

## LEASE

THIS LEASE ("Lease") is made at \_\_\_\_\_, Ohio, as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_, an Ohio limited liability company, which with its successors and assigns is herein called "Landlord", and \_\_\_\_\_, who with his heirs, legal and estate representatives and assigns is herein called "Tenant".

**1. Lease.** Subject to the terms and conditions of this Lease, Landlord leases to Tenant the \_\_\_\_\_ square foot space being the \_\_\_\_\_ floor of the building located at \_\_\_\_\_ ("Premises"). Prior to the cessation of Tenant's right to possession or, if earlier, the termination of this Lease, Tenant shall peaceably and quietly hold, occupy and enjoy the Premises without let, hindrance or molestation by Landlord or any other person or persons lawfully claiming under Landlord. Landlord grants to Tenant a non-exclusive license to use, for the purposes intended, the common areas, described on Exhibit A, and owned by Landlord, subject to the rules and regulations of Landlord as may be modified from time to time. The License shall immediately and automatically terminate, without notice, when Tenant's right to possession of the Premises ends.

**2. Examination of Premises.** Tenant has fully examined the Premises and acknowledges that the Premises are satisfactory to Tenant.

**3. Term of Lease.**

(A) The term of the Lease (the "Lease Term" or "Term") shall be three (3) years commencing on \_\_\_\_\_, 20\_\_\_\_ (the "Commencement Date"). Unless renewed as provided below, the Term of the Lease shall terminate thirty-six (36) months after the Commencement Date.

(B) At Tenant's option, Tenant may renew the term of the Lease for an additional three (3) year period by providing Landlord with written notice thereof prior to one hundred eighty (180) days prior to the end of the initial term, time being of the essence; provided, however, that Tenant is not then in default of any provision of the Lease and that no default occurs prior to the end of the initial term. Tenant shall not be deemed to be in default of the Lease if Landlord elects to waive the default or if the default is cured prior to the end of any applicable cure period. The phrase "Lease Term" or "Term" as used in this Lease shall refer to any additional three year renewal term of this Lease as elected by Tenant pursuant to this Section.

**4. Rent and Deposit.**

(A) Tenant shall pay to Landlord, time being of the essence, rent, herein called the "Rent" (payment of which shall not be delayed, excused or set-off for any reason), for the use of the Premises during the term of this Lease in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) per year, payable in equal monthly installments of \_\_\_\_\_ Dollars (\$\_\_\_\_\_). Rent shall be payable starting on the Commencement Date and continuing on the first day of each succeeding month. If the Commencement Date is not the first day of the month, then Rent for the month of the Commencement Date shall be paid pro-ratably by Tenant. If Tenant fails to pay, when due and payable, the Rent or amounts or charges of any kind or character provided in this Lease, such unpaid amounts shall bear interest at eighteen percent (18%) per annum from the due date to the date of payment. In addition to such interest, if Tenant shall fail to pay any monthly installment of Rent by the fifth (5th) day of the month in which such installment is due, a late charge equal to five percent (5%) of the installment.

(B) Landlord acknowledges receipt of a security deposit in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_). The deposit shall not bear interest and shall be returned to Tenant within thirty (30) days after the Lease terminates less any and all damages incurred by Landlord arising, directly or indirectly, as a result of any breach or default of this Lease or of any damage or injury to the Premises. Landlord at any time and from time to time may apply all or any portion of the deposit to damages and other costs incurred by Landlord. In such event, after notice, Tenant shall immediately restore the deposit to the original amount.

**5. Use of the Premises.** The Premises shall be used only for \_\_\_\_\_ purposes.

**6. Repairs and Alterations.**

(A) No Landlord Obligations. Landlord shall have no obligation or responsibility whatsoever with respect to the maintenance, repair or replacement of the Premises.

(B) Maintenance, Cleaning and Repairs. Tenant, at Tenant's sole cost and expense, whether the same shall be the property of Tenant or Landlord, shall maintain, clean, repair and replace the Premises such that the same is at all times in good repair and condition and otherwise in compliance with all provisions of this Lease and such that all operational components of the Premises are functional and such that the Premises remain, at a minimum, in substantially the same condition as it is on the date hereof.

(C) Alterations. Tenant shall not make or suffer to be made any alterations, additions or improvements, in, on or to the Premises or any part thereof without the prior written consent of Landlord. Such alteration, except moveable furniture and trade fixtures, shall at once become a part of the realty and belong to Landlord.

(D) Tenant's Neglect. Regardless of any obligation otherwise imposed upon Landlord, Tenant shall pay, immediately upon receipt of invoice therefor, for the cost of any repairs or damage resulting from the negligence or the unlawful or willful acts of Tenant or Tenant's employees, representatives, invitees, agents, officers, directors, shareholders, partners, owners or visitors.

(E) Landlord's Liability Limitations. Landlord shall not be liable to Tenant for failure to make any repairs required of Landlord, or damages as a consequence thereof, unless written notice of necessity thereof has been given by Tenant to Landlord, specifying in reasonable detail the repairs required, and Landlord shall not have made such repairs within a reasonable period of time sufficient to accomplish such repairs after receipt of such notice with due allowances being made for delays beyond the control of Landlord. Notwithstanding any provisions of this Lease to the contrary, Landlord shall not be liable for any consequential or special or compensatory damages nor for any damage to the person or to any personal property, trade fixtures, inventory or other property or assets of Tenant or any other party located in, on or about the Premises arising due to any cause whatsoever, including, but not limited to, roof leaks, bursting pipes, roof or ceiling collapse, wind damage, rain, fire, floods, vandalism, or theft. The risk of loss with respect to such items shall be borne solely by Tenant.

**7. Compliance with Laws.** Tenant shall at all times comply with all Federal, state and local laws, statutes, ordinances, rules, regulations and requirements and the orders of all duly authorized governmental officials with respect to the Premises and the use and occupancy of the Premises and the physical condition of the Premises and shall cause the Premises to at all times conform to said governmental requirements listed above.

**8. Utilities.** Tenant shall be responsible for and shall pay for all utilities costs with respect to the Premises and shall cause all utilities to be placed in the name of Tenant as soon as is reasonably possible

after the Commencement Date. The Landlord shall not be responsible or liable to the Tenant in damages or otherwise for the quality or quantity or for any interruptions, curtailment, or suspension of utility service due to any cause, including, but not limited to, repairs, action of public authority, strikes, acts of God or the public enemy.

**9. Insurance.** At Tenant's expense, Tenant shall obtain and at all times maintain fire and extended coverage insurance for the full replacement value of the Premises and public liability coverage with a combined single limit of no less than Three Million Dollars (\$3,000,000.00). Landlord shall be an additional named insured. Tenant shall immediately provide Landlord evidence that said insurance is in full force and effect. Said policies shall provide that they will not be cancelled without at least thirty (30) days prior written notice to Landlord. The policies shall have such terms, provisions and coverages as are reasonably acceptable to Landlord in accordance with the types and amounts of coverage as are typical for industrial facilities in the greater Sandusky, Ohio area. The insurer shall be licensed to sell insurance in Ohio and shall have a Best's Rating of B+ or better and shall be of a Financial Classification of XI or better.

**10. Real Estate Taxes.** Tenant shall pay when due all real estate taxes and assessments with respect to the Premises which become due and payable during the Term.

**11. Protection of Landlord.**

(A) **Indemnity.** Tenant shall defend, indemnify and save Landlord harmless from and against any and all actions, causes of actions, liability, damage, penalties, costs, expenses and judgments (including, but not limited to, court costs and attorneys' fees) arising from injury to person or persons or property sustained by anyone in and about the Premises, resulting from any acts or omissions of Tenant or Tenant's officers, agents, servants, employees, contractors, licensees, invitees or sublessees or arising from any breach of default of this Lease or the enforcement of the same or the collection of any judgments obtained or arising from the use and occupancy of the Premises by Tenant or Tenant's officers, agents, servants, employees, contractors, invitees, licensees or sublessees. Not in limitation of the foregoing, Tenant shall defend, indemnify and save Landlord harmless from and against any and all actions, causes of action, claims, demands, liabilities, costs, expenses, fines and penalties, arising, directly or indirectly, as a result of any hazardous substances (as defined below) located in, on or about the Premises, due to any act or omission of Tenant or any officer, agent, servant, employee, contractor, invitee, licensee or sublessee of Tenant or with respect to any noncompliance with or violation of any Federal, state or local environmental or pollution control or reduction law, statute, rule, regulation or order, including, but not limited to, the Laws and Regulations and the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the Superfund Amendments and Reauthorization Act of 1986, the Resource Conservation and Recovery Act of 1976, as amended, the Clean Water Act, the Clean Air Act and the Toxic Substances Control Act. Tenant shall at all times comply with all Laws and Regulations and shall not permit, acquiesce in or cause, directly or indirectly, any Hazardous Substances to be located, placed, discharged, disposed of or used in, on or about the Premises.

(B) **Limitation of Liability.** Except for intentional, malicious torts and not in limitation of any other limitations or exculpations of liability of Landlord set forth herein, Landlord shall not be responsible or liable for any damage, loss, theft or injury to or of any property, fixtures, buildings, or other improvements or to any person or persons, at any time on the Premises, including any damage or injury to Tenant or to any of Tenant's officers, agents, servants, employees, contractors, invitees, licensees, customers, or sublessees.

(C) **Exculpation.** Landlord shall not be under any responsibility or liability in any way whatsoever for any defect in the Premises. All implied warranties are excluded. Tenant acknowledges that the Premises may contain hidden defects, which Landlord may or may not have knowledge of and which Landlord may or may not have disclosed to Tenant. Tenant shall take possession of the Premises and shall

occupy the same in their "as is" condition subject to any and all defects, including latent material defects. Not in limitation of the foregoing, Landlord makes no representations or warranties with respect to any matters, including, but not limited to, no warranties with respect to the fitness of the Premises for any purpose, the zoning applicable to the Premise, physical condition of the Premises, the availability of utilities services, the cost of utilities services, the amount of real estate taxes and assessments, the amount of insurance premiums, the presence or absence of Hazardous Substances in, on or about the Premises, the presence of asbestos in, on or about the Premises, the compliance of the Premises with any law, statute, regulation, rule, order or other governmental requirement or standard or any other matters.

(D) **Definition.** As used in this Lease, the term "Hazardous Substances" shall be defined as asbestos, urea formaldehyde, petroleum hydrocarbons and other petroleum products (including gasoline, diesel fuel, fuel oil, crude oil and motor oil and constituents of those products), tetrachloroethylene, polychlorinated biphenyls ("PCB's"), nuclear fuel or materials, chemicals, biological or medical wastes, radioactive materials, explosives, known carcinogens, petroleum products, and all dangerous, toxic or hazardous pollutants, contaminants, chemicals, materials or substances defined as hazardous or as a pollutant or contaminant in, or the release or disposal of which is regulated by any federal, state or local environmental Laws and/or Regulations. As used in this Lease, the term "Laws and Regulations" shall mean and include the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA" or the "Federal Superfund Act") of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"); the Resource Conservation and Recovery Act of 1976 ("RCRA"); the Clean Water Act; the Clean Air Act; and the Toxic Substances Control Act; all as the same may be amended from time to time and any other federal, state, county, municipal, local or other statute, law, ordinance or regulation which may relate to or deal with human health or the environment including without limitation all regulations promulgated by a regulatory body pursuant to any such statute, law or ordinance.

(E) **Notice.** Tenant shall immediately notify Landlord of the existence of any Hazardous Substances, known to Tenant now or at any time, in, on or about the Premises, and of the disposal of, deposit on or release of any Hazardous Substance in, on or about the Premises. The foregoing shall apply to Hazardous Substances whether or not disposed of, deposited or released by Tenant.

## **12. Fire and Casualty.**

(A) **Substantial Damage.** If the Premises or a substantial portion thereof shall be made untenable by fire or other casualty, Landlord, if it so elects, may:

- (1) Terminate the term of this Lease, effective as of the date of such fire or casualty, by written notice given to Tenant within thirty (30) days after such date, or
- (2) Repair, restore, or rehabilitate said Premises at Landlord's expense (unless the damage is due to Tenant's acts or omissions or those of Tenant's employees, agents, sublessees, licensees, contractors or invitees in which case, the repairs shall be at Tenant's expense) within twelve (12) months after the date of such fire or casualty, in which event the Term shall not terminate but any Rent shall be abated on a per diem and pro rata basis, based on the percentage of the Premises untenable (unless the damage is due to Tenant's acts or omissions or those of Tenant's employees, licensees, contractors, agents or invitees) while the Premises or a portion thereof shall remain untenable. If Landlord elects to so repair, restore or rehabilitate the Premises and shall fail to substantially complete the same within said twelve (12) months period, due allowance being made for delay due to

causes beyond Landlord's reasonable control, either the Landlord or Tenant, by written notice to the other, given within fifteen (15) days next following the last day of said twelve (12) months period, may terminate the Term as of the date of such fire or casualty, provided, however, that Tenant shall not have the right of termination if Tenant was in default prior to said fire or other damage or if fire or other damage was due, directly or indirectly, to the acts or omissions of Tenant or Tenant's employees, agents, representatives, invitees, licensees, directors, officers, partners, shareholders, owners or visitors. In the event of termination of the Term hereof pursuant to this Section, Rent shall be apportioned on a per diem basis and paid to the date of termination.

(B) Non-Substantial Damage. If the Premises shall be damaged (unless due to the acts or omissions of Tenant or those of Tenant's employees, agents or invitees) such that the provisions of Subsection (A) of this Section are not applicable, Landlord, to the extent of insurance proceeds, shall with reasonable dispatch restore the Premises (except those portions which have been constructed by Tenant at Tenant's expense or which are the property of Tenant) to substantially their condition prior to the damage. In such event, Rent shall not abate, provided, however, that Landlord shall not be obligated to make said repairs during the last two (2) years of the then existing term unless Tenant, within thirty (30) days after demand by Landlord, extends the lease for the period of any renewal term then authorized.

(C) Waiver. The provisions of Ohio Revised Code Section 5301.11 shall not apply and any rights thereunder are waived by Tenant.

**13. Eminent Domain**. In the event all or a part of the Premises shall be taken by a public or private authority under the power of eminent domain or like power, this Lease shall terminate, with respect to the portion of the Premises so taken, as of the date of possession thereof shall be required to be delivered to the appropriate authority. There shall be an equitable abatement of the Rent proportionate to the part of the Premises taken under such power. In the event of any total or partial taking under such power, Landlord shall be entitled to all such awards of damages as may be allowed.

**14. Assignment, Subletting and Encumbrances**. Tenant shall not assign this Lease, sublet any part of the Premises, or otherwise transfer any right or interest hereunder, or encumber in any way all or any portion of Tenant's interest in this Lease or any right or interest hereunder. Any merger or acquisition of Tenant shall be deemed to be a prohibited assignment of this Lease. Any change in the ownership (whether legal or equitable, whether through the sale of existing shares or partnership or membership interests or the issuance of new shares or partnership or membership interests or other interests in Tenant) shall be deemed to be a prohibited assignment.

**15. Landlord Mortgages and Estoppel Certificates and Subordination**.

(A) Mortgages. At the option of Landlord, this Lease shall be subordinated to the lien of any mortgage (hereinafter called "Mortgage") which Landlord may place on the Premises, or any portion of the foregoing. Upon Landlord's request, Tenant shall execute any instrument which may be required to effectuate such a subordination, provided Landlord shall first have delivered to Tenant a document signed by the mortgagee(s) providing in substance that, as long as Tenant shall discharge Tenant's obligations under this Lease: (1) Tenant's tenancy shall not be disturbed; (2) this Lease shall not be affected by any default under the Mortgage; (3) in the event of foreclosure of the Mortgage, the right of Tenant shall survive, provided Tenant fully performs all of Tenant's obligations hereunder, and provided further that Tenant shall not have prepaid any Rent, except as the same becomes due under the terms of this Lease. If Tenant is notified of Landlord's assignment of this Lease as security for a Mortgage and of the name and address of the mortgagee or trustee, Tenant shall not terminate or cancel this Lease for any default on the part of the

Landlord. Tenant shall promptly complete and deliver, from time to time, such estoppel certificates as Landlord delivers to Tenant after Tenant has in good faith completed the same in a truthful manner. Tenant, at Tenant's expense, shall comply with all covenants of any Mortgage.

(B) Estoppel. Tenant shall deliver to Landlord, within ten (10) days after Landlord's request for the same, a document certifying that an attached copy of this Lease and any amendments have not been further modified and are in full force and effect and that Landlord is not in default under the Lease (if there is no default) or the nature of Landlord's default(s) under this Lease (if there has been a default) and indicating the amount of any past due Rent and other charges and that there has been no prepaid Rent (if there has been no prepaid Rent) or the amount of any prepaid Rent if any. Tenant represents and warrants that the information contained in said certificate(s) will be true. Said certificate will be given subject to the penalties of perjury. Tenant acknowledges that said certificate will be relied upon by third parties.

**16. Entry of Landlord**. Landlord, without notice, may, at all reasonable times, enter the Premises: (A) to inspect or protect the Premises; (B) to effect compliance with any law, order or regulation of any lawful authority; (C) to make or supervise repairs, alterations or additions; (D) to exhibit the Premises to prospective tenants, purchasers or other persons; (E) to alter or otherwise prepare the Premises for re-occupancy at any time after Tenant has vacated the Premises; and (F) to prepare "as-built" drawings and to survey the Premises for any purpose. No authorized entry by Landlord shall constitute an eviction of Tenant or a deprivation of Tenant's rights, alter the obligations of Tenant, or create any right in Tenant adverse to Landlord's interests hereunder and the Rent reserved shall in no way abate, by reason of loss or interruption of business of Tenant, or otherwise, while any repairs, alterations, improvements or additions are being made. During the last six (6) months prior to the expiration of the term of this Lease or any renewal terms, Landlord may place upon the Premises the usual notices "to let", "for lease" or "for sale", which notices Tenant shall permit to remain thereon without molestation. The authority to enter granted to Landlord shall extend to and include all those authorized by Landlord, including, but not limited to, authorized employees, agents, officers, directors, invitees and contractors of Landlord.

**17. Removal of Equipment and Fixtures**. Tenant must remove Tenant's trade fixtures and personal property within thirty (30) days after Tenant's right to possession ends, time being of the essence provided that the foregoing shall not limit Landlord's right to enter, remove and dispose of said trade fixtures and personal property upon an Event of Default. In the event Tenant removes any items, Tenant shall immediately repair or reimburse Landlord for all damage or defacement resulting from the removal. If items are not removed within said deadlines, at Landlord's option, said items shall become and remain the property of Landlord and shall be deemed to be abandoned or at Landlord's option, Landlord may remove and dispose of said items and Tenant shall immediately reimburse Landlord for the costs for said removal.

**18. Holding Over by Tenant**. During any period of holding over, Tenant shall be a Tenant at will subject to all the obligations imposed upon Tenant by this Lease except that the Rent shall be increased by one hundred percent (100%). However, this Lease shall be deemed to have been extended for an additional period equal to the immediately preceding term of this Lease, if (at any time after fifteen (15) days from the end of Tenant's right to possession but before Tenant vacates the Premises) Landlord so elects.

**19. Default**.

(A) Definition of Default. As used in this Lease, the term "Event of Default" shall mean any of the following:

- (1) Tenant's failure to timely make payment of any rental installment or any other amounts payable by Tenant to Landlord hereunder; or

- (2) Tenant's failure, within ten (10) days after receipt of demand from Landlord, to fulfill any non-payment obligation imposed on Tenant by this Lease; or
- (3) Tenant or Tenant's guarantor shall file in any court a petition in bankruptcy or insolvency or for reorganization or for arrangement or liquidation within the meaning of the Bankruptcy Code or any comparable state law, or for the appointment of a receiver or trustee of all or a portion of Tenant's property; or
- (4) an involuntary petition of the kind referred to in Subitem (3) of this Section shall be filed against Tenant or Tenant's guarantor, if any, and such petition shall not be vacated within thirty (30) days after the date of filing thereof; or
- (5) Tenant or guarantor, if any, shall make an arrangement for the benefit of creditors, or shall be adjudicated a bankrupt; or
- (6) any property used in connection with Tenant's leasehold interest or Tenant's interest in the Lease shall be taken on execution or attached; or
- (7) Tenant shall, for reasons other than those specifically permitted in this Lease, cease to conduct Tenant's normal business operations in the Premises or leave the same vacated or abandoned for a period of ten (10) days.

(B) **Remedies.** Upon the happening of an Event of Default, Landlord at Landlord's option, may (1) terminate this Lease or (2) end Tenant's rights to possession of the Premises without terminating the term of this Lease. Upon termination of this Lease for any reason, or upon loss of the Tenant's right of possession as provided above, Tenant shall promptly surrender possession to Landlord and vacate the Premises, and Landlord may re-enter the Premises and expel the Tenant or anyone claiming under the Tenant and remove the property of any of them without notice, formal claim or judicial process, Landlord being absolved of any liability or claim for damages in doing anything reasonably necessary or appropriate in connection therewith. If Landlord elects to end Tenant's right of possession without terminating the term of this Lease, Landlord may, at Landlord's option, lease or sublet all or any part of the Premises on such terms and conditions as Landlord may elect and collect from Tenant any balance remaining due on the Rent or other obligations payable by Tenant under this Lease as well as charge Tenant for any leasehold improvement work incurred in a re-letting the Premises or portion thereof or Landlord may declare, without further notice, all Rent which otherwise would have been due and payable to be immediately due and payable.

**20. No Recording of Lease.** This Lease shall not be recorded.

**21. Requirements of Insurers and Governments.** Notwithstanding any provision of this Lease to the contrary, Tenant shall comply with all reasonable requests of any insurer of the Premises and shall comply with all governmental ordinances, statutes, rules, regulations and all demands and requests of authorized governmental officials, as if Tenant were the owner of the Premises. Tenant shall take no action and shall not refrain from taking any action if such action or failure to act would cause any insurance premium with respect to all or any portion of the Premises to be increased or any insurance coverage to be lost or limited or to lapse.

**22. Landlord's Security Interest.** Tenant hereby grants Landlord a security interest in Tenant's interest in this Lease, Tenant's trade fixtures, equipment, inventory and accounts receivable. Landlord shall have all rights of a secured party under Ohio Revised Code Chapter 1309. Not in limitation of the foregoing, Landlord is hereby authorized upon default, to take possession of any personal property of Tenant found in on or about the Premises and to sell the same at public or private sale and apply the proceeds thereof to the payment of any amounts due and owing under this Lease. Tenant hereby waives the benefit of any and all laws exempting property from execution, levy and sale on distress or judgment. Immediately upon request, Tenant shall execute financing statements and any other documents such that Landlord's security interest shall be perfected. This Lease constitutes a "security agreement" as provided in Ohio Revised Code Chapter 1309.

**23. Transfer of Landlord's Interest.** In the event Landlord conveys the fee simple interest in the Premises, Landlord on the date of conveyance shall not be liable to Tenant with respect to this Lease for any matters whatsoever except for those arising or accruing prior to the date of conveyance.

**24. Landlord Reimbursement.** At Landlord's sole option, Landlord may satisfy any of Tenant's obligations hereunder. In such event, Tenant shall reimburse Landlord for any expenses incurred by Landlord, which expenses shall be paid in full on the date Rent is due and payable hereunder next following the date on which Tenant receives an invoice.

**25. Bankruptcy.**

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

(B) If Tenant files a petition for reorganization under Chapters 11 or 13 of the Bankruptcy Code, or if a proceeding filed by or against Tenant under any other chapter of the Bankruptcy Code is converted to a Chapter 11 or 13 proceeding and Tenant's trustee or Tenant as debtor-in-possession fails to assume this Lease within <sup>^</sup>Csixty (60)<sup>^</sup>C days from the date of the filing of such petition or conversion, then the trustee of the debtor-in-possession shall be deemed to have rejected this Lease. To be effective, any election to assume this Lease must be in writing addressed to Landlord and, in Landlord's business judgment, all of the following conditions, which Landlord and Tenant acknowledge to be commercially reasonable, must have been satisfied:

- (1) The trustee or the debtor-in-possession has cured or has provided to Landlord adequate assurance, as defined in this subparagraph, that:
  - I. (a) It will cure all monetary defaults under this Lease within ten (1) days from the date of assumption; and
  - II.
  - III. (b) It will cure all non-monetary defaults under this Lease within thirty (30) days from the date of assumption.

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

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

(D) If the trustee or the debtor-in-possession has assumed this Lease, pursuant to Subsections (A) or (B) above, to assign or to elect to assign Tenant's interest under this Lease or the estate created by that interest to any other person, such interest or estate may be assigned only if the intended assignee has provided adequate assurance of future performance, as defined in this Subsection, of all of the terms, covenants and conditions of this Lease.

(E) For the purposes of this Section, "adequate assurance of future performance" means that Landlord has ascertained that each of the following conditions has been satisfied:

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

(F) When, pursuant to the Bankruptcy Code, the trustee or the debtor-in-possession is obligated to pay reasonable use and occupancy charges for the use of all or part of the Premises, it is agreed that such charges will not be less than the Rent and other monetary obligations of Tenant included herein.

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

## **26. Miscellaneous.**

(A) The provisions of this Lease are severable. The unenforceability or illegality of any provision shall not affect the enforceability or illegality of any other provisions.

(B) The provisions of this Lease constitute the only agreement between Landlord and Tenant with respect to the Premises and related matters and supersede all prior and contemporaneous agreements, understandings, representations, warranties and contracts.

(C) This Lease shall be binding upon and the benefits thereof shall accrue to the benefit of Landlord and Tenant and their respective heirs, legal and estate representatives, successors and assigns.

(D) Ohio law shall govern the interpretation and enforcement of this Lease. Landlord and Tenant hereby submit to the personal jurisdiction of the State Courts of Erie County, Ohio. All disputes arising hereunder shall be properly and exclusively venued in the State Courts of Erie County, Ohio.

(E) Tenant shall not commit waste with respect to the Premises.

(F) All titles are for convenience and are not substantive.

(G) Time shall be of the essence with respect to all provisions of this Lease applicable to Tenant.

(H) All notices to Tenant shall be deemed delivered on the date personally delivered to the Premises or the date when placed in the United States mail, postage prepaid, addressed to ^C.

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IN WITNESS WHEREOF, Landlord and Tenant have set their hands as of the day and year set forth above.

LANDLORD:

TENANT:

By:

\_\_\_\_\_  
, Authorized Representative

\_\_\_\_\_

\_\_\_\_\_  
[Print Name of Tenant]