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Eugene "Gene" Moore Fee: \$126.00  
Cook County Recorder of Deeds  
Date: 05/21/2003 02:30 PM Pg: 1 of 22

LEASE AGREEMENT

THIS LEASE AGREEMENT is entered into between 7300 KIMBARK LLC, an Illinois limited liability company ("Landlord") and SHADEMAKER PRODUCTS LLC, an Illinois limited liability company ("Tenant") with respect to the real property and improvements commonly known as 7300 S. Kimbark, Chicago, Illinois 60619 (the "Premises" or "Leased Premises"), legally described as follows:

See Attached Exhibit A. S: 8

IN CONSIDERATION FOR THE MUTUAL COVENANTS AND AGREEMENTS MADE HEREIN, including the rents to be paid hereunder, Landlord hereby leases to Tenant and Tenant leases from Landlord, the Premises together with the appurtenances thereto and improvements thereon (including all buildings, structures and improvements now or hereafter erected on such land, either prior to the commencement of or during the lease, and all fixtures, equipment and other property, now or hereafter installed therein, either prior to the commencement of or during the Lease, all of which together shall sometimes be called the "Improvements") solely for the purpose hereinafter described, for the term (the "Lease Term") commencing on May 15, 2003 and ending on May 15, 2028 (the "Termination Date"), pursuant to the following terms and conditions:

**DEFINITIONS:**

"Additional Rent" shall mean all taxes, assessments, insurance premiums and all other sums due from Tenant under this Lease other than Rent

"Base Rent" or "Rent" shall mean the annual and monthly rent payable from time to time in accordance with paragraph 1 of this Lease.

"Default Interest Rate" shall mean an annual interest rate of 5 % (per cent) over the prime rate from time to time published in the Wall Street Journal, or 10%, whichever is greater; provided, however, that at no time shall the Default Interest Rate at any given time exceed the then applicable maximum legal rate, if any. If the Wall Street Journal ceases to publish a prime rate, Landlord shall have the right to substitute a comparable index (including but not limited to a comparable or similar index used by the Continental Illinois National Bank or other comparable financial institution).

"Taxes and Assessments." shall mean all federal, state and local governmental taxes, assessments, levies and charges (including general real estate taxes) of every kind or nature, general and special, ordinary and extraordinary, which may be levied, assessed, imposed or become a lien upon the Premises or any part thereof or interest therein, the Improvements, fixtures, or equipment that are or may be constructed or installed on the Premises or used for the furnishing of utilities or services to the Premises (including any rental or similar taxes and license, building, occupancy, permit or similar fees levied in lieu of or in addition to general real or personal property taxes); along with all taxes, assessments, levies and charges which are now or hereafter may be assessed, levied or imposed in addition to, in replacement of or in substitution for such Taxes and Assessments and including without limitation, such taxes, levies and charges which, in whole or in part, are measured or calculated by or based upon Rent and/or Additional Rent including without

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limitation, gross income, gross receipts, license, occupation, privilege, value added, documentary stamp, transfer, excise, sales and use taxes, but excluding any tax on or measured by the net income of Landlord's Beneficiary or federal, state or local estate taxes, succession or inheritance taxes payable by Landlord's Beneficiary or Landlord.

## 1. RENT.

### A. Base Rent.

Tenant shall pay Landlord or Landlord's agent as rent for the Premises the sum of seventy-two thousand ( \$72,000.00 ) dollars per year in monthly installments of six thousand ( \$ 6,000.00 ) dollars payable, in advance, on the first day of each month at Landlord's address set forth herein or such other address as Landlord may designate in writing.

### B. Net Lease.

It is the intention of the parties that the Base Rent or Adjusted Base Rent as the case may be shall be absolutely net to Landlord and without deduction whatsoever and that the Tenant shall pay all expenses which are incident to the ownership and operation of the Leased Premises except as specifically set forth herein to the contrary.

### C. Taxes and Assessments.

(i) Tenant's Payment. Tenant shall pay as Additional Rent for the demised Premises (and shall furnish Landlord with receipts therefor within thirty (30) days after payment) all Taxes and Assessments which may be levied, assessed or imposed upon said Premises or any part thereof, or upon any Improvements at any time situated thereon, becoming due and payable with respect to any time period falling within the term of this Lease (including any levied or assessed upon Landlord's interest under this Lease). Such payments shall include all unpaid installments now accrued, or becoming due and payable during the term hereof, of special assessments levied against said Premises for improvements completed or not yet completed; all of which taxes, assessments, charges and or other impositions shall be paid by Tenant before they shall respectively become delinquent and in any case within such time as to prevent any sale or forfeiture of the Premises therefor or any part thereof; provided, however, that the liability of the Tenant with respect to special assessments levied shall be limited to the payment of such installments which mature during the term of this Lease, together with interest thereon, and Tenant shall not be obligated to pay any installments maturing subsequent to the term of this Lease. Whenever there shall be a right to elect to pay special assessments in a lump sum or in installments, the Landlord shall have the right to make such election, in its sole discretion, and the Tenant shall be nevertheless required to pay any installments (or lump sum) becoming due during the term hereof as provided herein.

(ii) Landlord's Payment. Landlord shall at its option have the right at all times during the term hereof to pay upon delinquency any taxes, assessments, charges or other impositions agreed to be paid by Tenant and to discharge tax sales, liens and claims against the demised Premises and to redeem said Premises from the same or any of them from time to time; and the amount so paid, including reasonable expenses (including attorneys fees) incurred, shall be so much Additional Rent due from Tenant to Landlord on the rent payment day after any such payment, with interest at the Default Rate from the date of payment thereof by Landlord until the repayment thereof by Tenant.

(iii) Contest By Tenant. Other provisions to the contrary notwithstanding, Tenant shall not be required to pay or discharge any tax, assessment, charge or other imposition against the demised Premises or any part thereof, or against any building or improvements at any time situated thereon, so long as Tenant shall in good faith and with due diligence contest the same by appropriate legal proceedings which shall have the effect of preventing the collection of the tax, assessment, charge or other imposition so contested and the sale or forfeiture of said Premises or any part thereof, or any building or improvements thereon, and provided that pending any such legal proceedings Tenant

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shall deposit with Landlord cash or securities satisfactory to Landlord in an amount equal to 110% of the amount of the tax, assessment, charge or other imposition and all interest and penalties thereon so contested. During compliance with the foregoing, Landlord shall not have the right to pay or discharge the tax, assessment, charge or other imposition so contested. The cash or securities so deposited shall be held by Landlord until said Premises, building or improvements shall have been released and discharged from any such tax, assessment, charge or other imposition and shall thereupon be returned to Tenant, less the amount of any loss, cost, damage and reasonable expense (including attorneys fees) that Landlord may sustain in connection with the tax, assessment, charge or other imposition so contested; provided, however, that if Tenant fails to prosecute with due diligence or fails to maintain said deposit or is otherwise in default under any other provisions of this Lease, Landlord may use said deposit to cure any default of Tenant.

(iv) Contest by Landlord. Landlord reserves the right to contest any Taxes and Assessments, in Landlord's discretion, in which the case the expenses thereof shall be Additional Rent payable by Tenant as part of the Taxes and Assessments due hereunder. Provided, however, that if any such expenses shall relate to a tax year or years or part thereof not falling during the term of this Lease, Tenant shall only be required to pay the pro rata portion of such expenses attributable to the portion of such contested year or years falling during the Lease Term.

(v) Deposit Upon Lease Termination. Upon termination of this Lease, Tenant shall deposit with Landlord the amount, as reasonably estimated by Landlord, that will be due from Tenant for any Taxes and Assessments accruing during the term of this Lease but not yet payable, and upon issuance of any such bills each party shall pay to or reimburse to the other party, as the case may be, the appropriate amount, if any, necessary so that Tenant pays its proper share, and no more or no less.

(vi) Tax Escrow. Landlord may elect, by notice to Tenant at any time, to cause Tenant to deposit with Landlord each month, at the time that the monthly installment of rent is due, the sum reasonably determined by Landlord from time to time to be required, on a monthly basis, to fund all Taxes and Assessments that Tenant is obligated to pay hereunder, as they come due (the "Tax Escrow"). If at any time Landlord shall reasonably determine that the amount of such payments made by Tenant is insufficient to accomplish the purpose of this paragraph, Tenant shall forthwith upon the request of Landlord pay the amount of the deficiency as so determined. All payments to be made by Tenant pursuant to this paragraph shall be non interest bearing and shall be applied by Landlord to the payment of Taxes and Assessments provided that Landlord is holding sufficient funds at the time that any installment of such Taxes and Assessments comes due, and Tenant is not in default at such time pursuant to any of the terms and conditions of this Lease.

If an Event of Default (as hereinafter defined) occurs under this Lease, Landlord shall have the right to apply all such escrow payments to the cost of curing such Event of Default, in which event the Tenant shall be required immediately upon notice by Landlord to restore the Tax Escrow account to the sum otherwise required hereunder.

If the sum of the payments made into the Tax Escrow account exceeds the amounts required to pay Taxes and Assessments and Tenant has fully performed all of its obligations under this Lease, Landlord shall either credit the amount of such excess against future monthly payments required to be made by Tenant pursuant to this section or refund said excess amount to Tenant (as determined by Landlord). Tenant shall receive any excess tax funds held by Landlord upon the termination of this Lease, provided that Tenant is not then in default under any of the terms and conditions of this Lease, and provided or interest on delinquent Taxes and Assessments resulting from Tenant's failure to provide sufficient funds to pay such Taxes and Assessments as required hereunder (or to restore funds as required if deposits are used by Landlord to cure Tenant defaults as permitted herein) shall be Additional Rent payable by Tenant upon demand.

## **D. Late Payments.**

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Tenant acknowledges that late payment of any Rent or Additional Rent will cause Landlord to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impracticable to ascertain. Such costs include, without limitation, administration and collection costs, processing and accounting charges, and the costs of drawing upon other sources of funds to pay Landlord's obligations or late charges that may be imposed on Landlord by the terms of any debt instrument secured by the Premises. Any payment of Rent or Additional Rent made more than five (5) days after the due date shall be automatically subject to a two (2) percent late penalty fee which shall immediately be due as Additional Rent. Additionally, all such delinquent Rent or Additional Rent shall bear interest commencing 10 days after its due date at the Default Interest Rate in effect from time to time. Provided, however, in no event shall the late penalty fee or interest payable pursuant to this paragraph exceed the maximum lawful rate. In no event shall any payment made hereunder be deemed to grant to Tenant a grace period or extension of time within which to pay any Rent or Additional Rent or prevent Landlord from exercising any right or enforcing any remedy available to Landlord upon Tenant's failure to pay each installment of Rent or any payment of Additional Rent as and when due under this Lease. Landlord may refuse to accept the tender of Rent or Additional Rent made more than ten (10) days after the due date.

**E. Utilities; Water, Gas and Electric Charges; Scavenger; Etc.**

Tenant will also pay, as Additional Rent, all utility and similar charges, including, without limitation, all charges for water, gas, sewer, electricity, heat or power, telephone, scavenger or other service used, rendered or supplied to Tenant in connection with the Premises. Tenant shall contract for such utilities and services in Tenant's own name. If part of any period in which any of such services is furnished is included within the term of this Lease and part thereof is included within a period of time after the Termination Date, the charges relating to such period shall be adjusted between Landlord and Tenant as of the Termination Date taking into account the use of such Premises before and after such date. Without limiting the generality of the foregoing, Tenant shall bear any and all costs and expense including, without limitation, of any and all facilities and equipment necessary for the providing, operation, maintenance and continuance of the aforesaid services or for the installation of such facilities and equipment upon the Premises.

In case any of such charges shall not be paid when due, Landlord shall have the right (but not the obligation) to pay the same, which amounts so paid, are declared to be so much Additional Rent and payable with the installment of rent next due thereafter.

**F. Place of Rent Payment.**

Rent and Additional Rent shall be paid to landlord at the address set forth after Landlord's signature or at such other place and to such other person or entity as Landlord from time to time may designate by five (5) days prior written notice to Tenant. Rent shall be paid without notice, demand, counterclaim, recoupment, set off, deduction or defense, and without abatement, suspension, deferment, diminution or reduction for any reason, except as otherwise specifically provided in this Lease.

**G. No Rent Deduction or Set Off.**

Tenant's covenant to pay rent is and shall be independent of each and every other covenant of this Lease. Tenant agrees that any claim by Tenant against Landlord shall not be deducted from rent nor set off against any claim for rent in any action.

**2. SECURITY DEPOSIT.**

Upon request by Landlord at any time during the term of this Lease, Tenant shall deposit with Landlord a sum equal to twice the monthly Rent as a security deposit (hereinafter called "Security Deposit"), which shall be held and applied by Landlord in accordance with the terms and conditions set forth below. The Security Deposit may be applied by Landlord for the purpose of curing any default or defaults of Tenant under this Lease. If said sum or any part thereof is used, applied or retained in curing any such default, Tenant shall upon demand, immediately deposit with Landlord an amount in cash equal to the amount so used, applied or retained. Default by Tenant in paying to Landlord any amount required to restore the Security Deposit after any application thereof, shall afford to Landlord the same remedies as in the default of the payment of Rent. If Tenant has not defaulted hereunder, or if Landlord has not applied said sum to

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any default, then the Security Deposit or any portion thereof not so applied by Landlord shall be paid in cash to Tenant within thirty (30) days after the termination of this Lease. Landlord will furnish to Tenant reasonable evidence (in the form of paid receipts or the like) to substantiate the amount deducted from the security deposit for curing defaults of Tenant. In the event of a bona fide sale of the Leased Premises, Landlord shall have the right to transfer the Security deposit to the purchaser to be held under the terms of this Lease, and, in such event, Landlord shall be released from all liability for the return of such Security deposit to Tenant, provided that Landlord notifies Tenant in writing of such transfer and furnishes to Tenant reasonable evidence of such transfer.

### 3. AUTHORIZED USE; COMPLIANCE WITH LAWS, ETC.

Tenant shall use and occupy the Premise for the manufacture and sale of recreational vehicle awnings and related or similar products ("Permitted Use"). Tenant shall not use, or permit the use of the Premises or any part thereof for any other purpose without Landlord's prior written consent. Tenant takes the Premises subject to, and shall not breach, or suffer the breach of, any condition, agreement, restriction, either recorded or of which Tenant has knowledge, affecting all or any part of the Premises or its use, including but not limited to all requirements of all applicable zoning and building laws, ordinances, and regulations, and all insurance requirements. Tenant, at its sole cost and expense, shall comply with all laws, rules, regulations, permits and certificates of governmental authorities relating to the Leased Premises or relating to Tenant's use and occupancy of all or any part of the Premises and all orders, rules and regulations of the board of fire underwriters or any other body hereafter exercising similar functions relating to Tenant's use and occupancy of the Premises. In addition, Tenant shall comply with the requirements of all policies of public liability, fire and other insurance at any time in force with respect to the Premises.

### 4. CONDITION AND UPKEEP OF PREMISES.

#### A. As-Is Condition.

Tenant has examined and knows the condition of the Premises and has received the same in good order and repair, and acknowledges that no representations as to the condition and repair thereof have been made by Landlord, or its agent prior to or at the execution of this Lease that are not herein expressed and that Tenant is in possession thereof as a continuation of its possession under the Old Lease, and acknowledges and agrees that it is taking the Premises in an "as is" condition.

#### B. Tenant To Keep in Repair.

Except as set forth in subparagraph C. hereof, Tenant will, at its own expense, keep the Premises including all appurtenances and improvements and equipment therein or thereon and including but not limited to both the exterior and interior of the building or buildings thereon, the roof, walls, floors, ceilings and windows, as well as the heating, air conditioning, electrical, water, drain, power and plumbing systems and equipment, paved, landscaped and blacktopped areas, driveways, adjacent alleys, sidewalks and curbs, in good repair, and in good tenantable and wholesome condition, and free from trash, rubbish, snow and ice, and will comply with all local or general regulations, laws and ordinances applicable thereto, as well as all lawful requirements of all competent authorities in that regard. In addition, Tenant will, as far as possible, keep said improvements from deterioration due to ordinary wear and from falling temporarily out of repair. Tenant's obligations hereunder shall include but not be limited to the following: replacing all broken glass with glass of the same size and quality as that broken; replacing all damaged plumbing fixtures with others of equal quality; keeping adjoining alleys and roads in a clean and healthful condition according to the applicable municipal ordinances and the direction of the proper public officers; without injury to the roof, removing all snow and ice from the same when necessary; and removing the snow and ice from the sidewalks and roads abutting the Premises. It is understood that Tenant's obligations in this Lease to repair and maintain the Leased Premises shall include but not be limited to the obligation to make all replacements, repairs or renewals to any portion thereof or equipment therein whether interior or exterior, structural or non-structural, ordinary or extraordinary, foreseen or unforeseen, as may be necessary (whether or not there is adequate insurance to do so) so as to return the Leased Premises to the Landlord, upon the termination of this Lease, in good condition and in compliance with all laws and ordinances, excepting only ordinary wear.

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C. **Roof Replacement:** Landlord will be responsible for replacing the roof of the Leased Premises when required.

D. **Landlord Not Obligated To Repair.**

Except as set forth in subparagraph C. above, Landlord shall not be obligated to make any repairs, replacements, or improvements of any kind whatsoever upon the Leased Premises, or any equipment, facilities or fixtures contained therein, all of which shall be the sole and exclusive responsibility of the Tenant, and Landlord shall not be liable for any damage to any person or property arising from the condition of the Leased Premises, including but not limited to damage occasioned by failure to keep the Premises in repair, nor for any damage done or occasioned by or from plumbing, gas, water, sprinkler, steam or other pipes or sewerage or the bursting, leaking or running of any pipes, tank or plumbing fixtures, in, above, upon or about Premises or any building or improvement thereon nor for any damage occasioned by water, snow or ice being upon or coming through the roof, skylights, trap door or otherwise, for all or any of which Tenant shall hold harmless and indemnify Landlord. Also, Landlord shall not be liable for any damages arising from acts of neglect of any owners or occupants of adjacent or contiguous property.

E. **Landlord Right to Cure Tenant Repair Defaults.**

If Tenant does not make repairs as required hereunder promptly and adequately, Landlord may but need not make such repairs and pay the costs thereof, and such costs shall be so much Additional Rent immediately due from and payable by Tenant to Landlord.

## 5. **TENANT NOT TO MISUSE.**

Tenant will not allow the Premises to be used for any purpose that will increase the rate of insurance thereon, nor for any purpose other than that hereinbefore specified, and will not load floors with machinery or goods beyond the floor load rating deemed safe by Landlord, in its reasonable judgment, and will not allow the Premises to be occupied in whole or in part by any other person, and will not permit the Premises to be used for any unlawful purpose, or for any purpose that will injure the reputation of the Premises or increase the fire hazard of the Premises, or disturb the neighborhood, and will not permit the same to remain vacant or unoccupied for more than ten (10) consecutive days; and will not allow any signs, cards or placards to be posted, or placed thereon except by written consent of Landlord. No equipment whatsoever, except for equipment already installed in the Premises on the date hereof, may be suspended from the roof joists.

There shall not be allowed, kept, or used on the Premises any inflammable or explosive liquids or materials save such as may be necessary for use in the business of the Tenant, and in such case, any such substances shall be delivered and stored in amount, and used, in accordance with the rules of the applicable Board of Underwriters and statutes and ordinances now or hereafter in force.

Tenant shall not cause or permit any Hazardous Materials (as hereinafter defined) to be brought upon, stored, used, generated, released into the environment or disposed of on, in, under or about the Premises by Tenant, its agents, employees, contractors or invitees, without the prior written consent of Landlord. Landlord hereby consents to Tenant's generation, storage and or use of such Hazardous Materials on or in the Premises as are associated with or required as part of Tenant's business and will be generated, used, stored and/or disposed of in a manner that complies with all laws regulating any such Hazardous Materials and provided that Tenant indemnifies Landlord from any and all liability with respect to such Hazardous Materials as more particularly described below.

Upon the Termination Date or sooner termination of Tenant's right of possession Tenant covenants to remove from the Premises, at its sole cost and expense, any and all Hazardous Materials which were released on the Premises or adjacent property from the Premises or stored, used, generated or released into the environment on, in or from the Premises during the term of the Lease including any equipment or systems containing Hazardous Materials.

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To the fullest extent permitted by law, Tenant hereby indemnifies Landlord and agrees to hold Landlord free and harmless from and against any and all claims, judgments, damages, penalties, fines, costs, liabilities and losses (including, without limitation, diminution in the value of the Premises and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees) which arise during or after the Term directly or indirectly from the presence of Hazardous Materials which were released on the Premises or on adjacent property from the Premises or stored, used, or generated on, in or from the Premises or released into the environment from the Premises during the term of the Lease. This indemnification by Tenant includes, without limitation, any and all costs incurred in connection with any Corrective Action (as hereinafter defined).

Tenant shall promptly notify Landlord of any release of Hazardous Materials in or about the Premises during the Term whether caused by Tenant, or any other persons or entities and Tenant shall provide Landlord with copies of reports and correspondence relating to any such Release and/or related Corrective Action.

For purposes of this Lease:

- A. **Hazardous Materials** means those substances which are regulated by or form the basis of liability under any Environmental Laws, including but not limited to petroleum or petroleum products and waste oil, asbestos or asbestos containing materials, urea formaldehyde, foam insulation, polychlorinated biphenols (PCBs) and Freon and other chlorofluorocarbons;
- B. **Environmental Laws** means all applicable Federal, state and local laws, regulations or ordinances relating to air quality, water quality, solid waste management, hazardous or toxic substances or the protection of health or environment, including, but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 Et. Seq.), the Hazardous Material Transportation Act, as amended (49 U.S.C. Sec. 1801 Et. Seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C. Sec. 1251 Et. Seq.), the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 7401 Et. Seq.), the Toxic Substances Control Act, as amended (15 U.S.C. Sec. 2601 Et. Seq.), the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. Sec. 4321 et seq), the Clean Water Act of 1977, as amended (33 U.S.C. Sec. 1251 et seq), and the National Environmental Policy Act of 1969, as amended (42 U.S.C. Sec. 4321 et seq), as these laws may have been amended or supplemented through the Commencement Date or during the Term of this Lease, and any analogous state or local statutes, and the regulations promulgated pursuant thereto;
- C. **Release** means any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching, or migration of any Hazardous Materials into the indoor or outdoor environment, or the movement of any Hazardous Materials or other substance through or in the air, soil, surface water, groundwater, or property;
- D. **Corrective Action** means any action required under any Environmental laws to (1) clean up, remove, treat, correct, remediate, prevent, mitigate, monitor, evaluate, investigate, assess, abate or in any other way address any Hazardous Materials in the indoor or outdoor environment; (2) prevent the Release or threat of Release, or minimize the further Release of any Hazardous Materials so they do not migrate or endanger or threaten to endanger public health or welfare or the indoor or outdoor environment; or (3) perform pre-remedial studies and investigations and post-remedial monitoring and care;
- E. **Claim** means any demand, cause of action, proceeding, or suit for damages, injuries to persons or property, damages to natural resources, fines, penalties, interest, or losses, or for the costs of site investigations, feasibility studies, information requests, health assessments, contributions, settlement, or actions to correct, remove, remediate, respond to, clean up, prevent, mitigate, monitor, evaluate, assess, or abate the release of a

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Hazardous Material or to enforce insurance, contribution, or indemnification agreements relating to Hazardous Materials or Environmental Laws.

Upon reasonable request of Landlord, Tenant shall promptly provide Landlord with complete and legible copies of all of the following items relating to the Premises or Tenant's occupancy thereof, which may be filed or prepared by or at the request of Tenant or served upon Tenant or any agent or employee of Tenant: reports, permit applications, warnings, notices and other documents filed pursuant to any Environmental Laws; all orders, reports, notices, listings and correspondence of or concerning a Release or Corrective Action, whether or not required by any Environmental Laws (including but not limited to all complaints, pleadings and other legal documents filed against Tenant related to Tenant's use, handling, storage or disposal of Hazardous Materials or any other Release of Hazardous Materials).

Landlord shall have the right, but not the obligation, to join and participate in any legal proceedings or actions initiated in connection with any claims or causes of action arising out of the storage, generation, use or Release of Hazardous Materials in, on, under, about or from the Premises, including but not limited to those resulting in: (a) injury to any person; (b) injury to or any contamination of the Premises or any adjoining property; or (c) injury to or contamination of any real or personal property wherever situated. Tenant, at its sole cost and expense, shall promptly take all actions necessary to return the Premises to the condition existing prior to the introduction of Hazardous Materials during the Term of this Lease. Notwithstanding the foregoing, Tenant shall not, without Landlord's prior written consent, take any Corrective Action in response to the presence of any Hazardous Materials in, on, or under or about the Premises or enter into any settlement agreement, consent decree or other compromise with any governmental agency with respect to any Hazardous Materials claims; provided, however, that Landlord's prior written consent shall not be unreasonably withheld nor shall it be necessary if the presence of Hazardous Materials in, on, or under or about the Premises either (a) poses an immediate threat to the health, safety or welfare of the public or (b) is of such a nature that an immediate Corrective Action is necessary and it is not possible to obtain Landlord's consent before taking such action.

Promptly upon the expiration or sooner termination of this Lease, Tenant shall represent to Landlord in writing that (a) Tenant has made a diligent effort to determine whether any Hazardous Materials were released in, on, under or about the Premises during the Term of this Lease and (b) based upon such effort, Tenant has no knowledge that any Hazardous Materials exist in, on, under or about the Premises other than as specifically identified to Landlord by Tenant in writing. To ensure performance of Tenant's obligations under this Section, Landlord may, (i) at any time within six (6) months prior to the end of the Lease Term, or (ii) upon the occurrence of an Event of Default, or (iii) upon the Landlord becoming aware of any facts or circumstances causing Landlord to reasonably believe that there may be a risk of Release occurring or that Release may have occurred on or from the Premises, by notice to Tenant, cause an environmental valuation of the Premises to be made, and in doing so may hire an outside consultant to perform an environmental audit of the Premises, an executed copy of which shall be delivered to Tenant within thirty (30) days after the report is prepared. If the environmental audit or Tenant discloses the existence of Hazardous Materials which were released during the term of the lease in, on, under or about the Premises, Tenant shall, at Landlord's request, within thirty (30) days after such request immediately prepare and submit to Landlord a comprehensive plan, subject to Landlord's approval, specifying the Corrective Action to be taken by Tenant with respect to such Hazardous Materials. Upon Landlord's approval of such plan, Tenant shall, at Tenant's sole cost and expense, without limiting any rights or remedies otherwise available to Landlord under this Lease, immediately implement such plan and proceed to clean up such Hazardous Materials in accordance with all applicable laws and as required by such plan and this Lease. If the environmental audit discloses the existence of Hazardous Materials released during the Term of the Lease, the Tenant shall pay to the Landlord the cost of the environmental evaluation and audit.

**The provisions of this paragraph 6 shall survive the termination of this Lease.**

**7. MECHANIC'S LIEN.**

Tenant will not permit any mechanic's lien or any other liens of any nature to be placed upon the



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Premises or any building or improvement thereon during the term hereof, and in case of the filing of such lien Tenant will promptly pay same. If default in payment thereof shall continue for seven (7) days after written notice thereof from Landlord to the Tenant, then Landlord shall have the right and privilege at Landlord's option of paying the same or any portion thereof without inquiry as to the validity thereof, and any amounts so paid, including expenses and interest, shall be so much additional rent hereunder due from Tenant to Landlord and shall be repaid to Landlord immediately on rendition of bill therefor.

## 8. INDEMNITY FROM TENANT.

Tenant covenants and agrees that it will protect and save and keep the Landlord and Landlord's agents, beneficiaries and employees forever harmless and indemnified against and from any penalty or damages or charges imposed for any violation of any laws or ordinances, whether occasioned by the neglect of Tenant or those holding under Tenant, and that Tenant will at all times protect, indemnify and save and keep harmless the Landlord against and from any and all losses, liabilities, claims, costs, damage or expenses (including reasonable attorneys' fees) arising out of or from any accident or other occurrence on or about the Premises, causing injury to any person or property whomsoever or whatsoever, or from any negligent or tortious act of Tenant or any of its agents, contractors, employees, licensees or invitees, or any work or thing done by Tenant or any of its agents, contractors, employees, licensees or invitees on or about any part of the Premises, and will protect, indemnify and save and keep harmless the Landlord against and from any and all claims and against and from any and all loss, cost, damage or expense (including reasonable attorneys' fees) arising out of any failure of Tenant in any respect to comply with and perform all the requirements and provisions of this Lease.

Tenant will pay and discharge all reasonable costs, attorneys' fees and expenses that shall be made and incurred by Landlord in enforcing the covenants and agreements of this Lease, or incurred by Landlord as a result of Tenant's default under this Lease, or incurred by Landlord in any litigation, negotiation or transaction in which Tenant causes Landlord, without Landlord's fault, to become involved or concerned.

## 9. ACCESS TO PREMISES.

Tenant will allow Landlord free access to the Premises for the purpose of examining or exhibiting the same, or to make any needful repairs, or alterations thereof which Landlord may see fit to make (including but not limited to any repairs, alterations or restoration or Corrective Action resulting from Tenant's failure to perform any such work required under this Lease), or to make any tests or investigations deemed necessary or appropriate by Landlord with respect to any suspected noncompliance by Tenant with the terms and conditions of this Lease, and will allow to have placed upon the Premises at all times notice of "For Sale" and "To Rent", and will not interfere with the same.

Nothing in the immediately preceding paragraph shall be deemed to obligate Landlord to make any repairs except as otherwise specifically agreed to herein.

Landlord shall not be liable for any inconvenience, disturbance, loss of business, nuisance or other damage arising out of the entry on the Premises of Landlord or any of its agents, representatives, consultants, employees, or contractors for purpose of the exercise of the rights under this paragraph 9. or otherwise under the Lease unless such persons or entities willfully or wantonly interfere with Tenant's business, and Landlord shall reasonably attempt to conduct its activities on the Premises in a manner that will cause minimal inconvenience, annoyance or disturbance to Tenant. Landlord shall have the right to use any and all means which Landlord shall deem proper in an emergency in order to obtain entry to the Premises without liability to Tenant except for any failure to exercise due care under the circumstances for Tenant's property. Any entry to the Premises obtained by Landlord as a result of such emergency shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction of Tenant from the Premises or any portion thereof.

## 10. VACATION OF PREMISES; HOLDOVER-LIQUIDATED DAMAGES.

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## A. Vacation of the Premises.

Upon termination of this Lease by lapse of time or otherwise, or termination of Tenant's right of possession, Tenant shall remove its goods and effects and peacefully yield up the Premises to Landlord in good order, repair and condition, subject to ordinary wear. In so doing, Tenant shall remove all of its equipment and personal property (except to the extent that same shall be deemed part of the Premises) and shall perform all restoration made necessary by the removal of same and pay to Landlord, upon demand and as Additional Rent, the cost of repairing any damage to the Premises caused by such removal. If Tenant fails or refuses to remove Tenant's said equipment and personal property within ten (10) days after Landlord gives Tenant written notice to remove same, Tenant shall be conclusively presumed to have abandoned such property and title shall thereupon pass to Landlord without any cost either by set-off, credit, allowance or otherwise, and Landlord, at its option, may accept title to such property or, at Tenant's expense, may (i) remove same or any part thereof in any manner Landlord may choose and (ii) store, destroy or otherwise dispose of same without incurring any liability whatsoever to Tenant or to any other person.

## B. Holdover; No Waiver; Liquidated Damages.

Tenant will, at the termination of this Lease by lapse of time or otherwise, yield up immediate possession to Landlord, and failing so to do, will pay as liquidated damages for such daily wrongful use and occupancy, for the whole time such possession is withheld, an amount per day to be calculated as hereinafter set forth; but the provisions of this clause shall not be held as a waiver by Landlord of any right of re-entry as hereinafter set forth; nor shall the receipt of said rent or any part thereof, or any other act in apparent affirmation of tenancy, operate as a waiver of the right to forfeit this Lease and the term hereby granted for the period still unexpired, for a breach of any of the covenants herein.

The amount of liquidated damages which shall be payable to Landlord in the event Tenant fails to yield up immediate possession to Landlord at the termination of the Lease, by lapse of time or otherwise, shall be an amount, per day, calculated as follows: The monthly Base Rent shall be multiplied by Twelve (12), then divided by Three Hundred Sixty Five (365), then multiplied by Two (2).

## C. Election To Treat Holdover as Periodic Tenancy.

Anything in this Lease to the contrary notwithstanding, if Tenant holds over after the expiration of the term of the Lease by lapse of time or otherwise, such holdover may be deemed, at the option of the Landlord, either a month to month or a year to year tenancy, in either case at rent equal to twice the Rent at such time payable hereunder, which tenancy shall commence on the first day immediately following such termination date of the Lease term. Tenant shall, in such case, be subject to all of the conditions and covenants of this Lease as though the same had originally been a month to month or year to year tenancy, except that any renewal options hereunder shall no longer be in force.

## 11. INSURANCE.

### A. Kinds of Insurance.

At all times subsequent to taking possession of the Leased Premises, Tenant shall, at its sole cost and expense maintain the following kinds of insurance:

(i) Insurance in an amount, not less than full replacement cost (as determined from time to time by competent insurance appraisers chosen by Landlord), against loss or damage by fire and lightning, including, by an extended coverage endorsement, windstorm, hail, explosion (except boiler), riot, riot attending a strike and civil commotion, damage from aircraft and vehicles and smoke damage.

(ii) Insurance against loss or damage by any steam boiler, pressure vessel or other such apparatus as the Landlord may deem necessary to be covered by such insurance and in such amount or amounts as the Landlord may from time to time reasonably require.

(iii) Insurance against war damage, whenever such insurance shall be written and a state of war or public emergency exists, to the full insurable value of the Premises.

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(iv) Insurance against such other risks, of a similar or dissimilar nature, as are or shall be customarily covered with respect to buildings similar in construction, general location, use and occupancy to the Leased Premises.

(v) Comprehensive General Public Liability Insurance on an occurrence basis against claims for personal injury, death or property damage occurring in connection with the use and occupancy of Leased Premises naming Landlord and Tenant as well as their respective agents or employees as the named insureds, with no deductible amounts, and with limits of liability not less than the following:

Bodily Injury:	One Person	\$ 2,000,000
	Aggregate	\$ 2,000,000
Property Damage:	One Accident	\$ 500,000

(vi) Rent or use and occupancy insurance against loss or damage resulting from the hazards specified in Clauses (i), (ii) and (iii) above, in an amount equal to one year's requirements of the Rent, and of the estimated amounts payable by the Tenant for Additional Rent.

## **B. General Requirements.**

With respect to policies which Tenant is required to procure and maintain hereunder:

(i) All policies of insurance shall provide that the proceeds thereof shall be payable to the Landlord and the Tenant as their respective interests may appear, and, if the Landlord so requires, the policies described in Sections (i) through (iv) above may be payable also to the holder of any mortgage as the interest of such holder may appear, pursuant to a standard mortgage clause or a loss payable clause. All policies of insurance shall provide that any loss shall be payable to the Landlord notwithstanding any act or negligence of the Tenant which might otherwise result in a forfeiture of said insurance, and shall further provide that they shall not be cancellable on less than 30 days' notice to all insureds and the holder of any mortgage.

(ii) All policies of insurance shall be in form satisfactory to the Landlord, shall be written with companies satisfactory to the Landlord and distributed among them in amounts satisfactory to the Landlord. The originals of all policies of insurance shall be held by the Landlord and shall be delivered to the Landlord on or before the Commencement Date of this Lease. Not less than 10 days prior to the expiration of each policy, a renewal policy shall be delivered to the Landlord, and not less than 10 days prior to the date any premium on each policy shall be due and payable there shall be delivered to the Landlord evidence of such payment satisfactory to the Landlord. The Landlord shall have the right to elect to continue in force all such policies in force at the expiration or earlier termination of the term of this Lease, and in the event of so electing the Landlord shall promptly reimburse the Tenant for the amount of premiums unearned thereon provided the term of the Lease was not terminated because of the fault of the Tenant.

## **C. Adjustment of Loss.**

The loss, if any, under all policies described above shall be adjusted by the Landlord and Tenant, and, as so adjusted, shall, subject to the terms of paragraph 12. hereof, be paid to the Landlord, and all such policies shall so provide. At the option of the Landlord, the holder of any mortgage may participate with the Landlord in any such adjustment and losses payable to the Landlord may be made payable to such holder, but subject to the provisions of Sections 12 and 13.

## **D. Blanket Policies.**

If Tenant furnishes any insurance in the form of a blanket policy, it will furnish satisfactory proof that such blanket policy complies in all respects with the provisions of this Lease, and that the coverage thereunder is at least equal to the coverage which would be provided under a separate policy covering only the Leased Premises.

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**E. Tenant Acts.**

Tenant will not do, suffer or permit any action or omission, whether upon the Leased Premises or otherwise, which might or would result in voiding or impairing the obligation of any such policy of insurance.

**F. Landlord's Right to Insure.**

Landlord shall have the right, but not the obligation, of taking out any insurance required to be obtained hereunder by Tenant and not so obtained, and Tenant shall pay the cost thereof to Landlord immediately upon demand therefor.

**G. Release and Waiver of Subrogation.**

Landlord and Tenant each release the other or anyone claiming through or under such other party by way of subrogation or otherwise from any claims for loss or damage caused to its property to the extent that such loss or damage is covered by collectible insurance notwithstanding that the other party, or anyone for whom such other party is responsible, may have negligently caused such loss or damage. Any insurance carried by any such party against loss or damage from fire or other casualty shall contain, if available without additional material cost, a clause whereby the insurer waives its rights of subrogation against the other party. Provided, however, that the releases and agreements in this Section G. shall not be effective if or during any time that any such releases are unlawful or if and during such time that the releasor's insurance policy provides that such release shall adversely affect the right of the releasor to recover thereunder, or shall materially increase the cost of such policy (except if and to the extent that the released party elects to pay such additional premium, in which case such release shall remain in force).

**12. DAMAGE OR DESTRUCTION**

**A. Tenant's Obligation to Restore.**

Subject to the Landlord's rights under section B. hereof, the Tenant covenants and agrees that in case of damage or to or destruction of the Leased Premises or of part thereof, by fire or other casualty, the Tenant, at the Tenant's sole cost and expense (regardless of whether or not adequate insurance proceeds are available to Tenant therefor) and pursuant to the provisions of this Section 12 and Section 13, will promptly repair, restore and rebuild the same as nearly as possible to the condition they were in immediately prior to such damage or destruction or with such changes or alterations as may be made in conformity with Section 13 hereof.

**B. Landlord's Rights.**

Provided, however, anything hereinbefore to the contrary notwithstanding, if the Improvements shall be materially damaged or destroyed by fire or other casualty ("material" damage meaning hereunder damage costing in excess of twenty (20%) per cent of the then value of the Improvements to repair), the Landlord shall have the option of either (a) requiring the Tenant to repair, restore and rebuild the same as in this Section provided, or (b) terminating this Lease as of the date of such damage or destruction by written notice to Tenant given within 30 days after such damage or destruction, in which event Landlord shall make a proportionate refund to Tenant of such Rent and Additional Rent as may have been paid in advance of such termination date with respect to a time period subsequent to such Termination Date (except to the extent that Tenant is then in default under the Lease).

**C. Collection of Insurance Proceeds; Additional Tenant Funds; Payouts.**

If Tenant is not then in default under this Lease, and Landlord does not elect to terminate the Lease pursuant to subparagraph B. hereof, the proceeds of insurance, less the cost, if any, of recovery, collected with respect to such damage or destruction of the Premises, whether received by Landlord or Tenant, shall, subject to the rights thereto of any mortgagee, be paid into and maintained in a separate account (the "Account") for purposes of restoration and repair of the Premises. If the proceeds of such insurance are not sufficient to pay the entire cost of such restoration and repair, then Tenant shall pay the deficiency into said Account. All insurance money recovered by the Landlord on account of such damage or destruction less the cost, if any, to the Landlord of such recovery, shall be paid out from time to time to or at the direction of the Tenant, as the work is completed, subject to the following provisions:

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(I) Each request for payment shall be accompanied by proper affidavits, valid waivers of lien, and a certificate of Tenant's architect or engineer in charge of the work stating that (a) the sum requested is justly due to the contractors, subcontractors, materialmen, laborers, engineers, architects or other persons, or entities rendering services or materials for the work, or justly required to reimburse Tenant for expenditures made by the Tenant with respect to such work and (b) when added to all prior amounts paid out for such work does not exceed the value of the work done to the date of such certificate and (c) the remaining funds on deposit will be sufficient to pay in full for the work upon its completion.

(ii) If at any time the net insurance proceeds and other Tenant deposits in the Account are insufficient to pay for the entire remaining cost of such work, Tenant shall deposit such additional funds as may be necessary to cover such deficiency.

(iii) Landlord may elect to maintain such Account at a title insurer to facilitate title coverage through a so-called construction escrow providing for all payments to be made out of such escrow by the escrow department of such title insurer.

**D. Other Requirements.**

No such work shall be performed except subject to the following requirements (and any other requirements set forth in Paragraph 13. of this Lease with respect to permitted alterations by Tenant):

(I) All permits and authorizations of all appropriate jurisdictions shall have been obtained.

(ii) Detailed plans and specifications shall have been obtained by Tenant and approved in writing by Landlord, which approval shall not be unreasonably withheld.

(iii) All such work shall be done in an expeditious fashion, and in all events shall be completed no later than 180 days after the damage or destruction (subject to delays occasioned by fires, explosions, strikes, lockouts, acts of God, inability to obtain labor or materials, unusual governmental restrictions, or similar causes beyond the control of tenant ("Force Majeure")).

(iv) Until and unless such time as sufficient funds to complete the work are deposited into the Account (from insurance proceeds and Tenant funds) Tenant shall furnish to Landlord at Tenant's expense a bond in form satisfactory to Landlord on which the Tenant shall be principal with a surety company reasonably satisfactory to Landlord, conditioned upon completion of and payment in full for the work within the time provided herein, subject to Force Majeure delays.

(v) All such work shall be done in compliance with all applicable laws, ordinances and regulations, federal, state and local, and with all insurance requirements, and shall be done in a good and workmanlike manner using only new, high grade materials.

(vi) During the pendency of such work, Tenant shall obtain workman's compensation insurance covering all persons employed in connection therewith with respect to whom death or injury claims could be asserted against the Landlord or the Premises, and such insurance shall cover Landlord as well as Tenant.

(vii) All contractors used for such work shall be subject to Landlord's reasonable approval, not to be unreasonably withheld or delayed.

**E. Rent Abatement.**

At the time of any damage to or destruction of the Premises as a result of which the Landlord or Tenant shall become entitled to payment under any policy or policies of rent or use and occupancy insurance required by Section 11 the Tenant shall assign to the Landlord all of the Tenant's right, title and interest in and to the proceeds of such policy or policies, and the Tenant shall be entitled to an abatement

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of Rent and any Additional Rent to the extent that Landlord receives such amounts as the proceeds of such policy or policies. The Landlord shall apply the proceeds of such insurance, to the extent available and in such order of priority as the Landlord in its sole discretion may determine, to the payment of Rent for the period required for reconstruction, and Additional Rent becoming due during such period. Upon the completion of all repair, restoration and rebuilding in the manner required herein, and provided the Tenant is not in default under any provision of this Lease, the Landlord will pay over to the Tenant any proceeds of such insurance received by the Landlord and not applied under the provisions of this Section. The Tenant hereby waives the provisions of any law now or hereafter in effect which would relieve the Tenant from an obligation to pay Rent or Additional Rent under this Lease except to the extent provided by this Section.

### 13. ALTERATIONS BY TENANT.

#### **A. Landlord's Consent and Other Requirements.**

Tenant shall not make any alterations in or additions to the Premises without Landlord's advance written consent in each and every instance having been first obtained. Landlord agrees that such consent shall not be unreasonably withheld, but it shall not be deemed unreasonable to withhold consent if any necessary consent of Landlord's mortgagee cannot be obtained. If Landlord consents to such alterations or additions, Tenant shall furnish Landlord, before commencement of the work or delivery of any materials onto the Premises, with plans and specifications and permits necessary for such alterations or additions, all in form and substance satisfactory to Landlord. Landlord may impose such further reasonable conditions with respect to any alterations or additions as Landlord deems appropriate, including, without limitation, requiring Tenant to enter into only so-called "no-lien" contracts in connection therewith, requiring Tenant to furnish Landlord with security for the payment of all costs to be incurred in connection with such work and/or requiring the escrowing of all funds necessary to complete such work (including insurance proceeds) and the payment thereof only on procuring of appropriate lien waivers and affidavits (along with title insurance coverage and customary holdbacks as appropriate). All additions and alterations shall be installed in a good, workmanlike manner and only new, high-grade materials shall be used. All alterations and additions to the Premises, whether temporary or permanent in character, whether made or paid for by Landlord or Tenant shall without compensation to Tenant become Landlord's property upon installation on the Premises and shall, unless Landlord requests their removal, be relinquished to Landlord in good condition, ordinary wear excepted, at the termination of this Lease by lapse of time or otherwise.

All alterations shall be done by contractors approved by Landlord, which approval shall not be unreasonably withheld or delayed, and shall conform with the requirements set forth in subparagraphs (I) through (vii) of paragraph 12.D. of this Lease.

#### **B. Tenant Indemnity.**

Tenant agrees to hold Landlord harmless from any and all liabilities, costs and expenses of every kind and description (including but not limited to, attorneys' fees and costs) which may arise out of or be connected in any way with such alterations, or with any work done pursuant to paragraph 12 of this Lease.

#### **C. Payment for Alterations.**

The work necessary to make such alterations or additions to the Premises shall be done at Tenant's expense. Tenant shall promptly pay to Tenant's contractors, when due, the cost of all such work and also the cost of any restoration of the Premises made necessary thereby (including all decorating required by reason thereof). Upon completing any alterations or additions, Tenant shall furnish Landlord with contractors' and subcontractors' affidavits and full and final waivers of lien and receipted bills covering all labor and materials expended and used therein or therefor, all in form and substance satisfactory to Landlord.

#### **D. Compliance with Laws; Landlord Supervision.**

All alterations and additions shall comply with all insurance requirements applicable to the Premises and with all ordinances, statutes and regulations of all governmental bodies, departments or agencies having jurisdiction over the Premises. Tenant shall permit Landlord to supervise construction operations in connection with alterations or additions, or any work done pursuant to paragraph 12. hereof,

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if Landlord requests to do so, provided that Landlord shall have no duty so to supervise.

## 14. ESTOPPEL CERTIFICATE.

Tenant agrees that from time to time, upon not less than five (5) days' prior request by Landlord or any mortgagee of Landlord, it will deliver to Landlord or any such mortgagee a statement in writing certifying:

That this Lease is unmodified and in full force and effect (or if there have been modifications that the Lease, as modified, is in full force and effect); the dates to which Rent and other charges have been paid and the amount thereof then payable hereunder; that Landlord is not in default under any provisions of this Lease or, if in default, the nature thereof in detail; and that Tenant is or is not in possession of the Leased Premises, as the case may be; and such other information as Landlord or such mortgagee may request.

## 15. SUBLETTING AND ASSIGNMENT.

### A. General Provisions.

Without the prior written consent of Landlord, Tenant shall not sublease, assign, mortgage, pledge, hypothecate or otherwise transfer or permit the transfer of this Lease or the interest of Tenant in this Lease, in whole or in part, by operation of law or otherwise. If Tenant desires to enter into any sublease of the Premises, Tenant shall deliver written notice thereof to Landlord, together with a copy of the proposed sublease agreement at least 60 days prior to the commencement date of the term of the proposed sublease. In making its determination of whether to consent to any proposed sublease, Landlord may take into consideration the business reputation and credit worthiness of the proposed subtenant; the intended use of the Premises by the proposed subtenant; the estimated pedestrian and vehicular traffic in and to the Premises which would be generated by the proposed subtenant; and any other factors which Landlord shall deem relevant. Any approved sublease shall be expressly subject to the terms and conditions of this Lease.

### B. Payment of Landlord's Attorney's Fees.

If Tenant requests Landlord to consent to a proposed assignment or sublease, Tenant shall pay to Landlord, whether or not consent is ultimately given, all of Landlord's reasonable attorneys fees incurred in connection with such request.

### C. Landlord Not to Unreasonably Withhold Consent.

Landlord agrees not to unreasonably withhold its consent to any proposed subleasing or assignment of all or part of the leased Premises by Tenant. Provided, however, that any consent thereto shall not be deemed to release Tenant from any of Tenant's obligations hereunder, and Landlord may look to either Tenant, the subtenant (or assignee), or both in connection with all of the obligations, liabilities, terms and conditions of this Lease. Further provided that it shall in no event be deemed unreasonable for Landlord to withhold consent to any proposed sublease of the Premises if Tenant is then in default under this Lease.

### D. Change of Control in Tenant.

Any transfer of control of Tenant by sale of stock or assets, dissolution, liquidation, merger or consolidation of said corporation shall be considered an assignment prohibited hereunder.

### E. Payment of Net Profit.

Tenant shall remit to Landlord monthly fifty percent (50%) of any net profit that Tenant shall make in connection with any subleasing of the Premises. "Net Profit" shall be defined as the monthly payments to be made to Tenant thereunder to the extent that they exceed the sums payable to Landlord hereunder. Any reasonable costs incurred by Tenant in connection with such subleasing (such as reasonable attorneys fees or broker's commissions) shall be offset against the sums received by Tenant in calculating the "net profit" by amortizing such costs over the term of the sublease; and any additional sums received by Tenant from the subtenant at the time of subleasing shall, for purposes of this calculation, be added to the monthly payments otherwise payable under the sublease by amortizing such sums over the term of the sublease.

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## 16. DEFAULT.

If any of the following events of default shall occur ("Events of Default"), to wit:

(i) Tenant defaults for more than five (5) days after the due date thereof in the payment of Rent or any other sum required to be paid hereunder, or

(ii) Tenant defaults in the prompt and full performance of any other covenant, agreement or condition of this Lease and such other default shall continue for a period of twenty (20) days after written notice thereof from Landlord to Tenant as set forth herein, (unless such other default involves a hazardous condition, in which event it shall be cured forthwith), or

(iii) The leasehold interest of Tenant is levied upon under execution or attached by process of law, or if Tenant abandons the Premises, or permits the same to remain vacant or unoccupied for a period of ten (10) days, or

(iv) If Tenant, or any one or more of the Tenants or Guarantors, if any, shall make an assignment for the benefit of creditors or shall be adjudged a bankrupt or shall file a petition for adjudication of bankruptcy or reorganization under any bankruptcy laws, or shall have an involuntary petition for bankruptcy filed against it which is not dismissed within thirty (30) days after filing thereof, or

(v) Tenant shall make an assignment or sublease of the Premises or any part thereof without the consent of Landlord as required herein,

then, and in any such event, besides other rights or remedies it may have, Landlord shall have the immediate right of re-entry without process of law and may remove all persons and property from the Premises, and such property may be removed and stored in any place chosen by Landlord, for the account of and at the expense and at the risk of Tenant. Any such property of the Tenant not retaken from storage by Tenant within thirty (30) days after the placement therein by Landlord or the end of the Term, however terminated (whichever is sooner), shall be conclusively presumed to have been conveyed by the Tenant to the Landlord under this Lease as a Bill of Sale without further payment or credit by the Landlord to the Tenant. Tenant hereby waives all claims for damages which may be caused by the re-entry of Landlord and taking possession of the Premises or removing or storing the furniture and property as herein provided, and will save Landlord harmless from any loss, costs or damages occasioned Landlord thereby, and no such re-entry shall be considered or construed to be a forcible entry or detainer, trespass or eviction, and without relinquishing Landlord's right to rent or other rights given to Landlord hereunder or by operation of law.

Should Landlord elect to re-enter, as herein provided, or should it take possession pursuant to legal proceedings or pursuant to any notice provided for by law, it may either terminate this Lease or it may, but need not, from time to time, without terminating this Lease, relet the Premises or any part thereof for such term or terms and at such rentals and on such other terms and conditions as Landlord in its sole discretion may deem advisable, with the right to make alterations and repairs to the Premises, which shall be paid for by Tenant, as may be reasonably required for any such reletting or to repair damage caused by Tenant or by Tenant's breach of obligations hereunder. The Landlord shall not be required to accept any tenant offered by Tenant or otherwise observe any instructions given by the Tenant concerning such reletting; provided, however, that if any substitute tenant tendered shall be equally or more financially responsible than Tenant and, by all other normal and reasonable standards, should be acceptable to Landlord or to other similar quality commercial buildings in the area, and would not be using the Premises in a manner inappropriate thereto (or in violation of any agreement by which Landlord is bound affecting the use of the Premises) then the approval of Landlord shall not be unreasonably withheld.

Landlord may elect to apply rentals received by it: (i) to the payment of any indebtedness, other than Rent, due hereunder from Tenant to Landlord; (ii) to the payment of any cost of such reletting (including but not limited to costs and reasonable attorneys fees incurred in connection with Tenant's defaults); (iii) to the



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payment of the cost of any alterations and repairs to the Premises necessary for such reletting or required by reason of Tenant's default; (iv) to the payment of Rent and Additional Rent due and unpaid hereunder; and the residue, if any, shall be held by Landlord and applied in payment of future Rent and Additional Rent as the same may become due and payable hereunder. Should such Rent and Additional Rent received from such reletting (after applications by Landlord to payments described in the foregoing clauses (i) through (iv)) during any month be less than that agreed to be paid during that month by Tenant hereunder, then Tenant shall pay such deficiency to Landlord. Such deficiency shall be calculated and paid by Tenant monthly on demand by Landlord.

In lieu of electing to receive and apply rentals as provided in the immediately preceding paragraph, Landlord may elect to receive from Tenant as and for Landlord's liquidated damages for Tenant's default an amount equal to the entire amount of Rent provided for in this Lease for the remainder of the Term, or any extension thereof if such extension has been agreed to as of the time of such default (excluding any increase based on Consumer Price Index figures not known at the time of default), which amount shall be forthwith due and payable by Tenant upon its being advised of such election by Landlord.

No such re-entry or taking possession of the Premises by Landlord shall be construed as an election on its part to terminate this Lease unless a written notice of such intention be given to Tenant or unless the termination thereof be decreed by a court of competent jurisdiction. Notwithstanding any such reletting without termination, Landlord may at any time thereafter elect to terminate this Lease for such previous breach.

Nothing herein contained shall limit or prejudice the right of Landlord to provide for and obtain as damages by reason of any such termination of this Lease or of possession an amount equal to the maximum allowed by any statute or rule of law in effect at the time when such termination takes place, whether or not such amount be greater, equal to, or less than the amounts of damages which Landlord may elect to receive as set forth above.

It is further agreed, by the parties hereto, that after the service of notice, or the commencement of a suit or after final judgment for possession of the Premises, Landlord may receive and collect any rent due, and the payment of said rent shall not waive or affect said notice, said suit, or said judgment.

Tenant hereby grants to Landlord a first lien upon the interest of Tenant under this Lease to secure the payment of monies due under this Lease, which lien may be enforced in equity at any time when money is overdue under this Lease; and Landlord shall be entitled as a matter of right to have a receiver appointed to take possession of the demised Premises and relet the same under order of court. Landlord shall have at all times the right to distrain for rent due, and shall have a valid and first lien upon all personal property which Tenant now owns, or may hereafter acquire or have an interest in, which is by law subject to such distraint, as security for payment of the rent herein reserved.

## 17. CONDEMNATION.

### A. Definition of Condemnation.

The term "condemnation" as used in this Lease shall mean the exercise of the power of eminent domain by any person, entity, body, agency or authority, or purchase in lieu of and under the threat of the exercise of the power of eminent domain. The date of condemnation shall mean the earlier of (a) the date on which the actual physical taking of possession occurs, pursuant to the exercise of said power of eminent domain, or in lieu thereof, or (b) the date receipt of the proceeds of settlement or compromise of the claims of the parties thereof during the pendency of the exercise of said power. The property is deemed "condemned" on said date.

### B. Total or Substantial Taking.

If, either all of the Premises are condemned, or so much of the Premises that the portion remaining cannot reasonably be used for the same purpose as before the condemnation, this Lease shall terminate as of the date of such condemnation and Rent and Additional Rent shall only be payable with

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respect to the period up to the date of condemnation.

**C. Partial Taking.**

If a portion of the Premise is condemned so that the portion remaining can reasonably be used for the same purpose as before the condemnation, this Lease shall remain in full force and effect as to all of the Premises not condemned, except as herein modified. In such case, the rent shall be abated by the proportion that the building floor space so taken bears to the total building floor space demised hereunder. Under those circumstances, the Tenant shall, at its own expense, make such repairs as may be necessary to place the part of the demised Premises not taken in a usable condition for the Tenant's purposes hereunder. Provided, however, that Landlord shall make available to Tenant (subject to the rights of any mortgagee) that portion of any award attributable to damage to said improvements, for Tenant's use in making such repairs and restorations. Such award shall be made available (and supplemented by Tenant Funds) from an Account in accordance with the same procedure for restoration provided for in paragraph 12. of this Lease.

Any sum payable by the condemning authority, except as set forth in the immediately preceding paragraph, (hereinafter sometimes called the "award"), shall be paid to and be the sole property of Landlord whether such award shall be made as compensation for diminution of the value of the leasehold or the fee of the Premises or otherwise. Tenant hereby assigns to Landlord all of Tenant's right, title and interest in and to any and all such award.

**18. TENANT'S SUBORDINATION AND ATTORNMENT.**

**A. Subordination.**

This Lease and the rights of Tenant hereunder shall be and are hereby made subject and subordinate to the lien of any mortgage, mortgages or deeds of trust now or hereafter existing against the Premises, the Land or any part or parts thereof, and to all renewals, modifications, consolidations, replacements and extensions thereof, and to all advances made or hereafter to be made upon the security thereof. Although such subordination shall be self-operating, Tenant, or its successors in interest, shall, upon Landlord's request, execute and deliver to Landlord any and all instruments desired by Landlord subordinating in the manner requested by Landlord this Lease to any such mortgage or deed of trust. Landlord is hereby irrevocably appointed and authorized as agent and attorney-in-fact of Tenant to execute all such subordination instruments in the event Tenant fails to execute said instruments within five (5) days after notice from Landlord demanding the execution thereof. Said notice may be given in the manner hereinafter provided for giving notice.

**B. Attornment.**

Should any mortgage affecting the Premises or the Land be foreclosed: (i) the liability of the mortgagee, trustee or purchaser at such foreclosure sale or the liability of a subsequent owner designated as Landlord under this Lease shall exist only so long as such trustee, mortgagee, purchaser or owner is the owner of the Leased Premises and such liability shall not continue or survive after further transfer of ownership; and (ii) Tenant shall, at the request of such mortgagee, trustee or purchaser, attorn to and recognize such mortgagee, trustee or purchaser in foreclosure as Tenant's Landlord under this Lease. Tenant agrees to execute and deliver at any time upon request of such mortgagee, trustee or purchaser, or their successors, any instrument to further evidence such attornment. Tenant hereby waives its right, if any, to elect to terminate this Lease or to surrender possession of the Premises in the event of any such mortgage foreclosure, and this Lease shall continue in force and effect as a direct lease between and binding upon Tenant and such mortgagee. As used in this Section 24(b), "mortgagee" shall include the successors and assigns of any such party, whether immediate or remote, the purchaser of any mortgage, whether at foreclosure or otherwise, and the successors, assigns and mortgagee of such purchaser, whether immediate or remote.

**19. LANDLORD'S RIGHT TO PERFORM TENANT'S DUTIES.**

If Tenant fails timely to perform any of its duties under this Lease, Landlord shall have the right (but

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not the obligation), after the expiration of any grace period elsewhere under this Lease expressly granted to Tenant for the performance of such duty, to perform such duty on behalf and at the expense of Tenant without further prior notice to Tenant, and all sums expended or expenses incurred by Landlord in performing such duty shall be deemed to be additional Rent under this Lease and shall be due and payable upon demand by Landlord.

## 20. NOTICES.

Notices may be served on either party, at the respective addresses given at the end of this Lease, either (a) by delivering or causing to be delivered a written copy thereof, or (b) by sending a written copy thereof by United States certified or registered mail, postage prepaid, addressed to Landlord or Tenant at said respective addresses in which event the notice shall be deemed to have been served two (2) business days after the date the copy is mailed.

## 21. MISCELLANEOUS PROVISIONS.

### A. Rights Cumulative.

The rights and remedies of Landlord under this Lease are cumulative. The exercise or use of any one or more thereof shall not bar Landlord from exercise or use of any other right or remedy provided herein or otherwise provided by law, nor shall exercise nor use of any right or remedy by Landlord waive any other right or remedy.

### B. Plurals; Successors; Binding Effect.

The words "Landlord" and "Tenant" wherever herein occurring and used shall be construed to mean "Landlords" and "Tenants" in case more than one person constitutes either party to this Lease; references to the singular or plural and to pronouns of male, female or neuter gender shall be deemed to include the other, where the context requires it; and all the covenants and agreements contained shall be binding upon, and inure to, their respective successors, heirs, executors, administrators and assigns and may be exercised by his or their attorney or agent.

### C. Severability.

Wherever possible each provision of this Lease shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Lease shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Lease.

### D. Captions and Paragraph References.

The Article and Section captions in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such Articles and Sections; and references to the terms "paragraphs" or "sections" when referring to such articles or sections may be used interchangeably.

### E. Applicable Law.

This Lease shall be construed in accordance with the laws of the State of Illinois.

### F. Time.

Time is of the essence of this Lease and the performance of all obligations hereunder.

### G. Tenant's Quiet Enjoyment.

So long as no Event of Default under this Lease has occurred, Tenant shall lawfully and quietly hold, occupy and enjoy the Premises during the term of this Lease without hindrance or molestation by the Landlord.

### H. Entire Agreement.

All prior and contemporaneous agreements, statements and understandings with respect

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to the subject matter of this Lease, if any, among the parties, or their agents, are merged into this Lease, and this Lease shall constitute the entire agreement among the parties with respect to the leasing of the Premises.

**I. Amendment.**

This lease may be amended or altered at any time, in whole or in part, only by written amendment signed by Landlord and Tenant or their respective agents.

**J. Counterparts.**

This Lease may be executed in two or more counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute a single instrument.

**K. Construction.**

This Lease is deemed and shall be construed to have been mutually prepared by all of the parties thereto and any uncertainty or ambiguity in it shall not be construed more strictly against one party as against any other party.

**L. No Joint Venture.**

Nothing in this Lease shall be deemed to or be construed by the parties hereto or any third party as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto or any other relationship, other than that of landlord and tenant.

**M. Consent.**

Any consent required of Landlord under this Lease must be granted in writing and may not be unreasonably withheld or delayed.

**N. No Broker.**

Each party represents and warrants to the other that it has not had dealings with any real estate broker, finder or other person with respect to this Lease in any manner. Each party agrees to indemnify, defend and hold the other harmless from and against all claims for broker's commissions or finder's fees by any person claiming to have been retained by it in connection with this transaction or claiming by through or under it to be the procuring cause of this transaction in breach of the foregoing representation and warranty.

**22. Tenant's Authority.**

Tenant warrants and represents that it has full power and authority to enter into this Lease and all related agreements and understandings and upon request will provide to Landlord a certified copy of a corporate resolution authorizing, confirming or ratifying these actions by the officers executing this Lease and related documents.

**23. Option To Renew.**

Tenant is hereby granted the right, to be exercised as provided below, to extend the term of this Lease for two additional consecutive periods of five years each, subject to the following:

**A. General Terms.**

The following terms and conditions must be satisfied:

(I) At the time of the exercise of such right and at the time the extension term begins, Tenant shall not be in default in the performance of any of the terms, covenants, and conditions contained in this lease;

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(ii) This Lease shall not have been terminated during the initial term or any additional extension of the term and shall be in full force and effect at the date of such exercise of the right to renew and at the date the renewal term begins:

(iii) Such extension shall not be effective as to any portions of the Premises that are subleased at any time between the date of exercise of such right and the date the extension term begins; and

(iv) Such extension shall be upon the same terms, covenants, and conditions contained in this Lease except that the Base Rent for each extension term shall be the greater of (a) the Base Rent (or Adjusted Base Rent as appropriate) for the last year of the Lease term just ended or (b) the then current fair market base rental for the Premises, as determined by Landlord in its reasonable business judgment, which Landlord could obtain in an arm's-length transaction with a willing and informed tenant for a term equal to the extension period. Landlord shall notify Tenant of the new Base Rent within sixty (60) days after notice to Landlord of Tenant's exercise of its extension rights.

(v) The Base Rent during any renewal term shall be increased as otherwise provided herein, starting with the first Adjustment Year one year after the commencement of the renewal period.

**B. Method of Exercise.**

Tenant shall exercise its rights of extension for each extension of the term granted hereby only in the following manner: at any time after the commencement of this Lease, but no later than one hundred eighty (180) days prior to the end of the then current term, Tenant shall notify Landlord in writing of its election to exercise the right to extend the term of this Lease for an additional period, pursuant to any rights granted by this Lease. This notice of election shall be given in the manner in this Lease provided for the giving of notices to the Landlord.

**C. Memorandum.**

At the request of Landlord, Tenant shall prior to the beginning of any extension term, execute a written memorandum confirming the Base Rent for the extension term.

**D. Reference to the term.**

When reference is made in this Lease to the term of the Lease or to the term of the demise under this Lease, the same shall include any and all extensions of the term, resulting from the exercise of one or more of the options conferred under this Lease, unless the context requires otherwise.

This Lease consists of 23 pages numbered 1 to 23 identified by Landlord and Tenant.

**IN WITNESS WHEREOF**, the parties hereto have executed this instrument as of the 15<sup>th</sup> day of May, 2003.

**LANDLORD:**

7700 Kimbark LLC

By: Sidney M. Levin  
Sidney Levin, Manager

Address for Notice:

PO Box 5271

Buffalo Grove, IL 60089

**TENANT:**

Shademaker Products LLC

By: Sidney M. Levin  
Sidney Levin, Manager

Address for Notice:

PO Box 5271

Buffalo Grove, IL 60089

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## EXHIBIT A

LOT 1 AND THE NORTH 98.35 FEET OF LOT 2, MEASURED ALONG THE EAST LINE THEREOF, IN RESUBDIVISION OF BLOCK 2 IN GRAY'S ADDITION TO CORNELL, SAID ADDITION BEING A SUBDIVISION OF THE WEST ½ OF THE SOUTHWEST ¼ OF THE NORTHEAST ¼ AND WEST ½ OF THE NORTHEAST ¼ OF THE SOUTHWEST ¼ OF THE NORTHEAST ¼ OF SECTION 26, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

PIN: 20-26-217-005-0000

Initial \_\_\_\_\_