

APPLICATION FOR APPEAL

Saint Paul City Clerk

310 City Hall, 15 W. Kellogg Blvd.

Saint Paul, Minnesota 55102

Telephone: (651) 266-8560

RECEIVED

JAN 14 2013

CITY CLERK

The City Clerk needs the following to process your appeal:

- \$25 filing fee payable to the City of Saint Paul (if cash: receipt number _____) CASH
- Copy of the City-issued orders or letter which are being appealed
- Attachments you may wish to include
- This appeal form completed
- Walk-In OR Mail-In

YOUR HEARING Date and Time:

Tuesday, 1-22-13

Time 2:30 P.M.

Location of Hearing:

Room 330 City Hall/Courthouse

Address Being Appealed:

Number & Street: 1133 Rice St City: St Paul State: MN Zip: 55119

Appellant/Applicant: Song Vang Email vangphi45@gmail.com

Phone Numbers: Business _____ Residence _____ Cell 651-431-1909

Signature: [Signature] Date: 1/11/13

Name of Owner (if other than Appellant): _____

Address (if not Appellant's): 2108 Margaret St St Paul MN 55119

Phone Numbers: Business _____ Residence _____ Cell 651-431-1909

What Is Being Appealed and Why?

Attachments Are Acceptable

- Vacate Order/Condemnation/Revocation of Fire C of O
- Summary/Vehicle Abatement
- Fire C of O Deficiency List
- Fire C of O: Only Egress Windows
- Code Enforcement Correction Notice
- Vacant Building Registration
- Other

Please see attachments



CITY OF SAINT PAUL
Christopher B. Coleman, Mayor

Nuisance Building Code Enforcement
375 Jackson Street, Suite 220
Saint Paul, MN 55101-1806
651-266-8989
651-266-1919
www.stpaul.gov/cde

January 07, 2013

Song Vang
2108 Margaret St E
St Paul MN 55119-3928

VACANT BUILDING REGISTRATION NOTICE

The premises at 1133 RICE ST

has been inspected and found to meet the legal definition of a Vacant Building as described in Saint Paul Legislative Code, Chapter 43. You are required to register this building with the Department of Safety and Inspections, Vacant Buildings Division, by filling out and returning the registration form provided with this letter. You are also required to pay the annual Vacant Building Registration Fee of \$1,440.00. The fee is due upon receipt of this letter and must be paid no later than thirty (30) days from the date of this letter, as required in Saint Paul Legislative Code Chapter 43. If this building is vacant due to a fire, complete the enclosed registration form and return it to this office within 30 days.

Please return the enclosed registration form along with your payment by February 07, 2013.

Do not mail cash.

If you wish to pay in person, you may do so from 8:00 a.m. to 4:00 p.m. Monday through Friday at:

DEPARTMENT OF SAFETY AND INSPECTIONS
375 Jackson Street, Suite 220
Saint Paul, MN 55101-1806

You may file an appeal to this fee or registration requirements by contacting the Office of the City Clerk at (651) 266-8688. Any appeal of this fee must be made within ten (10) days of the date of this notice.

If the registration fee is not received in this office within 45 days of the date of this letter the full amount owed will be assessed to, and collected with, the taxes for this property as permitted by Saint Paul Legislative Code Chapter 43.

The Code Enforcement Officer has notified the Building Inspection And Design Section that this property meets the legal definition of a registered vacant building and in accordance with Legislative Code Chapter 33, no permits (except demolition, wrecking and removal permits) will be issued until the requirements of all applicable ordinances are fulfilled.

All category 2 and category 3 vacant buildings must be winterized with gas and water services shut off or, alternately, an excess flow gas valve must be installed in the dwelling, within sixty (60) days of the date of this Notice.

**WRITTEN PERMISSION FROM THE CITY OF SAINT PAUL IS REQUIRED BEFORE A
CATEGORY 2 OR CATEGORY 3 VACANT BUILDING CAN BE OCCUPIED OR SOLD.**

Category 2: Requirements include: 1. register/re-register the building, 2. pay outstanding fee(s), 3. obtain a code compliance report, 4. submit for approval a rehab cost estimate from a licensed contractor and a schedule for completion of all code compliance work, 5. submit proof of financial responsibility acceptable to the City, and 6. obtain Zoning approval of the proposed use.

Category 3: All requirements listed for Category 2 vacant buildings, AND obtain a **Certificate of Occupancy OR Certificate of Code Compliance** prior to the sale of the building.

If the use of this building meets the definition of a nonconforming use by the Zoning Code then the use will lose its nonconforming status 365 days from the date the building was declared vacant.

**You must contact the Enforcement officer, Mike Kalis,
at 651-266-1929 to find out what must be done before this
building can be legally reoccupied.**

The Enforcement Officer may declare this building(s) to constitute a Nuisance Building subject to demolition and issue an Order to Abate under authority of Legislative Code Chapter 45. In the event this building is declared a Nuisance Building subject to demolition, the Enforcement Officer will notify all owners and interested parties of the Order to Abate, as provided in the Legislative Code Chapter 45.

If you have questions about this annual registration fee or other vacant building requirements, please contact the Enforcement Officer, Mike Kalis, at 651-266-1929.

This registration form and fee is required by law. Your prompt attention to this matter is appreciated.

Thank You,

Steve Magner
Vacant Buildings Program Manager
Department of Safety and Inspections

Enclosures: Regulations Requirements Information
Vacant Building Registration Form

SM: mk
vb_registration_notice 11/12

Song Vang
2108 Margaret Street
Saint Paul, MN 55117

January 11, 2013

City of Saint Paul
Department of Safety and Inspection
Nuisance Building Code Enforcement
375 Jackson Street, Suite 220
Saint Paul, MN 55101-1806

Re: Property at 1133 Rice Street, Saint Paul MN 55117

In regards to the Vacant Building Registration Notice dated January 7, 2013, I would like the City of Saint Paul to take into consideration my appeal of the registration for the following reason.

As the property owner, not the business owner, I was not made aware that the property was determined to be vacant as I currently have, under a lease contract, a tenant leasing the property to run their business. Only after receiving this notification from the City of Saint Paul was I made aware. No other communication was brought to my attention. Since then, I have contacted and discussed the situation with my tenant as outlined herein.

My tenant is suffering a loss of business due to poor performance and has obtained a full time job to keep up with the lease payments as well as the associated utility bills. He informs me that this is the reason why he is not present at the premises as often. Per our lease contract, the lease will terminate at the end of December 2013. Given the remainder of the contract, my tenant asked for an early termination of the lease agreement as of January 31, 2013. I have agreed to his request.

With the current tenant leaving at the end of January, I have been in contact with three highly potential lessees who are very interested in leasing the property. One would like to relocate his current photo studio there, another one a dollar store, and the last one, a grocery store. Of these three potential lessees, the potential lessee who would like to open/establish a grocery store has been to the premises with his planning and design team and would like to start as soon as March 2013 if possible.

Here is a timeline of what is to take place:

- End of January: Current tenant leaves
- Month of February: Clean up and perform any needed repairs
- March: New tenant moves in

With the above information, I asked that the City of Saint Paul waive this request to register my property as vacant as it is not vacant, and I too, would like to see my property, the neighborhood, community, and district flourish.

Attached for your reference is a copy of my current tenant's lease agreement.

Thank you,

A handwritten signature in black ink, consisting of several overlapping loops and a wavy tail, positioned below the text "Thank you,".

Commercial Lease Agreement

This LEASE AGREEMENT (hereinafter referred to as the "Lease") is by and between Song Vang ("Landlord"), and Nkia Pao Sao Chai Vang, DBA First Hmong Market and Video ("Tenant").

1. **PREMISES AND POSSESSION.** The Landlord hereby leases to the Tenant and the Tenant hereby takes from the Landlord, for the Term and upon the conditions hereinafter provided, the Premises at 1133 Rice Street, Saint Paul MN 55117 ("Premises").
2. **TERM.** This lease shall begin on January 1st, 2009, and end on the last day of December 31st, 2013, unless sooner terminated as provided herein, subject to the terms and conditions set forth below. This shall be known as the Initial Term. The Tenant shall have two successive options to extend the Term of this Lease by providing written notice to Landlord at least one hundred eighty (180) days in advance of the last day of the Term that would expire, but for the notice of the exercise of this option. Each option is for the right to extend the Term by five (5) years upon the conditions stated in this Lease.
3. **LEASEHOLD IMPROVEMENTS.** Tenant is taking the Premises and accepting the condition of the Premises "AS IS" and Landlord is under no obligation to make any structural or other alterations, decoration, additions or improvements. Tenant shall not make, and shall not commence, any improvement that has not been previously approved by the Landlord. If any improvement is made or commenced without the Landlord's consent, and the Landlord does not give subsequent approval thereof, the Tenant shall, upon receiving written notice from the Landlord, restore that portion of the Premises affected by the improvement to its preexisting condition at Tenant's expense.
4. **RENT.** The Tenant agrees to pay to the Landlord at such other place as the Landlord may hereafter from time to time designate in writing, without demand, annual Rent in the amount of Eighteen Thousand Dollars (\$18,000.00), payable in monthly installments of One Thousand Five Hundred Dollars (\$1,500.00).
 - a. **Renewal Terms.** (Not required) If Tenant exercises its options to extend the Term of this Lease, the Rent for the renewal term(s) shall be as follows:
 - i. For the first Renewal Term of 5 years, the annual Rent shall be Twenty Four Thousand Dollars (\$24,000.00), payable in equal monthly installments.
 - b. **Due Date.** All monthly installments of Rent shall be payable in advance on or before the first day of each calendar month during the Term. In the event any fractional months occur during the Term, the Tenant shall pay Rent on a pro rata basis calculated on the ratio of the actual number of days the Tenant is in

possession to the total days in the month in question. The Rent and Operating Costs are sometimes here in collectively referred to as the rent.

- c. **Independent Covenant.** Tenant's obligation to pay the Rent, Operating Costs and other amounts due under this Lease is an independent covenant, and is and shall not be subject to any abatement, deduction, counterclaim, reduction, set-off or defense of any kind whatsoever. The covenants and obligations of Landlord under this Lease are dependent upon the performance by Tenant of all of its covenants and obligations hereunder.
5. **SECURITY DEPOSIT.** There shall be no security deposit paid by Tenant.
6. **OPERATING COSTS.** Tenant shall assume responsibility for all gas, electric, telephone, cable, security systems, trash removal, water, sewer, satellite, and internet utilities for the Premises, and shall immediately notify all such utility companies that Tenant is assuming responsibility for all usage and other charges due for the Premises. Tenant shall also be responsible for the following "Operating Costs" for the Premises: all regular property taxes and special assessments or other governmental impositions which shall accrue or are payable in respect of any part of the Premises during the Term of this Lease; all other governmental impositions, including but not limited to amounts payable under assessment agreements relating to the Premises; fees for professional services; fees for professional plumbing, electrical, or cleaning services for common areas. All utilities and trash removal shall be placed in the Tenant's name and account, and shall be paid directly by Tenant to the utility supplier. Tenant shall pay premiums for all insurance, procured by Tenant pursuant to paragraph 20 below, directly to its insurance agent or insurance carrier. All taxes and special assessments shall be paid by Landlord and assessed to Tenant on a monthly basis, and shall be due from Tenant as Additional Rent immediately upon Tenant's receipt of an invoice from Landlord, unless the invoice indicates that the payments are due in installments (e.g., an invoice for real estate taxes may state that 1/12 of the taxes is due each month). If monthly installments are due, they are due on the first day of each month unless otherwise indicated by the Landlord. If taxes or special assessments apply retroactively, they shall be assessed to Tenant retroactively.
7. **TENANT'S SIGNAGE.** Any signage, displays, or graphics of any nature whatsoever relative to the business conducted on the Premises, whether located on the Premises, in the Premises, or elsewhere, as well as all other portions of the Premises that may be observed from outside of the Premises, shall be provided at the expense of the Tenant, but shall be subject, however, to the written approval of the Landlord, which approval shall not be unreasonably withheld. All signage existing at the commencement of this Lease is deemed approved. As to any signage which Tenant proposes to implement after the date of execution of this Lease, the Tenant shall submit to the Landlord the plans, for the Landlord's approval, for any such signage, displays, or graphics prior to their implementation. If the Landlord's approval is obtained, the Tenant may not thereafter

modify the same without again obtaining the Landlord's approval. This provision shall specifically apply to such signage, display, or graphics placed in any window of the Premises, or elsewhere in the Premises, which may be seen from outside the Premises. All signage in place at the time this Lease is executed is specifically approved.

8. **TENANT'S ADDITIONAL WARRANTIES.** In addition to any warranties or covenants made or to be kept by the Tenant pursuant to any other provision contained elsewhere herein, the Tenant hereby agrees:
 - a. To not commit any nuisance or waste on the Premises or Premises, throw foreign substances in plumbing facilities, or waste the services, if any, furnished by the Landlord;
 - b. To not place any items in or otherwise obstruct entries, halls, stairways, sidewalks, or other Common Areas, and not use the same for anything other than their intended purpose;
 - c. To pay when due all installments of rent, and to comply with any and all of the Tenant's other covenants and agreements contained in this Lease;
 - d. To store all trash and garbage and make the same available for regular pick-up;
 - e. To conduct its business at all times in good faith, and in a high grade and reputable manner.
9. **LAND LORD'S RIGHT TO FIX OR REPAIR.** If the Tenant shall fail to keep and preserve the Premises in the state of condition required by any provision of this Lease, the Landlord may, at its option, provide Tenant with written notice of such failure as provided here in. If the condition specified in any such notice shall continue for a period of ten (10) days after the date of the notice, Land lord may, at its option, put or cause the same to be put in the required condition and state of repair without liability to Tenant for any loss or damage that may accrue to Tenant's property or business by reason thereof. In such case, the Tenant, on demand, shall pay as additional rent, the cost thereof together with interest thereon from the date paid.
10. **USE.** Subject to the Tenant's ability and obligation to obtain all necessary governmental approvals and permits, the Tenant may use and occupy the Premises for the use of a grocery store. Landlord disclaims any warranty that the Premises are suitable for Tenant's use and Tenant acknowledges that it has had a full opportunity to make its own determination in this regard.
 - a. Compliance With Laws. The Tenant further warrants that it will not commit or permit any act to be performed, or any omission to occur on the Premises or Premises that will be in violation of any present or future law, ordinance, regulation or order of any governmental unit having jurisdiction over the Premises or Premises. This section shall specifically apply to the conformance with all health, safety, and building codes as the same may relate to any equipment or fixtures on the Premises or to any other aspect of the operation of the Tenant's business.

11. MAINTENANCE AND REPAIR. The Landlord shall maintain the foundations, exterior walls (except plate glass or other breakable material used in structural portions which shall be the responsibility of the Tenant as to that portion of such plate glass or other structural materials that may be located within or form part of the boundary of the Premises) and roof of the Premises in good repair, ordinary wear and tear excepted, unless the need for any such repair or replacement is directly or indirectly attributable to or results from activity being conducted within the Premises, or is necessary to accommodate Tenant's operations, or becomes necessary by reason of the negligence of the Tenant, its agents, servants, employees, or anyone else for whose acts the Tenant is responsible. The costs of routine maintenance and repair of the Premises shall be paid directly by the Tenant.

a. **Tenant's Maintenance Obligations.** The Tenant, at its own expense, shall maintain the Premises at all times in as good condition and repair of equal quality with the original work and condition, ordinary wear and tear excepted, and in a clean, sanitary, and safe condition in accordance with all applicable laws, ordinances, and regulations; including, without limitation, all plumbing, sewage, ventilating, and electrical systems serving the Premises, doors, windows, floors and floor coverings, interior walls and all interior painting and decorating, and all equipment, facilities, fixtures, and appurtenances. The Tenant shall permit no waste, damage, or injury to the Premises. If the Tenant refuses or neglects to commence necessary repairs within a reasonable period (no longer than ten (10) consecutive days) after written request, or does not adequately complete such repairs within a reasonable period (no longer than ten (10) consecutive days) after written request, or does not adequately complete such repairs within a reasonable time thereafter, the Landlord may make the repairs without liability to the Tenant for any loss or damage that may occur to the Tenant's stock or business by reason thereof, and if the Landlord makes such repairs, the Tenant shall pay to the Landlord amount so paid by the Landlord and/or all costs and expenses incurred by the Landlord in making the above maintenance or repair, including reasonable attorneys' fees, shall be deemed to be additional rent for the Premises and shall be due and payable by the Tenant to the Landlord on demand.

b. **Glass Windows.** The Tenant shall replace, forthwith, any cracked or broken glass with glass of the same quality, including plate glass or glass and other breakable materials used in structural portions in any interior or exterior windows and doors in the Premises. If not covered by insurance, the Tenant shall bear the expense of any such glass replacement directly.

12. LANDLORD'S RIGHT OF ACCESS. The Landlord, its employees, and agents shall have the right to enter the Premises at all reasonable times for the purpose of inspecting, cleaning, or repairing the Premises, or any portion thereof, or to exhibit the Premises to prospective tenants, purchasers, or others the Landlord may deem appropriate.

Specifically, the Landlord, its employees, or agents shall also be permitted to install on or through the Premises conduits or other utility lines or services as the Landlord may deem necessary or appropriate.

- 13. ALTERATIONS.** Tenant shall not make any alterations, additions, or improvements in or to the Premises, or add, disturb, or in any way change any plumbing or wiring therein without the written consent of the Landlord as to the character and detailed plans of the alteration, addition, or improvement to be made, the manner of doing the work, the appropriate indemnifications for the Landlord, the persons to do the work, the providing of the costs therefor, the returning of the Premises to the condition in which they were at the commencement (if required by the Landlord), and other requirements or assurances that may be required by the Landlord.
- 14. ASSIGNMENT OR SUBLETTING.** Tenant will not assign, transfer, mortgage or encumber this Lease or sublet or rent or permit occupancy or use of the Premises, or any part thereof by any third party; nor shall any assignment or transfer of this Lease be effectuated by operation of law or otherwise, (any of the foregoing being hereinafter referred to as an "Assignment") without in each such case obtaining the prior written consent of Landlord. The consent by Land lord to any Assignment shall not be construed as a waiver or release of Tenant from the terms of any covenant or obligation under this Lease, nor shall the collection or acceptance of rent from any transferee under an Assignment constitute an acceptance of the Assignment or a waiver or release of Tenant or any transferee of any covenant or obligation contained in this Lease, nor shall any Assignment be construed to relieve Tenant from the requirement of obtaining the consent in writing of Landlord to any further Assignment.
- 15. FIRE OR OTHER CASUALTY.** If fire or other casualty shall render the Premises untenable for a period in excess of ninety (90) days, either party shall have the right to terminate this Lease forthwith, in which case all rent owed to the Landlord shall be calculated and paid to the Landlord within ten (10) days of the Landlord's request therefor and any prepayments of rent shall be credited against the rent owed to the Landlord. If the Premises can be restored to a tenable condition within ninety (90) days from the date of such event, then, at the Landlord's option, by notice in writing to the Tenant, mailed within thirty (30) days after such event, this Lease shall remain in full force and effect, with the exception that the Rent for the period during which the Premises were untenable shall be abated pro rata.
- 16. CONDEMNATION: EMINENT DOMAIN.** If the whole of the Premises shall be taken by any public authority under the power or threat of eminent domain, then the Term of this Lease shall cease as of the day possession shall be taken by such public authority, and the rent shall be paid up to that date with a proportionate refund by Landlord of such rent as may have been paid in advance, if any. If a portion of the Premises shall be taken by any public authority under the power or threat of eminent domain, the Base Rent shall be abated pro rate based on the percentage of square footage taken.

17. SURRENDER AND TREATMENT OF IMPROVEMENTS. On the last day of the Term or on the sooner termination thereof, the Tenant shall peaceably surrender the Premises in the condition required of the Tenant and consistent with the Tenant's duty to make alterations, modifications, or repairs pursuant to this Lease. All permanent alterations, additions, improvements and fixtures, other than trade fixtures, that may be made or installed by either of the parties hereto on the Premises shall, at the time of such installation, become the property of the Landlord and shall remain on and be surrendered with the Premises as a part thereof, without damage or injury and without compensation or credit to the Tenant unless the Landlord, at its option, requires the removal of any such alterations, additions, improvements, or fixtures. All nonpermanent alterations, additions, improvements, and fixtures that may be made or installed by the Tenant on the Premises shall remain at all times the property of the Tenant and shall be removed by the Tenant on termination of this Lease.

- a. **Designation by Landlord.** At the time the Tenant applies for the Landlord's written consent to any alterations, additions, improvements, and fixtures, the Landlord shall determine, in its reasonable discretion, which are to be deemed permanent and which are nonpermanent for purposes hereof, provided, however, that failure of the Landlord to do so shall not be deemed a waiver of its right to do so at a later time, or of any of its other rights with respect thereto pursuant to statute or common law.
- b. **Tenant's Failure to Surrender.** If the Premises are not surrendered at the end of the Term or sooner termination thereof, the Tenant shall indemnify the Landlord against any loss or liability from delay by the Tenant in so surrendering the Premises, including, without limitation, claims made by any succeeding Tenant founded on such delay. The Tenant shall promptly surrender all keys for the Premises to the Landlord at the place then fixed for payment of rent and shall inform the Landlord of combinations on any locks and safes on the Premises.
- c. **Holding over.** In the event that the Tenant, with the Landlord's express permission, remains in possession of the Premises after the expiration of its Lease without the execution of a new Lease, it shall be deemed to be occupying the Premises as a tenant from month-to-month, subject to all the conditions and provisions of this Lease, insofar as the same can be applicable to a month-to-month tenancy, except that the Base Rent shall be double the amount stated herein.

18. DEFAULT. The following shall constitute an "Event of Default" under the terms of this Lease:

- a. If the Tenant shall fail to timely pay, when due, any rent or other sums due under this Lease, and any such rent or other sums shall remain unpaid for five (5) days after the same becomes due;

- b. If the Tenant shall fail to observe or perform any of the covenants, terms or conditions of this Lease;
- c. The existence of any collusion, fraud, dishonesty or bad faith by or with the acquiescence of the Tenant, which in any way relates to or affects this Lease or the Premises;
- d. If at any time any material representation, statement, report or certificate made now or hereafter by the Tenant is not true and correct, or if at any time any statement or representation made by the Tenant is not true and correct, and such representation, statement, report or certificate is not corrected within ten (10) days after written notice thereof;
- e. If all or a substantial part of the assets of the Tenant are attached, seized, subjected to a writ or distress warrant, or are levied upon, unless such attachment, seizure, writ, warrant or levy is vacated within thirty (30) days;
- f. If the Tenant is enjoined, restrained or in any way prevented by court order from performing any of its obligations hereunder or conducting all or a substantial part of its business affairs; or if a proceeding seeking such relief is not dismissed within thirty (30) days of being filed or commenced;
- g. If a notice of lien, levy or assessment is filed of record with respect to all or any part of the property of the Tenant by the United States, or any other governmental authority, unless contestable and actually and diligently contested in accordance herewith;
- h. If the Tenant shall file a voluntary petition for bankruptcy or for arrangement, reorganization or other relief under any chapter of the Federal Bankruptcy Code or any similar law, state or federal, now or hereafter in effect;
- i. If the Tenant shall file an answer or other pleading or any proceeding admitting insolvency, bankruptcy, or inability to pay its debts as they mature;
- j. If, within thirty (30) days after the filing against it of any involuntary proceedings under the Federal Bankruptcy Code or similar law, state or federal, now or hereafter in effect, the Tenant shall fail to have such proceeding vacated;
- k. If the Tenant shall fail to vacate, within thirty (30) days following the entry thereof, any order appointing a receiver, trustee or liquidator for it or all or a major part of its property, either on or off the Premises;
- l. If the Tenant shall be adjudicated as bankrupt;
- m. If the Tenant shall make an assignment for the benefit of creditors or shall admit in writing its inability to pay its debts generally as they become due or shall consent to the appointment of a receiver or trustee or liquidator of all or the major part of its property, or the Premises;
- n. If the Tenant shall die, or shall be judicially declared to be incompetent if a natural person, or if such Tenant is a firm, partnership, or corporation, be

- dissolved, terminated or merged, except as the same shall constitute an Assignment pursuant to Section 13 hereof to which the Landlord gives consent;
- o. If the Tenant shall sell, convey, transfer or assign all or a major portion of its inventory, fixtures or other personal property, either on or off the Premises, without replacing same with comparable equivalents within thirty (30) days;
 - p. If the Tenant shall sell, convey, transfer or assign any of the Tenant's rights, title, or interest in the Premises or this Lease, unless with the consent of Landlord in accordance with Section 13 hereof;
 - q. If the Tenant abandons the Premises before the end of the Term;
 - r. If the Tenant shall, at any time during the Term of this Lease, fail to carry in full force and effect any of the insurance coverage required by Paragraph 20 of this Lease.
- I. **Default -Nonpayment of Rent.** If any installment of rent is not paid by Tenant within four days of the date when due (e.g., if Rent is not paid by the fifth day of a month): (i) a one-time late charge in the amount of one hundred dollars (\$100.00) shall become immediately due and payable as compensation to Landlord for administrative costs; and (ii) the unpaid balance due Landlord shall bear interest at the Interest Rate from the date such installment became due and payable to the date of payment thereof by Tenant, and such late charge(s) and interest shall constitute additional rent hereunder which shall be immediately due and payable. The "Interest Rate" as used herein means the lesser of: the maximum rate permitted by law; and eighteen percent (18%) per annum.
- II. **Waiver.** No payment by Tenant or receipt by Landlord of a lesser amount than the monthly installments of rent herein stipulated shall be deemed to be other than on account of the earliest stipulated rent nor shall any endorsement or statement on any check or letter accompanying a check for payment of rent be deemed an accord and satisfaction, nor shall acceptance of rent with knowledge of breach constitute a waiver of the breach, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent, to terminate this Lease, to repossess the Premises or to pursue any other remedy provided in this Lease. No re-entry by Landlord, and no acceptance by Landlord of keys from Tenant shall be considered an acceptance of a surrender of the Lease.
- III. **Remedies.** Upon the occurrence of any Event of Default, the Landlord shall have any one or more of the following remedies:
- a. The Landlord may immediately terminate this Lease by notice to the Tenant. Upon such termination by the Landlord, the Tenant will at once surrender possession of the Premises to the Landlord and remove all of the Tenant's effects therefrom; and the Landlord may forthwith re-enter the Premises and

repossess itself thereof, and remove all persons and effects therefrom using such force as may be necessary without being guilty of trespass, forcible entry or detainer or other tort.

- b. Enter upon and take possession of the Premises by picking or changing the locks if necessary, and lock out, expel or remove the Tenant or any other person who may be occupying the Premises or any part thereof, by force if necessary, without being liable for prosecution or any claim for damages therefor, with or without having terminated this Lease;
- c. Landlord may enter upon the Premises by force if necessary without being liable for prosecution or any claim for damages therefor, and remedy such default for the account and at the expense of the Tenant without thereby waiving such default, and the Tenant further agrees that the Landlord shall not be liable for any damages resulting to the Tenant from such action;
- d. Whether or not this Lease has been terminated, Landlord may, but shall not be obligated to, attempt to relet the Premises for the account of Tenant in the name of Landlord or otherwise, for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the Term) and for such terms (which may include concessions or free rent) and for such uses as Landlord, in its uncontrolled discretion, may determine, and may collect and receive the rent therefor.
- e. No termination of this Lease pursuant to Subsection (a) or repossession of the Premises pursuant to Subsection (b) shall relieve Tenant of its liabilities and obligations under this Lease, all of which shall survive any such termination or repossession. In the event of any such termination or repossession, whether or not the Premises shall have been relet, Tenant shall pay to Landlord the Rent, Operating Costs, and other sums and charges to be paid by Tenant up to the time of such termination or repossession, and thereafter Tenant, until the end of what would have been the Term in the absence of such termination or repossession, shall pay to Landlord, as and for liquidated and agreed current damages for Tenant's default, the equivalent of the amount of the Rent, Operating Costs, and such other sums and charges which would be payable under this Lease by Tenant if this Lease were still in effect, less the net proceeds, if any, of any reletting effected pursuant to the provisions of Subsection (d) after deducting all of Landlord's expenses in connection with such reletting, including, without limitation, all repossession costs, brokerage and management commissions, operating expenses, legal expenses, attorneys' fees, alteration costs, and expenses of preparation for such reletting. Tenant shall pay such current damages to Landlord monthly on the days on which the Base Rent would have been payable under this Lease if this Lease were still in

effect, and Landlord shall be entitled to recover the same from Tenant on each such day.

- f. In the event the Tenant deserts, vacates or abandons the Premises, the Landlord may remove and store any property which remains in the Premises. In addition to the Landlord's other rights, the Landlord may dispose of the stored property if the Tenant does not claim the property within ten (10) days after the date the property is stored. The Landlord may charge a reasonable storage fee, which fee Tenant must pay before claiming the property. The Landlord shall deliver by certified mail to the Tenant, at the address specified for notice to the Tenant herein, a notice that the Landlord may dispose of the property if the Tenant does not claim it within ten (10) days after the date the property is stored.
- g. The Landlord may bring an action in a court of competent jurisdiction to collect any amounts due and owing under this Lease and/or to compel the Tenant to perform any and all of Tenant's obligations under this Lease.
- h. The Landlord may charge all costs to cure any default or offset any loss caused by the Tenant's default to the Tenant as additional rent; and
- i. The Tenant shall pay, in addition to the rent and other sums agreed to be paid hereunder, all costs, including without limitation reasonable attorneys' fees, incurred by the Landlord that result from enforcing the provisions of this Lease.

19. INSURANCE. The Tenant agrees to secure and keep in force from and after the Commencement Date of this Lease and throughout the full Term of the Lease, at the Tenant's own cost and expense, the following:

- a. "All Risk" property insurance on the Tenant's Premises, as well as the entire Premises. Such insurance shall include coverage for the full replacement value of all of Tenant's leasehold improvements, trade fixtures and personal property within the premises. Landlord shall be named as loss payee under all such policies.
- b. Commercial general liability insurance on the Premises as well as the Premises, providing coverage on an "occurrence" rather than a "claims made" basis, which policy shall include coverage for Bodily Injury, Property Damage, Personal Injury, Contractual Liability (applying to this Lease), and Independent Contractors, in current Insurance Services Office form or other form which provides coverage at least as broad. Tenant shall maintain a combined policy limit of at least \$1,000,000 applying to Bodily Injury, Property Damage and Personal Injury, which limit may be satisfied by Tenant's basic policy, or by the basic policy in combinations with umbrella or excess policies so long as the coverage is at least as broad as that required herein. Such liability, umbrella and/or excess policies may be subject to aggregate limits so long as the aggregate limits have

not at any pertinent time been reduced to less than the policy limit stated above, and provided further that any umbrella or excess policy provides coverage from the point that such aggregate limits in the basic policy become reduce or exhausted. Landlord shall be name as an additional insured under all such policies.

- i. Other Requirements. All policies of insurance procured by the Tenant shall:
 - ii. Be issued by insurance companies reasonably acceptable to the Landlord;
 - iii. Be written as primary policies not contributing with and not in excess of coverage that the Landlord may carry;
 - iv. All comprehensive general liability insurance procured by the Tenant under this section shall be issued for the benefit of the Landlord, the Tenant and the owner of the Premises, as their respective interests may appear;
 - v. Contain endorsements providing as follows:
 1. That such insurance may not be materially changed, amended, or canceled with respect to the Landlord except after twenty (20) days' prior written notice from the insurance company to the Landlord, sent by registered mail;
 2. That the Tenant be solely responsible for the payment of all premiums under such policy and that the Landlord shall have no obligation for the payment thereof notwithstanding that the Landlord is or may be named as an insured.
- c. **Proof of Coverage.** The original policy or policies, or duly executed certificates for the same, together with reasonably satisfactory evidence of payment of the premium thereof, shall be delivered to the Landlord within five (5) days of the date of execution of this Lease, and on renewals of such policies not less than twenty (20) days prior to the expiration of the term of any such coverage.

20. GENERAL PROVISIONS.

- a. **Waiver and indemnity.** Notwithstanding anything apparently to the contrary in this Lease, Landlord and Tenant hereby release one another and their respective partners, officers and employees from any and all liability (to the other or anyone claiming through or under them by way of subrogation or otherwise) for any loss or damage covered by property insurance or coverable by a customary form of policy of the insurance required by Paragraph 20, even if such loss or damage shall have been caused by the fault or negligence of the other party, or anyone for whom such party may be responsible.
- b. **Mechanic's liens.** The Tenant agrees to promptly pay all sums of money in respect of labor, services, materials, supplies, or equipment furnished or alleged to have been furnished to the Tenant in or about the Premises, and the Tenant shall

not permit any mechanic's, material man's, or other lien to arise or be filed against the Premises or the Landlord's interest therein. The Tenant shall save, hold harmless, and defend the Landlord from liability or other damage that the Landlord may incur as a result of such liens in the event the same arise or are filed in contravention of the immediately preceding sentence. If any such mechanic's lien shall at any time be filed, the Tenant shall forthwith cause the same to be discharged of record by payment, bond, order of a court of competent jurisdiction or otherwise, provided the Tenant first posts a bond in favor of the Landlord in a form and substance acceptable to the Landlord, which shall be conditioned on the successful contest by the Tenant of any such lien. The Tenant shall have the right to contest in good faith, any and all such liens. If the Tenant shall fail to cause such lien to be discharged within thirty (30) days after being notified of the filing thereof and before judgment or sale thereunder, then, in addition to any other right or remedy the Landlord may, but shall not be obligated to, discharge the same by paying the amount claimed to be due or by bonding or other proceeding deemed appropriate by the Landlord, and the amount so paid by the Landlord and/or all costs and expenses incurred by the Landlord in procuring the discharge of such lien, including reasonable attorneys' fees, shall be deemed to be additional rent for the Premises and shall be due and payable by the Tenant to the Landlord on demand. Nothing contained in this Lease shall be construed as a consent on the part of the Landlord to subject the Landlord's estate in the Premises or any portion of the Premises to any lien or liability under the lien laws of the state of Minnesota. The Landlord shall have the right to post and maintain on the Premises notices of non-responsibility under the laws of Minnesota.

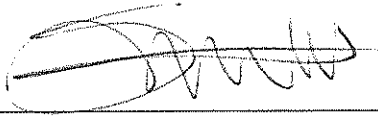
- c. **Keys.** Any and all keys to the Premises shall be surrendered to Landlord on the termination of this Lease.
- d. **No partnership, joint venture, or fiduciary relationship created.** Nothing contained in this Lease shall be interpreted as creating a partnership, joint venture, or relationship of principal and agent between the Landlord and the Tenant, it being understood that the sole relationship created hereby is one of landlord and tenant.
- e. **Cumulative rights.** No right or remedy herein conferred on or reserved to the Landlord is intended to be exclusive of any other right or remedy provided by law, but each shall be cumulative in and in addition to every other right or remedy given herein or elsewhere, or hereafter existing at law, in equity, or by statute.
- f. **Notices.** All communications, demands, notices, or objections permitted or required to be given or served under this Lease shall be in writing and shall be deemed to have been duly given or served if delivered in person to the other party or its duly authorized agent, or deposited in the United States mail, postage prepaid, for mailing by certified or registered mail, return receipt requested, or if

telegraphed, by prepaid telegram, and addressed to the other party to this Lease, to the address set forth next to such party's signature at the end of this Lease, and if to an entity not a party to this Lease, to the address designated by a party to this Lease in the foregoing manner. Any party may change its address by giving notice in writing, stating its new address, to any other party as provided in the foregoing manner. Commencing on the tenth (10th) day after the giving of such notice, such newly designated address shall be such party's address for the purposes of all communications, demands, notices, or objections permitted or required to be given or served under this Lease.

- g. **Successors and assigns.** This Lease shall be binding on and inure to the benefit of the parties hereto and their respective assigns, executors, heirs, personal representatives, and successors, provided, however, that nothing in this section shall be interpreted as granting the Tenant the right to assign this Lease or sublet the Premises.
- h. **Amendment, modification, or waiver.** No amendment, modification, or waiver of any condition, provision, or term of this Lease shall be valid or of any effect unless made in writing, signed by the party or parties to be bound, or its duly authorized representative, and specifying with particularity the extent and nature of such amendment, modification, or waiver. Any waiver by any party of any default shall not affect or impair any right arising from any subsequent default.
- i. **Severable provisions.** Each provision, section, sentence, clause, phrase, and word of this Lease is intended to be severable. If any provision, section, sentence, clause, phrase or word hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Lease.
- j. **Entire agreement.** This Lease contains the entire understanding of the parties hereto with respect to the transactions contemplated hereby and supersedes all prior agreements and understandings between the parties with respect to such subject matter.
- k. **Captions, headings, or titles.** All captions, headings, or titles in the paragraphs or sections of this Lease are inserted for convenience of reference only and shall not constitute a part of this Lease as a limitation of the scope of the particular paragraphs or sections to which they apply.
- l. **Minnesota law: Construction.** This Lease shall be construed and enforced in accordance with the laws of the state of Minnesota. No provision of this Lease shall be construed by any court against either party by reason of such party being deemed to have drafted or structured such provision.
- m. **Personal guaranty.** The individual signing this Lease Agreement for the Tenant, as an inducement to Landlord to enter into this lease, agrees to unconditionally guarantee the prompt payment and performance of the Tenant under this Lease Agreement and to be liable for any amounts due to the Landlord from the Tenant.

n. **Time of the essence.** Time is of the essence of this Lease, and of each and every covenant, term, condition, and provision hereof.

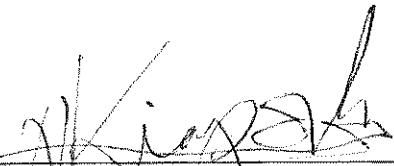
ACKNOWLEDGMENT OF LANDLORD

(s) 

(Land Lord)

Date 1/1/09

ACKNOWLEDGMENT OF TENANT

(s) 

(Tenant- Business Name)

Date 01/09/09