CONSTRUCTION AGREEMENT

This AGREEMENT is entered into effective [MONTH] [DAY],[YEAR] between [TENANT COMPANY], a [TENANT COMPANY STATE OF FORMATION] Corporation, with offices located at [TENANT COMPANY ADDRESS] (hereinafter called the "Tenant Company" or "Tenant") and [GENERAL CONTRACTOR COMPANY] (hereinafter called the "General Contractor"), a [GENERAL CONTRACTOR COMPANY STATE OF FORMATION] Corporation, with a contractors' license #[XXXXXXX] and offices at [GENERAL CONTRACTOR COMPANY ADDRESS] (hereinafter each may be called the "Party" or collectively called the "Parties").

ARTICLE 1: SCOPE OF WORK

1.1. General Contractor shall furnish all work, labor, tools, supplies, equipment, materials, supervision, scheduling, procurement services, coordination, insurance and contract administration (hereinafter collectively called "WORK") necessary to construct and complete in a good, expeditious, workmanlike and substantial manner certain Tenant improvements at [TENANT COMPANY ADDRESS], described in [EXHIBITS "A"] (plans prepared by [CONSULTANT]) and [EXHIBITS "B"] (General Contractor's Bid), and [EXHIBITS "C"] (architectural drawings and tenant improvement conceptions) under the terms of this Agreement.

1.2. General Contractor shall perform the Work in strict compliance with the Agreement and all applicable laws, building codes, ordinances, rules and regulations, including, without limitation, statutes, manufacturer's and/or supplier's specifications, requirements of [COMPANY 2] (hereinafter called the "Company 2") and all governmental and private agencies having jurisdiction of the construction and of craft unions involved (if any), including all decrees, resolutions, and other acts of governmental authority, including Federal and State Labor and Tax Laws, which are or may be applicable to this Agreement.

1.3. General Contractor acknowledges that it has made an independent investigation of the work to be performed, all Laws that are or may be applicable to this Agreement and General Contractor's performance hereunder and all other conditions affecting the Work to be performed and materials to be furnished which might affect the progress of the Work. General Contractor has satisfied itself as to these conditions and hereby accepts them as is (regardless of any later discovered conditions).

1.4. General Contractor has made an independent investigation of the jobsite, the soil conditions under the jobsite, and all other conditions that might affect the progress of the work, and has satisfied itself as to those conditions. The contract price includes payment for all work that may be done by General Contractor in order to overcome unanticipated underground conditions. Any information that Tenant or Landlord may have furnished to General Contractor about underground conditions or other job conditions is for General Contractor's convenience only, and Tenant does not warrant that the conditions are as thus indicated. General Contractor has satisfied itself as to all job conditions, including underground conditions, and has not relied on information furnished by Tenant or Landlord.

1.5. General Contractor shall not perform any extra work or modifications of the Work without prior receipt of written approval from Tenant Company.

ARTICLE 2: DATES OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

2.1. General Contractor shall begin work [DATE OF WORK STARTED] and shall prosecute the Work diligently to completion and in all events shall substantially complete the Work no later than [DATE OF COMPLETION]. "SUBSTANTIAL COMPLETION" shall mean that the Work is sufficiently complete in accordance with this Agreement so that the Tenant Company can occupy and utilize the Tenant improvements for their intended use. "FINAL COMPLETION" shall mean [DESCRIPTION OF FINAL COMPLETION].

2.2. General Contractor shall achieve Substantial Completion by [DATE OF SUBSTANTIAL COMPLETION], and Final Completion by [DATE OF FINAL COMPLETION] unless excused by the provisions of [ARTICLE 2.3] below.

2.3. General Contractor shall be excused for any delay in completion of the Agreement caused by acts of God; acts of public utilities, public bodies or inspectors (but not related to possible defects in General Contractor's performance); major changes requested by Tenant Company, or other contingencies unforeseen by General Contractor and beyond its reasonable control.

2.4. If completion of the project is delayed beyond [DATE OF DELAY], and the delay is not excused under [ARTICLE 2.3], General Contractor shall pay Tenant Company the sum of $35,777.90 per day for each calendar day during which completion of the project is delayed beyond the time specified for completion.

ARTICLE 3: THE AGREEMENT DOCUMENTS

3.1. The Agreement consists of the language of this Agreement between Tenant Company and General Contractor, all attached exhibits and any additional Drawings, Specifications, Addenda, and Change Orders.

3.2. Merger Provision. This Agreement constitutes the final agreement between the Parties. All prior and contemporaneous negotiations and agreements between the Parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement. The provisions of this Agreement may not be explained, supplemented, or qualified through evidence of trade usage or a prior course of dealings. In entering into this Agreement, neither Party has relied upon any statement, representation, warranty, or agreement of the other Party except for those expressly contained in this Agreement. There are no conditions precedent to the effectiveness of this Agreement other than those expressly stated in this Agreement.

ARTICLE 4: GENERAL CONTRACTOR COMPENSATION AND REIMBURSEMENT

4.1. The total compensation, including all reimbursements, to be paid General Contractor under this Agreement, as set forth in attached [EXHIBIT "B"], is $[TOTAL COMPENSATION AND REIMBURSEMENT FEE]. No additional sums shall be paid General Contractor without written Change Orders signed by Tenant Company.

ARTICLE 5: PAYMENT

5.1. The General Contractor shall be paid Compensation in progress payments.

5.2. The first progress payment will be due [NUMBER OF DAYS] after the Work commences. The second progress payment will be due [NUMBER OF DAYS] after the first payment is due. The final payment will be made as outlined in [ARTICLE 5.3]. ATTACH PROGRESS PAYMENT SCHEDULE.

5.3. At least [NUMBER OF DAYS] before the date each progress payment is due, the General Contractor shall submit to Tenant Company an Application for Progressive Payment (hereinafter "APPLICATION"), duly notarized and supported by such data substantiating the General Contractor's right to payment as the Tenant Company may reasonably require, and reflecting retainages as provided in the Agreement.

(a) The General Contractor shall furnish with each Application for Progressive Payment waivers of liens for itself and for each SubContractor or Sub-SubContractor hired by the General Contractor or their agents, together with such other forms as may be reasonably required by the Tenant Company to assure an effective waiver of mechanic's or materialmen's liens in compliance with the laws of the State of California, subject to the terms of the Agreement.

(b) For the Work described on each Progress Payment Application, each SubContractor shall submit waivers of liens for itself and for each of its major suppliers or Sub-SubContractors prior to Tenant Company's receipt and payment of the following Progress Payment Application.

(c) The General Contractor shall further submit with each Progressive Payment Application for payment a monthly progress report which shall set forth in detail the status of the Work as of the date of such Application. The exact format of the progress report shall be determined by the Tenant Company or its representative prior to submission of the Application for Progress Payment. However, the progress reports shall, at a minimum, describe those aspects of the Work which have been commenced and the status thereof, enumerate the trades and SubContractors involved in the Work and the amount of personnel employed on the Project by them, set forth the schedule for major portions of the Work for the coming month, and include the General Contractor's appraisal of the progress and cost of the Work, together with recommendations as to any action which should be taken by the Tenant Company.

(d) The General Contractor shall also submit with each Application such other documents as may be reasonably required by the Tenant Company or its Representative. The General Contractor shall not submit for Tenant Company's review and approval any Application which is incomplete, inaccurate or lacks the detail, specificity or supporting documentation required herein. It is understood and agreed by the General Contractor and Tenant Company that any Application which is deficient in any such manner shall not constitute a valid or proper Application for Progressive Payment, and the General Contractor shall be required to resubmit such Application in proper form prior to Tenant Company incurring any obligation to make payment on account thereof.

(e) The General Contractor specifically agrees that it shall not include in any Application sums attributable to Work which Tenant Company or its Representative has rejected or which shall otherwise constitute or relate to Applications for payment, billing or invoices of SubContractors or suppliers which the General Contractor disputes or for any reason does not believe should be paid.

(f) On or before [NUMBER OF DAYS] following Tenant Company's approval of the Application for Progressive Payment and supporting documentation, Tenant Company shall make payment to the General Contractor in the amount approved as aforesaid.

(g) The payment of any Application for Progressive Payment by Tenant Company, including the Final Application, does not constitute approval or acceptance of any item of cost in such Application for Progressive Payment. Tenant Company shall have the right to require the payment to SubContractors by the General Contractor to be in the form of a joint payee check, payable to the General Contractor and the SubContractor.

(h) Within [NUMBER OF DAYS] after Final Completion of the Work, or designated portion thereof approved by Tenant Company, and acceptance thereof by Tenant Company, or as soon thereafter as possible, General Contractor shall submit a Final Application for Progressive Payment which shall set forth all amounts due and remaining unpaid amounts and items to General Contractor with respect to the Work or designated portion thereof and upon issuance by Tenant Company of its approval, Tenant Company shall pay to the General Contractor the amount due under such Final Application for Progressive Payment. Anything to the contrary contained herein or elsewhere notwithstanding, Final Payment shall not be made prior to [NUMBER OF DAYS] following final completion of the Work or designated portion thereof.

(i) The Final Application for Progressive Payment shall not be made until General Contractor delivers to Tenant Company a complete unconditional full and final waiver and release of all liens arising out of or in connection with the Work, or designated portion thereof covered by such Final Application, and the Work, or designated portion thereof, has been fully performed in accordance with the Agreement. If any SubContractor or supplier refuses to furnish a release in full, and if requested by Tenant Company, the General Contractor shall furnish a bond satisfactory to Tenant Company to indemnify Tenant Company against any lien that might be filed by such SubContractor or supplier as provided herein.

(j) The General Contractor shall within [NUMBER OF DAYS] after receipt of notice of the existence of any lien filed against the Project by any SubContractor, supplier of materials or any other person or entity claiming to be a creditor of the General Contractor or the Tenant, cause the same to be removed as of record and/or fully bonded at the General Contractor's sole cost and expense. Any payment due to the General Contractor hereunder shall be reduced by an amount equal to up to one hundred fifty percent (150%) of the amount of any lien arising out of or related to General Contractor's performance under this Agreement until such lien is removed as of record and/or fully bonded to Tenant Company's reasonable satisfaction.

5.4. The making of progress payments under this Agreement by Tenant Company shall not be interpreted to imply that Tenant Company has inspected, accepted or approved General Contractor's or their agents' Work.

ARTICLE 6: PROTECTION OF PERSONS AND PROPERTY

6.1. The General Contractor shall be responsible for initiating, maintaining, documenting and supervising all safety precautions and programs in connection with the performance of the Agreement.

6.2. The General Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

(a) Persons employed by Tenant Company, the General Contractor or their agents on the Work and any other persons who may be affected thereby;

(b) The Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the General Contractor or the General Contractor's SubContractors or Sub-SubContractors; and

(c) Other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

6.3. The General Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations, statutes and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

6.4. The General Contractor shall erect and maintain, as required by existing conditions and performance of the Agreement, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying Tenant Company and users of adjacent sites and utilities.

6.5. If General Contractor stores explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the General Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

6.6. The General Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Agreement) to property referred to above caused in whole or in part by the General Contractor, a SubContractor, a Sub-SubContractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the General Contractor is responsible under the articles above, except damage or loss attributable to acts or omissions of Tenant Company or anyone directly or indirectly employed by Tenant Company.

6.7. The General Contractor shall designate a responsible member of the General Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the General Contractor's superintendent unless otherwise designated by the General Contractor in writing to Tenant Company.

6.8. The General Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

6.9. If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including, but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the General Contractor, the General Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to Tenant Company in writing.

ARTICLE 7: WARRANTIES

7.1. General Contractor is properly and currently licensed to perform the Work called for by the Agreement and shall remain so during performance of the Work.

7.2. General Contractor guarantees all equipment, material, supplies and work furnished on the job against defective construction, components, or workmanship for a period of [NUMBER OF YEARS] after completion of the work, except when the supplier or manufacturer of the equipment and material provides a longer guaranty. General Contractor expressly agrees to act as co-guarantor of such equipment and materials, and General Contractor shall request, procure and supply Tenant Company with all warranty and guaranty documents relative to equipment and materials incorporated in the job and guaranteed by their suppliers or manufacturers.

7.3. General Contractor further guarantees that if the Specifications of this Agreement provide for a specific manufacturer of specific equipment, material, supplies or parts for the Work furnished on the job and General Contractor, SubContractor, or supplier changes the manufacturer of the particular equipment, material, supplier or part, written notice of that change must be provided to Tenant Company, who has the right to reject such change or alteration.

7.4. General Contractor further guarantees that at the end of the Work, a set of as-built drawings shall be prepared by or on behalf of General Contractor, reflecting the actual construction of the Work performed under the Agreement.

ARTICLE 8: INSURANCE

8.1. The General Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in California such insurance as will protect the General Contractor from claims set forth below which may arise out of or result from the General Contractor's operations under the Agreement and for which the General Contractor may be legally liable, whether such operations be by the General Contractor or by a SubContractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

(a) Claims under Workers' Compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;

(b) Claims for damages because of bodily injury, occupational sickness or disease, or death of the General Contractor's employees;

(c) Claims for damages because of bodily injury, sickness or disease, or death of any person other than the General Contractor's employees;

(d) Claims for damages insured by usual personal injury liability coverage;

(e) Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

(f) Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;

(g) Claims for bodily injury or property damage arising out of completed operations; and

(h) Claims involving contractual liability insurance applicable to the General Contractor's obligations under the articles concerning Indemnity.

8.2. Commercial General Liability Insurance, which General Contractor is to provide, shall include all major divisions of coverage and be on a comprehensive basis including:

(a) Premises operations;

(b) Independent General Contractor's protection;

(c) Products and completed operations;

(d) Personal injury liability with employment exclusion and "X", "C" and "U" exclusions deleted;

(e) Contractual, including specified provision for the General Contractor's indemnification obligation hereunder;

(f) Owned, non-owned and hired motor vehicles;

(g) Broad form property damage, including completed operations; and

(h) Umbrella excess liability.

8.3. The insurance required in [ARTICLES 8.1] and [ARTICLES 8.2] shall be written for not less than the following amounts, or greater if required by law:

(a) Workers Compensation:

(i) State: Statutory Amount

(ii) Employer's Liability: $1,000,000

(b) Commercial General Liability (including Premises Independent General Contractor's Protective; Products and Completed Operations; Broad Form Property Damage):

(i) Bodily Injury: $1,000,000 Each Occurrence Combined Single Limit

(ii) Property Damage: $1,000,000 Each Occurrence Combined Single Limit

(iii) Products and Completed Operations to be maintained for [NUMBER OF YEARS] after final payment.

(c) Contractual Liability:

(i) Bodily Injury, Property and Damage: $1,000,000 Each Occurrence

(ii) Combined Single Limit

(d) Comprehensive Automobile Liability:

(i) Bodily Injury, Property and Damage: $1,000,000 Each Occurrence Combined Single Limit

 (e) Umbrella Excess Liability: $25,000,000 Over Primary Insurance.

8.4. General Contractor shall have Tenant Company added as an additional insured to the preceding Commercial General Liability Insurance Policy, or shall supply, with Tenant Company's written approval, a separate Tenant Company and General Contractor's Protective Policy naming (with limits of liability as specified above) Tenant Company as named insured. The insurance policies shall be endorsed to indicate that they are primary as respects to Tenant Company and not contributory with any other insurance available to Tenant Company. Each policy shall contain the following cross-liability provisions:

In the event of a claim being made hereunder by one insured for which another insured is or may be liable, then this policy shall cover such insured against whom a claim is or may be made in the same manner as if separate policies had been issued to each insured hereunder.

The General Contractor, before commencing Work, shall supply Tenant Company with Certificate(s) of Insurance and Certificate of Endorsement, evidencing compliance with the minimum requirements listed above and shall within [NUMBER OF DAYS] thereafter furnish Tenant Company with certified copies of the policies. The insurance certificate(s) shall state that the insurance evidenced by such certificate will not be canceled or reduced without [NUMBER OF DAYS] prior written notice to Tenant Company.

8.5. The General Contractor shall maintain a file for certificates of insurance received from each SubContractor. The General Contractor shall not allow any SubContractor to commence work until evidence satisfactory to the General Contractor of insurance is on file. Tenant Company shall have the right to review such insurance certificates at any time.

Each SubContractor shall maintain insurance in amounts not less than those specified below:

(a) Workmen's Compensation in accordance with the laws of California and Employers Liability in an amount not less than $500,000.

(b) Comprehensive General Liability

(i) Bodily Injury, Property Damage Liability in an amount not less than $1,000,000 in any one occurrence combined single limit.

(ii) Above to include Blanket Contractual Liability, Completed Operations Independent General Contractors, Personal Injury (employees exclusion deleted, and "X", "C" and "U" exclusions deleted).

(iii) Products and Completed Operations to be maintained for [NUMBER OF YEARS] after final payment.

(c) Comprehensive Automobile Liability

(i) Bodily Injury and Property Damage Liability in an amount not less than $1,000,000 in any one occurrence.

(ii) Above to include Employers Non-Owned and Hired Car coverage.

(iii) Umbrella Excess Liability $1,000,000 ($5,000,000 for Specialty SubContractors) over primary insurance

Each SubContractor shall furnish the General Contractor, before commencing work, certificates of insurance, evidencing compliance with the minimum requirements previously listed. The insurance will be placed in insurance company(ies) acceptable to Tenant Company. Each certificate shall state the insurance evidenced by such certificate will not be cancelled or reduced without [NUMBER OF DAYS] prior written notice to the General Contractor and Tenant Company.

8.6. Tenant Company shall have the right to require the General Contractor to furnish bonds covering faithful performance of the Agreement and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Agreement on the date of execution of the Agreement.

8.7. Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the General Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

ARTICLE 9: INDEMNITY/HOLD HARMLESS

9.1. General Contractor and SubContractors will indemnify and hold Tenant Company harmless from all claims, demands, or liability arising from or encountered in connection with this Agreement or the prosecution of work under it, whether such claims, demands or liability are caused by General Contractor, General Contractor's agents or employees, or SubContractors employed on the Project, their agents or employees, or products installed on the Project by General Contractor or SubContractors, excepting only such injury or harm as may be caused solely and exclusively by Tenant Company's fault or negligence. Such indemnity shall extend to claims, demands and liability for injuries occurring after completion of the Project as well as during the Work's progress. General Contractor shall incorporate this indemnity clause into each Subcontract.

9.2. General Contractor and SubContractors will also indemnify and hold Tenant Company harmless from any costs, expenses, attorneys' fees and liabilities incurred by General Contractor or Tenant Company in defending against such claims, whether the same proceed to judgment or not, and General Contractor at its own expense agrees, upon written request by Tenant Company, to defend any such suit or action brought against Tenant Company. In the prosecution of any successful claim or suit by Tenant Company for the enforcement of this Agreement, or any of the monetary or other obligations of the Agreement hereunder, General Contractor agrees to pay to Tenant Company any reasonable attorneys' fees and any costs of suit incurred by Tenant Company. This attorney fee provision is applicable to any claims or lawsuits brought against General Contractor or Tenant Company or any claims or lawsuits made or brought by Tenant Company against General Contractor to enforce the terms of this Agreement.

ARTICLE 10: DISPUTES

10.1. Any controversy between the parties to this Agreement arising from or relating to the performance or interpretation of this Agreement or any Subcontract or Sub-Subcontract is subject to Arbitration. Tenant Company, General Contractor and all Sub-Contractors, Sub-Sub-Contractors, material suppliers, sureties, and other parties involved with the construction of the Work are bound, each to the other by this arbitration clause, provided that the party has signed this Agreement or any document that refers to or incorporates this Agreement by reference, or signs any other Agreement to be bound by this Arbitration clause.

(a) On the demand of the Arbitrator or any party to an Arbitration initiated under the Arbitration provisions of this Agreement, Tenant Company, General Contractor, and any Sub Contractor, Sub-SubContractor, surety or other party bound by this Arbitration provision agrees to join in, become a party to, and be bound by such Arbitration.

(b) Arbitration shall be conducted under the Construction Industry Rules of the American Arbitration Association that are in effect at the time of the Arbitration, and judgment may be entered on the award as provided by California Law.

(c) If any party refuses or neglects to appear at or participate in arbitration after reasonable notice, the Arbitrator may decide the controversy in accordance with whatever evidence is presented by the party or parties who do participate. The arbitrator may award any remedy that is just and equitable in the arbitrator's opinion. The arbitrator will award to the prevailing party or parties such sums as are proper to compensate for the time, expense and trouble of arbitration, including arbitration fees, expert fees and reasonable attorney fees. The arbitrator will retain jurisdiction of a controversy even if a party or parties to the dispute will not or cannot be joined in the arbitration proceedings.

10.2. If either party becomes involved in arbitration or litigation arising from this Agreement or the performance of it, the court, tribunal or arbitrator in such arbitration or litigation, or in a separate suit, shall award the reasonable costs and expenses of arbitration and litigation, including expert witness fees and reasonable attorney fees, to the prevailing party or parties.

10.3. In a dispute between Tenant Company and General Contractor concerning performance of the Work, interpretation of this Agreement, extra work, delay, disruption, or payment or nonpayment for work performed, the parties shall attempt to resolve the dispute by negotiation. If the dispute is not resolved, General Contractor agrees to continue the work diligently to completion and will neither rescind this Agreement nor stop the progress of the Work, but will submit such controversy to determination by Arbitration after the Project has been completed.

10.4. As provided previously in this Agreement, Tenant Company, at any time, may require General Contractor to furnish a surety bond issued by a company authorized to do surety business in California on a form published by the [PUBLISHER COMPANY] guaranteeing that the General Contractor will perform all its obligations under this Agreement and will pay for all work and material furnished to the job. This bond shall be an amount equal to the value of the work remaining to be done under the Agreement. Tenant Company shall pay the premium on any such bond. General Contractor's failure to furnish the bond within [NUMBER OF DAYS] after written demand by Tenant Company shall constitute a material breach of this Contract and shall entitle Tenant Company to eject General Contractor from the job and have the work performed by others. In this event, General Contractor shall promptly and peaceably vacate the jobsite, leaving at the jobsite all tools, equipment and materials supplied for completion of the Work. If the cost of completing the Work required by this Contract exceeds the unpaid balance of the Contract price, General Contractor shall, on demand, reimburse Tenant Company for the difference. If the cost of completion in this situation is less than the unpaid balance of the Contract price, Tenant Company shall remit the difference to General Contractor.

10.5. Tenant Company may, during reasonable business hours, review and audit General Contractor's cost, accounting records, books, accounts, audits, inspections, test reports, and any other materials maintained by General Contractor on the Work of improvement. General Contractor shall supply Tenant Company with reasonable facilities for such audits. General Contractor shall preserve all job records for at least [NUMBER OF YEARS] after completion of the Work.

ARTICLE 11: TERMINATION

11.1. The General Contractor shall be deemed in default and Tenant Company may terminate this Agreement if the General Contractor or any SubContractor shall:

(a) Fail to begin Work within the time specified;

(b) Fail to perform the Work with sufficient properly skilled workmen and/or equipment or with sufficient proper materials to insure the completion of the Work within the specified time as reasonably determined by Tenant Company, which failure shall continue for [NUMBER OF DAYS] after notice thereof from Tenant Company;

(c) Perform the Work in a manner reasonably deemed by Tenant Company to be unsatisfactory, which failure shall continue for [NUMBER OF YEARS] after notice thereof from Tenant Company;

(d) Fail or refuse to remove materials reasonably determined by Tenant Company to be unsuitable, which failure shall continue for [NUMBER OF YEARS] after notice thereof from Tenant Company;

(e) Fail or refuse to perform anew any work reasonably determined by Tenant Company to be defective or unacceptable, which failure shall continue for [NUMBER OF YEARS] after notice thereof from Tenant Company;

(f) Fail to diligently proceed with the prosecution of the Work according to the agreed schedule for completion, which failure shall continue for [NUMBER OF DAYS] after notice thereof from Tenant Company;

(g) Fail to make prompt payment to SubContractors, Sub-SubContractors, materialmen or suppliers for labor or material furnish to or for the Project, which failure shall continue for [DAYS OF FAILURE] after notice thereof from Tenant Company;

(h) Become insolvent or be declared bankrupt, commit any act of bankruptcy or insolvency, or make an assignment for the benefit of creditors;

(i) Violate any laws, ordinances, rules, regulations or orders of any public authority having jurisdiction over the Project, which violation shall continue for [DAYS OF VIOLATION] after notice thereof from Tenant Company; or

(j) Otherwise fail to perform its obligations hereunder, which failure shall continue for [DAYS OF FAILURE] after notice thereof from Tenant Company.

11.2. When Tenant Company determines that any of the above reasons exist, [COMPANY 1] may, without prejudice to any other rights or remedies Tenant Company may have and after giving the General Contractor and the General Contractor's surety, if any, [NUMBER OF DAYS] written notice:

(a) Terminate this Agreement;

(b) Take possession of the site and all materials, equipment, tools, construction equipment and machinery thereon owned by the General Contractor;

(c) Finish the Work by whatever method Tenant Company, in its sole discretion, may deem expedient; and

(d) Provide the General Contractor with instructions as described in [ARTICLE 11.3].

11.3. Upon receipt of notice of termination, the General Contractor shall immediately, in accordance with written instructions from Tenant Company, proceed with performance of the following duties regardless of delay in determining or adjusting amounts due under this Article:

(a) Cease operations as specified in the Notice;

(b) Place no further orders and enter into no further subcontracts for materials, equipment, labor or facilities, except as necessary to complete continued portions of the Agreement;

(c) Promptly make every reasonable effort to procure cancellation, upon terms satisfactory to Tenant Company, of all orders and Subcontracts;

(d) Take actions that may be necessary or that Tenant Company may direct, for the protection and preservation of the terminated work and to protect materials, plant and equipment on the Site or in transit thereto;

(e) Execute and deliver such papers and documents and take such steps, including legal assignment of its contractual rights, as Tenant Company may require in order to vest in Tenant Company the rights and benefits the General Contractor may have under any obligations or commitments incurred or undertaken by the General Contractor in connection with the Work.

11.4. In the event that Tenant Company terminates the Agreement for one of the above reasons, the General Contractor shall not be entitled to receive further payment until the Work is finished. If the sum of the costs of finishing the Work, including compensation for the services of the Architect, Construction manager, Consultants and General Contractors, plus the amounts previously paid to the General Contractor prior to termination, exceed the sum called for in the Agreement, the General Contractor shall pay the difference to Tenant Company upon demand. If the foregoing costs, together with all other costs incurred by Tenant Company as a consequence of having to terminate the Agreement, are less than the Agreement Sum, than upon completion of the Work, the General Contractor shall be paid the portion of such difference, if any, properly allocable to the portion of the Work completed by the General Contractor prior to termination and for which the General Contractor had not previously been paid. In no event, however, shall the General Contractor be entitled to receive more than the difference between the Agreement Sum, minus all costs associated with completing the Work and terminating the employment of the General Contractor. In determining the amount owing to the General Contractor, allowances shall be made for claims that Tenant Company has against the General Contractor under the Agreement, and for the value of materials, supplies, equipment and other items that are part of the Cost of the Work to be disposed of by the General Contractor.

Neither Tenant Company nor its agents or employees are in any way liable or accountable to the General Contractor for the method by which completion of the Work, or any portion thereof, is accomplished or for the price paid therefore. By terminating the employment of the General Contractor, Tenant Company does not forfeit the right to recover damages from the General Contractor.

11.5. Tenant Company shall provide an "All Risk" form policy of fire insurance with risks excluded as provided in the policy. If substantial damage occurs to the Project by fire, flood, earthquake, or such other risks, whether insured or not, General Contractor shall be excused from further performance under this Agreement, and shall be paid the prorata value of the Work performed [NUMBER OF DAYS] after recording a Notice of Cessation of Work. If the damage is insubstantial, General Contractor shall repair the damage and increase the Agreement price by the reasonable value of the repairs. Damage will be deemed "insubstantial" if the cost of repair is less than 10% of the Agreement price. As used in this Article, "Repair" includes both repairs to the Work done by General Contractor and repairs to other portions of the jobsite that are necessary to enable General Contractor to complete the Project. If the damage is substantial, Tenant Company shall process its claims with its insurance carrier and Tenant Company and General Contractor shall negotiate in good faith for a change order and make appropriate adjustments to the Contract price and the Schedule for Performance. If the parties are unable to agree on the terms of the Change Order or if for any reason funds are not available to pay for rebuilding, than General Contractor is not obligated to continue the Work.

ARTICLE 12: MISCELLANEOUS PROVISIONS

12.1. This Agreement constitutes the entire Agreement of the parties. No other agreements, oral or written, pertaining to the Work to be performed under this Contract exists between the parties. This Agreement can be modified only by an Agreement in writing signed by both parties.

12.2. One or more waivers of a breach of any term of this Agreement shall not be construed as a waiver of a subsequent breach of the same or other terms.

12.3. In the event that any provisions of this Agreement shall be invalid or unenforceable, the remaining provisions shall be valid and binding on the parties.

12.4. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective partners, joint venturers, principals, heirs, estates, personal representatives, successors and assigns.

12.5. In the event that this Agreement is for any reason terminated, its warranty and indemnity provisions shall remain in full force and effect; and in the event that any indemnification herein called for shall be prohibited by law, then the subject indemnification provision shall not be void, but rather shall be interpreted as required in indemnification only to the fullest extent allowed by law.

12.6. This Agreement is being entered into in the [CITY OF AGREEMENT], [COUNTY OF AGREEMENT, [STATE OF AGREEMENT]; and it shall be interpreted and enforced according to the laws of the [STATE OF AGREEMENT].

12.7. Neither party may assign this Agreement or payments due under the Agreement, without the other party's written consent.

This Agreement is entered into as of the effective date set forth above and is executed in at least two original copies of which one is to be delivered to the General Contractor, and one to Tenant Company.

General Contractor:

By:

Name: [GENERAL CONTRACTOR SIGNATORY NAME]

Date: [GENERAL CONTRACTOR SIGNATURE DATE]

Tenant Company:

By:

Name: [TENANT COMPANY SIGNATORY NAME]

Date: [TENANT COMPANY SIGNATURE DATE]