

City of Salem



Request for Proposals

T-04

Lease Agreement for Office Space for the North Shore Workforce Investment Board (NSWIB)

October 11, 2017

PROPOSALS DUE:

November 13, 2017, 11:00AM

*Late bids will be rejected

Whitney C. Haskell
Purchasing Agent
93 Washington Street ,2nd Floor
Salem, MA 01970
whaskell@salem.com
(978) 619-5695

**NSWIB OFFICE SPACE
T-04
COVER SHEET**

PLEASE PRINT OR TYPE:

Proposer: _____

Street Address: _____
(Number and Street) (State) (Zip Code)

Taxpayer
Identification No: _____
(Social Security Number) (Federal Identification Number)

Contact Name: _____

Telephone: _____

Email Address: _____

Fax: _____

Authorized
Signature: _____

Name: _____

Title: _____

Date: _____

**NSWIB OFFICE SPACE
T-04
PROPOSER'S CHECKLIST**

Submissions:

	Yes	No
1. Cover Sheet		
2. Proposer's Checklist (this sheet)		
3. Price Proposal		
4. Non-Price/Technical Proposal		
• Required Certifications		
• Plan of Services		
5. Acknowledgement of Addenda: _____ (if applicable) #’s		

NSWIB OFFICE SPACE
T-04
REQUIRED CERTIFICATIONS

NON-COLLUSION:

The undersigned certifies under penalties of perjury that this bid or proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

2. TAX COMPLIANCE:

Pursuant to M.G.L. c. 62C, §49A, I certify under the penalties of perjury that, to the best of my knowledge and belief, I am in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

3. CORPORATE BIDDER (*if applicable*):

I, _____ certify that I am the _____ of the corporation named as Bidder in the Bid included herein, that _____, who signed said Bid on behalf of the Bidder was then _____ of said corporation, that I know his signature, that his signature thereon is genuine and that said Bid was duly signed, sealed and executed for and in behalf of said corporation by authority of its governing body.

(Corporate Seal)

(Secretary-Clerk)

(Signature of authorized individual submitting proposal)

(Printed Name)

(Name of Proposer)

(Federal Tax Identification or Social Security Number)

(Date)

PART 1. GENERAL INFORMATION

Summary

The City of Salem / North Shore Workforce Investment Board (NSWIB) invites proposals to lease office space, in accordance with the terms, conditions, and specifications herein.

- *Description:* The City of Salem / NSWIB will occupy the North Shore Workforce Investment Board's Administrative Office.
- *Amount of Space:* 2,500 square feet of useable space.
- *Type of Space:* Space for administrative offices
- *Desired Occupancy Date:* January 1, 2018
- *Type of Agreement:* City of Salem / NSWIB Lease
- *Term:* Two (2) year level monthly payments over term, with an option(s) for the City of Salem / NSWIB to renew for two (2) single years thereafter.
- *Public Parking:* 5 (minimum) to 10 parking spaces (may be street parking) 2 (minimum) handicapped parking spaces.
- *Public Transportation:* Access to public transportation to be no more than a 15 minute walk to the Administrative Office.
- *Location:* Salem, MA., Space shall be a maximum of a 10 minute walk to Salem City Hall (93 Washington Street) and Salem City Hall Annex (120 Washington Street).
- *Exterior and Interior Lighting*

A. Introduction

The purpose of the presentation of the RFP is to create space for the North Shore Workforce Investment Board at a reasonable rate. The City/NSWIB anticipates that following the deadline for proposals, a committee will be formed which will discuss and recommend a proposal to the Mayor. The proposal that will be recommended should meet the minimum requirements as set forth in this RFP, provide a lease at a reasonable rate, and provide the needed space. Following the recommendation and approval by the Mayor to enter into a lease agreement, the City/NSWIB will undergo the necessary steps to confirm a lease agreement with the selected person or group.

Following the execution of the lease, it is the landlord's responsibility to deliver the premises to the City of Salem / NSWIB in conformance with the specifications included with the RFP. Please note that the landlord is responsible for the completion of construction documents prepared by licensed professionals (including final design layout), furnishing all labor and materials, securing all permits necessary to complete the work, and for achieving substantial completion in accordance with the provisions of the lease at the landlord's expense.

The City of Salem / NSWIB will take occupancy of the leased premises only after construction of the improvements are completed and the premises are deemed available for tenant's occupancy in accordance with the agreed upon lease. The City/NSWIB will confirm the date of occupancy, which will be the commencement

date of the lease term. If the structure proposed to provide the required space requires rehabilitation, the City/NSWIB will sign a letter of intent for the lease agreement and then sign the full lease following the issuance of a certificate of occupancy for the space.

While all information presented in this Request for Proposals is from sources deemed reliable, this Request is subject to errors and omissions. This Request does not constitute an offer or promise to enter into a lease agreement and in no way is the City of Salem / NSWIB obligated to make a selection.

B. City of Salem / NSWIB Space Needs

The City of Salem / NSWIB has determined that it needs approximately 2,500 square feet of useable space.

C. Building Conditions

The following building conditions are required to be met by the proposer:

Building Codes: The proposed building must comply with all applicable federal, state, and local code requirements, or the City of Salem / NSWIB must be satisfied that it can and will be brought into substantial compliance by the desired occupancy date. If the proposal is accepted subject to the landlord meeting certain code requirements, the City of Salem / NSWIB will not take occupancy of the space until all code deficiencies have been fully corrected.

Life Safety: The building and leased premises must comply with local codes pertaining to life safety. Life safety hazards detected either before or during occupancy shall be corrected at the proposer's expense. The City of Salem / NSWIB requires emergency lighting to be upgraded to comply with current code standards for new construction within the leased premises and along all paths of egress. All fire protection equipment and materials must be maintained in accordance with applicable codes and ordinances. This includes, but is not limited to, fire doors, fire walls, fire stops, fire extinguisher, fire escapes, exit route diagrams, exit signs, emergency lighting and alarm systems.

Harmful Materials: All contaminants, dust, or gases must be removed or maintained at less than harmful levels, as required by law. The landlord is responsible for keeping on file all written certifications required by federal, state, or local officials. Harmful materials include asbestos and lead paint.

HVAC: HVAC systems must be fully automatic and capable of maintaining minimum winter temperatures of 68 degrees Fahrenheit and maximum summer temperatures of 78 degrees Fahrenheit throughout the leased premises.

Electrical Service: Electrical Service must be of sufficient capacity to provide adequate power for electrical equipment to be installed as part of the building, plus power required to operate all of the City of Salem / NSWIB's equipment, such as its computer networked system. In addition, the building should be wired to allow for internet access.

Telecommunications: The landlord will provide a complete telephone wiring system.

Restrooms: The landlord must provide and install restrooms as dictated by code.

PART 2. EVALUATION AND SELECTION

A. Minimum Requirements

The following conditions must be addressed and met in the developer's proposal for office space for the City of Salem / NSWIB:

1. That the building proposed to house the North Shore Workforce Investment Board's Administrative Office meets the minimum requirements of the Americans with Disabilities Act.
2. That the building proposed to house the North Shore Workforce Investment Board's Administrative Office meets all local Zoning and Massachusetts Building Code requirements. Any building that is proposed to be utilized for office space and is not in conformance with the regulations of the City of Salem shall be brought to code prior to the City of Salem / NSWIB occupying the building.
3. All local, state, and federal regulations regarding asbestos and lead paint removal must be adhered to in the building proposed for office space. If the building currently contains asbestos and lead paint, the hazardous material must be removed prior to the City of Salem / NSWIB occupying the building.
4. Agreement of the landlord to enter into a lease substantially in the form of the lease suggested by the City of Salem / NSWIB at the landlord's expense.
5. The proposal must demonstrate complete conformance with all submission requirements as previously stated in the RFP.
6. If the building proposed to house the North Shore Workforce Investment Board's Administrative Office is determined historically significant, then the proposal must show the historic nature of the structure being preserved.
7. The applicant must be able to provide the NSWIB/City with approximately 2,500 square feet of space in one building. The space should include the areas stated earlier in the RFP.
8. The applicant must show the ability of the landlord to prepare the proposed space for occupancy and to provide the services required in the RFP in accordance with the accepted standards. It must be shown that the landlord has the ability and the finances to substantially complete the tenant improvements and any other building improvements required for occupancy by the City of Salem / NSWIB by the desired occupancy date as represented in the RFP.

B. Competitive Evaluation Criteria

The Committee will evaluate each proposal for conformance with the objectives, submission requirements, and threshold criteria outlined in this Request for Proposals. Preference categories have been established for the purpose of further distinguishing competitive proposals. In addition, the preference categories will be used to compare the relative advantages of each competing proposal. The following preference categories must be addressed in the proposal:

1. ***The city requires that leased space has access to public transportation to be no more than a 15 minute walk to the Administrative Office. Proposed leased space in closer proximity is preferred and shall be ranked accordingly.***

The proposal shows leased space within a 15 minute walk from public transportation to the Administrative Office. – Highly Advantageous.

The proposal shows leased space within a 20 minute walk from public transportation to the Administrative Office. – Advantageous.

The proposal shows leased space in excess of a 20 minute walk from public transportation. – Not Advantageous.

2. *The square footage of the space provided. The City of Salem / NSWIB proposes the necessity for 2,456 square feet of useable space in one building.*

The proposal shows the building containing 2,400-2,500 square feet of useable space to be occupied by the Administrative Office – Highly Advantageous

The proposal shows the building containing 2,400-2,300 square feet of useable space to be occupied by the Administrative Office. - Advantageous

The proposal shows the building containing less than 2,000 square feet of useable space to be occupied by the Administrative Office. - Not Advantageous

3. *The ability of the applicant to provide access within the immediate vicinity to a minimum of 5-10 public parking spaces including 2 handicapped spaces.*

The proposed location for the Administrative Office shows 5 -10 public parking spaces of which include 2 handicapped spaces within the immediate vicinity – Highly Advantageous

The proposed location for the Administrative Office shows 5-10 public parking spaces of which include 1 handicapped space within the immediate vicinity - Advantageous

The proposed location for the Administrative Office shows less than 5 public parking spaces within the immediate vicinity – Not Advantageous

PART 3. SUBMISSION REQUIREMENTS

The proposer shall submit two sealed proposals, one non-priced and one priced. The non-priced and priced proposals must be submitted in separate envelopes. Each proposal envelope must state; the proposal number, the company name, and the date of opening.

A. The non-priced proposal shall include the following:

1. Letter of Submittal

The letter must be signed by the principal of the proposal team and addressed to Whitney Haskell, Purchasing Agent, 93 Washington St., Salem, MA 01970. The letter must outline the applicant's understanding of the objectives articulated in the RFP.

2. Applicant's Identification

Identify the name of the applicant or applicants, street address, mailing address, and telephone number. Specify the legal form of the group or firm.

List all officers, partners or owners of the entity by name, title and percentage of ownership and their addresses and telephone numbers.

3. Office Space Plan

Provide conceptual design documents and drawings that indicate the layout of the proposed office space. The drawings may consist of a site plan for the site, an elevation of the exterior of the structure, and floor plans for the interior of the structure.

4. Applicant's Experience

The applicant shall provide a listing of all other buildings owned which currently contain tenants. The ownership list shall consist of not only buildings within the City of Salem but outside the City limits as well.

5. Financial Capability

Identify the financial stability of the firm. If there is work to be completed to the building in order for the City of Salem / NSWIB to occupy the space, show the financial capability of the firm to complete the project.

6. Lease

A proposed lease agreement including all of the terms, excluding the cost of the lease, necessary by the developer. The City expects a fixed rate for the first year of the lease. For the two optional years thereafter for up to two years in which the City exercises its option, the annual rate will be adjusted according to the Consumer Price Index (North of Boston), but in no event greater than three (3%) percent.

7. Schedule

Describe the sequence of actions, outlining the timing of the steps. Particularly if the building is currently vacant, the steps must show a timeline for the approval of all permits necessary for occupancy of the City/NSWIB offices.

8. Non-Collusion Form

The non-collusion form must be included and signed in the non-priced proposal.

B. All priced proposals shall include:

1. Lease Proposal

The proposed financial terms of the lease that shall include the annual cost for the first 3 years of the lease and the two one year options of the agreement as well as the expected monthly rent payment. The following items shall also be included in the lease:

Notice: Under the lease, notice shall be given via certified mail to the following: Mayor Kimberley Driscoll, City of Salem / NSWIB, 93 Washington Street, Salem, MA 01970; and to the lessor.

Description of Premises: The chosen proposal shall be incorporated by reference into the lease, including a detailed description of the property.

Payments: The Lessee agrees to pay rent monthly, on the first day of each month.

Moving Costs: The landlord/lessor shall be responsible for all moving costs to a location other than 70 Washington Street.

Signage: The landlord/lessor shall provide exterior and interior signage.

Door Openers: The landlord/lessor shall provide and maintain door openers in compliance with ADA regulations.

Maintenance Response: The landlord/lessor shall be responsible for general maintenance and repair of premises.

Snow and Ice Removal: The landlord/lessor, at its sole expense, shall keep pedestrian access to the premises and building free of ice and snow.

Insurance: The tenant agrees to maintain, insurance hereof, policies of comprehensive general liability insurance and casualty insurance with limits for personal injury and property damage of \$1,000,000 each occurrence and \$1,000,000 in the aggregate. Policies shall cover use and occupation of the premises and all operations and activities conducted, at, on, or from the premises by the tenant, its agents, employees, or invitees.

Landlord/Lessor: The landlord/lessor shall maintain and keep in force during term of the lease a policy or policies of insurance covering the loss or damage of the premises.

Amendments: No amendment shall be allowed unless in writing and signed by the Mayor or Purchasing Agent with authority to do so.

Termination: The lease may be terminated if the lessor violates the terms of the lease or of the RFP.

Taxes: The landlord is responsible for all taxes on the building and parcel. Lessor must provide certification of tax compliance (Mass. General L.C. 62C, Section 49A).

Conflict of Interest: The lease shall be in accordance with all provisions of the Mass Conflict of Interest Law (Mass. General L.C. 268A).

Notice of Renewal Option: The tenant will give notice of exercising an option within six (6) months of expiration of lease.

PART 4. GENERAL CONDITIONS AND REQUIREMENTS

1. Proposal Rules

This proposal is solicited and will be awarded pursuant to the rules set forth in Chapter 30B of the Massachusetts General Laws.

2. Reviewing Period

All proposals meeting proposal requirements and conditions may be held by the City of Salem / NSWIB for a period not to exceed sixty (60) days from the date of the opening of proposals for the purpose of reviewing the proposals and investigating the qualifications of proposers, prior to the awarding of the contract.

3. Basis of Proposal Award

The Lease shall be awarded to the responsible and responsive proposer submitting the proposal considered most advantageous, taking into consideration the proposal's criteria and price.

A Committee will be appointed to evaluate the relative merits of the proposals.

4. Evaluation of Proposal

A committee, appointed by the City's Chief Procurement Officer, shall evaluate each proposal's comparative evaluation criteria. Using the rating system prescribed in Chapter 30B of the Massachusetts General Laws (the Uniform Procurement Act), the committee shall assign a rating system to each criteria. The committee shall also assign a composite rating to each non-price proposal. The committee shall then take into consideration the prices and decide the best overall proposal. The best overall proposal is not necessarily the proposal receiving the highest rating for the "Competitive Evaluation Criteria" nor the proposal with the most inexpensive lease terms. The documented results shall then be submitted to the City's Chief Procurement Officer who will make the award based on the evaluation.

5. Compliance with Applicable Laws

The contract shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

The proposal must comply with all Federal, State, and municipal laws, ordinances, rules and/or regulations.

6. Questions and Interpretations

Any substantive questions regarding the proposal documents shall be referred to the Purchasing Agent in writing at least five working days prior to the date and time for receipt of proposals. All answers and interpretations and any changes to the documents will be issued in the form of addenda to all proposers of record.

7. Ability and Experience

The Awarding Authority will not award a contract to any proposer who cannot furnish satisfactory evidence of his ability and experience pertaining to the lease of office space. If the proposed lease premises require rehabilitation, the proposer must furnish satisfactory evidence of his ability and experience in the field of development and rehabilitation.

The Awarding Authority may make such investigations as it deems necessary to determine the above and a proposer shall furnish information requested in this regard and shall furnish it under oath if required.

8. Certification of Non-Collusion and Tax Attestation Form

All proposers must sign the attached form which incorporates both an attestation clause regarding

Massachusetts State tax returns and a certificate of non-collusion. These signed forms must be submitted with the non-priced proposal package.

9. Corrections

Erasures or other changes in the proposal must be explained or noted over the signature of the proposer.

10. Conflict of Interest

The applicant agrees that to the extent that such law is applicable to the duties it is to perform hereunder, it will comply with the provisions of Chapter 286A of the General Laws concerning conflict of interest. The proposer covenants that it presently has no interest and shall not require any interest, direct or indirect, which would conflict in any manner or degree with the performance under the agreement.

No employee of the City of Salem / NSWIB and no public official who exercises any function or responsibilities in the review or approval of the undertaking or carrying out of this agreement shall participate in any decision relating to this agreement which affects his personal interest or the interest of any corporation, partnership, or association in which he is directly or indirectly interested or have any financial interest, direct or indirect in this agreement or the proceeds thereof.

11. Signature

All proposals shall be complete, factual, and signed by an authorized officer of the proposer's company on the appropriate page(s) and the front of the cover sheet.

12. Number of copies

One original and three copies of the non-priced proposal must be submitted to the Purchasing Agent. One original and three copies of the priced proposal must be submitted to the Purchasing Agent. The original documents shall be clearly marked on the front of the document as such.

13. Waiver

The City of Salem / NSWIB reserves the right to reject any and all proposals, or to waive any informalities in the proposal process, if deemed in the City's best interest.

14. Place and Time

Sealed proposals will be received at the Office of the City Purchasing Agent, 93 Washington Street, 2nd Floor, Salem, MA 01970 until 10:00 AM on XXXXXXXX at which time and place they will be opened and registered.

15. Disclosure

The selected proposer must file a disclosure of beneficial interests required by G.L. c.7, 40J. This must be filed with the Deputy Commissioner of the Division of Capital Asset Management and Maintenance.

16. Modifications

A proposer may correct, modify, or withdraw a proposal by sealed, written notice clearly marked as a correction, modification, or withdrawal and received in the Office of the Salem Purchasing Agent prior to the time and date set for the proposal deadline.

Failure to comply with the above conditions and requirements or any attached specifications or any other minimum qualifications will be justification to reject any proposal as incomplete.

Lease Proposal

The undersigned has read the Request for Proposal and has carefully examined all specifications therein. The undersigned certifies that prior to occupancy by the User Agency, the proposed property shall comply with all RFP specifications unless stated otherwise in this Proposal ; that he/she is an eligible proposer as defined in the RFP, and there are no known obstacles to prevent the owner from executing a lease, of which could invalidate such agreement. The undersigned acknowledges that the User Agency may reject all proposals, or waive portions of the RFP for all proposals, if it deems it in the City of Salem/ North Shore Workforce Investment Board's best interest. The undersigned proposes to lease the property to the City of Salem/ North Shore Workforce Investment Board.

Proposal Summary

Name of Proposed Building:

Address of Proposed Building:

Proposed Net Usable Area (SF):

Term of Lease (Years):

Average Rental Rate (\$/SF):

Proposer

Name of Proposer:

Contact:

Company Name:

Proposer's Address:

Tel:

Proposer's Signature:

Owner

Name of Building Owner:

Owner's Address:

Tel:

COST

Please complete the table below by filling in the proposed Total Rental Rate, the components of the Total Rental Rate, and the Total Annual Rent for the term of the lease. If there is a cost which is not included in the proposed Total Rental Rate, which the Agency must pay separately, please enter "Extra" in the appropriate space below.

The User Agency encourages submission of gross, flat rent proposals. All cost information related to this proposal should be included on this page. For Tenant Improvements and Utilities, you may attach a separate page if necessary.

When completed, this cost proposal must be sealed in an envelope and clearly marked "Price Proposal".

Please provide costs for the following:

1. _____ square feet

Proposed Rental Rate (\$/SF/YR)	1 st 3Year s	1 st 1 year option	2 nd 1 year option
Base Rent			
Tenant Improvements Improvement Cost			
Total Tenant Improvements			
Lights and Plugs			
Utilities Utility Cost			
Total Utilities			
Reserved Parking			
Other (Specify)			
Total Rental Rate (SF)			
Total Annual Rent (\$)			
Comments			

SAMPLE LEASE

LANDLORD:

TENANT: North Shore Workforce Investment Board/City of Salem

PREMISES: Approximately xxxxxx square feet

DATED:

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XI SECURITY DEPOSIT

XII MODIFICATION.....

Exhibit A	Plan Showing Tenant's Space
Exhibit B	Legal Description Of Lot

Lease dated as of the 1st day of December 2014 by and between XXXXXXXXXXXXXXXXXXXX, as landlord ("Landlord"), and North Shore Workforce Investment Board/City of Salem, as tenant ("Tenant").

**ARTICLE I
REFERENCE DATA**

1. (A) SUBJECTS REFERRED TO:

Each reference in this lease to any of the following subjects shall be construed to incorporate the data stated for that subject in this Section I (A):

LANDLORD'S ADDRESS:

TENANT'S ADDRESS:

BUILDING:

FLOOR AREA

OF TENANT'S SPACE: Approximately xxxx square feet

TERM:

COMMENCEMENT DATE:

FIXED RENT:

SECURITY DEPOSIT: None

PERMITTED USE: Administrative Office Use

PUBLIC LIABILITY INSURANCE LIMITS:

BODILY INJURY: \$2,000,000

PROPERTY DAMAGE: \$500,000

(B) EXHIBITS

**ARTICLE II
PREMISES**

2. PREMISES

Subject to and with the benefit of the provisions of this lease, Landlord hereby leases to Tenant, and Tenant leases from Landlord, Tenant's space in the Building, excluding exterior faces of exterior walls, all common facilities of the Building and all building service fixtures and equipment serving (exclusively or in common) other parts of the building. Tenant's space, with such exclusions, is hereinafter referred to as "the demised premises". Tenant shall have, as appurtenant to the demised premises, the right to use in common with others entitled thereto, subject to reasonable rules from time to time made by Landlord of which Tenant is given notice: (a) the common facilities from time to time included in the Building or on the parcel of land on which the Building is located (said parcel being more particularly described in Exhibit B and being hereafter referred to as "the Lot"), to the extent from time to time designated by Landlord; (b) the building service fixtures and equipment serving the demised premises; (c) the common facilities from time to time serving the Lot in common with other parcels of land, such as any so-called access roads, retention ponds, sewer and utility lines and the like, all to the extent from time to time designated by Landlord; and (d) access to a minimum of ten (10) regular and two (2) handicapped reserved parking spaces on the Lot. Landlord reserves the right from time to time (a) to install, repair, replace, use, maintain and

relocate for service to the demised premises and to other parts of the Building or either, building service fixtures and equipment wherever located in the Building, (b) to alter, relocate or eliminate any other common facility, (c) to designate specific parking areas upon the Lot to be for the exclusive use of one or more users thereof, and (d) to increase and/or decrease the size of the Lot by the acquisition of adjacent land and/or the disposition of any portions thereof. No such increase or decrease shall be deemed to have occurred until Landlord shall give Tenant notice thereof. If access to the parking areas of the Building shall be restricted by a gate or other mechanism, a procedure shall be established so that Tenant may validate the tickets of its customers so as to provide free parking to Tenant's customers for a reasonable period of time.

ARTICLE III TERM

3. TERM

TERMINATION OF LEASE FOR LACK OF APPROPRIATION

If, for any fiscal year during the term of this Lease, funds for the discharge of the TENANT'S obligations under this Lease are not appropriated and authorized, or if the funds so appropriated or authorized are reduced, or a change in local/state/federal priorities or regulations reduce the availability of infrastructure funding so that funds can be focused on intensive training services for Career Center customers, then TENANT may terminate or open negotiations to reduce the existing footprint outlined in this Lease by written notice to LANDLORD, without liability for damages, penalties or other charges arising from early termination, and without further recourse to either party: provided, however, that TENANT shall pay all Rent and any other charges due to LANDLORD for the period prior to its surrender of the DEMISED PREMISES, and the TENANT shall comply with the provisions of this Lease.

ARTICLE IV LANDLORD'S COVENANTS

4. (A) LANDLORD'S COVENANTS DURING THE TERM:

Landlord covenants during the Term:

- (1) To pay all real estate taxes when due;
- (2) To provide maintenance for the exterior of the Building and the common systems of the Building and the Lot and remove snow and ice from the Lot; and
- (3) Except as otherwise provided in this lease, to make such repairs to the roof, exterior walls and common facilities of the Building and the Lot as may be necessary to keep them in good repair and condition.
- (4) To provide a telephone and data wiring system for the demised premises which system shall allow for the operation of one unified telephone system provided by Tenant including multiple dedicated phone lines for the operation of the telephone system as well as several fax machines and modems.
- (5) To provide, maintain and service a security alarm system to serve the demised premises which system shall include, at a minimum, motion detection and door contact alarms, all of which shall be connected to a security bureau.
- (6) To provide signage that includes room numbers and room names (e.g. Conference Room, Testing Room) and to provide and install directories at the main entrance and at each floor of the Building. All signs, whether installed by Landlord as set forth hereunder, or installed by Tenant (with the prior approval of the Landlord) shall comply with exterior sign requirements of the City of Lynn.

(7) To provide and pay all charges for utilities used by Tenant in the demised premises except for telephone and data system charges. Landlord shall provide and pay for heating fuel during normal business hours which shall mean Monday through Friday 8:00 a.m. – 5:00 p.m. ("Tenant's Hours"). The electric system in the demised premises shall be capable of accommodating a local area network, several computers, printers, copiers, and fax machines to be provided and installed by Tenant.

(8) To provide reasonable and sufficient heat and air conditioning during Tenant's Hours. The HVAC system shall be maintained by Landlord and shall be operated in such a manner so as to maintain minimum winter temperatures of 68 degrees Fahrenheit and maximum summer temperatures of 78 degrees Fahrenheit throughout the demised premises.

(9) To provide access to employees of Tenant in addition to the access provided during Tenant's Hours provided that Landlord may request or otherwise impose identification or other security procedures for said access.

(B) INTERRUPTIONS

Landlord shall not be liable to Tenant for any compensation or reduction of rent by reason of inconvenience or annoyance or for loss of business arising from (a) power losses or shortages, or (b) the necessity of Landlord's entering the demised premises for any of the purposes in this lease authorized, including without limitation, for repairing or altering the demised premises or any portion of the Building or for bringing materials into and/or through the demised premises in connection with the making of repairs or alterations.

In case Landlord is prevented or delayed from making any repairs, alterations or improvements or furnishing any service or performing any other covenant or duty to be performed on Landlord's part, by reason of any cause reasonably beyond Landlord's control, Landlord shall not be liable to Tenant therefor, nor, except as expressly otherwise provided in Article VIII, shall Tenant be entitled to any abatement or reduction of rent by reason thereof, nor shall the same give rise to a claim in Tenant's favor that such failure constitutes actual or constructive, total or partial, eviction from the demised premises. Landlord reserves the right to stop any service or utility system when necessary in Landlord's opinion by reason of accident or emergency or until necessary repairs have been completed. Except in case of emergency repairs, Landlord will give Tenant reasonable advance notice of any contemplated stoppage and, in any event, Landlord will use reasonable efforts to avoid unnecessary inconvenience to Tenant by reason thereof.

ARTICLE V RENT

5. (A) FIXED RENT

(1) Tenant agrees to pay, without any offset or reduction whatever (except as made in accordance with the express provisions of this lease), fixed monthly rent equal to 1/12th of the Fixed Rent, such rent to be paid in equal installments in advance of the first day of each calendar month included in the Term; and for any portion of a calendar month at the beginning or end of the Term, a portion of such fixed monthly rent, prorated on a per diem basis. .

(2) If any payment of rent or any other payment payable hereunder by Tenant to Landlord shall not be paid when due, the same shall bear interest from the date when the same was payable until the date paid at the lesser of (a) twelve percent (12%) per annum, or (b) the highest lawful rate of interest which Landlord may charge to Tenant without violating any applicable law. Such interest shall constitute additional rent payable hereunder.

(B) ADDITIONAL RENT -TAXES

Tenant shall pay all taxes upon its signs and other personal property in or upon the demised premises and all taxes that are directly attributable to improvements made by Tenant (but not improvements made by Landlord) in or upon the demised premises.

(C) ADDITIONAL RENT - OPERATING COSTS

INTENTIONALLY DELETED

(D) ADDITIONAL RENT - ELECTRICITY AND GAS

INTENTIONALLY DELETED

**ARTICLE VI
TENANT'S COVENANTS**

6. TENANT'S COVENANTS DURING THE TERM.

Tenant covenants during the Term and such other time as Tenant occupies any part of the demised premises:

(1) To pay when due (a) all Fixed Rent and additional rent, (b) all taxes which may be imposed on Tenant's personal property in the demised premises (including without limitation, Tenant's fixtures and equipment) regardless to whomever assessed, and (c) all charges by any public utility for telephone and other utility services rendered to the demised premises but which are not made Landlord's responsibility in Article IV hereof.

(2) Except as otherwise provided in this Lease, to keep the demised premises in good order, repair and condition, reasonable wear only excepted; and at the expiration or termination of this lease peaceably to yield up the demised premises and all changes and additions therein in such order, repair and condition, first removing all goods and effects of Tenant and those claiming under Tenant and any items the removal of which is required by any agreement between Landlord and Tenant (or specified therein to be removed at Tenant's election and which Tenant elects to remove), and repairing all damage caused by such removal and restoring the demised premises and leaving them clean and neat. Notwithstanding anything to the contrary contained herein, Tenant shall forthwith remove from the demised premises (repairing any damage caused by such removal) any installations, alterations, additions or improvements made by Tenant or Landlord, and which Landlord requests Tenant to remove within thirty (30) days after the expiration or termination of the term of this lease, such removal to include returning the previously modified portions of the demised premises to their condition prior to the making of such installations, alterations, additions or improvements. Tenant's obligations hereunder shall survive the expiration or termination of the term of this lease. For purposes of this Section (2) the word "repairs" includes the making of replacements when necessary.

(3) To use and occupy the demised premises only for the Permitted Use; and not to injure or deface the demised premises, Building, or Lot; and not to permit in the demised premises any auction sale, nuisance, or the emission from the demised premises of any objectionable noise or odor; nor any use thereof which is improper, offensive, contrary to law or ordinance or liable to invalidate or increase the premiums for any insurance on the Building (or any portion thereof) or its contents, or liable to render necessary any alteration or addition to the Building;

(4) INTENTIONALLY DELETED

(5) To comply with reasonable and non-discriminatory rules and regulations hereafter made by Landlord (but only after copies thereof have been delivered to Tenant) for the care and use of the Building and Lot and their facilities and approaches, it being expressly understood, however, that Landlord shall not be liable to Tenant for the failure of other tenants of the Building to conform to such rules and regulations;

(6) To keep the demised premises equipped with all safety appliances required by law or ordinance or any other regulation of any public authority and/or any insurance inspection or rating bureau having jurisdiction, and to procure all licenses and permits required because of any use made by Tenant and, if requested by Landlord, to do any work required because of such use, it being understood that the foregoing provisions shall not be construed to broaden in any way the Permitted Use;

(7) Not without the prior written consent of Landlord to assign, hypothecate, pledge or otherwise encumber this lease, to make any sublease or to permit occupancy of the demised premises or any part thereof by anyone other than Tenant voluntarily or by operation of law, and as additional rent, to reimburse Landlord promptly upon demand for reasonable legal and other expenses incurred by Landlord in connection with any request by Tenant for consent to assignment or subletting. Without intending to limit Landlord's discretion in granting or withholding such consent, it is agreed that if Tenant requests Landlord's consent to assign this lease or sublet more than fifteen percent (15%) of the demised premises, Landlord shall have the option, exercisable by written notice to Tenant given within sixty days after receipt of such request, to terminate this lease as of a date specified in such notice which shall be not less than thirty (30) or more than sixty (60) days after the date of such notice. If Landlord shall so terminate this lease, rent shall be apportioned as of the date of termination, and Landlord may lease the demised premises or any part thereof to any person or entity (including without limitation, Tenant's proposed assignee or subtenant, as the case may be) without any liability whatsoever to Tenant by reason thereof. If Landlord shall consent to any assignment of this lease by Tenant or a subletting of the whole of the demised premises by Tenant at a rent which exceeds the rent payable hereunder by Tenant, or if Landlord shall consent to a subletting of a portion of the demised premises by Tenant at a rent in excess of the subleased portion's pro rata share of the rent payable hereunder by Tenant, then Tenant shall pay to Landlord, as additional rent forthwith upon Tenant's receipt of each installment of any such excess rent, the full amount of any such excess rent. Each request by Tenant for permission to assign this lease or to sublet the whole or any part of the demised premises shall be accompanied by a representation and warranty by Tenant as to the amount of rent to be paid to Tenant by the proposed assignee or sublessee. For purposes of this Section (7), the term "rent" shall mean all fixed rent, additional rent or other payments and/or consideration payable by one party to another for the use and occupancy of premises. Tenant agrees, however, that neither it nor anyone claiming under it shall enter into any sublease, license, concession or other agreement for use, occupancy or utilization of space in the demised premises which provides for rental or other payment for such use, occupancy or utilization based, in whole or in part, on the net income or profits derived by any person or entity from the space leased, used, occupied or utilized (other than an amount based on a fixed percentage or percentages of receipts or sales), and Tenant agrees that any such purported sublease, license, concession or other agreement shall be absolutely void and ineffective as a conveyance of any right or interest in the possession, use, occupancy, or utilization of any part of the demised premises. Tenant further agrees that any sublease, license, concession or agreement for use, occupancy or utilization of space in the demised premises entered into by it or by anyone claiming under it shall contain the provisions set forth in the immediately preceding sentence. Tenant further agrees that if a sublease is entered into, neither the rent payable thereunder nor the amount thereof passed on to any person or entity shall have deducted therefrom tiny expenses or costs related in any way to the subleasing of such space. If and whenever Tenant shall not be a so-called "publicly held" company, it is understood and agreed that the transfer of fifty percent (50%) or more of the stock in Tenant of any class (whether at one time or at intervals) shall constitute an "assignment" of Tenant's interest in this lease. If there shall be any assignment or subletting by Tenant pursuant to the provisions of this Section (7), Tenant shall remain primarily liable for the performance and observance of the covenants and agreements herein contained on the part of Tenant to be performed and observed, such liability to be (in the case of any assignment) joint and several with that of such assignee. It is expressly understood and agreed that no assignment of Tenant's interest in this lease shall be effective until such time as Tenant shall deliver to Landlord an agreement from the assignee, which agreement shall be reasonably satisfactory to Landlord in form and substance and shall provide that the assignee agrees with Landlord to be primarily liable for the performance and observance of the covenants and agreements herein contained on the part of Tenant to be performed and observed, such liability to be joint and several with that of Tenant;

(8) To defend landlord, with counsel acceptable to Landlord, save Landlord harmless from, and indemnify Landlord against any liability for injury, loss, accident or damage to any person or property and from any claims, actions, proceedings and expenses and costs in connection therewith (including, without implied limitation, reasonable counsel's fees): (i) arising from the omission, fault, willful act, negligence or other misconduct of Tenant or anyone claiming under Tenant, or from any use made or thing done or occurring upon or about the demised premises but not due to the omission, fault, willful act, negligence or other misconduct of Landlord, or (ii) resulting from the failure of Tenant to perform and discharge its covenants and obligations under this lease;

(9) To maintain public liability insurance upon the demised premises in amounts which shall, at the beginning of the term, be at least equal to \$2,000,000.00 for bodily injury or death to one or more individuals and \$500,000.00 for damage to property, and from time to time during the term, shall be for such higher limits, if any, as are customarily carried in the area in which the demised premises are located upon property similar in type and use

to the demised premises. Such insurance shall name Landlord as an additional insured. Tenant shall deliver to Landlord the policies of such insurance, or certificates thereof at least fifteen (15) days prior to the Commencement Date, and each renewal policy or certificate thereof, at least fifteen (15) days prior to the expiration of the policy it renews. Each such policy shall be written by a responsible insurance company authorized to do business in the Commonwealth of Massachusetts and shall provide that the same shall not be modified or terminated without at least twenty (20) days' prior written notice to each named insured;

(10) To keep all employees working in the demised premises adequately covered by workmen's compensation insurance in amounts no less than that required by law, and to furnish Landlord with certificates thereof;

(11) To permit Landlord and its agents entry: to examine the demised premises at reasonable times and, if Landlord shall so elect, to make repairs, alterations and replacements; to remove, at Tenant's expense, any changes, additions, signs, curtains, blinds, shades, awnings, aerials, flagpoles, or the like not consented to in writing; and to show the demised premises to prospective tenants during the twelve (12) months preceding the expiration of the term of this lease and to prospective purchasers and mortgagees at all reasonable times;

(12) Not to place a load upon any part of the floor of the demised premises exceeding that for which said floor was designed or in violation of what is allowed by law; and not to move any safe, vault or other heavy equipment in, about or out of the demised premises except in such manner and at such times as Landlord shall approve in writing in each instance. Tenant's machines and mechanical equipment which cause vibration or noise that may be transmitted to the Building structure or to any other space in the Building shall be placed and maintained by Tenant in settings of cork, rubber, spring, or other types of vibration eliminators sufficient to confine such vibration or noise to the demised premises;

(13) All furnishings, fixtures, equipment, effects and property of every kind, nature, and description of Tenant and all persons claiming by, through or under Tenant which may be in the demised premises or elsewhere in the Building shall be at the sole risk and hazard of Tenant, and if the whole or any part thereof shall be destroyed or damaged by fire, water or otherwise, or by the leakage or bursting of water pipes, steam pipes or other pipes, by theft, or from any other cause, no part of said loss or damage is to be charged to or borne by Landlord.

(14) To pay promptly when due the entire cost of any work done on the demised premises by Tenant and those claiming under Tenant; not to cause or permit any liens for labor or materials performed or furnished in connection therewith to attach to the demised premises; and immediately to discharge any such liens which may so attach;

(15) Not to make any exterior or structural alterations, improvements, changes or additions (nor any interior non-structural alterations, improvements, changes or additions which would affect any common utility or mechanical system in the Building) to the demised premises without Landlord's prior written consent. All construction work permitted by Landlord to be undertaken by Tenant shall be done in a good and workmanlike manner and in compliance with the applicable laws, ordinances, regulations and orders of governmental authorities and insurance rating or inspection bureaus. Landlord shall have the right (but not the obligation) to inspect the work of the Tenant at reasonable times and Tenant shall correct any deficiencies in said work as noted by Landlord;

(17) To insure the contents, equipment, and improvements of Tenant and those claiming under Tenant, under policies covering at least fire and the standard extended coverage risks, in amounts equal to the replacement cost thereof, the terms of which policies shall provide that such insurance shall not be canceled without at least twenty (20) days' prior written notice to Landlord. Copies of such insurance policy or policies, or certificates thereof, shall be delivered to Landlord at least fifteen (15) days prior to the Commencement Date and each renewal policy or certificate thereof, at least fifteen (15) days prior to the expiration of the policy it renews;

(18) To pay Landlord's expenses, including reasonable attorney's fees, incurred in enforcing any obligation of Tenant in this lease; and

ARTICLE VII DEFAULT

7. (A) EVENTS OF DEFAULT

(1) If Tenant shall default in the payment of Fixed Rent, additional rent or other payments required of Tenant, and if Tenant shall fail to cure said default within seven (7) days after receipt of notice of said default from Landlord, or (2) if Tenant shall default in the performance or observance of any other agreement or condition on its part to be performed or observed and if Tenant shall fail to cure said default within fifteen (15) days after receipt of notice of said default from Landlord (but if longer than fifteen days shall be reasonably required to cure said default, then if Tenant shall fail to commence the curing of such default within fifteen days after receipt of said notice and diligently prosecute the curing thereof to completion), or (3) if any person shall levy upon, or take this leasehold interest or any part thereof upon execution, attachment or other process of law, or (4) if Tenant shall make an assignment or its property for the benefit of creditors, or (5) if Tenant shall be declared bankrupt or insolvent according to law, or (6) if any bankruptcy or insolvency proceedings shall be commenced by or against Tenant, or (7) if a receiver, trustee or assignee shall be appointed for the whole or any part of Tenant's property, or (8) if Tenant shall vacate the demised premises, then in any of said cases, Landlord lawfully may immediately, or at any time thereafter, and without any further notice or demand, enter into and upon the demised premises or any part thereof in the name of the whole, by force or otherwise, and hold the demised premises as if this lease had not been made, and expel Tenant and those claiming under it and remove its or their property (forcibly, if necessary) without being taken or deemed to be guilty of any manner of trespass (or Landlord may send written notice to Tenant of the termination of this lease), and upon entry as aforesaid (or in the event that Landlord shall send Tenant notice of termination as above provided, on the fifth (5th) day next following the (date of the sending of the notice), the term of this lease shall terminate. Notwithstanding the provisions of clauses (1) and (2) of the immediately preceding sentence, if Landlord shall have rightfully given Tenant notice of default pursuant to either or both of said clauses twice during any twelve (12) month period, and if Tenant shall thereafter default in the payment of Fixed Rent, additional rent or other payments and/or the performance or observance of any other agreement or condition required of Tenant, then Landlord may exercise the right of termination provided for it in said immediately preceding sentence without first giving Tenant notice of such default and the opportunity to cure the same within the time provided in said clause (1) and/or clause (2), as the case may be. Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of Tenant being evicted or dispossessed for any cause, or in the event Landlord terminates this lease as provided in this Article. Termination of Lease due to unavailability of funding shall not be deemed default.

(B) OBLIGATIONS THEREAFTER

In case of any such termination, Tenant will indemnify Landlord each month against all loss of Fixed Rent and additional rent and against all obligations which Landlord may incur by reason of any such termination between the time of termination and the expiration of the term of this lease; or at the election of Landlord, exercised at the time of termination or at any time thereafter, Tenant will indemnify Landlord each month until the exercise of the election against all loss of Fixed Rent and additional rent and against all obligations which Landlord may incur by reason of such termination during the period between the time of the termination and the exercise of the election, and upon the exercise of the election Tenant will pay to Landlord as damages such amount as at the time of the exercise of the election represents the amount by which the rental value of the demised premises for the period from the exercise of the election until the expiration of the term of this lease shall be less than the amount of rent and other payments provided herein to be paid by Tenant to Landlord during said period. It is understood and agreed that at the time of the termination or at any time thereafter Landlord may rent the demised premises, and for a term which may expire before or after the expiration of the term of this lease, without releasing Tenant from any liability whatsoever, that Tenant shall be liable for any expenses incurred by Landlord in connection with obtaining possession of the demised premises, with removing from the demised premises property of Tenant and persons claiming under it (including warehouse charges), with putting the demised premises into good condition for reletting, and with any reletting, including, but without limitation, reasonable attorneys' fees and brokers fees, and that any monies collected from any reletting shall be applied first to the foregoing expenses and then to the payment of Fixed Rent, additional rent and all other payments due from Tenant to Landlord.

ARTICLE VIII CASUALTY AND TAKING

8. (A) CASUALTY AND TAKING

In case during the term of this lease all or any substantial part of the demised premises, the Building, or Lot or any one or more of them, are damaged by fire or any other casualty or by action of public or other authority or are taken by eminent domain, this lease shall terminate at Landlord's election, which may be made notwithstanding Landlord's entire interest may have been divested, by notice given to Tenant within thirty (30) days after the occurrence of the event giving rise to the election to terminate. Said notice shall, in the case of damage as aforesaid, specify the effective date of termination which shall be not less than thirty (30) nor more than sixty (60) days after the date of notice of such termination. In the case of any such taking by eminent domain, the effective date of the termination shall be the day on which the taking authority shall take possession of the taken property. Fixed Rent and additional rent shall be apportioned and adjusted as of the elective date of any such termination. If in any such case the demised premises are rendered unfit for use and occupation and this lease is not so terminated, Landlord shall use due diligence to put the demised premises, or, in the case of a taking, what may remain thereof (excluding any items which Tenant may be required or permitted to remove from the demised premises at the expiration of the term of this lease) into proper condition for use and occupation, but Landlord shall not be required to spend more than the net proceeds of insurance or award of damages it receives therefor, and a just proportion of the Fixed Rent and additional rent according to the nature and extent of the injury to the demised premises shall be abated until the demised premises or such remainder shall have been put by Landlord in such condition; and in case of a taking which permanently reduces the area of the demised premises, a just proportion of the Fixed Rent shall be abated for the remainder of the Term.

(B) RESERVATION OF AWARD

Landlord reserves to itself any and all rights to receive awards made for damage to the demised premises, Building or Lot and the leasehold hereby created, or any one or more of them, accruing by reason of any exercise of the right of eminent domain or by reason of anything done in pursuance of public or other authority. Tenant hereby releases and assigns to Landlord all of Tenant's rights to such awards, and covenants to deliver such further assignments and assurances thereof as Landlord may from time to time request, hereby irrevocably designating and appointing Landlord as its attorney-in-fact to execute and deliver in Tenant's name and behalf all such further assignments thereof. It is agreed and understood, however, that Landlord does not reserve to itself, and Tenant does not assign to Landlord, any damages payable for (i) movable equipment installed by Tenant or anybody claiming under Tenant at its own expense or (ii) relocation expenses, but in each case only if and to the extent that such damages are recoverable by Tenant from such authority in a separate action and without reducing Landlord's award of damages.

ARTICLE IX MORTGAGEE

9. (A) SUBORDINATION TO MORTGAGES

It is agreed that the rights and interest of Tenant under this lease shall be: (i) subject and subordinate to the lien of any present or future first mortgage and to any and all advances to be made thereunder, and to the interest thereon, upon the demised premises or any property of which the demised premises are a part, if the holder of such mortgage shall elect, by notice to Tenant, to subject and subordinate the rights and interest of Tenant under this lease to the lien of its mortgage; or (ii) prior to the lien of any present or future first mortgage, if the holder of such mortgage shall elect, by notice to Tenant, to give the rights and interest of Tenant under (this lease priority to the lien of its mortgage. It is understood and agreed that the holder of such mortgage may also elect, by notice to Tenant, to make some provisions hereof subject and subordinate to the lien of its mortgage while granting other provisions hereof priority to the lien of its mortgage. In the event of any of such elections, and upon notification by the holder of such mortgage to that effect, the rights and interest of Tenant under this lease shall be deemed to be subordinate to, or to have priority over, as the case may be, the lien of said mortgage, irrespective of the time of execution or time of recording of any such mortgage. Tenant agrees that it will, upon request of Landlord, execute, acknowledge and deliver any and all instruments deemed by Landlord necessary or desirable to evidence or to give

notice of such subordination or priority. The word "mortgage" as used herein includes mortgages, deeds of trust or other similar instruments and modifications, consolidations, extensions, renewals, replacements and substitutes thereof. Whether the lien of any mortgage upon the demised premises or any property of which the demised premises are a part shall be superior or subordinate to this lease and the lien hereof, Tenant agrees that it will, upon request, attorn to the holder of such mortgage or anyone claiming under such holder and their respective successors and assigns in the event of foreclosure of or similar action taken under such mortgage. Tenant further agrees that it shall not subordinate its interest in this lease to the lien of any junior mortgage, security agreement or lease affecting the demised premises, unless the holder of the first mortgage upon the demised premises or property which includes the demised premises shall consent thereto.

(B) LIMITATION ON MORTGAGEE'S LIABILITY

Upon entry and taking possession of the mortgaged premises for any purpose, the holder of a mortgage shall have all rights of Landlord, and during the period of such possession Landlord, not such mortgage holder, shall have the duty to perform all of Landlord's obligations hereunder. No such holder shall be liable, either as a mortgagee or as holder of a collateral assignment of this lease, to perform, or be liable in damages for failure to perform, any of the obligations of Landlord unless and until such holder shall succeed to Landlord's interest herein through foreclosure of its mortgage or the taking of a deed in lieu of foreclosure, and thereafter such mortgage holder shall not be liable for the performance of any of Landlord's obligations hereunder, except for the performance of those obligations which arise during the period of time that such mortgage holder holds Landlord's right, title and interest in this lease, such liability to be limited to the same extent as Landlord's liability is limited pursuant to Section 10(E) hereof.

(C) NO RELEASE OR TERMINATION

No act or failure to act on the part of Landlord which would entitle Tenant under the terms of this lease, or by law, to be relieved of any of Tenant's obligations hereunder or to terminate this lease, shall result in a release or termination of such obligations or a termination of this lease unless (i) Tenant shall have first given written notice of Landlord's act or failure to act to Landlord's mortgagees of record, if any, specifying the act or failure to act on the part of Landlord which could or would be the basis of Tenant's rights, and (ii) such mortgagees, after receipt of such notice, have failed or refused to correct or cure the condition complained of within a reasonable time thereafter, but nothing contained in this Section (C) shall be deemed to impose any obligation on any such mortgagee to correct or cure any such condition. "Reasonable time" as used above means and includes a reasonable time to obtain possession of the mortgaged premises, if the mortgagee elects to do so, and a reasonable time to correct or cure the condition. Finally, Tenant agrees that so long as any present or future mortgage shall remain in effect Tenant shall not alter, modify, amend, change, surrender or cancel this lease nor pay the rent due hereunder in advance for more than thirty (30) days, except as may be required herein, without the prior written consent of the holder thereof, and Tenant will not seek to be made an adverse or defendant party in any action or proceeding brought to enforce or foreclose such mortgage.

**ARTICLE X
GENERAL PROVISIONS**

10. (A) CAPTIONS

The captions of the Articles are for convenience and are not to be considered in construing this lease.

(B) SHORT FORM LEASE

Upon request of either party both parties shall execute and deliver a short form of this lease in form appropriate for recording, and if this lease is terminated before the term of this lease expires, an instrument in such form acknowledging the date of termination. No such short form lease shall contain any indication of the amount of the rentals payable hereunder by Tenant.

(C) NOTICES

All notices and other communications authorized or required hereunder shall be in writing and shall be given by mailing the same by certified or registered mail, return receipt requested, postage prepaid, by mailing the same by Express Mail or by having the same delivered by a commercial delivery service such as Federal Express, UPS, Purolator Courier and the like. If given to Tenant the same shall be directed to Tenant at Tenant's Address or to such other person or at such other address as Tenant may hereafter designate by notice to Landlord; and if given to Landlord the same shall be directed to Landlord at Landlord's Address, or to such other person or at such other address as Landlord may hereafter designate by notice to Tenant. In the event the notice directed as above provided shall not be received upon attempted delivery thereof to the proper address and shall be returned by the Postal Service or delivery service to the sender because of a refusal of receipt, the absence of a person to receive it, or otherwise, the time of the giving of such notice shall be the first business day on which delivery was so attempted.

After receiving notice from Landlord or from any person, firm or other entity that such person, firm or other entity holds a mortgage which includes the demised premises as part of the mortgaged premises, no notice from Tenant to Landlord shall be effective unless and until a copy of the same is given by certified or registered mail to such holder, and the curing of any of Landlord's defaults by such holder shall be treated as performance by Landlord, it being understood and agreed that such holder shall be afforded a reasonable period of time after the receipt of such notice in which to effect such cure.

(D) SUCCESSORS AND ASSIGNS

The obligations of this lease shall run with the land, and this lease shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns, except that the Landlord named herein and each successive owner of Landlord's interest in this lease shall be liable only for the obligations of Landlord accruing during the period of its ownership. Whenever Landlord's interest in this lease is owned by a trustee or trustees, the obligations of Landlord shall be binding upon Landlord's trust estate, but not upon any trustee, beneficiary or shareholder of the trust individually. Without limiting the generality of the foregoing, and whether or not Landlord's interest in this lease is owned by a trustee or trustees, Tenant specifically agrees to look solely to Landlord's interest in the Building and Lot for recovery of any judgment from Landlord, it being specifically agreed that neither Landlord, any trustee, beneficiary or shareholder of any trust estate for which Landlord acts nor any person or entity claiming by, through or under Landlord shall ever otherwise be personally liable for any such judgment.

(E) NO SURRENDER

The delivery of keys to any employee of Landlord or to Landlord's agent or any employee thereof shall not operate as a termination of this lease or a surrender of the demised premises.

(F) WAIVERS AND REMEDIES

The failure of Landlord or of Tenant to seek redress for violation of, or to insist upon the strict performance of any covenant or condition of this lease, or, with respect to such failure of Landlord, any of the rules and regulations referred to in Section 6(5) hereafter adopted by Landlord, shall not be deemed a waiver of such violation nor prevent a subsequent act, which would have originally constituted a violation, from having all the force and effect of an original violation, nor shall the failure of Landlord to enforce any of said rules and regulations against any other tenant in the Building be deemed a waiver of any such rules or regulations as far as Tenant is concerned. The receipt by Landlord of Fixed Rent or additional rent with knowledge of the breach of any covenant of this lease shall not be deemed a waiver of such breach by Landlord unless such waiver be in writing signed by Landlord. No consent or waiver express or implied, by Landlord or Tenant to or of any breach of any agreement or duty shall be construed as a waiver or consent to or of any other breach of the same or any other agreement or duty. No acceptance by Landlord of a lesser sum than the Fixed Rent and additional rent then due shall be deemed to be other than on account of the earliest installment of such rent due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed as accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such installment or

pursue any other remedy available to it. The specific remedies to which Landlord may resort under the terms of this lease are cumulative and are not intended to be exclusive of any other remedies or means of redress to which it may be lawfully entitled in case of any breach or threatened breach by Tenant of any provisions of this lease. In addition to the other remedies provided in this lease, Landlord shall be entitled to the restraint by injunction of the violation or attempted or threatened violation of any of the covenants, conditions or provisions of this lease or to a decree compelling specific performance of any such covenants, conditions or provisions. If any term of this lease, or the application thereof to any person or circumstances shall be held, to any extent, to be invalid or unenforceable, the remainder of this lease, or the application of such term to persons or circumstances other than those as to which it has been held invalid or unenforceable, shall not be affected thereby, and each term of this lease shall be valid and enforceable to the fullest extent permitted by law. If any interest to be paid by Tenant hereunder shall exceed the highest lawful rate which Landlord may recover from Tenant, such interest shall be reduced to such highest lawful rate of interest.

(G) SELF-HELP

If Tenant shall at any time default in the performance of any obligation under this lease, Landlord shall have the right, but shall not be obligated, to enter upon the demised premises and to perform such obligation, notwithstanding the fact that no specific provision for such performance by Landlord is made in this lease with respect to such default. In performing such obligation, Landlord may make any payment of money or perform any other act. All sums so paid by Landlord (together with interest, from the time paid by Landlord until the time Tenant repays the same to Landlord, at the rate of twelve percent (12%) per annum, compounded monthly), shall be deemed to be additional rent and shall be payable to Landlord immediately on demand. Landlord may exercise the foregoing right without waiving any other of its rights or releasing Tenant from any of its obligations under this lease.

(H) ESTOPPEL CERTIFICATE

Tenant agrees from time to time, upon not less than ten (10) days' prior written request by Landlord, to execute, acknowledge and deliver to Landlord a statement in writing certifying that this lease is unmodified and in full force and effect; that Tenant has no defenses, offsets or counterclaims against its obligations to pay the Fixed Rent and additional rent and to perform its other covenants under this lease; that there are no uncured defaults of Landlord or Tenant under this lease (or, if there have been any modifications, that this lease is in full force and effect as modified and stating the modifications, and, if there are any defenses, offsets, counterclaims, or defaults, setting them forth in reasonable detail); and the dates to which the Fixed Rent, additional rent and other charges have been paid. Any such statement delivered pursuant to this Section (H) may be relied upon by any prospective purchaser or mortgagee of premises which include the demised premises or any prospective assignee of any such mortgagee.

(I) WAIVER OF SUBROGATION

(1) Tenant hereby releases Landlord to the extent of Tenant's insurance coverage, from any and all liability for any loss or damage caused by fire or any of the extended coverage casualties or any other casualty insured against, even if such fire or other casualty shall be brought about by the fault or negligence of Landlord or its agents, provided, however this release shall be in force and effect only with respect to loss or damage occurring during such time as Tenant's policies covering such loss or damage shall contain a clause to the effect that this release shall not affect said policies or the right of Tenant to recover thereunder. Tenant agrees that its fire and other casualty insurance policies will include such a clause so long as the same is includable without extra cost, or if extra cost is chargeable therefor, so long as Landlord pays such extra cost. If extra cost is chargeable therefor, Tenant will advise Landlord thereof and of the amount thereof. Landlord at its election, may pay the same, but shall not be obligated to do so.

(2) Landlord hereby releases Tenant, to the extent of the Landlord's insurance coverage, from any and all liability for any loss or damage caused by fire or any of the extended coverage casualties or any other casualty insured against, even if such fire or other casualty shall be brought about by the fault or negligence of Tenant or its agents, provided, however, this release shall be in force and effect only with respect to loss or damage occurring during such time as Landlord's policies covering such loss or damage shall contain a clause to the effect that this release shall not affect said policies or the right of Landlord to recover thereunder. Landlord agrees that its fire and

other casualty insurance policies will include such a clause so long as the same is includable without extra cost, or if extra cost is chargeable therefor, so long as Tenant pays such extra cost. If extra cost is chargeable therefor, Landlord will advise Tenant thereof and of the amount thereof. Tenant at its election may pay the same, but shall not be obligated to do so.

(J) BROKERS

Tenant hereby represents and warrants to Landlord that it has dealt with no broker in connection with this lease and there are no brokerage commissions or other finders' fees payable in connection herewith. Tenant hereby agrees to hold Landlord harmless from, and indemnified against, all loss or damage (including without limitation, the cost of defending the same) arising from any claim by any broker claiming to have dealt with Tenant.

(K) LANDLORD'S DEFAULTS

Landlord shall not be deemed to have committed a breach of any obligation to make repairs or alterations or perform any other act unless: (1) it shall have made such repairs or alterations or performed such other act negligently; or (2) it shall have received notice from Tenant designating the particular repairs or alterations needed or the other act of which there has been failure of performance and shall have failed to make such repairs or alterations or performed such other act within a reasonable time after the receipt of such notice; and in the latter event Landlord's liability shall be limited to the cost of making such repairs or alterations or performing such other act. Landlord shall not be liable in any event for incidental or consequential damages to Tenant by reason of Landlord's default. Tenant shall have no right to terminate this Lease for any default by Landlord hereunder and no right, for any such default, to offset or counterclaim against any rent due hereunder.

(L) EFFECTIVENESS OF LEASE; TERMINATION OF PRIOR LEASE

The submission of this lease for examination does not constitute a reservation of or option for, the demised premises, and this lease becomes effective as a lease only upon execution and unconditional delivery thereof by both Landlord and Tenant. Upon such delivery, the Lease Agreement between Landlord and Tenant dated June 17, 1999 shall terminate and be of no further force and effect.

(M) HAZARDOUS MATERIALS

Tenant shall not (either with or without negligence) cause or permit the escape, disposal or release of any biologically or chemically active or other hazardous substances, or materials. Tenant shall not allow the storage or use of such substances or materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such substances or materials, nor allow to be brought into the Lot any such materials or substances except to use in the ordinary course of Tenant's business, and then only after written notice is given to Landlord of the identity of such substances or materials. Without limitation, hazardous substances and materials shall include those described in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et seq., Massachusetts General Laws Chapter 21E and any applicable state or local laws and the regulations adopted under these acts. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials, then the reasonable costs thereof shall be reimbursed by Tenant to Landlord upon demand as additional rent if such requirement applies to the demised premises. In addition, Tenant shall execute affidavits, representations and the like from time to time at Landlord's request concerning Tenant's best knowledge and belief regarding the presence of hazardous substances or materials in or on the demised premises. In all events, Tenant shall indemnify Landlord in the manner elsewhere provided in this lease from any release of hazardous materials on the demised premises occurring while Tenant is in possession, or elsewhere if caused by Tenant or persons acting under Tenant. The within covenants shall survive the expiration or earlier termination of the term of this lease.

(N) APPLICABLE LAW AND CONSTRUCTION

This Lease shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts and, if any provisions of this Lease shall to any extent be valid, the remainder of this Lease shall not

be affected thereby. There are no oral or written agreements between Landlord and Tenant affecting this Lease. This Lease may be amended, and the provisions hereof may be waived or modified, only by instruments in writing executed by Landlord and Tenant. The titles of the several Articles and Sections contained herein are for convenience only and shall not be considered in construing this Lease. Unless repugnant to the context, the words "Landlord" and "Tenant" appearing in this Lease shall be construed to mean those named above and their respective heirs, executors, administrators, successors and assigns, and those claiming through or under them respectively. If there be more than one tenant, the obligations imposed by this Lease upon Tenant shall be joint and several.

(O) AUTHORITY

Each person executing this Lease on behalf of Tenant does hereby covenant and warrant that (a) Tenant is qualified to do business in the Commonwealth of Massachusetts, (b) Tenant has full right and authority to enter into this Lease, and (c) each person signing on behalf of the Tenant is authorized to do so.

**ARTICLE XI
SECURITY DEPOSIT**

11. NOT REQUIRED

**ARTICLE XII
MODIFICATION**

12. In the event that any holder or prospective holder of any mortgage which includes the demised premises as part of the mortgaged premises, shall request any modification of any of the provisions of this lease, other than a provision directly related to the rents payable hereunder, the duration of the term hereof, or the size, use or location of the demised premises, Tenant agrees that Tenant will enter into an amendment of this lease containing each such modification so requested.

EXECUTED as a sealed instrument in two or more counterparts as of the day and year first above written.