

**PLANNING AND ZONING COMMISSION  
MEETING MINUTES  
Mayfield Village  
June 4, 2012**

The Planning and Zoning Commission met in regular session on Mon June 4, 2012 at 7:30 p.m. at the Mayfield Village Civic Center, Civic Hall. Chairman Farmer presided.

**ROLL CALL**

**Present:** Mr. Jim Farmer Chairman  
Mr. Garry Regan Chairman Pro-Tem  
Mr. Bill Marquardt  
Dr. Sue McGrath  
Mr. Casey Kucharson  
Mr. Paul Fikaris  
Mr. Tom Marrie Council Alternate

**Absent:** Mayor Rinker  
Mr. David Hartt Planning Director

**Also Present:** Ms. Diane Calta Law Department  
Mr. Tom Cappello Village Engineer  
Mr. John Marrelli Building Commissioner  
Ms. Deborah Garbo Secretary

**CONSIDERATION OF MEETING MINUTES: May 7, 2012**

Mr. Kucharson, seconded by Mr. Fikaris made a motion to approve the minutes of May 7, 2012.

**ROLL CALL**

Ayes: Mr. Farmer, Mr. Marquardt, Dr. McGrath, Mr. Kucharson, Mr. Fikaris  
Abstain: Mr. Regan  
Nays: None

**Motion Carried.  
Minutes Approved as written.**

**PROPOSAL**

1. Conditional Use Permit Best Buy Pools & Spas  
Ted Dellas, President  
731 Beta Drive, Unit B  
Panzica Development

**OPEN PORTION**

Chairman Farmer called the meeting to order. This is a regular meeting of the Planning and Zoning Commission. We have one item, the Conditional Use Permit for Best Buy Pools and Spas. We had an interesting workshop meeting on this, a lot of discussion. Diane was going to

try and address the issues that came up in her motion. We had comments regarding restricting signage and advertising. There was a sprinkler system issue and other areas of concern.

Ms. Calta said I talked to John briefly today. I'd like to read through the conditions we came up with, beginning with what would be the motion:

Motion to approve the Conditional Use Permit for the premises known as 731 Beta Drive, Unit 'B' for the use of the property by Best Buy Pools and Spas for the purposes of distributing through contractors, retailers, other distributors, ecommerce and other venues pools, hot tubs, swim spas and related accessories and based upon the following conditions:

- 1) The Conditional Use Permit shall not be issued until all fire code violations have been corrected to the satisfaction of the Village Fire Marshall (Fire Inspection enclosed). The inspection was done May 15<sup>th</sup> with 30 days to correct. Deadline is June 14<sup>th</sup>.
- 2) The Conditional Use Permit shall not be issued until the occupancy permit has been approved and issued. At this point in time, the occupancy permit hasn't been issued because of the Fire code issues.
- 3) The Conditional Use Permit shall remain in effect for a period of 2 years per Mayfield Village Codified Ordinance.
- 4) The premises may not be used as a retail location, shall not have established normal retail hours, shall not be advertised as a retail location, nor shall any signs be constructed noting the location as a retail location for the business operation of Best Buy Pools and Spas.
- 5) The Conditional Use Permit shall prohibit marked vehicles, cars, trucks or vans to be parked in the front of the building to advertise the business location or any other location.

## **DECISION**

Mr. Regan, seconded by Dr. McGrath made a motion to approve the Conditional Use Permit request for Best Buy Pools & Spas at 731 Beta with conditions as detailed by Ms. Calta.

Chairman Farmer opened up for discussion, any questions or comments.

Mr. Marquardt asked if the 30 day limit automatically revokes if the conditions aren't met.

Ms. Calta replied the 30 days is the time period for the Fire code violations. They would have until the 14<sup>th</sup> of June to correct these. If they're not corrected, they're not going to get their occupancy permit. If they don't get their occupancy permit, they're not going to get their Conditional Use Permit. That's the domino effect of it.

Mr. Regan asked about Condition #5. I agree with the intent, but we have First Energy trucks and trucks at the building I work in at Mt. Vernon.

Mr. Marrelli states our sign code details what a vehicle sign is. It says you can't park a vehicle that's graphically marked up to advertise a business on that premise after hours.

Mr. Regan was unaware of the 'after hours'.

Mr. Marrelli asked about enforcement. We're talking about a deadline of June 14<sup>th</sup> or they don't get a Conditional Use Permit, then he can't get an occupancy permit. My next question is, where do we go from there? Without an occupancy permit, they should basically close the doors.

Mr. Regan said the Fire violations are the trigger. The clock is already ticking.

Ms. Calta advised we'll cross that bridge if and when we get there.

Chairman Farmer asked Ted Dellas if he has any comment.

Ted Dellas, President Best Buy Pools & Spas said I really don't. I'm watching the process. I appreciate it moving as quickly as it is. From what Diane has said, I see the catch is that without the occupancy certificate, I can't have the Conditional Use Permit and without the Conditional Use Permit I really can't operate the business the way I want to. The real problem for me is the seasonality of it all, my season for all intensive purposes ends the 4<sup>th</sup> of July and trickles past that. By this not being available to me at this particular time, and it's not your problem, it's mine, is that I've lost the season which I do 85% of my business in. Other than that, I'll be interested in the vote.

Chairman Farmer asked Ted Esborn if he has any comment.

Ted Esborn, Economic Development Coordinator said we have the property owner here, Tony Panzica.

Tony Panzica, Panzica Realty Company said thank you. I just wanted to come to this meeting number one, I hope that you'll support Ted in allowing him the use to use the building in accordance what you've written up. I do want to correct the record. I read the meeting minutes from the last time and I want to assure you that nobody on the Panzica side, myself or anybody else on this team here never told him to do something that was illegal, never. Meeting minutes show something totally different. That never happened. He came to us from the tenant next door at the Caputo building, operating whatever way he was operating, we didn't know. He said he just wanted to do what he was doing there. We assumed whatever he was doing was right. We sublet to him based on meeting all the applicable codes doing this in accordance with the Village. I want to correct the record that none of us ever told him to do anything and try and screen under the radar. It never happened.

P & Z Minutes

June 4, 2012

Pg #4

Mr. Marquardt asked who is responsible for getting the conditional use permit or the occupancy permit.

Ms. Calta replied it falls on both the owner and the tenant.

Mr. Marquardt said so the responsibility is spread around but nobody's accepting it.

Alex Russo, Kowit & Passov Real Estate Group said I spoke to John Marrelli this week, he asked me if I'd bring in a copy of the actual lease document which verifies the use, signage and parking issue, etc. I'd like to enter this into the record (Lease Agreement enclosed).

Mr. Marrelli said the lease had been brought up at the workshop as to responsibilities of what tenants are allowed or not allowed to do. Since we have a copy, that's something we can put in the record.

Alex Russo notes pg #3; USE, pg #10; PARKING and pg #14; SIGNS. There's also a section regarding the sprinkler system.

Mr. Marquardt asked Alex Russo, are you responsible for the conditional use permit or occupancy permit?

Alex Russo replied I'm the Leasing Agent of the building.

Mr. Marquardt asked, so who is responsible for going after that?

Tony Panzica said we're responsible for that. The Fire Marshall came through, made a list. We hired a company to come in. They're scheduled to come in and take care of the items. Most of them are very minor and can get done very quickly. We're going to expedite that.

Mr. Marquardt said but this is after the fact.

Tony Panzica said this is after the Fire Inspection.

Mr. Marquardt said this is after the occupancy has already been established that the permit is being applied for.

Tony Panzica said right. We didn't know that he was not compliant.

Mr. Marquardt asked, but it was your responsibility to get the occupancy permit, is that correct?

Tony Panzica replied correct.

Julia Dudash, Property Manager Panzica Realty introduced herself. Once we have a lease signed then I can apply for the occupancy permit. We had a really short time frame.

Mr. Marquardt asked, when was the lease signed?

Julia Dudash replied March 5<sup>th</sup>.

Mr. Marquardt asked, when did you apply for the occupancy permit?

Julia Dudash replied beginning of May.

Mr. Marquardt said 2 ½ months.

Julia Dudash said lease began April 1<sup>st</sup>.

Mr. Marquardt said the lease was signed March 5<sup>th</sup> and the occupancy wasn't applied for until the end of May.

Julia Dudash said in April right after they had moved in, when they were starting to put things in is when the fire alarm was cut and all of this started. We were in discussions and I was trying to get all that together. I take full responsibility for that. It was a little bit of a crunch time. This is really one of the first leases we've done with Alex, administratively we were trying to figure out who was doing what.

Ted Dellas stated this team of nice people here are telling what their experience and memories are of what happened. Mine is slightly different. The initial 1500' as you walk in Unit B at the expense of Panzica was re-established, painted, renovated, new carpet, new paint, some structural changes as far as the walls are concerned, for me to retail. They were aware of the fact that I was retailing there.

Tony Panzica said that is false.

Ted Dellas said that is absolutely true, my e-mails could show that. And they approved my neon signage in the window. I have extensive e-mails on that going back and forth between myself and Julia. I'm not saying that they're lying, I'm just saying that my experience and my records show something completely different. And they didn't apply for the occupancy certificate until the fire alarm was cut by the tenant I share space with when he pounded a nail and that brought in the Fire Dept. At that point, I was advised by the Building Commissioner that I was not going to be allowed to retail. I had to cancel an \$11,000 advertising campaign that they were well aware about that I was going to do. This is not where Ted just walked through here blindly. I have extensive e-mails and discussions with some of the people sitting in this room about my use. And they said I was doing something next door. I had shared space on a sublet basis with Ed Weiskopf who is running a wholesale business. I was wholesaling out of there. I put storage in there. I had no retail to speak of. I had a couple people pick up their pools. My business was expanding because I purchased half a retail store on the west side. I was expanding the business and I needed some showroom and some space. That is how this came to be, this isn't where I'm trying to sneak through under the radar in Mayfield Village. That is just not the case. They're putting their best face forward and that's wonderful, that's what they should do. But the realities are that I was going in there to retail. Everybody knew it, they fixed that building so I could retail.

Alex Russo said this lease has been signed and notarized by you. It has very specific clauses. One in specific is the use. I really take offense to this because after what happens when you get done with a real estate transaction, it's what's signed, what's notarized, it's what's delivered. In the State of Ohio, that's the law. This could not be more specific of what the use is. We in no way shape or form tried to go around anything involving any laws. I'll read the specific clause:

7. USE (a)  
Lessee shall use and occupy the Demised Premises as a business office and a warehouse/assembly/testing space, in accordance with all applicable laws, ordinances, orders and regulations, and for no other purpose.

I take offense to that. I will stand by the document that's been signed and notarized by this gentleman and his partner and by the Panzica's. These documents mean something, they mean something because this is what everyone has to live by when they sign a document.

Ms. Calta notes, my understanding of the applicant is Best Buy Pools and Spas, although the lease is in the name of Paragon Marketing, LLC.

Ted Dellas replied that's my registered dba with the State of Ohio.

Ms. Calta wanted to clarify, in case anyone's looking at the lease and sees Paragon Marketing, LLC, Best Buy Pools and Spas is a dba for that LLC.

Mr. Regan said the conversations that have taken place sound like whether the Conditional Use Permit is or isn't issued, a portion of how you intended to operate in Mayfield Village is now out the door?

Ted Dellas replied 70% of the business I do is wholesale, 30% is retail. I was in Mansfield Ohio last week at a retail event. We were retailing. The sales that go into that area are wholesale through my Mayfield Village facility. They ship out of Mayfield Village, they don't retail out of Mayfield Village. To answer your question, yes, that portion would be gone.

Chairman Farmer said we have a motion and a second, if there are no further questions or comments, I'd like a roll call.

#### **ROLL CALL**

Ayes: Mr. Farmer, Mr. Regan, Dr. McGrath, Mr. Kucharson, Mr. Fikaris

Nays: Mr. Marquardt

**Motion Carried.**

**Recommendation to Council.**

#### **ADJOURNMENT**

Mr. Regan, seconded by Dr. McGrath made a motion to adjourn the meeting.

P & Z Minutes

June 4, 2012

Pg #7

**ROLL CALL**

Ayes: Mr. Farmer, Mr. Regan, Mr. Marquardt, Dr. McGrath, Mr. Kucharson, Mr. Fikaris

Nays: None

**Motion Carried.**

**Meeting adjourned at 7:55 p.m.**

---

Chairman

---

Secretary

Enclosures:

1. Fire Inspection Dated May 15, 2012
2. Beta Business Mall Lease Agreement Dated 5<sup>th</sup> day of March

# Village of Mayfield Fire Department

## FIRE PREVENTION BUREAU

### First Inspection

770 Som Center Road, Mayfield Village, Ohio 44143  
440-461-1208

Best Buy Pools and Spas located at 731 Beta Drive was inspected by the Mayfield Village Fire Department, Fire Prevention Bureau on Tuesday, May 15, 2012 and revealed the following conditions to exist.

Inspection Number: **12-i625**

Date of Initial Inspection: **Tue, May 15, 2012**

Violation corrections must be made within:  
30 Days after the date of the Initial Inspection above.

#### Code Violation Number and Description:

**OFC 505.1 Address numbers. New and existing buildings shall have approved address numbers, building numbers or ID placed in a position that is legible and visible from the road.**

##### Description

Premises identification must be provided on both the main ingress door located on the front of the building, as well as the rear door. The suite letter designation AND the name of the occupant is essential, since two tenants will be sharing this space. The existing electrical distribution and meter location placards located on the rear of the building must be updated to reflect the current configuration, tenants and the correct orientation of the building and be labeled legibly and appropriately.

**OFC 506.1 Where access to or within a structure or an area is restricted because of secured openings or where immediate access is necessary for life-saving or firefighting purposes, the fire code official is authorized**

##### Description

**OFC 506.1 (cont.) to require a key box to be installed in an approved location. The key box shall be of an approved type and shall contain keys to gain necessary access as required by the fire code official.**

##### Description

A Knox brand key safe shall be installed at the main front entrance. Tenants will provide all master keys to the fire code official to be secured within this box. An order form was already provided to the building owner's representative.

##### Description

**OFC 1006.3 In the event of a power failure, an emergency system shall automatically illuminate aisles, corridors, exits, etc in areas or spaces required to have 2 or more exits.**

##### Description

Several emergency lights were found not functioning when tested. Repair/replace as needed.

**OFC 1030.4 Exit signs shall be installed and maintained in accordance with OFC 1011. Exit signs must be illuminated at all times including during failure of primary power for at least 90 minutes duration.**

##### Description

Exit signs in several areas were not functioning when tested. Repair/replace as needed.

**OFC 605.3 Working Space and Clearance. A working space of not less than 30" wide, 36" deep, and 78" high shall be provided in front of electrical service equipment.**

##### Description

Storage of combustibles and a fork lift propane tank were found in front of and obstructing access to the main electrical disconnect and other electrical panels and equipment in the warehouse. Remove storage from this area and maintain access.

# Village of Mayfield Fire Department

## FIRE PREVENTION BUREAU

### First Inspection

770 Som Center Road, Mayfield Village, Ohio 44143  
440-461-1208

**OFC 906.2 Fire extinguishers shall be selected, installed and maintained in accordance with this code and NFPA 10.**

Description

All fire extinguishers on the premises were out of date and in need of an annual inspection. Have a licensed contractor perform the required annual maintenance and service, and install an appropriate inspection tag. Some fire extinguishers were found on the floor. All fire extinguishers in use shall be mounted. All others in storage, must be stored in a safe area as they are pressurized vessels and must be secured. A FIRE EXTINGUISHER OF AT LEAST A 3 A 40 BC RATING SHALL BE INSTALLED AT THE MAIN ENTRANCE IN THE SHOWROOM. Fire extinguishers must be serviced and installed as soon as possible.

**OFC 605.7 Electrical appliances and fixtures shall be tested and listed by an approved agency and installed in accordance with all instructions included as part of such listing.**

Description

A coffee pot located at the sink in the rest room lobby bore a label indicating it is listed for household use. Replace with a coffee pot indicating it is listed for use in a commercial application,

**OFC 3803.2.2 LP Gas containers on industrial vehicles and floor maintenance machines shall comply with sections 11.12 and 11.13 of NFPA 58**

Description

NFPA 58, 11.13.4.3 (2) states: "The use of industrial trucks in buildings frequented by the public, including those times when such buildings are occupied by the public shall require the approval of the authority having jurisdiction." As this building is occupied by other tenants, including a physical therapy and rehab facility, and due to the inherent hazards of the operation of internal combustion engines indoors in proximity to occupants, the use of propane fueled tow motors, fork lifts and similar equipment is discouraged and will not be permitted. Electric/battery powered equipment can be utilized safely.

**OFC 605.3.1 cont. The disconnecting means for each service, feeder or branch circuit originating on a switchboard or panelboard must be legibly and durably marked as to its purpose.**

Description

All service disconnects including the main shall be labeled in plain print as to their purpose.

**OFC 315.2.2 Storage/Mean of Egress. Combustible materials shall not be stored in exits or exit enclosures.**

Description

**OFC 1030.2 Required exit accesses, exits or exit discharges shall be continuously maintained free from obstructions or impediments to full instant use in the case of fire or other emergency.**

Description

Storage of combustibles on shelves within the warehouse directly adjacent to the sliding glass door between the showroom and the warehouse appeared unstable, as the large, heavy boxes were hanging over the edge of the shelving by nearly 2 feet and were encroaching on the exit access space of the marked warehouse exit. Make sure storage does not interfere with exit paths or other components of any means of egress.

**OFC 2302 High Piled Combustible Storage**

Description

2302 of the OFC defines High Piled Combustible Storage as : "Storage of combustible materials in closely packed piles or combustible materials on pallets, in racks or on shelves where the top of the storage is greater than 12 feet in height." OFC 2308.2 requires an approved automatic sprinkler system, installed in accordance with NFPA 13. **Reduce all current storage on racks, or shelves or in piles within the warehouse to not more than 12 feet in height immediately until an evaluation of the existing fire sprinkler system by a licensed fire sprinkler designer or fire protection engineer has been performed in order to determine the system's design and it's capability to properly control a fire in high piled combustible storage.**

# Village of Mayfield Fire Department

FIRE PREVENTION BUREAU

First Inspection

770 Som Center Road, Mayfield Village, Ohio 44143  
440-461-1208

**Unless otherwise specified elsewhere in this report, Violations must be corrected within 30 days of the date of this notice.**

Description

ALL VIOLATIONS AS LISTED SHALL BE CORRECTED NO LATER THAN 6/14/2012.

IF UPON THE NEXT INSPECTION, VIOLATIONS PERSIST INSPECTION FEES MAY BE IMPOSED PURSUANT TO SECTION 1501.14 OF THE MAYFIELD VILLAGE FIRE PREVENTION CODE.

YOU ARE HEREBY ORDERED TO MAKE THE FOLLOWING CORRECTION THAT MAY BE EITHER A FIRE HAZARD OR A LIFE HAZARD DURING THE TIME OF A FIRE OR ANY OTHER DISASTER.

IF THE OWNER, LESSEE, OR OCCUPANT IS AGGRIEVED BY AN ORDER OF THE INSPECTOR HE MAY APPEAL IN WRITING, TO THE FIRE CHIEF OF THE CITY OF MAYFIELD VILLAGE WITHIN THREE (3) DAYS FROM THE SERVICE OF THIS ORDER.

Inspector: \_\_\_\_\_  
Lt. Michael Girbino, Fire Marshal



Received by: \_\_\_\_\_

BETA BUSINESS MALL  
LEASE AGREEMENT

LEASE AGREEMENT made this 5<sup>th</sup> day of March, 2012 between 731 BETA, LTD., an Ohio limited liability company, having an office at 739 Beta Drive, Mayfield Village, Ohio 44143 (hereinafter called "Lessor") and Paragon Marketing, LLC, an Ohio limited liability company, and Weiskopf Industries, Inc., an Ohio corporation (hereinafter collectively referred to, and jointly and severally liable as "Lessee")

WITNESSETH:

1. Lessor hereby leases to Lessee and Lessee hires from Lessor 6,000 square feet, commonly known as Unit B (hereinafter called "the Demised Premises" or "the Premises") in the building located at 731 Beta Drive, Mayfield Village, Ohio 44143 (hereinafter called the "Building") in Beta Business Mall (hereinafter called the "Project") for the term and upon the payment of the rents and the keeping, performance and observance of all the terms, covenants, provisions, conditions and limitations hereinafter set forth, and each of the parties covenants and agrees to keep, perform and observe all of the same on its part to be kept, performed and observed.

2. TERM. The term of this Lease shall be for Three years and Three months, commencing on April 1st, 2012 (the "Effective Date") and ending on the last day of June, 2015.

3. RENT AND SECURITY DEPOSIT.

(a) Lessee covenants and agrees to pay to Lessor the Base Rent and Additional Rents, as defined in Paragraph [23], (sometimes collectively hereinafter referred to as "Rent") hereinafter provided. As Base Rent for the Demised Premises:

- (i) Commencing on July 1, 2012 Lessee shall pay Lessor the sum of Twenty-Seven Thousand Dollars (\$27,000.00) per annum, payable in equal monthly installments of Two-Thousand Two Hundred Fifty Dollars (\$2,250.00) in advance, on the first day of each and every calendar month, without any deduction or set-off whatsoever. Base Rent for the month of July 2012 shall be paid by Lessee to Lessor upon execution of this Lease.
- (ii) Commencing on April 1, 2013 Lessee shall pay Lessor the sum of Thirty Thousand Dollars (\$30,000.00) per annum, payable in equal monthly installments of Two-Thousand Five Hundred Dollars (\$2,500.00) in advance, on the first day of each and every calendar month, without any deduction or set-off whatsoever.
- (iii) Commencing on April 1, 2014 Lessee shall pay Lessor the sum of Thirty Three Thousand Dollars (\$33,000.00) per annum, payable in equal monthly installments of Two-Thousand Seven Hundred Fifty Dollars (\$2,750.00) in advance, on the first day of each and every calendar month, without any deduction or set-off whatsoever.
- (iv) Rent for the period of April 1, 2012 through June 30<sup>th</sup>, 2012 shall be Zero Dollars (\$0.00).

TAD

Lessee covenants and agrees that all Rent hereunder shall be paid to Lessor in legal tender of the United States of America without any demand therefor, at the office hereinabove set forth, or at such other place as Lessor may from time to time designate by notice in writing. Any rent or other sums payable by Lessee to Lessor under this Lease that are not paid within seven (7) days after they first become due, will be subject to a late charge of five percent (5%) of the amount due. Such late charges will be due and payable as additional rent on or before the next day on which an installment of rent is due.

(b) Upon execution of the Lease Agreement, Lessee shall deliver to Lessor the sum of \$2,250.00, which shall serve as a security deposit (the "Security Deposit") to secure the full and faithful performance by Lessee hereunder. Lessor shall have the right, but not the obligation, to use all or any part of the Security Deposit to satisfy any default by Lessee hereunder, and in the event Lessor uses the Security Deposit as aforesaid, Lessee agrees to deliver to Lessor, on demand, an amount equal to the amount so expended by Lessor plus such additional amount (if any) as may be necessary to restore the Security Deposit to its full amount. Lessee's Security Deposit shall not bear interest. Upon the termination of the term of this Lease (other than by reason of default of Lessee not timely cured) the Security Deposit shall be returned to Lessee by Lessor after deduction therefrom by Lessor of Lessor's expenses, if any, in restoring the Premises to the condition required herein. In the event of the termination of this Lease by reason of default by Lessee, Lessor may retain any Security Deposit and apply such amount to Lessor's damages, which shall not, however, preclude Lessor from asserting any other claims against Lessee, or proving any additional damages or costs suffered by Lessor (including attorney's fees) by reason of such default, or pursuing, any other remedies Lessor may have against Lessee.

#### 4. PROJECT SERVICES.

(a) Provided Lessee is not in default under any of the covenants and, agreements of this Lease, Lessor shall furnish Lessee the following services for which Lessee:

- (i) Water for sanitary, sewage and drinking purposes only in amounts customary for buildings of this type; and
- (ii) Electric current and gas. Any installation of special equipment (such as intermittent operating equipment) must have the prior approval of Lessor. Any new or additional electrical facilities required to service equipment installed by Lessee and all changes in existing electrical facilities in or servicing the Premises required by Lessee (if permitted) shall be installed, furnished or made by Lessor at Lessee's expense. Lessee shall purchase from Lessor all light bulbs, fluorescent tubes, ballasts or starters used in the Premises. All expense of maintenance and cleaning of fluorescent lighting equipment located in the Premises shall be borne by Lessee; and all electricity used during cleaning service or alterations and repairs in said Premises shall be paid by Lessee.

(b) Lessor makes no warranty or representation of any kind as to whether the Project services stipulated in this Paragraph 4 will be free from interruptions or suspensions caused by inspections, cleaning, repairs, renewals, improvements, alterations, strikes, lockouts, accidents, inability of Lessor to procure such service or to obtain fuel or supplies, or for other cause or causes beyond Lessor's reasonable control. An interruption or suspension of, or fluctuation in, any Project service (resulting from any of said cause or causes) shall never be deemed an eviction or disturbance of Lessee's use and possession of the Premises, or any part thereof, nor render Lessor liable to Lessee for damages, nor relieve Lessee from performance of Lessee's covenants and agreements hereunder.

#### 5. MAINTENANCE OF DEMISED PREMISES.

(a) Lessor shall maintain the roof, exterior walls excepting any doors or windows therein, and any structural portions of the Demised Premises, making repairs thereto becoming necessary during the term unless occasioned by any act or negligence of Lessee, its agents, contractors, invitees or employees, in which event such damage shall be repaired by Lessor at Lessee's sole cost and expense, subject to the waiver contained in paragraph 11 hereof.

(b) Lessee covenants and agrees to keep and maintain the Demised Premises and the fixtures and improvements therein in good order, condition and repair, and to make promptly all repairs or replacements becoming necessary during the term including, but without limitation, repairs or replacements of windows, doors, glass (which shall be replaced with glass of the same size and quality), electrical, plumbing and sewage lines and fixtures within the Demised Premises and all interior walls, floor covering and ceilings and all docks, conveyors, fire extinguishers and building appliances of every kind. In addition, Lessee shall be responsible for the maintenance and repair of the heating, air conditioning and ventilating equipment and ducts and vents attached thereto (the "HVAC System"), including any of such equipment which may be mounted on the roof of the Demised Premises. Lessee shall maintain a service contract covering the HVAC System with a contractor acceptable to Lessor, providing for semi-annual inspections. Notwithstanding the foregoing, if the HVAC System requires replacement, Lessor shall replace it at Lessor's expense. All repairs and replacements made by Lessee shall be equal in quality to the original work.

(c) Upon any default of Lessee in making any repairs or replacements required to be made by Lessee hereunder or in maintaining the Demised Premises, Lessor may, but shall not be required to make such repairs or replacements or to maintain the Demised Premises for Lessee's account, and the expense thereof shall constitute and be collectible as Additional Rent, payable by Lessee on demand, or, at Lessor's election, together with the next installment of Base Rent due hereunder.

#### 6. UTILITIES.

(a) Lessee shall pay for all utilities serving, or used in connection with Lessee's occupancy of, the Premises, including, without limitation, electricity, natural gas, sewer rental and telephone and shall sign all application forms and other documents, if any, which may be necessary in order to obtain separate meters for such utilities. Lessee shall pay for such utilities directly to the utility company supplying service based on its metered monthly consumption of such utility.

(b) At all times, Lessee's use of any such services shall never exceed the capacity of the mains, feeders, ducts and conduits bringing such service to the Demised Premises or of the outlets, risers, wiring, piping, duct work or other means of distribution of such service within the Demised Premises.

#### 7. USE.

(a) Lessee shall use and occupy the Demised Premises as a business office and a warehouse/assembly/testing space, in accordance with all applicable laws, ordinances, orders and regulations, and for no other purpose.

(b) Lessee shall not use or permit the Demised Premises to be used for any unlawful or illegal business or purpose nor sell or store upon the Demised Premises any spirituous, malt or vinous liquor or any narcotic drugs or any explosives or inflammable materials. Lessee shall use, maintain and occupy the Demised Premises in a careful, safe and proper manner and shall not permit waste or the maintenance of a nuisance therein. Lessee will keep the Demised Premises and appurtenances and the adjoining areas and sidewalks in a clean, safe and healthy condition. Lessee at its sole, expense shall

comply promptly with all laws, ordinances, orders and regulations of federal, state, county and municipal authorities and with any direction of any public officer or officers which shall impose any liability, order or duty upon Lessor or Lessee with respect to Lessee's use or occupancy of the Demised Premises. Lessee shall not permit the Demised Premises to remain vacant and shall not do or permit to be done any act or thing upon the Demised Premises which will invalidate or be in conflict with any fire insurance policies or increase the rate for fire insurance covering the Building. If, by reason of failure of Lessee to comply with the provisions hereof including, but not limited to, the use which Lessee makes of the Premises, the fire insurance rate shall at the commencement of the term or at any time thereafter be higher than it otherwise would be, then Lessee shall reimburse Lessor, as Additional Rent hereunder, for that part of all fire insurance premiums thereafter paid by Lessor which shall have been charged because of such failure or use by Lessee and shall make such reimbursement upon the first day of the month following payment of such additional cost by Lessor. If Lessee shall install any equipment or shall otherwise utilize the Demised Premises in such fashion so as to overload the utility lines and/or sewer lines servicing the Demised Premises, Lessee shall, at its own expense, make whatever changes are necessary to comply with the requirements of the utility companies, insurance underwriters and governmental authorities having jurisdiction thereof.

8. LESSEE'S TAXES. Lessee covenants and agrees to pay promptly when due all taxes assessed against Lessee's fixtures, furnishings, equipment and stock-in-trade placed in or on the Demised Premises during the term of this Lease.

9. RIGHTS RESERVED BY LESSOR. Without abatement or diminution in Rent, Lessor reserves and shall have the following rights:

(a) to approve and install, subject to Lessee's approval, which shall not be unreasonably withheld, all signs with respect to Lessee's use of the Premises (provided that such installation shall be at Lessee's sole expense);

(b) to enter the Premises at all reasonable times and after reasonable advance notice (1) for the making of such inspections, repairs, renewals, alterations, improvements or additions of, or to, the Premises or the Building as Lessor may deem necessary or desirable; (2) to exhibit the Premises to others during the last nine months of the term hereunder; and (3) for any purpose whatsoever related to the safety, protection, preservation or improvement of the Premises or of the Building or of Lessor's interest;

(c) to charge Lessee any expense including overtime cost incurred by Lessor in the event that repairs, alterations, improvements, decorating or other work in the Premises are made or done after ordinary business hours at Lessee's request; and

(d) to enter and alter, renovate or redecorate the Demised Premises immediately, if, during the last month of the term of this Lease Lessee shall have removed all or substantially all of Lessee's property therefrom, without elimination or abatement of Rent or other compensation, with such action by Lessor to have no effect on this Lease. Nothing herein contained, however, shall be deemed or construed to impose upon Lessor any obligation, responsibility or liability whatsoever for the care, supervision or repair of the Demised Premises except as in this Lease otherwise provided.

10. POSSESSION. If Lessor shall be unable to deliver possession of the Premises on the Effective Date for any cause beyond Lessor's reasonable control, then the Base Rent reserved shall not commence until the date possession of the Premises is available to Lessee and, in the event such date shall be in the middle of the month, then the Base Rent for such portion of a month shall be the product of the number of days of actual occupancy and a fraction, the numerator of which is the annual Base Rent

hereunder and the denominator of which is 360. Lessee agrees to accept such allowance and abatement of Base Rent as liquidated damages, in full satisfaction for the failure of Lessor so to deliver possession on said date of commencement, and to the exclusion of all claims and rights which Lessee might otherwise have by reason of delivery of possession not being made on said date; and no failure to deliver possession on said date shall in any event extend, or be deemed to extend, the term of this Lease. Nonstandard or additional work, if any, undertaken by Lessor for Lessee shall not be considered in determining the date when possession is available to Lessee.

11. INDEMNITY AND INSURANCE.

(a) All personal property belonging to Lessee or to any other person located in or about the Premises, or the areas adjoining the Premises, including the parking areas, shall be there at the sole risk of Lessee or such other person, and neither Lessor nor Lessor's agents or employees shall be liable for the theft, loss or misappropriation thereof, nor for any damage or injury thereto, nor for death or injury of Lessee or any of its officers, agents or employees or of any other person or damage to property caused by fire, water, rain, sprinklers, snow, frost, ice, steam, heat, cold, dampness, falling plaster, explosion, sewers or sewerage, gas, odors, noise, the bursting or leaking of pipes, plumbing, electrical wiring, and equipment and fixtures of all kinds, or by any act or neglect of other tenants or occupants of the Project, or of any other person, or caused in any other manner whatsoever, nor shall Lessor be liable for any latent defect in the Premises. Lessee shall give immediate written notice to Lessor in case of fire or accident in the Premises or of any damage, death, injury or defect therein. Lessee shall protect, defend, indemnify and save harmless Lessor from all losses, costs or damages sustained by reason of any act or other occurrence or failure to act causing death or injury to any person or damage to any property due directly or indirectly to the use or occupancy of the Premises, or the areas adjoining the Premises, including the parking areas, or any part thereof by Lessee; and Lessee shall protect, defend, indemnify and save harmless Lessor against and from any and all claims by or on behalf of any person(s), firm(s) or corporation(s), arising from the conduct or management of or from any work or thing whatsoever done by or on behalf of Lessee in or about the Premises, and shall further protect, defend, indemnify and save harmless Lessor against and from any and all claims arising from any breach or default on the part of Lessee in the performance of any covenant or agreement on the part of Lessee to be performed, pursuant to the terms of this Lease, or arising from any act or negligence of Lessee, or any of its agents, contractors, servants, employees, licensees or invitees, and against and from all costs, attorney fees, expenses and liabilities incurred with respect to any such claim, action or proceeding brought thereon; and in case any action or proceeding be brought against Lessor by reason of any such claim, Lessee upon notice from Lessor covenants to resist or defend at Lessee's expense such action or proceeding by counsel reasonably satisfactory to Lessor. Nothing herein contained shall be construed to relieve Lessor of the consequence of its own negligence or the negligence of Lessor's agents or employees.

(b) Lessee agrees that, at its own expense, it will procure and continue in force, Commercial General Liability Insurance insuring against personal injury, bodily injury and property damage occurring in, upon or about the Demised Premises, including all damage from signs, glass, awnings, fixtures or appurtenances now or hereafter erected on the Demised Premises during the term of this Lease, such insurance at all times to be in an amount of not less than a combined single limit of One Million Dollars (\$1,000,000.00). Such insurance shall name Lessor as "Additional Named Insured" and shall be written with a company or companies authorized to engage in the business of general liability insurance in the State of Ohio, and there shall be delivered to Lessor customary insurance certification evidencing such paid-up insurance. Lessee may obtain such insurance coverage under a blanket policy. Such insurance shall further provide that the same may not be cancelled, terminated or modified unless the insurer gives Lessor and Lessor's mortgagee(s), if any, at least thirty (30) days prior written notice thereof.

The above-mentioned insurance certifications and policies which are to be provided by Lessee shall be for a period of not less than one (1) year, it being understood and agreed that fifteen (15) days prior to the expiration of any-policy of insurance Lessee will deliver to Lessor a renewal or new policy to replace the policy expiring, with the further agreement that, should Lessee fail to furnish policies as is provided in this Lease, and at the times herein provided, Lessor may obtain such insurance and the premiums on such insurance shall be deemed Additional Rent to be paid by Lessee unto Lessor upon demand.

(c) Notwithstanding any provision in this Lease to the contrary, Lessor and Lessee each agree to and hereby do waive all rights of recovery and causes of action against the other for damage to property caused by any of the perils covered or coverable by "all risk" fire and extended coverage insurance or contents insurance, notwithstanding that any such damage or destruction may be due to the negligence of either party, or persons claiming under or through them.

12. HOLDING OVER. Should Lessee remain in possession of the Premises after the expiration of the term of this Lease without the consent of Lessor, then, without diminishing in any respect Lessor's other remedies with respect to Lessee's failure to vacate the Premises, Lessee shall be a tenant at sufferance and such tenancy shall otherwise be subject to all of the covenants and agreements of this Lease, at a monthly rental equal to 1.25 times the monthly installment of Base Rent than otherwise payable hereunder.

13. ASSIGNMENT AND SUBLETTING.

(a) Lessee shall not, without the prior written consent of Lessor in each instance (which consent shall not be unreasonably withheld), (1) assign, mortgage, hypothecate or convey this Lease or any interest therein; (2) allow any transfer hereof or any lien upon Lessee's interest by operation of law; (3) sublet the Premises or any part thereof; or (4) permit the use or occupancy of the Premises or any part thereof by anyone other than Lessee. The consent by Lessor to any such assignment, conveyance, or subletting by Lessee shall not operate as a waiver of the necessity for a consent to any subsequent assignment, conveyance or subletting, and the terms of such consent shall be binding upon any person holding by, under or through Lessee. Such consent shall not relieve Lessee from liability hereunder, past, present or future, for the payment of Rent or the performance or observance of any of the terms and conditions of this Lease, and Lessee shall continue to be fully liable hereunder.

(b) If Lessee is a corporation or limited liability company, then any merger, consolidation or liquidation, or any change in ownership or power to vote of a majority of Lessee's outstanding voting stock or membership interest shall constitute an assignment for the purpose of this Lease and shall require the prior written consent of Lessor.

14. TAKING OF POSSESSION. Except for material items adversely affecting Lessee's occupancy and specifically identified by writing(s) delivered to Lessor not later than ten days after Lessee takes possession, taking of possession of the Premises by Lessee shall be conclusive evidence as against Lessee that the Premises were in good order and satisfactory condition when Lessee took possession. No representation respecting the condition of the Premises or the Project has been made by Lessor to Lessee unless contained herein; and no promise of Lessor to prepare, alter or improve the Premises for Lessee's use and occupancy shall be binding upon Lessor unless contained herein. Lessor shall not be liable to Lessee for any expenses, loss or damages resulting from work done in or upon, or by reason of the use of, any adjacent or nearby building, land, or public or private way, or resulting from construction of any additional buildings within the Project.

15. ALTERATIONS. Lessee shall not make any structural alterations, additions or improvements or other changes in or to the structure or the entrances or exists thereof or any alteration

TAN

which affect the systems of the Building, without Lessor's prior written consent in each and every instance. Before any such work is commenced or any materials therefor are delivered on the Premises, Lessee shall provide Lessor with plans, specifications, names of contractors, copies of contracts and necessary permits; shall indemnify and hold harmless Lessor against and from liens, costs, damages and expenses of all kinds; and shall submit to Lessor's reasonable supervision of said work.

16. SURRENDER AT END OF TERM. At the expiration, or earlier termination in any manner, of the term hereof Lessee shall quit and surrender the Premises, together with all installations, improvements and alterations which may have been installed by Lessor or Lessee and which Lessor and Lessee may have agreed shall become the property of Lessor (it being understood and agreed that Lessee's furniture, trade fixtures, movable partitions, and standard business office machines and equipment shall remain Lessee's property and may be removed by Lessee), in as good condition and repair as when possession was delivered, reasonable use and wear, loss or damage by fire, the elements or other casualty not resulting from the willful or negligent acts of Lessee, Lessee's agents, employees or invitees, excepted. Upon such expiration or termination, Lessee agrees to remove or cause the removal of, all at Lessee's cost for such removal, all, additions, installation, alterations, fixtures and improvements made by Lessee upon the Premises, unless Lessor advises Lessee to the contrary, and Lessee shall repair at Lessee's expense any damage to the Premises caused by such removal; any of the same not so removed, or removed and not properly repaired, may be removed and repaired by Lessor, and Lessee agrees to pay the cost thereof and to indemnify Lessor and hold Lessor harmless therefrom; and if Lessee does not remove and repair the same, the same shall be deemed abandoned by Lessee and shall become the property of Lessor.

17. UNTENANTABILITY. If the Premises shall be partially damaged by fire or other casualty, this Lease shall remain in full force and effect and the damage to the Premises shall be repaired by Lessor, and the Base Rent until such repairs shall be made shall be abated on a per diem basis proportionate to the extent and for the period that the Premises are unfit for occupancy; provided, however, that there shall be no abatement of rent if the damage shall have been caused by the fault or neglect of Lessee, or Lessee's agents, contractors, servants, employees, licensees or invitees, which shall be without prejudice to any other rights or remedies of Lessor. Lessor shall incur no liability on account of any delay in the completion of such repairs which may arise by reason of adjustment of insurance, labor difficulties or any other cause beyond Lessor's control. If all or substantially all of the Premises are wholly destroyed or are made unfit for occupancy by fire or other casualty, acts of God or other cause, in Lessor's reasonable judgment, Lessor may elect, by written notice to Lessee within 90 days after the casualty date, (a) to terminate this Lease as of the date when the Premises or the Building are so destroyed or made unfit for occupancy or (b) to repair, restore or rehabilitate the Premises or the Building at Lessor's expense within six months after Lessor is able to take possession of the damaged Premises and undertake reconstruction or repairs; and if Lessor elects so to repair, restore or rehabilitate the Premises or the Building this Lease shall not terminate, but rent shall be abated on a per diem basis proportionate to the extent and for the period that the Premises are unfit for occupancy. In the event Lessor shall proceed under (b) above and shall not substantially complete the work within said six month period (excluding from said period loss of time resulting from delays beyond the reasonable control of Lessor), either Lessor or Lessee may then terminate this Lease, as of the date when the Premises or the Building were made unfit for occupancy, by written notice to the other not later than ten days after the expiration of said six month period. In the event of termination of this Lease pursuant to this Paragraph, Base Rent shall be apportioned on a per diem basis to and including the effective date of such termination, and Lessee shall promptly vacate the Premises and surrender the same to Lessor. If the damage or destruction is due to the fault or neglect of Lessee, or Lessee's agents, contractors, servants, employees, licensees or invitees, the debris shall be removed at the expense of the Lessee. Notwithstanding anything herein stated to the contrary, Lessor shall in no event be obligated to repair or rebuild if such damage or destruction shall occur during the last year of the initial term or any renewal term of this Lease.

18. REMEDIES OF LESSOR. All rights and remedies of Lessor herein set forth are in addition to any and all rights and remedies allowed by law and equity.

(a) If Lessee fails to pay the Rent reserved herein within seven (7) days after the date when due, or fails to pay any Additional Rent due hereunder within ten (10) days after rendition of statement, or defaults in the prompt and full performance of any of Lessee's covenants and agreements hereunder, or if the Leasehold interest of Lessee be levied upon under execution or be attached, or if Lessee vacates the Premises for more than 30 days, then and in any such event, Lessor may, if Lessor so elects, and with or without notice of such election and with or without demand whatsoever, forthwith terminate this Lease and Lessee's right to possession of the Premises, or Lessor may, without terminating this Lease, terminate Lessee's right to possession of the Premises.

(b) If at any time prior to the commencement of, or during, the term of this Lease, any voluntary or involuntary petition or similar pleading under any federal or state law relating to bankruptcy, or any voluntary or involuntary proceedings in any court or tribunal to declare Lessee insolvent or unable to pay its debts, or for reorganization, arrangement or composition, or for the appointment of a receiver or trustee of all or a portion of its property, shall be filed or instituted by or against Lessee (and within 30 days thereof Lessee fails to secure a stay or discharge thereof), or if Lessee makes an assignment for the benefit of creditors, or if Lessee is in default of this Lease for any reason specified in subparagraph 18(a) above, then and in any such event Lessor may, if Lessor so elects, with or without notice of such election and with or without entry or other action by Lessor, forthwith terminate this Lease and Lessee's right to possession of the Premises, and notwithstanding any other provisions hereof, Lessor shall forthwith upon such termination be entitled to recover damages in an amount equal to the then present value of the rent reserved in this Lease for the entire residue of the stated term hereof, less the fair rental value of the Premises for the residue of the stated term hereof.

(c) Upon the termination of this Lease, or upon the termination of Lessee's right to possession without termination of the Lease, Lessee shall surrender possession of and vacate the Premises immediately, and Lessor may enter into and repossess the Premises with or without process of law and remove all persons and property therefrom in the same manner, and with the same right, as if this Lease had not been made, and for the purpose of such entry and repossession Lessee waives any notice provided by law or otherwise to be given in connection therewith.

(d) If Lessee shall default in performing any term, covenant, or condition of this Lease on the part of Lessee to be performed by Lessee, which default may be cured by the expenditure of money, Lessor, at Lessor's option, after five days notice thereof to Lessee, may, but shall not be obligated to, on behalf of Lessee, expend such sum as may be necessary to perform and fulfill such term, covenant or condition, and any and all sums so expended by Lessor, with interest thereon at the rate of 10% per annum from the date of such expenditure, shall be and be deemed to be Additional Rent, in addition to the Rent, and shall be repaid by Lessee to Lessor on demand, but no such payment or expenditure by Lessor shall be deemed a waiver of Lessee's default nor shall it affect any other remedy of Lessor by reason of such default.

(e) Lessee hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of Lessee being dispossessed for any cause, or in the event of Lessor obtaining possession of the Premises, by reason of the violation by Lessee of any of the covenants and conditions of this Lease, or otherwise.

19. ADDITIONAL RENT. All costs, charges or payments provided under this Lease to be made by the Lessee to or for the benefit of the Lessor in addition to Base Rent, shall be considered Additional Rent hereunder and the failure to pay the same shall constitute a failure to pay the entire Rent

hereunder and Lessor shall thereupon have all rights and remedies provided for in the case of nonpayment of Rent or breach of a condition and as provided in law and equity.

20. EMINENT DOMAIN.

(a) In the event the Demised Premises or any part thereof shall be taken or condemned either permanently or temporarily for any public or quasi public use or purpose by any competent authority in appropriation proceedings or by any right of eminent domain, the entire compensation award thereof or, both Leasehold and reversion, shall belong to the Lessor without any deduction therefrom for any present or future estate of Lessee and Lessee hereby assigns to Lessor all its right, title and interest to any such award. However, Lessee shall be entitled to claim, prove and receive in such condemnation proceedings such award as may be allowed for fixtures and other equipment installed by it, but only if such award shall be in addition to the award for the land and the building (or portion thereof) containing the Demised Premises.

(b) If the entire Demised Premises shall be taken as aforesaid, then this Lease shall terminate and shall become null and void from the time possession thereof is required for public use and from that date the parties hereto shall be released from further obligation hereunder; but in the event a portion only of the Demised Premises shall be so taken or condemned such that Lessee is not prevented from conducting its business in substantially the same manner as prior to such taking or condemnation, then Lessor, at its own expense, shall repair and restore, to the extent reasonably possible, the portion not affected by the taking and thereafter the rental to be paid by Lessee shall be equitably and proportionately adjusted.

(c) Any such appropriation or condemnation proceedings shall not operate as or be deemed an eviction of Lessee or a breach of Lessor's covenant of quiet enjoyment.

21. ESTOPPEL CERTIFICATE BY LESSEE. Lessee agrees at any time and from time to time, upon not less than ten days' prior written request by Lessor, to execute and acknowledge and deliver to Lessor a written statement certifying that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified and stating the modifications), and the dates to which the Rent and other charges have been paid in advance, if any, it being intended that any such statement delivered pursuant to this Paragraph may be relied upon by any prospective purchaser, mortgagee or assignee of any mortgage of the fee of the Demised Premises.

22. NOTICES. In every instance where it shall be necessary or desirable for Lessor to serve any bill, notice or demand upon Lessee, such bill, notice or demand shall be deemed sufficiently given or made if, in writing, is sent either by a nationally recognized overnight package delivery service or mailed by registered or certified, United States mail, postage prepaid, and addressed to Lessee at the Premises, and the time of giving or making such notice or demand shall be deemed to be the time when the same is deposited in the mail as herein provided. Any notice by Lessee to Lessor must be sent by a recognized overnight package delivery service or by registered, or certified, United States mail, postage prepaid, addressed to Lessor at the address where the last previous Rent hereunder was paid.

23. NO WAIVER.

(a) No receipt of money by Lessor from Lessee with knowledge of the breach of any covenants of this Lease, or after the termination hereof, or after the service of any notice, or after the commencement of any suit, or after final judgment for possession of the Premises shall be deemed a waiver of such breach, nor shall it reinstate, continue or extend the term of this Lease or affect any such notice, demand or suit.

(b) No delay on the part of Lessor in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude any other, or further, exercise thereof or the exercise of any other right, power or privilege.

(c) No act done or thing said by Lessor or Lessor's agents or employees shall constitute a cancellation, termination or modification of, or eviction or surrender under, this Lease, or a waiver of any covenant, agreement or condition hereof, nor relieve Lessee from Lessee's obligation to pay the Rent reserved or other charges to be paid hereunder. Any acceptance of surrender, waiver or release by Lessor and any cancellation, termination or modification of this Lease must be in writing signed by Lessor. The delivery of keys to any employee or agent of Lessor shall not operate as a surrender or as a termination of the Lease, and no such employee or agent shall have any power to accept such keys prior to the termination of the Lease.

(d) No payment by Lessee or receipt by Lessor of a lesser amount than the Rent herein stipulated and reserved shall be deemed to be other than on account of the earliest stipulated Rent then due and payable, nor shall any endorsement or statement on any check, or letter accompanying any rent check or payment be deemed an accord and satisfaction, and Lessor may accept the same without prejudice to Lessor's right to recover any balance due or to pursue any other remedy in this Lease provided.

24. INABILITY TO PERFORM. This Lease and the obligation of Lessee to pay Rent hereunder and perform all of the other covenants and agreements hereunder or part of Lessee to be performed shall in no way be affected, impaired or excused because Lessor is unable to fulfill any of its obligations under this Lease or to supply or is delayed in supplying any service expressly or impliedly to be supplied or is unable to make, or is delayed in making any repairs, additions, alterations or decorations or is unable to supply or is delayed in supplying any equipment or fixtures if Lessor is prevented or delayed from so doing by reason of strike or labor troubles or any outside cause whatsoever including, but not limited to, governmental preemption in connection with a national emergency or by reason of any rule, order or regulation of any department or subdivision thereof or of any government agency or by reason of the conditions of supply and demand which have been or are affected by war or other emergency, or by reason of any fire or other casualty or act of God.

25. MECHANICS' LIENS. If, because of any act or omission of Lessee or anyone claiming by, through or under Lessee, any mechanics' or other lien or order for payment of money shall be filed against the Premises, or against Lessor (whether or not such lien or order is valid or enforceable as such), Lessee shall, at Lessee's own cost and expense, cause the same to be cancelled and discharged of record or, in lieu of discharging the same of record, providing such bonds or other security for the payment of such liens or orders as are acceptable to Lessor, within 60 days after the date of filing thereof, and Lessee shall indemnify, defend and save harmless Lessor from and against any and all costs, expenses, claims, losses or damages, including reasonable counsel fees, resulting therefrom or by reason thereof.

26. PARKING. For the term of this Lease, Lessee and its agents, employees, servants, contractors, licensees and invitees shall have the non-exclusive right to park a reasonable number of passenger motor vehicles in the parking areas adjoining the Premises. It is understood that Lessee holds such right upon the terms and conditions herein, including without limitation those contained in - Paragraph 11 and the further understanding that such areas shall not include any part thereof limited to and so designated by the Lessor solely for visitors to the Project. Without limiting the number of parking spaces referred to above, Lessee hereby acknowledges and agrees that Lessor is making no guarantee whatsoever as to the exclusive use of any space or spaces in the parking area. Lessor, in Lessor's sole discretion, may, but shall not be obligated to, control or enforce the proper use of the parking areas.

TAN

Lessee shall be allowed to park up to three (3), functional, insured and plated trucks, but no semi's, in the parking areas adjoining the Premises.

27. SPRINKLERS. If the sprinkler system existing in the Premises on the date of this Lease, or any of its equipment or appurtenances, shall, be damaged or injured, or not in proper working order by reason of any act or omission of Lessee, or Lessee's agents, employees, servants, contractors, licensees or invitees, Lessee shall forthwith restore the same to good working condition at its own expense. If the Board of Fire Underwriters or any bureau, department or official of the state Or city government having jurisdiction shall require or recommend that any changes, modifications, alterations or additional sprinkler heads or other equipment be made or supplied by reason of Lessee's business, or the location of partitions, trade fixtures, or other contents of the Premises, or for any other reason related, directly or indirectly, to Lessee's particular use of the Premises, or if any such changes, modifications, alterations, additional sprinkler heads or other equipment, become necessary to prevent the imposition of a penalty or charge against the full allowance for a sprinkler system in the fire insurance rate as fixed by any fire insurance company as a result, directly or indirectly, of Lessee's particular use of the Premises, Lessee shall, at Lessee's expense, promptly make and supply such changes, modifications, alterations, additional sprinkler heads or other equipment.

28. SUBORDINATION. Lessor shall have the right at any time, and from time to time, to place upon the Premises and/or land of which the Premises are a part, a mortgage or mortgages, which shall be wholly prior to the rights of Lessee under this Lease. It is the intention of the parties that such priority shall be established automatically and that no separate instrument shall be required to effectuate such subordination of this Lease. Lessee will, however, at any time and from time to time, upon request of Lessor and without payment of consideration by Lessor, promptly execute and deliver to Lessor any and all instruments deemed by Lessor necessary or advisable to subject and subordinate any and all rights given Lessee hereunder to such mortgage or mortgages. In the event any proceedings are brought for the foreclosure of any such mortgage, Lessee covenants that it will, to the extent of Lessor's interest affected by such foreclosure, attorn to the purchaser upon any such foreclosure sale and recognize such purchaser's interest as Lessor under this Lease. Lessee agrees to execute and deliver to Lessor, at any time and from time to time, upon the request of Lessor or of any such holder and without payment of consideration by Lessor, any instrument which, in the sole judgment of Lessor may be necessary or appropriate in any such foreclosure proceeding or otherwise to evidence such attornment. Lessee hereby appoints Lessor and the holder of any such mortgage or either of them, the attorney-in-fact, irrevocably, of Lessee to execute and deliver for and on behalf of Lessee any such instrument. Lessee further waives the provisions of any statute or rule of law, now or hereafter in effect, which may give or purport to give Lessee any right or election to terminate or otherwise adversely affect this Lease and the obligation of Lessee hereunder in the event any such foreclosure proceeding is brought, and agrees that this Lease shall not be affected in any way whatsoever by any such foreclosure proceeding. Notwithstanding the foregoing, Lessor shall use reasonable efforts to obtain from the holder of any mortgage against the Premises a non-disturbance agreement for the benefit of Lessee, which provides that so long as Lessee shall perform its obligations under this Lease, such holder will not seek to foreclose this Lease or terminate Lessee's rights hereunder.

29. LIMITATION OF LESSOR'S LIABILITY.

(a) The term "Lessor" as used in this Lease, so far as covenants or obligations on the part of Lessor are concerned, shall be limited to mean and include only the owner for the time being of the Demised Premises. If the Demised Premises be sold or transferred, the seller shall be automatically and entirely released of all covenants and obligations under this Lease from and after the date of such conveyance or transfer, provided the purchaser on such sale has assumed and agreed to carry out all covenants and obligations contained in this Lease to be performed on the part of Lessor hereunder, it

being hereby agreed that the covenants and obligations contained in this Lease shall be binding upon Lessor, its successors and assigns, only during their respective successive periods of ownership.

(b) It is expressly understood and agreed by Lessee that none of Lessor's covenants, undertakings, or agreements are made or intended as personal covenants, undertakings or agreements by Lessor, and any liability for damage or breach or nonperformance by Lessor shall be collectible only out of Lessor's interest in the Project, and no personal liability is assumed by nor at any time may be asserted against, Lessor or any of its officers, partners, agents, employees, legal representatives, successors or assigns, all such liability, if any, being expressly waived and released by Lessee. Lessee acknowledges that Lessor has the right to transfer its interest in the land and buildings and in this Lease, and Lessee agrees that in the event of any such transfer, Lessor shall automatically be released from all liability under this Lease and Lessee agrees to look solely to such transferee for the performance of Lessor's obligations hereunder.

30. LESSOR'S WORK: CONDITION OF PREMISES. Lessor shall perform the following work in the Premises, at Lessor's expense ("Lessor's Work"):

- (i) Lessor shall repair all walls and ceilings and will paint the front portion of the Premises as depicted on Exhibit A, light or very light grey;
- (ii) Lessor shall demolish the area adjacent to the warehouse portion of the Premises as depicted on Exhibit A so that it will become part of the warehouse;
- (iii) Lessor will construct an office area with demising walls and an interior entrance in the front area of the Building as depicted on Exhibit A;
- (iv) the front area of the Building depicted on Exhibit A will have the floors either tiled or carpeted with tile or carpet selected by Lessor and approved by Lessee;
- (v) the bathrooms will be cleaned and painted the same color as present;
- (vi) the kitchen area will be cleaned and painted the same color as present;
- (vii) all roof leaks in the front area and the warehouse area will be repaired;
- (viii) all doors, dock doors, windows and overhead doors will be functional;
- (ix) the HVAC unit in the front area of the Building will be inspected and made operational as of the date of delivery of possession;
- (x) the ceiling fans in the back warehouse area will be made operational;
- (xi) Lessor will repair the awning to match the rest of the frontage of the Building; and
- (xii) the Premises will otherwise be delivered with all systems including the overhead doors, in good working order.

Subject to the performance of Lessor's Work, Lessee shall accept possession of the Premises in the condition in which the Premises exist upon the delivery of possession thereof from Lessor to Lessee, "As Is". Lessee acknowledges that Lessee has inspected the Premises and that Lessor and Lessor's agents

have made no representations or warranties with respect to the Premises unless expressly set forth in this Lease, and that no warranties shall be implied under any applicable rule of law.

31. HAZARDOUS MATERIAL.

(a) Neither Lessee nor Lessee's agents, contractors, employees, or persons acting under Lessee (collectively, "Lessee's Agents") shall (either with or without negligence) cause or permit Hazardous Material (as defined below) to be brought upon, stored, used, generated, released into the environment, or disposed of on, in, under, or about the Project, without the prior written consent of Lessor, which consent Lessor may withhold in its sole and absolute discretion. Lessor, in its sole and absolute discretion, may consent to Lessee's storage, or use of Hazardous Material on or in the Premises provided Lessee demonstrates to Lessor, in Lessor's sole and absolute judgment, that the Hazardous Material (in incidental quantities) is necessary to or required as a part of Lessee's business and will be used, kept, stored, or disposed of in a manner that complies with all laws regulating any such Hazardous Material and with good business practices. Upon the expiration or termination of this Lease, Lessee covenants to remove from the Project, at Lessee's sole cost and expense, any and all Hazardous Material brought upon, stored, used, generated, or released into the environment by Lessee or Lessee's Agents. Lessee hereby indemnifies, defends, protects and holds harmless Lessor, Lessor's agents, contractors, and employees (collectively, "Lessor's Agents"), and Lessor's successors and assigns, from any and all claims, judgments, damages, penalties, fines, costs, liabilities, and losses (including, without limitation, loss or restriction on use of rentable space or any amenity of the Project and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees) that arise during or after the term directly or indirectly from the presence of Hazardous Material on, in, or about the Project that is caused or permitted by Lessee or Lessee's Agents. This indemnification by Lessee to Lessor, Lessor's Agents, and Lessor's successors and assigns, includes, without limitation, any and all costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by federal, state, or local governmental agency or political subdivision because of the presence of that Hazardous Material in, on, or about the Project or the soil or ground water on or under the Project or any portion thereof. Lessee shall promptly notify Lessor of any release of Hazardous Material in, on, or about the Project the Lessee or Lessee's Agents becomes aware of during the term, whether caused by Lessee, Lessee's Agents, or any other persons or entities.

(b) Lessor and Lessor's Agents shall have the right, but not the obligation, to inspect, investigate, sample, or monitor the premises, including any soil, water, ground water, or other sampling, and any other testing, digging, drilling, or analysis, at any time to determine whether Lessee is complying with the terms of this Lease, and in connection therewith, Lessee shall provide Lessor with full access to all relevant facilities records, and personnel. If Lessee is not in compliance with any of the provisions in this Paragraph 35, Lessor and Lessor's Agents shall have the right, but not the obligation, without limitation upon any of Lessor's other rights and remedies under this Lease, to immediately enter upon the Premises and to discharge Lessee's obligations under this Paragraph 35 at Lessee's expense, notwithstanding any other provision of this Lease. Lessor and Lessor's Agents shall endeavor to minimize interference with Lessee's business but shall not be liable for any such interference. All sums reasonably disbursed, deposited, or incurred by Lessor in connection therewith, including, but not limited to, all costs, expenses, and actual attorneys' fees, shall be due and payable by Lessee to Lessor, as an item of Additional Rent, on demand by Lessor, together with interest thereon at the maximum rate allowed by law from the date of that demand until paid by Lessee.

(c) Promptly upon the expiration or sooner termination of this Lease, Lessee shall represent to Lessor in writing that (i) Lessee has made a diligent effort to determine whether any Hazardous Material is in, on, under or about the premises and (ii) no Hazardous Material exists in, on, under, or about the Premises other than specifically identified to Lessor by Lessee in writing. To ensure

performance of Lessee's obligations under this Paragraph 35, Lessor may, at any time within five years of the expiration of the term or upon the occurrence of a default, by notice to Lessee, require that Lessee promptly commence and diligently prosecute to completion an environmental evaluation of the Premises. In connection therewith, Lessor may require Lessee, at Lessee's sole cost and expense, to immediately hire an outside consultant satisfactory to Lessor to perform a complete environmental audit of the Premises, an executed copy of which shall be delivered to Lessor within thirty (30) days after Lessor's request therefor. If Lessee or the environmental audit discloses the existence of Hazardous Material in, on, under, or about the Premises, Lessee shall, at Lessor's request, immediately prepare and submit to Lessor within thirty (30) days after that request a comprehensive plan, subject to Lessor's prior approval, specifying the actions to be taken by Lessee to return the Premises to the condition existing before the introduction of Hazardous Material. Upon Lessor's approval of that cleanup plan, Lessee shall, at Lessee's sole cost and expense, without limitation on any right and remedies of Lessor under this Lease or applicable law, immediately implement that plan and proceed to clean up that Hazardous Material in accordance with all applicable laws as required by the plan and this Lease.

(d) "Hazardous Material" shall mean (i) any waste, substance, pollutant or contaminant that is or becomes regulated by the federal government or any state, local or other governmental political subdivision or any agency thereof (collectively "governmental authority") having jurisdiction over the Project and the operations conducted thereon and (ii) any substance or material that is or becomes regulated by any governmental authority by reason of the hazardous or toxic qualities of such substance or material.

(e) The provision of this Paragraph 35 including, without limitation, the indemnification provisions set forth herein, shall survive any termination or expiration of this Lease.

32. SIGNS. Without Lessor's prior written consent, which consent shall not be unreasonably withheld, Lessee shall not attach any sign on any part of the outside of the Premises or the Building, or on any part of the inside of the Premises that is visible outside the Premises, or in the halls, lobbies or windows of the Building. Permitted signs shall comply with the requirements of the governmental authorities having jurisdiction over the Building. At its expense, Lessee will maintain all permitted signs and will, at the end of this Lease, and at its expense, remove all permitted signs and repair any damage caused by their removal. If Lessee fails to do so, Lessor may remove all unpermitted signs without notice to Lessee and at Lessee's expense.

33. MERGER. This Lease sets forth all the covenants, promises, assurances, agreement, representations, conditions, warranties, statements and understandings ("Representations") between Lessor and Lessee concerning the Premises, and there are no Representations, either oral or written, between them other than as set forth in this Lease. This Lease supersedes and revokes all previous negotiations, arrangements, letters of intent, offers to lease, lease proposals, brochures, agreements, representations, promises, warranties, understandings, and information conveyed, whether oral or in writing, between the parties or their respective representatives, or any other person purporting to represent Lessor or Lessee. Lessee acknowledges that it has not been induced to enter this Lease by any Representations not set forth in this Lease, it has not relied upon any such Representations, no such Representations shall be used in the interpretation or construction of this Lease, and Lessor shall have no liability for any consequences arising as a result of any such Representations.

34. SEPARABILITY. The holding by any Court that any provision in this Lease is invalid or unenforceable shall not affect the remaining provisions of this Lease, which shall remain in full force and effect.

35. BROKER. As part of the consideration for the granting of this Lease, Lessee represents and warrants to Lessor that no broker, agent or finder negotiated or was instrumental in negotiating or consummating this Lease. Lessee shall indemnify, defend and hold harmless Lessor from and against any claim by any broker, agent or finder for such fees and commissions.

36. ENTIRE AGREEMENT. This Lease contains the entire agreement between the parties hereto and shall not be modified in any manner except by an instrument in writing executed by said parties or their respective successors in interest.

37. PARAGRAPH HEADINGS. The paragraph headings appearing in this Lease are inserted only as a matter of convenience and for reference purposes, and in no way define, limit or describe the scope and intent of this Lease, or any paragraph hereof, nor in any way affect it.

38. QUIET ENJOYMENT. If Lessee shall (1) pay the Rent reserved, the charges for services stipulated herein and other amounts to be paid by Lessee to Lessor, and (2) well and faithfully keep, perform and observe all of the covenants, agreements and conditions herein stipulated to be kept, performed and observed by Lessee, Lessee shall at all times during the term of this Lease have the peaceable and quiet enjoyment of the Premises without hindrance of Lessor or any person lawfully claiming under Lessor, subject, however, to the terms of this Lease and any mortgage provided for in paragraph 32.

39. ASSIGNS. The covenants, agreements and conditions contained in this Lease shall bind and inure to the benefit of Lessor and Lessee and their respective heirs, legal representatives, successors and assigns, subject, however, to the provisions hereof requiring the consent of Lessor to any assignment of this Lease or subletting of the Premises.

*Remainder of page intentionally left blank. Signatures appear on following page.*

IN WITNESS WHEREOF, Lessor and Lessee have executed triplicate originals of this Lease AGREEMENT as of the day, month and year first above shown.

LESSOR: 731 BETA, LTD.

By: [Signature]  
Anthony M. Panzica, Member

LESSEE: PARAGON MARKETING, LLC

By: [Signature]  
Name: RED DELLAS  
Title: Pres.

WEISKOPF INDUSTRIES, INC.

By: [Signature]  
Name: Edward Weiskopf  
Title: Pres.

STATE OF OHIO )  
 ) SS:  
COUNTY OF CUYAHOGA )

BEFORE ME, a Notary Public, in and for said county and state personally appeared the above named 731 BETA LTD., an Ohio limited liability company, by Anthony M. Panzica, its Member who acknowledged that he did sign the foregoing instrument for and on behalf of said company, and that the same is the free act and deed of said company, and the free act and deed of him personally.

IN TESTIMONY WHEREOF, I have hereunder set my name and official seal at Cleveland, Ohio, this 5 day of March, 2012.



MICHAEL D. ARNOFF  
Notary Public, State of Ohio  
My Commission Expires  
August 10, 2016

Notary Public: [Signature]

[Handwritten initials]

STATE OF OHIO )  
 ) SS:  
COUNTY OF CUYAHOGA )

BEFORE ME, a Notary Public in and for said county and state personally appeared THEO DORE Dallas the owner of Paragon Marketing, LLC, an Ohio limited liability company, on whose behalf the foregoing Lease Agreement was executed, who acknowledged that he/she did sign the same for and on behalf of said limited liability company, being thereunto duly authorized and that the same is his free act and deed individually and as such \_\_\_\_\_ and the free and corporate act and deed of said limited liability company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Cleveland, Ohio this 7<sup>th</sup> day of March, 2012.

Notary Public: William H. Cooper Jr



STATE OF OHIO )  
 ) SS:  
COUNTY OF CUYAHOGA )

BEFORE ME, a Notary Public in and for said county and state personally appeared \_\_\_\_\_ the \_\_\_\_\_ of Weiskopf Industries, Inc., an Ohio corporation, on whose behalf the foregoing Lease Agreement was executed, who acknowledged that he/she did sign the same for and on behalf of said corporation, being thereunto duly authorized and that the same is his/her free act and deed individually and as such officers and the free and corporate act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Cleveland, Ohio this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

Notary Public: \_\_\_\_\_

*THM*