

## APPENDIX E

### DEFAULT AND REMEDIES

#### 1. Landlord's Right to Re-Enter and Re-Possess the Demised Premises.

The Landlord has the right (but without the obligation to do so) to re-enter and repossess the Demised Premises as the Landlord's own property, in the event that any of the following shall occur, each of which shall be deemed a default hereunder: (a) the Tenant fails to pay when due any rent or additional rent required to be paid by the Tenant under this Lease; (b) the Tenant fails to perform any non-monetary provision of this Lease applicable to the Tenant and such failure continues for fifteen (15) days after notice from the Landlord to the Tenant of the failure; (c) the Tenant vacates or abandons the Demised Premises; (d) proceedings are instituted by or against the Tenant and/or any guarantor under the existing or any future Federal Bankruptcy Code or Laws, as amended or modified (the "Bankruptcy Code"), or in insolvency or receivership; (e) the Tenant and/or any guarantor makes an assignment for the benefit of the creditors; (f) the Tenant and/or any guarantor enters into an agreement of composition with the Tenant's (or Guarantor's) creditors; (g) the Tenant's interest in this Lease or the estate of the Tenant passes to a party other than the Tenant as a result of any court proceeding, execution, levy, attachment, sale or operation of law; (h) the issuing bank fails to honor a draw upon the LOC and/or the Tenant fails to have a replacement LOC meeting the requisites of this Lease issued at least thirty (30) days prior to the expiration of any then current LOC, or within the timeframe set in this Lease regarding the issuer's termination of the LOC, or (i) the Tenant is habitually late in the payment of the monthly installments of the fixed rent and additional rent or in the performance of any non-monetary obligation under this Lease. For purposes of this Lease, habitually late is defined as failure by the Tenant to timely pay the monthly installments of fixed rent or additional rent, as provided in this Lease, three (3) or more times within a twelve (12) month period or the failure by the Tenant to timely perform the same non-monetary covenant more than three (3) times during the course of the Lease Term. However, notwithstanding the re-entry and re-possession by the Landlord, the Tenant shall nevertheless continue to be bound under this Lease pursuant to the provisions of paragraph 3, as well as any other provisions of this Lease where the Tenant's obligations survive the Expiration Date or any earlier termination date.

2. Landlord's Right to Terminate Lease. The Landlord has the option to terminate this Lease for any reason set forth in paragraph 1 (a) through (i), each of which shall be deemed a default under this Lease. In order to exercise this option, the Landlord shall give the Tenant notice of the termination at least five (5) days prior to the termination date fixed in the notice and this Lease Term shall terminate as of the date fixed in the notice. Notwithstanding such termination, the Tenant shall nevertheless continue to be bound under this Lease pursuant to the provisions of paragraph 3, as well as any other provisions of this Lease where the Tenant's obligations survive the Expiration Date or any earlier termination date.

3. **Rents and Expenses in Arrears and Damages.**

(a) **Rent Arrearages and Expenses.** If the Landlord re-enters and re-possesses the Demised Premises as provided in this Lease or as otherwise provided by Laws, or in the event the Landlord terminates this Lease as provided in this Lease, the Tenant shall nevertheless remain liable to the Landlord for the expenses the Landlord incurs in repairing, renovating, or making alterations, additions, or improvements to the Demised Premises so as to place the Demised Premises in good order and condition for re-renting, as well as for all brokerage commissions and attorney's fees and costs incurred by the Landlord in connection with the re-entry and re-possession, or termination and re-entry, and reletting, all fixed rent, additional rent and other sums, in arrears then due from the Tenant, all fixed rent and additional rent that otherwise would have been paid for the period provided for in Section \_\_\_\_\_ above, and all expenses incurred by the Landlord, after the default of the Tenant, for the care, maintenance, repair and replacement of the Demised Premises. The Landlord may re-let the Demised Premises, in whole or in part, for a term or terms which may be less or more than the full term of this Lease had the Landlord not re-entered and re-possessed or terminated this Lease, and the Landlord may grant reasonable concessions in re-renting the Demised Premises to a new tenant without affecting the liability of the Tenant under this Lease. The Landlord shall in no way be responsible or liable for any failure to re-let all or any part of the Demised Premises, or for any failure to collect any rent due after any re-letting.

(b) **Survival Covenant-Liability of Tenant after Re-Entry and Repossession or Termination.**

If the Landlord re-enters and re-possesses the Demised Premises as provided in paragraph 1 or as otherwise provided by Laws, or in the event the Landlord terminates this Lease as provided in paragraph 2, the Tenant shall nevertheless remain liable to the Landlord, for damages, for all fixed rent and additional rent to the Expiration Date, as though the Landlord had not re-entered and re-possessed the Demised Premises or terminated this Lease, to the extent of the difference between the fixed rent and additional rent reserved to the Expiration Date, and the fixed rent and additional rent received by the Landlord to the Expiration Date, after deducting all expenses (of the type set forth in subparagraph (a) above) incurred by the Landlord; and the difference, if any shall be paid by the Tenant to the Landlord as such deficiencies arise and are ascertained from month to month, and in no event shall the Tenant be entitled to any surplus fixed rent and additional rent collected by the Landlord in excess of the fixed rent and additional rent due from the Tenant hereunder, or alternatively, and at the election of the Landlord, the Landlord shall have the right to recover from the Tenant, for damages, the fixed rent and additional rent past due, all expenses of the type set forth in subparagraph (a) above incurred by the Landlord, and all fixed rent and additional rent (fixed at the amount due as of the Landlord's termination or reentry as the case may be) for the balance of the Lease Term discounted to its present day value using an interest rate of six (6%) percent .

4. **Survival of Tenant's Obligations.** Any obligations of the Tenant respecting payment or performance applicable to the Tenant under the Lease that have not been satisfied at the expiration or sooner termination of the Lease, shall survive the expiration or sooner termination of the Lease.

5. **LEGAL PROCEEDINGS.** THE LANDLORD AND THE TENANT WAIVE THE RIGHT TO JURY TRIAL IN ANY ACTION, SUMMARY DISPOSSESS PROCEEDING OR OTHER LEGAL PROCEEDING BETWEEN THEM AND THEIR SUCCESSORS, ARISING OUT OF THE LEASE, THE TENANT'S USE AND OCCUPANCY OF THE DEMISED PREMISES, OR THE TENANT'S RIGHT TO THE DEMISED PREMISES. THE TENANT WAIVES THE RIGHT TO TRANSFER SUMMARY DISPOSSESS PROCEEDINGS BROUGHT AGAINST THE TENANT TO THE SUPERIOR COURT OF NEW JERSEY.

6. **Remedies and Rights Not Exclusive.** No right or remedy conferred upon the Landlord is considered exclusive of any other right or remedy, but shall be in addition to every other right or remedy available to the Landlord under the Lease or by Law. Any right or remedy of the Landlord may be exercised from time to time, and as often as the occasion may arise. The granting of any right, remedy, option or election to the Landlord under the Lease shall not impose any obligation on the Landlord to exercise the right, remedy, option or election.

7. **Injunctive Relief.** Any violation, attempted violation, or threatened violation, of any provision of the Lease by the Tenant, can be remedied by an injunction, which shall be a cumulative remedy in addition to any other remedy available to the Landlord under the Lease or by any Law, and the Tenant shall not raise as a defense thereto that the Landlord has an adequate remedy at Law.

8. **Waiver of Right of Redemption.** The Tenant hereby waives all right of redemption to which the Tenant or any person under it may be entitled by any Law.

9. **No Mitigation of Damages.** In the event of a default which results in the Landlord recovering possession of the Demised Premises, the Landlord shall be under no duty to mitigate damages. **[Alternatively, if the landlord agrees to mitigate damages, include language providing the landlord with a safe harbor, not obligating the landlord to rent the space in advance of other space of the landlord and imposing on the tenant the burden of proof that landlord did not mitigate damages.]**