

Department of Public Health  
Medical Use of Marijuana Program  
RMD Applications  
99 Chauncy Street, 11<sup>th</sup> Floor  
Boston, MA 02111

June 6, 2016

To Whom It May Concern:

Here is the letter of non-opposition from the Town of Webster as well as the executed Webster lease demonstrating control of the property that was requested on May 27<sup>th</sup>.



CEO  
Mass Organic Therapy

RECEIVED

JUN 07 2016

MA Dept. of Public Health  
99 Chauncy Street  
Boston, MA 02111

From: "Registered Marijuana Dispensary Application (DPH)" <RMDApplication@MassMail.State.MA.US>  
Subject: FW: Property Interest and Letter  
Date: May 27, 2016 10:55:23 AM EDT

Dear [REDACTED]

When submitting the Siting Profile (Application 2 of 3) on May 20, 2016, Mass Organic Therapy, Inc. did not include evidence of interest in the Webster property or a letter of support or non-opposition for the proposed RMD in Webster. Please note that each application must be individually complete. Please submit these items for review via hand-delivery or mail to:

Department of Public Health  
Medical Use of Marijuana Program  
RMD Applications  
99 Chauncy Street, 11<sup>th</sup> Floor  
Boston, MA 02111

Please note that the Siting Profile (Application 2 of 3) is still under review by the Department.

Thank you,  
The Medical Use of Marijuana Program

**Medical Use of Marijuana Program**  
Bureau of Healthcare Safety and Quality  
Massachusetts Department of Public Health  
617-660-5370  
[RMDApplication@state.ma.us](mailto:RMDApplication@state.ma.us)



**Town Of Webster**  
Est. 1832  
**Massachusetts**

Office of the Board of Selectmen  
350 Main Street  
Webster, MA 01570

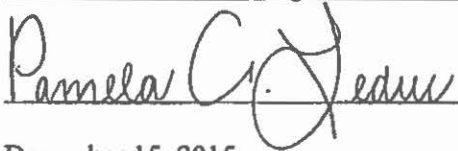
P: 508.949.3800 X 1041

Donald D. Bourque, Chairman  
Mark G. Dowglewicz, Vice Chairman  
Andrew M. Jolda, Secretary  
William A. Starzec  
Randall V. Becker

The *Board of Selectmen*, does hereby provide *support* to *Mass Organic Therapy, Inc.* to operate a Registered Marijuana Dispensary in *the Town of Webster*. I have been authorized to provide this letter on behalf of the *Board of Selectmen* by a vote taken at a duly noticed meeting held on *December 7, 2015*.

*The Board of Selectmen has verified with the appropriate local officials that the proposed RMD facility is located in a zoning district that allows such use by right or pursuant to local permitting.*

Pamela A. Leduc, Acting Town Administrator

  
\_\_\_\_\_

December 15, 2015



**Town Of Webster** Est. 1832  
**Massachusetts**

Office of the Board of Selectmen  
350 Main Street  
Webster, MA 01570

Ph: 508-949-3800 x1041


Donald D. Bourque, Chairman  
Mark G. Dowglewicz  
Andrew M. Jolda  
William A. Starzec  
Randy Becker

**CERTIFIED VOTE**

**This is to certify that the Board of Selectmen voted on December 7, 2015 at the Town Hall in the Board of Selectmen's Meeting Room the following:**

**Motion:** made by Selectman Jolda, seconded by Selectman Bourque to issue a letter of support for Mass Organic Therapy, Inc.

**Vote:** Selectman Becker – yes, Selectman Starzec – yes, Selectman Jolda – yes and Chairman Bourque – yes.

  
Courtney Friedland, Executive Secretary

**LEASE BY AND BETWEEN**

**Jeffrey M. Dennis, Trustee of the KLT Realty Trust, as Landlord**

**and**

**Mass Organic Therapy, Inc., as Tenant**

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**LEASE**

THIS LEASE (the "Lease") is dated as of the 1<sup>st</sup> day of June, 2016 and is entered into by and between Landlord and Tenant named below.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

**ARTICLE 1  
DEFINITIONS AND EXHIBITS**

1.1 Definitions. Whenever used herein, the following terms shall have the following meanings:

Term

Commencement Date: July, 1, 2016

Additional Rent

Commencement Date: July 1, 2016

Rent Commencement:

July 1, 2016

Date:

Landlord:

Jeffrey M. Dennis, Trustee of the KLT Realty Trust

Address

of Landlord:

30 Worcester Road, Webster, MA

Tenant:

Mass Organic Therapy, Inc.

Address

of Tenant:

161 Wareham Street, Middleboro, MA 02346

Original Lease Term:

Ten (10) years

Lease Term:

Two (2) options to extend the Lease Term for five (5) years each, in accordance with Article 21 hereof.

Land:

Certain real property, having an address of 30 Worcester Road, Webster Massachusetts on which the Building is located. A legal description of the Land is

set forth in Exhibit A, which is attached hereto and incorporated herein by this reference.

**Building:** The building located on the Land, containing approximately 104,000 square feet of space.

**Property:** The Land and the Building, together with any and all other structures and improvements located thereon (including, without limitation, driveways, parking areas, landscaping and the like).

**Premises:** Sections of the Building consisting of a total of approximately 50,000 rentable square feet of space of the Building and shown on the plan attached hereto as Exhibit B.

**Parking and Loading Docks:** See Section 2.1

**Permitted Use:** Medical marijuana cultivation and/or processing and general business offices.

**Free Base Rent Period:** Six (6) months following the Term Commencement Date. First base rent payment of \$18,750.00 due on January 1, 2017.

**Base Rent:** Base Rent shall mean the monthly installments due to Landlord until the conclusion of the Lease Term (or any extension thereof):

<b>Monthly Base Rent:</b>	Month 7 through Month 12	18,750.00
	Month 13 through Month 24	20,833.33
	Month 25 through Month 36	22,916.66
	Month 37 through Month 48	25,000.00
	Month 49 through Month 60	27,083.33
	Month 61 through Month 72	29,166.66
	Month 73 through Month 84	31,250.00
	Month 85 through Month 96	33,333.33
	Month 97 through Month 108	35,416.66
	Month 109 through Month 120	37,500.00

**Tenant's Proportionate Share:** 48%

**Security Deposit:** \$18,750.00; due June 1, 2016

**Operating Expenses:** Collectively, the Impositions (as defined below) and the aggregate commercially reasonable expenses incurred by Landlord in the operation, maintenance and management of the Property, including, without limitation, the following: utilities supplied to the Property (to the extent the same are not being paid directly by Tenant or other tenants of the Building); wages and "fringe" benefits for employees not above the level of manager, or contractors engaged on a full-time basis in connection with servicing the Property, and payroll taxes, workmen's compensation insurance premiums and similar costs with respect thereto, and an appropriate portion of same with respect to employees or contractors on a part-time basis; all insurance obtained by Landlord relating to or otherwise in connection with its ownership or the operation, rental, or management of the Property, the foregoing to

include without limitation any liability insurance, rent loss insurance, and any insurance required by Landlord's mortgage; services obtained for the benefit of the Property (including, without limitation, window cleaning, rubbish removal, snow removal, landscaping and grounds maintenance); repairs, replacement, repainting, maintenance, supplies and the like for the Property (except as otherwise set forth in the Agreement as Landlord's responsibility); the actual management fee equal to five percent (5 %) of the Base Rent for any calendar year of the Lease Term, legal fees and expenses, excluding any legal fees incurred by Landlord in connection with Landlord's dealings with any specific tenant of the Building, auditing fees and expenses; depreciation (on a straight line basis) for capital replacements and improvements made by Landlord which are required in the ordinary course of maintaining the Property or which will reduce the Operating Expenses thereof in Landlord's reasonable judgment, the cost of which shall be amortized over the useful life of the capital replacement or improvement in accordance with GAAP. The following items shall be excluded from "Operating Expenses": principal or interest payments on any mortgages or other financing arrangements, leasing commissions and depreciation for the Property, except as specifically provided above; leasing commissions, attorneys' fees, costs and disbursements and other expenses incurred in connection with negotiations or disputes with tenants, other occupants, or prospective tenants or occupants (other than Tenant, any occupant of the Premises, or any subtenant or assignee of Tenant); renovating or otherwise improving, decorating, painting or redecorating space for tenants or other occupants of the Building which is not common area; Landlord's cost of electricity and other services which are separately metered or separately charged to tenants and for which Landlord is entitled to be reimbursed by tenants; expenses in connection with services or other benefits of a type which are not provided Tenant but which are provided to another tenant or occupant (other than an occupant of the Premises); damages and penalties incurred due to a violation by Landlord or any tenant of the terms and conditions of any lease; overhead and profit increment paid to subsidiaries or affiliates of Landlord for services, to the extent only that the costs of such services exceed competitive costs of such services were they not so rendered by a subsidiary or affiliate; Landlord's general overhead and administrative expenses (except that Tenant hereby acknowledges that Operating Expenses shall include a management fee as set forth above); and advertising and promotional expenditures; ground rent; repairs or replacements necessitated by the negligence or willful misconduct of (a) Landlord or any of its employees, agents or contractors or (b) other tenants; the cost of repairs incurred by reason of fire or other casualty or condemnation to the extent that either (a) Landlord is compensated therefor through proceeds of insurance or condemnation awards; (b) Landlord is not fully compensated therefor due to the failure of Landlord to obtain insurance against such fire or casualty or the decision of Landlord to self-insure; or (c) if Landlord is not fully compensated by reason of the co-insurance provisions of its insurance policies due to Landlord's failure to obtain and maintain a sufficient amount of insurance coverage; costs incurred to clean up, contain, abate, remove, or otherwise remedy Hazardous Materials; professional dues and lobbying expenses; interest; penalties and fines.

**Impositions:**

All taxes including real estate taxes imposed (which term shall include payments in lieu of real estate taxes), and assessments, levies, license and permit fees and other governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever, which at any time during the Lease Term may be assessed, levied, confirmed, imposed upon, or may become due and payable out of or in respect of, or become a lien upon, the Property (including

all improvements thereto), other than: (i) municipal, state and federal income taxes (if any) assessed against Landlord; or (ii) municipal, state or federal capital levy, gift, estate, succession, inheritance or transfer taxes of Landlord; or (iii) corporation excess profits or franchise taxes imposed upon any corporate owner of the Property; or (iv) any income, profits or revenue tax, assessment or charge imposed upon the Rent payable by Tenant under this Lease; or (v) penalties and interest for late payment of Real Estate Taxes, unless such late payment was caused, in whole or in part, by Tenant's failure to pay Real Estate Taxes when due, or (vi) any tax or fee that is attributable solely to another tenant in the Building. provided, however, that if at any time during the Lease Term the methods of taxation prevailing at the commencement of the Lease Term shall be altered so that in lieu of or as a substitute for the whole or any part of the taxes, assessments, levies or charges now levied, assessed or imposed on real estate and the improvements thereon, there shall be levied, assessed and imposed a tax, assessment, levy, imposition or charge, wholly or partially as a capital levy or otherwise, on the rents received therefrom, or measured by or based in whole or in part upon the Property and imposed upon Landlord, then all such taxes, assessments, levies, impositions or charges or the part thereof so measured or based, shall be deemed to be included within the term "Impositions" for the purposes hereof, provided, however, that (i) such taxes, assessments and other impositions are imposed solely on real property owners, and only to the extent that same would be payable if the Property were the sole asset and income of Landlord and (ii) such taxes, assessments and impositions shall not include any mortgage, recording, stamp, or transfer taxes. In addition to the foregoing, the term "Impositions" shall include any new tax of a nature not presently in effect, but which may be hereafter levied, assessed, or imposed upon Landlord or the Property, if such tax shall be based solely on or arise out of the ownership, use or occupation of the Property. Landlord shall elect to pay all betterments and special assessments of real estate taxes over the longest period permitted under applicable law and Impositions shall include only those installments which become due during the Lease Term plus any interest payments due during the same period.

Landlord's Mortgagee: Any party holding a mortgage on the Property or any portion thereof, given as security for indebtedness owed by Landlord to the holder of the mortgage.

1.2 Effect of Reference to Definitions. Any reference in this Lease to any of the terms defined above shall be deemed, to the extent possible, to mean and include all aspects of the definition set forth above for such term.

1.3 Exhibits. The exhibits listed in this Section and attached to this Lease are incorporated by reference and are a part of this Lease.

Exhibit A: Description of the Land  
Exhibit B: Plan of the Premises

**ARTICLE 2**  
**PREMISES, LEASE TERM AND COMMENCEMENT OF LEASE TERM**

2.1 **Premises.** Landlord hereby LEASES to Tenant the Premises, subject to and with the benefit of the terms, covenants, conditions and provisions of this Lease, together with all easements, rights or privileges necessary in connection with the use of the Premises for the Permitted Uses. Tenant shall have the use, in common with others entitled thereto, of the roadways, driveways, parking areas, sidewalks and all other common areas serving the Premises, all subject to reasonable rules and regulations promulgated by Landlord from time to time. In addition, Tenant shall have the non-exclusive right, in common with others entitled thereto, to use Tenant's Proportionate Share of the total undesignated parking spaces with all such parking spaces being subject to Landlord's reasonable rules and regulations. Landlord shall not be responsible for monitoring the use by all tenants of parking spaces in this area but will undertake reasonable efforts to resolve any disputes brought to their attention by Tenant.

2.2 **Lease Term.** TO HAVE AND TO HOLD the Premises for the Lease Term commencing on the Term Commencement Date, subject to the terms, covenants, agreements and conditions contained in this Lease. Landlord hereby covenants that such Premises will be in "as is" condition.

2.3 **Term Commencement Date.** The Lease term shall commence on July 1, 2016.

**ARTICLE 3**  
**BASE RENT AND ADDITIONAL RENT**

3.1 **Base Rent.** Tenant covenants and agrees to pay, during the Lease Term, to Landlord, or to such other person as Landlord by written notice instructs Tenant to make such payments for Landlord's benefit and account, without demand (except as otherwise herein specifically provided), at the Address of Landlord set forth in Section 1.1 or at such other place as Landlord may by written notice to Tenant direct, (i.e. on the Rent Commencement Date), the Base Rent in equal monthly installments, in advance. The Base Rent shall be paid on the first (1st) day of each full calendar month of the Lease Term, and pro rata for any portion of a calendar month included at the beginning or end of the Lease Term, 1/30 of a monthly payment being due for each day of a partial month, payable on the first day of such month or partial month.

3.2 **Additional Rent.** This Lease shall be a triple net lease whereby the Landlord's only responsibility shall be expenses related to the Building's (including the Premises), (i) structure (including exterior walls, structural floors and foundations), and parking lot if and when necessary. For the avoidance of doubt, all such Structural Expenses shall be the sole responsibility of Landlord and shall not be included in Operating Expenses. Commencing on the Term Commencement Date, Tenant shall pay to Landlord, as Additional Rent, Tenant's Proportionate Share of the "Operating Expenses" pursuant to the terms set forth herein.

(a) Within ninety (90) days following the end of each calendar year included in whole or in part in the Lease Term, Landlord shall deliver to Tenant Landlord's good faith estimate of the Operating Expenses for the current year of the Lease Term. Following receipt of Landlord's estimate, Tenant shall pay to Landlord on the first day of each calendar month thereafter, as Additional Rent, an amount equal to 1/12th of Tenant's Proportionate Share applicable thereto of the amount shown in Landlord's estimate.

(b) Within ninety (90) days after the end of each calendar year or portion thereof included in the Lease Term, Landlord shall deliver to Tenant a statement setting forth the actual Operating Expenses for the immediately preceding calendar year. If the total estimated amount paid for Operating Expenses by Tenant for such preceding calendar year or portion thereof during the Term exceeds the actual amount due therefor as shown on Landlord's statement, the excess shall be credited against the monthly installments of Rent next due (or promptly refunded to Tenant if the Lease Term has expired or is terminated), if the total estimated amount paid by Tenant for any preceding year or portion thereof during the Lease Term is less than the actual amount due therefor as shown on Landlord's statement, then Tenant shall pay the difference (if undisputed) to Landlord within thirty (30) days after receipt of such statement from Landlord. Tenant's and Landlord's rights and obligations under this Section 3.2 with respect to the last calendar year, or

portion thereof, included in the Lease Term shall survive the expiration or sooner termination of this Lease. For purposes of calculating Tenant's Proportionate Share of Operating Expenses, a year shall mean a calendar year except the first year, which shall begin on the Term Commencement Date, and the last year, which shall end on the expiration of this Lease.

(c) Within ninety (90) days after receiving Landlord's statement of actual Operating Expenses for a particular calendar year, Tenant shall have the right to provide Landlord with written notice (the "Review Notice") of its intent to review Landlord's books and records relating to the Operating Expenses for such calendar year. Within a reasonable time after receipt of a timely Review Notice, Landlord shall make such books and records available to Tenant or Tenant's agent for its review at either Landlord's office or at the Property, provided that if Tenant retains an agent to review Landlord's books and records for any calendar year, such agent must be a certified public accountant licensed to do business in the state in which the Property is located and must not be compensated on a contingent fee basis. Tenant shall be solely responsible for any and all costs, expenses and fees incurred by Tenant or Tenant's agent in connection with such review. If Tenant elects to review Landlord's books and records, within sixty (60) days after such books and records are made available to Tenant, Tenant shall have the right to give Landlord written notice stating in reasonable detail any objection to Landlord's statement of actual Operating Expenses for such calendar year. If Tenant fails to give Landlord written notice of objection within such sixty (60) day period or fails to provide Landlord with a Review Notice within the ninety (90) day period provided above, Tenant shall be deemed to have approved Landlord's statement of Operating Expenses in all respects and shall thereafter be barred from raising any claims with respect thereto. Upon Landlord's receipt of a timely objection notice from Tenant, Landlord and Tenant shall work together in good faith to resolve the discrepancy between Landlord's statement and Tenant's review. If Landlord and Tenant determine that Operating Expenses for the calendar year in question are less than reported, Landlord shall forthwith provide Tenant with a credit against future additional rent in the amount of any overpayment by Tenant. Likewise, if Landlord and Tenant determine that Operating Expenses for the calendar year in question are greater than reported, Tenant shall pay to Landlord within thirty (30) days the amount of underpayment by Tenant. Any information obtained by Tenant pursuant to the provisions of this Section shall be treated as confidential. Tenant shall have the right to perform such review or audit of the Landlord's books, records and documents as provided for herein not more than once during each calendar year.

3.3 Rent. References in this Lease to "Rent" or "rent" shall be deemed to include both Base Rent and Additional Rent when the context so allows. All monetary obligations of Tenant under this Lease, except for the obligation to pay Base Rent, shall be deemed obligations to pay Additional Rent, unless such presumption is repugnant to the context.

3.4 Landlord's Right to Seek Abatement. Landlord shall use reasonable efforts to minimize Impositions, and Landlord shall contest the amount of Impositions payable to the extent that Landlord, in Landlord's commercially reasonable judgment, shall consider it prudent to do so. Only Landlord shall be eligible to institute tax reduction or other proceedings to reduce the assessed valuation of the Property. Should Landlord be successful in any such reduction proceedings and obtain a rebate for periods during which Tenant has paid Tenant's Proportionate Share, Landlord shall, after deducting Landlord's reasonable out-of-pocket expenses in connection therewith, including without limitation, attorneys' fees and disbursements, return to Tenant Tenant's Proportionate Share of such rebate.

3.5 Lease to be Deemed Net. This Lease shall be deemed and construed to be a triple net lease, and Tenant shall accordingly pay to Landlord on a triple net basis, the Base Rent and Additional Rent, free of any off-sets or deductions of any kind.

3.6 Independent Covenants. Each covenant, agreement, obligation and/or other provision in this Lease shall be deemed and construed to be a separate and independent covenant and not dependent on any other provision of this Lease.

3.7 Late Charge. Tenant agrees that if any monthly installment of Base Rent or Additional Rent or any other undisputed sum is not paid within ten (10) business days following the date due, a late charge shall be imposed in an amount equal to five percent (5%) of the unpaid monthly installment(s) of Rent and Additional Rent or other payment. The amount of the late charge to be paid by Tenant shall be reassessed and added to Tenant's obligation for each successive monthly period until paid. In addition to the foregoing, if any amount owed by Tenant to Landlord goes

unpaid for thirty (30) days beyond the date such failure to pay becomes an Event of Default as defined in Section 10.1 hereof, then Landlord may impose, at its election, interest on the overdue amount from the thirty first (31<sup>st</sup>) day after the date such Event of Default occurred until the date paid at the default interest rate set forth in Section 10.9 hereof. The provisions of this Section 3.7 shall in no way relieve Tenant of the obligation to pay the monthly installment(s) of Base Rent or Additional Rent or other payments on or before the date on which they are due, nor do the terms of this Section 3.7 in any way affect Landlord's remedies pursuant to Article 10 in the event said monthly installment(s) of Base Rent, Additional Rent or other payment is unpaid after date due.

#### **ARTICLE 4** **SECURITY DEPOSIT**

4.1 Security Deposit. June 1, 2016, Tenant shall deliver to Landlord a deposit pursuant to Section 1.1, \$18,750.00 of which shall be held by the Landlord as a security deposit (the "Security Deposit"). Except as provided for in this Section 4.1, Landlord shall hold the same throughout the Lease Term as security for the performance by Tenant of all obligations on the part of Tenant hereunder. Landlord shall have the right from time to time, without prejudice to any other remedy Landlord may have on account thereof, to apply such Security Deposit or any part thereof, to Landlord's damages arising from, or to cure, any default by Tenant of its obligations hereunder beyond the expiration of any applicable grace periods. If Landlord shall so apply any or all of such Security Deposit, Tenant shall immediately upon demand deposit with Landlord the amount so applied to be held as security hereunder. While Landlord holds such Security Deposit, Landlord shall have no obligation to pay interest on the same and shall have the right to commingle the same with Landlord's other funds. If Landlord conveys Landlord's interest under this Lease, the Security Deposit, or any part thereof not previously applied, shall be turned over by Landlord to Landlord's grantee, and, if so turned over, Tenant agrees to look solely to such grantee for proper application of the Security Deposit in accordance with the terms of this Section 4.1 and the return thereof in accordance herewith. Landlord's Mortgagee shall not be responsible to Tenant for the return or application of any such Security Deposit, whether or not it succeeds to the position of Landlord hereunder, unless such deposit shall have been received in hand by such Mortgagee. If Tenant is not in default at the termination of this Lease, the balance of the Security Deposit remaining after any such application shall be returned by Landlord (or by Landlord's Mortgagee or grantee, as applicable) to Tenant.

#### **ARTICLE 5** **UTILITIES AND SERVICES**

5.1 Utilities. Tenant shall at its own cost and expense cause all utility services to be separately metered or sub-metered.

(i) With respect to any utilities that are separately metered, the following shall apply. On or before the Term Commencement Date, Tenant shall make arrangements with appropriate utility or service companies for its own service for any such utilities that are separately metered, and Tenant shall promptly pay all costs with respect to same, such payments to be made, to the extent possible, directly to the utility or service provider or to the appropriate party charged with collecting the same, the foregoing to include all charges for such utilities or services.

(ii) With respect to utilities that are separately sub-metered, including water and sewer, the following shall apply: Landlord shall pay the applicable utility provider for such utility service consumed by the Premises, and then invoice Tenant for 100% of such utility service consumed by the Premises.

(iii) All the cost of consumption of all common area utilities, shall be included in Operating Expenses. Landlord shall be under no obligation to furnish any utilities or services to the Premises and shall not be liable for any interruption or failure in the supply of any such utilities or services to the Premises.

5.2 Landlord's Services. Landlord, during the Lease Term, shall provide the following services, the cost of which shall be included in the Operating Expenses unless such costs are Structural Expenses which shall not be included in the Operating Expenses:

(i) the repair and maintenance (when necessary or appropriate) of the structural components of the Building and Premises including the structural walls, foundations, and concrete floors; but Tenant shall be responsible, at its sole expense, for maintaining (including replacement as and when applicable) all mechanical systems (including the heating and air conditioners, electrical and plumbing systems) serving the Premises. Tenant shall be required to obtain and maintain an HVAC maintenance contract that is acceptable to Landlord, such acceptance not to be unreasonably withheld, conditioned or delayed and any such costs associated with such maintenance contract shall not be included in Operating Expenses. Landlord shall not be liable for damages caused by its failure to make any such repairs.

(ii) the repair and maintenance (when necessary or appropriate) of the parking areas, driveways, and walkways located on the Land (including, without limitation, the removal of snow and ice);

(iii) the insurance which Landlord is required to maintain on the Property pursuant to Article 6 below;

(v) the management of the Property; and

(v) parking and common area lighting.

5.3 Tenant's Access. Tenant shall have access to the Premises twenty-four hours a day, seven days a week. Tenant shall be solely responsible, at Tenant's sole cost and expense, for security for the Premises.

5.4 Reasonable Cooperation. Landlord shall reasonably cooperate with Tenant, without charge to the Tenant, but also without material cost to Landlord, with respect to any pursuit by Tenant of state and local business programs that may benefit the Tenant.

## ARTICLE 6 INSURANCE

6.1 Required Coverage. Tenant covenants and agrees with Landlord that during the Lease Term the following insurance shall be obtained by Tenant and carried at Tenant's sole expense:

Tenant's comprehensive public liability insurance insuring and indemnifying Tenant, Landlord, and Landlord's Mortgagee against liability for injury to persons and damage to property which may be claimed to have occurred upon the Premises or the sidewalks, ways and other real property adjoining said Premises and covering all Tenant's obligations under this Lease and with limits of at least \$1,000,000 per occurrence, \$2,000,000 aggregate, and \$2,000,000 umbrella policy, Beginning five (5) years after the Term Commencement Date and then once every five (5) years thereafter, Landlord may require such higher limits as may then be reasonably required by industry standard or as may then be customarily carried in the state where the Property is located by prudent occupants of similar property.

All policies of insurance required hereunder shall be procured by Tenant from responsible insurance companies licensed to do business in Massachusetts with an A.M. Best Rating at A or better.

(c) Workmen's Compensation covering all Tenant's employees working at the Premises.

(d) Such additional insurance (including, without limitation, rent loss insurance) as Landlord or Landlord's Mortgagee shall reasonably require, provided that such insurance is in an amount and of the type customarily carried in the state in which the Property is located by prudent occupants of similar property.

6.2 Writing and Disposition of Insurance Policies. All insurance required under Section 6.1 above shall be written with companies reasonably satisfactory to Landlord and in forms customarily in use from time to time in the market area of the Property. Tenant shall furnish Landlord with certificates of said policies, and said policies, if appropriate, shall (i) name Landlord and Landlord's Mortgagee as named insureds, as their respective interests may appear, and (ii) provide



that the coverage thereunder may not lapse or be cancelled without thirty (30) days prior written notice to Landlord, Landlord's Mortgagee and Tenant.

6.3 Mutual Waiver of Subrogation. Notwithstanding anything stated in this Lease to the contrary, Landlord and Tenant each hereby releases the other, its officers, directors, employees and agents, from any and all liability or responsibility (to the other or anyone claiming through or under them by way of subrogation or otherwise) for any loss or damage to property covered by insurance which either party is required to maintain under this Lease, even if such loss or damage shall have been caused by the fault or negligence of the other party, or anyone for whom such party may be responsible. However, this release shall be applicable and in force and effect only with respect to loss or damage occurring during such time as the releasor's insurance policies shall contain a clause or endorsement to the effect that any such release shall not adversely affect or impair said policies or prejudice the right of the releasor to recover thereunder. Landlord and Tenant each agrees that any fire and extended coverage insurance policies will include such a clause or endorsement as long as the same shall be obtainable without extra costs, or, if extra cost shall be charged therefor, so long as the other party pays such extra cost. If extra cost shall be chargeable therefor, each party shall advise the other party and of the amount of the extra cost, and the other party, at its election, may pay the same, but shall not be obligated to do so.

6.4 Blanket Policies. Nothing contained herein shall prevent Tenant from taking out insurance of the kind and in the amounts provided for herein under a blanket insurance policy or policies covering properties other than the Premises, provided however, that any such policy or policies of blanket insurance (a) shall specify therein, or Tenant shall furnish Landlord with the written statement from the insurers under such policy or policies specifying the amount of the total insurance allocated to the Premises, which amounts shall not be less than the amounts required herein, and (b) amounts so specified shall be sufficient to prevent any of the insureds from being a co-insurer within the terms of the applicable policy or policies, and provided further, however, that any such policy or policies of blanket insurance shall, as to the Premises, otherwise comply as to endorsements and coverage with the provisions herein.

6.5 Landlord's Insurance Covenant. Landlord covenants and agrees that, during the Lease Term, it shall obtain all risk insurance against damage by fire or other casualty in an amount at least equal to the replacement cost of the Premises as determined from time to time by Landlord or (at Landlord's election or upon Tenant's request) by appraisal made at the expense of Tenant by an accredited insurance appraiser approved by Landlord. Tenant's Proportionate Share of the cost of such insurance shall be paid by Tenant as an Operating Expense in accordance with Section 3.2 hereof.

## ARTICLE 7 TENANT'S ADDITIONAL COVENANTS

Tenant covenants and agrees during the Lease Term and such further time as Tenant occupies the Premises or any part thereof:

7.1 Performing Obligations. To perform fully, faithfully and punctually all of the obligations of Tenant set forth in this Lease; and to pay when due Rent and all charges, rates and other sums which by the terms of this Lease are to be paid by Tenant.

7.2 Use. To use the Premises only for the Permitted Uses in full compliance with all laws, ordinances, and regulations, and for no other purposes.

7.3 Maintenance and Repair. At Tenant's expense, and except for reasonable wear and tear, damage from fire or other casualty and obligations of Landlord set forth herein (including without limitation Structural Expenses), to keep the Premises, including, without limitation, all interior and exterior glass, all utilities, pipes, conduits, drains, loading docks and other installations used in connection with the Premises, clean, neat and in good order, repair and condition, and to arrange for, or enter into contracts regarding the provision of such services as are necessary to do so including, without limitation, the removal of rubbish, replacement of all light bulbs and ballasts as necessary. and to keep the Premises and such installations in as good condition, order and repair as the same are at the Term Commencement Date or such better conditions as they thereafter may be put, reasonable wear and use and damage by fire or other casualty or eminent

domain only excepted, it being understood that the foregoing exception for reasonable wear and use shall not relieve Tenant from the obligation to keep the Premises and such installation in good order, repair and condition including, without limitation, all necessary and ordinary non-structural repairs, replacements and the like (unless such expense is included in Operating Expenses or Structural Expenses). Tenant also agrees to abide by reasonable rules and regulations which may be adopted by Landlord from time to time.

7.4 Compliance with Laws. At Tenant's sole cost and expense, to comply promptly with all present and future laws, ordinances, orders, rules, regulations and requirements of all federal, state and municipal governments, departments, commissions, boards and officials, foreseen and unforeseen, ordinary as well as extraordinary, which may be applicable to the Premises or to Tenant's use, occupancy or presence in or at the Premises, including, if applicable, the Americans with Disabilities Act ("ADA") and all laws with respect to the handling, storage and disposal of hazardous materials by the Tenant, excluding prior uses of the Premises (the "Legal Requirements"), except that nothing herein shall require Tenant to bring the Premises into compliance with an existing Legal Requirement (unless the necessity for such compliance arises from Tenant's particular manner of using the Premises, and thus the necessity for such compliance would not necessarily exist if some other tenant or occupant were using the Premises), and Tenant may defer compliance so long as the validity of any such Legal Requirement shall be contested by Tenant in good faith and by appropriate legal proceedings, and:

If by the terms of such Legal Requirement, compliance therewith pending the prosecution of any such proceeding may legally be delayed without the incurrence of any lien, charge or liability of any kind against the Premises or the Property or any portion thereof and without subjecting Tenant or Landlord to any liability, civil or criminal, for failure so to comply therewith, Tenant may delay compliance therewith until the final determination of such proceeding, or

If any lien, charge or civil liability would be incurred by reason of any such delay, Tenant nevertheless may contest as aforesaid and delay as aforesaid, provided that such delay would not subject Landlord to criminal liability or fine, and Tenant (i) furnishes to Landlord security, reasonably satisfactory to Landlord, against any loss or injury by reason of such contest or delay, and (ii) prosecutes the contest with due diligence; and

(c) Such delay in compliance will not constitute a default by Landlord under any lease, mortgage or other agreement, will not affect the use of all or any portion of the Property by Landlord or any tenant of the Building, and will not affect the sale, leasing, or refinancing of all or any portion of the Property.

Notwithstanding the foregoing, Tenant shall not be responsible for compliance with any Legal Requirement requiring structural repairs, repairs to improvements located outside of and not exclusively serving the Premises, or the installation of new building equipment such as sprinklers, unless the need for such compliance arises from any work or alterations performed for or on behalf of Tenant, Tenant's particular manner of use of the Premises, or Tenant's negligence.

7.5 Payment for Tenant's Work. To pay promptly when due the entire cost of any work at or on the Premises undertaken by Tenant so that the Premises shall at all times be free of liens for labor and materials; promptly to clear the record of any notice of any such lien; to procure all necessary permits and before undertaking such work; to do all of such work in a good and workmanlike manner, employing materials of good quality and complying with all governmental requirements; and to save Landlord harmless and indemnified from all injury, loss, claims or damage to any person or property occasioned by or growing out of such work.

7.6 Indemnity. To save Landlord harmless and indemnified from, and to defend Landlord against, all injury, loss, claims or damage (including reasonable attorneys' fees) to any person or property while on the Premises unless arising from any omission, fault, negligence or other misconduct of Landlord, or its agents, servants, employees, or contractors; and to save Landlord harmless and indemnified from, and to defend Landlord against, all injury, loss, claims or damage (including reasonable attorneys' fees) to any person or property anywhere occasioned by any act, omission, neglect or default of Tenant or Tenant's agents, servants, employees, contractors, guests, invitees or licensees.

7.7 Personal Property at Tenant's Risk. That all personal property, equipment, inventory and the like from time to time upon the Premises shall be at the sole risk of Tenant; and that Landlord shall not be liable for any damage which may be caused to such property or the Premises or to any person for any reason including, without limitation, the bursting or leaking of or condensation from any plumbing, cooling or heating pipe or fixture, unless such damage is caused by the negligence or willful misconduct of the Landlord.

7.8 Payment of Cost of Enforcement. To pay on demand Landlord's expenses, including reasonable attorneys' fees, incurred in enforcing any obligation of Tenant under this Lease or in curing any default by Tenant under this Lease, provided that Landlord is successful in enforcing such obligation or has a right under this Lease to cure such default.

7.9 Yield Up. At the termination of the Lease Term, peaceably to yield up the Premises clean and in good order, repair and condition, and in conformance with all Legal Requirements, reasonable wear and tear and damage by fire or casualty or taking excepted, and to deliver to Landlord all keys to the Premises or any part thereof. All alterations, additions, or improvements made in or upon the Premises by Tenant shall, at Landlord's option, either be removed by Tenant prior to the end of the Term (and Tenant shall repair all damage caused thereby), or shall remain on the Premises at the end of the Term without compensation to Tenant, provided that Landlord shall, upon Tenant's written request to Landlord therefore, notify Tenant in writing which option it chooses at the time Landlord consents to any such alterations, additions, or improvements. Notwithstanding the foregoing, any and all trade equipment (including but not limited to manufacturing and processing equipment), trade fixtures, furniture, data lines, inventory and business equipment shall remain Tenant's property and shall be removed by Tenant at the expiration or earlier termination of this Lease. Upon demand by Landlord, Tenant shall remove, at Tenant's sole cost and expense, forthwith and with all due diligence (but in any event prior to the expiration or earlier termination of the Lease Term), any such alterations, additions or improvements which are designated by Landlord to be removed, and Tenant shall forthwith and with all due diligence, at its sole cost and expense, repair any damage to the Premises or the Property caused by such removal. In the event Tenant fails so to remove any such alterations, additions and improvements or fails to repair any such damage to the Premises or the Property, Landlord may do so and collect from Tenant the cost of such removal and repair in accordance with Section 7.8 hereof.

7.10 Rights of Mortgagees.

(i) This Lease shall be subordinate to any mortgage, deed of trust or ground lease or similar encumbrance (collectively, a "Mortgage") from time to time encumbering the Premises, whether executed and delivered prior to or subsequent to the date of this Lease, unless Landlord's Mortgagee shall elect otherwise. If this Lease is subordinate to any Mortgage and Landlord's Mortgagee or any other party shall succeed to the interest of Landlord pursuant to the Mortgage (such Mortgagee or other party, a "Successor"), at the election of the Successor, Tenant shall attorn to the Successor and this Lease shall continue in full force and effect between the Successor and Tenant. Not more than fifteen (15) days after Landlord's written request, Tenant agrees to execute such instruments of subordination or attornment in confirmation of the foregoing agreement as the Successor reasonably may request, and Tenant hereby appoints the Successor as Tenant's attorney-in-fact to execute such subordination or attornment agreement upon Tenant's failure timely to comply with the Successor's request. Notwithstanding the foregoing, if this Lease is subordinate to a Mortgage as aforesaid, then upon the written request of Tenant, Landlord agrees to use

commercially reasonable efforts to obtain the written agreement of Landlord's Mortgagee that, subject to such reasonable qualifications as such Mortgagee may impose, in the event that Landlord's Mortgagee or any other party shall succeed to the interest of Landlord hereunder pursuant to such Mortgage, so long as no Event of Default exists hereunder, Tenant's right to possession of the Premises shall not be disturbed and Tenant's other rights hereunder shall not be adversely affected by any foreclosure of such Mortgage. For purposes hereof, the term "commercially reasonable efforts" shall not include the payment of any sum of money or the consent to less favorable terms and conditions with respect to the obligations or indebtedness secured or created by the Mortgage. In the event that, despite using commercially reasonable efforts, Landlord is unable to obtain such an agreement, then this Lease nonetheless shall be subordinate as aforesaid. Landlord and Tenant agree that Landlord shall deliver, and Tenant shall execute, promptly following the execution of this Lease, that certain Subordination, Non-Disturbance and Attornment Agreement attached hereto as Exhibit D. Any future Subordination, Non-Disturbance and Attornment Agreement ("SNDA"), with respect to any future lenders or mortgagees, shall be deemed acceptable to both parties if such instrument is either (a) substantially in the form of such SNDA attached hereto as Exhibit D, or (b) in another form that is within the parameters of what is usual and customary for institutional lenders making loans in the Commonwealth of Massachusetts, and shall not place any additional substantive (as opposed to ministerial, e.g. sending default notices to the lender) obligations on the Tenant or lessen, other than in a de minimis manner, or other than in a manner usual and customary for SNDAs (e.g. lender's lack of liability for prior landlord defaults if the lender succeeds to the interests of landlord), any of Tenant's rights hereunder.

(ii) With reference to any assignment by Landlord of Landlord's interest in this Lease, or the rents payable hereunder, conditional in nature or otherwise, which assignment is made to the holder of a mortgage on property which includes the Premises, Tenant agrees that the execution thereof by Landlord, and the acceptance thereof by the holder of such mortgage shall never be treated as an assumption by such holder of any of the obligations of Landlord hereunder unless such holder shall, by notice sent to Tenant, specifically otherwise elect and, except as aforesaid, such holder shall be treated as having assumed Landlord's obligations hereunder only upon foreclosure of such holder's mortgage and the taking of possession of the Premises and unless such holder specifically elects to assume or is treated as assuming such obligations, Landlord shall continue to perform such obligations hereunder. In no event shall the acquisition of Landlord's interest in the Property by a purchaser which, simultaneously therewith, leases Landlord's entire interest in the Property back to the seller thereof be treated as an assumption by operation of law or otherwise, of Landlord's obligations hereunder, but Tenant shall look solely to such seller lessee, and its successors from time to time in title, for performance of Landlord's obligations hereunder and Landlord hereby agrees to continue to perform all its obligations hereunder. In any such event, this Lease shall be subject and subordinate to the lease to such purchaser. For all purposes, such seller lessee, and its successors in title, shall be the Landlord hereunder unless and until Landlord's position shall have been assumed by such purchaser lessor. Except as provided herein, in the event of any transfer of title to the Property by Landlord, Landlord shall thereafter be entirely freed and relieved from the performance and observance of all covenants and obligations hereunder and such purchaser shall be obligated to perform all obligations hereunder.

(iii) 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 mortgage holder whose name and address has been given to Tenant in writing (and, to be clear, if such mortgage holder's name and address has not been provided to Tenant in writing then Tenant shall have no obligation to provide such notice to such mortgage holder), and affording such mortgage holder a reasonable opportunity to perform Landlord's obligations hereunder. Notwithstanding any such attornment or subordination of a mortgage to this Lease, the holder of any mortgage shall not be liable for any acts of any previous landlord, shall not be obligated to install any tenant improvements, and shall not be bound by any amendment to which it did not consent in writing nor any payment of rent made more than one month in advance.

7.11 Estoppel Certificates. From time to time, upon not less than fifteen (15) days' prior written request by Landlord, to execute and acknowledge and deliver to Landlord, for delivery to a prospective purchaser or mortgagee of the Premises or the Property or to any assignee of any mortgage of the Premises or the Property, a statement in writing certifying: (a) that this Lease is unamended (or, if there have been any amendments, stating the amendments); (b) that it is then in full force and effect, if that be the fact; (c) the dates to which Rent and any other payments to Landlord have been paid; (d) any defenses, offsets and counterclaims which Tenant, at the time of the execution of said statement, believes that Tenant has with respect to Tenant's obligation to pay Rent and to perform any other obligations under this Lease or that there are none, if that be the fact; and (e) such other data as may reasonably be requested. Any such statement may be relied upon by such prospective purchaser or mortgagee of the Premises, or portion thereof, or any assignee of any mortgagee of the Premises, or portion thereof.

Landlord agrees at any time and from time to time, upon not less than twenty (20) days prior notice from Tenant, to execute and deliver to Tenant a statement in writing certifying (if true) that this Lease is unmodified and in full force and effect (or, if there have been modifications or renewals, that the same is in full force and effect as modified and renewed and stating the modifications and renewals) and the dates to which the Base Rent, Additional Rent and other charges have been paid in advance, if any, and stating whether or not, to the best knowledge of the signer of said certificate, Tenant is in default in the performance of any covenant, agreement or condition contained in this Lease and, if so, specifying each such default of which the signer may have knowledge, it being intended that any such statement may be relied upon by any prospective lender, assignee or sublessee of Tenant's interest in this Lease.

7.12 Nuisance. At all times during the Lease Term and such further time as Tenant occupies the Premises, not to injure, overload, deface or otherwise harm the Premises; nor commit any nuisance; nor to do or suffer any waste to the Premises; nor permit the emission of any noise or odor beyond those which naturally inhere in, and are the reasonably foreseeable result of, the Permitted Use; nor make any use of the Premises which is improper or contrary to any Legal Requirement or which will invalidate any insurance policy covering the Premises or any portion thereof, including, without limitation, the handling, storage and disposal of any hazardous material except for de minimus amounts not in violation of law and that are required in connection with the Permitted Use.

7.13 Changes and Alterations. Except as otherwise explicitly set forth herein, Tenant shall have no authority, without the express written consent of Landlord, which consent shall not be unreasonably withheld or delayed, to alter, remodel, reconstruct, demolish, add to, improve or otherwise change the Premises, except that Tenant shall have such authority, without the consent of Landlord, to install reasonable trade fixtures that clearly will have no effect on either (a) the structure, roof, or foundation of the Building, or (b) the plumbing, heating (and cooling), mechanical, electrical or other systems or services in the Building, and to make repairs to the Premises and do such things as are appropriate to comply with the obligations imposed on Tenant under other provisions of this Lease. Tenant shall not construct or permit any alterations, installations, additions or improvements, including any exterior signs ("Alterations") to the Premises or the Building without having first submitted to Landlord plans and specifications therefor for Landlord's approval, which approval shall not be unreasonably withheld or delayed provided that:

if the Alteration involves an exterior sign or will otherwise be visible from the exterior then the Alteration must be compatible with the architectural and aesthetic qualities of the Premises and the Land; and

the Alteration must have no effect on the plumbing, heating (and cooling), mechanical, electrical or other systems or services in the Building, and the Alteration (except for signs) must be entirely within the Premises; and

(iii) the Alteration, when completed, will not adversely affect the value of the Premises or the Land; and

(iv) Tenant demonstrates to Landlord's satisfaction that the Alteration will be made in accordance with all Legal Requirements using good quality materials and good quality construction practices and will not result in any liens on the Premises; and

(v) as soon as such work is completed, Tenant will have prepared and provide Landlord with "as-built" plans (in form acceptable to Landlord) showing all such work; and

(vi) Tenant will comply with any rules or requirements reasonably promulgated by Landlord in connection with the doing of any work, and if requested by Landlord, Tenant will obtain and maintain Builder's Risk insurance in connection with such work.

Tenant shall have the right to make minor Alterations from time to time in the Premises without obtaining Landlord's prior written consent therefor, provided that all of such work conforms to all of the above requirements in all respects, and further provided that Tenant provides Landlord with a written description of such work (and such other data as Landlord may request) prior to commencing any such Alteration, and further provided that the aggregate cost of such minor alterations may not exceed \$10,000 in any twelve (12) month period.

7.14 Financial Statements. So long as Tenant is a corporation whose stock is traded on a public exchange, Tenant shall not be required to furnish Landlord with financial statements. Tenant's statement of net worth, as reported in its annual report to its shareholders or in any forms required to be submitted to the Securities and Exchange Commission, shall be acceptable in lieu of any financial statements otherwise required hereunder and shall be conclusive with respect to the items reported therein. In the event that Tenant's stock is not traded on a public exchange, within one hundred twenty (120) days following the end of its fiscal year, Tenant shall furnish Landlord a statement of income and balance sheet for the immediately preceding fiscal quarter or fiscal year, as the case may be, reviewed by an independent certified public accountant and prepared in accordance with generally accepted accounting principles consistently applied (provided, however, that Tenant may deviate from GAAP with respect to "inventory valuation methodology" so long as Tenant chooses a reasonable alternative "inventory valuation methodology" to use, and discloses such alternate methodology in such statement or in the accompanying letter) and accompanied by a letter from the chief financial officer (or other equivalent financial officer) of the Tenant, stating that such officer represents and warrants, to his or her best knowledge, that such financial statement is true and accurate.

7.15 Holding Over. If Tenant remains in the Premises beyond the expiration of the Lease Term, or sooner following an early termination as provided for herein, such holding over shall not be deemed to create any tenancy, but Tenant shall be a tenant at sufferance only subject to all of Tenant obligations set forth herein, but at a daily rate equal to one hundred fifty percent (150%) of the Rent, the cost of electricity and all other utilities supplied to the Premises, and other charges provided for under this Lease. The acceptance of a purported rent check following termination shall not constitute the creation of a tenancy at will, it being agreed that Tenant's status shall remain that of a tenant at sufferance, at the aforesaid daily rate. Any reference in this Lease to Tenant's obligations continuing during the period of any holdover shall not be deemed to grant Tenant the right to a holdover or imply Landlord's consent to any such holdover. In addition, Tenant shall be liable for all costs, claims, liabilities and damages arising from or in any manner related to any such holdover including, without limitation, damages payable to the subsequent tenant and related to the loss of a tenant.

## **ARTICLE 8** **QUIET ENJOYMENT**

Landlord covenants that Tenant on paying the Rent and performing Tenant's obligations under this Lease shall peacefully and quietly have, hold and enjoy the Premises and its appurtenant parking spaces and may peaceably enjoy the non-exclusive use of the common areas of the Property and the Building, throughout the Lease Term or until it is terminated as in this Lease provided without hindrance by Landlord or by anyone claiming by, through or under Landlord. The foregoing covenant of quiet enjoyment is in lieu of any other covenant, express or implied.

## **ARTICLE 9**

### **DAMAGE AND EMINENT DOMAIN**

9.1 **Fire and Other Casualty.** In the event that at any time during the Lease Term the Premises or any part thereof or any part of the Building affecting the Premises or Tenant's access thereto are totally damaged or destroyed by fire or other casualty or substantially damaged so as to render them or a material portion thereof untenable, then, unless such damage or destruction was caused by the negligence, intentional misconduct, or other act or omission of Tenant or its employees, contractors, agents, or invitees, there shall be a just and proportionate abatement of the Rent payable hereunder, until the Premises are made suitable for Tenant's occupancy. In the event of any casualty damage to the Premises, Landlord shall proceed at its expense and with reasonable diligence to repair and restore the Premises (not including Tenant's trade fixtures, business equipment and furniture) to substantially the same condition they were in immediately prior to such casualty. Notwithstanding the foregoing, if Landlord in its commercially reasonable judgment determines that timely restoration is not possible within one hundred and eighty (180) days, then either party shall have the right to terminate this Lease by written notice given to the other party within sixty (60) days after the occurrence of such casualty. In the event the Premises have not been restored to a condition substantially suitable for their intended purpose within one hundred and eighty (180) days following the issuance of all permits required for such restoration, then either Landlord or Tenant may terminate this Lease by written notice given to the other within five (5) business days following such one hundred and eighty (180) day period.

9.2 **Eminent Domain.** Landlord reserves for itself all rights to any damages or awards with respect to the Premises and the leasehold estate hereby created by reason of any exercise of the right of eminent domain, or by reason of anything lawfully done in pursuance of any public or other authority; and by way of confirmation Tenant grants and assigns to Landlord all Tenant's rights to such damages so reserved, except as otherwise provided herein. Tenant reserves all rights to any damages or awards relating to its trade fixtures, equipment, personal property, exterior signs and relocation costs. Tenant covenants to execute and deliver any instruments confirming such assignment as Landlord may from time to time reasonably request provided, however, that Tenant shall be entitled to make a separate claim for, an amount equal to (a) the unamortized value of any of Tenant's leasehold improvements so condemned or taken, amortized over the useful life thereof; (b) the value of Tenant's fixtures and articles of personal property; and (c) Tenant's moving or relocation expenses. If all the Premises are taken by eminent domain, this Lease shall terminate when Tenant is required to vacate the Premises or such earlier date as Tenant is required to begin the payments of rent to the taking authority. If a partial taking by eminent domain results in so much of the Premises, Building or parking area being taken as to render the Premises or a material portion thereof unsuitable for Tenant's continued use and occupancy, as determined by Tenant in its reasonable discretion (provided, however, that if Landlord in good faith disagrees with Tenant's determination then such matter shall be settled by mandatory arbitration pursuant to the Arbitration Rules for the Real Estate Industry, as promulgated by the American Arbitration Association), Tenant may elect to terminate this Lease as of the date when Tenant is required to vacate the portion of the Premises so taken, by written notice to the other given not more than sixty (60) days after the date on which Tenant or Landlord, as the case may be, receives notice of the taking (but such 60 days shall be tolled in the event of any such arbitration). If a partial taking by eminent domain does not result in such portion of the Premises as aforesaid being taken, then this Lease shall not be terminated or otherwise affected by any exercise of the right of eminent domain. Whenever any portion of the Premises shall be taken by any exercise of the right of eminent domain, and if this Lease shall not be terminated in accordance with the provisions of this Section 9.2, Landlord shall, at its expense, proceeding with all reasonable dispatch do such work as may be required to restore the Premises or what remains thereof (not including Tenant's trade fixtures, business equipment and furniture) as nearly as may be to the condition they were in immediately prior to such taking, and Tenant shall at its expense, proceeding with all reasonable dispatch, provided sufficient condemnation proceeds are available therefor (or, if not, provided that Tenant provides additional funds needed above the amount of the condemnation proceeds available), do such work to its trade fixtures, business equipment and furniture, as may be required. A just proportion of the Rent

payable hereunder, according to the nature and extent of the taking shall be abated from the time Tenant is required to vacate that portion of the Premises or parking area taken or is denied access thereto. If the Premises have not been restored to a condition substantially suitable for their intended purpose within one hundred eighty (180) days of the issuance of all permits required for such restoration, Tenant may elect to terminate this Lease by written notice to Landlord sent within thirty (30) days following such one hundred eighty (180) day period.

#### **ARTICLE 10** **DEFAULTS BY TENANT AND REMEDIES**

10.1 **Tenant's Default.** Each of the following shall be an event of default ("**Event of Default**") hereunder: (A) if Tenant shall fail to pay any installment of Base Rent, Additional Rent or any other payment due under this Lease within five (5) days after notice of delinquency (provided, however, that such notice need not be given any more frequently than twice in any consecutive twelve month period); (B) if Tenant or any guarantor or surety of Tenant's obligations hereunder shall (i) make a general assignment for the benefit of creditors; (ii) commence any proceeding for relief, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts or seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or of any substantial part of its property; (iii) become the subject of any such proceeding which is not dismissed within ninety (90) days after its filing or entry; or (iv) die or suffer a legal disability (if Tenant, guarantor or surety is an individual) or be dissolved or otherwise fail to maintain its legal existence (if Tenant, guarantor or surety is a corporation, partnership or other entity); (C) Tenant shall fail to discharge or bond over any lien placed upon the Premises in violation of this Lease within thirty (30) days after Tenant receives notice that any such lien or encumbrance is filed against the Premises; and (D) if Tenant shall fail to comply with any provision of this Lease, other than those specifically referred to hereinabove and, except as otherwise expressly provided therein, such default shall continue for more than thirty (30) days after Landlord shall have given Tenant written notice of such default, or such longer period if such default cannot be reasonably cured within such thirty (30) day period, provided that Tenant diligently commences the cure within the thirty (30) day period and diligently prosecutes such cure to completion. Upon the occurrence of an Event of Default, defined as aforesaid, then in any such case, notwithstanding any waiver or other indulgence of any prior default, Landlord may terminate this Lease by written notice to Tenant sent at any time after the applicable cure period. Such termination shall take effect on the later of (i) the last day of the month in which Tenant receives the notice, or (ii) twenty-one (21) days after Tenant receives the notice, and shall be without prejudice to any remedy Landlord might otherwise have for any prior breach of covenant.

10.2 **Landlord's Election.** Upon each occurrence of an Event of Default and so long as such Event of Default shall be continuing, Landlord may at any time after the applicable cure period, at its election by written notice to Tenant: (i) terminate this Lease or Tenant's right of possession, but Tenant shall remain liable as hereinafter provided; and/or (ii) pursue any remedies provided for under this Lease or at law or in equity. Upon the termination of this Lease or termination of Tenant's right of possession, it shall be lawful for Landlord, without formal demand or notice of any kind, to re-enter the Premises by summary dispossession proceedings or any other action or proceeding authorized by law and to remove Tenant and all persons and property there from. If Landlord re-enters the Premises, Landlord shall have the right to keep in place and use, or remove and store all of the fixtures, equipment and other property of Tenant left at the Premises or elsewhere at the Property. If Landlord terminates this Lease or terminates Tenant's right of possession, Landlord may recover from Tenant the sum of (i) all Base Rent, Additional Rent and all other amounts accrued hereunder to the date of such termination, (ii) the costs set forth in **Section 10.3** below, and (iii) an amount equal to (A) the Base Rent and Additional Rent which would have been payable by Tenant under this Lease had this Lease not been so terminated (or had Tenant's right of possession not been terminated) for the period commencing after said termination and ending on the last day of the Lease Term with such amounts becoming due and payable by Tenant on such dates as Base Rent would otherwise become due and payable hereunder, less (B) the net rents received by Landlord from re-letting the Premises in accordance with **Section 10.5** below (or any portion(s) thereof) for the period commencing after said termination and ending on the last day of the Lease Term, such net rents to be determined by first deducting from the gross rents received by Landlord from such re-letting the unrecovered expenses incurred or paid by Landlord in connection with said termination and in re-entering the Premises and in securing possession thereof, as well as the actual unrecovered expenses of re-letting (including, without limitation, altering and preparing the Premises for new tenants and any broker's commission as determined pursuant to **Section 10.3** below). Subject to the provisions of **Section 10.4** below, any such re-letting may be for a shorter or longer period than the remaining Lease Term, and in no event shall



Tenant be entitled to receive any excess of such net rents over the Base Rent payable by Tenant to Landlord under this Lease. Even though Tenant has breached this Lease and abandoned the Premises, this Lease shall continue in effect for so long as Landlord does not terminate Tenant's right to possession, and Landlord may enforce all its rights and remedies under this Lease, including the right to recover Base Rent and Additional Rent as it becomes due. Any such payments due Landlord shall be made on the dates that Base Rent or such Additional Rent would otherwise come due under this Lease, and Tenant agrees that Landlord may file suit to recover any sums falling due from time to time. Notwithstanding any such re-letting without termination, Landlord may at any time thereafter elect in writing to terminate this Lease for such previous breach.

10.3. Reimbursement of Landlord's Expenses. In the case of termination of this Lease or termination of Tenant's right of possession pursuant to Section 10.2, Tenant shall reimburse Landlord for all actual expenses arising out of such termination, including, without limitation, (i) all costs actually incurred in collecting such amounts due from Tenant under this Lease (including reasonable attorneys' fees actually incurred and the costs of litigation and the like but only if Landlord is successful in its litigation), (ii) all customary and necessary expenses incurred by Landlord in attempting to relet the Premises or parts thereof (including advertisements, brokerage commissions, tenant's allowances, lease inducements, costs of preparing space, and the like), and (iii) all Landlord's other expenditures necessitated by the termination. The reimbursement from Tenant shall be due and payable within thirty (30) days following written notice from Landlord that an expense has been incurred with documentation substantiating such expenses, without regard to whether the expense was incurred before or after the termination.

10.4. Termination of Right of Possession. Even though Tenant has breached this Lease and abandoned the Premises, Landlord may enforce all its rights and remedies under this Lease, including the right to recover Base Rent and Additional Rent as it becomes due. Any such payments due Landlord shall be made on the dates that Base Rent and Additional Rent would otherwise come due under this Lease, and Tenant agrees that Landlord may file suit to recover any sums falling due from time to time. Notwithstanding any such abandonment, Landlord may at any time thereafter elect in writing to terminate this Lease for such previous breach.

10.5. Mitigation. Landlord shall use commercially reasonable efforts to relet the Premises which efforts shall be subject to the reasonable requirements of Landlord to lease to high quality tenants and to develop the Premises with an appropriate mix of uses, tenants, and terms of tenancies, and the like and factoring in the location and nature of the Premises. It is agreed that hiring a reputable leasing broker to lease the Premises at market price and cooperating in good faith with such broker and accepting (if presented with the opportunity to accept) a commercially reasonable (in light of all relevant circumstances) offer to lease as described herein shall satisfy the requirement that Landlord use commercially reasonable efforts to relet.

10.6. Claims in Bankruptcy. Nothing herein shall limit or prejudice the right of Landlord to prove and obtain in a proceeding for bankruptcy, insolvency, arrangement or reorganization, by reason of the termination, an amount equal to the maximum allowed by the statute of law in effect at the time when, and governing the proceedings in which, the damages are to be provided, whether or not the amount is greater to, equal to, or less than the amount of the loss or damage which Landlord has suffered.

10.7. Landlord's Right to Cure Defaults. Landlord may, but shall not be obligated to cure, at any time any default by Tenant under this Lease after the applicable notice and cure period (if any) has expired. In curing such defaults, Landlord may enter upon the Premises and take such action thereon as may be necessary to effect such cure. In the case of an emergency threatening serious injury to persons or property, Landlord may cure such default without notice. All costs and expenses incurred by Landlord in curing a default, including reasonable attorneys' fees actually incurred, together with interest thereon at a rate equal to the lesser of (a) eighteen percent (18%) per annum, or (b) the highest lawful rate of interest which Landlord may charge to Tenant without violating any applicable law from the day of payment by Landlord shall be paid by Tenant to Landlord on demand. Landlord may use the Security Deposit to effectuate any such cure.

10.8. No Waiver. Exercise by Landlord of any one or more remedies hereunder granted or otherwise available shall not be deemed to be an acceptance of surrender of the Premises and/or a termination of this Lease by Landlord, whether

by agreement or by operation of law, it being understood that such surrender and/or termination can be effected only by the written agreement of Landlord and Tenant. Tenant and Landlord further agree that forbearance or waiver by either party to enforce its rights pursuant to this Lease, or at law or in equity, shall not be a waiver of such party's right to enforce one or more of its rights in connection with any subsequent default. A receipt by Landlord of rent with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by Landlord of any provision of this Lease shall be deemed to have been made unless expressed in writing and signed by Landlord. No payment by Tenant, or acceptance by Landlord, of a lesser amount than shall be due from Tenant to Landlord shall be treated otherwise than as a payment on account of the earliest installment of any payment due from Tenant under the provisions hereof. The acceptance by Landlord of a check for a lesser amount with an endorsement or statement thereon, or upon any letter accompanying such check, that such lesser amount is payment in full, shall be given no effect, and Landlord may accept such check without prejudice to any other rights or remedies which Landlord may have against Tenant.

10.9 Default Interest. If any payment of Base Rent, Additional Rent or any other payment payable hereunder by Tenant to Landlord shall be overdue for a period of more than thirty (30) days after such failure to pay became an Event of Default, Landlord may impose, at its election, interest on the overdue amount from the thirty first (31<sup>st</sup>) day after the date such Event of Default occurred until the date paid at a rate equal to the lesser of (a) fourteen percent (14%) per annum, or (b) the highest lawful rate of interest which Landlord may charge to Tenant without violating any applicable law. Such interest shall constitute Additional Rent payable hereunder.

## **ARTICLE 11** **ASSIGNMENT AND SUBLETTING**

11.1 Prohibition. Tenant covenants and agrees that neither this Lease nor the term and estate hereby granted, nor any interest herein or therein, will be assigned, mortgaged, pledged, encumbered or otherwise transferred, and that neither the Premises, nor any part thereof will be encumbered in any manner by reason of any act or omission on the part of Tenant, or used or occupied, by anyone other than Tenant, or for any use or purpose other than as stated herein, or be sublet, without the prior written consent of Landlord in each and every case, which consent shall not be unreasonably withheld, delayed or conditioned. Not in limitation of the foregoing, Tenant's request for Landlord's consent to subletting or assignment of the entire Premises shall be submitted in writing no later than sixty (60) days in advance of the proposed effective date of such proposed assignment or sublease, and Tenant's request for Landlord's consent to subletting or assignment of any part of the Premises shall be submitted in writing no later than thirty (30) days in advance of the proposed effective date of such proposed assignment or sublease, which request shall be accompanied by the following information (the "Required Information"): (i) the name, current address and business of the proposed assignee or subtenant; (ii) the precise square footage and location of the portion of the Premises proposed to be so subleased or assigned; (iii) the effective date and term of the proposed assignment or subletting; and (iv) the rent and other consideration to be paid to Tenant by such proposed assignee or subtenant. Tenant also shall promptly supply Landlord with such financial statements and other information as Landlord may request, prepared in accordance with generally accepted accounting principles, not more than ninety (90) days old when delivered to Landlord, indicating the net worth, liquidity and credit worthiness of the proposed assignee or subtenant in order to permit Landlord to evaluate the proposed assignment or sublease. Tenant agrees to reimburse Landlord for reasonable legal fees and any other reasonable expenses and costs incurred by Landlord in connection with any proposed assignment or subletting.

11.2. Conditions to Consent. Notwithstanding anything to the contrary contained herein, it shall not be unreasonable for Landlord to withhold its consent to any proposed assignment or sublease if (i) Tenant proposes to assign this Lease or sublease the Premises or any portion thereof to any person or entity with whom Landlord is then negotiating for the rental of other space in the Building or who is a tenant in the Building or any other building owned by Landlord or any affiliate of Landlord; or (ii) the net worth of any such proposed assignee or subtenant is less than the proportionate net worth of Tenant on the date hereof corresponding to the proportionate amount of the square footage of the Premises proposed to be sublet; or (iii) the proposed use is not limited to the Permitted Uses; or (iv) there are then two (2) or more leases or subleases in effect with respect to the Premises (including this Lease); or (v) the proposed sublease is for a portion of the Premises of less than 5% of the rentable square feet; or (vi) any rent payable by Tenant hereunder is so-called "percentage rent" (provided, however, that it is hereby agreed and acknowledged that in no event shall Landlord's

right to withhold consent be limited to the basis set forth in clauses (i) through (vi) above). Landlord's consent shall be granted only if the assignee or subtenant shall promptly execute, acknowledge, and deliver to Landlord an agreement in form and substance satisfactory to Landlord whereby the assignee or subtenant shall agree to be bound by and upon the covenants, agreements, terms, provisions and conditions set forth in this Lease other than the payment of Rent hereunder.

11.3 Excess Rents. If Tenant shall sublet the Premises, having first obtained Landlord's consent, at a rental in excess of the rent and additional rent due and payable by Tenant under the provisions of this Lease, fifty percent (50%) of such excess Rent and Additional Rent net of Tenant's commercially reasonable and necessary expenses related to the sublease shall be paid by the Tenant to the Landlord, it being agreed, however, that Landlord shall not be responsible for any deficiency if Tenant shall sublet the Premises at a rental less than that provided for herein.

11.4 Assignment or Sublease to an Affiliate. Notwithstanding anything to the contrary contained herein, Tenant shall have the right to assign this Lease or sublet the Premises or any part thereof without the prior consent of Landlord to either (x) an entity into or with which Tenant is merged or consolidated, or to which all or substantially all of Tenant's assets are transferred, or (y) any entity which controls or is controlled by Tenant or is under common control with Tenant ("Affiliate"), provided that in any such event (i) if the transfer is an assignment that takes place in the context of a merger or consolidation or purchase of substantially all the assets of Tenant then provided that the successor to Tenant has a net worth, computed in accordance with generally accepted accounting principles consistently applied, at least equal to the net worth of Tenant herein named on the date of this Lease, and (ii) if the transfer takes place in any other context then provided that the successor to Tenant has a net worth, computed in accordance with generally accepted accounting principles consistently applied, at least equal to the net worth of Tenant herein named on the date of such transfer; (iii) proof satisfactory to Landlord of such net worth shall have been delivered to Landlord at least ten (10) days prior to the effective date of any such transaction, and (iv) the assignee agrees directly with Landlord, by written instrument in form satisfactory to Landlord in its reasonable discretion, to be bound by all the obligations of the "Tenant" hereunder, including without limitation this Article 11.

11.5 No Waiver; Tenant to Remain Liable. If this Lease is assigned, or if the Premises or any part thereof is sublet or occupied by anybody other than Tenant, Landlord may, after default by Tenant, collect Rent and/or Additional Rent from the assignee, subtenant or occupant, and apply the net amount collected to the Rent and/or Additional Rent herein reserved, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of this covenant, or the acceptance of the assignee, subtenant or occupant as a tenant, or a release of Tenant from the further performance by Tenant of covenants on the part of Tenant herein contained. The consent by Landlord to an assignment or subletting shall not in any way be construed to relieve Tenant from obtaining the express consent in writing of Landlord to any further assignment or subletting. No assignment, subletting or use of the Premises shall affect the Permitted Use hereunder. Notwithstanding any permitted assignment or subletting, Tenant shall at all times remain directly, primarily and fully responsible and liable for the payment of all sums payable hereunder and for compliance with all the obligations of Tenant hereunder.

## ARTICLE 12 NOTICES

All notices, consents, approvals, or other communication required by the provisions of this Lease to be given to Landlord or Tenant shall be in writing and shall be hand delivered or given by registered or certified mail or by Federal Express or other recognized overnight courier, addressed to the address of the party set forth in Section 1.1 hereof or to such other address as the party shall have last designated by notice with a copy, in the case of Landlord, to Schmitt & Dillon, 233 Main Street, Lancaster, MA 01523, Attn: Carl F. Schmitt, Esq.. The customary receipt shall be conclusive evidence of compliance with this Article 12. Notice shall be deemed given on the earlier of the date of actual receipt, or the third (3<sup>rd</sup>) business day following the date when deposited in the U.S. mail or on the first (1<sup>st</sup>) business day following the date when deposited with such courier, postage paid.

## ARTICLE 13 NOTICE OF LEASE

Tenant agrees that it will not record or register this Lease or any notice of lease.

**ARTICLE 14**  
**APPLICABLE LAW, SEVERABILITY, CONSTRUCTION**

This Lease shall be governed by and construed in accordance with the laws of the state in which the Property is located and, if any provisions of this Lease shall to any extent be invalid, the remainder of this Lease, and the application of such provisions in other circumstances, shall not be affected thereby. This Lease may be amended only by an instrument in writing executed by Landlord and Tenant. The titles of the several Articles and Sections contained herein are for convenience only and shall not be considered in construing this Lease.

**ARTICLE 15**  
**SUCCESSORS AND ASSIGNS, ETC.**

15.1 **Covenants Run With The Land.** It is understood and agreed that the covenants and agreements of the parties hereto shall run with the land and all covenants or agreements of Landlord, expressed or implied, shall be binding upon whoever is owner at the particular time except in respect of any breach or breaches thereof committed during Landlord's seisin and ownership of the Premises. No trustee, beneficiary, partner, member, manager, agent or employee of Landlord (or of any mortgagee or any, ground or improvements lessor) shall ever be personally or individually liable; nor shall it or they ever be answerable or liable in any equitable judicial proceeding or order beyond the extent of their interest in the Premises. Reference in this Lease to "Landlord" or to "Tenant" and all expressions referring thereto, shall mean the person or persons, natural or corporate, named herein as Landlord or as Tenant, as the case may be, and the heirs, executors, administrators, successors and assigns of such person or persons, and those claiming by, through or under them or any of them, unless repugnant to the context. If Tenant is a partnership or a firm of several persons, natural or corporate, the obligations of each person executing this Lease as Tenant shall be joint and several. Any person who signs this Lease for Tenant or for Landlord in a representative capacity personally warrants and represents that he or she is duly authorized to do so.

15.2 **Limitation on Landlord's Liability.** It is further understood and agreed that Tenant shall look solely to the estate and property of Landlord in the Premises or the proceeds thereof for the satisfaction of Tenant's remedies for the collection of a judgment (or other judicial process) requiring the payment of money by Landlord in the event of any default or breach by Landlord with respect to any of the terms, covenants and conditions of this Lease to be observed or performed by Landlord and any other obligations of Landlord created by or under this Lease, and no other property or assets of Landlord or of its partners, beneficiaries, co-tenants, shareholders or principals (as the case may be) shall be subject to levy, execution or other enforcement procedures for the satisfaction of Tenant's remedies.

**ARTICLE 16**  
**LANDLORD'S ACCESS**

Landlord and its authorized agents, employees, subcontractors and representatives shall have the right to enter the Premises at any time during emergencies (Landlord agrees to use reasonable efforts to notify Tenant of any such emergency) and at all reasonable times during the business hours of the Tenant with prior notice for any of the following purposes: (a) to determine whether the Premises are in good condition and whether Tenant is complying with its obligations under this Lease; (b) to do any necessary maintenance and to make such repairs, alterations, improvements or additions in or to the Premises or the Building as Landlord has the right or obligation to perform under this Lease, as Landlord may be required to do or make by law, or as Landlord may from time to time deem necessary or desirable; (c) to exhibit the Premises to prospective tenants during the last twelve (12) months of the Lease Term or during any period while an Event of Default exists hereunder; and (d) to show the Premises to prospective lenders, brokers, agents, buyers or persons interested in an exchange, at any time during the Lease Term. Landlord shall exercise best efforts to minimize

any inconvenience to Tenant, or interference with Tenant's use of the Premises and its business operations, in connection with any repairs or other work done by Landlord under the Lease, or in connection with any rights of access permitted to Landlord under the Lease, and Landlord shall carry out such repairs or other work promptly and diligently. Landlord shall provide Tenant with not less than ten (10) days prior written notice of any intended repairs, except in the case of an emergency, for which no prior notice shall be required.

If, at any time during the last month of the Lease Term, Tenant shall have removed all of Tenant's property from all or any portions(s) of the Premises, Landlord may immediately enter and alter, renovate and decorate the same, and such acts shall have no effect upon Tenant's remaining obligations and covenants under this Lease.

#### **ARTICLE 17** **CONDITION OF PREMISES**

17.1 **Tenant's Work.** If Tenant should desire to perform any additional work to the Premises (i.e., work that is in addition to the Landlord's Work) prior to opening for business, then such additional work shall be performed by Tenant, at its sole cost and expense ("**Tenant's Work**"). Any Tenant's Work shall be performed in accordance with Section 7.5 and Section 7.13 hereof.

#### **ARTICLE 18** **WARRANTY REGARDING BROKER**

Tenant warrants that it was introduced to the Premises by the Landlord, and Landlord and Tenant know of no Broker which was involved in this transaction in any way or is entitled to any brokerage commission or similar fee or charge in connection with this Lease. The Parties agree to indemnify each other and the Broker (if any) against any costs incurred by either (including attorneys' fees) if the foregoing warranty is untrue. Landlord shall pay a commission to the Brokers pursuant to a separate agreement.

#### **ARTICLE 19** **HAZARDOUS MATERIALS**

Neither Landlord nor Tenant shall (either with or without negligence) cause or permit the escape, disposal, release or threat of release of any biologically or chemically active or other Hazardous Materials (as said term is hereafter defined) on, in, upon or under the Premises or the Property. Tenant shall not allow the generation, storage, use or disposal of such Hazardous Materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the generation, storage, use and disposal of such Hazardous Materials, nor allow to be brought into the Premises or the Property any such Hazardous Materials except for use in the ordinary course of Tenant's business, and then only after written notice is given to Landlord of the identity of such Hazardous Materials. Hazardous Materials shall include, without limitation, any material or substance which is (i) petroleum, (ii) asbestos, (iii) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act, 33 U.S.C. ' 1251 et seq. (33 U.S.C. ' 1321) or listed pursuant to ' 307 of the Federal Water Pollution Control Act (33 U.S.C. ' 1317), (iv) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recover Act, 42 U.S.C. 6901 et seq. (42 U.S.C. ' 6903), (v) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. ' 9601 et seq. (42 U.S.C. ' 9601), as amended, or (vi) defined as "oil" or a "hazardous waste", a "hazardous substance", a "hazardous material" or a "toxic material" under any other law, rule or regulation applicable to the Property or any portion thereof. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of Hazardous Materials by Tenant, then the reasonable costs thereof shall be reimbursed by Tenant to Landlord upon demand as additional charges but only if such requirement may be the result of the acts or omissions of Tenant. In addition, Tenant shall execute affidavits, representations and the like, from time to time, at Landlord's request concerning Tenant's best knowledge and belief regarding the presence of Hazardous Materials in the Premises or at the Property or any portion thereof. In all events,

Tenant shall indemnify and save Landlord harmless from any release or threat of release or the presence or existence of any Hazardous Materials in or on the Premises occurring while Tenant is in possession or elsewhere at the Property if caused by Tenant or any person acting under Tenant. The within covenants and indemnity shall survive the expiration or earlier termination of the Lease Term. Landlord expressly reserves the right to enter the Premises to perform regular inspections. Landlord agrees to save Tenant harmless and to indemnify Tenant from and against any liability, injury, loss, claim, damage, settlement, attorneys' fees, fines, penalties, interest or expense which may be incurred by Tenant (including, without, limitation, any cost which Landlord may incur for testing and remediation) arising from any release, presence or existence of Hazardous Materials which existed at the Property prior to Tenant's occupation of the Premises.

Landlord represents and warrants to Tenant that to the actual knowledge of Landlord, without a duty of investigation, there is no asbestos or asbestos-containing materials or other Hazardous Material (except for, possibly, de minimus Hazardous Materials not in violation of applicable law) within the Demised Premises, and, if there shall be any asbestos or asbestos-containing materials (and if the same be friable and a realistic danger to health or safety), or if there be other Hazardous Material (except for de minimus Hazardous Materials not in violation of applicable law) within the Demised Premises, then the same shall be removed or encapsulated by Landlord, at Landlord's expense, prior to the Term Commencement Date. It is expressly understood and agreed by Landlord that there shall be a day for day tolling of the Rent Commencement Date if Tenant shall be unable to obtain a building permit, perform Tenant's Work or use and occupy the Premises for the Permitted Uses as a result of the presence of asbestos or asbestos-containing materials or other Hazardous Material within the Premises. As used herein the phrase "actual knowledge of Landlord" means the actual knowledge of Robert Flynn, who is the representative of Landlord in the best position to be aware of such matters.

Landlord shall be fully and completely liable to Tenant for any and all clean up costs and any and all other charges, fees and penalties (civil and criminal) imposed by any governmental authority with respect to the presence, use, disposal, transportation, generation or sale of Hazardous Materials on or about the Premises by any person or entity (other than Tenant or Tenant's agents, employees, licensees or contractors) prior to the Term Commencement Date. The foregoing indemnification shall survive in perpetuity, notwithstanding the termination or expiration of the Lease.

## **ARTICLE 20 FORCE MAJEURE**

In the event that Landlord or Tenant shall be delayed, hindered in or prevented from the performance of any act required hereunder other than the payment of any Base Rent, Additional Rent or other sums payable hereunder by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, the act, failure to act or default of the other party, war or other reason beyond their control ("Force Majeure"), then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. Force Majeure shall not be construed to excuse Tenant from making any payments due hereunder in a timely manner as set forth in this Lease or to excuse either party from performing any covenant or obligation imposed under this Lease by reason of the financial inability of either party.

## **ARTICLE 21 EXTENSION PERIOD**

21.1 Option to Extend Lease Term. Tenant shall have two (2) options, which said options shall not be severed from this Lease or separately assigned, mortgaged or transferred, at its election, to extend the Lease Term as described in "Option to Extend the Lease Term" in Article 1.1 (each such option period being referred to as an "Extension Period"), commencing, as to the first such option, upon the expiration of the Original Lease Term, and commencing, as to the second such option, upon the expiration of the first Extension Period, provided that (a) Landlord shall receive written notice from Tenant of the exercise of its election at least six (6) months prior to the expiration of the then current Lease Term but no sooner than twelve (12) months prior to the expiration of the then current Lease Term, (b) no Event of

Default shall exist at the time of Landlord's receipt of such notice and at the expiration of the then current Lease Term; and (c) the original Tenant named herein or any transferee pursuant to an assignment permitted hereunder or approved by Landlord is itself occupying at least fifty percent (50%) of the rentable area of the Premises both at the time of giving the notice and at the commencement of the applicable Extension Period. If Landlord shall receive notice of the exercise of the election in the manner and within the time provided aforesaid, the Lease Term shall be extended upon the receipt of the notice without the requirement of any action on the part of Landlord or Tenant, except as may be required in order to determine Base Rent as hereinafter provided. Except for the amount of Base Rent (which is to be determined as hereinafter provided), all the terms, covenants, conditions, provisions and agreements in the Lease contained shall be applicable to the Extension Period, except that there shall be no further options to extend the Lease Term after Tenant's exercise of its second option hereunder, nor shall Landlord be obligated to make or pay for any improvements to the Premises nor pay any inducement payments of any kind or nature. Landlord hereby reserves the right, exercisable by Landlord in its sole discretion, to waive (in writing) any condition precedent set forth in clauses (a), (b) or (c) above. Time is of the essence with respect to the exercise of the options contained herein. Tenant shall not have the right to give any notice exercising such options after the expiration of the applicable time limitation set forth herein, and any notice given after such time limitation purporting to exercise any such option shall be void and of no force or effect.

21.2 Determination of Option Rent. During each Extension Period, the Base Rent payable hereunder for the first twelve (12) month period during the Extension Period shall be the rent rate of the twelve (12) month period immediately prior to such Extension Period increased by the federal Consumer Price Index ("CPI") then in effect, and likewise increased by the then current CPI for each successive year of the Extension Period. In no event, however, shall such annual increase be less than 2% or greater than 4%.

## **ARTICLE 22 SIGNAGE**

Landlord acknowledges that Tenant shall be permitted to erect reasonable signage at the Building and Property as permitted by applicable code, taking into account, however, that the applicable code allows only a certain amount of signage for the entire Building and Property, and Tenant may not use more than its proportion of such allowed signage. Landlord agrees that, subject to the foregoing, Tenant shall have signage and a display system that will include directional signage within the Premises, and in general Tenant may have whatever signage it may desire within the Premises, so long as such signage is not readily visible from the exterior of the building – i.e., so long as such interior signage does not have the practical effect of also being exterior signage (for example, a sign right next to an exterior window that people can easily see from outside the building).

## **ARTICLE 23 INDEMNIFICATION**

Landlord shall indemnify and hold Tenant harmless against any loss, liability, damage, fine or other governmental penalty, cost, or expense (including attorneys' fees and costs of litigation), or any claim therefor, to the extent resulting from: (i) Landlord's noncompliance with or violation of any law, ordinance, or other governmental regulation applicable to Landlord, but only to the extent such noncompliance or violation is not based on the use or occupancy of the Premises by Tenant or on any other act or omission of Tenant or its employees, agents, or contractors; (ii) the use, generation, storage, treatment, or transportation, or the disposal or other release into the environment, of any Hazardous Material by Landlord or its employees, agents, or contractors; or (iii) injury to persons or loss or damage to property to the extent caused by any negligent or wrongful act or omission of Landlord or its employees, agents, and contractors.

Tenant shall indemnify and hold Landlord harmless against any loss, liability, damage, fine or other governmental penalty, cost, or expense (including attorneys' fees and costs of litigation), or any claim therefor, to the extent resulting from: (i) Tenant's noncompliance with or violation of any law, ordinance, or other governmental regulation applicable to Tenant, specifically including but not limited to such laws, ordinances and regulations concerning medical marijuana;

(ii) the use, generation, storage, treatment, or transportation, or the disposal or other release into the environment, of any Hazardous Material by Tenant or its employees, agents, or contractors; or (iii) injury to persons or loss or damage to property to the extent caused by any negligent or wrongful act or omission of Tenant or its employees, agents, and contractors.

## ARTICLE 24 MISCELLANEOUS

24.1 Solar Electricity. Landlord reserves the right to install solar panels on the roof of the entire Building, including the roof over the Premises, or otherwise on the Property. Upon the installation of the solar panels, Landlord will sell to Tenant, and Tenant shall buy, such electricity generated by the panels as may be available. The rate for such electricity will be determined by the Landlord but shall be below the market rate, as mutually agreed by the parties. The parties mutually agree to cooperate and act in a commercially reasonable manner in all aspects of the installation, operation, metering, and sale of the solar panels and the electricity they generate. Should the buyer exercise their option to purchase as identified in Section 24.4, buyer agrees to lease back any areas on the property, roof included, that contain solar panels to seller for consideration of \$1.00 and for a lease term of twenty five years. During the lease term buyer agrees to the electricity purchase rate terms set forth above. Buyer agrees that the lease term commences on the sale date of 30 Worcester Road, Webster, MA.

24.2 Tenant's Security Improvements. Tenant shall be allowed, at its sole cost and expense, to make commercially reasonable security improvements, including but not limited to exterior fencing and securing of doors and penetrations and external cameras.

24.3 Conditional Right to Terminate. Tenant shall have the right to terminate this Lease limited solely to the event that (i) the operation of medical marijuana facilities becomes illegal and (ii) Tenant's medical marijuana license is revoked. This provision shall not apply to a revocation of Tenant's medical marijuana license for cause or outside the context of a state-wide change in the medical marijuana law. In the event that this Lease is terminated pursuant to this provision, Tenant shall pay Landlord all unamortized costs (construction, legal, commissions, and the like) plus one year's Rent.

24.4 Option to Purchase. Tenant has an Option to purchase 30 Worcester Road, Webster, MA ( including all land and structures) at the purchase price set forth below. This option expires after month 48.

Month 25 through month 48	\$4,200,000.00
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Tenant may exercise its option to purchase the Property (the "Purchase Option") by giving written notice (the "Notice of Exercise") to Landlord after the commencement of month 25 but prior to the end of month 48. (The date on which such notice is given is hereinafter referred to as the "Exercise Date."). The option is conditional upon the Tenant not being in default of any provision of this Lease as of the Exercise Date. The purchase price shall be paid at the time of delivery of the deed by certified or bank check or by federal wire transfer. If Tenant gives a Notice of Exercise, the delivery of the deed to the Property, the payment of the purchase price and the closing of this transaction (the "Closing") shall occur at 10:00 A.M. at the offices of on the date designated by Tenant as the date for closing in Tenant's Notice of Exercise (such date is hereinafter referred to as the "Closing Date"). The Closing Date so designated by Tenant in the Notice of Exercise shall be not earlier than thirty (30) days after the Exercise Date and not later than ninety (90) days after the Exercise Date. These terms shall be incorporated into a standard form Purchase and Sale Agreement containing customary



provisions regarding title and adjustments to be executed by the parties within two weeks of the Exercise Date. It is agreed that time is of the essence of this Purchase Option. Any Notice of Exercise shall be accompanied by a non-refundable deposit of \$200,000.00 which shall be applied to the purchase price or retained by the Landlord should the Tenant thereafter fail to purchase the property. Tenant may not assign this Purchase Option except in connection with an assignment of the entire Lease in accordance with the provisions hereof. The Purchase Option shall terminate upon the expiration of the Lease Agreement unless a Notice of Exercise shall have been give prior to such expiration.

**24.5 Right of First Refusal.** If during the Term Landlord receives a bona fide written offer from a person or entity not affiliated with Landlord to purchase the Property which Landlord intends to accept subject to this paragraph (“Offer to Purchase”), Landlord shall give written notice thereof (the “Offer Notice”) to Tenant in the manner provided in the Lease, including a copy of the Offer to Purchase.

Tenant shall have ten (10) days from the date the Offer Notice is given within which to give written notice to Landlord accompanied by the sum of any offer deposit and purchase and sale deposit provided for in the Offer to Purchase (the “Acceptance Notice”) of Tenant’s agreement to purchase the Property on the same terms and conditions as set forth in the Offer to Purchase. If Tenant so gives an Acceptance Notice to Landlord, Landlord shall sell the Property to Tenant and Tenant shall buy said Property from Landlord on such terms and conditions. The closing on such purchase and sale shall be at the Worcester Registry of Deeds at 11:00 a.m. on the day that is the later of (i) the closing date specified in the Offer to Purchase, or (ii) sixty (60) days after the date on which Tenant gives the Acceptance Notice to Landlord.

If Tenant does not give an Acceptance Notice to Landlord within said ten (10) day period (or if Tenant by written notice to Landlord earlier waives its right of first refusal, Landlord shall be free, for a period of one hundred eighty (180) days thereafter, to convey the Property to the proposed purchaser in the Offer to Purchase on the terms and conditions set forth in the Offer to Purchase and in the event of such conveyance this Right of First Refusal shall terminate and be of no further force and effect and the Property shall thereafter be free of this Right of First Refusal. If Landlord does not so convey the Property, the Property shall remain subject to this Right of First Refusal and may not thereafter be conveyed, including to the proposed purchaser according to a renewed or subsequent Offer to Purchase, without first being offered to Tenant in the manner provided above.

If Tenant gives an Acceptance Notice in accordance with the provisions of this Right of First Refusal but thereafter defaults in the performance of its obligation so to purchase the Premises, any deposit shall be forfeit to the Landlord and this Right of First Refusal shall terminate and the parties shall have no further rights, obligations, or liabilities hereunder.

If Landlord shall make and record with the Worcester County Registry of Deeds an affidavit stating that (1) Landlord complied with the provisions of this subparagraph by giving written notice to Tenant as to terms of sale and (2) Landlord has not received a written acceptance from Tenant of said terms in accordance with the provisions of this subparagraph, or that Tenant accepted such terms but has failed to complete the same in accordance with said provisions, then such affidavit shall be conclusive evidence of compliance with the requirements of this subparagraph with respect to such conveyance. The provisions of this subparagraph shall not be applied so as to restrict bona fide mortgages or recognized mortgages lending institutions or sales or other proceedings for the foreclosure or otherwise thereon by the mortgage lending institutions or anyone claiming by under or through such mortgage lending institutions. Nor shall the provisions of this subparagraph apply to anyone taking title to the Property by, through or under said mortgage lending institution pursuant to foreclosure, deed in lieu, or exercise of any right or remedy of the lender pursuant to said mortgage.

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EXECUTED as an instrument under seal as of the date first set forth above.

LANDLORD:

Jeffrey M. Dennis,  
Trustee of the KLT Realty Trust

By: *Jeffrey M. Dennis*  
Name: Jeff M. Dennis  
Title: Trustee

TENANT:



Title: CEO

**EXHIBIT A**

**DESCRIPTION OF THE LAND**

The land together with the buildings thereon situated in Webster, Worcester County, Massachusetts, being shown as Lot No. 78-A-11-0 on a plan of land entitled "Plan of Land in Webster, Massachusetts (Worcester County) prepared for Cranston Print Works Company, prepared by John R. Farren, Professional Land Surveyor, dated April 23, 2013" and recorded with the Worcester County Registry of Deeds in Plan Book 900, Page 45, more particularly described in Deed from Cranston Print Works to Jeffrey M. Dennis, as Trustee of the KLT Realty Trust dated April 29, 2013 recorded with the Worcester County Registry of Deeds in Book 50808, Page 386.

