

**Hearing Date and Time: November 24, 2009 at 10:30 a.m. ET**  
**Objection Deadline: November 19, 2009 at 4:00 p.m. ET<sup>1</sup>**  
**Related to Docket No. 4337**

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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

<b>In re:</b>	)	<b>Chapter 11</b>
	)	
<b>MOTORS LIQUIDATION CORP., et al.,</b>	)	<b>Case No. 09-50026 (REG)</b>
<b>f/k/a General Motors Corp., et al.,</b>	)	
	)	<b>(Jointly Administered)</b>
<b>Debtors.</b>	)	
	)	
	)	

**OBJECTION OF FOUNTAIN LAKES I, L.L.C. TO DEBTORS'  
NINTH OMNIBUS MOTION PURSUANT TO 11 U.S.C. § 365 TO REJECT  
CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES OF  
NONRESIDENTIAL REAL PROPERTY**

<sup>1</sup> The Motion as filed established a deadline of November 18, 2009 at 4:00 p.m. E.T. (which deadline was a mere four business days after the Motion was filed). Evan Lederman, one of the Debtor's attorneys, consented to a one day extension of time for Fountain Lakes to respond to the Motion, e.g., until November 19, 2009 at 4:00 p.m. ET.

Fountain Lakes I, L.L.C. (“Fountain Lakes”), by its undersigned attorneys, hereby files this Objection to Debtors’ Ninth Omnibus Motion Pursuant to 11 U.S.C. § 365 to Reject Certain Executory Contracts and Unexpired Leases of Nonresidential Real Property (the “Motion”) and in support thereof avers:

1. Pursuant to a Lease Agreement dated September 2005 (as amended, the “Lease”), by and between Fountain Lakes and General Motors Corporation (the “Debtor”), Fountain Lakes leased approximately 190,932 square feet of office/warehouse space located on Industrial Boulevard in St. Charles, Missouri (as more particularly described in the Lease, the “Premises”) to the Debtor. A true and correct copy of the Lease is attached hereto as Exhibit A and incorporated herein by reference.

2. On November 12, 2009, the Debtor filed the Motion, seeking to reject the Lease. The Debtor has left substantial personal property in the Premises, including a large industrial racking system that occupies a substantial portion of the Premises. The racking system renders a substantial portion of Premises unusable by Fountain Lakes.

3. As this Court knows, all too often debtors simply leave the premises with property (equipment, goods, supplies and furniture, fixtures and equipment) remaining therein. The landlord is then left with the task of removing equipment, cleaning out the premises, and attempting to determine if any of the remaining property may be subject to the rights of the debtors or third parties.

4. This case is vastly different than the typical retail case where cash registers and store shelves are abandoned. This Debtor is an automotive manufacturer and the Premises consist of 190,000 square feet of industrial warehouse space much of which is occupied by a large racking system. To remove the racking system and other equipment, Fountain Lakes

would have to retain skilled laborers. Removal, even with skilled labor, could take weeks. The cost of removing large pieces of equipment and the industrial racking system in this matter could reach into the hundreds of thousands of dollars.

5. As a result, the Debtor should not be permitted to reject the Lease without first removing the racking system and its other personal property. To allow the Debtor to simply leave personal property behind results in the Debtor improperly shifting the cost of removal to Fountain Lakes.

6. Alternatively, the Debtor should be required to formally abandon the racking system and other personal property it intends to leave at the Premises before the Lease is rejected and provide formal notice of such abandonment to all parties that may assert a lien or lease interest in the abandoned property. The Motion does not purport to abandon the property, including the racking system. The Motion simply ignores the racking system and other property the Debtor apparently intends to leave behind.

7. It is a virtual certainty that property the Debtor may abandon is leased or subject to lien claims. Fountain Lakes should not be required to sort through lien or property rights to the property. Fountain Lakes does not have a direct relationship with any third parties who may have interests in any property which the Debtor may decide to abandon, and, as a result, Fountain Lakes may have to perform, *inter alia*, UCC-1 searches to determine whether or not any third party has any interest in property remaining in the Premises.

8. Fountain Lakes should not be put in the position of fulfilling Debtor's fiduciary obligations to its secured creditors and/or equipment lessors. The Debtor is the party seeking to have its Lease rejected. A condition to the order for rejection being effective should be that the Premises must be returned to Fountain Lakes in such a condition as will enable the landlord to

take immediate control of same without fear of being subjected to third party claims. Notice, abandonment, and termination of lien and lease rights is necessary for such to occur.

9. As a result, any rejection order should be conditioned upon an abandonment of the property remaining at the Premises by the Debtor and any Order entered by the Court approving rejection should provide that any of Debtors' property remaining in the Premises as of the rejection date is deemed abandoned. Further, the Order should provide that if any property remaining in the Premises belongs to a third party, or is property in which a third party claims an interest, whether a security interest or otherwise, Debtor shall give ten (10) days notice to each and every third party who may have a claim in such property to remove the property or in default thereof the third party's interest shall be deemed terminated and the property abandoned without any liability to the landlord for the disposal thereof.

10. Finally, the Order should make clear that it is not cutting off the right of Fountain Lakes to assert an administrative claim in the event that property is abandoned by the Debtor and, instead, should expressly preserve the rights of Fountain Lakes to seek allowance of administrative claims for the cost of removing the same in the event the Debtor elects (and this Court permits the Debtor) to abandon property at Premises.

11. Approval of the Motion as filed, and the failure to require the Debtors to comply with the requirements set forth above, would deprive Fountain Lakes of the use of its property without just compensation and delay Fountain Lake's ability to mitigate damages (thereby causing potential harm to the Debtor's estates, including its unsecured creditors).

WHEREFORE, Fountain Lakes I, LLC, requests that this Court require the Debtor to remove the racking system and all other personal property before the rejection is effective, or, alternatively, take affirmative action to abandon any personal property left behind in the

Premises and terminate lien and lease claims against any property abandoned, and expressly preserve the ability of Fountain Lakes to assert administrative claims for the costs incurred in removing any property the Debtor abandons at the Premises.

Dated: November 19, 2009

Respectfully submitted,

/s/ David L. Pollack

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*Counsel for Fountain Lakes I, LLC*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the foregoing Limited Objection to Debtors' Ninth Omnibus Motion Pursuant to 11 U.S.C. § 365 to Reject Certain Executory Contracts and Unexpired Leases of Nonresidential Real Property was served via first-class mail and/or electronic mail, upon:

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Office of the U.S. Trustee  
33 Whitehall Street, 21<sup>st</sup> Floor  
New York, New York 10004

/s/ David L. Pollack  
David L. Pollack, Esquire



INTEREST RATE:

8%

20.1

Notices

ADDRESS FOR NOTICES

Fountain Lakes I, L.L.C.  
Balke Brown Associates, Inc.  
1001 Highlands Plaza Drive West, Suite 150  
St. Louis, Missouri 63110  
Fax (314) 802-0802

ADDRESS FOR NOTICES

Affiliated Computer Services, Inc.  
Mailstop: GM LA  
1100A Cobb Parkway N  
Marietta, GA 30062  
Fax (678) 285-0927

With a copy to:

General Motors Worldwide Real Estate  
200 Renaissance Center  
MC 482-B38-C96  
Detroit, MI 48265  
Attention: Executive Director  
Fax (313) 665-6745

23.2

BROKERS:

Landlord's Broker: Grubb & Ellis/Krombach Partners  
Balke Brown Associates, Inc.

Commission Payable: By Landlord per separate agreement

Tenant's Broker: Jones Lang LaSalle

Commission Payable: Landlord pays 4% of base rental  
over the initial term (exclusive of  
any amortization of Tenant  
improvements)

Exhibit A - Diagram of Leased Premises  
Exhibit B - Form of Confirmation of Lease Term  
Exhibit C - Redevelopment Agreement  
Exhibit D - Safety Standards

~~EXHIBIT-E-TENANT EXCLUSIVE PARKING~~

~~EXHIBIT-F PARTICIPATING PLANS~~

SCHEDULE 1 - BASE BUILDING IMPROVEMENTS

SCHEDULE 2 TENANT IMPROVEMENTS

SCHEDULE 3 SCHEDULE (MILESTONES)

SCHEDULE 4 OUTLINE SPECIFICATION

AM

JB

SM

## OFFICE/WAREHOUSE LEASE

THIS LEASE is made and entered into as of the day set forth on the Lease Cover Page by and between Landlord and Tenant.

### WITNESSETH:

For and in consideration of the rents and covenants hereinafter set forth, Landlord hereby leases to Tenant and Tenant hereby rents from Landlord the following-described Premises upon the following terms and conditions:

#### **ARTICLE 1** **PREMISES**

**1.1 Premises.** Landlord, for and in consideration of the rents, covenants and agreements hereinafter set forth and hereby agreed to be paid, kept and performed by Tenant, does hereby lease to Tenant, and Tenant hereby leases from Landlord, that portion of Landlord's real estate and building described on the Lease Cover Page (such building together with the land on which it is situated is hereinafter referred to collectively as the "Building"), which is more particularly delineated on the diagram attached hereto as Exhibit A and incorporated herein by this reference (hereinafter referred to as the "Premises").

#### **ARTICLE 2** **TERM**

**2.1 Term.** The Lease term, Lease Commencement Date and Lease Termination Date of this Lease are set forth in paragraph 2.1 of the Lease Cover Page. If the Premises are not available and ready for occupancy by the stated Lease Commencement Date, and to the extent such unavailability or unreadiness is not occasioned or caused primarily by Tenant (such as Tenant's failure to promptly approve plans or specifications or make improvements to the Premises which are to be made by Tenant), then the Lease Commencement Date shall be the first day on which the Premises are available and ready for occupancy, and the Lease Termination Date shall be extended accordingly to provide for a full 125 month term. The phrase "available and ready for occupancy" means substantial completion of all improvements to be made by Landlord as described in paragraph 8.1 herein and the issuance by the applicable authorities of an occupancy permit allowing Tenant's occupancy of the Premises for the purposes set forth herein; provided, however, this shall only be a condition so long as Tenant has timely taken all action required of it to apply for such occupancy permit. If the Lease Termination Date, as so extended, is other than on the last day of a calendar month, the Lease Termination Date shall be further extended to the next occurring calendar month end. If the Premises are not available and ready for occupancy by the stated Lease Commencement Date and to the extent such unavailability or unreadiness is occasioned or caused by Tenant (such as Tenant's failure to promptly approve plans and specifications or make improvements to the Premises which are to be made by Tenant), then, Tenant's free rent period shall commence as of the scheduled Lease Commencement Date, although the actual Lease Commencement Date shall be extended as provided above. Upon the actual determination by Landlord and Tenant of the Lease Commencement Date and consequently the Lease Termination Date (if it is other than as stated in paragraph 2.1 on the Lease Cover Page), Landlord and Tenant shall confirm in writing the Lease Commencement Date and the Lease Termination Date by executing the form attached hereto as Exhibit B. Subject to the availability of the Premises and so long as Tenant has secured all insurance required hereunder, Tenant shall have the right, without cost to Tenant, prior to the Lease Commencement Date of this Lease, to enter upon the Premises at reasonable times for the purpose of preparing the Premises for their intended use so long as such access does not materially interfere with Landlord's ability to complete and deliver the Premises as required herein. Tenant's final entry into possession of the Premises shall constitute acceptance of the Premises and Tenant's acknowledgment that the Premises are in good order, condition and repair and that the Premises have been completed to Tenant's full and complete satisfaction, subject only to those punchlist type items and time to complete same which shall be agreed to in writing at the time of such occupancy and to all warranties provided by Landlord and Landlord's contractors.

#### **2.2 Renewal Option.**

(1) So long as Tenant is not in default hereunder either at the time such option is exercised or at the commencement of the renewal term, Tenant is granted the right and option (the "Renewal Option") to extend the term of this Lease for the additional period or periods described in paragraph 2.2 on the Lease Cover Page, and if such renewal is effectively exercised, such renewal term (the "Renewal Term") shall commence upon the expiration of the previous term of this Lease,

provided that such option must be exercised, if at all, by written notice from Tenant to Landlord given at least nine (9) months prior to the expiration of the then current term.

(2) In the event the foregoing option is effectively exercised, all the terms and conditions contained in this Lease shall continue to apply except that:

(i) There shall be no further right of renewal beyond the periods referred to above;

(ii) The Base Rent applicable to the Premises during any Renewal Term shall equal ninety-five percent (95%) of the then market rate of the Premises, but not less than the annual Base Rent paid by Tenant during the immediately preceding twelve (12) months before the Renewal Term. Upon the determination of such Base Rent, Landlord and Tenant shall enter into an amendment to the Lease to set forth the amount of initial Base Rent during such Renewal Term; and

(iii) At least forty-five (45) days prior to the date that Tenant is required to notify Landlord of its intention to exercise its Renewal Option hereunder, Tenant shall first inform Landlord of its potential interest to renew this Lease. Landlord shall then notify Tenant, within fifteen (15) days of the date of receipt of Tenant's notice, of the Base Rent for such Renewal Term as determined by Landlord in accordance with paragraph 2.2(2)(ii) above and which will be payable for the Renewal Term if Tenant elects to renew this Lease. Tenant shall then have fifteen (15) days thereafter to advise Landlord if it does not agree to pay the Base Rent set forth in the Landlord's notice, in which event, the parties shall negotiate in good faith to determine an appropriate Base Rent that meets the criteria set forth in paragraph 2.2(2)(ii) above. If the parties cannot agree to an appropriate Base Rent that meets the criteria set forth in paragraph 2.2(2)(ii) above within thirty (30) days of Tenant advising Landlord that it does not agree to the Base Rent set forth in the Landlord's notice, the parties agree that the appropriate Base Rent shall be determined as follows:

(iv) Within fifteen (15) days following the thirty (30) day period described in paragraph 2.2(2)(iii) above, Landlord and Tenant shall each notify the other in writing of their selection of an appraiser to determine the Market Rate. The two appraisers shall give their opinion of the Market Rate within twenty (20) days after their selection. The average of the two opinions shall be the Market Rate; provided, however, that in the event the two opinions differ by more than ten percent (10%) of the lower of the two amounts, the appraisers shall, within five (5) days thereafter, jointly select a third appraiser. This third appraiser shall, within ten (10) business days shall give its own opinion of the Market Rate and the two opinions which are closest to each other in value shall be added together and divided by two, and such average shall be final and binding on Landlord and Tenant as the Market Rate. Each party shall pay the costs and fees of the appraiser it selected. If a third appraiser is selected, the parties shall share equally the cost of the third appraiser. Upon determination of the Market Rate, Tenant shall have ten (10) days following such determination to elect to rescind its exercise of the Renewal Option. In the event of a timely rescission by Tenant of its Renewal Option, Tenant shall be responsible for paying the costs of all three appraisers. Upon determination of the Market Rate, so long as Tenant does not exercise its option to rescind the exercise of the Renewal Option, the parties shall promptly execute an amendment to this Lease setting forth the Base Rent for the Renewal Term. Each appraiser shall be a member in good standing of the appraisal institute holding a MAI designation and currently certified or licensed as a state certified general appraiser in the State of Missouri and have a minimum of five (5) years experience in the same geographical area as that in which the Premises is located and in real estate leasing and appraisal with respect to real estate which is of a similar kind to the Premises.

(3) For the purposes of any expansion, extension, or renewal of this Lease, the Market Rate shall be the rate that is charged to renewing/extending tenants for space of comparable size, location, and conditions in comparable property within a five (5) mile radius of the Building. The Market Rate should take into consideration the following: location, quality, age, common area factors, finish allowances, rental abatement, parking charges, lease assumptions, space planning allowances, refurbishment allowances, and any other concessions or inducement. In addition, other considerations such as credit standing of the Tenant, lease term, and any other issues that would be relevant in making a market rate determination should be considered.

**2.3 Right of First Refusal.** Subject to the prior rights of Pretium Packaging, L.L.C. and Vi-Jon Laboratories, Inc., if at any time during the term of this Lease Landlord enters into a Letter of Intent with a bona fide third party to lease any space which becomes available in Building II (the "ROFR Space"), Landlord shall provide a copy of such Letter of Intent to Tenant together with information sufficient for Tenant to confirm that such additional space will not violate Section 22.18 below ("Landlord's Notice"), whereupon Tenant shall have the option, exercisable by delivery of written notice to Landlord within ten (10) days after the date of Landlord's Notice, to indicate its

agreement to lease the ROFR Space. In the event Tenant decides to lease the ROFR Space, the terms of such lease shall, at Tenant's option, either be (i) on all of the same terms and conditions as set forth herein with Tenant Improvement Allowance being prorated based upon the size of the space and the number of years remaining in the Lease term, or (ii) the terms and conditions set forth in the Letter of Intent. In the event Tenant exercises its right of first refusal under this paragraph and elects to have the terms of this Lease apply to the ROFR Space and there is less than three (3) years remaining on the then current term of this Lease, then as a further condition to Tenant's exercise of its right of first refusal under this paragraph, Tenant must simultaneously exercise its next Renewal Option pursuant to Section 2.2. In such case, the rate of rent for the ROFR Space, as set forth in the Letter of Intent, shall be deemed the market rate of rent for the ROFR Space only for purposes of the Renewal Option. If Tenant does not exercise its option hereunder, then Landlord shall be free to lease the ROFR Space to the third party on substantially the same terms set forth in the Letter of Intent.

**2.4 Termination Option.** Provided that this Lease is in full force and effect and that Tenant is not in default hereunder, Tenant shall have the right and option (the "Termination Option") to terminate this Lease effective on the date set forth in paragraph 2.4 on the Lease Cover Page ("Early Termination Date"), provided that such Termination Option must be exercised, if at all, by written notice from Tenant to Landlord given not less than nine (9) months prior to the Early Termination Date and payment with such notice of five (5) months Base Rent plus the then unamortized balance of any and all leasing commissions and Tenant Improvement Allowance which Landlord pays and/or provides to Tenant in connection with the Premises, all such expenses to be amortized on a straight line basis over the Initial Term of the Lease (the "Termination Fee"). If Tenant has previously exercised any option to expand the Premises, the Termination Fee shall also include the then unamortized balance of any and all leasing commissions and Tenant improvement allowance which Landlord pays and/or provides to Tenant in connection with such option space, all such expenses to be amortized on a straight line basis over the term of the Lease for such option space.

**2.5 Personal Right.** Tenant expressly acknowledges that the rights granted in paragraphs 2.2, 2.3 and 2.4 are granted solely to, and is exercisable solely by the Tenant whose name appears on the Lease Cover Page and that such rights shall automatically lapse upon Tenant's assignment of this Lease or subletting of the Leased Property, or any portion thereof, to any person or entity, provided that Landlord shall permit such rights to be assigned to Tenant's assignee for the balance of the term of the Lease if such entity is a substantial, creditworthy entity in Landlord's reasonable judgment.

### **ARTICLE 3 BASE RENT**

**3.1 Base Rent.** Tenant shall pay to Landlord without demand, deduction, or offset as rent for the Premises, the amounts set forth in paragraph 3.1 of the Lease Cover Page. Each monthly installment shall be payable in advance on the first day of each calendar month during the term of this Lease. In the event the term of this Lease commences or ends on a day other than the first day of the calendar month, then the rental for such partial month shall be pro rated in the proportion that the number of days that this Lease is in effect during such partial month bears to the total number of days in such month, and such rental shall be paid upon the commencement of such period. Unless and to the extent the Lease Commencement Date is delayed by Force Majeure (as defined in Section 22.16) or a material delay caused by Landlord (i.e., a delay not caused by Tenant and that prevents the Lease Commencement Date from occurring no later than 10 weeks after the date on which Landlord and Tenant agree on the plans and specifications for the improvements referenced in Paragraph 8.1 below), the Lease Commencement Date shall be, and the payment of Base Rent shall commence, on the earlier of the date of substantial completion of the Tenant Improvements and November 1, 2005.

**3.2 Security Deposit.** [None]

**3.3 Late Charge.** A late charge equal to five percent (5%) of the delinquent payment may be assessed, at Landlord's option, as additional rent in the event that any rental or other sum due hereunder is not paid within ten (10) days after the same shall be due and payable. In addition, any and all delinquent payments of rent, additional rent and all other sums payable hereunder shall bear interest at the rate of ten percent (10%) per annum from the date of delinquency until paid. This provision shall in no way affect the right of Landlord to declare Tenant in default of this Lease for the failure to pay rent on the day that it is due.

### **ARTICLE 4 REAL ESTATE TAXES AND INSURANCE**

**4.1 Real Estate Taxes.** Tenant agrees to pay, as additional rent, Tenant's "Pro Rata Share" (as that term is defined below) of any and all real estate taxes, assessments (including subdivision assessments) and levies of every kind, whether general or special, ordinary or

extraordinary and professional fees relating to appeals thereof, which may be levied or assessed on the land and Building in which the Premises are located during the Lease term (hereinafter "Taxes"). It is understood and agreed that only Landlord may protest or contest the validity, amount and enforceability of any Taxes levied or assessed on the land and Building in which the Premises are located, provided that if the Taxes are increased in any given year by more than 3% over the previous year, Landlord shall carry out such protest at Tenant's request, expense and discretion, using counsel selected by Landlord and reasonably acceptable to Tenant, and any tax savings or refunds relating to Taxes paid directly or indirectly by Tenant shall belong to Tenant.

**4.2 Insurance.** Tenant also agrees to pay, as additional rent, Tenant's "Pro Rata Share" (as that term is defined below) of Landlord's insurance costs for the Premises and the Building during the Lease term. Should Landlord's insurance rates be increased by reason of a particular use of a portion of the Building being made by a party other than Tenant, no such increase in insurance costs shall be included in the calculation of Landlord's insurance costs for purposes of determining Tenant's Pro Rata Share thereof. Should Landlord's insurance rates be increased by reason of the particular use of the Premises being made by Tenant, all such increases in insurance costs over the existing rate prior to such use or the rate which would be charged but for such use by Tenant, shall be paid entirely by Tenant to Landlord within thirty (30) days after Tenant's receipt of an invoice for same.

**4.3 Payment of Additional Rent.** Tenant shall pay Landlord all additional rent due under this Article 4 as provided in paragraph 5.4 below. Tenant's "Pro Rata Share" is hereby agreed to be equal to the percentage specified on the Cover Page, which was determined based upon the number of square feet of space contained within the Premises as compared to the total number of square feet of space contained in the Building. In the event the actual number of square feet of space contained within the Premises or within the Building should be different than that set forth on the Cover Page, then Tenant's Base Rent and Pro Rata Share shall be recalculated accordingly. Tenant's obligation to pay Tenant's Pro Rata Share of Taxes and insurance costs shall be pro rated, if necessary, to correspond with that portion of a tax year or insurance year occurring in the first and last years of the term of this Lease.

## **ARTICLE 5 OPERATING EXPENSES**

**5.1 Tenant's Share of Operating Expenses.** Tenant shall pay, as additional rent, its Pro Rata Share (as defined in paragraph 4.3 above) of Landlord's operating expenses for the Building (for purposes of this Article 5, "Building" shall also include the tract of ground, parking lot, curbs, sidewalks and landscaping adjoining the building itself). Operating expenses for the Building for these purposes shall include all costs of management, operation, repair, maintenance and replacement, but shall not include expenses described in Section 5.2.B. below. The calculation of operating expenses for purposes of this paragraph shall be made annually on a calendar year basis. Landlord agrees to use its best efforts to minimize Operating Costs and agrees, commencing in 2007, to limit annual increases in controllable expenses contained within operating expenses to five percent (5%) or less in the aggregate. Controllable expenses for this purpose shall not include the cost of utilities, real estate taxes or any other expense over which Landlord has no reasonable control.

### **5.2 Operating Expenses Defined.**

**A.** By way of illustration and not limitation, the term "operating expenses" shall include, but shall not be limited to, the following expenses of the Building:

- (1) Costs and expenses incurred for the hiring and employment of all persons engaged in the on-site operation and maintenance of the Building or pursuant to a management agreement consistent with subsection (6) below;
- (2) Cost of all Building maintenance and lighting replacement, as well as the cost of all service agreements on equipment and improvements, including window cleaning;
- (3) Cost of repairs, general maintenance and replacements other than capital costs that are not described in subparagraph (7) below;
- (4) Cost of all water and sewer and all common area electric and other utilities;
- (5) Cost of maintenance, upkeep and replacement of the interior common elements and exterior of the Building, and the planting, landscaping and grounds surrounding the Building;

(6) Cost of Building management, which cost may be payable to personnel or entities affiliated with Landlord and which may include a management fee not in excess of three percent (3%) of gross rents collected;

(7) Cost, as reasonably amortized by Landlord of any capital improvements to the Building which reduces other operating expenses, or which is required to comply with any law, order, requirement or regulation or to replace existing equipment and machinery (the cost of any such replacement item shall be amortized over the number of years of 'useful life' of the item in accordance with GAAP, and Tenant shall reimburse Landlord as operating expenses for that portion of such amortized cost covering each remaining year of the Term of the Lease and any applicable Renewal Term from the date on which such replacement is completed);

(8) Removal of all snow, ice, paper and debris from the parking areas and sidewalks serving the Building;

(9) Maintaining parking lot lighting fixtures and relamping and reballasting as needed;

(10) Repairing, maintaining, servicing and replacing all on-site utility facilities, including, but not limited to, electrical systems, water systems, storm drainage systems and sanitary sewer systems, to the extent that they are not cleaned, repaired, maintained or replaced by public utilities;

(11) Cost of maintaining, sealing, striping and resurfacing but not replacing the parking areas, sidewalks and other common areas;

(12) All costs associated with Landlord's fire alarm system and sprinkler system (if any) in the Building; and

(13) All other non-capital costs incurred by Landlord in connection with the operation and maintenance of the Building other than expenses which relate exclusively to another tenant's space in the Building, it being the intention of the parties that Tenant pay as additional rent, in addition to the Base Rent, all expenses of operating and maintaining the Premises including Tenant's Pro Rata Share of all expenses of operating and maintaining the Building which benefit or are applicable to more than one tenant in the Building.

B. Notwithstanding the foregoing, operating expenses shall not include any of the following expenses:

(1) Mortgage principal and interest payments and other financing fees, costs and expenses;

(2) Refinancing fees, costs and expenses;

(3) Ground rent and related costs;

(4) Depreciation and amortization of Building or equipment (except as provided in A(7) above;

(5) Interest or penalties resulting from late payment by Landlord or other tenants;

(6) Advertising costs;

(7) Brokerage lease commissions;

(8) Tenant Improvements or alterations, including allowances for same paid by Landlord;

(9) Capital improvements and replacements, except as provided in Section A(7) above;

(10) Costs reimbursed by tenants or any other third party;

(11) Costs reimbursed by insurance;

(12) Costs reimbursed by governmental authorities;

- (13) Special services paid for by tenants;
- (14) Landlord's legal fees;
- (15) Artwork in the Building;
- (16) Legal fees for preparation and negotiation of leases;
- (17) Repairs due to a casualty or condemnation;
- (18) Leasing and marketing expenses for the Building;
- (19) Equipment rental and related expenses if the cost would constitute a capital expenditure, excepting rentals for temporary use in the maintenance and operation of the Building;
- (20) Contributions to operating expense reserves;
- (21) Contributions to political or charitable organizations;
- (22) Costs related to environmental remediation not caused by Tenant;
- (23) Taxes other than real property taxes or taxes or charges in lieu of property taxes;
- (24) Any cost representing an amount paid for services or materials to a related person, firm, or entity to the extent such amount exceeds the amount that would be paid for such services or materials at substantially the then existing market rates for the same quality of service to an unrelated person, firm, or corporation;
- (25) The cost of work performed by Landlord which is due to negligence of Landlord or its agents, representatives or employees;
- (26) The cost of overtime or other expense to Landlord in curing its defaults or settling its disputes (except in connection with a default by Tenant); and
- (27) The cost of any audit which Landlord reimburses pursuant to Paragraph 5.3 of this Lease or similar provisions in leases with other tenants.

**5.3 Annual Statements.** Landlord shall provide to Tenant a statement of actual operating expenses for the preceding calendar year within one hundred fifty (150) days after the end of such calendar year. Within ninety (90) days after Tenant receives Landlord's statement of actual operating expenses for the preceding calendar year, Tenant or its authorized agent shall have the right during normal business hours to inspect the books and records of Landlord relating to the operation of the Building at Landlord's office for the purpose of verifying the information in such statement. Unless Tenant asserts specific errors within ninety (90) days after delivery of such statement, the statement shall be deemed to be correct. Tenant may have Landlord's statement of operating expenses audited by an independent certified public accountant. In the event such audit shows that Landlord has overcharged Tenant by five percent (5%) or more, Landlord shall pay the cost of such audit. Otherwise, Tenant shall pay the cost of such audit. Landlord's failure to assess such increase for any one year shall not preclude Landlord from recovering any similar increase during the following year and shall not preclude Landlord from collecting for any similar increase with respect to any subsequent year.

**5.4 Estimated Payments.** In order to provide for the current payment by Tenant, on account, of Taxes, insurance premiums and operating expenses, Landlord shall, prior to the Lease Commencement Date and within approximately one hundred twenty (120) days of January 1 of each succeeding calendar year during the term of this Lease, estimate the Taxes, insurance premiums and operating expenses for the following year. Tenant shall pay as additional rent hereunder during the ensuing twelve (12) months, on the first day of each month, one-twelfth (1/12) of Tenant's Pro Rata Share of Landlord's estimate of said Taxes, insurance premiums and operating expenses. Should Landlord fail to provide Tenant with an estimate of the Taxes, insurance premiums and operating expenses anticipated for the following year by January 1 of any calendar year, Tenant shall continue to pay rental on the basis of the prior years' estimate until the first day of the month after such notice is given, on which date, Landlord or Tenant, as appropriate, will pay to the other the amount required to adjust Landlord's estimate of Tenant's Pro Rata Share of Taxes, insurance premiums and operating expenses allocable to the part of the calendar year which shall then have lapsed. If, as finally determined, Tenant's Pro Rata Share of such Taxes, insurance premiums and operating expenses shall be greater or less than the aggregate of all

installments so paid by Tenant to Landlord during such twelve (12) month period, then Tenant shall pay to Landlord the amount of such underpayment within thirty (30) days of Tenant's receipt of a statement therefrom by Landlord, or Landlord shall credit (or refund if the Lease has terminated) Tenant for the amount of such overpayment, as the case may be. It is the intention hereunder to estimate the amount of Taxes, insurance premiums and operating expenses for each calendar year and then adjust such estimate after the end of each year based on the actual Taxes, insurance premiums and operating expenses incurred during such year in accordance with the timing and manner of reconciling operating expenses in Paragraph 5.3 above. If at any time it appears to Landlord that the amount payable hereunder for the current calendar year will vary from Landlord's estimate by more than five percent (5%), Landlord may, by written notice to Tenant, revise Landlord's estimate for the year, in which case, subsequent payments by Tenant for the year shall be based upon the revised estimate prorata in accordance with the months remaining in such calendar year. In no event, however, shall Landlord have the right, without Tenant's consent, to revise Landlord's estimate more than one (1) time during any calendar year. The obligations of Landlord and Tenant with respect to adjustments of additional rent shall survive the termination of this Lease. Should this Lease terminate on a day other than the last day of a calendar year, Tenant's Pro Rata Share of Landlord's Taxes, insurance premiums and operating expenses for the calendar year in which this Lease terminates shall be prorated on the basis which the number of days from the commencement of the calendar year to and including the termination date bears to 365. Tenant does hereby acknowledge that its obligation to participate in Taxes, insurance premiums and operating expenses shall be deemed additional rent and, in the event of non-payment thereof, Landlord shall have all the rights and remedies herein provided for in case of nonpayment of rent.

**5.5 Vacancy Adjustment.** In determining the amount of operating expenses for which Tenant is obligated to pay Tenant's Pro Rata Share for any calendar year (i) if less than 100% of the Building shall have been occupied by tenants and fully used by them at any time during the year, operating expenses shall be increased to an amount equal to the like operating expenses which would normally be expected to be incurred had such occupancy been 100% and had such full utilization been made during the entire period, or (ii) if Landlord is not furnishing any particular work or service (the cost of which, if performed by Landlord, would constitute an operating expense) to a tenant who has undertaken to perform or to pay directly for such work or service in lieu of the performance thereof or payment therefor by Landlord, operating expenses shall be deemed to be increased by an amount equal to the additional operating expense which would reasonably have been incurred during such period by Landlord, had it at its own expense furnished such work or service to such tenant.

## ARTICLE 6 PURPOSE

**6.1 Possession and Use.** The Premises shall be occupied and used for the purpose of receiving, storing, warehousing and shipping products, materials and merchandise which is distributed by Tenant and other forms of transshipment services on a 24-hour-a-day, seven-day-a-week basis and other lawful uses incidental thereto. Tenant shall not allow any noise, smoke or odor to escape from the Premises in a manner which would be reasonably expected to materially disturb other occupants of the Building, or occupy the Premises in such manner as to disturb the peaceful and quiet occupancy of the other occupants of the Building. In no event, however, shall the Premises be used or occupied by Tenant in any manner contrary to law, zoning regulations or recorded restrictions, if any.

**6.2 Parking and Common Areas.** Tenant shall have the right to park trucks and trailers in those locations specified by Landlord as well as directly in front of Tenant's dock doors and to use spaces on the parking lot, as set forth in 6.2 of the Lease Cover Page, for automobile parking, for itself, its employees and invitees on an/unassigned, non-exclusive basis as depicted on Exhibit E. Tenant shall not park any trucks or tractor trailers on the automobile parking lot. Tenant shall be solely responsible to pay for any and all repairs, maintenance or excessive deterioration of such paved surfaces resulting from Tenant's excessive or improper use thereof. Tenant shall, at no time, block any common drive, or block access to any other tenant's premises and shall abide by such reasonable rules and regulations regarding the parking or standing of automobiles, trucks and trailers as Landlord may promulgate from time to time. Landlord shall retain exclusive control and management over the common areas serving the Premises and the Building, including but not limited to, all driveways, entrances, exits, roadways, parking areas, sidewalks and other features or facilities provided for the general use of all the tenants in the Building. Landlord shall have the right to establish, modify, change and enforce rules and regulations with respect to the use of said common areas and Tenant agrees to abide by and conform with such rules and regulations. Nothing contained in this Lease shall be construed so as to prohibit Landlord from reconfiguring the parking lot or from constructing any structures on the parking lot or in the common areas provided same does not unreasonably interfere with Tenant's operations at the Building or alter any truck routes to or through the drives accessing the Premises. Landlord reserves the right to remove abandoned or unlicensed vehicles and vehicles that are unreasonably interfering with the use of the

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parking lot by others and to charge the responsible party for Landlord's expense of removing said vehicle. Tenant shall be deemed responsible for any such vehicle belonging to or parked by any of Tenant's officers, directors, shareholders, employees, agents, contractors, licensees and concessionaires. Upon Landlord's request, Tenant shall furnish to Landlord within seven (7) days after the date of such request, the automobile license numbers of the vehicles used by Tenant and Tenant's employees, agents, contractors, licensees and concessionaires. Landlord shall have the right to cause any vehicles used by such parties to be towed at Tenant's cost for failure to park in the portion of the parking area where Tenant is authorized to park. Any amounts payable by Tenant hereunder shall be immediately due and payable upon demand by Landlord as additional rent hereunder.

## **ARTICLE 7**

### **UTILITIES, TRASH AND PERSONAL PROPERTY TAXES**

**7.1 Utilities.** Landlord shall cause the Premises to be separately metered for electricity and gas used in or upon the Premises during the term of this Lease. Tenant shall pay all electricity and gas charges relating to Tenant's use of the Premises. Landlord shall pay or cause to be paid when due, all charges for water and sewer used in or upon the Premises during the term of this Lease. Tenant shall reimburse Landlord, within thirty (30) days of Tenant's receipt of an invoice for same, for Tenant's Pro Rata Share of those water and sewer charges not separately metered to Tenant but relating to Tenant's use of the Premises as determined from time to time by Landlord. Tenant shall at all times during the term of this Lease maintain sufficient heat in the Premises so as to keep the water lines and sprinkler system in and serving the Premises from freezing during the winter months. Tenant shall be responsible for all damages incurred by Landlord for Tenant's failure to comply with the foregoing provisions and Landlord shall have the right, but not the obligation to cause the Premises to be adequately heated during the winter months at Tenant's sole cost and expense in the event Tenant shall fail to do so.

**7.2 Trash.** Tenant agrees to remove, at Tenant's sole cost and expense, all trash and rubbish of Tenant, which trash and rubbish shall be placed in Tenant's receptacles which shall be located in the areas designated by Landlord from time to time.

**7.3 Personal Property and Business Taxes.** Tenant shall pay before delinquent, all taxes, assessments, license fees and public charges levied, assessed or imposed upon its business operation, as well as upon its trade fixtures, merchandise and other personal property in or upon the Premises.

## **ARTICLE 8**

### **TENANT IMPROVEMENTS AND ALTERATIONS**

**8.1 Tenant Improvements.** Landlord agrees to construct the Base Building Improvements to the Premises at Landlord's sole cost as described on Schedule 1 attached hereto. Landlord also agrees to construct the improvements to the Premises listed on the Schedule of Tenant Improvements attached hereto as Schedule 2 (the "Tenant Improvements"). All such work shall be performed in a good and workmanlike manner, in accordance with the agreed Plans and Specifications referred to below, in compliance with all applicable laws, regulations, ordinances and codes and with the application of safety standards attached hereto as Exhibit D. Landlord shall complete the design and construction of the Base Building Improvements and the Tenant Improvements in accordance with the Milestone Schedule attached hereto as Schedule 3, subject to extension for delays to such work caused by force majeure events and the Tenant. The dates for commencement and completion of the Base Building Improvements and Tenant Improvements and access for Tenant's installation of fixtures and furnishings are of the essence.

The Tenant Improvements shall be constructed on an "open book" basis, and the Tenant shall be entitled to audit the Landlord's books and records for the improvements as required to substantiate the cost to design and construct the Tenant Improvements. Prior to commencement of construction of the Tenant Improvements, the Landlord shall submit to the Tenant, for the Tenant's reasonable approval, a proposed line item budget and maximum cost for the Tenant Improvements, indicating a not-to-exceed amount for the Excess Costs, as defined below, payable by the Tenant. Landlord agrees to obtain at least three (3) bids for each major component of the work. Landlord shall not be required to select the lowest bidder, but shall select that bid which, in Landlord's reasonable judgment, is submitted by the lowest qualified bidder. All costs and expenses of the Tenant Improvements in excess of the Tenant Improvement Allowance amount set forth in paragraph 8.1 of the Lease Cover Page ("Excess Costs") shall be paid by Tenant.

LANDLORD SHALL BE RESPONSIBLE FOR THE DESIGN AND ENGINEERING FOR THE TENANT IMPROVEMENTS AND THE PREPARATION OF THE PLANS AND SPECIFICATIONS FOR THE TENANT IMPROVEMENTS. SUCH PLANS AND SPECIFICATIONS SHALL COMPLY WITH THE OUTLINE SPECIFICATION FOR TENANT IMPROVEMENTS ATTACHED HERETO AS SCHEDULE 4. LANDLORD AND TENANT SHALL AGREE UPON A

SET OF PLANS AND SPECIFICATIONS FOR THE TENANT IMPROVEMENTS ON OR BEFORE THE PLAN APPROVAL DATE SET FORTH ON THE LEASE COVER PAGE, WHICH APPROVAL SHALL NOT BE UNREASONABLY WITHHELD OR DELAYED. IF NO SUCH AGREEMENT IS REACHED, THEN UNTIL SUCH TIME AS SUCH AGREEMENT IS REACHED, LANDLORD SHALL HAVE NO OBLIGATION TO CONSTRUCT THE TENANT IMPROVEMENTS, HOWEVER, RENT SHALL COMMENCE ON THE SCHEDULED LEASE COMMENCEMENT DATE. BY SO AGREEING TO THE PLANS AND SPECIFICATIONS, LANDLORD WARRANTS AND COVENANTS TO BUILD IN ACCORDANCE WITH SUCH PLANS AND SPECIFICATIONS, THAT THE PLANS AND SPECIFICATIONS ARE BUILDABLE AS PREPARED AND THAT LANDLORD SHALL COMPLETE CONSTRUCTION WITHIN TEN (10) WEEKS EXCEPT TO THE EXTENT OF DELAYS CAUSED BY FORCE MAJEURE OR BY TENANT.

The Tenant shall have the right to install the Tenant's fixtures and furnishings in the Premises during the construction of the Tenant Improvements. The Landlord shall provide access to areas of the Premises as reasonably required by the Tenant in accordance with the Milestone Schedule attached hereto as Schedule 3.

All improvements and work to be done on the Premises shall be performed solely by Landlord or its designated contractors or Tenant's contractors reasonably approved by Landlord (as to future improvements). If Tenant subsequently requests changes to the Plans and Specifications initially approved by Tenant and Landlord, Tenant shall be responsible for all increased costs and expenses associated with such changes, including without limitation the cost of preparing the revisions to the Plans unless such revisions are required on account of omissions or other matters for which Landlord's architect or contractor were initially responsible. No such changes shall be made without the prior written approval of Landlord after a written request has been made by Tenant.

Landlord will manage construction of the Tenant Improvements free of charge to Tenant. In the event the total construction cost of the Tenant Improvements as calculated upon substantial completion is less than the amount of the Tenant Improvement Allowance set forth in paragraph 8.1 of the Lease Cover Page, Tenant shall have the right to apply any unused portion to architectural/design fees, phones/data equipment or free rent.

Notwithstanding the foregoing, the amount set forth in paragraph 8.1 of the Lease Cover Page as the Maximum Amortization of Excess Costs, may be paid by Tenant over the initial lease term, together with interest thereon from and after such funds are advanced by Landlord at an annual rate equal to the rate per annum described in paragraph 8.1 of the Lease Cover Page in equal monthly installments payable on the first day of each month commencing on the first day Base Rent is due and payable. If Tenant elects to so amortize any such portion of the Excess Costs, Tenant must notify Landlord of its election in writing within fifteen (15) days after determination of the cost of the Tenant Improvements, but in all events, prior to Landlord's commencement of construction of the Tenant Improvements. Upon Final Completion of the construction of the Tenant Improvements (including punchlist work), Tenant shall reimburse Landlord for the portion of the Excess Costs that are not so amortized within forty-five (45) days after receipt of Landlord's invoice and sworn statements from the contractors and suppliers. Full unconditional waiver of lien from all of Landlord's contractors and suppliers covering the Base Building Improvements and the Tenant Improvements shall be due no later than ten (10) days after payment is received by Landlord.

## **8.2 Tenant's Alterations.**

**A.** Tenant may make nonstructural alterations costing less than Twenty Five Thousand and No/100 Dollars (\$25,000.00) per calendar year or fraction thereof in the aggregate without Landlord's consent, provided Tenant gives Landlord not less than thirty (30) days prior written notice thereof. Tenant shall not make any other alterations or improvements to the Premises, or to the exterior of the Premises or the exterior of the Building, without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Tenant agrees that all such work shall be done at Tenant's sole cost and expense, in accordance with the plans and specifications approved by Landlord and in a good and workmanlike manner, that the structural integrity of the Building shall not be impaired, and that no liens shall attach to all or any part of the Premises or the Building by reason thereof. Tenant shall, at its sole expense, obtain all permits required for such work. Landlord may condition its consent to proposed alterations and improvements upon, among other things, any one or more of the following:

(i) Tenant's agreement to remove any alterations or improvements upon termination, and to restore the Premises to the prior condition.

(ii) In the case of any alteration costing over \$25,000.00, delivery to Landlord of a satisfactory payment and performance bond equal to one and one-half times the estimated cost of the work.

(iii) In the case of any alteration, delivery to Landlord of evidence satisfactory to Landlord that Tenant shall cause such construction or alteration work to be performed by contractors who shall employ craft workers who are members of unions that are affiliated with the AFL-CIO Building and Construction Trades Department (the "Labor Covenant"). Tenant shall include the Labor Covenant in each of its contracts for such construction or alteration work. Tenant shall also provide such evidence as Landlord may reasonably require, from time to time during the course of such construction or alteration work, that the Labor Covenant is being fully and faithfully observed and Tenant shall include the obligation to provide such evidence in each contract entered into by Tenant for such construction or alteration work. Tenant further agrees that it shall incorporate the foregoing requirements in any sublease of the Premises. In the alternative, Tenant may engage Landlord to perform such alterations or improvements at Tenant's cost.

**B.** Tenant shall promptly pay any franchise, minor privilege or other tax or assessment resulting directly or indirectly from any alterations or improvements made by Tenant to the Premises. At Landlord's option, Landlord may engage an architect or an engineer to assist Landlord in reviewing any plans and specifications or other materials submitted by Tenant to Landlord for any proposed alterations or improvements to the Premises costing at least \$25,000.00, and Tenant shall reimburse Landlord as Additional Rent for the reasonable fees and expenses of any such architect or engineer engaged by Landlord within thirty (30) days after Landlord's demand therefor. Tenant shall repair promptly, at its sole expense, any damage to the Premises caused by bringing into the Premises any property for Tenant's use, or by the installation or removal of such property, regardless of fault or by whom the damage shall be caused unless resulting from Landlord's or Landlord's agent's, representative's or employee's negligence or breach of this Lease.

**C.** Subject to Tenant's rights under Section 8.3 below, unless removal is required by Landlord as a condition of Landlord's approval to such alteration or if Landlord's approval is not required, then by written notice to Tenant within thirty (30) days after Tenant's notice to Landlord that it is making such alterations, all alterations or improvements shall become the property of Landlord and shall be surrendered with the Premises at the expiration or other termination of the Lease Term, without payment by Landlord therefor. Tenant's machinery and equipment remains the property of Tenant and shall be removed by Tenant, at Tenant's sole expense, subject to the provisions of Article 19 (Surrender and Holding Over). Any removal by Tenant of alterations, improvements, machinery and/or equipment in accordance with this Section 8.2 shall be at Tenant's sole expense and subject to the condition that Tenant, at Tenant's sole expense, repair promptly all damage to the Premises resulting from such removal so that the Premises are restored in all material respects to their condition as existing prior to the installation of such alterations, improvements, machinery and equipment. Any such property remaining on the Premises after the expiration of this Lease shall be deemed abandoned by Tenant, but under no circumstances shall the presence of such property, on the Premises after the expiration of the term of this Lease, be deemed evidence of or constitute a holding over by Tenant. Landlord shall have the right, but not the obligation, to remove any and all property abandoned or deemed abandoned by Tenant and to dispose of it as Landlord deems fit without any liability or responsibility to Tenant. If Landlord chooses to store any such abandoned property on Tenant's behalf, then Tenant shall, as a condition to recovering any such property, reimburse Landlord for any and all costs of such storage. Any storage by Landlord of Tenant's property may be terminated at any time by Landlord without liability to Tenant whereupon Landlord may dispose of any such property as Landlord deems fit. Any damage to the Premises caused by Tenant in installing or removing any of Tenant's property shall be repaired at the expense of Tenant.

**8.3 Tenant's Fixtures.** Tenant may install upon the Premises such furniture, appliances, equipment, trade fixtures and other property as it deems necessary for its use, all of which items shall remain the property of Tenant and may be removed by Tenant at the termination of this Lease. Any such property remaining on the Premises after the expiration of this Lease shall be deemed abandoned by Tenant, but under no circumstances shall the presence of such property on the Premises after the expiration of the term of this Lease, be deemed evidence of or constitute a holding over by Tenant. Landlord shall have the right, but not the obligation, to remove any and all property abandoned or deemed abandoned by Tenant and to dispose of it as Landlord deems fit without any liability or responsibility to Tenant. If Landlord chooses to store any such abandoned property on Tenant's behalf, then Tenant shall, as a condition to recovering any such property, reimburse Landlord for any and all costs of such storage. Any storage by Landlord of Tenant's property may be terminated at any time by Landlord without liability to Tenant whereupon Landlord may dispose of any such property as Landlord deems fit. Any damage to the Premises caused by Tenant in installing or removing any of Tenant's property shall be repaired at the expense of Tenant.

**8.4 Satellite Dish.** Tenant shall have the right to install, at its sole cost and expense and at no additional rental charge, one(1) or more antennae, satellite dish or other transmission facilities, including all related wiring at a location on the rooftop of the Building which is mutually

agreeable to Landlord and Tenant. No roof penetration shall be made without Landlord's specific approval and oversight or in a manner which voids any roof warranty applicable to the Building. The operation of any such equipment shall not cause material interference with the operation of any equipment previously installed by Landlord or any other tenant on the roof. Upon expiration of the Lease, Tenant shall remove any and all such equipment and shall repair any and all damage resulting therefrom.

## **ARTICLE 9** **REPAIRS AND MAINTENANCE**

**9.1 Tenant's Obligation to Repair.** During the term of this Lease and any renewal term, Tenant shall, at its own cost and expense, when and if needed, or whenever requested by Landlord, and subject to all warranties provided by Landlord or Landlord's contractors and suppliers, keep and maintain all interior portions of the Premises (except to the extent Landlord is responsible to maintain the same pursuant to paragraph 9.2 below) in a good condition, promptly making all necessary repairs and replacements thereto, with materials and workmanship of the same character, kind and quality as the original. Tenant's obligation to maintain and repair the Premises shall include but shall not be limited to, all windows, glass and plate glass, doors, interior walls and finish work, floors (excluding subfloors) and floor coverings, water heaters and all plumbing work, electrical systems and fixtures, dock levelers, dock bumpers, dock doors, the heating and air conditioning systems and other fixtures located in and/or serving the Premises, all of which shall be kept and maintained by Tenant in good condition and repair, subject only to ordinary wear and tear and fire and other casualty. In addition, Tenant shall be responsible for maintaining (including, but not limited to, maintaining in full force and effect a servicing contract with a qualified HVAC service company for performing regularly scheduled preventative maintenance services) and replacing as needed the heating and air conditioning systems serving the Leased Premises during the term of this Lease (other than during the last three (3) years of the applicable term) and shall be responsible for any maintenance and repair items or replacements which would otherwise be the Landlord's obligation if, and to the extent, that such repair or maintenance or replacement responsibilities are due to the wrongful or negligent acts or activities of Tenant in or from the Leased Premises. In the event that a replacement or major repair of the HVAC system or components is required during the last three (3) years of the then applicable term of this Lease, Landlord shall perform same and Tenant shall only be responsible for reimbursing Landlord a portion thereof based upon (a) the amortized value of the cost of any such replacement item amortized over the number of years of 'useful life' of the item in accordance with GAAP; (b) pro rated for the number of years remaining in the applicable Term of the Lease; and (c) at such time, if ever, as any applicable Renewal Term is exercised, then Tenant shall pay Landlord for the remaining unamortized cost thereof. If the Building's sprinkler system or any of its appliances or systems shall be damaged or injured or not in proper working order by reason of any act or omission of Tenant or Tenant's employees, agents, contractors, licensees or invitees or if the Board of Fire Underwriters or Fire Insurance Exchange or any bureau or department or official of the state, county or city government require or recommend that any changes, modifications, alterations or additional sprinkler heads or other equipment be made or supplied by reason of the nature and/or conduct of Tenant's business or the location of partitions, trade fixtures or other contents in the Building or for any other reason not caused by Landlord or if any such changes, modifications, alterations, additional sprinkler heads or other equipment become necessary to prevent the imposition of a penalty or charge against the full allowance for a sprinkler system in the fire insurance rate as fixed by said Exchange or by any fire insurance company, Landlord shall have the right to perform any and all such work at Tenant's sole cost and expense and Tenant shall promptly reimburse Landlord as additional rent hereunder for the full cost of same upon receipt of an invoice from Landlord for such cost serving the Premises.

**9.2 Landlord's Obligation to Repair.** Landlord shall:

(i) Perform all needed replacements to the roof, exterior walls, subfloors, foundations, all structural replacements, including columns, beams, support joists, trunk utility lines and substrata portions of the plumbing system located outside of the Premises and/or not exclusively serving the Premises;

(ii) Perform all needed repairs to the roof, exterior walls, subfloors, foundations, all structural repairs, including columns, beams, support joists, trunk utility lines and substrata portions of the plumbing system located outside of the Premises and/or not exclusively serving the Premises and the sprinkler system of the entire Building, including portions located within the Premises;

(iii) Maintain the driveways, parking areas and other facilities owned by Landlord for the general use of all the tenants and their invitees in the Building in which the Premises are located, including any and all necessary landscaping of the common areas;

(iv) Remove snow and ice from the parking areas, sidewalks and driveways serving the Building in which the Premises are located; and

(v) Perform all needed repairs and replacements to the electrical, mechanical, HVAC, lighting and plumbing systems during the first twelve (12) months of the Lease term (except to the extent that the same have been installed or modified by Tenant).

Landlord's maintenance responsibilities pursuant to this paragraph shall not apply to any damage or repairs required due to the wrongful or negligent activities or actions of Tenant in or upon the Premises. In the event of an "emergency", and Tenant is unable to contact Landlord after reasonable efforts to do so, Tenant may perform Landlord's repair obligations as set forth herein. As soon as Tenant is reasonably able to do so, Tenant shall notify Landlord that Tenant has made such repairs on Landlord's behalf. Landlord shall reimburse Tenant for the reasonable costs of said repairs upon Landlord's receipt of an invoice for same. An "emergency" shall not be deemed to exist unless there is an imminent threat of harm to any person or an imminent threat of material damage to Tenant's property located in the Premises or any material interruption of Tenant's operations. Except for costs incurred by Landlord to perform replacements pursuant to (i) above or to perform the repairs and replacements pursuant to (v) above, or to perform roof repairs which are covered by warranties, all costs incurred by Landlord in performing its obligations under this paragraph shall be deemed to be operating expenses for purposes of Article 5 of this Lease

**9.3 Landlord's Right Upon Tenant's Refusal to Repair.** If Tenant refuses or neglects to make repairs and/or maintain the Premises, or any part thereof, in a manner reasonably satisfactory to Landlord, Landlord shall have the right, upon giving Tenant five (5) days prior written notice of its election to do so, to make such repairs or perform such maintenance on behalf of and for the account of Tenant. In such event, such work shall be paid for by Tenant within thirty (30) days of its receipt of a bill therefor. Nothing herein contained shall impose any duty on the part of Landlord to do any such work under any provision of this Lease which Tenant may be required to perform, nor shall it constitute a waiver of Tenant's default in failing to do the same. Landlord shall not be required to provide Tenant with any written notice of its election to perform work on Tenant's behalf pursuant to the provisions of this paragraph 9.3 in the event that the condition being remedied by Landlord on Tenant's behalf constitutes an emergency situation posing an imminent threat of harm or damage to Landlord's or some other tenant's property, or which poses an imminent threat of personal injury to any person.

**9.4 Landlord's Entry Upon the Premises.** Tenant agrees to permit Landlord and its authorized representatives to enter the Premises during normal business hours for the purpose of inspecting same, making any necessary repairs to the Premises and performing any work therein necessary to comply with any laws, ordinances, rules or regulations of any public authority, fire rating bureau, or Landlord's insurer or that Landlord may deem necessary to prevent waste or deterioration to the Premises. Landlord shall not be required to give Tenant any notice of its entry into the Premises in the event Landlord is entering the Premises in conjunction with any actual or perceived emergency situation involving any imminent threat of harm to any person or an imminent threat of material damage to the Premises, Landlord's Building or other property of Landlord or any third party. Any such entry shall be so as to cause minimal inconvenience to Tenant and observe all of Tenant's safety rules and standards. In addition, Landlord may, upon twenty-four (24) hours notice to Tenant, enter upon the Premises during normal business hours to show the Premises to prospective purchasers, mortgagees and insurance representatives and may at any time during the last one hundred eighty (180) days of the term of this Lease, show the Premises to prospective Tenants.

## **ARTICLE 10** **INSURANCE**

**10.1 Tenant's Public Liability and Property Insurance.** During the term of this Lease, Tenant shall, at its sole cost and expense, obtain and maintain during the term of the Lease, Comprehensive General Liability Insurance, including Blanket Contractual Liability coverage, with limits of not less than Five Million and No/100 Dollars (\$5,000,000.00) Combined Single Limit for Personal Injury and Property Damage; Comprehensive Automobile Liability Insurance covering all owned, non-owned and hired vehicles with limits of not less than Five Million and No/100 Dollars (\$5,000,000.00) Combined Single Limit for Personal Injury and Property Damage; and Statutory Workers Compensation and Employers Liability coverage with limits of not less than Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00). In such policy or policies, Landlord and Landlord's management company and/or managing agent shall be named as additional insureds, as their interests may appear and said policies shall contain a waiver of subrogation clause. Tenant shall be solely responsible for obtaining any fire or extended coverage insurance for personal property and improvements of Tenant which may be located within the Premises and for all goods, commodities and material stored by Tenant in or about the Premises. Tenant shall provide Landlord with evidence of such insurance, satisfactory to Landlord, on or prior to the Lease Commencement Date and thereafter on or prior to the expiration of any such policy or policies. All

such policies shall contain a provision that they may not be canceled or non-renewed except upon not less than thirty (30) days prior written notice to Landlord. Notwithstanding the aforesaid, Tenant shall be permitted to self-insure for all such coverages so long as Tenant provides Landlord with reasonably satisfactory evidence of Tenant's self insurance program.

**10.2 Landlord's Obligations.** Landlord shall, as an operating expense, obtain and maintain during the term of the Lease, All Risk Property Insurance for the Building upon a full replacement cost basis, with no co-insurance requirement; Comprehensive General Liability Insurance, including Blanket Contractual Liability coverage, with limits of not less than Five Million Dollars and No/100 Dollars (\$5,000,000.00) Combined Single Limit for Personal Injury and Property Damage; Comprehensive Automobile Liability Insurance covering all owned, non-owned and hired vehicles with limits of not less than Five Million and No/100 Dollars (\$5,000,000.00) Combined Single Limit for Personal Injury and Property Damage; and Statutory Workers Compensation and Employers Liability coverage with limits of not less than Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00). Landlord shall deliver to Tenant upon request a certificate evidencing such coverages.

**10.3 Mutual Waiver of Subrogation.** Landlord and Tenant hereby waive the rights each may have against the other on account of any loss or damage occasioned to Landlord or Tenant, as the case may be, their respective property, the Premises or its contents arising from any risk insured against by Landlord or Tenant; and the parties each, on behalf of their respective insurance companies insuring the property of either Landlord or Tenant against any such loss, waive any right of subrogation that it may have against Landlord or Tenant, as the case may be. The release set forth in this paragraph shall apply only to the extent that such loss or damage is covered by insurance and only so long as the applicable insurance policies contain a clause or otherwise provide that this release shall not affect the right of the insured to recover under such policies.

**10.4 Liability.** Tenant and all those claiming by, through or under Tenant shall store their property in and shall occupy and use the Premises and any improvements therein and appurtenances thereto and any other applicable portions of the Building, solely at their own risk and Tenant and all those claiming by, through or under Tenant hereby release Landlord, to the full extent permitted by law, from any and all claims of every kind, including loss of life, personal or bodily injury, damage to merchandise, equipment, fixtures or other property, or damage to business or from business interruption, arising, directly or indirectly, out of or from or on account of such occupancy and use or resulting from any present or future condition or state of repair thereof, except those claims arising out of the negligence of Landlord or its agents, directors, officers, employees or contractors. Tenant shall defend and indemnify Landlord and save it harmless from and against any and all claims against Landlord arising from (a) Tenant's use of the Premises or the conduct of its business or from any activity, work or thing done, permitted or suffered by Tenant in or about the Building, (b) the nonperformance of any covenant or agreement on Tenant's part to be performed pursuant to the terms of this Lease, (c) any act or negligence of Tenant or of any of its agents, contractors, employees, invitees or licensees, and from and against all costs, fines, judgments, reasonable counsel fees, expenses and liabilities incurred in any such claim or in any action or proceeding brought thereon, or (d) Tenant's failure to comply with any and all governmental laws, ordinances and regulations applicable to the condition or use of the Premises or its occupancy. In case any action or proceeding be brought against Landlord by reason of any such claim, Tenant upon notice from Landlord, covenants to resist or defend at Tenant's expense such action or proceeding by counsel reasonably satisfactory to Landlord. However, the foregoing provisions shall not be construed to make Tenant responsible for loss, damage, liability or defense resulting from injuries to third parties caused by the negligence or misconduct of Landlord or its agents, directors, officers, contractors or employees. Further, Tenant shall give prompt notice to Landlord in case of fire or other casualty or accidents in the Premises or of any defects therein or in any of Landlord's machinery or equipment serving the Premises. The provisions of this Article shall survive the termination of this Lease with respect to any claims or liabilities accruing prior to such termination.

## **ARTICLE 11 CASUALTY**

**11.1 Damage or Destruction.** If the Premises shall be partially damaged by fire or other casualty insured under Landlord's insurance policies, then upon Landlord's receipt of the insurance proceeds, Landlord shall, except as otherwise provided herein, repair and restore the same (exclusive of Tenant's trade fixtures, decorations, signs and contents) substantially to the condition thereof immediately prior to such damage or destruction; limited, however, to the extent of the insurance proceeds received by Landlord. If by reason of such occurrence, (a) the Premises is damaged in whole or in part as a result of a risk which is not covered by Landlord's insurance; or (b) the Premises is damaged in whole or in part during the last twelve (12) months of the term of this Lease; or (c) the Premises is damaged or the Building is damaged (whether or not the Premises is damaged) to an extent of 50% of more of the then replacement value thereof; or (d) the Building is damaged (whether or not the Premises is damaged) to such an extent that the Building cannot, in

the judgment of Landlord, be operated as an integral unit during and following the repair or restoration of said damaged areas, then, upon the occurrence of any of such events, Landlord may elect either to repair the damage as aforesaid, or cancel this Lease by written notice of cancellation given to Tenant within thirty (30) days after the date of such occurrence, and thereupon this Lease shall cease and terminate as though the date of Landlord's notice were the date herein fixed for the expiration of the term hereof; provided Tenant shall have the option to elect to renew this Lease in accordance with its terms if Landlord elects to terminate this Lease pursuant to clause (c) above (if Tenant so elects to renew, Landlord shall not be entitled to terminate this Lease). In addition to the foregoing, in the event the holder of any indebtedness secured by a mortgage or deed of trust covering the Premises requires that the insurance proceeds be applied to such indebtedness, then Landlord shall have the right to terminate this Lease by delivering a written notice of termination to Tenant within thirty (30) days after such requirement is made by such holder. Upon the termination of this Lease as aforesaid, Tenant's liability for the rents reserved hereunder shall cease as of the effective date of the termination of this Lease. Unless this Lease is terminated by Landlord as aforesaid, this Lease shall remain in full force and effect and Landlord shall promptly commence and diligently complete the restoration of the Premises and the Building. If the casualty renders the Premises untenable in whole or in part, a proportionate abatement of the minimum Base Rent and additional rent shall be allowed from the date when the damage occurred until the date when the Premises are made tenable or until the effective date of termination as herein provided, said abatement to be computed on the basis of the relation which the square foot area of the space rendered untenable bears to the aggregate square foot area of the Premises, provided that destruction of 50% or more of the square foot area of the Premises shall be deemed to be wholly untenable.

**11.2 Major Destruction.** Notwithstanding anything contained herein to the contrary, in the event the Premises are damaged by fire or other casualty so as to render said Premises unquestionably untenable for one hundred and eighty (180) days or longer, then, in such event, Landlord and Tenant shall each have the option to terminate this Lease by delivering a written notice to the other within thirty (30) days of the occurrence of such damage or destruction. If Landlord and Tenant cannot agree as to whether said Premises are unquestionably untenable for the aforescribed period of time, the fact shall be determined by an architect selected by Landlord.

## **ARTICLE 12 CONDEMNATION**

**12.1 Condemnation.** In the event the Premises or any part thereof shall be taken in an eminent domain proceeding the following provisions shall be controlling:

**A.** If the whole of the Premises shall be acquired or Condemned by eminent domain for any public or quasi-public use or purpose (hereinafter "Condemned" or a "Condemnation"), then and in that event the term of this Lease shall cease and terminate from the date of title vesting in such condemning authority and Tenant shall have no claim against Landlord for the value of any unexpired term of said Lease.

**B.** If any part of the Premises shall be Condemned and such partial Condemnation shall render the Premises unsuitable for the business of Tenant, then and in such event Tenant shall have the right to terminate this Lease by delivering a written notice of cancellation to Landlord, whereupon this Lease shall cease and terminate as of the later of (i) the date of title vesting in such condemning authority or (ii) that date which is thirty (30) days after the date Landlord shall have received said notice of cancellation, and Tenant shall have no claim against Landlord for the value of the unexpired term of this Lease.

**C.** In the event (a) any part of the Premises shall be Condemned during the last year of the term of this Lease; or (b) a part of the Premises is Condemned and the cost of restoring the Premises will exceed the proceeds of any condemnation award received by Landlord; or (c) any portion of the common areas or any portion of the Building is Condemned (whether or not any portion of the Premises is Condemned) to such an extent that the project cannot, in the judgment of Landlord, be operated as an integral unit during or following the repair or restoration work to the Building or common areas; or (d) the holder of any indebtedness secured by a mortgage or deed of trust covering the Building requires that the Condemnation proceeds be applied toward such indebtedness, then, in any of such events, Landlord may elect to cancel this Lease by written notice of cancellation given to Tenant, whereupon this Lease shall cease and terminate as of that date which is thirty (30) days following the date upon which Tenant shall receive said notice of cancellation.

**D.** In the event of any Condemnation or taking as hereinbefore provided, either whole or partial, Tenant shall not be entitled to any part of the award as damages or otherwise for such Condemnation and Landlord is to receive the full amount of such award, the Tenant hereby expressly waiving any right or claim to any part thereof; except that

Tenant shall be entitled to make application for, receive and retain any amounts which may be specifically awarded to it in such Condemnation proceedings because of the taking of its trade fixtures and for relocation expenses. It is understood that in the event of the termination of this Lease as aforesaid, neither Landlord nor Tenant shall have any claim against the other for the value of any unexpired term of this Lease and Tenant shall have no right or claim to any part of the award on account thereof.

#### **ARTICLE 13** **LIENS**

**13.1 Liens.** If the Premises or Tenant's leasehold interest therein shall at any time during the term of the Lease become subject to any mechanic's, laborer's or materialmen's lien based upon the furnishing of material or labor to Tenant on the Premises, Tenant shall cause the same, at Tenant's expense, to be discharged within sixty (60) days after notice thereof, unless the lien is then being litigated in good faith by Tenant, in which event Tenant shall indemnify and hold Landlord harmless from and against any such lien and shall secure Landlord to Landlord's satisfaction. Tenant shall have no authority or power, express or implied, to create or cause any lien, charge or encumbrance of any kind against the Premises or Landlord's ownership interest in the Premises.

#### **ARTICLE 14** **ASSIGNMENT**

**14.1 Assignment.** Tenant shall not transfer, assign, sublet, enter into license or concession agreements, change ownership or hypothecate this Lease or Tenant's interest in and to the Premises without first procuring the prior written consent of Landlord, which will not be unreasonably withheld or delayed. Landlord's consent shall not be required for an assignment or sublease to any subsidiary or affiliate of Tenant, provided Tenant gives Landlord not less than thirty (30) days prior written notice thereof. Any attempted transfer, assignment, subletting, license or concession agreement, change of ownership or hypothecation without Landlord's written consent, shall be void and confer no rights upon any third party. If this Lease or any interest of Tenant herein shall be assigned, or if the whole or any part of the Premises shall be sublet, Tenant shall nevertheless remain fully liable for the full performance of all obligations under this Lease to be performed by Tenant, and Tenant shall not thereby be released in any manner. Landlord's interest in this Lease may be assigned by Landlord in connection with the sale or other conveyance of the Building and, upon such assignment, the obligations of Landlord hereunder (including, but not limited to, refund of any security deposit held under paragraph 3.2 above) shall become obligations solely of such assignee.

**14.2 Landlord Termination Option.** In the event Tenant shall desire to sublet all or any portion of the Premises other than to a subsidiary or affiliate, Tenant shall give Landlord written notice, at least ninety (90) days before the commencement date of such proposed sublease, of Tenant's desire to sublet all or any portion of the Premises. Such notice shall include the commencement date of the proposed sublease, the area to be sublet, the rental to be paid by the subtenant, and all other terms and conditions of the sublease. From and after Landlord's receipt of Tenant's notice of its desire to sublease, Landlord shall have the option of terminating this Lease with respect to all or any portion of the area proposed to be sublet; such termination to be effective upon the date specified in the notice Landlord shall give to Tenant within fifteen (15) days after receiving notice of Tenant's desire to so sublease the Premises. If Landlord elects to terminate this Lease with respect to some portions of the Premises and Tenant will retain other portions of the Premises, the Base Rent and all adjustments thereto specified in this Lease shall be adjusted proportionally on the basis of the square footage of the Premises retained by Tenant and this Lease shall remain in full force and effect in all other respects.

**14.3 General.** In the event that Tenant shall sublet the Premises for a rental in excess of the fixed rent due hereunder from Tenant to Landlord, then, notwithstanding any other provision contained in this Lease to the contrary, the fixed rent provided for in this Lease shall automatically be increased (but in no event decreased) during the term of such sublease to a sum equal to the amount of rent actually paid under such sublease less reasonable subleasing-related expenses incurred by Tenant. In the event that Tenant shall receive any valuable consideration for an assignment of the Tenant's interest in this Lease, then, notwithstanding any other provision contained in this Lease to the contrary, Tenant shall pay to Landlord as additional rent hereunder, fifty percent (50%) of the amount of consideration thereby received after deduction of all expenses incurred in connection therewith.

#### **ARTICLE 15** **DEFAULT**

**15.1 Default.** The following events shall be deemed to be events of default by Tenant under this Lease: (a) if Tenant shall fail to make any payment of rent or additional rent or any other payment required to be made by Tenant hereunder, as the same shall become due and payable

and shall not cure such failure within fifteen (15) days after written notice thereof to Tenant (it being understood, however, that after Tenant has been given written notice of being delinquent in the payment of rent or additional rent on more than two (2) occasions during the term of this Lease, Landlord shall no longer be required to provide Tenant with written notice of such default and a fifteen (15) day period within which to cure such default, and Tenant shall be deemed in default of its obligations under this clause upon Tenant's failure to make any future payment of rent or additional rent as and when due); (b) if Tenant shall fail to comply with any term, provision or covenant of this Lease, other than the payment of rent and additional rent, and shall not cure such failure within thirty (30) days after written notice thereof to Tenant (provided that if such cure is not reasonably capable of being completed within such thirty (30) day period, then so long as Tenant has commenced to cure such default within such thirty (30) day period and diligently pursues the same to completion thereafter, such thirty (30) day period shall be extended for up to an additional sixty (60) days; (c) if Tenant shall become insolvent or shall make a transfer in fraud of its creditors, or shall make an assignment for the benefit of its creditors of Tenant's assets or Tenant's interest in this Lease; or (d) if a receiver or trustee shall be appointed for all or substantially all of the assets of Tenant and such proceeding shall not be dismissed or stayed within ninety (90) days thereafter.

**15.2 Remedies of Landlord.** Upon the occurrence of any such event of default, Landlord shall have the option to pursue any one or more of the following remedies (as well as any other remedies provided by law) without any notice or demand whatsoever:

**A.** Landlord may terminate this Lease, in which event Landlord may immediately repossess the Premises through the applicable legal process and be entitled to recover sums or damages for which Tenant may be adjudged legally liable to Landlord.

**B.** Landlord may terminate Tenant's right of possession and may repossess the Premises by unlawful detainer suit or by taking peaceful possession without terminating this Lease, in which event Landlord may, at Landlord's option, enter into the Premises, remove property, and take and hold possession, all as provided above, without terminating this Lease or releasing Tenant, in whole or in part, from Tenant's obligation to pay rent hereunder for the full term. Upon and after entry into possession without termination of this Lease, Landlord may relet the Premises or any part thereof for the account of Tenant to any person, firm or corporation other than Tenant for such rent, for such period (including periods extending beyond the term of this Lease) and upon such terms as Landlord shall determine to be commercially reasonable. In any such case, Landlord may make such reasonable repairs and alterations to the Premises and redecorate them as deemed by Landlord to be appropriate in order to facilitate reletting of the Premises. All reasonable costs thereof and Landlord's expenses of retaking possession, removing property, and of reletting, including a reasonable lease commission, shall be charged against the first rents collected on any reletting of the Premises. If the rents collected by Landlord upon any such reletting for Tenant's account, after payment of the foregoing expenses, are not sufficient to pay the full amount of the rent reserved in this Lease as it becomes due, Tenant shall pay to Landlord the amount of the deficiency each month upon demand. In the event the rents collected by Landlord upon any such reletting for Tenant's account, after payment of the foregoing expenses, exceed the full amount of the rent reserved in this Lease as it becomes due, such excess shall be retained by Landlord to be applied against any subsequent deficiency, and any excess remaining at the end of the term of this Lease shall be paid to Tenant.

**C.** Intentionally Omitted.

**D.** Landlord may make such repairs, obtain insurance and otherwise pay or perform any obligation of Tenant hereunder, in which case, Tenant shall promptly reimburse Landlord for all amounts so expended by Landlord together with interest thereon at the rate of one percent (1%) per month or at the highest lawful rate, whichever is less, all of which shall constitute additional rent hereunder. Nothing herein shall impose any duty on the part of Landlord to do any such work or pay any such expense which Tenant may be required to perform or pay, nor shall it constitute a waiver of Tenant's default in failing to do or pay the same.

No waiver by Landlord of any violation or breach of any of the terms, provisions and covenants of this Lease shall be deemed or construed to constitute a waiver of any other violation or breach of any of the terms, provisions and covenants herein contained. Forbearance by Landlord to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of such default.

**ARTICLE 16**  
**COMPLIANCE WITH LAWS**

**16.1 Code Compliance.** Tenant shall, at Tenant's sole cost and expense, comply or cause the Premises to comply with all applicable laws, rules, regulations, requirements and ordinances now in force or which may hereafter be in force (hereinafter collectively referred to as "Laws"), including, without limitation, The Americans With Disabilities Act (the "ADA"), which have been or which may be enacted or imposed by any governmental unit concerning the Premises or Tenant's use of the Premises; provided, however, that this provision shall not apply to any building wide alteration, maintenance or restoration required to all of the space in the Building or to compliance by the Building or the Premises (as opposed to Tenant's use thereof) on the Lease Commencement Date with any existing law, rule or regulation. Landlord represents and warrants that the Premises, including the Base Building Improvements, shall be in compliance with all applicable laws, rules, regulations, requirements and/or ordinances, including, without limitation, ADA requirements, on the Lease Commencement Date.

**16.2 Environmental Covenants.** Tenant shall not use, store, manufacture, dispose of or discharge any pollutants, contaminants, or harmful or hazardous substances from or on the Premises or otherwise occupy or permit the Premises to be occupied or used in a manner which (i) violates any law, regulation, rule or other governmental requirement, (ii) impairs the health, safety or condition of any person or property or (iii) adversely affects the use, enjoyment or value of the Premises or the surrounding property. Tenant shall promptly notify Landlord of the breach, or the potential or threatened breach, of any of the provisions of this paragraph. Tenant shall indemnify and hold Landlord and its officers, shareholders, partners, employees, and agents, harmless from any loss, claim, liability or expense (including, without limitation, attorneys' fees, court costs, consultant fees, expert fees, penalties, fines, removal, clean-up, transportation, disposal and restoration expenses) arising in connection with Tenant's failure to comply with the provisions of this paragraph. A breach of the provisions of this paragraph shall be a material default enabling Landlord to exercise any of the remedies set forth in this Lease. Tenant's obligation hereunder shall survive the termination of this Lease. Landlord represents that to the best of its knowledge, as of the Commencement Date, the Premises shall be free of any pollutants, contaminants or harmful or hazardous substances which (i) violate any law, regulation, rule or other governmental requirement; (ii) impair the health, safety or condition of any person or property; or (iii) materially adversely affect the use, enjoyment or value of the Premises or the surrounding property. Landlord represents and warrants that, to the best of its knowledge, the Premises does not contain: (i) any underground storage tanks nor have there ever been any underground storage tanks on the Premises; (ii) asbestos in any form, including insulation or flooring; (iii) PCB-containing equipment, including transformers or capacitors; or (iv) any other hazardous wastes, hazardous substances, or toxic substances which could affect or impair Tenant's use of or operations at the Premises or the health or safety of Tenant's employees. Landlord shall not cause, or permit to be caused, to exist, a hazardous condition at the Premises or Building in violation of any applicable Laws and if Landlord becomes aware of a hazardous condition in violation of Laws on the Premises prior to its occupancy by Tenant or at any time thereafter, Landlord shall (a) promptly give Tenant written notice of such condition; and (b) unless such condition has been caused by Tenant, its guests, invitees, employees or contractors, Landlord shall, in a prompt manner, take such action as required by Law to bring such hazardous condition into compliance with applicable laws, ordinances, and requirements of governmental authorities with competent jurisdiction, that it will indemnify, defend and hold Tenant, its affiliates and their respective members, partners, venturers, stockholders, directors, officers, employees, agents, spouses, legal representatives, successors and assigns harmless from and against any damage, liability, fines, penalties, costs (including, without limitation, reasonable attorneys' fees and costs), or losses to which Tenant may be subjected as a result of Landlord's breach of any of its representations, warranties or covenants.

**16.3 Bankruptcy.** If a petition is filed by or against Tenant for relief under Title 11 of the United States Code, as amended (the "Bankruptcy Code"), and Tenant (including for purposes of this section Tenant's successor in bankruptcy, whether a trustee or Tenant as debtor in possession) assumes and proposes to assign, or proposes to assume and assign, this Lease pursuant to the provisions of the Bankruptcy Code to any person or entity who has made or accepted a bona fide offer to accept an assignment of this Lease on the terms acceptable to Tenant, then notice of the proposed assignment setting forth (a) the name and address of the proposed assignee, (b) all of the terms and conditions of the offer and proposed assignment, and (c) the adequate assurance to be furnished by the proposed assignee of its future performance under this Lease, shall be given to Landlord by Tenant no later than twenty (20) days after Tenant has made or received such offer, but in no event later than ten (10) days prior to the date on which Tenant applies to a court of competent jurisdiction for authority and approval to enter into the proposed assignment. Landlord shall have the prior right and option, to be exercised by notice to Tenant given at any time prior to the date on which the court order authorizing such assignment becomes final and non-appealable to take an assignment of this Lease upon the same terms and conditions, and for the same consideration, if any, as the proposed assignee, less any brokerage commission which may otherwise be payable out of the consideration to be paid by the proposed assignee for the assignment of this Lease. If this Lease is assigned pursuant to the provisions of the Bankruptcy Code, Landlord: (i) may require from the assignee a deposit or other security for the performance of its obligations under this Lease in an amount substantially the same as would have been required

by Landlord upon the initial leasing to a tenant similar to the assignee; and (ii) shall be entitled to receive as additional Rent, any amounts received by Tenant in connection with such assignment. Any person or entity to which this Lease is assigned pursuant to the provisions of the Bankruptcy Code shall be deemed without further act or documentation to have assumed all of the Tenant's obligations arising under this Lease on and after the date of such assignment. Any such assignee shall upon demand execute and deliver to Landlord an instrument confirming such assumption. No provision of this Lease shall be deemed a waiver of Landlord's rights or remedies under the Bankruptcy Code to oppose any assumption and/or assignment of this Lease, or to regain possession of the Premises if this Lease has neither been assumed nor rejected within sixty (60) days after the date of the order for relief. Notwithstanding anything in this Lease to the contrary, all amounts payable by Tenant to or on behalf of Landlord, under this Lease, whether or not expressly denominated as rent, shall constitute rent for the purposes of Section 502(b)(6) of the Bankruptcy Code.

#### **ARTICLE 17 SUBORDINATION**

**17.1 Subordination.** Tenant shall, within fifteen (15) days after written request from Landlord, execute and deliver to Landlord such documents as may be reasonably necessary or appropriate, from time to time, to subordinate this Lease to any mortgage or deed of trust now or hereafter affecting the Building, provided such document contains reasonable assurances that in the event of a foreclosure or other conveyance of title to the holder of such mortgage or deed of trust or its designee, so long as Tenant is not in default of any of its obligations hereunder, the right of Tenant to possession of the Premises upon the terms set forth herein shall not be disturbed.

#### **ARTICLE 18 SIGNS**

**18.1 Signs.** Tenant, at Tenant's sole cost and expense, may install one building sign on the exterior of the Premises. Any such signage must be approved in advance by Landlord, which approval shall not be unreasonably withheld if it is in compliance with all applicable laws and regulations. Upon termination of this Lease Tenant shall remove such sign and repair any damage caused thereby, all at Tenant's sole cost and expense. No other signs, advertisements or notices shall be placed by Tenant on the outside of the Building. No sign, fixture, advertisement or notice shall be displayed, inscribed, painted or fixed by Tenant on any part of the inside of the Building or Premises without the prior written consent of Landlord, which may be withheld for any reason whatsoever. Directional signs may be placed on the exterior of the Premises to regulate traffic and pedestrian movements, so long as the same are approved in writing by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed.

#### **ARTICLE 19 SURRENDER AND HOLDING OVER**

**19.1 Surrender and Holding Over.** Upon the expiration of the term of this Lease, or upon an earlier termination of this Lease, Tenant shall surrender up peaceable possession of the Premises in the same condition as the Premises are in at the commencement of this Lease, reasonable wear and tear and casualty excepted. In the event that Tenant or any party holding under Tenant shall remain in possession of the Premises without Landlord's consent beyond the expiration of the term of this Lease or any renewal term thereof, whether by limitation or forfeiture, such party shall pay one hundred fifty percent (150%) rent hereunder during such holdover period.

#### **ARTICLE 20 NOTICES**

**20.1 Notices.** Any notice under this Lease shall be in writing and shall be deemed to be duly given only when (i) delivered personally; (ii) three (3) days following mailing by certified mail return receipt requested, or (iii) one (1) day after delivery to a nationally recognized courier service for overnight delivery addressed to Landlord at Landlord's notice address or to Tenant at Tenant's notice address. The addresses may be changed from time to time by either party by serving notice to the other party in the manner above provided.

#### **ARTICLE 21 ESTOPPEL CERTIFICATES**

**21.1 Estoppel Certificates.** Within fifteen (15) business days following any written request which Landlord may make from time to time, Tenant shall execute and deliver to Landlord a statement certifying: (a) the date of commencement of this Lease; (b) the fact that this Lease is unmodified and in full force and effect (or if there have been modifications hereto, that this Lease is in full force and effect, as modified, and stating the date and nature of such modifications); (c) the date to which the rental and other sums payable under this Lease have been paid; (d) the fact that

there are no current defaults under this Lease by either Landlord or Tenant except as specified in Tenant's statement; and (e) such other matters reasonably requested by Landlord. Landlord and Tenant intend that any statement delivered pursuant to this paragraph may be relied upon by any mortgagee, beneficiary, purchaser or prospective purchaser of the Building or any interest therein. Tenant's failure to deliver such statement within such time shall be conclusive upon Tenant (a) that this Lease is in full force and effect, without modification except as may be represented by Landlord; (b) that there are no uncured defaults in Landlord's performance; and (c) that not more than one (1) month's rental has been paid in advance.

## **ARTICLE 22** **MISCELLANEOUS PROVISIONS**

**22.1 Partial Invalidity.** If any term, covenant, condition or provision of this Lease is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

**22.2 Attorneys' Fees.** In the event it becomes necessary for either party to employ an attorney to bring suit against the other party for breach of this Lease, then the nonprevailing party shall pay all costs and expenses, including reasonable attorneys' fees of the prevailing party. In addition, should Landlord employ an attorney to recover any sum due under this Lease or because of the breach of any provision of this Lease by Tenant, whether or not suit is filed, Tenant shall pay as additional rent all costs and expenses incurred by Landlord, including reasonable attorneys' fees. Should Landlord be named as a defendant in any suit brought against Tenant in connection with or arising out of Tenant's occupancy hereunder, Tenant shall pay to Landlord its costs and expenses incurred in any suit including reasonable attorneys' fees.

**22.3 Waiver of Liability.** Anything contained in the Lease to the contrary notwithstanding, Tenant agrees that, other than with respect to any indemnification provision, for which Landlord shall be fully personally liable, Tenant shall look solely to the estate and property of Landlord in the land and buildings comprising the Premises for the collection of any judgment (or other judicial process) requiring the payment of money by Landlord to Tenant in the event of any default or breach by Landlord with respect to any of the terms and provisions of this Lease to be observed and/or performed by Landlord, subject, however, to the prior rights of any holder of any mortgage covering the Premises, and no other assets of the Landlord shall be subject to levy, execution or other judicial process for the satisfaction of Tenant's claim.

**22.4 Brokers.** Landlord represents and warrants that, except for the commission payable by Landlord to both Brokers named on the Lease Cover Page, there are no claims for brokerage commissions or finder's fees in connection with the execution of this Lease by Landlord, and Tenant represents and warrants that, except for the Tenant's Broker, Tenant has not been represented by any other Broker in this transaction. Landlord agrees to indemnify Tenant and hold Tenant harmless from all liabilities arising from any claims (including, without limitation, attorneys' fees) for commissions to the Brokers referenced on the Lease Cover Page and all other brokers representing Landlord. Tenant agrees to indemnify Landlord and hold Landlord harmless from all liabilities arising from any claims (including, without limitation, attorneys' fees) for commissions from brokers representing Tenant excluding the Brokers referenced on the Lease Cover Page.

**22.5 Rules.** Landlord shall have the right, from time to time, to make, establish or promulgate reasonable rules and regulations with regard to the Premises, provided such rules and regulations are not inconsistent with the terms of this Lease, and Tenant hereby covenants that it will observe, keep and comply with such rules and regulations promulgated by the Landlord.

**22.6 Assignment by Landlord.** The term "Landlord" as used in this Lease means only the owner at the time of the fee of the Premises, so that in the event of any sale of the Premises, the seller, transferor or assignor shall be entirely relieved of all further obligations of Landlord herein.

**22.7 Sole Agreement.** This Lease contains the entire agreement between the parties hereto and no term or provision hereof may be changed, waived, discharged or terminated unless the same be in writing executed by Landlord and Tenant.

**22.8 Confidentiality.** The terms and conditions of this Lease may not be disclosed by Tenant to third parties other than Tenant's attorney, accountant and other business advisors as may be necessary for the proper conduct of Tenant's business without the prior written consent of Landlord.

**22.9 Missouri Law Governs.** The law of the State of Missouri shall govern the construction, performance and enforcement of this Lease.

**22.10 Time of Essence.** Time shall be of the essence in the performance of every term, covenant and condition of this Lease.

**22.11 Captions.** The paragraph captions are inserted for convenience of reference and are in no way to be construed as a part of this Lease or as a limitation on the scope of the paragraph to which they refer.

**22.12 Benefit.** This Lease shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns.

**22.13 Lender Approval.** This Lease and all terms contained herein are made subject to and conditioned upon Landlord's lender's approval by not later than five (5) business days after the date this Lease is executed by both Landlord and Tenant, which Landlord shall request forthwith. Tenant agrees to provide such financial information as may reasonably be required by Landlord or its lender to enable it to render such approval. Landlord agrees that it will not disclose any such information to third parties other than Landlord's lender, attorney, accountant and other business advisors, or to obtain Landlord's lender's approval or as required by law, without the prior written consent of Tenant.

**22.14 Quiet Enjoyment.** Subject to the provisions of this Lease, Landlord covenants that Tenant, upon paying the rent and performing the covenants of this Lease on Tenant's part to be performed, shall and may peaceably have, hold and enjoy the Premises for the term of this Lease.

**22.15 Waiver of Jury Trial:** Landlord and Tenant each waive trial by jury in any action, proceeding, or counterclaim brought by either of the parties to this Lease against the other on any matter whatsoever arising out of or in any way connected with this lease or its termination, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, and/or any claim, injury or damage related thereto.

**22.16 Force Majeure.** Any provision, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials, governmental restrictions, regulations or controls, enemy or hostile government action, civil commotion, fire or other casualty or other causes beyond the reasonable control of the party required to perform shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage, except for the obligations imposed with regard to Rent and other charges to be paid by Lessee pursuant to this Lease.

**22.17 ERISA.** To the best of its knowledge after reasonable inquiry, Tenant has discovered no documents or other evidence indicating that it is a contributing employer to any of the plans participating in the AFL-CIO Building Investment Trust (the "Trust"), a list of which is attached hereto as Exhibit F (the "Participating Plans"); nor does the Tenant, to the best of its knowledge after reasonable inquiry, have any discretionary authority, control, responsibility or influence with respect to any Participating Plan's investment of assets in, or the withdrawal of assets by any Participating Plan from, the Trust. Notwithstanding any contrary provision of this Lease, Tenant shall not assign this Lease or sublease all or any portion of the Premises unless (i) such assignee or subtenant delivers to Landlord a certification (in form and content satisfactory to Landlord) substantially similar to the representation of the Tenant as set forth in the preceding sentence; and (ii) such assignee or subtenant agrees to the UBIT restrictions in Section 22.18. This provision shall remain in effect only so long as there are benefit plan investors (as defined in DOL Reg. §2510.3-101(f)(2)) that own an interest in the Landlord or any successor to the Landlord.

**22.18 UBIT.** Notwithstanding any contrary provision of this Lease, Tenant shall not (a) sublease all or any portion of the Premises under a sublease in which the rent is based on the net income or net profits of any person, or (b) without the approval of the Landlord, take any action to increase its leased floor space in the Fountain Lakes office park to greater than twenty five percent (25%) of the leasable floor space in such office park if, as a result of such action, the Trust would be subject to the Unrelated Business Income Tax under Sections 511 through 514 of the Code. This provision shall remain in effect only so long as there are benefit plan investors (as defined in DOL Reg. §2510.3-101(f)(2)) that own an interest in the Landlord or any successor to the Landlord.

**22.19 Annual Financial Statement.** At any time during the Lease Term that Tenant is not a "publicly traded company" (i.e., ownership interests are listed on a public securities exchange), then within one hundred twenty (120) days after the end of each fiscal year of Tenant, Tenant shall furnish to Landlord a financial statement, in form and substance satisfactory to Landlord, showing the complete results of Tenant's operations for its immediately preceding fiscal year, certified as true and correct by a certified public accountant and prepared after audit in accordance with generally accepted accounting principles applied on a consistent basis from year to year.

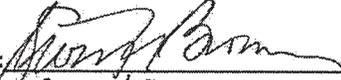
**ARTICLE 23**  
**IMPACT OF TAX INCREMENT FINANCING**

23.1 **Impact of Tax Increment Financing.** Tenant acknowledges that the Building is subject to the terms and provisions of a certain Redevelopment Agreement with the City of St. Charles, Missouri which pertains to the development by MB Properties, Inc. ("Developer") of Fountain Lakes Commerce Center pursuant to the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800-99.865 of the Revised Statutes of Missouri, as amended. Pursuant to the Redevelopment Agreement, in order to determine the "TIF Revenues", as defined therein, certain obligations must be imposed upon the owners, tenants and users of properties subject to the Redevelopment Agreement. The particular provisions of the Redevelopment Agreement which address these obligations are attached hereto as Exhibit C. Tenant hereby agrees that it shall promptly provide the information described in the Redevelopment Agreement to the appropriate officials of the City of St. Charles, Missouri and to the Developer until such time as the tax increment revenue notes described therein have been terminated.

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

**LANDLORD:**

FOUNTAIN LAKES I, L.L.C.

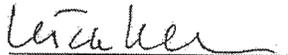
By:   
Title: member.

**TENANT:**

GENERAL MOTORS CORPORATION

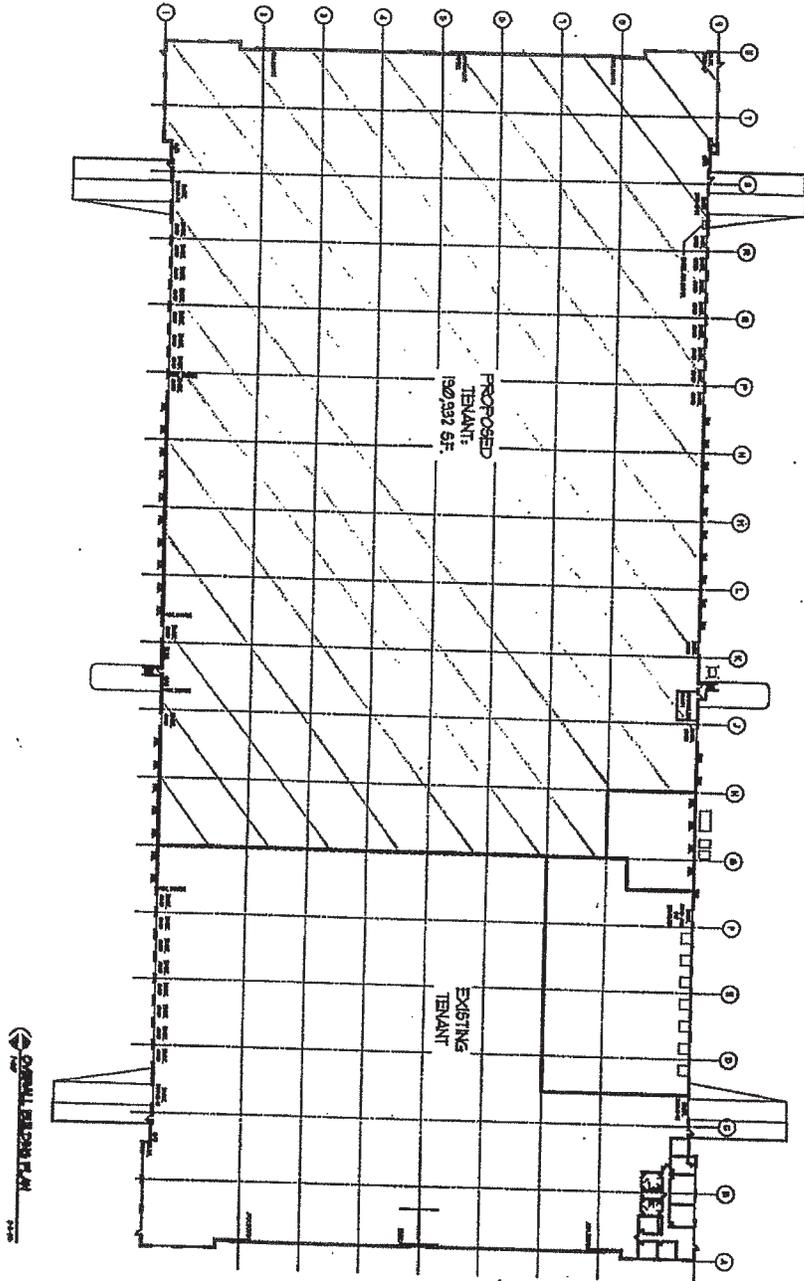
By:   
Title: JOHN K. BLANCHARD  
DIRECTOR  
WORLDWIDE REAL ESTATE

Approved for execution:

  
Mitchell R. Meisner, Esq.

EXECUTION RECOMMENDED  
WORLDWIDE REAL ESTATE  
BY: 

EXHIBIT A



**EXHIBIT C**

Portions of:

**REDEVELOPMENT AGREEMENT**

Between

**CITY OF ST. CHARLES, MISSOURI**

and

**MB PROPERTIES, L.L.C., AS DEVELOPER  
(now MB Properties, Inc.)**

dated

**December 22, 1997**

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[This Redevelopment Agreement pertains to the West 370 Redevelopment Area. Special reference is made to Sections 6.3, 6.4, 6.5 and 6.6 below; Lots within the West 370 Redevelopment Area are burdened by the obligations stated in those Sections.]

**ARTICLE VI. SPECIAL ALLOCATION FUND;  
COLLECTION AND USE OF TIF REVENUES**

**6.1 Special Allocation Fund.** The City agrees to cause its Director of Finance or other financial officer to maintain the Special Allocation Fund. Subject to the requirements of the TIF Act, the City shall promptly, upon receipt thereof, deposit the TIF Revenues into the Special Allocation Fund. Moneys in the Special Allocation Fund shall be applied as follows:

*First*, to the United States of America, an amount sufficient to pay arbitrage rebate, if any, owed under Section 148 of the Internal Revenue Code of 1986, as amended;

*Second*, to the payment of fees and expenses owing to the Trustee or any Paying Agent under the Indenture;

*Third*, to the City, an amount equal to five percent (5%) of the total amount transferred by the City to the Trustee from the Special Allocation Fund in order to reimburse the City for its administrative and professional service costs and expenses (including staff time) in connection the performance of its obligations under the Redevelopment Plan and this Agreement and which constitute Redevelopment Project Costs; provided, however, that whenever the total cumulative amount transferred to the City pursuant to this subparagraph in a calendar year equals \$75,000.00, then no further transfers shall thereafter be made to the City pursuant to this subparagraph for such calendar year.

*Fourth*, to the Taxing Districts (as defined in Section 99.805(12) of the TIF Act), an amount equal to fifteen percent (15%) of the amount on deposit in the Pilots Account (as defined in the Indenture) of the Special Allocation Fund and transferred by the City to the Trustee pursuant to the Indenture; provided, however, that whenever the total amount of such payments to the Taxing Districts in a calendar year equals \$343,643.00, then no further payments shall thereafter be made to any of the Taxing Districts pursuant to this paragraph Fourth for such calendar year;

*Fifth*, to the payment of interest becoming due and payable on the TIF Notes on each Interest Payment Date (as defined in the Indenture); and

Sixth, to the redemption to the maximum extent possible of any TIF Notes then outstanding.

6.2 *Application of TIF Revenues.* The City hereby agrees for the term of this Agreement to apply the TIF Revenues and any taxes, fees or assessments subsequently enacted and imposed in substitution therefor and allocable to the Special Allocation Fund under the TIF Act, or under successor statutes, to the repayment of TIF Notes as provided in the Note Ordinance. The City agrees that the officer of the City at any time charged with the responsibility of formulating budget proposals will be directed to include in the budget proposal submitted to the Mayor for each fiscal year that TIF Notes are outstanding a request for an appropriation of all moneys on deposit in the Special Allocation Fund for application to the payment of the principal of and interest on the TIF Notes.

6.3 *Cooperation in Determining TIF Revenues.* The City and the Developer agree to cooperate and take all reasonable actions necessary to cause the TIF Revenues to be paid into the Special Allocation Fund, and the City agrees to use its best efforts to assist the Developer in securing the benefits of the TIF Act, including the City's enforcement and collection of all payments to be paid into the Special Allocation Fund through all reasonable and ordinary legal means of enforcement. To assist the City in calculating TIF Revenues and establish the City's sales tax base, the Developer shall provide the City with the sales tax identification numbers for each tenant or owner located from time to time on the Property and shall use all reasonable efforts to supply or cause to be promptly supplied to the City, at the City's request, copies of the following:

(a) Monthly sales tax returns filed with the Missouri Department of Revenue promptly after filing by "sellers" (as that term is defined in Section 144.010(9) of the Revised Statutes of Missouri, as amended) located on the Property following completion of the Work; and

(b) Monthly invoices received for utility services provided to the Property including, but not limited to, electric, natural gas and telephone services and a map of the area showing owners or tenants of the Property, addresses, telephone numbers and utility service providers to enable obtaining utility tax information for the Property from the utility service providers.

6.4 *Obligation to Report TIF Revenues.* Any purchaser or transferee of real property which is located within the Redevelopment Area, and any lessee or other user of such real property required to pay TIF Revenues, shall use all reasonable efforts to timely furnish to the City such documentation as is required by Section 6.3 hereof. So long as any TIF Obligation is outstanding, the Developer shall cause such obligation to be a covenant running with the land and shall be enforceable as if such purchaser, transferee, lessee or other user were originally a party to and bound by this Agreement.

6.5 *Obligation to Report Maximum Sales Tax Revenue as Originating From the Redevelopment Area.* To the fullest extent permitted by law, the Developer shall use all reasonable efforts to cause any purchaser or transferee of real property located within the Redevelopment Area and any lessee or other user of real property located within the Redevelopment Area to designate sales subject to sales taxes pursuant to Chapter 144 of the Revised Statutes of Missouri, as amended, to be reported as originating from the Development Area. So long as any TIF Obligation is outstanding, the Developer shall cause such obligation to be a covenant running with the land and shall be enforceable as if such purchaser, transferee, lessee or other user were originally a party to and bound by this Agreement.

6.6 *Notice to City of Transfer.* The Developer agrees to notify the City in writing of any proposed sale, transfer or other disposition of the Property or any interest therein within ten (10) days prior to the date of said sale, transfer or other disposition. Said notice shall specify the name and address of the person so acquiring any or all of the Property or any interest therein and shall identify the Property to be sold, transferred or otherwise disposed, whether by voluntary transfer or otherwise.

**EXHIBIT D**

**(Safety Standards)**



**Fall Hazard Control**

Contractor must provide fall hazard control:

Whenever performance of any task would allow a worker to fall a distance of six feet or more, or any distance where the likelihood of a serious or fatal injury exists, fall hazards must be identified, evaluated, and controlled according to a hierarchy that ranks engineering and design techniques for hazard elimination and exposure prevention above the use of personal protective equipment.

The term task is defined to include all activities leading up to, performing, and demobilizing from, a specific work activity. This includes but is not limited to:

- Going to a specific place to observe, obtain or give instruction on work that may need to be performed
- Gathering materials and equipment to perform the work
- Putting into place temporary or permanent means of gaining access to the specific site
- Moving the required materials and equipment to the site
- Performing, or assisting another worker in performing, the required work
- Getting to and from the site over the interval of time from start to finish of the job
- Performing housekeeping during and at the conclusion of the work
- Inspecting the completed work
- Moving materials, equipment, and temporary means of access away from the site upon completion of the work.

**Continuous Fall Protection**

Whenever a worker is exposed to a fall hazard, as defined above, the Contractor must provide and the worker must utilize Continuous Fall Protection.

Continuous Fall Protection is defined as continuous, unceasing protection, such that one or any number of fall hazard controls, identified in the Pre-task plan (re-engineering, a guardrail, personal protective equipment, etc.), is provided for and utilized by the worker to perform a task while exposed to a fall hazard.

**Qualified Person**

The term Qualified person(s) "means a person with a recognized degree or professional certificate, and extensive knowledge and experience in the subject field who is capable of design, analysis, evaluation and specification in the subject work, project or product.

The Contractor, as part of the pre-task plan must identify in writing the name(s) of the qualified person(s) who will be responsible for identifying and controlling fall hazards on the job-site.

Anchorage points required as part of a fall hazard control system, must be engineered by, or if existing have the capacity verified by, a Professional Structural Engineer, licensed in the state in which the work is being performed. Contractor must provide these engineering services.

Contractor must not use as part of its personal fall arrest systems the permanent anchorage connectors or personal fall arrest equipment located within an existing facility.

Upon completion of the Contractor's work, Contractor must remove any anchorage points installed by the Contractor for fall protection, unless express written consent is obtained from the Owner to leave them in place.

**Fall Arrest Equipment**

Contractor's personal fall arrest equipment, utilized on this jobsite, must meet American National Standards Institute Safety Requirements for Personal Fall Arrest Systems, Subsystems and Components Z359.1, including the requirement that the maximum arresting force (MAF) cannot exceed 900 pounds.

Body belts are prohibited from use on all job-sites. Contractors must use full body harnesses for personal fall arrest systems, travel restraint systems, fall restraint systems or positioning systems.

**Perimeter Safety Cables**

Contractor must not use perimeter safety cables as an anchorage for personnel fall arrest systems. Contractor must label perimeter safety cables "Do Not Use as an Anchorage for Fall Protection Systems."

**Horizontal Lifeline System(s)**

If a Horizontal Lifeline System(s) is utilized on this project as a means of fall hazard control, the Contractor must adhere to the following additional requirements:

- Anchorage required** as part of a horizontal lifeline system, must be engineered by, or if existing have the capacity verified by, a Professional Structural Engineer, licensed in the state in which the work is being performed. Contractor must provide these engineering services.
- Drawings** The Contractor must provide a drawing for each horizontal lifeline system. The drawing must show all instructions, procedures, requirements, restrictions, etc. for its use, such as but not limited to material schedule, installation procedures, maximum number of users, etc.

The drawing must bear the seal of the professional structural engineer, licensed in the state in which the work is being performed, responsible for designating anchorages.

The drawing must contain the following statement identifying the qualified person responsible for the horizontal lifeline system.

"I am the qualified person that is responsible for the design of this horizontal lifeline system. I will supervise the installation and provide instructions for use of this horizontal lifeline system."

\_\_\_\_\_  
(Name and signature)

**Contractor Information**  
The anchorage capacity for anchorage points that have been identified within a facility are 1,800 pounds. Thus, personal fall arrest systems utilizing these anchorages must limit their maximum arresting force to no more than 900 pounds in order to achieve the minimum safety factor of two. This information does not, however, obviate Contractor's verification of anchorage capacity as required by applicable law.



**Fall Protection** Contractor must require and enforce the use of a **personal fall arrest system**:  
Whenever work performed upon a ladder would allow a worker to fall a distance of six feet or more, or any distance where the likelihood of a serious or fatal injury exists.

**Personal fall arrest systems** for this special safety condition are:

- full body harness, shock-absorbing lanyard, anchorage connector and anchorage, or
- full body harness, self-retracting lanyard with a built-in shock absorber, anchorage connector and anchorage, or
- full body harness, self-retracting lanyard with an external shock absorber, anchorage connector and anchorage, or
- full body harness, three (3) foot long shock-absorbing lanyard, fall arrest (rope grab), lifeline, anchorage connector and anchorage.

All of the personal fall arrest equipment listed above must meet ANSI standards Z359.1, with the exception that the **maximum arresting force (MAF) cannot exceed 900 pounds**.

Selection of any of the four personal fall arrest systems must be made by the contractor's qualified person, based on an evaluation of the residual risks associated with its use. Evaluation of the residual risks, by the contractor's qualified person, may prove that neither of the systems apply, in which case, another means of performing the work safely must be determined. Refer to the **Fall Hazard Control Special Safety Condition**. Types of residual risk include, but are not limited to:

- Anchorage
- Free Fall Distance
- Fall Arrest System Extension and the resulting Total Fall Distance
- Elasticity
- Pendulum (swing fall hazard)
- Fall Arrest System Malfunction
- Fall Out
- Maximum Arrest Force
- Post-Fall Suspension Time

The personal fall arrest system must be attached continuously to an approved anchorage as long as the worker is exposed to the fall hazard.

Any task that exposes a worker to a fall hazard, as defined above, must be identified in the Contractor's **Pre-task plan**.

Whenever a worker is exposed to a fall hazard, as defined above, the contractor must provide and the worker must utilize **Continuous Fall Protection**.

**Continuous Fall Protection** is defined as continuous, unceasing protection, such that one or any number of fall hazard controls, identified in the Pre-task plan (re-engineering, a guardrail, personal protective equipment, etc.), is provided for and utilized by the worker to perform a task while exposed to a fall hazard.



The Contractor, as part of the Pre-task plan must identify in writing the name(s) of the Qualified person(s) who will be responsible for identifying and controlling fall hazards on the jobsite.

The term Qualified person(s) "means one who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated his ability to solve or resolve problems relating to the subject matter, the work, or the project".

Anchorage required as part of a fall hazard control system, must be engineered by, or if existing have the capacity verified by, a Professional Structural Engineer, licensed in the state in which the work is being performed. Contractor must provide these engineering services.

Contractor must not use as part of its personal fall arrest systems the permanent anchorage connectors or personal fall arrest equipment located within an existing facility.

Body belts are prohibited from use on all job sites. Contractors must use full body harnesses for personal fall arrest systems.

**Metal Ladders** Contractor must not use portable metal ladders.

**Labels** Contractor must label all portable ladders brought onto the job site with their company name and/or logo.

**Contractor Notice:**

The anchorage capacity for anchorage points that have been identified within a facility is 1,800 pounds. Thus, personal fall arrest systems utilizing these anchorages must limit their maximum arresting force to no more than 900 pounds in order to achieve the minimum safety factor of two. This Notice does not, however, obviate Contractor's verification of anchorage capacity as required by applicable law.



Whenever Contractor performs work, including construction, roof replacement, inspections, assessments and / or roof leak repair, which will involve accessing an existing roof the Contractor, will, before proceeding with the work:

- Request and if available obtain a copy of the Owner's roof access map and the roof deck structural integrity inspection for the roof locations(s) where the Contractor will be performing work. The roof access map and the roof deck structural integrity inspection may provide useful information regarding restricted roof areas, acceptable roof access points, roof load capacities, access route markings, etc. Contractor must not rely upon the information contained in the roof access map or roof deck structural integrity inspection, but must make its own determinations as to the structural integrity or suitability of the roof for the intended project.
- Evaluate the roof deck from both the topside and the underside for conditions that have the potential to create hazards for Contractor's employees or others who may be exposed during the performance of the Contractor's work. Some conditions may only be detected by a visual inspection of the underside of the roof deck, examples of which may include deteriorated roof deck and equipment that penetrates the roof deck possible asbestos containing materials, electrical equipment installations, etc.
- Provide the Owner with a completed copy of the Contractor's Roof Access Notification Form and the Designated Employee List. The Designated Employee List must be updated for each shift and submitted to the Owner by the Contractor prior to the work. (Blank forms are attached to this Special Safety Condition)
- Participate in a post-work debriefing with the Owner to determine if Contractor's work affected the structural integrity of the roof and report to the Owner any unsafe conditions encountered during the work.

**Safety Monitoring System.** Contractor must identify and submit with their bid any locations where they propose to utilize a safety monitoring system with or without a warning line system.

Where Contractor utilizes a safety monitoring system, the Contractor must include the name and the responsibilities of the competent person that will be designated as the safety monitor on the pre-task plan. The safety monitor must wear a brightly colored safety vest or brightly colored hard hat that identifies them as the safety monitor.

**Roofing System Removal / Deck Removal / Replacement / Roof Mounted Equipment Removal**

Contractor will notify the Owner sufficiently in advance of commencing work so that personnel can be cleared from identified hazard area(s) before:

- the removal of the roofing system, including gravel and insulation and until after the 1<sup>st</sup> layer of hot bitumen is applied
- removing / replacing roof deck
- removing any equipment or portion thereof that penetrates the roof deck or
- hoisting material / equipment to the roof.

The Contractor will barricade the identified hazard area(s) and post a spotter. The spotter's responsibilities will include:

- Maintaining barricades and keeping people out of the hazard area.
- Maintain 2-way communication with the roof work crew.
- Know how to summon help in an emergency.
- Be able to recognize hazards that may arise during the work including:
  - Removal / replacement of equipment or roof deck
  - Hoisting of material / equipment
- Authority to stop work that puts people in imminent danger or may cause damage to equipment or the facility.

**Roof Leak Response / Repair, Inspections, Investigations and/or Assessments Before/After Construction**

Contractor must maintain 2-way communication with Owner and will provide at least 2 people working together on the roof. Contractor employees engaged in emergency roof leak evaluation and repair activities; inspections; investigations and/or assessments before / after Construction, must wear a brightly colored safety vest or brightly colored hard hat that identifies them as a roof leak repair person and / or inspector.

**Speed Limit for Powered Vehicles**

The speed limit for powered vehicles operated on the roof is 4 miles per hour.

**Smoking**

Smoking is prohibited on all roofs.

## Contractor Roof Access / Roof Work Notification

This notification and list of designated employees who will be performing the work will be completed by the Contractor and submitted along with the pre-task plan to the Owner's representative before any work begins.

Start Date: \_\_\_\_\_ Expected End Date: \_\_\_\_\_ Shift: \_\_\_\_\_

Description of work to be performed on roof: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Building: \_\_\_\_\_

List Specific Work Location(s) On Roof and Emergency Phone Numbers:  
\_\_\_\_\_  
\_\_\_\_\_

Method that will be used to access roof:

- Scaffold Stair Tower
- Extension Ladder
- Interior / Exterior Plant Stairway
- Aerial Lift
- Other - Describe: \_\_\_\_\_

Location of roof access:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

This notification, designated employee list and a copy of the Contractor's Pre-Task Plan will be posted by the Contractor at the roof access location. The information will remain posted during the duration of the work. The Owner or Owner's Representative will provide appropriate plant personnel with copies of this Notification and Employee List.

Prepared by: \_\_\_\_\_ Date: \_\_\_\_\_ Phone: \_\_\_\_\_  
(Contractor Name & Title)

Submitted to: \_\_\_\_\_ Date: \_\_\_\_\_ Phone: \_\_\_\_\_  
(Owner Rep. Name & Title)

## Designated Employee List

Contractor Name: \_\_\_\_\_

Date: \_\_\_\_\_ Shift: \_\_\_\_\_ Phone: \_\_\_\_\_

The following employees have been designated by: \_\_\_\_\_  
(Name of Contractor's Superintendent / Foreman)

to perform the work described on the attached Contractor Roof Access Notification and Pre-Task Plan.

- |           |           |
|-----------|-----------|
| 1. _____  | 16. _____ |
| 2. _____  | 17. _____ |
| 3. _____  | 18. _____ |
| 4. _____  | 19. _____ |
| 5. _____  | 20. _____ |
| 6. _____  | 21. _____ |
| 7. _____  | 22. _____ |
| 8. _____  | 23. _____ |
| 9. _____  | 24. _____ |
| 10. _____ | 25. _____ |
| 11. _____ | 26. _____ |
| 12. _____ | 27. _____ |
| 13. _____ | 28. _____ |
| 14. _____ | 29. _____ |
| 15. _____ | 30. _____ |

The designated employee list must be updated daily and posted at  
the roof access point for each work shift.

**SUBCONTRACTOR MINIMUM SAFETY SELECTION CRITERIA****General Motors Corporation****SPECIAL SAFETY CONDITIONS**

The Contractor will not present for the Owner's approval any Subcontractor that has an Experience Modification Rating (EMR) greater than 0.99 and a Days Away Restricted Transfer Incident Rate (DART-IR) greater than 3.0.

The Contractor must submit to the Owner a letter from the Subcontractor's insurance carrier certifying the Subcontractor's EMR, and a letter from the Subcontractor stating their DART-IR for the previous 12 month period to verify that the Subcontractor satisfies these minimum selection criteria.

These letters must be submitted when the Subcontractor is first presented for the Owner's approval and the Contractor must retain a copy of the verifying documentation in the Contractor's Safety Book.



**Safety Standard Requirement** Contractor's performing steel erection must follow the revised requirements as set forth by OSHA 29 CFR Part 1926 Subpart R - Safety Standards For Steel Erection; Proposed Rule, Dated: 8-13-1998 Federal Register # :63:43451-43513 with the following exceptions:

**Fall Hazard Control for steel erection and steel erection work performed upon a ladder applies to all workers.** No exceptions are made in regard to any worker classification, i.e. connectors, deckers at the leading edge, etc.

**Fall Hazard Control for steel erection** is governed by one of the following two conditions:

1. Steel erection work performed inside an **existing building** is governed by the **FALL HAZARD CONTROL SPECIAL SAFETY CONDITION.**
2. Steel erection work performed at a **new facility site** is governed by the **FALL HAZARD CONTROL SPECIAL SAFETY CONDITION**, with the following exception.

Whenever the performance of any **task** would allow a worker to fall a distance of **fifteen feet or more**, or any distance where the likelihood of a serious or fatal injury exists, fall hazards must be identified, evaluated, and controlled according to a hierarchy that ranks engineering and design techniques for hazard elimination and exposure prevention above the use of personal protective equipment.

*The term task is defined in the **FALL HAZARD CONTROL SPECIAL SAFETY CONDITION.***

**Steel erection work performed upon a ladder** is governed by one of the following two conditions:

1. **Steel erection work performed upon a ladder inside an existing building** is governed by the **LADDER SPECIAL SAFETY CONDITION.**
2. **Steel erection work performed upon a ladder at a new facility site** is governed by the **LADDER SPECIAL SAFETY CONDITION**, with the following exception.

Whenever **work performed upon a ladder**, would allow a worker to fall a distance of **fifteen feet or more**, or any distance where the likelihood of a serious or fatal injury exists.

**Contractor Notice: Multiple Lifts** The proposed OSHA 29 CFR Part 1926 Subpart R - Safety Standards For Steel Erection; Proposed Rule, Dated: 8-13-1998 Federal Register # :63:43451-43513 allows multiple lifts. Multiple lifts (Christmas Treeing) are prohibited by some Federal, State or local regulations, (e.g. MIOSHA) and, where a Contractor desires to use multiple lifts the Contractor must request and be granted a variance from the authority having jurisdiction (e.g. MIOSHA) before using multiple lifts on this jobsite.



# WALKING/WORKING IN FALLING PARTS GUARDS

General Motors Corporation SPECIAL SAFETY CONDITIONS

In the Contractor's Pre-Task Plan for walking/working in falling parts guards, the following, as a minimum, must be considered:

### Moving Conveyors and Equipment

Contractor must determine if the work they will perform in the falling parts guard requires the conveyor or other adjacent equipment to be de-energized and locked out.

### Pinch Points

Contractor must determine if the work they will perform in the falling parts guard exposes employees to any pinch points (e.g. between carriers, carriers/product on other conveyors, building steel, equipment, guardrails, etc.).

### Unprotected Sides, Edges and Open Holes

For any area that the Contractor will be working, including the path of employees to and from the access point(s) of the work area, the contractor must determine if the existing falling parts guard exposes employees to potential hazards at unprotected sides, edges or open holes.

### Guardrail Systems

Contractor must determine if the existing falling parts guard sides meet the OSHA requirements for guardrail systems. If existing falling part guard sides do not meet the requirements, the Contractor must provide a method for fall protection.

### Load Capacity

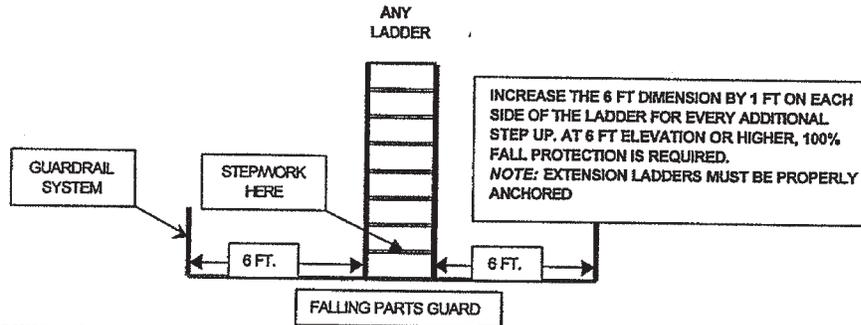
If the Contractor is to perform work in existing falling parts guards, the Contractor must determine if the guards will accept the load applied by the addition of personnel, materials and/or equipment. If the Contractor determines the load capacity is insufficient, the Contractor must notify the Owner and develop alternate plans for executing the scope of work.

### Newly Installed Falling Parts Guard-Anchors and Supports

Contractor must ensure all newly installed falling parts guards are properly anchored and supported before assigning employees to work inside of them.

### Using a Ladder in Falling Parts Guard.

When using ladders in falling parts guards, the Contractor will provide a stable and level surface on which to place the ladder. The Contractor must maintain a minimum of 6 ft from each side of the ladder to the guardrail system, plus 1 additional foot each side of the ladder for every step advanced up the ladder (See illustration below). If these requirements cannot be met, the Contractor must provide fall protection per the Special Safety Condition-LADDERS.





## AERIAL WORK PLATFORMS

General Motors Corporation

SPECIAL SAFETY CONDITIONS

### Inspections

At the beginning of each shift, the Contractor must perform a visual inspection and functional test of each Aerial Work Platform in accordance with the manufacturer's recommendations. The Contractor must document the results of each inspection and test, and affix a copy of the results to each respective piece of Aerial Work Platform equipment. The inspection and test documentation must remain affixed to each respective piece of Aerial Work Platform equipment for the entire shift of use. Thereafter, the Contractor must retain the inspection and test documentation in the Contractor's Safety Book.

### Pre-Task Planning

The Contractor must prepare a pre-task plan for any work that requires the use of Aerial Work Platforms.

### Operation

The Contractor must ensure that each operator of any Aerial Work Platform is trained on that equipment in accordance with the recommendations of the manufacturer of the equipment.

The Contractor must inspect all routes of travel, and the work areas for potential hazards, and take appropriate corrective action before an Aerial Work Platform is moved from one location to another.

The Contractor must turn off all Aerial Work Platforms when not occupied.

### Fall Protection

The Contractor must ensure that whenever employees are in an Aerial Lift, they wear full body harnesses and energy absorbing lanyards that meet or exceed the requirements of ANSI Standard Z 359.1. The lanyard must be secured to an anchorage location on the equipment that has been identified and certified by the manufacturer as being capable of supporting at least 1,800 pounds. The term *Aerial Lift* includes all "aerial", "boom", and "scissors" type work platform equipment.

### Aerial Work Platform, Ground Person

The Contractor must designate a person on the ground and in the general vicinity of the Aerial Work Platform while being operated who is adequately trained and capable of operating the emergency ground level controls, summoning help in an emergency and performing assigned duties as determined by the Contractor and contained in its pre-task plan. Performance of these responsibilities does not preclude assigning the designated grounds person additional duties, such as monitoring more than one lift, maintaining barricades, or deterring unauthorized entry to the extent they do not interfere with performance of ground person responsibilities.

The Contractor must include all the duties assigned to the ground person in the Contractor's pre-task plan.

### Barrier Design and Placement

Where the Contractor's pre-task plan calls for barriers, the Contractor installed barriers are to be designed and be substantial enough to deter the entry of unauthorized personnel into the hazard area. To comply with the intent of a substantial barrier, it must deter personnel from going under, walking over or walking through the barrier without first having to remove the barrier.

The Contractor's installed barriers must be set up around the perimeter of the potentially hazardous work area, at a distance sufficient to protect people outside the perimeter of the work area.

### Signs

The Contractor must place signs at all barricade entrances denoting, as a minimum, "DANGER Overhead Work Authorized Personnel Only", and any other special requirements pertaining to the work being performed in such barricaded area (e.g., hard hats required in this area, No Smoking, etc.)



Contractor must determine whether the scope of anticipated work includes the potential for exposure to electrical hazards, including, without limitation, whenever the scope of Contractor's Work involves installation, commissioning or removal of electric conductors or equipment. Contractor must eliminate employee exposure to electrical hazards by de-energizing all conductors or equipment that Contractor's employees may foreseeable encounter, unless Contractor demonstrates to Owner's satisfaction that de-energizing the electric conductors or equipment will increase hazards to employees (such as with interruption of life support systems, emergency alarm systems, hazardous location ventilation, etc.) or is infeasible (such as with start-up, troubleshooting, electrical testing/measurement).

**Pre-Task Plan** Where Contractor is unable to de-energize electric conductors or equipment, Contractor must include in its Job-Site Safety Plan a pre-task plan for all tasks where employees work on or near exposed energized electrical conductors or circuitry, specifically describing, but not limited to, how Contractor will eliminate or control the exposure to electrical hazards such as shock, arc flash and arc blast. Additionally, Contractor's electrical pre-task plan must include the following:

1. Reason Contractor could not de-energize the electric conductors or equipment;
2. Contractor's method for determining the nature and extent of electric shock hazard, Contractor's shock hazard analysis and Contractor's determination of shock protection boundaries;
3. Contractor's method for determining the nature and extent of electric arc flash hazard, Contractor's arc flash hazard analysis, and Contractor's determination of arc flash protection boundaries;
4. Contractor's assessment of the nature and extent of electric arc blast hazard, and Contractor's proposed plan to eliminate or control the exposure to the arc blast hazard.
5. Identify qualified person(s) who are to perform the work;
6. Explain Contractor's plan for keeping unqualified persons from entering or crossing shock, arc flash or arc blast protection boundaries;
7. Specify protective clothing, tools or other protective equipment that Contractor employees will use in performing the tasks.

**Personal Protective Equipment** Where Contractor employees work on or near exposed energized electrical conductors greater than 50V, Contractor employees must wear, as a minimum, personal protective equipment as specified on the GM "Arc Flash and Electric Shock Hazard Warning" label applicable to the equipment unless the Contractor specifies a more protective level of personal protective equipment as determined by its own electrical hazard analysis.

If the equipment is not labeled for Arc Flash and Electric Shock Hazard, the Contractor employees must, as a minimum level of personal protective equipment, wear ANSI Z 87.1 safety glasses with side shields and Flame-Resistant Clothing (long-sleeved shirt and pants or long-sleeved coverall) with a minimum arc rating of 8 cal/cm<sup>2</sup>, and insulating gloves rated for the voltage level when working on or near energized circuits of 50V or higher including when performing electrical testing or measuring tasks to include the verification of de-energization.

**Electrical Testing Equipment** Contractor may only use electrical testing devices that have been certified by Underwriters Laboratories, UL-3111 (or equivalent as determined in the sole and exclusive discretion of Owner), and that have been maintained, calibrated and inspected prior to use according to the manufacturers instructions/specifications.

**Bus Plugs** Contractor will not install or remove any Bus Plug rated GREATER THAN 200 Amps on an energized busway.

**Ground Fault Circuit Interrupters** Contractor will provide and utilize Ground-fault protection on all electric tools and equipment. Contractor will not consider an Assured Grounding Conductor Program as the primary means of protection.



Exhibit F

*Active Participants For Quarter Ending 9/30/2005*

*New participants were added on 7/1/2005*

<i>Merc Acct</i>	<i>Name</i>
6050000107	National Football League Players Association Defined Benefit Plan
6053000496	Bricklayers and Trowel Trades International Pension Fund
6053000502	AFL-CIO Staff Retirement Plan
6053000511	Laborers International Union of North America Staff Pension Plan
6053000520	Bridge and Iron Workers Staff Retirement Plan
6053000539	Service Employees International Union Master Pension Trust
6053000548	I.B.E.W. District Ten N. E. C. A. Individual Equity Retirement Plan
6053000557	Plumbers and Pipefitters National Pension Fund
6053000566	Stationary Engineers Local No. 39 Pension Plan
6053000575	Eighth District Electrical Pension Fund
6053000584	Upper Peninsula Plumbers and Pipefitters Pension Fund
6053000593	National Roofing Industry Pension Fund
6053000600	IBEW Local 673 Pension Fund
6053000619	Bricklayers Local Union #19 of Indiana Retirement Plan
6053000628	Electrical Workers Union Local No. 591 Retirement Trust
6053000637	National Automatic Sprinkler Industry Pension Fund
6053001832	Iron Worker Local Number 498 Pension Plan
6053001841	Omaha Construction Industry Pension Plan
6053001896	Asbestos Workers Local No. 23 Pension Fund
6053001903	Will County Local 174 Carpenters Supplemental Pension Plan
6053252311	Bakery and Confectionery Union and Industry International Pension Fund
6053252320	UFCW International Union Pension Plan for Employees
6053252339	International Association Of Full-Time Salaried Officers and Employees of Outside Lo
6053252348	Central Pension Fund of the International Union of Operating Engineers and Participat
6053252357	Ohio Local No. 1 Operating Plasterers and Cement Masons Pension Fund and Plan
6053252375	Indiana State Council of Carpenters Pension Fund
6053252384	California Public Employees Retirement System
6053330040	Roofers Union Local 33 Pension Fund

<i>Merc Acct</i>	<i>Name</i>
6053330059	Sheet Metal Workers' Pension Fund of Local Union #19
6053330068	Pension Hospitalization Benefit Plan of the Electrical Industry - Pension Trust Fund
6053330166	NECA-IBEW Local 176 Pension Fund
6053330228	NECA-IBEW Pension Trust Fund
6053332234	Carpenters Pension Fund of Illinois
6053333314	IBEW Local #360 Pension Plan
6053333458	Plumbers Local #8 Pension Plan
6053333467	Cascade Pension Trust Fund
6053333573	International Brotherhood of Painters and Allied Trades Union & Industry Pension Fun
6053333699	Local 68 Engineers Annuity Fund
6053333715	Electrical Workers Pension Fund, Local 103, IBEW
6053333939	Pacific Coast Roofers Pension Plan
6053334377	Carpenters Local #496 Pension Trust Fund
6053334938	Operating Engineers Construction Industry and Miscellaneous Pension Fund
6053335018	San Francisco Culinary, Bartenders & Service Employees Pension Fund
6053335189	Puget Sound Electrical Workers Pension Trust
6053336071	Painters & Allied Trades District Council #35 Pension Fund
6053336160	Tile, Terrazzo & Marble Industry Pension Trust Fund
6053336231	Rodman Local Union 201 Pension Fund
6053336286	Operating Engineers Pension Trust
6053336295	Minneapolis Painting Industry Pension Plan
6053336482	Cement Masons Locals 886 & 404 Pension Fund
6053336491	Carpenters' Pension Trust Fund of St. Louis
6053337034	Kansas Construction Trades Open End Pension Trust Fund
6053337310	Twin City Carpenters & Joiners Pension Fund
6053337329	Hawaii Laborers Pension Trust Fund
6053337560	CWA-ITU Negotiated Pension Plan
6053338113	HEREIU Pension Fund
6053339292	Southwest Ohio District Council of Carpenters - Dayton - Pension Plan
6053339540	San Diego Hotel and Restaurant Employees Pension Fund

<i>Merc Acct</i>	<i>Name</i>
6053339559	IBEW #481 Money Purchase Pension Plan & Trust
6053339942	Roofers' Pension Plan (United Union of Roofers, Waterproofers & Allied Workers Loc
6053339951	IUE AFL-CIO Pension Fund
6053340262	Southern Nevada Culinary & Bartenders Pension Trust
6053340271	Plumbers' Pension Fund, Local 130, U.A.
6053340299	New York City District Council of Carpenters Pension Fund
6053340306	Local 705 IBT Pension Trust Fund
6053340725	Sheet Metal Workers' Local Union No.100 Washington DC Area Pension Fund
6053340743	Local 68 IUOE Pension Fund
6053340752	NECA-IBEW Local 364 Defined Contribution Pension Fund
6053341029	Bricklayers Local 21 Pension Fund
6053341038	Laborers' Pension Fund
6053341047	Pension Fund of Bricklayers and Allied Crafts, Local No. 74 of DuPage County, Illinois
6053341074	United Mine Workers of America, International Pension Trust
6053341564	IBEW Local Union No. 99 Retirement Plan
6053341591	IBEW Local Union No. 99 Annuity Plan
6053341733	Annuity Plan of the Electrical Industry
6053341742	Maryland Electrical Industry Pension Fund
6053341902	Milwaukee Drivers Pension Trust Fund
6053342073	Atlanta Plumbers and Steamfitters Pension Fund
6053342091	Carpenters Labor Management Pension Fund
6053342652	West Michigan Plumbers, Fitters and Service Trades Local Union No. 174 Pension Pl
6053342974	IBEW Local #141 Pension Fund
6053342983	Motion Picture Industry Individual Account Plan
6053342992	Twin City Pipe Trades Pension Trust
6053343198	Jacksonville Plumbers and Pipefitters Pension Fund
6053343214	IBEW Local 117 Pension Fund
6053343429	Electrical Workers Local No. 292 Annuity Plan
6053343642	Bricklayers Union Local No. 6 of Indiana Pension Fund
6053343660	IBEW Local 43 and Electrical Contractors Pension Fund

<i>Merc Acct</i>	<i>Name</i>
6053343679	Iron Workers' Mid-America Pension Fund
6053343759	Laborers' District Council, Pension and Disability Trust Fund No. 3
6053344035	International Foundation of Employee Benefit Plans Pension Plan for Hourly Employee
6053344044	International Foundation of Employee Benefit Plans Pension Plan for Salaried Employee
6053344339	IBEW Local 131 Pension Plan
6053344357	Kalamazoo County Sheriff's Deputies Association Money Purchase Pension Plan
6053344446	Operating Engineers Local 57 Pension Fund
6053344455	UNITE Staff Retirement Plan
6053344464	Hotel and Restaurant Employees Local 25 and Hotel Association of Washington, D.C.
6053344473	Municipal Employees' Annuity & Benefit Fund of Chicago
6053344561	Laborers' District Council Construction Industry Pension Fund
6053344570	Fox Valley & Vicinity Laborers Pension Fund
6053344589	Worcester Plumbers and Pipefitters Local Union #4
6053344598	Rhode Island Carpenters Pension Fund
6053344712	Ironworkers District Council of New England Pension Fund
6053344847	BAC Local No. 4 Pension Fund
6053344856	Electrical Workers Local No. 292 Pension Plan
6053344874	Construction Workers Pension Trust Fund - Lake County & Vicinity
6053344883	Twin City Bricklayers Pension Fund
6053344892	Chicago Painters & Decorators Pension Fund
6053344909	Massachusetts Service Employees Pension Fund
6053344963	Southern Electrical Retirement Fund
6053345007	Motion Picture Laboratory Technicians and Film Editors Local 780 IATSE Pension Fund
6053345016	Toledo Roofers Local No. 134 Pension Plan
6053345025	IBEW Local Union #226 Open End Pension Trust Fund
6053345061	Plumbers & Steamfitters Local 43 Pension Fund Trust
6053345114	Teamsters Local 469 Pension Fund
6053345169	Painters District Council #2 Pension Trust
6053345187	Plasterers' & Cement Masons' Local 40 Pension Fund
6053345196	IUOE Local 825 Pension Fund

<i>Merc Acct</i>	<i>Name</i>
6053345203	International Longshoremen's Association (AFL-CIO) Employers Pension Fund, SE FI
6053345212	Rockford Area Dairy Industry, Local 754 IBT Retirement Pension Plan
6053345221	Centennial State Carpenters' Pension Trust Fund
6053345347	Northern Illinois Pension Fund
6053345374	LIUNA Local Union and District Council Pension Fund
6053345383	LIUNA National (Industrial) Pension Fund
6053345409	Cement Masons Union Local No. 502 Pension Fund
6053345436	Bi-State Development Agency / Division 788 Amalgamated Transit Union Master Trus
6053345445	IBEW Local No. 38 Pension Fund
6053345454	Deferred Salary Plan of the Electrical Industry
6053345461	Tile, Terrazzo & Marble Defined Contribution Pension Plan
6053345490	IUPAT Industry Annuity Plan
6053345917	Carolinás Electrical Workers Retirement Fund
6053345926	CSX Hotels, Inc. Pension Plan for Union Employees
6053345935	Local 138 IUOE Annuity Fund
6053345944	Glaziers Local No. 27 Pension Fund
6053346088	SEIU Local No. 4 Pension Fund
6053346097	Truck Drivers & Helpers Local Union No. 355 Retirement Pension Plan
6053346104	IBEW Local 508/Eastern Division, Georgia Chapter NECA Pension Fund
6053346113	Sheet Metal Workers Local 36 Pension Fund
6053346122	International Brotherhood of Firemen and Oilers National Pension Fund
6053346266	Waterfront Employers - ILA Pension Fund
6053346275	Plumbers and Steamfitters Local 102 Pension Fund
6053346284	Automotive Machinists Pension Trust
6053346293	New Jersey Education Association Employees Retirement Plan
6053346300	UA Locals 63/353 Joint Pension Trust Fund
6053346603	Nursing Home and Healthcare Employees of Philadelphia and Vicinity Pension Plan
6053346612	Greenville Plumbers and Pipefitters Pension Fund
6053346630	IUPAT General Officers, Staff and Employees Retirement & Pension Trust Fund
6053346649	Detroit Free Press Inc. Newspaper Guild of Detroit Pension Plan

<i>Merc Acct</i>	<i>Name</i>
6053346658	Plumbers & Pipefitters Local No. 333 Pension Fund
6053346667	Carpenter's Pension Fund of Northern California
6053346676	Carpenter's Annuity Trust Fund of Northern California
6053346685	International Brotherhood of Firemen & Oilers, Local No. 7 Pension Trust Fund
6053346694	Central Laborers' Annuity Fund
6053346701	Alaska Hotel & Restaurant Employees Pension Trust
6053346881	Building Trades United Pension Trust Fund - Milwaukee & Vicinity
6053346890	Teamsters Local Union No. 727 Pension Fund
6053346907	Plumbers And Steamfitters Local #118 Kenosha Unit Pension Plan
6053346916	GCIU Benevolent Trust Fund
6053346925	IBEW Local Union 1579 Pension Plan

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**Total Number of Active Participants**      159

## **SCHEDULE I**

### **(Base Building Improvements)**

1. Landlord shall place all electrical, mechanical, HVAC, lighting and plumbing systems in good working order.
2. Landlord shall add an additional layer of drywall/insulation/sound batting around the production area of the adjacent tenant Pretium Packaging. Landlord and Tenant will mutually agree upon the design specifications and method of construction to be used.

**SCHEDULE 2**  
**(Tenant Improvements)**

**Schedule 2**  
**General Motors Service & Parts Operations**  
**General Facility Specifications**  
**Fountain Lakes II Facility, St. Charles, MO**  
Revision date: September 8, 2005

**Division 1    General**

1. All construction must comply with all Federal, State and Local building code requirements, environmental laws, OSHA regulations, American with Disabilities Act (ADA) and all other affiliated codes.
2. Overall facility design for 20 employees (15 men, 5 women)
3. Provide single floor office in ~~south~~<sup>north</sup> east corner of facility with layout as identified in drawing 9-7-05 of approximately 4,500 s.f.
4. Provide single floor restroom in warehouse with identified floorplan as identified on drawing 9-7-05. Restroom shall have separate men's and women's facilities with ventilation.
5. Provide two drinking fountains (one ADA accessible) adjacent to restrooms in front office in NE corner of facility.
6. Provide two drinking fountains (one ADA accessible) adjacent to restrooms in warehouse located on drawing 9-7-05.
7. Add new painted metal guardrails at existing drive in ramps.
8. Install a canvas awning with aluminum frame at the main entry door. Approximately 3' x 8' supported on concrete panels.
7. The G.C. shall provide complete final cleanup of all materials and surfaces at project completion as well as jobsite cleanup on a daily basis.
8. Final clean up from construction shall be completed prior to substantial completion
9. Warrantees and owners manuals shall be turned over in large three-ring binders at time of substantial completion.
10. G.C. shall review existing dock doors with the building owners and shall include updating and/or repairing as necessary *at owner's expense* to bring to usable condition. Tenant will use all dock doors on east side of building.
11. Doors shall be solid core with plain sliced red oak veneer, shop finished with building standard stain – tenant selected color. Comply with architectural woodwork quality standards of the architectural woodwork institute.
12. Remove one existing dock seal and bumper set for tenant supplied trash compactor.
13. Provide one-piece mirrors at all toilet room p. lam counters and/or Bobrick 24" x 36" metal-framed mirrors at all wall mounted sinks.
14. All millwork shall comply with Architectural Woodwork Quality Standards by A.W.I. All cabinets and countertops shall be anchored to adjacent surfaces or partitions. Countertops shall have 1 1/2" thick square edges and shall be flush overlay construction. Provide 4" chrome plated pulls, plastic laminate all exposed surfaces, (Comply with NEMA LD-3, GP-50) melamine interiors

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and heavy duty glides and hinges as required. Cabinet hardware shall comply with BHMA A 156.9

15. Provide fire retardant blocking in walls for support of all casework, toilet accessories, wall mounted sinks, grab bars, doorstops, etc.
16. Existing warehouse demising wall will be modified as follows: Add one layer 5/8" type 'x' Gp. Bd. And fire seal at top of partition to deck.
17. Office/warehouse demising wall will be a 10'-0" high partition with a 1"x3" painted trim board at top for protection of the edge. Fully brace partition per code. Finish tape, sand and paint warehouse side of partition. G.C. shall install new interior pipe bollards and guardrails where specified by tenant. -- To be coordinated.
18. Provide insulation where indicated.
  - a. 3 1/2" thermal batt insulation with vapor barrier in demising walls.
  - b. 2 1/2" sound attenuation batt insulation around toilet rooms and conference rooms.
  - c. Provide 3 1/2" thermal insulation with vapor barrier above entire office area ceiling due to office/warehouse demising wall not being full height.
19. Gypsum board (gyp. bd.) shall be installed per the gypsum association recommended practices and per ASTM C36. All partitions shall be plum and in true straight lines. Joint tape, corner bead, edge bead, and joint compound: Standard with manufacturer's 3-coat system as recommended by U.S.G and per ASTM C475.
20. Typical partitions shall be 5/8" gyp. bd. on 3 5/8" 22 ga. metal studs at 24" o.c. and as further defined below:
  - a. Office area demising wall shall extend to 10'-0" a.f.f.
  - b. Interior walls shall extend to 4" above the ceiling (Typical ceiling at 9'-8")
21. Provide tapeable metal corner casing beads at all gyp. bd. corners.
22. Paint gyp. bd. partitions 2 coats eggshell latex over tinted primer.
23. Install sound dampening material to existing next-door tenant bump-out in demising wall at owner's expense.
24. Provide moisture resistant gyp. bd. at all wet walls.
25. Provide gyp. bd. expansion joints at 30'-0" o/c max.
26. Remove striping from warehouse floor.
27. Install painted plywood over existing windows on the northwest corner glass. Paint exterior side black to hide from view.
28. Provide seismic bracing of walls, ceiling and other items as required by the currently adopted building code. Comply with ASTM E580 for ceiling.

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**Division 2    Sitework**

- 29. Identification for payment of all utilities including but not limited to gas, electric, water and sewer shall be provided in lease agreement.
- 30. Parking to accommodate minimum 25 employee parking spaces with ADA requirements met.

**Division 3    Concrete**

- 31. Provide design and installation of extension of sidewalk from existing location at NE corner of facility to next existing man door located at C1 bay location.

**Division 4    Masonry**

- 32. Not applicable

**Division 5    Metals**

- 33. Not applicable

**Division 6    Wood & Plastics**

- 34. Provide and install one 4' x 8' x ½" thick plywood telephone board.

**Division 7    Thermal – Moisture Protection**

- 35. Not applicable

**Division 8    Doors & Windows**

- 36. Exterior aluminum doors are existing but the hardware must be upgraded as necessary to meet current codes. Deadlocks are not allowed without a panic or lever release.
- 37. Doorframes shall be 3070 hollow metal fully welded type, painted.

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**Division 9 Finishes**

38. Paint all interior walls, columns, structural steel and interior roof deck.
39. Provide floor material transition strips where required by change in flooring materials and heights. Provide the appropriate vinyl strip as recommended by 'Johnsonite.' Provide all necessary parts, i.e. track, base, adapters, strips, edge guards, fillers, etc.
40. Horizontal blinds shall comply with AWCMA document 1029 & NFPA 701 with pass rating and shall be installed on all windows, interior and exterior.
41. Carpet (cpt): Provide and install carpet where indicated on drawings. – 26 oz. level loop. Direct glue-down – type 6.6 by Shaw, hard drive or approved equal. Use \$21.00/s.y. for bidding. Carpet surface burning characteristics test method: DOC FF 1-70 - Rating: pass.
42. Vinyl composition tile (vct): Provide Armstrong standard Excelon complying with ASTM F 1066, FS SS-T0312 type IV 12" x 12" x 1/8" asbestos free where indicated on drawings.
43. Vinyl base (vb): Provide covered .080 gauge 4" vinyl base complying with FS SS-W-40, type II on all walls and warehouse side of demising wall.
44. Paint (pnt): Provide primer and two finish coats as recommended by the manufacturer for each type of material, surface, and location being painted or stained. Provide separate price for painting warehouse side of office demising walls.
45. Toilet Accessories: Provide accessories as follows and are compliant with the ADA – Bobrick only.
  - a. Paper towel dispenser/disposal – large and small units
  - b. Toilet paper dispenser - (B-2888)
  - c. Soap dispenser – Liquid
  - d. Grab bars
  - e. Sanitary napkin disposal
  - f. Coat hook – on back of each stall door and one in each private toilet room.
46. Toilet compartments/urinal screens shall be steel color coated finish, wall and/or floor mounted as manufactured by Global Steel Products or approved equal.
47. Toilet room floors shall be epoxy type – actual type to be coordinated between g.c. and tenant.
48. Acoustical ceiling shall be 2' x 4' acoustical lay-in ceiling panels in white 15/16" metal grid. Armstrong Cortega Second Look II - #2767
49. Do not cut main 'tees' in ceiling grid. Do not screw metal track to grid – use metal clips.
50. Provide metal paintable access panels where required for access to mechanical, plumbing, electrical, and/or any other concealed items. G.C. shall coordinate size, quantity, and location.
51. ***GM shall supply all appliances and installation at tenant expense.***

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- 52. Label all interior piping per attached G.M. provided specifications. See attached NAO Piping Systems Identification Standards.
- 53. Install grid identifications on all columns.
- 54. Break room cabinets shall include 12"d. wall and 24"d. base cabinets.
- 55. Hardware shall be commercial grade one. Provide passage sets with lever handles except at offices where lever locks shall be provided. Provide push/pull hardware on multi-fixture toilet rooms. Provide closers at demising wall doors and multi-fixture toilet rooms or as otherwise noted. Demising wall doors shall receive weather-stripping. All hardware shall meet building code requirements.
- 56. Borrowlites shall be hollow metal and shall include horizontal blinds.
- 57. In restrooms in front office - Provide minimum 6 lockers in women's restroom with adjacent bench seating and minimum 12 lockers in men's restroom with adjacent bench seating. All lockers can be stacked two high.

**Division 10    Specialties**

- 58. Not applicable

**Division 11    Equipment**

- 59. Not applicable

**Division 12    Furnishings**

- 58. Not applicable

**Division 13    Special Construction**

- 59. Not applicable

**Division 14    Conveying Systems**

- 60. Not applicable

**Division 15    Mechanical**

- 61. HVAC equipment sizing shall be based on load calculations to satisfy the 1997 ASHRAE Fundamentals chapter 26, Table 1A, Heating and Wind Design Conditions - United States for 99.6% Heating DB and 1997 ASHRAE Fundamentals chapter 26, Table 1B, Cooling and Dehumidification Design Conditions - United States for 1% Cooling DB/MWB.
- 62. Indoor design temperatures in the warehouse shall be 70F for heating in winter.

**Schedule 2**  
**General Motors Service & Parts Operations**  
**General Facility Specifications**  
**Fountain Lakes II Facility, St. Charles, MO** Revision date: September 8, 2005

63. Indoor design temperatures in the office shall be 70 F for heating in winter and 72F for cooling in summer. Five zones are requested by tenant.
64. Warehouse HVAC units shall be *direct* fired gas heating with outside air ventilation capabilities.
65. Office HVAC unit(s) shall be separate from the Warehouse units. Office HVAC unit(s) shall have indirect fired gas heating, direct expansion cooling with a modulating 0 - 100% outside air economizer.
66. Infrared heat shall be installed at the eight (8) truck dock doors as not yet identified on drawing 9-7-05.
67. Ventilation for restrooms shall be 15 air changes per hour.
68. Air conditioning for Computer room shall be two Liebert units minimum 1-1/2 tons each ground mounted and located at or near opposite ends of room.
69. Warehouse ventilation requirements: 132,000 CFM existing capability per owner, GM requires 300,000 CFM.
70. Remove existing duct through demising wall that separates space from adjacent tenant.
71. Break room shall include water supply and drainage for coffee vending machine, ice machine, general vending machines and for refrigerator. Refer to drawing 9-7-05 for layout.
72. Provide plumbing fixtures indicated, ADA compliant where required. (Flush valve type)
73. Insulate plumbing pipes per ADA w/ LavGuard or equal.
74. Provide floor drains in each toilet room, in the break room, computer room and elsewhere as required by local building codes. GM will dictate exact locations for break room and computer room and/or other locations.
75. Provide Hi-Low type electrical water coolers where indicated on drawing 9-7-05.

**Division 15-2 Fire Protection**

77. Office: Coverage density shall be 0.1 GPM/3000 s.f. (or better to meet code)
78. Computer Room: Coverage density shall be 0.12 GPM/3000 s.f. (or better to meet code)
79. Modify the existing proper fire protection system as required by the tenant and building owners. Fully coordinate with the tenants' storage heights and products being stored.
80. Fire extinguishers shall be installed by the tenant within a 75' travel distance of any point in the tenant space (verify with local fire marshal). The G.C. shall assist the tenant in coordination with the fire marshal for quantity, type, and locations. The tenant requires hose racks installed throughout the warehouse -- coordinate locations and quantities with tenant.

**Schedule 2**  
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81. Provide an anti-freeze fire protection coverage inside the trash compactor.
82. Computer Room sprinklers shall have a separate control valve located in the Computer Room and system will be 'wet'.
83. Walls around computer room shall be 1-hour rated with a 1-hour rated ceiling constructed of a 1-hour partition installed horizontally.
84. Computer room floor will not be raised or recessed per tenant.
85. Tenant to coordinate fire hose drops with architect for warehouse and per drawing . Provide 15 drops, each drop shall include 100' hose, pressure regulated valve, spray nozzle and hose wrench.
86. Add sprinkler heads at overhead doors per tenant specifications to be provided.

**Division 16 Electrical**

76. Warehouse lighting:
  - a. Lighting layout shall be designed based on the GM provided 'Phase Liner' drawing 9-7-05. Contact Tom Ryan for more information. (989-753-2274)
  - b. GM provided 'Phase Liner' drawing 9-7-05 shall be based on racking layout drawing 9-7-05 for best coverage
  - c. Lighting levels in warehouse shall be 25 foot-candles maintained 30 inches above finished floor per design provided by GM.
77. Office lighting:
  - a. Light fixtures shall be standard 2' x 4' fluorescent fixtures with prismatic lenses.
  - b. Lighting levels in office shall be 50 foot-candles maintained 30 inches above finished floor.
78. GM shall have a separate fire alarm panel with horns and strobes tied to main building panel.
79. G.C. shall install new interior pipe bollards and guardrails where specified by tenant. – to be coordinated.
80. Electrical panels shall be clearly marked on the exterior of the panel. The panel schedule shall be typed.
81. Provide four (4) 60 amp fusible disconnects for mobile equipment charging systems to be located at interior wall at **column H bay 8-9. This wall separates space from adjacent tenant.**
82. Provide one (1) 60 amp fusible disconnect for trash compactor to be located at existing dock space between L-K columns.

**Schedule 2**  
**General Motors Service & Parts Operations**  
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83. Exit and emergency light type and quantities shall be code compliant and match building standard. Actual locations must be approved by governing authorities and coordinated by the G.C.
84. Install pipe bollards or other steel protection at electrical equipment sprinkler risers etc. and paint safety yellow.
85. The network cabinet requires a single phase 30 amp service. The remainder of all the data drops require 120 volt receptacles.
86. Include wiring of UPS system in computer room.
87. Include wiring of EIC (employee information center) station in the break room.
88. Furnish and install two new 400 amp, three phase, 42 circuit panels.
89. G.C. shall install security system in compliance with G.M. requirements.
90. Provide electrical outlets, telephone and data lines per drawing 9-7-05 and meet all applicable code requirements as well.

Preliminary Bid Instructions:

**This list is not intended to be an all-inclusive specification; the selected general contractor (G.C.) will be responsible for providing all necessary items and services included in the standard practice of 'design/build' construction of a tenant finish-out that may be required to complete the project.** This list and the associated preliminary drawing are intended to be used to obtain pricing for this project only and do not constitute 'construction drawings' and therefore do not include every item necessary for completion of the project.

This document and the attached information is the basis for the bid. The final contract for construction, however, will be based upon a 'For Construction' set of drawings issued after permits have been applied for and comments, if any, have been incorporated into the final drawings issued for construction.

Any value engineering that you wish to include should be added or deducted as alternates and/or clarifications.



GENERAL MOTORS  
FOUNTAIN LAKES II

ID	Q	Task Name	Duration	Sep 11, '05	Sep 18, '05	Sep 25, '05	Oct 2, '05	Oct 9, '05	Oct 16, '05	Oct 23, '05	Oct 30, '05	Nov 6, '05	Nov 13, '05	Nov 20, '05	Nov 27, '05
				9/11	9/18	9/25	10/2	10/9	10/16	10/23	10/30	11/6	11/13	11/20	11/27
1	105	Test Item	1 day												
2	105	Gen Motor Review	5 days												
3	105	Est Preparation	5 days												
4	105	Demolition	2 days												
5	105	Drywall	30 days												
6	105	Carpentry	25 days												
7	105	Structural Steel	18 days												
8	105	Metalwork	5 days												
9	105	Dev, Frame, Under	5 days												
10	105	Glass	3 days												
11	105	Doct. Lenses	12 days												
12	105	Gen. VCT & Base	8 days												
13	105	Acoustical Ceilings	10 days												
14	105	Painting	30 days												
15	105	Total Partitions/Access	5 days												
16	105	Window Treatments	5 days												
17	105	Planting	43 days												
18	105	Synchrom	30 days												
19	105	HVAC	45 days												
20	105	Electrical	54 days												
21	105	Finishing	3 days												

Schedule 4

DAVID W. DIAL ARCHITECTS, P.C.

425 SOUTH WOODSMILL ROAD  
SUITE 200  
CHESTERFIELD, MISSOURI 63017  
PHONE (314) 439-9353  
FAX (314) 439-9373

PROJECT OUTLINE FOR OWNER AND BIDDERS

Revised August 30, 2005

General Motors – Fountain Lakes II  
St. Charles, Missouri

This document is a brief summary of the requirements for construction. It includes minimum quality standards for materials, information supplied by General Motors as well as bid instructions to general contractors. *Some of the information from General Motors, specifically the mechanical, electrical and sprinkler sections of this outline, are included as provided without review or modification.*

Attachments include:

- Preliminary Overall Floor Plan with tenant supplied racking and lighting layout shown.
- Preliminary Enlarged Office Plan with preliminary warehouse toilet plan.
- NAO Piping Systems Identification Standards (provided by G.M.)

Preliminary Bid Instructions:

This list is not intended to be an all-inclusive specification, the selected general contractor (G.C.) will be responsible for providing all necessary items and services included in the standard practice of 'design/build' construction of a tenant finish-out that may be required to complete the project. This list and the associated preliminary drawing are intended to be used to obtain pricing for this project only and do not constitute 'construction drawings' and therefore do not include every item necessary for completion of the project.

This document and the attached information is the basis for the bid. The final contract for construction, however, will be based upon a 'For Construction' set of drawings issued after permits have been applied for and comments, if any, have been incorporated into the final drawings issued for construction.

Any value engineering that you wish to include should be added or deducted as alternates and/or clarifications.

All work shall be performed in accordance with all applicable local codes and the Americans with Disabilities Act (ADA).

All materials shall be new. All work shall be performed in a professional workmanlike manner in accordance with generally accepted practices.

The G.C. shall include all design consultants and construction permits required for completion of the project including design/build mechanical, electrical, plumbing and fire protection or other engineering services that may be required. The architect (and structural engineer if needed) has been retained by the building owner and will be excluded from the general contractor's scope of work.

DAVID W. DIAL ARCHITECTS, P.C.

Project Outline – 8/16/05

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This document, the included preliminary drawings and other information that may be provided and all applicable codes, ordinances and standards shall be the basis for the bid.

Project Outline:

1. The G.C. shall provide complete final cleanup of all materials and surfaces at project completion as well as jobsite cleanup on a daily basis.
2. Provide seismic bracing of walls, ceiling, and other items as required by the currently adopted building code. Comply with ASTM E580 for ceilings.
3. Provide fire retardant blocking in walls for support of all casework, toilet accessories, wall mounted sinks, grab bars, doorstops, etc.
4. All millwork shall comply with Architectural Woodwork Quality Standards by A.W.I. All cabinets and countertops shall be anchored to adjacent surfaces or partitions. Countertops shall have 1 1/2" thick square edges and shall be flush overlay construction. Provide 4" chrome plated pulls, plastic laminate all exposed surfaces, (Comply with NEMA LD-3, GP-50) melamine interiors and heavy duty glides and hinges as required. Cabinet hardware shall comply with BHMA A 156.9
5. Break room cabinets shall include 12"d. wall and 24"d. base cabinets.
6. Provide and install one 4' x 8' x 3/4" thick plywood telephone board.
7. Office/warehouse demising wall will be a 10'-0" high partition with a 1"x3" painted trim board at top for protection of the edge. Fully brace partition per code. Finish tape, sand and paint warehouse side of partition. G.C. shall install new interior pipe bollards and guardrails where specified by tenant. – To be coordinated.
8. Existing warehouse demising wall will be modified as follows: Add one layer 5/8" type 'x' gyp. Bd. And fire seal at top of partition to deck.
9. Provide insulation where indicated.
  - 3 1/2" thermal batt insulation with vapor barrier in demising walls.
  - 2 1/2" sound attenuation batt insulation around toilet rooms and conference rooms.
  - Provide 3 1/2" thermal insulation with vapor barrier above entire office area ceiling due to office/warehouse demising wall not being full height.
10. Doorframes shall be 3070 hollow metal fully welded type, painted.
11. Doors shall be solid core with plain sliced red oak veneer, shop finished with building standard stain – tenant selected color. Comply with architectural woodwork quality standards of the architectural woodwork institute.

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Project Outline – 8/16/05

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12. Hardware shall be commercial grade one. Provide passage sets with lever handles except at offices where lever locks shall be provided. Provide push/pull hardware on multi-fixture toilet rooms. Provide closers at demising wall doors and multi-fixture toilet rooms or as otherwise noted. Demising wall doors shall receive weather-stripping. All hardware shall meet building code requirements.
13. Exterior aluminum doors are existing but the hardware must be upgraded as necessary to meet current codes. Deadlocks are not allowed without a panic or lever release.
14. Gypsum board (gyp. bd.) shall be installed per the gypsum association recommended practices and per ASTM C36. All partitions shall be plum and in true straight lines. Joint tape, corner bead, edge bead, and joint compound: Standard with manufacturer's 3-coat system as recommended by U.S.G and per ASTM C475.
15. Typical partitions shall be 5/8" gyp. bd. on 3 5/8" 22 ga. metal studs at 24" o.c. and as further defined below:
  - Office area demising wall shall extend to 10'-0" a.f.f.
  - Interior walls shall extend to 4" above the ceiling (Typical ceiling at 9'-6")
16. Provide tapeable metal corner casing beads at all gyp. bd. corners.
17. Paint gyp. bd. partitions 1 coats eggshell latex over tinted primer.
18. Paint all existing walls, deck, and structure. Newly installed items after painting has occurred are not required to be painted.
19. Remove striping from warehouse floor.
20. Provide moisture resistant gyp. bd. at all wet walls.
21. Provide gyp. bd. expansion joints at 30'-0" o/c max.
22. Provide metal paintable access panels where required for access to mechanical, plumbing, electrical, and/or any other concealed items. G.C. shall coordinate size, quantity, and location.
23. Acoustical ceiling shall be 2' x 4' acoustical lay-in ceiling panels in white 15/16" metal grid. Armstrong Cortega Second Look II - #2767
24. Do not cut main 'tees' in ceiling grid. Do not screw metal track to grid – use metal clips.
25. Exit and emergency light type and quantities shall be code compliant and match building standard. Actual locations must be approved by governing authorities and coordinated by the G.C.
26. All appliances shall be supplied and installed by the G.C.

27. Fire extinguishers shall be installed by the tenant within a 75' travel distance of any point in the tenant space (verify with local fire marshal). The G.C. shall assist the tenant in coordination with the fire marshal for quantity, type, and locations. The tenant requires hose racks installed throughout the warehouse – coordinate locations and quantities with tenant.
28. Install pipe bollards or other steel protection at electrical equipment sprinkler risers etc. and paint safety yellow.
29. Install painted plywood over existing windows on the northwest corner glass. Paint exterior side black to hide from view.
30. Finishes:
  - a. Provide floor material transition strips where required by change in flooring materials and heights. Provide the appropriate vinyl strip as recommended by 'Johnsonite.' Provide all necessary parts, i.e. track, base, adapters, strips, edge guards, fillers, etc.
  - b. Horizontal blinds shall comply with AWCMA document 1029 & NFPA 701 with pass rating and shall be installed on all windows, interior and exterior.
  - c. Carpet (cpt):  
Provide and install carpet where indicated on drawings. – 26 oz. Level loop. Direct gluedown – type 6.6 by Shaw, hard drive or approved equal. Use \$21.00/s.y. for bidding. Carpet surface burning characteristics test method: DOC FF 1-70 - Rating: pass.
  - d. Vinyl composition tile (vct):  
Provide Armstrong standard Excelon complying with ASTM F 1066, FS SS-T0312 type IV 12" x 12" x 1/8" asbestos free where indicated on drawings.
  - e. Vinyl base (vb):  
Provide covered .080 gauge 4" vinyl base complying with FS SS-W-40, type II on all walls and warehouse side of demising wall.
  - f. Paint (pnt):  
Provide primer and two finish coats as recommended by the manufacturer for each type of material, surface, and location being painted or stained. Provide separate price for painting warehouse side of office demising walls.
  - g. Toilet Accessories: Provide accessories as follows and are compliant with the ADA – Bobrick only.
    1. Paper towel dispenser/disposal – large and small units
    2. Toilet paper dispenser - (B-2888)
    3. Soap dispenser – Liquid
    4. Grab bars
    5. Sanitary napkin disposal
    6. Coat hook – on back of each stall door and one in each private toilet room.

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Project Outline – 8/16/05

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- h. Toilet compartments/urinal screens shall be steel color coated finish, wall and/or floor mounted as manufactured by Global Steel Products or approved equal.
  - i. Toilet room floors shall be epoxy type – actual type to be coordinated between g.c. and tenant.
  - j. Break room shall include water supply and drainage for coffee vending machine, ice machine, general vending machines and for refrigerator.
31. Provide one-piece mirrors at all toilet room p. lam counters and/or Bobrick 24" x 36" metal-framed mirrors at all wall mounted sinks.
32. All roof work shall be in compliance with the existing roof warranty.
33. Signage is excluded and is by the tenant.
34. Warehouse racking is excluded.
35. Final clean up from construction shall be completed prior to substantial completion.
36. Warrantees and owners manuals shall be turned over in large three-ring binders at time of substantial completion.
37. Borrowlites shall be hollow metal and shall include horizontal blinds.
38. Install a canvas awning with aluminum frame at the main entry. Approximately 3' x 8' supported on concrete panels.
39. G.C. shall review existing dock doors with the building owners and shall include updating and/or repairing as necessary to bring to usable condition. Tenant will use all dock doors on east side of building.
40. Computer Room Requirements:  
Install a separate sprinkler control valve for computer room.  
Walls around computer room shall be 1-hour rated with a 1-hour rated ceiling constructed of a 1-hour partition installed horizontally.  
Floor will not be raised or recessed per GM.
41. Label all interior piping per attached G.M. provided specifications. See attached NAO Piping Systems Identification Standards. Install column grid identifications as well.
42. Paint all interior columns, roof deck, structural steel, etc.
43. Remove one dock seal and bumper set for tenant supplied trash compactor.
44. Install sound dampening material to existing next-door tenant bump-out in demising wall.
45. Tenant to verify additional requirements to existing tenant demising wall.

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Project Outline – 8/16/05

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46. G.C. to install security system for tenant. G.C. shall coordinate with tenant.

47. Add new painted metal guardrails at existing drive in ramps.

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Project Outline – 8/16/05

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48. Mechanical: (Information provided by G.M.)

- a. The following is the design criteria for the HVAC equipment to be added to the Fountain Lake facility:
- b. HVAC equipment sizing shall be based on load calculations to satisfy the 1997 ASHRAE Fundamentals chapter 26, Table 1A, Heating and Wind Design Conditions - United States for 99.6% Heating DB and 1997 ASHRAE Fundamentals chapter 26, Table 1B, Cooling and Dehumidification Design Conditions - United States for 1% Cooling DB/MWB.
- c. Indoor design temperatures in the warehouse shall be 70F for heating.
- d. The office design temperatures shall be 70 F for heating in winter and 72F for cooling in summer. Five zones are requested by tenant.
- e. Warehouse HVAC units shall have direct fired gas heating with outside air ventilation capabilities.
- f. Office HVAC unit shall be separate from the Warehouse units. Office HVAC unit shall have indirect fired gas heating, direct expansion cooling with a modulating 0 - 100% outside air economizer.
- g. Infrared heat shall be installed at the five (5) truck dock doors.
- h. Warehouse shall be heated to maintain 55° at 0° outside air temp. Office shall be heated to maintain 75° at 0° outside air temp and cooled to maintain 75° at 95° outside air temp.
- i. Provide plumbing fixtures indicated, ADA compliant where required. (Flush valve type)
- j. Coordinate fire hose drops with tenant for warehouse.
- k. Ventilation for restrooms shall be 15 air changes per hour General Motors Progress Notes (GMPN) item #65
- l. Ventilation for Warehouse area shall be as identified in GMPN item #53 stated as 300,000 CFM (current capability is 132,000 CFM)
- m. Air conditioning for Computer room shall be two Liebert units minimum 1-1/2 tons each ground mounted. (GMPN item #10)
- n. Warehouse ventilation requirements: 132,000 CFM existing capability per owner, GM requires 300,000 CFM.

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Project Outline – 8/16/05

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49. Electrical:

- a. Warehouse lighting shall be designed based on the GM provided 'Phase Liner' drawings. Call Tom Ryan for more information. (989-753-2274)
- b. Tenant will provide warehouse lighting layout to coordinate with their racking layout. (Provided to g.c.)
- c. Add sprinkler heads at overhead doors per tenant.
- d. Remove existing duct through demising wall.
- e. Office light fixtures shall be standard 2' x 4' fluorescent fixtures with prismatic lenses.
- f. G.M shall have a separate fire alarm panel with horns and strobes tied to main building panel.
- g. G.C. shall install new interior pipe bollards and guardrails where specified by tenant. – to be coordinated.
- h. Electrical panels shall be clearly marked on the exterior of the panel. The panel schedule shall be typed.
- i. Provide four (4) 60 amp fusible disconnects for mobile equipment charging systems to be located at interior wall at column H bay 8-9. This wall separates space from adjacent tenant.
- j. Provide one (1) 60 amp fusible disconnect for trash compactor to be located at existing dock space between L-K columns.

50. Fire Protection

- a. Office: Coverage density shall be 0.1 GPM/3000 s.f. (GMPN item #70) (or better to meet code)
- b. Computer Room: Coverage density shall be 0.12 GPM/3000 s.f. (GMPN item #71) (or better to meet code)
- c. Modify the existing proper fire protection system as required by the tenant and building owners. Fully coordinate with the tenants' storage heights and products being stored.

51. Security Equipment:

- a. G.C. shall install security system in compliance with G.M. requirements.

END OF LIST