

UNOFFICIAL COPY

THIS DOCUMENT PREPARED BY:



Doc#: 0626947215 Fee: \$74.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 09/26/2008 02:34 PM Pg: 1 of 26

Martin B. Snow
Snow & Snow, Ltd.
105 West Madison Street
Suite 2000
Chicago, Illinois 60602

4369419

1 of 2

(For Recorder's Use)

COMMERCIAL SUB-LEASE AGREEMENT

Master Landlord: Kostner Investment Corporation,
sole beneficiary of MB Financial, successor to
Mid-City National Bank of Chicago, as Trustee,
under trust dated 7/19/98 and known as Trust Number 2753

Landlord: Kronon Motor Sales, Inc.

Tenant: Mid City Lincoln-Mercury, Inc.
4330 West Irving Park Road
Chicago, Illinois 60641

Property Address: 4330-4450 West Irving Park Road,
Chicago, Illinois 60641

After Recording, please mail to:

John C. Eggert
Gordon & Karr LLP
150 North Wacker Drive
Suite 1650
Chicago, Illinois 60606
(312) 377-4450

JK

UNOFFICIAL COPY

COMMERCIAL SUB-LEASE AGREEMENT

This Commercial Sub-Lease Agreement ("Lease") is made and effective this 13th day of July 2006, by and between KRONON MOTOR SALES, INC., an Illinois Corporation, as Sub-Landlord (hereinafter referred to as "Landlord") and MID CITY-LINCOLN MERCURY INC., an Illinois corporation, as Sub-tenant (hereinafter referred to as "Tenant").

The Landlord is the tenant of land commonly known and numbered as 4330 to 4450 W. Irving Park Road, Chicago and legally described in Exhibit A attached hereto and made a part hereof, and all structures and improvements thereon, including, but not limited to, the used car office trailer located on the used car lot which is a part of the Premises.

The Landlord is a tenant under a lease agreement with KOSTNER INVESTMENT CORPORATION, an Illinois Corporation, (hereinafter referred to as "Master-Landlord") said corporation is the sole beneficiary of MB FINANCIAL, Successor to MID CITY NATIONAL BANK OF CHICAGO as Trustee under Trust Dated 7/19/1998 and known as Trust Number 2753. Said lease is for a term of twenty (20) years, from the date of this agreement and by signing this agreement, the Master-Landlord consents to all the terms and conditions set forth herein. Hereinafter, the term "Lease" or "Lease term" shall refer only to the sub-lease between KRONON MOTOR SALES, INC and MID CITY LINCOLN-MERCURY, INC. Any reference to "Master-Lease" shall refer only to the lease between KOSTNER INVESTMENT CORPORATION and KRONON MOTOR SALES, INC.

The Landlord makes available for sub-lease all of the aforementioned property, (hereinafter referred to collectively as "Premises") attached hereto and made a part hereof and marked as Exhibit B.

The Landlord desires to sub-lease the Premises to Tenant, and Tenant desires to sub-lease the Premises from Landlord for the term, at the rental and upon the covenants conditions and provisions herein set forth.

THEREFORE, in consideration of the mutual promises herein, contained and other good and valuable consideration, it is agreed:

1. Term.

(a) **Initial Lease Term** Landlord hereby leases the Premises to Tenant, and Tenant hereby leases the same from Landlord, for an "Initial Term" beginning on the date first written above (hereinafter "the Commencement Date") and ending on the last day of the 60th month thereafter.

(b) **Renewal Term** Tenant may renew the Lease for one extended term of five (5) years, provided that Tenant is not in default of any terms of this Lease. Tenant shall exercise such renewal option, if at all, by giving written notice to Landlord not less than one hundred eighty (180) days prior to the expiration of the initial term. The renewal term shall be at the rental set forth below and otherwise upon the same covenants, conditions and provisions as provided in this Lease.

(c) **Additional Renewal Term** Tenant may renew the Lease for an additional one term of five (5) years, provided that the Tenant is not in default of any terms of the Lease. Tenant shall exercise such additional renewal option, if at all, by giving written notice to Landlord not less than one hundred

UNOFFICIAL COPY

eighty (180) days prior to the expiration of the first renewal term. The renewal term shall be at the rental set forth below and otherwise upon the same covenants, conditions and provisions as provided in this Lease.

2. Rental.

(a) **Initial rent** Tenant shall pay to Landlord during the Initial Term basic rental of Four Hundred Eighty Dollars (\$480,000.00) per year, payable in installments of Forty Thousand Dollars (\$40,000.00) per month. Each installment payment shall be due in advance on the first day of each calendar month during the lease term to Landlord C/O Mr. John A. Kronon, Jr. at 8019 W. Summerdale, Norwood Park, Illinois 60656-1553 or at such other place designated by written notice from Landlord to Tenant. Tenant, in addition to the above stated basic rent, shall pay additional amounts as hereinafter provided, which shall be considered as additional rent. The obligations of Tenant to pay base rent and other sums to the Landlord and the obligations of the Landlord under this lease are independent obligations.

(b) **Renewal Term Rent** The rental for the first renewal lease term, if created as permitted under this Lease, shall be Five Hundred Forty Thousand Dollars (\$540,000.00) per year payable in installments of Forty-Five Thousand Dollars (\$45,000.00) per month.

(c) **Additional Renewal Term Rent** The rental for the additional renewal lease term, if created as permitted under this Lease, shall be Five Hundred Seventy Thousand Dollars (\$570,000.00) per year payable in installments of Forty-Seven Thousand Five Hundred Dollars (\$47,500.00) per month.

(d) **Initial Rent Payment** On the Commencement Date, Tenant shall pay the first full month's rent, plus the initial tax escrow payment per paragraph 7(b) herein, which shall be prorated if this Lease commences after the first day of such month.

3. Delinquent Payment; Handling Charges.

All past due payments required of Tenant hereunder shall bear interest from the date due until paid at the lesser of eighteen percent per annum or the maximum lawful rate of interest; additionally, Landlord, in addition to all other rights and remedies available to it, may charge Tenant a fee equal to five percent of the delinquent payment to reimburse Landlord for its cost and inconvenience incurred as a consequence of Tenant's delinquency. In no event, however, shall the charges permitted under this Section 3 or elsewhere in this Lease, to the extent they are considered to be interest under applicable Law, exceed the maximum lawful rate of interest. Notwithstanding the foregoing, the late fee referenced above shall not be charged with respect to the first occurrence (but not any subsequent occurrence) during any 12-month period that Tenant fails to make payment when due, until five days after Landlord delivers written notice of such delinquency to Tenant.

4. Condition and Upkeep of Leased Premises

(a) **Initial Condition of Premises** The Tenant has examined and knows the condition of the Leased Premises and has received the same in good order and repair, and acknowledges that no representations as to the condition of said Leased Premises have been made by the Landlord or any agent of the Landlord, prior to or at the execution of this lease that are not herein expressed. Tenant, at

UNOFFICIAL COPY

its own expense, will keep the Leased Premises and any appurtenances thereto, in good repair, replacing all items in disrepair with items of the equal or greater quality and will keep the Leased Premises, in a clean and healthful condition according to the applicable municipal ordinances and the direction of the proper public officers during the term of this lease and will without injury to the roof, remove all snow and ice from the same when necessary, and will remove the snow and ice from the sidewalks abutting the Leased Property.

(b) **Tenant's Duty to Repair** The Landlord shall not be obligated to incur any expense for repairing any improvements upon the demised Leased Premises or connected therewith, including, but not limited to all of the fencing surrounding the Leased Premises, and the Tenant, at his own expense will keep all improvements in good repair (injury by fire or other causes beyond the Tenants control excepted) as well as in good tenantable and wholesome condition and will comply with all local or general regulations, laws, and ordinances applicable thereto as well as lawful requirements of all competent authorities in that behalf. Tenant will, as far as possible, keep said improvements from deterioration due to ordinary wear and from falling temporarily out of repair. If the 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 and payable by Tenant to Landlord.

(c) **Landlord's liability** Landlord shall not be liable for any damage occasioned by failure to keep the Leased Premises in repair, nor for any damage done or occasioned by or from plumbing, gas, water, sprinkler steam or other pipes or sewerage bursting, leaking or running of any pipes, tank or plumbing fixtures, in, above, below, upon or about the Leased Premises, nor for any damage occasioned by water, snow or ice being upon or coming through the roof, skylights, if any, or otherwise, nor for any damages arising from acts or neglect of any owners or occupants of adjacent or contiguous property.

(d) **Landlord's Liability Regarding EPA Matters** Tenant, at its own expense obtained a Phase I and Phase II EPA Study that shows possible EPA violations. Landlord, at its own cost, within Eighteen (18) months of the date of this agreement, shall provide Tenant a "No Further Remediation" ("NFR") letter issued by the Illinois Environmental Agency, showing remediation of that area shown in said Phase I & II EPA study, obtained by the Tenant, that may be in violation of Illinois EPA standards. Any cost to perform the remediation work or any other cost directly associated with obtaining said NFR letter shall be born solely by the Landlord. Upon receiving said NFR letter, Landlord shall be relieved of any further responsibility to the Tenant, its agents or assigns for any EPA matters, including, but not limited to, providing any further EPA studies and or any cost of remediation to the lease premises. No rent shall be abated for any part of the leased premises that cannot be used by the Tenant during the performance of any remediation work to the premises. If the Landlord does not provide said NFR letter to the Tenant within the aforementioned time period, then the Tenant may contract to perform the remediation work necessary to obtain such letter and deduct the cost thereof from the following month's rent due the Landlord.

5. **Title Insurance**

At Tenant's option, and at its sole cost and expense, Tenant may elect to obtain leasehold title insurance of its interest hereunder, its right of first refusal, purchase option and real estate sales contract rights, and upon such conditions and endorsements as Tenant deems appropriate. In such event, Landlord and Master Landlord agree to execute and deliver any and all documents which may be required by the issuing title insurer.

UNOFFICIAL COPY

6. Use

The purpose of the lease is for Tenant to operate an automobile dealership engaged in the sale and servicing of automobiles and small trucks only, and any ancillary business thereto. The Tenant will not allow the Leased Premises to be used for any other purpose, nor for any purpose other than that hereinbefore specified and will not load the floors with machinery or goods or anything else beyond the floor rating prescribed by applicable municipal ordinances and will not permit the Leased Premises to be used for any unlawful purpose, or for any purpose that will injure the structural portion of the building or increase the fire hazard of the building or disturb the neighborhood and will not let the Leased Premises to remain vacant or unoccupied for more than ten consecutive days; and will not allow any signs to be posted or placed thereon, nor permit any alteration of or addition to any part of the Leased Premises, including, but not limited to the building, fences, any signs as required by an automobile franchise agreement, except by prior written consent of Landlord. All work done as aforesaid shall be at the Tenant's expense and done in a good workmanlike manner and in full compliance with any municipal ordinances. If the Tenant fails or refuses, after ten (10) days written notice to the Tenant by the Landlord, to maintain the leased Premises as aforesaid, then the Landlord shall have the right, at Landlord's option of paying for said repairs or maintenance and said payment or payments shall be considered additional rent of the Tenant and shall be due and payable immediately to the Landlord. Landlord represents and warrants to Tenant that, as of the Commencement Date, the Premises is (i) zoned to permit sales and service of motor vehicles, and (ii) the Premises is in compliance with applicable zoning, building, fire, health and safety laws.

7. **Property Taxes and Assessments.**

(a) **Tenant's Obligation** Tenant shall be obligated to pay, all general real estate taxes and installments of special assessments that are assessed and coming due during the Lease term on the Leased Premises, and all personal property taxes with respect to Tenant's personal property, water or sewer taxes user fees or any other fees or taxes, if any, assessed against Premises.

(b) **Tax Escrow** The Tenant, in addition to the basic rent herein, shall establish a real estate tax escrow by depositing with Landlord an amount equal to one twelfth (1/12) of the last ascertainable real estate tax bill for the Premises to be used for the payment of real estate tax bills as the installments become due and owing. If after the payment of any installment, there is a deficit in the tax escrow, the Landlord shall so notify the Tenant in writing and the Tenant shall immediately deposit with the landlord an amount to eliminate said deficit.

The Tenant shall have the option, to deposit with the Landlord a sum equal to one and one half (1 ½) times the amount of the previous years real estates taxes, which sum shall be placed into an interest bearing account, with the interest payable annually to the Tenant, and the Tenant shall pay, prior to any delinquency, the real estate tax installments as they become due and owing and provide Landlord with written verification that said taxes were paid. If the amount of real estate taxes increase the Tenant shall so deposit with the Landlord an amount equal to one and one half (1 ½) times said increase.

(c) **Written Verification** Within thirty (30) days of the date that the aforementioned taxes are due, Tenant will provide written verification to Landlord that said taxes were paid in a timely manner. The Tenant shall also furnish the Landlord written proof that all other taxes or charges assessed against the Premises have been timely paid. If any of the aforementioned are not paid prior to

UNOFFICIAL COPY

delinquency, then the Landlord shall have the right, at Landlord's option of paying all real estate taxes, special assessments, personal property taxes or any other tax or charge due and owing along with any penalties and/or interest due and the amount so paid by the Landlord shall be so much additional rent immediately due from and payable by Tenant to Landlord.

(d) **Final Real Estate Tax Payment** At the end of the lease term, the Landlord shall hold back, from and funds due and owing the Tenant, including, but not limited to, the security deposit paid herein, an amount equal to one and one half (1 ½) the amount of the last ascertainable real tax bill to insure payment of all taxes, assessments or charges levied against the Premises, during the term of the lease or any extensions thereto. If the amount so held is insufficient to pay and discharge the aforementioned items, then the Tenant, immediately upon written notice from the Landlord, pay to either the Landlord or the body assessing the tax or charge an amount to eliminate said shortage.

(e) **Contesting a Tax Assessment** Tenant, at its own expense, shall have the right, but not the obligation to contest any tax, tax assessment lien or other charge that may be charged or imposed against the Premises, by any appropriate legal proceeding and not pay the contested tax or charge assessed until final determination thereof, provided the Tenant meets the following requirements:

1. The collection of the tax or charge assess will be abated during the pendency of the legal proceeding, to determine the validity of said tax or charge, and not be due until a final determination is made by either the taxing body assessing the tax or charge, or a court of competent jurisdiction;
2. The Tenant will make a good faith contest of the assessed charges and will proceed with due diligence to prosecute said claim, provided that said contested assessment is abated during the pendency of the legal proceeds, until the final determination of the validity of said tax or the amount assessed and not lien is adversely placed against the title to the Premises;
3. The Tenant shall be responsible for all expenses, including, but not limited to attorneys fees incurred to contest the assessment; and
4. The Tenant shall deposit with the Landlord an amount equal to two times the amount being contested, to insure the payment of all taxes, interest and penalties, if said contest fails.

8. Payment of Utilities

The Tenant will pay, in addition to the rent above specified, all charges for utilities, including water, sewer, gas and electric incurred during the term of the lease. Upon request by the Landlord, the Tenant shall provide Landlord with written proof that the utility charges are current and paid. Any of the above charges, if not paid when due, Landlord shall have the right to pay the same, which amounts so paid, together with any sums paid by Landlord to keep the Leased Premises in a clean and healthy condition, as above specified, are declared to be so much additional rent and payable with the installment of rent next due thereafter.

UNOFFICIAL COPY

9. Insurance; Waivers; Subrogation; Indemnity.

(a) **Insurance** Effective as of the commencement of the Lease Term and continuing throughout the Term, Tenant shall maintain the following insurance policies: (A) Fire and extended coverage property insurance for the replacement value of the Premises and all improvements thereto, less a commercially reasonable deductible, to be agreed upon by the Landlord and Tenant, insuring Tenant, Landlord, Landlord's property management company, (if any) and Landlord's Mortgagee (B) commercial general liability insurance in amounts of \$1,000,000 per occurrence and an umbrella policy of at least \$15,000,000.00 or, following the expiration of the initial Term, such other amounts as Landlord may from time to time reasonably require (and, if the use and occupancy of the Premises include any activity or matter that is or may be excluded from coverage under a commercial general liability policy, Tenant shall obtain such endorsements to the commercial general liability policy or otherwise obtain insurance to insure all liability arising from such activity or matter in such amounts as Landlord may reasonably require), insuring Tenant, Landlord, Landlord's property management company, (if any) and Landlord's Mortgagee against all liability for injury to or death of a person or persons or damage to property arising from the use and occupancy of the Premises and (without implying any consent by Landlord to the installation thereof) the installation, operation, maintenance, repair or removal of Tenant's Equipment, (C) insurance covering the full value of all alterations and improvements and betterments in the Premises, naming Landlord and Landlord's Mortgagee as additional loss payees as their interests may appear, (D) insurance covering the full value of all furniture, trade fixtures and personal property (including property of Tenant or others), (E) contractual liability insurance sufficient to cover Tenant's indemnity obligations hereunder (but only if such contractual liability insurance is not already included in Tenant's commercial general liability insurance policy), (F) worker's compensation insurance, and (G) business interruption insurance in an amount reasonably acceptable to Landlord. Tenant's insurance shall provide primary coverage to Landlord when any policy issued to Landlord provides duplicate or similar coverage, and in such circumstance Landlord's policy will be excess over Tenant's policy. Tenant shall furnish to Landlord certificates of such insurance and such other evidence satisfactory to Landlord of the maintenance of all insurance coverages required hereunder at least ten days prior to the commencement date of the lease, and at least 15 days prior to each renewal of said insurance, and Tenant shall obtain a written obligation on the part of each insurance company to notify Landlord at least 30 days before cancellation or a material change of any such insurance policies. All such insurance policies shall be in form, and issued by companies with an A.M. Best rating of A+:VII or better, reasonably satisfactory to Landlord. If Tenant fails to comply with the foregoing insurance requirements or to deliver to Landlord the certificates or evidence of coverage required herein, Landlord, in addition to any other remedy available pursuant to this Lease or otherwise, may, but shall not be obligated to, obtain such insurance and Tenant shall pay to Landlord on demand the premium costs thereof, plus an administrative fee of 15% of such cost.

(b) **Waivers & Subrogation** Landlord and Tenant each waives any claim it might have against the other for any damage to or theft, destruction, loss, or loss of use of any property, to the extent the same is insured against under any insurance policy of the types described in this Section 9 that covers the Premises, Landlord's or Tenant's fixtures, personal property, leasehold improvements, or business, or is required to be insured against under the terms hereof, regardless of whether the negligence of the other party caused such Loss (defined below). Additionally, Tenant waives any claim it may have against Landlord for any Loss to the extent such Loss is caused by a terrorist act. Each party shall cause its insurance carrier to endorse all applicable policies waiving the carrier's rights of recovery under subrogation or otherwise against the other party. Notwithstanding any provision in this

UNOFFICIAL COPY

Lease to the contrary, Landlord, its agents, employees and contractors shall not be liable to Tenant or to any party claiming by, through or under Tenant for (and Tenant hereby releases Landlord and its servants, agents, contractors, employees and invitees from any claim or responsibility for) any damage to or destruction, loss, or loss of use, or theft of any property, caused by casualty, theft, fire, third parties or any other matter or cause, regardless of whether the negligence of any party caused such loss in whole or in part.

(c) **Indemnification** Subject to Section 9(b) Tenant shall defend, indemnify, and hold harmless Landlord and its representatives and agents from and against all claims, demands, liabilities, causes of action, suits, judgments, damages, and expenses (including reasonable attorneys' fees) arising from any injury to or death of any person or the damage to or theft, destruction, loss, or loss of use of, any property or inconvenience (a "Loss") (1) occurring in or on the Premises) to the extent caused by the negligence or willful misconduct of any agent, employee or officer of the Tenant, or (2) arising out of the installation, operation, maintenance, repair or removal of any property of the Tenant. It is hereby agreed that clauses (1) and (2) of this indemnity are intended to indemnify Landlord and its agents against the consequences of their own negligence or fault, even when Landlord or its agents are jointly, comparatively, contributively, or concurrently negligent with Tenant, and even though any such claim, cause of action or suit is based upon or alleged to be based upon the strict liability of Landlord or its agents; however, such indemnity shall not apply to the sole or gross negligence or willful misconduct of Landlord and its agents. The indemnities set forth in this Lease shall survive termination or expiration of this Lease and shall not terminate or be waived, diminished or affected in any manner by any abatement or apportionment of Rent under any provision of this Lease. If any proceeding is filed for which indemnity is required hereunder, the indemnifying party agrees, upon request therefor, to defend the indemnified party in such proceeding at its sole cost utilizing counsel satisfactory to the indemnified party.

10. Sublease and Assignment.

(a) **Transfers**. Except as provided in Section 10(g), Tenant shall not, without the prior written consent of Landlord, (1) assign, transfer, or encumber this Lease or any estate or interest herein, whether directly or by operation of law, (2) permit any other entity to become Tenant hereunder by merger, consolidation, or other reorganization, (3) if Tenant is an entity other than a corporation whose stock is publicly traded, permit the transfer of an ownership interest in Tenant so as to result in a change in the current control of Tenant, (4) sublet any portion of the Premises, (5) grant any license, concession, or other right of occupancy of any portion of the Premises, or (6) permit the use of the Premises by any parties other than Tenant (any of the events listed in Section 10(a)(1) through 10(a)(6) being a "Transfer").

(b) **Consent Standards**. Landlord shall not unreasonably withhold its consent to any assignment or subletting of the Premises, provided that the proposed transferee (1) is creditworthy, (2) has a good reputation in the business community, (3) will use the Premises only for the Permitted Use and will not use the Premises in any manner that would violate any municipal ordinances, or state or federal laws that may be applicable; otherwise, Landlord may withhold its consent in its sole discretion. Additionally, Landlord may withhold its consent in its sole discretion to any proposed Transfer if any Event of Default by Tenant then exists.

(c) **Request for Consent**. If Tenant requests Landlord's consent to a Transfer, then, at least 15 business days prior to the effective date of the proposed Transfer, Tenant shall provide Landlord with a written description of all terms and conditions of the proposed Transfer, copies of the proposed documentation, and the following information about the proposed transferee: name and address;

UNOFFICIAL COPY

reasonably satisfactory information about its business and business history; its proposed use of the Premises; banking, financial, and other credit information; and general references sufficient to enable Landlord to determine the proposed transferee's creditworthiness and character.

(d) **Conditions to Consent.** If Landlord consents to a proposed Transfer, then the proposed transferee and Tenant shall execute with the Landlord a written agreement whereby the proposed transferee expressly assumes Tenant's obligations hereunder. Any transfer either (i) approved by Landlord or (ii) which is a Permitted Transfer herein, shall terminate Tenant's liability under this Lease. Landlord's consent to any Transfer shall not waive Landlord's rights as to any subsequent Transfers. If an Event of Default occurs while the Premises are subject to a Transfer, then Landlord, in addition to its other remedies, may collect directly from such transferee all rents becoming due to Tenant and apply such rents against Rent. Tenant authorizes its transferees to make payments of rent directly to Landlord upon receipt of notice from Landlord to do so following the occurrence of an Event of Default hereunder.

(e) **Attornment by Subtenants.** Each sublease by Tenant hereunder shall be subject and subordinate to this Lease and to the matters to which this Lease is or shall be subordinate, and each subtenant by entering into a sublease is deemed to have agreed that in the event of termination, re-entry or dispossession by Landlord under this Lease, Landlord may, at its option, take over all of the right, title and interest of Tenant, as sublandlord, under such sublease, and such subtenant shall, at Landlord's option, attorn to Landlord pursuant to the then executory provisions of such sublease, except that Landlord shall not be (1) liable for any previous act or omission of Tenant under such sublease, (2) subject to any counterclaim, offset or defense that such subtenant might have against Tenant, (3) bound by any previous modification of such sublease not approved by Landlord in writing or by any rent or additional rent or advance rent which such subtenant might have paid for more than the current month to Tenant, and all such rent shall remain due and owing, notwithstanding such advance payment, (4) bound by any security or advance rental deposit made by such subtenant which is not delivered or paid over to Landlord and with respect to which such subtenant shall look solely to Tenant for refund or reimbursement, or (5) obligated to perform any work in the subleased space or to prepare it for occupancy, and in connection with such attornment, the subtenant shall execute and deliver to Landlord any instruments Landlord may reasonably request to evidence and confirm such attornment. Each subtenant or licensee of Tenant shall be deemed, automatically upon and as a condition of its occupying or using the Premises or any part thereof, to have agreed to be bound by the terms and conditions set forth in this Section 10(e). The provisions of this Section 10(e) shall be self-operative, and no further instrument shall be required to give effect to this provision.

(f) **Cancellation.** Landlord may, within 30 days after submission of Tenant's written request for Landlord's consent to an assignment or subletting, cancel this Lease as of the date the proposed Transfer is to be effective. If Landlord cancels this Lease as to any portion of the Premises, then this Lease shall cease for such portion of the Premises and Tenant shall pay to Landlord all Rent accrued through the cancellation date relating to the portion of the Premises covered by the proposed Transfer. Thereafter, Landlord may lease such portion of the Premises to the prospective transferee (or to any other person) without liability to Tenant.

(g) **Permitted Transfers.** Notwithstanding Section 10(a), Tenant may Transfer all or part of its interest in this Lease or all or part of the Premises (a "**Permitted Transfer**") to the following types of entities (a "**Permitted Transferee**") without the written consent of Landlord:

- (1) an Affiliate of Tenant provided the Tangible Net Worth of such Affiliate is not less than the Tangible Net Worth of Tenant as of the date hereof;

UNOFFICIAL COPY

(2) any corporation, limited partnership, limited liability partnership, limited liability company or other business entity wholly owned or controlled by Tenant, or in which or with which Tenant, or its corporate successors or assigns, is merged or consolidated, in accordance with applicable statutory provisions governing merger and consolidation of business entities, so long as (A) Tenant's obligations hereunder are assumed by the entity surviving such merger or created by such consolidation; and (B) the Tangible Net Worth of the surviving or created entity is not less than the Tangible Net Worth of Tenant as of the date hereof; or

(3) any corporation, limited partnership, limited liability partnership, limited liability company or other business entity acquiring all or substantially all of Tenant's assets if such entity's Tangible Net Worth after such acquisition is not less than the Tangible New Worth of the Tenant as of the date of said transfer.

Tenant shall promptly notify Landlord of any such Permitted Transfer. Tenant shall remain liable for the performance of all of the obligations of Tenant hereunder, or if Tenant no longer exists because of a merger, consolidation, or acquisition, the surviving or acquiring entity shall expressly assume in writing the obligations of Tenant hereunder. Additionally, the Permitted Transferee shall comply with all of the terms and conditions of this Lease, including the Permitted Use, and the use of the Premises by the Permitted Transferee may not violate any other agreements affecting the Premises. On or prior to the effective date of any Permitted Transfer, Tenant agrees to furnish Landlord with (A) copies of the instrument effecting any of the foregoing Transfers, (B) documentation establishing Tenant's satisfaction of the requirements set forth above applicable to any such Transfer, and (C) evidence of insurance as required under this Lease with respect to the Permitted Transferee. The occurrence of a Permitted Transfer shall not waive Landlord's rights as to any subsequent Transfers. "**Tangible Net Worth**" means the excess of total assets over total liabilities, in each case as determined in accordance with generally accepted accounting principles consistently applied ("**GAAP**"), excluding, however, from the determination of total assets all assets which would be classified as intangible assets under GAAP including goodwill, licenses, patents, trademarks, trade names, copyrights, and franchises. Any subsequent Transfer by a Permitted Transferee shall be subject to the terms of this Section 10.

11. Alterations and Improvements.

(a) **Improvements; Alterations.** Tenant shall have the right to make alterations and improvements to the Premises which shall be performed at Tenant's expense only, in accordance with plans and specifications that meet all municipal codes. No alterations or physical additions in excess of \$50,000.00 in or to the Premises may be made without Landlord's prior review. Tenant shall not proceed with any alteration or addition that would adversely affect (in the reasonable discretion of the Landlord) the (1) Building Structure or (2) the value of the Premises. All alterations, additions, and improvements shall be constructed, maintained, and used by Tenant, at its risk and expense, in accordance with all Laws: Landlord's consent to or approval of any alterations, additions or improvements (or the plans therefore) shall not constitute a representation or warranty by Landlord, nor Landlord's acceptance, that the same comply with sound architectural and/or engineering practices or with all applicable Laws, or Ordinances and Tenant shall be solely responsible for ensuring all such compliance. If the aforementioned alterations or improvements are not completed by the Tenant, then the Landlord shall have the option, but not the obligation to complete the work and all costs incurred by the Landlord to complete said work shall be deemed additional rent and due the month following the presentment of said costs to the Tenant.

UNOFFICIAL COPY

(b) **Performance of Work.** Tenant shall cause all contractors and subcontractors to procure and maintain insurance coverage naming Landlord, Landlord's property management company, (if any) and Landlord's Mortgagee as additional insureds against such risks, in such amounts, and with such companies as Landlord may reasonably require. Tenant shall provide Landlord with the identities, mailing addresses and telephone numbers of all contracting entities performing work or supplying materials prior to beginning such construction and Landlord may post on and about the Premises notices of non-responsibility pursuant to applicable Laws. All such work shall be performed in accordance with all Laws and in a good and workmanlike manner so as not to damage the Premises. All such work which may affect the Building's Structure or the Building's Systems must be approved by either the Landlord or an engineer of its choosing, at Tenant's expense and, at Landlord's election, must be performed by Landlord's usual contractor for such work. All work affecting the roof of the Building must be performed by Landlord's roofing contractor, or a contractor approved by the Landlord and no such work will be permitted if it would void or reduce any existing warranty on the roof.

(c) **Construction Liens.** All work performed, materials furnished, or obligations incurred shall be deemed authorized and ordered by Tenant only, and Tenant shall not permit any construction liens to be filed against the Premises in connection therewith. Upon completion of any such work, Tenant shall deliver to Landlord final lien waivers from all contractors, subcontractors and materialmen who performed such work. If such a lien is filed, then Tenant shall, within ten days after Landlord has delivered notice of the filing thereof to Tenant (or such earlier time period as may be necessary to prevent the forfeiture of any interest of Landlord therein or the imposition of a civil or criminal fine with respect thereto), either (1) pay the amount of the lien and cause the lien to be released of record, or (2) diligently contest such lien and deliver to Landlord a bond or other security reasonably satisfactory to Landlord. If Tenant fails to timely take either such action after delivery of written notice to Tenants, then Landlord may pay the lien claim, and any amounts so paid, including expenses and interest, shall be considered additional rent and shall be paid by Tenant to Landlord within ten days after Landlord has invoiced Tenant therefor. Landlord and Tenant acknowledge and agree that their relationship is and shall be solely that of "landlord-tenant" (thereby excluding a relationship of "owner-contractor," "owner-agent" or other similar relationships). Accordingly, all materialmen, contractors, artisans, mechanics, laborers and any other persons now or hereafter contracting with Tenant, any contractor or subcontractor of Tenant or any other Tenant Party for the furnishing of any labor, services, materials, supplies or equipment with respect to any portion of the Premises, at any time from the date hereof until the end of the Term, are hereby charged with notice that they look exclusively to Tenant to obtain payment for same. Nothing herein shall be deemed a consent by Landlord to any liens being placed upon the Premises or Landlord's interest therein due to any work performed by or for Tenant or deemed to give any contractor or subcontractor or materialman any right or interest in any funds held by Landlord to reimburse Tenant for any portion of the cost of such work. Tenant shall defend, indemnify and hold harmless Landlord and its agents and representatives from and against all claims, demands, causes of action, suits, judgments, damages and expenses (including attorneys' fees) in any way arising from or relating to the failure to pay for any work performed, materials furnished, or obligations incurred by or at the request of the Tenant. This indemnity provision shall survive termination or expiration of this Lease.

12. Subordination; Attornment; Notice to Landlord's Mortgagee.

(a) **Subordination.** This Lease shall be subordinate to any deed of trust, mortgage, or other security instrument (each, a "**Mortgage**"), that now or hereafter covers all or any part of the Premises (the mortgagee under any such Mortgage, beneficiary under any such deed of trust, referred to herein as a "**Landlord's Mortgagee**"). Any Landlord's Mortgagee may elect, at any time, unilaterally, to make

UNOFFICIAL COPY

this Lease superior to its Mortgage, or other interest in the Premises by so notifying Tenant in writing. The provisions of this Section shall be self-operative and no further instrument of subordination shall be required; however, in confirmation of such subordination, Tenant shall execute and return to Landlord (or such other party designated by Landlord) within ten days after written request therefor such documentation, in recordable form if required, as a Landlord's Mortgagee may reasonably request to evidence the subordination of this Lease to such Landlord's Mortgagee's Mortgage (including a subordination, non-disturbance and attornment agreement) or, if the Landlord's Mortgagee so elects, the subordination of such Landlord's Mortgagee's Mortgage to this Lease.

(b) **Attornment.** Tenant shall attorn to any party succeeding to Landlord's interest in the Premises, whether by purchase, foreclosure, deed in lieu of foreclosure, power of sale, termination of lease, or otherwise, upon such party's request, and shall execute such agreements confirming such attornment as such party may reasonably request.

(c) **Notice to Landlord's Mortgagee.** Tenant shall not seek to enforce any remedy it may have for any default on the part of Landlord without first giving written notice by certified mail, return receipt requested, specifying the default in reasonable detail, to any Landlord's Mortgagee whose address has been given to Tenant, and affording such Landlord's Mortgagee a reasonable opportunity to perform Landlord's obligations hereunder.

(d) **Landlord's Mortgagee's Protection Provisions.** If Landlord's Mortgagee shall succeed to the interest of Landlord under this Lease, Landlord's Mortgagee shall not be: (1) liable for any act or omission of any prior lessor (including Landlord); (2) bound by any rent or additional rent or advance rent which Tenant might have paid for more than the current month to any prior lessor (including Landlord), and all such rent shall remain due and owing, notwithstanding such advance payment; (3) bound by any security or advance rental deposit made by Tenant which is not delivered or paid over to Landlord's Mortgagee and with respect to which Tenant shall look solely to Landlord for refund or reimbursement; (4) bound by any termination, amendment or modification of this Lease made without Landlord's Mortgagee's consent and written approval, except for those terminations, amendments and modifications permitted to be made by Landlord without Landlord's Mortgagee's consent pursuant to the terms of the loan documents between Landlord and Landlord's Mortgagee; (5) subject to the defenses which Tenant might have against any prior lessor (including Landlord); and (6) subject to the offsets which Tenant might have against any prior lessor (including Landlord) except for those offset rights which (A) are expressly provided in this Lease, (B) relate to periods of time following the acquisition of the Premises by Landlord's Mortgagee, and (C) Tenant has provided written notice to Landlord's Mortgagee and provided Landlord's Mortgagee a reasonable opportunity to cure the event giving rise to such offset event. Landlord's Mortgagee shall have no liability or responsibility under or pursuant to the terms of this Lease or otherwise after it ceases to own an interest in the Premises. Nothing in this Lease shall be construed to require Landlord's Mortgagee to see to the application of the proceeds of any loan, and Tenant's agreements set forth herein shall not be impaired on account of any modification of the documents evidencing and securing any loan.

13. Condemnation

The parties agree to the terms provided in this Section in the event that the Premises become subject to a condemnation proceeding.

- A. **Definitions:** The term "Taking" shall mean a taking during the term and any extension of the Lease of all or part of the Premises as a result of condemnation or by agreement between Landlord and the condemning

UNOFFICIAL COPY

authority. The term "Date of Taking" shall mean the date on which title is vested in the condemning authority.

- B. **Total Condemnation:** In the event of a Taking of the whole of the Premises, this Lease shall terminate on the Date of Taking as if such date were the Termination Date.
- C. **Partial Condemnation:** In the event of a Taking of less than all the Premises, where such taking would materially interfere with Tenant's conduct of its business, then at Tenant's sole and exclusive option, (1) this Lease shall terminate; or (2) this Lease shall remain in full force and effect with respect to the part of the Premises not the subject of the Taking, and in such event, Basic Rent and Additional Rent shall abate in proportion to the reduction in the value of the Premises.
- D. **Condemnation Award:** Each party shall be entitled to receive its share of the entire award for any Taking. Tenant shall be entitled to make a claim against the condemning authority for the value of any Tenant Equipment and Tenant's moving expenses which may be compensable as a result of the Taking. Nothing contained in this Section shall be deemed to prevent Landlord from settling any threatened or filed condemnation proceeding.

14. **Fire or Other Casualty.**

(a) **Repair Estimate.** If the Premises is damaged by fire or other casualty (a "**Casualty**"), Landlord shall, within 90 days after such Casualty, deliver to Tenant a good faith estimate (the "**Damage Notice**") of the amount of such damage and the time needed to repair the damage caused by such Casualty.

(b) **Tenant's Rights.** If a material portion of the Premises is damaged by Casualty such that Tenant is prevented from conducting its business in the Premises in a manner reasonably comparable to that conducted immediately before such Casualty and Landlord estimates that the damage caused thereby cannot be repaired within 90 days after the commencement of repairs (the "**Repair Period**"), then Tenant may terminate this Lease by delivering written notice to Landlord of its election to terminate within 30 days after the Damage Notice has been delivered to Tenant.

(c) **Repair Obligation.** If neither party elects to terminate this Lease following a Casualty, then Landlord shall, within a reasonable time after such Casualty, begin to repair the Premises and shall proceed with reasonable diligence to restore the Premises to substantially the same condition as they existed immediately before such Casualty; however, Landlord shall not be required to repair or replace any alterations or betterments within the Premises (which shall be promptly and with due diligence repaired and restored by Tenant at Tenant's sole cost and expense) or any furniture, equipment, trade fixtures or personal property of Tenant, and Landlord's obligation to repair or restore the Premises shall be limited to the extent of the insurance proceeds actually received by Landlord for the Casualty in question. If this Lease is terminated under the provisions of this Section 14, Landlord shall be entitled to the full proceeds of the insurance policies providing coverage for all alterations, improvements and betterments in the Premises (and, if Tenant has failed to maintain insurance on such items as required by this Lease, Tenant shall pay Landlord an amount equal to the proceeds Landlord would have received had Tenant maintained insurance on such items as required by this Lease).

UNOFFICIAL COPY

(d) **Continuance of Tenant's Business; Rental Abatement.** Tenant agrees that during any period of reconstruction or repair of the Premises it will continue the operation of its business within the Premises to the extent practicable, and Base Rent and Additional Rent for the portion of the Premises rendered untenable by the damage shall be abated on a reasonable basis from the date of damage until the completion of Landlord's repairs (or until the date of termination of this Lease by Landlord or Tenant as provided above, as the case may be), unless the Tenant caused such damage, in which case, Tenant shall continue to pay Rent without abatement.

15. Events of Default.

Each of the following occurrences shall be an "Event of Default":

(a) **Payment Default.** Tenant's failure to pay Rent, or any other required payment under this lease, within five days after Landlord has delivered written notice to Tenant that the same is due; however, an Event of Default shall occur hereunder without any obligation of Landlord to give any notice if Tenant fails to pay Rent when due and, during the 12 month interval preceding such failure, Landlord has given Tenant written notice of failure to pay Rent on one or more occasions.

(b) **Abandonment.** Tenant (1) abandons or vacates the Premises or any substantial portion thereof or (2) fails to continuously operate its business in the Premises for the Permitted Use set forth herein for a period of sixty (60) consecutive days.

(c) **Attachment.** If any execution, levy, attachment, or other process of law shall occur upon Tenant's goods, fixtures or interest in the Premises.

(d) **Estoppel.** Tenant fails to provide any estoppel certificate after Landlord's written request therefor pursuant to Section 21(e) and such failure shall continue for five days after Landlord's second written notice thereof to Tenant.

(e) **Insurance.** Tenant fails to procure, maintain and deliver to Landlord evidence of the insurance policies and coverages as required under Section 9(a).

(f) **Mechanic's Liens.** Tenant fails to pay and release of record, or diligently contest and bond around, any mechanic's lien filed against the Premises for any work performed, materials furnished or obligation incurred by or at the request of Tenant, within the time and in the manner required by Section 10(d).

(g) **Other Defaults.** Tenant's failure to perform, comply with, or observe any other agreement or obligation of Tenant under this Lease and the continuance of such failure for a period of more than 30 days after Landlord has delivered to Tenant written notice thereof.

(h) **Insolvency.** The filing of a petition by or against Tenant (the term "Tenant" shall include, for the purpose of this Section 15(h), any guarantor of Tenant's obligations hereunder) (1) in any bankruptcy or other insolvency proceeding; (2) seeking any relief under any state or federal debtor relief law; (3) for the appointment of a liquidator or receiver for all or substantially all of Tenant's property or for Tenant's interest in this Lease; (4) for the reorganization or modification of Tenant's capital structure; or (5) in any assignment for the benefit of creditors proceeding; however, if such a petition is filed against Tenant, then such filing shall not be an Event of Default unless Tenant fails to have the proceedings initiated by such petition dismissed within 90 days after the filing thereof.

16. Remedies

UNOFFICIAL COPY

Upon any Event of Default, Landlord may, in addition to all other rights and remedies afforded Landlord hereunder or by law or equity, take any one or more of the following actions:

(a) **Termination of Lease.** Terminate this Lease by giving Tenant written notice thereof, in which event Landlord may recover possession of the Premises and Tenant shall pay to Landlord the sum of (1) all Rent accrued hereunder through the date of termination, (2) all amounts due under Section 17(a), and (3) at Landlord's option, either (A) an amount equal to (i) the total Rent that Tenant would have been required to pay for the remainder of the Term discounted to present value at a per annum rate equal to the "Prime Rate" as published on the date this Lease is terminated by *The Wall Street Journal*, Midwest Edition, in its listing of "Money Rates" minus one percent, minus (ii) the then present fair rental value of the Premises for such period, similarly discounted, or (B) an amount equal to the total Rent that Tenant would have been required to pay for the remainder of the Term;

(b) **Termination of Possession.** Terminate Tenant's right to possess the Premises without terminating this Lease by giving written notice thereof to Tenant, in which event Tenant shall pay to Landlord (1) all Rent and other amounts accrued hereunder to the date of termination of possession, (2) all amounts due from time to time under Section 16a), and (3) all Rent and other net sums required hereunder to be paid by Tenant during the remainder of the Term, diminished by any net sums thereafter received by Landlord through reletting the Premises during such period, after deducting all costs incurred by Landlord in reletting the Premises. If Landlord elects to proceed under this Section 16(b), may remove all of Tenant's property from the Premises and store the same in a public warehouse or elsewhere at the cost of, and for the account of, Tenant, without becoming liable for any loss or damage which may be occasioned thereby. Landlord shall use reasonable efforts to relet the Premises on such terms as Landlord in its sole discretion may determine (including a term different from the Term, rental concessions, and alterations to, and improvement of, the Premises); however, Landlord shall not be obligated to relet the Premises before leasing other portions of the Building or Premises and Landlord shall not be obligated to accept any prospective tenant proposed by Tenant unless such proposed tenant meets all of Landlord's leasing criteria. Landlord shall not be liable for, nor shall Tenant's obligations hereunder be diminished because of, Landlord's failure to relet the Premises or to collect rent due for such reletting. Tenant shall not be entitled to the excess of any consideration obtained by reletting over the Rent due hereunder. Reentry by Landlord in the Premises shall not affect Tenant's obligations hereunder for the unexpired Term; rather, Landlord may, from time to time, bring an action against Tenant to collect amounts due by Tenant, without the necessity of Landlord's waiting until the expiration of the Term. Unless Landlord delivers written notice to Tenant expressly stating that it has elected to terminate this Lease, all actions taken by Landlord to dispossess or exclude Tenant from the Premises shall be deemed to be taken under this Section 16(b). If Landlord elects to proceed under this Section 16(b), it may at any time elect to terminate this Lease under Section 16(a);

(c) **Perform Acts on Behalf of Tenant.** Perform any act Tenant is obligated to perform under the terms of this Lease (and enter upon the Premises in connection therewith if necessary) in Tenant's name and on Tenant's behalf, without being liable for any claim for damages therefor, and Tenant shall reimburse Landlord on demand for any expenses which Landlord may incur in thus effecting compliance with Tenant's obligations under this Lease (including, but not limited to, collection costs and legal expenses), plus interest thereon at the Default Rate;

(d) **Suspension of Services.** Suspend any services required to be provided by Landlord hereunder without being liable for any claim for damages therefor; or

UNOFFICIAL COPY

(e) **Iteration of Locks.** Additionally, with or without notice, and to the extent permitted by Law, Landlord may alter locks or other security devices at the Premises to deprive Tenant of access thereto, and Landlord shall not be required to provide a new key or right of access to Tenant.

In calculating Tenant's liability following an Event of Default, the Percentage Rent for which Tenant shall be liable after termination of this Lease or of Tenant's rights of possession shall be determined by averaging the Percentage Rent payable during the 24 month period prior to such termination (or, if shorter, the period from the Commencement Date to termination).

17. Payment by Tenant; Non-Waiver; Cumulative Remedies.

(a) **Payment by Tenant.** Upon any Event of Default, Tenant shall pay to Landlord all costs incurred by Landlord (including court costs and reasonable attorneys' fees and expenses) in (1) obtaining possession of the Premises, (2) removing and storing Tenant's or any other occupant's property, (3) repairing or restoring any damage caused by Tenant (4) if Tenant is dispossessed of the Premises and this Lease is not terminated, reletting all or any part of the Premises (including brokerage commissions, cost of tenant finish work, and other costs incidental to such reletting), (5) performing Tenant's obligations which Tenant failed to perform, and (6) enforcing, or advising Landlord of, its rights, remedies, and recourses arising out of the default. To the full extent permitted by law, Landlord and Tenant agree the federal and state courts of the state in which the Shopping Center is located shall have exclusive jurisdiction over any matter relating to or arising from this Lease and the parties' rights and obligations under this Lease.

(b) **No Waiver.** Landlord's acceptance of Rent following an Event of Default shall not waive Landlord's rights regarding such Event of Default. No waiver by Landlord of any violation or breach of any of the terms contained herein shall waive Landlord's rights regarding any future violation of such term. Landlord's acceptance of any partial payment of Rent shall not waive Landlord's rights with regard to the remaining portion of the Rent that is due, regardless of any endorsement or other statement on any instrument delivered in payment of Rent or any writing delivered in connection therewith; accordingly, Landlord's acceptance of a partial payment of Rent shall not constitute an accord and satisfaction of the full amount of the Rent that is due.

(c) **Cumulative Remedies. Any and all remedies set forth in this Lease:** (1) shall be in addition to any and all other remedies Landlord may have at law or in equity, (2) shall be cumulative, and (3) may be pursued successively or concurrently as Landlord may elect. The exercise of any remedy by Landlord shall not be deemed an election of remedies or preclude Landlord from exercising any other remedies in the future. Additionally, Tenant shall defend, indemnify and hold harmless Landlord, Landlord's Mortgagee and their respective representatives and agents from and against all claims, demands, liabilities, causes of action, suits, judgments, damages and expenses (including reasonable attorneys' fees) arising from Tenant's failure to perform its obligations under this Lease.

18. Deleted

19. Surrender of Premises.

No act by Landlord shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept a surrender of the Premises shall be valid unless it is in writing and signed by Landlord. At the expiration or termination of this Lease, Tenant shall deliver to Landlord the Premises with all improvements located therein in good repair and condition, free of Hazardous Materials placed on the Premises during the Term, broom-clean, reasonable wear and tear (and condemnation and

UNOFFICIAL COPY

Casualty damage not caused by Tenant, as to which Sections 13 and 14 shall control) excepted, and shall deliver to Landlord all keys to the Premises. Provided that Tenant has performed all of its obligations hereunder, Tenant may remove all unattached trade fixtures (which, for purposes of this sentence, shall not include carpeting, floor coverings, attached shelving, lighting fixtures, wall coverings, or similar improvements), furniture, and personal property placed in the Premises by Tenant (but Tenant may not remove any such item which was paid for, in whole or in part, by Landlord or any wiring or cabling unless Landlord requires such removal). Additionally, at Landlord's option, Tenant shall remove such alterations, additions, improvements, trade fixtures, personal property, signs, equipment, wiring, conduits, cabling and furniture as Landlord may request; however, Tenant shall not be required to remove any addition or improvement to the Premises if Landlord has specifically agreed in writing that the improvement or addition in question need not be removed. Tenant shall repair all damage caused by such removal. All items not so removed shall, at Landlord's option, be deemed to have been abandoned by Tenant and may be appropriated, sold, stored, destroyed, or otherwise disposed of by Landlord without notice to Tenant and without any obligation to account for such items; any such disposition shall not be considered a strict foreclosure or other exercise of Landlord's rights in respect of the security interest granted under Section 18. The provisions of this Section 19 shall survive the end of the Term.

20. Holding Over

If Tenant fails to vacate the Premises at the end of the Term, then Tenant shall be a tenant at sufferance and, in addition to all other damages and remedies to which Landlord may be entitled for such holding over, (a) Tenant shall pay, in addition to the other Rent, Minimum Rent equal to 150% of the Rent payable during the last month of the Term, and (b) Tenant shall otherwise continue to be subject to all of Tenant's obligations under this Lease. The provisions of this Section 20 shall not be deemed to limit or constitute a waiver of any other rights or remedies of Landlord provided herein or at law. If Tenant fails to surrender the Premises upon the termination or expiration of this Lease, in addition to any other liabilities to Landlord accruing therefrom, Tenant shall protect, defend, indemnify and hold Landlord harmless from all loss, costs (including reasonable attorneys' fees) and liability resulting from such failure, including any claims made by any succeeding tenant founded upon such failure to surrender, and any lost profits to Landlord resulting therefrom.

21. Miscellaneous.

(a) **Landlord Transfer.** Landlord may transfer any portion of its rights under this Lease. If Landlord assigns its rights under this Lease, then Landlord shall thereby be released from any further obligations hereunder arising after the date of transfer, provided if such assignee assumes in writing Landlord's obligations hereunder arising from and after the transfer date.

(b) **Force Majeure.** Other than for Tenant's obligations under this Lease that can be performed by the payment of money (e.g., payment of Rent and maintenance of insurance), whenever a period of time is herein prescribed for action to be taken by either party hereto, such party shall not be liable or responsible for, and there shall be excluded from the computation of any such period of time, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, terrorist acts or activities, governmental laws, regulations, or restrictions, or any other causes of any kind whatsoever which are beyond the control of such party.

(c) **Estoppel Certificates.** From time to time, either Party, at the request of the other, within ten (10) business days after the other's request, a certificate confirming and containing such factual certifications and representations as to this Lease as may reasonably request. In the absence thereof, the requesting party may conclusively presume and rely upon the following facts: (1) this Lease is in full

UNOFFICIAL COPY

force and effect; (2) the terms and provisions of this Lease have not been changed except as otherwise represented by Landlord; (3) not more than one monthly installment of Minimum Rent and other charges have been paid in advance; (4) there are no claims against Landlord nor any defenses or rights of offset against collection of Rent or other charges; and (5) Landlord is not in default under this Lease. In such event, Tenant shall be estopped from denying the truth of the presumed facts.

(d) **Notices.** All notices and other communications given pursuant to this Lease shall be in writing and shall be (1) mailed by first class, United States Mail, postage prepaid, certified, with return receipt requested, and addressed to the parties hereto at the address specified at the end of this Lease, (2) hand delivered to the intended addressee, (3) sent by a nationally recognized overnight courier service, or (4) sent by facsimile transmission during normal business hours followed by a confirmatory letter sent in another manner permitted hereunder. All notices shall be effective upon delivery to the address of the addressee (even if such addressee refuses delivery thereof). The parties hereto may change their addresses by giving notice thereof to the other in conformity with this provision.

(e) **Separability.** If any clause or provision of this Lease is illegal, invalid, or unenforceable under present or future laws, then the remainder of this Lease shall not be affected thereby and in lieu of such clause or provision, there shall be added as a part of this Lease a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable.

(f) **Amendments; Binding Effect; No Electronic Records.** This Lease may not be amended except by instrument in writing signed by Landlord and Tenant. No provision of this Lease shall be deemed to have been waived by Landlord unless such waiver is in writing signed by Landlord, and no custom or practice which may evolve between the parties in the administration of the terms hereof shall waive or diminish the right of Landlord to insist upon the performance by Tenant in strict accordance with the terms hereof. Landlord and Tenant hereby agree not to conduct the transactions or communications contemplated by this Lease by electronic means, except by facsimile transmission as specifically set forth in Section 21(f); nor shall the use of the phrase "in writing" or the word "written" be construed to include electronic communications except by facsimile transmissions as specifically set forth in Section 21(f). The terms and conditions contained in this Lease shall inure to the benefit of and be binding upon the parties hereto, and upon their respective successors in interest and legal representatives, except as otherwise herein expressly provided. This Lease is for the sole benefit of Landlord and Tenant, and, other than Landlord's Mortgagee, no third party shall be deemed a third party beneficiary hereof.

(g) **Quiet Enjoyment.** Provided Tenant has performed all of its obligations hereunder, Tenant shall peaceably and quietly hold and enjoy the Premises for the Term, without hindrance from Landlord or any party claiming by, through, or under Landlord, but not otherwise, subject to the terms and conditions of this Lease.

(h) **No Merger.** There shall be no merger of the leasehold estate hereby created with the fee estate in the Premises or any part thereof if the same person acquires or holds, directly or indirectly, this Lease or any interest in this Lease and the fee estate in the leasehold Premises or any interest in such fee estate.

(i) **No Offer.** The submission of this Lease to Tenant shall not be construed as an offer, and Tenant shall not have any rights under this Lease unless Landlord executes a copy of this Lease and delivers it to Tenant.

UNOFFICIAL COPY

(j) **Entire Agreement.** This Lease constitutes the entire agreement between Landlord and Tenant regarding the subject matter hereof and supersedes all oral statements and prior writings relating thereto. Except for those set forth in this Lease, no representations, warranties, or agreements have been made by Landlord or Tenant to the other with respect to this Lease or the obligations of Landlord or Tenant in connection therewith. The normal rule of construction that any ambiguities be resolved against the drafting party shall not apply to the interpretation of this Lease or any exhibits or amendments hereto.

(k) **Venue, Jurisdiction and Waiver of Jury Trial.**

If either party hereto commences any suit or other legal or administrative proceeding to enforce any of the terms of this Lease, both parties hereto consents to both venue and subject matter jurisdiction in either the Circuit Court of Cook County, Illinois, or the Federal District Court for the Northern District of Illinois, Eastern Division in Chicago, Illinois **TO THE MAXIMUM EXTENT PERMITTED BY LAW, LANDLORD AND TENANT EACH WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY LITIGATION OR TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE ARISING OUT OF OR WITH RESPECT TO THIS LEASE OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH OR THE TRANSACTIONS RELATED HERETO.**

(l) **Governing Law.** This Lease shall be governed by and construed in accordance with the laws of the state of Illinois.

(m) **Recording.** Tenant is authorized and permitted to record this Lease or any memorandum of this Lease

In the event, that this Lease is either terminated by time, or by any other provision herein, the Tenant, if this Lease or a Memorandum of Lease has been previously recorded by Tenant, then Tenant, at Tenant's, sole cost and expense, shall prepare and record a release of this Lease agreement or Lease Memorandum.

(n) **Joint and Several Liability.** If Tenant is comprised of more than one party, each such party shall be jointly and severally liable for Tenant's obligations under this Lease. All unperformed obligations of Tenant hereunder not fully performed at the end of the Term shall survive the end of the Term, including payment obligations with respect to Rent and all obligations concerning the condition and repair of the Premises.

(o) **Confidentiality.** Tenant acknowledges that the terms and conditions of this Lease are to remain confidential for Landlord's benefit, and may not be disclosed by Tenant to anyone, by any manner or means, directly or indirectly, without Landlord's prior written consent; however, Tenant may disclose the terms and conditions of this Lease if required by Law or court order, and to its manufacturers, lenders, attorneys, accountants, employees and existing or prospective financial partners provided same are advised by Tenant of the confidential nature of such terms and conditions and agree to maintain the confidentiality thereof (in each case, prior to disclosure). Tenant shall be liable for any disclosures made in violation of this Section by Tenant or by any entity or individual to whom the terms of and conditions of this Lease were disclosed or made available by Tenant. The consent by Landlord to any disclosures shall not be deemed to be a waiver on the part of Landlord of any prohibition against any future disclosure.

UNOFFICIAL COPY

(p) **Authority.** Tenant (if a corporation, partnership or other business entity) hereby represents and warrants to Landlord that Tenant is a duly formed and existing entity qualified to do business in the state in which the Premises are located, that Tenant has full right and authority to execute and deliver this Lease, and that each person signing on behalf of Tenant is authorized to do so. Landlord hereby represents and warrants to Tenant that Landlord is a duly formed and existing entity qualified to do business in the state in which the Premises are located, that Landlord has full right and authority to execute and deliver this Lease, and that each person signing on behalf of Landlord is authorized to do so.

(q) **Hazardous Materials.** The term "**Hazardous Materials**" means any substance, material, or waste which is now or hereafter classified or considered to be hazardous, toxic, or dangerous under any Law relating to pollution or the protection or regulation of human health, natural resources or the environment, or poses or threatens to pose a hazard to the health or safety of persons on the Premises. Tenant shall not use, generate, store, or dispose of, or permit the use, generation, storage or disposal of Hazardous Materials on or about the Premises except in a manner and quantity necessary for the ordinary performance of Tenant's business, and then in compliance with all Laws. If Tenant breaches its obligations under this Section 21, Landlord may immediately take any and all action reasonably appropriate to remedy the same, including taking all appropriate action to clean up or remediate any contamination resulting from Tenant's use, generation, storage or disposal of Hazardous Materials. Notwithstanding Landlord's indemnity contained in Section 10(d), Tenant shall defend, indemnify, and hold harmless Landlord and its representatives and agents from and against any and all claims, demands, liabilities, causes of action, suits, judgments, damages and expenses (including reasonable attorneys' fees and cost of clean up and remediation) arising from Tenant's failure to comply with the provisions of this Section 21. This indemnity provision shall survive termination or expiration of this Lease.

22. Access to Premises Landlord shall have the right, at reasonable times and hours, so as not to interfere with the Tenant conducting his business, to inspect the Premises, to verify that Tenant is in compliance with all provisions of this Lease, to show the Premises at any time during the term of this Lease to prospective purchasers, mortgages or lessees, to make repairs that Tenant has failed to make under the Provisions of this Lease, however nothing in Section 22 obligates to Landlord to make any such repairs to the Premises.

23. Other Provisions.

As additional consideration for Landlord to enter into this Lease, Tenant shall cause each Guarantor (as defined in Exhibit C) to execute the guaranty, attached hereto as Exhibit C and Tenant shall deliver same to Landlord contemporaneously with Tenant's execution hereof. Tenant's failure to deliver such guaranty as required in the preceding sentence shall be an automatic Event of Default under this Lease, with no notice being necessary to Tenant, and Landlord shall be entitled to exercise any and all rights and remedies available to it hereunder, as well as at law or in equity. Additionally, if Tenant fails to deliver such guaranty, Landlord, notwithstanding anything to the contrary contained in this Lease, i. shall not be required to perform any tenant improvement work in the Premises, ii. Shall not be required to make any reimbursements or allowances in connection with any tenant improvement work, iii. Shall not be required to pay any brokerage commissions to the broker or brokers representing Tenant in connection with this Lease (and Tenant shall indemnify Landlord against all costs, expenses, attorneys' fees, and other liability for commissions or other compensation claimed by any broker or agent claiming the same by, through, or under Tenant), iv. May terminate this Lease by providing Tenant five days advance written notice thereof, and v. shall not be required to honor any renewal rights set forth in this Lease, if any.

UNOFFICIAL COPY

LANDLORD AND TENANT EXPRESSLY DISCLAIM ANY IMPLIED WARRANTY THAT THE PREMISES ARE SUITABLE FOR TENANT'S INTENDED COMMERCIAL PURPOSE, AND TENANT'S OBLIGATION TO PAY RENT HEREUNDER IS NOT DEPENDENT UPON THE CONDITION OF THE PREMISES OR THE PERFORMANCE BY LANDLORD OF ITS OBLIGATIONS HEREUNDER, AND, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, TENANT SHALL CONTINUE TO PAY THE RENT, WITHOUT ABATEMENT, DEMAND, SETOFF OR DEDUCTION, NOTWITHSTANDING ANY BREACH BY LANDLORD OF ITS DUTIES OR OBLIGATIONS HEREUNDER, WHETHER EXPRESS OR IMPLIED.

This Lease is executed on the respective dates set forth below, but for reference purposes, this Lease shall be dated as of the date first above written. If the execution date is left blank, this Lease shall be deemed executed as of the date first written above.

LANDLORD:


TENANT:

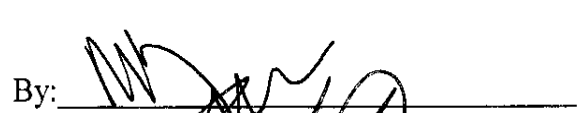
KRONON MOTOR SALES, INC.,

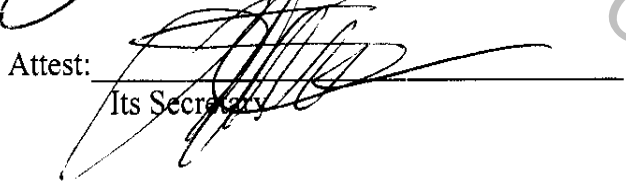
MID CITY LINCOLN MERCURY, INC.

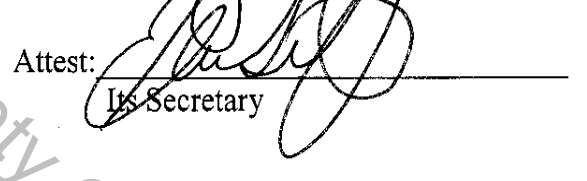
an Illinois Corporation

an Illinois Corporation

By: 
Its President

By: 
Its President

Attest: 
Its Secretary

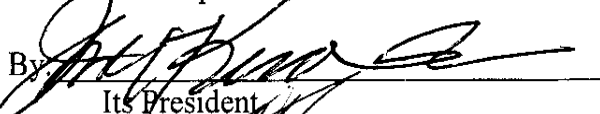
Attest: 
Its Secretary

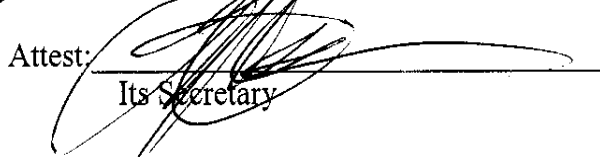
CONSENT BY MASTER-LANDLORD:

The undersigned, as President of KOSTNER INVESTMENT CORPORATION, an Illinois Corporation, hereby states that it is the owner of the Premises as set forth in Exhibit "A" herein and is the Master-Landlord in the Master-Lease entered into with KRONON MOTOR SALES, INC, an Illinois Corporation, who is the Master-Tenant thereunder and hereby consents to the sub-lease of said Premises by KRONON MOTOR SALES, INC. to MID CITY LINCOLN-MERCURY, INC. as of the date first written above and specifically consents to all of the terms and conditions set forth herein.

KOSTNER INVESTMENT CORPORATION,

An Illinois Corporation

By: 
Its President

Attest: 
Its Secretary

UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTIONS

Lots 9,10,11 and 12 in Irving Park Subdivision in Block 28, being a subdivision of the Southeast $\frac{1}{4}$ of Section 15 and the North $\frac{1}{2}$ of the Northeast $\frac{1}{4}$ of Section 22 all in Township 40 North, Range 13 East of the Third Principal Meridian, according to the plat thereof registered in the Office of the Registrar of Titles on September 22, 1869, in Cook County, Illinois.

Lots 1,2,3,4 and 5 in Hield's Resubdivision, being a resubdivision of Lots 19 through 23 of J.R. Wickersham's Subdivision of Block 7 and Baxter's Subdivision of Irving Park in the East $\frac{1}{2}$ of the Southeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 15, Township 40 North, Range 13 East of the Third Principal Meridian, according to the plat thereof registered in the Office of the Registrar of Titles on June 18, 1908 as Document No. 4220002, in Cook County, Illinois.

Lots 24,25,26,27, and 28 in J.R. Wickersham's Subdivision of Block 7, being a subdivision of Baxter's Subdivision of Irving Park in the East $\frac{1}{2}$ of the Southeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 15, Township 40 North, Range 13 East of the Third Principal Meridian, according to the plat thereof registered in the Office of the Registrar of Titles on September 29, 1887 as Document No. 877231, in Cook County, Illinois.

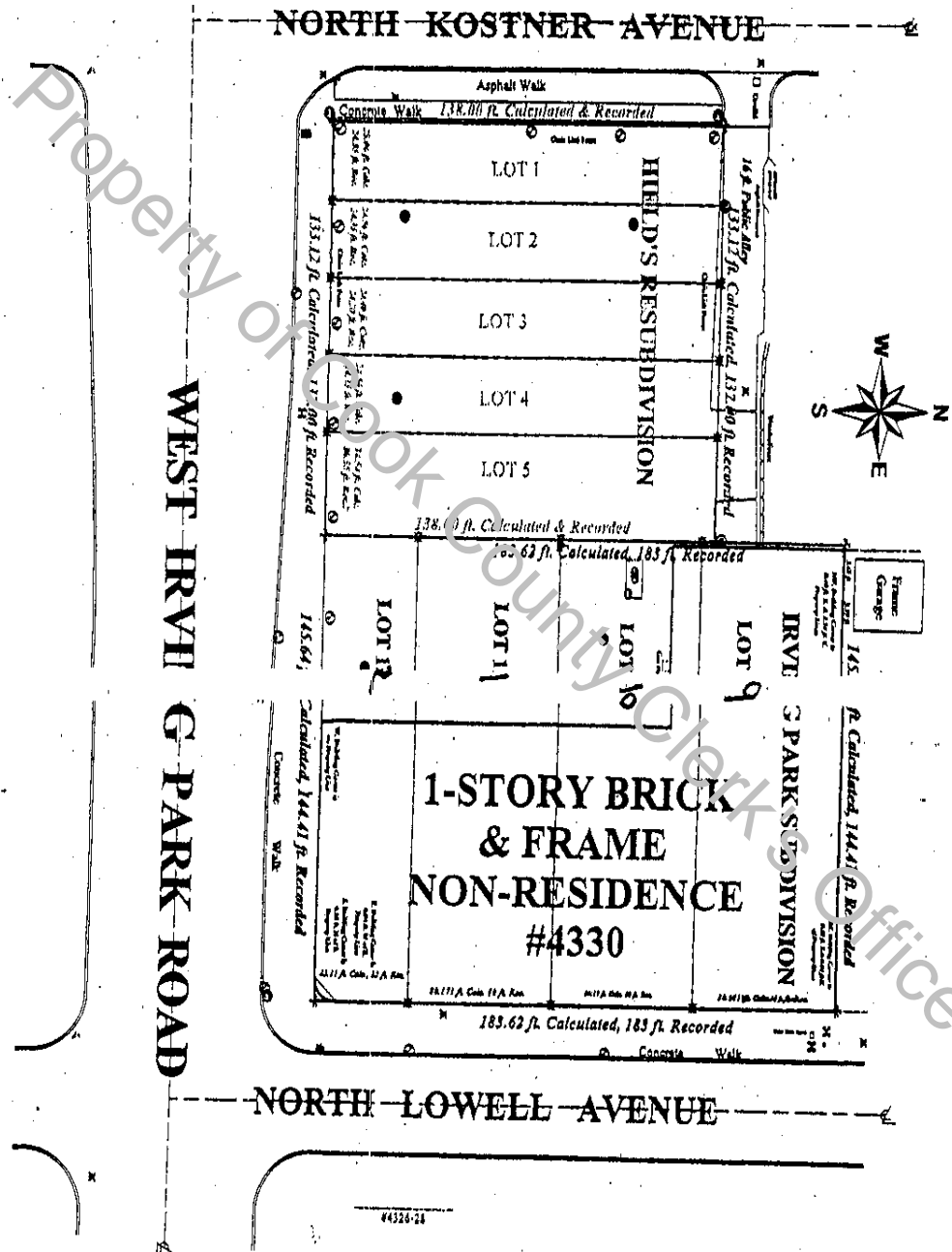
Lots 19,20,21,22, and 23 Baxter's Subdivision of Irving Park in Block 6 being a subdivision of the 20 Acres of the East End of the South $\frac{1}{2}$ of the Southwest $\frac{1}{4}$ of Section 15, Township 40 North, Range 13 East of the Third Principal Meridian, in Cook County, Illinois.

UNOFFICIAL COPY

EXHIBIT B

PLAT OF SURVEY

OF
LOTS 9, 10, 11, AND 12 IN IRVING PARK SUBDIVISION IN BLOCK 28, BEING A SUBDIVISION OF THE SOUTHEAST ¼ OF SECTION 15 AND THE NORTH ¼ OF THE NORTHEAST ¼ OF SECTION 22 ALL IN TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF REGISTERED IN THE OFFICE OF THE REGISTRAR OF TITLES ON SEPTEMBER 22, 1869, IN COOK COUNTY, ILLINOIS.
COMMONLY KNOWN AS: 4330 West Irving Park Road, Chicago, Illinois.



STATE OF ILLINOIS COUNTY OF COOK
Survey completed: The seventeenth day of January 2006

S.S. *David Kaminsky* 01/17/06

David Kaminsky, Illinois Professional Land Surveyor #375713 Date
Any discrepancy in measurement should be promptly reported to the surveyor for
explanation or correction and no dimension shall be assumed by sole measurement
upon this plat. WE DO NOT WARRANT AS TO LOCATION OF UNDERGROUND
UTILITIES OR UNDERGROUND IMPROVEMENTS. FOR EASEMENT, BUILDING
LINES AND OTHER RESTRICTIONS NOT SHOWN ON THIS PLAT REFER
TO THE ABSTRACT, DEED, CONTRACT, TITLE POLICY AND LOCAL
BUILDING REGULATIONS. Legal Description, written by David Kaminsky, P. L. S., with reference from the previous plat.

ACCURATE COMPUTERIZED SURVEYING SYSTEMS
2222 CENTER AVENUE, NORTHBROOK, ILLINOIS 60062-4519
Tel: (847) 272-2253 Fax: (847) 272 2253 or 377-9151 Cell: (847) 370-9927

22 of 27

Drawn and surveyed by: *David Kaminsky, P.L.S.*
Scale: 1"=10'
Ordered by: *M. Roman*
Job Number: *6041121 CB4330R*
Checked by: *S.G.*
Data Collector: *MC-LOT #142612121*
Municipality: *Chicago, Illinois*

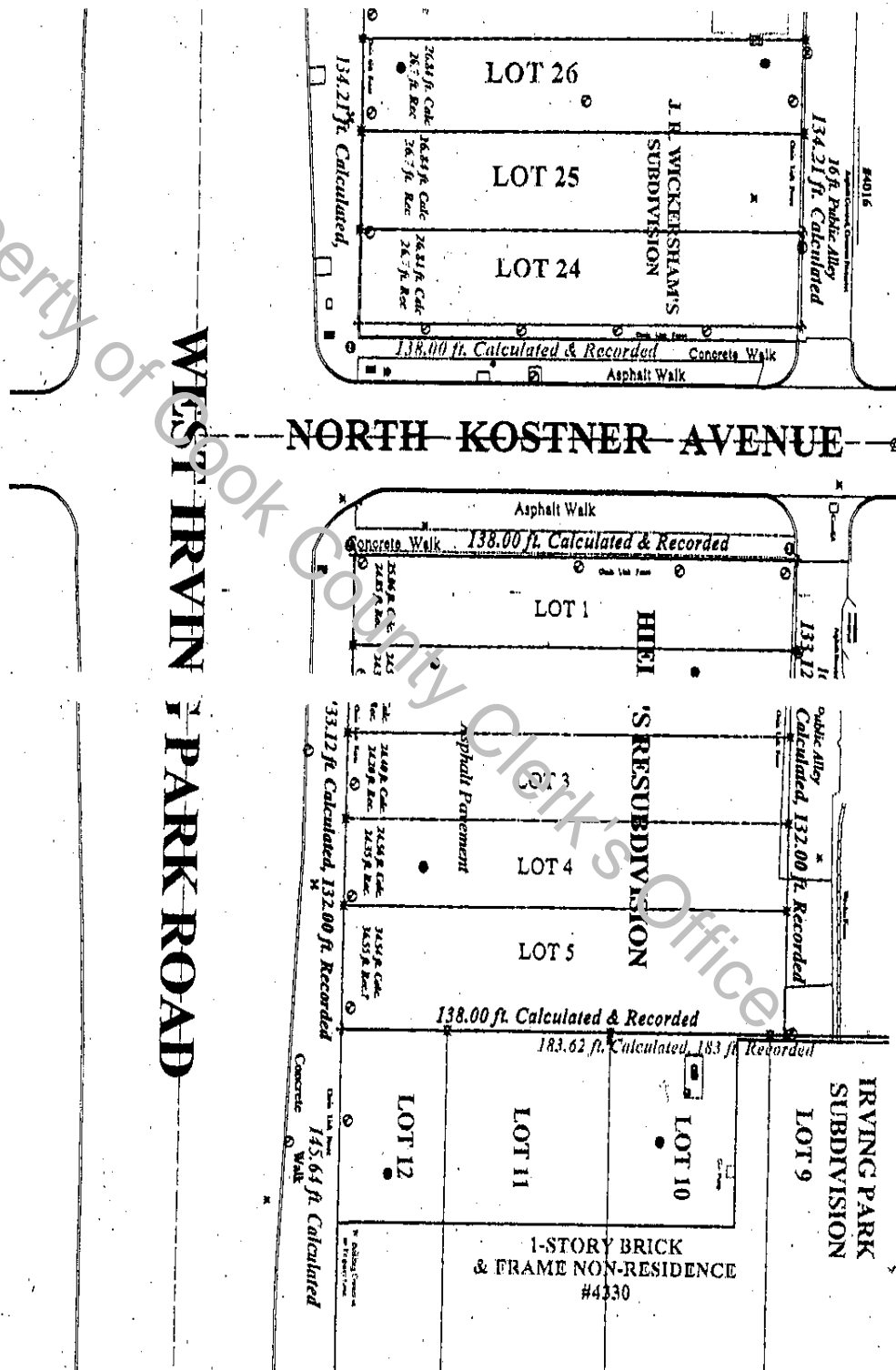
UNOFFICIAL COPY

EXHIBIT B, Cont'd.

PLAT OF SURVEY

OF
 LOTS 1, 2, 3, 4 AND 5 IN HIELD'S RESUBDIVISION, BEING A RESUBDIVISION OF LOTS 19 THROUGH 23 OF J. R. WICKERSHAM'S SUBDIVISION OF BLOCK 7 AND BAXTER'S SUBDIVISION OF IRVING PARK IN THE EAST 1/4 OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 15, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF REGISTERED IN THE OFFICE OF THE REGISTRAR OF TITLES ON JUNE 18, 1908 AS DOCUMENT NUMBER 4320032, IN COOK COUNTY, ILLINOIS.
 COMMONLY KNOWN AS: 4330 W. Irving Park Road, Chicago, Illinois.

Property of Cook County Clerk's Office



STATE OF ILLINOIS COUNTY OF COOK
 Survey completed: The seventeenth day of January 2006

S.S. David Kaminsky, Clerk
 David Kaminsky, Illinois Professional Land Surveyor #32-5112 Date
 Any discrepancy in measurement should be promptly reported to the surveyor. If no explanation or correction and no dimension shall be assumed by seals measurement upon this plat. WE DO NOT GUARANTEE AS TO LOCATION OF UNDERGROUND UTILITIES OR UNDERGROUND IMPROVEMENTS. FOR BASEMENT BUILDING LINES AND OTHER RESTRICTIONS NOT SHOWN ON THIS PLAT REFER TO THE CONTRACT, DEED, CONTRACT, TITLE POLICY AND LOCAL BUILDING REGULATIONS. Legal Description, written by David Kaminsky, P. L. S., with reference from the Station Max.

ACCURATE COMPUTERIZED SURVEYING SYSTEMS
 2222 CENTER AVENUE, NORTHBROOK, ILLINOIS 60062-4519
 Tel: (847) 272-2233 Fax: (847) 272-2233 or 377-9131 Cell: (847) 370-9927

Drawn and surveyed by: David Kaminsky, P.L.S.
 Scale: 1"=10'
 Ordered by: M. Bertram
 Job Number: 041121 CH4330R
 Checked by: S.C.
 Data Collector: MC-LOT #162012271
 Municipality: Chicago, Illinois

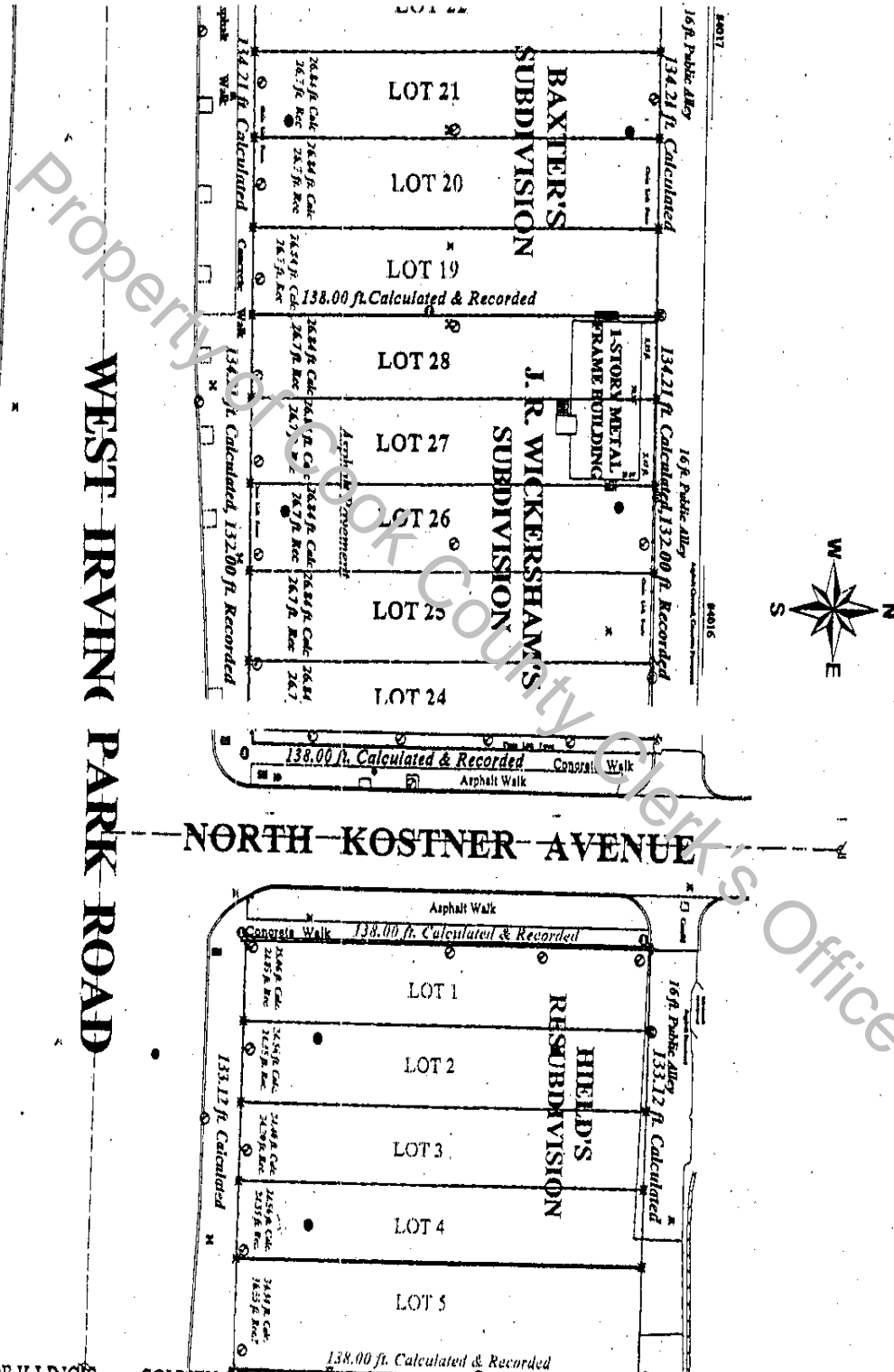
UNOFFICIAL COPY

EXHIBIT B, Cont'd.

PLAT OF SURVEY

OF
LOTS 24, 25, 26, 27 AND 28 IN J. R. WICKERSHAM'S SUBDIVISION OF BLOCK 7, BEING A SUBDIVISION OF BAXTER'S SUBDIVISION OF IRVING PARK IN THE EAST 1/4 OF THE
SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 15, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF
REGISTERED IN THE OFFICE OF THE REGISTRAR OF TITLES ON SEPTEMBER 20, 1917 AS DOCUMENT NUMBER 177231, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 4410 West Irving Park Road, Chicago, Illinois.



STATE OF ILLINOIS COUNTY OF COOK
Survey completed: The seventeenth day of January 2006

S.S. *David Kaminsky* 01/18/06

David Kaminsky, Illinois Professional Land Surveyor #175-3115. Data Any discrepancy in measurement should be promptly reported to the surveyor for explanation or correction and no dimension shall be assumed by scale measurement upon this plat. WE DO NOT CERTIFY AS TO LOCATION OF UNDERGROUND UTILITIES OR UNDERGROUND IMPROVEMENTS, FOR BASEMENT BUILDING LINES AND OTHER ABSTRACTIONS NOT SHOWN ON THIS PLAT REFER TO THE ABSTRACT, DEED, CONTRACT, TITLE POLICY AND LOCAL BUILDING REGULATIONS. Legal Description, written by David Kaminsky, P. L. S., with references from Section Map

ACCURATE COMPUTERIZED SURVEYING SYSTEMS
2222 CENTER AVENUE, NORTHBROOK, ILLINOIS 60062-4519
Tel: (847) 272-2253 Fax: (847) 272-2253 or 377-9151 Cell: (847) 370-9927

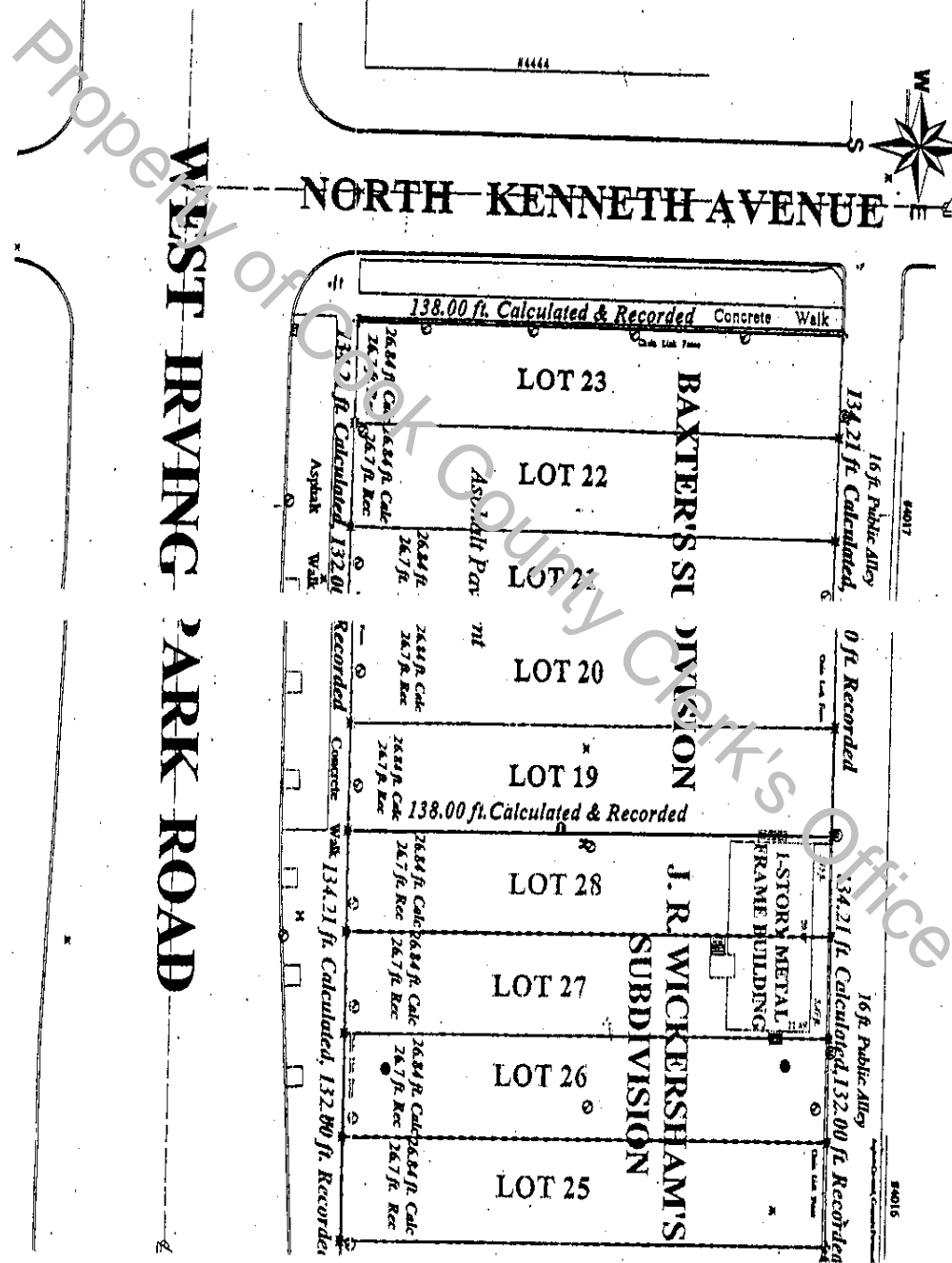
Drawn and surveyed by: *David Kaminsky, P.L.S.*
Scale: 1"=10'
Ordered by: *M. Bertram*
Job Number: *101171 CHA101A*
Checked by: *S.O.*
Data Collector: *MC-107 #11201211*
Municipality: *Chicago, Illinois*

UNOFFICIAL COPY

EXHIBIT B, Cont'd.

PLAT OF SURVEY

LOTS 19, 20, 21, 22 AND 23 BAXTER'S SUBDIVISION OF IRVING PARK IN BLOCK 6, BRING A SUBDIVISION OF THE 20 ACRES OF THE EAST END OF THE SOUTH 1/4 OF THE SOUTHWEST 1/4 OF SECTION 15, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.
COMMONLY KNOWN AS: 4410 W. Irving Park Road, Chicago, Illinois.



STATE OF ILLINOIS COUNTY OF COOK
Survey completed: The seventeenth day of January 2006.

S.S. David Kaminsky 01/17/06
 David Kaminsky Illinois Professional Land Surveyor #13-0223
 Any discrepancy in measurement should be primarily reported to the surveyor for explanation or correction and no dimension shall be assumed by scale measurement upon this plat. WE DO NOT WARRANT AS TO LOCATION OF UNDERGROUND UTILITIES OR UNDERGROUND IMPROVEMENTS, FOR EASEMENT, BUILDING LINES AND OTHER RESTRICTIONS NOT SHOWN ON THIS PLAT REFER TO THE ABSTRACT, DEED, CONTRACT, TITLE POLICY AND LOCAL BUILDING REGULATIONS. Legal Description, written by David Kaminsky, P. L. E., with reference from Section Map

ACCURATE COMPUTERIZED SURVEYING SYSTEMS
 2222 CENTER AVENUE, NORTHBROOK, ILLINOIS 60062-4519
 Tel: (847) 272-2253 Fax: (847) 272 2253 or 377-9151 Cell: (847) 370-9927

Drawn and surveyed by: David Kaminsky, P.L.E.
 Scale: 1"=40'
 Ordered by: M. Ragan
 Job Number: 031111 CH4102
 Checked by: S.P.
 Date Collected: MOJOT #16201211
 Municipality: Chicago, Illinois

25 of 27