

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS (DALLAS DIVISION) PROOF OF CLAIM

Name of Debtor: ERICKSON RETIREMENT COMMUNITIES, LLC Case Number: 09-37010

NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.

Name of Creditor (the person or other entity to whom the debtor owes money or property): RPH Industrial, LLC
Name and address where notices should be sent: Patricia A. Borenstein, Miles & Stockbridge PC, 10 Light Street, Baltimore, Maryland 21202
Telephone number: (410) 385-3406

Check this box to indicate that this claim amends a previously filed claim.
Court Claim Number: (if known)
Filed on:

Name and address where payment should be sent (if different from above): RPH Industrial, LLC, Michael A. Ready, Vice President- Asset Management, RREEF, 4550 Montgomery Avenue, Suite 1100, Bethesda, Maryland 20814
Telephone number: (301) 347-4843

Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.
Check this box if you are the debtor or trustee in this case.

1. Amount of Claim as of Date Case Filed: \$471,727.50
If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.
If all or part of your claim is entitled to priority, complete item 5.
Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.
Specify the priority of the claim.

2. Basis for Claim: Lease (See instruction #2 on reverse side.)

Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).

3. Last four digits of any number of which creditor identifies debtor:
3a. Debtor may have scheduled account as:

Wages, salaries, or commissions (up to \$10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. §507 (a)(4).

4. Secured Claim (See instruction #4 on reverse side.)
Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.
Nature of property or right of setoff: Real Estate Motor Vehicle Other
Describe:
Value of Property: \$ Annual Interest Rate %
Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$ Basis for perfection:
Amount of Secured Claim: \$ Amount Unsecured: \$

Contributions to an employee benefit plan - 11 U.S.C. §507 (a)(5).
Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family or household use - 11 U.S.C. §507 (a)(7).

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

Taxes or penalties owed to governmental units - 11 U.S.C. §507 (a)(8).

7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction 7 and definition of "redacted" on reverse side.) See attached Schedule and Exhibit.
DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.
If the documents are not available, please explain.

Other - Specify applicable paragraph of 11 U.S.C. §507 (a)(2).
Amount entitled to priority:
\$ 44,376.64
*Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

Date: 4/15/2010
Signature: Patricia A. Borenstein, Esquire; Counsel for RPH Industrial, LLC

FOR COURT USE ONLY
Erickson Ret. Comm. LLC
Barcode
01828

Schedule to Proof of Claim

**In re: ERICKSON RETIREMENT COMMUNITIES, LLC
(Chapter 11)**

Bankruptcy Case No. 09-37010

**In the United States Bankruptcy Court
for the Northern District of Texas**

**Creditor:
RPH INDUSTRIAL, LLC
("RPH")**

Petition Date: October 19, 2009

I. INTRODUCTION:

This Schedule supplements the information stated in the accompanying Proof of Claim, and shall constitute part of the Proof of Claim.

II. THE BASIS, COLLATERAL, AND AMOUNT OF THE CLAIM:

On December 16, 2004 (the "Commencement Date"), RPH entered into a lease with Erickson Retirement Communities, LLC (the "Debtor") on the property located at 991 Corporate Boulevard, Linthicum, Maryland 21090 (the "Property"). The term of the lease is approximately five years and six months from the Commencement Date, ending on the last day of the sixty-sixth full calendar month after the commencement month. Thus, the lease terminates on June 30, 2010. A true and correct copy of the lease is attached hereto as **Exhibit A**.

The Debtor has rejected the lease with RPH. Pursuant to § 502(b)(6) of the Bankruptcy Code, a lessor is entitled to a claim for damages resulting from a terminated lease, not to exceed the rent reserved by such lease, without acceleration, for the greater of one year, or 15 percent, not to exceed three years, of the remaining term of such lease, plus any unpaid rent due under the lease, without acceleration, from the Petition Date. For months 49 through 60 of the lease, the monthly rent is \$57,882.58. For months 61 through 66, the monthly rent is \$59,327.06. The Debtor did not pay the monthly rent due on November 1, 2009 (month 59 of the lease). The Debtor has not paid any rent since the Petition Date. The lease terminates on June 30, 2010. Thus, the amount to which the lessor is entitled is two months of rent at \$57,882.58 and six months of rent at \$59,327.06, for a total of \$429,280.30.

RPH RESERVES THE RIGHT TO AMEND THIS PROOF OF CLAIM.

EXHIBIT A

LEASE

RPH INDUSTRIAL, LLC

Landlord,

and

ERICKSON RETIREMENT COMMUNITIES, LLC

Tenant

TABLE OF CONTENTS

	Page
1. USE AND RESTRICTIONS ON USE	1
2. TERM.....	2
3. RENT	3
4. INTENTIONALLY DELETED	3
5. SECURITY DEPOSIT	4
6. ALTERATIONS	4
7. REPAIR.....	4
8. LIENS.....	5
9. ASSIGNMENT AND SUBLETTING	6
10. INDEMNIFICATION	8
11. INSURANCE	8
12. WAIVER OF SUBROGATION	9
13. SERVICES AND UTILITIES.....	9
14. HOLDING OVER.....	9
15. SUBORDINATION	9
16. RULES AND REGULATIONS.....	9
17. REENTRY BY LANDLORD	9
18. DEFAULT.....	10
19. REMEDIES.....	11
20. TENANT'S BANKRUPTCY OR INSOLVENCY.....	13
21. QUIET ENJOYMENT	14
22. CASUALTY.....	14
23. EMINENT DOMAIN.....	15
24. SALE BY LANDLORD.....	15
25. ESTOPPEL CERTIFICATES	16
26. SURRENDER OF PREMISES	16
27. NOTICES.....	16
28. TAXES PAYABLE BY TENANT	17
29. INTENTIONALLY DELETED	17
30. DEFINED TERMS AND HEADINGS.....	17
31. TENANT'S AUTHORITY	17
32. FINANCIAL STATEMENTS AND CREDIT REPORTS	17
33. COMMISSIONS	18
34. TIME AND APPLICABLE LAW	18
35. SUCCESSORS AND ASSIGNS.....	18
36. ENTIRE AGREEMENT	18

TABLE OF CONTENTS
(continued)

	Page
37. EXAMINATION NOT OPTION	18
38. RECORDATION	18
39. SIGNS	18
40. LIMITATION OF LANDLORD'S LIABILITY	19
41. LEASE CONTINGENT UPON TERMINATION OF EXISTING LEASE WITH RESPECT TO THE PREMISES	20
EXHIBIT A – FLOOR PLAN DEPICTING THE PREMISES	
EXHIBIT A-1 – SITE PLAN	
EXHIBIT B -- INITIAL ALTERATIONS	
EXHIBIT C – COMMENCEMENT DATE MEMORANDUM	
EXHIBIT D – RULES AND REGULATIONS	

MULTI-TENANT LEASE

REFERENCE PAGES

BUILDING: 991 Corporate Boulevard
Linthicum, Maryland 21090

LANDLORD: RPH Industrial, LLC

LANDLORD'S ADDRESS: c/o RREEF Management
8280 Greensboro Drive, Suite 550
McLean, VA 22102

WIRE INSTRUCTIONS AND/OR ADDRESS FOR RENT PAYMENT: 75 Remittance Drive, Suite 96247
Chicago, Illinois 60675-6247

LEASE REFERENCE DATE: _____, 2004

TENANT: Erickson Retirement Communities, LLC

TENANT'S NOTICE ADDRESS: 701 Maiden Choice Lane
Baltimore, Maryland 21228

PREMISES ADDRESS: 991 Corporate Boulevard
Linthicum, Maryland 21090

PREMISES RENTABLE AREA: approximately 41,271 sq. ft. (for outline of
Premises see Exhibit A)

USE: Office uses

SCHEDULED COMMENCEMENT DATE: December 16, 2004

RENT COMMENCMENT DATE: The date determined in accordance with Section 2.3
hereof.

TERM OF LEASE: Approximately five (5) years, six (6) months
beginning on the Commencement Date and ending
on the Termination Date. The period from the
Commencement Date to the last day of the same
month is the "Commencement Month."

TERMINATION DATE: The last day of the sixty-sixth (66th) full calendar
month after (if the Commencement Month is not a
full calendar month), or from and including (if the
Commencement Month is a full calendar month),
the Commencement Month.

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Initials

ANNUAL RENT and MONTHLY INSTALLMENT
OF RENT(Article 3):

Period in Months from		Rentable Square Footage	Annual Rent Per Square Foot	Annual Rent	Monthly Installment of Rent
Commencement Date from	through				
1	2 1/2	41,271	\$0.00	\$0.00	\$0.00
2 1/2	12	41,271	\$15.25	\$629,382.75	\$52,448.56
13	24	41,271	\$15.63	\$645,065.73	\$53,755.48
25	36	41,271	\$16.02	\$661,161.42	\$55,096.79
37	48	41,271	\$16.42	\$677,669.82	\$56,472.49
49	60	41,271	\$16.83	\$694,590.93	\$57,882.58
61	66	41,271	\$17.25	\$711,924.75	\$59,327.06

*Notwithstanding the foregoing, Annual Rent will be abated until the Rent Commencement Date.

TENANT'S PROPORTIONATE SHARE: 53.40%

SECURITY DEPOSIT: \$52,448.56

ASSIGNMENT/SUBLETTING FEE \$1,000 (except that the fee will be \$500 for a Permitted Transferee)

REAL ESTATE BROKER DUE COMMISSION: CB Richard Ellis, Inc. and MacKenzie Commercial Real Estate Services, LLC

TENANT'S SIC CODE: _____

AMORTIZATION RATE: 10%

The Reference Pages information is incorporated into and made a part of the Lease. In the event of any conflict between any Reference Pages information and the Lease, the Lease shall control. This Lease includes Exhibits A through D, all of which are made a part of this Lease.

LANDLORD:

RPH INDUSTRIAL, LLC,
a Delaware limited liability company

By: RREEF Management Company,
a Delaware limited liability company,
its authorized representative

By: _____
Name: Patrick N. Connell
Title: Vice President/Regional Manager

Dated: _____, 2004

TENANT:

**ERICKSON RETIREMENT
COMMUNITIES, LLC,**
a Maryland limited liability company

By: _____
Name: _____
Title: _____

Dated: _____, 2004

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Initials

LEASE

By this Lease Landlord leases to Tenant and Tenant leases from Landlord the Premises in the Building as set forth and described on the Reference Pages. The Premises are depicted on the floor plan attached hereto as Exhibit A, and the Building is depicted on the site plan attached hereto as Exhibit A-1. The Reference Pages, including all terms defined thereon, are incorporated as part of this Lease.

1. USE AND RESTRICTIONS ON USE.

The Premises are to be used solely for the purposes set forth on the Reference Pages. Tenant shall not do or permit anything to be done in or about the Premises which will in any way materially obstruct or interfere with the rights of other tenants or occupants of the Building or injure, annoy, or disturb them, or allow the Premises to be used for any improper, immoral, unlawful, or objectionable purpose, or commit any waste. Tenant shall not do, permit or suffer in, on, or about the Premises the sale of any alcoholic liquor without the written consent of Landlord first obtained. Tenant shall comply with all governmental laws, ordinances and regulations applicable to the use of the Premises and its occupancy and shall promptly comply with all governmental orders and directions for the correction, prevention and abatement of any violations in the Building or appurtenant land, caused or permitted by, or resulting from the specific use by, Tenant, or in or upon, or in connection with, the Premises, all at Tenant's sole expense. Tenant shall not do or permit anything to be done on or about the Premises or bring or keep anything into the Premises which will in any way increase the rate of, invalidate or prevent the procuring of any insurance protecting against loss or damage to the Building or any of its contents by fire or other casualty or against liability for damage to property or injury to persons in or about the Building or any part thereof.

Tenant shall not, and shall not direct, suffer or permit any of its agents, contractors, employees, licensees or invitees (collectively, the "Tenant Entities") to at any time handle, use, manufacture, store or dispose of in or about the Premises or the Building any (collectively "Hazardous Materials") flammables, explosives, radioactive materials, hazardous wastes or materials, toxic wastes or materials, or other similar substances, petroleum products or derivatives or any substance subject to regulation by or under any federal, state and local laws and ordinances relating to the protection of the environment or the keeping, use or disposition of environmentally hazardous materials, substances, or wastes, presently in effect or hereafter adopted, all amendments to any of them, and all rules and regulations issued pursuant to any of such laws or ordinances (collectively "Environmental Laws"), nor shall Tenant suffer or permit any Hazardous Materials to be used in any manner not fully in compliance with all Environmental Laws, in the Premises or the Building and appurtenant land or allow the environment to become contaminated with any Hazardous Materials. Notwithstanding the foregoing, Tenant may handle, store, use or dispose of products containing small quantities of Hazardous Materials (such as aerosol cans containing insecticides, toner for copiers, paints, paint remover and the like) to the extent customary and necessary for the use of the Premises for general office purposes; provided that Tenant shall always handle, store, use, and dispose of any such Hazardous Materials in a safe and lawful manner and never allow such Hazardous Materials to contaminate the Premises, Building and appurtenant land or the environment. Tenant shall protect, defend, indemnify and hold each and all of the Landlord Entities (as defined in Article 30) harmless from and against any and all loss, claims, liability or costs (including court costs and reasonable attorney's fees) incurred by reason of any actual failure of Tenant to fully comply with all applicable Environmental Laws, or the presence, handling, use or disposition in or from the Premises of any Hazardous Materials by Tenant or any Tenant Entity (even though permissible under all applicable Environmental Laws or the provisions of this Lease), or by reason of any actual or asserted failure of Tenant to keep, observe, or perform any provision of this Section 1.

Landlord has no actual knowledge (without any independent inquiry or investigation) that Hazardous Materials are present in the Building in violation of Environmental Laws. Landlord agrees that Landlord shall not hold Tenant liable for any costs related to Hazardous Materials existing on the Premises prior to Tenant's original occupancy thereof.

Tenant and the Tenant Entities will be entitled to the non-exclusive use of the common areas of the Building as they exist from time to time during the Term, including the parking facilities, subject to Landlord's reasonable rules and regulations regarding such use. Landlord agrees to provide non-exclusive parking spaces to Tenant at the Building at a ratio of 4 to 5 spaces per 1,000 square feet of space leased by Tenant hereunder, subject to the foregoing provisions. Landlord agrees to stripe the loading area behind the Building if necessary to

accommodate the fulfillment of Tenant's parking ratio as set forth above, provided that such striping does not and will not interrupt or disrupt or interfere with the flow of traffic about the Building. However, in no event will Tenant or the Tenant Entities park more vehicles in the parking facilities than Tenant's Proportionate Share of the total parking spaces available for common use. The foregoing shall not be deemed to provide Tenant with an exclusive right to any parking spaces or any guaranty of the availability of any particular parking spaces or any specific number of parking spaces.

2. TERM; DETERMINATION OF RENT COMMENCEMENT DATE.

2.1 The Term of this Lease shall begin on the Commencement Date, and shall terminate on the Termination Date as shown on the Reference Pages, unless sooner terminated by the provisions of this Lease. On the Commencement Date, Landlord shall tender possession of the Premises. Tenant shall, at Landlord's request, execute and deliver a memorandum agreement provided by Landlord in the form of Exhibit C attached hereto, setting forth the actual Commencement Date, Rent Commencement Date, Termination Date and, if necessary, a revised rent schedule. Should Tenant fail to do so within thirty (30) days after Landlord's request, the information set forth in such memorandum provided by Landlord shall be conclusively presumed to be agreed and correct.

2.2 Tenant agrees that in the event of the inability of Landlord to deliver possession of the Premises on the Scheduled Commencement Date for any reason, Landlord shall not be liable for any damage resulting from such inability, but Tenant shall not be liable for any rent until the Rent Commencement Date. No such failure to give possession on the Scheduled Commencement Date shall affect the other obligations of Tenant under this Lease, except that if Landlord is unable to deliver possession of the Premises within one hundred twenty (120) days after the Scheduled Commencement Date (other than as a result of strikes, shortages of materials, holdover tenancies or similar matters beyond the reasonable control of Landlord and Tenant is notified by Landlord in writing as to such delay), Tenant shall have the option to terminate this Lease.

2.3 The Landlord's Work to be performed by Landlord to Space A (as defined on Exhibit B) of the Premises pursuant to Exhibit B to this Lease, will be completed by Landlord after the Commencement Date. Tenant shall deliver a punch list of items not completed within thirty (30) days after the Rent Commencement Date, Landlord agrees to proceed with due diligence to perform its obligations regarding such items. Because Landlord's Work will be installed in the Premises during Tenant's use and occupancy of the Premises, Tenant agrees that Tenant, and its employees, contractors, licensees and invitees, will cooperate in every reasonable way with Landlord to enable Landlord to install the Landlord's Work, and to facilitate such installation. Tenant further agrees that, except as to Landlord's or its agents' gross negligence or willful misconduct, Landlord shall not be liable for any damage to Tenant's personal property caused by Landlord's installation of the Landlord's Work, and Tenant waives all claims against Landlord associated therewith.

Annual Rent hereunder shall not commence until the "Rent Commencement Date." The "Rent Commencement Date" will be the later of (a) the date which is two (2) months and fifteen (15) days after the Commencement Date; (b) the date on which Landlord or Landlord's architect gives Tenant notice of substantial completion of the Landlord's Work (as defined in Exhibit B attached hereto); or (c) if Landlord reasonably determines that the date of substantial completion of the Landlord's Work is delayed by reason of Tenant Delays (as defined in Exhibit B attached hereto), the date on which, in Landlord's reasonable judgment, the Landlord's Work would have been substantially completed but for such Tenant Delays.

2.4 Provided that as of the time of the giving of the Extension Notice (as defined below) and the Commencement Date of the Extension Term, (as defined below) (a) Tenant is the Tenant originally named herein, (b) Tenant actually occupies all of the Premises initially demised under this Lease and any space added to the Premises and (c) no Event of Default exists or would exist but for the passage of time or the giving of notice, or both; then Tenant will have the right to extend the Term of this Lease for two consecutive additional terms of five (5) years each (each, an "Extension Term") commencing on the day following the expiration of the Term of this Lease (the "Commencement Date of the Extension Term"). Tenant will give Landlord notice (the "Extension Notice") of its election to extend the term of this Lease at least 9 months, but not more than 12 months, prior to the scheduled expiration date of the Term of this Lease (the "Notice Period"). If Tenant does not give the Extension Notice during the Notice Period, Tenant's right to extend the Term of this Lease will automatically terminate. Time is of the essence as to the giving of the Extension Notice.

The Annual Rent payable by Tenant to Landlord during the Extension Term will be the greater of (i) the Annual Rent applicable to the last year of the initial Term of this Lease, with annual increases of 2.5%, and (ii) the then prevailing market rate for comparable space at the Building and comparable buildings in the vicinity of the Building, taking into account the size of the Premises, the length of the renewal term, market escalations and the credit of Tenant. The Annual Rent will not be reduced by reason of any costs or expenses saved by Landlord by reason of Landlord's not having to find a new tenant for such premises (including, without limitation, brokerage commissions, costs of improvements, rent concessions or lost rental income during any vacancy period). In addition, Landlord may pass through as Additional Rent, Taxes, Insurance Premiums and Expenses (as defined in Section 4) whether on a triple net basis, or over a pre-determined base year, as part of the market rate terms for each renewal option. In the event Landlord and Tenant fail to reach an agreement on such rental rate, including any additional rent and execute the Amendment (defined below) at least 6 months prior to the expiration of the Term of this Lease, then Tenant's exercise of the renewal option will be deemed withdrawn, and the Lease will terminate on its original expiration date.

Except for the Annual Rent and any additional rent for Taxes, Insurance Premiums and Expenses as determined above, Tenant's occupancy of the Premises during each Extension Term will be on the same terms and conditions (including the payment of Additional Rent) as are in effect immediately prior to the expiration of the initial Term of this Lease; provided, however, Tenant will have no further right to any allowances, credits or abatements or any options to expand, contract, renew or extend the Lease.

Landlord will have no obligation to refurbish or otherwise improve the Premises for any Extension Term. The Premises will be tendered on each Commencement Date of the Extension Term in "as-is" condition.

If the Lease is extended for any Extension Term, Landlord will prepare, and both parties will execute, an amendment to the Lease confirming the extension of the Lease Term and the other provisions applicable thereto (the "Amendment").

3. RENT.

3.1 Commencing on the Rent Commencement Date, Tenant agrees to pay to Landlord the Annual Rent in effect from time to time by paying the Monthly Installment of Rent then in effect on or before the first day of each full calendar month during the Term. The Monthly Installment of Rent in effect at any time shall be one-twelfth (1/12) of the Annual Rent in effect at such time. Rent for any period during the Term which is less than a full month shall be a prorated portion of the Monthly Installment of Rent based upon the number of days in such month. Said rent shall be paid to Landlord, without deduction or offset and without notice or demand, at the Rent Payment Address, as set forth on the Reference Pages, or to such other person or at such other place as Landlord may from time to time designate in writing. If an Event of Default occurs, Landlord may require by notice to Tenant that all subsequent rent payments be made by an automatic payment from Tenant's bank account to Landlord's account, without cost to Landlord. Tenant must implement such automatic payment system prior to the next scheduled rent payment or within ten (10) days after Landlord's notice, whichever is later. Unless specified in this Lease to the contrary, all amounts and sums payable by Tenant to Landlord pursuant to this Lease shall be deemed additional rent.

3.2 Tenant recognizes that late payment of any rent or other sum due under this Lease will result in administrative expense to Landlord, the extent of which additional expense is extremely difficult and economically impractical to ascertain. Tenant therefore agrees that if rent or any other sum is not paid when due and payable pursuant to this Lease, a late charge shall be imposed in an amount equal to the greater of: (a) Fifty Dollars (\$50.00), or (b) six percent (6%) of the unpaid rent or other payment. The amount of the late charge to be paid by Tenant shall be reassessed and added to Tenant's obligation for each successive month until paid. The provisions of this Section 3.2 in no way relieve Tenant of the obligation to pay rent or other payments on or before the date on which they are due, nor do the terms of this Section 3.2 in any way affect Landlord's remedies pursuant to Article 19 of this Lease in the event said rent or other payment is unpaid after date due.

4. INTENTIONALLY DELETED.

5. **SECURITY DEPOSIT.** Tenant shall deposit the Security Deposit with Landlord upon the execution of this Lease. Said sum shall be held by Landlord as security for the faithful performance by Tenant of all the terms, covenants and conditions of this Lease to be kept and performed by Tenant and not as an advance rental deposit or as a measure of Landlord's damage in case of Tenant's default. If Tenant defaults with respect to any provision of this Lease, Landlord may use any part of the Security Deposit for the payment of any rent or any other sum in default, or for the payment of any amount which Landlord may spend or become obligated to spend by reason of Tenant's default, or to compensate Landlord for any other loss or damage which Landlord may suffer by reason of Tenant's default. If any portion is so used, Tenant shall within five (5) days after written demand therefore, deposit with Landlord an amount sufficient to restore the Security Deposit to its original amount and Tenant's failure to do so shall be a material breach of this Lease. Except to such extent, if any, as shall be required by law, Landlord shall not be required to keep the Security Deposit separate from its general funds, and Tenant shall not be entitled to interest on such deposit. If Tenant shall fully and faithfully perform every provision of this Lease to be performed by it, the Security Deposit or any balance thereof shall be returned to Tenant at such time after termination of this Lease when Landlord shall have determined that all of Tenant's obligations under this Lease have been fulfilled.

6. **ALTERATIONS.**

6.1 Except for those, if any, specifically provided for in **Exhibit B** to this Lease, and except for non-structural cosmetic alterations costing less than \$20,000, Tenant shall not make or suffer to be made any alterations, additions, or improvements, including, but not limited to, the attachment of any fixtures or equipment in, on, or to the Premises or any part thereof or the making of any improvements as required by Article 7, without the prior written consent of Landlord. When applying for such consent, Tenant shall, if requested by Landlord, furnish complete plans and specifications for such alterations, additions and improvements. Landlord's consent shall not be unreasonably withheld with respect to alterations which (i) are not structural in nature, (ii) are not visible from the exterior of the Building, (iii) do not affect or require modification of the Building's electrical, mechanical, plumbing, HVAC or other systems, and (iv) in aggregate do not cost more than \$5.00 per rentable square foot of that portion of the Premises affected by the alterations in question.

6.2 In the event Landlord consents to the making of any such alteration, addition or improvement by Tenant, the same (except non-structural, cosmetic changes costing less than \$20,000) shall be made by using either Landlord's contractor or a contractor reasonably approved by Landlord, in either event at Tenant's sole cost and expense. If Tenant shall employ any contractor other than Landlord's contractor and such other contractor or any subcontractor of such other contractor shall employ any non-union labor or supplier, Tenant shall be responsible for and hold Landlord harmless from any and all delays, damages and extra costs suffered by Landlord as a result of any dispute with any labor unions concerning the wage, hours, terms or conditions of the employment of any such labor.

6.3 All alterations, additions or improvements proposed by Tenant shall be constructed in accordance with all government laws, ordinances, rules and regulations, using Building standard materials where applicable, and Tenant shall, prior to construction, provide the additional insurance required under Article 11 in such case, and also all such assurances to Landlord as Landlord shall reasonably require to assure payment of the costs thereof, including but not limited to, notices of non-responsibility, waivers of lien, surety company performance bonds and funded construction escrows and to protect Landlord and the Building and appurtenant land against any loss from any mechanic's, materialmen's or other liens. Tenant shall pay in addition to any sums due pursuant to Article 4, any increase in real estate taxes attributable to any such alteration, addition or improvement for so long, during the Term, as such increase is ascertainable; at Landlord's election said sums shall be paid in the same way as sums due under Article 4. Landlord may, as a condition to its consent to any particular alterations or improvements, require Tenant to deposit with Landlord the amount reasonably estimated by Landlord as sufficient to cover the cost of removing such alterations or improvements and restoring the Premises, to the extent required under Section 26.2.

7. **REPAIR.**

7.1 Landlord shall have no obligation to alter, remodel, improve, repair, decorate or paint the Premises, except as specified in **Exhibit B** if attached to this Lease and except that Landlord shall repair and maintain the structural portions of the roof, foundation and walls of the Building. By taking possession of the Premises, Tenant accepts them as being in good order, condition and repair and in the condition in which Landlord is obligated to deliver them, except as set forth in the punch list to be delivered pursuant to Section 2.1. It is hereby

understood and agreed that no representations respecting the condition of the Premises or the Building have been made by Landlord to Tenant, except as specifically set forth in this Lease. Landlord shall not be liable for any failure to make any repairs or to perform any maintenance unless such failure shall persist for an unreasonable time after written notice of the need of such repairs or maintenance is given to Landlord by Tenant.

7.2 Except as specified on **Exhibit B**, Tenant shall at its own cost and expense keep and maintain all parts of the Premises and such portion of the Building and improvements as are within the exclusive control of Tenant in good condition (ordinary wear and tear excepted), promptly making all necessary repairs and replacements, whether ordinary or extraordinary, with materials and workmanship of the same character, kind and quality as the original (including, but not limited to, repair and replacement of all fixtures installed by Tenant, water heaters serving the Premises, windows, glass and plate glass, doors, exterior stairs, skylights, any special office entries, interior walls and finish work, floors and floor coverings, heating and air conditioning systems serving the Premises, electrical systems and fixtures, sprinkler systems, dock boards, truck doors, dock bumpers, plumbing work and fixtures, and performance of regular removal of trash and debris). Tenant as part of its obligations hereunder shall keep the Premises in a clean and sanitary condition. Upon termination of this Lease, Tenant will yield up the Premises to Landlord in good condition and repair, loss by fire or other casualty excepted (but not excepting any damage to glass). Tenant shall, at its own cost and expense, repair any damage to the Premises or the Building resulting from and/or caused in whole or in part by the negligence or misconduct of Tenant, its agents, employees, contractors, invitees, or any other person entering upon the Premises as a result of Tenant's business activities or caused by Tenant's default hereunder.

7.3 Except as provided in Article 22, there shall be no abatement of rent and no liability of Landlord by reason of any injury to or interference with Tenant's business arising from the making of any repairs, alterations or improvements in or to any portion of the Building or the Premises or to fixtures, appurtenances and equipment in the Building. Except to the extent, if any, prohibited by law, Tenant waives the right to make repairs at Landlord's expense under any law, statute or ordinance now or hereafter in effect.

7.4 Tenant shall, at its own cost and expense, enter into a regularly scheduled preventive maintenance/service contract with a maintenance contractor approved by Landlord for servicing all heating and air conditioning systems and equipment serving the Premises (the "HVAC System") (and a copy thereof shall be furnished to Landlord). The service contract must include all services suggested by the equipment manufacturer in the operation/maintenance manual and must become effective within thirty (30) days of the date Tenant takes possession of the Premises. Should Tenant fail to do so, Landlord may, upon notice to Tenant, enter into such a maintenance/ service contract on behalf of Tenant or perform the work and in either case, charge Tenant the cost thereof along with a reasonable amount for Landlord's overhead. Notwithstanding the terms of Section 7.2 of this Lease to the contrary, in the event that Tenant must replace the HVAC system serving the Premises, then Tenant shall only pay that percentage of the cost of replacement of the HVAC System which is equal to the ratio by which the length of the remaining years the Term of the Lease bears to the useful life of such replacement, as determined in accordance with generally accepted accounting principles.

7.5 To Landlord's actual knowledge, but without any independent investigation, the public areas of the Building comply with the Americans with Disability Act ("ADA"), provided that the Building is not a place of public accommodation. Landlord agrees to make changes to the public areas of the Building required by any governmental entity in a written notice to Landlord to satisfy the ADA.

8. **LIENS.** Tenant shall keep the Premises, the Building and appurtenant land and Tenant's leasehold interest in the Premises free from any liens arising out of any services, work or materials performed, furnished, or contracted for by Tenant, or obligations incurred by Tenant. In the event that Tenant fails, within ten (10) days following the imposition of any such lien, to either cause the same to be released of record or provide Landlord with insurance against the same issued by a major title insurance company or such other protection against the same as Landlord shall accept (such failure to constitute an Event of Default), Landlord shall have the right to cause the same to be released by such means as it shall deem proper, including payment of the claim giving rise to such lien. All such sums paid by Landlord and all expenses incurred by it in connection therewith shall be payable to it by Tenant within five (5) days Landlord's demand.

9. ASSIGNMENT AND SUBLETTING.

9.1 Tenant shall not have the right to assign or pledge this Lease or to sublet the whole or any part of the Premises whether voluntarily or by operation of law, or permit the use or occupancy of the Premises by anyone other than Tenant, and shall not make, suffer or permit such assignment, subleasing or occupancy without the prior written consent of Landlord, such consent not to be unreasonably withheld or conditioned, and said restrictions shall be binding upon any and all assignees of the Lease and subtenants of the Premises. In the event Tenant desires to sublet, or permit such occupancy of, the Premises, or any portion thereof, or assign this Lease, Tenant shall give written notice thereof to Landlord at least sixty (60) days but no more than one hundred twenty (120) days prior to the proposed commencement date of such subletting or assignment, which notice shall set forth the name of the proposed subtenant or assignee, the relevant terms of any sublease or assignment and copies of financial reports and other relevant financial information of the proposed subtenant or assignee.

9.2 Notwithstanding any assignment or subletting, permitted or otherwise, Tenant shall at all times remain directly, primarily and fully responsible and liable for the payment of the rent specified in this Lease and for compliance with all of its other obligations under the terms, provisions and covenants of this Lease. Upon the occurrence of an Event of Default, if the Premises or any part of them are then assigned or sublet, Landlord, in addition to any other remedies provided in this Lease or provided by law, may, at its option, collect directly from such assignee or subtenant all rents due and becoming due to Tenant under such assignment or sublease and apply such rent against any sums due to Landlord from Tenant under this Lease, and no such collection shall be construed to constitute a novation or release of Tenant from the further performance of Tenant's obligations under this Lease.

9.3 In addition to Landlord's right to approve of any subtenant or assignee, Landlord shall have the option, in its sole discretion, in the event of any proposed subletting or assignment, to terminate this Lease, or in the case of a proposed subletting of less than the entire Premises, to recapture the portion of the Premises to be sublet, as of the date the subletting or assignment is to be effective. The option shall be exercised, if at all, by Landlord giving Tenant written notice given by Landlord to Tenant within thirty (30) days following Landlord's receipt of Tenant's written notice as required above. However, if Tenant notifies Landlord, within five (5) business days after receipt of Landlord's termination notice, that Tenant is rescinding its proposed assignment or sublease, the termination notice shall be void and the Lease shall continue in full force and effect. If this Lease shall be terminated with respect to the entire Premises pursuant to this Section 9.3, the Term of this Lease shall end on the date stated in Tenant's notice as the effective date of the sublease or assignment as if that date had been originally fixed in this Lease for the expiration of the Term. If Landlord recaptures under this Section 9.3 only a portion of the Premises, the rent to be paid from time to time during the unexpired Term shall abate proportionately based on the proportion by which the approximate square footage of the remaining portion of the Premises shall be less than that of the Premises as of the date immediately prior to such recapture. Tenant shall, at Tenant's own cost and expense, discharge in full any outstanding commission obligation which may be due and owing as a result of any proposed assignment or subletting, whether or not the Premises are recaptured pursuant to this Section 9.3 and rented by Landlord to the proposed tenant or any other tenant.

9.4 In the event that Tenant sells, sublets, assigns or transfers this Lease, Tenant shall pay to Landlord as additional rent an amount equal to one hundred percent (100%) of any Increased Rent (as defined below), less the Costs Component (as defined below), when and as such Increased Rent is received by Tenant. As used in this Section 9.4, "Increased Rent" shall mean the excess of (i) all rent and other consideration which Tenant is entitled to receive by reason of any sale, sublease, assignment or other transfer of this Lease, over (ii) the rent otherwise payable by Tenant under this Lease at such time. For purposes of the foregoing, any consideration received by Tenant in form other than cash shall be valued at its fair market value as determined by Landlord in good faith. The "Costs Component" is that amount which, if paid monthly, would fully amortize on a straight-line basis, over the entire period for which Tenant is to receive Increased Rent, the reasonable costs incurred by Tenant for leasing commissions and tenant improvements in connection with such sublease, assignment or other transfer.

9.5 Notwithstanding any other provision hereof, it shall be considered reasonable for Landlord to withhold its consent to any assignment of this Lease or sublease of any portion of the Premises if at the time of either Tenant's notice of the proposed assignment or sublease or the proposed commencement date thereof, there shall exist any uncured Event of Default of Tenant, or if the proposed assignee or sublessee is an entity: (a) with which Landlord is already in negotiation; (b) is already an occupant of the Building unless Landlord is unable to

provide the amount of space required by such occupant; (c) is a governmental agency; (d) is incompatible with the character of occupancy of the Building; (e) with which the payment for the sublease or assignment is determined in whole or in part based upon its net income or profits; or (f) would subject the Premises to a use which would: (i) involve increased personnel or wear upon the Building; (ii) violate any exclusive right granted to another tenant of the Building; (iii) require any addition to or modification of the Premises or the Building in order to comply with building code or other governmental requirements; or, (iv) involve a violation of Section 1.2. Tenant expressly agrees that for the purposes of any statutory or other requirement of reasonableness on the part of Landlord, Landlord's refusal to consent to any assignment or sublease for any of the reasons described in this Section 9.5, shall be conclusively deemed to be reasonable.

9.6 Upon any request to assign or sublet, Tenant will pay to Landlord the Assignment/Subletting Fee plus, on demand, a sum equal to all of Landlord's costs, including reasonable attorney's fees, incurred in investigating and considering any proposed or purported assignment or pledge of this Lease or sublease of any of the Premises, regardless of whether Landlord shall consent to, refuse consent, or determine that Landlord's consent is not required for, such assignment, pledge or sublease. Any purported sale, assignment, mortgage, transfer of this Lease or subletting which does not comply with the provisions of this Article 9 shall be void.

9.7 If Tenant is a corporation, limited liability company, partnership or trust, any transfer or transfers of or change or changes within any twelve (12) month period in the number of the outstanding voting shares of the corporation or limited liability company, the general partnership interests in the partnership or the identity of the persons or entities controlling the activities of such partnership or trust resulting in the persons or entities owning or controlling a majority of such shares, partnership interests or activities of such partnership or trust at the beginning of such period no longer having such ownership or control shall be regarded as equivalent to an assignment of this Lease to the persons or entities acquiring such ownership or control and shall be subject to all the provisions of this Article 9 to the same extent and for all intents and purposes as though such an assignment.

9.8 Notwithstanding the foregoing provisions of this Article to the contrary, Tenant shall be permitted to assign this Lease, or sublet all or a portion of the Premises, to an Affiliate (as defined below, herein a "Permitted Transferee") of Tenant without the prior consent of Landlord, if all of the following conditions are first satisfied:

9.8.1 Tenant shall not then be in default under this Lease;

9.8.2 a fully executed copy of such assignment or sublease, the assumption of this Lease by the assignee or acceptance of the sublease by the sublessee, and such other information regarding the assignment or sublease as Landlord may reasonably request, shall have been delivered to Landlord;

9.8.3 the Premises shall continue to be operated solely for the use specified in the Reference Page or other use acceptable to Landlord in its sole discretion;

9.8.4 any guarantor of this Lease reaffirms that its Guaranty remains in full force and effect;

and

9.8.5 Tenant shall pay all costs reasonably incurred by Landlord in connection with such assignment or subletting, including without limitation attorneys' fees.

Tenant acknowledges (and, at Landlord's request, at the time of such assignment or subletting shall confirm) that in each instance Tenant shall remain liable for performance of the terms and conditions of the Lease despite such assignment or subletting. As used herein the term "Affiliate" shall mean an entity which (i) directly or indirectly controls Tenant or (ii) is under the direct or indirect control of Tenant or (iii) is under common direct or indirect control with Tenant, (iv) is the successor in interest to Tenant by way of merger or consolidation, or by sale of all of the stock of Tenant or of all of the assets of Tenant, so long as the tangible net worth of the surviving or successor entity following such transaction is at least as much as the tangible net worth of Tenant immediately preceding the transaction or at the Commencement Date, whichever is higher. Control shall mean ownership of fifty-one percent (51%) or more of the voting securities or rights of the controlled entity.

10. **INDEMNIFICATION.** 10.1 None of the Landlord Entities shall be liable and Tenant hereby waives all claims against them for any damage to any property or any injury to any person in or about the Premises or the Building by or from any cause whatsoever (including without limiting the foregoing, rain or water leakage of any character from the roof, windows, walls, basement, pipes, plumbing works or appliances, the Building not being in good condition or repair, gas, fire, oil, electricity or theft), except to the extent caused by or arising from the gross negligence or willful misconduct of Landlord or its agents, employees or contractors. Tenant shall protect, indemnify and hold the Landlord Entities harmless from and against any and all loss, claims, liability or costs (including court costs and attorney's fees) incurred by reason of (a) any damage to any property (including but not limited to property of any Landlord Entity) or any injury (including but not limited to death) to any person occurring in, on or about the Premises or the Building to the extent that such injury or damage shall be caused by or arise from any actual or alleged act, neglect, fault, or omission by or of Tenant or any Tenant Entity to meet any standards imposed by any duty with respect to the injury or damage; (b) the conduct or management of any work or thing whatsoever done by the Tenant in or about the Premises or from transactions of the Tenant concerning the Premises; (c) Tenant's failure to comply with any and all governmental laws, ordinances and regulations applicable to the condition or use of the Premises or its occupancy; or (d) any breach or default on the part of Tenant in the performance of any covenant or agreement on the part of the Tenant to be performed pursuant to this Lease. The provisions of this Article shall survive the termination of this Lease with respect to any claims or liability accruing prior to such termination.

10.2 Landlord shall protect, indemnify and hold Tenant harmless from and against any and all loss, claims, liability or costs (including court costs and attorney's fees) arising out of the gross negligence or willful misconduct of Landlord or its agents or employees.

11. **INSURANCE.**

11.1 Tenant shall keep in force throughout the Term: (a) a Commercial General Liability insurance policy or policies to protect the Landlord Entities against any liability to the public or to any invitee of Tenant or a Landlord Entity incidental to the use of or resulting from any accident occurring in or upon the Premises with a limit of not less than \$1,000,000 per occurrence and not less than \$2,000,000 in the annual aggregate, or such larger amount as Landlord may prudently require from time to time, covering bodily injury and property damage liability and \$1,000,000 products/completed operations aggregate; (b) Business Auto Liability covering owned, non-owned and hired vehicles with a limit of not less than \$1,000,000 per accident; (c) insurance protecting against liability under Worker's Compensation Laws with limits at least as required by statute; (d) Employers Liability with limits of \$1,000,000 each accident, \$1,000,000 disease policy limit, \$1,000,000 disease--each employee; (e) All Risk or Special Form coverage protecting Tenant against loss of or damage to Tenant's alterations, additions, improvements, carpeting, floor coverings, panelings, decorations, fixtures, inventory and other business personal property situated in or about the Premises to the full replacement value of the property so insured, (f) Business Interruption Insurance for 100% of the 12 months actual loss sustained, and (g) Excess Liability in the amount of \$5,000,000.

11.2 The aforesaid policies shall (a) be provided at Tenant's expense; (b) name the Landlord Entities as additional insureds (General Liability) and loss payee, as their interests may appear (Property—Special Form); (c) be issued by an insurance company with a minimum Best's rating of "A:VII" during the Term; and (d) provide that said insurance shall not be canceled unless thirty (30) days prior written notice (ten days for non-payment of premium) shall have been given to Landlord; a certificate of Liability insurance on Accord Form 25 and a certificate of Property insurance on Accord Form 27 shall be delivered to Landlord by Tenant upon the Commencement Date and at least thirty (30) days prior to each renewal of said insurance.

11.3 Whenever Tenant shall undertake any alterations, additions or improvements in, to or about the Premises ("Work") the aforesaid insurance protection must extend to and include injuries to persons and damage to property arising in connection with such Work, without limitation including liability under any applicable structural work act, and such other insurance as Landlord shall require; and the policies of or certificates evidencing such insurance must be delivered to Landlord prior to the commencement of any such Work.

11.4 Landlord shall keep in force throughout the Term Commercial General Liability Insurance and All Risk or Special Form coverage insuring the Landlord and the Building, in such amounts and with such deductibles as Landlord determines from time to time in accordance with sound and reasonable risk management principles.

12. **WAIVER OF SUBROGATION.** So long as their respective insurers so permit, Tenant and Landlord hereby mutually waive their respective rights of recovery against each other for any loss insured by fire, extended coverage, All Risks or other insurance now or hereafter existing for the benefit of the respective party but only to the extent of the net insurance proceeds payable under such policies. Each party shall obtain any special endorsements required by their insurer to evidence compliance with the aforementioned waiver.

13. **SERVICES AND UTILITIES; JANITORIAL SERVICES.** Tenant shall pay for all water, gas, heat, light, power, telephone, sewer, sprinkler system charges and other utilities and services used on or from the Premises, together with any taxes, penalties, and surcharges or the like pertaining thereto and any maintenance charges for utilities. Tenant shall pay for all janitorial and cleaning services for the Premises. Tenant shall furnish all electric light bulbs, tubes and ballasts, battery packs for emergency lighting and fire extinguishers. If any such services are not separately metered to Tenant, Tenant shall pay such proportion of all charges jointly metered with other premises as determined by Landlord, in its sole discretion, to be reasonable. Any such charges paid by Landlord and assessed against Tenant shall be promptly payable to Landlord on demand and shall be additional rent hereunder. Tenant will not, without the written consent of Landlord, contract with a utility provider to service the Premises with any utility, including, but not limited to, telecommunications, electricity, water, sewer or gas, which is not previously providing such service to other tenants in the Building. Landlord shall in no event be liable for any interruption or failure of utility services on or to the Premises.

14. **HOLDING OVER.** Tenant shall pay Landlord for each day Tenant retains possession of the Premises or part of them after termination of this Lease by lapse of time or otherwise at the rate ("Holdover Rate") which shall be One Hundred Fifty Percent (150%) of the greater of (a) the amount of the Annual Rent for the last period prior to the date of such termination plus all Rent Adjustments under Article 4; and (b) the then market rental value of the Premises as determined by Landlord assuming a new lease of the Premises of the then usual duration and other terms, in either case, prorated on a daily basis, and also pay all damages sustained by Landlord by reason of such retention. If Landlord gives notice to Tenant of Landlord's election to such effect, such holding over shall constitute renewal of this Lease for a period from month to month, at the Holdover Rate, but if the Landlord does not so elect, no such renewal shall result notwithstanding acceptance by Landlord of any sums due hereunder after such termination; and instead, a tenancy at sufferance at the Holdover Rate shall be deemed to have been created. In any event, no provision of this Article 14 shall be deemed to waive Landlord's right of reentry or any other right under this Lease or at law.

15. **SUBORDINATION.** Without the necessity of any additional document being executed by Tenant for the purpose of effecting a subordination, this Lease shall be subject and subordinate at all times to ground or underlying leases and to the lien of any mortgages or deeds of trust now or hereafter placed on, against or affecting the Building, Landlord's interest or estate in the Building, or any ground or underlying lease; provided, however, that if the lessor, mortgagee, trustee, or holder of any such mortgage or deed of trust elects to have Tenant's interest in this Lease be superior to any such instrument, then, by notice to Tenant, this Lease shall be deemed superior, whether this Lease was executed before or after said instrument. Notwithstanding the foregoing, Tenant covenants and agrees to execute and deliver within ten (10) days of Landlord's request such further instruments evidencing such subordination or superiority of this Lease as may be required by Landlord. Landlord agrees to request from the holder of any mortgage or deed of trust on the Building, a subordination, non-disturbance and attornment agreement, which, among other things, grants Tenant the right to nondisturbance under the Lease upon a foreclosure under such mortgage or deed of trust so long as Tenant is not then in default under this Lease.

16. **RULES AND REGULATIONS.** Tenant shall faithfully observe and comply with all the rules and regulations as set forth in Exhibit D to this Lease and all reasonable and non-discriminatory modifications of and additions to them from time to time put into effect by Landlord. Landlord shall not be responsible to Tenant for the non-performance by any other tenant or occupant of the Building of any such rules and regulations.

17. **REENTRY BY LANDLORD.**

17.1 Landlord reserves and shall at all times have the right to re-enter the Premises to inspect the same, to show said Premises to prospective purchasers and mortgagees and, during the last 9 months of the Term, to prospective tenants, and to alter, improve or repair the Premises and any portion of the Building, without abatement of rent, and may for that purpose erect, use and maintain scaffolding, pipes, conduits and other necessary structures

and open any wall, ceiling or floor in and through the Building and Premises where reasonably required by the character of the work to be performed, provided entrance to the Premises shall not be blocked thereby, and further provided that the business of Tenant shall not be interfered with unreasonably. Notwithstanding the foregoing, except in the event of an emergency, Landlord shall give Tenant reasonable advance notice. Landlord shall have the right at any time to change the arrangement and/or locations of entrances, or passageways, doors and doorways, and corridors, windows, elevators, stairs, toilets or other public parts of the Building and to change the name, number or designation by which the Building is commonly known, provided that Tenant's access to and use of the Premises is not adversely impacted in any material respect. In the event that Landlord damages any portion of any wall or wall covering, ceiling, or floor or floor covering within the Premises, Landlord shall repair or replace the damaged portion to match the original as nearly as commercially reasonable but shall not be required to repair or replace more than the portion actually damaged. Tenant hereby waives any claim for damages for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned by any action of Landlord authorized by this Article 17.

17.2 For each of the aforesaid purposes, Landlord shall at all times have and retain a key with which to unlock all of the doors in the Premises, excluding Tenant's vaults and safes or special security areas (designated in advance), and Landlord shall have the right to use any and all means which Landlord may deem proper to open said doors in an emergency to obtain entry to any portion of the Premises. As to any portion to which access cannot be had by means of a key or keys in Landlord's possession, Landlord is authorized to gain access by such means as Landlord shall elect and the cost of repairing any damage occurring in doing so shall be borne by Tenant and paid to Landlord within thirty (30) days of Landlord's demand with written documentation of said expense.

18. DEFAULT.

18.1 Except as otherwise provided in Article 20, the following events shall be deemed to be Events of Default under this Lease:

18.1.1 Tenant shall fail to pay when due any sum of money becoming due to be paid to Landlord under this Lease, whether such sum be any installment of the rent reserved by this Lease, any other amount treated as additional rent under this Lease, or any other payment or reimbursement to Landlord required by this Lease, whether or not treated as additional rent under this Lease, and such failure shall continue for a period of five (5) days after written notice that such payment was not made when due, but if any such notice shall be given twice, for the twelve (12) month period commencing with the date of such notice, the failure to pay within five (5) days after due any additional sum of money becoming due to be paid to Landlord under this Lease during such period shall be an Event of Default, without notice.

18.1.2 Tenant shall fail to comply with any term, provision or covenant of this Lease which is not provided for in another Section of this Article and shall not cure such failure within twenty (20) days (forthwith, if the failure involves a hazardous condition) after written notice of such failure to Tenant provided, however, that such failure shall not be an event of default if such failure could not reasonably be cured during such twenty (20) day period, Tenant has commenced the cure within such twenty (20) day period and thereafter is diligently pursuing such cure to completion, but the total aggregate cure period shall not exceed ninety (90) days.

18.1.3 Tenant shall fail to vacate the Premises immediately upon termination of this Lease, by lapse of time or otherwise, or upon termination of Tenant's right to possession only.

18.1.4 Tenant shall become insolvent, admit in writing its inability to pay its debts generally as they become due, file a petition in bankruptcy or a petition to take advantage of any insolvency statute, make an assignment for the benefit of creditors, make a transfer in fraud of creditors, apply for or consent to the appointment of a receiver of itself or of the whole or any substantial part of its property, or file a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws, as now in effect or hereafter amended, or any other applicable law or statute of the United States or any state thereof.

18.1.5 A court of competent jurisdiction shall enter an order, judgment or decree adjudicating Tenant bankrupt, or appointing a receiver of Tenant, or of the whole or any substantial part of its property, without the consent of Tenant, or approving a petition filed against Tenant seeking reorganization or arrangement of Tenant

under the bankruptcy laws of the United States, as now in effect or hereafter amended, or any state thereof, and such order, judgment or decree shall not be vacated or set aside or stayed within sixty (60) days from the date of entry thereof.

19. **REMEDIES.**

19.1 Except as otherwise provided in Article 20, upon the occurrence of any of the Events of Default described or referred to in Article 18, Landlord shall have the option to pursue any one or more of the following remedies without any notice or demand whatsoever, concurrently or consecutively and not alternatively:

19.1.1 Landlord may, at its election, terminate this Lease or terminate Tenant's right to possession only, without terminating the Lease.

19.1.2 Upon any termination of this Lease, whether by lapse of time or otherwise, or upon any termination of Tenant's right to possession without termination of the Lease, Tenant shall surrender possession and vacate the Premises immediately, and deliver possession thereof to Landlord, and Tenant hereby grants to Landlord full and free license to enter into and upon the Premises in such event and to repossess Landlord of the Premises as of Landlord's former estate and to expel or remove Tenant and any others who may be occupying or be within the Premises and to remove Tenant's signs and other evidence of tenancy and all other property of Tenant therefrom without being deemed in any manner guilty of trespass, eviction or forcible entry or detainer, and without incurring any liability for any damage resulting therefrom, Tenant waiving any right to claim damages for such re-entry and expulsion, and without relinquishing Landlord's right to rent or any other right given to Landlord under this Lease or by operation of law.

19.1.3 Upon any termination of this Lease, whether by lapse of time or otherwise, Landlord shall be entitled to recover as damages, all rent, including any amounts treated as additional rent under this Lease, and other sums due and payable by Tenant on the date of termination, plus as liquidated damages and not as a penalty, an amount equal to the sum of: (a) an amount equal to the then present value of the rent reserved in this Lease for the residue of the stated Term of this Lease including any amounts treated as additional rent under this Lease and all other sums provided in this Lease to be paid by Tenant, minus the fair rental value of the Premises for such residue; (b) the value of the time and expense necessary to obtain a replacement tenant or tenants, and the estimated expenses described in Section 19.1.4 relating to recovery of the Premises, preparation for reletting and for reletting itself; and (c) the cost of performing any other covenants which would have otherwise been performed by Tenant.

19.1.4 Upon any termination of Tenant's right to possession only without termination of the Lease:

19.1.4.1 Neither such termination of Tenant's right to possession nor Landlord's taking and holding possession thereof as provided in Section 19.1.2 shall terminate the Lease or release Tenant, in whole or in part, from any obligation, including Tenant's obligation to pay the rent, including any amounts treated as additional rent, under this Lease for the full Term, and if Landlord so elects Tenant shall continue to pay to Landlord the entire amount of the rent as and when it becomes due, including any amounts treated as additional rent under this Lease, for the remainder of the Term plus any other sums provided in this Lease to be paid by Tenant for the remainder of the Term.

19.1.4.2 Landlord shall use commercially reasonable efforts to relet the Premises or portions thereof to the extent required by applicable law. Landlord and Tenant agree that nevertheless Landlord shall at most be required to use only the same efforts Landlord then uses to lease premises in the Building generally and that in any case that Landlord shall not be required to give any preference or priority to the showing or leasing of the Premises or portions thereof over any other space that Landlord may be leasing or have available and may place a suitable prospective tenant in any such other space regardless of when such other space becomes available and that Landlord shall have the right to relet the Premises for a greater or lesser term than that remaining under this Lease, the right to relet only a portion of the Premises, or a portion of the Premises or the entire Premises as a part of a larger area, and the right to change the character or use of the Premises. In connection with or in preparation for any reletting, Landlord may, but shall not be required to, make repairs, alterations and additions in or to the Premises

and redecorate the same to the extent Landlord deems necessary or desirable, and Tenant shall pay the cost thereof, together with Landlord's expenses of reletting, including, without limitation, any commission incurred by Landlord, within five (5) days of Landlord's demand. Landlord shall not be required to observe any instruction given by Tenant about any reletting or accept any tenant offered by Tenant unless such offered tenant has a credit-worthiness acceptable to Landlord and leases the entire Premises upon terms and conditions including a rate of rent (after giving effect to all expenditures by Landlord for tenant improvements, broker's commissions and other leasing costs) all no less favorable to Landlord than as called for in this Lease, nor shall Landlord be required to make or permit any assignment or sublease for more than the current term or which Landlord would not be required to permit under the provisions of Article 9.

19.1.4.3 Until such time as Landlord shall elect to terminate the Lease and shall thereupon be entitled to recover the amounts specified in such case in Section 19.1.3, Tenant shall pay to Landlord upon demand the full amount of all rent, including any amounts treated as additional rent under this Lease and other sums reserved in this Lease for the remaining Term, together with the costs of repairs, alterations, and Landlord's expenses of reletting and the collection of the rent accruing therefrom (including reasonable attorney's fees and broker's commissions), as the same shall then be due or become due from time to time, less only such consideration as Landlord may have received from any reletting of the Premises; and Tenant agrees that Landlord may file suits from time to time to recover any sums falling due under this Article 19 as they become due. Any proceeds of reletting by Landlord in excess of the amount then owed by Tenant to Landlord from time to time shall be credited against Tenant's future obligations under this Lease but shall not otherwise be refunded to Tenant or inure to Tenant's benefit.

19.2 Upon the occurrence of an Event of Default, Landlord may (but shall not be obligated to) cure such default at Tenant's sole expense. Without limiting the generality of the foregoing, Landlord may, at Landlord's option, enter into and upon the Premises if Landlord determines in its sole discretion that Tenant is not acting within a commercially reasonable time to maintain, repair or replace anything for which Tenant is responsible under this Lease or to otherwise effect compliance with its obligations under this Lease and correct the same, without being deemed in any manner guilty of trespass, eviction or forcible entry and detainer and without incurring any liability for any damage or interruption of Tenant's business resulting therefrom and Tenant agrees to reimburse Landlord within five (5) days of Landlord's demand as additional rent, for any expenses which Landlord may incur in thus effecting compliance with Tenant's obligations under this Lease, plus interest from the date of expenditure by Landlord at the Wall Street Journal prime rate.

19.3 Tenant understands and agrees that in entering into this Lease, Landlord is relying upon receipt of all the Annual and Monthly Installments of Rent to become due with respect to all the Premises originally leased hereunder over the full Initial Term of this Lease for amortization, including interest at the Amortization Rate. For purposes hereof, the "Concession Amount" shall be defined as the aggregate of all amounts forgone or expended by Landlord as free rent under the lease, under Exhibit B hereof for construction allowances (excluding therefrom any amounts expended by Landlord for Landlord's Work, as defined in Exhibit B), and for brokers' commissions payable by reason of this Lease. Accordingly, Tenant agrees that if this Lease or Tenant's right to possession of the Premises leased hereunder shall be terminated as of any date ("Default Termination Date") prior to the expiration of the full Initial Term hereof by reason of a default of Tenant, there shall be due and owing to Landlord as of the day prior to the Default Termination Date, as rent in addition to all other amounts owed by Tenant as of such Date, the amount ("Unamortized Amount") of the Concession Amount determined as set forth below; provided, however, that in the event that such amounts are recovered by Landlord pursuant to any other provision of this Article 19, Landlord agrees that it shall not attempt to recover such amounts pursuant to this Paragraph 19.3. For the purposes hereof, the Unamortized Amount shall be determined in the same manner as the remaining principal balance of a mortgage with interest at the Amortization Rate payable in level payments over the same length of time as from the effectuation of the Concession concerned to the end of the full Initial Term of this Lease would be determined. The foregoing provisions shall also apply to and upon any reduction of space in the Premises, as though such reduction were a termination for Tenant's default, except that (i) the Unamortized Amount shall be reduced by any amounts paid by Tenant to Landlord to effectuate such reduction and (ii) the manner of application shall be that the Unamortized Amount shall first be determined as though for a full termination as of the Effective Date of the elimination of the portion, but then the amount so determined shall be multiplied by the fraction of which the numerator is the rentable square footage of the eliminated portion and the denominator is the rentable square footage of the Premises originally leased hereunder; and the amount thus obtained shall be the Unamortized Amount.

19.4 If, on account of any breach or default by Tenant in Tenant's obligations under the terms and conditions of this Lease, it shall become necessary or appropriate for Landlord to employ or consult with an attorney or collection agency concerning or to enforce or defend any of Landlord's rights or remedies arising under this Lease or to collect any sums due from Tenant, Tenant agrees to pay all costs and fees so incurred by Landlord, including, without limitation, reasonable attorneys' fees and costs. **TENANT EXPRESSLY WAIVES ANY RIGHT TO: (A) TRIAL BY JURY; AND (B) SERVICE OF ANY NOTICE REQUIRED BY ANY PRESENT OR FUTURE LAW OR ORDINANCE APPLICABLE TO LANDLORDS OR TENANTS BUT NOT REQUIRED BY THE TERMS OF THIS LEASE.**

19.5 Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies provided in this Lease or any other remedies provided by law (all such remedies being cumulative), nor shall pursuit of any remedy provided in this Lease constitute a forfeiture or waiver of any rent due to Landlord under this Lease or of any damages accruing to Landlord by reason of the violation of any of the terms, provisions and covenants contained in this Lease.

19.6 No act or thing done by Landlord or its agents during the Term shall be deemed a termination of this Lease or an acceptance of the surrender of the Premises, and no agreement to terminate this Lease or accept a surrender of said Premises shall be valid, unless in writing signed by both Landlord and Tenant. No waiver by Landlord of any violation or breach of any of the terms, provisions and covenants contained in this Lease shall be deemed or construed to constitute a waiver of any other violation or breach of any of the terms, provisions and covenants contained in this Lease. Landlord's acceptance of the payment of rental or other payments after the occurrence of an Event of Default shall not be construed as a waiver of such Default, unless Landlord so notifies Tenant in writing. Forbearance by Landlord in enforcing one or more of the remedies provided in this Lease upon an Event of Default shall not be deemed or construed to constitute a waiver of such Default or of Landlord's right to enforce any such remedies with respect to such Default or any subsequent Default.

19.7 Intentionally Deleted.

19.8 Any and all property which may be removed from the Premises by Landlord pursuant to the authority of this Lease or of law, to which Tenant is or may be entitled, may be handled, removed and/or stored, as the case may be, by or at the direction of Landlord but at the risk, cost and expense of Tenant, and Landlord shall in no event be responsible for the value, preservation or safekeeping thereof. Tenant shall pay to Landlord, upon demand, any and all expenses incurred in such removal and all storage charges against such property so long as the same shall be in Landlord's possession or under Landlord's control. Any such property of Tenant not retaken by Tenant from storage within thirty (30) days after removal from the Premises shall, at Landlord's option, be deemed conveyed by Tenant to Landlord under this Lease as by a bill of sale without further payment or credit by Landlord to Tenant.

19.9 If more than one (1) Event of Default occurs during the Term or any renewal thereof, Tenant's renewal options, expansion options, purchase options and rights of first offer and/or refusal, if any are provided for in this Lease, shall be null and void.

20. **TENANT'S BANKRUPTCY OR INSOLVENCY.**

20.1 If at any time and for so long as Tenant shall be subjected to the provisions of the United States Bankruptcy Code or other law of the United States or any state thereof for the protection of debtors as in effect at such time (each a "Debtor's Law"):

20.1.1 Tenant, Tenant as debtor-in-possession, and any trustee or receiver of Tenant's assets (each a "Tenant's Representative") shall have no greater right to assume or assign this Lease or any interest in this Lease, or to sublease any of the Premises than accorded to Tenant in Article 9, except to the extent Landlord shall be required to permit such assumption, assignment or sublease by the provisions of such Debtor's Law. Without limitation of the generality of the foregoing, any right of any Tenant's Representative to assume or assign this Lease or to sublease any of the Premises shall be subject to the conditions that:

20.1.1.1 Such Debtor's Law shall provide to Tenant's Representative a right of assumption of this Lease which Tenant's Representative shall have timely exercised and Tenant's Representative shall have fully cured any default of Tenant under this Lease.

20.1.1.2 Tenant's Representative or the proposed assignee, as the case shall be, shall have deposited with Landlord as security for the timely payment of rent an amount equal to the larger of: (a) three (3) months' rent and other monetary charges accruing under this Lease; and (b) any sum specified in Article 5; and shall have provided Landlord with adequate other assurance of the future performance of the obligations of the Tenant under this Lease. Without limitation, such assurances shall include, at least, in the case of assumption of this Lease, demonstration to the satisfaction of the Landlord that Tenant's Representative has and will continue to have sufficient unencumbered assets after the payment of all secured obligations and administrative expenses to assure Landlord that Tenant's Representative will have sufficient funds to fulfill the obligations of Tenant under this Lease; and, in the case of assignment, submission of current financial statements of the proposed assignee, audited by an independent certified public accountant reasonably acceptable to Landlord and showing a net worth and working capital in amounts determined by Landlord to be sufficient to assure the future performance by such assignee of all of the Tenant's obligations under this Lease.

20.1.3 The assumption or any contemplated assignment of this Lease or subleasing any part of the Premises, as shall be the case, will not breach any provision in any other lease, mortgage, financing agreement or other agreement by which Landlord is bound.

20.1.4 Landlord shall have, or would have had absent the Debtor's Law, no right under Article 9 to refuse consent to the proposed assignment or sublease by reason of the identity or nature of the proposed assignee or sublessee or the proposed use of the Premises concerned.

21. **QUIET ENJOYMENT.** Landlord represents and warrants that it has full right and authority to enter into this Lease and that Tenant, while paying the rental and performing its other covenants and agreements contained in this Lease, shall peaceably and quietly have, hold and enjoy the Premises for the Term without hindrance or molestation from Landlord subject to the terms and provisions of this Lease. Landlord shall not be liable for any interference or disturbance by other tenants or third persons, nor shall Tenant be released from any of the obligations of this Lease because of such interference or disturbance.

22. **CASUALTY**

22.1 In the event the Premises or the Building are damaged by fire or other cause and in Landlord's reasonable estimation such damage can be materially restored within one hundred eighty (180) days, Landlord shall forthwith repair the same and this Lease shall remain in full force and effect, except that Tenant shall be entitled to a proportionate abatement in rent from the date of such damage. Such abatement of rent shall be made pro rata in accordance with the extent to which the damage and the making of such repairs shall interfere with the use and occupancy by Tenant of the Premises from time to time. Within forty-five (45) days from the date of such damage, Landlord shall notify Tenant, in writing, of Landlord's reasonable estimation of the length of time within which material restoration can be made, and Landlord's determination shall be binding on Tenant. For purposes of this Lease, the Building or Premises shall be deemed "materially restored" if they are in such condition as would not prevent or materially interfere with Tenant's use of the Premises for the purpose for which it was being used immediately before such damage.

22.2 If such repairs cannot, in Landlord's reasonable estimation, be made within one hundred eighty (180) days, Landlord and Tenant shall each have the option of giving the other, at any time within ninety (90) days after such damage, notice terminating this Lease as of the date of such damage. In the event of the giving of such notice, this Lease shall expire and all interest of the Tenant in the Premises shall terminate as of the date of such damage as if such date had been originally fixed in this Lease for the expiration of the Term. In the event that neither Landlord nor Tenant exercises its option to terminate this Lease, then Landlord shall repair or restore such damage, this Lease continuing in full force and effect, and the rent hereunder shall be proportionately abated as provided in Section 22.1.

22.3 Landlord shall not be required to repair or replace any damage or loss by or from fire or other cause to any panelings, decorations, partitions, additions, railings, ceilings, floor coverings, office fixtures or any other property or improvements installed on the Premises by, or belonging to, Tenant. Any insurance which may be carried by Landlord or Tenant against loss or damage to the Building or Premises shall be for the sole benefit of the party carrying such insurance and under its sole control.

22.4 In the event that Landlord should fail to complete such repairs and material restoration within sixty (60) days after the date estimated by Landlord therefore as extended by this Section 22.4, Tenant may at its option and as its sole remedy terminate this Lease by delivering written notice to Landlord, within fifteen (15) days after the expiration of said period of time, whereupon the Lease shall end on the date of such notice or such later date fixed in such notice as if the date of such notice was the date originally fixed in this Lease for the expiration of the Term; provided, however, that if construction is delayed because of changes, deletions or additions in construction requested by Tenant, strikes, lockouts, casualties, Acts of God, war, material or labor shortages, government regulation or control or other causes beyond the reasonable control of Landlord, the period for restoration, repair or rebuilding shall be extended for the amount of time Landlord is so delayed.

22.5 Notwithstanding anything to the contrary contained in this Article: (a) Landlord shall not have any obligation whatsoever to repair, reconstruct, or restore the Premises when the damages resulting from any casualty covered by the provisions of this Article 22 occur during the last twelve (12) months of the Term or any extension thereof, but if Landlord determines not to repair such damages Landlord shall notify Tenant and if such damages shall render any material portion of the Premises untenable Tenant shall have the right to terminate this Lease by notice to Landlord within fifteen (15) days after receipt of Landlord's notice; and (b) in the event the holder of any indebtedness secured by a mortgage or deed of trust covering the Premises or Building requires that any insurance proceeds be applied to such indebtedness, then Landlord shall have the right to terminate this Lease by delivering written notice of termination to Tenant within fifteen (15) days after such requirement is made by any such holder, whereupon this Lease shall end on the date of such damage as if the date of such damage were the date originally fixed in this Lease for the expiration of the Term.

22.6 In the event of any damage or destruction to the Building or Premises by any peril covered by the provisions of this Article 2.2, it shall be Tenant's responsibility to properly secure the Premises and upon notice from Landlord to remove forthwith, at its sole cost and expense, such portion of all of the property belonging to Tenant or its licensees from such portion or all of the Building or Premises as Landlord shall request.

23. **EMINENT DOMAIN.** If all or any substantial part of the Premises shall be taken or appropriated by any public or quasi-public authority under the power of eminent domain, or conveyance in lieu of such appropriation, either party to this Lease shall have the right, at its option, of giving the other, at any time within thirty (30) days after such taking, notice terminating this Lease, except that Tenant may only terminate this Lease by reason of taking or appropriation, if such taking or appropriation shall be so substantial as to materially interfere with Tenant's use and occupancy of the Premises. If neither party to this Lease shall so elect to terminate this Lease, the rental thereafter to be paid shall be adjusted on a fair and equitable basis under the circumstances. In addition to the rights of Landlord above, if any substantial part of the Building shall be taken or appropriated by any public or quasi-public authority under the power of eminent domain or conveyance in lieu thereof, and regardless of whether the Premises or any part thereof are so taken or appropriated, Landlord shall have the right, at its sole option, to terminate this Lease by providing thirty (30) days written notice to Tenant. Landlord shall be entitled to any and all income, rent, award, or any interest whatsoever in or upon any such sum, which may be paid or made in connection with any such public or quasi-public use or purpose, and Tenant hereby assigns to Landlord any interest it may have in or claim to all or any part of such sums, other than any separate award which may be made with respect to Tenant's trade fixtures and moving expenses; Tenant shall make no claim for the value of any unexpired Term.

24. **SALE BY LANDLORD.** In event of a sale or conveyance by Landlord of the Building, the same shall operate to release Landlord from any future liability upon any of the covenants or conditions, expressed or implied, contained in this Lease in favor of Tenant, and in such event Tenant agrees to look solely to the responsibility of the successor in interest of Landlord in and to this Lease. Except as set forth in this Article 24, this Lease shall not be affected by any such sale and Tenant agrees to attorn to the purchaser or assignee. If any security has been given by Tenant to secure the faithful performance of any of the covenants of this Lease, Landlord may transfer or deliver

said security, as such, to Landlord's successor in interest and thereupon Landlord shall be discharged from any further liability with regard to said security.

25. **ESTOPPEL CERTIFICATES.** Within ten (10) days following any written request which Landlord may make from time to time, Tenant shall execute and deliver to Landlord or mortgagee or prospective mortgagee a sworn statement certifying: (a) the date of commencement of this Lease; (b) the fact that this Lease is unmodified and in full force and effect (or, if there have been modifications to this Lease, that this lease is in full force and effect, as modified, and stating the date and nature of such modifications); (c) the date to which the rent and other sums payable under this Lease have been paid; (d) the fact that there are no current defaults under this Lease by either Landlord or Tenant except as specified in Tenant's statement; and (e) such other matters as may be reasonably requested by Landlord. Landlord and Tenant intend that any statement delivered pursuant to this Article 25 may be relied upon by any mortgagee, beneficiary or purchaser, and Tenant shall be liable for all loss, cost or expense resulting from the failure of any sale or funding of any loan caused by any material misstatement contained in such estoppel certificate. Failure to deliver the estoppel certificate as aforesaid shall constitute an Event of Default hereunder.

26. **SURRENDER OF PREMISES.**

26.1 Tenant shall arrange to meet Landlord for two (2) joint inspections of the Premises, the first to occur at least thirty (30) days (but no more than sixty (60) days) before the last day of the Term, and the second to occur not later than forty-eight (48) hours after Tenant has vacated the Premises. In the event of Tenant's failure to arrange such joint inspections and/or participate in either such inspection, Landlord's inspection at or after Tenant's vacating the Premises shall be conclusively deemed correct for purposes of determining Tenant's responsibility for repairs and restoration.

26.2 All alterations, additions, and improvements in, on, or to the Premises made or installed by or for Tenant, including carpeting (collectively, "Alterations"), shall be and remain the property of Tenant during the Term. Upon the expiration or sooner termination of the Term, all Alterations shall become a part of the realty and shall belong to Landlord without compensation, and title shall pass to Landlord under this Lease as by a bill of sale. At the end of the Term or any renewal of the Term or other sooner termination of this Lease, Tenant will peaceably deliver up to Landlord possession of the Premises, together with all Alterations by whomsoever made, in the same conditions received or first installed, broom clean and free of all debris, excepting only ordinary wear and tear and damage by fire or other casualty. Notwithstanding the foregoing, if Landlord elects by notice given to Tenant at least ten (10) days prior to expiration of the Term, Tenant shall, at Tenant's sole cost, remove any Alterations, including carpeting, so designated by Landlord's notice, and repair any damage caused by such removal. Tenant must, at Tenant's sole cost, remove upon termination of this Lease, any and all of Tenant's furniture, furnishings, movable partitions of less than full height from floor to ceiling and other trade fixtures and personal property (collectively, "Personalty"). Personalty not so removed shall be deemed abandoned by the Tenant and title to the same shall thereupon pass to Landlord under this Lease as by a bill of sale, but Tenant shall remain responsible for the cost of removal and disposal of such Personalty, as well as any damage caused by such removal. In lieu of requiring Tenant to remove Alterations and Personalty and repair the Premises as aforesaid, Landlord may, by written notice to Landlord delivered at least thirty (30) days before the Termination Date, require Tenant to pay to Landlord, as additional rent hereunder, the cost of such removal and repair in an amount reasonably estimated by Landlord.

26.3 All obligations of Tenant under this Lease not fully performed as of the expiration or earlier termination of the Term shall survive the expiration or earlier termination of the Term. Upon the expiration or earlier termination of the Term, Tenant shall pay to Landlord the amount, as estimated by Landlord, necessary to repair and restore the Premises as provided in this Lease and/or to discharge Tenant's obligation for unpaid amounts due or to become due to Landlord. All such amounts shall be used and held by Landlord for payment of such obligations of Tenant, with Tenant being liable for any additional costs upon demand by Landlord, or with any excess to be returned to Tenant after all such obligations have been determined and satisfied. Any otherwise unused Security Deposit shall be credited against the amount payable by Tenant under this Lease.

27. **NOTICES.** Any notice or document required or permitted to be delivered under this Lease shall be addressed to the intended recipient, by fully prepaid registered or certified United States Mail return receipt

requested, or by reputable independent contract delivery service furnishing a written record of attempted or actual delivery, and shall be deemed to be delivered when tendered for delivery to the addressee at its address set forth on the Reference Pages, or at such other address as it has then last specified by written notice delivered in accordance with this Article 27, or if to Tenant at either its aforesaid address or its last known registered office or home of a general partner or individual owner, whether or not actually accepted or received by the addressee. Any such notice or document may also be personally delivered if a receipt is signed by and received from, the individual, if any, named in Tenant's Notice Address.

28. **TAXES PAYABLE BY TENANT.** In addition to rent and other charges to be paid by Tenant under this Lease, Tenant shall reimburse to Landlord, upon demand, any and all taxes payable by Landlord (other than net income taxes) whether or not now customary or within the contemplation of the parties to this Lease: (a) upon, allocable to, or measured by or on the gross or net rent payable under this Lease, including without limitation any gross income tax or excise tax levied by the State, any political subdivision thereof, or the Federal Government with respect to the receipt of such rent; (b) upon or with respect to the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy of the Premises or any portion thereof, including any sales, use or service tax imposed as a result thereof; (c) upon or measured by the Tenant's gross receipts or payroll or the value of Tenant's equipment, furniture, fixtures and other personal property of Tenant or leasehold improvements, alterations or additions located in the Premises; or (d) upon this transaction or any document to which Tenant is a party creating or transferring any interest of Tenant in this Lease or the Premises. In addition to the foregoing, Tenant agrees to pay, before delinquency, any and all taxes levied or assessed against Tenant and which become payable during the term hereof upon Tenant's equipment, furniture, fixtures and other personal property of Tenant located in the Premises.

29. **INTENTIONALLY DELETED.**

30. **DEFINED TERMS AND HEADINGS.** The Article headings shown in this Lease are for convenience of reference and shall in no way define, increase, limit or describe the scope or intent of any provision of this Lease. Any indemnification or insurance of Landlord shall apply to and inure to the benefit of all the following "Landlord Entities", being Landlord, Landlord's investment manager, and the trustees, boards of directors, officers, general partners, beneficiaries, stockholders, employees and agents of each of them. Any option granted to Landlord shall also include or be exercisable by Landlord's trustee, beneficiary, agents and employees, as the case may be. In any case where this Lease is signed by more than one person, the obligations under this Lease shall be joint and several. The terms "Tenant" and "Landlord" or any pronoun used in place thereof shall indicate and include the masculine or feminine, the singular or plural number, individuals, firms or corporations, and their and each of their respective successors, executors, administrators and permitted assigns, according to the context hereof. The term "rentable area" shall mean the rentable area of the Premises or the Building as calculated by the Landlord on the basis of the plans and specifications of the Building including a proportionate share of any common areas. Tenant hereby accepts and agrees to be bound by the figures for the rentable space footage of the Premises and Tenant's Proportionate Share shown on the Reference Pages; however, Landlord may adjust either or both figures if there is manifest error, addition or subtraction to the Building or any business park or complex of which the Building is a part, remeasurement or other circumstance reasonably justifying adjustment. The term "Building" refers to the structure in which the Premises are located and the common areas (parking lots, sidewalks, landscaping, etc.) appurtenant thereto. If the Building is part of a larger complex of structures, the term "Building" may include the entire complex, where appropriate (such as shared Expenses or Taxes) and subject to Landlord's reasonable discretion.

31. **TENANT'S AUTHORITY.** If Tenant signs as a corporation, partnership, trust or other legal entity each of the persons executing this Lease on behalf of Tenant represents and warrants that Tenant has been and is qualified to do business in the state in which the Building is located, that the entity has full right and authority to enter into this Lease, and that all persons signing on behalf of the entity were authorized to do so by appropriate actions.

32. **FINANCIAL STATEMENTS AND CREDIT REPORTS.** At Landlord's request, Tenant shall deliver to Landlord a copy, certified by an officer of Tenant as being a true and correct copy, of Tenant's most recent audited financial statement, or, if unaudited, certified by Tenant's chief financial officer as being true, complete and correct in all material respects. Tenant hereby authorizes Landlord to obtain one or more credit reports on Tenant at

any time, and shall execute such further authorizations as Landlord may reasonably require in order to obtain a credit report.

33. **COMMISSIONS.** Each of the parties represents and warrants to the other that it has not dealt with any broker or finder in connection with this Lease, except as described on the Reference Pages.

34. **TIME AND APPLICABLE LAW.** Time is of the essence of this Lease and all of its provisions. This Lease shall in all respects be governed by the laws of the state in which the Building is located.

35. **SUCCESSORS AND ASSIGNS.** Subject to the provisions of Article 9, the terms, covenants and conditions contained in this Lease shall be binding upon and inure to the benefit of the heirs, successors, executors, administrators and assigns of the parties to this Lease.

36. **ENTIRE AGREEMENT.** This Lease, together with its exhibits, contains all agreements of the parties to this Lease and supersedes any previous negotiations. There have been no representations made by the Landlord or any of its representatives or understandings made between the parties other than those set forth in this Lease and its exhibits. This Lease may not be modified except by a written instrument duly executed by the parties to this Lease.

37. **EXAMINATION NOT OPTION.** Submission of this Lease shall not be deemed to be a reservation of the Premises. Landlord shall not be bound by this Lease until it has received a copy of this Lease duly executed by Tenant and has delivered to Tenant a copy of this Lease duly executed by Landlord, and until such delivery Landlord reserves the right to exhibit and lease the Premises to other prospective tenants. Notwithstanding anything contained in this Lease to the contrary, Landlord may withhold delivery of possession of the Premises from Tenant until such time as Tenant has paid to Landlord any security deposit required by Article 5, the first month's rent as set forth in Article 3 and any sum owed pursuant to this Lease.

38. **RECORDATION.** Tenant shall not record or register this Lease or a short form memorandum hereof without the prior written consent of Landlord, and then shall pay all charges and taxes incident such recording or registration.

39. **SIGNS.** Tenant may install signage at the Premises (but not on exterior of the Building) at Tenant's sole expense, and in strict compliance with all park maintenance association by-laws and covenants, all other recorded, applicable private restrictions, and all zoning laws, and state, county and local ordinances. All such signage shall be subject to Landlord's prior approval, which shall not be unreasonably withheld.

40. **LIMITATION OF LANDLORD'S LIABILITY.** Redress for any claim against Landlord under this Lease shall be limited to and enforceable only against and to the extent of Landlord's interest in the Building. The obligations of Landlord under this Lease are not intended to be and shall not be personally binding on, nor shall any resort be had to the private properties of, any of its or its investment manager's trustees, directors, officers, partners, beneficiaries, members, stockholders, employees, or agents, and in no case shall Landlord be liable to Tenant hereunder for any lost profits, damage to business, or any form of special, indirect or consequential damages.

41. **LEASE CONTINGENT UPON TERMINATION OF EXISTING LEASE WITH RESPECT TO THE PREMISES.** Tenant acknowledges and agrees that Landlord's obligations under this Lease are contingent upon Landlord terminating the existing Lease for the Premises with Ciena Corporation (the "Lease Termination"). Landlord will give Tenant notice of the Lease Termination. In the event that Landlord does not obtain the Lease Termination within 3 months of the date of this Lease, this Lease shall automatically terminate.

LANDLORD:

RPH INDUSTRIAL, LLC
a Delaware limited liability company

By: RREEF Management Company,
a Delaware corporation,
its authorized representative

By: _____
Name: Patrick N. Connell
Title: Vice President/Regional Manager

Dated: _____, 200

TENANT:

**ERICKSON RETIREMENT
COMMUNITIES, LLC.**
a Maryland limited liability company

By: _____
Name: _____
Title: _____

Dated: _____, 2004

EXHIBIT A – FLOOR PLAN DEPICTING THE PREMISES

**attached to and made a part of Lease bearing the
Lease Reference Date of _____, 2004 between
RPH Industrial, LLC, as Landlord and
Erickson Retirement Communities, LLC, as Tenant**

Exhibits A and A-1 are intended only to show the general layout of the Premises as of the beginning of the Term of this Lease. They does not in any way supersede any of Landlord's rights set forth in Article 17 with respect to arrangements and/or locations of public parts of the Building and changes in such arrangements and/or locations. It is not to be scaled; any measurements or distances shown should be taken as approximate.

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Initials

EXHIBIT A-1 – SITE PLAN

**attached to and made a part of Lease bearing the
Lease Reference Date of _____, 2004 between
RPH Industrial, LLC, as Landlord and
Erickson Retirement Communities, LLC, as Tenant**

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Initials

EXHIBIT B – INITIAL ALTERATIONS

**attached to and made a part of Lease bearing the
Lease Reference Date of _____, 2004 between
RPH Industrial, LLC, as Landlord and
Erickson Retirement Communities, LLC, as Tenant**

A. Improvements to 29,242 Square Feet of Space in Premises:

The initial Improvements to the 29,252 square feet of space in the Premises identified on Exhibit B-1 ("Space A") shall be made as follows:

1. Landlord will, at its sole cost and expense, construct improvements to Space A in the Premises (the "Landlord's Work"), based on the approved construction bid and space plans (collectively, the "Space Plans"), attached hereto as **Exhibit B-1**.

2. After Landlord's and Tenant's execution of the Lease, Landlord's architect will prepare architectural plans, drawings and specifications and engineered mechanical and electrical construction drawings for all of Landlord's Work consistent with the Space Plans (the "Final Plans"). The Final Plans will show: (i) the subdivision (including partitions and walls), layout, lighting, finish and decoration work (including carpeting and other floor coverings) for Space A of the Premises; (ii) all internal and external communications and utility facilities which will require the installation of conduits or other improvements from the base Building shell and/or within common areas; and (iii) all other specifications for Landlord's Work. The Final Plans will be submitted to Tenant for signature. Within 3 business days of its receipt of the Final Plans, Tenant agrees to either approve the Final Plans or to advise Landlord of any disapproval of the Final Plans and the reasons therefor in writing. If Tenant requests any changes to the Final Plans, such changes shall be subject to Landlord's approval. In the event that Landlord approves any such changes, Landlord will cause Landlord's architect to redesign the Final Plans, with all costs associated with such revisions to be paid by Tenant to Landlord prior to commencement of construction of Landlord's Work. The Final Plans will then be resubmitted to Tenant for its approval within 2 days of said resubmission. If Tenant fails to timely deliver to Landlord (i) disapproval of the Final Plans accompanied by a written explanation for said disapproval, or (ii) signed Final Plans, the Final Plans will be deemed approved by Tenant.

3. The Final Plans will include locations and complete dimensions, and Landlord's Work, as shown on the Final Plans, will: (i) be compatible with the Building shell and with the design, construction and equipment of the Building; (ii) comply with all Legal Requirements and all applicable insurance regulations; (iii) not require Building service beyond the level normally provided to other tenants in the Building and will not overload the Building floors; and (iv) be of a nature and quality consistent with the overall objectives of Landlord for the Building, as determined by Landlord in its reasonable discretion.

4. After Tenant's approval of the Final Plans, Landlord's architect will submit the Final Plans to the appropriate governmental agencies for plan checking and the issuance of a building permit. After Landlord obtains all necessary permits, Landlord's contractor will commence and diligently proceed with the construction of the Landlord's Work.

5. If, after the Final Plans have been approved by Tenant, Tenant requests any changes or substitutions to the Final Plans or to Landlord's Work during construction, Tenant will complete the change order request form approved by Landlord and forward it to Landlord. All such changes will be subject to Landlord's prior written approval. Prior to commencing any change, Landlord will prepare and deliver to Tenant a change order setting forth any change in the Scheduled Commencement Date and setting forth the total cost of such change, which will include associated architectural, engineering, construction contractor's costs and fees, and the cost of Landlord's overhead. If Tenant fails to approve such change order within 3 business days after delivery by Landlord, Tenant will be deemed to have withdrawn the proposed change and Landlord will not proceed to perform the change. Upon Landlord's receipt of Tenant's approval, Landlord will proceed with the change. Any additional costs related to such change are to be paid by Tenant to Landlord within 30 days after receipt by Tenant of an invoice for such additional costs from Landlord.

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Initials

6. "Tenant Delays" means any delay in the completion of the Landlord's Work resulting from any or all of the following: (i) Tenant's failure to timely perform any of its obligations pursuant to this Work Letter, including any failure to approve any item or complete, on or before the due date therefor, any action item which is Tenant's responsibility pursuant to this Work Letter; (ii) Tenant's request(s) for changes to the Final Plans which changes are inconsistent with the approved Space Plans, or otherwise require revisions to the Final Plans; or (iii) change orders requested by Tenant after approval of the Final Plans; or (iv) any delay to construction caused because of Tenant's occupancy of the Premises, failure to cooperate with Landlord as required by Section 2.3 hereof, or Tenant's construction of the Tenant Improvements in accordance with Section B below.

7. In the event of any default by Tenant with respect to any of the provisions of this Work Letter or any other agreement with Landlord relating to construction in or about the Premises, Landlord may, in addition to exercising any other right or remedy Landlord may have, treat such default as a default by Tenant under the Lease and exercise any or all rights available under the Lease in connection therewith, including, if applicable, the right of termination. In the event of any termination of the Lease by Landlord, in addition to its other rights and remedies, Landlord may elect in its absolute discretion, with respect to any work performed by or on behalf of Tenant prior to the date of such termination, to either: (a) retain for its own use part or all of any such work, without compensation to Tenant therefor; or (b) demolish or remove part or all of any such work and restore part or all of the Premises to its condition prior to the initial tender of possession thereof to Tenant, in which event Tenant will pay Landlord upon demand for all costs reasonably incurred by Landlord in connection with such demolition, removal and/or restoration.

B. Improvements to Remaining 12,019 Square Feet of Space in the Premises.

The initial improvements to the 12,019 remaining square feet of space in the Premises, as identified on Exhibit B-1 ("Space B") shall be made as follows:

1. (a) Tenant shall cause its architect and engineer, at its sole expense, to complete all drawings, plans and specifications necessary for the construction of Tenant's leasehold improvements to be located in Space B of the Premises, including but not limited to, MEP working drawings as required for the permitting and construction of the Premises ("**Tenant's Improvements**"). Tenant's architect and engineer shall be subject to Landlord's reasonable approval. Landlord shall provide Tenant with all existing architectural, mechanical, electrical and plumbing plans for the Space B of Premises, including any plans in Landlord's possession that were completed on behalf of prior tenants. All of Tenant's Improvements and the related drawings, plans and specifications, including without limitation, MEPs, shall comply with applicable laws, shall be suitable for obtaining all necessary construction permits and shall be submitted to Landlord for Landlord's approval (upon approval by Landlord, the "**Final Plans**"). Landlord shall approve or disapprove the drawings, plans and specifications for Tenant's Improvements within 5 days of receipt of the same from Tenant and Tenant shall cause any required revisions to be made. Any revisions to drawings, plans and specifications made pursuant to this paragraph shall be made at Tenant's expense. Upon Landlord's approval of the Final Plans, the Tenant's Improvements shall be deemed approved pursuant to Section 6.1 of the Lease. At the time of such approval, Landlord shall notify Tenant if, upon written demand by Landlord, Tenant shall be required, prior to the termination of the Lease or earlier expiration thereof, to remove its initial Tenant Improvements and repair and restore Space B of the Premises in accordance with Section 6.4 of the Lease.

(b) If Landlord should retain professionals to assist Landlord in evaluating the proposed Tenant's Improvements and/or the Final Plans, such services and related fees and expenses shall be at Tenant's expense.

2. Tenant shall cause its own contractor to construct Tenant's Improvements. Tenant's contractor shall be approved by Landlord, such approval not to be unreasonably withheld, subject to the following conditions:

(a) Tenant shall indemnify, defend (with counsel reasonably acceptable to Landlord), and hold harmless Landlord, Landlord's managing agent, Landlord's Entities, and Landlord's invitees from and against any all losses, damages, costs (including costs of suits and attorneys' fees), liabilities or causes of action arising out of or relating to Tenant's Improvements, including but not limited to mechanic's materialman's or other liens or

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Initials

claims (and all costs or expenses associated therewith) asserted, filed or arising out of any such work. Without limiting the generality of the foregoing, Tenant shall repair or cause to be repaired at its expense all damage caused by its contractor and Tenant shall reimburse Landlord for all reasonable costs incurred by Landlord to repair any damage caused by Tenant's contractor. Subject to Landlord's satisfaction of its funding obligations pursuant to Paragraph 6 of this Exhibit B, all parties contracting with Tenant to furnish labor, services, materials, suppliers or equipment with respect to the Premises shall look solely to Tenant for payment of same and Tenant's purchase orders and contracts shall state this requirement.

(b) Tenant's contract with any contractor with whom Tenant contracts with respect to Tenant's Improvements shall include (i) a provision requiring such contractor to keep the Premises, the Building and appurtenant land and Tenant's leasehold interest in the Premises free from any liens arising out of any work performed with respect to Tenant's Improvements; (ii) an express waiver of any rights of the contractor, any subcontractor or any materials supplier may have to claim a mechanic's, materialman's or other lien or claim arising out of any work performed with respect to Landlord's interest in the Premises, the Building and appurtenant land, or Tenant's Improvements; and (iii) a provision requiring such contractor to indemnify, defend (with counsel reasonably acceptable to Landlord) and hold harmless Landlord, Landlord's managing agent, Landlord's Entities, and Landlord's invitees from and against any and all losses, damages, costs (including costs of suits and attorneys' fees), liabilities or causes of action arising out of or relating to Tenant's Improvements, including but not limited to mechanic's, materialman's or other liens or claims (and all costs or expenses associated therewith) asserted, filed or arising out of any work performed with respect to Tenant's Improvements (other than against Tenant's interest therein). Tenant shall provide Landlord with final unconditional lien waivers from each contractor with whom Tenant has contracted with respect to Tenant's Improvements upon final completion of Tenant's Improvements.

(c) Tenant's contractor shall conduct its work in such a manner so as not to unreasonably interfere with any construction occurring in the Building, or to disrupt any tenant's business in the Building and shall comply with Landlord's rules and regulations applicable to all work being performed in the Building.

(d) Tenant's contractor shall maintain such insurance, including but not limited to Builder's all-risk insurance, in full force and effect as may be reasonably requested by Landlord or as required by applicable law, and all such insurance shall be with a carrier and in a form acceptable to Landlord. Landlord shall not be responsible for the storage of Tenant's materials or Tenant's Improvements.

3. Provided that no uncured Event of Default exists under the Lease, Landlord covenants and agrees that Landlord will contribute to Tenant an amount not exceeding \$10.00 per rentable square foot of Space B of the Premises (which is \$120,190 based upon 12,019 square feet) ("**Landlord's Allowance**") to be applied solely toward the cost of the Tenant Improvements.

4. Landlord shall disburse Landlord's Allowance directly to Tenant's contractor (or directly to Tenant with respect to payments to contractors and consultants not under contract with Tenant's principal contractor, so long as such payments in the aggregate do not exceed twenty percent (20%) of Landlord's Allowance) to be applied towards the cost of constructing Tenant's Improvements, together with a proportionate credit against the supervisory fee due to Landlord (if applicable); upon Landlord's receipt of invoices for all costs approved by Tenant and Tenant's construction manager, and which are reasonably acceptable to Landlord the "**Payment Conditions**"). Moreover, prior to each such payment by Landlord, the following conditions also shall be satisfied: (i) receipt by Landlord of invoices and/or applications for payment recovering all labor and materials expended and used and subject to a ten percent (10%) retainage until completion of all Tenant's Improvements, (ii) architect's and general contractor's percentage of completion affidavits certifying that the work covered by such invoice and/or application for payment is complete and in place, in form acceptable to Landlord in its sole discretion, (iii) partial lien waivers covering work with respect to which any materialman or contractor was previously paid pursuant to an earlier payment by Landlord (and final unconditional lien waivers with respect to final contract payments upon final completion of Tenant's Improvements) in form acceptable to Landlord in its sole discretion; (iv) as-built plans (upon final completion) covering all architectural work and mechanical, electrical, plumbing and structural engineering, (v) certification at Tenant's expense of Tenant's architect (or Landlord's architect if Tenant has not retained an architect) that the portion of the Tenant's Improvements for which payment is being sought has been installed in a good and workmanlike manner in accordance with approved plans and applicable codes and ordinances, and (vi)

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Initials

with respect to final payment and release of retainage, any licenses or permits required by any applicable governmental authority for Tenant's legal occupancy of the Premises and use of the equipment installed therein. Subject to satisfaction of the foregoing payment conditions, Landlord shall pay Tenant for such charges one (1) time per month. In no event shall any portion of Landlord's Allowance be disbursed if Tenant is in default (or will be in default upon notice and/or lapse of time) under the Lease. Tenant shall cause its contractor to be paid in full within thirty (30) days of substantial completion of Tenant's Improvements, subject to Tenant's withholding ten percent (10%) retainage (from all contracts other than professional service agreements) until completion of all Tenant's Improvements as provided above. Tenant shall cause disbursement requests to be submitted to Landlord in a timely manner, if applicable, to enable Tenant to satisfy the foregoing requirement. Tenant shall use Landlord's Allowance within twelve (12) months of taking possession of the Premises. In no event shall any portion of Landlord's Allowance be disbursed if Tenant is in default (or will be in default upon notice and/or lapse of time) beyond applicable notice and cure periods under the Lease.

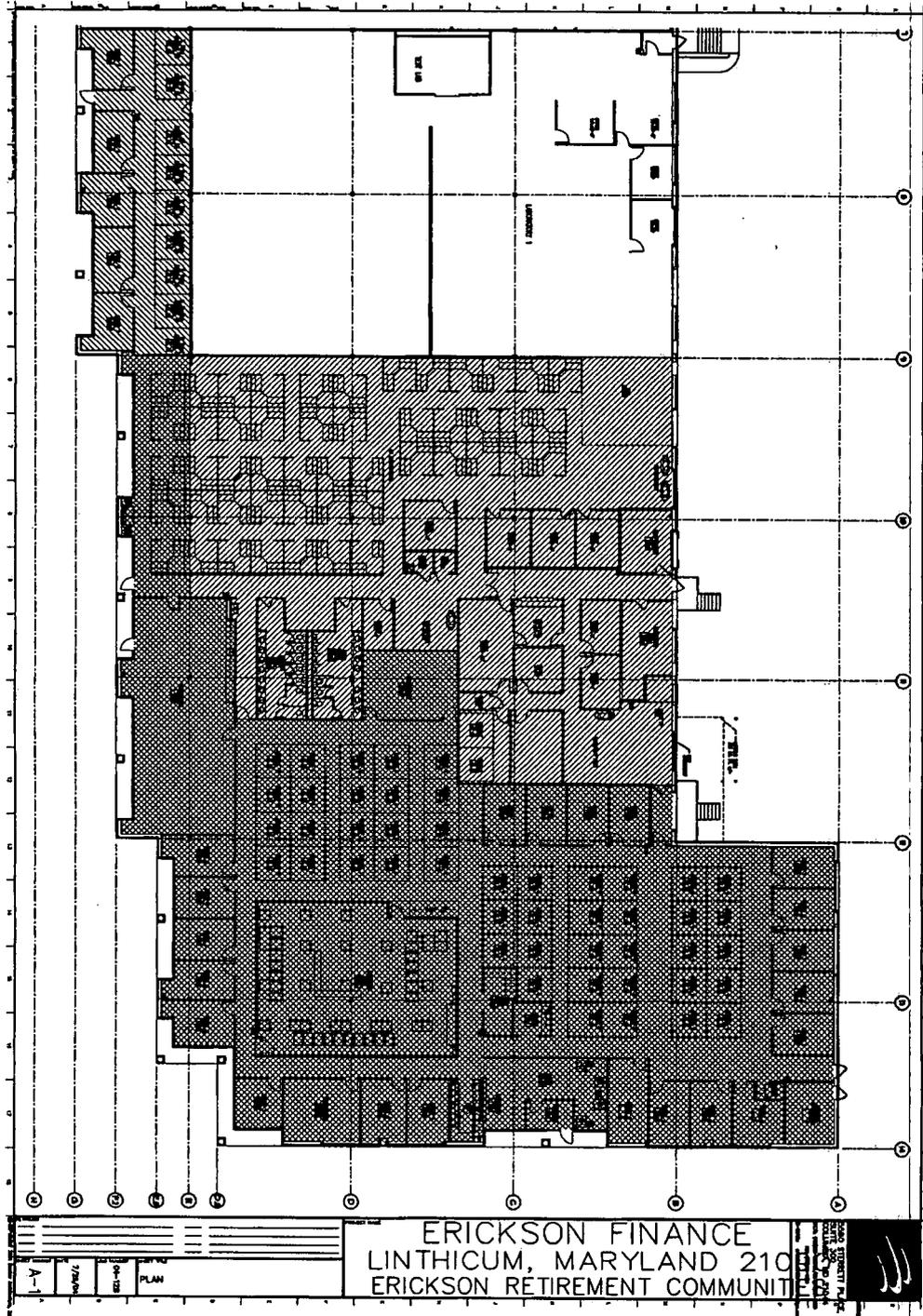
5. All payments to Landlord pursuant to this Exhibit B shall constitute Additional Rent under the Lease, and in the event of nonpayment thereof by Tenant, Landlord shall have all of the rights and remedies set forth in the Lease.

6. Tenant agrees to pay the cost of Tenant's Improvements (less any applicable amount of Landlord's Allowance, as hereinafter defined). Tenant shall pay to Landlord, or Landlord's affiliate, from the Landlord's Allowance, an oversight fee equal to three percent (3%) of all of the costs of construction of the Tenant Improvements as Landlord's supervisory fee.

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Initials

EXHIBIT B-1



B-1

Initials

09/02/2004 17:05 FAX 410 244 3101

CB RICHARD ELLIS

06/02/04 07:30 FAX

WILHELM

002
001



FACSIMILE COVER SHEET

TO: Mr. James Lighthouser

RE: Erickson Financial Expansion
Suite

OF: C.B. Commercial

991 Corporate Boulevard

Linthicum Maryland

Fax No. 410-244-3101

Est # 5352

DATE: June 2, 2004

TIME: 7:16 AM

FROM THE DISK OF Paul Woods

Page 1 of 7

REMARKS:

Please find attached our budget proposal for the above referenced project.

Please give me a call if you have any questions.

Thank you.

103
1-11-04

IF YOU HAVE EXPERIENCED A PROBLEM RECEIVING THIS TRANSMISSION, PLEASE CALL

Wilhelm Commercial Builders, Inc.
10979 Guilford Road, Suite B
Annapolis Junction MD. 20701

Baltimore Area Phone (410) 880-6242
Washington Area Phone (301) 206-5454

Fax Numbers: Baltimore Area Fax (410) 792-9494 Washington Area Fax (301-206-9494)

Email: pwoods@wilhelmbuilders.com

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Initials

B-2



Budget Proposal

C.B. Commercial
250 W. Pratt Street, Suite 700
Baltimore, Maryland 21201
Mr. James Lighthouse

Date: June 1, 2004
Re: Erickson Financial Expansion
Suite
991 Corporate Boulevard
Linthicum Maryland
Est # 5352

Dear Mr. Lighthouse:

We are pleased to present herewith our proposal for performing the general construction of the above referenced facility in accordance with the following drawings and clarifications:

<u>Drawing</u>	<u>Date</u>	<u>Prepared By</u>
SK-1	3/2/2004	DRB

- All work is to be performed during normal working hours.
- The project will achieve substantial completion within six weeks of receipt of the Building Permit and long lead items.
- This proposal is for budget purposes as a full scope of work has not been fully defined.
- All Drawings, Engineering and Design provided by Owner.
- Our Proposal is subject to quantities and unit prices as per the attached estimate break-out.

The work as outlined above will be performed for: \$210,892.00
Terms of payment: Bi-weekly requisitions, balance Net 10 days after date of invoice.

We appreciate the opportunity of presenting this proposal. Should you wish us to proceed with this work please indicate your acceptance by signing and returning one copy of this proposal to us for our files.

Sincerely,
Wilhelm Commercial Builders, Inc.

Paul Woods
Paul Woods
Vice President / Estimator

Accepted by: _____ Date: _____

Title: _____

Wilhelm Commercial Builders, Inc.
10979 Guilford Road, Suite B • Annapolis Junction, Maryland 20701
Balt. Area Phone (410) 880-6242 • Wash. Area Phone (301) 206-5454
Fax (410) 792-9494 • Fax (301) 206-9494

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Initials

Wilhelm Commercial Builders, Inc.

Budget Estimate

June 2, 2004

Estimate Master # 15

Project: Erickson Financial Expansion
 Suite: Suite
 Address: 991 Corporate Boulevard
 City: Linthicum Maryland

Last Update: 15-Jan-03
 Job Number:
 Proj. Mgr.:
 Field Mgr.:
 Estimator: Paul Woods

Usable Square Footage 22760 Sq. Ft. Cost - Sq. Ft. \$9.27
 Erickson Expansion Area 12589 Sq. Ft. Cost - Sq. Ft. \$16.75

Item:	Man Hour or Quantity	Unit Price	Item Total	Division Total
Division One: General Conditions:				
Project Allowances			0	
Building Permit			914	
Temporary Protection			637	
Engineering Fees			0	
Field Manager			5065	
Asst. Field Manager			0	
Jobsite Mobil Telephone			43	
Field Office			0	
Small Field Tools			0	
Deliveries/Hauling			385	
Final Clean Up			4552	
Regular Clean Up			1747	

\$0.59 Division 1 Cost S.F. Sub-Total 6.33% 13343

Division Two: Demolition:

Flooring Demolition	<u>13000</u>	0.25	<u>3250</u>	
Ceiling Demolition	10000	0.25	2500	
Wall Demolition	680	7.00	4760	
Door Demolition	21	20.00	420	
Misc. Demolition			<u>17740</u>	
Trash Removal & Dump Fee			5778	

\$1.51 Division 2 Cost S.F. Sub-Total 16.33% 34448

Division Two: Site Work:

Sitework Excavation	0	0.00	0	0
Landscaping	0	0.00	0	0
Misc. Sitework	0	0.00	0	0

\$0.00 Division 2 Cost S. F. Sub-Total 0% 0

Division Three: Concrete Work:

Concrete Work	0	0.00	0	0
Misc. Concrete	0	0.00	0	0
Flash Patch Existing Floors			1609	

\$0.07 Division 3 Cost S.F. Sub-Total 0.76% 1609

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Initials

Wilhelm Commercial Builders, Inc.

Page 2	Est # 6352	Man Hour or	Unit	Item	Division
Job Number:	Item:	Quantity	Price	Total	Total
Division Four: Masonry Work:					
Masonry Work		0	0.00	0	0
Marble Work		0	0.00	0	0
	\$0.00 Division 4 Cost S.F.		Sub-Total	0.00%	0
Division Five: Metals:					
Structural Steel		0	0.00	0	0
Misc. Metals		0	0.00	0	0
	\$0.00 Division 5 Cost S.F.		Sub-Total	0.00%	0
Division Six: Carpentry & Millwork Using Merillat Rutland Cabinets:					
Misc. Carpentry / Blocking				0	0
Closet Rod & Shelf		0	87	0	0
Adjustable Shelving (5 High On KV)		0	71	0	0
WCB Millshop (Using Merillat Rutland Production Cabinets)				0	0
Install Millwork				0	0
Millwork Subcontract & Installation				0	0
Misc. Millwork		0	0.00	0	0
	\$0.00 Division 6 Cost S.F.		Sub-Total	0.00%	0
Division Seven: Roofing & Insulation:					
Roof Patch				0	0
Fire Proof Steel				0	0
Awnings		0	0.00	0	0
	\$0.00 Division 7 Cost S.F.		Sub-Total	0.00%	0
Division Eight: Doors & Glazing:					
Doors, Frames & Hardware "Materials Only"				0	0
Single Suite Entry Door 30x80		0		0	0
Double Suite Entry Door 30x80		0		0	0
SC Int. Door w/Passage 30x70		0		0	0
SC Int. Door w/Lock 30x80		7	805	5635	0
HC Int. Door w/Passage 30x70		0		0	0
SC Int. Door w/ Full Glass 30X70		0		0	0
30x68 HC Bi-fold Door		0		0	0
40x68 HC Bi-fold Door		0		0	0
50x68 HC Bi-fold Door		0		0	0
Reinstall Existing Door "Labor Only"		11	65	715	0
ADA Hardware		0		0	0
Glazing, Change One Door Swing				2070	0
Misc.		0		0	0
	\$0.37 Division 8 Cost S.F.		Sub-Total	3.99%	8420

MILES & STOCKBRIDGE P.C.

PATRICIA A. BORENSTEIN
(410) 385-3406
PBORENSTEIN@MILESTOCKBRIDGE.COM

April 15, 2010

VIA FEDERAL EXPRESS

BMC Group Inc
Attn: Erickson Retirement Communities, LLC
Claims Processing
18750 Lake Drive East
Chanhassen, Minnesota 55317

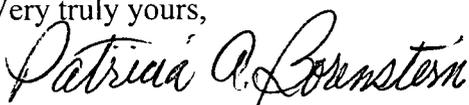
RE: *In re: Erickson Retirement Communities, LLC*
Case No. 09-37010

To Whom It May Concern:

Enclose please a Proof of Claim on behalf of RPH Industrial, LLC in the amount of \$471,727.50 for filing in the above-referenced bankruptcy case.

If you have any questions regarding this matter, please do not hesitate to contact me.

Very truly yours,


Patricia A. Borenstein

PAB/lk

Enclosure