

LEASE AGREEMENT  
BETWEEN  
PINEY BRANCH LIMITED PARTNERSHIP  
AND  
MONTGOMERY COUNTY, MARYLAND

DATED December 8, 1998

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LEASE AGREEMENT

THIS AGREEMENT, made this 12 day of December, 1998 by and between PINEY BRANCH LIMITED PARTNERSHIP, hereinafter referred to as "Lessor" and MONTGOMERY COUNTY, MARYLAND, a body corporate, hereinafter referred to as "Lessee".

WITNESSETH:

In consideration of the mutual agreements hereinafter set forth, the parties hereto agree as follows:

1. PREMISES: In consideration of the rent and covenants hereinafter contained, Lessor does hereby lease and demise unto Lessee the premises in the Shopping Center at 8513 Piney Branch Road, Silver Spring, Maryland, containing approximately 4,800 square feet of space.
  
2. TERM: This space is to be used as general office facilities for the term of five (5) years, (0) months, to commence on the first day of February, 1999 and terminate on the 31st day of January 2004.
  
3. USE: Lessee covenants and agrees that the above referenced premises shall be used and occupied only for the purposes mentioned in Paragraph Two (2) above, or any other purpose not more hazardous or objectionable by reason of fire or otherwise. Lessee shall have the right to occupy and use the leased premises twenty-four (24) hours a day, seven (7) days a week.
  
4. RENT:
  - A. The Lessee shall pay rent to the Lessor in the annual and monthly amounts hereinafter set forth:

<u>LEASE YEAR</u>	<u>TOTAL AMOUNT</u>	<u>MONTHLY AMOUNT</u>
1	\$48,000.00	\$4,000.00
2	\$49,440.00	\$4,120.00
3	\$50,923.20	\$4,243.60
4	\$52,450.90	\$4,370.91
5	\$54,024.42	\$4,502.04

B. All rent payments shall be made by the Lessee in advance, on or before the first day of each month, without set-off, deduction or demand therefor from the Lessor to and at the offices of the Lessor as hereinafter designated.

5. REAL ESTATE TAXES:

A. Beginning with the Commencement Date and continuing throughout the entire term of this Lease, Lessee agrees to pay, as additional rent hereunder, a sum equal to Lessee's proportionate share of all real estate taxes which may be levied or assessed by lawful taxing authorities against the land, buildings and all improvements in the shopping center. Notwithstanding the premises herein leased, Lessor and Lessee agree that Lessee's proportionate share of real estate taxes shall be based on 2400 square feet of retail space.

B. "Real estate taxes" shall be deemed to mean all city, county, town and village taxes, special or general, ordinary or extraordinary, assessments, excises, levies, and other governmental charges which shall be imposed upon or become due and payable or become a lien upon the premises or any part thereof, by any Federal, state, municipal, or other governmental or public authority under existing law, or practice or under any future law or practice.

The real estate taxes for any calendar year shall mean the real estate taxes actually paid or due to be paid during such calendar year, whether or not such real estate taxes related to such calendar year or a fiscal year.

- C. Lessee's proportionate share of real estate taxes shall be determined for each calendar year by multiplying the real estate taxes for such calendar year by a fraction, the numerator of which shall be the floor area of the premises, and the denominator of which shall be the floor area of all rentable space in the Building. Lessee's liability for Lessee's proportionate share of real estate taxes and assessments for the calendar years during which this lease commences and terminates shall in all events be subject to a pro-rata adjustment based on the number of days of said calendar year during which the term of this lease is in effect. Lessor and Lessee agree Lessee's pro-rata share of real estate taxes for the building is 8.8% based upon 2400 square feet.
- D. Lessee's proportionate share of real estate taxes shall be payable, on an annual basis, and payable in lump sum, within thirty (30) days after billing therefor from the Lessor. If the operation of any foregoing provisions result in payment of Lessee's proportionate share of real estate taxes for calendar years extending beyond the term of this lease, Lessor, within thirty (30) days following the expiration of the term of this lease, shall reimburse Lessee any such amount, less amounts then due Lessor from Lessee. A copy of a tax bill or assessment bill submitted by Lessor to Lessee along with the above-stated billing shall at all times be sufficient evidence of the amount of taxes and/or assessments assessed or levied against the property to which such bill relates. Lessor's and Lessee's obligations under this paragraph shall survive the expiration of the term of this lease.

6. COMMON AREA:

- A. Lessor grants to Lessee during the term of this Lease the right of non-exclusive use, in common with others, of all facilities furnished in the Shopping Center and designated for general use, in common, of occupants of the Shopping Center, including Lessee hereunder, its officers, agents, employees, and customers, including but not limited to parking areas, pedestrian sidewalks, canopies, loading platforms, washrooms, shelters, ramps, landscaped areas, and other similar facilities (herein called "Common Area"). Such Common Area shall include, without limitation, all roads and driveways serving the Shopping Center which are maintained or repaired by Lessor at Lessor's expense. The Common Area shall at all times be subject to the exclusive control and management of Lessor; and Lessor shall have the right from time to time to change the area, level, location and arrangement of the Common Area, to restrict parking for the tenants and their employees to employee parking areas, and to make all rules and regulations and do such things from time to time as in Landlord's sole discretion may be necessary for the proper operation of said Common Area.
- B. Lessee agrees to pay to Lessor each Lease Year, in the manner hereinafter provided, Lessee's Proportionate Share (as defined in Paragraph 6C) of all costs and expenses paid or incurred by Lessor, or for which Lessor is obligated to pay during the said Lease Year, for operating, administering, cleaning, policing and protecting, lighting, insuring, repairing, replacing, and maintaining the Common Area as defined in Paragraph 6E.
- C. Beginning with the commencement date, Lessee will pay to Landlord as additional rent hereunder, without deduction or set-off, such portion of Lessor's actual cost of operating and maintaining the Common Area (hereinafter defined) as 2,400 square feet bears to the Gross Leasable Area

(27,248 square feet) of the Shopping Center, which portion is hereby deemed to be 8.8%. Lessee shall pay for such costs as a separate charge in advance of the first day of each calendar month in an amount estimated by the Lessor, which amount shall be subject to annual adjustment to reflect the increasing (or decreasing) cost of the Landlord's operation and maintenance of the Common Area. At the commencement date of the Lease Agreement, the Tenant's monthly contribution for Common Area maintenance shall be \$250.00 a month.

- D. Within sixty (60) days after the end of each lease year, Lessor will furnish to Lessee a statement showing in reasonable detail the amount of Lessor's cost for such Common Area Services for the preceding Lease Year. Upon request, Lessor shall provide to Lessee additional documentation supporting Lessor's costs of providing services to the Common Area. Any deficit in Lessee's share of applicable cost will be proportionately assessed (payable within thirty (30) days of assessment), and any surplus will be proportionately credited, and the monthly payments for the ensuing Lease Year shall be adjusted accordingly. Changes in applicable floor areas shall result in corresponding pro rata adjustment.
- E. "Common Area" shall be defined as all that portion of building improvements excepting that area which is presently leased to tenants or is hereafter to be leased to tenants. Common areas shall include the parking areas provided by the Lessor for the building, the public conveniences of the building, and all other areas in the building now or hereafter constructed and intended to be used in common by the tenants and/or customers of the building.

- F. Lessor may, with twenty-four hour's notice, close temporarily any Common Area or any part thereof, to make repairs or changes and to discourage non-customer use. In addition, Lessor may modify, from time to time, (1) the traffic flow pattern and layout of parking space, and the entrances and exits to adjoining public streets or walkways, (2) utilize portions of the Common Area for entertainment and displays, and (3) do such other acts in and to the Common Area as in its judgment may be desirable to improve the convenience or attraction thereof or of the Shopping Center.
7. UTILITIES: Lessee agrees to pay all utility bills for the leased premises.
8. SERVICES:
- A. Lessee agrees to provide routine maintenance and janitorial services within the Leased Premises. Lessee shall maintain, repair, and replace electrical, interior plumbing, and HVAC systems.
- B. Lessor shall maintain and repair the buildings: (i) mechanical, electrical and HVAC systems; (ii) roof; and (iii) structural components of the building including plumbing and exterior walls and foundations.
- C. Lessor agrees to provide snow and ice removal/treatment, and to maintain the sidewalks and parking lot in a good state of repair. If Lessor fails to respond in a reasonable period of time to remove/treat snow and ice conditions, the Lessee may, but is under no obligation, remove/treat said snow and ice, and the Lessor shall reimburse the Lessee for the reasonable cost of these services.

- D. Lessor agrees to provide labor and material to paint the interior of the demised premises one (1) time at Lessee's request during the term of the Lease.

9. ALTERATIONS: Lessee shall not make alterations, changes, improvements to or remodel the demised premises without the prior written consent of the Lessor, which consent shall not be unreasonably withheld, and all alterations, additions, improvements or remodeling made by either of the parties hereto upon the premises shall be the property of the Lessor and shall remain upon and be surrendered with the premises at the termination of this Lease. All moveable partitions, fixtures, floor covering, or equipment installed in the demised premises at the Lessee's expense shall remain the property of Lessee and may be removed by the Lessee. Lessee shall, however, repair any damage caused directly and exclusively by said removal.

10. ASSIGNMENT AND SUBLEASING: Lessee shall not have the right to and shall not assign this lease nor sublease the demised premises or any portion thereof, without the consent of the Lessor first obtained in writing, which consent shall not unreasonably be withheld; provided that neither resulting assignment nor subleasing nor the consent of the Lessor thereto shall release, discharge or affect the liability of Lessee as provided in this Lease, for the full term hereof.

11. QUIET POSSESSION: Lessor covenants and agrees that, if Lessee shall perform all the covenants, conditions and agreements herein contained to be performed on Lessee's part, Lessee shall at all times during the term of this lease have the peaceful and quiet enjoyment and possession of the demised premises for the purposes leased without the hindrance of any person or persons whomsoever.

12. NON-APPROPRIATION: This lease is subject to the annual appropriation of funds. This lease shall terminate automatically on July 1 of any year for which Montgomery County, for whatever reason, does not appropriate funds to operate this project as stated. Tenant shall give Landlord at least thirty (30) days written notice of the lack of appropriation. The Landlord shall not make or be entitled to any claim for reimbursement of any kind, whether for improvements or prepaid items for any amount of money for which there has been no appropriation of funds.

13. PROPERTY DAMAGE AND LIABILITY INSURANCE:

- A. Lessee shall obtain and maintain, during the full term of this Agreement and any extension thereof, a policy of public liability insurance with bodily injury limits of FIVE HUNDRED THOUSAND (\$500,000.00) DOLLARS for injury (or death) to one person, FIVE HUNDRED THOUSAND (\$500,000.00) DOLLARS per occurrence, and property damage insurance with a limit of ONE HUNDRED THOUSAND (\$100,000.00) DOLLARS.
- B. Lessee agrees that it will not keep in or upon the Leased Premises any article which may be prohibited by the standard form of fire or hazard insurance policy. In the event Lessee's occupancy causes any increase in the insurance premiums for the Leased Premises or any part thereof, Lessee shall pay the additional premiums as they become due.
- C. To the extent permitted by law, Lessee will indemnify Lessor and save it harmless from and against any and all claims, action, damages, liability and expense in connection with loss of life, personal injury and/or damage to property arising from or out of any occurrence upon or at the Leased Premises, or the occupancy or use by Lessee of the Leased Premises or any part thereof, or the Lessee's use of the exterior areas provided by Lessor for the comfort and convenience of Lessee, occasioned wholly or in part by any

act or omission of Lessee, its agents, contractors, or employees, excepting claims arising out of the acts or omissions of the Lessor, the Lessor's agents, and employees. Lessee shall indemnify Lessor against any penalty, damage or charge incurred or imposed by reason of Lessee's violation of any law or ordinance. In case Lessor shall, without fault on its part, be made a party to any litigation commenced by or against Lessee, then Lessee shall protect and hold Lessor harmless.

- D. Lessee further agrees that all personal property in the Leased Premises shall be and remain at Lessee's sole risk, and Lessor shall not be liable for any damage to or loss of such personal property excepting damage arising out of the acts or omissions of the Lessor, Lessor's agents, and employees.
  
- E. Lessee shall deliver to Lessor a certificate of insurance evidencing the coverage hereinabove described within thirty (30) days from execution of this Agreement. Lessee reserves the right to self insure. Lessee and Lessor hereby waive any right of subrogation against the other to the extent that the liability arises from a cause covered by insurance and only to the extent of the insurance proceeds recovered, and provided that the parties' insurance policies permit such a waiver.

14. ACCESS: Lessee will allow Lessor or Lessor's agents to have access to the premises upon reasonable notice to Lessee and at all reasonable times for the purpose of inspection or in the event of fire or other property damage, or for the purpose of performing any maintenance and repairs Lessor may consider necessary or desirable; provided, however, Lessor shall not interfere with Lessee's use of the premises.

15. FIRE AND CASUALTY: If during the term of this lease the building is so injured by fire or otherwise that it is rendered wholly unfit for occupancy and cannot be repaired within ninety (90) days from the event of such injury, then this lease shall cease and terminate from the date of such injury. In such case, Lessee shall pay rent apportioned to the date of such damage and shall surrender the leased premises to the Lessor. If the casualty is such that the building can be repaired within ninety (90) days thereafter, Lessor shall enter and repair at Lessor's expense, with reasonable promptitude, and this lease shall not be affected except the rent shall be abated while such repairs are being made. In case of damage(s) which shall not render the building unfit for full occupancy, this Lease shall not be affected but Lessor may enter upon, and shall repair the said premises with reasonable promptitude.

16. SURRENDER OF POSSESSION: Lessee covenants, at the expiration or other termination of this lease, to remove all goods and effects from the demised premises not the property of Lessor, and to yield up to Lessor the demised premises (except trade fixtures and other fixtures belonging to Lessee), in good repair, order and condition in all respects, reasonable wear and use thereof and damage by fire or other casualty and damage from any risk with respect to which Lessee is not herein expressly made liable excepted.

17. HOLDOVER: If Lessee shall continue to occupy said premises of any part thereof after the conclusion of the term of this lease, or any extension thereof, his tenancy shall be deemed to be upon a month-to-month basis and the tenancy thus created can be terminated by either part giving the other not less than sixty (60) days written notice, to expire on the day of the month from which the tenancy commenced to run.

18. DEFAULT:

- A. By Lessee: In the event that rent, or any installment thereof, shall remain unpaid after it becomes due and payable, within ten (10) days after written notice to the Lessee for same, or if Lessee or Lessee's assigns shall fail or neglect to keep and perform each and every one of the terms of this lease,

and such failure or neglect continues for more than thirty (30) days (or such period as may reasonably be required to correct the default with exercise of due diligence), after written notice to Lessee from the Lessor specifying the default, then at the option of the Lessor, the Lessor and his assigns may proceed to recover possession under the laws of the State of Maryland.

B. By Lessor: In the event that the Lessor or his assigns shall fail or neglect to keep and perform each and every one of the covenants, conditions, and agreements contained herein, and such failure or neglect is not remedied within thirty (30) days (or such period as may reasonably be required to correct the default with exercise of due diligence) after written notice from the Lessee or his assigns specifying the default, then the Lessee or his assigns, at Lessee's option, may pursue any and all legal remedies available to Lessee.

C. No default as hereinbefore provided shall be deemed complete unless at the time Lessor or Lessee seeks to take any action based upon such alleged default the same shall remain uncured.

19. WAIVER: The waiver at any time by the Lessor or Lessee of any particular covenant or condition of the lease shall extend to the particular case only, and for the particular time and in the particular manner specified, and such waiver shall not be construed or understood as waiving any further or other rights of any character whatever.

20. NON-DISCRIMINATION: Landlord agrees to comply with the non-discrimination in employment policies in County contracts as required by Section 27-19 of the Montgomery County Code 1994, as amended, as well as all other applicable state and federal laws and regulations regarding employment discrimination. The Landlord assures the County that in accordance with applicable law, it does not, and agrees that it will not discriminate in any

manner on the basis of age, color, creed, ancestry, marital status, national origin, race, religious belief, sexual preference or disability.

21. PUBLIC EMPLOYMENT: Landlord understands that unless authorized under Chapter 19A and Section 11B-52 of the Montgomery County Code 1994, it is unlawful for any person transacting business with Montgomery County, Maryland, to employ a public employee for employment contemporaneous with his or her public employment.

22. CONTRACT SOLICITATION: The Lessor represents that he has not retained anyone to solicit or secure this lease from Montgomery County, Maryland, upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for bona fide employees or bona fide established commercial, selling agencies maintained by the Tenant for the purpose of securing business or an attorney rendering professional legal service consistent with applicable canons of ethics.

23. BENEFIT AND BURDEN: The provisions of the lease shall be binding upon, and shall inure to the benefit of the parties hereto and each of their respective representatives, successors, and assigns.

24. GOVERNING LAW: It is understood, agreed, and covenanted by and between the parties hereto that the Lessor at his own expense, will promptly comply with, observe and perform all of the requirements of all of the statutes, ordinances, rules, orders and regulations now in effect or hereinafter promulgated whether required by the Federal government, State of Maryland, Montgomery County government, municipal government, or Montgomery County Fire Marshal's Office, and whether required of the Lessor or the Lessee.

25. MAILING NOTICES: All notices required or desired to be given hereunder by either party to the other shall be given by certified or registered mail. Notices to the respective parties shall be addressed as follows:

LESSOR:

Piney Branch Limited Partnership  
c/o FINMARC Management, Inc.  
4733 Bethesda Avenue Suite 500  
Bethesda, Maryland 20814

LESSEE:

Montgomery County Maryland  
Leasing Management  
110 N. Washington Street, Room 318  
Rockville, Maryland 20850

Either party may, by like written notice, designate a new address and/or addressee to which such notices shall be directed.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be properly executed.

WITNESS:

By: Jane M. Fothgill

LESSOR:  
PINEY BRANCH LIMITED  
PARTNERSHIP

By: \_\_\_\_\_  
SB Investments, Inc. G.P.

By: Mama A. Solomon

Title: President

Date: 12/8/98

WITNESS:

By: Margaret C. Ford

LESSEE:  
MONTGOMERY COUNTY,  
MARYLAND

By: William M. Mooney  
WILLIAM MOONEY, ASSISTANT  
CHIEF ADMINISTRATIVE OFFICER

Date: \_\_\_\_\_

APPROVED AS TO FORM & LEGALITY  
COUNTY ATTORNEY'S OFFICE

By: [Signature]

RECOMMENDED

By: [Signature]  
REY JUNQUERA, LEASING MANAGER  
DIVISION OF FACILITIES AND SERVICES

Date: 10.14.98  
DISK9:PINE2.LSE

Date: 1/22/99