



UNITED CARPET

Property Management Flooring Agreement

THIS AGREEMENT is made and entered into this _____ day of _____, 20__ by and between United Carpet Company, Inc. ("United"), a Missouri corporation, 5434 Eagle Industrial Court, Hazelwood, Mo. 63042, and _____ ("Manager"), whose address is _____.

WHEREAS, Manager manages and will in the future manage various properties for and on behalf of the owners thereof (each such property being hereinafter referred to as a "Property" and each owner thereof as an "Owner"); and

WHEREAS, from time to time Manager will request United to provide certain flooring services and materials for particular Properties upon terms and conditions set forth herein and United desires to provide the same upon the terms and conditions set forth herein (each such request being hereinafter referred to as an "Order").

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. **Services to be Performed by United.** For each Order which is accepted by United, United will supply the materials and labor requested by Manager in accordance with industry standards. An Order will be accepted by United only upon the earlier of United's written acceptance ("Written Acceptance") or United's initiation of performance of the Order. Any Order to install flooring material shall be deemed to include a request that United perform all services associated with the installation, including preparation of flooring surfaces.

2. **Price.** The price for materials provided by United shall be the customary price charged by United to Manager for the Property at the time of United's acceptance, unless otherwise stated in the Written Acceptance. The price for labor to fulfill the Order will be charged at United's then current rate.

3. **Changes.** Any change by Manager in the terms of the Order shall constitute a new Order. If United has accepted the prior Order, then United may accept the changes and proceed with the new Order or it may terminate work under the prior Order and have all remedies provided by paragraph 12 below.

4. **Payment.** The entire balance on the order is owed to United upon the installation being permanent and complete. Manager shall pay United's invoices upon the terms set forth therein which shall not be inconsistent with the terms hereof. United may require a down payment. The total Price will include a Surcharge. The Surcharge represents miscellaneous expenses and may approximately reimburse United for one or more of the following: freight charges, freight gas surcharges, incidental installation expenses, and/or miscellaneous overhead. All Surcharge amounts remain the property of United.

5. **Entire Understanding.** This Agreement will be incorporated as if fully set forth in the terms of any Order. Each Order along with this Agreement will represent the parties' entire understanding with respect to such Order. All terms of an Order inconsistent with this Agreement, even if proposed after execution of this Agreement, will be deemed rejected and superseded by this Agreement unless otherwise agreed in writing by a corporate officer of United.

6. **NOTICE TO OWNER.** FAILURE OF THIS CONTRACTOR TO PAY THOSE PERSONS SUPPLYING MATERIALS OR SERVICES TO COMPLETE THIS CONTRACT CAN RESULT IN THE FILING OF A MECHANIC'S LIEN ON THE PROPERTY WHICH IS THE SUBJECT OF THIS CONTRACT PURSUANT TO CHAPTER 429, RSMO. TO AVOID THIS RESULT YOU MAY ASK THIS CONTRACTOR FOR "LIEN WAIVERS" FROM ALL PERSONS SUPPLYING MATERIAL OR SERVICES FOR THE WORK DESCRIBED IN THIS CONTRACT. FAILURE TO SECURE LIEN WAIVERS MAY RESULT IN YOUR PAYING FOR LABOR AND MATERIALS TWICE.

7. **Title, Ownership and Loss.** Title to and ownership of materials installed pursuant to an order shall be retained by United until installation is permanent and complete and Manager has paid United pursuant to its invoice. However, the risk of loss for both labor performed and material on the Property, whether installed or uninstalled, beyond the terms of United's limited warranty in paragraph 9(a), is upon Manager and Owner. Upon complete payment, United will provide appropriate lien waivers upon request of Manager.

8. **Manager's Warranties and Obligations.** (a) Manager warrants that: i) it will be fully authorized to place Orders subject to this Agreement on its own behalf and on behalf of the Owner; ii) each Property will be in good condition and will not have any hidden or undisclosed condition (including

but not limited to unlevel or buckling floors) which will affect performance of the Order, except those for which normal floor preparation will be performed by United. (b) If any such hidden or undisclosed condition exists, United may, at its sole option: i) with approval of Manager, at a negotiated price, proceed to complete the contract after rectifying such hidden condition; or ii) terminate performance of the Order, in which event United shall have all remedies provided by paragraph 12 below.

9. **United's Limited Warranty.** (a) If flooring supplied by United is maintained as required by the manufacturer, then United warrants all workmanship to Manager and Owner for two (2) years following completion of installation, except as to rental property where this limited warranty shall extend for only one (1) year following completion of installation. This warranty does not cover damage caused by conditions beyond United's control, including acts of God. No warranty made by United is transferable. After the warranty period, there will be a service charge for any work which may be performed by United. Flooring materials are warranted only by the manufacturer, and United shall assign all such warranties to Manager or Owner at the request of Manager or Owner. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE PROVISIONS OF THIS WARRANTY ARE MANAGER'S AND OWNER'S EXCLUSIVE REMEDY FOR BREACH OF THE WARRANTY. IN NO EVENT SHALL UNITED BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING FROM ANY CAUSE WHATSOEVER. Some states do not allow the exclusion or limitation of incidental or consequential damages so the above limitations may not apply to you. This warranty gives you specific legal rights, and you may also have other rights which may vary from state to state. Without expanding the limited warranty above, neither United nor its suppliers warrant: (i) that colors and textures will not vary from samples presented to Manager, Owner or any other; or (ii) natural wood products utilized in floors or other construction against splitting, discoloration of knots.

(b) Manager specifically acknowledges that removal of existing flooring, preparation of the job site and installation of flooring causes incidental damage to baseboards, door, surfaces beneath the flooring, and other surfaces and structures. United will not be responsible for damage to property which occurs during installation.

10. **Moving of Property and Animals.** (a) Prior to United performing work under an Order, Manager will: i) move all works of art, antiques, pianos, china, crystal, porcelain, computer equipment, televisions, stereo equipment, optical equipment, electronics or items which are valuable or which may have sentimental value, and any other items which United requests so that they do not obstruct United's work; ii) disconnect all utility lines to enable United to move those items which United will move.

(b) If Manager does not comply with the terms of subparagraph (a) of this paragraph, Manager and Owner will hold harmless and indemnify United and its employees, agents, contractors, officers and directors (collectively referred to in the remainder of this paragraph as "United") from any and all damages resulting from the negligence or gross negligence of United in performing the work mentioned in said subparagraph.

(c) Notwithstanding the foregoing, United reserves the right to refuse to move or handle any item for any reason, including that the item is valuable, fragile, heavy, bulky, large or cumbersome.

(d) Manager shall exercise strict control over all animals ensuring, at all times, that all animals are kept away from United, its materials, equipment and property.

11. **Delay.** United is not responsible for delay of inability to perform caused by Manager, Owner or any other person, strikes, acts of God, war, riots, shortages, weather conditions, public authorities, or other causes of casualties beyond United's control. If work is stopped for seven (7) days or more by public authority or through an act of neglect of Manager, Owner or any other person, United may terminate its performance of the Order and recover the amount due under paragraph 12 below. Manager's obligations to pay and perform pursuant to the Order are not conditioned on United's performance by any certain date. Manager shall have 20 days following notification that materials are ready for installation within which to allow United to begin installation.

12. **Damages and Remedies.** (a) In the event any party other than United shall breach or repudiate any Order of this Agreement, United shall be paid as liquidated damages and not as a penalty, a sum computed as follows: i) United's full current retail list price for all custom materials ordered or installed at the time of such breach or repudiation; ii) United's full current retail list price for all non-custom materials installed and all work performed the time of such repudiation or breach; plus iii) 35% of United's full current retail list price for all work and non-custom materials which are the subject of the Order and not performed or installed which are not otherwise included in sections i) and ii) of this subparagraph.

(b) As used herein, "custom materials" include all items which are not in United's inventory at the time the Order is made, all items which have been cut or altered to conform to the requirements of an Order and any other materials which are so designated by United prior to installation.

(c) In addition, in the event of such breach or repudiation: i) United shall be entitled to all costs of collection, including but not limited to court costs, collection agency charges, witness fees, expert witness charges, copying costs, travel charges, and a reasonable attorney's fee of one-third of the amount owed, whether or not suit is instituted; ii) United may, at its sole option, sell for scrap all custom materials at any time following 30 days after such breach or repudiation.

(d) The damages set forth herein shall be in addition to any other damage of loss suffered by United on account of any breach or repudiation.

(e) Any default in Manager's performance with respect to one Order shall constitute a default as to all Orders for which payment has not been made to United.

13. **Miscellaneous.** (a) Time is of the essence as to all Manager's obligations, including payment

(b) Paragraph headings contained in this Agreement are for convenience only, and shall not be used to interpret or construe the provisions hereof.

(c) This Agreement and all Orders placed in connection herewith shall be governed by the internal laws of the state of Missouri without references to any conflict of laws principles.

(d) Suit to enforce or interpret the provisions of this Agreement and any Order shall be brought only in the Circuit Court for the County of St. Louis, Missouri or the United States District Court for the Eastern District of Missouri, and the parties hereto irrevocably consent to the jurisdiction of such courts.

UNITED CARPET COMPANY, INC.

Rick Giancola, President

Title _____