

APPENDIX 4
MFPD MODEL COMMERCIAL LEASE

Project Name: _____
Location: _____
Project Number: _____

COMMERCIAL LEASE AGREEMENT

This Lease Agreement entered into by the Secretary of Housing and Urban Development (the "Secretary" or "HUD"), by and through

("Lessor") and _____
("Lessee"), provides as follows:

WHEREAS, Lessor is the owner of _____ (the "Project"), located in _____; and

WHEREAS, Lessee desires to lease space in the Project and Lessor is willing to rent Lessee space in the Project upon the terms, conditions and covenants set forth herein.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the parties, intending to be legally bound by this Lease Agreement, hereby agree as follows:

1. Definitions

a. Parties:

i. Lessor: Secretary of Housing and Urban Development, by and through:

ii. Lessee:

b. Leased Premises:

c. Term of Lease: _____ years

- d. Renewal Term: _____ years
- e. Commencement Date: _____
- f. Termination Date: _____

2. Lease of Premises. In consideration of the mutual covenants contained herein, and the payment of Rent as provided in paragraph 3 of this Lease Agreement, Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Leased Premises, described in paragraph 1(b) of this Lease Agreement, which are part of the Project, for a Term of Lease running from the Commencement Date to the Termination Date, both as set forth in paragraph 1 of this Lease Agreement.

3. Rent. Lessee covenants and agrees to pay to Lessor during the Term of Lease either a Flat Rent pursuant to paragraph a., or a Base Rent and Percentage Rent pursuant to paragraph b., as agreed by both parties. In no event shall Lessee be obligated to pay rent under both the Flat Rent Schedule and the Percentage Rent Schedule.

a. Plat Rent Schedule. Applicable
Lessee covenants and agrees to pay to Lessor during the Term of Lease an annual flat rent (the "Flat Rent") in the amount of \$ _____, payable in equal monthly installments of \$ _____ each, due and payable in advance, on the first day of each and every month during the Term of Lease. If the commencement date of the Term of Lease occurs other than on the first day of a month, then the monthly installment for the first month of the Term of Lease shall be prorated at the rate of one-thirtieth (1/30th) of the monthly installment of rent for each day, payable in advance of the Commencement Date. Lessee shall pay all rent to Lessor at the Lessor's office, or to such other party or other address as Lessor may designate by written notice to Lessee.

b. Percentage Rent Schedule. Applicable
Lessee covenants and agrees to pay to Lessor during the Term of Lease an annual base rent (the "Base Rent") of \$ _____, payable in equal monthly installments of \$ _____ each, due and payable in advance on the first day of each and every month during the Term of Lease. In addition to the Base Rent, Lessee shall pay to

Lessor rent based on a percentage of Lessee's monthly Gross Sales for each month during the Term of Lease (the "Percentage Rent"). The Percentage Rent shall be payable to the extent that five percent (5%) of Gross Sales for each month during the Term of Lease exceeds the annual base rent for that particular month. Monthly installment of Percentage Rent shall equal the positive difference, if any, between 5% of Gross Sales for the month which Percentage Rent is being calculated and the Base Rent payable for that month. Monthly installments of Percentage Rent shall be payable by no later than the last day of the month following the month for which Percentage Rent is being paid. If the commencement date of the Term of Lease occurs other than on the first day of a month, then the monthly installment for the first month of the Term of Lease shall be prorated at the rate of one-thirtieth (1/30th) of the monthly installment of rent for each day, payable in advance of the Commencement Date. Lessee shall pay all rent to Lessor at the Lessor's office, or to such other party or other address as Lessor may designate by written notice to Lessee.

- i. For purposes of calculating the Percentage Rent, Gross Sales means the total amount in dollars of the actual sales price, whether for cash or on credit, of all sales of merchandise and services, and all other receipts of business conducted in, on or from the Leased Premises and all mail or telephone orders received or filled at or from the Leased Premises and all deposits not refunded to purchasers and all orders taken in and from the Leased Premises whether or not said orders are filled elsewhere and receipts or sales by any sublessee doing business in or from the Leased Premises. Each sale upon installment or credit card shall be treated as a sale for the full price in the month during which such sale shall be made, irrespective of the time when Lessee may receive payment for such sale.
- ii. Lessee shall prepare and keep full, complete and proper books, records and accounts of Gross Sales, which shall at all reasonable

times be open to the inspection of Lessor, Lessor's auditor or other authorized agent at the Leased Premises for a period of at least three (3) years after the expiration of each year in the Term of Lease. Lessee shall furnish Lessor, along with each monthly installment of Percentage Rent, a complete statement, certified by the Lessee, of the amount of Gross Sales made during the month for which that installment is being paid. Lessee shall furnish Lessor, within ninety (90) days after the expiration of each year during the Term of Lease, a complete statement certified by Lessee showing the Gross Sales for the preceding year and copies of all returns and other information filed with respect to State sales and use taxes.

iii. The acceptance by Lessor of payments of Percentage Rent shall be without prejudice to Lessor's right to an examination of Lessee's books and records of its Gross Sales and inventories at the Leased Premises, in order to verify the amount of Gross Sales made in and from the Leased Premises, and without prejudice to Lessor's right to cause adjustments to be made to Percentage Rent based on such examination as appropriate. In the event Lessee shall fail to timely furnish to Lessor any monthly or annual statement required under this subparagraph, Lessor shall have the right, without notice, to conduct an audit of Lessee's books and records and to prepare such statements at Lessee's expense.

4. Late Payment Fee. In the event that any monthly installment of rent, whether Flat Rent, Base Rent or Percentage Rent, is not paid within ten (10) calendar days after it is due, then Lessee shall also pay to Lessor, as additional rent, a late payment fee equal to five percent (5%) of the delinquent rent for each month or part thereof that such rent remains unpaid.
5. Security Deposit. Upon execution of this Lease Agreement, Lessee shall pay to Lessor a deposit of \$ _____ to be held by Lessor as security for Lessee's performance of all Lessee's covenants and obligations in this Lease Agreement. Lessor shall have the right to apply the
-

security deposit in whole or in part in payment of any unpaid rent or other amount due because of an unperformed covenant or obligation by Lessee. Lessee's liability is not limited to the amount of the security deposit. On termination of the Lease Agreement and full payment of all amounts due and performance of Lessee's covenants and obligations, including surrender of the premises in accordance with paragraph 13(a) of this Lease Agreement, the security deposit, or any remaining unapplied portion thereof, shall be returned to Lessee without interest, except as provided by law.

6. Utilities. Lessee shall pay, in addition to the rent specified in paragraph 3(a) or 3(b) of this Lease Agreement, all water rents, gas and electric light and power bills taxed, levied or charged on the Leased Premises. This shall include any security system installed by the Lessee, during the Term of Lease in the Leased Premises. In case these charges are not paid when due, Lessor shall have the right to pay the same, which amounts so paid, are declared additional rent and are payable by the Lessee with the next monthly installment of rent due to the Lessor. It is understood and agreed that no interruption in the supply of any services or utilities to the Leased Premises shall constitute an actual or constructive eviction of Lessee from the Leased Premises or shall entitle Lessee to terminate this Lease Agreement or to an abatement of any rent payable hereunder. Lessor shall have no liability to Lessee on account of any such interruption. The Lessee, shall, at its own expense, obtain separate metering for such utilities.
 7. Condition on Possession. Lessee has examined and knows the condition of the Leased Premises and has received the same in good order and repair, and acknowledges that no representations as to the condition and repair of the Leased Premises, and no agreements or promises to decorate, alter, repair or improve the Leased Premises, have been made by the Lessor, except for those executed in writing and made a part of this Agreement.
 8. Use of Leased Premises. No use shall be made of the Leased Premises other than as a _____. Any other use shall constitute a default of this Lease Agreement. Lessee shall not permit any use of the Leased Premises which shall be offensive to or interfere with the rights of other tenants in the Project or which shall make voidable any insurance on the Project, the Leased
-

4315.1 REV-1

Premises, the building of which the Leased Premises are a part, or the contents thereof, or which shall be improper or contrary to any law or regulation. Lessee shall not keep or use or permit to be kept or used in or on the Leased Premises or any place contiguous thereto any flammable fluids or explosives, without the prior written permission of the Lessor.

- 9. Hours of Business. Lessee's business in the Leased Premises shall be open to the public during the following hours:

Monday - Friday _____

Saturday: _____

Sunday: _____

During other hours Lessee may conduct the following activities on the Leased Premises: _____

- 10. Deliveries. Lessee shall receive all deliveries and move all freight, furniture or other bulky matter through such doors, loading docks and corridors, and at such times, as may be reasonably designated by Lessor. Lessee shall not permit vehicles or materials to be parked or to stand in the loading dock area or anywhere on the Project's premises or in the area contiguous to the Project's premises where such vehicles and materials unreasonably interfere with the use of any area of the Project, the common areas, any public alleys, sidewalks or streets. Any damage or injury to the Leased Premises or the building in which the Leased Premises are located caused by the receipt of deliveries or the moving of freight, furniture or other bulky matter by Lessee shall be repaired at the sole cost of Lessee.

- 11. Maintenance.

- a. The Leased Premises are:

Free standing

Not free standing.

Unless the Leased Premises are free standing, Lessor shall, at its cost, maintain the building in which the Leased Premises are located in good condition and make all structural repairs required to the building and the Leased Premises, including foundations,

-
- roofs, bearing and exterior walls, and subflooring, and shall also maintain and repair at its cost, the unexposed electrical, plumbing and sewage systems. Lessor shall be responsible for all snow, ice and water removal and for the disposal of all debris and waste from and around the building in which the Leased Premises are located. If the Leased Premises are free standing, the Lessee shall assume the responsibilities of the Lessor under this paragraph.
- b. Lessee shall maintain and keep the Leased Premises in good repair throughout the Term of Lease. Lessee shall not commit waste or cause damage to the Leased Premises or the building of which the Leased Premises are a part; nor shall Lessee permit the appearance of the Leased Premises to deteriorate. If the Lessee does not keep the Leased Premises in good repair, Lessor may enter the same and may make such repairs as required to restore the Leased Premises to the condition they were in upon the date of execution of the Lease Agreement and Lessee agrees to pay Lessor, in addition to the rent set forth in paragraph 3 of this Lease Agreement, the expenses Lessor incurred in repairing the Leased Premises due to the failure of the Lessee to keep the Leased Premises in good repair.
12. Access to Leased Premises. Lessor reserves the right at all reasonable times, for itself and its duly authorized agents, to go upon and inspect the Leased Premises and at its option to make repairs, alterations and additions to the Leased Premises as it deems necessary, provided none of Lessee's rights granted under this Lease Agreement are unreasonably abridged by the Lessor's action under this paragraph. Lessor, during the progress of any work on the Leased Premises, may take all necessary materials and equipment into the Leased Premises without the same constituting an eviction. Lessee shall not be entitled to any abatement of rent while work is in progress nor to any damages by reason of loss or interruption of business or otherwise, provided; however, that Lessor shall use its best efforts not to interfere with Lessee's business operations. In emergencies, if Lessee is not present to permit entry into the Leased Premises, Lessor or Lessor's agent may enter the Leased Premises to protect or preserve or avoid damage to the Leased Premises, provided, however, reasonable care is exercised to safeguard Lessee's property. Lessor or its agents shall not be rendered liable for any entry into the Leased

4315.1 REV-1

Premises pursuant to this paragraph, nor shall the obligations of Lessee under this Lease Agreement be affected by Lessor's entry.

13. Quiet Enjoyment. Lessor covenants and agrees that Lessee, paying the rents and observing and keeping the terms, covenants and conditions of this Lease Agreement, shall lawfully, peaceably and quietly hold, occupy and enjoy the Leased Premises without any let, hindrance, ejection or molestation by the Lessor or any person or persons lawfully claiming under it.
14. Non-liability of Lessor. Except as provided by law, Lessor shall not be liable to Lessee for any damage or injury to Lessee, Lessee's agents, employees, or invitees, or Lessee's property caused by the failure of Lessor to keep the Leased Premises and the building in which the Leased Premises are located, in good repair, and shall not be liable for any injury caused by wind, defective plumbing, electric wiring, insulation, gas pipes, water pipes, or steam pipes, or from broken stairs, porches, railings or walks, or from the backing up of any sewer pipe or down-spout or from the bursting, leaking or running of any tank, tub, washstand, water closet or waste pipe, drain or any other pipe or tank, or from the escape of steam or hot water from any radiator, nor for any such damage or injury occasioned by the falling of any fixture, plaster or stucco, nor for any damage or injury arising from any act, omission or negligence of co-tenants or of other persons, all claims for any such damage or injury being expressly waived by Lessee.
15. Assigning or Subletting: Lessee shall not assign this Lease Agreement or sublet the whole or any part of the Leased Premises without Lessor's prior written consent, which consent shall not be unreasonably withheld or denied. A transfer of fifty percent (50%) or more of the ownership interests of Lessee within a twelve (12) month period shall be deemed equivalent to an assignment or subletting requiring consent of Lessor. Any attempted assignment or subletting made without Lessor's consent, shall, at the option of the Lessor, be deemed a default of this Lease Agreement. In the event Lessee should assign this Lease Agreement or sublet the Leased Premises with the prior written consent of the Lessor, the assignee or sublessee shall become subject to and perform all the terms, covenants and conditions of this Lease

assignment of this Lease Agreement or subletting of the Leased Premises shall release Lessee from liability under this Lease Agreement and Lessee shall at all times remain liable to Lessor for payment of rent and for performance of all terms, covenants and conditions of this Lease Agreement. Lessor shall give Lessee notice of any default by any assignee or sublessee under this Lease Agreement and Lessee shall have thirty (30) days from the date such notice is given to cure the default. If Lessee cures the default within the specified period, Lessee shall have the right to re-enter and possess the Leased Premises subject to the terms and conditions of this Lease Agreement.

16. Construction and improvements.

- a. Lessee's Construction. Lessee shall be solely responsible for the repair, renovation and remodeling of the Leased Premises. Lessee agrees that all repairs, renovation and remodeling shall be completed in accordance with plans and specifications which have been approved in writing by the Lessor prior to the commencement of such repairs, renovations and remodeling. All repairs, renovation and remodeling shall be performed in accordance with all laws, ordinances, regulations and rules of all appropriate governmental authorities and insurance rating agencies. Lessee agrees that it will not permit any mechanics, laborers or other construction liens to be asserted against the Leased Premises. Lessee agrees to indemnify and hold Lessor harmless from any claim or liability for personal injury or property damage sustained by any agent, employee or sub-contractor of Lessee, or such sub-contractor's agents or employees, while on the Leased Premises, or by any third person, including other tenants of the Lessor, or agents, employees or sub-contractors of Lessor, injured in the Leased Premises, or in the Project, as a result of the negligence of, or a condition created by, the Lessee or its agents, employees or sub-contractors or a condition existing on the Leased Premises during the repair, renovation and remodeling of the Leased Premises.
- b. Signs. Lessee shall not erect or install any ground, building or roof signs except as permitted by Lessor, provided that Lessor's permission shall not be

unreasonably withheld or denied. All signs installed by Lessee shall comply with all requirements of

4315.1 REV-1

appropriate governmental authorities and all necessary permits or licenses shall be obtained by Lessee. Lessee shall maintain all signs in good condition and repair at all times and shall save Lessor harmless from injury to person or property arising from the erection, installation and maintenance of said signs. Upon vacating the Leased Premises, Lessee shall remove all signs and repair any damage caused by their removal.

- c. Title to Improvements. The improvements to be constructed on the Leased Premises by Lessee, and all additions, alterations, modifications and replacements thereto during the Term of Lease, except for those indicated on the attached Rider, shall be the sole property of Lessee at all times during the Term of Lease. Prior to the expiration or earlier termination of the Term of Lease, Lessee shall remove same, and upon the expiration or earlier termination of the Term of Lease, all such improvements not so removed shall be surrendered by Lessee and shall become the property of Lessor. Upon removal of all improvements, the Lessee shall return the Leased Premises to the same, or better, condition as it was in at the commencement of the Term of Lease.

17. Insurance and Indemnification

- a. Insurance: Lessee shall maintain with respect to the Leased Premises comprehensive public liability insurance for personal injuries and property damage, which may be sustained by third parties arising out of the use, occupancy, management or control of the Leased Premises. Such insurance shall be in amounts approved by the HUD field office where the property is located. Lessee shall also obtain insurance on the contents of, and any improvements placed on, the Leased Premises, including alterations, decorations, furnishings, fixtures and equipment, against loss or damage by fire, explosion, sprinkler leakage and/or other casualty in amounts at all times sufficient to rebuild, repair and restore the Leased Premises in the event of such casualty. Lessee shall insure all plate glass on the Leased Premises, at 100% of replacement value. All insurance required pursuant to this paragraph shall name the Lessor as an

additional insured, insuring Lessor, as well as Lessee, against injury to persons or damage to property. All insurance required pursuant to this

paragraph shall be issued by insurance companies that are licensed to do business in the jurisdiction wherein the Project is located and that have a financial rating satisfactory to the Lessor. Lessee shall deposit with Lessor, upon Lessor's request, certificates for all insurance at, or prior to, the commencement of the Term of Lease, and thereafter within thirty (30) days prior to any cancellation or reduction of coverage. Each policy shall contain an endorsement which provides that no cancellation or reduction of coverage may be made without first giving Lessor and, if named as an additional insured, the holder of any mortgage or deed of trust on the Project, at least thirty (30) days prior written notice of such proposed action.

- b. Indemnification. Lessee agrees to indemnify, defend and hold Lessor harmless from and against any and all claims, causes of action, liabilities and other such loss or expense, of whatever nature, including costs of litigation and reasonable attorney's fees, whether for personal injury or property damage, arising out of, or connected in any way with, the Leased Premises, the conduct of Lessee's business on the Leased Premises or Lessee's use and occupancy of the Leased Premises, whether such injury occurs on the Leased Premises, in any area adjacent to the Leased Premises or in the Project.
18. Liens and Encumbrances. This Lease Agreement shall be subject to and subordinate to any and all mortgages, deed of trust and other instruments in the nature of a mortgage now or at any time hereafter constituting a lien or liens on the Leased Premises or the buildings of which the Leased Premises are a part, and Lessee shall, when requested, promptly execute and deliver such written instruments as shall be necessary to show the subordination of the Lease Agreement to said mortgages, deeds of trust or other such instruments. Lessee hereby covenants and agrees to be bound by all of Lessor's obligations contained in any such mortgages, deeds of trust and other instruments and to do nothing which shall cause Lessor to be in default of said mortgages, deeds of trust or other instruments and to remedy any such default of same within ten (10) days written notice from Lessor.

In the event that any lien upon Lessor's title results from any act or neglect of Lessee, and Lessee fails to remove said lien within ten (10) days after Lessor's notice to do so, Lessor may remove the lien by paying the

4315.1 REV-1

full amount of the lien without any investigation or contest of the validity of such lien, and Lessee shall pay Lessor upon request the amount paid out by Lessor in such behalf, including Lessor's costs, expenses and attorney's fees.

19. Damage and Destruction

a. If, at any time during the Term of Lease, the Leased Premises, or any part thereof, shall be damaged or destroyed by fire or other casualty of any kind or nature, including any casualty for which insurance was not obtained or obtainable, so as to be unfit for Lessee's carrying on its business in its normal and usual manner, and such destruction or damage can reasonably be restored or repaired within one hundred eighty (180) days after such event, there shall be no abatement of rental or other obligation of Lessee under this Lease Agreement and Lessor, or Lessee, with Lessor's written permission, shall restore or repair the Leased Premises to substantially the same condition as they were in immediately before the destruction with all reasonable speed and shall complete such restoration or repair within one hundred eighty (180) days after such event.

b. If the Leased Premises, or any part thereof, shall be destroyed or so damaged by any cause as to be unfit for Lessee's carrying on its business in its normal and usual manner, and it is determined by the parties that such destruction or damage cannot reasonably be repaired within one hundred eighty (180) days after the date of destruction or damage, either party shall be entitled to terminate this Lease Agreement by written notice of termination to the other party within thirty (30) days after the date of destruction or damage. If no notice of termination is given by either party, Lessor, or Lessee, with Lessor's written permission, shall immediately after expiration of such thirty (30) day period undertake such restoration or repair as is necessary to restore the Leased Premises to their former condition with all reasonable speed. In such event, the rental shall abate from the date of destruction or damage

until the completion of such repairs.

- c. Lessor shall bear the cost of all amounts expended on the repair or restoration of the Leased Premises, including actual and reasonable costs incurred by the

7/92

Appendix 4, page 12 of 18

4315.1 REV-1

Lessee, except that Lessor shall not be required to pay for the cost of repair or restoration of Lessee's alterations or improvements, trade fixtures, equipment or personal property. If the Lessor, during the course of its repair or restoration of the Leased Premises, repairs or restores any alterations or improvements made by the Lessee, or any of Lessee's trade fixtures, equipment or personal property, Lessee shall reimburse Lessor for any cost incurred in repairing or restoring these items which is not reimbursed through insurance. Lessee shall tender such reimbursement to Lessor not later than thirty (30) days after receipt of the invoices from Lessor for the reimbursable items.

- d. If the building in which the Leased Premises are located is so destroyed or damaged so as to make the building unfit for occupancy as a residential apartment building and Lessor decides not to restore or repair the building, the Lease Agreement shall be terminated.
20. Acquisition of Title By HUD. In the event that the Department of Housing and Urban Development ("HUD"), as mortgagee-in-possession, acquires title to the Leased Premises, this Lease Agreement shall continue in full force and effect, so long as Lessee is not in default on the payment of rent or in the performance of any of the terms, covenants or conditions of this Lease Agreement. Lessee's possession of the Leased Premises shall not be disturbed and Lessee's rights and privileges under this Lease shall not be diminished or interfered with by HUD.
 21. Default. If any installment of rent shall remain unpaid for five (5) days after the same becomes due, or if Lessor shall fail to keep or perform any of the terms, covenants or conditions of this Lease Agreement to be kept by it within ten (10) days after notice from Lessor of such failure, or if Lessee's interest in the Leased Premises shall be sold under execution, attachment or other legal process, or if Lessee shall make an assignment for the benefit of creditors or if Lessee shall be subjected to a receivership, then, and without

notice, it shall be lawful for the Lessor to re-enter the Leased Premises and have free possession of the same and this Lease Agreement shall be terminated without prejudice to Lessor's right of action for arrears of rent or breach of contract, present and prospective damages or for any other costs or expenses resulting from such

4315.1 REV-1

breach on the part of the Lessee. In the event of default, Lessor may relet the Leased Premises for the remainder of the Term of Lease, and may recover from Lessee any deficiency between the amount so obtained and the rentals provided by the new tenant. The reletting of the Leased Premises under such circumstances by Lessor shall not be construed under any circumstances as the acceptance of the surrender of the Leased Premises by the Lessee, unless Lessor consents in writing. Lessor's rights and remedies under this paragraph shall be cumulative and nonexclusive of any other rights, remedies at law or in equity.

22. Anticipatory Repudiation. If, prior to the Commencement Date, Lessee notifies Lessor of, or otherwise unequivocally demonstrates, an intention to repudiate this Lease Agreement, Lessor may, at its option, consider such anticipatory repudiation a breach of this Lease Agreement. In addition to any other remedies guaranteed Lessor under this Lease Agreement, Lessor may retain the security deposit and all rent paid by Lessee upon execution of the Lease Agreement. Lessee shall pay in full for all materials ordered for, and for all improvements constructed or installed within, the Leased Premises to the date of the breach.
23. Termination of Lease Agreement.
 - a. Surrender of Leased Premises. Lessee shall, at the expiration or earlier termination of this Lease, for whatever reason, remove all Lessee's goods and effects from the Leased Premises, including all trade fixtures, furniture and equipment. Lessee shall deliver to Lessor the Leased Premises, and all keys, alterations and additions thereto. In the event of Lessee's failure to remove any of Lessee's property from the Leased Premises, Lessor is hereby authorized, without liability to Lessee for loss or damage, and at the sole risk of Lessee, to remove and store any of the property at Lessee's expense, or to retain same under Lessor's control, or to sell at public or private sale, without notice, and to apply

the net proceeds of such sale to the payment of any sum due hereunder, or to destroy such property without liability or obligation of any nature to Lessee.

- b. Holding Over. At the expiration of Term of Lease, because of lapse of time, or otherwise, Lessee shall

7/92

Appendix 4, page 14 of 18

4315.1 REV-1

yield up immediate Possession of the Leased Premises to Lessor in accordance with the conditions of paragraph 8(a) of the Lease Agreement. If Lessee retains possession of the Leased Premises or any part thereof after the termination of the Term of Lease, then Lessor may at its option, within thirty (30) days after termination of the Term of Lease serve written notice upon the Lessee that such holding over constitutes either a renewal of this Lease Agreement for one (1) year, creation of a month to month tenancy, or creation of a tenancy at sufferance. If no written notice is served on the Lessee, then a tenancy at sufferance shall have been created. In the event of a holding over, the terms of this Lease Agreement will continue in effect in accordance with the type of tenancy established as a result of the holding over. Lessee shall also pay to Lessor all damages sustained by Lessor resulting from retention of possession of the Leased Premises by Lessee. This paragraph shall not constitute a waiver by Lessor of any right of re-entry.

- c. Abandonment of Leased Premises. If Lessee shall vacate or abandon the Leased Premises or permit the same to remain vacant or unoccupied for a period of thirty (30) consecutive days, or in case of the non-payment of rent, or of the breach of any covenant of this Lease Agreement, Lessee's right to the possession of the Leased Premises shall terminate without notice and the Lessor may relet the Leased Premises.
- d. Right to Relet. If Lessee's right to the possession of the Leased Premises shall be terminated in any way, the Lessor may relet the Leased Premises for the remainder of the Term of Lease and may recover from Lessee any deficiency between the amount so obtained and the rentals provided by the new tenant.

24. Miscellaneous Provisions.

- a. Modifications in Lease Agreement. The Lease Agreement shall not be modified or terminated without the prior written consent of HUD.
- b. Rules and Regulations. Lessee and Lessee's agents, employees and licensees shall faithfully observe and strictly comply with such reasonable and uniform rules and regulations as Lessor may from time to time

4315.1 REV-1

adopt. Notice of any rules or regulations shall be given in writing. If there is any inconsistency between this Lease Agreement and the rules and regulations established by the Lessor, this Lease Agreement shall govern.

- a. Notices. Notices may be served on either party, at the respective addresses listed in paragraph 1 of this Lease Agreement, either (1) by delivering or causing to be delivered a written copy of the notice; or (2) by sending a written copy of the notice by certified or registered mail, postage prepaid, addressed to Lessor or Lessee at their respective addresses, in which event, the notice shall be deemed to have been served at the time of mailing.
- d. No Waiver by Lessor. No waiver of any of the terms, covenants, or conditions imposed or required by this Lease Agreement and no waiver of any legal or equitable relief or remedy shall be implied by the failure of Lessor to assert any right to declare any forfeiture or for any other reason. No waiver of any terms, covenants or conditions shall be valid unless it shall be in writing and signed by the Lessor. No waiver of any pledge of this Lease Agreement or the forgiveness or performance of any one or more of the terms, covenants or conditions may be claimed or pleaded by Lessee to excuse a subsequent pledge or failure of performance of any of the terms, covenants or conditions of this Lease Agreement.
- e. Force Majeure. In the event that either party shall be delayed or prevented from the performance of any act required under this Lease Agreement by reason of strikes, lockouts, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war, explosion, accident, fire, flood or other catastrophe or any other reason of a like nature not the fault of the party delayed in such performance, then such

performance shall be excused for the period of the delay and the period of the performance of any act shall be extended for a period equivalent to the period of such delay. Notwithstanding anything contained herein to the contrary, under no circumstances shall Lessee at any time be excused from the payment of any rent or other sums of money which may become due under the terms of this Lease Agreement.

- f. Criminal Acts of Third Parties. Lessor shall not be liable in any manner to Lessee, its agents, employees, invitees or visitors for any injury caused by the criminal or intentional misconduct of third parties or of Lessee, Lessee's agents, employees, invitees or visitors. All claims against Lessor for any such damage or injury are hereby expressly waived by Lessee, and Lessee agrees to hold harmless and indemnify Lessor from all such damages and the expense of defending all claims made by Lessee's agents, employees, invitees or visitors.

- g. Option to Renew. Lessee, having fully performed all of its covenants and obligations under this Lease Agreement, has the right and option to renew this Lease Agreement for the term specified in paragraph 1.(d.), upon the same terms, covenants and conditions as provided in this Lease Agreement, provided however, that Rents shall be increased in accordance with the following schedule and that Lessor receives written notice from Lessee of Lessee's intent to renew the Lease Agreement at least six (6) months prior to the expiration of the Term of Lease. All of the terms, covenants and conditions of this Lease Agreement shall remain in full force and effect during each entire Renewal Term, with the monthly installment of rents for each Renewal Term as follows:

	Renewal	Term	Monthly Rent
1.	From _____	to _____	\$ _____
2.	From _____	to _____	\$ _____
3.	From _____	to _____	\$ _____
4.	From _____	to _____	\$ _____
5.	From _____	to _____	\$ _____

- h. Severability. If any provision of this Lease Agreement shall to any extent be held by a court of law to be invalid or unenforceable, the remainder of

this Lease Agreement shall not be affected and each provision of this Lease Agreement shall be valid and be enforced to the fullest extent permitted by law.

- i. All covenants, promises, representations, obligations and agreements contained in this Lease Agreement shall be binding upon, apply and inure to the benefit of Lessor and Lessee and their respective heirs, legal representatives, successors and assigns.

4315.1 REV-1

IN WITNESS WHEREOF, the parties have executed this Agreement and have agreed that it shall be effective as of the _____ day of _____, 19_____.

Signed and acknowledged in the presence of:

LESSOR:

By: _____

LESSEE:

By: _____