
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549**

FORM 10-Q

**Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934
For the Quarterly Period Ended September 30, 2008**

Or

**Transition Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934
For the Transition Period From _____ to _____
Commission file number 0-33169**



CROSS COUNTRY HEALTHCARE, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
Incorporation or organization)

13-4066229
(I.R.S. Employer
Identification Number)

**6551 Park of Commerce Blvd, N.W.
Boca Raton, Florida 33487**
(Address of principal executive offices)(Zip Code)

(561) 998-2232
(Registrant's telephone number, including area code)

Not Applicable
(Former name, former address and former fiscal year, if changed since last report)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Sections 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the Registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of "accelerated filer and large accelerated filer" in Rule 12b-2 of the Exchange Act:

Large accelerated filer Accelerated filer
Non-accelerated filer (Do not check if a smaller reporting company) Smaller Reporting Company

Indicate by checkmark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

The registrant had outstanding 30,774,868 shares of Common Stock, par value \$0.0001 per share, as of October 31, 2008.

INFORMATION RELATING TO FORWARD-LOOKING STATEMENTS

In addition to historical information, this Form 10-Q contains statements relating to our future results (including certain projections and business trends) that are “forward-looking statements” within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended (the Exchange Act), and are subject to the “safe harbor” created by those sections. Words such as “expects”, “anticipates”, “intends”, “plans”, “believes”, “estimates”, “suggests”, “seeks”, “will” and variations of such words and similar expressions are intended to identify forward-looking statements. These statements involve known and unknown risks, uncertainties and other factors that may cause our actual results and performance to be materially different from any future results or performance expressed or implied by these forward-looking statements. These factors include, without limitation, the following: our ability to attract and retain qualified nurses, physicians and other healthcare personnel, costs and availability of short-term housing for our travel healthcare professionals, demand for the healthcare services we provide, both nationally and in the regions in which we operate, the functioning of our information systems, the effect of existing or future government regulation and federal and state legislative and enforcement initiatives on our business, our clients’ ability to pay us for our services, our ability to successfully implement our acquisition and development strategies, the effect of liabilities and other claims asserted against us, the effect of competition in the markets we serve, our ability to successfully defend the Company, its subsidiaries, and its officers and directors on the merits of any lawsuit or determine its potential liability, if any, and other factors set forth in Item 1.A. “Risk Factors” in the Company’s Annual Report on Form 10-K for the year ended December 31, 2007, as filed and updated in our Quarterly Reports on Form 10-Q and other filings with the Securities and Exchange Commission.

Although we believe that these statements are based upon reasonable assumptions, we cannot guarantee future results and readers are cautioned not to place undue reliance on these forward-looking statements, which reflect management’s opinions only as of the date of this filing. There can be no assurance that (i) we have correctly measured or identified all of the factors affecting our business or the extent of these factors’ likely impact, (ii) the available information with respect to these factors on which such analysis is based is complete or accurate, (iii) such analysis is correct or (iv) our strategy, which is based in part on this analysis, will be successful. The Company undertakes no obligation to update or revise forward-looking statements

All references to “we”, “us”, “our”, or “Cross Country” in this Quarterly Report on Form 10-Q mean Cross Country Healthcare, Inc., its subsidiaries and affiliates.

CROSS COUNTRY HEALTHCARE, INC.

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PART I. – FINANCIAL INFORMATION

ITEM 1. CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

Cross Country Healthcare, Inc. Condensed Consolidated Balance Sheets (Unaudited, amounts in thousands)

| | September 30, 2008 | December 31, 2007 |
|--|-----------------------|----------------------|
| Current assets: | | |
| Cash and cash equivalents | \$ 12,637 | \$ 9,066 |
| Restricted cash | 5,000 | — |
| Accounts receivable, net | 126,380 | 116,133 |
| Deferred tax assets | 6,472 | 6,172 |
| Other current assets | 18,962 | 17,768 |
| Total current assets | 169,451 | 149,139 |
| Property and equipment, net | 25,639 | 23,460 |
| Trademarks, net | 64,815 | 19,153 |
| Goodwill, net | 366,340 | 326,119 |
| Other identifiable intangible assets, net | 36,933 | 15,996 |
| Debt issuance costs, net | 2,910 | 424 |
| Other long-term assets | 1,254 | 1,017 |
| Total assets | <u>\$ 667,342</u> | <u>\$ 535,308</u> |
| Current liabilities: | | |
| Accounts payable and accrued expenses | \$ 12,885 | \$ 10,203 |
| Accrued employee compensation and benefits | 39,015 | 26,102 |
| Current portion of long-term debt | 9,214 | 5,067 |
| Income taxes payable | 5,041 | 1,222 |
| Other current liabilities | 8,357 | 7,815 |
| Total current liabilities | 74,512 | 50,409 |
| Long-term debt | 135,194 | 34,385 |
| Non-current deferred tax liabilities | 49,767 | 49,547 |
| Other long-term liabilities | 9,117 | 10,530 |
| Total liabilities | 268,590 | 144,871 |
| Commitments and contingencies | | |
| Stockholders' equity: | | |
| Common stock | 3 | 3 |
| Additional paid-in capital | 237,093 | 245,844 |
| Other stockholders' equity | 161,656 | 144,590 |
| Total stockholders' equity | 398,752 | 390,437 |
| Total liabilities and stockholders' equity | <u>\$ 667,342</u> | <u>\$ 535,308</u> |

See accompanying notes to the condensed consolidated financial statements

Cross Country Healthcare, Inc.
Condensed Consolidated Statements of Income
(Unaudited, amounts in thousands, except per share data)

| | Three Months Ended September 30, | | Nine Months Ended September 30, | |
|--|-------------------------------------|------------|------------------------------------|------------|
| | 2008 | 2007 | 2008 | 2007 |
| Revenue from services | \$ 178,134 | \$ 185,124 | \$ 528,336 | \$ 536,556 |
| Operating expenses: | | | | |
| Direct operating expenses | 130,696 | 139,266 | 390,081 | 408,606 |
| Selling, general and administrative expenses | 33,475 | 31,486 | 97,763 | 90,927 |
| Bad debt expense | 203 | — | 687 | 1,265 |
| Depreciation | 1,789 | 1,370 | 5,352 | 4,359 |
| Amortization | 713 | 622 | 2,029 | 1,361 |
| Legal settlement charge | — | — | — | 34 |
| Total operating expenses | 166,876 | 172,744 | 495,912 | 506,552 |
| Income from operations | 11,258 | 12,380 | 32,424 | 30,004 |
| Other expenses: | | | | |
| Foreign exchange loss (gain) | (79) | 59 | (119) | 59 |
| Interest expense, net | 788 | 808 | 1,960 | 1,823 |
| Income before income taxes | 10,549 | 11,513 | 30,583 | 28,122 |
| Income tax expense | 4,378 | 4,464 | 12,191 | 10,810 |
| Net income | \$ 6,171 | \$ 7,049 | \$ 18,392 | \$ 17,312 |
| Net income per common share: | | | | |
| Basic | \$ 0.20 | \$ 0.22 | \$ 0.60 | \$ 0.54 |
| Diluted | \$ 0.20 | \$ 0.22 | \$ 0.59 | \$ 0.53 |
| Weighted average common shares outstanding: | | | | |
| Basic | 30,710 | 31,954 | 30,842 | 32,041 |
| Diluted | 30,911 | 32,433 | 31,032 | 32,631 |

See accompanying notes to the condensed consolidated financial statements

Cross Country Healthcare, Inc.
Condensed Consolidated Statements of Cash Flows
(Unaudited, amounts in thousands)

| | Nine Months Ended September 30, | |
|---|------------------------------------|-----------|
| | 2008 | 2007 |
| Operating activities | | |
| Net income | \$ 18,392 | \$ 17,312 |
| Adjustments to reconcile net income to net cash provided by operating activities: | | |
| Depreciation | 5,352 | 4,359 |
| Amortization | 2,029 | 1,361 |
| Bad debt expense | 687 | 1,265 |
| Deferred income tax expense | (34) | 8,436 |
| Other noncash charges | 1,008 | 250 |
| Changes in operating assets and liabilities: | | |
| Accounts receivable | 13,063 | (7,292) |
| Other current assets | (1,032) | 1,048 |
| Income taxes | 3,860 | (817) |
| Accounts payable and accrued expenses | (2,987) | (5,796) |
| Accrued legal settlement charge | — | (6,704) |
| Other current liabilities | 594 | 2,544 |
| Net cash provided by operating activities | 40,932 | 15,966 |
| Investing activities | | |
| Acquisition of MDA Holdings, Inc. | (113,197) | — |
| Other acquisitions and related payments | (13,131) | (27,312) |
| Purchases of property and equipment | (3,387) | (6,673) |
| Net cash used in investing activities | (129,715) | (33,985) |
| Financing activities | | |
| Repayment of debt | (86,017) | (123,473) |
| Proceeds from issuance of debt | 190,817 | 145,457 |
| Exercise of stock options | 1,014 | 1,652 |
| Stock repurchase and retirement | (10,775) | (6,008) |
| Debt issuance costs | (2,636) | (11) |
| Tax benefit of stock option exercises | 153 | 294 |
| Net cash provided by financing activities | 92,556 | 17,911 |
| Effect of exchange rate changes on cash | (202) | 108 |
| Change in cash and cash equivalents | 3,571 | — |
| Cash and cash equivalents at beginning of period | 9,066 | — |
| Cash and cash equivalents at end of period | \$ 12,637 | \$ — |

See accompanying notes to the condensed consolidated financial statements

CROSS COUNTRY HEALTHCARE, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Unaudited)

1. ORGANIZATION AND BASIS OF PRESENTATION

The condensed consolidated financial statements include the accounts of Cross Country Healthcare, Inc. and its direct and indirect wholly-owned subsidiaries (collectively, the Company). All material intercompany transactions and balances have been eliminated in consolidation. The accompanying condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States for interim financial information and with the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, they do not include all of the information and notes required by U.S. generally accepted accounting principles for complete financial statements. The preparation of consolidated financial statements, in conformity with accounting principles generally accepted in the United States, requires management to make estimates and assumptions that affect the reported amounts in the condensed consolidated financial statements and accompanying notes. Actual results could differ from those estimates. In the opinion of management, all adjustments (consisting of normal recurring accruals) considered necessary for a fair presentation have been included. These operating results are not necessarily indicative of the results that may be expected for the year ending December 31, 2008.

These unaudited interim condensed consolidated financial statements should be read in conjunction with the audited consolidated financial statements and notes thereto for the year ended December 31, 2007 included in the Company's Annual Report on Form 10-K as filed with the Securities and Exchange Commission. The December 31, 2007, condensed consolidated balance sheet included herein was derived from the December 31, 2007 audited consolidated balance sheet included in the Company's Annual Report on Form 10-K.

Certain prior year amounts have been reclassified to conform to the current period presentation.

2. COMPREHENSIVE INCOME

Certain of the Company's foreign operations use their respective local currency as their functional currency. In accordance with Financial Accounting Standards Board (FASB) Statement No. 52, *Foreign Currency Translation*, assets and liabilities of these operations are translated at the exchange rates in effect on the balance sheet date. Income statement items are translated at the average exchange rates for the period. The cumulative impact of currency fluctuations related to the balance sheet translation is included in other stockholders' equity in the accompanying condensed consolidated balance sheets and was \$1.2 million and \$0.2 million at September 30, 2008 and December 31, 2007, respectively.

Total comprehensive income was \$5.0 million and \$17.1 million for the three and nine month periods ended September 30, 2008, respectively. Total comprehensive income was \$7.3 million and \$17.7 million for the three and nine month periods ended September 30, 2007, respectively. Total comprehensive income includes net income and foreign currency translation adjustments.

3. EARNINGS PER SHARE

In accordance with the requirements of FASB Statement No. 128, *Earnings Per Share*, basic earnings per share is computed by dividing net income by the weighted average number of shares outstanding including the vested portion of restricted shares. The denominator used to calculate diluted earnings per share reflects the dilutive effects of stock options, stock appreciation rights and nonvested restricted stock (as calculated utilizing the treasury stock method). Certain shares of common stock that are issuable upon the exercise of options have been excluded from per share calculations because their effect would have been anti-dilutive.

4. ACQUISITIONS

MDA Holdings, Inc.

On September 9, 2008, the Company consummated the acquisition of substantially all of the assets of privately-held MDA Holdings, Inc. and its subsidiaries and all of the outstanding stock of a subsidiary of MDA Holdings, Inc. (collectively, MDA). The Company paid \$115.9 million in cash at closing, which included \$3.6 million as an estimated net working capital adjustment which is subject to final adjustments. This transaction also includes an earnout provision based on 2008 and 2009 performance criteria. This contingent consideration is not related to the sellers' employment. If the earnout payments are made, they will be allocated to goodwill as additional purchase

price, in accordance with FASB Statement No. 141, *Business Combinations*. Of the cash paid at closing, approximately \$8.7 million is being held in escrow to cover any post-closing liabilities and \$0.3 million is being held in escrow to cover any net working capital adjustments.

The Company's senior secured revolving credit facility was amended and restated in connection with the acquisition of MDA. The \$200.0 million Credit Agreement, dated as of November 10, 2005 and Amended and Restated as of September 9, 2008 (the Credit Agreement) keeps in place an existing \$75.0 million revolving credit facility and provides for a 5-year \$125.0 million term loan facility with Wachovia Capital Markets, LLC and certain of its affiliates, Banc of America Securities LLC and certain other lenders. The proceeds from the term loan were used to fund the acquisition, pay financing related fees, and pay certain acquisition expenses. The remainder of the proceeds was used to reduce borrowings under its revolving credit agreement. See Note 7- Debt for more information about the term loan and amended credit agreement.

Headquartered in Norcross, Georgia, MDA provides multi-specialty locum tenens (temporary physician staffing) and allied staffing services to the healthcare industry in all 50 states. MDA is a leading provider of locum tenens staffing solutions through its independent contract physicians. In addition, MDA has an in-house NCQA-certified Credentials Verification Organization which verifies critical credentials prior to physician assignments. It also offers its physicians occurrence-based malpractice coverage, as compared to less desirable claims-made policies offered by its main competitors. See Note 6 – Reserves for Claims for additional information. The acquisition of MDA solidifies the Company's position as a leading national provider of healthcare staffing solutions. The Company expects to benefit from a more diversified revenue stream as physicians are viewed as revenue generators by its hospital clients, as compared to nurses who represent a cost center. The Company is also able to offer a more comprehensive suite of services to its healthcare clients and recognizes there may be some potential synergies with its physician search business.

The acquisition has been accounted for in accordance with FASB Statement No. 141, using the purchase method. The results of MDA's operations have been included in the condensed consolidated statements of income since the date of acquisition. MDA's allied staffing services have been combined with the Company's nurse and allied staffing business segment. MDA's physician staffing services have been reported as a new business segment for the Company, titled Physician Staffing, in accordance with FASB Statement No. 131, *Disclosure about Segments of an Enterprise and Related Information*.

The purchase price was allocated to assets acquired and liabilities assumed based on estimates of fair value at the date of acquisition, utilizing preliminary audited financial statements and a preliminary independent third-party appraisal. The following table summarizes the approximate fair values of the assets acquired and liabilities assumed at the date of acquisition.

(Amounts in thousands)

| | |
|--|--------------------------|
| Current assets: | |
| Cash | \$ 3,191 |
| Restricted cash | 5,000 |
| Accounts receivable, net | 24,177 |
| Other current assets | 505 |
| Total current assets | <u>32,873</u> |
| Property and equipment | 4,061 |
| Trademarks | 46,000 |
| Goodwill | 26,819 |
| Other identifiable intangible assets | 23,000 |
| Total assets acquired | <u>132,753</u> |
| Current liabilities: | |
| Accounts payable and accrued expenses | 5,232 |
| Accrued employee compensation and benefits | 11,651 |
| Total liabilities assumed | <u>16,883</u> |
| Net assets acquired | <u><u>\$ 115,870</u></u> |

Based on the preliminary independent third-party appraisal, the Company assigned the following values to intangible assets: \$46.0 million to trademarks with an indefinite life, \$20.0 million for customer relations with a useful life of 12 years, \$2.0 million to database with a useful life of 5 years, and \$1.0 million to noncompete agreements with a weighted average useful life of 4 years. The excess of purchase price over the fair value of net tangible and intangible assets acquired approximated \$26.8 million and was recorded as goodwill, which is expected to be deductible for tax purposes. The purchase price allocation could change based on the ultimate resolution of initial assessments, the final audited financial statements, and/or the final third-party appraisal. Additional acquisition costs of approximately \$0.5 million were incurred during the three and nine months ended September 30, 2008, and are included as goodwill in the condensed consolidated balance sheet.

The following unaudited pro forma summary approximates the consolidated results of operations of the Company as if the MDA acquisition had occurred as of the beginning of each period presented, after giving effect to certain adjustments, including amortization of specifically identifiable intangible assets, deduction of net expenses related to the previous Employee Stock Ownership Plan of MDA, incremental interest expense and related income tax effects.

| | Three Months Ended September 30, | | Nine Months Ended September 30, | |
|---|-------------------------------------|------------|------------------------------------|------------|
| | 2008 | 2007 | 2008 | 2007 |
| (Amounts in thousands, except per share data) | | | | |
| Revenue from services | \$ 213,124 | \$ 226,619 | \$ 648,041 | \$ 655,551 |
| Net income | \$ 6,958 | \$ 7,744 | \$ 19,917 | \$ 19,115 |
| Net income per common share - basic | \$ 0.23 | \$ 0.24 | \$ 0.65 | \$ 0.60 |
| Net income per common share - diluted | \$ 0.23 | \$ 0.24 | \$ 0.64 | \$ 0.59 |

Assent Consulting

On July 18, 2007, the Company completed the acquisition of all of the shares of privately-held Assent Consulting (Assent) for \$19.6 million in cash paid at closing, including \$1.0 million which was held in escrow to cover any post-closing liabilities. The purchase price was subject to a working capital adjustment of approximately \$0.5 million that was settled with a payment to the Company in the fourth quarter of 2007. This transaction also included an earnout provision up to a maximum of \$4.9 million based on 2007 and 2008 performance criteria. This contingent consideration is not related to the sellers' employment. In the nine months ended September 30, 2008, the Company paid \$4.6 million related to 2007 performance satisfying all earnout amounts potentially due to the seller in accordance with the asset purchase agreement. Approximately \$2.0 million of the payment is being held in escrow, subject to forfeiture to the Company, to the extent a 2008 performance milestone is not achieved. The entire payment was allocated to goodwill as additional purchase price, in accordance with FASB Statement No. 141. The Company financed this acquisition using its revolving credit facility.

Headquartered in Cupertino, California, Assent Consulting provides staffing services primarily consisting of highly qualified clinical research, biostatistics and drug safety professionals to companies in the pharmaceutical and biotechnology industries. This acquisition provides a greater geographical presence on the West Coast of the U.S. and broadens the Company's client base for its clinical trials services business.

The acquisition has been accounted for using the purchase method and is included in the clinical trials services business segment. The results of Assent's operations have been included in the condensed consolidated statements of income since the date of acquisition, in accordance with FASB Statement No. 141.

The purchase price was allocated to assets acquired and liabilities assumed based on estimates of fair value at the date of acquisition, utilizing unaudited financial statements and an independent third-party appraisal. Based on the independent third-party appraisal, the Company assigned the following values to intangible assets: \$5.2 million for customer relations with a useful life of 10 years, \$0.5 million to database with a useful life of 6 years, \$0.4 million to a noncompete agreement with a useful life of 5 years, and \$0.3 million to trademarks with a useful life of 1.5 years. The excess of purchase price over the fair value of net tangible and intangible assets acquired approximated \$11.6 million and was recorded as goodwill, which is deductible for tax purposes.

AKOS Limited

On June 6, 2007, the Company acquired all of the shares of privately-held AKOS Limited (AKOS), based in the United Kingdom, for a total purchase price of up to £7.2 million, consisting of an up-front payment of £4.0 million and potential earnout payments up to a maximum of £3.2 million in 2007 and 2008, plus a working capital adjustment. The share purchase agreement also specified an estimated additional payment of £0.5 million, paid at closing, consisting of cash purchased. An additional amount of £0.2 million was paid in the third quarter of 2007, based on changes in net working capital, as defined by the share purchase agreement, and has been allocated to goodwill as additional purchase price.

The consideration for this acquisition equated to \$8.9 million in cash paid at closing, which included \$1.0 million for the additional payment and \$0.8 million which was held in escrow to cover any post-closing liabilities. The post-closing net working capital adjustment paid by the Company equated to approximately \$0.4 million. The Company financed this transaction using its revolving credit facility.

The potential earnout payments are based on 2007 and 2008 performance, as defined by the share purchase agreement and consideration is not related to the sellers' employment. In the first quarter of 2008, the Company paid £1.1 million (approximately \$2.2 million) related to the 2007 performance. This payment was allocated to goodwill as additional purchase price, in accordance with FASB Statement No. 141. If any other additional earnout payments are made, they will also be allocated to goodwill as additional purchase price, in accordance with FASB Statement No. 141.

AKOS, conducting business since 1986, is a provider of drug safety/pharmacovigilance, regulatory and clinical trial services to pharmaceutical and biotechnology companies in Europe, the United States, Canada and Asia. AKOS is based approximately 30 miles north of London, England, and strategically located inside what is considered to be the United Kingdom's research triangle that extends outward from London to Cambridge and Oxford Universities. The Company believes the addition of AKOS will allow the Company to provide a more global and comprehensive range of contract staffing and outsourcing services to pharmaceutical and biotech customers.

The acquisition has been accounted for using the purchase method and is included in the clinical trials services segment. The results of AKOS' operations have been included in the condensed consolidated statements of income since the date of acquisition, in accordance with FASB Statement No. 141.

The purchase price was allocated to assets acquired and liabilities assumed based on estimates of fair value at the date of acquisition, utilizing unaudited financial statements and an independent third-party appraisal. Based on an independent third-party appraisal, the Company assigned \$1.7 million to trademarks with an indefinite life and not subject to amortization. In addition, the Company assigned \$2.6 million to other identifiable intangible assets subject to amortization, as follows: \$2.2 million was assigned to customer relations with a useful life of 8.6 years, and \$0.4 million was assigned to other intangibles with an estimated useful life of 6 years. The excess of purchase price over the fair value of net tangible and intangible assets acquired approximated \$3.8 million and was recorded as goodwill, which is not deductible locally for tax purposes.

Metropolitan Research

On August 31, 2006, the Company acquired all of the assets of privately-held Metropolitan Research Associates, LLC and Metropolitan Research Staffing Associates, LLC (collectively Metropolitan Research) for \$18.6 million in cash plus a potential earn-out of up to \$6.4 million based on 2006 and 2007 performance criteria. During the nine month period ended September 30, 2008, the Company paid approximately \$6.4 million and satisfied all earnout payments due to the sellers of Metropolitan Research, in accordance with the asset purchase agreement. The payment was allocated to goodwill as additional purchase price, in accordance with FASB Statement No. 141.

5. GOODWILL AND INTANGIBLE ASSETS

At September 31, 2008 and December 31, 2007, the Company had the following acquired intangible assets (in thousands):

| | September 30, 2008 | | | December 31, 2007 | | |
|--|-----------------------|--------------------------|---------------------|-----------------------|--------------------------|---------------------|
| | Gross Carrying Amount | Accumulated Amortization | Net Carrying Amount | Gross Carrying Amount | Accumulated Amortization | Net Carrying Amount |
| Intangible assets subject to amortization: | | | | | | |
| Databases | \$ 15,236 | \$ 12,078 | \$ 3,158 | \$ 13,269 | \$ 11,788 | \$ 1,481 |
| Customer relations | 37,640 | 5,343 | 32,297 | 17,841 | 4,119 | 13,722 |
| Non-compete agreements | 4,153 | 2,675 | 1,478 | 3,153 | 2,360 | 793 |
| Trademark | 340 | 274 | 66 | 340 | 104 | 236 |
| | <u>\$ 57,369</u> | <u>\$ 20,370</u> | <u>\$ 36,999</u> | <u>\$ 34,603</u> | <u>\$ 18,371</u> | <u>\$ 16,232</u> |
| Intangible assets not subject to amortization: | | | | | | |
| Goodwill | \$ 386,958 | \$ 20,618 | \$ 366,340 | \$ 346,737 | \$ 20,618 | \$ 326,119 |
| Trademarks | 66,150 | 1,401 | 64,749 | 20,318 | 1,401 | 18,917 |
| | <u>\$ 453,108</u> | <u>\$ 22,019</u> | <u>\$ 431,089</u> | <u>\$ 367,055</u> | <u>\$ 22,019</u> | <u>\$ 345,036</u> |

Estimated annual amortization expense is approximately as follows:

Year Ending December 31 (amounts in thousands):

| | |
|------------|------------------|
| 2008 | \$ 1,174 |
| 2009 | 4,394 |
| 2010 | 4,247 |
| 2011 | 3,862 |
| 2012 | 3,609 |
| Thereafter | 19,713 |
| | <u>\$ 36,999</u> |

The changes in the carrying amount of goodwill by segment are as follows (in thousands):

| | Nurse and Allied Staffing Segment | Physician Staffing Segment | Clinical Trials Services Segment | Other Human Capital Management Services Segment | Total |
|---|-----------------------------------|----------------------------|----------------------------------|---|-------------------|
| Balance as of December 31, 2007 | \$ 257,667 | \$ — | \$ 49,145 | \$ 19,307 | \$ 326,119 |
| Acquisition of MDA | 1,218 | 26,119 | — | — | 27,337 |
| Earnout payment for Assent Consulting | — | — | 4,552 | — | 4,552 |
| Earnout payment for Metropolitan Research | — | — | 6,436 | — | 6,436 |
| Earnout payment and net working capital adjustment for AKOS | — | — | 2,507 | — | 2,507 |
| Currency translation adjustment for AKOS | — | — | (611) | — | (611) |
| Balance as of September 30, 2008 | <u>\$ 258,885</u> | <u>\$ 26,119</u> | <u>\$ 62,029</u> | <u>\$ 19,307</u> | <u>\$ 366,340</u> |

As of September 30, 2008, the Company had approximately \$3.1 million included in other intangible assets which related to a particular customer relationship. The relationship with this customer remains in good standing; however, the customer has begun to use offshore staffing to meet some of its needs and will not be renewing one of its contracts due to expire in the first quarter of 2009. The expiration of this particular contract has the potential to impact the projected revenue stream utilized in assessing the value of this intangible asset. Management will be aggressively pursuing other opportunities as they become available with this customer in an effort to replace this revenue stream. The Company does have other ongoing contracts with this customer that are expected to continue to generate business, but they are not significant or sufficient enough to replace the revenue stream that will be ending in the first quarter of 2009. Based on these circumstances, the Company may have to record an impairment charge if the future revenue stream from this customer relationship does not appear to support the recorded intangible asset. Due to the uncertainty related to its future revenue stream at this time, the Company's impairment analysis is not complete and a reasonable estimate of the amount of a potential impairment charge cannot be determined.

6. RESERVES FOR CLAIMS

Workers' compensation, professional liability and health care benefits are provided under partially self-insured plans. The Company records its estimate of the ultimate cost of, and reserves for, workers' compensation and professional liability benefits based on internally prepared actuarial models reviewed by an independent actuary using the Company's loss history as well as industry statistics. Furthermore, in determining its reserves, the Company includes reserves for estimated claims incurred but not reported. The health care insurance accrual is for claims that have occurred but have not been reported and is based on the Company's historical claim submission patterns. The ultimate cost of workers' compensation, professional liability and health insurance costs will depend on actual costs incurred to settle the claims and may differ from the amounts reserved by the Company for those claims.

For claims reported prior to September 1, 2008, the workers' compensation insurance carrier required the Company to fund a reserve for payment of claims. Those funds are maintained by the insurance carrier. Effective September 1, 2008, the Company has moved from a pre-funded program to a letter of credit structure to guarantee payments of claims. The Company had approximately \$5.9 million and \$6.7 million recorded as prepaid workers' compensation expense included in other current assets on the condensed consolidated balance sheets at September 30, 2008 and December 31, 2007, respectively. At September 30, 2008, the Company had outstanding a \$2.0 million standby letter of credit related to this new structure.

Effective October 2004, the Company implemented individual occurrence-based professional liability insurance policies with no deductible, for virtually all of its working nurses and allied professionals, other than those employed through its MedStaff subsidiary. This coverage substantially replaced a \$2.0 million per-claim layer of self-insured exposure. Effective October 1, 2008, the individual professional liability insurance policies were replaced with one policy that insures each individual nurse for \$2.0 million per occurrence and \$4.0 million in the aggregate, as well as the corporation which shares those limits. This policy has no deductible and does not cover healthcare professionals working through MedStaff or MDA.

Separately, the Company's MedStaff subsidiary has a claims-made professional liability policy with a limit of \$2.0 million per occurrence, \$4.0 million in the aggregate and a \$25,000 deductible. In addition, MDA has an occurrence-based professional liability policy with a limit of \$1.0 million per occurrence, \$3.0 million in the aggregate and a \$0.5 million deductible for MDA, its independent contractor physicians, CRNAs and allied health professionals. MDA's \$0.5 million deductible is insured by Jamestown Indemnity Ltd., a Cayman Island company and a wholly-owned subsidiary of MDA Holdings, Inc.(the Captive). Under the terms of the Captive's reinsurance policy it is required to guarantee the payment of claims to its insured parties primary medical malpractice insurance carrier via a \$5.0 million letter of credit. The value of the letter of credit is secured by \$5.0 million of cash held by the Captive in a restricted account and is reported as restricted cash on the condensed consolidated balance sheet. For healthcare professionals that are not insured through these individual policies or through MedStaff's policy, and for the Company's independent liabilities (such as negligent hiring), the Company provides primary coverage with a \$2.0 million self-insured retention.

Subject to certain limitations, the Company also has \$5.0 million per occurrence and \$10.0 million in the aggregate in umbrella liability insurance coverage, after the individual policies, MedStaff's policy or the \$2.0 million self-insured primary coverage have been exhausted.

In August 2002, the Company changed its professional and general liability policy to include a self-insured limit of \$2.0 million per claim through a self-insured retention.

7. DEBT

At September 30, 2008, long-term debt consists of the following:

| (Amounts in thousands) | September 30, 2008 | December 31, 2007 |
|--|-----------------------|----------------------|
| Term loan, interest at 4.99% | \$ 125,000 | \$ — |
| Revolving credit facility, weighted average interest at 5.65% and 6.81% at September 30, 2008 and December 31, 2007, respectively | 18,250 | 38,000 |
| Capitalized leases | 1,158 | 1,452 |
| | 144,408 | 39,452 |
| Less current portion | (9,214) | (5,067) |
| | \$ 135,194 | \$ 34,385 |

The Company's senior secured revolving credit facility entered into on November 10, 2005 was amended and restated as of September 9, 2008 in connection with the acquisition of MDA. The Credit Agreement keeps in place an existing \$75.0 million revolving credit facility, maturing in November 2010, and provides for a 5 year \$125.0 million term loan facility with Wachovia Capital Markets, LLC and certain of its affiliates, Banc of America Securities LLC and certain other lenders. The term loan bears interest at a rate of, at the Company's option, either: (i) LIBOR plus a leverage-based margin or (ii) Base Rate (as defined in the Credit Agreement) plus a leverage-based margin.

The Credit Agreement was also amended for customary covenants for similar leveraged deals such as: 1) requiring the Company to hedge at least 40% of its floating rate exposure for 2 years; and 2) adding a mandatory prepayment provision from Excess Cash as defined by the Credit Agreement. Pursuant to the provisions of the Credit Agreement, in October 2008, the Company entered into interest rate swap agreements to effectively fix the interest on \$70.0 million of its term debt for a period of 2 years at 3.04%, plus the applicable LIBOR spread.

The \$75.0 million revolving credit facility has a \$10.0 million sublimit for the issuance of Swingline Loans (as defined by the Credit Agreement) and a \$35.0 million sublimit for the issuance of standby letters of credit. Swingline Loans and letters of credit issued under this facility reduce the revolving credit facility on a dollar for dollar basis. The credit facility is being used for general corporate purposes including working capital, capital expenditures and permitted acquisitions and investments, as well as to pay fees and expenses related to the credit facility. As of September 30, 2008, the Company had \$18.3 million of borrowings and \$5.3 million of standby letters of credit outstanding under this facility, leaving \$51.4 million available for borrowing. In addition, the Company has a letter of credit outstanding outside the Credit Agreement relating to MDA's Captive. See Note 6- Reserves for Claim s.

The provisions of the revolving credit agreement generally allow the Company to borrow, repay and re-borrow debt for an uninterrupted period until the maturity date of the credit facility which, as of September 30, 2008, extends beyond one year from the balance sheet date. Borrowings under the facility are generally not callable unless an event of default exists, and there are no subjective acceleration clauses. Accordingly, as per the provisions of FASB Statement No. 6, *Classification of Short-term Obligations Expected to Be Refinanced*, \$16.0 million of borrowings under this facility is classified as long-term as of September 30, 2008. Short-term borrowings under this facility consist of borrowings that the Company intends to or has repaid as of the date of the issuance of these condensed consolidated financial statements.

Long-term debt includes capital lease obligations that are subordinate to the Company's senior secured facility.

Aggregate scheduled maturities of long-term debt as of September 30, 2008 are as follows:

Year Ending December 31 (Amounts in thousands):

| | | |
|------|----|----------------|
| 2008 | \$ | 4,003 |
| 2009 | | 7,711 |
| 2010 | | 26,441 |
| 2011 | | 15,628 |
| 2012 | | 36,719 |
| 2013 | | 53,906 |
| | \$ | <u>144,408</u> |

8. STOCKHOLDERS' EQUITY

Stock Repurchase Program

On May 10, 2006, the Company's Board of Directors authorized a stock repurchase program whereby the Company was authorized to purchase up to 1.5 million shares of its common stock. This repurchase program was completed and on February 28, 2008, the Company's Board of Directors authorized an additional stock repurchase program, whereby it may purchase up to an additional 1.5 million shares of its common stock, subject to the terms of the Company's credit agreement. The shares may be repurchased from time-to-time in the open market and the repurchase program may be discontinued at any time at the Company's discretion. The Company commenced repurchases under the February 2008 authorization during the first quarter of 2008 upon the completion of the May 2006 authorization.

During the three months ended September 30, 2008, the Company did not repurchase shares due to the impending and subsequent closing of its previously announced acquisition of MDA. During the nine months ended September 30, 2008, the Company repurchased a total, under both programs, of 924,235 shares at an average price of \$11.66. The cost of such purchases was approximately \$10.8 million. During the nine months ended September 30, 2007, the Company purchased a total of 346,998 shares of common stock at an average cost of \$17.31 per share, for a total cost of \$6.0 million. All of the common stock purchased was retired. Under the February 2008 authorization, the Company may purchase up to an additional 1,441,139 shares of common stock, subject to the constraints of the Company's Credit Agreement. Currently, the Company may not make any repurchases until the Leverage Ratio (as defined in the Credit Agreement) drops below 2 to 1. The Leverage Ratio on September 30, 2008 was 2.14 to 1. At September 30, 2008, the Company had approximately 30.8 million shares of common stock outstanding.

Share-Based Payments

During the nine month period ended September 30, 2008, the Company granted, under its 2007 Stock Incentive Plan, 110,310 restricted stock awards, and 158,664 stock appreciation rights to the Company's management team. The stock appreciation rights can only be settled with stock. The awards and rights vest over a 4 year period.

During the three and nine month periods ended September 30, 2008, \$0.4 million and \$0.9 million, respectively, was included in selling, general and administrative expenses related to share-based payments. Share-based payment expense was not material for the three and nine month periods ended September 30, 2007.

During the three and nine months ended September 30, 2008, 90,064 shares and 104,626 shares of common stock, respectively, were issued upon exercise of employee stock options. In addition, in the nine month period ended September 30, 2008, 2,046 shares of common stock were issued as a result of vested restricted stock.

9. SEGMENT DATA

In the third quarter of 2008, the Company added a physician staffing business segment as a result of the MDA acquisition (See Note 4- Acquisitions). MDA provides multi-specialty locum tenens and allied staffing services to the healthcare industry in all 50 states. MDA's locum tenens business comprises the physician staffing business segment while MDA's allied staffing services have been aggregated with the Company's nurse and allied staffing business segment.

The nurse and allied staffing business segment primarily provides travel nurse and allied staffing services and per diem nurse services to primarily acute care hospitals which include public and private healthcare and for-profit and not-for-profit facilities throughout the U.S. The physician staffing business segment provides multi-specialty locum tenens (temporary physician staffing) to the healthcare industry in all 50 states. The clinical trials services business segment provides clinical trials, drug safety, and regulatory professionals on a contract staffing and outsourced basis to companies in the pharmaceutical, biotechnology and medical device industries, as well as to contract research organizations, primarily in the United States, Canada and Europe. The other human capital management services business segment includes the combined results of the Company's education and training and retained search businesses.

Information on operating segments and a reconciliation to income from operations for the periods indicated are as follows:

| | Three Months Ended September 30, | | Nine Months Ended September 30, | |
|---|-------------------------------------|-------------------|------------------------------------|-------------------|
| | 2008 | 2007 | 2008 | 2007 |
| (Amounts in thousands) | | | | |
| Revenue from external customers: | | | | |
| Nurse and allied staffing | \$ 128,910 | \$ 145,780 | \$ 402,241 | \$ 433,497 |
| Physician staffing | 10,831 | — | 10,831 | — |
| Clinical trials services | 25,414 | 26,164 | 75,181 | 65,444 |
| Other human capital management services | 12,979 | 13,180 | 40,083 | 37,615 |
| | <u>\$ 178,134</u> | <u>\$ 185,124</u> | <u>\$ 528,336</u> | <u>\$ 536,556</u> |
| Contribution income (a): | | | | |
| Nurse and allied staffing | \$ 14,332 | \$ 14,329 | \$ 41,132 | \$ 39,385 |
| Physician staffing | 928 | — | 928 | — |
| Clinical trials services | 3,755 | 5,064 | 11,937 | 10,597 |
| Other human capital management services | 1,589 | 1,639 | 6,092 | 5,728 |
| | <u>20,604</u> | <u>21,032</u> | <u>60,089</u> | <u>55,710</u> |
| Unallocated corporate overhead | 6,844 | 6,660 | 20,284 | 19,952 |
| Depreciation | 1,789 | 1,370 | 5,352 | 4,359 |
| Amortization | 713 | 622 | 2,029 | 1,361 |
| Legal settlement charge | — | — | — | 34 |
| Income from operations | <u>\$ 11,258</u> | <u>\$ 12,380</u> | <u>\$ 32,424</u> | <u>\$ 30,004</u> |

- (a) The Company defines contribution income as income from operations before depreciation, amortization, and corporate expenses not specifically identified to a reporting segment. Contribution income is a financial measure used by management when assessing segment performance and is provided in accordance with FASB Statement No. 131, *Disclosure about Segments of an Enterprise and Related Information*.

10. COMMITMENTS AND CONTINGENCIES

Commitments:

The Company has entered into non-cancelable operating lease agreements for the rental of office space and equipment. Certain of these leases include options to renew as well as rent escalation clauses and in certain cases, incentives from the landlord for rent-free months and allowances for tenant improvements. The rent escalations and incentives have been reflected in the following table. Future minimum lease payments, as of September 30, 2008, associated with these agreements with terms of one year or more are approximately as follows:

| Year Ending December 31 (Amounts in thousands): | | |
|---|----|---------------|
| 2008 | \$ | 1,755 |
| 2009 | | 6,833 |
| 2010 | | 6,009 |
| 2011 | | 5,645 |
| 2012 | | 5,216 |
| Thereafter | | 13,978 |
| | \$ | <u>39,436</u> |

Contingencies:

Maureen Petray and Carina Higareda v. MedStaff, Inc.

On February 18, 2005, the Company's MedStaff subsidiary became the subject of a purported class action lawsuit (*Maureen Petray and Carina Higareda v. MedStaff, Inc.*) filed in the Superior Court of California in Riverside County. The lawsuit relates to only MedStaff corporate employees. The claims alleged under this lawsuit are generally similar in nature to those brought by Darrelyn Renee Henry in a lawsuit against the Company, which was dismissed (*Darrelyn Renee Henry vs. MedStaff, Inc., Cross Country Healthcare, Inc., Victor Kalafa, Tim Rodden, Talia Pico and Melissa Hetrick*).

The lawsuit alleges, among other things, violations of certain sections of the California Labor Code, the California Business and Professions Code, and recovery of unpaid wages and penalties. MedStaff currently has less than 50 corporate employees in California. The Plaintiffs, Maureen Petray and Carina Higareda, purport to sue on behalf of themselves and all others similarly situated, allege that MedStaff failed, under California law, to provide meal periods and rest breaks and pay for those missed meal periods and rest breaks; failed to compensate the employees for all hours worked; failed to compensate the employees for working overtime; and failed to keep appropriate records to keep track of time worked. Plaintiffs seek, among other things, an order enjoining MedStaff from engaging in the practices challenged in the complaint; for full restitution of all monies MedStaff allegedly failed to pay Plaintiffs and their purported class; for interest; for certain penalties provided for by the California Labor Code; and for attorneys' fees and costs. On February 5, 2007, the court granted class certification. On October 16, 2008, MedStaff, Inc. filed a Motion to Decertify the class. The Company is unable to determine its potential exposure, if any, and intends to vigorously defend this matter.

Cossack, et. al. v. Cross Country TravCorps and Cross Country Nurses, Inc.

In the nine months ended September 30, 2007, the Company paid \$6.7 million to settle the California wage and hour class action lawsuit filed against certain of the Company's subsidiaries in Superior Court in Orange County, California, in August of 2003.

The Company is also subject to other legal proceedings and claims that arise in the ordinary course of its business. In the opinion of management, the outcome of these other matters will not have a material effect on the Company's consolidated financial position or results of operations.

11. RECENTLY ISSUED ACCOUNTING STANDARDS

In April 2008, the FASB issued FASB Staff Position No. 142-3, *Determination of the Useful Life of Intangible Assets*, which amends the factors that should be considered in developing renewal or extension assumptions used to determine the useful life of a recognized intangible asset under FASB Statement No. 142, *Goodwill and Other Intangible Assets*. The intent of FASB Staff Position No. 142-3 is to improve the consistency between the useful life

of a recognized intangible asset under FASB Statement No. 142 and the period of expected cash flows used to measure the fair value of the asset under FASB Statement No. 141(R) and other U.S. generally accepted accounting principles. FASB Staff Position No. 142-3 is effective for fiscal years beginning after December 15, 2008 and interim periods within those fiscal years and early adoption is prohibited. The Company will implement FASB Staff Position No. 142-3 on January 1, 2009. The Company expects that FASB Staff Position No. 142-3 could have an impact on its future consolidated financial statements when effective, but the nature and magnitude of the specific effects will depend upon the nature, terms and size of the acquisitions the Company consummates after the effective date.

In March 2008, the FASB issued FASB Statement No. 161, *Disclosures about Derivative Instruments and Hedging Activities – an amendment of FASB Statement No. 133*. FASB Statement No. 161 requires enhanced disclosures about how and why an entity uses derivative instruments, how derivative instruments and related hedged items are accounted for under FASB Statement No. 133, *Accounting for Derivative Instruments and Hedging Activities*, and its related interpretations, and how derivative instruments and related hedged items affect an entity's financial position, financial performance, and cash flows. FASB Statement No. 161 is effective for financial statements issued for fiscal years and interim periods beginning after November 15, 2008, with early application encouraged. FASB Statement No. 161 encourages, but does not require, comparative disclosures for earlier periods at initial adoption. The Company expects to implement FASB Statement No. 161 in the fourth quarter of 2008 due to the interest rate swap agreements entered into in October 2008 (See Note 7-Debt) and it does not believe the adoption of FASB Statement No. 161 will have a material impact on its consolidated financial statements.

In December 2007, the FASB issued FASB Statement No. 141R, *Business Combinations* (FASB 141R), which replaces FASB Statement No. 141, *Business Combinations*. FASB 141R applies to all transactions or other events in which an entity obtains control of one or more businesses and requires that all assets and liabilities of an acquired business as well as any noncontrolling interest in the acquiree be recorded at their fair values at the acquisition date. Among other things, FASB 141R requires the expensing of direct transaction costs, including deal costs and restructuring costs as incurred. In addition, contingent consideration arrangements will be recognized at their acquisition date fair values, with subsequent changes in fair value generally reflected in earnings. Pre-acquisition contingencies will also typically be recognized at their acquisition date fair values. In subsequent periods, contingent liabilities will be measured at the higher of their acquisition date fair values or the estimated amounts to be realized. In addition, material adjustments made to the initial acquisition purchase accounting will be required to be recorded back to the acquisition date. This will cause companies to revise previously reported results when reporting comparative financial information in subsequent filings. The statement is effective for business combinations for which the acquisition date is on or after the beginning of the first annual reporting period beginning on or after December 15, 2008. The Company expects that FASB 141R could have an impact on its future consolidated financial statements when effective, but the nature and magnitude of the specific effects will depend upon the nature, terms and size of the acquisitions the Company consummates after the effective date.

In February 2007, the FASB issued Statement No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities*. This standard allows companies to elect to follow fair value accounting for certain financial assets and liabilities in an effort to mitigate volatility in earnings without having to apply complex hedge accounting provisions. FASB Statement No. 159 is applicable only to certain financial instruments and is effective for fiscal years beginning after November 15, 2007. As the Company did not elect fair value treatment for qualifying instruments that exist as of the effective date, the adoption of this Standard did not have a material impact on its consolidated financial statements. The Company may elect to measure qualifying instruments at fair value in the future.

In September 2006, the FASB issued Statement No. 157, *Fair Value Measurements*, which defines fair value, establishes a framework for measuring fair value under U.S. generally accepted accounting principles and expands disclosures about fair value measurements. FASB Statement No. 157 was effective for financial statements issued for fiscal years beginning after November 15, 2007. However, in February 2008, the FASB Staff Position No. 157-2 was issued, which delays the effective date for nonfinancial assets and nonfinancial liabilities, except for items that are recognized or disclosed at fair value in the financial statements on a recurring basis. The effective date has been deferred to fiscal years beginning after November 15, 2008 for these nonfinancial assets and liabilities. At January 1, 2008, the adoption of FASB Statement No. 157 did not have a material impact on the Company's condensed consolidated financial statements. The Company does not expect the deferred portion of the adoption to have a material impact on its consolidated financial statements.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS.

The Company's condensed consolidated financial statements present a consolidation of all its operations. This discussion supplements the detailed information presented in the condensed consolidated financial statements and notes thereto which should be read in conjunction with the consolidated financial statements and related notes contained in the Company's Annual Report on Form 10-K, filed for the year ended December 31, 2007, and is intended to assist the reader in understanding the financial results and condition of the Company.

Overview

Our nurse and allied staffing business segment, which comprises travel and per diem nurse and travel allied staffing, represented approximately 73% of our total revenue. Travel nurse staffing represented approximately 86% of this business segment's revenue and approximately 62% of the Company's total revenue. In the third quarter of 2008, the Company added a new business segment, physician staffing, as a result of its acquisition, on September 9, 2008, of substantially all of the assets of privately held MDA Holdings, Inc. and its subsidiaries and all of the outstanding stock of a subsidiary of privately-held MDA Holdings, Inc. (collectively, MDA). Physician staffing represented approximately 6% of our total revenue for the three months ended September 30, 2008. Our clinical trials services business segment, which provides a flexible range of traditional contract staffing, clinical research outsourcing, drug safety monitoring, and regulatory consulting services, represented approximately 14% of total revenue. Our other human capital management services business segment represented approximately 7% of total Company revenue and consists of the education and training, and retained search businesses.

For the three months ended September 30, 2008, revenue was \$178.1 million, and net income was \$6.2 million, or \$0.20 per diluted share. Cash provided by operating activities for the nine months ended September 30, 2008, was \$40.9 million and was used primarily for repurchases of shares of our common stock, earnout payments related to acquisitions in our clinical trials services business segment, repayments on our revolving credit facility and capital expenditures. We financed the purchase of MDA in early September by borrowing \$125.0 million on a term loan under our restated and amended Credit Agreement. We ended the quarter with total debt of \$144.4 million and \$12.6 million in unrestricted cash, resulting in a ratio of debt, net of unrestricted cash, to total capitalization of 24.3%.

Nurse and Allied Staffing

The demand for our nurse and allied staffing business, as measured by the average monthly number of open orders from our hospital clients has decreased significantly from the second quarter of 2008 and on a year-over-year basis. In addition, we experienced a decrease in booking activity from our clients for future assignments. Our hospital clients have been increasingly reluctant to commit to a contract nurse, most often citing low patient census and budget reductions as factors for their hesitation. On the supply side, we believe a nurse's willingness to leave a full-time hospital staff position is affected by the overall economic environment and its potential impact on the employment security and income earnings potential of the nurse's spouse. We believe that recent weakness in the nation's employment statistics is likely having an adverse effect on the willingness of nurses to relinquish the security of a full-time hospital staff position in order to take a travel assignment with us. During the third quarter of 2008, we introduced a significant revision to our compensation and benefit package for our nurse and allied professionals. We believe this will significantly enhance our competitive position in the market place. While the initial response was less than anticipated due to the complexity of this program, we did experience an improved response later in the quarter. We are also seeing an increase in nurse applicant activity. However, this is occurring at a time when our customers appear less inclined to commit to contract nurses.

Physician Staffing

We believe this business will continue to experience growth due to a greater demand for physicians because they are revenue generators for hospitals and physician practice groups, unlike nurses who represent a cost center to hospitals.

Clinical Trials Services

Our clinical trials services business has also experienced a similar reluctance from its clients to commit. Certain projects scheduled to start in the third and fourth quarter have been delayed until 2009. Pharmaceutical and biotechnology customers have become less willing to use temporary staffing and out-sourcing services to meet their clinical trials objectives. We believe this is driven by an effort to reduce expenses at all levels to conserve cash in the current economic environment at all levels. This includes research efforts, which effectively delays the start of some clinical projects. However, we believe there are a sufficient number of trials being planned that represent opportunities for this business both on a domestic and international basis.

Results of Operations

The following table summarizes, for the periods indicated, selected condensed consolidated statements of income data expressed as a percentage of revenue:

| | Three Months Ended September 30, | | Nine Months Ended September 30, | |
|--|---|-------------|--|-------------|
| | 2008 | 2007 | 2008 | 2007 |
| Revenue from services | 100.0% | 100.0% | 100.0% | 100.0% |
| Direct operating expenses | 73.4 | 75.2 | 73.8 | 76.2 |
| Selling, general and administrative expenses | 18.8 | 17.0 | 18.6 | 16.9 |
| Bad debt expense | 0.1 | 0.0 | 0.1 | 0.2 |
| Depreciation and amortization | 1.4 | 1.1 | 1.4 | 1.1 |
| Income from operations | 6.3 | 6.7 | 6.1 | 5.6 |
| Foreign exchange loss | 0.0 | 0.0 | 0.0 | 0.0 |
| Interest expense, net | 0.4 | 0.5 | 0.3 | 0.4 |
| Income before income taxes | 5.9 | 6.2 | 5.8 | 5.2 |
| Income tax expense | 2.4 | 2.4 | 2.3 | 2.0 |
| Net income | 3.5% | 3.8% | 3.5% | 3.2% |

Acquisitions

MDA Holdings, Inc.

On September 9, 2008, we consummated the acquisition of MDA. We paid \$115.9 million in cash at closing, which included \$3.6 million as an estimated net working capital adjustment which is subject to final adjustments. This transaction also includes an earnout provision based on 2008 and 2009 performance criteria. This contingent consideration is not related to the sellers' employment. Of the cash paid at closing, approximately \$8.7 million is being held in escrow to cover any post-closing liabilities and \$0.3 million is being held in escrow to cover any net working capital adjustments.

Our senior secured revolving credit facility entered into on November 10, 2005 was amended and restated as of September 9, 2008 in connection with the acquisition of MDA. The Credit Agreement keeps in place an existing \$75.0 million revolving credit facility and provides for a 5 year \$125.0 million term loan facility with Wachovia Capital Markets, LLC and certain of its affiliates, Banc of America Securities LLC and certain other lenders. The proceeds from the term loan were used to fund the acquisition, pay financing related fees, and pay certain acquisition expenses. The remainder of the proceeds was used to reduce our borrowings under our revolving credit facility. See Note 7 to the condensed consolidated financial statements - Debt for more information about the term loan and amended Credit Agreement.

Headquartered in Norcross, Georgia, MDA provides multi-specialty locum tenens (temporary physician staffing) and allied staffing services to the healthcare industry in all 50 states. MDA is a leading provider of locum tenens staffing solutions. MDA has an in-house NCQA-certified Credentials Verification Organization which verifies critical credentials prior to physician assignments. It also offers its physicians occurrence-based malpractice coverage, as compared to less desirable claims-made policies offered by its main competitors. The acquisition of MDA solidifies our position as a leading national provider of healthcare staffing solutions. We expect to benefit

from a more diversified revenue stream as physicians are viewed as revenue generators by its hospital clients, as compared to nurses, who represent a cost center. We are also able to offer a more comprehensive suite of services to our healthcare clients and recognize there may be some potential synergies with our physician search business.

The acquisition has been accounted for in accordance with Financial Accounting Standards Board (FASB) Statement No. 141, *Business Combinations*, using the purchase method. The results of MDA's operations have been included in the condensed consolidated statements of income since the date of acquisition. MDA's allied staffing services have been included in our nurse and allied staffing business segment. MDA's physician staffing services have been reported as a new business segment, physician staffing, in accordance with FASB Statement No. 131, *Disclosure about Segments of an Enterprise and Related Information*.

Based on the preliminary independent third-party appraisal, the Company assigned the following values to intangible assets: \$46.0 million to trademarks with an indefinite life, \$20.0 million for customer relations with a useful life of 12 years, \$2.0 million to database with a useful life of 5 years, and \$1.0 million to noncompete agreements with a weighted average useful life of 4 years. The excess of purchase price over the fair value of net tangible and intangible assets acquired approximated \$26.8 million and was recorded as goodwill, which is expected to be deductible for tax purposes. The purchase price allocation could change based on the ultimate resolution of initial assessments, the final audited financial statements, and/or the final third-party appraisal. Additional acquisition costs of approximately \$0.5 million were incurred during the three and nine months ended September 30, 2008, and are included as goodwill in the condensed consolidated balance sheet.

Assent Consulting

On July 18, 2007, we completed an acquisition of the shares of privately-held Assent Consulting (Assent) for \$19.6 million in cash paid at closing, including \$1.0 million which was held in escrow to cover any post-closing liabilities. We financed this acquisition using our revolving credit facility. The purchase price was subject to a working capital adjustment that was settled with a payment of \$0.5 million to us in the fourth quarter of 2007. This transaction also includes an earnout provision up to a maximum of \$4.9 million based on 2007 and 2008 performance criteria. This contingent consideration is not related to the sellers' employment. In the second quarter of 2008, we paid \$4.6 million related to 2007 performance satisfying all earnout amounts potentially due to the seller in accordance with the asset purchase agreement. Of this payment, \$2.0 million is being held in escrow, subject to forfeiture to us, to the extent a 2008 performance milestone is not achieved. The entire payment was allocated to goodwill as additional purchase price, in accordance with FASB Statement No. 141.

Headquartered in Cupertino, California, Assent provides staffing services primarily consisting of highly qualified clinical research, biostatistics and drug safety professionals to companies in the pharmaceutical and biotechnology industries. We believe this acquisition expands our geographical presence on the West Coast of the U.S. and broadens our client base for our clinical trials services business.

The acquisition has been accounted for using the purchase method and it is included in the clinical trials services business segment. The results of Assent operations have been included in the consolidated statements of income since the date of acquisition, in accordance with FASB Statement No. 141.

Based on an independent third-party appraisal, we assigned the following values to intangible assets: \$5.2 million for customer relations with a useful life of 10 years, \$0.5 million to database with a useful life of 6 years, \$0.4 million to a noncompete agreement with a useful life of 5 years, and \$0.3 million to trademarks with a useful life of 1.5 years. The excess of purchase price over the fair value of net tangible and intangible assets acquired approximated \$11.6 million and was recorded as goodwill, which is deductible for tax purposes.

AKOS Limited

On June 6, 2007, we acquired all of the shares of privately-held AKOS Limited (AKOS), based in the United Kingdom, for a total purchase price of up to £7.2 million, consisting of an up-front payment of £4.0 million and potential earnout payments up to £3.2 million in 2007 and 2008, plus a working capital adjustment. The share purchase agreement also specified an estimated additional payment of £0.5 million, paid at closing, consisting of cash purchased. An additional amount of £0.2 million was paid in the third quarter of 2007, based on changes in net working capital, as defined by the share purchase agreement, and has been allocated to goodwill as additional purchase price.

The consideration for this acquisition was approximately \$8.9 million in cash paid at closing, which included \$1.0 million for the additional payment and \$0.8 million which is being held in escrow to cover any post-closing liabilities. The post-closing working capital adjustment paid by us equated to approximately \$0.4 million. We financed this transaction using our revolving credit facility.

The potential earnout payments are based on 2007 and 2008 performance, as defined by the share purchase agreement and is not related to the sellers' employment. In the first quarter of 2008, we paid £1.1 million (approximately \$2.2 million) related to 2007 performance. This payment and any additional earnout payment will be allocated to goodwill as additional purchase price, in accordance with FASB Statement No. 141.

AKOS has been conducting business since 1986 and provides drug safety, regulatory and clinical trial services to pharmaceutical and biotechnology companies in Europe, the United States, Canada and Asia. AKOS is based approximately 30 miles north of London, England, and strategically located inside what is considered to be the United Kingdom's research triangle that extends outward from London to Cambridge and Oxford Universities. We believe the addition of AKOS will allow us to provide a more global and comprehensive range of contract staffing and outsourcing services to pharmaceutical and biotech customers.

The acquisition has been accounted for using the purchase method and is included in the clinical trials services business segment. The results of AKOS' operations have been included in the consolidated statements of income since the date of acquisition, in accordance with FASB Statement No. 141.

Based on an independent third-party appraisal, we assigned \$1.7 million to trademarks with an indefinite life and not subject to amortization. In addition, we assigned \$2.6 million to total other identifiable intangible assets subject to amortization as follows: \$2.2 million was assigned to customer relations with a useful life of 8.6 years, and \$0.4 million was assigned to other intangibles with an estimated useful life of 6 years. The excess of purchase price over the fair value of net tangible and intangible assets acquired approximated \$3.8 million and was recorded as goodwill, which is not deductible locally for tax purposes.

Goodwill and Other Identifiable Intangible Assets

Goodwill and other intangible assets represented 117% of our stockholders' equity as of September 30, 2008. Goodwill and other identifiable intangible assets from the acquisition of the assets of our predecessor, Cross Country Staffing, a partnership, as well as from subsequent acquisitions were \$366.3 million and \$101.7 million, respectively, net of accumulated amortization, at September 30, 2008. In accordance with FASB Statement No. 142, goodwill and certain other identifiable intangible assets are not subject to amortization. Instead, we review impairment annually. Refer to our Critical Accounting Principles and Estimates section of our Management's Discussion and Analysis as filed in our Annual Report on Form 10-K for the year ended December 31, 2007. Other identifiable intangible assets, which are subject to amortization, are being amortized using the straight-line method over their estimated useful lives ranging from 1 to 25 years. Refer to Note 5- Goodwill and Intangible Assets for more detailed information.

As of September 30, 2008, we had approximately \$3.1 million included in other intangible assets which related to a particular customer relationship. The relationship with this customer remains in good standing; however, the customer has begun to use offshore staffing to meet some of its needs and will not be renewing one of its contracts due to expire in the first quarter of 2009.

The expiration of this particular contract has the potential to impact our projected revenue stream utilized in assessing the value of this intangible asset. We will be aggressively pursuing other opportunities as they become available with this customer in an effort to replace this revenue stream. We do have other ongoing contracts with this customer that are expected to continue to generate business, but they are not significant or sufficient enough to replace the revenue stream that will be ending in the first quarter of 2009. Based on these circumstances, we may have to record an impairment charge if the future revenue stream from this customer relationship does not appear to support the recorded intangible asset. Due to the uncertainty related to its future revenue stream at this time, our impairment analysis is not complete and a reasonable estimate of the amount of a potential impairment charge cannot be determined, but we do not expect it exceed \$0.06 per diluted share.

Segment Information

In the third quarter of 2008, we added the physician staffing business segment as a result of our acquisition of MDA (See Note 4-Acquisitions in notes to condensed consolidated financial statements). MDA provides multi-specialty locum tenens and allied staffing services to the healthcare industry in all 50 states. MDA's locum tenens business comprises the physician staffing business segment while MDA's allied staffing services have been aggregated with our nurse and allied staffing business segment.

Our nurse and allied staffing business segment primarily provides travel nurse and allied staffing services and per diem nurse services to acute care hospitals. Nurse and allied staffing services are also marketed to public and private healthcare facilities and for-profit and not-for-profit facilities throughout the U.S. The physician staffing business segment provides multi-specialty locum tenens (temporary physician staffing) to the healthcare industry in all 50 states. Our clinical trials services business segment provides clinical trials, drug safety and regulatory professionals on a contract staffing and outsourced basis to companies in the pharmaceutical, biotechnology and medical device industries, as well as to contract research organizations (CRO) and acute care hospitals conducting clinical research trials in the United States, Canada and Europe. Our other human capital management services business segment includes the combined results of our Company's education and training and retained search businesses.

The following table presents, for the periods indicated, selected condensed consolidated statements of income data by segment:

| | Three Months Ended September 30, | | Nine Months Ended September 30, | |
|---|-------------------------------------|-------------------|------------------------------------|-------------------|
| | 2008 | 2007 | 2008 | 2007 |
| (Amounts in thousands) | | | | |
| Revenue from external customers: | | | | |
| Nurse and allied staffing | \$ 128,910 | \$ 145,780 | \$ 402,241 | \$ 433,497 |
| Physician staffing | 10,831 | — | 10,831 | — |
| Clinical trials services | 25,414 | 26,164 | 75,181 | 65,444 |
| Other human capital management services | 12,979 | 13,180 | 40,083 | 37,615 |
| | <u>\$ 178,134</u> | <u>\$ 185,124</u> | <u>\$ 528,336</u> | <u>\$ 536,556</u> |
| Contribution income (a): | | | | |
| Nurse and allied staffing | \$ 14,332 | \$ 14,329 | \$ 41,132 | \$ 39,385 |
| Physician staffing | 928 | — | 928 | — |
| Clinical trials services | 3,755 | 5,064 | 11,937 | 10,597 |
| Other human capital management services | 1,589 | 1,639 | 6,092 | 5,728 |
| | <u>20,604</u> | <u>21,032</u> | <u>60,089</u> | <u>55,710</u> |
| Unallocated corporate overhead | 6,844 | 6,660 | 20,284 | 19,952 |
| Depreciation | 1,789 | 1,370 | 5,352 | 4,359 |
| Amortization | 713 | 622 | 2,029 | 1,361 |
| Legal settlement charge | — | — | — | 34 |
| Income from operations | <u>\$ 11,258</u> | <u>\$ 12,380</u> | <u>\$ 32,424</u> | <u>\$ 30,004</u> |

- (a) We define contribution income as income from operations before depreciation, amortization, and other corporate expenses not specifically identified to a reporting segment. Contribution income is a measure used by management to access operations and is provided in accordance with FASB Statement No. 131, *Disclosure About Segments of an Enterprise and Related Information*.

Three Months Ended September 30, 2008 compared to Three Months Ended September 30, 2007

Revenue from services

Revenue from services decreased \$7.0 million, or 3.8%, to \$178.1 million for the three months ended September 30, 2008, as compared to \$185.1 million for the three months ended September 30, 2007. Excluding the impact of acquisitions, revenue decreased \$19.5 million or 10.5%. The decrease in revenue was primarily due to a decrease in revenue from our nurse and allied staffing business segment as well as decreases in our clinical trials services and other human capital management services.

Nurse and allied staffing

Revenue from our nurse and allied staffing business segment decreased \$16.9 million, or 11.6%, to \$128.9 million in the three months ended September 30, 2008, from \$145.8 million in the three months ended September 30, 2007. The decrease in revenue reflected a decrease in staffing volume versus the prior year that was partially offset by improved pricing.

Average nurse and allied staffing revenue per full-time equivalents (FTEs) and average bill rates increased approximately 1.9% and 2.2%, respectively, during the three months ended September 30, 2008, compared to the three months ended September 30, 2007. The average number of nurse and allied staffing FTEs on contract during the three months ended September 30, 2008, decreased 13.3% from the three months ended September 30, 2007.

Physician staffing

Revenue from our physician staffing business was \$10.8 million in the three months ended September 30, 2008, entirely from the acquisition of MDA.

Clinical trials services

Revenue from clinical trials services decreased \$0.8 million, or 2.9%, to \$25.4 million in the three months ended September 30, 2008, from \$26.2 million in the three months ended September 30, 2007. Excluding the impact of the acquisition of Assent, revenue decreased \$1.8 million, or 6.8%. This decline is primarily due to a decrease in our drug safety business due to the loss of a specific contract (see Note 5 to the condensed consolidated financial statements— Goodwill and Intangible Assets) and a decrease in traditional contract staffing volume; partially offset by an increase in revenue from CRO projects. The decrease in staffing volume is due to the completion of certain contracts and delays in the start-up of certain clinical trials.

Other human capital management services

Revenue from other human capital management services for the three months ended September 30, 2008, decreased \$0.2 million, or 1.5%, to \$13.0 million from \$13.2 million in the three months ended September 30, 2007, reflecting a decrease in revenue from our education and training business partially offset by an increase in revenue from our retained search business. Revenue from our education and training business declined primarily due to lower seminar attendance. Revenue from our retained search business was up slightly due to stronger placement activity.

Direct operating expenses

Direct operating expenses are comprised primarily of field employee compensation expenses, housing expenses, travel expenses and field insurance expenses. Direct operating expenses decreased \$8.6 million, or 6.2%, to \$130.7 million for the three months ended September 30, 2008, as compared to \$139.3 million for the three months ended September 30, 2007.

As a percentage of total revenue, direct operating expenses represented 73.4% of revenue for the three months ended September 30, 2008 and 75.2% for the three months ended September 30, 2007. This decrease is primarily due to a widening of our bill-pay spread in our travel staffing operations, and a change in mix of revenue from our business segments. Revenue from our clinical trials services and other human capital management services are a higher percentage of total revenue from services in the three months ended September 30, 2008, compared to the three months ended September 30, 2007, primarily due to the clinical trials services acquisitions. Clinical trials services and other human capital management services tend to have lower direct costs as a percentage of revenue than our nurse and allied staffing business segment.

Selling, general and administrative expenses

Selling, general and administrative expenses increased \$2.0 million, or 6.3%, to \$33.5 million for the three months ended September 30, 2008, as compared to \$31.5 million for the three months ended September 30, 2007. The increase in selling, general and administrative expenses was primarily due to the acquisition of MDA.

Included in selling, general and administrative expenses is unallocated corporate overhead of \$6.8 million in the three months ended September 30, 2008, compared to \$6.7 million in the three months ended September 30, 2007. As a percentage of consolidated revenue, unallocated corporate overhead was 3.8% during the three month period ended September 30, 2008, and 3.6% in the three month period ended September 30, 2007, primarily due to higher compensation of approximately \$0.4 million related to share-based payments. Excluding share-based payment compensation, unallocated corporate overhead was lower in the three months ended September 30, 2008.

As a percentage of total revenue, selling, general and administrative expenses were 18.8% and 17.0%, respectively, for the three months ended September 30, 2008 and 2007, primarily due to negative operating leverage in our nurse and allied staffing segment and a change in mix of revenue from our business segments. Revenue from our clinical trials services and other human capital management services increased at a higher rate than our nursing and allied staffing business segment, primarily due to the clinical trials services acquisitions. Clinical trial services and other human capital management services generally operate with a higher selling, general and administrative burden than our nursing and allied staffing business segment.

Bad debt expense

Bad debt expense was \$0.2 million in the three months ended September 30, 2008. No bad debt expense was recorded in the three months ended September 30, 2007.

Contribution income

Contribution income from our nurse and allied staffing segment for the three months ended September 30, 2008, was \$14.3 million, essentially flat from the three month period ended September 30, 2007. As a percentage of nurse and allied staffing revenue, segment contribution income was 11.1% for the three months ended September 30, 2008, and 9.8% for the three months ended September 30, 2007. This increase is primarily due to a widening of our bill-pay spread and lower insurance expenses.

Contribution income from physician staffing for the three months ended September 30, 2008, was \$0.9 million, representing the 22 days of operations since our acquisition of this business. As a percentage of physician staffing revenue, contribution income was 8.6%.

Contribution income from clinical trials services for the three months ended September 30, 2008, decreased \$1.3 million to \$3.8 million, compared to \$5.1 million in the three months ended September 30, 2007. As a percentage of clinical trials services revenue, segment contribution income was 14.8% in the three months ended September 30, 2008, compared to 19.4% in the three months ended September 30, 2007. This decline is primarily due to an increase in direct costs associated with a CRO project and a decrease in revenue from drug safety engagements which had higher margins than our traditional contract staffing assignments.

Contribution income from other human capital management services for the three months ended September 30, 2008, was \$1.6 million, essentially flat from the three months ended September 30, 2007. Contribution income as a percentage of other human capital management services revenue for the three months ended September 30, 2008, was 12.2% compared to 12.4% for the three months ended September 30, 2007.

Depreciation and amortization expense

Depreciation and amortization expense in the three months ended September 30, 2008, totaled \$2.5 million as compared to \$2.0 million for the three months ended September 30, 2007. As a percentage of total revenue, depreciation and amortization expense was 1.4% for the three month period ended September 30, 2008 and 1.1% for the three month period ended September 30, 2007. This increase is primarily due to higher amortization expense related to our acquisitions and additional depreciation expense from fixed assets that were placed into service since the beginning of 2008 due to technology upgrades.

Interest expense, net

Interest expense, net, totaled \$0.8 million for the three months ended September 30, 2008 and 2007. Higher average borrowings outstanding were offset by a lower effective interest rate on our borrowings. Higher borrowings in the three months ended September 30, 2008, were primarily due to financing of the MDA acquisition. The effective interest rate on our borrowings for the three months ended September 30, 2008, was 4.7% compared to a rate of 6.8% for the three months ended September 30, 2007. In October 2008, we entered into interest rate swap agreements to effectively fix the interest on \$70.0 million of our term debt for a period of 2 years at 3.04%, plus the applicable LIBOR spread.

Income tax expense

Income tax expense totaled \$4.4 million for the three months ended September 30, 2008, as compared to \$4.5 million for the three months ended September 30, 2007. The effective tax rate was 41.5% in the three months ended September 30, 2008, compared to 38.8% in the three months ended September 30, 2007. The change in rate is due to a revision of the estimated tax rate for the full year 2008, primarily reflecting the introduction of per diem allowances for our travel nurse and allied staffing field personnel. A portion of these allowances are not deductible for tax purposes.

Nine Months Ended September 30, 2008 compared to Nine Months Ended September 30, 2007

Revenue from services

Revenue from services decreased \$8.2 million, or 1.5%, to \$528.3 million for the nine months ended September 30, 2008 as compared to \$536.6 million for the nine months ended September 30, 2007. The decrease was primarily due a decrease in revenue from our nurse and allied staffing business segment partially offset by the added revenue of the MDA acquisition and an increase in our clinical trials services and other human capital management services business segments. The increase in our clinical trials services business segment was due to the acquisitions of AKOS and Assent. Excluding the impact of acquisitions, consolidated revenue from services decreased \$33.7 million or 6.3%.

Nurse and allied staffing

Revenue from our nurse and allied staffing business segment decreased \$31.3 million, or 7.2%, to \$402.2 million in the nine months ended September 30, 2008, from \$433.5 million in the nine months ended September 30, 2007. A decrease in volume versus the prior year more than offset improved pricing.

Average nurse and allied staffing revenue per FTEs and average bill rates increased approximately 3.0% during the nine months ended September 30, 2008, compared to the nine months ended September 30, 2007. The average number of nurse and allied staffing FTEs on contract during the nine months ended September 30, 2008, decreased 9.9% from the nine months ended September 30, 2007.

Physician staffing

Revenue from our physician staffing business was \$10.8 million in the nine months ended September 30, 2008. This revenue was generated by MDA, acquired on September 9, 2008.

Clinical trials services

Revenue from clinical trials services increased \$9.7 million, or 14.9%, to \$75.2 million in the nine months ended September 30, 2008, from \$65.4 million in the nine months ended September 30, 2007. Excluding the impact of the acquisitions of Assent and AKOS, revenue decreased \$4.2 million, or 6.5%. This decline was primarily due to a decrease in traditional contract staffing volume and a decrease in revenue from the drug safety contract described above; partially offset by an increase in revenue from CRO projects.

Other human capital management services

Revenue from other human capital management services for the nine months ended September 30, 2008, increased \$2.5 million, or 6.6%, to \$40.1 million from \$37.6 million in the nine months ended September 30, 2007, reflecting increases in both our education and training and our retained search businesses.

Direct operating expenses

Direct operating expenses are comprised primarily of field employee compensation expenses, housing expenses, travel expenses and field insurance expenses. Direct operating expenses decreased \$18.5 million, or 4.5%, to \$390.1 million for the nine months ended September 30, 2008, as compared to \$408.6 million for the nine months ended September 30, 2007.

As a percentage of total revenue, direct operating expenses represented 73.8% of revenue for the nine months ended September 30, 2008 and 76.2% for the nine months ended September 30, 2007. This decrease is primarily due to a widening of our bill-pay spread in our travel staffing operations, a change in mix of revenue from our business segments, lower professional liability expenses and lower housing cost as a percentage of revenue; partially offset by higher health insurance claims. Revenue from our clinical trials services and other human capital management services are a higher percentage of total revenue from services in the nine months ended September 30, 2008 compared to the nine months ended September 30, 2007, primarily due to the clinical trials services acquisitions. Clinical trials services and other human capital management services tend to have lower direct costs as a percentage of revenue than our nurse and allied staffing business segment.

Selling, general and administrative expenses

Selling, general and administrative expenses increased \$6.8 million, or 7.5%, to \$97.8 million for the nine months ended September 30, 2008, as compared to \$90.9 million for the nine months ended September 30, 2007. The increase in selling, general and administrative expenses was primarily due to additional expenses from acquisitions and higher compensation expense partially offset by lower legal fees.

Included in selling, general and administrative expenses is unallocated corporate overhead of \$20.3 million for the nine months ended September 30, 2008, compared to \$20.0 million for the nine months ended September 30, 2007. As a percentage of consolidated revenue, unallocated corporate overhead was 3.8% during the nine month period ended September 30, 2008 and 3.7% for the nine month period ended September 30, 2007.

As a percentage of total revenue, selling, general and administrative expenses were 18.6% and 16.9%, respectively, for the nine months ended September 30, 2008 and 2007, primarily due to a combination of a change in mix of revenue from our business segments and higher expenses as discussed above. Revenue from our clinical trials services and other human capital management services increased at a higher rate than our nursing and allied staffing business segment, primarily due to the clinical trials services acquisitions. Clinical trial services and other human capital management services generally operate with a higher selling, general and administrative burden than our nursing and allied staffing and physician staffing business segments.

Bad debt expense

Bad debt expense totaled \$0.7 million for the nine months ended September 30, 2008 compared to \$1.3 million in the nine months ended September 30, 2007. Bad debt expense as a percentage of total revenue was 0.1% in the nine months ended September 30, 2008 compared to 0.2% in the nine months ended September 30, 2007. This decrease is due to improved collections during the nine month period ended September 30, 2008.

Contribution income

Contribution income from our nurse and allied staffing segment for the nine months ended September 30, 2008, increased \$1.7 million, or 4.4%, to \$41.1 million from \$39.4 million in the nine month period ended September 30, 2007. As a percentage of nurse and allied staffing revenue, segment contribution income was 10.2% for the nine months ended September 30, 2008, and 9.1% for the nine months ended September 30, 2007. This increase is primarily due to a widening of our bill-pay spread, and secondarily by lower professional liability expenses and a moderation in the rate of increase of housing costs, partially offset by higher health insurance claims.

Contribution income from physician staffing for the nine months ended September 30, 2008, was \$0.9 million, representing the 22 days of operations since our acquisition of this business. As a percentage of physician staffing revenue, contribution income was 8.6%.

Contribution income from clinical trials services for the nine months ended September 30, 2008, increased \$1.3 million to \$11.9 million, compared to \$10.6 million in the nine months ended September 30, 2007. As a percentage of clinical trials services revenue, segment contribution income was 15.9% in the nine months ended September 30, 2008, compared to 16.2% in the nine months ended September 30, 2007.

Contribution income from other human capital management services for the nine months ended September 30, 2008, increased by \$0.4 million, or 6.4%, to \$6.1 million, from \$5.7 million in the nine months ended September 30, 2007 due to improved contribution income in the retained search business partially offset by lower contribution income from the education and training businesses. Contribution income as a percentage of other human capital management services revenue was 15.2% for the nine month periods ended September 30, 2008 and 2007.

Depreciation and amortization expense

Depreciation and amortization expense in the nine months ended September 30, 2008, totaled \$7.4 million as compared to \$5.7 million for the nine months ended September 30, 2007. As a percentage of revenue, depreciation and amortization expense was 1.4% for the nine month period ended September 30, 2008 and 1.1% for the nine months ended September 30, 2007. This increase is primarily due to higher amortization expense related to acquisitions and additional depreciation expense from fixed assets that were placed into service since the beginning of 2008 due to technology upgrades.

Interest expense, net

Interest expense, net, totaled \$2.0 million for the nine months ended September 30, 2008 and \$1.8 million for the nine months ended September 30, 2007. This increase was due to higher average borrowings in the nine months ended September 30, 2008, partially offset by a lower effective interest rate. Higher borrowings in the nine months ended September 30, 2008, were primarily due to the financing of the MDA and 2007 acquisitions, stock repurchases and earnout payments. The effective interest rate on our borrowings for the nine months ended September 30, 2008, was 5.1% compared to a rate of 6.9% for the nine months ended September 30, 2007.

Income tax expense

Income tax expense totaled \$12.2 million for the nine months ended September 30, 2008, as compared to \$10.8 million for the nine months ended September 30, 2007. The effective tax rate was 39.9% in the nine months ended September 30, 2008, compared to 38.4% in the nine months ended September 30, 2007. The increase in the tax rate was primarily due to a revised estimate of the current year's taxable income, primarily reflecting the introduction of per diem allowances for our travel nurse and allied staffing field personnel. A portion of these allowances are not deductible for tax purposes.

Liquidity and Capital Resources

As of September 30, 2008, we had a current ratio, defined as the amount of current assets divided by current liabilities, of 2.3 to 1. Working capital decreased by \$3.8 million to \$94.9 million as of September 30, 2008, compared to \$98.7 million as of December 31, 2007.

Net cash provided by operating activities during the nine months ended September 30, 2008, was \$40.9 million, compared to \$16.0 million in the nine months ended September 30, 2007. During the nine months ended September 30, 2007, we paid \$6.7 million, pretax, to settle the California wage and hour class-action lawsuit (*Cossack, et. al. v. Cross Country TravCorps and Cross Country Nurses, Inc.*). Exclusive of this prior year payment, net cash provided by operating activities in the nine months ended September 30, 2008 was higher, primarily due to a decrease in accounts receivable in the nine months ended September 30, 2008, compared to an increase in accounts receivable in the nine months ended September 30, 2007. In addition net cash provided by operating activities was higher due to timing of payments, partially offset by lower net income. Number of days' sales outstanding decreased 5 days to 54 days at September 30, 2008, compared to 59 days at December 31, 2007, primarily due to the impact of the MDA acquisition which operates with lower days' sales outstanding than our other businesses.

Investing activities used \$129.7 million in cash during the nine months ended September 30, 2008, primarily for the purchase of MDA and earnout payments related to the acquisitions of Assent, AKOS and Metropolitan Research. During the nine months ended September 30, 2007, investing activities used \$34.0 million in cash, primarily for the acquisitions of Assent and AKOS and capital expenditures.

Net cash provided by financing activities during the nine months ended September 30, 2008, was \$92.6 million compared to \$17.9 million during the nine months ended September 30, 2007. During the nine months ended September 30, 2008, we borrowed \$125.0 million through a term loan to fund the acquisition of MDA. In addition, we repaid a net of \$20.2 million of our total debt, as compared to net borrowings of \$22.0 million in the nine months ended September 30, 2007. During the nine months ended September 30, 2008, we used \$10.8 million to repurchase and retire stock as compared to \$6.0 million in the nine months ended September 30, 2007. Debt issuance costs paid were \$2.6 million in the nine months ended September 30, 2008 related to the MDA financing. Proceeds and tax benefits from the exercise of employee stock options provided \$1.2 million in the nine months ended September 30, 2008 compared to \$1.9 million in the nine months ended September 30, 2007.

Stockholders' Equity

On May 10, 2006, our Board of Directors authorized a stock repurchase program whereby we may purchase up to 1.5 million shares of our common stock. This repurchase program was completed and on February 28, 2008, our Board of Directors authorized an additional stock repurchase program whereby we may purchase up to an additional 1.5 million shares of our common stock, subject to the terms of our current credit agreement. The shares may be repurchased from time-to-time in the open market and the repurchase program may be discontinued at any time at our discretion. We commenced repurchases under this authorization during the first quarter of 2008 upon the completion of the May 2006 authorization.

During the nine months ended September 30, 2008, we repurchased, under both programs, a total of 924,235 shares at an average price of \$11.66. The cost of such purchases was approximately \$10.8 million. During the nine months ended September 30, 2007, we purchased 346,998 shares of common stock at an average cost of \$17.31 per share, for a total cost of \$6.0 million. All of the common stock was retired. Under the remainder of the February 2008 authorization, we can purchase up to an additional 1,441,139 shares. Currently, we may not make any repurchases until the Leverage Ratio (as defined in the Credit Agreement) drops below 2 to 1. The Leverage Ratio on September 30, 2008 was 2.14 to 1. At September 30, 2008, we had approximately 30.8 million shares of common stock outstanding.

Credit Facility

Our senior secured revolving credit facility entered into on November 10, 2005 was amended and restated as of September 9, 2008 in connection with the acquisition of MDA. The \$200.0 million Credit Agreement, dated as of November 10, 2005 and Amended and Restated as of September 9, 2008 (the Credit Agreement) keeps in place an existing \$75.0 million revolving credit facility and provides for a 5-year \$125.0 million term loan facility with Wachovia Capital Markets, LLC and certain of its affiliates, Banc of America Securities LLC and certain other lenders. The term loan bears interest at a rate of, at our option, either: (i) LIBOR plus a leverage-based margin or (ii) Base Rate (as defined in the Credit Agreement) plus a leverage-based margin.

The Credit Agreement was also amended for customary covenants for similar leveraged deals such as: 1) requiring us to hedge at least 40% of our floating rate exposure for 2 years; and 2) adding a mandatory prepayment provision from Excess Cash as defined by the Credit Agreement. Pursuant to the provisions of the Credit Agreement, subsequent to September 30, 2008, in October 2008, we entered into interest rate swap agreements to effectively fix the interest on \$70.0 million of our term debt for a period of 2 years at 3.04%, plus the applicable LIBOR spread.

for fiscal years and interim periods beginning after November 15, 2008, with early application encouraged. FASB Statement No. 161 encourages, but does not require, comparative disclosures for earlier periods at initial adoption. We expect to implement FASB Statement No. 161 during the fourth quarter due to the interest rate swap agreements we have entered into in October 2008 (See Note 7 to the condensed consolidated financial statements - Debt) and we do not believe the adoption of FASB Statement No. 161 will have a material impact on our consolidated financial statements.

In December 2007, the FASB issued FASB No. 141R, *Business Combinations* (FASB 141R), which replaces FASB 141. FASB 141R applies to all transactions or other events in which an entity obtains control of one or more businesses and requires that all assets and liabilities of an acquired business as well as any noncontrolling interest in the acquiree be recorded at their fair values at the acquisition date. Among other things, FASB 141R requires the expensing of direct transaction costs, including deal costs and restructuring costs as incurred. In addition, contingent consideration arrangements will be recognized at their acquisition date fair values, with subsequent changes in fair value generally reflected in earnings. Pre-acquisition contingencies will also typically be recognized at their acquisition date fair values. In subsequent periods, contingent liabilities will be measured at the higher of their acquisition date fair values or the estimated amounts to be realized. In addition, material adjustments made to the initial acquisition purchase accounting will be required to be recorded back to the acquisition date. This will cause companies to revise previously reported results when reporting comparative financial information in subsequent filings. The Statement is effective for business combinations for which the acquisition date is on or after the beginning of the first annual reporting period beginning on or after December 15, 2008. We expect that FASB 141R could have an impact on our future consolidated financial statements when effective, but the nature and magnitude of the specific effects will depend upon the nature, terms and size of the acquisitions we consummate after the effective date.

In February 2007, the FASB issued Statement No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities*. This standard allows companies to elect to follow fair value accounting for certain financial assets and liabilities in an effort to mitigate volatility in earnings without having to apply complex hedge accounting provisions. FASB Statement No. 159 is applicable only to certain financial instruments and is effective for fiscal years beginning after November 15, 2007. We did not elect to measure any assets or liabilities at fair value that are not already measured at fair value under existing standards. Therefore, the standard had no impact on our consolidated financial statements.

In September 2006, the FASB issued Statement No. 157, *Fair Value Measurements*, which defines fair value, establishes a framework for measuring fair value under generally accepted accounting principles and expands disclosures about fair value measurements. FASB Statement No. 157 is effective for financial statements issued for fiscal years beginning after November 15, 2007. However, in February 2008, the FASB Staff Position No. 157-2 was issued, which delays the effective date for nonfinancial assets and nonfinancial liabilities, except for items that are recognized or disclosed at fair value in the financial statements on a recurring basis. The effective date has been deferred to fiscal years beginning after November 15, 2008 for these nonfinancial assets and liabilities. At January 1, 2008, the adoption of FASB Statement No. 157 did not have a material impact on our consolidated condensed financial statements. We do not expect the deferred portion of the adoption to have a material impact on our consolidated financial statements.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

The following discussion supplements the detailed information presented in our Annual Report on Form 10-K filed for the year ended December 31, 2007.

Our exposure to interest rate changes has increased from December 31, 2007, due to the term loan financing related to our acquisition of MDA as described in Note 7 – Debt to the condensed consolidated financial statements. The \$125.0 million term loan bears interest at a rate of, at our option, either: (i) LIBOR plus a leverage-based margin or (ii) Base Rate plus a leverage-based margin. A 1% change in interest rates on our variable rate debt, including the term loan, would have resulted in interest expense fluctuating approximately \$0.1 million and \$0.3 million in the three and nine month periods ending September 30, 2008.

In October 2008, we entered into interest rate swap agreements to effectively fix the interest on \$70.0 million of our term loan for a period of 2 years at 3.04%, plus the applicable LIBOR spread.

ITEM 4. CONTROLS AND PROCEDURES

The Company carried out an evaluation, under the supervision and with the participation of the Company's Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of the Company's "disclosure controls and procedures" (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act), as of the end of the period covered by this report. Based upon the evaluation, the Company's Chief Executive Officer and Chief Financial Officer concluded that the Company's disclosure controls and procedures are effective. Disclosure controls and procedures are designed to ensure that information required to be disclosed in Company reports filed or submitted under the Exchange Act is recorded, processed, summarized, communicated to management, including the Chief Executive Officer and the Chief Financial Officer, and reported within the time periods specified in the Securities and Exchange Commission's rules and forms. The disclosure controls and procedures are designed to ensure that information required to be disclosed by us in reports required under the Exchange Act of 1934, as amended, is accumulated and communicated to our management, including the Chief Executive Officer and Chief Financial Officer, in order to allow timely decisions regarding any required disclosure.

The evaluation has not identified any changes in the Company's internal controls over financial reporting or in other factors that occurred during the last fiscal quarter that have materially affected or that are reasonably likely to materially affect the Company's internal control over financial reporting.

PART II. – OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

Maureen Petray and Carina Higareda v. MedStaff, Inc.

On February 18, 2005, the Company's MedStaff subsidiary became the subject of a purported class action lawsuit (*Maureen Petray and Carina Higareda v. MedStaff, Inc.*) filed in the Superior Court of California in Riverside County. The lawsuit relates to only MedStaff corporate employees. The claims alleged under this lawsuit are generally similar in nature to those brought by Darrelyn Renee Henry in a lawsuit against the Company, which was dismissed (*Darrelyn Renee Henry vs. MedStaff, Inc., Cross Country Healthcare, Inc., Victor Kalafa, Tim Rodden, Talia Pico and Melissa Hetrick*).

The lawsuit alleges, among other things, violations of certain sections of the California Labor Code, the California Business and Professions Code, and recovery of unpaid wages and penalties. MedStaff currently has less than 50 corporate employees in California. The Plaintiffs, Maureen Petray and Carina Higareda, purport to sue on behalf of themselves and all others similarly situated, allege that MedStaff failed, under California law, to provide meal periods and rest breaks and pay for those missed meal periods and rest breaks; failed to compensate the employees for all hours worked; failed to compensate the employees for working overtime; and failed to keep appropriate records to keep track of time worked. Plaintiffs seek, among other things, an order enjoining MedStaff from engaging in the practices challenged in the complaint; for full restitution of all monies MedStaff allegedly failed to pay Plaintiffs and their purported class; for interest; for certain penalties provided for by the California Labor Code; and for attorneys' fees and costs. On February 5, 2007, the court granted class certification. On October 16, 2008, MedStaff, Inc. filed a Motion to Decertify the class. The Company is unable to determine its potential exposure, if any, and intends to vigorously defend this matter.

ITEM 1A. RISK FACTORS

The following risk factors, replace the risk factors in their entirety included in the Company's Annual Report on Form 10-K.

We may be unable to recruit enough healthcare professionals to meet our clients' demands.

We rely significantly on our ability to attract, develop and retain healthcare professionals who possess the skills, experience and, as required, licensure necessary to meet the specified requirements of our healthcare staffing clients. We compete for healthcare staffing personnel with other temporary healthcare staffing companies, as well as actual and potential clients such as healthcare facilities, physician groups and pharmaceutical and biotechnology companies, some of which seek to fill positions with either regular or temporary employees. Currently, there is a shortage of certain qualified nurses and physicians in most areas of the United States and competition for these professionals remains intense. The current slowdown in the economy may make these healthcare professionals less willing to travel to temporary assignments, thus further intensifying the competition with other temporary healthcare staffing companies to recruit these healthcare professionals. Although demand by our clients has slowed, at this time we still do not have enough nurses and physicians to meet our clients' demands for these staffing services. This shortage of healthcare professionals generally and their willingness to leave stable full-time jobs to travel on temporary assignments in the current environment may limit our ability to increase the number of healthcare professionals that we successfully recruit, decreasing our ability to grow our business.

The costs of attracting and retaining healthcare professionals may rise more than we anticipate.

We compete with hospitals, healthcare facilities, physician groups and other healthcare staffing companies for qualified healthcare professionals. Because there is currently a shortage of qualified healthcare professionals, competition for them is intense. Our ability to recruit and retain healthcare professionals depends on our ability to, among other things, offer assignments that are attractive to healthcare professionals and offer them competitive wages and benefits or payments, as applicable. To induce healthcare professionals to take assignments with or through our competitors, they might increase hourly wages or other benefits.

If we do not raise wages or other benefits in response to such increases by our competitors, we could face difficulties attracting and retaining qualified healthcare professionals. In addition, if we raise wages in response to our competitors' wage increases and are unable to pass such cost increases on to our clients, our margins could decline.

Our costs of providing housing for our healthcare professionals may be higher than we anticipate and, as a result, our margins could decline.

We provide housing for certain of our healthcare professionals when on an assignment with us. At any given time, we have several thousand apartments on lease throughout the U.S. Typically, the length of an apartment lease is coterminous with the length of the assignment of a nurse or allied healthcare professional. If the costs of renting apartments and furniture for these healthcare professionals increase more than we anticipate and we are unable to pass such increases on to our clients, our margins may decline. To the extent the length of a nurse's housing lease exceeds the term of the nurse's staffing contract, we bear the risk that we will be obligated to pay rent for housing we do not use. To limit the costs of unutilized housing, we try to secure leases with term lengths that match the term lengths of our staffing contracts, typically 13 weeks. In some housing markets we have had, and believe we will continue to have, difficulty identifying short-term leases. If we cannot identify a sufficient number of appropriate short-term leases in regional markets, or, if for any reason, we are unable to efficiently utilize the apartments we do lease, we may be required to pay rent for unutilized housing, or, to avoid such risk, we may forego otherwise profitable opportunities.

Our clients may terminate or not renew their contracts with us.

Our arrangements with hospitals, healthcare facilities and physician group clients are generally terminable upon 30 to 90 days' notice. We may have fixed costs, including housing costs, associated with terminated arrangements that we will be obligated to pay post-termination. Our clinical trials services business is conducted under long-term contracts with individual clients that may perform numerous clinical trials. Some of these long-term contracts are terminable by the clients without cause upon 30 to 60 days' notice. Sponsors may decide to immediately discontinue trials at any time if compounds or biologics being studied do not meet targeted expectations. Clients utilizing our clinical trials services may also decide to offshore work outside of the United States to countries where we do not currently provide those services and this could adversely impact our business. In addition, the scope of work under a contract may be changed favorably or unfavorably for our business. Clients may also develop their own in-house capabilities that may replace their need to outsource clinical trials services to us. The delay, loss, termination or unfavorable change in the scope of work performed under a clinical trials services contract could negatively impact our business.

Decreases in demand by our clients may adversely affect the profitability of our business.

Among other things, changes in the economy which result in higher unemployment and low job growth, a decrease or stagnation in the general level of in-patient admissions at our clients' facilities and the willingness of our hospital, healthcare facilities and physician group clients to develop their own temporary staffing pools and increase the productivity of their permanent staff may, individually or in the aggregate, significantly affect demand for our temporary healthcare staffing services and hamper our ability to attract, develop and retain clients. When a hospital's admissions increase, temporary employees or other healthcare professionals are often added before full-time employees are hired. As admissions decrease, clients may reduce their use of temporary employees or other healthcare professionals before undertaking layoffs of their regular employees. In a down market, healthcare professionals may be less likely to leave a full-time position to work on temporary assignments and clients are also more likely to focus on internal solutions for their temporary staffing needs. In addition, we also may experience more competitive pricing pressure during periods when in-patient admissions are stagnant for periods of time or declining. In addition, if a trend emerges toward providing healthcare in alternative settings, as opposed to acute care hospitals, in-patient admissions at our clients' facilities could decline. These events individually or in the aggregate may cause a reduction in admissions that could negatively affect the demand for our services. A decreased demand in our services may affect our ability to provide attractive assignments to our healthcare professionals thereby reducing our profitability.

Any failure by our clinical trials services business to comply with certain policies and procedures and regulations specific to that business could harm our reputation and operating results.

Our clinical trials service business operates in a highly regulated industry. Any failure on our part to comply with the policies and procedures established for a trial or to comply with existing regulations could result in the termination of ongoing research or the disqualification of data for submission to the Federal Drug Administration ("FDA") and other regulatory authorities. This could harm our reputation, our ability to win future business and our operating results. In addition, if the FDA or another similar regulatory body finds a material breach by us of sound

clinical practices, it could result in the termination of a clinical trial and that could harm our reputation, our ability to win future business and our operating results.

The nature of our clinical trials services contracts could hurt our operating results.

Some of our contracts are fixed price and, as such, we have limits on the amounts we can charge for our clinical trials services. As a result, the profitability of this business could be negatively impacted due to changes in the timing and progress of large contracts. In addition, we may be responsible for cost overruns on certain contracts unless the scope of work is revised from the original contract terms and we are able to negotiate an amendment with the client shifting the additional cost to the client. If we experience significant cost overruns, it may result in lower gross margins on those projects.

Our clinical trials business exposes us to potential liability for personal injury and wrongful death claims that could affect our reputation and operating results.

Our clinical trials services business is involved in the testing of new drugs and medical devices on volunteer human beings. Due to the risk of personal injury or death to patients participating in clinical trials, we are at risk for being sued in personal injury or wrongful death lawsuits due to possible unforeseen adverse side effects or the improper administration of a drug or device. Many of these patients are already seriously ill. Under our contracts, we are typically indemnified unless the resulting damages were caused by our negligence (e.g. serious adverse event is not reported timely to a sponsor or unblinding of material for a study is not done timely to respond with appropriate information for patient safety reasons). We have limited insurance coverage for certain events, however, the amount of our liability could materially impact our operating performance and our reputation and our insurance program may not cover such event.

We are dependent on the proper functioning of our information systems.

We are dependent on the proper functioning of our information systems in operating our business. Critical information systems used in daily operations identify and match staffing resources and client assignments and perform billing and accounts receivable functions. Additionally, we rely on our information systems in managing our accounting and financial reporting. If these systems are damaged or disrupted and unable to function properly in order to support our business operations or require significant costs to repair, maintain or further develop, our business and financial results could be materially adversely affected. Our information systems are protected through a secure hosting facility and additional backup remote processing capabilities also exist in the event our primary systems fail or are not accessible. However, the business is still vulnerable to fire, storm, flood, power loss, telecommunications failures, physical or software break-ins and similar events which may prevent personnel from gaining access to systems necessary to perform their tasks in an automated fashion. In the event that critical information systems fail or are otherwise unavailable, these functions would have to be accomplished manually, which could impact our ability to identify business opportunities quickly, to maintain billing and clinical records reliably, to bill for services efficiently and to maintain our accounting and financial reporting accurately.

Losses caused by natural disasters, such as hurricanes could cause us to suffer material financial losses.

Catastrophes can be caused by various events, including, but not limited to, hurricanes and other severe weather. The incidence and severity of catastrophes are inherently unpredictable. The extent of losses from a catastrophe is a function of both the total amount of insured exposure and the severity of the event. We do not maintain business interruption insurance for these events. We could suffer material financial losses as a result of such catastrophes.

If applicable government regulations change, we may face increased costs that reduce our revenue and profitability.

The temporary healthcare staffing industry is regulated in many states. For example, in some states, firms such as our nurse staffing companies must be registered to establish and advertise as a nurse-staffing agency or must qualify for an exemption from registration in those states. If we were to lose any required state licenses, we could be required to cease operating in those states. The introduction of new regulatory provisions could substantially raise the costs associated with hiring temporary employees. For example, some states could impose sales taxes or increase sales tax rates on temporary healthcare staffing services. These increased costs may not be able to be passed on to clients without a decrease in demand for temporary employees. In addition, if government regulations were implemented that limited the amounts we could charge for our services, our profitability could be adversely affected.

If certain of our healthcare professionals are reclassified from independent contractors to employees our profitability could be materially adversely impacted.

Federal or state taxing authorities could re-classify our locum tenens physicians and certified registered nurse anesthetists as employees, despite both the general industry standard to treat them as independent contractors and many state laws prohibiting non-physician owned companies from employing physicians (e.g. the “corporate practice of medicine”). If they were re-classified as employees, we would be subject to, among other things, employment and payroll-related tax claims, as well as any applicable penalties and interest. Any such reclassification would have a material adverse impact on our business model for that business segment and would negatively impact our profitability.

We are exposed to increased costs and risks associated with complying with increasing and new regulation of corporate governance and disclosure standards.

We are spending an increased amount of management’s time and resources, since the inception of the Sarbanes-Oxley Act of 2002, to comply with changing laws, regulations and standards relating to corporate governance and public disclosures. The compliance requires management’s annual review and evaluation of our internal control systems and attestations of the effectiveness of these systems by our independent auditors. This process has required us to hire additional personnel and has resulted in additional accounting and legal expenses. We may encounter problems or delays in completing the review and evaluation, the implementation of improvements and the receipt of a positive attestation by our independent auditors. If we are not able to timely comply with the requirements set forth in Section 404 of the Sarbanes-Oxley Act of 2002, we might be subject to sanctions or investigation by regulatory authorities. Any such action could adversely affect our business and financial results.

Future changes in reimbursement trends could hinder our clients’ ability to pay us.

While in most cases our fees are paid directly by our clients rather than by governmental or third-party payers, many of our clients are reimbursed under the federal Medicare program and state Medicaid programs for the services they provide. In recent years, federal and state governments have made significant changes in these programs that have reduced reimbursement rates. In addition, insurance companies and managed care organizations seek to control costs by requiring that healthcare providers, such as hospitals, discount their services in exchange for exclusive or preferred participation in their benefit plans. Future federal and state legislation or evolving commercial reimbursement trends may further reduce, or change conditions for, our clients’ reimbursement. Limitations on reimbursement could reduce our clients’ cash flows, hampering their ability to pay us.

Competition for acquisition opportunities may restrict our future growth by limiting our ability to make acquisitions at reasonable valuations and lack of liquidity in the credit markets may restrict our ability to make certain desirable acquisitions.

Our business strategy includes increasing our market share and presence in the temporary nurse and allied staffing, clinical trials services and locum tenens industries as well as other human capital management services through strategic acquisitions of companies that complement or enhance our business. We have historically faced competition for acquisitions. In the future, this could limit our ability to grow by acquisition or could raise the prices of acquisitions and make them less accretive to our earnings. In addition, even if we are able to negotiate acceptable terms at reasonable valuations, there can be no assurance that there will be sufficient liquidity available on terms favorable to the Company to complete such acquisition. If we are unable to secure necessary financing under our credit facility or otherwise, we may be unable to complete desirable acquisitions. Certain restrictive covenants in our credit facility may also limit our ability to complete desirable acquisitions.

We may face difficulties integrating our acquisitions into our operations and our acquisitions may be unsuccessful, involve significant cash expenditures or expose us to unforeseen liabilities.

We continually evaluate opportunities to acquire healthcare staffing companies and other human capital management services companies that would complement or enhance our business and at times have preliminary acquisition discussions with some of these companies.

These acquisitions involve numerous risks, including:

- Potential loss of key employees or clients of acquired companies;
- Difficulties integrating acquired personnel and distinct cultures into our business;

- Difficulties integrating acquired companies into our operating, financial planning and financial reporting systems;
- Diversion of management attention from existing operations; and
- Assumptions of liabilities and exposure to unforeseen liabilities of acquired companies, including liabilities for their failure to comply with healthcare and tax regulations.

These acquisitions may also involve significant cash expenditures, debt incurrence and integration expenses that could have a material adverse effect on our financial condition and results of operations. Any acquisition may ultimately have a negative impact on our business and financial condition.

We operate our business in a regulated industry and modifications, inaccurate interpretations or violations of any applicable statutory or regulatory requirements may result in material costs or penalties to our Company and could reduce our revenue and earnings per share.

Our industry is subject to many complex federal, state and international laws and regulations related to, among other things, the eligibility of our foreign nurses to work in the U.S., the licensure of professionals, the payment of our field employees (e.g., wage and hour laws, employment taxes and income tax withholdings, etc.) and the operations of our business generally. If we do not comply with the laws and regulations that are applicable to our business (both domestic and foreign), we could incur civil and/or criminal penalties or be subject to equitable remedies.

Impairment in the value of the Company's goodwill or other intangible assets could adversely affect the Company's financial condition and results of operations.

The Company is required to test goodwill and intangible assets with indefinite lives annually, including the goodwill associated with past acquisitions and any future acquisitions, to determine if impairment has occurred. Interim reviews must also be performed whenever events or changes in circumstances indicate that impairment may have occurred. If the testing performed indicates that impairment has occurred, the Company is required to record a non-cash impairment charge for the difference between the value of the goodwill or other intangible assets and the implied fair value of the goodwill or other intangible assets in the period the determination is made. The testing of goodwill and other intangible assets for impairment requires the Company to make significant estimates about our future performance and cash flows, as well as other assumptions. These estimates can be affected by numerous factors, including changes in economic, industry or market conditions, changes in business operations, changes in competition or potential changes in the Company's stock price and market capitalization. Changes in these factors, or changes in actual performance compared with estimates of our future performance, could affect the fair value of goodwill or other intangible assets, which may result in an impairment charge. The Company cannot accurately predict the amount and timing of any impairment of assets. Should the value of goodwill or other intangible assets become impaired, there could be an adverse effect on the Company's financial condition and results of operation. At September 30, 2008, goodwill (net of amortization) represented 54.9% of the Company's total assets.

Significant legal actions could subject us to substantial uninsured liabilities.

In recent years, healthcare providers have become subject to an increasing number of legal actions alleging malpractice, vicarious liability, violation of certain consumer protection acts, negligent hiring, product liability or related legal theories. We may be subject to liability in such cases even if the contribution to the alleged injury was minimal. Many of these actions involve large claims and significant defense costs. In addition, we may be subject to claims related to torts or crimes committed by our corporate employees or healthcare professionals. In most instances, we are required to indemnify clients against some or all of these risks. A failure of any of our corporate employees or healthcare professionals to observe our policies and guidelines intended to reduce these risks; relevant client policies and guidelines or applicable federal, state or local laws, rules and regulations could result in negative publicity, payment of fines or other damages.

A key component of our business is the credentialing process. Ultimately, any hospital or other health care provider is responsible for its own internal credentialing process, and the provider typically makes the decision to allow a healthcare professional to provide services on behalf of the client. Nevertheless, in many situations, the provider will be relying upon the reputation and screening process of our Company. Errors in this process or failure to detect a poor or incorrect history could have a material effect on our reputation. In addition, we may not have access to all of the resources that are available to hospitals to check credentials.

To protect ourselves from the cost of these types of claims, we maintain professional malpractice liability insurance and general liability insurance coverage in amounts and with deductibles that we believe are appropriate for our operations. Our coverage is, in part, self-insured. However, our insurance coverage may not cover all claims against us or continue to be available to us at a reasonable cost. If we are unable to maintain adequate insurance coverage, we may be exposed to substantial liabilities.

If our insurance costs increase significantly, these incremental costs could negatively affect our financial results.

The costs related to obtaining and maintaining professional and general liability insurance and health insurance for healthcare providers has been increasing. If the cost of carrying this insurance continues to increase significantly, we will recognize an associated increase in costs, which may negatively affect our margins. This could have an adverse impact on our financial condition.

If we become subject to material liabilities under our self-insurance programs, our financial results may be adversely affected.

We provide workers compensation coverage through a program that is partially self-insured. In addition, we provide medical coverage to our employees through a partially self-insured preferred provider organization. A portion of our medical malpractice coverage is also through a partially self-insured program. If we become subject to substantial uninsured workers compensation, medical coverage or medical malpractice liabilities, our financial results may be adversely affected.

We are subject to litigation, which could result in substantial judgment or settlement costs.

We are party to various litigation claims and legal proceedings. We evaluate these litigation claims and legal proceedings to assess the likelihood of unfavorable outcomes and to estimate, if possible, the amount of potential losses. Based on these assessments and estimates, if any, we establish reserves and/or disclose the relevant litigation claims or legal proceedings, as appropriate. These assessments and estimates are based on the information available to management at the time and involve a significant amount of management judgment. While we do have certain business insurance, it may not be sufficient to cover our need. We caution you that actual outcomes or losses may differ materially from those estimated by our current assessments which would impact our profitability. Adverse developments in existing litigation claims or legal proceedings involving our Company or new claims could require us to establish or increase litigation reserves or enter into unfavorable settlements or satisfy judgments for monetary damages for amounts in excess of current reserves, which could adversely affect our financial results for future periods.

Until the sale by certain selling stockholders of a significant portion of their remaining shares, those selling stockholders will be able to substantially influence the outcome of all matters submitted to our stockholders for approval, regardless of the preferences of other stockholders.

Charterhouse Equity Partners III (CEP III) and CHEF Nominees Limited (CHEF) own approximately 8% of our outstanding common stock and continue to have two designees serving on our Board of Directors (which is currently comprised of seven members). Accordingly, they will be able to substantially influence:

- the election of Directors
- management and policies; and
- the outcome of any corporate transactions or other matters submitted to our stockholders for approval, including mergers, consolidations and the sale of substantially all of our assets.

Under our stockholders' agreement, the CEP Investors had the right to designate two directors for nomination to our Board of Directors. This number decreased (i) to one director when CEP reduced its ownership pursuant to a Secondary Offering in November 2006 by more than 50% of their holdings prior to our initial public offering and (ii) the number will decrease to zero upon a reduction of ownership by more than 90% of their holdings prior to our initial public offering. Their interests may conflict with the interests of the other holders of our common stock.

A registration statement under the Securities Act covering resale of CEP III's stock is presently in effect and sales of this stock could cause our stock price to decline.

The Company presently maintains an effective shelf registration under the Securities Act covering the resale of stock held by CEP III. These shares represent approximately 8% of our outstanding common stock and sales of the stock could cause our stock price to decline. In addition, we registered 4,398,001 shares of common stock for issuance under our 1999 stock option plans and 1,500,000 shares of common stock for our 2007 Stock Incentive Plan. Options to purchase 2,068,409 shares of common stock were issued and outstanding as of September 30, 2008, of which, options to purchase 2,050,149 shares were vested. In addition, 319,164 shares of stock appreciation rights were issued and outstanding as of September 30, 2008, none of which were vested. Shares of restricted stock outstanding as of September 30, 2008, were 201,039. Common stock issued upon exercise of stock options, stock appreciation rights and restricted stock, under our benefit plans, is eligible for resale in the public market without restriction.

We cannot predict what effect, if any, market sales of shares held by any stockholder or the availability of these shares for future sale will have on the market price of our common stock.

If provisions in our corporate documents and Delaware law delay or prevent a change in control of our Company, we may be unable to consummate a transaction that our stockholders consider favorable.

Our certificate of incorporation and by-laws may discourage, delay or prevent a merger or acquisition involving us that our stockholders may consider favorable. For example, our certificate of incorporation authorizes our Board of Directors to issue up to 10,000,000 shares of "blank check" preferred stock. Without stockholder approval, the Board of Directors has the authority to attach special rights, including voting and dividend rights, to this preferred stock. With these rights, preferred stockholders could make it more difficult for a third party to acquire us. Delaware law may also discourage, delay or prevent someone from acquiring or merging with us.

Terrorist attacks or armed conflict could adversely affect our normal business activity and results of operations.

In the aftermath of the terrorist attacks on September 11, 2001, we experienced a temporary interruption of normal business activity. Similar events in the future or armed conflicts involving the United States could result in additional temporary or longer-term interruptions of our normal business activity and our results of operations. Future terrorist attacks could also result in reduced willingness of nurses to travel to staffing assignments by airplane or otherwise.

Recent market disruptions may adversely affect our operating results and financial condition.

The current recessionary conditions and the continuation or intensification of any continued volatility in the financial markets may have an adverse impact on the availability of credit to our customers and businesses generally and could lead to a further weakening of the U.S. and global economies. To the extent that disruption in the financial markets continues and/or intensifies, it has the potential to materially affect our customers' ability to tap into debt and/or equity markets to continue their ongoing operations, have access to cash and/or pay their debts as they come due, all of which could reasonably be expected to have an adverse impact on the number of open positions for healthcare staff they request, as well as their ability to pay for our temporary staffing services.

The disruptions that the financial markets are currently undergoing have led to unprecedented governmental intervention on an emergency basis. The results of these actions have been unclear, resulting in confusion and uncertainty which in itself has been materially detrimental to the efficient functioning of the markets. It is impossible to predict what, if any, additional interim or permanent governmental restrictions may be imposed on the markets and/or the effect of such restrictions on us, our customers and the operations of corporate entities generally in the United States.

ITEM 6. EXHIBITS

See Exhibit Index immediately following signature page.

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.

CROSS COUNTRY HEALTHCARE, INC.

Date: November 10, 2008

By: /s/ EMIL HENSEL
Emil Hensel
Chief Financial Officer and Director
(Principal Financial Officer)

Date: November 10, 2008

By: /s/ DANIEL J. LEWIS
Daniel J. Lewis
Chief Accounting Officer
(Principal Accounting Officer)

EXHIBIT INDEX

| <u>No.</u> | <u>Description</u> |
|-----------------------------|---|
| <u>10.1</u> | Lease Agreement dated February 1, 2007, by and between MDA Holding, Inc. and ADKS Realty Corporation |
| <u>10.2</u> | Lease Agreement dated March 1, 1999 by and between Medical Doctors Associates, Inc. and ADKS Realty Corporation |
| <u>10.3</u> | Lease Agreement dated as of October 29, 2007, by and between Crestline Office Center Associates LLC, and MDA Holdings, Inc. |
| <u>10.4</u> | Lease Agreement dated as of September 21, 2004, by and between TGS American Realty Limited Partnership and Medical Doctor Associates, Inc. |
| <u>10.5</u> | First Amendment to Lease Agreement dated as of September 1, 2007, by and between Cornerstone Opportunity Ventures, LLC and Cejka Search, Inc. |
| 10.6* | Purchase Agreement, dated as of July 22, 2008, by and among Cross Country Healthcare, Inc., StoneCo H, Inc., MDA Holdings, Inc., Medical Doctor Associates, Inc., Allied Health Group, Inc., Credent Verification and Licensing Services, Inc. and Jamestown Indemnity, Ltd., and MDA Employee Stock Ownership and 401(k) Plan – ESOP Component Trust |
| <u>31.1</u> | Certification Pursuant to pursuant to Rule 13a-14(a) and Rule 15d-14 (a) by Joseph A. Boshart, President and Chief Executive Officer |
| <u>31.2</u> | Certification Pursuant to pursuant to Rule 13a-14(a) and Rule 15d-14 (a) by Emil Hensel, Chief Financial Officer |
| <u>32.1</u> | Certification Pursuant to 18 U.S.C. Section 1350 by Joseph A. Boshart, Chief Executive Officer |
| <u>32.2</u> | Certification Pursuant to 18 U.S.C. Section 1350 by Emil Hensel, Chief Financial Officer |

* Previously filed as an exhibit to the Company's Form 8-K dated July 22, 2008, and incorporated by reference herein.

LEASE AGREEMENT

THIS LEASE made this first day of February, 2007 by and between MDA HOLDINGS, INC., a Georgia corporation, first party (hereinafter called "Tenant"), and ADKS REALTY CORPORATION, a Georgia corporation, second party (hereinafter called "Landlord"),

WITNESSETH:

1. PREMISES. The landlord, for and in consideration of the rents, covenants, agreements, and stipulations hereinafter mentioned, reserved, and contained, to be paid, kept and performed by the Tenant, has leased and rented, and by these presents does lease and rent, unto the said Tenant, and said Tenant hereby agrees to lease and take upon the terms and conditions which hereinafter appear, the following described property (hereinafter called "Premises"), to wit:

Office building located at 147 Technology Parkway, Technology Park, in Gwinnett County, State of Georgia.

No easement for light or air is included in the Premises.

2. TERM. To have to hold the same for a term of three (3) years beginning on the first day of Feb. 2007, and ending on the last day of January, 2010 at midnight, unless sooner terminated as hereinafter provided.
3. RENTAL. Tenant agrees to pay Landlord, an annual rental in the amount of \$300,000, which shall be paid promptly on the first day of each month in advance, during the term of this lease, in equal monthly installments of \$25,000.
4. UTILITY BILLS. Tenant shall pay utility bills, including but not limited to, water, sewer, gas, electricity, fuel, light and heat bills for the Premises, and Tenant shall pay all charges for garbage collection services or other sanitary services rendered to the Premises or used by Tenant in connection therewith. If Tenant fails to pay any of said utility bills or charges for garbage collection or other sanitary services, Landlord may pay the same and such payment shall be added to and become part of the next rental payment due under this Lease.
5. USE OF PREMISES. Premises shall be used for corporate offices purposes and no other. Premises shall not be used for any illegal purposes, nor in any manner to create any nuisance or trespass, nor in any manner to vitiate the insurance or increase the rate of insurance on Premises.
6. ABANDONMENT OF THE PREMISES. Tenant agrees not to abandon or vacate the Premises during the period of this Lease and agrees to use said Premises for the purposes herein leased until the expiration hereof.
7. REPAIRS OF TENANT. Tenant accepts the Premises in their present condition and as suited for the uses intended by Tenant. Tenant shall, throughout the initial term of this Lease extensions or renewal thereof, at its expense, maintain in good order and repair the Premises, including the building, heating and air conditioning equipment (including but not limited to replacement of parts, compressors, air handling units and heating units), and other improvements located thereon. An expense cap of \$15,000 per year on major replacement items such as compressors, air handling units and heating units, and total roof refurbishment by Tenant. Tenant further agrees to care for the grounds around the building, including the mowing of grass, paving, care of shrubs and general landscaping. Tenant agrees to return said Premises to Landlord at the expiration, or prior to termination of this Lease in as good condition and repaid as when first received, natural wear and tear, damage by storm, fire, lightning, earthquake or other casualty alone excepted.

8. TAX ESCALATION. Tenant shall pay upon demand, as additional rental during the term of this Lease and any extension or renewal thereof, the amount by which all taxes (including but not limited to, ad valorem taxes, special assessments and any other governmental charges) on the Premises for each tax year exceed all taxes on the Premises for the tax year 1991. In the event the Premises are less than the entire property assessed for such taxes for any such tax year, then the tax

for any such year applicable to the Premises shall be determined by proration on the basis that the rentable floor area of the Premises bears to the rentable floor area of the entire property assessed. If the final year of the lease term fails to coincide with the tax year, then any excess for the tax year during which the term ends shall be reduced by the pro rata part of such tax year beyond the lease term. If such taxes for the year in which the Lease terminates are not ascertainable before payment of the last month's rental, then the amount of such taxes assessed against the property for the previous tax year shall be used as a basis of determining the pro rata share, if any, to be paid by Tenant for that portion of the last lease year. Tenant's pro rata portion of increased taxes, are not provided herein, shall be payable within fifteen days after receipt of notice from Landlord as to the amount due.

9. **DESTRUCTION OF, OR DAMAGE TO, PREMISES.** If Premises are totally destroyed by storm, fire, lightning, earthquake or other casualty, this Lease shall terminate as of the date of such destruction, and rental shall be accounted for as between Landlord and Tenant as of that date. If Premises are damaged but not wholly destroyed by any of such casualties, rental shall abate in such proportion as use of Premises has been destroyed, and Landlord shall restore Premises to substantially the same condition as before damage as speedily as practicable, whereupon full rental shall recommence.
10. **INDEMNITY.** Tenant agrees to indemnify and save harmless the Landlord against all claims for damages to persons or property by reason of Tenant's use or occupancy of Premises, and all expenses incurred by Landlord because thereof, including attorneys' fees and court costs. Supplementing the foregoing and in addition thereof, Tenant shall during all terms of this Lease, and any extension thereof, and at Tenant's expense maintain in full force and effect comprehensive general liability insurance with limits of \$500,000.00 per person and \$1,000,000.00 per accident, and property damage limits of \$100,000.00, which insurance shall contain a special endorsement recognizing and insuring any liability accruing to Tenant under the first sentence of this paragraph. Such insurance policy shall contain a clause expressly waiving any right of the insurer of subrogation against Landlord. Prior to the commencement of the term of this Lease, Tenant shall furnish Landlord with a certificate of such insurance which shall show the waiver of subrogation, and the endorsement required hereby. Such certificate shall provide that Landlord will be given ten (10) days written notice prior to cancellation or expiration of the insurance evidenced thereby.
11. **GOVERNMENTAL ORDERS.** Tenant agrees, at his own expense, to promptly comply with all requirements of any legally constituted public authority made necessary by reason of Tenant's occupancy of said Premises. Landlord agrees to promptly comply with any such requirements if not made necessary by reason of Tenant's occupancy. It is mutually agreed, however, between Landlord and Tenant, that if in order to comply with such requirements, the cost to Landlord or Tenant, as the case may be, shall exceed a sum equal to one year's rent, then Landlord or Tenant who is obligated to comply with such requirements is privileged to terminate this Lease by giving written notice of termination to the other party, by registered mail, which termination shall become effective sixty (60) days after receipt of such notice, and which notice shall eliminate necessity of compliance

with such requirement by party giving such notice unless party receiving such notice of termination shall, before termination becomes effective, pay to party giving notice all cost of compliance in excess of one year's rent, or secure payment of said sum in manner satisfactory to party giving notice.

12. CONDEMNATION. If the whole of the leased Premises, or such portion thereof as will make Premises unusable for the purposes herein leased, be condemned by any legally constituted authority for any public use or purpose, then in either of said events the term hereby granted shall cease from the time when possession thereof is taken by public authorities, and rental shall be accounted for as between Landlord and Tenant as of that date. Such termination, however, shall be without prejudice to the rights of either Landlord or Tenant to recover compensation and damage caused by condemnation from the condemner. It is further understood and agreed that neither the Tenant nor Landlord shall have any rights in any award made to the other by any condemnation authority.
13. ASSIGNMENT AND SUBLETTING. Tenant shall not, without the prior written consent of Landlord, assign this Lease or any interest hereunder, or sublet Premises or any part thereof, or permit the use of any party other than Tenant. Consent to any assignment or sublease shall not destroy this provision, and all later assignments or subleases shall be made likewise only on the prior written consent of Landlord. Assignee of Tenant, at option of Landlord, shall become directly liable to Landlord for all obligations of Tenant hereunder, but no sublease or assignment by Tenant shall relieve Tenant of any liability hereunder.
14. REMOVAL OF FIXTURES. Tenant may (if not in default hereunder), prior to the expiration of this Lease, or any extension thereof, remove all fixtures and equipment which he has placed in Premises, provided Tenant repairs all damage to Premises caused by such removal.
15. EVENTS OF DEFAULT. The happening of any one or more of the following events (hereinafter any one of which may be referred to as an "Event of Default") during the term of this Lease, or any renewal or extension thereof, shall constitute a breach of this Lease on the part of the Tenant: (1) Tenant fails to pay the rental as provided for herein; (2) Tenant abandons or vacates the Premises; (3) Tenant fails to comply with or abide by and perform any other obligation imposed upon Tenant under this Lease; (4) Tenant is adjudicated bankrupt; (5) a permanent receiver is appointed for Tenant's property and such receiver is not removed within sixty (60) days after written notice from Landlord to Tenant to obtain such removal; (6) Tenant, either voluntarily or involuntarily, takes advantage of any debtor relief proceedings under any present or future law, whereby the rent or any part thereof is, or is proposed to be, reduced or payment thereof deferred; (7) Tenant makes an assignment for benefit of creditors; or (8) Tenant's effects are levied upon or attached under process against Tenant, which is not satisfied or dissolved within thirty (30) days after written notice from Landlord to Tenant to obtain satisfaction thereof.
16. REMEDIES UPON DEFAULT. Upon the occurrence of any Event of Default, Landlord may pursue any one or more of the following remedies, separately or concurrently, without any notice (except as specifically provided hereafter) and without prejudice to any other remedy herein provided or provided by law: (a) if the Event of Default involves nonpayment of rental, and Tenant fails to cure such default within ten (10) days after receipt of written notice thereof from Landlord, or if the Event of Default involves a default in performing any of the terms of provisions of this Lease other than the payment of rental, and Tenant fails to cure such default within thirty (30) days after the date of receipt of written notice of default from Landlord, Landlord may terminate this lease by giving written notice to Tenant and upon such termination shall be entitled to recover from the Tenant damages in an amount equal to all rental which is then due and which would

otherwise have become due throughout the remaining term of this Lease, or any renewal thereof (as if this Lease had not been terminated); or (b) if the Event of Default involves any matter other than those set forth in item (a) of this paragraph, the Landlord may terminate this Lease by giving written notice to Tenant, and upon such termination, shall be entitled to recover from Tenant damages in an amount equal to all rental which is then due and which would otherwise have become due throughout the remaining term of this Lease or any renewal or extension thereof (as if this Lease had not been terminated); or (c) upon any Event of Default, Landlord may give to Tenant written notice of such default and advise Tenant that unless such default is cured within ten (10) days after receipt of such notice, the entire amount of the rental for the remainder of the term of this Lease, or any renewal or extension thereof, shall immediately become due and payable upon the expiration of the ten day period, and thereafter unless all the terms and provisions of this Lease are fully complied with by the Tenant without said ten day period, the entire amount of said rental shall thereupon become immediately due and payable without further notice to Tenant; or (d) upon any Event of Default, Landlord, as Tenant's agent, without terminating this Lease may enter upon and rent the Premises, in whole or, in part, at the best price obtainable by reasonable effort, without advertisement and by private negotiations and for any term Landlord deems proper, with Tenant being liable to Landlord for the deficiency, if any, between Tenant's rent hereunder and the price obtained by Landlord on reletting; provided however, that Landlord shall not be considered to be under any duty by reason of this provision to take any action to mitigate damages by reason of Tenant's default.

17. EXTERIOR SIGNS. Tenant shall place no signs upon the outside walls or roof of the leased Premises except with the written consent of the Landlord. Any and all signs placed on the within leased Premises by Tenant shall be maintained in compliance with rules and regulations governing such signs and the Tenant shall be responsible to Landlord for any damage caused by installation, use, or maintenance of said signs, and Tenant agrees upon removal of said signs to repair all damage incident to such removal.
18. ENTRY FOR CARDING, ETC. Landlord may card Premises "For Rent" or "For Sale" thirty (30) days before the termination of this Lease. Landlord may enter the Premises at reasonable hours to exhibit same to prospective purchasers or tenants and to make repairs required of Landlord under the terms hereof, or to make repairs to Landlord's adjoining property, if any.
19. EFFECT OF TERMINATION OF LEASE. No termination of this Lease prior to the normal ending thereof, by lapse of time or otherwise, shall affect Landlord's right to collect rent for the period prior to termination thereof.
20. MORTGAGEE'S RIGHTS. Tenant's right shall be subject to any bona fide mortgage or deed to secure debt which is now, or may hereafter be, placed upon the Premises by Landlord. Tenant shall, if requested by Landlord, execute a separate agreement reflecting such subordination.
21. NO ESTATE IN LAND. This Lease shall create the relationship of Landlord and Tenant between the parties hereto; no estate shall pass out of Landlord. Tenant has only a usufruct, not subject to levy and sale, and not assignable by Tenant except by Landlord's consent.
22. HOLDING OVER. If Tenant remains in possession of Premises after expiration of the term hereof, with Landlord's acquiescence and without any express agreement of parties, Tenant shall be a tenant at will at rental rate in effect at the end of Lease; and there shall be no renewal of this Lease by operation of law. If Tenant remains in possession of the Premises after expiration of the term hereof without Landlord's acquiescence, then Tenant shall be a tenant at sufferance and, commencing on the date following the date of such expiration, the monthly rental payable under paragraph 3 hereof shall, for each month

or fraction thereof during which Tenant so remains in possession, be twice the monthly rental otherwise payable under paragraph 3 hereof.

23. ATTORNEYS' FEES AND HOMESTEAD. If any rent owing under this Lease is collected by or through an attorney at law, Tenant agrees to pay twenty (20%) percent thereof as attorneys' fees. Tenant waives all homestead rights and exemptions which he may have under any law as against any obligation owing under this Lease. Tenant hereby assigns to Landlord his homestead and exemption.
24. RIGHTS CUMULATIVE. All rights, powers and privileges conferred hereunder upon parties hereto shall be cumulative but not restrictive to those given by law.
25. SERVICE OF NOTICE. Tenant hereby appoints as his agent to receive service of all dispossession or distraint proceedings and notices thereunder, and all notices required under this Lease, the person in charge of leased Premises at the time, or occupying said Premises; and if no person is in charge of, or occupying said Premises, then such service or notice may be made by attaching the same on the main entrance to said Premises. A copy of all notices under this Lease shall also be sent to Tenant's last known address, if different from said Premises.
26. WAIVER OF RIGHTS. No failure of Landlord to exercise any power given Landlord hereunder, or to insist upon strict compliance by Tenant with his obligation hereunder, and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of Landlord's right to demand exact compliance with the terms hereof.
27. DISCLOSURE OF OWNERSHIP. The owner of the Premises is ADKS REALTY CORPORATION, a Georgia corporation, whose address is 145 Technology Parkway, the persons authorized to manage the Premises is Kenneth M. Shumard and Agatino S. DiBella, whose address is 145 Technology Parkway. Service of process and demands and notices as to the Landlord shall be made on Kenneth M. Shumard & Agatino S. DiBella, who is authorized to acknowledge the receipt of same.
28. TIME OF ESSENCE. Time is of the essence of this agreement.
29. DEFINITIONS. "Landlord" as used in this Lease shall include the first party, his heirs, representatives, assigns and successors in title to Premises. "Tenant" shall include second party, his heirs and representatives, and if this Lease shall be validly assigned or sublet, shall include also Tenant's assignees or sublessees, as to Premises covered by such assignment or sublease. "Agent" shall include third party, his successors, assigns, heirs and representatives. "Landlord", "Tenant", and "Agent" include male and female, singular and plural, corporation, partnership or individual, as may fit the particular party.
30. SPECIAL STIPULATIONS. Insofar as the following stipulations conflict with any of the foregoing provisions, the following shall control:
 - a. The rent to be paid to Landlord by Tenant shall be net to Landlord, and Tenant covenants and agrees that it will also pay, or cause to be paid all charges and assessments of every kind and character which may be made against the Premises during the term of this Lease including but not limited to:
 - i. Any and all taxes of every kind which may be assessed against the Premises or against Landlord by reason of its ownership of the Premises;
 - ii. Any and all taxes which may be assessed against the improvements as may be presently located or hereafter placed on the Premises;
 - iii. Any and all sales taxes which may be assessed against the rent due hereunder by any governmental authority having jurisdiction there over;
 - iv. Any and all charges or assessments for sewer or water lines, or for street or sidewalk construction, paving or repair; and
 - v. Any and all bills for utilities or services furnished to or for the Premises.

- b. Tenant shall at its sole cost and expense, maintain any and all improvements presently located on or hereafter constructed on the Premises (any such improvements herein referred to as

the "Improvements") in good order and repair, and. to make all necessary repairs, replacements and renewals thereof, whether interior or exterior, structural or non-structural.

- c. (i) Tenant shall secure and maintain in force, at Tenant's expense, during the term of the Lease, fire and "extended coverage" insurance on all improvements now or hereafter located on the Premises in an amount sufficient to prevent any party in. interest from being or becoming a co-insurer on any part of the risk, which amount shall not be less than one hundred (100%) percent of the "full insurable value" being the cost of replacing such Improvements. All policies of such insurance shall include the name of the Landlord as one of the parties insured and shall fully protect both the Landlord and Tenant as their respective interests may appear. Should the improvements be damaged by casualty insured under such policies, Tenant will use the proceeds received from such policies to repair and restore the damaged improvements to the condition existing prior to such casualty or to construct new improvements.
- (ii) Tenant at its own cost and expense during the term of this Lease shall carry in full force and effect public liability insurance covering the Landlord as well as Tenant in amounts of not less than \$1,000,000.00 for injury to or death of any one person, and \$1,000,000.00 for injury or death of any number of persons in any one accident, and \$500,000.00 for damage to property. All policies of such insurance shall include the name of the Landlord as one of the parties insured and shall fully protect both the Landlord and Tenant as their respective interests may appear.
- (iii) Promptly upon the writing of the policies required of Landlord as described herein, Tenant will deliver to the Landlord certificates of all such policies.
- d. Tenant shall indemnify and save harmless Landlord against and from all liabilities, obligations, damages, penalties, claims, costs, charges and expenses including reasonable attorneys' fees which may be imposed upon or incurred by or asserted against Landlord by reason of any of the following occurring during the term of this Lease:
 - (i) any work or thing done in, on or about the Premises or any part thereof by or on behalf of Tenant;
 - (ii) any use, non-use, possession, occupation, condition, operation, maintenance or management of the Lease Premises or any part thereof;
 - (iii) any negligence on the part of Tenant or any of its agents, contractors, servants, employees, licensees, invitees or designees;
 - (iv) any accident, injury or damage to any person or property occurring in, on or about the Premises or any part thereof which occurs as a result of any act, or failure to act, on the part of Tenant or any of its agents, contractors, servants, employees, licensees, invitees, or designees.

- (e) Notwithstanding any provision herein to the contrary, this Lease shall be a "net- net-net" lease, and the rents reserved hereunder shall be a paid without any set- off, offset, or deduction of any nature.
- (f) Landlord agrees to extend a one-year option to extend this lease if requested in writing by Tenant. Landlord further agrees to extend up to three more one-year options at the end of each term. It is agreed that the terms of this lease will remain the same during the four option years.
- (g) Tenant agrees, to pay rent on 18,972 square feet beginning February 1, 2007 in monthly installments of \$18,972. Within six months, the other tenants in building 147, PracticeAdmin, MRM and Paragon, must vacate. Tenant agrees to pay full rent, or monthly payments of \$25,000 beginning the first day of the following month that other tenants vacate and space is available. Landlord agrees to clean space before Tenant takes possession or pay for cleaning.
- (h) Until Tenant occupies all space in Building 147 all utilities will be apportioned among tenants and paid on a pro-rata share based upon square footage occupied. Tenant will pay percentage of utilities based upon 18,972 square feet, or 75.8% of utilities. Tenant will pay all utilities as provided in paragraph 4 upon possession of additional 6,028 square feet. This percentage (75.8%) is for the 147 Building only. Tenant will pay 100% of utilities of 145 Building.
- (i) Until Tenant occupies space in Building 147, all taxes will be apportioned among tenants and paid on a pro-rata share based upon square footage occupied. Tenant will pay percentage of taxes based upon 18,972 square feet, or 75.8% of taxes. Tenant will pay all taxes as provided in paragraph 8 upon possession of additional 6,028 square feet. This percentage (75.8%) is for the 147 Building only. Tenant will pay 100% of taxes of 145 Building.

This Lease contains the entire agreement of the parties hereto and no representations, inducements, promises or agreements, oral or otherwise between the parties, not embodied herein, shall be of any force or effect.

IN WITNESS WHEREOF, the parties herein have hereunto set their hands and seals, in triplicate, the day and year first above written.

Signed, sealed and delivered This
28th day of February 2007, In the
presence of:

//signed//Anne B. Anderson

WITNESS

//signed//Aida Rivinius

NOTARY PUBLIC (AFFIX SEAL)

AIDA RIVINIUS Notary Public,
Gannett COUNTY. GEORGIA
My Commission Expires November 19, 2009

Signed, sealed and delivered This
28th day of February 2007, in the
presence of:

//signed//Rebecca S Lunsford

WITNESS

//signed//Aida Rivinius

NOTARY PUBLIC (AFFIX SEAL)

AIDA RIVINIUS Notary Public,
Gannett COUNTY. GEORGIA
My Commission Expires November 19, 2009

TENANT:
MDA HOLDINGS, INC.,
a Georgia corporation

By: //signed//James E. Ginter

Name: James E. Ginter

Title: President

LANDLORD:
ADKS REALTY CORPORATION
a Georgia corporation

By: //signed//K.M. Shumard

Name: K. M. Shumard

Title: Vice President

LEASE AGREEMENT

THIS LEASE made this first day of March, 1999, by and between MEDICAL DOCTOR ASSOCIATES, INC., a Georgia corporation, first party (hereinafter called "Tenant"), and ADKS Realty Corporation, a Georgia corporation, second party (hereinafter called "Landlord");

WITNESSETH:

1. PREMISES. The Landlord, for and in consideration of the rents, covenants, agreements, and stipulations hereinafter mentioned, reserved, and contained, to be paid, kept and performed by the Tenant, has leased and rented, and by these presents does lease and rent, unto the said Tenant, and said Tenant hereby agrees to lease and take upon the terms and conditions which hereinafter appear, the following described property (hereinafter called "Premises"), to wit:

Office building located at 145 Technology Parkway, Technology Park, in Gwinnett County, State of Georgia

No easement for light or air is included in the Premises.

2. TERM. To have to hold the same for a term of fifteen (15) years beginning on the first day of March 1999, and ending on the last day of February, 2014 at midnight, unless sooner terminated as hereinafter provided.
3. RENTAL. Tenant agrees to pay Landlord, an annual rental in the amount of \$300,000, which shall be paid promptly on the first day of each month in advance, during the term of this lease, in equal monthly installments of \$25,000.
4. UTILITY BILLS. Tenant shall pay utility bills, including but not limited to, water, sewer, gas, electricity, fuel, light and heat bills for the Premises, and Tenant shall pay all charges for garbage collection services or other sanitary services rendered to the Premises or used by Tenant in connection therewith. If Tenant fails to pay any of said utility bills or charges for garbage collection or other sanitary services, Landlord may pay the same and such payment shall be added to and become part of the next rental payment due under this Lease.
5. USE OF PREMISES. Premises shall be used for corporate offices purposes and no other. Premises shall not be used for any illegal purposes, nor in any manner to create any nuisance or trespass, nor in any manner to vitiate the insurance or increase the rate of insurance on Premises.
6. ABANDONMENT OF THE PREMISES. Tenant agrees not to abandon or vacate the Premises during the period of this Lease and agrees to use said Premises for the purposes herein leased until the expiration hereof.
7. REPAIRS OF TENANT. Tenant accepts the Premises in their present condition and as suited for the uses intended by Tenant. Tenant shall, throughout the initial term of this Lease extensions or renewal thereof, at its expense, maintain in good order and repair the Premises, including the building, heating and air conditioning equipment (including but not limited to replacement of parts, compressors, air handling units and heating units), and other improvements located thereon. An expense cap of \$15,000 per year on major replacement items such as compressors, air handling units and heating units, and total roof refurbishment by Tenant. Tenant further agrees to care for the grounds around the building, including the mowing of grass, paving, care of shrubs and general landscaping. Tenant agrees to return said Premises to Landlord at the expiration, or prior to termination of this Lease in as good condition and repaid as when first received, natural wear and tear, damage by storm, fire, lightning, earthquake or other casualty alone excepted.

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8. TAX ESCALATION. Tenant shall pay upon demand, as additional rental during the term of this Lease and any extension or renewal thereof, the amount by which all taxes (including but not limited to, ad valorem taxes, special assessments and any other governmental charges) on the Premises for each tax year exceed all taxes on the Premises for the tax year 1991. In the event the Premises are less than the entire property assessed for such taxes for any such tax year, then the tax

for any such year applicable to the Premises shall be determined by proration on the basis that the rentable floor area of the Premises bears to the rentable floor area of the entire property assessed. If the final year of the lease term fails to coincide with the tax year, then any excess for the tax year during which the term ends shall be reduced by the pro rata part of such tax year beyond the lease term. If such taxes for the year in which the Lease terminates are not ascertainable before payment of the last month's rental, then the amount of such taxes assessed against the property for the previous tax year shall be used as a basis of determining the pro rata share, if any, to be paid by Tenant for that portion of the last lease year. Tenant's pro rata portion of increased taxes, are not provided herein, shall be payable within fifteen days after receipt of notice from Landlord as to the amount due.

9. DESTRUCTION OF, OR DAMAGE TO, PREMISES. If Premises are totally destroyed by storm, fire, lightning, earthquake or other casualty, this Lease shall terminate as of the date of such destruction, and rental shall be accounted for as between Landlord and Tenant as of that date. If Premises are damaged but not wholly destroyed by any of such casualties, rental shall abate in such proportion as use of Premises has been destroyed, and Landlord shall restore Premises to substantially the same condition as before damage as speedily as practicable, whereupon full rental shall recommence.
10. INDEMNITY. Tenant agrees to indemnify and save harmless the Landlord against all claims for damages to persons or property by reason of Tenant's use or occupancy of Premises, and all expenses incurred by Landlord because thereof, including attorneys' fees and court costs. Supplementing the foregoing and in addition thereof, Tenant shall during all terms of this Lease, and any extension thereof, and at Tenant's expense maintain in full force and effect comprehensive general liability insurance with limits of \$500,000.00 per person and \$1,000,000.00 per accident, and property damage limits of \$100,000.00, which insurance shall contain a special endorsement recognizing and insuring any liability accruing to Tenant under the first sentence of this paragraph. Such insurance policy shall contain a clause expressly waiving any right of the insurer of subrogation against Landlord. Prior to the commencement of the term of this Lease, Tenant shall furnish Landlord with a certificate of such insurance which shall show the waiver of subrogation, and the endorsement required hereby. Such certificate shall provide that Landlord will be given ten (10) days written notice prior to cancellation or expiration of the insurance evidenced thereby.
11. Governmental Orders. Tenant agrees, at his own expense, to promptly comply with all requirements of any legally constituted public authority made necessary by reason of Tenant's occupancy of said Premises. Landlord agrees to promptly comply with any such requirements if not made necessary by reason of Tenant's occupancy. It is mutually agreed, however, between Landlord and Tenant, that if in order to comply with such requirements, the cost to Landlord or Tenant, as the case may be, shall exceed a sum equal to one year's rent, then Landlord or Tenant who is obligated to comply with such requirements is privileged to terminate this Lease by giving written notice of termination to the other party, by registered mail, which termination shall become effective sixty (60) days after receipt of such notice, and which notice shall eliminate necessity of compliance with such requirement by party giving such notice unless party receiving such notice of termination shall, before termination becomes effective, pay to party giving notice all cost of compliance in excess of one year's rent, or secure payment of said sum in manner satisfactory to party giving notice.
12. Condemnation. If the whole of the leased Premises, or such portion thereof as will make Premises unusable for the purposes herein leased, be condemned by any legally constituted authority for any public use or purpose, then in either of said events the term hereby granted shall cease from the time when possession thereof is taken by public authorities, and rental shall be accounted for as between Landlord and Tenant as of that date. Such termination, however, shall be without prejudice to the rights of either Landlord or Tenant to recover compensation and damage caused by condemnation from the condemner. It is further understood and agreed that neither the Tenant nor Landlord shall have any rights in any award made to the other by any condemnation authority.

13. ASSIGNMENT AND SUBLETTING. Tenant shall not, without the prior written consent of Landlord, assign this Lease or any interest hereunder, or sublet Premises or any part thereof, or permit the use of any party other than Tenant. Consent to any assignment or sublease shall not destroy this provision, and all later assignments or subleases shall be made likewise only on the prior written consent of Landlord. Assignee of Tenant, at option of Landlord, shall become directly liable to Landlord for all obligations of Tenant hereunder, but no sublease or assignment by Tenant shall relieve Tenant of any liability hereunder.
14. REMOVAL OF FIXTURES. Tenant may (if not in default hereunder), prior to the expiration of this Lease, or any extension thereof, remove all fixtures and equipment which he has placed in Premises, provided Tenant repairs all damage to Premises caused by such removal.
15. EVENTS OF DEFAULT. The happening of any one or more of the following events (hereinafter any one of which may be referred to as an "Event of Default") during the term of this Lease, or any renewal or extension thereof, shall constitute a breach of this Lease on the part of the Tenant: (1) Tenant fails to pay the rental as provided for herein; (2) Tenant abandons or vacates the Premises; (3) Tenant fails to comply with or abide by and perform any other obligation imposed upon Tenant under this Lease; (4) Tenant is adjudicated bankrupt; (5) a permanent receiver is appointed for Tenant's property and such receiver is not removed within sixty (60) days after written notice from Landlord to Tenant to obtain such removal; (6) Tenant, either voluntarily or involuntarily, takes advantage of any debtor relief proceedings under any present or future law, whereby the rent or any part thereof is, or is proposed to be, reduced or payment thereof deferred; (7) Tenant makes an assignment for benefit of creditors; or (8) Tenant's effects are levied upon or attached under process against Tenant, which is not satisfied or dissolved within thirty (30) days after written notice from Landlord to Tenant to obtain satisfaction thereof.
16. REMEDIES UPON DEFAULT. Upon the occurrence of any Event of Default, Landlord may pursue any one or more of the following remedies, separately or concurrently, without any notice (except as specifically provided hereafter) and without prejudice to any other remedy herein provided or provided by law: (a) if the Event of Default involves nonpayment of rental, and Tenant fails to cure such default within ten (10) days after receipt of written notice thereof from Landlord, or if the Event of Default involves a default in performing any of the terms of provisions of this Lease other than the payment of rental, and Tenant fails to cure such default within thirty (30) days after the date of receipt of written notice of default from Landlord, Landlord may terminate this lease by giving written notice to Tenant and upon such termination shall be entitled to recover from the Tenant damages in an amount equal to all rental which is then due and which would otherwise have become due throughout the remaining term of this Lease, or any renewal thereof (as if this Lease had not been terminated); or (b) if the Event of Default involves any matter other than those set forth in item (a) of this paragraph, the Landlord may terminate this Lease by giving written notice to Tenant, and upon such termination, shall be entitled to recover from Tenant damages in an amount equal to all rental which is then due and which would otherwise have become due throughout the remaining term of this Lease or any renewal or extension thereof (as if this Lease had not been terminated); or (c) upon any Event of Default, Landlord may give to Tenant written notice of such default and advise Tenant that unless such default is cured within ten (10) days after receipt of such notice, the entire amount of the rental for the remainder of the term of this Lease, or any renewal or extension thereof, shall immediately become due and payable upon the expiration of the ten day period, and thereafter unless all the terms and provisions of this Lease are fully complied with by the Tenant without said ten day period, the entire amount of said rental shall thereupon become immediately due and payable without further

notice to Tenant; or (d) upon any Event of Default, Landlord, as Tenant's agent, without terminating this Lease may enter upon and rent the Premises, in whole or, in part, at the best price obtainable by reasonable effort, without advertisement and by private negotiations and for any term Landlord deems proper, with Tenant being liable to Landlord for the deficiency, if any, between Tenant's rent hereunder and the price obtained by Landlord on reletting; provided however, that Landlord shall not be considered to be under any duty by reason of this provision to take any action to mitigate damages by reason of Tenant's default.

17. EXTERIOR SIGNS. Tenant shall place no signs upon the outside walls or roof of the leased Premises except with the written consent of the Landlord. Any and all signs placed on the within leased Premises by Tenant shall be maintained in compliance with rules and regulations governing such signs and the Tenant shall be responsible to Landlord for any damage caused by installation, use, or maintenance of said signs, and Tenant agrees upon removal of said signs to repair all damage incident to such removal.
18. ENTRY FOR CARDING, ETC. Landlord may card Premises "For Rent" or "For Sale" thirty (30) days before the termination of this Lease. Landlord may enter the Premises at reasonable hours to exhibit same to prospective purchasers or tenants and to make repairs required of Landlord under the terms hereof, or to make repairs to Landlord's adjoining property, if any.
19. EFFECT OF TERMINATION OF LEASE. No termination of this Lease prior to the normal ending thereof, by lapse of time or otherwise, shall affect Landlord's right to collect rent for the period prior to termination thereof.
20. MORTGAGEE'S RIGHTS. Tenant's right shall be subject to any bona fide mortgage or deed to secure debt which is now, or may hereafter be, placed upon the Premises by Landlord. Tenant shall, if requested by Landlord, execute a separate agreement reflecting such subordination.
21. NO ESTATE IN LAND. This Lease shall create the relationship of Landlord and Tenant between the parties hereto; no estate shall pass out of Landlord. Tenant has only a usufruct, not subject to levy and sale, and not assignable by Tenant except by Landlord's consent.
22. HOLDING OVER. If Tenant remains in possession of Premises after expiration of the term hereof, with Landlord's acquiescence and without any express agreement of parties, Tenant shall be a tenant at will at rental rate in effect at the end of Lease; and there shall be no renewal of this Lease by operation of law. If Tenant remains in possession of the Premises after expiration of the term hereof without Landlord's acquiescence, then Tenant shall be a tenant at sufferance and, commencing on the date following the date of such expiration, the monthly rental payable under paragraph 3 hereof shall, for each month or fraction thereof during which Tenant so remains in possession, be twice the monthly rental otherwise payable under paragraph 3 hereof.
23. ATTORNEYS' FEES AND HOMESTEAD. If any rent owing under this Lease is collected by or through an attorney at law, Tenant agrees to pay twenty (20%) percent thereof as attorneys' fees. Tenant waives all homestead rights and exemptions which he may have under any law as against any obligation owing under this Lease. Tenant hereby assigns to Landlord his homestead and exemption.
24. RIGHTS CUMULATIVE. All rights, powers and privileges conferred hereunder upon parties hereto shall be cumulative but not restrictive to those given by law.

25. SERVICE OF NOTICE. Tenant hereby appoints as his agent to receive service of all dispossession or distraint proceedings and notices thereunder, and all notices required under this Lease, the person in charge of leased Premises at the time, or occupying said Premises; and if no person is in charge of, or occupying said Premises, then such service or notice may be made by attaching the same on the main entrance to said Premises. A copy of all notices under this Lease shall also be sent to Tenant's last known address, if different from said Premises.
26. WAIVER OF RIGHTS. No failure of Landlord to exercise any power given Landlord hereunder, or to insist upon strict compliance by Tenant with his obligation hereunder, and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of Landlord's right to demand exact compliance with the terms hereof.
27. DISCLOSURE OF OWNERSHIP. The owner of the Premises is ADKS Realty Corporation, a Georgia corporation, whose address is 145 Technology Parkway, the persons authorized to manage the Premises is Kenneth M. Shumard and Agatino S. DiBella, whose address is 145 Technology Parkway. Service of process and demands and notices as to the Landlord shall be made on Kenneth M. Shumard & Agatino S. DiBella, who is authorized to acknowledge the receipt of same.
28. TIME OF ESSENCE. Time is of the essence of this agreement.
29. DEFINITIONS. "Landlord" as used in this Lease shall include the first party, his heirs, representatives, assigns and successors in title to Premises. "Tenant" shall include second party, his heirs and representatives, and if this Lease shall be validly assigned or sublet, shall include also Tenant's assignees or sublessees, as to Premises covered by such assignment or sublease. "Agent" shall include third party, his successors, assigns, heirs and representatives. "Landlord", "Tenant", and "Agent" include male and female, singular and plural, corporation, partnership or individual, as may fit the particular party.
30. SPECIAL STIPULATIONS. Insofar as the following stipulations conflict with any of the foregoing provisions, the following shall control:
 - (a) The rent to be paid to Landlord by Tenant shall be net to Landlord, and Tenant covenants and agrees that it will also pay, or cause to be paid all charges and assessments of every kind and character which may be made against the Premises during the term of this Lease including but not limited to:
 - (i) Any and all taxes of every kind which may be assessed against the Premises or against Landlord by reason of its ownership of the Premises;
 - (ii) Any and all taxes which may be assessed against the improvements as may be presently located or hereafter placed on the Premises;
 - (iii) Any and all sales taxes which may be assessed against the rent due hereunder by any governmental authority having jurisdiction there over;
 - (iv) Any and all charges or assessments for sewer or water lines, or for street or sidewalk construction, paving or repair; and
 - (v) Any and all bills for utilities or services furnished to or for the Premises.

- (b) Tenant shall at its sole cost and expense, maintain any and all improvements presently located on or hereafter constructed on the Premises (any such improvements herein referred to as the "Improvements") in good order and repair, and, to make all necessary repairs, replacements and renewals thereof, whether interior or exterior, structural or non-structural.
- (c) (i) Tenant shall secure and maintain in force, at Tenant's expense, during the term of the Lease, fire and "extended coverage" insurance on all improvements now or hereafter located on the Premises in an amount sufficient to prevent any party in. interest from being or becoming a co-insurer on any part of the risk, which amount shall not be less than one hundred (100%) percent of the "full insurable value" being the cost of replacing such Improvements. All policies of such insurance shall include the name of the Landlord as one of the parties insured and shall fully protect both the Landlord and Tenant as their respective interests may appear. Should the improvements be damaged by casualty insured under such policies, Tenant will use the proceeds received from such policies to repair and restore the damaged improvements to the condition existing prior to such casualty or to construct new improvements.
- (ii) Tenant at its own cost and expense during the term of this Lease shall carry in full force and effect public liability insurance covering the Landlord as well as Tenant in amounts of not less than \$1,000,000.00 for injury to or death of any one person, and \$1,000,000.00 for injury or death of any number of persons in any one accident, and \$500,000.00 for damage to property. All policies of such insurance shall include the name of the Landlord as one of the parties insured and shall fully protect both the Landlord and Tenant as their respective interests may appear.
- (iii) Promptly upon the writing of the policies required of Landlord as described herein, Tenant will deliver to the Landlord certificates of all such policies.
- (d) Tenant shall indemnify and save harmless Landlord against and from all liabilities, obligations, damages, penalties, claims, costs, charges and expenses including reasonable attorneys' fees which may be imposed upon or incurred by or asserted against Landlord by reason of any of the following occurring during the term of this Lease:
- (i) any work or thing done in, on or about the Premises or any part thereof by or on behalf of Tenant;
- (ii) any use, non-use, possession, occupation, condition, operation, maintenance or management of the Lease Premises or any part thereof;
- (iii) any negligence on the part of Tenant or any of its agents, contractors, servants, employees, licensees, invitees or designees;
- (iv) any accident, injury or damage to any person or property occurring in, on or about the Premises or any part thereof which occurs as a result of any act, or failure to act, on the part of Tenant or any of its agents, contractors, servants, employees, licensees, invitees, or designees.
- (e) Notwithstanding any provision herein to the contrary, this Lease shall be a "net- net-net" lease, and the rents reserved hereunder shall be a paid without any set- off, offset, or deduction of any nature.

This Lease contains the entire agreement of the parties hereto and no representations, inducements, promises or agreements, oral or otherwise, between the parties, not embodied herein, shall be of any force or effect.

IN WITNESS WHEREOF, the parties herein have hereunto set their hands and seals, in triplicate, the day and year first above written.

Signed, sealed and delivered This 25th day of February, 1999, in the presence of:

Signed, sealed and delivered This 25th day of February 1999, In the presence of:

TENANT:
MEDICAL DOCTOR ASSOCIATES, INC.
a Georgia corporation

//signed//Miller

Witness

By: //signed//K. M. Shumard

Name: K. M. Shumard

Title: CEO

//signed//Kim Kisling

NOTARY PUBLIC (AFFIX SEAL)

My commission expires:
Notary Public, Dekalb County, Georgia
My Commission Expires February 8, 2002

Signed, sealed and delivered This 25th day of February 1999, in the presence of:

LANDLORD:
ADKS REALTY CORPORATION, A
Georgia corportion

//signed//Miller

Witness

By: //signed//K. M. Shumard

Name: K. M. Shumard

Title: Vice President

(CORPORATE SEAL)

//signed//Kim Kisling

Notary Public (AFFIX SEAL)

My commission expires:
Notary Public, Dekalb County, Georgia
My Commission Expires February 8, 2002

OFFICE LEASE

between

CRESTLINE OFFICE CENTER ASSOCIATES, LLC

a Colorado limited liability company

(as Landlord)

and

MDA HOLDINGS, INC a Georgia corporation

(as Tenant)

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LEASE AGREEMENT

THIS LEASE, dated as of October 29, 2007 (the "Effective Date"), is by and between CRESTLINE OFFICE CENTER ASSOCIATES LLC, a Colorado limited liability company ("Landlord") and MDA HOLDINGS INC. a Georgia corporation ("Tenant").

WITNESSETH:

1. PRINCIPAL TERMS. Capitalized terms, first appearing in quotations in this Article, elsewhere in the Lease or any Exhibits, are definitions of such terms as used in the Lease and Exhibits and shall have the defined" meaning whenever used "BUILDING": Approximately 6 1,500 square foot office building to be constructed on the Real Property (as hereafter defined) with an address of 7400 East Crestline Circle, Greenwood Village, CO 80111

1.1 "BUILDING": Approximately 61,500 square foot office building to be constructed on the Real Property (as hereafter defined) with an address of 7400 East Crestline Circle, Greenwood Village, CO 80111

1.2 "PREMISES": Approximately 7,237 rentable square feet Suite 100

1.3 "INITIAL TERM": Five (5) years and one (1) month. "Commencement Date": On or about December 1, 2007 subject to the provisions of Article 5.

"Expiration Date": the last day of the 61st full calendar month following the Commencement Date

1.4 "BASE RENT":

| <u>Period</u> | <u>Monthly</u> | <u>Annual Rate Per RSF</u> |
|----------------|----------------|--------------------------------|
| Months 2 - 13 | \$ 13,267.83 | \$ 22.00* |
| Months 14 - 25 | \$ 13,569.38 | \$ 22.50 |
| Months 26 - 37 | \$ 13,870.92 | \$ 23.00 |
| Months 38 - 49 | \$ 14,172.46 | \$ 23.50 |
| Months 50 - 61 | \$ 14,474.00 | \$ 24.00 |

*Provided that no uncured Event of Default occurs during the Initial Term, no Base Rent shall be due for Month 1

1.5 OPERATING EXPENSES: Pro Rata Share (12%) of the portion of annual Operating Expenses in excess of the Base Operating Expenses

1.6 "DEPOSIT": \$27,742.00

1.7 "PERMITTED USE": General Office Use

1.8 "GUARANTOR": N/A

1.9 "PARKING": 29 spaces, of which all 20 may be uncovered spaces (based on 4 spaces per 1,000 rsf), free of charge; provided however that Tenant shall have the right to lease up to 7 underground parking spaces (based on 1 space per 1,000 rsf) at the

rate of \$90.00 per month per space, which right must be exercised no later than the end of the fourth (4th) month of the Initial Term, whereupon the number of uncovered spaces to which Tenant shall be entitled shall be reduced by the number of underground parking spaces which Tenant elects to lease

1.10 LANDLORD'S NOTICE ADDRESS: 1010 Northern Boulevard
Great Neck, New York 11021
Attention: F. William Schmergel

With a copy to: CRESTLINE OFFICE CENTER ASSOCIATES, LLC
7400 East Crestline Circle, Suite 125
Greenwood Village, CO 80111
Attn: Paul Schmergel

1.11 RENT PAYMENT ADDRESS: Crestline Office Center
P.O. Box 973363
Dallas, TX 75397-3363

1.12 LANDLORD'S TAX I.D.: 84-1500407

1.13 TENANT'S NOTICE ADDRESS: MDA
Precommencement Address: 145 Technology Parkway
Norcross, GA 30092

Post Commencement Address: 7400 East Crestline Circle, Suite 100
Greenwood Village, CO 80111

1.14 TENANT'S TAX I.D.: 58-1761269

1.16 LANDLORD'S BROKER: Vector Property Services, LLC

1.17 COOPERATING BROKER: CRESA Partners

1.18 ATTACHMENTS: [check if applicable]

- x Exhibit A – Depiction of the Premises
- x Exhibit B – Legal Description of the Real Property
- x Exhibit C – Commencement Certificate
- x Exhibit D – Rules and Regulations

2. GENERAL COVENANTS. Tenant covenants and agrees to pay Rent and perform the obligations hereafter set forth and in consideration therefore Landlord leases to Tenant the Premises as depicted on the plat attached as Exhibit A, together with a non-exclusive right subject to the provisions hereof, to use plazas, common areas, or other areas on the real property legally described on Exhibit B (the "Real Property") designated by Landlord for the exclusive or non-exclusive use of the tenants of the Building ("Common Areas"). The Building, Real Property, Common Areas, and appurtenances are hereinafter collectively sometimes called the "Building Complex".

3. TERM. The Initial Term of the Lease commences at 12:01 a.m. on the Commencement Date and terminates at 12:00 midnight on the Expiration Date (the Initial Term together with any extensions thereof is herein referred to as the "Term").

4. RENT. Subject to the provisions below, commencing on the Commencement Date and on the first day of each month thereafter, Tenant shall pay Base Rent in the amount stated in Section 1.4, in advance without notice (all amounts, including Base Rent, to be paid by Tenant pursuant to this Lease as the context requires are sometimes referred to collectively as "Rent(s)"). Rents shall be paid without set off, abatement, or diminution, at the address set forth in Section 1.11, or at such other place as Landlord from time to time designates in writing.

5. COMPLETION OR REMODELING OF THE PREMISES. Provisions regarding remodeling or tenant finish work in the Premises, if any, are set forth in Article 31, below. "Initial Tenant Finish" means the Premises in its "as is" condition on the Commencement Date. Except with regard to Initial Tenant Finish, Landlord has no obligation for the completion or remodeling of the Premises, and Tenant accepts the Premises in its "as is" condition on the Commencement Date. Landlord shall notify Tenant of the pending substantial completion of the Initial Tenant Finish: whereupon the Parties shall schedule an inspection of the Premises to be conducted prior to the Commencement Date, at which Tenant and Landlord shall inspect only the components of the Initial Tenant Finish (the "Inspection") and shall mutually agree upon items of work from the Initial Tenant Finish that are not satisfactorily completed (The "Punch List Items"). Landlord shall use commercially reasonable efforts to complete or correct the Punch List Items in a timely manner. Notwithstanding any provision in this Lease to the contrary, the Commencement Date and Tenant's Rent obligations will not be delayed or extended by any delay in completion of the Initial Tenant Finish (as defined in Article 5, below) unless such delay is caused by "Net Landlord Delay". The term "Landlord Delay" means any delay, other than due to Force Majeure Events, Tenant Delay or completion of Punch List items, caused by solely by Landlord's failure to substantially complete the Initial Tenant Finish. All delays other than Landlord Delay are deemed "Tenant Delay". "Net Landlord Delay" means the number of days, if any, by which Landlord Delay exceeds Tenant Delay and the Commencement Date and Tenant's rental obligations will be delayed by the number of days equal to the number of days of Net Landlord Delay, if any. In no event shall the Commencement Date be extended as a result of Punch List Items. As soon as the Term commences, Landlord and Tenant agree to execute a commencement agreement in the form attached as Exhibit C, setting forth the exact Commencement Date and Expiration Date. If during the first year of the Initial Term, Tenant discovers a defect in the Initial Tenant Finish that (a) was not reasonably discoverable during the Inspection; and (b) was not caused by the actions of Tenant or anyone acting by, through or under Tenant (each a "Latent Defect"), provided that Landlord is notified by Tenant of the Latent Defect within, five (5) days of Tenant's discovery thereof, Landlord shall correct such Latent Defect to the Parties reasonable satisfaction.

6. OPERATING EXPENSES.

6.1 Definitions. The additional terms below have the following meanings in this Lease:

(1) "Base Operating Expenses" means the Operating Expenses (as defined below) for Operating Expense Year (as defined below) of 2008.

(2) "Landlord's Accountants" means that individual or firm employed by Landlord from time to time to keep the books and records for the Building Complex, and/or to prepare the federal and state income tax returns for Landlord with respect to the Building Complex, which books and records shall be certified to by a representative of Landlord. All determinations made hereunder shall be made by Landlord's Accountants unless otherwise stated.

(3) "Rentable Area" means 61,500 rentable square feet of space. If there is a significant change in the aggregate Rentable Area as a result of an addition, partial destruction, modification to building design, or similar cause which causes a reduction or increase in the Rentable Area on a permanent basis or, if Landlord re-measures the Building and a change in Rentable Area occurs, Landlord's Accountants shall make such adjustments in the computations as are necessary to provide for such change.

(4) "Tenant's Pro Rata Share" means the percentage set forth in Section 1.5. If Tenant, at any time during the Term, leases additional space in the Building or if the Rentable Area is adjusted, Tenant's Pro Rata Share shall be recomputed by dividing the total rentable square footage of space then leased by Tenant (including any additional space) by the Rentable Area and the resulting figure shall become Tenant's Pro Rata Share.

(5) "Operating Expense Year" means each calendar year during the Term, except that the first Operating Expense Year begins on the Commencement Date and ends on December 31 of such year and the last Operating Expense Year begins on January 1 of the calendar year in which this Lease

expires or is terminated and ends on the date of such expiration or termination. If an Operating Expense Year is less than twelve (12) months, Operating Expenses for such year shall be prorated.

(6) "Operating Expenses" means all operating expenses of any kind or nature which are in Landlord's reasonable judgment necessary, appropriate, or customarily incurred in connection with the operation and maintenance of the Building Complex, subject to the exclusions set forth below. Operating Expenses include:

(a) All real property taxes and assessments levied against the Building Complex by any governmental or quasi-governmental authority or under any covenants, declarations, easements or restrictions, including taxes, assessments, surcharges, or service or other fees of a nature not presently in effect which are hereafter levied on the Building Complex as a result of the use, ownership or operation of the Building Complex or for any other reason, whether in lieu of or in addition to, any current real estate taxes and assessments. However, any taxes which are levied on the rent of the Building Complex will be determined as if the Building Complex were Landlord's only real property. In no event do taxes and assessments include any federal or state income taxes levied or assessed on Landlord. Expenses for tax consultants to contest taxes or assessments are also included as Operating Expenses (all of the foregoing are collectively referred to herein as "Taxes"). Taxes also include special assessments, license taxes, business license fees, business license taxes, commercial rental taxes, levies, charges, penalties or taxes, imposed by any authority against the Premises, Building Complex or any legal or equitable interest of Landlord. Special assessments are deemed payable in such number of installments permitted by law, whether or not actually so paid, and include any applicable interest on such installments. Taxes (other than special assessments) are computed on an accrual basis based on the year in which they are levied, even though not paid until the following Operating Expense Year;

(b) Costs of supplies, including costs of relamping and replacing ballasts in all Building standard tenant lighting;

(c) Costs of energy for the Building Complex, including costs of propane, butane, natural gas, steam, electricity, solar energy and fuel oils, coal or any other energy sources;

(d) Costs of water and sanitary and storm drainage services;

(e) Costs of janitorial and security services;

(f) Costs of general maintenance, repairs, and replacements including costs under HVAC and other mechanical maintenance contracts; and repairs and replacements of equipment used in maintenance and repair work;

(g) Costs of maintenance, repair and replacement of landscaping;

(h) Insurance premiums for the Building Complex, including all-risk or multi-peril coverage together with loss of rent endorsement; the part of any claim paid under the deductible portion of any insurance policy carried by Landlord; public liability insurance; and any other insurance carried by Landlord on any component parts of the Building Complex;

(i) All labor costs, including wages, costs of worker's compensation insurance, payroll taxes, fringe benefits, including pension, profit-sharing and health, and legal fees and other costs incurred in resolving any labor dispute;

(j) Professional building management fees, costs and expenses, including costs of office space and storage space required by management for performance of its services;

(k) Legal, accounting, inspection, and other consulting fees (including fees for consultants for services designed to produce a reduction in Operating Expenses or improve the operation, maintenance or state of repair of the Building Complex);

(l) Costs of capital improvements and structural repairs and replacements to the Building Complex to conform to changes subsequent to the date of issuance of the shell and core certificate of occupancy for the Building in any Applicable Laws (herein "Required Capital Improvements"); and the costs of any capital improvements and structural repairs and replacements designed primarily to reduce Operating Expenses (herein "Cost Savings Improvements"). Expenditures for Required

Capital Improvements and Cost Savings Improvements will be amortized at a market rate of interest over the useful life of such capital improvement (as determined by Landlord's Accountants); however, the amortized amount of any Cost Savings Improvement in any year will be equal to the estimated resulting reduction in Operating Expenses; and

(m) Costs incurred for Landlord's Accountants including costs of any experts and consultants engaged to assist in making the computations;

“Operating Expenses” do not include:

(i) Costs of work, including painting and decorating, which Landlord performs for any tenant other than work of a kind and scope which Landlord is obligated to furnish to all tenants whose leases contain a rental adjustment provision similar to this one;

(ii) Costs of repairs or other work occasioned by fire, windstorm or other insured casualty to the extent of insurance proceeds received;

Building; (iii) Leasing commissions, advertising expenses and other costs incurred in leasing space in the

(iv) Costs of repairs or rebuilding necessitated by condemnation;

(v) Interest on borrowed money or debt amortization, except as specifically set forth above;

(vi) Depreciation on the Building Complex

(vii) Costs of repair or replacement made necessary by fire, other casualty, or exercise of the right of eminent domain to the extent that Landlord receives insurance proceeds or condemnation awards;

(viii) Advertising and other promotional costs and expenses, attorneys' fees, costs and disbursements and other expenses incurred in negotiating or executing leases or in resolving disputes with other tenants, other occupants, or other prospective tenants or occupants of the Building Complex or any portion thereof, collecting rents or otherwise enforcing leases of other tenants of the Building Complex or any portion thereof;

(ix) Costs and expenses of special services rendered to particular tenants of the Building Complex or any portion thereof or that exclusively benefit another tenant or tenants of the Building Complex or any portion thereof, including, without limitation, costs of tenant installations, decorating expenses, redecorating expenses or constructing improvements or alterations to any tenant space, and the cost of any janitorial cleaning service or security services provided to other tenants which exceed the standard of that provided to Tenant;

(x) Costs of electrical energy furnished and metered directly to and required to be paid by tenants of the Building Complex or any portion thereof or for which Landlord is reimbursed by tenants as additional rental over and above any such tenant's base rental or pass through of operating costs;

(xi) Except for the amortization of the cost of capital investment items which are primarily for the purpose of reducing Operating Expenses, Operating Expenses shall include no cost or expenditure that would be classified as a capital expense under generally accepted accounting principles consistently applied (all such capital expenditures which are primarily for the purpose of reducing Operating Expenses shall be amortized over the useful life of the capital improvement, as determined in accordance with generally accepted accounting principles consistently applied, but in no event to extend beyond the reasonable life of the Building, and the amount to be included in Operating Expenses in any calendar year shall be the lesser of (a) the amortized amount, determined in accordance with the foregoing, or (b) the actual or, if not reasonably obtainable, the reasonably estimated reduction in Operating Expenses resulting from the capital improvement during the same calendar year;

(xii) Depreciation, amortization and other non cash Items;

- (xiii) Costs and expenses incurred by Landlord for which Landlord is actually reimbursed by parties other than tenants of the Building Complex, including, without limitation, insurance proceeds;
- (xiv) Costs and expenses attributable to the initial construction of the any improvement in the Building Complex (including correcting initial construction defects);
- (xv) Overhead and profit increment paid to subsidiaries or affiliates of Landlord for services on or to the Building Complex or any portion thereof, to the extent that the costs of such services exceed the costs of comparable services rendered by unrelated entities;
- (xvi) Finance and debt service fees for the Building Complex or any portion thereof and rental under any ground or underlying lease or leases for the Building Complex or any portion thereof,
- (xvii) Landlord's general overhead except as it directly relates to the operation, management, maintenance, repair and security of the Building;
- (xviii) Any compensation paid to clerks, attendants or other persons in commercial concessions operated by Landlord;
- (xix) Costs and expenses for items and services for which Tenant reimburses Landlord or pays third persons, to the extent of such reimbursement or payment;
- (xx) Costs, fines or penalties incurred due to violations by Landlord of any governmental rule or authority, other than any such cost, fine or penalty (not otherwise paid by Tenant) incurred due to any violation caused by any act or omission of Tenant, its employees or agents;
- (xxi) Costs of wages, salaries, or other compensation paid to any executive employees of Landlord above the grade of "Property Manager" or paid to employees of Landlord who are not employed full time, on site at the Building Complex; provided, however, if an employee of Landlord works on several buildings within the area, including the Building, the costs and expenses connection with such employee shall be allocated among such buildings by Landlord in accordance with reasonable and consistent criteria;
- (xxii) Costs and expenses incurred in leasing air conditioning systems, elevators or other equipment ordinarily considered to be of a capital nature, except for the component of any such equipment rental representing reasonable charges for maintenance of such items;
- (xxiii) Any costs or expenses incurred in compliance with new or revised federal or state laws or municipal ordinances, or codes or regulations promulgated under any of the same, requiring modification only to any areas of the Building leased to any tenant, including Tenant;
- (xxiv) Any expenses for repairs or maintenance which are covered by warranties and service contracts, to the extent such maintenance and repairs are made at no cost to Landlord;
- (xxv) Any costs representing any amount paid for services and materials to a related person, firm, or entity to the extent such amount exceeds the amount that would be paid for such services or materials at the then existing market rates to an unrelated person, firm or corporation;
- (xxvi) The cost of overtime or other incremental/additional expenses made necessary by reason of Landlord's defaults under this Lease;
- (xxvii) Any amounts payable by Landlord by way of indemnity or for damages or which constitutes a fine or penalty, including interest or penalties for any late payment;
- (xxviii) Repairs, alterations, and general maintenance paid by proceeds of insurance and repairs necessitated by violations of law in effect as of the date of the Lease;
- (xxix) Repairs, alterations, and general maintenance necessitated by the negligence or willful misconduct of Landlord or its agents, employees, or contractors or repairs, alterations, and general maintenance necessitated by the negligence or willful misconduct of any other tenant

or occupant of the Building Complex or of any of their respective agents, employees, contractors, invitees, or licensees; or

(xxx) Costs and expenses associated with any health, athletic or recreational club of the Building Complex.

To the extent that employees, utilities or other services or costs are attributable to the Building and other buildings on a common basis or are provided for Common Areas, such Operating Expenses shall be reasonably prorated by Landlord to reflect costs to be allocated hereunder to the Building. If any lease entered into by Landlord with any tenant in the Building is on a so-called "net" basis, or provides for a separate basis of computation for any Operating Expenses with respect to its leased premises, Landlord's Accountants may modify the computation of Base Operating Expenses, Rentable Area, and Operating Expenses for a particular Operating Expense Year to eliminate or modify any expenses which are paid for in whole or in part by such tenant. If the Rentable Area is not fully occupied during any particular Operating Expense Year, Landlord's Accountants may adjust those Operating Expenses which are affected by occupancy for the particular Operating Expense Year to reflect 100% occupancy. Furthermore, in making any computations contemplated hereby, Landlord's Accountants may make such other modifications to the computations as are required in their judgment to achieve the intention of the parties hereto.

6.2 Additional Payment. If any increase occurs in Operating Expenses for any Operating Expense Year during the Term in excess of the Base Operating Expenses, Tenant shall pay Landlord Tenant's Pro Rata Share of the amount of such increase (less Estimated Payments, if any, previously made by Tenant for such year).

6.3 Estimated Payments. During each Operating Expense Year beginning with the first month of the second Operating Expense Year and continuing each month thereafter throughout the Term, Tenant shall pay Landlord, at the same time as Base Rent is paid, an amount equal to 1/12 of Landlord's estimate of Tenant's Pro Rata Share of any projected increases in Operating Expenses for the particular Operating Expense Year in excess of Base Operating Expenses ("Estimated Payment").

6.4 Annual Adjustments.

(1) Following the end of each Operating Expense Year, including the first Operating Expense Year, Landlord shall submit to Tenant a statement setting forth the exact amount of Tenant's Pro Rata Share of the increase, if any, of the Operating Expenses for the Operating Expense Year just completed over the Base Operating Expenses. Beginning with the statement for the second Operating Expense Year, each statement shall set forth the difference, if any, between Tenant's actual Pro Rata Share of the increase in Operating Expenses for the Operating Expense Year just completed and the estimated amount for such Operating Expense Year. Each statement shall also set forth the projected increase, if any, in Operating Expenses for the new Operating Expense Year over Base Operating Expenses and the corresponding increase or decrease in Tenant's monthly Rent for such new Operating Expense Year above or below the Rent paid by Tenant for the immediately preceding Operating Expense Year.

(2) To the extent that Tenant's Pro Rata Share of the increase in Operating Expenses for the period covered by a statement is different from the Estimated Payment during the Operating Expense Year just completed, Tenant shall pay Landlord the difference within 30 days following receipt by Tenant of the statement or receive a credit against the next due Rent, as the case may be. Until Tenant receives a statement, Tenant's Estimated Payment for the new Operating Expense Year shall continue to be paid at the prior Estimated Payment, but Tenant shall commence payment of Rent based on the new Estimated Payment beginning on the first day of the month following the month in which Tenant receives the statement. Tenant shall also pay Landlord or deduct from the Rent, as the case may be, on the date required for the first payment, as adjusted, the difference, if any, between the Estimated Payment for the new Operating Expense Year set forth in the statement and the Estimated Payment actually paid during the new Operating Expense Year. If, during any Operating Expense Year, there is a change in the information on which Tenant is then making its Estimated Payments so that the prior estimate is no longer accurate, Landlord may revise the estimate and there shall be such adjustments made in the monthly Rent on the first day of the month following notice to Tenant as shall be necessary by either increasing or decreasing, as the case may be, the amount of monthly Rent then being paid by Tenant for the balance of the Operating Expense Year.

6.5 Miscellaneous. In no event will any decrease in Rent pursuant to any provision hereof result in a reduction of Rent below the Base Rent. Delay by Landlord in submitting any statement for any Operating Expense Year does not affect the provisions of this Section or constitute a waiver of

Landlord's rights for such Operating Expense Year or any subsequent Operating Expense Years.

6.6 Dispute. If Tenant disputes an adjustment submitted by Landlord or a proposed increase or decrease in the Estimated Payment, Tenant shall give Landlord notice of such dispute within 30 days after Tenant's receipt of the adjustment. If Tenant does not give Landlord timely notice, Tenant waives its right to dispute the particular adjustment. If Tenant timely objects, Tenant may engage its own certified public accountants ("Tenant's Accountants") to verify the accuracy of the statement complained of or the reasonableness of the estimated increase or decrease. The person conducting the examination on behalf of Tenant shall enter into a confidentiality agreement satisfactory to Landlord. If Tenant's Accountants determine that an error has been made, Landlord's Accountants and Tenant's Accountants shall endeavor to agree upon the matter, failing which such matter shall be submitted to an independent certified public accountant selected by Landlord, with Tenant's reasonable approval, for a determination which will be conclusive and binding upon Landlord and Tenant. All costs incurred by Tenant for Tenant's Accountants shall be paid for by Tenant unless Tenant's Accountants disclose an error, acknowledged by Landlord's Accountants (or found to have occurred through the above independent determination), of more than ten percent (10%) in the computation of the total amount of Operating Expenses, in which event Landlord shall pay the reasonable costs incurred by Tenant to obtain such audit. Notwithstanding the pendency of any dispute, Tenant shall continue to pay Landlord the amount of the Estimated Payment or adjustment determined by Landlord's Accountants until the adjustment has been determined to be incorrect. If it is determined that any portion of the Operating Expenses were not properly chargeable to Tenant, then Landlord shall promptly credit or refund the appropriate sum to Tenant.

7. SERVICES.

7.1 Subject to the provisions below, Landlord agrees, without charge, in accordance with standards of other similar first class, multi-tenant office buildings in the metropolitan Denver, Colorado area: (1) to furnish running water at (a) those points of supply for general use of tenants of the Building, and (b) to the "kitchenette" area within the Premises (provided that there is no excessive water use therein); (2) during Ordinary Business Hours to furnish, the interior Common Areas heated or cooled air (as applicable), electrical current, janitorial services, and maintenance; (3) during Ordinary Business Hours, subject to Force Majeure Event(s), to furnish heated or cooled air to the Premises for standard office use to the extent required in order to keep the temperature in the Premises within the range from 68 degrees Fahrenheit to 75 degrees Fahrenheit, subject to Force Majeure Event(s) and provided the recommendations of Landlord's engineer regarding occupancy and use of the Premises are complied with by Tenant, to provide, during Ordinary Business Hours, the general use of passenger elevators for ingress and egress to and from the Premises (at least one such elevator shall be available at all times except in the case of emergencies or repair); (5) to provide janitorial services for the Premises to the extent of the Initial Tenant Finish (including window washing of the outside of exterior windows); and (6) to cause electric current to be supplied to the Premises for Tenant's Standard Electrical Usage (items (1) through (6) are collectively called "Services"). "Tenant's Standard Electrical Usage" means electricity for normal office purposes including fluorescent and incandescent lighting (including task and task ambient lighting systems) and for normal office equipment, including duplicating (reproduction) machines and personal computers (provided they do not require any additional voltage, special electrical or HVAC requirements beyond the systems existing in the Premises), and internal communications systems. "Ordinary Business Hours" means 8:00 a.m. to 6:00 p.m. Monday through Friday and 9:00 a.m. to 12:00 p.m. on Saturdays, Legal Holidays excepted. "Legal Holidays" mean New Year's Day, Martin Luther King Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and such other national holidays hereafter established by the United States Government.

7.2 "Excess Usage" means any usage of electricity (1) during other than Ordinary Business Hours; (2) in an amount in excess of Tenant's Standard Electrical Usage; or (3) for Special Equipment or for standard HVAC services during other than Ordinary Business Hours. "Special Equipment" means (a) any equipment consuming more than 0.5 kilowatts at rated capacity, (b) any equipment requiring a voltage other than 120 volts, single phase, or (c) equipment that requires the use of self-contained HVAC units. If Tenant desires Excess Usage, Landlord will use reasonable efforts to supply the same. Tenant shall reimburse Landlord for all Landlord's costs of providing services for Excess Usage, including costs for materials, additional wear and tear on equipment, utilities, and labor (including fringe and overhead costs). Computation of such costs will be made by Landlord's engineer, based on his engineering survey of Tenant's Excess Usage. Tenant shall also reimburse Landlord for all costs of supplementing the Building HVAC System and/or extending or supplementing any electrical service, as Landlord determines is necessary, as a result of Tenant's Excess Usage. Prior to installation or use of Special Equipment or operation of the Premises for extended hours on an ongoing basis, Tenant shall notify Landlord of such intended installation or use and obtain Landlord's consent. Not less than 48 hours prior

notice shall be given Landlord of Tenant's request for such services. Tenant may request that Landlord install at Tenant's cost a check meter and/or flow meter to determine the cost of Tenant's Excess Usage. Tenant shall also pay the cost of replacing light bulbs and/or tubes and ballast used in all lighting in the Premises other than that provided by Landlord to all tenants of the Building.

7.3 If Tenant requires janitorial services other than those included as standard Services, Tenant shall separately pay for such services monthly upon billings by Landlord, or Tenant shall, at Landlord's option, separately contract for such services with the same company used by Landlord to furnish janitorial services to the Building.

7.4 Landlord may discontinue, reduce, or curtail Services (either temporarily or permanently) when necessary due to accident, repairs, alterations, strikes, lockouts, Applicable Laws, or any other happening beyond Landlord's reasonable control. Landlord is not liable for damages to Tenant or any other party as a result of any interruption, reduction, or discontinuance of Services (either temporary or permanent) nor shall the occurrence of any such event be construed as an eviction of Tenant, cause or permit an abatement, reduction or setoff of Rent, or operate to release Tenant from Tenant's obligations,

7.5 Tenant shall promptly notify Landlord of any accidents or defects in the Building of which Tenant becomes aware, including defects in pipes, electric wiring, and HVAC equipment, and of any condition which may cause injury or damage to the Building or any person or property therein.

8. QUIET ENJOYMENT. So long as an Event of Default does not exist, Tenant is entitled to the quiet enjoyment and peaceful possession of the Premises subject to the provisions of this Lease. Landlord shall under no circumstances be held responsible for restriction or disruption of access to the Building from public streets caused by construction work or other actions taken by or on behalf of governmental authorities, or for actions taken by other tenants (their employees, agents, visitors, contractors or invitees), or any other cause not entirely within Landlord's direct control, and same shall not constitute a constructive eviction of Tenant nor give rise to any right or remedy of Tenant against Landlord of any nature or kind. This covenant of quiet enjoyment is in lieu of any covenant of quiet enjoyment provided or implied by law, and Tenant expressly waives any such other covenant of quiet enjoyment to the extent broader than the covenant contained in this Article.

9. DEPOSIT. Tenant has deposited with Landlord the sum specified in Section 1.6 hereof as a security deposit, receipt of which is hereby acknowledged. The Deposit shall be held by Landlord without liability for interest as security for the faithful performance by Tenant of all of the terms of this Lease to be observed and performed by Tenant.

9.1 USE AND RETURN OF DEPOSIT. If any of the Rents herein reserved to Landlord shall be overdue and unpaid or should Landlord make payments on behalf of the Tenant, or Tenant shall fail to perform any of the terms of this Lease, then Landlord may, at its option and without prejudice to any other remedy which Landlord may have on account thereof appropriate and apply the entire Deposit (or so much thereof as may be necessary to compensate Landlord) toward the payment of Rent or other charges due Landlord, or loss or damage sustained by Landlord due to such breach on the part of Tenant. Tenant shall forthwith upon demand restore the Deposit to the original sum deposited. Should Tenant comply with all of said terms and promptly pay all of the Rents as they fall due, the Deposit shall be returned in full to Tenant at the end of the term.

9.2 BANKRUPTCY. In the event of bankruptcy or other debtor-creditor proceedings against Tenant, the Deposit shall be deemed to be applied first to the payment of Rent and other charges due Landlord for all periods prior to filing of such proceedings.

9.3 TRANSFER OF DEPOSIT. Landlord may deliver the funds deposited hereunder by Tenant to the purchaser of Landlord's interest in the Premises in the event that such interest be sold and thereupon, provided that the new owner of Landlord's interest in the Premises acknowledges receipt of the Deposit, and agrees, in writing, to assume Landlord's obligations in this Article 9. Landlord shall be discharged from any further liability with respect to the Deposit, and this provision shall also apply to any subsequent transferees. Landlord may accomplish such transfer by giving the purchaser a credit against the purchase price or obligating the purchaser to be liable for the Deposit in the sale documents.

10. CHARACTER OF OCCUPANCY. Tenant shall occupy the Premises for the Permitted Use and for no other purpose, and use it in a careful, safe, and proper manner and pay on demand for any damage to the Premises caused by misuse or abuse by Tenant, Tenant's agents or employees, or any other person entering upon the Premises under express or implied invitation of Tenant (collectively, "Tenant's Agents").

Tenant, at Tenant's expense, shall comply with all applicable federal, state, city, quasi governmental and utility provider laws, codes, rules, and regulations now or hereafter in effect ("Applicable Laws") which impose any duty upon Landlord or Tenant with respect to the occupation or alteration of the Premises. Tenant shall not commit or permit waste or any nuisance on or in the Premises. Tenant agrees not to store, keep, use, sell, dispose of or offer for sale in, upon or from the Premises any article or substance prohibited by any insurance policy covering the Building Complex nor shall Tenant keep, store, produce or dispose of on, in or from the Premises or the Building Complex any substance which may be deemed an infectious waste or hazardous substance under any Applicable Laws, except customary office and cleaning supplies. &nb sp:Landlord has received no notification from any governmental authority that hazardous substances (as defined under U.S. federal environmental laws) have been stored or generated at, released or discharged from or are present in the Premises in violation of applicable law.

Notwithstanding the foregoing, if, during the Initial Term, it is discovered and established to Landlord's reasonable satisfaction that (a) hazardous materials (as defined under U.S. federal law) are present in the Premises in amounts and a manner that violates applicable law (the "Violating Substances"), and (2) the Violating Substances were present in the Premises on or prior to the Effective Date, Landlord shall bear the reasonable cost of the removal of the Violating Substances and none of the cost thereof shall be included in Tenant's Pro Rata Share.

11. MAINTENANCE, ALTERATIONS AND REENTRY BY LANDLORD.

11.1 Landlord will (i) make repairs and replacements to HVAC, mechanical, life safety and electrical systems in the Premises (to the extent such systems are Building standard) deemed necessary by Landlord for normal operations of the Building Complex; and (ii) provide upkeep, maintenance, and repairs to all Common Areas. Except as provided in this Section or otherwise expressly required in this Lease, Landlord is not required to make improvements or repairs to the Premises during the Term.

11.2 Landlord or Landlord's agents may at any time enter the Premises (upon reasonable prior notice, except in emergency situations) for examination and inspection, or to perform, if Landlord elects, any obligations of Tenant which Tenant fails to perform or such cleaning, maintenance, janitorial services, repairs, replacements, additions, or alterations as Landlord deems necessary for the safety, improvement, or preservation of the Premises or other portions of the Building Complex or as required by Applicable Laws. Landlord or Landlord's agents may also show the Premises to prospective purchasers and Mortgagees, at any time, and from time to time; and to prospective tenants during the last nine (9) months of the Initial Term (unless Tenant properly exercises its renewal option, as set forth in Article 36, below), in which event Landlord and Landlord's agents shall not have the right to show the Premises to prospective tenants until the last nine (9) months of the Renewal Period (as defined in Article 35, below). Notwithstanding the foregoing, if an Event of Default exists, Landlord may show the Premises to prospective tenants at any time, and from time to time. Any such reentry does not constitute an eviction or entitle Tenant to abatement of Rent. Landlord may make such alterations or changes in other portions of the Building Complex as Landlord desires so long as such alterations and changes do not unreasonably interfere with Tenant's occupancy of the Premises. Landlord may use the Common Areas and one or more street entrances to the Building Complex as may be necessary in Landlord's judgment to complete such work.

12 ALTERATIONS AND REPAIRS BY TENANT.

12.1 Tenant shall not make any alterations to the Premises during the Term, including installation of equipment or machinery which requires modifications to existing electrical outlets or increases Tenant's usage of electricity beyond Tenant's Standard Electrical Usage (collectively "Alterations") without in each instance first obtaining the written consent of Landlord, which shall not be unreasonably withheld or delayed. Landlord's consent or approval of the plans, specifications and working drawings for any Alterations shall not constitute any warranty or representation by Landlord (and shall not impose any liability on Landlord) as to their completeness, design sufficiency, or compliance with Applicable Laws. Tenant shall at its cost: pay all engineering and design costs incurred by Landlord as to all Alterations, obtain all governmental permits and approvals required, and cause all Alterations to be completed in compliance with Applicable Laws and requirements of Landlord's insurance. All such work relating to Alterations shall be performed in a good and workmanlike manner, using new materials and equipment at least equal in quality to the Initial Tenant Finish. All Alterations repair and maintenance work performed by Tenant shall be done at Tenant's expense by Landlord's employees or, with Landlord's prior consent and subject to any conditions imposed by Landlord, by other persons requested by Tenant; however, if such work is not performed by Landlord's employees, Tenant shall pay Landlord a reasonable supervisory fee upon receipt of an invoice. If Landlord authorizes such persons to perform work, Tenant shall deliver to Landlord prior to commencement certificates issued by insurance companies qualified to do business in the state in which the Premises are located, evidencing that worker's compensation, public liability insurance, and property damage insurance (in amounts, with companies and on forms satisfactory to Landlord) are in force and maintained by all

contractors and subcontractors engaged to perform such work. All liability policies shall name Landlord, Building Manager, and Mortgagee as additional insureds. Each certificate shall provide that the insurance may not be cancelled or modified without 10 days' prior written notice to Landlord and Mortgagee. Landlord also has the right to post notices in the Premises in locations designated by Landlord stating that Landlord is not responsible for payment for such work and containing such other information as Landlord deems necessary. All such work shall be performed in a manner which does not unreasonably interfere with Landlord or other tenants of the Building, or impose additional expense upon Landlord in the operation of the Building Complex. Notwithstanding the foregoing, and without modifying or otherwise limiting the provisions of this Section 12.1, Landlord's consent shall not be required for any Alteration that is solely of a cosmetic nature and that (a) is not visible from outside the Premises, (b) will not affect the systems and/or structure of the Building, (c) is solely at the expense of Tenant, and (d) cost of which is \$25,000.00 or less.

12.2 Tenant shall keep the Premises and Landlord Furniture (as defined in Article 31, below) in as good order, condition, and repair and in an orderly state, as on the Commencement Date, loss by fire or other casualty or ordinary wear excepted.

12.3 All Alterations, including partitions, paneling, carpeting, drapes or other window coverings, and light fixtures (but excluding Tenant Furniture) are deemed a part of the real estate and the property of Landlord and remain upon and be surrendered with the Premises at the end of the Term, whether by lapse of time or otherwise. "Tenant Furniture" shall mean movable office furniture not attached to the Building that is (a) brought into the Premises by Tenant and (b) not Landlord Furniture (as defined in Article 36, below). Notwithstanding the foregoing, at Landlord's discretion, Landlord may require the Tenant, at Tenant's sole cost and expense to remove cable installed by Tenant, whereupon Tenant, at Tenant's sole cost and expense shall repair any damage caused to the Premises or the Building by such removal.

13. CONSTRUCTION LIENS. Tenant shall pay for all work done on the Premises by Tenant or at its request (other than the Initial Tenant Finish) of a character which may result in liens on Landlord's or Tenant's interest and Tenant will keep the Premises free of all construction liens, and other liens on account of such work. Tenant indemnifies, defends, and saves Landlord and all Mortgagees harmless from all liability, loss, damage, or expenses, including attorneys' fees, on account of any claims of laborers, materialmen or others for work performed or for materials or supplies furnished to Tenant or persons claiming under Tenant. If any lien is recorded against the Premises or Building or any suit affecting title thereto is commenced as a result of such work, or supplying of materials, Tenant shall cause such lien to be removed of record within 5 days after notice from Landlord. If Tenant desires to contest any claim, Tenant must furnish Landlord adequate security of at least 150% of the amount of the claim, plus estimated costs and interest and, if a final judgment establishing the validity of any lien is entered, Tenant shall immediately pay and satisfy the same. If Tenant fails to proceed as aforesaid, Landlord may pay such amount and any costs, and the amount paid, together with reasonable attorneys' fees incurred, shall be immediately due Landlord upon notice.

14. SUBLETTING AND ASSIGNMENT.

14.1 Tenant shall not sublet any part of the Premises nor assign or otherwise transfer this Lease or any interest herein (sometimes referred to as "Transfer," and the subtenant or assignee may be referred to as "Transferee") without the consent of Landlord first being obtained, which consent will not be unreasonably withheld provided that: (1) Tenant complies with the provisions of Section 14.4; (2) Landlord declines to exercise its rights under Section 14.3; (3) the Transferee is engaged in a business and the portion of the Premises will be used for the Permitted Use in a manner which is in keeping with the then standards of the Building and does not conflict with any exclusive use rights granted to any other tenant of the Building Complex; (4) the Transferee has reasonable financial worth in light of the responsibilities involved; (5) an Event of Default does not exist at the time Tenant makes its request; (6) the Transferee is not a governmental or quasi-governmental agency; (7) the Transferee is not a tenant or currently negotiating a lease with Landlord in the Building Complex, and provided that Landlord controls sufficient available space in the Building Complex to accommodate such Transferee; and (8) the rent to be paid by the Transferee is not less than the Rent paid by Tenant for such space and is not less than 50% of the rental rate then being offered by Landlord for similar space in the Building. Transfer includes a sale by Tenant of substantially all of its assets or stock if Tenant is a publicly traded corporation, a merger of Tenant with another corporation, the transfer of 50% or more of the stock in a corporate tenant whose stock is not publicly traded, or transfer of 50% or more of the beneficial ownership interests in a partnership or limited liability company tenant.

14.2 Following any Transfer in accordance with this Article 14, Landlord may, after default by Tenant, collect rent from the Transferee or occupant and apply the net amount collected to the Rent, but no Transfer or collection will be deemed an acceptance of the Transferee or occupant as Tenant or

release Tenant from its obligations. Consent to a Transfer shall not relieve Tenant from obtaining Landlord's consent to any other Transfer. Notwithstanding Landlord's consent to a Transfer, Tenant shall continue to be primarily liable for its obligations. If Tenant collects any rent or other amounts from a Transferee in excess of the Rent for any monthly period, Tenant shall pay Landlord the excess monthly, as and when received.

14.3 Notwithstanding the above, if Tenant requests Landlord's consent to sublet 25% or more of the Premises, Landlord may refuse to grant such consent in its sole discretion and terminate this Lease as to the portion of the Premises with respect to which such consent was requested; provided, however, if Landlord does not consent and elects to terminate the Lease as to such portion, Tenant may within 15 days after notice from Landlord to this effect withdraw Tenant's request for consent. If such termination occurs, it shall be effective on the date designated in a notice from Landlord and shall not be more than 30 days following such notice.

14.4 Tenant must notify Landlord at least 60 days prior to the desired date of the Transfer ("Tenant's Notice"). Tenant's Notice shall describe the portion of the Premises to be transferred and the terms and conditions. Landlord has, without obligation, 30 days following receipt of Tenant's Notice to sublet the space on Tenant's behalf or to exercise its rights pursuant to Section 14.3 if Tenant's Notice discloses that 25% or more of the Premises is involved. If the space covered by Tenant's Notice is subleased by Landlord, rent and other sums due from the subtenant will be paid to Tenant directly and Landlord has no responsibility for the performance by such subtenant of its obligations under its sublease with Tenant. If Landlord is unwilling or unable to locate a subtenant (and, if applicable, declines to exercise its rights under Section 14.3), Landlord will notify Tenant not later than 60 days after receipt of Tenant's Notice and Tenant shall be free to sublet the specified portion of the Premises to any third party on terms substantially identical to those described in Tenant's Notice, subject to Landlord's consent as set forth above. If Tenant does not sublet such portion of the Premises within 60 days following Landlord's notice to Tenant, Tenant must reoffer the Premises to Landlord in accordance with the provisions hereof prior to subleasing to a third party.

14.5 All documents utilized by Tenant to evidence a Transfer are subject to approval by Landlord. Tenant shall pay Landlord's expenses, including reasonable attorneys' fees, of determining whether to consent and in reviewing and approving the documents. Tenant shall provide Landlord with such information as Landlord reasonably requests regarding a proposed Transferee, including financial information.

14.6 If a trustee or debtor in possession in bankruptcy is entitled to assume control over Tenant's rights under this Lease and assigns such rights to any third party notwithstanding the provisions hereof, the rent to be paid by such party shall be increased to the current Base Rent (if greater than that being paid for the Premises) which Landlord charges for comparable space in the Building as of the date of such third party's occupancy. If Landlord is entitled under the Bankruptcy Code to "Adequate Assurance" of future performance of this Lease, the parties agree that such term includes the following:

- (1) Any assignee shall have a net worth that is satisfactory to Landlord in its sole discretion.
- (2) The assignee must assume and agree to be bound by the provisions of this Lease.

15 **DAMAGE TO PROPERTY.** Tenant agrees Landlord is not liable for any injury or damage, either proximate or remote, occurring through or caused by fire, water, steam, or any repairs, alterations, injury, accident, or any other cause to (a) the Premises, (b) any portion of the Landlord Furniture or (c) any furniture, fixtures, Tenant improvements, or other personal property of Tenant kept or stored in the Premises, or in other parts of the Building Complex ("Tenant's Personal Property"), whether by reason of the negligence or default of Landlord, other occupants, any other person, or otherwise; and the keeping or storing of all property of Tenant in the Premises and Building Complex is at the sole risk of Tenant. Notwithstanding the foregoing, and subject to Sections 18.6 and 27.14, below, Landlord shall be liable for injury or damage to the Premises and Landlord Furniture (but not to the Tenant's Personal Property) to the extent that such injury or damage is caused solely and exclusively by Landlord's GN Liability (as hereinafter defined). "Landlord's GN Liability" means injury or damage caused by the gross negligence or willful misconduct of Landlord or Landlord's administrative agent(s).

16. INDEMNITY.

16.1 For the purposes of this Section:

"Claim" includes any action, cause of action, demand, counterclaim, cross claim or third party claim. Claim includes every kind and nature of claim whatsoever, known or unknown, fixed or contingent, whether in law or in equity.

"Liability or Cost" means any liabilities, losses, costs (including court costs), reasonable attorney's fees, obligations, awards, judgments, fines, penalties, damages, expenses, deficiencies or other reasonable charges whether or not the indemnified party was advised of the possibility of such damages.

"Tenant Party" means Tenant, the Tenant's subtenants, or provided that such person is acting within the scope of its authority or employment, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

"Landlord Party" means Landlord and its members, officers, directors, agents, employees and Landlord's affiliates.

"Tenant Indemnified Losses" means the alleged Liability or Cost of a Landlord Party attributable to bodily injury or loss of use or destruction of, injury or damage to property and/or monetary loss arising out of (a) performance or failure to perform under this Lease by a Tenant Party; (b) intentional misconduct and/or (c) negligent acts or omissions of the any Tenant Party.

Subject to Section 18.6, below, Tenant hereby agrees, to the fullest extent permitted by law, to indemnify defend and hold harmless each Landlord Party against Tenant Indemnified Losses.

"Landlord Indemnified Losses" means the alleged Liability or Cost of Tenant caused by Landlord's GN Liability.

Subject to Section 18.6 and Section 27.14, below, Landlord hereby agrees, to the fullest extent permitted by law, to indemnify defend and hold harmless Tenant against Landlord Indemnified Losses.

16.2 Tenant shall maintain throughout the Term a commercial general liability policy, including protection against death, personal injury and property damage, issued by an insurance company qualified to do business in the state in which the Premises are located, with a single limit of not less than \$1,000,000.00. Such policy shall name Landlord, Building Manager, and Mortgagee as additional insureds, be primary to any other similar insurance of such additional insureds, and provide that it may not be cancelled or modified without at least 20 days' prior notice to Landlord and Mortgagee. The minimum limits of such insurance do not limit the liability of Tenant hereunder. Prior to occupancy of the Premises, and prior to expiration of the then-current policy, Tenant shall deliver certificates evidencing that insurance required under this Lease is in effect.

17. SURRENDER AND NOTICE. Upon the expiration or other termination of this Lease, Tenant shall immediately quit and surrender to Landlord the Premises broom clean, in good order and condition, ordinary wear and tear and loss by fire or other casualty excepted, and Tenant shall remove all of its movable furniture and other effects, all telephone cable and related equipment in the Building installed by Tenant, and such Alterations, as Landlord requires. If Tenant fails to timely vacate the Premises as required, Tenant is responsible to Landlord for all resulting costs and damages of Landlord, including any amounts paid to third parties who are delayed in occupying the Premises.

18. INSURANCE, CASUALTY, AND RESTORATION OF PREMISES.

18.1 Landlord shall maintain property insurance coverage at least as broad as ISO Special Form Coverage against risks of direct physical loss or damage (commonly known as "all risk") for the full replacement cost of the Building Complex (excluding tenants' personal property and equipment).

18.2 Tenant shall maintain throughout the Term insurance coverage at least as broad as ISO Special Form Coverage against risks of direct physical loss or damage (commonly known as "all risk") for the full replacement cost of Tenant's property and betterments in the Premises, including tenant finish in excess of the Initial Tenant Finish.

18.3 If the Building is damaged by fire or other casualty which renders the Premises wholly untenable and the damage is so extensive that an architect selected by Landlord certifies in writing to Landlord and Tenant within 60 days of said casualty that the Premises cannot, with the exercise of reasonable diligence, be made fit for occupancy within 180 working days from the happening thereof, then, at the option of Landlord or Tenant exercised in writing to the other within 30 days of such determination, this

Lease shall terminate as of the occurrence of such damage. In the event of termination, Tenant shall pay Rent duly apportioned up to the time of such casualty and forthwith surrender the Premises and all interest. If Tenant fails to do so, Landlord may reenter and take possession of the Premises and remove Tenant. If, however, the damage is such that the architect certifies that the Premises can be made tenantable within such 180-day period or neither Landlord or Tenant elects to terminate the Lease despite the extent of damage, then the provisions below apply.

18.4 If the Premises are damaged by fire or other casualty that does not render it wholly untenable or require a repair period in excess of 180 days, Landlord shall with reasonable promptness except as hereafter provided repair the Premises to the extent of the Initial Tenant Finish.

18.5 If the Building is damaged (though the Premises may not be affected, or if affected, can be repaired within 180 days) and within 60 days after the damage Landlord decides not to reconstruct or rebuild the Building, then, notwithstanding anything contained herein, upon notice to that effect from Landlord within said 60 days, Tenant shall pay the Rent apportioned to such date, this Lease shall terminate from the date of such notice, and both parties discharged from further obligations except as otherwise expressly provided.

18.6 Landlord and Tenant waive all rights of recovery against the other and its respective officers, partners, members, agents, representatives, and employees for loss or damage to its real and personal property kept in the Building Complex which is capable of being insured against under ISO Special Form Coverage, or for loss of business revenue or extra expense arising out of or related to the use and occupancy of the Premises. Tenant also waives all such rights of recovery against Building Manager. Each party shall, upon obtaining the property damage insurance required by this Lease, notify the insurance carrier that the foregoing waiver is contained in this Lease and use reasonable efforts to obtain an appropriate waiver of subrogation provision in the policies.

18.7 Rent shall abate during any period of repair and restoration to the extent of any recovery by Landlord under its loss of rent insurance related to the Premises in the same proportion that the part of the Premises rendered untenable bears to the whole.

19 CONDEMNATION. If the Premises or substantially all of it or any portion of the Building Complex which renders the Premises untenable is taken by right of eminent domain, or by condemnation (which includes a conveyance in lieu of a taking), this Lease, at the option of either Landlord or Tenant exercised by notice to the other within 30 days after the taking, shall terminate and Rent shall be apportioned as of the date of the taking. Tenant shall forthwith surrender the Premises and all interest in this Lease, and, if Tenant fails to do so, Landlord may reenter and take possession of the Premises. If less than all the Premises is taken, Landlord shall promptly repair the Premises as nearly as possible to its condition immediately prior to the taking, unless Landlord elects not to rebuild under Section 18.5. Landlord shall receive the entire award or consideration for the taking.

20. DEFAULT BY TENANT.

20.1 Each of the following events is an "Event of Default":

- (1) Any failure by Tenant to pay Rent on the due date unless such failure is cured within 5 business days after notice by Landlord;
- (2) This Lease or Tenant's interest is transferred whether voluntarily or by operation of law except as permitted in Article 14;
- (3) This Lease or any part of the Premises is taken by process of law and is not released within 15 days after a levy;
- (4) Commencement by Tenant of a proceeding under any provision of federal or state law relating to Insolvency, bankruptcy, or reorganization ("Bankruptcy Proceeding");
- (5) Commencement of a Bankruptcy Proceeding against Tenant, unless dismissed within 60 days after commencement;
- (6) The insolvency of Tenant or execution by Tenant of an assignment for the benefit of creditors; the convening by Tenant of a meeting of its creditors or any significant class thereof for

purposes of effecting a moratorium upon or extension or composition of its debts; or the failure of Tenant generally to pay its debts as they mature, or the occurrence of any of the foregoing with respect to any Guarantor, if any, of Tenant's obligations;

(7) The admission in writing by Tenant (or any general partner of Tenant if Tenant is a partnership), that it is unable to pay its debts as they mature or it is generally not paying its debts as they mature;

(8) Tenant fails to take possession of the Premises on the Commencement Date, unless such failure (including, but not limited to the failure to pay Rent, including all applicable Late Fees, interest and penalties) is cured within 90 days after notice from Landlord;

(9) Tenant fails to perform any of its other obligations and non-performance continues for 30 days after notice by landlord or, if such performance cannot be reasonably had within such 30-day period, Tenant does not in good faith commence performance within such 30-day period and diligently proceed to completion; provided, however, Tenant's right to cure shall not exceed the period provided by Applicable Law;

(10) Any event which is expressly defined as or deemed an Event of Default under this Lease.

20.2 Remedies of Landlord. If an Event of Default occurs, Landlord may then or at any time thereafter, either:

(1) Without further notice except as required by Applicable Laws, reenter and repossess the Premises or any part and expel Tenant and those claiming through or under Tenant and remove the effects of both without being deemed guilty of any manner of trespass and without prejudice to any remedies for arrears of Rent or preceding breach of this Lease. Should Landlord reenter or take possession pursuant to legal proceedings or any notice provided for by Applicable Law, Landlord may, from time to time, without terminating this Lease, relet the Premises or any part, either alone or in conjunction with other portions of the Building Complex, in Landlord's or Tenant's name but for the account of Tenant, for such periods (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 sole discretion, determines and Landlord may collect the rents therefore. Landlord is not in any way responsible or liable for failure to relet the Premises, or any part thereof, or for any failure to collect any rent due upon such reletting. If there is other unleased space in the Building, Landlord may lease such other space without prejudice to its remedies against Tenant. No such reentry or repossession or notice from Landlord shall be construed as an election by Landlord to terminate this Lease unless specific notice of such intention is given Tenant. Acts of maintenance or preservation or efforts to relet the Premises or the appointment of a receiver upon initiative of Landlord to protect Landlord's interest under this Lease shall not constitute a termination of Tenant's contractual liability under this Lease unless written release of liability is given by Landlord to Tenant. Landlord reserves the right following any reentry and/or reletting to exercise its right to terminate this Lease by giving Tenant notice, in which event this Lease will terminate as specified in the notice,

(2) If Landlord takes possession of the Premises without terminating this Lease, Tenant shall pay Landlord (i) the Rent which would be payable if repossession had not occurred, less (ii) the net proceeds, if any, of any reletting of the Premises after deducting all of Landlord's expenses incurred in connection with such reletting, including all repossession costs, brokerage commissions, attorneys' fees, expenses of employees, alteration, and repair costs (collectively "Reletting Expenses"). If, in connection with any reletting, the new lease term extends beyond the Term or the premises covered thereby including other premises not part of the Premises, a fair apportionment of the rent received from such reletting and the Reletting Expenses will be made in determining the net proceeds received from the reletting. In determining such net proceeds, rent concessions will also be apportioned over the term of the new lease. Tenant shall pay such amounts to Landlord monthly on the days on which the Rent would have been payable if possession had not been retaken, and Landlord is entitled to receive the same from Tenant on each such day, or

(3) Give Tenant notice of termination of this Lease on the date specified and, on such date, Tenant's right to possession of the Premises shall cease and the Lease will terminate except as

to Tenant's liability as hereafter provided as if the expiration of the term fixed in such notice were the end of the Term. If this Lease terminates pursuant to this Section, Tenant remains liable to Landlord for damages in an amount equal to the Rent which would have been owing by Tenant for the balance of the Term had this Lease not terminated, less the net proceeds, if any, of reletting of the Premises by Landlord subsequent to termination after deducting Reletting Expenses. Landlord may collect such damages from Tenant monthly on the days on which the Rent would have been payable if this Lease had not terminated and Landlord shall be entitled to receive the same from Tenant on each such day. Alternatively, if this Lease is terminated, Landlord at its option may recover forthwith against Tenant as damages for loss of the bargain and not as a penalty an amount equal to the worth at the time of termination of the excess, if any, of the Rent reserved in this Lease for the balance of the Term over the then Reasonable Rental Value of the Premises for the same period plus all Reletting Expenses. "Reasonable Rental Value" is the amount of rent Landlord can obtain for the remaining balance of the Term.

20.3 Cumulative Remedies. Suits to recover Rent and damages may be brought by Landlord, from time to time, and nothing herein requires Landlord to await the date the Term would expire had there been no Event of Default or termination, as the case may be. Each right and remedy provided for in this Lease is cumulative and non-exclusive and in addition to every other right or remedy now or hereafter existing at law or equity, including suits for injunctive relief and specific performance. The exercise or beginning of the exercise by Landlord of one or more rights or remedies shall not preclude the simultaneous or later exercise by Landlord of other rights or remedies. All costs incurred by Landlord to collect any Rent and damages or to enforce this Lease are also recoverable from Tenant. If any suit is brought because of an alleged breach of this Lease, the prevailing party is also entitled to recover from the other party all reasonable attorneys' fees and costs incurred in connection therewith.

20.4 No Waiver. No failure by Landlord to insist upon strict performance of any provision or to exercise any right or remedy upon a breach thereof, and no acceptance of full or partial Rent during the continuance of any breach constitutes a waiver of any such breach or such provision, except by written instrument executed by Landlord. No waiver shall affect or alter this Lease but each provision hereof continues in effect with respect to any other then existing or subsequent breach thereof.

20.5 Bankruptcy. Nothing contained in this Lease limits Landlord's right to obtain as liquidated damages in any bankruptcy or similar proceeding the maximum amount allowed by law at the time such damages are to be proven, whether such amount is greater, equal to, or less than the amounts recoverable, either as damages or Rent, referred to in any of the preceding provisions of this Section. Notwithstanding anything in this Section to the contrary, any proceeding described in Section 20.1(5), (6), (7) and (8) is an Event of Default only when such proceeding is brought by or against the then holder of the leasehold estate under this Lease.

20.5 Late Payment Charge. Any Rent not paid within 5 days after the due date shall thereafter bear interest at 5 percentage points above the Prime Rate or the highest rate permitted by law, whichever is lower, until paid. Further, if such Rent is not paid within 5 days after notice, Tenant agrees Landlord will incur additional administrative expenses, the amount of which will be difficult to determine; Tenant therefore shall also pay Landlord a late charge for each late payment of 5% of such payment. Any amounts paid by Landlord to cure a default of Tenant which Landlord has the right but not the obligation to do, shall, if not repaid by Tenant within 5 days of demand by Landlord, thereafter bear interest at 5 percentage points above the Prime Rate until paid. "Prime Rate" means that rate announced by Wells Fargo Bank, N.A. as its prime rate on the date closest to the date interest commences.

20.6 Waiver of Jury Trial. Tenant and Landlord waive any right to a trial by jury in suits arising out of or concerning the provisions of this Lease.

21 DEFAULT BY LANDLORD. In the event of any alleged default on the part of Landlord, Tenant shall give notice to Landlord and afford Landlord a reasonable opportunity to cure such default. Such notice shall be ineffective unless a copy is simultaneously also delivered in the manner required in this Lease to any holder of a mortgage and/or deed of trust affecting all or any portion of the Building Complex (collectively, "Mortgagee"), provided that prior to such notice Tenant has been notified (by way of notice of Assignment of Rents and Leases, or otherwise), of the address of a Mortgagee. If Landlord fails to cure such default within the time provided, then Mortgagee shall have an additional 30 days following a second notice from Tenant or, if such default cannot be cured within that time, such additional time as may be necessary provided within such 30 days. Mortgagee commences and diligently pursues a cure (including commencement of foreclosure proceedings if necessary to effect such cure). Tenant's sole remedy will be

equitable relief or actual damages but in no event is Landlord or any Mortgagee responsible for consequential damages or lost profit incurred by Tenant as a result of any default by Landlord. If a Mortgagee, or transferee under such Mortgage (hereafter defined), succeeds to Landlord's interest as a result of foreclosure or otherwise, such party shall not be: (i) liable for any default, nor subject to any setoff or defenses that Tenant may have against Landlord; (ii) bound by any amendment (including an agreement for early termination) without its consent made at any time after notice to Tenant that such Mortgage requires such consent; and (iii) bound by payment of Rent in advance for more than 30 days. Tenant agrees to pay Rent (and will receive credit under this Lease) as directed in any Mortgagee's notice of Landlord's default under the Mortgage reciting that Mortgagee is entitled to collect Rent.

22. SUBORDINATION AND ATTORNMENT.

22.1 This Lease at Landlord's option will be subordinate to any mortgage, deed of trust and related documents now or hereafter placed upon the Building Complex (including all advances made thereunder), and to all amendments, renewals, replacements, or restatements thereof (collectively, "Mortgage"). Tenant agrees that no documentation other than this Lease is required to evidence such subordination.

22.2 If any Mortgagee elects to have this Lease superior to the lien of its Mortgage and gives notice to Tenant, this Lease will be deemed prior to such Mortgage whether this Lease is dated prior or subsequent to the date of such Mortgage or the date of recording thereof.

22.3 In confirmation of subordination or superior position, as the case may be, Tenant will execute such documents as may be required by Mortgagee and if it fails to do so within 10 days after demand, Tenant hereby irrevocably appoints Landlord as Tenant's attorney-in-fact and in Tenant's name, place, and stead, to do so.

22.4 Tenant hereby attorns to all successor owners of the Building, whether such ownership is acquired by sale, foreclosure of a Mortgage, or otherwise.

23 **REMOVAL OF TENANT'S PROPERTY.** All movable personal property of Tenant, including but not limited to Tenant Furniture (collectively "Tenant Property") not removed from the Premises upon vacation, abandonment, or termination of this Lease shall be conclusively deemed abandoned and may be sold, or otherwise disposed of by Landlord without notice to Tenant and without obligation to account; Tenant shall pay Landlord's reasonable expenses in connection with such disposition. Notwithstanding the foregoing, if the Lease is terminated by Landlord prior to the Expiration Date or expiration of the Renewal Period, for other than an Event of Default that is not timely cured, Tenant shall have at least forty-eight (48) hours within which to remove the Tenant Property (the "Removal Period"), and to restore the Premises pursuant to the provisions of Article 17, above. During the Removal Period, (a) the Tenant Property shall not be deemed abandoned; and (b) Landlord shall provide Tenant reasonable access to the Premises for the purpose of removing the Tenant Property, pursuant to the terms of this Article 23.

24 **HOLDINGOVER: TENANCY MONTH-TO-MONTH.** If, after the expiration or termination of this Lease, Tenant remains in possession of the Premises without a written agreement as to such holding over and continues to pay rent and Landlord accepts such rent, such possession is a tenancy from month-to-month, subject to all provisions hereof but at a monthly rent equivalent to 125% of the monthly Rent paid by Tenant immediately prior to such expiration or termination. Rent shall continue to be payable in advance on the first day of each calendar month. Such tenancy may be terminated by either party upon 10 days' notice prior to the end of any monthly period. Nothing contained herein obligates Landlord to accept rent tendered after the expiration of the Term or relieves Tenant of its liability under Article 17.

25 **PAYMENTS AFTER TERMINATION.** No payments by Tenant after expiration or termination of this Lease or after any notice (other than a demand for payment of money) by Landlord to Tenant reinstates, continues, extends the Term, or affects any notice given to Tenant prior to such payments. After notice, commencement of a suit, or final judgment granting Landlord possession of the Premises, Landlord may collect any amounts due or otherwise exercise Landlord's remedies without waiving any notice or affecting any suitor, judgment.

26 **STATEMENT OF PERFORMANCE.** Tenant agrees at any time (but in no event more than three (3) times in any twelve (12) consecutive month period) upon not less than 10 business days' notice to execute and deliver to Landlord a written statement certifying that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified stating the modifications); that there have been no defaults by Landlord or Tenant and no event which with the

giving of notice or passage of time, or both, would constitute such a default (or, if there have been defaults, setting forth the nature thereof): the date to which Rent has been paid in advance and such other information as Landlord requests. Such statement may be relied upon by a prospective purchaser of Landlord's interest or Mortgagee. Tenant's failure to timely deliver such statement is conclusive upon Tenant that: (i) this Lease is in full force and effect without modification except as may be represented by Landlord; (ii) there are no uncured defaults in Landlord's performance; and (iii) not more than 1 month's Rent has been paid in advance. Upon request, Tenant will furnish Landlord an appropriate resolution confirming that the party signing the statement is authorized to do so.

27. MISCELLANEOUS.

27.1 Transfer by Landlord. The term "Landlord" means so far as obligations of Landlord are concerned, only the owner of the Building at the time in question and, if any transfer of the title occurs, Landlord herein named (and in the case of any subsequent transfers, the then grantor) is automatically released from and after the date of such transfer of all liability as respects performance of any obligations of Landlord thereafter to be performed. Any funds in Landlord's possession at the time of transfer in which Tenant has an interest will be turned over to the grantee and any amount then due Tenant under this Lease will be paid to Tenant.

27.2 No Merger. The termination or mutual cancellation of this Lease will not work a merger, and such termination or cancellation will at the option of Landlord either terminate all subleases or operate as an automatic assignment to Landlord of such subleases.

27.3 Common Area Use. Landlord may use any of the Common Areas for the purposes of completing or making repairs or alterations in any portion of the Building Complex. In connection therewith, Landlord shall use commercially reasonable efforts to not materially adversely affect Tenant's access to, or use of the Premises.

27.4 Independent Covenants. This Lease is to be construed as though the covenants between Landlord and Tenant are independent and not dependent and Tenant is not entitled to any setoff of the Rent against Landlord if Landlord fails to perform its obligations; provided, however, the foregoing does not impair Tenant's right to commence a separate suit against Landlord for any defeat by Landlord so long as Tenant complies with Article 21.

27.5 Validity of Provisions. If any provision is invalid under present or future laws, then it is agreed that the remainder of this Lease is not affected and that in lieu of each provision that is invalid, there will be added as part of this Lease a provision as similar to such invalid provision as may be possible and is valid and enforceable.

27.6 Captions. The caption of each Article is added for convenience only and has no effect in the construction of any provision of this Lease.

27.7 Construction. The parties waive any rule of construction that ambiguities are to be resolved against the drafting party. Any words following the words "include," "including," "such as," "for example," or similar words or phrases shall be illustrative only and are not intended to be exclusive, whether or not language of non-limitation is used.

27.8 Applicability. Except as otherwise provided, the provisions of this Lease are applicable to and binding upon Landlord's and Tenant's respective heirs, successors and assigns. Such provisions are also considered to be covenants running with the land to the fullest extent permitted by law.

27.9 Authority. Tenant and the party executing this Lease on behalf of Tenant represent to Landlord that such party is authorized to do so by requisite action of Tenant and agree, upon request, to deliver Landlord a resolution, similar document, or opinion of counsel to that effect.

27.10 Severability. If there is more than one party which is the Tenant, the obligations imposed upon Tenant are joint and several.

27.11 Acceptance of Keys, Rent of Surrender. No act of Landlord or its representatives during the Term, including any agreement to accept a surrender of the Premises or amend this Lease, is binding on Landlord unless such act is by a partner, member or officer of Landlord, as the case may be, or other party designated in writing by Landlord as authorized to act. The delivery of keys to Landlord or its

representatives will not operate as a termination of this Lease or a surrender of the Premises. No payment by Tenant of a lesser amount than the entire Rent owing is other than on account of such Rent nor is any endorsement or statement on any check or letter accompanying payment an accord and satisfaction. Landlord may accept payment without prejudice to Landlord's right to recover the balance or pursue any other remedy available to Landlord

27.12 Building Name and Size. Landlord may as it relates to the Building and Building Complex: change the name, increase the size by adding additional real property, construct other buildings or improvements, change the location and/or character, or make alterations or additions. If additional buildings are constructed or the size is increased, Landlord and Tenant shall execute an amendment which incorporates any necessary modifications to Tenant's Pro Rata Share. Tenant may not use the Building's name for any purpose other than as part of its business address.

27.13 Diminution of View. Tenant agrees that no diminution of light, air, or view from the Building entitles Tenant to any reduction of Rent under this Lease, results in any liability of Landlord, or in any way affects Tenant's obligations.

27.14 Limitation of Liability. Notwithstanding anything to the contrary contained in this Lease, Landlord's liability is limited to Landlord's interest in the Building and Landlord shall never be personally liable for recovery of any judgment.

27.15 Non-Reliance. Tenant confirms it has not relied on any statements, representations, or warranties by Landlord or its representatives except as set forth herein.

27.16 Written Modification. No amendment or modification of this Lease is valid or binding unless in writing and executed by the parties.

27.17 Lender's Requirements. Tenant will make such modifications to this Lease as may hereafter be required to conform to any lender's requirements, so long as such modifications do not increase Tenant's obligations or materially alter its rights.

27.18 Effectiveness. Submission of this instrument for examination or signature by Tenant does not constitute a reservation of or option to lease and it is not effective unless and until execution and delivery by both Landlord and Tenant.

27.19 Survival. This Lease, notwithstanding expiration or termination, continues in effect as to any provisions requiring observance or performance subsequent to termination or expiration.

27.20 Time of Essence. Time is of the essence herein.

27.21 Rules and Regulations. If rules and regulations are attached hereto, they are a part of this Lease and Tenant agrees that Tenant and Tenant's Agents shall at all times abide by such rules and regulations.

27.22 Recording. Tenant will not record this Lease. Recording of the Lease by or on behalf of Tenant is an Event of Default.

28. AUTHORITIES FOR ACTION AND NOTICE.

28.1 Unless otherwise provided, Landlord may act through Landlord's Building Manager or other designated representatives from time to time.

28.2 All notices or other communications required or desired to be given to Landlord must be in writing and shall be deemed received when delivered personally to any officer, partner, or member of Landlord (depending upon the nature of Landlord) or the manager of the Building (the "Building Manager") whose office is in the Building, or when deposited in the United States mail, postage prepaid, certified or registered, return receipt requested, addressed as set forth in Section 1.10. All notices or communications required or desired to be given to Tenant shall be in writing and deemed duly served when delivered personally to any officer, employee, partner, or member of Tenant (depending upon the nature of Tenant), individually if a sole proprietorship, or manager of Tenant whose office is in the Building, or when deposited in the United States mail, postage prepaid, certified or registered, return receipt requested, addressed to the appropriate address set forth in Section 1.13. Either party may designate in writing served as above provided

a different address to which notice is to be mailed. The foregoing does not prohibit notice from being given as provided in the rules of civil procedure, as amended from time to time, for the state in which the Real Property is located.

29. **PARKING.** Landlord will make available within the Building parking facilities the number and type of parking spaces set forth in Section 1.9. Spaces designated as covered spaces shall be located in the parking garage and shall be on a reserved basis at the current rate being charged for covered spaces from time to time (the "Parking Rate"). Tenant shall pay the Parking Rate for each covered space monthly. The initial Parking Rate for the covered spaces is \$90.00 per month per space. All parking spaces, other than the covered spaces designated for Tenant's use, shall be in and out, unassigned parking spaces in the surface parking area without additional charge to Tenant. Notwithstanding the above, the right granted to Tenant to use such spaces is a license only and Landlord's inability to make such spaces available at any time for reasons beyond Landlord's reasonable control is not a material breach by Landlord of its obligations hereunder and Tenant has no rights to use the parking garage except as provided in this Article. The abatement of Tenant's obligation to pay for unavailable spaces during any period of unavailability constitutes Tenant's sole remedy. If Tenant fails to timely pay a parking bill, Tenant forfeits its rights to all parking spaces. All vehicles parked in the parking garage and the personal property therein shall be at the sole risk of Tenant. Tenant's Agents and the users of such spaces and Landlord shall have no liability for loss or damage thereto for whatever cause.

30. **FORCE MAJEURE EVENT.** Any obligation of the Landlord hereunder, which is delayed or not performed due to acts of God, strike, riot, war, weather, terrorism, failure to obtain labor and materials at a reasonable cost, or any other reason beyond the control of the Landlord is to be performed (each a "Force Majeure Event," and collectively "Force Majeure Events"), shall not constitute a default by Landlord and shall be performed within a reasonable time after the end of such cause for delay or nonperformance.

31. TENANT IMPROVEMENTS AND USE OF LANDLORD'S FURNITURE

31.1 The existing wall coverings in the Premises and tile floors in the kitchen and work rooms shall remain in the Premises in their "as is" condition and state of repair.

31.2 Landlord shall use commercially reasonable efforts to cause the following improvements as set forth below to the Premises no later than December 1, 2007, subject to delays, if any, due to Force Majeure Events (the "Commencement Date"):

- (1) Removal of the partial wall separating the "open" area from the rest of the Premises, and the doorway in the corridor behind the reception desk; and patch the resulting damage to those portions of the walls, to which the removed wall was attached all per the depiction set forth, on Exhibit E,
- (2) Repainting of existing walls with Building "standard" paint,
- (3) Installation of eleven (11) Compel Insignia New Wood Office Suite with U-shaped office desk, bridge and credenza and 1 Compel Insignia desk and bridge (collectively the "New Furniture"). As more specifically set forth below, the New Furniture shall be and remain the personal property of the Landlord, and
- (4) Installation of Designweave P.O.P. Collection carpeting in the Premises, and
- (5) Installation of twenty four (24) 6'x8' Herman Miller AO2 workstations and voice and data cabling (collectively the "Workstations").

31.3 Provided that no uncured Event of Default has occurred during the Initial Term, the Tenant shall have the right to use the following which is and shall remain, at all times, including but not limited to during the Initial Term, and at all times thereafter, the personal property of Landlord.

- (1) The New Furniture,
- (2) The Workstations,
- (3) 36 Cue desk chairs (the "Chairs"), and
- (4) Chairs and conference table located in the conference room within the Premises (the Conference Room Furniture")

The Workstations, the Chairs, the Conference Room Furniture and the New Furniture shall be termed collectively the "Landlord's Furniture". Landlord, at its sole option may make substitutions in the Landlord's Furniture with substantially similar items, as determined by Landlord in its reasonable judgment.

32. INTENTIONALLY DELETED.

33. BROKERAGE. Tenant represents it has not employed any broker with respect to this Lease and has no knowledge of any broker's involvement in this transaction except those listed in Sections 1.15 and 1.16 (collectively, the "Brokers"). Tenant shall indemnify Landlord against any expense incurred by Landlord as a result of any claim for commissions or fees by any other broker, finder, or agent, whether or not meritorious, employed by Tenant or claiming by, through, or under Tenant, other than the Brokers. Tenant acknowledges Landlord is not liable for any representations by the Brokers regarding the Premises, Building, Building Complex, or this Lease.

34. COUNTERPARTS. This Lease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any one or more counterpart signature pages may be removed from one counterpart of the Lease and annexed to another counterpart of the Lease to form a completely executed original instrument without impairing the legal effect of the signature thereon.

35. ADDENDUM/EXHIBITS. Any Addenda and/or Exhibits referred to herein and attached hereto are incorporated herein by reference.

36. RENEWAL OPTION. Provided that no Event of Default then exists, Tenant shall have one (1) option to renew this Lease (the "Renewal Option") for an additional period of five (5) years (the "Renewal Period"), upon written notice to Landlord provided no later than nine (9) months prior to the end of the Initial Term (the "Renewal Notice"). The terms for the Renewal Period shall be the same as set forth in this Lease, except that Rent shall be at the then current market rate, but in no event less than the Rent payable for the last year of the Initial Term. If Tenant fails to timely provide a Renewal Notice, Tenant shall be deemed to have waived all rights to the Renewal Option and the Lease shall expire at the end of the Initial Term,

IN WITNESS WHEREOF, the parties have executed this Lease as of the day and year first above written and it is effective upon delivery of a fully-executed copy to Tenant.

MDA HOLDINGS ,INC.
A Georgia corporation

CRESTLINE OFFICE CENTER ASSOCIATES LLC,
a Colorado limited liability company

By: /s/ James E. Ginter

By: /s/ F. William Schmergel

Title: President

Title: Member

Print Name: James E. Ginter

"LANDLORD"

ATTEST:

By: /s/ Aida Rivinius

Print Name: Aida Rivinius

Print Title: Executive Assistant

"TENANT"

LEASE AGREEMENT BETWEEN

TGS AMERICAN REALTY LIMITED PARTNERSHIP,

AS LANDLORD, AND

MEDICAL DOCTOR ASSOCIATES, INC.,

AS TENANT

DATED SEPTEMBER 21, 2004

600 LAS COLINAS BOULEVARD
IRVING, TEXAS

BASIC LEASE INFORMATION

Lease Date: September 21, 2004

Landlord: **TGS AMERICAN REALTY LIMITED PARTNERSHIP**, A Delaware limited partnership

Tenant: **MEDICAL DOCTOR ASSOCIATES, INC.**, a Georgia corporation

Premises: Suite No. 1550, containing 9,330 rentable square feet, in the office building commonly known as 600 Las Colinas Boulevard (the "**Building**"), and whose street address is 600 East Las Colinas Boulevard, Irving, Texas 75039. The Premises are outlined on the plan attached to the Lease as Exhibit A. The land on which the Building is located (the "**Land**") is described on Exhibit B. The term "**Project**" shall collectively refer to the Building, the Land and the driveways, parking facilities, and similar improvements and easements associated with the foregoing or the operation thereof.

Term: 80 full calendar months, plus any partial month from the Commencement Date to the end of the month in which the Commencement Date falls, starting on the Commencement Date and ending at 5:00 p.m. local time on the last day of the 80th full calendar month following the Commencement Date, subject to adjustment and earlier termination as provided in the Lease.

Commencement Date: The earliest of (a) the date on which Tenant occupies any portion of the Premises and begins conducting business therein, (b) the date on which the Work (as defined in Exhibit D hereto) in the Premises is Substantially Completed (as defined in Exhibit D hereto), or (c) the date on which the work in the Premises would have been Substantially Completed but for the occurrence of any Tenant Delay Days (as defined in Exhibit D hereto).

Basic Rent: Subject to the conditional abatement of Basic Rent set forth in Exhibit I hereto, Basic Rent shall be the following amounts for the following periods of time:

| Lease Month | Annual Basic Rent Rate Per Rentable Square Foot | Monthly Basic Rent |
|-------------|---|--------------------|
| 1-80 | \$15.00 | \$11,662.50 |

As used herein, the term "**Lease Month**" means each calendar month during the Term (and if the Commencement Date does not occur on the first day of a calendar month, the period from the Commencement Date to the first day of the next calendar month shall be included in the first Lease Month for purposes of determining the duration of the Term and the monthly Basic Rent rate applicable for such partial month).

Security Deposit: \$11,662.50

Rent: Basic Rent, Tenant's Proportionate Share of increases in Taxes over the Base Tax Year, Tenant's Proportionate Share of Electrical Costs, Tenant's Proportionate Share of Additional Rent, and all other sums that Tenant may owe to Landlord or otherwise be required to pay under the Lease.

The foregoing Basic Lease Information is incorporated into and made a part of the Lease identified above. If any conflict exists between any Basic Lease Information and the Lease, then the Lease shall control.

LANDLORD:

TGS AMERICAN REALTY LIMITED PARTNERSHIP,

a Delaware limited partnership

By: TGS American Realty, LLC, a Delaware limited liability company, its general partner

By: //signed//John Massing

Name: John Massing

Title: Senior VP

TENANT:

MEDICAL DOCTOR ASSOCIATES, INC., a Georgia Corporation

By: //signed//Michael Pretiger

Name: Michael Pretiger

Title: CFO

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LEASE

This Lease Agreement (this "**Lease**") is entered into as of September 21, 2004, between **TGS AMERICAN REALTY LIMITED PARTNERSHIP**, A Delaware limited partnership ("**Landlord**"), and **MEDICAL DOCTOR ASSOCIATES, INC.**, a Georgia corporation ("**Tenant**").

1. **Definitions and Basic Provisions.** The definitions and basic provisions set forth in the Basic Lease Information (the "**Basic Lease Information**") executed by Landlord and Tenant contemporaneously herewith are incorporated herein by reference for all purposes. Additionally, the following terms shall have the following meanings when used in this Lease: "**Affiliate**" means any person or entity which, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the party in question; "**Building's Structure**" means the Building's exterior walls, roof, elevator shafts, footings, foundations, structural portions of load-bearing walls, structural floors and subfloors, and structural columns and beams; "**Building's Systems**" means the Building's HVAC, life-safety, plumbing, electrical, and mechanical systems; "**including**" means including, without limitation; "**Laws**" means all federal, state, and local laws, ordinances, rules and regulations, all court orders, governmental directives, and governmental orders and all interpretations of the foregoing, and all restrictive covenants affecting the Project, and "**Law**" means any of the foregoing; "**Tenant's Off-Premises Equipment**" means any of Tenant's equipment or other property that may be located on or about the Project (other than the Premises); and "**Tenant Party**" means any of the following persons: Tenant; any assignees claiming by, through, or under Tenant; any subtenants claiming by, through, or under Tenant; and any of their respective agents, contractors, employees, licensees, guests and invitees.
2. **Lease Grant.** Subject to the terms of this Lease, Landlord leases to Tenant, and Tenant leases from Landlord, the Premises.
3. **Tender of Possession.** Landlord and Tenant presently anticipate that possession of the Premises will be tendered to Tenant in the condition required by this Lease on or about November 1, 2004 (the "**Estimated Delivery Date**"). If Landlord is unable to tender possession of the Premises in such condition to Tenant by the Estimated Delivery Date, then (a) the validity of this Lease shall not be affected or impaired thereby, (b) Landlord shall not be in default hereunder or be liable for damages therefor, and (c) Tenant shall accept possession of the Premises when Landlord tenders possession thereof to Tenant. By occupying the Premises, Tenant shall be deemed to have accepted the Premises in their condition as of the date of such occupancy, subject to the performance of punch-list items that remain to be performed by Landlord, if any. Within five days after the Commencement Date, Tenant shall execute and deliver to Landlord a letter substantially in the form of Exhibit E hereto confirming (1) the Commencement Date and the expiration date of the initial Term, (2) that Tenant has accepted the Premises, and (3) that Landlord has performed all of its obligations with respect to the Premises (except for punch-list items specified in such letter); however, the failure of the parties to execute such letter shall not defer the Commencement Date or otherwise invalidate this Lease. Occupancy of the Premises by Tenant prior to the Commencement Date shall be subject to all of the provisions of this Lease excepting only those requiring the payment of Basic Rent, Additional Rent, Taxes and Electrical Costs (each as defined herein). Landlord agrees to promptly correct and complete any punch-list items.
4. **Rent**
 - (a) **Payment.** Tenant shall timely pay to the Landlord Rent, without notice, demand, deduction or set off (except as otherwise expressly provided herein), by good and sufficient check drawn on a national banking association at Landlord's address provided for in this Lease or as otherwise specified by Landlord and shall be accompanied by all applicable state and local sales or use taxes. The obligations of Tenant to pay Basic Rent and other sums to Landlord and the obligations of Landlord under this Lease are independent obligations. Basic Rent adjusted as herein provided, shall be payable monthly in advance. The first monthly installment of Basic Rent shall be payable contemporaneously with the execution of this Lease; thereafter, subject to the provisions of Exhibit I, Basic Rent shall be payable on the first day of each month beginning on the first day of the second full calendar month of the Term. The monthly Basic Rent for any partial month at the beginning of the Term shall equal the product of 1/365 of the annual Basic Rent in effect during the partial month and the number of days in the partial month and shall be due on the Commencement Date. Payments of Basic Rent for any fractional calendar month at

the end of the Term shall be similarly prorated. Tenant shall pay Additional Rent at the same time and in the same manner as Basic Rent.

(b) Operating Costs; Taxes; Electrical Costs.

(1) Commencing January 1, 2005, Tenant shall pay to Landlord Tenant's Proportionate Share of the amount ("**Additional Rent**") by which the annual Operating Costs (defined below) exceed the Expense Stop. Landlord may make a good faith estimate of the Additional Rent to be due by Tenant for any calendar year or part thereof during the Term.

During each calendar year or partial calendar year or the Term (after the base year, if the Expense Stop is calculated on a base year basis), Tenant shall pay to Landlord, in advance concurrently with each monthly installment of Basic Rent, an amount equal to the estimated Additional Rent for such calendar year or part thereof divided by the number of months therein. From time to time, Landlord may estimate and re-estimate the Additional Rent to be due by Tenant and deliver a copy of the estimate or re-estimate to Tenant. Thereafter, the monthly installments of Additional Rent payable by Tenant shall be appropriately adjusted in accordance with the estimations so that, by the end of the calendar year in question, Tenant shall have paid all of the Additional Rent as estimated by Landlord. Any amounts paid based on such an estimate shall be subject to adjustment as herein provided when actual Operating Costs are available for each calendar year.

(2) The term "**Operating Costs**" means all expenses and disbursements (subject to the limitations set forth below) that Landlord incurs in connection with the ownership, operation, and maintenance of the Project, determined in accordance with sound accounting principles consistently applied, including the following costs: (A) wages and salaries of all on-site employees at or below the grade of senior building manager engaged in the operation, maintenance or security of the Project (together with Landlord's reasonable allocation of expenses of off-site employees at or below the grade of senior building manager who perform a portion of their services in connection with the operation, maintenance or security of the Project), including taxes, insurance and benefits relating thereto; (B) all supplies and materials used in the operation, maintenance, repair, replacement, and security of the Project; (C) costs for improvements made to the Project which, although capital in nature, are expected to reduce the normal operating costs (including all utility costs) of the Project, as amortized using a commercially reasonable interest rate over the time period reasonably estimated by Landlord to recover the costs thereof taking into consideration the anticipated cost savings, as determined by Landlord using its good faith, commercially reasonable judgment, as well as capital improvements made in order to comply with any Law hereafter promulgated by any governmental authority or any interpretation hereafter rendered with respect to any existing Law, as amortized using a commercially reasonable interest rate over the useful economic life of such improvements as determined by Landlord in its reasonable discretion; (D) cost of all utilities, except Electrical Costs and the cost of other utilities reimbursable to Landlord by the Project's tenants other than pursuant to a provision similar to this Section 4(b); (E) insurance expenses; (F) repairs, replacements, and general maintenance of the Project; (G) fair market rental and other costs with respect to the management office (reasonable in size) for the Building; and (H) service, maintenance and management contracts with independent contractors for the operation, maintenance, management, repair, replacement, or security of the Project (including alarm service, window cleaning, and elevator maintenance). If the Building is part of a multi-building office complex (the "**Complex**"), Operating Costs, Taxes and Electrical Costs for the Complex may be prorated among the Project and the other buildings of the Complex, as reasonably determined by Landlord.

In addition to the exclusions and limitations to Operating Costs set forth above, Operating Costs shall not include costs for (i) capital improvements made to the building, other than capital improvements described in Section 4(b)(2)(C) and except for items which are generally considered maintenance and repair items such as painting of common areas, replacement of carpet in elevator lobbies, and the like; (ii) repair, replacements and general maintenance paid by proceeds of insurance or by Tenant or other third parties; (iii) interest, amortization or other payments on loans to Landlord; (iv) depreciation; (v) leasing commissions; (vi) legal expenses for services, other than those that benefit the Project tenants generally (e.g., tax disputes); (vii) renovating or otherwise improving space for occupants of the Project or vacant space in the Project; (viii) Taxes; (ix) federal income taxes imposed on or measured by the income of Landlord from the operation of the Project; (x) the cost of any special work or service performed for any

tenant (including Tenant) at such tenant's cost and for which Landlord has been reimbursed by Tenant; (xi) compensation paid to officers and executives of Landlord above the level of building manager (excluding any accountants); (xii) the cost of any items for which Landlord is reimbursed by insurance, condemnation or otherwise; (xiii) interest on debt or amortization payments on any mortgage or deed to secure debt and ground rental under any ground lease or other underlying lease; (xiv) any real estate brokerage commissions (or any fee in lieu of such commission), attorneys' fees, architectural and engineering fees, permit, license and inspection fees, and any other costs incurred in connection with the leasing (or otherwise allowing to use), subleasing, or lease assignment of any space in the Project to any person or entity; (xv) any advertising expenses incurred in connection with the marketing of any rentable space; (xvi) any expenses for repairs or maintenance which are covered by warranties and service contracts, to the extent such maintenance and repairs are made at no cost to Landlord; (xvii) legal expenses arising out of the construction of the improvements within the Project or disputes with tenants or the enforcement of the provisions of any lease affecting the Project, including without limitation this Lease; (xviii) management fees in excess of the greater of three percent (3%) or the applicable market rate of the rentals collected for the Building in any year; (xix) amounts directly incurred in connection with selling, syndicating, financing, mortgaging or hypothecating any interest in the Project or any equipment therein; (xx) costs (including fines and penalties) incurred due to a violation by Landlord or any tenant or occupant of the Project of any legal requirements, or costs incurred due to the negligence or willful misconduct of Landlord or Landlord's employees, agents or contractors (however, any insurance deductibles shall be included in Operating Costs); (xxi) any costs or expenses representing an amount paid to an affiliate of Landlord which is in excess of the amount which would be paid to a party which is not an affiliate of Landlord; (xxii) any costs associated with the removal or encapsulation of asbestos or other hazardous substances as required by laws in existence and as interpreted as of the Lease Date; (xxiii) contributions to any organizations, whether political or charitable; (xxiv) reserves, including reserves for bad debts or rental losses; (xxv) costs associated with the operation of the partnership or other entity which constitutes Landlord, as distinguished from costs of operation of the Building or the Project, including accounting and legal costs, costs of defending lawsuits with any mortgagee, and costs of selling, syndicating, financing, mortgaging or hypothecating any ownership interest in Landlord, or any of Landlord's interests in the building or the Project; (xxvi) depreciation of the Building or any other building in the Project; and (xxvii) interest, principle, points and fees on debts or amortization on any financing except for amortization of capital expenses as permitted under this Lease. If the Expense Stop is calculated on a base year basis, Operating Costs for the base year only shall not include costs incurred due to extraordinary circumstances, including market-wide labor rate increases due to boycotts and strikes; utility rate increases due to extraordinary circumstances, including conservation surcharges, boycotts, embargos or other shortages; insurance deductibles; or amortized costs relating to capital improvements.

(3) Tenant shall also pay Tenant's Proportionate Share of any increase in Taxes for each year and partial year falling within the Term over the Taxes for the Base Tax Year. Tenant shall pay Tenant's Proportionate Share of Taxes in the same manner as provided above for Tenant's Proportionate Share of Operating Costs. "**Taxes**" means taxes, assessments, and governmental charges or fees whether federal, state, country or municipal, and whether they be by taxing districts or authorities presently taxing or by others, subsequently created or otherwise, and any other taxes and assessments (including non-governmental assessments for common charges under a restrictive covenant or other private agreement that are not treated as part of Operating Costs) now or hereafter attributable to the Project (or its operation), excluding, however, penalties and interest thereon and federal and state taxes on income (if the present method of taxation changes so that in lieu of or in addition to the whole or any part of any Taxes, there is levied on Landlord a capital tax directly on the rents received therefrom or a franchise tax, assessment, or charge based, in whole or in part, upon such rents for the Project, then all such taxes, assessments, or charges, or the part thereof so based, shall be deemed to be included within the term "Taxes" for purposes hereof). Taxes shall include the costs of consultants retained in an effort to lower taxes and all costs incurred in disputing any taxes or in seeking to lower the tax valuation of the Project. For property tax purposes, Tenant waives all rights to protest or appeal the appraised value of the Premises, as well as the Project, and all rights to receive notices of reappraisal as set forth in Sections 41.413 and 42.015 of the Texas Tax Code.

(4) Tenant shall also pay to Landlord Tenant's Proportionate Share of the cost of all electricity used by the Project ("**Electrical Costs**"). Such amount shall be payable in monthly installments on the Commencement Date and on the first day of each calendar month thereafter. Each installment shall be based on Landlord's estimate of the amount due for each month. From time to time during any calendar year, Landlord may estimate or re-estimate the Electrical Costs to be due by Tenant for that calendar year and deliver a copy of the estimate or re-estimate to Tenant. Thereafter, the monthly installments of Electrical Costs payable by Tenant shall be appropriately adjusted in accordance with the estimations. Landlord shall cause any tenants of the Building whose equipment consumes a disproportionate amount of electricity (relative to the other tenants in the Building) to pay their fair share of Electrical Costs.

(5) By April 1 of each calendar year, or as soon thereafter as practicable, Landlord shall furnish to Tenant a statement of Operating Costs and Electrical Costs for the previous year, in each case adjusted as provided in Section 4(b)(6), and of the Taxes for the previous year (the "**Operating Costs and Tax Statement**"). If Tenant's estimated payments of Operating Costs, Electrical Costs or Taxes under this Section 4(b) for the year covered by the Operating Costs and Tax Statement exceed Tenant's Proportionate Share of such items as indicated in the Operating Costs and Tax Statement, then Landlord shall promptly credit or reimburse Tenant for such excess; likewise, if Tenant's estimated payments of Operating Costs, Electrical Costs or Taxes under this Section 4(b) for such year are less than Tenant's Proportionate Share of such items as indicated in the Operating Costs and Tax Statement, then Tenant shall promptly pay Landlord such deficiency.

(6) With respect to any calendar year or partial calendar year (including calendar year 2004) in which the Building is not occupied to the extent of 100% of the rentable area thereof, or Landlord is not supplying services to 100% of the rentable area thereof, the Operating Costs and Electrical Costs for such period which vary with the occupancy of the Building shall, for the purposes hereof, be increased to the amount which would have been incurred had the Building been occupied to the extent of 100% of the rentable area thereof and Landlord had been supplying services to 100% of the rentable area thereof. In no event shall Landlord be entitled to recover more than 100% of actual Operating Costs or more than 100% of actual Electrical Costs pursuant to this Section 4(b)(6).

5. **Delinquent Payment; Handling Charges.** All past due payments required of Tenant hereunder shall bear interest from the date due until paid at the lesser of the "Prime Rate" as published by *The Wall Street Journal*, Southwest Edition, in its listing of "Money Rates" on the date such payment is due plus five percent (5%) per annum or the maximum lawful rate of interest (such lesser amount is referred to herein as the "**Default Rate**"); additionally, Landlord, in addition to all other rights and remedies available to it, may charge Tenant a fee equal to five percent of the delinquent payment to reimburse Landlord for its cost and inconvenience incurred as a consequence of Tenant's delinquency. In no event, however, shall the charges permitted under this Section 5 or elsewhere in this Lease, to the extent they are considered to be interest under applicable Law, exceed the maximum lawful rate of interest. Notwithstanding the foregoing, the late fee referenced above shall not be charged with respect to the first occurrence (but not any subsequent occurrence) during any 12-month period that Tenant fails to make payment when due, until five days after Landlord delivers written notice of such delinquency to Tenant.

6. **Security Depo**Contemporaneously with the execution of this Lease, Tenant shall pay to Landlord the Security Deposit, which shall be held by Landlord to secure Tenant's performance of its obligations under this Lease. The Security Deposit is not an advance payment of Rent or a measure or limit of Landlord's damages upon an Event of Default (as defined herein). Landlord may, from time to time following an Event of Default and without prejudice to any other remedy, use all or a part of the Security Deposit to perform any obligation Tenant fails to perform hereunder. Following any such application of the Security Deposit, Tenant shall pay to Landlord on demand the amount so applied in order to restore the Security Deposit to its original amount. Provided that no Event of Default exists or any other condition exists which with the passage of time, the giving of notice, or both, would constitute an Event of Default, Landlord shall, within 30 days after the expiration of the Term and Tenant's surrender of the Premises in compliance with the provisions of this Lease, return to Tenant the portion of the Security Deposit which was not applied to satisfy Tenant's obligations. The Security Deposit may be commingled with other funds, and no interest shall be paid thereon. If Landlord transfers its interest in the Premises and the transferee assumes Landlord's obligations under this Lease, then Landlord shall assign the Security Deposit to the transferee and, provided the transferee assumes in writing all of the Landlord's obligations hereunder arising after

such transfer, Landlord thereafter shall have no further liability for the return of the Security Deposit. The rights and obligations of Landlord and Tenant under this Section 6 are subject to any other requirements and conditions imposed by Laws applicable to the Security Deposit.

7. **Landlord's Obligations.**

(a) **Services.** Landlord shall use all reasonable efforts to furnish to Tenant: (1) water at those points of supply provided for general use of tenants of the Building; (2) heated and refrigerated air conditioning ("**HVAC**") as appropriate, at such temperatures and in such amounts as are standard for the Building and for comparable buildings in the vicinity of the Building; (3) janitorial service to the Premises on weekdays, other than holidays, for Building-standard installations and such window washing as may from time to time be reasonably required; (4) elevators for ingress and egress to the floor on which the Premises are located, in common with other tenants, provided that Landlord may reasonably limit the number of operating elevators during non-business hours and holidays; and (5) electrical current during normal business hours for equipment that does not require more than 110 volts and whose electrical energy consumption does not exceed normal office usage. Landlord shall maintain the common areas of the Building in reasonably good order and condition, except for damage caused by a Tenant Party. If Tenant desires any of the services specified in Section 7(a)(2): (A) at any time other than between 7:00 a.m. and 6:00 p.m. on weekdays and between 8:00 a.m. and 12:00 p.m. on Saturday (in each case other than holidays), or (B) on Sunday or holidays, then such services shall be supplied to Tenant upon the written request of Tenant delivered to Landlord before 3:00 p.m. on the business day preceding such extra usage, and Tenant shall pay to Landlord the cost of such services within 30 days after Landlord has delivered to Tenant an invoice therefor. The costs incurred by Landlord in providing after-hour HVAC service to Tenant shall include costs for electricity, water, sewage, water treatment, labor, metering, filtering, and maintenance reasonably allocated by Landlord to providing such service.

(b) **Excess Utility Use** Landlord shall not be required to furnish electrical current for equipment that requires more than 110 volts or other equipment whose electrical energy consumption exceeds normal office usage. If Tenant's requirements for or consumption of electricity exceed the electricity to be provided by Landlord as described in Section 7(a), Landlord shall, at Tenant's expense, make reasonable efforts to supply such service through the then-existing feeders and risers serving the Building and the Premises, and Tenant shall pay to Landlord the cost of such service within 30 days after Landlord has delivered to Tenant an invoice therefor. Landlord may determine the amount of such additional consumption and potential consumption by any verifiable method, including installation of a separate meter in the Premises installed, maintained, and read by Landlord, at Tenant's expense. Tenant shall not install any electrical equipment requiring special wiring or requiring voltage in excess of 110 volts unless approved in advance by Landlord, which approval shall not be unreasonably withheld. Tenant shall not install any electrical equipment requiring voltage in excess of Building capacity unless approved in advance by Landlord, which approval may be withheld in Landlord's sole discretion. The use of electricity in the Premises shall not exceed the capacity of existing feeders and risers to or wiring in the Premises. Any risers or wiring required to meet Tenant's excess electrical requirements shall, upon Tenant's written request, be installed by Landlord, at Tenant's cost, if, in Landlord's judgment, the same are necessary and shall not cause permanent damage to the Building or the Premises, cause or create a dangerous or hazardous condition, entail excessive or unreasonable alterations, repairs, or expenses, or interfere with or disturb other tenants of the Building. If Tenant uses machines or equipment in the Premises which affect the temperature otherwise maintained by the air conditioning system or otherwise overload any utility, Landlord may install supplemental air conditioning units or other supplemental equipment in the Premises, and the cost thereof, including the cost of installation, operation, use, and maintenance, in each case plus an administrative fee of 15% of such cost, shall be paid by Tenant to Landlord within 30 days after Landlord has delivered to Tenant an invoice therefor.

(c) **Restoration of Services; Abatement.** Landlord shall use reasonable efforts to restore any service required of it that becomes unavailable; however, such unavailability shall not render Landlord liable for any damages caused thereby, be a constructive eviction of Tenant, constitute a breach of any implied warranty, or, except as provided in the next sentence, entitle Tenant to any abatement of Tenant's obligations hereunder. If however, Tenant is prevented from using the Premises because of the unavailability of any such service for a period of 25 consecutive business days following Landlord's receipt from Tenant of a written notice regarding such unavailability, the restoration of which is within Landlord's reasonable control, and such unavailability was not caused by a Tenant Party or a governmental directive, then Tenant shall, as its exclusive remedy be entitled to a

reasonable abatement of Rent for each consecutive day (after such 25-day period) that Tenant is so prevented from using the Premises.

(d) **Access.** Subject to the Building rules and regulations attached as Exhibit C hereto and the other provisions of this Lease (including Section 9 here of), Tenant will be provided access to the Premises 24 hours per day, seven days per week. If such access is unavailable due to force majeure or any other reason beyond Landlord's control (including construction performed by parties other than Landlord which prohibits such access), Landlord shall not be in default under this Section 7(d).

8. **Improvements; Alterations; Repairs; Maintenance.**

(a) **Improvements; Alterations.** Improvements to the Premises shall be installed at Tenant's expense only in accordance with plans and specifications which have been previously submitted to and approved in writing by Landlord, which approval shall be governed by the provisions set forth in this Section 8(a). No alterations or physical additions in or to the Premises may be made without Landlord's prior written consent, which shall not be unreasonably withheld or delayed; however, Landlord may withhold its consent to any alteration or addition that would adversely affect (in the reasonable discretion of Landlord) the (1) Building's Structure or the Building's Systems (including the Building's restrooms or mechanical rooms), (2) exterior appearance of the Building, (3) appearance of the Building's common areas or elevator lobby areas, or (4) provision of services to other occupants of the Building. Tenant shall not paint or install lighting or decorations, signs, window or door lettering, or advertising media of any type visible from the exterior of the Premises without the prior written consent of Landlord, which consent may be withheld in Landlord's sole and absolute discretion. All alterations, additions and improvements made after the Commencement Date by or on behalf of a Tenant Party shall be constructed, maintained, and used by Tenant, at its risk and expense, in accordance with all Laws; Landlord's consent to or approval of any alterations, additions or improvements (or the plans therefor) shall not constitute a representation or warranty by Landlord, nor Landlord's acceptance, that the same comply with sound architectural and/or engineering practices or with all applicable Laws, and Tenant shall be solely responsible for ensuring all such compliance.

(b) **Repairs; Maintenance.** Tenant shall maintain the Premises in a clean, safe, and operable condition, and shall not permit or allow to remain any waste or damage to any portion of the Premises (ordinary wear and tear excepted). Additionally, Tenant, at its sole expense shall repair, replace and maintain in good condition and in accordance with all Laws and the equipment manufacturer's suggested service programs, all portions of the Premises, Tenant's Off-Premises Equipment and all areas, improvements and systems exclusively serving the Premises. Subject to Section 15 of this Lease, Tenant shall repair or replace, subject to Landlord's direction and supervision, any damage to the Building caused by a Tenant Party. If Tenant fails to make such repairs or replacements within 15 days after Tenant is made aware of such damage, the Landlord may make the same at Tenant's cost. If any such damage occurs outside of the Premises, then Landlord may elect to repair such damage at Tenant's expense, rather than having Tenant repair such damage. The cost of all maintenance, repair or replacement work performed by Landlord under this Section 8 shall be paid by Tenant to Landlord within 30 days after Landlord has invoiced Tenant therefor.

(c) **Performance of Work.** All work described in this Section 8 shall be performed only by Landlord or by contractors and subcontractors approved in writing by Landlord. Tenant shall cause all contractors and subcontractors to procure and maintain insurance coverage naming Landlord, Landlord's property management company and Landlord's asset management company as additional insureds against such risks, in such amounts, and with such companies as Landlord may reasonably require. Tenant shall provide Landlord with the identities, mailing addresses and telephone numbers of all persons performing work or supplying materials prior to beginning such construction and Landlord may post on and about the Premises notices of non-responsibility pursuant to applicable laws. All such work shall be performed in accordance with all Laws and in a good and workmanlike manner so as not to damage the Building (including the Premises, the Building's Structure and the Building's Systems). All such work which may affect the Building's Structure or the Building's Systems must be approved by the Building's engineer of record, at Tenant's expense and, at Landlord's election, must be performed by Landlord's usual contractor for such work. All work affecting the roof of the Building must be performed by Landlord's roofing contractor and no such work will be permitted if it would void or reduce the warranty on the roof.

(d) **Mechanic's Liens.** All work performed, materials furnished, or obligations incurred by or at the request of a Tenant Party (not including the work to be performed by Landlord pursuant to Exhibit D hereto) shall be deemed authorized and ordered by Tenant only, and Tenant shall not permit any mechanic's liens to be filed against the Premises or the Project in connection therewith. Upon completion of any such work, Tenant shall deliver to Landlord final lien waivers from all contractors, subcontractors and materialmen who performed such work. If such a lien is filed, then Tenant shall, within ten days after Landlord has delivered notice of the filing thereof to Tenant (or such earlier time period as may be necessary to prevent the forfeiture of the Premises, the Project or any interest of Landlord therein or the imposition of a civil or criminal fine with respect thereto), either (1) pay the amount of the lien and cause the lien to be released of record, or (2) diligently contest such lien and deliver to Landlord a bond or other security reasonably satisfactory to Landlord. If Tenant fails to timely take either such action, the Landlord may pay the lien claim, and any amounts so paid, including expenses and interest, shall be paid by Tenant to Landlord within ten days after Landlord has invoiced Tenant therefor. Landlord and Tenant acknowledge and agree that their relationship is and shall be solely that of "landlord-tenant" (thereby excluding a relationship of "owner-contractor", "owner-agent" or other similar relationships). Accordingly, all materialmen, contractors, artisans, mechanics, laborers and any other persons now or hereafter contracting with Tenant, any contractor or subcontractor of Tenant or any other Tenant Party for the furnishing of any labor, services, materials, supplies or equipment with respect to any portion of the Premises, at any time from the date hereof until the end of the Term, are hereby charged with notice that they look exclusively to Tenant to obtain payment for same. Nothing herein shall be deemed a consent by Landlord to any liens being placed upon the Premises, the Project or Landlord's interest therein due to any work performed by or for Tenant or deemed to give any contractor or subcontractor or materialman any right or interest in any funds held by Landlord to reimburse Tenant for any portion of the cost of such work. Tenant shall defend, indemnify and hold harmless Landlord and its agents and representatives from and against all claims, demands, causes of action, suits judgments, damages and expenses (including attorneys' fees) in any way arising from or relating to the failure by any Tenant Party to pay for any work performed, materials furnished, or obligations incurred by or at the request of a Tenant Party. This indemnity provision shall survive termination or expiration of this Lease.

(9) **Use.** Tenant shall use the Premises only for the Permitted Use and shall comply with all Laws relating to the use, condition, access to, and occupancy of the Premises and will not commit waste, overload the Building's Structure or the Building's Systems or subject the Premises to use that would damage the Premises. The population density within the Premises as a whole shall at no time exceed one person for each 250 rentable square feet in the premises. Notwithstanding anything in this Lease to the contrary, as between Landlord and Tenant, (a) Tenant shall bear the risk of complying with Title III of the Americans With Disabilities Act of 1990, any state laws governing handicapped access or architectural barriers, and all rules, regulations, and guidelines promulgated under such laws, as amended from time to time (the "**Disabilities Act**") in the Premises, and (b) Landlord shall bear the risk of complying with the Disabilities Acts in the common areas of the Building, other than compliance that is necessitated by the use of the Premises for other than the Permitted Use or as a result of any alterations or additions, including any initial tenant improvement work made by or on behalf of a Tenant Party (which risk and responsibility shall be borne by Tenant). The Premises shall not be used for any use which is disreputable, creates extraordinary fire hazards, or results in an increased rate of insurance on the Building or its contents, or for the storage of any Hazardous Materials (other than typical office supplies [e.g., photocopier toner] and then only in compliance with all Laws). Tenant shall not use any substantial portion of the Premises for a "call center", any other telemarketing use, or any credit processing use. If, because of a Tenant's Party's acts or because Tenant vacates the Premises, the rate of insurance on the Building or its contents increases, then Tenant shall pay to Landlord the amount of such increase within 30 days after demand, and acceptance of such payment shall not waive any of Landlord's other rights. Tenant shall conduct its business and control each other Tenant Party so as not to create any nuisance or unreasonably interfere with other tenants or Landlord in its management of the Building.

10. **Assignment and Subletting.**

(a) **Transfers.** Except as provided in Section 10(h), Tenant shall not, without the prior written consent of Landlord, (1) assign, transfer, or encumber this Lease or any estate or interest herein, whether directly or by operation of law, (2) permit any other entity to become Tenant hereunder by merger, consolidation, or other reorganization, (3) if Tenant is an entity other than a corporation whose stock is publicly traded, permit the transfer of ownership interest in Tenant so as to result in a change in the current control of Tenant (excluding transfers between existing shareholders), (4) sublet any portion of the Premises, (5) grant any license, concession, or

other right of occupancy of any portion of the Premises, or (6) permit the use of the Premises by any parties other than Tenant (any of the events listed in Section 10(a)(1) through 10 (a)(6) being a “**Transfer**”).

(b) **Consent Standards.** Landlord shall not unreasonably withhold its consent to any assignment or subletting of the Premises, provided that the proposed transferee (1) is creditworthy, (2) has a good reputation in the business community, (3) will use the Premises for the Permitted Use (thus, excluding, without limitation, uses for credit processing and telemarketing) and will not use the Premises in any manner that would conflict with any exclusive use agreement or other similar agreement entered into by Landlord with any other tenant of the Building or Complex, (4) will not use the Premises, Building or Project in a manner that would materially increase the pedestrian or vehicular traffic to the Premises, Building or Project, (5) is not a governmental entity, or subdivision or agency thereof, (6) is not another occupant of the Building or Complex, and (7) is not a person or entity with whom Landlord is then, or has been within the three-month period prior to the time Tenant seeks to enter into such assignment or subletting, negotiating to lease space in the Building or Complex or any Affiliate or any such person or entity; otherwise, Landlord may withhold its consent in its sole discretion. Additionally, Landlord may withhold its consent in its sole discretion to any proposed Transfer if any Event of Default by Tenant then exists.

(c) **Request for Consent.** If Tenant requests Landlord’s consent to a Transfer, then, at least 15 business days prior to the effective date of the proposed Transfer, Tenant shall provide Landlord with a written description of all terms and conditions of the proposed Transfer, copies of the proposed documentation, and the following information about the proposed transferee: name and address; reasonably satisfactory information about its business and business history; its proposed use of the Premises; banking, financial, and other credit information; and general references sufficient to enable Landlord to determine the proposed transferee’s creditworthiness and character. Concurrently with Tenant’s notice of any request for consent to a Transfer, Tenant shall pay to Landlord a fee of \$750 to defray Landlord’s expenses in reviewing such request, and Tenant shall also reimburse Landlord within 15 days after request for its reasonable attorneys’ fees (not to exceed \$2,000) incurred in connection with considering any request for consent to a Transfer.

(d) **Conditions to Consent.** If Landlord consents to a proposed Transfer, then the proposed transferee shall deliver to Landlord a written agreement whereby it expressly assumes Tenant’s obligations hereunder; however, any transferee of less than all of the space in the Premises shall be liable only for obligations under this Lease that are properly allocable to the space subject to the Transfer for the period of the Transfer. No Transfer shall release Tenant from its obligations under this Lease, but rather Tenant and its transferee shall be jointly and severally liable therefor. Landlord’s consent to any Transfer shall not waive Landlord’s rights as to any subsequent Transfers. If an Event of Default occurs while the Premises or any part thereof is subject to a Transfer, then Landlord, in addition to its other remedies, may collect directly from such transferee all rents becoming due to Tenant and apply such rents against Rent. Tenant authorizes its transferees to make payments of rent directly to Landlord upon receipt of notice from Landlord to do so following the occurrence of an Event of Default hereunder. Tenant shall pay for the cost of any demising walls or other improvements necessitated by a proposed subletting or assignment.

(e) **Attornment by Subtenants.** Each sublease by Tenant hereunder shall be subject and subordinate to this Lease and to the matters to which this Lease is or shall be subordinate, and each subtenant by entering into a sublease is deemed to have agreed that in the event of termination, re-entry or dispossession by Landlord under this Lease, Landlord may, at its option, take over all of the right, title and interest of Tenant, as sublandlord, under such sublease, and such subtenant shall, at Landlord’s option, attorn to Landlord pursuant to the then executory provisions of such sublease, except that Landlord shall not be (1) liable for any previous act or omission of Tenant under such sublease, (2) subject to any counterclaim, offset or defense that such subtenant might have against Tenant, (3) bound by any previous modification of such sublease not approved by Landlord in writing or by any rent or additional rent or advance rent which such subtenant might have paid for more than the current month to Tenant, and all such rent shall remain due and owing, notwithstanding such advance payment, (4) bound by any security or advance rental deposit made by such subtenant which is not delivered or paid over to Landlord and with respect to which such subtenant shall look solely to Tenant for refund or reimbursement, or (5) obligated to perform any work in the subleased space or to prepare it for occupancy, and in connection with such attornment, the subtenant shall execute and deliver to Landlord any instruments Landlord may reasonably request to evidence and confirm such attornment. Each subtenant or licensee of Tenant shall be deemed, automatically upon and as a

condition of its occupying or using the Premises or any part thereof, to have agreed to be bound by the terms and conditions set forth in this Section 10(e). The provisions of this Section 10(e) shall be self-operative, and no further instrument shall be required to give effect to this provision.

(f) **Cancellation.** Landlord may, within 30 days after submission of Tenant's written request for Landlord's consent to an assignment or subletting, cancel this Lease as to the portion of the Premises proposed to be sublet or assigned as of the date the proposed Transfer is to be effective. If Landlord cancels this Lease as to any portion of the Premises, then this Lease shall cease for such portion of the Premises and Tenant shall pay to Landlord all Rent accrued through the cancellation date relating to the portion of the Premises covered by the proposed Transfer. Thereafter, Landlord may lease such portion of the Premises to the prospective transferee (or to any other person) without liability to Tenant. Notwithstanding the foregoing, if Landlord provides written notification to Tenant of its election to cancel this Lease as to any portion of the Premises as provided above, Tenant may rescind its proposed assignment or subletting of all or any portion of the Premises by notifying Landlord in writing within seven business days following Landlord's written cancellation notice. The provisions of this Section 10(f) shall not apply to any Permitted Transfer.

(g) **Additional Compensation.** While no Event of Default exists, Tenant shall pay to Landlord, immediately upon receipt thereof, fifty percent (50%) of the excess of (1) all compensation received by Tenant for a Transfer less the actual out-of-pocket costs reasonably incurred by Tenant with unaffiliated third parties (i.e., brokerage commissions and tenant finish work) in connection with such Transfer (such costs shall be amortized on a straight-line basis over the term of the Transfer in question) over (2) the Rent allocable to the portion of the Premises covered thereby. While any Event of Default exists, Tenant shall pay to Landlord, immediately upon receipt thereof, one hundred percent (100%) of the excess of (A) all compensation received by Tenant for a Transfer over (B) the Rent allocable to the portion of the Premises covered thereby.

(h) **Permitted Transfers.** Notwithstanding Section 10(a), Tenant may Transfer all or part of its interest in this lease or all or part of the Premises (a "**Permitted Transfer**") to the following types of entities (a "**Permitted Transferee**") without the written consent of Landlord:

(1) an Affiliate of Tenant;

(2) any corporation, limited partnership, limited liability partnership, limited liability company or other business entity in which or with which Tenant, or its corporate successors or assigns, is merged or consolidated, in accordance with applicable statutory provisions governing merger and consolidation of business entities, so long as (A) Tenant's obligations hereunder are assumed by the entity surviving such merger or created by such consolidation; and (B) the Tangible Net Worth of the surviving or created entity is not less than the Tangible Net Worth of Tenant as of the date hereof; or

(3) any corporation, limited partnership, limited liability partnership, limited liability company or other business entity acquiring all or substantially all of Tenant's assets or stock if such entity's Tangible Net Worth after such acquisition is not less than the Tangible Net Worth of Tenant as of the date hereof.

Tenant shall promptly notify Landlord of any such Permitted Transfer. Tenant shall remain liable for the performance of all of the obligations of Tenant hereunder, or if Tenant no longer exists because of a merger, consolidation, or acquisition, the surviving or acquiring entity shall expressly assume in writing the obligations of Tenant hereunder. Additionally, the Permitted Transferee shall comply with all of the terms and conditions of this Lease, including the Permitted Use, and the use of the Premises by the Permitted Transferee may not violate any other agreements affecting the Premises, the Building or the Complex, Landlord or other tenants of the Building or the Complex. No later than 30 days after the effective date of any Permitted Transfer, Tenant agrees to furnish Landlord with (A) copies of the instrument effecting any of the foregoing Transfers, (B) documentation establishing Tenant's satisfaction of the requirements set forth above applicable to any such Transfer, and (C) evidence of insurance as required under this Lease with respect to the Permitted Transferee. The occurrence of a Permitted Transfer shall not waive Landlord's rights as to any subsequent Transfers. "**Tangible Net Worth**" means the excess of total assets over total liabilities, in each case as determined in accordance with generally accepted accounting principles consistently applied ("**GAAP**"), excluding however, from the determination of total assets all assets

which would be classified as intangible assets under GAAP including goodwill, licenses, patents, trademarks, trade names, copyrights, and franchises. Any subsequent Transfer by a Permitted Transferee shall be subject to the terms of this Section 10.

11. Insurance; Waivers; Subrogation; Indemnity.

(a) **Tenant's Insurance.** Effective as of the earlier of (1) the date Tenant enters or occupies the Premises, or (2) the Commencement Date, and continuing throughout the Term, Tenant shall maintain the following insurance policies: (A) commercial general liability insurance in amounts of \$3,000,000 per occurrence or, following the expiration of the initial Term, such other amounts as Landlord may from time to time reasonably require (and, if the use and occupancy of the Premises include any activity or matter that is or may be excluded from coverage under a commercial general liability policy [e.g., the sale, service or consumption of alcoholic beverages], Tenant shall obtain such endorsements to the commercial general liability policy or otherwise obtain insurance to insure all liability arising from such activity or matter [including liquor liability, if applicable] in such amounts as Landlord may reasonably require), insuring Tenant, Landlord, Landlord's property management company, Landlord's asset management company and, if requested in writing by Landlord, Landlord's Mortgagee, against all liability for injury to or death of a person or persons or damage to property arising from the use and occupancy of the Premises and (without implying any consent by Landlord to the installation thereof) the installation, operation, maintenance, repair or removal of Tenant's Off-Premises Equipment, (B) insurance covering the full value of all alterations and improvements and betterments in the Premises, naming Landlord and Landlord's Mortgagee as additional loss payees as their interest may appear, (C) insurance covering the full value of all furniture, trade fixtures and personal property (including property of Tenant or others) in the Premises or otherwise placed in the Project by or on behalf of a Tenant Party (including Tenant's Off-Premises Equipment), (D) contractual liability insurance sufficient to cover Tenant's indemnity obligations hereunder (but only if such contractual liability insurance is not already included in Tenant's commercial general liability insurance policy), (E) worker's compensation insurance, and (F) business interruption insurance in an amount reasonably acceptable to Landlord. Any insurance required to be maintained by Tenant may be taken out under a blanket insurance policy or policies covering other premises, property or insureds in addition to the Premises and Tenant, provided such policy or policies otherwise comply with this Section 11(a). Tenant's insurance shall provide primary coverage to Landlord when any policy issued to Landlord provides duplicate or similar coverage, and in such circumstance Landlord's policy will be excess over Tenant's policy. Tenant shall furnish to Landlord certificates of such insurance and such other evidence satisfactory to Landlord of the maintenance of all insurance coverages required hereunder at least ten days prior to the earlier of the Commencement Date or the date Tenant enters or occupies the Premises, and at least 15 days prior to each renewal of said insurance, and Tenant shall obtain a written obligation on the part of each insurance company to notify Landlord at least 30 days before cancellation or a material change of any such insurance. All such insurance policies shall be in form, and issued by companies with an A.M. Best rating of A+:VII or better, reasonably satisfactory to Landlord. If Tenant fails to comply with the foregoing insurance requirements or to deliver to Landlord the certificates or evidence of coverage required herein, Landlord, in addition to any other remedy available pursuant to this Lease or otherwise, may, but shall not be obligated to, obtain insurance and Tenant shall pay to Landlord on demand the premium costs thereof, plus an administrative fee of 15% of such cost.

(b) **Landlord's Insurance.** Throughout the Term of this Lease, Landlord shall maintain, as a minimum, the following insurance policies: (1) property insurance for the Building's replacement value (excluding property required to be insured by Tenant), less a commercially-reasonable deductible if Landlord so chooses, and (2) commercial general liability insurance in an amount of not less than \$3,000,000. Landlord may, but is not obligated to, maintain such other insurance and additional coverages as it may deem necessary. The cost of all insurance carried by Landlord with respect to the Project shall be included in Operating Costs. The foregoing insurance policies and any other insurance carried by Landlord shall be for the sole benefit of Landlord and under Landlord's sole control, and Tenant shall have no right or claim to any proceeds thereof or any other rights thereunder. Notwithstanding anything in this Lease to the contrary, Landlord's indemnity obligations under this Lease shall be limited to the extent any such claim is insured against under the terms of any insurance policy maintained by Landlord (or is required to be maintained by Landlord under the terms of this Lease).

(c) **No Subrogation; Waiver of Property Claims.** Landlord and Tenant each waives any claim it might have against the other for any damage to or theft, destruction, loss, or loss of use of any property, to

the extent the same is insured against under any insurance policy of the types described in this Section 11 that covers the Project, the Premises, Landlord's or Tenant's fixtures, personal property, leasehold improvements, or business or is required to be insured against under the terms hereof, regardless of whether the negligence of the other party caused such Loss (defined below).

Additionally, Tenant waives any claim it may have against Landlord for any Loss to the extent such Loss is caused by a terrorist act. Each party shall cause its insurance carrier to endorse all applicable policies waiving the carrier's rights of recovery under subrogation or otherwise against the other party. Notwithstanding any provision in this Lease to the contrary, Landlord, its agents, employees and contractors shall not be liable to Tenant or to any party claiming by, through or under Tenant for (and Tenant hereby releases Landlord and its servants, agents, contractors, employees and invitees from any claim or responsibility for) any damage to or destruction, loss, or loss of use, or theft of any property of any Tenant Party located in or about the Project, caused by casualty, theft, fire, third parties or any other matter or cause, regardless of whether the negligence of any party caused such loss in whole or in part. Tenant acknowledges that Landlord shall not carry insurance on, and shall not be responsible for damage to, any property of any Tenant Party located in or about the Project.

(d) **Indemnity.** Subject to section 11(c), Tenant shall defend, indemnify, and hold harmless Landlord and its representatives and agents from and against all claims, demands, liabilities, causes of action, suits, judgments, damages, and expenses (including reasonable attorneys' fees) arising from any injury to or death of any person or the damage to or theft, destruction, loss or loss of use of any property or inconvenience (a "**Loss**") (1) occurring in or on the Project (other than within the Premises) to the extent caused by the negligence or willful misconduct of any Tenant Parties, (2) occurring in the Premises, or (3) arising out of the installation, operation, maintenance, repair or removal of any of Tenant's Off-Premises Equipment. Clauses (2) and (3) of this indemnity are intended to indemnify Landlord and its agents against the consequences of their own negligence or fault, even when Landlord or its agents are jointly, comparatively, contributively, or concurrently negligent with Tenant, and even though any such claim, cause of action, or suit is based upon or alleged to be based upon the strict liability of Landlord or its agents; however such indemnity shall not apply to the sole or gross negligence or willful misconduct of Landlord and its agents. Subject to Section 11(c), Landlord shall defend indemnify, and hold harmless Tenant and its agents from and against all claims, demands, liabilities, causes of action, suits, judgments, and expenses (including reasonable attorneys' fees) for any Loss arising from any occurrence in or on the Building's common areas to the extent caused by the negligence or willful misconduct of Landlord or its agents, representatives or contractors. The indemnities set forth in this Lease shall survive termination or expiration of this Lease and shall not terminate or be waived, diminished or affected in any manner by any abatement or apportionment of Rent under any provision of this Lease. If any proceeding is filed for which indemnity is required hereunder, the indemnifying party agrees, upon request therefor, to defend the indemnified party in such proceeding at its sole cost utilizing counsel satisfactory to the indemnified party.

12. **Subordination; Attornment; Notice to Landlord's Mortgagee.**

(a) **Subordination.** This Lease shall be subordinate to any deed of trust, mortgage, or other security instrument (each, a "**Mortgage**"), or any ground lease, master lease, or primary lease (each, a "**Primary Lease**"), that now or hereafter covers all or any part of the Premises (the mortgagee under any such Mortgage, beneficiary under and such deed of trust, or the lessor under any such Primary Lease is referred to herein as a "**Landlord's Mortgagee**"). Any Landlord's Mortgagee may elect, at any time, unilaterally, to make this Lease superior to its Mortgage, Primary Lease, or other interest in the Premises by so notifying Tenant in writing. The provisions of this Section shall be self-operative and no further instrument of subordination shall be required; however, in confirmation of such subordination, Tenant shall execute and return to Landlord (or such other party designated by Landlord) within ten days after written request therefor such documentation, in recordable form if required, as a Landlord's Mortgagee may reasonably request to evidence the subordination of this Lease to such Landlord's Mortgagee's Mortgage or Primary Lease (including a subordination, non-disturbance and attornment agreement) or, if the Landlord's Mortgagee so elects, the subordination of such Landlord's Mortgagee's Mortgage or Primary Lease to this Lease.

(b) **Attornment.** Tenant shall attorn to any party succeeding to Landlord's interest in the Premises, whether by purchase, foreclosure, deed in lieu of foreclosure, power of sale, termination of lease, or otherwise, upon such party's request, and shall execute such agreements confirming such attornment as such party may reasonably request.

(c) **Notice to Landlord's Mortgagee.** Tenant shall not seek to enforce any remedy it may have for any default on the part of Landlord without first giving written notice by certified mail, return receipt requested, specifying the default in reasonable detail, to any Landlord's Mortgagee whose address has been given to Tenant, and affording such Landlord's Mortgagee a reasonable opportunity to perform Landlord's obligations hereunder.

(d) **Landlord's Mortgagee's Protection Provisions.** If Landlord's Mortgagee shall succeed to the interest of Landlord under this Lease, Landlord's Mortgagee shall not be: (1) liable for any act or omission of any prior lessor (including Landlord); (2) bound by any rent or additional rent or advance rent which Tenant might have paid for more than the current month to any prior lessor (including Landlord), and all such rent shall remain due and owing, notwithstanding such advance payment; (3) bound by any security or advance rental deposit made by Tenant which is not delivered or paid over to Landlord's Mortgagee and with respect to which Tenant shall look solely to Landlord for refund or reimbursement; (4) bound by any termination, amendment or modification of this Lease made without Landlord's Mortgagee's consent and written approval, except for those terminations, amendments and modifications permitted to be made by Landlord without Landlord's Mortgagee's consent pursuant to the terms of the loan documents between Landlord and Landlord's Mortgagee; (5) subject to the defenses which Tenant might have against any prior lessor (including Landlord); and (6) subject to the offsets which Tenant might have against any prior lessor (including Landlord) except for those offset rights which (A) are expressly provided in this Lease, (B) relate to periods of time following the acquisition of the Building by Landlord's Mortgagee, and (C) Tenant has provided written notice to Landlord's Mortgagee and provided Landlord's Mortgagee a reasonable opportunity to cure the event giving rise to such offset event. Landlord's Mortgagee shall have no liability or responsibility under or pursuant to the terms of this Lease or otherwise after it ceases to own an interest in the Project. Nothing in this Lease shall be construed to require Landlord's Mortgagee to see the application of the proceeds of any loan, and Tenant's agreements set forth herein shall not be impaired on account of any modification of the documents evidencing and securing any loan.

13. **Rules and Regulations.** Tenant shall comply with the rules and regulations of the Project which are attached hereto as Exhibit C. Landlord may, from time to time, change such rule and regulations for the safety, care, or cleanliness of the Project and related facilities, provided that such changes are applicable to all tenants of the Project, will not unreasonably interfere with Tenant's use of the Premises and are enforced by Landlord in a non-discriminatory manner. Tenant shall be responsible for the compliance with such rules and regulations by each Tenant Party.

14. **Condemnation.**

(a) **Total Taking.** If the entire Building or Premises are taken by right of eminent domain or conveyed in lieu thereof (a "**Taking**"), this Lease shall terminate as of the date of the Taking.

(b) **Partial Taking – Tenant's Rights.** If any part of the Building becomes subject to a Taking and such Taking will prevent Tenant from conducting on a permanent basis its business in the Premises in a manner reasonably comparable to that conducted immediately before such Taking, then Tenant may terminate this Lease as of the date of such Taking by giving written notice to Landlord within 30 days after the Taking, and Basic Rent and Additional Rent shall be apportioned as of the date of such Taking. If Tenant does not terminate this Lease, then Rent shall be abated on a reasonable basis as to that portion of the Premises rendered untenable by the Taking.

(c) **Partial Taking – Landlord's Rights.** If any material portion, but less than all, or the Building becomes subject to a Taking, or if Landlord is required to pay any of the proceeds arising from a Taking to a Landlord's Mortgagee, then Landlord may terminate this Lease by delivering written notice thereof to Tenant within 30 days after such Taking, and Basic Rent and Additional Rent shall be apportioned as of the date of such Taking. If Landlord does not so terminate this Lease, then this Lease will continue, but if any portion of the Premises has been taken, Rent shall abate as provided in the last sentence of Section 14(b).

(d) **Temporary Taking.** If all or any portion of the Premises becomes subject to a Taking for a limited period of time (not to exceed 180 days), this Lease shall remain in full force and effect and Tenant shall continue to perform all of the terms, conditions and covenants of this Lease, including the payment of Basic Rent

and all other amounts required hereunder. If any such temporary Taking terminates prior to the expiration of the Term, Tenant shall restore the Premises as nearly as possible to the condition prior to such temporary Taking, at Tenant's sole cost and expense.

Landlord shall be entitled to receive the entire award for any such temporary Taking, except that Tenant shall be entitled to receive the portion of such award which (1) compensates Tenant for its loss of use of the Premises within the Term and (2) reimburses Tenant for the reasonable out-of-pocket costs actually incurred by Tenant to restore the Premises are required by this Section 14(d).

(e) **Award.** Subject to Section 14(d), if any Taking occurs, then Landlord shall receive the entire award or other compensation for the Land, the Building, and other improvements taken; however, Tenant may separately pursue a claim (to the extent it will not reduce Landlord's award) against the condemner for the value of Tenant's personal property which Tenant is entitled to remove under this Lease, moving costs, loss of business, and other claims it may have.

15. **Fire or Other Casualty.**

(a) **Repair Estimate.** If the Premises or the Building are damaged by fire or other casualty (a "**Casualty**"), Landlord shall, within 60 days after such Casualty, deliver to Tenant a good faith estimate (the "**Damage Notice**") of the time needed to repair the damage caused by such Casualty and the estimated completion date for such repair work as determined by Landlord in the exercise of its commercially reasonable discretion.

(b) **Tenant's Rights.** If a material portion of the Premises is damaged by Casualty such that Tenant is prevented from conducting its business in the Premises in a manner reasonably comparable to that conducted immediately before such Casualty and Landlord estimates that the damage caused thereby cannot be repaired within 210 days after the commencement of repairs (the "**Repair Period**"), then Tenant may terminate this Lease by delivering written notice to Landlord of its election to terminate within 30 days after the Damage Notice has been delivered to Tenant.

(c) **Landlord's Rights.** If a Casualty damages the Premises or a material portion of the Building and (1) Landlord estimates that the damage to the Premises cannot be repaired within the Repair Period, (2) the damage to the Premises exceeds 50% of the replacement cost thereof (excluding foundations and footings), as estimated by Landlord, and such damage occurs during the last two years of the Term, (3) regardless of the extent of damage to the Premises, the damage is not fully covered by Landlord's insurance policies or Landlord makes a good faith determination that restoring the Building would be uneconomical, or (4) Landlord is required to pay any insurance proceeds arising out of the Casualty to a Landlord's Mortgagee, then Landlord may terminate this Lease by giving written notice of its election to terminate within 30 days after the Damage Notice has been delivered to Tenant.

(d) **Repair Obligation.** If neither party elects to terminate this Lease following a Casualty, then Landlord shall, within a reasonable time after such Casualty, begin to repair the Premises and shall proceed with reasonable diligence to restore the Premises to substantially the same condition as they existed immediately before such Casualty; however, Landlord shall not be required to repair or replace any alterations or betterments within the Premises (which shall be promptly and with due diligence repaired and restored by Tenant at Tenant's sole cost and expense) or any furniture, equipment, trade fixtures or personal property of Tenant or others in the Premises or the Building. If this Lease is terminated under the provisions of this Section 15, Landlord shall be entitled to the full proceeds of the insurance policies providing coverage for all alterations, improvements and betterments in the Premises (and, if Tenant has failed to maintain insurance on such items as required by this Lease, Tenant shall pay Landlord an amount equal to the proceeds Landlord would have received had Tenant maintained insurance on such items as required by this Lease). If Landlord does not complete the restoration of the Premises within 120 days after the time period estimated by Landlord to repair the damage caused by such Casualty as specified in the Damage Notice, as the same may be extended by force majeure or delays caused by a Tenant Party, Tenant may terminate this Lease by delivering written notice to Landlord and Landlord's Mortgagee within ten days following the expiration of such 120-day period (as the same may be extended as set forth above) and prior to the date upon which Landlord substantially completes such restoration. Such termination shall be effective as of the date specified in Tenant's termination notice (but not earlier than 30 days nor later than 90 days after the date of such notice) as if such date were the date fixed for the expiration of the Term. If Tenant fails to timely give such termination notice, Tenant shall be deemed to have waived its right to terminate this Lease, time being of the

essence with respect thereto. Notwithstanding the foregoing, if upon the receipt of Tenant's written election to terminate this Lease as provided in this Section 15(d), Landlord reasonably believes it can complete the restoration of the Premises within 30 days following the receipt of such notice, Landlord may, in its sole discretion, elect to proceed with such restoration and, provided Landlord substantially completes such restoration within such 30-day period, Tenant's election to terminate shall be null and void.

(e) **Abatement of Rent.** If the Premises are damaged by Casualty, Rent for the portion of the Premises rendered untenantable by the damage shall be abated on a reasonable basis from the date of damage until the completion of Landlord's repairs (or until the date of termination of this Lease by Landlord or Tenant as provided above, as the case may be).

16. **Personal Property Taxes.** Tenant shall be liable for all taxes levied or assessed against personal property, furniture, or fixtures placed by Tenant in the Premises or in or on the Building or Project. If any taxes for which Tenant is liable are levied or assessed against Landlord or Landlord's property and Landlord elects to pay the same, or if the assessed value of Landlord's property is increased by inclusion of such personal property, furniture or fixtures and Landlord elects to pay the taxes based on such increase, then Tenant shall pay to Landlord, within 30 days following written request therefor, the part of such taxes for which Tenant is primarily liable hereunder, however, Landlord shall not pay such amount if Tenant notifies Landlord that it will contest the validity or amount of such taxes before Landlord makes such payment, and thereafter diligently proceeds with such contest in accordance with Law and if the non-payment thereof does not pose a threat of loss or seizure of the Project or interest of Landlord therein or impose any fee or penalty against Landlord.

17. **Events of Default.** Each of the following occurrences shall be an "**Event of Default**":

(a) **Payment Default.** Tenant's failure to pay Rent within five days after Landlord has delivered written notice to Tenant that the same is due; however, an Event of Default shall occur hereunder without any obligation of Landlord to give any notice if Tenant fails to pay Rent when due and, during the 12 month interval preceding such failure, Landlord has given Tenant written notice of failure to pay Rent on one or more occasions;

(b) **Abandonment.** [Intentionally deleted];

(c) **Estoppel.** Tenant fails to provide any estoppel certificate after Landlord's written request therefor pursuant to Section 25(e) and such failure shall continue for five days after Landlord's second written notice thereof to Tenant;

(d) **Insurance.** Tenant fails to procure, maintain and deliver to Landlord evidence of the insurance policies and coverages as required under Section 11(a);

(e) **Mechanic's Liens.** Tenant fails to pay and release of record, or diligently contest and bond around, any mechanic's lien filed against the Premises or the Project for any work performed, materials furnished, or obligation incurred by or at the request of Tenant, within the time and in the manner required by Section 8(d);

(f) **Other Defaults.** Tenant's failure to perform, comply with, or observe any other agreement or obligation of Tenant under this Lease and the continuance of such failure for a period of more than 30 days after Landlord has delivered to Tenant written notice thereof; however, if such failure cannot be cured within such 30-day period (thus excluding, for example, Tenant's obligation to provide Landlord evidence of Tenant's insurance coverage) and Tenant commences to cure such failure within such 30-day period and thereafter diligently pursues such cure to completion, then such failure shall not be an Event of Default unless it is not fully cured within an additional 30 days after the expiration of the 30-day period; and

(g) **Insolvency.** The filing of a petition by or against Tenant (the term "Tenant" shall include, for the purpose of this Section 17(g), any guarantor of Tenant's obligations hereunder) (1) in any bankruptcy or other insolvency proceeding; (2) seeking any relief under any state or federal debtor relief law; (3) for the appointment of a liquidator or receiver for all or substantially all of Tenant's property or for Tenant's interest in

this Lease; (4) for the reorganization or modification of Tenant's capital structure; or (5) in any assignment for the benefit of creditors proceeding ; however, if such a petition is filed against Tenant, then such filing shall not be an Event of Default unless Tenant fails to have the proceedings initiated by such petition dismissed within 90 days after the filing thereof.

18. **Remedies.** During the continuance of any Event of Default, Landlord may, in addition to all other rights and remedies afforded Landlord hereunder or by law or equity, take any one or more of the following actions:

(a) **Termination of Lease.** Terminate this Lease by giving Tenant written notice thereof, in which event Tenant shall pay to Landlord the sum of (1) all Rent accrued hereunder through the date of termination, (2) all amounts due under Section 19(a), and (3) an amount equal to (A) the total Rent that Tenant would have been required to pay for the remainder of the Term discounted to present value at a per annum rate equal to the "Prime Rate" as published on the date this Lease is terminated by *The Wall Street Journal*, Southwest Edition, in its listing of "Money Rates" minus one percent, minus (B) the then present fair rental value of the Premises for such period, similarly discounted;

(b) **Termination of Possession.** Terminate Tenant's right to possess the Premises without terminating this Lease by giving written notice thereof to Tenant, in which event Tenant shall pay to Landlord (1) all Rent and other amounts accrued hereunder to the date of termination of possession, (2) all amounts due from time to time under Section 19(a), and (3) all Rent and other net sums required hereunder to be paid by Tenant during the remainder of the Term, diminished by any net sums thereafter received by Landlord through reletting the Premises during such period, after deducting all costs incurred by Landlord in reletting the Premises. If Landlord elects to proceed under this Section 18(b), Landlord may remove all of Tenant's property from the Premises and store the same in a public warehouse or elsewhere at the cost of, and for the account of, Tenant, without becoming liable for any loss or damage which may be occasioned thereby. Landlord shall use reasonable efforts to relet the Premises on such terms as Landlord in its sole discretion may determine (including a term different from the Term, rental concessions, and alterations to, and improvement of the Premises); however, Landlord shall not be obligated to relet the Premises before leasing other portions of the Building or Complex and Landlord shall not be obligated to accept any prospective tenant proposed by Tenant unless such proposed tenant meets all of Landlord's leasing criteria. Landlord shall not be liable for, nor shall Tenant's obligations hereunder be diminished because of, Landlord's failure to relet the Premises or to collect rent due for such reletting. Tenant shall not be entitled to the excess of any consideration obtained by reletting over the Rent due hereunder, but any such excess shall be credited against amounts due and owing to Landlord by Tenant pursuant to this Lease; however, in no event will Landlord be obligated to pay to Tenant any excess. Reentry by Landlord in the Premises shall not affect Tenant's obligations hereunder for the unexpired Term; rather, Landlord may, from time to time, bring an action against Tenant to collect amounts due by Tenant, without the necessity of Landlord's waiting until the expiration of the Term. Unless Landlord delivers written notice to Tenant expressly stating that it has elected to terminate this Lease, all actions taken by Landlord to dispossess or exclude Tenant from the Premises shall be deemed to be taken under this Section 18(b). If Landlord elects to proceed under this Section 18(b), it may at any time elect to terminate this Lease under Section 18(a);

(c) **Perform Acts on Behalf of Tenant.** Perform any act Tenant is obligated to perform under the terms of this Lease (and enter upon the Premises in connection therewith if necessary) in Tenant's name and on Tenant's behalf, without being liable for any claim for damages therefore, and Tenant shall reimburse Landlord on demand for any expenses which Landlord may incur in thus effecting compliance with Tenant's obligations under this Lease (including, but not limited to, collection costs and legal expenses), plus interest thereon at the Default Rate;

(d) **Suspension of Services.** Suspend any above Building-standard services required to be provided by Landlord hereunder without liability to Tenant; or

(e) **Alteration of Locks.** Additionally, with or without notice, and to the extent permitted by Law, Landlord may alter locks or other security devices at the Premises to deprive Tenant of access thereto, and Landlord shall not be required to provide a new key or right of access to Tenant.

19. **Payment by Tenant; Non-Waiver; Cumulative Remedies.**

(a) **Payment by Tenant.** Upon any Event of Default, Tenant shall pay to Landlord all costs incurred by Landlord (including court costs and reasonable attorney's fees and expenses) in (1) obtaining possession of the Premises, (2) removing and storing Tenant's or any other occupant's property, (3) repairing, restoring, altering, remodeling, or otherwise putting the Premises into condition acceptable to a new tenant, (4) if Tenant is dispossessed of the Premises and this Lease is not terminated, reletting all or any part of the Premises (including brokerage commissions, cost of tenant finish work, and other costs incidental to such reletting), (5) performing Tenant's obligations which Tenant failed to perform, and (6) enforcing, or advising Landlord of, its rights, remedies, and recourses arising out of the default. To the full extent permitted by law, Landlord and Tenant agree the federal and state courts of the state in which the Premises are located shall have exclusive jurisdiction over any matter relating to or arising from this Lease and the parties' rights and obligations under this Lease.

(b) **No Waiver.** Landlord's acceptance of Rent following an Event of Default shall not waive Landlord's rights regarding such Event of Default. No waiver by Landlord of any violation or breach of any of the terms contained herein shall waive Landlord's rights regarding any future violation of such term. Landlord's acceptance of any partial payment of Rent shall not waive Landlord's rights with regard to the remaining portion of the Rent that is due, regardless of any endorsement or other statement on any instrument delivered in payment of Rent or any writing delivered in connection therewith; accordingly, Landlord's acceptance of a partial payment of Rent shall not constitute an accord and satisfaction of the full amount of the Rent that is due.

(c) **Cumulative Remedies.** Any and all remedies set forth in this Lease: (1) shall be in addition to any and all other remedies Landlord may have at law or in equity, (2) shall be cumulative, and (3) may be pursued successively or concurrently as Landlord may elect. The exercise of any remedy by Landlord shall not be deemed an election of remedies or preclude Landlord from exercising any other remedies in the future. Additionally, Tenant shall defend, indemnify and hold harmless Landlord, Landlord's Mortgagee and their respective representatives and agents from and against all claims, demands, liabilities, causes of action, suits, judgments, damages and expenses (including reasonable attorneys' fees) arising from Tenants failure to perform its obligations under this Lease.

20. **Landlord's Lien.** [Intentionally deleted.]

21. **Surrender of Premises.** No act by Landlord shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept a surrender of the Premises shall be valid unless it is in writing and signed by Landlord. At the expiration or termination of this Lease, Tenant shall deliver to Landlord the Premises with all improvements located therein in good repair and condition, free of Hazardous Materials placed on the Premises during the Term, broom-clean, reasonable wear and tear (and condemnation and Casualty damage, as to which Sections 14 and 15 shall control) excepted, and shall deliver to Landlord all keys to the Premises. Provided that no Event of Default exists or any other condition exists which with the passage of time, the giving of notice, or both, could constitute an Event of Default, Tenant may remove all unattached trade fixtures, furniture, and personal property placed in the Premises or elsewhere in the Building by Tenant (but Tenant may not remove any such item which was paid for, in whole or in part, by Landlord or any wiring or cabling unless Landlord requires such removal). Additionally, at Landlord's option, Tenant shall remove such alterations, additions, improvements, trade fixtures, personal property, equipment, wiring, conduits, cabling, and furniture (including Tenant's Off-Premises Equipment) as Landlord may request; however, Tenant shall not be required to remove any addition or improvement to the Premises or the Project if Landlord has specifically agreed in writing that the improvement or addition in question need not be removed. Tenant shall repair all damage caused by such removal. All items not so removed shall, at Landlord's option, be deemed to have been abandoned by Tenant and may be appropriated, sold, stored, destroyed, or otherwise disposed of by Landlord without notice to Tenant and without any obligation to account for such items; any such disposition shall not be considered a strict foreclosure or other exercise of Landlord's rights in respect of the security interest granted under Section 20. The provisions of this Section 21 shall survive the end of the Term.

22. **Holding Over.** If Tenant fails to vacate the Premises at the end of the Term, then Tenant shall be a tenant at sufferance and, in addition to all other damages and remedies to which Landlord may be entitled for such holding over, (a) Tenant shall pay, in addition to the other Rent, Basic Rent equal to the greater of (1) 150% of the

Rent payable during the last month of the Term, or (2) 125% of the prevailing rental rate in the Building for similar space, and (b) Tenant shall otherwise continue to be subject to all of Tenant's obligations under this Lease. The provisions of this Section 22 shall not be deemed to limit or constitute a waiver of any other rights or remedies of Landlord provided herein or at law. If Tenant fails to surrender the Premises upon the termination or expiration of this Lease, in addition to any other liabilities to Landlord accruing therefrom, Tenant shall protect, defend, indemnify and hold Landlord harmless from all loss, costs (including reasonable attorneys' fees) and liability resulting from such failure, including any claims made by any succeeding tenant founded upon such failure to surrender, and any lost profits to Landlord resulting therefrom.

23. **Certain Rights Reserved by Landlord.** Provided that the exercise of such rights does not unreasonably interfere with Tenant's use or occupancy of or access to the Premises and does not adversely affect Tenant's parking rights hereunder, Landlord shall have the following rights:

(a) **Building Operations.** To decorate and to make inspections, repairs, alterations, additions, changes, or improvements, whether structural or otherwise, in and about the Project, or any part thereof; to enter upon the Premises (after giving Tenant reasonable notice thereof, which may be oral notice, except in cases of real or apparent emergency, in which case no notice shall be required) and, during the continuance of any such work, to temporarily close doors, entryways, public space, and corridors in the Building; to interrupt or temporarily suspend Building services and facilities; to change the name of the Building; and to change the arrangement and location of entrances or passageways, doors, and doorways, corridors, elevators, stairs, restrooms, or other public parts of the Building; Landlord agrees to use commercially reasonable efforts to minimize the interference with Tenant's business operations in connection with exercising such rights;

(b) **Security.** To take such reasonable measures as Landlord deems advisable for the security of the Building and its occupants; evacuating the Building for cause, suspected cause, or for drill purposes; temporarily denying access to the Building; and closing the Building after normal business hours and on Sundays and holidays, subject, however, to Tenant's right to enter when the Building is closed after normal business hours under such reasonable regulations as Landlord may prescribe from time to time;

(c) **Prospective Purchasers and Lenders.** To enter the Premises at all reasonable hours to show the Premises to prospective purchasers or lenders; and

(d) **Prospective Tenants.** At any time during the last 12 months of the Term (or earlier if Tenant has notified Landlord in writing that it does not desire to renew the Term) or at any time during the continuance of an Event of Default, to enter Premises at all reasonable hours to show the Premises to prospective tenants.

24. **Substitution Space.** Landlord may, at Landlord's expense, relocate Tenant within the Building space on the eighth floor or a higher floor which is comparable in location within the Building (excluding the floor on which the Premises is located), size, utility and condition to the Premises. If Landlord relocates Tenant, Landlord shall reimburse Tenant for Tenant's reasonable out-of-pocket expenses for moving Tenant's furniture, equipment, and supplies from the Premises to the relocation space and for reprinting Tenant's stationery of the same quality and quantity as Tenant's stationery supply on hand immediately before Landlord's notice to Tenant of the exercise of this relocation right and shall abate Basic Rent payable to Landlord pursuant to this Lease for the first 60 days after the date of such relocation. Upon such relocation, the relocation space shall be deemed to be the Premises and the terms of this Lease shall remain in full force and shall apply to the relocation space. No amendment or other instrument shall be necessary to effectuate the relocation contemplated by this Section; however, if requested by Landlord, Tenant shall execute an appropriate amendment document within ten business days after Landlord's written request therefore. If Tenant fails to execute such relocation amendment within such time period, or if Tenant fails to relocate within the time period stated in Landlord's relocation notice to Tenant (or, if such relocation space is not available on the date specified in Landlord's relocation notice, as soon thereafter as the relocation space becomes available and is tendered to Tenant in the condition required by this Lease), then, in addition to Landlord's other remedies set forth in this Lease, at law and/or in equity, Landlord may terminate this Lease by notifying Tenant in writing thereof at least 60 days prior to the termination date contained in Landlord's termination notice. Time is of the essence with respect to Tenant's obligations under this Section.

25. **Miscellaneous.**

(a) **Landlord Transfer.** Landlord may transfer any portion of the Project and any of its rights under this Lease. If Landlord assigns its rights under this Lease, then Landlord shall thereby be released from any further obligations hereunder arising after the date of transfer, provided that the assignee assumes in writing Landlord's obligations hereunder arising from and after the transfer date.

(b) **Landlord's Liability.** The liability of Landlord (and its partners, shareholders or members) to Tenant (or any person or entity claiming by, through or under Tenant) for any default by Landlord under the terms of this Lease or any matter relating to or arising out of the occupancy or use of the Premises and/or other areas of the Building shall be limited to Tenant's actual direct, but not consequential, damages therefore and shall be recoverable only from the interest of Landlord in the Building, and Landlord (and its partners, shareholders or members) shall not be personally liable for any deficiency. Additionally, Tenant hereby waives its statutory lien under Section 91.004 of the Texas Property Code.

(c) **Force Majeure.** Other than for Landlord's and Tenant's obligations under this Lease that can be performed by the payment of money (e.g., payment of Rent and maintenance of insurance), whenever a period of time is herein prescribed for action to be taken by either party hereto, such party shall not be liable or responsible for, and there shall be excluded from the computation of any such period of time, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, terrorist acts or activities, governmental laws, regulations, or restrictions, or any other causes of any kind whatsoever which are beyond the control of such party.

(d) **Brokerage.** Neither Landlord nor Tenant has dealt with any broker or agent in connection with the negotiation or execution of this Lease, other than Peloton Real Estate Partners, LLC and Pinnacle Commercial Real Estate, Inc., whose commissions shall be paid by Landlord pursuant to separate written agreements. Tenant and Landlord shall each indemnify the other against all costs, expenses, attorneys' fees, liens and other liability for commissions or other compensation claimed by any other broker or agent claiming the same by, through, or under the indemnifying party.

(e) **Estoppel Certificates.** From time to time (but not more than four times in any 12-month period unless to a Landlord's Mortgagee), Tenant shall furnish to any party designated by Landlord, within ten days after Landlord has made a request therefore, a certificate signed by Tenant confirming and containing such factual certifications and representations as to this Lease as Landlord may reasonably request. Unless otherwise required by Landlord's Mortgagee or a prospective purchaser or mortgagee of the Project, the initial form of estoppel certificate to be signed by Tenant is attached hereto as Exhibit F. If Tenant does not deliver to Landlord the certificate signed by Tenant within such required time period, Landlord, Landlord's Mortgagee and any prospective purchaser or mortgagee, may conclusively presume and rely upon the following facts: (1) this Lease is in full force and effect; (2) the terms and provisions of this Lease have not been changed except as otherwise represented by Landlord; (3) not more than one monthly installment of Basic Rent and other charges have been paid in advance; (4) there are no claims against Landlord nor any defenses or rights of offset against collection of Rent or other charges; and (5) Landlord is not in default under this lease. In such event, Tenant shall be estopped from denying the truth of the presumed facts.

(f) **Notices.** All notices and other communications given pursuant to this Lease shall be in writing and shall be (1) mailed by first class, United States Mail, postage prepaid, certified, with return receipt requested, and addressed to the parties hereto at the address specified in the Basic Lease Information, (2) hand delivered to the intended addressee, (3) sent by a nationally recognized overnight courier service, or (4) sent by facsimile transmission during normal business hours followed by a confirmatory letter sent in another manner permitted hereunder. All notices shall be effective upon delivery to the address of the addressee (even if such addressee refuses delivery thereof). The parties hereto may change their addresses by giving notice thereof to the other in conformity with this provision.

(g) **Separability.** If any clause or provision of this Lease is illegal, invalid, or unenforceable under present or future laws, then the remainder of this Lease shall not be affected thereby and in lieu of such clause or provision, there shall be added as a part of this Lease a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable.

(h) **Amendments; Binding Effect; No Electronic Records.** This Lease may not be amended except by instrument in writing signed by Landlord and Tenant. No provision of this Lease shall be deemed to have been waived by Landlord unless such waiver is in writing signed by Landlord, and no custom or practice which may evolve between the parties in the administration of the terms hereof shall waive or diminish the right of Landlord to insist upon the performance by Tenant in strict accordance with the terms hereof. Landlord and Tenant hereby agree not to conduct the transactions or communications contemplated by this Lease by electronic means, except by facsimile transmission as specifically set forth in Section 25(f); nor shall the use of the phrase "in writing" or the word "written" be construed to include electronic communications except by facsimile transmissions as specifically set forth in Section 25(f). The terms and conditions contained in this Lease shall inure to the benefit of and be binding upon the parties hereto, and upon their respective successors in interest and legal representatives, except as otherwise herein expressly provided. This Lease is for the sole benefit of Landlord and Tenant, and, other than Landlord's Mortgagee, no third party shall be deemed a third party beneficiary hereof.

(i) **Quiet Enjoyment.** Provided Tenant has performed all of its obligations hereunder, Tenant shall peaceably and quietly hold and enjoy the Premises for the Term, without hindrance from Landlord or any party claiming by, through, or under Landlord, but not otherwise, subject to the terms and conditions of this Lease.

(j) **No Merger.** There shall be no merger of the leasehold estate hereby created with the fee estate in the Premises or any part thereof if the same person acquires or holds, directly or indirectly, this Lease or any interest in this Lease and the fee estate in the leasehold Premises or any interest in such fee estate.

(k) **No Offer.** The submission of this Lease to Tenant shall not be construed as an offer, and Tenant shall not have any rights under this Lease unless Landlord executes a copy of this Lease and delivers it to Tenant.

(l) **Entire Agreement.** This Lease constitutes the entire agreement between Landlord and Tenant regarding the subject matter hereof and supersedes all oral statements and prior writings relating thereto. Except for this set forth in this Lease, no representations, warranties, or agreements have been made by Landlord or Tenant to the other with respect to this Lease or the obligations of Landlord or Tenant in connection therewith. The normal rule of construction that any ambiguities be resolved against the drafting party shall not apply to the interpretation of this Lease or any exhibits or amendments hereto.

(m) **Waiver of Jury Trial.** **TO THE MAXIMUM EXTENT PERMITTED BY LAW, LANDLORD AND TENANT EACH WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY LITIGATION OR TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE ARISING OUT OF OR WITH RESPECT TO THIS LEASE OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH OR THE TRANSACTIONS RELATED HERETO.**

(n) **Governing Law.** This Lease shall be governed by and construed in accordance with the laws of the state in which the Premises are located.

(o) **Recording.** Tenant shall not record this Lease or any memorandum of this Lease without the prior written consent of Landlord, which consent may be withheld or denied in the sole and absolute discretion of Landlord, and any recordation by Tenant shall be a material breach of this Lease. Tenant grants to Landlord a power or attorney to execute and record a release releasing any such recorded instrument of record that was recorded without the prior written consent of Landlord.

(p) **Water or Mold Notification.** To the extent Tenant or its agents or employees have actual knowledge of any water leakage, water damage or mold in or about the Premises or Project, Tenant shall promptly notify Landlord thereof in writing.

(q) **Joint and Several Liability.** If Tenant is comprised of more than one party, each such party shall be jointly and severally liable for Tenant's obligations under this Lease. All unperformed obligations of

Tenant hereunder not fully performed at the end of the Term shall survive the end of the Term, including payment obligations with respect to Rent and all obligations concerning the condition and repair of the Premises.

(r) **Financial Reports.** Within 15 days after Landlord's request, Tenant will furnish Tenant's most recent audited financial statements (including any notes to them) to Landlord, or, if no such audited statements have been prepared, such other financial statements (and notes to them) as may have been prepared by an independent certified public accountant or failing those, Tenant's internally prepared financial statements. If Tenant is a publicly traded corporation, Tenant may satisfy its obligations hereunder by providing to Landlord Tenant's most recent annual and quarterly reports. Tenant will discuss its financial statements with Landlord and, following the occurrence of an Event of Default hereunder, will give Landlord access to Tenant's books and records in order to enable Landlord to verify the financial statements. Landlord will not disclose any aspect of Tenant's financial statements that Tenant designates to Landlord as confidential except (1) to Landlord's Mortgagee or prospective mortgagees or purchasers of the Building, (2) in litigation between Landlord and Tenant, and/or (3) if required by court order. Tenant shall not be required to deliver the financial statements required under this Section 25(r) more than once in any 12-month period unless requested by Landlord's Mortgagee or a prospective buyer or lender of the Building or an Event of Default occurs.

(s) **Landlord's Fees.** Whenever Tenant requests Landlord to take any action not required of it hereunder or give any consent required or permitted under this Lease, Tenant will reimburse Landlord for Landlord's reasonable, out-of-pocket costs payable to third parties and incurred by Landlord in reviewing the proposed action or consent, including reasonable attorneys', engineers' or architects' fees, within 30 days after Landlord's delivery to Tenant of a statement of such costs. Tenant will be obligated to make such reimbursement without regard to whether Landlord consents to any such proposed action. If Landlord reasonably believes that the out-of-pocket costs payable to third parties to be incurred by Landlord in reviewing the proposed action or consent will exceed \$1,000, Landlord will first notify Tenant of such cost estimate before proceeding with such third-party expenses. If Tenant fails to consent to such additional costs and expenses within five business days after Landlord's written notification to Tenant thereof, Tenant shall be deemed to have rescinded its request for such action or consent.

(t) **Telecommunications.** Tenant and its telecommunications companies, including local exchange telecommunications companies and alternative access vendor services companies, shall have no right of access to and within the Building, for the installation and operation of telecommunications systems, including voice, video, data, Internet, and any other services provided over wire, fiber optic, microwave, wireless, and any other transmission systems ("**Telecommunications Services**"), for part or all of Tenant's telecommunications within the Building and from the Building to any other location without Landlord's prior written consent, not to be unreasonably withheld. All providers of Telecommunications Services shall be required to comply with the rules and regulations of the Building, applicable Laws and Landlord's policies and practices for the Building. Tenant acknowledges that Landlord shall not be required to provide or arrange for any Telecommunications Services and that Landlord shall have no liability to any Tenant Party in connection with the installation, operation or maintenance of Telecommunications Services or any equipment or facilities relating thereto. Tenant, at its cost and for its own account, shall be solely responsible for obtaining all Telecommunications Services.

(u) **Confidentiality.** Tenant acknowledges that the terms and conditions of this Lease are to remain confidential for Landlord's benefit, and may not be disclosed by Tenant to anyone, by any manner or means, directly or indirectly, without Landlord's prior written consent; however, Tenant may disclose the terms and conditions of this Lease if required by Law or court order, to its attorneys, accountants, employees, proposed assignees and sublessees and existing or prospective financial partners provided same are advised by Tenant of the confidential nature of such terms and conditions and agree to maintain the confidentiality thereof (in each case, prior to disclosure). Tenant shall be liable for any disclosures made in violation of this Section by Tenant or by any entity or individual to whom the terms of and conditions of this Lease were disclosed or made available by Tenant. The consent by Landlord to any disclosures shall not be deemed to be a waiver on the part of Landlord of any prohibition against any future disclosure.

(v) **Authority.** Tenant (if a corporation, partnership or other business entity) hereby represents and warrants to Landlord that Tenant is a duly formed and existing entity qualified to do business in the state in which the Premises are located, that Tenant has full right and authority to execute and deliver this Lease, and

that each person signing on behalf of Tenant is authorized to do so. Landlord hereby represents and warrants to Tenant that Landlord is a duly formed and existing entity qualified to do business in the state in which the Premises are located, that Landlord has full right and authority to execute and deliver this Lease, and that each person signing on behalf of Landlord is authorized to do so.

(w) **Hazardous Materials.** The term “**Hazardous Materials**” means any substance, material, or waste which is now or hereafter classified or considered to be hazardous, toxic, or dangerous under any Law relating to pollution or the protection or regulation of human health, natural resources or the environment, or poses or threatens to pose a hazard to the health or safety of persons on the Premises or in the Project. Tenant shall not use, generate, store, or dispose of, or permit the use, generation, storage or disposal of Hazardous Materials on or about the Premises or the Project except in a manner and quantity necessary for the ordinary performance of Tenant’s business, and then in compliance with all laws. If Tenant breaches its obligations under this Section 25(w), Landlord may immediately take any and all action reasonably appropriate to remedy the same, including taking all appropriate action to clean up or re mediate any contamination resulting from Tenant’s use, generation, storage or disposal of Hazardous Materials. Notwithstanding Landlord’s indemnity contained in Section 11(d), Tenant shall defend, indemnify, and hold harmless Landlord and its representatives and agents from and against any and all claims, demands, liabilities, causes of action, suits, judgments, damages and expenses (including reasonable attorneys’ fees and cost of clean up and remediation) arising from Tenant’s failure to comply with the provisions of this Section 25(w). This indemnity provision shall survive termination or expiration of this Lease.

(x) **List of Exhibits.** All exhibits and attachments attached hereto are incorporated herein by this reference.

- Exhibit A – Outline of Premises
- Exhibit B – Description of the Land
- Exhibit C – Building Rules and Regulations
- Exhibit D – Tenant Finish-Work: Work of Limited Scope
- Exhibit D-1 – Plans
- Exhibit E – Form of Confirmation of Commencement Date Letter
- Exhibit F – Form of Tenant Estoppel Certificate
- Exhibit G – Parking
- Exhibit H – Renewal Option
- Exhibit I – Rent Abatement Provisions

(y) **Determination of Charges.** Landlord and Tenant agree that each provision of this Lease for determining charges and amounts payable by Tenant (including provisions regarding Additional Rent and Tenant’s Proportionate Share of Taxes and Electrical Costs) is commercially reasonable and, as to each such charge or amount, constitutes a statement of the amount of the charge or a method by which the charge is to be computed for purposes of Section 93.012 of the Texas Property Code.

(z) **Prohibited Persons and Transactions.** Tenant represents and warrants that neither Tenant nor any of its affiliates, nor any of their respective partners, members, shareholders or other equity owners, and none of their respective employees, officers, directors, representatives or agents is, nor will they become, a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control (“**OFAC**”) of the Department of Treasury (including those named on OFAC’s Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and will not Transfer this Lease to, contract with or otherwise engage in any dealings or transactions or be otherwise associated with such persons or entities.

26. **Other Provisions.**

(a) **Attorneys’ Fees.** If there is any legal or arbitration action or proceeding between Landlord and Tenant to enforce any provision of this Lease or to protect or establish any right or remedy of either Landlord or Tenant hereunder, the unsuccessful party to such action or proceeding will pay to the prevailing party

all reasonable, actual out-of-pocket costs and expenses paid or payable to third parties, including reasonable attorneys' fees incurred by such prevailing party in such action or proceeding and in any appeal in connection therewith, and if such prevailing party recovers a judgment in any such action, proceeding or appeal, such costs, expenses and attorneys' fees will be determined by the court or arbitration panel handling the proceeding and will be included in and as a part of such judgment written above.

LANDLORD AND TENANT EXPRESSLY DISCLAIM ANY IMPLIED WARRANTY THAT THE PREMISES ARE SUITABLE FOR TENANT'S INTENDED COMMERCIAL PURPOSE, AND, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, (1) TENANT'S OBLIGATION TO PAY RENT HEREUNDER IS NOT DEPENDENT UPON THE CONDITION OF THE PREMISES OR THE PERFORMANCE BY LANDLORD OF ITS OBLIGATIONS HEREUNDER, AND, (2) TENANT SHALL CONTINUE TO PAY THE RENT, WITHOUT ABATEMENT, DEMAND, SETOFF OR DEDUCTION, NOTWITHSTANDING ANY BREACH BY LANDLORD OF ITS DUTIES OR OBLIGATIONS HEREUNDER, WHETHER EXPRESS OR IMPLIED.

This Lease is executed on the respective dates set forth below, but for reference purposes, this Lease shall be dated as of the date first above written. If the execution date is left blank, this Lease shall be deemed executed as of the date first written above.

LANDLORD:

TGS AMERICAN REALTY LIMITED PARTNERSHIP,

a Delaware limited partnership

By: TGS American Realty, LLC, a Delaware limited liability company, its general partner

By: //signed//John Massing

Name: John Massing

Title: Senior VP

Execution Date: Sept 30/04

TENANT:

MEDICAL DOCTOR ASSOCIATES, INC., a Georgia Corporation

By: //signed//Michael Pretiger

Name: Michael Pretiger

Title: CFO

Execution Date: 9/24/04

FIRST AMENDMENT TO LEASE AGREEMENT

This FIRST AMENDMENT TO LEASE AGREEMENT (“Amendment”) is entered into as of September 1, 2007, by and between **Cornerstone Opportunity Ventures, LLC**, a Delaware limited liability company (“Landlord”), and **Cejka Search, Inc.**, a Delaware corporation (“Tenant”).

WHEREAS, Landlord and Tenant have entered into that certain Lease Agreement (as amended from time to time, the “Lease”) dated February 2, 2007 for the use and occupancy of certain premises by Tenant described therein and originally constituting 27,051 rentable square feet (the “Original Demised Premises”) within the commercial office complex located in the City of Creve Coeur, Missouri commonly referred to as CityPlace 4 (the “Building”); and

WHEREAS, Landlord and Tenant desire to modify and amend the Lease to their mutual advantage and benefit; and

WHEREAS, words and phrases having defined meanings in the Lease shall have the same respective meanings when used herein, unless otherwise expressly defined herein.

NOW THEREFORE, in consideration of the premises and mutual agreements set forth herein, the parties agree as follows:

1. Landlord hereby agrees to lease to Tenant and Tenant hereby agrees to lease from Landlord approximately two hundred (200) rentable square feet of space on the first (1st) floor of the Building (the “Storage Space”) for use solely as storage space solely in connection with Tenant’s use of the Original Demised Premises. The Storage Space, together with the Original Demised Premises, shall be included in the definition of “Demised Premises”, and Tenant’s use and occupancy of the Storage Space shall be on the same terms and conditions as set forth in the Lease for the remainder of the Demised Premises, except as specifically set forth herein. Landlord reserves the right, at Landlord’s sole cost and expense, to relocate the Storage Space within the Building or the adjacent office building owned by Landlord commonly known as CityPlace 2 at any time following the delivery of five (5) days written notice to Tenant.

2. The term of the Lease for the Storage Space shall commence on September 1, 2007 the date hereof (the “Storage Space Commencement Date”). The term of the Lease for the Storage Space shall end simultaneously with the term of the Lease as to the entire Demised Premises on June 30, 2017.

3. Commencing on the Storage Space Commencement Date and continuing throughout the Term, Tenant shall pay to Landlord Base Annual Rent for the Storage Space in the amount of \$16.00 per rentable square foot of the Storage Space. Base Annual Rent for the Storage Space shall be paid in equal monthly amounts of \$266.67 and become due simultaneously with Base Annual Rent for the remainder of the Demised Premises.

4. Tenant’s obligation to pay, as additional rent, its proportionate share of Landlord’s Operating Expenses for the Building shall not include the obligation to pay the proportionate share of Operating Expenses attributable to the Storage Space.

5. Landlord shall have no obligation to provide any allowances for Alteration of the Storage Space or perform any Alterations thereto. Further, Tenant shall have no right to make any Alterations to the Storage Space without the express, written consent of Landlord, which may be withheld in Landlord's sole and absolute discretion.

6. This Amendment may be executed in counterparts, all of which shall be construed as an original, and all of which together shall constitute but a single instrument. This Amendment shall be interpreted in accordance with the laws of the State of Missouri. If any portion of this Amendment shall be deemed unenforceable, the remainder of this Amendment shall remain in full force and effect to the fullest extent possible.

7. Except as specifically set forth herein, the Lease remains unchanged. Landlord and Tenant hereby confirm and ratify each and every term of the Lease, including the terms amended pursuant to this Amendment.

8. Capitalized terms contained herein that are not defined shall have the meanings ascribed to such terms in the Lease. In the event of an inconsistency between this Amendment and the Lease, and any exhibits, or conditions referred to in the Lease, the terms of this Amendment shall prevail to the extent of the matters addressed herein.

9. Landlord and Tenant each represent and warrant to the other that neither of them has employed or dealt with any broker, agent or finder in carrying on the negotiations relating to this Amendment. Tenant and Landlord shall mutually indemnify and hold each other harmless from and against any claims for brokerage or commissions asserted by any broker, agent or finder engaged by either party.

IN WITNESS WHEREOF, Landlord and Tenant have signed and dated this Amendment as of the date first set forth hereinabove.

**CORNERSTONE OPPORTUNITY
VENTURES, LLC**

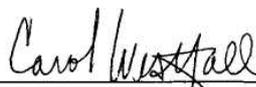
By:



Charles E. Gillum,
Director of Asset Management

CEJKA SEARCH, INC.

By:


President 10/7/08

Certification

I, Joseph A. Boshart, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Cross Country Healthcare, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of end of the period covered by this report based on such evaluation; and
 - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 10, 2008

/s/ JOSEPH A. BOSHA RT

Joseph A. Boshart

President and Chief Executive Officer

Certification

I, Emil Hensel, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Cross Country Healthcare, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of end of the period covered by this report based on such evaluation; and
 - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 10, 2008

/s/ EMIL HENSEL

Emil Hensel

Chief Financial Officer

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350

In connection with the accompanying Quarterly Report on Form 10-Q of Cross Country Healthcare, Inc. (the "Company") for the quarterly period ended September 30, 2008, (the "Periodic Report"), I, Joseph A. Boshart, Chief Executive Officer of the Company, hereby certify pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to my knowledge the Periodic Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that the information contained in the Periodic Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 10, 2008

/s/ JOSEPH A. BOSHA RT

Joseph A. Boshart

President and Chief Executive Officer

A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to Cross Country Healthcare, Inc. and will be retained by Cross Country Healthcare, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.

The foregoing certification is provided solely for purposes of complying with the provisions of Section 906 of the Sarbanes-Oxley Act of 2002.

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350

In connection with the accompanying Quarterly Report on Form 10-Q of Cross Country Healthcare, Inc. (the "Company") for the quarterly period ended September 30, 2008, (the "Periodic Report"), I, Emil Hensel, Chief Financial Officer of the Company, hereby certify pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to my knowledge the Periodic Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that the information contained in the Periodic Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 10, 2008

/s/ EMIL HENSEL

Emil Hensel

Chief Financial Officer

A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to Cross Country Healthcare, Inc. and will be retained by Cross Country Healthcare, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.

The foregoing certification is provided solely for purposes of complying with the provisions of Section 906 of the Sarbanes-Oxley Act of 2002.

