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# **LEASE**

**JOSEPH V. FISHER, LLC**  
(Landlord)

and

**WORKFORCE DEVELOPMENT BOARD OF FLAGLER AND VOLUSIA  
COUNTIES, INC.**  
(Tenant)

for

327-329 Bill France Blvd.  
Daytona Beach, FL 32114

in

**SPEEDWAY BUSINESS CENTER**  
(the Center)

LEASE DATE: \_\_\_\_\_

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### **EXHIBITS**

Exhibit "A"	Sketch of Leased Premises ( <b>NOTE:</b> This sketch is to be used for identification purposes and does not separately constitute any representation or warranty by the Landlord.)
Exhibit "B"	Legal Description of Center
Exhibit "C"	Schedule of Tenant Improvements to Leased Premises

## **GENERAL LEASE PROVISIONS**

This Lease is a legally binding document. Please read it thoroughly before you sign; the items contained in these General Provisions pages relate to and are applicable to the various contents of the Lease. There are no agreements between Landlord and Tenant unless contained in writing, signed by both parties, attached hereto and made a part of this Lease.

<b>LANDLORD:</b>	<b>JOSEPH V. FISHER, LLC</b>
<b>LANDLORD'S ADDRESS:</b>	PO Box 420500 Summerland Key, FL 33042-0500 (305) 745-2915 FAX (305) 745-3379
<b>TENANT:</b>	WORKFORCE DEVELOPMENT BOARD OF FLAGLER and VOLUSIA COUNTIES, INC.
<b>TENANT'S TRADE NAME:</b>	n/a
<b>TENANT'S ADDRESS:</b>	<u>Prior to Occupancy:</u> 1901 Mason Avenue, Ste 110 Daytona Beach, FL 32117 (386) 274-3850 FAX (386) 274-3864  <u>After Occupancy:</u> 327-329 Bill France Blvd. Daytona Beach, FL 32114  <u>In Emergency:</u> Richard A. Fraser, President (386) 274-3854
<b>DESCRIPTION OF LEASED PREMISES:</b>	The premises as outlined in Exhibit "A" Attached hereto and generally referred to as 327-329 Bill France Blvd., Speedway Business Center, consisting of 6,081 total square feet. (NOTE: The attached sketch is a rough diagram, the sole purpose of which is to identify where the Leased Premises are generally located. The sketch does not constitute any separate warranty or representation on the part of the Landlord).

**SPACE NUMBER OF LEASED PREMISES:** 327 - 329 Bill France Blvd.  
Daytona Beach, FL 32114

**SQUARE FOOTAGE OF LEASED PREMISES:** 6,081 square feet

**PARKING SPACES:** 5 parking spaces per 1,000 square feet = 30 cars

**LEASED PREMISES ADDRESS:** 327 - 329 Bill France Boulevard  
Daytona Beach, FL 32114

**PERMITTED USE:** The use as an office for Workforce Development related matters. The space may not be used for a full time training facility, but incidental training may take place at the space form time to time.  
(**NOTE:** All recesses, breaks, etc., must be to the rear of the space and no loitering or smoking may be permitted outside the front of the space.)

**TERM OF LEASE:** 5 years

**LEASE COMMENCEMENT DATE:** March 1, 2005

**LEASE EXPIRATION DATE:** February 28, 2010

**RENT COMMENCEMENT DATE:** March 1, 2005

**TENANT'S PROPORTIONATE SHARE:** 6.00%  
(**NOTE:** This is the percent of the various expenses for the Center to be paid by Tenant and is equal to the ratio by which the square footage in the Leased Premises bears to the total square footage in the Center)

**PASS-THRU EXPENSES:** There is included in base rent standard pass-thru expenses for real estate taxes, insurance, and common area maintenance expense for the calendar year 2004 (the "Base Year"). To the extent any of these expenses for any subsequent calendar year (i.e., calendar year 2005 or any subsequent calendar

year) exceed the related expense for the Base Year, the Tenant will pay its Proportionate Share of said increased amount. Tenant will in addition pay its Proportionate Share of other expenses related to the Center.

**PASS-THRU COMMENCEMENT DATE:**

\_\_\_\_\_ or such earlier date as the Tenant opens for business.  
 (NOTE: This is the date when the Tenant pays certain pass-thru expenses.)

**RENEWAL OPTIONS:**

**RENT DUE DATE:**

All monthly rent payments are due On or before the first day of each month.

**SECURITY DEPOSIT:**

Not required

**RENT DEPOSIT:**

Not required

**MAKE RENT CHECKS PAYABLE TO:**

**JOSEPH V. FISHER, LLC**

**BASE RENT:**

<u>Lease Period</u>	<u>PSF</u>	<u>Gross Annual</u>	<u>Gross Monthly</u>
3/1/05 - 2/28/06	\$10.76	\$65,031.56	\$5,419.29
3/1/06 - 2/28/07	\$11.30	\$68,715.30	\$5,726.27
3/1/07 - 2/28/08	\$11.87	\$72,181.47	\$6,015.12
3/1/08 - 2/28/08	\$12.46	\$75,769.26	\$6,314.10
3/1/09 - 2/28/10	\$13.08	\$79,538.48	\$6,628.29

The foregoing calculations include recurring pass-thru expenses for the Base Year (i.e., calendar year 2004); the foregoing amounts may increase by certain pass-thru expenses over the Base Year. Also, the foregoing calculations do not include sales tax, which the Tenant is obligated to pay, unless the Tenant is exempt and furnishes evidence to the Landlord of said exemption.

**LATE PAYMENT FEE:**

Ten percent (10%). (**NOTE:** This Late Payment Fee is due if any payment due the Landlord under this Lease is not paid within five (5) days of its due date. Also, the Late Payment Fee increases over time with each additional late payment: see paragraph 37 below.)

**SALES TAX:**

Tenant will pay all applicable sales tax due on all payments due under the Lease. (**NOTE:** Based on an exemption certificate furnished by the Tenant, the Tenant is exempt. The Tenant will be obligated to furnish a current certificate to the Landlord at all times.)

## LEASE

**THIS LEASE** (the "**Lease**") made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2004, by and between:

**JOSEPH V. FISHER, LLC**, a Florida Limited Liability Corporation, whose address is PO Box 420500, Summerland Key, FL 33042-0500, (hereinafter called "**Landlord**")

and

**WORKFORCE DEVELOPMENT BOARD OF FLAGLER and VOLUSIA COUNTIES, INC.**, a Florida Non-Profit Corporation, whose address is 1901 Mason Avenue, Suite 110, Daytona Beach, Florida 32117 (hereinafter called "**Tenant**")

### LEASED PREMISES

Pursuant to the terms of this Lease, Landlord leases to Tenant, and Tenant leases from Landlord, the premises outlined on the Sketch of Leased Premises attached hereto and made a part hereof as **Exhibit "A"** (the "**Leased Premises**").

The Leased Premises are a part of the **SPEEDWAY BUSINESS CENTER** (hereinafter called "**Center**"), located in the City of Daytona, County of Volusia, State of Florida, said Center being specifically described in **Exhibit "B"**, attached hereto and made a part hereof. The Center does not include the Sun Trust Bank or the Service Merchandise parcels.

### TERMS AND CONDITIONS OF LEASE

The Leased Premises are leased and accepted, and Tenant shall have and hold the Leased Premises, upon the terms and conditions set forth below:

1. **CONDITION OF LEASED PREMISES.** Landlord has no obligation whatsoever to make any improvements or repairs of any nature whatsoever to the Leased Premises and, as set forth in paragraph 2 below, the Tenant is accepting the Lease Premises in its "**AS IS**" condition. The Leased Premises is a newly built shell.

2. **EXAMINATION OF LEASED PREMISES.** Tenant has examined the Leased Premises and Tenant acknowledges that the Leased Premises are in good order and satisfactory condition and Landlord is under no obligation whatsoever to make any improvements or repairs of any nature whatsoever to the Leased Premises. In consideration for what the Landlord has characterized as reduced rent under the Lease, tenant has agreed that (i) the Landlord is making no representations of any nature whatsoever regarding the Leased Premises, (ii) the Tenant is accepting the Leased Premises in their "**AS IS**" condition, and (iii) the Tenant will, subject to the provisions of Paragraph 11 below, undertake any and all necessary improvements and repairs to the Leased Premises which may be necessary for the Tenant's use and



occupancy of the Leased Premises, whether required by applicable law, needed to bring the Leased Premises "up to code" or otherwise required by the Tenant.

3. **TERM OF LEASE.** The term of this Lease shall be from the date hereof and shall continue until February 28, 2010, (the "**Lease Expiration Date**"). In that regard:

A. **Lease Year.** The term "**Lease Year**" as used herein shall mean each calendar year during the term hereof, with any period of occupancy by Tenant prior to the first and subsequent to the last such calendar year being deemed a calendar year for the purpose hereof with pro rata adjustments with respect to rental or other matters provided for in this Lease in which the "**Lease Year**" shall be a factor.

B. **Renewal Term.** Tenant has the right to renew or extend this Lease beyond the Lease Expiration Date for twice for five years each time by giving written notice of such renewal to the Landlord not later than nine (9) months prior to the expiration date. Notwithstanding the foregoing, the Tenant shall have no right whatsoever to renew or extend this Lease unless the Tenant is at all times in full compliance with the terms and conditions of this Lease. The terms of this Lease shall continue during the Renewal Term subject, however, to any adjustments in base rent at a rate of 5% increase each year or as otherwise set forth in this Lease. The right to renew is again subject to the Landlord and the Tenant agreeing upon the length of the Renewal Term.

4. **RENT COMMENCEMENT DATE.** Notwithstanding anything herein to the contrary, Base Rent shall begin no later than March 1, 2005. At the request of either party, Landlord and Tenant shall enter into an agreement confirming the respective Commencement Dates, the occupancy of the Leased Premises and other matters reasonably requested by either party.

5. **RENTALS.** Tenant shall pay to Landlord the following rent during the term of this Lease:

A. **Base Rent.** The annual Base Rent set forth in the **GENERAL LEASE PROVISIONS** payable in twelve (12) equal monthly installments as set forth in the **GENERAL LEASE PROVISIONS**, each of which shall be due and payable on the first day of each and every calendar month during the term of this Lease. At times, the rent payable under this Subparagraph A is referred to as "**Guaranteed Rent**".

B. **Pass-Thru Expenses.** In addition to Guaranteed Rent, Tenant shall also pay to Landlord all other amounts due under this Lease including all pass-thru expenses set forth in the **GENERAL LEASE PROVISIONS** including all amounts due under Paragraphs 13 (i.e. Common Area Maintenance), 19 (i.e. Real Estate Taxes) and 20 (i.e. Common Area Maintenance, Real Estate Taxes, Insurance only), the Tenant's liability will only be for its Proportionate Share of the amount by which the actual expense for said items exceeds said related expense for the Base Year (i.e. calendar year 2004). Said Pass-Thru Expenses shall be payable on a monthly basis along with

the monthly Guaranteed Rent, but are subject to adjustment after the end of each Lease Year as otherwise set forth in this Lease.

D. **Status of Rent Payments.** The rent payments set forth under the **GENERAL LEASE PROVISIONS** are subject to adjustment from time to time based upon changes in the base Rent as set forth under the **GENERAL LEASE PROVISIONS** and also the actual amounts paid for pass-thru expenses (i.e. common area expenses, real estate taxes, property insurance, etc.).

E. **Rent for Fractional Periods.** If the Term of this Lease begins or ends on a date other than the first or last day of the month, then, in that event, rent and other amounts due for those fractional periods shall be prorated.

F. **Rent Absolutely Due.** All rent and other payments due Landlord hereunder shall be absolutely due to Landlord and shall be paid without notice or demand, and shall not be subject to any defense, off-set or counterclaim whatsoever.

G. **Monthly Rent Due on First Day of Month.** The monthly rent (consisting of monthly Base Rent and the monthly estimated pass-thru expenses) shall be due and payable on the first day of each and every calendar month during the term of the Lease.

H. **Sales Tax.** The Tenant shall be responsible for and pay to the Landlord on all rent and other payments due under this Lease all applicable sales tax, which sales tax shall be in addition to all rent and other payments set forth in this Lease.

All amounts required to be paid to the Landlord and designated as rent hereunder or otherwise due and payable to the Landlord under this Lease shall be deemed to be "**rent**" as that term is used in this Lease.

6. **USE OF LEASED PREMISES.** Tenant agrees that the Leased Premises will be used solely for the Permitted Use set forth under the **GENERAL LEASE PROVISIONS**. The Leased Premises may not be used for any other purpose without Landlord's consent, which Landlord may withhold in its absolute discretion. Without Landlord's prior written consent, the Tenant will not use or permit there to be located at any time on the Leased Premises any Hazardous Materials (as defined below) or any other regulated materials such as gasoline products, paint products, etc. except those which are normal and customary in the Permitted Use and only incidental such as cleaning materials, paint to paint the interior of the Leased Premises, etc. No alcoholic beverages may at any time be located on the Leased Premises for the purpose of sale or distribution to patrons or customers. (Thus, for example, Christmas parties for employees are not prohibited by this provision.)

7. **TENANT'S USE OF COMMON AREAS.** Tenant shall have a non-exclusive right to the use of the entrance ways, driveways, service drives and public parking areas, (the "**Common Areas**") as the same may exist from time to time, in the Center to the extent reasonably necessary to accommodate Tenant's business at the

Leased Premises. The use of such Common Areas are, however, subject to the following:

A. **Employee Parking.** Since the public parking areas are provided for the use of the customers of the Center, Tenant shall not allow its employees or representatives to park or store vehicles in the Center, except in areas designated by Landlord from time to time, if Landlord wishes to make said designation. Upon request of Landlord, Tenant shall furnish a list of all persons employed at the Leased Premises and the license registration numbers of all vehicles owned or used by them. Without Landlord's prior written consent, Tenant will not employ more persons than set forth under the **MAXIMUM NUMBER OF EMPLOYEES** under the **GENERAL LEASE PROVISIONS**, and the total number of parking spaces in the Center used by Tenant's employees shall not exceed the number of parking spaces set forth as the **MAXIMUM NUMBER OF PARKING SPACES** under the **GENERAL LEASE PROVISIONS**. Landlord shall have the right from time to time to identify parking areas for tenants in the Center.

B. **Loading and Unloading.** Except as authorized by Landlord, all loading and unloading at the Leased Premises (other than loading for retail customers) shall be done at the loading facilities or areas at the rear of the Leased Premises in order that the public parking areas shall be free from congestion of such activities. Temporary parking of vehicles shall be permitted in the service area only for the purpose of loading or unloading.

#### **8. LANDLORD'S OBLIGATION FOR REPAIRS.**

A. **Repairs to Structural Portions.** Landlord shall, at its sole cost and expense, keep the roof, the exterior and supporting walls, and other structural portions of the Leased Premises in good repair. Except as expressly set forth in this Subparagraph A, Landlord has no other duties or obligations whatsoever for any repairs or maintenance to the Leased Premises.

B. **Tenant's Neglect.** Regardless of any obligation otherwise imposed upon Landlord under Subparagraph A above, Tenant shall pay for the cost of any repairs resulting from the negligence or the unlawful or willful acts of its employees, contractors, customers, agents, representatives or visitors.

C. **Landlord's Liability.** Landlord shall not be liable to Tenant for failure to make any repairs required of Landlord unless written notice of necessity thereof has been given by Tenant to Landlord, specifying in reasonable detail the repairs required, and Landlord shall not have made such repairs within a reasonable period of time sufficient to accomplish such repairs after receipt of such notice, due allowances being made for delays beyond the control of Landlord. In any event, Landlord shall have no duty or liability whatsoever to Tenant for any incidental damages, lost profits, or any damage to any property of Tenant.

#### **9. TENANT'S CARE, REPAIR AND MAINTENANCE OF LEASED PREMISES.**

A. **General Repairs.** Tenant shall, at its sole cost and expense, keep the Leased Premises in good repair. This obligation shall include (but is not limited to) all interior painting, floor maintenance, replacement of damaged ceiling tile, screen repair, and repair and replacement, if necessary, of all hardware, interior and exterior doors, trade fixtures and heating, air conditioning, water, electrical, plumbing and other equipment, whether or not they were originally installed by Landlord or by Tenant. By way of illustration and not limitation, the following are obligations of Tenant in regard to the Leased Premises:

(1) Tenant shall maintain, repair and replace, if necessary, all heating, air conditioning and ventilation equipment and systems (the "**HVAC**") in the Leased Premises, including any maintenance, repairs or replacements needed to make the HVAC operable to meet Tenants needs, and, in that regard, the Tenant shall contract with a licensed heating and air conditioning firm (subject to Landlord's reasonable approval) for regular inspection and maintenance of the HVAC, including, but not limited to, regular replacement of filters and Tenant shall furnish Landlord a copy of said contract. At the expiration or earlier termination of this Lease, the Tenant will return the Leased Premises with the HVAC in good order and repair.

(2) Tenant shall maintain all the display windows and glass in a clean and neat condition. No signs, displays, shades, awnings, tinting, or any other materials of any nature whatsoever may be placed on or against the outside windows of the Leased Premises without Landlord's prior written consent, which consent shall not be unreasonably withheld.

B. **Replacement of Glass.** Tenant shall, at its sole cost and expense, replace and repair all plat or exterior damaged glass except such glass as may be damaged as a result of Landlord's negligence.

#### 10. **ADDITIONAL DUTIES OF TENANT**

A. **Laws.** Tenant shall at all times comply with all laws and ordinances applicable to the Tenant and its business.

B. **Nuisance.** Tenant shall not permit any nuisance or dangerous condition to occur at the Leased Premises.

C. **Maintenance.** Tenant shall at all times keep the Leased Premises and the areas immediately in front of the Leased Premises and immediately to the rear of the Leased Premises in a clean and neat condition.

D. **Noise and Air Pollution.** Tenant shall prohibit disturbing or offensive odors, fumes, gases, smoke, dust, steam vapors, noise or vibrations from occurring on or from the Leased Premises.

E. **Pest Control.** Tenant shall keep the Leased Premises free of vermin.

F. **Use of Appliances.** Tenant shall prohibit use of sinks, toilets or urinals in the Leased Premises for any purpose except that for which they were designed and installed.

G. **Trash Storage.** Tenant shall store all trash and garbage inside the Leased Premises and provide for its prompt and regular removal in containers provided by the Landlord at the Center. Tenant shall not burn any trash or any kind in or about the Center. Tenant shall not place in any such dumpster at the Center any trash or garbage other than that generated at the Leased Premises and, further, shall not dispose of any other materials other than trash and garbage which can be customarily disposed of. Thus, for example, hazardous or other similar materials (e.g. paint, petroleum products, etc., but only to the extent otherwise permitted to be on the Leased Premises) will be separately disposed of by Tenant at its expense and will not be placed in any of the garbage containers at the Center.

H. **Advertising Media.** Tenant shall not permit the use of any advertising media or device (such as sound production devices) which shall be audible from the exterior of the Leased Premises.

I. **Operating Hours.** In order to assure the transaction of the maximum volume of business at the Leased Premises and at the Center, Tenant shall, unless otherwise agreed to by Landlord, cause its business to be operated on ALL business days (i.e. Monday - Friday) during the hours of 10:00 a.m. and 5:00 p.m. The Tenant may open earlier and stay open later than the foregoing hours.

J. **Utilities for Leased Premises.** Tenant shall procure for its own account, shall be solely responsible for, and shall promptly pay all charges (not covered in the Common Area Maintenance Expenses) for water, sewer service, gas, electric power, hot and cold water, heat and air conditioning consumed or used in or at said premises, together with any and all other utilities used or consumed in the Leased Premises. Landlord shall not be responsible or liable to Tenant in damages or otherwise for the quality or quantity or for any interruptions, curtailment, or suspension of utility service due to repairs, action of public enemy, or any other cause beyond Landlord's reasonable control.

K. **Taxes.** Tenant shall make timely payment of all ad valorem taxes and assessments assessed against Tenant's stock of merchandise, furniture, equipment, supplies and other property located on or used in connection with the Leased Premises and of all privilege and business licenses, taxes and similar charges for which Tenant is primarily responsible.

L. **Occupancy License.** Where governmental jurisdictions require businesses to obtain an Occupancy License, Tenant shall provide Landlord within thirty (30) days after Tenant opens for business with a copy of the Occupancy License granted to Tenant by the governing municipality.

M. **Notice of Accidents.** Tenant shall give immediate notice to Landlord in

case of fire or accidents in the Leased Premises.

N. **No Alcohol.** Tenant shall not sell or distribute alcoholic beverages for on or off premises consumption without the prior written approval by Landlord. If approved, Tenant shall carry liquor liability insurance naming Landlord and its agents as additional insured. Tenant shall furnish Landlord a copy of said liquor liability insurance and shall keep said policy in full force and effect and shall notify Landlord immediately upon termination of said insurance.

#### 11. **ALTERATIONS TO LEASED PREMISES.**

A. **Alternations.** Alternations to the Leased Premises by Tenant shall be made only with the written consent of Landlord, which consent shall not be unreasonably withheld in case of minor alterations to conform the Leased Premises to the Permitted Use provided, however, prior notice of said alteration shall be given to the Landlord. However, any structural alterations by Tenant, (i.e. construction of interior walls, roof cuts, etc.), must have written approval by Landlord, which Landlord may withhold in its discretion. Any unauthorized structural alteration by Tenant, shall result in Tenant being financially liable for all costs Landlord incurs as a result of any such unauthorized alterations including, if so elected by Landlord, the removal of any such alterations and related repairs. To the extent authorized, any such improvements by the Tenant must be made in compliance with all applicable laws, the Tenant will be required to obtain all requisite building permits, and any such alterations or improvements may only be made by properly licensed contractors, subject to Landlord's approval, such approval not to be unreasonably withheld. In any event, the Tenant prior to commencing any alterations shall submit to the Landlord the building plans for the alterations. The Landlord may during any alterations inspect the construction to confirm that said construction is in compliance with the plans, building code and applicable law. All alterations shall be done in a good and workmanlike manner.

B. **Paying of Contractors.** Tenant shall promptly pay all contractors and material men employed by the Tenant and should any such lien be made or filed, Tenant shall bond off or discharge the same within ten (10) days after written request by Landlord.

C. **Tenant Has No Right To Lien Center.** Tenant shall keep the Leased Premises and the Building free from any liens arising out of any work performed, materials furnished or obligations incurred by Lessee, subject, however, to the rights of Tenant to contest such liens in the manner set forth in Section 11 hereof. Landlord shall have the right at all times to post notices of non-responsibility on the Premises and record verified copies thereof in connection with all work of any kind upon the Premises.

12. **RELOCATION OPTION.** If Landlord determines to utilize the Leased Premises for other purposes during the term of this Lease, upon sufficient notification to the Tenant of the options available, the Tenant agrees to relocate to another space in the Center, provided such other space is of equal or greater size and market value.

An increase in the square footage as a result of this move will not increase the square footage the rent is calculated on. Future rent calculations will be based on 6,081 square feet for the Term of the Lease and renewal options. Landlord shall pay all reasonable expenses of any such relocation, including but not limited to moving expenses, reconstruction of all Tenant and Landlord furnished improvements, interior design, and furnishing expenses incurred as a direct result of the move.

**13. COMMON AREA MAINTENANCE.**

A. **Definition.** The term "Common Areas" means the entire areas designed for common use or benefit within the Center, including, but not by way of limitation, parking areas, driveways, service roads, landscaped and vacant areas, loading docks, walks, retaining walls, curbs, retention areas and facilities, corridors and Center signs together with facilities such as washrooms and settling and retention ponds located within or outside of the Center. The Common Areas shall at all times be subject to the exclusive control and management of Landlord and may be expanded, contracted or changed by Landlord from time to time as deemed desirable. Subject to reasonable, nondiscriminatory rules and regulations to be promulgated by Landlord, the Common Areas is hereby made available to Tenant and its employees, agents, customers and invitees for their reasonable non-exclusive use in common with other tenants, their employees, agents, customers, invitees and Landlord for the purpose for which constructed. Landlord shall have the right to change the areas, location and arrangement of Common Areas (including specifically the parking and access areas); and to restrict parking by tenants, their officers, agents, and employees to designated areas within the Common Areas.

B. **Common Area Maintenance Expense.** Throughout the term of this Lease, Tenant shall pay to Landlord, as a "**Common Area Maintenance Expense**", Tenant's Proportionate Share of all costs and expenses of every kind and nature paid or incurred by Landlord in (a) operating, maintaining, repairing and lighting the Common Areas and all other non-leasable areas and facilities located in the Center which are available for use in common by occupants of the Center and their customers and invitees, (b) operating, maintaining, repairing and lighting the service areas, garbage and refuse disposal facilities (with the exception that restaurant users will arrange and pay for garbage and refuse disposal facilities at the restaurant users own expense), Center maintenance and storage room, loading area, storm water facilities (including drainage areas and retention ponds), and all other areas and facilities located in the Center which are used in the maintenance and operation of the Center, (c) operating, maintaining, repairing the Center sign(s), and (d) providing security and on and off site traffic control. Such expenses shall include, but not be limited to costs of management and supervision, cleaning, all water consumed in the Center which is not separately metered to Tenant, the purchase, placement, and maintenance of trash receptacles and liners, repairing, maintaining and replacing (but less the amount of any insurance proceeds or condemnation awards), lighting, snow and ice removal and control, parking line painting, landscaping, providing security, providing public liability, property damage, fire and extended coverage and such other insurance as Landlord deems appropriate, total compensation and benefits (including premiums for

workmen's compensations and other insurance) paid to or on behalf of employees, maintenance and cleaning of the storm water facilities including maintenance and cleaning out the retention pond, personal property taxes, supplies, fire protection and fire hydrant charges, licenses and permit fees, parking area surcharges or levies, reasonable depreciation of equipment used in operating, maintaining and repairing the Common Areas and rent paid for the leasing of any such equipment, and administrative charges equal to five percent (5%) of the total of all the foregoing items for Landlord's overhead expenses.

C. **Monthly Payment of Common Area Maintenance Expenses.** The estimated amount of Tenant's Common Area Maintenance Expense shall be paid in monthly installments in advance on the first day of each month in the amount set forth in the **GENERAL LEASE PROVISIONS**.

D. **Base Year Expense Included In Base Rent.** There is included in Base Rent the Tenant's Proportionate Share of recurring Common Area Maintenance Expenses for calendar year 2004 (the "**Base Year**"). Thus, except for Non-Recurring Items(as defined below), the Tenant will not be required to pay any additional amount for Common Area Maintenance Expenses for the Base Year.

E. **Annual Adjustment.** If following the Base Year, (e.g. calendar year 2005 and thereafter), the Common Area Maintenance Expenses for said year exceed the Common Area Maintenance Expenses for the Base Year, then, in that event the Tenant shall pay to the Landlord its proportionate share of any increase in Common Area Maintenance Recurring Expenses over the prior year. In the event Common Area Maintenance Expenses have increased for a year or there are Non-Recurring Expenses for which the Tenant has not paid its Proportionate Share for that year, then, in that event Landlord shall furnish to Tenant a statement of the amount of by which said actual Expenses have increased. Tenant shall pay to Landlord, within thirty (30) days following its receipt of Landlord's statement, the amount shown as due thereon. Landlord shall not be required to maintain books and records regarding Common Area Maintenance Expenses beyond one (1) year from the Lease Year in question. Further, the Expenses to be paid by Tenant hereunder shall be conclusive if not reviewed or revisited within one (1) year from the date Landlord so furnishes said statement to Tenant.

F. **Recurring Items.** The term "**Common Area Maintenance Expenses**" means the normal contract charges for maintenance only of the Common Area on a recurring basis (e.g. monthly sweeping of the parking lot, taxes, utilities, etc.). Thus matters not relating to normal, on going and recurring maintenance are not recurring items and therefore not subject to the limitation set forth above, in which case the Tenant will pay its Proportionate Share of said non-recurring items.

14. **SIGNS AND ADVERTISING.** Without the prior approval of Landlord, Tenant shall not permit the painting or display of any sign, placard, lettering or advertising material of any kind on or near the exterior of the Leased Premises except as expressly permitted in this Paragraph.



A. **Sign on Building.** Tenant shall, at its expense, install outside the Leased Premises on the fascia of the Center Building an electrically illuminated sign of such design, content, form and material as shall be approved by Landlord in writing for the purpose of designating generally the locations of Tenant's business.

B. **Pylon Sign.** Subject to availability, Tenant may add a sign identifying its business to the pylon sign on Bill France Boulevard for the Center.

C. **Maintenance of Signs, Etc.** Tenant shall pay the costs of its signs and their installation and shall thereafter maintain its signs in good condition. Tenant shall be responsible for damage to and repairing the Center building to as near original condition subject to Landlord's acceptance, due to installation, maintenance, and/or removal of signs. Signs which remain in place on the Leased Premises ten (10) days after the end of the Term or after Tenant abandons the Leased Premises shall automatically become the property of Landlord and may be removed by Landlord at Tenant's expense (including cost of repairs to the Leased Premises).

D. **Compliance with Law.** All signs shall be in strict compliance with applicable law. The copy area of signs shall be in compliance with laws. Further prior to installing any signs, Tenant must submit said signs to Landlord for its approval, not to be unreasonably withheld.

15. **USE OF CENTER NAME.** Tenant shall not have any property right to or interest in any name or distinctive designations which may become associated with the Center. Landlord shall retain all property rights in, and right to the use of, such name or designation.

16. **CENTER CHANGES.** Landlord may at any time construct additional buildings or improvements in the Center and may remodel or remove any of them. Any sidewall of the Leased Premises may be used by Landlord as a "party wall" for other buildings of Landlord. In so doing, Landlord, however, shall not unreasonably interfere with Tenant's use and occupancy of the Leased Premises or impair its rights under this Lease. Any building additions to the Center shall be incorporated into the total Center square footage upon which Tenant's Proportionate Share of Common Area Maintenance Expenses under Paragraph 13 above is based. In the event that the additions occur during the calendar year, Tenant's Proportionate Share shall be adjusted to reflect the portion of the year in which expenses attributable to the addition occurred.

17. **REAL ESTATE TAXES.**

A. **By Tenant.** Tenant agrees to pay as additional rent hereunder a sum equal to Tenant's Proportionate Share of the amount by which all real estate taxes which may be levied or assessed by the lawful taxing authorities against the land, buildings and all improvements in the Center exceed the real estate taxes on the Center for the Base Year (i.e. calendar year 2004). **"Real Estate Taxes"** shall be deemed to mean all city, county, town and village taxes, special or general, ordinary or extraordinary,

assessments, water and sewer rents, charges for public utilities, excises, levies, licenses and permit fees, and other governmental charges which shall be imposed upon or become due and payable or become a lien upon the Center or any part thereof, including the building and improvements which may hereafter be placed or erected thereon, or on the sidewalks or streets in front of the same by any federal state, municipal or other governmental or public authority under existing laws or practice or under any future laws or practice. If a tax consultant is secured by Landlord, Tenant shall pay the Proportionate Share of this cost as long as such tax services result in a tax savings for Tenant. Tenant's Proportionate Share of Landlord's Real Estate Taxes of the Center shall be determined for each year by multiplying such increased Real Estate Taxes by Tenant's Proportionate Share.

B. **Monthly Payment of Real Estate Taxes.** If there is an increase in real estate taxes over real estate taxes for the Base Year as set forth herein, then, in that event, the Base Rent paid by the Tenant for the following year shall be increased to take into account on a monthly basis the Tenant's Proportionate Share of said increased real estate taxes.

18. **INSURANCE.** Tenant shall at its own cost and expense keep and maintain in full force and effect the following insurance:

A. **Tenant's Property Insurance.** Property damage insurance on all Tenant's property to the extent of its full insurable value against loss or damage by fire, with extended coverage, and shall furnish Landlord with satisfactory evidence of such coverage within thirty (30) days after the commencement date of this Lease Agreement.

B. **Tenant's Liability Insurance.** Liability insurance against claims for bodily injuries or death upon or near the Leased Premises, to the extent of not less than \$1,000,000.00 in respect to bodily injuries or death to any one person and to the extent of not less than \$2,000,000.00 for bodily injuries or death to any number of persons arising out of one accident or disaster and property damage with limits of not less than \$500,000.00. Tenant shall furnish Landlord with satisfactory evidence of such coverage within ten (10) days after the execution of the Lease and, in any event, prior to the Tenant actually taking possession of the Leased Premises. Such policy of insurance shall show Landlord as an additional insured, shall contain a waiver of subrogation clause, and shall contain a clause that the insurer will not cancel or change the insurance without first giving Landlord thirty (30) days prior written notice.

C. **Pass-Thru for Landlord's Insurance.** Tenant shall pay Tenant's Proportionate Share of the amount by which premiums for insurance maintained by Landlord on the Center exceed actual premiums paid for the Base Year (i.e. calendar year 2004), including, but not limited to, coverage for fire, public liability, property damage, business interruption insurance, and other insurance as Landlord deems appropriate on or with respect to the Center. In regard to insurance maintained by Landlord, Landlord shall have no duty or obligation whatsoever in regard to Tenant, and said insurance will be solely for the benefit of Landlord.

D. **Activities by Tenant.** Tenant will not do or suffer to be done, or keep, or suffer to be kept, anything in, upon or about the Leased Premises which will contravene Landlord's policies insuring against loss or damage by fire or other casualty (including but not limited to public liability) or which will prevent Landlord from procuring such policies in companies acceptable to Landlord. If anything done, omitted to be done or suffered to be done by Tenant, or kept or suffered by Tenant to be kept in, upon or about the Leased Premises shall cause the rate of fire or other insurance on the Leased Premises or other property of Landlord in companies acceptable to Landlord to be increased beyond the minimum rate from time to time applicable to the premises for use for the purposes permitted under this Lease or such other property for the uses made thereof, Tenant will pay the amount of such increase promptly upon Landlord's demand.

19. **PROTECTION OF LANDLORD.**

A. **Indemnity By Tenant.** Tenant shall indemnify and save harmless Landlord, its stockholders, directors, officers, employees, agents and contractors (the "**Indemnified Parties**") from and against any and all liability, damage, penalties or judgment arising from injury to person or persons or property sustained by anyone in and about the Leased Premises and Common Area of the Center resulting from any act or acts or omissions of Tenant or Tenant's officers, agents, servants, employees, contractors or sub-lessees. Tenant shall at its own cost and expense, defend any and all suits or actions which may be brought against any Indemnified Party or in which any Indemnified Party may be impleaded with others upon any such aforementioned matter or claim except as may result from the acts set forth in Subparagraph B below.

B. **No Liability By Landlord.** Except for its negligence or the negligence of its officers, agents, servants, employees or contractors, Landlord shall not be responsible or liable for any damage or injury to any property, fixtures, buildings, or other improvements or to any person or persons, at any time on the Leased Premises, including any damage or injury to Tenant or to any of Tenant's officers, agents, servants, employees, contractors, customers, or sub-lessees. Landlord shall not be under any responsibility or liability in any way whatsoever for any latent defect in the Leased Premises or in the building of which they form a part.

20. **FIRE OR CASUALTY.** If the Leased Premises shall be made untenable by fire or other casualty, Landlord, if it so elects, may (a) terminate the term of this Lease, effective as of the date of such fire or casualty, by written notice given to Tenant within thirty (30) days after such date, or (b) repair, restore, or rehabilitate said Leased Premises at Landlord's expense within six (6) months after the date of such fire or casualty only if the necessary permits have been obtained for such repairs, in which event the term hereof shall not terminate but any fixed rent herein reserved shall be abated on a pro rata basis while the Leased Premises shall remain untenable (but nothing herein shall constitute any waiver by Landlord to seek any rent recovery under any applicable insurance policies). Thus, for example, if the Tenant is unable to use fifty percent (50%) of the Leased Premises measured by square footage, then the Tenant will only be obligated during said period to pay fifty

percent (50%) of what the Tenant is otherwise obligated to pay under this Lease whether in the form of rent or other payments. If Landlord elects to so repair, restore or rehabilitate said Leased Premises and shall fail to substantially complete the same within said six (6) month period, due allowance being made for delay due to practical impossibility, either Landlord or Tenant, by written notice to the other, given within fifteen (15) days next following the last day of said six (6) month period, may terminate the term hereof as of the date of such fire or casualty. In the event of termination of the term hereof pursuant to this Paragraph, Guaranteed Rent, if any, reserved hereunder shall be apportioned on a per diem basis and paid to the date of such fire or casualty and percentage rent, if any, shall be paid to the date of termination. The right of termination herein provided is separate and independent of any other provisions of this Lease relative to termination. The foregoing notwithstanding, of any other provisions of this Lease relative to termination. The foregoing notwithstanding, if during the last two (2) years of the existing term, the Leased Premises shall be damaged to the extent of more than twenty-five percent (25%) of the reasonable value of the improvements above foundation and floor, Landlord shall be obligated to repair and replace said premises if the Tenant renews its Lease, and unless Tenant, within thirty (30) days after demand by Landlord, extends said Lease for the period of any renewal term then authorized, Landlord shall not be obligated to make such repairs, but may, at its election to be exercised within sixty (60) days after date of such damages. If the Lease is terminated by Tenant pursuant to the provisions of this Paragraph, Landlord shall have no further obligations to Tenant.

21. **EMINENT DOMAIN.** In the event the whole of the Leased Premises (or such substantial part thereof that they are rendered unsuitable for Tenant's business) shall be taken by any public authority under the power of eminent domain or like power, this Lease shall terminate as of the date possession thereof shall be required to be delivered to the appropriate authority. In the event of only a partial taking under such power, which Lease shall not terminate, but there shall be an equitable abatement of the Guaranteed Rent proportionate to the part of the Leased Premises taken under such power. In the event of any total or partial taking under such power, Landlord shall be entitled to all such awards of damages as may be allowed. In the event there is any taking of any Common Area, said taking shall not terminate this Lease, result in any reduction of rent payments or other obligations of Tenant, and shall not have any other effect whatsoever on the Lease. All proceeds and awards arising out of any such taking regarding the Common Area shall be the sole property of Landlord.

22. **ASSIGNMENT AND SUBLETTING.**

A. **General Provisions.** Without Landlord's prior written consent, which consent shall not be unreasonably withheld, Tenant shall not assign this Lease, sublet any part of the Leased Premises, or otherwise transfer any right or interest hereunder. If Tenant is a corporation, the sale or encumbrance of a majority of its outstanding voting stock (whether in one transaction or as the result of more than one transaction) shall be deemed an assignment of this Lease. Likewise, if Tenant is a partnership, the

sale or transfer of a majority of its partnership interests (whether in one transaction or as the result of more than one (1) transaction) shall be deemed assignment of this Lease. If, at any time during the term, Landlord has knowledge that a person, firm or corporation other than Tenant is in possession of the Leased Premises without the written consent of Landlord, Landlord may, at its option, at any time thereafter, by written notice to Tenant, accept and treat such person, firm or corporation in possession as the assignee or sub-lessee of Tenant, in which event both Tenant and such assignee or sub-lessee shall be obligated to observe and perform all the covenants, conditions and provisions herein contained binding upon Tenant provided; however, that nothing herein shall affect Landlord's other remedies for Tenant's default by wrongful assignment or subletting. If Landlord gives its consent, such approval shall be limited only to the particular instance described in the consent.

B. **No Release of Tenant.** In the event Landlord's written consent is given to an assignment, or subletting, Tenant shall nevertheless remain liable to perform all covenants and conditions thereto and to guarantee such performance by its assignee or subtenant unless relieved thereof by the express terms of such consent. In no event may the Leased Premises be sued for any use other than as specifically set forth under this Lease and, further, nothing contained in any such assignment shall release Tenant from any continuing liability.

C. **Right of Landlord to Cancel.** Landlord, in reviewing any request for assignment or subleasing by Tenant, shall have the absolute right to cancel this Lease upon giving sixty (60) days notice to Tenant. In such case, the Lease shall expire as of the end of said sixty (60) day period.

### 23. **LANDLORD MORTGAGES.**

A. **Subordination.** This Lease shall be automatically subordinated to the lien of any mortgage ("**Mortgage**") which currently exists on the Center or which Landlord may at any time place on the center. Upon Landlord's request, Tenant shall execute any instrument which may be required to confirm such subordination.

B. **Notice to Mortgagee.** Tenant agrees that in the event Landlord is in default under this Lease, Tenant shall give simultaneous written notice of such default to the holder of record of the first mortgage covering the Leased Premises provided Tenant shall have first been notified, in writing, of the name and address of such mortgagee. Tenant further agrees that said holder of the first mortgage shall be permitted to correct or remedy such default within the same period of time allotted to Landlord.

24. **ESTOPPEL CERTIFICATES.** At any time and from time to time upon request in writing from Landlord, Tenant agrees to execute, acknowledge and deliver to Landlord a statement in writing certifying that this Lease is unmodified and in full force and effect for if there have been modifications, that the same is in full force and effect as modified and stating the modifications), the dates to which the Guaranteed Rent, Percentage Rent, and other charges have been paid, and any other factual data

relating to this Lease or the Leased Premises which Landlord may request.

25. **ENTRY OF LANDLORD.** Except for emergencies, the Landlord shall provide reasonable notice to the Tenant and the Tenant shall have the right to accompany the Landlord upon entry to the Leased Premises. In the event of an emergency, the Landlord shall make a good faith effort to contact the Tenant, but in any event, if the emergency poses risk of damage to persons or property, the Landlord may immediately enter the Leased Premises to avoid said damage. However, Landlord shall have no obligation to do so by the provision.

Landlord may, at all reasonable times, enter the Leased Premises.

- A. To inspect or protect the Leased Premises or any of its equipment thereon;
- B. To effect compliance with any law, order or regulation of any lawful authority;
- C. To make or supervise repairs, alterations or additions;
- D. To exhibit the Leased Premises to prospective tenants, purchasers or other persons; and
- E. To alter or otherwise prepare the Leased Premises for re-occupancy at any time after Tenant has vacated the Leased Premises.

No authorized entry by Landlord shall constitute an eviction of Tenant or a deprivation of Tenant's rights, alter the obligation of Tenant, or create any right in Tenant adverse to Landlord's interests hereunder and the rent reserved shall in no way abate, by reason of loss or interruption of business of Tenant, or otherwise, while any repairs, alterations, improvements or additions are being made. During the last six (6) months prior to the Leased Premises the usual notices "**For Rent**", which notices Tenant shall permit to remain thereon without molestation.

26. **VACATING LEASED PREMISES ON LEASE EXPIRATION DATE.** On the Lease Expiration Date, Tenant shall quit and surrender the Leased Premises broom clean and in good condition and repair (including the HVAC) together with all alterations, fixtures, installations, additions and improvements which may have been made in or attached on or to the Leased Premises except for reasonable wear and tear. Upon surrender, Tenant shall remove its trade fixtures, and Tenant shall repair any damage to the Leased Premises caused thereby. Landlord may require Tenant to restore the Leased Premises so that the Leased Premises shall be as they were on the Lease Commencement Date except for reasonable wear and tear, provided, however, if the Tenant is not in default and has fulfilled all its duties under this Lease, the Tenant will not be required to remove any Tenant Improvement that were installed with the approval of the Landlord. If the Tenant fails to surrender the Leased Premises as required herein, the Tenant shall be liable to the Landlord for all damages which the Landlord may sustain which, in any event, shall not be less than twice the total rent on a per diem basis which was required to be paid under the Lease immediately prior to the Lease Expiration Date. For the purposes of this paragraph, the term "Lease Expiration Date" means any earlier date on which the Tenant may vacate the Leased Premises.

27. **REMOVAL OF EQUIPMENT AND FIXTURES.** All trade furnishings, fixtures and equipment in the Leased Premises, which are supplied and installed at the sole expense of Tenant, shall remain Tenant's property. Tenant may remove these items prior to termination of this Lease, provided: A. Tenant is not in default hereunder at the time of termination; and B. Tenant immediately repairs or reimburses Landlord for the cost of repairing all resulting damage or defacement. Otherwise, such items shall become Landlord's property.

28. **HOLDING OVER BY TENANT.** In the event Tenant remains in possession of the Leased Premises after the Lease Expiration Date and without the execution of a new lease, it shall be deemed to be occupying said Premises as a tenant in sufferance and not under any other arrangement such as a month-to-month or other periodic rental. In such case, either party may terminate such tenancy in sufferance upon written notice thereof to the other party. Tenant shall not acquire any right or interest in the Leased Premises by remaining in possession after the termination of this Lease.

29. **DEFAULT.**

A. Events of Default. As used in this Lease, the term "**event of default**" shall mean any of the following:

(1) Tenant's failure to make payment of any rent or any other amounts payable by Tenant to Landlord hereunder within five (5) days after the same is due and payable;

(2) Tenant's failure, within ten (10) days after receipt of demand by Landlord, to fulfill any other non-monetary obligation imposed on Tenant by this Lease;

(3) Tenant or its guarantor shall file in any court a petition in bankruptcy or insolvency or for reorganization within the meaning of Chapter X of the Bankruptcy Act, or for the appointment of a receiver or trustee of all or a portion of Tenant's property;

(4) An involuntary petition of the kind filed against Tenant or any guarantor, if any, and such petition not vacated within thirty (30) days after the date of filing thereof. To the extent necessary, this amount may be used by the Landlord as an additional Security Deposit in the event of a default under the Lease prior to said rent payment coming due;

(5) Tenant or any guarantor, if any, shall make an arrangement for the benefit of creditors, or shall be adjudicated as bankrupt;

(6) Any property used in connection with Tenant's leasehold interest shall be taken on execution;

(7) Tenant shall for reasons other than those specifically permitted in this Lease, cease to conduct its normal business operations in the Leased Premises for a period of five (5) continuous days or for more than five (5) days in any thirty (30) day period; or

(8) Tenant's failure to provide Landlord with a copy of the Certificate of Occupancy granted to Tenant by the governing municipality showing that Tenant has complied with all building codes within thirty (30) days after Tenant opens for

business.

B. **Remedies for Default.** Upon the happening of an **"event of default"**, Landlord at its option, may in addition to any other rights which may be available to Landlord under applicable law, all of which rights are cumulative:

(1) Sue for all rent due under this Lease, including all past due rent and any and all future but not yet due rent for the balance of the then existing Term, all of which future rent shall be accelerated. For the purposes of this clause, **"Rent Due"** shall mean all Base Rent as well as all other pass-thru expenses required to be made by Tenant under this Lease;

(2) If default consists in whole or in part of Tenant's failure to expend funds, make the necessary expenditures for the account of Tenant who shall reimburse Landlord therefore with interest at the maximum legal rate of interest from date of expenditure; or

(3) Terminate Tenant's rights to possession of the Leased Premises without waiving any other rights that Landlord may have under this Lease, including the right of Landlord to recover all past due and future rent due for the then existing Term of the Lease. Upon termination of this Lease for any reason, or upon termination of Tenant's right of possession as provided above, Tenant shall promptly surrender possession to Premises and expel Tenant or anyone claiming under Tenant and remove the property of any of them without notice, formal claim or process, Landlord being absolved of any liability or claim for damages in doing anything reasonably necessary or appropriate in connection therewith. If Landlord elects to terminate Tenant's right of possession without terminating the term of this Lease, Landlord may, at its option, lease or sublet all or any part of the Leased Premises on such terms and conditions as Landlord may elect and collect from Tenant any balance remaining due on the rent or other obligations payable by Tenant under this Lease.

It is expressly understood and agreed that the provisions of this Paragraph shall not be construed to limit or impair any other right, claim or remedy to which Landlord may be entitled by law in case of Tenant's default, all of which rights for Tenant shall be cumulative. Landlord is under no duty to mitigate its damages in the event of Tenant's default.

Tenant shall also pay to Landlord all its costs and expenses, including reasonable attorneys fees, incurred by Landlord in the event of Tenant's default, regardless of whether suit is brought by Landlord. The foregoing shall also apply in the event of any bankruptcy of Tenant.

If Tenant shall default in the performance of any covenant required to be performed by virtue of any provisions of this Lease, Landlord may, after any notice and the expiration of any period with respect thereto as required pursuant to the applicable provisions of this Lease, perform the same for the account of Tenant. If Landlord, at any time, is compelled to pay or elects to pay any sum of money by reason of the failure of Tenant, after any notice and expiration of any period with respect thereto as required pursuant to the applicable provisions of this Lease, to comply with any



provision of this Lease, or if Landlord is compelled to incur any expense including reasonable attorney's fees, instituting, prosecuting or defending any action or proceeding instituted by reason of any default of Tenant hereunder, the sum of sums so paid by Landlord, with all interest at the highest rate permitted by law, costs (including any of Landlord's attorney's fees) and damages, shall be deemed to be additional rental hereunder and shall be immediately due from Tenant to Landlord following the incurring of such expenses.

30. **LANDLORD'S WARRANTIES.** Landlord warrants to Tenant that it has the right to lease the Leased Premises on the terms and conditions of this Lease and that Tenant may peaceably and quietly hold and enjoy the Leased Premises for the term of this Lease as long as Tenant shall faithfully perform its obligations hereunder, except as otherwise provided for by the terms of this Lease. Landlord makes no other representations or warranties of any nature whatsoever under this Lease or otherwise.

31. **NOTICES.** In regard to all notices to be given under this Agreement, all notices shall be in writing and shall be deemed to have been given (i) in the case of hand delivery, when actually delivered to the other party at the address set forth at the beginning of this Agreement, (ii) in the case of mailing, three (3) days after such notice has been deposited in the United States Mails, postage prepaid, by certified or registered mail and sent to the other party at the address set forth in the beginning of this Agreement, and (iii) in all other cases, when actually received by the other party. Notices may be given by telecopy and, in such case, shall be deemed to have been given when received by the other party. Either party may change the address to which said notices are to be given by the giving of notice of such to the other party as set forth in this paragraph. In regard to the Tenant, notices may also be given by delivering the notice addressed to the Tenant at the Leased Premises.

32. **DEFAULT BY LANDLORD.** Landlord shall in no event be charged with default in the performance of any of its obligation hereunder unless and until Landlord shall have failed to perform such obligations within thirty (30) days after written notice by Tenant to Landlord properly specifying wherein Landlord has failed to perform any such obligation, or if circumstances are such that the default cannot be reasonably cured within said thirty (30) day period, unless landlord has not commenced to perform such obligations within said thirty (30) days after written notice, and has not completed performance within a reasonable time thereafter. Landlord shall not be obligated for any damages whatsoever to Tenant beyond he cost of curing said default. By way of illustration, Landlord shall not be liable to Tenant for any incidental or consequential damages, lost profits, or damages to any of Tenant's property.

33. **MISCELLANEOUS.**

A. **Authorization of Signors.** Each of the persons whose signature appears hereon doe warrant to all others signatory hereto that such person is duly authorized and empowered to execute this Lease Agreement and thereby find Landlord and Tenant first named above.

B. **Joint and Several Liability.** If more than one person should sign this Lease (including any guarantors), all of said persons shall be jointly and severally liable for all obligations of Tenant under this Lease.

C. **Time of Essence.** Time is of the essence of this Agreement.

D. **Financial Information on Tenant.** At the request of Landlord, Tenant shall furnish to Landlord from time to time

E. **Applicable Law.** This Lease shall be construed in accordance with and governed by the laws of the State of Florida.

F. **Miscellaneous.** References to Tenant, whenever consistent with the context of this Lease, shall include the plural, neuter, feminine and masculine. In the absence of specified provisions to the contrary, the party upon whom any obligation is imposed by this Lease shall perform the obligation at its own expense. Paragraph headings relating to the contents of particular paragraphs are inserted only for the purpose of convenience and are not to be construed as parts of the particular paragraphs to which they refer. Any separate or attached sketch, drawing, plan, specification, rider, exhibit, or schedule shall be deemed an original part of this Lease only if initialed by the parties. Any sketch of the Leased Premises is for the purposes only of identifying Leased Premises, and does not constitute any separate warranty of representation by the Landlord.

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

H. **Interpretation of Lease.** If it ever becomes necessary to interpret this Lease, it shall be done without giving any preference or weight as to which party prepared or caused this Lease to be prepared.

I. **Memorandum of Lease.** Upon the request of Landlord, Tenant will in good faith cooperate in the preparation and execution of a Memorandum of Lease describing the parties, the Leased Premises, the basic terms of this Lease and such other portions hereof as either party may desire to be included in such instrument. Tenant will not record or cause anything to be recorded in the Public Records regarding the Leased Premises or the Center without Landlord's prior written consent.

J. **Identity of Interest.** The execution of this Lease or the performance of any act pursuant to the provisions thereof shall not be deemed or construed to have the effect of creating between Landlord and Tenant the relationship of principal or agent or of partnership or of joint venture and the relationship between them shall be that only of Landlord and Tenant.

K. **Waiver of Jury Trial.** In regard to all actions whatsoever regarding this Lease, or any other matter between the parties hereto or the Leased Premises, each party expressly waives any right to a jury trial.

L. **Exclusive Venue.** The exclusive venue for any and all actions involving this Lease, the Leased Premises, or any other matters whatsoever between the parties hereto regarding directly or indirectly the transaction described herein, shall be solely in the county where the Leased Premises are located.

M. **Binding Effect of Lease.** All rights and liabilities given to or imposed upon either of the parties by this Lease shall benefit and bind their respective successors, heirs and assigns to the extent this Lease may be assignable as provided above.

N. **Non-Waiver.** In the event Landlord shall fail to exercise any right, power, privilege, or option immediately upon the same arising, such failure shall not be construed as a waiver of the right to exercise that right, power, privilege, or option at a subsequent time, and the failure on the part of Landlord to insist upon strict compliance with any of the terms of this Lease by Tenant shall not be construed as a waiver of the right of Landlord to insist upon strict compliance in the future.

O. **Insufficient Funds.** Landlord will bill Tenant, and Tenant agrees to pay, in an amount equal to the greater of ten percent (10%) of the amount of the check or the bad check fee charged by Landlord's bank for each rental payment or other payment made to the Landlord hereunder that has been returned because of insufficient funds, in addition to the late charge stated in Paragraph 37 below. If Tenant should on more than two (2) occasions provide a check to Landlord which is returned for insufficient funds, all future payments by Tenant will be required to be made by local bank cashier's check.

P. **No Third Party Beneficiaries.** This Agreement is solely between the parties hereto, and no person other than said parties shall have any rights or privileges hereunder.

Q. **Guarantors.** Each person who is a stockholder in the Tenant will guaranty this Lease by executing the Guarantee of Lease in the form attached hereto as Exhibit "D". The person(s) signing as guarantor(s) at the time of this Lease constitute all the stockholders in the Tenant. Further, if any new person becomes a stockholder after the date of this Lease, that person will be required to execute the Guaranty of Lease. No guarantor will be released in any event without the written consent of the Landlord.

R. **Default Fee.** If the Tenant is in default under this Lease and fails to cure said default within ten (10) days after written notice from the Landlord, then, in that event the Landlord may, in addition to all other remedies available to it under this Lease or applicable law, at its option charge the Tenant a daily default fee of \$100.00 per day. This sub-paragraph does not require the giving of written notice for any default unless otherwise expressly required under this Lease, and further, does not apply to late payment of rent for which Paragraph 37 is applicable.

34. **LIMITATION OF LIABILITY.** Anything contained in this Lease to the contrary notwithstanding, Tenant agrees that it shall look solely to the estate and property of Landlord in the land and buildings comprising the Center of which the Leased Premises form a part for the collection of any judgment requiring the payment of money by Landlord for any default or breach by Landlord of any of its obligations under this Lease, and no other asset of Landlord shall be subject to levy, execution or other judicial process for the satisfaction of Tenant's claim.

Tenant is a non-profit corporation organized under the Laws of the State of Florida. Based on that representation, Landlord acknowledges and agrees the individual members of the Board of Directors have no personal liability for the obligations of the Tenant under this Lease.

35. **LATE CHARGES.** In the event that Tenant is more than five (5) days late in the payment of any amounts due the Landlord (including monthly rent) under the provisions of this Lease, then in addition to the amount owed, Tenant shall pay a late charge equal to ten percent (10%) of the amount due. If the Tenant is late on more than three (3) occasions during the term of this Lease, then beginning with the fourth late payment, the late charge shall increase to fifteen percent (15%) and if the Tenant has been late during the term of this Lease on more than five (5) occasions, the late charge shall thereafter be twenty percent (20%). Failure to pay any funds when due under the terms of this Lease shall subject Tenant to all of the provisions applicable upon default provided for in this Agreement, or provided for by law, and such rights granted to Landlord shall not be abridged by the provisions herein for said late charge.

36. **HAZARDOUS WASTE.** Tenant agrees to comply strictly and in all respects with the requirements of any and all federal, state and local statutes, rules and regulations now or hereinafter existing relating to the discharge, spillage, storage, uncontrolled loss, seepage, filtration, disposal, removal, or use of hazardous materials, including but not limited to the Comprehensive Environmental Response, Conservation and Liability Act of 1980, the Superfund Amendments and Re-authorization Act, the Resource Conservation and Recovery Act, the Hazardous Materials Transportation Act and the Florida Substances Law (collectively the "**Hazardous Waste Law**") and with all similar applicable laws and regulations and shall notify Landlord promptly in the event of any discharge, spillage, uncontrolled loss, seepage or filtration of oil, petroleum, chemical liquids or solids, liquid or gaseous products or any other Hazardous Materials (a "**Spill**") or the presence of any substance or material presently or hereafter identified to be toxic or hazardous according to any Hazardous Waste Law, including, without limitation, any asbestos, PCBs, radioactive substance, methane, volatile hydrocarbons, acids, pesticides, paints, petroleum based products, lead, cyanide, DDT, printing inks, industrial solvents or any other material or substance which has in the past or could presently or at any time in the future cause or constitute a health, safety or other environmental hazard to any person or property (collectively "**Hazardous Materials**") upon the Premises or the Building, and shall promptly forward to Landlord copies of all orders, notices, permits, applications or other communications and reports in connection with any such spill or Hazardous Materials. Tenant shall not handle, use, generate, manufacture, store or dispose of Hazardous

Materials in, upon, under or about the Premises and the Building. Tenant shall indemnify Landlord and hold Landlord harmless from and against all loss, penalty, liability, damage and expense suffered or incurred by Landlord related to or arising out of (i) the presence of Hazardous Materials on the Premises; (ii) any Spill or Hazardous Material affecting the Building, including any loss of value of the Building as a result of a Spill or the presence of Hazardous Material; or (iii) any other matter affecting the Building as a result of Tenant's action or inaction within the jurisdiction of any Governmental Authority; which loss, damage, penalty, liability, damage and expense shall include, but not limited to, (a) court costs, attorney's fees and expenses, and disbursements through and including any appellate proceedings; (b) all foreseeable and unforeseeable consequential damages, directly or indirectly, arising out of the use, generation, storage or disposal of Hazardous Materials by Tenant; (c) the cost of any required or necessary repair, clean-up or detoxification of the Project; and (d) the cost of preparation of any closure or other plans required under the Hazardous Waste Law, necessary to sell or lease the Premises or the Building.

37. **RADON DISCLOSURE - NOTICE TO TENANT.** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit. Pursuant to 404.056 (8) Florida Statutes.

38. **CONFIDENTIALITY CLAUSE.** The terms and conditions set forth herein between Landlord and Tenant are the result of market conditions existing at the time of lease negotiations, Landlord's evaluation of the credit worthiness of Tenant, length of lease term and many other factors that are unique to the parties hereto and the circumstances surrounding the transaction. The specifics of the business, legal and all other terms of the Lease are solely for the benefit and knowledge of the parties hereto involved. These specific terms, if disclosed to other tenants or prospective tenants at the Center or any other party, might have serious financial consequences that might prove damaging to Landlord. Therefore, should Landlord learn that Tenant has disclosed any of the terms of this Lease, without first obtaining written approval of Landlord, Tenant shall be liable for claims of damages, and all other remedies provided Landlord by law or equity. Further, the disclosure by Tenant shall constitute an event of default.

39. **RULES AND REGULATIONS.** Landlord shall have the right from time to time to promulgate, amend, rescind or change rules and regulations applicable to the Center, as a whole, including all operations and uses by tenants in the Center. All rules and regulations must be reasonable and must apply to the Center as a whole. Tenant agrees to comply with said rules and regulations, provided that said rules and regulations shall not take effect earlier than thirty (30) days after Landlord has given notice of such rules and regulations.

40. **NON-APPROPRIATION.** The Tenant has informed the Landlord it is a governmental organization depending in substantial part on funding from the Florida

Legislature on an annual basis. As such the Tenant has informed the Landlord the continued obligation of the Tenant under this Lease is subject to the continued funding of the Tenant's budget by the State of Florida, and to the extent the Tenant's budget is reduced as hereinafter set forth by the State of Florida, the Tenant may on one hundred eighty (180) days notice as set forth below terminate this Lease. The terms regarding said matter are as follows:

A. The Tenant has a fiscal year from July 1 to the following June 30. If non-appropriation (as hereinafter set forth) occurs, the Tenant may terminate the Lease by giving no less than one hundred eighty (180) days written notice to the Landlord prior to July 1 of the applicable fiscal year. Provided the following conditions are met, the Lease will expire on June 30 of said calendar year.

B. Tenant represents to Landlord it will in good faith pursue appropriate funding from the Florida Legislature so as to avoid non-appropriation hereunder. In any case, Tenant will not directly or indirectly seek for the Florida Legislature to non-appropriate Tenant.

C. For the purpose of this provision, non-appropriation means the funding by the Florida Legislature of the Tenant's budget during any upcoming fiscal year less than the greater of (i) \$3,500,000 or (ii) one-half of the budget for the then existing fiscal year of the Tenant.

If all of the foregoing conditions are met, and the Tenant elects to cancel the Lease due to non-appropriation, the Tenant shall not thereafter for the remainder of the Term lease other space in Volusia County or Flagler County, Florida, for the permitted use unless: (i) the Tenant first negotiates with the Landlord as to a new lease, which meets the needs of the Tenant; and (ii) if the Tenant has located other space and negotiated the terms and conditions, the Tenant first gives the Landlord a right of first refusal to meet said offer for space in the Building. The Landlord will have thirty (30) days from the date the Tenant furnishes a complete copy of said proposal to the Landlord to elect whether or not to meet said offer.

41. **COMPLETE AGREEMENT.** This Agreement incorporates all prior discussions, letters or intent, and Agreements between the parties regarding the Leased Premises and all matters relating thereto, and constitutes the complete agreement between the parties as to the Leased Premises. For this Lease to be amended, it may only be evidenced by a document signed by the party to be changed by said amendment.

## ADDENDUM TO LEASE

The foregoing Lease is modified as follows:

Paragraph/Exhibit

Modification

1. CONDITION OF LEASED PREMISES

The Landlord Warrants to the Tenant that the 6,081 square feet known as the Leased Premises was built to code, new, never occupied, and ready for build out to Tenant's specifications.

2. EXAMINATION OF LEASED PREMISES

The Leased Premises will be built out by the Tenant's contractor. It will be the Tenant's obligation to inspect the build out and insure that it meets Tenant's specifications, as well as the city, county and state building codes.

13. COMMON AREA MAINTENANCE

A. Provided the Tenant is not in default under the Lease, the Landlord agrees to maintain the Common Areas in a first class condition, comparable to other business centers of similar size and location.

B. Common Area Maintenance Expense will exclude capital expenditures, depreciation, or other expenses incurred by the Landlord in connection with other Tenants in the Center such as, but not limited to, collection expenses, etc.

C. Increase in Tenant's Proportionate Share of recurring Common Area Maintenance Expenses beyond the Base Year, said increases will not exceed on a cumulative basis the amount of five percent (5%) for each calendar year.

D. In regard to the term "non-recurring items", examples of these items are expenses which are not annual or otherwise of a frequent occurrence such as, but not limited to, re-striping of the parking lot, re-sod of the grass areas, etc.

14. (A). Sign on Building

Tenant will not be required to electronically

illuminate its sign unless a majority of other Tenants in the Building have illuminated signs.

19. **REAL ESTATE TAXES**

Real estate taxes for the Base Year are included in the Base Rent. It is only if real estate taxes for the year 2005 and subsequent years exceed the real estate taxes for the calendar year 2004, then the Tenant will have an additional obligation for payment of its Proportionate Share of the increase in real estate taxes for that year.

18. (C) **Pass-Thru for Landlord's Insurance**

The insurance premium for the Base Year is included in the Base Rent. Only if the insurance premium for the year 2005 and subsequent years exceeds the premium paid for calendar year 2004 the Tenant will have an additional obligation for insurance. In such event, the Tenant will only be obligated to pay its Proportionate Share of the increase.

19 (B) **No Liability by Landlord**

Landlord shall indemnify the Tenant for any damages or injuries brought about by any negligence of the Landlord to the extent not covered by insurance (either Landlord or Tenant).

26. **VACATING LEASE PREMISES ON LEASE EXPIRATION DATE**

To the extent Tenant undertakes certain Tenant Improvements in accordance with Paragraph 11 above and has obtained approval from the Landlord that some or all Tenant Improvements would not be removed on the Lease Expiration Date, then in that event, the Tenant, providing it is not otherwise in default under this Lease, shall not remove those specific Tenant Improvements, providing the Tenant has obtained the written approval of the Landlord that they may remain.

29. (B) (2) **Remedies for Default**

To clarify this provision, it will only apply if the Tenant has an affirmative obligation under this Lease to spend money to cure a particular condition, e.g., the Tenant through



its negligence causes damages its obligated to repair), and if the Tenant fails to make said repairs, the Landlord may do so and recover the cost of said repairs from the Tenant under this clause.



## **Exhibit "B"**

### **Legal Description of Real Property (Speedway Business Center aka Volusia Plaza Shopping Center)**

Part of the Southeast 1/4 of Section 14, Township 15 South, Range 32 East, Volusia County, Florida, more particularly described as follows:

As a Point of Reference, commence at the Northwest corner of the "Volusia Mall" Tract as described in Official Record Book 1671, Pages 632 to 636, of the Public Records of Volusia County, Florida, said Reference Point being on the East right-of-way line of Bill France Boulevard (a 100.00 foot right-of-way - formerly Mason Avenue) and lying 1644.32 feet Northerly along said East right-of-way line from the North right-of-way line of U.S. Highway 92 (a 200.00 foot right-of-way); thence North 24° 24' 05" West along the East right-of-way line of Bill France Boulevard for a distance of 597.46 feet to the Point of Beginning of this description:

Thence continue North 24° 24' 05" West along said East right-of-way line of Bill France Boulevard for a distance of 35.00 feet to then Southwest corner of the "Westwood Apartment" tract as described in Official Record Book 1998, Pages 729 to 731, and Official Record Book 2088, Pages 827 to 829, of the Public Records of Volusia County, Florida; thence North 65° 29' 55" East along the South line of said "Westwood Apartment" tract for a distance of 1101.21 feet; thence departing the South line of said "Westwood Apartment" tract and run South 22° 20' 13" East for a distance of 135.63 feet; thence North 67° 39' 47" East 100.00 feet; thence South 22° 20' 13" East 175.00 feet; thence South 67° 39' 47" West 225.00 feet; thence North 22° 20' 13" East 235.00 feet; thence South 67° 39' 47" West 347.36 feet; thence North 22° 20' 13" West 46.93 feet; thence South 67° 36' 38" West 111.51 feet; thence South 19° 20' 04" West 33.89 feet; thence South 24° 12' 34" East 157.05 feet; thence South 40° 42' 15" East 18.44 feet; thence South 67° 39' 47" West 51.00 feet; thence North 24° 24' 05" West 200.00 feet; thence South 65° 35' 55" West 79.30 feet; 46.60 feet; thence North 22° 50' 42" West 232.30 feet; thence South 67° 52' 02" West 46.60 feet; thence North 22° 22' 38" West 204.54 feet; thence North 65° 29' 55" East 317.66 feet to the Point of Beginning.

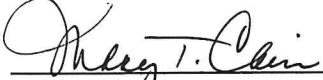
## EXHIBIT "C"

### SCHEDULE OF TENANT IMPROVEMENTS TO LEASED PREMISES

1. The Tenant will at its own expense and in accordance with Paragraph 11 of the Lease build out the Tenant Improvements necessary to the Leased Premises for its business subject in any event to code and other applicable legal requirements.
2. Tenant will pay all expenses of any nature whatsoever in connection with the Tenant Improvements, including all permit and inspection fees, etc.
3. Subject to causes beyond Tenant's control, the Tenant Improvements will be constructed in such a time so as to enable the Tenant to open for business by the Rent Commencement Date. As an incentive to the Tenant upon completion of the Tenant Improvements, the Tenant may take occupancy to the Leased Premises at no charge until the Commencement Date of the Leased Premises of March 1, 2005.
4. Tenant will undertake the preparation of all plans for Tenant Improvements and will submit a complete and accurate set to the Landlord in advance of any such Tenant Improvements. Further any Tenant Improvements will only be undertaken by a licensed general contractor. General contractor will have no right to file any lien upon the Leased Premises and will furnish a Certificate of Insurance naming Workforce Development Board of Flagler and Volusia Counties, Inc., and Joseph V. Fisher, LLC, as additional insured. All such Tenant Improvements must be in compliance with all applicable codes. The Landlord's approval is required for any alterations as set forth in Paragraph 11 A.
5. There will be no change to any of the structural components of the Leased Premises.
6. As an additional incentive the Landlord is contributing \$100,000 to the Tenant Improvements in recognition of Workforce Development Board's long relationship with the Landlord at this location and Indigo Business Center. The Landlord's contribution will be drawn down on the first \$100,000 of the completed construction by the Tenant.

**IN WITNESS WHEREOF**, the parties hereto have signed and sealed this Lease as of the day and year first written above.

Signed, sealed and delivered in the presence of:

  
\_\_\_\_\_  
(Signature of Witness)


MARY T. CAIN  
\_\_\_\_\_  
(Print Name of Witness)

  
\_\_\_\_\_  
(Signature of Witness)

Jennifer Swift  
\_\_\_\_\_  
(Print Name of Witness)


As to "Landlord"

Signed, sealed and delivered in the presence of:

  
\_\_\_\_\_  
(Signature of Witness)

Deborah L. Mason  
\_\_\_\_\_  
(Print Name of Witness)

As to "Tenant"

  
\_\_\_\_\_  
(Signature of Witness)

ANNA C. Lesizza  
\_\_\_\_\_  
(Print Name of Witness)

As to "Tenant"

**LANDLORD**  
**JOSEPH V. FISHER, LLC**

  
\_\_\_\_\_  
**JOSEPH V. FISHER**  
Managing Member

**TENANT**  
**WORKFORCE DEVELOPMENT BOARD**  
**OF FLAGLER and VOLUSIA**  
**COUNTIES, INC.**

  
\_\_\_\_\_  
**By: Richard A. Fraser**  
Position: President