

**CONTRACT EXEMPTION NO. 2010-04**

**Issued On July 8, 2010 By The**

**WEST VIRGINIA ETHICS COMMISSION**

**OPINION SOUGHT**

The Town of Wayne asks for a contract exemption to allow it to continue leasing the Town Hall building from Mayor James Ramey, III.

**FACTS RELIED UPON BY THE COMMISSION**

James Ramey, III, is the elected Mayor of the Town of Wayne. He owns a building which he leases to the Town. Prior to leasing the building, the Town of Wayne obtained an exemption from the Ethics Commission (A.O. 2003-01 issued on February 6, 2003 is attached hereto and incorporated by reference). The opinion granted the Town an exemption to lease the building for seven years.

According to the 2003 written lease agreement between James Ramey, III, and the Town of Wayne, the terms of the lease were as follows: **First**, a four month term from **March 1, 2003** and ending on **June 30, 2003**; and, **Second**, a one year term commencing on July 1, 2003 with a clause stating that it is subject to renewal for a seven year period thereafter. Hence, the total term of the lease was seven years and four months. That was 4 months longer than the seven year period authorized by the Ethics Commission.

Hence, in February of 2010, the Town sought a temporary contract exemption to cure the defect and to allow it adequate time to determine whether it wanted to continue to lease the subject building from James Ramey, III. On March 4, 2010, the Commission granted the temporary contract exemption. See C.E. 2010-01. In its opinion, the Commission stated:

Accordingly, the Ethics Commission hereby grants a temporary contract exemption until July 1, 2010 to allow the Town to continue to lease the subject building. If the Town seeks to renew its lease with James Ramey, III, then it may only do so by submitting another contract exemption request not later than May 15, 2010.

The Commission will **only** consider granting such a request if the Town submits with it the report of an independent appraiser setting forth the fair market rental value of the building. The appraiser hired should be different from the one initially used when the initial contract exemption request was submitted in 2003. Further, the appraiser should be an individual without any familial or financial connections to Ramey.

The Town proceeded to have the property appraised by John P. Cavendish and R. Todd Chadwick.<sup>1</sup> At a meeting held on June 7, 2010, the Town Council voted unanimously to continue to rent the building from the Mayor for a **five** year period at the rate of \$3,950.00 per month with a cost of living adjustment each year which, according to the terms of the lease, is the equivalent of the consumer price index established by the Department of Labor. (Proposed Lease, Article XIV). According to the minutes and proposed lease, the Town further agrees to pay: (1) the property taxes on the building; (2) upkeep, excluding the exterior walls and the roof; and, (3) liability insurance. (Proposed lease attached hereto and incorporated herein).

During the discussions and vote, Mayor Ramey properly recused himself; hence, he was not present for the deliberations or vote, including discussions held in executive session. Pursuant to the terms of the proposed lease, the lease and any extension "shall be subject to Town Council's yearly approval on the anniversary date of said Lease, and likewise [be] subject to approval of the West Virginia Ethics Commission."

The current rent paid by the Town is \$2,500.00 per month. Pursuant to the terms of the current lease, the Town pays the real estate taxes and is required to carry liability insurance. The appraisal report states the total square footage is 13,780.

Further, according to the appraisal report, the current rent per square foot is \$2.18 annually. The appraiser opines that the current lease value is "somewhere in the neighborhood of \$5.00 per square foot." Pursuant to the terms of the proposed lease, the cost per square foot is \$3.44.<sup>2</sup>

The appraiser examined comparable properties in the area which were for sale or for lease, including a building currently owned by the Town of Wayne which it leases to the senior citizen center. The report states that it is much smaller and is estimated to be 1/4 to 1/3 acre in size and that a garage structure of some type would have to be built to have comparable utility and storage areas. The tax records state that the property owned by James Ramey, III and leased to the Town is approximately 1.8 acres. Paved, striped, on-site parking for at least 40 automobiles is available at the current Town Hall site and will continue to be available pursuant to the terms of the lease.

In regard to other options discussed in the report, the appraiser notes that to purchase a comparable building site that is level, non-flooding property with convenient access and good visibility could cost approximately \$250,000.00 per acre. To construct a building on the site would cost approximately \$50.00 to \$60.00 per square foot. The appraisal report notes that the Recorder related that a local landowner indicated that he would donate a portion of his property if the Town were to run streets and utilities to the

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<sup>1</sup> John Cavendish was independently selected by the Town. Mr. Cavendish's business leases space to house the office of the West Virginia Ethics Commission. Upon learning of Mr. Cavendish's involvement, the Executive Director contacted James Ramey, III to disclose the lease agreement between Mr. Cavendish and the Commission. Both the Commission and James Ramey, III, agreed to the Town employing Mr. Cavendish to conduct the appraisal.

<sup>2</sup> Annual rent of 47,400.00/13,780 SF = \$3.44 per square foot.

unimproved rear portion of the site. The report states that "Depending on the engineering requirements for running streets, utilities and services required and the actual size of the site for the town would be acquiring, cost vs. benefit for this type of endeavor could vary widely. More information as to the particular requirements of this donation is needed to determine if it is economically viable."

The report notes that in August of 2005, the Town entered into a sublease with the West Virginia State Police whereby the Town leases 2700 square foot of the first floor to this State agency. The report states that in 2005, this space was "substantially updated."<sup>3</sup> The State pays the Town \$500.00 per month to rent this portion of the building. Pursuant to the terms of the proposed lease, the Town of Wayne may not sublease the premises without the written consent of the lessor, James Ramey, III. See proposed lease, Article V.

The proposed lease states that the Town shall be responsible to keep the interior of the premises in good repair. James Ramey, III is responsible for maintaining the roof and exterior walls.

The Town directed its attorney to seek a contract exemption. The request letter states that "If this lease is rejected, the Town is simply going to have to move to inadequate or substandard space."

### **CODE PROVISIONS RELIED UPON BY THE COMMISSION**

W. Va. Code § 6B-2-5(b) reads:

*Use of public office for private gain.* -- (1) A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person. Incidental use of equipment or resources available to a public official or public employee by virtue of his or her position for personal or business purposes resulting in de minimis private gain does not constitute use of public office for private gain under this subsection. The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

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<sup>3</sup> The improvements were the subject of a complaint before the West Virginia Ethics Commission, VCRB 2005-10 whereby the Commission found that James Ramey, III was guilty of violating the Ethics Act and imposed the following sanctions: (i) Public reprimand; (ii) Restitution to the Town of Wayne in the amount of \$ 43,931.58 (the cost of the renovations made to the privately owned building with public funds); (iii) Fine of \$5,000.00; (iv) Reimbursement to the Commission for costs; and, (v) Recommendation that Respondent Ramey be removed from office. On appeal, the Court upheld the ruling in majority part with one exception: it held that the Commission did not have grounds to impose a fine. The Commission agreed to a payment plan. At present, based upon information and belief, Respondent Ramey has complied with the terms of the payment plan and is not currently delinquent or in default.

W. Va. Code § 6B-2-5(d)(1) provides in part that ... no elected ... official ... or business with which he or she is associated may be a party to or have an interest in ... a contract which such official or employee may have direct authority to enter into, or over which he or she may have control: Provided, That nothing herein shall be construed to prevent or make unlawful the employment of any person with any governmental body....

W. Va. Code § 6B-2-5(d)(3) provides that where the provision of subdivision (1) of this subsection would result ... in excessive cost, undue hardship, or other substantial interference with the operation of a ... municipality... the affected government body ... may make written application to the ethics commission for an exemption from subdivision (1) ... of this subsection.

### **ADVISORY OPINION**

The Ethics Act, W. Va. Code § 6B-2-5(d)(1), prohibits public officials from having an interest in public contracts. These prohibitions were designed by the Legislature to steer public servants away from inherently questionable situations. These prohibitions are intended to prevent not only actual impropriety, but also situations which give the appearance of impropriety.

Pursuant to W. Va. Code § 6B-2-5(d)(1) an elected public official may not have more than a limited interest in the profits or benefits of a public contract over which he or she has direct authority or control unless his or her governing body seeks, and receives, an exemption from the West Virginia Ethics Commission to contract with the public official. The Ethics Act prohibits public servants, including Mayors, from having more than a limited interest in the profits or benefits of a public contract over which he or she has direct authority or control, unless his or her governing body seeks, and receives, an exemption to contract with the public official. W. Va. Code § 6B-2-5(d)(1). For purposes of this provision, a limited interest is defined as an interest which does not exceed one thousand dollars in the profits or benefits of the contracts in a calendar year. W. Va. Code § 6B-2-5(d)(2)(A). However, the \$1,000 exception is inapplicable here.

The Town of Wayne seeks to enter into a five year lease with James Ramey, III with the limitation that it is subject to renewal on a yearly basis. Further, at the conclusion of the five year period, the Town may exercise its option to renew the Lease for a five year period. The proposed lease amount is \$3,950.00 per month with a cost of living adjustment each year which, according to the terms of the lease, is the equivalent of the consumer price index established by the Department of Labor.

The June 7, 2010 minutes reflect that the Town Council Members voted unanimously to enter into the new lease. The minutes reflect that the Town Council Members were in executive session for approximately 45 minutes. Presumably, the Town Council Members considered all options discussed in the appraisal report and concluded that it was in the best interest of the Town to continue leasing the building from the Mayor. Although the Town used the services of an appraiser to evaluate the proposed lease,

there is no indication that the Town actively or publicly advertised for the purpose of seeking proposals from other property owners.

The appraiser states that the approximate fair market value of the space is "somewhere in the neighborhood of \$5.00 per square foot." The Commission recognizes that the actual rental value is dependent upon what a potential lessee is willing to pay on the open market. Nonetheless, the Commission finds that the appraised lease value represents a reliable benchmark as to the value of the current space or comparable space on the market.

Pursuant to the terms of the proposed lease, the rate is \$3.44 per square foot. This amount will vary year to year over the course of the proposed five year lease based upon changes, if any, to the consumer price index. However, the appraised value reflects that to require the Town to lease comparable space would result in additional costs to the Town. Moreover, the Commission takes administrative notice of the fact that it requires extensive planning, interruption in services and additional expenditures to relocate an office or Town Hall.

In regard to other options discussed in the report, the appraiser notes that to purchase a comparable building site that is level, non-flooding property with convenient access and good visibility could cost approximately \$250,000.00 per acre. To construct a building on the site would cost approximately \$50.00 to \$60.00 per square foot.

The Commission may grant an exemption if it finds that denying the exemption will result in excessive cost, undue hardship, or other substantial interference with the operation of a municipality. Based upon all the facts and circumstances, the Commission finds that denying a short-term contract exemption, and requiring the Town to vacate the building immediately, would result in excessive cost, undue hardship and other substantial interference with the Town's operations. Therefore, the Commission grants the Town an exemption to continue to lease the building until **July 1, 2011** at the proposed rate in the lease agreement, \$3,950.00 per month.

Accordingly, the Ethics Commission hereby grants, with limitations, an exemption to the Town of Wayne to continue to lease the subject property from James Ramey, III for a **one** year period until **July 1, 2011**. In granting this exemption, the Commission has reservations to the extent that there appears to be an inherent conflict for an elected Mayor to have a long-term lease with the Town where he serves as Mayor. While it is not the role of the Commission to micro-manage the administration of the Town; still, it must consider the stated purpose of the limitations in the Ethics Act, including the Legislative finding which reads:

The Legislature hereby finds that the holding of a public office or public employment is a public trust. Independence and impartiality of public officials or employees are essential for the maintenance of the confidence of our citizens in the operation of a democratic government.

W.Va. Code § 6B-1-2(a).

The Ethics Act provides that the test is whether denying the exemption will result in excessive cost, undue hardship, or other substantial interference with the operation of a municipality. The Commission finds that, for the present time, the hardship has been demonstrated for purposes of allowing the continuation of the lease until July 1, 2011. Before the conclusion of that time period, the Town must seek a new contract exemption in order to continue to lease the property from James Ramey, III. Prior to seeking the exemption, the Town must make an active good faith bona fide effort to solicit proposals from other property owners for the purchase or lease of property. Specifically, the Town must publicly advertise in the local newspaper that it is seeking proposals from property owners to lease or purchase property for the Town Hall. Further, the Town must place the matter on Town Council's agenda so that the public may be apprised of the Town's intent.

If James Ramey is still an elected Town official as of July 1, 2011, and if the Town is still renting the building at that time, then it must seek and obtain a new contract exemption if it wants to continue renting the building from James Ramey. At that time the Commission will re-examine this issue, including an examination of the efforts taken by the Town solicit proposals from area property owners, and the efforts of the Town to thoroughly examine whether viable alternatives exist. The Town must submit a copy of the newspaper advertisement and copies of Council Agendas containing information regarding the property with its contract exemption request, and provide an overview of the proposals or alternative sites it considered. Further, the Commission will consider whether the Town has taken any other steps to prevent an undue hardship or substantial interference with governmental operations should the contract exemption be denied.

The additional limitations which apply to this exemption are as follows:

**First**, if in 2011 the Town decides to seek another contract exemption, this item of business must be considered at a properly noticed meeting. James Ramey, III must continue to recuse himself from consideration of this matter. Further, both during and outside of meetings, he may not attempt to influence Council Members to vote to renew the lease; to do so could violate the Ethics Act. Indeed, he should not communicate with Council Members about this matter regardless of who initiates the conversation.

**Second**, the allegations in VCRB 2005-10 arose from renovations made to a portion of the building subleased to a tenant. The Ethics Commission found that, due to James Ramey's oversight and involvement in the renovations, made with Town of Wayne/public money, he violated the Ethics Act. To provide clear guidance to Mayor Ramey and the Town on this issue, the Commission hereby directs as follows:

If the Town continues to sublease the section of the building in question to the present tenant or a new tenant, Mayor Ramey may not be involved in the lease negotiations; instead, either the Town Council's designee or Recorder shall be the point of contact.

Council shall approve any subleases at a properly noticed meeting. The terms of the lease require James Ramey, III, to consent to any sublease. As such, his consent, as lessor, may and should be obtained prior to entering into a sublease agreement.

The Town shall seek permission from the Ethics Commission if it seeks to make any capital improvements to the building, including any capital improvements it may consider for its existing tenant or a new tenant. It may, in accordance with the terms of the lease, make any necessary repairs. However, the decision as to whether repair work is reasonable and necessary should be made by the Town Council or its designee, not the Mayor. When and if decisions are made by the Town Council or its designee to make a repair, the Mayor shall not be involved in deciding whether such repair work is reasonable and necessary. The Town Council or its designee may seek his permission if required by the terms of the lease. Moreover, if the Mayor believes that the Council is failing to keep the building in repair as required by the terms of the lease, then, as the lessor, he shall communicate any concerns he has in writing to the Town Council, Recorder and the Town's attorney.

The Commission notes that exemptions must be granted on a case-by-case basis. It cautions the Town of Wayne public officials and members of other governing bodies to read the exemptions closely and to comply with their terms. Further, the Commission encourages public officials to contact the Commission when questions arise relating to public contracts.

  
\_\_\_\_\_  
Jonathan E. Turak, Acting Chairperson

THIS LEASE AND AGREEMENT, made and entered into this \_\_\_ day of July, 2010 by and between JAMES RAMEY, JR., party of the first part, hereinafter referred to as “Lessor”, and TOWN OF WAYNE, party of the second part, hereinafter referred to as “Lessee”;

WITNESSETH: That for and in consideration of the premises and of the rentals herein reserved and to be paid by the Lessee to the Lessor, and of the covenants and agreements herein contained to be kept and performed by the Lessee, the Lessor does hereby lease, demise and let unto the Lessee for a term of five years, beginning July 1, 2010, and ending at midnight June 30, 2015 a 13,780 square foot building located at 1300 Norfolk Avenue, in Wayne, West Virginia, commonly known as Town Hall. At the conclusion of the initial Term, Lessee shall have one (1) option to renew this Lease for a period of five years by advising Lessor of its election to exercise such optional term on or before April 15, 2015. This Lease, and any extension, shall be subject to Town Council’s yearly approval on the anniversary date of said Lease, and likewise subject to approval of the West Virginia Ethics Commission.

The Lessee in consideration of said demise and lease hereby accepts said lease and said premises for the term and period aforesaid, upon the covenants and agreements, terms and conditions following, that is to say:

ARTICLE I  
FIXED MINIMUM RENTAL

The Lessee covenants and agrees to pay to the Lessor for the said premises for the term aforesaid, as rent reserved under this Lease and Agreement, rental of Three Thousand Nine Hundred Fifty Dollars (\$3,950.00) per month during the first year of said

Lease, and to pay the monthly rental pursuant to the annual payment schedule set forth in Article XV for each year thereafter, the first of said monthly installments being due and payable contemporaneously with the signing of this Lease, and on the first (1<sup>st</sup>) day of each month thereafter, beginning August 1, 2010. The Lessee further covenants and agrees to pay each and every one of said monthly installments of rental to the Lessor when due as aforesaid, payable to James Ramey, Jr. at 100 Palo Alto Street, Wayne, West Virginia, 25570, or at such other place as the Lessor may designate in writing, and the Lessee covenants to make each and every one of said monthly installments without notice or demand, notice and demand being hereby expressly waived by Lessee.

ARTICLE II  
CONDITION OF PREMISES, REPAIRS AND ALTERATIONS

The Lessee covenants to keep the interior of said premises, in constant good order and repair in all respects, and except as is otherwise provided hereinafter, the Lessee agrees that in no event shall any damage to the premises or lack of repair impose any burden whatsoever upon the Lessor, or affect or diminish the obligation of the Lessee to pay the rental hereinabove provided for and to keep and perform all the covenants and agreements herein contained and to be by it kept and performed. It is expressly understood and agreed, however, that if the building of which the demised premises are a part shall be damaged or destroyed by fire, flood or other catastrophe, the foregoing provisions of this Article shall not apply but the provisions of Article VII hereof shall control. Lessor agrees to maintain the roof and exterior walls for the leased premises, at Lessor's expense. All other and future repairs will be the responsibility and expense of Lessee.

The Lessor hereby agrees that the Lessee shall have the right to make any improvements or alterations, provided that such improvements or alterations does not change the structure foot print or roof structure to the demised premises, which the Lessee may deem advisable. Any and all alterations, additions or improvements shall be entirely at the expense of the Lessee, and the Lessee shall save the Lessor harmless from all mechanic's, materialmen's or laborer's liens with respect thereto. All such alterations, additions or improvements shall become a part of the real estate and shall belong to the Lessor, subject only to the terms of this Lease.

### ARTICLE III USE OF PREMISES

The Lessee covenants to use the premises solely in the conduct of its business, and that it will not use the premises, or any part thereof, in any unlawful manner or for any unlawful purpose and will comply with all Federal, State and Municipal laws, ordinances and regulations with respect to said premises and the use thereof. The Lessee further covenants to save the Lessor harmless from any penalty, damage or charge incurred or imposed by the violation of any such law, ordinance or regulation, whether occasioned by the Lessee, its agents, tenants, contractors or other persons then upon or using the demised premises.

### ARTICLE IV PARKING

The Lessee and its invitees shall have the right to use the parking space available in all areas of Lessor's premises. Maintenance of the parking area, including but not limited to snow and debris removal, shall be the responsibility of Lessee.

ARTICLE V  
ASSIGNMENT OR SUBLETTING

The Lessee covenants and agrees that Lessee may not sell, assign, or sublet the whole or any part of the demised premises without the written consent of Lessor, which shall not be unreasonably withheld.

ARTICLE VI  
RIGHT OF INSPECTION

The Lessor by and through its agent and/or agents shall at all reasonable times during the term of this Lease have the right to enter upon and inspect the demised premises for the purpose of determining whether or not the covenants, agreements and obligations by the Lessee herein made are being faithfully performed.

ARTICLE VII  
DAMAGE OR DESTRUCTION BY FIRE OR OTHER CASUALTY

If a fire or other casualty shall occur in the building leased hereunder, there shall be a just and proportionate abatement of the rent until the damage is repaired. In the event such damage is of such an extent that the cost of repairing the same would amount to fifty percent (50%) or more of the total value of the building immediately prior to such fire, then the Lessor, at its option, may elect to rebuild or repair such building. In the event the Lessor elects to repair or rebuild such building, it shall within thirty (30) days from the date of such fire or other casualty, advise the Lessee in writing of its election to repair or rebuild, and the Lessor shall thereupon promptly and at its own expense repair or rebuild such building and place it in as good condition as it was in immediately prior to such fire or other casualty. In no event shall the Lessor be liable for delays in rebuilding or repairing when caused by strike, lockout or other labor controversy, act of God, or by any other cause beyond the Lessor's control. In the event the said Lessor

elects not to rebuild or repair such building, the rent will abate and the Lease will be cancelled. Notwithstanding the foregoing, in the event of an occurrence by fire or other casualty hereunder which takes place during the final eight (8) months of the then-current Term, Lessee shall have the right, in its sole discretion, to terminate this lease without breach thereof by giving Lessor notice of such election within fifteen (15) days of receiving notice of Lessor's election to reconstruct; in which event, Lessor shall thereafter have no further obligation to Lessee to reconstruct nor shall Lessee have any further obligation to pay rentals.

#### ARTICLE VIII TAXES, UTILITIES AND INSURANCE

Real estate taxes on said premises will, throughout the term of this Lease, be paid by the Lessee.

The Lessee agrees that it will throughout the term aforesaid pay all utility bills for every service, commodity or article which may be furnished and supplied to the Lessee or used upon or in connection with the demised premises.

The Lessee agrees to carry public liability insurance in the amount of \$1,000,000.00 for personal injury and \$25,000.00 property damage with the Lessor to be named as an additional insured under said policy; said insurance to be with a carrier satisfactory to the Lessor. The Lessee covenants and agrees to promptly pay all premiums on said policies and to furnish the Lessor with certificates of such insurance. Lessor shall keep and maintain fire and property insurance on the building at Lessor's expense.

ARTICLE IX  
INDEMNITY

The Lessee will protect and save harmless the Lessor from damage by reason of the death of any person or injuries sustained by any person on the demised premises, or the street or sidewalk adjacent thereto. The Lessee shall pay all damages and costs recovered against the Lessor, and the same shall be due forthwith after notice thereof from the Lessor to the Lessee and shall be considered as part of the rent reserved hereunder, and the Lessor shall have a rent lien therefor. There shall be included in the amount to be paid by the Lessee to the Lessor under this Paragraph all reasonable attorney fees and other expenses incurred by the Lessor, and the liability of the Lessee shall not be lessened or affected if the Lessor shall elect to have its own attorney defend any action which may be brought against it by reason of any matter covered in this Paragraph.

ARTICLE X  
WAIVER OF BREACH

The Lessee covenants that any waiver by the Lessor of the keeping or performance of any covenant, agreement or undertaking by the Lessee to be kept or performed in the manner and at the time herein provided shall not be construed as a waiver of any subsequent breach or failure to keep or perform that for any other covenant, agreement or undertaking to be kept or performed by the Lessee, and any indulgence by the Lessor in enforcing or failing to enforce or take advantage of any remedy herein provided for or to which it may be entitled at any time shall never be construed as a waiver of the right of the Lessor to enforce the same at any future time.

ARTICLE XI  
LIEN FOR RENTALS

The Lessee covenants and agrees that the Lessor shall have and is hereby given a lien upon the leasehold estate hereby created and all of the property of the Lessee and its assigns of every kind and character to secure payment of all the rent and other sums which may fall due from the Lessee to the Lessor under the terms of this Lease for the entire term of this Lease, and such lien shall not be limited to one month's rent, and for the enforcement thereof the Lessor shall have all the rights provided by the laws of the State of West Virginia. The lien and right given the Lessor in this Paragraph shall be cumulative and in addition to any and all other rights that it may now or hereafter have under the laws of the State of West Virginia for the collection of rent, and the Lessor may, in addition to the right to distress, pursue such other remedy as may be available for the purpose of collection of said rent and other sums.

ARTICLE XII  
FORFEITURE ON DEFAULT

The Lessee covenants that if any default shall be made in the payment of any one or more of the monthly installments of rental herein provided for, whether formal demand shall have been made therefor or not, and if such default shall continue for a period of ten (10) days, or if the Lessee should fail to keep or be guilty of the breach of any covenant or agreement by it herein made, and such failure or breach should continue for a period of thirty (30) days after written notice thereof has been given to said Lessee by the Lessor, or if said Lessee should be adjudged a bankrupt or become insolvent or a receiver should be appointed to take charge of its property and affairs, then, in any of these events, this Lease and all rights of the Lessee hereunder shall, at the option of the Lessor, become and

be forthwith forfeited and terminated, and the Lessor shall have the right at any time afterward, without further notice or demand, to enter into or upon the demised premises and repossess and enjoy the same as of its former estate. In the event of such forfeiture of this Lease as hereinabove in this Article provided, or if the Lessee should abandon the demised premises, the Lessor may, if it so elects, lease the demised premises for the remainder of the term of the Lease and recover from the Lessee the difference between the rental herein provided for and the rental received by the Lessor as a result of such releasing.

#### ARTICLE XIII CONDEMNATION

If the leased premises, or any part thereof, is taken by eminent domain, this Lease shall expire on the date when the leased property shall be so taken, and the rent shall be apportioned as of such date, or, at the Lessee's option, it may continue leasing said premises with an adjustment of the rent proportional to the percentage of the premises so taken. Lessor and Lessee may each pursue their own recourse for compensation due for the condemnation, and such compensation shall belong solely to each party.

#### ARTICLE XIV ANNUAL RENTAL SCHEDULE

Pursuant to the terms of Article I and Article XIV hereunder, the monthly rent due from years two (2) through five (5) shall be upon the same terms and conditions hereinabove set forth, except said rental for such renewed term shall be ascertained by reference to the U.S. Department of Labor, Bureau of Labor Statistics, Consumers Price Index (all Urban Consumers) as of July 1, 2010 standing at \_\_\_\_\_, and that the rental shall be adjusted from that set forth in Article I herein proportionately to the rise or

fall of said Index figure as of the renewal date of each additional year, including those in any renewal period.

ARTICLE XV  
RIGHT TO REMOVE PROPERTY

Upon the termination of this Lease, or any extended term, other than by reason of default in the payment of rent or in the performance or breach of any covenant, promise or obligation in said Lease, the Lessee shall have the right to remove any and all paraphernalia, signs and equipment belonging to it and which can be removed without damage or injury to the building and premises hereby leased.

ARTICLE XVI  
QUIET POSSESSION

The Lessor covenants that subject to the right of forfeiture and re-entry as hereinabove provided in the event of the Lessee's failure to pay all the rental and perform all the covenants and agreements herein set forth, the said Lessee shall have quiet possession of the demised premises during the term of this Lease.

ARTICLE XVII  
NOTICES

Whenever in this Lease it shall be required or permitted that notice, approval, advice, consent or demand be given or served by either party to or on the other, such notice or demand shall not have been deemed to have been duly given or served unless in writing and either hand-delivered or forwarded by registered or certified mail to the Lessor's and Tenant's addresses as herein set forth in the opening paragraph of this Lease, or at such other address as one party shall subsequently give to the other by notice pursuant to this Article XIX.

ARTICLE XVIII  
TITLES OF ARTICLES

The titles or headings of the Articles of this Lease do not constitute a part of said Lease, but are placed at the beginning of each Article merely for convenience and identification.

IN WITNESS WHEREOF, James Ramey, Jr., Lessor, and the Town of Wayne, West Virginia, Lessee, have caused this Lease to be executed by \_\_\_\_\_, its \_\_\_\_\_, thereunto duly authorized, all as of the day, month and year first above written.

JAMES RAMEY, JR., LESSOR

\_\_\_\_\_ (SEAL)

TOWN OF WAYNE, LESSEE

\_\_\_\_\_ (SEAL)

By \_\_\_\_\_

Its \_\_\_\_\_

STATE OF WEST VIRGINIA,

COUNTY OF WAYNE, TO-WIT:

I, \_\_\_\_\_, a Notary Public in and for the County and State aforesaid, do hereby certify that James Ramey, Jr., whose name is signed to the writing above bearing date the \_\_\_\_ day of \_\_\_\_\_, 2010, has this day acknowledged the same before me in my said County.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

My commission expires \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

STATE OF WEST VIRGINIA,

COUNTY OF WAYNE, TO-WIT:

I, \_\_\_\_\_, a Notary Public in and for the County and State aforesaid, do hereby certify that \_\_\_\_\_, \_\_\_\_\_, whose name is signed to the writing above bearing date the \_\_\_ day of \_\_\_\_\_, 2010, for the Town of Wayne, a West Virginia \_\_\_\_\_, has this day before me in my said County acknowledged the said writing to be the act and deed of said \_\_\_\_\_.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

My commission expires \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

This instrument was prepared by:

FRAZIER & OXLEY, L. C.  
P. O. Box 2808  
Huntington, West Virginia 25727