

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE	PROOF OF CHAPTER 11 ADMINISTRATIVE CLAIM						
Name of Debtor (check one only): <input type="checkbox"/> FILENE'S BASEMENT, LLC <input checked="" type="checkbox"/> SYMS CORP. <input type="checkbox"/> SYMS CLOTHING, INC. <input type="checkbox"/> SYMS ADVERTISING INC.	Case Number: 11-13511 (KJC) 11-13512 (KJC) 11-13513 (KJC) 11-13514 (KJC)						
NOTE: This form should <u>not</u> be used for a claim arising <u>before</u> the commencement of the case, but may be used for purposes of asserting an administrative expense claim under 11 U.S.C. § 503(b)(9) (see Item #4).							
Name of Creditor: 1900 Chapman Project Owner, LLC (The person or entity to whom the debtor owes money or property)	<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of administrative claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check box if you have never received any notices in this case. <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you.						
Name and Address Where Notices Should be Sent: 1900 Chapman Project Owner, LLC, c/o Hines Attn: Chuck Waters, Rob Steward 555 13th St. NW, Suite 120 East Washington, DC 20004 Telephone No.: 202.434.0274 Email Address: Rob.Steward@hines.com							
ACCOUNT OR OTHER NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR:	Check here if this claim <input type="checkbox"/> replaces <input type="checkbox"/> amends a previously filed chapter 11 administrative claim, dated: _____.						
1. BASIS FOR CLAIM: <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input type="checkbox"/> Unpaid Post-Petition Rent <input checked="" type="checkbox"/> Other (Describe briefly in Item #5)							
2. DATE DEBT WAS INCURRED: See Attachment No. 1. * * Other than claims under 11 U.S.C. § 503(b)(9) described below, claim must have arisen on or after November 2, 2011 to be considered a chapter 11 administrative claim.	3. IF CHAPTER 11 CLAIM WAS ALLOWED BY THE COURT, DATE ALLOWED: _____. * * Attach a copy of the Bankruptcy Court Order.						
4. TOTAL AMOUNT OF CHAPTER 11 ADMINISTRATIVE CLAIM: \$ 9,639.67 If your administrative claim arose under 11 U.S.C. § 503(b)(9), indicate the total amount of your claim for the value of any goods received by the Debtor within 20 days before November 2, 2011, in which the goods have been sold to a Debtor in the ordinary course of such Debtor's business. If all or part of your claim is secured or entitled to priority, complete Item 5 or 6 below. <input type="checkbox"/> Check this box if your claim includes interest or other charges. Attach itemized statement of such interest or additional charges.							
5. BRIEF DESCRIPTION OF CLAIM (attach any additional information): See Attachment No. 1							
6. CREDITS AND SETOFFS: The amount of all payments on this claim that has been credited and deducted for the purpose of making this proof of administrative claim.							
7. SUPPORTING DOCUMENTS: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, bills of lading, itemized statements of running accounts, contracts, or evidence of security interests. If the documents are not available, explain. If the documents are voluminous, attach a summary.							
8. DATE-STAMPED COPY: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of administrative claim.							
9. SIGNATURE (check appropriate box): <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%; vertical-align: top;"> <input checked="" type="checkbox"/> I am the creditor. </td> <td style="width: 33%; vertical-align: top;"> <input type="checkbox"/> I am the creditor's authorized agent. (Attach copy of power of attorney, if any) </td> <td style="width: 33%; vertical-align: top;"> <input type="checkbox"/> I am the trustee, or the debtor, or their authorized agent. (See Bankruptcy Rule 3004). </td> </tr> <tr> <td colspan="3" style="vertical-align: top;"> <input type="checkbox"/> I am a guarantor, surety, indorser, or other codebtor. (See Bankruptcy Rule 3005). </td> </tr> </table>		<input checked="" type="checkbox"/> I am the creditor.	<input type="checkbox"/> I am the creditor's authorized agent. (Attach copy of power of attorney, if any)	<input type="checkbox"/> I am the trustee, or the debtor, or their authorized agent. (See Bankruptcy Rule 3004).	<input type="checkbox"/> I am a guarantor, surety, indorser, or other codebtor. (See Bankruptcy Rule 3005).		
<input checked="" type="checkbox"/> I am the creditor.	<input type="checkbox"/> I am the creditor's authorized agent. (Attach copy of power of attorney, if any)	<input type="checkbox"/> I am the trustee, or the debtor, or their authorized agent. (See Bankruptcy Rule 3004).					
<input type="checkbox"/> I am a guarantor, surety, indorser, or other codebtor. (See Bankruptcy Rule 3005).							
I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.							
Print Name: <u>Charles K. Waters, Jr.</u> <u>Charles</u> <u>2/28/12</u> RECEIVED Title: <u>Senior Vice President</u> (Signature) (Date) Company: <u>1900 Chapman Project Owner, LLC</u> Address: <u>555 13th St. NW, Suite 1020 East, Washington DC 20004</u> Telephone No.: <u>202-347-6337</u> Email: <u>chuck.waters@hines.com</u> MAR 01 2012 KURTZMAN CARSON CONSULTANTS							

- ☒ Date Stamped Copy Returned
☐ No self addressed stamped envelope
☐ No copy to return



111351212030100000000025

BAKER BOTTS LLP

2001 ROSS AVENUE
DALLAS, TEXAS
75201-2980

TEL +1 214.953.6500
FAX +1 214.953.6503
www.bakerbotts.com

ABU DHABI
AUSTIN
BEIJING
DALLAS
DUBAI
HONG KONG
HOUSTON
LONDON
MOSCOW
NEW YORK
PALO ALTO
RIYADH
WASHINGTON

February 29, 2012

BY FEDEX

Filene's Claims Processing Center
c/o Kurtzman Carson Consultants LLC
2335 Alaska Avenue
El Segundo, CA 90245

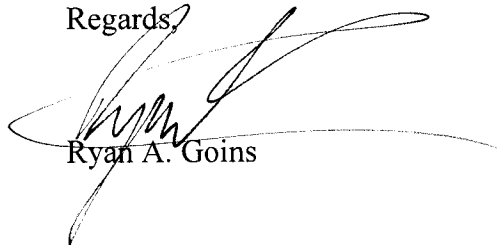
Ryan A. Goins
TEL +1 214.953.6647
FAX +1 214.953.4647
ryan.goins@bakerbotts.com

Re: In re Syms Corp., No. 11-13512 (KJC)

Dear Claims Agent:

Please find enclosed the original Proof of Chapter 11 Administrative Claim for 1900 Chapman Project Owner, LLC with supporting agreements and invoices. Per the claim form's instructions, please also find enclosed a copy of the Proof of Chapter 11 Administrative Claim and a self-addressed postage-paid envelope for the return of a proof of receipt.

Regards,



Ryan A. Goins

Enclosures

ATTACHMENT NO. 1 TO PROOF OF CHAPTER 11 ADMINISTRATIVE CLAIM

1900 Chapman Project Owner, LLC (“Landlord”) submits this attachment to its Proof of Chapter 11 Administrative Claim and incorporates this attachment into the Proof of Chapter 11 Administrative Claim in all respects.

By agreement dated as of May 13, 2011, Landlord and Syms Corp. (the “Debtor”) entered into a lease agreement (the “Lease”) regarding nonresidential real property located at 1900 Chapman Ave., Rockville, MD 20852 (the “Property”). The Debtor’s obligations under the lease include the payment of utilities supplied to the Property¹ and, in the event of default, of the Landlord’s costs and expenses, including reasonable legal fees and costs, related to the Property.² On November 2, 2011, the Debtor filed a petition for relief under chapter 11 of title 11 of the United States Code.

For the period from November 2, 2011 until the date of the filing of this Proof of Chapter 11 Administrative Claim, the unpaid amounts owing to the Landlord under the Lease total \$9,639.67. A true and accurate statement of accounts evidencing this amount is annexed hereto as **Attachment 2**. By filing this Proof of Chapter 11 Administrative Claim, Landlord reserves all rights to amend or revise its proof of claim to assert entitlement to additional pre- and post-petition amounts that may be owing to Landlord as provided by the lease or applicable law, including all rights of setoff or recoupment.

The Lease and supporting invoices are attached, and copies may be obtained by contacting the Landlord’s attorney, Omar Alaniz, at 214.953.6593 or *omar.alaniz@bakerbotts.com*.

¹ Lease § 4.03.

² Lease § 12.01.

ATTACHMENT NO. 2 TO PROOF OF CHAPTER 11 ADMINISTRATIVE CLAIM

Chg Date	Description	Amount
12/16/11	Legal Fees	\$1,836.29
1/24/12	Snow Removal	\$985.00
1/24/12	Plumbing and Heating	\$390.00
1/24/12	Utilities (water)	\$247.57
1/30/12	Legal Fees	\$2,679.88
2/15/12	Utilities (water)	\$263.93
2/24/12	Fence Repair	\$681.00
2/29/12	Legal Fees	\$2,556.00
	Total	\$9,639.67

R5551520

Hines
Lead Sheet by Phase
1900 Chapman Project - LAND
Draw # 8
12/1/2011 - 12/31/2011

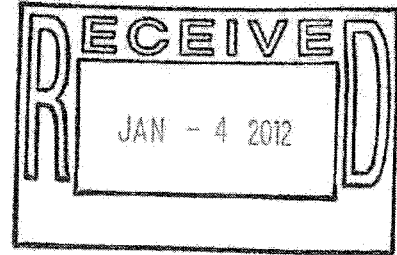
1/11/2012 14:53:32
Page - 2

Vendor	Invoice Number	Invoice Date	Amount	Subledger
Baker Botts LLP	1263268	12/16/2011	1,836.29	
30899 Other Legal-Site			1,836.29	

30899 Other Legal-Site

→ matt Hume

BAKER BOTTS L.L.P.
ATTORNEYS AT LAW
P.O. Box 201626
HOUSTON, TEXAS 77216-1626
TAXPAYER I.D. #74-1195457



Hines Interests Limited Partnership
Attn: Chuck Watters
555 13th Street N.W.
Suite 1020 East
Washington DC 20004

Invoice # 1263268
Invoice Date December 16, 2011
Attorney P M Stanton

001723.4909 Purchase of 1900 Chapman, Rockville, MD

TO FEE FOR SERVICES RENDERED AND EXPENSES INCURRED IN THE
ABOVE CAPTIONED MATTER THROUGH NOVEMBER 30, 2011

	Hours	Total	Description
11/03/11 O J Alaniz	3.50	1,340.50	Analysis of sale motion and procedures in Syms bankruptcy; legal analysis of bankruptcy issues pertaining to Syms bankruptcy; email same to P. Stanton for delivery to client.
✓ 11/04/11 P M Stanton	.50	304.00	Review contract. Attention to summary. Circulate summary to Hines.
11/23/11 O J Alaniz	.50	191.50	Analyze escrow agreement and consider treatment in bankruptcy; email analysis to P. Stanton.
Matter Total	4.50	\$1,836.00	

BAKER BOTTS L.L.P.

Hines Interests Limited Partnership

Page 2

	<u>RATE</u>	<u>HOURS</u>	<u>TOTAL</u>
PARTNER			
Stanton, P M	608.00	.50	304.00
Partner Totals:		.50	\$304.00

	<u>RATE</u>	<u>HOURS</u>	<u>TOTAL</u>
ASSOCIATE			
Alaniz, O J	383.00	4.00	1,532.00
Associate Totals:		4.00	\$1,532.00

BAKER BOTTS L.L.P.

Hines Interests Limited Partnership

Page 3

001723.4909 Purchase of 1900 Chapman, Rockville, MD

For expenses incurred:

Telephone calls	0.29
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Total Expenses	<hr/> \$0.29
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SUMMARY

Fees	\$1,836.00
Expenses	0.29
Total Amount Due:	\$1,836.29

CO	ACCOUNT	CT	AMOUNT	
01209	30899		\$1,836.29	Symms Bankruptcy Legal
APPROVED: RS <i>W. Hines</i>			DATE: 1/5/12	
REBILL:				

Note: Unbudgeted Expense

Hines
Lead Sheet by Phase
1900 Chapman Project - LAND
Draw # 9
1/1/2012 - 1/31/2012

<u>Vendor</u>	<u>Invoice Number</u>	<u>Invoice Date</u>	<u>Amount</u>	<u>Subledger</u>
P.R. Stevens, Inc	8219	1/24/2012	985.00	
O'Connor Plumbing & Heating	35926	1/24/2012	390.00	
City of Rockville	0306-000099.03	1/31/2012	247.57	
30299 Other Land Acq Costs			1,622.57	

P. R. Stevens, Inc.7316 Rosewood Manor Lane
Gaithersburg, MD 20882**RECEIVED**
JAN 20 2012**Invoice**

BY:

DATE	INVOICE #
1/24/2012	8219

BILL TO
Mr. Rob Steward Hines 555 13th Street, NW, Suite 1020 Washington DC 20004

REFERENCE
1900 Chapman Ave. Project Owners LLC Rockville, MD

P.O. NO.	TERMS	DUE DATE	REP	SHIP DATE
	Net 30	2/23/2012		1/24/2012

DESCRIPTION	QTY	RATE	AMOUNT
1/20/2012 - Light snow began around 10:00pm. It started as very fine snow which turned over to larger flakes after midnight and then sleet and freezing rain by 3:00am. This mix of snow, sleet, and freezing rain continued until about 5:00am. Crews were out overnight shoveling, plowing, and deicing. Temps Saturday Morning were 26-29 degrees and did not get above freezing until late in the day. Accumulations were close to 2 inches in Germantown, Gaithersburg and Rockville saw 1 - 1-1/2 inches and South Rockville and Bethesda saw about 1/2 to 3/4 inch. All were covered with about .1-.25 of an inch in ice. Sunday into Monday - foggy / icy conditions persisted until about 10 am Monday Morning - Crews were sent out both Sunday Morning to check for re-freezing and Monday to check sidewalks - asphalts that were salted seemed to be ok Monday Morning.		0.00	0.00
Hourly Rate for plowing of driveways, lots and entrances.	1	95.00	95.00
Bulk salt spread on icy areas. Per Ton - Please keep in mind that the amount of total salt put down may reflect multiple trips during the storm and the subsequent days after to control icing and thaw & refreeze.	0.75	360.00	270.00
Spreader Truck - Lots checked and deiced as needed.	1	95.00	95.00
Labor for Shoveling Sidewalks or De-icing. Total hours includes shoveling entrances during storm, clearing sidewalks around building, clearing sidewalks along streets the next day and any return visits in the subsequent days following a storm to check for icing and drifting snow.	5	35.00	175.00
De - icers spread on Sidewalks per 100 lbs.	2	35.00	70.00
Labor for Shoveling Sidewalks or De-icing. Total hours includes shoveling entrances during storm, clearing sidewalks around building, clearing sidewalks along streets the next day and any return visits in the subsequent days following a storm to check for icing and drifting snow. Front Steps and Walks into building	6	35.00	210.00
De - icers spread on Sidewalks per 100 lbs.	2	35.00	70.00

CO	ACCOUNT	QTY	AMOUNT	REMARKS
01289	30299		\$ 985.00	Bldg Maintenance Expense

Total	\$985.00
Payments/Credits	\$0.00
Balance Due	\$985.00

Phone #	Fax #
301-948-1570	301-948-0490

WSSC #1266 MD #19678
DC #1170 VA #2710-061681A



CS NO

35521

19301 Mateny Hill Road • Germantown, Maryland 20874 • (301) 540-5050 • Fax (301) 540-8677 • www.oconnorplumbing.net

Bill To: <u>R. L. Smith</u>		Job Name:																																																								
Address: <u>1514 13th St. S.W.</u>		Job Address: <u>1700 Chapman St.</u>																																																								
City, State, Zip: <u>Atlanta, GA 30310</u>		City, State, Zip: <u>Atlanta, GA 30310</u>																																																								
Phone: Work: <u>404-525-1111</u>	Cell: <u>404-525-1111</u>	Email: <u>rlsmith@atlantafire.com</u>																																																								
Description of Work to be Performed: <u>W/O #</u>		CS #																																																								
<table border="1"> <thead> <tr> <th>QTY</th> <th>ACCOUNT</th> <th>CT</th> <th>AMOUNT</th> <th>DESCRIPTION</th> </tr> </thead> <tbody> <tr> <td>01209</td> <td>30299</td> <td></td> <td>\$ 370.00</td> <td>Bldg Maintenance Expense</td> </tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr> </tbody> </table>				QTY	ACCOUNT	CT	AMOUNT	DESCRIPTION	01209	30299		\$ 370.00	Bldg Maintenance Expense																																													
QTY	ACCOUNT	CT	AMOUNT	DESCRIPTION																																																						
01209	30299		\$ 370.00	Bldg Maintenance Expense																																																						
APPROVED: <u>[Signature]</u>		DATE: <u>2/1/12</u>																																																								
REBILL:																																																										
EQUIP:		MODEL #:	SERIAL #:																																																							

Authorization of work:

[illegible]

I hereby acknowledge the satisfactory completion of the above described work and further acknowledge that I understand the general terms and conditions as outlined on the reverse side of this sheet. Additionally, if payment is by means of a credit card, your signature authorizes O'Connor Plumbing & Heating to process this transaction up to and including the full amount of the job and fees.

DATE COMPLETED

AUTHORIZED SIGNATURE
(After Completion of Job)

SEE REVERSE SIDE FOR GENERAL
TERMS AND CONDITIONS

WHITE - SHOP COPY

YELLOW - ACCOUNTING COPY

PINK - CUSTOMER COPY



CITY OF ROCKVILLE

111 Maryland Avenue · Rockville, MD 20850-2364
Ph: 240-314-8420 · Fax: 240-314-8419
Email: utilitybilling@rockvillemd.gov

ACCOUNT NUMBER	0306-000099.03	TYPE OF BILL	PAST DUE NOTICE
SERVICE ADDRESS	1900 CHAPMAN AVE		

AMOUNT DUE NOW	247.57
TURN OFF DATE	01/31/12
WRITE ACCT. NO. ON CHECK AND MAKE PAYABLE TO CITY OF ROCKVILLE	

SYMS CORPORATION

SYMS WAY 01289 30299
ATTN: MICHELLE OLIVERI
SECAUCUS NJ 07094

\$247.57

Syms Water Bill

Rockington Express

03060000990301311200024757000247579

APPROVED: *M. Amis*

DATE: 2/7/12

PLEASE DETACH THIS STUB AND RETURN WITH PAYMENT - MAKE CHECK PAYABLE TO CITY OF ROCKVILLE

CITY OF ROCKVILLE NOTICE OF PAYMENT DUE

ACCOUNT NUMBER	0306-000099.03
SERVICE ADDRESS	1900 CHAPMAN AVE

TYPE OF BILL	PAST DUE NOTICE
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AMOUNT DUE NOW 247.57

TURN OFF DATE 01/31/12

PAST DUE UTILITY BILL

IMPORTANT

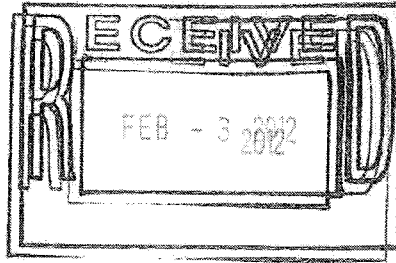
- Our records indicate that your utility account has an outstanding balance due.
- If payment is not received by the turn-off date indicated above, your service will be disconnected.
- Please allow sufficient time for mail delivery.
- If your water service is turned off for non-payment, service will be restored the same day if payment is received no later than 2:30 p. m., Monday through Friday (except holidays).
- The water disconnect/reconnect fee is \$50.
- If service is reconnected after hours (after 2:30 p.m.) and addition fee of \$80 will be applied.
- In the future, as part of your obligation for services provided, please ensure that your payment for utility service is received by the City of Rockville by the due date provided on your bill statement.
- If you are having financial difficulty in paying your bill, you may qualify for assistance. Contact the City of Rockville, Community Service Department at 240-314-8310.

FINAL BILL REMAINS UNPAID. TO AVOID TAX COLLECTION, PAYMENT MUST BE SENT IMMEDIATELY. THANK YOU.

Hines
Lead Sheet by Phase
1900 Chapman Project - LAND
Draw # 9
1/1/2012 - 1/31/2012

<u>Vendor</u>	<u>Invoice Number</u>	<u>Invoice Date</u>	<u>Amount</u>	<u>Subledger</u>
Baker Botts LLP	1268583	1/30/2012	2,678.60	
Baker Botts LLP	1268583	1/30/2012	1.28	
30899 Other Legal-Site			2,679.88	

BAKER BOTTS LLP



January 30, 2012

2001 ROSS AVENUE
DALLAS, TEXAS
75201-2980

TEL +1 214.953.6500
FAX +1 214.953.6503
www.bakerbotts.com

AUSTIN
BEIJING
DALLAS
DUBAI
HONG KONG
HOUSTON
LONDON
MOSCOW
NEW YORK
PALO ALTO
RIYADH
WASHINGTON

Patricia M. Stanton
214.953.6704
FAX 214.661.4704
pat.stanton@bakerbotts.com

VIA REGULAR MAIL

Mr. Charles Watters
Hines Interests Limited Partnership
555 13th Street N.W.
Suite 1020 East
Washington, DC 20004

Dear Chuck:

I have enclosed our statement of fees and expenses for December, 2011 in connection with the Purchase of 1900 Chapman, Rockville, MD matter.

Please let me know if you have any questions or need additional information regarding the enclosed statement.

Sincerely,

Patricia M. Stanton

PMS:tap

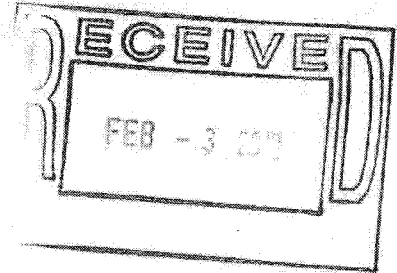
Enclosure



met/ Hanson

*then back to me for
counter signature*

BAKER BOTTS L.L.P.
ATTORNEYS AT LAW
P.O. Box 201626
HOUSTON, TEXAS 77216-1626
TAXPAYER I.D. #74-1195457



Hines Interests Limited Partnership
Attn: Chuck Watters
555 13th Street N.W.
Suite 1020 East
Washington DC 20004

Invoice # 1268583
Invoice Date January 30, 2012
Attorney P M Stanton

001723.4909 Purchase of 1900 Chapman, Rockville, MD

TO FEE FOR SERVICES RENDERED AND EXPENSES INCURRED IN THE
ABOVE CAPTIONED MATTER THROUGH DECEMBER 31, 2011

	Hours	Total	Description
12/13/11 O J Alaniz	3.00	1,149.00	Review various pleadings in Syms bankruptcy case; prepare for client call including consideration of various bankruptcy issues; telephone conference with client.
12/13/11 P M Stanton	.50	304.00	Telephone conference with Hines team and Alaniz regarding bankruptcy issues and strategy.
12/22/11 O J Alaniz	.40	153.20	Review and analyze interim sale procedures order in Syms bankruptcy case.
12/28/11 O J Alaniz	1.50	574.50	Analysis of actions to undertake and avoid regarding walk thru of 1900 Chapman location for bankruptcy purposes; telephone conference with R. Stewart regarding same; analysis of latest bankruptcy filings.
12/29/11 O J Alaniz	1.00	383.00	Analysis of actions to undertake and avoid regarding walk thru of 1900 Chapman location for bankruptcy purposes; telephone conference with R. Stewart regarding same; analysis of rejection order of various commercial leases in Syms bankruptcy.
12/30/11 O J Alaniz	.30	114.90	Review and comment on investor report regarding Syms bankruptcy case at client's request.

BAKER BOTTS L.L.P.

Hines Interests Limited Partnership

Page 2

Matter Total	6.70	\$2,678.60
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BAKER BOTTS LLP.

Hines Interests Limited Partnership

Page 3

	<u>RATE</u>	<u>HOURS</u>	<u>TOTAL</u>
PARTNER			
Stanton, P M	608.00	.50	304.00
Partner Totals:		<u>.50</u>	<u>\$304.00</u>

	<u>RATE</u>	<u>HOURS</u>	<u>TOTAL</u>
ASSOCIATE			
Alaniz, O J	383.00	6.20	2,374.60
Associate Totals:		<u>6.20</u>	<u>\$2,374.60</u>

001723.4909 Purchase of 1900 Chapman, Rockville, MD

For expenses incurred:

Postage	1.28
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Total Expenses	<u>\$1.28</u>
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SUMMARY

Fees	\$2,678.60
Expenses	1.28
Total Amount Due:	<u>\$2,679.88</u>

01209 30599 \$2,679.88 Byns Bankruptcy Legal

M. Am

2/7/12

BAKER BOTTS L.L.P.
ATTORNEYS AT LAW
P.O. Box 201626
HOUSTON, TEXAS 77216-1626
TAXPAYER I.D. #74-1195457

REMITTANCE STATEMENT

Matter #	001723.4909
Matter Name	Purchase of 1900 Chapman, Rockville, MD
Client Name	HINES INTERESTS LIMITED PARTNERSHIP
Invoice #	1268583
Billing Attorney	PATRICIA M. STANTON
Office	Dallas
TOTAL FEES:	\$2,678.60
TOTAL EXPENSES:	1.28
TOTAL AMOUNT DUE:	<hr/> \$2,679.88

TO ENSURE PROPER APPLICATION OF YOUR PAYMENT,
PLEASE RETURN THIS REMITTANCE ADVICE.

**CITY OF ROCKVILLE**

111 Maryland Ave., Rockville, MD 20850-2364

Ph: 240-314-8420 Fax: 240-314-8419

Email: utilitybilling@rockvillemd.gov**Amount Due By: 03/15/12****263.93**For the "Email Only" option, please go to:
<http://www.rockvillemd.gov/e-gov/ebill.html>

REAP Donation*

*If you wish to contribute to the Rockville Emergency Assistance Program (REAP) please indicate amount.

Account Number: 0306-000099.04

Service Address: 1900 CHAPMAN AVE

Please Write Amount Paid

\$

Please write account number on check

1900 CHAPMAN PROJECT, LLC
ATTN: ROB STEWART
555 13TH STREET, NW #1020E
WASHINGTON DC 20004

03060000990403201200028997000263936

PLEASE DETACH THIS STUB AND RETURN WITH PAYMENT - MAKE CHECK PAYABLE TO CITY OF ROCKVILLE

**CITY OF ROCKVILLE**

111 Maryland Ave., Rockville, MD 20850-2364

Ph: 240-314-8420 Fax: 240-314-8419

Email: utilitybilling@rockvillemd.gov

Acct. Number: 0306-000099.04

Bill Date: 02/15/12

Current Charges: 263.93

Total Amount Due: 263.93

Amount Due After 03/15/12: 289.97 *

*Includes 10% late fee

RECEIVED
2/8/2012

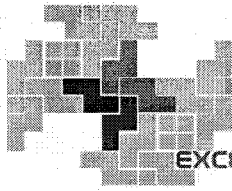
BY: Hines.....

UTILITY BILL

HAVE A NICE DAY.

1 Unit = 1,000 Gallons		Service Address 1900 CHAPMAN AVE					
Type of Service	Service Period	No. of Days	Previous Reading	Current Reading	Usage	Rate	Charges
SEWER CHESAPEAKE BAY FEE EDU READY TO SERVE CHARGE WATER	11/02-01/12	71	981	1001	20	@ 5.26	105.20
	11/02-01/12	71					3.52
	11/02-02/01	91				18.00	53.41
	11/02-01/12	71	981	1001	20		101.80

Water Usage in Units		Water Tier Rate for Current		Account Activity	
Current:	20	12 @	4.33 = 51.96	Current Charges	263.93
		8 @	6.23 = 49.84	Total Amount Due	263.93



927 S Walter Reed Dr - Ste 16
Arlington, VA 22204
703-878-0317
Fed. ID # 20-4397797

Invoice

Date	Invoice #
2/24/2012	11753

Billing Information
Hines 600 Thirteen Street, NW Suite 360 Washington, DC 20005-3060 Attn.: Chris Wells

Service Site Information
Rockville

		Terms	Rep	Start Date
		Net 15		2/24/2012
Item Code	Description	Quantity	Price Each	Amount
WDG	Welding Work. Repair and replace as needed 10 LF of 6' high chain link fencing. Furnish and install new chain and padlock for gate. Reinstall existing aluminum sign on post.		681.00	681.00
Thank you for your business!		Total		
		\$681.00		
		Payments		
		\$0.00		
		Balance		
		\$681.00		

LEASE AGREEMENT

**1900 CHAPMAN PROJECT OWNER, LLC,
a Delaware limited liability company**

as Landlord,

and

**SYMS CORP.,
a New Jersey corporation,**

as Tenant

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LEASE AGREEMENT

ARTICLE ONE BASIC TERMS

This Article One contains the Basic Terms of this Lease between Landlord and Tenant named below. Other Articles, Sections and Paragraphs of this Lease referred to in this Article One explain and define the Basic Terms and are to be read in conjunction with the Basic Terms.

Section 1.01. **Lease Commencement Date:** May 13, 2011.

Section 1.02. **Landlord:** 1900 CHAPMAN PROJECT OWNER, LLC, a Delaware limited liability company.

Address of Landlord: c/o Hines Interests Limited Partnership
555 13th Street, NW, Suite 1020 East
Washington, DC 20004
Attention: Charles K. Watters, Jr., Senior Vice President
Fax: (202) 347-2802

With a copy of any notice to:

c/o Hines Interests Limited Partnership
555 13th Street, NW, Suite 1020 East
Washington, DC 20004
Attention: Christopher D. Hughes, Executive Vice President
Fax: (202) 347-2892

Section 1.03. **Tenant:** SYMS CORP., a New Jersey corporation.

Address of Tenant: 1 Syms Way
Secaucus, New Jersey 07094
Attention: Marcy Syms, Chief Executive Officer
Fax: (201) 902-9270

With a copy of any notice to:

1 Syms Way
Secaucus, New Jersey 07094
Attention: Laura Brandt, VP & General Counsel
Fax: (201) 537-1013

Section 1.04. **Premises:** The property which is the subject of this Lease consists of that certain real property more particularly described on Exhibit A (the "Land"), which is improved by that certain building having a total of approximately 70,000 rentable square feet of space as depicted on the attached Exhibit B (the "Building"). As used herein, the term "Premises" includes the Land, the Building, all other improvements located on the Land, and all parking areas, driveways, sidewalks, loading areas, access roads, corridors, landscaped areas and planted

areas located on the Land. The square footage figures for the Building, as recited in this Section 1.04, are approximate. No adjustment will be made to the Base Rent or any other amounts payable by Tenant under this Lease (or to any other provisions of this Lease) if the actual square footage, however measured, is more or less than the square footage recited.

Section 1.05. Lease Term: This Lease shall commence on the Lease Commencement Date and shall expire on May 31, 2012 (the "**Lease Expiration Date**").

Section 1.06. Permitted Uses: (See Article Five) Only for the retail sale of apparel and related merchandise of a nature which is consistent with Tenant's business practice at the Premises immediately prior to the Lease Commencement Date.

Section 1.07. Brokers: None. (See Article Thirteen)

Section 1.08. Rent and Other Charges Payable by Tenant:

(a)	Base Rent :	<u>Lease Term</u>	<u>Monthly Installment of Base Rent</u>
		Lease Month 1 (including Stub Period)	\$87,500 + Prorated Amount for Stub Period, if any
		Lease Months 2 through 12	\$ 87,500.00
		First Extension (as defined below)	\$ 91,875.00

(b) The term "**Lease Month**" shall mean each consecutive calendar month during the Lease Term, with Lease Month 1 commencing on the Lease Commencement Date. If the Lease Commencement Date falls on a day other than the first day of a calendar month, then (i) Lease Month 1 shall include the partial Lease Month in which the Lease Commencement Date falls (the "**Stub Period**"), and (ii) the Base Rent and Additional Rent for the Stub Period shall be payable by Tenant based upon the Monthly Installment payable with respect to Lease Months 2 through 12 (but prorated based on the number of days in such calendar month). For purposes of this Lease, the term "**Lease Year**" shall mean, with respect to the first Lease Year, the period commencing on the first day of Lease Month 1 and ending on the last day of Lease Month 12, and with respect to subsequent Lease Years, each consecutive twelve (12) month period during the Lease Term following the first Lease Year.

ARTICLE TWO LEASE TERM

Section 2.01. Lease of Premises for Lease Term. The Lease Term shall be as set forth in Section 1.05 above, shall commence on the Lease Commencement Date, and shall terminate on the Lease Expiration Date, unless sooner terminated or extended as expressly provided in this Lease. The terms and provisions of this Lease shall be effective as of the Lease Commencement Date.

Section 2.02. Holding Over. If Tenant holds over after the expiration of the Lease Term hereof, with or without the express or implied consent of Landlord, such tenancy shall be from month-to-month only, and shall not constitute a renewal hereof or an extension for any further term, and in such case Base Rent shall be payable at a monthly rate equal to (i) 150% of

the Base Rent applicable immediately before the expiration of the Lease Term for the initial three (3) months following the expiration of the Lease Term, and (ii) 200% of the Base Rent applicable immediately before the expiration of the Lease Term following such initial three (3) month period. Such month-to-month tenancy shall be subject to every other term, covenant and agreement contained herein. Nothing contained in this Section 2.02 shall be construed as consent by Landlord to any holding over by Tenant, and Landlord expressly reserves the right to require Tenant to surrender possession of the Premises to Landlord as provided in this Lease upon the expiration or other termination of this Lease. The provisions of this Section 2.02 shall not be deemed to limit or constitute a waiver of any other rights or remedies of Landlord provided herein or at law. If Tenant fails to surrender the Premises upon the termination or expiration of this Lease, in addition to any other liabilities to Landlord accruing therefrom, Tenant shall protect, defend, indemnify and hold harmless Landlord (and Landlord's members, managers, partners, and shareholders, as applicable, and the affiliates, employees, agents, and contractors of Landlord and its members, managers, partners, and shareholders, as applicable) from all loss, costs (including reasonable attorneys' fees) and liability resulting from such failure, including, without limiting the generality of the foregoing, any claims made by any succeeding tenant founded upon such failure to surrender, and any lost profits to Landlord resulting therefrom.

Section 2.03. **Extension of Lease Term.**

(a) Agreement to Extend Lease Term. If Tenant wishes to extend the Lease Term beyond the Lease Expiration Date, then, on or prior to the date which is ninety (90) days prior to the then current Lease Expiration Date (the "**Extension Request Deadline**"), Tenant shall provide written notice to Landlord of Tenant's desire to extend the Lease Term (the "**Extension Request**"). Following timely receipt of the Extension Request, Landlord and Tenant shall attempt to agree, with each party acting in their sole and absolute discretion, to the terms of such extension (including, without limitation, the duration of the extension and the Base Rent payable during such extension). Notwithstanding anything to the contrary set forth in this Section 2.03, if Landlord and Tenant otherwise agree to an extension of the Lease Term (each an "**Extension**"), the Base Rent during the first such Extension (the "**First Extension**") shall be as set forth in Section 1.08(a) above. If Landlord and Tenant agree to the terms of an Extension, with each party acting in their sole and absolute discretion, then on or prior to the date which is thirty (30) days following the Extension Request Deadline (the "**Extension Acceptance Deadline**"), (i) Landlord and Tenant shall execute an amendment to this Lease setting forth such agreed upon terms (the "**Extension Amendment**"), and (ii) Tenant shall pay to Landlord, in cash or other readily available funds, an amount equal to the Base Rent for the first Lease Month of the applicable Extension (the "**Extension Payment**"). If Tenant (A) fails to deliver to Landlord an Extension Request by the Extension Request Deadline, (B) timely delivers an Extension Request, but thereafter (1) Landlord or Tenant fail to agree to an extension and execute the Extension Amendment by the Extension Acceptance Deadline, with each party acting in their sole and absolute discretion, or (2) Tenant fails to deliver the Extension Payment by the Extension Acceptance Deadline, or (C) at any time following the Extension Request Deadline, but prior to the commencement of the applicable Extension, Tenant is in default under this Agreement, all of Tenant's rights under this Section 2.03 and any Extension Amendment shall expire and thereafter be no further force or effect and this Lease shall terminate on the then current Lease Expiration Date and Tenant shall be deemed to have forever waived any rights

under this Section 2.03. During each Extension, Tenant shall pay on the first day of each Lease Month, (x) the monthly Base Rent as set forth in the Extension Amendment, in advance, without offset, recoupment, deduction or prior demand, unless expressly allowed by the terms of this Lease, (y) one-twelfth (1/12th) of the annual estimated Real Property Taxes and Insurance Premiums for the applicable calendar year, in accordance with Sections 4.02 and 4.04 below, respectively, and (iii) all other Additional Rent, in accordance with Section 4.01 below.

(b) Option to Terminate. If this Lease is extended pursuant to Section 2.03(a) above, Landlord and Tenant shall each have the option to terminate this Lease effective at any time on or after the first (1st) day of the First Extension (the "**Termination Option**"), by furnishing written notice (the "**Termination Notice**") at least ninety (90) days prior to the date on which the party sending such Termination Notice wishes to terminate the Lease. This Lease shall automatically terminate on the date set forth in such Termination Notice without further action on the part of Landlord or Tenant, and Tenant shall vacate the Premises in accordance with the terms of this Lease on or prior to such date. Failure to properly and timely vacate the Premises following the exercise of a Termination Option under this Section 2.03(b) shall be deemed a hold over pursuant to the provisions of Section 2.02. Either Landlord or Tenant may furnish a Termination Notice exercising its Termination Option which contemplates a termination of this Lease during a future Extension, even if such Extension has not yet been properly and fully exercised pursuant to Section 2.03(a) above.

(c) Time of Essence. Time is of the essence with respect to the provisions of this Section 2.03.

ARTICLE THREE BASE RENT

Section 3.01. Time and Manner of Payment.

3.01.1 Upon Tenant's execution of this Lease, Tenant paid to Landlord, in cash or other readily available funds, \$1,263,629.03, which amount represents the sum of (i) the aggregate Monthly Installments of Base Rent for the Lease Term (as set forth in Section 1.08(a) above) (the "**Base Rent Deposit**"), plus (ii) \$160,000 to be applied by Landlord pursuant to the terms of this Lease to the Real Property Taxes (as defined below) and Insurance Premiums (as defined below) due and payable during the Lease Term pursuant to Sections 4.02 and 4.04 below (the "**Real Property Taxes and Insurance Deposit**"). On the first day of the Stub Period and each Lease Month thereafter, Landlord shall deduct from (x) the Base Rent Deposit, the Base Rent installment for the applicable Lease Month, and (y) the Real Property Taxes and Insurance Deposit, the Real Property Taxes and Insurance Premiums payable during the Lease Term pursuant to Sections 4.02 and 4.04 below.

3.01.2 Notwithstanding anything in Section 3.01.1 to the contrary, on or prior to the date which is ten (10) calendar days after the Lease Commencement Date, Tenant may elect to deliver to Landlord a letter of credit, in a form and from an issuing bank reasonably approved by Landlord and otherwise in compliance with Sections 3.02 and 3.03 below (a "**Letter of Credit**"), in the amount of \$1,109,166.67 (the "**Original LOC Amount**") to secure the performance of Tenant's obligations under this Lease. If Tenant timely delivers such Letter of Credit, then, on the first day of each Lease Month thereafter, Tenant shall have the right to

deliver a substitute Letter of Credit, in a form and from an issuing bank reasonably approved by Landlord and otherwise in compliance with Sections 3.02 and 3.03 below, which substitute Letter of Credit shall be in the aggregate amount equal to the Original LOC Amount less any payments of Base Rent and estimated Real Property Taxes and Insurance Premiums actually paid by Tenant since the delivery of the original Letter of Credit. Alternatively, Tenant may deliver a single Letter of Credit, in a form and from an issuing bank reasonably approved by Landlord and otherwise in compliance with Sections 3.02 and 3.03 below which, provided such issuing bank otherwise agrees, provides a monthly drawdown mechanism by which the maximum amount of such Letter of Credit reduces each month solely by the amount of Base Rent, Real Property Taxes and Insurance Premiums actually paid by Tenant to Landlord in accordance with this Lease. Following the timely delivery of such approved Letter of Credit in the Original LOC Amount, (i) Landlord shall promptly refund to Tenant the remaining balance of the Base Rent Deposit and the Real Property Taxes and Insurance Deposit, after taking into account any deductions made by Landlord for payments due with respect to the Stub Period and Lease Month 1, and (ii) Tenant shall pay on the first day of each Lease Month thereafter, (x) the monthly Base Rent, in advance, without offset, recoupment, deduction or prior demand in accordance with Section 3.01.1 unless otherwise expressly allowed by the terms of this Lease, and (y) the monthly installment of Real Property Taxes and Insurance Premiums in accordance with Sections 4.02 and 4.04, respectively. If Tenant fails to timely delivery any payment of Base Rent, Real Estate Taxes or Insurance Premiums in accordance with the terms of this Lease, Landlord shall have the right to draw on the Letter of Credit under Section 3.02 below in order to cure such failure by Tenant.

Section 3.02. Form of Letter of Credit. Any Letter of Credit delivered by Tenant hereunder shall be irrevocable, unconditional and specifically assignable, and otherwise in form reasonably satisfactory to Landlord, issued to Landlord and its assigns by a bank reasonably satisfactory to Landlord. Following the occurrence of an Event of Default by Tenant, Landlord may, from time to time, without prejudice to any other remedy, draw on the Letter of Credit to satisfy any arrears of Base Rent, Real Property Taxes or Insurance Premiums, or to pay any other sums owed to Landlord as described in the Lease, or to satisfy any damage, injury, expense or liability caused to Landlord by such default. Neither the delivery to Landlord of any Letter of Credit nor any draws by Landlord thereunder shall be considered an advance payment of Base Rent or a measure of Landlord's damages in the event of a default by Tenant. If Landlord shall ever draw upon a Letter of Credit, and if this Lease has not terminated, Tenant shall immediately deliver to Landlord either an endorsement of the issuer of the Letter of Credit reinstating the credit for the portion thereof used by Landlord, or an additional Letter of Credit, conforming to the requirements of this Section 3.02, in an amount equal to the portion of the Original LOC Amount used by Landlord, such that the Letter of Credit shall be for an aggregate amount equal to the Original LOC Amount less payments of Base Rent and estimated Real Property Taxes and Insurance Premiums actually paid by Tenant by Tenant pursuant to Sections 3.01, 4.02, or 4.04 or drawn by Landlord pursuant to this Section 3.02 since the delivery of the original Letter of Credit. Tenant shall not encumber the Letter of Credit in any manner, and Landlord shall not be bound by any purported encumbrance.

Section 3.03. Term of Letter of Credit. Any Letter of Credit shall be effective as of the date of delivery to Landlord and shall not expire earlier than May 31, 2013. Landlord shall

waive in writing the benefits of the Letter of Credit and surrender the Letter of Credit to Tenant within thirty (30) days after the last to occur of the following:

- (a) the termination of the Lease (provided such termination is not the result of a default by Tenant), delivery of the Leased Premises to Landlord in accordance with the provisions of this Lease, and payment of all sums due to Landlord by Tenant under this Lease, or
- (b) the termination of the initial Lease Term (excluding any Extensions thereof), and payment of all sums due to Landlord by Tenant through such date.

Upon the sale of the Building, Landlord shall have the right to assign the benefits of any Letter of Credit to the purchaser, and Landlord shall have no subsequent liability for any draws against any Letter of Credit. In the event of a default by Tenant which is not fully resolved on or prior to the date which is sixty (60) days prior to the expiration of the Letter of Credit, Landlord may draw upon the full amount of the Letter of Credit and hold such cash as security for the performance of Tenant's obligations under this Lease pending the resolution of such default.

Section 3.04. Application of Payments. Unless otherwise designated by Landlord in its sole discretion, all payments received by Landlord from Tenant shall be applied to the oldest payment obligation owed by Tenant to Landlord. No designation by Tenant, either in a separate writing or on a check or money order, shall modify this section or have any force or effect.

Section 3.05. Termination; Advance Payments. Upon termination of this Lease under Article Seven (Damage or Destruction) of this Lease, or under Article Eight (Condemnation) of this Lease, or any other termination not resulting from Tenant's default, and after Tenant has vacated the Premises in the manner required by this Lease, Landlord shall refund or credit to Tenant the unused portions of the Base Rent Deposit and the Real Property Taxes and Insurance Deposit which apply to any time periods after termination of this Lease.

Section 3.06. Late Charges. Tenant's failure to pay Rent promptly may cause Landlord to incur unanticipated costs. The exact amount of such costs is impractical or extremely difficult to ascertain. Such costs may include, but are not limited to, processing and accounting charges and late charges which may be imposed on Landlord by any ground lease, mortgage or trust deed encumbering the Premises. Therefore, if Landlord does not receive any Rent payment within ten (10) Business Days after it becomes due, Tenant shall pay Landlord a late charge equal to five percent (5%) of the overdue amount. The parties agree that such late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of such late payment. If Tenant shall be served with a demand for payment of past due Rent or any other charge, any payments tendered thereafter to cure any default of Tenant shall be made only by cashier's check, wire transfer, or other immediately available funds. "**Business Days**" shall mean any day other than a Saturday, Sunday or a day on which national banking associations are authorized or required to close in the State of Maryland.

Section 3.07. Interest on Past Due Obligations. In addition to any late charge imposed pursuant to Section 3.06 above, any amount owed by Tenant to Landlord which is not paid when

due shall bear interest at the rate of eight percent (8%) per annum from the due date of such amount ("**Interest**"); provided, however, that no interest shall be payable on any late charges imposed on Tenant under this Lease. The payment of interest on such amounts shall not excuse or cure any default by Tenant under this Lease. If the interest rate specified in this Section 3.07 or any other charge or payment due under this Lease which may be deemed or construed as interest is higher than the rate permitted by law, such interest rate is hereby decreased to the maximum legal interest rate permitted by law.

ARTICLE FOUR OTHER CHARGES PAYABLE BY TENANT

Section 4.01. **Additional Rent.** All charges payable by Tenant other than Base Rent are called "**Additional Rent**." Unless otherwise set forth to the contrary in this Lease, Tenant shall pay all Additional Rent on the first day of each Lease Month. The term "**rent**" or "**Rent**" shall mean Base Rent and Additional Rent. Without limitation on other obligations of Tenant that shall survive the expiration or earlier termination of the Lease Term, the obligations of Tenant to pay the Additional Rent provided for in this Article Four shall survive the expiration or earlier termination of the Lease Term. The failure of Landlord to timely furnish Tenant the amount of the Additional Rent shall not preclude Landlord from enforcing its rights to collect such Additional Rent.

Section 4.02. Property Taxes.

(a) **Real Property Taxes.** Tenant shall pay all Real Property Taxes on the Premises (including any fees, taxes or assessments against, or as a result of, any tenant improvements installed on the Premises by or for the benefit of Tenant) during the Lease Term. During the Lease Term, Landlord shall bill Tenant monthly in advance for the estimated amount of such Real Property Taxes, and Tenant shall pay Landlord the full amount of such Real Property Taxes for the Lease Term as Additional Rent if the aggregate amount of such Real Property Taxes and any Insurance Premiums when due exceeds to the amount of the Real Property Taxes and Insurance Deposit then held by Landlord. The initial monthly estimate of Real Property Taxes and Insurance Premiums during the initial Lease Term, subject to Section 4.05 below, is \$13,333.00. On the first day of each Lease Month, Landlord shall deduct from the Real Property Taxes and Insurance Deposit, the amount of the installment of estimated Real Property Taxes payable for the applicable Lease Month; provided, however, if Tenant has timely delivered the Letter of Credit in accordance with Section 3.01.2 above, thereafter, Tenant shall pay to Landlord the monthly installment of estimated Real Property Taxes on the first day of each Lease Month. Landlord shall pay such taxes prior to such delinquency date, provided Tenant has timely made such payments to Landlord. Any penalty caused by Tenant's failure to timely make such payments shall also be Additional Rent owed by Tenant immediately upon demand.

(b) **Definition of "Real Property Tax."** "**Real Property Tax**" means: (i) any fee, license fee, license tax, business license fee, commercial rental tax, levy, charge, assessment, penalty or tax imposed by any taxing authority against the Premises, including, without limitation, any such fees, taxes or charges assessed by the state, county or city with respect to the Premises; (ii) any tax on the Landlord's right to receive, or the receipt of, rent or income from the Premises or against Landlord's business of leasing the Premises; (iii) any tax or

charge for fire protection, streets, sidewalks, road maintenance, refuse or other services provided to the Premises by any governmental agency, including, without limitation, any solid waste fees or storm water management fees which may be assessed by any governmental agency; (iv) any tax imposed upon this transaction or based upon a re-assessment of the Premises due to a change of ownership, as defined by applicable law, or other transfer of all or part of Landlord's interest in the Premises; and (v) any charge or fee replacing any tax previously included within the definition of Real Property Tax. "Real Property Tax" does not, however, include Landlord's federal or state income, franchise, inheritance or estate taxes; but "Real Property Tax" shall, notwithstanding the foregoing, specifically include any excise, transaction, sales, margin or privilege tax now or hereafter levied or imposed upon Landlord by any government or governmental agency on account of, attributed to or measured by or based upon (in whole or in part) Landlord's gross revenue (after any applicable deductions) or rent or other charges or prorations payable under this Lease.

(c) **Personal Property Taxes.**

(i) Tenant shall pay all taxes charged against trade fixtures, furnishings, equipment or any other personal property belonging to Tenant. Tenant shall diligently pursue the separate assessment of such personal property, so that it is taxed separately from the Premises.

(ii) If any of Tenant's personal property is taxed with the Premises, Tenant shall pay Landlord the taxes for the personal property within fifteen (15) Business Days after Tenant receives a written statement from Landlord for such personal property taxes.

(d) **Waiver of Protest.** Tenant agrees that it will not protest or appeal any appraisal or re-appraisal of all or any portion of the Premises before any governmental authority, and Tenant hereby waives all such rights of protest and appeal and any right to receive notices of such re-appraisal.

Section 4.03. Utilities. Tenant shall pay, directly to the appropriate supplier, the cost of all natural gas, heat, light, power, sewer service, telephone, fiber optic, cable or other communications or data delivery services, water, refuse disposal and other utilities and services supplied to the Premises. Tenant acknowledges and agrees that (1) this Lease is entirely separate and distinct from and independent of any and all agreements that Tenant may at any time enter into with any third party for the provision of utility services or any other services, and (2) Landlord has no obligation of any kind concerning the provision of any such services. Additionally, Landlord shall not be liable for any failure to furnish, stoppage of, or interruption in furnishing any of the services or utilities described in this Section 4.03, when such failure is caused by accident, breakage, repairs, strikes, lockouts, labor disputes, labor disturbances, governmental regulation, civil disturbances, terrorist acts, acts of war, moratorium or other governmental action, or any other cause beyond Landlord's control, and, in such event, Tenant shall not be entitled to any damages nor shall any failure or interruption abate or suspend Tenant's obligation to pay rent as required under this Lease or constitute or be construed as a constructive or other eviction of Tenant.

Section 4.04. Insurance Policies.

(a) **Liability Insurance.** During the Lease Term, Tenant, at Tenant's sole cost and expense, shall maintain a policy of commercial general liability insurance (or its equivalent) insuring Tenant against liability for bodily injury, property damage (including loss of use of property) and personal injury arising out of the operation, use or occupancy of the Premises. Tenant shall name Landlord (and any affiliate of Landlord designated by Landlord) as an additional insured under such policy, and Tenant shall provide Landlord with an appropriate "additional insured" endorsement to Tenant's liability insurance policy (in a form acceptable to Landlord). The initial amount of such insurance shall be Five Million Dollars (\$5,000,000.00) per occurrence and annual aggregate and shall be subject to periodic increase based upon inflation, increased liability awards, recommendation of Landlord's professional insurance advisors and other relevant factors. The liability insurance obtained by Tenant under this Section 4.04(a): shall (i) be primary and non-contributing; (ii) contain a "separation of insureds" clause (or equivalent); (iii) contain contractual liability coverage respecting Tenant's indemnity obligations under Section 5.05 below; and (iv) not have a deductible amount in excess of Five Thousand Dollars (\$5,000.00). The amount and coverage of such insurance shall not limit Tenant's liability nor relieve Tenant of any other obligation under this Lease. Landlord may also obtain commercial general liability insurance in an amount and with coverage determined by Landlord, insuring Landlord against liability arising out of ownership, operation, use or occupancy of the Premises. The policy obtained by Landlord shall not be contributory and shall not provide primary insurance.

(b) **Property and Rental Income Insurance.** During the Lease Term, Landlord shall maintain policies of insurance covering loss of or damage to the Premises in the full amount of its replacement value, with such policies providing protection against loss or damage due to fire or other casualties covered within the classification of all-risks property insurance. Landlord shall have the right to obtain terrorism, flood and earthquake insurance and other forms of insurance as Landlord deems reasonable. Landlord shall not obtain insurance for Tenant's fixtures or equipment or building improvements installed by Tenant on the Premises. During the Lease Term, Landlord shall also maintain a rental income insurance policy, with loss payable to Landlord, in an amount equal to one year's Base Rent, plus estimated Real Property Taxes and Insurance Premiums. During the Lease Term, Tenant shall maintain (at its sole cost and expense) policies of insurance covering loss of or damage to Tenant's fixtures, equipment, contents, inventory and building improvements installed by Tenant on the Premises in the full amount of their replacement value, with such policies providing protection against loss or damage due to fire or other casualties covered by all-risks property insurance with no co-insurance provisions applicable and shall be written as primary policies, not contributing with and not supplemental to the property insurance coverage that Landlord is required to carry pursuant to this Section 4.04(b). Tenant shall be liable for the payment of any deductible amount under Landlord's insurance policies (which deductible amount shall not exceed \$5,000.00) maintained pursuant to this Section 4.04(b); provided, however, that if the loss or damage is due to an act or omission of Tenant, then Tenant shall be responsible for payment of the entirety of such deductible amount. Tenant shall also be responsible for payment of the entirety of any deductible amount under Tenant's insurance policies. Tenant shall not do or permit anything to be done which invalidates any such insurance policies; provided, however, Tenant's current use of the Premises, as approved by Landlord, does not invalidate any such insurance policies.

(c) **Payment of Premiums.** Landlord shall bill Tenant monthly in advance for the estimated amount of such premiums under the insurance policies described in Sections 4.04(a) and (b) above (collectively, the "**Insurance Premiums**"), consistent with Section 4.05 below, and Tenant shall pay Landlord the full amount of such premiums, as Additional Rent if the aggregate amount of such Insurance Premiums and any Real Property Taxes when due exceeds to the amount of the Real Property Taxes and Insurance Deposit then held by Landlord. The initial monthly estimate of Real Property Taxes and Insurance Premiums during the initial Lease Term, subject to Section 4.05 below, is \$13,333.00. On the first day of each Lease Month, Landlord shall deduct from the Real Property Taxes and Insurance Deposit, such estimated amount payable for the applicable Lease Month; provided, however, if Tenant has timely delivered the Letter of Credit in accordance with Section 3.01.2 above, thereafter, Tenant shall pay to Landlord the monthly installment of estimated Insurance Premiums on the first day of each Lease Month. Landlord shall pay such Insurance Premiums as and when due, provided Tenant has timely made such payments to Landlord. Any penalty caused by Tenant's failure to timely make such payments shall also be Additional Rent owed by Tenant immediately upon demand. If the Lease Term expires before the expiration of an insurance policy maintained by Landlord, Tenant shall be liable for Tenant's prorated share of the insurance premiums. Prior to the Lease Commencement Date, Tenant shall deliver to Landlord a copy of any policy of insurance which Tenant is required to maintain under this Section 4.04. At least thirty (30) days prior to the expiration of any such policy, Tenant shall deliver to Landlord a renewal of such policy. As an alternative to providing a policy of insurance, Tenant shall have the right to provide Landlord a certificate of insurance (in form acceptable to Landlord) executed by an authorized officer or agent of the insurance company, certifying that the insurance which Tenant is required to maintain under this Section 4.04 is in full force and effect and containing such other information which Landlord reasonably requires.

(d) **General Insurance Provisions.**

(i) Any insurance that Tenant is required to maintain under this Lease shall include a provision that requires the insurance carrier to give Landlord not less than thirty (30) days' written notice prior to any cancellation or modification of such coverage, including the cancellation or modification of any required endorsements.

(ii) If Tenant fails to deliver any policy, certificate or renewal to Landlord required under this Lease within the prescribed time period or if any such policy is canceled or modified during the Lease Term without Landlord's consent, Landlord may obtain such insurance for Landlord's sole benefit (but is under no obligation to do so), in which case Tenant shall reimburse Landlord for the commercially reasonable cost of such insurance within fifteen (15) Business Days after receipt of a detailed statement that provides supporting documentation indicating the cost of such insurance. If Tenant fails to carry the required insurance, such failure shall automatically be deemed to be a covenant by Tenant to self-insure such required coverage, with a full waiver of subrogation in favor of Landlord (in the case of deemed self-insurance of Tenant's required property insurance); provided, however, that such failure shall remain a breach of this Lease unless cured by Tenant and any such deemed covenant to self-insure shall not be construed to grant Tenant the right to self-insure any of its insurance obligations under this Lease.

(iii) Tenant shall maintain all insurance required under this Lease with companies duly authorized to issue insurance policies in the State in which the Premises is located and holding a Financial Strength Rating of "A-" or better, and a Financial Size Category of "XII" or larger, based on the most recent published ratings of the A.M. Best Company. Landlord and Tenant acknowledge the insurance markets are rapidly changing and that insurance in the form and amounts described in this Section 4.04 may not be available in the future. Tenant acknowledges that the insurance described in this Section 4.04 is for the primary benefit of Landlord. If at any time during the Lease Term, Tenant is unable to obtain the insurance required under this Lease, Tenant shall nevertheless maintain insurance coverage which is (1) customary and commercially reasonable in the insurance industry for Tenant's type of business, as that coverage may change from time to time, and (2) reasonably acceptable to Landlord. Landlord makes no representation as to the adequacy of such insurance to protect Landlord's or Tenant's interests. If Tenant believes, in its sole discretion, that any such insurance coverage is inadequate, Tenant shall, at Tenant's sole cost and expense, obtain any such additional property or liability insurance which Tenant deems necessary to protect Landlord and Tenant.

(iv) NOTWITHSTANDING ANYTHING IN THIS LEASE TO THE CONTRARY, LANDLORD AND TENANT EACH HEREBY WAIVES ANY AND ALL RIGHTS OF RECOVERY AGAINST THE OTHER, OR AGAINST THE MEMBERS, MANAGERS, OFFICERS, EMPLOYEES, AGENTS OR REPRESENTATIVES OF THE OTHER (WHETHER SUCH RIGHT OF RECOVERY ARISES FROM A CLAIM BASED ON NEGLIGENCE OR OTHERWISE), FOR LOSS OF OR DAMAGE TO ITS PROPERTY OR THE PROPERTY OF OTHERS UNDER ITS CONTROL, IF SUCH LOSS OR DAMAGE IS INSURABLE UNDER AN "ALL RISK" PROPERTY INSURANCE POLICY (OR EQUIVALENT) OR IS COVERED BY ANY INSURANCE POLICY IN FORCE (WHETHER OR NOT DESCRIBED IN THIS LEASE) AT THE TIME OF SUCH LOSS OR DAMAGE, PROVIDED, HOWEVER, SECTION 4.04(b) SHALL CONTROL WITH RESPECT TO LIABILITY FOR THE PAYMENT OF ANY DEDUCTIBLE UNDER THE PROPERTY INSURANCE POLICIES REQUIRED TO BE OBTAINED PURSUANT TO SECTION 4.04(b). UPON OBTAINING THE REQUIRED POLICIES OF INSURANCE, LANDLORD AND TENANT SHALL GIVE NOTICE TO THE INSURANCE CARRIERS OF THIS MUTUAL WAIVER OF SUBROGATION.

(v) Tenant shall not use the Premises or permit the Premises to be used for any purpose other than the Permitted Use which would (a) jeopardize or be in conflict with the property insurance policies covering the Premises or fixtures or property in the Premises; (b) increase the rate of property insurance applicable to the Premises to an amount higher than it otherwise would be for general retail use; or (c) subject Landlord to any liability or responsibility for injury to any person or persons or to property by reason of any business or operation being conducted at the Premises outside the scope of the Permitted Use. Landlord acknowledges and confirms that the Tenant's current use, as of the date of this Lease, is approved as a Permitted Use.

(vi) Tenant shall, at its sole cost and expense, keep in full force and effect during the Lease Term the following additional coverage: (1) workers' compensation insurance as required by state law; (2) employer's liability insurance, with a limit of One Million Dollars (\$1,000,000.00), each accident, One Million Dollars (\$1,000,000.00) policy limit, and

One Million Dollars (\$1,000,000.00) each employee for all persons employed by Tenant who may come onto or occupy the Premises; (3) commercial auto liability insurance with a limit of One Million Dollars (\$1,000,000.00) aggregate limit for bodily injury and property damage, including owned, non-owned, and hired auto liability coverage for such vehicles driven on and around the Premises (if Tenant does not own company vehicles, a letter to that effect from an officer or principal of Tenant, in addition to proof of non-owned and hired auto liability coverage is required); (4) "Causes of Loss – Special Form" (or equivalent) personal property insurance, covering Tenant's personal property, whether owned, leased, or rented, including but not limited to trade fixtures, furniture, equipment, office contents, any interior improvements constructed within the Premises and any alterations to the Premises made by Tenant; and (5) to the extent that Tenant constructs or develops any improvements in or on the Premises, which according to the terms and conditions of this Lease shall become property of Landlord at the termination thereof, Tenant shall also provide "Causes of Loss – Special Form" (or equivalent) property coverage on a replacement cost basis.

(vii) If Tenant carries any of the liability insurance required hereunder in the form of a blanket policy, any certificate required hereunder shall make specific reference to the Premises; provided, however, the blanket policy carried with respect to the insurance required by Tenant hereunder shall contain a "per location" endorsement assuring that any aggregate limit under such blanket policy shall apply separately to the Premises and that the insurer thereunder shall provide written notice to Landlord if the available portion of such aggregate is reduced to less than the minimum amounts required under Section 4.04(a) above by either payment of claims or the establishment of reserves for claims (in which case Tenant shall be obligated to take immediate steps to increase the amount of its insurance coverage in order to satisfy the minimum requirements set forth in Section 4.04(a) above).

Section 4.05. Annual Reconciliation. Landlord may adjust its estimate of annual Real Property Taxes and Insurance Premiums at any time and from time to time during the Lease Term, but no more frequently than once every six (6) months, based upon Landlord's experience and reasonable anticipation of costs. Such adjustments shall be effective as of the next rent payment date after notice to Tenant. Within one hundred twenty (120) days after the end of each Lease Year, Landlord shall deliver to Tenant a statement prepared in accordance with generally accepted accounting principals setting forth, in reasonable detail, with supporting documentation, the actual Real Property Taxes and Insurance Premiums paid or incurred during the preceding Lease Year. Upon receipt of such statement, there shall be an adjustment between Landlord and Tenant (which shall include the release of any remaining portion of the Real Property Taxes and Insurance Deposit, if applicable), with payment to or credit given by Landlord (as the case may be) so that Landlord shall receive the entire amount of such costs and expenses for such period. The provisions of this Section 4.05 shall survive the expiration or earlier termination of the Lease Term.

ARTICLE FIVE USE OF PREMISES

Section 5.01. Permitted Uses. Tenant may use the Premises only for the Permitted Uses set forth in Section 1.06 above and for no other purpose whatsoever; provided that such Permitted Uses (i) do not create any unusual or atypical wear and tear on the Building or decrease the value of the Premises; (ii) do not create any risk of Environmental Damages or

Hazardous Material contamination on the Premises; (iii) do not create obnoxious (as to a reasonable person) odors or noise; (iv) do not include storage of tires, chemicals (other than those permitted under Section 5.03 below) or explosives or other products made with like materials; and (v) do not involve fabrication or manufacturing.

Section 5.02. Manner of Use. Tenant shall not cause or permit the Premises to be improved, developed, or used in any way which constitutes a violation of any law, statute, ordinance, or governmental regulation or order, or other governmental requirement now in force or which may hereafter be enacted or promulgated (collectively, "**Applicable Laws**"), or which constitutes a nuisance or waste. Tenant shall obtain and pay for all permits required for Tenant's occupancy of the Premises, and for all business licenses, and shall promptly take all actions necessary to comply with all applicable statutes, ordinances, rules, regulations, orders and requirements regulating the use by Tenant of the Premises, including without limiting to the Occupational Safety and Health Act.

Tenant shall, at its sole cost and expense, promptly comply with any Applicable Laws which relate to (or are triggered by) (i) Tenant's use of the Premises, and (ii) any alteration or any tenant improvements made by Tenant or at the request of Tenant. Should any standard or regulation now or hereafter be imposed on Tenant by any federal, state or local governmental body charged with the establishment, regulation and enforcement of occupational, health or safety standards, then Tenant agrees, at its sole cost and expense, to comply promptly with such standards or regulations. The judgment of any court of competent jurisdiction or the admission of Tenant in any judicial action, regardless of whether Landlord is a party thereto, that Tenant has violated any Applicable Laws, shall be conclusive of that fact as between Landlord and Tenant. Tenant shall immediately notify Landlord in writing of any water infiltration at the Premises.

Section 5.03. Hazardous Materials.

5.03.1 Definitions.

A. "**Hazardous Material**" means any substance, whether solid, liquid or gaseous in nature:

(i) the presence of which requires investigation or remediation under any federal, state or local statute, regulation, ordinance, order, action, policy or common law; or

(ii) which is or becomes defined as a "hazardous waste," "hazardous substance," pollutant or contaminant under any federal, state or local statute, regulation, rule or ordinance or amendments thereto including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. section 9601 et seq.) and/or the Resource Conservation and Recovery Act (42 U.S.C. section 6901 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. section 1801 et seq.), the Federal Water Pollution Control Act (33 U.S.C. section 1251 et seq.), the Clean Air Act (42 U.S.C. section 7401 et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. section 2601 et seq.), and the Occupational Safety and Health Act (29 U.S.C. section 651 et seq.), as these laws have been amended or supplemented; or

(iii) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous or is or becomes regulated by any governmental authority, agency, department, commission, board, agency or instrumentality of the United States, the State of Maryland or any political subdivision thereof; or

(iv) without limitation which contains gasoline, diesel fuel or other petroleum hydrocarbons; or

(v) without limitation which contains polychlorinated biphenyls (PCBs), asbestos or urea formaldehyde foam insulation; or

(vi) without limitation which contains radon gas.

B. **"Environmental Requirements"** means all applicable present and future:

(i) statutes, regulations, rules, ordinances, codes, licenses, permits, orders, and similar requirements (including, but not limited to those pertaining to reporting, licensing, permitting, investigation and remediation), of all Governmental Agencies; and

(ii) all applicable judicial, administrative, and regulatory decrees, judgments, and orders issued by a Governmental Agency relating to the protection of human health or the environment, including, without limitation, all requirements pertaining to emissions, discharges, releases, or threatened releases of Hazardous Materials or chemical substances into the air, surface water, groundwater or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of Hazardous Materials or chemical substances.

C. **"Environmental Damages"** means all claims, judgments, damages, losses, penalties, fines, liabilities (including strict liability), encumbrances, liens, costs, and expenses (including the reasonable expense of investigation and defense of any claim, whether or not such claim is ultimately defeated, or the amount of any good faith settlement or judgment arising from any such claim) of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable (including without limitation reasonable attorneys' fees and disbursements and consultants' fees) any of which are incurred at any time as a result of the existence or release of Hazardous Material upon, about, or beneath the Premises or migrating or threatening to migrate to or from the Premises. Environmental Damages include, without limitation:

(i) damages for personal injury, or injury to property or natural resources occurring upon or off of the Premises, including, without limitation, the cost of demolition and rebuilding of any improvements on real property, interest, penalties and damages arising from claims brought by or on behalf of employees of Tenant, but specifically excluding any damages with respect to diminution in value or life expectancy and any consequential damages;

(ii) reasonable fees, costs or expenses incurred for the services of attorneys, consultants, contractors, experts, laboratories and all other costs incurred in connection with the investigation or remediation of such Hazardous Materials to the extent required by

Environmental Requirements or violation of such Environmental Requirements, including, but not limited to, the preparation of any feasibility studies or reports or the performance of any cleanup, remediation, removal, response, abatement, containment, closure, restoration or monitoring work required by any Governmental Agency to comply with Environmental Requirements and including without limitation any reasonable attorneys' fees, costs and expenses incurred in enforcing the provisions of this Lease or collecting any sums due hereunder; and

(iii) liability to any third person or Governmental Agency to indemnify such person or Governmental Agency for costs expended in connection with the items referenced in subparagraph (ii) above.

D. **"Contamination"** means the presence of or release of Hazardous Materials into any environmental media from, upon, within, below, into or on any portion of the Premises, including the Building, so as to require remediation, cleanup or investigation under any applicable Environmental Requirements.

E. **"Governmental Agency"** means all governmental agencies, departments, commissions, boards, branches (such as the judiciary), bureaus or instrumentalities of the United States, states, counties, cities and political subdivisions thereof.

F. The **"Tenant Group"** means Tenant, Tenant's successors, assignees, officers, members, managers, directors, agents, employees, contractors, or other parties under the supervision or control of Tenant, other than a member of the Landlord Group.

G. The **"Landlord Group"** means Landlord, Landlord's successors, assignees, officers, members, managers, directors, agents, employees, contractors, and other parties under the supervision or control of Landlord, other than a member of the Tenant Group.

5.03.2 Prohibitions.

A. Other than normal quantities of general office and cleaning supplies and automobile fluids contained in automobiles located within the designated parking areas on the Premises, Tenant shall not cause, permit or suffer any Hazardous Material to be brought upon, treated, kept, stored, disposed of, discharged, released, produced, manufactured, generated, refined or used upon, about or beneath the Premises by the Tenant Group; provided, however, Tenant shall have no liability whatsoever for any Environmental Damages resulting from the migration onto the Premises of Hazardous Materials from locations outside of the Premises not resulting from Tenant Group's actions. Without limiting the generality of the above, in no event shall Tenant or any other member of the Tenant Group be permitted to introduce, treat, store, dispose of, discharge, release, produce, manufacture, generate, refine, or use chlorinated solvents upon, about, or beneath the Premises.

B. Tenant shall not cause or permit the commission by the Tenant Group of a violation of any Environmental Requirements upon, about or beneath the Premises.

C. Tenant shall neither create nor permit the Tenant Group to create any lien, security interest or other charge or encumbrance of any kind with respect to the Premises,

including without limitation, any lien imposed pursuant to section 107(f) of the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. section 9607(l)) or any similar state statute.

D. Tenant shall not install, operate or maintain any above or below grade tank, sump, pit, pond, lagoon or other storage or treatment vessel or device on the Premises without Landlord's prior written consent, which may be withheld in Landlord's sole and absolute discretion.

5.03.3 Indemnity.

A. TENANT AGREES TO INDEMNIFY, DEFEND, REIMBURSE AND HOLD HARMLESS:

(i) LANDLORD; AND

(ii) ANY OTHER PERSON WHO ACQUIRES ALL OR A PORTION OF THE PREMISES IN ANY MANNER (INCLUDING PURCHASE AT A FORECLOSURE SALE) OR WHO BECOMES ENTITLED TO EXERCISE THE RIGHTS AND REMEDIES OF LANDLORD UNDER THIS LEASE; AND

(iii) THE DIRECTORS, OFFICERS, SHAREHOLDERS, EMPLOYEES, PARTNERS, MEMBERS, MANAGERS, AGENTS, AFFILIATES, MORTGAGEES, TRUSTEES, HEIRS, AND DEVISEES OF SUCH PERSONS;

FROM AND AGAINST ANY AND ALL ENVIRONMENTAL DAMAGES WHICH EXIST AS A RESULT OF THE ACTIVITIES OR NEGLIGENCE OF THE TENANT GROUP OR WHICH EXIST AS A RESULT OF THE BREACH OF ANY WARRANTY OR COVENANT OR THE INACCURACY OF ANY REPRESENTATION OF TENANT CONTAINED IN THIS LEASE, OR BY TENANT'S REMEDIATION OF THE PREMISES.

B. The obligations contained in this Section 5.03.3 shall include, but not be limited to, the burden and reasonable expense of defending all claims, suits and administrative proceedings, even if such claims, suits or proceedings are groundless, false or fraudulent, and conducting all negotiations of any description, and paying and discharging, when and as the same become due, any and all judgments, penalties or other sums which comprise Environmental Damages due against such indemnified persons. Landlord, at its sole expense, may employ additional counsel of its choice to associate with counsel representing Tenant.

C. Landlord shall have the right but not the obligation, at its sole expense, to join and participate in, and jointly control, if it so elects, any legal proceedings or actions initiated in connection with the subject matter of this Section 5.03. Landlord may also jointly negotiate, defend, approve and appeal any action taken or issued by any applicable governmental authority with regard to Contamination of the Premises by a Hazardous Material.

D. Subject to the terms of Section 5.03.7 below, the obligations of Tenant in this Section 5.03.3 shall survive the expiration or termination of this Lease for the applicable statute of limitations period.

E. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, TENANT HEREBY ACKNOWLEDGES AND AGREES THAT (I) TENANT IS THE PRIOR OWNER OF THE PREMISES AND HAS BEEN THE SOLE OCCUPANT OF THE BUILDING SINCE ITS CONSTRUCTION, (II) AS OF THE LEASE COMMENCEMENT DATE, CERTAIN CONDITIONS EXIST AT THE PREMISES WHICH REQUIRE REMEDIATION UNDER EXISTING ENVIRONMENTAL REQUIREMENTS OR MAY CAUSE COSTS TO BE INCURRED FOR ENVIRONMENTAL DAMAGES, WHICH CONDITIONS ARE MORE PARTICULARLY DESCRIBED IN THAT CERTAIN PHASE II ENVIRONMENTAL SITE ASSESSMENT, PERFORMED BY APEX COMPANIES, LLC, DATED AS OF MARCH 28, 2011 AND SUBSEQUENT ENVIRONMENTAL INVESTIGATION AS OF THE DATE HEREOF (the "**Existing Environmental Condition**"), WHICH INDICATES, AMONG OTHER THINGS, THAT HAZARDOUS MATERIALS MAY HAVE MIGRATED OFF OF THE PREMISES ONTO ADJOINING PROPERTY ("**Offsite Migration**"), (III) DURING THE TERM OF THIS LEASE, LANDLORD DOES NOT INTEND, AND LANDLORD SHALL HAVE NO OBLIGATION, TO REMEDIATE THE EXISTING ENVIRONMENTAL CONDITION, ANY OFFSITE MIGRATION, OR ANY OTHER CONDITION OF THE PREMISES WHICH DOES NOT COMPLY WITH ENVIRONMENTAL REQUIREMENTS, AND (IV) TENANT SHALL NOT TAKE OR PERMIT THE TENANT GROUP TO TAKE ANY ACTION OR MAKE ANY USE OF THE PREMISES WHICH WOULD EXACERBATE, CAUSE A RELEASE OF OR NEGATIVELY IMPACT THE EXISTING ENVIRONMENTAL CONDITION OR ANY OTHER CONDITION DESCRIBED IN CLAUSE (III) ABOVE. LANDLORD AND TENANT EACH HEREBY ACKNOWLEDGE AND AGREE THAT (X) THAT CERTAIN PURCHASE AND SALE AGREEMENT BY AND BETWEEN HINES INTERESTS LIMITED PARTNERSHIP AND TENANT, DATED AS OF FEBRUARY 28, 2011 (AS SUBSEQUENTLY AMENDED AND ASSIGNED TO LANDLORD), AND (Y) THAT CERTAIN ESCROW AGREEMENT BY AND BETWEEN LANDLORD, TENANT AND STEWART TITLE GUARANTY COMPANY, DATED AS OF THE LEASE COMMENCEMENT DATE, SHALL CONTROL AS TO ALL LIABILITIES BETWEEN THE PARTIES HERETO WITH RESPECT TO THE EXISTING ENVIRONMENTAL CONDITION. IN NO EVENT SHALL THE EXECUTION OF THIS LEASE BY LANDLORD BE CONSTRUED AS AN ASSUMPTION BY LANDLORD OF ANY LIABILITY WITH RESPECT TO ANY OFFSITE MIGRATION OR ANY CLAIMS, JUDGMENTS, DAMAGES, LOSSES, PENALTIES, FINES, LIABILITIES, ENCUMBRANCES, LIENS, COSTS OR EXPENSES OF WHATEVER KIND OR NATURE, CONTINGENT OR OTHERWISE, MATURED OR UNMATURED, FORESEEABLE OR UNFORESEEABLE, RELATED TO ANY OFFSITE MIGRATION.

5.03.4 Obligation to Remediate. In addition to the obligation of Tenant to indemnify Landlord pursuant to this Lease, Tenant shall, upon approval and demand of Landlord, at its reasonable cost and expense and using contractors reasonably approved by Landlord, promptly take all actions to remediate the Premises which are required by any Governmental Agency to mitigate Environmental Damages in violation of any Environmental Requirements; provided, however, that Tenant's remediation obligation shall only arise if it is necessitated from the presence upon, about or beneath the Premises at any time during or upon termination of this Lease (whether discovered during or following the Lease Term, but subject to the limitation set forth in Section 5.03.3(D) above), of a Hazardous Material existing as a result

of the activities or negligence of the Tenant Group which violates Environmental Requirements or causes Environmental Damages; provided, further, however, in no event shall Tenant be obligated to take any actions under this Section 5.03.4 with respect to the Existing Environmental Condition. Such actions may include the investigation of the environmental condition of the Premises, the preparation of any feasibility studies, reports or remedial plans, and the performance of any cleanup, remediation, containment, operation, maintenance, monitoring or restoration work, whether on or off the Premises.

5.03.5 Right to Inspect.

(a) Upon reasonable prior notice to Tenant, Landlord shall have the right in its sole and absolute discretion, but not the duty, to enter and conduct, at any reasonable time (i) an inspection of the Premises, including invasive tests, to determine, among other things, the compliance of the Premises and the activities thereon with Environmental Requirements and the existence of Environmental Damages as a result of the condition of the Premises or surrounding properties and activities thereon, (ii) any testing or other inspections required by any Governmental Agency in connection with any Environmental Requirements, and (iii) any necessary remediation of the Premises (however, in no event is Landlord obligated to do so). Landlord shall have the right, but not the duty, to retain any independent professional consultant (the "**Consultant**") to enter the Premises to conduct such an inspection or to review any report prepared by or for Tenant concerning such compliance and Tenant shall reasonably cooperate with such Consultant and any such inspection, testing or remediation. The cost of the Consultant shall be paid by Landlord unless such investigation discloses a material violation of any Environmental Requirement by the Tenant Group or the existence of a Hazardous Material in violation of Environmental Requirements on the Premises due to the acts or omissions of the Tenant Group or any other property caused by the activities or negligence of the Tenant Group (other than Hazardous Materials used in compliance with all Environmental Requirements), in which case Tenant shall pay the reasonable cost of the Consultant. Pursuant to Section 5.03.4 above, Tenant shall perform, at its sole cost and expense, any clean-up or remedial work which is necessary to remove, mitigate or remediate any Hazardous Materials and/or contamination of the Premises caused by the activities or negligence of the Tenant Group to the extent required to comply with Environmental Requirements; provided, however, in no event shall the foregoing require Tenant to perform any clean-up or remedial work with respect to the Existing Environmental Condition. Tenant hereby grants to Landlord, and the agents, employees, consultants and contractors of Landlord the right to enter the Premises and to perform such tests and/or remediation on the Premises, following at least 48 hours' advance notice (except in case of an emergency) as are reasonably necessary to conduct such reviews, investigations and remediation, provided Landlord uses commercially reasonable efforts to minimize interference with the business of Tenant and otherwise complies with the terms of Section 5.06 below.

(b) If during the Term of this Lease any Governmental Agency requires that Landlord conduct testing or inspections or construct or alter improvements the costs of which is estimated to exceed \$50,000 in the aggregate, as determined by Landlord in its sole discretion, Landlord shall have the right to terminate this Lease following the delivery of at least three (3) months prior written notice thereof to Tenant, in which event this Lease shall terminate on the date set forth in such written notice without further action on the part of Landlord or Tenant, and

Tenant shall vacate the Premises in accordance with the terms of this Lease on or prior to such date.

5.03.6 Notification. If either party shall become aware of or receive notice or other communication concerning any actual, alleged, suspected or threatened violation of Environmental Requirements, or liability of either party for Environmental Damages in connection with the Premises, including but not limited to notice or other communication concerning any actual or threatened investigation, inquiry, lawsuit, claim, citation, directive, summons, proceeding, complaint, notice, order, writ, or injunction, relating to same, then such party shall deliver to the other party within ten (10) Business Days of the receipt of such notice or communication, a written description of said violation, liability, or actual or threatened event or condition, together with copies of any documents evidencing same. Receipt of such notice shall not be deemed to create any obligation on the part of Landlord to defend or otherwise respond to any such notification.

5.03.7 Survival of Hazardous Materials Obligation. Tenant's breach of any of its covenants or obligations under this Section 5.03 shall constitute a breach under this Lease. The obligations of Tenant under this Lease shall survive the expiration or earlier termination of this Lease for a period equal to the applicable statute of limitations, and shall constitute obligations that are independent and severable from Tenant's covenants and obligations to pay rent under this Lease.

Section 5.04. Auctions and Signs. Tenant shall not conduct or permit any auctions or sheriff's sales at the Premises. Subject to the provisions of this Section 5.04, Tenant, at its sole cost and expense, may maintain identification signs (each a "Sign") in the existing forms and locations as exist on the façade of the Building; provided, however, that if Tenant wishes to alter any existing sign or install any new sign on the Premises, (i) the size, color, location, materials and design of the Sign shall be subject to Landlord's prior written approval; (ii) the Sign shall comply with all applicable governmental rules and regulations and the Premises's covenants, conditions and restrictions; (iii) the Sign shall not be painted directly on the Building or attached or placed on the roof of the Building; and (iv) Tenant's continuing signage right shall be contingent upon Tenant maintaining the Sign in a first-class condition. Tenant shall be responsible for all costs incurred in connection with the design, construction, installation, repair and maintenance of the Sign. Any signs, notices, logos, pictures, names or advertisements which are installed and that have not been separately approved by Landlord, may be removed by Landlord, without notice by Landlord to Tenant at Tenant's reasonable cost and expense.

Section 5.05. Indemnity. TENANT SHALL INDEMNIFY, DEFEND, PROTECT AND HOLD HARMLESS LANDLORD (AND LANDLORD'S MEMBERS, MANAGERS, PARTNERS, AND SHAREHOLDERS, AS APPLICABLE, AND THE AFFILIATES, EMPLOYEES, AGENTS, AND CONTRACTORS OF LANDLORD AND ITS MEMBERS, MANAGERS, PARTNERS, AND SHAREHOLDERS, AS APPLICABLE) FROM ANY AND ALL COSTS, CLAIMS, LOSS, DAMAGE, EXPENSE AND LIABILITY (INCLUDING WITHOUT LIMITATION COURT COSTS, LITIGATION EXPENSES, AND REASONABLE ATTORNEYS' FEES) INCURRED IN CONNECTION WITH OR ARISING FROM: (A) TENANT'S USE OF THE PREMISES, INCLUDING, BUT NOT LIMITED TO, THOSE ARISING FROM ANY ACCIDENT, INCIDENT, INJURY OR DAMAGE, HOWEVER AND

BY WHOMSOEVER CAUSED (EXCEPT TO THE EXTENT OF ANY CLAIM ARISING OUT OF LANDLORD'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT), TO ANY PERSON OR PROPERTY OCCURRING IN OR ABOUT THE PREMISES; (B) THE CONDUCT OF TENANT'S BUSINESS OR ANYTHING ELSE DONE OR PERMITTED BY TENANT TO BE DONE IN OR ABOUT THE PREMISES; (C) ANY BREACH OR DEFAULT IN THE PERFORMANCE OF TENANT'S OBLIGATIONS UNDER THIS LEASE; (D) ANY MISREPRESENTATION OR BREACH OF WARRANTY BY TENANT UNDER THIS LEASE; OR (E) OTHER ACTS OR OMISSIONS OF TENANT. As a material part of the consideration to Landlord, Tenant assumes all risk of damage to property or injury to persons in or about the Premises arising from any cause (including, but not limited to, those arising from a claim of negligence), and Tenant hereby waives all claims in respect thereof against Landlord, except to the extent of any claim arising out of Landlord's gross negligence or willful misconduct; provided, however, that this waiver is subject to Section 4.04(d)(iv) above. As used in this Section, the term "Tenant" shall include Tenant's employees, agents, contractors and invitees, if applicable. The provisions of this Section 5.05 shall survive the expiration or earlier termination of this Lease with respect to any claims or liability occurring prior to such expiration or earlier termination, and shall constitute obligations that are independent and severable from Tenant's covenants and obligations to pay rent under this Lease.

Section 5.06. Landlord's Access. Landlord reserves the right at all reasonable times and upon at least three (3) calendar days advance notice to Tenant (except in the event of an emergency, when no advance notice shall be required) to enter the Premises to (i) inspect it; (ii) show the Premises to prospective purchasers, mortgagees or tenants, or to the ground or underlying lessors; (iii) post notices of non-responsibility; (iv) alter, improve or repair the Premises; (v) following at least one (1) week's advance written notice to Tenant, during the last four (4) months of the Lease Term, place on the Premises "For Sale" and "For Lease" signs; (vi) place on the Premises signs related to Landlord's potential development of the Premises, as may be desired by Landlord or required by Applicable Laws, or (vii) to conduct physical, engineering, subsurface, geotechnical and other studies and/or evaluations of the Premises; provided, however, that Landlord shall use reasonable efforts not to unreasonably disturb the operation of Tenant's business within the Premises as a result of such entry. Notwithstanding anything to the contrary contained in this Section 5.06, Landlord may enter the Premises at any time to (A) perform any services required of Landlord; (B) take possession due to any breach of this Lease, in the manner provided in this Lease, and consistent with applicable law; and (C) perform any covenants of Tenant which Tenant fails to perform within thirty (30) days after written notice from Landlord of such failure, except in the event of an emergency or where such failure could reasonably be deemed harmful to persons or materially dangerous to property. Any such entries shall be without the abatement of Rent and shall include the right to take such reasonable steps as required to accomplish the stated purposes. Tenant hereby waives any claims for damages or for any injuries or inconvenience to or interference with Tenant's business, lost profits, any loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned thereby. Landlord agrees to take reasonable measures to minimize interference with Tenant's business at the Premises. For each of the above purposes, Landlord may request and Tenant, at its sole option, shall either provide (i) a key with which to unlock all the doors in the Premises or (ii) a Tenant representative to be available to Landlord to enable the necessary access. In an emergency, Landlord shall have the right to use any means that Landlord may deem proper to open the doors in and to the Premises. Any entry into the Premises in the manner described

above shall not be deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an actual or constructive eviction of Tenant from any portion of the Premises.

Section 5.07. **Vehicle Parking.** Tenant shall be entitled to use the vehicle parking area located on the Premises as shown on Exhibit B without paying any Additional Rent therefor. Tenant shall not allow large trucks or other large vehicles to be parked within the Premises (other than in designated areas) or on the adjacent public streets; provided, however, that the parking or storing of large trucks and other commercial vehicles is allowed in front of, adjacent and perpendicular to Tenant's dock loading doors at the Premises, so as to be on the concrete apron adjacent to such doors, or in other areas specifically designated by Landlord for such purpose.

Section 5.08. **Quiet Possession.** If Tenant pays the rent and complies with all other terms of this Lease, Landlord agrees to defend Tenant's right to enjoy the Premises for the full Lease Term against any party claiming by, through or under Landlord, subject to the provisions of this Lease.

ARTICLE SIX CONDITION OF PREMISES; MAINTENANCE, REPAIRS AND ALTERATIONS

SECTION 6.01. **Existing Conditions.** TENANT ACCEPTS THE PREMISES IN ITS "AS-IS" CONDITION AS OF THE LEASE COMMENCEMENT DATE. EXCEPT AS EXPRESSLY PROVIDED IN THIS LEASE, TENANT ACKNOWLEDGES THAT NEITHER LANDLORD NOR ANY AGENT OF LANDLORD HAS MADE ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WHATSOEVER WITH RESPECT TO THE CONDITION OF THE PREMISES, THE BUILDING OR ANY PORTION OF THE PREMISES, OR ANY BUILDINGS OR OTHER IMPROVEMENTS ON OR COMPRISING A PART OF EITHER OF SAME, NOR WITH RESPECT TO THE FITNESS OR SUITABILITY THEREOF FOR ANY PARTICULAR USE OR PURPOSE, AND TENANT HEREBY WAIVES ANY AND ALL SUCH WARRANTIES, EXPRESS OR IMPLIED, INCLUDING SPECIFICALLY BUT WITHOUT LIMITATION ANY WARRANTY OR REPRESENTATION OF SUITABILITY. TENANT REPRESENTS AND WARRANTS THAT TENANT PREVIOUSLY OWNED THE PREMISES AND HAS OCCUPIED THE PREMISES SINCE ITS CONSTRUCTION AND HAS THEREFORE MADE ITS OWN INSPECTION OF AND INQUIRY REGARDING THE CONDITION OF THE PREMISES (OR HAS HAD THE OPPORTUNITY TO DO SO), IS AWARE OF THE CONDITION OF THE PREMISES, INCLUDING, WITHOUT LIMITATION, THE EXISTING ENVIRONMENTAL CONDITION, AND IS NOT RELYING ON ANY REPRESENTATIONS OF LANDLORD OR ANY BROKER WITH RESPECT THERETO.

Section 6.02. **Exemption of Landlord from Liability.** Landlord shall not be liable for any damage or injury to the person, business (or any loss of income therefrom), goods, wares, merchandise or other property of Tenant, Tenant's employees, invitees, customers or any other person in or about the Premises, whether such damage or injury is caused by or results from: (a) fire, steam, electricity, water, gas or rain; (b) the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures or any other cause; (c) conditions arising in or about the Premises or upon other portions of the

Premises, or from other sources or places; (d) criminal acts or entry by unauthorized persons into the Premises or the Building; or (e) any act or omission of any other person. Landlord shall not be liable for any such damage or injury even though the cause of or the means of repairing such damage or injury are not accessible to Tenant. The provisions of this Section 6.02 shall not, however, exempt Landlord from liability to the extent of Landlord's gross negligence or willful misconduct, and are subject to Section 4.04(d)(iv) above.

Section 6.03. Tenant's Obligations.

(a) Except as provided in Article Seven (Damage or Destruction) below, and Article Eight (Condemnation) below, Tenant, at Tenant's cost and expense, shall keep all portions of the Premises (including structural, nonstructural, interior, exterior, systems, equipment, parking areas and landscaped areas) in good order, condition and repair and shall operate the Premises as a first-class retail development. It is the intention of Landlord and Tenant that, at all times during the Lease Term, Tenant shall maintain the Premises in an attractive, first-class and fully operative condition. Tenant's repair obligation described above shall include the replacement of any damaged areas of the Premises, if repair is impracticable, so as to restore such areas to the condition existing prior to such damage. Tenant shall also be responsible for compliance with and payment of all sums due under all documents and other matters recorded in the chain of title of the Premises that were effective prior to the transfer of the ownership of the Property from Tenant to Landlord which affect the Premises and which impose a burden on the owner thereof, including, without limitation, (i) that certain Storm Water Management Easement, Storm Water Management Inspection and Maintenance Agreement dated March 24, 1997 and recorded as Instrument No. LF 14769.059 in the Official Public Records of Montgomery County, Maryland (as may have been amended from time to time), and all related agreements with local municipalities related to storm water facilities on the Premises, and (ii) that certain Tree Conservation Easement and Declaration of Covenants dated March 2, 1997 and recorded as Instrument No. LF 14769.065 in the Official Public Records of Montgomery County, Maryland. Tenant shall be solely responsible for any fines or other penalties imposed by local municipalities and other government authorities which result from Tenant's failure to comply with its obligations under this Lease, and Tenant's obligations under this sentence shall survive the expiration or earlier termination of this Lease.

(b) Tenant shall be responsible for all costs and expenses associated with Tenant's obligations under this Section 6.03, which shall include, but are not limited to, the costs of all utilities, water and sewage charges; maintenance of signs; maintenance of fire system and pump (including testing, monitoring and servicing); maintenance of landscaped areas; association dues, if any; the cost of improvements made to comply with the requirements of any law, ordinance, code, rule or regulation; rental or lease payments paid by Tenant for rented or leased personal property used in the operation or maintenance of the Premises; fees for required licenses and permits; repairing, resurfacing, repaving, maintaining, painting, lighting, cleaning, snow removal, refuse removal, security and similar items for the Premises; maintenance expenses for heating and air conditioning systems, maintenance expenses for the roof of the Building; exterior painting, sealing and restriping and/or resurfacing and repaving of the parking lot, driveways, and other paved areas. If Tenant fails to maintain, repair or replace any portion of the Premises as required by this Section 6.03, Landlord may (but without any obligation to do so), upon ten (10) days' prior notice to Tenant (except that no notice shall be required in the case

of an emergency), enter the Premises and perform such maintenance or repair (including replacement, as needed) on behalf of Tenant. In such case, Tenant shall reimburse Landlord for all reasonable costs incurred in performing such maintenance or repair within thirty (30) days of receipt of an invoice therefore with supporting documentation.

(c) Without limiting the foregoing, Tenant shall maintain the landscaped and paved areas of the Premises. Such maintenance shall include gardening, tree trimming, replacement or repair of landscaping, landscape irrigation systems and similar items. Such maintenance shall also include sweeping and cleaning of asphalt, concrete or other surfaces on the driveway, parking areas, yard areas, loading areas or other paved or covered surfaces.

Section 6.04. Alterations, Additions, and Improvements.

(a) Tenant shall not make any alterations, additions, or improvements to the Premises ("Tenant's Alterations") without Landlord's prior written consent, which may not be unreasonably withheld. Landlord may require Tenant to provide demolition and/or lien and completion bonds in form and amount satisfactory to Landlord. Tenant shall promptly remove any Tenant's Alterations constructed in violation of this Section 6.04(a) upon Landlord's written request. All Tenant's Alterations shall be performed in a good and workmanlike manner, in conformity with all Applicable Laws, and all contractors and subcontractors shall be approved or disapproved by Landlord in writing within ten (10) Business Days following a request for approval from Tenant, which approval shall not be unreasonably withheld. Upon completion of any such work, Tenant shall provide Landlord with "as built" plans, copies of all construction contracts, and proof of payment for all labor and materials.

(b) Tenant shall pay when due all claims for labor and material furnished to the Premises. Tenant shall give Landlord at least twenty (20) days' prior written notice of the commencement of any work on the Premises. Landlord may elect to record and post notices of non-responsibility on the Premises, to the extent permitted under applicable law.

(c) Landlord may condition its consent to any proposed Tenant's Alterations on such requirements as Landlord, in its sole discretion, deems necessary or desirable, including without limitation: (i) Tenant's submission to Landlord, for Landlord's prior written approval, of all plans and specifications relating to Tenant's Alterations; (ii) Landlord's prior written approval of the time or times when Tenant's Alterations are to be made; (iii) Landlord's prior written approval of the contractors and subcontractors performing Tenant's Alterations; (iv) Tenant's written notice of whether Tenant's Alterations include the use or handling of any Hazardous Materials; (v) Tenant's obtaining, for Landlord's benefit and protection, of such insurance as Landlord may reasonably require (in addition to that required under Section 4.04 of this Lease); and (vi) Tenant's payment to Landlord of all reasonable costs and expenses incurred by Landlord because of Tenant's Alterations, including, but not limited to, reasonable costs incurred in reviewing the plans and specifications for, and the progress of, Tenant's Alterations, and costs of engaging outside consultants (whether for structural engineering review or otherwise). Notwithstanding the foregoing, if Landlord approves any Tenant's Alterations, then in its written notice to Tenant setting forth its approval, Landlord shall designate whether such Tenant's Alterations must be removed in accordance with Section 6.05 below at the expiration or earlier termination of this Lease.

(d) Within ten (10) Business Days following the imposition of any lien or stop notice resulting from any of Tenant's Alterations (an "**Imposition**"), Tenant shall either (a) cause such Imposition to be released of record by payment, or (b) in case of a disputed Imposition, cause the posting of a proper bond in favor of Landlord or provide other security satisfactory to Landlord. In case of a disputed Imposition, Tenant shall diligently contest such Imposition and indemnify, defend, and hold Landlord harmless from any and all actual loss, cost, damage, liability and expense (including reasonable attorney's fees) arising from or related to it. If Tenant fails to take either action within such ten (10)-day period, Landlord, at its election, may pay and satisfy the Imposition, in which case the sum so paid by Landlord, with interest from the date of payment at the rate set forth in Section 3.07 of this Lease, shall be deemed Additional Rent due and payable by Tenant within ten (10) Business Days after Tenant's receipt of Landlord's detailed payment demand.

(e) If the proposed Tenant's Alterations involve or affect in any way one or more of the structural components of the Building, or relate in any way to life safety matters, including, but not limited to, the Building's or Premises fire suppression system (collectively, the "**Structural and Safety Alterations**"), Tenant agrees to use contractors and subcontractors reasonably selected by Landlord for the construction of any and all permitted Structural and Safety Alterations.

Section 6.05. Condition upon Termination.

(a) Upon the termination of this Lease, Tenant shall surrender the Premises to Landlord, broom clean, free of all personal property (other than any personal property which constitutes Non-removable Improvements) and in the same condition as received, ordinary wear and tear excepted; provided, however, Tenant shall not be obligated to repair any damage which Landlord is required to repair under Article Seven (Damage or Destruction) below. In addition, Tenant shall remove any Tenant's Alterations which Landlord has designated for removal in accordance with Section 6.04(c) above prior to the expiration of this Lease and shall restore the Premises to its prior condition, all at Tenant's expense. All Non-removable Improvements and all other alterations, additions and improvements which Landlord has not required Tenant to remove shall become Landlord's property and shall be surrendered to Landlord upon the expiration or earlier termination of this Lease, except that Tenant may remove any of Tenant's machinery, equipment or other personal property (except for any machinery, equipment or other personal property that constitutes Non-removable Improvements) that can be removed without material damage to the Premises. Tenant shall repair, at Tenant's expense, any damage to the Premises caused by the removal of any such machinery, equipment or other personal property. "**Non-removable Improvements**" shall mean the following improvements: (1) walls and fixed partitioning, (2) wall coverings, (3) doors (including frame and hardware), (4) floor coverings, (5) building systems, including, without limitation, pipes, sprinklers, wires, appliances, plumbing, heating or air conditioning, (6) any ceiling and all elements thereof (including without limitation ceiling grid and ceiling tile) in the areas of the Building where currently installed and any improvements above the ceiling, (7) light fixtures, (8) wall switches and outlets, (9) exit lights, (10) automatic life safety and fire sprinkler system, (11) elevator and related mechanical systems, and (12) sales floor platforms, fitting rooms and register stands.

(b) Tenant's obligations under this Section 6.05 shall also include its obligations under Section 5.04 with respect to any Sign. If Tenant fails, by the expiration or earlier termination of the Lease Term, to restore the Premises to the condition required under this Section 6.05, then Tenant shall pay Landlord within thirty (30) days of receipt of a detailed invoice therefor, setting forth the amount of the actual cost of such restoration work with supporting documentation.

ARTICLE SEVEN DAMAGE OR DESTRUCTION

Section 7.01. Damage or Destruction to Premises.

(a) Tenant shall notify Landlord in writing ("**Damage Notice**") immediately upon the occurrence of any damage to the Premises. Subject to the provisions of Section 7.01(c) and Section 7.01(d) below, if the insurance proceeds received by Landlord from the insurance policies described in Section 4.04(b) above are sufficient to pay for the necessary repairs, this Lease shall remain in effect and Landlord shall repair the damage as soon as reasonably possible. Landlord may elect (but is not required) to repair any damage to Tenant's fixtures, equipment, or improvements. In the absence of such an election, Tenant shall be solely responsible for the repair, replacement and restoration of Tenant's fixtures, equipment, or improvements and shall promptly commence such repair and diligently pursue the same to completion, unless this Lease is terminated as provided in this Article Seven.

(b) If the insurance proceeds received by Landlord are not sufficient to pay the entire cost of repair, or if the cause of the damage is not covered by the insurance policies which Landlord maintains under Section 4.04(b) above, Landlord may elect either to: (i) repair the damage as soon as reasonably possible, in which case this Lease shall remain in full force and effect; or (ii) terminate this Lease as of the date the damage occurred. Landlord shall notify Tenant within thirty (30) days after receipt of the Damage Notice whether Landlord elects to repair the damage or terminate this Lease. If Landlord elects to repair the damage, Tenant shall pay to Landlord (i) the deductible amount under Landlord's insurance policies (which deductible amount shall not exceed \$10,000.00), and (ii) if it is determined through arbitration or court proceedings that the damage is directly due to an act or omission of Tenant or Tenant's employees, agents, contractors or invitees, the difference between the actual cost of repair and any insurance proceeds received by Landlord (including, but not limited to, the entirety of any such deductible amount).

(c) If the repairs to the Premises are estimated to require more than the lesser of (i) the then remaining Lease Term and (ii) ninety (90) days from Landlord's receipt of insurance proceeds and building permits (the "**Repair Period**") to be Substantially Completed, then either Landlord or Tenant shall have the right to terminate this Lease as of the date written notice of such termination is delivered to the other party. In the event of damage to the Premises, Landlord shall have the right to provide Tenant with a written notice, or Tenant shall have the right, at any time and from time to time to request in writing that Landlord deliver to Tenant a written notice (in each case, the "**Contractor Certificate**"), certifying to both Landlord and Tenant, in the reasonable opinion of Landlord's contractor, the amount of time required to repair or complete the repair of the Premises. If, in the Contractor Certificate, the contractor certifies that the repair of the Premises will take a period in excess of the Repair Period to be

Substantially Completed, then within twenty (20) days after the delivery of the Contractor Certificate to Tenant, Tenant or Landlord may terminate this Lease by delivering written notice of such termination to the other party within such twenty (20) day period, and this Lease shall be terminated as of the date of the other party's receipt of such written notice of termination. Notwithstanding the foregoing, Tenant shall not have any right to terminate this Lease under this Section 7.01 if the damage to the Premises was caused by the gross negligence or willful misconduct of Tenant or its agents, employees, contractors or invitees.

(d) If the damage to the Premises occurs during the last ninety (90) days of the Lease Term and such damage will require more than thirty (30) days to Substantially Complete the repair, then either Landlord or Tenant may elect to terminate this Lease as of the date the damage occurred, regardless of the sufficiency of any insurance proceeds. The party electing to terminate this Lease, pursuant to this Section 7.01(d), shall give written notification to the other party of such election within thirty (30) days after Tenant's Damage Notice.

Section 7.02. Temporary Reduction of Rent. If the Premises is destroyed or damaged and Landlord or Tenant repairs or restores the Premises pursuant to the provisions of this Article Seven, any rent payable during the period of such damage, repair and/or restoration shall be reduced according to the degree, if any, to which Tenant's use of the Premises is impaired. Except for such possible reduction in Base Rent, Insurance Premiums and Real Property Taxes, Tenant shall not be entitled to any compensation, reduction, or reimbursement from Landlord as a result of any damage, destruction, repair, or restoration of or to the Premises.

Section 7.03. Waiver. Tenant waives the protection of any statute, code or judicial decision which may grant to Tenant the right to terminate a lease or automatically terminate a lease in the event of the destruction of the leased property. Tenant agrees that the provisions of Article Seven above shall govern the rights and obligations of Landlord and Tenant in the event of any destruction of the Premises.

ARTICLE EIGHT CONDEMNATION

If all or any portion of the Premises is taken under the power of eminent domain or sold under the threat of that power (all of which are called "**Condemnation**"), this Lease shall terminate as to the part taken or sold on the date the condemning authority takes title or possession, whichever occurs first. If more than twenty percent (20%) of the floor area of the Building is taken and Tenant cannot reasonably continue to conduct its business at the Premises, either Landlord or Tenant may terminate this Lease as of the date the condemning authority takes title or possession, by delivering written notice to the other within ten (10) days after receipt of written notice of such taking (or in the absence of such notice, within ten (10) days after the condemning authority takes title or possession). If neither Landlord nor Tenant terminates this Lease, this Lease shall remain in effect as to the portion of the Premises not taken, except that the Base Rent and Additional Rent shall be reduced in proportion to the reduction in the floor area of the Premises. Landlord shall be entitled to receive the entire award or payment in connection therewith, except that Tenant shall have the right to file any separate claim available to Tenant for any taking of Tenant's personal property and fixtures belonging to Tenant and removable by Tenant upon expiration of the Lease Term pursuant to the terms of this Lease, and for moving expenses, so long as such claim does not diminish the award available to Landlord with respect

to the real property or its lender, and such claim is payable separately to Tenant. If this Lease is not terminated, Landlord shall repair any damage to the Premises caused by the Condemnation, except that Landlord shall not be obligated to repair any damage for which Tenant has been reimbursed by the condemning authority. If the severance damages received by Landlord are not sufficient to pay for such repair, Landlord shall have the right to either terminate this Lease or make such repair at Landlord's expense.

ARTICLE NINE ASSIGNMENT AND SUBLETTING

Section 9.01. **Transfers.** Tenant shall not, without the prior written consent of Landlord, assign, mortgage, pledge, encumber or otherwise transfer, this Lease or any interest hereunder, permit any assignment or other such foregoing transfer of this Lease or any interest hereunder by operation of law, or sublet the Premises or any part thereof (all of the foregoing are hereinafter sometimes referred to collectively as "**Transfers**" and any person to whom any Transfer is made or sought to be made is hereinafter sometimes referred to as a "**Transferee**"). Any Transfer made without Landlord's prior written consent shall, at Landlord's option, be null, void and of no effect, and shall, at Landlord's option, constitute a material default by Tenant under this Lease. Whether or not Landlord shall grant consent, Tenant shall pay Landlord's review and processing fees up to a maximum of \$1,500.00, as well as any reasonable legal fees incurred by Landlord in connection with such review, within thirty (30) days after written request by Landlord.

Section 9.02. **Landlord's Consent.** Landlord may withhold or condition its consent to any proposed Transfer to any proposed Transferee in its sole and absolute discretion.

Section 9.03. **Effect of Transfer.** If Landlord consents to a Transfer, (i) the terms and conditions of this Lease shall in no way be deemed to have been waived or modified, (ii) such consent shall not be deemed consent to any further Transfer by either Tenant or a Transferee, (iii) Tenant shall deliver to Landlord, promptly after execution, an original executed copy of all documentation pertaining to the Transfer in form reasonably acceptable to Landlord, and (iv) no Transfer relating to this Lease or agreement entered into with respect thereto, whether with or without Landlord's consent, shall relieve Tenant or any guarantor of Tenant's obligations under this Lease from liability under this Lease.

Section 9.04. **Additional Transfers.** For purposes of this Lease, the term "**Transfer**" shall also include: (i) if Tenant is a partnership, the cumulative withdrawal or change, voluntary, involuntary or by operation of law, of twenty-five percent (25%) or more of the partners, or the cumulative transfer of twenty-five percent (25%) or more of partnership interests, within a twelve (12)-month period, or the dissolution of the partnership without immediate reconstitution thereof; (ii) if Tenant is a closely held corporation (i.e., whose stock is not publicly held and not traded through an exchange or over the counter), (A) the dissolution, merger, consolidation or other reorganization of Tenant, (B) the sale or other transfer of more than an aggregate of twenty-five percent (25%) of the voting shares of Tenant (other than to immediate family members by reason of gift or death), within a twelve (12)-month period, or (C) the sale, mortgage, hypothecation or pledge of more than an aggregate of twenty-five percent (25%) of the value of the unencumbered assets of Tenant within a twelve (12) month period; and (iii) if Tenant is a limited liability company, any cumulative transfer of more than twenty-five percent

(25%) of the membership interests. In addition to those types of Transfers specified above in this Article Nine, any change to the form of tenant entity or any use of the Premises by an individual or entity other than Tenant, whether pursuant to a license or concession, or otherwise, shall be deemed a Transfer requiring Landlord's consent. Notwithstanding any language to the contrary in this Article Nine, Landlord may, in its sole discretion, withhold its consent to any proposed assignment of Tenant's leasehold interest in the Premises to a lender as security, whether such proposed assignment is in the form of a leasehold deed of trust, leasehold mortgage, or otherwise.

ARTICLE TEN DEFAULTS; REMEDIES

Section 10.01. Covenants and Conditions. Tenant's performance of each of Tenant's obligations under this Lease is a condition as well as a covenant. Tenant's right to continue in possession of the Premises is conditioned upon such performance. Time is of the essence in the performance of all covenants and conditions.

Section 10.02. Defaults. Tenant shall be in material default under this Lease (an "Event of Default"):

(a) If Tenant abandons the Premises or if Tenant's vacation of the Premises results in the cancellation of any insurance described in Section 4.04 above;

(b) If Tenant fails to pay Rent or any other charge when due;

(c) If Tenant fails to perform any of Tenant's non-monetary obligations under this Lease for a period of thirty (30) days after written notice from Landlord; provided that if more than thirty (30) days are required to complete such performance, Tenant shall not be in default if Tenant commences such performance within the thirty (30) day period and thereafter diligently pursues its completion. However, Landlord shall not be required to give such notice if Tenant's failure to perform constitutes a non-curable breach of this Lease. The notice required by this paragraph is (i) intended to satisfy any and all notice requirements imposed by law on Landlord and is not in addition to any such requirement, and (ii) not intended to extend the time for Tenant's performance if a shorter period of time for performance is expressly provided in this Lease.

(d) (i) If Tenant makes a general assignment or general arrangement for the benefit of creditors; (ii) if a bankruptcy petition is filed by or against Tenant and is not dismissed within thirty (30) days; (iii) if a trustee or receiver is appointed to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease and possession is not restored to Tenant within thirty (30) days; or (iv) if substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease is subjected to attachment, execution or other judicial seizure which is not discharged within thirty (30) days. If a court of competent jurisdiction determines that any of the acts described in this subparagraph (d) is not a default under this Lease, and a trustee is appointed to take possession (or if Tenant remains a debtor in possession) and such trustee or Tenant transfers Tenant's interest hereunder, then Landlord shall receive, as Additional Rent, the excess, if any, of the rent (or any other consideration) paid in connection with such assignment or sublease over the rent payable by Tenant under this Lease.

(e) If any guarantor of this Lease revokes or otherwise terminates, or purports to revoke or otherwise terminate, any guaranty of all or any portion of Tenant's obligations under this Lease. Unless otherwise expressly provided, no guaranty of this Lease is revocable.

Section 10.03. Remedies. Upon the occurrence of any Event of Default, Landlord may at its option pursue any one or more of the following remedies, and any and all other rights or remedies accruing to Landlord by law or otherwise, without any notice or demand to the extent permitted by applicable law:

(a) Commence dispossessory proceedings with or without the termination of this Lease. Tenant shall remain liable for the payment of all rents accruing after any writ of possession as to the Premises is issued to Landlord.

(b) Commence proceedings against Tenant for all amounts owed by Tenant to Landlord, whether as Base Rent, Additional Rent, damages or otherwise.

(c) Terminate the Lease, in which event Tenant shall immediately surrender the Premises to Landlord. Tenant agrees to pay on demand the amount of all loss and damage which Landlord may suffer by reason of the termination of the Lease Term under this section or otherwise.

(d) Upon any termination of Tenant's right to possession only, without termination of the Lease, Landlord may, at Landlord's option, enter into the Premises, remove Tenant's signs and other evidences of tenancy, and take and hold possession thereof as provided below, without such entry and possession terminating the Lease or releasing Tenant, in whole or in part, from any obligation, including Tenant's obligation to pay rent, including any amounts treated as Additional Rent, hereunder for the full Lease Term. In any such case, Landlord may relet the Premises on behalf of Tenant for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the Lease Term) and on such terms and conditions (which may include concessions of free rent and alteration, repair and improvement of the Premises) as Landlord, in its sole discretion, may determine and receive directly the rent by reason of the reletting. Tenant agrees to pay Landlord on demand any deficiency that may arise by reason of any reletting of the Premises. In no event shall Tenant be entitled to any rentals received by Landlord in excess of the amounts due by Tenant hereunder. Tenant further agrees to reimburse Landlord upon demand for any reasonable expenditures made by it for remodeling or repairing in order to relet the Premises and for all other reasonable expenses incurred in connection with such reletting (including, without limitation, reasonable attorneys' fees and brokerage commissions). Landlord shall have no obligation to relet the Premises or any part thereof and shall in no event be liable for failure to relet the Premises or any part thereof or, in the event of any such reletting, for refusal or failure to collect any rent due upon such reletting. No such refusal or failure shall operate to relieve Tenant of any liability under this Lease. Tenant shall instead remain liable for all rent and for all such expenses.

(e) Enter upon and take possession of the Premises, without being liable for prosecution of any claim for damages or for trespass or other tort. In connection with such re-entry, Landlord shall have the right to change or re-key all locks to entrances to the Building and other improvements on the Premises, and Landlord will have no obligation to give Tenant a new

key to same unless and until such Event of Default is cured on a timely basis and, in any event, prior to the exercise of any other of Landlord's rights or remedies hereunder or at law or in equity.

(f) Do or cause to be done whatever Tenant is obligated to do under the terms of this Lease, in which case Tenant agrees to reimburse Landlord on demand for any and all costs or expenses which Landlord may thereby incur. Tenant agrees that Landlord shall not be liable for any damages resulting to Tenant from effecting compliance with Tenant's obligations under this Lease, whether caused by the negligence of Landlord or otherwise.

(g) Enforce the performance of Tenant's obligations hereunder by injunction or other equitable relief (which remedy may be exercised upon any breach or default or any threatened breach or default of Tenant's obligations hereunder).

(h) With or without terminating this Lease, declare the difference, if any, between (i) the entire amount of the Base Rent and Additional Rent which would become due and payable during the remainder of the Lease Term, discounted to present value using a discount rate equal to the Prime Rate in effect as of the date of such declaration, and (ii) the fair rental value of the Premises during the remainder of the Lease Term (taking into account, among other factors, the anticipated duration of the period the Premises will be unoccupied prior to reletting and the anticipated cost of reletting the Premises), also discounted to present value using a discount rate equal to the Prime Rate in effect as of the date of such declaration, to be due and payable immediately, in which event such sum shall be due and payable immediately and Tenant agrees to pay the same at once, together with all Base Rent and Additional Rent and other sums then due, at the office of Landlord at the address set forth in Section 1.02 of this Lease; it being understood and agreed that such payment shall be and constitute Landlord's liquidated damages, Landlord and Tenant acknowledging and agreeing that it is difficult or impossible to determine the actual damages Landlord would suffer from Tenant's breach hereof and that the agreed upon liquidated damages are not punitive or penalties and are just, fair and reasonable, all in accordance with applicable laws. As used in this Section 10.03, "**Prime Rate**" means the rate of interest published from time-to-time by the Wall Street Journal and designated as such in the "Money Rates" section of such publication.

Section 10.04. Termination. If Landlord elects to terminate this Lease as a result of an Event of Default, such termination of the Lease shall not terminate Tenant's liability for rent and/or other amounts owing and thereafter becoming owing by Tenant under this Lease (it being agreed that any such notice of termination of this Lease given by Landlord shall mean termination of Tenant's leasehold estate under this Lease, with Tenant remaining liable, however, for damages (whether attributable to the period of time before or after the date of such termination) calculated in the manner provided elsewhere in this Lease). In that regard, in the event that Landlord elects to terminate this Lease, Tenant shall be liable to Landlord for all damages resulting therefrom, which shall include, without limitation, (i) all reasonable costs, expenses and fees, including reasonable attorneys' fees that Landlord incurs in connection with the filing, commencement, pursuing and/or defending of any action in any bankruptcy court or other court with respect to this Lease, the obtaining of relief from any stay in bankruptcy restraining any action to evict Tenant, or the pursuing of any action with respect to Landlord's right to possession of the Premises, (ii) any and all other costs of recovering the Premises

(including reasonable attorneys' fees and costs), (iii) the cost of removing and storing Tenant's or any other occupant's property from the Premises, (iv) the unpaid Rent owed at the time of such termination, plus any interest or charges thereon permitted pursuant to this Lease, (v) the cost of reletting the Premises (as reasonably estimated by Landlord and including alterations or repairs to the Premises and brokerage commissions), (vi) the measure of damages set forth in Section 10.03(h) above, and (vii) any other sum of money or damages or other relief which Landlord may be entitled to under this Lease, at law or in equity. All such damages suffered (apart from Base Rent and other rent payable hereunder) shall constitute pecuniary damages that must be reimbursed to Landlord prior to assumption of this Lease by Tenant or any successor to Tenant in any bankruptcy or other proceeding.

Section 10.05. Cumulative Remedies. Landlord's exercise of any right or remedy shall not prevent it from exercising any other right or remedy available at law, in equity or otherwise.

Section 10.06. Surrender. No act or thing done by Landlord or its agents during the Lease Term shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept a surrender of the Premises shall be valid unless made in writing and signed by Landlord.

Section 10.07. Removal of Tenant's Property. All furniture, equipment, and other personal property of Tenant not removed from the Premises upon the vacation or abandonment thereof following an uncured default by Tenant or upon the termination of this Lease for any cause whatsoever shall conclusively be deemed to have been abandoned by Tenant, and may be appropriated, sold, stored, destroyed or otherwise disposed of by Landlord without notice to Tenant and without obligation to account therefor. Tenant shall reimburse Landlord for all reasonable expenses incurred in connection with the disposition of such personal property. Landlord, upon presentation of evidence of a third party's claim of ownership or security interest in any such abandoned property, may turn over such property to the third party claimant without any liability to Tenant.

Section 10.08. Consequential Damages. Notwithstanding anything to the contrary contained in this Lease, nothing in this Lease shall impose any obligations on Tenant or Landlord to be responsible or liable for, and each hereby releases the other from all liability for, consequential, punitive or exemplary damages other than those consequential damages incurred by Landlord in connection with (a) the holdover of the Premises by Tenant after the expiration or earlier termination of this Lease, (b) the contamination of the Premises or any property resulting from the presence or use of Hazardous Materials caused or permitted by the Tenant Group, or (c) any physical construction or improvement work performed by or on behalf of Tenant in the Premises that was not approved by Landlord.

Section 10.09. Landlord's Lien. In addition to any statutory or common law lien protecting Landlord's interests, in consideration of the mutual benefits arising under this Lease, Tenant hereby grants to Landlord a lien and security interest in all of Tenant's property now or hereafter placed in or on the Premises to secure payment of all Base Rent and Additional Rent that become due under this Lease. The provisions of this section constitute a security agreement under the Uniform Commercial Code of the State where the Premises is located (the "Code") so that Landlord has and may enforce a security interest on all of Tenant's fixtures, machinery, equipment, accessions, furnishings, and other such property now or hereafter placed in or on the

Premises and all proceeds therefrom (the "Collateral"), and such property shall not be removed from the Premises without the prior written consent of Landlord (which consent may be withheld in Landlord's sole and absolute discretion) until all arrearages in Base Rent and Additional Rent have been paid and Tenant has complied with all other provisions of this Lease. Consistent with the terms of the Code, Tenant authorizes Landlord to file a financing statement describing the Collateral, and naming Tenant, as debtor, to perfect the lien hereby created. Upon the occurrence of an Event of Default identified in Section 10.02 of this Lease, Landlord may, in addition to all other remedies provided by law or under this Lease, without notice or demand except as provided below, exercise the rights afforded to a secured party under the Code. To the extent the Code requires Landlord to give to Tenant notice of any act or event and such notice cannot be validly waived before a default occurs, then five (5) Business Days prior written notice thereof shall be reasonable notice of the act or event.

Section 10.10. Waivers by Tenant. Tenant waives and surrenders, for itself and all persons or entities claiming by, through and under Tenant, including creditors of all kinds: (i) any right and privilege which Tenant or any of them has under any present or future constitution, statute or rule of law to redeem the Premises or to have a continuance of this Lease for the Lease Term after termination of Tenant's right of occupancy by order or judgment of any court or by any legal process or writ, or under the terms of this Lease and (ii) the benefits of any present or future constitution, statute or rule of law that exempts property from liability for debt or for distress for rent; (iii) any provision of applicable laws relating to notice or delay in levy of execution in case of eviction of a tenant for non-payment of rent. Tenant further hereby acknowledges and agrees that Landlord shall have no duty to mitigate damages recoverable by Landlord by reason of any Event of Default hereunder, unless otherwise expressly required by applicable law, and Tenant hereby waives any such claims of any such obligation to mitigate to the extent permitted by applicable law.

Section 10.11. Default by Landlord. Except where the provisions of this Lease grant Tenant an express, exclusive remedy, or deny Tenant a remedy, if Landlord should fail to perform or observe any covenant, term, provision or condition of this Lease and such default should continue beyond a period of thirty (30) days (or if more than thirty (30) days are required to complete such performance, such longer period as is required to complete such performance, provided Landlord commences such performance within the thirty (30) day period and thereafter diligently pursues its completion), after in each instance written notice thereof is given by Tenant to Landlord (and a copy of said notice is sent simultaneously therewith to any parties entitled to receive such notices to Landlord pursuant to Section 14.06 below [the "Notice Parties"]) then in any such event Tenant shall have the right to commence such actions at law or in equity to which Tenant may be entitled (except an action to declare a termination of this Lease). The rights of Tenant pursuant to this Section 10.11 shall be subject to the express provisions of this Lease providing for remedies in exclusion of the remedies above described. Except where the express terms of this Lease allow, Tenant may not terminate this Lease because of Landlord's default. Tenant specifically agrees that the cure of any default by any of the Notice Parties shall be deemed a cure by Landlord under this Lease.

ARTICLE ELEVEN PROTECTION OF LENDERS

Section 11.01. **Subordination.** This Lease is subject and subordinate to all present and future ground or underlying leases of the Premises, and to the lien of any mortgages or trust deeds, now or hereafter in force against the Premises, and to all renewals, extensions, modifications, consolidations and replacements thereof, and to all advances made or hereafter to be made upon the security of such mortgages or trust deeds, unless the holders of such mortgages or trust deeds, or the lessors under such ground lease or underlying leases, require in writing that this Lease be superior thereto by giving notice thereof to Tenant at least five (5) days before the election becomes effective. Tenant covenants and agrees in the event any proceedings are brought for the foreclosure of any such mortgage or trust deed, or if any ground or underlying lease is terminated, to attorn, without any deductions or set-offs whatsoever, to the purchaser upon any such foreclosure sale, or to the lessor of such ground or underlying lease, as the case may be, if so requested to do so by such purchaser or lessor, and to recognize such purchaser or lessor as the landlord under this Lease, provided such lienholder or purchaser or ground lessor shall agree to accept this Lease and not disturb Tenant's occupancy, so long as Tenant timely pays the rent and observes and performs all of the terms, covenants and conditions of this Lease to be observed and performed by Tenant. Landlord's interest herein may be assigned as security at any time to any lienholder. Tenant shall, within ten (10) days of request by Landlord, execute such further instruments or assurances in the form as is then required by Landlord's lender to evidence or confirm the subordination or superiority of this Lease to any such mortgages, trust deeds, ground leases or underlying leases.

Section 11.02. **Estoppel Certificates.** Upon Landlord's written request, Tenant shall execute, acknowledge and deliver to Landlord a written statement certifying: (i) that none of the terms or provisions of this Lease have been changed (or if they have been changed, stating how they have been changed); (ii) that this Lease has not been cancelled or terminated; (iii) the last date of payment of the Base Rent and other charges and the time period covered by such payment; (iv) that Landlord is not in default under this Lease (or, if Landlord is claimed to be in default, stating why); and (v) such other representations or information with respect to Tenant or this Lease as Landlord may reasonably request or which any prospective purchaser or encumbrancer of the Premises may require. Tenant shall deliver such statement to Landlord within twenty (20) days after Landlord's request. Landlord may give any such statement by Tenant to any prospective purchaser or encumbrancer of the Premises. Such purchaser or encumbrancer may rely conclusively upon such statement as true and correct.

ARTICLE TWELVE LEGAL COSTS

Section 12.01. **Legal Proceedings.** If Tenant or Landlord shall be in breach or default under this Lease, such party (the "**Defaulting Party**") shall reimburse the other party (the "**Non-defaulting Party**") upon demand for any costs or expenses that the Non-defaulting Party incurs in connection with any breach or default of the Defaulting Party under this Lease, whether or not suit is commenced or judgment entered. Such costs shall include reasonable legal fees and costs incurred for the negotiation of a settlement, enforcement of rights or otherwise. Furthermore, if any action for breach of or to enforce the provisions of this Lease is commenced, the court in such action shall award to the party in whose favor a judgment is entered, a reasonable sum as attorneys' fees and costs. The losing party in such action shall pay such attorneys' fees and

costs. TENANT SHALL ALSO INDEMNIFY LANDLORD AGAINST AND HOLD HARMLESS LANDLORD (AND LANDLORD'S MEMBERS, MANAGERS, PARTNERS, AND SHAREHOLDERS, AS APPLICABLE, AND THE AFFILIATES, EMPLOYEES, AGENTS, AND CONTRACTORS OF LANDLORD AND ITS MEMBERS, MANAGERS, PARTNERS, AND SHAREHOLDERS, AS APPLICABLE) FROM ALL COSTS, EXPENSES, DEMANDS AND LIABILITY LANDLORD MAY INCUR IF LANDLORD BECOMES OR IS MADE A PARTY TO ANY CLAIM OR ACTION (A) INSTITUTED BY TENANT AGAINST ANY THIRD PARTY, OR BY ANY THIRD PARTY AGAINST TENANT, OR BY OR AGAINST ANY PERSON HOLDING ANY INTEREST UNDER OR USING THE PREMISES BY LICENSE OF OR AGREEMENT WITH TENANT; (B) FOR FORECLOSURE OF ANY LIEN FOR LABOR OR MATERIAL FURNISHED TO OR FOR TENANT OR SUCH OTHER PERSON; (C) OTHERWISE ARISING OUT OF OR RESULTING FROM ANY ACT OR TRANSACTION OF TENANT OR SUCH OTHER PERSON; OR (D) NECESSARY TO PROTECT LANDLORD'S INTEREST UNDER THIS LEASE IN A BANKRUPTCY CASE, OR OTHER PROCEEDING UNDER TITLE 11 OF THE UNITED STATES CODE, AS AMENDED. Tenant shall defend Landlord against any such claim or action at Tenant's expense with counsel reasonably acceptable to Landlord or, at Landlord's election, Tenant shall reimburse Landlord for any reasonable legal fees or costs Landlord incurs in any such claim or action.

Section 12.02. **Landlord's Consent.** Tenant shall pay Landlord's actual reasonable attorneys' fees incurred in connection with Tenant's request for (a) Landlord's consent under Article Nine (Assignment and Subletting) of this Lease up to a maximum of \$1,500.00 per request, or in connection with any other act which Tenant proposes to do and which requires Landlord's consent, or (b) other Landlord action.

ARTICLE THIRTEEN BROKERS

Landlord and Tenant hereby warrant to each other that they have had no dealings with any real estate broker or agent in connection with the negotiation of this Lease, and that they know of no real estate broker or agent who is entitled to a commission in connection with this Lease. EACH PARTY AGREES TO INDEMNIFY AND DEFEND THE OTHER PARTY AGAINST AND HOLD THE OTHER PARTY HARMLESS FROM ANY AND ALL CLAIMS, DEMANDS, LOSSES, LIABILITIES, LAWSUITS, JUDGMENTS, AND COSTS AND EXPENSES (INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEYS' FEES) WITH RESPECT TO ANY LEASING COMMISSION OR EQUIVALENT COMPENSATION ALLEGED TO BE OWING ON ACCOUNT OF THE INDEMNIFYING PARTY'S DEALINGS WITH ANY REAL ESTATE BROKER OR AGENT.

ARTICLE FOURTEEN MISCELLANEOUS PROVISIONS

Section 14.01. **Non-Discrimination.** Tenant promises, and it is a condition to the continuance of this Lease, that there will be no discrimination against, or segregation of, any person or group of persons on the basis of race, color, sex, creed, national origin or ancestry or other legally protected category in the leasing, subleasing, transferring, occupancy, tenure or use of the Premises or any portion thereof.

Section 14.02. **Landlord's Liability; Certain Duties.**

(a) As used in this Lease, the term "**Landlord**" means only the current owner or owners of the fee title to the Premises at the time in question. Each Landlord is obligated to perform the obligations of Landlord under this Lease only during the time such Landlord owns such interest or title. Any Landlord who transfers its title or interest is relieved of all liability with respect to the obligations of Landlord under this Lease to be performed on or after the date of transfer. However, each Landlord shall deliver to its transferee all funds that Tenant previously paid if such funds have not yet been applied under the terms of this Lease.

(b) Tenant shall give written notice of any failure by Landlord to perform any of its obligations under this Lease to Landlord and to any ground lessor, mortgagee or beneficiary under any deed of trust encumbering the Premises whose name and address have been furnished to Tenant in writing. Landlord shall not be in default under this Lease unless Landlord (or such ground lessor, mortgagee or beneficiary) fails to cure such non-performance within thirty (30) days after receipt of Tenant's notice. However, if such non-performance reasonably requires more than thirty (30) days to cure, Landlord shall not be in default if such cure is commenced within such thirty (30)-day period and thereafter diligently pursued to completion.

(c) Notwithstanding any term or provision herein to the contrary, the liability of Landlord for the performance of its duties and obligations under this Lease is limited to Landlord's interest in the Premises, and neither the Landlord nor its partners, members, managers, shareholders, officers or other principals shall have any personal liability under this Lease.

(d) Except as otherwise expressly provided in Section 2.03(b) of this Lease, Tenant shall have no right to terminate this Lease based on an uncured default by Landlord in the performance of Landlord's obligations under this Lease; provided, however, that Tenant may seek to recover from Landlord an amount representing appropriate actual, compensatory damages for breach of contract based on any such uncured default of Landlord, but not otherwise. Consistent with Section 10.08 above, in no event shall Tenant be permitted to recover consequential, punitive, or exemplary damages from Landlord based on any such uncured default of Landlord, or otherwise.

(e) With respect to any provision of this Lease which provides (or is held to provide) that Landlord shall not unreasonably withhold any consent or approval, Tenant shall not be entitled to make any claim for, and Tenant hereby expressly waives, any claim for damages, it being acknowledged and agreed that Tenant's sole right and exclusive remedies therefor shall be to seek injunctive relief and an action for specific performance.

Section 14.03. Severability. A determination by a court of competent jurisdiction that any provision of this Lease or any part thereof is illegal or unenforceable shall not cancel or invalidate the remainder of such provision or this Lease, which shall remain in full force and effect, and it is the intention of the parties that there shall be substituted for such provision as is illegal or unenforceable a provision as similar to such provision as may be possible and yet be legal and enforceable.

Section 14.04. Interpretation. The captions of the Articles or Sections of this Lease are to assist the parties in reading this Lease and are not a part of the terms or provisions of this Lease. Unless the context clearly requires otherwise, (i) the plural and singular numbers will each be deemed to include the other; (ii) the masculine, feminine, and neuter genders will each be deemed to include the others; (iii) "shall," "will," "must," "agrees," and "covenants" are each mandatory; (iv) "may" is permissive; (v) "or" is not exclusive; and (vi) "includes" and "including" are not limiting. In the event of a dispute between Landlord and Tenant over the interpretation of this Lease, both parties shall be deemed to have been the drafter of this Lease, and any applicable law that states that contracts are to be construed against the drafter shall not apply. In any provision relating to the conduct, acts or omissions of Tenant, the term "Tenant" shall include Tenant's agents, employees, contractors, invitees, successors or others using the Premises with Tenant's express or implied permission.

Section 14.05. Incorporation of Prior Agreements; Modifications. This Lease is the only agreement between the parties pertaining to the lease of the Premises and no other agreements are effective. All amendments to this Lease shall be in writing and signed by all parties. Any other attempted amendment shall be void. All attached exhibits are hereby expressly incorporated into this Lease by this reference.

Section 14.06. Notices. All notices, demands, statements or communications (collectively, "Notices") given or required to be given by either party to the other hereunder shall be in writing, shall be sent by United States certified or registered mail, postage prepaid, return receipt requested, nationally-recognized commercial overnight courier, or delivered personally (i) to Tenant at the appropriate addresses set forth in Section 1.03 above, or (ii) to Landlord at the addresses set forth in Section 1.02 above. Landlord and Tenant shall have the right to change its respective Notice address upon giving Notice to the other party. Any Notice will be deemed given upon the date delivery is made or refused, if delivered or attempted to be delivered by an approved courier (as provided above) or personally delivered. Consistent with the provisions of Section 14.02(b) above, if Tenant is notified of the identity and address of Landlord's secured lender or ground or underlying lessor, Tenant shall give to such lender or ground or underlying lessor written notice of any default by Landlord under the terms of this Lease by registered or certified mail, and such lender or ground or underlying lessor shall be given the same opportunity to cure such default as is provided Landlord under this Lease (unless such cure period is extended pursuant to the terms of any agreement to which Tenant is a party or to which Tenant consents) prior to Tenant's exercising any remedy available to Tenant. Notices required hereunder may be given by either an agent or attorney acting on behalf of Landlord or Tenant.

Section 14.07. Waivers. The failure of either party to insist upon the strict performance, in any of one or more instances, of any term, covenant or condition of this Lease shall not be deemed to be a waiver by either party of such term, covenant or condition. No waiver by Landlord of any breach by Tenant of any term, provision and covenant contained herein shall be deemed or construed to constitute a waiver of any other or subsequent breach by Tenant of any term, provision or covenant contained herein. Landlord's acceptance of the payment of rent (or portions thereof) or any other payments hereunder after the occurrence of and during the continuance of a default (or with knowledge of a breach of any term or provision of this Lease which with the giving of notice and the passage of time, or both, would constitute a default) shall not be construed as a waiver of such default or any other rights or remedies of Landlord,

including any right of Landlord to recover the Premises. Moreover, Tenant acknowledges and agrees that Landlord's acceptance of a partial rent payment shall not, under any circumstances (whether or not such partial payment is accompanied by a special endorsement or other statement), constitute an accord and satisfaction. Landlord will accept the check (or other payment means) for payment without prejudice to Landlord's right to recover the balance of such rent or to pursue any other remedy available to Landlord. Forbearance by Landlord to enforce one or more of the remedies herein provided upon the occurrence of a default shall not be deemed or construed to constitute a waiver of such default.

Section 14.08. No Recordation. Tenant shall not record this Lease or any assignment or security document pertaining to this Lease. Landlord may require that a "Short Form" or memorandum of this Lease executed by both parties be recorded. If such memorandum is required by Landlord, Landlord shall pay all transfer taxes and recording fees.

Section 14.09. Binding Effect; Choice of Law. This Lease binds any party who legally acquires any rights or interest in this Lease from Landlord or Tenant. However, Landlord shall have no obligation to Tenant's successor unless the rights or interests of Tenant's successor are acquired in accordance with the terms of this Lease. The laws of the State in which the Premises is located shall govern this Lease, without regard to such State's conflicts of law principles. Tenant hereby knowingly, intentionally, and irrevocably agrees that Landlord may bring any action or claim to enforce or interpret the provisions of this Lease in the State and County where the Premises is located, and that Tenant irrevocably consents to personal jurisdiction in such State for the purposes of any such action or claim. Nothing in this Section 14.09 shall be deemed to preclude or prevent Landlord from bringing any action or claim to enforce or interpret the provisions of this Lease in any other appropriate place or forum. Tenant further agrees that any action or claim brought by Tenant to enforce or interpret the provisions of this Lease, or otherwise arising out of or related to this Lease or to Tenant's use and occupancy of the Premises, regardless of the theory of relief or recovery and regardless of whether third parties are involved in the action, may only be brought in the State and County where the Premises is located, unless otherwise agreed in writing by Landlord prior to the commencement of any such action.

IN THE INTEREST OF OBTAINING A SPEEDIER AND LESS COSTLY ADJUDICATION OF ANY DISPUTE, LANDLORD AND TENANT HEREBY KNOWINGLY, INTENTIONALLY, AND IRREVOCABLY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY LEGAL ACTION, PROCEEDING, CLAIM, OR COUNTERCLAIM BROUGHT BY EITHER OF THEM AGAINST THE OTHER ON ALL MATTERS ARISING OUT OF OR RELATED TO THIS LEASE OR THE USE AND OCCUPANCY OF THE PREMISES.

Section 14.10. Corporate Authority; Partnership Authority; LLC Authority. If Tenant is a corporation, each person signing this Lease on behalf of Tenant represents and warrants that he has full authority to do so and that this Lease binds the corporation. Within thirty (30) days after this Lease is signed, Tenant shall deliver to Landlord a certified copy of a resolution of Tenant's Board of Directors authorizing the execution of this Lease or other evidence of such authority reasonably acceptable to Landlord. If Tenant is a partnership, each person or entity signing this Lease for Tenant represents and warrants that he or it is a general

partner of the partnership, that he or it has full authority to sign for the partnership and that this Lease binds the partnership and all general partners of the partnership. Tenant shall give written notice to Landlord of any general partner's withdrawal or addition. Within thirty (30) days after this Lease is signed, Tenant shall deliver to Landlord a copy of Tenant's recorded statement of partnership or certificate of limited partnership. If Tenant is a limited liability company (LLC), each person or entity signing this Lease for Tenant represents and warrants that he or it is a manager or member of the LLC, that he or it has full authority to sign for the LLC and that this Lease binds the LLC. Within thirty (30) days after this Lease is signed, Tenant shall deliver to Landlord a certified copy of a resolution of Tenant's managers or members authorizing the execution of this Lease, or other evidence of such authority reasonably acceptable to Landlord.

Section 14.11. Joint and Several Liability. All parties signing this Lease as Tenant shall be jointly and severally liable for all obligations of Tenant.

Section 14.12. Force Majeure. A "Force Majeure" event shall occur if Landlord or Tenant cannot perform any of its obligations due to events beyond such party's control (except with respect to (i) the obligations imposed with regard to Base Rent, Additional Rent and other charges to be paid by Tenant pursuant to this Lease, and (ii) the time period within which, or deadline dates by which, notices must be forwarded under this Lease), and in such cases the time provided for performing such obligations shall be extended by a period of time equal to the duration of such events. Events beyond Landlord's or Tenant's control include, but are not limited to, acts of God, war, civil commotion, terrorist acts, labor disputes, strikes, fire, flood or other casualty, shortages of labor or material, government regulation or restriction, waiting periods for obtaining governmental permits or approvals, or weather conditions. No express reference in this Lease to a Force Majeure event shall create any inference that the terms of this Section 14.12 do not apply with equal force in the absence of such an express reference.

Section 14.13. Counterparts. This Lease may be executed in counterparts and, when all counterpart documents are executed, the counterparts shall constitute a single binding instrument. Receipt of facsimile signatures (regardless of the means of transmission) shall be as binding on the parties as an original signature.

Section 14.14. Survival. All representations and warranties of Landlord and Tenant shall survive the termination of this Lease.

Section 14.15. Relationship of Parties. Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent, partnership, joint venturer or any association between Landlord and Tenant, it being expressly understood and agreed that neither the method of computation of Rent nor any act of the parties hereto shall be deemed to create any relationship between Landlord and Tenant other than the relationship of landlord and tenant.

Section 14.16. No Warranty. In executing and delivering this Lease, Tenant has not relied on any representation, including, but not limited to, any representation whatsoever as to the amount of any item comprising Additional Rent or the amount of the Additional Rent in the aggregate or that Landlord is furnishing the same services to other tenants, at all, on the same

level or on the same basis, or any warranty or any statement of Landlord which is not set forth herein or in one or more of the exhibits attached hereto.

Section 14.17. Waiver of Redemption by Tenant. Tenant hereby waives, for Tenant and for all those claiming under Tenant, all rights now or hereafter existing to redeem by order or judgment of any court or by any legal process or writ, Tenant's right of occupancy of the Premises after any termination of this Lease.

Section 14.18. Independent Covenants. This Lease shall be construed as though the covenants herein between Landlord and Tenant are independent and not dependent and Tenant hereby expressly waives the benefit of any statute or other law to the contrary and agrees that if Landlord fails to perform its obligations set forth herein, Tenant shall not be entitled to make any repairs or perform any acts hereunder at Landlord's expense or to any setoff of the Rent or other amounts owing hereunder against Landlord.

Section 14.19. Confidentiality. Tenant agrees that the terms of this Lease are confidential and constitute proprietary information of Landlord, and that disclosure of the terms hereof could adversely affect Landlord. Tenant shall keep its partners, members, manager, officers, directors, employees, agents, real estate brokers and sales persons and attorneys from disclosing the terms of this Lease to any other person without Landlord's prior written consent (which may be withheld in Landlord's sole and absolute discretion), except to any accountants of Tenant in connection with the preparation of Tenant's financial statements or tax returns, to agents or consultants of Tenant in connection with Tenant's performance of its obligations hereunder, to an assignee of this Lease or subtenant of the Premises, or to a person to whom disclosure is required in connection with any action brought to enforce this Lease; provided, however, that Tenant shall inform such persons of the confidentiality of the terms of this Lease and shall obtain their agreement to abide by the confidentiality provisions of this Section prior to such disclosure. In the event Tenant is required to disclose this Lease or any terms thereof to governmental agencies pursuant to applicable laws, Tenant shall, prior to making such disclosure, submit a written request to the applicable authorities that this Lease be exempt from such disclosure requirements and take other actions reasonably necessary to avoid such disclosure. Tenant shall provide Landlord with a copy of such request and all related documents promptly following the submission thereof to the applicable authorities and shall keep Landlord apprised of the status of such request and all responses thereto. Tenant shall, in any event, provide Landlord with not less than ten (10) days notice prior to disclosing this Lease or any term thereof to any court or governmental agency.

Section 14.20. Tenant's Representations and Warranties. Tenant warrants and represents to Landlord as follows, each of which is material and being relied upon by Landlord:

(a) Tenant and all persons and entities that own fifty percent (50%) or greater equity interest in Tenant or in any of its officers, directors or managing members: (x) are not, and shall not become, a person or entity with whom Landlord is restricted from doing business under regulations of the Office of Foreign Assets Control ("OFAC") of the Department of the Treasury (including, but not limited to, those named on OFAC's Specially Designated Nationals and Blocked Persons list) or under any statute, executive order (including, but not limited to, the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions With

Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action; (y) are not, and shall not become, a person or entity with whom Landlord is restricted from doing business under the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001 or the regulations or orders thereunder; and (z) are not knowingly engaged in, and shall not knowingly engage in, any dealings or transaction or be otherwise associated with such persons or entities described in clauses (x) or (y), above.

(b) If Tenant is an entity, Tenant is duly organized, validly existing and in good standing under the laws of the State of its organization, and is qualified to do business in the State in which the Premises is located, and the persons executing this Lease on behalf of Tenant have the full right and authority to bind Tenant without the consent or approval of any other person or entity. Tenant has full power, capacity, authority and legal right to execute and deliver this Lease and to perform all of its obligations hereunder. This Lease is a legal, valid and binding obligation of Tenant, enforceable in accordance with its terms.

(c) Tenant has not (1) made a general assignment for the benefit of creditors, (2) filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by any creditors, (3) suffered the appointment of a receiver to take possession of all or substantially all of its assets, (4) suffered the attachment or other judicial seizure of all or substantially all of its assets, (5) admitted in writing its inability to pay its debts as they come due, or (6) made an offer of settlement, extension or composition to its creditors generally.

Tenant confirms that all of the above representations and warranties are true as of the date of this Lease, and acknowledges and agrees that they shall survive the expiration or earlier termination of this Lease.

Section 14.21. Landlord's Representations and Warranties. Landlord warrants and represents to Tenant as follows, each of which is material and being relied upon by Tenant:

(a) Landlord and all persons and entities that own fifty percent (50%) or greater equity interest in Landlord or in any of its officers, directors or managing members: (x) are not, and shall not become, a person or entity with whom Tenant is restricted from doing business under regulations of OFAC (including, but not limited to, those named on OFAC's Specially Designated Nationals and Blocked Persons list) or under any statute, executive order (including, but not limited to, the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action; (y) are not, and shall not become, a person or entity with whom Tenant is restricted from doing business under the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001 or the regulations or orders thereunder; and (z) are not knowingly engaged in, and shall not knowingly engage in, any dealings or transaction or be otherwise associated with such persons or entities described in clauses (x) or (y), above.

(b) If Landlord is an entity, Landlord is duly organized, validly existing and in good standing under the laws of the State of its organization, and is qualified to do business in the State in which the Premises is located, and the persons executing this Lease on behalf of Landlord have the full right and authority to bind Landlord without the consent or approval of

any other person or entity. Landlord has full power, capacity, authority and legal right to execute and deliver this Lease and to perform all of its obligations hereunder. This Lease is a legal, valid and binding obligation of Landlord, enforceable in accordance with its terms.

(c) Landlord has not (1) made a general assignment for the benefit of creditors, (2) filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by any creditors, (3) suffered the appointment of a receiver to take possession of all or substantially all of its assets, (4) suffered the attachment or other judicial seizure of all or substantially all of its assets, (5) admitted in writing its inability to pay its debts as they come due, or (6) made an offer of settlement, extension or composition to its creditors generally.

Landlord confirms that all of the above representations and warranties are true as of the date of this Lease, and acknowledges and agrees that they shall survive the expiration or earlier termination of this Lease.

Section 14.22. Further Assurances. Except as otherwise expressly provided in this Lease, Landlord and Tenant each will, at its own cost and expense, execute and deliver such further documents and instruments and will take such other actions as may be reasonably required or appropriate to carry out the intent and purposes of this Lease.

Section 14.23. Heirs and Successors. The covenants and agreements of this Lease shall be binding upon the heirs, legal representatives, successors and permitted assigns of the parties hereto.

ARTICLE FIFTEEN NO OPTION OR OFFER

THE SUBMISSION OF THIS LEASE BY LANDLORD, ITS AGENT OR REPRESENTATIVE FOR EXAMINATION OR EXECUTION BY TENANT DOES NOT CONSTITUTE AN OPTION OR OFFER TO LEASE THE PREMISES UPON THE TERMS AND CONDITIONS CONTAINED HEREIN OR A RESERVATION OF THE PREMISES IN FAVOR OF TENANT, IT BEING INTENDED HEREBY THAT THIS LEASE SHALL ONLY BECOME EFFECTIVE UPON THE EXECUTION HEREOF BY LANDLORD AND DELIVERY OF A FULLY EXECUTED LEASE TO TENANT, WHETHER SUCH EXECUTION AND DELIVERY IS ACCOMPLISHED BY PHYSICAL DELIVERY OR DELIVERY BY FACSIMILE TRANSMISSION OR OTHER ELECTRONIC MEANS. NEITHER PARTY SHALL HAVE ANY OBLIGATION TO CONTINUE DISCUSSIONS OR NEGOTIATIONS OF THIS LEASE.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have executed this Lease to be effective as of the Lease Commencement Date.

LANDLORD:


1900 CHAPMAN PROJECT OWNER, LLC,
a Delaware limited liability company

By: Hines 1900 Chapman LLC,
a Delaware limited liability company,
its administrative member

By: Hines 1900 Chapman Associates Limited
Partnership,
a Texas limited partnership,
its sole member

By: Hines Interests Limited Partnership,
a Delaware limited partnership,
its general partner

By: Hines Holdings, Inc.,
a Texas corporation,
its general partner

By: 
Charles K. Watters Jr.
Senior Vice President

TENANT:

SYMS CORP.,
a New Jersey corporation

By: _____
Marcy Syms
Chief Executive Officer

IN WITNESS WHEREOF, the parties hereto have executed this Lease to be effective as of the Lease Commencement Date.

LANDLORD:

1900 CHAPMAN PROJECT OWNER, LLC,
a Delaware limited liability company

By: Hines 1900 Chapman LLC,
a Delaware limited liability company,
its administrative member

By: Hines 1900 Chapman Associates Limited
Partnership,
a Texas limited partnership,
its sole member

By: Hines Interests Limited Partnership,
a Delaware limited partnership,
its general partner

By: Hines Holdings, Inc.,
a Texas corporation,
its general partner

By: _____
Charles K. Watters Jr.
Senior Vice President

TENANT:

SYMS CORP.,
a New Jersey corporation

By: Marcy Syms
Marcy Syms
Chief Executive Officer

EXHIBIT A

DESCRIPTION OF THE PREMISES

All of that lot or parcel of land lying, situate and being in the City of Rockville, Rockville (4th) Election District of Montgomery County, Maryland and being more particularly described as follows:

BEING KNOWN AND DESIGNATED as Lot 14, Block 5 as shown on the Plat entitled "Lot 14, Block 5 HALPINE (Being a Plat of Correction of Lot 1, Block 5, HALPINE, Plat Book 184 Plat 20377)," which Plat is recorded among the Land Records of Montgomery County, Maryland as Plat No. 24213.

AND BEING a portion of the property acquired by Syms Corp., a New Jersey corporation, by Special Warranty Deed dated August 6, 1996, from Chapman Avenue Limited Partnership, a Maryland limited partnership, and recorded August 7, 1996, among the Land Records of Montgomery County, Maryland, in Liber 14292, folio 593.

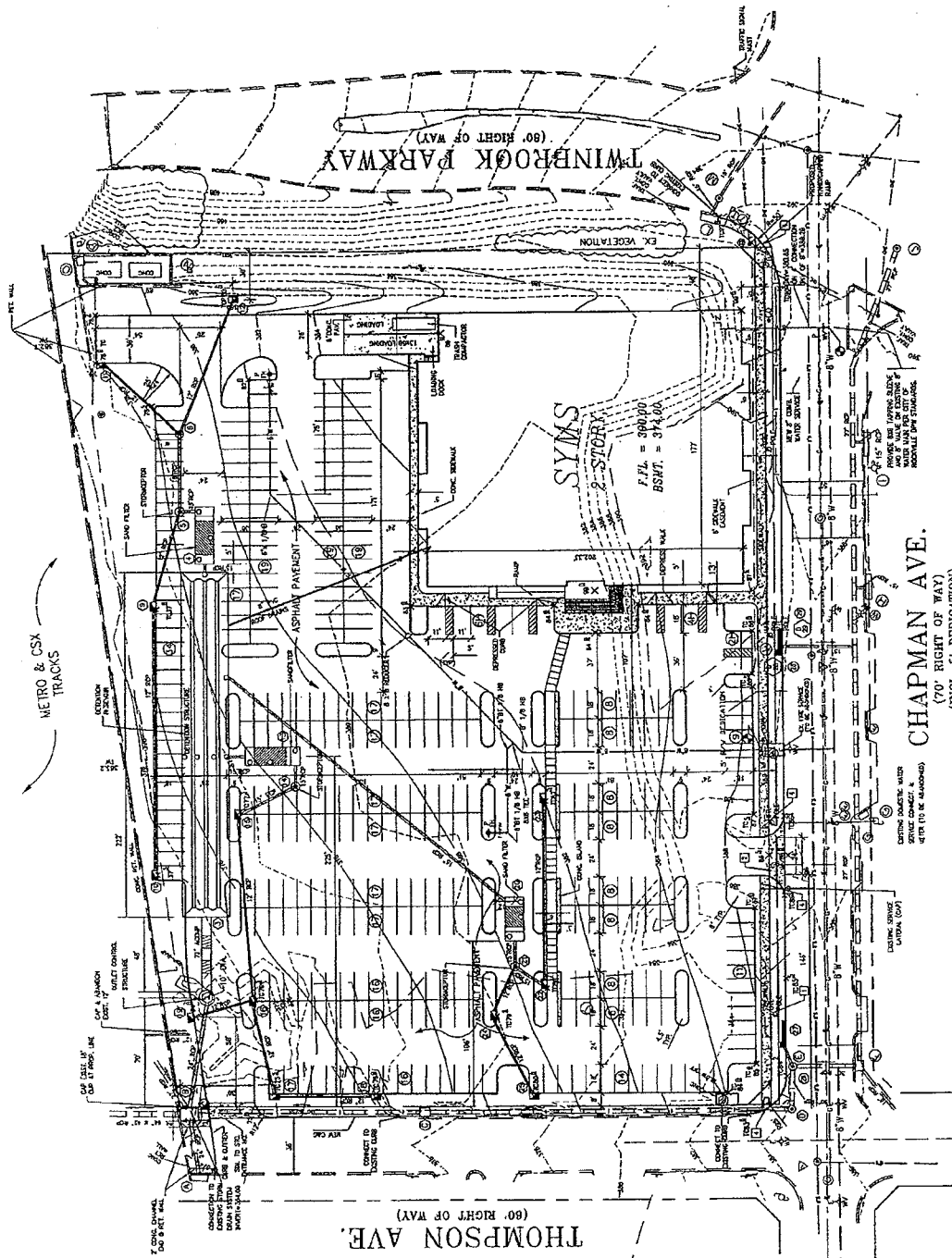
EXHIBIT B

DEPICTION OF THE PREMISES (INCLUDING PARKING AREAS)

(Attached)

GENERAL NOTES

- SEE SHEET 8 FOR PAVING AND STORM DRAIN NOTES
- SEE SHEET 9 FOR DETAILS OF WORK IN C/P OF CHAPMAN STREET
- CONSTRUCTION LATER NOTES
- EXISTING UTILITY PIPES TO BE RELOCATED BY NOTES
- CONSTRUCT NEW STAIRWELL COMMERCIAL ENTRANCE
- ROCKVILLE STAIRWELL DETAIL
- CONSTRUCT CURB ON EITHER A CURB AS INDICATED
- CONSTRUCT TO CITY OF ROCKVILLE STAIRWELL DETAIL
- CONSTRUCT WEDGEMAN RAMP FOR ROCKVILLE STAIRWELL DETAIL



REV.	DATE	REVISIONS	APPRO.	DATE	FILE
1	12/25/86	SCALE	NO. 3	1/4"	
2	12/25/86	1"=30'	NO. 3	1/4"	
3	12/25/86	1"=30'	NO. 3	1/4"	

SITE DEVELOPMENT
PLAN

SYMS

DATE PREPARED: 12/25/86
DATE CHECKED BY CITY: 12/25/86
DATE APPROVED BY CITY: 12/25/86
SYMS, INC., ROCKVILLE, MD

DEPARTMENT OF PUBLIC WORKS
CITY OF
ROCKVILLE
MAYLAND AT LARSON ROCKVILLE, MARYLAND

DATE PREPARED: 12/25/86
DATE CHECKED BY CITY: 12/25/86
DATE APPROVED BY CITY: 12/25/86
SYMS, INC., ROCKVILLE, MD

DATE PREPARED: 12/25/86
DATE CHECKED BY CITY: 12/25/86
DATE APPROVED BY CITY: 12/25/86
SYMS, INC., ROCKVILLE, MD

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DATE CHECKED BY CITY: 12/25/86
DATE APPROVED BY CITY: 12/25/86
SYMS, INC., ROCKVILLE, MD