

City of Alexandria, Virginia

MEMORANDUM

DATE: JUNE 4, 2004

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: PHILIP SUNDERLAND, CITY MANAGER ^{PS}

SUBJECT: LEASE FOR CITY SPACE AT TAVERN SQUARE

ISSUE: Consideration of a fifteen-year lease, the term to be concurrent with our existing leases for an effective term of eleven years, for office space located in Tavern Square.

RECOMMENDATION: That City Council authorize the City Manager to execute, on behalf of the City, and to deliver the attached lease for approximately 27,000 square feet of space in Tavern Square (Attachment I), in substantially the form presented to the Council with such changes as are approved by the City Manager and the City Attorney. The execution of the leases by the City Manager shall constitute conclusive evidence of his approval, and that of the City Attorney, of any and all changes from the documents made available to the City Council.

BACKGROUND: One of the action items discussed in Council's Draft Strategic Plan is the preparation of a master space plan for City offices. Staff from the General Services Department and City Manager's Office have been working on a draft of the plan to identify the major space requirements for all City departments now and in the future. A major premise of our planning has been that the City will continue to maintain its core financial, regulatory, legislative, citizen information, and administrative functions in the downtown area -- specifically, in City Hall and, to the degree necessary, in buildings near City Hall. A second major space planning premise has been that the City's direct service programs and operations will not be downtown, but in other locations where they will be closer to their client base (e.g., the soon-to-occur relocation of the Health Department and Clubhouse program to 4480 King Street; DHS on Mt. Vernon Avenue).

A major renovation of City Hall occurred in the early 1980's, when the City courthouse was completed. At that time, the courts, the commonwealth's attorney office, and the clerk of courts moved out of City Hall. Also, at that time, most of the core City functions identified above were placed in City Hall. Over time, however, the need for additional space for these core functions increased and, in the mid-1990s, these functions began to outgrow the space available in City Hall.

As a result, since 1996, the City has leased increasing amounts of space near City Hall, in Bankers Square and Tavern Square, for the operation of these core City functions. Most of the operations were relocated to these locations from City Hall; others were relocated from the courthouse. Currently, the City leases approximately 8,800 square feet in Bankers Square for the Purchasing and Accounting divisions of the Finance Department. Approximately 37,350 square

feet are leased in Tavern Square for a variety of City, state, Sheriff and court operations (e.g., Office on Women, Human Rights Office, Registrar, ASAP and Public Defender programs, ACVA, General Services Department, Risk Management and Internal Audit). The leasing of much of this space occurred because certain core City functions and departments needed to expand operations in City Hall, necessitating the movement of other operations out of City Hall.

DISCUSSION: City Hall has approximately 74,000 square feet of usable space, including conference rooms and meeting space. It houses approximately 350 employees and supports the coming and going of thousands of residents monthly.

Today, however, City Hall is unable to provide sufficient space, in as secure manner as we would like, for the core functions that now take place within it. Indeed, a number of different factors now require that space be freed up in City Hall and, as a result, that some current City Hall operations be relocated to another location. These factors include:

- the expansion of programs and/or operations in Planning & Zoning, T&ES and Code Enforcement;
- the need for additional meeting space for staff and the public;
- the commitment to improve City Hall security (e.g., by relocating all meeting space to the first and second floors);
- the need to improve the utility and convenience of areas in which the public is served;
- the creation of entirely new programs and operations (e.g., GIS, fire retesting); and
- the City's consistently increasing information technology and egovernment operations.

In order to free up space in City Hall, we have developed a plan to relocate and consolidate Information Technology Services (ITS) and Housing to Tavern Square, where we will lease 24,986 square feet of additional space. These two departments are now located mainly in City Hall, but also in other leased space. Consolidating their operations in Tavern Square will enable these other leases eventually to be ended. Also, under the proposed lease, we will lease an additional 2,200 square feet which we intend to sublease to the state for state offices.

This relocation of IT and Housing will provide approximately 9,800 square feet of space in City Hall for use by departments that are currently experiencing crowded conditions and/or anticipate increased staffing. It also will allow us to relocate the Housing programs now operated off of Herbert Street to Tavern Square, and to relocate to a single Tavern Square location certain IT operations now located on another floor of Tavern Square and on Cameron Street. Also, the newly leased space will include additional space for public meetings and for the receiving and storage of ITS equipment.

The landlord has agreed to lease this Tavern Square space for the concurrent term of our existing leases (expiration October 31, 2015) at \$22.00 a square foot. In addition, we will work with the landlord to make rent commencement dates concurrent with budget and planning processes. The landlord has demonstrated his willingness to work constructively with the City in the past and has expressed that same willingness in this effort.

FISCAL IMPACT: The estimated FY 2005 cost for the 27,186 square feet of office space, assuming a phased occupancy beginning August 1, 2004, for the Commonwealth of Virginia space and concluding with the occupancy of IT and Housing in spring 2005, is estimated to be \$244,655 after netting out \$44,367 or fifteen percent of the FY 2005 lease costs, which will be reimbursed by the Commonwealth of Virginia. Estimated net lease costs to the City for 2006 is \$566,751, reflecting one full year of occupancy. The Commonwealth's share of the full-year lease costs is approximately eight percent of the total. The City's share of the lease costs will be programmed within the operating budgets for Housing, IT, and General Services.

The landlord will fund the majority of the capital build-out costs through the lease. However, the City will be responsible for any "above building standard" items. These items include additional HVAC and emergency generator power requirements for ITS, communications, and moving expenses. The funding source for the additional HVAC and emergency generator power will be partially funded through the Capital Improvement Plan (CIP) for the previously planned IT Server Room expansion project. The remaining costs will be funded through the Space Management Program account in the CIP

ATTACHMENT: Tavern Square Lease

STAFF:

Michele Evans, Assistant City Manager

Mark Jinks, Assistant City Manager

Edward Mandley, Director, Department of General Services

Peter Geiling, Deputy Director, Department of General Services

DRAFT
DEED OF LEASE

THIS DEED OF LEASE (the "Lease"), is made as of the ____ day of _____, 2004, by and between **TAVERN SQUARE, LLC**, a Delaware limited liability company, herein called "Landlord", and **the CITY OF ALEXANDRIA**, a municipal corporation of the Commonwealth of Virginia (Fed ID #54-6001103-G) (herein called "Tenant").

WITNESSETH:

**ARTICLE I
GRANT AND TERM**

SECTION 1.01. PREMISES. In consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of Tenant to be observed and performed, Landlord demises and leases to Tenant, and Tenant rents from Landlord, those certain premises located on that certain parcel of land (herein called the "Property") within the building(s) known as **Tavern Square** (herein called the "Project") having an address of 110 North Royal Street, entire third floor, containing approximately 8,896 rentable square feet Alexandria, Virginia (the "3rd Floor Premises") and 123 North Pitt Street, part of second floor, containing approximately 20,711 rentable square feet, Alexandria, Virginia (the "2nd Floor Premises" and together with the 3rd Floor Premises herein called the "Premises"), together with the right to use in common with others all common areas and facilities associated with the Property and the Project; excepting and reserving to Landlord the underlying land and the right to install, maintain, use or repair and replace upon the Premises such pipes, pipe clean out, conduits, ducts, wires, meters, electric panels, utility rooms or closets, and any other materials or facilities located in or passing through the Premises which serve parts of the Project or Property. The Premises are shown and described on the floor plans attached hereto as **Exhibit A**. Except during such hours as are determined by Landlord, the building in which the Premises are located shall be restricted from public access and controlled by a security system. Landlord shall provide to Tenant for its use security cards to access the building in which the Premises are located during such hours of restricted access.

SECTION 1.02. COMMENCEMENT AND ENDING DATE OF TERM.

(a) The term of this Lease shall commence on a date to be determined pursuant to the provisions of this Section 1.02, which date shall be on or about August 1, 2004 (the "Lease Commencement Date"). Tenant's obligation to pay Rent and additional rent hereunder shall commence on the Lease Commencement Date (the "Rent Commencement Date"). The Lease Commencement Date may be different for different portions of the Premises and shall be determined for each space independently as phases of the Premises are available for Tenant's occupancy. Whenever the terms Lease Commencement Date or Rent Commencement Date are used herein, such terms shall be interpreted to mean and refer to the 2nd Floor Premises, the 3rd Floor Premises, or any portion thereof, as appropriate under the circumstances.

(b) The Lease Commencement Date shall be the earlier of (i) the date the Premises are deemed available for occupancy pursuant to subsection (c) hereof, or (ii) except as provided in subsection (e) below, the date Tenant, or anyone claiming by, through or under Tenant, occupies any portion of the Premises for the purpose of the conduct of Tenant's (or such other person's) business therein.

(c) The Premises shall be deemed available for occupancy when all of the following shall have occurred:

(1) Landlord shall have substantially completed the improvements to be completed by Landlord pursuant to Article IV (Landlord shall provide Tenant with at least fifteen (15) days written notice of the occurrence of substantial completion); and

(2) Landlord shall have obtained a certificate of occupancy for the Premises.

Substantial completion shall mean the Premises are constructed in accordance with Article IV with the exception of minor punchlist items that do not materially and adversely affect Tenant's use of the Premises. Landlord shall complete such punchlist items within forty-five (45) days of the Lease Commencement Date.

Notwithstanding anything to the contrary contained herein, if there is a delay in the availability for occupancy of the Premises due to Tenant Delay, then the Premises shall be deemed available for occupancy on the date on which the Premises would have been available for occupancy but for such Tenant Delay, even though the construction or installation of the improvements has not been commenced or completed. As used herein, the term "Tenant Delay" shall include any action or omission by Tenant or Tenant's agents, contractors, representatives, licensees and the like which delays Landlord's completion of the improvements.

(d) When the Lease Commencement Date has been determined by Landlord, Landlord and Tenant shall execute a Commencement Notice; provided, however, that the failure of Landlord to prepare and present the Commencement Notice to Tenant, or Tenant's failure to execute the same, shall not affect Tenant's liability hereunder.

(e) Tenant may not enter or occupy the Premises prior to the Lease Commencement Date without Landlord's express written consent. During any entry prior to the Lease Commencement Date, Tenant agrees to cooperate with Landlord and its contractor's efforts to complete the improvements, and Tenant further acknowledges that all such early entry shall be subject to the terms of this Lease including, without limitation, subsection (c) above regarding Tenant Delay; provided, however, Rent obligations shall not be accelerated, except in the event of Tenant Delay. Tenant shall be liable for and, to the extent permitted by law, shall indemnify, defend and hold Landlord harmless from and against any and all damage, liability, claim, cost or expense arising out of or resulting from entry into the Project or the Premises by Tenant, its employees or contractors pursuant to this provision, including, but not limited to damage to the Premises, the Property or the Project, damage to the property of any other tenant in the Project, and personal injury to any person. Within thirty (30) days after receipt of written notice from Landlord, Tenant shall repair, at its sole cost and expense, any damage to the Premises, the

Property, the Project, or the property of any other tenant and shall, if applicable, provide Landlord with written confirmation of its obligation to defend any claim for personal injury. Tenant may, upon entry, submit to Landlord a written statement detailing the condition of the Premises prior to entry and unless objected to by Landlord, in writing, within ten (10) days of receipt of same, such statement shall be determinative of the condition of the Premises at the time of Tenant's entry for purposes of determining Tenant's liability for any damages pursuant to this provision.

(f) The term of this Lease (the "Lease Term") shall end on the last day of the third calendar month following the expiration of the eleventh (11th) Lease Year, as Lease Year is hereinafter defined. It is the intent of the parties that the Lease Term shall terminate at the same time as all other leases between Landlord and Tenant for other premises within the Project and the termination date shall be adjusted as necessary to ensure that all such leases expire simultaneously.

SECTION 1.03. LEASE YEAR DEFINED. The term "Lease Year" as used herein shall mean a period of twelve (12) consecutive full calendar months, provided, however, that the first Lease Year shall begin on the earlier to occur of the Lease Commencement Date for the 2nd Floor Premises and the Lease Commencement Date for the 3rd Floor Premises if such Lease Commencement Date shall occur on the first day of a calendar month; if not, then the first Lease Year shall commence upon the first day of the calendar month next following the earlier to occur of the Lease Commencement Date for the 2nd Floor and the Lease Commencement Date for the 3rd Floor Premises. Each succeeding Lease Year shall commence upon the anniversary date of the first Lease Year.

SECTION 1.04. RENEWAL TERM. Tenant shall have the option to renew this Lease for one (1) additional five (5) year term at Fair Market Value ("FMV"). In order to exercise this option to renew, Tenant shall provide Landlord written notice of its intent to renew at least nine (9) months prior to the expiration of the original Lease Term. In the event Tenant exercises the right to renew, all of the terms and conditions of this Lease shall continue in full force and effect during the renewal term, except that the Rent payable during the renewal term shall be agreed to by the parties. For purposes of this Section 1.04 the annual FMV shall be (at the date of its determination) equal to ninety-five percent (95%) of the annual fixed rent which an unrelated third party would pay for office space comparable to the Premises in Old Town Alexandria for a lease of five years and otherwise on all of the terms of this Lease, with the provision that the base rental for the renewal term shall be the higher of the annual FMV or the then current rent in effect under this Lease. On or about the date which is 60 days prior to the commencement of the renewal term, Landlord shall give notice to the Tenant of Landlord's determination of the annual FMV. If Tenant disputes Landlord's determination, Tenant shall give notice to Landlord of the dispute within 15 days after receipt of Landlord's notice stating Tenant's determination of the annual FMV (time being of the essence). If Tenant shall not submit such notice, then the Rent for the renewal term shall be established using Landlord's determination of the annual FMV. If Tenant shall submit such notice, Landlord and Tenant shall, within 10 days following Tenant's notice, each designate an arbitrator to determine the annual FMV. Each party shall bear the cost for the arbitrator that it selects. Each arbitrator must be a person having not less than 15 years' experience as a commercial leasing broker in Northern Virginia. The arbitrators shall have thirty

(30) days from the date of Tenant's notice to mutually agree upon the annual FMV and if they do so then the annual FMV which they mutually agree upon shall be conclusive and binding upon both the Landlord and Tenant; however, if the arbitrators are unable to mutually agree upon the annual FMV within such thirty (30) day period, then the arbitrators shall designate a third arbitrator within five (5) days following the end of the thirty (30) day period. The third arbitrator shall determine the annual FMV within ten (10) days of being designated and the determination of the third arbitrator shall be conclusive and binding upon both Landlord and Tenant. The costs and expenses of the third arbitrator shall be paid 50 percent by Landlord and 50 percent by Tenant. Each party shall pay the costs and expenses of its own attorneys and experts and of presenting evidence. If the dispute shall not be resolved prior to the commencement of the renewal term, then pending the resolution of the dispute, Tenant shall pay the Rent based upon Landlord's determination of the annual FMV, and within 30 days following resolution of the dispute any adjustment shall be paid by Tenant to Landlord or refunded by Landlord to Tenant retroactive to the commencement of the renewal term. Except for the change, if any, of the Rent, no other term of this Lease shall change.

The foregoing notwithstanding, Tenant shall not have the right to renew this Lease unless it is also renewing all other leases for all other premises which it occupies in the Project.

ARTICLE II RENT

SECTION 2.01. RENT.

(a) Tenant agrees to pay to Landlord without any prior demand therefore and without any deduction or set-off whatsoever, rent for the 2nd Floor Premises (the "2nd Floor Rent") of Four Hundred Fifty-Five Thousand Six Hundred Forty-Two and 00/100 Dollars (\$455,642.00) per annum, payable in equal monthly installments of Thirty-Seven Thousand Nine Hundred Seventy and 17/100 Dollars (\$37,970.17) in advance on the first day of each calendar month of the first Lease Year for the 2nd Floor Premises and for each Lease Year thereafter, for the 2nd Floor Premises, together with such increases as are hereinafter provided for And rent for the 3rd Floor Premises (the "3rd Floor Rent") of One Hundred Ninety-Five Thousand Seven Hundred Twelve and 00/100 Dollars (\$195,712.00) per annum, payable in equal monthly installments of Sixteen Thousand Three Hundred Nine and 33/100 Dollars (\$16,309.33) in advance upon the first day of each calendar month of the first Lease Year for the 3rd Floor Premises, and for each Lease Year thereafter, for the 3rd Floor Premises, together with such increases as are hereinafter provided for. The 2nd Floor Rent and the 3rd Floor Rent are together referred to herein as the "Rent". If the Rent Commencement Date shall commence upon a day other than the first day of a calendar month, then Tenant shall pay, upon the Rent Commencement Date, a pro rata portion of the Rent described in the foregoing clause, prorated on a per diem basis with respect to the fractional calendar month preceding the first month of the first Lease Year. The first full month Rent shall be paid to Landlord within thirty (30) days of the execution of this Lease by the parties.

(b) Rent shall escalate annually by an amount equal to one hundred percent (100%) of the increase in the Consumer Price Index (CPI) for the Washington, D.C. Metropolitan area, but

in no event greater than three percent (3%) over the prior Lease Year, except that at the beginning of the sixth Lease Year, the annual Rent payable shall increase by an amount equal to Two Dollars (\$2.00) per square foot per annum.

SECTION 2.02. OPERATING EXPENSES AND REAL ESTATE TAXES

(a) In addition to paying the Rent and any other additional rent reserved hereunder, the Tenant shall pay to Landlord, as further additional rent, a sum equal to 5.3% of any excess of the amounts levied or assessed for real estate taxes for all governmental purposes on the Property and Project, of which the 3rd Floor Premises form a part and 12.34% of any such excess on the Property and Project of which the 3rd Floor Premises are a part, for any fiscal or calendar tax year which shall include any part of the Lease Term, over and above the amount levied and assessed for calendar year 2004, any such payment for the last year of the Lease Term to be apportioned based upon the portion of the Lease Term that shall be included within the calendar year for which said taxes shall be levied or assessed. Upon the written demand of the Landlord to the Tenant and delivery by Landlord to Tenant of a written statement showing the real estate taxes incurred and the amount due from Tenant, the Tenant shall pay such excess of taxes not later than ten (10) days before the last day when said taxes or any installment thereof shall become due and payable without penalty. Notwithstanding the provisions hereof for the payment of the additional rent payable under this Section 2.02(a), it is agreed that in the event the Tenant shall have become obligated to pay such additional rent for any Lease Year, then the Tenant agrees that on the 1st day of each month of the next succeeding Lease Year, the Tenant shall pay to the Landlord on account of such additional rent for such succeeding Lease Year, a sum equal to 1/12th of the additional rent payable for the preceding Lease Year, and when the amount of the additional rent for such succeeding Lease Year shall have been determined, an adjustment shall be made between the Landlord and the Tenant so that if the amount so paid shall be less than the amount due for such succeeding Lease Year, then the Tenant shall immediately pay to the Landlord any such difference, or if the amount so paid shall exceed the amount due for such succeeding Lease Year, then the Landlord shall refund to the Tenant any such excess. "Real estate taxes" shall not include any (i) franchise, corporation, income or net profits tax, unless substituted for real estate taxes or imposed as additional charges in connection with the ownership of the Project, which may be assessed against Landlord or the Project or both, (ii) transfer taxes assessed against Landlord or the Project or both, (iii) penalties or interest on any late payments of Landlord, except to the extent that Tenant did not pay its pro rata share to Landlord on time, and (iv) personal property taxes of Tenant or other tenants in the Project.

(b) In addition to paying the Rent and any other additional rent reserved hereunder, the Tenant shall pay to Landlord, as further additional rent, a sum equal to 5.3% of any increase in Operating Expenses (as hereinafter defined) with respect to the 3rd Floor Premises and 12.34% of any increase in Operating Expenses (as hereinafter defined) with respect to the 2nd Floor Premises for any future year which is greater than the Operating Expenses for the 2nd Floor Premises or the 3rd Floor Premises, as the case may be, for the calendar year 2004, which sum shall be due within ten (10) days after the Landlord has submitted a written statement to the Tenant showing the Operating Expenses incurred and the amount due from Tenant. Unless Tenant shall take written exception to any such statement within the time period for completing an audit as provided pursuant to Section 2.03, such statement shall be considered final.

“Operating Expenses” shall be defined as those expenses paid or incurred by the Landlord for the maintaining, operating and repairing the Property and Project, and shall include but not be limited to the actual cost of electricity, water, gas, fuel, sanitation, waste disposal, all insurance, maintenance, painting, management fees (not to exceed 3.5% of the gross receipts generated from the operation of the Project), supplies, wages and salaries of all persons engaged in the maintenance, repair and operation of the Property and Project, legal and accounting expenses, and any and all other expenses which may be considered as an expense of maintaining, repairing and operating the Property and Project under sound accounting principles. All Operating Expenses shall be determined in accordance with generally accepted accounting principles, which shall be consistently applied. Notwithstanding the provisions hereof for the payment of the additional rent payable under this Section 2.02(b), it is agreed that in the event the Tenant shall have become obligated to pay such additional rent for any Lease Year, then the Tenant agrees that on the 1st day of each month of the next succeeding Lease Year, the Tenant shall pay to the Landlord on account of such additional rent for such succeeding Lease Year, a sum equal to 1/12th of the additional rent payable for the preceding Lease Year, and when the amount of the additional rent for such succeeding Lease Year shall have been determined, an adjustment shall be made between the Landlord and the Tenant so that if the amount so paid shall be less than the amount due for such succeeding Lease Year, then the Tenant shall immediately pay to the Landlord any such difference, or if the amount so paid shall exceed the amount due for such succeeding Lease Year, then the Landlord shall refund to the Tenant any such excess.

“Operating Expenses” shall not include (i) costs for any capital repairs, replacements or improvements, (ii) wages, salaries and compensation paid to Landlord’s executive personnel and other personnel above the grade of building manager, (iii) legal and accounting costs incurred by Landlord, or paid by Landlord to third parties, with respect to disputes with individual tenants, negotiation of tenant leases, or ownership (rather than operation) of the Project, (iv) expenses for which Landlord is reimbursed or indemnified (either by an insurer, condemnor, tenant, warrantor or otherwise) to the extent of funds received by Landlord; (v) expenses incurred in leasing or procuring tenants (including lease commissions, advertising expenses and expenses of renovating space for tenants); (vi) interest or amortization payments on any loans; (vii) net basic rents under ground leases; (viii) costs specially billed to and paid by specific tenants; (ix) expenses in connection with services or other benefits of a type which Tenant is not entitled to receive under this Lease but which are provided to another tenant or occupant in the Project; (x) costs incurred as a result of a violation by Landlord or any other tenant of the Project of the terms of any lease relating to the Project; (xi) costs representing an amount paid to subsidiaries or affiliates of Landlord for services on or to the Project and/or the Premises, to the extent only that the costs of such services exceed competitive costs of such services were they not rendered by a subsidiary or affiliate; (xii) wages, salaries or compensation paid to clerks, attendants or other persons in commercial concessions operated by Landlord in the Project; and (xiii) any fines or penalties incurred due to violations by Landlord of any governmental law, ordinance, rule or authority. There shall be no duplication of costs or reimbursement. [If the Project is not fully occupied during calendar year 2000 or any full year of the Lease Term, those actual Operating Expenses which vary according to occupancy rates shall be adjusted for calendar year 2004 or such year to an amount which Landlord reasonably estimates would have been incurred had the Project been fully occupied. For purposes of this section “fully occupied” shall mean occupancy of 90% of the net rentable floor space in the Project.

SECTION 2.03. AUDIT RIGHT. Tenant shall have the right to audit Landlord's annual statement of Operating Expenses, and Landlord shall provide Tenant with access to its books and records at a location designated by Landlord in Northern Virginia for purposes of such audit. Tenant shall commence any audit within sixty (60) days after receipt of the annual statement, and shall complete its audit within one hundred twenty (120) days after receipt of the annual statement. The cost of any such audit shall be paid by Tenant, provided if it is determined on the basis of such audit that the amount of Tenant's obligations for Operating Expenses for any year were overstated by more than five percent (5%), then the reasonable cost of the audit shall be paid by Landlord. Landlord shall refund to Tenant any overpayment for the year in question within thirty (30) days after the amount of the overpayment has been established as provided in this Section 2.03. If Tenant fails to exercise its right of audit within the sixty (60) day period, the amount of Tenant's obligations for Operating Expenses shall be conclusively established as the amount set forth in the annual statement delivered by Landlord to Tenant. If, however, Tenant timely exercises its right of audit, the amount of Tenant's obligations for Operating Expenses shall be conclusively established pursuant to this Section 2.03. If Landlord disputes the results of Tenant's audit, Landlord shall give written notice to Tenant of the dispute within 45 days after receipt of Tenant's notice stating the result of its audit (time being of the essence). If Landlord shall not submit such notice, then the amount of Tenant's obligations for Operating Expenses shall be conclusively established as a result of such audit. If Landlord shall submit such notice, Landlord and Tenant shall, within 10 days following Landlord's notice, each designate an arbitrator to determine the amount of Tenant's share of Operating Expenses. Each party shall bear the cost for the arbitrator that it selects. Each arbitrator must be a person having not less than 10 years' experience as a accountant for shopping centers or commercial office projects. The arbitrators shall have thirty (30) days from the date of Landlord's notice to mutually agree upon the Tenant's obligations for Operating Expenses and if they do so then the Tenant's share of such amounts which they mutually agree upon shall be conclusive and binding upon both the Landlord and Tenant; however, if the arbitrators are unable to mutually agree upon Tenant's share of such amounts within such thirty (30) day period, then the arbitrators shall designate a third arbitrator within five (5) days following the end of the thirty (30) day period. The third arbitrator shall determine the Tenant's share of such amounts within ten (10) days of being designated and the determination of the third arbitrator shall be conclusive and binding upon both Landlord and Tenant. The costs and expenses of the third arbitrator shall be paid 50 percent by Landlord and 50 percent by Tenant. Each party shall pay the costs and expenses of its own attorneys and experts and of presenting evidence. If the dispute shall not be resolved prior to the date Tenant's share Operating Expenses is due, then pending the resolution of the dispute, Tenant shall pay its share of such amounts based upon Landlord's determination, and within 30 days following resolution of the dispute any adjustment shall be paid by Tenant to Landlord or refunded by Landlord to Tenant. Tenant's payment of the amount determined by Landlord pending final resolution shall not constitute a waiver of Tenant's objection to such amount. Tenant, its employees and agents shall, to the fullest extent permitted by law, maintain the confidentiality of all information provided to Tenant in performing its audit(s) pursuant to this Section 2.03.

SECTION 2.04 ADDITIONAL RENT. Tenant shall pay as additional rent any money required to be paid pursuant to Sections 2.02, 2.05, 12.01, 23.01 and all other money or additional charges required to be paid by Tenant under this Lease, whether or not the same be

designated "additional rent". If such amounts or charges are not paid at the time provided in this Lease, they shall nevertheless, if not paid when due, be collectible as additional rent with the next installment of Rent thereafter falling due hereunder, but nothing herein contained shall be deemed to suspend or delay the payment of any amount of money or charge at the time the same becomes due and payable hereunder, or limit any other remedy of Landlord.

SECTION 2.05. LATE FEES FOR PAST DUE RENT AND RETURN CHECK CHARGES. If Tenant shall fail to pay, when the same is due and payable, the Rent, any additional rent or any other sum required hereunder, then Tenant shall pay a late payment fee, including interest, as set forth in Section 21.07 herein as additional rental. Any return of Tenant's check unpaid shall be a failure of payment of rental due hereunder, and Tenant shall pay an additional charge, as additional rent, equal to two (2) times the charge made by Landlord's bank, but in no event less than fifty dollars (\$50.00).

ARTICLE III SERVICES AND MAINTENANCE PROVIDED BY LANDLORD

SECTION 3.01. SERVICES. Landlord will furnish (a) elevator service, (b) hot and cold water for lavatory and drinking purposes, (c) electrical service sufficient for lighting the Premises and for the operation therein of standard office equipment, (d) janitorial and cleaning services as provided in Section 14.02, and (e) heating and air conditioning from 8:00 a.m. to 6:00 p.m. on Monday through Friday and 9:00 a.m. to 1:00 p.m. on Saturday, exclusive of legal holidays. If Tenant is furnished additional services, or if Tenant's use of the Premises causes additional expense, as reasonably determined by Landlord, Tenant will pay the actual additional expense. If Tenant wishes to install electrical equipment such as electrical heating or refrigeration equipment, electronic data processing machines or equipment using current which exceeds that usually furnished for use in general office space, Tenant will obtain the prior written approval of Landlord, which approval shall not be unreasonably withheld, conditioned or delayed, and will pay as additional rent all actual, additional cost involved. If any required services are suspended or curtailed, Landlord will restore the services with reasonable dispatch; provided, if such suspension or curtailment is due to a cause beyond Landlord's reasonable control (including, but not limited to, accident, emergency or mechanical breakdown), Landlord will not have any responsibility or liability for the curtailment or suspension of services or electrical surges and there will be no abatement of Rent or other effect on Tenant's obligations under this Lease. Tenant shall have access to the Premises and use of the elevator service 24 hours a day, 365 days per year.

SECTION 3.02. REPAIRS. Except as provided in Section 12.01, Landlord shall perform all maintenance and make all repairs and replacements to the Project, including without limitation, building systems located in the Premises; provided, however, that Tenant shall perform any such repairs and replacements which may be necessary due to the negligence of Tenant, its employees, agents, contractors or invitees.

ARTICLE IV LANDLORD'S CONSTRUCTION

SECTION 4.01. CONSTRUCTION OF DEMISED PREMISES. Landlord agrees, at

its cost and expense, to construct the Premises according to a set of plans to be developed by Landlord's architect and mutually agreed upon by the parties. In addition, Landlord's architect will prepare, at Landlord's cost and expense, plans for the construction of Tenant's improvements pursuant to space plans provided by Tenant. Tenant shall submit space plans to Landlord on or before April 30, 2004. In the event Tenant's space plans are not submitted to Landlord by April 30, 2004, then the time for Landlord to complete construction required by Landlord shall be extended one (1) day for each day after April 30, 2004, that Tenant's space plans are submitted to Landlord, provided and any such extension shall be considered a Tenant Delay for purposes of determining the Lease Commencement Date and the Rent Commencement Date. Landlord shall pay the costs of construction associated with the base build-out of the Premises. Tenant shall be solely responsible for the cost of any upgrades or additions above building standard which are not part of the base build-out. The base build-out shall include the construction and painting of all interior walls, providing interior doors with basic hardware, carpet and dropped ceiling, according to Landlord's specifications.

SECTION 4.02. STANDARDS OF CONSTRUCTION. Landlord shall complete the construction of the Premises in a good and workmanlike manner, using new materials, in accordance with the approved plans and specifications and customary trade practices, and in compliance with all applicable laws, ordinances, rules and regulations.

SECTION 4.03. COMPLIANCE WITH APPLICABLE LAWS. Landlord shall be responsible for ensuring that the Project and the Premises will meet all applicable codes and regulations, including without limitation the Americans with Disabilities Act, and fire and life safety codes, as such codes and regulations exist on the Lease Commencement Date. Landlord shall be responsible for ensuring that the Project and the Premises will meet all such codes and regulations as they may be amended from time to time, provided, however, that Tenant shall be responsible for any modifications to the Premises which may be necessary due to Tenant's specific use of the Premises or any portion thereof.

ARTICLE V TENANT'S CONSTRUCTION AND ACCEPTANCE OF PREMISES

SECTION 5.01. CONSTRUCTION. Tenant shall not penetrate the roof of the Premises without the prior written consent of Landlord, which consent may be withheld by Landlord in its sole and absolute discretion. All of Tenant's improvements to the Premises shall be completed by contractors designated by or reasonably acceptable to Landlord. In the event Tenant makes any future alterations to the Premises, Tenant shall immediately provide Landlord with an updated set of as-built plans for the Premises at Tenant's expense.

SECTION 5.02. ACCEPTANCE OF PREMISES. Upon completion of Landlord's improvements, Landlord and Tenant shall execute a statement that Tenant accepts the Premises in their then current condition, subject to the obligation of Landlord to complete punch list items and Landlord's obligation to maintain the Project pursuant to the terms of this Lease.

ARTICLE VI USE AND COMPLIANCE WITH LAWS AND RULES

SECTION 6.01. USE OF PREMISES. Subject to zoning and all other laws, rules and regulations, Tenant shall use the Premises solely for general office purposes.

SECTION 6.02. GOVERNMENTAL REGULATIONS. Except as provided in Section 4.03, Tenant shall, at Tenant's sole cost and expense, comply with all laws, ordinances, rules and regulations of all county, municipal, state, federal and other applicable governmental authorities, now in force or which may hereafter be in force, pertaining to the Premises, and shall faithfully observe in its use of the Premises all such laws, ordinances, rules and regulations; provided, however, Tenant shall have no obligation to comply with or observe such laws, ordinances, rules and regulations, in the event of a violation thereof caused by the act or omission of Landlord, its prior tenants, or its predecessors in title. In such event, Landlord shall comply with and observe such laws, ordinances, rules and regulations.

SECTION 6.03. HAZARDOUS SUBSTANCES. Neither Tenant nor its successors, assigns or invitees, shall use, store, treat, transport, manufacture, handle, dispose or produce any "hazardous substance" (as defined below) on the Premises, except that office equipment, office supplies and cleaning solutions that are customarily found in first-class office buildings and which are or contain a hazardous substance may be used, stored, treated, transported, manufactured, handled, disposed or produced in the Premises, provided such is incident to and reasonably necessary for the operation and maintenance of the Premises as permitted pursuant to the terms of this Lease and is in compliance with applicable laws, ordinances, rules and regulations. The term "hazardous substance" shall mean any substance deemed hazardous under any of the following statutes or under any other statute or regulation of any governmental authority: The Comprehensive Environmental Response, Compensation and Liability Act, 42 USC § 9601 *et seq.*; the Resource Conservation and Recovery Act, 42 USC § 6901 *et seq.*; the Hazardous Material Transportation Act, 49 USC § 1801 *et seq.*; or the Toxic Substances Control Act, 15 USC § 2601 *et seq.* Landlord represents and warrants that (a) the Project shall comply with all federal, state and local codes and regulations relating to hazardous substances, and (b) no hazardous substances exist in the Project in proscribed amounts.

SECTION 6.04. RULES AND REGULATIONS. The rules and regulations attached to this Lease as Exhibit "D" are hereby made a part of this Lease and Tenant agrees to comply with and observe the same. Tenant's failure to keep and observe said rules and regulations shall constitute a breach of the terms of this Lease in the same manner as if the same were contained herein as covenants. In the event of any inconsistency between this Lease and said rules and regulations, this Lease shall control.

ARTICLE VII PARKING

SECTION 7.01. PARKING. During the Lease Term Landlord shall make available two (2) parking spaces per 1,000 square feet of the Premises for the Tenant to lease at prevailing monthly market rates.

ARTICLE VIII

SECURITY DEPOSIT

[INTENTIONALLY OMITTED]

**ARTICLE IX
COMMON USE AREAS AND FACILITIES**

SECTION 9.01. CONTROL OF COMMON AREAS AND FACILITIES BY LANDLORD. Landlord shall operate, manage and maintain all common areas and facilities associated with the Property and Project in a first class manner. Such common areas and facilities shall at all times be subject to the exclusive control and management of Landlord, and Landlord reserves the right from time to time to unilaterally establish, modify and enforce reasonable rules and regulations with respect to all of same (see Exhibit "D").

**ARTICLE X
LANDLORD'S RIGHT TO ALTER AND ADD
TO PROJECT**

SECTION 10.01. ALTERATIONS AND ADDITIONS TO PROJECT. Landlord hereby reserves the right at any time to make alterations or additions to and to build additional stories on the Project and to build adjoining the same. Landlord also reserves the right to construct other buildings and improvements on the Property from time to time, to make alterations thereof or additions thereto, to build additional stories thereon, to build adjoining same, to construct additional underground and/or other parking facilities and to demolish, alter, renovate, make additions to or build adjoining any buildings and improvements located upon the Property at the execution of this Lease. Notwithstanding anything to the contrary contained herein, in no event shall Landlord's activities under this Section 10.01 unreasonably interfere with or disrupt Tenant's use and occupancy of the Premises. At least ten (10) days prior to the commencement of any such activities, Landlord shall provide written notice thereof to Tenant (except in an emergency, in which event no such notice shall be required).

**ARTICLE XI
ALTERATIONS AND SIGNAGE**

SECTION 11.01. ALTERATIONS AND SIGNAGE. Tenant will not (i) make any structural alterations, additions or improvements to the Premises without Landlord's prior consent or (ii) install any sign, advertisement or notice on or in the Project. Tenant shall obtain, at its expense, all necessary permits to construct/erect all alterations, additions or improvements to the Premises and shall comply with all laws, rules, regulations and ordinances pertaining to same. Landlord, at its expense, shall add Tenant's name and suite number on the reader board in the first floor elevator lobby and shall place Tenant's name on each public entry to each suite, as identified by the plans to be agreed upon by the parties. Upon termination of the Lease, all alterations, additions and improvements will become the property of Landlord.

SECTION 11.02. TENANT SHALL DISCHARGE ALL LIENS. Tenant shall promptly pay all its contractors and materialmen, so as to minimize the possibility of a lien

thereby attaching to the Premises, and should any such lien be made or filed, Tenant shall bond against or discharge the same within ten (10) days after written request by Landlord. Tenant shall provide Landlord with written proof of payment or bonding hereunder promptly upon written request therefore by Landlord.

**ARTICLE XII
TENANT'S MAINTENANCE, REPAIR AND SURRENDER OF PREMISES**

SECTION 12.01.

(a) Maintenance, Repair and Surrender by Tenant. Tenant will repair, maintain, and upon the termination of the Lease, deliver to Landlord, the Premises in the same condition they are in on the Lease Commencement Date, ordinary wear and tear and damage by fire or other casualty not due to negligence of Tenant excepted.

(b) Reimbursement. If Tenant refuses or neglects to repair as required of it hereunder and to the reasonable satisfaction of Landlord within thirty (30) days after written demand, Landlord may make such repairs without liability to Tenant for any loss or damage that may accrue to Tenant's furniture, fixtures, or other property or to Tenant's business by reason thereof, and upon completion thereof, Tenant shall pay Landlord's costs for making such repairs plus ten per cent (10%) for overhead plus five per cent (5%) for supervision upon presentation of bill therefore, as additional rent.

**ARTICLE XIII
INSURANCE AND INDEMNITY**

SECTION 13.01. TENANT'S LIABILITY INSURANCE. Tenant shall, during the entire term hereof, keep in full force and effect a policy of public liability and property damage insurance with respect to the Premises, and the business operated by Tenant and any permitted subtenants of Tenant in the Premises in which the limits of public liability shall be not less than a combined limit of Three Million Dollars (\$3,000,000.00). The policy shall name Landlord, any person, firms or corporations who have an insurable interest and so designated by Landlord, and Tenant as insured, and shall contain a clause that the insurer will not cancel or change the insurance without first giving the Landlord and lender of the Project thirty (30) days prior written notice. A certificate of insurance shall be delivered to Landlord and any lender of the Project, upon request, and copies of all renewals thereof shall likewise be delivered. Notwithstanding anything to the contrary contained in this Section 13.01, Tenant represents that it is self-insured with a single public liability and property damage limit of Two Million Dollars (\$2,000,000.00), insuring against all liability of Tenant and its authorized representatives arising out of and in connection with Tenant's use and occupancy of the Premises. Tenant further represents that its insurance will be applicable to cover any and all claims arising from the occupancy of a portion of the Premises by _____. **[INFORMATION ON SUBLESSEE TO BE PROVIDED BY TENANT]** Landlord hereby accepts Tenant's representations herein as performance by Tenant of its obligation under this Section 13.01.

SECTION 13.02. TENANT'S INDEMNIFICATION. To the extent permitted by law,

Tenant will indemnify Landlord and save it harmless from and against any and all claims, actions, damages, liability and expense in connection with loss of life, personal injury and/or damage to property arising from or out of any occurrence in, upon or at the Premises, or the occupancy or use by Tenant of the Premises or any part thereof, or occasioned wholly or in part by any act or omission of Tenant, its agents, contractors, employees, servants or lessees unless the same are caused by the gross negligence or willful misconduct of Landlord, its agents, contractors, employees, servants or lessees. In case Landlord shall, without fault on its part, be made a party to any litigation commenced by or against Tenant, then Tenant, to the extent permitted by law, shall protect and hold Landlord harmless and shall, to the extent permitted by law, pay all costs, expenses and reasonable attorneys' fees incurred or paid by Landlord in connection with such litigation, save as provided in Section 21.04.

SECTION 13.03. LANDLORD'S INSURANCE. Landlord shall, during the entire term hereof, keep in full force and effect a special form policy of commercial property insurance which insures the Project against loss due to fire and other casualties, with a replacement cost endorsement in an amount equal to the replacement cost of the Project, and rent insurance upon commercially reasonable terms. The commercial property insurance shall also cover all building standard leasehold improvements. A certificate of insurance shall be delivered to Tenant, upon request, and copies of all renewals thereof shall likewise be delivered, upon request.

SECTION 13.04. LANDLORD'S INDEMNIFICATION. Landlord will indemnify, defend and save harmless Tenant from and against any and all claims, actions, damages, liability and expense in connection with loss of life, personal injury and/or damage to property arising from any occurrence in or on the Property, the Project, or the common areas or facilities therein, when not a result of the gross negligence or willful misconduct of Tenant; provided, however, such indemnification shall only extend to the Premises in the event of Landlord's gross negligence or willful misconduct.

ARTICLE XIV UTILITIES

SECTION 14.01. UTILITY CHARGES. Landlord shall supply all utilities to the Premises; however, in no event shall Landlord be liable for any interruption or failure in the supply of any such utilities to the Premises save to the extent (if any) that the same is caused by the Landlord's negligence or misconduct.

SECTION 14.02. CLEANING SERVICES. Landlord will provide a cleaning service five (5) nights per week in accordance with the specifications set forth in Exhibit B attached hereto and incorporated herein by this reference.

ARTICLE XV OFFSET STATEMENT, ESTOPPEL, ATTORNMENMENT AND SUBORDINATION

SECTION 15.01. OFFSET STATEMENT, ESTOPPEL. Within ten (10) days after written request therefore by Landlord, or in the event that upon any proposed sale, assignment or hypothecation of the Project or the Property by Landlord an offset statement or estoppel

certificate shall be required from Tenant, Tenant agrees to execute and deliver such statement or certificate in or upon the form supplied by Landlord or any proposed mortgagee or purchaser, or to Landlord, certifying (if such be the case) that this Lease is in full force and effect and that there are no defenses or offsets thereto or defaults thereunder (or stating those claimed by Tenant) and containing such other information as may be reasonably required by such proposed mortgagee, purchaser or the holder of any underlying lease.

SECTION 15.02. ATTORNMENT. Tenant shall, in the event any proceedings are brought for the foreclosure of, or in the event of exercise of the power of sale under any mortgage made by Landlord covering the Premises or in the event of any termination of any underlying lease, attorn to the purchaser upon any such foreclosure or sale and recognize such purchaser or lessor under any underlying lease as Landlord under this Lease, without change in the terms or other provisions of such Lease; provided, however, that the successor in interest shall not be bound by (a) any payment of rent or additional rent for more than one month in advance, except prepayments in the nature of security for the performance by the Tenant of its obligations under the Lease, (b) any security deposited with any landlord under the Lease except to the extent said successor actually receives such deposit, (c) any act or omission, or default by any previous landlord under the Lease, unless such default is continuing in nature, in which case said successor shall be obligated to cure such default, (d) any other existing or past offsets or defenses that Tenant may have under the Lease, unless related to a default which is continuing in nature and said successor does not cure such default as required hereunder, and (e) any amendment or modification of the Lease made without the consent of the assignee or such successor in interest.

SECTION 15.03. SUBORDINATION. Tenant agrees that this Lease shall be subordinate to any first mortgages, first deeds of trust, ground or underlying leases, or the lien resulting from any other method of financing or refinancing that may now or hereafter be placed upon the land and/or buildings of which the Premises are a part or against any buildings hereafter placed upon the land of which the Premises are a part, and to all advances made or hereafter to be made upon the security thereof, and to the interest thereon, and to all renewals, modifications, consolidations, replacements and extensions thereof; provided that the party to any such future instrument, other than Landlord, enters into a non-disturbance agreement with Tenant, pursuant to which such party consents to, and recognizes, Tenant's right to continue to occupy the Premises under the terms of this Lease so long as Tenant is not in default hereunder. In the event that any such mortgagee or trustee shall elect to constitute this Lease as a prior lien to its interest, then upon such mortgagee or trustee notifying Tenant to that effect, this Lease shall be deemed prior in lien to the said mortgage or trust deed, whether or not this Lease is dated prior to or subsequent to the date of said mortgage or trust deed. Tenant agrees upon demand to execute such further instruments subordinating this Lease as Landlord may reasonably request, provided such further subordination shall be upon the express condition that this Lease shall be recognized by the mortgagee and that the rights of Tenant shall remain in full force and effect during the term of this Lease so long as Tenant shall continue to perform all of the covenants of this Lease. Failure of Tenant to execute any such instrument within thirty (30) days of a written request by Landlord shall be deemed an event of default hereunder.

SECTION 15.04. PROMPT EXECUTION OF INSTRUMENTS. Tenant, upon

written request of any party in interest, shall execute and deliver promptly such true and correct instruments, statements or certificates to carry out the intent of Sections 15.01, 15.02 and 15.03 above as shall be requested by Landlord.

**ARTICLE XVI
ASSIGNMENT AND SUBLETTING**

SECTION 16.01. CONSENT REQUIRED. (a) Tenant will not assign this Lease in whole or in part, nor sublet all or any part of the Premises without the prior written consent of Landlord in each instance. Consent may be withheld at Landlord's sole and absolute discretion. The consent by Landlord to any assignment or subletting shall not constitute a waiver of the necessity for such consent to any subsequent assignment or subletting. This prohibition against assigning or subletting shall be construed to include a prohibition against any assignment or subletting by operation of law. If this Lease is assigned, or if the Premises or any part thereof be underlet or occupied by anybody other than Tenant, Landlord may collect rent from the assignee, undertenant or occupant, and apply the net amount collected to the Rent due hereunder, and if such rent is in excess of the Rent due hereunder then 100% of such excess amount shall be retained by Landlord and Tenant hereby waives any and all rights thereto, but no such assignment, underletting, occupancy or collection shall be deemed a waiver of this covenant, or the acceptance of the assignee, undertenant or occupant as tenant or a release of Tenant from the further performance by Tenant of covenants and obligations on the part of Tenant herein contained.

(b) Landlord hereby consents to the sublease of approximately 2,302 square feet of the 3rd Floor Premises to _____, provided, however, that this shall not constitute approval of the assignment or sublease of any additional portion of the Premises to _____ or any other entity, nor shall the consent granted herein constitute approval of any subsequent assignment or sublease by Tenant or _____. Further, this consent does not release Tenant from liability for any of its obligations under this Lease with respect to the portion of the Premises being subleased and Landlord shall be entitled to look solely to Tenant for the performance of all such obligations. **[INFORMATION ON SUBLESSEE TO BE PROVIDED BY TENANT]**

**ARTICLE XVII
WASTE**

SECTION 17.01. WASTE OR NUISANCE. Tenant shall not commit or suffer to be committed any waste upon the Premises or any nuisance.

**ARTICLE XVIII
[INTENTIONALLY OMITTED]**

**ARTICLE XIX
DESTRUCTION OF PREMISES**

SECTION 19.01. TOTAL OR PARTIAL DESTRUCTION. If the Premises shall be

damaged by fire, the elements, unavoidable accident or other casualty, but are not thereby rendered untenable in whole or in part, Landlord shall cause such damage to be repaired, and the rental shall not be abated. If by reason of such occurrence, the Premises shall be rendered untenable only in part, Landlord shall cause the damage to be repaired, and the rental meanwhile shall not be abated, except to the extent of payments made to Landlord pursuant to rent insurance maintained on the Project. If the Premises shall be rendered wholly untenable by reason of such occurrence, Landlord shall cause such damage to be repaired or Landlord may at its election terminate this Lease and the tenancy hereby created by giving to Tenant within the sixty (60) days following the date of said occurrence, written notice of Landlord's election so to do and in event of such termination Rent shall be adjusted as of such date. Landlord's obligation to repair under this Section 19.01 is expressly limited to the extent of any insurance proceeds paid to and received by Landlord. Landlord shall use said proceeds to restore the Premises to the condition it was in following completion of leasehold improvements, except that Landlord shall have no obligation to restore any improvements to the Premises which were performed by Tenant, its agents, employees or contractors during their entry upon the Premises prior to the Lease Commencement Date pursuant to Section 1.02(e), any improvements to the Premises made by Tenant after the Lease Commencement Date, or, except to the extent covered by Landlord's insurance, any upgrades to the Premises specifically paid for by Tenant. If the repair of the Premises is not substantially completed within one hundred eighty (180) days following the date of said occurrence, Tenant may at its election terminate this Lease by giving to Landlord written notice of Tenant's election so to do and in such event Rent shall be adjusted as of such date. In the event the Premises shall be rendered wholly untenable, then Rent shall be abated during the existence of such damage. If under any of the foregoing provisions Rent is to be abated based upon payments made to Landlord pursuant to rent insurance required to be maintained on the Project, and such payments are not made because Landlord fails to maintain rent insurance as required pursuant to this Lease, then in such cases Rent shall be abated to the extent that payments would have been made to Landlord if it had maintained rent insurance as required pursuant to this Lease.

SECTION 19.02. PARTIAL DESTRUCTION OF BUILDING. In the event that fifty per cent (50%) or more of the rented and rentable ground floor area of the Project shall be damaged or destroyed by fire or other cause, notwithstanding that the Premises may be unaffected by such fire or other cause, Landlord may terminate this Lease and the tenancy hereby created by giving to Tenant five (5) days prior written notice of Landlord's election so to do, which notice shall be given, if at all, within the sixty (60) days following the date of said occurrence. Rent shall be adjusted as of the date of such damage.

ARTICLE XX EMINENT DOMAIN

SECTION 20.01. TOTAL CONDEMNATION OF PREMISES. If the whole of the Premises shall be acquired or condemned by eminent domain for any public or quasi-public use or purpose, then the term of this Lease shall cease and terminate as of the date of title vesting in such proceeding and all Rent and additional rent payable by Tenant shall be paid up or adjusted, as the case may be, to that date and Tenant shall have no claim against Landlord for the value of any unexpired term of this Lease.

SECTION 20.02. PARTIAL CONDEMNATION. If any part of the Premises shall be acquired or condemned as aforesaid, and in the event that such partial taking or condemnation shall render the Premises unsuitable for the business of Tenant, then the term of this Lease shall cease and terminate as of the date of title vesting in such proceeding. Tenant shall have no claim against Landlord for the value of any unexpired term of this Lease and Rent and additional rent payable by Tenant shall be adjusted to the date of such termination. In the event of a partial taking or condemnation which is not extensive enough to render the Premises unsuitable for the business of Tenant, then Landlord shall promptly restore the Premises to a condition comparable to its condition at the time of such condemnation less the portion lost in the taking, and this Lease shall continue in full force and effect and Rent shall be equitably adjusted.

SECTION 20.03. LANDLORD'S DAMAGES. In the event of any condemnation or taking as aforesaid, whether whole or partial, Tenant shall not be entitled to any part of the Landlord's award paid for such condemnation and Landlord is to receive the full amount of such Landlord's award, Tenant hereby expressly waiving any right or claim to any part thereof.

SECTION 20.04. TENANT'S DAMAGES. Although all Landlord's damages in the event of any condemnation are to belong to Landlord whether such damages are awarded as compensation for diminution in value of the leasehold or to the fee of the Premises, Tenant shall have the right to claim and recover from the condemning authority, but not from Landlord, such compensation as may be separately awarded or recoverable by Tenant in Tenant's own right on account of any and all damage to Tenant's business by reason of the condemnation and for or on account of any cost or loss to which Tenant might be put in removing Tenant's furniture, fixtures, leasehold improvements and equipment. In the event of any condemnation or taking as aforesaid, whether whole or in part, Tenant shall not be entitled to any part of the Landlord's award paid for such condemnation. However, if Tenant's award is granted in a lump sum with Landlord's award, Landlord shall pay to Tenant therefrom such amount as is due to Tenant.

ARTICLE XXI BANKRUPTCY AND DEFAULT

SECTION 21.01. BANKRUPTCY.

(a) In the event that Tenant or any guarantor of this Lease shall become or be adjudicated bankrupt or insolvent, or if Tenant or any guarantor of Tenant shall file or acquiesce in a petition in any court in any bankruptcy, reorganization, composition, extension, arrangement or insolvency proceedings, or if Tenant or any guarantor of Tenant shall make an assignment or other conveyance in trust for the benefit of its creditors, or if any execution or attachment shall be issued against Tenant or Tenant's property whereupon the Premises shall be taken or occupied or attempted to be taken or occupied by someone other than Tenant and such execution or attachment shall not be dismissed, vacated, discharged or bonded within sixty (60) days after issuance of same, or if a receiver or trustee shall be appointed for Tenant and such receivership be not discharged within sixty (60) days from the date of such appointment, then upon the happening of any of said events, the term hereby demised shall, at the option of the Landlord, cease and determine, it being expressly agreed that the covenant hereinafter contained against the

assignment of this Lease shall cover the case of the assignment of this Lease by operation of law as well as the assignment of this Lease by a voluntary act of Tenant.

(b) If this Lease shall be so canceled and terminated, neither Tenant nor any person claiming through or under Tenant by virtue of any statute or order of any court shall be entitled to remain in possession of the Premises but shall forthwith quit and surrender the Premises. In no event, without the written approval of Landlord, which approval may be granted or withheld at its sole discretion, shall this Lease be or be considered an asset of Tenant's estate in bankruptcy or insolvency, or any receiver or trustee (hereafter referred to as a "Trustee") with respect thereto.

(c) To the extent that Landlord's right to cancel this Lease in accordance with the provisions of Section 21.01, 21.02 or Section 21.03 of this Lease is invalid or unenforceable under the Bankruptcy Reform Act of 1978 (the "Act"), as the same may be amended from time to time, or any other statute or rule of law, then the following provisions shall apply, to the extent valid and enforceable:

(1) If there has been a default by Tenant under any provision of this Lease (other than this Section 21.01), the Trustee may not assume this Lease, unless, at the time of assumption of this Lease, the Trustee:

a. cures, or provides adequate assurance (to Landlord's reasonable satisfaction) that the Trustee will promptly cure such default; and

b. provides adequate assurance (to Landlord's reasonable satisfaction) of future performance under the Lease, which shall include, without limitation, adequate assurance:

(i) of the source of rent and other consideration due under such Lease;

(ii) that assumption or assignment of such Lease will not breach substantially any provision, such as a radius, location, use or exclusivity provision, in any other lease, financing agreement or master agreement relating to the Project; and

(iii) that assumption or assignment of this Lease will not disrupt substantially any tenant mix or balance in the Project.

(2) If there has been a default by Tenant, the Trustee may not require the Landlord to provide services or supplies incidental to this Lease before assumption of this Lease unless the Landlord is compensated under the terms of this Lease for any unpaid services, supplies, Rent, additional rent, and any other amounts due under this Lease but unpaid by Tenant before assumption of this Lease.

(d) If this Lease is terminated under the provisions of this Section 21.01, or by reason of rejection by the Trustee, Landlord shall be entitled to the recovery of damages, and such other remedies, as are provided for in Section 21.03. The foregoing sentence shall not, however, limit or prejudice the right of Landlord to petition for and obtain as liquidated damages in any

bankruptcy, insolvency, receivership, reorganization or arrangement proceeding an amount equal to the maximum allowed by the Act or any other statute or rule of law governing such proceedings and in effect at the time when such damages are to be proved, whether or not such amount be greater, equal to or less than the amount of the damages referred to in the preceding sentence.

SECTION 21.02. TENANT'S DEFAULTS. Tenant shall be in default hereunder if:

- (a) Tenant fails to pay any Rent, additional rent or other sum required hereunder on its due date, and such default is not remedied within ten (10) days after written notice thereof from Landlord; or
- (b) Tenant fails to furnish any statement required hereunder on its due date; or
- (c) Tenant fails to maintain any insurance required hereunder; or
- (d) Tenant abandons the Premises or fails to conduct business therein for a period of thirty (30) or more consecutive days (subject to Articles XIX and XX and to Section 26.06 hereof); or
- (e) Tenant neglects or fails to perform or observe any of the other material terms, covenants or conditions contained in this Lease on Tenant's part to be performed or observed; or
- (f) Tenant neglects or fails to perform or observe any material term, covenant or condition contained in any other lease pursuant to which Tenant occupies any other premises in the Project.
- (g) Tenant defaults under Section 21.01 of the Lease; or
- (h) Tenant fails to cure any default under Section 6.04 of this Lease; or
- (i) Tenant fails to take possession of the Premises and open for business therein within one hundred twenty (120) days after the Lease Commencement Date.

Notwithstanding anything to the contrary contained in subparagraphs (b) through (g) of the immediately preceding sentence, Tenant shall not be in default under said subparagraphs unless the violation, neglect or failure referenced in said subparagraphs is not remedied by Tenant within thirty (30) days after Landlord shall have given to Tenant written notice specifying such violation, neglect or failure, unless such default is of such a nature that it cannot be cured within such thirty (30) day period, in which case no default shall be deemed to have occurred, so long as Tenant shall commence the curing of the default within such thirty (30) day period, and shall thereafter diligently and continuously prosecute the curing of same. In the event that, as a result of an occurrence which would otherwise be a default hereunder but for Tenant's diligent attempts to cure, Landlord suffers or is in risk of suffering a financial loss or legal injury of any kind, then Tenant shall, upon written request from Landlord, compensate Landlord for said loss or take such reasonable steps as are requested by Landlord to protect Landlord from said injury or loss.

SECTION 21.03. LANDLORD'S REMEDIES IN CASE OF TENANT'S DEFAULT.

(a) If Tenant is in default hereunder, Landlord, in addition to all other remedies, may, at any time and without further demand or notice, terminate this Lease and/or re-enter or otherwise take possession of the Premises and remove all persons and property therefrom (and store the property so removed at Tenant's expense) without being deemed guilty of trespass and without liability for any loss or damage caused thereby except in the event of Landlord's gross negligence or willful misconduct. Should Landlord so take possession of the Premises,

(i) the Rent to the time of such possession shall thereupon become due and shall be paid by Tenant, together with all expenses of such possession, including reasonable legal and brokerage fees and the cost of preparing the Premises for reletting;

(ii) Landlord may at any time thereafter terminate this Lease by written notice to Tenant;

(iii) Landlord may prepare the Premises for reletting;

(iv) Landlord may relet the Premises, or any part thereof, for such term, at such rental, and upon such conditions as Landlord deems advisable;

(v) Tenant shall pay Landlord, for each month during the balance of the Lease Term, any deficiency between:

a. all Rent and additional rent herein reserved, and

b. the net rent plus any additional rent for each such month collected upon such reletting;

(vi) Tenant shall pay to Landlord the cost of providing insurance during the balance of the Lease Term which Tenant is required to provide; and

(vii) the net rent collected upon such reletting shall be applied first to the payment of any indebtedness of Tenant to Landlord other than for Rent due hereunder, second to the payment of the expenses of reletting (including reasonable legal and brokerage fees and the cost of preparing the Premises for reletting), and third to the payment of Rent and additional rent due and unpaid hereunder; and

(viii) Tenant waives all rights of redemption granted by any present or future laws.

Should Landlord terminate this Lease at any time after default by Tenant, it may, in addition to any other remedies, recover from Tenant all damages incurred by it as a result of such default, including the value at the time of such termination, discounted to its present worth (the "Discounted Value") of the excess, if any, of the Rent and additional rent herein reserved for the

remainder of the Lease Term over the then reasonable rental value of the Leased Premises for such remainder. The Discounted Value shall be computed by using a discount rate equal to the interest rate of 5-Year U.S. Treasuries as of the date the Lease is terminated.

(b) If either Landlord or Tenant shall default in the performance of any covenant on its part to be performed by virtue of any provision in this Lease, and if in connection with the enforcement of the non-defaulting party's rights or remedies, such non-defaulting party shall properly and reasonably incur fees and expenses for services rendered (including reasonable attorneys' fees), then such fees and expenses shall, if said non-defaulting party shall prevail in litigation, be immediately reimbursed by the defaulting party on demand. The foregoing notwithstanding, no noteholder, mortgagee, other secured party, purchaser at foreclosure or grantee under a deed in lieu of foreclosure shall have any liability under the preceding sentence on account of any default by Landlord. Notwithstanding the foregoing, in the event Landlord shall file any legal action for the collection of Rent or any eviction proceeding, whether summary or otherwise, for the non-payment of Rent, and Tenant shall make payment of such Rent due and payable prior to the rendering of any judgment, and not pursuant to any written settlement agreement, then Landlord shall be entitled to collect, and Tenant shall be obligated to pay, all court filing fees and the reasonable fees of Landlord's attorneys.

SECTION 21.04. LEGAL EXPENSES. In the event that either party hereto shall bring legal action against the other party, then the prevailing party shall be entitled to reimbursement from the other party for all expenses thus incurred, including reasonable attorneys' fees.

SECTION 21.05. DISTRAINT. In addition to all other rights and remedies of Landlord, Landlord shall, to the extent permitted by law, have a right of distress for Rent and a first lien on all of Tenant's furniture, fixtures and equipment in the Premises, free and clear of all liens, encumbrances or equipment leases, as security for rent and all other charges payable hereunder for the term of this Lease and for the performance of all of the covenants, terms and conditions to be performed by Tenant under this Lease.

SECTION 21.06. WAIVER OF JURY TRIAL. The parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, and/or any claim or injury or damage.

SECTION 21.07. LATE PAYMENT FEES AND INTEREST CHARGE . In the event that any installment or payment of Rent is not received by the tenth (10th) day of the applicable month of the Lease Term, or additional rent or any other sum required hereunder to be paid by Tenant to Landlord is not received by Landlord on or before the tenth (10th) calendar day after written notice that the same is due and payable, then for each and every such late payment, in addition to the payment then in arrears, Tenant shall immediately pay to Landlord, as additional rent, a late payment fee equal to five percent (5%) of the unpaid principal sum due plus simple interest accruing on the unpaid principal sum at the rate of eighteen percent per annum (18%) beginning on the date such money becomes due and payable until such money is

paid in full. The provisions in this Lease providing for the payment of a late payment fee shall not be construed to extend the date for payment of any sums required to be paid by Tenant hereunder or to relieve Tenant of its obligation to pay all such sums at the time or times herein stipulated. Notwithstanding the imposition of such late payment fees pursuant to this Section 21.07, Tenant shall be in default under this Lease if any or all payments required to be made by Tenant are not made at the time herein stipulated, and neither the demand for, nor collection by, Landlord of such delinquent principal sums and late payment fees shall be construed as a cure of such default on the part of Tenant. Notwithstanding the provisions for written notice hereunder, this provision shall apply and Landlord shall only be required to give such notice two (2) times in any Lease Year. Thereafter, for the remainder of the Lease Term, the late payment fees provided for in this Section 21.07 shall apply if any payment of Rent, additional rent or any other required sum due hereunder is not paid within four (4) days after its due date.

SECTION 21.08. LANDLORD'S DEFAULT AND TENANT'S REMEDIES.

(a) Landlord shall be in default hereunder if Landlord neglects or fails to perform or observe any of the material terms, covenants or conditions contained in this Lease on Landlord's part to be performed or observed. Notwithstanding anything to the contrary contained in the immediately preceding sentence, Landlord shall not be in default unless the neglect or failure is not remedied by Landlord within thirty (30) days after Tenant shall have given written notice to Landlord specifying such neglect or failure, unless such default is of such a nature that it cannot be cured within such thirty (30) day period, in which case no default shall be deemed to have occurred, so long as Landlord shall commence the curing of the default within such thirty (30) day period, and shall thereafter diligently and continuously prosecute curing of the same.

(b) Tenant, at any time Landlord is in default hereunder, may avail itself of any legal and equitable remedies available to it. Tenant shall also have the right, at its sole option, to immediately and without notice cure such default for the account, and at the expense, of Landlord. Tenant may recover from Landlord the amount so incurred by Tenant to cure such default. Any such amount shall accrue interest at the rate of eighteen percent (18%) per annum beginning on the tenth day after written notice of the amount due is provided to Landlord.

**ARTICLE XXII
ACCESS BY LANDLORD**

SECTION 22.01. RIGHT OF ENTRY. Upon prior notice, Landlord or Landlord's duly authorized agents shall have the right to enter the Premises at all reasonable times during Tenant's business hours to examine the same and to show them to prospective purchasers. During the six (6) months prior to the expiration of the term of this Lease or any sooner termination, Landlord may exhibit the Premises to prospective tenants and place upon the Premises, in such manner as to interfere as little as is reasonably possible in the circumstances with Tenant's business, the usual "For Lease" notices, which notices Tenant shall permit to remain thereon without molestation. If Tenant shall not be personally present to open and permit an entry into the Premises, at any time, when for any reason which Landlord deems an emergency, an entry therein shall be necessary, Landlord or Landlord's agents may enter the same forcibly or otherwise, without rendering Landlord or such agents liable therefore, except

for acts of negligence (if any) of Landlord or its agents, and without in any manner affecting the obligations and covenants of this Lease. In the event of any such emergency, Landlord shall provide notice of such entry to Tenant as soon as reasonably possible. Nothing herein contained, however, shall be deemed or construed to impose upon Landlord any obligation, responsibility or liability whatsoever, for the care, maintenance or repair of the Premises or of the Property, except as otherwise herein specifically provided.

ARTICLE XXIII TENANT'S PROPERTY

SECTION 23.01. TAXES ON LEASEHOLD. Tenant shall be responsible for and shall pay before delinquency all municipal, county, state and federal taxes applicable to or assessed during the term of this Lease against any leasehold interest, improvements or personal property of any kind, owned by or placed in, upon or about the Premises by Tenant.

SECTION 23.02. LOSS AND DAMAGE. Landlord shall not be liable for any damage to property of Tenant or of others located on the Premises, nor for the loss of or damage to any property of Tenant or of others by theft or otherwise. Landlord shall not be liable for any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain or snow or leaks from any part of the Premises or from the pipes, appliances or plumbing works or from the roof, street or sub-surface or from any other place or by dampness or by any other cause of whatsoever nature. Landlord shall not be liable for any such damage caused by other persons in the Premises, occupants of adjacent property or the public, or caused by operations in construction of any private, public or quasi-public work. All property of Tenant kept or stored on the Premises shall be so kept or stored at the risk of Tenant only and, to the extent permitted by law, Tenant shall hold Landlord harmless from any claims arising out of damage to the same, including subrogation claims by Tenant's insurance carrier. Notwithstanding anything to the contrary set forth in this Section 23.02, Landlord shall have the obligation to indemnify Tenant against any loss to the extent set forth in Section 13.04.

SECTION 23.03. NOTICE BY TENANT. Tenant shall give immediate notice to Landlord in case of fire or accidents in the Premises.

ARTICLE XXIV HOLDING OVER, SUCCESSORS

SECTION 24.01. HOLDING OVER. Any holding over after the expiration of the term hereof shall be construed to be a tenancy from month to month and the minimum monthly rent payable during such holdover period shall be an amount equal to twice the Rent and additional rent payable during the last Lease Year (pro-rated on a monthly basis) and shall otherwise be on the terms and conditions herein specified, so far as applicable.

SECTION 24.02. SUCCESSORS. All rights and liabilities herein given to, or imposed upon, the respective parties hereto shall extend to and bind the several respective heirs, executors, administrators, successors, and assigns of the said parties, and if there shall be more than one party hereto as Tenant, they shall all be bound jointly and severally by the terms,

covenants and agreements herein. No rights, however, shall inure to the benefit of any assignee of Tenant unless the assignment to such assignee has been approved by Landlord in writing as provided in Section 16.01 hereof or as otherwise provided in Section 16.01 hereof.

**ARTICLE XXV
QUIET ENJOYMENT**

SECTION 25.01. NO HINDRANCE. Landlord warrants that it has full right and power to execute and perform this Lease and to grant the estate demised herein and that Tenant, on payment of the Rent and performing the covenants herein contained, shall peaceably and quietly have, hold and enjoy the demised Premises for the uses and purposes herein set forth during the full term of this Lease, provided, however, that subject to and in accordance with Article XV hereof, Tenant accepts this Lease subject and subordinate to any recorded mortgage, deed of trust, underlying lease, or other lien currently existing upon the Premises.

**ARTICLE XXVI
MISCELLANEOUS**

SECTION 26.01. WAIVER. No waiver by the parties hereto of any default or breach of any term, condition or covenant of this Lease shall be deemed to be waiver of any subsequent default or breach of the same or any other term, condition or covenant contained herein. The acceptance of rent shall not be deemed a waiver of any preceding breach, and no waiver shall be deemed to have been given except if same be in writing. The failure of the Landlord to collect any amount due pursuant to this Lease, whether Rent or additional rent, shall not act as a waiver of the collection of such amount, provided, however, that no action shall be brought to collect any such amount more than five (5) years after the expiration of this Lease.

SECTION 26.02. ACCORD AND SATISFACTION. No payment by Tenant or receipt by Landlord of a lesser amount than the Rent herein stipulated shall be deemed to be other than on account of the stipulated Rent, nor shall any endorsement or statement on any check or any letter which may accompany any check or payment be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy in this Lease provided.

SECTION 26.03. ENTIRE AGREEMENT. This Lease and the Exhibits attached hereto and forming a part hereof, set forth all the covenants, promises, agreements, conditions and understandings between Landlord and Tenant concerning the Premises and there are no covenants, promises, agreements, conditions or understandings, either oral or written between them other than are herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by them.

SECTION 26.04. CHANGE OF NAME. Tenant agrees not to change the advertised name of the business operated in the Premises without the written permission of Landlord.

SECTION 26.05. NO PARTNERSHIP. Landlord does not, in any way or for any

purpose, become a partner of Tenant in the conduct of Tenant's business or otherwise, or a joint venturer or a member of a joint enterprise with Tenant.

SECTION 26.06. FORCE MAJEURE. In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Lease, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. The provisions of this section shall not operate to excuse Tenant from prompt payment of Rent, additional rent or any other payments required of Tenant by the terms of this Lease.

SECTION 26.07. NOTICES, PLACE RENT PAYABLE. Any notice, demand, request or other instrument which may be or are required to be given under this Lease shall be delivered in person or sent by United States registered or certified mail, postage prepaid, return receipt requested, and shall be addressed (a) if to Landlord, **Tavern Square, LLC, c/o The Pyne Companies, Ltd., 40 Wall Street, 62nd Floor, New York, NY 10005, ATTN: Jay B. Fischhoff** or otherwise, as Landlord may designate by written notice, and (b) if to Tenant, City of Alexandria, Department of General Services, P.O. Box 178, Alexandria, Virginia 22313-1500, Attn: Director of General Services, or at such other address as Tenant shall designate by written notice, with a copy to City Attorney, City of Alexandria, P.O. Box 178, Alexandria, Virginia 22313-1500. All payments of Rent, additional rent and all other sums of money or charges required to be paid by Tenant to Landlord under this Lease shall be made payable to "**Tavern Square, LLC**" at **Tavern Square, LLC, Department 0829, Denver, CO 80263-0829**, or at such other address as Landlord may designate by written notice.

SECTION 26.08. CAPTIONS AND SECTION NUMBERS. The captions, section numbers and article numbers appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections or articles of this Lease, nor in any way affect this Lease.

SECTION 26.09. TENANT DEFINED, LANDLORD DEFINED.

(a) The word "Tenant" shall be deemed and taken to mean each and every person or party mentioned as a Tenant herein, be the same one or more. If there shall be more than one party hereto as Tenant, the liability of each party under this Lease as Tenant shall be joint and several, and any notice required or permitted by the terms of this Lease may be given by or to any one thereof. The use of the neuter singular pronoun to refer to Landlord or Tenant shall be deemed a proper reference even though Landlord or Tenant may be an individual, a partnership, a corporation, or a group of two or more individuals or corporations. The necessary grammatical changes required to make the provisions of this Lease apply in the plural sense where there is more than one Landlord or Tenant and to either corporations, associations, partnerships or individuals, males or females, shall in all instances be assumed as though in each case fully expressed.

(b) The term "Landlord" as used in this Lease means only the owner or the mortgagee in possession for the time being of the Project in which the Premises are located or the owner of a lease of said Project and/or the land thereunder so that in the event of any sale of said Project or an assignment of this Lease, or a demise of said building and/or land, Landlord shall be and hereby is entirely freed and relieved of all obligations of Landlord hereunder from and after the date of such sale or assignment, provided that the purchaser, assignee or lessee has assumed and agreed to observe and perform all obligations of Landlord hereunder.

SECTION 26.10. GOVERNING LAW, PARTIAL INVALIDITY. This Lease shall be construed and governed by the laws of the Commonwealth of Virginia. If any term, covenant or condition of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable under the laws of the said State, or otherwise, the remainder of this Lease, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant and condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

SECTION 26.11. REPRESENTATION OF PARTIES. The parties hereto represent and warrant to each other that neither has been represented by any broker in connection with the negotiation and/or execution of this Lease other than CBRE and The Pyne Companies, Ltd. ("Brokers") on behalf of Landlord, and that there are no claims for brokerage commissions or finder's fees in connection therewith except as previously agreed to in writing between Brokers and Landlord, and that neither has dealt with any other person, firm or corporation in connection herewith. To the extent permitted by law, each of the parties hereto agrees to indemnify and hold harmless the other party against and from all liabilities arising from any such claim including, without limitation, the cost of counsel fees in connection therewith. Tenant hereby acknowledges that The Pyne Companies, Ltd. is related to Landlord through one (1) or more common owners.

SECTION 26.12. NO OPTION. The submission of this Lease for examination does not constitute a reservation of or option for the Premises and this Lease becomes effective as a lease only upon execution and delivery thereof by Landlord and Tenant.

SECTION 26.13. RECORDING. Tenant shall not record this Lease without written consent of Landlord. However, upon request of either party hereto, the other party shall join in the execution of a memorandum or so-called "short form" of this Lease for the purposes of recordation, the cost of any such recordation to be borne by the party requesting same. Any such memorandum or short form of this Lease shall describe the parties, the Premises and the term of this Lease and shall incorporate this Lease by reference.

SECTION 26.14. TRANSFER OF OWNERSHIP AND LANDLORD'S LIABILITY.

(a) In the event Landlord's interest in the Premises, the Project, the Property or any part thereof is sold, conveyed, assigned, transferred, leased or subleased, whether voluntarily or

involuntarily, Landlord hereunder shall be entirely freed and relieved of all its covenants and obligations under this Lease from and after the date of such sale, assignment, transfer, lease or sublease.

(b) It is specifically understood and agreed that there shall be no personal liability on Landlord in respect to any of the covenants, conditions or provisions of this Lease; in the event of a breach or default by Landlord of any of its obligations under this Lease, Tenant shall look solely to any applicable insurance policy held by Landlord and/or Landlord's equity in the Property or Project or its leasehold interest in the Property or Project, as the case may be, for the satisfaction of Tenant's remedies.

SECTION 26.15. ABANDONED PROPERTY. Any property owned by Tenant and left in the Premises after this Lease terminates, or after Tenant vacates the Premises, shall be deemed abandoned property and Landlord shall have the right, but not the obligation, to dispose of such property, without liability to Tenant for the disposal of such property.

SECTION 26.16. TERMINATION DUE TO APPROPRIATIONS.

(a) Appropriation by City. It is acknowledged by the parties hereto that there is a governmental policy which requires a termination clause based on yearly appropriation for the Tenant's budget. Therefore, the Tenant's continued occupancy of the Premises for the full Term is dependent upon the appropriation of funds for the leasing of the Premises at the beginning of each fiscal year of the City of Alexandria. In the event that funds are not appropriated for the leasing of the Premises, Tenant shall furnish Landlord with a written notice from Tenant's Budget Office that funds were not appropriated by the City of Alexandria. This notice shall be given to Landlord not less than forty-five (45) days prior to the beginning of the fiscal year involved, or, if approval of the final budget for such fiscal year is not obtained at least fifty (50) days prior to the beginning of any applicable fiscal year, then within five (5) days after approval of the final budget for the fiscal year involved. In the event that funds are not appropriated for the leasing of the Premises, then, upon payment of the Liquidated Damages described below, this Lease shall become null and void and this Lease shall terminate at the end of the then current fiscal year. In such event, Tenant shall vacate the Premises prior to the beginning of the next City of Alexandria fiscal year.

(b) Liquidated Damages. In the event that Tenant shall give Landlord such notice of failure by the City to appropriate funds for the leasing of the Premises, and intention to terminate the Lease, then, on or before the effective date of such termination, Tenant shall pay to Landlord, as liquidated damages and not as a penalty (the "Liquidated Damages") an amount equal to the sum of (i) the unamortized portion of the cost of the initial leasehold improvements made by Landlord plus any commissions paid by Landlord in connection with this Lease (which amount has been determined to be \$ _____ [JAY TO PROVIDE BASED UPON TENANTS PLANS] amortized over the Lease Term of eleven (11) years, plus (ii) Rent for six (6) months following the effective date of such termination.

SECTION 26.17. TERMINATION OF LEASES ON PORTIONS OF SPACES CURRENTLY OCCUPIED. Simultaneously with the Rent Commencement Date for the 2nd

Floor Premises, the Tenant shall deliver to Landlord, in accordance with the terms of all applicable Leases, other than provisions relating to liquidated damages, certain premises consisting of approximately 2,926 square feet taken by Tenant under a Deed of Lease for premises at 421 King Street, said premises consisting of two suites more particularly described on Exhibit E attached hereto and made a part hereof. All rent and additional rent payable by Tenant pursuant to its existing Lease at 421 King Street shall be proportionately reduced at the time the foregoing premises are delivered to Landlord and an Amendment to Deed of Lease executed by the parties to reflect that the premises referenced in this Section 26.17 are being delivered to Landlord and shall no longer be a part of any applicable lease. Upon delivery of the referenced premises to Landlord, Tenant's obligations with respect to such premise shall terminate, except that Tenant shall be obligated to pay all rent and additional rent applicable to such premises through the date on which such premises are delivered to Landlord.

SECTION 26.18. TRANSACTION TERMS. Landlord hereby certifies to Tenant that the economic terms of this transaction are the most favorable presently being offered to any prospective tenant for any comparable new space at the Project (excluding renewals or extensions of existing leases).

SECTION 26.19. NON-RECORDING. This Lease shall not be recorded except upon the written consent of both of the parties, which consent the parties may withhold in their sole and absolute discretion. Any costs associated with recording this Lease shall be paid by the party requesting that this Lease be recorded.

IN WITNESS WHEREOF, each party hereto has caused this Lease to be executed in its name and behalf , all as of the day and year first above written.

LANDLORD:

TAVERN SQUARE, LLC

By: _____ (SEAL)
Its: Manager

TENANT:

CITY OF ALEXANDRIA

By: _____ (SEAL)
Its: _____

WITNESS:

WITNESS/ATTEST:

- Exhibits:
- A. FLOOR PLAN
 - B. CLEANING SPECIFICATIONS
 - C. [INTENTIONALLY OMITTED]
 - D. RULES & REGULATIONS
 - E. 5th FLOOR SPACE BEING TAKEN BACK BY LANDLORD