

## LEASE AGREEMENT

**THIS LEASE AGREEMENT** (the "Lease"), made this 3<sup>rd</sup> day of DECEMBER 2008 (the "Effective Date"), by and between The City of Mason, Ohio (hereinafter called "Landlord") and, Bethesda Hospital, Inc., an Ohio Non-Profit Corporation (hereinafter called "Tenant"; Landlord and Tenant individually referred to as a "Party" or collectively referred to as the "Parties").

### **WITNESSETH:**

#### **1. Premises**

Landlord hereby leases and demises unto Tenant, and Tenant hereby takes and leases from Landlord, certain demised premises, to be constructed as shown and outlined on Exhibit A, attached hereto and incorporated herein (hereinafter called the "Premises"), consisting of approximately thirty thousand (30,000) square feet, which shall be subject to final determination under Section 4(f) for all purposes of this Lease including Base Rent, Taxes and Operating Costs, located as a separate and distinct expansion located adjacent to the existing building known as the Mason Community Center located at 6050 Mason-Montgomery Road, Mason, OH 45040 (the "Building"), Premises and Building (being collectively known as the "Facilities") being located on a site (hereinafter "Site") with other structures occupied and used variously by the City of Mason, Mason City School District and others. Tenant does not assume any obligations of the Landlord to the Mason City School District or others under any existing or future agreement among those parties.

#### **2. Term**

This Lease shall have a term of twenty (20) Lease Years, as hereinafter defined (the "Original Term"). The Original Term shall commence (hereafter, the "Lease Commencement Date") on the first (1st) day following the certification by Landlord's architect of record for this project that the Premises has been substantially completed in accordance with the approved Construction Documents, and City of Mason Building Department granting a temporary or final certificate of occupancy for the Premises unless it is not obtainable due to additional work being performed by Tenant or other causes attributable to Tenant. Base Rent, Taxes, Operating Expenses and other charges delineated herein shall commence upon the Lease Commencement Date.

- (a) Option to Renew Lease: Provided Tenant is not in material default of any of the provisions hereof including all financial and other obligations pursuant to this Lease beyond any applicable notice and cure period at the time of giving any renewal notice, Tenant shall have options to renew this lease for up to three (3) additional terms of five (5) lease years each (each a "Renewal Term"), under the same terms and conditions with Base Rent for the Renewal Term as listed in Section 7. Tenant must provide written notice to Landlord of its intent to renew at least one hundred eighty (180) days prior to the current term's expiration in order to exercise any option. The "Lease Term" shall be the Original Term together with any applicable Renewal Term(s).

### **3. Definition of "Lease Year"**

For purposes of this Lease, the term "Lease Year" shall mean, for the first (1st) such Lease Year, the period beginning on the Lease Commencement Date and ending at the end of the twelfth (12th) full calendar month to elapse therefrom, and thereafter shall mean each successive period of twelve (12) consecutive calendar months during the Lease Term and any extensions thereof. If the Lease Commencement Date occurs on a date other than the first (1st) day of a calendar month, then the first (1st) Lease Year shall include the initial partial month and twelve full calendar months. Upon the Lease Commencement Date, Landlord and Tenant shall execute a Lease Commencement Date Agreement memorializing the terms of this paragraph. If the first month is a partial month, Base Rent, Taxes, Operating Expenses and other charges delineated herein running from the Lease Commencement Date until the last day of the same calendar month shall be prorated and such installment to be payable by not later than the fifth (5th) day after the Lease Commencement Date.

### **4. Improvements to the Premises; Condition of the Premises**

- (a) Design of Premises. Landlord and Tenant shall work diligently and cooperatively with Landlord's architect of record for the Building, which was selected with Tenant's approval, to arrive at a final design for the Premises. Said scope of design shall include areas of Site affected by construction of the Premises, the shell and core of the Premises and the interior improvements thereto. Said scope shall not include trade fixtures, furnishings or movable equipment (FF&E), except that mechanical scope of work shall include necessary MEP work to functionally support eventual installation of FF&E by Tenant. Upon mutual agreement of a final site plan, it

shall be attached hereto as Exhibit A. The Parties shall use commercially reasonable efforts to complete an agreed design reflected in the Construction Documents (as defined in subsection (c)) by April 16, 2009. With respect to the exterior shell thereof, the Parties agree that the Premises shall be designed using the same type of building materials as the existing Building, and that interior improvements shall be of a cost and type customarily associated with medical offices and facilities subject to fair market rent providing services comparable to those permitted hereunder. Landlord, through the appropriate authorized agent, shall issue construction cost estimates at appropriate stages of development of the Construction Documents, including a final estimate based on complete Construction Documents.

- (b) Landlord's Work. Landlord, at its expense, shall cause to be completed the Premises as set forth in the Construction Documents (hereinafter, the "Landlord's Work"). The scope and cost of Landlord's Work shall not include purchase of Tenant's trade fixtures, medical equipment or the associated installation expenses. Landlord shall direct its constructor of Landlord's Work to grant Tenant and Tenant's sub-contractors reasonable and timely access for the installation of Tenant's equipment or components by Tenant, subject to the reasonable safety rules, notification requirements and job site administration of Landlord's constructor. All costs to complete the work of the Construction Documents shall be borne by Landlord, said "Total Cost" being the basis for the calculation of rent to be paid by Tenant, as subsequently set forth herein. Landlord agrees to take competitive bids from qualified contractors for construction of Landlord's Work and otherwise to take all reasonable measures to minimize the Total Cost. Total Cost shall be based on the fixed price bid by the contractor and Tenant shall not be liable for any additional cost arising from voluntary additional payments made by Landlord to the contractor, hazardous materials or other defects in the Site, or Landlord's breach of its obligations to the contractor, except as provided in Section 4(d) regarding Change Orders.
- (c) Commencement of Improvements. Prior to the commencement of Landlord's Work, Landlord and Tenant shall sign, date and exchange copies of the Plans, specifications, construction schedules, and itemized budgets (including calculation of maximum Total Cost, based on the GMP under subsection (h) below, for purposes of direct capitalization rent calculation),

payment schedules, detailing said construction and any separate costs thereof liable to Tenant and Landlord, each document, once agreed, also bearing the stamp (or label), "FINAL/ FOR CONSTRUCTION." Said Plans, specifications, schedules, and budgets (hereinafter, the "Construction Documents") are a part hereof by reference and shall set forth the entire scope of work to be completed in the Premises by Landlord. Tenant acknowledges that Landlord will not undertake the Landlord's Work nor bear any liability whatsoever for not commencing construction until the Construction Documents are signed, stamped and exchanged. The Parties shall work cooperatively using commercially reasonable means to achieve a completion and occupancy of the Premises by June 17, 2010. If no agreement is reached on final Construction Documents, and Landlord submits to Tenant proposed Construction Documents acceptable to Landlord, Tenant shall give notice to Landlord either (i) waiving any objection to the Construction Documents proposed by Landlord, or (ii) terminating this Lease. In the event that Tenant chooses to terminate the Lease, Tenant shall remain responsible to reimburse Landlord for its pro rata share of all costs associated with conceptual architectural work and all other design work as described in Section 4 of this Lease, but in no event shall Tenant be required to reimburse more than forty percent (40%) of all design work.

- (d) Change Orders. Any change, addition or modification to the completed Construction Documents which will result in an increase in the cost of Landlord's Work shall be known as a "Change Order". Any Change Order initiated or caused by Tenant shall be known as a Tenant Change Order. Any Change Order initiated or caused by Landlord shall be known as a Landlord Change Order. Any Change Order initiated or caused by any Contractor due to unforeseen circumstances of the project shall be known as a Project Change Order. Landlord's consent to any Tenant Change Order within the general scope of the project shall not be unreasonably withheld. Landlord shall provide to Tenant a written estimate of the cost of each and any Tenant Change Order, and the revised Total Cost for the Landlord's Work. Landlord's estimate of any Tenant Change Order shall include an estimate of any delay in the construction schedule caused by the change, and set forth a date by which Tenant must execute the change order, or otherwise direct Landlord, in order to prevent additional costs to Tenant or delays in the construction schedule. Landlord shall promptly notify Tenant of

any other matter that shall cause a delay in the construction schedule. Landlord and its constructor shall use reasonable efforts to meet the construction schedule set forth in the Contract Documents, however, Landlord shall not be liable for the schedule impact of any delay caused by Tenant or any delay outside its control or the reasonable control of its constructor.

- (e) Payment of Change Orders. Landlord shall be solely responsible to pay for all Landlord Change Orders. On or before the Lease Commencement Date, the amount of the aggregate of all Tenant Change Orders shall be determined by Landlord. The aggregate of all Tenant Change Orders shall be added to Total Cost for rent calculation purposes. Upon presentation of Project Change Orders, Tenant and Landlord shall promptly meet to discuss cost sharing or allocation alternatives.
- (f) Statement of Pro Rata Share. Prior to the Commencement of the Term of the Lease, Landlord's architect shall perform an as-built calculation of the usable square footage of the Premises and the Building. The resulting square footages shall be combined to form a fraction, the square footage of the Premises being the numerator and the sum of the square footage of the Building *plus* the Premises being the denominator; said fraction then being the Pro Rata Share as subsequently employed herein.
- (g) Allocation of Conceptual Architectural Work. Tenant acknowledges that Landlord will undertake certain conceptual architectural work for the Premises pursuant to a professional services agreement with a design professional to be selected by Landlord, subject to Tenant's approval. The costs associated with such conceptual architectural work shall be included in the Total Cost of the project for purposes of rent calculation. Under the same or a different professional services agreement, Landlord may secure services related to a separate expansion of the Building that is being contemplated by Landlord; all expenses related to such separate expansion are Landlord's responsibility and are not included in the Total Cost.
- (h) Guaranteed Maximum Price. Landlord shall engage a Construction Manager for the project that will provide a Guaranteed Maximum Price (GMP) for the project prior to bids being solicited. Tenant shall notify Landlord in writing of its acceptance of the GMP as provided by the Construction Manager. If

Tenant does not accept the GMP, the parties will promptly meet to discuss alternatives for reducing the cost of the project, which may include redesign or other measures that the parties may agree upon. If no agreement is reached on further steps to be taken, Tenant shall give notice to Landlord either (i) waiving any objection to the GMP, or (ii) terminating this Lease. In the event that Tenant chooses to terminate the Lease, Tenant shall remain responsible to reimburse Landlord for its pro rata share of all costs associated with conceptual architectural work and all other design work as described in Section 4 of this Lease, but in no event shall Tenant be required to reimburse more than forty percent (40%) of all design work.

## **5. Condition of the Premises**

Landlord shall obtain from its contractor and extend to Tenant a warranty of construction in a good and workmanlike manner in conformance with Construction Documents, and at least a one-year correction period such as that provided in AIA forms and other industry-standard construction contracts. Subject to the completion of Landlord's Work and the foregoing warranties, Tenant accepts the Premises in "AS IS, WHERE IS" condition. Tenant shall not make or allow to be made any alterations, additions or improvements to or of the Premises or any part thereof, other than interior paint, carpet, and other redecorating, without first obtaining the written consent of Landlord, which consent shall not be unreasonably withheld. Any alterations, additions or improvements to or of said Premises, including, but not limited to the installation of equipment permanently affixed to the Premises, but excepting movable furniture and trade fixtures, shall at once become a part of the Building and belong to Landlord and shall be surrendered with the Premises unless subsequently removed or replaced in the normal course of operations of the Premises. In the event Landlord consents to the making of any alterations, additions or improvements to the Premises by Tenant, the same shall be made by Tenant at Tenant's sole cost and expense, in a good and workmanlike manner in accordance with applicable laws (including laws relating to the use of hazardous material such as asbestos-containing materials) and diligently completed. If Tenant desires to make any unusual alterations, additions or improvements which, in Landlord's reasonable opinion, would materially detract from the value of the Premises upon surrender to Landlord, then Landlord may designate such alterations, additions or improvements, at the time of granting its consent to the making thereof, as mandatory to remove, and upon the expiration or sooner termination of the Lease Term, at Tenant's sole cost and expense forthwith and with all due diligence, remove any such mandatory to remove alterations, additions or improvements made by Tenant, 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 caused by such removal.

## **6. Use**

The Premises shall be used as a medical and general office and purposes associated therewith and for provision of the services set forth in **Exhibit B** hereof and as otherwise agreed to by the parties pursuant to the terms of a separate Operating Agreement. Tenant covenants and agrees that all times during the term hereof the Premises shall be used only for the said purposes. Tenant shall abide by the general City of Mason ordinances to the extent applicable to the use of the Premises. Nothing herein constitutes consent by Tenant to adoption of unreasonable restrictions or terms inconsistent with this Lease. Tenant may adopt such reasonable hours of operation as it deems appropriate from time to time. It is understood that Tenant does not currently contemplate any 24-hour operations, and might adopt such hours only if they become typical in the future for the types of services offered by Tenant and are approved by Landlord, which approval shall not be unreasonably withheld. Landlord agrees not to operate, and not to permit any tenant or other party claiming under Landlord to operate, any other medical service on the Site which competes with the medical services then offered by Tenant (or parties claiming under Tenant) in the Premises; however, this restriction does not prevent Landlord from continuing to operate a general fitness center in the Building (including associated first aid facilities), even if Tenant operates fitness equipment in the Premises for general medical purposes.

## **7. Base Rent**

Landlord reserves, and Tenant covenants to pay to Landlord, without right of offset and without prior demand therefor being made as rent for the Premises, and for the rights herein granted Tenant, a minimum rental (hereinafter referred to as "Base Rent"). The Base Rent of Tenant shall consist of two components: (a) Minimum Rent, which is Triple Net Base Rent calculated using a Direct Capitalization of Cost, plus (b) Additional Rent, of \$115,000 annually as consideration for the value of the land upon which the Premises are constructed and related rights of access and use of improvements shared in common with others also having buildings upon the Site.

The following paragraph sets forth the method of calculation of the Annual Triple Net (Base) Rent obligations of Tenant and the amount(s) due and payable in equal monthly installments, on the first day of every calendar month (or a portion thereof for a fraction of a month) beginning on the Lease Commencement Date and throughout the term hereof:

*Annual triple net rent of Tenant shall be calculated by multiplying Total Cost by a direct capitalization rate of 9%. For example, if Total Cost (including all "hard" construction costs and the specific "soft" costs permitted by this Lease including A&E, and permits) were to be six million dollars (\$6,000,000) the annual triple net Base Rent of Tenant would be calculated as in the following formula:*

$$\text{\$6,000,000} \times .09 = \text{\$540,000}.$$

*The product of Total Cost times the direct capitalization rate shall yield the annual triple net base rental, to then be divided by twelve (12) to determine the monthly installment amount. This monthly rental amount shall remain constant during the entire Original Term hereof. Calculation of total Base Rent would then be:*

$$\text{\$540,000 (using the above example)} + \text{\$115,000} = \text{\$655,000 per year}$$

$$\text{...divided by 12} = \text{\$54,583.33 per month}.$$

*Except as provided below, the rental amount to be paid by Tenant during each Renewal Term hereof shall be based on the final annual Base Rent payable at the end of the previous term multiplied by 1 plus the one-half of the percentage of increase of the Consumer Price Index-All Urban Consumers (CPI-U, All Items, All Areas, 1982-84=100 or the latest BLS update thereof) during the prior term. For example, if the CPI increases by a total of 50 percent during the 20-year Original Term, then the annual Base Rent for the first Renewal Term shall be the annual Base Rent in effect during the Original Term increased by 25%. If the CPI increases by a total of 14% during the first 5-year Renewal Term, then the annual Base Rent for the second Renewal Term shall be the annual Base Rent in effect during the first Renewal Term increased by 7%. If Tenant exercises its option to renew for the first Renewal Term and Landlord objects to the Base Rent calculated under the preceding CPI formula as not representative, in Landlord's opinion, of fair market rental value at that time, and Landlord so notifies Tenant within 15 days after receipt of Tenant's renewal notice, then the foregoing CPI calculation shall be inapplicable and the Base Rent for the first Renewal Term shall be the fair market value determined according to the following appraisal procedure: Landlord and Tenant shall attempt to agree upon a single appraiser to make the determination. If they are unable to agree within 10 days after Landlord's notice of objection to CPI-based rent, then each of Landlord and Tenant shall appoint an independent appraiser having an*

*MAI (or then-current comparable) designation and those appraisers shall attempt to agree on the fair market value for Base Rent. If they are unable to agree within 30 days after appointment, they shall jointly appoint a third MAI appraiser to make the determination, and the third appraiser shall choose either the amount proposed by Landlord's appointed appraiser or Tenant's appointed appraiser. If the first two appraisers are unable to agree on the identity of the third appraiser, the third appraiser shall be appointed by the American Arbitration Association upon request by either party. In all cases, the fair market Base Rental shall be based on the rental reasonably obtainable in the market from a new tenant and shall not take into account any special value of the property to Tenant based on its previous occupancy. If the fair market Base Rent determined by appraisal exceeds the amount determined under the foregoing CPI formula, then Tenant may rescind its renewal option exercise by giving notice to Landlord within 10 days after Tenant receives the market rental determination. Each party shall be responsible for all charges of its respective appointed appraiser and one-half of the cost of any single or third appraiser.*

## **8. Late Payments**

Tenant hereby acknowledges that late payment by Tenant to Landlord of Rent or any other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, late charges which may be imposed upon Landlord by terms of any mortgage or trust deed covering the Premises. Accordingly, if any installment of Rent or any other sum due from Tenant shall not be received by Landlord's designee within five (5) days after the due date, then Tenant shall pay to Landlord late charges equal to twelve percent (12%) per annum until paid, plus any attorney's fees incurred by Landlord by reason of Tenant's failure to pay rent and/or other charges when due hereunder. The parties hereby agree that such late charge represent fair and reasonable estimates of the cost that Landlord will incur by reason of the late payment by Tenant. Acceptance of such late charges by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder. The aforementioned fees and interest charges shall also apply to any invoice from Landlord for Tenant's cost for Additional Improvements or applicable change orders.

## **9. Security Deposit**

No Security Deposit shall be required as part of the Lease.

## **10. Utilities**

In accordance with the Construction Documents, Landlord is responsible for providing all applicable utility services to and inside the Premises boundaries. Landlord is responsible for maintaining all such lines outside the Premises. If Tenant desires additional services which, at that time, are available in the Building, Landlord agrees to cooperate with Tenant, at Tenant's expense, in extending such services to the Premises. If Tenant desires any services not originally provided, or upgrades of existing services not available in the Building, Landlord agrees to permit Tenant or its service provider to install underground lines across the Site at a location reasonably designated by Landlord. Tenant may use the roof of the Premises for reasonable satellite dishes and other data equipment, to be located in a manner that prevents or minimizes any visibility from the ground. If possible, Tenant shall be responsible to pay directly to the utility companies the cost of all utilities, including but not limited to gas, electricity, water, and telephone used in the Premises. Notwithstanding the foregoing, if the Landlord is unable to obtain separate sub-meters for the utilities used in the Premises, Tenant shall pay its pro rata share of said utilities calculated and payable in the same manner as Taxes and Operating Expenses, whether said utilities are for the Premises or common areas. If an unscheduled interruption to said utilities occurs as a result of the conduct of Landlord, Base Rent shall abate during such interruption. To the extent feasible, Landlord shall coordinate with utility providers to schedule utility interruptions outside of normal business hours.

## **11. Real Estate Taxes**

(a) Should occupancy by Tenant create liability on the part of Landlord for real estate taxes related to the Premises improvements or any part thereof, subject to receipt of funds from Tenant as provided in Section 11(b), Landlord shall pay directly to the taxing authorities the amount of taxes and assessments levied and assessed upon the property, including the land and improvements comprising the Premises and Common Areas (hereinafter "Taxes"). Tenant shall seek, if beneficial or appropriate, an exemption from taxes pertaining to the portion of the Premises occupied by any tax exempt entity comprising Tenant.

(b) In the event that Taxes are applicable to any portion of the Premises

improvements, Tenant shall bear such costs during the Lease Term, providing funds to Landlord in advance of Taxes being due, so that Landlord can make such payment to the taxing authority.

## **12. Expenses and Expense Reimbursement by Tenant**

- (a) Landlord shall pay all operating expenses associated with the Facilities and Site and maintain same in good condition throughout the Lease Term. Such Operating Expenses shall include, but not be limited to: public utilities (not including telecom), general repair and maintenance expenses (not of fitness equipment), cost of maintenance personnel to the extent used to maintain, repair and/or clean the Facilities, repairs to the building envelope (including the roof, caulking, exterior sealers, etc), cost of operating, maintaining or repair heating, ventilating or air conditioning equipment, cost of consumable supplies used in public restroom facilities, lighting supplies and maintenance, any regular and periodic program of painting, plumbing expenses, electrical expenses, and any other ordinary operating cost typically incurred to prudently maintain the interior and mechanical improvements and structures comprising the Facilities.
- (b) Landlord shall perform, and pay all costs associated with maintenance, repair, replacement and cleaning of fitness equipment and other fitness elements (such as swimming pools, showers, locker rooms, pool equipment, basketball courts, etc.) of the Building (hereinafter called "Fitness Expenses") and maintain same in good condition throughout the Original Term of this lease or any Renewal Term thereof. Tenant's liability for any Fitness Expenses shall be subject to mutual agreement of the Parties, the share of any such expense liability of Tenant being determined on the basis of a Utilization Plan jointly agreed year to year by the Parties. During the annual budget process of Landlord, Tenant shall participate to determine the extent of its planned utilization of the Building by its staff based on programming for the coming year. Tenant shall then bear its share of the cost of Fitness Expenses equal to the percentage of its use of the Building (its fitness equipment and elements). Where Tenant's use of an area of the Building is exclusive, the "percentage of use" shall be calculated using the following formula: 
$$\text{Program Hours of Tenant} <\text{DIVIDED BY}> \text{Total Public Hours of Program Area}$$
 Where such use by Tenant is not exclusive, the Parties shall agree on a formula for sharing Fitness Expenses.

(c) Notwithstanding the foregoing, Landlord's liability to pay Operating Expenses of the Facilities may be limited by agreement of the Parties in the following ways:

- i. Tenant may elect (with Landlord's consent, which shall not be unreasonably withheld) to incur and pay directly certain agreed costs of maintaining, repairing and cleaning its Premises to sub-contractors of its employ.
- ii. Tenant may elect (with Landlord's consent, which shall not be unreasonably withheld) to utilize its employees to directly complete certain agreed costs of maintenance, repair and cleaning of its Premises.
- iii. Such Operating Expenses as shall be incurred directly by Tenant shall be called Premises Expenses (being distinguished from Shared Operating Expenses).

(d) "Shared Operating Expenses" shall be defined as any Operating Expense incurred by Landlord to the common benefit of both Building and Premises (explicitly excluding any cost of the Site or Facilities borne by, or that should reasonably be allocated to, the Mason City School District or another third party with occupancy of the Site). Examples of Shared Operating Expenses shall include but not be limited to:

- i. Any expense of Section 12(a) above that is not exclusively for Building and is also not separately paid for by Tenant.
- ii. Utilities for the Facilities not subject to sub-metering or separate, direct payment by Tenant.
- iii. Landscaping services pertaining to the Site (only that portion reasonably allocated to the Facilities).
- iv. Snow removal services pertaining to the Site (only that portion reasonably allocated to the Facilities).
- v. Any joint scope of exterior repair, maintenance and cleaning of the structures comprising the Facilities.

- vi. Repair, maintenance and cleaning of sidewalks, curbs, plazas, signs and roadways interior to the Site (only that portion reasonably allocated to the Facilities).

(e) Notwithstanding any of the foregoing, Shared Operating Expenses shall not include:

- i. depreciation of the Building or Premises or any equipment, fixtures, improvements and facilities used in connection therewith;
- ii. interest on and amortization of debt, other expenses related to incurring debt, and payment of ground rent;
- iii. the cost of leasehold improvements for other Tenants of the Building and any other expense pertaining to the Building that is not for the mutual benefit of the Building and Premises;
- iv. cost of any "tap fees" or any other one-time costs incurred in securing utility services for the Facilities, except that any such costs related solely to the Premises may be included in Total Cost for rent calculation purposes;
- v. fees and expenses (including legal and brokerage fees, advertising, marketing and promotional costs) paid by Landlord in connection with procuring tenants or leasing any space within the Facilities; fees and expenses for procuring new tenants for the Building;
- vi. legal fees and litigation costs, including but not limited to costs incurred by Landlord relating to any violation by Landlord or any other tenant of the terms and conditions of any lease;
- vii. costs specifically charged to other tenants or paid by insurance or any other third-party source;
- viii. expenses or costs incurred by Landlord relating to any violation by Landlord or any other tenant of the terms and conditions of any lease;
- ix. expenses incurred in operating any business or public service which Landlord may operate in the Building, other than general expenses of the Facilities as provided in Section 12(a);

- x. the cost of any work or service performed for any tenant in the Building to a materially greater extent or in a materially more favorable manner than that furnished to Tenant;
- xi. the cost of any repair, improvement or replacement which would be required to be capitalized under generally accepted accounting principles; however, if Landlord is required to make capital improvements to the Premises in order to comply with changes in laws or regulations, the cost of doing so may be added to Total Cost for rent calculation purposes;
- xii. wages, salaries or other compensation paid to any employees at or above the grade of Parks and Recreation Facilities Manager;
- xiii. Landlord's general overhead and administrative expenses;
- xiv. the cost of correcting defects (latent or otherwise) in the construction of the Premises or its equipment, which are the responsibility of the construction contractor under the warranties to be obtained by Landlord under terms of this Lease;
- xv. any expenses incurred by Landlord to accommodate special events, including but not limited to shows, promotions, private events or parties, ceremonies and advertising beyond the normal expenses otherwise attributable solely to Building services, such as lighting and HVAC to such public portions of the Building in normal operations during standard Building hours of operation, unless otherwise agreed to by Tenant as a joint event;
- xvi. any costs in excess of those which are reasonable and customary in the community at the time;
- xvii. any entertainment, dining, or travel expenses of Landlord unless agreed to by Tenant as a joint promotion;
- xviii. any type of utility service which is separately metered to or separately charged or paid by Tenant;
- xix. the cost of any environmental investigation or remediation; and

xx. any item which is included in the Shared Operating Expenses which, but for this provision, would be included twice.

- (f) Tenant covenants and agrees to pay to Landlord, as Expense Reimbursement during the term of this Lease, its Pro Rata Share of any Shared Operating Expenses and its share of any Fitness Expenses. Landlord estimates that Tenant's liability for Expense Reimbursement liability of Tenant is estimated for the first Lease Year to be approximately \$ 256,560, which number shall be for estimation purposes only and shall not bind Landlord in any manner whatsoever. This first year estimate shall be paid by Tenant to Landlord in monthly installments of \$21,380 simultaneously with the payment of Base Rent. An estimate of Expense Reimbursement liability of Tenant for the coming calendar year shall be calculated in advance by Landlord during the term hereof and provided to Tenant in writing by December 1 of each year. Tenant may participate in and assist in the calculation of this estimate. Once Total Cost is determined, the Parties shall complete the form of agreement attached hereto as Exhibit C setting forth the calculation of all forms of rent for Year One (1) of the term hereof. The methods of calculation of all forms of rent and expense reimbursement as contained in Exhibit C shall be binding under this Lease.
- (g) Landlord shall provide, no later than ninety (90) days after the end of the calendar year its statement of actual Shared Operating Expenses and Tenant's share of Fitness Expenses for the prior year. Landlord waives any right to collect additional Shared Operating Expenses if the statement is not provided within that time unless Tenant agrees to an extension of time prior to the expiration of the ninety (90) days. If the sum of Tenant's payments during the prior year shall be less than the actual sum of Tenant's Pro Rata Share of Shared Operating Expenses and Tenant's share of Fitness Expenses, Tenant shall pay any such deficit to Landlord within twenty (20) days of receipt of invoicing by Landlord. Should Tenant have overpaid Landlord based on Landlord's estimate, Landlord shall promptly refund the overpayment to Tenant. If overpayment by Tenant based on Landlord's estimate is adverse to Tenant in an amount equal to or greater than 15%, Landlord shall pay a penalty to Tenant equal to 12% of the adverse amount over 15%.

### **13. Furniture and Fixtures**

Tenant agrees, at its own cost and expense, to furnish the Premises with its furniture and trade fixtures. All furniture and trade fixtures installed in the Premises by Tenant shall remain Tenant's property. Tenant agrees to repair (or to reimburse Landlord for the cost of repairing) any damage to the Premises occasioned by the installation or removal of said trade fixtures.

### **14. Use of Common Areas**

Tenant, its subtenants and their respective customers, employees and invitees shall have the right to use and enjoy, in common with Landlord and other tenants and their customers, employees, and invitees, the parking areas, elevators, hallways, common restrooms, approaches, entrances, exits and roadways and all other areas of the Building and Site intended for use by Landlord, tenants and their customers, employees and invitees (the "Common Areas"), which Landlord agrees to provide for the reasonable operation of the Building and Premises. Landlord covenants that, at all times during the term, it will maintain the Common Areas in a good condition of repair and adequately lighted and paved and secured, and that there will be at least the minimum number of parking spaces sufficient to satisfy governmental requirements, as determined by the applicable Planned Unit Development ("PUD") requirements, at the time of the date of this Lease or any subsequent change of law; provided, however, that even if in excess of code requirements in effect currently or at any time in the future, Landlord agrees to construct and keep available for non-exclusive use by Tenant and its authorized persons as provided in this Section, at all times during this Lease, at least 5 parking spaces per 1,000 feet of usable area in the Premises, in reasonable proximity to the Premises. Landlord further agrees to designate a minimum of sixty (60) spaces with signage indicating that said spaces are for exclusive use of Tenant, its subtenants and their respective customers, employees and invitees during Tenant's normal business hours of 7:00 a.m. through 5:00 p.m., Monday through Friday, with the exact language of the signage to be mutually agreeable to Landlord and Tenant. The general vicinity of said parking spaces is shown on the Site Plan attached hereto as Exhibit A. Anything in this paragraph to the contrary notwithstanding, Landlord expressly reserves the right, from time to time, to construct buildings and/or enlarge existing buildings on or over the Common Areas provided that Tenant's access, parking, utilities and visibility from the public street are not materially impaired.

### **15. Landlord's Obligations, Repairs and Right of Entry**

Landlord agrees to do the following as long as Tenant is not in default of this Lease beyond

any applicable notice and grace period:

- (a) As applicable, maintain and repair the elevator from time to time in accordance with State laws and regulations;
- (b) Landlord shall furnish heat or air conditioning to the Premises during normal business hours on business days from Monday to Friday inclusive and on Saturdays from 8 a.m. until 6 p.m., and if Tenant needs heat or air conditioning during other than these business hours it will be made available at Tenant's cost upon written request; provided, however, that Landlord shall have a reasonable time to maintain and repair the heating and air conditioning system upon notice from Tenant of such work being needed from time to time;
- (c) Pay for a sufficient amount of electricity for normal Common Area uses during regular business hours, and at other times for prudent exterior lighting;
- (d) Cause the Common Areas of the Facilities and the Site on which they are located to be cleaned on a regular basis, and cause the parking lot to be cleaned free of ice and snow on an as-needed basis;
- (e) Cause to be cleaned all exterior portions of the Building and Premises, including exterior windows, to commercially accepted standards; and
- (f) Landlord covenants that it will, with reasonable dispatch after being notified in writing by Tenant of the need thereof, make such repairs or replacement to the Common Areas, outside utility lines exterior of the Premises (including the roof, gutters, downspouts and outside walls, glass and doors), and building systems, including electrical, plumbing, heating, air conditioning, and ventilation systems and equipment not within the Premises, as may be necessary to keep the same in a good condition of repair. Anything in the foregoing to the contrary notwithstanding, Landlord shall have no liability whatsoever for damage or injury to Tenant's property occasioned by its failure to make any such repair (e.g., injury or damage to Tenant's property resulting from leaks caused by a defect in the roof, outside walls, gutters and/or downspouts) unless, within a reasonable time after being notified in writing by Tenant of the need therefor, Landlord shall have failed to make such repair and such failure shall not have been due to any cause beyond Landlord's control, including, without limitation, strikes and/or inability to

obtain materials and/or equipment at reasonable prices, in which case rent shall abate until Landlord completes the repair or restores the interrupted service. Landlord, its agents, employees and contractors, shall have the right, from time to time, with reasonable notice, to enter and use insofar as may be necessary the Premises for the purpose of making any of the aforesaid repairs. Tenant shall not be entitled to any reduction in rent or to any claim for damages by reason of any inconvenience, annoyance, and/or injury to business arising out of any repairs made by Landlord in a reasonable and proper manner pursuant to this paragraph.

#### **16. Tenant's Repairs**

To the extent of Tenant's obligations as determined by the Parties subject to paragraph 12(c) hereof, Tenant covenants that it will, at all times during the term and at its own cost and expense, keep the interior of the Premises (including, without limitation, windows, doors, glass, fixtures, equipment, HVAC equipment located within its leased Premises, light bulbs and fixtures, and all other components or parts of the Premises which Landlord has not expressly agreed to maintain or repair) in a good and safe condition of repair and in good working order (making such renewals and replacements as may be necessary), unless the need therefore is occasioned by fire or other casualty covered by Landlord's insurance policy, in which event such repair and replacement shall be an expense of Landlord to the extent of such coverage.

#### **17. Final Inspection of the Premises**

Final inspection by Landlord will be done prior to Tenant's move out and no utilities will be disconnected until final inspection has been done and documented. Tenant is to arrange such inspection with the City Manager of Landlord prior to Tenant's move out.

#### **18. Tenant's Care of Premises and Common Areas**

Tenant covenants and agrees that it will, at all times during the term hereof, keep the Premises, and the Building to the extent of its use, clean and free from obstruction, rubbish, and dirt, except for items addressed by Landlord's janitorial service. Tenant shall place all trash, rubbish and garbage in a proper closed receptacle and shall not permit its personnel or anyone else under its control to litter or obstruct the Common Areas adjoining the Premises.

## **19. Tenant's Failure to Repair and Remove Debris**

Tenant agrees that if it fails to perform any obligation placed upon him by either paragraph 16 or paragraph 18 of this Lease after reasonable notice and opportunity to cure, Landlord, in addition to other remedies provided by law and/or this Lease, may correct, in Landlord's sole and absolute discretion, the default in a reasonable manner at the cost and expense of Tenant.

## **20. Miscellaneous Covenants of Tenant**

Tenant covenants that: it will comply with all Federal, State and/or municipal laws, ordinances and regulations relating to his business conducted in the Premises; it will be responsible for changing the locks of the Premises upon delivery of possession; it will promptly pay for all electricity, gas, water and other utilities consumed on, and all sewage disposal charges assessed against, the Premises; it will not use the name of the Building for any purpose other than as the address of his business to be conducted in the Premises; it will not use, or permit to be used, the Premises for any illegal or immoral purpose; it will conduct his business in such manner as will be in keeping with the character and reputation of the Building; it will make every effort to work harmoniously with other tenants in the Building; it will comply with all reasonable rules and regulations promulgated from time to time by Landlord for the operation of the Building; it will not, without the prior written consent of Landlord (which shall not be unreasonably withheld), cause or allow any advertising sign to be erected, installed, painted, displayed or maintained on the exterior of the building of which the Premises constitute a part; it will keep all signs installed (with the consent of Landlord) on the exterior of the building of which the Premises constitute a part, freshly painted, in good repair and operating condition at all times; it will not without the prior written consent of Landlord: (i) make any alteration to any structural portion of the Premises, (ii) use or permit to be used any advertising medium or device such as a phonograph, radio or public address system outside the Premises, and (iii) hold a fire, bankruptcy, going-out-of-business or auction sale; and (iv) it will permit Landlord or its representatives (a) to enter the Premises during the last six (6) months of the Lease Term for the purpose of exhibiting the Premises to prospective tenants, and (b) to place a "For Rent" sign in a front show window during such period of time.

## **21. Fire Hazard**

Tenant covenants that, without the prior written consent of Landlord, it will not do anything of an unusually hazardous nature which will increase the rate of fire insurance on the building of which the Premises constitute a part, and that if such consent is given, Tenant will pay

Landlord the amount of the increase in the cost of such insurance, as and when the premiums become due.

## **22. Care of Roof**

Tenant agrees that it will not (directly or by sufferance) place any debris on the roof of the building of which the Premises constitute a part or cut, drive nails into or otherwise mutilate the roof or penetrate roof in anyway without prior consent of Landlord, which shall not be unreasonably withheld, and that it will keep the roof, gutters and downspouts free of all debris caused by his employees, contractors, agents or invitees. The Construction Documents shall make provision for Tenant to pass cables to the roof in case Tenant elects to place satellite dishes or other data equipment there.

## **23. Condition on Termination**

Tenant covenants that it will, upon the expiration or earlier termination of this Lease, (a) deliver up to Landlord, peaceably and quietly, the Premises in the same good condition they are now in or shall hereafter be placed, ordinary wear and tear and damage by casualty within the coverage of Landlord's standard policy and the consequences of any failure by Landlord to comply with its obligations excepted, and (b) remove his trade fixtures and/or signage from the Premises and to repair promptly any damage caused by such removal.

## **24. Improvements to Become Landlord's**

Tenant agrees that all additions and other permanent improvements installed in the Premises by Tenant, including, without limitation, all electric wiring, electric fixtures and floor coverings (including wall to wall carpeting but excepting rugs and trade fixtures) shall immediately become the property of Landlord, and shall not be removed by Tenant at the expiration or earlier termination of this Lease, but may be removed or modified by Tenant in the course of making further renovations or repairs of the Premises at a later time in accordance with other provisions of this Lease.

## **25. Indemnification and Release**

Tenant shall indemnify, defend and hold harmless Landlord and its officers, directors, employees, volunteers, attorneys and agents from and against any and all third-party claims, and from and against all costs, including reasonable attorney fees and disbursements, incurred in the defense of any such claim, and from and against all losses and damages awarded against an indemnitee in any such third-party claims (including consequential, punitive damages and attorney fees), to the extent arising from (i) the negligence, gross

negligence or willful misconduct, or (ii) failure to perform obligations pursuant to this Lease, of Tenant, its employees, agents, clients, patients, invitees and guests, in or about the Premises, Building and Common Areas ; excluding, however, any of the foregoing to the extent resulting from negligence, breach of this Lease or other fault on the part of Landlord, its other tenants or contractors, volunteers, and their respective employees, agents, clients, patients, invitees and guests. The provisions of this section shall survive the expiration or earlier termination of this Lease.

## **26. Tenant's Insurance**

Tenant will, at all times during the term of this Lease, at its own cost, maintain, with companies reasonably acceptable to Landlord, rated A:XII or better as set forth in the most current "Best's Key Rating Guide" and which shall be licensed to do business in the State of (State), commercial general liability and property damage insurance with combined single liability limits of not less than One Million Dollars (\$1,000,000.00) per occurrence, covering Tenant's activities and operations in the Premises, or equivalent coverage under a self-insurance program, and property insurance covering Tenant's personal property for its full replacement cost. If commercial general liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this location or the general aggregate limit shall be twice the required occurrence limit. Tenant's commercial general liability insurance policies shall name Landlord, its officers, officials, and employees as additional insureds with respect to vicarious liability of any Additional Insured resulting from acts or omissions of Tenant or other parties for which Tenant is responsible, and arising out of the ownership, maintenance or use of that part of the premises leased to Tenant. Coverage shall be primary to the Additional Insureds and not contributing with any other insurance or similar protection available to the Additional Insureds, whether other available coverage be primary, contributing or excess, but shall not be applicable to the independent negligence or other fault of any Additional Insured. Tenant covenants that certificates of all of the insurance policies required under this Lease, and their renewal or replacement, shall be delivered to Landlord promptly upon demand. Such policy or policies shall also provide that it shall not be canceled without thirty (30) days prior written notice to Landlord.

## **27. Landlord's Insurance**

Landlord will, at all times during the terms of this Lease, at its own cost, maintain a policy or policies of insurance with an insurance company with an A.M. Best rating of A-VII or better, insuring the building and improvements comprising the Facilities against all risk (special

cause of loss form, its equivalent, or better) of direct physical loss in an amount equal to the full replacement cost of the building structure and improvements as of the date of loss, provided Landlord shall not be obligated in any way or manner to insure any personal property of Tenant upon or within the Premises. Landlord's insurance shall include boiler and machinery coverage on the Building's mechanical and electrical systems and coverage for loss of rents for a period of at least twelve months. Landlord shall at all times during the term of this Lease maintain commercial general liability insurance in amounts at least equal to that required of Tenant per this Lease or equivalent coverage under a self-insurance program organized and maintained in accordance with Section 2744.08 of the Ohio Revised Code,. Landlord's commercial general liability insurance policy or policies shall name Tenant as an additional insured.

## **28. Waiver of Subrogation**

Anything in this Lease to the contrary notwithstanding, Landlord and Tenant hereby waive and release each other of and from any and all right of recovery, claim, action or cause of action, against each other, their other tenants or subtenants and any of their respective agents, officers and employees, for any loss or damage to property that may occur, including but not limited to loss of use, regardless of cause or origin, including negligence of Landlord or Tenant, their other tenants or subtenants and their agents, officers and employees, to the extent that the loss or damage is covered by insurance maintained by a party, or would have been covered if insurance had been maintained in accordance with terms of this Lease. Landlord and Tenant agree immediately to give their respective insurance companies which issued policies of insurance written notice of the terms of the mutual waivers contained in this section, and to have the insurance policies properly endorsed, if necessary, to prevent the invalidation of the insurance coverage by reason of the mutual waivers.

## **29. Damage By Fire or Other Casualty**

If the Premises or any substantial part of the Premises is damaged or destroyed by fire or other casualty, such that the damage cannot be replaced or repaired within one year (One Hundred Eighty (180) days in case of damage occurring during the last three years of the Lease Term) thereafter, either Party may by written notice to the other, terminate this Lease, which termination shall be effective as of the date of such damage.

If the Premises are made partially or completely untenable as a result of fire or other casualty, and the Lease is not terminated as provided above, this Lease shall remain in full force and effect and the Base Rent and Operating Costs shall abate during such time as the

Premises are untenable; provided, however, if Tenant occupies part of the space, Rents (Base and Additional) shall be abated by an amount determined by multiplying the Rent (Base and Additional) by a fraction of the numerator of which is the leasable space which cannot be occupied and the denominator of which is the total leasable square footage within the Premises.

Unless this Lease is terminated as herein above provided, this Lease shall remain in full force and effect and Landlord shall proceed with due diligence to restore, repair, and replace the Premises and Building to substantially the same condition as it was in as of the Commencement Date. Landlord shall be under no duty to restore any alterations, improvements or additions made by the Tenant or by Landlord at Tenant's request after the Commencement Date, unless the same are covered by proceeds of insurance available to Landlord in which case Landlord shall restore the same. In all cases, due allowances in the completion of the repairs shall be given to the Landlord for any reasonable delays caused by adjustment of insurance loss, strikes, labor difficulties, inability to obtain supplies or materials or any other cause beyond Landlord's control.

### **30. Mechanic's Liens**

Tenant shall not permit any mechanic's, materialman's or similar lien to stand against any portion of the Premises or the Building for any labor performed or material finished in connection with any work performed or caused to be performed by Tenant. If any such lien is filed against the Premises or the Building, Tenant shall indemnify and hold Landlord harmless from any obligation pertaining thereto and shall discharge such lien by paying the amount secured thereby or providing a bond within twenty (20) days after it was filed, or such longer period as is required to secure judicial approval of a bond with due diligence, and if Tenant fails to do so Landlord may discharge the lien without inquiring into the validity thereof and Tenant shall promptly reimburse Landlord for any amount so expended.

### **31. Condemnation**

In the event that the whole of the Premises are taken by the exercise of the power of eminent domain (or sold to the holder of such power, pursuant to a threatened taking) and such taking is more than twenty (20) days, this Lease shall terminate as of the date of such taking. In the event any portion of the Premises, or at least twenty percent (20%) in the aggregate, of the customer parking areas of the Building, are taken by the exercise of the power of eminent domain and which taking is in excess of sixty (60) days (or sold to the holder of such power, pursuant to a threatened taking) and it is not reasonably possible for Landlord to replace any parking so taken, this Lease may, at the option of Landlord or

Tenant, be terminated by written notice given to the other within sixty (60) days after such taking or sale occurs. If this Lease is not so terminated, Landlord covenants that it will, at its own expense, promptly after the lapse of said sixty (60) days, repair such damage and do such work as may be required to repair and rebuild Tenant's Premises and/or the Common Areas, with the view to restoring the Premises and/or the Common Areas as nearly as may be to the condition they were in immediately prior to such taking; provided, however, that whether or not this Lease is so terminated, the minimum rental payable hereunder shall be equitably abated (according to the loss of use) from the date of such taking. Tenant shall have no right in or to the proceeds of any award made to Landlord in any such condemnation, but shall have the right to its own award for loss of use, relocation costs or leasehold improvements made by it (and not by Landlord).

### **32. Assignment and Subletting**

Tenant covenants that it will not assign this Lease, or sublet or permit any other person to occupy part or all of the Premises, without Landlord's prior written consent, which may not be unreasonably withheld. The criteria to be used in determining whether Landlord may reasonably withhold consent to any assignment or sublet are that: (i) Tenant shall not be relieved of any liability for performance of all terms and provisions of this Lease; (ii) Tenant is not in default of this Lease; (iii) the successor has a net worth and creditworthiness acceptable to Landlord in its reasonable discretion; (iv) the business reputation of the successor is acceptable to Landlord in its reasonable discretion; (v) the use as set forth in this Lease remains the same or as otherwise permitted pursuant to this Lease; (vi) the assignment or sublet is in a form with such terms as reasonably acceptable to Landlord; (vii) the Premises shall not be subdivided except in case of subletting between related entities; and (viii) the successor meets other reasonable requirements that Landlord would consider if leasing directly to such successor.

Without Landlord's consent, Tenant may, upon thirty (30) days written notice to Landlord, assign or sublet the Premises to an affiliate of Tenant (including but not limited to any entity controlled by TriHealth or any other hospital member of TriHealth) or to an entity in which maintains a controlling interest in Tenant. Upon any such assignment or sublet of this Lease, Tenant shall remain primarily liable for Base Rent, Taxes, Operating Costs and all other liabilities incurred herein. If at any time during the term, Landlord has knowledge that a person, firm or corporation other than Tenant is in possession of the Premises without the written consent of Landlord, Landlord may, at its option, at any time thereafter, by written notice to Tenant, accept and treat such person, firm or corporation in possession as the assignee or subtenant of Tenant, in which event both Tenant and such assignee or

subtenant shall be obligated to observe and perform all the covenants, conditions and provisions herein contained binding upon Tenant; provided, however, that nothing herein shall affect Landlord's other remedies for Tenant's default by wrongful assignment or subletting.

### **33. Subordination**

Landlord warrants that there are no ground leases, mortgages or deeds of trust which now affect the Premises, the land on which the Premises are situated, the Common Areas or the Building, except for a certain ground lease between Landlord and Mason City School District as to which Landlord hereby represents and warrants that Landlord has the right to enter into this Lease without violating said ground lease, and covenants to comply at all times with its obligations under said ground lease and provide and guarantee Mason City School District's non-disturbance. If in the future, Landlord elects to grant a first mortgage covering the Premises, alone or together with other property, Tenant shall, upon request of the Landlord, execute and deliver, in recordable form, any instrument of subordination reasonably requested by Landlord, provided, however, that any such instrument contains provisions in form reasonably acceptable to Tenant that in the event of a foreclosure or any other enforcement action under any such mortgage, the mortgagee and the purchaser at any foreclosure sale shall recognize this Lease without disturbance of Tenant's possession or rights hereunder and this Lease shall continue in full force and effect and Tenant shall attorn to the new property owner as Landlord. Any such mortgage may at any time, at the request of the holder of the note secured thereby, be subordinated to this Lease.

### **34. Default**

The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Tenant.

- (a) The permanent abandonment of the Premises by Tenant, resulting in the Premises falling into disrepair.
- (b) The failure by Tenant to make any payment of rent or cost for Additional Improvements, or any other payment required to be made by Tenant hereunder, as and when due, which failure continues for ten (10) days after written notice from Landlord. If Tenant disputes in good faith the amount of any payment demanded by Landlord, Tenant shall pay any undisputed portion and this Lease shall not be subject to termination during pendency of the dispute, provided that Tenant promptly pays, with interest and reasonable

attorneys' fees, any amount that is finally determined to be its responsibility.

- (c) The failure by Tenant to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Tenant, other than described in (b) above, where such failure shall continue for a period of thirty (30) days after written notice thereof by Landlord to Tenant; provided, however, that if the nature of Tenant's default is such that more than thirty (30) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion. If Tenant disputes in good faith any non-monetary performance demanded by Landlord, Tenant shall perform any undisputed portion and this Lease shall not be subject to termination during pendency of the dispute, provided that Tenant promptly performs any obligation that is finally determined to be its responsibility and pays Landlord's reasonable attorneys' fees incurred in enforcing Tenant's obligations.
- (d) The making by Tenant of any general assignment or general arrangement for the benefit of creditors; or the filing by or against Tenant of a petition to have Tenant adjudged a bankrupt, or a petition or reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, the same is dismissed within sixty (60) days); or the appointment of a trustee or a receiver to take possession of substantially all of Tenant's interest in this Lease, where possession is not restored to Tenant within thirty (30) days; or the attachment, execution or other judicial seizure substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged within thirty (30) days.

### **35. Remedies**

In the event of any such default or breach by Tenant, Landlord may at any time thereafter, in its sole discretion, with or without demand and without limiting Landlord in the exercise of a right or remedy which Landlord may have by reason of such default or breach:

- (a) Terminate Tenant's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Tenant shall immediately surrender possession of the Premises to Landlord. In such event Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by