

## AGREEMENT TO LEASE

This lease, made and entered into at Dayton, Ohio, this 31<sup>st</sup> day of October, 2001 by and between Harson Investments Limited, a Florida Limited Partnership, 110 North Main Street, Suite 1330, Dayton, Ohio 45402, hereinafter called Lessor and Dayton Eye Associates, Inc. with address of 89 Sylvania Drive, Dayton, Ohio 45440, hereinafter called Lessee.

Witnesseth

**1.1 PREMISES.** Lessor does hereby let and lease unto Lessee the premises, hereinafter referred to as the "Premises", located at 77 East Woodbury Drive, Suite 100 and 104 Dayton, Ohio 45415, containing approximately 4,883 square feet of rentable space, and being further described on the Approved Drawings which are included in the exhibit attached hereto as **Exhibit "A"** and made a part hereof.

**2.1 TERM.** To have and to hold the same for the term of eleven (11) years and commencing on January 1, 2002 (the "Commencement Date") and continuing for the next one hundred and thirty two (132) months. The lease will terminate on December 31, 2013 (the "termination date"). Lessee agrees to execute a form confirming commencement, upon request of Lessor.

**3.1 RENT.** Lessee shall pay to the Lessor as Basic Rent (or "Rent") for the demised Premises in accordance with the following schedule which is in accordance with Article 6.1. Rent shall include real estate property taxes, building insurance and common area maintenance, and pro-rata costs for rubbish removal payable by Lessor. Lessee shall receive Rent abatement for twelve consecutive monthly installments upon completion and proof of payment for Deposits described in Article 7.1.

3.2 The Rent for each year is as follows:

3.2.1 Lease commencing January 1, 2002 through December 31, 2002. The first twelve months shall be free of charge.

3.2.2 Rent Commencement on January 1, 2003 through December 31, 2003  
The annual sum of sixty five thousand nine hundred twenty and 56/100 (\$65,920.56) dollars which shall be paid in equal monthly installments of (\$5,493.38).

3.2.4 Each year thereafter beginning on January 1, 2004, the base rent shall be increased by 2% over the previous years base rent.

3.3. The above rental schedule shall be paid throughout the term of this Lease due and payable in advance on the first day of each month without demand. Said rent shall be paid to the Lessor, or to the duly authorized agent of the Lessor, at its office during business hours. If the Commencement Date of this Lease is other than the first day of the month, any rental adjustment or additional

*11/2013  
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rents hereinafter provided for shall be pro-rated accordingly. Any installment of rent accruing hereunder and any other sum payable hereunder, if not paid within ten (10) days of the date when due, Lessee shall pay a late charge of five percent (5%) of the unpaid payment which shall be immediately due.

**4.1 POSSESSION.** Possession shall begin on February 1, 2002.

**5.1 CONSTRUCTION PROVISIONS.** The Lessor will construct improvements Premises according to **Exhibit "B"** ("Lessor's Work") at Lessor's sole cost and expense (to be attached). Lessor warrants that the work will be performed in a good workmanlike manner, substantially in accordance with **Exhibits "B"**, free from any material faults or material defects in materials or construction. Lessor further warrants that all materials shall be constructed in a good and workmanlike manner, in compliance with manufacturers specifications and all applicable laws, codes and regulations. Lessee shall be responsible for Lessee's Work as outlined in **Exhibit "C"**.

**6.1. RENTAL ADJUSTMENTS.**

6.2. Basic Rent. Basic Rent as set forth in Paragraph 3 hereof is shown to be increased each year, starting on the first anniversary date of rent commencement by two percent (2%) over the amount paid in the preceding year.

6.3. Taxes. Intentionally left blank.

6.4. Fire Insurance In the event Lessee's occupancy causes any increase of premium for the fire, boiler and/or casualty rates on the Premises or any part thereof above the rate for the least hazardous type of occupancy legally permitted in the Premises, the Lessee shall pay the additional premium on the fire, boiler and/or casualty insurance policies by reason thereof. The Lessee also shall pay in such event, any additional premium on the rent insurance policy that may be carried by the Lessor for its protection against rent loss through fire. Bills for such additional premiums shall be rendered by Lessor to Lessee at such times as Lessor may elect, and shall be due from and payable by Lessee when rendered, and the amount thereof shall be deemed to be and paid as additional rent.

6.5. Definitions. Intentionally left blank.

**7.1 DEPOSITS.**

7.2. Security Deposit. Concurrently with Lessee's execution of this Lease, Lessee has deposited with Lessor the sum of five thousand four hundred ninety three and 38/100 (\$5,493.38) Dollars as security for the payment by Lessee of the Base Rent and other charges set forth in this Lease, and for the performance by-Lessee of all the terms, conditions and covenants of this Lease. If at any time during the term of this Lease, Lessee shall be in default in the performance of any provision of this Lease beyond any applicable cure period, Lessor shall have the right to use the security deposit, or so much thereof as is necessary, in

payment of any Base Rent or other charges, reimbursement of any expense incurred by Lessor, or payment of any damages incurred by Lessor because of Lessee's default. If any portion of the deposit is so used or applied, Lessee shall, within ten (10) days after written demand from Lessor, remit to Lessor a sufficient amount to restore the security deposit to its original amount. The security deposit shall not operate as agreed or liquidated damages and Lessee shall be liable for any sums in excess of such deposit which may be applicable under this lease.

7.3. Refund. If the security deposit has not been utilized as provided in 7.2. hereof, such security deposit, or so much of it as has not been so utilized, shall be returned to Lessee after the expiration of the Term or any Renewal Term of this Lease, whichever shall last occur.

7.4 Additional Security. Upon execution of this lease, Lessee shall deposit with Lessor ~~two (2)~~ one (1) ~~Letters-Letter~~ of Credit in the amount of Fifty One Hundred Thousand and no/100 (\$50100,000.00) Dollars each and issued in a form and by a National Banking institution reasonably satisfactory to Lessor.

~~One of the~~ The ~~Letters-Letter~~ of Credit shall provide security for the financial obligations ~~obligation~~ of the Lessee under the lease and the cost of improvements and shall remain effective for a period of ~~six (6)~~ eleven (11) years. It shall decrease in the amount of Ten Thousand and no/100 (\$10,000.00) Dollars beginning at the end of the second (2nd) year of the term and in a similar amount at the end of each succeeding year of the term until the end of the ~~sixth~~ eleventh (6th/11th) year when this Letter of Credit shall expire. In the event Lessee shall be in default under any financial obligation of this lease while this Letter of Credit is effective, Lessor may draw against this Letter of Credit in an amount sufficient to satisfy the default.

~~The remaining Letter of Credit shall secure the cost of the improvements made by Lessor for Lessee's benefit at the commencement of this lease as required in section 5.1 below and shall remain effective for a period of (11) years. It shall decrease in the amount of Ten Thousand and no/100 (\$10,000.00) Dollars beginning at the end of the seventh (7th) year of the lease term and in a similar amount at the end of each succeeding year of the term until the end of the eleventh (11th) year when this Letter of Credit shall expire. In the event that Lessee shall default in this lease, Lessor may draw against the then entire balance of this Letter of Credit to reimburse itself for the improvements made by Lessor as required in section 5.1 above.~~

8.1. USE AND OCCUPANCY. Premises are to be used only for general medical office purposes and such other purposes as are usual in connection therewith pertaining to the Lessee's business and for no other purpose. Lessee will not use the Premises for any unlawful purpose or in any manner offensive to any other occupant. Lessee, for itself, its agents, employees, and guests, covenants not to conduct nor permit to be conducted on the Premises any business in violation of any County, State or Federal law, ordinance or regulation. Lessee covenants and agrees to pay directly to the proper agency all licenses, fees and charges legally imposed upon the use of the demised Premises by the Lessee.

**9.1. RULES AND REGULATIONS.** Lessor shall have the right to adopt reasonable rules and regulations governing the use and occupancy of the Premises and the Building, from time to time. Lessor shall notify Lessee of any changes or additions to the Rules and Regulations. The Rules and Regulations shall be binding upon and enforceable against Lessee in the same manner as any other covenants of this Lease, and: (i) are attached as **Exhibit "D"** in their present form; and (ii) will be effective upon ten (10) days written notice, in the event of an amendment thereto.

**10.1. PARKING.** Lessee shall have the right of nonexclusive use, in common with others, of the outdoor automobile parking areas. Under no circumstances will Lessee, its employees, agents and licensees, park in an unauthorized area designated as a firelane, visitor parking or short term parking. No vehicle to be left overnight.

**11.1. CARE OF BUSINESS.** The Lessee agrees that it will suffer no waste or injury to the demised Premises; that it will make all repairs to the demised Premises necessitated by the fault of the Lessee, its agents, employees or guests (and not due to Lessor's negligence); that it will not do, or permit anything to be done in the Premises which will in any way increase the fire insurance premium on the Building, or conflict with the fire insurance policies on the Building, that it will defend and save harmless the Lessor from any liability arising from injury to person or property caused by any act of omission by Lessee, its agents, employees, or guests; that it will repair, at or before the end of the term, or sooner if so requested by Lessor, all injury done by the installation or removal of furniture or other property, and that it will surrender the Premises at the expiration of the term (or the sooner termination thereof for any reason) in as good condition as they were at the beginning of the term, ordinary wear and tear excepted.

**12.1. REPAIRS AND UTILITIES**

**12.2. Lessee's Repairs And Utilities.** Lessee at its own expense shall repair, maintain and replace the interior portions of the Premises and the fixtures and appurtenances therein, including all electrical, plumbing or HVAC systems, entrances and vestibules, partitions, windows, window frames, glass, moldings, doors, door openers, light bulbs, fluorescent tubes, lighting fixtures (including component parts such as starters, ballasts, lenses or grills), furnishings and all other items of Lessee's Work, in good condition and repair, but Lessee shall not be responsible for repairs, maintenance or replacements required to be made by Lessor pursuant to Section 12.3 and 12.4.

Lessee shall be solely responsible for and promptly pay all charges for heat, water, gas, electricity, or any other utility used or consumed on the Premises. Should Lessor elect to supply the water, gas, heat, electricity or any other utility used or consumed in the Premises, Lessee agrees to purchase and pay for the same as additional rent at the applicable rates filed by the Lessor with the proper regulatory authority. In no event shall Lessor be liable for an interruption or failure in the supply of any such utilities to the leased premises.

If there are unique and special requirements relating to medical waste, construction waste or out of the ordinary amounts of waste, Lessee shall contract for and pay for such additional disposal service in accordance with all governmental and building rules and regulations.

12.3. HVAC Maintenance. In order to maintain the heating, ventilating and air conditioning ("HVAC") systems, Lessor, at Lessor's expense shall contract with a reputable HVAC Contractor for a preventative maintenance contract which shall include but not be limited to lubrication and filter and belt changes as needed for the system a minimum of every three (3) months and for seasonal start-ups.

12.4. Lessor's Repairs. Subject to ordinary wear and tear, Lessor shall maintain, repair and replace as necessary all exterior and structural portions of the Premises and Building, and all utility pipes, lines, conduits and other facilities serving the Premises and/or the Building to the point the same enter the Premises. Lessor shall also be responsible for any HVAC repairs exceeding \$200.00 per visit.

In addition, Lessor shall provide lawn service, removal of ice and snow from parking areas and drives, striping, pavings, maintenance repair and replacement of parking areas and drives.

13.1. ACCESS BY LANDLORD. Intentionally left blank.

14.1. ASSIGNMENT OR SUBLETTING. Lessee shall not sublet or assign the Premises without the Lessor's prior written consent, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, an assignment to a corporation or other entity affiliated with or under common control of Lessee shall not require Lessor's consent nor shall the consolidation or merger of Lessee or the sale of substantially all of Lessee's assets require Lessor's consent, provided Lessee remains liable for the payment and performance of the Lease terms, and majority control of the occupying tenant remains exercised by a majority of the same individuals that controlled the original Lessee.

14.2. In determining whether to grant consent to the Lessee's sublet or assignment request, the Lessor may consider any reasonable factor. Lessor and Lessee agree that any one of the following factors, or any other reasonable factor, will be reasonable grounds for deciding the Lessee's request:

14.2.1 financial strength in accordance with generally accepted commercial standards of the proposed subtenant/assignee must be at least equal to that of the Lessee;

14.2.2. business reputation of the proposed subtenant/assignee must be in accordance with generally acceptable commercial standards;

14.2.3 managerial and operational skills of the proposed subtenant/assignee must be in accordance with generally accepted commercial standards;

14.2.4 use of the Premises by the proposed subtenant/assignee will not violate or create any potential violation of any laws;

14.2.5 use of the Premises by the proposed subtenant/assignee will not violate any other agreements affecting the Premises, the Lessor or other tenants in accordance with generally accepted commercial standards.

**15.1. ATTORNMENT.** In the event the herein demised Premises are sold due to any foreclosure sale or sales, by virtue of judicial proceedings or otherwise, this Lease shall continue in full force and effect and Lessee agrees, upon request, to attorn to and acknowledge the foreclosure purchaser or purchasers at such sale as Lessors hereunder.

**16.1. ESTOPPEL CERTIFICATE.** The Lessee agrees to execute an Estoppel Certificate for the benefit of Lessor's lender wherein the Lessee warrants the terms and conditions of this Lease. Lessee will furnish the estoppel certificate within twenty (20) days of Lessor's request.

**17. ALTERATIONS AND CHANGES.** Except as otherwise provided herein, the Lessee covenants that at no time will it make material alterations or changes of any kind to the Premises. Should the Lessee desire any such alteration or changes, the Lessee shall notify the Lessor and, if requested by the Lessor, shall supply plans and specifications therefor. If the Lessor approves such alterations and changes, they are to be made at the Lessee's expense. At Lessor's request, all such alterations and changes shall be restored to their original condition at Lessee's expense at the termination of this Lease. Lessor's consent to any such changes shall not be unreasonably withheld.

**18.1. OWNERSHIP OF IMPROVEMENT.** All alterations, decorations, installations, additions or improvements upon the Premises made by either party, except Lessee's moveable trade fixtures, furniture and furnishings, shall become the property of Lessor and remain upon, and be surrendered with, the Premises, as a part thereof, at the end of the Term.

**19.1. DAMAGE TO PREMISES.** If the said Premises are injured or damaged by fire, windstorm or other casualty not caused by Lessee to such an extent as to render them partially or wholly untenable, the Lessor shall restore such Premises so injured or damaged to the extent set forth on the original construction drawings as speedily as possible, but in no event longer than ninety (90) days, and the rent shall abate proportionately on such part of said Premises as may have been rendered untenable until such time as such part shall be fit for occupancy, after which the full amount of rent reserved as aforesaid shall be payable as herein set forth. If the Premises cannot be restored within ninety (90) days, Lessee or Lessor may terminate this Lease and rent shall abate as of the date of the casualty. If such Premises are injured or damaged by any of the aforesaid causes to such an extent as to render the same untenable for Lessee to conduct its business, at the option of either party, then this Lease, upon surrender of possession to the Lessor, shall thereupon cease, and all

liability of the Lessee shall terminate upon payment of all rent due and payable to the date of such surrender. In no event shall Lessor be liable for any loss or damage sustained by Lessee by reason of fire or other accidental casualty.

**20.1. CONDEMNATION.** In the event the whole or any part of the Premises shall be condemned or taken in any manner for public use, the Lessor or Lessee, at its option, may terminate this Lease, and the Lessor shall be entitled to any and all income and rent awards or any interest thereon or therein whatsoever which may be paid or made in connection with such public use. Lessee shall have no claim against the Lessor or be entitled to any award or damages. Notwithstanding the foregoing, Lessee shall be entitled to an award from the condemning authority for its relocation costs and the costs of replacing any trade fixtures. Lessee shall be entitled to participate in any condemnation proceeding to protect its right and the awards set forth in the preceding sentence.

**21.1. INSURANCE.**

21.2. Lessee further covenants and agrees to procure and maintain at Lessee's expense throughout the term of this Lease and any extension thereof, a policy or policies of insurance in the amount of not less than \$1,000,000 per occurrence and \$300,000 for property damage in a carrier or carriers reasonably satisfactory to Lessor, insuring from all claims, demand or actions for injury to or death of more than one person in any one accident involving the Premises. The Lessor shall be named as an additional insured under said policy for the Premises. Said insurance shall not be subject to cancellation except after at least ten (10) days' prior written notice to Lessor, and the policy or policies or duly executed certificate or certificates for the same, together with satisfactory evidence of the payment of the premium thereon, shall be deposited with Lessor at the commencement of the term and as thereafter requested by Lessor but not more frequently than annually. If Lessee fails to comply with such requirements, Lessor may obtain such insurance and keep the same in effect, and Lessee shall pay Lessor the premium cost thereof upon demand.

21.3. Lessee further covenants and agrees to procure and maintain at Lessee's expense throughout the term of this Lease and any extension thereof, a policy or policies of insurance, in a carrier or carriers reasonably satisfactory to Lessor, insuring all personal property which may be upon said Premises during the terms hereof.

21.4. Notwithstanding anything to the contrary herein contained, neither Lessor nor Lessee shall be liable for any damage to property of the other caused by fire or other peril usually covered by a standard policy of fire and extended coverage insurance, including vandalism and malicious mischief, and each party hereby expressly releases the other from all liability for such damage including any subrogation claims of any insurer.

21.5 Lessor shall maintain and provide during the term of the Lease fire and extended coverage insurance insuring against all risk of physical loss for the replacement cost of the building and general liability insurance of a commercially reasonable level covering the property, other than the Premises.

**22.1. QUIET ENJOYMENT.** Lessor covenants that, upon the payment of the rent herein provided, and the performance by the Lessee of all covenants herein, Lessee shall have and hold the demised Premises, free from any interference from the Lessor except as otherwise provided herein.

**23.1. LESSEE'S DEFAULT.** The Lessee shall be considered in default of this Lease upon the happening of any one of the following:

23.1.1 The failure by Lessee to make any payment of rent or any other payment required to be made by Lessee to Lessor hereunder, as and when due, where such failure shall continue for a period of ten (10) days after Lessor provides to Lessee written notice thereof. Notwithstanding the foregoing, Lessor shall not be required to give written notice more than two (2) times in any calendar year. Any third failure to pay rent within ten (10) days after such rent is due hereunder shall be a default without written notice.

23.1.2 The failure of the Lessee to perform any other term, covenant or condition of this Lease, where such failure shall continue for a period of thirty (30) days after Lessor provides to Lessee written notice of Lessee's default, provided if such default cannot reasonably be cured within such period and Lessee diligently pursues such cure, Lessee shall have a reasonable time in excess of thirty (30) days to effectuate such cure.

23.1.3. The commencement of any action or proceeding for the dissolution, liquidation or reorganization under the Bankruptcy Act, of Lessee, or for the appointment of a receiver or trustee of the Lessee's property.

23.1.4. The making of any assignment for the benefit of creditors by Lessee.

23.1.5. Any lawful levy sale or execution or other legal process against the Lessee's leasehold interest, or the attachment thereof by process of law, provided such levy or attachment is not discharged or stayed by appeal or otherwise within a period of thirty (30) days.

In the event of default of this Lease by Lessee, then Lessor, besides other rights of remedies it may have, shall have the immediate right of re-entry with legal process. Should Lessor take possession pursuant to legal proceedings or pursuant to any notice provided for by law, it may either terminate this Lease or it may from time to time, without terminating this Lease, re-let said Premises or any part thereof for such term or terms and at such rental or rentals and upon such other terms and conditions as Lessor in its sole discretion may deem advisable, with the right to make alterations and repairs to said Premises. Rentals received by Lessor from such subletting shall be applied: first, to the payment of any indebtedness, other than Rent, due hereunder from Lessee to Lessor; second, to the payment of Rent due and unpaid hereunder; third, to the payment of any cost of such re-letting; fourth, to the payment of the cost of any alterations and repairs to Premises; and the residue, if any, shall be held by Lessor and applied in payment of future Rent as the same may become due and payable hereunder or



accrued to the lessor. Should such rentals received from such re-letting during any month be less than required to be paid by Lessee as defined above, then Lessee shall immediately pay such deficiency to Lessor. Such deficiency shall be calculated and paid monthly. No such re-entry or taking possession of said Premises by Lessor shall be construed as an election on its part to terminate this Lease unless a written notice of such intention be given to Lessee or unless the termination thereof be decreed by a court of competent jurisdiction. Notwithstanding any such re-letting without termination, Lessor may at any time thereafter elect to terminate this Lease for such previous breach or act of default. Should Lessor at any time terminate this Lease for any breach or act of default, in addition to any other remedy it may have, it may recover from Lessee all damages it may incur by reason of such breach or act of default, including the cost of recovering the demised Premises and legal fees.

**24.1. HOLDING OVER.** If Lessee holds possession of the Premises after the termination of this Lease for any reason, Lessee shall pay Lessor one hundred twenty five percent (125%) of the rent provided for herein for the last year of the term for such period that Lessee holds over, but such payment of rent shall not create any lease arrangement whatsoever between Lessor and Lessee unless expressly agreed to in writing by Lessor. It is further understood that during such period that Lessee holds over, the Lessor retains all of Lessor's rights under this Lease, including damages as a result of the termination of this Lease and the right to immediate possession of the Premises. This Paragraph 24.1 shall not be construed to grant Lessee permission to hold over.

**25.1. ATTORNEY'S FEES.** In the event of employment of an attorney by the Lessor because of the violation or enforcement of any term or provision of this Lease, by Lessee, the Lessee shall pay such attorney's fees.

**26.1. WAIVER OF BREACH.** No waiver of any breach of the covenants, provisions or conditions contained in this Lease shall be construed as a waiver of the covenant itself or any subsequent breach itself, and if any breach shall occur and afterwards be compromised, settled or adjusted, this Lease shall continue in full force and effect as if no breach had occurred unless otherwise agreed. The acceptance of rent hereunder shall neither be nor construed to be a waiver of any breach of any term, covenant or condition of this Lease.

**27.1. NOTICE.** All notices to Lessee under this Lease shall be presumed to have been delivered when personally delivered to the Premises, or three (3) days after mailing by United States mail, certified return receipt requested, addressed to Lessee at the Premises or at Lessee's address last known to Lessor; or to such other address as Lessee may in writing from time to time designate. All notices to Lessor hereunder shall be presumed to have been delivered when personally delivered to Lessor's offices or three (3) days after mailing by United States mail, return receipt requested, addressed to the Lessors address, as set forth above or such other address to which the same shall be moved and notice thereof given to Lessee.

**28.1. SEVERABILITY.** If for any reason whatever any of the provisions hereof shall be unenforceable or ineffective, all of the other provisions shall be and remain in full force and effect.

**29.1. RIGHTS RESERVED BY LESSOR.** Without abatement or diminution in rent, and in addition to any other rights reserved in this Lease, Lessor reserves the following rights:

29.1.1. Changing Public Areas. To change the street address and/or the name of the Building and/or change the arrangement and/or location of entrances, passageways, doors, doorways, corridors, elevators, stairs, toilets, or other public parts of the building, without liability to Lessee.

29.1.2. Approval of Signs. To approve all signs and all sources furnishing sign painting and lettering, such approval not to be unreasonably withheld.

29.1.3. Right of Entry. To enter the Premises at all reasonable times at least twenty-four (24) hours after notice to Lessee (except in the case of an emergency) (a) for the making of inspections, decorations, alterations, improvements and repairs to the Premises and Building and to protect and preserve the same as Lessor may deem necessary or desirable; (b) to erect, use and maintain pipes and conduits in and through the Premises; and (c) to exhibit the Premises to prospective purchasers or lessees of or holders of mortgages on the Building at any time, and to others during the last six (6) months of the Lease. In the event any work in the vicinity of the Premises requires entry into the Premises (whether by Lessor, utility companies, other tenants of the building or other persons authorized by Lessor), such entry shall be deemed approved by Lessee provided that Lessee's occupancy is not unreasonably disturbed.

29.1.4. Repairs and Improvements. At any time or times, Lessor, either voluntarily or pursuant to governmental requirement, may make repairs, alterations or improvements in or to the Building or Premises or any part of either, and during alterations may close entrances, doors, windows, corridors or other facilities.

29.1.5. Overtime Charges. To charge to Lessee any expense including overtime cost incurred by Lessor in event that repairs, alterations, decorating or other work in the Premises are made or done after ordinary business hours at Lessee's request.

**30.1. BROKERAGE.** Lessor and Lessee represent and warrant that there are no claims for brokerage commissions or finders' fees in connection with the execution of this Lease. Lessor and Lessee agree to indemnify each other against, and hold the other harmless from, all liabilities arising from any such other claims for brokerage or other commission or similar fee or compensation for any other service rendered at its insistence in connection with this transaction.

**31.1. ENTIRE AGREEMENT.** No terms, conditions, warranties, promises or understanding of any nature, whether expressed or implied, exist between the parties except as set forth in the Lease, or the exhibits attached to this Lease.

**32.1. INDEMNIFICATION.** Lessee, as a material fact of the consideration to be rendered to Lessor under this Lease, hereby waives all claims against Lessor for damages to Lessee's property, in, upon or about the Premises for any cause arising at any time except for Lessor's gross negligence or willful misconduct. Lessee will hold Lessor exempt and harmless for and on account of any damage or injury to any person, or to the property of any person arising from the use of the Premises by Lessee, arising from the failure to keep the Premises in good condition as herein provided so long as such damage or injury not occasioned by Lessor's negligence or willful misconduct. Lessor shall not be liable to Lessee for any damage by or from any act or negligence of any other tenant or occupant of the Building so long as Lessor does not contribute to such negligence.

Lessor, as a material fact of the consideration of Lessee's entering into this Lease, hereby waives all claims against Lessee for damages to property, in, upon or about the Premises and for injuries to persons in or about the Premises for any cause arising at any time except for Lessee's gross negligence or willful misconduct. Lessor will hold Lessee exempt and harmless for and on account of any damage or injury to any person, or to the property of any person arising from Lessor's acts on or about the Premises or arising from the failure of Lessor to keep the covenants herein contained.

**33.1. LESSOR'S DEFAULT.** In the event of a default of this Lease by Lessor and upon thirty (30) days advance written notice by Lessee to Lessor specifying such default, then Lessor shall be in default hereunder and Lessee shall have the right to exercise any rights or remedies it may have at law or in equity.

**34.1. SUBORDINATION.** This Lease shall be subject to and subordinate at all times to the lien of any mortgages and/or deeds of trust now or hereafter made on the demised Premises, and to all advances made or hereafter to be made thereunder, provided that the holder of such mortgage agrees not to disturb Lessee's tenancy hereunder. This subordination provision shall be self-operative and no further instrument of subordination shall be required but Lessee agrees to cooperate with Lessor by executing any subordination agreement requested by Lessor's lender so long as the same does not modify any right of the Lessee hereunder.

**35.1. TIME.** Time is of the essence of this Lease.

**36.1. LEASE AGREEMENT.** The "Lease Agreement" consists of this Agreement and the following exhibits:

1. Exhibit "A" – Approved Drawings/Floor Plan.
2. Exhibit "B" - Lessor's Work.
3. Exhibit "C" - Lessee's Work.
4. Exhibit "D" - Rules and Regulations, Notary Form.

5. Exhibit "E" – Demolition Plan

This Lease Agreement has a total of 12 pages plus exhibits.

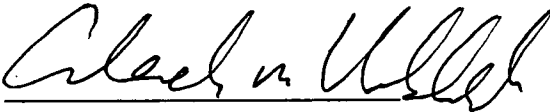
**37.1. LESSOR'S COVENANTS.** Lessor covenants and agrees (i) that Lessor owns the property described in Section 1; (ii) that Lessor has the full right and power to enter into this Lease (iii) that Lessor has not received any notice or citation from any applicable governmental authority that the real property violates any applicable state, federal or local law, ordinance, code, rule or regulation, including, without limitation, the Americans with Disabilities Act; (iv) that to the best of Lessor's knowledge the real property upon which the premises are to be located and building which will contain the premises will not violate any applicable governmental or environmental laws or regulations of any state, local or federal governmental authority, including, without limitation, the Americans with Disabilities Act.

**38.1. SIGNAGE.** Lessor shall grant to Lessee the right to name the building according to Lessee's reasonable request. Lessor shall also grant to Lessee the right to amend or change monument signage to reflect Lessee's desired name change. Such requests along with drawings shall be submitted to Lessor by Lessee. Lessor's approval shall not be unreasonably withheld.

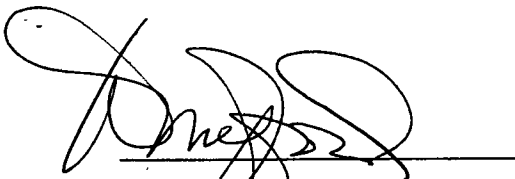
**39.1. MEMORANDUM.** This lease shall not be recorded by either party. Upon request of either party, a memorandum of this Lease shall be executed by the parties and may be recorded in the Office of the County Recorder.

IN WITNESS WHEREOF, the parties have hereunto set their hands the date first above Written.

In Witness Whereof:

  
\_\_\_\_\_

Laurretta M. Rowley

  
\_\_\_\_\_

Joseph M. Rescove

Lessor: Harson Investments, A  
Florida Limited Partnership  
By: Harson Investments, Inc.  
Its: General Partner

  
\_\_\_\_\_

By: Shayna Kolodesh  
Its: President

Lessee: Dayton Eye Associates,  
Inc.

  
\_\_\_\_\_

By: Michael Just  
Its: President

STATE OF OHIO, COUNTY OF MONTGOMERY, SS:

The foregoing instrument was signed and acknowledged before me this 12TH day of NOVEMBER, 2001 by Harson Investments, Limited by Harson Investments, Inc., by it's General Partner by Shayna Kolodesh, President of Harson Investments, Inc.

Lauretta M Ranly  
Notary Public

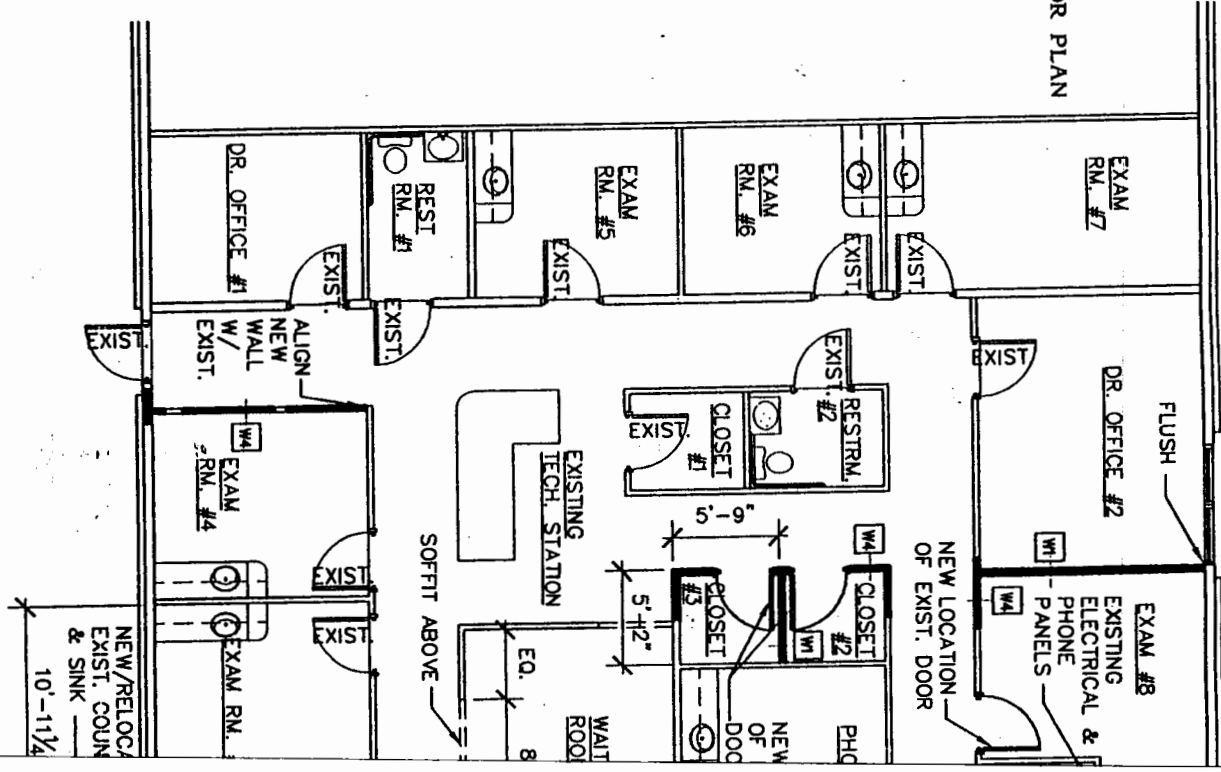
STATE OF Ohio  
COUNTY OF Montgomery SS.  
LAURETTA. M. RANLY, Notary Public,  
In and for the State of Ohio  
My Commission Expires Jan. 29 2002

The foregoing instrument was signed and acknowledged before me this 31 day of Oct, 2001 by Dayton Eye Associates, Inc. by RICHARD LISTON It's PRESIDENT.

Kathleen M Parks  
Notary Public

KATHLEEN M. PARKS, Notary Public  
In and for the State of Ohio  
My Commission Expires June 3 2003

EXHIBIT A  
 APPROVED DRAWING/FLOOR PLAN

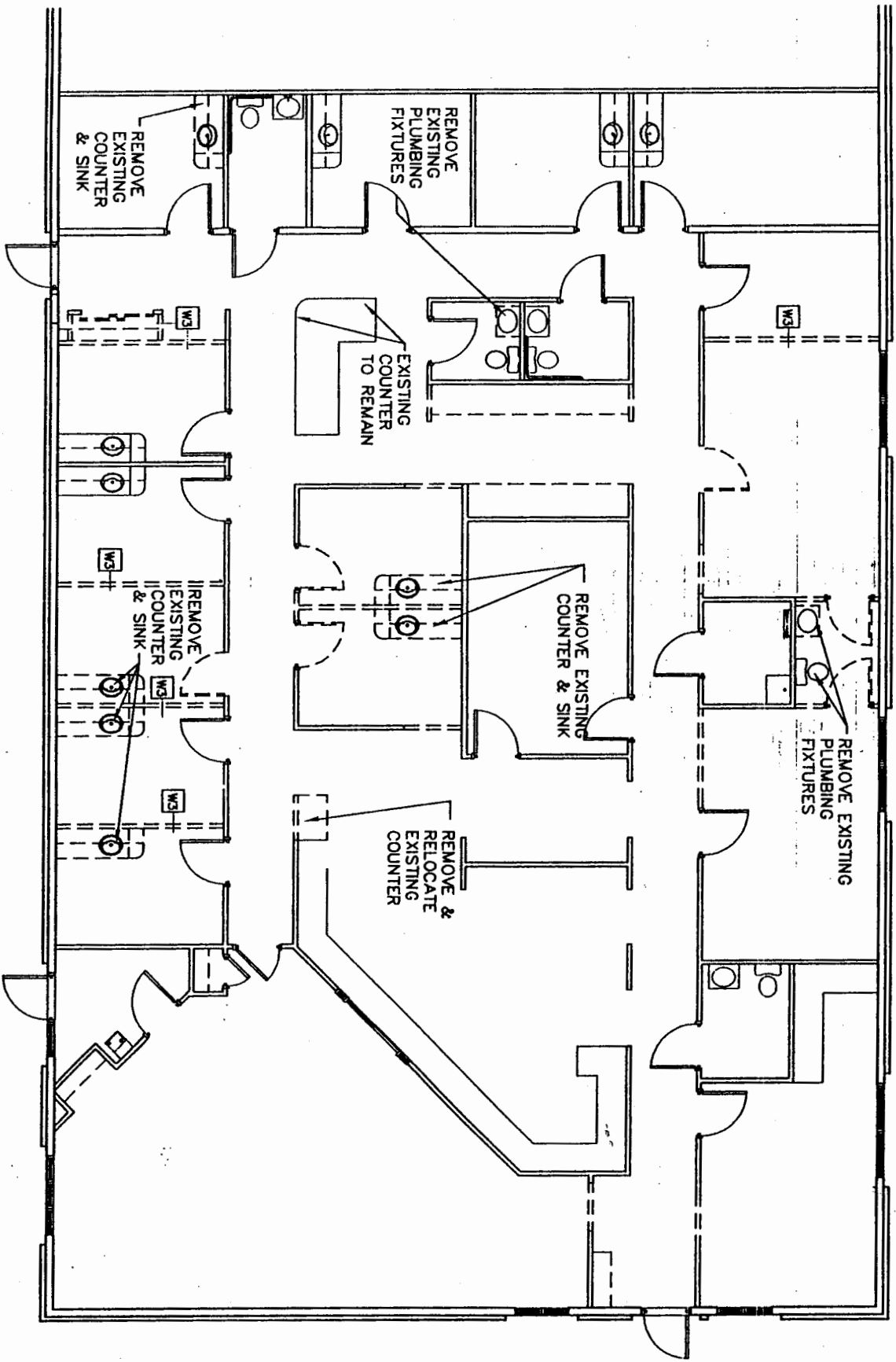


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## EXHIBIT "B"

### LESSOR'S WORK

1. Lessor shall construct the offices in conformance with the approved drawings shown as Exhibit "A". These plans are the revised floor plans.
2. All walls and fixtures shall be removed as shown on the demolition plan shown on Exhibit "E".
3. All replacement walls shall be 5/8 " drywall with one sheet of sound board between adjoining exam rooms.
4. All Electric shall be to code.
5. Plumbing shall be to code and moved as shown on Exhibit A to service the desired locations on Exhibit A.
6. Lessor shall re-locate existing plumbing fixtures, shelving, base cabinets and wall cabinets rather than replace with new. Lessor shall install new cabinets where needed.
7. New flooring shall be placed throughout the central core, waiting area and exam rooms 8 and 9 as well as physician offices. The flooring shall be 28-30 oz commercial grade carpet. Lessor shall provide lessee samples to chose from. The interior waiting area shall have chair rail plus wallpaper below chair rail and paint above chair rail.
8. Finish materials shall include replacement of existing wall paper in core area.
9. Primer and two coats of paint shall be applied to new wall surfaces.
10. All doors, hinges, frames and other hardware shall be of similar commercial quality as existing. Lessor shall have the option to re-locate existing doors, hinges and frames.
11. The waiting room shall have a decorative carpeting with decorative base molding. The balance shall have the existing rubber base molding and be replaced with the same if needed.
12. Lessor shall extend open office counter top for a check out counter as shown on Exhibit A.



- 1. D. A
- 2. R. A
- 3. A. A
- 4. A. A

- W1
- W2
- W3
- W4

2 DEMOLITION PLAN

1/8" = 1'-0"

