

04-11-2001

PI



Trademarks:  
it or copy thereof.

I. Name of conveying party (ies):

101659290

Name and address of receiving party (ies):

Wisconsin Wagon Company, Inc.

Name: WWC Acquisition, LLC  
Internal Address: 516 West South Street  
Street Address:  
City: Kalamazoo  
State: MI

MAR 27 2001  
Zip: 49007

- Entity:
- Individual (s)
  - General Partnership
  - Corporation-State Wisconsin
  - Other \_\_\_\_\_
  - Association
  - Limited Partnership

- Entity:
- Individual (s)
  - General Partnership
  - Corporation-State
  - Other Michigan Limited Liability Company
  - Association
  - Limited Partnership
  - Citizenship \_\_\_\_\_

3-27-01

3. Interest Conveyed:

- Assignment
- Security Agreement
- Other Purchase of Assets Agreement
- Execution Date December 1, 2000
- Change of Name
- Merger

If not domiciled in the United States, a domestic representative designation is attached:  
 Yes  No  
(The attached document must not be an assignment.)

4. Application number (s) or registration number (s).

A. Trademark Application No. (s)

B. Trademark Registration No. (s)  
1,554,607

Additional sheet attached?

Yes  No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Thomas L. Lockhart  
Internal Address: Varnum, Riddering, et al  
Street Address: 333 Bridge Street  
City: Grand Rapids  
State: MI Zip: 49504

6. Total number of applications and registrations involved:

1

7. Amount of fee: \$40.00

- Enclosed
- Authorized to be charged to deposit account.

8. Deposit account number (attach duplicate copy of this form if paying by deposit account):

Deposit Account No. 22-0257

DO NOT USE THIS SPACE

40E

9. 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.

3-26-01

Date

Signature

Timothy E. Eagle  
Name of Person Signing

Total number of pages including cover sheet, attachments, and document: 25

**PURCHASE OF ASSETS  
AGREEMENT**

SELLER                   Wisconsin Wagon Company, Corp  
                              Wisconsin Registration # 266485  
                              U.S. EIN 391306739

BUYER                    WWC Acquisition, LLC., a Michigan LLC

1.     Purchase of Assets.

(a)     Subject to the terms and conditions hereof, Seller will sell, convey, transfer, assign and deliver to Buyer, and Buyer will purchase and accept the conveyance, transfer, assignment and delivery of, all right, title and interest of Seller in and to the assets owned, leased or used by Seller in the conduct of its business (including all inventory, all work in process, all machinery, equipment, jigs, fixtures, hand tools, tables and stands, all drawings and specifications, all photography, art work and lay out design, all website and other Internet-related property, U.S. registered trademark #1,554,607, all goodwill and going concern value and all books and records, but excluding, however, those assets described in Schedule 1(a) attached hereto) (the "Assets").

(b)     At the Closing (as defined below), Buyer will pay to Seller the purchase price of \$50,000. The purchase price shall be paid \$30,000 in cash or readily available funds at the Closing, and by a Promissory Note in the amount of \$20,000, a copy of which note is attached hereto as Schedule 1(b). At the Closing, Seller shall transfer title to the Assets to Buyer by a Warranty Bill of Sale, free and clear of all liens and encumbrances.

(c)     At the Closing, Buyer shall execute and deliver to Seller as collateral for Buyer's Promissory Note a Security Agreement giving to Seller a security interest in all of the Assets. Buyer shall further execute and deliver to Seller at the Closing a Financing Statement in recordable form to perfect Seller's security interest in the Assets.

(d)     Except as provided in Schedule 1(c) attached hereto, Buyer will not assume any liabilities of Seller. Further, Seller will indemnify and hold harmless Buyer from and against any and all losses, costs, damages and expenses (including reasonable attorney fees) arising out of or otherwise related to any liabilities of Seller (other than any such liabilities assumed by Buyer).

2.     Covenant Not to Compete. As an inducement for Buyer to purchase the Assets, neither Seller nor Albert R. Hough, President of Seller, shall compete against Buyer, during the 5-year period beginning as of the Closing Date (as defined below), by engaging, directly or indirectly, within the United States of America, in any business substantially similar to that conducted by Seller as of the date hereof. Buyer shall (in addition to any other rights or remedies that may be available to it) be entitled to an injunction, restraining order or such other equitable relief as a court of competent jurisdiction may deem necessary or appropriate to restrain Seller and/or Albert R. Hough from committing any violation of this Section 2. Seller, Albert Hough, and Buyer irrevocably submit to the exclusive jurisdiction of the circuit court of Rock County, Wisconsin, or the Federal District Court for the Western District of Wisconsin in respect of any request or application of injunctive

relief under this Section 2.

3. Consulting. As of the Closing Date, Albert R. Hough and Buyer will enter into an at-will consulting relationship (which may be terminated at any time by Albert R. Hough and/or Buyer with or without cause). Pursuant to the relationship, Albert R. Hough will provide consultation and assistance to Buyer in connection with its ownership of the Assets and operation of the business. Such consultation and assistance will be provided at such time(s) and place(s) and otherwise on such terms as are mutually acceptable to Albert R. Hough and Buyer.

4. Lease. As of the Closing Date, Seller and Albert R. Hough will cause Bower City Land Partnership to enter into a lease with Buyer of the premises at 507 Laurel Avenue, Janesville, WI, a copy of which is attached hereto as Schedule 4.

5. Good and Marketable Title. Seller represents to Buyer that it now has, and as of the Closing will have, good and marketable title to the Assets and that the Assets, when sold pursuant to the terms and conditions of this Agreement, will be free and clear of any and all liens and encumbrances.

6. Dispute Resolution. In the case of any dispute between Seller (and/or Albert R. Hough) and Buyer or any claim by Seller (and/or Albert R. Hough) or Buyer against the other arising out of the arrangements contemplated by this letter (other than in connection with any request or application for injunctive relief as contemplated by Section 2), a meeting will be promptly held to attempt in good faith to negotiate a resolution of the matter. If, within a reasonable period of time following the occurrence of the matter, Seller (and/or Albert R. Hough) and Buyer are not successful in negotiating a resolution of the matter, Seller (and/or Albert R. Hough) and Buyer will submit the matter to binding arbitration and the matter will be finally settled in accordance with the Commercial Arbitration Rules of the American Arbitration Association in Janesville, Wisconsin, by one or more arbitrator(s) appointed in accordance with such Commercial Arbitration Rules (it being understood and acknowledged that such arbitrator(s) may order or allow such discovery as such arbitrator(s) deem(s) reasonable). Judgment upon any award, which may include an award of costs and expenses incurred in the resolution of the matter, shall be entered in the circuit court for Rock County, Wisconsin, or the Federal District Court for the Western District of Wisconsin, whichever shall have jurisdiction of the subject matter of the arbitration.

7. Expenses. Seller (and/or Albert R. Hough) and Buyer shall each pay all of their own costs, fees and expenses incurred by them in connection with the negotiation, review, documentation, preparation and closing of this Agreement and each of the other related agreements.

8. Successor and Assignment. All of the terms and conditions contained in this Agreement will be binding upon, will inure to the benefit of and will be enforceable by the respective heirs, legal representatives, successors and assigns of Seller (and/or Albert R. Hough) and Buyer. Neither Seller (nor Albert R. Hough) nor Buyer may assign their respective rights or obligations under this Agreement without the written consent of the other.

9. Amendments and Waivers. Any term or condition contained in this Agreement may be amended or waived if, but only if, such amendment or waiver is in writing and signed by Seller and Buyer.

10. Closing. The closing of the transaction contemplated by this Agreement (the

“Closing”) shall take place on January 4, 2001, but shall be effective as of January 1, 2001 (the “Closing Date”).

ACCEPTED AND AGREED On December 1, 2000

Wisconsin Wagon Co., Corp.

WWC Acquisition, L.L.C.

By: Albert R. Hough  
Albert R. Hough  
President

By: Peter R. Douglas  
Peter R. Douglas, Authorized Manager

Albert R. Hough  
Albert R. Hough

## Schedule 1(a)

### ASSET EXCLUSIONS

1. All cash or its equivalent, and Accounts Receivable as of December 31, 2000, if any
2. All federal, state and local Income Tax refunds due, if any
3. All insurance policies
4. Corporate financial records
5. Furniture - Rolltop desk
  - Tall oak file cabinet
  - Walnut book case
  - Oak file cabinets (2)
  - Walnut shipping desk
  - Time clock

**Schedule 1(b)**

**PROMISSORY NOTE**

[ATTACHED]

**PROMISSORY NOTE**

\$20,000.00

January 1, 2001

The undersigned maker, WWC Acquisition, L.L.C., promises to pay to the order of Wisconsin Wagon Company, Corp., as payee, at Janesville, Wisconsin, the principal sum of Twenty Thousand and No/100 Dollars (\$20,000.00) in two (2) installments of Ten Thousand and No/100 Dollars (\$10,000.00) each, without interest. The first payment shall be made on July 1, 2001 and the second payment shall be made on January 1, 2002.

Any payment not made when due shall bear interest at twelve percent (12%) per year until paid.

If any payment is not made when due, the unpaid balance shall, at the option of the holder and without notice, mature and become immediately payable.


This note is secured by a security agreement between maker and payee, and payment may be accelerated according to the terms of the security agreement.

All makers, endorsers, sureties and guarantors agree to pay all costs of collection, including reasonable attorneys' fees, and waive presentment, protest, demand and notice of dishonor.

This Note may be prepaid in whole or in part at any time without penalty.

Executed as of the date and year first above written.

WWC Acquisition, L.L.C.

By:   
Peter R. Douglas, Authorized Manager

**Schedule 1(c)**

**LIABILITIES**

[TO BE COMPLETED]

Schedule 1(c)

rev2.wpd



**Schedule 4**

**LEASE**

**[ATTACHED]**

**Schedule 4**

**TRADEMARK**  
**REEL: 002267 FRAME: 0315**

## COMMERCIAL LEASE

**THIS COMMERCIAL LEASE** is made effective January 1, 2001, between Bower City Land Partnership of 507 Laurel Avenue, Janesville, WI 53545 ("Landlord"), and WWC Acquisition, L.L.C., of 516 West South Street, Kalamazoo, MI 49007 ("Tenant").

### **1. Description of Premises and Term**

**1.1** Landlord leases to Tenant and Tenant leases from Landlord the premises, consisting of approximately a 3,136 s.f. building located at 507 Laurel Avenue, Janesville, WI, together with the non-exclusive use of the parking lot, and the shared use of the storage area with Landlord. A map showing the area in the building to be occupied by Tenant and showing the storage area to be shared with Landlord is attached hereto and incorporated herein.

**1.2** The primary term of this Lease shall be for one (1) year commencing on the 1<sup>st</sup> day of January, 2001, and ending the 31<sup>st</sup> day of December 2001, unless sooner terminated.

**1.3** If Tenant is not in default under any provisions of this Lease, Tenant may renew and extend this Lease for one (1) additional term of five (5) years upon the same terms and conditions excepting only the rent to be paid shall be as stated in paragraph 3.2. Notice of Tenant's intention to exercise any right or option to renew or extend must be given in writing to Landlord at least thirty (30) days prior to the end of the current term, or the option granted in this section shall become null and void.

### **2. Use of Premises**

Landlord grants to Tenant the right to occupy and use the premises only for the purpose of conducting its manufacturing business, together with its associated marketing and sales activities. Tenant will not do or permit any act or thing which is contrary to any law or insurance requirement, or which might impair the value or usefulness of the premises or any part thereof, or which constitutes a public or private nuisance or waste. Tenant shall comply with all recorded covenants, conditions and restrictions that now or later affect the premises.

### **3. Rent**

**3.1** Tenant shall pay to Landlord at Landlord's address set forth above, or such other place as Landlord may from time to time designate in writing, rent for the premises as follows: fixed minimum annual base rental of Seven Thousand Two Hundred and No/100 Dollars (\$7,200.00). The total fixed annual base rental shall be payable in equal monthly installments of Six Hundred and No/100 Dollars (\$600.00) each, payable in advance on the first day of each calendar month, commencing on January 1, 2001.

**3.2** If Tenant exercises its option to renew the Lease, the annual base rental shall be adjusted annually upon the mutual agreement of Landlord and Tenant based upon increases over the preceding year for the costs to Landlord for supplying heat, electricity, sewer and water to the building in which the premises is located, and for any increases in real estate taxes for the building in which the premises is located. Any change in the base annual rent shall be effective as of the first (1<sup>st</sup>) day of January of each year.

### **4. Alterations, Additions and Improvements**

**4.1** Tenant shall make no alterations, additions, improvements or changes ("alterations") to the premises without first obtaining the written consent of Landlord.

**4.2** All alterations that may be installed or placed in or about the premises from time to time shall, at the option of Landlord, be and become the property of Landlord upon installation. Upon the expiration or earlier termination of the term of this Lease, all alterations then located on the premises shall, with the premises, be vacated and surrendered by the Tenant to the Landlord and shall, at the option of Landlord, become the property of the Landlord, and the Tenant agrees to execute and deliver to the Landlord such quit claim deeds, assignments or other instruments of conveyance as the Landlord may deem reasonably necessary to evidence such transfer of title to Landlord. In the alternative, Landlord may require Tenant, at Tenant's sole cost, remove any such alterations and restore the premises to its original condition, normal wear and tear excepted. Tenant shall remove all signs, fixtures or equipment that may be installed or placed in or about the premises and restore the premises to its original condition, normal wear and tear excepted.

**5. Utilities**

**5.1** Landlord shall provide at its expense, all heat, electricity, water and sewer servicing the Premises.

**5.2** Tenant agrees that Landlord shall not be liable for damage, by abatement of rent or otherwise, for failure to furnish or delay in furnishing any service, or for diminution in the quality or quantity of any service when the failure, delay or diminution is entirely or partially caused by (i) breakage, repairs, replacements or improvements; (ii) strike, lock out or other labor trouble; (iii) inability to secure electricity, gas, water or other fuel at the premises after reasonable effort to do so; (iv) accident or casualty; (v) act or default of Tenant or other parties; or (vi) any other cause beyond Landlord's reasonable control. Such failure, delay or diminution shall not be considered to constitute an eviction or a disturbance of Tenant's use and possession of the premises or relieve Tenant from paying rent or performing any of its obligations under this Lease. Landlord shall not be liable under any circumstances for a loss of or injury to property or for injury to or interference with Tenant's business, including loss of profits through, in connection with or incidental to a failure to furnish any of the utilities or services under this section.

**6. Insurance**

During the term of the Lease and for any further time that Tenant shall hold the premises, Tenant shall obtain and maintain, at its expense, the following types and amounts of insurance:

**A. Casualty Insurance.** Tenant shall keep all of its equipment and personal property on the premises, including all alterations, additions, and improvements, insured against loss or damage.

**B. Personal Injury and Property Damage Insurance.** Insurance against liability for bodily injury (including death) and property damage in an amount of at least \$500,000 per occurrence and in such forms of insurance policies as may, from time to time, be required by Landlord, shall be provided by Tenant, and shall name Landlord as an additional insured. Tenant shall provide proof of such insurance coverage to Landlord upon request.

**7. Covenant Against Liens**

Tenant shall not be the cause or object of any liens or allow such liens to exist, attach to, be placed on or encumber Landlord's or Tenant's interest in the premises, building, or real property by operation or law or otherwise. Tenant shall not suffer or permit any lien of mechanics, material suppliers or others to be placed against the premises, building or real property with respect to the work or services performed or claimed to have been performed for Tenant, or materials furnished or claimed to have been furnished to Tenant or the premises.

**8. Default or Breach**

Each of the following events shall constitute a default or breach of this Lease by Tenant:

A. If Tenant, or any successor or assignee of Tenant while in possession, shall file a petition in bankruptcy or insolvency or for reorganization under any bankruptcy act, or shall voluntarily take advantage of any such act by answer or otherwise, or shall make an assignment for the benefit of creditors.

B. If involuntary proceedings under any bankruptcy law or insolvency act shall be instituted against Tenant, or if a receiver or trustee shall be appointed of all or substantially all of the property of Tenant, and such proceedings shall not be dismissed or the receivership or trusteeship vacated within sixty (60) days after the institution or appointment.

C. If Tenant shall fail to pay Landlord any rent or additional rent when the rent shall become due and shall not make the payment within five (5) days after notice by Landlord to Tenant, however, Landlord shall only be required to give one such notice within any twelve (12) month period, there being no requirement for Landlord to give any additional such notices.

D. If Tenant shall fail to perform or comply with any of the conditions of this Lease and if the non-performance shall continue for a period of ten (10) days after notice by Landlord to Tenant, or if the performance cannot be reasonably had within the ten (10) day period, Tenant shall not in good faith have commenced performance within the ten (10) day period and shall not diligently proceed to completion of performance, however,

Landlord shall only be required to give one such notice within any twelve (12) month period, there being no requirement for Landlord to give any additional such notices.

E. If Tenant shall vacate or abandon the premises.

F. If this Lease or the estate of Tenant hereunder shall be transferred to or shall pass to or devolve on any other person or party, except in the manner herein permitted.

**9. Effect of Default**

**9.1** In the event of any default, as set forth in Section 13, the rights of Landlord shall be as follows:

A. Landlord shall have the right to cancel and terminate this Lease, as well as all of the right, title, and interest of Tenant hereunder, by giving to Tenant notice of the cancellation and termination. Upon such notice, this Lease and the right, title, and interest of Tenant, shall terminate in the same manner and with the same force and effect, except as to Tenant's liability, as if the date fixed in the notice of cancellation and termination were the end of the term originally determined.

B. Whether or not Landlord elects to terminate this Lease due to any default by Tenant, Landlord may (i) terminate any sublease, license, concession, or any other consensual arrangement for possession entered into by Tenant and affecting the premises, and (ii) choose to succeed to Tenant's interest in such an arrangement. If Landlord elects to succeed to Tenant's interest in such an arrangement, Tenant shall, as of the date of notice by Landlord of that election, have no further right to, or interest in, the rent or other consideration receivable under that arrangement.

C. Landlord may elect, but shall not be obligated, to make any payment required of Tenant or comply with any agreement, term or condition required to be performed by Tenant, and Landlord shall have the right to enter the premises for the purpose of correcting or remedying any such default and to remain until the default has been corrected or remedied, but any expenditure for the correction by Landlord shall not be deemed to waive or release the default of Tenant or the right of Landlord to take any action as may be otherwise permissible hereunder in the case of any default.

**D.** Landlord may reenter the premises immediately and remove the property and personnel of Tenant, and store the property in a public warehouse or at a place selected by Landlord, at the expense of Tenant. After reentry Landlord may terminate the Lease on giving five (5) days' written notice of termination to Tenant. Without the notice, reentry will not terminate the Lease. On termination Landlord may recover from Tenant all damages proximately resulting from the breach, including the cost of recovering the premises, and the worth of the balance of this Lease for the remainder of the Lease term reduced to present value using an interest rate of five percent (5%), which sum shall be immediately due Landlord from Tenant.

**E.** After reentry, Landlord may relet the premises or any part thereof for any term without terminating the Lease, at the rent and on the terms as Landlord may choose. Landlord may make alterations and repairs to the premises. The duties and liabilities of the parties if the premises are relet shall be as follows:

**i.** In addition to Tenant's liability to Landlord for breach of the Lease, Tenant shall be liable for all expenses of the reletting, for the alterations and repairs made, and for the difference between the rent received by Landlord under the new Lease Agreement and the rent installments that are due for the same period under this Lease.

**ii.** Landlord shall have the right, but shall not be required, to apply the rent received from reletting the premises (1) to reduce the indebtedness of Tenant to Landlord under the Lease, not including indebtedness for rent, (2) to expenses of the reletting and alterations and repairs made, (3) to rent due under this Lease, or (4) to payment of future rent under this Lease as it becomes due.

**9.2** If the new Tenant does not pay a rent installment promptly to Landlord, and the rent installment has been credited in advance of payment to the indebtedness of Tenant other than rent, or if rentals from the new Tenant have been otherwise applied by Landlord as provided and during any rent installment period are less than the rent payable for the corresponding installment period under this Lease, Tenant shall pay Landlord for deficiency, separately for each rent installment deficiency period, and before the end of that period. Landlord may at any time after

a reletting terminate the Lease for the breach on which Landlord had based the reentry and subsequently relet the premises.

**10. Damage and Destruction of Premises**

**10.1** Tenant shall notify Landlord in writing promptly of any damage to the premises resulting from fire, earthquake or any other identifiable event of a sudden, unexpected or unusual nature ("casualty"). In the event of a partial destruction of the premises during the term from any cause, Landlord shall repair the same, provided the repairs can be made within one hundred twenty (120) days under the laws and regulations of applicable governmental authorities. Any such partial destruction shall neither annul nor void this Lease, except that Tenant shall be entitled to a proportionate reduction of rent while the repairs are being made, any proportionate reduction being based on the extent to which the making of repairs shall interfere with the business carried on by Tenant in the premises. If the repairs cannot be made in the specified time, Landlord may, at Landlord's option, make repairs within a reasonable time, this Lease continuing in full force and effect and the rent to be proportionately rebated as previously set forth in this section. In the event that Landlord does not elect to make repairs that cannot be made in the specified time or those repairs cannot be made under the laws and regulations of the applicable governmental authorities, this Lease may be terminated at the option of either party. Should the building in which the premises are situated be destroyed to the extent of not less than thirty-three and one-third (33-1/3%) percent of the replacement cost thereof, this Lease shall be terminated.

**10.2** Despite any other provision of this section, if the premises or the building is destroyed or damaged by a casualty during the last six (6) months of the Lease term, Landlord shall have the option to terminate this Lease by giving written notice to Tenant of the exercise of that option within thirty (30) days after that damage or destruction.

**10.3** If Landlord shall undertake to restore or repair the premises, Landlord shall initiate and pursue the necessary work with all reasonable dispatch, in a manner consistent with sound construction methods, but Landlord shall not be liable for any delays or interruptions occasioned by strikes, casualties, critical materials in short supply, governmental regulations or any other causes beyond Landlord's control. Following the restoration of the premises or completion of



repairs thereto, possession and occupancy of the premises shall be tendered to Tenant and rental shall commence and accrue as of that date; whereupon this Lease shall continue unabated.

**11. Subordination**

This Lease and all rights of Tenant hereunder shall be subject and subordinate to the lien of any and all mortgages that may now or hereafter affect any part of the premises, and to any and all renewals, modifications, or extensions of any such mortgages, as well as to any and all zoning laws, ordinances and regulations, conditions and agreements affecting the premises at any time, or any other encumbrances. Tenant shall on demand execute, acknowledge, and deliver to Landlord, without expense to Landlord, any and all instruments that may be necessary or proper to subordinate this Lease and all rights therein to the lien of any such mortgage or mortgages and each renewal, modification, or extension, and if Tenant shall fail at any time to execute, acknowledge, and deliver any such subordination instrument, Landlord, in addition to any other remedies available, may execute, acknowledge, and deliver the same as Tenant's attorney-in-fact, and in Tenant's name. Tenant hereby irrevocably makes, constitutes, and appoints Landlord, its successors and assigns, its attorney-in-fact, for that purpose.

**12. Unlawful or Dangerous Activity**

Tenant shall neither use nor occupy any part of the premises for any unlawful, disreputable or ultra-hazardous business purpose, nor operate or conduct its business in a manner constituting a nuisance of any kind. Tenant shall immediately, on discovery of any unlawful, disreputable or ultra-hazardous use, take action to halt such activity.

**13. Easements, Agreements, or Encumbrances**

This Lease is subject to (1) any state of fact that an accurate survey or personal inspection may show; (2) building and zoning restrictions, if any, and any and all other municipal or governmental restrictions and regulations imposed by any city, county, state, federal or other governmental or quasi-governmental authority having jurisdiction to impose the same; and (3) any and all covenants, restrictions and easements and any encumbrance or encumbrances existing at or prior to the time the Landlord acquired title to the premises.

**14. Quiet Enjoyment**

Landlord warrants that Tenant shall be granted peaceable and quiet enjoyment of the premises free from any eviction or interference by Landlord if Tenant pays the rent and other charges required, and otherwise fully and punctually performs the terms and conditions imposed on Tenant.

**15. Rent Abatement**

No abatement, diminution or reduction of rent shall be claimed or allowed to Tenant or any person claiming under it under any circumstances whether for inconvenience, discomfort, interruptions of business or otherwise, arising from the making of alterations, improvements or repairs to the premises, because of any governmental laws, regulations, ordinances or the like, or arising from and during the restoration of the premises after the destruction or damage by fire or other cause or the taking by condemnation of a portion only of the premises except as herein provided.

**16. Access to Premises; Signs Posted by Landlord**

16.1 Tenant shall permit Landlord or its agents to enter the premises at all reasonable hours to inspect the premises, to serve, post and keep posted notices required by law or that Landlord considers necessary for the protection of Landlord or the premises, or make repairs that Tenant may neglect or refuse to make in accordance with the provisions of this Lease, or make repairs, replacements, alternations or improvements to the premises that Landlord considers necessary or desirable, and also to show the premises to prospective buyers or renters at any time within four (4) months prior to the expiration of the term. Tenant shall, within four (4) months prior to the expiration of the term, permit the usual notices of "For Rent" and "For Sale" to be placed on the premises and to remain without hinderance or molestation.

16.2 Notwithstanding any other provision of this Lease, Landlord may enter the premises at any time to perform services required of Landlord, take possession due to any breach of this Lease or perform any covenants of Tenant that Tenant fails to perform.

16.3 Landlord may at any time change the name of the building and install, affix and maintain all signs on the exterior and interior of the building as Landlord may, in Landlord's sole

discretion, desire. Tenant shall not have or acquire any property right in the name of the building. Tenant may use the name of the building, or pictures or illustrations of the building in advertising or other publicity during the Lease term.

**17. Waivers**

**17.1** The failure of Landlord to insist on a strict performance of any of the terms and conditions shall be deemed a waiver of the rights or remedies that Landlord may have regarding that specific instance only, and shall not be deemed a waiver of any subsequent breach or default in any terms and conditions.

**17.2** No receipt by Landlord of a lesser payment than the rent required under this Lease shall be considered to be other than on account of the earliest amount due, and no endorsement or statement on any check or letter accompanying a payment or check shall be considered an accord and satisfaction. Landlord may accept checks or payments without prejudice to Landlord's rights to recover all amounts due and pursue all other remedies provided for in this Lease.

**17.3** Landlord's receipt of monies from Tenant after giving notice to Tenant terminating this Lease shall in no way reinstate, continue or extend the Lease term or affect the termination notice given by Landlord before the receipt of those monies.

**18. Notice**

**18.1** All notices to be given with respect to this Lease shall be in writing. Each notice shall be sent by registered or certified mail, postage prepaid and return receipt requested, to the party to be notified at the address set forth herein or at such other address as either party may from time to time designate in writing.

**18.2** Each notice shall be deemed to have been given at the time it shall be deposited in the United States mail in the manner prescribed. Nothing shall be construed to preclude personal service of any notice in the manner prescribed for personal service of a summons or other legal process.

**19. Arbitration**

In a situation where this Lease provides for the settlement of a dispute or question by arbitration, the same shall be settled by arbitration in accordance with the current rules of the American Arbitration Association, and judgment on the award rendered may be entered in any court having jurisdiction.

**20. Assignment, Mortgage or Sublease**

Neither Tenant nor its successors or assigns shall transfer, assign, mortgage, pledge or encumber this Lease or sublet the premises, in whole or in part, or permit the premises to be used or occupied by others, nor shall this Lease be assigned or transferred by operation of law, without the prior consent in writing of Landlord in each instance. If this Lease is assigned or transferred, or if all or any part of the premises is sublet or occupied by anybody other than Tenant, Landlord may, after default by Tenant, collect rent from the assignee, transferee, subtenant or occupant and apply the net amount collected to the rent reserved herein, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of any agreement or condition, or the acceptance of the assignee, transferee, subtenant or occupant as Tenant. Tenant shall continue to be liable in accordance with the terms and conditions of this Lease and shall not be released from the performance of the terms and conditions. The consent by Landlord to an assignment, mortgage, pledge or transfer shall not be construed to relieve Tenant from obtaining the express written consent of Landlord to any future transfer of interest.

**21. Surrender of Possession**

21.1 Tenant shall, on the last day of the term, or on earlier termination and forfeiture of the Lease, peaceably and quietly surrender and deliver the premises to Landlord free of subtenancies, including all buildings, additions, and improvements constructed or placed thereon by Tenant, except moveable trade fixtures, all in good condition and repair. Any trade fixtures or personal property not used in connection with the operation of the premises and belonging to Tenant, if not removed at the termination or default, and if Landlord shall so elect, shall be deemed abandoned and become the property of Landlord without any payment or offset. Landlord may remove such fixtures or property from the premises and store them at the risk and expense

of Tenant if Landlord shall so elect. Tenant shall repair and restore all damage to the premises caused by the removal of equipment, trade fixtures, and personal property.

**21.2** No act of Landlord or its authorized representative shall constitute Landlord's acceptance of the surrender of the premises by Tenant unless that intent is specifically acknowledged in a writing signed by Landlord. At the option of Landlord, a surrender and termination of this Lease shall operate as an assignment to Landlord of all subleases or subtenancies. Landlord shall exercise this option by giving notice of that assignment to all subtenants within thirty (30) days after the effective date of the surrender and termination.

**21.3** If Tenant remains in possession of the premises after expiration or earlier termination of this Lease with Landlord's expressed written consent, Tenant's occupancy shall be a month-to-month tenancy at a rent agreed on by Landlord and Tenant, but in no event less than the base rent and additional rent payable under this Lease during the last full month before the date of expiration or earlier termination of this Lease. The month-to-month tenancy shall be on the terms and conditions of this Lease, except as provided in this paragraph. Landlord's acceptance of rent after such holding over with Landlord's written consent shall not result in any other tenancy or in a renewal of the original term of this Lease. If Tenant remains in possession of the premises after expiration or earlier termination of this Lease without Landlord's consent, Tenant's continued possession shall be on the basis of a tenancy at sufferance and Tenant shall pay as rent during the holdover period an amount equal to the greater of (i) 150% of the fair market rental (as reasonably determined by Landlord) for the premises, or (ii) 200% of the base rent and additional rent payable under this Lease for the last full month before the date of expiration or termination.

## **22. Remedies of Landlord**

**22.1** In the event of a breach or a threatened breach by Tenant of any of the terms or condition of this Lease, Landlord shall have the right of injunction to restrain Tenant and the right to invoke any remedy allowed by law or in equity, as if the specific remedies of indemnity or reimbursement were not provided.

**22.2** The rights and remedies given to Landlord in this Lease are not distinct and separate, but cumulative, and not one of them, whether or not exercised by Landlord, shall be deemed to be in exclusion of any of the others, by law, or by equity provided.

**22.3** In all cases, and in any suit, action or proceeding of any kind between the parties, it shall be presumptive evidence of the fact of the existence of a charge being due if Landlord shall produce a bill, notice or certificate of any public official entitled to give that notice to the effect that such charge appears of record on the books in his office has not been paid.

**22.4** No receipt of money by Landlord from Tenant after default or cancellation of this Lease in any lawful manner shall (1) reinstate, continue, or extend the term or affect any notice given to Tenant, (2) operate as a waiver of the right of Landlord to enforce the payment of rent and additional rent due or falling due, or (3) operate as a waiver of the right of Landlord to recover possession of the premises by proper suit, action, proceeding or other remedy. After (1) service of notice of termination and forfeiture as provided and the expiration of the time specified, (2) the commencement of any suit, action, proceeding, or other remedy, or (3) final order or judgment for possession of the premises, Landlord may demand, receive, and collect any monies due, without in any manner affecting such notice, order or judgment. Any and all such monies so collected shall be deemed to be payment on account of the use and occupation of the premises or at the election of Landlord, on account of the liability of Tenant.

**23. Environment, Indemnification and Contaminants**

**23.1** Landlord hereby agrees to reimburse upon demand, defend (with counsel reasonably satisfactory to Tenant), indemnify and hold harmless Tenant from and against all liability, costs, expenses, claims, fines, penalties and damages arising during or after the term of this Lease out of or in any way related to the presence of any underground storage tanks or any contaminants on the premises which are not caused to be present by the activities of Tenant, its employees, agents, contractors, sublessees or assigns, or out of a breach of the foregoing warranties, including, without limitation, court costs and attorneys' fees in any suit, action or administrative proceeding or negotiations resulting therefrom, cleanup and the detoxification of the premises and the environment. The foregoing indemnification shall survive the expiration or termination of this Lease and the transfer of all or any portion of this premises.

**23.2** Tenant hereby agrees to reimburse upon demand, defend (with counsel reasonably satisfactory to Landlord), indemnify and hold harmless Landlord from and against all liability, costs, expenses, claims, fines, penalties and damages arising during or after the term of this Lease

out of or in any way related to the presence of any underground storage tanks or any contaminants on the premises which are caused to be present by the activities of Tenant, its employees, agents, contractors, sublessees or assigns or out of a breach of the foregoing warranties, including, without limitation, court costs and attorneys' fees in any suit, action or administrative proceeding or negotiations resulting therefrom, cleanup and the detoxification of the premises and the environment. The foregoing indemnification shall survive the expiration or termination of this Lease and the transfer of all or any portion of this premises.

**23.3** For the purpose of this Lease, the word "contaminants" shall mean: any hazardous, toxic or dangerous waste, substance (including, but not limited to, any petroleum derivative substance) or material defined as such in (or for purposes of) any state, federal or local environmental laws, regulations, decrees or ordinances, in the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), as amended, or in any so-called state or local "Superfund", "Superlien" or "Clean-up Lien" law, or any other federal, state or local regulation, order or decree relating to or imposing liability or standards of conduct concerning any such substances or materials or any amendments or successor statutes thereto.

#### **24. Indemnification**

**24.1** If either party defaults in any of the covenants or agreements herein contained, the defaulting party shall pay all costs and expenses, including reasonable attorney's fees incurred by the other party in enforcing its rights arising under this Agreement, whether incurred through legal action or otherwise.

**24.2** Tenant hereby indemnifies and holds the Landlord, the Landlord's agents, employees, successors, and assigns harmless from any and all claims, damages or liabilities, whatsoever, stemming from, arising out of or with respect to Tenant's business activities on the Premises.

#### **25. Covenants Binding on Successors**

Each provision of this Lease shall extend to and shall, as the case might require, bind and inure to the benefit of Tenant and Landlord and their respective heirs, legal representatives,

successors and assigns; provided, however, that this Lease shall not inure to the benefit of any assignee, transferee or successor of Tenant except upon the written consent of Landlord.

**26. Total Agreement**

This Lease contains the entire Agreement between the parties and cannot be amended or terminated except by a written instrument subsequently executed by the parties.

**27. Time of the Essence**

Time is of the essence in all provisions of this Lease.

**28. Applicable Law**

This Lease shall be construed in accordance with the laws of the State of Wisconsin.

**29. Severability**

If any provision of this Lease, or its application to any person, is held to be invalid, for any reason, the other provisions and their applications shall be unaffected and shall remain in effect and to this end, the provisions are declared to be completely severable.

IN WITNESS WHEREOF, the parties have executed this Lease at \_\_\_\_\_,  
Wisconsin, the day and year first above written.

**LANDLORD:**

**TENANT:**

**BOWER CITY LAND PARTNERSHIP**

**WWC ACQUISITION, L.L.C.**

By: Albert R. Young

By: Peter R. Douglas  
Peter R. Douglas, Authorized Manager

By: Lois M. Haugh

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