

MERCHANT STREET LEASE
Commercial

THIS LEASE, made and entered into this ____ day of _____, 20____, by and between MERCHANT STREET, LLC, a Missouri limited liability company, hereinafter called "LESSOR," and _____, hereinafter called "LESSEES:"

W I T N E S S E T H:

In consideration of the respective covenants of the parties and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned do hereby mutually agree as follows:

1. **LEASED PROPERTY:** That LESSOR, for and in consideration of the rents, covenants and agreements hereinafter set forth and hereby agreed to be paid, kept and performed by LESSEES and subject to the terms and conditions herein contained, does hereby lease to LESSEES, and LESSEES hereby lease from LESSOR, the following described property located at _____ in the City of Columbia, Boone County, Missouri, to-wit:

Suite _____ on Lots 3A and 3D of The Village of Cherry Hill as shown by plat recorded in Plat Book ____, Page ____, Deed Records of Boone County, Missouri being an area of approximately _____ square feet as outlined in red on Exhibit "A" attached hereto.

Subject to the provisions of the Declaration of Charter, Easements, Covenants and Restrictions of Town Center recorded in Book 1592, Page 354, Deed Records of Boone County, Missouri.

Subject also to the provisions of the Master Deed Restrictions of The Village of Cherry Hill recorded in Book 1592, Page 246, Deed Records of Boone County, Missouri.

subject to the reservation by LESSOR of the right (without thereby assuming the obligation) to install, maintain, use, repair and replace all pipes, ducts, wires, motors, utility lines and other equipment which now or hereafter may be required to serve LESSOR or any other lessee on LESSOR'S adjacent property.

2. **TERM:** The term of this Lease shall be for a period of _____ years commencing on the ____ day of _____, 20__ and extending through the ____ day of _____, 20__.

3. **RENT:** LESSEES shall pay to LESSOR as rent on the leased property during the term of this Lease the following:

a) During the first one (1) year term of this Lease, the sum of \$_____ per month.

b) During the second one (1) year term of this Lease, the monthly rent required to be paid during the first one (1) year term of this Lease plus an amount equal to _____% of said monthly rent.

c) At the beginning of each succeeding one (1) year term of this Lease the amount of the monthly rent required to be paid under this Lease shall be adjusted to equal the monthly rent required to be paid for the one (1) year period immediately prior thereto plus an amount equal to _____% of said monthly rent.

The aforesaid rent shall be paid to LESSOR monthly in advance on the 1st day of each calendar month during the term of this Lease. If the first day upon which rent becomes payable is other than the first day of any calendar month, the rent for the first fractional month of the term of this Lease shall be paid by LESSEE to LESSOR in advance at a daily rate based upon the monthly rent.

4. LATE CHARGES: In the event LESSEES fail to pay any monthly installment of rent within ten (10) days after the due date, LESSEES agree to pay to LESSOR a late charge in the amount of \$_____ plus \$_____ per day for each day that said payment is delinquent after the tenth (10th) day after the due date until said rent payment is paid in full, and said late charge shall be paid concurrently with the payment of the delinquent rent payment and shall be considered as additional rent under the terms of this Lease.

5. SECURITY DEPOSIT: That concurrently with the execution of this Lease, LESSEES shall pay to LESSOR the sum of \$_____ as a security deposit to insure LESSEES' performance of all of the terms of this Lease required to be performed by LESSEES. In the event of default in performance of any of the terms of this Lease by LESSEES, LESSOR may retain so much of said security deposit as necessary to compensate LESSOR for damages sustained by reason of said default and the balance of the security deposit without interest shall be returned to LESSEES within thirty (30) days after the end of the term of this Lease. LESSEES' liability to LESSOR for damages sustained by reason of breach of this Lease shall not be limited to the amount of the security deposit.

6. POSSESSION: LESSEES shall have the right to possession of the leased property under the terms of this Lease on the commencement date of this Lease, and on paying the rents and performing the covenants herein contained LESSEES may hold said possession for the term of this Lease.

7. PURPOSE: LESSEES will use the leased property only for the purpose of _____
and for no other purpose without the prior written consent of LESSOR which consent shall not be unreasonably withheld.

LESSEES will not reside on or live on the leased property and will not permit any other person to reside on or live on the leased property.

LESSEES shall not place any table, chairs or other tangible personal property on the sidewalk in front of the leased property or on the sidewalk in front of the property owned by LESSOR located adjacent to the leased property and shall not conduct any business activity or any activity incidental thereto on said sidewalk areas.

8. UTILITIES: LESSEES shall pay when due for all utilities, including water, sewer, gas, electric current, trash pickup and other utilities, furnished to the leased property during the term of this Lease.

LESSEES shall keep the heat in the leased building during freezing weather at a sufficient temperature level to avoid freezing of the waterlines and the utility fixtures on the leased property.

9. PROPERTY TAXES: LESSOR agrees to pay all real estate taxes accruing and all special assessments levied on the leased property during the term of this Lease.

10. TOWN CENTER ASSESSMENTS: LESSOR shall pay all assessments of The Village of Cherry Hill Town Center Association, Inc., a Missouri corporation, applicable to the leased property which accrue during the term of this Lease.

11. CASUALTY INSURANCE PREMIUMS: LESSOR shall pay all casualty insurance premiums accruing on the leased property during the term of this Lease.

12. LIABILITY INSURANCE: LESSEES will at their own expense during the term of this Lease maintain in full force and effect liability insurance on the leased property in an amount of at least \$1,000,000.00 single limit coverage for personal injury, death and property damage, which policy of insurance shall name both LESSOR and LESSEES as insureds and shall also include not less than Five Thousand Dollars (\$5,000.00) medical payment coverage. On or before the commencement date of this Lease LESSEES shall furnish to LESSOR a certificate from a reputable insurance company licensed to do business in Missouri showing that said policy is in full force and effect and LESSEES shall maintain said policy in full force and effect during the term of this Lease and at all times during the term of this Lease shall keep LESSOR furnished with a copy of said policy and a certificate from the insurance company certifying that the same is in full force and effect.

Notwithstanding the fact that LESSEES are required to furnish and maintain liability insurance as provided herein, LESSEES expressly agree to indemnify and hold LESSOR harmless from any loss or damage, including attorney fees, arising out of or resulting from any claim, demand, action or cause of action brought or instituted against LESSOR on account of or arising out of any act or omission of LESSEES, their agents, servants, employees or invitees in regard to the leased property or the adjacent sidewalk, or arising out of any activities or conditions on the leased property or the adjacent sidewalk, or arising out of any failure of

LESSEES to comply with any law, rule or regulation applicable to the leased property or the adjacent sidewalk.

13. MAINTENANCE AND REPAIRS: LESSOR agrees to maintain in good repair the roof and exterior walls of the building of which the leased property is a part, excluding windows, glass, exterior doors and damage caused by fault of LESSEES or any of their employees, invitees, licensees or customers.

LESSEES agree to maintain in good repair the interior of the leased property including windows, glass, exterior doors and damage caused by fault of LESSEES or any of their employees, invitees, licensees or customers and including but not limited to all heating, air conditioning, electrical, sewer and plumbing fixtures, equipment and appliances on the leased property. LESSEES shall be responsible for cleaning the exterior and interior surfaces of the window glasses on the leased property. LESSEES shall also at their expense keep the snow and ice removed from the sidewalk and steps leading to the leased property and the sidewalk adjacent to the leased property if said removal is not performed by the Association identified in paragraph 10 above.

14. TOWN CENTER DECLARATION: LESSEES agree during the term of this Lease to comply with all of the provisions of the Town Center Declaration recorded in Book 1592, Page 354, Deed Records of Boone County, Missouri which are applicable to the leased property and LESSEES agree at all times during the term of this Lease to be a member of the Merchants' Council referred to in said Declaration.

LESSEES acknowledge that the parking areas adjacent to the leased property are controlled by the Town Center Association referred to in the aforesaid Declaration and that this Lease does not include any assigned parking areas.

15. ALTERATIONS: LESSEES will not make any alterations, additions or improvements to the leased property without the prior written consent of LESSOR, which consent shall not be unreasonably withheld. All alterations, additions and improvements shall become LESSOR'S property when made, except LESSEES shall have the right to remove their trade fixtures from the leased property prior to the expiration or termination of this Lease and in the event of such removal LESSEES shall thereupon repair in a good and workmanlike manner any damage caused to the leased property caused by said removal and replace any fixtures removed in connection with the aforesaid alterations, additions and improvements.

Any aforesaid permitted alterations, additions and improvements made by LESSEES shall be performed in a good and workmanlike manner, shall be performed in compliance with all applicable laws, rules and regulations. LESSEES shall promptly pay when due all costs and expenses incurred in making the aforesaid permitted alterations, additions and improvements to the leased property.

16. PROPERTY CARE AND USE: LESSEES agree to fairly treat, preserve and care for the leased property, to keep the leased property in good repair as specified herein, to refrain from committing or permitting to be committed waste on the leased property, to not destroy,

damage or remove any improvements on the leased property without the prior written consent of LESSOR, to keep the leased property free from debris and litter, to not use the leased property or permit the leased property to be used for any disreputable or hazardous purpose, to use due care and diligence in guarding the leased property from fire and to refrain from committing a nuisance on the leased property.

17. ASSIGNMENT AND SUBLETTING: LESSEES shall not assign this Lease nor any interest herein nor shall LESSEES sublet the leased property or any part thereof, nor shall LESSEES permit any person or entity to come in, with, through or under LESSEES on the leased premises, without the prior written consent of LESSOR which consent shall not be unreasonably withheld. Any permitted transfer, assignment, sublease or license of any part of the leased property by LESSEES shall not relieve LESSEES from LESSEES' liability to pay rent and to perform all of the covenants, terms and conditions contained in this Lease required to be performed by LESSEES.

18. LAWS AND REGULATIONS: LESSEES agree that during the term of this Lease LESSEES will comply with all laws, regulations, rules and ordinances of the City of Columbia, County of Boone, State of Missouri and United States of America pertaining to the leased property, and will comply with all rules and regulations of all public boards, commissions, authorities and officers relating to the leased property and the use of the same and will not permit the leased property to be used for any illegal purpose.

19. INSPECTION: LESSEES will permit LESSOR and its representatives to enter the leased property at any reasonable time upon reasonable prior notice from LESSOR for the purpose of inspecting, repairing or viewing the same for any reasonable purpose and will permit LESSOR or its representatives to enter the leased premises during the last six (6) months of the term of this Lease for the purpose of showing for rent.

20. SIGNS: LESSEES will not install any sign on the leased property which does not comply with the sign ordinances of the City of Columbia, Missouri or which does not comply with the provisions of the Declaration of Charter, Easements, Covenants and Restrictions of The Village of Cherry Hill recorded in Book 1592, Page 354, Deed Records of Boone County, Missouri.

21. MECHANICS' LIENS: LESSEES agree that LESSEES will pay for all labor and materials furnished to LESSEES in maintaining the buildings and improvements on the leased property and in making any permitted alterations, additions or improvements to the leased property before any mechanics' lien attaches to the property, and LESSEES agree to indemnify and save LESSOR harmless from any loss or damage, including attorney fees, sustained by reason of any mechanics' liens filed against the leased property to enforce payment of any bills for such labor and materials.

22. ADJACENT PREMISES: LESSEES shall not permit any loud or offensive noise, any offensive odor or any substance to be emitted from the leased property or permit any activity to be conducted on the leased property which is an annoyance or nuisance to any occupant of any of LESSOR'S adjacent property.

23. ENVIRONMENTAL MATTERS: LESSEES agree that they will at all times during the term of this Lease conduct their business on the leased property in compliance with all environmental laws, rules and regulations applicable to the leased property including but not limited to said laws, rules and regulations applicable to Hazardous Materials (hereinafter defined) located on the leased property. LESSEES hereby agree to indemnify and forever hold LESSOR harmless from any loss or damage, including attorney fees, arising out of or resulting from any act or omission of LESSEES on the leased property during the term of this Lease which is in violation of any law, rule or regulation pertaining to Hazardous Materials.

For the purpose of this numbered paragraph, the following terms shall have the meanings set forth below:

a) "Hazardous Materials" shall mean any substance which is or contains (1) any "hazardous substance" as defined in Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601 et seq.) ("CERCLA") or any regulations promulgated under CERCLA, (2) any "hazardous waste" as defined in the Resource Conservation and Recovery Act (42 U.S.C. Section 6901, et seq.) ("RCRA") or regulations promulgated under RCRA, (3) any substance regulated under the Toxic Substances Control Act (15 U.S.C. Section 2601, et seq.), (4) gasoline, diesel fuel or other petroleum hydrocarbons, (5) asbestos and asbestos containing materials, in any form, whether friable or non-friable, (6) polychlorinated byphenyls, (7) radon gas and (8) any additional substances or materials that are classified or considered to be hazardous or toxic under Environmental Requirements (hereinafter defined) or the common law, or any other applicable law, statute, ordinance, rule or regulation. Hazardous Materials shall include, without limitation, any substance, the presence of which on the leased property (A) requires reporting, investigation or remediation under Environmental Requirements; (B) causes or threatens to cause a nuisance on the leased property or adjacent property or poses or threatens to pose a hazard to the health or safety of persons on the leased property or adjacent property; or (C) which, if emanated or migrated from the leased property, could constitute a trespass.

b) "Environmental Requirements" shall mean all laws, statutes, ordinances, rules, regulations, agreements, judgments, orders and decrees now or hereafter enacted, promulgated or amended, of the United States, the states, the counties, the cities or any other political subdivisions in which the leased property is located and any other political subdivision, agency or instrumentality exercising jurisdiction over the owner of the leased property, the leased property or the use of the leased property relating to pollution, the protection from pollution, or regulation of human health, natural resources or the environment, or the emission, discharge, release or threatened release of pollutants, contaminants, chemicals or industrial, toxic or hazardous substances or waste or Hazardous Materials into the environment, including, without limitation, ambient air, surface water, ground water or land or soil.

24. CONDITION AT END: LESSEES will surrender possession of the leased property at the expiration or termination of this Lease without further notice to quit in as good a condition as received except as otherwise provided herein and except for normal wear.

25. LESSEES' PROPERTY: LESSOR shall not be responsible or liable at any time for any loss or damage to LESSEES' equipment, trade fixtures or other personal property on the leased property.

26. DEFAULT: The following events shall be deemed to be events of default by LESSEES under this Lease:

a) Should LESSEES fail to pay any installment of rent referred to in paragraph 3 above or any late charge referred to in paragraph 4 above and such failure shall continue for a period of ten (10) days after written notice from LESSOR; provided however, in the event two (2) such notices have been given in any calendar year and thereafter during said calendar year LESSEES fail to pay any installment of rent or any late charge due within twenty (20) days after the due date such shall be deemed a default on this Lease without the requirement of any prior written notice being given by LESSEES.

b) Should LESSEES fail to comply with any term, provision or covenant of this Lease, other than the payment of rent or any late charge due, and shall not cure such failure within twenty (20) days after written notice thereof from LESSOR, or if the same cannot be cured within twenty (20) days, shall not have commenced to cure the failure within said twenty (20) days and proceed diligently to cure same.

c) Should LESSEES make a transfer in fraud of creditors, or should LESSEES make an assignment for the benefit of creditors.

d) Should LESSEES file a petition under any section or chapter of the Federal Bankruptcy Act, as amended, or under any similar law or statute of the United States or any state thereof; or should LESSEES be adjudicated a bankrupt or insolvent in proceedings filed against LESSEES thereunder.

e) Should a receiver or trustee be appointed for all or substantially all of the assets of LESSEES.

Upon the occurrence of any such events of default, LESSOR shall have the option to pursue any one or more of the following remedies without any notice or demand:

i) To terminate this Lease and all provisions herein, in which event LESSEES shall immediately surrender the leased property to LESSOR. If LESSEES fail so to do, LESSOR may, without prejudice to

any other remedy which it may have for possession or arrearages in rent, enter upon and take possession of the leased property and expel or remove LESSEES and any other person who may be occupying said leased property or any part thereof. LESSEES agree to pay to LESSOR on demand the amount of all loss and damage which LESSOR may suffer by reason of such termination, whether through inability to relet the premises on satisfactory terms or otherwise.

ii) To enter upon and take possession of the leased property and expel or remove LESSEES and any other person who may be occupying said leased property or any part thereof and relet the leased property and receive the rent therefor. LESSEES agree to pay to LESSOR on demand any deficiency that may arise by reason of such reletting.

iii) To enter upon the leased property and do whatever LESSEES are obligated to do under the terms of this Lease. LESSEES agree to reimburse LESSOR on demand for any expenses which LESSOR may incur in thus effecting compliance with LESSEES' obligations under this Lease.

iv) To enter upon the leased property and to remove the property and personnel of LESSEES from the leased property and to store the property of LESSEES in a public warehouse or at a place selected by LESSOR at the expense of LESSEES.

v) To recover all amounts due from LESSEES under the terms of this Lease.

Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies herein provided or any other remedies provided by law, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any rent due to LESSOR hereunder or of any damages occurring to LESSOR by reason of the violation of any of the terms, provisions and covenants herein contained. Failure by LESSOR to enforce one or more of the remedies herein provided upon any event of default shall not be deemed or construed to constitute a waiver of such default, or of any other violation or breach of any of the terms, provisions and covenants contained herein. If LESSOR shall incur any expenses, including court costs, reasonable litigation expenses and reasonable attorney fees, as the result of a default by LESSEES under the terms of this Lease, then LESSOR shall have the right to recover from LESSEES all of said expenses which shall be considered as additional rent hereunder, whether or not such default is subsequently cured.

27. EMINENT DOMAIN: In the event a part of the leased property is taken by eminent domain and the part remaining is still suitable for the use contemplated herein, this Lease as to the part taken shall terminate as of the date title shall be taken by the condemnor and all monies paid or to be paid by the condemnor shall be paid to LESSOR, and LESSEES shall have no right to participate in said condemnation proceedings. In the event said partial taking

has any detrimental effect upon LESSEES' use of the leased property, the rent shall be reduced according to the extent that LESSEES' use of the leased property has been affected by said condemnation proceedings.

In the event all of the leased property is taken, or so much thereof as to render the leased property unsuitable for the use being made of the leased property at the time of condemnation, this Lease shall terminate as of the date that the condemning authority has the right to possession of the leased property, and the condemnation proceeds shall be paid to LESSOR. The parties acknowledge that the provisions of this paragraph shall not preclude LESSEES from pursuing a separate claim against the condemning authority for any damage sustained by LESSEES as a result of said condemnation proceedings.

28. BUILDING DAMAGE: In the event the leased property is damaged by fire or other casualty without fault of LESSEES so as to be partially untenable, LESSOR agrees to promptly restore the leased property to a tenable condition and a proportionate part of the rent shall abate until the leased property is restored to a full tenable condition.

In the event the leased property is damaged by fire or other casualty without fault of LESSEES to the extent that the leased property is totally untenable, this Lease shall terminate as of the date of said damage and any prepaid, unaccrued rent shall be refunded to LESSEES.

29. SUBORDINATION: This Lease and all rights of LESSEES hereunder shall be subject and subordinate to the lien of any and all mortgages that may now or hereafter affect the leased property, or any part thereof, and to any and all renewals, modifications, or extensions of any such mortgages. LESSEES shall on demand execute, acknowledge and deliver to LESSOR, without expense to LESSOR, any and all instruments that may be necessary or proper to subordinate this Lease and all rights therein to the lien of any such mortgage or mortgages and each renewal, modification or extension, and if LESSEES shall fail at any time to execute, acknowledge and deliver any such subordination instrument, LESSOR, in addition to any other remedies available in consequence thereof, may execute, acknowledge and deliver the same as LESSEES' attorney-in-fact and in LESSEES' name and LESSEES hereby irrevocably make, constitute and appoint LESSOR and its successors and assigns, their attorney-in-fact for that purpose. In the event of a foreclosure on any mortgage or Deed of Trust to which this Lease is subject, the mortgagee or the purchaser at any such foreclosure sale shall be entitled to substitution as LESSOR of this Lease, and as substitute LESSOR shall be entitled to enforce all terms and conditions hereof and the possession of the leased property by LESSEES shall not be disturbed so long as LESSEES comply with the terms of this Lease.

30. ESTOPPEL CERTIFICATE: LESSEES agree within ten (10) days after requested by LESSOR to execute such tenant's estoppel certificates as reasonably required by LESSOR or its lender.

31. FINISH ALLOWANCE: LESSOR does hereby consent to LESSEES making the alterations, additions and improvements to the leased property described on Exhibit "B" attached hereto. LESSEES shall have said alterations, additions and improvements made to the leased property in accordance with plans and specifications hereafter approved by LESSOR which

approval shall not be unreasonably withheld. LESSEES will have the aforesaid alterations, additions and improvements made to the leased property in a good and workmanlike manner and in compliance with the codes and ordinances of the City of Columbia, Missouri. All of the aforesaid alterations, additions and improvements shall become LESSORS' property when made. LESSOR shall pay when incurred the first \$_____ of the cost incurred in making the aforesaid alterations, additions and improvements and LESSEES shall pay when due the balance of said cost.

32. SPECIAL AGREEMENTS:

33. NOTICES: All notices required or permitted herein shall be in writing, sent to the party to whom addressed at the following address(es) and shall be deemed delivered to, and received by the other party when (i) actually received, if hand delivered, (ii) on the next business day when given by Federal Express or other twenty-four (24) hour delivery service, package prepaid, or (iii) two (2) business days after being deposited in the United States Mail by certified mail, return receipt requested, postage prepaid; the address(es) being as follows:

To LESSOR: _____

To LESSEES: _____

or at such other address or addresses as may be specified in writing to the other party.

34. RENT PAYMENTS: All rent payments due hereunder shall be made to LESSOR at the address of LESSOR specified in the preceding paragraph or at such other address or addresses as may be specified in writing by LESSOR to LESSEES.

35. TIME: Time is of the essence of all of the provisions of this Lease.

36. WAIVER: No waiver of any forfeiture by acceptance of rent or otherwise shall waive any subsequent cause of forfeiture or breach of any condition of this Lease.

37. LESSEES' LIABILITY: The LESSEES shall be jointly and severally liable to perform all of the obligations of the LESSEES contained in this Lease.

38. SUCCESSORS AND ASSIGNS: This Lease shall be binding upon the parties hereto, and their successors and assigns, subject however, to the restrictions herein contained against assignment by LESSEES.

39. CHOICE OF LAW: This Lease shall be construed under the laws of the State of Missouri and the jurisdiction and venue of any dispute under the terms of this Lease shall be in the Circuit Court of Boone County, Missouri.

IN WITNESS WHEREOF, the parties have hereunto executed this Lease the day and year first above written.

LESSOR:

MERCHANT STREET, LLC, a Missouri
limited liability company

BY: _____
ROY R. FINLEY, President of Roy Finley
Building and Development, Inc., Member

BY: _____
DONALD GINSBURG, Member

LESSEES:

PERSONAL GUARANTEE

The undersigned do hereby jointly and severally, unconditionally and absolutely, guarantee the performance by LESSEES of LESSEES' obligations under the aforesaid Lease, and agree that this guarantee shall constitute a primary and not a secondary obligation, and that LESSOR may pursue remedies against the undersigned without the necessity of exhausting any other remedy available to it against LESSEES. This guarantee is absolute and irrevocable and is made as an inducement to LESSORS' entry into the foregoing Lease. To the maximum extent

permitted by law the undersigned waive notice of presentment, demand, notice of default and all other defenses available to sureties and guarantors.

LEASED PREMISES

TENANT IMPROVEMENTS