

RESOLUTION
of the
BOROUGH OF NEW PROVIDENCE
Resolution No. 2015-270

Council Meeting Date: 07-13-2015

Date Adopted: 07-13-2015

TITLE: RESOLUTION AUTHORIZING THE AGREEMENT OF LEASE
BETWEEN THE BOROUGH OF NEW PROVIDENCE AND THE NEW
PROVIDENCE , SUMMIT, AND MILLBURN EMERGENCY SERVICES
DISPATCH CENTER

Councilperson Kapner submitted the following resolution, which was duly
seconded by Councilperson Muñoz.

BE IT RESOLVED by the Mayor and Borough Council of the Borough of New
Providence, County of Union and State of New Jersey, that they do hereby approve and
authorize the agreement of lease between the Borough of New Providence and the
New Providence, Summit and Millburn Emergency Services Dispatch Center, in the
form attached hereto, terminating on July 1, 2025.

BE IT FURTHER RESOLVED the Mayor and Borough Clerk are authorized to
execute same on behalf of the Borough of New Providence.

APPROVED, this 13th day of July, 2015.

RECORD OF VOTE

	AYE	NAY	ABSENT	NOT VOTING
GALLUCCIO	X			
GENNARO	X			
KAPNER	X			
MADDEN	X			
MUÑOZ	X			
ROBINSON	X			
MORGAN			TO BREAK COUNCIL TIE VOTE	

I hereby certify that the above resolution was adopted at a meeting of the Borough Council held on the 13th day of July, 2015.

Wendi B. Barry, Borough Clerk

LEASE AGREEMENT

THIS AGREEMENT, made this 1st day of July, 2015,

BETWEEN the Borough of New Providence, a municipal corporation of the State of New Jersey, with a principal office in the Lincoln Municipal Complex, 360 Elkwood Avenue, Borough of New Providence, County of Union, State of New Jersey, hereinafter referred to as "**LANDLORD**",

AND New Providence, Summit, and Millburn Emergency Services Dispatch Center, a joint meeting formed pursuant to New Jersey law, with principal offices about to be at 360 Elkwood Avenue, Borough of New Providence, County of Union, State of New Jersey, hereinafter referred to as "**TENANT**".

WITNESSETH:

1. **PREMISES.** Landlord demises unto Tenant, and Tenant leases from Landlord, for the Term and upon the terms and conditions hereinafter set forth the following described premises:

That portion of the building located at 360 Elkwood Avenue, Lot 1, Block 51 on the Official Tax Map of the Borough of New Providence, and containing 2,800 square feet, more or less, as more particularly shown on the building plan attached as Exhibit A (hereinafter referred to as the "Premises" or "Leased Premises").

2. **TERM.** The term of this Lease shall be for a period of ten (10) years, commencing upon the date of this Lease (the "Commencement Date"), and said term ending ten (10) years from the Commencement Date.

(a) **Option.** Tenant shall have the option to extend the Lease Term for one (1) additional period of ten (10) years, subject to all of the terms, covenants and conditions of this Lease.

To be effective, Tenant must give Landlord written notice of election by the Tenant to extend the Lease Term no later than ninety (90) days prior to the Termination Date of the Lease, TIME BEING OF THE ESSENCE. Tenant agrees that Tenant shall forever waive Tenant's right to exercise the within option if Tenant shall fail for any reason whatsoever to give such written notice to Landlord as aforesaid, whether such failure is inadvertent or unintentional. Tenant's right to extend the Lease Term pursuant to this section shall be conditioned upon there being no default by Tenant in the performance or observance of any of the terms, covenants and conditions of this Lease at any time during the Lease Term, if applicable

3. **TERMINATION.**

The Tenant may terminate this Lease upon provision of written notice of intent to terminate given no later than 180 days prior to the requested Termination Date.

4. **RENT.**

(a) **Basic Rent.** The Tenant shall pay to the Landlord during the Lease Term Basic Rent (hereinafter "Term Basic Rent") in the amount of Forty-Eight Thousand Dollars (\$48,000.00) per year, commencing on the first day July, 2015. Rent shall be paid quarterly on March 1, June 1, September 1, and December 1 of each year the Lease is in effect. The Quarterly Rental Payment shall be in the amount of Twelve Thousand Dollars (\$12,000.00). The First Quarterly Payment shall be prorated from the date operation of the Shared Dispatch Center commences to the date of first payment.

Beginning January 1 following the second full year of operation, rent during the term of the Lease shall be increased at the rate of Two Percent (2%) each year, or the annual increase in the Consumer Price Index, whichever is less.

In the event that an additional public entity may join the joint meeting as a stake holder, then the rent shall increase for each such new member by the rate of One Thousand

Dollars (\$1,000.00) per month, and such increase shall become part of the Rent that is subject to annual increases as set forth herein.

Tenant shall pay Basic Rent, and any additional rent as hereinafter provided to Landlord at Landlord's above stated address, or at such other place as Landlord may designate in writing, without demand and without counterclaim, deduction or setoff. As used in this Lease, Basic Rent shall mean Term Basic Rent, Yearly Basic Rent or Quarterly Basic Rent, as appropriate.

(b) **Service Charges for Late Payment.**

In the event that any sums required to be paid by Tenant under this Lease are not received by Landlord on or before the fifth (5th) calendar day after the same are due, then, for each and every late payment ("Late Payment"), Tenant shall immediately pay, in addition to the Late Payment, as Additional Rent, service charges as follows:

(i) Five (5%) percent of the Late Payment for any Late Payment that is paid after the tenth (10th) calendar day after same is due.

Notwithstanding this service charge, Tenant shall be in default under this Lease if all payments that are required to be made by Tenant under this Lease are not made at or before the times herein stipulated.

5. **ALTERATIONS BY TENANT.**

(a) Tenant may not make any exterior or structural alterations to the Leased Premises. In addition, Tenant shall not make, except in an emergency, any interior alterations, except for alterations to the decor of the Leased Premises, provided that such alterations affect color or merchandising aspects of the interior only, without first delivering detailed plans and specifications to Landlord and obtaining Landlord's prior written consent, which consent shall not be unreasonably withheld. Tenant shall reimburse Landlord for any out-of-pocket expenses associated with such review and approval, including, without limitation, engineering, architectural and attorneys' fees. Any such alterations shall be performed in a good and workmanlike manner and in accordance with applicable legal and insurance requirements and the terms and provisions of this Lease.

(b) In the event that any mechanic's lien is filed against the Leased as a result of any work or act of Tenant, Tenant, at its expense, shall discharge or bond off the same within ten (10) days from the filing thereof. If Tenant fails to discharge said mechanic's lien, Landlord may bond or pay such lien without inquiring into the validity or merits thereof, and all sums so advanced, plus any expenses associated therewith, including legal fees, shall be paid on demand as Additional Rent.

(c) If, in an emergency, it shall become necessary for Landlord to make repairs that are required to be made by Tenant, Landlord may re-enter the Leased Premises and proceed to have such repairs made and pay the costs thereof. Tenant shall pay or reimburse Landlord for the costs of such repairs on demand as Additional Rent.

(d) If, as a result of any alterations or improvements by Tenant, any taxes are imposed on Landlord, Tenant shall be solely responsible for same, and shall pay same when due or as Additional Rent under this Lease.

(e) Landlord shall submit to Tenant a list of approved contractors (the "Approved Contractors") upon delivery of possession of the Premises to Tenant. Tenant shall be required to use an Approved Contractor, whether or not Landlord's consent is required for the alteration. In the event of an emergency, Tenant shall be obligated to use its best efforts to contact an Approved Contractor prior to retaining the services of a non-Approved Contractor.

6. **USE.** Tenant shall have the right to use the Premises for a Shared Dispatch Center as more particularly described in the Agreement between the Borough of New Providence and the City of Summit dated December 4, 2012, which creates the Joint Meeting, including any amendments thereto, including all facets of business normally related to such usage, which includes operation of the Shared Dispatch Center for its proper purposes twenty-four (24) hours per day, seven (7) days per week.

(a) **Prohibited Uses.** Tenant shall not do or permit anything to be done in or about the Leased Premises, nor bring or keep anything therein, which is not within the permitted use of the Leased Premises, which will in any way increase the existing rate of or affect any fire or other insurance upon the Leased Premises or any of its contents, or which will cause a cancellation of any insurance policy covering said Leased Premises or any part

thereof or any of its contents. Tenant shall not do or permit anything to be done in or about the Leased Premises which will in any way obstruct or interfere with the rights of other tenants or occupants of the Leased Premises or allow the Premises to be used for any improper, immoral, unlawful or objectionable purpose; nor shall Tenant cause, maintain or permit any nuisance in, on or about the Leased Premises. Tenant shall not commit or allow to be committed any waste in or upon the Leased Premises.

(b) **Compliance With Laws.** Tenant shall, at all times during the Term of this Lease and its occupancy of the Leased Premises, comply with and maintain the Leased Premises in accordance with all ordinances, laws, statutes, rules, regulations, directives, orders or other requirements of all municipal, local, state, and federal governments or public authorities or agencies having jurisdiction, now in effect or hereafter enacted ("Laws"), including, but not limited to, any Laws relating to environmental conditions, and the Americans with Disabilities Act, 42 U.S.C.A. §12101, et seq. Tenant expressly covenants and agrees to indemnify, defend and save Landlord harmless from and against any claim, damage, liability, cost, penalties and/or fines, including reasonable attorneys' fees, which Landlord may suffer as a result of any violation of or non-compliance with any Laws by Tenant in its use and occupancy of the Leased Premises. The foregoing covenant shall survive the termination of the within Lease in connection with any obligation of Tenant hereunder.

(c) **Tenant's Warranties.** Tenant warrants, represents, covenants and agrees to and with Landlord that, throughout the Lease Term, Tenant shall:

(i) observe all restrictive covenants of record which are applicable to the Leased Premises, provided that the same do not prohibit Tenant's permitted use of the Leased Premises;

(ii) keep the Leased Premises sufficiently heated to prevent freezing of water in pipes and fixtures in and about the Leased Premises;

(iii) not use any glass of any window for the placement of any signs or advertising;

(iv) not use any exterior lighting or window lighting without Landlord's consent;

(v) keep the interior parts of the Leased Premises in as good repair as the same are in when Tenant's Work is completed as specified herein, except, without limitation, for repairs occasioned by fire, the elements, other casualty or unsafe condition of the building, reasonable wear and tear, and structural and roof repairs, all of which shall be the obligation of Landlord. Tenant shall comply with all rules, regulations and requirements of any Federal, State, County or Municipal authority, or the Board of Fire Underwriters or like organization, applicable to the Leased Premises. Excepting Landlord's obligation for the repairs as set forth in this subsection (xiii), Tenant shall make all other repairs, renovations and alterations of any kind or nature whatsoever throughout the Term of this Lease and all option periods thereof;

(vi) promptly give Landlord notice of any damage to the Leased Premises or Leased Premises or any alleged default by Landlord under this Lease;

(vii) not change any locks to the Leased Premises or install any additional locks or security devices without the prior written consent of Landlord. Tenant acknowledges and agrees that Landlord shall have keys (and/or any necessary access codes) so as to permit access to the Premises; and

(viii) not employ, in the course of maintaining, improving, repairing, restoring, reconstructing or altering the Leased Premises in accordance with its rights and obligations under this Lease, any labor which is not an Approved Contractor.

7. **UTILITIES.**

Tenant shall pay for all utilities and services required for their Rental Space. The Landlord shall pay for no utilities and services relative to the Rental Space.

8. **INSURANCE, INDEMNITY AND LIABILITY.**

(a) **Tenant's Obligations.**

The Tenant shall obtain, pay for and keep in effect for the benefit of the Landlord and Tenant, public liability insurance on the rental space. The insurance company and the broker must be acceptable to the Landlord. This coverage must be in at least for each person injured One Million Dollars (\$1,000,000.00) for any accident, Three Million Dollars (\$3,000,000.00) for property damage, Five Hundred Thousand Dollars (\$500,000.00). All policies shall state that the insurance company cannot cancel or refuse

to review without at least ten (10) days' written notice to the Landlord. The Tenant shall also carry and provide evidence of fire legal liability insurance with a limit of Five Hundred Thousand Dollars (\$500,000.00), with the Borough as an additional named insured.

The Tenant shall deliver a copy of the original policy to the Landlord with proof of payment of the first year's premium. The Tenant shall deliver a renewal policy to the Landlord with proof of payment not less than fifteen (15) days before the expiration of each policy.

In the event Tenant's use of the Rental Space makes it impossible for the Landlord to obtain or maintain fire insurance on the building in the amount and form reasonably acceptable to the Landlord. The Landlord may cancel this Lease on thirty (30) days' notice to the Tenant. If, due to the Tenant's use of the Rental Space, the fire insurance rate increases, the Tenant shall pay the amount of the increase in the premium to the Landlord on demand.

(b) **Waiver of Subrogation/Covenants To Hold Harmless.**

(i) Landlord and Tenant, and any party claiming through Landlord and Tenant, each hereby releases the other, its officers, directors, employees, and agents from and against any and all liability and responsibility for any loss or damage to property covered by valid and collectable fire insurance policies with standard and extended coverage endorsements, even if such fire and other casualties shall have been caused by the fault or negligence of the other party, or anyone for whom such party may be responsible, and each hereby agrees to obtain an acknowledgement of this Waiver of Subrogation from its insurance carrier.

(ii) Tenant will indemnify Landlord and save it harmless from and against any and all claims, actions, damages, losses, liability and expense in connection with loss of life, personal injury and/or damage to property arising from or out of any occurrence in, upon or at the Leased Premises, or the occupancy or use by Tenant of the Leased Premises or any part thereof, or occasioned wholly or in part by any act or omission of Tenant, its agents, contractors, employees, servants, lessees, or concessionaires, or by reason of injury or damage to any person or to any property belonging to Landlord or any other person, occurring in or about the Leased Premises, caused by or resulting from fire, steam, electricity, gas, water, rain, ice or snow, or any leak or flow from or into any part of the Leased Premises or from any kind of injury which may arise from any other cause whatsoever in or on the Leased Premises, unless such injury or damage is caused by or is due to the gross negligence of Landlord, or its agents, servants or employees, in which event Landlord agrees to indemnify the Tenant in similar manner to the indemnification herein. In case Landlord shall be made a party to any litigation commenced by or against Tenant, then Tenant shall protect and hold Landlord harmless and shall pay all costs and expenses incurred or paid by Landlord in connection with such litigation, to the extent that Tenant has agreed to indemnify Landlord in this paragraph. In case Tenant shall be made a party to any litigation commenced by or against Landlord, then Landlord shall protect and hold Tenant harmless and shall pay all costs and expenses incurred or paid by Landlord in connection with such litigation, to the extent that Landlord has agreed to indemnify Tenant in this paragraph.

9. **DAMAGE/DESTRUCTION OF LEASED PREMISES/LEASED PREMISES**

(a) **Duty to Repair.** Except as otherwise provided in Paragraph (b) of this Article, if the Leased Premises are damaged or destroyed by any casualty covered by Landlord's fire insurance policy, Landlord shall, if permitted to do so by its mortgagee, repair such damage or destruction as soon as reasonably possible, to the extent of the available insurance proceeds, and this Lease shall continue in full force and effect. In the event that the Premises have not been repaired within one hundred eighty (180) days following the settlement of any insurance claims, Tenant may terminate this Lease upon one hundred twenty (120) days' written notice to Landlord.

(b) **Damage To Leased Premises.** If the Leased Premises are damaged or destroyed by any casualty covered by Landlord's fire insurance policy to such an extent as to render the same tenantable in whole or substantial part, or to the extent of twenty-five percent (25%) or more of the replacement value of the Leased Premises during the last twenty-four (24) months of the Term herein, then either Landlord or Tenant may:

(i) agree that Landlord shall repair such damage or destruction as soon as reasonably possible, in which event this Lease shall continue in full force and effect, or

(ii) cancel and terminate this Lease as of the date of the occurrence of such damage or destruction by giving Tenant written notice of Landlord's election to do so within ninety (90) days after the date of the occurrence of the damage or destruction.

(c) **Damage To Leased Premises.** If the Leased Premises is damaged or destroyed by any casualty covered by Landlord's fire insurance policy to such an extent as to render fifty (50%) percent or more of the tenantable area of the Leased Premises tenantable, then, regardless of whether the Leased Premises are affected by the occurrence of the damage to, or destruction of, the Leased Premises, and subject to the rights of Landlord's mortgagee, either Landlord or Tenant may:

(i) agree that Landlord shall repair such damage or destruction as soon as reasonably possible, in which event this Lease shall continue in full force and effect, or

(ii) cancel and terminate this Lease as of the date of the occurrence of such damage or destruction by giving Tenant written notice of Landlord's election to do so within ninety (90) days after the date of the occurrence of the damage or destruction. In the event that Landlord subsequently decides to rebuild the Leased Premises within one (1) year of the termination of this Lease pursuant to this Paragraph, Landlord shall negotiate in good faith with Tenant to lease a store of similar size and use in the rebuilt Leased Premises.

(d) **Uninsured Casualty.** If the Leased Premises are damaged or destroyed by any casualty which is not covered by Landlord's fire insurance policy, then Landlord shall have no duty to repair such damage or destruction. In the event of such damage or destruction, either Landlord or Tenant may:

(i) agree that Landlord shall repair such damage or destruction as soon as reasonably possible, in which event this Lease shall continue in full force and effect, or

(ii) cancel and terminate this Lease as of the date of the occurrence of such damage or destruction, in which event this Lease shall so terminate, unless, within thirty (30) days thereafter, Tenant agrees to repair the damage or destruction with Approved Contractors at its cost and expense or to pay for Landlord's repair of such damage or destruction.

(e) **Reconstruction.** If all or any portion of the Leased Premises is damaged by fire or other casualty and this Lease is not terminated in accordance with the above provisions, then to the extent permitted by any mortgage affecting the Leased Premises, all insurance proceeds, however recovered, shall be made available for payment of the cost of repair, replacing and rebuilding. Landlord shall use the proceeds from the insurance to repair or rebuild the Leased Premises to its prior condition, and Tenant shall, using the proceeds from the insurance and employing only Approved Contractors, repair, restore, replace, or rebuild that portion of the Leased Premises constituting Tenant's Work as defined herein, together with any additional improvements installed by Tenant, such that the Leased Premises shall be restored to its condition as of the date that is immediately prior to the occurrence of such casualty. All of the aforesaid Tenant's insurance proceeds shall be deposited in escrow and shall be disbursed as work on such repair, replacement or restoration progresses, upon the certification of Landlord's architect that the balance in the escrow fund is sufficient to pay the estimated costs of completing the repair, replacement and restoration. If Tenant's insurance proceeds shall be less than the cost of Tenant's obligations hereunder, Tenant shall pay the entire excess cost. With respect to any improvements which were initially installed by Tenant, but which are insured under Landlord's policy as part of the real estate, Landlord shall elect to either restore those improvements to the condition they were in immediately preceding the casualty, or to provide the funds to Tenant to make the restoration.

(f) **No Rent Abatement.** In no event shall the Fixed Minimum Annual Net Rental and Additional Rent payable under this Lease be abated during the existence of any such damage or until such repair or rebuilding is substantially completed. Tenant shall maintain business interruption insurance or rent insurance to compensate Tenant for any damages resulting from loss of use of the Leased Premises, and in no event shall Tenant withhold any rent or make any claim against Landlord for any damages relating thereto.

10. **SUBORDINATION AND ATTORNMENT.**

(a) **Subordination.** This Lease and Tenant's tenancy shall not be a lien against the Leased Premises which is superior to any mortgages that now encumber, or may hereafter be placed upon, the Leased Premises or the Leased Premises. Any such mortgage or mortgages shall automatically have preference and precedence over, and be superior and prior in lien to, this Lease, irrespective of the date of recording, and Tenant agrees, within five (5) business days of receipt thereof, to execute any instruments, without cost, which may be deemed necessary or desirable to further effect the subordination of this Lease to any such mortgage or mortgages.

(b) **Attornment.** At the option of any person who shall succeed to the interest of all or any part of Landlord's interest in the Leased Premises, whether by purchase, foreclosure, deed in lieu of foreclosure, power of sale, termination of lease, or otherwise (a "Successor"), and upon written notice thereof to Tenant, Tenant shall be obligated to pay to such Successor, in lieu of to Landlord, the rentals and other charges due hereunder and to thereafter comply with all of the terms of this Lease, and shall, without charge, attorn to such Successor as its landlord under this Lease, notwithstanding the failure of Landlord to comply with this Lease, any defense to which Tenant might be entitled against Landlord under this Lease, or any bankruptcy or similar proceedings with respect to Landlord.

11. **QUIET ENJOYMENT.** Landlord will put Tenant in actual possession of the Leased Premises at the beginning of the Term aforesaid, or such other date as shall be herein elsewhere agreed upon, and Tenant, subject to all of the terms and conditions hereof, on paying the rent and performing the covenants herein agreed by it to be performed, shall and may peaceably and quietly have, hold and enjoy, for said Term and any extensions thereof, the Leased Premises, along with the non-exclusive use of the Common Area.

12. **ACCESS.** Landlord, its agents, employees, or independent contractors shall, upon reasonable advance written notice to Tenant, have access to the Leased Premises at reasonable hours to inspect the same, to carry out the provisions of this Lease, to make any required repairs or replacements, and to show the Leased Premises to any prospective purchasers, lenders, or tenants, provided however in an emergency situation, such access may be at any time and without notice.

13. **ASSIGNMENT, SUBLETTING AND ENCUMBERING OF LEASE.**

(a) **General Prohibition.** Tenant may not assign, transfer, hypothecate, mortgage or otherwise encumber this Lease or any of its rights hereunder, or sublet the Leased Premises, or any portion thereof, by any persons other than Tenant or its agents, other cardiologists or other internists, or effect any sale or change of ownership of more than forty-nine (49%) percent of its stock or ownership interests without Landlord's prior written consent, which consent shall not be unreasonably withheld. Landlord reserves the right to request a monetary compensation or concession, to be determined, as a condition of consent. In the event of any permitted assignment or sublease, (i) neither Tenant, nor any subsequent assignee, nor any guarantors of this Lease shall be relieved from any liability under this Lease; and (ii) all of the provisions of this Lease shall be binding upon any assignee or subtenant. Any written consent of Landlord shall be effective in that instance only and shall not be deemed to apply to any future assignment, sublease or sale or transfer of more than forty-nine (49%) percent of its stock or ownership interests. Tenant's application for Landlord's consent, as herein provided, shall specify the proposed use by the proposed assignee or subtenant as a condition of such application. Anything in this Article to the contrary notwithstanding, Tenant shall not be permitted to assign or sublet the Premises or any portion thereof to any assignee or subtenant whose use would be in competition with an existing tenant at the Leased Premises or whose use would be in violation of any restrictions on tenant's use which are stated in any binding contracts between Landlord and other tenants at the Leased Premises, except as otherwise provided herein. Landlord shall be under absolutely no obligation to consent to the foregoing. In the event of any permitted assignment to an assignee who is a bona fide purchaser for value of all of Tenant's assets (and not merely this Lease) and rights to operate Tenant's business at the Premises, Tenant and any guarantors under this Lease shall be relieved of any liability under this Lease as of the date of said assignment, provided that such assignee can substantiate to Landlord a net worth which is equal to or greater than that of Tenant at the time of the proposed assignment.

(b) **Procedure.** In the event that Tenant desires to assign or transfer this Lease, or sublet (or permit the occupancy or use of) the Leased Premises, or any part thereof, Tenant shall give Landlord not less than sixty (60) days' prior written notice of

Tenant's intention to so assign or transfer or sublet all or any part of the Leased Premises, the terms of such proposed transaction, and the parties to participate in such proposed transaction. For sixty (60) days following receipt of said notice, Landlord shall have the right, exercisable by sending written notice to Tenant, either to terminate this Lease and recapture the Leased Premises or to sublet from Tenant for the balance of the Term of this Lease either (i) all of the Leased Premises in the event that Tenant notified Landlord of its intention to assign or transfer this Lease, or (ii) only so much of the Leased Premises as Tenant intends to sublet in the event that Tenant notified Landlord of its intention to sublet the Leased Premises or a portion thereof, at the same rental per square foot that Tenant is obligated to pay to Landlord hereunder. In the event that Landlord does not exercise its right to terminate this Lease or to sublet such space, Tenant may assign or transfer or sublet such space provided that Tenant has obtained the prior written consent of Landlord. In the event that Tenant defaults hereunder, Tenant hereby assigns to Landlord the rent due from any subtenant of Tenant and, in such event, hereby authorizes each such subtenant to pay said rent directly to Landlord. The consent by Landlord to any assignment, transfer, or subletting to any party shall not be construed as a waiver or release of Tenant under the terms of any covenant or obligation under this Lease, nor shall the collection or acceptance of rent from any such assignee, transferee, subtenant or occupant constitute a waiver or release of Tenant with respect to any covenant or obligation that is contained in this Lease, nor shall any such assignment, transfer or subletting be construed to relieve Tenant from giving Landlord said sixty (60) days' notice or from obtaining the consent in writing of Landlord to any further assignment, transfer or subletting. Landlord's rights pursuant to this paragraph (b) shall not apply in the event that the proposed assignee is a bona fide purchaser for value of all of the Tenant's assets (and not merely this Lease) and has purchased all of Tenant's assets and rights to operate all of Tenant's stores at all locations.

(c) **Costs.** Any costs and expenses, including attorneys' fees, incurred by Landlord in connection with any proposed or purported assignment, transfer, or sublease shall be borne by Tenant and shall be payable to Landlord as Additional Rent.

14. **END OF TERM.**

(a) **Surrender.** Upon the expiration or other termination of the Term of this Lease, Tenant shall, at its cost and expense: (i) quit and surrender to Landlord the Leased Premises, in good order and condition, broom clean, ordinary wear and tear excepted; (ii) remove from the Leased Premises all property of Tenant, including moveable trade fixtures and all improvements and alterations to the Leased Premises that are not wanted by Landlord, as so indicated by Landlord at any time; (iii) fully comply with Article 8(e); and (iv) repair any damage caused by such removal and return the Leased Premises to the condition prior to such installation. If requested by Landlord, Tenant shall, at its expense, obtain and deliver to Landlord a satisfactory report prepared by an environmental consultant that is approved by Landlord, evidencing compliance with all Laws and Article 8(e) hereof.

(b) **Holding Over.** If Tenant shall hold possession of the Leased Premises after the expiration or termination of this Lease, at Landlord's option:

(i) Tenant shall be deemed to be occupying the Leased Premises as a tenant from month-to-month, at double the Fixed Minimum Annual Net Rental in effect during the last Lease Year immediately preceding such hold-over and otherwise subject to all of the terms and conditions of this Lease, including payment of Additional Rent, or

(ii) Landlord may exercise any other remedies under this Lease or at law or in equity, including an action for wrongfully holding over. No payment by Tenant, or receipt by Landlord, of a lesser amount than the correct rent shall be deemed to be other than a payment on account, nor shall any endorsement or statement on any check or letter accompanying any check for payment of rent or any other amounts owed to Landlord be deemed to effect or evidence an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of the rent or other amount owed or to pursue any other remedy that is provided in this Lease.

15. **DEFAULT.** Any one or more of the following shall be deemed to be events of default hereunder:

(a) Failure of Tenant to make any payment of Fixed Annual Minimum Net Rental or Additional Rent when due;

(b) Failure of Tenant to timely perform any of the terms, covenants or conditions of this Lease, and such failure shall continue for fifteen (15) days after written notice from Landlord (except that such fifteen (15) day period may be extended for such

additional period of time as is reasonably necessary to cure such default, if such default cannot be cured within such period, provided that Tenant commences the process of curing the same within said fifteen (15) day period and diligently and continuously pursues such cure);

(c) In the event that Tenant or any guarantor of this Lease shall be adjudicated a bankrupt, insolvent, or placed in receivership, or if proceedings are instituted by or against Tenant for bankruptcy, insolvency, receivership, agreement of composition or assignment for the benefit of creditors which shall not be set aside within forty-five (45) days, or if this Lease or the estate of Tenant herein shall pass to another by virtue of any court proceedings, writ of execution, levy, sale or by operation of law, other than estate distribution or intestate descent and distribution;

(d) If Tenant refuses to take possession of the Leased Premises on the Delivery of Possession Date, or fails to open its doors for business at the expiration of the fixturing period as required herein, or vacates the Leased Premises and permits the same to remain unoccupied and unattended, or substantially ceases to carry on its normal activities in the Leased Premises;

(e) If Tenant attempts or purports to transfer, assign, mortgage or encumber this Lease or any of Tenant's interest hereunder, or attempts or purports to sublet or grant a right to use or occupy all or a portion of the Leased Premises, without obtaining the prior written consent of Landlord;

(f) Recordation or attempted recordation of this Lease by Tenant;

(g) If Tenant shall have been in default under subparagraphs (a) or (b) of this Article 15 more than three (3) times in any twelve (12) month period, notwithstanding any subsequent cure of the default; or

(h) If any execution, levy, attachment or other legal process of law shall be made upon Tenant's goods, fixtures, or interest in the Leased Premises, and the same is not discharged, removed or stayed within sixty (60) days.

16. **REMEDIES ON DEFAULT.** In the event of any default as defined in Article 19 hereof, or if Tenant shall be evicted by summary proceedings or otherwise, then Landlord, in addition to other remedies herein contained, or as may be permitted by law, may pursue any one or all of the following:

(a) Landlord shall have the right, but not the obligation, upon giving five (5) days' notice in writing to Tenant, to declare this Lease and the Term hereof at an end on the date that is fixed in such notice as if such date were the originally fixed expiration date of the Term of this Lease, and Landlord shall then have the right to remove all persons, goods, fixtures, and chattels from the Premises without liability for damages. Nothing in this Lease shall be deemed to require Landlord to give notice prior to the commencement of a summary proceeding for non-payment of any rent or a plenary action for the recovery of rent on account of any default in the payment of any rent, it being intended that such notices are for the sole purpose of creating a conditional limitation hereunder pursuant to which this Lease shall terminate and Tenant shall become a holdover tenant.

(b) Landlord may proceed to recover possession of the Leased Premises under and by virtue of the provisions of the laws of the jurisdiction in which the Leased Premises is located, or by such other proceedings, including re-entry and possession, as may be applicable, without being liable for prosecution therefor or for damages, and re-enter the Premises and the same have and again possess and enjoy; and, as agent for Tenant or otherwise, re-let the Premises and receive the rent therefor and apply the same, first to the payment of such expenses, including leasing commissions, reasonable attorneys' fees and costs, and such other amounts as Landlord expends in re-entering, repossessing and re-letting the same and in making any repairs and alterations as may be necessary; and second, to the payment of rent due hereunder. Any other notice to quit or notice of Landlord's intention to re-enter the Leased Premises is hereby expressly waived. If Landlord elects to terminate this Lease, everything contained in this Lease on the part of Landlord to be done and performed shall cease without prejudice, subject, however, to the right of Landlord to recover from Tenant all rent and any other sums due and owing to Landlord. Tenant shall remain liable for any rent as may be in arrears and also for any rent as may accrue subsequent to the re-entry by Landlord, to the extent of the difference between the rent reserved hereunder and the rent, if any, received by Landlord during the remainder of the unexpired Term hereof, after deducting the aforementioned expenses, fees and costs, the same to be paid as specified in Paragraph (c) herein below.

(c) In case of any such default, re-entry, expiration, and/or dispossession by summary proceedings or otherwise, (1) the rent shall become due thereupon and be paid to the time of such re-entry, dispossession and/or expiration, together with such expenses as Landlord may incur for legal expenses, attorney's fees, brokerage or leasing commissions,

and expenses for repairs and alterations as may be necessary to put the Premises in good order or for preparing same for re-letting; (2) Landlord may re-let the Leased Premises or any part or parts thereof, either in the name of Landlord or otherwise, for a term or terms which may, at Landlord's option, be less than or greater than the balance of the Term and may grant concessions or free rent; and (3) Tenant or the legal representatives of Tenant shall also pay to Landlord, as damages for the failure of Tenant to pay rent and observe and perform Tenant's covenants herein contained, the deficiency between the rent hereby reserved and/or covenanted to be paid and the net amount, if any, of the rent collected on account of the re-letting(s) of the Leased Premises for each month of the period which would otherwise have constituted the balance of the Term. When computing such damages, there shall be added to the said deficiency such expenses as Landlord incurs in connection with re-letting, such as legal expenses, attorney's fees, brokerage fees, and for keeping the Leased Premises in good order or for preparing the same for re-letting. Any concessions or free rent which had been previously provided by the Landlord shall be deemed to have been granted, and shall not be included in the calculation of any deficiency. Any such damage sustained by Landlord may be recovered by Landlord, at Landlord's option: (i) in monthly installments by Tenant on the rent day specified in this Lease, (ii) in a single proceeding at the time of the re-letting, or in separate actions, from time to time, as said damage shall have been made more easily ascertainable by successive re-lettings, or (iii) in a single proceeding that is deferred until the expiration of the Term of this Lease (in which event, Tenant hereby agrees that the cause of action shall not be deemed to have accrued until the date of expiration of said Term and shall survive the termination of this Lease). Any suit that is brought to collect the amount of the deficiency for any month shall not prejudice in any way the rights of Landlord to collect the deficiency for any subsequent month by a similar proceeding.

(d) Nothing contained herein shall prevent the enforcement of any claim that Landlord may have against Tenant for anticipatory breach of the unexpired Term of this Lease. In the event of a breach or threatened breach by Tenant of any of the covenants or provisions of this Lease, Landlord shall have the right of injunction and the right to invoke any remedy that is allowed at law or in equity, as if re-entry, summary proceedings and other remedies were not herein provided for. The reference in this Lease to any particular remedy shall not preclude Landlord from any other remedy at law or in equity. Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event that Tenant is evicted or dispossessed for any cause, or in the event that Landlord obtains possession of the Leased Premises, by reason of the violation by Tenant of any of the covenants and conditions of this Lease or otherwise.

(e) Landlord shall have the right, independent of any other remedy herein, to terminate, void and cancel any option to renew contained herein.

No receipt of rent by Landlord from Tenant after the termination of this Lease or after giving any notice, shall reinstate, continue or extend the Term of this Lease. No receipt of rent after the commencement of any suit, or after the final judgment for possession of the Leased Premises, shall reinstate, continue or extend the Term of this Lease, or affect the suit or said judgment.

For purposes of this Article, the term "Tenant" shall also include any guarantor of this Lease, and any obligations, duties or covenants of Tenant in this Article shall also extend to any guarantor of this Lease in addition to Tenant.

17. **GENERAL PROVISIONS.**

(b) **Signs.** Tenant may only install such signs as may be approved by the Landlord.

(d) **Headings.** The headings contained in the body of this Lease are for the purposes of identification only, are not a part of the agreement between the parties, shall not define, limit or describe the scope of this Lease, and shall have no effect upon the construction or interpretation of any part hereof.

(e) **Force Majeure.** All performances, undertakings, or obligations of Landlord hereunder shall be subject to force majeure, and all time periods set forth herein for compliance with any of the above shall be extended due to catastrophe, accident, weather, storms, acts of war and insurrection, unavailability of materials, strikes, embargoes, moratoriums or other conditions beyond Landlord's control.

(f) **Performance Of Tenant's Obligations.** If Tenant shall at any time fail to make any payment or perform any act which Tenant is obligated to make or perform under this Lease, then Landlord may, but shall not be obligated so to do, after Tenant's time in which to make any such payment or perform any such act as provided in this Lease has expired, and without waiving, or releasing Tenant from, any obligations of Tenant that are

contained in this Lease, make any such payment or perform any such act which Tenant is obligated to perform under this Lease, in such manner and to such extent as shall be necessary, and in exercising any such rights, pay any necessary and incidental costs and expenses, employ counsel and incur and pay reasonable attorneys' fees. Notwithstanding the foregoing, Landlord may make any such payment or perform any such act before Tenant's time to do so has expired, if the same is necessary or required for the preservation or protection of the Premises. All sums so paid by Landlord, and all necessary and incidental costs and expenses in connection with the performance of any such act by Landlord, together with interest thereon at the Prime Rate (as published by The Wall Street Journal) plus five (5%) percent per annum, shall be deemed Additional Rent hereunder and, except as otherwise in this Lease expressly provided, shall be payable to Landlord on demand or, at the option of Landlord, may be added to any rent then due or thereafter becoming due under this Lease. Tenant covenants to pay any such sum or sums with interest as aforesaid, and Landlord shall have (in addition to any other right or remedy of Landlord) the same rights and remedies in the event of the non-payment thereof by Tenant as in the case of a default by Tenant in the payment of rent.

(g) **No Waiver.** The failure of Landlord to enforce against Tenant any provision, covenant, or condition, by reason of Tenant committing any breach of or default under this Lease, shall not be deemed a waiver thereof, nor void or affect the right of Landlord to enforce the same covenant or condition on the occasion of any subsequent breach or default thereof; nor shall the failure of Landlord to exercise any right in this Lease on any occasion arising therefrom be deemed or construed to be a waiver of the right to exercise the same right upon any subsequent occasion.

(h) **Negotiated Agreement.** This Lease is a negotiated agreement. Landlord and Tenant agree that the language of this agreement shall not be construed against either party by virtue of its counsel having prepared same.

(i) **Execution.** This Lease is not binding upon Landlord or Tenant until it is signed by duly authorized officers of Landlord and Tenant and delivered to Landlord and to Tenant. If Tenant is a corporation, each individual executing this Lease on behalf of said corporation represents and warrants that he is duly authorized to execute and deliver this Lease on behalf of said corporation, in accordance with the bylaws of said corporation, and that this Lease is binding upon said corporation. In addition, if Tenant is a corporation, Tenant represents and warrants that it is duly organized, validly existing and authorized to do business in the State of New Jersey and that all franchise and corporate taxes have been paid to date.

(j) **Commission.** Each party represents and warrants that it has not dealt with any real estate broker or agent in connection with this Lease. Each party further agrees to hold harmless the other from and against any and all liability arising from any claim for a commission or finder's fee arising from acts of said party, including without limitation, the cost of attorneys' fees. Landlord and Tenant recognize that the Broker is the sole broker who negotiated and effectuated this lease transaction. Landlord agrees to pay to Broker any and all commissions in accordance with a separate agreement between the parties

(k) **Additional Remedies.** Any remedies specifically provided for in this Lease are in addition to, and not exclusive of, any other remedy available to Tenant or Landlord under applicable law. Any measure of damages that is provided for in this Lease shall not be deemed to limit or prejudice Landlord's right to prove and obtain all of the damages, which Landlord may sustain as a result of any and all breaches of this Lease.

TO LANDLORD:

Borough of New Providence
360 Elkwood Avenue
New Providence, NJ 07974

With a copy to:
Paul R. Rizzo, Esq.
DiFrancesco, Bateman, et al.
15 Mountain Boulevard
Warren, NJ 07059-6327
(908) 757-7800
(908) 757-8039 (Fax)

TO TENANT:

New Providence, Summit, and Millburn Emergency Services Dispatch Center
360 Elkwood Avenue
New Providence, NJ 07974

If so served or sent, any such notice shall be deemed given on the date that same is personally delivered, or if mailed, on the second business day after depositing same in a P.O. Box regularly maintained by the U.S. Post Office Department, or if sent by Federal Express, on the first business day after sending.

(m) **Binding Effect.** This Lease shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, executors, successors, representatives and assigns.

(n) **Severability.** If any provision of this Lease shall be declared invalid or unenforceable, the remainder of this Lease shall continue in full force and effect.

(o) **Entire Agreement.** This Lease contains the entire agreement between the parties, and any change, modification or amendment shall be in writing and executed by the party against which enforcement thereof is sought.

(p) **Choice of Law.** This Lease, and the rights and obligations of the parties hereto, shall be interpreted and construed in accordance with the laws of the State of New Jersey.

(q) **Ratification.** Any documents heretofore signed by Tenant pertaining to the Leased Premises or this Lease are hereby ratified and confirmed.

(r) **Third Party Beneficiary.** Nothing contained in this Lease shall be construed so as to confer upon any other party the rights of a third party beneficiary, except for the rights contained herein for the benefit of any mortgagee of the Leased Premises.

(s) **Waiver Of Jury Trial.** Landlord and Tenant hereby mutually waive any and all rights which either party may have to request a jury trial in any proceeding at law or in equity in any court of competent jurisdiction.

(t) **Time.** Time is of the essence of this Lease and each and all of its provisions in which performance is a factor.

(u) **Recordation.** Neither Landlord nor Tenant shall record this Lease, but a short form memorandum hereof may be recorded at the request of Landlord, which, by its terms, may specify that Landlord shall have the unilateral right to cancel and discharge such memorandum.

(v) **Interruption Of Service Or Use.** The interruption or curtailment of any service that is maintained in the Leased Premises or the Premises, if caused by strike, mechanical difficulties, government preemption in connection with a national emergency, conditions of supply and demand affected by any governmental emergency, or any causes beyond Landlord's control, whether similar or dissimilar to those enumerated, shall not entitle Tenant to any claim against Landlord, including claims for resulting damages (and specifically including damage to computers), or to any abatement in rent, and shall not constitute a constructive or partial eviction. Tenant shall have no right of self-help with respect to any alleged defaults by Landlord under this Lease, and Tenant shall not be entitled to claim a constructive eviction from the Premises unless Tenant shall have first notified Landlord, in writing, of the condition or conditions giving rise thereto, and if the complaints are justified, unless Landlord shall have failed, within a reasonable time after receipt of such notice, to remedy, or to commence and proceed with due diligence to remedy, such condition or conditions. In addition, prior to claiming a constructive eviction, Tenant shall notify Landlord's mortgagee of Landlord's failure to remedy or to commence to remedy said condition(s). Landlord's mortgagee shall then have the right, but not the obligation, within no less than an additional thirty (30) days, to cure the condition(s) giving rise to the constructive eviction. Thereafter, Tenant shall have the right to cure the condition(s) before claiming a constructive eviction.

18. **CONDITION.** Landlord's obligations under this Lease are subject to, and conditioned upon, the approval of all of the terms and conditions of this Lease by any Mortgagee of the Leased Premises.

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

WITNESS/ATTEST:

Landlord
