

Thomas E Lauria
State Bar No. 11998025
Craig H. Averch
State Bar No. 01451020
WHITE & CASE LLP
Wachovia Financial Center
200 South Biscayne Blvd.
Miami, FL 33131
Telephone: (305) 371-2700
Facsimile: (305) 358-5744

Robin Phelan
State Bar No. 15903000
Judith Elkin
State Bar No. 06522200
HAYNES AND BOONE, LLP
901 Main Street
Suite 3100
Dallas, TX 75202
Telephone: (214) 651-5000
Facsimile: (214) 651-5940

ATTORNEYS FOR THE DEBTORS AND DEBTORS-IN-POSSESSION

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

_____)	
In re)	Chapter 11 Case
)	
MIRANT CORPORATION, <u>et al.</u> ,)	Case No. 03-46590 (DML)
)	Jointly Administered
Debtors.)	
_____)	

**MOTION OF DEBTORS TO REJECT THE OFFICE LEASE
AGREEMENT WITH EON PROPERTIES, LLC**

Mirant Corporation ("Mirant") and its affiliated debtors (collectively, the "Debtors"), as debtors in possession, file this Motion (the "Motion") pursuant to section 365(a) of title 11, United States Code (11 U.S.C. §§ 101 et seq.) (the "Bankruptcy Code") for authority to reject the "Office Lease Agreement" (the "Lease") between EON Properties, LLC, as landlord (the "Landlord"), and Mirant Sugar Creek, LLC and Mirant Zeeland, LLC, as tenants, for premises known as Plum Creek Center and located at Suite 102, 222 Indianapolis Blvd., Schererville,

Indiana, which is described below in greater detail and attached hereto as Exhibit B.¹ In support thereof the Debtors represent as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

PROCEDURAL BACKGROUND

2. The Cases. Commencing on July 14, 2003, and concluding in the early morning hours of July 15, 2003, (the “Petition Date”), certain of the Debtors (collectively, the “Initial Debtors”) filed voluntary petitions in this Court for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as amended (the “Bankruptcy Code”).² On August 18, 2003, Mirant EcoElectrica Investments I, Ltd. and Puerto Rico Power Investments, Ltd. (collectively, the “New Debtors”) commenced chapter 11 cases under the Bankruptcy Code. On October 3, 2003, the following additional Debtors filed voluntary petitions in this Court for relief under chapter 11: (i) Mirant Wrightsville Management, Inc.; (ii) Mirant Wrightsville Investments, Inc.; (iii) Wrightsville Power Facility, L.L.C.; and (iv) Wrightsville Development Funding, L.L.C. (collectively, the “Wrightsville Debtors”). On November 18, 2003, the following additional Debtors filed voluntary petitions in this Court for relief under chapter 11: (i) Mirant Americas Energy Capital, LP; and (ii) Mirant Americas Energy Capital Assets, LLC (the

¹ Not all parties were served with the Lease. Any party may request a copy of the Lease by making a written request to the Debtors’ counsel.

² Concurrently, Mirant caused two of its Canadian subsidiaries, Mirant Canada Energy Marketing, Ltd and Mirant Canada Energy Marketing Investments, Inc. (collectively, the “Canadian Debtors”) to commence plenary insolvency proceedings (the “Canadian Proceedings”) in the Court of Queen’s Bench of Alberta Judicial District of Calgary (the “Canadian Court”) pursuant to the *Companies’ Creditors Arrangement Act*. The Canadian Debtors are subject to the sole and exclusive jurisdiction of the Canadian Court.

“MAEC Debtors” and collectively with the Initial Debtors, the New Debtors, and the Wrightsville Debtors, the “Debtors”). The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

3. The Cases are Jointly Administered. On July 15, 2003, this Court granted the motion for an order requesting that the bankruptcy estates of the Initial Debtors be jointly administered. On September 8, 2003, this Court entered an order approving joint administration of the cases of the New Debtors with those of the Initial Debtors. On October 20, 2003, this Court entered an order approving the joint administration of the cases of the Wrightsville Debtors with those of the Initial Debtors. On November 20, 2003, this Court entered an order approving the joint administration of the cases of the MAEC Debtors with those of the Initial Debtors.

4. The Committees. Three official committees have been appointed by the Office of the United States Trustee for the Northern District of Texas in these administratively consolidated cases. Specifically, an official unsecured creditors’ committee and an official committee of equity security holders have been appointed for Mirant Corporation and an official unsecured creditors’ committee has been appointed for Mirant Americas Generation, LLC (collectively, the “Committees”).

RELIEF REQUESTED

5. By this Motion, the Debtors respectfully request pursuant to 11 U.S.C. § 365(a) authority to reject the Lease listed below in paragraph 5 hereof, effective ten (10) business days from the date of service of this Motion.

BASIS FOR RELIEF

6. On August 14, 2003, the Court entered an amended order (the "Order") approving procedures (the "Rejection Procedures") for the rejection of Leases and Leases from time to time in furtherance of the reorganization efforts of the Debtors.

7. In summary, the procedures Order allows the Debtors, in the exercise of their business judgment, to reject any Lease or Lease determined to be unnecessary and/or burdensome to the Debtors' ongoing business operations following ten (10) business days from service via facsimile or overnight mail, to: (i) the counterparty under the respective Lease at the last known address available to the Debtors; (ii) counsel for the counterparty under the respective Lease who has appeared in these cases and has specifically requested notice of any rejection notice; and (iii) counsel for any statutory committees appointed in these cases. A copy of the Order is attached hereto as Exhibit A.

8. Pursuant to the terms of the Order and N.D. TX L.B.R. 9014.1, unless a written objection hereto is filed and served in accordance with the terms of the Order, the following Lease will be deemed rejected pursuant to 11 U.S.C. § 365(a) effective upon the expiration of the ten (10) business day notice period described above (the "Effective Date"):

- (a) **Title of the Lease:** "Office Lease Agreement" between Landlord, Mirant Sugar Creek, LLC, and Mirant Zeeland, LLC, dated April 24, 2002, for premises known as Plum Creek Center and located at Suite 102, 222 Indianapolis Blvd., Schererville, Indiana.

Effective Date of Rejection:

January 30, 2004, subject to paragraph 6 hereof

Parties to the Lease:

EON Properties, LLC
Mirant Sugar Creek LLC
Mirant Zeeland, LLC

Contact Information for Non-Debtors:

EON Properties, LLC
222 Indianapolis Blvd.
Suite 101
Scherverville, Indiana 46375

EON Properties, LLC
1417 Wilderness Drive
Scherverville, Indiana 46375

9. If an objection to this Motion is timely filed and served upon: White & Case, LLP, Wachovia Financial Center, 200 South Biscayne Blvd., Miami, Florida 33131, Attention: Thomas E Lauria, Esq. and Haynes and Boone, LLP, 901 Main Street, Suite 3100, Dallas, Texas 75202, Attention: Judith Elkin, Esq., counsel for the Debtors, not later than ten (10) business days from the date of service of this Motion, the Debtors shall seek a hearing on the objection at the Court's earliest convenience. If such an objection to the Motion is timely received, and the Court ultimately upholds the Debtors' determination to reject the Lease, then the Lease shall be deemed rejected as of the date of the determination by the Court unless otherwise agreed, in writing, by the Debtors and the counterparty to the respective Lease.

10. Pursuant to the Order, claims arising out of the rejection of the Lease must be filed with the Court, or any Court approved claims processing agent, by the later of (i) the deadline for filing proofs of claims established by the Court or (ii) thirty (30) days after the Effective Date of Rejection, or the date of the Order of the Court upholding the Debtors' determination to reject the Lease, unless otherwise agreed, in writing, by the Debtors and the counterparty to the Lease (the "Rejection Claims Deadline").

11. Pursuant to the Order, any holder of a claim allegedly arising from the rejection of the Lease who fails to timely file a proof of such claim on or before the expiration of the Rejection Claims Deadline shall be (a) forever barred from asserting such claim against any of

the Debtors; (b) forever barred from sharing in any distribution of the Debtors' estates or assets under any confirmed plan of reorganization or order of the Court authorizing distributions from the Debtors' estates; and (c) bound by the terms of any plan of reorganization confirmed in these chapter 11 cases and any order of the Court authorizing distributions from the Debtors' estates.

General Description Relating to the Lease.

12. The Lease is for 2,875 sq. feet of floor area within an office building and has a term of three (3) years, which runs from June 1, 2002 to May 31, 2005. Pursuant to the Lease, the Debtors pay an annual base rent of \$47,437.50 in Year 1, which increases to approximately \$48,860.63 in Year 2 and \$50,326.44 in Year 3. In addition to the annual base rent, the Lease requires the Debtors to reimburse the Landlord for Common Area Maintenance Expenses (as defined in the Lease), including property taxes, utilities, repairs and cleaning costs.

The Lease May Be Rejected.

13. Section 365(a) of the Bankruptcy Code provides that a debtor-in-possession, "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). The Lease is an unexpired lease, since the Lease does not expire until May 31, 2005, and therefore can be rejected pursuant to section 365(a). "This provision allows a [debtor] to relieve the bankruptcy estate of burdensome agreements which have not been completely performed." *Stewart Title Guaranty Co. v. Old Republic National Title Insurance Co.*, 83 F.3d 735, 741 (5th Cir. 1996) (quoting *In re Murexco Petroleum, Inc.*, 15 F.3d 60, 62 (5th Cir. 1994)).

Rejection Of The Lease is Within the Debtors' Business Judgment.

14. Rejection of a lease requires court approval. A debtor's decision to assume or reject will be approved provided that it meets the "business judgment" test, pursuant to which rejection of an unexpired lease is appropriate if such rejection would benefit the estate. *See Richmond Leasing v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985); *In re G.I. Indus., Inc.*, 204 F.3d 1276, 1282 (9th Cir. 2000) ("[A] bankruptcy court applies the business judgment rule to evaluate a trustee's rejection decision . . ."); *In re Food Barn Stores, Inc.*, 107 F.3d 558, 567 n. 16 (8th Cir. 1997) (debtor's request to assume or reject Lease should be approved where not manifestly unreasonable or made in bad faith). The "business judgment" test is satisfied where the assumption or rejection of an unexpired lease enhances the value of the estate. *See Richmond Leasing*, 762 F.2d at 1309. Upon a finding that a debtor has exercised sound business judgment in determining whether to assume or reject an executory Lease or unexpired lease, a court should approve the decision pursuant to section 365(a) of the Bankruptcy Code. *See NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984).

15. "The fundamental purpose of reorganization is to prevent a debtor from going into liquidation, with an attendant loss of jobs and possible misuse of economic resources." *Bildisco*, 465 U.S. at 528 (citing H.R.Rep. No. 95-595, p. 220 (1977)).

16. Since entering into the Lease, the Debtors' business operations have changed and, after due inquiry, the Debtors determined that rejection of the Lease is necessary and appropriate. The Debtors plan to cease operating from the Shererville office as of January 31, 2004, and have determined, in their reasonable business judgment, that the Lease is burdensome to their estates and an impediment to their on-going business operations. Because the Debtors intend to cease operating from the Shererville Office, the Lease has no beneficial value and, in fact, is causing the Debtors to pay rent for premises they will no longer be using as of February 1, 2004.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he provided a true and correct copy of the forgoing to Bankruptcy Services, LLC and directed them to effect service upon all persons on the Limited Service List (without exhibits) via U.S. mail, and the addressees set forth below via overnight mail (with exhibits) on the 15th day of January 2004.

Eric J. Taube
Mark C. Taylor
Hohmann, Taube & Summers, L.L.P.
100 Congress Avenue
Suite 1600
Austin, TX 78701

Deborah D. Williamson
Thomas Rice
Cox & Smith Incorporated
112 East Pecan Street
Suite 1800
San Antonio, TX 78205-1505

Howard L. Siegel
Brown Rudnick Berlack Israels LLP
City Place I, 185 Asylum Street
Hartford, CT 06103-3401

Bruce R. Zirinsky
Gregory Petrick
Cadwalader, Wickersham & Taft
100 Maiden Lane
New York, NY 10038

William R. Baldiga
Brown Rudnick Berlack Israels LLP
One Financial Center
Boston, MA 02111

Mark Thompson
Simpson Thacher & Bartlett
425 Lexington Avenue
New York, NY 10017-3954

Edward S. Weisfelner
Leslie H. Scharf
Brown Rudnick Berlack Israels LLP
120 West 45th Street
New York, NY 10036

EON Properties, LLC
222 Indianapolis Blvd.
Suite 101
Scherverville, Indiana 46375

Paul N. Silverstein
Andrews & Kurth, L.L.P.
805 Third Avenue
New York, NY 10022

EON Properties, LLC
1417 Wilderness Drive
Scherverville, Indiana 46375

Jason S. Brookner
Andrews & Kurth, L.L.P.
1717 Main Street
Suite 3700
Dallas, TX 75201

/s/ Ian T. Peck

EXHIBIT A

U.S. BANKRUPTCY COURT,
NORTHERN DISTRICT OF TEXAS

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

ENTERED
TAWANA J. MARSHALL, CLERK
THE DATE OF ENTRY IS
ON THE COURT'S DOCKET

_____)	
In re)	Chapter 11 Case
)	
MIRANT CORPORATION, <u>et al.</u> ,)	Case No. 03-46590-DML-11
)	Jointly Administered
Debtors.)	
_____)	

**AMENDED ORDER REGARDING MOTION OF DEBTORS FOR AN ORDER
PURSUANT TO SECTIONS 365 AND 554 OF THE BANKRUPTCY CODE
AUTHORIZING AND APPROVING A PROCEDURE FOR THE REJECTION OF
CERTAIN EXECUTORY CONTRACTS**

Upon the Motion of Debtors for an Order Pursuant to Sections 365 and 554 of the Bankruptcy Code Authorizing and Approving a Procedure for the Rejection of Certain Executory Contacts (the "Motion") filed by the above-captioned debtors and debtors-in-possession (collectively, the "Debtors") in these Chapter 11 cases; and it appearing that this Court has jurisdiction over this matter; and it appearing that due and proper notice has been given; and upon due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED that the Motion is granted; and it is further

ORDERED that the Rejection Procedures referenced on Exhibit "A" attached hereto are hereby approved; and it is further

ORDERED that this Court shall, and hereby does, retain jurisdiction with respect to all matters arising or related to the implementation of this Order; and it is further

ORDERED that the last date to file timely proofs of claim against the Debtors arising from the rejection of any Contracts and Leases (the "Rejection Claims Deadline") will be and hereby is the later of: (i) the deadline for filing proofs of claims established by this Court; and (ii) thirty (30) days after the Rejection Effective Date, as such term is defined in the

Rejection Procedures, unless otherwise agreed, in writing, by the Debtors and the counterparty to a particular Contract or Lease; and it is further

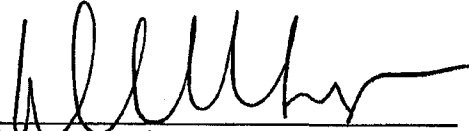
ORDERED that any holder of a claim allegedly arising from the rejections authorized in accordance with the Rejection Procedures who fails to timely file a proof of such claim on or prior to the expiration of the Rejection Claims Deadline be: (i) forever barred from asserting such claim against any of the Debtors or their estates; (ii) forever barred from sharing in any distribution of the Debtors' estates or assets under any plan of reorganization confirmed in these chapter 11 cases or order of the Court authorizing distributions from the Debtors' estates; and (iii) bound by the terms of any plan of reorganization confirmed in these chapter 11 cases and/or any order of the Court authorizing distributions from the Debtors' estates; and it is further

ORDERED that the procedures established by this Order, including the Rejection Claims Deadline, shall not apply to (a) any executory contract or unexpired lease between any of the Debtors and (i) PEPCO and any of its affiliates; (ii) WGES; (iii) Kern; (iv) 285 Venture; (v) Unitil; (vi) the NSTAR Companies (as each entity is defined it is respective objection or joinder to objections to the Motion) (vii) the Cape Light Compact Agreements, including the Pilot Electric Supply Agreement by and between the Cape Light Compact and Mirant Americas Retail Energy Marketing, LP; or (b) leases and lease-related contracts pertaining to the Dickerson and Morgantown power plants operated by Mirant Mid-Atlantic, LLC and its subsidiaries (in which the lease counterparties are certain limited liability companies affiliated with Bank One, N.A., Union Bank of California, N.A. and Verizon Capital Corp.); and it is further

ORDERED that, to the extent that any provision contained in this Order is inconsistent with this Court's Interim Order Authorizing the Debtors to (i) Comply With Terms of Prepetition Trading Contracts, (ii) Enter Into Postpetition Trading Contracts in the Ordinary Course of Business, (iii) Provide Credit Support Relating to Both Pre- and Post-Petition Trading

Contracts, and (iv) Setting a Final Hearing to Consider the Entry of a Final Order Affirming the Interim Order and Authorizing Assumption of Prepetition Trading Contracts entered on July 17, 2003 (the "Trading Order"), the Trading Order shall control.

Dated August 14, 2007



HONORABLE D. MICHAEL LYNN
UNITED STATES BANKRUPTCY JUDGE

Exhibit "A"

Rejection Procedures

- a. Unless a timely objection is filed, any Contract or Lease determined by the Debtors, in the exercise of their business judgment, to be unnecessary and/or burdensome to the Debtors' ongoing business operations shall, unless otherwise agreed, in writing, by the Debtors and the counterparty to a particular Contract or Lease, be deemed rejected ten (10) business days from service of a motion to reject such Contract or Lease (the "Rejection Motion"), via facsimile or overnight mail, to: (i) the counterparty under the respective Contract or Lease at the last known address available to the Debtors; (ii) counsel for the counterparty under the respective Contract or Lease who has appeared in these cases and has specifically requested notice of any rejection notice; and (iii) counsel for any statutory committees appointed in these cases (each, a "Committee").
- b. The Rejection Motion shall be substantially in the form of the Rejection Motion attached hereto as Exhibit A-1 and shall include a copy of the Order approving this Motion.
- c. If an objection to a Rejection Motion is filed by a counterparty to a Contract or Lease, or by any Committee, and timely served upon, and actually received by, counsel to the Debtors prior to the expiration of the ten (10) business day notice period, the Debtors will seek a hearing to consider the objection at the Court's earliest convenience.
- d. If no objections by either a counterparty to a Contract or Lease or by any Committee, are timely received, then the applicable Contract or Lease shall be deemed rejected as of the expiration of the ten (10) business day notice period described above unless otherwise agreed, in writing, by the Debtors and the counterparty to a particular Contract or Lease. The Rejection Effective Date for any rejection shall be the later of (a) the expiry of the ten (10) business day notice period if no objection is filed; (b) the entry of an order ultimately approving rejection if an objection to rejection is filed; and (c) such other date upon which the debtor and the objection party may agree.
- e. If an objection to a Rejection Motion is timely received, and the Court ultimately upholds the Debtors' determination to reject the applicable Contract or Lease, then the applicable Contract or Lease shall be deemed rejected as of the date of the Order unless otherwise agreed, in writing, by the Debtors and the counterparty to the applicable Contract or Lease.
- f. Claims arising out of the rejection of Contracts and Leases must be filed with the Bankruptcy Court or any Court approved claims processing agent by the later of (i) the deadline for filing proofs of claim established by this Court or (ii) thirty (30) days after the Rejection Effective Date, unless otherwise agreed, in writing, by the Debtors and the counterparty to a particular Contract or Lease.

Exhibit "A-1"

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

_____)	
In re)	Chapter 11 Case
MIRANT CORPORATION, <u>et al.</u> ,)	Case No. 03-46590-DML-11
Debtors.)	Jointly Administered
_____)	

**MOTION OF DEBTORS TO REJECT EXECUTORY CONTRACTS OR
UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY
OF [NAME OF COUNTERPARTY]**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Mirant Corporation ("Mirant") and its affiliated debtors (collectively, the "Debtors"), as debtors in possession, file this Motion (the "Motion") pursuant to section 365(a) of title 11, United States Code (11 U.S.C. §§ 101 et seq.) (the "Bankruptcy Code") for authority to reject certain executory contracts (each, a "Contract") or unexpired leases of real property (each, a "Lease"), and in support thereof represent as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

PROCEDURAL BACKGROUND

2. The Cases. Commencing on July 14, 2003 and concluding in the early morning hours of July 15, 2003, (the "Petition Date"), each of the Debtors filed a voluntary petition in this court for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C.

§§ 101-1330, as amended (the "Bankruptcy Code").¹ The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

3. The Cases are Jointly Administered. On July 15, 2003, this Court granted the Debtors' motion for an order requesting that the Debtors' bankruptcy estates be jointly administered.

4. Unsecured Creditors' Committees. On July 25, 2003, the Office of the United States Trustee for the Northern District of Texas formed two official committees of unsecured creditors. The first Committee is comprised of certain bondholders of Mirant Americas Generation, LLC. The Second Committee is comprised of certain creditors of Mirant Corporation and the remaining Debtors.

RELIEF REQUESTED

4. By this Motion, the Debtors respectfully request pursuant to 11 U.S.C. § 365(a) authority to reject certain Contracts and/or Leases listed below, effective 10 (ten) business days from the date upon service of this Motion.

¹ Concurrently, Mirant caused two of its Canadian subsidiaries, Mirant Canada Energy Marketing, Ltd and Mirant Canada Energy Marketing Investments, Inc. (collectively, the "Canadian Debtors") to commence plenary insolvency proceedings (the "Canadian Proceedings") in the Court of Queen's Bench of Alberta Judicial District of Calgary (the "Canadian Court") pursuant to the *Companies' Creditors Arrangement Act* (the "CCAA"). The Canadian Debtors are subject to the sole and exclusive jurisdiction of the Canadian Court.

BASIS FOR RELIEF

5. On _____, 2003, the Court entered an order (the "Order") approving procedures (the "Rejection Procedures") for the rejection of Contracts and Leases from time to time in furtherance of the reorganization efforts of the Debtors.
6. In summary, the procedures Order allows the Debtors, in the exercise of their business judgment, to reject any Contract or Lease determined to be unnecessary and/or burdensome to the Debtors' ongoing business operations following ten (10) business days from service via facsimile or overnight mail, to: (i) the counterparty under the respective Contract or Lease at the last known address available to the Debtors; (ii) counsel for the counterparty under the respective Contract or Lease who has appeared in these cases and has specifically requested notice of any rejection notice; and (iii) counsel for any statutory committees appointed in these cases. A copy of the Order is attached hereto as Exhibit "A".
7. Pursuant to the terms of the Order and N.D. TX L.B.R. 9014.1, unless a written objection hereto is filed and served in accordance with the terms of the Order, the following Leases and/or Contracts will be deemed rejected pursuant to 11 U.S.C. § 365(a) effective upon the expiration of the ten (10) business day notice period described above (the "Effective Date"):

**Title of Lease/Contract:
Effective Date of Rejection:
Parties to the Lease/Contract
and Contact Information:**

8. If an objection to this Motion is timely filed and served upon: White & Case, LLP, Wachovia Financial Center, 200 South Biscayne Blvd., Miami, Florida 33131, Attention: Thomas E Lauria, Esq. and Haynes and Boone, LLP, 901 Main Street, Suite 3100,

Dallas, Texas 75202, Attention: Judith Elkin, Esq., counsel for the Debtors, not later than ten (10) business days from the date of service of this Motion, the Debtors shall seek a hearing on the objection at the Court's earliest convenience. If such an objection to a Rejection Motion is timely received, and the Court ultimately upholds the Debtors' determination to reject the applicable Contract or Lease, then the applicable Contract or Lease shall be deemed rejected as of the date of such determination by the Court unless otherwise agreed, in writing, by the Debtors and the counterparty to the applicable Contract or Lease.

9. Pursuant to the Order, claims arising out of the rejection of Contracts and Leases must be filed with the Court, or any Court approved claims processing agent, by the later of: (i) the deadline for filing proofs of claims established by this Court or (ii) thirty (30) days after the Effective Date, or the date of the Order of the Court upholding the Debtors' determination to reject the applicable Contract or Lease, unless otherwise agreed, in writing, by the Debtors and the counterparty to a particular Contract or Lease (the "Rejection Claims Deadline").

10. Pursuant to the Order, any holder of a claim allegedly arising from the rejection of a Contract or Lease who fails to timely file a proof of such claim on or before the expiration of the Rejection Claims Deadline shall be (a) forever barred from asserting such claim against any of the Debtors; (b) forever barred from sharing in any distribution of the Debtors' estates or assets under any confirmed plan of reorganization or order of the Court authorizing distributions from the Debtors' estates; and (c) bound by the terms of any plan of reorganization confirmed in these chapter 11 cases and any order of the Court authorizing distributions from the Debtors' estates.

CONCLUSION

WHEREFORE, the Debtors respectfully request the relief requested herein and such other and further relief as this Court deems just and proper.

Dated: Fort Worth, Texas
_____, 2003

HAYNES AND BOONE, LLP
901 Main Street
Suite 3100
Dallas, TX 75202
(214) 651-5000

By _____

Robin Phelan
State Bar No. 15903000
Judith Elkin
State Bar No. 06522200
Ian Peck
State Bar No. 24013306

-and-

Thomas E Lauria
State Bar No. 11998025
Michelle C. Campbell
State Bar No. 24001828
WHITE & CASE LLP
Wachovia Financial Center
200 South Biscayne Blvd.
Miami, Florida 33131
(305) 371-2700

PROPOSED ATTORNEYS FOR THE DEBTORS
AND DEBTORS-IN-POSSESSION

EXHIBIT B

OFFICE LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered into this _____ day of April, 2002, by and between EON PROPERTIES, LLC (hereinafter referred to as "Landlord"), and MIRANT SUGAR CREEK, LLC AND MIRANT ZEELAND, LLC. (hereinafter referred to as "Tenant").

WITNESSETH

That for and in consideration of the rentals hereinafter reserved and of the mutual covenants and agreements hereinafter set forth, the parties hereto do hereby mutually agree as follows:

ARTICLE I. GRANT AND TERM

SECTION 1.01. DEMISED PREMISES. Landlord hereby leases to Tenant for the term and upon the covenants hereinafter set forth, approximately Two Thousand Eight Hundred seventy-five (2,875) square feet of floor area, hereinafter called "Demised Premises". The Demised Premises, Suite 102 are located within the Office Building commonly known as PLUM CREEK CENTER and located at 222 Indianapolis Blvd., Schererville, Indiana (hereinafter called "Office Building") legally described on Exhibit A attached hereto and made part hereof. The Demised Premises is shown on the Building Floor Plan attached hereto and made a part hereof as Exhibit "B".

SECTION 1.02. TERM. The term of this Lease shall be for a period of three (3) years, commencing on June 1, 2003 or the date on which Tenant shall open the Demised Premises for business, whichever occurs first (hereinafter referred to as the "Commencement Date"), and expiring midnight on the same month and day following the expiration of three (3) full years after the Commencement Date unless sooner terminated in accordance with the provisions hereof (the "Expiration Date"). For all purposes of this Lease, a "lease year" shall be defined as the twelve (12) consecutive calendar months commencing on the first day of the month following the Commencement Date (unless the Commencement Date is the first day of the month in which case the lease year shall commence on said date). Each subsequent lease year shall be for the twelve (12) consecutive calendar months immediately following the expiration of the prior lease year. If requested by Landlord, immediately following delivery of the Demised Premises to Tenant, or at any other time during the term hereof, Tenant shall execute an Opening and Termination Date Declaration in the form attached hereto as Exhibit "C", specifying the information called for in said form.

ARTICLE II. RENT AND DEPOSIT

SECTION 2.01. MINIMUM RENT.

(a) Tenant covenants and agrees to pay Minimum Rent to Landlord at 1417 Wilderness Drive, Schererville, Indiana 46375, in monthly installments, in advance, according to the following:

1. From the Commencement Date until the end of the month at the end of the first lease year, the sum of Forty Seven Thousand Four Hundred thirty-seven and 50/100 Dollars (\$47,437.50) per annum, payable in equal monthly installments of Three Thousand Nine Hundred fifty-three and 13/100 Dollars (\$3,953.13), payable one each on the first of every calendar month for the then current month. Monthly rental payments shall be reduced pro rata for the initial Lease term, by the amount of the rental deposit herein described in Section 2.04 which is to be applied toward monthly rent payments. Tenant's rental deposit shall reduce the monthly rental payment due Two Thousand and 00/100 Dollars (\$2,000.00) plus Additional Rent, as herein described, for the initial term of this Lease. Tenant's first installment of rent shall be due and payable on the Commencement Date and shall include, in addition to the monthly installment set forth hereinabove, a sum equal to the monthly installment of rent divided by thirty (30) and multiplied by the number of days from and including the Commencement Date until the first day of the first lease year.

2. Annual rent for each subsequent year of the original term of this Lease shall be increased three percent (3%) of the annual rent due and payable for the prior lease year. Such annual rent shall be payable in equal monthly installments at the time and in the same manner as rent for the first year of the original term of the Lease.

SECTION 2.02. PAYMENTS BY TENANT. Tenant shall pay to Landlord, without demand, deductions, set-offs or counterclaims, the rent, which is hereby defined as the sum of the Minimum Rent and all Additional Rent when and as the same shall be due and payable hereunder. Unless otherwise stated, all other sums of money or charges payable to Landlord from Tenant by this Lease are defined as "Additional Rent" and are due ten (10) days after the rendering of an invoice therefore and failure to pay such charges carries the same consequences as Tenant's failure to pay rent. All payments and charges required to be made by Tenant to Landlord hereunder shall be payable in coin or currency of the United States of America, at the address indicated herein. No payment to or receipt by Landlord of a lesser amount than the then amount required to be paid hereunder shall be deemed to be other than on account of the earliest amount of such obligation then due hereunder. No endorsement or statement on any check or other communication accompanying a check for payment of any amounts payable

JAN-13-2004 15:14

2025853796

99%

P.03

SECTION 4.01. SITE PLAN. Exhibit "B" sets forth the general layout of the Office Building. Landlord does not warrant or represent that the Office Building or the Demised Premises will be constructed exactly as shown thereon or that it will be completed by a specific date. Landlord may change or alter any of the Common Areas or any other aspect in the Office Building, or may sell or lease any portion of the Office Building all without the consent of or notice to Tenant. Landlord hereby agrees that the relative location and actual size of the Demised Premises shall remain substantially unchanged.

SECTION 4.02. LANDLORD'S WORK. Landlord shall construct the Demised Premises, substantially in accordance with the plans

prepared on behalf of the Tenant for Tenant's layout for the Demised Premises. Tenant Buildout Specifications are attached hereto and made a part hereof as Exhibit "D" (hereinafter referred to as "Landlord's Work"). All costs for the improvement work shall be at the Tenant's expense. All tenant improvement costs shall be estimated and thirty percent (30%) shall be paid prior to start of tenant improvement work and the balance due paid, weekly as construction progresses, with ninety percent of Tenant Buildout expenses paid prior to the occupancy. The remaining ten percent (10%) shall be withheld by the Tenant until satisfactory completion, by Landlord, of the Tenant Buildout punch list, to be furnished Landlord within fifteen (15) days after initial occupancy and Lease Commencement date.

SECTION 4.03. DELIVERY OF POSSESSION DATE. Landlord shall give Tenant at least thirty (30) days' prior notice of the projected date on which Landlord's Work will be substantially completed and the Demised Premises will be available to Tenant for the performance of Tenant's Work. On the day when Landlord's Work is substantially completed and the Demised Premises are ready for Tenant to begin its work under Section 4.04, Landlord and Tenant shall execute a Delivery of Possession Date Certificate substantially in the form of Exhibit "E" attached hereto and made a part hereof. (The date specified in such Certificate as the date on which the Demised Premises have been delivered to Tenant shall be the "Delivery of Possession Date".) Tenant agrees to take physical possession of the Demised Premises on the date Landlord tenders possession of the Demised Premises to Tenant. From and after the Delivery of Possession Date, Tenant agrees to diligently perform Tenant's work.

SECTION 4.04. TENANT'S WORK. Other than work done pursuant to Section 4.02, all work is to be performed by Tenant at its expense (hereinafter referred to as "Tenant's Work") in accordance with Exhibit "F" attached hereto and made a part hereof and in accordance with the provisions of Section 4.06 hereof. All entry into the Demised Premises and work done by Tenant shall be at Tenant's sole risk. All work performed by Tenant shall be subject to Landlord's prior written approval, including but not limited to written approval of Tenant's plans and specifications as prepared, and shall be in accordance with good construction practices, all applicable laws, Landlord's insurance requirements as set forth in Section 4.05(b) and 9.02 herein below, and Landlord's reasonable and non-discriminatory rules and regulations as published from time to time. Further, Landlord shall have no responsibility or liability for any loss or damage to any property belonging to Tenant. Tenant agrees to pay for Tenant's pro rata share of all the utilities used or consumed in the Demised Premises by Tenant on and after the Delivery of Possession Date. Tenant shall obtain at Tenant's sole expense all certificates, approvals and permits which may be necessary so that a certificate of occupancy for the Demised Premises may be issued. Copies of all such certificates shall be delivered to Landlord. Except for Landlord's Work, Tenant shall ready the Demised Premises for the opening of Tenant's business by the Commencement Date.

SECTION 4.05. SUBSEQUENT ALTERATIONS BY TENANT.

(a) Tenant may not make any additions to the Demised Premises; or structural changes, structural modifications or structural alterations to the Demised Premises; or changes to any entrances or to the exterior of the Demised Premises, without the prior written consent of Landlord in each instance.

(b) Any alterations shall be performed in a first-class and workmanlike manner and in accordance with all applicable legal and insurance requirements and the terms and provisions of this Lease.

(c) The Tenant shall notify the Landlord of any alteration work to the Demised Premises, at any time, which may affect the operation of the sprinkler system in the building. Upon such notification, the Landlord, at the Tenant's sole expense, shall cause the sprinkler system to be shut down and drained in the affected area(s) for the alteration period and reactivate the sprinkler system upon completion of all related alteration work. In the event that the Landlord is not notified and damage occurs in any part of the Office Building, resulting from the operation of the sprinkler system, the costs of any and all repairs and/or replacements of any kind shall be at the sole expense of the Tenant. The provisions of this subparagraph shall extend to any and all work conducted by the Tenant, including any maintenance, repair or alteration of the Demised Premises.

(d) Prior to the commencement of any work by Tenant, Tenant shall (i) obtain public liability insurance to cover every contractor to be employed by Tenant which shall name Landlord as an additional insured, appropriate workmen's compensation and shall deliver duplicate originals of all certificates of such insurance to Landlord for written approval, (ii) furnish Landlord with all necessary permits, licenses, approvals, certificates and authorizations for prosecution and completion of the work, and (iii) furnish Landlord with such other documents as may be reasonably requested by Landlord.

(e) No promise of Landlord to alter, remodel, improve, repair, decorate or clean the Demised Premises or the Common Areas, or

any part thereof, and no representation respecting the condition of the Demised Premises or the Office Building has been made to Tenant by Landlord, except as specifically set forth in this Lease. Tenant hereby expressly acknowledges that Landlord has made no representations or warranties, expressed or implied, as to the design or adequacy of the Demised Premises for the use set forth in Section 5.01, and any such representation or warranty, statutory or otherwise, is hereby waived by Tenant.

SECTION 4.06. LIEN CLAIMS. Tenant shall not permit any lien or claim for lien for any mechanic, laborer or supplier or any other lien to be filed against the Office Building, the Demised Premises, or any part thereof arising out of work performed, or alleged to have been performed by, or at the direction of, or on behalf of Tenant. In the event that any such lien or claim is filed against the Demised Premises or Office Building or any portion thereof as a result of any work or act of Tenant, Tenant, at its expense, shall discharge or bond over the same within ten (10) days from the filing thereof. If Tenant fails to discharge said mechanic's lien, Landlord may bond over or pay the same without inquiring into the validity or merits of such lien. Said lien and all sums so advanced by Landlord, including Landlord's expenses and attorneys' fees, shall be paid on demand by Tenant as Additional Rent.

ARTICLE V. CONDUCT OF BUSINESS

SECTION 5.01. USE. Tenant shall use and occupy the Demised Premises for the following purposes only, and for no other purposes: general office and related uses.

SECTION 5.02. OPENING; ESTOPPEL CERTIFICATE. Tenant agrees to open for business and thereafter conduct its regular business operations during the entire term of this lease. From time to time and upon ten (10) days' notice, Tenant agrees to execute and deliver a written acceptance/estoppel certificate confirming that Tenant has accepted the Demised Premises and such other facts relative to this Lease as Landlord or any mortgagee of the Office Building may request to be confirmed. If Tenant fails to execute such certificate, Tenant hereby irrevocably appoints Landlord as its attorney-in-fact to execute and deliver such certificate for Tenant, or Landlord may elect to terminate this Lease.

SECTION 5.03. UTILITIES. Tenant, at its expense, shall pay all costs for all utilities and services provided by Landlord which are used in or at the Demised Premises, commencing with the Delivery of Possession Date and throughout the term of this Lease. Tenant shall pay, directly to the public utility companies, the cost of any installation not included in Landlord's Work of any and all such utility services. If Tenant desires gas, telegraphic, burglar alarm, computer installations or signal service, Landlord shall, upon request, direct the location and method of all connections and wiring, if any, for such service. The installation, maintenance and use of any such service shall be at Tenant's sole expense. Tenant agrees to indemnify and hold harmless Landlord from and against any and all claims arising from the installation and maintenance of such utility and other services and from all costs and charges for utilities consumed on or by the Demised Premises. In the event a utility servicing the Demised Premises cannot be separately metered, Tenant shall reimburse Landlord for its pro rata share of the cost of said utility service as follows: Landlord will multiply the cost of said utility service by a quotient, the numerator of which shall be the gross leasable square footage of floor area in the Demised Premises and the denominator of which shall be the total gross leasable square footage of the Building which is covered by the invoice or bill for said utility service. Any amount payable to Landlord by Tenant pursuant to this Paragraph shall be Additional Rent hereunder. Tenant's obligation to pay its proportionate share of the utility services not separately metered to the Demised Premises shall survive the termination of this Lease.

SECTION 5.04. DIRECTORY. Tenant shall have the right to have the Landlord install its name on the building directory located in the Office Building and on the exterior pylon sign, at Tenant's sole cost and expense.

SECTION 5.05. TENANT'S WARRANTIES AND OBLIGATIONS. Tenant warrants, represents, covenants and agrees to and with Landlord that throughout the term hereof it shall (i) keep the Demised Premises clean, neat, sanitary and safe and in good order, repair and condition (including all necessary replacements, painting and decorating), and shall keep all glass in doors, windows and elsewhere clean and in good condition and shall replace promptly all glass which may become damaged or broken with glass of the same quality, ordinary wear and tear and damage by fire or other casualty covered by collectible proceeds of Landlord's insurance excepted; (ii) pay, before delinquent, any and all taxes, assessments and public charges imposed upon Tenant's business or fixtures, and pay when due all fees of similar nature; (iii) observe all restrictive covenants of record and Landlord's reasonable rules and regulations which are applicable to the Office Building; (iv) not use any advertising medium or sound devices inside the Demised Premises which may be heard outside the Demised Premises, or permit any objectionable odors to emanate from the Demised Premises; (v) keep the Demised Premises sufficiently heated to prevent freezing of water in pipes and fixtures in and about the Demised Premises; (vi) keep the temperature within the Demised Premises at such levels as may be required

by any federal, state or local laws, ordinances, or regulations; (vii) comply and require all of Tenant's employees, agents, concessionaires, licensees and invitees to comply with all laws, ordinances, orders and governmental regulations, and with the directions of any public officer authorized by law, with respect to the Demised Premises and the use and occupancy thereof; (viii) operate its business in the Demised Premises as required under Section 5.02; and (ix) Tenant shall comply with all local, state and federal regulations and requirements with respect to the storage and removal of any and all medical, toxic and hazardous waste products. Tenant hereby indemnifies and holds Landlord harmless from any liability, damages, loss, costs and expenses arising from the use, storage and disposal of any medical, toxic or hazardous waste products on the Demised Premises. Tenant shall remove any medical, toxic and hazardous substances located on the Demised Premises, or located in the Office Building (if located thereon due to Tenant's use of the Demised Premises) at the expiration of the Lease term.

SECTION 5.06. LEGAL REQUIREMENTS. Tenant shall, at its own expense, comply with all laws, orders, ordinances of governmental authorities having jurisdiction (including but not limited to the Indiana State Department of Health, the State of Indiana, Lake County and the Town of Schererville and with directions of public officers thereunder, with all applicable Board of Fire Insurance Underwriters regulations respecting all matters of occupancy, condition or maintenance of the Demised Premises, whether such orders or directions shall be directed to Tenant or Landlord, and Tenant shall hold Landlord harmless from any and all costs or expenses on account thereof. Tenant shall procure and maintain all licenses and permits legally necessary for the operation of Tenant's business and allow Landlord to inspect them on request. In the event the State of Indiana shall revoke the license required to operate the Tenant's business on the Demised Premises, the revocation shall be a Default under this Lease.

ARTICLE VI. COMMON AREA

SECTION 6.01. COMMON AREA DEFINED. All areas ("Common Areas") exterior to the Demised Premises as shown on Exhibit "B" (or which are created subsequent to the date of this Lease), which are available for the joint use and benefit of Landlord, Tenant and other tenants and owners of the Office Building, and their respective employees, agents, subtenants, licensees, customers and other invitees, including but not limited to parking areas, parking spaces, driveways, passageways, sidewalks, entrances, elevators, elevator shafts, lobby, hallways, stairwells, exits, lighting facilities, utility or janitor closets, public restrooms, landscaped areas and utility lines.

SECTION 6.02. USE. During the term of this Lease, Tenant is granted, subject to Landlord's rules and regulations promulgated by Landlord from time to time, the nonexclusive license to permit its customers and invitees to use the sidewalks, parking areas, the entrance and exit ways designated by Landlord for access and egress to and from the Demised Premises from a public street or highway. Notwithstanding anything contained in this Lease to the contrary, Landlord shall have the right, at any time and from time to time, without notice to or consent of Tenant, to change the size, location, elevation and nature of the Common Areas or any part thereof, including, without limitation, the right to locate and/or erect thereon structures and other buildings and improvements of any type.

SECTION 6.03. COMMON AREA MAINTENANCE EXPENSES. Starting with the Commencement Date, Landlord shall be responsible for maintaining and keeping in good service and repair the Common Areas. Tenant agrees to reimburse Landlord, as Additional Rent, for its proportionate share of all costs and expenses incurred by Landlord in managing, servicing, insuring, cleaning, maintaining, repairing and (to the extent Landlord, in its sole discretion, deems appropriate) policing and protecting all Common Areas in the Office Building (the "Common Area Maintenance Expenses"). The Common Area Maintenance Expenses shall include, but not be limited to, the following costs and expenses: (i) gas, electricity, sewer, other utility charges (including surcharges) of whatever nature, and removal of rubbish, dirt, debris, snow and ice; (ii) insurance premiums, including but not limited to liability, property damage, fire, extended coverage, rent loss, worker's compensation employer's liability and contractual liability insurance premiums; (iii) all other maintenance and repair expenses and supplies which may be deductible for such calendar year in computing federal income tax liability; (iv) any other costs and expenses (i.e. items which are not capital improvements) incurred by Landlord in operating the Office Building; (v) the cost of any capital improvements which are made by Landlord after completion of initial construction of the Office Building, provided however, that the cost of each such capital improvement, together with any financing charges incurred in connection therewith, shall be amortized and/or depreciated over the useful life thereof and only that portion thereof attributable to such calendar year shall be included in the Common Area Maintenance Expenses for such calendar year; (vi) management fees and other administration fees and costs (including attorneys' and auditors' fees); and (vii) roof repair, maintenance or replacement. Common Area Maintenance Expenses shall not include principal payments or interest payments on any mortgages, deeds of trust, or other financing encumbrances; leasing commissions payable by Landlord; or deductions for depreciation of the improvements.

SECTION 6.04. CALCULATION OF COMMON AREA MAINTENANCE EXPENSE. In the event Landlord is maintaining the Common Areas, Tenant's obligations to reimburse Landlord for Common Area Maintenance Expenses shall be calculated as follows: (i) Landlord shall

aggregate together all Common Area Maintenance Expenses; (ii) divide by a number which is the total square footage of the gross leasable floor area contained in the Office Building; (iii) multiply the quotient arrived at through the calculations described in (ii) above by the total gross leasable square footage of floor area in the Demised Premises. Tenant shall pay Landlord, in advance, Tenant's proportionate share of Landlord's estimate of Common Area Maintenance Expenses, as computed above, in twelve (12) equal monthly installments with the monthly installment of Minimum Rent. Notwithstanding the above, in the event Landlord at any time determines that the amount of Common Area Maintenance Expenses actually being paid by Landlord exceeds the estimate upon which Tenant's proportionate share of Common Area Maintenance Expenses was computed, Tenant, following a request from Landlord, shall commence to pay with the next installment of rent due an amount sufficient to result in Tenant's paying its full proportionate share of Common Area Maintenance Expenses as computed on the basis of Landlord's revised estimate of Common Area Maintenance Expenses. Within sixty (60) days of the end of each calendar year, there shall be an adjustment if the amount paid by Tenant for the prior calendar year or partial calendar year just ended differs from its proportionate share actually incurred in that year. Any amount due Tenant or any amount due Landlord shall be credited against or paid, respectively, in the next monthly installment of Common Area Maintenance Expenses. Tenant's obligation to pay its proportionate share of Common Area Maintenance Expenses shall survive the termination of this Lease.

ARTICLE VII. REPAIRS AND MAINTENANCE

SECTION 7.01. REPAIRS AND MAINTENANCE

(a) Tenant agrees, at Tenant's expense, to perform all maintenance and to make all repairs, replacements and substitutions of whatever kind and nature, foreseen and unforeseen, to keep the Demised Premises and fixtures thereon in good condition and repair including all necessary maintenance, repairs, replacements and substitutions of and for the walls, floors, ceilings, windows and doors located within the Demised Premises. If Tenant fails to perform its obligations under this Section, Landlord may (but shall not be obligated to) perform same and Tenant shall reimburse to Landlord the cost thereof (as Additional Rent) upon demand.

(b) Landlord is obligated to maintain the roof, structure, lobby, all electrical, mechanical and plumbing systems and elevator of the Office Building containing the Demised Premises. In addition, Landlord shall maintain and repair the heating, ventilating and air conditioning system. All costs of such maintenance and repairs shall be included as part of the Common Area Maintenance Expenses described in Section 6.03 of this Lease.

(c) Landlord shall cause the Common Areas to be cleaned with normal regularity and the cost thereof shall be paid by Tenant in accordance with Section 6.04 of this Lease.

ARTICLE VIII. REAL ESTATE TAXES

SECTION 8.01. LIABILITY. Starting with the Commencement Date and throughout the entire term of this Lease, Tenant shall pay Landlord, as Additional Rent, Tenant's proportionate share of Taxes, as hereinafter defined, for each tax year. The term "Taxes" means the total of all taxes and assessments, general and special, ordinary and extraordinary, foreseen and unforeseen, including assessments for public improvements and betterments, assessed, levied or imposed with respect to the land and improvements included within the Office Building, taxes on rents, leases or subleases or on the privilege of leasing or subleasing. The term "Taxes" also includes all fees, costs and expenses (including attorneys' fees and court costs) paid or incurred by Landlord in seeking or obtaining any refund or reduction of Taxes, whether or not successful. If, at any time during the term of this Lease, the present method of taxation shall be changed so that in lieu of the whole or any part of any Taxes levied, assessed or imposed on real estate and the improvements thereon there shall be levied, assessed or imposed on Landlord a capital levy or other tax directly on the rents received therefrom and/or a franchise tax, assessment, levy or charge measured by or based, in whole or in part, upon such rents for the present or any future building or buildings in the Office Building, then all such taxes, assessments, levies or charges, or the part thereof so measured or based, shall be deemed to be included within the term "Taxes" for the purposes hereof. Tenant's proportionate share hereunder shall be calculated as follows: (i) Landlord shall aggregate together all Taxes, (ii) divide by a number which is the total square footage of the gross leasable floor area contained in the Office Building and (iii) multiply the quotient arrived at through the calculations described in (ii) above by the total gross leasable square footage of floor area in the Demised Premises.

SECTION 8.02. METHOD OF PAYMENT. Tenant's share of Taxes shall be paid monthly together with payments of Minimum Rent so that Landlord shall have sufficient funds to pay Taxes when due without advancing same on behalf of Tenant. On or about the Commencement Date, Landlord shall provide Tenant with a statement of the amount which Tenant must reimburse (where applicable) to Landlord for Taxes paid

by Landlord in advance respecting Tenant's share of Taxes for the current tax year, or the amount which Tenant shall pay monthly so that by the next tax payment date, Tenant will have paid its full share of Taxes for the current tax year, and the amount Tenant shall pay in equal monthly installments following the next tax payment date.

Monthly payments due after the tax payment date following the Commencement Date shall be based on Landlord's good faith estimate of Taxes required to be paid on the second tax payment date following the Commencement Date. Landlord may make adjustments in its estimates as necessary based upon billings from the taxing authority, and any adjustments necessary shall be paid or credited within ten (10) days of Landlord's statement. Notwithstanding the end of the term hereof, Tenant shall continue to be liable to Landlord for all Taxes assessed, levied or imposed for the period of the term of this Lease, as extended, or any portion thereof, whether or not such taxes shall be due during such term, and Tenant shall promptly remit to Landlord any amount due to Landlord upon notice from Landlord to Tenant.

ARTICLE IX. INSURANCE, INDEMNITY AND LIABILITY

SECTION 9.01. LANDLORD'S OBLIGATIONS. Landlord shall obtain and maintain, during the term of this Lease, fire and extended coverage insurance, insuring against all reasonable perils and liabilities, for ninety percent (90%) of the replacement value of the Demised Premises and Landlord's Work. Such insurance shall be issued by an insurance company licensed to do business in the State of Indiana. Tenant, within ten (10) days of request, shall pay to Landlord its pro rata share of the cost of such insurance. Tenant's pro rata share shall be determined by multiplying the cost of the insurance by a fraction the numerator of which is the gross leasable square foot floor area of the Demised Premises and the denominator of which is the square foot floor area of the gross leasable area located within the second floor of the Office Building.

SECTION 9.02. TENANT'S OBLIGATIONS.

(a) Tenant, at Tenant's sole cost and expense, shall obtain and maintain, for the term of this Lease, as extended, insurance policies providing the following coverage: (i) Tenant's fixtures, equipment, furnishings and other contents, including all improvement designated herein as Tenant's Work, in the Demised Premises, for the full replacement value of said items; (ii) all perils included in the classification "fire and extended coverage" under insurance industry practices in effect from time to time in the jurisdiction in which the Demised Premises is located; (iii) comprehensive general liability insurance naming Landlord, Landlord's partners, Landlord's beneficiary, any mortgagee and/or master lessor, if any, as additional insureds, which policy is to be in the minimum amount of One Million and No/100 Dollars (\$1,000,000.00) combined single limit for bodily injury and property damage in the Demised Premises and anywhere within the Office Building. The minimum limits hereinbefore set forth may, at Landlord's option, be increased by not more than ten percent (10%), such increase to occur not more often than once during each two (2) consecutive lease years during the term hereof. Tenant shall deliver to Landlord certificates of insurance or duplicate originals of each such policy.

(b) The policies described in this Section 9.02 shall: (i) be acceptable to Landlord in form and content; (ii) contain an express waiver of any right of subrogation by the insurance company against Landlord, Landlord's agents and employees and any mortgagees and ground lessors; (iii) contain a provision that it shall not be canceled and that it shall continue in full force and effect unless Landlord has received at least thirty (30) days' prior written notice of such cancellation or termination, and (iv) not be materially changed without prior notice to Landlord.

(c) Tenant shall not permit to be done any act which will invalidate or be in conflict with the fire insurance policies covering the Office Building or any other insurance referred to in this Lease. Tenant will promptly comply with all rules and regulations relating to such policies. If the acts of Tenant or its employees or agents shall increase the rate of insurance referred to in this Lease, such increases shall be immediately paid by Tenant as Additional Rent.

SECTION 9.03. COVENANTS TO HOLD HARMLESS.

(a) Landlord and Tenant each hereby releases the other, its officers, directors, employees and agents from any and all liability or responsibility for any loss or damage to property covered by, or which loss or damage is required pursuant to this Lease to be insured by, valid and collectible fire insurance with standard and extended coverage endorsement, to the extent of the proceeds collected or collectible under such insurance policies or which would have been collectible under such insurance policies if maintained as required hereunder, even if such fire or other casualties shall have been caused by the fault or negligence of the other party, or anyone for whom such party may be responsible.

(b) Tenant agrees to hold harmless and indemnify Landlord, Landlord's beneficiary, any and all mortgagees and their respective agents, beneficiaries, partners, officers, servants and employees against claims and liabilities, including attorneys' fees, for injuries to all persons and damage to, or theft or misappropriation or loss of property occurring in or about the Demised Premises and the Office Building, or from any breach or default on the part of Tenant in the performance of any covenant or agreement on the part of Tenant to be performed pursuant to the terms of this Lease or due to any other act or omission of Tenant, its agents, employees, guests or invitees. In case of any action or proceeding brought against Landlord, Landlord's beneficiary, any mortgagee, master lessor, or any of their respective agents, beneficiaries, partners, officers, servants or employees by reason of any such claims, upon notice from Landlord, Tenant covenants to defend such action or proceeding at Tenant's expense with counsel reasonably satisfactory to Landlord.

SECTION 9.04. LIABILITY OF LANDLORD TO TENANT: Except with respect to any damages resulting from the gross negligence of Landlord, its agents or employees, Tenant releases Landlord and Landlord's beneficiary and their respective agents, beneficiaries, partners, officers, servants and employees, from and waives all claims for damages to person or property sustained by Tenant or by any occupant of the Demised Premises or the Office Building, or by any other person, resulting directly or indirectly from fire or other casualty, cause or any existing or future condition, defect, matter or thing in the Demised Premises, the Office Building or any part thereof, or from any equipment or appurtenance therein, or from any accident in or about the Office Building, or from any act or neglect of any tenant or other occupant of the Office Building or any other person, including any agent, beneficiary, partner, officer, servant or employee of Landlord or of Landlord's beneficiary. This Section shall apply especially, but not exclusively, to damage caused by water, snow, frost, steam, excessive heat or cold, sewerage, any gas, odors or noise, or the bursting or leaking of pipes or plumbing fixtures, falling plaster, broken glass, sprinkling, heating, ventilating or air conditioning systems, devices or equipment or flooding, and shall apply without distinction as to the person whose act or neglect was responsible for the damage and whether the damage was due to any of the acts specifically enumerated above, or from any other thing or circumstance, whether of a like nature or of a wholly different nature. All personal property belonging to Tenant or any occupant of the Demised Premises or to any other person that is in the Demised Premises or the Office Building shall be there at the risk of Tenant or such other person only, and Landlord and Landlord's beneficiary and their respective agents, beneficiaries, partners, officers, servants and employees shall not be liable for damage thereto or theft or misappropriation thereof.

ARTICLE X. DESTRUCTION OF DEMISED PREMISES

SECTION 10.01. RECONSTRUCTION; LEASE CONTINUANCE AND RENT ABATEMENT. If all or a substantial portion of the Demised Premises shall be damaged by fire or other casualty, this Lease shall not be terminated or otherwise affected; except that, if, (i) any such fire or other casualty occurs within the last two (2) years of the term of this Lease and the cost of repairs exceeds Ten Thousand Dollars (\$10,000.00) as estimated by Landlord, or (ii) if the Demised Premises and/or the building in which the Demised Premises are located are damaged or destroyed by any casualty other than those covered by Landlord's insurance policies in effect on the date of such casualty, then, in any such event, Landlord, at Landlord's sole option, may terminate this Lease and the Demised Term upon thirty (30) days' notice to Tenant given within ninety (90) days after the fire or other casualty. Upon the giving of any such notice, this Lease and the Demised Term shall terminate by limitation upon the giving of said notice as fully and effectively as if the date said notice is given had been the date in this Lease specifically provided for the termination of this Lease and the Demised Term.

If Landlord does not so terminate this Lease, then Landlord shall repair and/or rebuild the Demised Premises, the Demised Term shall continue without interruption, and this Lease shall remain in full force and effect. Landlord and Tenant waive the provisions of any present or future law which may be contrary to the foregoing provisions of this Section. Tenant shall, using the proceeds from the insurance provided for in Section 9.02, repair, restore, replace or rebuild that portion of the Demised Premises constituting Tenant's Work, as defined herein, together with any additional improvements installed by Tenant, such that the Demised Premises shall be restored to its condition as of 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 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 and restoration. If Tenant's insurance proceeds shall be less than Tenant's obligation hereunder, Tenant shall pay the entire excess cost. The Minimum Rent, Taxes, Tenant's share of Common Area Maintenance Expenses (if any) which are payable hereunder during the existence of such damage and until such repair or rebuilding is substantially completed shall be abated. Abatement shall terminate upon the earlier of (i) the date upon which Tenant commences to use substantially all of the Demised Premises for business with the public and (ii) the date upon which Landlord substantially completes its repair or rebuilding work.

ARTICLE XI. CONDEMNATION

SECTION 11.01. EMINENT DOMAIN. If twenty-five percent (25%) or more of the floor area of the Demised Premises shall be taken or condemned by any competent government authority, then either party may elect to terminate this Lease by giving notice to the other party not more than sixty (60) days after the date on which such title shall vest in the authority; provided that if Landlord elects, by giving Tenant written notice thereof within thirty (30) days following the condemnation date, to make reasonably comparable space in the Office Building available to Tenant under the same terms as herein provided, Tenant shall accept such space and this Lease shall then apply to such space. Appropriate adjustments will be made to reflect any difference between the rentable area of the replacement space and the rentable area of the Demised Premises. If the parking facilities are reduced below the minimum parking requirements imposed by the applicable authorities, Landlord or Tenant may elect to terminate this Lease by giving Tenant notice within one hundred twenty (120) days after such taking. In case of any taking or condemnation, whether or not the term of this Lease shall cease and terminate, the entire award shall be the property of Landlord; provided, however, Tenant shall be entitled to any award as may be allowed for fixtures and other equipment which, under the terms of this Lease, would not have become the property of Landlord; further provided that any such award to Tenant shall not be in diminution of any award to Landlord.

SECTION 11.02. RENT APPORTIONMENT. Tenant's obligation to pay Minimum Rent shall be apportioned or ended, as the case may be, as of the date of vesting of title or termination of this Lease. Any purchase of all or a portion of the Office Building in lieu of taking or condemnation under powers of eminent domain shall be deemed a taking or condemnation thereof.

ARTICLE XII. ASSIGNMENT, SUBLETTING AND ENCUMBERING LEASE

(a) Tenant shall not, without the express written consent of Landlord: (i) assign or otherwise transfer, mortgage or encumber this Lease or any of its rights hereunder, (ii) sublet the Demised Premises or any part thereof or permit the use of the Demised Premises or any part thereof by any persons other than Tenant or its agents, or (iii) permit the assignment or other transfer of this Lease or any of Tenant's rights hereunder by operation of law. Any attempted or purported transfer, assignment, mortgaging or encumbering of this Lease or any of Tenant's interest hereunder, and any attempted or purported subletting or grant of a right to use or occupy all or a portion of the Demised Premises, in violation of the foregoing sentence shall be null and void and shall not confer any rights upon any purported transferee, assignee, mortgagee, sublessee, or occupant.

(b) Any costs and expenses, including attorneys' fees (which shall include the cost of any time expended by any in-house counsel of Landlord) 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 on demand as Additional Rent.

(c) In the event Tenant, pursuant to a right to do so contained in this Lease, transfers or sublets all or a portion of the Demised Premises to a third party, any monthly rent or other payment accruing to Tenant as the result of any such assignment, transfer or sublease, including any lump sum or periodic payment in any manner relating to such assignment, transfer or sublease, which is in excess of the net rent then payable by Tenant under the Lease shall be paid by Tenant to Landlord monthly as Additional Rent. Landlord may require a certificate from Tenant specifying the full amount of any such payment of whatsoever nature.

ARTICLE XIII. SUBORDINATION AND FINANCING

SECTION 13.01. SUBORDINATION. This Lease and Tenant's tenancy hereunder shall be subject and subordinate at all times to the lien of any mortgage or deed of trust now or hereafter placed upon the interest of the Landlord in the Demised Premises. Tenant agrees to execute and deliver such instruments as may be desired by Landlord or by any mortgagee subordinating this Lease to the lien of any present or future mortgage or deed of trust, within ten (10) days after written request therefore by Landlord. Tenant hereby appoints Landlord its attorney-in-fact, irrevocably, to execute and deliver any such instrument for Tenant, if Tenant fails to deliver such written instrument within said ten (10) days.

SECTION 13.02. ATTORNMEN. If and so long as this Lease is in full force and effect, then at the option of the mortgagee: (i) this Lease shall remain in full force notwithstanding (a) a default under the mortgage by Landlord, (b) failure of Landlord to comply with this Lease, (c) a defense to which Tenant might be entitled against Landlord under this Lease, or (d) any bankruptcy or similar proceedings with respect to Landlord; (ii) if any mortgagee or purchaser at a private or public sale shall become possessed of the Demised Premises, Tenant shall, without

charge, attorn to such mortgagee or purchaser as its landlord under the Lease.

SECTION 13.03. FINANCING. In the event any permanent lender for the Office Building requires as a condition to financing, modifications to this Lease, provided such modifications are minor, reasonable, do not materially adversely affect Tenant, do not materially alter the approved working plans and do not increase the rentals and other sums to be paid hereunder, Landlord shall submit to Tenant a written amendment with such required modification and if Tenant fails to execute and return within ten (10) days thereafter the amendments that have been submitted, then Landlord shall have the right to cancel this Lease, upon ten (10) days' written notice to Tenant.

ARTICLE XIV. DEFAULTS

SECTION 14.01. ELEMENTS OF DEFAULT. If any one or more of the following events occurs, said event or events shall hereby be a "Default" hereunder:

- (a) if Tenant, or any guarantor of Tenant's obligations hereunder, shall make an assignment for the benefit of creditors or file a petition in any court in bankruptcy, reorganization, composition, or make an application in any such proceedings for the appointment of a trustee or receiver for all or any portion of its property;
- (b) if any petition shall be filed against Tenant, or any guarantor of Tenant's obligations hereunder, in any bankruptcy, reorganization, or insolvency proceedings, and said proceedings shall not be dismissed or vacated within thirty (30) days after such petition is filed;
- (c) if a receiver or trustee shall be appointed under state law for Tenant, or any guarantor of Tenant's obligations hereunder, for all or any portion of the property of either of them, and such receivership or trusteeship shall not be set aside within thirty (30) days after such appointment;
- (d) if Tenant refuses to take possession of the Demised Premises at the Delivery of Possession Date, fails to open and keep its doors open for business as required herein, vacates or abandons the Demised Premises and permits same to remain unoccupied and unattended, or substantially ceases to carry on its normal activities in the Demised Premises;
- (e) if Tenant is a corporation, if any part or all of its stock representing effective voting control of Tenant, shall be transferred so as to result in a change in the present effective voting control of Tenant and such change is not consented to in writing by Landlord, provided, however, this provision shall not apply if Tenant is a publicly traded corporation;
- (f) if Tenant fails to pay Minimum Rent, its share of the Common Maintenance Area Expenses Taxes, Additional Rent or any other charges required to be paid by Tenant when same shall become due and payable and such failure continues for five (5) days after written notice from Landlord;
- (g) if Tenant shall fail to perform or observe any terms and conditions of this Lease, and such failure shall continue for ten (10) days after written notice from Landlord (except that such ten [10] day period shall be automatically extended for such additional period of time as is reasonably necessary in Landlord's opinion to cure such Default, if such Default cannot be cured within such period, provided Tenant commences the process of curing the same within said ten [10] day period and diligently pursues such cure);
- (h) if any execution, levy, attachment or other legal process of law shall occur upon Tenant's goods, fixtures or interest in the Demised Premises;
- (i) if Tenant does, or permits to be done, any act which causes a mechanic's lien claim to be filed against the Demised Premises or the Office Building and Tenant does not comply with the provisions of Section 4.06;
- (j) if Tenant fails to cure immediately any hazardous condition that Tenant has created or permitted in violation of law or in breach of this Lease; or

SECTION 14.02. LANDLORD'S REMEDIES. Should a Default occur under this Lease, Landlord may pursue any or all of the following:

(a) Landlord may terminate this Lease by giving written notice of such termination as provided in Section 14.01(f) or (g) above, whichever is applicable, to Tenant, whereupon this Lease shall automatically cease and terminate and Tenant shall be immediately obligated to quit the Demised Premises. Any other notice to quit or notice of Landlord's intention to reenter the Demised 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 the Landlord to recover from Tenant all rent and any other sums accrued up to the time of termination or recovery of possession by Landlord, whichever is later.

(b) Upon termination of this Lease pursuant to Section 14.02(l), Landlord may proceed to recover possession of the Demised Premises under and by virtue of the provisions of the laws of the jurisdiction in which the Demised Premises is located, or by such other proceedings, including re-entry and possession, as may be applicable.

(c) Should this Lease be terminated before the expiration of the term of this Lease by reason of Tenant's default as hereinabove provided, or if Tenant shall abandon or vacate the Demised Premises before the expiration or termination of the term of this Lease without having paid the full rental for the remainder of such term, Landlord shall have the option to relet the Demised Premises for such rent and upon such terms as are not unreasonable under the circumstances and if the full rental reserved under this Lease (and any of the costs, expenses or damages indicated below) shall not be realized by Landlord, Tenant shall be liable for all damages sustained by Landlord, including, without limitation, deficiency in rent, reasonable attorneys' fees, brokerage fees and expenses of placing the Demised Premises in commercially reasonable condition. Landlord, in putting the Demised Premises in good order or preparing the same for re-rental, may, at Landlord's option, make such alterations, repairs or replacements in the Demised Premises, and the making of such alterations, repairs, or replacements shall not operate or be construed to release Tenant from liability hereunder as aforesaid. Landlord shall in no event be liable in any way whatsoever for failure to relet the Demised Premises, or in the event that the Demised Premises are relet, for failure to collect the rent under such reletting, and in no event shall Tenant be entitled to receive the excess, if any, of such net rent collected over the sums payable to Tenant or Landlord hereunder.

(d) Any damage or loss of rent sustained by Landlord may be recovered by Landlord, at Landlord's option, at the time of the reletting, or in separate actions, from time to time, as said damage shall have been made more easily ascertainable by successive relettings, or at Landlord's option, in a single proceeding 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) or in a single proceeding prior to either the time of reletting or the expiration of the term of this Lease.

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

SECTION 14.03. ADDITIONAL REMEDIES AND WAIVERS. The rights and remedies of Landlord set forth herein shall be in addition to any other right and remedy now or hereinafter provided by law, and all such rights and remedies shall be cumulative. No action or inaction by Landlord shall constitute a waiver of a Default and no waiver of Default shall be effective unless it is in writing, signed by the Landlord.

SECTION 14.04. CURE OF DEFAULT. If Tenant shall be in Default hereunder, Landlord shall have the option, upon ten (10) days' written notice to Tenant, to cure said Default for the account of and at the expense of the Tenant. No such notice shall be required for emergency repairs. Tenant agrees to pay Landlord interest, at a rate equal to four percent (4%) in excess of the corporate base rate of interest announced from time to time by the First National Bank of Chicago but not in excess of the maximum legal rate, for all sums paid by Landlord pursuant to the terms of this Article, and for all sums due and owing to Landlord more than five (5) days after the date such sums are due.

SECTION 14.05. EXPENSES OF ENFORCEMENT. Tenant shall pay all costs, charges and expenses, including court costs and reasonable attorneys' fees, incurred by Landlord, (i) if Landlord prevails in enforcing Tenant's obligations under this Lease, (ii) if Landlord prevails in the exercise by Landlord of any of its remedies upon the occurrence of a Default, (iii) in any litigation, negotiation or transactions in which

Tenant causes Landlord, without Landlord's fault, to become involved or concerned, or in which Landlord becomes involved or concerned as a result of or in connection with this Lease, or (iv) in consideration of any request or approval of or consent to any action by Tenant which is prohibited by this Lease or which may be done only with Landlord's approval or consent, whether or not such approval or consent is given.

ARTICLE XV. RIGHT OF ACCESS

Landlord may, upon reasonable prior notice to Tenant, enter upon the Demised Premises for the purpose of inspecting, making repairs, replacements, or alterations, and showing the Demised Premises to prospective purchasers, lenders or lessees.

ARTICLE XVI. DELAYS

Neither Landlord nor Tenant shall be deemed to be in default with respect to any obligation to perform any of the terms, covenants and conditions of this Lease, if Landlord's or Tenant's failure to perform any such obligation is due in whole or in part to any strike, lockout, labor dispute (whether legal or illegal and whether such dispute is with Landlord or Tenant or some other person or entity), labor shortage, civil disorder, failure of power, restrictive governmental laws and regulations, riots, insurrections, war, freight embargo, contractor or supplier delays, fuel, water, material, tool or supply shortages or the inability to obtain such commodities on reasonable terms, lack of or delays in transportation, accidents, casualties, severe weather, acts of God, acts caused directly or indirectly by Tenant or Landlord (or Tenant's or Landlord's agents, employees, guests or invitees), acts of other tenants or occupants of the Office Building or any other cause beyond the reasonable control of Landlord. In such event, the time for performance by Landlord or Tenant shall be extended by an amount of time equal to the period of the delay so caused. In no event shall this Article XVI apply in any way to any monetary obligations of Tenant under this Lease.

ARTICLE XVII. END OF TERM.

SECTION 17.01. RETURN OF DEMISED PREMISES. Upon the expiration or termination of this Lease, Tenant shall quit and surrender the Demised Premises to Landlord in good order, broom clean, normal wear and tear and acts of God excepted. Subject to the other terms of this Lease, Tenant shall, at its expense, remove all property of Tenant, all alterations to the Demised Premises not wanted by Landlord, and repair damage caused by such removal and return the Demised Premises to the condition in which they were prior to the installation of the articles so removed. Upon the expiration or termination of this Lease, Tenant shall execute and acknowledge a quit-claim deed of Tenant's interest in the Demised Premises, in recordable form, in favor of the Landlord, ten (10) days after written notice and demand therefore by Landlord, and Tenant hereby appoints Landlord its attorney-in-fact, irrevocably, to execute and deliver such quit-claim deed should Tenant timely fail to do so.

SECTION 17.02. HOLDING OVER. If Tenant shall hold possession of the Demised Premises after the expiration or termination of this Lease, at Landlord's option (i) Tenant shall be deemed to be occupying the Demised Premises as a tenant from month to month, at double the Minimum Rent in effect during the last lease year immediately preceding such holdover and otherwise subject to all of the terms and conditions of this Lease, or (ii) Landlord may exercise any other remedies it has 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 provided in this Lease.

ARTICLE XVIII. COVENANT OF QUIET ENJOYMENT

Landlord covenants prior to the date that it gives Tenant possession of the Demised Premises, Landlord will have leasehold title to the Demised Premises, and that if and so long as Tenant pays the rent and all other charges provided for herein, and performs all of its obligations provided for herein, Tenant shall at all times during the term hereof peaceably have hold and enjoy the Demised Premises, without any interruption or disturbance from Landlord, or anyone claiming through or under Landlord, subject to the terms hereof.

ARTICLE XIX. RIGHTS RESERVED TO LANDLORD

Landlord shall have the following rights exercisable without notice and without liability to Tenant for damage or injury to property, person or business (all claims for damage being hereby released) and without effecting an eviction or disturbance of Tenant's use or possession or giving rise to any claim for set-offs or abatement of rent:

- (a) To establish or change the name, designation or street address of the building containing the Demised Premises;
- (b) To install and maintain signs in or on any part of the Office Building outside of the Demised Premises;
- (c) To enter the Demised Premises in an emergency, using such force as is reasonably necessary;
- (d) To decorate, remodel, repair, alter or otherwise prepare the Demised Premises for re-occupancy at any time after Tenant vacates or abandons the Demised Premises;
- (e) Provided that reasonable access to the Demised Premises shall be maintained during the hours of business conducted by Tenant on the Demised Premises and shall not be interfered with unreasonably, to make inspections, repairs alterations, additions or improvements in or to the building containing the Demised Premises, the Common Areas or the Office Building, including installations, repairs, replacements, additions or alterations within the building containing the Demised Premises or to wiring, conduit, pipes, ducts and other mechanical, electrical or other facilities and systems serving other premises in the Office Building, and to make repairs, additions or alterations in the Office Building which may change Common Areas or the method of ingress to or egress from the Demised Premises or the Office Building, convert Common Areas into leasable areas or change the use thereof, and to perform any acts related to the safety, protection, preservation, reletting, sale or improvement of the Demised Premises or any part of the Office Building and for any of the foregoing purposes may enter the Demised Premises with such material as Landlord may deem necessary, erect scaffolding and all other necessary structures in or adjacent to the Demised Premises and close or temporarily suspend operations of entrances, doors, corridors, elevators, escalators or other facilities; and Tenant waives any claim for damages, including the loss of business resulting therefrom, and agrees to pay Landlord for overtime and other expenses incurred if such work is done other than during ordinary business hours at Tenant's request;
- (f) To erect, use and maintain pipes, ducts, wiring conduits and similar devices in and through the Demised Premises and to enter upon the Demised Premises for the purpose of inspecting the same;
- (g) To change the arrangement and/or location of entrances, doors, corridors, elevators, stairs, toilets or other public parts of the building containing the Demised Premises provided such changes do not unreasonably interfere with Tenant's use of the Demised Premises;
- (h) To grant to any person the exclusive right to conduct any business or render any service in or to the building containing the Demised Premises, provided such exclusive right shall not operate to prohibit Tenant from using the Demised Premises for such business or service permitted hereunder and conducted or rendered by Tenant in or from the Demised Premises at the time Tenant first occupies the Demised Premises;
- (i) To retain at all times master keys or passkeys to the Demised Premises;
- (j) To do or permit to be done any work on or about the exterior of the Office Building or any adjacent or nearby building, land, street or alley; and
- (k) To lease any portion of the Office Building to any person or entity for any use or purpose as Landlord, in its sole discretion, may determine, including uses which are the same as or similar to any or all of the uses described in Section 5.01.

ARTICLE XX. MISCELLANEOUS

- (a) This Lease contains the entire agreement between the parties hereto and there are no promises, agreements, conditions,

undertakings, or warranties, or representations, oral or written, between them or other than as herein set forth. If any provisions of this Lease shall be invalid or unenforceable, the remainder of this Lease shall not be affected thereby and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

(b) No notice or other communications given under this Lease shall be effective unless the same is in writing, and is delivered in person or mailed by registered or certified mail, return receipt requested, first class, postage prepaid or delivered by national overnight courier service addressed:

1. If to Landlord, to EON PROPERTIES, LLC, 222 Indianapolis Blvd., Suite 101, Schererville, Indiana 46375, or to such other person and address as Landlord shall designate by giving notice thereof to Tenant.

2. If to Tenant, to Mirant Americas, Inc., 222 Indianapolis Blvd., Suite 102, Schererville, IN 46375 or such other address as Tenant shall designate by giving notice thereof to Landlord.

The date of service of any notice given by mail shall be the date on which such notice is deposited in the U.S. mails and the date service of any notice given by national overnight courier service shall be the date such notice is delivered by such courier service.

(c) It is the intent of the parties hereto that all questions with respect to the construction of the Lease and the rights and liabilities of the parties hereto shall be determined in accordance with the laws of the State of Indiana.

(d) This Lease shall bind and inure to the benefit of the parties hereto and their respective legal representatives, heirs, successors and assigns.

(e) There shall be no personal liability on Landlord, Landlord's partners, Landlord's beneficiaries or any successor in interest with respect to any provisions of this Lease. Tenants shall look solely to the equity of the then owner of the Demised Premises for the satisfaction of any remedies of the Tenant in the event of a breach by Landlord of any of its obligations hereunder.

(f) Landlord and Tenant warrant and represent that there were no brokers or agents instrumental in consummating this Lease.

(e) Landlord hereunder shall have the right to freely assign this Lease upon notice to but without the consent of Tenant.

(g) The terms of this Lease shall not be interpreted to mean that Landlord and Tenant are partners or joint ventures.

(h) If any provision of this Lease or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such provision to the persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

(i) No failure by Landlord to insist upon the strict performance of any term, covenant, agreement, provision, condition or limitation of this Lease to be kept, observed or performed by Tenant, and no failure by Landlord to exercise any right or remedy consequent upon a breach of any such term, covenant, agreement, provision, condition or limitation of this Lease, shall constitute a waiver of any such breach or of any such term, covenant, agreement, provision, condition or limitation.

(j) The parties hereby agree that neither this Lease nor any memorandum thereof shall be recorded with the Lake County, Indiana Recorder's Office.

(k) No employee or agent of Landlord or Landlord's broker, if any, has authority to make a lease or any other warranty, representation, agreement or undertaking. The submission of this document for examination and negotiation does not constitute an offer to lease or a reservation of or option for the Demised Premises, and this document will become effective and binding only upon execution and delivery by Landlord and Tenant.

(l) Landlord shall provide Tenant and Tenant's employees building access cards for entry into the Common Areas and premises.

Tenant shall provide Landlord with current lists of access card holders and shall keep such lists current. Tenant shall pay Landlord the sum of Fifty Dollars (\$50.00) for the replacement of any lost or stolen access cards.

- (m) All Riders and all Exhibits referred to in and attached hereto are hereby incorporated in this Lease.
- (n) Tenant shall comply with all applicable Federal, State and Local laws and regulations.

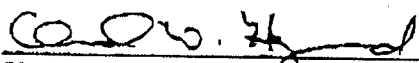
IN WITNESS WHEREOF, and intending that this Lease be a sealed instrument, Landlord and Tenant have executed this Lease under seal on the dates indicated below:

LANDLORD:
EON PROPERTIES, LLC

BY: 
M. Ross Gambri, Member

Date: 4/24/02

TENANT:
MIRANT SUGAR CREEK, LLC 50%
MIRANT ZEELAND, LLC 50%

BY: 
Charlie Huguenard, Director of Operations
Mirant Midwest Business Unit

Date: 4/24/02

* Move in date to be no later than May 22, 2002. CWH
RW