

LEASE WITH OPTION TO PURCHASE

This Lease Agreement with Option to Purchase (hereinafter referred to as "Lease") made as of the ____ day of _____, 2005, by and between FB Properties Joint Venture, a Wisconsin joint venture between Towne Realty, Inc. and a trust established for the benefit of the Zilber Family, a Wisconsin joint venture (hereinafter referred to as the "Tenant"), and the Redevelopment Authority of the City of Milwaukee, a statutory public body, (hereinafter referred to as the "Authority").

Witnesseth:

The Authority hereby leases, demises and lets unto Tenant the real property (hereinafter referred to as the "Property") located at 738 and 744 N. Old World Third Street in the Wisconsin – 4th Street Redevelopment Project area of the City of Milwaukee. The Property is more particularly described in Exhibit A, which is affixed hereto and incorporated into this document by reference.

This Lease is entered into by the parties under the following terms and conditions:

1. Term. Eight (8) years commencing on _____ (hereinafter referred to as the "Commencement Date") and terminating on _____.
2. Rent. Rent is \$2,275 per month (to be increased by 3% annually on the anniversary of the Commencement Date) due on the 1st of each month.
3. Use of the Property. The Tenant shall use the Property solely for purposes consistent with the renewal plan for the Wisconsin – 4th Street Redevelopment Project area. In this instance, the Tenant will use the Property for surface parking purposes.
4. Occupancy Subject to Existing Easements and Restrictions. Tenant's occupancy of the Property is subject to any recorded easements and restrictions of record. The Authority

further reserves the right to grant additional easements against the Property during the lease term. The Authority shall give the Tenant notice prior to execution of such additional easements or restrictions.

5. Termination and Vacation.

a. Termination and Vacation Date. Tenant shall vacate the Property on or before the expiration of this Lease. The Property shall be returned to the Authority by Tenant in substantially the same condition in which it was received. In the event that Tenant fails to vacate the Property in a timely fashion, the Authority shall have the option to cause the Property to be vacated, and to assess the actual costs of such vacation against the Tenant.

b. Property to be Vacated Clear of all Materials and Equipment. Tenant shall vacate the Property free and clear of all materials and equipment. In the event that Tenant fails to vacate the Property in the prescribed state of clearance, as determined by the Authority, after thirty (30) days' written notice to Tenant, the Authority may have such clearance and clean-up conducted as in its reasonable judgment is necessary in order to bring the Property to the prescribed state of clearance and to assess the costs of such action against Tenant.

6. Termination by the Authority. The Authority may, in its sole discretion and without cause, terminate this Lease by providing Tenant with 18 months prior written notice thereof.

7. Default. The occurrence of one or more of the following events shall be considered events of default under the terms of this Lease:

a. Tenant shall be adjudged a bankrupt, or a decree or order, approving as properly filed, a petition or answer asking reorganization of Tenant under Federal Bankruptcy Laws as now or hereafter amended, or under the laws of this State, shall be entered, and any such decree,

judgment or order shall not have been vacated, stayed or set aside within sixty (60) days from the date of the entry or granting thereof; or

b. Tenant shall file or admit the jurisdiction of the court and the material allegations contained in any petition in bankruptcy or any petition pursuant or purporting to be pursuant to the Federal Bankruptcy Laws as now or hereafter amended, or Tenant shall institute any proceedings or shall give its consent to the institution of any proceedings for any relief of Tenant under any bankruptcy or insolvency laws or any laws relating to the relief of debtors, readjustment of indebtedness, or reorganization; or

c. Tenant shall make an assignment for the benefit of creditors or shall apply for or consent to the appointment of a receiver for Tenant; or

d. Tenant shall abandon the Property for a period of thirty (30) days or be delinquent in any payments due under this Lease required to be made by Tenant hereunder and such delinquency shall continue for ten (10) days after notice thereof in writing to Tenant; or

e. Tenant shall make any changes in use, or additional use of, the Property; or

f. Tenant shall make any assignment, transfer, conveyance or other disposition of its interest in the Property without the express written consent of the Authority; or

g. Tenant shall default in any of the other covenants or agreements herein contained to be kept, observed and performed by Tenant, and such default shall continue for thirty (30) days after notice thereof in writing to Tenant.

Upon occurrence of any one or more of such events of default, it shall be lawful for the Authority, at its election in the manner and terms herein provided, to declare this Lease ended, and to recover possession of the Property, either with or without process of law, to enter and to expel, and remove Tenant and all agents, employees and representatives of Tenant engaged in

operating the Property or occupying the Property, using such force as may be necessary in so doing. If default shall be made in any covenants, agreements, conditions or undertakings herein contained, to be observed and performed by Tenant, which cannot with due diligence be cured within a period of thirty (30) days, and if notice thereof in writing shall have been given to Tenant, and if Tenant prior to the expiration of said thirty (30) days from and after the giving of such notice, commences to eliminate the cause of such default and proceeds diligently and with reasonable dispatch to take all steps and do all work required to cure such default and thereafter does so cure such default, then the Authority shall not have the right to declare the term of this Lease as ended; provided, however, that the curing of any default in such manner shall not be construed to limit or restrict the right of the Authority to declare this Lease ended and terminated, and to enforce all of the Authority's rights and remedies hereunder for any other default not so cured.

8. Maintenance and Housekeeping. Routing maintenance, housekeeping and cleanliness shall be the responsibility of Tenant. The Authority retains the right to have any of its officers, agents or employees inspect the Property at all reasonable times and Tenant shall be required to grant full access to the Property at such times.

9. Utilities. Tenant shall be solely responsible for the installation and purchase of all utility services required by Tenant during the term of this Lease.

10. Assignment and Subleasing. Tenant shall not, except with the prior written consent of the Authority, assign any interest in this Lease, nor sublet any portion of the Property.

11. Indemnification. Tenant hereby agrees to indemnify and save harmless the Authority and the City of Milwaukee (hereinafter referred to as "City") from and against all liabilities, claims, demands, judgments, losses and all suits at law or in equity, costs and expenses,

including reasonable attorney's fees, for injury to and/or death of any person or persons and/or loss and/or damage to the property of any person, firm or corporation whomsoever, including both parties hereto and their employees, arising from the construction, maintenance or operation of Tenant's improvements and equipment, or in the carrying on of its business as hereinbefore set forth, except when such liability, claim, demand, judgment or loss arises from a negligent act of the Authority or the City, their agents, contractors or employees.

12. Insurance. Tenant will furnish a Certificate of Insurance showing insurance written by a company licensed in the State of Wisconsin approved by the City Attorney and covering any and all liability or obligations which may result from the operations by Tenant's employees, agents, contractors or subcontractors as aforesaid in this Lease; such Certificate of Insurance will name both the Authority, the City of Milwaukee and their respective officers and employees as additional insureds. The Certificate shall provide that the company will furnish the Authority with a thirty (30) day written notice of cancellation, nonrenewal or material change. Said insurance shall be written in comprehensive form and shall protect Tenant and the Authority against all claims arising from injuries to members of the public or damage to property of others arising out of any act or omission of Tenant's employees, agents, contractors or subcontractors as follows:

<u>Coverage</u>	<u>Amount</u>
- Comprehensive General Liability (including applicable Contractual liability specifically Relating to this Agreement)	\$1,000,000.00 per occurrence \$5,000,000.00 aggregate
- Worker's Compensation	In accordance with Ch. 102, Wisconsin Statutes, and Federal law

The limits and adequacy of said insurance shall be determined by the Authority and the form and proof of insurance shall also be approved by the Authority. Failure of Tenant to maintain adequate coverage shall not relieve it of any contractual responsibility or obligation under this Lease. The Authority shall have the right to review policies providing the required coverage.

The attorney in fact or agent of any insurance company furnishing any policy of insurance shall sign and furnish an affidavit setting forth that no Authority or City official or employee has any interest, direct or indirect, or is receiving any premium, commission, fee or other thing of value on account of furnishing said policy of insurance.

13. Taxes. Tenant shall pay and discharge when due all taxes, if any, assessments, levies and other charges, general and special, that are or may be during the term hereof levied, assessed, imposed or charged on the Property or the improvements thereon or hereafter placed thereon.

14. Status of Improvements. Tenant shall make no substantial improvements upon the Property without the prior written consent of the Authority.

Upon termination of this Lease, Tenant shall, upon notice from the Authority, be required and obligated to remove from said property at any time within thirty (30) days after the termination of this Lease, or any renewal or extension thereof, however effected, all buildings, or other improvements and any and all appurtenances thereto brought or placed upon said Property by Tenant. In the event such removals are not completed within said thirty (30) days, the Authority shall have the right to collect damages from Tenant; provided, however, that the Authority may in lieu of removal require Tenant to convey title to such improvements to the Authority, free and clear of all liens and encumbrances. Any such election shall be made in writing and communicated to Tenant. No such option with respect to election of either to

remove or not to remove shall rest with Tenant and Tenant shall have the obligation and responsibility to perform that which the Authority shall direct.

15. Compliance with Laws and Orders. Tenant agrees to observe fully and to comply with any lawful rule, regulation or directive which shall emanate from any state, federal or local departments or agencies having jurisdiction.

16. Time of the Essence. It is expressly understood and agreed to by the parties hereto that time is of the essence for each term and provision of this Lease.

17. Waiver. One or more waivers by the Authority of any covenant or condition of this Lease shall not be construed as a waiver of a subsequent breach of the same or of any other covenant or condition. The consent or approval given by the Authority with respect to any act by Tenant requiring such consent or approval shall not be deemed to waive or render unnecessary further consent or approval of any subsequent similar act by Tenant.

18. Option to Purchase Authority Parcel. The Authority (Seller) grants an option to Tenant (Buyer) to purchase the Property; provided, however, that the Authority and the City must approve the complete purchase terms and further provided that Tenant is not in default of any term of the Lease and submits an approvable development plan to the Authority.

19. Exercise of Option. This option may be exercised in writing at any time during the term of the Lease, by the mailing of a notice by certified mail, return receipt requested, exercising option addressed to the Authority at the address herein or by personal delivery of the notice, and by delivering in like manner a development plan for the Property, which development plan must be approved by the Authority. If the Authority does not approve the development plan within sixty (60) days after receipt, the Tenant's exercise of the option shall be null and void.

If this option is exercised, the transaction shall be closed, within ninety (90) days of date of service, at the Authority's office or such other place as may be agreed upon, at which time the Tenant (Buyer) shall pay the full purchase price by certified or cashiers check. Rent shall be prorated as of date of closing.

The Authority shall furnish and deliver to Buyer for examination at least 15 days prior to the date set for closing a commitment for an owner's policy of title insurance in the amount of the full purchase price naming Buyer as the insured, as Buyer's interest may appear written by a responsible title insurance company licensed by the State of Wisconsin, which policy shall guarantee Seller's title to be in condition called for by this Agreement.

20. Purchase Price. The purchase price shall be determined by mutual agreement of the parties or by an appraisal performed by an appraiser mutually agreed to by the parties. If the purchase price or the appraiser cannot be mutually agreed to by the parties within thirty (30) days after the mailing of the notice of exercising the option, the option to purchase may be terminated at the option of the Authority. The Authority shall, upon payment of the purchase price, convey the property by quit claim deed, or conveyance provided herein, free and clear of all liens and encumbrances, excepting municipal and zoning ordinances, easements for public utilities, recorded building and use restrictions and covenants and other encumbrances or liens suffered to be placed against the Property by Tenant, provided none of the forgoing prohibit expansion of Tenant's present use.

21. Option to Purchase Tenant Parcel. The Tenant (Seller) shall grant an option to the Authority (Buyer) to purchase Tenant's Property at 752 N. Old World Third Street, as more particularly described on Exhibit B which is attached hereto and incorporated herein.

22. Exercise of Option. The Authority's option to purchase Tenant's Property may only be exercised if Tenant has not successfully exercised its option to purchase the Property under Paragraph 19 and only after the 8th anniversary of the commencement date. The option shall be exercised by mailing a notice by certified mail, return receipt requested, exercising the option addressed to the Tenant at the address herein or by personal delivery of the notice.

If this option is exercised, the transaction shall be closed within sixty (60) days of the date of the service, at the Authority's office or such other place as may be agreed upon, at which time the Authority (Buyer) shall pay the full purchase price by certified or cashiers check.

Tenant shall furnish and deliver to the Authority for examination at least 15 days prior to the date set for the closing a commitment for an owner's policy of title insurance in the amount of the full purchase price naming the Authority as the insured, as Authority's interest may appear written by a responsible title insurance company licensed by the State of Wisconsin, which policy shall guarantee Tenant's title to be in a condition called for by this Agreement.

23. Purchase Price. The purchase price shall be determined by mutual agreement of the parties or by an appraisal performed by an appraiser mutually agreed to by the parties. If the purchase price or the appraiser cannot be mutually agreed to within thirty (30) days after the mailing of the notice exercising the option, the option to purchase may be terminated by the Tenant at its election. Thereafter, the Authority shall retain and may pursue all of its acquisition rights under Chapter 32, Stats.

24. Sole Agreement and Amendment. This Lease and the attached exhibits to which reference is made herein contain all of the agreements and covenants made between the parties hereto, shall be binding upon the parties hereto and their respective successors and assigns, and

may not be modified orally or in any other manner other than by agreement, in writing, signed by each of the parties to this Lease.

25. Notice. Any notice provided for herein or given pursuant to this Lease, shall be deemed in compliance herewith if in writing and sent by United States certified or registered mail, postage prepaid, return receipt requested, or by receipted personal delivery to the parties as follows:

To the Authority:

809 N. Broadway
Milwaukee, WI 53202
Attention: Rocky Marcoux
Executive Director-Secretary

To the Tenant:

710 N. Plankinton Ave.
Milwaukee, WI 53203

26. Governing Law. This Lease shall be governed by the internal laws of the State of Wisconsin. If any term or provision of this Lease or any exhibits hereto, or the application thereof to any person or circumstance, shall to any extent be declared invalid or unenforceable, then the remainder of this Lease and exhibits, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by applicable law.

27. Nondiscrimination. Tenant hereby agrees that in its use of the Property and in its activities undertaken pursuant hereto it shall not discriminate, permit discrimination or restriction on the basis of race, sexual orientation, creed, ethnic origin or identity, color, gender, religion, marital status, age, handicap or national origin.

28. Authority of the Authority. Any matters not herein expressly provided for shall be handled and disposed of in the discretion of the Authority. Any discretion herein granted to the Authority may be exercised through the Executive Director-Secretary and/or his designee(s).

The Authority may, in its sole discretion, reduce the leased portion of the Property by giving the Tenant one year prior written notice thereof. Such reduction in leasehold shall not be deemed to terminate this Lease, but shall result in a recalculation of rent.

29. Counterparts. This Lease may be executed in any number of counterparts, each of which shall constitute an original and all of which shall constitute one and the same Lease.

30. Approval. It is further agreed and understood that this Lease must be submitted to the City for its approval and such approval is a condition precedent to the Lease taking effect.

A memorandum of this Lease may be recorded in the Register of Deeds Office provided that both parties agree to the content thereof.

IN WITNESS WHEREOF, The parties hereto have by their duly authorized officers executed this Lease Agreement under seal as of the day and year first above written.

IN THE PRESENCE OF:

REDEVELOPMENT AUTHORITY
OF THE CITY OF MILWAUKEE

Chairman

Executive Director-Secretary

IN THE PRESENCE OF:

FB PROPERTIES JOINT VENTURE

STATE OF WISCONSIN)
MILWAUKEE COUNTY)

Personally came before me this ____ day of _____, 2005,
_____, Chairman of the above-named Redevelopment Authority of the City of
Milwaukee, who by its authority and on its behalf executed the foregoing instrument and
acknowledged the same.

Notary Public, State of Wisconsin
My Commission Expires: _____

STATE OF WISCONSIN)
MILWAUKEE COUNTY)

Personally came before me this ____ day of _____, 2005, _____,
Executive Director-Secretary of the above-named Redevelopment Authority of the City of
Milwaukee, who by its authority and on its behalf executed the foregoing instrument and
acknowledged the same.

Notary Public, State of Wisconsin
My Commission Expires: _____

STATE OF WISCONSIN)
MILWAUKEE COUNTY)

Personally came before me this ____ day of _____, 2005,
_____, the _____ and _____, the _____ of FB
Properties Joint Venture, who by its authority and on its behalf executed the foregoing and
acknowledged the same.

Notary Public, State of Wisconsin
My Commission Expires: _____

This Agreement was drafted by the
Office of the City Attorney.

Approved as to content this
____ day of _____, 2005.

Deputy City Attorney

Approved as to form and execution
this ____ day of _____, 2005.

Deputy City Attorney

1050-2005-2310:96164

