

POWER SOLUTIONS INTERNATIONAL, INC.
Form 424B3
March 16, 2012

Filed Pursuant to Rule 424(b)(3) and Rule 424(c)

Registration File Nos. 333-176653 and 333-174543

Prospectus Supplement No. 6

(to Prospectus dated September 13, 2011)

POWER SOLUTIONS INTERNATIONAL, INC.

2,309,783 Shares of Common Stock

This prospectus supplement no. 6 supplements the prospectus dated September 13, 2011, as supplemented by prospectus supplement no. 1 dated November 1, 2011 (Supplement No. 1), prospectus supplement no. 2 dated November 4, 2011 (Supplement No. 2), prospectus supplement no. 3 dated November 14, 2011 (Supplement No. 3), prospectus supplement no. 4 dated November 23, 2011 (Supplement No. 4) and prospectus supplement no. 5 dated March 2, 2012 (Supplement No. 5), which forms a part of each of our registration statements on Form S-1 (Registration File Nos. 333-176653 and 333-174543). This prospectus supplement is being filed to update and supplement the information included or incorporated by reference in the prospectus with the information contained in our current report on Form 8-K, filed with the Securities and Exchange Commission on March 16, 2012 (the Current Report). Accordingly, we have attached the Current Report to this prospectus supplement.

The prospectus, Supplement No. 1, Supplement No. 2, Supplement No. 3, Supplement No. 4, Supplement No. 5 and this prospectus supplement relate to the sale of up to 2,309,783 shares of Power Solutions International, Inc. common stock, par value \$0.001 per share, by the selling securityholders named in the Selling Securityholders section of the prospectus. We will not receive any proceeds from the sale of our shares by the selling securityholders.

Our common stock is quoted on the OTC Bulletin Board and the OTC Markets OTCQB tier under the symbol PSIX. On March 15, 2012, the last reported closing bid price of our common stock as reported on the OTC Bulletin Board was \$12.25 per share. These over-the-counter quotations reflect inter-dealer prices, without retail mark-up, mark-down or commission and may not necessarily represent actual transactions.

Investing in the securities involves a high degree of risk. You should read the prospectus, Supplement No. 1, Supplement No. 2, Supplement No. 3, Supplement No. 4, Supplement No. 5 and this prospectus supplement carefully before you invest. See Risk Factors beginning on page 5 of the prospectus.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of the securities offered hereby or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.

The date of this prospectus supplement is March 16, 2012

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of

The Securities Exchange Act of 1934

Date of Report (Date of Earliest Event Reported): March 13, 2012

POWER SOLUTIONS INTERNATIONAL, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction

of incorporation)

655 Wheat Lane, Wood Dale, IL

000-52213
(Commission

File Number)

33-0963637
(IRS Employer

Identification No.)

60191

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(Address of principal executive offices)

(Zip Code)

Registrant's telephone number, including area code: (630) 350-9400

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 1.01 Entry into a Material Definitive Agreement.

On March 13, 2012, Power Great Lakes, Inc., an Illinois corporation (PGL) and indirect wholly-owned subsidiary of Power Solutions International, Inc. (the Company), entered into an Industrial Building Lease (the Lease Agreement) with Centerpoint Properties Trust (Centerpoint), a Maryland real estate investment trust, for the building located at 801 AEC Drive, Wood Dale, Illinois (the Building).

The term of the Lease Agreement is from August 1, 2013 through July 31, 2018, and PGL has the option to renew for one additional five-year period. PGL is currently leasing the Building from Centerpoint pursuant to an existing lease, which expires July 31, 2013. PGL will continue to occupy 100% of the Building, which has a total area of approximately 116,000 square feet and will be used for manufacturing, warehousing and certain administrative functions.

The Lease Agreement is attached to this Current Report on Form 8-K as Exhibit 10.1 and is incorporated herein by reference. The foregoing summary of the Lease Agreement is qualified in its entirety by the complete text of the Lease Agreement filed herewith.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit Number	Exhibit Description
10.1	Industrial Building Lease, dated as of March 13, 2012, between Power Great Lakes, Inc. and Centerpoint Properties Trust.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Power Solutions International, Inc.

Date: March 16, 2012

By: /s/ Thomas J. Somodi

Name: Thomas J. Somodi

Title: Chief Operating Officer and Chief Financial Officer

INDUSTRIAL BUILDING LEASE

THIS LEASE is made as of this 13th day of March, 2012 between CENTERPOINT PROPERTIES TRUST a Maryland real estate investment trust (**Landlord**), and POWER GREAT LAKES, INC., an Illinois corporation (**Tenant**).

ARTICLE I LEASE TERMS

Section 1.1. Definitions. In addition to the other terms, which are elsewhere defined in this Lease, the following terms and phrases, whenever used in this Lease shall have the meanings set forth in this **Section 1.1**, and only such meanings, unless such meanings are expressly contradicted, limited or expanded elsewhere herein.

A. Base Rent Schedule:

	Period	Annual Base Rent	Monthly Base Rent
August 1, 2013	July 31, 2014	\$ 462,244.00	\$ 38,520.33
August 1, 2014	July 31, 2015	\$ 476,111.32	\$ 39,675.94
August 1, 2015	July 31, 2016	\$ 490,394.66	\$ 40,866.22
August 1, 2016	July 31, 2017	\$ 505,106.50	\$ 42,092.21
August 1, 2017	July 31, 2018	\$ 520,259.69	\$ 43,354.97

B. Commencement Date: August 1, 2013.

C. Initial Monthly Rent Adjustment Deposit: \$[To be determined by Landlord prior to Commencement Date].

(i) Initial Tax Deposit: \$ _____

(ii) Initial Expense Deposit: \$ _____

D. Landlord s Broker: None.

E. Landlord s Mailing Address:

1808 Swift Drive

Oak Brook, Illinois 60523

Attention: Mr. Sean Maher

F. Security Deposit: \$45,742.90 (Any amount held by Landlord pursuant to the Gross Lease (as herein defined) as of the Commencement Date will be retained by Landlord and applied to such amount of Security Deposit).

G. Tenant s Broker: Colliers Bennett & Kahnweiler.

H. **Tenant's Mailing Address:**

655 Wheat Lane

Wood Dale, Illinois 60191

I. **Tenant's Proportion:** 100%.

J. **Term:** The sixty (60) month term, commencing as of the Commencement Date and ending on the Termination Date, unless sooner terminated by Landlord as provided hereunder.

K. **Termination Date:** July 31, 2018.

L. **Use:** Manufacturing and warehousing.

Section 1.2. Significance of Definitions. Each reference in this Lease to any of the Definitions contained in Section 1.1 of this Article shall be deemed and construed to incorporate all of the terms provided under each such Definition.

Section 1.3. Enumeration of Exhibits. The exhibits in this Section and attached to this Lease are incorporated in this Lease by this reference and are to be construed as a part of this Lease.

Exhibit A Legal Description

Exhibit B Intentionally Omitted

Exhibit C Form of Estoppel Certificate

Exhibit D Form of Landlord's Agreement

ARTICLE II PREMISES

Section 2.1. Lease. Landlord, for and in consideration of the rents herein reserved and of the covenants and agreements herein contained on the part of Tenant to be kept, observed and performed, does by these presents, lease to Tenant, and Tenant hereby leases from Landlord, the demised premises (**Premises**), consisting of the building (**Building**) located at 801 AEC Drive, Wood Dale, Illinois, which Building is located on the land (**Land**) legally described on Exhibit A attached hereto. The Land and Building are sometimes also collectively referred to as the **Project** . The lease of the Premises shall be subject to, and Tenant shall at all times during the Term comply with, all covenants, conditions, agreements, easements, encumbrances and restrictions of record as of the date hereof affecting the Project (collectively **Restrictions**). Tenant is currently leasing the Premises from Landlord pursuant to that certain Industrial Lease dated June 30, 2011 by and between Landlord and Tenant for a term expiring July 31, 2013 (the **Gross Lease**).

ARTICLE III TERM

Section 3.1. Term. The Term of this Lease shall commence on the Commencement Date and shall end on the Termination Date, unless sooner terminated as hereinafter set forth.

ARTICLE IV CONDITION OF PREMISES

Section 4.1. Disclaimer Regarding Premises. Except for Landlord's Work (as herein defined), Tenant acknowledges that they are currently in possession of the Premises and agree to accept the Premises in an absolutely as is condition (except as stated herein to the contrary), and Tenant acknowledges that Landlord, its agents, attorneys, representatives and employees have not and do not make any representations or warranties, express or implied, to Tenant regarding the Premises or the Project. In the event that Tenant makes improvements to the offices at the Premises and an elevator is required by the Village of Wood Dale, then Landlord agrees to either install said elevator, at Landlord's sole cost and expense, or reimburse Tenant for the actual, reasonable cost of installing said elevator to the office portion of the Premises (**Landlord's Work**). In addition, Landlord's Work shall include the following work to be performed by or on behalf of Landlord, at Landlord's sole cost and expense: (i) caulk, seal and repair all exterior windows to create a watertight envelope, if necessary, as determined by Landlord, (ii) provide a credit to Tenant of \$8,500.00 to replace missing fixtures in bathrooms on North side of Building second floor, (iii) repair or replace main stairs, (iv) crackfill and repair the floors, (v) perform (or provide a credit to Tenant to perform) code compliance issues such as exit signs for the second floor office or in the event that the Village defers the requirement of such work until after Tenant completes office improvements, Landlord shall either perform (or provide a credit to Tenant to perform) such code compliance issues and (vi) replace (or provide a credit to Tenant to replace) the drywall, insulations, moldings and paint that were damaged during the mold remediation work recently performed by Landlord at the Premises. Landlord agrees to commence Landlord's Work promptly after execution of the Lease and to use commercially reasonable effort thereafter to timely and diligently complete Landlord's Work. Tenant shall not be responsible for any Pre-Existing Conditions that were existing at the time of execution of the Gross Lease, including, without limitation, any possible mold or bacteria issue resulting from water damage in the office portion of the Premises.

ARTICLE V RENT

Section 5.1. Base Rent. Tenant agrees to pay to Landlord, monthly in advance, without offset or deduction, base rent for the Term (**Base Rent**) in the amount of the Monthly Base Rent set forth in the Base Rent Schedule commencing on the Commencement Date and continuing on the first day of each month thereafter for the balance of the Term of this Lease. In addition thereto, Tenant shall pay all such other amounts as are herein described as **Additional Rent** in the manner and at the time specified in this Lease. The term **Rent** when used in this Lease shall include all Base Rent payable under this Section 5.1, as well as the charges herein described as Additional Rent. All Rent payable hereunder shall be payable to Landlord at 2023 Paysphere Circle, Chicago, IL 60674), or as Landlord may otherwise from time to time designate in writing.

Section 5.2. Base Rent Adjustment. In addition to the Base Rent payable by Tenant hereunder, Tenant shall pay to Landlord, as Additional Rent, commencing on the Commencement Date, the Rent Adjustment described in this Section 5.2 without set off or deduction. Until such time as Tenant receives the first Adjustment Statement provided for in clause (C) of this Section 5.2, Tenant shall, commencing on the Commencement Date and on the first day of each and every month thereafter, make the Initial Monthly Rent Adjustment Deposit specified in Article I hereof.

A. For the purposes of this Lease:

- (1) The term **Calendar Year** shall mean each calendar year or a portion thereof during the Term.
- (2) The term **Expenses** shall mean and include all expenses paid or incurred by Landlord for maintaining and insuring the Project, the appurtenances and personal property used in conjunction therewith. Expenses shall not include work for Pre-Existing Conditions (as herein defined) or expenses caused in whole or in part due to the negligence of Landlord. In the event that Tenant desires Landlord to perform common area maintenance at the Project, then Landlord shall be entitled to include in Expenses, in addition to all costs incurred by Landlord in performing said common area maintenance, a management fee of three percent (3%) of Rent.
- (3) The term **Rent Adjustments** shall mean all amounts owed by Tenant as Additional Rent on account of Expenses or Taxes, or both.
- (4) The term **Rent Adjustment Deposit** shall mean an amount equal to Landlord's estimate of Rent Adjustments due for any Calendar Year made from time to time during the Term.
- (5) The term **Taxes** shall mean any taxes, assessments, sewer rents, rates and charges, transit taxes and any other federal, state or local governmental charge, general, special, ordinary or extraordinary, which now or hereafter accrue during the Term and are levied or assessed or become a lien against the Project or any portion thereof, this Lease or any Rent payable under this Lease in any Calendar Year during the Term and any tax in substitution of any of the foregoing. Notwithstanding the foregoing, Landlord agrees that with respect to special assessments, in the event Landlord is permitted to pay such special assessments in installments, Taxes shall only include those installments due and payable during the Term. Taxes also include Landlord's reasonable costs and expenses (including reasonable attorney's fees) in contesting or attempting to reduce any taxes. Landlord hereby represents to Tenant that it has no knowledge of any current or contemplated special assessments against the Project as of the date hereof.

B. Tenant shall pay to the Landlord as Additional Rent Tenant's Proportion of Expenses and Taxes attributable to each Calendar Year of the Term. The amount of Taxes attributable to a Calendar Year shall be the amount assessed for any such Calendar Year, even though the assessment for such Taxes may be payable in a different Calendar Year.

C. As soon as reasonably feasible after the expiration of each Calendar Year, Landlord will furnish Tenant a statement (**Adjustment Statement**) showing the following:

- (1) Expenses and Taxes for the Calendar Year last ended and the amount of Expenses and Taxes payable by Tenant for such Calendar Year;

- (2) The amount of Rent Adjustments due Landlord for the Calendar Year last ended, less credits for Rent Adjustment Deposits paid, if any; and
- (3) The Rent Adjustment Deposit due in the current Calendar Year.

D. Within thirty (30) days after Tenant's receipt of each Adjustment Statement, Tenant shall pay to Landlord:

- (1) The amount of Rent Adjustment shown on said statement to be due Landlord for the Calendar Year last ended; plus
- (2) The amount, which when added to the Rent Adjustment Deposit theretofore paid in the current Calendar Year, would provide that Landlord has then received such portion of the Rent Adjustment Deposit as would have theretofore been paid to Landlord had Tenant paid one twelfth of the Rent Adjustment Deposit, for the current Calendar Year, to Landlord monthly on the first day of each month of such Calendar Year.

Commencing on the first day of the first month after Tenant's receipt of each Adjustment Statement, and on the first day of each month thereafter until Tenant receives a more current Adjustment Statement, Tenant shall pay to Landlord one twelfth of the Rent Adjustment Deposit shown on said statement. During the last complete Calendar Year, Landlord may include in the Rent Adjustment Deposit its estimate of the Rent Adjustment which may not be finally determined until after the expiration of the Term. The Tenant's obligation to pay the Rent Adjustment shall survive the Term.

E. Tenant's payment of the Rent Adjustment Deposit for each Calendar Year shall be credited against the Rent Adjustments for such Calendar Year. All Rent Adjustment Deposits may be commingled, and no interest shall be paid to Tenant thereon.

Section 5.3. Interest Charge and Late Charge. Tenant acknowledges that its late payment of any Rent will cause Landlord to incur certain costs and expenses not contemplated under this Lease, the exact amount of which is extremely difficult or impractical to fix. Therefore, if any payment of Rent, or any portion thereof, is not received by Landlord within five (5) days of the date when due, Tenant shall immediately pay to Landlord a late charge equal to three percent (3%) of the unpaid amount (**Late Charge**). In the event that any overdue payment of Rent is not paid within one (1) month of the due date thereof, an additional Late Charge equal to one percent of the unpaid amount may be charged by Landlord, and Landlord may charge an additional one percent of the unpaid amount so over due for each additional month, or fraction thereof, during which any such payment remains past due. Landlord and Tenant agree that the Late Charge represents a reasonable estimate of costs and expenses incurred by Landlord from, and is fair compensation to Landlord for, its loss suffered by such non payment by Tenant.

Any amount due from Tenant to Landlord under this Lease, other than the payment of Rent, not paid when due shall bear interest from the date when the same is payable under the terms of this Lease until the same shall be paid at an annual rate of interest equal to twelve percent per annum (the **Delinquency Rate**).

ARTICLE VI UTILITIES

Section 6.1. Utilities. Tenant shall pay, directly to the appropriate supplier, all costs of natural gas, electricity, heat, light, power, sewer service, telephone, water, refuse disposal and other utilities and services supplied to the Premises.

The current utility service providers (each such company shall hereinafter be referred to as a **Current Service Provider**) are utility companies selected by Landlord to provide service for the Premises. Notwithstanding the foregoing, if permitted by law, Landlord shall have the right at any time and from time to time during the Term to either contract for service from a different company or companies providing service (each such company shall hereinafter be referred to as an **Alternate Service Provider**) or continue to contract for service from the Current Service Provider.

Tenant shall cooperate with Landlord, the Current Service Provider and any Alternate Service Provider at all times and, as reasonably necessary, shall allow Landlord, Current Service Provider and any Alternate Service Provider reasonable access to the Premises electric lines, feeders, risers, wiring, and any other machinery within the Premises.

Landlord shall in no way be liable or responsible for any loss, damage, or expense that Tenant may sustain or incur by reason of any change, failure, interference, disruption, defect, unavailability or unsuitability in the supply or character of the energy furnished to the Premises, and no such change, failure, interference disruption, defect, unavailability, or unsuitability shall relieve Tenant from any of its obligations under the Lease.

ARTICLE VII USE

Section 7.1. Use. The Premises shall be used for the Use only, and for no other purpose.

Section 7.2. Prohibited Uses. Tenant shall not permit the Premises, or any portion thereof, to be used in such manner which impairs Landlord's right, title or interest in the Premises or any portion thereof, or in such manner which gives rise to a claim or claims of adverse possession or of a dedication of the Premises, or any portion thereof, for public use. Tenant shall not use or occupy the Premises or permit the Premises to be used or occupied (i) contrary to any Restriction or any statute, rule, order, ordinance, requirement, regulation or restrictive covenant applicable thereto, and shall at all times comply with same, (ii) in any manner which would violate any certificate of occupancy, (iii) in any manner which would render the insurance void, (iv) in any manner which would cause structural injury to the Building, (v) in any manner which would cause the value or usefulness of the Premises or any part thereof to diminish other than normal wear and tear and Landlord approved Alterations, or (vi) in a manner which would constitute a public or private nuisance or waste. Tenant agrees that it will, promptly upon discovery of any such use, immediately notify Landlord and take all necessary steps to compel the discontinuance of such use.

ARTICLE VIII MAINTENANCE, REPAIR AND REPLACEMENTS OF PREMISES

Section 8.1. Tenant's Obligations. Subject to Landlord's Work and Section 8.2 herein, Tenant assumes full and sole responsibility for condition, operation, repair, alteration, improvement, replacement, maintenance and management of the Premises. Tenant agrees, at Tenant's sole cost and expense, to take good care of the Premises and keep same and all parts thereof, together with any and all alterations and additions thereto, in good order, condition (at least as good condition as existed as of the Commencement Date) and repair, suffering no waste or injury. Except as provided in Section 8.2, herein to the contrary, Tenant shall, at its sole cost and expense, promptly perform all maintenance and promptly make all necessary repairs and replacements in and to the Premises, including, but not limited to, all windows, glass, plate glass, ceilings, skylights, interior and demising walls, doors, electrical systems, fixtures and equipment, lighting fixtures and equipment, plumbing systems, fixtures and equipment, sprinkler systems, fixtures and equipment, heating, ventilating and air conditioning systems, fixtures and equipment, loading docks, areas and doors, rail space areas, fences and signs, connections, pipes, mains, water, sewer and connections, and all other systems, fixtures, machinery, apparatus, equipment and appurtenances now or hereafter part of, belonging to, connected with or used in conjunction with the Premises. In addition, Tenant shall be responsible to maintain the repairs that Landlord makes to the floors pursuant to Landlord's Work and for any damage to the floors and floor slab due to normal wear and tear or unreasonably excessive Tenant use. Further, Tenant agrees to provide written notice to Landlord promptly after discovering any damage to, or repairs necessary to, the floors. All such repairs and replacements shall be of first class quality and sufficient for the proper maintenance and operation of the Premises. Tenant shall keep and maintain the Premises safe, secure and clean, specifically including, but not by way of limitation, removal of waste and refuse matter. Tenant shall not permit anything to be done upon the Premises (and shall perform all maintenance and repairs thereto so as not) to invalidate, in whole or in part, or prevent the procurement of any insurance policies which may, at any time, be required under the provisions of this Lease. Tenant shall not obstruct or permit the obstruction of any parking area, adjoining street or sidewalk. Tenant shall obtain and maintain fire extinguishers in the Premises as required by Law. Tenant at its own cost and expense also shall promptly comply with any and all governmental requirement to or affecting the Premises or any part thereof required due to Tenant's use and occupancy of the Premises, irrespective of the nature of the work required to be done and whether or not the same involve or require any structural changes or additions in or to the Building. Tenant, at its sole cost and expense, shall be responsible and perform all common area maintenance and repair at the Project, including, but not limited to, landscaping, fire alarm monitoring, sprinkler systems and all snow and ice removal, but excluding parking lot maintenance.

Section 8.2. Landlord's Obligations. Subject to the provisions of Articles X and XIII hereof, Landlord shall replace the exterior roof, exterior walls (excluding windows, window frames, doors, door frames and any interior improvements) and foundation of the Building and maintain, repair and replace the floors and floor slabs, except for Tenant's obligations in Section 8.1 above, at Landlord's sole cost and expense. In addition, Landlord shall maintain and repair the parking lot, exterior roof, exterior walls (excluding windows, window frames, doors, door frames and any interior improvements) and foundation of the Building and all costs incurred by Landlord in connection with such maintenance and repairs shall be deemed Expenses. In the event Landlord, in its reasonable discretion, determines that any component of the Premises or the Project (other than roof, exterior walls, foundation and structural portions of the Building), including, without limitation

the HVAC system and parking lot, requires replacement and, if such replacement constitutes a capital expenditure under generally accepted accounting principals, then Landlord shall replace said capital item, and the cost thereof shall be amortized at 10% over the useful life (as determined by generally accepted accounting principles) and Tenant shall pay to Landlord monthly, as additional Rent, the monthly amortized cost for each month during the Term (including any Renewal Term (as herein defined)) commencing on the date of replacement and ending on the Termination Date or Tenant, at its option, may, after completion of the replacement, pay to Landlord the cost of said replacement multiplied by a fraction, the numerator being the remaining years remaining on the Term (as may be extended by any renewal of the Lease) and the denominator being the useful life (number of years) of the replacement (as determined by generally accepted accounting principles).

Section 8.3. Maintenance Contract. Tenant shall enter into a maintenance contract, in form and substance and with a firm reasonably satisfactory to Landlord, for the semi-annual maintenance of the HVAC system serving the Premises.

ARTICLE IX TENANT S INSURANCE

Section 9.1. Coverage Required. Tenant shall procure and maintain, or cause to be maintained, at all times during the term of this Lease, at Tenant s sole cost and expense, and until each and every obligation of Tenant contained in the Lease has been fully performed, the following insurance coverage:

A. **Worker s Compensation and Employer s Insurance.** Insurance covering all of Tenant s employees for Worker s Compensation, in statutory amounts, and Employer s liability coverage of: \$1,000,000.00 for each accident and a disease policy limit of \$1,000,000.00.

B. **Commercial General Liability Insurance (Primary).** Commercial General Liability covering Tenant against any claims arising out of liability for bodily injury and death and personal injury and advertising injury and property damage occurring in and about the Premises, and/or the Building and otherwise resulting from any acts and operations of Tenant, its agents and employees, with combined single limit of \$1,000,000.00 per occurrence and \$2,000,000.00 annual general aggregate. Products/completed operation, independent contractors, special form property damage and coverage for insured contracts are to be included.

C. **Automobile Liability Insurance.** When any motor vehicles are used in connection with this Lease, Tenant shall provide Automobile Liability Insurance to include owned, non-owned or hired automobiles and automobile contractual liability with limits of not less than \$1,000,000.00 per accident for bodily injury and \$1,000,000.00 per accident for property damage and such other coverage as required by Illinois law.

D. **Umbrella Liability.** Umbrella Liability Insurance to be excess over the Commercial General Liability, Automobile Liability and Employer s Liability Insurance. The Umbrella Liability policy shall be written on an occurrence form with a limit of liability of \$5,000,000.00 and a Self-Insured Retention no greater than \$10,000.00.

E. **Contents.** Insurance for direct physical damage from special causes of loss in an amount sufficient at all times to pay the greater of (a) the full replacement cost of the equipment used by Tenant at the Premises and (b) the full insurable value of Tenant's Property.

F. **Other Coverage.** Such other policy or policies as are deemed reasonably necessary by Landlord. If, pursuant to the provisions of Section 1.1 of this Lease, Tenant is permitted to serve and/or sell alcoholic liquor, in packaged form or otherwise, including, without limitation, beer, wine and/or ale, then Tenant shall obtain and maintain, throughout the entire term of this Lease, liquor liability and dram shop insurance, in such amounts as Landlord may require, and if no such amount is specified by Landlord, in amounts no less than the minimums required by applicable law.

Section 9.2. Policies. All insurance policies shall (i) be written with insurance companies authorized to do business in the State of Illinois, acceptable to Landlord, with a minimum A.M. Best rating of A-VII; (ii) name Landlord and Landlord's mortgagee, if any, as additional insured and loss payee as their respective interests may appear and shall contain an Additional Insured Endorsement CG2011 11 85 or its equivalent; (iii) state that the insurance is primary and that the insurer shall not be required to seek contribution from any other insurance available to additional insureds; (iv) provide that said policies may not be terminated or modified without thirty (30) days advance written notice to Landlord and its mortgagee, if any; (v) provide that Landlord and its mortgagee, if any, shall receive written notice of non payment of all insurance premiums due and have the right to cure such non payment within ten (10) days after the receipt of said written notice; (vi) provide defense expense in addition to the limit of liability stated in the policy and (vii) contain a waiver of subrogation endorsement. Tenant shall furnish to Landlord, prior to the Commencement Date, such insurance required to be carried by Tenant, and thereafter at least fifteen (15) days prior to the expiration of each such policy, certificates of insurance for any required insurance. If Tenant fails to submit such policies or certificates to Landlord within the specified time, or otherwise fails to obtain and maintain insurance coverages in accordance with this Article IX, then Landlord, at Landlord's sole option may, but shall not be obligated to, procure such insurance on behalf of, and at the expense of, the Tenant, and if Landlord exercises such right and expends any funds to obtain such insurance, Tenant shall reimburse Landlord for such amounts upon demand, and such amounts shall constitute Additional Rent. Such a failure by Tenant to procure and deliver insurance as required by this Article IX shall constitute a default hereunder, and such default shall not be cured by Landlord's election to procure insurance on Tenant's behalf.

Section 9.3. Deductibles. Landlord and Tenant further agree any and all deductibles on insured policies required to be provided by either party shall be borne by Tenant.

Section 9.4. Subrogation. Landlord and Tenant agree to have all fire and casualty insurance which is required to be carried by either of them hereunder endorsed to provide that the insurer waives all rights of subrogation which such insurer might have against the other party and Landlord's mortgagee, if any. By this clause, the parties intend and hereby agree, that the risk of loss or damage to property shall be borne by the parties' insurance carriers. It is hereby agreed that Landlord and Tenant shall look solely to, and seek recovery from, only their respective insurance carriers in the event a loss is sustained for which Property Insurance is carried or is required to be

carried under this Lease. If Landlord or Tenant elects to self-insure any of the insurance required of Landlord or Tenant hereunder, the party electing to self insure shall be considered an insurance carrier for purposes of this paragraph. Without limiting any release or waiver of liability or recovery contained in any other Section of this Lease but rather in confirmation and furtherance thereof, Landlord waives all claims for recovery from Tenant, and Tenant waives all claims for recovery from Landlord, and their respective agents, partners and employees, for any loss or damage to any of its property insured under the insurance policies required hereunder.

Section 9.5. Landlord's Insurance. Landlord shall maintain casualty insurance for the full replacement cost of the Building and such other insurance as deemed reasonably necessary by Landlord. The cost of such Landlord's insurance and all deductibles paid thereunder shall be a part of Expenses.

ARTICLE X DAMAGE OR DESTRUCTION

Section 10.1. Casualty. In the event that the Premises are made untenable by fire or other casualty and Landlord shall decide not to restore or repair same, then Landlord shall have the right to terminate this Lease by notice to Tenant given within thirty (30) days after the date of such fire or other casualty and the Rent shall be apportioned on a per diem basis and paid to the date of such fire or other casualty. In the event the Premises are made untenable by fire or other casualty and Landlord shall decide to rebuild and restore the same, this Lease shall not terminate and Landlord shall repair and restore the Premises and Rent shall abate on an equitable basis during the period of reconstruction and repair and Landlord agrees to use commercially reasonable efforts to provide temporary premises to Tenant during the period of restoration. If Tenant cannot occupy the Premises for a period reasonably determined to exceed one hundred eighty (180) days after the event of casualty, Tenant, at its option, exercisable upon written notice to Landlord within thirty (30) days after the date of such casualty, shall have the right to terminate this Lease. All property insurance proceeds shall be paid to Landlord.

ARTICLE XI LIENS

Section 11.1. Lien Claims. Tenant shall not do any act which shall in any way encumber the title of Landlord in and to the Premises or the Building, nor shall any interest or estate of Landlord in the Premises or the Building be in any way subject to any claim by way of lien or encumbrance, whether by operation of law or by virtue of any express or implied contract by Tenant, and any claim to or lien upon the Premises or the Building arising from any act or omission of Tenant shall accrue only against the leasehold estate of Tenant and shall in all respects be subject and subordinate to the paramount title and rights of Landlord in and to the Premises or the Building. Tenant will not permit the Premises or the Building to become subject to any mechanics', laborers' or materialmen's lien on account of labor or material furnished to Tenant or claimed to have been furnished to Tenant in connection with work of any character performed or claimed to have been performed on the Premises by or at the direction or sufferance of Tenant.

ARTICLE XII TENANT ALTERATIONS

Section 12.1. Alterations. Tenant shall not make any alterations, additions or improvements to the Premises or any portion thereof including but not limited to areas above, below and surrounding the Premises (collectively, **Alterations**) without in each instance, the prior written consent of Landlord; which consent shall not be unreasonably withheld, provided, however, upon notice to, but without the consent of Landlord, Tenant shall have the right to make Alterations in the event that the Alterations (i) are non structural, (ii) do not require openings in the roof, foundation, floor or exterior walls, (iii) do not affect the floor slab, parking areas, landscaped areas or other common features of the Project, (iv) do not affect any Building system, (v) do not compromise, limit, interfere with, invalidate, violate, weaken or otherwise affect any Engineered Barrier or Institutional Control in effect with respect to the Project, (vi) do not violate, invalidate, cause non-compliance with or otherwise affect the terms of any NFR Letter (defined in Section 30.1) which may be applicable to the Project, (vii) do not require a permit and (viii) do not cost in excess of \$10,000.00 in the aggregate in any twelve (12) month period. For purposes of this Lease, (i) the term **Engineered Barrier** means a physical measure for the purpose of preventing or minimizing exposure to Hazardous Materials (as hereinafter defined) including, but not limited to: fencing, capping, horizontal or vertical barriers, hydraulic controls, and alternative water supplies; and (ii) the term **Institutional Control** means a legal or administrative tool or action taken to reduce the potential for exposure to Hazardous Materials including but not limited to: use restrictions, environmental monitoring requirements, and site access and security measures. Landlord acknowledges that Tenant has advised that it will need to make some Alterations regarding venting systems for their operations that will require roof penetrations, widening of dock doors, secure racking to floor slab and build and remodel office space and Landlord's consent to such Alterations shall not be unreasonably withheld.

Section 12.2. Alteration Standards and Procedures. Any Alteration by Tenant hereunder shall be done in a good and workmanlike manner in compliance with any applicable governmental laws, statutes, ordinances and regulations. Before commencing any Alterations requiring Landlord's consent: (a) plans and specifications therefor, prepared by a licensed architect, shall be submitted to and approved by Landlord (such approval shall not be unreasonably withheld or delayed); (b) Tenant shall furnish to Landlord an estimate of the cost of the proposed work, certified by the architect who prepared such plans and specifications; (c) all contracts for any proposed work shall be submitted to and approved by Landlord; (d) Tenant shall have furnished Landlord with a satisfactory certificate or certificates from an insurance company acceptable to Landlord reflecting insurance coverage reasonably acceptable to Landlord; and (e) Tenant shall either furnish to Landlord a bond in form and substance satisfactory to Landlord, or such other security reasonably satisfactory to Landlord to insure payment for the completion of all work free and clear of liens. Upon completion of any Alteration by Tenant hereunder, Tenant shall furnish Landlord with a copy of the as built plans covering such construction.

Section 12.3. Ownership of Alterations. At Landlord's option, at the termination of this Lease, (i) all Alterations shall become the property of Landlord and shall remain upon and be surrendered with the Premises as a part thereof at the termination of this Lease; or (ii) any or all of the Alterations must be removed by Tenant and the Premises must be restored to its original condition. Landlord agrees that upon request from Tenant at the time Tenant seeks consent from Landlord of an Alteration, Landlord shall elect whether or not the Alterations must be removed by Tenant and the Premises restored to its original condition.

Section 12.4. Signs. Tenant shall not place any signs on any part of the Building or Land without the prior written consent of Landlord, which consent shall not be unreasonably withheld.

ARTICLE XIII CONDEMNATION

Section 13.1. Condemnation. If a portion of the Premises shall be lawfully taken or condemned for any public or quasi-public use or purpose, or conveyed under threat of such condemnation and as a result thereof the Premises cannot be used for the same purpose and with the same utility as before such taking or conveyance, the Tenant's right to possession under this Lease shall end and the Lease shall be deemed terminated upon the date of the taking of possession by the condemning authority, without apportionment of the award. Tenant hereby assigns to Landlord, Tenant's interest in such award, if any. In the event only a part of the Premises shall be taken and as a result thereof the balance of the Premises can be used for the same purpose, this Lease shall not terminate, but shall be prorated to the extent of the condemnation, and Landlord, at its sole cost and expense up to the amount of any condemnation award, shall, to the extent practical, promptly repair and restore the Premises. Any award paid as a consequence of a taking or sale in lieu thereof shall be paid to Landlord and any sums not disbursed by Landlord in connection with the repair or restoration of the Premises shall be retained by Landlord. In the event of a taking of land only, this Lease shall not terminate and Landlord shall not be obligated to repair or restore the Premises.

ARTICLE XIV ASSIGNMENT SUBLETTING BY TENANT

Section 14.1. No Assignment, Subletting or Other Transfer. Except as provided in Section 14.5 herein to the contrary, Tenant shall not assign this Lease or any interest hereunder, nor shall Tenant sublet or permit the use or occupancy of the Premises or any part thereof by anyone other than Tenant, without the express prior written consent of Landlord, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Landlord acknowledges that Tenant may permit clients or vendors of Tenant to sublease or occupy small portions of the Premises, and such sublets or occupancy shall be permitted without Landlord's consent and notwithstanding Section 14.3 below to the contrary, Tenant may retain any excess rental on such subleases or occupancy arrangements, but Tenant shall provide prior written notice to Landlord of such arrangement. Consent by Landlord pursuant to this Article shall not be deemed, construed or held to be consent to any additional assignment or subletting, but each successive act shall require similar consent of Landlord. Landlord shall be reimbursed by Tenant for any costs or expenses incurred pursuant to any request by Tenant for consent to any such assignment or subletting. In connection with any request for a sublease, Tenant shall provide Landlord with a copy of the proposed sublease agreement and financial information from the proposed subtenant acceptable to Landlord.

Section 14.2. Operation of Law. Except as provided in Section 14.5 herein to the contrary, Tenant shall not allow or permit any transfer of this Lease, or any interest hereunder, by operation of law, or convey, mortgage, pledge or encumber this Lease or any interest hereunder.

Section 14.3. Excess Rental. If Tenant shall, with Landlord's prior written consent as herein required, sublet the Premises, one hundred percent of the rental in excess of the Base Rent and any Additional Rent herein provided shall be paid by Tenant to Landlord promptly when due under any sublease as Additional Rent due hereunder.

Section 14.4. Merger or Consolidation. If Tenant is a corporation whose stock is not publicly traded, any transaction or series of transactions (including, without limitation, any dissolution, merger, consolidation or other reorganization of Tenant, or any issuance, sale, gift, transfer or redemption of any capital stock of Tenant, whether voluntary, involuntary or by operation of law, or any combination of any of the foregoing transactions) resulting in the transfer of control of Tenant, shall be deemed to be a voluntary assignment of this Lease by Tenant subject to the provisions of this Article XIV. If Tenant is a partnership or limited liability company, any transaction or series of transactions (including without limitation any withdrawal or admittance of a partner or member or a change in any partner's or member's interest in Tenant, whether voluntary, involuntary or by operation of law, or any combination of any of the foregoing transactions) resulting in the transfer of control of Tenant, shall be deemed to be a voluntary assignment of this Lease by Tenant subject to the provisions of this assignment of this Lease by Tenant subject to the provisions of this Article XIV. As used in this Section 14.4, the term **control** means possession of the power to vote not less than a majority interest of any class of voting securities and partnership or limited liability company interests or to direct or cause the direction (directly or indirectly) of the management or policies of a corporation, or partnership or limited liability company through the ownership of voting securities, partnership interests or limited liability company interests, respectively.

Section 14.5. No Consent Required. Notwithstanding anything to the contrary set forth herein, Landlord's consent shall not be required for an assignment or sublease to a Tenant Successor or Tenant Affiliate (as such terms are hereinafter defined), and Landlord shall have no right to terminate this Lease with respect to the Premises or any portion of the Premises as a result of such assignment or sublease to a Tenant Successor or Tenant Affiliate, as long as (i) Tenant gives written notice to Landlord of the proposed assignment or sublease no later than five (5) business days prior to such assignment or sublease; and (ii) if an assignment, such assignee assumes the obligations of Tenant under this Lease. As used herein, the term **Tenant Successor** shall mean any entity (i) which results from a merger or consolidation with the original Tenant under this Lease or (ii) which acquires all or substantially all of the assets of the original Tenant under this Lease; and the term **Tenant Affiliate** shall mean any entity which is controlled by, controls, or is under common control with (A) the original Tenant named in this lease, or (B) a Tenant Successor. For purposes of the foregoing, the term **control** means the power to direct the management and policies of the subject entity, either directly or indirectly, whether through the ownership of voting securities or other beneficial interests or otherwise.

Section 14.6. Information. Regardless of whether Landlord's consent is required under this Article XIV, Tenant shall notify Landlord in writing of Tenant's intent to assign this Lease or any right or interest hereunder, or to sublease the Premises or any part thereof, and of the name of the proposed assignee or sublessee, the nature of the proposed assignee's or sublessee's business to be conducted on the Premises, the terms and provisions of the proposed assignment or sublease, a copy of the proposed assignment or sublease form, and such other information as Landlord may

reasonably request concerning the proposed assignee or sublessee, including, but not limited to, net worth, income statements and other financial statements for a two (2) year period preceding Tenant's request for consent, evidence of insurance complying with the requirements of Article IX, if reasonably warranted an environmental questionnaire from the proposed assignee or sublessee, and reimburse Landlord's costs and expenses described in Section 14.1.

Section 14.7. No Release of Liability. No assignment or subletting shall relieve Tenant of its obligations hereunder, and Tenant shall continue to be liable as a principal and not as a guarantor or surety, to the same extent as though no assignment or sublease had been made.

ARTICLE XV ANNUAL STATEMENTS

Section 15.1. Financial Statements. Solely in the event that Tenant is not a public company, Tenant agrees to timely provide current annual financial statements (collectively, **Financial Information**) upon request by Landlord, not more than once per calendar year. Tenant agrees that Landlord may deliver the Financial Information to any lender, prospective lender or prospective purchaser of the Premises.

ARTICLE XVI COSTS AND EXPENSES OF LITIGATION

Section 16.1. Costs and Expenses of Litigation. Tenant shall pay upon demand, all costs and expenses, including reasonable attorneys' fees, incurred by Landlord in any action enforcing the observance and performance by Tenant of all covenants, conditions and provisions of this Lease to be observed and performed by Tenant, in which Landlord is the prevailing party. Landlord shall pay upon demand, all costs and expenses, including reasonable attorneys' fees, incurred by Tenant in any action enforcing the observance and performance by Landlord of all covenants, conditions and provisions of this Lease to be observed and performed by Landlord, in which Tenant is the prevailing party. All references in this Lease to attorneys' fees shall be deemed to include all legal assistants' and paralegals' fees and shall include all fees incurred through all post-judgment and appellate levels and in connection with bankruptcy proceedings. The provisions of this Section 16.1 shall survive the expiration or earlier termination of this Lease.

ARTICLE XVII ESTOPPEL CERTIFICATES

Section 17.1. Estoppel Certificate. Tenant agrees that on the Commencement Date and at any time and from time to time thereafter, upon not less than ten (10) days' prior written request by Landlord, Tenant will execute, acknowledge and deliver to Landlord, Landlord's mortgagee, purchaser, or any other third party designated by Landlord, to the extent factually accurate, a statement in writing in the form of Exhibit C attached hereto. Tenant further agrees to certify to any prospective purchaser or mortgagee any other reasonable information specifically requested by such prospective purchaser or mortgagee.

ARTICLE XVIII INSPECTION OF PREMISES

Section 18.1. Inspections. Tenant agrees to permit Landlord and any authorized representatives of Landlord, to enter the Premises at all reasonable times on reasonable advance notice for the purpose of inspecting the Premises and Landlord agrees that Tenant or Tenant's

representatives may accompany Landlord or its authorized representatives during such entry. Notwithstanding the foregoing, in the case of an Emergency Situation (as defined in [Section 22.1](#)) no notice shall be required. Any such inspections shall be solely for Landlord's purposes and may not be relied upon by Tenant or any other person.

Section 18.2. Signs. Tenant agrees to permit Landlord and any authorized representative of Landlord to enter the Premises at all reasonable times during business hours on reasonable advance notice (and Landlord agrees that Tenant or Tenant's representative may accompany Landlord or its authorized representatives during such entry) to exhibit the same for the purpose of sale, mortgage or lease, and during the final twelve (12) month period of the Term hereof, Landlord may display on the Premises customary For Sale or For Rent signs.

ARTICLE XIX FIXTURES

Section 19.1. Building Fixtures. The Building and all other improvements located on the Land, including, but not limited to, all structural components of the Building and all plumbing, heating, lighting, electrical and air conditioning fixtures and equipment, and other articles of personal property owned by Landlord and used in the operation of the Premises, whether or not attached or affixed to the Premises, together with all Alterations and Tenant's Property which by the terms of this Lease become the property of Landlord (collectively, **Building Fixtures**), shall be and remain a part of the Premises and shall constitute the property of Landlord.

Section 19.2. Tenant's Property. Except as otherwise expressly provided by the terms of this Lease, all of Tenant's trade fixtures and other personal property, fixtures, apparatus, machinery and equipment now or hereafter located upon the Premises, other than Building Fixtures, shall be and remain the personal property of Tenant, and the same are herein referred to as **Tenant's Property**.

ARTICLE XX DEFAULT

Section 20.1. Tenant's Default. Tenant agrees that the occurrence of any one or more of the following events shall be considered an **Event of Default** as said term is used herein:

- A. An order, judgment or decree shall be entered by any court adjudicating Tenant bankrupt or insolvent, or approving a petition seeking reorganization of Tenant or appointing a receiver, trustee or liquidator of Tenant, or of all or a substantial part of its assets, if such order, judgment or decree shall continue unstayed and in effect for any period of sixty (60) days; or
- B. Tenant shall file an answer admitting the material allegations of a petition filed against Tenant in any bankruptcy, reorganization or insolvency proceeding or under any laws relating to the relief of debtors, readjustment or indebtedness, reorganization, arrangements, composition or extension; or
- C. Tenant shall make any assignment for the benefit of creditors or shall apply for or consent to the appointment of a receiver, trustee or liquidator of Tenant, or any of the assets of Tenant; or

D. Tenant shall file a voluntary petition in bankruptcy, or shall admit in writing its inability to pay its debts as they come due, or shall file a petition or an answer seeking reorganization or arrangement with creditors or take advantage of any insolvency law; or

E. A decree or order appointing a receiver of the property of Tenant shall be made and such decree or order shall not have been vacated within sixty (60) days from the date of entry or granting thereof; or

F. Tenant shall fail to make any payment of Rent or other payment required to be made by Tenant hereunder when due, and such failure continues for five (5) days after written notice from Landlord (provided, however, no notice shall be required for any third or subsequent default in any twelve (12) month period); or

G. Tenant shall fail to carry all required insurance under this Lease; or

H. Tenant, or any Guarantor, has knowingly made any material misrepresentation, or failed to disclose a material fact, under the Lease or in connection with any information (including, without limitation, Financial Information) submitted or furnished to Landlord by Tenant or any Guarantor; or

I. If Tenant shall default in the performance of any covenant, promise or agreement on the part of Tenant contained in this Lease not otherwise specified in this Section 20.J and such default shall continue for thirty (30) days after notice thereof in writing by Landlord to Tenant, or if such default or condition which gives rise thereto cannot with due diligence and good faith be cured within such thirty (30) day period, if Tenant shall not in good faith and within the period of thirty (30) days commence the curing of such default and pursue the curing of such default continuously and diligently and in good faith to the end that such default shall be cured within such minimum period in excess of thirty (30) days as may be reasonably necessary to cure such default through pursuing such cure promptly, diligently, continuously and in good faith; provided, however, that such additional period beyond thirty (30) days shall not apply to a default that creates a clear and present danger to persons or property or materially adversely affects the Premises, or if the failure or default by Tenant is one for which Landlord (or any officer or other agent or beneficial or other owner thereof) may be subject to fine or imprisonment.

ARTICLE XXI REMEDIES

Section 21.1. Landlord s Remedies. Upon the occurrence of any Event of Default and at any time thereafter, Landlord may, at its election, exercise any one or more of the following described remedies, in addition to all other rights and remedies provided at law, in equity or elsewhere herein:

A. Landlord may terminate this Lease by giving to Tenant written notice of Landlord s election to do so, in which event the Term and all right, title and interest of Tenant hereunder shall end on the date stated in such notice;

B. Landlord may terminate the right of Tenant to possession of the Premises without terminating this Lease, by giving written notice to Tenant that Tenant's right of possession shall end on the date stated in such notice, whereupon the right of Tenant to possession of the Premises or any part thereof shall cease on the date stated in such notice;

C. Landlord may enforce the provisions of this Lease and may enforce and protect the rights of Landlord by a suit or suits in equity or at law for the performance of any covenant or agreement herein, and for the enforcement of any other appropriate legal or equitable remedy, including without limitation (i) injunctive relief, (ii) recovery of all moneys due or to become due from Tenant under any of the provisions of this Lease, and (iii) any other damages incurred by Landlord by reason of Tenant's default under this Lease; and

D. Landlord may pursue all legal means to reenter and take possession of the Premises or any part of the Premises, repossess the same, expel Tenant and those claiming through or under Tenant, and remove the effects of both or either, using such force for such purposes as may be necessary, without being liable for prosecution, without being deemed guilty of any manner of trespass, and without prejudice to any remedies for arrears of Rent or other amounts payable under this Lease or as a result of any other breach of this Lease.

Section 21.2. Reentry to Premises. Should Landlord elect to reenter as provided herein with or without terminating this Lease, or should Landlord take possession pursuant to legal proceedings or pursuant to any notice provided by law, Landlord may, from time to time, without terminating this Lease, rent the Premises or any part of the Premises, for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the Term) and on such conditions and upon such other terms (which may include concessions of free rent and alteration and repair of the Premises) as Landlord, in its discretion, may determine, and Landlord may collect and receive the Rent due in connection therewith. Landlord shall not be required to accept any tenant offered by Tenant or any third party or observe any instruction given by Tenant relative to such reletting. Landlord shall however use commercially reasonable efforts to relet the Premises and mitigate its damages. Landlord will in no way be responsible or liable for any failure to relet the Premises, or any part of the Premises, or for any failure to collect any rent due upon such reletting. No such reentry or taking possession by Landlord will be construed as an election on Landlord's part to terminate this Lease unless a written notice of such intention is given to Tenant. No written notice from Landlord under this Article XXI or under a forcible or unlawful entry and detainer statute or similar law will constitute an election by Landlord to terminate this Lease unless such notice specifically so states. Landlord reserves the right following any such reentry or reletting to exercise its right to terminate this Lease by giving Tenant such written notice, in which event this Lease will terminate as specified in such notice.

Section 21.3. Damages Without Lease Termination. In the event that Landlord does not elect to terminate this Lease, but on the contrary elects to take possession of the Premises, then, in addition to all other rights and remedies of Landlord, Tenant shall pay to Landlord (i) Rent and other sums as provided in this Lease that would be payable under this Lease if such repossession had not occurred, less (ii) the net proceeds, if any, of any reletting of the Premises after deducting all of Landlord's reasonable expenses in connection with such reletting, including without limitation all repossession costs, brokerage commissions, attorneys' fees, expenses of employees, alteration and

repair costs, and expenses of preparation for such reletting. If, in connection with any reletting, the new lease term extends beyond the Term, or the Premises covered by such new lease includes other premises not part of the Premises, a fair apportionment of the rent received from such reletting will be made in determining the net proceeds from such reletting. Tenant will pay such Rent and other sums to Landlord monthly on the day on which such sums would have been payable under this Lease if possession had not been retaken, and Landlord shall be entitled to receive such Rent and other sums from Tenant on each such day.

Section 21.4. Damages Upon Lease Termination. In the event that Landlord elects to terminate this Lease, then, in addition to all other rights and remedies of Landlord, Tenant shall remain liable to pay to Landlord as damages an amount equal to (i) all Rent due hereunder accrued and unpaid for the period up to and including the Termination Date, plus (ii) all other additional sums payable by Tenant or for which Tenant is liable or in respect of which Tenant has agreed to indemnify Landlord under any of the provisions of this Lease, which may then be owing and unpaid, plus (iii) all costs and expenses, including, without limitation, court costs and reasonable attorneys' fees incurred by Landlord in the enforcement of any of its rights and remedies hereunder, plus (iv) the present value (based upon a discount rate of five percent per annum) of the Rent provided to be paid for the remainder of the Term, less the fair market value of reletting the Premises for the remainder of the Term, Taking into account the time and expense necessary to relet the Premises, including, without limitation, the expenses enumerated in Section 21.3, plus (v) interest on the foregoing amounts at the Delinquency Rate from the date of Landlord's notice to Tenant demanding payment therefor until paid.

In the alternative, Landlord shall have the right, from time to time, to recover from Tenant upon demand, and Tenant shall remain liable to pay Landlord for, (i) all Rent and other amounts due and owing under this Lease not previously paid pursuant to the provisions of this Lease, plus (ii) damages equal to the sum of (y) all Rent and all other sums which would have accrued under this Lease after the date of termination had it not been terminated, such damages to be due and payable as such sums would have become due, less (z) such amounts as Landlord may actually receive from reletting after first paying all costs of such reletting, including, without limitation, the expenses enumerated in Section 21.3 and the net amounts of rent collected remaining after such expenses shall operate only as an offsetting credit against the amount due hereunder with any excess or residue belonging solely to Landlord, plus interest on the foregoing sum at the Delinquency Rate from the date of Landlord's notice to Tenant demanding payment therefor until paid.

Section 21.5. Survival of Tenant Obligations. No termination of this Lease and no taking possession of and/or reletting the Premises or any part thereof, shall relieve Tenant of its liabilities and obligations hereunder, except as specifically provided herein, all of which shall survive such expiration, termination, repossession or reletting except as otherwise specifically provided.

Section 21.6. Tenant Waiver. Landlord and Tenant waive and shall waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matter whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, or any claim of injury or damage. No failure by either party to insist upon the strict performance by the other party of any covenant, agreement, term or condition of this Lease or to exercise any right or remedy consequent upon a

breach thereof, and no payment or acceptance of full or partial Rent during the continuance of any such breach, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Lease to be performed or completed by either party, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by the other party. No waiver of any breach shall affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

Section 21.7. Suits to Recover Damages. Suit or suits for the recovery of damages, or for a sum equal to any installment or installments of Rent payable hereunder or any other sums payable by Tenant to Landlord pursuant to this Lease, may be brought by Landlord at any time and from time to time at Landlord's election, and nothing herein contained shall be deemed to require Landlord to await the date whereon this Lease or the Term would have expired had there been no Event of Default by Tenant.

Section 21.8. Receipt of Payment after Termination. No receipt of moneys by Landlord from Tenant after the termination of this Lease or Tenant's right to possession, or after the giving of any notice of the termination of this Lease or Tenant's right to possession, shall reinstate, continue or extend the Term or affect any notice theretofore given to Tenant, or operate as a waiver of the right of Landlord to enforce the payment of Rent payable by Tenant hereunder or thereafter falling due, or operate as a waiver of the right of Landlord to recover possession of the Premises or any part thereof by proper remedy, it being agreed that after the service of notice to terminate this Lease or Tenant's right to possession or the commencement of any suit or summary proceedings, or after a final order or judgment for the possession of the Premises, or any part thereof or interest therein, Landlord may demand, receive and collect any moneys due or thereafter falling due without in any manner affecting such notice, proceeding, order, suit or judgment, all such moneys collected being deemed payments on account of the Tenant's liability hereunder.

Section 21.9. Cumulative Remedies. No remedy contained herein or otherwise conferred upon or reserved to Landlord, shall be considered exclusive of any other remedy, but the same shall be cumulative and shall be in addition to every other remedy given herein, now or hereafter existing at law or in equity or by statute, and every power and remedy given by this Lease to Landlord may be exercised from time to time and as often as occasion may arise or as may be deemed expedient. No delay or omission of Landlord to exercise any right or power arising from any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein.

ARTICLE XXII LANDLORD'S PERFORMANCE OF TENANT'S COVENANTS

Section 22.1. Landlord's Right to Perform Tenant's Obligations. In the event Tenant shall fail to perform any of its obligations hereunder, Landlord may (but shall not be obligated to do so), and without waiving or releasing Tenant from any obligation of Tenant hereunder, make any payment or perform any other act which Tenant is obligated to make or perform under this Lease. All sums so paid and all liabilities so incurred by Landlord, together with interest thereon at the Delinquency Rate, shall be payable to Landlord upon demand as Additional Rent. Except in the case of an Emergency Situation, Landlord shall use reasonable efforts to give prior notice (which may be

oral) of its performance, if reasonably feasible under the circumstances. Nothing contained herein shall be construed to require Landlord to advance monies for any purpose. In exercising its rights hereunder, Landlord shall use reasonable efforts not to interfere with the normal operation of the Premises. The term **Emergency Situation** shall mean a situation which has caused or is likely to cause bodily injury to persons, contamination of or physical damage to the Premises (or any portion thereof) or adjoining property or economic liability or criminal jeopardy to Landlord.

ARTICLE XXIII SUBORDINATION TO MORTGAGES

Section 23.1. Subordination. Landlord may execute and deliver a mortgage (**Mortgage**) against the Premises or any interest therein. This Lease and the rights of Tenant hereunder shall be and are hereby made expressly subject and subordinate at all times to the lien of any Mortgage now or hereafter encumbering any portion of the Premises, and to all advances made or hereafter to be made upon the security thereof. Tenant agrees to execute and deliver such instruments subordinating this Lease to the lien of any such Mortgage as may be requested in writing by Landlord from time to time.

ARTICLE XXIV INDEMNITY AND WAIVER

Section 24.1. Indemnity. Tenant will protect, indemnify and save Landlord, its partners, shareholders, employees, officers, directors, agents, and their respective successors and assigns harmless from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including without limitation, reasonable attorney's fees and expenses) imposed upon, incurred by or asserted against Landlord by reason of: (a) any accident, injury to or death of persons or loss of or damage to property occurring on or about the Premises or the Project or any part thereof or the adjoining properties, sidewalks, curbs, streets or ways, or resulting from an act or omission of Tenant or anyone claiming by through or under Tenant; (b) any failure on the part of Tenant to perform or comply with any of the terms of this Lease or any other agreements affecting the Premises; (c) Tenant's use, occupation, condition or operation of the Premises or any part thereof; or (d) performance of any labor or services or the furnishing of any materials or other property in respect of the Premises or any part thereof by or on behalf of Tenant. In case any action, suit or proceeding is brought against Landlord by reason of any such occurrence, Tenant will, at Tenant's sole expense, resist and defend such action, suit or proceeding, or cause the same to be resisted and defended.

Except for claims arising in whole or in part from the negligence or willful misconduct of Landlord and Landlord's agents, Tenant waives all claims it may have against Landlord and Landlord's agents for damage or injury to person or property sustained by Tenant or any persons claiming through Tenant or by any occupant of the Premises, or by any other person, resulting from any part of the Premises becoming out of repair, or resulting from any accident on or about the Premises or the Project or resulting directly or indirectly from any act or neglect of any person, excluding Landlord and Landlord's agents.

This Section 24.1 shall include, but not by way of limitation, damage caused by water, snow, frost, steam, excessive heat or cold, sewage, gas, odors or noise, or caused by bursting or leaking pipes or plumbing fixtures, and shall apply equally whether any such damage results from the act or

neglect of Tenant or of any other person, excluding Landlord's and Landlord's agents' negligence or willful misconduct, and whether such damage be caused or result from anything or circumstance above mentioned or referred to, or to any other thing or circumstance whether of a like nature or of a wholly different nature. All personal property belonging to Tenant or any occupant of the Premises shall be there at the risk of Tenant or of such other person only, and Landlord shall not be liable for any damage thereto or for the theft or misappropriation thereof, except for Landlord's and Landlord's agents' negligence or willful misconduct.

ARTICLE XXV SURRENDER

Section 25.1. Condition of Premises. Upon the termination of this Lease whether by forfeiture, lapse of time or otherwise, or upon the termination of Tenant's right to possession of the Premises, Tenant will at once surrender and deliver up the Premises to Landlord, broom clean, in good order, condition and repair, reasonable wear and tear excepted. **Broom clean** means free from all debris, dirt, rubbish, personal property of Tenant, oil, grease, tire tracks or other substances, inside and outside of the Building and on the grounds comprising the Premises.

Section 25.2. Removal of Tenant's Property and Alterations. Upon the termination of this Lease by forfeiture, lapse of time, or otherwise, Tenant shall remove Tenant's Property and Alterations designated by Landlord. Tenant shall repair any injury or damage to the Premises which may result from such removal. If Tenant does not remove Tenant's Property or such Alterations from the Premises prior to the end of the Term, however ended, Landlord may, at its option, remove the same and deliver the same to any other place of business of Tenant or warehouse the same, and Tenant shall pay the cost of such removal (including the repair of any injury or damage to the Premises resulting from such removal), delivery and warehousing to Landlord on demand, or Landlord may treat Tenant's Property and Alterations as having been conveyed to Landlord with this Lease as a Bill of Sale, without further payment or credit by Landlord to Tenant.

Section 25.3. Holdover. If Tenant retains possession of the Premises or any part thereof after the termination of the Term, by lapse of time or otherwise, then Tenant shall pay to Landlord Rent, at one hundred fifty percent (150%) of the rate payable for the month immediately preceding said holding over (including increases for Additional Rent which Landlord may reasonably estimate), computed on a per month basis, for each month or part thereof (without reduction for any such partial month) that Tenant remains in possession. In addition thereto, solely in the event such retention of possession of the Premises or any part thereof exceeds thirty (30) days after the termination of the Term, Tenant shall pay Landlord all damages, consequential as well as direct, sustained by reason of Tenant's retention of possession. The provisions of this paragraph do not limit the Landlord's rights of re entry or any other right hereunder.

ARTICLE XXVI COVENANT OF QUIET ENJOYMENT

Section 26.1. Covenant of Quiet Enjoyment. Landlord covenants that Tenant, on paying the Rent and all other charges payable by Tenant hereunder, and on keeping, observing and performing all the other terms, covenants, conditions, provisions and agreements herein contained on the part of Tenant to be kept, observed and performed, all of which obligations of Tenant are independent of Landlord's obligations hereunder, shall, during the Term, peaceably and quietly have, hold and enjoy the Premises subject to the terms, covenants, conditions, provisions and agreement hereof free from hindrance by Landlord or any person claiming by, through or under Landlord.

