

(iii) Comprehensive Automobile Liability Coverage—(including coverage for owned, hired and nonowned automotive equipment) with a combined single limit of Five Million Dollars (\$5,000,000) per occurrence for bodily injury and property damage (which coverage may be achieved by using an umbrella liability policy in combination with Tenant's primary liability policy);

(iv) Owner's Protective Liability Insurance insuring Tenant against any and all liability to third parties for damages because of bodily injury and property damage liability of others, or a combination thereof, which may arise from work in the completion of the Improvements, with a combined single limit of Five Million Dollars (\$5,000,000) each occurrence with respect to bodily injury and/or property damage. Tenant shall also provide a Completed Value Form "All Physical Loss" Builders Risk Policy, as it relates to the Building, naming the interests of Landlord and its agents as additional insured.

All insurance policies referenced in this subsection (b) shall name Landlord and such other parties as reasonably requested by Landlord as additional insured under the policies. Tenant or Tenant's contractor shall deliver the necessary insurance certificates to Landlord prior to commencing work. Further, Tenant agrees to hold and save Landlord from any and all liability, claims and damages arising out of the construction of the Improvements.

(c) All policies of insurance required to be carried by Tenant pursuant to this Section 16 shall be written by responsible insurance companies licensed to do business in the State of Michigan and with a Best rating of at least A-X. A copy of each paid-up policy evidencing such insurance or a certificate of the insurer, certifying that such policy has been issued, providing the coverage required by this Section 16 and containing provisions specified herein, shall be delivered to Landlord prior to the commencement of the Term and, upon renewals, not less than thirty (30) days prior to the expiration of such coverage (except for notice of 10 days for cancellation due to non-payment of the premium). Landlord may, at any time and from time to time, inspect and/or copy any and all insurance policies required to be procured by Tenant hereunder.

(d) Each policy evidencing insurance required to be carried by Tenant pursuant to this Section 16 shall contain the following provisions and/or clauses: (i) a cross-liability, severability or substantially similar clause; (ii) a provision that such policy and the coverage evidenced thereby shall be primary and noncontributing with respect to any policies carried by Landlord and that any coverage carried by Landlord shall be excess insurance; (iii) a provision including Landlord and such other parties as reasonably requested by Landlord as an additional insured (except with respect to workers' compensation insurance); and (iv) a provision that the insurer will not cancel, materially change or fail to renew the coverage provided by such policy without first giving Landlord thirty (30) days' prior written notice.

(e) Landlord and Tenant shall each be released from any liability (by way of subrogation or otherwise) for loss or damage to any building, structure or other tangible property, or any resulting loss of income, or losses under workers' compensation laws and benefits, resulting from damage by casualty (irrespective of the cause of such casualty) to the extent that such loss or damage is insured or required to be insured under this Lease, upon the express proviso that if at any time their respective insurers shall refuse to permit waivers of subrogation, Landlord and Tenant may in each instance revoke said waiver of subrogation effective thirty (30) days from the date of notice to the other unless, within such thirty (30) day period, the other is able to secure and furnish without additional expense insurance in other companies with such waiver of subrogation, or if such waiver can only be obtained at additional expense, if the other agrees to pay such additional expense.

SECTION 17. Destruction:

In the event that, at any time during the term of this Lease, the Improvements shall be destroyed or damaged in whole or in part by fire or other cause within the definition of the insurance policies carried or required to be carried by Tenant in accordance with this Lease, then, Tenant, at its own cost and expense, shall cause the same to be repaired, replaced or rebuilt with a building substantially the same as the Building in accordance with Section 8 hereof and subject to Landlord's approval of the Improvements, within a period of time which, under all prevailing circumstances, shall be reasonable; provided, however, that if the Building on the Demised Premises shall be substantially damaged or destroyed by fire or such other cause during the last year of the Initial Term or during any Extended Term such that the Building is no longer usable, Tenant shall have the right to terminate this Lease by written notice to Landlord within ninety (90) days after such damage or destruction. Tenant shall continue to pay Basic Rent and all other rents and charges during any restoration and there shall be no rent abatement hereunder as a result of any fire or other casualty. If Tenant shall so terminate this Lease, Tenant shall promptly raze the Building and any other portions of the Improvements required by Landlord and promptly restore the Demised Premises to a safe, "raw" land, condition suitable for a new development utilizing the insurance proceeds therefor and the unused portion of the insurance proceeds not required to discharge any applicable Mortgages and to so raze such damaged buildings and restore the Demised Premises to a safe condition shall be paid to Tenant. In the event this Lease shall be so terminated pursuant to this Section 17, Tenant shall pay Rent through the date of delivery of the Demised Premises to Landlord in the condition required herein, upon which delivery, this Lease shall be terminated.

SECTION 18. Eminent Domain:

(a) If the whole of the Demised Premises shall be taken for any public or quasi-public use under any statute or by right of eminent domain or by private purchase in lieu thereof, then this Lease shall automatically terminate as of the date that possession has been taken. In the event of a partial taking (or purchase) of the Demised Premises pursuant to which Tenant can no longer reasonably operate the Building for its intended purposes, then Tenant shall have the right, but not the obligation, to terminate this Lease by giving written notice of such termination to Landlord on or prior to the date ninety (90) days after the date of such taking (or purchase), and upon the giving of such notice of termination the term of this Lease shall expire and come to an end on the last day of the calendar month in which such notice shall be given, with the same force and effect as if said day had been originally fixed herein as the expiration date of the Term of this Lease. In the event this Lease shall terminate or shall be terminated, Rent shall, if and when necessary, be adjusted to the day of the taking (or purchase) and neither party shall have any further rights or liabilities hereunder.

(b) In the event of a taking (or purchase) resulting in the termination of this Lease pursuant to the provisions of Section 18(a) hereof, the parties hereto agree to cooperate in applying for and in prosecuting any claim for such taking and further agree, that the aggregate net award, after deducting all expenses and costs, including attorneys' fees, incurred in connection therewith, payable to both Landlord and Tenant shall be paid to Landlord (or if required, to any Leasehold Mortgagee) and distributed as follows:

(i) So much of such net award as is available for distribution shall first be paid to the holder or holders of any Leasehold Mortgage to the extent of the then unpaid principal amount of such Leasehold Mortgage.

(ii) Then, the balance of the net award, if any, remaining after such payment to the holders of any Leasehold Mortgage pursuant to Section 18(b)(i) hereof, shall be divided between Landlord and Tenant as follows: Landlord shall be paid an amount equal to (A) the greater of (1) ten (10) times the then current annual Basic Rent, or (2) the value of the land comprising the Demised Premises (but not any Improvements), subject to the terms of this Lease, other than the provisions of this Section 18, and (B) that portion of the net award relating to the Improvements equal to such portion multiplied by a fraction, the numerator of which is the number of full calendar months from and after the Commencement Date to the date of such termination of this Lease pursuant to this Section 18 and the denominator of which is the number of full calendar months from the Commencement Date to the stated expiration date of the Term (including any renewal terms with respect to which Tenant has exercised or has the right to exercise) (hereinafter referred to as "**Landlord's Share**") and Tenant shall be paid the entire balance thereof after such payment to Landlord.

(c) (i) In the event of a partial taking (or purchase) not resulting in the termination of this Lease, pursuant to the provisions of Section 18(a) hereof, Tenant shall, at its own cost and expense, make all repairs to the buildings and improvements on the Demised Premises affected by such taking (or purchase) to the extent necessary to restore the same to a complete architectural unit (to the extent permitted, however, taking into consideration the amount of land remaining after any such taking or purchase).

(ii) All compensation available or paid to Landlord and Tenant upon such a partial taking (or purchase), shall be paid to Tenant for the purpose of paying towards the cost of such restoration, or, in the event that the parties hereto agree that only a portion of the aggregate award is sufficient to so restore, then only such portion as agreed upon shall be paid to Tenant for such purpose and the balance shall be distributed pursuant to Section 18(c)(iii).

(iii) All compensation available or paid to Landlord and Tenant upon such a partial taking (or purchase) in excess of the amount thereof needed by Tenant to repair and restore the buildings and improvements shall be distributed in the same manner as is provided in Section 18(b)(i) and (ii) hereof. In the event that any payment out of such compensation shall be paid to Landlord, then the Rent payable hereunder shall be reduced by a fraction the numerator of which shall be the amount so paid to Landlord and the denominator of which shall be in an amount equal to Landlord's Share less the total net proceeds of any award theretofore received by Landlord from any (and all) prior partial takings (or purchases).

(d) If all or any portion of the Demised Premises shall be condemned or taken for governmental occupancy for a limited period, this Lease shall not terminate and Tenant shall be entitled to receive the entire award therefor (whether paid as damages, rent or otherwise) unless the period of governmental occupancy extends beyond the expiration of the Term, in which case Landlord shall be entitled to part of such award as shall be properly allocable to the cost of restoration of the Demised Premises to the extent any such award is specifically made for such purpose, and the balance of such award shall be apportioned between Landlord and Tenant as of the date of such expiration. If the termination of such governmental occupancy is prior to the expiration of this Lease, Tenant shall restore the Property as nearly as possible to the condition in which it was prior to the condemnation or taking.

SECTION 19. Landlord's Mortgages:

In the event that Landlord desires to pledge its leasehold interest in the Demised Premises under this Lease as security for financing, then Landlord may collaterally assign its interest at any time and from time to time during the Term. If the party providing such financing desires a mortgage on Landlord's leasehold or fee interest, Landlord may grant such mortgage which shall have priority over this Lease provided such mortgagee executes and delivers to Tenant an agreement recognizing Tenant's leasehold interest and right of possession so long as Tenant is not in Default under the terms of this Lease beyond any applicable notice and cure period in a form mutually acceptable such mortgagee, Landlord and Tenant (or in the form attached as Exhibit B).

SECTION 20. Leasehold Mortgages:

Tenant and every successor and assign of Tenant is hereby given the right by Landlord in addition to any other rights herein granted, without Landlord's prior written consent, to mortgage its interests in this Lease, or any part or parts thereof, and any sublease(s) under one or more leasehold mortgage(s) (each, a "**Leasehold Mortgage**"), and assign this Lease, or any part or parts thereof, and any sublease(s) as collateral security for such Leasehold Mortgage(s), upon the condition that all rights acquired under such Leasehold Mortgage(s) shall, except as otherwise specifically provided herein, be subject to each and all of the covenants, conditions and

restrictions set forth in this Lease, and to all rights and interests of Landlord herein, none of which covenants, conditions and restrictions set forth in this Lease is or shall be waived by Landlord by reason of the right given so to mortgage such interest in this Lease, except as expressly provided herein. Notwithstanding the foregoing, Tenant shall not create or permit to exist any lien, mortgage, or charge on, pledge of, or conditional sale or other title retention agreement with respect to, or encumbrance of any kind on Landlord's interest in Landlord's estate and/or interest in the Demised Premises and/or this Lease. If Tenant shall mortgage this leasehold, or any part or parts thereof, and if the holder(s) of such Leasehold Mortgage(s) (each, a "**Leasehold Mortgage**") shall, within thirty (30) days of its execution, send to Landlord a true copy thereof, together with written notice specifying the name and address of the Leasehold Mortgagee and the pertinent recording date with respect to such Leasehold Mortgage(s), Landlord agrees that so long as any such Leasehold Mortgage(s) shall remain unsatisfied of record or until written notice of satisfaction is given by the applicable Leasehold Mortgagee(s) to Landlord, the following provisions shall apply:

(a) There shall be no cancellation, surrender or modification of this Lease by joint action of Landlord and Tenant without the prior consent in writing of the Leasehold Mortgagee(s);

(b) Landlord shall, upon serving Tenant with any notice of default, simultaneously serve a copy of such notice upon the Leasehold Mortgagee(s). The Leasehold Mortgagee(s) shall thereupon have the right to remedy or cause to be remedied the defaults complained of, and Landlord shall accept such performance by or at the instigation of such Leasehold Mortgagee(s) as if the same had been done by Tenant. If Tenant does not cure within the applicable cure period under this Lease, Landlord shall notify Leasehold Mortgagee(s) if it intends to terminate this Lease and Leasehold Mortgagee(s) shall, after receiving such notice, have forty-five (45) days from the date of service of notice of termination upon such Leasehold Mortgagee(s) to notify Landlord of its desire to nullify such notice and shall have paid to Landlord all Rent and other payments herein provided for, and then in default, and shall have complied or shall commence the work of complying with all of the other requirements of this Lease, except as provided in Section 20(g) hereof, if any are then in default, and shall prosecute the same to completion with reasonable diligence (not to exceed ninety (90) days unless such default cannot reasonably be cured within said ninety (90) day period or possession of the Demised Premises is required for such cure), then in such event Landlord shall not be entitled to terminate this Lease and any notice of termination theretofore given shall be void and of no effect;

(c) If Landlord shall elect to terminate this Lease by reason of any default of Tenant, the Leasehold Mortgagee(s) shall not only have the right to nullify any notice of termination by curing such default, as aforesaid, but shall also have the right to postpone and extend the specified date for the termination of this Lease as fixed by Landlord in its notice of termination, for a period of not more than six (6) months, provided that such Leasehold Mortgagee(s) shall cure or cause to be cured any then existing money defaults and meanwhile pay Rent and comply with and perform all of the other terms, conditions and provisions of this Lease on Tenant's part to be complied with and performed, other than past non-monetary defaults, and provided further that the Leasehold Mortgagee(s) shall forthwith take steps to acquire or sell Tenant's interest in this Lease by foreclosure of the Leasehold Mortgage(s) or otherwise and shall prosecute the same to completion with all due diligence. If at the end of said six (6) month period the

Leasehold Mortgagee(s) shall be actively engaged in steps to acquire or sell Tenant's interest herein, the time of said Leasehold Mortgagee to comply with the provisions of this Section 20 shall be extended for such period as shall be reasonably necessary to complete such steps with reasonable diligence and continuity;

(d) Subject to the terms of Section 20(b) and (c), the Leasehold Mortgagee, or its successors, assignees, or any purchaser at a foreclosure sale (each a "**Purchaser**") shall have the unrestricted right to acquire Tenant's interest under the Lease by foreclosure, assignment or transfer in lieu of foreclosure or otherwise, and such acquisition shall not require Landlord's consent or be deemed a default under the Lease. Upon Landlord's receipt from Leasehold Mortgagee of written notice of such an acquisition sent to Landlord at the address set forth above (or to any other address given by Landlord in writing to Leasehold Mortgagee), Landlord shall permit the Purchaser to enter into possession of the Property and to hold the same and exercise and enjoy all of the rights, privileges and benefits of Tenant under the Lease (without any representations or warranties of the validity of such rights), and such acquisition shall constitute an assumption by the Purchaser of Tenant's obligations under the Lease, provided, however, that the Purchaser shall not be liable for Tenant's obligations under the Lease until it shall become the owner of the Lease, either by foreclosure or assignment in lieu thereof or otherwise, and then only during the period of time it is the owner of said Lease; provided, however, that, as a condition to the right of the Purchaser to acquire Tenant's leasehold estate as aforesaid, Purchaser shall promptly upon acquiring the leasehold estate, cure all of the defaults of Tenant under the Lease which are outstanding as of the date of such acquisition of the leasehold estate, except as provided in Section 20(c) and (g);

(e) Landlord agrees that the name of the Leasehold Mortgagee(s) may be added to the "Loss Payable Endorsement" of any and all insurance policies required to be carried by Tenant hereunder on condition that the insurance proceeds are to be applied in the manner specified in this Lease and that the Leasehold Mortgagee(s) or collateral document shall so provide;

(f) Notwithstanding any to the contrary contained in this section 20, the notice and cure rights of the Leasehold Mortgagee and all other rights of the Leasehold Mortgagee under this section 20 shall be conditioned upon the Leasehold Mortgagee or its nominee, successors and assigns, paying Landlord any delinquent Rent, Taxes, Utility Expenses, any and all construction liens, maintaining in full force and effect all insurance required under this Lease, paying all other financial obligations of Tenant under this Lease (collectively "Financial Obligations") and continuing to timely pay all Financial Obligations in accordance with the terms and conditions of this Lease; and

(j) Landlord shall, upon request, execute, acknowledge and deliver to each Leasehold Mortgagee(s), an agreement prepared at the sole cost and expense of Tenant, in form satisfactory to such Leasehold Mortgagee(s), between Landlord, Tenant and Leasehold Mortgagee(s), agreeing to all of the provisions of this Section 20. The term "Leasehold Mortgage", whenever used herein, shall include whatever security instruments are used in the locale of the Demised Premises, such as, without limitation, deeds of trust, security deeds and conditional deeds, as well as financing statements, security agreements and other documentation required pursuant to the Uniform Commercial Code.

SECTION 21. Quiet Enjoyment:

Tenant, upon paying the Rent and all other sums and charges to be paid by it as herein provided, and observing and keeping all covenants, warranties, agreements and conditions of this Lease on its part to be kept, shall quietly have and enjoy the Demised Premises during the term of this Lease, without hindrance or molestation by anyone claiming by through or under Landlord, subject only to the Permitted Exceptions.

SECTION 22. Defaults:

(a) In the event any one or more of the following events shall have occurred and shall not have been remedied as hereinafter provided: (i) the occurrence of any event set forth in Section 23 hereof, without the curing of same as therein provided; (ii) Tenant's failure to pay any installment of Rent when the same shall be due and payable and the continuance of such failure for a period of fifteen (15) days after receipt by Tenant of notice in writing from Landlord specifying in detail the nature of such failure; (iii) abandonment of the Property for a period of sixty (60) consecutive days, (iv) failure to maintain the insurance required hereunder for a period of five (5) business days after written notice from Landlord that such insurance is not in place, (v) a failure to comply with any of the provisions of Section 8, which failure is not remedied thirty (30) days after receipt by Tenant of notice in writing from Landlord specifying in detail the nature of such failure, or (vi) Tenant's failure to perform any of the other covenants, conditions and agreements herein contained on Tenant's part to be kept or performed and the continuance of such failure without the curing of same for a period of sixty (60) days after receipt by Tenant of notice in writing from Landlord specifying in detail the nature of such failure, then, Landlord may, at its option, give to Tenant a notice of election to terminate this Lease and end the Term of this Lease upon a date specified in such notice which date shall be not less than ten (10) business days (Saturdays, Sundays and legal holidays excluded) after the date of receipt by Tenant of such notice from Landlord, and upon the date specified in said notice, the term and estate hereby vested in Tenant shall cease and any and all other right, title and interest of Tenant hereunder shall likewise cease without further notice or lapse of time, as fully and with like effect as if the entire term of this Lease had elapsed, but Tenant shall continue to be liable to Landlord as hereinafter provided.

(b) Upon any termination of the term of this Lease pursuant to Section 22(a) hereof, or at any time thereafter, Landlord may, in addition to and without prejudice to any other rights and remedies Landlord shall have at law or in equity, re-enter the Property, and recover possession thereof and dispossess any or all occupants of the Property in the manner prescribed by the statute relating to summary proceedings, or similar statutes; but Tenant in such case shall remain liable to Landlord as hereinafter provided.

(c) Should Landlord elect to re-enter, as herein provided, or should it take possession pursuant to legal proceedings or pursuant to any notice provided for by law, it may either terminate this Lease or it may from time to time, without terminating this Lease, make such alterations and repairs as may be necessary in order to relet the Property, and relet the Property or any part thereof for such term or terms (which may be for a term extending beyond the Term) and at such rental or rentals and upon such other terms and conditions as Landlord in its sole discretion may deem advisable. Upon each such reletting all rentals and other sums received by

Landlord from such reletting shall be applied, first, to the payment of any indebtedness other than Rent due hereunder from Tenant to Landlord; second, to the payment of any costs and expenses of such reletting, including reasonable brokerage fees and attorneys' fees and of costs of such alterations and repairs; third, to the payment of Rent and other charges 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 and other sums received from such reletting during any month be less than that to be paid during that month by Tenant hereunder, Tenant shall pay such deficiency to Landlord. Such deficiency shall be calculated and paid monthly. Tenant shall in no event be entitled to any Rent collected or payable upon any reletting, whether or not such Rent shall exceed the Rent reserved in this Lease. No such re-entry or taking possession of the Property 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 reletting without termination, Landlord may at any time hereafter 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 (i) all costs incurred by Landlord (including court costs and reasonable attorneys' fees and expenses) in obtaining possession of the Property, (ii) all costs of removing and storing Tenant's or any other occupant's property, (iii) all costs of repairing, restoring, altering, remodeling, or otherwise putting the Property into condition acceptable to a new tenant, (iv) all costs of performing Tenant's obligations which Tenant failed to perform, (v) costs and expenses of enforcing, or advising Landlord of, its rights, remedies, and recourses arising out of the default, (vi) any and all other damages it may incur by reason of such breach, and (vii) 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 Demised Premises for the remainder of the stated term, all of which amounts shall be immediately due and payable from Tenant to Landlord.

(d) In case suit shall be brought for recovery of possession of the Property or for the recovery of Rent or any other amount due under the provisions of this Lease, or because of the breach of any other covenant herein contained on the part of Tenant to be kept or performed, and a breach shall be established, Tenant shall pay to Landlord all expenses incurred therefor, including a reasonable attorney's fee.

(e) The parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Property and/or any claim of injury or damage. If Landlord commences any proceedings for nonpayment of Rent or any other amounts payable hereunder, Tenant shall not interpose any noncompulsory counterclaim of whatever nature or description in any such proceeding, unless the failure to raise the same would constitute a waiver thereof. This shall not, however, be construed as a waiver of Tenant's right to assert such claims in any separate action brought by Tenant.

(f) Notwithstanding anything herein contained to the contrary, if Tenant shall be in default in the performance of any of the terms or provisions of this Lease and if Landlord shall give to Tenant notice in writing of such default specifying the nature thereof, and if Tenant shall fail to cure such default within the time provided in Section 22(a) hereof or immediately if such default requires emergency action, Landlord may, in addition to its other legal and equitable remedies, cure such default for the account of and at the cost and expense of Tenant, and the sums so expended by Landlord, including reasonable legal fees and interest at the rate in Section 40, shall be deemed to be additional rent and shall be paid by Tenant on the day when Basic Rent shall next become due and payable.

(g) Upon any default by Tenant under this Lease after the applicable notice and cure periods, if any, set forth in Section 22(a) and (b) hereof, or at any time thereafter, Landlord may, in addition to and without prejudice to any other rights and remedies Landlord shall have at law or in equity, and whether or not this Lease has been terminated, exercise its rights under the collateral assignment described in Section 8(e)(x) and re-enter the Property and complete construction of the Improvements.

SECTION 23. Bankruptcy and Insolvency:

If, after the Commencement Date of this Lease: (a) Tenant or tenant then having the title to the leasehold estate created hereunder shall, while having such title, be adjudicated a bankrupt or adjudged to be insolvent; (b) a receiver or trustee shall be appointed for the aforesaid Tenant's property and affairs; (c) the aforesaid Tenant shall make an assignment for the benefit of creditors or shall file a petition in bankruptcy or insolvency or for reorganization or shall make application for the appointment of a receiver; or (d) any execution or attachment shall be issued against the aforesaid Tenant or any of the aforesaid Tenant's property, whereby the Demised Premises or any building or buildings or any improvements thereon shall be taken or occupied or attempted to be taken or occupied by someone other than the aforesaid Tenant, except as may herein be permitted, and such adjudication, appointment, assignment, petition, execution or attachment shall not be set aside, vacated, discharged or bonded within ninety (90) days after the issuance of the same, then a default hereunder shall be deemed to have occurred so that the provisions of Section 22 hereof shall become effective and Landlord shall have the rights and remedies provided for therein.

SECTION 24. Environmental Provisions:

(a) Definitions.

(i) As used herein, "Environmental Laws" shall mean any federal, state and local laws including statutes, regulations, rulings, orders, administrative interpretations, guidance documents or memoranda and other governmental restrictions and requirements relating to the creation or discharge of solid waste, hazardous substances, hazardous waste, air pollutants, water pollutants or process wastewater or otherwise relating to the environment or Hazardous Substances (as defined herein) including, but not limited to, Michigan's Natural Resources and Environmental Protection Act ("NREPA"), M.C.L. 324.101 *et seq.*, the Federal Toxic Substances Control Act ("TOSCA"), the Federal Solid Waste Disposal Act, the Federal

Clean Air Act, the Federal Water Pollution Control Act ("**CWA**"), the Federal Resource and Conservation and Recovery Act of 1976 ("**RCRA**") or the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("**CERCLA**"), the Hazardous Materials Transportation Act, regulations of the Federal Environmental Protection Agency or state environmental protection agency or Department of Environmental Quality now or at any time hereafter in effect.

(ii) As used herein, the term "Hazardous Substances" shall include, without limitation and regardless of when so classified or nominated:

(1) Those substances included within the definition of "liquid industrial waste," "hazardous substances," "hazardous materials," "toxic substances" or "hazardous waste" in NREPA, CERCLA, RCRA, CWA or the Hazardous Materials Transportation Act, or in any regulations promulgated pursuant to any Environmental Law;

(2) Those substances listed in the United States Department of Transportation Table (49 C.F.R. 172.101, including any amendments thereto) or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 C.F.R. Part 302, including any amendments thereto);

(3) Any material, waste, substance or mixture that is (A) petroleum, (B) asbestos, (C) polychlorinated biphenyls, (D) regulated under TOSCA, (E) flammable explosives, or (F) radioactive materials; or

(4) Such other substances, materials, wastes or mixtures that are or become regulated as hazardous or toxic under applicable local, state or federal law, or by the United States government, or which are classified as hazardous or toxic under local, state or federal laws or regulations having jurisdiction over the Demised Premises.

(b) Environmental Covenants of Tenant. During the Term of this Lease, Tenant shall:

(i) timely comply with all applicable Environmental Laws;

(ii) provide Landlord, immediately upon receipt thereof, with copies of any correspondence, notice, pleading, citation, notice of noncompliance, notice of violation, indictment, complaint, order, decree or other document from any source asserting or alleging that Tenant has violated any Environmental Laws applicable to Tenant's use of or presence at the Property, or asserting or alleging a circumstance or condition upon the Property which may require Tenant to perform a cleanup, remedial action or otherwise undertake a response activity, (including investigation), undertake due care activities or which imposes an obligation upon Tenant to pay any amount required under any Environmental Laws, by or on the part of Tenant under any Environmental Laws; and

(iii) at its sole expense, remove, remediate, clean up or prevent the offsite migration of any Hazardous Substances that were released to the environment, threatened to be released to the

environment or disposed of at the Property, by Tenant, its employees or invitees during the Term of this Lease, and for which Landlord has no responsibility for removing or remediating under Section 24(e) hereof, or perform other investigation, remediation or corrective action with regard to such Hazardous Substances as required by Landlord in its sole discretion, if at any time it is determined that such Hazardous Substances above normal background concentrations present a health hazard on the Property or are required to be investigated, removed, contained, remediated or subject to corrective action pursuant to any Environmental Laws or regulatory authority.

(c) Reports. Tenant acknowledges that Landlord is not in possession of any environmental reports prepared for it or on its behalf on or before the date upon which this Lease has been executed by the Landlord and Tenant. Landlord has not provided to Tenant any reports concerning the environmental condition of the Demised Premises existing prior to the date upon which this Lease has been executed by Landlord and Tenant. There may exist environmental reports that have not been provided to Tenant because they are (1) neither in Landlord's possession nor under its control; or (2) they were prepared for Tenant or on its behalf.

SECTION 25. Parking:

Landlord or a Landlord Affiliate, as applicable, shall construct a parking deck in accordance with the Parking Agreement on property adjacent to the Demised Premises. A portion of the parking spots in the deck will be made available to Tenant and any subtenants in the Building on terms contained in the Parking Agreement. Tenant and Landlord or Landlord's Affiliate, as applicable, has or shall enter into one or more leases, licenses or other such agreements necessary to more fully set forth the terms and provisions of the parking rights granted to Tenant (each, a "**Parking Agreement**"). A copy of any such agreement executed as of the date of this Lease is attached hereto as Exhibit F.

SECTION 26. No Merger:

There shall be no merger of this Lease or the leasehold interest with any other estate or interest in the Demised Premises, or any part thereof, by reason of the fact that the same person or other entity may acquire or own or hold, directly or indirectly, (a) this Lease or the leasehold interest or any interest in this Lease or in the leasehold interest, and (b) any other estate or interest in the Demised Premises or any part thereof. No such merger shall occur unless and until all persons and entities having an interest (including a Leasehold Mortgage and any security interest) in this Lease or the leasehold interest and any such other estate or interest in the Demised Premises, or any part thereof, shall join in a written instrument effecting such merger and shall duly record the same.

SECTION 27. Waivers:

Failure of Landlord or Tenant to complain of any act or omission on the part of the other party no matter how long the same may continue, shall not be deemed to be a waiver by said party of any of its rights hereunder. No waiver by Landlord or Tenant at any time express or implied, of any breach of any provision of this Lease shall be deemed a waiver of a breach of any other provision of this Lease or a consent to any subsequent breach of the same or any other

provision. No acceptance by Landlord of any partial payment shall constitute an accord or satisfaction but shall only be deemed a part payment on account.

SECTION 28. Force Majeure:

In the event that Landlord or Tenant shall be delayed, hindered in or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, the act, failure to act or default of the other party, war or other reason beyond its control, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. From and after the Commencement Date, the provisions of this Section 28 shall not operate to excuse Tenant from the payment of Rent or any other payments required under the terms of this Lease.

SECTION 29. Notices:

Every notice, approval, consent or other communication authorized or required by this Lease shall not be effective unless same shall be in writing and (i) sent postage prepaid by United States registered or certified mail, return receipt requested, (ii) by recognized overnight delivery service or (iii) by facsimile transmission (with a copy sent by first class mail), directed to the other party at its address hereinabove first mentioned, or such other address as either party may designate by notice given from time to time in accordance with this Section 29. Copies of all notices to Tenant shall also be sent to _____, and copies of all notices to Landlord shall also be sent to _____. Notices shall be effective upon delivery or refusal of the addressee to accept delivery. Rent payable by Tenant hereunder shall be paid to Landlord at the same place where a notice to Landlord is herein required to be directed.

SECTION 30. Certificates:

Either party shall, without charge, at any time and from time to time hereafter, within twenty (20) days after written request of the other, certify by written instrument duly executed and acknowledged to any mortgagee or purchaser, or proposed mortgagee or proposed purchaser, or any other person, firm or corporation specified in such request: (a) as to whether this Lease has been supplemented or amended, and if so, the substance and manner of such supplement or amendment; (b) as to the validity and force and effect of this Lease, in accordance with its tenor as then constituted; (c) as to the existence of any default thereunder; (d) as to the existence of any offsets, counterclaims or defenses thereto on the part of such other party; (e) as to the commencement and expiration dates of the Term; and (f) as to any other matters as may reasonably be so requested. Any such certificate may be relied upon by the party requesting it and any other person, firm or corporation to whom the same may be exhibited or delivered, and the contents of such certificate shall be binding on the party executing same.

SECTION 31. Governing Law:

This Lease and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the State of Michigan.

SECTION 32. Partial Invalidity:

If any term, covenant, condition or provision of this Lease or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

SECTION 33. Short Form Lease:

The parties will at any time, at the request of either one, promptly execute duplicate originals of an instrument, in recordable form, which will constitute a short form of lease, setting forth a description of the Demised Premises, the term of this Lease and any other portions thereof, excepting the rental provisions, as either party may request.

SECTION 34. Interpretation:

Wherever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa, as the context shall require. The Section headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof. This Lease may be executed in several counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. The terms "Landlord" whenever used herein shall mean only the owner at the time of Landlord's interest herein, and upon any sale or assignment of the interest of Landlord, its successors in interest and/or assigns shall, during the term of its ownership of its estates herein, be deemed to be Landlord.

SECTION 35. Entire Agreement:

This Lease and the operative exhibits hereto represent the entire agreement between the parties with respect to the matters explicitly set forth herein. Except as expressly referenced herein, no oral or written, prior or contemporaneous agreements shall have any force or effect. The Lease may not be amended, altered or modified unless done so by means of a written instrument signed by both parties, and to the extent a Leasehold Mortgage is then in effect, consented to by the Leasehold Mortgagee.

SECTION 36. Parties:

Except as herein otherwise expressly provided, the covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of Landlord and Tenant and their respective heirs, successors, administrators and assigns.

SECTION 37. Tenant's Property:

(a) Tenant shall be responsible for and shall pay before delinquency all municipal, county, state and federal taxes assessed during the term of this Lease against any leasehold interest in the Demised Premises or against Tenant's personal property.

(b) Landlord and Landlord's agents and employees 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 Demised Premises or for any loss or damage or injury to persons resulting to Tenant or its property from bursting, stoppage or leaking of water, gas, sewer or steam pipes or for any damage or loss of property or injury to persons within the Demised Premises from any cause whatsoever.

(c) No act by Landlord shall be deemed an acceptance of a surrender of the Demised Premises, and no agreement to accept a surrender of the Demised Premises shall be valid unless the same is made in writing and signed by Landlord. All furnishing, moveable equipment, trade fixtures, signs and other personalty (collectively, "trade fixtures") hereafter installed by Tenant in the Property (or any part of the Building as permitted), shall remain the property of Tenant and shall be removed by Tenant at the expiration or earlier termination of the Term provided that: (i) Tenant shall not at such time be in default under this Lease and (ii) Tenant shall promptly restore the damage done to the Property by the installation and/or removal thereof. Should Tenant fail to so remove Tenant's trade fixtures and/or to so restore the Property, Landlord may do so, collecting upon demand at Landlord's option, the cost and expense thereof as additional rent. Any such trade fixtures which are not removed by Tenant within thirty (30) days after any termination of this Lease, including, but not limited to, a termination by Landlord pursuant to this Lease, shall at Landlord's election: (i) be conclusively presumed to have been conveyed by Tenant to Landlord without further payment or credit by Landlord to Tenant, and/or (ii) Tenant shall be conclusively presumed to have forever abandoned such property, and without accepting title thereto, Landlord may, at Tenant's expense, remove, store, destroy, discard or otherwise dispose of all or any part thereof in any manner that Landlord shall choose without incurring liability to Tenant or to any other person, and Tenant shall pay to Landlord, upon demand, any and all reasonable expenses incurred in taking any of such actions. In no event shall Landlord ever become or accept or be charged with the duties of a bailee (either voluntary or involuntary) of any personal property; and the failure of Tenant to remove all such property from the Property shall forever bar Tenant from bringing any action or asserting any liability against Landlord with respect to any such property which Tenant fails to remove. Notwithstanding anything herein contained to the contrary or any decision of any court to the contrary, the term "trade fixtures" shall not include any air-conditioning, heating, lighting, electrical and plumbing equipment installed by Tenant in the Property, or any wiring, cable or other apparatus related thereto. Tenant will indemnify and hold Landlord harmless for any claim by third parties with respect to property owned or claimed by them, left in the Property by Tenant and removed by Landlord pursuant to this Section. The provisions of this Section 37(c) shall survive the end of the Term.

SECTION 38. Holding Over:

Any holding over after the expiration of the Term hereof with the consent of Landlord, shall be construed to be a tenancy from month to month (with rent for the first three holdover months at a rate of one hundred percent (100%) the monthly Basic Rent herein specified for the last year of the Term, and thereafter at a rate of one hundred fifty percent (150%) the monthly Basic Rent herein specified for the last year of the Term) and shall otherwise be on the same terms and conditions herein specified so far as applicable. In the event Tenant remains in possession of the Property after the expiration of the Term without Landlord's consent, Tenant

shall be deemed a trespasser and shall also pay to Landlord all damages sustained by Landlord as a result of retention of possession by Tenant, including, without limitation, the loss of any proposed subsequent tenant for any portion of the Property. The provisions of this Section 38 shall not be deemed to limit or constitute a waiver of any other rights or remedies of Landlord provided herein or at law.

SECTION 39. Transfer of Landlord's Interest:

In the event of any transfer or transfers of Landlord's interest in the Demised Premises, the transferor shall be automatically relieved of any and all obligations on the part of Landlord accruing from and after the date of such transfer.

SECTION 40. Interest on Past Due Obligations:

Any amount due to Landlord hereunder which is not paid within ten (10) days of when due shall bear interest at a prime rate as published in The Wall Street Journal (or if there is no such newspaper, then such other nationally recognized business newspaper selected by Landlord) plus five percent (5%) per annum, but not in excess of highest legal rate from the date due until paid. The payment of such interest shall not excuse or cure any default by Tenant under this Lease.

SECTION 41. Liability of Landlord:

If Landlord fails 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 recovers 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 neither Landlord nor the Members or Managers comprising the limited liability company which is Landlord herein, nor any shareholder, trustee, officer, employee or agent thereof, shall be liable for any deficiency.

SECTION 42. Performance:

Whenever this Lease requires that something be done within a period of days, such period shall (a) not include the day from which such period commences, (b) include the day upon which such period expires, (c) expire at 5:00 p.m. eastern standard time on the date by which such thing is to be done, and (d) be construed to mean calendar days (except as otherwise specifically provided herein); provided that if the final day of such period falls on a Saturday, Sunday or legal holiday in the State of Michigan where such thing is to be done, such period shall extend to the first business day thereafter.

SECTION 43. Brokers:

Landlord and Tenant warrant to each other that neither has dealt with a real estate broker in connection with this Lease and that no broker(s) are entitled to any commission on account of the transaction referenced herein.

SECTION 44. Authority:

Both Landlord and Tenant hereby warrant and represent that each have been duly authorized to enter into this Lease and that the undersigned are duly authorized to execute this Lease on behalf of Landlord and Tenant respectively.

SECTION 45. Accord and Satisfaction:

No payment by Tenant or receipt by Landlord of a lesser amount than any payment of Rent herein stipulated shall be deemed to be other than on account of the earliest stipulated Rent then due and payable. Tenant agrees that Landlord shall not be bound by any endorsement or statement on any check or any letter accompanying any check or payment and no such endorsement, statement or letter shall be deemed an accord and satisfaction, whether such check or letter is forwarded to Landlord's lock box or directly to Landlord, or elsewhere and Landlord or Landlord's bank may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy provided in this Lease, at law or in equity.

SECTION 46. No Partnership:

By execution of this Lease, Landlord does not, in any way or for any purpose, become a partner of Tenant in the conduct of its business, or otherwise, or joint venturer or a member of a joint enterprise with Tenant.

SECTION 47. Independent Covenants:

The covenant to pay Rent is hereby declared to be an independent covenant on the part of Tenant to be kept and performed, and no offset shall be permitted or allowed except as otherwise specifically provided in this Lease. Tenant's covenant to pay Rent shall survive the expiration or earlier termination of this Lease.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

LANDLORD:

WITNESS:

a _____

By _____

Its: _____

TENANT:

_____,
a _____

By: _____

EXHIBIT B

TENANT' S FORM OF GROUND LEASE

GROUND LEASE

THIS GROUND LEASE, dated the _____ day of _____, 20__ (this "Lease"), by and between _____, whose address is _____ (hereinafter referred to as "Landlord"), and _____, whose address is _____ (hereinafter referred to as "Tenant").

SECTION 1. Premises:

Landlord hereby leases and lets to Tenant, and Tenant hereby takes and hires from Landlord, upon and subject to the terms, conditions, covenants and provisions hereof, all of Landlord's interest in that certain tract, piece or parcel of land, situate in the City of _____, County of _____, and State of Michigan, more particularly described on Exhibit A annexed hereto and made part hereof, together with any and all of the currently existing improvements, appurtenances, rights, privileges and easements benefiting, belonging or pertaining thereto, and any right, title and interest of Landlord, ~~if any,~~ in and to any land lying in the bed of any street, road or highway (open or proposed) to the center line thereof, in front of or adjoining said tract, piece or parcel of land and together with any strips and gores relating to said tract, piece or parcel of land, all rights of use, air, mineral and subsurface rights, servitudes, licenses, tenements, hereditaments and appurtenances now or hereafter belonging to the foregoing (all the foregoing hereinafter sometimes referred to as the "Demised Premises"). The lease of the Demised Premises is subject to ~~all any~~ zoning ordinances affecting the Demised Premises, ~~building, use and other restrictions~~ to the Permitted Exceptions set forth on Exhibit B annexed hereto and matters of record made a part hereof. The Demised Premises together with any improvements which are constructed by Tenant after the date of this Lease shall be hereinafter referred to as the "Property." Landlord and Tenant acknowledge that Tenant has entered into a lease (the "Office Lease") for _____ the space in the Building with _____ (the "Office Tenant")

SECTION 2. Term; Conditions:

(a) The term of this Lease shall commence on the date of the execution and delivery of this Lease (hereinafter referred to as the "Commencement Date").

(b) Notwithstanding the Commencement Date as set forth in Section 2(a) hereof, unless this Lease has been previously terminated in accordance with the terms and conditions hereof, the obligation of Tenant to pay rent reserved under Section 3 hereof shall commence on the earlier to occur of (i) January 1, 2007, (ii) the date upon which ("Office Tenant") commences use and occupancy after completion of its tenant improvements of thirty percent (30%) or more of the space in the Building leased to Office Tenant pursuant to Tenant's lease with Office Tenant (the "Office

Lease"), or (iii) the date upon which Office Tenant commences to pay rent to Tenant under the Office Lease (hereinafter referred to as the "Rent Commencement Date").

(c) ~~(b)~~—The initial term of this Lease shall commence on the Commencement Date and expire thirty-five (35) years after the Commencement Date, unless sooner terminated or extended as herein provided (the "**Initial Term**").

(d) ~~(c)~~—~~Provided Tenant is not in default at the expiration of the Initial Term or any Extension Term (as hereinafter defined), as applicable, after notice and the expiration of any applicable cure periods,~~Tenant shall have the right to extend the Initial Term or Extension Term, as applicable, for three (3) additional periods of twenty (20) years each (each such renewal referred to as an "**Extension Term**"), upon all of the terms and conditions of this Lease (other than the further right to extend after such three (3) Extension Terms), and at the Basic Rent set forth in Section 3(b) hereof. Each such extension shall automatically be exercised unless Tenant delivers written notice of termination to Landlord given no later than ninety (90) days before the date on which this Lease would otherwise extend.

(e) ~~(d)~~—The Initial Term of this Lease and the Extension Terms (unless Tenant elects not to extend), are collectively herein referred to as the "**Term**."

(f) The parties hereto acknowledge that in the event Tenant is not reasonably satisfied that the following conditions (the "Conditions") have been met within the time periods set forth below, then Tenant shall have the right to terminate this Lease prior to the expiration of the time periods applicable to the relevant Condition as set forth below. The Conditions and the period for satisfaction or waiver of the Conditions are as follows:

- (i) that Tenant obtains approval from Landlord as to its preliminary site plan, architectural elevations (to include color and materials), landscape and irrigation plans, utility plans, and exterior lighting and signage plans as required under this Lease within thirty (30) days following the date of execution of this Lease; and obtains approval from Landlord as to Tenant's final plans as required under this Lease within ninety (90) days following the date of execution of this Lease;**
- (ii) that Tenant determines, within thirty (30) days from the date of execution of this Lease, that the soil condition, environmental condition and other physical characteristics of the Demised Premises are satisfactory for the construction and use of the building contemplated by Tenant; and**
- (iii) that Tenant obtains (or determines that it can obtain), within one hundred twenty (120) days from the date of execution of this Lease, all permits, licenses and approvals required for (1) the construction of the buildings and other improvements shown on the Landlord approved, final plans, and (2) the operation of Tenant's proposed business, as described in this Lease.**

Tenant shall indemnify Landlord for all costs and expenses incurred in connection with Tenant's submission of requests for permits or other governmental licenses or approvals as contemplated under this paragraph. (Tenant's obligation to indemnify Landlord as provided herein shall survive the termination of this Lease). In the event that any of the Conditions are not satisfied within the respective time periods set forth above, Tenant shall have the right (i) to declare this Lease null and void, or (ii) to waive the unsatisfied Condition(s). In the event that Tenant elects to declare this Lease null and void, as provided above, then Tenant shall notify Landlord to that effect (which notice shall specify the reason for termination), in writing, prior to the expiration of the applicable time period as set forth above, after which neither party shall have any further liability under this Lease to the other (except as otherwise provided herein). In the event that Tenant fails to terminate this Lease as a result of failure to satisfy any Condition(s) within the applicable time period set forth above, then Tenant shall be deemed to have waived the applicable Condition(s) and this Lease shall remain in full force and effect. In any event, this Lease shall continue in effect without this Section 2(f), and the provisions of this Section 2(f) shall be null and void and of no force or effect whatsoever (except for the indemnification obligations contained in the next paragraph, which shall continue), if Tenant has not terminated this Lease (as provided herein) within one hundred twenty (120) days from the date of execution of this Lease.

Until such time as the Conditions are satisfied or waived by Tenant, Tenant shall be obligated to comply with all of the provisions of this Lease but shall not be permitted to exercise any of its rights under this Lease except as set forth in this paragraph. During such period prior to satisfaction or waiver of the Conditions, Tenant and its employees and agents shall, however, have the right to enter upon the Demised Premises for engineering purposes. Such engineering purposes shall include the right to make surveys and topographical maps, to perform environmental assessments, to conduct soil tests and make soil borings, to make determinations as to the availability of utilities, and to perform such other acts and engineering studies as may be deemed necessary by Tenant in order to determine that the condition of the Demised Premises is satisfactory to it for its proposed use of same, all of which are to be conducted at Tenant's sole expense and liability. Tenant hereby agrees to indemnify, defend and hold Landlord harmless from and against any losses, damages, liabilities and expenses of any nature whatsoever, including reasonable attorneys' fees, which might be incurred by Landlord arising out of or relating to any entry by or on behalf of Tenant or its employees or agents upon the Demised Premises. Tenant hereby further agrees that in the event this Lease shall be terminated by Tenant under the provisions of this Section 2(f), then Tenant shall, within twenty (20) days of the date of termination of this Lease, (i) restore the Demised Premises to the condition it was in prior to any such entry, and (ii) deliver to Landlord copies of all surveys, maps, test results, studies, reports and assessments that were prepared by or on behalf of Tenant with respect to the Demised Premises. Tenant hereby further agrees to keep in confidence any and all information obtained by Tenant in connection with the inspections, surveys, tests, studies and assessments that are performed by or for Tenant with respect to the Demised Premises. Tenant's obligations to indemnify Landlord, to restore the Demised Premises, to provide Landlord with materials and to preserve confidentiality, all as provided in this paragraph, shall survive the termination of this Lease.

SECTION 3. Rent:

(a) Tenant covenants and agrees to pay Landlord for the Demised Premises, without any offset, abatement or deduction whatsoever other than as expressly set forth herein, and without previous demand therefor, basic rent ("Basic Rent") as set forth below. For purposes of this Lease, each consecutive twelve month period shall be referred to hereafter as a "Lease Year". Provided, however, the first (1st) Lease Year shall be a long Lease Year and shall commence on the Commencement Date of this Lease and shall expire on December 31, 20___. There shall be no Basic Rent due during the first (1st) Lease Year. Tenant's payment of Basic Rent shall commence on the Rent Commencement Date. The Basic Rent shall be \$500,000.00. Commencing on the first (1st) day of the third (3rd) Lease Year and on the first (1st) day of each Lease Year thereafter throughout the entire Term of this Lease (including any Extension Terms), the Basic Rent shall increase by (i) two percent (2%) over the Basic Rent that had been owing during the preceding Lease Year during the term of the Office Lease on the commencement of the new Lease Year, and (ii) thereafter three percent (3%) over the Basic Rent that had been owing during the preceding Lease Year. Notwithstanding anything herein to the contrary, the Basic Rent shall be adjusted (up or down as applicable) by \$1.00 per square foot for every square foot by which the gross square footage of the Building shall be less than _____ square feet or more than _____ square feet at any time during the Term of this Lease-

(b) As of the date the payment of Basic Rent commences under this Lease, all Basic Rent per annum shall be payable by Tenant in ~~monthly~~ equal bi-annual installments on the first day of ~~each month~~ the first (1st) and seventh (7th) months of each Lease Year during the Term, and shall be payable at the office of Landlord first above set forth or at such other place of which Landlord shall have given Tenant written notice at least thirty (30) days in advance. If the date the payment of Basic Rent commences under this Lease is not the first day of the first or seventh month of a Lease Year, then the Basic Rent due hereunder shall be prorated for the balance of the current six month period.

(c) As hereinafter used the term "Rent" shall be deemed to include the Basic Rent and any other additional rent, if any, payable by Tenant to Landlord hereunder.

SECTION 4. Rent to Be Net to Landlord:

The purpose and intent of this Lease is that the Basic Rent provided for in Section 3 hereof shall be, except as otherwise specifically set forth in this Lease, an absolutely net return to Landlord and shall continue unreduced and unabated throughout the entire Term and ~~shall be absolutely net of that~~ all costs, expenses, taxes Taxes (real and personal as hereinafter defined), assessments and charges and other costs of every kind and nature ~~whatsoever relating to in connection with~~ the ownership, occupancy, use, maintenance, upkeep and preservation of the Demised Premises and of said leasehold interest and of this Lease during the Term shall be borne and paid by Tenant so that the rental together with any such adjustments constitute the minimum income realized by Landlord from the Premises. ~~Tenant will indemnify and hold harmless Landlord from and against such costs, expenses and charges.~~

SECTION 5. Use of Demised Premises:

Pursuant to the Plans (as hereinafter defined), approved by Landlord, the Demised Premises shall initially be used by Tenant solely for the operation of a first-class, non-high rise office building (per City of _____ ordinances) **and uses incidental to such primary use, such as parking, a sundry retail shop or cafeteria or similar type of food service facilities.** The cafeteria or similar type of food service facilities shall ~~require the consent of Landlord~~ ~~serve only~~ **principally, but not exclusively,** the Building and shall be of a type customary in first-class downtown _____ office buildings or otherwise in keeping with the character and quality of uses in the immediately surrounding development commonly referred to as "_____" (collectively, the "**Surrounding Development**"). As of the date hereof, "first-class office building" shall mean a building comparable to _____, _____ – and _____, **Notwithstanding the foregoing, upon the expiration or termination of the Office Lease, then, and in that event, the permitted use of the Demised Premises shall be expanded to include restaurants or retail business on the ground floor of the Building, provided that such retail or restaurant use shall be subject to Landlord's reasonable written approval and (i) the proposed tenants shall not be direct competitors of any tenants in the Surrounding Development at that time, or (ii) the proposed new uses will not cause Landlord or Landlord's Affiliates (as hereinafter defined) to be in violation of any exclusive use and/or radius clauses set forth in any leases for space in the Surrounding Development in effect at the time of the proposed change in the use of the Demised Premises.**

SECTION 6. Taxes and Utility Expenses:

(a) (i) From and after the Commencement Date, Tenant shall, during the Term, as additional rent, pay and discharge punctually, as and when the same shall become due and payable, all **real estate** taxes, special and general assessments, water rents, rates and charges, sewer rents ~~and other governmental impositions and charges of every kind and nature whatsoever, extraordinary as well as ordinary~~ (hereinafter referred to as "**Taxes**"), and each and every installment thereof which shall or may during the term of this Lease be charged, levied, laid, assessed, imposed, become due and payable, or liens upon or for or with respect to the Demised Premises or any part thereof, or any buildings, appurtenances or equipment owned by Tenant thereon or therein ~~or any part thereof, taxes based upon the receipt of rent (including the Michigan Single Business Tax), and any other federal, state or local charge (general, special, ordinary or extraordinary) which may now or hereafter be imposed, levied or assessed against the Property~~ or any part thereof, together with all interest and penalties thereon, under or by virtue of all present or future laws, ordinances, requirements, orders, directives, rules or regulations of the Federal, State, County, Town and City governments and of all other governmental authorities whatsoever (all of which shall also be included in the term "Taxes" as heretofore defined) and all sewer rents and charges for water, steam, heat, gas, hot water, electricity, light and power, cable, internet and other service or services, furnished to the Demised Premises or the occupants thereof during the term of this Lease (hereinafter referred to as "**Utility Expenses**"). To the extent Landlord or Landlord's Affiliate will supply any of the utility services to Tenant, Landlord or Landlord's Affiliate, as applicable, and Tenant shall enter into a separate agreement with respect to such service.

(ii) If any present or future enactment of the State of Michigan or any political subdivision thereof or any governmental authority having jurisdiction thereof imposes a tax

and/or assessment of any kind or nature upon, against or with respect to the Rent payable by Tenant to Landlord hereunder ~~or on the income of Landlord derived from the Demised Premises,~~ or with respect to Landlord's, or the individuals' or entities' which form Landlord herein, ownership of the land and buildings comprising the Demised Premises, and/or impose a tax or surcharge of any kind or nature upon, against or with respect to the Demised Premises, ~~either in addition to or~~ by way of substitution for all or any part of the taxes and assessments levied or assessed against such land and such buildings, then for the purpose of this Section 6, such amount shall be calculated on a calendar year basis and Tenant shall be obligated to pay the same to Landlord within thirty (30) days after Tenant receives a written invoice therefor from Landlord.

(iii) Tenant shall promptly deliver to Landlord, upon Landlord's request, copies of paid real property tax bills as soon as the same are received by Tenant.

(b) (i) To the extent that the same may be permitted by law, Tenant or its designees shall have the right to apply for the conversion of any assessment for local improvements assessed during the term of this Lease in order to cause the same to be payable in annual installments, and upon such conversion Tenant shall pay and discharge punctually said installments as they shall become due and payable during the Term from and after the Rent Commencement Date. Landlord agrees to permit the application for the foregoing conversion to be filed in Landlord's name, if necessary, and shall execute any and all documents requested by Tenant to accomplish the foregoing result.

~~(bii)~~ Tenant shall be deemed to have complied with the covenants of this Section 6(b) if payment of such Taxes shall have been made ~~thirty (30) days prior to the end of~~ either within any period allowed by law or by the governmental authority imposing the same during which payment is permitted without penalty before the same are deemed delinquent.

(c) All such Taxes, including assessments which have been converted into installments as set forth in Section 6(b) hereof, which shall become payable during each of the calendar or fiscal tax years, as the case may be, in which the Commencement Date occurs and in which the Term of this Lease terminates, shall be apportioned prorata between Landlord and Tenant in accordance with the respective portions of such year before and after the Commencement Date and before and after the termination date, as the case may be.

(d) (i) Tenant or its designees shall have the right to contest or review all such Taxes by legal proceedings, or in such other manner as it may deem suitable (which, if instituted, Tenant or its designees shall conduct promptly at its own cost and expense, and free of any expense to Landlord, and, if necessary, in the name of and with the cooperation of Landlord and Landlord shall execute all documents necessary to accomplish the foregoing). Notwithstanding the foregoing, Tenant shall promptly pay all such Taxes if at any time the Demised Premises or any part thereof shall then be immediately subject to forfeiture, if Landlord shall be subject to any criminal liability arising out of the non-payment thereof, or if payment of such Taxes is required under Michigan law to proceed with the desired challenge.

(ii) The legal proceedings referred to in Section 6(d)(i) hereof shall include appropriate certiorari proceedings and appeals from orders therein and appeals

from any judgments, decrees or orders. In the event of any reduction, cancellation or discharge, Tenant shall pay the amount finally levied or assessed against the Demised Premises or adjudicated to be due and payable on any such contested Taxes.

(d) — e) Landlord covenants and agrees that if there shall be any refunds or rebates on account of the Taxes paid by Tenant under the provisions of this Lease, such refund or rebate shall belong to Tenant. Landlord will, upon the request of Tenant, sign any receipts which may be necessary to secure the payment of any such refund or rebate, and will pay over to Tenant such refund or rebate as received by Landlord. Taxes for the first and last Lease Year shall be appropriately prorated based on the most recent real estate tax bill then available.

(f) Nothing herein or in this Lease otherwise contained shall require or be construed to require Tenant to pay any inheritance, estate, succession, transfer, gift, franchise, income, single business or profit taxes, that are or may be imposed upon Landlord, its successors or assigns. [There shall further be excluded from the calculation of Taxes any Taxes assessed or levied against or upon the Premises for any fiscal tax year by reason of any action of Landlord (including, but not by way of limitation, sales, exchanges, transfers, conveyances and all other transfers of any nature whatsoever) taken subsequent to the commencement of the term of this Lease which triggers a reassessment of the Building or any portion of the real property of which it is a part, all of which shall be paid by Landlord or, at Tenant's option, by Tenant and offset against the Rent.]

SECTION 7. Tenant Taking Demised Premises "AS IS, WHERE IS":

Tenant acknowledges that as of the date of this Lease it has inspected, analyzed, reviewed and evaluated the Demised Premises, that it and its representatives will have conducted such investigation of the Demised Premises as deemed necessary by Tenant and that it is thoroughly aware of the condition of the Demised Premises. ~~The~~Except as otherwise specifically set forth herein, the Demised Premises and any other property or rights furnished or to be furnished under or in connection with this Lease to Tenant are furnished "AS IS", "WHERE IS" AND WITH ALL FAULTS AND WITHOUT ANY REPRESENTATION OR WARRANTY OF ANY NATURE WHATSOEVER, EXPRESS OR IMPLIED, ORAL OR WRITTEN, AND IN PARTICULAR, WITHOUT ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; AND, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED FOR IN THIS LEASE, LANDLORD DISCLAIMS AND TENANT HEREBY WAIVES ANY OBLIGATION, LIABILITY, RIGHT, CLAIM OR DEMAND IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE WITH RESPECT TO THE DEMISED PREMISES EXCEPT AS EXPRESSLY SET FORTH HEREIN. Without limiting the generality of the foregoing, Tenant acknowledges and agrees: (i) that Landlord neither represents nor warrants that the Demised Premises or any part thereof leased under this Lease will operate satisfactorily; (ii) that, except as specifically set forth herein, Landlord shall have no liability or responsibility for the condition and/or operation of the Demised Premises; and (iii) that Tenant is leasing the Demised Premises based solely upon its own inspection, evaluation, review and analysis, and Tenant assumes the entire risk associated with such inspection, evaluation, review and analysis being incomplete or inaccurate.

SECTION 8. Construction of Improvements:

(a) Landlord shall not be required to perform any construction upon or in connection with the Demised Premises or supply any utilities or facilities thereto and Tenant shall be solely responsible therefor at Tenant's sole cost and expense.

(b) Tenant shall, at its sole cost and expense, raze any existing improvements upon the Demised Premises and provide all work and materials of whatsoever nature in order to construct a first class office building (referred to herein as the "**Building**") of not less than _____ thousand (_____) gross square feet and not more than _____ thousand (_____) gross square feet, the Access Road (as hereinafter defined) and site preparation, utilities, landscaping, irrigation, and all other improvements whatsoever in connection therewith, as approximately set forth on the preliminary design plan attached hereto as Exhibit D (the Building and all other such improvements are herein collectively referred to as the "**Improvements**").

(c) Notwithstanding anything herein contained to the contrary, ~~any change to the Improvements~~ **(i) the layout of the Building and associated landscaping upon the Demised Premises, (ii) the height and exterior configuration of the Building, (iii) the materials utilized on the exterior of the Building, (iv) all signs upon the exterior of the Building (other than directional signage) and (v) the Access Road,** shall be subject to Landlord's prior written approval **(hereinafter referred to as the "Construction Approval Matters"), which approval shall not be unreasonably withheld.** Tenant agrees that Landlord ~~may~~ **shall not be deemed to be unreasonably withheld** ~~withholding~~ its approval **with respect to items governed by (c)(iii) and (iv)** to the extent that the materials and signage utilized on the exterior of the Building are ~~changed~~ **not consistent** in any respect **quality and nature to materials and signage used for Surrounding Development.** Tenant shall submit ~~details constructions drawings, plans and specifications~~ (together with all supporting documentation and information necessary for Landlord to review the plans) relating to ~~the Improvement~~ **all Construction Approval Matters** (the "**Plans**"), to Landlord for Landlord's written approval, **which approval shall not be unreasonably withheld,** before submitting the Plans for building permits and shall not construct any Improvements **containing Construction Approval Matters** unless and until Landlord has approved the same in writing. Landlord shall review such Plans, as revised from time to time, and advise Tenant of any changes required by Landlord **within ten (10) business days of receipt. Failure by Landlord to respond within such time period will constitute an approval of the request, but shall not subject Landlord to any liability.** In the event that Landlord rejects the Plans or requests additional information to complete its review, Tenant shall revise the Plans or submit such additional information as reasonably required by Landlord in order to obtain Landlord's approval of the Construction Approval Matters. No **material** change shall be made with respect to any ~~Improvements~~ **Construction Approval Matters** without Landlord's prior written approval.

(d) Tenant shall, at its sole cost and expense obtain any and all requisite building, construction, zoning and other licenses, variances, permits and approvals relating to the construction of the Improvements. **Landlord shall cooperate in all reasonable respects with Tenant in order to obtain all such permits and/or approvals, including executing, acknowledging and delivering any consents or any other instruments as may be required in**

connection therewith; provided, however, that in no event shall Landlord incur any liability, cost or expense in connection therewith.

(e) Upon issuance of such building permits, Tenant shall promptly undertake the construction of the Improvements and diligently prosecute such construction to completion. All construction of the Improvements **Construction Approval Matters** shall be performed **substantially and materially** in accordance with the Plans relating thereto as approved by Landlord. The following provisions shall govern the construction of the Improvements.

(i) To the end that there shall be no labor disputes which would interfere with any construction or operation of the Improvements, Tenant agrees to engage the services of only such contractors or subcontractors covered by a collective bargaining agreement with the appropriate jurisdictional trade union, ~~and, that will work in harmony and without causing any labor dispute with each other and with the employees, contractors and subcontractors of all others working in or upon the Building or any part thereof, and Tenant shall require its contractors and subcontractors to employ only such labor as will work in harmony and without causing any labor dispute with each other, with Tenant's employees, contractors and subcontractors and with the employees, contractors and subcontractors of all others working in or upon the Building or any part thereof.~~ Tenant shall be solely responsible for the negotiation and preparation of all development, architectural and construction contracts. ~~Tenant shall enter into a fixed sum or stipulated sum construction contract with a general contractor satisfactory to Landlord.~~ **Notwithstanding anything herein to the contrary, the terms of this Section 8(e)(i) shall not apply to any subtenants in the Building.**

(ii) During construction, Tenant shall pay for all electricity, water and other utilities consumed in performing such construction. Tenant shall be responsible for the removal of all construction debris and trash relating to the construction of the Improvements.

(iii) Tenant agrees not to commence construction of the Improvements until Tenant has secured a building permit and all other applicable permits, Landlord's approval of the Plans **relating to the Construction Approval Matters** and a certificate of insurance naming all appropriate parties as additional insured and evidencing the coverage required by Section 16(b) of this Lease.

(iv) All such work shall conform to applicable statutes, ordinances, laws, codes and governmental regulations. Tenant shall obtain and convey copies to Landlord of all applicable permits and all approvals as may be required by local or state authorities and utility companies. Meter cost fees, tapping, use and capital charges incurred by reason of supplying utilities to the Demised Premises are to be paid by Tenant.

~~(v) All of the contractors performing any such work shall be licensed contractors, capable of performing quality workmanship. Landlord shall be entitled to rely on the same completion security provided by Tenant to its lender (although Landlord's interest may be subordinated to that of the Lender's), including without limitation, a guaranty from the parent organization for the general contractor and/or payment and performance bonds ensuring completion of the Improvements.~~

(vi) No approval by Landlord shall be deemed valid unless the same shall be in writing.

(vii) All of such work shall be performed in a first-class, workmanlike manner and shall be in good and usable condition at the date of completion.

(viii) Tenant shall take all reasonably necessary measures to minimize any damage, disruption or inconvenience in the area of the Demised Premises caused by such construction, and make adequate provision for the safety and convenience of all persons affected thereby. Dust, noise and other effects of such construction shall be controlled using accepted methods customarily utilized in order to control such conditions. Tenant shall not permit dirt, debris, equipment, trash or the like to be located outside of the Demised Premises, except as otherwise agreed to by Landlord and Tenant.

(ix) After completion of the Building, and upon receipt by Tenant, Tenant shall supply Landlord with a copy of the Certificate of Occupancy from the local building department and one (1) set of "as-built" drawings for record purposes.

(x) Simultaneously with the execution of this Lease, Tenant shall enter into a collateral assignment with Landlord, which shall assign to Landlord all permits, contracts, plans, specifications, reports, and other contract rights relating to the construction of the Improvements. An event of default under this Lease shall be an event of default under the collateral assignment. **To the extent necessary for Tenant to obtain construction financing, Landlord's rights under such assignment shall be junior to an assignment in favor of the construction lender.**

(xi) ~~Construction~~ **Subject to Section 28, Tenant shall use reasonable efforts to commence construction** of the Improvements shall ~~commence~~ on or before _____, and shall ~~be~~ **substantially completed** **complete construction** by the earlier of (i) _____, or (ii) the date the Building is required to be completed pursuant to the terms of the Office Lease (the earlier of such dates hereafter referred to as the "**Completion Date**"). For purposes of this provision, "commencement" shall mean the beginning of installation of the foundation for the Building. Once commenced, Tenant shall diligently proceed with the construction of the Improvements. For purposes of this provision, "completion" shall mean the earlier of (a) use and occupancy of the Building by Office Tenant, or (b) issuance of a **temporary or** final certificate of occupancy for the Building.

(f) Tenant intends to construct an access road for the ingress to and from the Building at a location and of a size necessary for Landlord's intended use and in compliance with all applicable Laws and otherwise of a mutually agreeable nature, as reflected on the approved Plans (the "Access Road"). Tenant shall be responsible for all costs to construct the Access Road. Tenant shall coordinate the design of the Access Road with Landlord in order to incorporate such Access Road within the Improvements. The Access Road shall be constructed on or before the Completion Date; provided, however, that at all times prior to installation of the Access Road Landlord shall be provided, and Tenant shall cause to be maintained, free and clear access to the Building which is of a nature and quality equal to the access available to Landlord as of the date of this Lease. Landlord and Tenant agree to maintain those portions of the Access Road allocated to each party in accordance with Exhibit C attached hereto.

(g) Upon expiration or the earlier termination of the Term, title to all Improvements, including fixtures (other than Tenant's or any permitted sublessee's trade fixtures), shall vest in and become the property of Landlord without any additional compensation or further instrument of conveyance. Tenant shall, if so requested, deliver, at no cost or expense to Landlord, a confirmatory deed ~~or other document requested by Landlord~~ of the foregoing. The Improvements shall be surrendered and transferred to Landlord free and clear of all liens or claims to or against them by Tenant or any third persons, and Tenant shall defend and indemnify Landlord against all liability or loss arising from such liens or claims. Notwithstanding the foregoing, until such expiration or earlier termination of the Term, Tenant alone shall have the right to deduct all depreciation on Tenant's income tax returns for the Improvements and any alterations, improvements or additions thereto and title to all Improvements shall be vested in Tenant. Provided, however, Tenant shall not waste or destroy the Improvements and the Improvements shall not be removed or severed from the Demised Premises.

(h) The parties covenant and agree for themselves and all parties claiming under them that the Improvements are real property. It is the intent of the parties that the separation of title to the Improvements and the Demised Premises is not to change the character of the Improvements as real property. It is also the intention and agreement of the parties that the ownership of Tenant's leasehold estate and all of Tenant's right, title and interest in and to the Improvements shall be non-separable and that any attempt to transfer such right, title and interest in the Improvements shall be void and ineffective unless accompanied by a complete transfer of Tenant's leasehold estate in accordance with the terms hereof.

SECTION 9. Repairs and Alterations:

(a) Except as otherwise specifically provided in this Lease such as, by way of example, Landlord's responsibilities relating to environmental matters and the Access Road, Landlord shall have absolutely no obligation to make any repairs, replacements or improvements in and to the Demised Premises or to maintain the same.

(b) Tenant, at Tenant's sole cost and expense, shall keep and maintain in first-class appearance, in a condition consistent with the adjacent Surrounding Development or, to the extent Landlord or Landlord's Affiliate does not have a significant interest in a portion of the Surrounding Development, a first-class, non-high rise office building and in good order, condition and repair (including replacement of parts and equipment, if necessary) the Demised Premises, the Access Road and every part thereof and any and all appurtenances thereto wherever located, and all other repairs, replacements, renewals and restorations, interior and exterior, ordinary and extraordinary, foreseen and unforeseen, including, without limitation, all maintenance, replacements and repairs of the foundation, all structural portions, exterior walls and roof of the Building, heating and air conditioning, plumbing and all electrical systems, sprinkler systems, walls, floors and ceilings and all parking, landscaping, drives and other common areas upon the Demised Premises. The duty to repair shall include the duty to replace whenever necessary or appropriate. Landlord, at Landlord's sole cost and expense, shall keep and maintain adjacent Surrounding Development in first-class appearance, and every part thereof and any and all appurtenances thereto wherever located, and all other repairs, replacements, renewals and restorations, interior and exterior, ordinary and extraordinary, foreseen and unforeseen, including, without

limitation, all maintenance, replacements and repairs of the foundation, all structural portions, exterior walls and roof of all buildings, heating and air conditioning, plumbing and all electrical systems, sprinkler systems, walls, floors and ceilings and all parking, landscaping, drives and other common areas. The duty to repair shall include the duty to replace whenever necessary or appropriate.

(c) Tenant shall ~~not~~ have the right to make any and all alterations, improvements and/or additions to the Improvements ~~without first obtaining~~ from time to time, provided that Landlord's prior written approval shall be required with respect to any alterations, improvements and/or additions which affect the Construction Approval Matters. Prior to making any alterations, improvements or additions which affect the Construction Approval Matters, Tenant shall submit to Landlord plans and specifications therefor for Landlord's prior written approval. Tenant shall not make any alterations, improvements or additions which affect the Construction Approval Matters prior to receiving Landlord's prior written approval. If approval is required, Landlord will not unreasonably withhold its approval subject to compliance with Section 8(c) and shall provide its approval or denial within ten (10) business days after receipt of a written request. Failure by Landlord to respond to a written request within such time will constitute an approval of the request.

(d) At the expiration or earlier termination of the Term, Tenant shall surrender the Demised Premises and all improvements in good order, condition and repair, subject to normal wear and tear and the provisions of Sections 17 and 18 hereof.

SECTION 10. Requirements of Public Authority:

(a) Subject to the terms and conditions contained in Section 24 below, during the Term of this Lease, Tenant shall, at its own cost and expense, promptly observe and comply with all present and future laws, ordinances, requirements, orders, directives, rules and regulations of the Federal, State, County and City governments and of all other governmental authorities affecting the Property or appurtenances thereto or any part thereof (including the structural portions thereof) whether the same are in force as of the Commencement Date or any in the future be passed, enacted or directed (hereinafter referred to as the "Laws"), and Tenant shall pay all costs, expenses, liabilities, losses, damages, fines, penalties, claims and demands, including reasonable counsel fees, that may in any manner arise out of or be imposed because of the failure of Tenant to comply with the covenants of this Section 10. The term "Laws" shall include all Environmental Laws (as hereinafter defined).

(b) Tenant shall have the right to contest by appropriate legal proceedings diligently conducted in good faith, in the name of Tenant, or Landlord (if legally required), or both (if legally required), without cost or expense to Landlord, the validity or application of any Laws, and if by the terms of any such Laws, compliance therewith may legally be delayed pending the prosecution of any such proceeding, Tenant may delay such compliance therewith until the final determination of such proceeding.

(c) Landlord agrees to execute and deliver, within five (5) business days after receipt of a written request, any appropriate documents or other instruments which may be necessary or proper to permit Tenant so to contest the validity or application of any such Laws and to fully cooperate with Tenant in such contest.

SECTION 11. Covenant Against Liens:

Except as provided in Section 20 below and liens for taxes not yet due and payable, Tenant shall not allow any liens to attach to the Property or any leasehold estates created pursuant to this Lease. If, because of any act or omission of Tenant or any person claiming an interest in the Property through Tenant (such as contractors and subcontractors), any mechanic's lien or other lien, charge or order for the payment of money shall be filed against the Property or any leasehold estates created pursuant to this Lease, Tenant shall, at its own cost and expense, **either (a) cause the same to be discharged of record or bonded over in compliance with the Michigan Construction Lien Act within ten(10) days after of prior to the filing foreclosure thereof, or (b) if Tenant in good faith determines that the lien should be contested, then diligently contest such lien to the extent Tenant shall promptly furnish such security as Landlord shall reasonably determine to be necessary and/or required to prevent any foreclosure proceedings against the Property, or any portion thereof, during the pendency of such contest and Tenant shall, to the extent reasonably possible, cause the title company that issued an Owner's title policy to Landlord (or such other company satisfactory to Landlord) to issue an endorsement to such policy removing the lien as a matter affecting title to the Property. In the event that Tenant commences to contest a lien, but fails to diligently pursue such contest to completion, then Tenant shall, upon demand of Landlord, comply with option (a). After conclusion of the legal proceedings contesting a lien, Tenant shall promptly pay the amount of any award (if any) to the lienholder and cause the lien to be discharged (if not already done so).** Tenant shall indemnify and save harmless Landlord against and from all costs, liabilities, suits, penalties, claims and demands, including reasonable counsel fees, resulting from any liens that attach to the Property or any leasehold estates created pursuant to this Lease.

All materialmen, contractors, artisans, mechanics, laborers and any other persons or entities now or hereafter contracting with Tenant (or Tenant's contractors or agents) for the furnishing of any labor, services, materials, supplies or equipment with respect to any portion of the Property, are hereby charged with notice that they must look exclusively to Tenant to obtain payment and/or security for the same. Landlord shall be entitled to file and/or post on the Property such notices, including notices of non-responsibility and other similar notices, evidencing Tenant's obligations with respect to any of the matters covered by this Section 11.

SECTION 12. Access to Demised Premises:

(a) Subject to the limitations set forth herein, Landlord or Landlord's agents and designees shall have the right, but not the obligation, to enter upon the Property at all reasonable times (or at any time in the event of an emergency) to examine same and to exhibit the Property to prospective purchasers and prospective tenants—, **but in the latter case only during the last six (6) months of the Term of this Lease. Notwithstanding anything herein to the contrary, access to the Building, except in the event of an emergency, shall be permitted only upon twenty-four (24) hours advance notice to Tenant and shall be subject to the rights of any subtenants in the Building.**

(b) Landlord hereby reserves the right to access the portion of the Demised Premises not improved with the Building at any and all times for the use, operation, maintenance,

construction and replacement of the Access Road, provided, however, that if any of the foregoing would impede parking on the Demised Premises during normal hours of operation of the Building, such access shall only be at mutually agreeable times and with Tenant's prior written consent, which consent will not be unreasonably withheld. Landlord shall also have the right, at its sole cost and expense, to construct on the Demised Premises in a location acceptable to both Landlord and Tenant near the Utility Building, such additional (permanent or temporary) communication, broadcast or electronic devices deemed necessary by the Landlord for the Surrounding Development. Tenant shall not alter the Access Road without Landlord's prior written approval. Tenant shall in no way interfere with, limit or block use of the Access Road by Landlord.

(c) Landlord shall use good faith efforts to assist Tenant in obtaining a non-exclusive easement for the benefit of the Demised Premises (the "Access Easement") from the _____ Authority (the "Authority") over the area depicted on Exhibit attached hereto (the "Easement Area") for the purposes of vehicular and pedestrian ingress and egress between _____ Street and the Demised Premises. The Access Easement will also require consent/subordination from _____ County (the "County") and the City of _____ Downtown Development Authority (the "DDA"). The terms and conditions of the easement agreement shall be subject to Landlord's reasonable review and approval as to any matters which affect Landlord's right to continue to use the Easement Area for roadways, driveways, pathways, landscaping, lighting and other improvements associated with the development of a parking garage (the "Landlord Improvements") on the parcel adjacent to the Demised Premises (commonly referred to as "Parcel _____"). Subject to the foregoing, Landlord further agrees to join in the granting of the Access Easement for purposes of granting its consent to the Access Easement and for any other purpose reasonably required by Tenant or the Authority.

(d) Landlord shall construct a parking garage on Parcel _____ in accordance with the land identified plans and specifications attached hereto as _____ of Exhibit B _____ on or before _____ (the "Lot Completion Date"). Landlord recognizes that a delay in the Lot Completion Date will cause a disruption in Tenant's business. In consideration of that business disruption, Landlord hereby agrees to provide Tenant with one additional day of free rent beyond any other free rent concession provided for in this Lease, for every day of delay beyond the Lot Completion set forth above, plus pay Tenant \$ _____ per day. All such amount may be offset by Tenant against the Rent and other sums due hereunder. Landlord may construct roadway and pathway improvements within the Easement Area in connection with the development of the Landlord Improvements. Landlord shall grant to Tenant, a non-exclusive license throughout the term of this Lease for use of all roadways and pathways as may exist from time to time within the Easement Area (the "Road License") pursuant to a separate license agreement dated as of the date hereof (the "Road License Agreement"). The Road License Agreement shall provide, in part, that for so long as Landlord or Landlord's Affiliates own Parcel _____ or controls the development rights to Parcel _____, Landlord shall maintain such portions of the Easement Area which are used for the Landlord Improvements, in a condition commensurate with the rest of the Surrounding Development at Landlord's sole cost and expense (subject to such exclusions as set forth in the Road License Agreement, such as Tenant's liability for any damage to the Landlord Improvements caused by Tenant, its employees, contractors or agents). Upon completion of the

design of the Landlord Improvements, to the extent any of the roadways and pathways to be constructed by Landlord on _____Parcel_____ are not located within the Easement Area, or to the extent such roadways and pathways to be constructed thereon will not abut the Demised Premises, Landlord shall grant to Tenant a license to enter upon the Easement Area and construct any roadways and pathways necessary to connect with _____ Street or the Landlord Improvements, at Tenant's sole cost and expense. Upon constructing such roadways and pathways necessary to connect to the Demised Premises, Tenant shall maintain such roadways and pathways throughout the term of this Lease. Landlord and Tenant each agree, with respect to the design, plans and specifications of all such roadways and pathways to be located within the Easement Area, regardless of which party is actually constructing such roadways and pathways, the non-constructing party shall have a right of approval of such design, plans and specifications, which approval shall not be unreasonably withheld. **Further, Tenant acknowledges that the Authority, the County and/or the DDA may have the right to approve plans and specifications for the construction of the roadways and pathways. Landlord shall have no liability for any delays caused, or any changes required by, the Authority, the County or the DDA.**

(e) In addition to the Access Easement, Landlord **grants Tenant the right to grant public utility or public service providers rights of way or easement in order to service the Property with telephone, cable, water or other utilities. Landlord agrees to consent thereto and to execute and deliver all documents reasonably necessary in connection therewith provided the location of the easement is reasonably acceptable to Landlord. Landlord** shall use good faith efforts to assist Tenant in obtaining a perpetual, non-exclusive easement located within the Easement Area for the benefit of the Demised Premises (the "**Drainage Easement**") from _____**the Authority** for the construction and maintenance of certain drainage facilities as are required for the development of the Demised Premises. The exact location of the drainage facilities within the Easement Area will be subject to Landlord's reasonable approval for purposes of confirming that the drainage facilities will not interfere with the Landlord Improvements. The **Drainage Easement will also require consent/subordination from the County and the DDA. The** terms and conditions of the easement agreement shall be subject to Landlord's **reasonable** review and approval for purposes of confirming Landlord's ability to continue to use the Easement Area for the Landlord Improvements. Subject to the foregoing, Landlord further agrees to join in the granting of the Drainage Easement for purposes of granting its consent to the Drainage Easement and for any other purpose reasonably required by Tenant or _____**the Authority**.

(f) Landlord shall grant to Tenant a license for the term of this Lease for the construction and maintenance of such drainage facilities within the Drainage Easement pursuant to a separate license agreement dated as of the date hereof (the "**Drainage License Agreement**"). The Drainage License Agreement shall provide, in part, that Tenant shall restore the surface of the Drainage Easement after construction and after any future maintenance, to the condition which existed prior to construction or maintenance, as applicable, to the extent reasonably practicable. To the extent Landlord has approved the location of the drainage facilities, Landlord agrees not to build any portion of the parking garage or other structures over the location of the drainage facilities.

(g) Upon execution of the Road License Agreement and the Drainage License Agreement, such licenses, or a short form version thereof, shall be recorded in the real estate records of _____ County, Michigan. Under no circumstances shall Landlord be required to commence a lawsuit or legal action to obtain the Access Easement or Drainage Easement.

SECTION 13. Assignment and Subletting:

(a) Subject to the provisions of Section 13(b) hereof, Tenant shall have the right to assign this Lease or sublet all or any portion of the Building **enter into a sublease with a term that extends beyond the term hereof only** with Landlord's consent. ~~Landlord may withhold its, which consent to~~ **shall not be unreasonably withheld, conditioned or delayed; provided that Landlord's consent shall not be required for** any assignment of this Lease for any reason, including but not limited to, if the proposed transferee (1) is not creditworthy; (2) is not in good standing with the State in which it is formed (to the extent the transferee is or subletting to an entity which is created by filing with a State); (3) does not have experience owning or operating buildings similar in nature to the Building; (4) is a tenant **Affiliate, as hereinafter defined,** or occupant in the Surrounding Development, if such party would be relocating from the Surrounding Development to the Building; (5) is a company in competition with Landlord's affiliates; or (6) is a federal, state, county, or local governmental body. **any sublet of the Building.**

Further, Landlord's consent shall not be required for an assignment in accordance with Section 20(l) of this Lease. Consent by Landlord to one or more assignments of this Lease or to one or more sublettings of the Building shall not operate to exhaust Landlord's rights under this Section 13(a). If Tenant desires to assign this Lease or sublet all or any portion of the Building **which requires Landlord approval,** Tenant shall give notice to Landlord setting forth the terms of the proposed assignment or subletting, **except with respect to an assignment or subletting to an Affiliate, Tenant shall only be required to notify Landlord of such assignment or subletting.** Notwithstanding any assignment or subletting, Tenant shall not be released from any and shall be responsible for the performance of all of Tenant's obligations under this Lease. **Landlord's consent to a sublease requiring approval from Landlord will not be unreasonably withheld or delayed to the extent that the proposed tenant intends to use the Property only for a use permitted under this Lease and does not require signage in violation of this Lease or parking rights which conflict with the Parking Agreement (as hereinafter defined).**

(b) Except for collateral assignments granted in connection with financings, Tenant shall not have the right to assign this Lease until after the completion of the Building.

(c) ~~(i)~~ Notwithstanding **the fact that any subleases executed by Tenant shall be subject and subordinate to this Lease, Landlord agrees that upon termination of this Lease (other than because of a casualty or condemnation) for as long as the subtenant is not in default, beyond any applicable notice and cure period, in the payment of rent or other amounts due under the sublease, or in the performance of any of the terms, covenants and conditions of the sublease on subtenant's part to be performed, the sublease shall not be terminated and the subtenant's rights and interests under the sublease, shall not be**

disturbed by Landlord and Landlord will recognize the sublease as a direct lease with Landlord. Landlord agrees, upon Tenant's request, to enter into a non-disturbance and recognition agreement with each such subtenant providing for the foregoing. However, the foregoing non-disturbance and recognition obligation shall be applicable only to the extent the sublease contains the following provisions (unless otherwise waived in writing by Landlord before the sublease is executed):

(i) Immediately upon termination of the interest of Tenant under this Lease, the subtenant shall attorn to Landlord under the sublease (thereby agreeing to recognize Landlord as its landlord and to pay to Landlord all rents and other amounts from time to time coming due under the sublease), the attornment to be effective and self-operative, without the execution of any other instruments;

(ii) Notwithstanding anything in this Lease or the sublease to the contrary Landlord shall not in any event be (a) liable for any act, omission or default of Tenant; (b) subject to any claims, abatements, offsets, counterclaims or defenses that subtenant may have against Tenant; (c) bound by any rent, additional rent or other charges that subtenant may have paid for more than the then current month to Tenant; (d) bound by any amendment, modification, of the sublease **to the extent Landlord had the right to initially approve the sublease under the terms of this Lease;** (e) liable for any security or other deposit **except to the extent actually received and held by Landlord;** (f) liable for any covenant or agreement to undertake or complete demolition, construction or installation of improvements on the Demised Premises or any part thereof; (g) liable for any payment to subtenant of any sums, or granting to subtenant of any credit, with respect to the cost of preparing, furnishing or moving in to the Building or any part thereof; (h) liable for any obligation of Tenant under the sublease **which shall have accrued prior to the date this Lease terminates;** or (i) liable for any representation or warranty given or made by Tenant, including without limitation, any representation or warranty with respect to the environmental or other condition of the Demised Premises, construction, zoning, compliance with laws or building codes, or title, or any indemnity, hold harmless or defense obligation with respect thereto; and

(iii) ~~(ii)~~ If Landlord becomes liable to subtenant under the sublease for any claim, loss or damage, subtenant shall look solely to the Property for recovery of any judgment or damages from Landlord, and Landlord shall have no personal liability, directly or indirectly, under or in connection with the sublease. Nothing in this Lease shall impose any obligation on Landlord for the management, control or condition of the Property prior to the time, if any.

(d) "Affiliates" means any person or entity that controls, is controlled by or is under common control with Tenant. A person or entity shall be presumed to have control when it possesses the power, directly or indirectly, to direct, or cause the direction of, the management or policies of another person or entity, whether through ownership or voting securities, by contract or otherwise.

(e) ~~(e)~~ In the event of a Sale (as defined below) by Tenant of this Lease, Tenant hereby covenants and agrees to pay to Landlord, in cash, 1/3 of the Available Proceeds (as defined below) **up to a maximum of \$** . Such amount shall be paid immediately following Landlord's assignment of the Ground Lease and the closing of the Sale. Tenant shall

provide Landlord with written notice of any proposed Sale at least thirty (30) days prior to the intended closing date for the Sale (the "Sale Notice"). In the event that no Available Proceeds are available, then the Tenant has no obligation to pay Landlord as described above and any obligation of any party to pay Landlord such amount shall cease.

(i) The term "Available Proceeds" shall mean the cash value of all consideration received by Tenant for the Sale (including, but not limited to, cash, stock or other ownership interests in an entity, real or personal property or debt relief), less (a) the amounts paid or to be paid for the expenses of Tenant incurred in connection with the Sale, including, without limitation, legal and accounting fees, brokerage commissions, transfer taxes (or similar impositions), prorations, title and survey charges, and repayment of any loan (including accrued but unpaid interest and including any prepayment penalties) made to Tenant, (b) the amounts of any payments due to members of Tenant which are project costs as defined in the project budget provided to the lender; and (c) the return of \$~~36~~ million of equity to the members of Tenant and the return of any additional unrecovered capital (including, without limitation, any additional equity investment above \$ _____ million).

(ii) The term "Sale" shall mean: (a) an assignment of this Lease by Tenant which requires Landlord's consent which is made in connection with the sale of all or substantially all of the assets of Tenant, (b) any sale, in one or more related transactions, of more than 50% of the membership interests of Tenant in any twelve (12) month period, other than to other members of Tenant, as a result of a death or for estate planning purposes, or (c) any merger or consolidation of Tenant with another entity which results in any party other than the ~~current~~other members of Tenant or their Affiliates owning more than 50% of the ownership interests in the surviving entity. For purposes of this provision, a Sale will not be deemed to occur upon the assignment or transfer of this Lease to (a) a Leasehold Mortgagee, (b) a purchaser at a foreclosure sale with respect to a Leasehold Mortgage, or (c) a purchaser/assignee acquiring the Lease from a Leasehold Mortgagee or other purchaser at a foreclosure sale (provided, however, this provision and the obligation to make the payments described herein to Landlord shall be binding upon and assumed by such purchaser/assignee).

SECTION 14. Signs:

(a) Subject to Landlord's rights of approval as herein provided with respect to exterior signs, Tenant and Tenant's subtenants shall have the right to install, maintain and replace in, on or over or in front of the Property or in any part thereof such signs and advertising matter as Tenant may desire, and Tenant shall comply with any applicable requirements of governmental authorities having jurisdiction and shall obtain any necessary permits for such purposes. As used in this Section 14, the word "sign" shall be construed to include any placard, light or other advertising symbol or object, irrespective of whether same be temporary or permanent.

(b) ~~Tenant shall not sell or grant naming and/or exterior signage rights other than to tenants within the Building.~~ So long as Landlord or Landlord's Affiliate owns, controls or has some other meaningful interest (whether by title, lease or concession right) in all or a part of the Surrounding Development, Tenant shall not, without Landlord's prior written consent, provide signage on the Building or the Demised Premises (other than on the interior of the Building to

the extent not visible from the exterior) to any entity whose primary business is as owner of a _____, _____, _____ or _____, although Tenant may provide signage to any subsidiary or related entities, so long as such subsidiary or related entities' business is not _____ itself. By way of example only, Tenant shall not provide signage to _____ so long as it is still in the _____ business, but may provide signage to subsidiaries of _____ that may _____ but do not _____. "**Landlord's Affiliate**" means (i) the _____, (ii) _____ or _____, (iii) any lineal descendants of _____ or _____, (iv) any entity that is majority or wholly owned or controlled by, or is under common control with, Landlord or the _____ or (v) any entity that is majority or wholly owned or controlled by _____ and/or _____ and/or any of their lineal descendants.

(c) Tenant shall have such other signage rights with respect to the adjacent Surrounding Development as set forth in any separate agreement now or in the future entered into by Tenant and Landlord or any of Landlord's Affiliates.

SECTION 15. Indemnity:

Except to the extent of Landlord's gross negligence or willful misconduct and except as it relates to that portion of the Access Road which is under Landlord's control and the Utility Building, Tenant shall indemnify, defend, and hold harmless Landlord and its members, partners, directors, officers, stockholders, employees, legal representatives, agents, successor or assigns from and against any and all claims, actions, obligations, judgments, damages, liability, cost and expense, including attorneys' fees, arising from or related to (a) any occurrence in, upon or at the Demised Premises (including loss of life, personal injury and/or damage to property), (b) the occupancy or use by Tenant or any subtenant of the Demised Premises or any part thereof, (c) Tenant's failure to comply with any provision of this Lease, and/or (d) any act or omission of Tenant, its subtenants, agents, contractors, suppliers, employees, servants, customers or licensees and any person or entity conducting business in the Demised Premises. Any defense obligation shall be undertaken with legal counsel reasonably approved by Landlord. Tenant's obligation under this Section 15 shall survive the termination or expiration of this Lease.

Unless and then solely to the extent such damage is caused by the willful misconduct or the gross negligence of Landlord or is related to Landlord's use of that portion of the Access Road which is under Landlord's control and the Utility Building, Tenant, in consideration of Landlord's execution of this Lease, hereby releases Landlord from all claims for loss of life, personal injury or theft of or damage to property or business or the loss of use of any property or inconvenience sustained by Tenant or any person claiming through Tenant, resulting from any fire, accident, or any occurrence or condition in or upon the Demised Premises.

SECTION 16. Insurance:

(a) Tenant shall, at its sole cost and expense, from and after the Commencement Date, and during the entire term hereof, procure, pay for and keep in full force and effect: (i) an occurrence form commercial general liability policy, including insurance against assumed or contractual liability under this Lease with respect to the Demised Premises and

the operations of Tenant and any person or entity conducting business in, on or about the Demised Premises in which the limits with respect to personal liability and property damage shall not be less than Five Million Dollars (\$5,000,000) combined single limit for bodily injury and property damage per occurrence; (ii) special causes of loss property insurance for the full replacement value (without any deductions for depreciation or otherwise) of the Property, including business interruption insurance for a period of at least one (1) year; (iii) special extended coverage property insurance, including theft and, if applicable, boiler and machinery coverage, written at a replacement cost value in an adequate amount to avoid coinsurance and a replacement cost endorsement insuring Tenant's trade fixtures, furnishings, equipment, plate glass, signs and personal property of Tenant; (iv) workers' compensation coverage as required by law; (v) with respect to alterations, improvements and the like required or permitted to be made by Tenant hereunder, contractor's protective liability and builder's risk insurance, in amounts satisfactory to Landlord; and (vi) product liability coverage, including, without limitation, if liquor or food is sold upon the Demised Premises, liquor liability coverage and coverage for liability arising out of the consumption of food and/or alcoholic beverages on or obtained at the Demised Premises, of not less than Two Million Dollars (\$2,000,000) combined single limit per occurrence for personal injury and death and property damage. From time to time during the Term of this Lease, at Landlord's request, Tenant shall (1) procure, pay for and keep in full force and effect such other insurance as Landlord shall reasonably require, and (2) increase the limits of such insurance as Landlord shall reasonably require. The above required liability coverage of \$5,000,000 may be achieved by using an umbrella liability policy in combination with Tenant's primary liability policy.

(b) Prior to commencement of the construction of the Improvements and until full completion thereof, Tenant shall secure, pay for and maintain or cause its contractor to secure, pay for and maintain, as the case may be, during the construction of and fixturing work within the Demised Premises, the following forms of insurance coverage:

(i) Workmen's Compensation Insurance—statutory limits;

(ii) Commercial General Liability Insurance—(including Contractor's Protective Liability, Completed Operations, Contractual Liability, Explosion and Collapse coverage), with a combined single limit of Five Million Dollars (\$5,000,000) each occurrence with respect to bodily injury and/or property damage (which coverage may be achieved by using an umbrella liability policy in combination with Tenant's primary liability policy); and

(iii) Comprehensive Automobile Liability Coverage—(including coverage for owned, hired and nonowned automotive equipment) with a combined single limit of Five Million Dollars (\$5,000,000) per occurrence for bodily injury and property damage (which coverage may be achieved by using an umbrella liability policy in combination with Tenant's primary liability policy);

(iv) Owner's Protective Liability Insurance insuring Tenant against any and all liability to third parties for damages because of bodily injury and property damage liability of others, or a combination thereof, which may arise from work in the completion of the Improvements, with a combined single limit of Five Million Dollars (\$5,000,000) each

occurrence with respect to bodily injury and/or property damage. Tenant shall also provide a Completed Value Form "All Physical Loss" Builders Risk Policy, as it relates to the Building, naming the interests of Landlord and its agents as additional insured.

All insurance policies referenced in this subsection (b) shall name Landlord, and such other parties as reasonably requested by Landlord as additional insured under the policies. Tenant or Tenant's contractor shall deliver the necessary insurance certificates to Landlord prior to commencing work. Further, Tenant agrees to hold and save Landlord from any and all liability, claims and damages arising out of the construction of the Improvements.

(c) All policies of insurance required to be carried by Tenant pursuant to this Section 16 shall be written by responsible insurance companies licensed to do business in the State of Michigan and with a Best rating of at least A-X. A copy of each paid-up policy evidencing such insurance or a certificate of the insurer, certifying that such policy has been issued, providing the coverage required by this Section 16 and containing provisions specified herein, shall be delivered to Landlord prior to the commencement of the Term and, upon renewals, not less than thirty (30) days prior to the expiration of such coverage (except for notice of 10 days for cancellation due to non-payment of the premium). Landlord may, at any time and from time to time, inspect and/or copy any and all insurance policies required to be procured by Tenant hereunder.

(d) Each policy evidencing insurance required to be carried by Tenant pursuant to this Section 16 shall contain the following provisions and/or clauses: (i) a cross-liability, severability or substantially similar clause; (ii) a provision that such policy and the coverage evidenced thereby shall be primary and noncontributing with respect to any policies carried by Landlord and that any coverage carried by Landlord shall be excess insurance; (iii) a provision including Landlord and such other parties as reasonably requested by Landlord as an additional insured (except with respect to workers' compensation insurance); and (iv) a provision that the insurer will not cancel, materially change or fail to renew the coverage provided by such policy without first giving Landlord thirty (30) days' prior written notice.

(e) Landlord and Tenant shall each be released from any liability (by way of subrogation or otherwise) for loss or damage to any building, structure or other tangible property, or any resulting loss of income, or losses under workers' compensation laws and benefits, resulting from damage by casualty (irrespective of the cause of such casualty) to the extent that such loss or damage is insured or required to be insured under this Lease, upon the express proviso that if at any time their respective insurers shall refuse to permit waivers of subrogation, Landlord and Tenant may in each instance revoke said waiver of subrogation effective thirty (30) days from the date of notice to the other unless, within such thirty (30) day period, the other is able to secure and furnish without additional expense insurance in other companies with such waiver of subrogation, or if such waiver can only be obtained at additional expense, if the other agrees to pay such additional expense.

SECTION 17. Destruction:

In the event that, at any time during the term of this Lease, the Improvements shall be destroyed or damaged in whole or in part by fire or other cause within the definition of the insurance policies carried or required to be carried by Tenant in accordance with this Lease, then,

Tenant, at its own cost and expense, shall cause the same to be repaired, replaced or rebuilt with a building substantially the same as the Building in accordance with Section 8 hereof and subject to Landlord's approval ~~of the Improvements~~**with respect to the Construction Approval Matters**, within a period of time which, under all prevailing circumstances, shall be reasonable; provided, however, that **(i) if any time after completion of the Improvements more than 30% of the gross square footage of the Building is substantially damaged or destroyed, (ii) the Office Lease is terminated as a result of such casualty prior to commencement of reconstruction Office Lease or (iii)** if the Building on the Demised Premises shall be substantially damaged or destroyed by fire or such other cause during the last ~~year~~**five (5) years** of the Initial Term or during any Extended Term such that the Building is no longer usable, Tenant shall have the right to terminate this Lease by written notice to Landlord within ninety (90) days after such damage or destruction. Tenant shall continue to pay Basic Rent and all other rents and charges during any restoration and there shall be no rent abatement hereunder as a result of any fire or other casualty. If Tenant shall so terminate this Lease, Tenant shall promptly raze the Building and any other portions of the Improvements required by Landlord and promptly restore the Demised Premises to a safe, "raw" land, condition suitable for a new development utilizing the insurance proceeds therefor and the unused portion of the insurance proceeds not required to discharge any applicable Mortgages and to so raze such damaged buildings and restore the Demised Premises to a safe condition shall be paid to Tenant. In the event this Lease shall be so terminated pursuant to this Section 17, Tenant shall pay Rent through the date of delivery of the Demised Premises to Landlord in the condition required herein, upon which delivery, this Lease shall be terminated.

SECTION 18. Eminent Domain:

(a) If the whole of the Demised Premises shall be taken for any public or quasi-public use under any statute or by right of eminent domain or by private purchase in lieu thereof, then this Lease shall automatically terminate as of the date that possession has been taken. In the event of a partial taking (or purchase) of the Demised Premises pursuant to which Tenant can no longer reasonably operate the Building for its intended purposes, then Tenant shall have the right, but not the obligation, to terminate this Lease by giving written notice of such termination to Landlord on or prior to the date ninety (90) days after the date of such taking (or purchase), and upon the giving of such notice of termination the term of this Lease shall expire and come to an end on the last day of the calendar month in which such notice shall be given, with the same force and effect as if said day had been originally fixed herein as the expiration date of the Term of this Lease. In the event this Lease shall terminate or shall be terminated, Rent shall, if and when necessary, be adjusted to the day of the taking (or purchase) and neither party shall have any further rights or liabilities hereunder.

(b) In the event of a taking (or purchase) resulting in the termination of this Lease pursuant to the provisions of Section 18(a) hereof, the parties hereto agree to cooperate in applying for and in prosecuting any claim for such taking and further agree, that the aggregate net award, after deducting all expenses and costs, including attorneys' fees, incurred in connection therewith, payable to both Landlord and Tenant shall be paid to Landlord (or if required, to any Leasehold Mortgage) and distributed as follows:

(i) So much of such net award as is available for distribution shall first be paid to the holder or holders of any Leasehold Mortgage to the extent of the then unpaid principal amount of such Leasehold Mortgage.

(ii) Then, the balance of the net award, if any, remaining after such payment to the holders of any Leasehold Mortgage pursuant to Section 18(b)(i) hereof, shall be divided between Landlord and Tenant as follows: Landlord shall be paid an amount equal to ~~(A)~~ the greater of (1) ten (10) times the then current annual Basic Rent (or less, if the outstanding term is less than 10 years), or (2) the value of the land comprising the Demised Premises (but not any Improvements), subject to the terms of this Lease, other than the provisions of this Section 18, and ~~(B) that portion of the net award relating to the Improvements equal to such portion multiplied by a fraction, the numerator of which is the number of full calendar months from and after the Commencement Date to the date of such termination of this Lease pursuant to this Section 18 and the denominator of which is the number of full calendar months from the Commencement Date to the stated expiration date of the Term (including any renewal terms with respect to which Tenant has exercised or has the right to exercise)~~ (hereinafter referred to as "**Landlord's Share**") and Tenant shall be paid the entire balance thereof after such payment to Landlord.

(c) (i) In the event of a partial taking (or purchase) not resulting in the termination of this Lease, pursuant to the provisions of Section 18(a) hereof, Tenant shall, at its own cost and expense, make all repairs to the buildings and improvements on the Demised Premises affected by such taking (or purchase) to the extent necessary to restore the same to a complete architectural unit (to the extent permitted, however, taking into consideration the amount of land remaining after any such taking or purchase).

(ii) All compensation available or paid to Landlord and Tenant upon such a partial taking (or purchase), shall be paid to Tenant for the purpose of paying towards the cost of such restoration, or, in the event that the parties hereto agree that only a portion of the aggregate award is sufficient to so restore, then only such portion as agreed upon shall be paid to Tenant for such purpose and the balance shall be distributed pursuant to Section 18(c)(iii).

(iii) All compensation available or paid to Landlord and Tenant upon such a partial taking (or purchase) in excess of the amount thereof needed by Tenant to repair and restore the buildings and improvements shall be distributed in the same manner as is provided in Section 18(b)(i) and (ii) hereof. In the event that any payment out of such compensation shall be paid to Landlord, then the Rent payable hereunder shall be reduced by a fraction the numerator of which shall be the amount so paid to Landlord and the denominator of which shall be in an amount equal to Landlord's Share less the total net proceeds of any award theretofore received by Landlord from any (and all) prior partial takings (or purchases).

(d) If all or any portion of the Demised Premises shall be condemned or taken for governmental occupancy for a limited period, this Lease shall not terminate and Tenant shall be entitled to receive the entire award therefor (whether paid as damages, rent or otherwise) unless the period of governmental occupancy extends beyond the expiration of the Term, in which case Landlord shall be entitled to part of such award as shall be properly allocable to the cost of restoration of the Demised Premises to the extent any such award is specifically made for such

purpose, and the balance of such award shall be apportioned between Landlord and Tenant as of the date of such expiration. If the termination of such governmental occupancy is prior to the expiration of this Lease, Tenant shall restore the Property as nearly as possible to the condition in which it was prior to the condemnation or taking.

SECTION 19. Landlord's Mortgages:

In the event that Landlord desires to pledge its leasehold interest in the Demised Premises under this Lease as security for financing, then Landlord may collaterally assign its interest at any time and from time to time during the Term. If the party providing such financing desires a mortgage on Landlord's leasehold or fee interest, Landlord may grant such mortgage ~~which shall have priority over this Lease provided~~ so long as such mortgagee executes mortgage is subject and delivers subordinate to this Lease and such mortgage will not interfere with or adversely impact on ~~Tenant an agreement recognizing Tenant's leasehold interest and right of possession so long as Tenant is not in Default under the terms of this Lease beyond any applicable notice and cure period in a form mutually acceptable such mortgagee, Landlord and/or Tenant (or in the form attached's ability to obtain leasehold financing as Exhibit B) herein.~~

SECTION 20. Leasehold Mortgages:

Tenant and every successor and assign of Tenant is hereby given the right by Landlord in addition to any other rights herein granted, without Landlord's prior written consent, to mortgage its interests in this Lease, or any part or parts thereof, and any sublease(s) under one or more leasehold mortgage(s) (each, a "Leasehold Mortgage"), and assign this Lease, or any part or parts thereof, and any sublease(s) as collateral security for such Leasehold Mortgage(s), upon the condition that all rights acquired under such Leasehold Mortgage(s) shall, except as otherwise specifically provided herein, be subject to each and all of the covenants, conditions and restrictions set forth in this Lease, and to all rights and interests of Landlord herein, none of which covenants, conditions and restrictions set forth in this Lease is or shall be waived by Landlord by reason of the right given so to mortgage such interest in this Lease, except as expressly provided herein. Notwithstanding the foregoing, Tenant shall not create or permit to exist any lien, mortgage, or charge on, pledge of, or conditional sale or other title retention agreement with respect to, or encumbrance of any kind on Landlord's interest in Landlord's estate and/or interest in the Demised Premises and/or this Lease. If Tenant shall mortgage this leasehold, or any part or parts thereof, and if the holder(s) of such Leasehold Mortgage(s) (each, a "Leasehold Mortgage") shall, within thirty (30) days of its execution, send to Landlord a true copy thereof, together with written notice specifying the name and address of the Leasehold Mortgagee and the pertinent recording date with respect to such Leasehold Mortgage(s), Landlord agrees that so long as any such Leasehold Mortgage(s) shall remain unsatisfied of record or until written notice of satisfaction is given by the applicable Leasehold Mortgagee(s) to Landlord, the following provisions shall apply:

(a) There shall be no cancellation, surrender or modification of this Lease by joint action of Landlord and Tenant without the prior consent in writing of the Leasehold Mortgagee(s);

(b) Landlord shall, upon serving Tenant with any notice of default, simultaneously serve a copy of such notice upon the Leasehold Mortgagee(s). The Leasehold Mortgagee(s)

shall thereupon have the right to remedy or cause to be remedied the defaults complained of, and Landlord shall accept such performance by or at the instigation of such Leasehold Mortgagee(s) as if the same had been done by Tenant. If Tenant does not cure within the applicable cure period under this Lease, Landlord shall notify Leasehold Mortgagee(s) if it intends to terminate this Lease and Leasehold Mortgagee(s) shall, after receiving such notice, have forty-five (45) days from the date of service of notice of termination upon such Leasehold Mortgagee(s) to notify Landlord of its desire to nullify such notice and shall have paid to Landlord all Rent and other payments herein provided for, and then in default, and shall have complied or shall commence the work of complying with all of the other requirements of this Lease, except as provided in Section 20(g) hereof, if any are then in default, and shall prosecute the same to completion with reasonable diligence (not to exceed ninety (90) days unless such default cannot reasonably be cured within said ninety (90) day period or possession of the Demised Premises is required for such cure), then in such event Landlord shall not be entitled to terminate this Lease and any notice of termination theretofore given shall be void and of no effect;

(c) If Landlord shall elect to terminate this Lease by reason of any default of Tenant, the Leasehold Mortgagee(s) shall not only have the right to nullify any notice of termination by curing such default, as aforesaid, but shall also have the right to postpone and extend the specified date for the termination of this Lease as fixed by Landlord in its notice of termination, for a period of not more than six (6) months, provided that such Leasehold Mortgagee(s) shall cure or cause to be cured any then existing money defaults and meanwhile pay Rent and comply with and perform all of the other terms, conditions and provisions of this Lease on Tenant's part to be complied with and performed, other than past non-monetary defaults, and provided further that the Leasehold Mortgagee(s) shall forthwith take steps to acquire or sell Tenant's interest in this Lease by foreclosure of the Leasehold Mortgage(s) or otherwise and shall prosecute the same to completion with all due diligence. If at the end of said six (6) month period the Leasehold Mortgagee(s) shall be actively engaged in steps to acquire or sell Tenant's interest herein, the time of said Leasehold Mortgagee to comply with the provisions of this Section 20 shall be extended for such period as shall be reasonably necessary to complete such steps with reasonable diligence and continuity. **Notwithstanding anything contained herein to the contrary, Landlord shall not have the right to terminate this Lease based on any defaults which, by their nature, Leasehold Mortgagee cannot cure unless the procedures under Section 20(f) are followed;**

(d) Subject to the terms of Section 20(b) and (c), the Leasehold Mortgagee, or its successors, assignees, or any purchaser at a foreclosure sale (each a "**Purchaser**") shall have the unrestricted right to acquire Tenant's interest under the Lease by foreclosure, assignment or transfer in lieu of foreclosure or otherwise, and such acquisition shall not require Landlord's consent or be deemed a default under the Lease. Upon Landlord's receipt from Leasehold Mortgagee of written notice of such an acquisition sent to Landlord at the address set forth above (or to any other address given by Landlord in writing to Leasehold Mortgagee), Landlord shall permit the Purchaser to enter into possession of the Property and to hold the same and exercise and enjoy all of the rights, privileges and benefits of Tenant under the Lease (without any representations or warranties of the validity of such rights), and such acquisition shall constitute an assumption by the Purchaser of Tenant's obligations under the Lease, provided, however, that the Purchaser shall not be liable for Tenant's obligations under the Lease until it shall become the owner of the Lease, either by foreclosure or assignment in lieu thereof or otherwise, and then

only during the period of time it is the owner of said Lease; provided, however, that, as a condition to the right of the Purchaser to acquire Tenant's leasehold estate as aforesaid, Purchaser shall promptly upon acquiring the leasehold estate, cure all of the defaults of Tenant under the Lease which are outstanding as of the date of such acquisition of the leasehold estate, except as provided in Section 20(c) and (g);

(e) Landlord agrees that the name of the Leasehold Mortgagee(s) may be added to the "Loss Payable Endorsement" of any and all insurance policies required to be carried by Tenant hereunder on condition that the insurance proceeds are to be applied in the manner specified in this Lease and that the Leasehold Mortgagee(s) or collateral document shall so provide;

(f) ~~Notwithstanding any to the contrary contained~~ **Landlord agrees that** in this section 20, ~~the notice and cure rights of the~~ **event of termination of this Lease by reason of any default by Tenant (other than a monetary default which** Leasehold Mortgagee ~~and all other rights of the~~ **does not cure) that Landlord will enter into a new lease of the Demised Premises with the** Leasehold Mortgagee ~~under this section 20 shall be conditioned upon the~~ **Leasehold Mortgagee(s) or its nominee(s) for the remainder of the term,** successors and assigns, ~~paying Landlord any delinquent Rent, Taxes, Utility Expenses, any and all construction liens, maintaining in full force and effect all insurance required under this Lease, paying all other financial obligations of Tenant under this Lease (collectively "Financial Obligations") and continuing to timely pay all Financial Obligations in accordance with the~~ **effective as of the date of such termination, with the same Rent and upon the terms and, provisions, covenants and agreements as herein contained and subject only to the same** conditions of this Lease; ~~and title as this Lease is subject to on the date of the execution hereof, and to the rights, if any, of any parties then in possession of any part of the Demised Premises, provided:~~

(i) Said Leasehold Mortgagee(s) or its nominee shall make written request upon Landlord for such new lease within forty-five (45) days after Leasehold Mortgagee receives notice of such termination and such written request is accompanied by payment to Landlord of sums then due to Landlord under this Lease;

(ii) Said Leasehold Mortgagee(s) or its nominee(s) shall pay to Landlord at the time of the execution and delivery of said new lease, any and all sums which would at the time of the execution and delivery thereof, be due pursuant to this Lease but for such termination, and in addition thereto, any expenses, including reasonable attorneys' fees, to which Landlord shall have been subjected by reason of such default;

(iii) Said Leasehold Mortgagee(s) or its nominee(s) shall perform and observe all covenants herein contained on Tenant's part to be performed and shall further remedy any other conditions which Tenant under the terminated lease was obligated to perform under the terms of this Lease; and upon execution and delivery of such new lease, any subleases which may have theretofore been assigned and transferred by Tenant to Landlord, as security under this Lease, shall thereupon be deemed to be held by Landlord as security for the performance of all of the obligations of Tenant under the new lease;

(iv) Landlord shall not warrant possession of the Demised Premises to tenant under the new lease;

(v) Such new lease shall be expressly made subject to the rights, if any, of Tenant under this Lease as terminated; and

(vi) Tenant under such new lease shall have the same right, title and interest in and to the Building and Improvements on the Demised Premises as Tenant had under this Lease as terminated;

(g) Nothing herein contained shall require the Leasehold Mortgagee(s) or its nominee(s) to cure any default of Tenant referred to in Section 23 hereof or any other non-monetary default which are not otherwise curable by Leasehold Mortgagee due to the nature of the default;

(h) To the extent reasonably necessary for Tenant to obtain financing secured by its interest in this Lease, Landlord agrees promptly after submission to execute, acknowledge and deliver any reasonable agreements modifying this Lease requested by any Leasehold Mortgagee(s), provided that such modification does not decrease Tenant's obligations or decrease Landlord's rights or increase Landlord's obligations pursuant to this Lease;

(i) The proceeds from any insurance policies or arising from a condemnation are to be held by any Leasehold Mortgagee(s) and distributed pursuant to the provisions of this Lease, but the Leasehold Mortgagee(s) may reserve its rights to apply to the mortgage debt all, or any part, of Tenant's share of such proceeds not required for restoration pursuant to such Leasehold Mortgagee(s);

(k) The Leasehold Mortgagee(s) shall be given notice of any litigation or arbitration proceedings by the parties hereto, and shall have the right to intervene therein and be made a party to such proceedings, and the parties hereto do hereby consent to such intervention. In the event that the Leasehold Mortgagee(s) shall not elect to intervene or become a party to such proceedings, the Leasehold Mortgagee(s) shall receive notice of, and a copy of any award or decision made in said arbitration proceedings;

(l) In the event that the Leasehold Mortgagee (but not any other Purchaser) obtains title and ownership of Tenant's interest under this Lease, then, notwithstanding the restrictions set forth in Section 13, Landlord shall not have any ability to approve an assignment of the Lease by the Leasehold Mortgagee; provided, however, the assignee shall assume in writing all of the obligations and liabilities of Tenant hereunder as of the date of such assignment and the provisions of Section 13 shall remain applicable to any other assignments thereafter;

(m) (j)—Landlord shall, upon request, execute, acknowledge and deliver to each Leasehold Mortgagee(s), an agreement prepared at the sole cost and expense of Tenant, in form satisfactory to such Leasehold Mortgagee(s), between Landlord, Tenant and Leasehold Mortgagee(s), agreeing to all of the provisions of this Section 20. The term "Leasehold Mortgage", whenever used herein, shall include whatever security instruments are used in the locale of the Demised Premises, such as, without limitation, deeds of trust, security deeds and conditional deeds, as well as financing statements, security agreements and other documentation required pursuant to the Uniform Commercial Code-; and

(n) For a period of time not to exceed one (1) year, at such time the Leasehold Mortgagee (but not any other Purchaser) has acquired Tenant's interest hereunder and is thus Tenant under this Lease, the amount of Basic Rent due hereunder to Landlord by Leasehold Mortgagee shall be temporarily reduced by one-half. Such reduction shall commence on the first payment date for Basic Rent after Leasehold Mortgagee becomes Tenant hereunder and shall continue for a period of one (1) year thereafter. Provided, however, this waiver will automatically be revoked and the full Basic Rent shall be due immediately upon any default hereunder by the Leasehold Mortgagee or upon any subsequent assignment of this Lease by Leasehold Mortgagee.

SECTION 21. Quiet Enjoyment:

Tenant, upon paying the Rent and all other sums and charges to be paid by it as herein provided, and observing and keeping all covenants, warranties, agreements and conditions of this Lease on its part to be kept, shall quietly have and enjoy the Demised Premises during the term of this Lease, without hindrance or molestation by anyone claiming by through or under Landlord, subject only to the Permitted Exceptions.

SECTION 22. Defaults:

(a) In the event any one or more of the following events shall have occurred and shall not have been remedied as hereinafter provided: ~~(i) the occurrence of any event set forth in Section 23 hereof, without the curing of same as therein provided; (ii) Tenant's failure to pay any installment of Rent when the same shall be due and payable and the continuance of such failure for a period of fifteen (15) days after receipt by Tenant of notice in writing from Landlord specifying in detail the nature of such failure; (iii) abandonment of the Property for a period of sixty (60) consecutive days, (iv) failure to maintain the insurance required hereunder for a period of five (5) business days after written notice from Landlord that such insurance is not in place, (v) a failure to comply with any of the provisions of Section 8, which failure is not remedied thirty (30) days after receipt by Tenant of notice in writing from Landlord specifying in detail the nature of such failure, or (vi) Tenant's failure to perform any of the other covenants, conditions and agreements herein contained on Tenant's part to be kept or performed and the continuance of such failure without the curing of same for a period of sixty (60) days after receipt by Tenant of notice in writing from Landlord specifying in detail the nature of such failure,~~ **[Landlord agrees that in no event shall such default described in this Subsection (ii) be the basis of a forfeiture of this Lease or otherwise result in the eviction of Tenant or the termination of the term of this Lease.] If Tenant shall not cure said failure as provided in Section 22(b) hereof (if applicable);** then, Landlord may, at its option, give to Tenant a notice of election to terminate this Lease and end the Term of this Lease upon a date specified in such notice which date shall be not less than ten (10) business days (Saturdays, Sundays and legal holidays excluded) after the date of receipt by Tenant of such notice from Landlord, and upon the date specified in said notice, the term and estate hereby vested in Tenant shall cease and any and all other right, title and interest of Tenant hereunder shall likewise cease without further notice or lapse of time, as fully and with like effect as if the entire term of this Lease had elapsed, but Tenant shall continue to be liable to Landlord as hereinafter provided.

(b) In the event that Landlord gives notice of a default under Section 22(a)(ii) of such a nature that it cannot reasonably be cured within such sixty (60) day period, then such default shall not be deemed to continue so long as Tenant, after receiving such notice, proceeds to cure the default within such 60 day period and continues to diligently take all steps necessary to complete the same within a period of time which, under all prevailing circumstances, shall be reasonable.

(c) ~~(b)~~—Upon any termination of the term of this Lease pursuant to Section 22(a) hereof, or at any time thereafter, Landlord may, in addition to and without prejudice to any other rights and remedies Landlord shall have at law or in equity, re-enter the Property, and recover possession thereof and dispossess any or all occupants of the Property in the manner prescribed by the statute relating to summary proceedings, or similar statutes; but Tenant in such case shall remain liable to Landlord as hereinafter provided.

(d) ~~(e)~~—Should Landlord elect to re-enter, as herein provided, or should it take possession pursuant to legal proceedings or pursuant to any notice provided for by law, it may either terminate this Lease or it may from time to time, without terminating this Lease, make such alterations and repairs as may be necessary in order to relet the Property, and relet the Property or any part thereof for such term or terms (which may be for a term extending beyond the Term) and at such rental or rentals and upon such other terms and conditions as Landlord in its sole discretion may deem advisable. Upon each such reletting all rentals and other sums received by Landlord from such reletting shall be applied, first, to the payment of any indebtedness other than Rent due hereunder from Tenant to Landlord; second, to the payment of any costs and expenses of such reletting, including reasonable brokerage fees and attorneys' fees and of costs of such alterations and repairs; third, to the payment of Rent and other charges 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 and other sums received from such reletting during any month be less than that to be paid during that month by Tenant hereunder, Tenant shall pay such deficiency to Landlord. Such deficiency shall be calculated and paid monthly. Tenant shall in no event be entitled to any Rent collected or payable upon any reletting, whether or not such Rent shall exceed the Rent reserved in this Lease. No such re-entry or taking possession of the Property 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 reletting without termination, Landlord may at any time hereafter 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 (i) all costs incurred by Landlord (including court costs and reasonable attorneys' fees and expenses) in obtaining possession of the Property, (ii) all costs of removing and storing Tenant's or any other occupant's property, (iii) all costs of repairing, restoring, altering, remodeling, or otherwise putting the Property into condition acceptable to a new tenant, (iv) all costs of performing Tenant's obligations which Tenant failed to perform, (v) costs and expenses of enforcing, or advising Landlord of, its rights, remedies, and recourses arising out of the default, (vi) any and all other damages it may incur by reason of such breach, and (vii) 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 Demised Premises for the remainder of the stated term, all of which amounts shall be immediately due and payable from Tenant to Landlord.

(e) ~~(d)~~-In case suit shall be brought for recovery of possession of the Property or for the recovery of Rent or any other amount due under the provisions of this Lease, or because of the breach of any other covenant herein contained on the part of Tenant to be kept or performed, and a breach shall be established, Tenant shall pay to Landlord all expenses incurred therefor, including a reasonable attorney's fee.

(f) ~~(e)~~-The parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Property and/or any claim of injury or damage. If Landlord commences any proceedings for nonpayment of Rent or any other amounts payable hereunder, Tenant shall not interpose any noncompulsory counterclaim of whatever nature or description in any such proceeding, unless the failure to raise the same would constitute a waiver thereof. This shall not, however, be construed as a waiver of Tenant's right to assert such claims in any separate action brought by Tenant.

(g) ~~(f)~~-Notwithstanding anything herein contained to the contrary, if Tenant shall be in default in the performance of any of the terms or provisions of this Lease and if Landlord shall give to Tenant notice in writing of such default specifying the nature thereof, and if Tenant shall fail to cure such default within the time provided in Section 22(a) hereof or immediately if such default requires emergency action, Landlord may, in addition to its other legal and equitable remedies, cure such default for the account of and at the cost and expense of Tenant, and the sums so expended by Landlord, including reasonable legal fees and interest at the rate in Section 40, shall be deemed to be additional rent and shall be paid by Tenant on the day when Basic Rent shall next become due and payable.

(h) ~~(g)~~-Upon any default by Tenant under this Lease after the applicable notice and cure periods, if any, set forth in Section 22(a) and (b) hereof, or at any time thereafter, Landlord may, in addition to and without prejudice to any other rights and remedies Landlord shall have at law or in equity, and whether or not this Lease has been terminated, exercise its rights under the collateral assignment described in Section 8(e)(x) and re-enter the Property and complete construction of the Improvements.

SECTION 23. Bankruptcy and Insolvency:

If, after the Commencement Date of this Lease: (a) Tenant or tenant then having the title to the leasehold estate created hereunder shall, while having such title, be adjudicated a bankrupt or adjudged to be insolvent; (b) a receiver or trustee shall be appointed for the aforesaid Tenant's property and affairs; (c) the aforesaid Tenant shall make an assignment for the benefit of creditors or shall file a petition in bankruptcy or insolvency or for reorganization or shall make application for the appointment of a receiver; or (d) any execution or attachment shall be issued against the aforesaid Tenant or any of the aforesaid Tenant's property, whereby the Demised Premises or any building or buildings or any improvements thereon shall be taken or occupied or attempted to be taken or occupied by someone other than the aforesaid Tenant, except as may

herein be permitted, and such adjudication, appointment, assignment, petition, execution or attachment shall not be set aside, vacated, discharged or bonded within ninety (90) days after the issuance of the same, then a default hereunder shall be deemed to have occurred so that the provisions of Section 22 hereof shall become effective and Landlord shall have the rights and remedies provided for therein. **Notwithstanding anything to the contrary hereinabove contained, upon the occurrence of a default pursuant to this Section 23, if the Rent due and payable hereunder shall continue to be paid and the other covenants, conditions and agreements of this Lease on Tenant's part to be kept and performed shall continue to be kept and performed, no event of default shall have been deemed to have occurred and the provisions of Section 23 hereof shall not become effective.**

SECTION 24. Environmental Provisions:

(a) Definitions.

(i) As used herein, "Environmental Laws" shall mean any federal, state and local laws including statutes, regulations, rulings, orders, administrative interpretations, guidance documents or memoranda and other governmental restrictions and requirements relating to the creation or discharge of solid waste, hazardous substances, hazardous waste, air pollutants, water pollutants or process wastewater or otherwise relating to the environment or Hazardous Substances (as defined herein) including, but not limited to, Michigan's Natural Resources and Environmental Protection Act ("**NREPA**"), M.C.L. 324.101 *et seq.*, the Federal Toxic Substances Control Act ("**TOSCA**"), the Federal Solid Waste Disposal Act, the Federal Clean Air Act, the Federal Water Pollution Control Act ("**CWA**"), the Federal Resource and Conservation and Recovery Act of 1976 ("**RCRA**") or the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("**CERCLA**"), the Hazardous Materials Transportation Act, regulations of the Federal Environmental Protection Agency or state environmental protection agency or Department of Environmental Quality now or at any time hereafter in effect.

(ii) As used herein, the term "Hazardous Substances" shall include, without limitation and regardless of when so classified or nominated:

(1) Those substances included within the definition of "liquid industrial waste," "hazardous substances," "hazardous materials," "toxic substances" or "hazardous waste" in NREPA, CERCLA, RCRA, CWA or the Hazardous Materials Transportation Act, or in any regulations promulgated pursuant to any Environmental Law;

(2) Those substances listed in the United States Department of Transportation Table (49 C.F.R. 172.101, including any amendments thereto) or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 C.F.R. Part 302, including any amendments thereto);

(3) Any material, waste, substance or mixture that is (A) petroleum, (B) asbestos, (C) polychlorinated biphenyls, (D) regulated under TOSCA, (E) flammable explosives, or (F) radioactive materials; or

(4) Such other substances, materials, wastes or mixtures that are or become regulated as hazardous or toxic under applicable local, state or federal law, or by the United States government, or which are classified as hazardous or toxic under local, state or federal laws or regulations having jurisdiction over the Demised Premises.

(b) Environmental Covenants of Tenant. During the Term of this Lease, Tenant shall:

(i) timely comply with all applicable Environmental Laws;

(ii) provide Landlord, immediately upon receipt thereof, with copies of any correspondence, notice, pleading, citation, notice of noncompliance, notice of violation, indictment, complaint, order, decree or other document from any source asserting or alleging that Tenant has violated any Environmental Laws applicable to Tenant's use of or presence at the Property, or asserting or alleging a circumstance or condition upon the Property which may require Tenant to perform a cleanup, remedial action or otherwise undertake a response activity, (including investigation), undertake due care activities or which imposes an obligation upon Tenant to pay any amount required under any Environmental Laws, by or on the part of Tenant under any Environmental Laws; and

(iii) at its sole expense, remove, remediate, clean up or prevent the offsite migration of any Hazardous Substances that were released to the environment, threatened to be released to the environment or disposed of at the Property, by Tenant, its employees or invitees during the Term of this Lease, and for which Landlord has no responsibility for removing or remediating under Section 24(e) hereof, or perform other investigation, remediation or corrective action with regard to such Hazardous Substances as required by Landlord in its sole discretion, if at any time it is determined that such Hazardous Substances above normal background concentrations present a health hazard on the Property or are required to be investigated, removed, contained, remediated or subject to corrective action pursuant to any Environmental Laws or regulatory authority.

(c) Reports. Tenant acknowledges that Landlord is not in possession of any environmental reports prepared for it or on its behalf on or before the date upon which this Lease has been executed by the Landlord and Tenant. Landlord has not provided to Tenant any reports concerning the environmental condition of the Demised Premises existing prior to the date upon which this Lease has been executed by Landlord and Tenant. There may exist environmental reports that have not been provided to Tenant because they are (1) neither in Landlord's possession nor under its control; or (2) they were prepared for Tenant or on its behalf.

(d) Indemnification. Landlord shall indemnify, defend and hold harmless Tenant and its employees, directors, stockholders, officers and agents, from and against any and all fines, penalties, claims, demands, causes of action, damages, losses, injuries and liabilities of any nature whatsoever actually incurred by Tenant, arising from any and all environmental conditions which existed on or about the Demised Premises prior to the Commencement Date, or from the conduct of any business or from any activity, work or things done, permitted or suffered by Landlord on or about the Demised Premises or elsewhere which resulted or results in any adverse environmental condition on or about the

Demised Premises and for which Tenant has a legal obligation to undertake response activity, remedial action, cleanup or corrective action. For purposes of the above sentence, the terms "permitted" and "suffered" shall not be construed so as to include the act of Landlord leasing the Demised Premises to Tenant. Landlord's duty to indemnify shall not include indemnification for any environmental conditions which were caused, exacerbated or otherwise set in motion by Tenant or any of Tenant's Lessees. Landlord shall further indemnify, defend and hold harmless Tenant from and against all costs, attorneys' fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon; and in case any action or proceeding be brought against Tenant by reason of any such claim, Landlord, upon notice from Tenant, shall defend the same at Landlord's expense by counsel satisfactory to Landlord and approved by Tenant, which approval shall not unreasonably be withheld. Landlord shall have no duty to indemnify Tenant for any environmental claim made by Tenant to the extent that such claim is due to or attributable to Tenant voluntarily undertaking investigation, response, remedial or corrective action not considered to be commercially reasonable under the circumstances.

(e) Environmental Covenants of Landlord. Landlord shall:

(i) to the extent it has any such obligations in its capacity as a lessor, timely comply with all Environmental Laws as they apply to all conditions on or about the Demised Premises which existed on or about the Demised Premises prior to the Commencement Date (whether or not Landlord or Tenant knew or should have known of such conditions), or from any adverse environmental condition that arises during the Term of this Lease that results from an on-site condition that existed upon the Commencement Date, or, with the exception such business or activity undertaken by or on behalf of Tenant, from the conduct of any business or from any activity, work or things done, permitted or suffered by Landlord on or about the Demised Premises or elsewhere which resulted in any environmental condition on or about the Demised Premises. For purposes of the above sentence, the terms "permitted" and "suffered" shall not be construed so as to include the act of Landlord leasing the Demised Premises to Tenant;

(ii) provide Tenant, immediately upon receipt thereof, with copies of any correspondence, notice, pleading, citation, notice of noncompliance, notice of violation, indictment, complaint, order, decree or other document from any source asserting or alleging violation upon the Demised Premises of any Environmental Laws, or asserting or alleging a circumstance or condition upon the Demised Premises which may require a financial contribution by Landlord or a cleanup, remedial action or other response activity, including investigation, by or on the part of Landlord under any Environmental Laws;

(iii) at its expense, and only to the extent required by NREPA or any other Environmental Law, remove or contain any Hazardous Substances on or about the Demised Premises or other environmental conditions on or about the Demised Premises (whether or not Landlord or Tenant knew or should have known of such Hazardous Substances or conditions) that existed prior to the Commencement Date, or perform other investigation or remediation or corrective action with regard to such Hazardous

Substances or environmental conditions as required by any Environmental Law, if at any time it is determined that such Hazardous Substances or environmental conditions on the Demised Premises present a risk to human health or the environment or are required to be investigated, removed, contained or remediated or otherwise subject to corrective action by any Environmental Laws ; and

(iv) reimburse Tenant in full for all costs and expenses incurred by Tenant in restoring the Property to its condition immediately preceding any removal, containment, remediation or corrective action required to be taken by Landlord pursuant to Section 24(e)(iii), which costs and expenses may include, without limitation, the cost of rebuilding any Improvements on the Demised Premises to a standard comparable to that of the Improvements existing on the Demised Premises immediately prior to the removal, containment, remediation or corrective action, and all costs and fees for professional and legal services incurred by Tenant in connection with such restoration or rebuilding.

(f) Baseline Environmental Assessment. The parties shall engage one or more environmental consultants to prepare Category "N" Baseline Environmental Assessments as required by Section 20129a of Part 201 of NREPA ("BEAs") for Landlord and Tenant. The BEAs shall be conducted, completed and submitted to the Michigan Department of Environmental Quality ("MDEQ") within the times required under Part 201 of NREPA and its administrative rules. The BEAs shall include a Section 107a Due Care Compliance Analysis prepared in accordance with Part 201 of NREPA Rule 1013 and its administrative rules (the "Due Care Plan"). The BEAs shall be submitted separately to the MDEQ for a determination that Landlord and Tenant, respectively, meet the requirements for an exemption to liability under M.C.L. 324.20126(1)(c) and that the proposed use of the Demised Premises are consistent with the obligations that Landlord and Tenant, respectively, may have under M.C.L. 324.20107a ("MDEQ Approval"). Tenant shall use its best efforts to cause _____ to prepare Landlord's BEA, if Landlord so requests in writing, or to provide such information to Landlord's independent consultant as is necessary to prepare Landlord's BEA. Without regard to the consultant that prepares Landlord's BEA, Landlord shall have the sole obligation to pay all costs associated with preparing, submitting and seeking MDEQ Approval for its BEA and the Due Care Plan. Tenant shall have the sole obligation to pay all costs associated with preparing, submitting and seeking MDEQ Approval of its BEA. If any deficiencies are noted with respect to Landlord's BEA or the Due Care Plan, Landlord shall have the sole obligation to remedy the deficiencies. If any deficiencies are noted with respect to Tenant's BEA, Tenant shall have the sole obligation to remedy the deficiencies. Neither party shall be responsible for paying to remedy any deficiencies to the other party's BEA. Both parties shall be responsible for implementing, maintaining and monitoring any Institutional Controls or Engineering Controls required pursuant to the approved Due Care Plan, provided, however, to the extent that any of the Institutional Controls or Engineering Controls set forth in the Due Care Plan apply to the Demised Premises, Tenant shall be responsible to implement, maintain and monitor such Institutional Controls or Engineering Controls. For purposes of this paragraph, "Institutional Controls" shall mean any legal or administrative restrictions or limitations on the use of, or access to, a site or facility to eliminate or minimize potential exposures to Hazardous Substances, or to prevent activities that could interfere with the effectiveness of a cleanup, remedial or response action, as

discussed in Michigan Rule R299.5101 and "Engineering Controls" shall mean physical restrictions on the use of, or access to, a site or facility to eliminate or minimize potential exposures to Hazardous Substances, or to prevent activities that could interfere with the effectiveness of a cleanup, remedial or response action.

SECTION 25. Parking:

Landlord or a Landlord Affiliate, as applicable, shall construct a parking deck in accordance with the Parking Agreement on property adjacent to the Demised Premises. A portion of the parking spots in the deck will be made available to Tenant and any subtenants in the Building on terms contained in the Parking Agreement. Tenant and Landlord or Landlord's Affiliate, as applicable, has or shall enter into one or more leases, licenses or other such agreements necessary to more fully set forth the terms and provisions of the parking rights granted to Tenant (each, a "**Parking Agreement**"). A copy of any such agreement executed as of the date of this Lease is attached hereto as Exhibit F.

SECTION 26. No Merger:

There shall be no merger of this Lease or the leasehold interest with any other estate or interest in the Demised Premises, or any part thereof, by reason of the fact that the same person or other entity may acquire or own or hold, directly or indirectly, (a) this Lease or the leasehold interest or any interest in this Lease or in the leasehold interest, and (b) any other estate or interest in the Demised Premises or any part thereof. No such merger shall occur unless and until all persons and entities having an interest (including a Leasehold Mortgage and any security interest) in this Lease or the leasehold interest and any such other estate or interest in the Demised Premises, or any part thereof, shall join in a written instrument effecting such merger and shall duly record the same.

SECTION 27. Waivers:

Failure of Landlord or Tenant to complain of any act or omission on the part of the other party no matter how long the same may continue, shall not be deemed to be a waiver by said party of any of its rights hereunder. No waiver by Landlord or Tenant at any time express or implied, of any breach of any provision of this Lease shall be deemed a waiver of a breach of any other provision of this Lease or a consent to any subsequent breach of the same or any other provision. No acceptance by Landlord of any partial payment shall constitute an accord or satisfaction but shall only be deemed a part payment on account.

SECTION 28. Force Majeure:

In the event that Landlord or Tenant shall be delayed, hindered in or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, the act, failure to act or default of the other party, war or other reason beyond its control, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. From and after the **Rent** Commencement Date, the provisions of this Section 28

shall not operate to excuse Tenant from the payment of Rent or any other payments required under the terms of this Lease.

SECTION 29. Notices:

Every notice, approval, consent or other communication authorized or required by this Lease shall not be effective unless same shall be in writing and (i) sent postage prepaid by United States registered or certified mail, return receipt requested, (ii) by recognized overnight delivery service or (iii) by facsimile transmission (with a copy sent by first class mail), directed to the other party at its address hereinabove first mentioned, or such other address as either party may designate by notice given from time to time in accordance with this Section 29. Copies of all notices to Tenant shall also be sent to _____, and copies of all notices to Landlord shall also be sent to _____. Notices shall be effective upon delivery or refusal of the addressee to accept delivery. Rent payable by Tenant hereunder shall be paid to Landlord at the same place where a notice to Landlord is herein required to be directed.

SECTION 30. Certificates:

Either party shall, without charge, at any time and from time to time hereafter, within twenty (20) days after written request of the other, certify by written instrument duly executed and acknowledged to any mortgagee or purchaser, or proposed mortgagee or proposed purchaser, or any other person, firm or corporation specified in such request: (a) as to whether this Lease has been supplemented or amended, and if so, the substance and manner of such supplement or amendment; (b) as to the validity and force and effect of this Lease, in accordance with its tenor as then constituted; (c) as to the existence of any default thereunder; (d) as to the existence of any offsets, counterclaims or defenses thereto on the part of such other party; (e) as to the commencement and expiration dates of the Term; and (f) as to any other matters as may reasonably be so requested. Any such certificate may be relied upon by the party requesting it and any other person, firm or corporation to whom the same may be exhibited or delivered, and the contents of such certificate shall be binding on the party executing same.

SECTION 31. Governing Law:

This Lease and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the State of Michigan.

SECTION 32. Partial Invalidity:

If any term, covenant, condition or provision of this Lease or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

SECTION 33. Short Form Lease:

The parties will at any time, at the request of either one, promptly execute duplicate originals of an instrument, in recordable form, which will constitute a short form of lease, setting forth a description of the Demised Premises, the term of this Lease and any other portions thereof, excepting the rental provisions, as either party may request.

SECTION 34. Interpretation:

Wherever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa, as the context shall require. The Section headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof. This Lease may be executed in several counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. The terms "Landlord" whenever used herein shall mean only the owner at the time of Landlord's interest herein, and upon any sale or assignment of the interest of Landlord, its successors in interest and/or assigns shall, during the term of its ownership of its estates herein, be deemed to be Landlord.

SECTION 35. Entire Agreement:

This Lease and the operative exhibits hereto represent the entire agreement between the parties with respect to the matters explicitly set forth herein. Except as expressly referenced herein, no oral or written, prior or contemporaneous agreements shall have any force or effect. The Lease may not be amended, altered or modified unless done so by means of a written instrument signed by both parties, and to the extent a Leasehold Mortgage is then in effect, consented to by the Leasehold Mortgagee.

SECTION 36. Parties:

Except as herein otherwise expressly provided, the covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of Landlord and Tenant and their respective heirs, successors, administrators and assigns.

SECTION 37. Tenant's Property:

(a) Tenant shall be responsible for and shall pay before delinquency all municipal, county, state and federal taxes assessed during the term of this Lease against any leasehold interest in the Demised Premises or against Tenant's personal property.

(b) Landlord and Landlord's agents and employees 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 Demised Premises or for any loss or damage or injury to persons resulting to Tenant or its property from bursting, stoppage or leaking of water, gas, sewer or steam pipes or for any damage or loss of property or injury to persons within the Demised Premises from any cause whatsoever.

(c) No act by Landlord shall be deemed an acceptance of a surrender of the Demised Premises, and no agreement to accept a surrender of the Demised Premises shall be valid unless the same is made in writing and signed by Landlord. All furnishing, moveable equipment, trade fixtures, signs and other personalty (collectively, "**trade fixtures**") hereafter installed by Tenant in the Property (or any part of the Building as permitted), shall remain the property of Tenant and shall be removed by Tenant at the expiration or earlier termination of the Term provided that: (i) Tenant shall not at such time be in default under this Lease and (ii) Tenant shall promptly restore the damage done to the Property by the installation and/or removal thereof. Should Tenant fail to so remove Tenant's trade fixtures and/or to so restore the Property, Landlord may do so, collecting upon demand at Landlord's option, the cost and expense thereof as additional rent. Any such trade fixtures which are not removed by Tenant within thirty (30) days after any termination of this Lease, including, but not limited to, a termination by Landlord pursuant to this Lease, shall at Landlord's election: (i) be conclusively presumed to have been conveyed by Tenant to Landlord without further payment or credit by Landlord to Tenant, and/or (ii) Tenant shall be conclusively presumed to have forever abandoned such property, and without accepting title thereto, Landlord may, at Tenant's expense, remove, store, destroy, discard or otherwise dispose of all or any part thereof in any manner that Landlord shall choose without incurring liability to Tenant or to any other person, and Tenant shall pay to Landlord, upon demand, any and all reasonable expenses incurred in taking any of such actions. In no event shall Landlord ever become or accept or be charged with the duties of a bailee (either voluntary or involuntary) of any personal property; and the failure of Tenant to remove all such property from the Property shall forever bar Tenant from bringing any action or asserting any liability against Landlord with respect to any such property which Tenant fails to remove. Notwithstanding anything herein contained to the contrary or any decision of any court to the contrary, the term "trade fixtures" shall not include any air-conditioning, heating, lighting, electrical and plumbing equipment installed by Tenant in the Property, or any wiring, cable or other apparatus related thereto. Tenant will indemnify and hold Landlord harmless for any claim by third parties with respect to property owned or claimed by them, left in the Property by Tenant and removed by Landlord pursuant to this Section. The provisions of this Section 37(c) shall survive the end of the Term.

SECTION 38. Holding Over:

Any holding over after the expiration of the Term hereof with the consent of Landlord, shall be construed to be a tenancy from month to month (with rent for the first three holdover months at a rate of one hundred percent (100%) the monthly Basic Rent herein specified for the last year of the Term, and thereafter at a rate of one hundred fifty percent (150%) the monthly Basic Rent herein specified for the last year of the Term) and shall otherwise be on the same terms and conditions herein specified so far as applicable. In the event Tenant remains in possession of the Property after the expiration of the Term without Landlord's consent, Tenant shall be deemed a trespasser and shall also pay to Landlord all damages sustained by Landlord as a result of retention of possession by Tenant, including, without limitation, the loss of any proposed subsequent tenant for any portion of the Property. The provisions of this Section 38 shall not be deemed to limit or constitute a waiver of any other rights or remedies of Landlord provided herein or at law.

SECTION 39. Transfer of Landlord's Interest:

In the event of any transfer or transfers of Landlord's interest in the Demised Premises, the transferor shall be automatically relieved of any and all obligations on the part of Landlord accruing from and after the date of such transfer.

SECTION 40. Interest on Past Due Obligations:

Any amount due to Landlord hereunder which is not paid within ten (10) days of when due shall bear interest at a prime rate as published in The Wall Street Journal (or if there is no such newspaper, then such other nationally recognized business newspaper selected by Landlord) plus ~~five~~**four** percent (~~5~~**4**%) per annum, but not in excess of highest legal rate from the date due until paid. The payment of such interest shall not excuse or cure any default by Tenant under this Lease.

SECTION 41. Liability of Landlord:

If Landlord fails 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 recovers 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 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 interest** in the Demised Premises, and neither Landlord nor the Members or Managers comprising the limited liability company which is Landlord herein, nor any shareholder, trustee, officer, employee or agent thereof, shall be liable for any deficiency.

SECTION 42. Performance:

Whenever this Lease requires that something be done within a period of days, such period shall (a) not include the day from which such period commences, (b) include the day upon which such period expires, (c) expire at 5:00 p.m. eastern standard time on the date by which such thing is to be done, and (d) be construed to mean calendar days (except as otherwise specifically provided herein); provided that if the final day of such period falls on a Saturday, Sunday or legal holiday in the State of Michigan where such thing is to be done, such period shall extend to the first business day thereafter.

SECTION 43. Brokers:

Landlord and Tenant warrant to each other that neither has dealt with a real estate broker in connection with this Lease and that no broker(s) are entitled to any commission on account of the transaction referenced herein.

SECTION 44. Authority:

Both Landlord and Tenant hereby warrant and represent that each have been duly authorized to enter into this Lease and that the undersigned are duly authorized to execute this Lease on behalf of Landlord and Tenant respectively.

SECTION 45. Accord and Satisfaction:

No payment by Tenant or receipt by Landlord of a lesser amount than any payment of Rent herein stipulated shall be deemed to be other than on account of the earliest stipulated Rent then due and payable. Tenant agrees that Landlord shall not be bound by any endorsement or statement on any check or any letter accompanying any check or payment and no such endorsement, statement or letter shall be deemed an accord and satisfaction, whether such check or letter is forwarded to Landlord's lock box or directly to Landlord, or elsewhere and Landlord or Landlord's bank may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy provided in this Lease, at law or in equity.

SECTION 46. No Partnership:

By execution of this Lease, Landlord does not, in any way or for any purpose, become a partner of Tenant in the conduct of its business, or otherwise, or joint venturer or a member of a joint enterprise with Tenant.

SECTION 47. Consents:

Landlord and Tenant acknowledge and agree that each will act in good faith and in a commercially reasonable manner (except where approvals are specifically left to one's party's discretion as specifically stated in this Lease) under this Lease and that it is their overriding intent that this Lease and the parties' obligations hereunder be construed in a manner that furthers their intent that each provision of this Lease be construed in a commercially reasonable manner. Without limiting the foregoing, whenever any consent or approval is required, the party whose consent or approval is required will either grant or deny the request for consent or approval within the specific period specified in this Lease, or if no period is specified, within ten (10) days of its receipt of the request therefor. If a response is not timely received, the consent or approval shall be deemed granted. If either party believes that the other party is not acting either in good faith or in a commercially reasonable manner in connection with whether any consent or approval is granted or denied (except where one party has sole discretion to grant such approval or consent), such party shall notify the other and demand that the matter be arbitrated. The parties shall engage within five (5) business days of the notice, as arbitrator, the senior real estate attorney in the then largest commercial law firm in the metropolitan area which does not represent either Landlord or Tenant. Such arbitration shall occur within ten (10) business days of the arbitrator's engagement and shall be performed in accordance with the rules of commercial arbitration of the American Arbitration Association. The arbitrator's decision shall be binding on both parties and the party against whom the arbitrator rules shall pay the fees of the arbitrator. The arbitrator's decision shall require that the consent or approval requested either be granted or denied, as the case may be, but no further damages shall be awarded. If the designated arbitrator

is unwilling or unable to serve within the required time, then the parties shall first, request such designated party to designate another real estate attorney to so serve; second, if no such designation is made, attempt to mutually agree on an arbitrator; or third, if the parties cannot agree within five (5) days after learning of the unavailability of an arbitrator, request the chief judge of _____ County, Michigan to designate an arbitrator.

SECTION 48. ~~SECTION 47.~~ **Independent Covenants:**

The covenant to pay Rent is hereby declared to be an independent covenant on the part of Tenant to be kept and performed, and no offset shall be permitted or allowed except as otherwise specifically provided in this Lease. Tenant's covenant to pay Rent shall survive the expiration or earlier termination of this Lease.

[SIGNATURES ON THE FOLLOWING PAGE]

SECTION 49. **Right of First Refusal:**

Landlord, its heirs, executors, assigns, and successors in title, do by these presents bind themselves not to sell or convey the Demised Premises to any person, firm or company during the Term of this Lease except under the following terms and conditions: Tenant is herein granted the right to purchase the real property comprising the Demised Premises upon equal terms to any bona fide offer Landlord intends to accept at any time during the Term hereof. Landlord, upon receipt of a bona fide offer for purchase of the Demised Premises by a third party which Landlord intends to or is otherwise inclined to accept, shall promptly give notice thereof to Tenant in writing setting forth the proposed terms and provisions of the sale including the purchase price, terms of payment, and such additional information as may be needed by Tenant to obtain a full understanding of the terms of the proposed sale. Tenant shall thereafter have a period of thirty (30) days within which to exercise in writing its option to purchase the Demised Premises upon the same terms, covenants, and conditions as those set forth in the original bona fide offer. Failure of Tenant to exercise such option within a thirty (30) day period of time shall terminate Tenant's option rights as to that transaction, and Landlord shall be free to proceed with a sale of the property in accordance with the terms of the original offer to purchase and any nonmaterial changes thereto (for purposes hereof, material terms shall include without limitation price and payment terms; nonmaterial terms shall include without limitation, but changes such as extending the closing date, extending the due diligence period, increasing deposit amounts, modifications to representations and warranties, and price changes less than \$ _____ would be nonmaterial). The exercise of the option by Tenant shall be upon the same terms, covenants, and conditions as those set forth in the original offer with any nonmaterial changes thereto as agreed upon by the parties. This right of first refusal shall remain in full force and effect throughout the Original Term and Option Terms, and shall apply to any and all successor Landlords. A sale by Landlord, subject to the terms hereof, shall not affect Tenant's rights to continue as a tenant under the terms of this Lease. Notwithstanding the foregoing, this Right of First Refusal shall not apply to a foreclosure, deed in lieu of foreclosure or any other

conveyance by Landlord's mortgagee, the bona fide sale, gift or devise by any individual landlord hereto, to any lineal descendant or ancestor of any of the landlords or to any entity, including but not limited to general partnerships, limited partnerships, limited liability companies, trusts, or corporations, in which any such transferor and the other individual landlords, their lineal descendants or ancestors own in the aggregate the majority of such entity; provided, however, that any transaction or transfer subsequent to a transaction or transfer permitted under this paragraph shall be subject to Tenant's right of first refusal herein unless such subsequent transaction is itself exempt under this paragraph..

[Execution Page Follows]

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

LANDLORD:

WITNESS:

a _____

By _____

Its: _____

TENANT:

a _____

By: _____