

01-30-2001



FORM PTO-1618A  
Expires 06/30/99  
OMB 0651-0027

U.S. Department of Commerce  
Patent and Trademark Office  
TRADEMARK

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1. 22.01

### RECORDATION FORM COVER SHEET TRADEMARKS ONLY

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

#### Submission Type

- New
- Resubmission (Non-Recordation)  
Document ID #
- Correction of PTO Error  
Reel #  Frame #
- Corrective Document  
Reel #  Frame #

#### Conveyance Type

- Assignment  License
  - Security Agreement  Nunc Pro Tunc Assignment
  - Merger  Change of Name
  - Other
- Effective Date  
Month Day Year

#### Conveying Party

Mark if additional names of conveying parties attached

Name

Execution Date  
Month Day Year

Formerly

- Individual  General Partnership  Limited Partnership  Corporation  Association
- Other

Citizenship/State of Incorporation/Organization

#### Receiving Party

Mark if additional names of receiving parties attached

Name

DBA/AKATA

Composed of

Address (line 1)

Address (line 2)

Address (line 3)   
City

State/Country

Zip Code

- Individual  General Partnership  Limited Partnership
- Corporation  Association
- Other

If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)

Citizenship/State of Incorporation/Organization

01/29/2001 DBYRNE 00000447 1472736

FOR OFFICE USE ONLY

01 FC:481 40.00 OP  
02 FC:482 25.00 OP

Public burden reporting for this collection of information is estimated to average approximately 30 minutes per Cover Sheet to be recorded, including time for reviewing the document and gathering the data needed to complete the Cover Sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Chief Information Officer, Washington, D.C. 20231 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0651-0027), Washington, D.C. 20503. See OMB Information Collection Budget Package 0651-0027, Patent and Trademark Assignment Practice. DO NOT SEND REQUESTS TO RECORD ASSIGNMENT DOCUMENTS TO THIS ADDRESS.

Mail documents to be recorded with required cover sheet(s) information to:  
Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20231

TRADEMARK  
REEL: 002224 FRAME: 0855

**Domestic Representative Name and Address**

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

**Correspondent Name and Address**

Area Code and Telephone Number

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

**Pages** Enter the total number of pages of the attached conveyance document including any attachments. #

**Trademark Application Number(s) or Registration Number(s)**  Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

Trademark Application Number(s)			Registration Number(s)		
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="1472736"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="1508620"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

**Number of Properties** Enter the total number of properties involved. #

**Fee Amount** Fee Amount for Properties Listed (37 CFR 3.41): \$

Method of Payment: Enclosed  Deposit Account

Deposit Account (Enter for payment by deposit account or if additional fees can be charged to the account.)  
Deposit Account Number: #

Authorization to charge additional fees: Yes  No

**Statement and Signature**

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Charges to deposit account are authorized, as indicated herein.

Dr. Howard Gottlieb, President

1/8/01

Name of Person Signing

Signature

Date Signed

## ASSIGNMENT OF TRADE NAME, BILL OF SALE AND CONVEYANCE

THIS ASSIGNMENT OF TRADE NAME, BILL OF SALE AND CONVEYANCE AGREEMENT ("Assignment Agreement"), made this 9<sup>th</sup> day of ~~November~~ January, 2000 by and between **New England Eyecare, P.C.**, a Connecticut professional corporation with offices at 270 Amity Road, Suite 220, Woodbridge, Connecticut, (**hereinafter referred to as "Assignor"**), and **Mark D. Sturgis, O.D.**, an individual with a principal residence at 106 Natsisky Farms Road, South Windsor, Connecticut 06074 (**"Assignee"**), **Mark D. Sturgis, O.D., P.C.**, a Connecticut professional corporation with a principal address at 106 Natsisky Farms Road, South Windsor, Connecticut 06074, **New England Eyecare of Waterbury, P.C.**, a Connecticut professional corporation with a principal address at 2451 Berlin Turnpike, Newington, Connecticut, and **New England Eyecare of Manchester, P.C.**, a Connecticut professional corporation with a principal address at 397 Broad Street, Manchester, Connecticut. (**Assignee, Mark D. Sturgis, O.D., P.C., and New England Eyecare of Manchester, P.C. are sometimes collectively referred to as "Licensee"**)

### WITNESSETH

WHEREAS, Assignor, Assignee and Licensee have executed a License Agreement, dated as of March 29, 1996 (**hereinafter referred to as the "License"**), a copy of which is attached hereto as Exhibit A, concerning the non-exclusive, revocable right and license to use the trade names New England Eyecare, New England Eyecare of Manchester and New England Eyecare of West Hartford (**hereinafter collectively referred to as the "Trade Name"**).

WHEREAS, Assignor, Assignee and Licensee hereby terminate the License simultaneous with the execution of this Assignment Agreement.

WHEREAS, Assignor has agreed to transfer to Assignee all its rights, title and interest in and to the Trade Name; and

WHEREAS, Assignee and Licensee presently own and operate eyecare facilities under the Trade Name in the towns of Manchester, Connecticut, East Hartford, Connecticut, West Hartford, Connecticut and Newington, Connecticut.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

1.

**ASSIGNMENT OF NEW ENGLAND EYECARE NAME**

- A. Assignor hereby sells, assigns and conveys to Assignee all right, title and interest in and to the Trade Name. Assignor further acknowledges that as of the date of this Assignment Agreement all right, title and interest in and to the Trade Name shall remain the exclusive and proprietary property of Assignee and that Assignee has the exclusive, irrevocable and perpetual right and license to use the Trade Name in connection with the operation of Assignee's facilities where ever located. Further, Assignor acknowledges that Assignee has the exclusive worldwide, irrevocable and perpetual right to license, franchise or to otherwise sell, transfer or assign the Trade Name on terms and conditions Assignee deems appropriate, in Assignee's sole discretion. Provided, notwithstanding anything contained herein to the contrary, Assignee shall not operate its own facility under the Trade Name in derogation of any rights of the following holders of certain licenses described in Section 1.B below.
- B. The following perpetual non-exclusive licenses have previously been granted by Assignor (**hereinafter referred to as the "Assigned Licenses"**):
1. **Raphael Capasso, O.D., P.C. (hereinafter referred to as "Capasso")**. Pursuant to a certain Settlement and Termination Agreement dated October 25, 1995 (hereinafter referred to as the "Capasso Assignment Agreement"), Capasso, has a limited, exclusive nontransferable right to use the trade name "New England Eyecare" solely within the Town of Stratford, State of Connecticut and its contiguous towns and only in connection with operating an optometric practice therein. Notwithstanding the foregoing, such license may be transferred upon a sale of Capasso or substantially all of its assets with the prior written approval of Assignee or to the immediate family of Raphael Capasso, O.D., upon his death or permanent total disability. No further license fees are due or payable from Capasso.
  2. **Sheila W. Doyle, O.D (hereinafter referred to as "Doyle")**. Doyle has a limited, exclusive, nontransferable right to use the trade name "New England Eyecare" solely within the City of Stamford, State of Connecticut and its contiguous towns. No further license fees are due or payable from Doyle.
- C. Assignor hereby assigns and transfers all Assignor's rights and title to the Assigned Licenses to Assignee. Assignor shall forward written notice to the holders of the Assigned Licenses of the assignment of Assignor's rights hereunder to Assignee.

D. Assignor hereby assigns and transfers to Assignee all right, title and interest in and to any state or federal registration by Assignor of the Trade Name **(hereinafter collectively referred to as the "Registrations")**. Further, Assignor represents and warrants that the Registrations include, but may not be limited to, the following state or federal registrations:

1. State of Connecticut Service Mark Registration No. 6509, registered on February 11, 1986 and renewed on February 11, 1996 for a five-year period.

2. United States Federal Registration No. 1,472,736 for the mark New England Eyecare registered on January 12, 1988.

3. United States Federal Registration No. 1508620 for the mark New England Eyecare registered on October 11, 1998.

E. Upon request by Assignee, Assignor shall execute any appropriate document necessary to document the assignment and transfer the Registrations to Assignee.

## 2.

### **ASSIGNMENT FEE**

Assignee and/or Licensee has paid to Assignor on or before the date hereof, an amount equal to approximately \$20,000.00. Said amount represents funds that were due from Assignor to Assignee and/or Licensee as a result of payments by Kaiser Foundation Health Plan of Connecticut, Inc. and/or Kaiser Foundation Health Plan of New York **(hereinafter collectively referred to as "Kaiser")**, which funds were retained by Assignor and never paid over to Licensee as required pursuant to the License. In consideration of this Assignment Agreement, Assignee hereby waives and forever relinquishes Assignee's rights to such Kaiser payments from Assignor and releases Assignor from any obligation in connection therewith.

## 3.

### **ASSIGNOR'S AGREEMENT TO CHANGE NAME**

The Assignor hereby agrees to change its corporate name to a name that does not include the Trade Name within 90 days following the execution of this Assignment Agreement. The Assignor shall provide evidence of the name change to the Assignee within fourteen days of receipt of confirmation of the filing of such name change.

**4.  
BROKERS AND EXPENSES**

Each party hereto acknowledges to the other that no person has acted as a broker in connection with this Assignment Agreement and the transactions contemplated hereby.

**5.  
WAIVER**

Neither the failure nor any delay on the part of either party hereto in exercising any right, power or remedy hereunder shall operate as a waiver thereof, or of any other right, power or remedy; nor shall any single or partial exercise of any right, power or remedy preclude any further or other exercise thereof, or the exercise of any other right, power or remedy.

**6  
NOTICES**

Any notice or other documents to be given or delivered hereunder by any party to any other party shall be in writing and shall be delivered personally or sent by certified mail, postage prepaid, to the following addresses:

**ASSIGNEE:**

Mark D. Sturgis, O.D.  
106 Natsisky Farms Road  
South Windsor, CT 06074

**with a copy to:**

Mary Ann Santacroce, Esquire  
O'Connell, Flaherty & Attmore, LLC  
280 Trumbull Street  
Hartford, CT 06013

**ASSIGNOR:**

Howard Gottlieb, O.D. President  
New England Eyecare, P.C.  
270 Amity Road,  
Suite 220  
Woodbridge, CT 06525

**with a copy to:**

Steven J. Saft, Esq.  
Kleban and Samor, P.C.  
2425 Post Road  
P.O. Box 763  
Southport, CT 06490

**7.  
MERGER AMENDMENT**

This Assignment Agreement, the attachments hereto and other documents expressly referred to herein embody the entire representations, warranties, agreements and conditions in relation to the subject matter hereof,

and no representation, warranty, understanding or agreement, oral or otherwise in relation thereto exists between the parties except as herein expressly set forth. This Assignment Agreement may not be amended, augmented or terminated orally but only as expressly provided herein or by an instrument in writing duly executed by the parties hereto.

## **8. PARTIES**

This Assignment Agreement and the various rights and obligations arising hereunder shall inure only to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

## **9. INVALIDITY**

The invalidity or unenforceability of any term or provision of this Assignment Agreement or the application of such term or provision to any person or circumstances shall not impair or affect the remainder of this Assignment Agreement and its application to other persons and circumstances, and the remaining terms and provisions hereof shall not be invalidated but shall remain in full force and effect.

## **10. APPLICABLE LAW**

This Assignment Agreement shall be governed by and construed in accordance with the laws of the State of Connecticut.

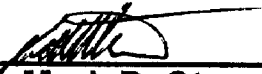
## **11. CAPTIONS**

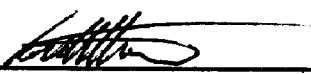
The captions in this Assignment Agreement are for convenience only and shall not be considered a part of or affect the construction or interpretations of any provision of this Assignment Agreement.

IN WITNESS WHEREOF, this Assignment Agreement has been executed and delivered as of the day and year first above written.

New England Eyecare of  
Manchester, P.C.


New England Eyecare of  
Waterbury, P.C.

  
BY: Mark D. Sturgis, O.D.  
It's President

  
BY: Mark D. Sturgis, O.D.  
It's President  
~~November~~, 2000

Mark D. Sturgis, O.D., P.C.

New England Eyecare, P.C.

  
BY: Mark D. Sturgis, O.D.  
It's President


  
BY: Howard Gottlieb, O.D.  
It's President

Mark D. Sturgis, O.D.

  
Individually

STATE OF CONNECTICUT:  
: ss. Hartford  
COUNTY OF HARTFORD :

On this the 10<sup>th</sup> day of ~~November~~, <sup>January, 2001</sup> 2000 before me, personally appeared, Mark D. Sturgis, O.D., who acknowledged himself to be the President of New England Eyecare of Manchester, P.C., New England Eyecare of Waterbury, P.C. and Mark D. Sturgis, O.D., P.C. and that he, as such President, being authorized to do so, and in his individual capacity, executed this Assignment Agreement for the purposes therein contained, and acknowledged the free act and deed of himself and the corporations, by signing his name and the name of the corporations by himself as President.

  
Mary Ann Santacroce, Esq.  
Commissioner of the Superior Court



STATE OF CONNECTICUT:

COUNTY OF *New Haven* : ss. *Woodbridge*

*January 8, 2001*

On this the *8<sup>th</sup>* day of ~~November, 2000~~ *January 2001* before me, personally appeared, Howard Gottlieb, O.D., who acknowledged himself to be the President of New England Eyecare, P.C. and that he, as such President, being authorized to do so executed this Assignment Agreement for the purposes therein contained, and acknowledged the free act and deed of the corporation, by signing the name of the corporation by himself as President.

*Emily Resnik Conn*

Commissioner of the Superior Court

**EMILY RESNIK CONN  
NOTARY PUBLIC  
MY COMMISSION EXPIRES JUNE 30, 2002**

# EXHIBIT A

MARCH 29, 1996 LICENSE AGREEMENT

LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("Agreement"), made this 29th day of March, 1996 by and between Mark D. Sturgis, O.D., P.C., a Connecticut professional corporation with a principal address at 106 Natsisky Farms Road, South Windsor, Connecticut 06074, Mark D. Sturgis, O.D., an individual with a principal residence at 106 Natsisky Farms Road, South Windsor, Connecticut 06074 and New England Eyecare of Manchester, P.C., a Connecticut professional corporation with a principal address at 397 Broad Street, Manchester, Connecticut 06040 (individually and collectively referred to as "Licensee") and New England Eyecare, P.C., a Connecticut professional corporation with offices at 270 Amity Road, Suite 220, Woodbridge, Connecticut (hereinafter referred to as "Licensor").

WITNESSETH:

WHEREAS, Licensor and Mark D. Sturgis, O.D. have executed a License Agreement, dated as of November 29, 1989 (hereinafter referred to as the "Initial License"), a copy of which is attached hereto as Exhibit A, concerning the non-exclusive, revocable right and license to use the trade names New England Eyecare and New England Eyecare of Manchester; and

WHEREAS, Licensor and Mark D. Sturgis, O.D. have terminated the Initial License simultaneous with the execution of the Agreement; and

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**WHEREAS, Licensor and Licensee have mutually agreed to enter into an exclusive and perpetual licensing arrangement concerning the exclusive, perpetual right (conditional on payment of the fees herein set forth) and license to use the trade names New England Eyecare, New England Eyecare of Manchester and New England Eyecare of West Hartford (the "Trade Name").**

**NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:**

**1.**

**LICENSE OF NEW ENGLAND EYECARE NAME**

**(1) Licensor hereby grants to Licensee an exclusive, revocable right and license to use the Trade Name only in connection with the operation of Licensee's facilities at (a) 1138 New Britain Avenue, West Hartford, Connecticut, (b) 397 Broad Street, Manchester, Connecticut and (c) any future site located within a city or town contiguous to Manchester, Connecticut and West Hartford, Connecticut (the "Premises"). Said license to use the Trade Name is revocable by Licensor upon the occurrence of either of the following events: (a) Licensee's failure to pay fees to Licensor, or its agent, as set forth in Paragraph 2, Licensee Fee, (b) Licensee's failure to satisfy all of the terms and conditions of the Kaiser Agreement, as herein defined, or to satisfy all of the terms and conditions of any modifications, adjustments or renewals in and to the Kaiser Agreement or (c) an event of default by the Licensee or the Guarantor of the Note, as the term is defined therein. Licensee acknowledges that all right,**

title and interest in and to the Trade Name is and shall remain the exclusive and proprietary property of Licensor. Any rights not expressly granted herein shall be retained by Licensor.

(2) (a) Licensor hereby grants to Mark D. Sturgis, O.D. a four-year, non-exclusive, revocable right to sublicense the Trade Name to other persons or entities domiciled or doing business in the following towns: Torrington, Connecticut; Enfield, Connecticut; Middletown, Connecticut; and Willimantic, Connecticut. Any sub-licensee shall be bound by the duties and obligations applicable to Licensee as provided for in Paragraph 1, section (1), above.

(i) If said Licensee intends to sublicense the Trade Name as provided in this Paragraph 1, section (2), then Licensee shall give Licensor written notice of Licensee's intent to sublicense. If Licensee gives such notice, then Licensor shall have no right to revoke and there shall not be a forfeiture of Licensee's right to sublicense as provided in Paragraph 1, section (2)(a)(ii) below as long as such sublicensee establishes a physical presence within the particular city or town within a period of three (3) months following such notice.

(ii) Such right to sublicense the Trade Name in one of the enumerated cities or towns described in this Paragraph 1, section 2, herein, automatically shall be forfeited by Licensee if Licensor gives Licensee written notice of Licensor's intent to license the Trade Name to any other person or entity and if such other person or entity establishes a physical presence within the particular city or town within three (3) months of the date of such notice.

(iii) Licensee shall bear all costs associated with such sublicenses unless otherwise specified herein.

(b) In consideration of the right to sublicense the Trade Name under the terms

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provided in this Paragraph 1, section (2)(a), Licensee shall pay to Licensor or its designee, royalty payments according to the following formula: Three percent (3%) of the monthly gross sales <sup>for the first four (4) years</sup> invoiced by the sub-licensees. For purposes of this Agreement, "monthly" shall mean the last day of each month. The term "gross sales" as used in this Agreement shall be construed to include the entire amount of the actual sales price net of any sales tax paid, whether wholly or partly for cash or on credit, of all sales of merchandise, services and all other receipts of any business including all deposits not refunded to customers and all sales made and orders originally received in or at the License's place of business. Credit or installment transactions shall be treated as sales for the full price at the time payment is received by Licensee or its agent. Credit card and other credit transactions shall result in gross sales in the full amount of the selling price without any allowances for credit card fees and charges.

In addition to the foregoing, there shall be deducted from gross sales the amount of any cash or credit refund made upon any sale where the merchandise sold, or some part thereof, is thereafter returned by the customer to, and accepted by sub-licensee. These royalty payment, together with a report of gross sales for the monthly period, shall be due and payable on the fifteenth (15th) day following the end of such monthly period. For purposes of this Agreement an "Agreement Year" shall mean the twelve (12) calendar month period commencing on the date first above written. Licensee further agrees to pay Licensor a late fee in an amount Twenty-Five (\$25.00) Dollars per day for each day past the fifteenth (15th) day of the month either or both of the above fees are not paid when due.

(c) Licensor may, at its option, terminate the Trade Name sublicense described in

this Paragraph 1, section 2, for any reason allowed or permitted under this Agreement, including but not limited to Licensee's failure to pay fees as stated in this Agreement.

(4) In order to protect the reputation and goodwill of Licensor's Trade Name, Licensee shall:

(a) Use the Trade Name only in connection with Licensee's business located at the Premises, or at such other locations as specifically provided for herein.

(b) Not hold itself out or otherwise employ the Trade Name to perform any activity, or to incur any obligation or indebtedness in such a manner as might make Licensor liable therefor; and

(c) Adopt and use the Trade Name only in the manner prescribed by Licensor.

(d) Not operate Licensee's business and/or advertise under the Trade Name in any manner which disparages or in any way compromises the Trade Name or its value.

(e) Observe any reasonable requirement with respect to servicemark registration and copyright notices as Licensor may from time to time direct; and

(f) Immediately notify Licensor of any and all imitations or infringements of the Trade Name.

2.

### LICENSE FEE

Licensee shall pay to Licensor at Closing: (a) Seventy Thousand Dollars (\$70,000.00) either in a certified, cashier's check or bank check as remuneration for (i) a revocable, yet perpetual right to use the trade name "New England Eyecare of Manchester"<sup>1</sup> (the "Cash Buy-out") and (ii) the termination of the Initial License; and (b) a conditional Promissory Note in

*WJH/HOS*  
and "New England Eyecare of West Hartf."

the amount of Thirty Thousand Dollars (\$30,000.00) in the form of Exhibit B attached hereto (the "Note"). Interest only shall be payable under the Note beginning on March 25, 1996 and ending on March 24, 1998, thereafter, Licensee shall pay to Licensor thirty-six (36) consecutive equal monthly installments of principal plus interest at 1% over the prime rate as charged by Citibank, N.A, New York City, adjusted semi-annually, with no prepayment penalty. Licensee's obligations to Licensor under the Note shall terminate if at any time prior to March 24, 2001, the health maintenance agreement by and between Kaiser Foundation Health Plan of Connecticut, Inc., Kaiser Foundation Health Plan of New York (collectively referred to herein as "Kaiser") and the Licensor, or any amendment or renewal thereof (the "Kaiser Agreement"), a copy of which is attached hereto as Exhibit C, is discontinued by Kaiser or Licensor, or if Licensee fails to approve and be bound by the terms and conditions of the Kaiser Agreement as provided for in this Agreement.

3.

### SERVICES FOR HEALTH MAINTENANCE ORGANIZATIONS

Licensee shall comply fully with all of the terms and conditions of the Kaiser Agreement. If Licensor enters into any agreement with any health maintenance organization in the future, Licensee shall have the option to participate in the agreement or arrangement based upon all of the terms and conditions; however, if upon the expiration of the Kaiser Agreement, the Licensor renews the Kaiser Agreement, then Licensee shall comply fully with all of the terms and conditions of the said renewed Kaiser Agreement. Failure by the Licensee to accept and be bound by the said renewed Kaiser Agreement or failure by



Licensee to comply fully with all of the terms and conditions of the said renewed Kaiser Agreement shall be deemed a default under this Paragraph 3.

In the event Licensee is in default of this Paragraph 3, Licensee shall forfeit the license and sublicense described in Paragraph 1, above and the Licensee's right to use the Trade Name shall terminate. Furthermore, Licensee shall forfeit the right to provide optometric services in accordance with the Kaiser Agreement. At such time, Licensee shall relinquish any and all right to receive compensation from under the Kaiser Agreement.

4.

#### PAYMENT FOR SERVICES UNDER KAISER AGREEMENT

(a) In full payment for the optometric services provided under the current Kaiser Agreement, without regard to the number of Kaiser members who request services or volume of services Licensee provides to Kaiser members, Licensor shall pay Licensee a fee equal to nine cents (\$0.09) per Kaiser member per month for each office as a base (the "Fee").

Licensor shall pay Licensee the Fee within ten (10) days of Licensor collecting its monthly fee under the Kaiser Agreement from Kaiser. Licensor agrees to pay Licensee a late fee in an amount Twenty-Five (\$25.00) Dollars per day for each day payment to Licensee is delayed past the day when payment is due.

(b) If Kaiser and Licensor renew or modify the current Kaiser Agreement or enter into a new Agreement with similar terms, and Licensor, with respect to the current Kaiser Agreement, receives either an increased fee or a decreased fee for providing such optometric

services pursuant to the renewed or modified Kaiser Agreement, then Licensee's Fee shall be increased or decreased by the same percentage as Licensor's fee is increased or decreased in the renewed or modified Kaiser Agreement [By way of example, if Licensor's fee is decreased from forty-seven cents (\$0.47) to forty-two cents (\$0.42) per member per month, then Licensee's Fee will be decreased from nine cents (\$0.09) to eight cents (\$0.08), thus resulting in a decrease of eleven (11) percent to both the Licensor and the Licensee].

(c) If any term or provision of the Kaiser Agreement should, for any reason whatsoever, be declared invalid by a court of competent jurisdiction or be found by such court to violate any law, statute, regulation and/or the like of any federal, state or local entity, the Licensor shall amend, modify or alter the Kaiser Agreement in compliance with any order, decree, law, statute, regulation and/or the like. If such an event should occur the validity or enforceability of this Agreement, the other agreements referred to herein and the remainder of the Kaiser Agreement shall not be affected thereby.

5.

#### LICENSEE'S INDEMNITY

Licensee hereby undertakes and agrees to indemnify Licensor (and its shareholder(s) officers and directors and their respective successors, heirs and assigns), and hold them harmless against and in respect of any and all claims, debts, actions, suits, proceedings, demands, assessments, judgments, liabilities, costs and legal and other expenses to any person in connection with or arising out of Licensee's use of the Trade Name or arising out of Licensee's conduct of its optometric business.

The covenant of indemnity set forth in this Section 8 is intended by Licensee to be for the benefit of Licensor, and its shareholders and shall be without limitation either as to time or amount.

6.

#### DEFAULT

Failure by a Licensee to pay all or any part of the payments when due Licensor under this Agreement, the Note or the Assignment and Modification Agreement shall be deemed a default by the Licensee. In the event of a default, Licensor shall have the right to terminate this Agreement with respect to the defaulting Licensee upon the giving of fifteen (15) days written notice to Licensee during which time Licensee shall have the right to cure any such default. If Licensee cures any default within fifteen (15) days of receiving written notice of a default, this License shall continue in full force and effect.

If Licensee's right to use the Trade Name is terminated or expires for any reason, Licensee agrees to immediately (i) pay all fees and charges due and payable to Licensor, and any amounts when due to any other suppliers, (ii) discontinue use of the Trade Name, furniture, fixtures, decor, interior or exterior decoration, signs, displays, advertising or promotional material and the like that contain the name New England Eyecare or any logo of New England Eyecare or the like, (iv) cancel any fictitious business name or equivalent registrations or listings indicating that Licensee is in any way affiliated with the Licensor and the Trade Name and immediately dissolve or change the name of any corporation, partnership or other business entity utilizing a name similar to, associated with or related to the Trade

Name and (v) notify all of his suppliers utilities, landlords, creditors and concerned others that Licensee has no contractual or other arrangement with the Licensor or rights to the Trade Name. Licensee agrees not to identify any present or future store or itself or himself as having been in any way associated with Licensor or the Trade Name following termination of this Agreement.

For purposes of this Paragraph 6, only, a default by one Licensee shall not be deemed a default by any other Licensee. Further, if this Agreement is terminated as to any one or more Licensees, this Agreement and the License granted hereunder shall remain in full force and effect as to any Licensee that is not in default.

7.

#### BROKERS AND EXPENSES

Each party hereto acknowledges to the other that no person has acted as a broker in connection with this Agreement and the transactions contemplated hereby.

8.

#### WAIVER

Neither the failure nor any delay on the part of the Licensor in exercising any right, power or remedy hereunder shall operate as a waiver thereof, or of any other right, power or remedy; nor shall any single or partial exercise of any right, power or remedy preclude any

further or other exercise thereof, or the exercise of any other right, power or remedy.

9.

NOTICES

Any notice or other documents to be given or delivered hereunder by any party to any other party shall be in writing and shall be delivered personally or sent by certified mail, postage prepaid, to the following addresses:

**LICENSOR:**

Howard Gottlieb, O.D., President  
New England Eyecare, P.C.  
270 Amity Road, Suite 220  
Woodbridge, CT 06525

cc: Steven J. Saft, Esq.  
Kleban and Samor, P.C.  
2425 Post Road  
P.O. Box 763  
Southport, CT 06490

**LICENSEE:**

Mark D. Sturgis, O.D., P.C.  
106 Natsisky Farms Road  
South Windsor, CT 06074

cc: Mary Ann Santacrocce  
Gordon, Muir & Foley  
Hartford Square North  
10 Columbus Boulevard  
Hartford, CT 06106-1944

Mark D. Sturgis, O.D.  
106 Natsisky Farms Road  
South Windsor, CT 06074

cc: Mary Ann Santacrocce  
Gordon, Muir & Foley  
Hartford Square North  
10 Columbus Boulevard  
Hartford, CT 06106-1944

New England Eyecare of Manchester, P.C.  
397 Broad Street  
Manchester, CT 06040

cc: Mary Ann Santacrocce  
Gordon, Muir & Foley  
Hartford Square North  
10 Columbus Boulevard  
Hartford, CT 06106-1944

10.

#### MERGER AMENDMENT

This Agreement, the attachments hereto and the assessments and other documents expressly referred to herein embody the entire representations, warranties, agreements and conditions in relation to the subject matter hereof, and no representation, warranty, understanding or agreement, oral or otherwise in relation thereto exists between the parties except as herein expressly set forth. This Agreement may not be amended, augmented or terminated orally but only as expressly provided herein or by an instrument in writing duly executed by the parties hereto.

11.

#### PARTIES

This Agreement and the various rights and obligations arising hereunder shall inure

only to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

12.

INVALIDITY

The invalidity or unenforceability of any term or provision of this Agreement or the application of such term or provision to any person or circumstances shall not impair or affect the remainder of this Agreement and its application to other persons and circumstances, and the remaining terms and provisions hereof shall not be invalidated but shall remain in full force and effect.

13.

CAPITALIZED TERMS

Any terms not defined herein shall have the respective meanings ascribed to them in the Asset Purchase and Sale Agreement, or any other document attached thereto.

14.

APPLICABLE LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Connecticut.

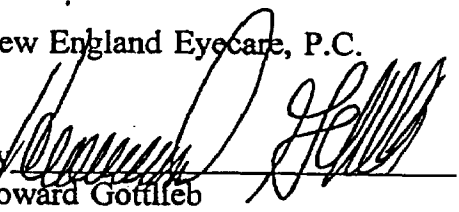
CAPTIONS

The captions in this Agreement are for convenience only and shall not be considered a part of or affect the construction or interpretations of any provision of this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed and delivered as of the day and year first above written.

LICENSOR:


New England Eyecare, P.C.

By   
Howard Gottlieb  
Its President

LICENSEE:

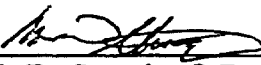
Mark D. Sturgis, O.D., P.C.

Mark D. Sturgis, O.D.

  
Mark D. Sturgis, O.D  
Its President

  
Mark D. Sturgis, O.D

New England Eyecare of Manchester, P.C.

By   
Mark D. Sturgis, O.D.  
Its President



LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("Agreement"), made this 29<sup>th</sup> day of November, 1989 by and between Mark Sturgis, O.D., residing at 21 Christine Circle, Bloomfield, Connecticut ("Licensee"), and New England Eyecare, P.C., a Connecticut professional corporation with offices at 817 Chapel Street, New Haven, Connecticut ("Licensor").

W I T N E S S E T H:

WHEREAS, Licensor desires to grant, and Licensee desires to acquire, a non-exclusive, revocable right and license to use the trade names (collectively, "Trade Name") "New England Eyecare" and "New England Eyecare of Manchester"; and

WHEREAS, Licensor desires to render, and Licensee desires to use Licensor's Marketing Services (as hereinafter defined);

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties agree as follows:

1.

LICENSE OF NEW ENGLAND EYECARE NAME

Licensor hereby grants to Licensee the non-exclusive, revocable right (conditional on payment of the fees herein set forth) and license to use the Trade Name only in connection with the operation of Licensee's facility at 397 Broad Street, Manchester, Connecticut, for a five (5) year period commencing on

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the date first above written. Licensee acknowledges that all right, title and interest in and to the Trade Name is and shall remain the exclusive and proprietary property of Licensor. Any rights not expressly granted herein shall be retained by Licensor.

In order to protect the reputation and goodwill of Licensor's Trade Name, Licensee shall:

(a) Use the Trade Name only in connection with Marketing Services (as hereinafter defined) at Licensee's optometrist practice located at 397 Broad Street, Manchester, Connecticut and not separately therefrom.

(b) Not hold itself out or otherwise employ the Trade Name to perform any activity, or to incur any obligation or indebtedness in such a manner as might make Licensor liable therefor; and

(c) Adopt and use the Trade Name only in the manner prescribed by Licensor.

(d) Not operate his business and/or advertise under the Trade Name in any manner which disparages or in any way compromises the Trade Name or its value.

(e) Observe any reasonable requirement with respect to servicemark registration and copyright notices as Licensor may from time to time direct; and

(f) Immediately notify Licensor of any and all imitations or infringements of the Trade Name.

MARKETING SERVICES

The Licensor agrees to provide Marketing Services to Licensee for a five (5) year period commencing upon the date first above written.

(a) "Marketing Services" may include, but are not limited to, (1) arranging for the purchase of local and regional advertising on behalf of Licensee but at Licensee's sole cost and expense, (2) the development of advertising and promotional programs, (3) the conducting of market research and public relations programs at Licensee's request but at Licensee's sole cost and expense, and (4) providing camera ready or equivalent quality material for use in newspapers, radio, television or other media form. It is understood by the parties hereto that all costs associated with the printing and displaying of advertisements, including, but not limited to, costs of advertising space in the print, electronic or broadcast media, and costs of all graphics, print and the like shall be borne by the Licensee.

(b) Licensor shall give to Licensee an estimate of the cost of all advertising or promotion intended for Licensee's direct benefit and Licensee must give written consent before Licensor enters into any contracts for such advertising or promotion.

(c) Upon Licensee's request, and at Licensee's sole cost and expense, Licensor will arrange broadcasting on behalf of

Licensee of radio and television spots advertising New England Eyecare of Manchester in form and substance reasonably agreeable by both parties. Licensee must give written consent and provide advance payment before Licensor enters into any contracts for the production or broadcast of any television or radio spots.

3.

ROYALTY FOR TRADENAME LICENSE AND MARKETING SERVICES

(a) In consideration for the right to use the Trade Name and Marketing Services during the term of this Agreement, Licensee agrees to pay to Licensor a semi-monthly (for purposes of this Agreement, "semi-monthly" shall mean the 15th and last day of each month) fee equal to the following percentages of Licensee's semi-monthly Gross Sales (as hereinafter defined):

<u>Agreement Year</u>	<u>Trade Name: Percentage of Semi-Monthly Gross Sales</u>	<u>Marketing Services: Percentage of Semi-Monthly Gross Sales</u>
1	3/4	1/4
2	1 1/4	1/2
3	2 1/4	3/4
4	3	1
5	3 3/4	1 1/4

These fees, together with a report of Gross Sales for the semi-monthly period, shall be due and payable on the fifth (5th) day following the end of such semi-monthly period. For purposes of this Agreement an "Agreement Year" shall mean the twelve (12) calendar month period commencing on the date first above written.

(b) Licensee further agrees to pay Licensee a late fee in an amount equal to Twenty-Five (\$25.00) Dollars per day for each day past the seventh (7th) day of the month either or both of the above fees are not paid when due.

(c) If Licensee is not in default of this Agreement, the Asset Purchase and Sale Agreement ("AP&S") by and among the Licensee and New England Eyecare of Manchester, P.C., the Promissory Note ("Note") by and between Licensee and New England Eyecare of Manchester, P.C., the Licensee's Security Agreement ("Security Agreement") by and among Licensee, Licensor and New England Eyecare of Manchester, P.C., and/or the Sublease Agreement ("Sublease") by and between Licensee, New England Eyecare of Manchester, P.C., and Alice C. Jarvis and John D. Labelle, Co-Executors of the Estate of Alexander Jarvis, all of even date herewith at the time Licensee is desirous of renewing this Agreement, then Licensee shall have successive options, exercisable by giving written notice to Licensor not less than ninety (90) days, but not more than one hundred fifty (150) days, in advance of the expiration of the previous five (5) year period, to renew the right and license to use the Trade Name and obtain the Marketing Services for a subsequent five (5) year period commencing upon the termination of the previous five (5) year term. Subsequent Options shall not be exercisable unless the previous option is duly exercised. In the event that Licensee exercises any options hereunder, Licensee agrees to pay

a semi-monthly fee to Licensor during such renewal term equal to five percent (5%) (3 3/4% for the Trade Name and 1 1/4% for Marketing Services) of each semi-monthly Gross Sales period payable on the 5th day following the end of such semi-monthly period on which the fee was calculated. In no event shall the total percentage fee be increased above five percent (5%).

(d) If Licensee's right to use the Trade Name or Marketing Services is terminated or expires for any reason, Licensee agrees to immediately (i) pay all fees and charges due and payable to Licensor, and any amounts when due to any other suppliers, (ii) discontinue use of the Trade Name, (iii) discontinue use of any furniture, fixtures, decor, interior or exterior decoration, signs, displays, advertising or promotional material and the like that contain the name New England Eyecare or any logo of New England Eyecare or the like, (iv) cancel any fictitious business name or equivalent registrations or listings indicating that Licensee is in any way affiliated with the Licensor and the Trade Name and immediately dissolve or change the name of any corporation, partnership or other business entity utilizing a name similar to, associated with or related to the Trade Name and (v) notify all of his suppliers utilities, landlords, creditors and concerned others that Licensee has no contractual or other arrangement with the Licensor or rights to the Trade Name. Licensee agrees not to identify any present or future store or itself or himself as having been in any way associated with

Licensors or the Trade Name following termination of this Agreement.

(e) The term "Gross Sales" as used in this Agreement shall be construed to include the entire amount of the actual sales price net of any sales tax paid, whether wholly or partly for cash or on credit, and whether collected or uncollected, of all sales of merchandise, services and all other receipts of any business conducted in, at or from the Licensee's place of business including all deposits not refunded to customers and all sales made and orders originally received in or at the Licensee's place of business. Credit or installment transactions shall be treated as sales for the full price at the time each sale is made, and not when or if payment is made or when title passes to the merchandise sold. Credit card and other credit transactions shall result in Gross Sales in the full amount of the selling price without any allowances for bad debts, uncollectible accounts or credit card fees and charges.

In addition to the foregoing, there shall be deducted from Gross Sales the amount of any cash or credit refund made upon any sale where the merchandise sold, or some part thereof, is thereafter returned by the customer to, and accepted by Licensee.

4.

#### AUDITS

Licensee shall keep an accurate account of all Gross Sales. Licensors may, by any agent, at any reasonable time or times,

examine or audit any or all of Licensee's books, records and correspondence, and make copies thereof. If any examination or audit discloses a deficiency in fee payments, Licensor will give notice of the deficiency to Licensee and Licensee shall pay the amount of the deficiency with interest at a rate equal to fourteen (14%) percent, compounded daily from the date the deficiency in payment was due to the date paid, which shall be within 10 days of receipt of Licensor's notice. If any examination or audit shows that the fees paid to Licensor are deficient by more than 2% of the fees actually owed for any examination or audit period, then Licensee shall reimburse Licensor for the cost of the examination or audit.

5.

SERVICES FOR HEALTH MAINTENANCE ORGANIZATIONS

Licensee shall comply fully with all of the terms and conditions of any agreement or arrangement with which Licensor has now or in the future entered into with any health maintenance organization. Licensor currently has agreements with Kaiser and ConnectiCare, the relevant provisions of which are set forth on Exhibit A and B, respectively. Any violation by Licensee of any such agreement or arrangement shall be a default under this Agreement, the Note and the Sublease. In the event Licensee is in default of this Agreement or any other agreement referred to herein, the Licensor shall have all rights and remedies provided in said agreements, including, but not limited to, the right to



immediate possession and use of the premises which the Licensee occupies pursuant to the Sublease and all personal property used in or related to the Licensee's optometric practice so that Licensor may provide optometric services in accordance with the Kaiser and ConnectiCare agreements in lieu of Licensee and receive all compensation therefrom. So long as Licensee is not in default hereunder or under the Note or other agreements referred to herein, Licensor agrees to list Licensee as a provider of New England Eyecare products in all brochures and advertisements.

6.

PAYMENT FOR SERVICES UNDER KAISER AGREEMENT

(a) In full payment for the optometric services provided under the current Kaiser Agreement, without regard to the number of Kaiser members who request services or volume of services Licensee provides to Kaiser members, Licensor shall pay Licensee a fee equal to five cents (\$0.05) per Kaiser member per month (the "Fee") (i.e., if there are 37,000 Kaiser members in a given month, Licensor shall pay Licensee:  $37,000 \times \$0.05$  or \$1,850).

If Kaiser and Licensor renew or modify the current Kaiser Agreement or enter into a new Agreement with similar terms, and Licensor receives an increased fee for providing such optometric services pursuant to the renewed, modified or new Kaiser Agreement, Licensee's fee of five cents (\$0.05) per member per month shall be increased in the same proportion as Licensor's fee

is increased in the renewed or new Kaiser Agreement (i.e., if Licensor's fee is increased from forty cents (\$0.40) to fifty cents (\$0.50) per member per month, then Licensee's Fee will be increased from five cents (\$0.05) to six and one-quarter cents (\$.0625) per member per month). Licensee acknowledges that Licensor does not warrant or grant any assurance hereby that Licensor will be successful in negotiating the renewal, extension or modification of the Kaiser Agreement. Licensor shall pay Licensee the Fee monthly on or before the tenth (10th) day of the month following the month on which the Fee was collected by Licensor from Kaiser.

(b) Licensee acknowledges that the current Kaiser Agreement requires Licensor to pay Kaiser nine percent (9%) of total Gross Sales to Kaiser members. Licensee, to comply with this provision of the Kaiser Agreement as the same may be modified or amended from time to time, shall pay to Licensor on a semi-monthly basis nine percent (9%) of Licensee's semi-monthly Gross Sales to Kaiser members, whether for products or services but excluding the Fee above (the "Kaiser Fee"). The Kaiser Fee shall be due and payable, together with a report of semi-monthly Gross Sales to Kaiser members on the fifth (5th) day following the end of such semi-monthly period. If any Kaiser Fee is not paid prior to the seventh (7th) day following the end of such semi-monthly period, Licensee shall pay Licensor interest equal to fourteen (14%) percent, compounded daily, on the Kaiser Fee until paid.

Further, Licensee agrees to abide in the same manner to similar fee requirements in any future health maintenance organization agreement including any future Kaiser Agreement.

(c) If any term or provision of the Kaiser Agreement should, for any reason whatsoever, be declared invalid by a court of competent jurisdiction or be found by such court to violate any law, statute, regulation and/or the like of any federal, state or local entity, the Licensor shall amend, modify or alter the Kaiser Agreement in compliance with any order, decree, law, statute, regulation and/or the like. If such an event should occur, the validity or enforceability of this Agreement, the other agreements referred to herein and the remainder of the Kaiser Agreement shall not be affected thereby.

7.

#### LICENSEE'S OPERATION

(a) Licensee shall sell all Product (as hereinafter defined) and render all professional services at the Standard Price (as hereinafter defined), unless the Licensee obtains the prior written consent from a majority, in number, of all Greater Hartford New England Eyecare stores (including Licensee's) pursuant to the following procedure. Licensee shall provide written notice to all Greater Hartford New England Eyecare stores which notice shall set forth the Product and or professional services, the Standard Price and the Price Licensee desires to charge for the Product or professional services. Each Greater

Hartford New England Eyecare store, within 10 days of receiving notice, will either provide or withhold its consent in writing. The failure of any Greater Hartford New England Eyecare store to respond to the notice shall be deemed the withholding of such store's consent.

Licensor will provide purchaser a listing of products carried by Licensor or its affiliates (each a "Product") setting forth the price (the "Standard Price") at which each Product is to be sold or professional services are to be rendered. Licensor, with the written consent of a majority of the owners of the practices currently existing in East Hartford, West Hartford and Manchester, may amend the Product and Standard Price list from time to time. Subject to the other terms and provisions of this Agreement, Licensee may sell any item not on the Product list at any price Licensee deems appropriate and is not required to carry any or all items on the Product list at any time; provided that, no owner shall have more than one vote regardless of the number of stores directly or indirectly owned; and in the event of a deadlock with respect to changes in any Standard Price, the price shall be an amount equal to the average of the two prices submitted by each owner. The Greater Hartford "New England Eyecare" stores shall include all stores operating under the "New England Eyecare" trade name within the cities or towns of Hartford, West Hartford, East Hartford, Manchester, Glastonbury, Newington, Farmington, Simsbury, Windsor and Windsor

Locks. There are, as of the date of this Agreement, three New England Eyecare stores located in the Greater Hartford area; viz., West Hartford, East Hartford and Manchester.

(b) Licensee shall not discount fees for professional services rendered or Products sold to any patient or customer unless Licensee obtains the prior written consent of Licensor and the consent of a majority, in number, of all Greater Hartford New England Eyecare Stores. Notwithstanding the above, nothing herein shall be interpreted to prevent Licensee from extending reasonable discounts to a limited number of individual customers or patients on a case by case basis.

(c) Licensee shall not discount services rendered or products sold to any health maintenance organization patient unless expressly provided for in the health maintenance organization agreement or upon Licensor's prior written consent.

8.

LICENSEE'S INDEMNITY

Licensee hereby undertakes and agrees to indemnify Licensor (and its shareholder(s) officers and directors and their respective successors, heirs and assigns), and hold them harmless against and in respect of any and all claims, debts, actions, suits, proceedings, demands, assessments, judgments, liabilities, costs and legal and other expenses to any person in connection with or arising out of Licensee's use of the Trade

Name or arising out of Licensee's conduct of its optometric business.

The covenant of indemnity set forth in this Section 8 is intended by Licensee to be for the benefit of Licensor, and its shareholders and shall be without limitation either as to time or amount.

9.

DEFAULT

Licensee's failure to pay all or any part of the payments when due Licensor under this Agreement shall be deemed a default under this Agreement, the Note, the AP&S, the Security Agreement and the Sublease. Similarly, any default under the AP&S, the Note, the Security Agreement and/or the Sublease shall constitute an event of default under this Agreement.

In the event of a default, Licensor shall have the right to terminate this Agreement upon the giving of fifteen (15) days written notice to Licensee during which time Licensee shall have the right to cure any such default. If Licensee cures any default within fifteen (15) days of receiving written notice of a default, this License shall continue in full force and effect.

10.

BROKERS AND EXPENSES

Each party hereto acknowledges to the other that no person has acted as a broker in connection with this Agreement and the transactions contemplated hereby.

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11.

WAIVER

Neither the failure nor any delay on the part of the Licensor in exercising any right, power or remedy hereunder shall operate as a waiver thereof, or of any other right, power or remedy; nor shall any single or partial exercise of any right, power or remedy preclude any further or other exercise thereof, or the exercise of any other right, power or remedy.

12.

NOTICES

Any notice or other documents to be given or delivered hereunder by any party to any other party shall be in writing and shall be delivered personally or sent by certified mail, postage prepaid, to the following addresses:

LICENSOR

New England Eyecare, P.C.  
Howard Gottlieb, Pres.  
817 Chapel Street  
New Haven, CT 06510

cc: William A. Perrone, Esq.  
Kleban and Samor, P.C.  
2425 Post Road  
P.O. Box 763  
Southport, CT 06490

LICENSEE

Mark Sturgis, O.D.  
21 Christine Circle  
Bloomfield, CT 06002

cc: John Goodrich, Esq.  
Gordon, Muir & Foley  
10 Columbus Avenue  
Hartford, CT 06106-1944

13.

MERGER; AMENDMENT

This Agreement, the attachments hereto and the agreements and other documents expressly referred to herein embody the entire representations, warranties, agreements and conditions in relation to the subject matter hereof, and no representation, warranty, understanding or agreement, oral or otherwise, in relation thereto exists between the parties except as herein expressly set forth. This Agreement may not be amended, augmented or terminated orally but only as expressly provided herein or by an instrument in writing duly executed by the parties hereto.

14.

PARTIES

This Agreement and the various rights and obligations arising hereunder shall inure only to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.



15.

NON-ASSIGNABILITY

Licensee's rights, duties and /or obligations provided herein shall not be assignable by Licensee to any party without the prior written consent of Licensor.

16.

INVALIDITY

The invalidity or unenforceability of any term or provision of this Agreement or the application of such term or provision to any person or circumstances shall not impair or affect the remainder of this Agreement and its application to other persons and circumstances, and the remaining terms and provisions hereof shall not be invalidated but shall remain in full force and effect.

17.

APPLICABLE LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Connecticut.

18.

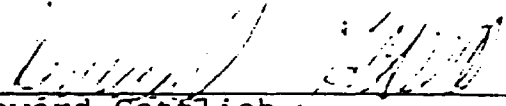
CAPTIONS

The captions in this Agreement are for convenience only and shall not be considered a part of or affect the construction or interpretations of any provision of this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed and delivered as of the day and year first above written.

LICENSOR:

New England Eyecare, P.C.

By   
Howard Gottlieb  
Its President

LICENSEE:

Mark Sturgis, O.D.

  
Mark Sturgis, O.D.

PROMISSORY NOTE**\$30,000.00**Hartford, Connecticut  
March 29, 1996

FOR VALUE RECEIVED, **Mark D. Sturgis, O.D., P.C.** a Connecticut professional Corporation with a principal place of business at 106 Natsisky Farms Road, South Windsor, Connecticut 06074 (hereinafter referred to as the "Maker") promises to pay to the order of **New England Eyecare, P.C.**, a Connecticut professional corporation with a principal office at 270 Amity Road, Suite 220, Woodbridge, Connecticut 06525 (the "Lender"), or at such place as the holder may designate in writing, the principal sum of **Thirty Thousand and 00/100 Dollars (\$30,000.00)** in lawful money of the United States of America with interest on such unpaid amount from the date of this Note until paid at the prime rate as charged by Citibank, N.A., New York City, plus one percent (1%) per annum, provided that, in no event shall the rate of interest exceed the maximum rate allowable under Connecticut usury laws.

Interest only shall be payable in twenty-four (24) consecutive monthly installments payable on the 25th of each month beginning April 25, 1996. Such monthly payments shall continue through March 24, 1998.

Principal and interest shall be payable in thirty-six (36) consecutive monthly payments payable on the 25th of each month beginning March 25, 1998. Such monthly payments shall continue until the entire indebtedness evidenced by this Note is fully paid, except that any remaining indebtedness, if not paid sooner, shall be due and payable on March 31, 2001.

The initial interest rate hereunder shall be nine and one-quarter percent (9 ¼%) per annum. The interest rate hereunder shall be adjusted on December 26, 1996 and on the 26th day of every sixth months thereafter. The initial payment of interest shall be Two Hundred Thirty-One Dollars and 25/100 Dollars (\$231.25) per month.

This Note may be prepaid in whole or in part at any time without penalty or premium. Maker shall have the right at any time to prepay the entire outstanding amount of this Note. Maker shall have the right to make a partial prepayment of this Note at any time.

Maker will be in default if:

1. Maker does not make any payment within fifteen (15) days of the date due;
2. The Maker shall be unable to pay its or his debts as they mature or shall make an assignment for the benefit of any of its or his creditors;
3. A default in the performance of any term, provision or obligation contained in this Note and the License Agreement of even date herewith by and between Mark D. Sturgis, O.D., P.C. and Lender, or any other instrument delivered to the Lender in connection with this Note;

4. A default the prompt payment of any other indebtedness at any time due to the Lender from the Maker and/or the Guarantor or the performance or observance of any other agreement of the Maker in favor of the Lender; and

5. Bankruptcy, insolvency or death of the Maker or any guarantor, endorser or other person now or hereafter liable for the payment of any indebtedness evidenced by this Note;

Then at the option of Lender, immediately and without notice to Maker upon the occurrence of an event of default specified in the foregoing subparagraphs of this Note, the obligation of Maker hereunder shall immediately become due and payable without further action of any kind, and his Note shall become due and payable without presentment, demand, protest or other notice of any kind, all of which are expressly waived by Maker.

The Maker further promises to pay all costs and expenses, including reasonable attorneys' fees, which may be incurred by the Lender in collecting any sums due under this Note.

Failure by the holder hereof to insist upon performance in accordance with the terms of this Note or the lien securing this Note shall not be deemed a waiver of any other obligation under this Note or the lien securing this Note.

Lender reserves the right to pledge, hypothecate or otherwise dispose of this Note. Any subsequent holder of this Note shall not be subject to (and the Maker expressly waives as against such subsequent holder) any defenses, set-offs, counterclaims or other objections to the payment of this Note.

Presentment, notice of dishonor, and protest are hereby waived by all makers, sureties, guarantors and endorsers hereof.

Any notice to Maker provided for in this Note shall be given by mailing such notice by certified mail addressed to Maker at the address stated below, or to such other address as Maker may designate by notice to the Lender. Any notice to the Lender shall be given by mailing such notice by certified mail, return receipt requested, to the Lender at the address stated above in this Note, or at such other address as may have been designated by notice to Maker.

This Note is to be governed by and construed in accordance with the laws of the State of Connecticut for all purposes.

This Note may not be assigned.

The terms of this Promissory Note and payment due hereunder are subject to the terms and conditions of a certain Standby Agreement executed on March 29, 1996 by and between Mark D. Sturgis, O.D., P.C. and Howard Gottlieb, O.D.

TO INDUCE LENDER TO ENTER INTO THE COMMERCIAL TRANSACTION EVIDENCED BY THIS NOTE AND THE LICENSE AGREEMENT, THE MAKER AND GUARANTOR HEREOF AGREES THAT THE SAID TRANSACTION IS COMMERCIAL AND NOT A CONSUMER TRANSACTION AND WAIVES ANY RIGHT TO NOTICE OF AND HEARING ON THE RIGHT OF LENDER UNDER CHAPTER 903a OF THE CONNECTICUT GENERAL STATUTES OR OTHER STATUTE OR STATUTES AFFECTING PREJUDGMENT REMEDIES AND AUTHORIZES LENDER'S ATTORNEY TO ISSUE A WRIT FOR PREJUDGMENT REMEDY WITHOUT COURT ORDER, PROVIDED THE COMPLAINT SHALL SET FORTH A COPY OF THIS WAIVER.

Mark D. Sturgis, O.D., P.C.

By: \_\_\_\_\_  
Mark D. Sturgis, O.D., Its President

GUARANTY

For Value Received, the undersigned (the "Guarantor") hereby guarantee(s) the prompt payment of the within Note in full when due as therein provided and hereby adopt(s) and assent(s) to the terms and conditions of said note.

\_\_\_\_\_  
Mark D. Sturgis, O.D.

Guarantor's address:

106 Natsisky Farms Road  
South Windsor, Connecticut 06074

AMENDMENT TO AGREEMENT FOR OPTOMETRIC AND OPTICAL SALES SERVICES

THIS AMENDMENT TO Agreement for Optometric and Optical Sales Services ("Amendment") is entered into on August 1, 1995, by and between Kaiser Foundation Health Plan of Connecticut, Inc. ("KFHP-CT"), and New England Eye Care of West Hartford, Inc. ("NEEC").

WHEREAS, the parties hereto have previously entered into that certain Agreement for Optometric and Optical Sales Services ("Agreement"), effective January 1, 1995 pursuant to which NEEC and members of its staff have agreed to provide certain optometric and optical sales services for Health Plan Members; and

WHEREAS, the parties hereto desire to continue their relationship as set forth in the Agreement in an amended manner;

NOW, THEREFORE, the parties hereto agree as follows:

- 1. This agreement covers all Health Plan Members enrolled under the Connecticut Access/Managed Medicaid Program ("Medicaid Members").
2. Exhibit B (Compensation and Billing). Section IV (Optical Sales and Products) - NEEC will provide all optical products to Medicaid Members which are covered under the applicable Membership Agreement at the most recent Medical Assistance Policy Fee Schedule as published by the State of Connecticut's Department of Income Maintenance (attached). NEEC will bill Health Plan for such covered optical products and will not bill the Medicaid Member.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date first indicated above:

KAISER FOUNDATION HEALTH PLAN OF CONNECTICUT, INC.

NEEC of West Hartford, Inc.

By: \_\_\_\_\_

By: [Signature]

Name: Steve Godfrey

Name: Howard Gottlieb

Title: Director Community Hospital and Health Plan Contracts

Title: President

## Agreement For Optometric and Optical Sales Services

This Agreement has been entered into by and between Kaiser Foundation Health Plan of Connecticut, Inc. ("KFHP-CT"), a Connecticut nonprofit corporation, Kaiser Foundation Health Plan of New York ("KFHP-NY"), a New York nonprofit corporation (collectively referred to in this Agreement as "Health Plan"), and New England Eye Care of West Hartford, P.C. ("NEEC"), a Connecticut professional corporation, because Health Plan desires NEEC to provide optometric and optical sales services ("Vision Services") to its Health Plan members ("Members") that are entitled to benefits under a Health Plan Medical and Hospital Service Agreement ("Membership Contract") and to assure the continual availability of such services for Members in the future, and NEEC is licensed in the state of Connecticut and the state of New York ("State") to provide Vision Services and desires to provide such services on an ongoing basis to Members. Therefore, it is agreed that:

1. Vision Services to be Provided:

NEEC will, through licensed professionals and other staff, provide Vision Services to Members in accord with Exhibit A. Vision Services means all ordinary and necessary optometric services, including refraction and related eye screening to be performed by optometrists licensed in Connecticut, and optical sales of eyewear and other related eye care products.

2. Personnel:

- a. As specified in Exhibit "A", NEEC will employ all personnel, including optometrists and opticians, necessary to carry out its duties under this Agreement.
- b. NEEC will ensure that all personnel necessary to provide Vision Services to Members under this Agreement ("Staff") are fully licensed, qualified and experienced. NEEC is solely responsible for the method and manner in which its Staff carry out their duties. NEEC will notify Health Plan immediately if any Staff member's license is suspended, revoked, or restricted in any way. NEEC will immediately remove such Staff member from Health Plan's facilities and will not allow such Staff member to render Vision Services under this Agreement in any facility without the prior written permission of Health Plan.



- c. NEEC will comply with all applicable federal, state and local laws and regulations pertaining to licensure, wages and hours of employment, participation in the Medicare program and the operations and safety of facilities that provide optometric services.
- d. NEEC will ensure that its Staff complies with the rules and regulations promulgated by Health Plan for the safe, orderly and efficient conduct of their activities on Health Plan's premises.
- e. Upon the request of either Health Plan or Medical Group, for good cause shown, NEEC will remove any of its Staff who are providing Vision Services on Health Plan's premises.
- f. NEEC will advise its Staff of the necessity to maintain confidentiality of information regarding Health Plan and Members. No NEEC Staff member will have access to, or will have the right to review, any medical record except where necessary in the regular course of performing Vision Services under this Agreement. Except as necessary to the provision of such services, the discussion, transmission, or narration in any form of any information regarding Members obtained in performing duties under the Agreement is prohibited.
- g. NEEC Staff will cooperate with and participate, as requested by Health Plan, in quality assurance and utilization review activities with respect to Vision Services provided under this Agreement. Such activities may involve personnel from other areas or regions of the Kaiser Permanente Medical Care Program.

3. Compensation for Services:

Health Plan will pay NEEC for Vision Services provided to Members under this Agreement and NEEC will pay Health Plan for the use of Health Plan facilities in accord with Exhibit B. Except as provided in Exhibit B of this Agreement, NEEC agrees that in no event, including, but not limited to non-payment by Health Plan, insolvency or breach of this Agreement, shall NEEC bill, charge, collect a deposit from, seek compensation, remuneration or reimbursement from, or have any recourse against any Member for Vision Services provided pursuant to this Agreement. NEEC further agrees that this provision shall (1) survive the termination of this Agreement regardless of the cause giving rise to termination and shall be construed to

be for the benefit of Members, and (2) supersede any oral or written contrary agreement now existing or hereafter entered into between the parties.

4. Reporting Requirements:

At the end of each month during the term of this Agreement, NEEC will provide Health Plan with a report of all Vision Services provided at each facility that same month. This report will contain detail and summary information on optometry and optical sales activity at each facility.

5. Books and Records:

- a. NEEC will maintain appropriate records of Vision Services provided to Members under this Agreement including, but not limited to, the Member's name, Health Plan number, date of Vision Service, type of visit, prescription written, prescription filled and charges for each Vision Service. Copies of such records will be supplied to Health Plan and/or Medical Group upon request. Prescription information will be provided to the Member's Health Plan medical record.
- b. Health Plan and/or Medical Group may inspect, at all reasonable times, books and records (including, but not limited to, accounting, administrative and utilization records) maintained by NEEC related to Vision Services provided under this Agreement.

6. Insurance:

During the term of this Agreement, NEEC will maintain in full force and effect, at its sole expense: a) combined bodily injury and property damage liability insurance with limits of not less than \$500,000 per occurrence and \$1,000,000 aggregate; and b) professional liability insurance with limits of not less than \$500,000 per occurrence and \$2,000,000 aggregate to cover all its obligations and liabilities and those of its officers, agents, Staff members and employees under this Agreement.

Within thirty (30) days of the date of this Agreement, NEEC will supply Health Plan with Certificates of Insurance evidencing such coverage and stating that coverage will not be cancelled or reduced without at least thirty (30) days prior written notice to Health Plan. During the term of this Agreement, NEEC will also maintain in full force and effect workers' compensation insurance as required by law.

7. Indemnification:

NEEC agrees to indemnify and hold harmless (and at Health Plan's request, defend) Health Plan and Medical Group and all other persons or organizations cooperating in the conduct of the health care program commonly known as the Kaiser Permanente Medical Care Program, and each of their partners, employees, agents and officers (each of which persons and organizations is an Indemnitee) from and against any and all claims, losses, damages, liabilities, costs, expenses, judgements or obligations whatsoever, for or in connection with injury (including death) or damage to any person or property resulting from or in any way connected with the performance or failure to perform obligations hereunder by NEEC, its employees, Staff members, officers, partners or agents. The foregoing indemnity and hold harmless obligation of NEEC includes and applies without limitation to injury or damage to third parties and to Health Plan and Medical Group and its respective employees, agents and officers. Notwithstanding the foregoing, the liability of NEEC does not include any responsibility or obligations to the extent due to the sole negligence or willful misconduct of Health Plan or Medical Group, or the partners, employees, agents, or officers of either of them.

8. Labor Relations:

NEEC will conduct its labor relations in such a manner as to avoid any labor disputes which might disrupt services under this Agreement. In the event of any labor dispute affecting Vision Services to Health Plan Members, NEEC will continue to provide such Vision Services despite the existence of any such dispute.

9. Non-Discrimination:

- a. NEEC will provide Vision Services to Members without discrimination on account of race, color, sex, age, religion, national origin, physical or mental handicap or veteran's status. The non-discrimination and affirmative action clauses contained in Executive Order 11246, as amended by Executive Order 11375, relative to race, color, religion, sex or national origin, and the implementing rules and regulations prescribed by the Secretary of Labor in Title 41, Part 60 of the Code of Federal Regulations are incorporated herein.

- b. NEEC will conduct its employment practice without discrimination on account of race, color, sex, age, religion, national origin, physical or mental handicap or veteran's status.
- c. To the extent required by federal laws, executive orders and regulations, NEEC agrees to incorporate herein the utilization of small and minority business concerns clauses (The Small Business Act, as amended; Executive Order 11625; and the Federal Acquisition Regulation (FAR) at 48 CFR Chapter 1, Parts 1-69 and the utilization of labor surplus area concerns clauses (The Small Business Act, as amended; Executive Order 12073; 41 CFR 1-1.805.3; and FAR at 48 CFR Chapter 1, Part 20 of Subparagraph D and Part 52 of Subparagraph H).

10. Relationship of Parties:

This Agreement does not and should not be construed to create the relationship of agent, employee, partnership, joint venture or association between the parties, but it is an Agreement by and between two independent contractors, those being NEEC and Health Plan. The Staff of NEEC providing Vision Services under this Agreement are not employees of Health Plan for any purpose, including, but not limited to compensation for services, employee welfare and pension benefits, fringe benefits or employment or workers' compensation insurance.

11. Access to Financial Records:

If this Agreement is determined to be subject to the provisions of Section 952 of P.O. 96-499, which governs access to books and records of subcontractors of services to Medicare providers where the cost or value of such services under the contract exceeds \$10,000 over a twelve month period, then NEEC agrees to permit representatives of the Secretary of the Department of Health and Human Services and to the Comptroller General, in accord with criteria and procedures contained in applicable federal regulations, to have access to its books, documents and records as necessary to verify the cost of Vision Services under this Agreement.

12. Term:

The term of this Agreement is thirty-six (36) months, commencing January 1, 1995 and terminating December 31, 1997 unless terminated prior to this date in accordance with the provisions set forth below.

13. Termination:

- a. This Agreement may be terminated for cause by either party. A non-breaching party desiring to terminate the Agreement for cause will give the other party written notice identifying the cause and sixty (60) days to cure the same. If at the end of the sixty (60) day period there has been no material cure, in the non-breaching party's reasonable judgement, the non-breaching party may terminate this Agreement upon an additional thirty (30) days written notice. For purposes of this provision "cause" includes, but is not limited to, the following: (i) failure by NEEC to maintain the accessibility standards set forth in Exhibit "A" of this Agreement, (ii) persistence of discourteous behavior by NEEC staff; (iii) significant and/or frequent quality problems in NEEC's operations in Health Plan's reasonable judgement; or (iv) failure by NEEC or Health Plan to make payments or carry out any obligation in accord with this Agreement.
- b. This Agreement may be terminated by either party without cause by giving one hundred eighty (180) days prior written notice to the other party thereof. During the notice periods described above, this Agreement shall continue to be effective and the parties shall remain liable hereunder.
- c. If NEEC terminates this Agreement, NEEC will, at Health Plan's option, continue to provide Vision Services to Members under this Agreement for thirty (30) days after the effective date of termination. The terms and conditions of this Agreement will continue to apply to such services provided to Members.
- d. This Agreement will automatically terminate if NEEC fails to maintain its licensure. In the case of such termination, Health Plan will pay NEEC any amount due under this Agreement up to the date of such termination.
- e. Sections 7, 8, and 12 shall continue to apply after termination of this Agreement with respect to any injury or claim related to Vision Services rendered to Members under this Agreement.

14. Assignment:

This Agreement is not assignable or transferable by any party without the prior, written consent of the other party which consent shall not be unreasonably withheld or delayed.

15. Notices:

All notices herein provided to be given, or which may be given, by any party to the other, will be deemed to have been fully given when written and personally delivered to the parties below or deposited in the United States Mail, certified and postage prepaid and addressed as follows:

To Health Plan: Mr. Michael Grubb  
Senior Vice President  
Kaiser Permanente  
76 Batterson Park Road  
Farmington, CT 06034

To NEEC: Dr. Howard Gottlieb  
New England Eye Care, P.C.  
817 Chapel Street  
New Haven, CT 06510

16. Referrals:

- a. NEEC will refer Health Plan Members who, upon optometric examination, require examination and/or treatment by an ophthalmologist, to ophthalmologists designated by The Northeast Permanente Medical Group, P.C. ("Medical Group").
- b. Medical Group may require NEEC Staff to obtain pre-authorization from Medical Group before referrals are made to the designated ophthalmologists. Medical Group will provide NEEC with reasonable notice before requiring such pre-authorization.

17. Health Plan Member Grievances:

- a. NEEC will promptly notify Health Plan of receipt of any letter from an attorney regarding Members or complaints from any Member.
- b. NEEC will refer all Members with complaints or grievances to Health Plan's Member Services representatives. Health Plan will advise NEEC of any

complaint or grievances it receives from Members concerning NEEC. Both parties will cooperate in resolving such complaints or grievances.

18. New York State Department of Health Rules and Regulations:

This Agreement and any material amendments thereto are subject to the prior approval of the commissioner of the New York State Department of Health.

19. Entire Agreement of the Parties:

This Agreement contains the entire agreement of the parties. Any prior agreement, promise, negotiation, or representation about the subject matter of this Agreement not expressly set forth herein is of no force or effect. This Agreement may be amended at any time by mutual agreement of the parties, but no such amendment is valid unless it is in writing and signed by both parties.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their authorized representatives.

KAISER FOUNDATION HEALTH  
PLAN OF CONNECTICUT, INC.

NEW ENGLAND EYE CARE  
OF WEST HARTFORD, P.C.

KAISER FOUNDATION HEALTH  
PLAN OF NEW YORK

By: Michael Grubb  
MICHAEL GRUBB  
SENIOR VICE PRESIDENT

By: Howard Gottlieb  
HOWARD GOTTLIEB  
PRESIDENT

Dated: 12/16/94

Dated: 1/2/95



## Exhibit A

### Services to Be Provided

- I. Optometric Services/Kaiser Foundation Health Plan of Connecticut
  - A. Optometric Services means all refraction and related eye screenings to be performed by optometrists employed by NEEC and licensed in Connecticut.
  - B. NEEC will provide Optometric Services to members of Kaiser Foundation Health Plan of Connecticut, Inc. at Health Plan's Health Center located at 99 Ash Street, East Hartford, Connecticut ("Health Center") and all NEEC's facilities located in West Hartford and Manchester, Connecticut, including any future sites within Health Plan's Hartford service area. NEEC will provide the personnel necessary to provide Optometric Services during Health Plan's hours of operation.
  - C. NEEC will provide routine appointments to Members within three weeks of the Member's request and the same day or urgent care appointments upon the request of a Northeast Permanente Medical Group, P.C. ("Medical Group") physician or consulting physician associated with Medical Group. NEEC will reserve to health Plan's Members at least four appointments per day at its West Hartford facility and at least three appointments per day at its Manchester facility. The number of such appointments may be changed from time to time by mutual consent of the parties to comply with Health Plan's requirement for not more than a three week wait for a routine appointment. If NEEC opens any new facility within Health Plan's service area, it will reserve to Health Plan's Members a reasonable number of appointments per day at such facility. As Health Plan opens new facilities, NEEC will ensure that Members receive appropriate access to Optometric Services by NEEC locally or, if NEEC does not have such a facility locally, Members from the new Health Plan facility may be omitted from the payment rates set forth in Exhibit B to this Agreement.
  - D. Health Plan will provide utilities and equipment necessary for NEEC to provide optometric services at the East Hartford Health Center.

II. Optical Sales/Kaiser Foundation Health Plan of Connecticut, Inc.  
Kaiser Foundation Health Plan of New York

- A. Optical sales means all ordinary and necessary fitting of eyewear and repair of eyeglasses to be performed by licensed opticians and the sale of eyewear and related eye care products.
- B. NEEC will provide Optical Sales services to Members of Kaiser Foundation Health Plan of Connecticut, Inc. at Health Plan's facility at 99 Ash Street, East Hartford, Connecticut and all NEEC facilities in West Hartford and Manchester. NEEC will provide Optical Sales services to Members of Kaiser Foundation Health Plan of New York at Health Plan's facility at 210 Westchester Avenue, White Plains, New York. NEEC will provide such services at all Health Plan facilities in accordance with mutually agreed upon hours of operation.
- C. All equipment required to provide optical sales services at Health Plan or NEEC facilities will be provided by NEEC.

III. Supervisory Staffing

NEEC will designate one of its Staff members at the White Plains Health Center and the East Hartford Health Center to serve as "Supervisor" and to act as a liaison between NEEC and Health Plan. Additionally, at the East Hartford Health Center, NEEC will designate one of its optometrist Staff members to serve as "Manager" and to represent NEEC with respect to clinical issues. This manager will periodically meet with Medical Group and Health Plan personnel to review NEEC's performance under this Agreement.

IV. Health Plan Facilities

Health Plan shall provide appropriate space at its East Hartford Health Center for NEEC to provide optometric services and optical sales as well as appropriate space at its White Plains Health Center for optical sales. Health Plan will be responsible for providing such space as well as utilities, housekeeping, and minor maintenance service. Additionally, Health Plan is responsible for providing the equipment necessary for optometric services at East Hartford.

## Exhibit B

### Compensation and Billing

#### I. Optometric Services

For all Optometric Services provided under this Agreement, KFHP - CT will pay NEEC on a capitation basis, as specified below.

- a. Thus, NEEC's compensation for each month will vary as a result of KFHP - CT's aggregate membership for that month; it will not vary as a result of the nature, duration, or volume of services provided by NEEC under this Agreement. KFHP - CT will give NEEC reasonable access to KFHP - CT's records documenting membership figures during KFHP - CT's hours of operation upon request. The membership base for this Agreement shall be KFHP - CT's Hartford service area.
- b. KFHP - CT will pay NEEC for Optometric Services performed under this Agreement at the following rates:  
  
January 1, 1995 through June 30, 1995 - \$ .58 PMPM  
July 1, 1995 through December 31, 1995 - \$ .49 PMPM
- c. KFHP - CT will pay NEEC by the 15th day of each month a sum equal to the applicable PMPM multiplied by KFHP - CT's membership on the last day of the preceding month.
- d. NEEC agrees that the Capitation Rate set forth in Section 1 of this Exhibit B includes payment for all optometric services. NEEC agrees to provide KFHP - CT with a monthly itemized list of services performed and will relinquish all rights to any recovery of compensation therefore, except as otherwise provided in the Agreement.

#### II. Lease Agreement - Space for Optical Sales

In consideration for the use of Health Plan's facilities in White Plains and East Hartford, NEEC agrees to pay the following monthly rent amounts to Health Plan:

- a. White Plains: \$2,241.67 per month

- b. East Hartford: \$1,600.00 per month

### III. Adjustment to Compensation

Effective January 1, 1996 and January 1, 1997 the monthly rent amounts and the capitation rate specified in Sections I and II above, will be adjusted according to the annual percentage change in the Consumer Price Index for all urban consumers ("CPI-U"), All Items, Northeast which is published by the United States Department of Labor.

### IV. Optical Sales and Products

- a. Health Plan's Members, with the exception of Members covered under a Health Plan Optical Plan or with Medicare coverage, are responsible for paying for all optical sales and products, and NEEC will bill Health Plan Members directly for these items.
- b. For Members covered under a Health Plan Optical Plan, NEEC will bill Health Plan for the amount of the applicable Health Plan Optical Plan benefits and will bill Members for the balance, if any, of covered optical sales and products.
- c. For Members entitled to Medicare coverage, NEEC will bill the Health Care Financing Administration ("HCFA") directly for Medicare covered optical sales (including products) and will bill Health Plan, and Health Plan will pay, the applicable Medicare coinsurance and deductible. NEEC will include with all invoices for payment of the Medicare coinsurance and deductible the Explanation of Medical Benefits ("EOMB") from HCFA for such services.  
If a Member chooses eyewear and/or other related eye care products which is in excess of the Medicare allowable amount, NEEC will explain to the Member that he or she will be responsible for any amount in excess of the Medicare allowable amount and NEEC will bill the Member for such excess amount.
- d. NEEC will provide Health Plan Members with the opportunity to choose eyewear at various prices, ranging from low to high. NEEC Staff will not pressure Members to select the high priced eyewear or to undergo procedures which are not covered under the Member's Membership

- a. NEEC will bill Members or patients directly for services provided in the following circumstances:
1. Non-Covered Services. Where NEEC provides items or services to any non-Member, or to a Member for which the Member has no optical benefit under the applicable Membership Contract, or for which the Member must pay supplemental charges (as defined in the Membership Contract).
  2. Lack of Coverage. Where a Member elects to continue receiving services from NEEC after such Member's coverage benefits under his or her Membership Contract have been exhausted or after Health Plan disallows coverage for such services.
- b. NEEC will collect applicable co-payments from Members receiving Optometry Services at NEEC facilities at the time such services are provided hereunder and will regularly remit such payments to Health Plan. NEEC will provide Health Plan with written notice when it is unable to collect any co-payment from a Member. In any event, NEEC will make a good faith effort to collect all such co-payments from every applicable Member receiving Optometry Services at its facilities.

#### VI. Coordination of Benefits

It is Health Plan's responsibility to screen the Member to identify the primary carrier or third party payor, but NEEC will immediately notify Health Plan upon receiving any notice thereof. Health Plan will bill the appropriate primary carrier or third party payor for compensation for Vision Services provided by NEEC to any Member where the Member is entitled to benefits under a Membership Contract that includes a provision for coordinating benefits with another carrier's health benefits coverage and the Member has such other coverage which is primary or where the Member is entitled to medical coverage provided by worker's compensation, group or individual no fault and traditional automobile insurance or general third party liability insurance.