**LeaseA#1**

LEASE AND AMENDMENT TO LEASE

**Exhibit 10(gg)**

**LEASE AGREEMENT**

This Lease Agreement (the "Lease") is made and executed between ROADSTOP CENTERS OF TEXAS, L.P. ("Landlord"), and HELEN’S RESTAURANTS LIMITED PARTNERSHIP ("Tenant"), as of October 15, 2002 (the "Effective Date"), pursuant to the terms of which the parties hereto contract and agree as follows:

**SECTION 1**Leased Premises

This Lease shall pertain to a portion of the real property located at Morton2415 Morton, Houston, Willis County, Texas, (the "Morton Street Property"), consisting of approximately 17,000 square feet, together with all rights, privileges, and appurtenances belonging to or in any way pertaining thereto (hereafter collectively referred to as the "Leased Premises"). A copy of the site plan of the Morton Street Property, with the Leased Premises being outlined in red, is attached hereto and incorporated herein for all purposes.

**SECTION 2**Initial and Renewal Terms of Lease

This Lease shall be for an initial term of one-year (the "Initial Term"), commencing on November 1, 2002 (the "Commencement Date") and ending on October 31, 2003.

Renewal; Automatic. Upon the expiration of the initial term of this Lease, provided this Lease has not been previously terminated pursuant the provisions of this Lease as may be set forth elsewhere herein, this Lease shall automatically renew for two additional one (1) year Renewal Terms, unless on or before 90 days prior to the then current Expiration Date of this Lease, either party has given notice of such party's intention not to renew this Lease for an additional one (1) year Renewal Term.

**SECTION 3**Early Termination of Lease by Landlord

Landlord may at any time during any term of this Lease, upon ninety (90) days written notice (an "Early Termination Notice"), terminate and cancel this Lease, in which event this Lease shall terminate as of the date specified in such Early Termination Notice.

**SECTION 4**Approved Use of Leased Premises

The Leased Premises shall be used for the purpose of storing restaurant furniture and equipment and for the assembly of restaurant equipment, including light welding, and for no other purpose. In no event shall Tenant store toxic or hazardous substances on the Leased Premises without Landlords prior written approval.

**SECTION 5**Rental Payments

During the Initial Term and any Renewal Term of this Lease, Tenant shall pay Landlord, at the address of Landlord, as set forth below, or such other address as Landlord may direct in writing, Rent in the amount of $3,500 per month, on the first day of each month, commencing November 1, 2002.

Tenant shall be liable for, and Landlord may collect a late charge of five cents ($0.05) for each dollar of Rent unpaid by the eleventh (llth) day of each month, such charge to be addition to and not in lieu of any other remedy of Landlord hereunder. Tenant agrees that such charges are necessary and reasonable in light of the expenses and loss of income caused by late payments.

Tenant shall make all rental payments in full. Payment or receipt of a rental payment of less than the amount stated in this lease shall be deemed to be nothing more than partial payment of that month's account.  Under no circumstances shall Landlord's acceptance of a partial payment constitute accord and satisfaction. Nor will Landlord's acceptance of a partial payment forfeit Landlord's right to collect the balance due on the account, despite any endorsement, stipulation, or other statement on any check.

**SECTION 6**Insurance

Tenant shall obtain appropriate general liability, worker's compensation, theft and other coverage in such amounts and from such companies as are mutually agreeable to the parties to the lease. Tenant shall have complete responsibility for obtaining insurance covering all personal property stored or placed in and about the Leased Premises and Landlord shall have no responsibility for the same. Landlord shall be a named as an additional insured on each liability policy. Landlord shall maintain all insurance on the Leased Premises in such amounts and from companies, as Landlord, in Landlord's sole judgment and discretion, deems advisable and appropriate. Tenant shall have no interest in any insurance obtained by Landlord or the proceeds thereof.

Landlord and Tenant, in behalf of themselves and all parties claiming under them, mutually release and discharge each other from all claims and liabilities arising from or caused by any casualty or hazard or in connection with property on or activities conducted on the Leased Premises, which are covered or required hereunder to be covered in whole or in part by insurance on the Leased Premises, and waive any right of subrogation which might otherwise exist in or accrue to any person on account thereof, provided that such release shall not operate in any case where the effect is to invalidate or increase the cost of such insurance coverage (provided, that in the case of increased cost, the other party shall have the right, within thirty (30) days following written notice, to pay such increased cost, hereby keeping such release and waiver in full force and effect).

**SECTION 7**Access of Landlord; For Sale or For Lease Signs

Tenant shall allow Landlord full and complete access to the Leased Premises for the purpose of examining the Leased Premises to ascertain that the Leased Premises is in good repair and in clean and sanitary condition. Landlord shall have the right, at all times during the term of this Lease, as it may be renewed, between the hours of 8:00 a.m. and 6:00 p.m., Monday through Saturday, as well as any other hours Tenant's representatives are at the Leased Premises, to show the Leased Premises to prospective purchasers. During the last 90 days of the Initial Term or any Renewal Term, Landlord shall also have the right to show the Leased Premises to prospective lessees, unless the Lease has been renewed, as provided for herein.

**SECTION 8**Operation, Care and Use of Leased Premises

Tenant shall comply with all present and future governmental laws, ordinances and regulations applicable to the use of the Leased Premises, including but not limited to compliance with all applicable federal, state, and local laws relating to protection of public health, welfare, and the environment (Environmental Laws"), with respect to Tenant's use and occupancy of the Leased Premises and Tenant shall promptly comply with all governmental orders and directives for the correction, prevention and abatement of nuisance or any non-compliance in, upon or connected with the Leased Premises.

Tenant shall not, without the Landlord's prior written consent, keep anything within the Leased Premises (or use the Leased Premises for any purpose) which increases the insurance premium cost or invalidates any insurance policy carried on the Leased Premises or other parts of the Property.  If Landlord should consent to such use or occupancy by Tenant, Tenant shall pay on demand, as additional rent, the additional insurance premiums resulting from such use or occupancy. All property kept or stored or maintained within the Leased Premises by Tenant shall be at Tenant's sole risk.

Tenant shall take good care of the Leased Premises and keep the same in a clean and attractive condition, and free from waste, dirt, rubbish or nuisance at all times. Tenant shall keep any service-ways, and loading areas adjacent to the Leased Premises neat, clean and at all times, and shall store all trash and garbage within the Leased Premises, arranging for the regular pick-up of such trash and garbage at Tenant's expense. Receiving and delivery of goods and merchandise and removal of garbage and trash shall be made only at such locations, and subject to such regulations as Landlord may from time to time prescribe.

**SECTION 9**Surrender of Leased Premises Upon  
Termination of Lease

Unless the Lease has been renewed as provided for herein, at the expiration of the Initial Term or any Renewal Term, Tenant shall surrender the Leased Premises in as good condition as it was in at the beginning of such term, reasonable use and wear and damages by the elements excepted.

If Tenant does not vacate the Premises following termination of this Lease, Tenant will become a tenant at will and must vacate the Premises on receipt of notice from Landlord. It is agreed and understood that any holding over by Tenant of the Leased Premises after the expiration of this Lease shall operate and be construed as a tenancy from month to month (the "Holdover Period") at a rental equal to 150% of the Minimum Monthly Rent herein provided, as such rental is then adjusted as herein provided (the "Holdover Rental"), and subject to any Percentage Rent. The accrual or payment of such Holdover Rental shall not provide Tenant with any rights of occupancy or any other rights under the Lease during the Holdover Period. Tenant shall remain in the possession of the Leased Premises solely at the sufferance of Landlord and Landlord shall be entitled to pursue all of its remedies against Tenant during such Holdover Period, including but not limited to seeking Tenant's eviction, notwithstanding the accrual and/or payment of such Holdover Rental.

**SECTION 10**Events of Default and Landlord's Remedies

An "Event of Default" shall occur, as follows:

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| A. | Rent. If Tenant shall be in default of the prompt payment, when due, of any installment of basic rent or additional rent. |
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| B. | Breach.  If Tenant shall default in observing, performing, or keeping any term, provisions, covenant or condition of this Lease on Tenant's part to be kept, observed, or performed, other than for the payment of Rent, and shall not cure such default after Landlord gives Tenant twenty (20) days written notice thereof, or, if any default cannot be cured completely within such period, Tenant does not promptly commence to cure such default within such period and thereafter proceed with due diligence to cure the same. |
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| C. | Insolvency. If Tenant is unable to meet its obligations as they become due, is adjudicated a bankrupt, makes a general assignment for the benefit of creditors, or takes the benefit of any insolvency act, or a permanent receiver or trustee in any insolvency act, or a permanent receiver or trustee in bankruptcy is appointed for Tenant's property and such appointment is not vacated within Thirty (30) days. For these purposes, "Tenant" shall mean the Tenant then in possession of the Leased Premises. |
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| D. | Abandonment.  If the Leased Premises becomes vacant or deserted for a period of Three (3) days. |
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| E. | Assignment. If this Lease is assigned or the Leased Premises sublet other than in accordance with the lease terms; provided, however, it shall not be a violation of this subsection if: (1) Tenant assigns part or all of its obligations hereunder to an entity that is an affiliate of the Tenant and which is subject to the same ultimate controlling ownership as that of the Tenant; or (2) said assignment or subletting is authorized in advance by Landlord. |

Remedies Upon Default. Upon the occurrence of an Event of Default, Landlord shall be entitled, but not required, to exercise certain remedies, as follows:

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| A. | Termination. Terminate this Lease as completely as if that were the date Landlord terminates the Lease were the date for the expiration hereof as specified in the Lease and, in such event, Tenant shall then surrender the Leased Premises to Landlord. Upon the termination of this Lease, Landlord may terminate any sublease then in effect, without the consent of the subtenant. |
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| B. | Detainer action. File a Detainer action to have Tenant removed and evicted from the Leased Premises. |
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| C. | Take Possession of Leased Premises. Without any formal demand or notice, reenter the Leased Premises by any lawful means and remove Tenant therefrom without being liable for any damages therefor. |
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| D. | Deficiency. If this Lease terminates as provided in this Section, Landlord may at any time recover from Tenant the amount by which Landlord has been damaged as a result of Tenant's default. |
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| E. | Other Lawful Remedies. Pursue any other remedy allowed by law. |

Statutory Notice.  Nothing in this Section shall be deemed to require Landlord to give Tenant any notice, except as required by statute, before the commencement of any unlawful detainer action for nonpayment of any basic rent or additional rent.

Time of Essence.  Time is of the essence of this Lease with respect to Tenant's performance of its obligations hereunder.

**SECTION 11**Security Interest and Lien on Tenant's Improvements  
And Personal Leased Premises

Landlord shall have a security interest and first lien paramount to all others on every right and interest of Tenant in and to this Lease, on any improvement on or hereafter placed on the Leased Premises, and on all furnishings, equipment, fixtures, or other personal property of any kind belonging to Tenant, or the Tenant's equity therein, on the Leased Premises.  The security interest and lien are granted for the purposes of securing payment of rents, taxes, assessments, charges, liens, penalties, and damages, and of securing the performance of all of Tenant's obligations under this Lease. The security interest and lien shall be in addition to all other rights granted to Landlord under present or future laws of this state. Tenant shall execute such financing statements and such other instruments as are reasonably required by Landlord to perfect such security interests.

**SECTION 12**Injunctive Relief By Landlord Against Tenant  
or Others - Cumulative Remedy

Any violation, attempted violation, or threatened violation of any condition of this Lease by Tenant, or anyone claiming under it, shall be remediable by injunction, which shall be a cumulative remedy in addition to every other remedy given by this Lease or by existing or future laws.

**SECTION 13**Right Of Entry To Make Necessary Repairs  
No Liability For Disturbance

Landlord or its agent shall be permitted to enter the Leased Premises at all reasonable times during usual business hours for the purpose of inspecting the Leased Premises and making any necessary repairs to the Leased Premises and performing any work therein that may be necessary by reason of the Tenant's default under the terms of this lease.

Landlord reserves the right to install, maintain, use repair and replace ducts, pipes wires and conduits through the walls, floors and ceilings of the Leased Premises serving other parts of the Property and the right to install, maintain, use, repair and replace equipment, signs, antennas, displays and other objects upon the roof of the Leased Premises.

Nothing herein shall imply any duty upon the part of the Landlord to do any such work which under any provision of this Lease the Tenant may be required to perform, and the performance thereof by Landlord shall not constitute a waiver of Tenant's default. Landlord may during the progress of any work on or in the Leased Premises keep and store upon the Leased Premises all necessary materials, tools and equipment.

Landlord shall not in any event be liable for inconvenience, annoyance, disturbance, loss of business, or other damage to Tenant or the subtenants of Tenant by reason of making such repairs or the performance of any such work on or in the Leased Premises, or on account of bringing materials, supplies, and equipment into or through the Leased Premises during the course of such work, and the obligations of Tenant under this lease shall not thereby be affected in any manner.

**SECTION 14**Destruction By Casualty  
(Election To Discontinue Operations)

In the event of a casualty to the Leased Premises, Landlord shall not be obligated to restore the Leased Premises.  In addition, all insurance proceeds covering such casualty, under any policy relating to the Leased Premises, shall become the property of Landlord. Tenant shall co-operate fully in assisting Landlord in the processing of any claims, and shall make such assignments and sign such other documents as are required by an insurer to give effect to this Lease. However, in the event any portion of the Leased Premises is damaged or destroyed to such an extent that Tenant, in its sole discretion, elects to discontinue operations, or shall Landlord, in its sole discretion, elect not to restore the Leased Premises, either party may cancel this Lease by giving the other party notice of its election and this Lease shall terminate and shall become null and void Thirty (30) days after said notice.

**SECTION 15**Rental & Security Deposit

No security deposit or other rent prepayment is due and payable pursuant to the terms of this Lease.

**SECTION 16**Severability

In case any one or more of the provisions contained in this Lease shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions thereof and this Lease shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

**SECTION 17**Cumulative Remedies

The rights and remedies provided by this Lease are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise, and may be exercised and enforced concurrently and whenever and as often as occasion therefor arises.

**SECTION 18**Taxes and Utilities

Landlord shall pay all current real estate taxes and special assessments lawfully levied or assessed against the Leased Premises. Tenant shall pay all current personal property taxes and special assessments levied or assessed against all personal property placed by Tenant in and about the Leased Premises. Landlord shall pay for the existing utilities furnished to the Leased Premises, but shall not be required to provide for any additional utilities. Landlord shall not be liable for any interruption whatsoever, nor shall Tenant be entitled to claim any right of offset due to any interruption of service. Tenant's sole remedy in the event of an interruption in utility service, which lasts longer than 7 consecutive days is to terminate this Lease by written notice, in which event this Lease shall terminate on the latter of 10 days after the date of such notice or the date Tenant vacates the Leased Premises after having given such notice of termination. In no event shall Tenant be entitled to a return or refund of Rent paid prior to such termination.

**SECTION 19**Alterations and Improvements

Tenant shall not create any openings in the roof or exterior walls, nor make any alterations or capital improvements to the Leased Premises without the prior consent of the Landlord. All non-structural alterations, additions and improvements that are made by Tenant shall become the property of Landlord at the termination of the Lease; however, the Tenant shall promptly remove, if Landlord at its sole option so elects, all alterations, additions and improvements, and any other property placed in the Leased Premises by Tenant, who shall be responsible for any damage caused by such removal. Tenant has erected a fence separating the Leased Premises from the remainder of the building in which the Leased Premises is located. Unless otherwise instructed by Landlord, Tenant shall remove the fence at the termination of the Lease and repair any damage to the Leased Premises caused by such removal. Tenant understands that Landlord may lease space adjoining the Leased Premises to other tenants and that in the course of such activities, may erect a more permanent and substantial partition separating the Leased Premises from such other space. In such event. Landlord shall have the right to remove the fence in order to replace the fence with a more permanent and substantial partition, without any liability to Tenant for such removal and/or destruction of the fence and Landlord shall have the right to enter into and upon the Leased Premises for the purpose of constructing such partition.

**SECTION 20**Waiver of Subrogation

Both parties hereto waive any and every claim which arises or may arise in this favor and against the other party hereto during the terms of this Lease or any renewal term thereof for any and all loss of, or damage to any of its property located within or upon, or constituting a part of, the Leased Premises, which loss or damage is converted by valid and collectible fire and extended coverage insurance policy, to the extent that such loss or damage is recoverable under said policy. Said mutual waivers shall be in addition to, and not in limitation or derogation of, any other waiver or release contained in this Lease with respect to any loss of, or damage to, property of the parties hereto. Inasmuch as the above-stated mutual waivers will preclude the assignment of any claim by way of subrogation or otherwise to an insurance company (or any other person), each party hereto hereby agrees immediately to give each insurance company which has issued to its policies of fire and extended coverage insurance written notice of the terms of said mutual waivers, and to have said policies properly endorsed, if necessary, to prevent the invalidation of the coverage by reason of said waivers.

**SECTION 21**Quiet Enjoyment

Landlord warrants that it has full right and power to execute and perform this Lease and that the Tenant, on payment of the rent and performing its covenants hereunder, shall peacefully and quietly have, hold and enjoy the Leased Premises during the full term of this Lease has any extension or renewal hereof. Notwithstanding the foregoing. Tenant understands that Landlord may lease other portions of the Morton Street Property to other tenants and Tenant agrees that Landlord shall have no obligation to provide Tenant with any security with respect to such other Tenants or the public in general and Tenant agrees to be solely responsible for its own security and the security of its property located in or about the Leased Premises and to provide its own insurance coverage to protect itself against any losses as the result of any theft or destruction, which may be caused by such other Tenants, their agents and invitees. Tenant's sole remedy for a violation of the warranty and covenant of quiet enjoyment shall be to terminate this Lease.

**SECTION 22**Parties Have Relationship Of Landlord and Tenant  
Not Principal-Agent, Partners, or Joint Venturers

Nothing contained in this Lease shall be deemed or construed tocreate the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between Landlord and Tenant. It is expressly understood and agreed that neither the computation of rent nor any other provisions contained in this Lease nor any act or acts of the parties hereto shall be deemed to create any relationship between Landlord and Tenant other than the relationship of landlord and tenant.

**SECTION 23**Indemnity

Landlord shall not be liable for and Tenant agrees to indemnifyand save harmless Landlord and its affiliates and their agents, servants, directors, officers and employees (collectively, the "Indemnitees") from and against any and all liabilities, damages, claims, suits, costs (including costs of suit, attorneys' fees and costs of investigation) and actions of any kind arising or alleged to arise by reason of injury to or death of any person or damage to or loss of property occurring on, in, or about the Leased Premises or by reason of any other claim whatsoever of any person or party occasioned by any act or omission on the part of Tenant or any invitee, patron, licensee, employee, director, officer, agent, servant, owner, contractor, subcontractor, or tenant of Tenant, or on the part of any person entering the Leased Premises under the expressed or implied invitation of Tenant, or any breach, violation or nonperformance of any covenant of Tenant under this Lease, whether such liability, claims, suits, costs, injuries, deaths, or damages arise from or are attributed to the concurrent negligence of any Indemnitee. If any action or proceeding shall be brought by or against any Indemnitee in connection with any such liability or claim, Tenant, on notice from the Indemnitee, shall defend such action or proceeding, at Tenant's expense, by or through attorneys reasonably satisfactory to the Indemnitee.  The provisions of this Section shall apply to all activities of Tenant with respect to the Leased Premises, whether occurring before or after execution of the Lease. Tenant's obligations under this Section shall not be limited to the limits or coverage of insurance maintained or required to be maintained by Tenant under this Lease.

**SECTION 24**Eminent Domain

If more than ten percent (10%) of the floor area of the Leased Premises should be taken for any public or quasi-public use under any governmental law, ordinance or regulation or by right of eminent domain or by private purchase in lieu thereof, either party may terminate this Lease and the rent shall be abated during the unexpired portion of this Lease, effective on the date physical possession is taken by the condemning authority. In no event shall Tenant have any interest in or claim to any award by any condemning authority, with the right to all such awards being the sole property of Landlord.

**SECTION 25**Miscellaneous Terms And Provisions

This Lease shall be subject to miscellaneous terms and provisions, as follows:

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| A. | Amendment. This Lease shall not be amended, modified, superceded or cancelled unless in writing and signed by the parties referring to this Lease and demonstrating intent to so amend, modify, supercede or cancel it. | |
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| B. | Binding Effect. This Lease shall be binding and conclusive upon and inure to the benefit of and be enforceable by the respective parties hereto and their successors and assigns. | |
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| C. | Construction. This Lease represents the mutual agreement of the parties and shall not be construed more strongly against or in favor of either party. | |
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| D. | Counterparts. This Lease may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but such counterparts shall be construed together and shall constitute one instrument. This Lease shall be binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of the parties reflected hereon as signatories. | |
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| E. | Damages; Limitation. To the maximum extent permitted by applicable law, no party nor any of its affiliates or suppliers will be liable for any indirect damages (including, without limitation, consequential, special or incidental damages, damages for loss of profits or revenues, business interruption, or loss of business information) arising from or in connection with this Lease or any of the Documents, or any breach of the terms thereof, even if advised of the possibility of such damages or if such possibility was reasonably foreseeable. This exclusion of liability does not apply to a party's liability to another party for: (i) willful misconduct; (ii) violation of any indemnity provisions of this Lease; or (iii) violation of its confidentiality obligation or of another party's intellectual property rights. | |
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| F. | Entire Agreement. This Lease, together with any schedules and other documents to which it refers, supersedes any and all other agreements, either oral or in writing, between or among the parties hereto with respect to the subject matter hereof and contains all of the covenants and agreements between the parties with respect to said matter. Each party to this Lease acknowledges that no representations, inducements, promises or agreement, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not invited herein and that no other agreement, statement or promise not contained in this Lease shall be valid or binding. | |
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| G. | Execution and Delivery by Facsimile Transmission. If this Lease or any document executed in connection with this Lease is delivered by facsimile or similar instantaneous electronic transmission device pursuant to which the signature of or on behalf of such party can be seen (a "fax"), such execution and delivery shall be considered valid, binding and effective for all purposes as an original document. Additionally, the signature of any party on this document transmitted by way of a facsimile machine shall be considered for all purposes as an original signature. Any such faxed document shall be considered to have the same binding legal effect as an original document. At the request of any party, any faxed document shall be re-executed by each signatory party in an original form. | |
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| H. | Execution of Other Documents; Further Action. Each party shall, on demand, execute or obtain such other documents or instruments and corrective filings or instruments and use all commercially reasonable efforts to do or cause such other things as may be reasonably necessary or desirable to effect the provisions and purposes of this Lease. | |
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| I. | Expenses of Negotiation.  Whether or not the transactions contemplated hereby are consummated, each of the parties will pay all costs and expenses of its or his performance of and compliance with this Lease. | |
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| J. | Fees and Expenses of Actions. If any arbitration proceeding, administrative proceeding or any legal action, at law or in equity (an "Action"), is commenced, including an Action for declaratory relief, to enforce or interpret the terms of this Lease, or any document or instrument executed in connection with or pursuant to this Lease, or involving any controversy or claim between or among the parties to this Lease, whether sounding in contract, tort or statute, whether through arbitration, probate, bankruptcy, receivership or other judicial or administrative proceeding, the prevailing party in such Action (the "Prevailing Party") shall be entitled to recover reasonable attorney's fees, paralegal costs, expert witness and consulting expert fees and costs, and other expenses, costs and necessary disbursements incurred by such Prevailing Party in the investigation, preparation, pursuit or defense of any claim asserted by any party in such Action (including allocated costs for in-house legal services), in addition to any other relief to which the Prevailing Party may be otherwise entitled, at law or hereunder, in the amount determined by the fact-finder (s) or arbitrator (s). | |
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| K. | Force Majure. Whenever a period of time is herein provided for Landlord to do or perform any act or thing. Landlord shall not be liable or responsible for, and there shall be excluded from the computation of such periods of time, any delays due to strikes, riots, acts of God, shortages of labor or materials, national emergency, acts of public enemy, governmental restrictions, laws or regulations, or any other cause or causes, whether similar or dissimilar to those enumerated, beyond Landlord's reasonable control. | |
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| L. | Gender and Number.  Unless otherwise required by context, the genders shall include each other and the singular shall include the plural and the plural the singular. | |
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| M. | Headings, Etc.  Headings, table of contents, captions, titles and marginal notations are for convenience only and shall not limit or restrict the interpretation or construction of the passage(s) to which such headings, table of contents, captions, titles and notations may relate. | |
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| N. | Governing Law; Jurisdiction and Venue; Performance. Except to the extent that the laws of the United States may apply or otherwise control this Lease, the rights and obligations of the parties hereunder shall be governed by, construed and interpreted in accordance with the laws of the State of Texas, without regard to conflict of law principals. Bexar County, Texas shall be the proper place of venue to enforce payment under the performance of this Lease. | |
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| O. | Schedules, Addenda and Exhibits. All schedules, addenda and exhibits shall be a part of this Lease for all purposes. Schedules, addenda and exhibits shall be changed from time to time as the parties may agree. When schedules, addenda and exhibits are changed, they shall be redrafted in accordance with agreed changes, dated as of the effective date of such change and signed by the parties.  Copies of changed schedules, addenda and exhibits shall be furnished to each party and such changed schedules and exhibits shall become a part of this Lease for all purposes.  Schedules, addenda and exhibits, which have been changed, shall cease to be a part of this Lease, and the most recently dated schedule, addendum and exhibit, signed by all parties, shall govern. | |
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| P. | Survival of Covenants.  All covenants, agreements, representations and warranties made by a party to this Lease, and in any other documents, schedules or instruments referred to herein shall survive the execution and delivery of this Lease. All such covenants, agreements, representations and warranties shall be binding upon any successors and assigns of the party giving the same. | |
|  |  | |
| Q. | Third Party Beneficiaries; None Created. Nothing express or implied in this Lease is intended to confer, nor shall anything herein confer, upon any person other than the parties hereto and the respective successors or assigns of the parties hereto, any rights, remedies, obligations or liabilities whatsoever. | |
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| R. | Waiver. No waiver of any term of this Lease shall be valid unless it is in writing and signed by both parties. The failure of any party at any time or times to require performance of any provision hereof shall in no manner affect the right to enforce the same. No waiver by any party of any condition contained in this Lease, or of the breach of any term, provision, representation, warranty or covenant contained in this Lease, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or breach, or as a waiver of any other condition or of the breach of any other term, provision, representation, warranty or covenant. | |
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| S. | Notices. Any notice to be given or to be served upon any party hereto, in connection with this instrument, must be in writing and may be given in person or by: courier; overnight delivery service or Express Mail; facsimile transmission; | |
|  |  | |
|  | or, certified or registered mail. Such notice shall be deemed to have been given and received: when actually received, in the case of hand delivery, overnight delivery service or Express Mail; when a certified or registered letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail; | |
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|  | and, if given by facsimile transmission, it shall be deemed to have been given when its transmission is confirmed by the transmitting facsimile machine as received by the party to whom it is addressed. Any party hereto may, at any time by giving five (5) days written notice to the other party hereto, designate any other address and/or facsimile telephone number in substitution of the following address and facsimile telephone number to which such notice shall be given: | |
|  |  | |
| TO: Landlord | | |
|  | | Mailing Address: |
|  | | Roadstop Centers of Texas, L.P.  XXX, TX 78265-4630 Attention: Legal Department |
|  | |  |
|  | | Physical Address: |
|  | | Roadstop Centers of Texas, L.P. XXX |
|  | |  |
| TO: Tenant | |  |
|  | | Mailing and Physical Address: |
|  | | Helen’s, Inc. Texas Attention: Real Estate Department TELECOPY NO.: |

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURES OF PARTIES ON NEXT PAGE]

**SECTION 26**Status of Leased Premises

TENANT ACKNOWLEDGES THAT IT HAS FULLY INSPECTED THE LEASED PREMISES.  TENANT HEREBY ACCEPTS THE LEASED PREMISES "AS IS" AND ACKNOWLEDGES THAT THE LEASED PREMISES IS SUITABLE FOR THE PURPOSES FOR WHICH THE SAME ARE LEASED IN THEIR PRESENT CONDITION.

THIS WRITTEN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.

THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

In agreement whereof, the parties execute this Lease in multiple originals as of the Effective Date.

|  |  |
| --- | --- |
| TENANT: | LANDLORD: |
|  |  |
| HELEN’S RESTAURANTS   LIMITED PARTNERSHIP | ROADSTOP CENTER OF TEXAS,   OF TEXAS, L.P. |
|  |  |
| BY:  HELEN’S, INC., ITS GENERAL PARTNER | BY:  RUSHTEX, INC., ITS GENERAL PARTNER |

|  |  |
| --- | --- |
| By: /s/Linda Evans Name:  Linda Evans Title: Senior V.P. | By:  /s/Carry Piscator Carry Piscator President |

**FIRST AMENDMENT TO  
LEASE AGREEMENT**

This First Amendment to Lease Agreement (the "Amendment") is entered into between **NORMA’S RESTAURANTS, INC.**, a Texas corporation, herein called "Landlord", and **HELEN’S RESTAURANTS LIMITED PARTNERSHIP**, as "Tenant, to be effective August 1, 2003, for the purpose of amending that one certain Lease Agreement entered into between Roadstop Centers of Texas, L.P., predecessor-in-interest to Landlord, and Tenant effective October 15, 2002 (the "Lease", including all addendum thereto). The terms of this Amendment shall be construed as a part of the terms of the Lease in all respects. In the event the terms, covenants or conditions of this Amendment conflict with the terms, covenants or conditions of the Lease, the terms of this Amendment shall control.

**WHEREAS,** Tenant has requested, and Landlord has agreed, to lease an additional 10,000 square feet of warehouse space contiguous to the existing Leased Premises ("Additional Space"), in accordance with the terms of this Amendment.

**NOW, THEREFORE,** for and in consideration of the mutual agreements set out hereunder and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landlord and Tenant agree as follows:

|  |  |
| --- | --- |
| 1. | The recital set forth above is true and correct. |
|  |  |
| 2. | The Leased Premises shall mean 27,000 square feet of warehouse space located at Morton2415 Morton Street, as more particularly described on Exhibit "A", attached hereto. |
|  |  |
| 3. | Effective as of August 1, 2003, the monthly rent identified in Section 5 of the Lease shall be increased to Five Thousand Five Hundred Fifty-Nine and No/100 Dollars ($5,559.00). |
|  |  |
| 4. | At Tenant's option and expense, Tenant may finish out the Additional Space, in accordance with the requirements of Section 19 of the Lease. |
|  |  |
| 5. | Landlord and Tenant confirm and agree that, in ail other respects, the Lease remains in full force and effect. |
|  |  |
| 6. | Except as otherwise defined herein, all terms used herein shall have the same meaning as they have in the Lease. |
|  |  |
| 7. | The parties agree that for purposes of the execution of this Amendment, facsimile copies of signatures shall be sufficient to bind the parties hereto. |
|  |  |
| 8. | This Amendment may be executed in multiple counterparts, each of which shall be fully executed as an original and all of which together shall constitute one and the same instrument. The counterparts bearing facsimile signatures shall be deemed to constitute originals and shall bind the parties hereto. |

**EXECUTED** in multiple originals to be effective as of the date set forth above.

|  |  |  |
| --- | --- | --- |
|  | **NORMA’S RESTAURANTS, INC., a Texas corporation** | |
|  |  |  |
|  | **By:** | /s/Allison Chang |
|  |  |  |
|  | **Name:** | Allison Chang |
|  | **Title:** | Controller |
|  |  | |
|  | **HELEN’S RESTAURANTS LIMITED PARTNERSHIP, a Texas limited partnership** | |
|  | **By:  HELEN’S MANAGEMENT, INC., a Delaware corporation, General Partner** | |
|  |  |  |
|  | **By:** | /s/Aaron Seeps |
|  |  |  |
|  |  | Aaron Seeps Vice President-Real Estate |

**LeaseA#2**

EXHIBIT 10

**Exhibit 10**

**YUMMY MORSELS**

**Lease**

THIS LEASE has been made and entered into as of December 7, 2009, by and between CoverHospitality, LLC (“Landlord”), and Milbrought, Inc., a Michigan corporation, dba Yummy Morsels (“Tenant”).

**WITNESSETH:**

In consideration of the mutual undertakings herein contained, and intending to be legally bound, Landlord and Tenant agree as follows:

***ARTICLE 1***

***Definitions***

1.1 *Definitions.*When used in this Lease, the following defined terms shall carry the definitions which follow them, unless the context clearly indicates to the contrary:

(a) “Exterior Areas” means all portions of the Property available for use by tenants and their invitees, and not intended to be leased, such as, without limitation, all parking areas, driveways, dumpster areas and sidewalks, but excluding detention/retention areas, roofs, buildings, or areas serving, or for the sole benefit of any singular tenant.

(b) “Lease Year” means the 12-month period beginning on February 1 of each year and ending on the following January 31.

(c) “Premises” means that space in the Property shown outlined on **Exhibit B**attached hereto, which shall include an approximately 5,588 square foot building, parking lots, and an outdoor seating area along the east wall of the building (which outdoor seating area shall accommodate 48 people), and which outdoor seating area shall be included in the Rent (no additional rent for the outdoor seating area). Landlord’s estimate of the square feet (excluding the outdoor seating area) is based on the dimensioned layout of the Premises attached as **Exhibit B-1**hereto. On or before Landlord delivers possession to Tenant, Landlord shall measure and report to Tenant the actual dimensions and square footage of the Premises. If the square footage (excluding the outdoor seating area) varies by more than 10 feet from 5,588 square feet, then either party may require the other to enter into an amendment to this Lease adjusting Tenant’s Base Rent to reflect the actual square footage of the Premises.

(d) “Property” means the real estate legally described on **Exhibit A**hereto and shown on **Exhibit B**, including the Premises, Country Inn & Suites, and the real estate to the west of the Premises labeled State Farm on **Exhibit B**, including without limitation the parking lots and driveway.

1

(e) “Rent” means Base Rent, Additional Rent and all other amounts or charges payable by Tenant under any provision of this Lease, all of which shall be deemed payable by Tenant in consideration of the demise of the Premises.

(f) “Taxes” means all ad valorem real estate taxes levied or billed by any governmental unit during the Term in respect of the Property or the Premises, or both, or any part thereof; provided, however, that in the case of special assessments payable in installments, only current installments shall be included in the definition of Taxes for any one calendar year, and only those assessed subsequent to the commencement of this Lease. Taxes shall include any governmental charge levied in lieu of all or any part of the ad valorem taxes and shall not include capital charges, paybacks; or special assessments existing prior to the Lease Commencement Date. Tenant may, at its sole cost and expense, contest Taxes with the assessing governmental authority.

(g) “Zoning” means that the Premises on the Property are currently zoned and allow the use and services to be provided by Tenant with parking sufficient to satisfy the Ordinances of the County of Marquette and/or Township of Marquette, including the exclusive use of an outside patio for the sale of food and alcoholic beverages.

1.2 *Gender; Singular and Plural.*Whenever in this Lease words, including pronouns, are used in the masculine, they shall be read in the feminine or neuter whenever they would so apply and vice versa, and words in this Lease that are singular shall be read as plural whenever the latter would so apply and vice versa.

***ARTICLE 2***

***Demise of Premises; Possession***

2.1 *Demise of Premises; Term.*

(a) Landlord leases the Premises to Tenant, and Tenant hires the Premises from Landlord, on the terms and subject to the conditions contained herein, for a term of fifteen (15) years, beginning one hundred twenty (120) days after possession is delivered to Tenant with Landlord’s work substantially complete for purposes of commencing Tenant buildout or when Tenant opens for business, whichever is earlier (the “Commencement Date”), and ending one hundred eighty (180) months later (the “Termination Date”), unless sooner terminated as provided herein (the “Term”). “Substantially complete” means that Landlord’s work is completed to the extent that no more than a traditional punch list of items that must be fixed or repaired remain to be completed, which punch list of repair items shall be repaired within twenty (20) days of delivery of the punch list by Tenant to Landlord. If Tenant is not then in default, Tenant shall have the option of extending this Lease for three (3) additional five (5) year terms, under the same terms and conditions herein, and conditional upon providing Landlord written notice one hundred eighty (180) days prior to the Termination Date or the last day of any preceding option term.

(b) Landlord reserves, upon prior notice to Tenant, the right to repair and replace pipes, ductwork, wires and the like through the Premises as necessary upon prior notice. Landlord shall use all reasonable efforts to make all such installations and perform all work related thereto so as to minimize any unreasonable interference with or interruption of the business operations of Tenant as provided herein.

2.2 *Use of Premises.*

(a) Tenant shall use and occupy the Premises for the purposes of a Yummy Morsels Restaurant, and for no other purpose without Landlord’s prior written consent (which shall not be unreasonably withheld by Landlord). Tenant shall have the exclusive right to: (i) operate a sports themed restaurant; and (ii) operate a restaurant and/or bar that primarily serves chicken wings with two or more sauces as a dominant menu item over other menu items.

(b) Tenant shall not use the Premises, or permit the Premises to be used, in a manner that constitutes a violation of any applicable law, order, ordinance, or regulation nor shall Tenant commit any waste in the Premises, or permit anything to be done on the Premises that creates a nuisance. Tenant shall not permit morally offensive, promiscuous or pornographic activities on the Premises.

(c) Landlord agrees: (i) that Tenant’s exclusive use includes the use of an outside patio with sale of alcoholic beverages and food, which does not violate the Lease provisions; (ii) that the sale of alcoholic beverages in the outdoor area is recognized and is permissible and does not violate such provisions; (iii) that the sound and video systems to be used by Tenant on the interior of the premises are not violative of the use of Tenant (so long as they do not unreasonably disrupt other tenants); and (iv) that there shall be four (4) small satellite dishes placed upon the roof of the premises in inconspicuous locations. The standard of operation shall be the standard provided by the Franchisor for operation of a typical Yummy Morsels restaurant in compliance with the Tenant’s Franchise requirements.

(d) Landlord agrees to the following Tenant requirements:

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| --- | --- | --- | --- |
|  | (i) |  | Tenant shall have the right to incorporate standard Yummy Morsels Gen. 4.1 Trade Dress to the exterior of the Premises with associated signage and awnings. Landlord will cooperate to obtain all approvals from the Township of Marquette. |
|  |  |  |  |
|  | (ii) |  | The Landlord will provide adequate parking and handicap spaces as shown on the proposed site plan (projected total spaces: 125). All parking is open, but restricted to Property tenants, employees and customers, provided that the Storm easement property is non-exclusive. Landlord will provide four (4) carry-out reserved parking spaces in front of Tenant’s space to serve Tenant’s customers. Landlord shall insure that Tenant is able to use the driveway and parking area immediately to the west of the Premises as shown on **Exhibit B**as “State Farm” for its use and the use of Tenant’s employees, customers, invitees and guests. |

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|  | (iii) |  | Landlord shall provide Tenant with a staging area for two (2) eight (8) yard dumpsters for the exclusive use of the restaurant. Tenant shall be responsible for maintaining such dumpsters and surrounding area in a clean, neat and acceptable manner, in accordance with industry standards. |
|  |  |  |  |
|  | (iv) |  | Landlord shall provide, at Landlord’s sole cost and expense a grease rendering container as may be required for restaurant use. (Tenant to provide Grease Trap.) |
|  |  |  |  |
|  | (v) |  | Landlord shall permit Tenant to install up to four (4) small satellite dishes on the roof in an inconspicuous location. Installation, removal, maintenance and repair of the satellite dishes shall be at Tenant’s sole cost and expense. Any penetrations to secure the satellite dishes are to be made by Landlord-designated roofing contractor at Tenant’s sole cost and expense. |
|  |  |  |  |
|  | (vi) |  | Landlord shall permit Tenant to use the outdoor patio area exclusively for a seating area and bar area (as permitted by local laws and regulations) for full-service food, beverage, including alcoholic beverage, service. |

*2.3 Possession.*

(a) Landlord shall deliver possession of the Premises to Tenant, for purposes of commencing the Tenant buildout, by July 1, 2010. If possession of the Premises shall, for any reason, not be delivered to Tenant on or before July 1, 2010, this Lease shall continue in full force and effect, and for every day from July 1, 2010 to November 1, 2010 that Landlord does not deliver possession, Tenant shall receive two (2) days free rent from the Commencement Date forward. If Landlord does not deliver possession on or before November 1, 2010, Tenant shall have the right to terminate this Lease and Landlord shall reimburse Tenant for all out-of-pocket costs and expenses, including all architectural plans, permits, licenses, franchisor-imposed penalties, interest, charges and attorney fees, up to one hundred thousand dollars ($100,000.00) Dollars, plus the cost of the Liquor License and the attorney fees incurred in its procurement. If Tenant does not terminate this Lease on or after November 1, 2010, then for every day from November 1, 2010 to the Commencement Date, Tenant shall receive three (3) days free rent from the Commencement Date forward. Notwithstanding the delivery of the Premises to Tenant, Landlord may have an additional 30 days to complete construction of the parking lot and landscaping on the Premises, provided, however that in such event, the Commencement Date will be extended until Tenant opens for business. Upon payment to Tenant there shall be transferred to Landlord the Liquor License and this Lease shall be null and void. If Tenant shall take possession of any part of the Premises before the Commencement Date to expedite Tenant’s Work upon written agreement with Landlord, such possession shall be governed by the provisions of this Lease, except that Tenant shall not pay Landlord rent or other charges except for electricity

consumed at the Premises. Neither the Term nor any other provision of this Lease shall be affected by Tenant’s prior occupancy, which shall occur only with the written permission of the Landlord, which shall not be unreasonably withheld, conditioned or delayed. Further, there shall be added for each day of delay in providing possession an additional day to the term and all rights of Tenant under the Lease shall be correspondingly extended. If Tenant is given possession to commence work of any kind, such shall not be deemed that the Tenant has taken possession of the Premises for the purposes of this Lease.

(b) Tenant’s obligation to pay Rent shall commence on the Commencement Date provided Landlord’s Work is substantially complete, as defined in this Lease, at time of delivery of the Premises.

2.4 *Condition of Premises; Representations.*Except as Landlord and Tenant may otherwise agree in writing, Tenant’s acceptance of possession shall constitute that Tenant has inspected the Premises and found them to be satisfactory at the time of entry. Landlord shall be responsible for all latent defects to the Premises and structures, and for conditions which are not apparent on date of delivery. Landlord shall be obligated to correct any punchlist items that are due to the fault of Landlord’s Work as provided in Section 5.1(a).

The Landlord warrants and guarantees that the Premises will be delivered in the condition required and is responsible for any latent defects so that Tenant may have quiet enjoyment of the property and the exclusive use and occupancy as provided herein. The Landlord represents that Landlord’s Work on the Premises will meet all applicable building codes, ordinances, laws, regulations, and requirements, including the Americans With Disabilities Act.

2.5 *Quiet Enjoyment.*Landlord covenants and agrees with Tenant that upon Tenant’s paying the Rent and observing and performing the terms, covenants and conditions to be performed and observed, Tenant may peaceably and quietly enjoy the Premises hereby leased as provided herein for the exclusive use(s) of Tenant which are provided and allowed under the current zoning and that the parking is sufficient for such uses.

***ARTICLE 3***

***Rent and Other Charges***

3.1 *Base Rent.*

(a) Tenant shall pay to Landlord, for the first ten (10) years, as follows:

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| Year 1 |  | $15.00/sq. ft. | | |  | $83,820/year | | |  | $6,985.00/month | | |
| Year 2 |  | $15.00/sq. ft. | | |  | $83,820/year | | |  | $6,985.00/month | | |
| Year 3 |  | $15.00/sq. ft. | | |  | $83,820/year | | |  | $6,985.00/month | | |
| Year 4 |  | $15.00/sq. ft. | | |  | $83,820/year | | |  | $6,985.00/month | | |
| Year 5 |  | $15.00/sq. ft. | | |  | $83,820/year | | |  | $6,985.00/month | | |

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| Year 6 |  | $16.00/sq. ft. | | |  | $89,408/year | | |  | $7,450.66/month | | |
| Year 7 |  | $16.00/sq. ft. | | |  | $89,408/year | | |  | $7,450.66/month | | |
| Year 8 |  | $16.00/sq. ft. | | |  | $89,408/year | | |  | $7,450.66/month | | |
| Year 9 |  | $16.00/sq. ft. | | |  | $89,408/year | | |  | $7,450.66/month | | |
| Year 10 |  | $16.00/sq. ft. | | |  | $89,408/year | | |  | $7,450.66/month | | |
| Year 11 |  | $17.00/sq. ft. | | |  | $94,996/year | | |  | $7916.33/month | | |
| Year 12 |  | $17.00/sq. ft. | | |  | $94,996/year | | |  | $7916.33/month | | |
| Year 13 |  | $17.00/sq. ft. | | |  | $94,996/year | | |  | $7916.33/month | | |
| Year 14 |  | $17.00/sq. ft. | | |  | $94,996/year | | |  | $7916.33/month | | |
| Year 15 |  | $17.00/sq. ft. | | |  | $94,996/year | | |  | $7916.33/month | | |

(the “Base Rent”). The Base Rent shall be payable in twelve (12) equal monthly installments, commencing on the Commencement Date or when Tenant opens for business, whichever is sooner, unless Section 2.3 above has become applicable.

(b) Each monthly installment of Base Rent shall be payable in advance on or before the first day of each calendar month during the Term at such place as the Landlord shall from time to time designate. If this Lease commences other than on the first day of a calendar month, monthly installments of Base Rent for the first and last months of the Term shall be prorated.

(c) If Tenant exercises its options to extend this Lease, the Base Rent shall be as follows:

|  |  |  |  |  |  |  |  |  |  |  |  |  |
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| Option 1 |  |  |  |  |  |  |  |  |  |  |  |  |
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| Year 16 |  | $18.00/sq. ft. | | |  | $100,584/year | | |  | $8,382.00/month | | |
| Year 17 |  | $18.00/sq. ft. | | |  | $100,584/year | | |  | $8,382.00/month | | |
| Year 18 |  | $18.00/sq. ft. | | |  | $100,584/year | | |  | $8,382.00/month | | |
| Year 19 |  | $18.00/sq. ft. | | |  | $100,584/year | | |  | $8,382.00/month | | |
| Year 20 |  | $18.00/sq. ft. | | |  | $100,584/year | | |  | $8,382.00/month | | |
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| Option 2 |  |  |  |  |  |  |  |  |  |  |  |  |
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| Year 21 |  | $19.00/sq. ft. | | |  | $106,172/year | | |  | $8,847.66/month | | |
| Year 22 |  | $19.00/sq. ft. | | |  | $106,172/year | | |  | $8,847.66/month | | |
| Year 23 |  | $19.00/sq. ft. | | |  | $106,172/year | | |  | $8,847.66/month | | |
| Year 24 |  | $19.00/sq. ft. | | |  | $106,172/year | | |  | $8,847.66/month | | |
| Year 25 |  | $19.00/sq. ft. | | |  | $106,172/year | | |  | $8,847.66/month | | |
|  |  |  |  |  |  |  |  |  |  |  |  |  |
| Option 3 |  |  |  |  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |  |  |  |  |
| Year 26 |  | $20.00/sq. ft. | | |  | $111,760/year | | |  | $9313.33/month | | |
| Year 27 |  | $20.00/sq. ft. | | |  | $111,760/year | | |  | $9313.33/month | | |
| Year 28 |  | $20.00/sq. ft. | | |  | $111,760/year | | |  | $9313.33/month | | |
| Year 29 |  | $20.00/sq. ft. | | |  | $111,760/year | | |  | $9313.33/month | | |
| Year 30 |  | $20.00/sq. ft. | | |  | $111,760/year | | |  | $9313.33/month | | |

3.2 *Taxes.*

(a) Landlord shall ensure that the Premises as depicted in **Exhibit B**have its own separate Tax Parcel ID Number. Beginning on the Commencement Date Tenant shall pay, before any penalty or interest attaches, real estate taxes levied on the Premises and parking lot included in the separate Tax Parcel ID number associated with the Premises, and shall, upon request, furnish to Landlord evidence of such payment.

(f) Tenant shall pay, before any penalty or interest attaches, all personal property taxes levied or assessed against Tenant’s personal property and shall, upon request, furnish to Landlord evidence of such payment.

3.3 *Utilities.*Landlord shall bring all utilities to the premises and pay all extension and impact charges, and provide separate meters at its sole cost and expense. Landlord shall provide the minimum required electrical service as required by Tenant’s use. Utility services provided by Landlord shall include water (minimum 2 inch line), sanitary sewer (minimum 4 inch line), and electrical and telephone and cable consistent with Tenant’s requirements for its use. Parking lot lighting immediately surrounding the Premises shall be wired directly to Tenant’s meter. Tenant shall connect to such utilities, at its expense, in the form of tap or connection fees only. Tenant shall promptly pay for all water, sewer, gas, heat, light, power, janitorial services, garbage disposal, communication service, telephone service and other public utilities furnished to the Premises from and after the Commencement Date. If Landlord provides utilities, utility payments shall be deemed additional rent under this Lease, and shall be at competing rates and charges. If Landlord is the provider of such utilities to the Premises, Landlord shall only be liable for interruption of utility service that it may furnish due to its negligence, acts, or omissions or those of its servants, agents or contractors. Tenant shall be responsible for payment of all utility deposits, if any.

3.4 *Late fee and interest on Rent.*If Tenant shall fail to pay Rent within ten (10) days of its due date, Landlord shall be entitled to a late fee of one hundred dollars ($100.00). If Tenant fails to pay Rent within thirty (30) days written notice, such delinquency shall bear interest from the expiration of the thirty (30) day notice period until paid at a rate equal to twelve (12%) percent per annum. The payment of such interest shall not excuse or cure any default by Tenant under this Lease.

3.5 *Setoff; Obligation to Survive; Application of Payments.*Any Rent due under this Lease shall be paid by Tenant when due without any setoff, deduction, abatement, or reduction except as provided herein.

***ARTICLE 4***

***Use of ExteriorAreas***

4.1 *Use of ExteriorAreas.*Landlord hereby grants to Tenant the non-exclusive right to use the Exterior Areas for the purposes for which they were designed, subject to the following conditions:

(a) Exterior Areas shall be for the use of the tenants of the Property, their invitees, and guests.

(b) Tenant shall have non-exclusive use of the Exterior Areas.

(c) The Exterior Areas shall be operated by a Landlord in a manner that does not interfere with Tenant’s use and quiet enjoyment or ingress/egress to the Premises, or the parking provided for on the Site Plan designated for Tenant, including reserved parking, or its visibility.

(d) Landlord shall be responsible to operate the Exterior Areas in accordance with a first-class development consistent therewith. Any rules and regulations must be reasonable and non-discriminatory and not change the obligations or duties of Tenant under the Lease. Landlord shall not change the use of the Exterior Areas in a manner that is contrary to the Site Plan or alter buildings which would affect the position of Tenant’s Premises or its visibility, egress, ingress, or parking. In no event shall Landlord cause changes to the Exterior Areas which would affect or alter Tenant’s business or its outdoor seating and patio use or reserved parking.

(e) Landlord shall not use the side or rear walls of the Premises or roof in a manner that diminishes the aesthetics of the premises or Tenant’s use of such Premises. In no event shall the obligations of Tenant be increased due to alterations that take place subsequent to the date of execution of this Lease.

4.2 *Maintenance and Control.*Landlord shall maintain, operate and control the Exterior Areas, including the exterior (sidewalks, planting beds, lawn, etc) immediately adjacent to the Premises, at Landlord’s sole cost and expense, including without limitation, sidewalk and parking lot maintenance and repair, snow removal, salting, summer lawn care, including mowing, mulching, shrub maintenance, plantings, and landscaping and maintenance. Landlord shall operate the Exterior Areas in accordance with a first-class development consistent therewith as set forth in 4.1. Although sidewalk snow removal is Landlord’s primary responsibility, Tenant will keep the sidewalks and entries surrounding the Premises clear of snow as necessary between Landlord’s normal snow removal services.

***ARTICLE 5***

***Preparation of the Premises***

5.1 *Landlord’s Work and Tenant’s Work.*

(a) In preparing the Premises for Tenant’s occupancy, Landlord shall, at Landlord’s expense, perform the work as required in **Exhibit C**(hereinafter sometimes referred to as “Landlord’s Work. All Landlord’s Work shall be fully inspected by Tenant within five (5) business days following notice from Landlord that the Premises are ready for Tenant’s inspection. If Tenant fails to inspect on or before the fifth (5th) business day following Landlord’s inspection notice to Tenant, then Landlord may delay the delivery date for each day that Tenant delays in inspecting. Landlord shall be responsible for any defects in its original construction or latent defects which cannot be determined by Tenant. Tenant shall provide a punchlist of any defects it is aware of within ten (10) business days after possession is given to Tenant which are to be corrected by Landlord within twenty (20) days. All warranties, guarantees given to Landlord for construction of the Premises and buildings and improvements shall be provided to Tenant as a third-party beneficiary or enforced by Landlord at the request of Tenant. Landlord’s Work must be in conformity with Tenant’s required work plan and specifications, including those for utilities and in compliance with all applicable statutes, codes/ordinances, regulations, and Tenant’s plans and specifications. If there is any conflict between the terms of this Section 5.1 and **Exhibit C**, **Exhibit C**shall control. Landlord shall provide Tenant with an as-built survey in Adobe (PDF) and CAD formats to confirm dimensions and square footage of the Premises with adjustments as necessary to calculate rent and other charges upon completion of construction.

(b) Other than Landlord’s Work, any alterations, improvements, additions, physical changes or other work necessary or desirable to place the Premises in a condition suitable for Tenant’s business purposes (“Tenant’s Work”) shall be performed in a good and workmanlike manner by or for Tenant at Tenant’s sole cost and expense. No construction or installation by Tenant shall begin until Landlord has approved the plans therefore. All construction shall be substantially performed in accordance with the approved plans, unless Landlord otherwise consents in writing. Tenant shall be solely responsible for obtaining any approvals, permits, variances, exceptions, etc., that may be necessary from Township of Marquette, and/or any other applicable governmental entity, except as set forth in **Exhibit C**. Further, any delay in approval of Tenant’s plans by Landlord shall extend all dates and requirements of Tenant. Tenant may elect to hire its own contractors to perform Tenants work pursuant to the plans and specifications as approved by Landlord and the Township of Waukeesha; however such contractors shall be licensed, insured and provide workers’ compensation insurance, proof of which will be supplied to Landlord upon written request from Landlord as soon as practicable.

(c) Except as provided in **Exhibit C**and this Section, Tenant shall, at Tenant’s expense, procure all permits and licenses and make all contracts necessary for the construction of Tenant’s Work. Tenant’s Work shall fully conform to all applicable statutes, ordinances, regulations and codes. Prior to commencing any work, Tenant shall require its contractors and subcontractors to furnish Landlord and Tenant with evidence of insurance coverage for injury to persons and property and Worker’s Compensation. If commercially reasonable, Landlord shall be named as an additional insured on all of Tenant’s contractors’ insurance policies.

5.2 *Special Provisions Applicable to Tenant’s Work.*Tenant’s contractors shall perform their work within the Premises only. Tenant shall be responsible for removal from the Premises and the Property of all trash, rubbish and surplus materials resulting from any work being performed in the Premises. During the conduct of Tenant’s Work, Tenant and its contractors shall keep the Premises in a clean and orderly fashion and keep the Property in a clean and orderly fashion as is commercially reasonable for a construction site and shall not interfere with the operations of the neighboring businesses, including the Country Inn & Suites.

5.3 *Lien Waivers.*Tenant shall notify Landlord upon completion of Tenant’s Work in accordance with the plans. Simultaneously with such written notice, Tenant shall furnish Landlord with a detailed breakdown of the cost of Tenant’s Work, proper sworn statements and lien waivers from all persons performing work on or supplying materials to the Premises, and a certificate of occupancy issued by the appropriate governmental authority.

5.4 *Covenant Against Liens.*Tenant shall not do any act which will in any way encumber the title of Landlord in and to the Premises, nor shall the interest or estate of Landlord in the Premises be in any way subject to any claim by virtue of any act or omission of Tenant except as provided herein. Any claim to a lien upon the Premises arising from any act or omission of Tenant shall be valid only against Tenant and shall in all respects be subordinate to the title and rights of Landlord, and any person claiming through Landlord, in and to the Premises. Tenant shall remove any lien or encumbrance on its interest in the Premises within thirty (30) days after it has arisen; provided, however, that Tenant may in good faith contest any such item if it notifies Landlord in writing thereof and posts a bond or other security with Landlord, the title company, or a court of competent jurisdiction.

***ARTICLE 6***

***Alterations***

6.1 *Alterations by Tenant.*

(a) Except as permitted by Article 5 or required by Section 7.1, Tenant shall not, without the prior written consent of Landlord (which will not be unreasonably withheld or delayed), make any alterations, improvements, additions or physical changes (hereinafter referred to as “alterations”) to the Premises. Landlord shall, within thirty (30) days of Tenant’s commencement of Tenant’s Work, reimburse Tenant for the tenant improvement allowances as described in **Exhibit C.**Tenant shall provide to Landlord sworn statements and lien waivers and a Certificate of Occupancy for the Tenant’s Work. Notwithstanding anything to the contrary, interior, non-structural improvements to the Premises may be made without the Landlord’s consent. Tenant shall provide Landlord with such plans and specifications as are to be undertaken. Changes which are required by Tenant’s Franchisor during the Lease Term or Extended Lease Term shall be allowed without Landlord’s prior written consent, including exterior changes to signage or dress.

(b) Unless Landlord otherwise provides in writing, no alterations made or installed by Tenant (except moveable furniture, equipment and trade fixtures) shall be removed by Tenant from the Premises at the termination of this Lease. Instead, all such leasehold improvements shall, when installed and permanently attached to the freehold, become and remain the property of Landlord. Notwithstanding the aforegoing, it is explicitly understood and agreed that all fixtures, equipment, walk-in coolers, refrigerators, bars, booths, range hoods, electrical fixtures, equipment, audio, video systems, storage and display cases, furniture, shelves and

racks, business equipment, make-up air; ovens, telephone and communication systems; storage and display cases including, without limitation, silencing, refrigeration, heating, lighting, telephone and other communication systems, fixtures and outlets, and partitions, railings, gates, doors, vaults, paneling, molding, shelving, flooring and floor covering, may be removed by Tenant and are not and will not be part of the Property. Tenant may obtain financing on such fixtures and equipment. Landlord’s lender shall not have any lien or interest in such fixtures and equipment. Landlord’s lender shall subordinate any such first mortgage lien to Tenant’s lender leasehold mortgage, fixture lien, chattel mortgage of like type of equipment financing instrument, subject to Landlord’s lender’s approval. Furthermore, Tenant shall have the right to mortgage and place a deed of trust as security interest on its leasehold fixtures and equipment, and Landlord agrees that it and its lender shall subordinate any lien or interest and Landlord’s interest to such financing by Tenant.

(c) Approved Tenant alterations shall be subject to the provisions of Article 5 above, as if they were “Tenant’s Work.”

6.2 *Signs.*Tenant may erect, maintain and remove such signs as have been approved in writing by Landlord, which approval shall not be unreasonably withheld. Landlord approves the standard Yummy Morsels general 4.1 trade dress to exterior with associated façade, signage, and awnings, subject only to municipal approvals. Tenant shall have the right to place signs and displays in the window areas which are customary with Yummy Morsels and which are utilized at typical Yummy Morsels locations in keeping with its approved sign package. Tenant, with the cooperation of Landlord, shall procure any necessary approvals from the appropriate governmental entity. Tenants shall have a panel on the pylon sign.

6.3 *Additional Construction by Landlord.*Landlord reserves the right to make alterations, expansions or additions to the Property. Notwithstanding the aforegoing, Landlord shall not alter the Exterior Area in a manner that would alter Tenant’s visibility, access, egress and ingress, position, reserved parking, number of required parking spaces, or use of the premises and/or outdoor patio seating area. Landlord shall not use the side or rear walls of the premises or roof in a manner that diminishes the aesthetics of the premises or Tenant’s use of such premises. The Site Plan that shall be provided to Tenant shall not be altered without Tenant’s permission. Landlord shall not diminish the size of the building or add to the building after the date of execution of the Lease without Tenant’s consent. In no event shall the obligations of Tenant be increased due to alterations that take place subsequent to date of execution of this Lease.

***ARTICLE 7***

***Repairs***

7.1 *Repair and Maintenance of Premises.*Except as provided in Section 7.2 below and Section 4.2 above, Tenant shall, at its expense, keep and maintain the Premises, and each component of the Premises except the foundation, roof, exterior walls (excluding storefronts) and all load-bearing portions of the Premises, in a good and clean, first class operating condition. Tenant’s obligations shall include, but not necessarily be limited to, the replacement of broken glass and the cleaning, repair and maintenance (including all necessary replacements) of all doors, windows, and the interior portions of the Premises, and the heating, air conditioning, mechanical, electrical, plumbing and sprinkler systems serving the Premises, any building security system and all other interior non-structural components. Tenant shall not be responsible for replacement and repair of exterior walls, floors, adjacent sidewalks, roofs, gutters, downspouts, and structural components — whether interior or exterior. Furthermore, all guarantees and warranties shall be made available by Landlord to Tenant, including any roofs or other warranties from contractors, materialmen, suppliers or equipment providers. Provided Landlord has delivered the Premises in the condition required, and to the extent such repairs or replacements are not due to defect in original construction, Tenant shall maintain the Premises as provided herein. Tenant shall not be obligated to make any repairs or replacements occasioned by the tortious acts or negligence of Landlord, its agents, employees, invitees, except to the extent that Tenant is reimbursed therefore under any policy of insurance carried by Landlord, and it shall not make repairs, replacements or additions unless required by law and which are the responsibility of Tenant under the Lease and not due to acts or neglect of Landlord. Tenant shall not be responsible for repairs or replacements or additions to systems external to the Premises unless due to its acts, omissions or negligence, or those of its contractors or employees.

7.2 *Structural Repairs.*Landlord shall, at its expense, keep the foundation, roof, exterior walls (excluding storefronts) and all load-bearing portions of the Premises in good repair throughout the Term. Landlord may recover from Tenant the cost of repairs occasioned by the tortious acts or negligence of Tenant, its agents, employees, or licensees, except to the extent that Landlord is reimbursed therefore under any policy of insurance, or such are due in whole or in part by Landlord, its servants, agents, employees or contractors. Landlord shall be neither liable nor responsible for any loss that may accrue to Tenant or Tenant’s business by reason of Landlord’s actions in fulfilling its obligations under the Lease unless such is due in whole or in part to the acts, omissions, or negligence of Landlord or its contractors. Landlord shall undertake any repairs that are its responsibilities upon ten (10) days prior written notice, subject to weather conditions, so long as Landlord has notified Tenant of Landlord’s intentions; provided however, if there is a threat to the public health, safety or welfare as determined by Tenant, Landlord shall comply with the time requirements of this section. If there is a failure to make such repairs by Landlord and such are necessary in the reasonable judgment of Tenant, and after written notice, Tenant may make such repairs and deduct the amount of such repairs from the sums due Landlord. However, no notice shall be required by Tenant if there is an emergency. Any work undertaken by Tenant as described in this section shall be payable by Landlord within thirty (30) days of receipt of such bill, together with interest on such amount at the rate of ten (10%) percent per annum.

***ARTICLE 8***

***Tenant’s Covenants***

8.1 *Laws, Ordinances and General Conditions.*

(a) Tenant, at its expense, shall comply promptly with (i) applicable laws, ordinances, orders and regulations affecting its use or occupancy of the Premises, or any alterations it has made to the Property or the Premises.

(b) Tenant shall pay as Additional Rent any increase in the cost of insurance on the Property as a result of any unauthorized use of the Premises by Tenant, but such payment shall not constitute in any manner a waiver by Landlord of its right to enforce all of the covenants and provisions of this Lease. It is recognized that Tenant’s proposed operation and use of the Premises shall not increase the insurance cost on the Property.

(c) Tenant represents and warrants that it is a licensed franchisee of Yummy Morsels and is authorized to operate a Yummy Morsels restaurant at the Premises.

8.2 Tenant hereby indemnifies, defends, and holds Landlord, its officers, directors, and employees harmless from and against any and all claims, demands, liabilities, costs, expenses, and damages, including attorney’s fees incurred by Landlord, arising from: (i) the negligence or willful misconduct of Tenant or its agents, employees, contractors, customers or invitees; or (ii) any material breach or default by Tenant of this Lease; or (iii) the breach of Tenant’s covenants, representations, and warranties. In the event any action or proceeding shall be brought against Landlord, its officers, directors, or employees by reason of any such claim, Tenant shall defend Landlord at Tenant’s sole cost and expense by counsel reasonably satisfactory to Landlord. Tenant shall also indemnify, defend, and hold Landlord, its servants, agents, employees, officers, and directors harmless from any and all claims, demands, costs, expenses, damages, and all attorney fees incurred or that arise from any cause of action that arise from or are attributable to any hazardous materials or conditions or release on the Premises that occurs during the Lease Term which are caused by the negligence or intentional acts of Tenant, its servants, agents, employees, contractors, or invitees.

***ARTICLE 9***

***Landlord’s Covenants***

9.1 *Representations*. Landlord covenants that it will not lease space in the Property to a use that is in violation of the exclusive use of Tenant. Landlord covenants, agrees, and warrants that it will not lease space in the Property to any use that is an adult bookstore, peep show, or x-rated movie. Landlord covenants, represents, and warrants to Tenant, as an inducement to enter into this Lease, that Tenant’s use of the Premises for a Yummy Morsels restaurant with outdoor patio seating is not in violation or breach of the terms, covenants, conditions, of any restrictions, leases, easements, or restrictions, nor does Tenant’s use, approved Signage Package, placement on the pylon sign(s) and monument sign, or storefront design require permission or the approval from any other tenant.

9.2 It is expressly understood and agreed that Landlord shall use reasonable efforts to cause any work to be done by it in a manner that does not interfere with Tenant’s business and operation of Tenant’s business and shall be undertaken upon prior written notice, and at reasonable and agreed-upon times. Furthermore, no work that is undertaken by Landlord shall interfere with Tenant’s signage or satellite dishes. Nothing shall be done below the surface of the ground which interferes with Tenant’s use or enjoyment of the premises, or above the building or roof which shall have such effect. Landlord shall be responsible to permit and make the necessary changes and alterations to the building as are set forth in **Exhibit C**, Landlord’s Work, in accordance with permitted plans submitted to and approved by the City/Township.

9.3 Landlord represents and warrants to Tenant that there is sufficient parking for Tenant in conformity with the Ordinances of the Township. Further, it is a condition of this Lease that Landlord obtain all parking variances necessary to assure Tenant’s business use under the Lease and to provide for four (4) reserved parking spaces for carry out in front of the Leased Premises. Tenant shall provide to the Township of Marquette the number of seats in the Premises as soon as practicable following Lease execution.

9.4 Landlord hereby indemnifies, defends, and holds Tenant, its officers, directors, and employees harmless from and against any and all claims, demands, liabilities, costs, expenses, and damages, including attorney’s fees incurred by Tenant, arising from: (i) the negligence or willful misconduct of Landlord or its agents, employees, contractors, customers or invitees; or (ii) any material breach or default by Landlord of this Lease; or (iii) the breach of Landlord’s covenants, representations, and warranties. In the event any action or proceeding shall be brought against Tenant, its officers, directors, or employees by reason of any such claim, Landlord shall defend Tenant at Landlord’s sole cost and expense by counsel reasonably satisfactory to Tenant. Landlord shall also indemnify, defend, and hold Tenant, its servants, agents, employees, officers, and directors harmless from any and all claims, demands, costs, expenses, damages, and all attorney fees incurred or that arise from any cause of action that accrued prior to the commencement of the Lease Term by any third parties or from acts or omissions of others, and from any and all claims arising from or attributable to any hazardous materials or conditions or release on the premises that exist prior to the date of commencement of this Lease; or occurs during the Lease Term which are caused by the negligence or intentional acts of Landlord, its servants, agents, employees, contractors, or invitees.

***ARTICLE 10***

***Damage to Premises; Eminent Domain; Indemnity; Insurance***

10.1 *Destruction, Fire or Other Cause.*

(a) Subject to the provisions of Subsection 10.l(b) below, if the Premises shall be rendered untenable by fire or other casualty, Landlord shall restore the Premises (excluding Tenant’s trade fixtures and improvements) and make them tenable as soon as possible. Rent shall abate during the period of untenability in proportion to the area of the Premises rendered untenable, and for ninety (90) days after its delivery to Tenant in a repaired condition by Landlord to allow Tenant to refixture the Premises. In any event, Tenant shall commence paying rent no later than the date that Tenant reopens for business following the casualty. All such restoration shall be completed within one hundred fifty (150) days of date of the casualty, weather permitting, or Tenant shall be entitled to terminate this Lease in its sole discretion. Landlord shall advise Tenant within thirty (30) days of any casualty whether Landlord can rebuild the Premises within such period of time. Tenant shall have the right to extend such period of time for rebuilding by written notice to Landlord from time-to-time. Landlord shall attempt to provide in existing and future financing documents that it has a right to rebuild if there is a insurable casualty and to receive the insurance proceeds for such purposes.

(b) If the Premises, or the building that the Premises are a part, shall be so damaged by fire or other casualty that demolition or substantial reconstruction (more than fifty (50%) percent of their initial cost) is required during the last year of any Lease Term or Extended Lease Term, unless Tenant elects to extend the Lease Term by exercise of an Option Right, then Landlord may terminate this Lease by notifying the Tenant of such termination within thirty (30) days after the date of such damage. Rent shall be prorated to the date of such a termination. If Tenant extends the Lease Term, Landlord must rebuild as required herein.

(c) Tenant shall immediately notify Landlord of the occurrence of a fire or other casualty at the Premises and shall, at its expense, restore or replace its personal property, fixtures and tenant improvements. There shall be no abatement of Rent during any delay caused by the failure of Tenant to complete its restoration and repair work unless due to acts or omissions of Landlord.

10.2 *Eminent Domain.*If all or any part of the Premises or any parking area or the entrances for egress or ingress shall be taken or condemned by any competent authority for any public use or purpose such that the way in which Tenant conducts business is affected in a material way, then the Term shall, at the sole option of Tenant, end as of the day prior to the date of any actual taking. If the Premises may not reasonably be used for the purpose contemplated by the Lease following any taking, Tenant, in its discretion, may terminate this Lease. Tenant shall be entitled to funds awarded it for moving expenses, business interruption, loss of its leasehold interest, exclusive of Landlord’s interest, and for all costs and expenses it is entitled to under law. If not terminated by Tenant this Lease shall otherwise remain in full force and effect without apportionment to Tenant of any portion of the award or damages made solely to Landlord and Landlord shall make the necessary repairs and alterations to the extent of any award to be received by Landlord. Notwithstanding the aforegoing, Tenant may apply for and seek its own separate award for a partial taking as provided herein and at law. In the event of a termination pursuant to this Section 10.2, Rent shall be apportioned to the date of such taking. Landlord shall attempt to provide in existing and future financing documents that it may receive condemnation proceeds with a right to rebuild as provided under this Lease.

10.3 *Indemnification; Tenant’s Property.*

(a) Tenant and Landlord shall defend and indemnify each other against, and hold each other harmless from, any and all liabilities, obligations, damages, penalties, claims, costs and expenses, including reasonable attorneys’ fees, paid or incurred as a result of or in connection with this Lease, the negligence of the other, any subtenant, or any of their contractors, employees, customers, invitees, or licensees, and each shall indemnify, defend, and save harmless the other from such conditions. If any action or proceeding is brought against Landlord or Tenant, as the case may be, by reason of any such claim, Tenant or Landlord, upon written notice from the other, will, at such parties’ expense, resist or defend such action or proceeding by counsel approved by the other in writing.

(b) Tenant shall maintain an all risk policy of insurance for injury to persons and property and, in addition, all plate glass upon or appurtenant to the Premises, to the extent of their replacement cost, which policy of insurance shall contain a clause or endorsement under which the insurer waives, or permits the waiver by Tenant, of rights of subrogation against Landlord, and its agents, employees, customers, invitees, guests, or licensees, with respect to losses payable under such policy. Landlord and Tenant shall provide to the extent possible, waivers of subrogation for claims covered by any policies of insurance, notwithstanding that such damage may result from the negligence or fault of the other, or its agents, employees, customers, invitees, guests, or licensees. Any deductible amount included in such policy shall be treated as though it were recoverable under the policy.

10.4 *Insurance.*By this section, and by the applicable portions of Section 10.3 above, Landlord and Tenant intend that the risk of loss or damages as described shall be borne by responsible insurance carriers to the extent provided.

(a) Landlord shall insure the Property (except the Premises) against loss or damage under a policy or policies of casualty insurance. Such policies shall include a waiver of subrogation clause or endorsement similar to that required of Tenant in Section 10.3(b) above. Landlord shall maintain fire and extended coverage for the full replacement value of the Property (except the Premises). Tenant shall be named as an additional insured on all liability policies of Landlord with respect to acts or omissions or occurrences within the Exterior Areas. Landlord shall maintain a policy of general public liability insurance with a minimum single limit, liability of at least One Million Dollars ($1,000,000) per occurrence and coverages for property damage, bodily injury or death, completed operations, contractual liability, and indemnification, and name Tenant as an additional insured. The insurance policy shall provide thirty (30) days prior written notice to Tenant of any change or alteration as well as cancellation. Landlord’s insurance shall name Tenant as an additional insured against all claims, demands, or actions for injury, death, property damage, or occasioned by acts or omissions of Landlord. The same insurance requirements under Section 10.4(b) below for Tenant shall also be applicable to Landlord. Both Landlord’s and Tenant’s insurance shall have, to the extent attainable, waiver of subrogation in favor of the other.

(b) Tenant shall insure the Premises against loss or damage under a policy or policies of casualty insurance. Such policies shall include a waiver of subrogation clause or endorsement similar to that required of Tenant in Section 10.3(b) above. Tenant shall maintain fire and extended coverage for the full replacement value of the Premises. Tenant shall maintain workers’ compensation insurance covering all of its employees to at least the statutory limit set forth under Michigan law, and a policy of general public liability insurance and liquor liability in an amount at least equal to One Million Dollars ($1,000,000.00) single limit coverage for property damage, bodily injury or death. All such policies of insurance shall name Landlord as an additional insured. Tenant’s policies shall provide by endorsement or otherwise that such insurance may not be canceled, terminated, amended, or modified for any reason whatsoever, except upon thirty (30) days’ prior written notice to the other. Prior to the time such workers’ compensation and general public liability insurance is first required to be carried by Tenant, and thereafter at least fifteen (15) days prior to the expiration of any such policy, Tenant shall deliver either duplicate originals of the aforesaid policies or a certificate evidencing such insurance coverage. If a certificate is provided, it shall contain a statement substantially in the form of the immediately preceding sentence.

***ARTICLE 11***

***Default and Remedies; Termination and Surrender***

11.1 *Landlord’s Remedies.*If Tenant shall fail to make any payment of any Rent due hereunder within seven (7) days of its due date, or if Tenant shall fail to perform any of the other covenants or conditions which Tenant is required to observe and perform under this Lease for a period of thirty (30) days following written notice of such failure, or if the interest of Tenant in this Lease shall be levied upon under execution and not removed or stayed within thirty (30) days, or if any petition shall be filed by or against Tenant in a court of bankruptcy which is not removed within forty-five (45) days, or if Tenant shall be declared insolvent according to law, or make an assignment for the benefit of creditors or petition for or enter into an arrangement, or if Tenant shall abandon and vacate the Premises during the Term of this Lease or if Tenant shall dissolve, then Landlord may, but need not, treat the occurrence of any one or more of the foregoing events as a default under this Lease, and thereupon may, at its option, with notice and demand to Tenant as required by law, have the following-described remedies in addition to other rights and remedies provided at law or in equity. If Tenant has expeditiously undertaken, and is attempting to cure a non-monetary default and continuously proceeding to that goal, then the cure period shall be extended to sixty (60) days if it is capable of being cured within that period.

(a) Terminate Tenant’s right of possession and repossess the Premises in a district court summary proceeding action and without terminating this Lease, in which case Landlord shall use good faith efforts to relet all or any part of the Premises for such rent and upon reasonable business terms. For the purposes of such reletting, Landlord shall list the Premises with a broker and may make such repairs or physical changes in or to the Premises as may be necessary. During any period that Landlord is unable to relet the Premises, then Tenant shall pay to Landlord the amount due to be paid by Tenant as such rent becomes due under the Lease without acceleration as provided herein. If the Premises are relet and a sufficient sum shall not be realized from the reletting, after payment of all costs and expenses of such repairs and the expense of such reletting and the collection of rent occurring therefrom, to satisfy the Rent herein provided to be paid during the remainder of the initial Term, Tenant shall satisfy and pay any such deficiency as and when such rent becomes due under the Lease. Tenant agrees that Landlord may file suit to recover sums falling due under the terms of this paragraph from time to time and that any suit or recovery of any portion due Landlord hereunder shall be no defense to any subsequent action brought for any amount not theretofore reduced to judgment in favor of Landlord. Any election of Landlord upon an event of uncured default after written notice must be proceeded with all notices and appropriate requirements as provided by law. All remedies of Landlord must comply with the requirements of the Summary Proceedings Act of the State of Michigan, and shall not include consent to self help. Landlord shall have a duty to mitigate damages. Landlord’s collection of rents, in the event of a reletting, shall be used to diminish any liability of Tenant.

11.2 *Termination; Surrender of Possession.*

(a) Upon the expiration or termination of this Lease, whether by lapse of time, operation of law, or pursuant to the provisions of this Lease, Tenant shall:, within twenty (20) days of such event.

(i) Deliver the Premises in the condition required under the Lease (other than as contemplated by Section 7.1 above), ordinary wear and tear excepted and damage covered by insurance, remove all of its personal property and trade fixtures from the Premises and the Property and repair any damage caused by such removal;

(ii) Surrender possession of the Premises to Landlord; and

(iii) Upon the request of Landlord, at Tenant’s cost and expense, remove from the exterior and interior of the Premises and the Property all signs, symbols and trademarks which are connected with or associated specifically with Tenant’s business and repair any damages to the Premises caused by the signs or their removal.

(b) If Tenant shall fail or refuse to deliver the Premises as hereinabove provided, Landlord may do so and recover its costs from Tenant for so doing. If Tenant shall fail or refuse to comply with Tenant’s duty to remove all personal property and trade fixtures from the Premises within twenty (20) days from the expiration or termination of this Lease, the parties hereto agree and stipulate that Landlord may, at its election, treat such failure as Tenant has abandoned such property. In such event, Landlord may keep or remove, store, discard, or otherwise dispose of all or any part of such property in any manner that Landlord shall choose without incurring liability to Tenant or to any other person or entity, subject to any Subordination Agreement entered into with Tenant’s lender. Should Tenant or its lender with respect to the fixtures and equipment fail to remove such property within twenty (20) days after a termination or expiration of the Lease or as agreed upon, then Landlord shall be relieved of any further responsibility. Tenant shall reimburse Landlord for its costs incurred in such removal, but in any event, no more than seven thousand five hundred dollars ($7,500.00).

11.3 *Holding Over.*If Tenant shall remain in possession of the Premises, or any part thereof, after the termination or expiration of this Lease, Tenant shall become a month-to-month Tenant whose estate may be terminated by thirty (30) days prior written notice. Tenant shall, however, pay Landlord one and one-half (1 1/2 ) times the amount of Rent which would have been due for a like period of occupancy during the preceding month of the Lease Term hereof. The provisions of this clause shall not operate as a waiver by Landlord of any right it may otherwise have. However, Tenant’s right to remove its equipment and fixtures shall be governed as set forth above even if the Lease ceases.

11.4 *Assignment and Subletting.*Tenant shall not, without the prior written consent of Landlord, which shall not be unreasonably withheld, delayed or conditioned, assign this Lease; sublet the Premises or any part thereof; or permit the use of the premises by any party other than Tenant and its employees. Notwithstanding the foregoing, Tenant may assign the Lease or sublet the Premises to a holding company or subsidiary company of the Tenant, a franchisee, the acquirer of a majority of the Tenant’s other locations or a lending institution in connection with a financing of Tenant’s business, without the prior consent of the Landlord. Such assignment or subletting shall not alter Tenant’s responsibility to Landlord under this Lease. Landlord agrees to accept rent from Tenant, its assigns, successors or subtenant. Further, Tenant shall have the right without such Consent to assign the Lease to Landlord’s Franchisor pursuant to **Appendix C** attached. Landlord agrees to accept rent from the Tenant, its assignee or subtenant.

11.5 *Bankruptcy.*

(a) If following the filing of a petition by or against Tenant in a bankruptcy court, Landlord shall not be permitted to terminate this Lease as hereinabove provided because of the provisions of Title 11 of the United States Code relating to Bankruptcy, as amended (the “Bankruptcy Code”), then Tenant (including Tenant as Debtor-in-Possession) or any trustee for Tenant agrees to promptly petition the bankruptcy court, to assume or reject this Lease in accordance with the Bankruptcy Act.

(b) Tenant or any trustee for Tenant may only assume this Lease if (i) it cures or provides adequate assurance that the trustee will promptly cure any default hereunder, (ii) it compensates or provides adequate assurance that the Tenant will promptly compensate Landlord for any actual pecuniary loss to Landlord resulting from Tenant’s default, and (iii) it provides adequate assurance of future performance under this Lease by Tenant. In no event after the assumption of this Lease by Tenant, or any trustee for Tenant, shall any then-existing default remain uncured for a period in excess of thirty (30) days. Adequate assurance of future performance of this Lease shall include, without limitation, adequate assurance: (i) of the source of Rent required to be paid by Tenant hereunder; and (ii) that assumption or permitted assignment of this Lease will not breach any provision hereunder.

In the event of any conflict, the Bankruptcy Act shall control.

11.6 *Remedies Cumulative.*

(a) The failure of either party to enforce any covenant or condition of this Lease shall not be deemed a waiver thereof or of the right of either party to enforce each and every covenant and condition of this Lease. No provision of this Lease shall be deemed to have been waived unless such waiver shall be in writing and signed by the person against whom the waiver is claimed.

(b) All rights and remedies of Landlord under this Lease shall be cumulative, and none shall exclude any other rights or remedies allowed by law.

11.7 *Expenses of Enforcement; Performance by Landlord.*

(a) The losing party shall pay all reasonable attorneys’ fees and expenses incurred by the winning party in enforcing any provision of this Lease.

(b) Twenty (20) days prior written notice shall be given to the defaulting party of any obligation requiring performance. If the non-defaulting party incurs a cost by the failure to perform an obligation by the defaulting party, there shall be an obligation to repay it within twenty (20) days prior written notice to the non-defaulting party. Either party may contest the necessity of any repairs or performance of obligations undertaken by the other, and the reasonableness of any

costs or expenses incurred. If either party shall fail to perform any of its obligations hereunder, the other party may, with the above prior notice, perform such obligations if such is not commenced and completed within the time provided. If Landlord or Tenant incurs any costs in connection therewith, they shall be paid by the other defaulting party upon twenty (20) days written demand with interest thereon from date of the payment at a rate equal to ten (10%) percent per annum, as set forth above.

***ARTICLE 12***

***Access to Premises***

12.1 *Access to Premises.*Landlord shall have the right, upon reasonable prior notice, to enter upon the Premises at all reasonable business hours for the purpose of inspecting them or making such repairs or alterations as it is obligated to make under the terms of this Lease or which Landlord may elect to perform, following Tenant’s failure to do so. Repairs shall be made, and alterations as are the requirement of Landlord, in such a manner that they do not unreasonably interfere with Tenant’s operation of the premises or its quiet enjoyment. Repairs by either Landlord or Tenant on behalf of the other shall be made in a manner only upon prior notice and only if the other party fails to undertake such repairs that are its obligations upon notice as provided in Paragraph 9.3.

The Landlord shall have the right to enter the premises at reasonable hours on reasonable notice to show them to prospective purchasers and mortgagees, however, such shall be in a manner that does not interfere with the operation of the business and shall not include entry into the kitchen and other areas which could be a violation of health codes or would create a hazard in the operation of the business.

Other than as indicated above, in no event may Landlord enter the premises without the consent of Tenant unless there is an absolute emergency.

Throughout the Term, Landlord shall have the right to enter the Premises at reasonable hours on reasonable notice for the purpose of showing them to prospective purchasers or mortgagees and, during the last six months of the Term, to prospective tenants.

If Tenant is not present to open and permit an entry into the Premises, Landlord or Landlord’s agents may enter the same whenever such entry may be reasonably necessary in event of an emergency to protect life or property. In no event shall the obligations of Tenant hereunder be affected by any such entry.

***ARTICLE 13***

***Miscellaneous***

13.1 *Notices.*

All notices, bills or statements required hereunder shall be in writing and shall be deemed to have been given if either delivered personally or mailed by certified or registered mail, return receipt requested, to the parties at their addresses as set forth below. The addresses specified for notices herein may from time to time be changed by the written notice of one party to the other.

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|  | Landlord: |  | Cover Hospitality, LLC |  |  | |
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|  | Copy to: |  |  |  |  | |
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|  |  |  |  |  |  | |
|  | Tenant: |  | Milbrought, Inc. |  |  | |
|  |  |  | Fred Huntington |  |  | |
|  |  | XXX | 21751 W. Eleven Mile Rd., Suite 208 |  |  | |
|  |  |  | Southfield, MI 48076 |  |  | |
|  |  |  |  |  |  | |
|  | Copy to: |  | XX, Esq. |  |  | |
|  |  |  | XXX |  |  | |
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13.2 *Effect of Submission.*The submission by Landlord of the within Lease for execution by Tenant shall confer no rights nor impose any obligations, including brokerage obligations, on any party unless both Landlord and Tenant shall have executed this Lease and duplicate originals thereof shall have been delivered to the respective parties. If Tenant executes this Lease and submits it to Landlord, such submission shall constitute an offer to Lease, which shall be irrevocable for thirty (30) days.

13.3 *Litigation.*Landlord and Tenant do hereby waive trial by jury in any action, proceeding or counterclaim brought by either against the other upon any matters whatsoever arising out of or in any way connected with this Lease, Tenant’s use or occupancy of the Premises, or any claim or injury or damage or both. It is further mutually agreed that if Landlord commences any summary proceeding for nonpayment of any Rent, Tenant will not interpose any counterclaim in any such proceeding (unless it is a compulsory counterclaim); provided, however, that the foregoing shall not constitute a waiver of Tenant’s right to bring a separate action for any claim Tenant may have.

13.4 *Governing Law; Invalidation.*This Lease shall be governed by and construed in accordance with the laws of the State of Michigan that are applied to leases made and to be performed in that state. The invalidation of one or more terms of this Lease shall not affect the validity of the remaining terms.

13.5 *Headings.*The headings contained herein are for convenience only and shall not be used to define, explain, modify or aid in the interpretation or construction of the contents hereof.

13.6 *Amendment.*This Lease represents the entire agreement between the parties. No oral or written, prior or contemporaneous agreements shall have any force or effect, and this Lease may not be amended, altered or modified unless done so by means of a written instrument signed by both parties.

13.7 *Subordination; Attornment; Estoppel Certificate.*

(a) This Lease shall, at the sole option of Landlord or its lenders, be subject and subordinate to the interest of the holders of any notes secured by mortgages on the Property or the Premises, now or in the future, and to all ground or underlying leases and to all renewals, modifications, consolidations, replacements and extensions thereof. While the provisions of this section are self-executing, Tenant shall execute such documents as may be reasonably required by Landlord or any mortgagee to affirm or give notice of such subordination. In turn for such execution of documents, Tenant shall be entitled to receive a satisfactory non-disturbance agreement from each such lender whereby the lender agrees to recognize Tenant’s rights under this Lease following foreclosure or event of a deed in lieu of foreclosure, so long as Tenant is not in default hereunder. Furthermore, it is recognized that Tenant shall finance its equipment and fixtures, including bars, ovens, refrigerators, walk-in coolers, range hoods, entertainment equipment including video and acoustical equipment, and that such do not form part of the leasehold premises and are fixtures of Tenant, and are subject to the security interest by Tenant’s lender and shall not be subordinated to Landlord and any Mortgages of Landlord.

(b) At the request of Landlord, Tenant shall within ten (10) days deliver to Landlord, or anyone designated by Landlord, a certificate stating and certifying as of its date (i) the date to which Rent and other charges under this Lease have been paid; (ii) whether or not there are then existing any setoffs or defenses against the enforcement of any of the agreements, terms, covenants or conditions hereof on the part of Tenant to be performed or complied with (and, if so, specifying the same); (iii) if such be true, that this Lease is unmodified and in full force and effect and that Landlord is not in default under any provision of this Lease (or if modified, setting forth all modifications, and if Landlord is in default, setting forth the exact nature of such default); and (iv) such other information as Landlord may reasonably request in connection with the Landlord-Tenant relationship established by this Lease, including but not limited to Tenant’s financial statements, in accordance with Tenant’s or its parents’ reporting requirements with the SEC. Landlord agrees to deliver the same required statement to Tenant and anyone designated by Tenant within the same time and manner. Further, Tenant will agree to attorn to any lender or subsequent purchaser of Landlord provided that such recognizes Tenant’s quiet enjoyment and rights under the Lease, and cures any prior existing defaults of Landlord. The Tenant shall have a right of offset and to assert any counterclaims, which shall continue until cured by the

successor’s purchaser, or Lender and Tenant may exercise those rights contained within the Lease. Any amendment to the Lease shall be binding upon any subsequent purchaser or lender. Any notice and cure provisions of a lender must correspond to Landlord’s and not require any additional time period thereafter. The Subordination and Attornment Agreement shall comply with the reasonable requirements of Tenant’s lender.

13.8 *Light or Air Rights.*No rights to light or air over any property, whether belonging to Landlord or any other person, are granted to Tenant under this Lease.

13.9 *Successors and Assigns.*The covenants, conditions, and agreements contained in this Lease shall bind and inure to the benefit of Landlord and Tenant and, except to the extent prohibited by Section 10.4 above, their respective successors and assigns.

13.10 *Covenants and Conditions.*All covenants and conditions contained in this Lease are independent of one another. All of the covenants of Tenant contained herein shall, at the option of Landlord, be construed as both covenants and conditions.

13.11 *Sale or Transfer of Property or Premises.*Upon any sale or transfer, including any transfer by operation of law, of the Property or the Premises, Landlord shall be relieved of all subsequent obligations and liabilities under this Lease but not prior liabilities or obligations.

13.12 *Accord and Satisfaction.*No payment by Tenant or receipt by Landlord of a lesser amount than the monthly rent herein stipulated shall be deemed to be other than on account of the earliest stipulated rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed in accord and satisfaction, and Landlord shall accept such check or payment without prejudice to Landlord’s right to recover the balance of such rent or to pursue any other remedy in this Lease as provided.

13.13 *Brokers.*Landlord shall pay a commission to Patapon Vinivaat Commercial Real Estate, LLC equal to six percent (6%) of the aggregate rent for the first five (5) years and four percent (4%) of the aggregate rent for the second five (5) years and two and one-half percent (2.5%) of the aggregate rent for the third five (5) years pursuant to the commission agreement between Landlord and Patapon Vinivaat Commercial Real Estate, LLC. Other than Patapon Vinivaat Commercial Real Estate, LLC, Landlord represents and warrants that it has dealt with no broker in connection with this Lease. Each party indemnifies and agrees to hold harmless the other party, and at the other party’s option defend the other party, from and against any and all liabilities, including, without limitation, reasonable attorneys’ fees, arising from a claim by any broker claiming through the indemnifying party.

13.14 *Liability Joint and Several.*If Tenant is more than one person, each of their obligations under this Lease shall be joint and several.

13.15 *Net Lease.*It is the intention of the parties that this Lease shall be what is commonly known as a “net-net-net” or “carefree” Lease and Landlord’s obligations shall be limited to those it has specifically undertaken herein.

13.16 *Recording.*Tenant shall not record this Lease, but may record a Memorandum of this Lease.

13.17 *Force Majeure.*Whenever a period of time is provided in this Lease for either party to perform any act, except pay monies, neither party shall be liable nor responsible for any delays due to strikes, lockouts, casualties, acts of God, war, terrorism, governmental regulation or control or other causes beyond the reasonable control of the parties, and the time period for the performance of such act shall be extended for the amount of time of the delay. This clause shall not result in an extension of the term of this Lease.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, this Lease has been executed as of the day and year first above written.

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|  |  |  |  |  |  |
| WITNESSES: |  | **LANDLORD:  COVER HOSPITALITY, LLC** | | |  |
|  |  | By: | /s/ Maralyn Vucik | |  |
|  |  |  | Maralyn Vucik | |  |
|  |  |  | Its: Member | |  |
|  | | | | | |
|  |  | **TENANT:  MILBROUGHT, INC.** | | |  |
|  |  | By: | /s/ Fred HuntingtonFrederick Huntington | |  |
|  |  | Fred Huntington | Fred Huntington | |  |
|  |  |  | Its: President | |  |
|  | | | | | |

Exhibit A — Legal Description of the Property  
Exhibit B — Description of the Property and Premises  
Exhibit C — Plans and Specifications for Landlord’s Work  
Exhibit D — Guaranty of Lease

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

LEGAL DESCRIPTIONS OF COVER HOSPITALITIES

xxxxx

INFO FOR YM EXHIBIT A

**Yummy Morsels Parcel**

**YM**XXXX

**EXHIBIT B**

**DESCRIPTION OF THE PREMISES AND PROPERTY**

MAPS and Plans

**EXHIBIT C**

**YUMMY MORSELS  
EXHIBIT C  
PLANS AND SPECIFICATIONS FOR LANDLORD’S WORK**

In preparing the Premises for Tenant’s occupancy, Landlord shall, at Landlord’s expense, perform the services and provide the labor and materials necessary to deliver the Premises as listed below to Tenant. Tenant shall only be responsible for construction of those items that are designated as Tenant’s Responsibility.

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| **Walls:** |  | Landlord’s responsibility. Exterior walls shall be constructed in accordance with all applicable local building codes and standards and shall be properly insulated and waterproof. |
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|  |  | Tenant shall be responsible to coordinate with Landlord’s contractor all of the Tenant’s work (mechanical, electrical, etc.) to be installed within walls constructed by Landlord so as not to delay the completion of the Landlord’s work. |
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|  |  | Landlord’s responsibility. Demising Walls — dividing Premises to be constructed of 6” metal stud framing to underside of roof deck installed on floor slab provided by Landlord. Gypsum board on both sides, (fire rated where required by Building Code, taped and sanded) all provided by Landlord and shall meet all applicable local building codes and standards. Exterior walls shall be furred out with studs, drywall, and insulation. |
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| **Insulation:** |  | Landlord’s responsibility. Landlord to put insulation on all exterior walls as well as the demised interior walls to equal R-19 rating. |
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| **New Construction:** |  | Vapor barrier to be applied to the pad underneath the slab. |
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| **Toilets:** |  | Landlord to provide a credit of $12,000 for restrooms. |
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| **Ceiling:** |  | Landlord’s responsibility. Exposed underside of steel roof deck on exposed steel structural members and steel joists or purlins (unpainted). Exposed and unpainted “Shell” building mechanical, electrical and plumbing elements. |
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| **Interior Lighting Fixtures:** |  | Landlord shall give credit to Tenant for the equivalent of a standard lighting Package which is $1.25 per square foot. |
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| **Floors:** |  | **New Construction:** |
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|  |  | Compacted sand fill graded to within +/- 0.1 foot to an elevation of four (4”) inches below finish floor. Concrete floor slab shall be smooth and level, to be provided by Landlord. |
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| **Frame:** |  | Landlord’s responsibility. A structural frame, foundations and roof deck designed to carry the following allowable live loads per square foot: |

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|  | a. |  | First Floor (on grade):     100 lbs. per sq. ft. |
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|  | b. |  | Roof:        30 lbs. per sq. ft. snow load;  3 lbs. per sq. ft. superimposed load for  ceiling, ductwork, TV’s, etc. |

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| **Roof:** |  | Landlord’s responsibility. A single ply membrane roof of bonded type construction on insulated deck with a “U” factor of R-19. Landlord shall install a watertight and insulated roof. |
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| **Space Height:** |  | Landlord’s responsibility. The maximum clear heights measured between the finished floor slab and finished ceiling in Tenant Leased Spaces shall be fourteen (14’-0”) minimum. |
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| **Basements and Mezzanines:** |  | Not permitted. |
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| **Front Exterior:** |  | Landlord’s responsibility. An exterior façade constructed of varied design and materials shall extend across the entire building above Tenant’s storefront area. Landlord to provide blocking and junction box for Yummy Morsels signs and wedge lighting as well as a double entry storefront opening, single hollow metal rear exit door, and a single patio door, windows and glass and two (2) operating 8’ x 8’ glass garage doors pursuant to Tenant’s specifications. Design shall incorporate Yummy Morsels Trade Dress and/or subject to approval by Yummy Morsels Corporate Office. See Attached. Landlord shall change the exterior elevators to suit Tenant’s drawings, subject to Landlord and Tenant’s mutual approval. Front exterior shall accommodate the outdoor patio as described in Lease. |
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| **Electrical:** |  | Landlord’s responsibility. A central transformer will be provided with electrical conduit to the Premises. Electrical power will be furnished at 1,000 Amps, 120/208 Volt 4 wire 3 phase, circuit breakers and panels and individually metered at central metering locations as determined by Tenant. A minimum of two panels will comprise the 1,000 amps. Feeders from meter to a fused disconnect switch to be furnished and installed by Landlord. Conduit to the Premises shall be provided by Landlord at a mutually agreed upon location. at location determined by Tenant’s Architect and located on the interior of the rear wall. This shall include, but not be limited to, tenant’s decorative exterior lighting and signage and all other Landlord approved elements. Landlord’s responsibility. Landlord to provide and install building mounted lighting as required to illuminate the site and public areas at locations as determined by the Landlord’s Architect. |
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| **Cable:** |  | Landlord’s responsibility. Landlord shall provide a cable service connection to the Premises. |
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| **Telephone:** |  | Landlord’s responsibility. Access/conduit shall be provided to the Tenant space for telecommunications wiring from the local service provider’s demarcation point. Incoming feeders to project central distribution backboards, at locations designated by Tenant. Empty conduit systems, with pull strings, to the Premises shall be provided by Landlord. |

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| HVAC: |  | Landlord’s responsibility. Roof mounted equipment, Heating, Ventilation and Cooling Units will be supplied and installed by Landlord. Gas and electrical service to the building HVAC units will be provided by Landlord and connected to metering systems to be furnished by Landlord. Roof top mounted equipment will be new units per Yummy Morsels specifications, or Tenant approved specifications, and Landlord will furnish and have forty-five (45) tons of cooling. All control wiring, distribution and ductwork will be provided and installed by Landlord to Tenant’s specifications. |
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|  |  | Tenant’s responsibility. Tenant shall provide other cooling or ventilation equipment for its operation as a restaurant including all fire dampers, fire suppression requirements of its own equipment and any fire control requirements as a result of the Tenant’s use and occupancy. Tenant’s work shall conform to all applicable codes and rules pertinent to Tenant’s use of the Premises. |
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| **Meters:** |  | Landlord’s responsibility. Shall be separately provided for all utilities running into Tenant’s space. Tenant shall be responsible for all utilities consumed in the Leased Premises. The Landlord will provide the required electric service. Utility services provided by Landlord include water (minimum 2” line, 55 psi), sanitary sewer (minimum 4” line), electric and telephone. Landlord will also provide any required utility meters for the Leased Premises and all cabinets including all panels and MDP and CT cabinets. |
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| **Water:** |  | Landlord’s responsibility. On site water supply mains (separate for domestic and fire protection), shut-off valves and fire hydrants will be provided by the Landlord. The landlord will provide interior domestic water branch lines stubbed into the Premises at a point to be determined by Tenant. Water shall be brought to the rear of the building. |
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| **Fire Sprinklers:** |  | Landlord’s responsibility. The interior fire protection system main will be stubbed above Premises at a point to be determined by Tenant’s architect and distribution points shall be determined by Tenant’s architect per Tenant’s specifications. |
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| **Sanitary and Storm Sewers:** |  | Landlord’s responsibility. Sanitary and storm mains to serve the Premises and sanitary branch lines will be stubbed beneath the Premises at a location to be determined by Tenant’s Architect. |
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|  |  | Tenant’s responsibility. New Construction: Grease trap to be provided by Landlord per Tenant’s specifications, subject to all applicable permits, zoning, building and Health department requirements, with screens and security and maintained by Tenant. |
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| **Gas:** |  | Landlord’s responsibility. Gas service lines will be provided to a metered location as determined by Tenant. Landlord shall extend gas service lines to the Premises at a location determined by the Tenant. |
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| **Exterior Sign:** |  | Exterior sign lights on the building for Tenant’s exclusive use are not wired to the house meter — wired and controlled by Tenant. Tenant and Landlord will cooperate to incorporate standard Yummy Morsels Trade Dress to exterior with associated façade, signage and awnings. Subject to Township of Marquette approvals, the plans will be submitted by Tenant to Landlord for approval which may not be unreasonably withheld or delayed. Landlord to provide all electrical service to Tenant’s signage and lighting to Tenant’s fixtures at the façade or Tenant shall deliver to Tenant credit in an amount to be agreed upon for this specific scope of work. See Exhibit “B” attached. |

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| **Interior** **Finishes:** |  | Other than those described herein as Landlord’s Work or obligation shall be provided by Tenant as specified on Tenant finish drawings. |
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| **Service Doors:** |  | Landlord’s responsibility: Service door(s) per Tenant space and required Exit doors, in exterior building walls, will be installed by Landlord per Tenant’s specifications. Door shall be a single 3’-4“x 7’-0“x 1 3/4” prime painted hollow metal door and frame, no vision panel; with commercial grade hardware consisting of a surface mounted door closer, 1 1/2 pairs of butts, one lockset with exterior cylinder. The tenant’s preferred location will be used where timely notification (prior to commencing construction of exterior walls) is given to the Architect. |
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| **Exterior Areas:** |  | Landlord’s responsibility. Landlord will construct parking lots, driveways, roads, landscaping and all other areas deemed Exterior areas in a class A Premises pursuant to the approved site plan attached. Landlord shall also provide Tenant with a staging area for two (2) eight (8) yard dumpsters for the use of the restaurant. Landlord to show specific area on site plan. |
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|  |  | Tenant responsibility. Landlord shall permit Tenant to install a grease rendering container as may be required for restaurant use. |
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|  |  | Tenant’s responsibility. Landlord shall permit Tenant to install up to four (4) small satellite dishes on the roof in an inconspicuous location, or any greater number required by Tenant and Tenant shall warrant any roof penetrations. |
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|  |  | Landlord’s responsibility. Landlord shall permit Tenant to use the outdoor patio area exclusively for a seating area and bar area (as permitted by local laws and regulations) for food and beverage service. |
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|  |  | Landlord’s responsibility. Landlord shall, at its sole cost, provide the concrete pad and access doors to the outdoor patio area. Landlord shall provide and install patio fencing consistent with Tenant’s Exterior Trade Dress. |
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|  |  | Landlord’s responsibility. Landlord shall designate a “No Building Area” on the Site Plan parking area, including the four (4) reserved parking spaces. |
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| **Impact Fees:** |  | Landlord’s responsibility. Landlord shall pay all, if any, restaurant impact fees associated with infrastructure and water and sewer capacity fees (often referred to as Tap Fees) for a sit-down restaurant in the Township of Marquette if such should be required by the Township or the County of Marquette. |
|  |  |  |
| **Architectural Plans:** |  | Tenant’s responsibility. Tenant shall hire a registered architect to prepare plans for permitting the interior construction and buildout by the Township of Marquette, all subject to the reasonable approval of the Landlord prior to the commencement of any Tenant Improvements. |

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|  |  | Landlord’s responsibility. Landlord will provide Tenant with a building drawing in PDF and CAD format to confirm dimensions and square footage of the Leased Premises and Property within 30 days of Lease execution. Landlord shall provide architectural and space planning services through the architect. |
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| **Permits:** |  | Landlord’s responsibility. The Landlord shall be responsible to permit and construct the Building shell as provided herein and the Lease, including all corresponding building construction permit fees for Landlord’s work only. |
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|  |  | Tenant’s responsibility. Tenant shall be responsible to permit and construct all of Tenant’s Work as well as permits required to conduct its business, including the health department. |
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| **Survey:** |  | Landlord’s responsibility. Landlord to furnish tenant with an ALTA survey and corresponding legal description. |
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| **Parking Areas, Roads & Zoning:** |  | Landlord’s responsibility. Landlord to construct hard surfaced, properly drained, lighted, striped and landscaped parking areas, and truck service courts; access roads having directional signs and such traffic controls as may be necessary. Any exterior access ramps from the parking lot and the sidewalk to the doors for each entrance or exit, any interior access ramps and threshold risers, as required by code. Landlord shall modify front parking to accommodate Tenant’s exterior patio area. |

**EXHIBIT D**

**GUARANTY OF LEASE**

THIS GUARANTY OF LEASE made as of the 7th day of December, 2009 between Cover Hospitality, LLC, a Michigan limited liability company, as Landlord, and Milbrought, Inc., a Michigan corporation, as Tenant.

In consideration of and to induce the execution and delivery of that certain Lease December 7, 2009, (the “Lease”) between Landlord and Tenant, for a certain premises (the “Premises”) as more particularly described in the Lease, Guarantor hereby agrees as follows:

1. For the first five (5) Lease Years of the Lease only, Guarantor unconditionally guaranties to Landlord the full and punctual payment of all rents and other sums payable by Tenant under the Lease, and the full and punctual performance and observance of all terms, covenants and conditions on the part of Tenant to be performed and observed under the Lease (collectively the “Tenant Obligations”). Guarantor further agrees to indemnify and hold Landlord harmless for any loss, liability, damage or expense (including reasonable attorney’s fees) arising from the failure of Tenant to timely perform any of the Tenant Obligations and/or the enforcement of this Guaranty during such period. Upon Tenant’s default under the Lease and upon demand by Landlord, Guarantor shall pay or perform the Tenant Obligations so in default, as applicable, without offset, deduction or counterclaim.

2. This is a guaranty of payment and not of collection. Landlord shall not be required to pursue any remedies that it may have against Tenant or pursue any security deposit or other security or other parties as a condition to the enforcement of this Guaranty, it being intended that Guarantor’s obligations under this Guaranty shall be independent of, and in addition to, the Tenant Obligations. It is understood and agreed that Guarantor may be joined in any action against Tenant and that recovery may be had against Guarantor in such action, or in any independent action against Guarantor.

3. Guarantor waives notice of any breach or default by Tenant under the Lease, notice of acceptance of this Guaranty, and all suretyship defenses generally. The foregoing provisions shall apply without limitation to Landlord’s waiver of or failure to enforce any Tenant Obligations and/or Landlord’s granting extensions of time of performance to Tenant.

4. This Guaranty shall be absolute and continuing.

(a) Any modification, amendment or other alteration of the Lease;; any assignment of the Lease or any sublease; any release of any other party liable for the Tenant Obligations or any release of security held by Landlord for the performance of the Tenant Obligations; or any sublease of all or a portion of the Premises; and Guarantor consents to any and all of the foregoing;

(b) Any disability or other defense of Tenant, or the cessation from any other cause whatsoever of the liability of Tenant under the Lease.

The obligations and liability of Guarantor under this Guaranty shall continue in effect until all Tenant Obligations accruing during the first five (5) Lease Years of the initial term of the Lease have been fully paid and satisfied. If at any time payment of any of the Tenant Obligations is rescinded or must be otherwise restored or returned upon the insolvency, bankruptcy or reorganization of the Tenant, the obligations of the Guarantor with respect to such payment shall be reinstated at such time as though such payment had not been made.

i

5. Until all Tenant Obligations are fully paid and satisfied, Guarantor (a) shall have no right of subrogation against Tenant by reason of Guarantor’s performance under this Guaranty or monies or obligations owed by Tenant to Guarantor, (b) waives any right to enforce any remedy which Guarantor now has or may hereafter have against Tenant by reason of Guarantor’s performance under this Guaranty, and (c) subordinates any liability or indebtedness of Tenant now or hereafter held by or owed to Guarantor to the Tenant Obligations.

6. This Guaranty and the obligations of the Guarantor under this Guaranty shall not be modified, discharged, waived or terminated except by an agreement in writing signed by Guarantor and Landlord and approved by the holder of any first mortgage on the Premises.

7. This Guaranty shall bind Guarantor and the successors and assigns of Guarantor. This Guaranty may be freely assigned, transferred or hypothecated by Landlord and shall run in favor and inure to the benefit of Landlord, its successors and assigns, and each subsequent holder of Landlord’s interest under the Lease. References to the term “Tenant” shall be deemed to include Tenant’s successors and assigns. This Guaranty may be assigned by Landlord but may not be assigned by Tenant.

8. This Guaranty shall be governed by and construed in accordance with Michigan law. Guarantor agrees to be subject to the jurisdiction of the appropriate courts of Michigan, to accept service of process in any action brought in Michigan, and Guarantor waives any objection to personal jurisdiction in such action.

9. Notices to the Guarantor shall be sent by certified or registered mail to the address set forth below Guarantor’s signature and shall be effective upon receipt. Alternatively, notices may be sent by Federal Express or other recognized delivery service and shall be effective upon delivery to the above address. Guarantor may change its address by giving written notice to Landlord in accordance with this provision.

10. Guarantor represents and warrants that it has the legal right and capacity to execute this Guaranty.

WITNESS the following signature(s) and seal(s) as of the day and year first above written.

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| INDIVIDUAL GUARANTOR(S) | | |  |  |  | CORPORATE GUARANTOR | | | | | | | | | | | |
|  |  |  |  |  |  |  |  |  |  |  | | | |  |  |  |  |
|  |  |  |  |  |  | NAME OF CORPORATION | | | | | | | | | | | |
|  |  |  |  |  |  |  |  |  |  |  | | | |  |  |  |  |
|  |  |  |  |  |  | **Milbrought, Inc.,**a Michigan corporation | | | | | | | | | | | |
|  | | |  |  |  |  |  |  |  |  | | | |  |  |  |  |
| Name: |  |  |  |  |  |  |  |  |  |  | | | |  |  |  |  |
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| Address: |  |  |  |  |  | By: |  | Fred HuntingtonFred Huntington |  | (SEAL) | | | |  |  |  |  |
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|  |  |  |  |  |  |  | Fred Huntington |  |  |  |  |  |  |
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|  |  |  |  |  |  |  |  | Title: President |  |  | | | |  |  |  |  |

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| STATE OF MICHIGAN | ) |  |
|  | ) | ss |
| COUNTY OF OAKLAND | ) |  |

The foregoing instrument was acknowledged before me this 7th day of December, 2009, by Fred HuntingtonFred Huntington.

|  |  |  |  |  |  |
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|  |  | | |  |  |
|  | /s/ A.B | | |  |  |
|  | A.B, Notary Public | | |  |  |
|  | My Commission Expires: July 31, 2015 | | |  |  |

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**Appendix C to the Franchise Agreement**

**Addendum to Lease**

This Addendum to Lease, dated December 7, 2009, is entered into between Cover Hospitality, LLC (“Landlord”), and Milbrought, Inc. (“Tenant”).

RECITALS

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|  | A. |  | The parties have entered into a Lease Agreement, dated December 7, 2009, (the “Lease”) pertaining to the premises located at Waukesha, MI, (the “Premises”). |
|  |  |  |  |
|  | B. |  | Landlord acknowledges that Tenant has agreed to operate a Restaurant at the Premises pursuant to Tenant’s Franchise Agreement (the “Franchise Agreement”) with Yummy Morsels International, Inc. (“YM”) under the name “Yummy Morsels Grill & Bar” or other name designated by YM (the “Restaurant”). |
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|  | C. |  | The parties desire to amend the Lease in accordance with the terms and conditions contained in this Addendum to provide YM the opportunity to preserve the Premises as a YM branded restaurant as provided herein. |

AGREEMENT

Landlord and Tenant agree as follows:

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| 1. |  | Remodeling and Decor. Landlord agrees that Tenant has the right to remodel, equip, paint and decorate the interior of the Premises and to display such proprietary marks and signs on the interior and exterior of the Premises as Tenant is reasonably required to do pursuant to the Franchise Agreement and any successor Franchise Agreement under which Tenant may operate a Restaurant on the Premises. Any remodel of the building and/or its signs shall be subject to Landlord’s prior and reasonable approval. |
|  |  |  |
| 2. |  | Assignment. Tenant does not have the right to sublease or assign the Lease to any third party without YM’s and Landlord’s written approval. Tenant has the right to assign all of its right, title and interest in the Lease to YM, its affiliates or its parent company, at any time during the term of the Lease, including any extensions or renewals, without first obtaining Landlord’s consent. No assignment will be effective, however, until YM or its designated affiliate gives Landlord written notice of its acceptance of the assignment. YM or its parent company will be responsible for the lease obligations incurred after the effective date of the assignment. If YM elects to assume the Lease under this subparagraph or unilaterally assumes the lease as provided for in subparagraph 3(a) or 4(a), Landlord and Tenant agree that (i) Lessee will remain liable for the responsibilities and obligations, including amounts owed to Landlord, prior to the date of assignment and assumption, and (ii) YM will have the right to sublease the Premises to another franchisee with Landlord’s prior reasonable approval — reasonableness to be based on |

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|  |  | proposed new franchisee’s related business experience and credit history, provided the franchisee meets YM’s then-current standards and requirements for franchisees and agrees to operate the Restaurant as a Yummy Morsels restaurant pursuant to a Franchise Agreement with YM. Upon receipt by Landlord of an assumption agreement pursuant to which the assignee agrees to assume the Lease and to observe the terms, conditions and agreements on the part of Tenant to be performed under the Lease, the YM Entity shall thereupon be released from all liability as tenant under the Lease from and after the date of assignment, without any need of a written acknowledgment of such release by Landlord. | | |
|  |  |  | | |
| 3. |  | Default and Notice. | | |
|  | | (a) |  | Landlord shall send YM copies of all notices of default it gives to Tenant concurrently with giving such notices to Tenant. If Tenant fails to cure any defaults within the period specified in the Lease, Landlord shall promptly give YM written notice thereof, specifying the defaults Tenant has failed to cure. YM has the right to unilaterally assume the Lease if Tenant fails to cure. YM shall have 15 days from the date YM receives such notice to exercise, by written notice to Landlord and Tenant, its right for YM or its designee (the “YM Entity”) to assume the Lease. YM shall have an additional 15 days from the expiration of Tenant’s cure period in which to cure the default or violation. |
|  | |  |  |  |
|  | | (b) |  | If the YM Entity elects to assume the Lease, the YM Entity shall not be required to cure defaults and/or to begin paying rent until Landlord delivers possession of the Premises to the YM Entity. The YM Entity shall have the right, at any time until Landlord delivers possession of the Premises, to rescind the option exercise, by written notice to Landlord. |
|  | |  |  |  |
|  | | (c) |  | All notices to YM must be sent by registered or certified mail, postage prepaid, to the following address: |

Yummy Morsels International, Inc., MN 67555  
Attention: General Counsel

YM may change its address for receiving notices by giving Landlord written notice of the new address. Landlord agrees that it will notify both Tenant and YM of any change in Landlord’s mailing address to which notices should be sent.

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| 4. |  | Termination, Non-Renewal, Expiration. | | |
|  | | (a) |  | If the Franchise Agreement is terminated for any reason during the term of the Lease or any extension thereof, YM has the right, but not the obligation, to unilaterally assume the Lease by giving Landlord written notice. Within 30 days after receipt of such notice, Landlord shall give a YM Entity written notice specifying any defaults of Tenant under the Lease. |

ii

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|  | | (b) |  | If the Lease contains term renewal or extension right(s) and if Tenant allows the term to expire without exercising said right(s), Landlord shall give YM written notice thereof, and a YM Entity shall have the option, for thirty (30) days after receipt of said notice, to exercise the Tenant’s renewal or extension right(s) on the same terms and conditions as are contained in the Lease. If a YM Entity elects to exercise such right(s), it shall so notify Landlord in writing, whereupon Landlord and the YM Entity shall promptly execute and deliver an agreement whereby the YM Entity assumes the Lease, effective at the commencement of the extension or renewal term. |
|  | |  |  |  |
|  | | (c) |  | Upon the expiration or termination of the Lease, Landlord will cooperate with and assist YM in gaining possession of the Premises and if a YM Entity does not elect to enter into a new lease for the Premises with Landlord on terms reasonably acceptable to the YM Entity, Landlord will allow YM to enter the Premises, without being guilty of trespass and without incurring any liability to Landlord, except for any damages caused by YM’s willful misconduct or gross negligence, to remove all signs, awnings, and all other items identifying the Premises as a Yummy Morsels® Restaurant and to make such other modifications (such as repainting) as are reasonably necessary to protect the Yummy Morsels® marks and system. In the event YM exercises its option to purchase assets of Tenant, Landlord must permit YM to remove all such assets being purchased by YM. |
| 5. |  | Additional Provisions. | | |

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|  | | (a) |  | Landlord hereby acknowledges that the provisions of this Addendum to Lease are required pursuant to the Franchise Agreement under which Tenant plans to operate its business and the Tenant would not lease the Premises without this Addendum. |
|  | |  |  |  |
|  | | (b) |  | Landlord further acknowledges that Tenant is not an agent or employee of YM and the Tenant has no authority or power to act for, or to create any liability on behalf of, or to in any way bind YM or any affiliate of YM, and that Landlord has entered into this Addendum to Lease with full understanding that it creates no duties, obligations or liabilities of or against YM or any affiliate of YM, unless and until the Lease is assigned to, and accepted in writing by, YM or its parent company. |
|  | |  |  |  |
|  | | (c) |  | YM Entity may elect not to assume or be bound by the terms of any amendment to the Lease executed by Tenant without obtaining YM’s prior written approval, which shall not be unreasonably withheld or delayed. |
| 6. |  | Sales Reports. If requested by YM, Landlord will provide YM with whatever information Landlord has regarding Tenant’s sales from the Restaurant. | | |

iii

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| 7. |  | Modification. No amendment or variation of the terms of this Addendum is valid unless made in writing and signed by the parties and the parties have obtained the written consent of YM. |
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| 8. |  | Reaffirmation of Lease. Except as amended or modified in this Addendum, all of the terms, conditions and covenants of the Lease remain in full force and effect and are incorporated by reference and made a part of this Addendum as though copied herein in full. In the event of any conflict between the terms of this Addendum and those in the Lease, the terms of this Addendum shall control. |
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| 9. |  | Beneficiary. Landlord and Tenant expressly agree that YM is a third party beneficiary of this Addendum. |

IN WITNESS WHEREOF, the parties have executed this Addendum as of the dates written below.

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| TENANT: | | |  | LANDLORD: | | |  |  |
|  |  |  |  |  |  |  |  |  |
| MILBROUGHT, INC. | | |  | COVER HOSPITALITY, LLC | | |  |  |
|  |  |  |  |  |  |  |  |  |
| /s/ Fred Huntington | | |  | /s/ Maralyn Vucik | | |  |  |
|  | | |  |  | | |  |  |
| By: |  | Fred Huntington |  | By: |  | Maralyn Vucik |  |  |
| Its: |  | President |  | Its: |  | Member |  |  |

**LeaseA#3**

EX-10.10

EXHIBIT 10.10

5-30-00

LEASE

THIS LEASE, made and entered into as of the 31st day of May, 2000, by and between Heltsley Homes LLC, 660 W. Heltsley Avenue, Suite 406, Madison, Wisconsin 53703, (hereinafter referred to as the "Lessor"), and Cherry County Financial Corporation (hereinafter referred to as the "Lessee").

WITNESSETH:

WHEREAS, the Lessor has the legal right to lease the parcel of land and building located at 116 South Heltsley Street, XX, Wisconsin, , (hereinafter referred as the "Property"); and,

WHEREAS, Lessee wishes to lease premises consisting of approximately 7,150 square feet, more or less, located on the first floor of the Property, all as outlined on the floor plans marked as Exhibit "A", attached hereto and incorporated herein by reference (the "Leased Premises");

NOW, THEREFORE, for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, Lessee does hereby take and hire from Lessor and does hereby covenant, promise, and agree as follows:

1)  LEASED PREMISES: The Lessor does hereby demise and lease to the Lessee and the Lessee leases and takes from the Lessor, subject to the conditions of this Lease, that part of the Property defined above as the "Leased Premises", together with non-exclusive rights, in common with such others as Lessor shall solely determine, of ingress and egress through all common entrances and exits now existing or from time to time hereafter established by Lessor.

Lessee acknowledges that Lessor requires the consent of Cherry County Title & Abstract, Inc. to modification of the condominium plan to relocate certain common areas. Lessor shall have three (3) days after approval of Lessee's plans and specifications for the Internal Improvements to provide the required consent to any amendment of the condominium documents to accommodate Lessee's plans for the Interior Improvements. If Lessor does not provide Lessee with a copy of such consent within such three (3) days or if Lessor is otherwise unable to accommodate approved plans and specifications of Lessee, Lessee, at Lessee's option, may declare this Lease null and void and Lessor shall reimburse Lessee for all costs and fees incurred by Lessee in the preparation of all of the plans and specifications for the Interior Improvements.

2)  TERM AND RIGHT TO RENEW: The term of this Lease shall be for be for five (5) years commencing on September 1, 2000. This date shall be hereinafter referred to as the "Occupancy Date". Lessee shall have two (2) options to renew this Lease for additional term of three (3) years each. Said option shall be deemed exercised if Lessee gives Lessor written notice of its election to renew this Lease on or before one hundred eighty (180) days prior to the

expiration of the original or extended lease term. Said lease renewal shall be on the same terms and conditions as are set forth herein. Base Rent for the renewal terms shall be as set forth in Exhibit "B", attached hereto and incorporated herein by reference. The term Lease Year shall be defined as a period of twelve (12) consecutive calendar months commencing on the Occupancy Date.

Upon execution of this Lease, Lessee and its designated architects, contractors, materialmen and any other persons reasonably required to make the Interior Improvements as defined herein shall be allowed access to the premises.

3)  ACCEPTANCE OF PREMISES: The execution hereof by the Lessee shall constitute an acceptance of the Leased Premises and an acknowledgement by the Lessee that the Leased Premises are in the condition provided for under this Lease and are acceptable to Lessee. This paragraph shall not be construed so as to relieve the Lessor from his obligation to repair and maintain in accordance with paragraph (7)(b) below.

4)  RENT AND SECURITY DEPOSIT: The Lessee will pay the Lessor the Rent and Security Deposit set forth in Exhibit "B", attached hereto and incorporated herein by reference, and any additional rent described in this Lease, at the dates and times prescribed. The obligation to pay rent shall commence on the Occupancy Date. All other rental payments to the Lessor shall be made in advance on the first day of each month.

5)  INSURANCE AND INDEMNITY:

As additional rent:

i)  Insurance and Indemnity:

a)  Lessee shall procure and maintain policies of liability insurance, at its own cost and expense, throughout the term of this Lease, insuring Lessor and Lessee from all claims, demands or actions made by or on behalf of any person or persons, firm or corporation and arising from, related to or connected with the Leased Premises, for bodily injury to or personal injury to or death of any person, or more than one person, or for damage to property in an amount of not less than $1,000,000.00 combined single limit per occurrence. Said insurance shall be written on an "occurrence" basis and not a "claims made" basis. If at any time during the term of this Lease, Lessee owns or rents more than one location, its liability policy shall contain an endorsement to the effect that the aggregate limit in the policy shall apply separately to each location owned or rented by Lessee. Said insurance shall also fully cover the indemnity set forth in subparagraph (e) below. Lessor shall provide liability insurance in amounts at least equal as those required of the Lessee and the Lessor shall maintain in force casualty insurance providing replacement value coverage for physical damage to the Building for incidences not required to be covered by Lessee's insurance.

b)  The Lessee agrees to notify the Lessor in writing if it is unable to procure all or some part of the insurance, and if the Lessor shall procure such insurance, then the Lessee

2

will, within three (3) days after receiving written notice, pay the Lessor the amount of the premiums paid.

c)  All policies of insurance provided for or contemplated by this paragraph shall name the Lessor and the Lessee as insureds or additional insureds, as their respective interests may appear. In addition, all of such policies shall contain endorsements by the respective insurance companies waiving all rights of subrogation, if any, against the Lessor. Said policies shall further provide that they are not cancelable except upon thirty (30) days written notice to Lessor. On or before Lessee occupies the Leased Premises, Lessee shall provide Lessor the endorsements evidencing the coverage required of Lessee hereunder.

d)  If Lessee, with express written permission of Lessor, occupies all or any part of the Leased premises prior to the Occupancy Date, Lessee's obligations hereunder shall commence as of said date, and all terms, covenants and conditions of this Lease, except with respect to payment of Base Rent, shall be deemed in full force and effect as of said date.

e)  The Lessee shall defend, indemnify, and hold the Lessor harmless against any and all claims, damages and lawsuits arising after the execution hereof, and any orders, decrees or judgments which may be entered therein, brought for damages or alleged damages resulting from any injury to person or property or from loss of life sustained in or about the Leased Premises of whatever nature, caused by, or resulting from any act, omission or negligence of the Lessee or any employee or agent of the Lessee. In addition, the Lessee agrees to save the Lessor harmless from, and indemnify the Lessor against, any and all injury, loss, or damage, including any reasonable attorney fees incurred by Lessor in connection with any such matter or claim for injury, loss or damage, of whatever nature, to any person or property caused by, or resulting from any act, omission or negligence of the Lessee or any employee or agent of the Lessee. In addition, the Lessee hereby releases the Lessor from any and all liability for any loss or damage caused by fire or any of the extended coverage casualties except in cases of Lessors negligence. In addition, the Lessor shall be exempt from any and all liability for any damage or, injury to persons or property caused by or resulting from steam, electricity, gas, water, rain, ice or snow, or any leak or flow from or into any part of said building or from any damage or injury resulting or arising from any cause or happening, except in cases of Lessors negligence.

6)  SUBLEASING OR ASSIGNMENT: The Lessee may sublease, sell, assign, or transfer the whole or any part of its interest in this Lease or the Leased Premises to a service business other than retail food and beverage vending business with the prior written consent of the Lessor, which consent Lessor shall not unreasonably withhold. Specifically, without limitation, Lessee may assign this Lease to Oakens National Bank. Lessor will not allow a sublease, sale, assignment or transfer to an adult entertainment type business including but not limited to an adult bookstore and/or pornographic video retailer. Lessee shall not permit any interest in the Leased Premises to be transferred by law or otherwise.

3

7)  REPAIRS AND MAINTENANCE:

a)  Lessee covenants and agrees to keep and maintain in good order, condition and repair the interior of the Leased Premises during the term of the Lease, and further agrees that the Lessor shall be under no obligation to make any repairs or perform any maintenance to the interior of the Leased Premises unless specifically provided for herein or unless such repairs or maintenance are necessitated by the negligent acts of Lessor. The Lessee covenants and agrees that it shall be responsible for janitorial service and window cleaning to the Leased Premises of such frequency as may be required to maintain the interior of the Leased Premises and the interior and exterior glass in a neat and clean condition. Lessee shall be responsible for maintenance and repair of non-structural interior walls, plate glass (including display windows), ceiling, and any trade fixtures or other personal property, Interior Improvements (as defined in paragraph (22) below) mechanical equipment which Lessee installs or, has as part of the final finish, placed in the Leased Premises. Lessee, if not in default under this Lease, may upon termination hereof remove all of Lessee's trade fixtures, personal property and equipment from the Leased Premises provided that Lessee repairs any damage caused by such removal and restores the Leased Premises to the condition existing as of the date said items were installed in the Leased Premises. Upon termination of this Lease for any reason, Lessee shall not remove any Interior Improvements, as that term is defined in paragraph (22) below. All such Interior Improvements shall remain to and for the benefit of the Lessor, and Lessor shall be deemed to own said Interior Improvements free and clear of all liens and encumbrances effective on the date this Lease terminates. Failure to remove any property which Lessee is obligated or entitled to remove upon termination hereof on or before thirty (30) days after termination of this Lease shall be conclusive evidence of abandonment of said property by Lessee and title to the same shall immediately vest in Lessor.

b)  Lessor agrees to be responsible for maintenance and repair of all structural components of the Property and the common areas of the Property.

c)  If the Lessee refuses or neglects to commence or complete repairs required of Lessee under Paragraph (7)(a) above, promptly and adequately, the Lessor may, but shall not be required to, do so and the Lessee shall pay the cost thereof to Lessor upon demand as additional rent, provided such repairs are consistent with the nature and quality of the damaged item(s). The Lessee further covenants and agrees that Lessee shall not permit material alterations of or upon any part of the Leased Premises except by and with the prior written consent of the Lessor. Any permitted alterations and additions to the Leased Premises shall be made in accordance with all applicable laws, codes and ordinances, and shall remain for the benefit of the Lessor except as otherwise provided for in this Lease or in said written consent; and the Lessee further agrees, in the event of making such alterations as herein provided, to indemnify and save harmless the Lessor from all expense, liens, claims or damages to either persons or property or the Leased Premises arising out of or resulting from the undertaking or making of said alterations or additions, except to the extent they result from the acts or omissions of Lessor, and to allow no liens or other encumbrances to be placed against said Leased Premises as a result thereof.

4

8)  TAXES: Lessor shall be responsible for the prompt payment of all real estate taxes in regard to the Leased Premises and any special assessments or other charges assessed against the Leased Premises for which the owner of the real estate would otherwise be liable. Lessee shall promptly pay all personal property taxes attributable to the personal property and trade fixtures of Lessee and shall pay all sales taxes that may be assessed in the conduct of Lessee's business.

9)  COMPLIANCE WITH LAWS AND REGULATIONS: The Lessee will comply with all statutes, ordinances, rules, order, regulations and requirements of all federal, state, city and local governments, and with all rules, orders, and regulations of the applicable Board of Fire Underwriters.

10) SIGNS: The Lessee shall have the right, at Lessee's sole cost and expense, to install and maintain a sign advertising the Lessee's business. Any sign shall conform to the Lessor's Sign Criteria and shall be properly permitted by all governmental entities having jurisdiction. The exact size, design, configuration and location of the sign shall be subject to Lessor's prior written approval, which approval shall not be unreasonably withheld.

11) SUBORDINATION:

a)  The Lessor reserves the right and privilege to subject and subordinate this Lease at all times to the lien of any mortgage or mortgages, or other security interest, now or hereafter placed upon the Lessor's interest in the Leased Premises and on the land and buildings of which the Leased Premises are a part, and to any and all advances to be made under such mortgages, and all renewals, modifications, extensions, consolidations and replacements thereof provided that, notwithstanding such subordination, as long as Lessee is in compliance with the terms of this Lease, Lessee shall have the right to the quiet enjoyment of the Premises and the full benefits of this Lease for the initial term and any renewal thereof.

b)  The subordination provision contained in this paragraph shall be self-operative, and no other instrument shall be required hereunder. However, the Lessee covenants and agrees to execute and deliver, upon demand, such further instrument or instruments subordinating this Lease on the foregoing basis to the lien of any such mortgage or mortgages as shall be desired by the Lessor and hereby irrevocably appoints Lessor the attorney-in-fact of Lessee to execute and deliver such instrument or instruments for and in the name of the Lessee, in the event Lessee shall fail to execute such instrument or instruments within ten (10) days after written notice, to so do in Lessee's place and stead.

12) CONDEMNATION OR EMINENT DOMAIN:

a)  In the event that all of the Leased Premises shall be condemned or taken by eminent domain by any authority having the right of eminent domain, or if purchased by such authority in lieu of condemnation of said Leased Premises, then the term of this Lease shall cease and terminate as of the date title vests in the condemnor and all rentals shall be paid up to that date, and the Lessee shall have no claim against the Lessor for the value of any unexpired term

5

of the Lease but Lessee shall be entitled to the portion of the condemnation award attributed to the leasehold improvements.

b)  In the event part of the Leased Premises shall be taken by eminent domain by any authority having the right of eminent domain, or if purchased by such authority in lieu of condemnation of said Leased Premises, and such purchase or taking shall, in the reasonably exercised opinion of Lessor and Lessee, render the remainder of the Leased Premises unsuitable for the business of the Lessee, then the term of this Lease shall cease and terminate at the same time and in the same manner as if the entire Leased Premises had been taken, and the Lessee shall have no claim against the Lessor for the value of any unexpired term of the Lease but Lessee shall be entitled to the portion of the condemnation award attributed to the leasehold improvements.

c)  In the event a partial taking of the Leased Premises does not render the remainder of the Leased Premises unsuitable, in the reasonably exercised opinion of the Lessor and the Lessee, for the business of the Lessee, this Lease shall continue in force subject only to a reasonable adjustment of rental for the portion taken which adjustment shall not be less than the pro-rata amount of the rent based on the ratio between the total original square footage and the square footage taken.

d)  In the event that the Lessee and the Lessor cannot agree on whether the Leased Premises has been rendered unsuitable by a partial taking or on what constitutes a reasonable adjustment of rental, as required by subparagraph (c), the amount of such adjustment shall be determined by arbitration according to the Wisconsin Arbitration Act. The arbitrator's decision and award of a dispute and/or controversy shall be in writing and shall be final and binding on the Lessee and Lessor, and the decision of the arbitrator shall be deemed to be a judgment and/or decree and may be entered as such in any court of competent jurisdiction. Cherry County, Wisconsin shall be the place of any arbitration proceeding held hereunder.

13) RIGHT TO INSPECT: The Lessor reserves the right to enter upon, inspect and examine the Leased premises at any time, upon reasonable notification to Lessee of not fewer than 24 hours, and the Lessee agrees, within one hundred twenty (120) days of the termination of the Lease, to allow the Lessor access to the Leased Premises to show the premises and to place a 3 feet by 4 feet "For Rent" signs on the Leased Premises which shall not unreasonably obstruct the Lessee's storefront appearance.

14) DESTRUCTION OF PREMISES:

a)  If, during the term of this Lease, the Leased Premises or the Property is totally or partially destroyed by fire or the elements, so as to render the Leased Premises wholly unfit for occupancy, or makes it impossible to conduct the business of the Lessee thereon, and if the Leased Premises cannot be repaired within ninety (90) days from the date of the damage, or if Lessor decides, within a reasonable time, not to exceed thirty (30) days, not to rebuild, then the Lessee or the Lessor shall have the right to terminate this Lease from the date of such damage or destruction by giving the other party written notice. Upon the giving of such notice, the Lessee shall immediately surrender the Leased premises and all interest therein to the Lessor, and in

6

case of any such termination, the Lessor may re-enter and repossess the Leased Premises discharged of this Lease, and may dispossess all parties then in possession thereof, provided, however, that Lessee shall have a period of thirty (30) days from termination to remove all personal property/trade fixtures from the Leased Premises. In the event the Leased Premises shall be repaired, restored and rebuilt by Lessor at its own sole cost and expense, within ninety (90) days from the date of destruction, then all rents payable by the Lessee shall be terminated during the period of repair and restoration. In no event shall the Lessor be required to repair, rebuild and restore the Leased Premises at a cost greater than the net proceeds of monies received from any insurance policy or policies covering such loss or damages. The Lessor shall repair the Leased Premises with all reasonable speed, and the rents shall recommence on the date that the repairs are completed and the Lessor has given five days prior written notice to Lessee that the Premises are again fit for occupancy.

b)  If the damage does not render the Leased Premises unfit for occupancy, then the Lessor agrees that the damage shall be repaired as soon as practicable and in that case, the Lessee shall pay pro-rata rent during the repair period. All repairs resulting from fire or the elements shall be paid for by the Lessor out of any insurance proceeds received. All improvements placed by the Lessee on the Leased Premises shall, however, in any event, be repaired and replaced by the Lessee at Lessee's own expense and not at the expense of the Lessor.

15) DEFAULT AND REMEDIES:

a)  Acts of Default of Lessee: Each of the following shall be deemed a default by the Lessee and a breach of this Lease:

1)  Failure to pay any of the rent or additional rent herein reserved, or any party thereof, for a period of ten (10) days after written notice.

2)  Failure to do, observe, keep and perform any term, covenant, condition, agreement or provision in this Lease to be done, observed, kept and performed by the Lessee (except concerning the payment of rent or additional rent) for a period of ten (10) days after written notice, unless such default cannot be cured within 10 days and Lessee is making a diligent additional 60 days.

3)  The abandonment of the Leased Premises by the Lessee.

4)  The filing by the Lessee of a petition for any relief under Chapter 7 or Chapter 11 of the Bankruptcy Act of the United States, as amended, or any other provisions of such act, or the filing by Lessee or a petition for relief under any State bankruptcy, receivership, or any insolvency statute, or the making by the Lessee of any assignment for the benefit or its creditors, or any appointment of a receiver or trustee for the Lessee for all or part of this property, or the taking by execution of any of the Lessee's rights hereunder shall at the sole discretion of the Lessor forthwith render this Lease null and void. Upon the happening of any of the events set forth in this subparagraph, Lessor shall have the right without notice to forthwith terminate all of the Lessee's interest herein.

7

b)  Acts of Default of Lessor: The following shall be deemed a default by the Lessor and a breach of this Lease:

1)  The failure of Lessor to observe, keep or perform any term, covenant, agreement or provision in this Lease to be done, reserved, kept and performed by the Lessor for a period of ten (10) days after written notice from Lessee, provided, however, that if a cure cannot be accomplished within thirty days and Lessor has diligently attempted to cure within such thirty days, Lessor shall have a reasonable time to accomplish such cure but shall not exceed an additional sixty days.

c)  Remedies: Upon the happening of any of the acts of default set forth above, which acts remain uncured after expiration of the time periods provided for above, the Lessor or Lessee, as appropriate, shall have the right to elect any one or more of such remedies as may be allowed by applicable law.

16) TRADE FIXTURES: The Lessee shall furnish and pay for any and all equipment, furniture, trade fixtures and signs to be used in or installed upon the Premises and the same shall at all times remain the property of Lessee.

17) LIENS: The Lessee shall not do or cause anything to be done whereby the Leased Premises may be encumbered by any mechanic's or other liens. Whenever and as often as any mechanic's or other lien is filed against said Leased Premises purporting to be for labor or materials furnished or to be furnished to the Lessee, the Lessee shall remove the lien by payment or by bonding with a surety company authorized to do business in the State of Wisconsin, within ten (10) days from the date of the filing of said mechanic's or other lien and delivery of notice thereof to the Lessee of the Lessee's obligation under this Lease. Should the Lessee fail to take the foregoing steps within said period, then the Lessor shall have the right, among other things, to pay said lien without inquiring into the validity thereof, and the Lessee shall forthwith reimburse the Lessor for without inquiring into the validity thereof, and the Lessee shall forthwith reimburse the Lessor for the total expense incurred by it in discharging said lien as additional rent hereunder.

18) NO WAIVER BY LESSOR EXCEPT IN WRITING: No agreement to accept a surrender of the Leased Premises shall be valid unless in writing signed by the Lessor. The delivery of keys to any employee of the Lessor or the Lessor's agents shall not operate as a termination of the Lease or a surrender of the Leased Premises. The failure of the Lessor to seek redress for violation of, or to insist upon the strict performance of any covenant or condition of this Lease, or of any rule or regulation, shall not prevent a subsequent act, which would have originally constituted a violation, from constituting a violation or act of default hereunder. No payment by the Lessee or receipt by the Lessor of a lesser amount than the rent herein stipulated shall be deemed to be other than on account of the earliest stipulated rent, nor shall any endorsement or statement on any check nor any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and the Lessor may accept such check or payment without prejudice to the Lessor's right to recover the balance of such rent or pursue any other remedy provided in this Lease. This Lease contains the entire agreement between the parties,

8

and any executory agreement hereafter made shall be ineffective to change, modify or discharge it in whole or in part unless such executory agreement is in writing and signed by the party against whom enforcement of the change, modification or discharge is sought.

19) BREACH - PAYMENT OF COSTS AND ATTORNEYS' FEES: Each party agrees to pay and discharge all reasonable costs and reasonable attorneys' fees and expenses that shall be incurred by the other party in enforcing the covenants, conditions and terms of this Lease, including, in the case of the Lessor, the costs of reletting.

20) WAIVER OF SUBROGATION: Nothing in this Lease shall be construed so as to authorize or permit any insurer of Lessee to be subrogated to any right of Lessee against Lessor arising out of this Lease. Lessee hereby releases Lessor to the extent of any perils to be insured against by Lessee under the terms of this Lease, whether or not such insurance has actually been secured, and to the extent of its insurance coverage for any loss or damage caused by any such casualty, unless such incidents shall be brought about by the fault or negligence of Lessor. Lessee shall endeavor to obtain appropriate waivers of subrogation from its insurance carrier giving affect to this paragraph.

21) UTILITIES; USE OF PREMISES:

a)  Lessee agrees to provide and pay for water, sewer, gas and electric utility services attributable to Lessee's use and occupancy of the Leased Premises. With respect to electric utility services, Lessee's obligation to pay for the same shall extend to charges payable under the following meters, which at the time of execution of this Lease are separately billed to Lessee: electric meter number \_\_\_\_\_\_\_\_\_\_. With respect to gas utility services, Lessee's obligation to pay for the same shall extend to charges payable under the following meters, which at the time of execution of this Lease are separately billed to Lessee: gas meter number \_\_\_\_\_\_\_\_. Lessee shall pay water and sewer utility services on a proration of the bills for such services calculated on the ratio of the square footage of the Leased Premises to the square footage of the total first floor commercial space in the building in which the Leased Premises are located.

b)  Lessee agrees to operate and use the Leased Premises as professional office space for a Bank. Lessee shall conduct its business in the Leased Premises in full compliance with all applicable laws, rules, ordinances and regulations, and shall conduct its business in such a way so as not to disturb any other tenants of the Property.

c)  Notwithstanding anything else set forth in this Lease, Lessor, and its employees, agents or contractors, shall have the unlimited right to enter the Leased Premises without prior notice, twenty-four (24) hours per day, for the purpose of access to the Leased Premises, for emergencies, without the same constituting a breach or violation of this Lease or applicable law.

9

22) LESSEE'S IMPROVEMENTS; LESSOR'S IMPROVEMENTS:

a)  Lessee may undertake, at Lessee's sole cost and expense, improvements to the Leased Premises (the "Interior Improvements"), and shall undertake and complete all other additional work necessary for the opening of Lessee's business in the Leased Premises, provided Lessee first procures the advance written consent of Lessor to all Interior Improvements, which shall not be unreasonably withheld. Lessor shall give its approval or indicate that it is withholding approval of the plans and specifications no later than seven (7) days after submission of the plans and specifications to Lessor by Lessee. All Interior Improvements shall be evidenced by written plans and specifications, a complete copy of which shall be provided to Lessor as a precondition to Lessor's approval. In addition, Lessee shall pay for all design and construction costs incurred to alter the current common areas and Lessors leasing office to fit Lessee's final space layout and Lessor's requirement for an additional exit to Heltsley Street provided such costs are incurred as a result of the construction according to Lessee's plans and specifications for the Interior Improvements.

If Lessor withholds its consent to any of the planned improvements by Lessee, Lessor shall within three (3) days of submission to Lessor of the planned plans and specifications for the planned improvements identify all aspects of the planned improvements to which it objects, and, at Lessee's option, Lessor and Lessee shall within ten (10) days of Lessor's rejection of the improvements participate in an arbitration hearing to resolve the disputed issues as identified by Lessor. Lessor and Lessee shall agree on an arbitrator, and, if they cannot agree, each shall select one arbitrator and those two arbitrators shall select a third arbitrator, and the three arbitrators shall together render a decision on the disputed issues which shall be binding on Lessor and Lessee. Alternatively, if Lessee in good faith submits two sets of plans and specifications which differ in material aspects and Lessor withholds its consent to both sets of plans and specifications, Lessee may declare this Lease terminated with no further liability under this Lease.

b)  All of Lessee's or Lessor's improvements shall be performed in full compliance with all applicable laws, rules, ordinances and regulations and in a good workmanlike manner. All of Lessee's improvements shall be subject to paragraph (16), above, relating to mechanic and materialmen liens.

23) MISCELLANEOUS PROVISIONS:

a)  Unless otherwise required by law, all written notices shall be delivered by certified United States mail or the equivalent to the Lessee at 110 South Heltsley Avenue, Cherry County, Wisconsin, or to Lessor at c/o The Percey Company, Inc., 660 West Heltsley Ave., #303, Madison, Wisconsin,. The Lessor and the Lessee may, from time to time, change these addresses by notifying each other of any change in writing as per this section.

b)  The terms, condition and covenants contained in this Lease and any riders and Plans attached hereto shall bind and inure to the benefit of the Lessor and the Lessee and their respective successors, heirs, and assigns.

10

c)  This Lease shall be governed by and construed under the laws of the State of Wisconsin.

d)  In the event that any provision of this Lease shall be held invalid or unenforceable, no other provision of this Lease shall be affected by such holding, and all of the remaining provisions of this Lease shall continue in full force and effect pursuant to the terms hereof.

e)  The paragraph captions are inserted only for convenience and reference, and are not intended, in any way, to define, limit, or describe the scope, intent and language of this Lease or its provisions.

f)  This Lease contains the entire agreement between the parties and shall not be modified in any manner except by an instrument in writing executed by the parties or their respective successors in interest.

g)  This Lease may be executed in any number of counterparts with the same effect as if all parties executed a single instrument.

h)  FDIC Clause: Notwithstanding any other provisions contained in this Lease, in the event (a) Tenant or its successors or assignees shall become insolvent or bankrupt, or if it or their interest under this Lease shall be levied upon or sold under execution or other legal any depository institution supervisory authority ("Authority"), Landlord may, in either such event, terminate this Lease only with the concurrence of any receiver or liquidator appointed by such Authority, provided, that in the event this Lease is terminated by the receiver or liquidator, the maximum claim of Landlord for rent, damages or indemnity for injury resulting from the termination, rejection or abandonment of the unexpired Lease shall be by law no greater than an amount equal to all accrued and unpaid rent to the date of termination.

i)  Parking. Lessor shall provide Lessee at no additional cost eight (8) surface parking stalls located adjacent and immediately west of the Leased Premises and exclusively dedicated to the customers of Lessee during the hours of 7:30 a.m. to 5:30 p.m. Monday through Friday with appropriate signage indicating the same. In addition, Lessor shall provide to Lessee ten (10) underground parking stalls at an additional cost of $20.00 per month for each such stall. Annual increases for such parking stalls shall be no more than $1.00 per month. In addition, Lessor shall provide Lessee ten (10) underground parking stalls at no additional charge for as long as Lessor has not received a bona fide offer to lease the same. If Lessor receives a bona fide offer to lease any of the ten (10) free underground parking stalls from a person or entity other than a tenant or condominium owner of the building within which the Leased Premises are located, Lessor shall offer to lease each of the affected parking stalls to Lessee at the then current market rate for such stalls and, in any event, no more than Lessor was to have charged the offering party for such parking stall(s). Lessee shall have a period of ten (10) days to advise Lessor of its exercise of its right of first refusal as to such parking stalls. If Lessee exercises its right of first refusal, lease payments for the affected parking stall(s) shall commence on the first day of the next month in which rent would be due under this Lease.

11

If the aggregate number of parking stalls available to Lessee at any time proves insufficient for Lessee's needs, Lessor shall mark each parking stall for which Lessee is paying rent "Reserved for Oakens National Bank" and shall police such parking spaces to ensure the exclusive use of such parking spaces for the benefit of Lessee provided that such period of exclusivity shall be between the hours of 7:30 a.m. and 5:30 p.m. Monday through Friday. For purposes of this Lease, the underground parking stalls used by Lessee shall be considered to be insufficient if three (3) days during any monthly period employees of Lessee are unable to locate parking stalls within the underground parking facility beneath the Leased Premises.

For each underground parking stall, Lessee shall pay a one time $50.00 fee for each automatic door opener for access to the underground parking. If any of the underground parking stalls are surrendered by Lessee hereunder before termination of the Lease because of Lessor's rental of the same to third parties, Lessor shall refund the door opener fee for each stall so surrendered.

j)  Lessee shall be allowed to install an Automated Teller Machine and a Night Depository Drop-Box as per Lessee's plans and specifications provided their installation does not adversely affect the structural integrity of the Building.

k)  Termination for Lack of Federal Approval. The obligation of Lessee to be bound for the full term of this Lease is conditioned on Lessee obtaining all necessary approvals to operate as a national bank. Immediately upon approval by Lessor of Lessee's plans and specifications for the Interior Improvements, Lessee shall be allowed to make the Interior Improvements and take all other action necessary to ready the Premises for occupancy during the pendency of Lessee's approvals. If Lessee has not received all necessary approvals for its application to operate as a national bank by November 1, 2000, Lessee may declare this Lease terminated, provided, however, (a) that all Interior Improvements Lessee has caused to be made to the Premises shall be deemed abandoned and shall become the sole property of Lessor, free and clear of any liens or encumbrances created or arising out of any request for labor or materials or any other act of Lessee, and Lessee shall indemnify and hold harmless Lessee of and from any and all such lien claims and (b) Lessee shall be responsible for rents that have accrued to the date of termination. Lessee shall promptly pursue all necessary approvals for it to operate as a national bank. This paragraph shall not be constructed to relieve Lessee of any liability Lessee may have for personal injury or property damage arising out of the negligence of Lessee or any of Lessee's agents or contractors in regard to their activities upon the Premises.

12

IN WITNESS WHEREOF, the Lessor and Lessee have respectively signed and sealed this Lease of the day and year first above written.

LESSOR

HELTSLEY HOMES, LLC

/s/ Norman Taylor

---------------------------------

By:  Norman Taylor

Its: Managing Member

LESSEE

CHERRY COUNTY FINANCIAL CORPORATION

/s/ Anna F Dover

--------------------------------

By:  Anna F Dover

Its: Executive Vice President

13

EXHIBIT A

[SCHEMATIC OF LEASED PREMISES]

EXHIBIT"B"

DATE OF LEASE:

May 31, 2000

ADDRESS OF LEASED PREMISES:

110 South Heltsley Street,

Cherry County, WI

LESSOR:

Heltsley Homes LLC

LESSEE:

Cherry County Financial Corporation

BASE RENT:

$ 9.75 per square foot of Premises per year for the first lease year paid in equal monthly installments of $5,809.38 with the first payment due upon September 1, 2000. Base Rent shall increase 4.0% per year during the original and extended term(s) of the Lease.

SECURITY DEPOSIT:

Lessee shall pay a Security Deposit equal to one months rent upon Lease signing.

LEASE AMENDMENT #1

The Lease made and entered into as of the 31st day of May, 2000, by and between Heltsley Homes LLC, hereinafter referred to as the "Lessor' and Cherry County Financial Corporation, hereinafter referred to as "Lessee" is amended as follows:

PAGE 1 SECOND "WHEREAS" IS AMENDED AS FOLLOWS:

". . .lease premises consisting of approximately 7,574 square feet (See attached Exhibit A) . . . ".

SECTION 21) UTILITIES; USE OF PREMISES IS AMENDED AS FOLLOWS:

". . .Electric Meter Numbers are 179898 and 187042. . . "

". . .Gas Meter Numbers are 318818 and 318819. . . "

SECTION 22) LESSEE'S IMPROVEMENTS; LESSOR'S IMPROVEMENTS AT THE END OF THE FIRST PARAGRAPH IN SUBSECTION A), ADD THE FOLLOWING:

". . . Lessee agrees to pay the following Lessors' costs of providing the Premises, upon of the execution of this amendment:

A&A Fire and Security (Door Intercom)

=

$ 2,887.50

A&A Fire and Security (Cameras)

=

$ 3,931.10

Urban Resources Architectural Design

=

$ 1,080.00

Mau & Associates (Condo document revisions)

=

$    227.50

STS Consultants (Engineering services)

=

$    135.00

Total:

$ 8,261.10

     . . ."

SECTION 23).  SUBSECTION K) TERMINATION FOR LACK OF FEDERAL APPROVAL. "DELETE THIS SUBSECTION".

EXHIBIT A:   REPLACE EXHIBIT A WITH THE ATTACHED AMENDED EXHIBIT A

EXHIBIT B:   REPLACE EXHIBIT B WITH THE ATTACHED AMENDED EXHIBIT B

The original Lease, dated May 31, 2000 shall remain in full force and effect, except as amended above.

\*LESSOR\*

HELTSLEY HOMES LLC

By:

/s/ Norman Taylor

3-22-01

Norman Taylor, Managing Member

Date

\*Lessee\*

CHERRY COUNTY FINANCIAL CORPORATION

By:

/s/ Anna F Dover

3/7/01

Anna F Dover

Date

By:

/s/ Susanna Paltgraff

3/7/01

Susanna Paltgraff

Date

2

AGREEMENT TO AVAILABILITY OF LEASE

Agreement made this 30th day of November, 2001, by and between Landmakers, LLC (d/b/a The Willows Mall), a Wisconsin limited liability company, of Cherry County, Wisconsin (hereinafter referred to as the "Lessor") and Oakens National Bank, a Wisconsin corporation, of Cherry County, Wisconsin, (hereinafter referred to as the "Lessee").

WITNESSETH:

1.

In the event of a disaster (commonly defined as natural disaster,   terrorism, act of war, civil unrest, fire, etc.) that renders the lessee's   principal business facility (located at 110 South Heltsley Street, Green   Bay, WI) incapable of normal operations, the lessor agrees to provide space   in the The Willows Mall which will act as a back-up location for the   resumption of business operations of the lessee.

Rent, location of space, length of occupancy, and other terms will be negotiated as part of an Agreement of Lease in the event of a declaration of disaster by the lessee at its principal business facility.

Lessee understands that availability of space is not guaranteed and will regularly keep in contact with the lessor to determine if alternate locations need to be sought to accomplish their business resumption objectives.

2.

As an act of good faith, lessor agrees to immediately provide enough space for the storage of two 55 gallon containers which will hold various basic provisions (tools, supplies, etc.) to be used in the event the lessee needs to execute their business resumption plan. Specifically, these containers would contain such items as batteries, flashlights, basic tools, radios, first aid kits, water, office supplies, blank bank documents, and a copy of the lessee's business resumption plan.

3.

Lessor also agrees to allow lessee to perform a business resumption test on an annual basis to insure the lessee's ability to use lessor's facility as a viable business resumption location. Tests performed will be non-intrusive and invisible from other tenants located in the lessor's facility (The Willows Mall).

4.

TERM: The term of this agreement shall be (5) five years commencing on December 1, 2001 and ending on midnight, November 30, 2006.

5.

TERMINATION: Lessor or Lessee reserve the right to cancel this agreement for whatever reason at any time during the term noted above.

6.

CONSTRUCTION: The terms and conditions of this agreement shall be construed in accordance with the laws of the State of Wisconsin.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

LESSOR:

LANDMAKERS, LLC

By:  /s/ Ann L. Tombs

     Ann L. Tombs, Managing Member

LESSEE:

OAKENS NATIONAL BANK

By:  /s/ Norrick Limbers

     Norrick Limbers, Vice President

2

SECOND AMENDMENT OF LEASE

This Second Amendment is attached to and incorporated into the "Lease Agreement" entered into the 31st day of May 2000 by and between HELTSLEY HOMES LLC - C/O MANAGEMENT AGENT ASHFIELD CORPORATION, XXXX, MADISON, WI 53711 (hereinafter referred to as "Lessor") as Landlord and CHERRY COUNTY FINANCIAL CORPORATION D\B\A OAKENS NATIONAL BANK (hereinafter referred to as "Lessee"), as Tenant. To the extent that the terms of this Second Amendment conflict with or contradict the terms and conditions of the Lease Agreement to which it is attached, the terms of this Second Amendment shall supersede and control. All other provisions of said Lease shall remain the same and shall continue in full force and effect.

This Addendum hereby adds 1,137 square feet to Lessee's existing 7,574 square feet, for a total leased square footage of 8,71 1 square feet. Lessee agrees to accept the 1,137 square feet in "AS IS" condition. Lessee will be responsible for all tenant improvement costs and related expenses associated with the added space. All improvements completed shall be done in a workmanlike manner, and meet all state, city and local codes. Lessor shall have the right to approve or deny all improvement plans and approval shall not be unreasonably withheld. This agreement is contingent upon the subject space's existing occupant agreeing to terminate and vacate the subject space on or before April 30th, 2002. Lessor and Lessee agree that the leased premise is 8,711 sq. ft. for the purposes of this agreement.

1.  Term. This lease shall begin the 1st day of May 2002 and end on the 31st day of August 2005.

2.  Rent. Figures Are Stated In Monthly Rates

BASE RENT FROM

8,711 SQ. FT.

(11) STALLS

(1) STORAGE

05/01/2002 to 08/31/2002

$7,361

$220

$20

09/01/2002 to 08/31/2003

$7,655

$352

$20

09/01/2003 to 08/31/2004

$7,961

$484

$20

09/01/2004 to 08/31/2005

$8,280

$616

$20

Lessee shall have two(2) consecutive options to renew said lease for three (3) years each. Each year a 4% annual escalator will be applied to the prior years rental rates. Lessee must provide a written notice of its election to renew or vacate a minimum of 180 days prior to any lease expiration of the original or renewal periods.

3.  No Other Change. All other provisions of said Lease shall remain the same and shall continue in full force and effect.

4.  Incorporation Into Lease. Landlord and Tenant agree that executed counterparts of this Second Amendment shall be attached to, and become a part of, the respective copies of said Lease now in the possession of each party hereto.

IN WITNESS HEREOF, Landlord and Tenant have duly executed this Second Amendment.

LESSEE:

LESSOR:

CHERRY COUNTY FINANCIAL CORPORATION

HELTSLEY HOMES LLC

d\b\a Oakens National Bank

By: /s/ Susanne Paltgraff, President

By: /s/ Norman Taylor

      Susanne Paltgraff, President

      Norman Taylor,

      Managing Member

Date: 4/5/02

Date: April 10, 2002

AMENDED EXHIBIT "A"

[AMENDED SCHEMATIC OF LEASED PREMISES]

AMENDED EXHIBIT"B"

DATE OF LEASE:

May 31, 2000

ADDRESS OF LEASED PREMISES:

110 South Heltsley Street, Cherry County, WI.

LESSOR:

Heltsley Homes LLC

LESSEE:

Oakens National Bank

BASE RENT:

$9.75 per square foot of Premises per year for the first lease year paid in equal monthly installments of $6,153.88 with the first payment due upon September 1, 2000. Base Rent shall increase 4.0 % per year during the original and extended term(s) of the Lease.

SECURITY DEPOSIT:

Lessee shall pay a Security Deposit equal to one month's rent upon Lease signing.

**LeaseA#4**

EX-10 3 lease.htm

Exhibit 10

**COMMERCIAL LEASE AGREEMENT**

This Commercial Lease Agreement ("Lease") is made and effective August 4, 2000, by and between Chuck Holdings, L.L.C., an Arizona Limited Liability Company ("Landlord") and Chuck Productions, Inc., a Delaware Corporation ("Tenant").

Landlord is the owner of land and improvements commonly known and numbered as XXX., Phoenix, AZ 85040 and legally described as follows (the "Building"):  18,000 Sq. Ft. free-standing building and all associated land.

Landlord makes available for lease a portion of the Building designated as XXX. (the "Leased Premises").

Landlord desires to lease the Leased Premises to Tenant, and Tenant desires to lease the Leased Premises from Landlord for the term, at the rental and upon the covenants, conditions and provisions herein set forth.

THEREFORE, in consideration of the mutual promises herein, contained and other good and valuable consideration, it is agreed:

1.  **Term**.

A.  Landlord hereby leases the Leased Premises to Tenant, and Tenant hereby leases the same from Landlord, for an "Initial Term" beginning August 4, 2000 and ending February 4, 2026.  Landlord shall use its best efforts to give Tenant possession as nearly as possible at the beginning of the Lease term.  If Landlord is unable to timely provide the Leased Premises, rent shall abate for the period of delay.  Tenant shall make no other claim against Landlord for any such delay.

B.  Tenant may renew the Lease for one extended term of one year.  Tenant shall exercise such renewal option, if at all, by giving written notice to Landlord not less than ninety (90) days prior to the expiration of the Initial Term.  The renewal term shall be at the rental set forth below and otherwise upon the same convenants, conditions and provisions as provided in this Lease.

2.  **Rental**.

Tenant will provide the funds for the deposit on the Building and all fees associated with obtaining the Building.  In exchange for this, Tenant will receive rental rates ‘at cost’ from Landlord.  ‘At cost’ rental rates means that Tenant shall pay to Landlord during the Initial Term rental fees equal to all expenses relating to the building, including, but not limited to: mortgage, taxes, fees, maintenance, and improvements.  Payments will be 12 per year, unless otherwise agreed.  Each installment payment shall be due in advance on the first day of each calendar month during the lease term to Landlord at **YYY, Mesa, AZ 85208** or at such other place designated by written notice from Landlord or Tenant.  The rental payment amount for any partial calendar months included in the lease term shall be prorated on a daily basis.  Tenant shall also pay to Landlord a "Security Deposit" in the amount of **$500**.

3.  **Use**

The Leased Premises may be used and occupied by Tenant for any lawful purpose which complies with applicable zoning ordinances. Notwithstanding the forgoing, Tenant shall not use the Leased Premises for the purposes of storing, manufacturing or selling any explosives, flammables or other inherently dangerous substance, chemical, thing or device.

4.  **Sublease**.

Tenant shall have the right to sublease up to, but not exceeding, 49% of the Leased Premises, with Landlord's consent, such consent shall not to be unreasonably withheld or delayed.  If Tenant does sublease, Landlord must approve the lease agreement for sublease.

5.  **Repairs**.

During the Lease term, Tenant shall make, at Tenant's expense, all necessary repairs to the Leased Premises.  Repairs shall include such items as routine repairs of floors, walls, ceilings, and other parts of the Leased Premises damaged or worn through normal occupancy, including major mechanical systems or the roof, subject to the obligations of the parties otherwise set forth in this Lease.

6.  **Alterations and Improvements**.

Tenant, at Tenant's expense, shall have the right following Landlord's consent to remodel, redecorate, and make additions, improvements and replacements of and to all or any part of the Leased Premises from time to time as Tenant may deem desirable, provided the same are made in a workmanlike manner and utilizing good quality materials.  Tenant shall have the right to place and install personal property, trade fixtures, equipment and other temporary installations in and upon the Leased Premises, and fasten the same to the premises.  All personal property, equipment, machinery, trade fixtures and temporary installations, whether acquired by Tenant at the commencement of the Lease term or placed or installed on the Leased Premises by Tenant thereafter, shall remain Tenant's property free and clear of any claim by Landlord.  Tenant shall have the right to remove the same at any time during the term of this Lease provided that all damage to the Leased Premises caused by such removal shall be repaired by Tenant at Tenant's expense.

7.  **Property Taxes**.

Tenant shall pay, prior to delinquency, all general real estate taxes and installments of special assessments coming due during the Lease term on the Leased Premises, and all personal property taxes with respect to Tenant's personal property, if any, on the Leased Premises.

8.  **Insurance**.

A.  If the Leased Premises or any other party of the Building is damaged by fire or other casualty resulting from any act or negligence of Tenant or any of Tenant's agents, employees or invitees, rent shall not be diminished or abated while such damages are under repair, and Tenant shall be responsible for the costs of repair not covered by insurance.

B.  Landlord shall maintain fire and extended coverage insurance on the Building and the Leased Premises in such amounts as Landlord shall deem appropriate.  Tenant shall be responsible, at its expense, for fire and extended coverage insurance on all of its personal property, including removable trade fixtures, located in the Leased Premises.

C.  Tenant and Landlord shall, each at its own expense, maintain a policy or policies of comprehensive general liability insurance with respect to the respective activities of each in the Building with the premiums thereon fully paid on or before due date, issued by and binding upon some insurance company approved by Landlord, such insurance to afford minimum protection of not less than $1,000,000 combined single limit coverage of bodily injury, property damage or combination thereof.  Landlord shall be listed as an additional insured on Tenant's policy or policies of comprehensive general liability insurance, and Tenant shall provide Landlord with current Certificates of Insurance evidencing Tenant's compliance with this Paragraph.  Tenant shall obtain the agreement of Tenant's insurers to notify Landlord that a policy is due to expire at least (10) days prior to such expiration.  Landlord shall not be required to maintain insurance against thefts within the Leased Premises or the Building.

9. **Utilities.**

Tenant shall pay all charges for water, sewer, gas, electricity, telephone and other services and utilities used by Tenant on the Leased Premises during the term of this Lease unless otherwise expressly agreed in writing by Landlord.  Tenant acknowledges that the Leased Premises are designed to provide standard office use electrical facilities and standard office lighting.  Tenant shall not use any equipment or devices that utilizes excessive electrical energy or which may, in Landlord's reasonable opinion, overload the wiring or interfere with electrical services to other tenants.

10.  **Signs**.

Following Landlord's consent, Tenant shall have the right to place on the Leased Premises, at locations selected by Tenant, any signs which are permitted by applicable zoning ordinances and private restrictions.  Landlord may refuse consent to any proposed signage that is in Landlord's opinion too large, deceptive, unattractive or otherwise inconsistent with or inappropriate to the Leased Premises or use of any other tenant.  Landlord shall assist and cooperate with Tenant in obtaining any necessary permission from governmental authorities or adjoining owners and occupants for Tenant to place or construct the foregoing signs.  Tenant shall repair all damage to the Leased Premises resulting from the removal of signs installed by Tenant.

11.  **Entry**.

Landlord shall have the right to enter upon the Leased Premises at reasonable hours to inspect the same, provided Landlord shall not thereby unreasonably interfere with Tenant's business on the Leased Premises.

12.  **Parking**.

During the term of this Lease, Tenant shall have the non-exclusive use in common with Landlord, other tenants of the Building, their guests and invitees, of the non-reserved common automobile parking areas, driveways, and footways, subject to rules and regulations for the use thereof as prescribed from time to time by Landlord.  Landlord reserves the right to designate parking areas within the Building or in reasonable proximity thereto, for Tenant and Tenant's agents and employees.  Tenant shall provide Landlord with a list of all license numbers for the cars owned by Tenant, its agents and employees.

13.  **Building Rules.**

Tenant will comply with the rules of the Building adopted and altered by Landlord from time to time and will cause all of its agents, employees, invitees and visitors to do so; all changes to such rules  will be sent by Landlord to Tenant in writing.  The initial rules for the Building are attached hereto as Exhibit "A" and incorporated herein for all purposes.

14.  **Damage and Destruction**.

Subject to Section 8 A. above, if the Leased Premises or any part thereof or any appurtenance thereto is so damaged by fire, casualty or structural defects that the same cannot be used for Tenant's purposes, then Tenant shall have the right within ninety (90) days following damage to elect by notice to Landlord to terminate this Lease as of the date of such damage.  In the event of minor damage to any part of the Leased Premises, and if such damage does not render the Leased Premises unusable for Tenant's purposes, Landlord shall promptly repair such damage at the cost of the Landlord.  In making the repairs called for in this paragraph, Landlord shall not be liable for any delays resulting from strikes, governmental restrictions, inability to obtain necessary materials or labor or other matters which are beyond the reasonable control of Landlord.  Tenant shall be relieved from paying rent and other charges during any portion of the Lease term that the Leased Premises are inoperable or unfit for occupancy, or use, in whole or in part, for Tenant's purposes.  Rentals and other charges paid in advance for any such periods shall be credited on the next ensuing payments, if any, but if no further payments are to be made, any such advance payments shall be refunded to Tenant.  The provisions of this paragraph extend not only to the matters aforesaid, but also to any occurrence which is beyond Tenant's reasonable control and which renders the Leased Premises, or any appurtenance thereto, inoperable or unfit for occupancy or use, in whole or in part, for Tenant's purposes.

15.  **Default**.

If default shall at any time be made by Tenant in the payment of rent when due to Landlord as herein provided, and if said default shall continue for fifteen (15) days after written notice thereof shall have been given to Tenant by Landlord, or if default shall be made in any of the other covenants or conditions to be kept, observed and performed by Tenant, and such default shall continue for thirty (30) days after notice thereof in writing to Tenant by Landlord without correction thereof then having been commenced and thereafter diligently prosecuted, Landlord may declare the term of this Lease ended and terminated by giving Tenant written notice of such intention, and if possession of the Leased Premises is not surrendered, Landlord may reenter said premises.  Landlord shall have, in addition to the remedy above provided, any other right or remedy available to Landlord on account of any Tenant default, either in law or equity.  Landlord shall use reasonable efforts to mitigate its damages.

16.  **Quiet Possession**.

Landlord covenants and warrants that upon performance by Tenant of its obligations hereunder, Landlord will keep and maintain Tenant in exclusive, quiet, peaceable and undisturbed and uninterrupted possession of the Leased Premises during the term of this Lease.

17.  **Condemnation**.

If any legally, constituted authority condemns the Building or such part thereof which shall make the Leased Premises unsuitable for leasing, this Lease shall cease when the public authority takes possession, and Landlord and Tenant shall account for rental as of that date.  Such termination shall be without prejudice to the rights of either party to recover compensation from the condemning authority for any loss or damage caused by the condemnation.  Neither party shall have any rights in or to any award made to the other by the condemning authority.

18.  **Subordination.**

Tenant accepts this Lease subject and subordinate to any mortgage, deed of trust or other lien presently existing or hereafter arising upon the Leased Premises, or upon the Building and to any renewals, refinancing and extensions thereof, but Tenant agrees that any such mortgagee shall have the right at any time to subordinate such mortgage, deed of trust or other lien to this Lease on such terms and subject to such conditions as such mortgagee may deem appropriate in its  discretion.  Landlord is hereby irrevocably vested with full power and authority to subordinate this Lease to any mortgage, deed of trust or other lien now existing or hereafter placed upon the Leased Premises of the Building, and Tenant agrees upon demand to execute such further instruments subordinating this Lease or attorning to the holder of any such liens as Landlord may request.  In the event that Tenant should fail to execute any instrument of subordination herein required to be executed by Tenant promptly as requested, Tenant hereby irrevocably constitutes Landlord as its attorney-in-fact to execute such instrument in Tenant's name, place and stead, it  being agreed that such power is one coupled with an interest.  Tenant agrees that it will from time to time upon request by Landlord execute and deliver to such persons as Landlord shall request a statement in recordable form certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as so modified), stating the dates to which rent and other charges payable under this Lease have been paid, stating that Landlord is not in default hereunder (or if Tenant alleges a default stating the nature of such alleged default) and further stating such other matters as Landlord shall reasonably require.

19.  **Security Deposit**.

The Security Deposit shall be held by Landlord without liability for interest and as security for the performance by Tenant of Tenant's covenants and obligations under this Lease, it being expressly understood that the Security Deposit shall not be considered an advance payment of rental or a measure of Landlord's damages in case of default by Tenant.  Unless otherwise provided by mandatory non-waivable law or regulation, Landlord may commingle the Security Deposit with Landlord's other funds.  Landlord may, from time to time, without prejudice to any other remedy, use the Security Deposit to the extent necessary to make good any arrearages of rent or to satisfy any other covenant or obligation of Tenant hereunder.  Following any such application of the Security Deposit, Tenant shall pay to Landlord on demand the amount so applied in order to restore the Security Deposit to its original amount.  If Tenant is not in default at the termination of this Lease, the balance of the Security Deposit remaining after any such application shall be returned by Landlord to Tenant.  If Landlord transfers its interest in the Premises during the term of this Lease, Landlord may assign the Security Deposit to the transferee and thereafter shall have no further liability for the return of such Security Deposit.

20.  **Notice**.

Any notice required or permitted under this Lease shall be deemed sufficiently given or served if sent by United States certified mail, return receipt requested, addressed as follows:

If to Landlord to:

Chuck Holdings, L.L.C.

YYY

Mesa, AZ 85208

If to Tenant to:

Chuck Productions, Inc.

ZZZZ

Phoenix, AZ, 85040

Landlord and Tenant shall each have the right from time to time to change the place notice is to be given under this paragraph by written notice thereof to the other party.

21.  **Brokers**.

Tenant represents that Tenant was not shown the Premises by any real estate broker or agent and that Tenant has not otherwise engaged in, any activity which could form the basis for a claim for real estate commission, brokerage fee, finder's fee or other similar charge, in connection with this Lease.

22.  **Waiver**.

No waiver of any default of Landlord or Tenant hereunder shall be implied from any omission to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated.  One or more waivers by Landlord or Tenant shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition.

23.  **Memorandum of Lease**.

The parties hereto contemplate that this Lease should not and shall not be filed for record, but in lieu thereof, at the request of either party, Landlord and Tenant shall execute a Memorandum of Lease to be recorded for the purpose of giving record notice of the appropriate provisions of this Lease.

24.  **Headings**.

The headings used in this Lease are for convenience of the parties only and shall not be considered in interpreting the meaning of any provision of this Lease.

25.  **Successors**.

The provisions of this Lease shall extend to and be binding upon Landlord and Tenant and their respective legal representatives, successors and assigns.

26.  **Consent**.

Landlord shall not unreasonably withhold or delay its consent with respect to any matter for which Landlord's consent is required or desirable under this Lease.

27.  **Performance**.

If there is a default with respect to any of Landlord's covenants, warranties or representations under this Lease, and if the default continues more than fifteen (15) days after notice in writing from Tenant to Landlord specifying the default, Tenant may, at its option and without affecting any other remedy hereunder, cure such default and deduct the cost thereof from the next accruing installment or installments of rent payable hereunder until Tenant shall have been fully reimbursed for such expenditures, together with interest thereon at a rate equal to the lessor of twelve percent (12%) per annum or the then highest lawful rate.  If this Lease terminates prior to Tenant's receiving full reimbursement, Landlord shall pay the unreimbursed balance plus accrued interest to Tenant on demand.

28.  **Compliance with Law**.

Tenant shall comply with all laws, orders, ordinances and other public requirements now or hereafter pertaining to Tenant's use of the Leased Premises.  Landlord shall comply with all laws, orders, ordinances and other public requirements now or hereafter affecting the Leased Premises.

29.  **Final Agreement**.

This Agreement terminates and supersedes all prior understandings or agreements on the subject matter hereof.  This Agreement may be modified only by a further writing that is duly executed by both parties.

IN WITNESS WHEREOF, the parties have executed this Lease as of the day and year first above written.

Chuck Holdings, L.L.C.

Chuck Productions, Inc.

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Robert D. Chuck

Bob Chuck

Manager

President

**LeaseA#5**

EX-10.(G)

**Exhibit 10(g)**

**LEASE AGREEMENT**

This LEASE AGREEMENT (the “Lease”) is made and entered into this 20th day of Feb., 2015, by and between Linklater Properties LLC, a Georgia LLC (“Landlord”), with an address of XXX GA 30084, and MediaMart Corporation, a Georgia corporation (“Tenant”) with an address of XXX, Georgia 30084.

Leased Property. For and in consideration of the rents, covenants and agreements hereinafter set forth, Landlord hereby leases to Tenant the real property described on Exhibit “A”, attached hereto and incorporated herein by reference, together with all improvements located thereon and all easements and rights appurtenant thereto (hereinafter collectively called the “Leased Property”).

1. Term. The term of this Lease shall be ten (10) years, commencing on February 20, 2015 (the “Commencement Date”), and ending on February 19, 2025, both dates inclusive, unless sooner terminated or extended as herein provided (such term, as extended, the “Lease Term”). The term “Lease Year”, as used herein, shall mean the period of time from the Commencement Date through the end of the twelfth (12th) full calendar month after the Commencement Date, and each succeeding twelve (12) month period thereafter. Thus, the first Lease Year shall consist of twelve (12) complete calendar months, plus any additional days between the Commencement Date and the end of the month in which the Commencement Date falls, unless the Commencement Date falls on the first (1st) day of the month, in which case, the first Lease Year shall be twelve (12) complete calendar months from and after the Commencement Date.

(a) Option to Extend. Tenant shall have the right, privilege and option to extend the term of this Lease for three (3) successive periods of one (1) year each under the same terms and conditions of this Lease then in effect. Tenant, if it elects to exercise any option, shall do so by giving Landlord written notice at least thirty (30) days prior to the expiration of the initial Lease Term or the then-current Option Period, as the case may be.

(b) Month to Month Tenancy. If Tenant shall remain in possession of the Leased Property after the expiration of the Lease Term and without any express agreement of the parties hereto, Tenant shall be a month-to-month tenant upon all the same terms and conditions as contained in this Lease, including, without limitation, the payment of rent, which shall be based on that rate in effect during the last month of the preceding term.

2. Rent.

(a) This Lease shall be treated as a triple net lease in which the Tenant shall be responsible for all expenses of the leased facilities, whatever they may be, and shall promptly pay for any and all expenses incurred during the Term. Tenant shall pay to Landlord in lawful money of the United States, at the beginning of the Lease Term, in one payment of Twenty Thousand Twenty Nine Dollars ($20,029) in advance of the first

day of the lease term hereof, and monthly rental payments in advance in the amount of Fifteen Thousand Eight Hundred and Twelve Dollars and Fifty Cents ($15,812.50) during the initial term and any extension of the initial lease term hereof. (the “Net Rent”).

(b) If Landlord fails to receive all or any portion of the monthly Net Rent within ten (10) days after it becomes due, Tenant shall pay Landlord as additional rent, a late charge equal to five percent (5%) of the overdue amount. Tenant and Landlord agree that such late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of such late payment.

(c) During the term and any extensions hereof, Tenant shall pay all utility bills for the electrical requirement and heating (HVAC) requirements of the leased facility

(d) Tenant agrees to cause all real property taxes and assessments applicable to the Leased Property to be paid before the same become delinquent.

(e) Tenant agrees to cause all insurance premiums for all property, casualty, liability and flood insurance, if required,

3. Use. Tenant may use and occupy the Leased Property for any lawful purpose. Tenant shall not use or knowingly permit any part of the Leased Property to be used for any unlawful purpose.

4. Quiet Enjoyment. Tenant, upon paying the Net Rent and all additional rent and other charges herein provided for and performing all the other terms of this Lease, shall quietly have and enjoy the Leased Property during the term of this Lease and any extensions thereof without hindrance or molestation by anyone claiming by, through, or under Landlord.

5. Maintenance and Repairs.

(a) Tenant’s Repairs. Tenant shall be responsible for all repairs to the premises including those caused by the negligence or willful acts or omissions of Tenant, its agents, employees, or contractors, Tenant shall, at its own expense, maintain and make all necessary repairs and replacements to the Leased Property and to the window glass, fixtures and all other appliances and appurtenances belonging thereto and all equipment used in connection with the Leased Property (including, without limitation, the HVAC system, mechanical, electrical and plumbing systems) both internal to the Leased Property and external to the Leased Property (*i.e.*, the leads from the tie-ins to the public utilities to the improvements located on the Leased Property). Such repairs and replacements shall be made promptly as and when necessary and in a good and workmanlike manner. On default of Tenant in making such repairs or replacements, Landlord may, but shall not be required to, make such repairs and replacements for Tenant’s account, and the reasonable expense thereof (actually incurred) shall constitute and be collectible as additional rent.

2

6. Compliance with Law. Except as otherwise provided in Section 6(b) of this Lease, Tenant shall, throughout the term of this Lease, at its sole expense, promptly comply with all laws and regulations of all federal, state, county and municipal governments and appropriate departments, commissions, boards and offices thereof, and the orders and regulations of the National Board of Fire Underwriters, or any other body now or hereafter exercising similar functions, which may be necessary by reason of Tenant’s use or occupancy of the Leased Property or operation of its business. Tenant shall be responsible for any and all costs and expenses arising from any violations of environmental laws or regulations caused by Tenant’s activities or occupancy of the Leased Property. Tenant’s responsibility to make those repairs, replacements, modifications, alterations, installations, additions and improvements to the Leased Property required by laws, regulations, governmental orders and insurance requirements shall be limited to those instances where caused by the special or extraordinary use by Tenant of the Leased Property, as opposed to the scope of normal warehouse or commercial use

7. Surrender of the Leased Property. Tenant shall, on the last day of the Lease Term, or upon the sooner termination of this Lease, peaceably and quietly surrender the Leased Property to Landlord in as good condition and repair as at the commencement of the term, natural wear and tear of each and damage from casualty or governmental taking excepted. Any trade fixtures or personal property belonging to Tenant or to any subtenant, if not removed at such termination, and if Landlord shall so elect, shall be deemed abandoned and become the property of Landlord without any payment or offset therefor.

8. Alterations, Additions and Improvements.

(a) Tenant shall be allowed to make any material structural alterations, additions or improvements to the Leased Property with the prior consent of Landlord, which consent shall not be unreasonably withheld, conditioned, or delayed and shall be deemed given if not denied in writing with specific reasons therefor within fifteen (15) days after written request therefor. Any alteration, addition or improvement made by Tenant after such consent shall be completed in a good and workmanlike manner and in accordance with all applicable codes and regulations. Except as otherwise set forth in the immediately preceding sentence, Tenant may make any other alterations, additions or improvements to the Leased Property as Tenant may elect, all at its sole cost and expense, provided that Tenant does so in a good and workmanlike manner and in accordance with all applicable codes and regulations. All alterations, additions and improvements made pursuant to this Section 9(a) shall be surrendered with the Leased Property upon the expiration or earlier termination of the Lease Term and shall thereupon become the property of Landlord without any compensation to Tenant.

(b) Tenant shall indemnify Landlord against and hold Landlord harmless from any mechanic’s lien or other lien arising out of the making of any alterations, repairs, additions or improvements by Tenant.

9. Events of Default. Any of the following circumstances shall be deemed a “Default” or “Event of Default” by Tenant.

(a) If Tenant shall fail to make any payment of any Net Rent and such failure is not cured within ten (10) days after written notice from Landlord;

3

(b) If Tenant shall fail in the performance of any covenant of this Lease (other than the covenant for the payment of Net Rent) and if such default is not cured within thirty (30) days after written notice thereof has been given to Tenant by Landlord; or, if such failure shall be of such nature that it cannot be cured completely within such thirty (30) day period, if Tenant shall not have promptly commenced to cure the default within such thirty (30) day period or shall not thereafter proceed with reasonable diligence and in good faith to remedy such default;

(c) If Tenant shall be adjudicated bankrupt, make a general assignment for the benefit of creditors, or if a permanent receiver or trustee in bankruptcy shall be appointed for Tenant’s property and such appointment is not vacated within ninety (90) days; or if Tenant shall file a petition seeking relief under any bankruptcy or creditors’ rights laws; or if such a petition shall be filed against Tenant and the same shall not have been dismissed within ninety (90) days.

10. Breach/Default by Tenant; Remedies of Landlord. Upon the occurrence of an Event of Default, Landlord shall have the option, subject to any applicable cure periods to do any one of the following:

(a) Landlord may (but shall not be obligated to) cure such Default on behalf of and at the expense of Tenant, and Tenant shall reimburse Landlord for any and all reasonable sums so expended by Landlord. Such expenses shall include, but shall not be limited to, reasonable attorneys’ fees actually incurred and the reasonable costs of instituting, prosecuting or defending any action or proceeding instituted by reason of such Default by Tenant (provided Landlord prevails in such action or proceeding). Should Tenant, pursuant to the terms of this Lease, become obligated to reimburse or otherwise pay to Landlord any sum of money in addition to the specific rent herein provided for, then the amount thereof shall be deemed additional rent and may, at Landlord’s option, be added to and collected as part of any subsequent installment of the specific rent due and payable hereunder.

(b) Landlord may terminate Tenant’s right of possession or this Lease, by written notice to Tenant specifying the date of termination in such notice, and, on or after such date, enter upon and take possession of the Leased Property and expel or remove Tenant and any other person who may be occupying said Leased Property or any part thereof, by entry, dispossessory suit or otherwise, without thereby releasing Tenant from any liability hereunder; and, if Landlord so elects, Landlord may make such alterations, redecoration and repairs as Landlord, in its reasonable judgment, may deem necessary to relet the Leased Property, and Landlord may relet the Leased Property or any portion thereof for such term or terms and at the best price obtainable by reasonable effort and upon such other terms and conditions as Landlord in its sole discretion may deem advisable, with or without advertisement, or by private negotiations. Upon each such reletting, all rentals and other sums received by Landlord from such reletting shall be applied: first, to the payment of any indebtedness other than Net Rent due hereunder from Tenant to Landlord; second to the payment of any reasonable costs and expenses of such reletting actually incurred by Landlord, including lease assumptions, reasonable brokerage fees and attorneys’ fees actually incurred; and the residue, if any shall be held

4

by Landlord and applied in payment of future Net Rent as the same may become due and payable hereunder. Notwithstanding anything to the contrary contained herein, in the event the term of such subsequent lease extends beyond the then-current Lease Term, Tenant shall have no obligations whatsoever with respect to or under such extended period. Tenant shall be responsible to Landlord for any delinquency between the Net Rent and additional rental due hereunder and amounts received by Landlord from such reletting during the remainder of the then-current Lease Term; however, Tenant shall not be entitled to any excess realized by Landlord.

(c) Pursuit of any of the foregoing remedies shall not preclude pursuit of any other remedies herein provided or any other remedies provided by law. Landlord shall have the duty to mitigate any possible damages which may be incurred pursuant to any such default by Tenant. Any notice in this provision may be given by Landlord or its attorney.

11. Breach/Default by Landlord; Remedies of Tenant. In the event the Landlord shall fail to comply with any provisions of this Lease which are the responsibility of Landlord to perform and the same have not been fully performed within thirty (30) days after written notice from Tenant (provided, that in the event the default is of such a nature that it cannot be cured within thirty (30) days but is otherwise capable of cure, and Landlord commences such cure within said 30-day period and diligently pursues the same to completion, then Landlord shall have such additional time as may be reasonably necessary to cure such default), then Tenant shall have the option (i) to cure such default for the account of Landlord (without any obligation so to do), in which case, Landlord shall reimburse Tenant the reasonable costs of such cure actually incurred within twenty (20) days after Landlord’s receipt of an invoice therefor; or (ii) to pursue any and all remedies available to it at law and in equity, such remedies being cumulative and not exclusive.

12. Damage to or Destruction of Leased Property. If the Leased Property is totally destroyed by storm, fire, lightning, earthquake or other casualty, this Lease shall terminate as of the date of such destruction, and rental shall be accounted for as between Landlord and Tenant as of that date. If the Leased Property shall be partially damaged or destroyed by such casualty, then Landlord shall deliver to Tenant within thirty (30) days of such casualty a written notice stating the reasonable estimate of time and cost necessary to repair such damage (the “Damage Notice”). In the event the Damage Notice indicates that the repairs will require more than sixty (60) days to complete or will cost more money than Landlord is likely to receive from insurance proceeds (unless Landlord pledges in writing to cover any discrepancy between the actual cost to repair such damage and the insurance proceeds Landlord will receive), then Landlord or Tenant shall have the right to terminate this Lease in writing delivered to the other party within thirty (30) days of delivery of the Damage Notice. In the event the Lease is not terminated as provided herein or the Damage Notice indicates that the repairs will likely require sixty (60) days or less to complete and will cost an amount less than or equal to the insurance proceeds Landlord is likely to receive, then, this Lease shall remain in full force and effect, all rental amounts due hereunder (including, without limitation, Net Rent) shall abate until such time as the repairs shall be substantially complete in the proportion the portion of the Leased Property which is untenantable (in Tenant’s reasonable opinion) bears to the total Leased Property, and Landlord shall complete such repairs within sixty (60) days after the date of the Damage Notice.

5

13. Insurance.

(a) Throughout the term of this Lease and any extensions thereof, Tenant shall carry at its sole expense, and maintain in full force and effect, fire and extended coverage insurance on the buildings of the Leased Property in an amount at least equal to their replacement value. Throughout the term of this Lease and any extensions thereof, Tenant shall carry at its sole expense, and maintain in full force and effect, fire and extended coverage insurance on Tenant’s contents, furniture, fixtures, equipment, and other property removable by Tenant under the provisions of this Lease.

(b) Throughout the term of this Lease and any extensions thereof, Tenant shall carry at its sole expense, and maintain in full force and effect, general liability insurance insuring Tenant and Landlord in an amount not less than $1,000,000.00 combined single limit from a carrier reasonably satisfactory to Landlord.

(c) Landlord and Tenant each waive, and each insurance policy carried by either Landlord or Tenant shall contain a provision whereby the insured and insurer thereunder waive, any rights of subrogation against the other party on account of any loss or damage insured against under such policy, provided that such waiver of the right of subrogation shall not be operative in any case where the effect is to invalidate such insurance coverage.

(d) To the fullest extent permitted by law, Landlord and Tenant each waive all right of recovery against the other for, and agree to release the other from liability for, loss or damage to the extent such loss or damage is covered by valid and collectible insurance in effect at the time of such loss or damage or which is required to be covered pursuant to the terms of this Lease, provided, however, that the foregoing release by each party shall not apply to the extent of any deductible paid by either party under the terms of such party’s insurance policy (up to a maximum of $5,000.00); provided, further, however, that the foregoing release by each party is conditioned upon the other party carrying insurance with the above-described waiver of subrogation, and if such coverage is not obtained or maintained by either party, then the other party’s foregoing release shall be deemed to be rescinded until such waiver is either obtained or restated.

(e) All policies of insurance required under this Lease (i) shall be written by insurers reasonably acceptable by Landlord and Tenant which are licensed to do business in the state in which the Leased Property is located, and (ii) shall contain provisions obligating the insurer to notify the Landlord and Tenant in writing at least thirty (30) days prior to any change, cancellation, or nonrenewal of such policies taking effect. Landlord and Tenant agree to provide the other with copies of all policies required hereunder within fifteen (15) days of a request therefor.

14. Condemnation and Eminent Domain.

(a) If the whole of the Leased Property, or such portion thereof as will make the Leased Property unusable for the purpose herein leased (as determined by Tenant in its reasonable discretion), shall be condemned by any legally constituted authority for any

6

public use or purpose, or sold under threat of condemnation, then, in any of said events the term hereby granted shall cease from the time when possession or ownership thereof is taken by public authorities and rental shall be accounted for as between Landlord and Tenant as of that date. Such termination, however, shall be without prejudice to the rights of either Landlord or Tenant to recover compensation and damage caused by condemnation from the condemnor. It is further understood and agreed that neither the Tenant, nor Landlord, shall have any rights in any award made to the other by any condemnation.

(b) In the event of a partial taking or condemnation which does not make the Leased Property unusable for the purpose herein leased, so that this Lease is not thereby terminated, (i) Landlord shall repair any damage caused by such taking or condemnation so as to restore the Leased Property as nearly as possible to its condition prior to such taking or condemnation within sixty (60) days after such taking, and the rent and other charges due from Tenant hereunder shall be equitably abated until Landlord completes such repairs, all as provided in Section 13 hereof, and (ii) the rent and other charges due from Tenant hereunder shall be permanently equitably abated to account for any diminution of the Leased Property resulting from such taking or condemnation. If Landlord is unable to complete such repair and restoration within sixty (60) days from the taking, Tenant shall have the right to terminate this Lease.

15. Assignment and Subletting. Tenant may assign or sublet all or any portion of the Leased Property for the remainder of the Lease Term upon the prior written approval of Landlord, which approval Landlord shall not unreasonably withhold, condition, or delay; provided, however, that the business or occupation of the subtenant shall not be extra-hazardous, disreputable or illegal, and provided further that in the case of a sublease only, Tenant shall remain liable for the payment of the Net Rent herein reserved and for the performance of all the other terms of this Lease required to be performed by Tenant. Upon the occurrence of an assignment consented to by Landlord, Tenant shall have no further liability or obligation under this Lease. In the event Landlord shall not have responded to Tenant’s request for consent within twenty (20) days after Tenant’s request therefor together with a detailed explanation of the reasons for any denial of consent, Landlord shall be deemed to have consented to the proposed assignment or subletting.

16. Release of Corporate Agents. In any case where a corporation is or shall be Tenant or Landlord hereunder, no recourse under or upon any obligation, covenant or agreement of this Lease otherwise permitted by any statute or rule of law shall be had against any incorporator, subscriber, stockholder, officer or director, past, present or future, of such corporation, either directly or through the corporation.

17. Notice. Any notice required hereunder by either party to the other shall be in writing and shall be deemed to be duly given only if delivered personally or by a nationally-recognized overnight delivery service, or mailed by certified or registered mail, postage prepaid, addressed to Tenant at the Leased Property, and to Landlord at the address noted on this Lease. Notices shall be effective on the earlier of (i) actual receipt or refusal to accept receipt; (ii) one (1) business day after depositing the same with the overnight delivery service or (iii) three (3) business days after mailing. Delivery to an employee or officer of a party shall be

7

effective delivery of a notice. Any refusal to accept delivery shall be deemed effective delivery. Any delay in delivery because of a changed address of which no notice has been given shall not affect the effective date of delivery. Any notice may be given by an attorney on behalf of a party. All notice addresses must be in the continental U.S. and all notices must be in the English language.

18. Binding Effect. This Lease shall be binding upon and inure to the benefit of the heirs, legal representatives, successors and assigns of Landlord and Tenant.

19. Governing Law. This Lease shall be construed in accordance with and governed by the laws of the State in which the Leased Property is situated.

20. Time. TIME IS OF THE ESSENCE in this Lease.

21. Hazardous Substances.

(a) Tenant shall not use or suffer the use of the Leased Property as a landfill, or dump, or as a site for storage, treatment, or disposal of “Hazardous Wastes,” “Hazardous Substances” or toxic substances (as such terms are hereinafter defined), except to the extent done so in compliance with all environmental laws. Tenant shall be liable to Landlord for any and all cleanup costs and any and all other charges, fees or penalties relating to Tenant’s use, disposal, transportation, generation or sale of Hazardous Substances on or at the Leased Property. Tenant shall and hereby does agree to pay, protect, defend, indemnify and hold Landlord harmless from and against any and all losses, damages, expenses, fees, claims, costs and liabilities (including, but not limited to reasonable attorneys’ fees actually incurred) arising out of or in any manner related to the presence of “Hazardous Substances” at, on or in the Leased Property which directly results from an act or omission of Tenant during its period of occupancy. The obligations of Tenant under this paragraph shall survive any expiration or termination of this Lease.

(b) As used herein, “Hazardous Substances” shall mean any (i) “hazardous waste” as defined by the Resource, Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), as amended, and regulations promulgated thereunder; or (ii) any “hazardous, toxic or dangerous waste, substance or material” specifically defined as such in (or for the purposes of) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.), as amended, and regulations promulgated thereunder.

(c) Tenant shall not in any manner be liable for, required to contain, remediate, remove or clean up, bear any costs or expenses regarding or have any responsibility whatsoever with respect to, nor does Tenant indemnify Landlord or any other party regarding, any Hazardous Wastes, Hazardous Substances, or toxic substances, materials or wastes or other environmental contaminants which either (i) were already on the Leased Property prior to the term of this Lease or (ii) are brought, generated, emitted, discharged, released, spilled or disposed of on or from the Leased Property at any time whatsoever by any persons, entities or parties other than Tenant or Tenant’s employees, agents, contractors, or invitees. Landlord agrees to indemnify and hold Tenant harmless

8

from and against any and all losses, damages, expenses, fees, claims, costs, and liabilities (including, but not limited to reasonable attorneys’ fees actually incurred) arising out of or in any manner caused by (i) or (ii) above or by Landlord, its agents, employees, or contractors.

22. Landlord’s Liability. The liability of Landlord hereunder shall be limited to its interest in the Leased Property.

23. Subordination. This Lease shall be subject and subordinate to any bona fide present or future mortgage placed upon the Leased Property by Landlord, provided such mortgagee agrees in writing that the possession of Tenant during the remainder of the Lease Term shall not be disturbed despite any foreclosure or other action by such mortgagee, provided Tenant is not in default hereunder. As to any mortgage, security deed or deed of trust encumbering the Leased Property as of the date of this Lease, Landlord covenants to deliver such an agreement to Tenant, in form and substance reasonably acceptable to Tenant, within ten (10) days after the date of this Lease.

24. Removal of Fixtures. Tenant may, prior to the expiration of the Lease Term, remove all fixtures and equipment which Tenant has placed on the Leased Property, provided Tenant repairs all damage to the Leased Property caused by such removal; provided, however, Tenant shall not remove, under any circumstances, the following: heating, ventilating, air conditioning, plumbing, electrical and lighting systems and fixtures or dock levelers.

25. Title and Authority. Landlord represents and warrants to Tenant that (a) Landlord holds good title to the Leased Property and has full power and authority to make this Lease and (b) there are no encumbrances, easements, covenants or restrictions on the Leased Property which would prevent or materially interfere with Tenant’s use and enjoyment of the Leased Property as contemplated by this Lease.

26. Memorandum of Lease. Upon the request of either party, Landlord and Tenant shall mutually execute and deliver a notice, memorandum or short form of this Lease in recordable form and either party may record such instrument in the applicable registry of deeds. The cost of such recording shall be borne by the party requesting the same.

27. Miscellaneous.

(a) Each party shall itself bear all costs and expenses of fulfilling its obligations under this Lease, except only where specifically provided herein to the contrary.

(b) This Lease contains the entire agreement of the parties hereto, and no representations, inducements, promises or agreements, oral or otherwise, between the parties, not embodied herein, shall be of any force or effect. This Lease supersedes any prior or contemporary discussions between the parties hereto with respect to the matters contained herein.

9

(c) If any term, covenant or condition of this Lease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant or condition to persons, entities or circumstances other than those which render the same invalid or unenforceable shall not be affected thereby, and each term, covenant or condition of this Lease shall be valid and enforceable to the fullest extent permitted by law.

(d) No modification of this Lease shall be effective unless made in writing and signed by Landlord and Tenant.

(e) In the event either Landlord or Tenant shall retain the services of an attorney to enforce any provision of this Lease, the prevailing party shall be reimbursed by the other in the amount of its reasonable attorneys’ fees and other costs actually incurred.

(f) Landlord and Tenant agree to provide to the other, within twenty (20) days after a written request therefor, an estoppel certificate certifying that this Lease is in full force and effect, that the same has not been amended (or, if it has, stating the amendments which have been made), that, to its actual knowledge, there are no defaults under this lease (or, if there are, specifying such defaults), and such other matters as may reasonably be requested.

(g) Tenant shall place no signs upon the outside walls or roof of the Leased Property except with the written consent of Landlord. Any and all signs placed on the Leased Property by Tenant shall be maintained in compliance with governmental rules and regulations governing such signs, and Tenant shall be responsible to Landlord for any damage caused by installation, use or maintenance of said signs, and all damage incident to such removal.

(h) Landlord may card the Leased Property “For Rent” or “For Sale” ninety (90) days before the termination of this Lease. Landlord may enter the Leased Property at reasonable hours to exhibit the Leased Property to prospective purchasers or tenants, to inspect the leased Property to see that Tenant is complying with all of its obligations hereunder, and to make repairs required of Landlord under the terms hereof or to make repairs to Landlord’s adjoining property, if any.

[Signatures on the following page]

10

IN WITNESS WHEREOF, the parties have executed and delivered this Lease under seal as of the day and year first above written.

**LANDLORD:**

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| Linklater Properties LLC | | |
|  |  | |
| By: |  |  |
| Name: |  | Jonathan R. Linklater |
| Title: |  | Member |

**TENANT:**

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|  |  |  |
| MediaMart Corporation | | |
|  |  | |
| By: |  |  |
| Name: |  | Martha Millicent |
| Title: |  | Chief Financial Officer |

11

EXHIBIT “A”

Physical address of XXX

Consisting of a 34,500 square foot industrial office/warehouse/manufacturing facility

12

**LeaseA#6**

 ex10-1.htm

**Exhibit 10.1**

**LEASE AGREEMENT**

**THIS LEASE AGREEMENT** (“Lease”) is made as of April 1, 2022 (the “Effective Date”), by and between **FORCO LLC,** a Nebraska LLC, with an address of which for notice purposes is C/O Power REIT, XXX, New York 11804 (“Landlord”) and **Foreign CorporAid of Nebraska LLC**, a Nebraska LLC, with an address of which for notice purposes is XXX Bethpage, New York 11804, (“Tenant”).

WHEREAS, on or prior to the date hereof, Landlord has acquired all of the right, title and interest in that certain 88-acre parcel of property being more particularly described on Exhibit 1 attached hereto and incorporated herein (the “Property”), together with all rights appurtenant thereto and with all improvements located or to be constructed thereon in accordance with the terms hereof (collectively, the “Premises”); and

WHEREAS, in connection with the lease of the Property by Tenant, Tenant has agreed to purchase and install improvement items for the 1,064,780 square foot greenhouse, 12,986 square foot office, 12,975 square foot packing space, a 10,500 square foot storage and distribution space and a 21 room employee housing building (collectively the “Buildings”) and Landlord has agreed to provide certain funds towards the cost of such construction based upon an agreed upon budget of Landlord costs as attached hereto as Exhibit 2 (the “Project Budget”);

NOW, THEREFORE, for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, Landlord and Tenant, intending to be legally bound, enter into the Lease on the following terms, conditions and covenants:

1. PROPERTY; TERM.

1.1 PREMISES. On or prior to the date hereof, Landlord has acquired the Property. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Property, being that certain property for all purposes of this Lease and irrespective of any variation thereof which might ever be determined by measurement (together, the land and Buildings shall be referred to as the “Premises”). The Premises is situated on the real property described in **Exhibit 1** attached hereto.

1.2 LEASE TERM.

(a) Initial Term. The initial term of this Lease (“Initial Term”) shall be one hundred and twenty (120) full calendar months from the Effective Date, plus the portion of the month in which the Effective Date occurs if the Effective Date is other than the first day of the month.

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(b) Options to Renew. Provided Tenant is not in default of any of the terms or conditions of the Lease beyond the applicable notice and cure period at the time of exercise, Tenant is granted **four (4)** successive options (each, an “Option Term”, collectively, the “Option Terms”, and successively the “First Option Term,” the “Second Option Term,” the “Third Option Term,” and the “Fourth Option Term”) to extend the term of the Lease following the initial Term and then following the First Option Term if so exercised, upon the following terms and conditions. Each Option Term shall be for **five (5)** years. The Tenant shall deliver written notice of its intent to exercise each Option Term, delivering such written notice to Landlord prior to but not after the date which is 365 days prior to the expiration of the Initial Term (as to the First Option Term), 365 days prior to the expiration of the First Option Term (for the Second Option Term), 365 days prior to the expiration of the Second Option Term (for the Third Option Term), or 365 days prior to the expiration of the Third Option Term (for the Fourth Option Term), but no earlier than the date which is fifteen (15) months prior to the expiration of the then current Term. Subject to the conditions herein expressed, delivery of the written notice of the intent to exercise the then applicable Option Term shall irrevocably commit the Tenant to the Option Term so exercised. Each Option Term shall be subject to all the terms, covenants and conditions of the Lease, except as modified by this provision (meaning, no further options will be re-imposed, subject only to the Second Option Term). If Tenant does not so exercise any such Option Term in the time and manner herein provided, time being strictly of the essence, any and all of Tenant’s option rights for the Option Term at bar (and any otherwise succeeding Option Term) shall irrevocably be deemed waived. The Base Rent and monthly installments thereof for each year of each Option Term shall be as specified on the attached Rent Schedule, if exercised.

The Initial Term, as so extended in accordance with the terms hereof, shall be referred to hereinafter as the “Term.” Tenant shall have no right to operate its business on the Premises until Tenant has provided Landlord with a certificate of insurance evidencing the insurance coverages that Tenant is obligated to maintain pursuant to this Lease.

1.2.1 Zoning Approvals: Tenant represents and warrants that prior to commencement of operation, they will have obtained and will maintain all required state and local permits, licenses and approvals, including any local land use and zoning permits necessary for their construction of the Buildings and all related improvements (the “Permits and Approvals”) and none of the Permits and Approvals have been appealed. Tenant further represents and warrants that they have provided copies of all Permits and Approvals to Landlord.

2. RENT AND OTHER CHARGES.

2.1 BASE RENT. Tenant agrees to pay monthly rent (“Base Rent”) on the first day of each month of the Term, together with any and all rental, sales or use taxes levied by any governmental body for the use or occupancy of the Premises and any rent or other charges payable hereunder in accordance with the column entitled “Monthly Rent” on the Rent Schedule attached as Exhibit 3.

2.1.1 Rent Payment Address: Base Rent (and any and all other items of rent, additional rent or sums due Landlord hereunder) shall be paid without demand, without necessity of notice, without reduction, without set off and without deduction in wire transfer of immediately available funds or by check or money order to Landlord at 301 Winding Road, Old Bethpage, New York 11804 or such other address as Landlord directs in writing from time to time at least 30 days prior to next rental installment where such writing is given in accordance with the notice provisions of this Lease. Rent may NOT be paid in cash.

2.2 LATE CHARGES. If any Base Rent or other payment due under this Lease is not received by Landlord within five (5) days of the due date of such payment, Tenant shall pay, in addition to such payment a late charge equal to the greater of (i) three percent (3.0%) of the payment which is past due or (ii) Two Hundred Fifty and No/100 Dollars ($250.00). If any payment due from Tenant shall remain overdue for more than ten (10) days, interest shall accrue daily on the past due amount from the date such amount was due until paid or judgment is entered at a rate equivalent to the lesser of ten percent (10%) per annum and the highest rate permitted by law. Interest on the past due amount shall be in addition to and not in lieu of the five percent (3.0%) late charge or any other remedy available to Landlord.

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2.3 ADDITIONAL RENT. This Lease shall be deemed to be a “triple net” lease, it being the express understanding and intent of Landlord and Tenant that the Base due hereunder shall be absolutely net to Landlord and that all costs and expenses for the Premises, to the extent practicable, shall be paid directly to the applicable service provider or entity charging such expense by Tenant. Except as otherwise expressly set forth herein, Tenant shall pay all expenses arising in connection with the Premises, including without limitation, all Operating Expenses (as hereinafter defined). All charges payable by Tenant under the terms of this Lease other than Base Rent are called “Additional Rent.” The term “Rent” shall mean Base Rent and Additional Rent.

2.4 OPERATING EXPENSES.

2.4.1 DEFINITIONS. For all purposes of this Lease, the following terms shall have the meanings ascribed to them herein.

2.4.1.1 “Operating Expenses” shall mean any reasonable and actual expenses incurred whether by Landlord or by others on behalf of Landlord, arising out of Landlord’s maintenance, operation, management, insuring, repair, replacement (if such replacement is generally regarded in the industry as increasing operating efficiency or is required under any Applicable Law that was not in effect or not applicable to the Property on the Effective Date) and administration of the Buildings and the Premises including, without limitation: (i) all real estate, personal property and other ad valorem taxes, and any other levies, charges, local improvement rates, and assessments whatsoever assessed or charged against the Buildings, the Premises and the equipment and improvements owned by Landlord therein contained, including any amounts assessed or charged in substitution for or in lieu of any such taxes, excluding only income or capital gains taxes imposed upon Landlord, and including all fees and costs associated with the appeal of any assessment on taxes; (ii) insurance that Landlord is obligated or permitted to obtain under this Lease and any reasonable industry standard deductible amount applicable to any claim made by Landlord under such insurance; and (iii) dues and assessments under any applicable deed restrictions or declarations of covenants and restrictions.

2.4.1.2 Operating Expenses shall, however, exclude: (i) interest and amortization on mortgages and other debt costs or ground lease payments, if any; (ii) depreciation of Buildings and other improvements (except permitted amortization of certain capital expenditures); (iii) legal fees in connection with leasing, tenant disputes or enforcement of leases; (iv) real estate brokers’ commissions or marketing costs; (v) improvements or alterations to tenant spaces not required by law or Landlord’s insurance underwriting standards; (vi) the cost of providing any service directly to, and paid directly by, any tenant; (vii) costs of any items to the extent Landlord receives reimbursement from insurance proceeds or from a warranty or other such third party (such proceeds to be deducted from Operating Expenses in the year in which received); and (viii) capital expenditures, except those (a) made primarily to reduce Operating Expenses or increases therein, or to comply with laws or insurance requirements (excluding capital expenditures to cure violations of laws or insurance requirements that existed prior to the date of this Lease), or (b) for replacements (as opposed to additions or new improvements); provided, any such permitted capital expenditure shall be amortized (with interest at the prevailing loan rate available to Landlord when the cost was incurred) over: (x) the period during which the reasonable estimated savings in Operating Expenses equals the expenditure, if applicable, or (y) the useful life of the item as reasonably determined by Landlord, but in no event fewer than five (5) years nor more than ten (10) years.

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2.4.2 PAYMENT OF OPERATING EXPENSES. In addition to the payment of Base Rent, Tenant shall pay to Landlord all Operating Expenses in accordance with the terms hereof. Landlord shall bill Tenant for its Operating Expenses as incurred and such payment will be due in full with the next monthly rent payment. All such amounts are deemed items of additional rent and are subject to sales tax (if applicable) which Tenant shall pay together with all such moneys as and when paid to Landlord.

2.4.3 UTILITIES; JANITORIAL SERVICES.

2.4.3.1 Utilities at the Premises. Tenant shall be solely responsible for and shall promptly pay directly to the service providers all charges for gas, heat, light, electricity, water, sewer, security, power, telephone and any other utility or service used in or servicing the Premises exclusively and all other costs and expenses involved in the care, maintenance, and use thereof and not related to the rest of the Premises. Such charges shall include all security deposits and other charges by utility companies.

2.4.3.2 Property Services. Tenant shall be solely responsible for and shall promptly pay for all window washing, janitorial service and trash and debris removal charges relating to the Premises. Tenant shall maintain the Premises in a clean and orderly fashion.

3. USE OF PROPERTY.

3.1 PERMITTED USES. Tenant may use the Premises for a State of Nebraska food crop cultivation facility and for no other use or purpose whatsoever if not in compliance with the Permits and Approvals. Tenant shall NOT be permitted to sell any product to be consumed on site whatsoever. Landlord and Tenant acknowledge and agree that the Permitted Use is the intended use to be permitted under this Lease. Notwithstanding anything herein to the contrary, Landlord acknowledges and agrees that Tenant’s Permitted Use shall not be a violation of this Lease while and so long as Tenant is properly approved with all Permits and Approvals in good standing (the “Legal Compliance Clarification”).

3.2 COMPLIANCE WITH LAWS.

3.2.1 LANDLORD’S COMPLIANCE. Tenant shall be responsible for any costs associated with making any modifications to the Buildings required pursuant to any federal, state or local laws, ordinances, Buildings codes, and rules and regulations of governmental entities having jurisdiction over the Premises, including but not limited to the Board of Fire Underwriters and the Americans with Disabilities Act (“ADA”), all regulations and orders promulgated pursuant to the ADA. Further, Tenant shall remain responsible for ADA compliance for its employees and within the Buildings.

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3.2.2 TENANT’S COMPLIANCE. Tenant shall materially comply with all Applicable Laws and operational registrations and licenses and shall promptly comply with all governmental orders and directives for the correction, prevention, and abatement of any nuisances and any violation of Applicable Laws in, upon, or connected with the Premises, all at Tenant’s sole expense. Tenant warrants that all improvements or alterations of the Premises made by Tenant or Tenant’s employees, agents or contractors, either prior to Tenant’s occupancy of the Premises or during the Term, will comply with all Applicable Laws, including any and all on site security requirements set forth under Applicable Laws or as otherwise reasonably required by Landlord given the safety concerns associated with the Permitted Use hereunder. In the event that (i) Tenant’s specific use and occupancy of the Premises, or (ii) any alterations to the Premises performed by or on behalf of Tenant pursuant to this Lease, necessitates or triggers any modifications (including structural modifications) to the Premises or Buildings or alterations to the Buildings systems, the same shall be made by Landlord pursuant to a budget reasonably agreed upon by Landlord and Tenant and promptly reimbursed by Tenant within thirty (30) days after written demand by Landlord, including backup substantiating Tenant’s proportionate share of the expenses. In addition, Tenant warrants that its use of the Premises will be in material compliance with all Applicable Laws subject to the Legal Compliance Clarification.

3.3 HAZARDOUS MATERIAL. Throughout the Term, Tenant will not bring upon the Premises or release, discharge, store, dispose, or transport of any Hazardous Materials (as hereinafter defined) on, under, in, above, to, or from the Premises or the Buildings, except that de minimis quantities of Hazardous Materials may be used in the Premises as necessary for the customary maintenance of the Premises provided that same are used, stored and disposed of in strict compliance with Applicable Laws. For purposes of this provision, the term “Hazardous Materials” will mean and refer to any wastes, materials, or other substances of any kind or character that are or become regulated as hazardous or toxic waste or substances, or which require special handling or treatment, under any Applicable Laws.

If Tenant’s activities at the Premises or Tenant’s use of the Premises (a) result in a release of Hazardous Materials that is not in compliance with Applicable Laws or permits issued thereunder; (b) gives rise to any claim that requires a response under Applicable Laws or permits issued thereunder; (c) causes a significant public health threat; or (d) causes the presence at the Premises, Buildings of Hazardous Materials in levels that violate Applicable Laws or permits issued thereunder, then Tenant shall, at its sole cost and expense: (i) immediately provide verbal notice thereof to Landlord as well as notice to Landlord in the manner required by this Lease, which notice shall identify the Hazardous Materials involved and the emergency procedures taken or to be taken; and (ii) promptly take all action in response to such situation required by Applicable Laws, provided that Tenant shall first obtain Landlord’s approval of the non-emergency remediation plan to be undertaken. Landlord hereby represents that to the best of its knowledge and belief as of the Effective Date there are no Hazardous Materials at the Buildings or on the Premises which exceed levels that require remediation or similar clean up or curative action be taken.

Tenant shall at all times indemnify and hold harmless Landlord against and from any and all claims, suits, actions, debts, damages, costs, losses, obligations, judgments, charges and expenses (including reasonable attorneys’ fees) of any nature whatsoever suffered or incurred by Landlord to the extent they were caused by the following activities of Tenant at the Premises, Buildings or Property during the Term of this Lease and arise from events or conditions which came into existence after the Effective Date not caused by Landlord or other tenants: (i) any release or disposal of any Hazardous Materials at the Premises, Buildings or Property by Tenant, or (ii) the violation of any Applicable Laws at the Premises, Buildings or Property pertaining to protection of the environment, public health and safety, air emissions, water discharges, hazardous or toxic substances, solid or hazardous wastes or occupational health and safety. The indemnification obligations of Tenant shall survive the expiration or earlier termination of this Lease.

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3.4 ACCESS.

3.4.1 LANDLORD’S ACCESS. Landlord shall be entitled at all reasonable times and upon reasonable notice to enter the Premises to examine them and to make such repairs, alterations, or improvements thereto as Landlord is required by this Lease to make or which Landlord considers necessary or desirable; provided, Landlord shall comply with all law in respect of any such entry; Landlord may require Tenant provide an accompanying staff member or employee with any such entry; Landlord will honor any specifically closed-off areas as may be required by law for security and safety; but Landlord may nonetheless act as prudent and necessary in case of emergency. Tenant shall not unduly obstruct any pipes, conduits, or mechanical or other electrical equipment so as to prevent reasonable access thereto. Landlord shall exercise its rights under this section, to the extent possible in the circumstances, in such manner so as to reduce, if practical, interference with Tenant’s use and enjoyment of the Premises. Subject to the foregoing, Landlord and its agents have the right to enter the Premises at all reasonable times and upon reasonable notice to show them to prospective purchasers, lenders, or anyone having a prospective interest in the Buildings, and, during the last six (6) months of the Term or any renewal thereof, to show them to prospective tenants. Landlord will have the right at all times to enter the Premises with Tenant or licensed individual(s) on behalf of the Tenant to escort the Landlord in the event of an emergency affecting the Premises, subject to any applicable limitations required by any applicable regulations. Although Landlord shall not have the right to place “For Lease” signs in the Premises, or upon the exterior of the Premises itself, nothing herein shall limit Landlord’s rights to promote, advertise, place “For Lease” signs or otherwise market leasing of the Property in whatever lawful manner Landlord may elect, as long as such manner(s) do not materially interfere with the Premises.

3.4.2 TENANT’S ACCESS. Tenant shall have access to the Premises twenty-four (24) hours per day, seven (7) days per week, 365 days per year, subject to reasonable security measures and except in the event of an emergency, casualty, force majeure or similar event which causes Landlord to limit access to tenants, which limitation of access shall be for the shortest duration as reasonably possible.

3.5 QUIET POSSESSION. Provided Tenant is not in default beyond applicable notice and cure periods, Tenant shall be entitled to peaceful and quiet enjoyment of the Premises for the Term without interruption or interference by Landlord or any person claiming through Landlord.

3.6 COVENANTS AND RESTRICTIONS. Tenant hereby acknowledges and agrees that the Buildings, and Tenant’s occupancy thereof, is subject to all matters of Public Record.

4. TENANT ALTERATIONS AND IMPROVEMENTS.

4.1 TENANT IMPROVEMENTS; CONDITION OF PREMISES. Except as expressly provided in this Lease, Tenant acknowledges and agrees that Landlord has not undertaken to perform any modification, alteration or improvements to the Premises, and Tenant further waives any defects in the Premises and acknowledges and accepts the Premises in their “AS IS” condition, and as suitable for the purpose for which they are leased. Tenant acknowledges and agrees that if Tenant desires to expand its existing operations at the Premises or elsewhere, Landlord shall have the ability to lease space to Tenant for such operations on comparable terms and conditions as set forth in this Lease. Tenant shall continue to be responsible for all of its own construction and operational costs and expenses at all such additional facilities; provided, however, Landlord and Tenant covenant and agree to use their good faith efforts to cooperate with each other to establish a mutually agreed upon budget, lease terms and the conditions for the lease by Landlord to Tenant of all such facilities.

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4.2 TENANT ALTERATIONS. Tenant will not make or allow to be made any alterations in or to the Premises without first obtaining the written consent of Landlord, which consent may be granted or withheld in Landlord’s sole discretion; provided, however that such Landlord consent shall not be required for changes that are not to the exterior, or are not to the structure, or are not to Buildings systems, or which are merely cosmetic in nature. All Tenant alterations will be accomplished in a good and workmanlike manner at Tenant’s sole expense, in conformity with all Applicable Laws by a licensed and bonded contractor approved in advance by Landlord, such approval of contractor not to be unreasonably withheld or delayed. All contractors performing alterations in the Premises shall carry workers’ compensation insurance, commercial general liability insurance, automobile insurance and excess liability insurance in amounts reasonably acceptable to Landlord and shall deliver a certificate of insurance evidencing such coverages to Landlord prior to commencing work in the Premises. Upon completion of any such work, Tenant shall provide Landlord with “as built” plans, copies of all construction contracts, and proof of payment for all labor and materials. All alterations or improvements, shall remain with the Premises upon Lease termination or expiration and will be surrendered to Landlord along with the Premises at such time and will be deemed owned by Landlord at all times from and after and upon completion thereof (but rights to the use of same and Tenant’s obligations to keep in good order, condition and repair and maintain same, as a part of the Premises, shall remain with Tenant pursuant to this Lease during the term of this Lease). Tenant will have no authority or power, express or implied, to create or cause any construction lien or mechanics’ or materialmen’s lien or claim of any kind against the Premises, the Property or any portion thereof. Landlord’s interest in the Premises is not and shall not be subject to any liens as a result of Tenant’s use or occupancy of the Premises including specifically, without limitation, for improvements made by Tenant, and all such liens are expressly prohibited. Tenant will promptly cause any such liens or claims to be released by payment, bonding or otherwise within thirty (30) days after request by Landlord, and will indemnify Landlord against losses arising out of any such claim including, without limitation, legal fees and court costs. Landlord has the right, but not the obligation, to discharge any such lien. Any amount paid by Landlord for such purpose and Landlord’s related reasonable attorneys’ fees shall be paid by Tenant to Landlord upon demand and shall accrue interest from the date paid by Landlord until Landlord is reimbursed therefor at the highest rate permitted by Law. NOTICE IS HEREBY GIVEN THAT LANDLORD WILL NOT BE LIABLE FOR ANY LABOR, SERVICES OR MATERIAL FURNISHED OR TO BE FURNISHED TO TENANT, OR TO ANYONE HOLDING THE PREMISES THROUGH OR UNDER TENANT, AND THAT NO MECHANICS’ OR OTHER LIENS FOR ANY SUCH LABOR, SERVICES OR MATERIALS WILL ATTACH TO OR AFFECT THE INTEREST OF LANDLORD IN THE PREMISES. TENANT WILL DISCLOSE THE FOREGOING PROVISIONS TO ANY CONTRACTOR ENGAGED BY TENANT PROVIDING LABOR, SERVICES OR MATERIAL TO THE PREMISES.

4.3 TENANT CONSTRUCTION OF IMPROVEMENTS. Tenant covenants and agrees to lawfully and on a lien free basis, construct and install the improvements to the Buildings pursuant to the plans and specifications jointly agreed upon by Landlord and Tenant, all such construction and installation to be done in accordance with all applicable laws, rules and regulations. Such improvements shall be completed on or before March 2023. Landlord covenants and agrees to fund the cost related to the above referenced construction up to the amount described on Exhibit 2 attached hereto (the “Project Budget”). Tenant covenants and agrees that Tenant shall be responsible for any and all costs in excess of the Project Budget. Payments for the Project Budget shall be made based on progress payments based on actual out of pocket expenses incurred to third parties with the balance, if any, paid as a development fee upon “completion” which is defined hereunder as the later to occur of: (i) receipt of a Certificate of Occupancy by the applicable local and State authorities, (ii) receipt of lien waivers from all contractors who worked on site, and (iii) the commencement of lawful operations in the Addition. All contractors must submit insurance certificates acceptable to Landlord and naming Landlord prior to commencement of work.

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4.4 FUTURE CONSTRUCTION PROJECTS BY TENANT. Tenant covenants and agrees that Landlord shall be provided with the right (but not the obligation) to finance future capital projects of Tenant, at the Property on similar terms to this Lease or as otherwise mutually agreed upon by the parties. During the Term of this Lease, Tenant, will NOT own, operate or invest in a facility that is reasonably likely to have a negative impact on the performance of the Property or their business during the Term of this Lease unless the parties mutually agree that the operations at this Property support the need for additional facilities.

5. INSURANCE AND INDEMNITY.

5.1 TENANT’S INSURANCE. Tenant will throughout the Term (and any other period when Tenant is in possession of the Premises) carry and maintain, at its sole cost and expense, the following types of insurance, which shall provide coverage on an occurrence basis in the amounts specified with deductible amounts reasonably satisfactory to Landlord:

(a) COMMERCIAL GENERAL LIABILITY INSURANCE. Commercial general liability (“CGL”) insurance with coverage for premises/operations, personal and advertising injury, products/completed operations and contractual liability with combined single limits of liability of not less than $1,000,000 per occurrence, $2,000,000 in the annual aggregate for bodily injury and property damage per occurrence. The policy shall name the Indemnified Parties as additional insureds on a primary and non-contributory basis for all ongoing and completed operations under ISO Forms CG20 38 04 13 and CG 20 37 or their equivalents. The coverage provided under this CGL policy shall be written on an “occurrence” basis with no policy provisions that preclude coverage for any workers employed at the job site or that otherwise restrict, reduce, limit or impair contractual liability coverage or the status of any additional insureds. Completed Operations coverage shall remain in force for not less than five (5) years after completion of the work and shall include the Indemnified Parties as additional insureds on a primary and non-contributory basis.

(b) COMPREHENSIVE AUTOMOBILE LIABILITY INSURANCE. Comprehensive automobile liability insurance with a limit of not less than $1,000,000 per occurrence for bodily injury, $500,000 per person and $100,000 property damage or a combined single limit of $1,000,000 for both Tenant-owned and leased vehicles.

(c) UMBRELLA COVERAGE. Tenant shall also carry and maintain Umbrella Liability Insurance in an amount not less than $5,000,000 providing excess coverage over all limits and coverages required in paragraph (b) and (c) above in this section and naming the Indemnified Parties as additional insureds on a primary and non-contributory basis.

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(d) PROPERTY INSURANCE. Insurance of personal property, decorations, trade fixtures, furnishings, equipment, alterations, leasehold improvements and betterments made by Tenant on a replacement cost basis, with coverage equal to not less than one hundred percent (100%) of the full replacement value of the insured property. Such insurance shall be written on the ISO Special Perils form including but not limited to the perils of fire, extended coverage, windstorm, vandalism, malicious mischief and sprinkler leakage, for the full replacement cost value of the covered items and in amounts that meet any co-insurance clause of the policies of insurance with a deductible amount not to exceed $10,000. Tenant’s policy will also include business interruption/extra expense coverage in amounts sufficient to insure twelve (12) months of interrupted business operations at the Premises including payment of rent. Landlord shall be listed as a loss payee with respect to their interest in the Premises.

All policies referred to above shall: (i) be taken out with insurers permitted to write policies in the state of Nebraska having a minimum A.M. Best’s rating of A, Class VII or as otherwise permitted by Landlord; (ii) be non-contributing with, and shall apply only as primary and not as excess to any other insurance available to Landlord or any mortgagee of Landlord; and (iii) contain an obligation of the insurers to endeavor to notify Landlord not less than thirty (30) days prior to any material change, cancellation or termination of any such policy except not less than ten (10) days prior in the case of termination due to Tenant’s nonpayment of premiums. Landlord and Landlord’s property manager, and any mortgagees named by Landlord, shall be named as additional insureds on the CGL and automobile liability policies. Tenant shall provide certificates of insurance on or before the Effective Date and thereafter at times of renewal or changes in coverage or insurer, and, if required by a mortgagee, copies of such insurance policies certified by Tenant’s insurer as being complete and current promptly upon request. If (a) Tenant fails to take out or to keep in force any insurance referred to in this Section 5.1, or should any such insurance not be approved by either Landlord or any mortgagee, and (b) Tenant does not commence and continue to diligently cure such default within five (5) business days after notice by Landlord to Tenant specifying the nature of such default, then Landlord has the right, without assuming any obligation in connection therewith, to procure such insurance at the sole cost of Tenant, and all outlays by Landlord shall be paid by Tenant to Landlord without prejudice to any other rights or remedies of Landlord under this Lease. Tenant shall not keep or use in the Premises any article that may be prohibited by any fire or casualty insurance policy in force from time to time covering the Premises or the Buildings.

(e) WORKERS’ COMPENSATION. Workers’ compensation insurance covering all employees of Tenant, as required by the laws of the State of Nebraska, and employers’ liability coverage subject to limits required by law.

(f) BUILDERS RISK. During construction work on the Property, Tenant shall procure and pay for a Builders Risk related to the contemplated construction activities reasonably acceptable to Landlord. Landlord shall be named as a loss payee with respect to its interest in the Property during construction.

5.2 LANDLORD’S INSURANCE. During the Term, Landlord, at its option, may carry and maintain the following types of insurance: (i) property insurance on the Buildings covering “All Risks” perils in an amount equal to the full replacement cost of the Buildings (excluding any property with respect to which Tenant and other tenants are obliged to insure pursuant to Section 5.1 or similar sections of their respective leases); and (ii) commercial general liability insurance with respect to Landlord’s operations on the Property. Landlord may maintain any other commercially reasonable insurance coverages relating to the Premises, or Tenant’s activities and operations therein. All costs of such insurance are properly includable in Operating Expenses and shall be reimbursed by Tenant.

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5.3 RELEASE AND WAIVER OF SUBROGATION RIGHTS. The parties hereto, for themselves and anyone claiming through or under them, hereby release and waive any and all rights of recovery, claim, action or cause of action, against each other, their respective agents, directors, officers and employees, for any loss or damage to all property, whether real, personal or mixed, located in the Premises or the Buildings, by reason of any cause against which the releasing party is actually insured or, regardless of the releasing party’s actual insurance coverage, against which the releasing party is required to be insured pursuant to the provisions of Sections 5.1 or 5.2. This mutual release and waiver shall apply regardless of the cause or origin of the loss or damage, including negligence of the parties hereto, their respective agents and employees except that it shall not apply to willful conduct. Each party agrees to provide the other with reasonable evidence of its insurance carrier’s consent to such waiver of subrogation upon request. This Section 5.3 supersedes any provision to the contrary which may be contained in this Lease.

5.4 INDEMNIFICATION OF THE PARTIES.

5.4.1 TENANT’S INDEMNITY. Tenant hereby agrees to indemnify, defend and hold harmless Landlord from and against any and all liability for any loss, injury or damage, and all costs, expenses, court costs and reasonable attorneys’ fees, imposed on Landlord by any person whomsoever that occurs (i) in the Premises, except for any such loss, injury or damage that is caused by or results from the gross negligence or willful misconduct of Landlord, its employees or agents; or (ii) anywhere in the Property outside of the Premises as a result of the gross negligence or willful misconduct of Tenant, its employees, agents or contractors; or (iii) imposed upon or suffered by Landlord due to breach or violation of Tenant’s obligations under this Lease which breach or violation in turn gives rise to any such liability, costs, expenses, court costs and reasonable attorneys’ fees suffered by or imposed upon Landlord.

5.4.2 LANDLORD’S INDEMNITY. Landlord hereby indemnifies Tenant from, and agrees to hold Tenant harmless against, any and all liability for any loss, injury or damage, including, without limitation, all costs, expenses, court costs and reasonable attorneys’ fees, imposed on Tenant by any person whomsoever, that occurs in the Buildings or anywhere in the Property and that is caused by or results from the gross negligence or willful misconduct of Landlord or its employees or agents.

The provisions of this Section 5.4 shall survive the expiration or earlier termination of this Lease.

6. DAMAGE, DESTRUCTION AND CONDEMNATION.

6.1 DESTRUCTION OR DAMAGE TO PREMISES. If the Premises are at any time damaged or destroyed in whole or in part by fire, casualty or other causes, Landlord shall have sixty (60) days from such damage or destruction to determine and inform Tenant whether Landlord will restore the Premises to substantially the condition that existed immediately prior to the occurrence of the casualty. If Landlord elects to rebuild, Landlord shall complete such repairs to the extent of insurance proceeds within one hundred eighty (180) days from the end of the sixty (60) day period. If such repairs have not been completed within that 180-day period, and Tenant desires to terminate the Lease as a result thereof, then Tenant must notify Landlord prior to Landlord’s completion of the repairs of Tenant’s intention to terminate this Lease. Landlord shall then have ten (10) days after Landlord’s receipt of written notice of Tenant’s election to terminate to complete such repairs (as evidenced by a certificate of completion). If Landlord does complete such repairs prior to the expiration of such ten-day cure period, Tenant shall have no such right to terminate this Lease. Tenant shall, upon substantial completion by Landlord, promptly and diligently, and at its sole cost and expense, repair and restore any improvements to the Premises made by Tenant to the condition which existed immediately prior to the occurrence of the casualty. If, in Landlord’s architect’s or general contractor’s reasonable estimation, the Premises cannot be restored within two hundred forty (240) days of such damage or destruction, then either Landlord or Tenant may terminate this Lease as of a date specified in such notice, which date shall not be less than thirty (30) nor more than sixty (60) days after the date such notice is given. Until the restoration of the Premises is complete, there shall be an abatement or reduction of Base Rent in the same proportion that the square footage of the Premises so damaged or destroyed and under restoration bears to the total square footage of the Premises, unless the damaging event was caused by the negligence or willful misconduct of Tenant, its employees, officers, agents, licensees, invitees, visitors, customers, concessionaires, assignees, subtenants, contractors or subcontractors, in which event there shall be no such abatement.

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Notwithstanding the foregoing provisions of this paragraph, if damage to more than fifty percent (50%) of the Premises or destruction of the Premises shall occur within the last year of the Term, as the same may be extended as provided hereinafter and Landlord notifies Tenant that (i) Landlord will restore the Premises to their condition prior to the casualty, and (ii) Landlord desires to extend the Term of the Lease with Tenant, then Landlord and Tenant shall extend the Term for an additional period so as to expire five (5) years from the date of the completion of the repairs to the Premises, provided Tenant gives written notice to Landlord of Tenant’s agreement to extend the Term within fifteen (15) days after receipt of Landlord’s notice. Such extension shall be on the terms and conditions provided herein, if an option to extend this Lease remains to be exercised by Tenant hereunder, or under the terms prescribed in Landlord’s notice, if no such further extension period is provided for herein. Upon receipt of such notice from Tenant, Landlord agrees to repair and restore the Premises within a reasonable time. If Tenant refuses or fails to timely extend the Term as provided herein, Landlord at its option shall have the right to terminate this Lease as of the date of the damaging event, or to restore the Premises and the Lease shall continue for the remainder of the then unexpired Term, or until the Lease is otherwise terminated as provided herein.

6.2 CONDEMNATION.

6.2.1 TOTAL OR PARTIAL TAKING. If the whole of the Premises (provided that if 60% or more of the Premises are taken, Tenant may deem that all of the Premises are taken), or such portion thereof as will make the Premises unusable, in Landlord’s reasonable judgment, for the purposes leased hereunder, shall be taken by any public authority under the power of eminent domain or sold to public authority under threat or in lieu of such taking, the Term shall cease as of the day possession or title shall be taken by such public authority, whichever is earlier (“Taking Date”), whereupon the rent and all other charges shall be paid up to the Taking Date with a proportionate refund by Landlord of any rent and all other charges paid for a period subsequent to the Taking Date. If less than the whole of the Premises, or less than such portion thereof as will make the Premises unusable as of the Taking Date, is taken, Base Rent and other charges payable to Landlord shall be reduced in proportion to the amount of the Premises taken. If this Lease is not terminated, Landlord shall repair any damage to the Premises caused by the taking to the extent necessary to make the Premises reasonably tenantable within the limitations of the available compensation awarded for the taking (exclusive of any amount awarded for land).

6.2.2 AWARD. All compensation awarded or paid upon a total or partial taking of the Premises or Buildings including the value of the leasehold estate created hereby shall belong to and be the property of Landlord without any participation by Tenant; Tenant shall have no claim to any such award based on Tenant’s leasehold interest. However, nothing contained herein shall be construed to preclude Tenant, at its cost, from independently prosecuting any claim directly against the condemning authority in such condemnation proceeding for damage to, or cost of removal of, stock, trade fixtures, furniture, and other personal property belonging to Tenant; provided, however, that no such claim shall diminish or otherwise adversely affect Landlord’s award or the award of any mortgagee.

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7. MAINTENANCE AND REPAIRS.

7.1 Tenant shall, at its expense, throughout the Term and all renewals and extensions thereof, maintain in good order, condition and repair the Premises, including but not limited to heating and air conditioning equipment, walls, floors and ceilings, window exteriors, mechanical and electrical systems and equipment exclusively serving the Premises, electric light fixtures, bulbs, tubes and tube casings, doors, floor coverings, dock doors, levelers, plumbing system and plumbing fixtures, Tenant’s signs and utility facilities not maintained by Landlord. Landlord shall use reasonable efforts to extend to Tenant the benefit from warranties on such items, if any, that have been made by Landlord’s contractors or vendors and to extend to Tenant, as and if available, any bulk buying power that Landlord may have with such contractors or vendors. If any portion of the Premises or any system or equipment in the Premises which Tenant is obligated to repair cannot be fully repaired, Tenant shall promptly replace the same, regardless of whether the benefit of such replacement extends beyond the Term. Tenant shall, at Tenant’s expense, maintain a preventive maintenance contract providing for the regular inspection (at least quarterly) and maintenance of the heating and air conditioning system by a licensed and qualified heating and air conditioning contractor, or Tenant shall perform such HVAC inspection and maintenance with duly licensed and qualified employee. The cost of such preventive maintenance contract shall be paid by Tenant and an expense solely chargeable to Tenant; but if Landlord so elects, same may be billed directly by Landlord to Tenant where Landlord on Tenant’s behalf enters into such preventive maintenance contract and in such case shall be deemed Additional Rent (Landlord alone may so elect whether to enter into such preventive maintenance contract on Tenant’s behalf). Landlord shall have the right, upon notice to Tenant, to undertake the responsibility for preventive maintenance of any other system or component at Tenant’s expense. Tenant shall be responsible for janitorial services and trash removal from the Premises, at Tenant’s expense. Landlord and Tenant intend that, at all times during the Term, Tenant shall maintain the Premises in good order and condition and appearances reasonably commensurate with the balance of the Property.

All of Tenant’s obligations to maintain and repair shall be accomplished at Tenant’s sole expense. If Tenant fails to maintain and repair the Premises as required by this Section, Landlord may, on 10 days’ prior written notice (except that no notice shall be required in case of emergency), enter the Premises and perform such maintenance or repair on behalf of Tenant; provided such entry is made in compliance with Applicable Laws. In such cases, Tenant shall reimburse Landlord immediately upon demand for all costs incurred in performing such maintenance or repair plus an administration fee equal to 5% of such actual and reasonable costs or expenses.

7.2 CONDITION UPON TERMINATION. Upon the termination of the Lease, Tenant shall surrender the Premises to Landlord, broom clean and with all systems in good working order, condition and repair, except for damage caused by casualty, condemnation and ordinary wear and tear which Tenant was not otherwise obligated to remedy under any provision of this Lease. However, Tenant shall not be obligated to repair any damage that Landlord is required to repair under Section 7.1. Subject to the foregoing, Tenant shall repair, at Tenant’s expense, any damage to the Premises and the Buildings caused by the removal of any of Tenant’s personal property. In no event shall Tenant remove any of the following materials or equipment: any power wiring or power panels; light fixtures; environmental control systems; heaters, air conditioners, or any other heating or air conditioning equipment (other than movable equipment brought upon the Premises by Tenant); plumbing fixtures; or other similar Buildings operating equipment.

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8. DEFAULT AND REMEDIES.

8.1 DEFAULT BY TENANT. The following will be events of default by Tenant under this Lease:

(a) Failure to pay when due any installment of Rent or any other payment required pursuant to this Lease within five (5) days of due date;

(b) The filing of a petition for bankruptcy or insolvency under any applicable federal or state bankruptcy or insolvency law; an adjudication of bankruptcy or insolvency or an admission that it cannot meet its financial obligations as they become due, or the appointment or a receiver or trustee for all or substantially all of the assets of Tenant; in each of the foregoing cases, if not dismissed within 30 days of such filing, adjudication, admission or appointment, as applicable;

(c) A transfer in fraud of creditors or an assignment for the benefit of creditors, by Tenant;

(d) The filing or imposition of a lien against the Premises, the Buildings or the Property as a result of any act or omission of Tenant and the failure of Tenant to satisfy or bond the lien in its entirety within thirty (30) days after receipt of notice of same;

(e) The liquidation, termination or dissolution of Tenant;

(f) Failure to cure the breach of any provision of this Lease or any other lease or agreement Landlord and Tenant are a party to, other than the obligation to pay Rent, within twenty (20) days after notice thereof to Tenant; provided, however, that if such breach cannot be cured within such 20 day period using diligent efforts and Tenant promptly commenced efforts to cure such breach upon receipt of Landlord’s notice thereof, then such cure period shall be extended for so long as Tenant continues to use diligent efforts to cure, not to exceed a total of sixty (60) days from the date of Landlord’s notice;

(g) Tenant’s breach of the same provision of this Lease, other than the obligation to pay Rent, more than twice (2) in any twelve (12) month period;

(h) Failure to deliver, maintain or restore the Security Deposit pursuant to Section 11.2 hereof within the timeframes provided; and

8.2 REMEDIES. Upon the occurrence of any event of default set forth in Section 8.1, Landlord shall be entitled to the following remedies:

(a) Landlord may terminate this Lease, dispossess Tenant and recover as damages from Tenant all Rent that is due but unpaid as of the date of dispossession, plus all other reasonable costs and expenses incurred by Landlord to dispossess Tenant.

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(b) Landlord may terminate this Lease and declare 100% of all Rent to be paid pursuant to this Lease for the remainder of the Term to be immediately due and payable, and thereupon such amount shall be accelerated and Landlord shall be entitled to recover the net present value thereof employing an assumed discount rate of 2% per annum for purposes of present value computation;

(c) Landlord may elect to repossess the Premises and to relet the Premises for Tenant’s account, holding Tenant liable in damages for all expenses incurred in any such reletting and for any difference between the amount of Rent received from such reletting and the amount due and payable under the terms of this Lease; provided, however, that Tenant shall not, in such circumstances, be responsible for any cost to retrofit or alter the Premises.

(d) After the provision of notice and summary proceedings if required by law Landlord may enter the Premises and take any actions required of Tenant under the terms of this Lease, and Tenant shall reimburse Landlord on demand for any expenses that Landlord may incur in effecting compliance with Tenant’s obligations under this Lease, and Landlord shall not be liable for any damages resulting to Tenant from such action.

(e) If this Lease is terminated in accordance with the provisions of this Section, then Landlord agrees make good faith and commercially reasonable efforts to mitigate its damages which efforts shall include efforts to re-let the Property.

The above remedies shall be cumulative and shall not preclude Landlord from pursuing any other remedies permitted by law. Landlord’s election not to enforce one or more of the remedies upon an event of default shall not constitute a waiver.

8.3 COSTS. If any litigation or other court action, arbitration or similar adjudicatory proceeding is commenced by any party to enforce its rights under this Lease against any other party, all fees, costs and expenses, including, without limitation, reasonable attorneys’ fees and court costs, incurred by the prevailing party in such litigation, action, arbitration or proceeding shall be reimbursed by the non-prevailing party; provided, that if a party to such litigation, action, arbitration or proceeding prevails in part, and loses in part, the court, arbitrator or other adjudicator presiding over such litigation, action, arbitration or proceeding shall award a reimbursement of the fees, costs and expenses incurred by such party on an equitable basis. .

8.4 WAIVER. No delay or omission by Landlord in exercising a right or remedy shall exhaust or impair the same or constitute a waiver of, or acquiescence to, a default.

8.5 DEFAULT BY LANDLORD. In the event of any default by Landlord, Tenant’s exclusive remedy shall be an action for damages, but prior to any such action Tenant will give Landlord written notice specifying such default with particularity, and Landlord shall have a period of thirty (30) days following the date of such notice in which to commence the appropriate cure of such default. Unless and until Landlord fails to commence and diligently pursue the appropriate cure of such default after such notice or complete same within a reasonable period of time, Tenant shall not have any remedy or cause of action by reason thereof. Notwithstanding any provision of this Lease, neither Landlord nor any officer, director, partner, shareholder, or member of Landlord shall have any individual or personal liability whatsoever under this Lease. In the event of any breach or default by Landlord of any term or provision of this Lease, Tenant agrees to look solely to the equity or interest then-owned by Landlord in the Premises (together with insurance proceeds, condemnation awards and sale proceeds), and in no event shall any deficiency judgment be sought or obtained against Landlord, nor any officer, director, partner, shareholder, or member of Landlord. Notwithstanding any provision of this Lease, Landlord shall not be liable to Tenant or any other person for consequential, special or punitive damages, including without limitation, lost profits.

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9. PROTECTION OF LENDERS. Landlord represents and warrants that as of the date hereof, there either is no mortgage or ground lease affecting the Property or if there is a mortgage, the lender holding same shall have confirmed it does not object to this Lease.

9.1 SUBORDINATION AND ATTORNMENT. This Lease shall be subject and subordinated at all times to the terms of each and every ground or underlying lease which now exists or may hereafter be executed affecting the Premises under which Landlord shall claim, and to the liens of each and every mortgage and deed of trust in any amount or amounts whatsoever now or hereafter existing encumbering the Premises, Buildings or the Property, and to all modifications, renewals and replacements thereto without the necessity of having further instruments executed by Tenant to effect such subordination. Tenant, upon demand, shall further evidence its subordination by executing a subordination and attornment agreement in form and substance mutually acceptable to Tenant and Landlord and its mortgagee or ground lessor, which subordination and attornment agreement must provide that so long as no default or event which with the passing of time or giving of notice would constitute a default exists under this Lease, the peaceable possession of Tenant in and to the Premises, and continued Permitted Use thereof, for the Term shall not be disturbed in the event of the foreclosure of the subject mortgage or termination of the subject ground or underlying lease affecting the Premises. If Landlord’s interest in the Buildings or Property is acquired by any ground lessor, mortgagee, or purchaser at a foreclosure sale or transfer in lieu thereof, Tenant shall attorn to the transferee of or successor to Landlord’s interest in the Lease, Premises, Buildings or Property and recognize such transferee or successor as Landlord under this Lease. Notwithstanding the foregoing, any mortgagee under any mortgage shall have the right at any time to subordinate any such mortgage to this Lease on such terms and subject to such conditions as the mortgagee in its discretion may consider appropriate.

9.2 ESTOPPEL CERTIFICATES. Within ten (10) days of receipt of written request from Landlord, any lender or prospective lender of the Buildings, or at the request of any purchaser or prospective purchaser of the Buildings, Tenant shall deliver an estoppel certificate, attaching a true and complete copy of this Lease, including all amendments relative thereto, and certifying with particularity, among other things, (i) a description of any renewal or expansion options, if any; (ii) the amount of rent currently and actually paid by Tenant under this Lease; (iii) that the Lease is in full force and effect as modified; (iv) Tenant is in possession of the Premises; (v) stating whether either Landlord to the best of its knowledge or Tenant is in default under the Lease and, if so, summarizing such default(s) if known; and (vi) stating whether Tenant or Landlord has any offsets or claims against the other party and, if so, specifying with particularity the nature and amount of such offset or claim if known. Landlord shall likewise deliver a similar estoppel certificate within ten (10) days of the receipt of a written request from Tenant, any lender or prospective lender of Tenant, or assignee approved by Landlord, certifying the status of Tenant’s monetary obligations under this Lease.

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9.3 TENANT’S FINANCIAL CONDITION AND OTHER OPERATING REPORTS.

Tenant shall provide Landlord with:(A) certified financial statements by an authorized officer of Tenant regarding Tenant’s operations at the Premises, including standard profit and loss statements, actual sales vs. projected sales, an income statement and balance sheet, all of which show that Tenant has the financial wherewithal to meet its obligations as they are due within twenty (20) days after the end of each calendar month, and (B) certified financials from an authorized officer or by a third party accounting firm reasonably acceptable to Landlord, to be delivered within 90 days of the end of each calendar year during the Term. Tenant hereby agrees not to make any distributions to owners/investors of Tenant until such time as Tenant has achieved cash flow sufficient to establish a cash reserve equal to six (6) months of Tenant’s operating expenses, including but limited to, Rent (the “Working Capital Reserve”). Once Tenant has established the Working Capital Reserve in Tenant’s bank account (as certified to Landlord monthly), Tenant may distribute excess cash flow earned thereafter to its owners/investors in accordance with its Operating Agreement. In addition to and not by way of limitation of the foregoing, Tenant covenants and agrees that during the Term of this Lease, (i) the salaries for certain owners/ officers of Tenant shall be as set forth on the attached Exhibit 4, all of which will be annually certified as such by an authorized officer of Tenant on or before January 15th of each Lease year during the Term and (ii) absolutely no additional salary shall be paid to the identified owners/officers of Tenant other than as set forth on Exhibit 4 until and after the Working Capital Reserve has been established and so long as it is maintained, and (iii) absolutely no distributions will be made to owners/investors in Tenant unless and until the Working Capital Reserve amount has been achieved and is being maintained in Tenant’s bank account. During the Term hereof, Landlord, shall have full rights to inspect the books and records of Tenant on reasonable notice and during normal business hours and to have an audit of such books and records done at its own expense to confirm the accuracy and completeness thereof; provided, such audit is performed in connection with all Applicable Laws. Landlord and Tenant acknowledge and agree that Landlord is **not**intended to nor will it actually have any control over Tenant’s business located at the Premises or elsewhere rather it is intended to support the viability of Tenant and its ability to meet its financial obligations.

10. LANDLORD’S LIABILITY; CERTAIN DUTIES. As used in the Lease, the term “Landlord” means only the current owner or owners of the fee title to the Buildings or the leasehold estate under a ground lease of the Buildings at the time in question. Each landlord is obligated to perform the obligations of Landlord under this Lease only during the time such landlord owns such interest or title. Any landlord who transfers its title or interest is relieved of all liability with respect to the obligations of Landlord under this Lease to be performed on or after the date of transfer, provided that such transfer is not for the primary purpose of avoiding such obligations. However, each landlord shall deliver to its transferee all funds previously paid by Tenant if such funds have not yet been applied under the terms of this Lease.

11. MISCELLANEOUS PROVISIONS.

11.1 SECURITY DEPOSIT. Tenant shall remit to Landlord a security deposit in the amount of One Hundred and Ninety-Three Thousand Dollars ($193,000) by wire transfer of immediately available funds or other form acceptable to Landlord in its sole discretion (“Security Deposit”) on the Effective Date. The Security Deposit represents security for the faithful performance and observance by Tenant of each and every term of this Lease. Landlord may apply all or part of the Security Deposit to any unpaid Rent or other charges due from Tenant or to cure any other default of Tenant. The Security Deposit shall not constitute liquidated damages. If after notice, Tenant fails to cure and Landlord uses any part of the Security Deposit, Tenant shall restore the Security Deposit to its full amount within ten (10) days after written notice from Landlord. No interest shall accrue to or for the benefit of Tenant on the Security Deposit. Landlord shall not be required to keep the Security Deposit separate from its other accounts, and no trust relationship is created with respect to the Security Deposit. Landlord shall not be obligated to return the Security Deposit to Tenant upon the expiration or earlier termination of the Lease unless and until all of the following events occur: (i) the payment in full of all Rent due pursuant to the Lease; and (ii) the repair of any and all damage to the Premises beyond that caused by casualty, condemnation and normal wear and tear.

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11.2 INTERPRETATION. The captions of the Articles or Sections of this Lease are to assist the parties in reading this Lease and are not a part of the terms or provisions of this Lease. Whenever required by the context of this Lease, the singular shall include the plural and the plural shall include the singular. The masculine, feminine and neuter genders shall each include the other. In any provision relating to the conduct, acts or omissions of Tenant the term “Tenant” shall include Tenant’s agents, employees, contractors, invitees, successors or others using the Premises, Buildings or Property with Tenant’s expressed or implied permission. This Lease will not be construed more or less favorably with respect to either party as a consequence of the Lease or various provisions hereof having been drafted by one of the parties hereto.

11.3 INCORPORATION OF PRIOR AGREEMENTS; MODIFICATIONS. This Lease is the only agreement between the parties pertaining to the lease of the Premises and no other agreements either oral or otherwise shall be effective unless embodied herein. All amendments to this Lease shall be in writing and signed by Landlord and Tenant. Any other purported amendment shall be void.

11.4 NOTICES. Any notice or document (other than rent) required or permitted to be delivered by the terms of this Lease shall be in writing and delivered by: (i) hand delivery; (ii) certified mail, return receipt requested; or (iii) guaranteed overnight delivery service. Notices to Tenant shall be delivered to the address specified in the introductory paragraph of this Lease. Notices to Landlord shall be delivered to the address specified in the introductory paragraph of this Lease. All notices shall be effective upon delivery or attempted delivery during normal business hours. Either party may change its notice address upon notice to the other party, given in accordance herewith by an authorized officer, partner, or principal.

11.5 RADON GAS NOTICE. Radon is a naturally occurring radioactive gas that, when it has accumulated in a Buildings in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in Buildings in Nebraska. Additional information regarding radon and radon testing may be obtained from your county health department.

11.6 WAIVERS. All waivers must be in writing and signed by the waiving party. Either party’s failure to enforce any provision of this Lease or its acceptance of Rent shall not be a waiver and shall not prevent such party from enforcing that provision or any other provision of this Lease in the future. No statement on a payment check from Tenant or in a letter accompanying a payment check shall be binding on Landlord. Landlord may, with or without notice to Tenant, negotiate such check without being bound to the conditions of such statement.

11.7 NO RECORDATION. Tenant shall not record this Lease or any memorandum of lease.

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11.8 FORCE MAJEURE. The performance by either party to this Lease of its obligations (except the payment of Rent or other sums of money owed by Tenant) shall be excused by delays attributable to events beyond that party’s control for a period of time that is sufficient for the party to perform its obligations after the cessation of the Force Majeure event acting in a diligent, commercially reasonable manner. Events beyond a party’s control include, but are not limited to, acts of the other party, acts of God (including reasonable preparation therefor), war, civil commotion, labor disputes, strikes, fire, flood or other casualty, failure of power, shortages of labor or material, government action, regulation or restriction (including extraordinary delay in the issuance of any permit, permit approval or Buildings permit inspection) and unusually inclement weather conditions. Events beyond a party’s control shall not include changes in economic or market conditions, or financial or internal problems of the non-performing party, or problems that can be satisfied by the payment of money.

11.9 EXECUTION OF LEASE. Submission or preparation of this Lease by Landlord shall not constitute an offer by Landlord or option for the Premises, and this Lease shall constitute an offer, acceptance or contract only as expressly specified by the terms of this Section 11.10. In the event that Tenant executes this Lease first, such action shall constitute an offer to Landlord, which may be accepted by Landlord by executing this Lease, and once this Lease is so executed by Landlord and delivered to Tenant, such offer may not be revoked by Tenant and this Lease shall become a binding contract. In the event that Landlord executes this Lease first, such action shall constitute an offer to Tenant, which may be accepted by Tenant only by delivery to Landlord of a fully executed copy of this Lease, together with a fully executed copy of any and all guaranty agreements and addenda provided that in the event that any party other than Landlord makes any material or minor alteration of any nature whatsoever to any of said documents, then such action shall merely constitute a counteroffer, which Landlord, may, at Landlord’s election, accept or reject. Notwithstanding that the Effective Date may occur and the Term may commence after the date of execution of this Lease, upon delivery and acceptance of this Lease in accordance with the terms of this Lease, this Lease shall be fully effective, and in full force and effect and valid and binding against the parties in accordance with, but on and subject to, the terms and conditions of this Lease.

11.10 AUTHORITY.

11.10.1 TENANT’S AUTHORITY. As a material inducement to Landlord to enter into this Lease, Tenant, intending that Landlord rely thereon, represents and warrants to Landlord that:

(i) Tenant and the party executing on behalf of Tenant are fully and properly authorized to execute and enter into this Lease on behalf of Tenant and to deliver this Lease to Landlord;

(ii) This Lease constitutes a valid and binding obligation of Tenant, enforceable against Tenant in accordance with the terms of this Lease;

(iii) Tenant is duly organized, validly existing and in good standing under the laws of the state of Tenant’s organization and has full power and authority to enter into this Lease, to perform Tenant’s obligations under this Lease in accordance with the terms of this Lease, and to transact business in the state in which the Premises are located; and

(iv) The execution of this Lease by the individual or individuals executing this Lease on behalf of Tenant, and the performance by Tenant of Tenant’s obligation under this Lease, have been duly authorized and approved by all necessary corporate or partnership action, as the case may be, and the execution, delivery and performance of this Lease by Tenant is not in conflict with Tenant’s bylaws or articles of incorporation (if a corporation), agreement of partnership (if a partnership), and other charters, agreements, rules or regulations governing Tenant’s business as any of the foregoing may have been supplemented or amended in any manner.

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11.10.2 LANDLORD’S AUTHORITY. As a material inducement to Tenant to enter into this Lease, Landlord, intending that Tenant rely thereon, represents and warrants to Tenant that:

(i) Landlord is the fee owner of the Property.

(ii) Landlord and the party executing on behalf of Landlord are fully and properly authorized to execute and enter into this Lease on behalf of Landlord and to deliver this Lease to Tenant;

(iii) This Lease constitutes a valid and binding obligation of Landlord, enforceable against Landlord in accordance with the terms of this Lease;

(iv) Landlord is duly organized, validly existing and in good standing under the laws of the state of Landlord’s organization and has full power and authority to enter into this Lease, to perform Landlord’s obligations under this Lease in accordance with the terms of this Lease, and to transact business in the state in which the Premises are located; and

(v) The execution of this Lease by the individual or individuals executing this Lease on behalf of Landlord, and the performance by Landlord of Landlord’s obligation under this Lease, have been duly authorized and approved by all necessary corporate or partnership action, as the case may be, and the execution, delivery and performance of this Lease by Landlord is not in conflict with Landlord’s bylaws or articles of incorporation (if a corporation), agreement of partnership (if a partnership), and other charters, agreements, rules or regulations governing Landlord’s business as any of the foregoing may have been supplemented or amended in any manner

11.11 CHOICE OF LAW. This Lease shall be governed by the laws of the State of Nebraska.

11.12 COUNTERPART. This Lease may be executed in multiple counterparts, each counterpart of which shall be deemed an original and any of which shall be deemed to be complete of itself and may be introduced into evidence or used for any purpose without the production of the other counterpart or counterparts. Signatures appearing hereon that have been reproduced, applied, provided, delivered or transmitted by facsimile, email, DocuSign or other electronic means shall be equally binding and effective as original signatures hereon, and shall be deemed duly and effectively delivered if so transmitted or provided.

11.13 HOLDING OVER. If Tenant remains in possession of the Premises after the end of the Term without having executed and delivered a new lease or an agreement extending the Term, there shall be no tacit renewal of this Lease or the Term, and Tenant shall be deemed to be occupying the Premises from month to month at a monthly Base Rent payable in advance on the first day of each month equal to one hundred twenty-five percent (125%) first month, one hundred fifty percent (150%) second month and two hundred percent (200%) thereafter of the monthly amount of Base Rent payable during the last month of the Term, and otherwise upon the same terms as set forth in this Lease, so far as they are applicable to a month to month tenancy. In addition to and not limiting any other rights or remedies which Landlord may have on account of Tenant holding over without written consent of Landlord, Tenant shall be liable for any and all direct and consequential damages incurred by Landlord on account of such unapproved holding over including claims by tenants entitled to future possession.

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11.14 TIME IS OF THE ESSENCE. Time is of the essence of this Lease and all provisions contained herein.

11.15 APPROVAL OF PLANS AND SPECIFICATIONS. Neither review nor approval by or on behalf of Landlord of any Tenant’s plans nor any plans and specifications for any Tenant Alterations or any other work shall constitute a representation or warranty by Landlord, any of Landlord’s beneficiaries or any of their respective agents, partners or employees that such plans and specifications either (i) are complete or suitable for their intended purpose, or (ii) comply with Applicable Laws, it being expressly agreed by Tenant that neither Landlord, nor any of Landlord’s beneficiaries nor any of their respective agents, partners or employees assume any responsibility or liability whatsoever to Tenant or to any other person or entity for such completeness, suitability or compliance.

11.16 RELATIONSHIP. Landlord and Tenant disclaim any intention to create a joint venture, partnership or agency relationship.

11.17 BROKERS. Tenant covenants, represents and warrants that there was and is no broker, finder or commissioned procuring cause or participant in commissions associated with Tenant’s efforts (any such person being a “Tenant’s Broker”) in connection with the negotiation and consummation of this Lease. Tenant agrees to indemnify and defend Landlord against any loss, liability, or expense (including reasonable attorney’s fees and costs) arising out of claims for fees or commissions from anyone other than a broker retained or hired by Landlord claiming to have represented Tenant in connection with the lease of the Premises.

11.18 WAIVER OF TRIAL BY JURY. **LANDLORD AND TENANT EACH HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER ON ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE. THE PARTIES FURTHER HEREBY WAIVE THE RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL HAS NOT BEEN WAIVED.**

11.19 RIDERS AND EXHIBITS. All Riders, Addenda and Exhibits attached hereto and referenced herein shall be deemed to be a part hereof and are hereby incorporated.

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11.20 TENANT ASSIGNMENT. Tenant will not assign this Lease, in whole or in part, or sublease the Premises, in whole or in part without the prior consent of Landlord. Tenant shall pay to Landlord all direct costs and shall reimburse Landlord for all expenses (including reasonable attorneys’ fees) incurred by Landlord in connection with any assignment or sublease requested by Tenant. Landlord may, in its reasonable discretion, consider all factors cognizable by law as reasonable to evaluate and consider in making its determination of whether to consent, including making a study of the financial wherewithal and credit of any proposed successor or subtenant and, in the case of an assignment, may require additional guaranties as appropriate to satisfy reasonable financial standards and criteria for approval. Any guaranty of an individual offered shall be joined by spouse and shall be in Landlord’s then current commercially reasonable form. Landlord may condition any consent to any assignment, upon the execution and delivery of Landlord’s commercially reasonable form of instrument, executed by Landlord, Tenant, the successor (assignee) tenant, and any new guarantor(s) then so arising, under the terms of which (i) the Tenant (as assignor) agrees and confirms to the foregoing continued obligations and liabilities and assigns all of its rights, title and interest in and to the Lease and all moneys having been paid thereunder, including any security deposit, (ii) the successor (as assignee) agrees to assume the Lease in all respects and to assume all obligations of payment and performance thereunder, past, present and future, including for the express benefit of Landlord and accepts the Premises in its then as-is condition, (iii) Landlord shall not be liable for, and Tenant and the successor (as assignee) shall, jointly and severally, hold Landlord harmless against and indemnify Landlord for and from any commission(s) payable associated with the assignment, and (iv) the successor (as assignee) agrees to provide all proper current evidence of insurance as called for in this Lease prior to first entry upon, on or into the Premises. Landlord may condition any consent to any sublease, upon the execution and delivery to Landlord of a commercially reasonable form of sublease agreement as between Tenant and such subtenant, under the terms of which (i) Tenant shall continue to remain primarily liable for the payment of all amounts of rental and other sums and performance of all covenants required of Tenant under the Lease, (ii) there shall be no modifications or amendments of the sublease without the prior written consent of Landlord, (iii) the subtenant shall not be granted any rights of Tenant under the Lease nor the power to exercise same, (iv) it is provided that in the event of any default under the terms and provisions of the Lease, Landlord shall have the right to collect the rental attributable to the subleased space directly from the subtenant without waiving any of Landlord’s rights against Tenant, (v) Landlord shall not be liable for, and Tenant and the subtenant shall, jointly and severally, hold Landlord harmless against and indemnify Landlord for and from any commission(s) payable associated with the sublease, and (vi) nothing in the sublease will be deemed to amend or modify the Lease as between Tenant and Landlord, and the subtenant will expressly confirm and acknowledge that the sublease is inferior and subordinate to the Lease in all respects.

11.21 LANDLORD ASSIGNMENT. Landlord will have the right to sell, transfer or assign, in whole or in part, its rights and obligations under this Lease. Any such sale, transfer or assignment will operate to release Landlord from any and all liability under this Lease arising after the date of such sale, assignment or transfer, so long as successor landlord assumes the obligations of landlord hereunder.

11.22 NOTWITHSTANDING ANY OTHER TERM OR CONDITION OF THIS LEASE THE FOLLOWING ADDITIONAL PROPERTY SPECIFIC TERMS AND CONDITIONS SHALL GOVERN AND CONTROL:

A. OUTSIDE STORAGE - Under no circumstances shall Tenant store or display its goods or merchandise outside of the Buildings with the exception of specifically requested and approved by Landlord hard goods or materials that are specifically required for Tenant’s operations that cannot be stored within the Buildings (e.g., soil) Tenant shall ensure any outside storage is neat and organized and in compliance with all applicable Laws and Tenant shall not store any plants or other finished materials outside of the Buildings

B. HVAC/ENVIRONMENTAL CONTROLS, GREENHOUSE ROOF AND SYSTEMS REPAIR AND MAINTENANCE: Tenant shall, at Tenant’s sole expense repair and in accordance with the terms of this Lease, shall have a maintenance agreement for the HVAC/Environmental Controls, Greenhouse Roof and Systems unless such work will be performed by a duly qualified employee of Tenant or of Tenant’s Affiliate, and will be responsible for any repairs and replacement for HVAC/Environmental Controls, Greenhouse Roof and Systems at all times during the Lease Term.

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C. TENANT’S PRIMARY DUTY. All agreements and covenants to be performed or observed by Tenant under this Lease shall be at Tenant’s sole cost and expense and without any abatement of rent. If Tenant fails to pay any sum of money to be paid by Tenant or to perform any other act to be performed by Tenant under this Lease, Landlord shall have the right, but shall not be obligated, and without waiving or releasing Tenant from any obligations of Tenant, to make any such payment or to perform any such other act on behalf of Tenant in accordance with this Lease. All sums so paid by Landlord and all costs incurred or paid by Landlord shall be deemed additional rent hereunder and Tenant shall pay the same to Landlord on written demand, together with interest on all such sums and costs from the date of expenditure by Landlord to the date of repayment by Tenant at the rate of ten percent (10%) per annum.

D. ABANDONED PROPERTY**.** If Tenant abandons the Premises, or is dispossessed by process of law or otherwise, any movable furniture, equipment, trade fixtures or personal property belonging to Tenant and left in the Premises shall be deemed to be abandoned, at the option of Landlord, and Landlord shall have the right to sell or otherwise dispose of such personal property in any commercially reasonable manner.

E. SIGNAGE: All signage that will be visible from the exterior of the Buildings must be approved, in writing, by Landlord before installation. It is the responsibility of the Tenant to obtain all necessary governmental permits required for signage approved by Landlord.

11.23 AMENDMENT. Unless otherwise provided in this Lease, this Lease may be amended, modified, or terminated only by a written instrument executed by Landlord and Tenant.

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Signature page to that certain LEASE AGREEMENT by and between **FORCO LLC**, a Nebraska limited liability company, as Landlord, and **Foreign CorporAid of Nebraska LLC,**a Nebraska limited liability company, as Tenant, concerning Premises located at 1703 North Harrison Street, O’Neill, NE 68768

**IN WITNESS WHEREOF**, Tenant and Landlord have caused this Lease to be duly executed as of the date first above written by their respective duly authorized officers.

  TENANT:

Foreign CorporAid of Nebraska LLC,

a Nebraska limited liability company

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Print Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title:\* [\_\_] Manager or [\_\_] Member or

[\_\_] Managing Member or

[\_\_] President as duly authorized officer

[\_\_] Other [Specify: \_\_\_\_\_\_\_\_\_\_\_\_]\*\*

\*Signatory above warrants and represents that he or she is duly and properly authorized and empowered with signature authority to sign for the entity above and bind it to the terms and conditions hereof. \*\*

\*\*If the individual signing the Lease for Tenant is indicated having a title of “Other” above, then as a condition to full execution and delivery hereof, there must be attached to this Lease, lawfully taken entity resolutions which establish his or her authority and empowerment to execute the Lease and bind the Tenant in all respects hereto.

LANDLORD:

FORCO LLC, a

Nebraska limited liablity company

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

Rob Wild

Authorized Signatory

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**EXHIBIT 1**

**LeaseA#7**

COMMERCIAL LEASE AGREEMENT

Exhibit 10.27

COMMERCIAL LEASE AGREEMENT

THIS LEASE (this “Lease”) dated this 14th day of February, 2023

BETWEEN:

MERCATOR LLC of XXX, Miami Beach FL 33141

Telephone: +++

(the “Landlord”)

OF THE FIRST PART

- AND -

Mercafink Inc. of XXX Miami Beach FL 33141

Telephone: (604) 356-100

(the “Tenant”)

OF THE SECOND PART

IN CONSIDERATION OF the Landlord leasing certain premises to the Tenant, the Tenant leasing those premises from the Landlord and the mutual benefits and obligations set forth in this Lease, the receipt and sufficiency of which consideration is hereby acknowledged, the Parties to this Lease (the “Parties”) agree as follows:

Definitions

1. When used in this Lease, the following expressions will have the meanings indicated:

a. “Additional Rent” means all amounts payable by the Tenant under this Lease except Base Rent, whether or not specifically designated as Additional Rent elsewhere in this Lease;

b. “Building” means all buildings, improvements, equipment, fixtures, property and facilities from time to time located at XXX, Miami Beach FL 33141, as from time to time altered, expanded or reduced by the Landlord in its sole discretion;

c. “Common Areas and Facilities” mean:

i. those portions of the Building areas, buildings, improvements, facilities, utilities, equipment and installations in or forming part of the Building which from time to time are not designated or intended by the Landlord to be leased to tenants of the Building including, without limitation, exterior weather walls, roofs, entrances and exits, parking areas, driveways, loading docks and area, storage, mechanical and electrical rooms, areas above and below leasable premises and not included within leasable premises, security and alarm equipment, grassed and landscaped areas, retaining walls and maintenance, cleaning and operating equipment serving the Building; and

ii. those lands, areas, buildings, improvements, facilities, utilities, equipment and installations which serve or are for the useful benefit of the Building, the tenants of the Building or the Landlord and those having business with them, whether or not located within, adjacent to or near the Building and which are designated from time to time by the Landlord as part of the Common Areas and Facilities;

d. “Leasable Area” means with respect to any rentable premises, the area expressed in square feet of all floor space including floor space of mezzanines, if any, determined, calculated and certified by the Landlord and measured from the exterior face of all exterior walls, doors and windows, including walls, doors and windows separating the rentable premises from enclosed Common Areas and Facilities, if any, and from the center line of all interior walls separating the rentable premises from adjoining rentable premises. There will be no deduction or exclusion for any space occupied by or used for columns, ducts or other structural elements;

e. “Premises” means the office space at XXX, Miami Beach FL 33141.

f. “Rent” means the total of Base Rent and Additional Rent.

Page 1 of 7

Intent of Lease

2. It is the intent of this Lease and agreed to by the Parties to this Lease that rent for this Lease will be on a gross rent basis meaning the Tenant will pay the Base Rent and any Additional Rent and the Landlord will be responsible for all other service charges related to the Premises and the operation of the Building save as specifically provided in this Lease to the contrary.

Leased Premises

3. The Landlord agrees to rent to the Tenant the office space municipally described as XXX, Miami Beach FL 33141 (the “Premises”).

4. The Premises will be used for only the following permitted use: Corporate office address and registered office for MERCAFINK. (the “Permitted Use”).

5. No pets or animals are allowed to be kept in or about the Premises or in any common areas in the Building containing the Premises.

6. Subject to the provisions of this Lease, the Tenant is entitled to the use of parking (the “Parking”) on or about the Premises. Only properly insured motor vehicles may be parked in the Tenant’s Parking.

Term

7. The term of the Lease commences at 12:00 noon on February 15, 2023 and ends at 12:00 noon on February 28, 2025 (the “Term”).

8. Should the Tenant remain in possession of the Premises with the consent of the Landlord after the natural expiration of this Lease, a new tenancy from month to month will be created between the Landlord and the Tenant which will be subject to all the terms and conditions of this Lease but will be terminable upon either party giving one month’s notice to the other party.

Rent

9. Subject to the provisions of this Lease, the Tenant will pay a base rent of $850.00, payable per month, for the Premises (the “Base Rent”), without setoff, abatement or deduction. In addition to the Base Rent, the Tenant will pay for any fees or taxes arising from the Tenant’s business.

10. The Tenant will pay the Base Rent on or before the first of each and every month of the Term to the Landlord.

11. The Base Rent for the Premises will increase over the Term of the Lease as follows: Each year rent will increase by 10%

12. The Tenant will be charged an additional amount of $100.00 per day for any Rent that is received after the due date.

13. No acceptance by the Landlord of any amount less than the full amount owed will be taken to operate as a waiver by the Landlord for the full amount or in any way to defeat or affect the rights and remedies of the Landlord to pursue the full amount.

Use and Occupation

14. The Tenant will open the whole of the Premises for business to the public fully fixtured, stocked and staffed on the date of commencement of the Term and throughout the Term, and will continuously occupy and utilize the entire Premises in the active conduct of its business in a reputable manner on such days and during such hours of business as may be determined from time to time by the Landlord.

15. The Tenant covenants that the Tenant will carry on and conduct its business from time to time carried on upon the Premises in such manner as to comply with all statutes, bylaws, rules and regulations of any federal, state, municipal or other competent authority and will not do anything on or in the Premises in contravention of any of them.

16. The Tenant covenants that the Tenant will carry on and conduct its business from time to time carried on upon the Premises in such manner as to comply with any statute, including any subordinate legislation, which is in force now or in the future and taking into account any amendment or re-enactment, or any government department, local authority, other public or competent authority or court of competent jurisdiction and of the insurers in relation to the use, occupation and enjoyment of the Building (including in relation to health and safety compliance with the proper practice recommended by all appropriate authorities).

Page 2 of 7

Advance Rent and Security Deposit

17. On execution of this Lease, the Tenant will pay the Landlord advance rent (the “Advance Rent”) to be held by the Landlord without interest and to be applied on account of the first and last installments of Base Rent as they fall due and to be held to the extent not so applied as security for and which may be applied by the Landlord to the performance of the covenants and obligations of the Tenant under this Lease.

18. On execution of this Lease, the Tenant will pay the Landlord a security deposit equal to the amount of $10,000.00 (the “Security Deposit”) to be held by the Landlord without interest. The Landlord will return the Security Deposit to the Tenant at the end of this tenancy, less such deductions as provided in this Lease but no deduction will be made for damage due to reasonable wear and tear.

19. The Tenant may not use the Security Deposit as payment for the Rent.

Quiet Enjoyment

20. The Landlord covenants that on paying the Rent and performing the covenants contained in this Lease, the Tenant will peacefully and quietly have, hold, and enjoy the Premises for the agreed term.

Distress

21. If and whenever the Tenant is in default in payment of any money, whether hereby expressly reserved or deemed as Rent, or any part of the Rent, the Landlord may, without notice or any form of legal process, enter upon the Premises and seize, remove and sell the Tenant’s goods, chattels and equipment from the Premises or seize, remove and sell any goods, chattels and equipment at any place to which the Tenant or any other person may have removed them, in the same manner as if they had remained and been distrained upon the Premises, all notwithstanding any rule of law or equity to the contrary, and the Tenant hereby waives and renounces the benefit of any present or future statute or law limiting or eliminating the Landlord’s right of distress.

Overholding

22. If the Tenant continues to occupy the Premises without the written consent of the Landlord after the expiration or other termination of the Term, then, without any further written agreement, the Tenant will be a month-to-month tenant at a minimum monthly rental equal to twice the Base Rent and subject always to all of the other provisions of this Lease insofar as the same are applicable to a month-to-month tenancy and a tenancy from year to year will not be created by implication of law.

Additional Rights on Reentry

23. If the Landlord reenters the Premises or terminates this Lease, then:

a. notwithstanding any such termination or the Term thereby becoming forfeited and void, the provisions of this Lease relating to the consequences of termination will survive;

b. the Landlord may use such reasonable force as it may deem necessary for the purpose of gaining admittance to and retaking possession of the Premises and the Tenant hereby releases the Landlord from all actions, proceedings, claims and demands whatsoever for and in respect of any such forcible entry or any loss or damage in connection therewith or consequential thereupon;

c. the Landlord may expel and remove, forcibly, if necessary, the Tenant, those claiming under the Tenant, and their effects, as allowed by law, without being taken or deemed to be guilty of any manner of trespass;

d. in the event that the Landlord has removed the property of the Tenant, the Landlord may store such property in a public warehouse or at a place selected by the Landlord, at the expense of the Tenant. If the Landlord feels that it is not worth storing such property given its value and the cost to store it, then the Landlord may dispose of such property in its sole discretion and use such funds, if any, towards any indebtedness of the Tenant to the Landlord. The Landlord will not be responsible to the Tenant for the disposal of such property other than to provide any balance of the proceeds to the Tenant after paying any storage costs and any amounts owed by the Tenant to the Landlord;

Page 3 of 7

e. the Landlord may relet the Premises or any part of the Premises for a term or terms which may be less or greater than the balance of the Term remaining and may grant reasonable concessions in connection with such reletting including any alterations and improvements to the Premises;

f. after reentry, the Landlord may procure the appointment of a receiver to take possession and collect rents and profits of the business of the Tenant, and, if necessary to collect the rents and profits the receiver may carry on the business of the Tenant and take possession of the personal property used in the business of the Tenant, including inventory, trade fixtures, and furnishings, and use them in the business without compensating the Tenant;

g. after reentry, the Landlord may terminate the Lease on giving 5 days’ written notice of termination to the Tenant. Without this notice, reentry of the Premises by the Landlord or its agents will not terminate this Lease;

h. the Tenant will pay to the Landlord on demand:

i. all rent, Additional Rent and other amounts payable under this Lease up to the time of reentry or termination, whichever is later;

ii. reasonable expenses as the Landlord incurs or has incurred in connection with the reentering, terminating, reletting, collecting sums due or payable by the Tenant, realizing upon assets seized; including without limitation, brokerage, fees and expenses and legal fees and disbursements and the expenses of keeping the Premises in good order, repairing the same and preparing them for reletting; and

iii. as liquidated damages for the loss of rent and other income of the Landlord expected to be derived from this Lease during the period which would have constituted the unexpired portion of the Term had it not been terminated, at the option of the Landlord, either:

i. an amount determined by reducing to present worth at an assumed interest rate of twelve percent (12%) per annum all Base Rent and estimated Additional Rent to become payable during the period which would have constituted the unexpired portion of the Term, such determination to be made by the Landlord, who may make reasonable estimates of when any such other amounts would have become payable and may make such other assumptions of the facts as may be reasonable in the circumstances; or

ii. an amount equal to the Base Rent and estimated Additional Rent for a period of six (6) months.

Renewal of Lease

24. Upon giving written notice no later than 60 days before the expiration of the Term, the Tenant may renew this Lease for an additional term. All terms of the renewed lease will be the same except for any signing incentives/inducements and this renewal clause and the amount of the rent. If the Landlord and the Tenant cannot agree as to the amount of the Rent, the amount of the Rent will be determined by mediation. The Rent should be determined taking into consideration the market rent of similarly improved premises in the market, as well as the location, use, age, and size of premises.

Landlord Improvements

25. The Landlord will make the following improvements to the Premises:

a. Dedicated wall build out with storage closest and access to an exterior door and bathroom.

Landlord Chattels

26. The Landlord will not supply any chattels.

Tenant Improvements

27. The Tenant will obtain written permission from the Landlord before doing any of the following:

a. painting, wallpapering, redecorating or in any way significantly altering the appearance of the Premises;

b. removing or adding walls, or performing any structural alterations;

c. changing the amount of heat or power normally used on the Premises as well as installing additional electrical wiring or heating units;

d. subject to this Lease, placing or exposing or allowing to be placed or exposed anywhere inside or outside the Premises any placard, notice or sign for advertising or any other purpose;

e. affixing to or erecting upon or near the Premises any radio or TV antenna or tower, or satellite dish; or

f. installing or affixing upon or near the Premises any plant, equipment, machinery or apparatus without the Landlord’s prior consent.

Page 4 of 7

Utilities and Other Costs

28. The Landlord is responsible for the payment of the following utilities and other charges in relation to the Premises: electricity, natural gas, water, sewer, telephone, internet and cable.

Insurance

29. The Tenant is hereby advised and understands that the personal property of the Tenant is not insured by the Landlord for either damage or loss, and the Landlord assumes no liability for any such loss. The Tenant is advised that, if insurance coverage is desired by the Tenant, the Tenant should inquire of Tenant’s insurance agent regarding a Tenant’s policy of insurance.

Abandonment

30. If at any time during the Term, the Tenant abandons the Premises or any part of the Premises, the Landlord may, at its option, enter the Premises by any means without being liable for any prosecution for such entering, and without becoming liable to the Tenant for damages or for any payment of any kind whatever, and may, at the Landlord’s discretion, as agent for the Tenant, relet the Premises, or any part of the Premises, for the whole or any part of the then unexpired Term, and may receive and collect all rent payable by virtue of such reletting, and, at the Landlord’s option, hold the Tenant liable for any difference between the Rent that would have been payable under this Lease during the balance of the unexpired Term, if this Lease had continued in force, and the net rent for such period realized by the Landlord by means of the reletting. If the Landlord’s right of reentry is exercised following abandonment of the premises by the Tenant, then the Landlord may consider any personal property belonging to the Tenant and left on the Premises to also have been abandoned, in which case the Landlord may dispose of all such personal property in any manner the Landlord will deem proper and is relieved of all liability for doing so.

Governing Law

31. It is the intention of the Parties to this Lease that the tenancy created by this Lease and the performance under this Lease, and all suits and special proceedings under this Lease, be construed in accordance with and governed, to the exclusion of the law of any other forum, by the laws of the State of Florida, without regard to the jurisdiction in which any action or special proceeding may be instituted.

Severability

32. If there is a conflict between any provision of this Lease and the applicable legislation of the State of Florida (the ‘Act’), the Act will prevail and such provisions of the Lease will be amended or deleted as necessary in order to comply with the Act. Further, any provisions that are required by the Act are incorporated into this Lease.

Assignment and Subletting

33. The Tenant will not assign this Lease in whole or in part, nor sublet all or any part of the Premises, nor grant any license or part with possession of the Premises or transfer to any other person in whole or in part or any other right or interest under this Lease (except to a parent, subsidiary or affiliate of the Tenant), without the prior written consent of the Landlord in each instance, which consent will not be unreasonably withheld so long as the proposed assignment or sublease complies with the provisions of this Lease.

34. Notwithstanding any assignment or sublease, the Tenant will remain fully liable on this Lease and will not be released from performing any of the terms, covenants and conditions of this Lease.

35. If the Lease is assigned or if the Premises or any part of the Premises are sublet or occupied by anyone other than the Tenant, the Landlord may collect rent directly from the assignee, subtenant or occupant, and apply the net amount collected, or the necessary portion of that amount, to the rent owing under this Lease.

36. The prohibition against assigning or subletting without the consent required by this Lease will be constructed to include a prohibition against any assignment or sublease by operation of law.

37. The consent by the Landlord to any assignment or sublease will not constitute a waiver of the necessity of such consent to any subsequent assignment or sublease.

Page 5 of 7

Bulk Sale

38. No bulk sale of goods and assets of the Tenant may take place without first obtaining the written consent of the Landlord, which consent will not be unreasonably withheld so long as the Tenant and the Purchaser are able to provide the Landlord with assurances, in a form satisfactory to the Landlord, that the Tenant’s obligations in this Lease will continue to be performed and respected, in the manner satisfactory to the Landlord, after completion of the said bulk sale.

Care and Use of Premises

39. The Tenant will promptly notify the Landlord of any damage, or of any situation that may significantly interfere with the normal use of the Premises.

40. Vehicles which the Landlord reasonably considers unsightly, noisy, dangerous, improperly insured, inoperable or unlicensed are not permitted in the Tenant’s parking stall(s), and such vehicles may be towed away at the Tenant’s expense. Parking facilities are provided at the Tenant’s own risk. The Tenant is required to park in only the space allotted to them.

41. The Tenant will not make (or allow to be made) any noise or nuisance which, in the reasonable opinion of the Landlord, disturbs the comfort or convenience of other tenants.

42. The Tenant will not engage in any illegal trade or activity on or about the Premises.

43. The Landlord and Tenant will comply with standards of health, sanitation, fire, housing and safety as required by law.

Surrender of Premises

44. At the expiration of the lease term, the Tenant will quit and surrender the Premises in as good a state and condition as they were at the commencement of this Lease, reasonable use and wear and damages by the elements excepted.

Hazardous Materials

45. The Tenant will not keep or have on the Premises any article or thing of a dangerous, flammable, or explosive character that might unreasonably increase the danger of fire on the Premises or that might be considered hazardous by any responsible insurance company.

Rules and Regulations

46. The Tenant will obey all rules and regulations posted by the Landlord regarding the use and care of the Building, parking lot and other common facilities that are provided for the use of the Tenant in and around the Building on the Premises.

General Provisions

47. Any waiver by the Landlord of any failure by the Tenant to perform or observe the provisions of this Lease will not operate as a waiver of the Landlord’s rights under this Lease in respect of any subsequent defaults, breaches or nonperformance and will not defeat or affect in any way the Landlord’s rights in respect of any subsequent default or breach.

48. This Lease will extend to and be binding upon and inure to the benefit of the respective heirs, executors, administrators, successors and assigns, as the case may be, of each party to this Lease. All covenants are to be construed as conditions of this Lease.

49. All sums payable by the Tenant to the Landlord pursuant to any provision of this Lease will be deemed to be Additional Rent and will be recoverable by the Landlord as rental arrears.

50. Where there is more than one Tenant executing this Lease, all Tenants are jointly and severally liable for each other’s acts, omissions and liabilities pursuant to this Lease.

51. Time is of the essence in this Lease.

52. This Lease will constitute the entire agreement between the Landlord and the Tenant. Any prior understanding or representation of any kind preceding the date of this Lease will not be binding on either party to this Lease except to the extent incorporated in this Lease. In particular, no warranties of the Landlord not expressed in this Lease are to be implied.

Page 6 of 7

IN WITNESS WHEREOF the Parties to this Lease have duly affixed their signatures under hand and seal, or by a duly authorized officer under seal, on this 14th day of February, 2023.

MERCATOR LLC (Landlord)

Per: (SEAL)

(Witness)

Mercafink Inc. (Tenant)

(Witness) Per: /s/ Mohammad Pashtun (SEAL)

**LeaseA#8**

EXHIBIT 10.6 OXFORD LEASE

**EXHIBIT 10.6**

LEASE AGREEMENT

THIS LEASE AGREEMENT (this “Lease”) is made this 3rd day of April, 2019, by and between Lodgingsolutions, LLC, a Delaware limited liability company with a mailing address of XXX, Connecticut 06870 (“Landlord”), and ABC CONSTRUCTION, INC., a Delaware corporation with a mailing address of YYY, Maine 04271 (“Tenant”). The parties hereby agree as follows:

LEASE INFORMATION AND DEFINITIONS

The following information and definitions are incorporated into and made a part of this Lease:

Leased Premises: The “Leased Premises” means certain land located in the Town of Oxford, County of Oxford, and State of Maine, and being more particularly described on Exhibit A, attached hereto and made a part hereof, together with all improvements thereon and all rights and easements appurtenant thereto (the “Real Property”), together with those certain items of personal property listed on Exhibit A-1, attached hereto and made a part hereof (the “Leased Personal Property”).

Term: The “Term” means:

(a) an “Initial Term,” being a period commencing on the Acquisition Date (as defined in Section 28) (the “Commencement Date”) and ending at 5:00 p.m. on March 31, 2029, subject to adjustment and earlier termination as provided in the Lease; and

(b) if Tenant duly exercises its option to extend the term of this Lease for one or both Extension Terms as provided in the Lease, then also each such Extension Term for which Tenant has duly exercised such option.

Extension Terms: The Extension Terms shall be two (2) separate, consecutive sixty (60) month periods (hereinafter referred to as “First Extension Term” and the “Second Extension Term,” respectively, and also referred to in the singular as an “Extension Term” and in the plural as the “Extension Terms”), all on the terms and conditions set forth in the Lease.

Rent Commencement Date: Tenant’s obligations to pay Base Rent shall commence on August 1, 2019 (the “Rent Commencement Date”), provided, however, that Tenant shall have the right, exercisable only by giving written notice to Landlord prior to June 1, 2019 (the “Rent Commencement Extension Notice”), to elect to defer the Rent Commencement Date until November 1, 2019.

1

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Base Rent: (a) In the event that Tenant does not give Landlord a timely Rent Commencement Extension Notice as provided herein, the Base Rent for the Leased Premises during the Initial Term shall be as set forth on Exhibit B, attached hereto and made a part hereof.

(b) In the event that Tenant gives Landlord a timely Rent Commencement Extension Notice as provided herein, the Base Rent for the Leased Premises during the Initial Term shall be as set forth on Exhibit C, attached hereto and made a part hereof.

(c) The Base Rent for the Leased Premises for each year of each Extension Term shall be shall be an amount which is equal to 100% of the prevailing market rates in effect at the time of Tenant’ s exercise of its extension right for property comparable to the Leased Premises in the vicinity of the Leased Premises (and, for clarity, shall include annual escalators consistent with such prevailing market), all as determined by a licensed commercial real estate broker or appraiser doing business in the greater Portland, Maine vicinity and chosen by Landlord, but in no event shall Base Rent for any year of any Extension Term be less than the Base Rent payable for the immediately preceding year of the Term.

Rent: The term “Rent” means Base Rent and all other sums payable by Tenant under this Lease.

Taxes: Without limiting the “net” nature of this Lease as provided in herein, Tenant shall pay all Taxes (as defined in this Lease).

Utilities: Without limiting the “net” nature of this Lease as provided herein, Tenant shall contract for and pay for all Utilities (as defined in this Lease).

Operating Expenses; Maintenance and Repairs: Without limiting the “net” nature of this Lease as provided herein, Tenant shall pay 100% of all costs and expenses associated with the use, occupancy, operation, maintenance, repair, and/or replacement of the Leased Premises.

Permitted Use:

Subject in all events to the terms and conditions of the Lease, the Leased Premises shall be used only for purposes of a facility for the manufacture of modular homes and other components of modular home construction and associated administrative and general business offices of Tenant in connection therewith.

1. Leased Premises. Landlord leases to Tenant, in consideration of the Rent to be paid by Tenant and subject to the terms and conditions set forth herein, the Leased Premises. Tenant agrees that Tenant accepts and is leasing the Leased Premises in their “as is” condition.

2.    Commencement and Term. The term of this Lease shall commence on the Commencement Date and shall be the Lease Term, unless earlier terminated or extended by mutual agreement of the parties or as otherwise provided in this Lease.

3.    Rent; Net Lease.

(a)    Tenant covenants and agrees to pay to Landlord at its address as set forth in the preamble to this Lease or at such other place as Landlord shall from time to time designate in writing, during the Lease Term, the Base Rent, without holdback or set-off, in advance, commencing on the Rent Commencement Date and continuing thereafter on the first day of each calendar month during the Lease Term. All other items of Rent shall be paid, without holdback or set-off, in accordance with the terms of this Lease. If any payment of Rent is received by Landlord more than five (5) days after the date when such payment is due, a late charge of five percent (5%) of the past due payment shall be assessed, due and payable immediately and without notice.

(b)    Landlord and Tenant acknowledge and agree that this Lease is intended to constitute, and shall constitute, an absolutely ‘net” Lease such that the Rent shall provide Landlord with a “net” return for the Term, free of all expenses and charges with respect to the Leased Premises, all of which shall be Tenant’s responsibility. Accordingly, Tenant shall pay as additional Rent and discharge, at the times specified herein, or if no time is specified, before failure to pay the same shall give rise to any interest or penalty or create any risk of lien or forfeiture, each and every item of expense, of every kind and nature whatsoever, foreseen or unforeseen, ordinary or extraordinary, related to or arising from the Leased Premises, or by reason of, or in any manner connected with or arising from, the development, leasing, operation, management, maintenance, repair, replacement, use, and/or occupancy of the Leased Premises.

4.    (Reserved.)

5.    (Reserved.)

6.    Permitted Use; Compliance with Laws.

(a)    Tenant agrees to use and occupy the Leased Premises for the Permitted Use, and for no other purpose without the written consent of Landlord, and further agrees not to use the Leased Premises for any purpose deemed extra hazardous or not covered by insurance. Tenant acknowledges and agrees that Landlord shall have the right to adopt reasonable rules and regulations for the use and/or occupancy of the Leased Premises and Tenant agrees that it shall at all times observe and comply with such rules and regulations.

(b)    Tenant agrees to abide by and comply with all Laws (as hereafter defined) applicable to the Leased Premises and/or the use or occupancy of the Leased Premises. It is the responsibility of Tenant to determine all zoning information and secure all necessary permits, licenses, and approvals for Tenant’s use and occupancy of the Leased Premises. Without limiting the generality of the foregoing, Tenant agrees to maintain in full force and effect, during the Lease Term, at Tenant’s cost and expense, all permits, licenses, registrations, and approvals required under applicable Laws for the use and/or occupancy of the Leased Premises. Without limiting the “AS IS” nature of this Lease, Tenant acknowledges and agrees that Landlord has not made and is not making any representations or warranties as to the suitability of, or the ability to obtain any permits or approvals for, Tenant’s intended use of the Leased Premises.

(c)    As used in this Lease, the term “Laws” means all federal, state, municipal or similar statute, law, ordinance, regulation, rule, code, order, requirement or rule of law (including common law).

3

7.    Taxes.

(a)    Tenant shall be responsible for the prompt payment of all taxes, levies, betterments, and assessments, and governmental impositions of every kind or nature, whether now existing or hereafter created, general or special, ordinary or extraordinary, foreseen or unforeseen, that may be charged, assessed, laid, levied, or imposed upon, or become a lien or liens against, the Leased Premises (including the Real Property and the Leased Personal Property) or this Lease, including any amount that Landlord may be required to pay to any governmental authority as sales tax, gross receipt tax, or any tax of like nature specifically measured as a percentage of, or fraction of, or other factors based upon the all or any portion of the Rent payable hereunder (whether in lieu of, or in addition to the current system of real estate taxation) (all amounts payable under this Section being referred to herein as “Taxes”).

(b)    Tenant shall pay all Taxes, at Landlord’s option, either (i) to Landlord as additional Rent in estimated monthly installments, with the actual amount of Taxes reconciled against such estimated monthly installments annually and, within thirty (30) days of such reconciliation, Landlord remitting to Tenant the amount by which the payment of estimated Taxes exceeds the actual Taxes for such annual period (provided Tenant is not then in breach of this Lease), or Tenant paying to Landlord the amount by which the actual Taxes for such annual period exceeds the estimated payments made by Tenant to Landlord; or (ii) to Landlord within thirty (30) days after Landlord makes demand therefor, with copies of any bills for Taxes; or (iii) directly to the taxing authority, in which event Tenant shall provide to Landlord evidence of the prompt payment of all Taxes prior to the date the same are due without the accrual of any interest on such Taxes.

8.    Utilities.

(a)    Tenant shall make arrangements for, and pay on or before the date the same become due, all charges for or relating to gas, oil, electricity, water, sewer, septic, telecommunications, and all other services used at or supplied to the Leased Premises (collectively, “Utilities”).

(b)    Landlord shall in no way be liable for any loss, expense, or damage (whether direct or indirect) that Tenant may sustain or incur by reason of any change, failure, interference, disruption, interruption, or defect in the supply or character of any Utilities serving the Leased Premises, regardless of its duration, or if the quantity or character of Utilities become unavailable to the Leased Premises or no longer suitable for Tenant’s requirements. Additionally, any such change, failure, interference, disruption, interruption, defect, unavailability, or unsuitability mentioned in this Section shall not: (i) constitute an actual or constructive eviction of Tenant, in whole or in part; (ii) entitle Tenant to any abatement or diminution of Rent, or any other costs due from Tenant pursuant to this Lease; (iii) relieve or release Tenant from any of its obligations under this Lease; or (iv) entitle Tenant to terminate this Lease.

4

9.    Operation, Maintenance and Repairs.

(a)    Tenant agrees that from and after the Commencement Date, Tenant will keep neat and clean and maintain in good and safe order, condition and repair, and in compliance with all Laws the entirety of the Leased Premises, including any and all alterations or improvements to the Leased Premises occurring after the date of this Lease. Tenant agrees to pay the costs for cleaning and janitorial services relating to the Leased Premises (including trash removal and trash hauling), which services shall be provided or caused to be provided by Tenant. Tenant shall be responsible for the plowing, shoveling, and treatment of snow and ice and all grounds keeping, including all landscaping and sweeping of pavement and other hardscaped surfaces. Tenant shall be responsible for all items of maintenance and all repairs to and replacements (except as otherwise provided in Section 18) of all buildings and improvements and all Building Systems (as hereafter defined), and all foundations, structural supports, walls, ceilings, windows (including plate glass), siding, roof structure, roofing materials, doors, plate glass, driveways, parking areas, fences and signs located in, on or at the Leased Premises) that the Leased Premises may require from time to time during the Term, whether interior or exterior, structural or non-structural, ordinary or extra-ordinary, foreseen or unforeseen, all to keep the Leased Premises in good and safe order, condition, and repairs, and in at least as good condition as the Leased Premises are in on the Commencement Date. The term “Building Systems” means all heating systems, ventilating systems, air conditioning systems, fire alarm systems, sprinkler systems, and other life safety systems, septic systems, water supply systems (including any water treatment or filtration systems), plumbing systems, electrical systems, storm water management facilities, and all other systems located at or serving the Real Property.

(b)    Without limiting the generality of sub-section (a) of this Section, Tenant shall procure and maintain, with qualified vendors reasonably acceptable to Landlord, contracts providing for periodic inspections and maintenance of the heating, ventilating, and air conditioning (HVAC) systems, fire alarm, sprinkler, and life safety systems, the septic system (if any), the crane(s) and related appurtenances in the building, and the Hundegger saw, at such intervals as are reasonably required by Landlord, but in all events at least annually.

5

10.    Alterations, Renovations and Improvements. Tenant shall not make any alterations, renovations or improvements to the Leased Premises without obtaining Landlord’s prior written consent to the plans and specifications therefor and the contractor(s) to be retained by Tenant to perform such work, which shall not be unreasonably withheld, conditioned, or delayed in the case of cosmetic renovations that do not affect the structural elements of the improvements, the roof(s) of any buildings, or any of the Building Systems, but otherwise shall be in Landlord’s sole discretion. Prior to any contractor or subcontractor (of any tier) providing or furnishing any labor, materials, or services in connection with any alterations, renovations, or improvements, Tenant shall obtain and furnish to Landlord the name and address of each such contractor and subcontractor. In addition, prior to any such labor, materials, or services being provided or furnished, Tenant shall furnish to Landlord a mechanic’s lien waiver and notice to prevent lien in a form prescribed by Landlord, duly executed by each such contractor or subcontractor who will furnish or provide labor, materials, and/or services. Tenant shall ensure that all such alterations, renovations and improvements are performed in a good and workmanlike and in compliance with all applicable Laws. In the event any lien is filed against the Leased Premises in connection with or arising out of any work performed at or materials, labor or other services supplied to the Leased Premises, Tenant shall cause the same to be discharged within thirty (30) days after such lien is filed. Tenant shall indemnify and hold Landlord harmless from and against all claims, demands, liabilities, liens, losses, costs and expenses (including reasonable attorneys’ fees) which may arise or be incurred by Landlord as a direct or indirect result of or in connection with such alterations, renovations and improvements, and Tenant shall be responsible for all costs, liabilities, and expenses arising out of such alterations, renovations and/or improvements. All alterations, renovations and improvements which may be made or installed by or on behalf of Tenant upon the Leased Premises and which in any manner are attached to the floors, walls or ceilings shall, at Landlord’s option, remain upon the Leased Premises, and, upon termination of this Lease, shall be surrendered with the Leased Premises as a part thereof without disturbance, molestation or injury, provided, however, that Tenant’s furniture, equipment, other personal property, and trade fixtures (which, for avoidance of doubt, shall in no event include the Leased Personal Property or the crane(s) or related appurtenances located at the Leased Premises) may be removed by Tenant from the Leased Premises upon the expiration or termination of this Lease, subject to the provisions relating to removal thereof as provided in this Lease.

11.    Signs. Tenant shall have the right to maintain the existing signage at the Real Property as of the Commencement Date and shall have the right to install additional signage that does not affect the structural elements of the improvements, the roof(s) of any buildings, or any of the Building Systems, provided, however, that all signage shall be at Tenant’s sole cost and expense, and shall comply with all applicable Laws.

6

12.    Surrender; Holdover. Tenant shall vacate and surrender the Leased Premises to Landlord at the expiration or sooner termination of the Lease Term and the same shall be in the same condition as Tenant is required to maintain the same during the Lease Term, free of all of Tenant’s personal property except as may otherwise be provided herein, “broom clean,” and otherwise in accordance with the provisions of the Lease. Tenant shall have no right to holdover beyond the expiration of the Lease Term. If Tenant continues to occupy the Leased Premises after the end of the Lease Term, such continued occupancy shall be deemed a tenancy-at-sufferance even if Landlord accepts any payment from Tenant, but in the event that a court of competent jurisdiction deems such acceptance of a payment to constitute acceptance of “rent”, such acceptance shall create no rights in Tenant beyond a tenancy-at-will under the terms and conditions stated herein but at a Base Rent rate equal to one hundred fifty percent (150%) of the Base Rent applicable immediately preceding the end of the Lease Term, plus all additional Rent, until (i) Tenant shall vacate the Leased Premises; (ii) the termination of the tenancy-at-will; or (iii) Landlord shall give notice of a different rental amount. Nothing contained in this Section shall be deemed to (a) constitute consent by Landlord to such occupancy or holdover by Tenant; (b) confer any rights on Tenant as more than a tenant-at-sufferance or, if Landlord accepts any rental payments applicable to such period of holding over, a tenant-at-will; or (c) relieve Tenant from liability for damages suffered by Landlord as a result of such holding over.

13.    Removal of Tenant’s Property. Tenant’s trade fixtures, personal property, furniture and equipment, other than those items which are to remain or which Landlord elects to have remain at the Leased Premises as provided in Section 10 of this Lease, may be removed by Tenant at the termination of this Lease, provided (a) Tenant is not then be breach of any provision of this Lease; (b) such removal shall not cause any material damage to any portion of the Leased Premises, and any other damage created by such removal shall be repaired by Tenant at Tenant’s expense prior to the expiration of the Lease Term to at least as good condition as existed when possession of the Leased Premises was delivered to Tenant; and (c) such removal shall be made before the termination of the Lease Term.

14.    Subletting and Assignment. Tenant shall not assign this Lease, in whole or in part, or sublet the Leased Premises or any portion thereof, or encumber the leasehold interest created by this Lease in any manner (including the creation of any security interest in or other pledge of or lien upon the Leased Personal Property) without the prior written consent of Landlord, which may be withheld in Landlord’s sole discretion during the first twenty-four full calendar months of the Term, and thereafter will not be unreasonably withheld. No assignment or sublease shall operate to release Tenant from any of its obligations under this Lease. Each sublease of the Leased Premises or any portion thereof must contain a release of and waiver of claims against Landlord and the other Releasees (as that term is defined in this Lease), in form and content acceptable to Landlord, and must require the subtenant’s property insurer to issue in favor of Landlord and the other Releasees waiver of subrogation rights endorsements to all policies of property insurance carried in connection with the Leased Premises and the contents thereof. Every transfer by levy or sale on execution, or other legal process, every transfer in bankruptcy, every transfer by merger, consolidation, or by operation of Law, every transfer of a controlling interest in Tenant, and every transfer under any compulsory procedure or order of court shall be deemed to constitute an “assignment” within the meaning of this Lease. Any attempted assignment or sublease in violation of this Section shall, at Landlord’s option, be void and shall constitute a default under this Lease. Consent by Landlord to an assignment or sublease in one instance shall not operate to release the requirement that consent from Landlord be obtained for any further or subsequent assignment or sublease. Tenant shall pay all fees and expenses, including reasonable attorneys’ fees, incurred by Landlord in connection with any proposed subletting or assignment, irrespective of whether Landlord’s consent is in fact granted.

7

15.    Indemnification and Insurance.

(a)    Tenant agrees to maintain in full force during the Lease Term insurance as follows:

(i)     commercial general liability insurance, written on an occurrence basis, with a deductible in an amount not to exceed $10,000.00, and providing:

(A)     minimum limits of (y) $1,000,000.00 per occurrence with $3,000,000.00 annual aggregate limit for bodily injury (including death) and property damage; and (z) $3,000,000.00 in the annual aggregate with respect to products and completed operations;

(B)     coverage for damages arising out of bodily injury (including death) sustained by any person or persons or arising out of damage to or destruction of property;

(C)    coverage for damages arising out of premises liability, personal injury and advertising injury;

(D)    pollution liability coverage for sudden and accidental pollution;

(E)    for extension of such coverage to include liability for the operation of non-owned motor vehicles;

(F)    specific coverage for Tenant’s indemnification obligations under this Lease (but neither this provision nor such coverage shall be deemed to limit any of Tenant’s obligations under this Lease);

(G)     that Tenant’s commercial general liability insurance is provided on a primary and non-contributory basis;

(H)    that Landlord, Landlord’s mortgagee(s) of the Leased Premises from time-to-time (if any), and any other persons reasonably designated in writing by Landlord from time-to-time are named as additional insureds by an endorsement provided on ISO Form 2026 (1185) or its equivalent, without modification, or such other endorsement as is acceptable to Landlord, acting reasonably; and

(I)    for waiver of subrogation in favor of Landlord, Landlord’s mortgagee(s) of the Leased Premises from time-to-time (if any), and any other persons reasonably designated in writing by Landlord from time-to-time.

(ii)    Automobile liability insurance covering all motor vehicles owned, leased, or licensed by Tenant, covering injury to or death of one or more persons or damage to or destruction of property, with a minimum limit of liability of $3,000,000.00 for each accident.

(iii)    Workers compensation insurance in accordance with the requirements of all applicable Laws, and employers liability insurance with limits of at least $1,000,000.00, with such workers compensation insurance and employers liability insurance providing for waiver of subrogation in favor of Landlord, its mortgagee(s) of the Leased Premises from time-to-time (if any), and any other persons reasonably designated in writing by Landlord from time-to-time.

(iv)    Umbrella excess liability insurance in a minimum amount of $10,000,000.00, on a following form basis over the insurance described in clauses (i) through (iii), above.

8

(v)    Special causes of loss form (also sometimes known as “all risk”) property insurance insuring, on a replacement cost basis (without any deduction for depreciation), all personal property and trade fixtures owned by or within the care, custody or control of Tenant (including the Leased Personal Property), with limits in an amount of not less than one hundred percent (100%) of the full replacement cost of such property, without co-insurance provisions, and with a deductible of not more than $10,000.00, and with Landlord (and Landlord’s mortgagee(s) of the Leased Premises from time-to-time) named as loss payee(s) with respect to the Leased Personal Property and additional insured(s). Such policy(ies) of property insurance must insure against fire, sprinkler leakages, and earthquake, flood and collapse, and all other perils as are from time to time included in the standard special causes of loss form (also sometimes known as “all risk”) coverage;

(vi)    Until such time, if any, as Landlord elects to carry property insurance for the buildings and improvements located on the Leased Premises, special causes of loss form (also sometimes known as “all risk”) property insurance insuring, on a replacement cost basis (without any deduction for depreciation), all buildings and improvements (including fixtures) located on the Leased Premises, with limits in an amount of not less than one hundred percent (100%) of the full replacement cost of such buildings and improvements, and in all events sufficient at all times to avoid causing the insured to be or become a co-insurer, and with a deductible of not more than $10,000.00, and with Landlord (and Landlord’s mortgagee(s) of the Leased Premises from time-to-time) named as loss payee(s) and additional insured(s). Such policy(ies) of property insurance must insure against fire, sprinkler leakages, and earthquake, flood and collapse, and all other perils as are from time to time included in the standard special causes of loss form (also sometimes known as “all risk”) coverage;

(vii)    business interruption insurance covering all of Tenant’s obligations under this Lease with respect to the payment of Rent for a period of at least eighteen (18) months.

(viii)    Such other insurance policies, such other endorsements, such other deductibles, and/or such other insurance policy limits as may from time to time be reasonably required by Landlord, provided that, at the time, such other insurance policies, endorsements, deductibles, and/or insurance policy limits are commonly carried for premises and/or buildings or improvements similar in construction, design, general location, use, operation, and occupancy to those located on or appurtenant to the Leased Premises or for operations similar to those conducted on or from the Leased Premises.

(b)    Without limiting the exculpatory provisions of this Lease, each policy of property insurance maintained by Tenant under this Lease shall contain waivers of subrogation in favor of Landlord and all other Releasees.

(c)    All insurance required to be obtained and maintained by Tenant pursuant to this Section must be with insurers authorized to transact insurance business and cover risks in the State of Maine and that are rated “A-“ or better by A.M. Best Company, Inc. or other insurance companies of recognized responsibility acceptable to Landlord, acting reasonably.

(d)    The policies of insurance required to be maintained by Tenant under this Lease shall be endorsed to require that each policy will not be cancelled or materially changed without at least thirty (30) days prior written notice to Landlord.

(e)    Tenant shall deliver to Landlord copies of each policy of insurance (including all endorsements) required to be maintained by Tenant under this Lease or such other evidence of each such policy of insurance (and all required endorsements) as is acceptable to Landlord, acting reasonably.

9

(f)    If Tenant fails to obtain, maintain and/or pay for the insurance required by this Lease at the times and for the amounts and duration specified herein, Landlord has the right, but not the obligation, at any time and from time to time, to obtain such insurance and/or pay the premiums for such insurance, without limiting any other rights or remedies available to Landlord for such failure. In such event, Tenant shall repay Landlord, immediately upon demand, all sums so paid by Landlord and all costs and expenses incurred by Landlord in connection therewith (including reasonable attorneys’ fees), all without prejudice to any other rights or remedies available to Landlord.

(g)    Landlord shall have the right, at any time during the Term, to elect, by giving written notice to Tenant, to carry property insurance for the buildings and improvements located on the Leased Premises, in which event, Tenant shall pay to Landlord the amount of all premiums for such property insurance procured and maintained by Landlord with respect to the Real Property. Tenant shall pay such amounts to Landlord in estimated monthly installments, with the actual amount of incurred by Landlord for such premiums being reconciled against such estimated monthly installments annually and, within thirty (30) days of such reconciliation, Landlord remitting to Tenant the amount by which the payment of estimated premiums exceeds the actual premiums for such annual period (provided Tenant is not then in breach of this Lease), or Tenant paying to Landlord the amount by which the actual premiums for such annual period exceeds the estimated payments made by Tenant to Landlord.

(h)    Tenant acknowledges and agrees that such property insurance as Landlord elects to purchase with respect to the Real Property shall be for the sole benefit of Landlord and that such insurance shall not cover any personal property, trade fixtures, leasehold improvements, or other property or appurtenances owned by or within the care, custody, or control of Tenant, or otherwise located in the Leased Premises (collectively, “Tenant’s Property”) and that in the event of damage to or loss of any of Tenant’s Property, neither Landlord, its mortgagee(s) of the Leased Premises from time-to-time (if any), nor any of the shareholders, members, directors, managers, officers, employees, or agents of Landlord or any such mortgagee(s) (each in the singular “Releasee”, and in the plural, “Releasees”) shall have any obligation to repair or replace the same. Notwithstanding any exception to Tenant’s indemnification obligations under this Lease, Tenant does hereby expressly release all Releasees of and from, and agrees to indemnify, hold harmless, and defend Releasees from and against, any and all claims for damages to or loss of any of Tenant’s Property, regardless of the cause thereof, including, damage or loss due to any Releasee’s negligence.

(i)    Tenant shall indemnify and hold all Releasees harmless and, if requested by Landlord, defend such Releasee(s) with counsel reasonably satisfactory to Landlord, from and against any and all liabilities, losses, claims, causes of action, damages, costs, and expenses (including reasonable attorney’s fees) incurred by or threatened against any Releasee arising out of (i) any occurrence on the Leased Premises or the use of the Leased Premises by Tenant, its employees, agents, licensees, or invitees, except to the extent caused by the negligence or willful misconduct of Landlord (but such exception shall not apply to limit the application of sub-section (h) of this Section); or (ii) Tenant’s breach of any provision of this Lease. Tenant agrees that the foregoing agreement to indemnify, defend, and hold harmless extends to liabilities, losses, claims, causes of action, damages, costs and expenses (including reasonable attorney’s fees) arising out of claims of Tenant’s employees without regard to any immunity, statutory or otherwise, including any immunity under the workers compensation Laws of Maine or any other applicable jurisdiction, which immunity Tenant hereby waives, but only for the purposes of Tenant’s obligations to the Releasees under this sub-section. Tenant’s obligations under this sub-section shall survive the termination of this Lease.

10

16.    Hazardous Materials. Tenant covenants and agrees that Tenant will not permit any Hazardous Substances (as hereafter defined) to be stored, generated, or released from the Leased Premises, other than Hazardous Substances incidental to Tenant’s use, maintenance, and operation of the Leased Premises for the Permitted Use provided that Tenant shall store, generate, handle, and dispose of all such Hazardous Substances in full compliance with all applicable laws. Tenant hereby covenants and agrees to indemnify, hold harmless, and, if requested by Landlord, defend, Landlord from and from and against any and all demands, claims, causes, of action, losses, liabilities, damages, fines, costs, and expenses (including reasonable attorneys’ fees, court costs and clean-up costs) that may arise out of any Hazardous Substances located at or generated or released from the Leased Premises, irrespective of whether first occurring prior to or after the Commencement Date. The term “Hazardous Substances” means any flammables, explosives, radioactive materials, gasoline, oil, other petroleum products, lead paint, urea formaldehyde (including urea formaldehyde foam insulation), asbestos, asbestos containing materials, polychlorinated biphenyls, and any other hazardous materials, hazardous waste, hazardous matter, hazardous or toxic substances, chemical pollutants, and other materials or substances defined in or regulated by Environmental Laws. The term “Environmental Laws” means (A) the Clean Water Act; (B) the Clean Air Act; (C) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act; (D) the Toxic Substance Control Act; (E) the Resource Conservation and Recovery Act; (F) the Hazardous Materials Transportation Act; and/or (G) any similar state Laws regulating pollution or contamination of the environment The obligations of Tenant under this Section shall survive the termination of this Lease.

17.    Right to Enter. Tenant agrees to permit Landlord or its duly authorized agents to enter on the Leased Premises during Tenant’s normal business hours, with reasonable prior notice, to examine the condition of said Leased Premises, exercise any rights of Landlord under this Lease, and/or to show the same to prospective tenants, lenders, or purchasers, provided such access to the Leased Premises shall not unnecessarily interfere with Tenant’s use of the Leased Premises or the conduct of Tenant’s business activities thereon. Notwithstanding the foregoing, Landlord shall have the right (but not the obligation) to enter the Leased Premises without prior notice in the event of an emergency in which prior notice is not practicable in the circumstances.

18.    Total or Partial Destruction.

(a)    In the event the improvements on the Real Property (including any Building Systems) are damaged or destroyed by fire or other peril (a “Casualty”), Tenant shall give Landlord notice of such Casualty as soon as reasonably possible after the Casualty. Landlord shall have the right to elect whether to have such improvements rebuilt or restored. In the event that Landlord elects not to have the improvements rebuilt or restored, and the nature of the Casualty is such as would, absent such rebuilding or restoration, materially impair Tenant’s ability to use and occupy such Leased Premises in substantially the same manner as they were used prior to the Casualty, this Lease shall terminate effective as of the date of the Casualty. In the event that Landlord elects to have the improvements rebuilt or restored, this Lease shall remain in effect without reduction or abatement of Rent, and the following provisions shall apply:

(i)    Landlord shall, with reasonable promptness rebuild or restore such improvements to at least substantially the same condition, quality, and class as existed prior to the Casualty, using the proceeds of insurance covering such improvements, provided, however, that in no event shall Landlord be obligated to expend for any such rebuilding or restoration an amount in excess of the insurance proceeds actually collected by Landlord on account of the Casualty, less the costs and expenses (including reasonable attorneys’ fees) incurred by Landlord in collecting such proceeds.

11

(ii)    Notwithstanding the preceding clause (i), Landlord shall have the right to elect, by giving written notice to Tenant, to have Tenant rebuild or restore the Leased Premises, in which event Tenant shall, with reasonable promptness, and in all events within twelve (12) months of the date of Landlord’s election notice, rebuild or restore such improvements to at least substantially the same condition, quality, and class as existed prior to the Casualty, using the proceeds of insurance covering such improvements. The selection of all engineers, architects, and contractors engaged in connection with such rebuilding or restoration and all plans and specifications for such rebuilding or restoration, shall be subject to review and approval by Landlord. In the event that Landlord makes the election to have Tenant rebuild or restore as provided in this clause (ii), all proceeds payable by reason of any Casualty under all applicable policies of insurance (whether Tenant is carrying such insurance, or Landlord has elected to do so as provided in this Lease) shall be paid to Landlord or its mortgagee, and such proceeds will be held by Landlord or its mortgagee in an interest-bearing account and, provided Tenant is not in breach of this Lease, shall be made available for rebuilding or restoring the improvements, and shall be paid by Landlord (or such mortgagee) from time- to-time during the progress of construction for the costs of such reconstruction or repair, all subject to and in accordance with reasonable terms, conditions, and construction disbursement procedures specified by Landlord and/or such mortgagee. Any excess proceeds of insurance (and accrued interest) remaining after the completion of the restoration or reconstruction of the Leased Premises shall be paid to Landlord.

(b)    Loss or Damage affecting Leased Personal Property. In the event of any loss or destruction of or damage to any of the Leased Personal Property, Tenant shall, unless Landlord or its mortgagee elects to retain any proceeds of insurance allocable to such Leased Personal Property, be responsible for the repair and replacement of such lost, destroyed, or damaged Leased Personal Property, with the restored or replacement items of at least equivalent condition, quality, class, and value to the item(s) of Leased Personal Property prior to such loss, destruction, or damage. All proceeds payable under all applicable policies of insurance by reason of any loss or destruction of or damage to any Leased Personal Property shall be paid to Landlord or its mortgagee. Unless Landlord or its mortgagee elect to retain such proceeds of insurance allocable to such Leased Personal Property, such proceeds will be held by Landlord or its mortgagee in an interest-bearing account and, provided Tenant is not in breach of this Lease, shall be made available for such repair or replacement, and shall be paid out by Landlord (or such mortgagee) from time to time during the progress of the repair or replacement for the reasonable costs of such repair or replacement, all subject to and in accordance with reasonable terms, conditions, and disbursement procedures specified by Landlord and/or such mortgagee. Any excess proceeds of insurance (and accrued interest) remaining after the completion of the repair or replacement of such Leased Personal Property shall be paid to Landlord. There shall be no abatement or reduction of Rent on account of any such loss, destruction, or damage.

(c)    Tenant shall be responsible for all insurance deductibles applicable to any Casualty affecting any of the improvements on the Real Property (including Building Systems) and/or any loss or destruction of or damage to any of the Leased Personal Property.

(d)    The provisions of this Section shall be subject and subordinate to the provisions of any mortgage now or hereafter placed upon the Real Property, the provisions of any security agreement now or hereafter affecting the Leased Personal Property, and the requirements of any mortgagee holding such mortgage or secured party holding the security interest under such security agreement.

12

19.    Condemnation.

(a)    “Condemnation” means any taking of title to or any interest in the Leased Premises or any part thereof or any other property used in connection with the Leased Premises (including for ingress, egress, parking, septic service, water supply or other services or utilities) by exercise of any right of eminent domain by, or by any similar proceeding or act of, any person having the power and legal authority to do so (or by purchase in lieu thereof). For the purposes of this definition, the effective date of any Condemnation shall be deemed to be the later of: (i) the date when title to the Leased Premises or part thereof or such other property is transferred by such proceeding or act of the condemning authority, and (ii) the date when Tenant o is no longer permitted to occupy the Leased Premises or to use such other property.

(b)    “Substantial Condemnation” means any Condemnation that affects all or a substantial portion of the Leased Premises or any Condemnation that has or is reasonably likely to have a materially adverse effect on any business operations then being conducted on the Leased Premises. Tenant may waive its right to treat as a Substantial Condemnation any Condemnation that would otherwise qualify as such.

(c)    “Insubstantial Condemnation” means any Condemnation that is not a Substantial Condemnation.

(d)    If a Substantial Condemnation occurs, this Lease shall terminate upon the effective date of the Substantial Condemnation.

(e)    If an Insubstantial Condemnation occurs, then this Lease shall continue in full force and effect without reduction or abatement of Rent.

(f)    In the event of any Condemnation, Landlord shall be entitled to receive and retain the amounts awarded for the Leased Premises, and Tenant shall be entitled to receive and retain any amounts which may be specifically awarded to it in any such condemnation proceedings because of its business loss or the taking of its trade fixtures, furniture, or other property.

20.    Force Majeure. In any case where either party is required to perform any act pursuant to this Lease, except for Tenant’s monetary obligations hereunder, the time for the performance thereof shall be extended by a period of time equal to the period of any delay caused by or resulting from an act of God, war, civil commotion, fire or other casualty, labor difficulties, shortages of energy or labor, government regulations, or delays caused by one party to the other, whether such period be designated by a fixed date, a fixed time, or as a reasonable date or time.

21.    Quiet Enjoyment. Tenant, on paying the Rent and performing and observing the covenants in this Lease, may hold and enjoy the Leased Premises for the Term without unreasonably interference from any person claiming by, through, or under Landlord, subject and subordinate to all provisions of this Lease.

22.    Default.

(a)    In the event that:

(i)    Tenant shall fail to pay when due the Rent or any other sums payable hereunder when due and such failure remains uncured for five (5) days after Landlord delivers a default notice to Tenant for such failure to pay rent; or

13

            (ii)    any petition in bankruptcy shall be filed by Tenant or any guarantor hereof or other petition or proceeding shall be filed or commenced by Tenant or any guarantor hereof to declare Tenant insolvent, or to delay, reduce or modify Tenant’s or any such guarantor’s debts or obligations, or Tenant or any such guarantor admits its inability to pay its debts, or Tenant or any such guarantor makes an assignment for the benefit of creditors; or

            (iii)    any bankruptcy petition or proceeding shall be filed against Tenant or any guarantor hereof or to otherwise declare Tenant or any guarantor hereof bankrupt or insolvent or to delay, reduce or modify Tenant’s or any such guarantor’s debts or obligations or a receiver, trustee or other similar type of appointment or court appointee or nominee is appointed for Tenant or any such guarantor or any of the property of Tenant or any such guarantor, and such petition, appointment or proceeding is not dismissed within sixty (60) days after it is commenced; or

            (iv)    the leasehold interest of Tenant is levied upon or attached by process of law, including the filing of any mechanic’s lien, and such levy, lien, or attachment is not dissolved within thirty (30) days after it is made; or

            (v)    Tenant shall abandon the Leased Premises during the Lease Term; or

            (vi)    Tenant shall assign this Lease or sublet any portion of the Leased Premises, or attempt to do either of the foregoing, in violation of this Lease; or

            (vii)    Tenant violates or fails to observe or comply with any Laws applicable to the Leased Premises, Tenant’s use thereof, or Tenant’s operations, activities or conduct of business at or from the Leased Premises; or

(viii)    any other event, occurrence, act, or omission described in any provision of this Lease as constituting a “default” or an “Event of Default” occurs;

(ix)    Tenant shall neglect or fail to perform or observe any of the other covenants, terms, provisions or conditions contained in this Lease and, if the neglect or failure is capable of being cured, such neglect or failure continues for more than thirty (30) days after written notice thereof (provided, however, that if such neglect or failure is capable of being cured, but is not capable of being cured within said thirty (30) day period, then Tenant shall have such additional period of time, not to exceed an additional sixty (60) days, as is reasonably necessary to cure the same provided Tenant commences to cure within said thirty (30) day period and diligently and continuously prosecutes the cure to completion); or

14

(x)    there is a default by Tenant under (A) that certain Lease Agreement of even or near date herewith between Tenant and 947 Billingham Road, LLC pertaining to property located in the Town of Billingham, County of Oxford, and State of Maine; and/or (B) that certain Lease Agreement of even or near date herewith between Tenant and 400 Main Street, LLC pertaining to property located in the Town of Paris, County of Oxford and State of Maine, and any such default continues beyond the expiration of applicable notice and cure periods (if any), then, and in any of said cases (notwithstanding any license of any former breach of covenant or waiver of the benefit hereof or consent in a former instance), and without limitation of any other remedies that might be available to Landlord under this Lease, at law, or in equity, Landlord lawfully may, immediately or at any time thereafter, terminate this Lease by sending written notice of termination to Tenant, or, subject to compliance with applicable Laws, enter into and upon the Leased Premises or any part thereof in the name of the whole and repossess the same as of its former estate, and expel Tenant and those claiming through or under it and remove it or their effects without being deemed guilty of any manner of trespass, in each case without prejudice to any rights or remedies which might otherwise be available to Landlord for collection of Rent and other damages for breach of covenant, and upon entry as aforesaid or upon sending of such notice, this Lease shall terminate.

(b)    Without limiting other remedies of Landlord at law or in equity for any breach of or on account of termination of this Lease, Tenant covenants that in case of such termination under sub-section (a) of this Section, Tenant shall pay to Landlord the unpaid Rent owed to Landlord through the time of termination, plus interest thereon at the rate of 18% per annum from the date the same was due until paid; and (ii) at the election of Landlord, either:

(1)    the present value of a sum which, at the time of such termination of this Lease is equal to (A) the aggregate of the Rent which would have been payable by Tenant for the period commencing upon such termination of this Lease and continuing through the date this Lease would have terminated had there been no default by Tenant; minus (B) the fair market rental value of the Leased Premises (after deducting reasonable projections for Landlord’s costs and expenses of re-letting the Leased Premises, including advertising expenses, brokerage commissions, reasonable attorneys’ fees, and commercially reasonable costs of repairing, renovating, or otherwise altering the Leased Premises to suit the new tenant); or

            (2)    for the period of time commencing upon such termination of this Lease and continuing through the date this Lease would have terminated had there been no default by Tenant hereunder, the difference, if any, between the Rent which would have been due had there been no such termination and the amount being received by Landlord as rent from a replacement Tenant of Leased Premises, if any. In addition, Tenant shall pay to Landlord all costs and expenses of such re-letting, including advertising expenses, brokerage commissions, reasonable attorneys’ fees, and commercially reasonable costs of repairing, renovating, or otherwise altering the Leased Premises to suit the new tenant.

(c)    If Tenant shall default in the performance or observance of any covenant, agreement, or condition in this Lease contained on its part to be performed or observed and shall not cure any such default as provided herein, Landlord may, at its option, without waiving any claim for damages or any other right or remedy for breach of this Lease, at any time thereafter, cure such default. Any amount paid or any liability incurred by Landlord in so doing shall be deemed paid or incurred for the account of Tenant, and Tenant agrees to immediately reimburse Landlord therefor, as additional Rent.

(d)    Tenant shall pay all reasonable attorneys’ fees incurred by Landlord in connection with the enforcement of Tenant’s obligations under this Lease.

15

(e)    Landlord shall in no event be in default in the performance of any of its obligations hereunder unless and until Landlord shall have failed to perform, or failed diligently to attempt to perform, such obligations within thirty (30) days or such additional time as is reasonably required to correct any such default after notice by Tenant to Landlord properly specifying wherein Landlord has failed to perform any such obligation.

(f)    In no event shall Landlord be liable to Tenant for incidental, consequential, or punitive damages in connection with any matter arising out of this Lease or the Leased Premises. Without in any way limiting or impairing the effect of the other provisions of this Lease, Tenant shall neither assert nor seek to enforce any claim arising out of this Lease or out of the use or occupancy of the Leased Premises against Landlord, its shareholders, directors, officers, employees, or agents, or any of its or their assets other than the value of Landlord’s interest in the Leased Premises and Tenant agrees to look solely to such interest and insurance coverage for the satisfaction of any claim arising out of this Lease or out of the use or occupancy of the Leased Premises.

23.    Sale or Mortgage; Estoppel; Subordination.

(a)    Nothing contained in this Lease shall limit Landlord’s right to sell, mortgage, or otherwise encumber its fee interest in the Leased Premises, or affect Landlord’s right to assign this Lease or the Rent payable under this Lease, whether as further security under a fee mortgage or otherwise. Any such assignment of this Lease or of the Rent payable under this Lease shall be honored by Tenant.

(b)    In the event Landlord shall sell, transfer, or otherwise convey the Leased Premises, Landlord, upon the written assumption by the transferee of the obligations arising hereunder after the date of such transfer, shall be entirely freed and relieved of all covenants and obligations of Landlord hereunder. Nothing in the preceding sentence shall be construed to impair Tenant’s leasehold interest under this Lease so long as Tenant performs and observes the covenants and terms of this Lease on its part to be performed and observed.

(c)    This Lease shall, at Landlord’s option, be subordinate to any ground lease, mortgage, deed of trust, or any other hypothecation or security now or hereafter placed upon the Leased Premises, and to any and all advances made on the security thereof and to all renewals, modifications, consolidations, replacements and extensions thereof. Notwithstanding such subordination, Tenant’s right to quiet possession of the Leased Premises shall not be disturbed if Tenant is not in default and so long as Tenant shall pay the Rent and observe and perform all of the provisions of this Lease. If any mortgagee, trustee, or ground lessor shall elect to have this Lease made prior to the lien of its mortgage, deed of trust or ground lease, and shall give written notice thereof to Tenant, this Lease shall be deemed prior to such mortgage, deed of trust, or ground lease, whether this Lease is dated prior to or subsequent to the date of said mortgage, deed of trust, or ground lease or the date of recording thereof. Tenant agrees to execute any documents required to effectuate an attornment, a subordination, or to make this Lease prior to the lien of any mortgage, deed of trust or ground lease, as the case may be. Tenant’s failure to execute such documents within ten (10) days after written demand shall constitute an Event of Default by Tenant hereunder.

16

(d)    At any time, and from time to time, upon the written request of Landlord or any mortgagee or prospective purchaser of the Leased Premises, Tenant, within ten (10) business days after such written request, agrees to execute, acknowledge and deliver to Landlord and/or mortgagee, without charge, an estoppel certificate which shall contain (i) a certification that this Lease is unmodified and in full force and effect or, if modified, a statement of the nature of any such modification and a certification that this Lease, as so modified, is in full force and effect; (ii) a certification of the date to which the Rent payable by Tenant are paid (including any payments in advance); (iii) a certification that Tenant is not in default hereunder and that there are not, to Tenant’s knowledge, any uncured events of default on the part of Landlord hereunder, or a specification of such events of default if any are claimed by Tenant; and (iv) such other commercially reasonable certifications as are identified in such request. Tenant’s failure to deliver such estoppel certificate within the time frame set forth above shall, at Landlord’s option, constitute an Event of Default hereunder and shall, at Landlord’s option, be conclusive proof that this Lease is in full force and effect without modification except as may be represented by Landlord, that there are no uncured defaults in Landlord’s performance of Landlord’s obligations under this Lease, and that not more than one month’s Rent has been paid in advance.

(e)    If Landlord desires to finance, refinance, or sell the Leased Premises, Tenant hereby agrees to deliver to any lender or purchaser designated by Landlord, and cause any guarantor to so deliver, such financial statements and other financial information pertaining to Tenant and such guarantor as may be reasonably required by such lender or purchaser. Tenant’s failure to provide such information or cause such information to be provided within ten (10) days after written demand shall constitute an Event of Default by Tenant hereunder.

24.    Notices. Any notice, request, demand, approval or consent given or required to be given under this Lease shall be, unless otherwise stated, in writing and shall be deemed to have been given (i) when hand delivered to the other party; or (ii) on the day on which the same shall have been mailed by United States registered or certified mail, return receipt requested, with all postage prepaid, or by Federal Express or similar nationally-recognized overnight courier service that provides evidence of delivery, to the address of the party to receive such notice as set forth in the preamble hereof, provided that either party may, by such manner of notice, add or substitute one or more persons or addresses for provision of such notice.

17

25.    Tenant Representations.

(a)    Neither Tenant nor any key personnel of Tenant nor any of Tenant’s underlying beneficial owners have engaged in any dealings or transactions, directly or indirectly, (i) in contravention of any U.S., international or other anti-money laundering regulations or conventions, including without limitation the United States Bank Secrecy Act, the United States Money Laundering Control Act of 1986, the United States International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001, Trading with the Enemy Act (50 U.S.C. §1 et seq., as amended), any foreign asset control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56 and the regulations promulgated thereunder (collectively, the “Patriot Act”), or any order issued with respect to anti-money laundering by the U.S. Department of the Treasury’s Office of Foreign Assets Control (“OFAC”); or (ii) in contravention of Executive Order No. 13224 issued by the President of the United States on September 24, 2001 (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), as may be amended or supplemented from time to time (“Executive Order 13224”); or (iii) on behalf of terrorists or terrorist organizations, including those persons or entities that are included on any relevant lists maintained by the United Nations, North Atlantic Treaty Organization, Organization of Economic Cooperation and Development, OFAC, Financial Action Task Force, U.S. Securities & Exchange Commission, U.S. Federal Bureau of Investigation, U.S. Central Intelligence Agency, U.S. Internal Revenue Service, or any country or organization, all as may be amended from time to time.

        (b)    Neither Tenant nor any key personnel of Tenant nor any of the underlying beneficial owners of Tenant is or will be a person or entity (i) that is listed in the Annex to or is otherwise subject to the provisions of Executive Order 13224; or (ii) whose name appears on OFAC’s most current list of “Specially Designated Nationals and Blocked Persons,” (which list may be published from time to time in various mediums including, but not limited to, the OFAC website, http:www.treas.gov/ofac/t11sdn.pdf); or (iii) who commits, threatens to commit or supports “terrorism”, as that term is defined in Executive Order 13224; or (iv) who has been associated with or is otherwise affiliated with any entity or person listed above.

        (c)    Tenant represents that it has all requisite power and authority to enter into this Lease and the person executing this Lease on behalf of Tenant represents that he or she has all requisite power and authority to do so.

26.    Miscellaneous Provisions.

(a)    Invalidity of Particular Provisions. If any term or provision of this Lease, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held 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 Laws.

(b)    Governing Law. This Lease, and all claims or causes of action (whether arising in contract, in tort, or by statute) that may be based upon, arise out of or relate to this Lease, shall be governed by and enforced in accordance with the internal Laws of the State of Maine, including its statutes of limitations, without regard or reference to conflicts of law principles.

18

(c)    Interpretation. Whenever the word “include,” “includes,” or “including” is used in this Lease, it is deemed to be followed by the words “without limitation.” The terms “this Lease,” “hereof,” “herein,” “hereby,” “hereunder” and similar expressions refer to this Lease as a whole and not to any particular section of this Lease unless the context otherwise requires. The word “person” includes any individual, corporation, firm, association, partnership (general or limited), joint venture, limited liability company, trust, estate or other legal entity. The section and sub-section headings throughout this instrument are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Lease. Whenever in this Lease provision is made for the doing of any act by any party, it is understood and agreed that said act shall be done by such party at its own cost and expense, unless a contrary intent is expressed.

(d)    Entire Agreement; Binding Effect. All negotiations, considerations, representations, and understandings between Landlord and Tenant are incorporated herein and may be modified or altered only by agreement in writing between Landlord and Tenant, and no act or omission of any employee or agent of Landlord shall alter, change, or modify any of the provisions hereof. All rights, obligations and liabilities contained herein given to, or imposed upon, Landlord and Tenant shall extend to and bind the several respective administrators, trustees, receivers, legal representatives, successors, heirs and permitted assigns of Landlord and Tenant. If the “Tenant” under this Lease consists of more than one person or entity, each such person and/or entity shall be bound jointly and severally by the terms, covenants and agreements herein and jointly and severally liable for all obligations arising hereunder.

(e)    Language. Words of any gender used in this instrument shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

(f)    Recording; Notice of Lease. Landlord and Tenant agree that this Lease shall not be recorded. The parties agree that at the request of either party, they will execute, acknowledge, and deliver a notice or memorandum of this Lease in recordable form for recording in the Oxford County Registry of Deeds. The requesting party shall bear the expense of recording such notice or memorandum. The Memorandum of Lease shall not be construed to vary the terms and conditions hereof. Landlord and Tenant also agree that, upon the request of either party, they will execute, acknowledge, and deliver a commercially reasonable instrument in recordable form with respect to the termination date of this Lease.

(g)    Timeliness of Landlord’s Notices. Landlord’s failure during the Lease Term to prepare or deliver any of the statements, notices, or bills, or invoices for any sum payable by Tenant under this Lease shall not in any way cause Landlord to forfeit or surrender its rights to collect any amount that may have become due and owing from Tenant during the Lease Term.

(h)    Waiver of Jury Trial. Tenant, for itself and its heirs, successors, and assigns, does hereby **WAIVE THE RIGHT TO A TRIAL BY JURY** in any action or proceeding based upon, or related to, the subject matter of this Lease. This waiver is knowingly, intentionally, and voluntarily made by Tenant and Tenant acknowledges that neither Landlord nor any person acting on behalf of Landlord has made any representations of fact to induce this waiver of trial by jury or in any way to modify or nullify its effect. Tenant further acknowledges that it has been represented (or has had the opportunity to be represented) in the signing of this Lease and in the making of this waiver by independent legal counsel, selected of its own free will, and that it has had the opportunity to discuss this waiver with counsel. Tenant further acknowledges that it has read and understands the meaning and ramifications of this waiver provision.

19

27.    Additional Provisions Pertaining to Leased Personal Property.

(a)    Without limiting any other provision of this Lease, Tenant agrees that (i) title to the Leased Personal Property shall remain vested in Landlord; (ii) Tenant will not represent to any party that Tenant has title to the Leased Personal Property; (iii) the Leased Personal Property may not be used as collateral to secure any obligations of Tenant to any party; (iv) Tenant will not allow the Leased Personal Property to become encumbered in any way whatsoever; and (v) Tenant will not remove the Leased Personal Property from the Real Property without the written consent of Landlord. Tenant agrees that Landlord may file any financing statements or other documents Landlord deems reasonably necessary or desirable to protect or enforce its rights and interest in the Leased Personal Property and Tenant agrees to execute such documents as Landlord reasonably requests in connection therewith. In the event any of Leased Personal Property is lost, stolen, damaged, or destroyed, Tenant will be responsible for the full replacement of the same.

(b)    ***THE LEASED PERSONAL PROPERTY IS BEING PROVIDED TO TENANT IN “AS IS, WHERE IS” CONDITION, WITH ALL FAULTS. LANDLORD MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTY OF MERCHANTABILITY, WITH RESPECT TO THE LEASED PERSONAL PROPERTY, AND ALL SUCH WARRANTIES AND REPRESENTATIONS ARE EXPRESSLY DISCLAIMED BY LANDLORD.***

28.    Contingency for Acquisition of Leased Premises. The parties acknowledge that Landlord does not yet own the Premises and agree that this Lease is contingent upon Landlord acquiring fee title to the Real Property by no later than May 31, 2019. In the event that Landlord has not acquired fee title to the Real Property on or before May 31, 2019 (or such later date as the parties may agree upon in writing), this Lease shall automatically terminate. If Landlord does acquire fee title to the Real Property on or before May 31, 2019, then the date upon which Landlord acquires fee title to the Real Property is referred to herein as the “Acquisition Date.” Tenant shall not be entitled to possession of the Premises until the Acquisition Date (also referred to in this Lease as the Commencement Date).

***[Signature Page(s) and Guaranty Follow]***

20

IN WITNESS WHEREOF, Landlord and Tenant have caused this Lease to be executed by their duly authorized undersigned representatives as an instrument under seal as of the day and year first written above.

WITNESS:

LANDLORD:

**Lodgingsolutions, LLC**

By:    /s/ Henry King

Name:    Henry King

Title:    President

21

WITNESS:

TENANT:

**ABC CONSTRUCTION, INC.**

By: /s/ Margaret Atwood

By:    /s/ Frances Baker

Printed Name:    Frances Baker

Its:        President

GUARANTY

For value received, and in consideration of and as an inducement to Landlord to enter into the foregoing Lease (the “Lease”) with Tenant, the undersigned, **NORBO HOLDINGS, INC.** (“Guarantor”), does hereby unconditionally guaranty to Landlord the complete and due performance and observation of each and every agreement, covenant, term, and condition of the Lease to be performed or observed by Tenant, including, without limitation, the payment of all Rent required under the Lease. The validity of this Guaranty and the obligations of the Guarantor hereunder shall not be terminated, affected, or impaired by reason of the granting by the Landlord of any indulgences to the Tenant. This Guaranty shall remain and continue in full force and effect with respect to any and all renewals, modifications, or extensions of the Lease, irrespective of whether Guarantor shall have received any notice of or consented to such renewal, modification, or extension. The liability of the Guarantor hereunder shall be primary, and in any right of action that shall accrue to the Landlord under the Lease or applicable law, the Landlord may proceed against Guarantor without having commenced any action against or having obtained any judgment against Tenant and/or may proceed against Guarantor and Tenant, jointly and severally. Guarantor hereby waives all guaranty and suretyship defenses. All of the terms and provisions of this Guaranty shall inure to the benefit of the successors and assigns of the Landlord and shall be binding upon the successors and assigns of Guarantor. Capitalized terms that are used, but not defined, in this Guaranty shall have the meaning ascribed thereto in the Lease.

IN WITNESS WHEREOF, the Guarantor has executed this Guaranty as an instrument under seal as of the date of the Lease.

WITNESS:

GUARANTOR:

**NORBO HOLDINGS, INC.**

By: /s/ Margaret Atwood

By:    /s/ Frances Baker

Printed Name:    Frances Baker

Its:        President & CEO

22

List of Exhibits

Exhibit A – Description of the Leased Premises

Exhibit B – Base Rent if Tenant does not give a timely Rent Commencement Extension Notice

Exhibit C – Base Rent if Tenant does give a timely Rent Commencement Extension Notice

23

**EXHIBIT A**

(Description of Leased Premises)

Parcel 1

A certain lot or parcel of land, together with the buildings and improvements thereon, located in the Town of Oxford, County of Oxford, and State of Maine, being more particularly bounded and described as follows:

A - 1

**EXHIBIT A-1**

(Personal Property)

The “Leased Personal Property” means any personal property located at the Real Property and acquired by Landlord from the seller of the Real Property on the Acquisition Date, if any.

A - 2

**EXHIBIT B**

(Base Rent if Tenant does not give a timely Rent Commencement Extension Notice)

**LeaseA#9**

LEASE AGREEMENT - M/S. VIKRAM TECH PARK PVT. LTD.

**Exhibit 10.8**

**LEASE AGREEMENT**

**THIS LEASE AGREEMENT** made at Chennai on this 25th day of May 2010.

**BY AND BETWEEN**

**M/s. Vikram Tech Park Pvt. Ltd**., having its Registered Office XXX, Chennai – 601-234 represented by its Authorized Signatory (“Lessor”) hereinafter referred to as the **‘LESSOR’** (which expression shall unless repugnant to the context or meaning thereof mean and include his successors-in-interest and title, permitted assigns or anyone claiming through or under him) of the **ONE PART**;

**AND**

**M/s. ACE India Pvt. Ltd.**, having its Registered Office at YYY, Chennai—600 002 represented by its Authorized Signatory herein after termed as the **“Lessee”** (which expression shall unless it be repugnant to the context or the meaning thereof mean and include its successors-in-interest and title, permitted assigns or anyone claiming through or under them) of the **OTHER PART**;

Lessor and Lessee are hereinafter jointly referred to as the ‘Parties’ and individually as “Party”.

WHEREAS the Lessor and Lessee, in consideration of the rights, privileges, obligations and agreements contained in this Lease Agreement agree as follows:

**NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:**

**1. LEASE AND DESCRIPTION OF THE PREMISES**

The Lessee**,**being desirous of taking on lease the Premises (as defined below), for the purpose of carrying on its business operations, has approached the Lessor**,**and the Lessor has agreed to give on lease the Premises to the Lessee, on the terms and conditions agreed upon in this Lease Agreement.

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| A. | The Lessor is the owner of **42, 943 sq.ft. SBA**of fully fitted office area consisting of the 7th and 8th Office floor in the block AAAA, Chennai – 60a1 234 long with 39 nos. of reserved car parking slots (at the rate of 1 car park for every 1,100 sq ft leased) at no additional cost, for the Lessee’s exclusive use (all of which are more particularly described in the Schedule `A’ hereunder written and are hereinafter referred to as the ‘Premises’). |

**2. LEASE TERM**

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| A. | The lease will be for a period of **Three (3) years** commencing from **1st June 2010 to 31st May 2013.**(“Lockin Period”). |

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| B. | Both Parties agree not to terminate the lease during the Lock-In Period other than as may be specifically provided for in this Agreement. |

**3. RENT & INTEREST FREE REFUNDABLE SECURITY DEPOSIT**

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| --- | --- |
| A. | The Lessee agrees and undertakes, to pay the rent at the rate of **Rs.60/- (Rupees Sixty only)** per sq.ft. per month calculated on the Super Built Up area of 42,943 sq. ft. of the premises which is **Rs.25,76,580/- (Rupees Twenty Five Lakhs Seventy Six Thousand Five Hundred and Eighty only)** with applicable service tax, **monthly**in advance to the Lessor on or before the 7th day of every month, subject to statutory deduction of tax at source. |

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| B. | Subject to the Lessor handing over possession of the Premises fitted-out in accordance with the Lay-Out Plans (as defined below), the Lessee’s obligation to pay rent for the premises shall commence from **8th of June, 2010**. The Lessor shall not however be responsible for any delay in handing over the possession of the Premises to the Lessee arising from any Change Request (as defined below) for the Lay-Out Plans initiated by the Lessee. . |

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| C. | In the event of any delay in the payment of the monthly rent within 7 days of the due date as set out herein, the Lessee shall be liable to pay interest on such outstanding payment @ 18 % per annum calculated from the date when the payment is due to the date of payment. |

Page 2 of 24

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| D. | The Lessee has paid an amount equivalent to **9 months rent** being **INR 2,31,89,220 (Rupees Two Crores, Thirty One Lakhs, Eighty Nine Thousand Two Hundred Twenty Only)** as interest free refundable security deposit (“Security Deposit”) to the Lessor on signing this agreement, the receipt of which the Lessor acknowledges. |

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| E. | The Security Deposit shall be fixed for the Initial Term as well as any renewals of this lease and the LESSOR agrees not to demand any increase in this Security Deposit during the Initial Term or during any renewed term of this lease for upto a maximum of two (2) further terms of three (3) years each. |

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| F. | The Security Deposit is refundable within fifteen (15) days from the Lessee handing over vacant possession of the Premises to the Lessor on expiry of the lease period or pursuant to a termination of the lease. The Lessor may adjust any arrears of monthly rent, arrears of maintenance charges or arrears of charges for electricity consumed by the Lessee at the Premises and any amounts agreed pursuant to clause 5F against the Security Deposit prior to refunding the same. If the Lessor fails to refund the Security Deposit within the 15 days of the Lessee vacating and handing over vacant possession of the premise along with the de bonding certificate from the customs & STPI, the Lessee will be entitled to thereon at the rate of 18% per annum from the date on which the payment was due till such time the Security Deposit is repaid to the Lessee interest. |

**4. FIT-OUT & INTERIORS**

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| A. | The Lay-Out Plans are attached herewith as **Annexure 1**. The Lessor shall arrange, at its own cost, to fit-out the Premises in accordance with the Lay-Out Plans and subject to there being no delays from any Change Request (as defined below) initiated by the Lessee, handover possession of the Premises to the Lessee not later than forty-five (45) days from the date hereof which is not later than 30 th of June 2010. |

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| B. | The Lessee shall be permitted to inspect the work undertaken by the Lessor for the conversion of the Premises in accordance with the Lay-Out Plans. If the Lessee wishes to make a change to the Lay-Out Plan it must give written notice to the Lessor describing the change required (“Change Request”). The Lessor shall, within two (2) working days of receipt of a Change Request from the Lessee, inform the Lessee in writing of the expected costs and delay (if any) in carrying out the requested changes to the Lay-Out Plan. Not later than two (2) working days of receiving the said estimate from the Lessor, the Lessee shall confirm, in writing, whether the Change Request (including the estimate of cost of the same) is confirmed or not. If the Change Request is confirmed by the Lessee, the Lay-Out Plan will be deemed amended in accordance therewith and the date for hand-over of possession adjusted for the expected delay, if any. The costs of executing any such change requested by the Lessee (subject to the same not exceeding the estimated cost accepted by the Lessee) shall be borne by the Lessee. If however the Lessee rejects the Change Request, the Lay-Out Plan will continue in force unchanged. |

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| C. | On the date when the possession of the Premises is handed over to the Lessee), the Lessor covenants that the Premises shall be fully fitted and the interior changes shall be done as per the Lay-Out Plans and be ready for use and occupation by the Lessee. It is agreed that time is the essence of this covenant and any failure or delay in the same shall be a material breach of this Agreement. Notwithstanding anything contained in this Agreement, the lease and the obligation of the Lessee to pay rent, maintenance charges or any other payment pursuant hereto shall commence on 8th of June 2010 only if |

Page 3 of 24

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|  | possession of the Premises (fitted out in accordance with the Lay-Out Plan) is handed over to the Lessee not later than 30th of June 2010 or a later date on account of any Change Request as provided for in clause C above. In the event of any delay in handing-over possession of the Premises in accordance with the terms of this Agreement, which delay is not caused by any Change Request initiated by the Lessee, the date of commencement of the lease and the commencement of the obligation to pay rent and other payments shall be postponed by the number of days of such delay. |

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| D. | Prior to handing over the possession of the Premises, the Parties shall jointly undertake an inspection of the Premises to confirm that the interiors and fit outs have been done in accordance with the Lay-Out Plans. During this inspection the Parties shall jointly draw up and sign a list of the assets (Asset List) installed in the Premises by the Lessor. This signed Asset List shall be included as **Annexure 2** to this Agreement. These assets shall be available for the Lessee’s use in the Premises but shall remain the property of the Lessor and shall be returned to the Lessor on the Lessee vacating the Premises. |

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| E. | The Lessee shall ensure that there is routine maintenance executed for the upkeep and repair of all the assets as listed in the Asset List at Annexure 2, installed within the Premises throughout the term of this lease or any renewals thereof including periodical renewals of the annual maintenance contract with the maintenance agency. The Lessor shall arrange for routine maintain of the assets that are installed outside the Premises. |

**5. TERMINATION**

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| A. | Neither Party shall terminate the lease of the Premises during the Lock-In Period other than for the following reasons: |

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|  | (i) | For breach of a material term of this Agreement by the other Party, which breach is either not capable of remedy or is not remedied within sixty (60) days of written notice calling upon the Party in breach to remedy the breach. |

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|  | (ii) | On the occurrence of an Event of Force Majeure (as defined in clause 13) that prevents the use of the Premises for the purposes for which the Premises has been leased for a continuous period of thirty (30) days. The right to terminate in the event of such an Event vests solely with the Lessee. |

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| B. | In the event the lease of the Premises is renewed beyond the Lock-In Period, the right of the Parties to terminate the renewed lease agreement shall be as follows: |

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|  | (i) | The Lessee may terminate the lease by providing Three (3) Months notice to the Lessor without assigning any reason for the same. |

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|  | (ii) | The Lessee may forthwith terminate the lease for breach of a material term of the renewed lease agreement by the Lessor, which breach is either not capable of remedy or is not remedied within sixty (60) days of written notice calling upon the Lessor to remedy the breach. |

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|  | (iii) | The Lessor may terminate the lease for any material breach by the Lessee, in which event the Lessor shall give notice of 2 months to the Lessee to remedy the breach within the notice period and should the Lessee not remedy the breach within the notice period, the Lessor will be entitled to terminate the lease on the expiry of the notice period. |

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| C. | The Parties agree not to terminate the lease either during the Lock-In Period or any renewed term thereof other than as specifically agreed in this Agreement. |

Page 4 of 24

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| D. | The Lessee shall pay rent during the termination notice period in advance or may for any renewed Lease period, if any, at its option and advise the Lessor to adjust the same from the Security Deposit refundable to the Lessee on termination of the lease. |

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| E. | In the event the Lessee terminates the lease during the Lock-In Period other than as provided in clause 5A, the Lessee shall be liable to pay the Lessor the residual rental for the unexpired period of the Lock-In Period. The Lessee may advise the Lessor to adjust any such amounts due from the Security Deposit. |

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| F. | Atleast ten (10) days prior to the Lessee vacating the Premises, the Parties shall undertake a joint inspection of the Premises to identify any damage caused to the Premises by the Lessee which has not been repaired by the Lessee. In the event any such damage is noticed during the said inspection, prior to the Lessee vacating the Premises, the Lessee shall, at its option, either arrange to repair the same (at its own cost) or else the Parties may agree on the cost for repairing the said damage and the Lessor shall be entitled to adjust the amount so agreed from the Security Deposit. In the event the Parties are unable to agree on the existence of any such damage or the costs for repairing the same, the Parties shall jointly appoint a third party to assess the issues in dispute between them. The Parties shall take their best endeavour to get the decision from the third party prior to the Lessee vacating the Premises and shall be final and binding on both Parties. The charges for engagement of this third party shall be shared equally between the Parties. |

**6. MAINTENANCE & UTILITY CHARGES**

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| **A.** | The Lessee shall maintain (i.e. routine day-to-day maintenance) the internal areas of the Premises at its own cost. |

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| **B.** | During the period of the lease, the Lessee shall, over and above the rent herein reserved , also bear and pay the following expenses in respect of the Premises: |

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|  | (i) | All charges for electricity consumed (excluding for the A/C) by the Lessee in the Premises and the proportionate charges for running the DG set for power backup for the interiors of the Premises shall be paid to the maintenance company in accordance with the individual meter reading. These power charges shall be calculated in accordance with the methodology elaborated in **Annexure 3**. It is understood by both Parties that the calculation elaborated in Annexure 3 is based on the current rates prescribed by the TNEB and the said rates are subject to revision by the TNEB or of its successors from time to time. The Lessee also understands that if the TNEB or any of its successors makes any demand for additional security deposit for the supply of power to the building, the same shall be shared pro rata between the then current occupants of the building, including the Lessee. Any such contribution which may be required to be made by the Lessee towards the security deposit shall be refunded to the Lessee by the Lessor along with the Security Deposit. . There shall not be any extra charges for using the Air-conditioning or any other services which is allotted for the Premises, in the night. |

Page 5 of 24

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|  | (ii) | Charges for electricity consumed as mentioned in 6c(i) above is not inclusive of the power consumed for the air conditioning of the Premises. The power consumed for the air-conditioning shall be metered separately and paid for in accordance with the separate agreement between the Parties on the sharing of savings on account of HVAC system installed to reduce the power consumption for all the occupants of the building. |

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| **C.** | **Access:** |

The Lessee shall have unlimited access to the ‘Leased premises’ 24 hours a day, all days of the week with full infrastructure and facilities including lifts, power, power back-up and Air-conditioning.

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| **D.** | **Air-Conditioning:** |

The Lessor shall provide adequate air conditioning for 24 hours a day to the Premises as per the requirement of the Lessee to maintain 24 +/- 1 degree Centigrade temperature.

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| **E.** | **Power:** |

The Lessor shall provide electricity power of 600KVA for the Premises as more particularly detailed in Annexure 1 to the Premises at no extra cost. The consumption charges for the Power shall be paid by the Lessee as agreed in clause 6C(i) and (ii) above.

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| **F.** | **Power Back-up:** |

The Lessor shall provide uninterruptible power supply for 100% of the load required by the Lessee in the Premises (i.e.600 KVA) plus power required for the air conditioning, 24 hours a day on all days. In the event of any interruption in the regular power supply or any part thereof, the Lessor agrees that it will provide the Lessee with 100% power backup for the full load required by the Lessee using the DG sets.

The Lessee shall pay the Proportionate charges for running the DG set for power backup for the interiors of the Premises as agreed in clause 6.C.(i) above.

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| **G.** | **Toilets:** |

The Lessor shall provide fully finished Toilets as per the Lessor’s standard specifications.

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| **H.** | **Water & Sewage:** |

No connection Charge Payable by the Lessee for the Premises. The Lessor shall provide Water & Sewage Connection in accordance with applicable laws and shall provide running water continuously on all days and sewerage facilities for the Premises as per the National Building Code norms. No additional charges are payable for the water consumed by the Lessee in the Premises.

Page 6 of 24

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| **I.** | **Legal Fee and Registration of Lease:** |

Each Party to bear its own legal costs. The Stamp Duty & Registration Charges of the Lease Documentation as applicable shall be borne by the Lessee.

The Lessor will provide required assistance in the registration process.

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| **J.** | **Signage:** |

The Lessee shall be entitled to exhibit signboards, displays and advertisements or any other logo on the designated places earmarked by the Lessor inside the Building in such suitable manner as per the signage rules of the facility. Further, such signboards outside the building shall also be exhibited only at such places earmarked by the Lessor.

**7. THE LESSEE’S COVENANTS**

The Lessee, to the extent that the obligations agreed upon under this Lease Agreement may continue throughout the term of the lease and any renewal thereof, covenants to the Lessor as follows:

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|  | i) | The Lessee shall use the said Premises only as an office, the Car Parking Spaces only for parking Light Motor Vehicles with the option of parking not more than 4 two wheelers per designated car park slot. |

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|  | ii) | The Lessee shall at its own costs and charges with prior intimation to the Lessor install furniture, fixtures, fittings, electrical installations, equipment and all other conveniences as the Lessee may think fit for or in connection with the full use, occupation and enjoyment of the Premises without any structural alterations. Any proposed improvements on the Premises shall be given in writing to the Lessor in advance and after receiving consent of the same (which consent shall not be unreasonably withheld or delayed) the Lessee shall start the required works. On termination of this Agreement, if the Lessee opts to remove the same it shall do so at its own cost and expense. Provided however, that any damage caused to the Premises, while so removing the furniture shall be dealt with in accordance with clause 5F. The Lessee shall be entitled to remove all property of the Lessee from the Premises without any let or hindrance from the Lessor and the Lessor confirms that it shall not have any right of lien, charge, pledge or any retention right over any of the property of the Lessee notwithstanding any amount payable or allegedly payable by the Lessee to the Lessor for any reason whatsoever. |

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|  | iii) | The Lessee shall not do or suffer to be done in the Premises any act, deed, matter or thing which may cause nuisance or annoyance to the Lessor or the other occupiers of the building. |

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|  | iv) | The Lessee shall use the Premises with due care and caution and keep the same in good and tenantable condition (reasonable wear and tear excepted). |

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|  | v) | The Lessee shall permit the Lessor or their duly authorised representative upon reasonable proper notice, and at a mutually agreed time, to enter the Premises at reasonable hours, for the purpose of inspection and/or carrying out any required |

Page 7 of 24

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|  | repairs, in the Premises. It is agreed and acknowledged by the Lessor that such repairs/inspection (if necessitated), will be performed in such a manner so as not to cause any inconvenience or disturbance to the Lessee. |

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|  | vi) | All day-to-day repairs/maintenance, such as replacement fused bulbs, leakage of taps, replacement of glass panes, except the exterior glass panes and all other minor repairs shall be undertaken by the Lessee at its own cost. |

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|  | vii) | The Lessee shall use the Premises in a reasonable and prudent manner (subject to normal wear and tear), and any damage done to the Premises other than those caused by normal wear and tear and damage by fire, flood, earthquake or other Act of God, or riots, civil commotion or any cause beyond the reasonable control of the Lessee shall be dealt with in accordance with clause 5F. |

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|  | viii) | The Lessee shall have the right to sub-lease the Premises to any group companies or affiliates or subsidiaries with written intimation to the Lessor. Third Party sub lease will not be permitted. |

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|  | ix) | The Lessee shall abide by and perform all the rules and regulations and by-laws of the Building and all laws for the time being in force provided such rules and by-laws do not cause any undue disadvantage or hardship to the Lessee. The Lessee shall indemnify and keep indemnified the Lessor against all actions, proceedings, suits, claims, demands, losses, damages, costs, charges, and expenses incurred or suffered by them as a reason of any non-observance or non-performance of such rules and regulations by the Lessee. |

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|  | x) | The Lessee shall be entitled to store all its goods, belongings, chattels, articles, (except inflammable articles or any other articles which are hazardous in nature and likely to cause damage to the building), in the Premises. |

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|  | xi) | The Lessee shall pay maintenance charges as per the bills raised by the Maintenance Company appointed by the Lessor for the provision of maintenance services. |

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|  | xii) | The Lessee shall indemnify, keep indemnified, defend and hold the Lessor harmless from and against any and all direct and actual claims, losses, damages arising out of or relating to any misrepresentation or breach of representation or warranty made by the Lessee under this clause 7. |

**8. THE LESSOR’S COVENANTS**

The Lessor to the extent that these obligations agreed upon under this Lease Agreement may continue throughout the term of the Lease, and any renewal thereof, hereby covenants with the Lessee as follows:

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|  | i) | The Lessor shall, for and during the period of the lease and any renewed terms of this lease, bear and pay all existing and future property taxes, water taxes and other taxes and increases thereof which are now or may at any time hereafter during the period of the lease, be assessed, charged or imposed in respect of the Premises or any part |

Page 8 of 24

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|  | thereof. Any taxes, levies etc arising out of usership of the premise shall be paid by the Lessee including but not limited to service tax, lease tax etc. |

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|  | ii) | The Lessor shall be responsible for carrying out, at it’s cost, all structural repairs (including any leakages and seepages) to the Premises as well as the Fortius building as may be required. In the event the Lessor fails to carry out any such repairs as may be required, within 30 days the Lessee may to carry out such repairs. The Lessee on carrying out such repairs shall be entitled to either reimbursement of expenses incurred for such repairs or adjustments of the same towards the subsequent lease rent payable on producing the requisite vouchers of expenses. |

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|  | iii) | The Lessor shall not do anything or omit or suffer to be done anything whereby the Lease agreed to be granted is prejudicially affected. |

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|  | iv) | The Lessee shall be entitled to use and enjoy the common areas and facilities appurtenant to the Premises including the following: |

a. Porch, Entrance Lobby and Common Passages;

b. Lifts/Pumps/Generators of the building.

c. Lift lobbies, staircase lobbies, terraces, stairs, basement, approach way to the building, circulation space including driveway surrounding the building

d. Any such utility space which the Lessee will share with the other occupants of the building.

The Lessee shall be authorized to enter any common utility space / building (e.g. generator room etc.) only with the escort of a representative of the maintenance company / the Lessor.

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|  | v) | The Lessor shall provide the required Wet riser, fire hydrant, sprinklers, Public announcement system and smoke detectors and all other safety equipment as per agreed specifications in the Common areas and within the Premises. |

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|  | vi) | The Lessor shall provide common telecommunication services (Broadband / Leased lines etc) to the building at no extra cost to the Lessee. Charges for the telecommunication services consumed by the Lessee shall be paid by the Lessee |

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|  | vii) | The Lessor shall provide fully finished Toilets within the Premises as per their standard specifications. |

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|  | viii) | The Lessor shall provide the maintenance services as agreed between the Parties in the separate Maintenance Agreement executed between them. The provision of the said maintenance services in accordance with the separate Maintenance Agreement is a material term of this Agreement. The Maintenance Charge shall be charged based on open book basis and shall be subject to a quarterly reconciliation and an annual audit. |

Page 9 of 24

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|  | ix) | The Lessor shall facilitate in obtaining for the Lessee the benefits on the tariff concessions, which are applicable for the software parks (STPI) as applicable for the Premises subject to satisfactory documentation provided by the Lessee. The Lessor shall cooperate with the Lessee to avail of such benefits. |

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|  | viii) | The Lessor shall abide by and perform all the rules and regulations and by-laws of the building, and all laws for the time being in force provided such rules and by-laws do not cause any undue disadvantage or hardship to the Lessee. The Lessor shall indemnify and keep indemnified the Lessee against all actions, proceedings, suits, claims, demands, losses, damages, costs, charges, and expenses incurred or suffered by them as a reason of any non-observance or non-performance of such rules and regulations by the Lessor. |

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|  | x) | The Lessor hereby represents that it has good title and is the absolute owner of the Premises and no other person (except banks / financial institutions which may have certain charges on the Premises on account of loans extended for financing the development of the building) has or have any right, title and interest in the said Premises. |

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|  | xi) | The Lessor hereby represents that it is entitled to use and permit the use of all the common amenities, facilities and utilities in the Fortius Building as contemplated herein and in the separate maintenance and power saving agreements signed between the parties. |

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|  | xii) | The Lessor represents that it has the full right and unrestrained authority to enter into these presents and that the agreements (now or in future) with any banks / financial institutions for financing the development of the building do not place any restraint on the right of the Lessor to lease the Premises on the terms agreed herein. |

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|  | xiii) | The Lessor represents that it shall not do, omit or suffer to be done anything whereby its right to hold and enjoy the Premises or lease the same in accordance with these presents is avoided, forfeited or extinguished including but not limited to anything required as per the terms of agreements between the Lessor and banks / financial institutions that may have a charge on the Premises from time to time. It is, however, agreed, by the Lessee, that, in the event of the Lessor being desirous of selling/ assigning/ alienating its rights in the Premises, the Lessor shall be entitled to do so provided that the Lessor has ensured that the prospective purchaser/assignee agrees in writing to be bound by the terms and conditions herein contained and specifically undertakes to refund the security deposit to the Lessee as agreed herein, and such sale shall not be to any investor not of good social standing. The Lessor shall ensure that the Premises are not sold piece-meal and will be sold only on a floor-wise basis. |

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|  | xiv) | The Lessor represents and warrants that all necessary approvals, permissions registrations etc. required for the construction and occupation of the Premises have been duly obtained and that the entire Building including the Premises have been constructed strictly in accordance with the Planning Permit and approved Building Plans for the same and that it has obtained / applied for the necessary permissions / certificates under applicable laws to occupy and use it for commercial purposes and that the Lessor is not aware of any restraint, obstruction or legal impediment to the use and/or occupation of the Premises for the purposes for which it is leased. |

Page 10 of 24

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|  | xv) | The Lessor represents and warrants that, on the Lessee paying the rent hereby reserved and performing and observing its obligations hereunder, the Lessee shall be entitled to peaceably and quietly hold and enjoy the Premises during the period of lease without any eviction, disturbance or interruption by the Lessor or any person or persons claiming through or under the Lessor or otherwise howsoever. |

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|  | xvi) | The Lessor represents that except for certain charges created in favour of banks / financial institutions that have financed the Lessor’s development of the building, the Premises is free from any kind of encumbrances, court orders or any mortgages, charges or lien which would affect the peaceful enjoyment thereof by the Lessee. |

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|  | xvii) | The Lessor covenants that shall sign, without undue delay, , on such applications, no-objection certificates or any documents prescribed by any statute / government authority as may be required by the Lessee to obtain necessary statutory / governmental licenses, permissions etc. to carry out its business operations from the Premises. |

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|  | xviii) | The Lessor shall indemnify, keep indemnified, defend and hold the Lessee harmless from and against any and all direct and actual claims, losses, damages (including associated legal expenses and reasonable re-location expenses) arising out of or relating to any misrepresentation or breach of representation or warranty made by the Lessor under this clause 8. |

**9. INSURANCE**

The Lessor shall ensure that the Premises and the fit-outs are insured during the period of lease against structural damage, damage by fire, earthquake, riots and other risks at their own cost.

**10. RENEWAL**

The lease of the Premises may be renewed at the Lessee’s sole option for a further two (2) terms of Three (3) years each. The Lessee shall exercise this option of renewal, in writing, atleast three (3) months prior to the expiry of the then current term of the lease. In the event the Lessee exercises its option to renew the lease, the Parties agree that the Parties shall execute and register a fresh lease agreement for the renewed term on the same conditions as herein contained except for the lease rent which will be escalated by 12% of the last paid rent at the end of every three year lease term.

**10. SCOPE OF AGREEMENT / LEGAL CONSTRUCTION**

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| **A**. | This Lease Agreement cancels all other agreements, which the Parties may have previously entered into which related in any way to the Premises including the term sheet dated 12th March 2010 executed between the Parties and this Lease Agreement constitutes the entire understanding of the Parties. Oral discussions and representations made during the negotiation of this Lease shall not be construed to be terms of this Lease Agreement. Any changes, variation, or modification of the terms of this Lease shall not be valid unless made in writing and signed by both Parties hereto. |

Page 11 of 24

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| **B** | If any provision of this Lease Agreement or the application of any such provision to any person or circumstance shall be held invalid, illegal or unenforceable in any respect, by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision hereof and such provision shall be deemed modified to the minimum extent necessary to make such provision consistent with the applicable law, and in its modified form, such provision shall then be enforceable and enforced. |

**11. NOTICE**

Any notice, claim correspondence or other documents relating to this Lease Agreement shall be in writing in the English language and shall be deemed to be duly given or made when delivered by registered post to the Party to which it is to be given or made at the following addresses:

If to Lessor, deliver to:

**M/s. Vikram Tech Park (P) Limited**

Kind Attn: Mr. Mendo Patel

XXX

Chennai –

Telehone No:

If to Lessee, deliver to:

**ACE Pvt Ltd**

YYY

Kind Attn: General Manager

With a copy to:

Vice President & General Counsel

ACE, Inc

San Francisco, CA USA

The Parties may change their addresses and numbers for the purpose of giving notice by providing proper notice in accordance with the terms of this Article. Any notice shall be effective when received by the Party to which it is to be given or by the office of the Party to which it is sent.

**12. MISCELLANEOUS**

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| **A.** | The terms of this lease shall be construed in accordance with the laws of India |

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| **B.** | This Lease Agreement is executed in two (2) counterparts in the English language each of which shall be deemed to constitute an original but all of such counterparts shall together constitute one and the same instrument. The Lessee shall retain one set and the Lessor shall retain the second set. |

Page 12 of 24

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| **C.** | LESSEE shall always observe and perform all the terms and conditions, covenants and provisions as contained in this Lease Agreement and shall not do, omit or suffer to be done any thing whereby the right of the LESSOR to the Premises is violated or forfeited or jeopardized or extinguished and LESSEE shall always indemnify and keep indemnified the LESSOR against any such loss or damage suffered by LESSOR by reason of any act or deed or omission of LESSEE. |

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| **D.** | The LESSEE shall not store or deal in any goods in the leased portion which are hazardous in nature and not permissible in law except the UPS, Other equipments, Batteries, Diesel and others as essential to run LESSEE’s Business Operations. |

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| **E.** | Any controversy or claim arising out of or relating to this LEASE DEED, or any breach or alleged breach thereof, shall be finally settled by arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996. The LESSEE shall be entitled to appoint one arbitrator and LESSOR shall be entitled to appoint one arbitrator and that those two arbitrators shall nominate a third arbitrator. The arbitration proceedings shall be held in Chennai. The Courts in Chennai shall alone have jurisdiction with respect to all matters arising out of this LEASE DEED. |

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| **F.** | The headings under in this Lease Agreement are for convenience only and do not constitute matters to be construed in interpreting this Lease Agreement. |

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| **G.** | This Lease Agreement may not be amended or otherwise altered except pursuant to an instrument in writing signed by each of the Parties hereto. This Lease Agreement shall be binding upon and inure to the benefit of the respective successors, legal representatives and permitted assigns of the Parties, provided that no Party shall assign any of its rights or delegate any obligations hereunder without the prior written consent of the other, and any attempted assignment or delegation without consent shall be null and void. |

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| **H.** | Subject to the terms and conditions of this Lease Agreement, each of the Parties hereto will use all reasonable efforts to take, or cause to be taken, all action, and to do, or cause to be done, all things necessary to fulfill its obligations under this Lease Agreement. |

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| **I.** | **Jurisdiction:** This Contract shall be governed, construed and enforced in accordance with the laws of India and the courts in Chennai shall have jurisdiction with respect to all matters and disputes arising out of or relating to this Contract. |

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| **J.** | The failure of either Party to enforce at any time or for any period of time any provision hereof shall not be construed to be a waiver of any provision or of the right therefore to enforce any/or each and every provision of the Agreement. |

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| **K.** | The Parties agree that time is the essence in the performance of each of the Parties obligations under this Lease Agreement. |

**13. FORCE MAJEURE:**

If performance of this Agreement is prevented, restricted or interfered with by reason of acts of God, wars, revolution, civil commotion, acts of public enemy, embargo, epidemic, quarantine, acts of government (including state or local government) acting in their sovereign capacity, labor difficulties (including strikes, slowdowns, picketing or boycotts), or any other circumstances beyond the reasonable control of a Party and not involving any fault, misconduct or negligence of the Party affected (“Event of Force Majeure”), the Party affected, upon giving prompt notice to the other Party, shall be excused from such performance on a day-to-day basis during the continuance of such Event of Force Majeure provided, however, that the Party so affected shall use its best reasonable efforts to avoid or remove such causes of non-performance and both Parties shall proceed immediately with the performance of their obligations under this Agreement whenever such causes are removed or avoided, or such causes otherwise cease. If the Event of Force Majeure makes the use of the Premises or any substantial part thereof for the business operations

Page 13 of 24

of the Lessee unfeasible for a continuous period of over thirty (30) then in that event the Lessee shall be entitled to terminate this Lease Agreement forthwith at its option. If however the Lessee opts to continue this lease, the Lessor shall at its own cost restore the Premises to the condition in which it existed prior to the said destruction or damage. It is agreed between the Parties that the Lessee shall not be liable to pay the rent or any other charges payable pursuant to this Agreement for the period when the Premises is unfit for its use.

**LeaseA#10**

Exhibit 10.107

THIRD AMENDMENT TO LEASE

This THIRD AMENDMENT TO LEASE (this “Third Amendment”) is dated as of February 1, 2013, by and between EVANS REALTY, L.P., a Delaware limited partnership (“Landlord”), and COMPCAST INC., a Delaware corporation (“Tenant”).

R E C I T A L S

A. Landlord and Tenant are parties to that certain Office Lease dated March 28, 2005 (the “Original Lease”), as amended by that certain First Amendment to Lease dated as of March 31, 2006 (the “First Amendment”), and that certain Second Amendment to Lease dated as of February 23, 2010 (the “Second Amendment”), whereby Landlord leases to Tenant and Tenant leases from Landlord all of the 465,812 rentable square feet of space comprising the entire rentable areas of “Building 1” (which is comprised of 103,979 rentable square feet), “Building 2” (which is comprised of 130,243 rentable square feet), “Building 3” (which is comprised of 130,354 rentable square feet), and “Building 4” (which is comprised of 101,236 rentable square feet), as those terms are defined in the Lease (collectively, the “Premises”) respectively located and addressed at 7525, 7535, 7545, and 7555 Torrey Santa Fe Road, San Diego, California. The Premises and related improvements constitute that certain office building project commonly known as “The Heights” (the “Project”). The Original Lease, the First Amendment and the Second Amendment shall be collectively referred to herein as the “Lease.”

B. Landlord and Tenant presently desire to amend the Lease as more fully set forth below.

A G R E E M E N T

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows.

1.Defined Terms. All capitalized terms not defined herein shall have the same respective meanings as are given such terms in the lease unless expressly provided otherwise in this third amendment.

2. Modification of Maintenance Obligations.

2.1 Landlord Maintenance Items. Notwithstanding any provision to the contrary contained in the Lease (including, but not limited to, Section 7.1 of the Original Lease), retroactive to the Lease Commencement Date and continuing thereafter for the duration of the Lease Term, Landlord (a) has been responsible for maintaining in first-class condition and operating order and keeping in good repair and condition the items identified on Exhibit A (the “Landlord Maintenance Items”), and (b) shall continue to maintain in first-class condition operating order and keep in good repair and condition the Landlord Maintenance Items. Pursuant to Section 7.1 of the Original Lease, Landlord shall be permitted to include in Operating Expenses any costs or expenses incurred by Landlord in maintaining such Landlord Maintenance Items to the extent allowed pursuant to the terms and conditions of Section 4.2.4 of the Original Lease;

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Evans Realty, L.P.

[COMPCAST, INC.]

Third Amendment to Office Lease

provided, however, as the costs of the “Tenant Maintenance Items” (as that term is defined in Section 2.2 below) are incurred directly by the Tenant and paid for directly by the Tenant, such costs shall not be includable within Operating Expenses.

2.2 Tenant Maintenance Items. Notwithstanding any provision to the contrary contained in the Lease (including, but not limited to, Section 7.1 of the Original Lease), retroactive to the Lease Commencement Date and continuing thereafter for the duration of the Lease Term, Tenant, at Tenant’s sole cost and expense, (i) has been responsible for maintaining in first-class condition and operating order and keeping in good repair and condition the items identified on Exhibit B (the “Tenant Maintenance Items”), and (ii) shall continue to maintain in first-class condition and operating order and keep in good repair and condition the Tenant Maintenance Items.

2.3 BS Exception. Notwithstanding any provision to the contrary contained in this Lease, retroactive to the date of the Original Lease, the third (3rd) and fifth (5th) sentences of Section 7.1 of the Lease shall be deleted in their entirety and replaced with the following:

Third (3rd) sentence replacement:

“Notwithstanding anything in this Lease to the contrary, Tenant shall be required to perform repairs to the Building Structure to the extent such repairs are necessitated by Tenant’s use of the Premises for other than normal and customary business office operations or by Tenant’s negligence or willful misconduct, unless and to the extent such damage is covered by insurance carried or required to be carried by Landlord pursuant to Article 10 and to which the waiver of subrogation is applicable (such obligation to the extent applicable to Tenant as qualified and conditioned will hereinafter be defined as the “BS Exception”).”

Fifth (5th) sentence replacement:

“In addition, Tenant shall, at Tenant’s own expense, but under the supervision and subject to the prior approval of Landlord, and within any reasonable period of time specified by Landlord, promptly and adequately repair all damage to the Premises and replace or repair all damaged, broken or worn fixtures and appurtenances, but such obligation shall not extend to the Building Structure except pursuant to the BS Exception.”

In addition, each and every reference to the phrase “BS/BS Exception” contained in the Lease shall be deleted wherever it appears in the Lease and shall be replaced with the phrase “BS Exception.”

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Evans Realty, L.P.

[COMPCAST, INC.]

Third Amendment to Office Lease

3. Management Standards. Landlord and Tenant hereby acknowledge that Tenant’s in-house facilities management department (collectively, the “Facilities Team”) is comprised of a multi-disciplined staff of highly trained and professional facilities maintenance, repair and management personnel. Tenant shall cause, throughout the Lease Term, its Facilities Team to continue to maintain materially consistent levels of capability and expertise with the levels of such Facilities Team as of the date of this Third Amendment, and apply such Facilities Team to the Premises as reasonably required to satisfy Tenant’s obligations with respect to the Tenant Maintenance Items.

3.1 Professional Management. Tenant shall perform its duties with respect to the Tenant Maintenance Items in a manner consistent with the standards followed by the Landlord and other first-class institutional owners and management companies that are managing Comparable Buildings (the “Management Standard”).

3.2 Service Agreements. All Tenant Maintenance Items shall be maintained, repaired and replaced (except as otherwise provided in Section 3.3 below) by Tenant (i) in a commercially reasonable first-class condition, (ii) in accordance with any applicable manufacturer specifications relating to any particular component of such Tenant Maintenance Items, (iii) in accordance with Applicable Laws. Tenant shall contract with a qualified, experienced professional third party service company to perform its maintenance, repair and replacement obligations hereunder with respect to the HVAC systems (which shall provide for and include, without limitation, replacement of filters, oiling and lubricating of machinery, parts replacement, adjustment of drive belts, oil changes and other preventive maintenance, including annual maintenance of duct work, interior unit drains and caulking of sheet metal, and recaulking of jacks and vents on an annual basis), the roof (but not the roof structure), the building fire/lifesafety systems and the mechanical, electrical and plumbing systems (a “Service Contract”). Tenant shall deliver full and complete copies of all such Service Contracts to Landlord within thirty (30) days after the effective date of such Service Contract. In addition, Tenant shall regularly, in accordance with commercially reasonable standards, generate and maintain preventive maintenance records relating to each Building’s mechanical and main electrical systems, including life safety, elevators and the central plant (“Preventative Maintenance Records”). In addition, upon Landlord’s request, Tenant shall deliver a copy of all current Service Agreements to Landlord and/or a copy of the Preventative Maintenance Records.

3.3 Capital Items.

3.3.1. In General. With respect to those components of the Tenant Maintenance Items that arc capital in nature, Tenant shall notify Landlord from time-to-time of its belief that certain of such “Capital Items” (as that term is defined below) need to be replaced or constructed in the Project, and to the extent Landlord concurs (in its commercially reasonable discretion) that such Capital Items do need to be so replaced and/or constructed, Landlord shall perform the same and charge the cost thereof to Tenant as a component of Operating Expenses to the extent permitted by the terms of Sections 4.2.4(xiii), (Q) and (R) of the Original Lease (as amended by Section 3.3.2 below); provided, however, it shall be deemed commercially reasonable under this Section 3.3.1 for the Landlord to withhold its consent to any proposed Capital Items if the useful life of such particular Capital Item is anticipated to significantly exceed the then-remaining Lease Term when Tenant is obligated to lease the Premises. To the extent the cost of a

c.03/WLA

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3

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[COMPCAST, INC.]

Third Amendment to Office Lease

particular Capital Item otherwise allowable pursuant to the foregoing sentence is not permitted to be passed through to Tenant as a component of Operating Expenses pursuant to the terms of Section 4.2.4(xiii), (Q) and (R) of the Original Lease (as amended by Section 3.3.2 below), and the requested Capital Item is commercially reasonable (i.e., consistent with the standards generally maintained at the Comparable Buildings), the cost of such Capital Item shall be borne entirely by Landlord with no reimbursement obligation on behalf of Tenant. Tenant shall use commercially reasonable efforts to provide Landlord with any notice contemplated by the terms of this Section 3.3.1 at least sixty (60) days prior to the date upon which Tenant anticipates work related to the applicable Capital Item would need to be commenced. For purposes hereof, “Capital Items” shall mean capital improvements to the Project (including, any of the buildings located therein) which are Tenant Maintenance Items, or which shall become Tenant Maintenance Items once complete, and are more particularly contemplated by the terms of Sections 4.2.4(xiii) and (R) of the Original Lease (as amended by Section 3.3.2 below).

3.3.2. Section 4.2.4(R) of the Original Lease. Landlord and Tenant hereby acknowledge and agree that that Section 4.2.4(R) of the Original Lease is hereby deleted and replaced with the following

“R.

Costs of a capital nature, including, without limitation, capital improvements, capital repairs, capital equipment and capital tools, all as determined in accordance with sound real estate management and accounting principles, consistently applied, except (i) to the extent required under any governmental law or regulation enacted and enforced after the Lease Commencement Date, and (ii) costs incurred with respect to devices anticipated to reduce Operating Expenses, but with regard to such subsection (ii) costs, only to the extent the same do not exceed the anticipated net reduction of Operating Expenses, provided that in either case the permissible costs set forth in items (i) and (ii), above, shall be amortized over their reasonable useful life as determined in accordance with generally accepted accounting principles as and to the extent consistently applied by institutional ownership in the office building real estate industry; provided further that, in connection with the costs set forth in item (ii) above, Landlord shall, upon Tenant’s request, provide Tenant with reasonable evidence that the annual cost of the capital improvement will be equal to or less than the reasonably anticipated savings in Direct Expenses caused by such capital improvement, and Tenant shall have the right to approve such calculations as being materially accurate, which approval shall not be unreasonably withheld;”

4. Meeting Requirements.

4.1 Maintenance Meetings. At the written request of either Landlord or Tenant (a “MM Request”), each party shall arrange to meet and confer with the other (at a

c.03/WLA

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4

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[COMPCAST, INC.]

Third Amendment to Office Lease

mutually reasonable and convenient time and location), as to the status of the maintenance, repair and other work required to be performed by each party under the Lease (as amended) (each, a “Maintenance Meeting”); provided, however, in no event shall Landlord or Tenant be required to participate in more than one (1) such Maintenance Meeting in any calendar quarter during the Lease Term, unless such a Maintenance Meeting is required in connection with an emergency situation or event.

4.2 M&R Reports. In connection with, and in advance of, any such Maintenance Meeting, to the extent the requesting party’s MM Request included a request for maintenance and repair reports, documents and back-up materials, the responding party shall promptly deliver any maintenance and repair reports, documents and back-up materials related to the maintenance, repair and other work required to be performed by such party under the Lease (as amended), to the extent the same are regularly and customarily generated and maintained by, and in the possession of, its Facilities Team (collectively, the “M&R Reports”); provided, however, the responding party may also make a prompt written request for such M&R Reports maintained by the requesting party, in which case such request shall also be satisfied prior to the corresponding Maintenance Meeting.

4.3 Books and Records. Tenant shall maintain complete, detailed and accurate records, books and accounts of all funds disbursed in connection with Tenant’s maintenance of the Tenant Maintenance Items (excepting salary disbursements internal to Tenant), including all M&R Reports. Tenant agrees to keep all of the aforementioned documents (collectively, the “Books and Records”) safe, available and separable from any record not having to do with the Premises. Tenant shall not dispose of any such Books or Records until the same are at least three (3) years old.

4.4 Tenant’s Risk Management Obligations. Tenant shall promptly investigate and make a full timely written report to Landlord as to all alleged accidents of a material nature known to Tenant and/or all material claims for damages relating to the Premises known to Tenant, including any material damage or destruction to the Premises. Landlord and Tenant shall notify each other immediately of any threatened or pending condemnation, rezoning or other governmental orders, proceedings or lawsuits involving the Premises.

4.5 Tenant’s Responsibilities Upon Termination of Management of the Premises. Upon the expiration or earlier termination of the Lease (as amended) for any reason, Tenant shall forthwith, without necessity of demand or notice, deliver the following to Landlord, or Landlord’s appointed agent on the effective date of such expiration or early termination (except to the extent that any such item has already been delivered to Landlord).

4.5.1. Copies of the Preventative Maintenance Records for the most recent full calendar year.

4.5.2. Copies of the Books and Records for the most recent full calendar year and any subsequent partial calendar year.

c.03/WLA

a

5

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[COMPCAST, INC.]

Third Amendment to Office Lease

4.5.3. Any third party warranties, guaranties and operating manuals in Tenant’s possession relating to any Tenant Maintenance Items (copies thereof where reasonably acceptable).

4.5.4. All keys related to the telephone closets, janitorial closets, electrical closets, storage rooms, storage areas, rooftop access points, and all other areas which for which Tenant has restricted access.

4.5.5. A certification that Tenant, in connection with the terms and conditions of Section 5 of this Third Amendment, has maintained those portions of the Project, Building and Premises required to be maintained by Tenant in accordance with the terms and conditions of this Third Amendment and Article 24 of the Original Lease.

The obligation of Tenant to deliver the foregoing shall survive the expiration or earlier termination of the Lease.

5. Condition of the Tenant Maintenance Items Upon Surrender. In addition to the requirements set forth in Article 15 of the Original Lease, upon the expiration of the Lease Term, or upon any earlier termination of the Lease (as amended), Tenant shall, surrender the Premises in satisfaction of the terms and conditions of Section 7.1 of the Original Lease as well as Section 4 of this Third Amendment, including without limitation, Tenant’s obligations with respect to the Tenant Maintenance Items. Furthermore, the Tenant Maintenance Items shall be in compliance with, and Tenant having complied with, Tenant’s obligations under the Lease (as amended) to maintain and deliver the Premises in as good order and condition as when Tenant installed or took possession thereof and as thereafter improved or altered by Landlord and/or Tenant, reasonable wear and tear, and repairs which are specifically made the responsibility of Landlord hereunder excepted. In the event that the Premises or the Tenant Maintenance Items shall be delivered in a condition which does not comply with the terms of this Section 5, then upon written notice to Tenant describing in reasonable detail the Tenant Maintenance Items which are in non-compliance (“Landlord’s Non-Compliance Notice”), and Tenant’s failure to cure such non-compliance within thirty (30) days following Tenant’s receipt of Landlord’s Non-Compliance Notice, Landlord shall be entitled, but not required, to expend all reasonable costs in order to cause the Premises and/or the Tenant Maintenance Items to comply with the required condition upon surrender and Tenant shall reimburse Landlord for all such costs within thirty (30) days of written demand therefor accompanied by documented invoices for such work.

6. No Brokers. Landlord and Tenant hereby warrant to each other that they have had no dealings with any real estate broker or agent in connection with the negotiation of this Third Amendment. Each party agrees to indemnify and defend the other party against and hold the other party harmless from any and all claims, demands, losses, liabilities, lawsuits, judgments, and costs and expenses (including, without limitation, reasonable attorneys’ fees) with respect to any leasing commission or equivalent compensation alleged to be owing on account of the indemnifying party’s dealings with any real estate broker or agent. The terms of this Section 6 shall survive the expiration or earlier termination of this Third Amendment.

7. No Further Modification. Except as specifically set forth in this Third Amendment, all of the terms and provisions of the Lease shall remain unmodified and in full force and effect.

c.03/WLA

a

6

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[COMPCAST, INC.]

Third Amendment to Office Lease

In the event of any conflict between the terms and conditions of the Lease and the terms and conditions of this Third Amendment, the terms and conditions of this Third Amendment shall prevail.

[Signatures follow on next page]

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a

7

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[COMPCAST, INC.]

Third Amendment to Office Lease

IN WITNESS WHEREOF, Landlord and Tenant have executed this Third Amendment as of the date first set forth above.

LANDLORD:

TENANT:

EVANS REALTY, L.P.,

a Delaware limited partnership

COMPCAST INC.,

a Delaware corporation

By: Evans Realty Corporation

a Maryland corporation,

General Partner

By: /s/ Lauren Oats

Name: Lauren Oats

Title: SVP

By: /s/ Heather Balls

Name: Heather Balls

Title: Sr. Vice President Asset Management

Execution Date: , 2013

By: /s/ Thomas Foley

Name: Thomas Foley

Title: Vice President Finance Operations and Real Estate Compcast

By: /s/ Norma Jean

Name: Norma Jean

Title: Chief Accounting Officer

Execution Date: June 5, 2013

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a

8

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[COMPCAST, INC.]

Third Amendment to Office Lease

EXHIBIT A

SANTA FE SUMMIT

LANDLORD MAINTENANCE OBLIGATIONS

Landlord shall maintain in first-class condition and operating order and keep in good repair and condition the following items (which items are to be referred to as the “Landlord Maintenance Items” in Section 1.1 of this Third Amendment):

Maintained by:

Landlord

Building Structure

Structural potions of the Building

ü

Building Structure

Foundation

ü

Building Structure

Floor/ceiling slabs

ü

Building Structure

Roof structure (excluding, the roof membrane and roof housekeeping)

ü

Building Structure

Curtain wall

ü

Building Structure

Exterior glass & mullions

ü

Building Structure

Columns

ü

Building Structure

Beams

ü

Building Structure

Shafts (including, elevator shafts)

ü

Building Structure

Stairwells and stairs

ü

Exterior Areas

Exterior plumbing (including, backflow testing & repairs)

ü

Exterior Areas

Parking areas (i.e., the parking lot and parking structure) (including, the sweeping thereof)

ü

Exterior Areas

Paving and concrete

ü

Exterior Areas

Landscaping (including, irrigation of the external landscaping)

ü

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EXHIBIT A

1

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[COMPCAST, INC.]

Third Amendment to Office Lease

Exterior Areas

Exterior Building Appearance (including, the painting of the exterior of the Building and exterior power washing of the Building, but excluding the volleyball court, the basketball court and the balconies)

ü

Exterior Areas

Exterior lights (including, the replacement of exterior light bulbs)

ü

Exterior Areas

Water features in the landscaped areas of the Project (including, pools and fountains)

ü

Exterior Areas

Gates

ü

Exterior Areas

Exterior doors and Windows (including, window washing)

ü

Exterior Areas

Amphitheatre

ü

Exterior Areas

Project common areas (including, promenade umbrellas)

ü

Exterior Areas

Exterior trash enclosures

ü

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EXHIBIT A

2

Evans Realty, L.P.

[COMPCAST, INC.]

Third Amendment to Office Lease

EXHIBIT B

SANTA FE SUMMIT

TENANT MAINTENANCE OBLIGATIONS

Landlord shall maintain in first-class condition and operating order and keep in good repair and condition the following items (which items are to be referred to as the “Tenant Maintenance Items” in Section 1.2 of this Third Amendment):

Maintained by:

Tenant

Interior Areas

The Premises (including, all blinds, ceiling tiles, interior doors, all improvements, fixtures and furnishings therein and all of the floors of the Building (but not extending to the Building Structure except pursuant to the BS Exception))

ü

Interior Areas

Janitorial

ü

Interior Areas

Interior pest control (including the provision of extermination services)

ü

Interior Areas

Interior lights (including, the replacement of interior light bulbs)

ü

Interior Areas

Utilities

ü

Interior Areas

Interior Building Appearance (including, the painting of the interior of the Building and the washing of all windows serving the Premises (but only on the interior side of each applicable window))

ü

Interior Areas

Interior project signage

ü

Building Systems

Building mechanical closets

ü

Building Systems

Building electrical closets

ü

Building Systems

Building telephone closets

ü

Building Systems

Base Building, restrooms and washrooms

ü

Building Systems

All Base Building mechanical systems

ü

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EXHIBIT B

1

Evans Realty, L.P.

[COMPCAST, INC.]

Third Amendment to Office Lease

Building Systems

All Base Building electrical systems

ü

Building Systems

All Base Building sprinkler and life safety systems(including, fire alarm testing and repairs and fire sprinklers testing and repairs)

ü

Building Systems

All Base Building plumbing systems

ü

Building Systems

Base Building HVAC systems (including, the hot and cold elements thereof as well as the rooftop HVAC units and associated equipment)

ü

Exterior Areas

Volleyball court

ü

Exterior Areas

Basketball court

ü

Exterior Areas

Elevator cabs & systems

ü

Exterior Areas

Balconies

ü

Exterior Areas

Exterior pest control (including, the provision of extermination services)

ü

Exterior Areas

Roof housekeeping

ü

Exterior Areas/Interior Areas

Security systems

ü

Exterior Areas/Interior Areas

Trash removal (including, recycling)

ü

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EXHIBIT B

#2

Evans Realty, L.P.

[COMPCAST, INC.]

Third Amendment to Office Lease

**LeaseA#11**

LEASE AGREEMENT

**Exhibit 10.1**

**COMMERCIAL LEASE AGREEMENT**

**THIS LEASE AGREEMENT is made and entered into \_\_\_December 1,\_\_\_2006, between**

**HousingRUS (hereinafter referred to as"Landlord"), and**

**Woodchuckers Inc. (hereinafter referred to as "Tenant").**

**ARTICLE I - GRANT OF LEASE**

**Landlord, in consideration of the rents to be paid and the covenants and agreements to be performed and observed by the Tenant, does hereby lease to the Tenant and the Tenant does hereby lease and take from the Landlord the property described in Exhibit "A" attached hereto and by reference made a part hereof (the "Leased Premises"), together with, as part of the parcel, all improvements located thereon.**

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| --- |
| **ARTICLE II - LEASE TERM** |

**Section l. Total Term of Lease. The term of this Lease shall begin on the commencement date, as defined in Section 2 of this Article II, and shall terminate 5 years from the date hereof.**

**Section 2. Commencement Date. The "Commencement Date" shall mean the date on which the Tenant shall commence to conduct business on the Leased Premised, so long as such date is not in excess of sixty (60) days subsequent to execution hereof.**

|  |
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| **ARTICLE III - EXTENSIONS** |

**The parties hereto may elect to extend this Agreement upon such terms and conditions as may be agreed upon in writing and signed by the parties at the time of any such extension.**

**ARTICLE IV - DETERMINATION OF RENT**

**The Tenant agrees to pay the Landlord and the Landlord agrees to accept, during the term hereof, at such place as the Landlord shall from time to time direct by notice to the Tenant, rent at the following rates and times:**

**Section 1. Annual Rent. Annual rent for the term of the Lease shall be \_\_\_\_CAD$6000.00 \_\_\_\_\_\_Dollars.**

**Section 2. Payment of Yearly Rent. The annual rent shall be payable in advance in equal monthly installments of one-twelfth (1/12th) of the total yearly rent.**

**Reference to yearly rent hereunder shall not be implied or construed to the effect that this Lease or the obligation to pay rent hereunder is from year to year, or for any term shorter than the existing Lease term, plus any extensions as may be agreed upon.**

**ARTICLE V - SECURITY DEPOSIT**

**The Tenant has deposited with the Landlord the sum of \_\_\_\_\_0\_\_\_\_\_\_Dollars as security for the full and faithful performance by the Tenant of all the terms of this lease required to be performed by the Tenant. Such sum shall be returned to the Tenant after the expiration of this lease, provided the Tenant has fully and faithfully carried out all of its terms.**

**In the event of a bona fide sale of the property of which the leased premises are a part, the Landlord shall have the right to transfer the security to the purchaser to be held under the terms of this lease, and the Landlord shall be released from all liability for the return of such security to the Tenant.**

|  |
| --- |
| **ARTICLE VI - TAXES** |

**Section l. Personal Property Taxes. The Tenant shall be liable for all taxes levied against any leasehold interest of the Tenant or personal property and trade fixtures owned or placed by the Tenant in the Leased Premises.**

**Section 2. Real Estate Taxes. During the continuance of this lease Landlord shall deliver to Tenant a copy of any real estate taxes and assessments against the Leased Property. From and after the Commencement Date, the Tenant shall pay to Landlord not later than twenty-one (21) days after the day on which the same may become initially due, all real estate taxes and assessments applicable to the Leased Premises, together with any interest and penalties lawfully imposed thereon as a result of Tenant's late payment thereof, which shall be levied upon the Leased Premises during the term of this Lease.**

**Section 3. Contest of Taxes. The Tenant, at its own cost and expense, may, if it shall in good faith so desire, contest by appropriate proceedings the amount of any personal or real property tax. The Tenant may, if it shall so desire, endeavor at any time or times, by appropriate proceedings, to obtain a reduction in the assessed valuation of the Leased Premises for tax purposes. In any such event, if the Landlord agrees, at the request of the Tenant, to join with the Tenant at Tenant's expense in said proceedings and the Landlord agrees to sign and deliver such papers and instruments as may be necessary to prosecute such proceedings, the Tenant shall have the right to contest the amount of any such tax and the Tenant shall have the right to withhold payment of any such tax, if the statute under which the Tenant is contesting such tax so permits.**

**Section 4. Payment of Ordinary Assessments. The Tenant shall pay all assessments, ordinary and extraordinary, attributable to or against the Leased Premises not later than twenty-one (21) days after the day on which the same became initially due. The Tenant may take the benefit of any law allowing assessments to be paid in installments and in such event the Tenant shall only be liable for such installments of assessments due during the term hereof.**

**Section 5. Changes in Method of Taxation. Landlord and Tenant further agree that if at any time during the term of this Lease, the present method of taxation or assessment of real estate shall be changed so that the whole or any part of the real estate taxes, assessment or governmental impositions now levied, assessed or imposed on the Leased Premises shall, in lieu thereof, be assessed, levied, or imposed wholly or in part, as a**

- 2 -

**capital levy or otherwise upon the rents reserved herein or any part thereof, or as a tax, corporation franchise tax, assessment, levy or charge, or any part thereof, measured by or based, in whole or in part, upon the Leased Premises or on the rents derived therefrom and imposed upon the Landlord, then the Tenant shall pay all such taxes, assessments, levies, impositions, or charges. Nothing contained in this Lease shall require the Tenant to pay an estate, inheritance, succession, capital levy, corporate franchise, gross receipts, transfer or income tax of the Landlord, nor shall any of the same be deemed real estate taxes as defined herein unless the same be imposed in lieu of the real estate taxes.**

**ARTICLE VII - CONSTRUCTION AND COMPLETION**

**Section 1. Improvements by TENANT. Tenant may have prepared plans and specifications for the construction of improvements, and, if so, such plans and specifications are attached hereto as Exhibit "B" and incorporated herein by reference. Tenant shall obtain all certificates, permits, licenses and other authorizations of governmental bodies or authorities which are necessary to permit the construction of the improvements on the demised premises and shall keep the same in full force and effect at Tenant's cost.**

**Tenant shall negotiate, let and supervise all contracts for the furnishing of services, labor, and maerials for the construction of the improvements on the demised premises at its cost. All such contracts shall require the contracting party to guarantee performance and all workmanship and materials installed by it for a period of one year following the date of completion of construction. Tenant shall cause all contracts to be fully and completely performed in a good and workmanlike manner, all to the effect that the improvements shall be fully and completely constructed and installed in accordance with good engineering and construction practice.**

**During the course of construction, Tenant shall, at its cost, keep in full force and effect a policy of builder's risk and liability insurance in a sum equal, from time to time, to three times the amount expended for construction of the improvements. All risk of loss or damage to the improvements during the course of construction shall be on Tenant with the proceeds from insurance thereon payable to Landlord.**

**Upon completion of construction, Tenant shall, at its cost, obtain an occupancy permit and all other permits or licenses necessary for the occupancy of the improvements and the operation of the same as set out herein and shall keep the same in force.**

**Nothing herein shall alter the intent of the parties that Tenant shall be fully and completely responsible for all aspects pertaining to the construction of the improvements of the demised premises and for the payment of all costs associated therewith. Landlord shall be under no duty to investigate or verify Tenant's compliance with the provision herein. Moreover, neither Tenant nor any third party may construe the permission granted Tenant hereunder to create any responsibility on the part of the Landlord to pay for any improvements, alterations or repairs occasioned by the Tenant. The Tenant shall keep the property free and clear of all liens and, should the Tenant fail to do so, or to have any liens removed from the property within fourteen (14) days of notification to do so by the Landlord , in addition to all other remedies available to the Landlord , the Tenant shall indemnify and hold the Landlord harmless for all costs and expenses,**

- 3 -

**including attorney's fees, occasioned by the Landlord in having said lien removed from the property; and, such costs and expenses shall be billed to the Tenant monthly and shall be payable by the Tenant with that month's regular monthly rental as additional reimburseable expenses to the Landlord by the Tenant.**

**Section 2. Utilities. Tenant shall pay for all water, sanitation, sewer, electricity, light, heat, gas, power, fuel, janitorial, and other services incident to Tenant's use of the Leased Premises, whether or not the cost thereof be a charge or imposition against the Leased Premises.**

**ARTICLE VIII - OBLIGATIONS FOR REPAIRS**

**Section 1. LANDLORD'S Repairs. Subject to any provisions herein to the contrary, and except for maintenance or replacement necessitated as the result of the act or omission of sublessees, licensees or contractors, the Landlord shall be required to repair only defects, deficiencies, deviations or failures of materials or workmanship in the building. The Landlord shall keep the Leased Premises free of such defects, deficiencies, deviations or failures during the first twelve (12) months of the term hereof.**

**Section 2. TENANT'S Repairs. The Tenant shall repair and maintain the Leased Premises in good order and condition, except for reasonable wear and tear, the repairs required of Landlord pursuant hereto, and maintenance or replacement necessitated as the result of the act or omission or negligence of the Landlord, its employees, agents, or contractors.**

**Section 3. Requirements of the Law. The Tenant agrees that if any federal, state or municipal government or any department or division thereof shall condemn the Leased Premises or any part thereof as not in conformity with the laws and regulations relating to the construction thereof as of the commencement date with respect to conditions latent or otherwise which existed on the Commencement Date, or, with respect to items which are the Landlord's duty to repair pursuant to Section 1 and 3 of this Article; and such federal, state or municipal government or any other department or division thereof, has ordered or required, or shall hereafter order or require, any alterations or repairs thereof or installations and repairs as may be necessary to comply with such laws, orders or requirements (the validity of which the Tenant shall be entitled to contest); and if by reason of such laws, orders or the work done by the Landlord in connection therewith, the Tenant is deprived of the use of the Leased Premises, the rent shall be abated or adjusted, as the case may be, in proportion to that time during which, and to that portion of the Leased Premises of which, the Tenant shall shall be deprived as a result thereof, and the Landlord shall be obligated to make such repairs, alterations or modifications at Landlord's expense.**

**All such rebuilding, altering, installing and repairing shall be done in accordance with Plans and Specifications approved by the Tenant, which approval shall not be unreasonably withheld. If, however, such condemnation, law, order or requirement, as in this Article set forth, shall be with respect to an item which shall be the Tenant's obligation to repair pursuant to Section 2 of this Article VII or with respect to Tenant's own costs and expenses, no abatement or adjustment of rent shall be granted; provided, however, that Tenant shall also be entitled to contest the validity thereof.**

- 4 -

**Section 4. TENANT'S Alterations. The Tenant shall have the right, at its sole expense, from time to time, to redecorate the Leased Premises and to make such non-structural alterations and changes in such parts thereof as the Tenant shall deem expedient or necessary for its purposes; provided, however, that such alterations and changes shall neither impair the structural soundness nor diminish the value of the Leased Premises. The Tenant may make structural alterations and additions to the Leased Premises provided that Tenant has first obtained the consent thereto of the Landlord in writing. The Landlord agrees that it shall not withhold such consent unreasonably. The Landlord shall execute and deliver upon the request of the Tenant such instrument or instruments embodying the approval of the Landlord which may be required by the public or quasi public authority for the purpose of obtaining any licenses or permits for the making of such alterations, changes and/or installations in, to or upon the Leased Premises and the Tenant agrees to pay for such licenses or permits.**

**Section 5. Permits and Expenses. Each party agrees that it will procure all necessary permits for making any repairs, alterations, or other improvements for installations, when applicable. Each Party hereto shall give written notice to the other party of any repairs required of the other pursuant to the provisions of this Article and the party responsible for said repairs agrees promptly to commence such repairs and to prosecute the same to completion diligently, subject, however, to the delays occasioned by events beyond the control of such party.**

**Each party agrees to pay promptly when due the entire cost of any work done by it upon the Leased Premises so that the Leased Premises at all times shall be free of liens for labor and materials. Each party further agrees to hold harmless and indemnify the other party from and against any and all injury, loss, claims or damage to any person or property occasioned by or arising out of the doing of any such work by such party or its employees, agents or contractors. Each party further agrees that in doing such work that it will employ materials of good quality and comply with all governmental requirements, and perform such work in a good and workmanlike manner.**

**ARTICLE IX - TENANT'S COVENANTS**

**Section 1. TENANT's Covenants. Tenant covenants and agrees as follows:**

**a. To procure any licenses and permits required for any use made of the Leased Premises by Tenant, and upon the expiration or termination of this Lease, to remove its goods and effects and those of all persons claiming under it, and to yield up peaceably to Landlord the Leased Premises in good order, repair and condition in all respects; excepting only damage by fire and casualty covered by Tenant's insurance coverage, structural repairs (unless Tenant is obligated to make such repairs hereunder) and reasonable wear and tear;**

**b. To permit Landlord and its agents to examine the Leased Premises at reasonable times and to show the Leased Premises to prospective purchasers of the Building and to provide Landlord, if not already available, with a set of keys for the purpose of said examination, provided that Landlord shall not thereby unreasonably interfere with the conduct of Tenant's business;**

- 5 -

**c. To permit Landlord to enter the Leased Premises to inspect such repairs, improvements, alterations or additions thereto as may be required under the provisions of this Lease. If, as a result of such repairs, improvements, alterations, or additions, Tenant is deprived of the use of the Leased Premises, the rent shall be abated or adjusted, as the case may be, in proportion to that time during which, and to that portion of the Leased Premises of which, Tenant shall be deprived as a result thereof.**

**ARTICLE X - INDEMNITY BY TENANT**

**Section l. Indemnity and Public Liability. The Tenant shall save Landlord harmless and indemnify Landlord from all injury, loss, claims or damage to any person or property while on the Leased Premises, unless caused by the willful acts or omissions or gross negligence of Landlord, its employees, agents, licensees or contractors. Tenant shall maintain, with respect to the Leased Premises, public liability insurance with limits of not less than one million dollars for injury or death from one accident and $250,000.00 property damage insurance, insuring Landlord and Tenant against injury to persons or damage to property on or about the Leased Premises. A copy of the policy or a certificate of insurance shall be delivered to Landlord on or before the commencement date and no such policy shall be cancellable without ten (10) days prior written notice to Landlord.**

**ARTICLE XI - USE OF PROPERTY BY TENANT**

**Section 1. Use. The Leased Premises may be occupied and used by Tenant exclusively as a business office, to be known as a KLX Business and Financial Services, LLC.**

**Nothing herein shall give Tenant the right to use the property for any other purpose or to sublease, assign, or license the use of the property to any sublessee, assignee, or licensee, which or who shall use the property for any other use.**

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| **ARTICLE XII - SIGNAGE** |

**Section l. Exterior Signs. Tenant shall have the right, at its sole risk and expense and in conformity with applicable laws and ordinances, to erect and thereafter, to repair or replace, if it shall so elect signs on any portion of the Leased Premises, providing that Tenant shall remove any such signs upon termination of this lease, and repair all damage occasioned thereby to the Leased Premises.**

**Section 2. Interior Signs. Tenant shall have the right, at its sole risk and expense and in conformity with applicable laws and ordinances, to erect, maintain, place and install its usual and customary signs and fixtures in the interior of the Leased Premises.**

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| **ARTICLE XIII - INSURANCE** |

**Section 1. Insurance Proceeds. In the event of any damage to or destruction of the Leased Premises, Tenant shall adjust the loss and settle all claims with the insurance companies issuing such policies. The parties hereto do irrevocably assign the proceeds from such insurance policies for**

- 6 -

**the purposes hereinafter stated to any institutional first mortgagee or to Landlord and Tenant jointly, if no institutional first mortgagee then holds an interest in the Leased Premises. All proceeds of said insurance shall be paid into a trust fund under the control of any institutional first mortgagee, or of Landlord and Tenant if no institutional first mortgagee then holds an interest in the Leased Premises, for repair, restoration, rebuilding or replacement, or any combination thereof, of the Leased Premises or of the improvements in the Leased Premises. In case of such damage or destruction, Landlord shall be entitled to make withdrawals from such trust fund, from time to time, upon presentation of:**

**a. bills for labor and materials expended in repair, restoration, rebuilding or replacement, or any combination thereof;**

**b. Landlord's sworn statement that such labor and materials for which payment is being made have been furnished or delivered on site; and**

**c. the certificate of a supervising architect (selected by Landlord and Tenant and approved by an institutional first mortgagee, if any, whose fees will be paid out of said insurance proceeds) certifying that the work being paid for has been completed in accordance with the Plans and Specifications previously approved by Landlord , Tenant and any institutional first mortgagee in a first class, good and workmanlike manner and in accordance with all pertinent governmental requirements.**

**Any insurance proceeds in excess of such proceeds as shall be necessary for such repair, restoration, rebuilding, replacement or any combination thereof shall be the sole property of Landlord subject to any rights therein of Landlord's mortgagee, and if the proceeds necessary for such repair, restoration, rebuilding or replacement, or any combination thereof shall be inadequate to pay the cost thereof, Tenant shall suffer the deficiency.**

**Section 2. Subrogation. Landlord and Tenant hereby release each other, to the extent of the insurance coverage provided hereunder, from any and all liability or responsibility (to the other or anyone claiming through or under the other by way of subrogation or otherwise) for any loss to or damage of property covered by the fire and extended coverage insurance policies insuring the Leased Premises and any of Tenant's property, even if such loss or damage shall have been caused by the fault or negligence of the other party.**

**Section 3. Contribution. Tenant shall reimburse Landlord for all insurance premiums connected with or applicable to the Leased Premises for whatever insurance policy the Landlord , at its sole and exclusive option, should select.**

**ARTICLE XIV - DAMAGE TO DEMISED PREMISES**

**Section 1. Abatement or Adjustment of Rent. If the whole or any part of the Leased Premises shall be damaged or destroyed by fire or other casualty after the execution of this Lease and before the termination hereof, then in every case the rent reserved in Article IV herein and other charges, if any, shall be abated or adjusted, as the case may be, in proportion to that portion of the Leased Premises of which Tenant shall be deprived on account of such damage or destruction and the work of repair, restoration, rebuilding, or replacement or any combination thereof, of the improvements**

- 7 -

**so damaged or destroyed, shall in no way be construed by any person to effect any reduction of sums or proceeds payable under any rent insurance policy.**

**Section 2. Repairs and Restoration. Landlord agrees that in the event of the damage or destruction of the Leased Premises, Landlord forthwith shall proceed to repair, restore, replace or rebuild the Leased Premises (excluding Tenant's leasehold improvements), to substantially the condition in which the same were immediately prior to such damage or destruction. The Landlord thereafter shall diligently prosecute said work to completion without delay or interruption except for events beyond the reasonable control of Landlord . Notwithstanding the foregoing, if Landlord does not either obtain a building permit within ninety (90) days of the date of such damage or destruction, or complete such repairs, rebuilding or restoration and comply with conditions (a), (b) and (c) in Section 1 of Article XIII within nine (9) months of such damage or destruction, then Tenant may at any time thereafter cancel and terminate this Lease by sending ninety (90) days written notice thereof to Landlord , or, in the alternative, Tenant may, during said ninety (90) day period, apply for the same and Landlord shall cooperate with Tenant in Tenant's application. Notwithstanding the foregoing, if such damage or destruction shall occur during the last year of the term of this Lease, or during any renewal term, and shall amount to twenty-five (25%) percent or more of the replacement cost, (exclusive of the land and foundations), this Lease, except as hereinafter provided in Section 3 of Article XV, may be terminated at the election of either Landlord or Tenant, provided that notice of such election shall be sent by the party so electing to the other within thirty (30) days after the occurrence of such damage or destruction. Upon termination, as aforesaid, by either party hereto, this Lease and the term thereof shall cease and come to an end, any unearned rent or other charges paid in advance by Tenant shall be refunded to Tenant, and the parties shall be released hereunder, each to the other, from all liability and obligations hereunder thereafter arising.**

**ARTICLE XV - CONDEMNATION**

**Section 1. Total Taking. If, after the execution of this Lease and prior to the expiration of the term hereof, the whole of the Leased Premises shall be taken under power of eminent domain by any public or private authority, or conveyed by Landlord to said authority in lieu of such taking, then this Lease and the term hereof shall cease and terminate as of the date when possession of the Leased Premises shall be taken by the taking authority and any unearned rent or other charges, if any, paid in advance, shall be refunded to Tenant.**

**Section 2. Partial Taking. If, after the execution of this Lease and prior to the expiration of the term hereof, any public or private authority shall, under the power of eminent domain, take, or Landlord shall convey to said authority in lieu of such taking, property which results in a reduction by fifteen (15%) percent or more of the area in the Leased Premises, or of a portion of the Leased Premises that substantially interrupts or substantially obstructs the conducting of business on the Leased Premises; then Tenant may, at its election, terminate this Lease by giving Landlord notice of the exercise of Tenant's election within thirty (30) days after Tenant shall receive notice of such taking. In the event of termination by Tenant under the provisions of Section 1 of this Article XV, this Lease and the term hereof shall cease and terminate as of the date**

- 8 -

**when possession shall be taken by the appropriate authority of that portion of the Entire Property that results in one of the above takings, and any unearned rent or other charges, if any, paid in advance by Tenant shall be refunded to Tenant.**

**Section 3. Restoration. In the event of a taking in respect of which Tenant shall not have the right to elect to terminate this Lease or, having such right, shall not elect to terminate this Lease, this Lease and the term thereof shall continue in full force and effect and Landlord , at Landlord's sole cost and expense, forthwith shall restore the remaining portions of the Leased Premises, including any and all improvements made theretofore to an architectural whole in substantially the same condition that the same were in prior to such taking. A just proportion of the rent reserved herein and any other charges payable by Tenant hereunder, according to the nature and extent of the injury to the Leased Premises and to Tenant's business, shall be suspended or abated until the completion of such restoration and thereafter the rent and any other charges shall be reduced in proportion to the square footage of the Leased Premises remaining after such taking.**

**Section 4. The Award. All compensation awarded for any taking, whether for the whole or a portion of the Leased Premises, shall be the sole property of the Landlord whether such compensation shall be awarded for diminution in the value of, or loss of, the leasehold or for diminution in the value of, or loss of, the fee in the Leased Premises, or otherwise.**

**The Tenant hereby assigns to Landlord all of Tenant's right and title to and interest in any and all such compensation. However, the Landlord shall not be entitled to and Tenant shall have the sole right to make its independent claim for and retain any portion of any award made by the appropriating authority directly to Tenant for loss of business, or damage to or depreciation of, and cost of removal of fixtures, personalty and improvements installed in the Leased Premises by, or at the expense of Tenant, and to any other award made by the appropriating authority directly to Tenant.**

**Section 5. Release. In the event of any termination of this Lease as the result of the provisions of this Article XV, the parties, effective as of such termination, shall be released, each to the other, from all liability and obligations thereafter arising under this lease.**

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| **ARTICLE XVI - DEFAULT** |

**Section 1. LANDLORD'S Remedies. In the event that:**

**a. Tenant shall on three or more occasions be in default in the payment of rent or other charges herein required to be paid by Tenant (default herein being defined as payment received by Landlord ten or more days subsequent to the due date), regardless of whether or not such default has occurred on consecutive or non-consecutive months; or**

**b. Tenant has caused a lien to be filed against the Landlord's property and said lien is not removed within thirty (30) days of recordation thereof; or**

**c. Tenant shall default in the observance or performance of any of the covenants and agreements required to be performed and observed by Tenant hereunder for a period of thirty (30) days after notice to Tenant in**

- 9 -

**writing of such default (or if such default shall reasonably take more than thirty (30) days to cure, Tenant shall not have commenced the same within the thirty (30) days and diligently prosecuted the same to completion); or**

**d. Sixty (60) days have elapsed after the commencement of any proceeding by or against Tenant, whether by the filing of a petition or otherwise, seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or future Federal Bankruptcy Act or any other present or future applicable federal, state or other statute or law, whereby such proceeding shall not have been dismissed (provided, however, that the non-dismissal of any such proceeding shall not be a default hereunder so long as all of Tenant's covenants and obligations hereunder are being performed by or on behalf of Tenant); then Landlord shall be entitled to its election (unless Tenant shall cure such default prior to such election), to exercise concurrently or successively, any one or more of the following rights:**

**I. Terminate this Lease by giving Tenant notice of termination, in which event this Lease shall expire and terminate on the date specified in such notice of termination, with the same force and effect as though the date so specified were the date herein originally fixed as the termination date of the term of this Lease, and all rights of Tenant under this Lease and in and to the Premises shall expire and terminate, and Tenant shall remain liable for all obligations under this Lease arising up to the date of such termination, and Tenant shall surrender the Premises to Landlord on the date specified in such notice; or**

**ii. Terminate this Lease as provided herein and recover from Tenant all damages Landlord may incur by reason of Tenant's default, including, without limitation, a sum which, at the date of such termination, represents the then value of the excess, if any, of (a) the Minimum Rent, Percentage Rent, Taxes and all other sums which would have been payable hereunder by Tenant for the period commencing with the day following the date of such termination and ending with the date herein before set for the expiration of the full term hereby granted, over (b) the aggregate reasonable rental value of the Premises for the same period, all of which excess sum shall be deemed immediately due and payable; or**

**iii. Without terminating this Lease, declare immediately due and payable all Minimum Rent, Taxes, and other rents and amounts due and coming due under this Lease for the entire remaining term hereof, together with all other amounts previously due, at once; provided, however, that such payment shall not be deemed a penalty or liquidated damages but shall merely constitute payment in advance of rent for the remainder of said term. Upon making such payment, Tenant shall be entitled to receive from Landlord all rents received by Landlord from other assignees, tenants, and subtenants on account of said Premises during the term of this Lease, provided that the monies to which tenant shall so become entitled shall in no event exceed the entire amount actually paid by Tenant to Landlord pursuant to the preceding sentence less all costs, expenses and attorney's fees of Landlord incurred in connection with the reletting of the Premises; or**

**iv. Without terminating this Lease, and with or without notice to Tenant, Landlord may in its own name but as agent for Tenant enter into and upon and take possession of the Premises or any part thereof, and, at landlord's option, remove persons and property therefrom, and such property, if any, may be removed and stored in a warehouse or elsewhere at the cost of, and for the account of Tenant, all without being deemed guilty of trespass or**

- 10 -

**becoming liable for any loss or damage which may be occasioned thereby, and Landlord may rent the Premises or any portion thereof as the agent of Tenant with or without advertisement, and by private negotiations and for any term upon such terms and conditions as Landlord may deem necessary or desirable in order to relet the Premises. Landlord shall in no way be responsible or liable for any rental concessions or any failure to rent the Premises or any part thereof, or for any failure to collect any rent due upon such reletting. Upon such reletting, all rentals received by Landlord from such reletting shall be applied: first, to the payment of any indebtedness (other than any rent due hereunder) from Tenant to Landlord; second, to the payment of any costs and expenses of such reletting, including, without limitation, brokerage fees and attorney's fees and costs of alterations and repairs; third, to the payment of rent and other charges then due and unpaid hereunder; and the residue, if any shall be held by Landlord to the extent of and for application in payment of future rent as the same may become due and payable hereunder. In reletting the Premises as aforesaid, Landlord may grant rent concessions and Tenant shall not be credited therefor. If such rentals received from such reletting shall at any time or from time to time be less than sufficient to pay to Landlord the entire sums then due from Tenant hereunder, Tenant shall pay any such deficiency to Landlord. Such deficiency shall, at Landlord's option, be calculated and paid monthly. No such reletting shall be construed as an election by Landlord to terminate this Lease unless a written notice of such election has been given to Tenant by Landlord. Notwithstanding any such reletting without termination, Landlord may at any time thereafter elect to terminate this Lease for any such previous default provided same has not been cured; or**

**v.  Without liability to Tenant or any other party and without constituting a constructive or actual eviction, suspend or discontinue furnishing or rendering to Tenant any property, material, labor, Utilities or other service, whether Landlord is obligated to furnish or render the same, so long as Tenant is in default under this Lease; or**

**vi. Allow the Premises to remain unoccupied and collect rent from Tenant as it comes due; or**

**vii. Foreclose the security interest described herein, including the immediate taking of possession of all property on or in the Premises; or**

**viii. Pursue such other remedies as are available at law or equity.**

**e. Landlord's pursuit of any remedy of remedies, including without limitation, any one or more of the remedies stated herein shall not (1) constitute an election of remedies or preclude pursuit of any other remedy or remedies provided in this Lease or any other remedy or remedies provided by law or in equity, separately or concurrently or in any combination, or (2) sever as the basis for any claim of constructive eviction, or allow Tenant to withhold any payments under this Lease.**

**Section 2. LANDLORD'S Self Help. If in the performance or observance of any agreement or condition in this Lease contained on its part to be performed or observed and shall not cure such default within thirty (30) days after notice from Landlord specifying the default (or if such default shall reasonably take more than thirty (30) days to cure, shall diligently prosecuted the same to completion), Landlord may, at its option, without waiving any claim for damages for breach of agreement, at any time thereafter cure such default for the account of Tenant, and any amount paid**

- 11 -

**or contractual liability incurred by Landlord in so doing shall be deemed paid or incurred for the account of Tenant and Tenant agrees to reimburse Landlord therefor and save Landlord harmless therefrom. Provided, however, that Landlord may cure any such default as aforesaid prior to the expiration of said waiting period, without notice to Tenant if any emergency situation exists, or after notice to Tenant, if the curing of such default prior to the expiration of said waiting period is reasonably necessary to protect the Leased Premises or Landlord's interest therein, or to prevent injury or damage to persons or property. If Tenant shall fail to reimburse Landlord upon demand for any amount paid for the account of Tenant hereunder, said amount shall be added to and become due as a part of the next payment of rent due and shall for all purposes be deemed and treated as rent hereunder.**

**Section 3. TENANT'S Self Help. If Landlord shall default in the performance or observance of any agreement or condition in this Lease contained on its part to be performed or observed, and if Landlord shall not cure such default within thirty (30) days after notice from Tenant specifying the default (or, if such default shall reasonably take more than thirty (30) days to cure, and Landlord shall not have commenced the same within the thirty (30) days and diligently prosecuted the same to completion), Tenant may, at its option, without waiving any claim for damages for breach of agreement, at any time thereafter cure such default for the account of Landlord and any amount paid or any contractual liability incurred by Tenant in so doing shall be deemed paid or incurred for the account of Landlord and Landlord shall reimburse Tenant therefor and save Tenant harmless therefrom. Provided, however, that Tenant may cure any such default as aforesaid prior to the expiration of said waiting period, without notice to Landlord if an emergency situation exists, or after notice to Landlord , if the curing of such default prior to the expiration of said waiting period is reasonably necessary to protect the Leased Premises or Tenant's interest therein or to prevent injury or damage to persons or property. If Landlord shall fail to reimburse Tenant upon demand for any amount paid or liability incurred for the account of Landlord hereunder, said amount or liability may be deducted by Tenant from the next or any succeeding payments of rent due hereunder; provided, however, that should said amount or the liability therefor be disputed by Landlord, Landlord may contest its liability or the amount thereof, through arbitration or through a declaratory judgment action and Landlord shall bear the cost of the filing fees therefor.**

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| **ARTICLE XVII - TITLE** |

**Section l. Subordination. Tenant shall, upon the request of Landlord in writing, subordinate this Lease to the lien of any present or future institutional mortgage upon the Leased Premises irrespective of the time of execution or the time of recording of any such mortgage. Provided, however, that as a condition to such subordination, the holder of any such mortgage shall enter first into a written agreement with Tenant in form suitable for recording to the effect that:**

**a. in the event of foreclosure or other action taken under the mortgage by the holder thereof, this Lease and the rights of Tenant hereunder shall not be disturbed but shall continue in full force and effect so long as Tenant shall not be in default hereunder, and**

**b. such holder shall permit insurance proceeds and condemnation proceeds**

- 12 -

**to be used for any restoration and repair required by the provisions of Articles XIII, XIV or XV, respectively. Tenant agrees that if the mortgagee or any person claiming under the mortgagee shall succeed to the interest of Landlord in this Lease, Tenant will recognize said mortgagee or person as its Landlord under the terms of this Lease, provided that said mortgagee or person for the period during which said mortgagee or person respectively shall be in possession of the Leased Premises and thereafter their respective successors in interest shall assume all of the obligations of Landlord hereunder. The word "mortgage", as used herein includes mortgages, deeds of trust or other similar instruments, and modifications, and extensions thereof. The term "institutional mortgage" as used in this Article XVII means a mortgage securing a loan from a bank (commercial or savings) or trust company, insurance company or pension trust or any other lender institutional in nature and constituting a lien upon the Leased Premises.**

**Section 2. Quiet Enjoyment. Landlord covenants and agrees that upon Tenant paying the rent and observing and performing all of the terms, covenants and conditions on Tenant's part to be observed and performed hereunder, that Tenant may peaceably and quietly have, hold, occupy and enjoy the Leased Premises in accordance with the terms of this Lease without hindrance or molestation from Landlord or any persons lawfully claiming through Landlord .**

**Section 3. Zoning and Good Title. Landlord warrants and represents, upon which warranty and representation Tenant has relied in the execution of this Lease, that Landlord is the owner of the Leased Premises, in fee simple absolute, free and clear of all encumbrances, except for the easements, covenants and restrictions of record as of the date of this Lease. Such exceptions shall not impede or interfere with the quiet use and enjoyment of the Leased Premises by Tenant. Landlord further warrants and covenants that this Lease is and shall be a first lien on the Leased Premises, subject only to any Mortgage to which this Lease is subordinate or may become subordinate pursuant to an agreement executed by Tenant, and to such encumbrances as shall be caused by the acts or omissions of Tenant; that Landlord has full right and lawful authority to execute this Lease for the term, in the manner, and upon the conditions and provisions herein contained; that there is no legal impediment to the use of the Leased Premises as set out herein; that the Leased Premises are not subject to any easements, restrictions, zoning ordinances or similar governmental regulations which prevent their use as set out herein; that the Leased Premises presently are zoned for the use contemplated herein and throughout the term of this lease may continue to be so used therefor by virtue of said zoning, under the doctrine of "non-conforming use", or valid and binding decision of appropriate authority, except, however, that said representation and warranty by Landlord shall not be applicable in the event that Tenant's act or omission shall invalidate the application of said zoning, the doctrine of "non-conforming use" or the valid and binding decision of the appropriate authority. Landlord shall furnish without expense to Tenant, within thirty (30) days after written request therefor by Tenant, a title report covering the Leased Premises showing the condition of title as of the date of such certificate, provided, however, that Landlord's obligation hereunder shall be limited to the furnishing of only one such title report.**

**Section 4. Licenses. It shall be the Tenant's responsibility to obtain any and all necessary licenses and the Landlord shall bear no responsibility therefor; the Tenant shall promptly notify Landlord of the fact that it has obtained the necessary licenses in order to prevent any delay to Landlord in commencing construction of the Leased Premises.**

- 13 -

**ARTICLE XVIII - EXTENSIONS/WAIVERS/DISPUTES**

**Section l. Extension Period. Any extension hereof shall be subject to the provisions of Article III hereof.**

**Section 2. Holding Over. In the event that Tenant or anyone claiming under Tenant shall continue occupancy of the Leased Premises after the expiration of the term of this Lease or any renewal or extension thereof without any agreement in writing between Landlord and Tenant with respect thereto, such occupancy shall not be deemed to extend or renew the term of the Lease, but such occupancy shall continue as a tenancy at will, from month to month, upon the covenants, provisions and conditions herein contained. The rental shall be the rental in effect during the term of this Lease as extended or renewed, prorated and payable for the period of such occupancy.**

**Section 3. Waivers. Failure of either party to complain of any act or omission on the part of the other party, no matter how long the same may continue, shall not be deemed to be a waiver by said party of any of its rights hereunder. No waiver by either party at any time, express or implied, of any breach of any provision of this Lease shall be deemed a waiver of a breach of any other provision of this Lease or a consent to any subsequent breach of the same or any other provision. If any action by either party shall require the consent or approval of the other party, the other party's consent to or approval of such action on any one occasion shall not be deemed a consent to or approval of said action on any subsequent occasion or a consent to or approval of any other action on the same or any subsequent occasion. Any and all rights and remedies which either party may have under this Lease or by operation of law, either at law or in equity, upon any breach, shall be distinct, separate and cumulative and shall not be deemed inconsistent with each other, and no one of them, whether exercised by said party or not, shall be deemed to be an exclusion of any other; and any two or more or all of such rights and remedies may be exercised at the same time.**

**Section 4. Disputes. It is agreed that, if at any time a dispute shall arise as to any amount or sum of money to be paid by one party to the other under the provisions hereof, the party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of the said party to institute suit for the recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said party to pay such sum or any part thereof, said party shall be entitled to recover such sum or so much thereof as it was not legally required to pay under the provisions of this Lease. If at any time a dispute shall arise between the parties hereto as to any work to be performed by either of them under the provisions hereof, the party against whom the obligation to perform the work is asserted may perform such work and pay the costs thereof "under protest" and the performance of such work shall in no event be regarded as a voluntary performance and shall survive the right on the part of the said party to institute suit for the recovery of the costs of such work. If it shall be adjudged that there was no legal obligation on the part of the said party to perform the same or any part thereof, said party shall be entitled to recover the costs of such work or the cost of so much thereof as said party was not legally required to perform under the provisions of this Lease and the amount so paid by Tenant may be withheld or deducted by Tenant from any rents herein reserved.**

- 14 -

**Section 5. TENANT'S Right to cure LANDLORD'S Default. In the event that Landlord shall fail, refuse or neglect to pay any mortgages, liens or encumbrances, the judicial sale of which might affect the interest of Tenant hereunder, or shall fail, refuse or neglect to pay any interest due or payable on any such mortgage, lien or encumbrance, Tenant may pay said mortgages, liens or encumbrances, or interest or perform said conditions and charge to Landlord the amount so paid and withhold and deduct from any rents herein reserved such amounts so paid, and any excess over and above the amounts of said rents shall be paid by Landlord to Tenant.**

**Section 6. Notices. All notices and other communications authorized or required hereunder shall be in writing and shall be given by mailing the same by certified mail, return receipt requested, postage prepaid, and any such notice or other communication shall be deemed to have been given when received by the party to whom such notice or other communication shall be addressed. If intended for Landlord the same will be mailed to the address herein above set forth or such other address as Landlord may hereafter designate by notice to Tenant, and if intended for Tenant, the same shall be mailed to Tenant at the address herein above set forth, or such other address or addresses as Tenant may hereafter designate by notice to Landlord.**

**ARTICLE XIX - PROPERTY DAMAGE**

**Section l. Loss and Damage. Notwithstanding any contrary provisions of this Lease, Landlord shall not be responsible for any loss of or damage to property of Tenant or of others located on the Leased Premises, except where caused by the willful act or omission or negligence of Landlord , or Landlord's agents, employees or contractors, provided, however, that if Tenant shall notify Landlord in writing of repairs which are the responsibility of Landlord under Article VII hereof, and Landlord shall fail to commence and diligently prosecute to completion said repairs promptly after such notice, and if after the giving of such notice and the occurrence of such failure, loss of or damage to Tenant's property shall result from the condition as to which Landlord has been notified, Landlord shall indemnify and hold harmless Tenant from any loss, cost or expense arising therefrom.**

**Section 2. Force Majeure. In the event that Landlord or Tenant shall be delayed or hindered in or prevented from the performance of any act other than Tenant's obligation to make payments of rent, additional rent, and other charges required hereunder, by reason of strikes, lockouts, unavailability of materials, failure of power, restrictive governmental laws or regulations, riots, insurrections, the act, failure to act, or default of the other party, war or other reason beyond its control, then performance of such act shall be excused for the period of the delay and the period for the performance of such act shall be extended for a period equivalent to the period of such delay. Notwithstanding the foregoing, lack of funds shall not be deemed to be a cause beyond control of either party.**

**ARTICLE XX - MISCELLANEOUS**

**Section 1. Assignment and Subletting. Under the terms and conditions hereunder, Tenant shall have the absolute right to transfer and assign this lease or to sublet all or any portion of the Leased Premises or to cease**

- 15 -

**operating Tenant's business on the Leased Premises provided that at the time of such assignment or sublease Tenant shall not be in default in the performance and observance of the obligations imposed upon Tenant hereunder, and in the event that Tenant assigns or sublets this property for an amount in excess of the rental amount then being paid, then Landlord shall require as further consideration for the granting of the right to assign or sublet, a sum equal to fifty (50%) percent of the difference between the amount of rental to be charged by Tenant to Tenant's sublessee or assignee and the amount provided for herein, payable in a manner consistent with the method of payment by the sublessee or assignee to the Tenant, and/or fifty (50%) percent of the consideration paid or to be paid to Tenant by Tenant's sublessee or assignee. Landlord must consent in writing to any such sublessee or assignee, although such consent shall not be unreasonably withheld. The use of the Leased Premises by such assignee or sublessee shall be expressly limited by and to the provisions of this lease.**

**Section 2. Fixtures. All personal property, furnishings and equipment presently and all other trade fixtures installed in or hereafter by or at the expense of Tenant and all additions and/or improvements, exclusive of structural, mechanical, electrical, and plumbing, affixed to the Leased Premises and used in the operation of the Tenant's business made to, in or on the Leased Premises by and at the expense of Tenant and susceptible of being removed from the Leased Premises without damage, unless such damage be repaired by Tenant, shall remain the property of Tenant and Tenant may, but shall not be obligated to, remove the same or any part thereof at any time or times during the term hereof, provided that Tenant, at its sole cost and expense, shall make any repairs occasioned by such removal.**

**Section 3. Estoppel Certificates. At any time and from time to time, Landlord and Tenant each agree, upon request in writing from the other, to execute, acknowledge and deliver to the other or to any person designated by the other a statement in writing certifying that the Lease is unmodified and is in full force and effect, or if there have been modifications, that the same is in full force and effect as modified (stating the modifications), that the other party is not in default in the performance of its covenants hereunder, or if there have been such defaults, specifying the same, and the dates to which the rent and other charges have been paid.**

**Section 4. Invalidity of Particular Provision. If any term or provision of this Lease or the application hereof to any person or circumstance shall, to any extent, be held invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held 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 law.**

**Section 5. Captions and Definitions of Parties. The captions of the Sections of this Lease are for convenience only and are not a part of this Lease and do not in any way limit or amplify the terms and provisions of this Lease. The word "Landlord" and the pronouns referring thereto, shall mean, where the context so admits or requires, the persons, firm or corporation named herein as Landlord or the mortgagee in possession at any time, of the land and building comprising the Leased Premises. If there is more than one Landlord, the covenants of Landlord shall be the joint and several obligations of each of them, and if Landlord is a partnership, the**

- 16 -

**covenants of Landlord shall be the joint and several obligations of each of the partners and the obligations of the firm. Any pronoun shall be read in the singular or plural and in such gender as the context may require. Except as in this Lease otherwise provided, the terms and provisions of this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.**

**Nothing contained herein shall be deemed or construed by the parties hereto nor by any third party as creating the relationship of principal and agent or of partnership or of a joint venture between the parties hereto, it being understood and agreed that neither any provision contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of Landlord and Tenant.**

**Section 6. Brokerage. No party has acted as, by or through a broker in the effectuation of this Agreement, except as set out hereinafter.**

**Section 7. Entire Agreement. This instrument contains the entire and only agreement between the parties, and no oral statements or representations or prior written matter not contained in this instrument shall have any force and effect. This Lease shall not be modified in any way except by a writing executed by both parties.**

**Section 8. Governing Law. All matters pertaining to this agreement (including its interpretation, application, validity, performance and breach) in whatever jurisdiction action may be brought, shall be governed by, construed and enforced in accordance with the laws of the State of \_\_Nevada\_\_\_\_\_\_\_\_\_\_\_\_. The parties herein waive trial by jury and agree to submit to the personal jurisdiction and venue of a court of subject matter jurisdiction located in \_\_\_\_\_\_Clark\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_County, State of \_\_\_Nevada\_\_\_\_\_\_\_\_\_\_\_. In the event that litigation results from or arises out of this Agreement or the performance thereof, the parties agree to reimburse the prevailing party's reasonable attorney's fees, court costs, and all other expenses, whether or not taxable by the court as costs, in addition to any other relief to which the prevailing party may be entitled. In such event, no action shall be entertained by said court or any court of competent jurisdiction if filed more than one year subsequent to the date the cause(s) of action actually accrued regardless of whether damages were otherwise as of said time calculable.**

**Section 9. Contractual Procedures. Unless specifically disallowed by law, should litigation arise hereunder, service of process therefor may be obtained through certified mail, return receipt requested; the parties hereto waiving any and all rights they may have to object to the method by which service was perfected.**

**Section 10. Extraordinary remedies. To the extent cognizable at law, the parties hereto, in the event of breach and in addition to any and all other remedies available thereto, may obtain injunctive relief, regardless of whether the injured party can demonstrate that no adequate remedy exists at law.**

**Section 11. Reliance on Financial Statement. Tenant shall furnish concurrently with the execution of this lease, a financial statement of Tenant prepared by an accountant. Tenant, both in corporate capacity, if applicable, and individually, hereby represents and warrants that all the information contained therein is complete, true, and correct. Tenant**

- 17 -

**understands that Landlord is relying upon the accuracy of the information contained therein. Should there be found to exist any inaccuracy within the financial statement which adversely affects Tenant's financial standing, or should Tenant's financial circumstances materially change, Landlord may demand, as additional security, an amount equal to an additional two (2) months' rent, which additional security shall be subject to all terms and conditions herein, require a fully executed guaranty by a third party acceptable to Landlord, elect to terminate this Lease, or hold Tenant personally and individually liable hereunder.**

**IN WITNESS WHEREOF, the parties hereto have executed this Lease the day and year first above written or have caused this Lease to be executed by their respective officers thereunto duly authorized.**

**Signed, sealed and delivered in the presence of:**

|  |  |
| --- | --- |
| **RAY ATAHARI** | **MICHAEL FIUMO Woodchuckers** |
| **"LANDLORD"** | **"TENANT"** |

- 18 -

**EXHIBIT "A" PROPERTY DESCRIPTION**

**The following described real property, together with all improvements thereon: which has a street address as follows:**

|  |
| --- |
| **XXX** **Kelowna BC Canada V1X 7S8** |

|  |
| --- |
| **Initials:** **LANDLORD HR** **TENANT WC** |

**LeaseA#12**

**Exhibit 10.5**

**Lease Agreement**

This Lease Agreement (the "Lease") is dated as of January 13, 2009 by and among AL Sharaf Family Holdings, LLC, an Idaho limited liability company whose address is XXX, Idaho 83301 ("Lessor") and AL Sharaf Family Produce, Inc., an Idaho corporation whose address is XXX, Idaho 83301 ("Lessee").

WHEREAS, the Lessor is the owner of (a) real property located in Twin Falls County, Idaho legally described on Exhibit A hereto, together with all improvements thereon and appurtenances thereto (the "Real Property"), (b) the personal property described on Exhibit B hereto together with all replacements, repairs and additions incorporated therein or affixed thereto (collectively, the "Packing Equipment") and (c) the personal property described on Exhibit C hereto together with all replacements, repairs and additions incorporated therein or affixed thereto (collectively, the "Miscellaneous Property," and together with the Packing Equipment, the "Personal Property"). For purposes of this Lease, the "Property" shall mean the Real Property and the Personal Property;

WHEREAS, in connection with the purchase of the Packing Equipment by Mohammed AL Sharaf ("Mohammed"), Mohammed executed a Promissory Note in favor of Key Equipment Finance Inc. (the "Lender") in the amount of Three Hundred Eighty-Seven Thousand and No/100ths Dollars ($387,000.00) (the "Note") and a Master Security Agreement with the Lender whereby Mohammed granted a security interest in the Packing Equipment to the Lender (the "Security Agreement," and together with the Note and the ancillary documents thereto and amendments thereof, the "Loan Documents"); and

WHEREAS, Mohammed transferred the Packing Equipment to the Lessor effective as of May 29, 2008 in exchange for the Lessor's assumption of Mohammed's obligations under the Loan Documents, which Loan Documents shall continue to encumber the Packing Equipment until the obligations arising under such Loan Documents are paid in full; and

WHEREAS, the parties hereto desire that the Lessor lease the Property to the Lessee on and subject to the terms hereof;

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereby agree as follows:

1.     Lease. Lessor hereby agrees to lease the Property to the Lessee, and Lessee hereby agrees to lease the Property from Lessor, on the terms and conditions set forth herein.

        Term. This Lease shall commence on the date hereof (the "Effective Date"). The initial term of this Lease shall run until December 31, 2013. Thereafter, this Lease shall automatically renew for additional one (1) year periods unless either party provides written notice to the other party of its intent not to renew at least sixty (60) days prior to the expiration of the then-current term.

2.     Rent.

     2.1      General. Rent shall be payable in the amount of Twenty Thousand and No/100ths Dollars ($20,000.00) per month on or before the tenth (10th) day of each month without prior demand and without offset. Rent for the initial partial month of January 2009 shall be payable on the date hereof and pro rated based on the actual days in such month. In addition to other rights provided herein and by law, if rent or any other amount required to be paid by Lessee hereunder is not received by the tenth (10th) day after the date when due, such rent or other amount shall bear interest at the rate of Twelve Percent (12.00%) per annum (the "Default Rate") from the date due.

     2.2     Taxes. Lessee shall pay any applicable sales tax, use tax or property tax on the Property in accordance with Section 12.

3.     Disclaimer of Warranties. Lessee agrees that it has selected the Property based upon its own judgment and disclaims any reliance upon any statements or representations made by Lessor. LESSOR MAKES NO WARRANTY WITH RESPECT TO THE PROPERTY, EXPRESSED OR IMPLIED, AND LESSOR SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE AND ANY LIABILITY FOR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OF OR THE INABILITY TO USE THE PROPERTY. Lessee agrees to make the rental and other payments required hereunder without regard to the condition of the Property. Lessor assumes no responsibility for the installation, adjusting or servicing of the Property.

4.     Title. Title to the Property shall at all times remain with Lessor, and Lessee at its expense shall protect and defend the title of Lessor and keep the Property free of all claims and liens other than the rights of Lessee hereunder and claims and liens created by or arising through Lessor (such as liens arising pursuant to the Loan Documents). While Lessee may possess the Property in accordance with the terms of this Lease, the Lessee expressly acknowledges the existence of the Lender's security interest in the Packing Equipment.

5.     Location; Inspection. The Packing Equipment shall be located on the Real Property and shall not be removed therefrom (other than temporary removal in the ordinary course of business) without the prior written consent of the Lessor. The Lessor shall have the right to enter upon the Real Property and inspect the Property at any reasonable time. The Lender shall have the right to enter upon the Real Property and inspect the Packing Equipment at any reasonable time. At the Lessor's request, the Lessee shall (a) affix permanent labels in a prominent place on the Packing Equipment stating the Lessor's interest therein (and the Lender's interest therein, as applicable), (b) keep such labels in good repair and condition and (c) provide Lessor with an inventory listing all labeled Packing Equipment within twenty (20) days of such request.

6.     Use; Alterations. Lessee shall use the Property lawfully and only in the manner for which it was designed and intended and so as to subject it only to ordinary wear and tear. Lessee shall comply with all applicable laws, and will not permit any person to dispose of any hazardous materials into or onto the Real Property. Lessee shall immediately notify the Lessor, in writing, upon becoming aware of any existing threatened investigation, claim or action by any governmental authority that could adversely affect the Property, the Lessor, the Lender or this Lease. Lessee, at its own expense, shall make such alterations, additions or modifications to the Property as may be required from time to time to meet the requirements of applicable law or governmental body (each, a "Required Alteration"). All such Required Alterations shall immediately, and without further act, be deemed to constitute "Property" and be fully subject to this Lease as if originally leased hereunder. Lessee shall not make any other alterations to the Property without Lessor's prior written consent.

7.     Repairs and Maintenance.

     7.1     Lessee Repairs and Maintenance. Other than as explicitly made the Lessor's responsibility under Section 8.2, Lessee, at Lessee's sole cost and expense, shall (a) keep the Property in good repair, operating condition, appearance and working order in compliance with the manufacturer's recommendations and Lessee's standard practices (but in no event less than industry practices), (b) properly service all components of the Property following the manufacturer's written operating and servicing procedures, (c) upon Lessor's request, enter into and keep in full force and effect during the term hereof a maintenance agreement covering the Packing Equipment with the manufacturer, or a manufacturer-approved maintenance organization, to maintain, service and repair such Property, as otherwise required herein, (d) upon Lessor's request, furnish Lessor with an executed copy of any such maintenance agreement, and (e) replace any part of the Property that becomes unfit or unavailable for use from any cause (whether or not such replacement is covered by a maintenance agreement) with a replacement part that, in Lessor's sole opinion, is of the same manufacture, value, remaining useful life and utility as the replaced part immediately preceding the replacement, assuming that such replaced part was in the condition required by this Lease. Replacement parts shall be free and clear of all liens, constitute Property and be fully subject to this Lease as if originally leased hereunder.

     7.2     Lessor Repairs and Maintenance. Lessor, at Lessor's sole cost and expense, shall be responsible for any repairs or replacements that are required to the structural or mechanical systems of the Real Property (specifically excluding the Packing Equipment, whether or not attached to the Real Property) which (a) would be classified as capital expenditures under generally accepted accounting principals and (b) are not otherwise covered by insurance under Section 11; *provided, however*, that the Lessor shall only be responsible under this Section 8.2 (i) for any such repair or replacement costing in excess of $10,000 each, in which event the Lessor shall be responsible for the entire cost of such repair or replacement or (ii) if the Lessee has been responsible for repairs or replacements costing less than $10,000 each, but which in the aggregate exceed $75,000 in any year, in which event the Lessor shall be responsible for any such excess.

8.     Transfers and Assignment.

     8.1     Lessee Transfer. Without Lessor's prior written consent, Lessee will not (a) sell, assign, sublet, pledge, or otherwise encumber or permit a lien to exist on or against any interest in this Lease or the Property, (b) rent or lend the Property to anyone or (c) permit the Property to be used by anyone other than the Lessee or its respective qualified employees. Lessee acknowledges that it remains primarily liable for all obligations hereunder notwithstanding use of the Property by any other party.

     8.2     Lessor Transfer. Lessor, at any time with or without notice to Lessee, may sell, transfer, assign and/or grant a security interest in all or any part of Lessor's interest in this Lease or all or any part of the Property (each, a "Lessor Transfer"). Any purchaser, transferee, assignee or secured party of Lessor (each a "Lessor Assignee") shall have and may exercise all of Lessor's rights hereunder with respect to the Property to which any such Lessor Transfer relates. Upon receipt of written notice of a Lessor Transfer, Lessee shall promptly acknowledge in writing its obligations hereunder, shall comply with the written directions or demands of any Lessor Assignee and shall make all payments due hereunder as directed in writing by the Lessor Assignee. Following such Lessor Transfer, the term "Lessor" shall be deemed to include or refer to each Lessor Assignee; *provided, however*, that the indemnification obligations of the Lessee shall apply to both the Lessor and each Lessor Assignee, as well as their respective members, shareholders, directors, officers and agents.

9.     Risk of Loss. Lessee shall bear the entire risk of loss (including without limitation, theft, destruction, disappearance of or damage to the Property from any cause whatsoever), whether or not insured against, during the term of this Lease. No such loss shall relieve Lessee of the obligation to pay rent or of any other obligation hereunder.

10.     Insurance.

     10.1     Lessee shall, at all times during the term hereof and at Lessee's own cost and expense, maintain (a) insurance against all risks of physical loss or damage to Property for the full replacement value thereof, and (b) commercial general liability insurance (including blanket contractual liability coverage and products liability coverage) for personal and bodily injury and property damage in an amount not less than $1,000,000 per occurrence.

     10.2     All insurance policies required hereunder shall include terms, and be with insurance carriers, reasonably satisfactory to Lessor and the Lender. Without limiting the generality of the foregoing, each policy shall include the following terms: (i) all physical damage insurance shall name Lessor (and with respect to the Packing Equipment, the Lender) and its/their assigns as loss payees, (ii) all liability insurance shall name Lessor (and with respect to the Packing Equipment, the Lender) and its/their assigns as additional insureds, (iii) the policy shall not be canceled or altered without at least thirty days' advance notice to Lessor (and with respect to the Packing Equipment, the Lender) and its assigns and (iv) coverage shall not be invalidated against Lessor (and with respect to the Packing Equipment, the Lender) or its assigns because of any violation of any condition or warranty contained in any policy or application therefor by Lessee or by reason of any action or inaction of Lessee. On May 19, 2009 and each one (1) year anniversary thereof, and during the term hereof, Lessee shall deliver to Lessor certificates or other proof of insurance satisfactory to Lessor evidencing the coverage required by this section.

11.     Taxes. Lessee shall pay when due and shall indemnify and hold harmless Lessor and Lender (on an after-tax basis) from and against any and all taxes, fees, withholdings, levies, imposts, duties, assessments and charges of every kind and nature whatsoever (including any related penalties and interest) imposed upon or against Lessor, Lender, any Lessor Assignee, any Lender assignee, Lessee or any of the Property by any governmental authority in connection with, arising out of or otherwise related to the Property, this Lease or any rent and receipts or earnings arising therefrom, including without limitation any sales or use tax, and excepting only all Federal, state and local taxes on or measured by Lessor's or Lender's net income. The provisions of this Section 12 shall survive any termination of this Lease for a period of three (3) years. The termination of such indemnification period, however, shall not affect any claim if written notice of such claim is given to the Lessee prior to such termination date.

12.     Lessor's Right to Perform for Lessee. If Lessee fails to perform any of its obligations contained herein, Lessor may (but shall not be obligated to) itself perform such obligations, and the amount of the reasonable costs and expenses of Lessor incurred in connection with such performance, together with interest on such amount from the date said amounts are expended at the Default Rate, shall be payable by Lessee to Lessor upon demand. No such performance by Lessor shall be deemed a waiver of any rights or remedies of Lessor or be deemed to cure any Default of Lessee hereunder (as such term is defined below).

13.     End of Lease Term. Upon the expiration or earlier termination of this Lease, the Lessee will immediately deliver the Property to Lessor in the same condition as when delivered to Lessee, ordinary wear and tear excepted.

14.     Default; Remedies.

     14.1     Default by Lessee. The occurrence of any of the following shall constitute a "Default" and a material breach of this Lease by the Lessee:

          (a)     Lessee fails to pay any rent or other amount due hereunder when due, where such failure continues for five (5) days after written notice thereof from Lessor to Lessee;

          (b)     Any failure by Lessee to observe or perform any other provision, covenant or condition of this Lease to be observed or performed by Lessee where such failure continues for thirty (30) days after written notice thereof from Lessor to Lessee; provided that if the nature of such default is such that the same cannot reasonably be cured within a thirty (30) day period, Lessee shall not be deemed to be in default if it shall commence such cure within such period and thereafter rectify and cure said default with due diligence;

          (c)     Lessee shall breach the Supply Agreement dated on or about the date hereof (the "Supply Agreement") by and among the Lessee, Southern Mountain View, Inc., a Nevada corporation ("Southern Mountain View") and Peak Ag., Inc., an Idaho corporation ("Peak") where such breach shall continue for fifteen (15) days after written notice of the same from Southern Mountain View or Peak to Lessee;

          (d)     An assignment by Lessee for the benefit of its creditors; or the filing of a voluntary or involuntary petition by or against Lessee under any law for the purpose of adjudicating Lessee as bankrupt, or for extending time for payment, adjustment or satisfaction of Lessee's liabilities, or the reorganization, dissolution, or arrangement on account of or to prevent bankruptcy or insolvency of Lessee; unless the assignment or proceedings, and all orders, adjudications, custodies and supervision are dismissed, vacated or otherwise permanently stayed or terminated within sixty (60) days after the assignment, filing or other initial event;

          (e)     An assignment by Secure Technologies, Inc., a Nevada corporation ("Secure") for the benefit of its creditors; or the filing of a voluntary or involuntary petition by or against Secure under any law for the purpose of adjudicating Secure as bankrupt, or for extending time for payment, adjustment or satisfaction of Secure's liabilities, or the reorganization, dissolution, or arrangement on account of or to prevent bankruptcy or insolvency of Secure; unless the assignment or proceedings, and all orders, adjudications, custodies and supervision are dismissed, vacated or otherwise permanently stayed or terminated within sixty (60) days after the assignment, filing or other initial event; or

          (f)     Any shares of Series A Convertible Preferred Stock of Secure acquired by AL Sharaf Family Limited Partnership, L.P., an Idaho corporation (the "Purchaser") pursuant to the Purchase Agreement executed on or about the date hereof by and between Secure and the Purchaser (the "Purchase Agreement") shall be or become non-voting for any reason.

     14.2     Default by Lessor. The Lessor shall be in "Default" under the Lease if it fails observe or perform any provision, covenant or condition of this Lease to be observed or performed by Lessor where such failure continues for thirty (30) days after written notice thereof from Lessee to Lessor; provided that if the nature of such default is such that the same cannot reasonably be cured within a thirty (30) day period, Lessor shall not be deemed to be in default if it shall commence such cure within such period and thereafter rectify and cure said default with due diligence.

     14.3     Remedies by Lessor. In the event of a Default by Lessee, Lessor may exercise any rights or remedies provided by law or equity. The parties acknowledge and agree that in the event the Lessor elects to terminate the Lessee's right to possession of the Property, the Lessor's damages shall include without limitation lost rent, the cost of recovering possession, amounts owed to the Lender under the Loan Documents, necessary repairs, and attorneys' fees and expenses.

     14.4     Remedies by Lessee. In the event of a Default by Lessor, Lessee may exercise any rights or remedies provided by law or equity; *provided, however*, that the Lessee shall not be entitled to make any deductions or offsets in rent or other amounts due to Lessor (a) without the prior express written consent of the Lessor or (b) until the Lessee obtains a final judgment from a court of competent jurisdiction awarding damages to the Lessee as a result of a Default by the Lessor, in which event the Lessee may offset the amount of such finally adjudicated damages against the rent.

15.     Notices. All notices and other communications hereunder shall be in writing and shall be transmitted by hand, overnight courier or certified mail (return receipt requested), US postage prepaid. Such notices and other communications shall be addressed to the respective party at the address set forth above or at such other address as any party may, from time to time, designate by notice duly given in accordance with this section. Such notices and other communications shall be effective upon receipt or, in the case of mailing in accordance with the terms of this section, the earlier of receipt or three days after mailing.

16.     Indemnity. Lessee shall indemnify and hold harmless Lessor, each Lessor Assignee, and its or their members, shareholders, directors, officers and agents from and against any and all liabilities, causes of action, claims, suits, penalties, damages, losses, costs or expenses (including attorneys' fees), obligations (including without limitation indemnification obligations), liabilities, demands and judgments (collectively, a "Liability") arising out of or in any way related to: (a) Lessee's failure to perform any covenant hereunder, (b) the untruth of any representation or warranty made by Lessee hereunder or (c) ownership, use, condition or operation of each item of Property, including injury to persons, property or the environment including and any liability based on strict liability in tort, negligence, breach of warranties or Lessee's failure to comply fully with applicable law or regulatory requirements; *provided*, that the foregoing indemnity shall not extend to any Liability to the extent resulting solely from the gross negligence of Lessor. The indemnification obligations set forth in this Section 17 shall survive any termination of the Lease for a period of one (1) year. The termination of any such indemnification period, however, shall not affect any claim if written notice of such claim is given to the Lessee prior to such termination date.

17.     Fees and Expenses. In connection with the enforcement by either party of its rights under this Lease, the party that prevails shall be entitled to recovery of all reasonable costs and expenses, including without limitation attorneys' fees.

18.     Net Lease; Unconditional Obligation; and Non-Cancelable. This Lease is a completely net Lease and Lessee's obligation to pay the rent and amounts payable by Lessee hereunder is unconditional and not subject to any abatement, reduction, setoff or defense of any kind. This Lease cannot be canceled or terminated except as expressly provided herein.

19.     Additional Action; Cooperation with Lender. Lessee will promptly execute and deliver to Lessor such further documents and take such further action as Lessor may request in order to more effectively carry out the intent and purpose of this Lease. Upon the request by the Lessor, the Lessee agrees to reasonably cooperate with the Lessor in connection with the Secured Obligations and any replacement financing, which cooperation may include an assignment of rent hereunder to the Lender or any replacement lender.

20.     Miscellaneous; Governing Law; Litigation. The parties hereto agree that time is and shall be of the essence in each and every term and condition contained herein. This Lease may be executed in any number of counterparts by original or facsimile signature, each of which shall be deemed an original, but all of which together shall constitute one instrument. If any clause or provision of this Lease is held to be illegal, invalid, or unenforceable under present or future laws, then such clause or provision will be severed from this Lease and the Lease will be enforced to the fullest extent permitted by law in a manner that is consistent with the intentions of the parties hereto. This Lease (including the exhibits attached hereto) constitutes the entire agreement and understanding among the Lessor and the Lessee with respect to the lease of the Property and supersedes all prior and current understandings and agreements, whether written or oral, with respect to such lease. This Lease may be modified or amended only by a written instrument executed by the Lessor and the Lessee. This Lease shall be construed in accordance with the laws of the State of Idaho without regard to its conflict of law rules. Should any litigation be commenced between the parties concerning this Lease or the rights and duties of the parties in relation thereto, the action shall be brought in Twin Falls County, Idaho. The prevailing party in any litigation shall be entitled to recover, in addition to such other relief as may be granted, reasonable attorneys fees and costs.

21.     Delivery and Acceptance. The Lessee hereby certifies that all the Property described in the Lease has been delivered, inspected, installed, is in good working condition, and accepted by the undersigned as satisfactory.

22.     Time of Essence. The parties hereto agree that time is and shall be, of the essence in each and every term and condition contained herein.

23.     Notices. Any notice or other communication required or permitted to be given hereunder shall be in writing by mail, facsimile or personal delivery and shall be effective upon actual receipt of such notice. The addresses for such communications shall be:

to the Lessee:  
  
                    AL Sharaf Family Produce, Inc.  
                    c/o Abby Seraf  
                    -----, NJ 07058  
                    Attention: President and CEO  
  
                    and  
  
                    AL Sharaf Family Produce, Inc.  
                    c/o Sara Alfifi  
                    ---, NJ 07041  
                    Attention: CFO  
  
          to Lessor:  
  
                    AL Sharaf Family Holdings, LLC  
                    XXX

 Twin Falls, ID 83301  
                    Attention: Mohammed AL Sharaf  
  
                    and  
  
                    AL Sharaf Family Holdings, LLC  
                    ------CA 91362  
                    Attention: Mohammed AL Sharaf

[the remainder of this page has been left intentionally blank].

          IN WITNESS WHEREOF, the undersigned have executed this Lease on the date and year first above written.

|  |  |
| --- | --- |
| **Lessor** | AL Sharaf Family Holdings, LLC    By:  /s/ Mohammed AL Sharaf                                Name: Mohammed AL Sharaf Title: Member    By:  /s/ Ibrahim AL Sharaf                                Name: Ibrahim AL Sharaf Title: Member |
| **Lessee** | AL Sharaf Family Produce, Inc.    By:   /s/ Mohammed AL Sharaf                             Name: Mohammed AL Sharaf Title: President |

Exhibit A

Real Property

Parcel No. 1

Lots 1, 2 and 3, Block 3, TWIN FALLS CHAMBER OF COMMERCE INDUSTRIAL PARK SUBDIVISION NO. 3, Twin Falls County, according to the official plat thereof recorded in Book 13 of Plats, page 1, records of Twin Falls County, Idaho.

AND

Exhibit B

Packing Equipment

|  |  |  |
| --- | --- | --- |
| CLARIFIER | N/A | N/A |
| STATIC SCREEN | N/A | N/A |
| PUMPS | N/A | N/A |
| CULL BINS | N/A | N/A |
| UNLOADING SYSTEM | N/A | N/A |
| WASHING & DRYING | N/A | N/A |
| GRADING TABLES | N/A | N/A |
| #2 TABLES | N/A | N/A |
| EVEN FLO BINS | N/A | N/A |
| POMONA PACKAGING | 85-2 | 220-029 |
|  | 85-1 | 118-115 |
| WEIGHT INDICATOR | N/A | N/A |
| SAMPLER | N/A | N/A |
| INK PRINTER | N/A | N/A |
| HYSTER | A618633 | GPH02A20PV |
| HYSTER | C831996 | KCPH02A20 |
| HYSTER | C2-3-FW-475 | 25271 |
| BAGGER & WEIGHTS | 140093-1 | 189-4030-1001 |
| AUTOMATIC BAGGER MAGNUSON | 93068 | 189-93068-1001 |
| AUTOMATIC BAGGER MAGNUSON | 93069 | 189-93069-1001 |
| EXETER GRADER MACHINE | N/A | N/A |
| FABRICATING EXETER UNIT | N/A | N/A |
| EXETER ENGINEERING UNIT | N/A | N/A |
| EXETER ENGINEERING UPGRADE | N/A | N/A |
| TRACK SYSTEM FOR EXETER | N/A | N/A |
| CAMERA FOR GRADING SYSTEM | N/A | N/A |
| COLOR CAMERAS & DIGITAL DISPLAYER | N/A | N/A |
| GRADER ACCESSORIES | N/A | N/A |
| ELIMINATOR | N/A | N/A |
| POTATO SCANNER | Tatoscanner | 9240 |
| GLUE MACHINE | 80-14 | 85-7-5 |
| BOX FILLER | N/A | N/A |
| QUICK LOK MACHINE | N/A | N/A |
| BAG CLOSER | N/A | N/A |
| DOBOY STITCH O'MATIC | N/A | N/A |
| AIR COMPRESSOR CRANDAL | N/A | N/A |
| KEEGAN BAG O'MATIC MACHINE | N/A | N/A |
| KEEGAN BAG O'MATIC COLUMN | N/A | N/A |
| KEEGAN BAG O'MATIC HARDWARE | N/A | N/A |
| MATHEWS INKJET PRINTERS | N/A | N/A |
| BOX ERECTOR | ER1800 | ER18-13 |
| GEAR BOXES (100) | N/A | N/A |
| ALL CONVEYOR LINES BUILT ON SITE | N/A | N/A |

Exhibit C

Miscellaneous Property

All rights in and to the marks "A," "B," and "C”

**LeaseA#13**

EQUIPMENT LEASE AGREEMENT

**Exhibit 10.51**

**EQUIPMENT LEASE AGREEMENT**

THIS EQUIPMENT LEASE AGREEMENT (this “Agreement”) is made and entered into as of November 21, 2003 (the “Effective Date”), by and between Scholt, Inc., a Delaware corporation (the “Manufacturer”), and Prime Corporation, a Delaware corporation ( the “Lessee”).

**RECITALS**

A. Previously, Manufacturer has entered into a development agreement with the Lessee, dated January 25, 2002 (the “Development Agreement”), regarding the development of its InSpec Carcass Inspection System, and thereafter entered into an Equipment and Technology License Agreement, dated March 12, 2003, relating to installing the InSpec Carcass Inspection System in Lessee’s Ellisville, Nebraska beef processing plant.

B. Lessee desires to have Manufacturer install the InSpec Carcass Inspection System in certain other of its beef processing facilities (each plant referred to collectively as the “Facility”). In this regard, Lessee desires to lease certain equipment and technology and other intellectual property from Manufacturer relating to the InSpec Carcass Inspection System, and Manufacturer desires to lease such equipment and technology and other intellectual property to Lessee, upon the terms and conditions contained in this Agreement.

**AGREEMENT**

NOW THEREFORE, in consideration of the mutual covenants and conditions herein contained, and intending to be legally bound, the parties mutually agree as follows:

1. Lease.

(a) *Grant*. Manufacturer hereby to Lease to Lessee the equipment described in “Products and Services” on Exhibit A (the “Equipment”) during the Term, along with a non-exclusive license to utilize the Equipment and related technology under all intellectual property rights in the equipment and technology including, but not limited to, all rights held by Manufacturer under U.S. 5,914,247, on the terms and conditions set forth in this Agreement. Manufacturer further grants to Lessee for the Term a non-exclusive license under all copyrights in any works of authorship provided by Lessee to Manufacturer (“Works”) to reproduce, display, perform, or make derivative works from such Works in the context of Lessee’s use of the Equipment.

(b) *Term*. The term of this Agreement (the “Term”) commences on the date of this Agreement and ends, with respect to each Facility, upon the third anniversary of the date of installation, unless earlier terminated in accordance with the terms of this Agreement.

(c) *Fees*. Lease fees for the Equipment shall be payable in the amounts, at the times and in the manners described in “Lease Price” and “Payment Schedule” on Exhibit A (the “Lease Fees”). All amounts due under this Agreement shall be paid to Manufacturer at its address as specified in this Agreement or at such other place as Manufacturer may designate in writing, without notice or demand, and without abatement, setoff, counterclaim, or deduction of any amounts whatsoever, except as otherwise provided in this Agreement. All amounts due and owing to Manufacturer under this Agreement but not paid on the due date thereof shall bear interest at the rate of the lesser of: (i) twelve percent per annum; and (ii) the maximum lawful interest rate permitted under applicable law. Such interest shall accrue on the balance of unpaid amounts from time to time outstanding from the date on which portions of such amounts become due and owing until payment thereof in full. Any service fees shall be discounted from Manufacturer’s standard rates by an amount of five percent.

3. Time of Performance. Manufacturer agrees to begin performance of its obligations upon the execution of this Agreement promptly, and agrees that, subject to Section 14 (Risk of Loss), Section 27(e) (Force Majeure) or the acts or omissions of Lessee, the Equipment will be delivered to Lessee at each Facility, undamaged and in good working order, no later than as set forth under “Installation” in Exhibit A (the “Delivery Due Date”). Manufacturer and Lessee agree to communicate and to meet in good faith during the time of performance to discuss the status of the project and to help ensure that the Delivery Due Date is met.

4. Damages for Late Delivery. Subject to delays caused in whole or in part in connection with or through the operation of Section 14 (Risk of Loss), Section 27(e) (Force Majeure) or the acts or omissions of Lessee, Manufacturer agrees to pay Lessee the amount of $500.00 for each day by which the actual date of delivery of the Equipment at any Facility exceeds that Facility’s Delivery Due Date, up to a maximum of $10,000.00. Any such amount shall be payable exclusively through deductions from the Lease Fees.

5. Limitation of Warranties by Manufacturer.

(a) Manufacturer warrants that the Equipment shall meet the descriptions and criteria and shall be as warranted as set forth on Exhibit A. Manufacturer further warrants that (i) all work shall be performed in a good, workmanlike and professional manner and (ii) the Equipment shall be (x) of the highest grade and quality unless otherwise specified and shall conform to the specifications, drawings, samples, or other description furnished by Manufacturer or specified by Lessee, (y) fit and sufficient for the purpose disclosed by Manufacturer, and (z) of good material and workmanship and free from defect. Manufacturer further warrants that if the Equipment is subject to the federal “Occupational Safety and Health Act” of 1970, as amended (“OSHA”), or OSHA’s state equivalent, or the rules and regulations thereunder that, at the time of delivery, the Equipment will, to the reasonable knowledge

2

of Manufacturer, conform to all applicable standards and requirements set forth in OSHA or rules and regulations in effect at the time of delivery. Manufacturer further warrants that it has rights to grant a sublicense under U.S. 5,914,247 to Lessee in order to allow Lessee to use the Equipment to fullest extent allowed under this Agreement and that Manufacturer will notify Lessee promptly in the event Manufacturer’s right to grant such sublicense is in danger of being terminated or has been terminated. Manufacturer expressly disclaims all other warranties.

(b) Manufacturer and Lessee specifically agree that the Equipment is provided as an addition to the Lessee’s food safety procedures only, and not as a replacement for such procedures. The Equipment is designed to detect varying levels of plant-based organic contamination which can potentially be transferred from the meat animal hide and/or digestive tract onto the meat surface, and could potentially contain the bacteria commonly found in the digestive tract or on the hide which can cause food borne illnesses. Manufacturer and Lessee specifically acknowledge that the Equipment does not detect bacteria, viruses or parasitic organisms. Accordingly, and in addition to the limitations set forth in the Agreement, Lessee agrees that, should Manufacturer be sued for personal injury allegedly caused by the existence of bacteria, virus or parasitic organisms in a product sold by Lessee, Lessee shall defend, indemnify and hold harmless Manufacturer and Manufacturer’s Representatives as set forth in Section 12 of the Agreement.

(c) NEITHER PARTY, NOR ITS TRANSFEREES OR ASSIGNS, SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT OR CONSEQUENTIAL DAMAGES OR FOR ANY INTERRUPTION OF SERVICE OR LOSS OF BUSINESS. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NO REPRESENTATION OR WARRANTY BY A PARTY AS TO THE EQUIPMENT OR ANY OTHER MATTER BY A PARTY AS TO THE EQUIPMENT SHALL BE BINDING ON THAT PARTY.

6. Representations.

(a) Lessee hereby represents that, with respect to this Agreement: (i) the execution, delivery and performance thereof by Lessee have been duly authorized by all necessary corporate action; (ii) the individual executing such document is duly authorized to do so; and (iii) such document constitutes a legal, valid and binding obligation of Lessee, enforceable against Lessee in accordance with its terms, subject to applicable bankruptcy law and equity.

(b) Manufacturer hereby represents that, with respect to this Agreement: (i) the execution, delivery and performance thereof by Manufacturer have been duly authorized by all necessary corporate action; (ii) the individual executing such document is duly authorized to do so; and (iii) such document constitutes a legal, valid and binding obligation of Manufacturer, enforceable against Manufacturer in accordance with its terms, subject to applicable bankruptcy law and equity.

3

7. Title. Manufacturer shall at all times retain title to the Equipment, and Lessee shall not represent otherwise to any person or entity. All documents of title and evidences of delivery shall be delivered to Manufacturer. Lessee shall not change or remove any insignia or lettering that is on the Equipment or that is thereafter placed thereon indicating Manufacturer’s ownership thereof; and at any time during the term of this Agreement, upon request of Manufacturer, Lessee shall affix to the Equipment, in a prominent place, labels, plates or other markings supplied by Manufacturer stating the owner of the Equipment. Manufacturer is hereby authorized by Lessee to file or record and refile and rerecord Uniform Commercial Code Financing Statements setting forth Manufacturer’s interest in the Equipment. Lessee shall indemnify Manufacturer and defend Manufacturer’s title against all persons claiming against (through actions other than actions of Manufacturer) or through Lessee, at all times keeping the Equipment free from any legal process or encumbrance whatsoever resulting from, by, or under any acts of Lessee including, but not limited to, liens, attachments, levies and executions, and shall give Manufacturer immediate written notice thereof and shall indemnify Manufacturer from any loss caused thereby. Lessee shall execute and deliver to Manufacturer, upon Manufacturer’s request, such further instruments and assurances as Manufacturer deems reasonably necessary or reasonably advisable for the confirmation or perfection of Manufacturer’s rights hereunder. Lessee acknowledges that this Agreement does not confer on Lessee any rights to use Manufacturer’s graphic designs, copyrights, trademarks, trade dress, trade secrets, know-how or any other intellectual property owned or controlled by Manufacturer that is not expressly included in the definition of Confidential Information or “Equipment.” Such rights may only be conferred on Lessee in a separate written license agreement executed by both parties.

8. Care and Use of Equipment. Manufacturer shall maintain and service the Equipment as described in “Maintenance and Service” and “Improvements” on Exhibit A. In all other respects, except for damage or repairs due to the acts or omissions of Manufacturer or its employees, agents or contractors, Lessee at its own cost and expense shall maintain the Equipment in good operating condition, repair and appearance, and Lessee shall protect the same from deterioration, other than normal wear and tear. Lessee shall use the Equipment in the regular course of business only, within its normal capacity, without abuse, and in the manner contemplated by the parties as of the date of this Agreement. Lessee shall comply with all laws, ordinances, regulations, requirements and rules with respect to the use and operation of the Equipment, and shall not make (except in conjunction with Manufacturer in accordance with Section 9 (Upgrades and Additions)) any modification, alteration or addition to the Equipment. Neither Lessee nor its employees, agents or representatives shall tamper with, disassemble, revise, engineer or otherwise examine the manual workings of the Equipment. If through the negligence of Lessee or the breach of this Agreement by Lessee repairs are required of Manufacturer then Lessee shall reimburse Manufacturer for all reasonable costs incurred by Manufacturer in making such repairs or performing such maintenance, if Lessee has not made such repairs or performed such maintenance within a reasonable time following Manufacturer’s written notice to Lessee. Manufacturer shall have the right during normal business hours, upon reasonable prior notice to Lessee and subject to applicable laws and regulations, to enter the Facility in

4

order to inspect, observe or, upon an Event of Default (as defined below), remove the Equipment, or otherwise protect Manufacturer’s interest, and Lessee shall cooperate fully in affording Manufacturer the opportunity to do the same. Lessee shall permit Manufacturer to review all documentary and electronic information relating to the Equipment and the operation of it.

9. Upgrades And Additions. Additions, modifications, alterations and upgrades to the Equipment shall be conducted only as described in “Improvements” on Exhibit A, and each shall be conducted only with the consent of and by Manufacturer, not to be unreasonably withheld or delayed. In consideration of Lessee’s lease of the Equipment, Manufacturer agrees to offer Lessee, at a price and upon terms to be negotiated between the parties but at a discount from prices offered to the rest of the meat packing industry, all improvements made by Manufacturer to substantially similar Equipment sold or licensed by Manufacturer during the term of this Agreement. All additions, modifications, alterations and upgrades to the Equipment and to Manufacturer Confidential Information shall be handled pursuant to Article 7 of the Development Agreement.

10. Net Fees; Taxes. The Lease Fees under this Agreement are net to the Manufacturer, and Lessee shall pay to Manufacturer, when due, all taxes and charges (other than income taxes imposed on Manufacturer), including all sales, use, excise, personal property, stamp, documentary and ad valorem taxes, license and registration fees, assessments, fines, penalties, freight, transportation and similar charges imposed on the ownership, possession, licensing, operation or use of the Equipment during the term of this Agreement. In the event of a continuing default by Lessee, Lessee shall pay to Manufacturer all costs and expenses, storage, caretaking and repossession expenses in connection with the enforcement of Manufacturer’s rights under this Agreement.

11. Relationship of the Parties. Lessee shall be considered to be an independent contractor. The relationship shall not be construed to be that of employer and employee, and shall not constitute a partnership, joint venture or agency of any kind. Neither party shall have any right to enter into any contracts or commitments in the name of, or on behalf of, the other, or to bind the other in any respect whatsoever. In addition, neither party shall obligate or purport to obligate the other by issuing or making any affirmations, representations, warranties or guaranties with respect to the Equipment to any third party.

12. Indemnification.

(a) Except to the extent caused by the negligent acts or omissions of Manufacturer or its officers, directors, employees, agents or contractors (the “Manufacturer Representatives”) or by the breach of this Agreement by Manufacturer, Lessee shall indemnify, protect and save Manufacturer and the Manufacturer Representatives harmless from all claims, demands, suits or actions (including attorney fees incurred in connection therewith) that may be asserted against Manufacturer or any Manufacturer Representative relating to (i) Lessee’s indemnification obligations

5

contained in Section 5(b), (ii) acts of negligence or willful conduct by Lessee or any Lessee Representative in connection with the Equipment, or (iii) Lessee’s breach of this Agreement. These indemnification obligations shall continue in full force and effect notwithstanding the termination of this Agreement.

(b) Except to the extent caused by the negligent acts or omissions of Lessee or its officers, directors, employees, agents or contractors (the “Lessee Representatives”) or by the breach of this Agreement by Lessee, Manufacturer shall indemnify, protect and save Lessee and the Lessee Representatives harmless from all claims, demands, suits or actions (including attorney fees incurred in connection therewith) that may be asserted against Lessee or any Lessee Representative relating to (i) any alleged or actual, direct or contributory infringement of patent or other intellectual property, arising from the use of the Equipment, (ii) acts of negligence or willful conduct by Manufacturer or any Manufacturer Representative or (iii) Manufacturer’s breach of this Agreement. These indemnification obligations shall continue in full force and effect notwithstanding the termination of this Agreement.

(c) In the event a claim against an indemnified party arises to which the indemnity of this section is applicable, notice shall be given promptly by the indemnified party to the indemnifying party and the indemnifying party shall have the right to control the defense of such claim and to select lead counsel to defend such claim, at the sole cost and expense of the indemnifying party; provided that in no event shall an indemnifying party enter into any settlement without the consent of the indemnified party, which consent shall not be unreasonably withheld. The indemnified party may select counsel to participate in any such defense at the sole cost and expense of the indemnified party. In connection with any claim, the parties shall cooperate with each other and provide each with access to relevant books and records in their possession, as well as necessary employees or other agents.

13. Insurance.

(a) Lessee shall obtain and maintain or self insure for the Term, at its own expense, property damage and liability insurance and insurance against loss or damage to the Equipment (including so-called extended coverage), as a result of theft and such other risks of loss as are normally maintained on equipment of the type leased under this Agreement by companies carrying on the business in which Lessee is engaged, in such amounts, in such form and with such insurers as shall be reasonably satisfactory to Manufacturer. Each insurance policy shall provide that it may not be canceled or altered without at least 30 days prior written notice thereof being given to Manufacturer or its successor and assigns.

(b) Manufacturer agrees that during the Term it and any subcontractor it provides to perform installation, service or maintenance at the Facility, shall maintain a policy or policies of insurance as set forth below:

(i) worker’s compensation, employer’s liability insurance and other legally required employer’s insurance in accordance with and meeting all requirements of applicable State and Federal law; and

6

(ii) general liability insurance (including contractual liability) in amounts not less than $2,000,000 per occurrence, combined single limits.

(c) Each party shall provide the other evidence of the above-required insurance in the form of certificates of insurance. These certificates of insurance shall contain a provision that 30 days’ prior written notice of cancellation will be provided to the other party.

14. Risk of Loss. Except to the extent caused by the acts or omissions of Manufacturer or any Manufacturer Representative or arising out of a breach of this Agreement by Manufacturer, Lessee shall bear the entire risk of the Equipment being lost, destroyed or otherwise unfit or unavailable for use from any cause whatsoever (an “Event of Loss”) after it has been delivered by the Manufacturer to the common carrier for shipment to Lessee. If an Event of Loss shall occur with respect to the Equipment, Lessee shall promptly notify Manufacturer of that fact in writing. Except to the extent caused by the acts or omissions of Manufacturer or any Manufacturer Representative or arising out of a breach of this Agreement by Manufacturer, within 30 days Lessee shall pay to Manufacturer an amount equal to the Lease Fee payment due and payable with respect to the Equipment on or prior to such date, plus a sum equal to the casualty value of the Equipment as of the date of such payment (which, for purposes of this Agreement, shall be determined in good faith by Manufacturer and Lessee in direct relation to the value of the portion of the Equipment deemed to have been lost).

15. Default. Notwithstanding anything to the contrary contained in this Agreement, if any one of the following events (an “Event of Default”) shall occur, then to the extent permitted by applicable law, the non-defaulting party shall have the right, but not the obligation, to exercise any one or more of the remedies set forth in Section 16 below:

(a) Lessee fails to pay any Lessee Fee or other payment under this Agreement when due and after receiving written notice of non-payment from Manufacturer does not make such payment within three business days;

(b) any representation or warranty of either party made in this Agreement shall prove to have been false or misleading in any material respect as of the date when it was made;

(c) either party breaches any covenant, warranty or agreement hereunder, and such breach continues for 10 business days after receipt of written notice of such breach, or such additional reasonable time (not to exceed 60 days) if such breach cannot reasonably be cured in such 10 business day period; or

(d) either party is dissolved, becomes insolvent or makes an assignment for the benefit of creditors, a receiver, trustee, conservator or liquidator of all or a substantial part of its assets is appointed with or without its application or consent

7

or a petition is filed or consented to such party under the Federal Bankruptcy Code or other law of the United States or of any other competent jurisdiction, or under any insolvency law or laws providing for the relief of debtors, or a petition or other proceeding is filed or commenced against such party thereunder and not dismissed or stayed within 30 days thereafter.

16. Remedies.

(a) Upon the occurrence and during the continuance of an Event of Default by Lessee, in addition to any rights or remedies available at law or in equity, Manufacturer may, at its option, exercise any one or more of the following remedies:

(i) cause Lessee to (and Lessee agrees that it will), upon written demand of Manufacturer and at Lessee’s expense, promptly return to Manufacturer at a location in the continental United States designated by Manufacturer the Equipment in accordance with all of the terms of this Agreement, or Manufacturer, at its option, may enter upon the premises where the Equipment is located and take immediate possession of and remove the same, all without liability for unreasonable damage to property or otherwise and without being guilty of trespass or conversion as to the Equipment;

(ii) sell any or all of the Equipment at public or private sale, with notice to Lessee or advertisement, or otherwise dispose of, hold, use, operate, lease to others, or keep idle the Equipment, all as Manufacturer in its sole discretion may determine and all free and clear of any rights of Lessee and without any duty to account to Lessee for such action or inaction or for any proceeds with respect thereto, except as hereinafter provided or required by applicable law (with all notices of any sale, lease or other disposition of the Equipment being sent to Lessee at least 10 days prior to such disposition or such other action, and shall constitute reasonable, fair notice to Lessee of any such disposition);

(iii) enter upon the premises where the Equipment or any item thereof is located and render the Equipment or such item inoperable but not so as to diminish its value;

(iv) exercise any other right that may be available to it under the Uniform Commercial Code or any other applicable law or proceed by appropriate court action to enforce the terms hereof or to recover damages for the breach hereof or to rescind this Agreement as to the Equipment; or

(v) (exclusive of any one or more of the foregoing remedies), by written notice to Lessee, cause Lessee to (and Lessee agrees that it will) pay to Manufacturer (as liquidated damages for loss of a bargain and not as a penalty) on the date specified in such notice an amount equal to the then present value of all unpaid payments due under this Agreement that, absent an Event of Default, would have been payable under this Agreement for the full Term, and in such event Lessee shall enjoy the same rights and privileges and retain the same obligations (other than the obligation

8

to pay Lease Fees) for the balance of the Term and at the end of the Term as if no default had occurred and all lease fee obligations had been prepaid in full or otherwise satisfied completely. In addition, Lessee shall continue to be liable for all covenants and indemnities under this Agreement and for all attorney fees and other costs and expenses incurred by Manufacturer, including, but not limited to, placing any Equipment in the condition required by this Agreement upon redelivery.

(b) Upon the occurrence and during the continuance of an Event of Default by Manufacturer, in addition to any rights or remedies available at law or in equity, Lessee may, at its option, terminate this Agreement and return the Equipment without further obligation to Manufacturer.

(c) No failure on the part of either party to exercise, and no delay in exercising, any right or remedy hereunder shall operate as a waiver thereof; and the rights or remedies provided herein or by applicable law, including, without limitation, re-entry upon premises or repossession of the Equipment, will not be considered an election of remedies, waiver of either party’s rights hereunder or under applicable law or termination or surrender of this Agreement.

17. Safety. Manufacturer and its contractors performing installation, service and maintenance at the Facility shall complete and sign Lessee’s Contractor Safety Pre-Qualification form attached as Exhibit B and incorporated herein, and shall abide by Lessee’s safety rules, policies and procedures as outlined in Lessee’s Safety Guidelines Handbook or as otherwise communicated by Lessee to Manufacturer or its contractors, including, without limitation the Drug/Alcohol Testing Addendum attached as Exhibit C.

18. Compliance with Laws. Both parties warrant that their performance under this Agreement shall be rendered in material accordance with all applicable laws, rules, regulations and ordinances.

19. Patents. Manufacturer warrants that none of the Equipment violates any patents or other intellectual property rights of third parties. If it should be determined that any Equipment sold hereunder infringes any existing patent or other intellectual property rights of a third party, the Manufacturer shall indemnify Lessee and defend the action on behalf of Lessee, at Manufacturer’s expense and, at Manufacturer’s option: (i) modify, at Manufacturer’s expense, the Equipment to make it non-infringing or to provide substantially similar benefit to Lessee (or in such other way as is reasonably acceptable to Lessee); (ii) replace, at Manufacturer’s expense, the infringing Equipment with non-infringing equipment or that provides substantially similar benefit to Lessee (or in such other way as is reasonably acceptable to Lessee); or (iii) terminate this Agreement and remove the Equipment from the Facility at Manufacturer’s expense.

20. Modification. No modification or change may be made in this Agreement except by a writing signed by a duly authorized representative of each party.

21. Assignment. Except by Lessee to a subsidiary or commonly controlled affiliate, or except in the case of a sale of the Facility, this Agreement and the rights and

9

obligations hereunder may not be assigned, delegated or transferred by the Lessee without the prior written consent of the Manufacturer. Manufacturer may, without Lessee’s consent, assign or transfer this Agreement or the Equipment, any fees or other sums due or to become due under this Agreement, and in such event Manufacturer’s assignee or transferee shall have all the rights, obligations, powers, privileges and remedies of Manufacturer under this Agreement, and Lessee’s obligations hereunder shall not be subject to any defense, offset or counterclaim available to Lessee against Manufacturer. In any case of assignment by either party, the assigning party shall remain liable to the other party for the rights, obligations, powers, privileges and remedies of the other party with respect to such assignee.

22. Other Prohibitions Related to the Lease and Equipment. Without the prior written consent of Manufacturer, such consent not to be unreasonably withheld, Lessee shall not: (a) sublease any of the Equipment; (b) create or incur, or permit to exist, any lien or encumbrance with respect to any of the Equipment, or any part thereof; or (c) move any of the Equipment from the location at which it is first installed.

23. Notice. Any and all notices, requests, instructions and other communications required or permitted to be given under this Agreement after the date hereof by any party hereto to any other party may be delivered personally or by nationally recognized overnight courier service or sent by mail or by telex or facsimile transmission, at the respective addresses or transmission numbers set forth below and shall be effective (a) in the use of personal delivery, telex or facsimile transmission, when received; (b) in the case of mail, upon the earlier of actual receipt or three (3) business days after deposit in the United States Postal Service, first class certified or registered mail, postage prepaid, return receipt requested; and (c) in the case of nationally recognized overnight courier service, one (1) business day after delivery to such courier service together with all appropriate fees or charges for such delivery. The parties may change their respective addresses and transmission numbers by written notice to all other parties, sent as provided in this Section 23. All communications must be in writing and addressed as follows:

|  |  |  |
| --- | --- | --- |
|  |  |  |
| Manufacturer: |  | Scholt, Inc.  Indiana  Attention: Rich Stroman |
|  |  | |
| Copy To: |  | Juris Right  Dallas, Texas  Attention: AB, Esq. |
|  |  | |
| Lessee: |  | Prime Corporation |

10

|  |  |  |
| --- | --- | --- |
|  |  |  |
|  |  | Kentucky  Attention: CD, Vice President |
|  |  | |
| Copy To: |  | Prime Corporation  Kentucky  Attention: Legal Department |

24. Waiver. None of the conditions or provisions of this Agreement shall be held to have been waived by any act or knowledge on the part of either party, except by an instrument in writing signed by a duly authorized officer or representative of the parties. Further, the waiver by either party of any right or the failure to enforce at any time any of the provisions of this Agreement, or any related rights, shall not be deemed to be a waiver of any other rights or any breach or failure of performance of the other party.

25. Confidentiality. Both parties acknowledge that, in the course of performing their respective obligations under this Agreement, they may receive from the other party certain confidential and proprietary information, including data, specifications, processes, policies, technologies, methods, formulae, and performance and other information of the other party (collectively, “Confidential Information”). Both parties agree to limit disclosure and access to the Confidential Information to such of their employees as are directly involved with work required by this Agreement and then only to the extent as is necessary and essential to complete such work. Each party will ensure that their respective employees shall preserve the confidential nature of the Confidential Information. Neither party shall disclose any of the Confidential Information to any other party, in whole or in part, directly or indirectly, unless authorized in writing by the other party. The parties shall, at all times, take proper and appropriate steps to protect the Confidential Information. Confidential Information shall be used only in connection with performance of this Agreement. No other use of it will be made by the receiving party or its employees, it being recognized that the disclosing party has reserved all rights to the Confidential Information. The term Confidential information shall not include information which (i) is in the public domain prior to disclosure to the receiving party, (ii) is lawfully in the receiving party’s possession prior to disclosure, (ii) becomes part of the public domain by publication or otherwise through no unauthorized act or omission on the part of the receiving party. The receiving party will not duplicate the Confidential Information, in whole or in part, except to the extent necessary to perform its obligations under this Agreement. The Confidential Information shall remain the property of the disclosing party and shall be returned to the disclosing party upon termination of this Agreement. The obligations under this section shall survive termination of this Agreement.

26. Visitation Rights. When in the company of personnel of other meat packing companies that are pre-announced by Manufacturer to Lessee and pre-authorized each time by Lessee to Manufacturer, Lessee agrees to allow visitation

11

rights to the Equipment installation site, expressly for the purpose of viewing the Equipment in operation, on date(s) and time(s) to be determined by Lessee in common accord with Manufacturer.

27. Miscellaneous.

(a) *Severability*. If any provision of this Agreement is declared invalid or unenforceable, this Agreement shall endure except for the part declared invalid or unenforceable. The parties shall consult and use their best efforts to agree upon a valid and enforceable provision which shall be a reasonable substitute for such invalid or unenforceable provision in light of the intent of this Agreement.

(b) *Counterparts*. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(c) *Entire Agreement*. This Agreement supercedes and cancels any previous agreements or understandings, whether oral, written or implied, heretofore in effect and sets forth the entire agreement between Manufacturer and Lessee with respect to the subject matter hereof, including the Development Agreement (other than with respect to the confidentiality and publicity and publications provisions contained in that agreement). In the event of a conflict between the Development Agreement and this Agreement, the terms of this Agreement shall control.

(d) *Specific Performance*. In addition to such other remedies as may be available under applicable law, the parties acknowledge that the remedies of specific performance and/or injunctive relief shall be available and proper if either party fails or refuses to perform its duties or fulfill its covenants hereunder.

(e) *Force Majeure*. No party to this Agreement shall be responsible for any delays or failure to perform any obligation under this Agreement due to acts of God, strikes or other disturbances, including without limitation war, insurrection, embargoes, governmental restrictions, acts of governments or governmental authorities, and any other cause beyond the control of such party. During an event of force majeure the parties’ duties to perform obligations set forth in this Agreement shall be suspended.

(f) *Governing Law*. This Agreement shall be construed in accordance with the laws of the state of Delaware without giving effect to the principles of conflict of laws.

(g) *Publicity*. The provisions of “Article 4 - Publicity and Publications” of the Joint Development Agreement shall continue to be in force and effect and shall apply to this Agreement, with such provisions being incorporated into this Agreement by reference.

(h) *Source Code Escrow.* Subject to execution of an escrow agreement, Manufacturer (“Lessor”) will deposit the Deposit Materials (as defined

12

below) with DSI Technology Escrow, Inc. or such other escrow agent reasonably acceptable to the parties (“Escrow Agent”). The parties will use commercially reasonable efforts to negotiate and execute a source code escrow agreement (“Source Code Escrow Agreement”) within 30 days of the execution date hereof. Within 30 days of Lessor’s release of a material update, as long as Lessee has paid for maintenance and support services, Lessor will deliver to the Escrow Agent a new copy of the Deposit Materials containing the source code for such material update. Lessor shall be responsible for, and shall pay, any and all fees due to the Escrow Agent in connection with such escrow arrangement. The Escrow Agent will make the Deposit Materials available to Lessee only if Lessor fails to perform the maintenance and support services after its receipt of prior notice and an opportunity to cure in accordance with this Agreement; provided, however, that if a dispute arises as to whether or not Lessor has failed to perform (or failed to cure such non-performance of) the maintenance and support services in accordance with this Agreement, the parties shall appoint a mutually acceptable neutral third party arbitrator, with expertise in intellectual property law, who will, no later than fourteen (14) days after the initial demand of Lessee, direct the Escrow Agent to hold or release the applicable portion of the Deposit Materials according to such arbitrator’s interpretation of this Agreement and the Source Code Escrow Agreement. In the event the Deposit Materials are rightly released to Lessee by the Escrow Agent, Lessee may use the Deposit Materials for: (i) the sole purpose of providing maintenance and support for Lessee’s internal business only and solely in accordance with the provisions of this Agreement; (ii) only for as long as Lessee adheres to all of its obligations under the Agreement including, without limitation, payment obligations; (iii) only as long as Lessee is not in breach of the Agreement; and (iv) only for the duration of the term of license granted under this Agreement. The Deposit Materials and all improvements, derivative works and enhancements thereto remain the exclusive intellectual property and confidential information of Lessor, and Lessee agrees that it will promptly return the Deposit Materials together with all copies, improvements, derivative works and enhancements thereof, and all other Confidential Information to Lessor upon the expiration or termination of this Agreement, and certify the same in writing to Lessor. For purposes hereof, the Deposit Materials shall mean the latest copy of the source code for DM, SM computers, the latest copy of the source code for DM controller board, a copy of the latest user manual, and a bill of material list of all critical components and vendors or on-going maintenance of CIS Systems.

13

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first written above.

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| **LESSEE:** | | |
|  | | |
| PRIME CORPORATION | | |
|  |  | |
| By: |  |  |
| Name: |  |  |
| Title: |  |  |
|  | | |
| **MANUFACTURER:** | | |
|  | | |
| SCHOLT, INC. | | |
|  |  | |
| By: |  |  |
| Name: |  |  |
| Title: |  |  |

14

**LeaseA#14**

EX-10.2

EXHIBIT 10.2

EQUIPMENT LEASE AGREEMENT

This Equipment Lease Agreement (this “Agreement” or “Lease”), dated as of February 11, 2020, is made between Amity Equipment Finance, a division of GrowthBank, (the “Lessor”) and Providex, LLC, a Delaware limited liability company (the “Lessee”). Lessor and Lessee are referred to in this Agreement individually as a “Party” and, collectively, as the “Parties”. Capitalized terms used but not defined herein shall have the meaning set forth for such terms in the Purchase Agreement (as defined below).

RECITALS

WHEREAS, Lessor is in the business of owning and leasing equipment and plans to purchase certain fuel cell power generation equipment from Lessee pursuant to that certain Purchase and Sale Agreement, dated as of the date hereof, between Lessor and Lessee (the “Purchase Agreement”);

WHEREAS, DriveOn, Inc., a Delaware corporation (“Guarantor”) has delivered to Lessor that certain Guaranty Agreement, dated as of the date hereof (the “Guaranty”), to guarantee Lessee’s payment obligations to Lessor; and

WHEREAS, Lessee desires to lease from Lessor, and Lessor desires to lease to Lessee, the fuel cell power generation equipment described in the Bill of Sale entered into pursuant to the Purchase Agreement and as further described in this Agreement, when and as the conditions to such lease are met as provided herein.

NOW, THEREFORE, in consideration of the mutual covenants, representations, warranties and agreements hereinafter set forth, and intending to be legally bound hereby, the Parties agree as follows:

1.LEASE. Lessor agrees to lease to Lessee and Lessee agrees to lease from Lessor certain fuel cell power generation equipment (the “Equipment”) as further described in Exhibit A. The Equipment shall be installed at the location described in Exhibit A (the “Site”).

2.TERM AND RENT. The initial term (“Initial Term”) for this Lease shall be for the period specified in Exhibit A, and Lessee shall pay Lessor the Rent specified in Exhibit A throughout the Initial Term for the use of the Equipment. The Initial Term and Rent with respect to the Equipment shall commence on, and Lessee will be obligated to pay Rent from, the Rental Commencement Date (as defined in Exhibit A). For purposes of this Agreement, the term “Rent” shall mean and include all amounts payable by Lessee to Lessor for the lease of the Equipment. As used in this Agreement, the term “Lease Term” means the Initial Term plus any Renewal Terms (as defined in Section 15), unless earlier terminated in accordance with the terms of this Agreement.

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3.LATE CHARGES. If any Rent or other amount due hereunder is not paid within ten (10) days after the due date thereof, Lessor shall have the right to impose and collect and Lessee agrees to pay a late charge on, and in addition to, such unpaid Rent or other amount due hereunder for each month or part thereof that such Rent or other amount due hereunder remains unpaid, an amount equal to 1.5% per month of such unpaid Rent or other amount due hereunder until paid.

4.DISCLAIMER OF WARRANTIES. Lessee acknowledges that Lessor is not the manufacturer of the Equipment, nor manufacturer’s agent, and Lessee agrees that as between Lessor and Lessee, the Equipment leased hereunder is of a design, size, fitness and capacity selected by Lessee and that Lessee is satisfied that the same is suitable and fit for its intended purpose. LESSEE FURTHER ACKNOWLEDGES THAT THE EQUIPMENT IS LEASED UNDER THIS AGREEMENT ON AN ‘AS-IS,’ ‘WHERE IS’ BASIS AND THAT LESSOR MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO ANY OF THE EQUIPMENT, ITS MERCHANTABILITY, OR ITS FITNESS FOR A PARTICULAR PURPOSE. LESSOR SHALL NOT BE LIABLE TO LESSEE OR ANY OTHER PERSON FOR DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING FROM LESSEE’S USE OF THE EQUIPMENT, ANY DEFECT OR MALFUNCTION OF THE EQUIPMENT, OR FOR DAMAGES BASED ON STRICT OR ABSOLUTE TORT LIABILITY OR LESSOR’S NEGLIGENCE. No defect or unfitness of the Equipment shall relieve Lessee of the obligation to pay Rent, or to perform any other obligation under this Agreement.

5.ASSIGNMENT OF WARRANTIES. Notwithstanding the foregoing, so long as no Default (as defined in Section 19) has occurred hereunder and is continuing, Lessee shall be entitled to the benefit of any applicable manufacturer’s warranties received or held by Lessor or from which Lessor otherwise benefits, and to the extent assignable, Lessor hereby assigns such warranties to Lessee for the Lease Term. In the event that any warranty is not assignable to Lessee, Lessor hereby appoints Lessee as Lessor’s agent and attorney-in-fact with respect to such warranty, which appointment is coupled with an interest, to assert and enforce, from time to time, in the name of and for the account of the Lessor and the Lessee, as their interests may appear, but in all cases at the sole cost and expense of the Lessee, any such warranty, and so long as no Default shall have occurred and be continuing, Lessee may retain any recovery from such claim.

6. USE, OPERATION AND MAINTENANCE.

(a)Lessee shall use the Equipment in the manner for which it was designed and intended, solely for Lessee’s business purposes, substantially in accordance with all manufacturer manuals and instructions and in compliance with Applicable Law. As used herein, “Applicable Law” means all applicable laws, statutes, regulations, ordinances, orders and other requirements of any governmental authority (including such requirements necessary to ensure that the Equipment qualifies for all tax benefits and environmental attributes, in each case, to the extent available by law to the owner of the Equipment as of the date of this Agreement). Lessee, at Lessee’s own cost and expense, shall install a fuel cell energy production monitoring system to monitor the energy production of the Equipment, and such monitoring system shall be acceptable to the Lessor and provide Lessor with real-time access to such monitoring system’s data. Any

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such monitoring systems installed by Lessee shall be deemed part of the Equipment and shall become property of Lessor. Lessee, at Lessee’s own cost and expense, shall keep the Equipment in good repair, condition and working order, ordinary wear and tear excepted, sufficient to perform according to the requirements of this Agreement and each Project Document, and shall furnish or otherwise obtain all parts, mechanisms, devices and servicing required therefor in the ordinary course. Lessee shall also make, at Lessee’s own cost and expense, all modifications to the Equipment as are required from time to time for the Equipment to comply with Applicable Law and each Project Document. All replacement parts, repairs, alterations, modifications and additions to the Equipment at any time made to or placed upon the Equipment shall become the property of Lessor. Lessee may, with Lessor’s prior written consent, which shall not be unreasonably withheld, make such alterations, modifications or additions to the Equipment as Lessee may deem desirable in the conduct of its business; provided the same shall not diminish the current or estimated residual value, utility, function, operation or remaining useful life of the Equipment, cause the loss of any warranty thereon or any certification necessary for the maintenance thereof. Lessor acknowledges that any data files or software developed or installed by Lessee which is resident or otherwise installed on the Equipment shall be and remain the property of Lessee; provided, however, that the Lessor shall have no obligation or responsibility to remove or return same to Lessee. Lessee shall, at Lessee’s own cost and expense, provide and maintain a security system to adequately secure and limit access to the Equipment. In connection with any such alteration, modification or additions to the Equipment, if Lessee permanently removes any parts, equipment and/or other materials from the Equipment in connection with installing a permanent replacement, title to and risk of loss of and liability for such replaced parts, equipment and/or other materials shall pass to Lessee at the time of removal from the Equipment.

(b)Lessee shall take all necessary actions so that Lessee is either not subject to or is exempt from regulation (i) as a "public utility" or a "holding company" under the FPA and PUHCA and FERC's regulations thereunder, and (ii) as a "public utility," "electric utility," "electric corporation," or a "holding company" or similar terms under applicable laws or regulations of the state where the Equipment is located.

(c)Lessee shall at all times maintain, or cause to be maintained, in full force and effect the Interconnection Agreement and/or such other interconnection agreement with the applicable local utility that permits interconnection and operation of the Equipment in parallel with such utility’s distribution system.

7.NET LEASE. This Agreement is a “net lease” and Lessee’s obligation to pay all Rent and other amounts due and owing hereunder is absolute and unconditional and shall not be terminated, extinguished, diminished, setoff or otherwise impaired by any circumstance whatsoever, including by (a) any claim, setoff, counterclaim, defense or other right which Lessee may have against Lessor or any affiliate of Lessor; (b) any defect in the title, condition, design, operation, merchantability or fitness for use of the Equipment, or any eviction of the Equipment by paramount title or otherwise from the Site, or any unavailability of access to the Equipment at the Site; (c) any loss, theft or destruction of, or damage to, the Equipment or any portion thereof or interruption or cessation in the use or possession thereof or any part thereof for any reason whatsoever and of whatever duration; (d) the condemnation, requisitioning, expropriation, seizure or other taking of title to or use of the Equipment or the Site by any governmental entity or otherwise; (e) any ineligibility of the Equipment or any portion thereof for any particular use,

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whether or not due to any failure of Lessee to comply with any Applicable Law; (f) any event of “force majeure” or any frustration of purpose; (g) any insolvency, bankruptcy, reorganization or similar proceeding by or against Lessee; (h) termination or loss of the Site or any portion thereof, or of any other lease, sublease, right-of-way, easement or other interest in personal or real property upon or to which any portion of the Equipment is located, attached or appurtenant or in connection with which any portion of the Equipment is used or otherwise affects or may affect the Equipment or any right thereto, (i) any termination of a Project Document or the failure of any Project Document to be in full force and effect, or (j) any defect in the title to, or the existence of any lien with respect to, the Equipment (unless such defect or lien results from or is caused by any act or omission of Lessor, in which case Lessee may withhold Rent if and to the extent such defect or lien reasonably interferes with Lessee’s use of the Equipment), it being the intention of the Parties hereto that all Rent and other amounts payable under this Agreement shall continue to be payable in the manner and at times provided for herein. If for any reason whatsoever this Agreement is terminated in whole or in part by operation of law or otherwise, except as specifically provided herein, Lessee nonetheless agrees, to the extent permitted by Applicable Law and without limiting any other rights or remedies Lessor has under this Agreement or any other Lease Document, to pay to Lessor an amount equal to each installment of Rent and all other amounts due and owing hereunder, at the time such payment would have become due and payable in accordance with the terms hereof had this Agreement not been so terminated.

8.NO LIENS; REMOVAL; ABANDONMENT; QUIET ENJOYMENT. Lessee shall keep the Equipment free and clear from all liens, charges, encumbrances, legal process and claims other than Permitted Liens. Lessee shall promptly notify Lessor of the imposition of any lien (other than Permitted Liens) of which the Lessee becomes aware and shall promptly use commercially reasonable efforts, at Lessee’s own cost and expense, to fully discharge and release any such lien. Lessee shall not move the Equipment from the location specified in this Lease therefor without the prior written consent of Lessor. Lessee agrees not to waive its right to use and possess the Equipment in favor of any party other than Lessor and further agrees not to abandon the Equipment to any party other than Lessor. So long as no Default has occurred and is continuing, Lessee’s quiet and peaceful possession and use of the Equipment will not be disturbed by Lessor or anyone claiming by, through or on behalf of Lessor.

9.TITLE. (a) Lessor and Lessee agree that the Equipment is and at all times shall remain the sole and exclusive personal property of Lessor (subject to Section 25), and Lessee covenants that it will at all times treat the Equipment as such and that no part of the Equipment shall be considered or treated as a fixture. No right, title or interest in the Equipment shall pass to Lessee other than the right to maintain possession and use of the Equipment for the Lease Term, conditioned upon Lessee’s compliance with the terms and conditions of this Agreement and except as otherwise provided in the last sentence of Section 6 (a). If requested by Lessor, Lessee shall affix to or place on the Equipment, at Lessor’s expense, plates or markings indicating Lessor’s ownership.

(b) The Parties agree that this Agreement is intended to be a “true lease,” and the Lessor will be treated as owner and lessor of the Equipment and Lessee will be treated as lessee of the Equipment for commercial law purposes as well as federal, state and local income tax purposes and, accordingly, the Parties agree that the Lessor is intended to be the party entitled to claim any

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and all benefits available to an owner of the Equipment, including all Tax Benefits (as defined in Section 19). Lessor acknowledges that all rights and interests in and to any renewable energy credits, utility rebates (including performance based incentives), and any other environmental attributes associated with the electricity or thermal output from the Equipment (all such attributes, specifically excluding any Tax Benefits, the “Environmental Attributes”) are required to be transferred to Southern California Edison Company in connection with the delivery of energy pursuant to the PPA and Lessor has no rights to the foregoing. In the event that this Agreement or this Lease is deemed to be a lease intended for security, Lessee hereby grants Lessor a purchase money security interest in the Equipment (including any replacements, substitutions, additions, attachments and proceeds).

10.TAXES. (a) Lessee shall promptly reimburse Lessor, or shall pay directly if so requested by Lessor, as additional Rent, all taxes, charges and fees (including any interest, additions to tax and penalties) that may now or hereafter be imposed or levied by any governmental body or agency upon or in connection with the purchase, ownership, lease, possession, use or location of the Equipment or otherwise in connection with the transactions contemplated by this Agreement, including sales, use, property (real or personal and tangible or intangible), value added or other transfer taxes on (i) the initial sale of Equipment to Lessor, (ii) the Rents, (iii) the sale of power or thermal energy to, or the use of the Equipment by, the offtaker under the Power Purchase Agreement, executed on April 20, 2018, and entered into by Lessee, and Southern California Edison Company (as the same may be amended, amended and restated, modified or supplemented from time to time, the “Power Purchase Agreement”), or otherwise with respect to any Project Document, (iv) any payment of Stipulated Loss Value and (v) upon any exercise of the Purchase Option, but excluding any and all taxes, charges and fees (including any interest, additions to tax and penalties) (A) on or measured by net or gross income, net or gross receipts, alternative minimum taxable income, items of tax preference, branch profits, franchise, capital, conduct of business, stock value or net worth (in each case other than taxes that are (or are in the nature of) sales, use, value added, transfer, excise and personal property taxes), (B) resulting from Lessor’s negligence, willful misconduct, or the breach by Lessor of any of its representations, warranties, covenants or obligations under any Lease Document, (C) resulting from or arising out of any failure on the part of Lessor to file any tax returns or pay any taxes owing on a timely basis or any errors or omissions on Lessor’s tax returns unless the Lessee is responsible under this Agreement for filing the returns, Lessee has not provided information requested by Lessor that is necessary to file such tax returns or Lessor’s failure to file any tax returns or any errors or omissions on such tax returns is attributable to Lessee’s fraud, negligence or misrepresentation, (D) attributable to a transfer or disposition (directly or indirectly) of any interest in the Equipment, this Agreement or any part of the foregoing or any interest in the Lessor (including a deemed transfer for tax purposes) other than (I) a transfer to Lessee pursuant to the exercise of any purchase option granted to Lessee under this Agreement, or (II) a transfer pursuant to Lessor’s exercise of remedies in Section 19 as a result of a Default, (E) resulting from the leasing, ownership, use or operation of any Equipment after the expiration or earlier termination of this Agreement with respect to such Equipment, (F) imposed on Lessor (including by way of withholding) as a result of the failure by Lessor (or any member of Lessor) to be a “United States person” (within the meaning of section 7701(a)(30) of the Internal Revenue Code (the “Code”), (G) imposed on Lessor by any jurisdiction to the extent such taxes would not have been imposed on Lessor had Lessor not engaged in activities in such jurisdiction unrelated to the transactions contemplated by the Lease Documents,

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and (H) imposed on any transferee, assignee or successor in interest of the Lessor to the extent such taxes are in excess of the taxes that would have been imposed on the original Lessor had such transfer or assignment not occurred. Lessee shall file, in a timely manner and in the name of the Lessor as owner, any personal property tax returns relating to the Equipment that are required to be filed covering periods during the Lease Term, pay the amounts shown on the returns and provide copies of such returns and proof of payment to the Lessor. Failure of Lessee to pay promptly amounts due hereunder shall be treated the same as failure to pay any installment of Rent pursuant to Section 3. If Lessee is requested by Lessor to file any other returns or remit payments directly to any governmental body or agency, Lessee shall provide proof of said filing or payment to Lessor.

(b) Lessee shall be entitled to contest the imposition of taxes, charges and fees (including penalties) subject to this Section 10 at Lessee’s sole cost and expense; provided that Lessee has confirmed in writing its liability for the amounts should it lose the contest, the contest does not create risk of forfeiture of the Equipment, and Lessee keeps Lessor informed about the progress of the contest and provides Lessor copies of any filings or correspondence with the tax authorities about the case. Lessor shall provide to Lessee such information as Lessee may reasonably request in order to contest and shall otherwise cooperate with Lessee to the extent necessary to permit Lessee to conduct such contest. Lessor agrees not to settle any claim that Lessee is contesting in accordance with this Section 10(b) without the prior consent of Lessee, such consent not to be unreasonably withheld. If Lessor shall obtain a refund or tax credit or other tax benefit attributable to an amount paid by Lessee pursuant to this Section 10, Lessor shall promptly pay or credit to Lessee the amount of such refund, credit or tax benefit.

11.ACCOUNTS. (a) Lessee agrees to deposit all revenues received by Lessee with respect to the Equipment into a demand deposit account (the “Control Account”) to be established by Lessee. In addition, on the Lease Commencement Date, Lessee shall establish a separate interest bearing account (the “Minimum Monthly Reserve Account”). The Minimum Monthly Reserve Account and the Control Account are together referred to as the “Accounts”. Any and all interest accruing on invested amounts held in any of the Accounts shall be for the benefit of and shall be deemed the property of Lessee. Each of the Accounts may be at a financial institution that is an affiliate of Lessor. The cost of establishing and maintaining the Accounts shall be borne by Lessee. Lessee shall instruct each counterparty to each Project Document to make all payments to which Lessee or any of Lessee’s affiliates is entitled under each such Project Document to the Control Account and to provide evidence of such instruction to Lessor, and Lessee agrees to enforce its right, or to cause its affiliates to enforce their rights, to designate the Control Account as the place to which such payments should be made in the event that for any reason any such counterparty fails to make payment to such account. Lessee shall, on the Lease Commencement Date, fund the Minimum Monthly Reserve Account with an amount equal to the “Minimum Monthly Reserve Fund” amount set forth in Exhibit A (the “Minimum Balance Requirement”), and Lessee shall thereafter maintain a minimum amount in the Minimum Monthly Reserve Account equal to the amount set forth in Exhibit A. Lessor shall have sole signatory authority over the Accounts. As collateral security for the prompt payment and performance of all obligations under this Agreement, Lessee hereby grants to Lessor a first priority security interest in, lien upon and pledge of the Control Account and the Minimum Monthly Reserve Account. Lessee shall take all such action as may be reasonably requested by Lessor to maintain Lessor’s first priority security interest in each such account.

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(b)If the amount in the Minimum Monthly Reserve Account falls below eighty percent (80%) of the Minimum Balance Requirement at any time, Lessee shall promptly replenish the Minimum Monthly Reserve Account such that the Minimum Balance Requirement is met and in addition shall provide to Lessor information regarding the cause of the shortfalls in the Control Account and/or Minimum Monthly Reserve Account, the steps being taken to remedy the situation giving rise to such shortfalls, and such other information as Lessor shall reasonably request (which information shall not include technical proprietary information).

(c)On the date that is ten (10) business days prior to each date on which a payment of Rent is due (each, a “Rent Payment Date”), Lessor shall determine the amounts on deposit in the Control Account, and if there are insufficient funds to make the transfers contemplated in clauses first and second of Section 11(d) in full on the next occurring Rent Payment Date, Lessor shall withdraw from the Minimum Monthly Reserve Account an amount equal to such deficiency and deposit such amount into the Control Account.

(d)On each Rent Payment Date under this Lease, Lessor shall transfer funds from the Control Account in the following order of priority, in each case, to the extent funds are available in the Control Account:

First, if any amount (other than Rent due and payable on such Rent Payment Date) is due and owing on such Rent Payment Date to Lessor hereunder (including, for the avoidance of doubt, any delinquent Rent due and owing at such time) or under any other Lease Document, Lessor shall transfer such amount to Lessor.

Second, Lessor shall transfer the amount of all Rent due and owing on such Rent Payment Date to Lessor.

Third, if the Minimum Balance Requirement is not met as of such Rent Payment Date, Lessor shall transfer to the Minimum Monthly Reserve Account the amount necessary to meet the Minimum Balance Requirement.

Fourth, any obligation in the nature of operating expenses of the Project at the instruction of Lessee and as approved by Lessor.

Fifth, provided that no Default has occurred and is continuing, Lessor shall transfer to Lessee any amounts remaining in the Control Account as instructed by Lessee.

(e)[Intentionally omitted]

(f)At the end of the Lease Term, and after all amounts payable to Lessor under the Lease Documents have indefeasibly been paid in full, all amounts remaining in the Accounts shall be paid to Lessee other than amounts necessary to repair any damage to the Equipment for which Lessee is liable hereunder or to the Site as a result of Lessee’s activity on the Site for which Lessor is liable, which amounts (or reasonably estimated amounts if the specific amounts are not then known to Lessor) may be retained by Lessor. In the event the estimated amount retained by Lessor is greater than the actual amount necessary for such repairs, Lessor shall so notify Lessee promptly following such determination and shall deliver to Lessee an amount equal

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to such excess. Notwithstanding the foregoing, at the end of the Lease Term, Lessee shall have no obligation to repair or replace (or reimburse Lessor for any repair or replacement expenses related to) ordinary wear and tear, any module performing in line with the age and expected degradation curve of the Equipment, or any part performing with the performance, reliability and safety in line with the age of the Equipment and of a type, grade, quality and condition comporting with Prudent Industry Practices.

(g)Lessor may cause a collateral agent to take any or all actions Lessor is permitted to take under this Agreement or any other Lease Document.

12.LOSS OF OR DAMAGE TO EQUIPMENT. Lessee hereby assumes and shall bear the risk of loss for destruction of or damage to the Equipment from any and every cause whatsoever, whether or not insured, until the Equipment is returned to Lessor. No such loss or damage shall impair any obligation of Lessee under this Agreement, which shall continue in full force and effect. In event of damage to or theft, loss or destruction of the Equipment (or any item thereof), Lessee shall promptly notify Lessor in writing of such fact and of all details with respect thereto, and shall, within thirty days of such event, at Lessee’s option, (a) place the same in good repair, condition and working order, (b) at Lessee’s expense, dispose of any Equipment in compliance with Applicable Law, substitute such Equipment (or any item thereof) with equipment of equivalent or superior manufacture, make, model and features, in good repair, condition and working order and transfer clear title to such replacement property to Lessor whereupon such property shall be subject to this Agreement and the applicable other Lease Documents and be deemed Equipment for purposes hereof and thereof, or (c) pay Lessor an amount equal to the sum of (i) all Rent accrued but unpaid to the date of such payment, plus (ii) the “Stipulated Loss Value” of the Equipment as set forth in Exhibit A (the “Stipulated Loss Value”), whereupon this Lease shall terminate, subject to Section 22, solely with respect to the Equipment (or any item thereof) for which such payment is received by Lessor. Any insurance proceeds received with respect to the Equipment (or any item thereof) shall be applied, in the event option (c) is elected, in reduction of the then unpaid obligations, including the Stipulated Loss Value, of Lessee to Lessor, if not already paid by Lessee, or, if already paid by Lessee, to reimburse Lessee for such payment, or, in the event option (a) or (b) is elected, to reimburse Lessee for the costs of repairing, restoring or replacing the Equipment (or any item thereof) upon receipt by Lessor of evidence, satisfactory to Lessor, that such repair, restoration or replacement has been completed, and an invoice has been provided therefor.

13.INSURANCE. (a) Lessee shall keep the Equipment insured against theft and all risks of loss or damage, subject to policy limitations or exclusions reasonably acceptable to Lessor, from every cause whatsoever for an amount equal to the greater of the Stipulated Loss Value and the replacement value of the Equipment and shall carry general liability insurance, both for personal injury and property damage, and Lessee shall be liable for all deductible portions of all required insurance. All such insurance shall be maintained with insurance companies rated A-X or better by Best’s Insurance Guide and Key Ratings (or an equivalent rating by another nationally recognized insurance rating agency of similar standing if Best’s Insurance Guide and Key Ratings shall no longer be published) or with other insurance companies of recognized responsibility satisfactory to Lessor. All insurance for theft, loss or damage shall provide that losses, if any, shall be payable to Lessor, and all such liability insurance shall name Lessor (or Lessor’s assignee as appropriate) as additional insured and shall

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be endorsed to state that it shall be primary insurance as to Lessor. Lessee shall pay the premiums therefor and deliver to Lessor a certificate of insurance or other evidence satisfactory to Lessor that such insurance coverage is in effect; provided, however, that Lessor shall be under no duty either to ascertain the existence of or to examine such insurance policies or to advise Lessee in the event such insurance coverage shall not comply with the requirements hereof. Each insurer shall agree by endorsement upon the policy or policies issued by it or by independent instrument furnished to Lessor, that it will give Lessor at least ten (10) days’ prior written notice of cancellation of the policy for nonpayment of premiums and at least thirty (30) days’ prior written notice for alteration or cancellation due to any other reason or for non- renewal of the policy. The proceeds of such insurance payable as a result of loss of or damage to the Equipment shall be applied as set forth in Section 12.

(b) If Lessee fails to obtain insurance or provide evidence thereof to Lessor, Lessee agrees that Lessor may, upon prior written notice to Lessee, but shall not be obligated to, obtain such insurance on Lessee’s behalf and charge Lessee for all costs and expenses associated therewith. Without limiting the forgoing, Lessee specifically agrees that if Lessor obtains insurance on Lessee’s behalf, Lessee will be required to pay a monthly insurance charge. The insurance charge will include reimbursement for premiums advanced to the insurer, finance charges (which will typically be at a rate higher than the rate used to determine the Rent), billing and tracking fees, administrative expenses and other related fees. Lessor shall receive a portion of the insurance charges, which may include a profit from such finance charges, billing, tracking, administrative and other charges.

Except as provided in the immediately preceding paragraph, any other insurance obtained by or available to Lessor shall be secondary insurance, and Lessor shall be solely liable for all costs associated therewith.

14.END OF LEASE TERM OPTIONS. Not later than one hundred eighty (180) days prior to the expiration of the Initial Term or any Renewal Term (as defined below)] of this Lease, Lessee shall notify the Lessor in writing whether it intends at the expiration of such term to (a) renew the Lease in accordance with Section 15 (the “Renewal Option”), (b) purchase the Equipment in accordance with Section 16 (the “Purchase Option”), or (c) return the Equipment to Lessor (the “Return Option”); provided that Lessee may only exercise the Renewal Option or the Purchase Option so long as no Default under this Agreement has occurred and is then continuing and Lessee may only exercise the Return Option if all conditions contained in each Project Document to assign each such Project Document to Lessor have been met. If Lessee does not provide this notice at the end of the Initial Term, Lessee shall be deemed to have elected the Renewal Option, subject to the conditions in Section 15. If Lessee does not provide this notice at the end of any Renewal Term, Lessee shall be deemed to have elected either the Renewal Option or the Return Option, to be selected in Lessor’s sole discretion, subject to the conditions in Section 15. If Lessee elects the Return Option, Lessee acknowledges that by means of that certain Assignment Agreement dated as of the date hereof and executed by Lessee in favor of Lessor (the “Assignment Agreement”), Lessee shall have assigned to Lessor all of Lessee’s right, title and interest in, to and under each Project Document and each Governmental Approval, effective as of the end of the Lease Term. If the Equipment is not then in good repair, condition and working order, ordinary wear and tear excepted, or has not been maintained in accordance with Section 6, Lessee shall promptly reimburse Lessor for all reasonable costs

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incurred to restore the Equipment to such condition but subject to the limitations set forth in the last sentence of Section 11 (f). In such case, Lessor shall consider having DriveOn, Inc. continue to remain as the operator of the Equipment for the duration of the Power Purchase Agreement. If, at the end of the Lease Term, Lessee has elected the Return Option and the Power Purchase Agreement is no longer in full force and effect, then Lessee shall, within sixty (60) days of the end of the Lease Term, at Lessee’s expense, (i) reimburse Lessor for the costs to restore the Equipment as provided above (subject to the limitations set forth in the last sentence of Section 11 (f))and (ii) remove all of the Equipment from the Site, repair any damage to the Site caused by such removal so the Site is restored to the condition required by the associated land rights agreement or site license, pack the Equipment into appropriate shipping containers or wrap and secure the equipment for shipping in accordance with the original equipment manufacturer’s standard practice, insure the shipment for the fair market value of the Equipment at such time, and cause the Equipment to be delivered to such location within the United States as Lessor may specify.

15.REMARKETING. If Lessee does not elect the Renewal Option or Purchase Option for this Lease, then Lessee shall use commercially reasonable efforts on a non-discriminatory, non-priority “as is” basis, to assist Lessor in remarketing the Equipment for one-hundred eighty (180) days following the expiration of the Initial Term or any Renewal Term of this Lease (the “Remarketing Period”). In connection with the foregoing remarketing obligations, Lessor may elect, by written notice to Lessee (“Service Notice”), that Lessee arrange one or more remarketing services specified by Lessor from time to time in writing, such remarketing services, if obtained, to be at Lessor’s sole cost as a remarketing expense (including both third party costs incurred by Lessee and a reasonable estimate of in house expenses incurred by Lessee; provided, however, that items with a cost over $5,000 shall require Lessor’s consent), which may include (i) arranging for removal of the Equipment; (ii) Equipment inspections and inventory; (iii) Equipment de-installation and installation, as necessary; (iv) refurbishment of the Equipment; (v) appraisal of the Equipment; (vi) Equipment maintenance services; (vii) arranging for Equipment maintenance certification; and/or (viii) providing and/or securing necessary Equipment license(s) and maintenance for a new purchaser or lessee. If, following the receipt of the Service Notice, Lessee shall in good faith determine that it is not feasible to perform any or all of the foregoing services or that such performance could expose Lessee to unreasonable liability, then Lessee shall promptly notify Lessor in writing, whereupon Lessee shall have no further obligation to arrange for the performance of such services.

In connection with any services performed by Lessee pursuant to this Section 15, Lessee shall (i) hold any Equipment that Lessee takes possession of, or control over, as bailee, and not as consignee, and (ii) be responsible for, and hereby indemnifies and holds Lessor harmless from and against, any and all damage to or loss of the Equipment to the extent such damage or loss is related to the gross negligence or willful misconduct of Lessee. Lessee shall be, and shall at all times remain, an independent contractor with regard to its obligations hereunder.

In performing its remarketing obligations, Lessee may not pledge the credit of, or to enter into any contract or financing arrangement for, Lessor; it being agreed that Lessee has not been granted any property interest in any intellectual property (including, without limitation, the corporate name, trademarks or trade names) of Lessor. In this regard, Lessee has no power or

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authority, express or implied, to bind or otherwise obligate Lessor in any manner with respect to a sale, lease or other disposition of the Equipment. Any proposal or offer submitted by Lessee with respect thereto to any third-party shall state that it is conditioned upon the written approval of Lessor. In this regard, Lessor expressly reserves the right to approve or reject any offer or proposal, or portion thereof, made by Lessee or any third party, which approval or rejection shall not be unreasonably withheld or delayed. If any offer is approved by Lessor, in its sole and absolute discretion, the transaction(s) contemplated in such offer or proposal shall be consummated solely and directly between Lessor, in Lessor’s (or its nominee’s or designee’s) name, and the applicable purchaser or lessee. Any offer or proposal rejection shall not relieve Lessee of its obligations to continue to remarket the Equipment.

In the event that Lessee is unable to sell or otherwise dispose of the Equipment during the Remarketing Period under terms and conditions reasonably acceptable to Lessor, then Lessor may remarket the Equipment within its sole and absolute discretion. In this event, Lessee shall deliver and/or make storage arrangements, as a remarketing expense, for any applicable Equipment as directed by Lessor in writing but shall otherwise have no further obligation hereunder.

16.LEASE RENEWAL. (a) If Lessee elects, or is deemed to elect, the Renewal Option for this Lease, then this Lease (with respect to all, but not less than all, of the Equipment under this Lease) shall be extended for a sixty (60) month term or such other term or terms as Lessor and Lessee may agree upon (each such term, a “Renewal Term”), commencing on the day following the last day of the Initial Term or the prior Renewal Term, as applicable; provided that the aggregate Renewal Terms may not exceed the remaining term of the Power Purchase Agreement and the sum of the Renewal Terms and the Initial Term may not exceed eighty percent (80%) of the Equipment’s remaining economic useful life as determined by the Appraisal (as defined in Section 18(a)) without the prior written consent of Lessor. Rent payable during any Renewal Term shall be the Fair Market Rental Value for the Equipment as determined below.

(b)The Fair Market Rental Value (as defined below) of the Equipment, as of the commencement of any Renewal Term, shall be determined by agreement of Lessor and Lessee within sixty (60) days after receipt by Lessor of the irrevocable notice from the Lessee of its election to renew this Lease or its deemed election to renew this Lease, or, if they shall fail to agree within such sixty (60) day period, shall be determined by a qualified appraiser appointed by Lessor and Lessee or, if they cannot agree on an appraiser, then by a panel of three (3) appraisers with one each chosen by Lessor and Lessee and the third appraiser appointed by the first two appraisers (the “Appraisal Procedure”), with the fair market rental value as determined by the third appraiser to be binding and conclusive on the Parties as the “Fair Market Rental Value” for purposes of this Lease. The Rent payable during the Renewal Term shall be equal to the average of the Rent payable during the twelve (12) month period immediately preceding the Renewal Term until the Fair Market Rental Value is determined, at which time the prior Rent payments shall be adjusted to take into account such determination.

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(c)The amounts that are payable during any Renewal Term as Stipulated Loss Value shall be determined on the basis of the fair market sales value of the Equipment as of the commencement of such Renewal Term and shall be set forth in a schedule to be mutually agreed by Lessor and Lessee prior to the commencement of such Renewal Term. If Lessor and Lessee cannot agree on the fair market sales value, such amount shall be determined by the Appraisal Procedure, and the fees and expenses of the appraiser or panel of appraisers shall be shared equally by Lessor and Lessee.

17.PURCHASE OPTION. (a) If Lessee elects the Purchase Option in accordance with Section 14, Lessee shall have the option to purchase all but not less than all of the Equipment in this Lease from Lessor for an amount equal to the greater of (i) the then fair market value of the Equipment as agreed by Lessee and Lessor, or if they shall fail to agree, as determined by the Appraisal Procedure (such amount, the “Lessee Purchase Option Amount”) and (ii) 31% of the Purchase Price. The Purchase Option shall be consummated as of the close of business on the closing date set forth in Lessee’s notice or on such other date the Parties may otherwise agree (the “Lessee Purchase Date”).

(b)If Lessee elects to exercise the Purchase Option, then on the Lessee Purchase Date, Lessee shall pay to Lessor (i) the Lessee Purchase Option Amount, and all sales, use, value added and other taxes required to be indemnified by the Lessee pursuant to Section 10 plus (ii) any unpaid Rent and any other outstanding amount due under this Agreement on or before such date.

(c)Upon payment of all sums specified in this Section 16 this Lease shall terminate, all amounts in any Accounts shall be returned to Lessee and, at the request of Lessee, Lessor shall transfer its rights in the Equipment to the Lessee on an “as is,” “where is” basis without representation or warranty.

18.LESSEE INDEMNITY. Lessee assumes liability for and shall indemnify, save, and hold harmless Lessor and Lessor’s officers, directors, employees, agents and assignees from and against any and all third party claims, actions, suits or proceedings of any kind and nature whatsoever, including all damages, liabilities, penalties, costs, expenses and reasonable consultant and legal fees (hereinafter “Claim(s)”) based on, arising out of, connected with or resulting from the Equipment, the use or possession of the site where the Equipment is located, Lessee’s obligations under this Agreement, or Lessee’s possession, use or operation of the Equipment including, without limitation, Claims relating to ownership, use, possession or disposal of the Equipment, Claims arising in contract or tort (including negligence, strict liability or otherwise), Claims arising out of latent defects of the Equipment (regardless of whether the same are discoverable by Lessor or Lessee), Claims arising out of or relating to the violation of applicable law, including environmental law, or the existence or release of hazardous materials at the site where the Equipment is located, or Claims arising out of any trademark, patent or copyright infringement, but excluding (a) any Claims that accrue in respect of circumstances that occur after Lessor has taken possession of the Equipment after termination of this Agreement, provided that such Claims do not relate to Lessee’s use, possession or operation of the Equipment, (b) any Claims that result from the gross negligence or willful misconduct of Lessor, and (c) Claims for Taxes (it being agreed that Lessee’s indemnification obligations with respect to Taxes are set forth in Sections 10 and 18). If any Claim is made against Lessee or Lessor, the

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Party receiving notice of such Claim shall promptly notify the other, but the failure of such person receiving notice to notify the other shall not relieve Lessee of any obligation hereunder, except for obligations for any expenses or direct damages solely to the extent attributable to Lessor’s failure to so notify Lessee.

19. TAX INDEMNITY.

(a)Lessee acknowledges that the Rent has been calculated on the assumption that the Lessor will be the owner of the Equipment for federal, state and local income tax purposes on the date it acquires the Equipment pursuant to the Purchase Agreement, that it will remain the sole owner after entering into this Lease and that, for federal, state and local income tax purposes, it will be able to (i) claim an investment tax credit (for federal income tax purposes) under section 48(a)(3)(iv) of the Code for 30% of the portion of the Purchase Price that is allocated to 5-year property by the Appraisal, (ii) either claim cost recovery reductions of one hundred percent (100%) of Lessor's Depreciable Cost (as defined below), which, for Federal income tax purposes is claimed pursuant to section 168(k)(1) of the Code, or depreciate Lessor’s Depreciable Cost over a 5-year MACRS recovery period utilizing the half-year convention, in the taxable year that includes the Lease Commencement Date with respect thereto and assuming such Equipment's salvage value is zero, (iii) depreciate the portion of the Purchase Price that is allocated to interconnection property by the Appraisal (the “Interconnection Property”) on a straight-line basis over a 20-year recovery period and (iv) amortize transaction expenses incurred in connection with this Lease over the Lease Term. The foregoing investment tax credit, depreciation deductions and amortization deductions are referred to herein as the “Tax Benefits.” The “Appraisal” is the report prepared solely for Lessor and its counsel by Term Consultants, Inc. or another appraiser chosen by Lessor (the "Appraiser") as of the Lease Commencement Date that addresses certain valuation and other issues related to the Equipment and that is satisfactory in form and substance to Lessor. "Lessor's Depreciable Cost" means (1) for state and local income tax purposes, that portion of the Purchase Price allocated to the Equipment by the Appraiser and (2) for federal income tax purposes, that portion of the Purchase Price allocated to the Equipment by the Appraiser, reduced by 50% of the investment tax credit in clause (i) above, in each case excluding that portion of the Purchase Price that is allocated to the Interconnection Property. Lessee acknowledges further that the Rent in this Lease has been calculated on the assumption that Lessor will have to report the Rent as income in the periods and amounts shown in Exhibit A.

(b)Lessee represents, warrants and covenants to Lessor the following: (i)(A) for purposes of the investment tax credit, the Equipment will be treated as "placed in service" for federal income tax purposes and the original use of the Equipment will be deemed to commence for federal income tax purposes on the Lease Commencement Date and (B) for purposes of the depreciation deductions, (1) the Equipment will be treated as "placed in service" on the Lease Commencement Date and (2) the acquisition requirements set forth in section 168(k)(2)(E)(ii) of the Code have been met; (ii) there was no binding contract in place for the Equipment as of September 27, 2017; (iii) the Equipment was mechanically complete in 2019 and placed in service for federal income tax purposes by the Lessee in 2019, (iv) all of the Equipment was originally placed in service by Lessee on a date that is no more than three (3) months before the closing on the purchase of the Equipment by Lessor and lease back of such Equipment under this Agreement to Lessee (the "Original Placed-in-Service Date"); (v) during the period beginning on the Original Placed-in-Service Date and

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ending on the date of the purchase of the Equipment by Lessor and lease back of such Equipment under this Agreement to Lessee, no person or entity other than Lessee has had any ownership interest in the Equipment or any part thereof; (vi) all of the Equipment was new when it was originally placed in service by Lessee; (vii) reserved; (viii) the only portion of the Equipment that is not “qualified fuel cell property” is certain interconnection property and the portion of the Purchase Price that is allocable to such interconnection property is less than 2%, (ix)reserved; (x) all of the Equipment (other than the interconnection property) qualifies as "5-year property" within the meaning of Section 168(e)(3)(B)(vi)(I) of the Code and the interconnection property qualifies as “20-year property” within the meaning of Section 168(e)(3)(F) of the Code; (xi) Lessor will have a tax basis for purposes of calculating the 30% investment tax credit equal to that portion of the Purchase Price that is allocated to “qualified fuel cell property” by the Appraiser; (xii) Lessor will have a tax basis for (A) state and local income tax depreciation purposes equal to that portion of the Purchase Price that is allocated to the Equipment by the Appraiser and (B) for federal income tax depreciation purposes equal to that portion of the Purchase Price that is allocated to the Equipment by the Appraiser, reduced by 50% of the 30% investment tax credit amount (as determined in clause (xi) above); (xiii) during the Lease Term, the Equipment will not be considered "tax-exempt use property" within the meaning of section 168(h) of the Code or considered used by a tax-exempt entity within the meaning of section 50(b)(3) of the Code or governmental unit or foreign person or entity within the meaning of section 50(b)(4) of the Code (other than solely due to the fact that Lessor (or any member of Lessor) is or becomes a tax-exempt entity within the meaning of section 168(h)(2) of the Code); (xiv) as of the Lease Commencement Date, no portion of the Equipment is, and at no time during the Lease Term will any portion of the Equipment become, tax-exempt bond financed property within the meaning of Section 168(g)(5) of the Code or financed with "subsidized energy financing" within the meaning of Section 48(a)(4) of the Code, other than as a result of the status of Lessor or any member of Lessor or actions taken by Lessor; (xv) the Equipment will be used solely in the United States; (xvi) the Equipment will not be subject to the alternative depreciation system under section 168(g) of the Code (assuming no election by Lessor under section 168(g)(1)(E) of the Code); (xvii) Lessee has not claimed and will not claim, or cause to be claimed, an investment tax credit under section 48(a)(3)(iv) of the Code or other federal tax credit, in each case with respect to the Equipment or any portion thereof; (xviii) on the Lease Commencement Date, the Equipment will not require any improvements, modifications or additions (other than ancillary items of a kind customarily selected and furnished by lessees of property of the same kind as the Equipment) in order for the Equipment to be rendered complete for its intended use by Lessee; (xix) Lessee will not take a position for U.S. federal or state income tax purposes that it is the owner of any portion of the Equipment during the Lease Term or that is inconsistent with any of the tax assumptions set forth in this Section 19; (xx) at no time during the period beginning on the Lease Commencement Date and ending on the fifth anniversary of such date (the "Recapture Period") will the portion of the Equipment that is classified by the Appraisal as “qualified fuel cell property” or any portion thereof be disposed of or otherwise cease to be (in each case within the meaning of section 50 of the Code) "qualified fuel cell property" within the meaning of Section 48(c)(1) of the Code, other than as a result of the status of Lessor or any member of the Lessor or actions taken by Lessor; (xxi) all written information provided by or on behalf of Lessee to the Appraiser was accurate and complete in all material respects and remains accurate and complete on the Lease Commencement Date; and (xxii) the Power Purchase Agreement will be treated as a service contract under Section 7701(e) of the Code and not as a lease for income tax purposes.

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(c)Lessee covenants that it has not, and will not at any time during the term of this Agreement, take any action or omit to take any action (whether or not the same is permitted or required hereunder) that is inconsistent with the tax assumptions in Section 19(a), that could contribute to loss by Lessor of all or any part of the Tax Benefits or that could require the Lessor to report Rent as income ahead of the periods to which the Rent is attributable in Exhibit A or report any other amounts as income as a result of the transactions contemplated in this Agreement (an “Inclusion”). Lessee covenants that it will provide Lessor promptly upon request any information that Lessor reasonably requires in connection with claiming any Tax Benefits and responding to questions from the Internal Revenue Service.

(d)If as a result of any act, omission, breach of warranty or covenant or misrepresentation by Lessee, (i) the Tax Benefits are lost, disallowed, eliminated, reduced, delayed, recaptured, compromised or are otherwise unavailable to Lessor (any of the foregoing being a “Loss”) or (ii) the Lessor is required to report an Inclusion, then Lessee will pay the Lessor promptly on demand an amount that will compensate the Lessor fully for the Loss or Inclusion (including any interest, penalties or additions to tax) on an after-tax basis. For this purpose, “after-tax basis” means an amount determined by dividing the amount of the Loss or Inclusion by one minus the maximum composite federal, state and local corporate income tax rates in effect at time of payment. Notwithstanding the foregoing, Lessee shall not have any liability to Lessor for indemnification under this Section 19(d) for any Loss or Inclusion if and to the extent such Loss or Inclusion results from the failure of the Lease to be a “true lease” for federal, state and local income tax purposes or the failure of the Lease to have “economic substance” within the meaning of Code Section 7701(o) (in each case, other than due to an act, omission, breach of warranty, breach of covenant or misrepresentation by Lessee). Upon payment of the full indemnity amount by Lessee, the act, omission, breach of warranty or covenant or misrepresentation of Lessee that caused a Loss will not be deemed a Default hereunder. If requested by Lessee, Lessor agrees to attempt in good faith to challenge any assertion by the Internal Revenue Service or state tax authorities that will lead to a Loss; provided, however, Lessee has first agreed in writing to indemnify Lessor for all reasonable expenses (including attorneys’ fees), liabilities or losses that Lessor may incur in the contest. Lessor will have the sole discretion to determine whether or not to undertake judicial or administrative proceedings beyond the level of an Internal Revenue Service auditing agent and to select counsel to handle the contest. For purposes of this Section 18, the term “Lessor” shall include the entity or entities, if any, with which Lessor files a consolidated income tax return.

20.DEFAULT AND REMEDIES. (a) Lessee shall be in default under this Agreement if: (i) Lessee fails to pay Rent or any other payment due and owing hereunder within five (5) business days of the due date thereof; (ii) Lessee fails to observe, keep or perform any other term or condition of this Agreement or any other Lease Document and such failure continues for thirty (30) days following receipt of written notice from Lessor; provided, that if such default is a non-monetary default capable of being cured but cannot be cured within such thirty-day period, and Lessee is diligently pursuing such cure, the cure period shall be extended for so long as is necessary to effect such cure (but in no event in excess of sixty (60) days beyond such thirty-day period); (iii) any representation or warranty made by Lessee herein or in any document delivered to Lessor in connection herewith shall prove to be false or misleading in any material respect and the false or misleading nature of such representation or warranty is not corrected within thirty (30) days following receipt of written notice thereof from Lessor; (iv) a breach

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of the covenant set forth in Section 26(c) shall have occurred; (v) Lessee becomes insolvent, dissolves, or assigns its assets for the benefit of creditors, or enters any bankruptcy or reorganization proceeding; (vi) (A) any Project Document or material Governmental Approval has been terminated without the prior written approval of Lessor to the extent Lessor’s approval is required hereunder; or (B) any default has occurred and is continuing under any material provision of a Project Document or any material Governmental Approval and any cure period provided thereunder has terminated without such default having been cured; (vii) Lessee undergoes a change in ownership or control of any type without the prior written approval of Lessor; (viii) any “Default” (as such term is defined in the Guaranty) has occurred and is continuing under the Guaranty or the Guaranty fails to provide Lessor the rights intended to be created thereby, ceases to be in full force and effect or the validity thereof is disaffirmed by Lessee or the Guarantor; or (ix) Lessee is in default of any obligation in excess of $100,000 (after any applicable cure period)(each of (i) through (ix), a “Default”).

(b)If a Default shall have occurred and be continuing under this Lease, Lessor shall have the right to take any one or more of the following actions with respect to this Lease: (i) cancel or terminate this Lease, (ii) enter onto the premises and take possession of or otherwise repossess the Equipment and, at the option of Lessor, cause the Lessee to promptly assign to Lessor the Project Documents and Governmental Approvals as if the Equipment were being returned in connection with the Return Option; (iii) proceed by appropriate court action or actions at law or in equity to enforce performance by Lessee of the terms and conditions of this Agreement and/or recover damages for the breach thereof; (iv) cause all moneys on deposit in the Accounts for this Lease to be paid directly to the account of Lessor, but only to the extent of the amount actually owed by Lessee to Lessor hereunder; (v) accelerate all of the amounts due hereunder for this Lease by requiring Lessee to pay Lessor an amount equal to the sum of (A) all Rent and any other unpaid amounts accrued to the date of such payment, plus (B) the Stipulated Loss Value; (vi) exercise its rights set forth in Section 11(b); (vii) take any other action as provided for in the Assignment Agreement; and/or (viii) exercise any other right or remedy available at law or in equity.

(c)Upon Lessee’s payment in full to Lessor of the amounts set forth in Section 19(b)(v), this Lease shall terminate (except as set forth in Section 22) and, at the request of the Lessee, Lessor shall transfer its ownership and rights in the Equipment to Lessee or Lessee’s designee on an “as is,” “where is” basis.

21.REPORTS. (a) As long as Guarantor is a publicly traded company filing reports with the SEC, within fifteen (15) days of Guarantor’s filing of any Form 8 K, 10 Q or 10 K, Lessee shall provide Lessor with copies of all such filings, it being understood that this Section 21(a) shall be deemed satisfied if such annual financial statements are timely filed by Guarantor with the Securities and Exchanges Commission in compliance with applicable.

(b)If, at any time during this Lease, Guarantor ceases to be a publicly traded company and, as a result, the foregoing information is no longer filed with the SEC, then, from and after such time, Lessee shall: (i) within sixty (60) days after the end of each quarterly period during the Lease Term, deliver to Lessor unaudited quarterly financial statements for the Lessee and the Guarantor as of the end of such quarterly period, prepared in accordance with generally accepted accounting principles in the United States (“GAAP”); and (ii) within one hundred twenty

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(120) days after the end of each calendar year during the Lease Term, deliver to Lessor audited annual financial statements for the Lessee and the Guarantor as of the end of such calendar year, prepared in accordance with GAAP; provided that if audited annual financial statements are not prepared for Lessee and the Guarantor in the ordinary course for any year then unaudited annual financial statements for Lessee for such year may be provided if they are certified by the chief financial officer of the Lessee or Guarantor as prepared in accordance with GAAP, it being understood that this Section 19(a) shall be deemed satisfied if such annual financial statements are timely filed by Lessee with the Securities and Exchange Commission in compliance with applicable law.

(c)Promptly, but in any event within ten (10) business days after receipt thereof, a copy of each material notice sent or received in connection with a Project Document or a Governmental Approval.

(d)Promptly upon, but no later than fifteen (15) business days after, Lessor’s written request from time to time, such data, certificates, reports, statements, documents and further information regarding the business, assets, liabilities, financial condition, or results of operations of the Lessee as the Lessor may reasonably request (which information shall not include technical proprietary information).

22.FURTHER ASSURANCES. Lessee agrees (a) at the written request of Lessor, to execute and deliver to Lessor any Uniform Commercial Code financing statements, fixture filings or other instruments Lessor deems necessary for expedient filing, recording or perfecting the interest and title of Lessor in this Agreement and the Equipment, (b) that a copy of this Agreement may be filed in accordance with clause (a), provided the economic terms not necessary for filing shall have been deleted therefrom, (c) that all costs incurred in connection with any actions taken in accordance with clause (a), including, without limitation, costs for filing fees and taxes, shall be paid by Lessee, and (d) to promptly, at Lessee’s expense, deliver such other reasonable documents and assurances, and take such further action as Lessor may reasonably request in writing, in order to effectively carry out the intent and purpose of this Agreement and each other Lease Document.

23.SURVIVAL. Lessee’s covenants, representations, warranties and indemnities contained in Sections 8, 10, 14, 17, 18, 19 and 26 hereof are made for the benefit of Lessor and shall survive, remain in full force and effect and be enforceable after the expiration or termination of this Agreement for any reason. Each other provision set forth in the Lease Documents that, by its terms, survives termination of this Agreement shall also survive, remain in full force and effect and be enforceable after the expiration or termination of this Agreement for any reason. Further, at the end of the Lease Term, to the extent a Default shall have occurred and be continuing (or would have occurred and be continuing but for the end of the Lease Term) pursuant to Section 19(a)(viii), any amounts on deposit in the Accounts shall be held by Lessor until such Default has been cured, and such amounts shall be available to Lessor to offset any amounts owed to Lessor in respect of such Default.

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24.INSPECTION. During the Lease Term, Lessor may, during normal business hours, on reasonable prior written notice to Lessee and in accordance with any notice requirement set forth in any applicable Project Document, inspect the Equipment and the records with respect to the operations and maintenance thereof, in Lessee’s custody or to which Lessee has access. Lessee may be present at such inspection. Any such inspection will not unreasonably disturb or interfere with the normal operation or maintenance of the Equipment or the conduct by Lessee of its business and will be in accordance with Lessee’s and site owner’s health, safety and insurance programs. In no event shall Lessor have any duty or obligation to make any such inspection and Lessor shall not incur any liability or obligation by reason of not making any such inspection.

25.ACCEPTANCE OF EQUIPMENT: NON CANCELABLE. Lessee’s acceptance of the Equipment shall be conclusively and irrevocably evidenced by Lessee signing the Certificate of Acceptance in the form attached hereto and upon acceptance, this Lease shall be noncancelable for the Initial Term unless otherwise provided in this Lease.

26.ASSIGNMENT. (a) Lessee may not assign any interest in this Agreement or the other Lease Documents without the prior written consent of Lessor, which consent shall not be unreasonably withheld. Lessor may assign its interests in this Agreement and the other Lease Documents, in whole or in part, with notice to but without the consent of Lessee. If any such

Lessor assignment is a partial assignment of this Agreement by Amity Equipment Finance (for purposes of this Section 25, “Amity”), (i) so long as no Default shall have occurred, Amity shall maintain its administrative role under this Agreement with Lessee and shall act as an intermediary between Lessee and any Amity partial assignee, and (ii) unless Lessee receives notice from Amity or Amity's assignee to the contrary, Lessee's satisfaction of its obligations under the Lease Documents to Amity shall be deemed to satisfy such obligations to all Lessors.

(b)Without limiting the foregoing, Lessee further acknowledges and agrees that upon written notice of an assignment from Lessor, Lessee will pay all Rent and any and all other amounts payable by Lessee under this Lease to such assignee or mortgagee or as instructed by Lessor provided that Lessee may assert any defense that it may have pursuant to this Agreement. Lessee agrees to confirm in writing receipt of notice of assignment as may be reasonably requested by assignee or mortgagee.

(c)Except as otherwise set forth in this Agreement, Lessee shall not assign, sublet, hypothecate, sell, transfer or part with possession of the Equipment or any interest in this Agreement, and any attempt to do so shall be null and void and shall constitute a Default hereunder.

27.REPRESENTATIONS, WARRANTIES AND COVENANTS. (a) Lessee represents and warrants to Lessor that: (i) the execution and delivery by Lessee of this Agreement and the Certificate of Acceptance are duly authorized on the part of Lessee and constitute valid obligations binding upon, and enforceable against, Lessee; (ii) neither the execution and delivery of this Agreement or the Certificate of Acceptance, nor the due performance thereof by Lessee, including the commitment to pay (and payment of) Rent, will result in any breach

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of, or constitute a default under, or violation of, Lessee’s constitutive documents, or any material agreement to which Lessee is a party or by which Lessee is bound; (iii) Lessee is duly formed, validly existing and in good standing in its state of formation and in any jurisdiction where the Equipment is located; and (iv) no material approval, consent or withholding of objection is required from any governmental authority or entity with respect to the entering into, or performance of this Agreement or the Certificate of Acceptance by Lessee.

(b)Lessee has provided to Lessor true and correct copies of its constitutive documents, authorizing resolutions for the transactions contemplated hereby, and a certificate of incumbency, each certified by a duly appointed officer of Lessee.

(c)Without the prior consent of Lessor, Lessee shall not: (i) amend or supplement any Project Document or Governmental Approval in any manner that could be reasonably expected to affect materially or adversely Lessor’s interest in the Lease; or (ii) transfer or terminate any Project Document.

(d)Without the prior consent of Lessor, Lessee shall not (i) permit the offtaker under the Power Purchase Agreement to net or setoff any mutual debts or payment obligations between Lessee and offtaker owing under the Power Purchase Agreement, to the extent Lessee’s consent is required for such netting or setoff or (ii) consent to the offtaker.

under the Power Purchase Agreement assigning its obligations under the Power Purchase Agreement, to the extent Lessee’s consent is required for such assignment.

28.NOTICES. Any notice required or given hereunder shall be deemed properly given when provided in writing (a) three (3) business days after mailed first class, overnight, or certified mail, return receipt requested, postage prepaid, addressed to the designated recipient at its address set forth below or such other address as such Party may advise by notice given in accordance with this provision or (b) upon receipt by the Party to whom addressed in writing by personal delivery, commercial courier service, fax or other means which provides a permanent record of the delivery of such notice. Notices shall be delivered to the Parties at the following addresses:

If to Lessee:

Providex, LLC c/o DriveOn, Inc.

XXX, CT 06810

Attn: Chief Financial Officer

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With a copy to:

DriveOn, Inc.

XXX, CT 06810

Attn: General Counsel

If to Lessor:

Amity Equipment Finance

MI 48098

Attn: Corporate Counsel

29.DOCUMENTATION. Except for the payment of Rent, for which invoices are provided as an accommodation to Lessee and not as a condition precedent to payment, Lessor

shall use commercially reasonable efforts to provide Lessee with reasonable documentation, including, statements, tax bills and/or invoices, evidencing payment obligations or reimbursement due to Lessor pursuant to the terms of this Agreement.

30.ANTI-MONEY LAUNDERING; INTERNATIONAL TRADE LAW COMPLIANCE. Lessee represents and warrants to Lessor, as of the date of this Agreement, the date of each advance of proceeds pursuant to this Agreement, the date of any renewal, extension or modification of this Agreement, and at all times until this Agreement and the Lease has been terminated and all amounts thereunder have been indefeasibly paid in full, that: (a) no Covered Entity (i) is a Sanctioned Person; (ii) has any of its assets in a Sanctioned Country or in the possession, custody or control of a Sanctioned Person; or (iii) does business in or with, or derives any of its operating income from investments in or transactions with, any Sanctioned Country or Sanctioned Person in violation of any law, regulation, order or directive enforced by any Compliance Authority; (b) the proceeds of this Lease will not be used to fund any operations in, finance any investments or activities in, or, make any payments to, a Sanctioned Country or Sanctioned Person in violation of any law, regulation, order or directive enforced by any Compliance Authority; (c) the funds used to repay this Lease are not derived from any unlawful activity; and (d) each Covered Entity is in compliance with, and no Covered Entity engages in any dealings or transactions prohibited by, any laws of the United States, including but not limited to any Anti-Terrorism Laws. Lessee covenants and agrees that it shall immediately notify Lessor in writing upon the occurrence of a Reportable Compliance Event.

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As used herein: “Anti-Terrorism Laws” means any laws relating to terrorism, trade sanctions programs and embargoes, import/export licensing, money laundering, or bribery, all as amended, supplemented or replaced from time to time; “Compliance Authority” means each and all of the (a) U.S. Treasury Department/Office of Foreign Assets Control, (b) U.S. Treasury Department/Financial Crimes Enforcement Network, (c) U.S. State Department/Directorate of Defense Trade Controls, (d) U.S. Commerce Department/Bureau of Industry and Security, (e)

U.S.Internal Revenue Service, (f) U.S. Justice Department, and (g) U.S. Securities and Exchange Commission; “Covered Entity” means Lessee, its affiliates and subsidiaries, all guarantors, pledgors of collateral, all owners of the foregoing, and all brokers or other agents of Lessee acting in any capacity in connection with this Agreement or this Lease; “Reportable Compliance Event” means that any Covered Entity becomes a Sanctioned Person, or is indicted, arraigned, investigated or custodially detained, or receives an inquiry from regulatory or law enforcement officials, in connection with any Anti-Terrorism Law or any predicate crime to any Anti-Terrorism Law, or self-discovers facts or circumstances implicating any aspect of its operations with the actual or possible violation of any Anti-Terrorism Law; “Sanctioned Country” means a country subject to a sanctions program maintained by any Compliance Authority; and “Sanctioned Person” means any individual person, group, regime, entity or thing listed or otherwise recognized as a specially designated, prohibited, sanctioned or debarred person or entity, or subject to any limitations or prohibitions (including but not limited to the blocking of property or rejection of transactions), under any order or directive of any Compliance Authority or otherwise subject to, or specially designated under, any sanctions program maintained by any Compliance Authority.

31.USA PATRIOT ACT NOTICE. To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify and record information that identifies each lessee that opens an account. What this means: when Lessee opens an account, Lessor will ask for the business name, business address, taxpayer identifying number and other information that will allow Lessor to identify Lessee, such as organizational documents. For some businesses and organizations, Lessor may also need to ask for identifying information and documentation relating to certain individuals associated with the business or organization.

32.GOVERNING LAW. This Agreement is entered into, under and shall be construed in accordance with, and governed by, the laws of the State of New York, without giving effect to conflict of laws principles other than Section 5-1401 and 5-1402 of the New York General Obligations law. Each Party consents to the non-exclusive jurisdiction of the courts of the State of New York, in and for the County of New York, or of the United States of America for the Southern District of New York over any action or proceeding brought in connection with this Agreement. Nothing herein shall affect the right to serve process in any other manner permitted by law or the right of Lessor to bring legal action or proceedings in any other competent jurisdiction. LESSEE AND LESSOR EXPRESSLY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH LESSOR AND/OR LESSEE MAY BE PARTIES ARISING OUT OF OR IN ANY WAY PERTAINING TO THIS AGREEMENT.

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33.FINANCE LEASE STATUS. Lessee agrees that if Article 2A-Leases of the Uniform Commercial Code of the State of New York (the “Uniform Commercial Code” or “UCC”) applies to this Agreement this Agreement shall be considered a “Finance Lease” as that term is defined in Article 2A. TO THE EXTENT PERMITTED BY APPLICABLE LAW, LESSEE WAIVES ANY AND ALL RIGHTS AND REMEDIES CONFERRED UPON A LESSEE BY SECTIONS 508-522 OF ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE.

34.BUSINESS DAY. For all purposes hereof, the term “business day” means any day which is not a Saturday, Sunday or other day on which banks are required to close for business in the State of New York.

35.MISCELLANEOUS. The captions of this Agreement are for convenience only and shall not be read to define or limit the intent of the provision that follows such captions. This Agreement and the other Lease Documents contain the entire agreement and understanding between Lessor and Lessee relating to the subject matter hereof. Any variation or modification hereof and any waiver of any of the provisions or conditions hereof shall not be valid unless in writing signed by an authorized representative of the Parties hereto. Any provision of this Agreement that is unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Lessor’s failure at any time to require strict performance by Lessee or any of the provisions hereof shall not waive or diminish Lessor’s right thereafter to demand strict compliance therewith or with any other provision.

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IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the date first above written.

LESSEE:

PROVIDEX, LLC

By: DriveOn Finance II, LLC

Its: Sole Member

By: DriveOn, Inc.

Its: Sole Member

By: /s/ Tracy Fouree

Name: Michael S. Bishop

Title: Executive Vice President, Chief

Financial Officer and Treasurer

LESSOR:

AMITY EQUIPMENT FINANCE

By: /s/ Amir Mohd\_\_\_\_\_\_\_

Name: Amir Mohd

Title: President

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EXHIBIT A

RENTAL SCHEDULE

This Rental Schedule dated and effective as February 11, 2020 is incorporated into and deemed part of the Equipment Lease Agreement dated as of February 11, 2020 (the “Agreement”) by and between Amity Equipment Finance (“Lessor”) and Providex, LLC (“Lessee”). This Rental Schedule shall be accompanied by a Certificate of Acceptance in the form attached as Attachment #1.

All terms used within this document that are defined in the Agreement shall have the same meaning herein.

1. Description of Equipment and Site location: As set forth on Attachment #4.

Lease Terms:

Initial Term:120 months

Rental Commencement Date: February 11, 2020

Rent: As set forth on Attachment #2 attached hereto and incorporated herein

Minimum Monthly Reserve Fund: $429,178.50

The Initial Term of this Lease shall commence upon the Acceptance Date as indicated on the Certificate of Acceptance (“Lease Commencement Date”) and, unless earlier terminated pursuant to the terms of the Agreement, shall continue until expiration of the number of months specified above after the Rental Commencement Date specified above. Rent shall begin accruing on the Rental Commencement Date and shall be due and payable, along with applicable taxes, in advance each month during the Initial Term on the dates and in the amounts specified for such date on Attachment #2.

Lessee shall pay Rent throughout the Initial Term on each Rent payment date listed on Attachment #2 in the amount specified under the column heading “Cash Rent Payment” for such Rent payment date. The Lessor and the Lessee agree that each “Cash Rent Payment” shown on Attachment #2 is intended to constitute a specific allocation of fixed rent within the meaning of Treasury Regulation §1.467-1(c)(2)(ii)(A) to the applicable Rental Period and is the rent that the Lessor and Lessee will report for use of the Equipment for income tax purposes.

2. Stipulated Loss Values are as set out on Attachment #3 attached hereto and incorporated herein.

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Attachment #1 TO EXHIBIT A

CERTIFICATE OF ACCEPTANCE

to

Rental Schedule

Dated February 11, 2020

In compliance with the terms, conditions and provisions of the Agreement dated February 11, 2020 (the "Lease") between the undersigned ("Lessee") and Amity Equipment Finance ("Lessor"), Lessee hereby:

(a) certifies and warrants that all Equipment described in the above-referenced Rental Schedule (the "Equipment") is delivered, inspected and fully installed, and operational as of the Acceptance Date as indicated below;

(b) accepts all the Equipment for all purposes under the Lease and all attendant documents as of the date above (the "Acceptance Date"); and

(c) restates and reaffirms, as of the Acceptance Date, each of the representations, warranties and covenants heretofore given to Lessor in the Lease.

Lessor is hereby authorized to insert serial numbers on the above-referenced Rental Schedule.

LESSEE:

PROVIDEX, LLC

By: DriveOn Finance II, LLC

Its: Sole Member

By: DriveOn, Inc.

Its: Sole Member

By: /s/ Tracy Fouree\_\_\_\_\_\_\_

Name: Tracy Fouree

Title: Executive Vice President, Chief Financial Officer and Treasurer

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Attachment #2

TO EXHIBIT A

Rental Value

Rental Schedule

Rent shall be due and payable in accordance with the following schedule. Rent is stated exclusive of all applicable sales and/or use taxes. Lessee is responsible for all sales and/or use taxes on the Rent. Day 1 of Month 1 shall be the Effective Date. Each Day 1 thereafter shall be each subsequent monthly anniversary date.

Payment Date

Rent Amount ($)

Down Payment 2,875,980

Day 1 of Month 1 71,530

Day 1 of Month 2 71,530

Day 1 of Month 3 71,530

Day 1 of Month 4 71,530

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Day 1 of Month 32 71,530

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Attachment #3 TO EXHIBIT A

Stipulated Loss of Value Schedule Rental Schedule

Period Stip Loss Total Amount

Ending % Due after Monthly Payment

Month 1 110.00% $ 15,817,890.00

Month 2 109.41% $ 15,733,302.35

Month 3 108.82% $ 15,648,714.71

Month 4 108.24% $ 15,564,127.06

Month 5 107.65% $ 15,479,539.41

Month 6 107.06% $ 15,394,951.76

Month 7 106.47% $ 15,310,364.12

Month 8 105.88% $ 15,225,776.47

Month 9 105.29% $ 15,141,188.82

Month 10 104.71% $ 15,056,601.18

Month 11 104.12% $ 14,972,013.53

Month 12 103.53% $ 14,887,425.88

Month 13 102.94% $ 14,802,838.24

Month 14 102.35% $ 14,718,250.59

Month 15 101.76% $ 14,633,662.94

Month 16 101.18% $ 14,549,075.29

Month 17 100.59% $ 14,464,487.65

Month 18 100.00% $ 14,379,900.00

Month 19 99.41% $ 14,295,312.35

Month 20 98.82% $ 14,210,724.71

Month 21 98.24% $ 14,126,137.06

Month 22 97.65% $ 14,041,549.41

Month 23 97.06% $ 13,956,961.76

Month 24 96.47% $ 13,872,374.12

Month 25 95.88% $ 13,787,786.47

Month 26 95.29% $ 13,703,198.82

Month 27 94.71% $ 13,618,611.18

Month 28 94.12% $ 13,534,023.53

Month 29 93.53% $ 13,449,435.88

Month 30 92.94% $ 13,364,848.24

Month 31 92.35% $ 13,280,260.59

Month 32 91.76% $ 13,195,672.94

Month 33 91.18% $ 13,111,085.29

Month 34 90.59% $ 13,026,497.65

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Month 35 90.00% $ 12,941,910.00

Month 36 89.41% $ 12,857,322.35

Month 37 88.82% $ 12,772,734.71

Month 38 88.24% $ 12,688,147.06

Month 39 87.65% $ 12,603,559.41

Month 40 87.06% $ 12,518,971.76

Month 41 86.47% $ 12,434,384.12

Month 42 85.88% $ 12,349,796.47

Month 43 85.29% $ 12,265,208.82

Month 44 84.71% $ 12,180,621.18

Month 45 84.12% $ 12,096,033.53

Month 46 83.53% $ 12,011,445.88

Month 47 82.94% $ 11,926,858.24

Month 48 82.35% $ 11,842,270.59

Month 49 81.76% $ 11,757,682.94

Month 50 81.18% $ 11,673,095.29

Month 51 80.59% $ 11,588,507.65

Month 52 80.00% $ 11,503,920.00

Month 53 79.41% $ 11,419,332.35

Month 54 78.82% $ 11,334,744.71

Month 55 78.24% $ 11,250,157.06

Month 56 77.65% $ 11,165,569.41

Month 57 77.06% $ 11,080,981.76

Month 58 76.47% $ 10,996,394.12

Month 59 75.88% $ 10,911,806.47

Month 60 75.29% $ 10,827,218.82

Month 61 74.71% $ 10,742,631.18

Month 62 74.12% $ 10,658,043.53

Month 63 73.53% $ 10,573,455.88

Month 64 72.94% $ 10,488,868.24

Month 65 72.35% $ 10,404,280.59

Month 66 71.76% $ 10,319,692.94

Month 67 71.18% $ 10,235,105.29

Month 68 70.59% $ 10,150,517.65

Month 69 70.00% $ 10,065,930.00

Month 70 69.41% $ 9,981,342.35

Month 71 68.82% $ 9,896,754.71

Month 72 68.24% $ 9,812,167.06

Month 73 67.65% $ 9,727,579.41

Month 74 67.06% $ 9,642,991.76

Month 75 66.47% $ 9,558,404.12

Month 76 65.88% $ 9,473,816.47

Month 77 65.29% $ 9,389,228.82

Month 78 64.71% $ 9,304,641.18

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Month 79 64.12% $ 9,220,053.53

Month 80 63.53% $ 9,135,465.88

Month 81 62.94% $ 9,050,878.24

Month 82 62.35% $ 8,966,290.59

Month 83 61.76% $ 8,881,702.94

Month 84 61.18% $ 8,797,115.29

Month 85 60.59% $ 8,712,527.65

Month 86 60.00% $ 8,627,940.00

Month 87 59.41% $ 8,543,352.35

Month 88 58.82% $ 8,458,764.71

Month 89 58.24% $ 8,374,177.06

Month 90 57.65% $ 8,289,589.41

Month 91 57.06% $ 8,205,001.76

Month 92 56.47% $ 8,120,414.12

Month 93 55.88% $ 8,035,826.47

Month 94 55.29% $ 7,951,238.82

Month 95 54.71% $ 7,866,651.18

Month 96 54.12% $ 7,782,063.53

Month 97 53.53% $ 7,697,475.88

Month 98 52.94% $ 7,612,888.24

Month 99 52.35% $ 7,528,300.59

Month 100 51.76% $ 7,443,712.94

Month 101 51.18% $ 7,359,125.29

Month 102 50.59% $ 7,274,537.65

Month 103 50.00% $ 7,189,950.00

Month 104 49.41% $ 7,105,362.35

Month 105 48.82% $ 7,020,774.71

Month 106 48.24% $ 6,936,187.06

Month 107 47.65% $ 6,851,599.41

Month 108 47.06% $ 6,767,011.76

Month 109 46.47% $ 6,682,424.12

Month 110 45.88% $ 6,597,836.47

Month 111 45.29% $ 6,513,248.82

Month 112 44.71% $ 6,428,661.18

Month 113 44.12% $ 6,344,073.53

Month 114 43.53% $ 6,259,485.88

Month 115 42.94% $ 6,174,898.24

Month 116 42.35% $ 6,090,310.59

Month 117 41.76% $ 6,005,722.94

Month 118 41.18% $ 5,921,135.29

Month 119 40.59% $ 5,836,547.65

Month 120 40.00% $ 5,751,960.00

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Attachment #4

TO EXHIBIT A

Description of Equipment

Equipment includes all equipment and components of the FCE SureSource 3000 fuel cell system, including but not limited to items detailed below.

Equipment Model Number Serial Number Warranty Info

SureSource 3000 Module C1420 C1420-134

C1420-135 Long Term Service Agreement (LTSA)

SureSource 3000 MBOP SureSource 3000 MM27 12 mos.

SureSource 3000 EBOP Rockwell - Power Conditioning Unit (PCU),

Allen -Bradley Power Flex

1.764MVA Leader 46249256

Follower 43204413 18 mos. from ship or 12 from start

Chiller for EBOP PCU Pfannenberg

Model EB 350 SP

460/3/60

Part No. 42533505321 S15530808168

S15530808172

12 mos.

SureSource 3000 Exhaust Heat Recovery - Water Loop Heater Cain Heat Recovery Unit

HRU-360F26SSS DFC3000 S/N 8678 18 mos.

from ship or 12 from start

SureSource 3000 Transformer Rockwell / Hammond AA00706273

AA00706274 12 mos.

1800kVA Transformer 370V/370V/12.0kV

BOP Transformer Cooper / Eaton – XFMR, 300KVA, 12kV-480Y, FR3

CP1850008662

18 mos. from ship or

12 from start

SureSource 3000 Switchgear F60/CCB Powergrid Solutions – 15KV, 1200A, NEMA 3R, SMCG SO5644901-001 18 mos. from ship or

12 from start

Neutral Grounding Reactor Gilbert Electrical Systems 13.8kV, 62 ohms, 150A/10 sec

79710-79743-0818

18 mos. from ship or

12 from start

**LeaseA#15**

EQUIPMENT LEASE AGREEMENT

**Exhibit 10.56**

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|  |  |  |
| **LESSOR** |  | **MASTER EQUIPMENT**  **LEASE AGREEMENT** |

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| **[GRAPHIC]** |  | MASTER LEASE AGREEMENT NO. \_\_\_\_\_\_\_\_\_\_ |

Lease Agreement made this                      day of                     ,                      between INTERLEASE LEASING CORPORATION, dba. GE CAPITAL INTERLEASE LEASING (“Lessor”) with a place of business located at XXX, Portland, Oregon 97676 and Crab Delight Restaurants, Inc. (“Lessee”) having its principal place of business located at YYY, Tampa, FL 33715.

**1. LEASE AGREEMENT**. Lessor hereby leases to Lessee and Lessee hereby leases from Lessor all of the personal property (“Equipment”) described in Equipment Lease Schedule(s), which are or may from time to time be executed by Lessor and Lessee and attached hereto or incorporated herein by reference (“Schedules”), upon the terms and conditions set forth in this Lease, as supplemented by the terms and conditions set forth in the appropriate Schedule(s) identifying such items of Equipment. All terms and conditions of this Lease shall govern the rights and obligations of Lessor and Lessee except as specifically modified in writing, Whenever reference is made herein to the “Lease”, it shall be deemed to include each of the various Schedules identifying all items of Equipment all of which constitute one undivided Lease of the Equipment and the terms and conditions of which arc incorporated herein by reference.

**2. SELECTION OF EQUIPMENT; ACCEPTANCE**. Lessee will select the type, quantity and supplier of each item of Equipment designated in the appropriate Schedule, and in reliance thereon such Equipment will then be ordered by Lessor from such supplier or Lessor will accept an assignment of any existing purchase order therefore. Lessor will have no liability for any delivery or failure by the supplier to fill the purchase order or to meet the conditions thereof. Lessee acknowledges that Lessor has not participated and will not participate in any way in Lessee’s selection of the Equipment or of the supplier, Lessee agrees to inspect the Equipment and to execute an Acknowledgment and Acceptance of Equipment by Lessee notice, as provided by Lessor, after the Equipment has been delivered and after Lessee is satisfied that the Equipment is satisfactory in every respect. Lessee hereby authorizes Lessor to insert in this Lease serial numbers or other identifying data with respect to the Equipment.

**3. DISCLAIMER OF WARRANTIES AND CLAIMS; LIMITATION OF REMEDIES. LESSOR, NOT BEING THE MANUFACTURER OF THE EQUIPMENT NOR THE MANUFACTURER’S AGENT, MAKES NO EXPRESS OR IMPLIED WARRANTY OF ANY KIND WHATSOEVER WITH RESPECT TO THE EQUIPMENT, INCLUDING, BUT NOT LIMITED TO, THE MERCHANTABILITY OF THE EQUIPMENT OR ITS FITNESS FOR ANY PARTICULAR PURPOSE; THE DESIGN OR CONDITION OF THE EQUIPMENT; THE QUALITY Y2K COMPLIANCE OR CAPACITY OF THE EQUIPMENT; THE WORKMANSHIP IN THE EQUIPMENT; COMPLIANCE OF THE EQUIPMENT WITH THE REQUIREMENT OF ANY LAW, RULE, SPECIFICATION OR CONTRACT PERTAINING THERETO: PATENT INFRINGEMENT; OR LATENT DEFECTS. LESSEE LEASES THE EQUIPMENT “AS IS” AND WITH ALL FAULTS. Lessee accordingly agrees not to assert any claim whatsoever against Lessor for loss of anticipatory profits or consequential damages. Lessor shall have no obligation to install, erect, test, service, or maintain the Equipment. Lessee shall look to the manufacturer and/or seller for any claims related to the Equipment.**

**If the Equipment is not properly installed, does not operate as represented or warranted by the supplier or manufacturer, or is unsatisfactory for any reason, regardless of cause or consequence, Lessee’s only remedy, if any, shall be against the supplier or manufacturer of the Equipment and not against Lessor.**

**Lessor hereby acknowledges that any manufacturer’s and/or seller’s warranties are for the benefit of both Lessor and Lessee. NOTWITHSTANDING THE FOREGOING, LESSEE’S OBLIGATIONS TO PAY THE RENTALS OR OTHERWISE UNDER THIS LEASE SHALL BE AND ARE ABSOLUTE AND UNCONDITIONAL. To the extent permitted by the manufacturer or seller, and provided Lessee is not in default under this Lease, Lessor shall make available to Lessee all manufacturer and/or seller warranties with respect to Equipment.**

**Lessee specifically acknowledges that the Equipment is leased to Lessee solely for commercial or business purposes and not for personal, family, or household purposes.**

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| The parties have specifically negotiated and agreed to the foregoing section 3: |  | Lessee Initials: |  | /s/Margot Honegger |
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**4. STATUTORY FINANCE LEASE**. Lessee agrees and acknowledges that it is the intent of both parties to this Lease that it qualify as a statutory finance lease under Article 2A of the Uniform Commercial Code as adopted in Oregon. Lessee acknowledges and agrees that Lessee has selected both (1) the Equipment; and (2) the supplier from whom Lessor is to purchase the Equipment. Lessee acknowledges that Lessor has not participated in any way in Lessee’s selection of the Equipment or of the supplier, and Lessor has not selected, manufactured, or supplied the Equipment.

**LESSEE IS ADVISED THAT IT MAY HAVE RIGHTS UNDER THE CONTRACT EVIDENCING THE LESSOR’S PURCHASE OF THE EQUIPMENT FROM THE SUPPLIER CHOSEN BY LESSEE AND THAT LESSEE SHOULD CONTACT THE SUPPLIER OF THE EQUIPMENT FOR A DESCRIPTION OF ANY SUCH RIGHTS.**

**5. ASSIGNMENT BY LESSEE PROHIBITED. WITHOUT LESSOR’S PRIOR WRITTEN CONSENT, LESSEE SHALL NOT ASSIGN THIS LEASE OR SUBLEASE THE EQUIPMENT OR ANY INTEREST THEREIN, OR PLEDGE OR TRANSFER THIS LEASE, OR OTHERWISE DISPOSE OF THE EQUIPMENT COVERED HEREBY.**

**6. COMMENCEMENT; RENTAL PAYMENTS; INTERIM RENTALS. This Lease shall commence upon the written acceptance hereof by Lessor and shall end upon full performance and observance by Lessee of each and every term, condition and covenant set forth in this Lease, any Schedules hereto and any extensions hereof. Rental payments shall be in the amounts and frequency as set forth on the face of this Lease or any Schedules hereto. In addition to regular rentals, Leasee shall pay to Lessor interim rent for the use of the Equipment prior to the due date of the first payment. Interim rent shall be in an amount equal to 1/30th of the monthly rental, multiplied by the number of days elapsing between the date on which the Equipment is accepted by Lessee and the commencement date of this Lease, together with the number of days elapsing between commencement of the Lease and the due date of the first payment. The payment of interim rent shall be due and payable upon Lessee’s receipt of invoice from Lessor. The rental period under the Lease shall terminate following the last day of the term stated on the face hereof or in any Schedule hereto unless such Lease or Schedule has been extended or otherwise modified. Lessor shall have no obligation to Lessee under this Lease if the Equipment, for whatever reason, is not delivered to Lessee within ninety (90) days after Lessee signs this Lease. Lessor shall have no obligation to Lessee under this Lease if Lessee fails to execute and deliver to Lessor an Acknowledgement and Acceptance of Equipment by Lessee acknowledging its acceptance of the Equipment within thirty (30) days after it is delivered to Lessee, with respect to this Lease or any Schedule hereto.**

**7. SECURITY DEPOSIT**. As security for the prompt and full payment of rent, and the faithful and timely performance of all provisions of this Lease, and any extensions or renewals thereof, Lessee shall pledge and deposit with Lessor the security amount set forth in the section shown as “Security Deposit” on each respective Schedule. In the event any default shall be made in the performance of any of Lessee’s obligations under this Lease, Lessor shall have the right, but shall not be obligated, to apply said security to the curing of such default. Within 15 days after Lessor mails notice to Lessee that Lessor has applied any portion of the Security Deposit to the curing of any default, Lessee shall restore said Security Deposit to the full amount set forth in the Schedules. On the expiration or earlier termination of each Schedule to this Lease, or any extension or renewal thereof, provided Lessee has paid all of the rent herein called for and fully performed all other provisions of this Lease with respect to such schedule, Lessor will return to Lessee any then remaining balance of the Security Deposit with respect to such Schedule, without interest. Said Security Deposit may be commingled with Lessor’s other funds.

**8. LIMITED PREARRANGED AMENDMENTS; AUTHORIZATION; SPECIFIC POWER OF ATTORNEY**. In the event it is necessary to amend the terms of this Lease or the terms of any Schedule to reflect a change in one or more of the following conditions:

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|  | (1) | Lessor’s actual cost of procuring the Equipment; or |

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|  | (2) | Lessor’s actual cost of providing Equipment to Lessee; or |

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|  | (3) | A change in the Lease payments as a result of (1) and/or (2) above; or |

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|  | (4) | Description of the leased Equipment, |

Lessee agrees that any such amendment shall be described in a letter from Lessor to Lessee, and unless within 15 days after the date of such letter Lessee objects thereto in a writing delivered to Lessor, this Lease and any affected Schedules shall be deemed amended and such amendments shall be incorporated herein/therein as if originally set forth herein/therein.

Lessee authorizes Lessor or its designee to file a Uniform Commercial Code financing statement without Lessee’s signature, in form and content and from time to time as Lessor deems proper, listing Lessee as Lessee or Debtor. Lessee further grants to Lessor a specific power of attorney for Lessor to sign, endorse or negotiate for Lessor’s benefit any instrument representing proceeds from any policy of insurance covering the Equipment.

**9. LESSEE’S REPRESENTATION**. Lessee represents that its exact legal name, state of incorporation, location of its chief executive office and/or its place of residence as applicable, have been correctly identified to Lessor.

**10. USE; EQUIPMENT LOCATION**. Lessee shall use the Equipment in a careful manner, shall make all necessary repairs at Lessee’s expense, and shall comply with all laws relating to its possession, use or maintenance, and shall not make any alterations, additions or improvements to the Equipment without Lessor’s prior written consent. All additions, repairs or improvements made to the Equipment shall belong to Lessor. The Equipment shall be kept at the location specified above, or, if none is specified, at Lessee’s address as set forth above and shall not be removed without Lessor’s prior written consent.

**11. OWNERSHIP; PERSONALITY**. The Equipment is, and shall remain, the property of Lessor, and Lessee shall have no right, title or interest therein or thereto except as expressly set forth in this Lease. The Equipment shall remain personal property even though installed in or attached to real property.

**12. SURRENDER**. By this Lease, Lessee acquires no ownership rights in the Equipment and has no option to purchase same. Upon the expiration or termination of any Schedule or this Lease, or in the event of a default pursuant to Paragraph 20 hereof, Lessee, at its expense, shall return the Equipment in good repair, ordinary wear and tear resulting from proper use thereof alone excepted, by delivering it, packed and ready for shipment, to such place as Lessor may specify.

**13. RENEWAL**. At the expiration of the term set forth in each Schedule, Lessee shall return the Equipment subject to said Schedule in accordance with Paragraph 12 hereof. At Lessor’s option, this Lease, with respect to each Schedule, may be continued on a month-to-month basis until 30 days after Lessee returns the Equipment subject to the Schedule to Lessor. In the event that the Lease, with respect to a Schedule, is so continued, Lessee shall pay to Lessor rentals in the same periodic amounts as indicated under “Rental” on the Schedule.

**14. LOSS AND DAMAGE**. Lessee shall bear the entire risk of loss, theft, damage or destruction of the Equipment from any cause whatsoever, and no loss, theft, damage or destruction of the Equipment shall relieve Lessee of the obligation to pay rent or to comply with any other obligation under this Lease.

In the event of damage to any item of Equipment, Lessee shall immediately place the same in good repair at Lessee’s expense. If Lessor determines that any item of Equipment is lost, stolen, destroyed or damaged beyond repair, Lessee shall at Lessee’s option do one of the following:

(a) Replace the same with like Equipment in good repair, acceptable to Lessor, or

(b) Pay Lessor in cash the following: (i) all amounts due by Lessee to Lessor with respect to all affected Schedules up to the date of the loss; (ii) the unpaid balance of the total rent for the remaining term of the affected Schedules attributable to said item, reduced to present value at a discount rate of 6% as of the date of the loss; and (iii) the Lessor’s estimate as of the time this Lease was entered into of Lessor’s residual interest in the Equipment, discounted to present value at a discount rate of 9% as of the date of the loss. Upon Lessor’s receipt of payment as set forth above, Lessee shall be entitled to the Equipment, without any warranties. If insurance proceeds are used to fully comply with this subparagraph, the balance of any such proceeds shall go to Lessee to compensate for loss of use of the Equipment for the remaining term of the Lease.

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| LESSEE HAS READ AND AGREES TO ALL ITEMS ON THIS PAGE 2 OF 4 |  | /s/    Margot Honegger |
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**15. INSURANCE; LIENS; TAXES.** Lessee shall provide and maintain insurance against loss, theft, damage or destruction of the Equipment in an amount not less than the full replacement value of the Equipment, with loss payable to Lessor Lessee shall also provide and maintain comprehensive general all-risk liability insurance, including but not limited to product liability coverage, insuring Lessor and Lessee with a severability of interest endorsement or its equivalent, against any and all loss or liability for damages either to persons or property or otherwise, which might result from or happen in connection with the condition, use or operation of the Equipment, with such limits and with an insurer as are satisfactory to Lessor. Each policy shall expressly provide that said insurance as to Lessor and its assigns shall not be invalidated by any act, omission or neglect of Lessee and cannot be canceled without 30 days written notice to Lessor. As to each policy, Lessee shall furnish to Lessor a certificate of insurance from the insurer, which certificate shall evidence the insurance coverage required by this Paragraph and shall designate Lessor as loss payee and/or additional insured. Lessor shall have no obligation to ascertain the existence or adequacy of insurance, or to provide any insurance coverage for the Equipment or for Lessee’s benefit.

Lessee shall keep the Equipment free and clear of all levies, liens, and encumbrances. Lessee shall be responsible for all taxes and fees (local, state and federal) which may now or hereafter be placed on the leasing, rental, sale, possession or use of the Equipment, excluding however, all taxes on or measured by Lessor’s net income. With respect to personal property taxes, if the purchase option set forth herein is $1.00, or if lessee is required to purchase the Equipment at the conclusion of the rental payments, Lessee shall file any required personal property tax returns and shall provide Lessor with proof of payment. If the purchase option is other than as described in the previous sentence. Lessor shall pay personal property tax and bill Lessee for reimbursement. If Lessor is billed for such charges or taxes or if Lessee falls to pay such charges or taxes. Lessor shall make payment, shall notify Lessee of Such payment, and Lessee shall repay to Lessor the amount thereof with 15 days after such notice is mailed to Lessee.

If Lessee fails to procure or maintain said insurance or to pay said charges or taxes, Lessor shall have the right, but shall not be obligated, to effect such insurance, or pay such charges or taxes. In that event, Lessor shall notify Lessee of such payment and Lessee shall repay to Lessor the cost thereof within 15 days after such notice is mailed to Lessee.

**16. INDEMNITY.** Lessee shall indemnify Lessor against any claims, actions, damages or liabilities, including all attorney fees, arising out of or connected with the Equipment, without limitation. Such indemnification shall survive the expiration, cancellation or termination of this Lease. Lessee waives any immunity Lessee may have under any industrial insurance act with regard to indemnification of Lessor.

**17. ASSIGNMENT BY LESSOR.** Any assignee of Lessor shall have all of the rights but none of the obligations or Lessor under this Lease. Lessee shall recognize and hereby consents to any assignment of this Lease by Lessor, and Lessee shall not assert against the assignee any defense, counterclaim or set-off that Lessee may have against Lessor. Subject to the foregoing, this Lease insures to the benefit of and is binding upon the heirs, devisees, personal representatives, survivors, successors in interest and assigns of the parties hereto.

**18. SERVICE CHARGES; INTEREST.**If Lessor does not receive any payment required by this Lease within three (3) days of the due date thereof, or such greater time period as required by applicable law, Lessee shall pay to Lessor, as a charge for servicing of a delinquent account and not as a penalty, a charge of ten percent (10%) of the amount due or $22, whichever is greater, or such lesser amount equal to the maximum allowable under applicable law for such charges. No more than one such service charge shall be made on any delinquent payment regardless of the length of the delinquency. In addition to the foregoing service charge. Lessee shall pay to Lessor a $100 default fee with respect to any payment which becomes thirty (30) days past due. In addition, Lessee shall pay to Lessor any actual additional expenses incurred by Lessor in collection efforts, including but not limited to long-distance telephone charges and travel expenses.

Further, Lessee shall pay to Lessor interest on any delinquent payment or amount due under this Lease from the due date thereof until paid, at the lesser of the maximum rate of interest allowed by law or 18% per annum.

**19. TIME OF ESSENCE.** Time is of the essence of this Lease, and this provision shall not be impliedly waived by the acceptance on occasion of late or defective performance.

**20. DEFAULT.** Lessee shall be in default of this Lease if:

(a) Lessee shall fail to make any payment due under the terms of this Lease for a period of 10 days from the due date thereof; or

(b) Lessee shall fail to observe, keep or perform any other provision of this Lease, and such failure shall continue for a period of 10 days; or

(c) Lessee has made any misleading or false statement, or representation in connection with application for or performance of this Lease; or

(d) The Equipment or any part thereof shall be subject to any lien, levy, seizure, assignment, transfer, bulk transfer, encumbrance, application, attachment, execution, sublease, or sale without prior written consent of Lessor, or if Lessee shall abandon the Equipment or permit any other entity or person to use the Equipment without the prior written consent of Lessor; or

(e) Lessee dies or ceases to exist; or

(f) Lessee changes its name, state of incorporation, chief executive office and/or place of residence without providing Lessor with 30 days written notice of such change;

(g) Lessee defaults on any other agreement it has with Lessor; or

(h) Any guarantor of this Lease defaults on any obligation to Lessor, or any to the above-listed events of default occur with respect to any guarantor, or any such guarantor files or has filed against it a petition under the bankruptcy laws.

**21. REMEDIES.** If Lessee is in default, Lessor, with or without notice to Lessee, shall have the right to exercise any one or more of the following remedies, concurrently or separately and without any election of remedies being deemed to have been made;

(a) Lessor may enter upon Lessee’s premises and without any court order or other process of law may repossess and remove the Equipment, or render the Equipment unusable without removal, either with or without notice to Lessee. Lessee hereby waives any trespass or right of action for damages by reason of such entry, removal or disabling. Any such repossession shall not constitute a termination of this Lease;

(b) Lessor may require Lessee, at its expense, to return the Equipment in good repair, ordinary wear and tear resulting from proper use thereof alone excepted, by delivering it, packed and ready for shipment, to such place as Lessor may specify;

(c) Lessor may cancel or terminate this Lease and may retain any and all prior payments paid by Lessee;

(d) Lessor may declare all sums due and to become due under this Lease immediately due and payable, including as to any or all items of Equipment, without notice or demand to Lessee;

(e) Lessor may re-lease the Equipment to any third party, without notice to Lessee, upon such terms and conditions as Lessor alone shall determine, or may sell the Equipment without notice to Lessee, at private or public sale, at which sale Lessor may be the purchaser;

(f) Lessor may sue for and recover from Lessee the sum of all unpaid rents and other payments due under this Lease then accrued, plus all accelerated future payments due under this Lease, reduced to their present value using a discount rate of 6% as of the date of default, plus Lessor’s estimate at the time this Lease was entered into of Lessor’s residual interest in the Equipment, reduced to present value at a discount rate of 6%, as of the date of default, less the net proceeds of disposition, if any, of the Equipment;

(g) To pursue any other remedy available at law, by statute or equity.

No right or remedy conferred upon or reserved to Lessor is exclusive of any other right or remedy herein, or by law or by equity provided or permitted, but each shall be cumulative of every other right or remedy given herein or now or hereafter existing by law or equity or by statute or otherwise, and may be enforced concurrently therewith or from time to time. No single or partial exercise by Lessor of any right or remedy hereunder shall preclude any other or further exercise of any other right or remedy.

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| LESSEE HAS READ AND AGREES TO ALL ITEMS ON THIS PAGE 3 OF 4 |  | /s/    Margot Honegger |
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**22. MULTIPLE LESSEES.**Lessee and each of them are jointly and severally responsible and liable to Lessor under this Lease, Lessor may, with the consent of any one of the Lessees hereunder, modify, extend or change any of the terms hereof without consent or knowledge of the others, without in any way releasing, waiving or impairing any right granted to Lessor against the others.

**23. EXPENSE OF ENFORCEMENT.** In the event of any legal action with respect to this Lease, the prevailing party in any such action shall be entitled to reasonable attorney fees, including attorney fees incurred at the trial level, including action in bankruptcy court, on appeal or review, or incurred without action, suits or proceedings, together with all costs and expenses incurred in pursuit thereof.

**24. MISCELLANEOUS.**

(1) LESSEE HEREBY ACKNOWLEDGES THAT THIS LEASE IS NONCANCELABLE FOR THE ORIGINAL RENTAL TERM SET FORTH IN EACH SCHEDULE.

(2) LESSEE UNDERSTANDS AND ACKNOWLEDGES THAT NO BROKER OR SUPPLIER NOR ANY SALESMAN, BROKER OR AGENT OF ANY BROKER OR SUPPLIER IS AN AGENT OF LESSOR. NO BROKER OR SUPPLIER, NOR ANY SALESMAN, BROKER OR AGENT OF ANY BROKER OR SUPPLIER IS AUTHORIZED TO WAIVE OR ALTER ANY TERM OR CONDITION OF THIS LEASE, AND NO REPRESENTATION AS TO THE EQUIPMENT OR ANY OTHER MATTER BY A BROKER OR SUPPLIER OR ANY SALESMAN, BROKER OR AGENT OF ANY BROKER OR SUPPLIER SHALL IN ANY WAY AFFECT LESSEE’S DUTY TO PAY THE RENTALS AND TO PERFORM LESSEE’S OBLIGATIONS SET FORTH IN THIS LEASE.

(3) Lessee authorizes Lessor, its successors, assigns and potential assigns, to obtain a personal credit profile from a national credit bureau for purposes of update, renewal or extension of credit and for reviewing or collecting this Lease.

(4) Any notices required by this Lease or the UCC shall be deemed to be delivered when a record properly directed to the intended recipient has been (a) deposited with US Postal Service, (b) transmitted by facsimile, (c) transmitted through the internet, or (d) has been personally delivered.

**25. SEVERABILITY.** This Lease is intended to constitute a valid and enforceable legal instrument. In the event any provision hereof is declared invalid, such provision will be deemed severable from the remaining provisions of this Lease, all of which will remain in full force and effect.

**26. ENTIRE AGREEMENT; WAIVER.** This instrument and the Schedules executed by Lessor and Lessee constitute the entire agreement between Lessor and Lessee with respect to the Equipment and the subject matter of this Lease. No provision of this Lease shall be modified unless in writing signed by an authorized representative of Lessor. Waiver by Lessor of any provision hereof in one instance shall not constitute a waiver of any other instance.

Lessee initials:         /s/    Margot Honegger

**27. CHOICE OF LAW; JURISDICTION IN OREGON. This Lease shall not be effective until signed by Lessor at its office in Portland, Oregon. This Lease shall be considered to have been made in the State of Oregon and shall be interpreted in accordance with the laws and regulations of the State of Oregon.**

**Lessor agrees to jurisdiction in the State of Oregon in any action, suit or proceeding arising out of this Lease, and concedes that it, and each of them, transacted business in the State of Oregon by entering into this Lease. In the event of legal action to enforce this Lease, Lessee agrees that venue may be laid in Washington County, Oregon.**

Lessee initials:         /s/    Margot Honegger

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| **LESSEE: Crab Delight Restaurants, Inc.** | | | | |  | **LESSOR: INTERLEASE LEASING CORPORATION** | | | | |
|  |  | |  | |  | |  | |  | |
| /s/Margot Honegger |  | **Date** |  | **11-8-02** |  |  |  | **Date** |  |  |
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| Margot Honegger            C.F.O |  |  |  |  |  |  |  |  |  |  |
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**EXHIBIT “A”**

**The following Exhibit “A” is attached to and made a part of**

**GE Capital Interlease Leasing Lease #                    .**

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| SUPPLIER OF EQUIPMENT: |  | ZENITH HOSPITALITY SYSTEMS  Tampa, FL 33309 |

EQUIPMENT LOCATION: A

STORE #14 EQUIPMENT DESCRIPTION:

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| --- | --- | --- | --- | --- |
|  |  |  |  |  |
| 5 |  | - |  | Book Size PC Work Station 1Ghz celeron, 128MB, 20GB H/D, No O/S |
|  |  | |  | |
| 5 |  | - |  | Mini Mag 1 & 2 Track PS/2 Cardreader, Ivory |
|  |  | |  | |
| 1 |  | - |  | 5 Terminal RDC 16Bit to 32Bit Relicense, Full Version Upgrade, Microsoft Windows 2000 Professional Client License, 5 Pak |
|  |  | |  | |
| 1 |  | - |  | SMC B Port 10/100 Switch with Uplink, (13) 10 Base T Patch cable 6Ft W/Ends |
|  |  | |  | |
| 1 |  | - |  | 4 Port RCS Remote Printer |

Including Installation

EQUIPMENT LOCATION: B

STORE #47 EQUIPMENT DESCRIPTION:

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|  |  |  |  |  |
| 5 |  | - |  | Book Size PC Work Station 1Ghz Celeron, 128MB, 20GB H/D, No O/S |
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| 5 |  | - |  | Mini Mag 1 & 2 Track PS/2 Cardreader, Ivory |
|  |  | |  | |
| 1 |  | - |  | 5 Terminal RDC 16Bit to 32Bit Relicense, Full Version Upgrade, Microsoft Windows 2000 Professional Client License, 5 Pak |
|  |  | |  | |
| 1 |  | - |  | SMC B Port 10/100 Switch with Uplink, (13) 10 Base T Patch Cable 6Ft W/Ends |
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| 1 |  | - |  | 4 Port RCS Remote Printer |

Including Installation

EQUIPMENT LOCATION: C

STORE #37 EQUIPMENT DESCRIPTION:

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| 5 |  | - |  | Book Size PC Work Station 1Ghz Celeron, 128MB, 20GB H/D, No O/S |
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| 5 |  | - |  | Mini Mag 1 & 2 Track PS/2 Cardreader, Ivory |
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| 1 |  | - |  | 5 Terminal RDC 16Bit to 32Bit Relicense, Full Version, Upgrade, Microsoft Windows 2000 Professional Client License, 5 Pak |
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| 1 |  | - |  | SMC B Port 10/100 Switch with Uplink, (11) 10 Base T Patch Cable 6Ft W/Ends |
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| 1 |  | - |  | 4 Port RCS Remote Printer |

Including Installation

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| **LESSOR:** GE Capital Interlease Leasing | | |  |  |  |  | | |
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| **BY:** |  |  |  |  |  | **DATE:** |  |  |
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| **LESSEE:** Crab Delight Restaurants, Inc. | | |  |  |  |  | | |
|  |  | |  | |  | |  | |
| **BY:** |  | /s/ Margot Honegger |  |  |  | **DATE:** |  | 11 - 8 - 02 |
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|  |  | Margot Honegger, C.F.O. |  |  |  |  |  |  |
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| **BY:** |  |  |  |  |  | **DATE:** |  |  |
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Page 1 of 3 pages.

**EXHIBIT “A”**

**The following Exhibit “A” is attached to and made a part of**

**GE Capital Interlease Leasing Lease #                    .**

EQUIPMENT LOCATION: C

STORE #48 EQUIPMENT DESCRIPTION:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  |  |  |  |
| 6 |  | - |  | Book Size PC Work Station 1Ghz Celeron, 128MB, 20GB H/D, No O/S |
|  |  | |  | |
| 6 |  | - |  | Mini Mag 1 & *2*Track PS/2 Cardreader, Ivory |
|  |  | |  | |
| 1 |  | - |  | 6 Terminal RDC 16Bit to 32Bit Relicense, Full Version Upgrade, (2) Microsoft Windows 2000 Professional Client License, 5 Pak |
|  |  | |  | |
| 1 |  | - |  | SMC 8 Port 10/100 Switch with Uplink, (13) 10 Base T Patch Cable 6Ft W/Ends |
|  |  | |  | |
| 1 |  | - |  | 4 Port RCS Remote Printer |

Including Installation

EQUIPMENT LOCATION: D

STORE #5 EQUIPMENT DESCRIPTION:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  |  |  |  |
| 4 |  | - |  | Book Size PC Work Station 1Ghz Celeron, 128MB, 20GB H/D, No O/S |
|  |  | |  | |
| 4 |  | - |  | Mini Mag 1 & 2 Track PS/2 Cardreader, Ivory |
|  |  | |  | |
| 1 |  | - |  | 6 Terminal RDC 16Bit to 32Bit Relicense, Full Version Upgrade, (2) Microsoft Windows 2000 Professional Client License, 5 Pak |
|  |  | |  | |
| 1 |  | - |  | SMC 8 Port 10/100 Switch with Uplink, (13) 10 Base T Patch Cable 6Ft W/Ends |
|  |  | |  | |
| 1 |  | - |  | 4 Port RCS Remote Printer |

Including Installation

EQUIPMENT LOCATION: E

STORE #44 EQUIPMENT DESCRIPTION:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  |  |  |  |
| 4 |  | - |  | Book Size PC Work Station 1Ghz Celeron, 128MB, 20GB H/D, No O/S |
|  |  | |  | |
| 4 |  | - |  | Mini Mag 1 & 2 Track PS/2 Cardreader, Ivory |
|  |  | |  | |
| 1 |  | - |  | 5 Terminal RDC 16Bit to 32Bit Relicense, Full Version Upgrade, (2) Microsoft Windows 2000 Professional Client License, 5 Pak |
|  |  | |  | |
| 1 |  | - |  | SMC 8 Port 10/100 Switch with Uplink, (11) 10 Base T Patch Cable 6Ft W/Ends |
|  |  | |  | |
| 1 |  | - |  | 4 Port RCS Remote Printer |

Including Installation

EQUIPMENT LOCATION: F

STORE #20 EQUIPMENT DESCRIPTION:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  |  |  |  |
| 6 |  | - |  | Book Size PC Work Station 1Ghz Celeron, 128MB, 20GB H/D, No O/S |
|  |  | |  | |
| 6 |  | - |  | Mini Mag 1 & 2 Track PS/2 Cardreader, Ivory |
|  |  | |  | |
| 1 |  | - |  | 6 Terminal RDC 16Bit to 32Bit Relicense, Full Version Upgrade, (2) Microsoft Windows 2000 Professional Client License, 5 Pak |
|  |  | |  | |
| 1 |  | - |  | SMC 8 Port 10/100 Switch with Uplink, (13) 10 Base T Patch Cable 6Ft W/Ends |
|  |  | |  | |
| 1 |  | - |  | 4 Port RCS Remote Printer |

Including Installation

|  |  |  |  |  |  |  |  |  |
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| **LESSOR:** GE Capital Interlease Leasing | | |  |  |  |  | | |
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| **BY:** |  |  |  |  |  | **DATE:** |  |  |
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| **LESSEE:** Crab Delight Restaurants, Inc. | | |  |  |  |  | | |
|  |  | |  | |  | |  | |
| **BY:** |  | /s/ Margot Honegger |  |  |  | **DATE:** |  | 11-8-02 |
|  |  |  |  |  |  |  |  |  |
|  |  | Margot Honegger, C.F.O. |  |  |  |  |  |  |
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| **BY:** |  |  |  |  |  | **DATE:** |  |  |
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Page 2 of 3 pages.

**EXHIBIT “A”**

**The following Exhibit “A” is attached to and made a part of**

**GE Capital Interlease Leasing Lease #**

EQUIPMENT LOCATION: G

STORE #28 EQUIPMENT DESCRIPTION:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  |  |  |  |
| 5 |  | - |  | Book Size PC Work Station 1Ghz Celeron, 128MB, 20GB H/D, No O/S |
|  |  | |  | |
| 5 |  | - |  | Mini Mag 1 & 2 Track PS/2 Cardreader, Ivory |
|  |  | |  | |
| 1 |  | - |  | 5 Terminal RDC 16Bit to 32Bit Relicense, Full Version Upgrade, Microsoft Windows 2000 Professional Client License, 5 Pak |
|  |  | |  | |
| 1 |  | - |  | SMC 8 Port 10/100 Switch with Uplink, (11) 10 Base T Patch Cable 6Ft W/Ends |
|  |  | |  | |
| 1 |  | - |  | 4 Port RCS Remote Printer Including Installation |

EQUIPMENT LOCATION: H

STORE #17 EQUIPMENT DESCRIPTION:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  |  |  |  |
| 7 |  | - |  | Book Size PC Work Station lGhz Celeron, 128MB, 20GB H/D, No O/S |
|  |  | |  | |
| 1 |  | - |  | Book Size PC Work Station 1Ghz Celeron, 128MB, 20GB H/D, No O/S w/Multi media kit |
|  |  | |  | |
| 7 |  | - |  | Mini Mag 1 & 2 Track PS/2 Cardreader, Ivory |
|  |  | |  | |
| 1 |  | - |  | 6 Terminal RDC 16Bit to 32Bit Relicense, Full Version Upgrade, (2) Microsoft Windows 2000 Professional Client License, 5 Pak |
|  |  | |  | |
| 1 |  | - |  | SMC 16 Port 10/100 Switch with Uplink, (13) 10 Base T Patch Cable 6Ft W/Ends |
|  |  | |  | |
| 1 |  | - |  | 4 Port RCS Remote Printer Including Installation |

|  |  |  |  |  |  |  |  |  |
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|  |  |  |  |  |  |  |  |  |
| **LESSOR:** GE Capital Interlease Leasing | | |  |  |  |  | | |
|  |  | |  | |  | | | |
| **BY**: |  |  |  |  |  | **DATE: \_\_\_\_\_\_\_\_\_\_** | | |
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| **LESSEE:** Crab Delight Restaurants, Inc. | | |  |  |  |  | | |
|  |  | |  | |  | | | |
| **BY**: |  | /s/ Margot Honegger |  |  |  | **DATE:** 11-8-02 | | |
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|  |  | Margot Honegger, C.F.O. |  |  |  |  |  |  |
|  |  | |  | |  | | | |
| **BY**: |  |  |  |  |  | **DATE:** \_\_\_\_\_\_\_\_\_\_ | | |
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Page 3 of 3 pages.

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|  |  |  |  |  |
| **[GRAPHIC]** |  |  |  | **LEASE SCHEDULE** |
|  |  | |  | |
|  |  | MASTER EQUIPMENT  LEASE AGREEMENT NO. |  |  |
|  |  |  |  |  |
|  |  | LEASE SCHEDULE NO. |  |  |
|  |  |  |  |  |

BETWEEN Interlease Leasing Corporation, dba GE Capital Interlease Leasing (LESSOR) and Crab Delight Restaurants, Inc. (LESSEE).

|  |  |
| --- | --- |
| 1. | **DESCRIPTION OF EQUIPMENT** |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  |  |  |  |
| **Quantity** |  | **Item** |  | **Model/Serial No.** |
|  |  | SEE ATTACHED EXHIBIT “A” |  |  |

|  |  |
| --- | --- |
| 2. | **EQUIPMENT LOCATION**: The above Equipment is to be located and delivered to Lessee’s premises at SEE ATTACHED EXHIBIT “A” . |

|  |  |
| --- | --- |
| 3. | **RENTAL TERM**: 36 months. |

|  |  |
| --- | --- |
| 4. | **RENTAL**; The first payment in the amount of $1,992.49 (plus applicable tax) is due \_\_\_, \_\_\_. Subsequent rental payments will be in the same amount and due on the same day monthly (monthly, quarterly, etc.) thereafter. |

|  |  |
| --- | --- |
| 5. | **NUMBER AND AMOUNT OF ADVANCE RENTAL PAYMENTS:** NUMBER: 1@ $1,992.49. |

|  |  |
| --- | --- |
| 6 | **SECURITY DEPOSIT**: $1,992.49. |

|  |  |
| --- | --- |
| 7. | **EQUIPMENT COST**: $59,931.85. |

|  |  |
| --- | --- |
| 8. | THIS SCHEDULE AND ITS TERMS AND CONDITIONS ARE HEREBY INCORPORATED BY REFERENCE IN THE ABOVE MASTER EQUIPMENT LEASE AGREEMENT. LESSEE PERMITS LESSOR TO INSERT MODEL AND SERIAL NUMBERS OF EQUIPMENT WHEN DETERMINED BY LESSOR. |

LEASE CHARGE RATE. Lessee is aware that the Equipment may be purchased from Lessor for cash (“Equipment Cost”) or it may be leased from Lessor. By signing this Lease, Lessee acknowledges that it has chosen to lease the Equipment from Lessor for the Lease Term and it, agrees to pay rent to the Lessor, If this Lease provides for any payment option other than a Fair Market Value payment option, each rental payment includes a principal amount based on the Equipment Cost and the lease charge rate. The lease charge rate can be determined by applying to the Equipment Cost the rate which will amortize the Equipment Cost to the Purchase Option Amount, by payment of the rental payments and any interim rent over the Lease Term. Lessee and Lessor intend to comply with all applicable laws. If it is determined that rental payments under this Lease result in an interest payment higher than that allowed by applicable law, then any excess interest collected will be applied to the repayment of principal and interest will be charged at the rate allowed by law.

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|  |  |  |  |  |  |  |  |  |
| LESSEE:  Crab Delight Restaurants, Inc. |  |  |  |  |  | LESSOR:  Interlease Leasing Corporation, dba GE Capital  Interlease Leasing | | |
|  | | |  |  |  |  |  | |
| (Must be signed by Authorized Corporate  Officer, Partner, or Proprietor) |  |  |  |  |  |  |  |  |
|  |  | |  | |  | |  | |
| /s/ Margot Honegger |  | CFO |  |  |  |  |  |  |
|  | | |  |  |  |  | | |
| Margot Honegger |  | (Title) C.F.O. |  |  |  |  |  | (Title) |
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|  |  | (Title) |  |  |  |  |  |  |
|  |  | |  | |  | |  | |
|  |  |  |  |  |  | Accepted this                      day of                     ,              at Portland, OR |  |  |
|  | | |  |  |  |  |  |  |
|  |  | (Title) |  |  |  |  |  |  |
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|  |  | (Title) |  |  |  |  |  |  |

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| --- | --- |
| Lessee: | Crab Delight Restaurants, Inc. |

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| --- | --- |
|  | Tampa, FL 33618 |

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| --- | --- |
| RE: | Addendum to Lease Agreement No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. |

It is hereby agreed that the Lease Agreement entered into by and between GE Capital Interlease Leasing, as Lessor, and the below referenced Lessee is hereby amended to include the following:

Lessee shall have the option to purchase all of the equipment described in said Lease Agreement upon the expiration of the initial lease term. The equipment may be purchased for a price that shall be $150.00, plus applicable sales tax and any other tax applicable to such sale, provided that Lessee has performed all terms and conditions of said Lease. The parties hereto have agreed that the above-referenced option to purchase represents an option to purchase at a price which the Lessee and Lessor believe represents an estimate of the fair market value which the equipment will have at the end of the lease.

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|  |  |  |  |  |  |  |  |  |
| LESSOR: GE Capital Interlease Leasing | | |  |  |  | LESSEE: Crab Delight Restaurants, Inc. | | |
|  |  | |  | |  | |  | |
| BY: |  |  |  |  |  | BY: |  | /s/ Margot Honegger |
|  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  | Margot Honegger. C.F.O. |

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|  |  |  |  |  |  | DATE : 11-8-02 | | |

**LeaseA#16**

EXHIBIT 10.25

**Exhibit 10.25**

ARCO EQUIPMENT FINANCE CORPORATION

**MASTER LEASE AGREEMENT**

THIS MASTER LEASE AGREEMENT (this “**Lease**”) is made as of December 30, 2009, between ARCO EQUIPMENT FINANCE CORPORATION, its successors and assigns (“**Lessor**”), and KRON FREIGHT SYSTEM, INC., its successors and permitted assigns (“**Lessee**”).

Lessee desires to lease from Lessor the equipment and other property (the “**Equipment**”) described in each Equipment Schedule executed pursuant to this Lease (each, a “**Schedule**”) incorporating by reference the terms and conditions of this Lease (the term “**Lease**” shall also include any Riders to this Lease entered into with respect to such Schedule). Certain definitions and construction of certain of the terms used in this Lease are provided in Section 19 hereof.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Lease agree as follows:

1. **AGREEMENT TO LEASE; TERM**. This Lease is effective as of the date specified above. By entering into a Schedule, Lessor leases the Equipment described therein to Lessee, and Lessee leases such Equipment from Lessor, in each case, subject to the terms and conditions in this Lease and such Schedule and all of the other documents and agreements executed in connection herewith (collectively, the “**Lease Documents**”). Each Schedule, incorporating the terms and conditions of this Lease, will constitute a separate instrument of lease. The term of lease with respect to each item of Equipment leased under a Schedule shall commence on the date of execution of such Schedule and continue for the term provided in that Schedule.

2. **RENT**. Lessee shall pay Lessor (a) the rental installments (“**Basic Rent**”) as and when specified in each Schedule, without demand, and (b) all of the other amounts payable in accordance with this Lease, such Schedule and/or any of the other Lease Documents (“**Other Payments**”, and together with the Basic Rent, collectively, the “**Rent**”). Upon Lessee’s execution thereof, the related Schedule shall constitute a non-cancelable net lease, and Lessee’s obligation to pay Rent, and otherwise to perform its obligations under or with respect to such Schedule and all of the other Lease Documents, are and shall be absolute and unconditional and shall not be affected by any circumstances whatsoever, including any right of setoff, counterclaim, recoupment, deduction, defense or other right which Lessee may have against Lessor, the manufacturer or vendor of the Equipment (the “**Suppliers**”), or anyone else, for any reason whatsoever (each, an “**Abatement**”). Lessee agrees that all Rent shall be paid in accordance with Lessor’s or Assignee’s written direction. Time is of the essence. If any Rent is not paid within five (5) days of the due date, Lessee shall pay a late charge equal to five (5) percent of the amount in arrears.

3. **REPRESENTATIONS, WARRANTIES AND AGREEMENTS OF LESSEE**. Lessee represents, warrants and agrees that, as of the effective date of this Lease and of each Schedule: (a) Lessee has the form of business organization indicated, and is and will remain duly organized and existing in good standing under the laws of the state specified, under Lessee’s signature and is duly qualified to do business wherever necessary to perform its obligations under the Lease Documents, including each jurisdiction in which the Equipment is or will be located. Lessee’s legal name is as shown in the preamble of this Lease; and Lessee’s Federal Employer Identification Number and organizational number are as set forth under Lessee’s signature. Within the previous six (6) years, Lessee has not changed its name, done business under any other name, or merged or been the surviving entity of any merger, except as disclosed to Lessor in writing. (b) The Lease Documents (1) have been duly authorized by all necessary action consistent with Lessee’s form of organization, (2) do not require the approval of, or giving notice to, any governmental authority, (3) do not contravene or constitute a default under any applicable law, Lessee’s organizational documents, or any agreement, indenture, or other instrument to which Lessee is a party or by which it may be bound, and (4) constitute legal, valid and binding obligations of Lessee enforceable against Lessee, in accordance with the terms thereof. (c) Other than Lessee’s obligations for Lessee’s contractual employees as provided by existing multiemployer plans, there are no pending actions or proceedings to which Lessee is a party, and there are no other pending or threatened actions or proceedings of which Lessee has knowledge, before any court, arbitrator or administrative agency, which, either individually or in the aggregate, would have a Material Adverse Effect. As used herein, “**Material Adverse Effect**” shall mean (i) a materially adverse effect on the business, condition (financial or otherwise), operations, performance or properties of Lessee, or on Lessor’s rights and remedies under this Lease, or (ii) a material impairment of the ability of Lessee to perform its obligations under or remain in compliance with such Schedule or any of the other Lease Documents. Further, Lessee is not in default under any financial or other material agreement that, either individually, or in the aggregate, would have a Material Adverse Effect. (d) Under the applicable laws of each such jurisdiction, such Equipment consists (and shall continue to consist) solely of personal property and not fixtures. Such Equipment is removable from and is not essential to the premises at which it is located. (e) The financial statements of Lessee (copies of which have been furnished to Lessor) have been prepared in accordance with generally accepted accounting principles consistently applied (“**GAAP**”), and fairly present Lessee’s financial condition and the results of its operations as of the date of and for the period covered by such statements, and since the date of such statements there has been no material adverse change in such conditions or operations. (f) With respect to any Collateral, Lessee has good title to, rights in, and/or power to transfer all of the same. (g) The Supplier is not an affiliate of Lessee. (h) The Supply Contract (as such term is hereinafter defined) represents an arms’ length transaction and the purchase price for the Equipment specified therein is the amount obtainable in an arms’ length transaction between a willing and informed buyer and a willing and informed seller under no compulsion to sell.

LEASE AGREEMENT — X

4. **FURTHER ASSURANCES AND OTHER COVENANTS**. Lessee agrees as follows: (a) Lessee shall obtain and deliver to Lessor and/or promptly execute or otherwise authenticate any documents, filings, waivers (including any landlord and mortgagee waivers), releases and other records, and will take such further action as Lessor may reasonably request in furtherance of Lessor’s rights under any of the Lease Documents. Lessee irrevocably authorizes Lessor to file UCC financing statements (“**UCCs**“), and other filings with respect to the Equipment or any Collateral. Without Lessor’s prior written consent, Lessee agrees not to file any corrective or termination statements or partial releases with respect to any UCCs filed by Lessor pursuant to this Lease. (b) Lessee shall provide written notice to Lessor: (1) thirty (30) days prior to any change in Lessee’s name or jurisdiction or form of organization; (2) promptly upon the occurrence of any Event of Default (as defined in Section 15) or event which, with the lapse of time or the giving of notice, or both, would become an Event of Default (a “**Default**”); and (3) promptly upon Lessee becoming aware of any alleged violation of applicable law relating to the Equipment or this Lease. (c) Lessee has been advised by Lessor that the USA Patriot Act establishes minimum standards of account information to be collected and maintained by Lessor, and that to help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify and record information that identifies each person who opens an account; and specifically, this means that when Lessee executes this Lease, Lessor may ask for Lessee’s name and address, the date of birth of the officers executing this Lease, and other information that will allow Lessor to identify Lessee; and that Lessor may also ask to see the driver’s license or other identifying documents of the officers of Lessee executing this Lease. (d) Lessee is and will remain in full compliance with all applicable laws including, without limitation, (i) ensuring that no person who owns a controlling interest in or otherwise controls Lessee is or shall be (A) listed on the Specially Designated Nationals and Blocked Person List maintained by the Office of Foreign Assets Control (“**OFAC**”), Department of the Treasury, and/or any other similar lists maintained by OFAC pursuant to any authorizing statute, Executive Order or regulation, or (B) a person designated under Sections 1(b), (c) or (d) of Executive Order No. 13224 (September 23, 2001), any related enabling legislation or any other similar Executive Orders, and (ii) compliance with all applicable Bank Secrecy Act (“**BSA**”) laws, regulations and government guidance on BSA compliance and on the prevention and detection of money laundering violations.

5. **CONDITIONS PRECEDENT**. Lessor’s agreement to purchase and lease any Equipment under a Schedule, is conditioned upon Lessor’s determination that all of the following have been satisfied: (a) Lessor having received the following, in form and substance reasonably satisfactory to Lessor: (1) evidence as to due compliance with the insurance provisions of Section 11; (2) if requested, lien searches in the jurisdiction of Lessee’s organization, and wherever else Lessor deems appropriate; (3) UCCs, real property waivers and all other filings required by Lessor; (4) a certificate of an appropriate officer of Lessee certifying: (A) resolutions duly authorizing the transactions contemplated in the applicable Lease Documents, and (B) the incumbency and signature of the officers of Lessee authorized to execute such documents; (5) an opinion of counsel for Lessee as to each of the matters set forth in sub-parts (a) through (c) of Section 3; (6) the only manually executed original of the Schedule, and counterpart originals of all other Lease Documents; (7) all purchase documents pertaining to the Equipment (collectively, the “**Supply Contract**”); (8) if requested by Lessor, good standing certificates from the jurisdiction of Lessee’s organization and the location of the Equipment, and evidence of Lessee’s organizational number; (9) the Master Lease Guaranty (the “**Guaranty**”), in form and substance satisfactory to Lessor, duly executed by Arkansas Best Corporation (the “**Guarantor**”); (10) a certificate of Guarantor’s secretary certifying: (A) resolutions duly authorizing the undertaking to guarantee the payment and performance of the obligations of Lessee under this Lease, and (B) the incumbency and signature of the officers of Guarantor authorized to execute the Guaranty; (11) an opinion of counsel for Guarantor as to each of the matters set forth in Subparts (a)(1) and (2), (b) and (c) of Section 4 of the Guaranty; and (12) such other documents, agreements, instruments, certificates, opinions, and assurances, as Lessor reasonably may require. (b) All representations and warranties provided by Lessee in favor of Lessor in any of the Lease Documents shall be true and correct on the effective date of the related Schedule (Lessee’s execution and delivery of the Schedule shall constitute Lessee’s acknowledgment of the same). (c) There shall be no Default or Event of Default under the Schedule or any other Lease Documents. The Equipment shall have been delivered to and accepted by Lessee, as evidenced by the Schedule, and shall be in the condition and repair required hereby; and on the effective date of such Schedule Lessor shall have received good title to the Equipment described therein, free and clear of any claims, liens, attachments, rights of others and legal processes (“**Liens**”).

LEASE AGREEMENT — X

2

6. **ACCEPTANCE UNDER LEASE.**Upon delivery, Lessee shall inspect and, if conforming to the condition required by the applicable Supply Contract, accept the Equipment and execute and deliver to Lessor a Schedule describing such Equipment. The Schedule will evidence Lessee’s unconditional and irrevocable acceptance under the Schedule of the Equipment described therein. However, if Lessee fails to accept delivery of any item of the Equipment, or accepts such Equipment but fails to satisfy any or all of the other conditions set forth in Section 5, Lessor shall have no obligation to purchase or lease such Equipment. In such event, Lessor’s rights shall include, among other things, the right to demand that Lessee (a) fully assume all obligations as purchaser of the Equipment, with the effect of causing Lessor to be released from any liability relating thereto, (b) immediately remit to Lessor an amount sufficient to reimburse it for all advance payments, costs, taxes or other charges paid or incurred with respect to the Equipment (including any of such amounts paid by Lessor to Supplier under the Supply Contract or as a reimbursement to Lessee), together with interest at the Default Rate accruing from the date or dates such amounts were paid by Lessor until indefeasibly repaid by Lessee in full, and (c) take all other actions necessary to accomplish such assumption.

7. **USE AND MAINTENANCE**. (a) Lessee shall (1) use the Equipment solely in the continental United States (provided, however, that without limiting Lessee’s indemnification obligations pursuant to Section 14(b) hereof, Lessee may use the Equipment on an occasional basis in Mexico and/or Canada so long as such use does not cause the Equipment to be deemed to constitute tangible property “used predominantly outside the United States”, within the meaning of the Internal Revenue Code of 1986, as now or hereafter amended (the “**Code**”)) and in the conduct of its business, for the purpose for which the Equipment was designed, in a careful and proper manner, and shall not permanently discontinue use of the Equipment; (2) operate, maintain, service and repair the Equipment, and maintain all records and other materials relating thereto, (A) in accordance and consistent with (i) the Supplier’s recommendations and all maintenance and operating manuals or service agreements, whenever furnished or entered into, including any subsequent amendments or replacements thereof, issued by the Supplier or service provider, (ii) the requirements of all applicable insurance policies, (iii) the Supply Contract, so as to preserve all of Lessee’s and Lessor’s rights thereunder, including all rights to any warranties, indemnities or other rights or remedies, (iv) all applicable laws, and (v) the prudent practice of other similar companies in the same business as Lessee, but in any event, to no lesser standard than that employed by Lessee for comparable equipment owned or leased by it; and (B) without limiting the foregoing, so as to cause the Equipment to be in good repair and operating condition and in at least the same condition as when delivered to Lessee hereunder, except for ordinary wear and tear resulting despite Lessee’s full compliance with the terms hereof; (3) provide written notice to Lessor not less than thirty (30) days after any change of the location of any Equipment (or the location of the principal garage of any Equipment, to the extent that such Equipment is mobile equipment) as specified in the Schedule; and (4) not attach or incorporate the Equipment to or in any other property in such a manner that the Equipment may be deemed to have become an accession to or a part of such other property. (b) Within a reasonable time, Lessee will replace any parts of the Equipment which become worn out, lost, destroyed, damaged beyond repair or otherwise unfit for use, by new or reconditioned replacement parts which are free and clear of all Liens and have a value, utility and remaining useful life at least equal to the parts replaced (assuming that they were in the condition required by this Lease). Any modification or addition to the Equipment that is required by this Lease shall be made by Lessee. Title to all such parts, modifications and additions to the Equipment immediately shall vest in Lessor, without any further action by Lessor or any other person, and they shall be deemed incorporated in the Equipment for all purposes of the related Schedule. Unless replaced in accordance with this Section, Lessee shall not remove any parts originally or from time to time attached to the Equipment, if such parts are essential to the operation of the Equipment, are required by any other provision of this Lease or cannot be detached from the Equipment without materially interfering with the operation of the Equipment or adversely affecting the value, utility and remaining useful life which the Equipment would have had without the addition of such parts. Except as permitted in this Section, Lessee shall not make any material alterations to the Equipment. (c) Upon forty-eight (48) hours’ notice, Lessee shall afford Lessor and/or its designated representatives access to the premises where the Equipment is located for the purpose of inspecting such Equipment and all applicable maintenance or other records relating thereto at any reasonable time during normal business hours; provided, however, if a Default or Event of Default shall have occurred and then be continuing, no notice of any inspection by Lessor shall be required. If any discrepancies are found as they pertain to the general condition of the Equipment, Lessor will communicate these discrepancies to Lessee in writing. Lessee shall then have thirty (30) days to rectify these discrepancies at its sole expense. Lessee shall pay all expenses of a re-inspection by Lessor’s appointed representative, if corrective measures were required.

LEASE AGREEMENT — X

3

8. **DISCLAIMER; QUIET ENJOYMENT. (a) THE EQUIPMENT IS LEASED HEREUNDER “AS IS, WHERE IS”. LESSOR SHALL NOT BE DEEMED TO HAVE MADE, AND HEREBY DISCLAIMS, ANY REPRESENTATION OR WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE EQUIPMENT, INCLUDING ANY PART, OR ANY MATTER WHATSOEVER, INCLUDING, AS TO EACH ITEM OF EQUIPMENT, ITS DESIGN, CONDITION, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, TITLE, ABSENCE OF ANY PATENT, TRADEMARK OR COPYRIGHT INFRINGEMENT OR LATENT DEFECT (WHETHER OR NOT DISCOVERABLE BY LESSEE), COMPLIANCE OF SUCH ITEM WITH ANY APPLICABLE LAW, CONFORMITY OF SUCH ITEM TO THE PROVISIONS AND SPECIFICATIONS OF ANY PURCHASE DOCUMENT OR TO THE DESCRIPTION SET FORTH IN THE RELATED SCHEDULE OR ANY OF THE OTHER LEASE DOCUMENTS, OR ANY INTERFERENCE OR INFRINGEMENT (EXCEPT AS EXPRESSLY PROVIDED IN SECTION 8(b)), OR ARISING FROM ANY COURSE OF DEALING OR USAGE OF TRADE, NOR SHALL LESSOR BE LIABLE, FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OR FOR STRICT OR ABSOLUTE LIABILITY IN TORT; AND LESSEE HEREBY WAIVES ANY CLAIMS ARISING OUT OF ANY OF THE FOREGOING.**Without limiting the foregoing, Lessor will not be responsible to Lessee or any other person with respect to, and Lessee agrees to bear sole responsibility for, any risk or other matter that is the subject of Lessor’s disclaimer; and Lessor’s agreement to enter into this Lease and any Schedule is in reliance upon the freedom from and complete negation of liability or responsibility for the matters so waived or disclaimed herein or covered by the indemnity in this Lease. So long as no Event of Default has occurred, Lessee may exercise Lessor’s rights, if any, under any warranty with respect to the Equipment. Lessee’s exercise of such rights shall be at its sole risk, shall not result in any prejudice to Lessor, and may be exercised only during the term of the related Schedule. Lessee shall not attempt to enforce any such warranty by legal proceeding without Lessor’s prior written approval. (b) Lessor warrants that during the term of each Schedule, so long as no Event of Default has occurred, Lessee’s possession and use of the Equipment leased thereunder shall not be interfered with by Lessor or anyone rightfully claiming an interest through Lessor. The preceding warranty is in lieu of all other warranties by Lessor, whether written, oral or implied, with respect to this Lease or the Equipment. Any actual or purported breach of this warranty shall not give rise to any Abatement, but Lessee may bring a direct cause of action against Lessor for any actual damages directly resulting from any such breach.

9. **FEES AND TAXES**. Lessee agrees to: (a) (1) if permitted by law, file in Lessee’s own name or on Lessor’s behalf, directly with all appropriate taxing authorities all declarations, returns, inventories and other documentation with respect to any personal property taxes (or any other taxes in the nature of or imposed in lieu of property taxes) due or to become due with respect to the Equipment, and if not so permitted by law, to promptly notify Lessor and provide it with all information required in order for Lessor to timely file all such declarations, returns, inventories, or other documentation, and (2) pay on or before the date when due all such taxes assessed, billed or otherwise payable with respect to the Equipment directly to the appropriate taxing authorities; (b) (1) pay when due as requested by Lessor, and (2) defend and indemnify Lessor on a net after-tax basis against liability for all license and/or registration fees, assessments, and sales, use, property, excise, privilege, value added and other taxes or other charges or fees now or hereafter imposed by any governmental body or agency upon the Equipment or with respect to the manufacture, shipment, purchase, ownership, delivery, installation, leasing, operation, possession, use, return, or other disposition thereof or the Rent hereunder (other than taxes on or measured solely by the net income of Lessor (except as and to the extent expressly addressed in Section 14(b) hereof)); and (c) indemnify Lessor against any penalties, charges, interest or costs imposed with respect to any items referred to in clauses (a) and (b) above (the items referred to in clauses (a), (b), and (c) above being referred to herein as “**Impositions**”). Any Impositions which are not paid when due and which are paid by Lessor shall, at Lessor’s option, become immediately due from Lessee to Lessor.

10. **TITLE; GRANTING CLAUSE.**(a) Lessee and Lessor intend that: (1) each Schedule, incorporating by reference the terms of this Lease, constitutes a true “lease” and a “finance lease” as such terms are defined in Article 2A and not a sale or retention of a security interest; and (2) Lessor is and shall remain the owner of each item of Equipment (unless sold by Lessor pursuant to any Lease Document), and Lessee shall not acquire any right, title or interest in or to such Equipment except the right to use it in accordance with the terms of the related Schedule. (b) In order to secure the prompt payment of the Rent and all of the other amounts from time to time outstanding with respect hereto and to each Schedule, and the performance and observance by Lessee of all of the provisions hereof and thereof and of all of the other Lease Documents, Lessee hereby collaterally assigns, grants, and conveys to Lessor, a security interest in and lien on all of Lessee’s right, title and interest in and to all of the following (whether now existing or hereafter created, and including any other collateral described on any rider hereto; the “**Collateral**”): (1) (if contrary to the parties’ intentions a court determines that such Schedule is not a true “lease” under the UCC) the Equipment described in such Schedule or otherwise covered thereby (including all inventory, fixtures or other property comprising the Equipment), together with all related software (embedded therein or otherwise) and general intangibles, all additions, attachments, accessories and accessions thereto whether or not furnished by the Supplier; (2) all subleases, chattel paper, accounts, security deposits, and general intangibles relating thereto, and any and all substitutions, replacements or exchanges for any such item of Equipment or other collateral, in each such case in which Lessee shall from time to time acquire an interest; and (3) any and all insurance and/or other proceeds of the property and other collateral in and against which a security interest is granted hereunder. The collateral assignment, security interest and lien granted herein shall survive the termination, cancellation or expiration of each Schedule until such time as Lessee’s obligations thereunder and under the other Lease Documents are fully and indefeasibly discharged. (c) If contrary to the parties’ intentions a court determines that any Schedule is not a true “lease”, the parties agree that in such event Lessee agrees that: (1) with respect to the Equipment, in addition to all of the other rights and remedies available to Lessor hereunder upon the occurrence of a Default, Lessor shall have all of the rights and remedies of a first priority secured party under the UCC; and (2) any obligation to pay Basic Rent or any Other Payment, to the extent constituting the payment of interest, shall be at an interest rate that is equal to the lesser of the maximum lawful rate permitted by applicable law or the effective interest rate used by Lessor in calculating such amounts.

LEASE AGREEMENT — X

4

11. **INSURANCE**. Upon acceptance under a Schedule, until the Equipment is returned to Lessor in accordance with this Lease, Lessee shall maintain all-risk insurance coverage with respect to the Equipment insuring against, among other things: (a) any casualty to the Equipment (or any portion thereof), including loss or damage due to fire and the risks normally included in extended coverage, malicious mischief and vandalism, for not less than the full replacement value of the Equipment; and (b) any commercial liability arising in connection with the Equipment, including both bodily injury and property damage with a combined single limit per occurrence of not less than the amount specified in the Schedule; having a deductible or self-insured retention in a maximum amount of $1,000,000.00 or such greater amount as may be mutually agreed to by Lessor and Lessee. Notwithstanding the foregoing, provided that no Event of Default has then occurred, Lessee may self-insure with respect to the coverage required pursuant to Clause (a) of the immediately preceding sentence. The required insurance policies (including endorsements) or self-insurance shall (i) be in form and amount generally acceptable under industry standards, and written by insurers of recognized reputation and responsibility satisfactory to Lessor (but such insurer shall carry a current rating by A.M. Best Company of at least “A” for a general policyholder and a financial rating of at least “VIII”), (ii) be endorsed to name Lessor as an additional insured (but without responsibility for premiums), (iii) provide that any amount payable under the required physical damage coverage shall be paid directly to Lessor as sole loss payee, and (iv) provide for thirty (30) days’ written notice by such insurer of cancellation, material change, or non-renewal. Lessee agrees that it shall obtain and maintain such other coverages (including pollution coverage), or cause adjustments to be made to the scope, amount or other aspects of the existing coverages, promptly upon Lessor’s request, as and when Lessor and Lessee agree that such additional coverages or modifications to be appropriate in light of any changes in applicable law, prudent industry practices, Lessee’s anticipated use of the Equipment or other pertinent circumstances.

12. **LOSS AND DAMAGE**. (a) At all times until the Equipment is returned to Lessor in accordance with this Lease, Lessee shall bear the risk of loss, theft, confiscation, taking, unavailability, damage or partial destruction of the Equipment and shall not be released from its obligations under any Schedule or other Lease Document in any such event. (b) Lessee shall provide prompt written notice to Lessor of any Total Loss or any material damage to the Equipment. Any such notice must be provided together with any damage reports provided to any governmental authority, the insurer or Supplier, and any documents pertaining to the repair of such damage, including copies of work orders, and all invoices for related charges. (c) Without limiting any other provision hereof, Lessee shall repair all damage to any item of Equipment from any and all causes, other than a Total Loss, so as to cause it to be in the condition and repair required by this Lease. (d) A “**Total Loss**” shall be deemed to have occurred to an item of Equipment upon: (1) the actual or constructive total loss of any item of the Equipment, (2) the loss, disappearance, theft or destruction of any item of the Equipment, or damage to any item of the Equipment that is uneconomical to repair or renders it unfit for normal use, or (3) the condemnation, confiscation, requisition, seizure, forfeiture or other taking of title to or use of any item of the Equipment or the imposition of any Lien thereon by any governmental authority. On the next rent payment date following a Total Loss (a “**Loss Payment Date**”), Lessee shall pay to Lessor the Basic Rent due on that date plus the Stipulated Loss Value of the item or items of the Equipment with respect to which the Total Loss has occurred (the “**Lost Equipment**”), together with any Other Payments due hereunder with respect to the Lost Equipment. Upon making such payment, (i) Lessee’s obligation to pay future Basic Rent shall terminate solely with respect to the items of Lost Equipment so paid for, but Lessee shall remain liable for, and pay as and when due, all Other Payments, and (ii) Lessor shall convey to Lessee all of Lessor’s right, title and interest in the Lost Equipment, “**AS IS WHERE IS**”, but subject to the requirements of any third party insurance carrier in order to settle an insurance claim. As used in this Lease, “**Stipulated Loss Value**” shall mean the product of the Total Invoice Cost of the Lost Equipment, times the percentage factor applicable to the Loss Payment Date, as set forth in the Schedule of Stipulated Loss Values incorporated in such Schedule. After the final rent payment date of the original term or any renewal term of a Schedule, the Stipulated Loss Value shall be determined as of the last rent payment date during the applicable term of such Schedule, and the applicable percentage factor shall be the last percentage factor set forth in the Schedule of Stipulated Loss Values incorporated in such Schedule. (e) Lessor shall be under no duty to Lessee to pursue any claim against any person in connection with a Total Loss or other loss or damage. (f) If Lessor receives a payment under an insurance policy required under this Lease in connection with any Total Loss or other loss of or damage to an item of Equipment, and such payment is both unconditional and indefeasible, then provided Lessee shall have complied with the applicable provisions of this Section, Lessor shall either (1) if received pursuant to a Total Loss, remit such proceeds to Lessee up to an amount equal to the amount paid by Lessee to Lessor as the Stipulated Loss Value, or credit such proceeds against any amounts owed by Lessee pursuant to Section 12(d), or (2) if received with respect to repairs made pursuant to Section 12(c), remit such proceeds to Lessee up to an amount equal to the amount of the costs of repair actually incurred by Lessee, as established to Lessor’s satisfaction.

LEASE AGREEMENT — X

5

13. **REDELIVERY**. (a) Lessee shall provide written notice to Lessor not less than one hundred eighty (180) days and not more than two hundred forty (240) days prior to the expiration of the term of any Schedule (or of any renewal thereof, if applicable) of Lessee’s intent to return the Equipment described on such Schedule to Lessor upon the expiration of the term of such Schedule. IF LESSEE FAILS TO PROVIDE THE FOREGOING NOTICE IN A TIMELY MANNER, THE TERM OF THE APPLICABLE SCHEDULE AUTOMATICALLY SHALL BE DEEMED TO HAVE BEEN EXTENDED, WHICH EXTENSION SHALL CONTINUE UNTIL ONE HUNDRED EIGHTY (180) DAYS AFTER THE DATE ON WHICH LESSEE PROVIDES THE REQUIRED NOTICE, DURING WHICH EXTENSION PERIOD LESSEE SHALL CONTINUE TO PAY TO LESSOR PER DIEM RENT AT THE LAST PREVAILING LEASE RATE UNDER THE APPLICABLE SCHEDULE; provided, however that Lessor may elect to terminate such extension at any time upon ten (10) days written notice to Lessee. During such extension period, the terms and conditions of this Lease (including, without limitation, the provisions of this Section 13) shall continue to be applicable. Solely for purposes of the definition of Stipulated Loss Value in Section 12(d) hereof, any such extension shall be deemed a renewal of the term of such Schedule. (b) Upon the expiration or earlier cancellation or termination of any Schedule, Lessee shall return the Equipment described on such Schedule to Lessor free and clear of all Liens whatsoever, to any of Lessee’s distribution center locations within the continental United States. Lessee shall provide, at its expense, transit insurance for the redelivery period in an amount equal to the replacement value of such Equipment and Lessor shall be named as the loss payee on all such policies of insurance. Lessee shall cause: (1) the Supplier’s representative or other qualified person acceptable to Lessor (the “**Designated Person**”) to de-install such Equipment in accordance with the Supplier’s specifications (as applicable) and pack such Equipment properly and in accordance with the Supplier’s recommendations (as applicable); and (2) such Equipment to be transported in a manner consistent with the Supplier’s recommendations and practices (as applicable). Upon return, such Equipment shall be: (i) in the same condition as when delivered to Lessee under the related Schedule, ordinary wear and tear excepted; (ii) mechanically and structurally sound, capable of performing the functions for which such Equipment was originally designed, in accordance with the Supplier’s published and recommended specifications (as applicable); (iii) redelivered with all component parts in good operating condition (and all components must meet or exceed the Supplier’s minimum recommended specifications, unless otherwise agreed by Lessor in writing); (iv) redelivered with all software and documentation necessary for the operation of such Equipment for the performance of the functions for which such Equipment was originally designed (whether or not such software is embedded in or otherwise is a part of such Equipment); and (v) cleaned and cosmetically acceptable, with all Lessee-installed markings removed and all rust, corrosion or other contamination having been removed or properly treated, and in such condition so that it may be immediately installed and placed in service by a third party. Upon delivery, such Equipment shall be in compliance with all applicable Federal, state and local laws, and health and safety guidelines. Lessee shall be responsible for the cost of all repairs, alterations, inspections, appraisals, storage charges, insurance costs, demonstration costs and other related costs necessary to cause such Equipment to be in full compliance with the terms of this Lease. (c) If requested by Lessor, Lessee shall also deliver all related records and other data to Lessor, including all records of maintenance, modifications, additions and major repairs, computerized maintenance history, and any maintenance and repair manuals (collectively, the “**Records**”). All manuals or other documents delivered to Lessor that are subject to periodic revision will be fully up-to-date and current to the latest revision standard of any particular manual or document. In the event any such Records are missing or incomplete, Lessor shall have the right to cause the same to be reconstructed at Lessee’s expense. (d) In addition to Lessor’s other rights and remedies hereunder, if such Equipment and the related Records are not returned in a timely fashion, or if repairs are necessary to place any item of Equipment in the condition required in this Section, Lessee shall (i) continue to pay to Lessor per diem rent at the last prevailing lease rate under the applicable Schedule with respect to such item of Equipment, for the period of delay in redelivery, and/or for the period of time reasonably necessary to accomplish such repairs, and (ii) pay to Lessor an amount equal to the aggregate cost of any such repairs. Lessor’s acceptance of such rent on account of such delay and/or repair does not constitute an extension or renewal of the term of the related Schedule or a waiver of Lessor’s right to prompt return of such Equipment in proper condition. Such amount shall be payable upon the earlier of Lessor’s demand or the return of such Equipment in accordance with this Lease. (e) Without limiting any other terms or conditions of this Lease, the provisions of this Section are of the essence of each Schedule, and upon application to any court of equity having jurisdiction, Lessor shall be entitled to a decree against Lessee requiring Lessee’s specific performance of its agreements in this Section.

LEASE AGREEMENT — X

6

14. **INDEMNITY**. (a) General. Lessee shall indemnify, defend and keep harmless Lessor and any Assignee (as defined in Section 17), and their respective agents and employees (each, an “**Indemnitee**”), from and against any and all Claims (other than such as may directly and proximately result from the actual, but not imputed, negligence or willful misconduct of such Indemnitee), by paying, on a net after-tax basis, or otherwise discharging same, when and as such Claims shall become due. Lessee agrees to further indemnify each such Indemnitee with respect to Claims for which such Indemnitee is strictly liable. Lessor shall give Lessee prompt notice of any Claim hereby indemnified against and Lessee shall be entitled to control the defense of and/or to settle any Claim, in each case, so long as (1) no Default or Event of Default has occurred and is then continuing, (2) Lessee confirms, in writing, its unconditional and irrevocable commitment to indemnify each Indemnitee with respect to such Claim, (3) Lessee is financially capable of satisfying its obligations under this Section, (4) Lessor approves the defense counsel selected by Lessee, and (5) there is no reasonable risk of criminal liability being imposed on Lessor or any of its directors, officers or employees as a result of such Claim. The term “**Claims**” shall mean all claims, allegations, harms, judgments, settlements, suits, actions, debts, obligations, direct damages, demands (for compensation, indemnification, reimbursement or otherwise), losses, penalties, fines, liabilities (including strict liability), charges that Lessor has incurred or for which it is responsible, in the nature of interest, Liens, and costs (including attorneys’ fees and disbursements and any other legal or non-legal expenses of investigation or defense of any Claim, whether or not such Claim is ultimately defeated or enforcing the rights, remedies or indemnities provided for hereunder, or otherwise available at law or equity to Lessor), of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, by or against any person, arising on account of (A) any Lease Document, including the performance, breach (including any Default or Event of Default) or enforcement of any of the terms thereof, or (B) the Equipment, or any part or other contents thereof, any substance at any time contained therein or emitted therefrom, including any hazardous substances, or the premises at which the Equipment may be located from time to time, or (C) the ordering, acquisition, delivery, installation or rejection of the Equipment, the possession of any property to which it may be attached from time to time, maintenance, use, condition, ownership or operation of any item of Equipment, and by whomsoever owned, used, possessed or operated, during the term of any Schedule with respect to that item of Equipment, the existence of latent and other defects (whether or not discoverable by Lessor or Lessee) any claim in tort for negligence or strict liability, and any claim for patent, trademark or copyright infringement, or the loss, damage, destruction, theft, removal, return, surrender, sale or other disposition of the Equipment, or any item thereof, including, Claims involving or alleging environmental damage, or any criminal or terrorist act, or for whatever other reason whatsoever. If any Claim is made against Lessee or an Indemnitee, the party receiving notice of such Claim shall promptly notify the other, but the failure of the party receiving notice to so notify the other shall not relieve Lessee of any obligation hereunder.

(b) Tax Indemnity. (1) Lessee represents and warrants that: (A) it believes that it is reasonable to estimate that the useful life of the Equipment exceeds the lease term (including any interim and fixed rental renewal periods) by the greater of one (1) year or twenty (20) percent of such estimated useful life, and that said Equipment will have a value at the end of the lease term, including any fixed rate renewal period, of at least twenty (20) percent of the Total Invoice Cost of the Equipment, without including in such value any increase or decrease for inflation or deflation during the original lease term; and (B) the Equipment is, and will be used by Lessee so as to remain, property eligible for the MACRS Deductions (as defined below).

(2) (A) If by reason of (i) any act or failure to act of Lessee (including a breach of any covenant or agreement of Lessee set forth in this Lease), or (ii) the misrepresentation of or breach by Lessee of any of the warranties and representations set forth in Section 14(b) (1) of this Lease and Section 6(b) of the Schedule (if applicable), Lessor in computing its taxable income or liability for tax, shall lose, or shall not have, or shall lose the right to claim or there shall be disallowed or recaptured for Federal and/or state income tax purposes, in whole or in part, the benefit of MACRS Deductions; or (B) Lessor shall become liable for additional tax as a result of Lessee having added an attachment or made an alteration to the Equipment, including (without limitation) any such attachment or alteration which would increase the productivity or capability of the Equipment so as to violate the provisions of Rev. Proc. 2001-28, 2001-1 C.B. 1156 (as it may hereafter be modified or superseded); or (C) Lessor shall be entitled to claim a lesser credit for foreign taxes against its Federal income tax liability than that to which Lessor would have been entitled if each item of income, gain, loss and deduction with respect to the Equipment had been treated as income from sources within the United States pursuant to Section 861 of the Code; hereinafter referred to as a “**Loss**”; then Lessee shall pay Lessor the Tax Indemnification Payment as additional rent and Lessor shall revise the Schedule(s) of Stipulated Loss Values to reflect the Loss. As used herein, “**MACRS Deductions**” shall mean the deductions under Section 167 of the Code, determined in accordance with the modified Accelerated Cost Recovery System with respect to the Total Invoice Cost of any item of the Equipment using the accelerated method set forth in Section 168(b)(1) or 168(b)(2) of the Code as in effect on the date of this Lease for property assigned to the class of property specified in the Schedule pertaining thereto and (if the applicable Schedule specifies that bonus depreciation is available) taking into account the fifty (50) percent special depreciation allowance and basis adjustment under Section 168(k)(1) of the Code; “**Lessor**” shall be deemed to include the consolidated Federal taxpayer group of which Lessor is a member; and “**Tax Indemnification Payment**” shall mean such amount as, after consideration of (i) all taxes required to be paid by Lessor in respect of the receipt thereof under the laws of any governmental or taxing authority in the United States, and (ii) the amount of any interest or penalty which may be payable by Lessor in connection with the Loss, shall be required to cause Lessor’s after-tax net return (the “**Net Return**”) to be equal to, but no greater than, the Net Return computed consistently with current tax laws (and with the assumption that Lessor is taxed at the highest marginal Federal and state tax rates) as of the date of this Lease that would have been available to Lessor had the Loss not occurred.

LEASE AGREEMENT — X

7

(c) Lessor promptly shall notify Lessee in writing of such Loss and Lessee shall pay to Lessor the Tax Indemnification Payment within thirty (30) days of such notice. For these purposes, a Loss shall occur upon the earliest of: (A) the happening of any event (such as disposition or change in use of any item of the Equipment) which will cause such Loss, (B) the payment by Lessor to the Internal Revenue Service or state taxing authority of the tax increase (including an increase in estimated taxes) resulting from such Loss; (C) the date on which the Loss is realized by Lessor; or (D) the adjustment of the tax return of Lessor to reflect such Loss.

15. **DEFAULT**. A default shall be deemed to have occurred hereunder and under a Schedule upon the occurrence of any of the following (each, an “**Event of Default**”): (a) non-payment of Basic Rent on the applicable rent payment date; (b) non-payment of any Other Payment within five (5) days after it is due; (c) failure to maintain, use or operate the Equipment in compliance with applicable law; (d) breach by Lessee of its covenants pursuant to Section 4(d) hereof; (e) failure to obtain, maintain and comply with all of the insurance coverages required under this Lease; (f) any transfer or encumbrance, or the existence of any Lien, that is prohibited by this Lease; (g) a payment or other default by Lessee under any loan, lease, guaranty or other financial obligation to Lessor or its affiliates which default has been declared; (h) a payment or other default by Lessee under any material (that is, for an amount in excess of $10,000,000) loan, lease, guaranty or other material financial obligation to any third party which default has been declared; (i) an inaccuracy in any representation or breach of warranty by Lessee (including any false or misleading representation or warranty) in any financial statement or Lease Document, including any omission of any substantial contingent or unliquidated liability or claim against Lessee; (j) the commencement of any bankruptcy, insolvency, receivership or similar proceeding by or against Lessee or any of its properties or business (unless, if involuntary, the proceeding is dismissed within sixty (60) days of the filing thereof) or the rejection of this Lease or any other Lease Document in any such proceeding; (k) the failure by Lessee generally to pay its debts as they become due or its admission in writing of its inability to pay the same; (l) Lessee shall (1) enter into any transaction of merger or consolidation, unless Lessee shall be the surviving entity (such actions being referred to as an “**Event**”), unless the surviving entity is organized and existing under the laws of the United States or any state, and prior to such Event: (A) such person executes and delivers to Lessor (x) an agreement satisfactory to Lessor, in its sole discretion, containing such person’s effective assumption, and its agreement to pay, perform, comply with and otherwise be liable for, in a due and punctual manner, all of Lessee’s obligations having previously arisen, or then or thereafter arising, under any and all of the Lease Documents, and (y) any and all other documents, agreements, instruments, certificates, opinions and filings requested by Lessor; and (B) Lessor is satisfied as to the creditworthiness of such person, and as to such person’s conformance to the other standard criteria then used by Lessor when approving transactions similar to the transactions contemplated in this Lease; (2) cease to do business as a going concern, liquidate, or dissolve; or (3) sell, transfer, or otherwise dispose of all or substantially all of its assets or property; (m) effective control of Lessee’s voting capital stock, issued and outstanding from time to time, is not retained by the present holders (unless Lessee shall have provided thirty (30) days’ prior written notice to Lessor of the proposed disposition and Lessor shall have consented thereto in writing); (n) there occurs a default or anticipatory repudiation under the Guaranty; or (o) breach by Lessee of any other covenant, condition or agreement (other than those in items (a)-(n)) under this Lease or any of the other Lease Documents that continues for thirty (30) days after Lessor’s written notice to Lessee (but such notice and cure period will not be applicable unless such breach is curable by practical means within such notice period). The occurrence of an Event of Default with respect to any Schedule shall, at the sole discretion of Lessor, constitute an Event of Default with respect to any or all Schedules to which it is then a party. Notwithstanding anything to the contrary set forth herein, Lessor may exercise all rights and remedies hereunder independently with respect to each Schedule.

LEASE AGREEMENT — X

8

16. **REMEDIES**. (a) If an Event of Default occurs with respect to any Schedule, the Lessor thereunder may (in its sole discretion) exercise any one or more of the following remedies with respect to such Schedule and any or all other Schedules to which such Lessor is then a party: (1) proceed at law or in equity, to enforce specifically Lessee’s performance or to recover damages; (2) declare each such Schedule in default, and cancel each such Schedule or otherwise terminate Lessee’s right to use the Equipment and Lessee’s other rights, but not its obligations, thereunder and Lessee shall immediately assemble, make available and, if Lessor requests, return the Equipment to Lessor in accordance with the terms of this Lease; (3) enter any premises where any item of Equipment is located and take immediate possession of and remove (or disable in place) such item (and/or any unattached parts) by self-help, summary proceedings or otherwise without liability (except for liability for loss or damage to cargo or other property located in the Equipment); provided, however, Lessor shall not be entitled to any lien with regard to any cargo or other property located in the Equipment and Lessee shall have the absolute right to remove such cargo or property prior to any such taking; (4) use Lessee’s premises for storage without liability; (5) sell, re-lease or otherwise dispose of any or all of the Equipment, whether or not in Lessor’s possession, at public or private sale, with or without notice to Lessee, and apply or retain the net proceeds of such disposition, with Lessee remaining liable for any deficiency and with any excess being retained by Lessor; (6) enforce any or all of the preceding remedies with respect to any related Collateral, and apply any deposit or other cash collateral, or any proceeds of any such Collateral, at any time to reduce any amounts due to Lessor; (7) demand and recover from Lessee all Liquidated Damages and all Other Payments whenever the same shall be due; and (8) exercise any and all other remedies allowed by applicable law, including the UCC. As used herein, “**Liquidated Damages**” shall mean the liquidated damages (all of which, Lessee hereby acknowledges, are damages to be paid in lieu of future Basic Rent and are reasonable in light of the anticipated harm arising by reason of an Event of Default, and are not a penalty) described in the first sentence of parts (1) or (2) of Section 16(b), depending upon the recovery and disposition of the Equipment leased under the applicable Schedule. Upon the occurrence of the Event of Default described in Section 15(j) hereof, the remedy provided in Clause (7) above shall be automatically exercised without the requirement of prior written notice to Lessee or of any other act or declaration by Lessor, and the Liquidated Damages described therein shall be immediately due and payable.

(b) (1) If an Event of Default occurs with respect to any Schedule, if Lessor recovers the Equipment and disposes of it by a lease or elects not to dispose of the Equipment after recovery, upon demand, Lessee shall pay to Lessor an amount equal to the sum of (A) any accrued and unpaid Rent as of the date Lessor recovers possession of the Equipment, plus (B) the present value as of such date of the total Basic Rent for the then remaining term of such Schedule, minus (C) either, as applicable, (i) the present value, as of the commencement date of any substantially similar re-lease of the Equipment, of the re-lease rent payable for that period, commencing on such date, which is comparable to the then remaining term of such Schedule or (ii) the present value, as of that certain date which may be determined by taking into account Lessor’s having a reasonable opportunity to remarket the Equipment, of the “market rent” for such Equipment (as computed pursuant to Article 2A) in the continental United States on that date, computed for that period, commencing on such date, which is comparable to the then remaining term of such Schedule; provided, however, Lessee acknowledges that if Lessor is unable after reasonable effort to dispose of the Equipment at a reasonable price and pursuant to other reasonable terms, or the circumstances reasonably indicate that such an effort will be unavailing, the “market rent” in such event will be deemed to be $0.00, but in the event that Lessor does eventually re-lease or otherwise dispose of the Equipment, it will apply the net proceeds of such disposition, to the extent received in good and indefeasible funds, as a credit or reimbursement, as applicable, in a manner consistent with the applicable provisions of Article 2A. Any amounts discounted to present value, shall be discounted at the rate of three percent (3%) per annum, compounded annually.

(2) If an Event of Default occurs with respect to any Schedule, if Lessee fails to return the Equipment in the manner and condition required by this Lease, or Lessor recovers and sells the Equipment, upon demand, Lessee shall pay to Lessor an amount calculated as the Stipulated Loss Value of the Equipment (determined as of the next rent payment date after the date of the occurrence of the subject Event of Default), together with all other Rent due with respect to the related Schedule as of such determination date, any amount due from Lessee pursuant to Rider No. 1 attached to the Schedule, and all Enforcement Costs (defined in Section 16(c)), less a credit for any disposition proceeds, if applicable pursuant to the application provisions in the next sentence. If Lessor demands the Liquidated Damages under this part (2), and recovers and sells the Equipment, any proceeds received in good and indefeasible funds shall be applied by Lessor, with respect to the related Schedule: first, to pay all Enforcement Costs, to the extent not previously paid; second, to pay to Lessor an amount equal to any unpaid Rent due and payable, together with the Liquidated Damage amounts specified in this part (2), to the extent not previously paid; third, to pay to Lessor any interest accruing on the amounts covered by the preceding clauses, at the Default Rate, from and after the date the same becomes due, through the date of payment; and fourth, (A) if the Lessor under such Schedule is also the Lessor under any other Schedules (whether by retaining the same, or as Assignee), to satisfy any remaining obligations under any or all such other Schedules, or (B) if such Lessor is not the Lessor under any other Schedule, or if Lessee’s obligations to such Lessor under such other Schedules have been fully and indefeasibly satisfied, to reimburse Lessee for such amounts to the extent paid by Lessee as Liquidated Damages pursuant to this part (2).

LEASE AGREEMENT — X

9

(c) A cancellation of any Schedule shall occur only upon written notice by Lessor to Lessee. Unless already specifically provided for in Section 16(b), if an Event of Default occurs with respect to any Schedule, Lessee shall also be liable for all of the following (“**Enforcement Costs**”): (1) all unpaid Rent due before, during or after exercise of any of the foregoing remedies, and (2) all reasonable legal fees (including consultation, drafting notices or other documents, expert witness fees, sending notices or instituting, prosecuting or defending litigation or arbitration) and other enforcement costs and expenses incurred by reason of any Default or Event of Default or the exercise of Lessor’s rights or remedies, including all expenses incurred in connection with the return or other recovery of any Equipment in accordance with the terms of this Lease or in placing such Equipment in the condition required hereby, or the sale, re-lease or other disposition (including but not limited to costs of transportation, possession, storage, insurance, taxes, lien removal, repair, refurbishing, advertising and brokers’ fees), and sales or use taxes incurred by Lessor in connection with any disposition of the Equipment after the occurrence of an Event of Default, and all other pre-judgment and post-judgment enforcement related actions taken by Lessor or any actions taken by Lessor in any bankruptcy case involving Lessee, the Equipment, or any other person. From and after the date on which an Event of Default occurs, Lessee shall pay interest to Lessor with respect to all amounts due hereunder until such amounts are received by Lessor in good funds at a per annum interest rate that is the lesser of ten (10) percent or the maximum rate permitted by applicable law (the “**Default Rate**”). No right or remedy is exclusive and each may be used successively and cumulatively. Any failure to exercise the rights granted hereunder upon any Default or Event of Default shall not constitute a waiver of any such right. No extension of time for payment or performance of any of Lessee’s obligations hereunder shall operate to release, discharge, modify, change or affect the original liability of Lessee for such obligations, either in whole or in part. In any action to repossess any Equipment or other Collateral, Lessee waives any bonds and any surety or security required by any applicable laws as an incident to such repossession. Notices of Lessor’s intention to accelerate, acceleration, nonpayment, presentment, protest, dishonor or any other notice whatsoever (other than as expressly set forth herein) are waived by Lessee. Any notice given by Lessor of any disposition of the Equipment or any Collateral or other intended action of Lessor which is given in accordance with this Lease at least five (5) business days prior to such action, shall constitute fair and reasonable notice of such action. The execution of a Schedule shall not constitute a waiver by Lessor of any pre-existing Default or Event of Default. With respect to any disposition of any Equipment or Collateral pursuant to this Section, (i) Lessor shall have no obligation, subject to the requirements of commercial reasonableness, to clean-up or otherwise prepare the same for disposition, (ii) Lessor may comply with any applicable law in connection with any such disposition, and any actions taken in connection therewith shall not be deemed to have adversely affected the commercial reasonableness of any disposition thereof, (iii) Lessor may disclaim any title or other warranties in connection with any such disposition, and (iv) Lessee shall remain responsible for any deficiency remaining after Lessor’s exercise of its remedies and application of any funds or credits against Lessee’s obligations under any Schedule, and Lessor shall retain any excess after such application.

17. **ASSIGNMENT**. (a) LESSEE SHALL NOT ASSIGN, DELEGATE, TRANSFER OR ENCUMBER ANY OF ITS RIGHTS OR OBLIGATIONS HEREUNDER OR UNDER ANY SCHEDULE, OR ITS LEASEHOLD INTEREST OR ANY COLLATERAL, SUBLET THE EQUIPMENT OR OTHERWISE PERMIT THE EQUIPMENT TO BE OPERATED OR USED BY, OR TO COME INTO OR REMAIN IN THE POSSESSION OF, ANYONE BUT LESSEE. Without limiting the foregoing, (1) Lessee may not attempt to dispose of any of the Equipment, and (2) Lessee shall (A) maintain the Equipment free from all Liens, other than Permitted Liens, (B) notify Lessor immediately upon receipt of notice of any Lien affecting the Equipment, and (C) defend Lessor’s title to the Equipment. A “**Permitted Lien**” shall mean any Lien for Impositions, Liens of mechanics, materialmen, or suppliers and similar Liens arising by operation of law, provided that any such Lien is incurred by Lessee in the ordinary course of business, for sums that are not yet delinquent or are being contested in good faith and with due diligence, by negotiations or by appropriate proceedings which suspend the collection thereof and, in Lessor’s sole discretion, (i) do not involve any substantial danger of the sale, forfeiture or loss of the Equipment or any interest therein, and (ii) for the payment of which adequate assurances or security have been provided to Lessor. No disposition referred to in this Section shall relieve Lessee of its obligations, and Lessee shall remain primarily liable under each Schedule and all of the other Lease Documents. (b) Lessor may at any time with or without notice to Lessee grant a security interest in, sell, assign, delegate or otherwise transfer (an “**Assignment**”) all or any part of its interest in the Equipment, this Lease or any Schedule and any related Lease Documents or any Rent thereunder, or the right to enter into any Schedule, and Lessee shall perform all of its obligations thereunder, to the extent so transferred, for the benefit of the beneficiary of such Assignment (such beneficiary, including any successors and assigns, an “**Assignee**”). Lessee agrees not to assert against any Assignee any Abatement (without limiting the provisions of Section 2) or Claim that Lessee may have against Lessor, and Assignee shall not be bound by, or otherwise required to perform any of Lessor’s obligations, unless expressly assumed by such Assignee. Lessor shall be relieved of any such assumed obligations. If so directed in writing, Lessee shall pay all Rent and all other sums that become due under the assigned Schedule and other Lease Documents directly to the Assignee or any other party designated in writing by Lessor or such Assignee. Lessee acknowledges that Lessor’s right to enter into an Assignment is essential to Lessor and, accordingly, waives any restrictions under applicable law with respect to an Assignment and any related remedies. Upon the request of Lessor or any Assignee, Lessee also agrees (i) to promptly execute and deliver to Lessor or to such Assignee an acknowledgment of the Assignment in form and substance satisfactory to the requesting party, an insurance certificate and such other documents and assurances reasonably requested by Lessor or Assignee, and (ii) to comply with all other reasonable requirements of any such Assignee in connection with any such Assignment. Upon such Assignment and except as may otherwise be provided herein, all references in this Lease to “Lessor” shall include such Assignee. (c) Subject always to the foregoing, this Lease and each Schedule shall inure to the benefit of, and are binding upon, Lessee’s and Lessor’s respective successors and assigns.

LEASE AGREEMENT — X

10

18. **MISCELLANEOUS**. (a) This Lease, each Schedule, any Riders hereto or thereto and any commitment letter between the parties, constitute the entire agreement between the parties with respect to the subject matter hereof and thereof and shall not be amended or modified in any manner except by a document in writing executed by both parties. (b) Any provision of this Lease that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. (c) The representations, warranties and agreements of Lessee herein shall be deemed to be continuing and to survive the execution and delivery of this Lease, each Schedule and any other Lease Documents. With respect to each Schedule, the obligations of Lessee under Sections 8, 9, 10, 12, 13 and 14 hereof, together with any of Lessee’s obligations under the other provisions of this Lease (as incorporated therein) which have accrued but not been fully satisfied, performed or complied with prior to the expiration or earlier cancellation or termination of such Schedule, shall survive the expiration or earlier cancellation or termination thereof. (d) All of Lessee’s obligations hereunder and under any Schedule shall be performed at Lessee’s sole expense. Lessee shall reimburse Lessor promptly upon demand for all expenses incurred by Lessor in connection with (1) any action taken by Lessor at Lessee’s request, or in connection with any option, (2) the filing or recording of real property waivers and UCCs, (3) any Enforcement Costs not recovered pursuant to Section 16, (4) all inspections, and (5) all lien search reports (and copies of filings) requested by Lessor. If Lessee fails to perform any of its obligations with respect to a Schedule, Lessor shall have the right, but shall not be obligated, to effect such performance, and Lessee shall reimburse Lessor, upon demand, for all expenses incurred by Lessor in connection with such performance. Lessor’s effecting such compliance shall not be a waiver of Lessee’s default. (e) Lessee irrevocably appoints Lessor as Lessee’s attorney-in-fact (which power shall be deemed coupled with an interest) to: (1) make minor corrections to manifest errors in factual data in any Schedule and/or any addenda, attachments, exhibits and/or riders to this Lease or any Schedule; and (2) execute, endorse and deliver any documents and checks or drafts relating to or received in payment for any loss or damage under the policies of insurance required by this Lease, but only to the extent that the same relates to the Equipment, or are required by titling agencies in order to reflect Lessor as the owner and/or lienholder with respect to certificates of title pertaining to motor vehicles (if any) comprising the Equipment. (f) LESSOR AND LESSEE HEREBY WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH LESSEE AND/OR LESSOR MAY BE PARTIES ARISING OUT OF OR IN ANY WAY PERTAINING TO THIS LEASE. (g) All notices (excluding billings and communications in the ordinary course of business) hereunder shall be in writing, personally delivered, delivered by overnight courier service, sent by facsimile transmission (with confirmation of receipt), or sent by certified mail, return receipt requested, addressed to the other party at its respective address stated below the signature of such party or at such other address as such party shall from time to time designate in writing to the other party; and shall be effective from the date of receipt. (h) This Lease shall not be effective unless and until accepted by execution by an officer of Lessor at the address, in the State of Maryland (the “**State**”), as set forth below the signature of Lessor. THIS LEASE AND ALL OF THE OTHER LEASE DOCUMENTS, AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER, SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE (WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES OF THE STATE), INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, REGARDLESS OF THE LOCATION OF THE EQUIPMENT. The parties agree that any action or proceeding arising out of or relating to this Lease may be commenced in any state or Federal court in the State, and agree that a summons and complaint commencing an action or proceeding in any such court shall be properly served and shall confer personal jurisdiction if served personally or by certified mail to it at the mailing address below Lessee’s signature, or as it may provide in writing from time to time, or as otherwise provided under the laws of the State. (i) This Lease and all of the other Lease Documents may be executed in counterparts. Photocopies or facsimile transmissions of signatures shall be deemed original signatures and shall be fully binding on the parties to the same extent as original signatures. The transfer or possession of the “Original” of this Lease shall be irrelevant to the full or collateral assignment of, or grant of security interest in, any Schedule; provided, however, no security interest in any Schedule may be created through the transfer, possession or control, as applicable, of any counterpart of such Schedule other than the original thereof, which shall be identified as the document or record (as applicable) marked “Original” and all other counterparts shall be marked “Duplicate”. (j) If Lessor is required by the terms hereof to pay to or for the benefit of Lessee any amount received as a refund of an Imposition or as insurance proceeds, Lessor shall not be required to pay such amount, if any Default has occurred and not been cured or any Event of Default shall have occurred and not been waived by Lessor. In addition, if Lessor is required by the terms hereof to cooperate with Lessee in connection with certain matters, such cooperation shall not be required if a Default or Event of Default has then occurred and is continuing. (k) To the extent Lessor is required to give its consent or approval with respect to any matter, the reasonableness of Lessor’s withholding of such consent shall be determined based on the then existing circumstances; provided, that Lessor’s withholding of its consent shall be deemed reasonable for all purposes if (i) the taking of the action that is the subject of such request, might result (in Lessor’s discretion), in (A) an impairment of Lessor’s rights, title or interests hereunder or under any Schedule or other Lease Document, or to the Equipment, or (B) expose Lessor to any Claims or Impositions, or (ii) Lessee fails to provide promptly to Lessor any filings, certificates, opinions or indemnities required by Lessor as a condition to such consent. (l) There is no restriction (either express or implied) on any disclosure or dissemination of the tax treatment or tax structure of the transactions contemplated by this Lease or any documents executed in connection herewith. Further, each party hereto acknowledges that it has no proprietary rights to any tax matter or tax idea or to any element of the transaction structure contemplated by this Lease; and each party hereto (and any employee, representative or agent of any party hereto) may disclose to any and all persons (without limitation of any kind), the Federal tax treatment and Federal tax structure of the transaction contemplated by this Lease. This Section 18(l) is intended to cause the transaction contemplated by this Lease to be treated as not having been offered under conditions of confidentiality for purposes of Section 1.6011-4(b)(3) (or any successor provision) of the Treasury Regulations promulgated under Section 6011 of the Code and Section 6111 of the Code and the Treasury Regulations promulgated thereunder; and shall be construed in a manner consistent with such purpose.

LEASE AGREEMENT — X

11

19. **DEFINITIONS AND RULES OF CONSTRUCTION**. (a) The following terms when used in this Lease or in any of the Schedules have the following meanings: (1) “**affiliate**”: with respect to any given person, shall mean (i) each person that directly or indirectly owns or controls, whether beneficially or as a trustee, guardian or other fiduciary, five (5) percent or more of the voting stock, membership interest or similar equity interest having ordinary voting power in the election of directors or managers of such person, (ii) each person that controls, is controlled by, or is under common control with, such person, or (iii) each of such person’s officers, directors, members, joint venturers and partners. For the purposes of this definition, “control” of a person means the possession, directly or indirectly, of the power to direct or cause the direction of its management or policies, whether through the ownership of voting securities, by contract or otherwise; (2) “**applicable law**” or “**law**”: any law, rule, regulation, ordinance, order, code, common law, interpretation, judgment, directive, decree, treaty, injunction, writ, determination, award, permit or similar norm or decision of any governmental authority; (3) **“AS IS, WHERE IS”**: **AS IS, WHERE IS**, without warranty, express or implied, with respect to any matter whatsoever; (4) “**business day**”: any day, other than a Saturday, Sunday, or legal holiday for commercial banks under the laws of the state of the Lessor’s notice address; (5) “**governmental authority**”: any federal, state, county, municipal, regional or other governmental authority, agency, board, body, instrumentality or court, in each case, whether domestic or foreign; (6) “**person**”: any individual, corporation, limited liability entity, partnership, joint venture, or other legal entity or a governmental authority, whether employed, hired, affiliated, owned, contracted with, or otherwise related or unrelated to Lessee or Lessor; and (7) “**UCC**” or “**Uniform Commercial Code**”: the Uniform Commercial Code as in effect in the State or in any other applicable jurisdiction; and any reference to an article (including Article 2A) or section thereof shall mean the corresponding article or section (however termed) of any such applicable version of the Uniform Commercial Code. (b) The following terms when used herein or in any of the Schedules shall be construed as follows: (1) “**herein**,” “**hereof**,” “**hereunder**,” etc.: in, of, under, etc. this Lease or such other Lease Document in which such term appears (and not merely in, of, under, etc. the section or provision where the reference occurs); (2) “**including**”: means including without limitation unless such term is followed by the words “and limited to,” or similar words; and (3) “**or**”: at least one, but not necessarily only one, of the alternatives enumerated. Any defined term used in the singular preceded by “any” indicates any number of the members of the relevant class. Any Lease Document or other agreement or instrument referred to herein means such agreement or instrument as supplemented and amended from time to time. Any reference to Lessor or Lessee shall include their permitted successors and assigns. Any reference to an applicable law shall also mean such law as amended, superseded or replaced from time to time.

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LEASE AGREEMENT — X

12

IN WITNESS WHEREOF, the parties hereto have caused this Master Lease Agreement to be duly executed, under seal, as of the day and year first above set forth.

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| ARCO EQUIPMENT FINANCE CORPORATION | | | | | | |  |  |  | KRON FREIGHT SYSTEM, INC. | | | | |  |
| Lessor | | | | | | |  |  |  | Lessee | | | | |  |
|  |  |  | | | | |  |  |  |  |  |  | | |  |
| By: |  | /s/ Jose Soltera | | | | | [SEAL] |  |  | By: |  | /s/ Bridget Jones | | | [SEAL] |
|  |  |  | | | | |  |  |  |  |  |  | | |  |
|  |  | Name: Jose Soltera | | | | |  |  |  |  |  | Name: Bridget Jones | | |  |
|  |  | Title:   Senior Vice President | | | | |  |  |  |  |  | Title:   Assistant Treasurer | | |  |
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|  |  |  | | | | |  |  |  | Form of Organization: Corporation | | | | |  |
|  |  |  | | | | |  |  |  | Jurisdiction of Organization: Delaware | | | | |  |
|  |  |  | | | | |  |  |  | Organizational No.: 0937905 | | | | |  |
|  |  |  | | | | |  |  |  | Federal Employer Identification No.: BBBBBBBB | | | | |  |

LEASE AGREEMENT — X

13

ARCO EQUIPMENT FINANCE CORPORATION

**EQUIPMENT SCHEDULE SERIES \_\_\_\_ NO. \_\_\_\_\_**

executed pursuant to that certain Master Lease Agreement dated as of December 30, 2009 (the “Lease”; which is incorporated herein by reference). This Equipment Schedule, incorporating by reference the terms and conditions of the Lease, constitutes a separate instrument of lease. To the extent of any conflict or inconsistency between the terms of this Equipment Schedule and the Lease, the terms of this Equipment Schedule shall prevail.

1. EQUIPMENT. The Equipment leased hereunder shall be as set forth in the schedule attached hereto.

TOTAL INVOICE COST: $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

2. TERM. Upon and after the date of execution hereof, the Equipment shall be subject to the terms and conditions provided herein and in the Lease.

A full term of lease with respect to said Equipment shall commence on the date hereof and shall extend for thirty-six (36) months after the first day of  \_\_\_\_\_, 2010 (the “Base Lease Commencement Date”).

3. RENT.

(a) During the period from the date hereof to the Base Lease Commencement Date (the “Interim Term”), the pro-rated daily rent for said Equipment shall be $\_\_\_\_\_\_ per day; computed as  \_\_\_\_\_% of the Total Invoice Cost specified above. This pro-rated payment shall be made on the last day of the month for each month during the Interim Term.

(b) From and after the Base Lease Commencement Date, the monthly rent for said Equipment during the term of this Lease shall be $\_\_\_\_\_, computed as  \_\_\_\_\_% of the Total Invoice Cost specified above. Rent payments shall be made, in advance, on the first day of the month for each month during the term of this Lease.

4. LESSEE’S CONFIRMATION. Lessee hereby confirms and warrants to Lessor that the Equipment: (a) was duly delivered to Lessee at the location specified in Section 5 hereof; (b) has been received, inspected and determined to be in compliance with all applicable specifications and that the Equipment is hereby accepted for all purposes of the Lease; and (c) is a part of the “Equipment” referred to in the Lease and is taken subject to all terms and conditions therein and herein provided.

5. LOCATION OF EQUIPMENT. The location of the Equipment is specified on the Schedule of Equipment attached hereto.

6. TAX ATTRIBUTES. (a) The class of property to which the Equipment is assigned (as referenced in Section 14(b)(2) of the Lease) is 3-year property.

(b) The bonus depreciation [is/is not] available with respect to the Equipment. [IF BONUS DEPRECIATION IS AVAILABLE, INCLUDE THE FOLLOWING: Lessee represents and warrants that: (1) each item of Equipment constitutes “qualified property” pursuant to Section 168(k) of the Code and is eligible for the additional first-year depreciation deduction equal to fifty (50) percent of the Total Invoice Cost of the Equipment contemplated by the Code, as specified on this Schedule; (2) the Equipment shall be treated as originally placed in service not earlier than the date of the execution and delivery of this Schedule, or in the event the transaction is a sale-leaseback transaction, Lessee shall not have placed in service the Equipment subject to this Lease at any time prior to three (3) months before the execution and delivery of this Schedule; (3) Lessee has not arranged to purchase, and Lessor is not purchasing, the Equipment pursuant to a binding written contract entered into before January 1, 2008; and (4) each item of Equipment shall be placed in service before January 1, 2010.]

7. COMMERCIAL LIABILITY INSURANCE. The amount of commercial liability insurance referenced in Section 11 of the Lease is $10,000,000.00.

8. PERSONAL PROPERTY TAXES.

Please choose one of the options below by initialing where indicated. Initial ONLY ONE choice of option:

OPTION 1 Lessee’s Initials:  \_\_\_\_\_

(Applicable in Jurisdictions Requiring Lessor to List Equipment): Lessee agrees that it will not list any of such Equipment for property tax purposes or report any property tax assessed against such Equipment until otherwise directed in writing by Lessor. Upon receipt of any property tax bill pertaining to such Equipment from the appropriate taxing authority, Lessor will pay such tax and will invoice Lessee for the expense. Upon receipt of such invoice, Lessee will promptly reimburse Lessor for such expense;

OPTION 2 Lessee’s Initials:  \_\_\_\_\_

(Applicable in Jurisdictions Permitting Lessee to List Equipment): Lessee agrees that it will (a) list all such Equipment, (b) report all property taxes assessed against such Equipment, and (c) pay all such taxes when due directly to the appropriate taxing authority until Lessor shall otherwise direct in writing.

9. SCHEDULE OF STIPULATED LOSS VALUES. This Schedule of Stipulated Loss Values shall be applicable solely to the Equipment described in this Equipment Schedule.

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| --- | --- | --- |
|  |  |  |
| Rent |  | Percent of Total |
| Payment No. |  | Invoice Cost |
|  |  |  |

10. RIDER. Rider No. 1 attached hereto is incorporated in this Equipment Schedule.

11. PAYMENT AUTHORIZATION. Lessor is hereby irrevocably authorized and directed to pay the Total Invoice Cost specified above as follows:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  |  |  |  |
| Company Name |  | Address |  | Amount |
|  |  |  |  |  |

Lessor is hereby authorized to insert such factually correct information as is necessary to complete this Equipment Schedule, including (without limitation) the date of execution, and the rental payment amount(s) and factor(s).

[OPTIONAL: USE ONLY IF ALL EQUIPMENT ON THIS SCHEDULE IS SALE-LEASEBACK]

12. BILL OF SALE. In consideration of the payment by Lessor of the amount specified herein as the Total Invoice Cost of the items of Equipment listed on the Schedule of Equipment attached hereto, the receipt and sufficiency of which are hereby acknowledged, Lessee does hereby bargain, sell, assign, transfer and set over to Lessor such Equipment, together with whatever claims and rights Lessee may have against the manufacturer and/or supplier of such Equipment, including (but not limited to) all warranties with respect thereto.

15

Lessee represents and warrants that: (a) Lessee has good and marketable title to such Equipment conveyed hereunder and does hereby transfer an interest therein free and clear of any and all encumbrances, liens, charges or defects; (b) the transfer of an interest in such Equipment (1) has been duly authorized by all necessary action on the part of Lessee, (2) does not require the consent of any stockholder, member, trustee or holders of any indebtedness of Lessee, except such as have been duly obtained, and (3) does not and will not contravene any law, governmental rule, regulation or order now binding on Lessee, or the organizational documents of Lessee, or contravene the provisions of, or constitute a default under, or result in the creation of any lien or encumbrance upon the property of Lessee under, any indenture, mortgage, contract or other agreement to which Lessee is a party or by which it or its property is bound; and (c) no filing or recordation must be made, no notice must be given, and no other action must be taken with respect to any state or local jurisdiction, or any person, in order to preserve to Lessor all the rights transferred hereby.

DATE OF EXECUTION: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_

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| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  |  |  |  |  |  |  |  |  |  |
| ARCO EQUIPMENT FINANCE CORPORATION | | |  |  |  | KRON FREIGHT SYSTEM, INC. | | |  |
| Lessor | | |  |  |  | Lessee | | |  |
|  |  |  |  |  |  |  |  |  |  |
| By: |  |  | [SEAL] |  |  | By: |  |  | [SEAL] |
|  |  | |  |  |  |  |  | |  |
|  | Name: |  |  |  |  |  | Name: |  |  |
|  | Title: |  |  |  |  |  | Title: |  |  |

16

ARCO EQUIPMENT FINANCE CORPORATION

**RIDER NO. 1 TO EQUIPMENT SCHEDULE SERIES \_\_\_ NO. \_\_\_\_\_**

To and part of Equipment Schedule Series \_\_\_\_\_\_ No.  \_\_\_\_\_  dated as of the  \_\_\_\_\_  day of  \_\_\_\_\_, 20\_\_\_\_\_  (the “Schedule”), executed pursuant to that certain Master Lease Agreement dated as of the 30th day of December, 2009 (the “Lease”), each between ARCO EQUIPMENT FINANCE CORPORATION, its successors and assigns (“Lessor”), and KRON FREIGHT SYSTEM, INC., its successors and permitted assigns (“Lessee”).

A. TERMINAL RENTAL ADJUSTMENT. It is presently anticipated that the fair market value of the Equipment upon the expiration of the original lease term relating thereto will be an amount equal to the Estimated Residual Value of the Equipment specified on this Schedule. Upon expiration of the original lease term, Lessor will attempt to sell the Equipment. If the Net Proceeds of Sale (as hereafter defined) is less than thirty (30) percent of the Total Invoice Cost of the Equipment (the “Estimated Residual Value”), promptly upon demand Lessee shall pay to Lessor the amount of the difference. If the Net Proceeds of Sale exceeds the Estimated Residual Value, the amount of the difference promptly shall be paid by Lessor to Lessee. If the Equipment has not been sold on the expiration date of the original lease term relating thereto, then the Net Proceeds of Sale shall be deemed to be zero; and promptly upon demand Lessee shall pay to Lessor an amount equal to the Estimated Residual Value of the Equipment. If Lessor thereafter shall sell the Equipment, the Net Proceeds of Sale promptly shall be paid by Lessor to Lessee. Any such payment by either Lessee or Lessor shall be deemed to be a Terminal Rental Adjustment with respect to the Equipment. As used herein, “Net Proceeds of Sale” shall mean the gross selling price actually received by Lessor less all (i) selling expenses incurred by Lessor, (ii) amounts which (if not paid) would constitute a lien on the Equipment for which Lessee is responsible under the Lease, and (iii) applicable sales or other transfer taxes paid by Lessor. As used herein, “Equipment” shall mean the Equipment described on all Schedules of this series.

As required by Section 7701(h) of the Internal Revenue Code of 1986, as now or hereafter amended, Lessee shall execute and deliver to Lessor the Certification by Lessee in substantially the form attached hereto as Exhibit No. 1. Lessee acknowledges that the Truth in Mileage Act of 1986 (and the regulations promulgated thereunder) requires the lessee of motor vehicles (at the time such motor vehicles are terminated from the lease) to provide a written disclosure to the lessor regarding the mileage of such motor vehicles. Under this law, the “failure to complete or providing false information may result in fines and/or imprisonment”. Therefore, Lessee agrees to provide to Lessor (on a form provided by Lessor) upon termination of a motor vehicle from the Lease the mileage disclosure information required by the Federal regulations.

B. OPTION TO PURCHASE. Provided that no Default or Event of Default has then occurred, Lessee shall have the option to purchase, upon the expiration of the term of the Lease, all but not less than all of the Equipment upon the following terms and conditions: If Lessee desires to exercise this option it shall, at least two hundred forty (240) days before expiration of the term of the Lease with respect to the first Schedule of this series to terminate in accordance with its terms, give Lessor written notice of its intention to exercise this option to purchase and shall engage in negotiations with Lessor to determine the purchase price for the Equipment. Not less than one hundred eighty (180) days before expiration of the term of the Lease with respect to the first Schedule of this series to terminate in accordance with its terms, Lessee shall give Lessor written notice of its election to purchase on the terms mutually agreed upon during negotiations. Such election shall be effective with respect to all Equipment leased under all Schedules of this series. At the expiration of the term of the Lease, Lessee shall pay to Lessor in cash any Rent due on that date plus the purchase price for the Equipment so purchased, determined as hereinafter provided. Lessee’s exercise of the purchase option contained herein shall constitute a sale of the Equipment pursuant to Section A above and Lessee shall be responsible for the performance of its obligations pursuant to Section A above.

The purchase price of the Equipment shall be an amount equal to its then Fair Market Value, together with all taxes and charges upon sale. For purposes of this Section, “Fair Market Value” shall be deemed to be an amount equal to the sale price obtainable in an arms’ length transaction between a willing and informed buyer and a willing and informed seller under no compulsion to sell (and assuming that, as of the date of determination, the Equipment is in at least the condition required by Section 13 of the Lease). If the parties are unable to agree on the Fair Market Value of the Equipment, then Lessor and Lessee shall at Lessee’s expense obtain appraisal values from three independent appraisers (one to be selected by Lessor, one by Lessee, and the other by the two selected by Lessor and Lessee; each of whom must be associated with a professional organization of equipment or personal property appraisers, such as the American Society of Appraisers) and the average Fair Market Value as determined by such appraisers shall be binding on the parties hereto.

Notwithstanding any election of Lessee to purchase, the provisions of the Lease shall continue in full force and effect until the passage of ownership of the Equipment upon the date of purchase. On the date of purchase, Lessor shall deliver to Lessee a bill of sale transferring and assigning to Lessee, without recourse or warranty, except (with respect to the status of title conveyed) in respect of Lessor’s acts, all of Lessor’s right, title and interest in and to the Equipment. Lessor shall not be required to make and may specifically disclaim any representation or warranty as to the condition of the Equipment or any other matters.

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| ARCO EQUIPMENT FINANCE CORPORATION | | |  |  |  | KRON FREIGHT SYSTEM, INC. | | |  |
| Lessor | | |  |  |  | Lessee | | |  |
|  |  |  |  |  |  |  |  |  |  |
| By: |  |  | [SEAL] |  |  | By: |  |  | [SEAL] |
|  |  | |  |  |  |  |  | |  |
|  | Name: |  |  |  |  |  | Name: |  |  |
|  | Title: |  |  |  |  |  | Title: |  |  |

18

EXHIBIT NO. 1

CERTIFICATION BY LESSEE

This Certification is provided by the undersigned (“Lessee”) in connection with that certain Master Lease Agreement dated as of December  \_\_\_\_\_, 2009 (the “Lease”), with ARCO EQUIPMENT FINANCE CORPORATION. The parties intend and agree that the Lease constitute a “qualified motor vehicle operating agreement” within the meaning of Section 7701(h) of the Internal Revenue Code of 1986, as now or hereafter amended, and this Certification is required to be provided pursuant to that Section.

Lessee hereby certifies, under penalty of perjury, that it intends that more than fifty (50) percent of the use of the Equipment (as such term is defined in the Lease) is to be in a trade or business of the Lessee.

Lessee acknowledges that it has been advised that it will not be treated as the owner of the Equipment for Federal income tax purposes.

IN WITNESS WHEREOF, Lessee has caused this Certification to be duly executed, under seal, as of the  \_\_\_\_\_  day of December, 2009.

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| --- | --- | --- | --- | --- |
|  |  |  |  |  |
|  | KRON FREIGHT SYSTEM, INC. Lessee | | |  |
|  | By: |  | | [SEAL] |
|  |  | Name: |  |  |
|  |  | Title: |  |  |

**LeaseA#17**

FORM OF EQUIPMENT LEASE AGREEMENT

**Exhibit 10.02**

**Date:**

**Lessee Name:**

**Street Address:**

**City, State, Zip:**

Thank you for choosing to do business with Venture Holdings, Inc. Kindly have the enclosed documents (including the following) completed and mailed to XXX, FL 335460 or faxed to ---

**LEASE AGREEMENT SIGNED BY AN AUTHORIZED OFFICER OR OWNER IF YOU ARE A SOLE PROPRIETORSHIP AND WITNESSES WHERE REQUIRED, PRINTED NAME AND TITLE AFFIXED, FEDERAL TAX ID NUMBER REFERENCED WITH EACH PAGE OF THE TERMS AND CONDITIONS INITIALED.**

An executed copy of each of the lease documents attached or enclosed. If mailing, please include the signed copy of your advance fees check (if applicable). If you are sending by fax, please fax a copy of the completed check and ensure that the signor’s name is printed below the signature (in such a case, we do not need the check mailed to us).

A business check with your legal name in the amount of $                     for advance payments, documentation fees, and other monies owed. If you would like us to process the check electronically, please mail/fax a copy of the completed and signed check with the signor’s name and title printed below the signature and confirm your authorization by signing below:

For the purpose of expediting the commencement of the transaction contemplated by the enclosed documents, you hereby grant us and our agent the right to, at our option, process any check received from you electronically by transmitting the amount of the check, the routing number, account number, check serial number and other information appearing on the check to our bank. If we choose to utilize this option, by submitting a check (in original or copy form) for payment, you authorize us and our agent to process such payment through Automated Clearing House (“ACH”) Network electronic fund transfer transactions and initiate an ACH debit from your bank account. If you have sent us a copy of the check for electronic processing, you should retain the original check for your records. If you have sent us an original check that we or our agent have/has processed electronically, we will stamp the original check “paid” and will at your request, return or destroy the stamped check.

**Please Sign Here >>>>>>**

Please provide us with a copy of your Tax Exempt Certificate (if applicable).

Venture Holdings, Inc., will REQUIRE proof of insurance coverage on the leased equipment.

**Please forward this checklist to your property and liability insurance company or companies.**

The following information must be referenced in the Certificate of Insurance:

|  |  |  |
| --- | --- | --- |
|  | 1. | Specify equipment location as follows: |

|  |  |  |
| --- | --- | --- |
|  | 2. | Single limit public liability damage insurance of not less than $500,000.00 per occurrence naming lessee as insured and Venture Holdings, Inc. as additional insured. |

|  |  |  |
| --- | --- | --- |
|  | 3. | Actual cash value all risk insurance in the amount of $                    , naming as Loss Payee and Additional Insured. |

|  |  |  |
| --- | --- | --- |
|  | 4. | The Certificate Holder must read as follows: |

Venture Holdings, Inc., its successors and assigns, XXX, FL 335460

Please mail or fax your documentation to the following:

Venture Holdings, Inc.

, FL 335460

Please do not hesitate to contact us at (-----) with any questions you may have. Please reference any questions with your lease number.

**Lease Agreement**

**Lease Number**

**Lessee Name:**

**Trade/DBA Name:**

**Address:**

**City, State, Zip:**

**Contact:**

**Equipment Address:**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  |  |  |  |
| **Schedule of Equipment:** | | |  |  |
| **Qty** |  | **Description and Serial Number** |  | **Total Cost** |

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  |  |  |  |  |  |  |  |  |
| *Schedule of Rental Payments:* | | | | |  |  |  |  |
| Lease Term |  | Total Number of |  | Amount of Each Rental |  | Advance Payment |  | End of Lease |
| (in Months) |  | Rental Payments |  | Payment (Plus Taxes) |  | (Plus Taxes) |  | Purchase Option |

Important Notice: We have written this Lease in plain language because we want you to understand its terms. Please read this Lease carefully. The words “you” and “your” mean the Lessee named below. The words “we”, “us” and “our” refer to the Lessor named below. BY SIGNING THIS LEASE, YOU AGREE TO THE TERMS ON THE FRONT AND REVERSE SIDES OR SUBSEQUENT PAGES, INCLUDING ALL TERMS AND CONDITIONS. THIS LEASE IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN YOU AND US. YOU CERTIFY THAT ALL THE INFORMATION CONTAINED IN THIS LEASE AND YOUR APPLICATION IS CORRECT AND COMPLETE. THIS LEASE IS NOT BINDING UPON US UNTIL WE SIGN IT.

Execution and Delivery of Lease: This Lease will be created and evidenced as follows (i) we will deliver to you (at the email, facsimile or business address you provide to us ) an electronic (email or facsimile) or paper version of each document to be signed by you, including this Lease and any exhibits or related documents (each, a “Document”), (ii) you will print (if applicable) and manually sign the signature page of each such Document and deliver to us by facsimile or other means the signed signature page; (iii) we will manually sign each signature page do delivered by you (if the Document requires your signature); and (iv) we will attach each fully signed signature page to a printed paper copy of the applicable Document. By so signing and transmitting a Document to us, you confirm your intent to sign such Document and accept its terms. You acknowledge that we are relying upon your promise that you have not modified the Document sent to you for signature. We both intend that each Document produced by this process which contains our original manual signature shall be for all purposes (including perfection of security interests and admissibility of evidence) the sole original authenticated Document. We will promptly send you a copy of each fully signed Document and will retain each original authenticated Document, which will be conclusively presumed to be identical to the version signed by you unless you deliver specific written objections thereto within three (3) business days after receipt of such copy.

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  |  |  |  |  |  |  |
| LESSOR: |  | Venture Holdings, Inc. |  | LESSEE: |  |  |
| By: |  |  |  | Signature: |  |  |
| Name: |  | Elizabeth Pember, President |  | Name: |  |  |
| Date: |  |  |  | Date: |  |  |
|  |  |  |  | FEI #: |  |  |

Unconditional Personal: In consideration of Lessor entering into the above Lease in reliance on this Guarantee, the undersigned, jointly and severally, if more than one, unconditionally and irrevocably guarantees, as primary obligor and not merely as surety, to Lessor, its successors and assigns, the prompt payment and performance of all obligations of Lessee under the Lease, whether such obligations are now or hereafter existing. The undersigned agrees that (a) this is an absolute, unconditional and continuing guarantee of payment and not of collection and that Lessor can proceed directly against the undersigned without disposing of any security or seeking to collect from Lessee under the Lease, (b) the undersigned waives all defenses and notices including those of protest, presentment and demand, (c Lessor may renew, extend or otherwise change the terms of the Lease without notice to the undersigned and the undersigned will be bound by such changes, and (d) the undersigned will pay all of Lessor’s costs of enforcement and collection. This Guarantee survives the bankruptcy of Lessee and binds the undersigned’s administrators, successors and assigns. The undersigned’s obligations under this guarantee continue even if Lessee becomes insolvent or bankrupt or is discharged from bankruptcy and the undersigned agrees not to be repaid by Lessee in the event the undersigned must pay Lessor. THIS GUARANTEE WILL BE GOVERNED BY THE LAWS OF THE STATE OF FLORIDA. EACH OF THE UNDERSIGNED AGREES TO JURISDICTION AND VENUE IN THE STATE OF FLORIDA, COUNTY OF HILLSBOROUGH. Each of the undersigned authorizes Lessor to conduct an investigation of his/her/its credit history and directs his/her/its creditors (including banks, leasing companies and trade suppliers) to release information regarding his/her/its credit to Lessor, it successors and assigns. Each of the undersigned authorizes Lessor to release all information that Lessor may possess about him/her/it to any prospective purchaser of the Lease.

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| --- | --- | --- | --- | --- | --- | --- |
|  |  |  |  |  |  |  |
| Guarantor: |  |  |  | Guarantor: |  |  |
| Signature: |  |  |  | Signature: |  |  |
| Printed Name: |  |  |  | Printed Name: |  |  |
| SSN # |  |  |  | SSN # |  |  |

**Terms and Conditions**

**1. COMMENCEMENT OF LEASE; RENTAL PAYMENTS**. You agree to lease from us the Equipment described in this Lease and remit to us Rental Payments (and applicable taxes) for the full Lease Term. Rental Payments will include any freight, delivery, installation and other expenses we finance on your behalf at your request. When you receive the Equipment, you agree to inspect it and to verifier by telephone such information as we may require or, at our request, send us a written certificate of acceptance. We do not have to accept this Lease and we are not obligated to purchase a unit of Equipment from Supplier or lease a unit of Equipment to you unless on or before the Last Funding Date indicated on the cover page of this Lease (which is the date the credit approval for this Lease expires): (a) we have received all required documentation in satisfactory form and substance, (b) you have accepted the Equipment in accordance with the terms set forth below, (c) we have received any required Advance Payment, (d) no material adverse change in your business, operations or financial condition occurs, and (e) no Event of Default as described in Section 10 occurs and is then continuing. If we do not accept this Lease, we will return to you any Advance Payment. If all the conditions precedent set forth above have been met and we have accepted this Lease, the Lease Term begins on the date you accept the Equipment (the “Lease Commencement Date”). ONCE WE ACCEPT THIS LEASE, YOU MAY NOT CANCEL IT DURING THE LEASE TERM. If the Lease Commencement Date is not the first or the fifteenth day of any calendar month (a “Payment Date”), the Lease Term will be extended by the number of days between the Lease Commencement Date and the Payment Date which first occurs after the Lease Commencement Date, and your first payment will be increased by 1/30th of the monthly Rental Payment multiplied by the number of days elapsed from the Lease Commencement Date to the day immediately preceding the first Payment Date after the Lease Commencement Date. You authorize us to change the Rental Payment by not more than 15% due to changes in the Equipment configuration or other factors affecting Equipment Cost which may occur prior to our acceptance of this Lease. We will advise you of the due date of each Rental Payment and the address to which you must send your payments, but our failure to so advise you will not release you of your obligations under this Lease. Rental Payments are due whether or not you receive an invoice. Unless otherwise required by applicable law, we are not required to refund any Rental Payment, pay any interest on any Advance Payment, or keep any Advance Payment in a separate account. We may apply the Advance Payment to any amount you owe us under this Lease. Lease Rate Factor: Your periodic Rental Payments are calculated using a lease rate factor (the “Lease Rate Factor”). The Lease Rate Factor is calculated, in part, using an interest rate based on the interest rate for swaps (the “Swap Rate”) that most closely approximates the initial term of this Lease as published in the Federal Reserve Statistical Release H.15 available at http://www.federalreserve.gov/releases/hl5/uodate on or about the date this Lease is prepared by us (the “Initial Rate Date”). The Lease Rate Factor and your periodic Rental Payments may be adjusted if the Swap Rate as reported four (4) business days prior to acceptance of the Equipment is different than the Swap Rate as reported on the Initial Rate Date. We will notify you if the Lease Rate Factor changes. Notwithstanding the foregoing, if this is a Stated Purchase Option Lease and the Lease Rate Factor is provided to you on or before December 31” of any calendar year, but the Lease Commencement Date is on or after January 1st of the following calendar year, then the Lease Rate Factor and your periodic rental payment will be adjusted to preserve our tax economic yields and cash flows and we will notify you of any such adjustments.

**2. TAXES**. You agree to pay us, when invoiced, all sales and use taxes and other similar charges imposed relative to this Lease, the Rental Payments or the Equipment. If the Purchase Option amount is $1.00 (a “Dollar Purchase Option”), you agree to file any required personal property tax returns and if we ask, provide us with proof of payment. If the Purchase Option amount is other than $1.00 (a ‘Stated Purchase Option”), you agree at our option to either (a) reimburse us for all personal property taxes which we may be required to pay as the owner of the Equipment or (b) remit to us each month our estimate of the monthly equivalent of the annual personal property taxes to be assessed. If an increase in the federal corporate income tax rate or a change in the “accelerated cost recovery deductions” allowed by the Internal Revenue Code of 1986, as amended, adversely affects our after-tax earnings on this Lease, we may increase the Rental Payments to offset such adverse effect and a change in the Rental Payments is effective on the effective date of such increase.

**3. NET LEASE. THIS LEASE IS A NET LEASE AND YOUR PAYMENT OBLIGATIONS HEREUNDER ARE ABSOLUTE AND UNCONDITIONAL AND ARE NOT SUBJECT TO CANCELLATION, ABATEMENT, REDUCTION, RECOUPMENT, DEFENSE OR SETOFF FOR ANY REASON WHATSOEVER**

**4. OWNERSHIP**. If this Lease provides for a Dollar Purchase Option, you will have title to the Equipment and will be deemed to be the owner of the Equipment and will be entitled to all tax benefits. If this Lease provides for a Stated Purchase Option, we will have title to the Equipment unless and until you exercise any Purchase Option available to you at the end of the Lease Term. To secure your obligations to us under this Lease, you grant us a first priority security interest in the Equipment and all related proceeds. You irrevocably grant us the power to prepare, sign on your behalf (if applicable), and file, electronically or otherwise, a financing statement and any amendment thereto or continuation thereof relating to the Equipment, and containing any other information required by the applicable Uniform Commercial Code. At our request, you will attach identifying labels supplied by us showing our interest in a prominent position on each unit of Equipment.

**5. MAINTENANCE**. You will, at your own expense, (a) keep the Equipment in good repair, condition and working order, ordinary wear and tear excepted, free of all claims, liens and encumbrances of any kind or nature, (b) not move the Equipment from the Equipment Location without our prior written consent, (c) use the Equipment solely for commercial purposes in the manner for which it is intended and in compliance with all applicable laws and manufacturer requirements or recommendations, (d) perform all service and maintenance requirements described in the operator’s and instrument manuals provided by the manufacturer or Supplier and keep the Equipment eligible for any manufacturer’s warranty certification, and (e) give us reasonable access to inspect the Equipment and its maintenance and other records. All additions, upgrades, replacement parts and attachments will become part of the Equipment unless they can be easily removed without damage to the original Equipment You will not attach any of the Equipment to any real estate. Upon our reasonable request and at your cost, you will get each person with an interest in the real estate where the Equipment is located to waive any rights they may have in the Equipment.

**6. DISCLAIMER OF WARRANTIES**. You have selected the Equipment. You acknowledge that the Supplier, the manufacturer of the Equipment and their respective representatives are not our agents and are not authorized to modify the terms of this Lease. You are aware of the name of the manufacturer or Supplier of each item of Equipment and you will contact the manufacturer or Supplier for a description of your warranty rights. You agree to settle any dispute you may have regarding performance of the Equipment with the manufacturer or Supplier of the Equipment. **WE ARE LEASING THE EQUIPMENT TO YOU “AS-IS”. WE HAVE NOT MADE AND DO NOT MAKE ANY EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES REGARDING THE EQUIPMENT INCLUDING, WITHOUT LIMITATION, ITS DESIGN, MERCHANTABILITY, SUITABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE. WE SHALL HAVE NO LIABILITY TO YOU OR ANY THIRD PARTY FOR ANY DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES RELATING TO THE EQUIPMENT OR THIS LEASE. WE WILL NOT BE LIABLE FOR SPECIFIC PERFORMANCE OF THIS LEASE OR FOR ANY LOSSES, DAMAGES, DELAY OR FAILURE TO DELIVER THE EQUIPMENT. THIS LEASE CONSTITUTES A “FINANCE LEASE” AS DEFINED IN ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE.** You agree to waive all rights and remedies conferred upon a lessee by Article 2A (Sections 508-522) of the Uniform Commercial Code. To the extent permitted by applicable law, you also hereby waive any rights now or hereafter conferred by statute or otherwise that may limit or modify any of our rights or remedies under this Lease, including any rights you may have which require us to (a) sell any Equipment to mitigate damages or (b) provide you with notices of default, intent to accelerate amounts becoming due or acceleration of such amounts. If you signed a purchase order for the Equipment, you assign to us, without further action on your or our part, all of your rights but none of your obligations with respect to the Equipment and any proceeds thereof and agree to, upon our request, obtain consent from the manufacturer or Supplier of Equipment with respect to such assignment. Unless you are in default under this Lease, you may at your own expense enforce all warranties and other rights directly against the manufacturer.

**7. INDEMNITY**. You axe responsible for, and agree to defend and indemnity us against, all losses, damages, claims, injuries and attorneys’ fees incurred or asserted by any person that relate to the Equipment. We reserve the right to control the defense and to select or approve defense counsel. This indemnity survives the expiration or termination of this Lease. If this Lease provides for a Stated Purchase Option, you agree that it was entered into on the assumption that we will be entitled to certain tax benefits available to the owner of the Equipment, and you agree to indemnity us for the loss of any income tax benefits caused by your acts or omissions.

**8. LOSS OR DAMAGE**. If any item of Equipment is lost, stolen or damaged, you will (and Rental Payments will continue to accrue without abatement until you), at your option and cost, either (a) repair the item or replace the item with a comparable item reasonably acceptable to us, or (b) pay us a sum equal to (I) all Rental Payments and other amounts then due and payable under this Lease, and (2) the present value of (i) all Rental Payments to become due during the remainder of the Lease Term, and (ii) the Purchase Option amount set forth in this Lease, each discounted at (x) 6% per annum if this Lease provides for a Stated Purchase Option, (y) the lease charge rate (as determined pursuant to Section 16) if this Lease provides for a Dollar Purchase Option, or (z) if such applicable rate is not permitted by law, then at the lowest rate permitted by law (collectively referred to as the “Net 1300k Value”). We will then transfer to you all our right, title and interest in the Equipment “**AS-IS, WHERE-IS” WITHOUT ANY REPRESENTATION OR WARRANTY WHATSOEVER** Insurance proceeds will be applied toward repair or replacement of the Equipment or payment hereunder, as applicable.

**9. INSURANCE**. You are responsible for loss and damage to the Equipment from any cause whatsoever on and after delivery thereof. You agree, at your cost to: (a) keep the Equipment insured against all risks of physical loss or damage for its full replacement value, naming us as loss payee; and (b) maintain public liability insurance, covering personal injury and property damage in such amount as we require, naming us as additional insured. Prior to commencement of this Lease and at any time upon our request, you must provide us with evidence of an occurrence type insurance policy covering such risks and liabilities issued by an insurance carrier acceptable to us. The policy must provide us with not less than 15 days’ prior written notice of cancellation, non-renewal or amendment, and must provide deductible amounts acceptable to us.

**Terms and Conditions**

**10. DEFAULT**. An Event of Default will occur if: (a) we do not receive any Rental Payment or other payment within 10 days of its due date, (b) you or any guarantor of your obligations under this Lease (“Guarantor”) do not perform any of your or any Guarantor’s other obligations under this Lease or such Guarantor’s guaranty, and such failure continues for 10 days after we notify you of it, (c) any representation you have made in this Lease or any Guarantor has made in its guaranty shall prove to have been false or misleading in any material respect (d) you or any Guarantor become insolvent, are liquidated or dissolved, merge, transfer substantially all of your or its stock or assets, stop doing business or assign your or its rights or property for the benefit of creditors, (e) a petition is filed by or against you or any Guarantor under any bankruptcy or insolvency law, (t) if you are a sole proprietorship, you die or have a guardian appointed, (g) any Guarantor dies or has a guardian appointed, or (h) you default on any other agreement between you and us (or our affiliates).

**11. REMEDIES**. If an Event of Default occurs, we may, in our sole discretion, do any or all of the following: (a) cancel or otherwise terminate this Lease or any other Lease or agreement between you and us, (b) require you to immediately pay us, as compensation for loss of our bargain and not as a penalty, a sum equal to the Net Book Value, (c) require you to return the Equipment in accordance with Section 13, (d) repossess the Equipment without court order and you will not make any claims against us (Or our agent) for damages or trespass or any other reason if we take such action, and (e) exercise any other right or remedy available at law or in equity. You agree to pay all of our costs of enforcing our rights against you, including attorneys’ fees. We may, but will have no obligation to, sell or otherwise dispose of the Equipment, with or without notice to you, at a public or private sale, and without any duty to account to you with respect to such action or inaction or for any proceeds with respect thereto. You agree that (a) if notice of sale is required by law, five days advance notice Will constitute reasonable notice, (b) we may apply the proceeds of any sale or other disposition of the Equipment (after deducting all costs and expenses related to the repossession, sale or other disposition) to the amounts you owe us, (c) you will remain responsible for any balance which may remain after we apply such net proceeds, and (d) we will retain all rights and remedies even if we do not choose to enforce them at the time of your default. If this Lease provides for a Dollar Purchase Option and we receive more than the Net Book Value plus our costs and expenses, we will remit any excess to you.

**12. END OF LEASE OPTIONS**. If this Lease provides for a Dollar Purchase Option and you are not in default, we will release any security interest we have in the Equipment at the end of the Lease Term. If this Lease provides for a Stated Purchase Option and you are not in default, you will have the option at the end of the Lease Term to(s) return the Equipment in accordance with Section 13, (b) extend the Lease Term for a new term upon the terms and conditions set forth in this Lease, or (c) on 60 days advance written notice to us, purchase all but not less than all of the Equipment for the Purchase Option amount (and all applicable taxes). If the Purchase Option is stated as a percentage, the Purchase Option amount will be the product of such percentage multiplied by the final Equipment Cost. If the Purchase Option is stated as FMV, FMV will mean the fair market in place value of the Equipment at the end of the Lease Term, assuming good condition (except for ordinary wear and tear), as estimated by us. Upon payment of the applicable amount, we will transfer the Equipment to you **“AS IS, WHERE IS” WITHOUT ANY REPRESENTATION OR WARRANTY WHATSOEVER. IF YOU FAIL TO EXERCISE THE PURCHASE OPTION, ALL OF YOUR OBLIGATIONS UNDER THIS LEASE WILL CONTINUE UNTIL THE EQUIPMENT IS RETURNED IN ACCORDANCE WITH SECTION 13.**

13. RETURN OF EQUIPMENT. If (a) an Event of Default occurs, (b) you do not purchase the Equipment at the end of the Lease Term, or (c) you do not extend the Lease Term, at your cost and risk you will promptly (i) place the Equipment in good order and condition (except for ordinary wear and tear from normal use), (ii) cause the Equipment to be disassembled, deinstalled, inspected, tested and crated in accordance with the manufacturer’s recommendations and any and all local, state and federal regulatory requirements then in effect, (iii) immediately return the Equipment, freight and insurance prepaid, at your risk to any location and aboard any carrier we may designate in the continental United States, and (iv) pay a return fee of $100, not to exceed the maximum permitted by law, as reasonable compensation for our costs in processing returned Equipment. Any such Equipment will be accompanied by all accessories originally included with the Equipment, qualifies (if applicable) for continued maintenance under a manufacturer’s service and maintenance contract, and includes the latest software release provided by the manufacturer or Supplier to you. You will continue to remit Rental Payments until the first day of the month which follows the date the Equipment is received by us in the condition required by this Lease.

**14. ASSIGNMENT. YOU WILL NOT SELL, ASSIGN OR SUB-LEASE THE EQUIPMENT OR YOUR INTEREST IN THIS LEASE, OR FILE OR PERMIT A LIEN TO BE FILED AGAINST TILE EQUIPMENT**. We may, without notifying you, (a) release any information we possess you and this Lease to any prospective investor, participant or purchaser of this Lease, and (b) sell, assign, or transfer this Lease and our interests in the Equipment. You agree that the new owner or any of our assignees and transferees will have the same rights and benefits that we now have under this Lease but none of our obligations. The rights of the new owner or any of our assignees and transferees will not be subject to any claim, defense, or set-off that you may have against us.

**15. PAST DUE PAYMENTS**. We may charge you slate charge equal to 10% of any late payment, but not more than the highest legal rate. Any Rental Payments not made when due and other payment obligations incurred as a result of an Event of Default will accrue interest at the lower of 18% per annum or the highest legal rate from their due date until paid.

**16. COMPLIANCE WITH LAWS**. You understand that the Equipment may be purchased for cash for an amount equal to the cost thereof or it may be leased. By signing this Lease, you acknowledge that you have chosen to lease the Equipment from us for the Lease Term and agreed to remit Rental Payments and other sums to us. If this Lease provides for a Dollar Purchase Option, or a Stated Purchase Option that constitutes a nominal percentage of the Equipment Cost, each Rental Payment includes a principal amount based on the Equipment Cost and a lease charge rate. The lease charge portion of the Rental Payment can be determined by applying to the Equipment Cost the rate that will amortize the Equipment Cost down to the Purchase Option amount by remittance of the Rental Payments. The lease charge rate may be higher than the actual annual interest rate because of the amortization of certain costs and expenses incurred by us. **WE BOTH INTEND TO COMPLY WITH ALL APPLICABLE LAWS. IF IT IS DETERMINED THAT YOUR PAYMENTS UNDER THIS LEASE RESULT IN AN INTEREST PAYMENT HIGHER THAN ALLOWED BY APPLICABLE LAW, THEN ANY EXCESS INTEREST COLLECTED WILL BE APPLIED TO AMOUNTS THAT ARE LAWFULLY DUE AND OWING UNDER THIS LEASE OR WILL BE REFUNDED TO YOU. IN NO EVENT WILL YOU BE REQUIRED TO PAY ANY AMOUNTS IN EXCESS OF THE LEGAL AMOUNT**.

**17. YOUR REPRESENTATIONS**. You represent and warrant that (a) you have the lawful power and authority to enter into this Lease, (b) the individuals signing this Lease have been duly authorized to do so on your behalf, (e) by entering into this Lease you will not violate any law or other agreement to which you are a party, (d) you are not aware of anything that will have a material adverse effect on your ability to satisfy your obligations under this Lease, (e) all financial information you have provided and will provide to us is true, correct and complete and provides an accurate representation of your financial condition, and (I) the location of your chief executive office state of incorporation or organization, exact legal name, place of residence and organizational identification number, as applicable, have been correctly identified to us.

**18. MISCELLANEOUS**. You agree that during the Lease Term (a) you will promptly notify us in writing if there is a change in the name, Ownership, state of incorporation or formation or organizational number (if any) of your business, or if there is a change in your ownership, (b) you will provide such financial information we may reasonably request, (c) you will take any action we reasonably request to protect our rights in the Equipment and this Lease, and (d) we may insert missing information or correct obvious errors or your legal name in this Lease without further notice to you. This Lease constitutes the entire agreement between you and us and supersedes any conflicting equipment purchase order or other written or oral agreement. Except as noted in clause (d) above, no modification of this Lease will be binding unless in writing and signed by you and us. You authorize us (Or our agent) to (i) obtain personal credit bureau reports, (ii) make all other credit inquiries we deem necessary, and (iii) furnish payment history information to credit reporting agencies. You agree to pay us a fee shown on the cover page of this Lease to cover our documentation and investigation costs. Any claim you have against us must be made within one year after the event that caused it. TIME IS OF THE ESSENCE IN THIS LEASE. If a court finds any provision of this Lease to be unenforceable, the remaining terms will remain in effect. If you fail to comply with any provision of this Lease, we have the right but not the obligation to have such provision brought into compliance and all expenses we incurred in bring about such compliance will be considered a Retrial Payment which is due within five (5) days after the date we send to you a written request for payment. All our and your written notices must be sent by certified or first class mail or recognized overnight delivery service, postage prepaid, to you at your address set forth on the cover page of this Lease or our address at 1010 Thomas Edison Boulevard S.W., Cedar Rapids, Iowa 52404, Telephone No.: (800) 535-1480, or by facsimile transmission to you at your facsimile telephone number set forth on the cover page of this Lease or to us at our facsimile telephone number (319) 841.6324, with oral confirmation of receipt. At any time after this Lease is signed, you or we may change an address or facsimile telephone number by giving notice to the other of the change. You hereby acknowledge and confirm that you have not received any tax, financial, accounting or legal advice from us, the manufacturer or Supplier of the Equipment.

**19. CHOICE OF LAW. THIS LEASE WILL BE GOVERNED BY THE LAWS OF THE STATE OF FLORIDA. BOTH PARTIES CONSENT TO THE JURISDICTION AND VENUE OF FEDERAL AND STATE COURTS IN FLORIDA FOR ALL DISPUTES ARISING UNDER THIS LEASE AND WAIVE ANY RIGHTS TO A JURY TRIAL IN ANY ACTION ARISING UNDER THIS LEASE.**

**20. COUNTERPARTS**. This Lease may be executed in separate counterparts, all of which shall together constitute one and the same instrument. IF THIS LEASE CONSTITUTES CHATFEL PAPER (AS DEFINED IN THE UNIFORM COMMERCIAL CODE IN EFFECT IN ANY APPLICABLE JURISDICTION), NO SECURITY INTEREST IN THIS LEASE MAY BE CREATED THROUGH THE TRANSFER OR POSSESSION OF ANY COUNTERPART OTHER THAN THE ORIGINAL COUNTERPART IDENTIFIED BY US AS THE SOLE ORIGINAL CHATFEL PAPER COPY.(Lessee: Please initial here                      to confirm that you have received and read both pages of the Terms and Conditions)

**LeaseA#18**

EXHIBIT 10.33

Exhibit 10.33

EQUIPMENT LEASE AGREEMENT

THIS AGREEMENT CONTAINS PROVISIONS RELATING TO INDEMNITY, RELEASE OF LIABILITY, AND ALLOCATION OF RISK

This Equipment Lease Agreement (the "Lease") is made effective the 15th day of August, 2017 ("Effective Date"), by and between Tough Drilling LLC, a Delaware limited liability company, with an address at, XXX OK 73089 (“Lessor”), and Bullseye Drilling LLC, a Texas limited liability company, with an address at, YYY Texas 79809 (“Lessee”). The parties may be referred to herein individually as “Party” and collectively as “Parties”.

RECITALS

WHEREAS, Lessor owns certain oilfield equipment, materials and/or supplies and from time to time enters into leases with third parties;

WHEREAS, Lessee desires to lease certain oilfield equipment, materials and/or supplies from Lessor;

WHEREAS, Lessor is prepared to lease certain oilfield equipment, materials and/or supplies to Lessee on the terms and conditions set forth in this Lease;

AGREEMENTS

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, agreements and covenants contained in this Agreement, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Parties undertake and agree as follows:

1. Equipment Leased. Lessor hereby leases to Lessee and Lessee leases from Lessor the equipment, along with the equipment attached thereto or contained therein as specified in Schedule A attached to this Lease and made a part hereof (the "Equipment"), together with all parts, components, accessories, replacements, substitutions, additions and improvements now or in the future attached to or forming a part thereof.

2. Delivery and Maintenance of the Equipment.

A. Lessee, at Lessee’s sole cost and expense, shall be solely responsible for picking up and taking possession of the Equipment at a location designated by Lessor by a date no later than August 1, 2017. This date may be extended by mutual written consent of the Parties.

B. Any preparation, loading, transportation unloading, and/or redelivery of the Equipment shall be performed by and at the sole expense of Lessee in a professional and workmanlike manner in conformance with all recommendations of Lessor, and in compliance with good oilfield, servicing, logistical and engineering practices. Lessee is solely responsible for all losses and damage relating to transportation of the Equipment from the point of origin to each destination. Lessee shall, at its sole expense, secure and maintain insurance, as provided in this Lease, for the greater of $1,000,000.00 or the stated value of the Equipment, as set forth in the Schedule “B”. Lessee shall list Tough Drilling LLC on all insurance as an additional insured and loss payee and owner of the Equipment. Lessee shall inspect and inventory the Equipment at each destination and, to the extent any loss or damage has occurred, take all steps required to preserve a claim against the carrier for such loss or damage, including but not limited to obtaining a written acknowledgment from the carrier as to all such loss or damage. Lessee shall remain solely responsible for all such loss or damage notwithstanding any actual or purported limitation of liability by a carrier.

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C. Any alterations or modifications to the Equipment may be made only upon prior consultation with and prior written approval by Lessor, which approval may be withheld in Lessor’s sole and absolute discretion.

D. Lessee, at its sole expense, shall keep and maintain the Equipment in good working order and repair. In the event the Equipment, during the Term hereof, is lost, damaged, destroyed, in whole or in part, or stolen, Lessee shall pay to Lessor One Hundred Percent (100%) of the current new replacement cost of such Equipment delivered to the location of Lessor’s choosing, and the obligations of this Lease shall end, except with respect to those which by context of this Lease are intended to survive, and those which have accrued prior to such loss, damage, destruction or theft.

E. All repairs and maintenance of the Equipment shall be performed promptly by Lessee. Lessee shall supply all labor, at Lessee’s sole cost and expense, and all materials shall be provided by Lessee, at Lessee’s sole cost and expense. Lessor shall provide Lessee with a designated person to assist in Lessee’s repairs and maintenance of the Equipment.

3. Term and Lease Payment.

A. The term of this Lease of Equipment shall be for a period of six (6) months (the "Initial Term"), commencing on the Effective Date, and continuing thereafter in subsequent six (6) month periods (“Subsequent Terms” and collectively, with the Initial Term, the “Term”), terminable on at least sixty (60) days' written notice prior to the expiration of the then current Term.

B. During the Term, Lessee shall pay to Lessor, a lease fee in U.S. Dollars in the amounts as follows ("Lease Payment"):

Equipment Lease Payment

Equipment Group A $800.00 per day of use.

Equipment Group B $450.00 per day of use.

Notwithstanding anything to the contrary contained in this Agreement, the Equipment will be considered “in use” for an entire Day (being a period of 24 hours) if any component or item of Equipment (limited on a per Equipment Group basis) is employed, engaged, activated, operated, put into service, applied, utilized, operated, mobilized, or any like action, whether similar or dissimilar to those expressly denoted, at any point, and for any period of time, regardless of temporal duration, during such Day. Notwithstanding anything to the contrary contained herein, Lessor may elect to terminate this Lease, without liability hereunder, and, at the sole cost and expense of Lessor, retake possession of the Equipment, in the event that Lessee does not accrue a Lease Payment in an amount greater than One Dollar and No/00 Cents ($1.00) for a period of time greater than thirty five (35) consecutive days.

C. Lessee shall pay each Lease Payment to Lessor within fifteen (15) days of invoicing by Lessor during the Term of this Lease. Lessor will invoice Lessee on a monthly basis, and Lessee shall promptly provide Lessor with all documentation necessary and/or convenient for Lessor to accurately issue such invoices to Lessee. Lessee shall provide such information within two (2) business days of Lessor’s request for the same, or at the end of any calendar month during the Term, whichever such date is earlier.

D. Lessee shall pay each Lease Payment to a bank account designated by Lessor.

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E. Lessee shall be solely responsible for payment of any and all taxes, licensing and registration fees, if any, in respect of the Equipment and the rental contemplated hereunder.

F. In addition to being a breach of this Lease, the failure to make a Lease Payment when due shall result in the accrual of interest on the unpaid balance at the rate of eighteen percent (18%) per annum or the maximum allowed by law, whichever is lesser. All payments due shall be first applied against service, repair, or replacement of the Equipment, transportation charges, attorney’s fees and costs associated with enforcement of this Lease or in defense of any claims made by Lessee or any third party against Lessor, then to interest before it is applied against the amount due.

4. Title. The Parties agree that title and ownership to the Equipment shall remain at all times with Lessor.

5. Acceptance of Delivery.

A. Upon receipt of Equipment delivery, Lessee shall inspect Equipment and either promptly report any deficiencies to Lessor or accept possession. By accepting possession of the Equipment under this Lease, Lessee accepts the condition of the Equipment. Lessee’s failure to provide written notice of any specific defects or damage, as determined during the initial inspection, constitutes (i) an admission and acknowledgment that the Equipment is in good, safe, and serviceable condition at the time of delivery; and (ii) an acceptance of the Equipment for the Term.

B. Upon prior consultation with and prior written approval by Lessor, the Parties agree that Lessee is authorized, at its sole expense, to furnish or install on the Equipment new or renewed replacement parts and to make any additions or improvements which Lessee deems necessary for the proper maintenance and operation of the Equipment (“Improvements”). All such parts, additions and Improvements shall be deemed a part of the Equipment, and subject to Section 4, above.

6. Limitations of Liability.

A. Lessee acknowledges that Lessee will obtain the Equipment on an "as is where is basis" without relying on Lessor. Lessor makes no warranty or representation, express or implied, statutory or otherwise, as to the design, quality, capacity or fitness of the Equipment for any particular purpose. EXCEPT AS IS OTHERWISE EXPRESSLY PROVIDED, LESSOR MAKES NO, AND HEREBY EXPRESSLY DISCLAIMS, ANY WARRANTY OR GUARANTEE OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING NO IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, REGARDING THE EQUIPMENT SUPPLIED BY LESSOR HEREUNDER.

B. Lessee agrees that no defect or unfitness of the Equipment shall relieve Lessee of the obligation to pay the Lease Payment throughout the Term hereof.

C. Lessee acknowledges and agrees that Lessor shall not be liable or responsible for any non-compliance with any statute, law, ordinance, rule or regulation relating to the installation, operation, use or maintenance of the Equipment, it being expressly understood that all such liability shall be the responsibility of Lessee.

D. Incidental or Consequential Damages. NOTWITHSTANDING ANY OTHER PROVISION HEREIN, LESSOR SHALL NOT BE LIABLE TO LESSEE FOR (AND LESSEE SHALL RELEASE, PROTECT, DEFEND, INDEMNIFY AND HOLD LESSOR HARMLESS FROM AND AGAINST) ANY SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL OR CONSEQUENTIAL

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DAMAGES OR LOSSES SUFFERED BY THE LESSEE OR ITS PARENT, AFFILIATES, SUBSIDIARIES AND SUBCONTRACTORS, AND EACH OF THEIR RESPECTIVE DIRECTORS, OFFICERS, AGENTS, REPRESENTATIVES, EMPLOYEES, CUSTOMERS AND INVITEES, RESULTING FROM OR ARISING, DIRECTLY OR INDIRECTLY, OUT OF OR IN CONNECTION WITH THIS LEASE, THE ORDERS, THE WORK OR OPERATIONS HEREUNDER, INCLUDING, WITHOUT LIMITATION, LOSS OF USE, LOSS OF DATA, LOSS OF ASSETS (INCLUDING BUT NOT LIMITED TO LOSS OF OR DELAY IN PRODUCTION, OR LOSS OF SAMPLES), COST OF REDRILL, LOSS OF PROFIT, LOSS OF BUSINESS, OR BUSINESS INTERRUPTION OR DOWNTIME, AND ALL WITHOUT REGARD TO THE SOLE, JOINT, CONCURRENT, GROSS, ACTIVE OR PASSIVE NEGLIGENCE OR BREACH OF DUTY (STATUTORY OR OTHERWISE) OF ANY PARTY. IN THE EVENT THAT THIS PROVISION FAILS OF ITS ESSENTIAL PURPOSE, LESSOR’S LIABILITY HEREUNDER SHALL NOT EXCEED THE TOTAL OF ONE (1) MONTH’S WORTH OF THE LEASE PAYMENT HEREUNDER.

7. Indemnification.

A. LESSEE SHALL INDEMNIFY AND DEFEND AGAINST, AND HOLD LESSOR, LESSOR’S PARENT, AFFILIATES, SUBSIDIARIES, JOINT VENTURERS, JOINT INTEREST OWNERS, PARTNERS, CO-OWNERS, CO-LESSEES, LESSEE’S CONTRACTORS AND EACH OF THEIR RESPECTIVE DIRECTORS, OFFICERS, AGENTS, REPRESENTATIVES, EMPLOYEES AND INVITEES HARMLESS FROM, ANY AND ALL CLAIMS, ACTIONS, SUITS, PROCEEDINGS, LOSSES, COSTS, EXPENSES, DAMAGES, AND LIABILITIES, INCLUDING WITHOUT LIMITATION, COSTS AND ATTORNEY FEES, FOR BODILY INJURY OR DEATH OF ANY PERSON, OR DAMAGE TO OR LOSS OF PROPERTY (INCLUDING THE EQUIPMENT) OF LESSOR, LESSEE OR ANY THIRD PARTY CAUSED BY, ARISING OUT OF, CONNECTED WITH, OR RESULTING, IN WHOLE OR IN PART FROM: (i) THE EQUIPMENT SUBJECT TO THIS LEASE, INCLUDING, BUT NOT LIMITED TO THE MANUFACTURE, SELECTION, INSPECTION, DELIVERY, USE, OPERATION, OR RETURN OF THE EQUIPMENT; (ii) DENIAL OF INSURANCE COVERAGE OR ANY BREACH OF THIS LEASE, INCLUDING BUT NOT LIMITED TO FAILURE TO OBTAIN OR MAINTAIN INSURANCE AS REQUIRED UNDER THIS LEASE; OR (iii) UNDER ANY THEORY OF LAW, INCLUDING A THEORY OF STRICT LIABILITY. Should Lessor deem it necessary, Lessor reserves the right, without obligation, to participate in the defense against any such liabilities. Lessee acknowledges and agrees that the indemnities in this Lease are conspicuous and meet the express negligence test.

8. Casualty and Insurance Duties of Lessee.

A. Lessee is solely responsible for all risk and actual losses and damage to the Equipment, regardless of cause. Lessee shall notify Lessor by telephone and in writing regarding all losses or damage to the Equipment within twenty-four (24) hours of any occurrence.

B. Lessee shall, at its sole expense, secure and maintain from an insurance company, or companies acceptable to Lessor and, lawfully authorized to do business in each state where the Equipment is located, the minimum insurance coverage listed below. The Certificate holder shall state “Tough Drilling LLC, XXX City, OK”.

C. Lessee shall secure Workers Compensation Insurance as required by Applicable Law and Employer’s Liability Insurance, with minimum limits of $1,000,000 each accident. Where applicable, endorsements for U.S. Long Shore and Harbor Workers Compensation Act and Maritime Coverage shall be attached to the policy and noted on the certificate.

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D. Lessee shall secure and maintain Commercial General Liability ("CGL") Insurance ("CGL") Insurance on an occurrence basis, with minimum limits of $1,000,000 per occurrence and $2,000,000 in aggregate, including bodily injury, property damage, and contractual liability coverage for Lessee’s indemnity obligations in this Lease. If the CGL coverage contains a General Aggregate Limit, such General Aggregate shall apply to each project. CGL Coverage shall be written on ISO Occurrence form CG00011093 or a substitute form providing equivalent coverage. Tough Drilling LLC and all subsidiaries shall be named as additional insured using ISO Additional Insured Endorsement CG2010 1185 or CG2010 1001 and CG2037 1001 or an endorsement providing equivalent coverage to the additional insured. This coverage will be primary and noncontributory and exclusive to any other insurance or self-insurance, including any deductible, maintained by, or provided to, the additional insured.

E. Lessee shall secure and maintain Inland Marine/All Risk Physical Damage Insurance to cover the full stated value of the Equipment, as stated on Schedule “B”, for all losses or damage to the Equipment resulting from all causes, including but not limited to overloading, misuse, fire, theft, flood, explosion, overturn, accident, and ‘acts of god’. The policy shall name Tough Drilling LLC as Loss Payee.

F. Lessee shall secure Umbrella/Excess Liability, with minimum limits of $1,000,000 per occurrence/$1,000,000 aggregate. Higher limits can be used to satisfy underlying limit requirements, but certificate must specifically state which policy coverage extends to.

G. Lessee shall provide proof of insurance, to be delivered to Lessor no later than five (5) calendar days after the Effective Date. Evidence of insurance shall contain a provision that the coverage afforded under the policies shall not be canceled, non-renewed, materially changed, or allowed to expire without first giving at least thirty (30) days written notice to Lessor. The cancellation wording shall read as follows: “Should any of the above described policies be cancelled, non-renewed or materially changed before the expiration date thereof, the Company shall give 30 days’ written notice to the Certificate Holder named hereon.”

H. All policies of insurance, except Workers’ Compensation, shall name Tough Drilling LLC and all subsidiaries as an additional insured using ISO Additional Insured Endorsement CG20101185 or CG20101001 and CG20371001 or an endorsement providing equivalent coverage to the additional insured. It shall apply as primary and non-contributing insurance before any other insurance or self-insurance, including any deductible, maintained by, or provided to, the additional insured. In addition to listing Tough Drilling LLC and all subsidiaries as loss payee, insurance hereunder will reflect that the applicable Tough Drilling LLC is the owner of the Equipment.

I. Lessee waives all rights of subrogation and all lien rights, which may accrue to it or to its insurers. All policies of insurance, including Workers’ Compensation, shall contain a waiver of all rights of subrogation and all lien rights in favor of Lessor. Lessee understands, acknowledges, and agrees that this waiver shall bind its insurers at all levels, and Lessee further acknowledges and agrees to notify its insurers of this waiver and to have all necessary endorsements added to the insurance policies applicable to this Lease. Lessee further understands, acknowledges, and agrees that, to the extent any insurer fails to recognize and honor this waiver or attempts to subrogate against Lessor and its insurance carriers or to enforce any lien rights against Lessor or its insurance carriers, Lessee will be liable to pay to Lessor any amounts required, and all losses Lessor may suffer, as a result of such subrogation or enforcement of lien rights.

J. Compliance with these insurance requirements shall not release or limit Lessee’s liability under this Agreement.

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9. Default.

A. Lessee shall be in default hereunder if Lessee fails to pay the Lease Payment as required hereunder within fifteen (15) business days of the due date thereof.

B. Either Party will be in default under this Lease if the Party defaults in the performance of an obligation required from the Party under this Lease.

C. If either Party defaults in performance of any of its obligations under this Lease, the other Party shall provide a written notice of the default to the defaulting Party and if the defaulting Party does not remedy the default within five (5) business days after the receipt of such notice, the other Party may rely on any legal or equitable remedy available in law or equity.

D. If Lessee is in default under this Lease, Lessor, with or without notice to Lessee, shall, in addition to the remedies provided in Section 9 (C) above, have the right to exercise any or all of the following remedies: (i) Elect that Lease Payment due be accelerated and the entire amount of rental be due immediately; (ii) Terminate this Lease; (iii) Enter on Lessee’s premises (or any location where the Equipment is located) and without any court order or other process of law repossess and remove the Equipment, whether with or without notice to Lessee; any such repossession shall not constitute a termination of this Lease unless Lessor so notifies Lessee in writing. Lessee expressly authorizes Lessor or Lessor’s agent to enter any premises owned or controlled by Lessee, or Lessee’s agents and assigns, where the Equipment is located for the purpose of repossessing and removing the Equipment. Lessee specifically waives any right of action Lessee might otherwise have arising out of the entry and repossession, and releases Lessor from any claim for trespass or damage caused by reason of the entry, repossession, or removal; or (iv) exercise such other rights and seek such remedies as may be available in law or in equity to Lessor.

E. Lessor shall be entitled to recover its attorney’s fees and reasonable costs arising in connection with Lessor’s enforcement of its rights under this Lease.

10. Return Condition. Upon the expiration or termination of this Lease, Lessee shall, at Lessee’s sole cost and expense, demobilize and prepare the Equipment for return to Lessor. The Equipment shall be free and clear of oil and other substances and in the same condition as received except for ordinary wear and tear. Lessor may elect to (i) retrieve the Equipment from the site at Lessee’s sole cost and expense, or (ii) direct Lessee to deliver the Equipment to location designated by Lessor, at Lessee’s sole cost and expense, and Lessee shall promptly undertake al efforts to carry out Lessor’s election above.

11. [Intentionally Omitted].

12. Encumbrances, Taxes and Other Laws. Lessee shall keep the Equipment free and clear of any liens or other encumbrances, and shall not permit any act where Lessor's title or rights may be negatively affected. Lessee shall be responsible for complying with and conforming to all laws, regulations, ordinances and statutes relating to the possession, use, operation or maintenance of the Equipment. Furthermore, Lessee shall promptly pay all taxes, fees, licenses and governmental charges, together with any penalties or interest thereon, relating to the possession, use, operation or maintenance of the Equipment.

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13. Mutual Representations and Warranties. Each Party, as applicable, agrees, represents and warrants as follows:

A. This Lease constitutes a valid and legally binding obligation of the Party, enforceable against the Party in accordance with its terms and all applicable laws;

B. Neither the entering into or the delivery of this Lease nor the completion of the transactions contemplated in this Lease by the Party will result in the violation of any agreement or other instrument to which the Party is a party or by which the Party is bound or in a violation of any laws applicable to the Party;

C. Lessee warrants to Lessor that Lessee has the experience, skill, and ability in such fields and related disciplines as may be necessary to perform under this Lease with a high standard of quality. Lessee acknowledges that Lessor is relying on Lessee’s skill and expertise for the performance of this Lease, and agrees to notify Lessor whenever Lessee does not have the necessary skill and experience to fully perform hereunder.

D. Lessee is solely responsible for compliance with and conforming to all specifications of the Equipment manufacturer for use, operation, service, maintenance, repair, and safety, including but not limited to the Equipment manufacturer’s rated load capacity and counterweight requirements and all requirements necessary to maintain any applicable manufacturers' warranties ("Manufacturer’s Specifications"), and is also responsible for obtaining any manuals for operation, repair, or other matters relating to the Equipment.

14. Notice. Any notice or documentation required under this Lease must be provided either by personal service to the address below, or e-mail to the address below, or delivery by registered mail to the Party's address below.

To Lessee:

Bullseye Drilling LLC

TX

Attention:

Telephone:

Email:

To Lessor:

Tough Drilling LLC

, OK

Attention: Legal Department

Telephone:

Email:

Email:

15. Assignment. Neither this Lease, nor any duties hereunder, may be assigned, in whole or in part, by Lessee without the prior written consent of Lessor, which consent may be withheld in Lessor’s sole and absolute discretion. The Parties stipulate and agree that one of the purposes of this provision is to ensure that Lessor has an opportunity to enter into a Lease Agreement with any assignee and/or successor, otherwise

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acceptable to Lessor. Therefore, a remedy available to Lessor for breach of this provision (available in addition to all remedies which would otherwise be available) shall be the recovery of any losses, costs, and expenses (including reasonable attorneys’ fees) which are incurred by Lessor, its directors, officers, employees and agents, and against which losses, costs and expenses Lessor, its directors, officers, employees and agents would have been indemnified had Lessor had a Lease Agreement with each of Lessee’s successor and/or assigns identical to this Lease.

16. Miscellaneous.

A. In this Lease, the words importing the singular will include the plural and vice versa.

B. Unless something in the subject matter is inconsistent therewith, all references to Articles, Sections or Schedules refer to Articles, Sections or Schedules of this Lease.

C. A waiver by any Party of the strict performance of any covenant or provision of this Lease will not of itself constitute a waiver or any subsequent breach of such covenant or provision or of any other covenant, provision or term of this Lease. A waiver will be effective if it is in writing an signed by a duly authorized representative of the Party granting the waiver.

D. Each Party will from time to time and at all times do all such further acts and execute and deliver all such further documents and assurances as shall be reasonably required in order to fully perform and carry out the terms of this Lease.

E. Time is of the essence in all respects of this Lease.

F. This Lease may be amended from time to time upon mutual agreement. All amendments must be in writing and signed by duly authorized representatives of the parties.

G. This Lease, including Schedules A and B, constitutes the entire agreement between the Parties with respect to its subject matter. There are no other agreements, representations, warranties, conditions, terms or understandings, written, verbal, express or implied between the Parties, unless mutually agreed to and confirmed in writing subsequent to the date of this Lease.

H. In the event, and to the extent, of conflict between any of the terms of this Lease and Schedule A or Schedule B , the terms of this Lease shall prevail.

I. If any one or more provisions of this Lease are found to be invalid, unenforceable or void by any court or tribunal of competent jurisdiction, the remaining terms and provisions will be deemed to be severable from the part so found and remain in full force and effect.

J. THIS LEASE SHALL BE CONSTRUED AND GOVERNED IN ACCORDANCE WITH THE LAWS OF THE STATE OF OKLAHOMA, WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAWS OR PRINCIPLES THAT MIGHT REFER THE GOVERNANCE OR CONSTRUCTION OF THIS AGREEMENT TO THE LAW OF ANOTHER JURISDICTION. ALL ACTIONS OR DISPUTES ARISING UNDER OR RELATED TO THIS AGREEMENT SHALL BE BROUGHT ONLY IN THE COURTS OF THE STATE OF OKLAHOMA LOCATED IN OKLAHOMA COUNTY OR IN FEDERAL DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA, AND EACH OF THE PARTIES EXPRESSLY CONSENTS TO PERSONAL JURISDICTION IN THE STATE OF OKLAHOMA WITH RESPECT TO SUCH ACTION OR DISPUTE. EACH OF THE PARTIES HERETO HEREBY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION DIRECTLY OR

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INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS LEASE. EACH OF THE PARTIES HEREBY (i) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (ii) ACKNOWLEDGES THAT IT HAS BEEN INDUCED TO ENTER INTO THIS LEASE BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS CONTAINED IN THIS SECTION 16.

K. Each Party hereto has participated in the drafting of this Lease, which each Party acknowledges is the result of extensive negotiations between the Parties. In the event of any ambiguity or question of intent arises, this Lease shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Lease.

L. The rights and obligations of the Parties in this Lease which, by its express terms or nature and context is intended to survive termination or expiration of this Lease, will survive any such termination or expiration.

M. This Lease may be executed in counterparts, each of which will be deemed an original and all of which will together constitute one and the same instrument. Delivery of this Lease may be made by facsimile or other electronic format attached to email.

[Signature Page Follows]

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LESSEE:

BULLSEYE DRILLING LLC

By:/s/Ellison Findley

Print: Ellison Findley

Title: Operations Manager

LESSOR:

TOUGH DRILLING LLC

By:/s/Hyun-He Park

Print: Hyun-He Park

Title: Chief Financial Officer

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Schedule “A”

The Equipment is generally described as follows:

1) MZ9 triplex mud pump w/ Cat 398 engine (liner washer built in) (Eng Ser #35Z00702)

2) 90 JTS of 4 ½” 16.60# G105 drill pipe with 4 ½” X-hole connections

3) 8ea - 6” drill collars w/ 4 ½” X-hole connections & 2 lift subs

4) 3ea - 8” drill collars w/ 6 5/8” Regular connections & 2 lift subs

5) 1ea - 4 ½” X-hole box X 6 5/8” Regular pin crossover sub

6) 1ea - 4 ½”IF box X 4 ½” X-hole pin sub

7) 1ea - 4 ½” X-hole pin X 4 ½” X-hole box (burn sub)

8) 2 lift subs for 6" drill collars

9) 2 lift subs for 8" drill collars

10) 1 each 250 Ton 4 1/2 " bottleneck elevators - Serial No#-WOE102534-01 LT-08-16

For purposes of this Agreement, the Equipment is broken into Equipment Group A and Equipment Group B, as follows:

Equipment Group A MZ9 triplex mud pump w/ Cat 398 engine (liner washer built in) (Eng Ser #35Z00702)

Equipment Group B 90 JTS of 4 ½” 16.60# G105 drill pipe with 4 ½” X-hole connections

8ea - 6” drill collars w/ 4 ½” X-hole connections & 2 lift subs

3ea - 8” drill collars w/ 6 5/8” Regular connections & 2 lift subs

1ea - 4 ½” X-hole box X 6 5/8” Regular pin crossover sub

1ea - 4 ½”IF box X 4 ½” X-hole pin sub

1ea - 4 ½” X-hole pin X 4 ½” X-hole box (burn sub)

2 lift subs for 6" drill collars

2 lift subs for 8" drill collars

1 each 250 Ton 4 1/2 " bottleneck elevators - Serial No#-WOE102534-01 LT-08-16

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Schedule “B”

Stated Value Equipment

$37,500 MZ9 triplex mud pump/398 cat engine, with liner washer, engine ser# 35Z00702

$10,800 90 Jts of 4 1/2" 16.60# G105 drill piupe with 4 1/2" X-hole connections

$3,200 8 each - 6" drillcollars with 4 1/2" X-hole connections

$2,400 3 each - 8" drillcollars with 6/5/8" regular connections

$100 1 each 4 1/2" X-hole X 6 5/8" regular pin crossover sub

$100 1 each 4 1/2" IF Box X 4 1/2" X hole pin sub

$100 1 each 4 1/2" X-hile pin X 4 1/2" X hole box (burn sub)

$200 2 lift subs for 6" drillcollars

$200 2 lift subs for 8" drillcollars

$1,000 1 each 250 Ton 4 1/2 " bottleneck elevators - Serial No#-WOE102534-01 LT-08-16

$55,600 Total

**LeaseA#19**

**Exhibit 10.26**

**EXECUTION COPY**

**MASTER LEASE AGREEMENT**

Dated As Of: April 28, 2006

This MASTER LEASE AGREEMENT is made and entered into by and between Butcher Equipment Leasing Inc. (“Lessor”), an Ohio corporation, with its principal place of business at XXX, Ohio 43230 and the Lessee identified below:

|  |  |  |
| --- | --- | --- |
|  |  |  |
| Lessee Name: |  | ORGON CORP. |
|  |  | |
| Lessee Address: |  |  |
|  |  | XXX. UT 84209 |
|  |  | |
| Lessee Organization: |  | A Corporation organized under the laws of the State of DE |

**1. LEASE OF EQUIPMENT**: Lessor leases to Lessee, and Lessee leases from Lessor, all the property described in the Lease Schedules which are signed from time to time by Lessor and Lessee.

**2. CERTAIN DEFINITIONS**: “Schedule” means each Lease Schedule signed by Lessee and Lessor which incorporates the terms of this Master Lease Agreement, together with all exhibits, riders, attachments and addenda thereto. “Equipment” means the property described in each Schedule, together with all attachments, additions, accessions, parts, repairs, improvements, replacements and substitutions thereto. “Lease”, “herein”, “hereunder”, “hereof’ and similar words mean this Master Lease Agreement and all Schedules, together with all exhibits, riders, attachments and addenda to any of the foregoing, as the same may from time to time be amended, modified or supplemented. “Prime Rate” means the prime rate of interest announced from time to time as the prime rate by MoneyCash Bank, N.A. (or its successors or assigns); provided, that the parties acknowledge that the Prime Rate is not intended to be the lowest rate of interest charged by said bank in connection with extensions of credit. “Lien” means any security interest, lien, mortgage, pledge, encumbrance, judgment, execution, attachment, warrant, writ, levy, other judicial process or claim of any nature whatsoever by or of any person. “Fair Market Value” means the amount which would be paid for an item of Equipment by an informed and willing buyer (other than a used equipment or scrap dealer) and an informed and willing seller neither under a compulsion to buy or sell. “Lessor’s Cost” means the invoiced price of any item of Equipment plus any other cost to Lessor of acquiring an item of Equipment as set forth in the Schedule. “Other Credit Agreement” means any agreement applicable to Lessee or any Guarantor (as defined in Section 14 below) or by which Lessee or any Guarantor is bound involving a liability, indebtedness or performance obligation of Lessee or any Guarantor with a potential liability to Lessee or any Guarantor in an amount equal to or in excess of $50,000.00. All terms defined in the Lease are equally applicable to both the singular and plural form of such terms.

**3. LEASE TERM AND RENT**: The term of the lease of the Equipment described in each Schedule (“Lease Term”) commences on the date stated in the Schedule and continues for the term stated therein. As rent for the Equipment described in each Schedule, Lessee shall pay Lessor the rent payments and all other amounts stated in such Schedule, payable on the dates

**Portions of this Exhibit were omitted and have been filed separately with the Secretary of the Commission pursuant to the Company’s application requesting confidential treatment under Rule 406 of the Securities Act of 1933, as amended.**

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specified therein. All payments due under the Lease shall be made in United States dollars at Lessors office stated in the opening paragraph or as otherwise directed by Lessor in writing. If any payment under the Lease is due on a day on which Lessor is not open for business, then such payment shall be due and payable on the next preceding day on which Lessor is open for business.

**4. ORDERING, DELIVERY, REMOVAL AND INSPECTION OF EQUIPMENT**: If an Event of Default occurs or if for any reason Lessee does not accept, or revokes its acceptance of, equipment covered by a purchase order or purchase contract or if any commitment or agreement of Lessor to lease equipment to Lessee expires, terminates or is otherwise cancelled, then automatically upon notice from Lessor, any purchase order or purchase contract and all obligations thereunder shall be assigned to Lessee and Lessee shall pay and perform all obligations thereunder. Lessee agrees to pay, defend, indemnify and hold Lessor harmless from any liabilities, obligations, claims, costs and expenses (including reasonable attorney fees and expenses) of whatever kind imposed on or asserted against Lessor in any way related to any purchase orders or purchase contracts. Lessee shall make all arrangements for, and Lessee shall pay all costs of, transportation, delivery, installation and testing of Equipment. The Equipment shall be delivered to Lessee’s premises stated in the applicable Schedule and shall not be removed without Lessor’s prior written consent. Lessor has the right upon reasonable notice to Lessee to inspect the Equipment wherever located. Lessor may enter upon any premises where Equipment is located and remove it immediately, without notice or liability to Lessee, upon the expiration or other termination of the Lease Term.

**5. MAINTENANCE AND USE**: Lessee agrees it will, at its sole expense: (a) repair and maintain the Equipment in good condition and working order and supply and install all replacement parts or other devices when required to so maintain the Equipment or when required by applicable law or regulation, which parts, or devices shall automatically become part of the Equipment; (b) use and operate the Equipment in a careful manner in the normal course of its business and only for the purposes for which it was designed in accordance with the manufacturer’s warranty requirements, and comply with all laws and regulations relating to the Equipment, and obtain all permits or licenses necessary to install, use or operate the Equipment; and (c) make no alterations, additions, subtractions, upgrades or improvements to the Equipment without Lessor’s prior written consent, but any such alterations, additions, upgrades or improvements shall automatically become part of the Equipment. The Equipment will not be used or located outside of the United States of America.

**6. NET LEASE; NO EARLY TERMINATION**: The Lease is a net lease. Lessee’s obligation to pay all rent and all other amounts payable under the Lease is absolute and unconditional under any and all circumstances and shall not be affected by any circumstances of any character including, without limitation, (a) any setoff, claim, counterclaim, defense or reduction which Lessee may have at any time against Lessor or any other party for any reason, or (b) any defect in the condition, design or operation of, any lack of fitness for use of, any damage to or loss of, or any lack of maintenance or service for any of the Equipment. Each Schedule is a noncancelable lease of the Equipment described therein and Lessee’s obligation to pay rent and perform all other obligations thereunder and under the Lease are not subject to prepayment, cancellation or termination by Lessee for any reason.

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**7. NO WARRANTIES BY LESSOR**: LESSOR LEASES THE EQUIPMENT AS-IS, WHERE-IS, AND WITH ALL FAULTS. LESSOR MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, OF ANY KIND AS TO THE EQUIPMENT INCLUDING, WITHOUT LIMITATION: ITS MERCHANTABILITY; ITS FITNESS FOR ANY PARTICULAR PURPOSE; ITS DESIGN, CONDITION, QUALITY, CAPACITY, DURABILITY, CAPABILITY, SUITABILITY OR WORKMANSHIP; ITS NON-INTERFERENCE WITH OR NON-INFRINGEMENT OF ANY PATENT, TRADEMARK, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHT; OR ITS COMPLIANCE WITH ANY LAW, RULE, SPECIFICATION, PURCHASE ORDER OR CONTRACT PERTAINING THERETO. Lessor hereby assigns to Lessee the benefit of any assignable manufacturer’s or supplier’s warranties, but Lessor, at Lessee’s written request, will cooperate with Lessee in pursuing any remedies Lessee may have under such warranties. Any action taken with regard to warranty claims against any manufacturer or supplier by Lessee will be at Lessee’s sole expense. LESSOR MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND AS TO THE FINANCIAL CONDITION OR FINANCIAL STATEMENTS OF ANY PARTY OR AS TO THE TAX OR ACCOUNTING TREATMENT OR CONSEQUENCES OF THE LEASE, THE EQUIPMENT OR THE RENT PAYMENTS.

**8. INSURANCE**: Lessee at its sole expense shall at all times keep each item of Equipment insured against all risks of loss or damage from every cause whatsoever for an amount not less than the greater of the full replacement value or the Stipulated Loss Value (as defined in Section 9(b) below) of such item of Equipment. Lessee at its sole expense shall at all times carry public liability and third party property damage insurance in amounts satisfactory to Lessor (but in no event less than $5,000,000.00) protecting Lessee and Lessor from liabilities for injuries to persons and damage to property of others relating in any way to the Equipment. All insurers shall be reasonably satisfactory to Lessor. Lessee shall deliver to Lessor satisfactory evidence of such coverage prior to and during the Lease Term of each Schedule. Proceeds of any insurance covering damage or loss of the Equipment shall be payable to Lessor as loss payee and shall be applied as set forth in Section 9 below). Proceeds of any public liability or third party property insurance shall be payable first to Lessor as additional insured to the extent of its liability, then to Lessee. If an Event of Default occurs and is continuing, then Lessee automatically appoints Lessor as Lessee’s attorney-in-fact with full power and authority in the place of Lessee and in the name of Lessee or Lessor to make claim for, receive payment of, and sign and endorse all documents, checks or drafts for loss or damage under any such policy. Each insurance policy will require that the insurer give Lessor at least 30 days prior written notice of any cancellation of such policy and will require that Lessor’s interests remain insured regardless of any act, error, omission, neglect or misrepresentation of Lessee. In the event that any policies insuring against liability risks described above shall now or hereafter provide coverage on a “claims made” basis, Lessee shall continue to maintain such policies in effect for a period of not less than three years after the expiration of the Lease Term of any Schedules. The insurance maintained by Lessee shall be primary without any right of contribution from insurance which may be maintained by Lessor.

**9. LOSS AND DAMAGE**: (a) Lessee bears the entire risk of loss, theft, damage or destruction of Equipment in whole or in part from any reason whatsoever (“Casualty Loss”). No Casualty Loss to Equipment shall relieve Lessee from the obligation to pay rent or from any other obligation under the Lease. In the event of Casualty Loss to any item of Equipment, Lessee

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shall immediately notify Lessor of the same and Lessee shall, if so directed by Lessor, immediately repair the same. If Lessor determines that any item of Equipment has suffered a Casualty Loss beyond repair (“Lost Equipment”), then Lessee, at the option of Lessor, shall: (1) immediately replace the Lost Equipment with similar equipment in good repair, condition and working order free and clear of any Liens and deliver to Lessor a bill of sale covering the replacement equipment, in which event such replacement equipment shall automatically be Equipment under the Lease; or (2) on the rent payment date which is at least 30 but no more than 60 days after the date of the Casualty Loss, pay to Lessor all accrued and unpaid rent, late charges and other amounts due under the Lease on or before such rent payment date plus the Stipulated Loss Value for such Lost Equipment as of the date the Stipulated Loss Value payment is due. Upon payment by Lessee of all amounts due under the above clause (2), the lease of the Lost Equipment will terminate and Lessor shall transfer to Lessee all of Lessor’s right, title and interest in such Equipment on an “as-is, where-is” basis with all faults, without recourse and without representation or warranty of any kind, express or implied.

(b) “Stipulated Loss Value” of any item of Equipment during its Lease Term equals the Stipulated Loss Value of the Equipment as set forth in its Schedule. If the Stipulated Loss Value of any item of Equipment is not set forth in its Schedule, then the Stipulated Loss Value shall be equal to 102% of the present value discounted in arrears to the applicable date at the applicable SLV Discount Rate of (1) the remaining rents and all other amounts [including, without limitation, any balloon payment and, as to a terminal rental adjustment clause (“TRAC”) lease, the TRAC value stated in the Schedule, and any other payments required to be paid by Lessee at the end of the applicable Lease Term] payable under the Lease for such item on and after such date to the end of the applicable Lease Term and (2) an amount equal to the Economic Value of the Equipment. For any item of Equipment, “Economic Value” means the Fair Market Value of the Equipment at the end of the applicable Lease Term as originally anticipated by Lessor at the Commencement Date of the applicable Schedule; provided, that Lessee agrees that such value shall be determined by the books of Lessor as of the Commencement Date of the applicable Schedule. After the payment of all rent due under the applicable Schedule and the expiration of the Lease Term of any item of Equipment, the Stipulated Loss Value of such item equals the Economic Value of such item. Stipulated Loss Value shall also include any Taxes payable by Lessor in connection with its receipt thereof. For any item of Equipment, “SLV Discount Rate” means an interest rate equal to LIBOR in effect on the Commencement Date of the Schedule for such item. “LIBOR” means the London Interbank Offered Rate for 30 day loans as published in the Wall Street Journal on the applicable date; provided that if the Wall Street Journal is not published on a particular day, the rate shall be as published in the most recently preceding published Wall Street Journal or, if the Wall Street Journal has stopped publishing 30-day LIBOR or if the Wall Street Journal has stopped publishing 30-day LIBOR on at least a monthly basis, in a comparable publication as reasonably determined by Lessor.

**10. TAX BENEFITS INDEMNITY**: (a) The Lease has been entered into on the basis that Lessor shall be entitled to such deductions, credits and other tax benefits as are provided by federal, state and local income tax law to an owner of the Equipment (the “Tax Benefits”) including, without limitation: (1) modified accelerated cost recovery deductions on each item of Equipment under Section 168 of the Code (as defined below) in an amount determined commencing with the taxable year in which the Commencement Date of the applicable Schedule occurs, using the maximum allowable depreciation method available under

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Section 168 of the Code, using a recovery period (as defined in Section 168 of the Code) reasonably determined by Lessor, and using an initial adjusted basis which is equal to the Lessor’s Cost of such item; (2) amortization of the expenses paid by Lessor in connection with the Lease on a straight-line basis over the term of the applicable Schedule; and (3) Lessor’s federal taxable income will be subject to the maximum rate on corporations in effect under the Code as of the Commencement Date of the applicable Schedule.

(b) If on any one or more occasions (1) Lessor shall lose, shall not have or shall lose the right to claim all or any part of the Tax Benefits, (2) there shall be reduced, disallowed, recalculated or recaptured all or any part of the Tax Benefits, or (3) all or any part of the Tax Benefits is reduced by a change in law or regulation (each of the events described in subparagraphs 1, 2 or 3 of this paragraph (b) will be referred to as a “Tax Loss”), then, upon 30 days written notice by Lessor to Lessee that a Tax Loss has occurred, Lessee shall pay Lessor an amount which, in the reasonable opinion of Lessor and after the deduction of all taxes required to be paid by Lessor with respect to the receipt of such amount, will provide Lessor with the same after-tax net economic yield which was originally anticipated by Lessor as of the Commencement Date of the applicable Schedule.

(c) A Tax Loss shall occur upon the earliest of. (1) the happening of any event (such as disposition or change in use of an item of Equipment) which may cause such Tax Loss; (2) Lessor’s payment to the applicable taxing authority of the tax increase resulting from such Tax Loss; or (3) the adjustment of Lessor’s tax return to reflect such Tax Loss.

(d) Lessor shall not be entitled to payment under this section for any Tax Loss caused solely by one or more of the following events: (1) a disqualifying sale or disposition of an item of Equipment by Lessor prior to any Event of Default by Lessee; (2) Lessor’s failure to timely or properly claim the Tax Benefits in Lessor’s tax return; (3) a disqualifying change in the nature of Lessor’s business or liquidation thereof; (4) a foreclosure by any person holding through Lessor a security interest on an item of Equipment which foreclosure results solely from an act of Lessor; or (5) Lessor’s failure to have sufficient taxable income or tax liability to utilize the Tax Benefits.

(e) “Code” shall mean the Internal Revenue Code of 1986, as amended. For the purposes of this section 10, the term “Lessor” shall include any affiliate group (within the meaning of section 1504 of the Code) of which Lessor is a member for any year in which a consolidated income tax return is filed for such affiliated group. Lessee’s obligations under this section shall survive the expiration, cancellation or termination of the Lease.

**11. GENERAL TAX INDEMNITY**: Lessee will pay, and will defend, indemnify and hold Lessor harmless on an after-tax basis from, any and all Taxes (as defined below) and related audit and contest expenses on or relating to (a) any of the Equipment, (b) the Lease, (c) purchase, acceptance, ownership, lease, possession, use, operation, transportation, return or other disposition of any of the Equipment, and (d) rentals or earnings relating to any of the Equipment or the Lease. “Taxes” means present and future taxes or other governmental charges that are not based on the net income of Lessor, whether they are assessed to or payable by Lessee or Lessor, including, without limitation (i) sales, use, excise, licensing, registration, titling, franchise, business and occupation, gross receipts, stamp and personal property taxes, (ii) levies, imposts, duties, assessments, charges and withholdings, (iii) penalties, fines, and additions to tax and (iv)

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interest on any of the foregoing. Unless Lessor elects otherwise in a writing sent to Lessee, Lessor will prepare and file all reports and returns relating to any Taxes and will pay all Taxes to the appropriate taxing authority. Lessee will reimburse Lessor for all such payments promptly on request. On or after any applicable assessment/levy/lien date for any personal property Taxes relating to any Equipment, Lessee agrees that upon Lessor’s request Lessee shall pay to Lessor the personal property Taxes which Lessor reasonably anticipates will be due, assessed, levied or otherwise imposed on any Equipment during its Lease Term. If Lessor elects in a writing sent to Lessee, Lessee will itself prepare and file all such reports and returns, pay all such Taxes directly to the taxing authority, and send Lessor evidence thereof. Lessee’s obligations under this section shall survive the expiration, cancellation or termination of the Lease.

**12. GENERAL INDEMNITY**: Lessee assumes all risk and liability for, and shall defend, indemnify and keep Lessor harmless on an after-tax basis from, any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs and expenses, including reasonable attorney fees and expenses, of whatsoever kind and nature imposed on, incurred by or asserted against Lessor, in any way relating to or arising out of the manufacture, purchase, acceptance, rejection, ownership, possession, use, selection, delivery, lease, operation, condition, sale, return or other disposition of the Equipment or any part thereof (including, without limitation, any claim for latent or other defects, whether or not discoverable by Lessee or any other person, any claim for negligence, tort or strict liability, any claim under any environmental protection or hazardous waste law and any claim for patent, trademark or copyright infringement). Lessee will not indemnify Lessor under this section for loss or liability arising from events which occur after the Equipment has been returned to Lessor or for loss or liability caused directly and solely by the gross negligence or willful misconduct of Lessor. In this section, “Lessor” also includes any director, officer, employee, agent, successor or assign of Lessor. Lessee’s obligations under this section shall survive the expiration, cancellation or termination of the Lease.

**13. PERSONAL PROPERTY**: Lessee represents and agrees that the Equipment is, and shall at all times remain, separately identifiable personal property. Upon Lessor’s request, Lessee shall furnish Lessor a landlord’s and/or mortgagee’s waiver and consent to remove all Equipment. Lessor may display notice of its interest in the Equipment by any reasonable identification. Lessee shall not alter or deface any such indicia of Lessor’s interest.

**14. DEFAULT**: Each of the following events shall constitute an Event of Default under the Lease: (a) Lessee fails to pay any rent or other amount due under the Lease within 10 days of its due date; or (b) Lessee fails to perform or observe any of its obligations in Sections 8, 18, or 22 hereof; or (c) Lessee fails to perform or observe any of its other obligations in the Lease for more than 30 days after Lessor notifies Lessee of such failure; or (d) Lessee or any Guarantor fails to pay or perform or observe any term, covenant (including, but not limited to, any financial covenant), agreement or condition contained in, or there shall occur any payment or other default under or as defined in, any loan, credit agreement, extension of credit or lease in which Lessor or any subsidiary (direct or indirect) of JP Morgan Butcher & Co. (or its successors or assigns) is the lender, creditor or lessor (each an “Affiliate Credit Agreement”) which shall not be remedied within the period of time (if any) within which such Affiliate Credit Agreement permits such default to be remedied; or (e) any statement, representation or warranty made by Lessee in the Lease, in any Schedule or in any document, certificate or financial statement in

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connection with the Lease proves at anytime to have been untrue or misleading in any material respect as of the time when made; or (f) Lessee or any Guarantor becomes insolvent or bankrupt, or admits its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors, or applies for, institutes or consents to the appointment of a receiver, trustee or similar official for it or any substantial part of its property or any such official is appointed without its consent, or applies for, institutes or consents to any bankruptcy, insolvency, reorganization, debt moratorium, liquidation or similar proceeding relating to it or any substantial part of its property under the laws of any jurisdiction or any such proceeding is instituted against it without stay or dismissal for more than 60 days, or it commences any act amounting to a business failure or a winding up of its affairs, or it ceases to do business as a going concern; or (g) with respect to any guaranty, letter of credit, pledge agreement, security agreement, mortgage, deed of trust, debt subordination agreement or other credit enhancement or credit support agreement (whether now existing or hereafter arising) signed or issued by any party (each a “Guarantor”) in connection with all or any part of Lessee’s obligations under the Lease, the Guarantor defaults in its obligations thereunder or any such agreement shall cease to be in full force and effect or shall be declared to be null, void, invalid or unenforceable by the Guarantor; or (h) Lessee or any Guarantor fails to pay or perform or observe any term, covenant (including, but not limited to, any financial covenant), agreement or condition contained in, or there shall occur any payment or other default under or as defined in any Other Credit Agreement which shall not be remedied within the period of time (if any) within which such Other Credit Agreement permits such default to be remedied, regardless of whether such default is waived by any other party to such Other Agreement or such default produces or results in the cancellation of such Other Credit Agreement or the acceleration of the liability, indebtedness or other obligation under such Other Credit Agreement; or (i) Lessee or any Guarantor shall suffer the loss of any material license or franchise when Lessor shall reasonably conclude that such loss fairly impairs Lessee’s or such Guarantor’s ability to perform its obligations required hereunder or with respect hereto; or (j) Lessee or any Guarantor shall fail to pay any final judgment forth the payment of money in an amount equal to or in excess of $50,000.00; or (k) there shall occur in Lessor’s reasonable opinion any material adverse change in the financial condition, business or operations of Lessee or any Guarantor.

**15. REMEDIES**: If any Event of Default exists, Lessor may exercise in any order one or more of the remedies described in the lettered subparagraphs of this section, and Lessee shall perform its obligations imposed thereby:

(a) Lessor may require Lessee to return any or all Equipment as provided in the Lease.

(b) Lessor or its agent may repossess any or all Equipment wherever found, may enter the premises where the Equipment is located and disconnect, render unusable and remove it, may demand that Lessee cease using the Equipment, and may use such premises without charge to store or show the Equipment for sale for up to 90 days.

(c) Lessor may sell any or all Equipment at public or private sale, with or without advertisement or publication, may re-lease or otherwise dispose of it or may use, hold or keep it.

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(d) Lessor may require Lessee to pay to Lessor on a demand date specified by Lessor, with respect to any or all Equipment (i) all accrued and unpaid rent, late charges and other amounts due under the Lease on or before such demand date, plus (ii) as liquidated damages for loss of a bargain and not as a penalty, and in lieu of any further payments of rent, the Stipulated Loss Value of the Equipment on such demand date, plus (iii) interest at the Overdue Rate on the total of the foregoing from the demand date to the date of payment. “Overdue Rate” means an interest rate per annum equal to the higher of 18% or 2% over the Prime Rate over the Prime Rate, but not to exceed the highest rate permitted by applicable law. The parties acknowledge that the foregoing money damage calculation reasonably reflects Lessor’s anticipated loss with respect to the Equipment and the related Lease resulting from the Event of Default. If an Event of Default under section 14(f) of this Master Lease Agreement exists, then Lessee will be automatically liable to pay Lessor the foregoing amounts as of the next rent payment date unless Lessor otherwise elects in writing.

(e) Lessee shall pay all costs, expenses and damages incurred by Lessor because of the Event of Default or its actions under this section, including, without limitation any collection agency and/or attorney fees and expenses, and any costs related to the repossession, safekeeping, storage, repair, reconditioning or disposition of the Equipment.

(f) Lessor may terminate the Lease and/or any or all Schedules, may sue to enforce Lessee’s performance of its obligations under the Lease and/or may exercise any other right or remedy then available to Lessor at law or in equity.

Except as otherwise expressly required by Section 14 hereof or by applicable law, Lessor is not required to take any legal process or give Lessee any notice before exercising any of the above remedies. None of the above remedies is exclusive, but each is cumulative and in addition to any other remedy available to Lessor. Lessor’s exercise of one or more remedies shall not preclude its exercise of any other remedy. No action taken by Lessor shall release Lessee from any of its obligations to Lessor. No delay or failure on the part of Lessor to exercise any right hereunder shall operate as a waiver thereof, nor as an acquiescence in any Event of Default, nor shall any single or partial exercise of any right preclude any other exercise thereof or the exercise of any other right. After any Event of Default, Lessors acceptance of any payment by Lessee under the Lease shall not constitute a waiver by Lessor of such Event of Default, regardless of Lessor’s knowledge or lack of knowledge at the time of such payment, and shall not constitute a reinstatement of the Lease if the Lease has been declared in default by Lessor, unless Lessor has agreed in writing to reinstate the Lease and to waive the Event of Default.

If Lessor actually repossesses any Equipment, then it will use commercially reasonable efforts under the then current circumstances to attempt to mitigate its damages; provided, that Lessor shall not be required to sell, re-lease or otherwise dispose of any Equipment prior to Lessor enforcing any of the remedies described above. Lessor may sell or re-lease the Equipment in any manner it chooses, free and clear of any claims or rights of Lessee and without any duty to account to Lessee with respect thereto except as provided below. If Lessor actually sells or re-leases the Equipment, it will credit the net proceeds of any sale of the Equipment, or the net present value (discounted at the then current Prime Rate) of the rents payable under any new lease of the Equipment, against and up to (but not exceeding) the Stipulated Loss Value of the Equipment and any other amounts Lessee owes Lessor, or will reimburse Lessee for and up to (but not exceeding) Lessee’s payment thereof. The term “net” as used above shall mean such amount after deducting the costs and expenses described in clause (e) above of this section.

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**16. LESSOR’S RIGHT TO PERFORM**: If Lessee fails to make any payment under the Lease or fails to perform any of its other agreements in the Lease (including, without limitation, its agreement to provide insurance coverage as stated in the Lease), Lessor may itself make such payment or perform such agreement, and the amount of such payment and the amount of the expenses of Lessor incurred in connection with such payment or performance shall be deemed to be additional rent, payable by Lessee on demand.

**17. FINANCIAL AND OTHER REPORTS**: Lessee agrees to furnish to Lessor: (a) annual audited financial statements setting forth the financial condition and results of operation of Lessee (financial statements shall include balance sheet, income statement and statement of cash flows and all notes and auditor’s report thereto) within 120 days of the end of each fiscal year of Lessee; (b) Quarterly financial statements setting forth the financial condition and results of operation of Lessee within 45 days of the end of each of the first three fiscal quarters of Lessee; (c) Monthly Bank and marketable securities statements within five days of receipt: and (d) such other financial information as Lessor may from time to time reasonably request including, without limitation, financial reports filed by Lessee with federal or state regulatory agencies. All such financial information shall be prepared in accordance with generally accepted accounting principles on a basis consistently applied. Lessee will promptly notify Lessor in writing with full details if any event occurs or any condition exists which constitutes, or which but for a requirement of lapse of time or giving of notice or both would constitute, an Event of Default under the Lease or which might materially and adversely affect the financial condition or operations of Lessee or any affiliate of Lessee. Lessee will promptly notify Lessor in writing of the commencement of any litigation. to which Lessee or any of its subsidiaries or affiliates may be a party (except for litigation in which Lessee’s or the affiliate’s contingent liability is fully covered by insurance) which, if decided adversely to Lessee would adversely affect or impair the title of Lessor to the Equipment or which, if decided adversely to Lessee would materially adversely affect the business operations or financial condition of Lessee. Lessee will immediately notify Lessor, in writing, of any judgment against Lessee if such judgment would have the effect described in the preceding sentence.

**18. NO CHANGES IN LESSEE; FINANCIAL COVENANTS**: Lessee shall not: (a) liquidate, dissolve or suspend its business; (b) sell, transfer or otherwise dispose of all or a majority of its assets, except that Lessee may sell its inventory in the ordinary course of its business; (c) enter into any merger, consolidation or similar reorganization unless it is the surviving company; (d) transfer all or any substantial part of its operations or assets outside of the United States of America; or (e) without 30 days advance written notice to Lessor, change its name, state of incorporation or organization, or chief place of business. There shall be no transfer of more than a 25% ownership interest in Lessee or any covenants of Lessee and any Guarantor under any Affiliate Credit Agreement shall remain fully applicable to Lessee and any Guarantor (as the case may be) and shall not be violated by Lessee or any Guarantor (as the case may be) at any time. If for any reason whatsoever an Affiliate Credit Agreement is canceled, discharged or otherwise terminated and if no other Affiliate Credit Agreement remains in effect as to Lessee or any Guarantor, then, automatically and without any action by Lessor or any other party, all financial covenants which are in effect as of the date immediately prior to the cancellation,

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discharge or termination of such Affiliate Credit Agreement shall remain in full force and effect, shall be incorporated in this Master Lease by reference, and shall be made a part of this Master Lease.

**19. LATE CHARGES**: If any rent or other amount payable under the Lease is not paid within 5 days of its due date, then as compensation for the administration and enforcement of Lessee’s obligation to make timely payments, Lessee shall pay with respect to each overdue payment on demand an amount equal to the greater of fifteen dollars ($15.00) or five percent (5%) of the each overdue payment (but not to exceed the highest late charge permitted by applicable law) plus any collection agency fees and expenses. The failure of Lessor to collect any late charge will not constitute a waiver of Lessors right with respect thereto.

**20. NOTICES; POWER OF ATTORNEY**: (a) Service of all notices under the Lease shall be sufficient if given personally or couriered or mailed to the party involved at its respective address set forth herein or at such other address as such party may provide in writing from time to time. Any such notice mailed to such address shall be effective three days after deposit in the United States mail with postage prepaid. Notice by overnight courier shall be deemed given and received on the date scheduled for delivery. (b) With respect to any power of attorney covered by the Lease, the powers conferred on Lessor thereby: are powers coupled with an interest; are irrevocable; are solely to protect Lessor’s interests under the Lease; and do not impose any duty on Lessor to exercise such powers. Lessor shall be accountable solely for amounts it actually receives as a result of its exercise of such powers.

**21. ASSIGNMENT BY LESSOR**: Lessor and any assignee of Lessor, with or without notice to or consent of Lessee, may sell, assign, transfer or grant a security interest in all or any part of Lessor’s rights, obligations, title or interest in the Equipment, the Lease, any Schedule or the amounts payable under the Lease or any Schedule to any entity (a “transferee”). The transferee shall succeed to all of Lessor’s rights in respect to the Lease as assigned to said transferee (including, without limitation, all rights to insurance and indemnity protection described in the Lease). Lessee agrees to sign any acknowledgement and other documents reasonably requested by Lessor or the transferee in connection with any such transfer transaction. Lessee, upon receiving notice of any such transfer transaction, shall comply with the terms and conditions thereof. Lessee agrees that it shall not assert against any transferee any claim, defense, setoff, deduction or counterclaim which Lessee may now or hereafter be entitled to assert against Lessor. Unless otherwise agreed in writing, the transfer transaction shall not relieve Lessor of any of its obligations to Lessee under the Lease and Lessee agrees that the transfer transaction shall not be construed as being an assumption of such obligations by the transferee. Lessee agrees that Lessor may provide lease information and financial information about Lessee on a confidential basis to any prospective transferee.

**22. NO ASSIGNMENT, SUBLEASE OR LIEN BY LESSEE**: LESSEE SHALL NOT, DIRECTLY OR INDIRECTLY, (a) MORTGAGE, ASSIGN, SELL, TRANSFER, OR OTHERWISE DISPOSE OF THE LEASE OR ANY INTEREST THEREIN OR THE EQUIPMENT OR ANY PART THEREOF, OR (b) SUBLEASE, RENT, LEND OR TRANSFER POSSESSION OR USE OF THE EQUIPMENT OR ANY PART THEREOF TO ANY PARTY, OR (c) CREATE, INCUR, GRANT, ASSUME OR ALLOW TO EXIST ANY LIEN ON THE LEASE, ANY SCHEDULE, THE EQUIPMENT OR ANY PART THEREOF.

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**23. EXPIRATION OF LEASE TERM**: (a) At least 90 days (or earlier if otherwise specified), but no more than 270 days prior to expiration of the Lease Term of each Schedule, Lessee shall give Lessor written notice of its electing one of the following options for all (but not less than all) of the Equipment covered by such Schedule: return the Equipment under clause (b) below; or purchase the Equipment under clause (c) below. The election of an option shall be irrevocable. If Lessee fails to give timely notice of its election, then (i) Lessee shall be deemed to have elected to return the Equipment to Lessor at the end of the original Lease Term or, if elected by Lessor under clause (ii) of this sentence, the Extended Lease Term, and (ii) Lessor, at its option, may extend the Lease Term for an additional three months (“Extended Lease Term”) and all provisions of the Lease shall remain in full force and effect during the Extended Lease Term including, without limitation, obligations to pay rent and insure the Equipment.

(b) If Lessee elects or is deemed to have elected to return the Equipment at the expiration of the Lease Term of a Schedule or if Lessee is obligated at any time to return the Equipment, then Lessee shall, at its sole expense and risk, reinstall, disassemble, pack, crate, insure and return the Equipment to Lessor (all in accordance with applicable industry standards) at any location in the continental United States of America selected by Lessor. The Equipment shall be in the same condition as when received by Lessee, reasonable wear, tear and depreciation resulting from normal and proper use excepted (and, if applicable, in the condition set forth in the Lease or the Schedule), shall be in good operating order and maintenance as required by the Lease, shall be certified as being eligible for any available manufacturer’s maintenance program, shall be free and clear of any Liens as required by the Lease, shall comply with all applicable laws and regulations and shall include all manuals, specifications, repair and maintenance records and similar documents. Until Equipment is returned as required above, all provisions of the Lease shall remain in full force and effect including, without limitation, obligations to pay rent and insure the Equipment; provided, that the Lease Term of the lease of the Equipment covered by such Schedule shall be month-to-month or such shorter period as may be specified by Lessor:

(c) If Lessee gives Lessor timely notice of its election to purchase Equipment, then on the expiration date of the applicable Schedule Lessee shall purchase all (but not less than all) of the Equipment and shall pay to Lessor the Fair Market Value of the Equipment plus all Taxes (other than income taxes on Lessor’s gains on such sales, costs and expenses incurred or paid by Lessor in connection with such sale plus all accrued but unpaid amounts due with respect to the Equipment and/or the Schedule. The Stipulated Loss Value or Economic Value of any item of Equipment shall have no bearing or influence on the determination of Fair Market Value under this clause (c). Upon payment in full of the above amounts, and if no Event of Default has occurred and is continuing under the Lease, Lessor shall transfer title to such Equipment to Lessee “as-is, where-is” with all faults and without recourse to Lessor and without any representation or warranty of any kind whatsoever by Lessor, express or implied.

(d) For purposes of the purchase option of the Lease, the determination of the Fair Market Value of any Equipment shall be determined (1) without deducting any costs of dismantling or removal from the location of use, (2) on the assumptions that the Equipment is in the better of its then current condition or the condition required by the applicable return and maintenance provisions of the Lease and that the Equipment is free and clear of any Liens as required by the Lease, and (3) by mutual agreement of Lessee and Lessor or, if Lessor and

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Lessee are not able to agree on such value, by the Appraisal Procedure. “Appraisal Procedure” means the determination of Fair Market Value by an independent appraiser acceptable to Lessor and Lessee, or, if the parties are unable to agree on an acceptable appraiser, by averaging the valuation (disregarding the One which differs the most from the other two) of three independent appraisers, the first appointed by Lessor, the second appointed by Lessee and the third appointed by the first two appraisers. Lessee, at its sole expense, shall pay all fees, costs and expenses of the above described appraisers.

**24. GOVERNING LAW**: THE INTERPRETATION, CONSTRUCTION AND VALIDITY OF THE LEASE SHALL BE GOVERNED BY THE LAWS OF THE STATE OF OHIO WITHOUT REFERENCE TO CONFLICT OF LAW PROVISIONS. WITH RESPECT TO ANYACTION BROUGHT BY LESSOR AGAINST LESSEE TO ENFORCE ANY TERM OF THE LEASE, LESSEE HEREBY IRREVOCABLY CONSENTS TO THE JURISDICTION AND VENUE OF ANY STATE OR FEDERAL COURT IN OHIO, WHERE LESSOR HAS ITS PRINCIPAL PLACE OF BUSINESS AND WHERE PAYMENTS ARE TO BE MADE BY LESSEE.

**25. MISCELLANEOUS**: (a) Subject to the limitations herein, the Lease shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, successors and assigns. (b) This Master Lease Agreement and each Schedule may be executed in any number of counterparts, which together shall constitute a single instrument. If more than one counterpart of each Schedule is executed by Lessee and Lessor, then only one may be marked “Lessor’s Original” by Lessor. A security interest in any Schedule may be created through transfer and possession only of: the sole original of said Schedule if there is only one original; or the counterpart marked “Lessor’s Original” if there are multiple counterparts of said Schedule. (c) Section and paragraph headings in this Master Lease Agreement and the Schedules are for convenience only and have no independent meaning. (d) The terms of the Lease shall be severable and if any term thereof is declared unconscionable, invalid, illegal or void, in whole or in part, the decision so holding shall not be construed as impairing the other terms of the Lease and the Lease shall continue in full force and effect as if such invalid, illegal, void or unconscionable term were not originally included herein. (e) All indemnity obligations of Lessee under the Lease and all rights, benefits and protections provided to Lessor by warranty disclaimers shall survive the cancellation, expiration or termination of the Lease. (f) Neither party hereto shall be liable to other party hereto for any indirect, consequential or special damages for any reason whatsoever. (g) Each payment made by Lessee shall be applied by Lessor in such manner as Lessor determines in its discretion which may include, without limitation, application as follows: first, to accrued late charges; second, to accrued rent; and third, the balance to any other amounts then due and payable by Lessee under the Lease. (h) If the Lease is signed by more than one Lessee, each of such Lessees shall be jointly and severally liable for payment and performance of all of Lessee’s obligations under the Lease. (i) In order to secure all obligations of Lessee under the Lease, Lessee assigns and grants to Lessor a security interest in: all rights, powers and privileges of Lessee under any sublease of any Equipment hereafter authorized in writing by Lessor, and all funds, balances, accounts, proceeds of collateral and/or other property of any kind of Lessee or in which Lessee has an interest now or hereafter in the possession, custody, or control of Lessor or JP Morgan Butcher Bank, N.A. and any of its direct or indirect affiliates and subsidiaries, including, without limitation, J.P. Morgan Securities Inc.

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**26. GOVERNMENT REGULATION**. Lessee shall not (a) be or become subject, at any time, to any law, regulation, or list of any government agency (including, without limitation, the U.S. Office of Foreign Asset Control list) that prohibits or limits Lessor from making any advance or extension of credit to Lessee or from otherwise conducting business with Lessee or (b) fail to provide documentary and other evidence of Lessee’s identity as may be requested by Lessor at any time to enable Lessor to verify Lessee’s identity or to comply with any applicable law or regulation, including, without limitation, Section 326 of the USA Patriot Act of 2001, 31 U.S.C. Section 5318.

**27. USA PATRIOT ACT NOTIFICATION**. The following notification is provided to Lessee pursuant to Section 326 of the USA Patriot Act of 2001, 31 U.S.C. Section 5318:

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT. To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person or entity that opens an account, including any deposit account, treasury management account, loan, other extension of credit, or other financial services product. What this means for Lessee: When Lessee opens an account, if Lessee is an individual, Lessor will ask for Lessee’s name, tax payer identification number, residential address, date of birth, and other information that will allow Lessor to identify Lessee, and if Lessee is not an individual, Lessor will ask for Lessee’s name, taxpayer identification number, business address, and other information that will allow Lessor to identify Lessee. Lessor may also ask, if Lessee is an individual, to see Lessee’s driver’s license or other identifying documents, and if Lessee is not an individual, to see Lessee’s legal organizational documents or other identifying documents.

**28. REPRESENTATIONS AND WARRANTIES**: Lessee represents and warrants to Lessor in connection with each Schedule that (a) Lessee is a corporation, limited liability company, partnership or proprietorship as stated at the outset of the Master Lease duly organized, validly existing and in good standing under the laws of the state of its organization as stated at the outset of the Master Lease and Lessee is qualified to do business and is in good standing under the laws of each other state in which the Equipment is or will be located; (b) Lessee’s name as set forth at the outset of this Master Lease is its complete and correct legal name as indicated in the public records of Lessee’s state of organization; (c) Lessee has full power, authority and legal right to sign, deliver and perform the Master Lease, the Schedule and all related documents and such actions have been duly authorized by all necessary corporate, company, partnership or proprietorship action; (d) the Master Lease, the Schedule and each related document has been duly signed and delivered by Lessee and each such document constitutes a legal, valid and binding obligation of Lessee enforceable in accordance with its terms; (e) there is no litigation or other proceeding pending, or to the best of the Lessee’s knowledge, threatened against or affecting Lessee which, if decided adversely to Lessee, would adversely affect, impair or encumber the interest of Lessor in the Equipment or would materially adversely affect the business operations or financial condition of Lessee; (f) all balance sheets, income statements and other financial data that have been delivered to Lessor (or JP Morgan Butcher Bank, N.A.) with respect to Lessee are complete and correct in all material respects, fairly

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present the financial condition of Lessee on the dates for which, and the results of its operations for the periods for which, the same have been furnished and have been prepared in accordance with generally accepted accounting principles consistently applied, (g) there has been no material adverse change in the condition of Lessee, financial or otherwise since the date of the most recent financial statements delivered to Lessor (or JP Morgan Butcher Bank, N.A.), and (h) Lessee’s organizational number assigned to Lessee by the state of its organization is correctly stated below Lessee’s signature.

**29. ENTIRE AGREEMENT**: THE LEASE REPRESENTS THE FINAL, COMPLETE AND ENTIRE AGREEMENT BETWEEN THE PARTIES HERETO. THERE ARE NO ORAL OR UNWRITTEN AGREEMENTS OR UNDERSTANDINGS AFFECTING THE LEASE OR THE EQUIPMENT. Lessee agrees that Lessor is not the agent of any manufacturer or supplier, that no manufacturer or supplier is an agent of Lessor, and that any representation, warranty or agreement made by manufacturer, supplier or by their employees, sales representatives or agents shall not be binding on Lessor.

**30. JURY WAIVER: ALL PARTIES TO THIS MASTER LEASE AGREEMENT WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY ANY PARTY AGAINST ANY OTHER PARTY ON ANY MATTER WHATSOEVER ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY RELATED TO THIS MASTER LEASE AGREEMENT.**

IN WITNESS WHEREOF, the undersigned have duly executed and delivered this Master Lease Agreement as of the date first written above.

|  |  |  |  |  |  |  |  |  |  |  |
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| **ORGON CORP.** | | |  |  |  | **BUTCHER EQUIPMENT LEASING INC.** | | |  |  |
| (Lessee) | | |  |  |  | (Lessee) | | |  |  |
|  |  | |  | |  | |  | |  | |
| By: |  | /s/ Janet B Raymond |  |  |  | By: |  | /s/ Linda Branson |  |  |
| Title: |  | V.P. Finance/CFO |  |  |  | Title |  | Funding Manager |  |  |
| State Organization #: 8999887 | | |  |  |  |  |  |  |  |  |
| Witness: /s/ AB | | |  |  |  |  |  |  |  |  |

Regardless of any prior, present or future oral agreement or course of dealing, no term or condition of the Lease may be amended, modified, waived, discharged, cancelled or terminated except by a written instrument signed by the party to be bound; except Lessee authorizes Lessor to complete the Acceptance Date of each Schedule and the serial numbers of any Equipment.

**Portions of this Exhibit were omitted and have been filed separately with the Secretary of the Commission pursuant to the Company’s application requesting confidential treatment under Rule 406 of the Securities Act of 1933, as amended.**

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| **ORGON CORP.** | | |
| (Lessee) | | |
|  |  | |
| By: |  | /s/ Janet B Raymond |
| Title: |  | V.P. Finance/CFO |
| Witness: /s/ AB | | |

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|  |  |  |
| **LEASE SCHEDULE NO.                1000130440** |  | **FINANCING LEASE** |
|  |  | (Fixed Contract Rate & Per Diem Interim) |
|  |  | |
| Master Lease Agreement dated        **04/28/2006** |  |  |
|  |  | |
| Lessor: **BUTCHER EQUIPMENT LEASING INC.** |  |  |
|  |  | |
| Lessee: **ORGON CORP.** |  |  |

|  |  |  |
| --- | --- | --- |
| **1.** |  | **GENERAL**. This Lease Schedule is signed and delivered under the Master Lease Agreement identified above, as amended from time to time (“Master Lease”), between Lessee and Lessor. The Master Lease is incorporated herein by reference as if set forth at length and Lessee and Lessor confirm that all terms and conditions of the Master Lease remain in full force and effect, except as specifically set forth herein to the contrary. Unless otherwise defined herein. capitalized terms defined in the Master Lease will have the same meanings when used in this Schedule. |

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| **2.** |  | **FINANCING; EQUIPMENT DESCRIPTION**. Lessor finances for Lessee, and Lessee finances with Lessor, all of the property (“Equipment”) described in Schedule A-1 attached hereto (and Lessee represents that all Equipment is new unless specifically identified as used). Lessee irrevocably and unconditionally agrees that the Equipment is and will be used at all times solely for commercial purposes, and not for personal, family or household purposes. |

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| **3.** |  | **AMOUNT FINANCED**: |

|  |  |  |  |
| --- | --- | --- | --- |
|  |  |  |  |
| **Equipment Cost Financed:** |  | **$** | **1,621,898.12** |
| **Set-Up/Filing Fee:** |  | **$** | **500.00** |
| **Miscellaneous:** |  |  |  |
| **Sales Tax:** |  | **$** | **0.00** |
| **Total Amount Financed:** |  | **$** | **1,622,398.12** |
|  |  |  |  |

|  |  |  |
| --- | --- | --- |
| **4.** |  | **FINANCING TERM**. The total Lease Term consists of the Interim Term plus the Base Term. The Interim Term begins on the date that Lessor accepts this Schedule as stated below Lessor’s signature (“Acceptance Date”) and continues up to the Commencement Date. The Base Term of this Schedule shall be **42** months and the Base Term shall commence on **Acceptance Date** (“Commencement Date”). |

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| **5.** |  | **INSTALLMENT PAYMENTS AND FEES**. The Total Amount Financed stated above in this Schedule is the original principal amount financed under this Schedule. Lessee agrees to repay said principal amount with interest during the Lease Term by Lessee’s payment to Lessor of all amounts stated below on the due dates stated below. There shall be added to each installment payment all applicable Taxes as in effect from time to time. |

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| --- | --- | --- | --- |
|  | (a) |  | During the Lease Term, the above Total Amount Financed shall bear interest at the rate of **9.09%** per annum (the “Contract Rate). Interest shaft be calculated on the basis of a 360-day year and twelve 30-day months. |

|  |  |  |  |
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|  | (b) |  | For the Interim Term, Lessee shall pay to Lessor on the Commencement Date an |

Page 1 of 8

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|  | amount equal to one-thirtieth (1/30th) of the Installment Payment multiplied by the number of days in the Interim Term. “Installment Payment” means the total of all installment payments due and payable during the Base Term divided by the number of months in the Base Term. |

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|  | (c) |  | During the Base Term, Lessee shall pay to Lessor installment payments in the amounts and according to the timing set forth below, provided however, that notwithstanding the following, the final installment payment due hereunder shall be equal to the remaining principal balance due and payable hereunder together with all accrued interest and fees. |

|  |  |  |  |
| --- | --- | --- | --- |
|  | (1) |  | Amount of each installment payment during the Base Term (including principal and interest): |

|  |  |  |  |
| --- | --- | --- | --- |
|  |  |  |  |
| **42 Monthly** |  | **$** | **45,243.54** |

|  |  |  |  |
| --- | --- | --- | --- |
|  | (2) |  | Frequency of installment payments during the Base Term: Monthly |

|  |  |  |  |
| --- | --- | --- | --- |
|  | (3) |  | Timing of installment payments during the Base Term: **In Arrears** |

|  |  |  |  |
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|  | (d) |  | Lessee shall pay Lessor a Set-Up/Filing Fee as follows: |

|  |  |  |  |
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|  | (1) |  | **$            .00** shall be paid on the Acceptance Date, or |

|  |  |  |  |
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|  | (2) |  | **$ 500.00** has been included in the above Amount Financed of the Equipment. |

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| **6.** |  | **SECURITY INTEREST**. This Schedule is intended to be a secured debt financing transaction, not a true lease. See Paragraph 7 below regarding Lessee’s ownership of the Equipment. As collateral security for payment and performance of all Secured Obligations (defined in Paragraph 8 below) and to induce Lessor to extend credit from time to time to Lessee (under the Lease or otherwise), Lessee hereby grants to Lessor a first priority security interest in all of Lessee’s right, title and interest in the Equipment, whether now existing or hereafter acquired, and in all Proceeds (defined in Paragraph 8 below). |

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| **7.** |  | **TITLE TO EQUIPMENT; FIRST PRIORITY LIEN**. Lessee represents, warrants and agrees: that Lessee currently is the lawful owner of the Equipment; that good and marketable title to the Equipment shall remain with Lessee at all times; that Lessee has granted to Lessor a first priority secunty interest in the Equipment and all Proceeds; and that the Equipment and all Proceeds are, and at all times shall be, free and clear of any Liens other than Lessor’s security interest therein. Lessee at its sole expense will protect and defend Lessors first priority security interest in the Equipment against all claims and demands whatsoever. |

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| **8.** |  | **CERTAIN DEFINITIONS**. “Secured Obligations” means (a) all payments and other obligations of Lessee under or in connection with this Schedule, and (b) all payments and |

Page 2 of 8

**Portions of this Exhibit were omitted and have been filed separately with the Secretary of the Commission pursuant to the Company’s application requesting confidential treatment under Rule 406 of the Securities Act of 1933, as amended.**

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|  |  |
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|  | other obligations of Lessee (whether now existing or hereafter incurred) under or in connection with the Master Lease and all present and future Lease Schedules thereto, and (c) all other leases, indebtedness, liabilities and/or obligations of any kind (whether now existing or hereafter incurred, absolute or contingent, direct or indirect) of Lessee to Lessor. “Proceeds” means at cash and non-cash proceeds of the Equipment including, without limitation, proceeds of insurance, indemnities and/or warranties. |

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| **9.** |  | **AMENDMENTS TO MASTER LEASE**. **For purposes of this Schedule only**, Lessee and Lessor agree to amend the Master Lease as follows: (a) public liability or third party property insurance as described in the second sentence of Section 8 of the Master Lease will not be required; (b) the definition of “Stipulated Loss Value” in clause (b) of Section 9 of the Master Lease is deleted and replaced by Paragraph 10 below; (c) the text of Section 10 of the Master Lease is deleted in its entirety; (d) Subsections 23(a), 23(c) and 23(d) of the Master Lease are deleted; (e) subsection 23(b) of the Master Lease will apply only if an event of default occurs; and (f) all references in the Lease as it relates to this Schedule to “Lessee” and “Lessor” shall be changed to “Borrower” and “Lender” respectively. |

|  |  |  |
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| **10.** |  | **STIPULATED LOSS VALUE**. **For purposes of this Schedule only**, the “Stipulated Loss Value” of any item of Equipment during its Lease Term is equal to 102% of the remaining principal balance due and payable by Lessee under this Schedule as of the date specified by Lessor for payment thereof; provided, that the foregoing calculation shall not exceed the maximum amount which may be collected by Lessor from Lessee under applicable law in connection with enforcement of Lessor’s rights under this Schedule and the Master Lease to the extent it relates to this Schedule. |

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| **11.** |  | **LESSEE TO PAY ALL TAXES**. **For purposes of this Schedule and its Equipment only:** Lessee, as the owner of the Equipment, shall pay any and all Taxes relating to this Schedule and its Equipment directly to the applicable taxing authority; Lessee shall prepare and file all reports or returns concerning any such Taxes as may be required by applicable law or regulation (provided, that Lessor shall not be identified as the owner of the Equipment in such reports or returns); and Lessee shall, upon Lessor’s request, send Lessor evidence of payment of such Taxes and copies of any such reports or returns. |

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| **12.** |  | **CONDITIONS**. No financing of Equipment under this Schedule shall be binding on Lessor, and Lessor shall have no obligation to disburse funds for the purchase of any Equipment, unless: (a) Lessor has received evidence of all required insurance; (b) in Lessor’s sole judgment, there has been no material adverse change in the financial condition or business of Lessee or any Guarantor; (c) Lessee has signed and delivered to Lessor this Schedule, which must be satisfactory to Lessor, and Lessor has signed and accepted this Schedule; (d) no change in the Code or any regulation thereunder, which in Lessor’s sole judgment would adversely affect the economics to Lessor of the financing transaction, shall have occurred or shall appear to be imminent; (e) Lessor has received, in form and substance satisfactory to Lessor, such other documents and information as Lessor shall reasonably request; and (f) Lessee has satisfied all other reasonable conditions established by Lessor. |

Page 3 of 8

**Portions of this Exhibit were omitted and have been filed separately with the Secretary of the Commission pursuant to the Company’s application requesting confidential treatment under Rule 406 of the Securities Act of 1933, as amended.**

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|  |  |  |
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| **13.** |  | **OTHER DOCUMENTS: EXPENSES**: Lessee agrees to sign and deliver to Lessor any additional documents deemed desirable by Lessor to effect the terms of the Master Lease or this Schedule including, without limitation, Uniform Commercial Code financing statements which Lessor is authorized to fife with the appropriate filing officers. Lessee hereby irrevocably appoints Lessor as Lessee’s attorney-in-fact with full power and authority in the place of Lessee and in the name of Lessee to prepare, sign, amend, file or record any Uniform Commercial Code financing statements or other documents deemed desirable by Lessor to perfect, establish or give notice of Lessor’s interests in the Equipment or in any collateral as to which Lessee has granted Lessor a security interest. Lessee shall pay upon Lessor’s written request any actual out-of-pocket costs and expenses, paid or incurred by Lessor in connection with the above terms of this section or the funding and closing of this Schedule. |

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| **14.** |  | **GOVERNMENT REGULATION**: Lessee shall not (a) be or become subject, at any time, to any law, regulation, or list of any government agency (including, without limitation, the U.S. Office of Foreign Asset Control list) that prohibits or limits Lessor from making any advance or extension of credit to Lessee or from otherwise conducting business with Lessee or (b) fail to provide documentary and other evidence of Lessee’s identity as may be requested by Lessor at any time to enable Lessor to verify Lessee’s identity or to comply wilh any applicable law or regulation, including. without limitation, Section 326 of the USA Patriot Act of 2001, 31 U.S.C. Section 5318. |

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| **15.** |  | **USA PATRIOT ACT NOTIFICATION**: The following notification is provided to Lessee pursuant to Section 326 of the USA Patriot Act of 2001, 31 U.S.C. Section 5318: |

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT. To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person or entity that opens an account, including any deposit account, treasury management account, loan, other extension of credit, or other financial services product. What this means for Lessee: When Lessee opens an account, if Lessee is an individual, Lessor will ask for Lessee’s name, tax payer identification number, residential address, date of birth, and other information that will allow Lessor to identify Lessee, and if Lessee is not an individual, Lessor will ask for Lessee’s name, taxpayer identification number, business address, and other information that will allow Lessor to identify Lessee. Lessor may also ask, if Lessee is an individual, to see Lessee’s driver’s license or other identifying documents, and if Lessee is not an individual, to see Lessee’s legal organizational documents or other identifying documents.

|  |  |  |
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| **16.** |  | **PURCHASE ORDERS AND ACCEPTANCE OF EQUIPMENT**. Lessee agrees that (i) Lessor has not selected, manufactured, sold or supplied any of the Equipment, (ii) Lessee has selected all of the Equipment and its suppliers, and (iii) Lessee has received a copy of, and approved, the purchase orders or purchase contracts for the Equipment. **AS BETWEEN LESSEE AND LESSOR, LESSEE AGREES THAT: (a) LESSEE HAS RECEIVED, INSPECTED AND APPROVED ALL OF THE EQUIPMENT; (b)** |

Page 4 of 8

**Portions of this Exhibit were omitted and have been filed separately with the Secretary of the Commission pursuant to the Company’s application requesting confidential treatment under Rule 406 of the Securities Act of 1933, as amended.**

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|  |  |
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|  | **ALL EQUIPMENT IS IN GOOD WORKING ORDER AND COMPLIES WITH ALL PURCHASE ORDERS AND PURCHASE CONTRACTS AND ALL APPLICABLE SPECIFICATIONS; (c) LESSEE IRREVOCABLY ACCEPTS ALL EQUIPMENT FOR PURPOSES OF THE LEASE “AS-IS, WHERE-IS” WITH ALL FAULTS; AND (d) LESSEE UNCONDITIONALLY WAIVES ANY RIGHT THAT IT MAY HAVE TO REVOKE ITS ACCEPTANCE OF THE EQUIPMENT.** |

**LESSEE HAS READ AND UNDERSTOOD ALL OF THE TERMS OF THIS SCHEDULE. LESSEE AGREES THAT THERE ARE NO ORAL OR UNWRITTEN AGREEMENTS WITH LESSOR REGARDING THE EQUIPMENT OR THIS SCHEDULE.**

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| **ORGON CORP.** | | |  |  |  | **BUTCHER EQUIPMENT LEASING INC.** | | |  |  |
| (Lessee) | | |  |  |  | (Lessor) | | |  |  |
|  |  | |  | |  | |  | |  | |
| By: |  | /s/ Miron Kumar |  |  |  | By: |  | /s/ Linda Branson |  |  |
| Title: |  | CEO |  |  |  | Title: |  | Funding Manager |  |  |
| Witness: /s/ CD | | |  |  |  | Acceptance Date: January 29, 2007 | | |  |  |

Page 5 of 8

**Portions of this Exhibit were omitted and have been filed separately with the Secretary of the Commission pursuant to the Company’s application requesting confidential treatment under Rule 406 of the Securities Act of 1933, as amended.**

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**Butcher Equipment Leasing Inc.**

SCHEDULE A-I EQUIPMENT LEASED HEREUNDER

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  |  |  |  |
| **QUANTITY** |  | **DESCRIPTION** |  | **PAGE** |

ALL PROPERTY DESCRIBED IN THE INVOICES IDENTIFIED BELOW, WHICH PROPERTY MAY BE GENERALLY DESCRIBED AS MANUFACTURING EQUIPMENT.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  |  |  |  |
| **EQUIPMENT COST:** |  | **$1,621,898.12** |  |  |
| **EQUIPMENT LOCATION:** |  | **560 ARAPEEN DRIVE**  **SUITE 100**  **SALT LAKE CITY, UT 84108**  **SALT LAKE COUNTY** |  |  |
|  |  | |  | |
| **VENDOR** |  | **INVOICE #** |  | **$ AMOUNT** |
| **[\*\*\*\*\*\*\*\*\*\*\*\*]** |  | **[\*\*\*\*\*\*\*\*\*\*\*\*]** |  | **[\*\*\*\*\*\*\*\*\*\*\*\*]** |
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|  |  | |  | |
| **EQUIPMENT LOCATION:** |  | **SALT LAKE COUNTY** |  |  |
|  |  | |  | |
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TOGETHER WITH ALL ATTACHMENTS, ADDITIONS, ACCESSIONS, PARTS, REPAIRS, IMPROVEMENTS, REPLACEMENTS AND SUBSTITUTIONS THERETO.

This Schedule A-1 is attached to and made a part of Lease Number 1000130440 and constitutes a true and accurate description of the equipment.

|  |  |  |
| --- | --- | --- |
|  |  |  |
| Lessee: |  | **ORGON CORP.** |
|  |  | |
| By: |  | /s/ Miron Kumar |
| Date: |  | January 26, 2007 |

Scheda-1.057

**Portions of this Exhibit were omitted and have been filed separately with the Secretary of the Commission pursuant to the Company’s application requesting confidential treatment under Rule 406 of the Securities Act of 1933, as amended.**

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**PREPAYMENT SCHEDULE ADDENDUM**

(For a Financing Lease Schedule)

(Lockout Period & Break Funding Premium)

Dated As Of January 26, 2007

Lease Schedule No. **1000130400**

Lessee: **ORGON CORP.**

Reference is made to the above Lease Schedule (“Schedule”) and to the Master Lease Agreement (“Master Lease”) identified in the Schedule, which are by and between BUTCHER EQUIPMENT LEASING INC. (“Lessor”) and the above lessee (“Lessee”). As used herein: “Lease” shall mean the Schedule and the Master Lease, but only to the extent that the Master Lease relates to the Schedule. This Schedule Addendum amends and supplements the terms and conditions of the Lease. Unless otherwise defined herein, capitalized terms defined in the Lease shall have the same meaning when used herein. Solely for purposes of the Schedule, Lessor and Lessee agree as follows:

1. Notwithstanding anything to the contrary herein or in the Schedule, Lessee and Lessor agree that Lessee shall not exercise its prepayment rights under this Addendum prior to the end of the Lock-Out Period specified below.

Lock-Out Period: the first 12 months of the Base Term of the Schedule

2. Notwithstanding anything to the contrary in the Lease, Lessee and Lessor agree that so long as no Event of Default has occurred and continues under the Lease and so long as Lessee gives Lessor at least 20 days prior written notice (the “Notice Period”) and so long as the above Lock-Out Period has expired, Lessee may elect to prepay its obligations under the Schedule by paying to Lessor on the installment payment date (a “Prepayment Date”) following the Notice Period the total of the following (the “Prepayment Amount”): (a) all accrued installment payments, interest, Taxes, late charges and other amounts then due and payable under the Lease; plus (b) the remaining principal balance payable by Lessee under the Schedule as of said Prepayment Date.

3. In addition to the prepayment amounts required by paragraph 2 above, Lessee shall also pay to Lessor a break funding premium equal to the amount, if any, by which (i) the present value of all Remaining Payments (as defined below) discounted to the Prepayment Date at a rate equal to the Interest Rate Swap rate having a term to maturity nearest to the remaining Average Life (as defined below) of the Schedule as reported on the Federal Reserve H.15 report as of the business day preceding the Prepayment Date exceeds (ii) the present value of all Remaining Payments discounted to the Prepayment Date at a rate equal to the Interest Rate Swap rate having a term to maturity nearest to the original Average Life of the Schedule as reported on the Federal Reserve H.15 report as of the Commencement Date of the Schedule. “Remaining Payments” means all remaining installment payments and all other amounts (including, without limitation, any balloon payment and any other payments required to be paid by Lessee at the end of the Base Term of the Schedule) payable under the Schedule after such Prepayment Date to the

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end of the Base Term of the Schedule. “Average Life” means the average duration of the original or remaining (as the case may be) principal payments included in the installment payments and any balloon payment payable under the Schedule weighted by the amount of the principal payments. If the Federal Reserve Board ceases publication of Interest Rate Swap rates in its Federal Reserve H.15 report or a similar report, then Lessor shall select an alternate publication for interest rate swap information in its reasonable discretion.

4. Except as expressly amended or supplemented by this Addendum and other instruments signed by Lessor and Lessee, the Lease remains unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Addendum as of the date first written above.

|  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  |  |  |  |  |  |  |  |  |  |  |
| **ORGON CORP.**  (Lessee) | | |  |  |  | **BUTCHER EQUIPMENT LEASING INC.**  (Lessor) | | |  |  |
|  |  | |  | |  | |  | |  | |
| By: |  | /s/ Miron Kumar |  |  |  | By: |  | /s/ Linda Branson |  |  |
| Title: |  | CEO |  |  |  | Title: |  | Funding Manager |  |  |

(prepay-CSA-lockout & break funding premium 5.06)

**Portions of this Exhibit were omitted and have been filed separately with the Secretary of the Commission pursuant to the Company’s application requesting confidential treatment under Rule 406 of the Securities Act of 1933, as amended.**

**LeaseA#20**

COMMERCIAL EQUIPMENT LEASE AGREEMENT

**Exhibit 10.11**

**COMMERCIAL EQUIPMENT LEASE AGREEMENT**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  |  |  |  |  |  |  |
| LESSOR: |  | Branson Services, LLC |  | LESSEE: |  | COOPER SERVICES, LP |
| ADDRESS: |  | XXX |  | ADDRESS: |  | YYY |
|  |  | Paris, Texas 78889 |  |  |  | Paris, TX 78889 |

Lessor, in reliance on Lessee’s selection of the equipment described below (“Unit” or “Unit(s)”), agrees to acquire and lease the Units to Lessee, and Lessee agrees to lease the Units from Lessor, subject to the terms and conditions below:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  |  |  |  |  |  |  |
|  |  | **Description of Unit(s)** |  | **Serial#** |  | **Brand** |
| 1 |  | **SEE EXHIBIT A – ATTACHED AND INCORPORATED HEREIN AS IF FULLY RECITED FOR ALL PURPOSES** |  | **SEE EXHIBIT A** |  | **SEE EXHIBIT A** |
| 2 |  |  | | | | |
| 3 |  |  | | | | |
| 4 |  |  | | | | |

**Gross Lease Amount:** Fifteen Million One Hundred Eighty Seven Thousand Eight Hundred Nineteen and 22/100 Dollars **($15,187,819.22)**

**Lease Payments to be paid:**60 payments of Two Hundred Seventy Six Thousand Four Hundred Eighteen and 30/100 Dollars **($276,418.30).**At the conclusion of the lease term, Lessee has the right, but not the obligation, to purchase all of the equipment in Exhibit A for 1 payment of Five Million Three Hundred Fifteen Thousand Seven Hundred Thirty Six and 65/100 Dollars **($5,315,736.65).** The first lease payment is due October 15, 2008 and monthly thereafter as set forth in this agreement.

**Effective Date:** October 15, 2008

**Lease Term: 60**                Months **Residual:**$5,315,736.65

**Location of Unit(s):**Lessee shall have the right to operate the units in the United States and Mexico.

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| **ADDITIONAL PROVISIONS:** |  |  |  | **RIDERS:** |
| **Delivery & Insurance Supplement** |  |  |  | **n/a** |
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**TERMS AND CONDITIONS OF LEASE**

**1. LEASE TERM:**The Lease term for each Unit shall start on its Delivery Date (the date (a) Lessor executes this Lease, (b) Lessor takes title to the Unit, or (c) Lessee or its agent takes control or physical possession of the Unit, whichever is latest), provided the Delivery Date is on or before the utilization date stated above, and shall continue for the number of months stated above. If the Delivery Date is not on or before the utilization date, Lessee shall, at the option of Lessor, assume Lessor’s obligations to purchase and pay for the Unit. Lessee shall execute and send Lessor’s Delivery Supplement to Lessor promptly after delivery of a Unit.

**2. RENT:**Lessee shall pay to Lessor, at P.O. Box 000Paris, Texas 78333 or such other location Lessor designates in writing, rent for each Unit as stated above starting (a) on its Delivery Date if the rent is to be paid in advance, or (b) one month (or other period as stated above) after its Delivery Date if the rent is to be paid in arrears. An amount equal to the first rent payment for each Unit must

accompany this document when it is submitted to Lessor. If Lessor executes this document, the amount shall be the first rent payment. If Lessor does not execute this document, the amount shall be returned to Lessee. If Lessor does not receive a rent payment on the date it is due, Lessee shall pay to Lessor, on demand, a late payment charge equal to five percent (5%) of the rent payment not paid when due or the highest charge allowed by law, whichever is less.

**3. NO ABATEMENT:**Lessee shall not be entitled to abatement or reduction of rent or setoff against rent for any reason whatsoever. Except as otherwise provided, this Lease shall not terminate because of, nor shall the obligations of Lessor or Lessee be affected by, any defect in, damage to, destruction of, or loss of possession or use of a Unit; the attachment of any lien, security interest or other claim to a Unit; any interference with Lessee’s use of a Unit; Lessee’s insolvency or the commencement of any bankruptcy or similar proceeding by or against Lessee, or any other cause whatsoever.

**4. DISCLAIMER OF WARRANTIES:**Lessee acknowledges and agrees that Lessor is not the manufacturer of the Unit(s) and that Lessee has selected each Unit based on Lessee’s own judgment without any reliance whatsoever on any statements or representations made by Lessor. AS BETWEEN LESSOR AND LESSEE, THE UNIT(S) ARE PROVIDED “AS IS” WITHOUT ANY WARRANTIES OF ANY KIND. LESSOR HEREBY EXPRESSLY DISCLAIMS a) ALL WARRANTIES OF MECHANTABILITY, b) ALL WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, AND c) ALL WARRANTIES AGAINST INFRINGEMENT OR THE LIKE. Lessor assigns to Lessee its interest in any of the manufacturer’s warranties on the  
Unit(s).

**5. POSSESSION, USE AND MAINTENANCE:**Lessee shall not (a) use, operate, maintain or store a Unit improperly, carelessly, unsafely or in violation of any applicable law or regulation or for any purpose other than in the conduct of Lessee’s business; (b) abandon a Unit; (c) sublease a Unit without the prior written consent of Lessor; or (d) create or allow to exist any lien, claim, security interest or encumbrance on any of its rights hereunder. A Unit is and shall remain personal property regardless of its use or manner of attachment to realty. Lessor and its agent shall have the right (but not the obligation) to inspect a Unit and maintenance records relating to it, and observe its use. Lessee, at its expense, shall maintain each Unit in good operating order, repair and condition and shall perform maintenance at least as frequently as stated in any applicable operator’s guide, service manual, or lubrication and maintenance guide. Lessee shall not alter any Unit or affix any accessory or equipment to it if doing so will impair its originally intended function or use or reduce its value. Lessee shall not make any “non-reversible” addition (as defined for federal income tax purposes) to a Unit without the prior written consent of Lessor. Any alteration or addition to a Unit shall be the responsibility of and at the sole risk of Lessee. If an Event of Default has occurred and is continuing, all parts, accessories and equipment affixed to a Unit shall become property of Lessor.

**6. TAXES:**Lessee shall promptly pay or reimburse Lessor for all fees and taxes of any nature, together with any penalties, fines or additions to tax and interest thereon (all of the foregoing hereafter the “Impositions”), levied upon Lessor by any taxing authority with respect to or in connection with a Unit from the time it is purchased by Lessor until it is returned to Lessor. Excluded, however, are taxes measured by Lessor’s net income but not excluded are net income taxes which by the terms of the statute imposing the tax expressly relieve Lessee or Lessor from the payment of any impositions which Lessee would otherwise be obligated to pay or reimburse. If Lessor is not entitled to an equal deduction with respect to any imposition which Lessee is required to pay or reimburse hereunder and payment or reimbursement constitutes income to Lessor, then Lessee shall also pay to Lessor the amount of any Impositions which Lessor is obligated to pay in respect of (a) the payment or reimbursement by Lessee and (b) any payment by Lessee made pursuant to this sentence. Lessee shall prepare and file, in a manner satisfactory to Lessor, any reports or returns that may be required with respect to a Unit. For purposes of this section, “Lessor” shall include any affiliated group, within the meaning of Section 1504 of the Internal Revenue Code of 1986, of which Lessor is a member for any year in which a consolidated or combined income tax return is filed for the affiliated group.

**7. TAX INDEMNITY:**This Lease is entered into on the basis that Lessee shall be entitled to (a) depreciation deductions with respect to a Unit, in accordance with Section 168(a) of the Internal Revenue Code of 1986, as amended (the “Code”), based upon the applicable depreciation method and recovery period specified in Sections 168(b) and (c) of the Code as identified by Lessee; and (b) for state income tax purposes, deductions analogous to (a) (all of the foregoing hereinafter the “Tax Benefits”). If Lessor, for any reason other than those stated in (i) through (iv) below, shall lose or lose the right to claim or, if there shall be disallowed, deferred or recaptured with respect to Lessor, any of the Tax Benefits with respect to any Unit (any of the foregoing hereafter a “Loss”), then, within thirty (30) days after written notice to Lessee by Lessor that a Loss has occurred, Lessee shall pay Lessor an amount which, in the reasonable opinion of Lessor, will cause Lessor’s net after tax rate of return over the term of this Lease in respect to the Unit to equal the net after tax rate of return that would have been realized if Lessor had been entitled to its anticipated utilization of all of the Tax Benefits. Lessor shall not be entitled to payment for any Loss arising solely as a direct result of any of the following: (i) a failure of Lessor to timely or properly claim the Tax Benefits for a Unit; (ii) a foreclosure by any person holding a lien through Lessor on any Unit, which foreclosure results solely from an act of Lessor; (iii) a Casualty Occurrence, if the Casualty Value in connection therewith has been paid by Lessee; or (iv) the failure of Lessor to have sufficient taxable income or tax liability to utilize the Tax Benefits. Lessor shall be under no obligation to contest any action that may result in a Loss. Lessee acknowledges and confirms that Lessor’s classification of a Unit in accordance with Section 168(e) of the Code and Lessor’s entitlement to the Tax Benefits is based solely upon Lessee’s representations as to the proper classification of a Unit as aforesaid. “Lessor” shall include any affiliated group (within the meaning of Section 1504 of the Code) of which Lessor is a member for any year in which a consolidated or combined income tax return is filed for the affiliated group.

**8. LOSS OR DAMAGE:**Lessee shall bear the risk, of any Casualty Occurrence (the Unit is worn out, lost, stolen, destroyed, take by governmental action or, in Lessor’s opinion, irreparably damaged) or other damage from the time it is purchased by Lessor until it is returned to Lessor. Lessee shall give Lessor prompt notice of a Casualty Occurrence or other damage. If, in Lessor’s opinion, the damage is not a Casualty Occurrence, Lessee shall, at its expense, promptly restore the Unit to the condition required by Section 5. If a Casualty Occurrence, Lessee shall pay to Lessor on the first rent payment date following the Casualty Occurrence (thirty (30) days after the Casualty Occurrence if there is no rent payment date remaining) all amounts then due under this Lease with respect to the Unit, plus a sum equal to the applicable Casualty Value of the Unit as shown in the applicable attached Exhibit. Upon making this payment, the term of this Lease with respect to the Unit shall terminate and Lessor shall be entitled to possession of the Unit. Lessee shall be entitled to any recovery of the Unit from insurance or otherwise to the extent it does not exceed the amount of the Casualty Value paid by Lessee.

**9. WAIVER AND INDEMNITY: LESSEE HEREBY AGREES TO RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS LESSOR, ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS AND ASSIGNS FROM AND AGAINST ANY CLAIMS OF LESSEE OR THIRD PARTIES, INCLUDING CLAIMS BASED UPON BREACH OF CONTRACT, BREACH OF WARRANTY, PERSONAL INJURY, PROPERTY DAMAGE, STRICT LIABILITY OR NEGLIGENCE, FOR ANY LOSS, DAMAGE OR INJURY CAUSED BY OR RELATING TO THE DESIGN, MANUFACTURE, SELECTION, DELIVERY, CONDITION, OPERATION, USE, OWNERSHIP, MAINTENANCE OR REPAIR OF ANY UNIT. FURTHER, LESSEE AGREES TO BE RESPONSIBLE FOR ALL COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEYS’ FEES, INCURRED BY LESSOR OR ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS AND ASSIGNS IN DEFENDING SUCH CLAIMS OR IN ENFORCING THIS PROVISION. UNDER NO CONDITION OR CAUSE OF ACTION SHALL LESSOR BE LIABLE FOR ANY LOSS OF ACTUAL OR ANTICIPATED BUSINESS OR PROFITS OR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES.**

**10. INSURANCE:**Lessee, at its expense, shall keep each Unit insured for the benefit of Lessor against all risks for not less than its Casualty Value and shall maintain comprehensive public liability insurance (including product and broad form contractual liability) covering the Unit for not less than $2,000,000 combined coverage for bodily injury and property damage. All insurance shall be in a form and with companies as Lessor shall approve, shall specify Lessor and Lessee as named insureds, shall be primary, without the right of contribution from any other insurance carried by Lessor, and shall provide that the insurance may not be canceled or altered so as to affect the interest of Lessor without at least ten (10) days’ prior written notice to Lessor. All insurance covering loss or damage to a Unit shall name Lessor as loss payee. Lessee shall not make adjustments with insurers except with Lessor’s prior written consent and hereby irrevocably appoints Lessor as Lessee’s attorney-in-fact to receive payment of and to endorse all checks, drafts and other documents and to take any other actions necessary to pursue insurance claims and recover payments if Lessee fails to do so. Lessee shall promptly notify Lessor of any occurrence that may become the basis of a claim and shall provide Lessor with all requested pertinent data. Lessee shall promptly deliver to Lessor evidence of such insurance coverage.

**11. EVENTS OF DEFAULT:**Each of the following constitutes an event of default (“Event of Default”): (a) Lessee fails to make any payment when due; (b) any representation or warranty to Lessor which is incorrect or misleading; (c) Lessee fails to observe or perform any covenant, agreement or warranty made by Lessee and the failure continues for ten (10) days after written notice to Lessee; (d) any default occurs under any other agreement between Lessee and Lessor or any affiliate of Lessor; (e) Lessee or any

guarantor of this Lease ceases to do business, becomes insolvent, makes an assignment for the benefit of creditors or files any petition or action under any bankruptcy, reorganization, insolvency or moratorium law, or any other law or laws for the relief of, or relating to, debtors; (f) filing of an involuntary petition under any bankruptcy statute against Lessee or any guarantor of this Lease, or appointment of a receiver, trustee, custodian or similar official to take possession of the properties of Lessee or any guarantor of this Lease, unless the petition or appointment ceases to be in effect within thirty (30) days after filing or appointment; and (g) breach or repudiation of a guaranty obtained by Lessor in connection with this Lease.

**12. REMEDIES:**If an Event of Default occurs, Lessor may (a) proceed by court action to enforce performance by Lessee of the covenants of this Lease or to recover damages for their breach or (b) by notice in writing to Lessee terminate this Lease, in which event all rights of Lessee to use a Unit shall terminate, but Lessee shall remain liable as provided herein and Lessor may do any one or more of the following: (i) require Lessee to return each Unit pursuant to Section 13; (ii) enter the premises where any Unit may be and take possession of it without notice, liability or legal process; (iii) recover from Lessee (whether or not Lessor takes possession of Unit) all amounts due or accrued on the date of termination; (iv) recover as damages for loss of bargain and not as a penalty a sum equal to the Casualty Value of a Unit; and (v) recover any other damages incurred by Lessor because of the breach of any covenant, representation or warranty other than payment of rent. If an Event of Default occurs and Lessee returns Unit pursuant to Section 13, Lessor shall undertake commercially reasonable efforts to sell or re-lease it and the proceeds of any sale or re-lease shall be applied in the following order: (a) to reimburse Lessor for all expenses of retaking, holding, preparing for sale or re-lease and selling or re-leasing the Unit, including any taxes, charges, costs, expenses and reasonable attorney’s fees incurred by Lessor; (b) to pay Lessor all amounts which under the terms of this Lease are due or have accrued as of the date of Lessor’s receipt of the proceeds; and (c) to reimburse Lessee for any sums previously paid to Lessor as damages for loss of bargain. Any surplus shall be retained by Lessor to the extent permitted by law. Lessee shall promptly pay any deficiency to Lessor. Lessee acknowledges that sale of a Unit to a wholesaler, retailer or user for cash or credit are all commercially reasonable. Lessee agrees to pay all charges, costs, expenses and reasonable attorney’s fees incurred by Lessor in enforcing this Lease. The remedies provided to Lessor shall be cumulative and shall be in addition to all other remedies existing at law or in equity. If Lessee fails to perform any of its obligations under this Lease, Lessor may perform the obligations, and the expenses incurred by Lessor as a result shall be payable by Lessee upon demand.

**13. RETURN OF UNIT:**Upon expiration of the term of this Lease or if Lessor shall rightfully demand possession of a Unit, Lessee, at its expense, shall promptly deliver possession of the Unit(s), as set forth in Exhibit A to Lessor, properly protected and in the condition required by Section 5, on board a carrier named by Lessor and shipping it, freight collect, to the destination designated by Lessor. If the Unit is not in the condition required by Section 5, Lessee shall pay to Lessor, on demand, all costs and expenses incurred by Lessor to bring the Unit into the required condition.

**14. LESSEE ASSURANCES AND REPRESENTATIONS:**Lessee and Lessor intend that this Lease shall be a “true lease” of the Unit(s), and not a sale of the Unit(s). Title to the Unit(s) shall remain in Lessor and Lessee shall not acquire any interest in the Unit(s) other than the leasehold interest described herein. Nevertheless, Lessee hereby grants to Lessor a security interest in the Unit(s), and all replacements or substitutions therefore, and any proceeds there from, including, but not limited to, proceeds in the form of chattel paper as security for the payment and performance by Lessee of all its obligations under this Lease in the event a court of competent jurisdiction determines that Lessee and Lessor created a security interest in the Unit(s).

Lessee shall, at its expense, do any act and execute, acknowledge, deliver, file, register and record any documents which Lessor deems desirable in its discretion to protect Lessor’s title or rights in a Unit and Lessor’s rights and benefits under this Lease. Lessee hereby irrevocably appoints Lessor as Lessee’s attorney-in-fact for the signing and filing of such documents and authorizes Lessor to delegate these limited powers.

Lessee represents and warrants to Lessor that (a) Lessee has the power to make, deliver and perform under this Lease, (b) the person executing and delivering this Lease is authorized to do so on behalf of Lessee, and (c) this Lease constitutes a valid obligation of Lessee, legally binding upon it and enforceable in accordance with its terms. Lessee shall, during the lease term, display in a prominent place on the Unit labels supplied by Lessor stating that the Unit is leased from Lessor. Lessee further represents and warrants to Lessor that Lessee is and shall remain (“Business Location”); and Lessee will not change its form of business organization or Business Location without prior written notice to Lessor.

**15. ASSIGNMENT; COUNTERPARTS:**The rights of Lessor under this Lease and title to the Unit may be assigned by Lessor at any time. If notified by Lessor, Lessee shall make all payments due under this Lease to the party designated in the notice without offset or deduction. No assignment of this Lease or any right or obligation under it may be made by Lessee without the prior written consent of Lessor. This Lease shall be binding upon and benefit Lessor and Lessee and their respective successors and assigns. If this Lease is assigned by Lessor to a partnership or trust, the term “Lessor” shall thenceforth mean and include the partnership or trust and shall also include, for purposes of Sections 4, 5, 8, 9, and 10, each partner in or beneficiary of the partnership or trust. Although

multiple counterparts of this document may be signed, only the counterpart accepted, acknowledged and certified by Cooper Services, LP on the signature page thereof as the original will constitute original chattel paper.

**16. EFFECT OF WAIVER; ENTIRE AGREEMENT; MODIFICATION OF LEASE; NOTICES:**A delay or omission by Lessor to exercise any right or remedy shall not impair any right or remedy and shall not be construed as a waiver of any breach or default. Any waiver or consent by Lessor must be in writing. This Lease completely states the rights of Lessor and Lessee and supersedes all prior agreements with respect to a Unit. No variation or modification of this Lease shall be valid unless in writing. All notices shall be in writing, addressed to the other party at the address stated on the front or at such other address as may hereafter be furnished in writing. This Agreement shall be governed by and construed under the laws of the State of Texas, without giving effect to the conflict-of-laws principles thereof, and Lessee hereby consents to the jurisdiction of any state or federal court located within the State of Tennessee. THE PARTIES HERETO HEREBY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE OBLIGATIONS OR THE COLLATERAL.

**17. SEVERABILITY; SURVIVAL OF COVENANTS:**If any provision of this Lease shall be invalid under any law, it shall be deemed omitted but the remaining provisions hereof shall be given effect. All obligations of Lessee under this Lease shall survive the expiration or termination of this Lease to the extent required for their full observance and performance.

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| Lessee: |  | Branson Services, LLC |  | Lessor: |  | COOPER SERVICES, LP |
|  |  | |  | |  | |
| By |  | /s/ Max Apple |  | By |  | /s/ Charles Branson Jr. |
|  |  | |  | |  | |
| Name  (PRINT) |  | Max Apple |  | Name  (PRINT) |  | Charles Branson Jr. |
|  |  | |  | |  | |
| Title |  | President |  | Title |  | President |
|  |  | |  | |  | |
| Date |  | October 15, 2008 |  | Date |  | October 15, 2008 |

**DELIVERY & INSURANCE SUPPLEMENT**

This pertains to the Lease, dated as of October 15, 2008, between **Cooper Services, LP**as Lessor and **Branson Services, LLC**as Lessee.

This confirms that Lessee has elected to obtain its own insurance on the unit(s), more particularly described in Exhibit A attached and incorporated herein as if fully set forth, from AB of Nextmax Insurance Agency, a true and correct copy of the valid binder has been tendered to Lessor and is attached herein as Exhibit B.

This further confirms that the Lessee physically received the following Unit(s), more particularly described in Exhibit A attached and incorporated herein as if fully set forth, on the possession date below. As of the date of signature of this form:

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|  | (i) | the Unit(s), as described in Exhibit A is in all respects satisfactory to Lessee for leasing under the Lease |

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| --- | --- | --- |
|  | (ii) | Lessor has performed all of its obligations under the Lease. |

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| Description of Unit(s)  & Insurance Binder: |  | See Exhibit A & B incorporated herein. |

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| Location: |  | Delivered to Paris, Texas |
| County: | -- | Jim Wells County |
| Possession Date: |  | October 15, 2008 |

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| --- | --- | --- |
|  |  |  |
| Signature |  |  |
|  |  | |
| Name (PRINT) |  |  |
|  |  | |
| Title |  |  |
|  |  | |
| Date |  |  |

**LeaseA#21**

EQUIPMENT LEASE AGREEMENT, DATED AS OF JUNE 6, 2022, BY AND BETWEEN PICADILLY FINANCIAL, INC. AND THE COMPANY

**Exhibit 10.14**

**Lease Agreement Number SE060622**

**LEASE AGREEMENT**

**This Lease Agreement, dated June 6, 2022 by and between PICADILLY FINANCIAL, INC. (the “Lessor”) with an office located at XXX, MN 55323 and STANISLAV INC. (the “Lessee”) with an office located at XXX, CA 94032.**

**Lessor hereby leases and grants to the Lessee the right to use and Lessee hereby rents and accepts the right to use the equipment (identified by serial number where serialized), services, and software provided by third parties and specifically identified on the Lease Schedule(s) attached hereto or incorporated herein by reference from time to time (collectively, such specifically identified equipment, software and services are the “Equipment”), subject to the terms and conditions hereof, as supplemented with respect to each item of Equipment by the terms and conditions set forth in the appropriate Lease Schedule**. **The term “Lease Agreement” shall include this Lease Agreement and the various Lease Schedule(s) identifying each item of Equipment or the appropriate Lease Schedule(s) identifying one or more particular items of Equipment.**

**1. TERM**: This Lease Agreement is effective from the date it is executed by both parties. The term of this Lease Agreement, as to all Equipment designated on any particular Lease Schedule, shall commence on the Installation Date for all Equipment on such Lease Schedule and shall continue for an initial period ending that number of months from the Commencement Date as set forth in such Lease Schedule (the “Initial Term”) and shall continue from year to year thereafter until terminated. The term of this Lease Agreement as to all Equipment designated on any particular Lease Schedule may be terminated without cause at the end of the Initial Term or any year thereafter by either party mailing written notice of its termination to the other party not less than ninety (90) days prior to such termination date.

**2. COMMENCEMENT DATE**: The Installation Date for each item of Equipment shall be the day said item of Equipment is installed at the Location of Installation, ready for use, and accepted in writing by the Lessee. The Commencement Date for any Lease Schedule is the first of the month following installation of all the Equipment on the Lease Schedule, unless the latest Installation Date for any Equipment on the Lease Schedule falls on the first day of the month in which case that is the Commencement Date. The Lessee agrees to complete, execute and deliver a Certificate(s) of Acceptance to Lessor upon installation of the Equipment. The parties understand that the Equipment is mobile robots, which will be stored and have a home base at the Location, but will be away from the Location from time to time as part of their mobile functions.

**3. LEASE CHARGE**: The lease charges for the Equipment leased pursuant to this Lease Agreement shall be the aggregate “Monthly Lease Charge(s)” as set forth on each and every Lease Schedule executed pursuant hereto (the aggregate “Monthly Lease Charge(s)” are the “Lease Charges”). Lessee agrees to pay to Lessor the Lease Charges in accordance with the Lease Schedule(s), and the payments shall be made at Lessor’s address indicated thereon. The Lease Charges shall be paid by Lessee monthly in advance with the first full month’s payment due on the Commencement Date. If the Installation Date does not fall on the first day of a month, the Lease Charge for the period from the Installation Date to the Commencement Date shall be an amount equal to the “Monthly Lease Charge” divided by thirty (30) and multiplied by the number of days from and including the Installation Date to the Commencement Date and such amount shall be due and payable upon receipt of an invoice from Lessor. Charges for taxes made in accordance with Section 4 and charges made under any other provision of this Lease Agreement and payable by Lessee shall be paid to Lessor at Lessor’s address specified on the Lease Schedule(s) on the date specified in invoices delivered to Lessee. If payment, as specified above, is not received by Lessor on the due date, Lessee agrees to and shall, to the extent permitted by law, pay on demand, as a late charge, an amount equal to one and one-half percent (11/2%), or the maximum percentage allowed by law if less, of the amount past due (“Late Charges”). Late Charges shall be charged and added to any past due amount on the date such payment is due and every thirty (30) days thereafter until all past due amounts are paid in full to Lessor.

*Page Number 1 of 10*

**4. TAXES**: In addition to the Lease Charges set forth in Section 3, the Lessee shall reimburse Lessor for all license or registration fees, assessments, sales and use taxes, rental taxes, gross receipts taxes, personal property taxes and other taxes now or hereafter imposed by any government, agency, province or otherwise upon the Equipment, the Lease Charges or upon the ownership, leasing, renting, purchase, possession or use of the Equipment, whether the same be assessed to Lessor or Lessee (the “Taxes”). Lessor shall file all property tax returns and pay all Taxes when due. Lessee, upon notice to Lessor, may, in Lessee’s own name, contest or protest any Taxes, and Lessor shall honor any such notice except when in Lessor’s reasonable opinion such contest is futile or will cause a levy or lien to arise on the Equipment or cloud Lessor’s title thereto. Lessee shall, in addition, be responsible to Lessor for the payment and discharge of any penalties or interest as a result of Lessee’s actions or inactions with respect to the Equipment. Nothing herein shall be construed to require Lessee to be responsible for any federal or state taxes or payments in lieu thereof, imposed upon or measured by the net income of Lessor, or state franchise taxes of Lessor, or except as provided hereinabove, any penalties or interest resulting from Lessor’s failure to timely remit such tax payments.

**5. DELIVERY AND FREIGHT COSTS**: Lessee shall accept delivery and install the Equipment before such time as the applicable vendor requires payment for such Equipment.

All transportation charges upon the Equipment for delivery to Lessee’s designated Location of Installation are to be paid by Lessee. All rigging, drayage charges, structural alterations, rental of heavy equipment and/or other expense necessary to place the Equipment at the Location of Installation are to be promptly paid by Lessee.

**6. INSTALLATION**: Lessee agrees to pay for the actual installation of the Equipment at Lessee’s site. Lessee shall make available and agrees to pay for all costs associated with providing a suitable place of installation and necessary electrical power, outlets and air conditioning required for operating the Equipment as defined in the Equipment manufacturer’s installation manual or instructions. All supplies consumed or required by the Equipment shall be furnished and paid for by Lessee.

**7. RETURN TO LESSOR**: On the day following the last day of the lease term associated with a Lease Schedule (the “Return Date”), Lessee shall cause and pay for all the Equipment (by serial number where serialized) on that Lease Schedule to be deinstalled, packed using the manufacturer’s original packing materials or equivalent and shipped to the location(s) designated in writing by Lessor, which must be a location in the continental United States (the “Return Location”). If all the Equipment on the applicable Lease Schedule is not at the Return Location within ten (10) days of the Return Date, or Lessee fails to deinstall and ship all the Equipment on the Return Date, then any written notice of termination delivered by Lessee shall become void, and the Lease Schedule shall continue in accordance with this Lease Agreement. Irrespective of any other provision hereof, Lessee will bear the risk of damage from fire, the elements or otherwise until delivery of the Equipment to the Return Location. At such time as the Equipment is delivered to the Lessor at the Return Location, the Equipment will be at the risk of Lessor. In the case of Equipment that is software or related implementation services, Lessee will erase, delete and destroy all electronic incidents of software, and deliver to Lessor all tangible items constituting software. At Lessor’s request, Lessee will also certify in a written form acceptable to Lessor that: (i) all tangible Software has been delivered to Lessor; (ii) all intangible records have been destroyed; (iii) Lessee has not retained the software in any form; (iv) Lessee will not use the Software after the termination date of a Lease Schedule; and (v) Lessee has not received from the software supplier(s) anything of value relating to or in exchange for Lessee’s use, rental or possession of the software during the duration of the applicable Lease Schedule (including a trade-in, substitution or upgrade allowance).

*Page Number 2 of 10*

**8. MAINTENANCE**: Lessee, at its sole expense, shall maintain the Equipment in good working order and condition. Lessee shall either self-maintain the Equipment or enter into, pay for and maintain in force during the entire term of any Lease Schedule, a maintenance agreement with the original manufacturer of the Equipment providing for continuous uninterrupted maintenance of the Equipment (the “Maintenance Agreement”). Lessee will keep the Equipment in good working order and make all necessary adjustments and repairs to the Equipment. The manufacturer is hereby authorized to accept the directions of Lessee with respect thereto. Lessee agrees to allow the manufacturer full and free access to the Equipment. All maintenance and service charges, whether under the Maintenance Agreement or otherwise, and all expenses, if any, of the manufacturer’s customer engineers, employees or independent contractors of Lessee incurred in connection with maintenance and repair services, shall be promptly paid by Lessee. Lessee warrants that all of the Equipment shall be in good working order operating according to manufacturer’s specification and eligible for the manufacturer’s standard maintenance agreement if commercially available upon delivery to and inspection and testing by the Lessor. If the Equipment is not operating according to manufacturer’s specification, in good working order and/or certified by the manufacturer as eligible for the manufacturer’s standard maintenance agreement if commercially available, Lessee agrees to reimburse Lessor for all costs, losses, expenses and fees associated with such equipment and the repair or replacement thereof.

**9. LOCATION, OWNERSHIP AND USE**: The Equipment shall, at all times, be the sole and exclusive property of Lessor. Lessee shall have no right or property interest therein, except for the right to use the Equipment in the normal operation of its business at the Location of Installation, or as otherwise provided herein. The Equipment is and shall remain personal property even if installed in or attached to real property.

Lessee shall keep the Equipment at all times free and clear from all claims, levies, encumbrances and process. Lessee shall give Lessor immediate notice of any such attachment or other judicial process affecting any of the Equipment. Without Lessor’s written permission, Lessee shall not attempt to or actually: (i) pledge, lend, create a security interest in, sublet, exchange, trade, assign, swap, use for an allowance or credit or otherwise; (ii) allow another to use; (iii) part with possession; (iv) dispose of; or (v) remove from the Location of Installation, any item of Equipment. If any item of Equipment is exchanged, assigned, traded, swapped, used for an allowance or credit or otherwise to acquire new or different equipment (the “New Equipment”) without Lessor’s prior written consent, then all of the New Equipment shall become Equipment owned by Lessor subject to this Lease Agreement and the applicable Lease Schedule.

Any feature(s) installed on the Equipment at the time of delivery that are not specified on the Lease Schedule(s) are and shall remain the sole property of the Lessor.

Lessee shall cause the Equipment to be operated in accordance with the applicable vendor’s or manufacturer’s manual of instructions by competent and qualified personnel.

**10. FINANCING STATEMENT**: Lessor is hereby authorized by Lessee to cause this Lease Agreement or other instruments, including Uniform Commercial Code Financing Statements, to be filed or recorded for the purposes of showing Lessor’s interest in the Equipment. Lessee agrees to execute any such instruments as Lessor may request from time to time.

**11. ALTERATIONS AND ATTACHMENTS**: Upon prior written notice to Lessor, Lessee may, at its own expense, make minor alterations in or add attachments to the Equipment, provided such alterations and attachments shall not interfere with the normal operation of the Equipment and do not otherwise involve the pledge, assignment, exchange, trade or substitution of the Equipment or any component or part thereof. All such alterations and attachments that are hardware alterations and attachments to the Equipment shall become part of the Equipment leased to Lessee and owned by Lessor. If, in Lessor’s sole determination, the alteration or attachment reduces the value of the Equipment or interferes with the normal and satisfactory operation or maintenance of any of the Equipment, or creates a safety hazard, Lessee shall, upon notice from Lessor to that effect, promptly remove the alteration or attachment at Lessee’s expense and restore the Equipment to the condition the Equipment was in just prior to the alteration or attachment.

*Page Number 3 of 10*

**12. LOSS AND DAMAGE**: Lessee shall assume and bear the risk of loss, theft and damage (including any governmental requisition, condemnation or confiscation) to the Equipment and all component parts thereof from any and every cause whatsoever, whether or not covered by insurance. No loss or damage to the Equipment or any component part thereof shall impair any obligation of Lessee under this Lease Agreement, which shall continue in full force and effect except as hereinafter expressly provided. Lessee shall repair or cause to be repaired all damage to the Equipment. In the event that all or part of the Equipment shall, as a result of any cause whatsoever, become lost, stolen, destroyed, depleted or otherwise rendered irreparably unusable, damaged or consumed, which shall include Equipment that would be rendered unusable by the act of deinstalling for return to Lessor (e.g. leasehold improvements of real estate etc.) (collectively, the “Loss”) then Lessee shall, within ten (10) days after the Loss, fully inform Lessor in writing of such a Loss and shall pay to Lessor the following amounts: (i) the Monthly Lease Charges (and other amounts) then due and owing under this Lease Agreement, plus (ii) one-hundred (100%) percent of the original cost of the Equipment subject to the Loss if the loss occurs in either the installation period or during the first nine months of the Initial Term, and, thereafter, the original cost of the Equipment amortized by the subsequent Monthly Lease Charges received by Lessor during the Initial Term using an amortization rate of eight hundred and ninety (890) basis points over the interest rate of the three (3) year United States Treasury Note as reported by the Federal Reserve on the Commencement Date (collectively, the sum of (i) plus (ii) shall be the “Casualty Loss Value”). If the Loss occurs after the Initial Term, (ii) above shall be the remaining unamortized balance as of the end of the Initial Term without further amortization (the “Terminal Casualty Loss Value”). Upon receipt by Lessor of the Casualty Loss Value: (i) the applicable Equipment shall be removed from the Lease Schedule; and (ii) Lessee’s obligation to pay Lease Charges associated with the applicable Equipment shall cease. Lessor may request, and Lessee shall complete, an affidavit(s) that swears out the facts supporting the Loss of any item of Equipment.

**13. INSURANCE**: Until the Equipment is returned to Lessor or as otherwise herein provided, whether or not this Lease Agreement has terminated as to the Equipment, Lessee, at its expense, shall maintain: (i) property and casualty insurance insuring the Equipment for its Casualty Loss Value naming Lessor or its assigns as sole loss payee with respect to the Equipment loss proceeds; and (ii) comprehensive public liability and third-party property insurance naming Lessor and its assigns as additional loss payees. The insurance shall cover the interest of both the Lessor and Lessee in the Equipment, or as the case may be, shall protect both the Lessor and Lessee in respect to all risks arising out of the condition, delivery, installation, maintenance, use or operation of the Equipment. All such insurance shall provide for thirty (30) days prior written notice to Lessor of cancellation, restriction, or reduction of coverage (or ten (10) days in the case of cancellation for nonpayment of premiums). Lessee hereby irrevocably appoints Lessor as Lessee’s attorney-in-fact to make claim for, receive payment of and execute and endorse all documents, checks or drafts for loss or damage or return premium under any insurance policy issued on the Equipment with respect to the Equipment only. Prior to installation of the Equipment, all policies or certificates of insurance shall be delivered to Lessor by Lessee. Lessee agrees to keep the Equipment insured with an insurance company which is at least “A” rated by A.M. Best. The proceeds of any loss or damage insurance with respect to the Equipment shall be payable to Lessor, but Lessor shall remit all such insurance proceeds to Lessee at such time as Lessee either (i) provides Lessor satisfactory proof that the damage has been repaired and the Equipment has been restored to good working order and condition or (ii) pays to Lessor the Casualty Loss Value. It is understood and agreed that any payments made by Lessee or its insurance carrier for loss or damage of any kind whatsoever to the Equipment are not made as accelerated rental payments or adjustments of rental, but are made solely as indemnity to Lessor for loss or damage of its Equipment.

**14. ENFORCEMENT OF WARRANTIES**: Upon receipt of a written request from Lessee, Lessor shall, so long as this Lease Agreement is in force, take all reasonable action requested by Lessee to enforce the Equipment manufacturer’s warranties (if any), expressed or implied, issued on or applicable to the Equipment, which are enforceable by Lessor in its own name. Lessor shall obtain for Lessee all service furnished by manufacturer in connection therewith (if any); provided, however, that Lessor shall not be required to commence any suit or action or resort to litigation to enforce any such warranty unless Lessee shall first pay to Lessor in advance all reasonable and documented out-of-pocket expenses in connection therewith, including reasonable and documented out-of-pocket attorney’s’ fees.

If any such warranty shall be enforceable by Lessee in its own name, Lessee shall, upon receipt of written request from Lessor, so long as this Lease Agreement is in force, take all reasonable action requested by Lessor to enforce any such warranty, which is enforceable by Lessee in its own name; provided, however, that Lessee shall not be obligated to commence any suit or action or resort to litigation to enforce any such warranty unless Lessor shall pay all expenses in connection therewith.

*Page Number 4 of 10*

**15. WARRANTIES, DISCLAIMERS AND INDEMNITY**: THE LESSOR DOES NOT MAKE ANY WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING THE WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. LESSEE ACKNOWLEDGES THAT IT IS NOT RELYING ON LESSOR’S SKILL OR JUDGEMENT TO SELECT OR FURNISH GOODS SUITABLE FOR ANY PARTICULAR PURPOSE AND THAT THERE ARE NO WARRANTIES CONTAINED IN THIS LEASE AGREEMENT. LESSEE ACKNOWLEDGES AND AGREES THAT LESSOR HAS NOT MADE ANY STATEMENT, REPRESENTATION OR WARRANTY RELATIVE TO THE ACCOUNTING OR TAX ENTRIES, TREATMENT, BENEFIT, USE OR CLASSIFICATION OF THE LEASE AGREEMENT OR ASSOCIATED LEASE SCHEDULES. LESSEE ACKNOWLEDGES THAT IT AND/OR ITS INDEPENDENT ACCOUNTANTS ARE SOLELY RESPONSIBLE FOR (i) ANY AND ALL OF LESSEE’S ACCOUNTING AND TAX ENTRIES ASSOCIATED WITH THE LEASE AGREEMENT AND/OR THE LEASE SCHEDULES AND (ii) THE ACCOUNTING AND TAX TREATMENT, BENEFITS, USES AND CLASSIFICATION OF THE LEASE AGREEMENT OR ANY LEASE SCHEDULE. LESSOR SHALL NOT BE LIABLE FOR DAMAGES, INCLUDING SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THE EQUIPMENT OR ITS USE BY LESSEE, AND SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH LESSOR’S FAILURE TO PERFORM ITS OBLIGATION HEREUNDER. THIS LEASE AGREEMENT IS A “FINANCE LEASE” AS THAT TERM IS DEFINED AND USED IN ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE. NO RIGHTS OR REMEDIES REFERRED TO IN ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE WILL BE CONFERRED ON LESSEE.

Lessee agrees that Lessor shall not be liable to Lessee for, and Lessee shall indemnify, defend and hold Lessor harmless with respect to, any claim from a third party for any liability, claim, loss, damage or reasonable and documented out-of-pocket expense of any kind or nature, whether based upon a theory of strict liability or otherwise, caused, directly or indirectly, by: (i) the inadequacy of any item of Equipment, including software, for any purpose; (ii) any deficiency or any latent or other defects in any Equipment, including software, whether or not detectable by Lessee; (iii) the selection, manufacture, rejection, ownership, lease, possession, maintenance, operation, use or performance of any item of Equipment, including software; (iv) any interruption or loss of service, use or performance of any item of Equipment, including software; (v) patent, trademark or copyright infringement; or (vi) any loss of business or other special, incidental or consequential damages whether or not resulting from any of the foregoing. Lessee’s duty to defend and indemnify Lessor shall survive the expiration, termination, cancellation or assignment of this Lease Agreement or a Lease Schedule and shall be binding upon Lessee’s successors and permitted assigns.

**16. EVENT OF DEFAULT**: The occurrence of any of the following events shall constitute an Event of Default under this Lease Agreement and/or any Lease Schedule:

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|  | (1) | the nonpayment by Lessee of any Lease Charges when due, or the nonpayment by Lessee of any other sum required hereunder to be paid by Lessee which non-payment continues for a period of ten (10) days from the date when due; |

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|  | (2) | the failure of Lessee to perform any other term, covenant or condition of this Lease Agreement, any Lease Schedule or any other document, agreement or instrument executed pursuant hereto or in connection herewith, which is not cured within ten (10) days; |

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|  | (3) | Lessee attempts to or does remove, transfer, sell, swap, assign, sublease, trade, exchange, encumber, receive an allowance or credit for, or part with possession of, any item of Equipment; |

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|  | (4) | Lessee or any guarantor of this Lease Agreement ceases doing business as a going concern, is insolvent, makes an assignment for the benefit of creditors, fails to pay its debts as they become due, offers a settlement to creditors or calls a meeting of creditors for any such purpose, files a voluntary petition in bankruptcy, is subject to an involuntary petition in bankruptcy and such involuntary bankruptcy is not dismissed within sixty (60) days, is adjudicated bankrupt or insolvent, files or has filed against it a petition seeking any reorganization, arrangement or composition, under any present or future statute, law or regulation; |

*Page Number 5 of 10*

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|  | (5) | without Lessor’s express prior written consent, (i) Lessee or any guarantor of this Lease Agreement sells, conveys, leases, exchanges or transfers all or substantially all of its assets other than to Lessee or such guarantor, (ii) Lessee or any guarantor of this Lease Agreement merges, consolidates, liquidates, dissolves or combines its assets with any other entity other than to Lessee or such guarantor, or (iii) if Lessee or any guarantor of this Lease Agreement is a corporation, partnership, limited liability company or other entity, more than 50% of the outstanding equity interests of Lessee or such guarantor are owned directly or indirectly at any time during the Term of this Lease Agreement by a person or group of persons other than the person(s) who held all of the outstanding equity interests on the date of this Lease Agreement; |

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|  | (6) | any representations or warranties made at any time by Lessee or any guarantor in this Lease Agreement or in any agreement, statement, certificate, financial or credit information provided in connection herewith are false or misleading in any material respect when made; |

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|  | (7) | Lessee or any guarantor of this Lease Agreement defaults under or otherwise has accelerated any obligation, credit agreement, loan agreement, conditional sales contract, capital lease, indenture or debenture for obligations in excess of $1,000,000; or Lessee or any guarantor of this Lease Agreement defaults under any other agreement now existing or hereafter made with Lessor, including an equipment purchase agreement; or |

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|  | (8) | the breach or repudiation by any party thereto of any guaranty, subordination agreement or other agreement running in favor of Lessor obtained in connection with this Lease Agreement. |

**17. REMEDIES**: Should any Event of Default occur and be continuing, Lessor may, in order to protect its interests and reasonably expected profits, with or without notice or demand upon Lessee, pursue and enforce, alternatively, successively and/or concurrently, any one or more of the following remedies:

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|  | (1) | recover from Lessee all accrued and unpaid Lease Charges and other amounts due and owing on the date of the default; |

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|  | (2) | recover from Lessee from time to time all Lease Charges and other amounts as and when becoming due hereunder; |

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|  | (3) | accelerate, cause to become immediately due and recover the present value of all Lease Charges and other amounts due and/or likely to become due hereunder from the date of the default to the end of the lease term using a discount rate of three (3%) percent; |

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|  | (4) | cause to become immediately due and payable and recover from Lessee the Casualty Loss Value of the Equipment; |

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|  | (5) | terminate any or all of the Lessee’s rights, but not its obligations, associated with the lease of Equipment under this Lease Agreement; |

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|  | (6) | retake (by Lessor, independent contractor, or by requiring Lessee to assemble and surrender the Equipment in accordance with the provisions of Section 7 hereinabove) possession of the Equipment without terminating the Lease Schedule or the Lease Agreement free from claims by Lessee which claims are hereby expressly waived by Lessee; |

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|  | (7) | require Lessee to deliver the Equipment to a location designated by Lessor; |

*Page Number 6 of 10*

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|  | (8) | proceed by court action to enforce performance by Lessee of its obligations associated with any Lease Schedule and/or this Lease Agreement; and/or |

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|  | (9) | pursue any other remedy Lessor may otherwise have, at law, equity or under any statute, and recover damages and reasonable and documented out-of-pocket expenses (including reasonable and documented out-of-pocket attorneys’ fees) incurred by Lessor by reason of the Event of Default. |

Upon repossession of the Equipment, Lessor shall have the right to lease, sell or otherwise dispose of such Equipment in a commercially reasonable manner, with or without notice, at a public or private sale. Lessor’s pursuit and enforcement of any one or more remedies shall not be deemed an election or waiver by Lessor of any other remedy. Lessor shall not be obligated to sell or re-lease the Equipment. Any sale or re-lease may be held at such place or places as are selected by Lessor, with or without having the Equipment present. Any such sale or re-lease, may be at wholesale or retail, in bulk or in parcels. Time and exactitude of each of the terms and conditions of this Lease Agreement are hereby declared to be of the essence. Lessor may accept past due payments in any amount without modifying the terms of this Lease Agreement and without waiving any rights of Lessor hereunder.

**18. COSTS AND ATTORNEYS’ FEES**: In the event of any default, claim, proceeding, including a bankruptcy proceeding, arbitration, mediation, counter-claim, action (whether legal or equitable), appeal or otherwise, whether initiated by Lessor or Lessee (or a debtor-in-possession or bankruptcy trustee), which arises out of, under, or is related in any way to this Lease Agreement, any Lease Schedule, or any other document, agreement or instrument executed pursuant hereto or in connection herewith, or any governmental examination or investigation of Lessee, which requires Lessor’s participation (individually and collectively, the “Claim”), Lessee, in addition to all other sums which Lessee may be called upon to pay under the provisions of this Lease Agreement, shall pay to Lessor, on demand, all reasonable and documented out-of-pocket costs, expenses and fees paid or payable in connection with the Claim, including, but not limited to, reasonable and documented out-of-pocket attorneys’ fees and reasonable and documented out-of-pocket costs, including travel and related expenses incurred by Lessor or its attorneys.

**19. LESSOR’S PERFORMANCE OPTION**: Should Lessee fail to make any payment or to do any act as provided by this Lease Agreement, then Lessor shall have the right (but not the obligation), without notice to Lessee of its intention to do so and without releasing Lessee from any obligation hereunder to make or to do the same, to make advances to preserve the Equipment or Lessor’s title thereto, and to pay, purchase, contest or compromise any insurance premium, encumbrance, charge, tax, lien or other sum which in the judgment of Lessor appears to affect the Equipment, and in exercising any such rights, Lessor may incur any liability and expend whatever amounts in its absolute discretion it may deem necessary therefor. All sums so incurred or expended by Lessor shall be due and payable by Lessee within ten (10) days of written notice thereof and provisions of reasonable supporting documentation therefor.

**20. QUIET POSSESSION AND INSPECTION**: Lessor hereby covenants with Lessee that Lessee shall quietly possess the Equipment subject to and in accordance with the provisions hereof so long as Lessee is not in default hereunder; provided, however, that Lessor or its designated agent may, at any and all reasonable times during business hours, enter Lessee’s premises for the purposes of inspecting the Equipment and the manner in which it is being used.

*Page Number 7 of 10*

**21. ASSIGNMENTS**: This Lease Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Lessee, however, shall not assign this Lease Agreement or sublet any of the Equipment without first obtaining the express prior written consent of Lessor and its assigns, if any. If express prior written consent for either an assignment or change of control, defined as any of the events in section 16(5), is not provided by Lessor, Lessee shall purchase the Equipment from Lessor, in consideration for: (i) the greater of either the Equipment’s retail in-place value or the Casualty Loss Value; plus (ii) all amounts then due and owing (including late fees and taxes); plus (iii) the present value of all future Monthly Lease Charges for the Initial Term or any renewal term thereafter discounted at a rate of three (3) percent. The sum of (i), (ii) and (iii) shall be payable at the close of the transaction requiring Lessor’s consent, and the Lessor shall transfer the ownership of the Equipment to Lessee and terminate the Lease Agreement. Lessee acknowledges that the terms and conditions of this Lease Agreement have been fixed in anticipation of the possible assignment of Lessor’s rights under this Lease Agreement and in and to the Equipment as collateral security to a third party (“Assignee” herein) which will rely upon and be entitled to the benefit of the provisions of this Lease Agreement. Lessee agrees to provide Lessor or its potential assigns with Lessee’s most recent audited and its most current financial statements. Lessee agrees with Lessor and such Assignee to recognize in writing any such assignment within fifteen (15) days after receipt of written notice thereof and to pay thereafter all sums due to Lessor hereunder directly to such Assignee if directed by Lessor, notwithstanding any defense, set-off or counterclaim whatsoever (whether arising from a breach of this Lease Agreement or not) that Lessee may from time to time have against Lessor. Upon such assignment, the Lessor shall remain obligated to perform any obligations it may have under this Lease Agreement and the Assignee shall (unless otherwise expressly agreed to in writing by the Assignee) have no obligation to perform such obligations. Any such assignment shall be subject to Lessee’s rights to use and possess the Equipment so long as Lessee is not in default hereunder.

**22. SURVIVAL OF OBLIGATIONS**: All covenants, agreements, representations, and warranties contained in this Lease Agreement, any Lease Schedule, or in any document attached thereto, shall be for the benefit of Lessor and Lessee and their successors, any assignee or secured party. Further, all covenants, agreements, representations, and warranties contained in this Lease Agreement, any Lease Schedule, or in any document attached thereto, shall survive the execution and delivery of this Lease Agreement and the expiration or other termination of this Lease Agreement.

**23. CORPORATE AUTHORITY**: The parties hereto covenant and warrant that the persons executing this Lease Agreement and each Lease Schedule on their behalf have been duly authorized to do so, and this Lease Agreement and any Lease Schedule constitute a valid and binding obligation of the parties hereto. The Lessee will, if requested by Lessor, provide to Lessor, Certificates of Authority naming the officers of the Lessee who have the authority to execute this Lease Agreement and any Lease Schedules attached thereto.

**24. LANDLORDS’ AND MORTGAGEES’ WAIVER**: If requested, Lessee shall use commercially reasonable efforts to obtain customary access agreements, in form and substance satisfactory to Lessor, from all landlords and mortgagees of any premises upon which any Equipment is located permitting Lessor to enter such premises.

**25. MISCELLANEOUS**: This Lease Agreement, the Lease Schedule(s), attached riders and any documents or instruments issued or executed pursuant hereto will have been made, executed and delivered in, and will be governed by the internal laws (as opposed to conflicts of law provisions) and decisions of, the State of Minnesota. Lessee and Lessor consent to jurisdiction of any local, state or federal court located within Minnesota. Venue will be in Minnesota and Lessee hereby waives local venue and any objection relating to Minnesota being an improper venue to conduct any proceeding relating to this Lease Agreement. At Lessor’s sole election and determination, Lessor may select an alternative forum, including arbitration or mediation, to adjudicate any dispute arising out of this Lease Agreement. THE PARTIES HERETO, AFTER CONSULTING (OR HAVING HAD AN OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR CHOICE, KNOWINGLY AND VOLUNTARILY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING RELATING TO THIS LEASE, INCLUDING ANY LITIGATION REGARDING THE ENFORCEMENT OF THIS LEASE OR ANY RELATED AGREEMENT.

*Page Number 8 of 10*

This Lease Agreement was jointly drafted by the parties, and the parties hereby agree that neither should be favored in the construction, interpretation or application of any provision or any ambiguity. There are no unwritten or oral agreements between the parties. This Lease Agreement and associated Lease Schedule(s) constitute the entire understanding and agreement between Lessor and Lessee with respect to the lease of the Equipment superseding all prior agreements, understandings, negotiations, discussions, proposals, representations, promises, commitments and offers between the parties, whether oral or written. No provision of this Lease Agreement or any Lease Schedule shall be deemed waived, amended, discharged or modified orally or by custom, usage or course of conduct unless such waiver, amendment or modification is in writing and signed by an officer of each of the parties hereto. If any one or more of the provisions of this Lease Agreement or any Lease Schedule is for any reason held invalid, illegal or unenforceable, the remaining provisions of this Lease Agreement and any such Lease Schedule will be unimpaired, and the invalid, illegal or unenforceable provisions shall be replaced by a mutually acceptable valid, legal and enforceable provision that is closest to the original intention of the parties. Lessee agrees that neither the manufacturer, nor the supplier, nor any of their salespersons, employees or agents are agents of Lessor.

Any notice provided for herein shall be in writing and sent by certified or registered mail to the parties at the addresses stated on page 1 of this Lease Agreement. This Lease Agreement shall not become effective until delivered to Lessor at its offices at XXX, Minnesota and executed by Lessor. If this Lease Agreement shall be executed by Lessor prior to being executed by Lessee, it shall become void at Lessor’s option five (5) days after the date of Lessor’s execution hereof, unless Lessor shall have received by such date a copy hereof executed by a duly authorized representative of Lessee.

This Lease Agreement is made subject to the terms and conditions included herein and Lessee’s acceptance is effective only to the extent that such terms and conditions are consistent with the terms and conditions herein. Any acceptance which contains terms and conditions which are in addition to or inconsistent with the terms and conditions herein will be a counter-offer and will not be binding unless agreed to in writing by Lessor.

The terms used in this Lease Agreement, unless otherwise defined, shall have the meanings ascribed to them in the Lease Schedule(s).

**26. REPOSSESSION**: LESSEE ACKNOWLEDGES THAT, PURSUANT TO SECTION 17 HEREOF, LESSOR HAS BEEN GIVEN THE RIGHT TO REPOSSESS THE EQUIPMENT SHOULD LESSEE BECOME IN DEFAULT OF ITS OBLIGATIONS HEREUNDER. LESSEE HEREBY WAIVES THE RIGHT, IF ANY, TO REQUIRE LESSOR TO GIVE LESSEE NOTICE AND A JUDICIAL HEARING PRIOR TO EXERCISING SUCH RIGHT OF REPOSSESSION.

**27. NET LEASE**: This Lease Agreement is a net lease and Lessee’s obligations to pay all Lease Charges and other amounts payable hereunder shall be absolute and unconditional and, except as expressly provided herein, shall not be subject to any: (i) delay, abatement, reduction, defense, counterclaim, set-off, or recoupment; (ii) discontinuance or termination of any license; (iii) Equipment failure, defect or deficiency; (iv) damage to or destruction of the Equipment; or (v) dissatisfaction with the Equipment or otherwise, including any present or future claim against Lessor or the manufacturer, supplier, reseller or vendor of the Equipment. To the extent that the Equipment includes intangible (or intellectual) property, Lessee understands and agrees that: (i) Lessor is not a party to and does not have any responsibility under any software license and/or other agreement with respect to any software; and (ii) Lessee will be responsible to pay all of the Lease Charges and perform all its other obligations under this Lease Agreement despite any defect, deficiency, failure, termination, dissatisfaction, damage or destruction of any software or software license. Except as expressly provided herein, this Lease Agreement shall not terminate for any reason, including any defect in the Equipment or Lessor’s title thereto or any destruction or loss of use of any item of Equipment.

**28. HEADINGS**: Section headings herein are used for convenience only and shall not otherwise affect the provisions of this Lease Agreement.

*Page Number 9 of 10*

IN WITNESS WHEREOF, the parties hereto have caused this Lease Agreement to be signed by their respective duly authorized representative.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Every Term is Agreed to and Accepted:** | |  | **Every Term is Agreed to and Accepted:** | |
| **PICADILLY FINANCIAL, INC.** | |  | **STANISLAV INC.** | |
|  |  |  |  |  |
| **By:** | /s/ Karen Schwelle |  | **By:** | /s/ Bonty Berks |
|  |  |  |  |  |
| **Print** |  |  | **Print** |  |
| **Name:** | Karen Schwelle |  | **Name:** | Bonty Berks |
|  |  |  |  |  |
| **Title:** | President |  | **Title:** | COO |
|  |  |  |  |  |
| **Date:** | June 20, 2022 |  | **Date:** | 6/17/2022 |

*Page Number 10 of 10*

LEASE SCHEDULE NO. 001

This Lease Schedule is issued pursuant to the Lease Agreement Number SE06988 dated June 6, 2022. The terms of the Lease Agreement and serial numbers contained on Certificate(s) of Acceptance are a part hereof and are incorporated by reference herein.

LESSOR LESSEE

Picadilly Financial, Inc. Stanislav Inc.

, MN 55323 , CA 94033

SUPPLIER OF EQUIPMENT LOCATION OF EQUIPMENT

Various TBD

Initial Term of Lease from Commencement Date: 24 Months

Monthly Lease Charge: $176,073.80, or $788,298.80 if the Expansion Option is chosen.

Anticipated Delivery and Installation: June 2022 thru September 2022, or thru April 2023 if the Expansion Option is chosen.

Projected Commencement Date: October 1, 2022, or May 1, 2023, if the Expansion Option is chosen.

Security Deposit: Upon Lessee’s execution of this Lease Schedule, Lessee shall deliver a security deposit in the amount of $352,147.60. Upon acceptance of the Expansion Option, the security deposit will be increased to $1,576,597.60. Provided that there has been no event of default and Lessee has returned all the Equipment under this Lease Schedule per the terms of the Lease Agreement, this security deposit will be returned to Lessee.

EQUIPMENT

MANUFACTURER QTY MACHINE/MODEL EQUIPMENT DESCRIPTION (including features)

Various Autonomous Sidewalk Robots, Manufacturer Fees & Shipping

The cost of all the Equipment on this Lease Schedule shall total $4,200,000.00. The Monthly Lease Charge listed above is calculated based on the agreement that this cost will be comprised of $3,500,000.00 of hardware at a lease rate factor of 0.040815 per $1.00 and $700,000.00 of non-hardware costs at a lease rate factor of 0.047459 per $1.00. Should the total cost of the Equipment exceed or be less than that indicated above, Lessor and Lessee agree that the Monthly Lease Charge above will be adjusted accordingly to reflect this actual cost at the Installation Date of the additional Equipment. If the total cost of non-hardware exceeds that indicated above, the non-hardware portion of the commitment above will be adjusted accordingly dollar for dollar by the amount of the additional non-hardware. This Lease Schedule No. 001 will Commence on the first of the month following the later of (i) the date the Lessee has satisfied its commitment to install all of the Equipment, as described above; or (ii) Lessor’s receipt of Lessee’s executed commencing Lease Schedule. A revised Lease Schedule No. 001R to replace this Lease Schedule No. 001 shall be executed by both parties to reflect the actual Equipment cost accepted and the commensurate Monthly Lease Charge, including any adjustments required under the Monthly Lease Charge Adjustment Rider. The Monthly Lease Charge will be prorated and charged as interim rent between the Installation Date of each item of equipment, as Lessee indicates on the Certificate(s) of Acceptance, and the Commencement Date. Interim rent due prior to the Commencement Date shall not reduce or offset Lessee’s post-Commencement Monthly Lease Charge obligations hereunder.

Expansion Option: If the parties agree during the installation phase of this Lease Schedule, the hardware amount will be increased by $15,000,000.00 for a total Equipment commitment of $19,200,000.00.

Every Term is Agreed to and Accepted: Every Term is Agreed to and Accepted:

PICADILLY FINANCIAL, INC. STANISLAV INC.

“LESSOR” “LESSEE”

By: /s/ Karen Schwelle By: /s/ Bonty Berks

Print Print

Name: Karen Schwelle Name: Bonty Berks

Title: President Title: COO

Date: June 20, 2022 Date: 6/17/2022

Rider Number: 001

Lease Agreement Number: SE0600000

Lease Schedule Number(s): ALL

Lessee Name: STANISLAV INC.

Lease Agreement Dated: JUNE 6, 2022

MONTHLY LEASE CHARGE ADJUSTMENT

This Lease Schedule is intended to be a fixed rate lease during the installation period and from the Commencement Date to the end of the term. The three-year treasury rate is an integral part of calculating the Monthly Lease Charge for this Lease Schedule. The Lessor and Lessee agree that the Monthly Lease Charge shall be fixed upon execution of this Lease and that should the three year treasury note increase between the execution of this Lease Schedule and the Commencement Date, the Monthly Lease Charge will be adjusted on the Commencement Date to reflect such increase and will then be fixed for the term of this Lease Schedule.

Every Term is Agreed to and Accepted: Every Term is Agreed to and Accepted:

PICADILLY FINANCIAL, INC. STANISLAV INC.

“LESSOR” “LESSEE”

By: /s/ Karen Schwelle By: /s/ Bonty Berks

Print Print

Name: Karen Schwelle Name: Bonty Berks

Title: President Title: COO

Date: June 20, 2022 Date: 6/17/2022

Rider Number: 002

Lease Agreement Number: SE060000

Lease Schedule Number(s): ALL

Lessee Name: STANISLAV INC.

Lease Agreement Dated: JUNE 6, 2022

RIGHT OF FIRST REFUSAL

Lessee shall notify Lessor (“Third Party Lease Offer Notice”) within ten (10) business days after receiving any bona fide offer in writing from a third party to lease equipment constituting robots of the type used in Lessee’s robot delivery business (“Offered Robot Equipment”) to Lessee, which offer Lessee intends to accept (a “Third-Party Offer”). Prior to accepting such offer, Lessee shall make an offer (the “Right of First Refusal”) to lease the Robot Equipment which is the subject of the Third-Party Offer (the “Offered Lease”) from Lessor upon the same terms and conditions of the Third Party Offer and in accordance with the terms and conditions set forth below.

(a) Notice. Subject to confidentiality requirements imposed by the applicable third party, the Third-Party Lease Offer Notice shall state the economic terms (including, but not limited to, equipment cost, monthly rental amount, purchase options), the terms and conditions of the Third Party Offer and the name of the third-party offeror, together with a copy of all writings between the third-party offeror and Lessee necessary to establish the terms of the Third Party Offer. Upon receipt of the Third-Party Lease Offer Notice, Lessor shall have the right but not the obligation to enter into the Offered Lease with Lessee upon the terms and conditions of the Third-Party Offer, subject to subparagraph below.

(b) Exercise. The Right of First Refusal shall first be exercisable by Lessor with respect to all, but not less than all, of the Offered Robot Equipment by delivery of written notice of exercise to Lessee within five (5) days after receipt of the Third-Party Lease Offer Notice. If Lessor does not exercise its Right of First Refusal or otherwise respond to Lessee within the time period as set forth above, the Right of First Refusal with respect to the Third-Party Lease Offer Notice under consideration shall be deemed to have expired.

(c) Expiration. The Right of First Refusal shall terminate on the termination date of the last Lease Schedule.

(d) Default. Should Lessee accept a Third Party Offer without either providing Lessor with a Third-Party Lease Offer Notice or, when notice has been provided, allowing Lessor to enter into the Offered Lease, Lessee will pay to Lessor a fee equal to five (5) percent of the equipment cost subject to the Offered Lease within thirty (30) days of executing the Offered Lease. Notwithstanding any provision to the contrary in the Lease Agreement or applicable Lease Schedule, any security deposits paid under Lease Schedules covered hereunder shall be held by Lessor until the expiration of this rider.

Every Term is Agreed to and Accepted: Every Term is Agreed to and Accepted:

PICADILLY FINANCIAL, INC. STANISLAV INC.

“LESSOR” “LESSOR”

By: /s/ Karen Schwelle By: /s/ Bonty Berks

Print Print

Name: Karen Schwelle Name: Bonty Berks

Title: President Title: COO

Date: June 20, 2022 Date: 6/17/2022

Rider Number: 003

Lease Agreement Number: SE060622

Lease Schedule Number(s): ALL

Lessee Name: STANISLAV INC.

Lease Agreement Dated: JUNE 6, 2022

PURCHASE OPTION

Provided that (i) an Event of Default has not occurred, (ii) Lessor has received all of the Lease Charges due under the Lease Schedule prior to Lessee exercising this option to purchase (including all late fees whether billed or unbilled), (iii) Lessor has received payment for all unpaid late fees and estimated property taxes, if any, and (iv) Lessor has received written notice of Lessee’s election to exercise this purchase option not less than ninety (90) days prior to the last date of the initial term of this Lease Schedule, then Lessee shall have the option to purchase the Equipment in its physical possession and on Lease Schedule No. 001 on the last day of the initial term, in whole and not in part, for either (A) forty (40) percent of the original Equipment cost plus applicable taxes, or, if Lessee has elected the Expansion Option under Lease Schedule No. 001 and has installed all of the Equipment under the expansion, (B) on an in-place basis and operating according to the manufacturer’s specifications, for the then determined mutually-agreed purchase price not to exceed forty percent (40%) of the original Equipment cost (plus applicable taxes). If a sale is not consummated, the notice provided to exercise this option shall be accepted as a notice to terminate and return all of the Equipment, and Lessee will return all of the Equipment on this Lease Schedule in accordance with the Lease Agreement. If Lessee does not return all of the Equipment, Lease Schedule No. 001 will continue in accordance with the Lease Agreement.

Lessee will receive title to the Equipment free and clear of all known liens only after Lessee has performed all of its obligations associated with the Lease Agreement and Lessor has been paid all sums due or becoming due under both this purchase option and the Lease Agreement, including, whether billed or not, all lease charges, taxes, and late fees. Lessor shall retain as income all monies received in association with the Lease Schedule including all rent, taxes, security deposits and other monthly lease charges and Lessee hereby waives any right to offset these monies against the costs associated with the exercise of this purchase option. Any sales or use tax due and not paid on these monies shall be added to the purchase price above.

Every Term is Agreed to and Accepted: Every Term is Agreed to and Accepted:

PICADILLY FINANCIAL, INC. STANISLAV INC.

“LESSOR” “LESSEE”

By: /s/ Karen Schwelle By: /s/ Bonty Berks

Print Print

Name: Karen Schwelle Name: Bonty Berks

Title: President Title: COO

Date: June 20, 2022 Date: 6/17/2022

INCUMBENCY CERTIFICATE

I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Secretary of Stanislav Inc., a Delaware corporation (the “Company”) do hereby certify that:

1. The persons whose names, titles and signatures that appear below (“Authorized Person”) are duly elected or appointed, qualified and authorized, on behalf of the Company, to execute and deliver any lease agreement and related documents, including, but not limited to, lease schedules, documents, riders, certificates of acceptance by and between Picadilly Financial, Inc. and the Company (collectively, the “Lease Documents”);

2. The Company shall be bound by any Lease Document that is executed and delivered by an Authorized Person;

3. The execution and delivery of any Lease Document is not prohibited by or in any manner restricted by the terms of the Company’s certificate of incorporation, its by-laws, or by any loan agreement, indenture or contract to which the Company is a party or under which it is bound; and

4. The signatures below are the true, correct and genuine signatures of the below-named persons:

Authorized Authorized

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Print Print

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Authorized Authorized

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Print Print

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

IN WITNESS WHEREOF, the undersigned does hereby execute this Certificate this 6th day of June, 2022.

Corporate Secretary

ADDENDUM NO. 1

This transaction is a true lease and is not intended by the parties as a secured transaction. Filing is only intended to make the true lease a matter of public record. Picadilly Financial, Inc. is the owner of all the equipment contained on this filing and any and all other equipment now or hereafter the subject of any lease agreement or lease schedule by and between the parties and all accessories, attachments, additions, and any substitutions and/or replacement of the equipment contained on this filing or any lease agreement or lease schedule between the parties. The lessee has no rights, express or implied, to sell, exchange, encumber, or otherwise dispose of any equipment contained on this filing or any lease agreement or lease schedule by and between the parties. The parties agree that this financing statement covers any and all equipment now or hereafter the subject of any lease agreement or lease schedule by and between the parties, including, but not limited to equipment contained on or subject to Lease Agreement Number SE060000 or any lease schedule executed pursuant thereto, together with all substitutions, replacements, accessions, process, rent, revenue, insurance, and proceeds related to the equipment contained on this filing or any lease agreement or lease schedule by and between the parties.

Every Term is Agreed to and Accepted: Every Term is Agreed to and Accepted:

PICADILLY FINANCIAL, INC. STANISLAV INC.

“LESSOR” “LESSOR”

By: /s/ Karen Schwelle By: /s/ Bonty Berks

Print Print

Name: Karen Schwelle Name: Bonty Berks

Title: President Title: COO

Date: June 20, 2022 Date: 6/17/2022

**LeaseA#22**

EXHIBIT 10.5

**Commercial Property Lease Agreement**

This Commercial Property Lease Agreement (“Lease”) is made and effective July 14, 2017, by and between Property Inlaws, LP (“Landlord”) and Burn Medical, Inc. (“Tenant”).

Landlord is the Owner of land and improvements commonly known and numbered as Property Inlaws, XXX, TX 75090.

Landlord desires to lease the Premises to Tenant and Tenant desires to lease the Premises from Landlord for the term, at the rental and upon the covenants, conditions and provisions herein set forth.

**THEREFORE**, in consideration of the mutual promises herein, contained and other good and valuable consideration, it is agreed:

1.Term. Landlord hereby leases the Premises to Tenant, and Tenant hereby leases the same from Landlord, for an “Initial Term” beginning July 14, 2017 and ending December 31, 2017, unless terminated earlier by either Landlord or Tenant upon thirty (30) days’ notice. Tenant shall have possession of the lease premises during Lease Term and be entitled to office related amenities, including, but not limited to parking, restrooms, cleaning services, and employee breakroom.

2.Rent. Tenant shall pay to Landlord a monthly rent during the initial term and during the renewal period lease of $4,000.00 per month due on the first of each month, with the first full-month payment for August, due by August 1, 2017. The initial month of July 2017, will be prorated for seventeen (17) days or $2,235.62 due upon occupancy.

3.Use. Notwithstanding the forgoing, Tenant shall not use the Leased Premises for the purposes of storing, manufacturing or selling any explosives, flammables or other inherently dangerous substance, chemical, thing or device.

4.Insurance. If the Leased Premises or any other part of the Building is damaged by fire or other casualty resulting from any act or negligence of Tenant or any of Tenant’s agents, employees or invitees, rent shall not be diminished or abated while such damages are under repair, and Tenant shall be responsible for the costs of repair not covered by insurance.

5.Utilities. Shall be included as part of the monthly rental payment of $4,000.00 per month and during the term of this Lease unless otherwise expressly agreed in writing by Landlord.

6.Entry. Landlord shall have the right to enter upon the Leased Premises at reasonable hours to inspect the same, provided Landlord shall not thereby unreasonably interfere with Tenant’s business on the Leased Premises.

7.Parking. During the term of this Lease, Tenant shall have the non-exclusive use in common with Landlord, other tenants of the Building, their guests and invitees, of the non-reserved common automobile parking areas, driveways. and footways, subject to rules and regulations for the use thereof as prescribed from time to time by Landlord.

IN WITNESS WHEREOF, the parties have executed this Lease on July 14, 2017.

Property Inlaws, LP

Burn Medical, Inc.

**LeaseA#23**

**EXHIBIT 10.2**

**COMMERCIAL PROPERTY LEASE AGREEMENT**

THIS LEASE AGREEMENT ("Lease") is made and entered into as of this 10 day of November, 2014 by and between CRANE PARK, (the "Landlord") Gulnora Izmov Inc. (“the "Tenant").

1. LEASE OF PREMISES. Subject to the terms and conditions stated in this Lease, Landlord does hereby demise, lease and let unto Tenant, and Tenant does hereby lease, take and receive from Landlord (a) that certain property commonly known as Crane Park 2300 East Crane Rd. Suite 100G (the "Leased Premises").

2. TERM. The term of this Lease shall be on an monthly basis, commencing November 8th, 2014 with rent due on the first of each month. The term of this lease and Tenants obligation to pay rent hereunder shall commence on the date first set forth above.

3. PAYMENTS

3.1. Rent. Tenant agrees to pay to Landlord as basic monthly rent (the "Rent") at such place as Landlord may designate without prior demand therefore and without any deduction or offset whatsoever, the sum of $250.00. Said Rent shall be due and payable on the First day of each month. If any payment is not made by the fifth day following the due date of the payment, then there shall be added to the payment an amount equal to ten (10%) percent of the payment as an agreed late charge every month in which a payment is delinquent.

3.2. Security Deposit. Tenant shall also pay to Landlord a "Security Deposit" in the amount of $250.00 . The Security Deposit shall be held by Landlord without liability for interest and as security for the performance by Tenant of Tenant's covenants and obligations under this Lease, it being expressly understood that the Security Deposit shall not be considered an advance payment of rental or a measure of Landlord's damages in case of default by Tenant. Unless otherwise provided by mandatory non-waivable law or regulation, Landlord may commingle the Security Deposit with Landlord's other funds. Landlord may, from time to time, without prejudice to any other remedy, use the Security Deposit to the extent necessary to make good any arrearages of rent or to satisfy any other covenant or obligation of Tenant hereunder. Following any such application of the Security Deposit, Tenant shall pay to Landlord on demand the amount so applied in order to restore the Security Deposit to its original amount. If Tenant is not in default at the termination of this Lease, the balance of the Security Deposit remaining after any such application shall be returned by Landlord to Tenant. If the tenant fails to complete the full term of the lease, the tenant will forfeit his security deposit. If Landlord transfers its interest in the Premises during the term of this Lease, Landlord may assign the Security Deposit to the transferee and thereafter shall have no further liability for the return of such Security Deposit.

4. “AS IS” LEASE. Tenant acknowledges that it has been in occupancy of the Leased Premises prior to the date of this Lease, and agrees that it accepts the Leased Premises in the condition in which the Leased Premises exist as of the date of this Lease (that is, “as is” and “where is,” with all faults), without any representation or warranty whatsoever from Landlord.

5. USE.

5.1. Use of Leased Premises. The Leased Premises shall be used and occupied by Tenant for the limited purposes for which the Leased Premises is currently being used by Tenant as of the date of this Lease, and for no other purpose whatsoever without the prior written consent of Landlord. Tenant will at its sole cost and expense comply with all governmental laws, ordinances, regulations, and requirements, of any lawful governmental body of authorities having jurisdiction over the Leased Premises which are now in force or which hereafter may be in force; keep the Leased Premises in a clean, neat and orderly condition, free of objectionable noise, odors, or nuisance; in all respects and at all times fully comply with all health and policy regulations; and not suffer, permit, or commit any waste.

5.2. Hazardous Waste. Tenant agrees not to keep or use or permit to be kept or used on the Leased Premises any hazardous substance, hazardous waste or hazardous material, as defined under any “Environmental Law” (defined as all federal, state and local laws, ordinances or regulations), except for such amounts as are the lawful activities of Tenant that are part of the ordinary course of Tenant’s business in accordance with the permitted use as provided in this Lease.

6. UTILITIES AND SERVICE. Tenant shall be responsible for telephone, cable internet and/or any other business specific services. Landlord shall be responsible for Electric, gas, water and sewer only.

7. MAINTENANCE AND REPAIRS; ALTERATIONS, ACCESS.

7.1. Maintenance and Repairs by Landlord. Landlord, at Landlord's sole cost and expense and without prior demand, shall maintain the Leased Premises in good order, condition and repair, reasonable wear and tear excepted, and agrees to pay for all labor, materials and other repairs to the electrical wiring, plumbing, air conditioning and heating systems (including spring and summer servicing, and replacement of filters as recommended by the manufacturers). Tenant expressly waives the benefit of any statute now or hereafter in effect which would otherwise allow Tenant the right to make repairs at Landlord’s expense or terminate this Lease because of Landlord’s failure to keep the Leased premises in good order, condition and repair.

7.2. Alterations. Tenant may not alter the Leased Premises without the prior written consent of Landlord in each instance. All alterations made by Tenant shall, unless Landlord requests removal, become Landlord's property and remain on the Leased Premises at the termination of this Lease without any compensation to Tenant. If Landlord demands or permits removal, Tenant will put that part of the Leased Premises into the same condition as existed prior to the alteration.

7.3. Landlord's Access to Leased Premises. Landlord shall have the right to place, maintain, and repair all utility equipment of any kind in, upon, and under the Leased Premises as may be necessary for the servicing of the Leased Premises and other portion of the Building. Landlord shall also have the right to enter the Leased Premises at all times to inspect it; to show it to prospective purchasers, mortgagees, tenants, and lessees; and to make such repairs, additions, alterations, or improvements as Landlord may deem desirable. Landlord shall be allowed to take all material upon said Leased Premises that may be required therefore without the same constituting an actual or constructive eviction of Tenant in whole or in part. The rents reserved herein shall in no way abate while said work is in progress by reason of loss or interruption of Tenant's business or otherwise, and Tenant shall have no claim for damages. Landlord may place upon the Leased Premises "For Sale” or “For Lease” signs which Tenant shall permit to remain thereon.

8. ASSIGNMENT AND SUBLETTING. Tenant shall not transfer, assign, mortgage or hypothecate this Lease, in whole or in part, or permit the use of the Leased Premises by any person or persons other than Tenant, or sublet the Leased Premises, or any part thereof, without the prior written consent of Landlord in each instance, provided that Landlord shall not unreasonably withhold its approval of an assignment or sublease.

9. INDEMNITY. Tenant shall indemnify Landlord and save it harmless from and against any and all suits, actions, damages, claims, liability and expense in connection with loss of life, bodily or personal injury, or property damage arising from or out of any occurrence in, upon, at or from the Leased Premises, or the occupancy or use by Tenant of Leased Premises or any part thereof, or occasioned wholly or in part by any act or omission of Tenant, its agents, contractors, employees, servants, invitees, licensees, or concessionaires. Except for Landlord's gross negligence or willful misconduct, Landlord shall not be responsible or liable at any time for any loss or damage to Tenant's personal property or to Tenant's business. Tenant shall store its property in and shall use and enjoy the Leased Premises at its own risk, and hereby releases Landlord, to the full extent permitted by law, from all claims of every kind resulting in loss of life, personal or bodily injury, or property damage. Without limiting the generality of the foregoing, Tenant hereby acknowledges the termination of any and all rights or interests in and to the Leased Premises (other than the leasehold interest created pursuant to this Lease), and releases Landlord with respect to all claims, if any, related to any such previous right or interest in and to the Leased Premises.

10. INSURANCE.

10.1. Liability Insurance And Indemnity. Tenant shall, during the Term hereof, keep in full force and effect a policy of public bodily injury and property damage liability insurance with respect to the Leased Premises, with a coverage limit for such policy approved by Landlord in writing. The policy shall name Landlord and any other persons, firms or corporations designated by Landlord and Tenant as insured, including but not limited to Landlord’s property manager, and shall contain a clause that the insurer will not cancel or change the insurance without first giving Landlord ten (10) days prior written notice. The insurance shall be with an insurance company approved by Landlord and a copy of the paid-up policy evidencing such insurance or a certificate of insurer certifying to the issuance of such policy shall be delivered to Landlord. If Tenant fails to provide such insurance, Landlord may do so and charge same to Tenant.

10.2.

Fire and Casualty Insurance. Subject to the provisions of this Section 11.2, Landlord shall secure, pay for, and at all times during the Term hereof maintain, insurance providing coverage upon the Building improvements in an amount equal to the full insurable value thereof (as determined by Landlord) and insuring against the perils of fire, extended coverage, vandalism, and malicious mischief. Tenant will not permit said Leased Premises to be used for any purpose which would render the insurance thereon void or cause cancellation thereof or increase the insurance risk or increase the insurance premiums in effect just prior to the commencement of this Lease.

10.3. Waiver Of Subrogation. Each party hereto does hereby release and discharge the other party hereto and any officer, agent, employee or representative of such party, of and from any liability whatsoever hereafter arising from loss, damage or injury caused by fire or other casualty for which insurance (permitting waiver of liability and containing a waiver of subrogation) is carried by the injured party at the time of such loss, damage or injury to the extent of any recovery by the injured party under such insurance.

11. MECHANIC’S LIEN. Should any mechanic's or other lien be filed against the Leased Premises or any part thereof by reason of Tenant's acts or omissions or because of a claim against Tenant, Tenant shall cause the same to be canceled and discharged of record by bond or otherwise within ten (10) days after notice by Landlord. If Tenant does not so comply with this provision, the Landlord may cause the lien to be removed and apply the cost thereof and any expenses associated with the removal, including reasonable attorney's fees, to be added as additional rent under this Lease.

12.

DEFAULT.

12.1.

Default by Tenant. The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Tenant (a) the failure by Tenant to make any payment or rent or any other payment required to be made by Tenant hereunder within a period of five (5) days after the same is due and payable; (b) the failure by Tenant to observe or perform any of the covenants, conditions, or provisions of this Lease to be observed or performed by the Tenant, other than to make the payments set out in subsection (a) above, where such failure shall continue for a period often (10) days after written notice thereof to Tenant by Landlord; provided, however, that if the nature of Tenant’s default is such that more than ten (10) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commences such cure within said ten (10) day period and thereafter diligently prosecutes such cure to completion; and (c) the making by Tenant of any general assignment or general arrangement for the benefit of creditors; or the filing by or against Tenant of a petition to have Tenant adjudged bankrupt, or a petition or reorganization or arrangement under any law relating to bankruptcy.

12.2.

Landlord’s Right to Re-enter and Relet Premises. In the event of any default or breach by Tenant, Landlord may elect to re-enter the Leased Premises, as herein provided, or take possession pursuant to legal proceedings or pursuant to any notice provided for by law, and Landlord may either terminate this Lease or it may from time to time, without terminating this Lease, make such alterations and repairs as may be necessary in order to relet the Leased Premises and relet said Leased Premises or any part thereof for such Term (which may be for a term extending beyond the Term) and at such rental or rentals and upon such other terms and conditions as Landlord, in its sole discretion, may deed advisable. Upon each such reletting, all rentals received by Landlord from such reletting shall be applied, first, to the payment of any indebtedness other than rent due hereunder from Tenant to Landlord; second, to the payment of any costs and expenses of such reletting, including brokerage fees and attorney’s fees, and to costs of such alterations and repair; third, to the payment of rent due and unpaid hereunder, and the residue, if any, shall be held by Landlord and applied in payment of further rent as the same may become due and payable hereunder. If rentals received from such reletting during any month are less than that to be paid during that month by Tenant hereunder, Tenant shall pay such deficiency to Landlord. Should Landlord at any time terminate this Lease for any breach, in addition to any other remedies it may have, it may recover from Tenant all damages it may incur by reason of such breach, including the costs of recovering the Leased Premises and reasonable attorney’s fees.

12.3. Other Rights and Remedies of Landlord. Each of the remedies set out in Section 13 and elsewhere in this Lease may be exercised jointly or severally with any of the remedies provided by this Lease or by law, at the option of the Landlord or any receiver or trustee; and any remedy election may be abandoned or terminated and may be resumed after such abandonment or termination, at the option of the Landlord or receiver or trustee. The rights and remedies herein set forth and granted to Landlord shall be cumulative and in addition to any and all other rights and remedies provided and given to Landlord under applicable law.

12.4. Landlord Default; Tenant’s Remedies. If Landlord materially defaults in performing any of its obligations under this Lease, and such default continues for thirty (30) calendar days after written notice of breach is given by Tenant to Landlord, Tenant, as its sole and exclusive remedy, may terminate the Lease pursuant to an additional written notice given by Tenant to Landlord; provided, however, that if the nature of Landlord’s obligation is such that more than thirty (30) days are required for performance, then Landlord shall not be in default hereunder if Landlord commences performance within such thirty (30) day period and diligently proceeds in completion of such obligation.

13. PROVISIONS APPLICABLE AT TERMINATION OF LEASE.

13.1. Surrender of Premises. At the expiration or earlier termination of this Lease, Tenant shall surrender the Leased Premises in the same condition as they were in upon delivery of possession thereto under this Lease, normal wear and tear accepted, and shall deliver all keys to Landlord. Before surrendering the Leased Premises, Tenant shall remove all of its personal property and trade fixtures and such property, and Tenant shall be responsible for all costs, expenses and damages incurred in the removal thereof. If Tenant fails to remove its personal property and fixtures upon the expiration or earlier termination of this Lease, the same subject to being deemed abandoned under applicable law, and upon compliance by Landlord with such law would become the property of Landlord.

13.2. Lease Term. This lease will continue on a month to month basis at the end of the term unless you notify us with a 30 day written notice that you will be leaving.

13.3. Attorneys' Fees. In case of a default by either party in its performance of its obligations of this Lease, the defaulting party shall pay all costs incurred in enforcing this Lease, or any other right arising out of such default, whether by suit or otherwise, including reasonable attorneys’ fees.

14. SUBORDINATION. Tenant accepts this Lease subject and subordinate to any mortgage, deed of trust or other lien presently existing or hereafter arising upon the Leased Premises, or upon the Building and to any renewals, refinancing and extensions thereof, but Tenant agrees that any such mortgagee shall have the right at any time to subordinate such mortgage, deed of trust or other lien to this Lease on such terms and subject to such conditions as such mortgagee may deem appropriate in its discretion. Landlord is hereby irrevocably vested with full power and authority to subordinate this Lease to any mortgage, deed of trust or other lien now existing or hereafter placed upon the Leased Premises of the Building, and Tenant agrees upon demand to execute such further instruments subordinating this Lease or attorning to the holder of any such liens as Landlord may request. In the event that Tenant should fail to execute any instrument of subordination herein require d to be executed by Tenant promptly as requested, Tenant hereby irrevocably constitutes Landlord as its attorney in-fact to execute such instrument in Tenant’s name, place and stead, it being agreed that such power is one coupled with an interest. Tenant agrees that it will from time to time upon request by Landlord execute and deliver to such persons as Landlord shall request a statement in recordable form certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as so modified), stating the dates to which rent and other charges payable under this Lease have been paid, stating that Landlord is not in default hereunder (or if Tenant alleges a default stating the nature of such alleged default) and further stating such other matters as Landlord shall reasonably require.

15. SIGNS. Following Landlord's consent, Tenant shall have the right to place on the Leased Premises, at locations selected by Tenant, any signs which are permitted by applicable zoning ordinances and private restrictions. Landlord may refuse consent to any proposed signage that is in Landlord's opinion too large, deceptive, unattractive or otherwise inconsistent with or inappropriate to the Leased Premises or use of any other tenant. Landlord shall assist and cooperate with Tenant in obtaining any necessary permission from governmental authorities or adjoining owners and occupants for Tenant to place or construct the foregoing signs. Tenant shall repair all damage to the Leased Premises resulting from the removal of signs installed by Tenant.

16. PARKING. During the term of this Lease, Tenant shall have the non-exclusive use in common with Landlord, other tenants of the Building, their guests and invitees, of the nonreserved common automobile parking areas, driveways, and footways, subject to rules and regulations for the use thereof as prescribed from time to time by Landlord. Landlord reserves the right to designate parking areas within the Building or in reasonable proximity thereto, for Tenant and Tenant's agents and employees. Tenant shall provide Landlord with a list of all license numbers for the cars owned by Tenant, its agents and employees. Separated structured parking, if any, located about the Building is reserved for tenants of the Building who rent such parking s paces. Tenant hereby leases from Landlord N/A spaces in such structural parking area, such spaces to be on a first come-first served basis. In consideration of the leasing to Tenant of such spaces, Tenant shall pay a monthly rental of  N/A  per space throughout the term of the Lease. Such rental shall be due and payable each month without demand at the time herein set for the payment of other monthly rentals, in addition to such other rentals.

17. JURY TRIAL WAIVER AND ALTERNATIVE DISPUTE PROVISIONS. To the fullest extent permitted by applicable law, each party waives its respective rights to a trial before a jury in connection with any action to interpret or enforce this Agreement, or otherwise arising out of or relating to this Agreement (“Disputes”). Disputes also include matters based on or arising from an alleged tort or involving either of our employees, agents, affiliates, or assigns of a party. Disputes do not include the enforceability or meaning of this paragraph, which matters may be determined only by a court. All Disputes shall be resolved by a judge sitting without a jury. If, but only if, a court determines for any reason that this jury waiver is not enforceable, then at any time prior to trial of the Dispute but not later than 30 days after entry of the order determining this jury waiver is unenforceable, any party shall be entitled to move that court for an order compelling alternative dispute resolution (“ADR”) by arbitration or judicial reference, as applicable (“ADR Order”). The ADR Order shall require the Dispute be resolved by binding arbitration administered by the National Arbitration Forum ("NAF") and heard in Salt Lake City, Utah. The ADR adjudicator will: (i) rule on dispositive motions and give effect to all applicable legal defenses; (ii) apply rules of evidence governing civil cases; (iii) prepare a reasoned statement of decision applying applicable law; and (iv) award recovery of all attorneys' fees and costs, ADR administration fees and costs, and adjudicator fees. Commencing ADR shall not prevent any party from seeking and obtaining from a court of competent jurisdiction provisional relief and the exercise of such rights shall not constitute a waiver of the right to submit any Dispute to ADR. Judgment upon the adjudicator’s award may be entered in any court having jurisdiction therefore.

18.1.

Force Majeure. Landlord shall be excused for the period of any delay in the performance of any obligations hereunder when prevented from so doing by cause or causes beyond Landlord's control, including labor disputes, civil commotion, war, governmental regulations or controls, fire or other casualty, inability to obtain any material or service, or acts of God.

18.2.

No Waiver. Failure of Landlord to insist upon the strict performance of any provision or to exercise any option hereunder shall not be deemed a waiver of such breach. No provision of this Lease shall be deemed to have been waived unless such waiver is in writing signed by Landlord. No waiver of any default of Tenant shall be implied from any omission by Landlord to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. One or more waivers by Landlord shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition.

18.3.

Notices. Any notice, demand, request, or other instrument which may be or is required to be given under this Lease shall be delivered in person, overnight by a nationally recognized courier, or sent by United States certified or registered mail, postage prepaid and shall be addressed (a) if to Landlord, at the place specified below, and (b) if to Tenant, either at the Leased Premises or the address for Tenant specified below. Either party may designate such other address as shall be given by written notice.

LANDLORD: Crane Park 2200 E. Crane Rd., , NV 89200 ATTN: Management

tenant: Gulnora Izmov Inc.

18.4.

Partial Invalidity. If any provision of this Lease or the application thereof to any person or circumstance shall to any extent be invalid, the remainder of this Lease or the application of such provision shall not be affected thereby and each provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

18.5. Quiet Enjoyment. Tenant, upon payment of the rent and the performance of the terms of this Lease, shall, at all times during the Term (unless the Lease is terminated pursuant to the terms hereof prior to the expiration of the Term), peacefully and quietly enjoy the Leased Premises without any disturbance from the Landlord or from any person claiming by, through or under the Landlord, except as otherwise herein provided.

18.6. Landlord’s Lien. Tenant hereby grants to Landlord a lien upon the improvements, trade fixtures and furnishings of Tenant to secure full and faithful performance of all of the terms of this Lease.

18.7.

Entire Agreement. This Lease Agreement constitutes the entire agreement and understanding between the parties and supersedes all prior discussions, understandings and agreements. Except as otherwise provided herein, this Lease may not be altered or amended except by subsequent written agreement executed by all of the parties hereto. Each party represents and warrants to the other that the signers of this Lease are authorized to do pursuant to all necessary corporate, company or partnership action. This Lease shall be governed by and construed under the laws of the state in which the Leased Premises is located.

18.8.

Rental Increases: N/A

18.9.

Termination Claus: Lease shall remain in full force and effect until the end of their said term.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed as of the day and year first above written.

LANDLORD:

CRANE PARK.

By: /S/ Susan Chen

    Manager

TENANT: Gulnora Izmov Inc.

By: /S/ Gulnora Izmov

**LeaseA#24**

EXHIBIT 10.2

**Exhibit 10.2**

**PRELIMINARY COMMERCIAL PROPERTY LEASE AGREEMENT**

The parties,

(i) **STM SOCIEDADE GENERAL LTDA**, a company with its principal place of business in the City of Barueri, state of São Paulo, at XXX, duly enrolled with the National Register of Corporate Taxpayers (CNPJ/MF) under nº 43.500.198/0001-78, herein represented as provided for in its articles of organization;

(ii) **BENBEN LTDA**, a limited liability company, with its principal place of business in the city of São Paulo, state of São Paulo, at YYY, enrolled with the National Register of Corporate Taxpayers (CNPJ/MF) under nº 03.361.252/0001-75, herein represented as provided for in its articles of organization by Mr. Joao Pan, Brazilian, married, business administrator, resident and domiciled in the City of São Paulo, State of São Paulo, with business office at ZZZZ, bearer of Identity Card RG nº 7.575.890 SSP/RJ, enrolled with the Individual Taxpayer Register (CPF/MF) under nº 628.676.708-96

Whereas the First Identified Party is the owner of the Property under construction at AAAAA, in the municipality of Santana do Parnaíba, State of São Paulo;

Whereas the Second Identified Party is interested in leasing the property mentioned above, as soon as its construction is concluded under the terms of this agreement;

The parties decide to prepare this Preliminary Commercial Property Lease Agreement, under the terms of article 462 of the Civil Code, which shall be governed by the following terms and conditions:

**1. OBJECT**

**1.1.**The Object of this agreement is the commitment of leasing the property under construction at AAAA, in the municipality of Santana do Parnaíba, State of São Paulo, according to plans and specifications contained in attachments, and which are an integral part of this instrument, as soon as its construction is concluded.

**2. CONSTRUCTION OF THE PROPERTY**

**2.1.**For the lease agreement to be executed, the construction of the Property shall follow the projects previously approved by the Second Identified Party and shall be exclusively at the expense of the First Identified Party, which shall faithfully respect the Plan and Description of the Property that are attached, and are an integral part of this instrument, the technical standards of construction approved by the Brazilian Association of Technical Standards (ABNT), as well as all the laws, regulations and local ordinances, and First Identified Party shall be solely responsible for obtaining all the necessary authorizations from the competent public bodies for the construction and occupation of the property.

**2.1.1.**The following items are not included in the construction of the property, as well as were not considered in setting the lease value established in clause 5.1, and the Second Identified Party may, at its expense and if the lease agreement is executed, install and implant:

|  |  |  |  |
| --- | --- | --- | --- |
|  | a) |  | Private Automatic Branch Exchange (PABX); |
|  |  |  |  |
|  | b) |  | Access Controls, CCTV and security; |
|  |  |  |  |
|  | c) |  | Power stabilizers; |
|  |  |  |  |
|  | d) |  | Office furniture and dividers; |
|  |  |  |  |
|  | e) |  | Landscaping; |
|  |  |  |  |
|  | f) |  | Light fixtures; |
|  |  |  |  |
|  | g) |  | Ceiling linings; |
|  |  |  |  |
|  | h) |  | Floor covering; and |
|  |  |  |  |
|  | i) |  | Air Conditioning System (equipment, duct, frames, etc) |

**2.2.**The First Identified Party is responsible for strict compliance with the obligations related to the Works, the construction and handing over of the Property in perfect conditions of use and making it available for leasing to the Second Identified Party Company, holding harmless Second Identified Party from any responsibility in this respect.

**2.3.**The correct, determined and non-extendable term for the conclusion of the Works and delivery of the Property (according to the projects approved by Second Identified Party Company) is April 26, 2010, with a delay tolerance of up to sixty (60) days. The Date for Conclusion of the Works may be advanced at the sole discretion of First Identified Party, by means of a seven (7)-day written notification to Second Identified Party Company.

**2.3.1.**The Second Identified Party is not obliged to accept receiving the property before April 26, 2010, it being certain that in the case of advancing the conclusion of the Works, Second Identified Party shall have the choice to advance the conclusion of the lease agreement or wait until the date planned.

**2.4.**The Date for Conclusion of the Works cannot be postponed, nor extended, save for reasons of force majeure or act of God, as provided in article 393 of the Brazilian Civil Code. In the event of an act of God or force majeure, as well as delays arising from a fact attributable solely to third parties, concerning which **LESSOR** has no deciding power, the terms for execution and conclusion of the Works shall immediately be suspended, for a period identical to that of the interruption.

**2.5.**If, for reasons other than those presented in clause 2.4., the First Identified Party is unable to conclude the works on the date set herein, including the period of tolerance, it shall pay to Second Identified Company, a fine equivalent to two thousand reais (R$2.000,00) per day of delay, limited to the value of a rent, and the Second Identified Party is reserved the right to choose between receiving the fine or not executing the lease agreement.

**2.6.**The Second Identified Party may inspect the works of the Property (“Works”) personally or through companies and/or individuals specifically appointed in writing by the Second Identified Party for such purpose (the “Inspectors”), and the respective fees shall be borne by Second Identified Company.

**2.7.**Upon the conclusion of the works of the Property, the Second Identified Party shall proceed to the final inspection to execute the lease agreement. The Second Identified Company, having verified that the Works comply with all the requirements of the Plans, Description and other conditions of this agreement, shall then sign the Term of Delivery and Acceptance of the Property.

**2.7.1.**The Second Identified Party may only refuse to receive the Property and sign the Lease Agreement, in the case of non-compliance with the obligations of this preliminary agreement.

**2.7.2.**If the Second Identified Party finds problems in the final inspection, it shall notify in writing the First Identified Party for it to immediately correct eventual faults in the Works. The First Identified Party shall, within a period of 24 hours counted from receipt of the notification, inform Second Identified Party about the time necessary for carrying out the corrections and performance of a new inspection.

**2.7.2.1**If, after handing over the property, problems are found in the property, the Second Identified Party shall inform the First Identified Party for it to immediately correct the faults in the property, save if caused by action or omission of lessee, its employees, suppliers and users, or resulting from normal use of the property, act of God or force majeure. If the First Identified Party does not make the corrections in the property within the term established by mutual agreement between the Parties, the Second Identified Party may have the repair made, by a person freely chosen by it, and the First Identified Party shall be obliged to pay for all the expenditures made, duly adjusted for inflation.

**2.8.**Additional facilities not included in the BASIC project, such as those described in clause 2.1.1., shall be on the sole account of the Second Identified Party after the lease agreement is executed, and it may not claim any reimbursement from the First Identified Party .

**2.9.**Upon request by the Second Identified Company, which shall be accompanied by project and specifications, the First Identified Party may authorize it to promote adaptations, facilities or implantations in the property to better fulfill its needs, even during the course of the Works. The authorization provided in this clause shall only be valid if made in an express and written manner.

**2.10.**The First Identified Party is responsible for obtaining the Certificate of Occupancy, or any document that replaces it, as well as obtaining the Fire Department Inspection Certificate, by the date of the final inspection to receive and accept the property.

**2.11.**The Second Identified Party may not refuse to receive the property or fail to execute the lease agreement, if the First Identified Party concludes the Works provided in the Plan and Description attached, but does not obtain the Certificate of Occupancy or the Fire Department Inspection Certificate by the date of the final inspection, because of the adaptations, facilities or implantations that the Second Identified Party may possibly still be concluding in the property under clause 2.9., and that may prevent obtaining the documents.

**2.12.**In the case set forth in clause 2.11, the First Identified Party shall obtain the Certificate of Occupancy and the Fire Department Inspection Certificate as soon as the Second Identified Party concludes the works of adaptations, facilities or implantations that prevented obtaining the respective documents.

**3. LEASE AGREEMENT**

**3.1.**After the Works projected in the Plan and Description included in the Attachment are concluded, and after Delivery and Acceptance of the property by the Second Identified Party under clause 2.7, the parties hereby undertake to execute the Lease agreement, the clauses and conditions of which are set forth in the Form of Lease Agreement included in the Attachment, which is an integral part of this instrument.

**3.2.**Provided that the obligations of this instrument are fulfilled, neither of the parties can refuse to execute the Lease Agreement, and the innocent party may demand fulfillment of the agreed, or terminate this instrument, and, in this event, it shall be entitled to receive the fine provided in clause 4.1.

**4. FINE**

**4.1.**In the case of unjustified refusal by either of the parties in signing the Lease Agreement, and if the innocent party chooses to terminate this instrument, it shall be entitled to receive from the reluctant party, as pre-determined losses and damages, a fine of one million reais (R$1.000.000,00).

**4.1.1.**The parties hereby declare that the setting of the penalty clause took into account the nature and purpose of the business, since the characteristics of the building were designed and made to order to fulfill the needs of the Second Identified Company, which in its turn, directed its entire strategic business plan towards the occupation of the property after the conclusion of its construction, and thus there is no reason to speak of excessive settlement, and the parties waive any request for equitable reduction of the penalty.

**5. VALUE OF THE RENT**

**5.1.**The monthly rent to be paid by the Second Identified Party when the lease agreement is executed, shall be the result of the multiplication of the amount of ninety four thousand and five hundred reais (R$94.500,00) by the National Index of Civil Construction (INCC) accumulated over the period from March 04, 2009 to the date of conclusion of the works and receipt of the property by the Second Identified Party, when it shall then be adjusted with the minimum periodicity established in law for leases of this nature, by the positive variation of the IGPM, published by the Getúlio Vargas Foundation.

**5.1.1.**Second Identified Party will have a grace period for the payment of the rent of the first three (3) months counted from the execution of the Lease agreement.

**6. DURATION OF THE LEASE**

**6.1.**The Lease Agreement should establish that the term of the lease is four (4) years, starting on the date of the effective delivery of the Properties by the First Identified Party to the Second Identified, which is expected to occur on April 26, 2010.

**6.2.**The Lease Agreement should grant the Second Identified Party the right to renew the agreement for an equal term, provided that it exercises it, by informing its intention in writing to the First Identified Party up to sixty (60) days before the end of the term of duration of the lease.

**6.2.1.**The Parties hereby agree that, in the event of occurrence of the renewal established in clause 6.2 above, the amount of the rents shall be increased by ten percent (10%), without prejudice to the application of the adjustment for inflation set forth in clause 5.1.

**6.3.**The First Identified Party cannot, in any event, oppose the renewal of the lease agreement, save because of contractual non-performance through the sole fault of the Second Identified Party**,** especially in the case of persistent delay in payment of the rent, this being considered as more than five (05) occurrences during the term of the agreement.

**7. GENERAL PROVISIONS**

**7.1.**This Preliminary Agreement shall be construed according to the following rules:

(i) any reference to this Agreement shall include its attachments and other documents or agreements therein referred to.

(ii) the references in this agreement to “party” or “parties” should be understood as references to the party or parties of this agreement, unless otherwise expressly provided for.

(iii) the parties participated jointly in the negotiation and preparation of this Agreement. In case of any doubts regarding any issue or in relation to the construction of any provision of this Agreement, this Agreement shall be construed as if prepared jointly by the parties and no presumption or burden of proof may favor or disfavor either of the parties because of the authorship of any provision of this instrument.

**7.2.**This Agreement and its Attachments express all the understandings related to its object and, as of the execution hereof, it shall supersede all the previous agreements, guarantees and representations made by the parties, orally or in writing. This instrument may only be changed by formal amendment, signed by the legal representatives of the parties, as provided for by Law.

**7.3.**The parties agree that waiving of or omitting to requiring compliance with the obligations arising from this Agreement and the Attachment thereof, as well as of the respective terms, shall not constitute a precedent, novation, nor modification of what was agreed upon, and is therefore a mere liberality, which the same parties waive invoking to their benefit.

**7.4.**If any provision of this Agreement or the Attachment thereof is invalid or annulled, such invalidity will not affect the other provisions of this Agreement and the Attachment thereof, which shall remain in full force, unless it prejudices the compliance with the obligation or the price agreed upon, in which case the affected party may terminate the Agreement.

**7.5.**The parties acknowledge that there is no partnership, representation, joint venture or employment relationship between them as a result of this Agreement, and that neither party shall have any right, power or authority to act on behalf of the other party or to bind the other party, in whatever manner, except as expressly provided in this Agreement.

**7.6.**Neither of the parties is, on account of Agreement, with the exceptions herein provided for, authorized or invested with authority to act as a representative of the other party, nor to execute contracts, transact business or assume obligations in place or on behalf of the other party, nor to accept service of process in place or on behalf of the other party, nor, further, to bind the other party, in whatever manner.

**7.7.**The commitments and obligations assumed by the parties under this Agreement are subject to specific performance, under articles 461, 466-A et seq. of the Code of Civil Procedure, and this instrument serves as an extrajudicially enforceable instrument, under article 585, II, of the Code of Civil Procedure, and it is hereby acknowledged that mere payment of damages shall not constitute adequate compensation in the case of default of an obligation assumed under this Agreement.

**7.8.**For all purposes of law, the parties hereto represent that they accept this instrument as it was drawn up and hereby agree that they and their successors are bound to fully perform this Agreement.

**8. JURISDICTION**

**8.1.**The contracting parties elect the forum of the domicile of the Property to settle any doubts or disputes arising out of this Agreement, with express waiver o any other, as privileged as it may be.

**8.2**This Agreement may be duly registered with the Registry of Deeds and Documents at the expense of Second Identified Party, in compliance with that provided in the sole paragraph of article 463 of the Civil Code.

In witness whereof, being aware of and in agreement with all the terms and conditions of this preliminary agreement, the parties, for themselves, their heirs and/or successors, execute this instrument, in three (03) counterparts of equal content and form, in the presence of the two undersigned witnesses.

São Paulo, March 01, 2010.

**STM — SOCIEDADE GENERAL**

**BENBEN LTDA**

**Witnesses**:

|  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  |  |  |  |  |  |  |  |  |  |  |
| 1) |  |  | 2) |  |  |  |  |  |  |  |
|  |  |  |  |  | | | |  |  |  |
| Name: | | | Name: | | | | | | |  |
| RG.: | | | RG.: | | | | | | |  |

**ATTACHMENT 1**

**NON-RESIDENTIAL LEASE AGREEMENT**

By this lawful private instrument the parties herby named and identified below, on one side**, STM SOCIEDADE GENERAL LTDA**, a company with its principal place of business iXXXXX , duly enrolled with the National Register of Corporate Taxpayers (CNPJ/MF) under nº, herein represented as provided for in its articles of organization, hereinafter referred to as **LESSOR**, and on the other side, **BENBEN LTDA**, a limited liability company, with its principal place of business in the city of São Paulo, state of São Paulo YYYYY, enrolled with the National Register of Corporate Taxpayers (CNPJ/MF) under nº 03.361--- herein represented as provided for in its articles of organization, by Mr. Joao Pan, Brazilian, married, business administrator, resident and domiciled in the City of São Paulo, State of São Paulo, with business offices at ZZZZr, bearer of Identity Card RG 00000 SSP/RJ, enrolled with the Individual Taxpayer Register (CPF/MF) under nº ----, hereinafter referred to as **LESSEE**, are in mutual agreement as to this “Non-Residential Lease Agreement”, according to the terms and conditions which they mutually accept and grant, to wit:

**1. OBJECT**

**1.1.**The object of this agreement is the leasing of the Commercial Property located at AAAAA I in the municipality of ----, State of São Paulo, according to plans and specifications contained in attachments, and which are an integral part of this instrument.

**1.2. LESSEE**may, at its own expense, this not having been considered in setting the lease amount, install and implant:

|  |  |  |  |
| --- | --- | --- | --- |
|  | a) |  | Private Automatic Branch Exchange (PABX);; |
|  |  |  |  |
|  | b) |  | Access controls, CCTV and security; |
|  |  |  |  |
|  | c) |  | Power stabilizers; |
|  |  |  |  |
|  | d) |  | Office furniture and dividers; |
|  |  |  |  |
|  | e) |  | Landscaping; |
|  |  |  |  |
|  | f) |  | Light fixtures; |
|  |  |  |  |
|  | g) |  | Ceiling linings; |
|  |  |  |  |
|  | h) |  | Floor covering; and |
|  |  |  |  |
|  | i) |  | Air Conditioning system (equipment, duct, frames, etc) |

|  |
| --- |
|  |

**1.3.**Additional facilities not included in the BASIC project, such as those described in item 1.2 above, shall be on the sole account of **LESSEE**, which cannot claim any reimbursement from **LESSOR,** nor retain the property at the end of the lease, but may, however, remove the betterments and amenities eventually introduced by **LESSEE**, provided that the removal thereof does not cause damage to the leased property, under clause 4.3.

**2. DURATION**

**2.1.**The term of this lease is four (4) years, starting on the date of the effective delivery of the property by **LESSOR**to **LESSEE**, planned to occur on April 26, 2010.

**2.2. LESSEE** is assured of the right to renew the agreement for an equal term, provided it exercises it, by informing its intention in writing to **LESSOR**, up to sixty (60) days before the end of the term of duration of this agreement. The agreement having been renewed, all the other terms and conditions agreed to herein shall remain unaltered, with the exception of the increase in the amount of the rent, set forth in Clause 2.2.1 below.

**2.2.1**The Parties hereby agree that, upon the occurrence of the renewal set forth in clause 2.2 above, the amount of the rent shall be increased by ten percent (10%), without prejudice to the application of the adjustment for inflation set forth in clause 3.7.

**2.3.**In no event may **LESSOR**oppose the renewal of the lease agreement, save for contractual non-performance through the sole fault of **LESSEE,** especially in the case of persistent delay in payment of the rent set forth in clause 3.6.1.

**2.4.**The term of the lease having ended and **LESSEE**not having manifested interest in renewing the Agreement, **LESSEE**undertakes to return the leased property, free of people or possessions, in perfect maintenance and repair conditions, as it now receives it, without any damage or defects, save for the natural wear of the asset resulting from the use of the Property, irrespective of any judicial or extrajudicial formality.

**3. RENT**

**3.1.**The initial monthly rent shall be the result of the multiplication of the amount of ninety four thousand and five hundred reais (R$94.500,00) by the National Index of Civil Construction (INCC) accumulated over the period from March 04, 2009 to the date of execution hereof.

2

**3.1.1.**If on the date of execution hereof the National Index of Civil Construction applicable to the calculation of the initial rent has not yet been disclosed, it will be set based on the accumulated variation of the twelve (12) last indexes published, and the adjustment, whether positive or negative, shall be made within three (3) business days of the publication of the index until then not disclosed.

**3.2. LESSEE**shall have a grace period for payment of the rent in the three (3) first months of the lease, counted from the effective date of handing over the property.

**3.3.**The monthly rents shall be paid always on the third (3rd) business day of the month following that of the respective past due monthly period, save with respect to the first rent due to **LESSOR**, which shall be paid proportionally to the leasing period of the prior month, by means of bank deposit in a current account to be indicated in due course by **LESSOR**, and the settlement shall occur by means of the confirmation by the bank of the effective credit to the account of the creditor.

**3.3.1.**The grace period set forth in clause 3.2 having passed, the first rent due to **LESSOR** shall be paid proportionally to the lease period of the previous month.

**3.4.**After the due date of the rent and lease charges, a fine equivalent to ten percent (10%) will be applied on the outstanding amount, calculated on the lease amount and charges due, **LESSEE** also being subject to the application of daily adjustment for inflation by the positive variation of the IGP-M published by the FGV and interest at the rate of one percent (1%) per month, charged *pro rata die.*

**3.5.**The mere lack of payment of a rent, at the time agreed upon shall, in itself, constitute default of **LESSEE**, irrespective of notification, judicial or extrajudicial notice, and **LESSOR** shall have the right to file an **EVICTION ACTION FOR LACK OF PAYMENT**, being obligated to pay, in addition to the amount due, all the costs, legal fees and possible damages related to the property, in the event of vacancy.

**3.6.**Receiving the rents and other lease charges after the term, or for an amount lower than that stipulated in this agreement, shall represent mere waiver by **LESSOR**, and in no case shall constitute novation, renewal, or change in the contractual provisions.

3

**3.6.1.**Even if there is tolerance by **LESSOR** for delays in payment of the rent, persistent delays in payment of the rent, considered as such more than five (05) occurrences during the term of the agreement, shall be considered serious infringement and contractual non-performance for all the purposes of this agreement.

**3.7.**The rent set in clause 3.1 above shall be adjusted with the minimum periodicity established in law for leases of this nature, currently annual, as of the date of execution of this agreement, which shall occur upon the effective handing over of the property, irrespective of the date of its occupation, based on the positive variation of the General Market Prices Index (IGPM), published by the Getúlio Vargas Foundation (FGV), or in the absence of such index, another one shall be chosen that best reflects the inflation of the period.

**3.8.**Whenever the law reduces the minimum periodicity to apply the adjustments for leases of the nature hereof, a new periodicity shall be automatically applied to this agreement, including the possible application of monthly adjustment of the lease due.

**3.9.**The adjustment of the rent pursuant to the criteria above shall be automatic, waiving any type of communication to **LESSEE**.

**3.10.**Upon the occurrence of rent adjustments, if up to the date of payment the applicable index has not been disclosed, the rent shall be adjusted based on the accumulated variation of the twelve (12) last indexes published, and the adjustment, whether positive or negative, shall be made within three (3) business days of the publication of the index until then not disclosed.

**4. DESTINATION OF THE LEASED PROPERTY**

**4.1**. **LESSEE** may use the property for non-residential purposes, respecting the structure of the property and the limitations determined by the legislation in force, zoning, environmental, sound pollution and other regulations, all of which **LESSEE** is fully aware of.

**4.2.**Any infraction, on the part of **LESSEE**, of the rules and limitations set forth in the caption of this clause shall be considered a serious infringement, and cause for the respective Ordinary Suit of Eviction for Contractual Infraction.

4

**4.3.**With the exception of the improvements already authorized by **LESSOR**, set forth in clause 1.2 above, **LESSEE** may, on its own account and risk, introduce improvements or make modifications in the property, with prior authorization in writing from **LESSOR**, with the purpose of better adapting it to its activities, always, however, obeying the restrictions of the legal regulations, it being certain that the necessary improvements shall be automatically and immediately incorporated into the property, becoming a benefit to **LESSOR**, even if they had been previously authorized in writing, and not causing any right to retention of the property, or right of indemnification to **LESSEE**. The betterments and amenities may be removed by **LESSEE**, provided that their removal does not cause damage to the leased property.

**4.4. LESSOR** cannot, however, upon the end or termination of the lease, require that the improvements or modifications made to the property with its consent in writing, be removed at the expense of **LESSEE**.

**4.5.**It is certain that, in the case of introduction of the referenced improvements, no responsibility or burden shall accrue to **LESSOR**, whether with respect to the public powers, or with respect to third parties, and **LESSEE** shall solely answer for them.

**4.6. LESSEE** is prohibited from changing the destination of the property stipulated above, under pain of contractual termination and consequent payment of the fine established herein.

**5. RIGHTS AND OBLIGATIONS OF LESSOR AND LESSEE**

**5.1.**As of the execution of this instrument, the following are obligations of **LESSEE**, in addition to those already specified in this instrument: (a) pay, on the due date, the respective leasing charges, listed in clauses **5.3**and **5.6**below, directly to the collection bodies and to **LESSOR**; (b) use the property for the purposes established in clause 4**.1**; (c) return the Property, upon the end of the lease, in the same conditions in which it was received; (d) assume responsibility for the maintenance referring to the conservation of the Property, under article 23 of Law 8.245/91, as well as those destined to replace its habitability conditions, including but not limited to cleaning services of the leased property and especially sanitary premises, maintenance of gardens and security services; (e) promptly repair the damage caused to the Property or its facilities by **LESSEE** or its employees, suppliers or users; (f) not change the internal or external structural layout of the Property without the prior consent in writing by **LESSOR**; (g) immediately deliver to **LESSOR** any summons, fines or notifications issued by the public authorities with respect to the Property, even if addressed to **LESSEE**; (h) assume responsibility for the facilities, cleaning, conservation and painting of the Property, including for the hydraulic, electrical, mechanical and security equipment, as well as fire-fighting and inspections by the fire department; and (i) maintain the leased property free of any contamination or contingency that might characterize an environmental liability.

5

**5.2. LESSEE** declares being aware that it must request the competent Authorization of Operation from the competent bodies, on its own account and risk, and **LESSOR** must supply all the documentation that is necessary with respect specifically to the property.

**5.3**. **LESSEE** is responsible for paying the expenses related to public services installed, insurance premiums and taxes directly related to the Property (electrical power, gas, water, sewage), directly to the collection agents, sending the respective proof of payment to **LESSOR**. This obligation remains even if such expenses are presented for payment after the end of the lease, but still pertaining to the period in which it was in force.

**5.4.**In the event that payment of some of these taxes or fees is made through **LESSOR**, **LESSEE** undertakes to pay the charges it is responsible for together with the settlement of the monthly rent due, even if the due date of such fees only occurs during the month it is charged by **LESSOR.**

**5.5.**In the same manner, all the fines and additions caused by **LESSEE** shall be paid together with the rents, including those that may result from retention of notice of assessment of taxes, fees and contributions for improvements.

**5.6. LESSEE** is also bound to pay, together with the rent, the condominium expenses, the expenses charged by the land subdivision on which the property is located, as well as the taxes, fees and charges related to the property.

**5.7. LESSOR** shall help **LESSEE** in obtaining with the competent bodies, the bills for water, electricity and gas in the name of **LESSEE**. **LESSEE**is responsible for supplying all the documentation necessary to obtain the water, electricity and gas bills in its name, and **LESSOR** is responsible for supplying all the necessary documentation necessary related specifically to the property. If there is any problem to obtain the bills for water, electricity and gas, because of documentation or requirement related to the property, **LESSOR**undertakes to solve the problem with the competent bodies, under pain of contractual non-performance.

6

**5.8. LESSEE** hereby receives the keys to the property, and declares having inspected, according to the inspection report attached, and has verified that is suitable for the purpose for which it is intended, and is in conformity with that agreed in this instrument, and undertakes to return it to **LESSOR** in the same manner, upon the end of this lease, in the most perfect order and conditions of use, save for the natural wear resulting from use, handing it over, however, recently painted and completely free of people or possessions.

**5.8.1**If, after handing over the property, there are problems found with the property, **LESSEE** shall inform **LESSOR** so that the latter may immediately correct the faults in the property, save if caused by action or omission of **LESSEE**, of its employees, suppliers and users, or resulting from normal use of the property, act of God or force majeure. If **LESSOR** does not make the corrections to the property within a time established by mutual agreement between the Parties, **LESSEE** may have the repairs made by a person of its free choice, and **LESSOR** shall be bound to pay for all the expenditures, duly adjusted for inflation.

**5.9.**Upon the end of the lease and return of the property, if **LESSOR** verifies any damage or defect in the same, it may refuse to receive the keys until **LESSEE** returns the property to the conditions in which it was received, save for the natural wear of the asset resulting from use, and the rent and other charges shall be on its account, until the requirements of this agreement are fully satisfied.

**5.10.**The parties establish that, in the event of termination of the lease by **LESSEE**, during the term of contractual validity, or after termination thereof, **LESSEE**must do so by means of prior notice to **LESSOR**, at least ninety (90) days before the date of vacation, under pain of bearing the rent of the respective period, without prejudice to the contractual fine in the amount of 03 rents, which fine is proportional to the remaining period of the lease, under the provisions of Law 8.245/91.

**5.10.1**. The prior notice established in clause **5.10**, as well as the contractual fine, shall not apply, in the event of normal termination of the agreement at the end of the term thereof.

**5.11. LESSEE** is bound to comply with, on its account, without the right to any reimbursement or indemnification by **LESSOR**, all the determinations, requirements or legal notices from the competent powers, with respect to the leased property, provided that such requirements are the responsibility of **LESSEE**.

**5.12. LESSEE** hereby permits that **LESSOR**, by itself or through its proxy, inspect or examine the leased property, whenever it deems necessary or convenient, but must, however, schedule a day and time with **LESSEE**.

7

**5.13.**If the inspection detects damage to the facilities of the leased property caused by **LESSEE**, **LESSOR** shall notify **LESSEE**, so that the latter may, within a maximum term of five (05) days, effect the necessary repairs, with the respective expenses on the account of **LESSEE**, under pain of, if not doing so, committing a contractual infraction causing termination of the lease, with **LESSEE** being condemned to pay the contractual fine and the other legal provisions.

**5.14. LESSOR** may, however, in the event of non-compliance with the terms of the notification set forth in clause 5.13, without prejudice to termination of the agreement, have the repairs made by a person of its free choice, and **LESSEE** shall be bound to pay for all the expenditures made, duly adjusted for inflation, and with the addition of the penalties set forth in this instrument.

**5.15. LESSEE** shall answer for the requirements of the Public Powers which it causes, whether municipal, state or federal, whether because of eventual expressly authorized modifications to the properties, or by reason of the activity exercised by it on the property, assuming all the responsibilities incurred for this purpose.

**5.16. VALIDITY CLAUSE**: A validity clause of this agreement is hereby established, and it is certain that in the case of sale of the property leased by **LESSOR**, this agreement shall be respected during the entire term established in clause 2 above.

**6. INSURANCE**

**6.1. LESSEE** undertakes to reimburse **LESSOR** for the amounts disbursed by the latter in contracting asset insurance for the Property, guaranteeing award for pecuniary damages resulting from fire, lightning, explosion of any nature, windstorm, flood, hurricane, cyclone, tornado, hail, smoke, impact of land vehicles and fall of aircraft, for an amount not lower than the market value of the asset, with **LESSOR**, or whomever it expressly indicates, as the beneficiary of the respective policies.

**6.1.1.**The asset insurance for the Property shall also encompass coverage for loss of rent for a period of twelve (12) months, and **LESSOR** shall be responsible for payment of the respective premium.

8

**6.2.**The obligation assumed by **LESSEE** under item 6.1 shall be maintained during the entire term of the lease, including its possible extensions.

**6.3.**The value of the insured items and the respective amounts of the indemnifications should be annually revalued according to the variation of the rent.

**6.4.**In the event of partial damage, **LESSEE** may continue using the Property. In this event, it must manifest its intention in writing to **LESSOR**, interrupting payment of the rent equivalent to the useful area of the Property that was rendered useless, and the difference between the amount to be paid by **LESSEE** and the amount of the rent shall be covered by the insurance set forth in clause 6**.**1. above, immediately after occurrence of the damage.

**6.5.**In the case of total damage, the parties may agree to maintain the agreement, without payment of the rents during the period of reconstruction, and also, in this event, guaranteeing to either of the parties the possibility of termination of the agreement without any penalty whatsoever.

**6.6.**Total damage having occurred, and the Insurance Company not having paid the indemnification to **LESSOR** on the grounds that the occupation of the Property was irregular, for not having observed the conditions of the respective policy, or not having observed the municipal, state and/or federal regulations applicable to the Property in order to permit the regular exercise of the activities of **LESSEE** as set forth in this Agreement, with the exception of the cases proven to result from defects of construction of the Property, **LESSEE** shall reimburse the amounts necessary to replace the property to **LESSOR**, except for the right of recourse of **LESSEE** against the Insurance Company.

**7. ASSIGNMENT AND SUBLEASING**

**7.1. LESSEE** is hereby expressly prohibited from subleasing or lending, in whole or in part, the leased property, as well as assigning or transferring this agreement, without the consent in writing by **LESSOR**.

**7.2. LESSOR**cannot refuse its consent in the event of subleasing to companies proved to belong to the same economic group as **LESSEE.**

9

**7.3**. Subleasing is hereby expressly authorized to the companies: **MERCADOPAGO.COM REPRESENTAÇÕES LTDA., IBAZAR.COM ATIVIDADES DE INTERNET LTDA and EBAZAR.COM.BR LTDA.**

**8. FINE**

**8.1.**If **LESSEE** voluntarily terminates this Agreement before the expiration of the term set forth in clause 2.1. it shall pay to **LESSOR**, as pre-set damages, a fine to be calculated on a prorated basis, according to the remaining period, in the maximum amount of three (3) rents, as set forth in clause 3**.**1, without prejudice to the payment of the rents up to the date of handing over the keys, and of the prior notice set forth in clause 5.10.

**8.2.**If the lease is terminated by **LESSOR** by virtue of non-compliance with any contractual obligations of **LESSEE**, except the event set forth in clause 8.1, the latter shall pay to **LESSOR**, as pre-set damages, a fine in the amount of three (3) rents, as set forth in clause 3**.**1, observing the sending of prior notice at least ninety (90) days before the date of payment of the indemnification and vacancy of the Property, it being clear that payment of the fine does not waive payment of the rents up to the date of handing over the keys.

**9. EVENTS OF DEFAULT**

**9.1.**Irrespective of the provisions above, the innocent party shall be prohibited from applying a penalty or terminating this instrument, unless (i) the innocent party has sent a notice in writing to the defaulting party, notifying it of the contractual or legal violation, and (ii) the defaulting party has not remedied the cause of the default within the period of fifteen (15) days after having received such notice.

**9.1.1.**The notice and the term mentioned in clause 9.1. do not apply in the event of delay in payment of the rent, the effects of which are set forth in clauses 3.4 and 3.5.

**10. GENERAL PROVISIONS**

**10.1.**In the case of expropriation of the property object of this agreement, **LESSOR** is hereby discharged of any and all responsibility, reserving for **LESSEE**, the right to act only against the expropriating power as to the indemnification it may perchance be entitled to.

10

**10.2.**If any amendment is made to **Lessee**‘s articles of incorporation that implies in a change of control in its corporate structure, for a company that is not part of its Economic Group, lessee shall within thirty (30) days of this occurrence, communicate this fact to **LESSOR**, which reserves the right to continue or not with this lease, under pain of characterization of contractual infringement and incurring the fine set forth in this agreement, in addition to giving cause to its immediate termination, since such factors were considered by **LESSOR** when executing this instrument. As being appropriate, it should be clarified that **LESSEE** may make any and all corporate alterations among the companies of the same economic group, and it is certain that changes of control with companies of the same corporate group shall not be considered changes of control for the purposes of this clause 10.2.

**10.3.**Everything due on account of this agreement and that is not eligible for summary process, shall be charged according to an executory process, without prejudice to a faster judicial or extrajudicial suit or proceeding, in the forum of the domicile of property, with waiver of any other, as privileged as it may be. In the case of court suit, the debtors shall be liable for, in addition to the contractual fine and all the court expenses incurred, the fees of the lawyer retained by the creditor to guarantee its rights, on the basis of twenty percent (20%) of the amount of the award, reduced to ten percent (10%), if the debt is settled out of court.

**10.4.**Non-exercise by one of the parties of any of its powers or rights vested under this Agreement shall not constitute a waiver by such party of such vested powers or rights, nor constitute a contractual novation. Changes hereto shall only be made and be in full force and effect after mutual agreement in writing by all the parties.

**10.5.**This lease is governed by Law nº 8.245, of October 18, 1991.

**10.6.**The parties assume full civil and criminal responsibility for the representations made herein.

**10.7. LESSEE** is hereby authorized to register this instrument with the competent Real Estate Registry Office or Registry of Deeds and Documents, bearing all the expenses arising from this act.

**10.8.**In the case of registration of this agreement by **LESSEE**, it shall further be obliged to, at the end or termination of the lease, immediately cancel it, at its expense. If it does not do so, and after being expressly communicated by **LESSOR** to do so, within the period of thirty (30) days, then **LESSOR** shall be automatically authorized to proceed with such cancellation with the competent Real Estate Registry Office, and may recover from **LESSEE** the expenses related to the cancellation of this registration.

11

**10.9.**If **LESSEE** abandons the property hereby leased, whether for its convenience, or as a result of a court decision, **LESSOR** is hereby authorized to donate any assets abandoned at the location to a charitable institution of its free choice.

**11. NOTICES**

**11.1.**All the notices, judicial notifications, services of process, summons and other communications related to this instrument may be sent by means of correspondence with Notice of Receipt (AR), or by other forms set forth in art. 58, subsection IV, of the Tenancy Law and in the Code of Civil Procedure. In this respect, the parties undertake to communicate one to the other, in writing, whenever there is a change of address, under pain of deeming received any notification at the former address.

**11.2.**The parties establish as addresses for notices, undertaking to mutually communicate changes, the following:

a) If to **LESSOR**:  
Att. Mr. Fenando Benites Junior  
XXXX

b) If to **LESSEE**:  
Att. Mr. Joao Pan

**12. RIGHT OF FIRST REFUSAL**

**12.1.**In the event of sale, commitment to sell, assignment or commitment to assign the rights with respect to full title of the Property, **LESSEE** shall be responsible for exercising the right of first refusal on the same terms offered to third parties, and **LESSOR** shall inform **LESSEE** about the intended operation by means of extrajudicial notification or by any other unequivocal means of acknowledgment.

12

**12.2.**The communication set forth in clause **12.1**above shall specify all the terms of the intended operation, and especially mention the price, the form of payment, as well as the place and date for analysis of the pertinent documentation.

**12.3.**The right of first refusal forfeits if **LESSEE** does not express its total acceptance of the proposal in an unequivocal manner within the period of ten (10) days.

**12.4.**Not having demonstrated interest in acquiring the property, **LESSEE** must permit inspection of the same by interested third parties, on a day and time previously agreed, under pain of characterization of contractual infringement.

**13. GUARANTEE**

**13.1. LESSEE** gives a single bond, in the amount of three (3) month rent, as guarantee of compliance with the obligations set forth in this Agreement, including the contractual adjustments that the rent may suffer, the legal and contractual penalties agreed to in this instrument, any taxes, fees and other charges of the lease, and possible extension of the lease. This amount shall be paid in cash, by means of a deposit to the account indicated by **LESSOR** at the time of the execution of this instrument. Upon termination of this agreement, **LESSOR** undertakes to return the bond to **LESSEE**, with the addition of all the advantages resulting from being invested in a savings account since the date of the payment until the month immediately prior to the termination of the agreement under the exact terms of that provided in §2 of art. 37 of Law 8.245/91.

**14. JURISDICTION**

**14.1.**The contracting parties elect the forum of the domicile of the Property to settle any doubts or disputes arising out of this Agreement, with express waiver o any other, as privileged as it may be. .

In witness whereof, being aware of and in agreement with all the terms and conditions of this preliminary agreement, the parties, for themselves, their heirs and/or successors, execute this instrument, in three (03) counterparts of equal content and form, in the presence of the two undersigned witnesses

São Paulo, March 01, 2010.

13

**LESSOR**:

**STM — SOCIEDADE GENERAL**

**LESSEE:**

**BENBEN LTDA**

**Witnesses**:

|  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  |  |  |  |  |  |  |  |  |  |  |
| 1) |  |  |  |  |  | 2) |  |  |  |  |
|  |  |  |  |  |  |  |  |  |  |  |
| Name: | | |  |  |  | Name: | | |  |  |
| RG.: | | |  |  |  | RG.: | | |  |  |

14

**LeaseA#25**

**EXHIBIT 10.41**

X

Dated as of November 30, 2017

between

GRESKY SERVICE CORPORATION,  
as Lessor

and

ABCD, INC.,  
as Lessee

This X has been executed in several counterparts. To the extent, if any, that this X constitutes chattel paper (as such term is defined in the Uniform Commercial Code as in effect in any applicable jurisdiction), no security interest in this X may be created through the transfer or possession of any counterpart other than the original counterpart containing the receipt therefor executed by the Agent on the signature page hereof.

TABLE OF CONTENTS

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | | | | |
|  |  |  |  |  |
|  |  |  |  | Page |
| ARTICLE I. | | |  | 1 |
|  | 1.1 | Definitions |  | 1 |
|  | 1.2 | Interpretation |  | 1 |
| ARTICLE II. | | |  | 2 |
|  | 2.1 | Property. |  | 2 |
|  | 2.2 | Lease Term. |  | 2 |
|  | 2.3 | Title. |  | 2 |
| ARTICLE III. | | |  | 3 |
|  | 3.1 | Rent. |  | 3 |
|  | 3.2 | Payment of Rent. |  | 3 |
|  | 3.3 | Supplemental Rent. |  | 3 |
|  | 3.4 | Performance on a Non-Business Day. |  | 4 |
|  | 3.5 | Rent Payment Provisions. |  | 4 |
| ARTICLE IV. | | |  | 4 |
|  | 4.1 | Taxes; Utility Charges. |  | 4 |
| ARTICLE V. | | |  | 4 |
|  | 5.1 | Quiet Enjoyment. |  | 4 |
| ARTICLE VI. | | |  | 5 |
|  | 6.1 | Net Lease. |  | 5 |
|  | 6.2 | No Termination or Abatement. |  | 5 |
| ARTICLE VII. | | |  | 6 |
|  | 7.1 | Ownership of the Property. |  | 6 |
| ARTICLE VIII. | | |  | 7 |
|  | 8.1 | Condition of the Property. |  | 7 |
|  | 8.2 | Possession and Use of the Property. |  | 7 |
|  | 8.3 | Integrated Property. |  | 8 |
| ARTICLE IX. | | |  | 8 |
|  | 9.1 | Compliance With Legal Requirements, Insurance Requirements and Manufacturer’s Specifications and Standards. |  | 8 |
| ARTICLE X. | | |  | 8 |
|  | 10.1 | Maintenance and Repair; Return. |  | 8 |
|  | 10.2 | Environmental Inspection. |  | 10 |
| ARTICLE XI. | | |  | 10 |
|  | 11.1 | Modifications. |  | 10 |
| ARTICLE XII. | | |  | 11 |
|  | 12.1 | Warranty of Title. |  | 11 |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | | | | |
|  |  |  |  |  |
|  |  |  |  | Page |
| ARTICLE XIII. | | |  | 11 |
|  | 13.1 | Permitted Contests Other Than in Respect of Indemnities. |  | 11 |
|  | 13.2 | Impositions, Utility Charges, Other Matters; Compliance with Legal Requirements. |  | 12 |
| ARTICLE XIV. | | |  | 12 |
|  | 14.1 | Commercial General Liability and Workers’ Compensation Insurance. |  | 12 |
|  | 14.2 | Permanent Hazard and Other Insurance. |  | 13 |
|  | 14.3 | Coverage. |  | 13 |
|  | 14.4 | Deductibles and Co-Payment Amounts. |  | 14 |
| ARTICLE XV. | | |  | 15 |
|  | 15.1 | Casualty and Condemnation. |  | 15 |
|  | 15.2 | Environmental Matters. |  | 17 |
|  | 15.3 | Notice of Environmental Matters. |  | 17 |
| ARTICLE XVI. | | |  | 18 |
|  | 16.1 | Termination Upon Certain Events. |  | 18 |
|  | 16.2 | Procedures. |  | 18 |
| ARTICLE XVII. | | |  | 18 |
|  | 17.1 | Lease Events of Default. |  | 18 |
|  | 17.2 | Surrender of Possession. |  | 22 |
|  | 17.3 | Reletting. |  | 22 |
|  | 17.4 | Damages. |  | 22 |
|  | 17.5 | Power of Sale. |  | 23 |
|  | 17.6 | Final Liquidated Damages. |  | 23 |
|  | 17.7 | Environmental Costs. |  | 25 |
|  | 17.8 | Waiver of Certain Rights. |  | 25 |
|  | 17.9 | Assignment of Rights Under Contracts. |  | 25 |
|  | 17.10 | Lessee Purchase to Cure Lease Event of Default. |  | 26 |
|  | 17.11 | Remedies Cumulative. |  | 26 |
|  | 17.12 | Limitation Regarding Certain Lease Events of Default. |  | 26 |
|  | 17.13 | Continuation of Lease. |  | 27 |
| ARTICLE XVIII. | | |  | 27 |
|  | 18.1 | Lessor’s Right to Cure Lessee’s Lease Defaults. |  | 27 |
| ARTICLE XIX. | | |  | 27 |
|  | 19.1 | Provisions Relating to Lessee’s Exercise of its Purchase Option. |  | 27 |
|  | 19.2 | No Purchase or Termination With Respect to Less than All of the Property. |  | 28 |
| ARTICLE XX. | | |  | 28 |
|  | 20.1 | Purchase Option or Sale Option-General Provisions. |  | 28 |
|  | 20.2 | Lessee Purchase Option. |  | 28 |
|  | 20.3 | Third Party Sale Option. |  | 29 |
| ARTICLE XXI. | | |  | 30 |
|  | 21.1 | Sale Procedure. |  | 30 |
|  | 21.2 | Application of Proceeds of Sale. |  | 31 |
|  | 21.3 | Indemnity for Excessive Wear. |  | 32 |
|  | 21.4 | Appraisal Procedure. |  | 32 |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | | | | |
|  |  |  |  |  |
|  |  |  |  | Page |
|  | 21.5 | Certain Obligations Continue. |  | 32 |
| ARTICLE XXII. | | |  | 32 |
|  | 22.1 | Holding Over. |  | 32 |
| ARTICLE XXIII. | | |  | 33 |
|  | 23.1 | Risk of Loss. |  | 33 |
| ARTICLE XXIV. | | |  | 33 |
|  | 24.1 | Assignment. |  | 33 |
|  | 24.2 | Subleases. |  | 33 |
| ARTICLE XXV. | | |  | 34 |
|  | 25.1 | No Waiver. |  | 34 |
| ARTICLE XXVI. | | |  | 34 |
|  | 26.1 | Acceptance of Surrender. |  | 34 |
|  | 26.2 | No Merger of Title. |  | 34 |
|  | 26.3 | Estoppel Certificates. |  | 34 |
| ARTICLE XXVII. | | |  | 35 |
|  | 27.1 | Notices. |  | 35 |
| ARTICLE XXVIII. | | |  | 35 |
|  | 28.1 | Miscellaneous. |  | 35 |
|  | 28.2 | Amendments and Modifications. |  | 35 |
|  | 28.3 | Successors and Assigns. |  | 35 |
|  | 28.4 | Headings and Table of Contents. |  | 35 |
|  | 28.5 | Counterparts. |  | 35 |
|  | 28.6 | GOVERNING LAW. |  | 35 |
|  | 28.7 | Calculation of Rent. |  | 36 |
|  | 28.8 | Memorandum of Lease. |  | 36 |
|  | 28.9 | Allocations Among the Financing Parties. |  | 36 |
|  | 28.10 | Limitations on Recourse. |  | 36 |
|  | 28.11 | WAIVERS OF JURY TRIAL. |  | 36 |
|  | 28.12 | Exercise of Lessor Rights. |  | 36 |
|  | 28.13 | SUBMISSION TO JURISDICTION AND VENUE. |  | 36 |
|  | 28.14 | USURY SAVINGS PROVISION. |  | 37 |

EXHIBITS

EXHIBIT A    Legal Description of the Property

EXHIBIT B    Memorandum of X

**X**

THIS X dated as of November 30, 2017 (as amended, modified, extended, supplemented, restated and/or replaced from time to time, this “Lease”) is between GRESKY SERVICE CORPORATION, a Delaware corporation, having its principal place of business at XX, NC 28220, as lessor (the “Lessor”), and ABCD, Inc., an Ohio corporation, having its principal place of business at, OH 43230, as lessee (the “Lessee”).

**WITNESSETH:**

**A.    WHEREAS,** subject to the terms and conditions of the Participation Agreement and the Agency Agreement, Lessor may (i) purchase a parcel of real property, which will (or may) have existing Improvements thereon, from one (1) or more third parties designated by Lessee and (ii) fund the acquisition, installation, testing, use, development, construction, operation, maintenance, repair, refurbishment and restoration of the Property by the Construction Agent; and

**B.    WHEREAS**, the Term shall commence with respect to the Property upon the Property Closing Date; and

**C.    WHEREAS,**Lessor desires to lease to Lessee, and Lessee desires to lease from Lessor, the Property pursuant to this Lease.

**NOW, THEREFORE,** in consideration of the foregoing, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**ARTICLE I.**

**1.1**    **Definitions.**

For purposes of this Lease, capitalized terms used in this Lease and not otherwise defined herein shall have the meanings assigned to them in Appendix A to that certain Participation Agreement dated as of November 30, 2017 (as amended, modified, extended, supplemented, restated and/or replaced from time to time in accordance with the applicable provisions thereof, the “Participation Agreement”) among Lessee, the various entities parties thereto from time to time, as the Guarantors, Lessor, the various banks and other lending institutions parties thereto from time to time, as Lease Participants, and Wells Fargo Bank, National Association, as the agent for the Lessor Parties and, respecting the Security Documents, as agent for the Secured Parties. Unless otherwise indicated, references in this Lease to articles, sections, paragraphs, clauses, appendices, schedules and exhibits are to the same contained in this Lease.

**1.2**    **Interpretation.**

The rules of usage set forth in Appendix A to the Participation Agreement shall apply to this Lease.

**ARTICLE II.**

**2.1**    **Property.**

Subject to the terms and conditions hereinafter set forth, Lessor hereby leases to Lessee and Lessee hereby leases from Lessor, the Property.

**2.2**    **Lease Term.**

The basic term of this Lease with respect to the Property (the “Basic Term”) shall begin upon the Property Closing Date (the “Commencement Date”) and shall end on the seventy-eight (78) month anniversary of the Initial Closing Date (the “Basic Term Expiration Date”), unless the Basic Term is earlier terminated or renewed in accordance with the provisions of this Lease and the other Operative Agreements. Notwithstanding the foregoing, Lessee shall not be obligated to pay Basic Rent until the Rent Commencement Date.

Subject to the consents required pursuant to this Section 2.2 and the other applicable terms and conditions of the Operative Agreements, Lessee may request that the Lease be extended for up to three (3) successive five-year terms (each a “Renewal Term”). Each Renewal Term shall end on the fifth annual anniversary of the commencement of such Renewal Term, unless such Renewal Term is earlier terminated.

To the extent no Lease Default or Lease Event of Default has occurred and is continuing as of the Basic Term Expiration Date or the last day of the first or second Renewal Term only, as applicable, Lessee may, not more than five hundred forty (540) days prior to the Expiration Date and not less than three hundred sixty (360) days prior to the seventy-eight (78) month anniversary of the Initial Closing Date or the last day of the first or second (but not the third) Renewal Term, if any, by irrevocable notice to the Financing Parties make written request to extend the Expiration Date for an additional period of five (5) years. Each of the Financing Parties shall make an irrevocable determination, in the absolute and sole discretion of each such party, within sixty (60) days of receiving a request from Lessee to extend the Term as to whether or not such party will agree to extend the Expiration Date as requested; provided, however, that failure by any such party to make a timely response to Lessee’s request for extension of the Expiration Date shall be deemed to constitute a refusal by such party to the requested extension of the Expiration Date. In response to a request for an extension of the Expiration Date, if (a) all Financing Parties shall each agree to the requested extension by delivering an irrevocable written confirmation of such acceptance of the extension to the Agent, Lessee and Lessor, then, provided no Lease Default or Lease Event of Default has occurred and is continuing as of the Basic Term Expiration Date or the last day of the first or second Renewal Term only, as applicable, the Term shall be extended and shall expire on the date five (5) years after the then current Expiration Date or (b) any Financing Party shall refuse (or be deemed to have refused) to agree to the requested extension, then the Term shall not be extended and shall expire on the then current Expiration Date and unless Lessee properly makes an election of an end of Term option pursuant to Section 20.1, Lessee shall be deemed to have elected the Purchase Option which shall be exercised, and the purchase of the Property shall occur, on the then current Expiration Date. Each Renewal Term, if any, shall commence on the day immediately following the Basic Term Expiration Date or the last day of the first or second Renewal Term, as applicable.

**2.3**    **Title.**

Subject to the provisions of Section 5.1 hereof, the Property is leased to Lessee without any representation or warranty, express or implied, by Lessor and subject to the rights of parties in possession (if any), the existing state of title (including the Permitted Liens) and all applicable Legal Requirements. Lessee shall in no event have any recourse against Lessor for any defect in Lessor’s title to the Property or any interest of Lessee therein other than for Lessor Liens.

2

**ARTICLE III.**

**3.1**    **Rent.**

(a)    Lessee shall pay Basic Rent in arrears on each Payment Date and all outstanding or accrued Basic Rent on any date on which this Lease shall terminate with respect to the Property during the Term, and Lessee shall pay Supplemental Rent in accordance with Section 3.3; provided, however, Lessee shall have no obligation to pay Basic Rent until the Rent Commencement Date and instead Basic Rent prior to such Rent Commencement Date shall be paid in accordance with Section 5.1(b) of the Participation Agreement.

(b)    Except as otherwise provided in Section 3.3, Rent shall be due and payable in lawful money of the United States and shall be paid by wire transfer of immediately available funds on the due date therefor (or within the applicable grace period) to such account or accounts at such bank or banks as the Agent shall from time to time direct so long as such account is at the Agent or another Financing Party.

(c)    Lessee’s inability or failure to take possession of all or any portion of the Property when delivered by Lessor, whether or not attributable to any act or omission of Lessor, the Construction Agent, Lessee or any other Person or for any other reason whatsoever, shall not delay or otherwise affect Lessee’s obligation to pay Rent in accordance with the terms of this Lease.

(d)    Lessee shall make all payments of Rent prior to 12:00 Noon, New York City time, on the applicable date for payment of such amount.

**3.2**    **Payment of Rent.**

Rent shall be paid absolutely net to Lessor or its designee, so that this Lease shall yield to Lessor the full amount thereof, without set-off, deduction (except for deduction or withholding of Impositions as required by Applicable Law, but subject to Section 11.2 of the Participation Agreement) or reduction.

**3.3**    **Supplemental Rent.**

Lessee shall pay to the Person entitled thereto any and all Supplemental Rent when and as the same shall become due and payable; provided, if there is no express time period specified for any such payment pursuant to the Operative Agreements or otherwise, Lessee shall make such payment of Supplemental Rent within two (2) Business Days of receipt of notice from Lessor, Agent or any other applicable Person requesting payment of the same. All such payments of Supplemental Rent shall be in the full amount thereof, without set-off, deduction (unless required by Applicable Law but subject to Section 11.2 of the Participation Agreement) or reduction. Lessee shall pay to the appropriate Person, as Supplemental Rent due and owing to such Person, among other things, on demand, (a) any and all payment obligations (except for amounts payable as Basic Rent) owing from time to time under the Operative Agreements by any Person to any Financing Party or any other Person, (b) interest at the applicable Overdue Rate on any installment of Basic Rent not paid when due (subject to the applicable grace period for payments of Basic Rent) for the period for which the same shall be overdue and on any payment of Supplemental Rent not paid when due or demanded by the appropriate Person (subject to any applicable grace period) for the period from the due date or the date of any such demand, as the case may be, until the same shall be paid and (c) amounts referenced as Supplemental Rent obligations pursuant to Section 8.3 of the Participation Agreement. The expiration or other termination of Lessee’s obligations to pay Basic Rent hereunder shall not limit or modify the obligations of Lessee with respect to Supplemental Rent. Unless expressly provided otherwise in this

3

Lease, in the event of any failure on the part of Lessee to pay and discharge any Supplemental Rent as and when due, Lessee shall also promptly pay and discharge any fine, penalty, interest or cost which may be assessed or added for nonpayment or late payment of such Supplemental Rent, all of which shall also constitute Supplemental Rent. Lessee shall pay all outstanding or accrued Supplemental Rent on any date on which this Lease shall terminate with respect the Property during the Term.

**3.4**    **Performance on a Non-Business Day.**

If any Basic Rent is required hereunder on a day that is not a Business Day, then such Basic Rent shall be due on the next succeeding Business Day (except to the extent Basic Rent is then being calculated based on the LIBOR Rate and such next succeeding Business Day falls in the next succeeding calendar month, then on the next preceding Business Day). If any Supplemental Rent is required hereunder on a day that is not a Business Day, then such Supplemental Rent shall be due on the next succeeding Business Day.

**3.5**    **Rent Payment Provisions.**

Lessee shall make payment of all Basic Rent and Supplemental Rent when due regardless of whether any of the Operative Agreements pursuant to which the same are calculated and owing shall have been rejected, avoided or disavowed in any bankruptcy or insolvency proceeding involving any of the parties to any of the Operative Agreements. Such provisions of such Operative Agreements and their related definitions are incorporated herein by reference and shall survive any termination, amendment or rejection of any such Operative Agreements.

**ARTICLE IV.**

**4.1**    **Taxes; Utility Charges.**

Lessee shall pay or cause to be paid all Impositions regarding the Property and all other charges regarding the use, occupancy, repair, access, maintenance or operation of the Property and all charges for electricity, power, gas, oil, water, telephone, sanitary sewer service and all other rents, utilities and operating expenses of any kind or type used in or on the Property during the Term. Upon Lessor’s reasonable request, Lessee shall provide from time to time Lessor with evidence of all such payments referenced in the foregoing sentence. Lessee shall be entitled to receive any credit or refund with respect to any Imposition or utility charge paid by Lessee. Unless a Lease Event of Default shall have occurred and be continuing, the amount of any credit or refund received by Lessor on account of any Imposition or utility charge paid by Lessee, net of the costs and expenses incurred by Lessor in obtaining such credit or refund, shall be promptly paid over to Lessee. All charges for Impositions or utilities imposed with respect to the Property for a period during which this Lease expires or terminates shall be adjusted and prorated on a daily basis between Lessor (to the extent Lessor has retained control of the Property) and Lessee or other purchaser of the Property, and each party shall pay or reimburse the other for such party’s pro rata share thereof.

**ARTICLE V.**

**5.1**    **Quiet Enjoyment.**

Subject to the rights of Lessor contained in Sections 10.1(d), 18.1 and 20.3, Article XVII and the other terms of this Lease and the other Operative Agreements and so long as no Lease Event of Default shall have occurred and be continuing, Lessee shall peaceably and quietly have, hold and enjoy the Property for the applicable Term, free of any claim or other action by Lessor or anyone rightfully claiming by, through or under Lessor (other than Lessee).

4

**ARTICLE VI.**

**6.1**    **Net Lease.**

This Lease shall constitute a net lease, and the obligations of Lessee hereunder are absolute and unconditional. Lessee shall pay all operating expenses arising out of the use, operation and/or occupancy of the Property. Any present or future law to the contrary notwithstanding, this Lease shall not terminate, nor shall Lessee be entitled to any abatement, suspension, deferment, reduction, set-off, counterclaim, or defense with respect to the Rent (except for deduction or withholding of Impositions as required by Applicable Law, but subject to Section 11.2 of the Participation Agreement), nor shall the obligations of Lessee hereunder be affected for any reason whatsoever, including by reason of: (a) any damage to or destruction of the Property or any part thereof; (b) any taking of the Property or any part thereof or interest therein by Condemnation or otherwise; (c) any prohibition, limitation, restriction or prevention of Lessee’s use, occupancy or enjoyment of the Property or any part thereof, or any interference with such use, occupancy or enjoyment by any Person or for any other reason; (d) any Lien or any matter affecting title to the Property; (e) any eviction by paramount title or otherwise; (f) any default by Lessor hereunder; (g) any action for bankruptcy, insolvency, reorganization, liquidation, dissolution or other proceeding relating to or affecting any Financing Party, any Credit Party or any Governmental Authority; (h) the impossibility or illegality of performance by Lessor, Lessee or both; (i) any action of any Governmental Authority or any other Person; (j) Lessee’s acquisition of ownership of all or part of the Property; (k) breach of any warranty or representation with respect to the Property or any Operative Agreement; (l) any defect in the condition, quality or fitness for use of the Property or any part thereof; or (m) any other cause or circumstance whether similar or dissimilar to the foregoing and whether or not Lessee shall have notice or knowledge of any of the foregoing. The parties intend that the obligations of Lessee hereunder shall be covenants, agreements and obligations that are separate and independent from any obligations of Lessor hereunder and shall continue unaffected unless such covenants, agreements and obligations shall have been modified or terminated in accordance with an express provision of this Lease. Lessor and Lessee acknowledge and agree that the provisions of this Section 6.1 have been specifically reviewed and subject to negotiation. The provisions of this Section 6.1 shall not preclude Lessee from pursuing lawsuits against any other party to the Operative Agreements regarding such party’s failure to perform its obligations pursuant to the Operative Agreements.

**6.2**    **No Termination or Abatement.**

Lessee shall remain obligated under this Lease in accordance with its terms and shall not take any action to terminate, rescind or avoid this Lease, notwithstanding any action for bankruptcy, insolvency, reorganization, liquidation, dissolution, or other proceeding affecting Lessee or any other Person, or any action with respect to this Lease or any Operative Agreement which may be taken by any trustee, receiver or liquidator of Lessee or any other Person or by any court with respect to Lessee or any other Person.

LESSEE HEREBY WAIVES TO THE EXTENT PERMITTED BY APPLICABLE LAW, ALL RIGHT (I) TO TERMINATE OR SURRENDER THIS LEASE (EXCEPT AS PROVIDED HEREIN) OR (II) TO AVAIL ITSELF OF ANY ABATEMENT, SUSPENSION, DEFERMENT, REDUCTION, SET-OFF, COUNTERCLAIM OR DEFENSE WITH RESPECT TO ANY RENT. LESSEE SHALL REMAIN OBLIGATED UNDER THIS LEASE IN ACCORDANCE WITH ITS TERMS AND TO THE EXTENT WAIVABLE UNDER APPLICABLE LAW, LESSEE HEREBY WAIVES ANY AND ALL RIGHTS NOW OR HEREAFTER CONFERRED BY STATUTE OR OTHERWISE TO MODIFY OR TO AVOID STRICT COMPLIANCE WITH ITS OBLIGATIONS UNDER THIS LEASE. NOTWITHSTANDING ANY SUCH STATUTE OR OTHERWISE, LESSEE SHALL BE BOUND BY ALL OF THE TERMS AND CONDITIONS CONTAINED IN THIS LEASE.

5

**ARTICLE VII.**

**7.1**    **Ownership of the Property.**

(a)    Lessor and Lessee intend that (i) this Lease will be treated as an “operating lease” pursuant to Accounting Standards Codification No. 840, as amended or replaced from time to time, for Lessee’s financial accounting purposes and (ii) for federal and all state and local income Tax purposes, commercial purposes, bankruptcy purposes and (other than as stated in the foregoing subsection (a)(i)) all other purposes (A) this Lease together with all other Operative Agreements will be treated as a financing arrangement and (B) Lessee will be treated as the owner of the Property and will be entitled to all Tax benefits ordinarily available to owners of property similar to the Property for such Tax purposes, including for this purpose, Lessee shall claim the cost recovery deductions associated with the Property, and Lessor shall not, unless required by Law, take on its Tax returns a position inconsistent with Lessee’s claim of such deductions. Notwithstanding the foregoing, neither party hereto has made, or shall be deemed to have made, any representation or warranty as to the availability of any of the foregoing treatments under applicable accounting rules, Tax, bankruptcy, regulatory, commercial or real estate law or under any other set of rules.

(b)    In order to secure the Company Obligations, Lessee hereby irrevocably conveys, grants, assigns, transfers, hypothecates, mortgages and sets over to Lessor, for the benefit of all Financing Parties, a security interest in and lien on all right, title and interest of Lessee (now owned or hereafter acquired) in and to the Property, to the extent such is personal property and all proceeds thereof (including insurance proceeds). For purposes of the creation and enforcement of this Lease as a security agreement and a fixture filing with respect to the Property and all proceeds thereof (including insurance proceeds), Lessee is the debtor, Lessor is the secured party and Agent is the assignee of Lessor (given that Agent is acting as collateral agent for the Secured Parties). The mailing addresses of the debtor (Lessee herein) and of the secured party (Lessor herein) from which information concerning security interests pursuant to this Lease may be obtained are as set forth on the signature pages of this Lease. A carbon, photographic or other reproduction of this Lease, any memorandum hereof (or short form lease) or of any financing statement related to this Lease shall be sufficient as a financing statement for any of the purposes referenced in this Lease. Lessee authorizes Lessor and Agent, to file UCC financing and fixture filing statements, amendments thereto and renewals thereof without Lessee’s signature, as Lessor or Agent may determine to be necessary or appropriate to perfect and maintain the security interest and lien granted herein.

In order to secure the Company Obligations and for purposes of the creation and enforcement of this Lease as a deed of trust with respect to the Property and all proceeds thereof (including insurance proceeds), LESSEE, as deed of trust grantor, hereby grants, assigns, transfers, hypothecates, mortgages, conveys and sets over a lien on all right, title and interest of Lessee (now owned or hereafter acquired) in the Property and all proceeds thereof (including insurance proceeds), to the extent such is real property, to First American Title Insurance Company (or any other Person appropriately designated from time to time by Lessor), as trustee, IN TRUST AND WITH POWER OF SALE, for the benefit of LESSOR, for the benefit of all Financing Parties, as beneficiary. The lien on the Property and all proceeds thereof (including insurance proceeds) granted and conveyed by Lessee to First American Title Insurance Company (or any other Person appropriately designated from time to time by Lessor), as trustee, pursuant to this Lease and each memorandum hereof (or short form lease) is and shall be a perfected lien.

6

**ARTICLE VIII.**

**8.1**    **Condition of the Property.**

FOR PURPOSES OF SECTION 1938 OF THE CALIFORNIA CIVIL CODE, LESSOR HEREBY DISCLOSES TO LESSEE, AND LESSEE HEREBY ACKNOWLEDGES, THAT THE PREMISES HAVE NOT UNDERGONE INSPECTION BY A CERTIFIED ACCESS SPECIALIST (CASP). LESSEE ACKNOWLEDGES AND AGREES THAT IT IS LEASING THE PROPERTY “AS-IS WHERE-IS” WITHOUT REPRESENTATION, WARRANTY OR COVENANT (EXPRESS OR IMPLIED) BY LESSOR (EXCEPT THAT LESSOR SHALL KEEP THE PROPERTY FREE AND CLEAR OF LESSOR LIENS AND SHALL COMPLY WITH SECTION 5.1) AND IN EACH CASE SUBJECT TO (A) THE EXISTING STATE OF TITLE, (B) THE RIGHTS OF ANY PARTIES IN POSSESSION THEREOF (IF ANY), (C) ANY STATE OF FACTS REGARDING ITS PHYSICAL CONDITION OR WHICH AN ACCURATE SURVEY MIGHT SHOW, (D) ALL APPLICABLE LEGAL REQUIREMENTS AND (E) VIOLATIONS OF LEGAL REQUIREMENTS WHICH MAY EXIST ON THE DATE HEREOF. NO FINANCING PARTY HAS MADE OR SHALL BE DEEMED TO HAVE MADE ANY REPRESENTATION, WARRANTY OR COVENANT (EXPRESS OR IMPLIED) (EXCEPT THAT LESSOR SHALL KEEP THE PROPERTY FREE AND CLEAR OF LESSOR LIENS AND SHALL COMPLY WITH SECTION 5.1) OR SHALL BE DEEMED TO HAVE ANY LIABILITY WHATSOEVER AS TO THE TITLE, VALUE, HABITABILITY, USE, CONDITION, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS FOR USE OF THE PROPERTY (OR ANY PART THEREOF), OR ANY OTHER REPRESENTATION, WARRANTY OR COVENANT WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY (OR ANY PART THEREOF), AND NO FINANCING PARTY SHALL BE LIABLE FOR ANY LATENT, HIDDEN, OR PATENT DEFECT THEREON OR THE FAILURE OF THE PROPERTY, OR ANY PART THEREOF, TO COMPLY WITH ANY LEGAL REQUIREMENT. LESSEE HAS OR PRIOR TO THE COMMENCEMENT DATE WILL HAVE BEEN AFFORDED FULL OPPORTUNITY TO INSPECT THE PROPERTY AND THE IMPROVEMENTS THEREON (IF ANY), IS OR WILL BE (INSOFAR AS ANY FINANCING PARTY IS CONCERNED) SATISFIED WITH THE RESULTS OF ITS INSPECTIONS AND IS ENTERING INTO THIS LEASE SOLELY ON THE BASIS OF THE RESULTS OF ITS OWN INSPECTIONS, AND ALL RISKS INCIDENT TO THE MATTERS DESCRIBED IN THE PRECEDING SENTENCE, AS BETWEEN THE FINANCING PARTIES, ON THE ONE HAND, AND LESSEE, ON THE OTHER HAND, ARE TO BE BORNE BY LESSEE.

**8.2**    **Possession and Use of the Property.**

(a)    At all times during the Term, the Property shall be a Permitted Facility and shall be used by Lessee in the ordinary course of its business. Lessee shall pay, or cause to be paid, all charges and costs required in connection with the use of the Property as contemplated by this Lease. Lessee shall not commit or permit any waste of the Property or any part thereof, normal wear and tear excepted.

(b)    Lessee will provide Lessor with prior written notice of any change of its name, its principal place of business or chief executive office or of its location for purposes of the UCC. Regarding the Property, Exhibit A contains an accurate legal description for the Land. The Equipment and Improvements respecting the Property will be located only at the location identified in Exhibit A, subject to Section 10.1(b).

(c)    Lessee will not attach or incorporate any item of Equipment to or in any other item of equipment or personal property or to or in any real property in a manner that could give rise to the assertion of any Lien on such item of Equipment by reason of such attachment or the assertion

7

of a claim that such item of Equipment has become a fixture and is subject to a Lien in favor of a third party that is prior to the Liens thereon created by the Operative Agreements or is not a Permitted Lien.

(d)    Simultaneously with the execution and delivery of this Lease, the Equipment, Improvements and Land and the remainder of the Property shall be deemed to have been accepted by Lessee for all purposes of this Lease and to be subject to this Lease.

(e)    At all times during the Term, Lessee will comply with all obligations under and (to the extent no Lease Event of Default exists and provided that such exercise will not impair the value, utility or remaining useful life of the Property) shall be permitted to exercise all rights and remedies under, all operation and easement agreements and related or similar agreements applicable to the Property.

**8.3**    **Integrated Property.**

On the Rent Commencement Date, Lessee shall, at its sole cost and expense, cause the Property to constitute (and for the duration of the Term shall continue to constitute) all of the equipment, facilities, rights, other personal property and other real property necessary or appropriate to operate, utilize, maintain and control a Permitted Facility in a commercially reasonable manner. The provisions of this Section 8.3 shall not limit the rights of Lessee to assign and/or sublet the Property pursuant to Article XXIV.

**ARTICLE IX.**

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| **9.1** | **Compliance With Legal Requirements, Insurance Requirements and Manufacturer’s Specifications and Standards.** |

Subject to the terms of Article XIII relating to permitted contests, Lessee, at its sole cost and expense, shall (a) cause the Property at all times to comply with (i) all applicable Legal Requirements (including all Environmental Laws) and (ii) all Insurance Requirements, (b) procure, maintain and comply with all licenses, permits, orders, approvals, consents and other authorizations required for the acquisition, installation, testing, use, development, construction, operation, maintenance, repair, refurbishment and restoration of the Property, and (c) comply with all manufacturer’s specifications and standards, whether or not compliance therewith shall require structural or extraordinary changes in the Property or interfere with the use and enjoyment of the Property unless the failure to procure, maintain and comply with such items identified in subparagraphs (a) (i), (b) and (c), individually or in the aggregate, shall not and could not reasonably be expected to have a Material Adverse Effect. Lessor agrees to take such actions at the sole cost and expense of Lessee as may be reasonably requested by Lessee in connection with the compliance by Lessee of its obligations under this Section 9.1.

**ARTICLE X.**

**10.1**    **Maintenance and Repair; Return.**

(a)    Lessee, at its sole cost and expense, shall maintain the Property in good condition, repair and working order and in the same condition as at the Rent Commencement Date, and make all necessary repairs thereto and replacements thereof, of every kind and nature whatsoever, whether interior or exterior, ordinary or extraordinary, structural or nonstructural or foreseen or unforeseen, in each case as required by Section 9.1 and on a basis consistent with the operation and maintenance of other properties or equipment owned or leased by Lessee or any of the Guarantors comparable

8

in type and function to the Property, such that the Property is capable of being utilized within a reasonable time by a third party and in compliance with standard industry practice subject, however, to the provisions of Article XV with respect to Casualty and Condemnation and ordinary wear and tear.

(b)    Lessee shall not use, move or relocate any component of the Property beyond the boundaries of the Land (comprising part of the Property) described in Exhibit A, except for the temporary removal of Equipment and other personal property for repair or replacement.

(c)    If any component of the Property becomes worn out, lost, destroyed, damaged beyond repair or otherwise permanently rendered unfit for use, Lessee, at its own expense, will within a reasonable time replace such component with a replacement component which is free and clear of all Liens (other than Permitted Liens) and has a value, utility and useful life at least equal to the component replaced (assuming the component replaced had been maintained and repaired in accordance with the requirements of this Lease). All components which are added to the Property shall immediately become the property of (and title thereto shall vest in) Lessor and shall be deemed incorporated in the Property and subject to the terms of this Lease as if originally leased hereunder.

(d)    Upon reasonable advance notice, Lessor, any other Lessor Party and their respective agents shall have the right to inspect the Property and maintenance records (to the extent available) with respect thereto at any reasonable time during normal business hours but shall not, in the absence of the occurrence and continuance of a Lease Event of Default, materially disrupt the business of Lessee. If a Lease Event of Default has occurred and is continuing, any such inspection shall be at the sole cost and expense of Lessee.

(e)    Lessee shall cause to be delivered to Lessor (at Lessee’s sole expense) one (1) or more additional Appraisals (or reappraisals of the Property) as Lessor may request if any Financing Party is required pursuant to any applicable Legal Requirement to obtain such Appraisals (or reappraisals) during the continuance of any Lease Event of Default not cured in accordance with the terms of the Operative Agreements.

(f)    Lessor shall under no circumstances be required to build any improvements or install any equipment on the Property, make any repairs, replacements, alterations or renewals of any nature or description to the Property, make any expenditure whatsoever in connection with this Lease or maintain the Property in any way. Lessor shall not be required to maintain, repair or rebuild all or any part of the Property, and Lessee waives the right to (i) require Lessor to maintain, repair, or rebuild all or any part of the Property, or (ii) make repairs at the expense of Lessor pursuant to any Legal Requirement, Insurance Requirement, contract, agreement, covenant, condition or restriction at any time in effect.

(g)    Lessee shall, upon the expiration or earlier termination of this Lease, if Lessee shall not have exercised (or been deemed to have exercised) its Purchase Option and purchased the Property, surrender the Property (i) to Lessor pursuant to the exercise of the applicable remedies upon the occurrence and continuance of a Lease Event of Default or (ii) to Lessor pursuant to the second paragraph of Section 21.1(a) hereof or to the third party purchaser, as the case may be, free and clear of Liens (other than as described in Section 5.6 of the Participation Agreement) and otherwise subject to Lessee’s obligations under this Lease (including the obligations of Lessee at the time of such surrender in the condition required by and otherwise in accordance with Sections 9.1, 10.1(a) through (f), 10.2, 11.1, 12.1, 21.1 and 22.1).

9

**10.2**    **Environmental Inspection.**

If Lessee has not given notice of exercise of its Purchase Option as required pursuant to Section 20.1, Lessee elects the Sale Option pursuant to Section 20.1 or for whatever reason Lessee does not purchase the Property in accordance with the terms of this Lease, then not more than one hundred fifty (150) days nor less than ninety (90) days prior to the Expiration Date, Lessee at its expense shall cause to be delivered to Lessor a Phase I environmental site assessment (conducted in accordance with the then applicable ASTM Phase I standard) and (if determined necessary by Lessor in the exercise of its reasonable judgment based on the results of such Phase I environmental site assessment) a Phase II environmental site assessment, in each case recently prepared (no more than thirty (30) days prior to the date of delivery) by an independent recognized professional reasonably acceptable to Lessor, and in form, scope and content reasonably satisfactory to Lessor.

**ARTICLE XI.**

**11.1**    **Modifications.**

Lessee, at its sole cost and expense, at any time and from time to time after the Rent Commencement Date without the consent of Lessor may make modifications, alterations, renovations, improvements and additions to the Property or any part thereof and substitutions and replacements therefor (collectively, “Modifications”), and Lessee, at its sole cost and expense, shall make any and all Modifications required to be made pursuant to all Legal Requirements, Insurance Requirements and manufacturer’s specifications and standards unless the failure to comply with Legal Requirements or manufacturer’s specifications and standards, individually, or in the aggregate, shall not and could not reasonably be expected to have a Material Adverse Effect; provided, that: (i) no completed Modification shall materially impair the value, utility or useful life of the Property from that which existed immediately prior to such Modification (assuming the Property was in the condition required by this Lease); (ii) each Modification shall be done expeditiously and in a good and workmanlike manner; (iii) no Modification shall adversely affect the structural integrity of the Improvements on the Property; (iv) Lessee shall maintain builders’ risk insurance (to the reasonable satisfaction of the Agent) at all times when a Modification is in progress; (v) subject to the terms of Article XIII relating to permitted contests, Lessee shall pay all costs and expenses and discharge any Liens arising with respect to any Modification; (vi) each Modification shall comply with the requirements of this Lease (including Sections 8.2 and 10.1); and (vii) no Improvement shall be demolished or otherwise rendered unfit for use unless Lessee shall finance or cause to be financed the proposed replacement Modification outside of this lease facility and on an unsecured basis; provided, further, Lessee shall not make any Modification (unless required by any Legal Requirement) to the extent any such Modification, individually or in the aggregate, shall or could reasonably be expected to have a Material Adverse Effect. Subject to the last paragraph of this Section 11.1, all Modifications shall immediately and without further action upon their incorporation into the Property (1) become property of Lessor, (2) be subject to this Lease and (3) be titled in the name of Lessor. Lessee shall not remove or attempt to remove any Modification from the Property, except in accordance with the next following paragraph.

At its sole cost, Lessee may remove Modifications from the Property, to the extent (subject to the confirmation of Lessor in its reasonable discretion) (v) the Modification is not required pursuant to any Legal Requirement, Insurance Requirement or manufacturer’s specification or standard, (w) the Modification is not financed by any of the Financing Parties and (x) the Modification may be removed from the Property without materially impairing the value, utility or useful life of the Property from that which existed immediately prior to such Modification. Any such Modification so removed prior to the Expiration Date or earlier termination of this Lease, shall become the property of Lessee after such removal; provided, any such Modification not removed prior to the Expiration Date or earlier termination of this Lease and any

10

Modification that does not otherwise meet the requirements of the foregoing subsections (v) through (x) shall, without the need for further action, (1) become property of Lessor, (2) be subject to this Lease and (3) be titled in the name of Lessor. In any event, Lessee shall repair, at its expense, all damage to the Property caused by any removal or attempted removal of any Modification.

**ARTICLE XII.**

**12.1**    **Warranty of Title.**

(a)    Lessee hereby acknowledges and shall cause title in the Property (including all Equipment, all Improvements, all replacement components to the Property and, subject to Section 11.1, all Modifications) immediately and without further action to vest in and become the property of Lessor and to be subject to the terms of this Lease from and after the Property Closing Date therefor or such date of incorporation into the Property. Lessee agrees that, subject to the terms of Article XIII relating to permitted contests, Lessee shall not directly or indirectly create or allow to remain, and shall promptly discharge at its sole cost and expense, any Lien, defect, title retention agreement or claim upon the Property, any component thereof or any Modifications or any Lien or claim with respect to the Rent or with respect to any amounts held by any Financing Party pursuant to any Operative Agreement, other than Permitted Liens. Lessee shall promptly notify Lessor in the event it receives actual knowledge that a Lien other than a Permitted Lien has occurred with respect to the Property, any component thereof or any Modifications or any Lien or claim with respect to the Rent or with respect to any amounts held by any Financing Party pursuant to any Operative Agreement, and Lessee represents and warrants to, and covenants with, Lessor that the Liens in favor of Lessor and/or the Agent created by the Operative Agreements are (and until the Financing Parties under the Operative Agreements have been paid in full shall remain) first priority perfected Liens subject only to Permitted Liens.

(b)    Nothing contained in this Lease shall be construed as constituting the consent or request of Lessor, expressed or implied, to or for the performance by any contractor, mechanic, laborer, materialman, supplier or vendor of any labor or services or for the furnishing of any materials for any construction, alteration, addition, repair or demolition of or to the Property or any part thereof. NOTICE IS HEREBY GIVEN THAT LESSOR IS NOT AND SHALL NOT BE LIABLE FOR ANY LABOR, SERVICES OR MATERIALS FURNISHED OR TO BE FURNISHED TO LESSEE, OR TO ANYONE HOLDING THE PROPERTY OR ANY PART THEREOF THROUGH OR UNDER LESSEE, AND THAT NO MECHANIC’S OR OTHER LIENS FOR ANY SUCH LABOR, SERVICES OR MATERIALS SHALL ATTACH TO OR AFFECT THE INTEREST OF LESSOR IN AND TO THE PROPERTY.

**ARTICLE XIII.**

**13.1**    **Permitted Contests Other Than in Respect of Indemnities.**

Except to the extent otherwise provided for in Section 11 of the Participation Agreement, Lessee, on its own or on Lessor’s behalf but at Lessee’s sole cost and expense, may contest, by appropriate administrative or judicial proceedings conducted in good faith and with due diligence, the amount, validity or application, in whole or in part, of any Legal Requirement, Imposition imposed on or against Lessee or the Property or utility charge payable pursuant to Section 4.1 or any Lien, and Lessor agrees not to pay, settle or otherwise compromise any such item, provided that (a) the commencement and continuation of such proceedings shall suspend the collection of any such contested amount from, and suspend the enforcement thereof against, the Property and the Financing Parties; (b) there shall not be imposed a Lien (other than

11

Permitted Liens) on the Property and no part of the Property nor the Rent would be in any danger of being sold, forfeited, lost or deferred; (c) at no time during the permitted contest shall there be a risk of the imposition of criminal liability or material civil liability on any Financing Party for failure to comply therewith; and (d) in the event that, at any time, there shall be a material risk of extending the application of such item beyond the end of the Term, then Lessee shall deliver to Lessor an Officer’s Certificate certifying as to the matters set forth in clauses (a), (b) and (c) of this Section 13.1 and confirm Lessee’s obligation to satisfy the same. Lessor, at Lessee’s sole cost and expense, shall execute and deliver to Lessee such authorizations and other documents as may reasonably be required in connection with any such contest. Lessor will not be required to join in any proceedings pursuant to this Section 13.1 unless a provision of any Applicable Law requires that such proceedings be brought by or in the name of Lessor or it is customary in the applicable jurisdiction for the title holder to join in such proceedings; in which case (A) if the contest relates to an Imposition, the provisions of Section 11.2 of the Participation Agreement will control, or (B) otherwise, Lessor will join in the proceedings or permit them or any part thereof to be brought in its name if and so long as (1) no Event of Default shall have occurred and be continuing and (2) Lessee pays all related expenses and indemnifies the Financing Parties with respect to such proceedings.

**13.2**    **Impositions, Utility Charges, Other Matters; Compliance with Legal Requirements.**

Except with respect to Impositions on the Property, Legal Requirements, utility charges and such other matters referenced in Section 13.1 which are the subject of ongoing proceedings contesting the same in a manner consistent with the requirements of Section 13.1, Lessee shall cause (a) all Impositions, utility charges and such other matters to be timely paid, settled or compromised, as appropriate, with respect to the Property and (b) the Property to comply with all applicable Legal Requirements, unless the failure to comply with Legal Requirements, individually or in the aggregate, shall not and could not reasonably be expected to have a Material Adverse Effect.

**ARTICLE XIV.**

**14.1**    **Commercial General Liability and Workers’ Compensation Insurance**.

During the Term, Lessee shall procure and carry, at Lessee’s sole cost and expense (or cause to be procured and carried, at the sole cost and expense of parties other than the Financing Parties), commercial general liability and umbrella liability insurance for claims for injuries or death sustained by persons or damage to property while on the Property during the Construction Period, from and after the Completion Date or respecting the Equipment used or located at the Property. Such insurance at all times shall have a minimum combined single limit per occurrence coverage (i) for commercial general liability (including bodily injury and property damage liability and products and completed operations coverage), of no less than $1,000,000 per occurrence with an aggregate of $2,000,000, (ii) commercial automobile liability with a combined single limit of no less than $1,000,000, (iii) workers compensation insurance in accordance with statutory requirements, including coverage for employers liability with a limit of no less than $1,000,000 per occurrence, $1,000,000 per employee and $1,000,000 per accident/disease, and (iv) umbrella liability of no less than $50,000,000; provided, however, that during the period prior to the Completion Date respecting the Property, such umbrella liability amount shall not be less than $75,000,000. The policies shall name Parent as the insured (but shall also cover Lessee as an insured thereunder) and shall be endorsed to name the Financing Parties and their officers, agents, employees and their Affiliates and the Affiliates’ officers, agents and employees, as additional insureds with respect to the Property. The policies shall also specifically provide that such policies shall be considered primary insurance which shall apply to any loss or claim before any contribution by any insurance which any Financing Party or Affiliate of any Financing Party may have in force. In the operation of the Property, Lessee shall comply with applicable workers’ compensation laws and protect the Financing Parties against any liability under such laws.

12

**14.2**    **Permanent Hazard and Other Insurance**.

(a)    (i)    During the Construction Period, Lessee shall maintain or shall require Contractor to maintain comprehensive builders’ all risk insurance covering all risks on a non-reporting form in amounts no less than the replacement cost of the Property (as increased from time to time for change orders or use of contingency amounts under the Construction Budget) from time to time and insurance for earth movement, in an amount no less than four (4) times the “probable maximum loss” of the Property as set forth in the Seismic Report (subject to a minimum of $50,000,000. Regardless of whether Lessee or Contractor procures the Builder’s Risk coverage, such insurance coverage shall be required to name (A) the Agent (on behalf of the Secured Parties) as loss payee, to the extent of its interests, with respect to the Property and (B) the Financing Parties and their officers, agents, employees and their Affiliates and the Affiliates’ officers, agents and employees, as additional insureds with respect to the Property.

(ii)    After the Construction Period, Lessee shall keep the Property insured against all risks of physical loss or damage by fire, earthquake, flood and other risks in amounts no less than replacement cost, with no co-insurance (obtained by any Financing Party or any Affiliate thereof) applied, of the Property from time to time. The policies shall name Parent as the insured (but shall also cover Lessee as an insured thereunder) and shall be endorsed to name the Agent (on behalf of the Secured Parties) as additional insured and loss payee, to the extent of its interests; provided, so long as no Lease Default or Lease Event of Default exists, any loss payable after the Rent Commencement Date respecting the Property under the insurance policies required by this Section 14.2(a)(ii) for losses up to $1,000,000 will be paid to Lessee.

(b)    If during the Term the area in which the Property is located is designated a “flood-prone” area pursuant to the Flood Disaster Protection Act of 1973, or any amendments or supplements thereto or is in a zone designated A or V, then Lessee shall comply with the National Flood Insurance Program as set forth in the Flood Disaster Protection Act of 1973. In addition, Lessee will fully comply with the requirements of the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as each may be amended from time to time, and with any other Legal Requirement, concerning flood insurance to the extent that it applies to the Property.

**14.3**    **Coverage**.

(a)    As of the date of this Lease and annually thereafter during the Term, Lessee shall furnish the Agent (on behalf of the Financing Parties) with certificates of insurance prepared by the insurers or insurance broker of Lessee showing the insurance required under Sections 14.1 and 14.2 to be in effect, naming (to the extent of their respective interests) each Financing Party and their officers, agents, employees and their Affiliates and their Affiliates’ officers, agents and employees, as additional insureds on liability policies required above except as respects workers’ compensation insurance and naming the Agent (on behalf of the Financing Parties) as additional insured and loss payee on property and builder’s risk policies and provide a waiver of subrogation in their favor, to the extent of their respective interests, and evidencing the other requirements of this Article XIV. All such insurance shall be at the sole cost and expense of Lessee and provided by (i) nationally recognized, financially sound insurance companies having an A.M. Best’s Key Rating Guide rating of A- or better and a financial size category of VII or higher, unless otherwise approved by the Agent (such approval from the Agent being subject to receipt of instructions from the Majority Secured Parties agreeing to an insurance company with an A.M. Best’s Key Rating Guide rating of less than

13

A- and/or an insurance company of a financial size category of less than VII), or (ii) other companies acceptable to the Agent, in all cases with regard to subsection (i) or (ii) above with limits and coverage provisions sufficient to satisfy the requirements set forth in this Lease. Lessee shall provide no less than thirty (30) days’ advance written notice to the Agent (on behalf of Lessor and the other beneficiaries of such insurance coverage) in the event of cancellation or material alteration of such insurance. Upon the reasonable request of the Agent (on behalf of the Financing Parties), Lessee shall deliver to the Agent (on behalf of the Financing Parties) copies of all insurance policies required by Sections 14.1 and 14.2.

(b)    Lessee agrees that the insurance policy or policies required by Sections 14.1 and 14.2 shall include an appropriate clause pursuant to which any such policy shall provide that it will not be invalidated should Lessee or any contractor, as the case may be, waive, at any time, any or all rights of recovery against any party for losses covered by such policy or due to any breach of warranty, fraud, action, inaction or misrepresentation by Lessee or any Person acting on behalf of Lessee. Lessee hereby waives any and all such rights against the Financing Parties to the extent of payments made to any such Person under any such policy.

(c)    Lessor may carry separate insurance at Lessor’s sole cost so long as Lessee’s insurance is designated as primary and in no event excess or contributory to any insurance Lessor may have in force which would apply to a loss covered under Lessee’s policy.

(d)    Lessee shall pay as they become due all premiums for the insurance required by Section 14.1 and Section 14.2 and shall renew or replace, or cause to be renewed or replaced, each policy prior to the expiration date thereof or otherwise maintain, or cause to be maintained, the coverage required by such Sections without any lapse in coverage. Upon renewal or replacement of any policies required, Lessee must provide, or cause to be provided, Lessor with updated certificates of insurance no later than ten (10) days prior to policy renewal.

(e)    Lessee hereby agrees to pay, or cause to be paid, all deductibles and co-payment amounts in connection with any loss or claim covered by any insurance policy required to be maintained by Lessee (directly or indirectly) pursuant to this Article XIV. All deductibles shall be the sole responsibility of Lessee; provided, however, during the Construction Period, deductibles may be reimbursed through Advances.

(f)    Any exclusion to any insurance policy maintained in accordance with this Article XIV that causes Lessee to fail to comply with the insurance requirements of this Article XIV shall only be applicable if accepted, in writing, by each additional insured and loss payee.

(g)    Losses, if any, with respect to the Property under any property damage policies required to be carried under Section 14.2(a) shall be adjusted with the insurance companies, including the filing of appropriate proceedings, by Lessee (after consultation with Lessor), unless a Lease Event of Default shall have occurred and be continuing, in which case such losses shall be adjusted by Lessor.

(h)    In no event shall the insurance required of Lessee or maintained by Lessee limit its liability or indemnity obligations.

**14.4**    **Deductibles and Co-Payment Amounts**.

14

Lessee shall have the option to utilize deductibles and co-payment amounts, in each case only to the extent such are reasonably acceptable to the Majority Secured Parties, with respect to the insurance required pursuant to the Operative Agreements; provided, however, that during the period prior to the Completion Date, (a) the deductible for the builder’s risk insurance policy shall not exceed $25,000 and (b) the deductible for the earth movement insurance shall not exceed two percent (2%) of the total project value at risk at the time of loss (subject to a minimum deductible of $250,000).

**ARTICLE XV.**

**15.1**    **Casualty and Condemnation.**

(a)    Subject to the provisions of this Article XV and Article XVI (in the event Lessee delivers, or is obligated to deliver or is deemed to have delivered, a Termination Notice), to the extent the Property is no longer a Construction Period Property and prior to the occurrence and continuation of a Lease Default or a Lease Event of Default, Lessee shall be entitled to receive (and Lessor hereby irrevocably assigns to Lessee all of Lessor’s right, title and interest in) any condemnation proceeds, award, compensation or insurance proceeds under Sections 14.2(a) or 14.2(b) hereof to which Lessee or Lessor may become entitled by reason of their respective interests in the Property (i) if all or a portion of the Property is damaged or destroyed in whole or in part by a Casualty or (ii) if the use, access, occupancy, easement rights or title to the Property or any part thereof is the subject of a Condemnation; provided, however, (x) if a Lease Default or a Lease Event of Default shall have occurred and be continuing or if such condemnation proceeds, award, compensation or insurance proceeds shall exceed $1,000,000, then such condemnation proceeds, award, compensation or insurance proceeds shall be promptly paid (and in any event within three (3) Business Days of Lessee’s receipt thereof) directly to Lessor or, if received by Lessee, shall be held in trust for Lessor and be promptly paid over by Lessee to Lessor, and (y) if the conditions of the foregoing subsection (x) do not apply, then any such award, compensation and/or insurance proceeds shall be paid to Lessee. All amounts held by Lessor hereunder on account of any condemnation proceeds, award, compensation or insurance proceeds either paid directly to Lessor or turned over to Lessor shall be, in the case of a Lease Default or a Lease Event of Default, held as security for the performance of Lessee’s obligations hereunder and under the other Operative Agreements until such time as such Lease Default or Lease Event of Default shall have been cured in accordance with the Operative Agreements or applied to the applicable obligations upon the exercise of remedies in connection with the occurrence of any such Lease Event of Default and when all such obligations of Lessee with respect to such matters (and all other obligations of Lessee which should have been satisfied pursuant to the Operative Agreements as of such date) have been satisfied, all amounts so held by Lessor shall be paid over to Lessee.

(b)    Lessee may appear in any proceeding or action to negotiate, prosecute, adjust or appeal any claim for any condemnation proceeds, award, compensation or insurance proceeds on account of any such Casualty or Condemnation and shall pay all expenses thereof. At Lessee’s reasonable request, and at Lessee’s sole cost and expense, Lessor and the Agent shall participate in any such proceeding, action, negotiation, prosecution, adjustment or appeal. Lessor and Lessee agree that this Lease shall control the rights of Lessor and Lessee in and to any such condemnation proceeds, award, compensation or insurance proceeds.

(c)    If a Casualty or a Condemnation of the Property or any interest therein occurs and no Lease Default or Lease Event of Default shall have occurred and be continuing, Lessee may at its option, and at its sole cost and expense, reconstruct or restore the Property in conformity with the requirements of Sections 10.1 and 11.1, so as to restore the Property to the same or a greater

15

remaining economic value, useful life, utility, condition, operation and function as existed immediately prior to such Casualty or Condemnation (assuming all maintenance and repair standards have been satisfied); provided, that the reconstruction or restoration of the Property shall be complete at least one hundred eighty (180) days prior to the Expiration Date. In the event of any Casualty or Condemnation, Lessee shall, not later than forty-five (45) days after Lessee has actual knowledge of such Casualty or Condemnation, either deliver to Lessor a Termination Notice pursuant to Section 16.1, if applicable, or, at Lessee’s sole cost and expense, diligently undertake and diligently reconstruct or restore the Property. Upon Lessee’s election to reconstruct or restore the Property, a Responsible Officer of Lessee shall deliver to the Agent a certificate that such reconstruction or restoration is reasonably expected to be complete at least one hundred eighty (180) days prior to the Expiration Date. Upon completion of such reconstruction or restoration of the Property, a Responsible Officer of Lessee shall deliver a certificate confirming that such reconstruction or restoration of the Property has been completed so as to have restored the Property to the same or a greater remaining economic value, useful life, utility, condition, operation and function as existed immediately prior to such Casualty or Condemnation (assuming all maintenance and repair standards have been satisfied). In such event, title to the Property shall remain with Lessor. To the extent no Lease Default or Lease Event of Default shall have occurred and be continuing at such time, Lessor shall then remit to Lessee all related condemnation proceeds, awards, compensation or insurance proceeds previously paid to Lessor as referenced in Section 15.1(a). In the event such a Casualty or Condemnation occurs and Lessee elects not to reconstruct or restore the Property, or if such reconstruction or restoration is not complete at least one hundred eighty (180) days prior to the Expiration Date, then Lessee shall be deemed to have delivered a Termination Notice to Lessor and the provisions of Sections 16.1 and 16.2 shall apply.

(d)    In the event of a Casualty or a Condemnation, this Lease shall terminate in accordance with Section 16.1 if Lessee, within thirty (30) days after such occurrence, delivers to Lessor a notice to such effect.

(e)    In no event shall a Casualty or Condemnation affect Lessee’s obligations to pay Rent pursuant to Article III, except to the extent Lessee has paid the Termination Value.

(f)    Notwithstanding anything to the contrary set forth in Section 15.1(a) or Section 15.1(c), if, during the Term, a Casualty or Condemnation occurs with respect to the Property or Lessee receives notice of a Condemnation with respect to the Property, and following such Casualty or Condemnation, the Property cannot reasonably be restored, repaired or replaced on or before the day one hundred eighty (180) days prior to the Expiration Date to the same or a greater remaining economic value, useful life, utility, condition, operation and function as existed immediately prior to such Casualty or Condemnation (assuming all maintenance and repair standards have been satisfied) or on or before such day the Property is not in fact so restored, repaired or replaced, then Lessee shall be deemed to have exercised its Purchase Option, such purchase to be effective on the next Payment Date (notwithstanding the limits on such exercise contained in Section 20.2) and pay Lessor the Termination Value; provided, if any Lease Default or Lease Event of Default has occurred and is continuing, Lessee shall also promptly (and in any event within three (3) Business Days) pay Lessor any condemnation proceeds, award, compensation or insurance proceeds received on account of any Casualty or Condemnation with respect to the Property; provided, further, that if no Lease Default or Lease Event of Default has occurred and is continuing, any Excess Proceeds shall be paid to Lessee. If a Lease Default or a Lease Event of Default has occurred and is continuing and any Lessor Advances or other amounts are owing with respect thereto, then any Excess Proceeds (to the extent of any such Lessor Advances or other amounts owing with respect thereto) shall be paid to Lessor, held as security for the performance of Lessee’s obligations hereunder and under the other

16

Operative Agreements and applied to such obligations upon the exercise of remedies in connection with the occurrence of a Lease Event of Default, with the remainder of such Excess Proceeds in excess of such Loans or Lessor Advances and other amounts owing with respect thereto being distributed to Lessee.

(g)    The foregoing provisions of Section 15.1(a) – 15.1(f) shall not apply if the Property is a Construction Period Property, it being acknowledged and agreed that the provisions of the Agency Agreement shall apply instead.

(h)    Lessee shall promptly give Lessor written notice of any Condemnation, regardless of the monetary value involved, or any material Casualty, together with such other information in connection therewith as may be reasonably requested by Lessor.

**15.2**    **Environmental Matters.**

Promptly upon Lessee’s actual knowledge of any Environmental Condition at the Property for which, in the reasonable opinion of Lessee, the cost to undertake any legally required response, clean up, remedial or other action will or might result in a cost to Lessee of more than **$**50,000, Lessee shall notify Lessor in writing of such condition. In the event of any Environmental Condition (regardless of whether notice thereof must be given), Lessee shall, not later than forty-five (45) days after Lessee has actual knowledge of such Environmental Condition, either deliver to Lessor a Termination Notice pursuant to Section 16.1, if applicable, or, at Lessee’s sole cost and expense, promptly and thereafter diligently undertake and diligently complete any investigation, response, clean up, remedial or other action (including the pursuit by Lessee of appropriate action against any off-site or third party source for contamination) necessary to investigate, remove, cleanup or remediate the Environmental Condition in accordance with all Environmental Laws. Any such undertaking shall be timely completed in accordance with prudent industry standards and applicable Environmental Laws and in any event prior to the Expiration Date. If Lessee does not deliver a Termination Notice pursuant to Section 16.1, Lessee shall, upon completion of remedial action by Lessee, cause to be prepared by a reputable environmental consultant acceptable to Lessor a report describing the Environmental Condition and the actions taken by Lessee (or its agents) in response to such Environmental Condition, and a statement by either the consultant or the Governmental Authority with jurisdiction over such matter that the Environmental Condition has been remedied in full compliance with applicable Environmental Law or that no further action with respect to such Environmental Condition is required. Not more than one hundred fifty (150) days and no less than ninety (90) days prior to any time that Lessee elects to cease operations with respect to the Property, Lessee at its expense shall cause to be delivered to Lessor a Phase I environmental site assessment respecting the Property recently prepared and (if determined necessary by Lessor in the exercise of its reasonable judgment based on the results of such Phase I environmental site assessment) a Phase II environmental site assessment, in each case recently prepared (no more than thirty (30) days prior to the date of delivery) by an independent recognized professional reasonably acceptable to Lessor, and in form, scope and content reasonably satisfactory to Lessor. If such environmental site assessment reveals any Environmental Condition at the Property, Lessee shall, within thirty (30) days of Lessor having received such assessment, provide Lessor with a plan designed to remedy the Environmental Condition on or prior to the Expiration Date. Notwithstanding any other provision of any Operative Agreement, if Lessee fails to comply with the foregoing obligation regarding the environmental site assessment and remedy plan or fails to complete such remediation prior to the Expiration Date, Lessee shall be obligated to purchase the Property for its Termination Value and shall not be permitted to exercise (and Lessor shall have no obligation to honor any such exercise) any rights under any Operative Agreement regarding a sale of the Property to a Person other than Lessee or any Affiliate of Lessee.

**15.3**    **Notice of Environmental Matters.**

17

Promptly, but in any event within thirty (30) Business Days from the date Lessee has actual knowledge thereof, Lessee shall provide to Lessor written notice of any pending or threatened material claim, action or proceeding involving any Environmental Law or any Release on or in connection with the Property. All such notices shall describe in reasonable detail the nature of the claim, action or proceeding and Lessee’s proposed response thereto. In addition, Lessee shall provide to Lessor, within five (5) Business Days of receipt, copies of all material written communications with any Governmental Authority relating to any pending or threatened material claim, action or proceeding referenced in the first sentence of this Section 15.3. Lessee shall also promptly provide such detailed reports of any such material environmental claims as may reasonably be requested by Lessor.

**ARTICLE XVI.**

**16.1**    **Termination Upon Certain Events.**

If, after the Rent Commencement Date, Lessee has delivered, or is deemed to have delivered, written notice of a termination of this Lease with respect to the Property to Lessor in the form described in Section 16.2(a) (a “Termination Notice”) pursuant to the provisions of this Lease, then following the applicable Casualty, Condemnation or Environmental Condition, Lessee shall pay Lessor the Termination Value on the Termination Date and upon Lessor’s receipt of the Termination Value, this Lease shall terminate.

**16.2**    **Procedures.**

(a)    A Termination Notice shall contain: (i) notice of termination of this Lease on a Payment Date not more than sixty (60) days after Lessor’s receipt of such Termination Notice (the “Termination Date”); and (ii) a binding and irrevocable agreement of Lessee to pay the Termination Value and purchase the Property on such Termination Date. To the extent no Lease Default or Lease Event of Default shall have occurred and be continuing, any Termination Notice delivered by Lessee to Lessor may be revoked within fifteen (15) days of delivery thereof. To the extent no Termination Notice is actually delivered by Lessee and (x) in the case of any Casualty or Condemnation regarding the Property, no reconstruction or restoration activity pursuant to Section 15.1 has commenced within eighty-five (85) days of the occurrence of such Casualty or Condemnation and (y) in the case of any Environmental Condition regarding the Property, no remediation activity pursuant to Section 15.2 has commenced within eighty-five (85) days of the occurrence of such Environmental Condition, then, in either such case, a Termination Notice shall be deemed delivered on the last occurring Payment Date not more than ninety (90) days following the applicable Casualty, Condemnation or Environmental Condition.

(b)    On each Termination Date, Lessee shall pay to Lessor the Termination Value, and Lessor shall convey the Property or the remaining portion thereof, if any, to Lessee (or Lessee’s designee), all in accordance with Section 20.2.

**ARTICLE XVII.**

**17.1**    **Lease Events of Default.**

If any one (1) or more of the following events (each a “Lease Event of Default”) shall occur:

(a)    (i) Except as otherwise provided in this Section 17.1(a), any payment of Basic Rent payable by Lessee shall not be paid when due, and, such payment shall be overdue for a period of three (3) Business Days, (ii) any payment payable by Lessee on the Expiration Date, including any

18

payment described in Article XX or XXI, shall not be paid when due, (iii) any payment of the Termination Value or any payment of Basic Rent or Supplemental Rent due on the date of any such payment of the Termination Value shall not be paid when due, or (iv) Lessee shall fail to make payment of any Supplemental Rent (other than Supplemental Rent payable pursuant to clause (ii) or (iii) of this Section 17.1(a)) due and payable within five (5) Business Days after receipt by Lessee of notice from Agent demanding payment thereof (as any of the amounts pursuant to this Section 17.1(a) are due and payable, whether at maturity, by acceleration or otherwise);

(b)    Any representation or warranty of any Credit Party contained in any Operative Agreement, or in any certificate, report furnished or delivered by any Credit Party on its own behalf or on Lessee’s behalf pursuant to the Operative Agreements to Agent or Lessor is incorrect, incomplete or misleading in any material respect when made or reaffirmed, as the case may be;

(c)    Any Credit Party shall default in the observance or performance of any covenant contained in Article XIV of this Lease (other than the requirement to deliver annual certificates), Sections 8.3A(c), 8.3A(f) or 8.3B of the Participation Agreement;

(d)    Any Credit Party shall default in the performance or observance of any term, covenant (excepting those covenants described in Section 17.1(c)), condition or agreement on its part to be performed or observed hereunder or under any other Operative Agreement (and not constituting a Lease Event of Default under any other clause of this Section 17.1), and such default is of a type that is subject to being cured and shall continue unremedied for a period of fifteen (15) Business Days after any Credit Party becomes aware of the occurrence thereof (such grace period to be applicable only in the event such default can be remedied by corrective action of the Credit Parties as determined by Lessor in its sole reasonable discretion);

(e)    (i) A breach, default or event of default shall occur at any time under the terms of the Revolving Credit Agreement or (ii) except as otherwise provided in the foregoing subsection (e)i), a breach, default or event of default shall occur at any time under the terms of any other agreement involving Indebtedness under which any Credit Party may be obligated as a borrower or guarantor in excess of Twenty-Five Million and 00/100 Dollars ($25,000,000.00) in the aggregate, and such breach, default or event of default consists of the failure to pay (beyond any period of grace permitted with respect thereto, whether waived or not) any Indebtedness when due (whether at stated maturity, by acceleration or otherwise) or if such breach or default permits or causes the acceleration of any Indebtedness (whether or not such right shall have been waived) or the termination of any commitment to lend;

(f)    Any final judgments or orders for the payment of money in excess of Twenty-Five Million and 00/100 Dollars ($25,000,000.00) in the aggregate shall be entered against any Credit Party by a court having jurisdiction in the premises, which judgment is not satisfied, discharged, vacated, bonded or stayed pending appeal within a period of sixty (60) days from the date of entry;

(g)    Any of the Operative Agreements shall cease to be legal, valid and binding agreements enforceable against the party executing the same or such party’s successors and assigns (as permitted under the Operative Agreements) in accordance with the respective terms thereof or shall in any way be terminated (except in accordance with its terms) or become or be declared ineffective or inoperative or shall in any way be challenged or contested by a Credit Party or cease to give or provide the remedies, powers or privileges intended to be created thereby;

19

(h)    Any of the Credit Parties’ assets are attached, seized, levied upon or subjected to a writ or distress warrant; or such come within the possession of any receiver, receiver and manager, trustee, custodian, assignee for the benefit of creditors or other similar official and the same is not cured within sixty (60) days thereafter;

(i)    (i) A notice of Lien or assessment which is not a Permitted Lien is filed of record with respect to all or any part of Lessee’s interest in any of the Collateral by the United States, or any department, agency or instrumentality thereof, or by any state, county, municipal or other governmental agency, including the PBGC, or any Taxes or debts owing at any time or times hereafter to any one of these becomes payable and the same is not paid within thirty (30) days after the same becomes; or (ii) except as otherwise provided in Section 17.1(i)(i), a notice of Lien or assessment in excess of Twenty-Five Million and 00/100 Dollars ($25,000,000.00) which is not a Revolving Credit Agreement Permitted Lien is filed of record with respect to all or any part of any of the Credit Parties’ assets by the United States, or any department, agency or instrumentality thereof, or by any state, county, municipal or other governmental agency, including the PBGC, or any Taxes or debts owing at any time or times hereafter to any one of these becomes payable and the same is not paid within thirty (30) days after the same becomes payable;

(j)    Any Credit Party ceases to be Solvent or admits in writing its inability to pay its debts as they mature; provided, that any Credit Party may dissolve in accordance with Section 8.3B(e) of the Participation Agreement;

(k)    Any of the following occurs: (i) any Reportable Event which constitutes grounds for the termination of any Plan by the PBGC or the appointment of a trustee to administer or liquidate any Plan, shall have occurred and be continuing; (ii) proceedings shall have been instituted or other action taken to terminate any Plan, or a termination notice shall have been filed with respect to any Plan; (iii) a trustee shall be appointed to administer or liquidate any Plan; (iv) the PBGC shall give notice of its intent to institute proceedings to terminate any Plan or Plans or to appoint a trustee to administer or liquidate any Plan; and, in the case of the occurrence of (i), (ii), (iii), or (iv) above, Lessor determines in good faith that the amount of the Credit Parties’ liability is likely to exceed ten percent (10%) of its consolidated tangible net worth; (v) the Revolving Credit Agreement US Borrowers or any other member of the ERISA Group shall fail to make any contributions when due to a Plan, Multiemployer Plan or Multiple Employer Plan; (vi) the Revolving Credit Agreement US Borrowers or any other member of the ERISA Group shall commit a contribution failure under Section 303(k)(1) of ERISA and is required to provide notice to the PBGC under Section 303(k)(4) of ERISA; (vii) the Revolving Credit Agreement US Borrowers or any other member of the ERISA Group shall withdraw completely or partially from a Multiemployer Plan or a Multiple Employer Plan; (viii) the Revolving Credit Agreement US Borrowers or any other member of the ERISA Group shall withdraw (or shall be deemed under Section 4062(e) of ERISA to withdraw) from a Multiple Employer Plan or cease operations at a facility under the circumstances described in Section 4062(e) of ERISA; or (ix) any Applicable Law is adopted, changed or interpreted by any Official Body with respect to or otherwise affecting one or more Plans, Multiemployer Plans, Multiple Employer Plans or Benefit Arrangements and, with respect to any of the events specified in (v), (vi), (vii), (viii) or (ix), the occurrence of which would be reasonably likely to result in a Material Adverse Effect;

(l)    Any Credit Party ceases to conduct its business as contemplated, except as expressly permitted under Section 8.3B(e) or 8.3B(f) of the Participation Agreement, or any Credit Party is enjoined, restrained or in any way prevented by court order from conducting all or any material part of its business and such injunction, restraint or other preventive order is not dismissed within thirty (30) days after the entry thereof;

20

(m)    (i) Any person or group of persons (within the meaning of Section 13(d) or 14(a) of the Exchange Act) shall have acquired beneficial ownership of (within the meaning of Rule 13d-3 promulgated by the SEC under said Act) thirty-three and one-third of one percent (33.33%) or more of the voting capital stock of the Parent, or (ii) within a period of twelve (12) consecutive calendar months, individuals who were directors of the Parent on the first day of such period, together with any directors whose election by such board of directors or whose nomination for election by the shareholders was approved by a vote of the majority of the directors then in office shall cease to constitute a majority of the board of directors of the Parent.

(n)    A proceeding shall have been instituted in a court having jurisdiction in the premises seeking a decree or order for relief in respect of any Credit Party in an involuntary case under any applicable bankruptcy, insolvency, reorganization or other similar Law now or hereafter in effect, or for the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator, conservator (or similar official) of any Credit Party for any substantial part of its property, or for the winding-up or liquidation of its affairs, and such proceeding shall remain undismissed or unstayed and in effect for a period of sixty (60) consecutive days or such court shall enter a decree or order granting any of the relief sought in such proceeding;

(o)    Any Credit Party shall commence a voluntary case under any applicable bankruptcy, insolvency, reorganization or other similar law now or hereafter in effect, shall consent to the entry of an order for relief in an involuntary case under any such law, or shall consent to the appointment or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator, conservator (or other similar official) of itself or for any substantial part of its property or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due, or shall take any action in furtherance of any of the foregoing;

(p)    Lessee shall fail to deliver a certificate when required pursuant to Section 14.3(a) within five (5) Business Days after receipt of notice from Lessor that such certificate is due under the terms hereof or to maintain insurance to the extent required by Article XIV;

(q)    Lessee shall elect the Sale Option and shall not have complied with each of its obligations pursuant to the Operative Agreements by the Expiration Date;

(r)    An Agency Agreement Event of Default shall have occurred and be continuing;

(s)    Any Operative Agreement shall cease to be in full force and effect;

(t)    The guaranty given by the Guarantors under the Participation Agreement shall cease to be in full force and effect, or any Guarantor or any Person acting by or on behalf of any Guarantor shall deny or disaffirm its obligations under such guaranty, or any Guarantor shall default in the due performance or observance of any term, covenant or agreement on its part to be performed or observed pursuant to such guaranty; or

(u)    Any Operative Agreement shall for any reason cease to create a valid and perfected first priority Lien (subject to Permitted Liens) on, or security interest in, any of the Collateral purported to be covered thereby, in each case other than in accordance with the express terms hereof or thereof.

then, in any such event, Lessor may, in addition to the rights and remedies provided in the Agency Agreement regarding any Agency Agreement Event of Default and the other rights and remedies provided for in this

21

Article XVII and in Section 18.1, terminate this Lease by giving Lessee five (5) days’ notice of such termination (provided, notwithstanding the foregoing, this Lease shall be deemed to be automatically terminated without the giving of notice upon the occurrence of a Lease Event of Default under Sections 17.1(n) or (o)), and this Lease shall terminate, and all rights of Lessee under this Lease shall cease. Lessee shall, to the fullest extent permitted by law, pay all costs and expenses incurred by or on behalf of Lessor or any other Financing Party, including fees and expenses of counsel (with such payments to be characterized as Supplemental Rent), as a result of any Lease Event of Default hereunder.

**17.2**    **Surrender of Possession.**

If a Lease Event of Default shall have occurred and be continuing, and whether or not this Lease shall have been terminated pursuant to Section 17.1, Lessee shall, upon ten (10) Business Days written notice, surrender to Lessor possession of the Property. Lessor may enter upon and repossess the Property by such means as are available at law or in equity, and may remove Lessee and all other Persons and any and all personal property and Lessee’s equipment and personalty and severable Modifications from the Property; provided, that Lessee shall have the right to remove and retain the Excluded Equipment to the extent such is removed from the Property within the above-referenced ten (10) Business Day period. In any event, Lessee shall promptly repair, at its expense, all damage to the Property caused by any removal or attempted removal of any Excluded Equipment. Lessor shall have no liability by reason of any such entry, repossession or removal performed in accordance with Applicable Law. Upon the written demand of Lessor, Lessee shall return the Property promptly to Lessor, in the manner and condition required by, and otherwise in accordance with the provisions of Section 10.1(g).

**17.3**    **Reletting.**

If a Lease Event of Default shall have occurred and be continuing, and whether or not this Lease shall have been terminated pursuant to Section 17.1, Lessor may, but shall be under no obligation to, relet the Property, for the account of Lessee or otherwise, for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the Term) and on such conditions (which may include concessions or free rent) and for such purposes as Lessor may determine, and Lessor may collect, receive and retain the rents resulting from such reletting. Lessor shall not be liable to Lessee for any failure to relet the Property or for any failure to collect any rent due upon such reletting.

**17.4**    **Damages.**

Neither (a) the termination of this Lease as to the Property pursuant to Section 17.1; (b) the repossession of the Property; nor (c) the failure of Lessor to relet the Property, the reletting of all or any portion thereof, nor the failure of Lessor to collect or receive any rentals due upon any such reletting, shall relieve Lessee of its liabilities and obligations hereunder, all of which shall survive any such termination, repossession or reletting. If any Lease Event of Default shall have occurred and be continuing and notwithstanding any termination of this Lease pursuant to Section 17.1, Lessee shall forthwith pay to Lessor all Rent and other sums due and payable hereunder to and including the date of such termination. Thereafter, on the days on which the Basic Rent or Supplemental Rent, as applicable, are payable under this Lease or would have been payable under this Lease if the same had not been terminated pursuant to Section 17.1 and until the end of the Term hereof or what would have been the Term in the absence of such termination, Lessee shall pay Lessor, as current liquidated damages (it being agreed that it would be impossible accurately to determine actual damages) an amount equal to the Basic Rent and Supplemental Rent that are payable under this Lease or would have been payable by Lessee hereunder if this Lease had not been terminated pursuant to Section 17.1, less the net proceeds, if any, which are actually received by Lessor with respect to the period in question of any reletting of the Property or any portion thereof; provided, that Lessee’s obligation to make

22

payments of Basic Rent and Supplemental Rent under this Section 17.4 shall continue only so long as Lessor shall not have received the amounts specified in Section 17.6. In calculating the amount of such net proceeds from reletting, there shall be deducted all of the Financing Parties’ expenses in connection therewith, including repossession costs, brokerage or sales commissions, fees and expenses for counsel and any necessary repair or alteration costs and expenses incurred in preparation for such reletting. To the extent Lessor receives any damages pursuant to this Section 17.4, such amounts shall be regarded as amounts paid on account of Rent. Lessee specifically acknowledges and agrees that its obligations under this Section 17.4 shall be absolute and unconditional under any and all circumstances and shall be paid and/or performed, as the case may be, without notice or demand and without any abatement, reduction, diminution, set-off, defense, counterclaim or recoupment whatsoever.

**17.5**    **Power of Sale.**

WITHOUT LIMITING ANY OTHER REMEDIES SET FORTH IN THIS LEASE, LESSOR AND LESSEE AGREE THAT LESSEE HAS GRANTED TO LESSOR, PURSUANT TO THE APPLICABLE PROVISIONS OF THIS LEASE (INCLUDING SECTION 7.1(B)), A LIEN AGAINST THE PROPERTY WITH A POWER OF SALE. A POWER OF SALE MAY ALLOW LESSOR TO TAKE THE PROPERTY AND SELL THE PROPERTY WITHOUT GOING TO COURT IN A FORECLOSURE ACTION UPON THE OCCURRENCE OF A LEASE EVENT OF DEFAULT. LESSOR AND LESSEE HEREBY FURTHER AGREE THAT UPON THE OCCURRENCE AND DURING THE CONTINUANCE OF ANY LEASE EVENT OF DEFAULT, LESSOR SHALL HAVE THE POWER AND AUTHORITY, TO THE EXTENT PROVIDED BY LAW, AFTER PRIOR NOTICE AND LAPSE OF SUCH TIME AS MAY BE REQUIRED BY LAW, TO FORECLOSE ITS INTEREST (OR CAUSE SUCH INTEREST TO BE FORECLOSED) IN ALL OR ANY PART OF THE PROPERTY.

**17.6**    **Final Liquidated Damages.**

(a)    If a Lease Event of Default other than a Limited Recourse Event of Default shall have occurred and be continuing, whether or not this Lease shall have been terminated pursuant to Section 17.1 and whether or not Lessor shall have collected any current liquidated damages pursuant to Section 17.4, Lessor shall have the right to recover, by demand to Lessee and at Lessor’s election in its sole discretion, and Lessee shall pay to Lessor, as and for final liquidated damages, the Termination Value exclusive of the indemnities payable under Section 11 of the Participation Agreement (which, if requested, shall be paid concurrently), and in lieu of all current liquidated damages beyond the date of such demand (it being agreed that it would be impossible accurately to determine actual damages). If Lessee does not pay the full amount of the Termination Value but exclusive of the indemnities payable under Section 11 of the Participation Agreement (which, if requested, shall be paid concurrently), Lessor shall also have its other remedies at Law, including selling all or any part of the Property at public sale or as otherwise permitted under Applicable Law free and clear of rights of Lessee. Upon payment of the amount specified pursuant to the first sentence of this Section 17.6(a), Lessee shall be entitled to receive from Lessor, either at Lessee’s request or upon Lessor’s election, in either case at Lessee’s cost, a special warranty deed or such other assignment document reasonably acceptable to Lessor as elected by Lessee conveying Lessor’s entire interest in the Property, in each case in recordable form and otherwise in conformity with local custom and free and clear of the Lien of this Lease, the Lien of the Security Documents and any Lessor Liens (but otherwise without representation or warranty of any kind). The Property shall be conveyed to Lessee “AS-IS, WHERE-IS” and in its then present physical condition. If any statute or rule of law shall limit the amount of such final liquidated damages to less than the amount agreed upon, Lessor shall be entitled to the maximum amount allowable under such statute or rule of law; provided, however, Lessee shall not be entitled to receive a warranty deed or any other assignment

23

of Lessor’s interest in the Property, the Improvements, Fixtures, Modifications, Equipment or the components thereof unless Lessee shall have paid in full the Termination Value. Lessee specifically acknowledges and agrees that its obligations under this Section 17.6(a) shall be absolute and unconditional under any and all circumstances and shall be paid and/or performed, as the case may be, without notice or demand and without any abatement, reduction, diminution, set-off, defense, counterclaim or recoupment whatsoever.

(b)    If no Lease Event of Default other than a Limited Recourse Event of Default shall have occurred and be continuing, whether or not this Lease shall have been terminated pursuant to Section 17.1 and whether or not Lessor shall have collected any current liquidated damages pursuant to Section 17.4, Lessor shall have the right to recover, by demand to Lessee and at Lessor’s election in its sole discretion, and Lessee shall pay to Lessor, as and for final liquidated damages, but exclusive of the indemnities payable under Section 11 of the Participation Agreement (which, if requested, shall be paid concurrently), and in lieu of all current liquidated damages beyond the date of such demand (it being agreed that it would be impossible accurately to determine actual damages) the Maximum Residual Guarantee Amount. Lessor shall also have its other remedies at law, including, without limitation, selling all or any part of the Property at public sale or as otherwise permitted under Applicable Law free and clear of rights of Lessee. Upon the occurrence of a Limited Recourse Event of Default, Lessor shall be under a continuing obligation to use its commercially reasonable efforts to sell the Property to one or more unrelated third parties; provided, however, that Lessor shall not be required to sell or attempt to sell any portion of the Property (i) in a manner, or under circumstances, that could materially impair Lessor’s ability to enforce any of its rights or remedies (other than collection of costs incurred as a result of Force Majeure Events occurring during the Construction Period) under this Lease (as determined by Lessor in good faith) or (ii) at a time when market conditions render it inadvisable to sell or attempt to sell the Property (as determined by Lessor in good faith). Lessor and/or Lessee may solicit offers for the purchase of Lessor’s rights, title, claims and interest in and to the Property. Lessor shall accept (or match) any purchase offer for a cash purchase price (net of all normal and customary sales and closing costs and the costs of holding, owning, operating, and maintaining the Property), equal to or greater than the Termination Value.

(c)    The proceeds derived from any such sale pursuant to Section 17.6(a) or (b), as applicable, (net of all normal and customary sales and closing costs and the costs of holding, owning, operating, and maintaining the Property, including amounts described in Section 8.7(c)(i) and (ii) of the Participation Agreement which shall be paid to the Agent to be allocated pursuant to Section 8.7(c)(i) and (ii) of the Participation Agreement) shall be distributed (x) if the relevant Lease Event of Default is not a Limited Recourse Event of Default and the sale of the Lessor’s interest in the Property occurs on or prior to the second annual anniversary of the date Lessor receives notice of, or otherwise has knowledge of, the Lease Event of Default, to the Agent to be allocated pursuant to Section 8.7(b)(iii)(x) of the Participation Agreement and (y) if the relevant Lease Event of Default is a Limited Recourse Event of Default and the sale of the Lessor’s interest in the Property occurs on or prior to the second annual anniversary of the date Lessor receives notice of, or otherwise has knowledge of, the Lease Event of Default, then prior to the allocation pursuant to Section 8.7(b)(iii)(x) of the Participation Agreement, first, to Lessor in the amount of the positive difference (if any) between the Termination Value (less any portion thereof that cannot be capitalized under GAAP, including any amount of Uninsured Force Majeure Loss) and the Maximum Residual Guarantee Amount; second, to Lessor, the unpaid portion, if any, of the Maximum Residual Guarantee Amount, third, to the Lessee, any remaining proceeds up to the amount of the Maximum Residual Guarantee Amount previously paid by Lessee, and fourth, to the Agent to be distributed by the Agent in accordance with Section 8.7(b)(iii)(x) of the Participation Agreement.

24

If, and to the extent that, there is no sale of Lessor’s interest in the Property on or prior to the second annual anniversary of the date Lessor receives notice of, or otherwise has knowledge of, the Lease Event of Default, then (x) Lessee shall have no right, title or interest whatsoever in the Property, (y) Lessor shall be the sole owner of its interest in the Property without any obligation to share with Construction Agent or Lessee any proceeds from the sale, conveyance, other transfer or otherwise regarding the Property and (z) if and to the extent Lessor realizes any proceeds with regard to the Property, such proceeds shall be distributed in accordance with Section 8.7(b)(iii)(x) of the Participation Agreement but substituting Lessor in place of Lessee pursuant to subsection “fifth” thereof as Lessee shall have no interest thereunder and no right to any such proceeds. All proceeds derived from any such sale or otherwise paid to Lessor after such second annual anniversary shall be distributed to the Agent for allocation in accordance with Section 8.7(b)(iii)(x) of the Participation Agreement. Lessee specifically acknowledges and agrees that its obligations under this Section 17.6 shall be absolute and unconditional under any and all circumstances and shall be paid and/or performed, as the case may be, without notice or demand and without any abatement, reduction, diminution, set-off, defense, counterclaim or recoupment whatsoever.

For purposes of this section, the amount realized by Lessor upon the sale of the Property shall be net of all normal and customary sales and closing costs and the costs of holding, owning, operating, and maintaining the Property (which shall include amounts described in Section 8.7(c)(i) and (ii) of the Participation Agreement) until such time as the Property is sold, which amounts shall be retained by Lessor. Lessor’s obligation to make payments to Lessee and Lessee’s obligation to make payments to Lessor, all as set forth above, shall survive any termination of this Lease.

**17.7**    **Environmental Costs.**

If a Lease Event of Default shall have occurred and be continuing, and whether or not this Lease shall have been terminated pursuant to Section 17.1, Lessee shall pay directly to any third party (or at Lessor’s election, reimburse Lessor) for the cost of any environmental investigation, response, corrective action or remediation required under any Environmental Law, and shall indemnify and hold harmless Lessor and each other Indemnified Person therefrom. Lessee shall pay all amounts referenced in the immediately preceding sentence within ten (10) days of any request by Lessor for such payment. The provisions of this Section 17.7 shall not limit the obligations of Lessee under any Operative Agreement regarding indemnification obligations, environmental testing, remediation and/or work.

**17.8**    **Waiver of Certain Rights.**

If this Lease shall be terminated pursuant to Section 17.1, Lessee waives, to the fullest extent permitted by Law, (a) any notice of re-entry or the institution of legal proceedings to obtain re-entry or possession; (b) any right of redemption, re-entry or possession; (c) the benefit of any laws now or hereafter in force exempting property from liability for rent or for debt; and (d) any other rights which might otherwise limit or modify any of Lessor’s rights or remedies under this Article XVII.

**17.9**    **Assignment of Rights Under Contracts.**

If a Lease Event of Default shall have occurred and be continuing, and whether or not this Lease shall have been terminated pursuant to Section 17.1, Lessee shall upon Lessor’s demand immediately assign, transfer and set over to Lessor all of Lessee’s right, title and interest in and to each agreement executed by Lessee in connection with the acquisition, installation, testing, use, development, construction, operation, maintenance, repair, refurbishment and restoration of the Property (including all right, title and interest of Lessee with respect to all warranty, performance, service and indemnity provisions and any sublease of the

25

Property), as and to the extent that the same relate to the acquisition, testing, use, operation, maintenance, repair, refurbishment and restoration of the Property.

**17.10**    **Lessee Purchase to Cure Lease Event of Default.**

Except in all cases with regard to a Lease Event of Default pursuant to Sections 17.1(n) or (o) and subject in all cases to Section 5.13 of the Participation Agreement, Lessee shall have the right to cure a Lease Event of Default hereunder arising solely with respect to the Property by purchasing the Property from, or causing the Property to be purchased by its designee from, Lessor for an amount equal to the Termination Value. After the occurrence of any Lease Event of Default (other than a Lease Event of Default pursuant to Sections 17.1(n) or (o), with respect to which such notice shall be deemed given), Lessor shall notify Lessee of Lessor’s intent to exercise its remedies with respect to such Lease Event of Default and thereafter refrain from exercising any remedy for a period of five (5) Business Days. During such period of five (5) Business Days and at any time thereafter (unless Lessor is legally obligated at such time to sell, lease or otherwise convey an interest in the Property to a Person other than Lessee) prior to the second annual anniversary of the date Lessor receives notice of, or otherwise has knowledge of, the Lease Event of Default, Lessee may exercise the above-stated purchase option by giving written notice thereof to the Agent. Any such purchase shall close on the date specified therefor in writing by the Agent to Lessee (which date shall be a Business Day after the Agent’s receipt of such notice from Lessee). Any such conveyance to Lessee or its designee shall be conducted in accordance with the mechanics described in Section 20.2 as if the date specified for such conveyance by the Agent under this Section 17.10 were the Election Date specified under Section 20.2.

**17.11**    **Remedies Cumulative.**

The remedies herein provided shall be cumulative and in addition to (and not in limitation of) any other remedies available at law, equity or otherwise, including any mortgage foreclosure remedies. After all amounts due and owing to all Financing Parties pursuant to the Operative Agreements have been paid, any excess funds held by any Financing Party following the exercise of remedies hereunder shall be paid to Lessee.

**17.12**    **Limitation Regarding Certain Lease Events of Default.**

Notwithstanding anything contained herein or in any other Operative Agreement to the contrary (but subject to the last paragraph of this Section 17.12), upon the occurrence and during the continuance of a Lease Event of Default attributable solely to a Lease Event of Default under (a) Section 17.1(b) of this Lease, but only to the extent arising under, regarding or pursuant to the last sentence of Section 6.1(i)(i) of the Participation Agreement, (b) Section 17.1(e) of this Lease, but only to the extent arising due to a “Change in Control” or any other comparable term or description referencing a matter similar to what is described in Section 17.1(m) of this Lease but which term or description may use (as compared to Section 17.1(m) of this Lease) different percentage interests or reference a different formulation to describe such matter or (c) Section 17.1(m) of this Lease (each, a “Limited Recourse Event of Default”), the maximum aggregate amount of Lessee’s obligations attributable solely to a Limited Recourse Event of Default (and any liability for amounts due pursuant to Section 11.1(g) of the Participation Agreement for enforcement costs or losses arising as a result of such Limited Recourse Event of Default) shall be an amount equal to the Maximum Residual Guarantee Amount; provided, this Section 17.12 shall not in any way limit the liability of Lessee in the event of any other Lease Event of Default (other than a Limited Recourse Event of Default) or any indemnity payment to any Indemnified Person (except as expressly stated above), including the indemnities set forth in Sections 11.1 through 11.9 of the Participation Agreement and such indemnity payment shall not be included in the calculation set forth above.

26

Lessee nonetheless acknowledges and agrees that even though the maximum aggregate recovery from Lessee is limited as aforesaid, neither Lessor’s nor any other Financing Party’s right of recovery from the Property (as opposed to any recovery from Lessee) is so limited and Lessor or any other applicable Financing Party shall be entitled to recover one hundred percent (100%) of the amounts owed to Lessor or such other Financing Party in accordance with the Operative Agreements from its interest in the Property, including from the sale or any other disposition thereof (whether in connection with Lessee’s purchase of the Property as provided herein and in the other Operative Agreements, the exercise of remedies as provided herein and in the other Operative Agreements or otherwise), including, to the extent not duplicative, one hundred percent (100%) of the aggregate Termination Value.

**17.13**    **Continuation of Lease.**

Lessor has the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee’s breach and abandonment and recover rent as it becomes due, if lessee has right to sublet or assign, subject only to reasonable limitations). Accordingly, Lessor may, at its option, elect not to terminate this Lease with respect to the Property and continue to collect all Basic Rent, Supplemental Rent and all other amounts due Lessor (together with all costs of collection) and enforce Lessee’s obligations under this Lease as and when the same become due, or are to be performed. At the option of Lessor, upon any abandonment of the Property by Lessee, Lessor may, in its sole and absolute discretion, enforce, by suit or otherwise, all covenants and conditions hereof to be performed and complied with by Lessee hereunder and to exercise all other remedies permitted by Section 1951.4 of the California Civil Code (or any amendments thereof or any successor laws which replace Section 1951.4), or elect not to terminate this Lease and may make any necessary repairs (and Lessee shall pay the costs of such repairs) in order to relet the Property, and relet the Property or any part thereof (in place, if so elected by Lessor) for such term or terms (which may be for a term extending beyond the Term of this Lease) and at such rental or rentals and upon such other terms and conditions as Lessor in its reasonable discretion may deem advisable; and upon each such reletting, all rentals actually received by Lessor from such reletting shall be applied to Lessee’s obligations hereunder and the other Operative Agreement in such order, proportion and priority as Lessor may elect in Lessor’s sole and absolute discretion (but in all events subject to the requirements of and applications set forth in the Participation Agreement). If such rentals received from such reletting during any period are less than the Rent with respect to the Property to be paid during that period by Lessee hereunder, Lessee shall pay any deficiency, as calculated by Lessor, to Lessor on the next Scheduled Payment Date.

**ARTICLE XVIII.**

**18.1**    **Lessor’s Right to Cure Lessee’s Lease Defaults.**

Lessor, without waiving or releasing any obligation or Lease Event of Default, may (but shall be under no obligation to) remedy any Lease Event of Default for the account and at the sole cost and expense of Lessee, including the failure by Lessee to maintain the insurance required by Article XIV, and may, to the fullest extent permitted by law, and notwithstanding any right of quiet enjoyment in favor of Lessee, enter upon the Property, and take all such action thereon as may be reasonably necessary or appropriate therefor. No such entry shall be deemed an eviction of Lessee. All out-of-pocket costs and expenses so incurred (including fees and expenses of counsel), together with interest thereon at the Overdue Rate from the date on which such sums or expenses are paid by Lessor, shall be paid by Lessee to Lessor on demand.

**ARTICLE XIX.**

**19.1**    **Provisions Relating to Lessee’s Exercise of its Purchase Option.**

27

Subject to Section 19.2, in connection with any termination of this Lease with respect to the Property pursuant to the terms of Section 16.2, or in connection with Lessee’s exercise of its Purchase Option, upon the date on which this Lease is to terminate with respect to the Property, and upon tender by Lessee of the amounts set forth in Sections 16.2(b) or 20.2, as applicable, Lessor shall transfer, at Lessee’s expense, the Property to Lessee (or to Lessee’s designee) by execution and delivery of the documentation referenced in the second paragraph of Section 20.2 and subject to the provisions of Section 20.2.

**19.2**    **No Purchase or Termination With Respect to Less than All of the Property.**

Lessee shall not be entitled to exercise its Purchase Option or the Sale Option separately with respect to a portion of the Property.

**ARTICLE XX.**

**20.1**    **Purchase Option or Sale Option-General Provisions.**

Not more than five hundred forty (540) days prior to the Expiration Date and not less than three hundred sixty (360) days prior to the Expiration Date (or, respecting the Purchase Option only with respect to a purchase by Lessee (or its designee) prior to the Expiration Date, not more than one hundred twenty (120) days and not less than ninety (90) days prior to the applicable Payment Date (such Expiration Date or, respecting the Purchase Option only, any such applicable Payment Date being hereinafter referred to as the “Election Date”), Lessee may give Lessor irrevocable written notice (the “Election Notice”) that Lessee is electing to exercise either (a) (i) in the case of the Expiration Date, the option for Lessee (or any designee of Lessee) to purchase the Property on the Expiration Date or (ii) in the case of any Payment Date, the option for Lessee (or any designee of Lessee), subject to Section 5.13 of the Participation Agreement, to purchase the Property on the applicable Payment Date (each of (a)(i) and (ii), the “Purchase Option”) or (b) with respect to an Election Notice given in connection with the Expiration Date only, the option to remarket the Property to a Person other than Lessee or any Affiliate of Lessee and cause a sale of the Property to occur on the Expiration Date pursuant to the terms of Section 21.1 (the “Sale Option”). If Lessee has not renewed this Lease in accordance with Section 2.2 and does not give an Election Notice indicating the Purchase Option or the Sale Option at least three hundred sixty (360) days prior to the Expiration Date, then Lessee shall be deemed to have elected for the Purchase Option to apply, and for the purchase of the Property to occur, on the Expiration Date. If Lessee shall elect (or be deemed to have elected) to exercise the Purchase Option then Lessee shall pay, or cause to be paid, to Lessor on the date on which such purchase is scheduled to occur an amount equal to the Termination Value for the Property and, upon receipt of such amounts and satisfaction of such obligations, Lessor shall transfer to Lessee (or any designee of Lessee) all of Lessor’s right, title and interest in and to the Property in accordance with Section 20.2.

The designation of another Person to purchase the Property on behalf of Lessee pursuant to the Purchase Option shall be subject to the provisions of the second sentence of the first paragraph of Section 20.2.

Notwithstanding the terms of this Section 20.1, Lessee may request a renewal of this Lease from and after the Expiration Date in accordance with Section 2.2.

**20.2**    **Lessee Purchase Option.**

Provided that the Election Notice has been appropriately given specifying the Purchase Option for any Payment Date prior to the Expiration Date and if Lessee otherwise elects as of the Expiration Date, Lessee (or any designee of Lessee) shall purchase the Property on the Election Date (i.e., Lessee (or any designee of Lessee) may purchase the Property on any Payment Date and Lessee (or any designee of Lessee)

28

may purchase the Property on the Expiration Date) at a price equal to the Termination Value. Notwithstanding the designation by Lessee of another Person to purchase the Property pursuant to the Purchase Option, Lessee shall remain fully liable for all its obligations pursuant to the Operative Agreements respecting the Property including any and all obligations which such designated Person might otherwise be expected to perform until Lessee or such designee has purchased the Property and paid the Termination Value therefor. Thereafter, only such provisions which by their express terms survive the expiration or earlier termination of this Lease shall continue to be in force and effect.

Subject to Section 19.2, in connection with any termination of this Lease with respect to the Property pursuant to the terms of Section 16.2, or in connection with Lessee’s exercise of its Purchase Option, upon the date on which this Lease is to terminate, and upon tender by Lessee (or any designee of Lessee) of the amounts set forth in Section 16.2(b) or this Section 20.2, as applicable, Lessor shall execute, acknowledge (where required) and deliver to Lessee, (or any designee of Lessee), at the cost and expense of Lessee (or any designee of Lessee), each of the following: (a) special or limited warranty Deeds conveying the Property (to the extent it is real property titled to Lessor) to Lessee (or any designee of Lessee) free and clear of the Lien of this Lease, the Lien of the Security Documents and any Lessor Liens (but otherwise without representation or warranty of any kind); (b) a Bill of Sale conveying the Property (to the extent it is personal property owned by Lessor) to Lessee free and clear of the Lien of this Lease, the Lien of the Security Documents and any Lessor Liens (but otherwise without representation or warranty of any kind); (c) any real estate Tax affidavit or other document required by law to be executed and filed in order to record the applicable Deed and such other documents that are customarily obtained in the State where the Property is located; and (d) FIRPTA affidavits. All of the foregoing documentation must be in form and substance reasonably satisfactory to Lessor and Lessee; provided, no Financing Party shall be responsible for any representation or warranty or any other assurance other than the representations and warranties referenced in the foregoing subsections (a) and (b). The Property shall be conveyed to Lessee “AS-IS, WHERE-IS” and in then present physical condition.

On the Election Date on which Lessee has elected to exercise its Purchase Option, Lessee shall pay (or cause to be paid) to Lessor, the Agent and all other parties, as appropriate, the sum of all costs and expenses incurred by any such party in connection with the election by Lessee to exercise its Purchase Option and all Rent and all other amounts then due and payable or accrued under this Lease and/or any other Operative Agreement.

**20.3**    **Third Party Sale Option.**

(a)    Provided that (i) no Default or Event of Default shall have occurred and be continuing and (ii) the Election Notice has been appropriately given specifying the Sale Option, Lessee shall undertake to cause a sale of the Property on the Election Date (all as specified in the Election Notice), in accordance with the provisions of Section 21.1 hereof. Such Election Date on which a sale is required may be hereafter referred to as the “Sale Date”.

(b)    In the event Lessee exercises the Sale Option then Lessee shall deliver the requisite environmental site assessments as required pursuant to Section 10.2. In the event such environmental assessments shall reveal, a recommendation for remediation of any material Hazardous Substances, any material violation of Environmental Laws, other material Environmental Violation or potential material Environmental Violation (with materiality determined in each case by Lessor in its reasonable discretion), then Lessee on the Sale Date at the election of Lessor shall pay to Lessor an amount equal to the Termination Value and any and all other amounts due and owing hereunder. Upon receipt of such payment and all other amounts due under the Operative Agreements, Lessor

29

shall transfer to Lessee all of Lessor’s right, title and interest in and to the Property in accordance with Section 20.2.

**ARTICLE XXI.**

**21.1**    **Sale Procedure.**

(a)    During the Marketing Period, Lessee, on behalf of Lessor, shall market using all commercially reasonable efforts to obtain bids for the cash purchase of the Property in connection with a sale to one (1) or more third party purchasers to be consummated on the Sale Date for the highest price available, shall notify Lessor promptly of the name and address of each prospective purchaser and the cash price which each prospective purchaser shall have offered to pay for the Property and shall provide Lessor with such additional information about the bids and the bid solicitation procedure as Lessor may reasonably request from time to time. All such prospective purchasers must be Persons other than Lessee or any Affiliate of Lessee. On the Sale Date, Lessee shall pay (or cause to be paid) to Lessor and all other parties, as appropriate, the sum of all costs and expenses incurred by Lessor and/or the Agent (as the case may be) in connection with such sale of the Property (regardless of whether such sale actually occurs) and all other amounts payable pursuant to Section 21.1(b).

Lessor (at the direction of the Majority Secured Parties) may reject any and all bids and may solicit and obtain bids by giving Lessee written notice to that effect; provided, however, that notwithstanding the foregoing, Lessor may not reject any bid for the Property submitted by Lessee if such bid is greater than or equal to the Limited Recourse Amount, and represents a bona fide offer from a third party purchaser. If the highest price which a prospective purchaser or the prospective purchasers shall have offered to pay for the Property on the Sale Date is less than the Limited Recourse Amount or if such bid does not represent a bona fide offer from a third party or if there are no bids, Lessor may elect to retain the Property by giving Lessee prior written notice of Lessor’s election to retain the same, and promptly upon receipt of such notice, Lessee shall surrender, or cause to be surrendered, the Property specified in such notice in the condition required by and otherwise in accordance with the terms and conditions of Section 10.1. Upon acceptance of any bid, Lessor agrees, at Lessee’s request and expense, to execute a contract of sale with respect to such sale, so long as the same is consistent with the terms of this Article XXI and provides by its terms that it is nonrecourse to Lessor.

Unless Lessor shall have elected to retain the Property pursuant to the provisions of the preceding paragraph, Lessee shall arrange for Lessor to sell the Property free and clear of the Lien of this Lease, the Lien of the Security Documents and any Lessor Liens (but otherwise without representation or warranty of any kind), for cash on the Sale Date to the purchaser offering the highest cash sales price, as identified by Lessee or Lessor, as the case may be. To effect such transfer and assignment, Lessor shall execute, acknowledge (where required) and deliver to the appropriate purchaser each of the following: (a) special or limited warranty Deeds conveying the Property (to the extent it is real property titled to Lessor) to the appropriate purchaser free and clear of the Lien of this Lease, the Lien of the Security Documents and any Lessor Liens (but otherwise without representation or warranty of any kind); (b) a Bill of Sale conveying the Property (to the extent it is personal property owned by Lessor) to the appropriate purchaser free and clear of the Lien of this Lease, the Lien of the Security Documents and any Lessor Liens (but otherwise without representation or warranty of any kind); (c) any real estate Tax affidavit or other document required by law or customary in the State where the Property is located to be executed and filed in order to record each Deed; and (d) FIRPTA affidavits, as appropriate. All of the foregoing documentation

30

must be in form and substance reasonably satisfactory to Lessor and Lessee; provided, no Financing Party shall be responsible for any representation or warranty or any other assurance other than the representations and warranties referenced in the foregoing subsections (a) and (b). Lessee shall surrender the Property if it is so sold subject to such documents to each purchaser in the condition required by and otherwise in accordance with Section 10.1, or in such other condition as may be agreed between Lessee and such purchaser. Lessee shall not take or fail to take any action which would have the effect of unreasonably discouraging bona fide third party bids for the Property. If the Property is not sold on the Sale Date in accordance with the terms of this Section 21.1, then Lessee shall be obligated to pay Lessor on the Sale Date an amount equal to the Maximum Residual Guarantee Amount, and Lessee shall transfer all of its right, title and interest in and to the Property to Lessor.

(b)    If the Property is sold on a Sale Date to a third party purchaser in accordance with the terms of Section 21.1(a) and the purchase price paid for the Property is less than the GAAP Project Cost (hereinafter such difference shall be referred to as the “Deficiency Balance”), then Lessee hereby unconditionally promises to pay to Lessor on the Sale Date all Rent and all other amounts then due and owing pursuant to the Operative Agreements and the lesser of (i) the Deficiency Balance, or (ii) the Maximum Residual Guarantee Amount. In the case of such a sale to a third party purchaser where the purchase price paid for the Property is equal to or more than the GAAP Project Cost but less than the Termination Value, then Lessor shall retain the sale proceeds, and Lessee shall not share in the sale proceeds. On a Sale Date if (x) Lessor receives the Termination Value from a third party purchaser, (y) Lessor and such other parties receive all other amounts specified in the last sentence of the first paragraph of Section 21.1(a) and (z) there remains any excess proceeds from the sale of the Property, then Lessee may retain such excess. If the Property is retained by Lessor pursuant to an affirmative election made by Lessor pursuant to the provisions of Section 21.1(a) or for whatever other reason (other than a sale to Lessee (or its designee) pursuant to the Purchase Option) there is no sale to a third party purchaser, then Lessee hereby unconditionally promises to pay to Lessor on the Sale Date all Rent and all other amounts then due and owing pursuant to the Operative Agreements and an amount equal to the Maximum Residual Guarantee Amount. Any payment of any of the foregoing amounts described in this Section 21.1(b) shall be made together with a payment of all other amounts referenced in the last sentence of the first paragraph of Section 21.1(a).

(c)    In the event that the Property is either sold to a third party purchaser on the Sale Date or retained by Lessor in connection with an affirmative election made by Lessor pursuant to the provisions of Section 21.1(a), then in either case on the applicable Sale Date Lessee shall provide Lessor or such third party purchaser with (i) all permits, certificates of occupancy, governmental licenses and authorizations necessary to use, operate, repair, access and maintain the Property for the purpose it is being used by Lessee, and (ii) such manuals, permits, easements, licenses, intellectual property, know-how, rights-of-way and other rights and privileges in the nature of an easement as are reasonably necessary or desirable in connection with the use, operation, repair, access to or maintenance of the Property. All assignments, licenses, easements, agreements and other deliveries required by clauses (i) and (ii) of this paragraph (c) shall be in form reasonably satisfactory to Lessor or such third party purchaser(s), as applicable, and shall be fully assignable (including both primary assignments and assignments given in the nature of security) without payment of any fee, cost or other charge.

**21.2**    **Application of Proceeds of Sale.**

31

Lessor shall apply the proceeds of sale of the Property as set forth in Section 8.7 of the Participation Agreement.

**21.3**    **Indemnity for Excessive Wear.**

If the proceeds of the sale described in Section 21.1 shall be less than the Limited Recourse Amount, and at the time of such sale it shall have been reasonably determined (pursuant to the Appraisal Procedure) that the Fair Market Sales Value of the Property shall have been impaired by greater than expected wear and tear during the term of the Lease, Lessee shall pay to Lessor within ten (10) days after receipt of Lessor’s written statement (i) the amount of such excess wear and tear determined by the Appraisal Procedure or (ii) the amount of the Sale Proceeds Shortfall, whichever amount is less.

**21.4**    **Appraisal Procedure.**

For determining the Fair Market Sales Value of the Property or any other amount which may, pursuant to any provision of any Operative Agreement, be determined by an appraisal procedure, Lessor and Lessee shall use the following procedure (the “Appraisal Procedure”). Lessor and Lessee shall endeavor to reach a mutual agreement as to such amount for a period of ten (10) days from commencement of the Appraisal Procedure under the applicable Section of the Lease, and if they cannot agree within ten (10) days, then two (2) qualified appraisers, one (1) chosen by Lessee and one (1) chosen by Lessor, shall mutually agree thereupon, but if either party shall fail to choose an appraiser within twenty (20) days after notice from the other party of the selection of its appraiser, then the appraisal by such appointed appraiser shall be binding on Lessee and Lessor. If the two (2) appraisers cannot agree within twenty (20) days after both shall have been appointed, then a third appraiser shall be selected by the two (2) appraisers or, failing agreement as to such third appraiser within thirty (30) days after both shall have been appointed, by the American Arbitration Association. The decisions of the three (3) appraisers shall be given within twenty (20) days of the appointment of the third appraiser and the decision of the appraiser most different from the average of the other two (2) shall be discarded and such average shall be binding on Lessor and Lessee; provided, that if the highest appraisal and the lowest appraisal are equidistant from the third appraisal, the third appraisal shall be binding on Lessor and Lessee. The fees and expenses of the appraiser appointed by Lessee shall be paid by Lessee; the fees and expenses of the appraiser appointed by Lessor shall be paid by Lessor (such fees and expenses not being indemnified pursuant to Section 11 of the Participation Agreement or otherwise by Lessee pursuant to the Operative Agreements); and the fees and expenses of the third appraiser shall be divided equally between Lessee and Lessor.

**21.5**    **Certain Obligations Continue.**

During the Marketing Period, the obligation of Lessee to pay Rent (including the installment of Basic Rent due on the Sale Date), pay indemnities, maintain the Property and maintain insurance shall continue undiminished until payment in full to Lessor of the sale proceeds, if any, the Maximum Residual Guarantee Amount or the Deficiency Balance (as applicable), the amount due under Section 21.3, if any, and all other amounts due to Lessor or any other Person with respect to the Property or any Operative Agreement. Lessor shall have the right, but shall be under no duty, to solicit bids, to inquire into the efforts of Lessee to obtain bids or otherwise to take action in connection with any such sale, other than as expressly provided in this Article XXI.

**ARTICLE XXII.**

**22.1**    **Holding Over.**

32

If Lessee shall for any reason remain in possession of the Property after the expiration or earlier termination of this Lease (unless the Property is conveyed to Lessee or Lessee is otherwise lawfully in possession of the Property pursuant to the terms of the Operative Agreements), such possession shall be as a tenancy at sufferance during which time Lessee shall continue to pay Supplemental Rent that would be payable by Lessee hereunder were the Lease then in full force and effect and Lessee shall continue to pay Basic Rent at the lesser of the highest lawful rate and an amount of Basic Rent (calculated at a Lessor Yield for the Lessor Advances at the Overdue Rate). Such Basic Rent shall be payable from time to time upon demand by Lessor and such additional amount of Basic Rent shall be for the account of Lessor and not shall not be shared with Lessee. During any period of tenancy at sufferance, Lessee shall, subject to the second preceding sentence, be obligated to perform and observe all of the terms, covenants and conditions of this Lease, but shall have no rights hereunder other than the right, to the extent given by law to tenants at sufferance, to continue its occupancy and use of the Property. Nothing contained in this Article XXII shall constitute the consent, express or implied, of Lessor to the holding over of Lessee after the expiration or earlier termination of this Lease as to the Property (unless the Property is conveyed to Lessee) and nothing contained herein shall be read or construed as preventing Lessor from maintaining a suit for possession of the Property or exercising any other remedy available to Lessor at law or in equity.

**ARTICLE XXIII.**

**23.1**    **Risk of Loss.**

During the Term, unless Lessee shall not be in actual possession of the Property solely by reason of Lessor’s exercise of its remedies of dispossession under Article XVII, the risk of loss or decrease in the enjoyment and beneficial use of the Property as a result of the damage or destruction thereof by fire, the elements, casualties, thefts, riots, wars or otherwise is assumed by Lessee, and Lessor shall in no event be answerable or accountable therefor.

**ARTICLE XXIV.**

**24.1**    **Assignment.**

Lessee may not assign this Lease or any of its rights or obligations hereunder or with respect to the Property except in accordance with Section 10.1 of the Participation Agreement.

**24.2**    **Subleases.**

(a)    Promptly, but in any event within five (5) Business Days, following the execution and delivery of any sublease permitted by this Article XXIV, Lessee shall notify Lessor of the execution of such sublease. As of the date of this Lease, Lessee shall lease the Property from Lessor, and any existing tenant respecting the Property shall automatically be deemed to be a subtenant of Lessee and not a tenant of Lessor.

(b)    Provided no Lease Default or Lease Event of Default has occurred and is continuing, Lessee may, without the prior written consent of any Financing Party or any other Person and subject to the other provisions of this Section 24.2, sublet the Property or portion thereof to any Subsidiary of the Parent. Lessee may otherwise sublet the Property or portion thereof to any Person (other than to a Subsidiary of the Parent) only with the consent of the Majority Secured Parties (such consent not to be unreasonably withheld or delayed).

33

(c)    No sublease (referenced in this Section 24.2 or otherwise) or other relinquishment of possession to the Property shall in any way discharge or diminish any obligation of any Credit Party to Lessor hereunder or under any of the other Operative Agreements and Lessee shall remain directly and primarily liable under this Lease as to the Property, or portion thereof, so sublet.

(d)    No sublease (referenced in this Section 24.2 or otherwise) shall extend beyond the Term of this Lease except with the consent of Majority Secured Parties (such consent not to be unreasonably withheld or delayed) and each such sublease shall be expressly subject and subordinate to this Lease.

(e)    No sublease hereunder, whether or not to an Affiliate of Lessee, shall subject any Financing Party to regulation by any Governmental Authority to which any Financing Party would not have been subject but for such sublease, nor shall any sublessee be subject to a proceeding under bankruptcy, insolvency or similar laws at the time of such sublease, nor shall such sublease create a Lease Default or Lease Event of Default hereunder.

**ARTICLE XXV.**

**25.1**    **No Waiver.**

No failure by Lessor or Lessee to insist upon the strict performance of any term hereof or to exercise any right, power or remedy upon a Lease Default or Lease Event of Default, and no acceptance of full or partial payment of Rent during the continuance of any such Lease Default or Lease Event of Default, shall constitute a waiver of any such Lease Default or Lease Event of Default or of any such term. To the fullest extent permitted by law, no waiver of any Lease Default or Lease Event of Default shall affect or alter this Lease, and this Lease shall continue in full force and effect with respect to any other then existing or subsequent Lease Default or Lease Event of Default.

**ARTICLE XXVI.**

**26.1**    **Acceptance of Surrender.**

No surrender to Lessor of this Lease or of all or any portion of the Property or of any part thereof or of any interest therein shall be valid or effective unless agreed to and accepted in writing by Lessor and no act by Lessor or the Agent or any representative or agent of Lessor or the Agent, other than a written acceptance, shall constitute an acceptance of any such surrender.

**26.2**    **No Merger of Title.**

There shall be no merger of this Lease or of the leasehold estate created hereby by reason of the fact that the same Person may acquire, own or hold, directly or indirectly, in whole or in part, (a) this Lease or the leasehold estate created hereby or any interest in this Lease or such leasehold estate, (b) any right, title or interest in the Property or (c) any Note.

**26.3**    **Estoppel Certificates.**

At any time and from time to time, but not more than once in any three hundred and sixty-five (365) day period, upon not less than ten (10) Business Days’ prior request by Lessor or Lessee (the “Requesting Party”), the other party (whichever party shall have received such request, the “Certifying Party”) shall furnish to the Requesting Party a certificate signed by an authorized officer of the Certifying Party (or, in the case of Lessee, a Responsible Officer) certifying that this Lease is in full force and effect (or that this

34

Lease is in full force and effect as modified and setting forth the modifications); the dates to which the Basic Rent and Supplemental Rent have been paid; to the best knowledge of the signer of such certificate, whether or not the Requesting Party is in default under any of its obligations hereunder (and, if so, the nature of such alleged default); and such other matters under this Lease as the Requesting Party may reasonably request. Any such certificate furnished pursuant to this Section 26.3 may be relied upon by the Requesting Party and any existing or prospective mortgagee, purchaser and any accountant or auditor, of, from or to the Requesting Party (or any Affiliate thereof).

**ARTICLE XXVII.**

**27.1**    **Notices.**

All notices required or permitted to be given under this Lease shall be in writing and delivered as provided in the Participation Agreement.

**ARTICLE XXVIII.**

**28.1**    **Miscellaneous.**

Anything contained in this Lease to the contrary notwithstanding, all claims against and liabilities of Lessee or Lessor arising from events occurring prior to the expiration or earlier termination of this Lease shall survive such expiration or earlier termination. If any provision of this Lease shall be held to be unenforceable in any jurisdiction, such unenforceability shall not affect the enforceability of any other provision of this Lease in such jurisdiction or of such provision or of any other provision hereof in any other jurisdiction.

**28.2**    **Amendments and Modifications.**

This Lease may not be amended, waived, discharged or terminated except in accordance with the provisions of Section 12.4 of the Participation Agreement.

**28.3**    **Successors and Assigns.**

All the terms and provisions of this Lease shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

**28.4**    **Headings and Table of Contents.**

The headings and table of contents in this Lease are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

**28.5**    **Counterparts.**

This Lease may be executed in any number of counterparts, each of which shall be an original, but all of which shall together constitute one (1) and the same instrument.

**28.6**    **GOVERNING LAW.**

THIS LEASE SHALL BE GOVERNED BY AND CONSTRUED, INTERPRETED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, EXCEPT TO THE

35

EXTENT THE LAWS OF THE STATE WHERE THE PROPERTY IS LOCATED ARE REQUIRED TO APPLY.

**28.7**    **Calculation of Rent.**

All calculation of Rent payable hereunder shall be computed based on the actual number of days elapsed over a year of three hundred sixty (360) days or, to the extent such Rent is based on the ABR, three hundred sixty-five (365) (or three hundred sixty-six (366), as applicable) days.

**28.8**    **Memorandum of Lease.**

This Lease shall not be recorded; provided, Lessor and Lessee shall promptly after the Commencement Date record (a) a memorandum of this Lease (in substantially the form of Exhibit B attached hereto) or a short form lease (in form and substance reasonably satisfactory to Lessor) regarding the Property in the local filing office with respect thereto, in all cases at Lessee’s cost and expense, and as required under Applicable Law to sufficiently evidence this Lease in the applicable real estate filing records.

**28.9**    **Allocations Among the Financing Parties.**

Notwithstanding any other term or provision of this Lease to the contrary, the allocations of the proceeds of the Property and any and all other Rent and other amounts received hereunder shall be subject to the intercreditor provisions among the Financing Parties set forth in Section 8.7 of the Participation Agreement.

**28.10**    **Limitations on Recourse.**

The limitations on recourse set forth in Section 12.9 of the Participation Agreement shall apply regarding this Lease.

**28.11**    **WAIVERS OF JURY TRIAL.**

EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY, TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS LEASE AND FOR ANY COUNTERCLAIM THEREIN.

**28.12**    **Exercise of Lessor Rights.**

Lessor and Lessee hereby acknowledge and agree that (a) the Agent shall, in its discretion, direct and/or act on behalf of Lessor pursuant to the Participation Agreement, including the provisions of Sections 8.2(c) and 8.6 of the Participation Agreement, (b) all notices to be given to Lessor shall be given to the Agent and (c) all notices to be given by Lessor may be given by the Agent, at its election.

**28.13**    **SUBMISSION TO JURISDICTION AND VENUE.**

THE PROVISIONS OF THE PARTICIPATION AGREEMENT RELATING TO SUBMISSION TO JURISDICTION AND VENUE ARE HEREBY INCORPORATED BY REFERENCE HEREIN, MUTATIS MUTANDIS.

36

**28.14**    **USURY SAVINGS PROVISION.**

IT IS THE INTENT OF THE PARTIES HERETO TO CONFORM TO AND CONTRACT IN STRICT COMPLIANCE WITH APPLICABLE USURY LAW FROM TIME TO TIME IN EFFECT. TO THE EXTENT ANY RENT OR PAYMENTS HEREUNDER ARE HEREINAFTER CHARACTERIZED BY ANY COURT OF COMPETENT JURISDICTION AS THE REPAYMENT OF PRINCIPAL AND INTEREST THEREON, THIS SECTION 28.14 SHALL APPLY. ANY SUCH RENT OR PAYMENTS SO CHARACTERIZED AS INTEREST MAY BE REFERRED TO HEREIN AS “INTEREST.” ALL AGREEMENTS AMONG THE PARTIES HERETO ARE HEREBY LIMITED BY THE PROVISIONS OF THIS PARAGRAPH WHICH SHALL OVERRIDE AND CONTROL ALL SUCH AGREEMENTS, WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER WRITTEN OR ORAL. IN NO WAY, NOR IN ANY EVENT OR CONTINGENCY (INCLUDING PREPAYMENT OR ACCELERATION OF THE MATURITY OF ANY OBLIGATION), SHALL ANY INTEREST TAKEN, RESERVED, CONTRACTED FOR, CHARGED, OR RECEIVED UNDER THIS LEASE OR OTHERWISE, EXCEED THE MAXIMUM NONUSURIOUS AMOUNT PERMISSIBLE UNDER APPLICABLE LAW. IF, FROM ANY POSSIBLE CONSTRUCTION OF ANY OF THE OPERATIVE AGREEMENTS OR ANY OTHER DOCUMENT OR AGREEMENT, INTEREST WOULD OTHERWISE BE PAYABLE IN EXCESS OF THE MAXIMUM NONUSURIOUS AMOUNT, ANY SUCH CONSTRUCTION SHALL BE SUBJECT TO THE PROVISIONS OF THIS PARAGRAPH AND SUCH AMOUNTS UNDER SUCH DOCUMENTS OR AGREEMENTS SHALL BE AUTOMATICALLY REDUCED TO THE MAXIMUM NONUSURIOUS AMOUNT PERMITTED UNDER APPLICABLE LAW, WITHOUT THE NECESSITY OF EXECUTION OF ANY AMENDMENT OR NEW DOCUMENT OR AGREEMENT. IF LESSOR SHALL EVER RECEIVE ANYTHING OF VALUE WHICH IS CHARACTERIZED AS INTEREST WITH RESPECT TO THE OBLIGATIONS OWED HEREUNDER OR UNDER APPLICABLE LAW AND WHICH WOULD, APART FROM THIS PROVISION, BE IN EXCESS OF THE MAXIMUM LAWFUL AMOUNT, AN AMOUNT EQUAL TO THE AMOUNT WHICH WOULD HAVE BEEN EXCESSIVE INTEREST SHALL, WITHOUT PENALTY, BE APPLIED TO THE REDUCTION OF THE COMPONENT OF PAYMENTS DEEMED TO BE PRINCIPAL AND NOT TO THE PAYMENT OF INTEREST, OR REFUNDED TO LESSEE OR ANY OTHER PAYOR THEREOF, IF AND TO THE EXTENT SUCH AMOUNT WHICH WOULD HAVE BEEN EXCESSIVE EXCEEDS THE COMPONENT OF PAYMENTS DEEMED TO BE PRINCIPAL. THE RIGHT TO DEMAND PAYMENT OF ANY AMOUNTS EVIDENCED BY ANY OF THE OPERATIVE AGREEMENTS DOES NOT INCLUDE THE RIGHT TO RECEIVE ANY INTEREST WHICH HAS NOT OTHERWISE ACCRUED ON THE DATE OF SUCH DEMAND, AND LESSOR DOES NOT INTEND TO CHARGE OR RECEIVE ANY UNEARNED INTEREST IN THE EVENT OF SUCH DEMAND. ALL INTEREST PAID OR AGREED TO BE PAID TO LESSOR SHALL, TO THE EXTENT PERMITTED BY APPLICABLE LAW, BE AMORTIZED, PRORATED, ALLOCATED AND SPREAD THROUGHOUT THE FULL STATED TERM (INCLUDING ANY RENEWAL OR EXTENSION) OF THIS LEASE SO THAT THE AMOUNT OF INTEREST ON ACCOUNT OF SUCH PAYMENTS DOES NOT EXCEED THE MAXIMUM NONUSURIOUS AMOUNT PERMITTED BY APPLICABLE LAW.

[signature pages follow]

37

IN WITNESS WHEREOF, the parties have caused this Lease to be duly executed and delivered as of the date first above written.

GRESKY SERVICE CORPORATION,

as Lessor

By:

Name:

Title:

Gresky Service Corporation

MAC:

---, NC 28202

Attention:

[signature pages continue]

X

CHAR1\1403564

ABCD, INC., as Lessee

By:

Name:

Title:

ABCD, Inc.

OH

[signature pages continue]

X

CHAR1\1403564

Receipt of this original counterpart of the foregoing Lease is hereby acknowledged as the date hereof

WELLS FARGO BANK, NATIONAL ASSOCIATION,

as the Agent

By:

Name:

Title:

Wells Fargo Bank, National Association

10 South Wacker Drive, 22nd Floor

Chicago, IL 60606

Attention:

[signature pages end]

X

CHAR1\1403564

EXHIBIT A TO THE X

(Legal Description of the Property)

A-1

EXHIBIT B TO THE X

[CONFORM TO STATE LAW REQUIREMENTS]

Recordation requested by:

ABC, PLLC

After recordation return to:

ABC

, NC

Space above this line for Recorder’s use

MEMORANDUM OF X

THIS MEMORANDUM OF X, dated as of \_\_\_\_\_, 20\_\_ (this “Memorandum”), is by and between GRESKY SERVICE CORPORATION, a Delaware corporation, with an office at XXX, NC 28220(hereinafter referred to as “Lessor”), and ABCD, INC., an Ohio corporation, with an office at \_\_\_\_\_ (hereinafter referred to as “Lessee”).

For purposes of provisions of the Lease and this Memorandum related to the creation and enforcement of the Lease and this Memorandum as a deed of trust, LESSEE, as deed of trust grantor, hereby grants and conveys all Lessee’s right, title and interest in the Property (as hereinafter defined) and all proceeds thereof (including insurance proceeds) to First American Title Insurance Company (or any other Person appropriately designated from time to time by Lessor), as trustee, IN TRUST AND WITH POWER OF SALE, for the benefit of LESSOR, as beneficiary. The Lien granted and conveyed by Lessee to First American Title Insurance Company (or any other Person appropriately designated from time to time by Lessor), as trustee, pursuant to the Lease and this Memorandum is and shall be a perfected Lien.

WITNESSETH:

That for value received, Lessor and Lessee do hereby covenant, promise and agree as follows:

B-1

**1.    Demised Premises and Date of Lease.** Lessor has leased to Lessee, and Lessee has leased from Lessor, for the Term (as hereinafter defined), certain real property and other property located in \_\_\_\_\_, which is described in the attached Schedule 1 (the “Property”), pursuant to the terms of a X between Lessor and Lessee dated as of November 30, 2017 (as such may be amended, modified, extended, supplemented, restated and/or replaced from time to time, “Lease”).

The Lease shall constitute a mortgage, deed of trust and security agreement and financing statement under the laws of the state in which the Property is situated. The maturity date of the obligations secured thereby shall be \_\_\_\_\_, unless extended to not later than \_\_\_\_\_.

For purposes of provisions of the Lease related to the creation and enforcement of the Lease as a security agreement and a fixture filing, Lessee is the debtor, Lessor is the secured party and Agent is the assignee of Lessor (given that Agent is acting as collateral agent for the Secured Parties). The mailing addresses of the debtor (Lessee herein) and of the secured party (Lessor herein) from which information concerning security interests hereunder may be obtained are as set forth on the signature pages hereof. A carbon, photographic or other reproduction of this Memorandum or of any financing statement related to the Lease shall be sufficient as a financing statement for any of the purposes referenced herein.

**2.    Term, Renewal, Extension and Purchase Option.** The term of the Lease for the Property (“Term”) commenced as of \_\_\_\_\_, 20\_\_ and shall end as of \_\_\_\_\_, 20\_\_, unless the Term is extended or earlier terminated in accordance with the provisions of the Lease. The Lease contains provisions for renewal and extension. The tenant has a purchase option under the Lease.

**3.    Mortgage; Power of Sale.** Without limiting any other remedies set forth in the Lease, in the event that a court of competent jurisdiction rules that the Lease constitutes a mortgage, deed of trust or other secured financing as is the intent of the parties, then Lessor and Lessee agree that Lessee has granted, pursuant to the terms of the Lease, a Lien in all Lessee’s right, title and interest in the Property WITH POWER OF SALE, and that, upon the occurrence and during the continuance of any Lease Event of Default, Lessor shall have the power and authority, to the extent provided by law, after prior notice and lapse of such time as may be required by law, to foreclose its interest (or cause such interest to be foreclosed) in all or any part of the Property.

**4.    Effect of Memorandum.** The purpose of this instrument is to give notice of the Lease and its respective terms, covenants and conditions to the same extent as if the Lease were fully set forth herein. This Memorandum shall not modify in any manner the terms, conditions or intent of the Lease and the parties agree that this Memorandum is not intended nor shall it be used to interpret the Lease or determine the intent of the parties under the Lease.

**5.    Counterpart Execution.** This Memorandum may be executed in any number of counterparts and by each of the parties hereto in separate counterparts, all such counterparts together constituting but one (1) and the same instrument.

[the remainder of this page has been intentionally left blank]

B-2

IN WITNESS WHEREOF, the parties hereto have duly executed this instrument as of the day and year first written.

LESSOR:

GRESKY SERVICE CORPORATION,

as Lessor

By:

Name:

Title:

Gresky Service Corporation

, NC

[signature pages continue]

B-3

LESSEE:

ABCD, INC., as Lessee

By:

Name:

Title:

ABCD, Inc.

, OH

[signature pages continue]

B-4

SCHEDULE 1  
  
  
(Description of Property)

B-5

[CONFORM TO STATE LAW REQUIREMENTS]

On \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2017, before me, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, of GRESKY SERVICE CORPORATION, a Delaware corporation, on behalf of the corporation, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [SEAL]

On \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2017, before me, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, of ABCD, INC., an Ohio corporation, on behalf of the corporation, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [SEAL]

**LeaseA#26**

EXHIBIT 10-CE

Rental Agreement

for non-residential rooms

Please mark applicable parts with a cross, fill in empty spaces or cross them out.

Any boxes which are not marked with a cross do not form part of the Agreement.

The following Rental Agreement is concluded

between Erika u. Fritz Schneck GbZ, Hartweg 5, 85628 Moosach

represented by Mr. Fritz Schneck

and - as Landlord -

Allweg Elektrik, Pappelalle15, 86528 Moosach

Represented by Mr. Josef Hauner

- as Tenant -

1

Rented Property

(1) The rented property consists of

X separate rooms X partial building ˜

Post Code, Place:85628

Street, House no(s).: IRosennweg 15

In case of rooms: position within the building (floor, no. of rental unit, if any)

See coloured marking according to the floor plan attached hereto

Further parts of the room and auxiliary spaces of the rented property (ancillary rooms) are:

No. of garages: - No. of parking spaces No. of customer parking spaces: No. of separate basement rooms

Further rooms/spaces: Parking spaces between street and building.

See floor plan/plan attached hereto.

Auxiliary spaces and operating facilities: (e.g. waste rooms, lifts, the joint use of which results from their purpose):

(2) Parts of the Agreement which identify the rented property are

X Floor Plan in the scale 1 : X Calculation of the main usable floor spaces 1)

1) Spaces for which the Tenant has an exclusive right of use within a building.

2

Main Usage of the Rented Property

The rooms will be rented for the operation of a

Production Site for the "Equipping of Computer Boards" & #9;

3

Amendment of the Main Usage

(1) The rooms may only be used for the purposes mentioned under 2. Amendments are subject to the Landlord's written consent. If the usage is restricted, impeded or impossible for reasons which are caused by the Tenant himself or the type of his trade or profession, he is not entitled to derive any rights for cancellation or termination of the Agreement therefrom.

(2) The Landlord ensures the use in a condition which is fundamentally suitable for the intended purpose, unless otherwise agreed under 10. Any public, official or other authorizations and consents required for the operation shall be obtained by the Tenant at his expense. The Landlord shall not be liable for the obtainment of such.

(3) If a required authorization or consent is not given for reasons which are caused by the Tenant himself, he shall be entitled to sublet the rented property, but the main usage mentioned under 2 shall remain.

(4) If a required authorization or consent is not given for reasons for which the Tenant is not responsible himself, this shall be deemed to be a dissolving condition for the tenancy. In this case, the Tenant is obliged to pay the agreed rent for a further period of 6 months after the return of the ownership of the rented property.

(5) A right of reduction or termination shall be excluded. In addition, he right of reduction according to 596 BGB [Civil Code] shall also be excluded.

4

Type of Agreement and Term

(1) The tenancy shall start on 01/07/2003.

(2) ˜ The Rental Agreement has been concluded for an indefinite period of time.

a) ˜ The legal terminations notification period according to 580 a sec. 2 BGB shall apply.

b) ˜ The termination notification period which is applicable to both parties shall be calendar months.

to the end of one ˜ calendar month ˜ calendar quarter ˜ calendar year.

(3) ˜ This is a limited Rental Agreement without a right of option.

a) ˜ The tenancy shall start on and will end on

By way of derogation from 545 BGB, the tenancy will not be prolonged for an indefinite time, if the Tenant continues to use the rented property after the end of the rental period.

b) ˜ The tenancy shall start on and will end on

Upon the end of the rental period, the tenancy shall be prolonged

˜ by one year ˜ by a further period of years ˜ for an indefinite period

unless it will be terminated by one of the parties

˜ with the legal notification period according to 550 a sec. 2 BGB

˜ with a notification period of calendar months

to the end of one ˜ calendar month ˜ calendar quarter ˜ calendar year.

By way of derogation from 545 BGB, the tenancy shall not be deemed to be prolonged for an indefinite period of time, if the Tenant continues to use the rented property after the end of the rental period.

(4) X This is a limited rental agreement with a right of option for the Tenant.

a) X The rental agreement shall be valid for a fixed period of 5 years and will end at the end of this period of time. However, the Tenant is entitled to prolong the tenancy by a further period of 5 years according to the conditions hereof, by making a written statement. The Landlord must receive the Tenant's statement six months before the end of the original tenancy at the latest. The condition of receipt shall be deemed to be fulfilled if the Landlord has received the statement on the 3rd working day of the first of these six months at the latest.

b) ˜ If the tenancy was prolonged due to the exercise of the Tenant's right of option, the Tenant is entitled to exercise this right in the same way for - more time(s).

c) If the Tenant exercises his right of option, the Landlord is entitled to an ordinary right of termination for the first time at the end of the rental period which results from the last exercise of the right of option by the Tenant. The notification period shall be 3 months. The condition of receipt shall be deemed to be fulfilled if the Tenant has received the statement at the 3rd working day of the first of these three months at the latest.

d) If the Tenant does not exercise his right of option, the tenancy shall be prolonged for an indefinite period of time, in case of doubt. Either party may terminate it with a notification period of 6 months

to the end of one X calendar month ˜ calendar quarter ˜ calendar year.

(5) The termination and the exercise of the right of option shall be made in writing.

(6) The tenancy shall not end upon the death of the Tenant. The special termination right of the heir according to 580 BGB shall be excluded.

6

Rental Conditions

Amount, Currency

(1) The monthly rent to be paid in advance amounts to

Euro 3,000.00

In addition, the following prepayments shall be made per month:

a) for heating and warm water costs Direct Settlement

b) for all other operating costs, according to Annex 5 of 27 of II Calculation Ruling

Euro 125.00

c) for the following further operating costs, namely

Water

Euro 100.00

Monthly Total:

Euro 3,225.00

Plus Turnover Tax

(3) X Graduated Rent

The monthly rent without operating costs shall amount to:

Amount, Currency

1. from

01.07.2003

to

30.06.2004

Euro 3,000.00

2. from

01.07.2004

to

30.06.2005

Euro 3,075.00

3. from

01.07.2005

to

30.06.2006

Euro 3,152.00

4. from

01.07.2006

to

30.06.2007

Euro 3,231.00

5. from

01.07.2007

to

30.06.2008

Euro 3,312.00

6. from

01.07.2008

to

30.06.2009

Euro 3,395.00

7. from

01.07.2009

to

30.06.2010

Euro 3,480.00

8. from

01.07.2010

to

30.06.2011

Euro 3,567.00

9. from

01.07.2011

to

30.06.2012

Euro 3,656.00

10. from

01.07.2012

to

30.06.2013

Euro 3,747.00

(5) Unless otherwise agreed, all payments shall be made to the account of the Landlord specified below, they shall be made in advance, free of charge and until the 3rd working day of the month at the latest:

Bank: VOLKSBANK Moosach

Account no.: 60000000 Bank Code 731 909 676

A change of the bank relation shall be reserved.

(6) Turnover Tax

If the main usage of the rented property is the distribution, delivery or rendering of such services which are subject to turnover tax according to the Turnover Tax Law, the Landlord may request that the Tenant pays the legal turnover tax for such rooms which are used for those works or services, such payment to be made separately and in addition to the rent applicable to such rooms.

˜ The Landlord hereby waives the exercise of such right.

X The Landlord hereby makes use of such right.

In case of the second alternative, the following shall apply in addition:

The Landlord undertakes to issue invoices for the rent to be paid stating the turnover tax as a separate item. The maturity of the rent shall remain unaffected thereby.

If the turnover tax option is chosen, the Tenant is obliged to provide the Landlord with an annual confirmation from his Tax Consultant or with any other evidence which the Landlord requires in order to proof to the Tax Authority that the preconditions for the option right exist, such provision shall be made until April 30 of every year.

6

Duty of Operation

If the main usage of the rented property is the operation of a retail or service trade or if it is intended for freelance activities, the Tenant is obliged to maintain the operation during the business hours which are common in the industry, or, in case of a freelance profession, during the working hours which are common in the respective business branch and to use all rooms according to the purpose described under 2 during the term of the tenancy.

The closing of the operation due to a company holiday is permitted for a maximum of 5 weeks per year.

If the Tenant infringes his duty of operation, the Landlord is entitled to terminate the contractual relationship after a written warning in case of continuation of or repeated interruption of the operation.

7

Protection from Competition

(1) If the Landlord owns or holds further rooms within the building or within a radius of 200 m, the Landlord undertakes to not rent them out to interested parties the goods or services of which would compete with the ones of the Tenant. The Landlord also assures the Tenant protection from competition, when the Landlord himself uses the rooms in the estate or in properties which he owns within the radius mentioned above. A protection from competition shall not exist if the goods and services offered by the interested party or the Landlord would only insignificantly overlap with those which the Tenant desires to offer.

(2) A protection from competition vis-à-vis existing tenancies shall be excluded. The Tenant is aware of the tenancies existing at the time of conclusion hereof and of the important services and offers carried out by the other tenants in the rented rooms.

(3) During the rental period, the Tenant undertakes to refrain from carrying out any activity in the rented rooms which locally competes with the activity of the Landlord or that of other tenants of the estate. A protection from competition shall not exist, insofar as the activity of the Tenant is conditional on the main usage mentioned under 2.

8

Promotional Measures

The Tenant is entitled to attach a sign, the size and design of which corresponds to existing signs. In general, the attachment of promotional facilities shall be subject to the Landlord's prior written consent. Insofar as authorizations are required, they are the responsibility of the Tenant.

Upon the end of the rental period, the Tenant undertakes to remove any and all promotional facilities at his own expense and to restore the original condition. This shall also apply if the authorization is revoked.

9

Insurances

The Tenant is obliged to take out a business liability insurance, a glass insurance and a burglary/theft insurance and to maintain it throughout the rental period.

10

Alterations, Maintenance, Basic Repair

Alterations

The following contractual condition on alterations shall X become part of the Agreement. ˜ not become part hereof.

If alterations of the rented rooms or the rented property are required to ensure an efficient operation, these shall be the responsibility of the Tenant. These are subject to the Landlord's separate written consent. The consent may only be refused for an important reason.

Important reasons are, inter alia:

- if public, official authorizations required for the alteration have not been obtained;

or

- if the usage rights of other tenants would be significantly impeded by the alteration which might result in a claim for rent reduction.

Insofar as the Tenant has carried out alterations for which the Landlord has given his consent, he may determine at the end of the tenancy if the original condition should be restored or not. The Tenant has neither a right of seizure regarding the objects which he has permanently installed in the building nor a claim for compensation for any possible increase of value.

Maintenance

The continuing maintenance (required repairs in the rooms and facilities) shall be the responsibility of the

X Tenant ˜ Landlord.

Major maintenance measures, especially at exterior walls, in the hallways or on the roof shall be the responsibility of the Landlord. Major maintenance measures exist whenever the costs of the individual measure exceeds an amount of

amount, currency

Euro 500.00.

Basic Repair

The basic repair shall be carried out within appropriate periods of time - at least every five years, beginning with the contractual period. If the tenancy ends before the end of the period of 5 years, the Landlord may claim a percentage proportion of the renovation costs which will be calculated according the period of time which has passed since the last renovation in proportion to the full renovation cycle. If no full renovation cycle has passed by since the Tenant has moved in, the proportion of the renovation costs shall be calculated from the date on which the Tenant moved in. For every year in which the Tenant did not carry out basic repair, he shall contribute 20 % to the costs arising therefrom. In case of doubt, the costs will be calculated based on a quotation provided by an expert specified by the Landlord.

Basic repairs comprise the painting of walls and ceilings, the cleaning of floors, varnishing of radiators and heating tubes, interior doors as well as the interior side of the window frames and the exterior doors, if these are made of wood.

11

Rental Security

X Before the delivery of the rented rooms, the Tenant undertakes to provide a unconditional, unlimited, irrevocable, directly enforceable, written guarantee from the following bank

- to be specified -

Amount, Currency

with an amount of Euro 14,600.00 and to submit the guarantee certificate to the Landlord. The guarantee must contain the waiver of objections and the obligation to pay the guaranteed amount upon the Landlord's request.

˜ The Tenant undertakes to pay to the Landlord a rental deposit of to a special account under the name of the Tenant:

Bank:

Account no.: Bank Code

The Landlord shall have the exclusive right of disposal for the account.

X Before the delivery of the rented property, the Tenant undertakes to provide a letter of comfort of his parent company Mehrweg Elektrik GmbH & Co. KG, Memminger Str. 14, 86159 Augsburg

which meets the legal conditions of the guarantee mentioned above.

The Landlord may make use of the rental security

- if, during the rental period, the Tenant is in arrears with the rent payment and if such default amounts to a minimum of one monthly rent;

- if damage is caused to the rented rooms and significant parts thereof by the Tenant and when the Landlord is responsible for the remedy of such damage or if the Landlord remedies the damage as a replacement measure because it is not remedied by the Tenant despite a written warning served to him;

- if agreed renovation measures have not been carried out by the Tenant upon the end of the tenancy;

- if the Landlord has other claims against the Tenant resulting from the tenancy.

If the Landlord makes use of the rental security during the rental period for a reason mentioned above, the Tenant is obliged to immediately restore it in its entire scope.

12

Person of the Tenant - Change of the Legal Form

If several persons act as Tenant, these persons authorize each other irrevocably to receive any declarations of intent issued by the Landlord.

If the Tenant's legal form changes, he shall immediately inform the Landlord thereof. The same shall apply when the business of the Tenant is transferred to other natural or legal persons.

The transfer to another natural or legal person shall be subject to the Landlord's consent. The same shall apply if the Tenant is a natural person or consists of a natural person and when the business is changed to a legal form where the liability of the company is limited.

If the consent is not given, the former persons shall remain the contractual party.

The Landlord may request in any case, that besides the legal successor, the former Tenant remains liable as joint guarantor for any liabilities arising from the tenancy.

13

Additional Agreements

1. Upon delivery, the object is in a newly renovated condition and shall be returned in the same condition at the end of the tenancy.

2. The Landlord will carry out installations and alterations according to the discussion of 24/03/03.

3. The ESD floor in the rented rooms will be installed by the Tenant.

14

Parts of the Contract

Parts of the Agreement are:

X The General Rental Conditions

X The Rules for Residents

X The Listing of the Operational Costs

X The Take-over Protocol which was prepared during the delivery of the rooms/the building

Place, date

/S/ Hans Scheller /S/ Landlord

Tenant Landlord

General Rental Conditions

No. 1

Set-off of Counter-demands

The Tenant may only set-off the rent payment with a claim for damages within the meaning of 536 a BGB or exercise a right of retention if he informs the Landlord thereof in writing at least one month before the maturity of such rent payment. The Tenant may only set-off with other claims, if these are undisputed or have been found to be legally valid. The Tenant may set- off with a claim from 538, 812 BGB without limitation.

No. 2

Subletting

The Tenant is not entitled to sublet the rented rooms, in total or in part, or to transfer them to third parties for use without the Landlord's prior consent.

In case of unauthorized subletting, the Landlord may request that the Tenant immediately terminates the subletting relationship at the next possible date of termination. If he fails to do this, the Landlord may terminate the tenancy without notice.

The Landlord may revoke a granted authorization for subletting for an important reason.

No. 3

Landlord's Lien to installed Objects

The legal conditions apply to the Landlord's lien.

The Tenant states that objects which he installs in the rented rooms upon moving in, are his free property and are not distressed or pledged, except the following objects:

The Tenant is obliged to immediately inform the Landlord of a distraint of objects which the Tenant has installed by stating the pledge holder and the bailiff.

No. 4

Access to the Rented Room by the Landlord

(1) The Landlord and his representatives are entitled to access the rented rooms after having previously informed the Tenant for the purpose of determining any damage and defect or necessary structural work and to read measuring devices. For the purpose of exercising a lien (no. 3), the Landlord and his representatives are entitled to access the rented rooms alone or accompanied by a witness.

(2) If the Landlord wishes to sell the house or if the tenancy has been terminated, the Landlord or his representatives may access the rented rooms at a previously announced time together with the parties which are interested in buying or renting the property. The inspection is permitted on working days between 9.00 and 12.00 am and between 3.00 and 6.00 pm.

(3) In case of longer absences, the Tenant shall ensure that the Landlord and his representatives may access the rented rooms in the cases mentioned above.

No. 5

End of the Rental Period

Upon the end of the rental period, the rented rooms shall be returned in a due and clean condition including all keys, even those which the Tenant procured himself. 10 of the Agreement shall apply in addition.

No. 6

Amendments or Supplements of the Agreement

Amendments or supplements of this Agreement shall be made in writing to be valid and shall be signed separately by the parties. This shall also apply to the waiver of the written form clause.

**LeaseA#27**

**Exhibit 10.6**

**AMENDMENT TO PROPERTY LEASE AGREEMENT**

by the**Company “MAISON”**

in favor of the **Company “MEDICINALS”**

**THE YEAR TWO THOUSAND AND SIXTEEN**

**ON**

**IN MARSEILLE (Bouches du Rhône)** 28/30 Avenue B Boucher

Maître Jaqueline Fourchet, a notary in the “SCP FONTAINE ET ASSOCIES, Notaries, members of a private professional partnership holding a Notarial Office,” with headquarters in PARIS (eighth district), 9 rue des Cavaliers,

With the participation of:

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Maître Francois Thibaultnotary in MARSEILLE Lawyer for the Lessee, |

Established in authentic form this deed containing **AMENDMENT TO LEASE AGREEMENT**, between the Parties identified below

**1. IDENTIFICATION OF THE PARTIES**

**LESSOR**

**1/**The Company called **SOCIETE IMMOBILIER**, a Public Limited Company whose registered office is located in PARIS (8th District), 29 Boulevard Cherie, identified by the SIREN (Système informatique du répertoire des entreprises [French Business Directory Identification System]) number 888 8888 999 RCS (Registre du commerce et des sociétés [Trade and Companies Registry]) of PARIS,

Represented by:

Ms. Dominique Pendantmanager, with professional address at COURBEVOIE (Hauts de Seine), Tour les YYYY, under the powers granted to her by **Ms. Sam Toutsaint**Director, with professional address at COURBEVOIE (Hauts de Seine), Tour les Miroirs, 18 avenue d’Alsace, pursuant to a power of attorney by private agreement in COURBEVOIE dated September 23, 2016, the original of which is the Appendix.

**( APPENDIX 1: POWERS OF MAISON )**

Ms. **Sam Toutsaint**herself having acted under the powers conferred upon her with right of substitution, by Mr. Georges Poulain**,**pursuant to a deed established by Mr. Jaques Saques, associated Notary in PARIS (8th District) 9 rue d’Astorg, on January 23, 2015.

Said **Mr. Georges Poulain**who himself acted as General Manager of ”**MAISON**,” a position to which it was appointed and that it accepted pursuant to a decision of the Board of Directors of said Company dated December 15, 2014, a certified true copy of the extract of the minutes of which is attached to the deed of January 23, 2015, referred to above.

Said company hereinafter referred to in the body of the deed as the “Lessor”

**PARTY OF THE FIRST PART**

**LESSEE**

The company called **MEDICINALS,**Public Limited Company with a Board of Directors and a Supervisory Board, whose registered office is located in MARSEILLE AAAAA, identified by the SIREN number 77889877

Represented by Ms. Sacha Smock Director of Legal Affairs, under the powers which were conferred upon her by Mr. Thierry Pascalpursuant to a power of attorney by private agreement established in MARSEILLE (Bouches-du-Rhône) on September 22, 2016, the original of which is the Appendix.

The said Mr. Thierry PascalChairman of the Board, domiciled at the registered office of the company

Having himself acted under of the powers which were granted to it pursuant to a meeting of the supervisory board on September 7, 2016, a certified true copy of an extract of the minutes of which is the Appendix.

It is observed here that by deliberations that took place on September 26, 2008, the supervisory board of the company **MEDICINALS**decided to transfer its registered office to AAAA.

A certified true copy of this decision is attached.

2

**( APPENDIX 2: DELIBERATIONS AND POWERS OF THE COMPANY MEDICINALS)**

Said company hereinafter referred to in the body of the deed as the “Lessee.”

**PARTY OF THE SECOND PART**

**2. DEFINITIONS**

To simplify, certain terms will, over of the course of this deed, have the definitions below:

**Deed of Sale or Sale**: refers to the deed established by Ms. Heloise Haussman, notary in MARSEILLE (Bouches-du-Rhône) dated June 9, 2008 and by which the Lessor acquired ownership of the Property.

**Appendix:**refers to an appendix to the Amendment and which is an integral part of it.

**Down payment:**refers to the amount made available by the Lessee to the Lessor under the conditions agreed in the original Lease Agreement

**Amendment:**refers to this deed concluded between the Lessor and the Lessee

**Financial Expenses:**refers to amounts owed by the Lessee for pre-rental fees, rent, and other charges, as specified in Chapter III of PART II.

**Agreement**or **Lease Agreement :**refers to the Property lease agreement between the Lessor and the Lessee pursuant to a deed established by Ms. Francois Thibault, notary in MARSEILLE, on June 9, 2008, replacing Ms. Sophie Guillaut

**Lessor:**refers to the company ”**MAISON**.”

**Lessee :** refers to the company ” **MEDICINALS**”

**Effective Date:**refers to effective date of the Amendment which is today’s date

**Reference Date:**refers to the day that will be taken into account to determine the rate applicable to the Pre-rental fees namely: will be the day of disbursement.

**Disbursement:**refers to any amount paid by the Lessor in respect of this transaction.

3

**Financial Amount Outstanding:**refers to, at a given date, the amount of the Investment, less financial amortization applied quarterly.

**EURIBOR**(Euro Inter Bank Offered Rate) is the interbank offered rate in EUROS between major banks in the Eurozone. It is calculated with three (3) decimals using the average of fifty-seven (57) quotes. It is published by the Fédération Bancaire de l’Union Européenne [European Union Banking Federation] (F.B.E.) at around 11:00 a.m. (Brussels time).

**Building or Property :** refers to the Property that is the subject of the Lease Agreement and the Amendment

**Investment:**refers to the amount dedicated by the Lessor for the financing of the Amendment

**Business Day:**refers to any entire day (other than Saturday or Sunday) on which credit institutions are open in Paris in order to perform banking operations and transactions on the interbank market.

**TARGET Business Day**: Refers to a day when the target PAYMENT SYSTEM is open. The European real time gross settlement system, referred to as TARGET, connects the European Central Bank to the national central banks of the states participating in the Economic and Monetary Union via their respective real time gross settlement systems (hereinafter RTGS). The TARGET interconnection system is open every day when at least two RTGS are open, except Saturday and Sunday. It is closed according to the TARGET schedule (currently January 1 and December 25).

**Rent:**refers to the financial charges due by the Lessee to the Lessor under the Amendment

**Parties:**refers to the Lessor and Lessee together and where the context so provides, all those appearing.

**VAT Pre-rental fees** refers to the financial charges due by the Lessee to the Lessor for any disbursement by the latter of the Value Added Tax.

**Work or Development Work** refers to the development work carried out in the Building and financed by the Lessor

**Residual Value:**refers to the Financial Amount Outstanding remaining due at the expiration of the Agreement after payment of the final installment of rent.

**These definitions are not exhaustive.**Other definitions are given in the body of the Agreement and they have the same contractual power.

4

**3. SUMMARY**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  |  |  |  |  |  |  |
| **1. IDENTIFICATION OF THE PARTIES** | | |  |  | **2** |  |
|  | | |  | | | |
| **2. DEFINITIONS** | | |  |  | **3** |  |
|  | | |  | | | |
| **3. SUMMARY** | | |  |  | **5** |  |
|  | | |  | | | |
| **4. PRESENTATION** | | |  |  | **8** |  |
|  | | |  | | | |
| **LEASE AGREEMENT OF JUNE 9, 2008** | | |  |  | **8** |  |
|  | | |  | | | |
| **5. PRESENTATION OF THE PROJECT - FINANCING AGREEMENT - GENERAL PRINCIPLES** | | |  |  | **9** |  |
|  | | |  | | | |
| **6. AMENDMENT TO PROPERTY LEASE AGREEMENT** | | |  |  | **12** |  |
|  | | |  | | | |
| **PART I** | | |  |  | **13** |  |
|  | | |  | | | |
| **PURPOSE - DURATION - FINANCIAL CHARACTERISTICS** | | |  |  | **13** |  |
|  | | |  | | | |
| **CHAPTER I** | | |  |  | **13** |  |
|  | | |  | | | |
| **PURPOSE OF THE LEASE** | | |  |  | **13** |  |
|  |  | |  | | | |
| **ARTICLE 1.** |  | **DESCRIPTION OF THE BUILDING** |  |  | **13** |  |
|  |  | |  | | | |
| **ARTICLE 2.** |  | **INTENDED USE OF THE BUILDING** |  |  | **13** |  |
|  | | |  | | | |
| **CHAPTER II** | | |  |  | **13** |  |
|  | | |  | | | |
| **DURATION - EFFECTIVE DATE** | | |  |  | **13** |  |
|  |  | |  | | | |
| **ARTICLE 3.** |  | **DURATION OF THE AMENDMENT** |  |  | **13** |  |
|  |  | |  | | | |
| **ARTICLE 4.** |  | **EFFECTIVE DATE** |  |  | **13** |  |
|  | | |  | | | |
| **CHAPTER III** | | |  |  | **14** |  |
|  | | |  | | | |
| **FINANCIAL CONDITIONS** | | |  |  | **14** |  |
|  |  | |  | | | |
| **ARTICLE 5.** |  | **INVESTMENT** |  |  | **14** |  |
|  |  | |  | | | |
| **ARTICLE 6.** |  | **FEES** |  |  | **14** |  |
|  | | |  | | | |
| **6.1. COMMITMENT FEE** | | |  |  | **14** |  |

5

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  |  |  |  |  |  |  |
| **6.2. STUDY AND STRUCTURING COSTS** | | |  |  | **14** |  |
|  | | |  | | | |
| **6.3. MANAGEMENT FEES** | | |  |  | **14** |  |
|  |  | |  | | | |
| **ARTICLE 7.** |  | **PRE-RENTAL FEES** |  |  | **15** |  |
|  | | |  | | | |
| **7.1. PRE-RENTAL FEES ON THE VALUE ADDED TAX** | | |  |  | **15** |  |
|  |  | |  | | | |
| **ARTICLE 8.** |  | **DEFINITION OF THE RENT** |  |  | **15** |  |
|  |  | |  | | | |
| **ARTICLE 9.** |  | **DETERMINATION OF THE RENT** |  |  | **16** |  |
|  | | |  | | | |
| **9.1. CALCULATION OF THE RENT** | | |  |  | **16** |  |
|  | | |  | | | |
| **9.2 DISAPPEARANCE OF THE SELECTED REFERENCE RATES** | | |  |  | **16** |  |
|  |  | |  | | | |
| **ARTICLE 10.** |  | **SUMMARY - BREAKDOWN TABLE - APPROVED BASIS** |  |  | **16** |  |
|  |  | |  | | | |
| **ARTICLE 11.** |  | **RENT DUE DATE - PAYMENT - DEFAULT INTEREST** |  |  | **17** |  |
|  | | |  | | | |
| **11.1. RENT DUE DATE** | | |  |  | **17** |  |
|  | | |  | | | |
| **11.2. PAYMENT** | | |  |  | **17** |  |
|  | | |  | | | |
| **11.3. DEFAULT INTEREST** | | |  |  | **17** |  |
|  |  | |  | | | |
| **ARTICLE 12.** |  | **SALE AGREEMENT** |  |  | **18** |  |
|  | | |  | | | |
| **12.1. UNILATERAL AGREEMENT TO SELL** | | |  |  | **18** |  |
| *12.1.1 Conditions for fulfilling the sale agreement* | | |  |  | 18 |  |
| *12.1.2. Implementation date* | | |  |  | 18 |  |
| *12.1.3. Procedures for exercising the option* | | |  |  | 18 |  |
| *12.1.4. Sale fees and taxes* | | |  |  | 18 |  |
|  | | |  | | | |
| **12.2. CONDITIONS OF THE SALE** | | |  |  | **19** |  |
|  | | |  | | | |
| **12.3. SALE PRICE UNDER THE AMENDMENT** | | |  |  | **20** |  |
| *12.3.1. Sale Price at the end of the Agreement* | | |  |  | 20 |  |
| *12.3.2. Advance Asking Price* | | |  |  | 21 |  |
|  | | |  | | | |
| **PART II** | | |  |  | **21** |  |
|  | | |  | | | |
| **TERMINATION OF THE LEASE AGREEMENT AND THE AMENDMENT—TAX PROVISIONS – INSURANCE - CLAIMS** | | |  |  | **21** |  |
|  |  | |  | | | |
| **ARTICLE 13.** |  | **TERMINATION** |  |  | **21** |  |
|  | | |  | | | |
| **13.1. TERMINATION AT THE REQUEST OF THE LESSEE** | | |  |  | **22** |  |
| *13.1.1. Conditions* | | |  |  | 22 |  |
| *13.1.2. Compensation* | | |  |  | 23 |  |
|  | | |  | | | |
| **13.2. TERMINATION AT THE REQUEST OF THE LESSOR** | | |  |  | **23** |  |
| *13.2.1. Conditions* | | |  |  | 23 |  |
| *13.2.2. Compensation* | | |  |  | 23 |  |

6

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  |  |  |  |  |  |  |
| **ARTICLE 14.** |  | **CONSEQUENCES OF THE TERMINATION OR FAILURE TO EXERCISE THE OPTION** |  |  | **24** |  |
|  | | |  | | | |
| **14.1. TERMINATION OF THE SALE AGREEMENT** | | |  |  | **24** |  |
|  | | |  | | | |
| **14.2. RELEASE OF THE PROPERTY BY THE LESSEE** | | |  |  | **24** |  |
|  | | |  | | | |
| **14.3. INVENTORY STATEMENT** | | |  |  | **24** |  |
|  | | |  | | | |
| **14.4. DELIVERY OF DOCUMENTS** | | |  |  | **24** |  |
|  |  | |  | | | |
| **ARTICLE 15.** |  | **TAXATION OF THE AMENDMENT** |  |  | **25** |  |
|  |  | |  | | | |
| **ARTICLE 16.** |  | **INSURANCE UNDER THE AMENDMENT** |  |  | **25** |  |
|  | | |  | | | |
| **16.1 CONSTRUCTION INSURANCE** | | |  |  | **25** |  |
|  | | |  | | | |
| **16.2 ALL RISKS EXCEPT INSURANCE** | | |  |  | **25** |  |
|  |  | |  | | | |
| **ARTICLE 17.** |  | **LOSSES** |  |  | **26** |  |
|  | | |  | | | |
| **17.1. OBLIGATIONS OF THE LESSEE IN THE EVENT OF A LOSS** | | |  |  | **26** |  |
|  | | |  | | | |
| **17.2. INSURANCE COMPENSATION** | | |  |  | **27** |  |
|  | | |  | | | |
| **17.3. PARTIAL LOSS** | | |  |  | **27** |  |
|  | | |  | | | |
| **17.4. TOTAL LOSS** | | |  |  | **28** |  |
|  | | |  | | | |
| **17.5. RECONSTRUCTION AUTHORIZATION** | | |  |  | **29** |  |
|  | | |  | | | |
| **17.6. RECONSTRUCTION - RESTORATION** | | |  |  | **29** |  |
|  | | |  | | | |
| **17.7. PROVISIONS RELATING TO RENTS** | | |  |  | **30** |  |
|  | | |  | | | |
| **PART III** | | |  |  | **30** |  |
|  | | |  | | | |
| **GUARANTEES** | | |  |  | **30** |  |
|  |  | |  | | | |
| **ARTICLE 18.** |  | **PLEDGE OF THE AMENDMENT** |  |  | **30** |  |
|  | | |  | | | |
| **PART IV** | | |  |  | **30** |  |
|  | | |  | | | |
| **MISCELLANEOUS** | | |  |  | **30** |  |
|  |  | |  | | | |
| **ARTICLE 19.** |  | **COSTS - ASSESSMENTS** |  |  | **30** |  |
|  |  | |  | | | |
| **ARTICLE 20.** |  | **INSEPARABILITY OF THE CONTRACTS** |  |  | **31** |  |

7

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  |  |  |  |  |  |  |
| **ARTICLE 21.** |  | **POWERS - RELATIVE EFFECT** |  |  | **32** |  |
|  | | |  | | | |
| **21.1. POWERS** | | |  |  | **32** |  |
|  | | |  | | | |
| **21.2. RELATIVE EFFECT** | | |  |  | **32** |  |
|  |  | |  | | | |
| **ARTICLE 22.** |  | **REPRESENTATIONS AND WARRANTIES OF THE PARTIES** |  |  | **33** |  |
|  |  | |  | | | |
| **ARTICLE 23.** |  | **NOTICES** |  |  | **34** |  |
|  |  | |  | | | |
| **ARTICLE 24.** |  | **ADDRESS FOR SERVICE - JURISDICTION** |  |  | **34** |  |
|  |  | |  | | | |
| **ARTICLE 25.** |  | **DATA PROTECTION ACT** |  |  | **35** |  |
|  |  | |  | | | |
| **ARTICLE 26.** |  | **ISSUE OF AN ENFORCEABLE COPY** |  |  | **35** |  |
|  |  | |  | | | |
| **ARTICLE 27.** |  | **LIST OF APPENDICES** |  |  | **35** |  |

**4. PRESENTATION**

**Acquisition of June 9, 2008**

Under a deed established by Ms. Heloise Haussman, notary in MARSEILLE on June 9, 2008, the Lessor acquired, from the City of MARSEILLE, the building whose description is as follows:

In the municipality of MARSEILLE (13009) Area of Redon, Route de Cassis, whose postal address is 117 avenue de Luminy, a building used for business, industrial premises, laboratories, with a net floor area of 2,838 m².

Registered in the land registry in Section 99M, numbers:

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | 34 locality known as known as route de Cassis for 96 a 48 ca |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | 39 locality known as route de Cassis for 02 a 99 ca |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | 38 locality known as route de Cassis for 02 a 39 ca |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | 37 locality known as route de Cassis for 04 a 64 ca |

For a total of 1 ha 06 a 50 ca

This acquisition took place for a price paid in cash pursuant to the deed which contains the discharge.

An authentic copy of this deed was published in the Land Registry Department of MARSEILLE 3rdDistrict on July 10, 2008 volume 2008P number 8977

**Lease Agreement of June 9, 2008**

Pursuant to a deed established on June 9, 2008 by Ms. Francois Thibault, notary in MARSEILLE, replacing Ms. Sophie Guillaut,

The Lessor granted to the Lessee a Lease Agreement on the Building and the financing of development work as part of a contracting authority delegation agreement.

8

This agreement was granted:

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | For a period that started to run on June 9, 2008 for Tranche A and on January1, 2009 for Tranche B, the two tranches ending twelve (12) years after Tranche A takes effect, i.e. June 8, 2020 |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | For an estimated investment excluding tax of SIX MILLION FOUR HUNDRED ONE THOUSAND EUROS (6,401,000.00 EUR) definitively approved for the amount of SIX MILLION FIVE HUNDRED FIFTY-ONE THOUSAND EUROS (6,551,000.00 EUR) |

It included the following guarantees:

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Pledge of the lease agreement |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Pledge of the down payment |

It was also agreed to under the obligations and conditions that it is unnecessary to recall here, as the parties declare to know them perfectly.

**5. PRESENTATION OF THE PROJECT - FINANCING AGREEMENT - GENERAL PRINCIPLES**

**PRESENTATION OF THE PROJECT / FINANCING AGREEMENT**

The Lessee wants to have, but without taking immediate ownership of, premises for industrial uses, businesses, laboratories located in MARSEILLE (Bouches du Rhône) 117, avenue de Luminy

To finance this transaction, it contacted the Lessor whose purpose defined by Article L.313-7 of the Monetary and Financial Code is renting unequipped buildings for professional uses and asked it:

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | To reimburse it for the cost of the Development Work that it carried out on the Building, |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | to lease the whole thing to it under an Amendment to the Lease Agreement, for the remaining duration of the latter. |

This work consists of development work to transform an office space into a research laboratory

The Work does not require the issuance of a building permit or a prior declaration, as established by a certification from CCD Architecte dated July 1, 2016, appended hereto.

**( APPENDIX 3: ARCHITECT CERTIFICATION )**

The Lessee represents and warrants that the Work does not change the classification of the Building with respect to the regulations relating to Facilities Classified for the Protection of the Environment and the activity carried out in the Building does not fall under these regulations.

9

The Work was accepted on June 16, 2016 as is clear from the Acceptance Report attached

**( APPENDIX 4: WORK ACCEPTANCE REPORT )**

The Lessor agreed to this financing request within the limit of an amount excluding value-added tax of **EIGHT HUNDRED FORTY-SIX THOUSAND THREE HUNDRED AND THIRTY-SEVEN EUROS AND EIGHTY CENTS (846,337.80 EUR)**

The Lessor repays on this date as is clear from the accounts of the undersigned notary, the sum of EIGHT HUNDRED FORTY-SIX THOUSAND THREE HUNDRED AND THIRTY SEVEN EUROS AND EIGHTY CENTS (846,337.80 EUR) excluding tax plus ONE HUNDRED SIXTY-NINE THOUSAND TWO HUNDRED SIXTY- SEVEN EUROS AND FIFTY-SIX CENTS (169,267.56 EUR) for the value added tax, for a total including tax of ONE MILLION FIFTEEN THOUSAND SIX HUNDRED FIVE EUROS AND THIRTY-SIX CENTS (1,015,605.36 EUR) to the Lessee, which recognizes and agrees to this and grants it good and valid discharge.

**FOR WHICH DISCHARGE IS DULY GIVEN**

**GENERAL PRINCIPLES**

Risk transfer

The Lessee acknowledges having perfect knowledge of the legal, technical, administrative and environmental characteristics of the Property, having chosen it to meet its own needs.

It acknowledges that the role of the Lessor is limited in this transaction to ensuring, according to the following agreed conditions, the financing of Development Work

In these conditions, and although the ownership of the Property is legally attributed to the Lessor for the duration of the Lease Agreement and the Amendment, it became justified for the Lessee to assume all the risks and obligations of any kind, even those resulting from a force majeure event, which would fall, according to general law, to the builder or the owner of the Property.

Responsibilities arising from the ownership, use or structure of the Building

All decisions relating to the choice of location, the nature, quality and intended use of the Property were made previously hereto by the Lessee. The Lessor took no part in these decisions and agreed, at the request of Lessee, to ensure, within the limits set above in the Presentation, the financing of the Property.

It is hereby specified that in the event of non-compliance with all current and future regulations applicable to the Property and to the activity carried out in the premises, the Lessee shall bear all the financial consequences, including any compensation for damages so that the Lessor is in no way either sought or disturbed about this matter.

10

In addition, if the administrative or judicial authorities require the closure of the leased premises, the Rent will continue to be due with no recourse against the Lessor.

The Lessee shall be personally responsible, without recourse against the Lessor, for obtaining and maintaining all administrative authorizations required for the activity carried out in the Property, the occupancy of the premises and their opening to the public.

The Lessee also shall be personally responsible, without recourse against the Lessor, for easements of any kind, as well as current and future regulations that may change or restrict the options regarding the use, layout and consistency of the premises without being able to claim a reduction in the Rent.

It will bear at its expense and without any recourse against the Lessor, the cost of work and/or any other measures and obligations required by the relevant authorities and that would have to be done to meet the current or future legal or regulatory mandatory provisions set by national or European standards rendered applicable in France.

For the duration of the Lease Agreement, the Lessee shall hold the use, management and control of the Property. It is therefore considered to be the caretaker and this Property is placed under its exclusive responsibility, which it will have to assume or have assumed by its sub-tenants in its entirety without being able to exercise any recourse whatsoever for any reason whatsoever, against the Lessor.

The Lessee intends, despite the acquisition by the Lessor of the Property, during the period of financing, to maintain full control over the Property from a technical and economic point of view.

For the duration of the transaction, the role of the Lessor, owner of the Property, is limited, although it is the legal owner of the Property, to financing the Property within the limits agreed between the Parties and subject to the Lessee exactly fulfilling its contractual obligations.

Any damage that may be caused, both to the Lessee and to third parties, due to the structure of the Property (including that of the soil), will be fully supported by the latter, which may not, as in the previous case, exercise any recourse whatsoever for any reason whatsoever against the Lessor.

In this spirit, the Lessee shall assume alone all the rights that could be exercised against anyone, particularly with regard to non-compliant defects, constraints on the use of the Property, easements...

In this context and because of the Lessee’s responsibilities under the Lease Agreement, the Lessor gives the Lessee all powers to conduct any action, take any initiative and if necessary conduct any proceedings.

11

The Lessee will be solely responsible, at its sole expense, for any proceedings that may be initiated and continued, though it will keep the Lessor informed of these.

The Lessor, if desired, can always intervene regardless of the status of the proceedings.

The Lessee agrees to keep the Lessor informed of these actions or proceedings by forwarding the documents or exhibits concerning these actions to the Lessor.

It is in light of these introductory statements, which should always be referred to in order to justify as necessary the distribution between the Parties of the charges, obligations, responsibilities and risks and to seek their shared purpose, that the Lease Agreement is concluded.

**6. AMENDMENT TO PROPERTY LEASE AGREEMENT**

The Lessor hereby finances as a property lease, under the provisions of Articles L 313-7 to L 313-10 of the Monetary and Financial Code of Act No. 95-115 of February 4, 1995 (Article 57), of Decree No. 95-617 of May 6, 1995 and following texts, to the Lessee, which is accepted by its representative, the Work which is the subject matter of the Amendment

The Amendment is divided into four parts:

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | The **first part** contains the purpose, duration and the financial characteristics of the Amendment |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | The**second part**relates to the termination of the Lease Agreement and the Amendment, the tax system of the Amendment, insurance and claims. |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | The**third part**contains the guarantees afforded to the Lessor |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | The **fourth part** contains various provisions. |

12

**PART I**

**PURPOSE - DURATION - FINANCIAL CHARACTERISTICS**

**CHAPTER I**

**PURPOSE OF THE LEASE**

**ARTICLE 1. DESCRIPTION OF THE BUILDING**

In the municipality of **MARSEILLE**(13009) Area of Redon, Route de Cassis, whose postal address is For a total of **1 ha 06 a 50 ca**

**ARTICLE 2. INTENDED USE OF THE BUILDING**

The Property is intended to be used as industrial premises, laboratory activities.

This intended use will not be subject to any changes without the express written agreement of the Lessor.

**CHAPTER II**

**DURATION - EFFECTIVE DATE**

**ARTICLE 3. DURATION OF THE AMENDMENT**

The Amendment is agreed for the period ending on the same date as the Lease Agreement, which is June 8, 2020.

**ARTICLE 4. EFFECTIVE DATE**

The leasing starts on this date

13

**CHAPTER III**

**FINANCIAL CONDITIONS**

**ARTICLE 5. INVESTMENT**

The investment by the Lessor is an amount excluding value added tax of **EIGHT HUNDRED FORTY-SIX THOUSAND THREE HUNDRED AND THIRTY-SEVEN EUROS AND EIGHTY CENTS (846,337.80 EUR)** and is as follows:

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Cost of the Development Work |

No amount in excess of the amount excluding tax of EIGHT HUNDRED FORTY-SIX THOUSAND THREE HUNDRED AND THIRTY-SEVEN EUROS AND EIGHTY CENTS (846,337.80 EUR) may be demanded from the Lessor, even if said Investment would turn out to be insufficient for any reason whatsoever for the realization of this transaction.

**ARTICLE 6. FEES**

**6.1. COMMITMENT FEE**

The Lessee shall be liable to pay, from the issue of the financing offer, i.e. June 14, 2016, until the Effective Date, which is today, a commitment fee equal to zero point ten per cent (0.10%) per quarter of the Lessor’s maximum investment excluding tax

This fee, plus the Value Added Tax, will be payable by the Lessee quarterly in arrears by debiting its account as will be described below.

**6.2. STUDY AND STRUCTURING COSTS**

A lump sum, excluding value added tax of TWO THOUSAND FIVE HUNDRED EUROS (2,500.00 EUR) for an amount including tax of THREE THOUSAND EUROS (3,000.00 EUR) was paid by the Lessee to the Lessor before today.

**6.3. MANAGEMENT FEES**

The company “**MAISON**” will invoice the Lessee for the cost of the specific services listed in the schedule appended hereto.

**( APPENDIX 5: PRICE SCHEDULE**)

The costs set out in said schedule are valid for the current year.

They will be revised on July 1 of each year and will be communicated free of charge on first demand of the Lessee.

Any new obligation placed under the Lessor’s responsibility by legal or regulatory provisions may be subject to new fees.

14

It is specified here that the management fees stated above will apply to all the transactions (Lease Agreement and Amendment) excluding all those that may be listed in the previous deed.

**ARTICLE 7. PRE-RENTAL FEES**

**7.1. PRE-RENTAL FEES ON THE VALUE ADDED TAX**

The Value Added Tax paid by the Lessor will give rise to the payment of VAT Pre-rental fees for a fixed period of four (4) months from each payment made by the Lessor under the Lease Agreement.

The Lessee shall be liable to pay VAT Pre-rental fees calculated according to banking practice on the amounts of Value Added Tax disbursed, at the following annual nominal rate of “T”:

**“T”: 3 month EURIBOR + one hundred fifty basis points (150 bp) per annum**

The rate “T” is calculated on a calculation basis corresponding to the exact number of days of the calculation period of the VAT Pre-rental fees calculated on a 360 day year.

The 3-month EURIBOR as defined above, to be used, will be the one published two TARGET Business Days prior to the Reference Date also defined above.

These VAT Pre-rental fees, plus the Value Added Tax that may encumber them, will be charged at the end of each calendar month and payable by the Lessee within fifteen (15) Business Days of the following month.

It being specified here that the 3-month EURIBOR used may not be less than zero percent (0%).

**ARTICLE 8. DEFINITION OF THE RENT**

It is explicitly specified that the term “Rent” as used herein for the language purposes, must be treated as a financial fee to cover amortization and remuneration, at the agreed rate, of the capital invested by the Lessor for the realization of this transaction.

Accordingly, and unless there is a specific legislative provision affecting the Lease Agreement, the Rents will not be subject to any modification or revision for any reason whatsoever, whether they are due to an existing situation of the Lessee or legislation regulating, temporarily or not, the amount or rate of rent for premises for commercial or industrial use, or lastly no revision based on the provisions of Articles L.145-1 et seq. of the Commercial Code, governing relationships between lessors and the tenants of commercial premises.

15

**ARTICLE 9. DETERMINATION OF THE RENT**

The Rent will be due by the Lessee to the Lessor from the Effective Date of the Amendment, which is today and is established as follows.

**9.1. CALCULATION OF THE RENT**

The rents will be composed of financial amortization and interest.

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Financial amortization depreciates the entire Investment for the duration of the Amendment |

The chosen amortization rate is the one that obtains constant maturities.

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | The interest will be calculated by applying to the Financial Amount Outstanding due before amortization for the period, a fixed annual nominal rate equal to one point twenty-five percent (1.25%) |

**9.2 DISAPPEARANCE OF THE SELECTED REFERENCE RATES**

If there are changes affecting the composition and/or the definition of one or more reference rates mentioned in the Lease Agreement or if the rate or rates should disappear, and if there is a change affecting one of the bodies publishing these reference rates or the publication procedures, the parties agree to refer to the rate resulting from the modification or the substitution, and the transition from the old rate to the new rate will be carried out using the required link ratio, as appropriate.

If there is no replacement rate or link ratio, if it is necessary, it will be up to the parties to agree on the selection of a new reference rate.

In the absence of agreement between them, the replacement rate will be determined by an Arbitral Tribunal composed of three (3) selected experts, one by the Lessor, the other by the Lessee and third by agreement between the Parties. Failing agreement, this third expert will be appointed by the other two experts or otherwise by the Judge in Summary Proceedings ruling at the request of either party. This Arbitral Tribunal shall decide by a majority of its members and will make its decision within sixty (60) days of its constitution.

It is expressly agreed that the lack of a reference rate will not authorize the Lessee to delay payment of rents. The Rents will continue to be billed when due based on the rate of the last Rents billed before the reference rate ceased to be published or disappeared.

The Rents will be adjusted as soon as the replacement rate is determined.

**ARTICLE 10. SUMMARY - BREAKDOWN TABLE - APPROVED BASIS**

In accordance with the provisions of Decree No. 95-617 of May 6, 1995, taken on the basis of Article 57 of Act No. 95-115 of February 4, 1995, the Lessor provided the Lessee the following elements established on the amount of the Investment as provided in this agreement, namely:

1 / A summary

2 / A table (Official)

3 / the financial table established and calculated on the amount and according to the above procedures provided for in Article 12.1.

The summary and the tables form the Appendix.

16

**( APPENDIX6: SUMMARY AND TABLES)**

**ARTICLE 11. RENT DUE DATE - PAYMENT - DEFAULT INTEREST**

**11.1. RENT DUE DATE**

The Rents thus determined are payable quarterly and in advance, on the 1st of January, the 1st of April, the 1st of July and the 1st of October each year.

However, the first term of Rent due on the Effective Date of the Lease Agreement was calculated on a pro rata temporis basis. Similarly, the last term of rent will also be calculated on a pro rata temporis basis.

**11.2. PAYMENT**

All Rents, and, in general, all amounts owed by the Lessee to the Lessor under the Lease Agreement will be collected by the Lessor by deducting the amount from the Lessee’s bank account, whose details are shown below.

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Bank: SOCIETE GENERALE |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | Branch : MARSEILLE ENTREPRISES |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | IBAN (International Bank Account Number): FR76 3 |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | BIC (Bank Identifier Code): - |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | ICS (SEPA Creditor Identifier): **F** |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | RUM (Single Mandate Reference): 000 |

Lessee’s EU VAT Number:

**11.3. DEFAULT INTEREST**

If the Lessee fails to pay any amount due under this Lease Agreement, it will be liable to pay default interest to the Lessor calculated on a pro rata temporis basis at the nominal annual rate equal to the rate of the Amendment plus five hundred basis points (500 bp) per annum from the due date until payment, all without prejudice to the possibility for Lessor to pursue termination of the Lease Agreement and the Amendment under the conditions set out below.

17

**ARTICLE 12. SALE AGREEMENT**

**12.1. UNILATERAL AGREEMENT TO SELL**

The “sale agreement” article of the Lease Agreement is canceled and replaced by the following:

*12.1.1 Conditions for fulfilling the sale agreement*

In accordance with the provisions of Article L 313-7 of the Monetary and Financial Code on Leasing transactions, the agreements resulting from the Lease Agreement must enable the Lessee to become, if desired, the owner of the Property that is the subject of the Lease Agreement and the Amendment, inseparably.

To this effect, the Lessor promises to the Lessee, which is accepted by its representative, but only as a promise, to sell the Property, subject of the Lease Agreement and the Amendment, to the Lessee.

This sale agreement may only be exercised and implemented if the Lessee is current with all its obligations under the Lease Agreement and the Amendment.

The implementation of the sale agreement thus granted by the Lessor may be requested by the Lessee:

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | either in advance from the date mentioned below under Article 12.1.2, |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | or upon the contractual expiration of the Lease Agreement and the Amendment |

*12.1.2. Implementation date*

This sale agreement is valid for a period starting to run from the end of the third (3rd) year from the Effective Date of the Amendment.

*12.1.3. Procedures for exercising the option*

The request to exercise the option may, from that date, be made, for the contractual expiration date of the Lease Agreement or during the Lease Agreement, at the end of each calendar quarter, by a registered letter with acknowledgment of receipt addressed to the Lessor, at its registered office, at least six (6) months in advance.

It must, under penalty of invalidity, be followed within three (3) months, by the consignment in the hands of the Lessor of a sum sufficient to cover both the sale price and the costs and fees incurred by the completion of the sale.

*12.1.4. Sale fees and taxes*

In addition to the price determined below, the Lessee shall pay all costs, duties, taxes and fees associated with this transfer and also all taxes, duties and contributions that the Administration may require from either party for any reason whatsoever (excluding corporate taxes that may be owed by the Lessor or any new tax owed by the Lessor, as a leasing company).

18

**12.2. CONDITIONS OF THE SALE**

The sale will be granted in return for the set price on the date of the completion of the sale by authenticated deed, in accordance with Article 12.3 below.

This price will be payable in cash upon signature of this deed.

The Lessee will be required to establish at its expense all diagnoses, certifications, expert assessments and other formalities imposed on building owners by the legislation in force related to Property transfers.

The signing of the deed of sale will occur on the expiration date of the Lease Agreement. In the event that the deed of sale would not be regularized on that date, the Lessee shall be liable to pay a quarterly occupancy fee to the Lessor equal to the Rent due for the last full calendar quarter.

The sale will take place under the ordinary and statutory terms and conditions in such cases, and in particular under the following terms:

●**Charges and conditions**

*The Buyer:*

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | *will take the Building in the condition it was found on the day of the sale, the Lessee having perfect knowledge of this for having had the enjoyment of it under the lease agreement, without any guarantee of the good, or poor condition of the buildings, defects of any kind, visible or hidden, condition of the soil and subsoil, shared walls, misalignment, errors in the description, and any difference in capacity even if it were to be in excess by one-twentieth, pursuant to the provisions of Article 1627 of the Civil Code, and by way of express derogation to the provisions of Article 1641 of the Civil Code.* |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | *Will be personally responsible for the absence of all administrative deeds or authorizations related to the Building.* |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | *Shall bear all passive easements of any kind and will benefit from all active easements that may exist, as those easements result especially from:* |

|  |  |  |  |
| --- | --- | --- | --- |
|  | *•* |  | *property titles, building lease, long-term lease, condominium rules, volume division, subdivision, particular areas, and any document concerning the Building,* |

|  |  |  |  |
| --- | --- | --- | --- |
|  | *•* |  | *the provisions of development plans that will be in force at that time,* |

|  |  |  |  |
| --- | --- | --- | --- |
|  | *•* |  | *the Law.* |

19

|  |  |  |  |
| --- | --- | --- | --- |
|  | *•* |  | *will pay, on the day of signing the authenticated deed of sale, all amounts due which have not yet been paid by the Lessee, and will make a provision covering the entire property tax (established based on the billing of the previous year), and undertakes to pay and/or reimburse any additional amount that could be claimed by the tax authorities for the ownership or use of the Building, under the conditions provided in the Property lease agreement, as well as the charges related to the Building.* |

|  |  |  |  |
| --- | --- | --- | --- |
|  | *•* |  | *Will be personally responsible for the situation of the Building with respect to former or future pollution, without recourse against the Lessor in accordance with the provisions of the Lease Agreement.* |

●***Transfer of ownership***

*The Lessee will be the owner of the Building from the date of signing the authenticated deed of sale, the transfer of ownership being subject to full payment by the Lessee of the sale price, as well as the amounts due referred to above, to the Lessor and payment of the sufficient sum - assessed by the Lessee’s notary - to meet the payment of costs, taxes and fees.*

*The authenticated deed of sale will be established by the notary of the Lessee with the participation of notary of the Lessor.*

●***Taking possession***

*Starting on the same day, the Lessee shall take possession of the Building by its combining its status as Lessee and Buyer.*

**12.3. SALE PRICE UNDER THE AMENDMENT**

It is expressly agreed that the sale price thus determined forms, in the minds of the parties, with the rents paid on their contractual due date, a unit for the expression of the financial conditions of this agreement. Accordingly, if for any reason the Lessor was forced to grant a reduction in the contractual rent over one or more terms or payment periods, the sale price would be recalculated taking into account firstly, the amounts actually collected and their date of payment, and secondly, the rents that would have received by the Lessor on their contractual due date without any reduction of the rent or payment period, all so that the Lessor receives, using the recalculated price, the profit resulting from the strict application of the provisions of the Lease Agreement.

*12.3.1. Sale Price at the end of the Agreement*

At the contractual expiration of the Amendment

The price of the sale promised above, will be equal to ONE EURO (1 EUR) excluding tax.

20

*12.3.2. Advance Asking Price*

The sale price as of the end of the third (3rd) year following the Effective Date of the Amendment will be equal to the present value, on the date of the sale, of all the amounts due (rent and Residual Value at the end of the Agreement) until the agreement expires.

In any event, this amount may not be less than the Financial Amount Outstanding remaining due on the date the option is exercised, plus three percent (3%)

The nominal discount rate will be equal to the nominal rate of the Agreement minus one hundred basis points (100 bp)

*12.3.3 subjugation of the price to value added tax*

Pursuant to the provisions of Article 260-5 e(a) of the French Tax Code, the sale price, determined as specified in Article 12.3 above, may be increased by the VAT, if the Lessor, subject to pay the VAT, has the option of being taxed at the VAT of the exercise of the option.

This increase in the sale price by the VAT will be applied in all cases of Property sale as provided in the Lease Agreement, whether in implementing the sale agreement above or in implementing any of the other provisions of the Lease Agreement, in particular, those relating to claims, referred to below.

**PART II**

**TERMINATION OF THE LEASE AGREEMENT AND THE AMENDMENT—TAX PROVISIONS – INSURANCE - CLAIMS**

**ARTICLE 13. TERMINATION**

*Articles related to termination as requested by the Lessee or the Lessor contained in the Lease Agreement, are canceled and replaced by the following:*

The termination of the Lease Agreement and the Amendment before their contractual expiration for any reason whatsoever: termination at the request of the Lessee or the Lessor, will lead automatically and without any formalities, to the payment by the Lessee of compensation calculated according to the following terms determined at the date of the effective termination, to which will be added where applicable exceptional charges.

As an essential condition, this compensation, related to the special nature of the Lease Agreement, will have the character of a lump-sum compensation for damages to offset the loss suffered by the Lessor by the early termination of the Lease Agreement and the Amendment.

21

The Lessee formally acknowledges that this compensation corresponds to the essentially financial nature of the Agreement, as the transaction was conducted by the Lessor at the express request of the Lessee out of consideration for the person.

**13.1. TERMINATION AT THE REQUEST OF THE LESSEE**

*13.1.1. Conditions*

Pursuant to the provisions of Article L 313-9 of the Monetary and Financial Code, the Lessor and the Lessee agreed, by mutual agreement, the conditions according to which the Lease Agreement and the Amendment may be terminated at the request of Lessee.

These conditions take into account the specific nature of the Property, as recalled in the presentation.

The Lessee expressly accepts the consequences of the termination of the Lease Agreement and the Amendment

The Lessee may only exercise its right to terminate as of the end of the third (3 rd) year following the Effective Date of the Amendment, and according to the following conditions:

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | The termination may only occur at the end of a calendar year, |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | The termination shall imply the termination of the sale agreement granted to the Lessee under the Lease Agreement and the Amendment |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | The Lessee shall notify the Lessor about the termination of the Lease Agreement and the Amendment at least six (6) months in advance by registered letter with postal acknowledgment of receipt sent to the registered office of the Lessor, |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | The Lessee must be current with its obligations under the Lease Agreement and the Amendment. |

It will have to justify, moreover, the good state of maintenance and repair of the Property by the production of an inventory drawn up by a recognized expert in this field, chosen by the Lessor at the Lessee’s expense.

The termination of the Lease Agreement and the Amendment will revert to the Lessee against simultaneous payment to the Lessor of the lump-sum termination compensation stipulated below, which will be recognized pursuant to a deed to be regularized by the Parties.

The compensation will be due even if the termination of the Lease Agreement and the Amendment was requested by the Lessee or its successors after a safeguarding, reorganization or liquidation procedure.

The Lessee will also bear the cost of any tax implications associated with the termination of the Lease Agreement and Amendment, as well as the cost of the deed of termination and any publication of such termination.

22

*13.1.2. Compensation*

The compensation shall be equal to fifty percent (50%) of the Sale Price of the Building determined according to the provisions of the Lease Agreement and Article 12.3 above.

All fees, duties and taxes including the value added tax that may apply to said compensation, which is stipulated excluding tax, will be charged to the Lessee.

**13.2. TERMINATION AT THE REQUEST OF THE LESSOR**

*13.2.1. Conditions*

In case of failure to perform any of the obligations imposed by the Lease Agreement and this agreement under the responsibility of the Lessee, the Lease Agreement and the Amendment shall be terminated automatically and without any legal formality, if the Lessor sees fit to do so, two (2) months after a notification sent to the Lessee of a payment order or a formal notice by extrajudicial deed remained totally or partly ineffective, and containing the statement by Lessor its intention to use the benefit of this clause, it being specified that any offer of payment made after the expiration of two (2) months will be ineffective.

The Lessee shall pay the Lessor, in addition to arrears of rent and charges, the termination compensation specified below.

It must return to the Lessor, without delay, the Building in good a state of good repair and maintenance and justify the payment of taxes, duties and services as well as its insurance premiums.

The termination of the Lease Agreement and the Amendment shall automatically imply the termination of the sale agreement granted to the Lessee under this agreement.

*13.2.2. Compensation*

The compensation shall be equal to fifty percent (50%) of the Sale Price of the Building stipulated above. It will be increased to seventy-five percent (75%) of the Sale Price if on the date of termination letter, the certificate of non-objection was not issued.

All fees, duties and taxes including the value added tax that may apply to said compensation, which is stipulated excluding tax, will be charged to the Lessee.

All amounts and compensation due on the date of termination and / or because of it, will produce, for the benefit of Lessor, automatically, without requiring any summons or formal notice, late payment interest at the rate stipulated under Article 11.3 above.

23

**ARTICLE 14. CONSEQUENCES OF THE TERMINATION OR FAILURE TO EXERCISE THE OPTION**

**14.1. TERMINATION OF THE SALE AGREEMENT**

Termination of the Lease Agreement and the Amendment or the failure to exercise the purchase option at the expiration of the Lease Agreement and the Amendment shall imply automatic termination of the sale agreement granted to the Lessee under this agreement.

**14.2. RELEASE OF THE PROPERTY BY THE LESSEE**

Failure to request the exercise of the purchase option within the agreed time, as in the case of termination of the Agreement, the Lessee, any beneficiary or successor, must remove any occupant and all furniture from the Property.

**14.3. INVENTORY STATEMENT**

If the request to exercise the purchase option is not made within the agreed time, as in case of termination of the Lease Agreement and this Agreement, the Lessor may have an inventory report drawn up by a recognized expert in this area, who it will choose to appoint. If the outcome of this inventory reveals that the Property is not in a good state of maintenance and operation, the Lessee will be required to restore or replace the equipment and materials that are in bad condition that are considered to be fixtures, and which are necessary for the normal operation of the Property.

The Lessee shall, at its own expense, remove signs and exterior panels and refurbish what results from this removal.

**14.4. DELIVERY OF DOCUMENTS**

Failure to request the exercise of the purchase option within the agreed time, as in case of termination of the Lease Agreement and the Amendment, the Lessee undertakes to deliver to the Lessor, on or before the date of expiration or termination of the Lease Agreement and the Amendment for the Property, the following documents (without the list below being exhaustive), namely:

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | the technical file containing in particular the technical reports, inspection reports and safety reports, |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | the maintenance file containing in particular the maintenance contracts, and possibly employment contracts (concerning contracts related to maintenance and not to the activity of the Lessee). |

In addition, the Lessee agrees:

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | To bear the consequences of termination of the current contracts, which would result from their non-recovery by the Lessor |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | To submit to the Lessor all the documents in its possession that would be necessary for the proper management and operation of the Property by Lessor. |

24

**ARTICLE 15. TAXATION OF THE AMENDMENT**

By express agreement between the Parties, the Amendment shall be subject to the Value Added Tax in accordance with current regulations and thus exempt from all lease registration fees.

The amount of value added tax levied on each term of Rent, at the rate in force at each term, will be borne by the Lessee in addition to the Rent and other charges specified below.

**ARTICLE 16. INSURANCE UNDER THE AMENDMENT**

**16.1 CONSTRUCTION INSURANCE**

The Lessee states that it did not purchase STRUCTURAL WARRANTY and TEN-YEAR MANUFACTURES LIABILITY insurance with respect to the Work, subject of the Amendment, which the Lessor accepts.

Therefore, the Lessee undertakes to assume all the consequences of any kind that may arise from the lack of purchase of said policies.

**16.2 ALL RISKS EXCEPT INSURANCE**

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | The coverage provided under the “All Risks Except” policy purchased by SOCIETE GENERALE including building insurance, Lost Rent -Loss of Use insurance, and Lessor Civil Liability insurance will be maintained throughout the duration of the Work. |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | The coverage amounts will be adjusted to new features of the property upon partial or total acceptance of the Work. |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | It is expressly agreed that the guaranteed amounts will be determined between the insurer and the Lessee, under the sole responsibility of the latter, and will not be less than the amount for reconstruction at replacement value, costs and fees included. |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | The Brokerage firm ABC FRANCE has been in touch with the Lessee to enable the latter to accurately assess the risks. Based on this information, a pricing was established by the broker, according to the guarantees contained in the manual issued by the insurer, defining the essential conditions of the contract. The Lessee acknowledges to have read this manual. |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | The Lessee will ensure, under its sole responsibility, that the certificate of insurance is issued by the insurer. |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | There is no waiver of the provisions of the original property lease contract concerning insurance. |

25

**ARTICLE 17. LOSSES**

*The article “losses” of the Lease Agreement is canceled and replaced by the following:*

**17.1. OBLIGATIONS OF THE LESSEE IN THE EVENT OF A LOSS**

The Lessee shall give written notice to the broker and the Lessor, within forty-eight (48) hours of its occurrence in the case of theft and within five (5) business days in other cases, of any loss suffered or caused by the Property, subject of the Lease Agreement.

It must also make all reports to the insurance companies under the conditions and within the time limits provided in each insurance policy: the Lessor hereby gives it, as necessary, a mandate to make such reports. The Lessee is prohibited from initiating any proceeding or action against the Lessor for the loss.

It will also take the necessary steps to obtain the rapid payment of compensation from the insurance companies, either on its own behalf or on behalf of the Lessor who hereby gives it all useful mandates for this purpose to perform all procedures, carry out all formalities, cause all expert assessments, participate in them; in case of difficulties, take all recourse excluding legal action.

It must, in respect of losses activating the guarantees of the structural warranty policy, use all the compensation paid by the insurance companies to repair the damage to the structures. Otherwise, the Lessee will risk an action for recovery of undue payments being initiated against it by the insurer.

In the event of legal proceedings, the Lessor shall first be warned by the Lessee of any action to be taken both as plaintiff and defendant. The Lessee shall appoint a lawyer whose specialty is directly related to the subject matter of the dispute. The Lessor reserves in any event the right to appoint its own lawyer. All fees and duties will be paid directly by the Lessee.

The Lessee agrees to keep the Lessor informed of developments in the proceedings.

The Lessee will show the Lessor all convictions that could be imposed against the latter in case of absence or inadequacy of the coverage of said policies and more generally in the event of total or partial coverage refusal by the insurer. It also will bear the costs and fees that the Lessor shall have incurred in its defense.

In the event of a loss activating the construction insurance policies (All Risks Construction or Structural Warranty policy), the Lessee undertakes to reconstitute, at its sole expense, the guarantee so that the amount of the latter is at least equivalent to what it was before the occurrence of the loss and enables, in any case, a complete reconstruction of the Property, and to justify this to the Lessor at the first request of the latter.

26

**17.2. INSURANCE COMPENSATION**

For losses whose compensation exceeds FIVE THOUSAND EUROS (5,000.00 EUR), the Lessor will only accept the compensation offer with the written consent of the Lessee, which shall notify its position within one month of receiving the offer.

The compensation paid after any loss shall be collected first by the Lessor, with the requirement that the Lessor repays the compensation to the Lessee upon proof that the work was done and the invoices paid.

The Lessor gives all powers to the Lessee to challenge the amount of compensation from the insurance companies or any other third party liable for this compensation, with the requirement that the Lessee keeps the Lessor informed of the progress of these challenges.

In any case the Lessee may not invoke such challenges to avoid its obligation to pay all the Rents, charges and accessories stipulated in the Lease Agreement.

The Lessee shall, in all cases, be personally responsible for any difference between the cost of full reconstruction of the structures and the amount of compensation paid by the insurers.

For losses for which the compensation is less than FIVE THOUSAND EUROS (5,000.00 EUR), the Lessee is permitted to collect the compensation to use it to carry out the repair work, the Lessor reserving the right to request any proof.

**17.3. PARTIAL LOSS**

As an exemption to the provisions of Article 1722 of the Civil Code, the partial destruction of the Property, even by an unforeseeable or force majeure event, will not allow the Lessee to request termination of the Lease Agreement, or payment of any compensation.

The Lessee must restore the damaged Property, at its sole expense and risk, after having obtained the necessary administrative authorizations.

If the rehabilitation of the Property cannot be done for lack of the necessary administrative authorizations, the Lessee shall have the right, without waiting for the expiration of the minimum period provided for in Article 12.1 above:

|  |  |
| --- | --- |
| i) | to either request the termination of the Lease Agreement and the Amendment upon payment by the Lessee to the Lessor of compensation equal to the sale price stipulated in Article 12.3.2 above, and determined at the date of termination, |

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| --- | --- |
| ii) | or to implement the sale agreement for the Property granted in its favor, under the conditions stipulated in article 12 “SALE AGREEMENT” and for a sale prices determined in Article 12.3.2 “Advance asking price,” even before the expiration of the minimum period prescribed above. |

27

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| iii) | or continue the Lease Agreement and the Amendment on the useable part of the Property. The Rent will be reduced in proportion to the ratio of the amount of insurance compensation net of any taxes that may encumber it, with the sale price determined in Article 12.3.2 “Advance Asking Price” approved on the date of payment of the compensation. |

This reduction will take effect only from the date of the receipt by the Lessor of the insurance compensation.

The Lessee must inform of its option by registered letter with acknowledgment of receipt within a period of one (1) month following the date on which it became aware of the impossibility to restore the Property for failure to obtain the administrative authorizations.

Otherwise, it will be deemed to have opted for the case iii) above.

The Lease Agreement will be subject to an amendment modifying the description and financial conditions to reflect the amount of compensation actually received by the Lessor, net of all fees and expenses incurred by it in particular with respect to any duties, taxes and capital gains.

Whichever option is taken by the Lessee, in cases i) and ii) above, the Lessor will transfer to it, on the day of the deed recording either the termination of the Lease Agreement or the exercise of the option, the amount of compensation received from insurance companies or any other organizations, net of all taxes and duties that may encumber this compensation, excluding corporate income tax.

The repayment to the Lessee of all compensation that can revert to it under the provisions of this Article 17.3 will not occur until the actual payment by the Lessee of all amounts that it may owe to the Lessor under the Lease Agreement, the Lessor however reserving the right to automatically offset these amounts.

**17.4. TOTAL LOSS**

In the event of a loss causing the total destruction of The Property, the Lease Agreement will be terminated automatically, but only at the expiration of the time periods set forth below for the benefit of the Lessee, to possibly exercise the option right reserved for it.

Nevertheless by express agreement between the Parties and by derogation to Article 1722 of the Civil Code, such termination will trigger the obligation for the Lessee to pay the Lessor compensation equal to the sale price of the Property determined in Article 12.3.2 of the Lease Agreement, “Advance Asking Price,” said price calculated on the date of termination, plus, if applicable, any costs of restoring the land after the loss (including demolition and removal of remains).

28

Notwithstanding the foregoing provisions, the Lessee shall have the option:

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|  | • |  | either to implement the sale agreement under the conditions specified in Articles 12.2 and 12.3 above, |

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|  | • |  | or (and by express derogation to the provisions of Article 1722 of the Civil Code) to continue the Lease Agreement by proceeding with the reconstruction of the Property at its sole expense and risk, after having obtained the necessary administrative authorizations. |

The Lessee must inform of its option within six (6) months from the day of the loss, by means of a registered letter with acknowledgment of receipt.

In the event that the Lessee would opt for the continuation of the Lease Agreement, the necessary administrative authorizations should be obtained by the Lessee within one (1) year from the date of notification of its option; otherwise the Lease Agreement would be automatically terminated under the conditions stipulated above, unless the Lessee prefers, in the same period of one (1) year, to opt for the implementation of the sale agreement.

Whichever option is taken by the Lessee, the Lessor will transfer to it the amount of compensation received from insurance companies or any other organizations, net of all taxes and duties that may encumber this compensation, excluding corporate income tax.

The repayment to the Lessee of all compensation that can revert to it under the provisions of this Article 17.4 will not occur until the actual payment by the Lessee of all amounts that it may owe to the Lessor under the Lease Agreement, the Lessor however reserving the right to automatically offset these amounts.

**17.5. RECONSTRUCTION AUTHORIZATION**

In all the cases provided in Articles 17.3 and 17.4 above, the Lessee is required to obtain any necessary administrative authorizations.

**17.6. RECONSTRUCTION - RESTORATION**

In all the cases provided in this article, the reconstruction of the completely destroyed Property or the restoration of the partially affected Property will be carried out by the Lessee:

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|  | • |  | as part of a project management delegation contract that will be regularized with the Lessor and under which the Lessee will, in particular, agree to purchase the necessary construction insurance, |

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|  | • |  | on the basis of an estimate of the work and plans established by the Lessee at its own expense and under its responsibility, |

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| --- | --- | --- | --- |
|  | • |  | and under the control and supervision of an architect or an engineering firm chosen by the Lessee, authorized, if necessary by the Lessor. Fees for the architects and engineering firms will be included in the reconstruction or restoration costs. |

**17.7. PROVISIONS RELATING TO RENTS**

In all cases of a loss where the Lessee opted for the repair or reconstruction of the Property and thus for the continuation of the Lease Agreement and the Amendment,

29

the Lessee will continue to pay, for the period elapsed since the date of the loss until the actual reconstruction, all Rents, charges and accessories stipulated in the Lease Agreement and the Amendment as long as the Lessor has not been compensated by the insurance company, under the Loss of Rent guarantee.

**PART III**

**GUARANTEES**

**ARTICLE 18. PLEDGE OF THE AMENDMENT**

To the guarantee of all claims that may result from the Amendment and the implementation of all obligations resulting herefrom, the Lessee pledges as collateral to the Lessor, which is accepted by its representative, the intangible elements resulting from this Amendment for the Lessee, together the right to lease and the benefit of the sale agreement, without exception or reservation.

Through this pledge, the Lessor shall have and exercise, on the different elements of this Amendment, all the rights, actions and privileges conferred by the Law to secured creditors.

In compliance with the Civil Code, the efficacy of the lien resulting from the pledge granted will be ensured as follows:

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|  | • |  | those appearing request that the Undersigned Notary deliver only an authentic copy of this deed; This authentic copy shall be marked: “special and single authentic copy submitted to the pledge contained in the Amendment of September 28, 2016;” |

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|  | • |  | the Lessee agrees to not request any authentic copy hereof. |

This stipulation does not however preclude the issuance of the enforceable copy to the Lessor.

**PART IV**

**MISCELLANEOUS**

**ARTICLE 19. COSTS - ASSESSMENTS**

All the costs hereof and all those that will follow or result from it will be the responsibility of the Lessee, who agrees.

For the calculation of the costs only, the parties declare that the amount of the Investment of the Lessor is valued at the sum excluding tax of EIGHT HUNDRED FORTY-SIX THOUSAND THREE HUNDRED THIRTY-SEVEN EUROS AND EIGHTY CENTS

30

(846,337.80 EUR) and the sum including the Value Added Tax of ONE MILLION FIFTEEN THOUSAND SIX HUNDRED FIVE EUROS AND THIRTY-SIX CENTS (1,015,605.36 EUR).

This Lease Agreement will be subject to registration formalities.

**ARTICLE 20. INSEPARABILITY OF THE CONTRACTS**

All the provisions of the Lease Agreement that are not contrary hereto, shall continue to apply to all agreements.

It is expressly stipulated between the parties that the Lease Agreement and the Amendment will be inseparable from each other and will form, in relations between the parties, a single and indivisible agreement.

Accordingly, all events whatsoever that could, by reason of the provisions of the Lease Agreement and the Amendment, affect either of the two agreements, will apply ipso facto and automatically to both agreements which are considered to be one transaction.

This will be the case in particular:

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|  | • |  | for the termination of the lease agreement at the request of the Lessee, such a request applying automatically to both agreements, even if it is made for only one of them. |

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|  | • |  | for any transfer of the right to the lease agreement which will necessarily concern the subject matter of both lease agreements, this agreement being necessary even in case of transfer of the benefit of only one of the agreements to the successor in the business. |

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|  | • |  | for the termination or rescinding of either of the two contracts under the termination clause inserted in it, for failure by the **LESSEE** to perform any of its obligations: such a rescinding would affect both agreements automatically and the compensation which would be due would be established by the addition of the compensation due under each of the contracts. |

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|  | • |  | in the event of a loss affecting all or part of the premises given in lease the agreement: it is expressly agreed in this regard, for the application of the provisions of the two contracts in question relating to the total loss, that only a loss that would cause the total destruction of the object of the two agreements would be considered a total loss. Any other loss, even one that caused the total destruction of the object of only one agreement, will be considered a partial loss. |

In addition, it is expressly stipulated that:

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|  | • |  | For the application of the provisions relating to losses, the termination of the lease agreement or early implementation of the sale agreement will apply automatically to both lease agreements, even if the request of the Lessee was limited to only one of these two agreements |

31

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|  | • |  | In the case of partial loss not followed by reconstruction for failure to obtain the necessary administrative authorizations: that the compensation payable by the Lessee to the Lessor like the reduction in rent and the sale price will therefore be determined based on the financial conditions of the agreement applying to the partially damaged property |

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|  | • |  | But however, if the loss partially affects the object of both lease agreements, the amount of compensation payable by the Lessee as well as the reduction of rent and the sale price will be determined separately for the object of each of the two agreements, according to the financial conditions of the relevant agreement; to this end, the assessment of the building’s depreciation (either by the agreement of the parties or by an expert) will be made separately for the object of each of the two agreements. |

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|  | • |  | in the event of the expropriation of the building: in this regard, it was agreed that only expropriation that would affect the entire building, object of both agreements, would be considered as expropriation, and that partial expropriation would be considered subject to the provisions for this case, the expropriation which would concern part of the premises, that part would itself constitute the entire object of one of the two agreements. Furthermore, the above rules established for the reduction of rent and the sale price in the event of a partial loss not followed by reconstruction, will be applied to the reduction of rent and the sale price set for the case of partial expropriation. |

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|  | • |  | for the sale agreement for the premises which may only be exercised by the**LESSEE**for the entire building, the object of both lease agreements. Any request to execute the sale of only part of the premises, should that part constitute the entire object of one of the two agreements, would be considered null and void |

**ARTICLE 21. POWERS - RELATIVE EFFECT**

**21.1. POWERS**

Parties acting in the common interest confer all powers necessary to any Clerk of a Notarial Office designated in the beginning hereof, in order to prepare and sign all deeds that are additional to, or that amend or correct these, in order to ensure their harmony with all mortgage, land registration, and civil status documents, and make any additional tax declarations

**21.2. RELATIVE EFFECT**

The Lessor owns the Building, for having acquired it pursuant to a deed established by Ms. Heloise Haussman, a notary in MARSEILLE, on June 9, 2008, an authenticated copy of which was published in Land Registry Department of MARSEILLE 3 rd Districton July 10, 2008 volume 2008P number 5846.

32

**ARTICLE 22. REPRESENTATIONS AND WARRANTIES OF THE PARTIES**

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|  | • |  | The representative in his official capacity of the Lessor warrants, on behalf of the company it represents, the accuracy of the following information and statements: |

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|  | • |  | The company is a French company duly incorporated and validly existing, whose characteristics listed above are accurate and current; |

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|  | • |  | The company has not been and is not subject to measures related to the application of the provisions of Articles L. 611-1 et seq. and Articles L. 620-1 et seq. of the Commercial Code, covering ad hoc mandate, conciliation, safeguarding, receivership and liquidation procedures, pursuant to the provisions referred to above; |

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|  | • |  | The company is not affected by any claim for nullity or dissolution; |

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|  | • |  | The company and its agent have legal capacity and have obtained all consents and authorizations of its corporate bodies and, where appropriate, the competent administrative authorities, and all other possibly necessary consents and authorizations to allow it to conclude and perform its obligations under the Deed; |

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| --- | --- | --- | --- |
|  | • |  | The signing and implementation of this agreement by the Lessor do not contravene any material contract or obligation to which it is a party, or any law, regulation, or administrative, judicial or arbitral decision which is binding on it and for which a failure to comply could negatively affect or impede the proper performance of the obligations arising from the Agreement. |

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|  | • |  | The representative of the Lessee, in its official capacity, states on behalf of the company it represents: |

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|  | • |  | that it is a French legal entity, having its head office in France; |

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|  | • |  | that it has full power and authority to enter into and perform this agreement in accordance with its articles of association and any other corporate document; |

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| --- | --- | --- | --- |
|  | • |  | that the signatory of this deed received all the powers and authorizations necessary for this purpose by decision, a certified true copy of which is appended hereto or to a deed established by the undersigned notary recording the receipt; |

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| --- | --- | --- | --- |
|  | • |  | that the signatory has received full authority to enter into all agreements relating to the Lease Agreement; |

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|  | • |  | that to its knowledge neither the signing, nor the performance of any provision of this deed and other planned agreements to said deed violate any agreement, deed, judgment, arbitral award, legislative, regulatory or other provision, that would apply to it or to which it would be subject; |

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| --- | --- | --- | --- |
|  | • |  | that to its knowledge, there is currently no, and there is no risk of there existing, a dispute, legal action or claim that could adversely or materially affect the financial position, activity or the property that are the object of the Lease Agreement, or incur the validity and force of this deed and other planned agreements to said deed; |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | the obligations hereunder constitute direct and unconditional obligations vis-à-vis the Lessor and are equally ranked in all respects as any other similar obligations of the Lessee; |

|  |  |  |  |
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|  | • |  | that it is not the subject of any action for nullity or dissolution; |

|  |  |  |  |
| --- | --- | --- | --- |
|  | • |  | The company has not been and is not subject to measures related to the application of the provisions of Articles L. 611-1 et seq. and Articles L. 620-1 et seq. of the Commercial Code, on receivership and the appointment of an ad hoc representative, conciliator, legal administrator or liquidator pursuant to the provisions referred to above; |

33

**ARTICLE 23. NOTICES**

Any notice between the Parties hereunder will be sent by Email (confirmed by registered letter with acknowledgment of receipt), express courier and delivered personally or sent to the Party to whom it is intended, at the address below (or any other address that they may subsequently notify to the Parties).

Alternatively, the notice may be supplemented by sending, by email, a copy of the registered letter with acknowledgment of receipt or by a bailiff’s writ.

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| --- | --- | --- | --- |
|  | **•** |  | **As regards the Lessor** |

Company: “**MAISON**”

Administrative address:

Registered office address:

|  |  |  |  |
| --- | --- | --- | --- |
|  | **•** |  | **As regards the Lessee:** |

Company: “**MEDICINALS**”

Attention:

Address:

Telephone:

Email Address:

The date on which a notice shall be deemed validly made will be the date of its actual receipt by the recipient, that is to say, the date on the notice of receipt or the notice of delivery in person.

**ARTICLE 24. ADDRESS FOR SERVICE - JURISDICTION**

The legal entities that are party to, and participants in the Agreement, for its implementation, elect domicile in their respective registered offices except the MAISON company which elects domicile at its administrative address

Any dispute concerning the interpretation or implementation of these agreements will be submitted to the competent Paris Court to which jurisdiction or authority is expressly granted by the parties without prejudice to the provisions enacted by Article 48 of the Code of Civil Procedure.

34

**ARTICLE 25. DATA PROTECTION ACT**

In accordance with Article 27 of Act No. 78-17 of January 6, 1978 relating to data protection, the personal information collected as part of this agreement and subsequently are intended for the Lessor who, by express agreement, is allowed to keep it in electronic memory, to use it and to communicate it for the same purposes to companies in its group, its brokers and insurers, or to a third party to which the Lessor entrusted the management of its business. In this case the Lessor will inform the Lessee.

The right of access and the right of rectification may be exercised with the Lessor.

Legal Notice

In accordance with the “Data Protection” Act of January 6, 1978, the Notarial Office carries out data processing for the performance of notarial activities, including deed formalities. To this end, the Office is required to save data concerning the parties and transmit it to certain administrations, including the Mortgage Registry for land registration, accounting and tax administrations. The parties may exercise their rights of access and rectification of data concerning them at the Notarial Office (“SCP FONTAINE ET ASSOCIES, Notaries, members of a private professional partnership holding a Notarial Office,” located kkkkkkk telephone:, email:.fr or via the “Data Protection” Correspondent appointed by the Office: xxxxx). Only for deeds relating to Property transfers, some information about the property and its price, unless they object at the Office, will be transcribed in a Property database for statistical purposes.

**ARTICLE 26. ISSUE OF AN ENFORCEABLE COPY**

The Parties request that the undersigned Associate Notary issue, at the expense of the Lessee, an enforceable copy of lease agreement to the Lessor.

**ARTICLE 27. LIST OF APPENDICES**

|  |  |  |  |
| --- | --- | --- | --- |
|  | **•** |  | **APPENDIX 1: POWERS OF MAISON** |

|  |  |  |  |
| --- | --- | --- | --- |
|  | **•** |  | **APPENDIX 2: DELIBERATIONS AND POWERS OF THE COMPANY MEDICINALS)** |

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|  | **•** |  | **APPENDIX 3: ARCHITECT CERTIFICATION** |

|  |  |  |  |
| --- | --- | --- | --- |
|  | **•** |  | **APPENDIX 4: WORK ACCEPTANCE REPORT** |

|  |  |  |  |
| --- | --- | --- | --- |
|  | **•** |  | **APPENDIX 5: PRICE SCHEDULE** |

|  |  |  |  |
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|  | **•** |  | **APPENDIX 6: SUMMARY AND TABLES** |

**IN WITNESS WHEREOF**

Established on                      pages.

35

And after reading, those appearing signed this deed with the undersigned notary, named above.

|  |  |  |
| --- | --- | --- |
|  |  |  |
| Ms. Dominique Pendant  On behalf of the **LESSOR** |  | /s/ Dominique Pendant |
|  |  | |
| Ms. Irene **BERKOWITZ**  On behalf of the **LESSEE/ MEDICINALS** |  | /s/ Sacha Smock |
|  |  | |
| **Participating notary**  Maître Francois Thibault |  | /s/ Francois Thibault |
|  |  | |
| **Notary** |  |  |

36

**LeaseA#28**

**Exhibit 10.15**

**CERTAIN IDENTIFIED INFORMATION HAS BEEN EXCLUDED FROM THIS**

**EXHIBIT BECAUSE IT IS BOTH NOT MATERIAL AND IS THE TYPE THAT THE**

**REGISTRANT TREATS AS PRIVATE OR CONFIDENTIAL. THE REDACTED**

**TERMS HAVE BEEN MARKED WITH THREE ASTERISKS [\*\*\*]**

**FORM OF NET LEASE**

THIS LEASE, entered into as of this \_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ for reference purposes, is by and between Fibercorp, a New York corporation, hereinafter referred to as “**Landlord**”, and Romaino North America, LLC, a Delaware limited liability company hereinafter referred to as “**Tenant**”.

**DEFINED TERMS/SPECIAL PROVISIONS**

**“Landlord”**

**Fibercorp,**a New York corporation, with its principal place of business at XXXX Memphis, Tennessee 38110. Landlord’s notice address and address for payment of rent may be changed at any time by Landlord upon written notice to Tenant.

**“Tenant”**

**Romaino North America, LLC**, a Tennessee limited liability company with its principal place of business at, Tennessee 38180,

**“Leased Premises”**

The building located at YYY, California 90620 containing 236,069 square feet of rentable area (the “Building”), and all improvements and facilities appurtenant to the Building including all drive aisles, parking areas, sidewalks, walls, landscaping and exterior improvements located on the land upon the Building is situated as more particularly described in Exhibit “A”, attached hereto and incorporated herein by reference.

**“Term”**

The Term shall be three (3) years, beginning September 1, 2021 (“Commencement Date”), plus any partial month at the beginning of the Term, together with any extensions thereof permitted hereunder.

**“Options”**

One (1) Five (5)-year option subject to Tenant providing written notice to Landlord not less than One Hundred Eighty (180) days prior to the expiration of the then current term of its intent to exercise its option, all upon the terms and at the rental rate outlined in Article XXVI.

**“Rent”**

During the Term, monthly Base Rent shall be paid in accordance with the schedule immediately following this paragraph. Rent shall escalate by [\*\*\*] percent ([\*\*\*]%) on each anniversary of the Commencement Date and shall be payable as provided in the schedule below. Rent payments shall commence on the Commencement Date as defined herein. If the Commencement Date shall fall on any day other than the first day of any month, the Rent for that month shall be prorated for the number of days left in the month after the Commencement Date. Thereafter, Rent shall be due on the first day of each successive month. The Rent shall be timely remitted to Landlord’s address above set forth or to such other address as Landlord may from time to time hereafter direct by written notice to Tenant.

|  |  |  |  |  |  |  |  |  |  |  |  |  |
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|  |  |  |  |  |  |  |  |  |  |  |  |  |
| **Year** |  | **PSF/ Month** | |  |  | **Monthly Rent** | |  |  | **Annual Rent** | |  |
| Year 1 |  |  | $[\*\*\*] |  |  |  | $[\*\*\*] |  |  |  | $[\*\*\*] |  |
| Year 2 |  |  | $[\*\*\*] |  |  |  | $[\*\*\*] |  |  |  | $[\*\*\*] |  |
| Year 3 |  |  | $[\*\*\*] |  |  |  | $[\*\*\*] |  |  |  | $[\*\*\*] |  |

**“Additional Rent”**

At the commencement of any calendar year during the Term hereof, Landlord may deliver to Tenant a written estimate of any Additional Rent (such expense being hereinafter referred to as “Estimated Operating Expenses”) which may be due hereunder during the calendar year. For each month, Tenant shall pay 1/12 of the amount of the Estimated Operating Expenses for that particular calendar year in addition to the monthly Base Rent and concurrently with each payment of monthly Base Rent. Estimated Operating Expenses shall include without limitation all reimbursements by Tenant for Landlord’s insurance, any repair and maintenance costs incurred by Landlord as a result of any default by Tenant in its maintenance and repair obligations under this Lease and any taxes or utilities not timely paid by Tenant. Landlord agrees that there shall be no property management fee payable to Landlord during the initial Term, but Tenant agrees that Landlord shall have the right to charge a management fee equal to 2.0% of monthly Base rent during the Extension Term.

Statements showing the actual Operating Expenses for the Leased Premises (hereinafter referred to as “Statement of Actual Expenses”) shall be delivered by Landlord to Tenant within ninety (90) days after any calendar year in which Estimated Operating Expenses were paid by Tenant or due Landlord under the provisions hereof. Any overpayment owed to Tenant by Landlord shall be paid to Tenant within the same timeframe.

Upon request, Landlord shall present copies of such charges included in Additional Rent for Tenant’s review and Tenant shall have the right to contest any charges that appear inaccurate or excessive to Tenant. Upon notice of such contest, Landlord agrees to work in good faith with Tenant to rectify any inaccuracies. Tenant shall not be required to pay any contested charges during the pendency of said contest and any overpayment or underpayment made shall be returned or remitted to Tenant or Landlord, as applicable, within thirty (30) days of determination of the same.

-2-

**“Acceptance of Premises”**

Tenant acknowledges that, as of the Commencement Date, the Leased Premises and the Building of which it forms a part and its systems and components are in good working order and condition and repair and Tenant accepts the Premises in its current as-is condition. Tenant acknowledges that, except as otherwise expressly set forth in this Lease neither Landlord nor any agent of Landlord has made any representation or warranty with respect to the Leased Premises, or with respect to the condition and/or suitability thereof for the conduct of Tenant’s business and that pursuant to Section 1938 of the California Civil Code, Landlord hereby advises Tenant that as of the date of this Lease neither the Premises, nor the Building have undergone inspection by a Certified Access Specialist (CASp) as to compliance with applicable access laws and regulations and Tenant accepts such fact and as-is condition of the Premises.

**“Assignment of Contractors’ Warranties to Tenant”**

Landlord does hereby assign to Tenant, on a non-exclusive basis, the benefits of any and all manufacturers’ and contractors’ warranties and guarantees with regard to construction and improvement of the Leased Premises prior to commencement of the Term. Landlord shall enforce such warranties or guarantees on behalf of Tenant upon written notice from Tenant as to any defects in the Leased Premises which might be covered by any such warranties or guarantees.

**ARTICLE I**

**Lease of Premises**

Landlord does hereby lease to Tenant the Leased Premises as described and referred to above for the Term and at the rental above set forth upon the following provisions, each of which shall be both covenants and conditions, and Landlord and Tenant hereby covenant and agree to abide by and perform each and every provision hereof. Landlord reserves the right from time to time to do any of the following: (a) make any changes, additions, improvements, maintenance, repairs or replacements in or to the Leased Premises if required to do so by any applicable Laws or to the extent necessary in conjunction with any improvements to the Leased Premises, provided that Tenant’s use of the Premises is not materially and adversely affected); (c) close temporarily any of the Premises while engaged in making repairs, improvements or alterations to the Leased Premises; and (d) perform such other acts and make such other changes with respect to the Leased Premises, as Landlord may, in the exercise of good faith business judgment, deem to be appropriate, provided in all events Landlord gives Tenant reasonable prior notice before commencing any such actions at the Premises and Landlord uses commercially reasonable and diligent efforts to avoid interfering with Tenant’s use and operations at the Premises.

-3-

**ARTICLE II**

**Net Basis Lease**

Except as provided herein to the contrary, it is intended that the Rent provided for in this Lease shall be an absolute net return to Landlord (exclusive of any debt service and income taxes of Landlord) for the initial Term or for any extensions or renewals thereof, free of any expenses or charges whatsoever with respect to the Leased Premises, including, but not in limitation of the foregoing, all insurance premiums, all utility charges, all taxes, and all repairs, replacements and betterments, except for repairs, replacements or betterments to the roof (membrane and structural elements), structural floors and structural portions and exterior walls of the Building on the Leased Premises and electrical, embedded plumbing and other utility lines serving the Premises and situated outside the exterior walls and roof of the Building (collectively, the “Structural Elements”), each of which shall be the responsibility of Landlord under Article IX, Section 1.

**ARTICLE III**

**Use of Leased Premises**

The Leased Premises may be used for the operation of a warehouse, or for any other lawful use which does not increase the wear and tear on the Leased Premises above that which is likely to be caused by the enumerated uses. Tenant shall, at its sole cost and expense, observe and comply with all Laws and all requirements of any board of fire underwriters or similar body relating to the Leased Premises now or hereafter in force relating to or affecting the condition, use, occupancy, alteration or improvement of the Leased Premises (whether, except as otherwise provided herein, structural or nonstructural, including unforeseen and/or extraordinary alterations and/or improvements to the Leased Premises and regardless of the period of time remaining in the Term). Tenant shall not use or allow the Leased Premises to be used for any improper, immoral, unlawful or reasonably objectionable purpose. Tenant shall not cause, maintain or permit any nuisance in, on or about the Leased Premises, the Building or the Property, nor commit or suffer to be committed any waste in, on or about the Leased Premises. Without limiting the foregoing, Tenant is prohibited from engaging or permitting others to engage in any activity which would be a violation of any state and/or federal laws relating to the use, sale, possession, cultivation and/or distribution of any controlled substances (whether for commercial or personal purposes) regulated under any applicable law or other applicable law relating to the medicinal use and/or distribution of marijuana (“Prohibited Drug Law Activities”).

**ARTICLE IV**

**Utility Charges**

Tenant shall pay and be liable for all charges for fuel, electricity, water, gas, telephone service, sewage, garbage collection and other utilities to be furnished to the Leased Premises during the Term of this Lease. Landlord shall have no liability to Tenant for any interruption in utilities or services to be provided to the Leased Premises when such failure is caused by all or any of the following: (a) accident, breakage or repairs; (b) strikes, lockouts or other labor disturbances or labor disputes of any such character; (c) governmental regulation, moratorium or other governmental action; (d) inability, despite the exercise of reasonable diligence, to obtain electricity, water or fuel; (e) service interruptions or any other unavailability of utilities resulting

-4-

from causes beyond Landlord’s control including without limitation, any electrical power “brown-out” or “black-out”; or (f) any other cause beyond Landlord’s reasonable control. In addition, in the event of any such interruption in utilities or services, Tenant shall not be entitled to any abatement or reduction of Rent, no eviction of Tenant shall result, and Tenant shall not be relieved from the performance of any covenant or agreement in this Lease. In the event of any stoppage or interruption of services or utilities which are not obtained directly by Tenant, Landlord shall diligently attempt to resume such services or utilities as promptly as practicable.

**ARTICLE V**

**Taxes**

**Section 1.** Tenant covenants and agrees to pay or cause to be paid, in addition to all other sums required to be paid by Tenant under the provisions of this Lease, all taxes, including, but not limited to, all real property taxes and assessments of any kind, sales taxes on rents, and all sewer use fees or charges for utilities, which may be levied or imposed by the United States, or the state, county or municipality in which the Leased Premises are located, or by any subdivision or department thereof, upon all or any part of the Leased Premises, upon any buildings, structures, fixtures or improvements now or hereafter located thereon or arising in respect of the occupation, use or possession of the Leased Premises or any estate, right, title or interest of the owner of the fee or of Landlord as the owner of a leasehold (excluding, however, any taxes imposed upon or measured by the net income of Landlord, which shall be the sole responsibility of Landlord), which are assessed or become a lien or due and owing at any time during the Term; provided, however, that any taxes, assessments or levies as aforesaid which become due and owing during the year that rent first or last becomes payable under this Lease and prior or subsequent to such time, as the case may be, shall be prorated as of the date for which rent first or last becomes payable under the terms of this Lease, as appropriate. Notwithstanding the foregoing, if such a tax, assessment or levy is payable over a period which exceeds the Term, only that portion which is attributable to the Term is to be paid by Tenant, and in computing the term over which such a tax, assessment or levy is due, the longest available period shall be utilized. If the Leased Premises are not separately assessed, said taxes and assessments shall be determined by Landlord through a reasonable apportionment in accordance with a fraction, the numerator of which is the total floor area of the Leased Premises and the denominator of which is the total leasable floor area of the Buildings multiplied by the amount of tax or assessment.

**Section 2.** Tenant may, at its own expense and in its own name and behalf or in the name and behalf of Landlord, in good faith, following reasonable prior notice to Landlord and an opportunity for Landlord to participate in any such contest, contest any such taxes, levies, assessments and other charges and, in the event of any such contest, may permit the taxes, levies, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless by such action the title of Landlord to any part of the Leased Premises shall be materially endangered or the Leased Premises or any part thereof shall become subject to loss or forfeiture, in which event such taxes, assessments or charges shall be paid forthwith by Tenant. Landlord will cooperate fully with Tenant in any such contest at Tenant’s sole cost and expense.

-5-

**Section 3.** Subject to its right of contest as provided in Section 2 hereof, should Tenant fail within the time provided and before the same become delinquent to pay any of such taxes to be paid by Tenant under the provisions hereof, including all penalties, fines, interest, costs and expenses, Landlord may, but shall not be so obligated, discharge or in any manner compromise or adjust the payments or obligations involved or any part thereof, and in the case of any sale or sales to enforce the same, Landlord may seek and effect any redemption therefrom as Landlord may deem fit, and Tenant shall pay to Landlord on demand therefor by Landlord, the full amount so paid and expended by Landlord, including all costs and expenses paid or incurred, which shall include reasonable attorney’s fees, together with interest at the highest rate permitted in the State of California from the date of payment by Landlord until paid by Tenant.

**Section 4.** Notwithstanding anything found in this Lease to the contrary, Landlord shall notify Tenant of all taxes and assessments on the Leased Premises owed by Tenant, within one hundred eighty (180) days of the first day of the following year for which the taxes and assessments were made. Any deficiency owed for such taxes and assessments shall be paid by Tenant within thirty (30) days of Tenant’s receipt of written notice from Landlord. Any overpayment of such taxes and assessments paid by Tenant shall be reimbursed to Tenant within thirty (30) days of written notice of such overpayment. If Landlord fails to notify Tenant of such taxes and assessments within eighteen (18) months after the first day of the following year for which the taxes and assessments were made, Landlord shall be estopped from attempting to charge Tenant for the same at a later date.

**ARTICLE VI**

**Insurance**

**Section 1.** Tenant agrees, at Tenant’s expense, to procure and maintain in force and effect continuously during the entire Term and any extensions or renewals thereof, a policy or policies of Commercial General Liability insurance in a company or companies authorized to do business in the state of California, insuring Landlord as an Additional Insured, and, at Landlord’s option, any other person, firm, or corporation having an interest in the leasehold estate, but for each Additional Insured only for occurrences arising out of Tenant’s use and occupancy of the Leased Premises in an amount of Two Million Dollars ($2,000,000.00) combined single limit for bodily injury and property damage per occurrence and Five Million Dollars ($5,000,000.00) in the aggregate. Tenant agrees to provide evidence of all such policies of insurance and all renewals thereof to Landlord. Tenant shall also procure and maintain at Tenant’s expense continuously during the entire Term and any extensions or renewals thereof, (i) Special Form (formerly known as “all risk”) insurance, including fire and extended coverage, sprinkler leakage (including earthquake sprinkler leakage), vandalism, malicious mischief plus earthquake and flood coverage upon property of every description and kind owned by Tenant and located in or on the Leased Premises, or for which Tenant is legally liable or installed by or on behalf of Tenant including, without limitation, furniture, equipment and any other personal property, and any alterations, in an amount not less than the full replacement cost thereof, (ii) Commercial Automobile Liability covering all owned, hired and non-owned automobiles, (iii) Worker’s compensation, in statutory amounts and employers’ liability, covering all persons employed in connection with any work done in, on or about the Leased Premises for which claims for death, bodily injury or illness could be asserted against Landlord, Tenant or the Leased Premises, and (iv) Umbrella liability insurance on an occurrence basis in an amount not less than Five Million Dollars ($5,000,000.00).

-6-

**Section 2.** At all times during the Term, Landlord shall, at Tenant’s expense, keep or cause to be kept the Building and all other improvements at any time constituting the Leased Premises, insured against fires and all perils included within full standard extended coverage insurance, in good and responsible insurance companies, authorized to do business in the state of California, in an amount not less than One Hundred Percent (100%) of the insurable value of the building erected or to be erected on the Leased Premises or One Hundred Percent (100%) of its replacement cost, whichever shall be less, said insurance to be for the benefit of Landlord and the mortgagee of the Leased Premises, if any, as their interests appear. Tenant shall reimburse Landlord for the cost of all such insurance under this Section 2 within ten (10) days of receipt of a billing therefor. If the Leased Premises are not separately insured, said insurance premiums shall be determined by Landlord through a reasonable apportionment in accordance with a fraction, the numerator of which is the total floor area of the Leased Premises and the denominator of which is the total leasable floor area of the Buildings multiplied by the amount of such insurance premiums.

**ARTICLE VII**

**Indemnity**

**Section 1.**Neither Landlord nor Tenant shall be liable to the other or any other person for any consequential damages, special or punitive damages, or for loss of business, revenue, income or profits (excluding however all rent payable by Tenant under this Lease) and each hereby waives any and all claims for any such damages against the other. Subject to the limitation set forth below, and to the extent not provided by any insurance coverage carried by Landlord, Tenant agrees to indemnify and hold Landlord harmless from and against any and all claims, damages, judgments, suits, causes of action, losses, liabilities and expenses, including, without limitation, attorneys’ fees and court costs including all reasonable expenses to Landlord (except as provided herein pursuant to Section 2 of this Article VII), for, or in connection with, any accident, injury or damage whatsoever caused to any person or property arising, directly or indirectly, out of the business conducted in the Leased Premises or occurring in, on or about the Leased Premises or any part thereof or arising directly or indirectly from any negligent act or omission of Tenant or any sub-tenant, or their respective servants, agents, employees or contractors, and from and against any and all costs, expenses and liabilities incurred in connection with any such claim or proceeding brought thereon.

**Section 2.**Notwithstanding anything in Section 1 of this Article VII to the contrary, Landlord shall remain liable for any and all claims and demands for, or in connection with, any accident, injury or damage whatsoever caused to any person or property arising, directly or indirectly, from any grossly negligent act or willful misconduct by Landlord or Landlord’s officers, employees, agents, servants or contractors occurring in, on or about the Leased Premises or any part thereof.

-7-

**ARTICLE VIII**

**Damage or Destruction of Leased Premises**

**Section 1.** If, during the Term, twenty-five percent (25%) or less of the insurable value of the buildings and improvements, now or hereafter existing upon the Leased Premises, shall be destroyed by fire, explosion, the elements, an act of God or any other insured casualty, Landlord shall promptly rebuild and restore the same as nearly as possible to the condition existing prior to the damage. Rent payments shall be reduced proportionately from the date of such loss until the Leased Premises are restored to the condition which existed prior to the damage.

**Section 2.** If, during the Term, more than twenty-five percent (25%) of the insurable value of the building or improvements upon the Leased Premises shall be damaged or destroyed by fire, explosion, the elements, an act of God or any other casualty or any uninsured casualty or event, this Lease shall nevertheless continue in full force and effect for a period of thirty (30) days from the date of such damage or destruction or until sooner terminated by the Tenant, subject to abatement of Rent for the period following such destruction. During such thirty (30) day period, Tenant shall have the option of terminating the Lease. In the event Tenant does not elect to terminate the Lease within such period, Landlord shall promptly commence to restore or rebuild the building or improvements and complete the same within one hundred and twenty (120) days from the date of destruction, with Rent abated from the date of destruction and throughout the period of repair and reconstruction during which Tenant is deprived of the use of the Leased Premises.

**Section 3.** If the Landlord shall fail to rebuild and restore the said building and improvements within such one hundred and eighty (180) day period as above provided, the Tenant shall have the right to cancel this Lease at the expiration of such one hundred and eighty (180) day period.

**Section 4**. Landlord shall also have the right to terminate this Lease if any damage to the Building occurs during the last twelve (12) months of the Term and Landlord’s contractor estimates in writing delivered to the parties that the repair, reconstruction or restoration of such damage cannot be completed within the earlier of (a) the scheduled expiration date of the Term, or (b) sixty (60) days after the date of such casualty.

**ARTICLE IX**

**Maintenance of Leased Premises**

**Section 1.** Landlord’s Obligations. Upon receipt of written notice from Tenant, Landlord agrees to proceed with due diligence, at its sole cost and expense, to make any repairs, replacements or renewals to the Structural Elements, provided such repairs, replacements and renewals are not made necessary by any neglect or act of Tenant (which shall be paid by Tenant), other than normal wear and tear and depreciation. Without limiting the foregoing, Landlord intends to replace the roof membrane in Year 4 of the Term, at Landlord’s cost, provided if Landlord determines that the roof needs to be replaced sooner than during Year 4,

-8-

then Landlord will replace the roof as and when so required at Landlord’s cost. All preventative maintenance and repairs of the existing roof shall be made by Landlord, at Tenant’s sole cost and expense as part of Operating Expenses. In addition, Landlord shall, at Tenant’s expense to be billed to Tenant monthly as “Operating Expenses” as provided herein, maintain, repair and replace all utility lines running outside of the exterior walls and roof, all HVAC systems, fire/life safety systems, electrical and plumbing systems of the Leased Premises and all drive aisles, driveways, walks, parking areas and landscaping and lighting and irrigation systems at the Leased Premises, including periodic removal of graffiti and periodic repainting of the exterior walls of the Building and periodic slurry coating and striping of the parking areas, provided however, any capital expenditures, including, but not limited to, the replacement of parking areas, drive aisles, HVAC system(s), etc. that are a part of Operating Expenses shall be amortized on a straight line basis over the useful life thereof. Landlord shall provide Tenant with monthly estimates of estimated Operating Expenses which Tenant shall pay to Landlord During any period of repair by Landlord, Rent shall be abated if, and to the extent, that Tenant’s use of the Leased Premises is restricted.

**Section 2.** Tenant’s Obligations. Tenant agrees promptly to make all repairs, replacements and renewals which become necessary in or about the Leased Premises, other than those which are Landlord’s obligation under Section 1 of this Article IX. To the extent Tenant is obligated to make any repairs, replacements or renewals in or about the Leased Premises, Landlord does hereby assign to Tenant all manufacturers’ and contractors’ warranties and guarantees covering the Building and any other improvements on the Leased Premises that may be in effect during the Term.

**ARTICLE X**

**Waiver of Claims for Damages to Real and Personal Property**

**Section 1.** Landlord and Tenant, for themselves and for their respective insurers, agree to and do hereby mutually release each other of and from any and all claims, demands, actions and causes of action that each may have or claim to have against the other for loss of or damage to the property of the other, both real and personal, caused by or resulting from fire, tornado and all other casualties or perils of the type and character covered by fire and extended coverage insurance, notwithstanding that any such loss or damage may be due to or result from the negligence of either of the parties hereto or their respective officers, employees or agents. Landlord and Tenant will each secure an appropriate clause in, or endorsement on, any fire and extended coverage insurance policy covering their respective real and personal property, pursuant to which the respective insurance companies waive subrogation; provided, however, that a failure on the part of either party to secure such appropriate clause in, or endorsement on, any fire and extended coverage insurance policy covering their respective real and personal property, pursuant to which the respective insurance companies waive subrogation, shall not, in any manner, affect or restrict the provisions of the above and foregoing mutual releases.

-9-

**Section 2.** Tenant, for itself and for its respective insurers, if any, does hereby agree that all personal property on the Leased Premises shall be at the risk of the Tenant only, and Landlord shall not be or become liable for any damage to said personal property or to Tenant or to any other persons for damage whatsoever done or occasioned by or from any boiler, plumbing, gas, water, steam or other pipes or any fixtures or appurtenances whatsoever, or arising by reason of the use of, said building, fixtures or appurtenances therein, or by damage caused in any other manner whatsoever; provided, however, that Landlord shall not be relieved of any liability for damage to Tenant’s personal property where such damage results from a condition or malfunction of equipment, fixtures or appurtenances, the maintenance or repair of which is Landlord’s responsibility hereunder.

**ARTICLE XI**

**Mechanic’s Liens**

Except for work or material which is the responsibility of Landlord under this Lease, Tenant agrees to pay promptly for any work done or material furnished in or about the Leased Premises after the commencement of the Term and to not suffer or permit any lien to attach to the Leased Premises, and Tenant further agrees promptly to cause any such lien or claims therefor to be released; provided, however, that in the event Tenant contests any such claim, Tenant agrees to indemnify and secure Landlord to the satisfaction of Landlord. Notice is hereby given that no mechanic’s, materialman’s or other lien sought to be taken or vested on the Leased Premises shall in any manner affect the right, title or interest of the Landlord therein, and that Tenant shall have no authority from Landlord to permit or create such lien. In the event that any such lien shall be filed upon the Leased Premises by reason of any act or omission (or alleged act or omission) of Tenant or any subtenant, and Tenant shall not, within thirty (30) days from and after notice to Tenant of the filing thereof, have caused the same to be released or have indemnified and secured Landlord to the satisfaction of Landlord, then in such event, Landlord may, but shall not be obligated to, cause the same to be discharged; and if Landlord does so, Tenant agrees to reimburse Landlord promptly upon demand for all costs, expenses and other sums of money expended by Landlord in connection therewith.

**ARTICLE XII**

**Eminent Domain**

**Section 1.** If the whole or any part of the land or Building constituting the Leased Premises shall be taken by any public authority under the power of eminent domain, and if the portion of such land or Building remaining after such taking shall not constitute sufficient space for the maintenance and operation of Tenant’s business in an economically feasible and profitable manner, as determined by Tenant, then the Term shall cease as of the date possession is delivered by Tenant, and Tenant shall pay Rent up to that date with an appropriate refund by Landlord of such Rent as may have been paid in advance for a period subsequent to the date of taking; provided, however, if Tenant, in its sole opinion, can use any part of the Building constituting a portion of the Leased Premises in an economically feasible and profitable manner, then the Lease shall continue in effect as to that part of the Building, and the Rent shall be abated from the date of taking in proportion to the number of square feet so taken. In the case of taking of unused land but not of Building, such that Tenant, it its sole opinion, can still use the remaining part of the Leased Premises in an economically feasible and profitable manner, then

-10-

the Lease shall continue in effect, and no abatement of Rent shall occur by reason thereof. Landlord agrees at its sole cost and expense to make all repairs, construction, additions or alterations that may be necessary or requisite for the making of the remainder of the Leased Premises a complete architectural and operating unit, and suitable for the business and operations of Tenant in an economically feasible and profitable manner.

**Section 2.** All compensation awarded for any taking under the power of eminent domain, whether for the whole or a part of the Leased Premises, shall be the property of Landlord, whether such damages shall be awarded as compensation for diminution in the value of, or loss of, the fee of the Leased Premises, and Tenant hereby assigns to Landlord all of Tenant’s right, title and interest in and to any and all such compensation; provided, however, that Landlord shall not be entitled to any award made to Tenant for the cost of removal of fixtures, stock and other personal property of Tenant, or for any other expenses or losses of Tenant connected with or resulting from any such taking, or any other awards, reimbursements or payments that may be made, awarded or granted to Tenant directly under applicable law.

**ARTICLE XIII**

**Quiet Enjoyment**

Landlord covenants that Tenant, when paying the Rent and performing all the covenants and agreements herein provided to be performed by Tenant, shall peaceably and quietly have, hold and enjoy the Leased Premises for the Term.

**ARTICLE XIV**

**Default**

**Section 1.** Subject to the provisions of this Article XIV, this Lease is made upon the express condition that Tenant shall faithfully and punctually perform and observe all the agreements, covenants and conditions herein set forth to be performed by Tenant, and that if at any time any Rent, taxes, assessments, charges, insurance premiums, utilities charges or any other monies required to be paid by Tenant hereunder, or any part thereof, shall be in arrears and unpaid for a period of five (5) days after notice in writing thereof shall have been given by Landlord to Tenant, or if defaults shall be made or suffered in the performance or observance of any of the other covenants or conditions of this Lease, and if Tenant fails to commence action to eliminate such default within thirty (30) days after notice in writing thereof shall have been given by Landlord to Tenant, Landlord shall have the right, at its election, to terminate this Lease or to enter upon the Leased Premises and take immediate possession thereof. If Landlord shall elect to so terminate this Lease, then Landlord may recover from Tenant: (a) the worth at the time of award of any unpaid Rent which had been earned at the time of such termination; plus (b) the worth at the time of the award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus (c) the worth at the time of award of the amount by which the unpaid Rent for the balance of the term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; plus (d) any other

-11-

amount necessary to compensate Landlord for all the detriment proximately caused by Tenant’s failure to perform its obligations under this Lease or which, in the ordinary course of things, would be likely to result therefrom, and this Lease and the Building and all improvements upon the Leased Premises shall be forfeited to Landlord without compensation therefor to Tenant, or any other person, firm or corporation whomsoever; provided, however, that Tenant may at any time before the expiration of such periods, pay and/or perform the engagements of this Lease for which Tenant shall be in default, and thereby prevent such entry and forfeiture. As used herein, the “worth at the time of award” is computed by allowing interest at the rate of ten percent (10%) per annum. As used in (c) above, the “worth at the time of award” is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%). Such right to sue and the right to forfeit and reenter are cumulative and not exclusive of each other or of any other lawful right or remedy that Landlord may have, and the fact that Landlord may have brought suit and recovered judgment for Rent or other sums in default hereunder shall not impair its right to cause forfeiture of this Lease and reenter, upon the terms set forth herein, in case the default upon which any such suit was based shall continue unsatisfied for the period of time hereinabove stipulated for such forfeiture and entry.

**Section 2.** Should any of the events of default hereinabove specified occur, in case Landlord does not elect to exercise the right to terminate this Lease conferred by the provisions of Section 1 of this Article XIV, Landlord shall nevertheless have, and is hereby expressly given, the right at its sole election to reenter the Leased Premises with or without legal process, and to remove and store for Tenant, Tenant’s signs and all property and effects of Tenant or other occupants of said premises, and to relet the premises or any part thereof at or near market rents and upon such terms and to such person or persons and for such period or periods as may seem fit to Landlord; and in case of such reletting, Tenant shall be liable to Landlord for the difference between the rents and payments herein reserved and agreed upon for the residue of the Term (except as hereinafter otherwise provided) and the rent realized by Landlord by such reletting, such net rents and payments to be determined by deducting from the entire rents and payments received by Landlord from such reletting, the expenses of recovering possession, reletting, repairing said premises, storing Tenant’s property, and collecting rents; and Tenant hereby agrees to pay to Landlord such deficiency each month, as the same may accrue. Tenant shall pay to Landlord within ten (10) days after the expiration of each month during such residue of the Term the difference between the reserved rents and payments for said month, and the net amount realized by Landlord from the premises during said month from such reletting. Landlord shall have the right at any time after such reentry and reletting, in its sole discretion, to terminate this Lease and thence forward there shall be no liability on the part of Tenant for any future accruing Rent or payments reserved under this Lease.

**Section 3.** If, after the commencement of the Term, (a) Tenant shall be adjudicated as bankrupt or adjudged to be insolvent; (b) a receiver or trustee shall be appointed for Tenant’s property and affairs; (c) Tenant shall make an assignment for the benefit of creditors or shall file a petition in bankruptcy or insolvency or for reorganization or debtor’s arrangement or shall make application for the appointment of a receiver, or (d) any execution or attachment shall be issued against Tenant or any of Tenant’s property, whereby the Leased Premises or any building or buildings or any improvements thereon shall be taken or occupied or attempted to be taken or

-12-

occupied by someone other than Tenant, except as may be herein permitted, and such adjudication, appointment, assignment, petition, application, execution or attachment shall not be set aside, vacated, discharged or bonded within thirty (30) days after the issuance of the same, then an event of default hereunder shall become effective, and Landlord shall have the rights and remedies provided for herein. Notwithstanding the foregoing, however, so long as the Rent shall continue to be paid hereunder, and Tenant shall perform all of the terms, covenants and conditions on its part to be performed, Landlord shall not have the right to declare a default in this Lease.

**Section 4.** This Lease is also made upon the express condition that Landlord shall faithfully and punctually perform and observe all the agreements, covenants and conditions set forth herein to be performed by Landlord. If any default shall be made or suffered in the performance or observance of any of the covenants or conditions of this Lease to be performed by Landlord, and if Landlord fails to commence action to eliminate such default within thirty (30) days after notice in writing thereof shall have been given by Tenant to Landlord, Tenant shall have the right, at its election, to (i) terminate this Lease and thence forward this Lease shall become void for all intents and purposes whatsoever subject, however, to the right of Tenant to sue on such Lease for damages sustained by reason of Landlord’s default; or (ii) cure said default and offset the next succeeding months’ Base Rent by the cost of curing the same. Provided, however, that Landlord may at any time before the expiration of such period of thirty (30) days, perform its obligations under this Lease for which Landlord shall be in default, and thereby prevent such termination of this Lease. Any rights of Tenant hereunder in the event of default by Landlord are cumulative and not exclusive of each other or any other lawful right or remedy that Tenant may have, and the fact that Tenant may have brought suit and recovered judgment against Landlord shall not impair its right to cause termination of this Lease.

**Section 5**. If Landlord does not receive Rent or any other payment within three (3) business days of when due from Tenant on the due date, Tenant shall pay to Landlord a late charge equal to five percent (5%) of such past due Rent or other payment; provided, however, Landlord agrees not to impose a late charge for the first late payment in any calendar year of the Term provided Tenant pays such late payment within five (5) business days of written invoice. Tenant agrees that this late charge represents a fair and reasonable estimate of the cost Landlord will incur by reason of Tenant’s late payment. Accepting any late charge shall not constitute a waiver by Landlord of Tenant’s default with respect to any overdue amount nor prevent Landlord from exercising any other rights or remedies available to Landlord. If any installment of Monthly Base Rent or Additional Rent, or any other amount payable by Tenant hereunder is not received by Landlord within thirty (30) days after written invoice by Landlord, it shall bear interest at the rate of ten percent (10%) per annum from the due date until paid.

**ARTICLE XV**

**Surrender of Leased Premises**

**Section 1.** Upon the end of the Term, Tenant shall quit and surrender the Leased Premises, in good condition and repair (depreciation, wear and tear excepted). Tenant shall, upon or before the end of the Term, remove from the Leased Premises all its property, including by way of illustration the furniture, fixtures, equipment and trade fixtures, and all property not so removed shall be deemed abandoned by Tenant.

-13-

**Section 2.** It is understood that all movable furniture, fixtures, equipment and all trade fixtures of every kind, character and description, placed in or upon the Leased Premises or owned by Tenant shall remain the property of Tenant, and may be removed by Tenant at any time.

**Section 3**. At the expiration or earlier termination of this Lease, Landlord and Tenant shall schedule a walk-through of the Leased Premises to determine whether Tenant has complied with its obligation to surrender the Leased Premises in accordance with Section 1 above. Landlord shall notify Tenant of any non-compliance at said time or Landlord shall be estopped from attempting to charge Tenant for any repairs it deems the responsibility of Tenant at a later date.

**ARTICLE XVI**

**Holding Over**

If Tenant should remain in possession of the Leased Premises after the expiration of the Term, as renewed or extended, and without executing a new lease, then such holding over shall be construed as a tenancy from month to month, subject to all the conditions, provisions and obligations of this Lease insofar as the same are applicable to a month-to-month tenancy, and Rent computed as One Hundred Fifty Percent (150%) of the monthly Base Rent paid during the last month of the term previously expired and shall continue to apply to such extended tenancy.

**ARTICLE XVII**

**Compliance With Laws**

**Section 1.** Tenant agrees to use the Leased Premises in a manner which shall be in compliance with all applicable laws, rules and regulations, orders and ordinances which relate specifically to, or which are imposed by reason of, its particular use or alteration of the Leased Premises, and further agrees not to suffer or permit the Leased Premises to be used for any unlawful purpose, and to protect Landlord and save it and the Leased Premises harmless from any and all fines and penalties that may result from or be due to any infractions of or noncompliance with the said laws, rules, regulations, orders and ordinances. Landlord shall be responsible for compliance with all applicable laws, rules and regulations, orders and ordinances which relate to the Leased Premises generally and to the parking lots, walkways, common areas and all ingress and egress associated with the Leased Premises and any modifications thereto initiated by Landlord, and which laws, rules, regulations, orders and ordinances are not applicable solely due to Tenant’s particular use of the Leased Premises, including by way of illustration, laws requiring the removal of asbestos or other hazardous materials and the Americans With Disabilities Act (ADA) 1991.

**Section 2.** Landlord shall be responsible for compliance with all laws including but not limited to the requirements of the Americans With Disabilities Act (ADA) 1991, as the same may become applicable either through alterations to the Leased Premises by Landlord or new construction of a portion or portions of Leased Premises by Landlord.

-14-

**ARTICLE XVIII**

**Notices**

**Section 1.** Any notice herein provided to be given to Landlord shall be given by registered or certified United States mail, postage prepaid, addressed to Landlord, return receipt requested, or by hand delivery or overnight courier service, as above provided for the payment of Rent.

**Section 2.** Any notice herein provided to be given to Tenant shall be given by registered or certified United States mail, postage prepaid, and shall be addressed return receipt requested, or by hand delivery or overnight courier service, as follows:

If to Tenant:

Romaino North America, LLC

Attn: Corporate Real Estate Department

TN 38190

with required notice to:

Romaino North America, LLC

Attn: AB

TN 38190

**Section 3.** Any and all notices given, as above provided, shall be deemed to be given when received by the addressee, as evidenced by return receipt.

**Section 4.** Each party shall have the right to specify, in lieu of its above-specified address, any other address in the United States of America by giving to the other party at least fifteen (15) days prior written notice of such change of address sent in accordance with Section 1 or 2 above.

**ARTICLE XIX**

**Non-Waiver; Rights and Remedies Cumulative**

No requirement of this Lease shall be deemed waived or varied, nor shall either party’s acceptance of any payment with knowledge of any default or either party’s failure or delay to take advantage of any default constitute a waiver of such party’s rights hereunder or of any subsequent or continued breach of any requirement of this Lease. All rights and remedies of either party hereunder or in connection with this Lease shall be in addition to, and not in substitution for, any rights or remedies otherwise available to such party.

-15-

**ARTICLE XX**

**Successors and Assigns**

All covenants, agreements, conditions, limitations, exceptions and undertakings contained in this Lease shall extend to, and inure to the benefit of, and be binding upon, the respective heirs, executors, administrators, legal representatives, successors and assigns of Tenant and Landlord. The parties hereto further agree that all of the covenants, agreements, conditions, limitations, exceptions and undertakings contained in this Lease shall be binding upon the parties hereto and shall be construed to be covenants running with the land.

**ARTICLE XXI**

**Access to Leased Premises**

Subject to applicable laws, and Tenant’s compliance with same, Tenant shall have access to the Leased Premises 24 hours per day, 7 days per week, 365 days per year.

Tenant agrees that Landlord, its agents, servants or employees, or any person authorized by Landlord, may enter the Leased Premises during usual business hours and upon twenty four (24) hours prior written notice to inspect the condition of the same and to make such repairs as Landlord may be required or permitted to make under the provisions of this Lease, to exhibit the same to prospective purchasers of the Leased Premises, and, within one hundred eighty (180) days prior to the termination of this Lease, or any extensions thereof, to exhibit the Leased Premises to prospective tenants and to place in and upon the premises at such places as Landlord may determine “For Rent” signs or notices; provided, however, that such signs or notices shall not be placed in positions in which they would unreasonably interfere with the continued conduct of Tenant’s business or obstruct Tenant’s own signs as then erected. Nothing herein contained, however, shall be deemed or construed to impose upon Landlord any obligation or liability whatever for care, supervision, repair, improvement, addition, change or alteration of the Leased Premises or the building or improvements thereon other than as expressly provided in this Lease.

**ARTICLE XXII**

**Assignment and Subletting**

Tenant may not assign this Lease or sublet all or part of the Leased Premises without the prior written consent of Landlord to such assignment or such subletting, such consent not to be unreasonably withheld, conditioned or delayed, provided the new entity is financially sound in the reasonable opinion of Landlord and further provided, however, that in the event of such assignment or such subletting, Tenant shall give Landlord prior written notice thereof and continue primarily responsible to Landlord for the performance of each of the terms, conditions and covenants to be performed by Tenant under the terms of this Lease, and provided further, that at the time of such assignment or subletting, such assignee or subtenant shall execute a

-16-

document agreeing to perform for the benefit of Landlord each and every term, condition and covenant of this Lease. Landlord shall be permitted to proceed directly against Tenant for the failure of the performance of any term, condition or covenant of this Lease without the necessity of joining in any such action or actions any assignee or subtenant, provided, however, that at Landlord’s option, Landlord may join such assignee or subtenant. Tenant agrees to pay to Landlord as Additional Rent within thirty (30) days after receipt thereof, fifty percent (50%) of any rent or other economic consideration received by Tenant as a result of any assignment or subletting which exceeds, in the aggregate, (i) the total Rent which Tenant is obligated to pay Landlord under this Lease (prorated to reflect obligations allocable to any portion of the Premises subleased) for the applicable period, plus (ii) any reasonable brokerage commissions and attorneys’ fees actually paid by Tenant in connection with such assignment or subletting. Notwithstanding the foregoing, Tenant may assign or sublet this Lease without Landlord’s consent to: (i) any affiliate, subsidiary or parent entity of Tenant; or (ii) any entity resulting from a merger involving Tenant and/or Tenant’s affiliates, subsidiaries or parent entity.

**ARTICLE XXIII**

**Modification/Construction**

No oral statement or written matter bearing date prior to the date hereof shall have any force or effect in connection with the interpretation of this agreement or otherwise. Tenant and Landlord agree that they are not relying on any representations or agreements other than those contained in this Lease. No agreement shall be held as changing or in any manner modifying, adding to, or detracting from, any of the terms or conditions of this Lease unless such agreement shall be in writing and duly executed by the parties hereto. Landlord and Tenant acknowledge that this Lease constitutes their mutual work product and agree that no inferences shall be drawn based upon this Lease being drafted either by Landlord or by Tenant.

**ARTICLE XXIV**

**Signage; Parking**

Tenant shall be permitted to erect signs that comply with all applicable zoning laws and regulations now or hereafter in effect. Landlord shall cooperate with Tenant in obtaining approval from the appropriate state and local authorities to install such signage on behalf of Tenant, located as shown on the site plan attached hereto as Exhibit B. Tenant shall bear all costs associated with obtaining said approvals.

Tenant shall have access to the parking as identified on Exhibit “B” hereto.

**ARTICLE XXV**

**Alterations and Additions**

Tenant shall not make or allow to be made any alterations, additions or improvements to or of the Premises or any part thereof, which alteration costs in excess of $50,000.00, without first obtaining the written consent of Landlord, which shall not be unreasonably withheld. Any alteration made to the Leased Premises below the above-referenced threshold amount shall not require Landlord’s prior written consent but shall require written notice from Tenant to Landlord.

-17-

**ARTICLE XXVI**

**Options to Extend Term**

Tenant is hereby granted one (1) option to extend the Term hereof an additional five (5) years each, upon one hundred eighty (180) days written notice prior to the expiration of the Term (the “Extended Term”). Rent for said Extended Term shall be equal to the then prevailing fair market rent (“FMV”). Fair Market Value shall mean the average annual rental rate then being charged in the La Mirada, Sante Fe Springs, Cerritos, Buena Park, and Fullerton areas for comparable space in comparable buildings, comparably located for which market rate is being determined, taking into consideration: location in the building, tenant improvements or allowances to be provided, rental abatements, lease takeovers/assumptions, moving expenses and other forms of rental concessions, proposed term of lease, extent of service provided or to be provided, whether or not the transaction is a sublease, the time the particular rate under consideration became or is to become effective, contraction and expansion options, and any other relevant terms or conditions. In the event Landlord and Tenant are not able to agree upon the Fair Market Value rental rate for the Extended Term, such Fair Market Value rental rate shall be determined as provided in Rider No. 1. Except as provided above, this Lease shall remain in full force and effect during the Extended Term.

**ARTICLE XXVII**

**Subordination and Acknowledgements**

**Section 1**. At the option of the Landlord or the applicable mortgagee, chargee or trustee (as the case may be), this Lease shall be subject and subordinate to any and all mortgages, charges and deeds of trust (and instruments supplemental thereto), which may now affect the Leased Premises. Tenant acknowledges and agrees that any such mortgagee, chargee or trustee may unilaterally postpone and subordinate its mortgage, charge or deed of trust to this Lease and any renewals, modifications, consolidations, replacements or extensions thereof to the intent that this Lease and all right, title and interest of Tenant in the Leased Premises shall be prior to the rights of such mortgagee, chargee or trustee as fully as if such Lease had been executed and registered before the registration of the mortgage, charge or deed of trust, as applicable. On request at any time and from time to time of Landlord or of the mortgagee, chargee or trustee under any such mortgage, charge or deed of trust, Tenant shall promptly, at no cost to the Landlord or mortgagee, chargee or trustee, and provided said mortgagee, chargee or trustee agrees to enter in a non-disturbance agreement with Tenant and agrees not to in any way disturb or modify Tenant’s rights under this Lease or Tenant’s occupancy of the Leased Premises under this Lease unless in accordance with the terms and conditions of this Lease:

-18-

(a) attorn to such mortgagee, chargee or trustee and become its tenant of the Leased Premises or the tenant of the Leased Premises of any purchaser from such mortgagee, chargee or trustee in the event of an exercise of any permitted power of sale contained in any such mortgage, charge or deed of trust for the then unexpired residue of the Term on the terms herein contained; and/or

(b) postpone and subordinate this Lease to such mortgage, charge or deed of trust to the intent that this Lease and all right, title and interest of Tenant in the Leased Premises shall be subject to the rights of such mortgagee, chargee or trustee as fully as if such mortgage, charge or deed of trust had been executed and registered and the money thereby secured had been advanced before the execution of this Lease (and notwithstanding any authority or consent of such mortgagee, or trustee, express or implied, to the making of this Lease).

**Section 2**. Tenant shall, within not more than twenty (20) days’ written request therefor, execute and return to Landlord or its mortgagee as required by Landlord from time to time and without cost to Landlord or such mortgagee, a statement in writing certifying that this Lease is unmodified and in full force and effect (or if modified, stating the modifications and that the Lease is in full force and effect as modified), the amount of the annual Rent then being paid hereunder, the dates to which the same, by instalment or otherwise, and other charges hereunder have been paid, whether or not there is any existing default on the part of Landlord of which Tenant has notice, and any other information reasonably required.

**ARTICLE XXVIII**

**Environmental**

**Section 1.** Landlord covenants and warrants that it knows of no transportation, storage (including underground storage tanks), placement, handling, treatment, discharge, generation, production or disposal (treatment) of any waste, petroleum product, waste products, radioactive waste, poly-chlorinated biphenyls, asbestos, hazardous materials of any kind, or any substance which is regulated by any law, statute, ordinance, rule or regulation (“Hazardous Materials”), by Landlord or any other person or entity (including other tenants) on or around the Leased Premises prior to the Tenant taking possession of the Leased Premises.

**Section 2.** Landlord hereby agrees it will indemnify, defend, save and hold harmless Tenant and Tenant’s officers, directors, shareholders, employees, agents, representatives, invitees, licensees, subtenants, customers or contractors and their respective heirs, successors, and assigns (collectively “Indemnified Parties/Tenant”) against and from, and to reimburse the Indemnified Parties/Tenant with respect to, any and all damages, claims, liabilities, loss, costs, and expenses (including reasonable and actual attorneys’ fees and expenses, court costs, administrative costs and costs of appeals), incurred by or asserted against the Indemnified Parties/Tenant by reason of or arising out of: (a) the breach of any representation or undertaking of Landlord of its agents, employees, heirs, successors, or assigns under Section 1 of this Article or (b) arising out of any act or negligence or violation of any law, statute, ordinance, rule or regulation with respect to the treatment or handling of Hazardous Materials at any time by Landlord, its agents, employees, contractors, other tenants or their respective heirs, successors or assigns. Further, Tenant shall not be responsible or liable for any violation of any environmental law during the Term of this Lease not caused by Tenant or an employee, authorized agent or invitee of Tenant.

-19-

**Section 3**. Except for ordinary and general office supplies, such as copier toner, liquid paper, glue, ink and common household cleaning materials, and motor vehicle fuel stored in fuel tanks of motor vehicles used on site in compliance with all environmental laws (some or all of which may constitute Hazardous Materials), Tenant agrees not to cause or permit any Hazardous Materials to be brought upon, stored, used, handled, generated, released or disposed of on, in, under or about the Leased Premises, without the prior written consent of Landlord, which consent Landlord may withhold in its sole and absolute discretion. Upon the expiration or earlier termination of this Lease, Tenant agrees to promptly remove from the Leased Premises, at its sole cost and expense, any and all Hazardous Materials, including any equipment or systems containing Hazardous Materials which are installed, brought upon, stored, used, generated or released upon, in, under or about the Leased Premises or any portion thereof by Tenant or any of Tenant’s Parties. To the fullest extent permitted by law, Tenant agrees to promptly indemnify, protect, defend and hold harmless Landlord and Landlord’s members, shareholders, partners, officers, directors, managers, employees, agents, contractors, successors and assigns (collectively, “**Landlord Parties**”) from and against any and all claims, damages, judgments, suits, causes of action, losses, liabilities, penalties, fines, expenses and costs (including, without limitation, clean-up, removal, remediation and restoration costs, sums paid in settlement of claims, attorneys’ fees, consultant fees and expert fees and court costs) which arise or result from the presence of Hazardous Materials on, in, under or about the Leased Premises or any portion thereof and which are caused or permitted by Tenant or any of Tenant’s Parties. The provisions of this Article 10 will survive the expiration or earlier termination of this Lease.

**ARTICLE XXIX**

**Broker**

Landlord and Tenant warrant that no broker was involved in this Lease or the transactions contemplated hereby except NL Commercial Properties, LLC (“Broker”). Tenant shall not be responsible for any real estate commission claimed to be owed to any broker or other person on any renewal, amendment, modification, or the like, of the Lease unless said party is specifically authorized in writing to receive the same by Tenant. Each party agrees to indemnify the other party from claims for real estate commissions or fees arising out of any acts or negotiations of the indemnifying party with any broker, realtor or finder.

**ARTICLE XXX**

**Confidentiality**

Each party agrees to treat all information contained in the Lease (including the name of the other party) as strictly confidential and shall not disclose any information about the Lease or the other party to anyone not an agent of said party, and if then only on a “need to know” basis and with the requirement that said agent treat the Lease and the terms hereof as strictly confidential. Neither party shall make any marketing or press release regarding the Lease without the prior written consent of the other party, which consent may be withheld in said party’s sole and absolute discretion. Notwithstanding anything herein to the contrary, either party may disclose information regarding the Lease under proper authority of court.

-20-

**ARTICLE XXXI**

**Public Recordation of Lease**

Each party agrees that neither party shall have the right to record and/or cause or permit this Lease, or any memorandum of this Lease, to be recorded publicly without prior written consent of the other party.

**ARTICLE XXXII**

**Counterpart Signatures**

This Lease may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**ARTICLE XXXIII**

**Miscellaneous**

**Section 1.** Notwithstanding anything contained in this Lease to the contrary, the obligations of Landlord under this Lease (including as to any actual or alleged breach or default by Landlord) do not constitute personal obligations of the individual members, managers, investors, partners, directors, officers, or shareholders of Landlord or Landlord’s members or partners, and Tenant shall not seek recourse against the individual members, managers, investors, partners, directors, officers, or shareholders of Landlord or Landlord’s members or partners or any other persons or entities having any interest in Landlord, or any of their personal assets for satisfaction of any liability with respect to this Lease. In addition, in consideration of the benefits accruing hereunder to Tenant and notwithstanding anything contained in this Lease to the contrary, Tenant hereby covenants and agrees for itself and all of its successors and assigns that the liability of Landlord for its obligations under this Lease (including any liability as a result of any actual or alleged failure, breach or default hereunder by Landlord), shall be limited solely to, and Tenant’s and its successors’ and assigns’ sole and exclusive remedy shall be against, Landlord’s interest in the Leased Premises, and no other assets of Landlord. The term “Landlord” as used in this Lease, so far as covenants or obligations on the part of the Landlord are concerned, shall be limited to mean and include only the owner or owners, at the time in question, of the fee title to, or a lessee’s interest in a ground lease of, the Leased Premises. In the event of any transfer or conveyance of any such title or interest (other than a transfer for security purposes only), the transferor shall be automatically relieved of all covenants and obligations on the part of Landlord contained in this Lease. Landlord and Landlord’s transferees and assignees shall have the absolute right to transfer all or any portion of their respective title and interest in the Leased Premises and/or this Lease without the consent of Tenant, and such transfer or subsequent transfer shall not be deemed a violation on Landlord’s part of any of the terms and conditions of this Lease.

-21-

**Section 2.** Within 15 business days following Landlord’s written request, Tenant shall execute and deliver to Landlord a commercially reasonable and typical estoppel certificate. Any such estoppel certificate may be relied upon by any mortgagee, beneficiary, purchaser or prospective purchaser of any portion of the Leased Premises, as well as their assignees. Tenant’s failure to deliver such estoppel certificate following an additional two (2) business day cure period after notice shall constitute a default hereunder. Tenant’s failure to deliver such certificate within such time shall be conclusive upon Tenant that this Lease is in full force and effect, without modification except as may be represented by Landlord, that there are no uncured defaults in Landlord’s performance, and that not more than one (1) month’s Rent has been paid in advance.

**Section 3.** This Lease shall be governed by, and construed pursuant to, the laws of the state of California. Venue for any litigation between the parties hereto concerning this Lease or the occupancy of the Premises shall be initiated in the county in which the Premises are located. Tenant shall comply with all governmental and quasi-governmental laws, ordinances and regulations applicable to the Premises, and all rules and regulations adopted pursuant thereto and all covenants, conditions and restrictions applicable to and/or of record against the Premises (individually, a “Law” and collectively, the “Laws”).

**Section 4.** All of the covenants, conditions and provisions of this Lease shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, personal representatives and permitted successors and assigns.

**Section 5.** If either Landlord or Tenant should bring suit (or alternate dispute resolution proceedings) against the other with respect to this Lease, including for unlawful detainer, forcible entry and detainer, or any other relief against the other hereunder, then all costs and expenses incurred by the prevailing party therein (including, without limitation, its actual appraisers’, accountants’, attorneys’ and other professional fees, expenses and court costs), shall be paid by the other party, including any and all costs incurred in enforcing, perfecting and executing such judgment and all reasonable costs and attorneys’ fees associated with any appeal.

**Section 6.** Landlord acknowledges that Tenant is currently a public company and its financial information is available as part of its public reporting obligations. However, should Tenant cease to be a publicly traded company or should Tenant assign this Lease to a company which is not a publicly traded company, then Tenant or such assignee agree to provide financial information to Landlord as follows: Upon ten (10) days prior written request from Landlord (which Landlord may make at any time during the Term including in connection with Tenant’s exercise of any Option in this Lease, but no more often that two (2) times in any calendar year, other than in the event of a default by Tenant during such calendar year or the exercise of any Option in such calendar year, when such limitation shall not apply), Tenant shall deliver to Landlord for review by Landlord and by Landlord’s accountants, investors and prospective purchasers and lenders: (a) a current financial statement of Tenant and any guarantor of this Lease, and (b) financial statements of Tenant and such guarantor for the two (2) years prior to the current financial statement year. Landlord covenants and agrees not to disclose any information regarding Tenant’s financial statements to any parties other than its accountants,

-22-

investors, purchasers, and lenders to keep all of Tenant’s financial information confidential. Such statements shall be prepared in accordance with generally acceptable accounting principles and certified as true in all material respects by Tenant (if Tenant is an individual) or by an authorized officer, member/manager or general partner of Tenant (if Tenant is a corporation, limited liability company or partnership, respectively).

**Section 7.** This Lease may be executed in one or more counterparts, each of which shall constitute an original and all of which shall be one and the same agreement. Signatures and initials required in this document may be executed via “wet” original handwritten signature or initials, or via electronic signature or mark, which shall be binding on the parties as originals, and the executed signature pages may be delivered using pdf or similar file type transmitted via electronic mail, cloud based server, e-signature technology or other similar electronic means, and any such transmittal shall constitute delivery of the executed document for all purposes of this Lease.

**Section 8.** Landlord and its employees and agents shall at all reasonable times have the right to enter the Leased Premises to inspect the same, to supply any service required to be provided by Landlord to Tenant under this Lease, to exhibit the Leased Premises to prospective lenders or purchasers (or during the last year of the Term or during any default by Tenant, to prospective tenants), to post notices of non-responsibility, and/or to alter, improve or repair the Leased Premises or any portion thereof, all without being deemed guilty of or liable for any breach of Landlord’s covenant of quiet enjoyment or any eviction of Tenant, and without abatement of Rent. In exercising such entry rights, Landlord shall endeavor to minimize, to the extent reasonably practicable, the interference with Tenant’s business, and shall provide Tenant with reasonable advance notice (oral or written) of such entry (except in emergency situations and for scheduled services). For each of the foregoing purposes, Landlord shall at all times have and retain a key with which to unlock all of the doors in, upon and about the Leased Premises, excluding Tenant’s vaults and safes, and Landlord shall have the means which Landlord may deem proper to open said doors in an emergency in order to obtain entry to the Leased Premises. Any entry to the Leased Premises obtained by Landlord by any of said means or otherwise shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Leased Premises, or an eviction of Tenant from the Leased Premises or any portion thereof, or grounds for any abatement or reduction of Rent and Landlord shall not have any liability to Tenant for any damages or losses on account of any such entry by Landlord.

[*The remainder of this page intentionally left blank. Signature page follows.*]

-23-

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease this \_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

|  |  |  |
| --- | --- | --- |
|  |  |  |
| **LANDLORD:** | | |
| **FIBERCORP** | | |
|  |  | |
| By: |  |  |
| Name: |  |  |
| Title: |  |  |
|  | | |
| **TENANT:** | | |
| **ROMAINO NORTH AMERICA, LLC** | | |
|  |  | |
| By: |  |  |
| Name: |  |  |
| Title: |  |  |

-24-

EXHIBIT A

DESCRIPTION OF LEASED PREMISES

-25-

**LeaseA#29**

REAL PROPERTY LEASE AGREEMENT, DATED SEPTEMBER 14, 2009

**Exhibit 10.1**

**FACE PAGE\***

**LEASE AGREEMENT**

**Lease Date:**Sept. 14, 2009

**Landlord:**Nixon, LP

**Landlord’s Address:**20XXXX Florissant Missouri

**Building: The 41,000 square feet owned by Landlord, described in Exhibit AA**

**Shopping Center:**HILLVILLE FESTIVAL CENTRE

**City, State:**HILLVILLE, ALABAMA

**Tenant:**Hightech, Inc. (“HT”)

**Tenant’s Home Address:                                           Phone #:**

**Tenant’s Business Address:**VVVV**Phone #:**----

**Tenant’s Tax Payer Identification Number:**74-389-998

**Name (d/b/a to be used by Tenant):**“Hightech, Inc.” –or– “HT”

**Lease Term:** Five (5 ) Years and Three (3) Months **Option Terms:** Five (5) **Additional Period(s)** of One (1) Year Each

**DEMISED PREMISES:**

Construction Commencement Date: Nov. 1, 2009

Estimated Completion Date: Dec. 31, 2009

Space # (See Exhibit “A” for approximate store location as marked in red; Shopping Center outlined in green)

Size 21,000 Square Feet

Width              Feet (More specifically shown as Dimension A on Exhibit B)

Depth              Feet (More specifically shown as Dimension B on Exhibit B)

Base Rent Increase Escalation: Four Percent (4%) at Commencement of Third Year, Three Percent at the Commencement of Each Option Year.

|  |  |  |
| --- | --- | --- |
|  |  |  |
| Percentage Rent:      % |  | Breakpoint: |

**INITIAL ESTIMATE CHARGES**

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| Security Deposit |  | $ |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| Base Rental |  | Per Sq. Ft. |  | $ | 6.00 |  | Per Year |  | $ | 126,000.00 |  |  | Per Month |  | $ | 10,500.00 |
| Taxes |  | Per Sq. Ft. |  | $ | 0.93 |  | Per Year |  | $ | 19,530.00 |  |  | Per Month |  | $ | 1,627.50 |
| Insurance |  | Per Sq. Ft. |  | $ | 0.41 |  | Per Year |  | $ | 8,610.00 |  |  | Per month |  | $ | 717.50 |
| CAM |  | Per Sq. Ft. |  | $ | 0.75 |  | Per Year |  | $ | 15,750.00 |  |  | Per Month |  | $ | 1,312.50 |
| TWA up to $100,000.00 |  | Per Sq. Ft. |  | $ | 4.76 |  | Per Year |  | $ | 23,199.36 |  |  | Per Month |  | $ | 1,933.28 |
|  |  |  |  |  |  |  | **TOTAL:** |  | **$** | **193,089.36** |  |  | Per Month |  | **$** | **16,090.78** |
|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| **Late Charge** |  |  |  |  |  |  | Percentage |  |  | 10 | % |  | Per Month |  | $ | 1,609.91 |
|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| Additional Rent for failure to open or to conduct business | | | | | | | |  |  |  |  |  | Per Day |  | $ | 500.00 |

**USE:**To be used as a call center for technical support operations

**LEASE EXECUTION:**

|  |  |  |
| --- | --- | --- |
|  |  |  |
| Individual |  | Corporate |
|  |  | Name & Title |

**GUARANTY EXECUTION**

|  |  |  |
| --- | --- | --- |
|  |  |  |
| Individual |  | Corporate |
|  |  | Name & Title |

Rider with sections numbered consecutively          through          are attached hereto and made a part hereof.

The laws of the State of Alabama and County of Hillville shall govern the validity, performance and enforcement of this lease.

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| \* | THIS IS A LEGALLY BINDING CONTRACT. PLEASE READ IT THOROUGHLY BEFORE YOU SIGN; THE ITEMS CONTAINED ON THIS FACE PAGE RELATE TO VARIOUS CONTENTS OF THE LEASE. THERE ARE NO AGREEMENTS BETWEEN THE PARTIES UNLESS CONTAINED IN WRITING IN THIS LEASE. |

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|  |  |  |  |  |  |  |  | LANDLORD |  | TENANT |
|  |  |  |  |  |  |  |  | /s/ |  | /s/ |
|  |  |  |  |  |  |  |  | INITIALS |  |  |

INDEX

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  |  |  |  |
| **SECTION** |  |  |  | **PAGE** |
| 1 |  | Parties |  | 1 |
| 2 |  | Relationship of Parties |  | 1 |
| 3 |  | Demised Premises |  | 1 |
| 3a |  | Tenant’s Work Allowance |  | 1 |
| 4 |  | Possession |  | 3 |
| 5 |  | Use |  | 3 |
| 6 |  | Operation of Business |  | 3 |
| 7 |  | Term |  | 3 |
| 8 |  | Base Rent |  | 4 |
| 9 |  | Additional Rent |  | 4 |
| 10 |  | Advance Rental |  | 4 |
| 11 |  | Time and Place of Payment |  | 4 |
| 12 |  | Failure to Open or to Conduct Business |  | 4 |
| 13 |  | Accord and Satisfaction |  | 5 |
| 14 |  | Operation and Maintenance of Common Areas |  | 5 |
| 15 |  | Control of Common Area by Landlord |  | 5 |
| 16 |  | Common Area Maintenance Charge |  | 5 |
| 17 |  | Use of Additional Areas |  | 6 |
| 18 |  | Utility Charges |  | 6 |
| 19 |  | Taxes on or in Respect of Rentals |  | 6 |
| 20 |  | Property Taxes |  | 6 |
| 21 |  | Insurance Premiums |  | 7 |
| 22 |  | Tenant’s Liability and Casualty Insurance |  | 8 |
| 23 |  | Indemnification of Landlord |  | 8 |
| 24 |  | Loss and Damage |  | 8 |
| 25 |  | Tenant’s Right to Make Alterations |  | 8 |
| 26 |  | Landlord’s Right to Make Alterations |  | 9 |
| 27 |  | Trade Fixtures |  | 9 |
| 28 |  | Affirmative Covenants of Tenant |  | 9 |
| 29 |  | Negative Covenants of Tenant |  | 11 |
| 30 |  | Signs |  | 12 |
| 31 |  | Performance of Tenant’s Covenants |  | 12 |
| 32 |  | Rights of Landlord |  | 12 |
| 33 |  | Responsibilities of Landlord |  | 13 |
| 34 |  | Events of Default |  | 13 |
| 35 |  | Rights of Landlord Upon Default by Tenant |  | 14 |
| 36 |  | Force Majeure |  | 15 |
| 37 |  | Landlord’s Exculpation |  | 15 |
| 38 |  | Financing Agreement |  | 15 |
| 39 |  | [Intentionally Omitted] |  | 15 |
| 40 |  | Assigning, Mortgaging, Subletting |  | 15 |
| 41 |  | Successors and Assigns |  | 15 |
| 42 |  | Attornment |  | 16 |
| 43 |  | Subordination |  | 16 |
| 44 |  | Estoppel Certificate |  | 16 |
| 45 |  | Destruction of the Demised Premises |  | 16 |
| 46 |  | Destruction of the Shopping Center |  | 17 |
| 47 |  | Total Condemnation |  | 17 |
| 48 |  | Total Condemnation of the Parking Area |  | 17 |
| 49 |  | Partial Condemnation |  | 17 |
| 50 |  | Partial Condemnation of the Parking Area |  | 17 |
| 51 |  | Landlord’s Damages |  | 17 |
| 52 |  | Tenant’s Damages |  | 18 |
| 53 |  | Release from Liability |  | 18 |
| 54 |  | Hazardous Waste |  | 18 |
| 55 |  | Custom and Usage |  | 18 |
| 56 |  | Holding Over |  | 19 |
| 57 |  | Quiet Enjoyment |  | 19 |
| 58 |  | Rehabilitation of Shopping Center |  | 19 |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  |  |  |  |
| 59 |  | Landlord’s Lien and Chattel Mortgage |  | 20 |
| 60 |  | Scope and Interpretation of the Agreement |  | 20 |
| 61 |  | No Representations |  | 20 |
| 62 |  | Notices |  | 20 |
| 63 |  | Section Numbers |  | 20 |
| 64 |  | Severability |  | 20 |
| 65 |  | Examination of Lease |  | 20 |
| 66 |  | Counterparts |  | 21 |
| 67 |  | Recording/Short Form Lease |  | 21 |
| 68 |  | Confidentiality |  | 21 |
| 69 |  | Patriot Act Compliance |  | 21 |

Notary

Exhibit A – The Building Site Plan

Exhibit B – The Shopping Center Site Plan

Exhibit C – Landlord’s Work

Exhibit D – Tenant’s Work

Exhibit E – Construction, Operating and Reciprocal Easement Agreement

Exhibit F – Supplemental

Exhibit G – Sign Criteria

**L E A S E    A G R E E M E N T**

**NOTE:** See **FACE PAGE** for the definition of certain terms used in this Lease, which **FACE PAGE** and terms are incorporated hereby in reference

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|  | 1. | **PARTIES** |

This Lease Agreement (the “Lease”) made as of the Lease Date as defined on the **FACE PAGE** is by and between **LANDLORD** (as defined on the **FACE PAGE**) and **TENANT** (as defined on the **FACE PAGE**).

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|  | 2. | **RELATIONSHIP OF PARTIES** |

Anything contained in this Lease to the contrary notwithstanding, it is specifically agreed that **LANDLORD** shall in no event be construed or deemed to be a partner or an associate of, or be engaged in a joint venture with, **TENANT** in the conduct of its business and that**LANDLORD** shall absolutely not be liable for any debts or other liabilities of any kind or sort whatsoever incurred by **TENANT** in the conduct of its business or otherwise. Nothing contained in this Lease shall be deemed or construed to confer upon **LANDLORD** any interest in the business of the **TENANT**. The relationship of the **LANDLORD** and **TENANT**, their successors and assigns, during the term of this Lease shall at all times be solely that of a landlord and a tenant. It is further expressly understood and agreed that **LANDLORD** and **TENANT** may by written agreement alter, amend, modify, revoke or rescind this Lease or any covenant herein contained.

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|  | 3. | **DEMISED PREMISES** |

**LANDLORD** hereby demises unto **TENANT** and **TENANT** hereby leases from **LANDLORD**, for the term and specifically upon thcofere terms and conditions set forth in this Lease, the premises described on the **FACE PAGE** which are located in the shopping center described on the **FACE PAGE** (the “Shopping Center”), in the City and State described on the **FACE PAGE**, which premises consists of an area of the approximate square feet within a one story building (“Building”) described on the **FACE PAGE** (the “Demised Premises”). The boundaries and location of the Building are outlined in green and the boundaries and location of the Demised Premises are outlined in red on the site plan attached hereto as Exhibit A (the “Building Site Plan”). The boundaries and location of the Shopping Center are outlined in green and the boundaries and location of the Building are outlined in red on the site plan attached hereto as Exhibit B (the “Shopping Center Site Plan”). The purpose of the Building Site Plan and the Shopping Center Site Plan is to show approximate location of the Demised Premises. This Lease Agreement, pursuant to which **TENANT** occupies the Demised Premises, shall be subject to the Construction, Operating and Reciprocal Easement Agreement for Hillville Festival Centre By and Among Rummage Find Stores, Inc. and Allison DeVille as Tenants-In-Common, Recorded March 26, 1986, attached here to as Exhibit E, and the Rummage Find Supplemental Agreement, dated March 20, 1986, attached hereto as Exhibit F (together, the “CORE Agreement”), to the extent applicable.

**LANDLORD** shall, at its cost and expense, construct the Demised Premises for **TENANT’S** use and occupancy in accordance with plans and specifications prepared by **LANDLORD** or **LANDLORD’S** architect, described in Exhibit C, “Landlord’s Work”, attached hereto and made a part hereof. **TENANT** shall at its cost and expense perform the work needed to finish the Demised Premises for its use in accordance with Exhibit D, “Tenant’s Work”, attached hereto and made a part hereof. Any work and material in addition to any of the items specifically enumerated in said Exhibit D shall be paid for and provided by **TENANT** at its own cost and expense. Any equipment or work other than those items specifically enumerated in said Exhibit D which **LANDLORD** or **LANDLORD’S** contractor installs or constructs in the Demised Premises on **TENANT’S** behalf shall be paid for by **TENANT** prior to the date when **TENANT** opens its store for business.

**LANDLORD** shall not be obligated to commence or to complete the construction within any particular period of time. However, if construction has not commenced on or before the Construction Commencement Date (as stated on the **FACE PAGE**), either **LANDLORD** or **TENANT** may cancel and terminate this Lease by giving written notice to the other within thirty (30) days following such date. Construction shall be deemed to have commenced for the purposes of this Lease upon receipt by Landlord of a building permit for Landlord’s Work and the completion date is Estimated Completion Date (as stated on the **FACE PAGE**) unless due to events beyond the control of **LANDLORD**.

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|  | 3a. | **TENANT’S WORK ALLOWANCE** |

LANDLORD shall provide to TENANT up to $ 100,000.00 as TENANT’S Work Allowance. The TENANT’S Work Allowance shall be used for costs associated with the design and construction of Tenant’s Work, as described in Exhibit D, attached hereto. TENANT shall repay the Tenant Work Allowance in monthly payments as additional rent, in the amount set forth on the FACE PAGE, during first five years of the Lease Term, as set forth on the FACE PAGE, commencing in the

1

same month as the commencement of TENANT’S obligation to pay rent, as defined in section 7. Any costs of Tenant’s Work in excess of $100,000.00 shall be the obligation of Tenant. Tenant’s Work shall not include the purchase by Tenant of any furniture or similar personal property.

As conditions for the disbursement of Tenant’s Work Allowance, the following procedures shall apply:

First: Tenant’s Contractor and Tenant Certification. Receipt by Landlord of a Certificate of the Tenant’s Contractor and the principal of Tenant in the form acceptable to Landlord, that (i) construction through the date of such certification has been completed in a good and workmanlike manner and in compliance with applicable laws and substantially in accordance with the Plans and Specifications; (ii) upon disbursement by Landlord of funds requested by the Request for Disbursement, as described in section 5.6 below, sufficient funds will be available to pay in full all obligations for materials delivered, work performed, services provided and other costs incurred in connection with the Tenant’s Work through the end of the period covered by such Request for Disbursement.

Second: Lien Waivers. Receipt by Landlord of lien waivers from (i) the Tenant’s Contractor, and (ii) from all subcontractors and materialmen performing work on or supplying materials for Tenant’s Work, for work performed and included and paid by disbursements before the current Request for Disbursement for all subcontractors and the current request for the Tenant’s Contractor which as to the Tenant’s Contractor may be conditioned upon current payment;

Third: Receipt by Landlord of a certificate of the architect who prepared the Plans and Specifications or such other person selected by Tenant and approved by Landlord to monitor the progress of construction (the “Construction Monitor”) stating (i) in such Construction Monitor’s best professional estimate the percentage of Tenant’s Work that has been completed, including the cost of materials on site as of the date of the certificate, and (ii) that such construction has been completed in accordance with the Plans and Specifications and as appropriate a revised binding cost bid from the approved Contractor; and

Fourth: Landlord shall have the right to retain five (5%) of the amount of each Interim Disbursement until the Final Disbursement described hereinbelow.

Fifth: Tenant shall not be in material default of its obligations under the Lease.

As conditions for Final Disbursement of Tenant Work Allowance, the following:

First: Landlord shall not make the Final Disbursement unless and until all of the following conditions (the “Final Disbursement Conditions”) have been satisfied:

Second: Certificate of Occupancy, Etc. Receipt by Landlord of all permits and approvals required, if any, for the normal use and occupancy of the Premises, including a final certificate of occupancy or certificate of completion shall have been duly issued by the appropriate governmental authorities having jurisdiction;

Third: Final Lien Waivers. Receipt by Landlord of final unconditional lien waiver (subject only to final payment) from the Tenant’s Contractor and all mechanics or materialmen who worked performed services at the Premises as part of Tenant’s Work;

Fourth: Tenant’s Architect Certification. Receipt by Landlord of a certificate of Tenant’s Architect stating that Tenant’s Work has been completed in a good and workmanlike manner in compliance with all applicable laws and in accordance with the Plans and Specifications.

Fifth: Tenant shall not at the time of the request for Final Disbursement be in material default of its obligations under the Lease.

Disbursements Do Not Constitute Waiver. No disbursement of any funds from the Landlord shall constitute a waiver of any of the conditions of the obligation of Landlord to make further Disbursements or, in the event Tenant is unable to satisfy any such condition for a period of thirty (30) consecutive days, no such disbursement shall have the effect of precluding Landlord from thereafter declaring such inability to be an Event of Default hereunder

Procedures for Disbursements. Landlord shall promptly review or cause to be reviewed any Request for Disbursement and accompanying documentation and shall, on or before the first business day fifteen (15) business days after receipt thereof, either: (a) if the Request for Disbursement is in appropriate form, and is accompanied by all other documentation required under this Lease as conditions to the requested disbursement, make the required Disbursement,

2

as provided in the Request for Disbursement; or (b) if the Request for Disbursement is not in appropriate form, or is not accompanied by all other documentation required under this Lease as conditions to the requested disbursement, advise Tenant of any deficiency for entitlement to such requested disbursement. Landlord’s review of such information shall be limited to whether the documentation required pursuant to this Agreement as a condition to and in support of the requested Disbursement was presented in due form, and without investigation or inquiry into any details of any supporting documentation. Landlord shall not unreasonably condition approval of any disbursement on any additional receipts, approvals, inspections or other matters.

Landlord Improvements. Landlord shall pay for the improvements with respect to the Building and Premises as are listed in Exhibit C.

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|  | 4. | **POSSESSION** |

Delivery of possession within the meaning of this Lease shall be accomplished by **LANDLORD’S** delivery to **TENANT** of the Demised Premises after **LANDLORD** has completed **LANDLORD’S** work, as set forth on Exhibit C.

**TENANT** agrees that it shall, with due diligence and all reasonable commercial promptness, proceed to install such fixtures and equipment and to perform such work as shall be necessary or appropriate in order to prepare the Demised Premises for the opening of business, all in accordance with Exhibit D.

**LANDLORD** agrees that, upon the date of delivery of possession to the **TENANT**, the Demised Premises shall, except for such work as may be required to be performed by **TENANT**, be free of all violations, orders or notices of violations of all public authorities which would directly prohibit **TENANT** from conducting its business.

By virtue of occupying the Demised Premises, or installing fixtures, facilities or equipment, or performing finishing work, whether in any such instance, directly or through its contractor(s) or agents, **TENANT** shall conclusively be deemed to have accepted the Demised Premises “as is” and to have acknowledged that the Demised Premises are in the condition as required by this Lease, except only and specifically as to any latent defects or latent omissions, if any, in the **LANDLORD’S** construction.

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|  | 5. | **USE** |

**TENANT** shall use and occupy the Demised Premises solely and exclusively for the conduct of **TENANT’S** business as described on the **FACE PAGE** and solely and exclusively under the name as defined on the **FACE PAGE** and under no other name except such as may be first approved by **LANDLORD** in writing.

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|  | 6. | **OPERATION OF BUSINESS** |

**TENANT** shall (a), except when, and to the extent that, the Demised Premises may be untenantable by reason of damage by fire or other casualty, continuously and uninterruptedly use, occupy, operate and conduct its business during the hours of operation as defined on the **FACE PAGE**; and (b) make reference by name to the whole Shopping Center as defined on the **FACE PAGE** in designating the location of the Demised Premises in all newspaper or other advertising, stationery or other printed material and all other reference to the location of the Demised Premises.

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|  | 7. | **TERM** |

The original term of this Lease shall be for a period as defined on the **FACE PAGE** of this Lease and from the “Commencement Date” hereafter provided unless sooner terminated hereby. The Commencement Date and **TENANT’S** obligation to pay annual base rent and additional rent, shall commence on the earlier of the following dates: (a) the date which is ninety (90) days after **TENANT** has been notified in writing that the Demised Premises are ready for occupancy, (b) the date which is ninety (90) days after **TENANT** has accepted possession of the Demised Premises, or (c) the date on which **TENANT** shall open the Demised Premises for business. In the event the expiration of the ninety (90) day period does not occur on the first day of the month or **TENANT** shall have opened the Demised Premises for business on a day other than the first day of the month, then the Commencement Date shall be the first day of the month next succeeding, but all other terms and conditions of this Lease shall be effective as if the term Commencement Date occurred on such prior date; and **TENANT** shall pay rent for the fractional month on a per diem basis (calculated on the basis of a thirty (30) day month) until the Commencement Date; and thereafter the rent shall be paid in equal monthly installments in advance on the first day of each month during the term of this Lease.

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|  | 8. | **BASE RENT** |

For the first two Lease years, in addition to additional rent, as herein provided, **TENANT** shall pay **LANDLORD** as base rent for the Demised Premises the sum as defined and set forth on the **FACE PAGE** per year. The base rent shall be payable in equal monthly installments as defined and set forth on the **FACE PAGE** and **SHALL BE PAID IN ADVANCE ON OR BEFORE THE FIRST DAY OF EACH MONTH**.

The annual base rent shall be increased at the commencement of the Third Lease year by an amount to be determined by multiplying the annual base rent paid for the previous Lease year by a percentage as defined and set forth on the **FACE PAGE**. The annual base rent shall be increased at the commencement of each Lease option year by an amount to be determined by multiplying the annual base rent paid for the previous Lease year by a percentage as defined and set forth on the **FACE PAGE**.

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|  | 9. | **ADDITIONAL RENT** |

In addition to the foregoing annual base rent, all other payments to be made by **TENANT** under this Lease shall be deemed to be and shall become additional rent hereunder whether or not the same be designated as such and shall be due and payable on demand or together with the next succeeding installment of annual base rent, whichever shall first occur; and **LANDLORD** shall have the same remedies for failure to pay the same as for a non-payment of annual base rent. **LANDLORD**, at its election, shall have the right, but not the obligation, to pay or do any act which requires the expenditure of any sums of money by reason of the failure or neglect of **TENANT** to perform any of the provisions of this Lease or cure any violation of any covenant, undertaking or agreement herein, and in the event **LANDLORD** shall, at its election, pay such sums or do such acts, **TENANT** agrees to pay **LANDLORD**, upon demand, all such sums plus interest starting the day Landlord paid the sum, and the sums so paid by **LANDLORD**, shall be deemed additional rent.

If **TENANT** shall fail to make payment of annual base rent or additional rent due hereunder within five (5) days of its due date, **TENANT** shall automatically be assessed, in addition to all other charges specified herein, a late charge as defined on the **FACE PAGE** to the extent permitted by law for each month or portion thereof that said payment shall be delinquent.

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|  | 10. | **ADVANCE RENTAL** |

**LANDLORD** acknowledges receipt from **TENANT** an amount equal to the annual base rent and additional rent for the first full calendar month of the term hereof as advance rental. If **TENANT** is in compliance with all of the terms, covenants and conditions of this Lease, the aforesaid advance rental shall be credited against the first rental payment due hereunder; otherwise, **LANDLORD** shall have the right to use, apply or retain the whole or any part of the advance rental to the extent required for the payment of any annual base rent and additional rent or any other sums due **LANDLORD** hereunder; including any sums which **LANDLORD** may expend or may be required to expend by reason of **TENANT’S** failure to observe or comply with any of the terms, covenants and conditions of this Lease. In the event that **LANDLORD** should sell or otherwise transfer or assign its interest in the Shopping Center or the Demised Premises prior to crediting the advance rental, **LANDLORD** may deliver the advance rental to the purchaser or other assignee or transferee of **LANDLORD’S** interest, in which event **LANDLORD** shall be discharged from any further liability with respect to such advance rental. **TENANT** agrees that said advance rental shall be forfeited if **TENANT** does not open for business as required herein. No interest shall be paid or payable on the advance rental.

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|  | 11. | **TIME AND PLACE OF PAYMENT** |

**TENANT** shall promptly pay all rentals and other sums due hereunder, without set off or deduction and render all statements herein to **Florissant PROPERTY MANAGEMENT, LLC,** 20XXXX Florissant Missouri

**,** or at such other place as may be designated from time to time by **LANDLORD** in writing. All payments due under this Lease shall be made by check, cashier’s check, certified check or money order, all payments shall be received subject to clearance. Should any check be returned to **LANDLORD** by **TENANT’S** bank for reason of non-sufficient funds, then, in addition to **LANDLORD’S** other rights and remedies therefor, **TENANT** shall from and after such time deliver all payments by cashier’s check, certified check or money order.

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|  | 12. | **FAILURE TO OPEN OR TO CONDUCT BUSINESS** |

Should **TENANT** have failed to open the Demised Premises for business at the conclusion of sixty (60) days following the Commencement Date, then **LANDLORD**, in addition to all other rights and remedies provided in this Lease in case of default, shall have the right to require specific performance by **TENANT**, or to cancel or to terminate this Lease, reserving all rights for damages suffered by reason of such default.

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|  | 13. | **ACCORD AND SATISFACTION** |

No payment by **TENANT** or receipt by **LANDLORD** of a lesser amount than the installments of annual base rent and additional rent herein stipulated shall be deemed to be other than on account of the earliest rents due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rents be deemed an accord and satisfaction, and **LANDLORD** may accept such check or payment without prejudice to **LANDLORD’S** right to receive the balance of such rents or pursue any other remedy in this Lease provided.

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|  | 14. | **OPERATION AND MAINTENANCE OF COMMON AREAS** |

Operation, and maintenance of the common areas and common facilities of the areas of the Shopping Center is subject to the CORE Agreement, attached as EXHIBITS E and F. The control, operation, and maintenance responsibilities for common areas and common facilities will be fulfilled by Barf Realty Corporation (“Barf”). Barf shall, subject to the CORE Agreement, maintain as common areas the parking lots within the areas of the Shopping Center shown upon Exhibit B for the nonexclusive use (in common with such others as **LANDLORD** may prescribe, including the occupants, employees, and customers of the store or stores upon the areas of the Shopping Center not owned by **LANDLORD**) of **TENANT**, its agents, employees and customers for vehicle parking. As set forth in the CORE Agreement, the parking lot shall be well lighted, with a minimum maintained intensity of not less than one (1) foot candle measured at the ground level during all the period of darkness when the Building is open for business and for one-half (1/2) hour before and one (1) hour after such business hours; provided, however, Barf shall not, in any event be required to light the Common Area on its Site after 10:00 p.m. Upon request of HT through the Landlord, Barf shall keep the Common Areas open and lighted after 10:00 p.m. provided that the additional cost of so doing shall be borne by HT (if only HT remains open) or by HT and such other store that may elect to remain open after 10:00 p.m., pro rata.

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|  | 15. | **CONTROL OF COMMON AREA** |

All parking areas, access roads and facilities which may be furnished in or at the Shopping Center, including employee parking areas, truck way or ways, driveways, loading docks and areas, delivery passages, package pick-up stations, sidewalks, malls, courts and ramps, landscaped and planting areas, retaining walls, stairways, bus stops, first aid stations, comfort stations, lighting facilities, signs, music program service, if any, and all other areas and improvements for the general use, in common, of tenants, their officers, agents, employees, and customers, shall at all times be subject to exclusive control and management pursuant to the CORE Agreement, the rights and obligations of which may be delegated, assigned, or subcontracted , in whole or in part, under this section to a tenant or tenants or third parties) and **LANDLORD** shall have the right from time to time to establish, modify and enforce reasonable rules and regulations with respect to all facilities and areas mentioned in this section.

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|  | 16. | **COMMON AREA MAINTENANCE AND MANAGEMENT CHARGE** |

**TENANT** shall pay **LANDLORD**, as additional rent, when and as invoiced, a common area maintenance charge as defined in the CORE Agreement. The amount of **TENANT’S** pro rata share of the aforementioned total cost is computed by using the fraction, the numerator of which is the square foot area of the Demised Premises and the denominator of which is the gross leasable square foot area in the Shopping Center, as defined in the CORE Agreement. The pro-rata share, as described herein above is 4.94%

The total cost of operating, repairing, replacing and maintaining the common areas and facilities of the Shopping Center shall include all reasonable and proper costs and expenses of operating and maintaining the Common Areas (including compensation of on-site managers and on-site administrative personnel) in a manner consistent with a first class shopping center and in an amount consistent with that incurred for the maintenance of similar shopping centers; provided however, there shall be excluded from the calculation of the common area maintenance charge, the following items: real estate taxes, fees or dues for merchants or other tenant associations, cost of repairs, maintenance or replacement of or to any buildings; utility systems or truck docks and ramps or customer pick-up areas of any other tenant or occupant of the Shopping Center, repairs or replacements necessitated by the negligence or wrongful action of Barf that were made to correct any condition in the existence prior to the date hereof, amounts paid to entities related to Barf in excess of the cost of such services from any competitive source, amounts reimbursable from insurance proceeds or by any tenant in the shopping center other than pursuant to a common area expense provisions similar to this paragraph, repairs or replacements of a capital nature unless the costs of same are amortized over the useful life of such repairs or replacements, trash and rubbish collection and disposal from other tenants of the shopping center, depreciation, amortization other than as set forth above, interest, or overhead or profit to the extent such overhead or profit exceeds, in the aggregate, 5% of the balance of common area expenses. It is understood that all of the costs and expenses of operating, repairing, replacing and maintaining the common areas and facilities of the Shopping Center shall be considered in determining **TENANT’S**pro rata share of such total cost, regardless of whether **TENANT** is directly benefitted by any such cost or expense.

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|  | 17. | **USE OF ADDITIONAL AREAS** |

The use and occupation by **TENANT** of the Demised Premises shall include the use in common with others entitled thereto of the common areas, employees’ parking areas, service roads, loading facilities, sidewalks and customer car parking areas, shown and depicted on Exhibit B and other facilities as may be designated from time to time by **LANDLORD**, subject however to the terms and conditions of this Lease and to reasonable rules and regulations for the use thereof as prescribed from time to time by **LANDLORD**.

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|  | 18. | **UTILITY CHARGES** |

**LANDLORD** shall, at its sole expense, arrange for the entry and connection of all necessary utility service to the Demised Premises, but shall not be required to pay any connection, “hook-up” or meter charge, or impact fees charged due to **TENANT’S** proposed usage of the Demised Premises. **TENANT** shall pay for all water fees, sprinkler system water fees, sewage service charges, fuels, electricity, steam and gas used in or at the Demised Premises for any purpose. In no event shall **LANDLORD** be liable for an interruption or failure in the supply of such utilities to the Demised Premises. If **LANDLORD** is billed direct for sprinkler system water fees or any other utility fees, **TENANT** in turn will be billed by **LANDLORD**. This fee will be due and payable within ten (10) days of receipt of invoice from **LANDLORD**.

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|  | 19. | **TAXES ON OR IN RESPECT OF RENTALS** |

**TENANT** shall pay all rent taxes applicable to all rent and, in the event of the enactment, adoption or enforcement by any governmental authority (including the United States, any state and any political or governmental subdivision) of any assessment, levy or tax, whether sales, use or otherwise, on or in respect of the rentals and charges set forth herein, or on or in respect of the right to lease, use or occupy the Shopping Center and/or the Demised Premises. **TENANT** shall pay such assessment, levy or tax to **LANDLORD**, or, at **LANDLORD’S** option, **TENANT** shall pay such assessment, levy or tax directly to the governmental authority. If such assessment, levy or tax is imposed upon or in respect of all of the rentals derived from the Shopping Center, or is imposed on or in respect of the Shopping Center as a whole, or imposed on or in respect of the right to lease, use or occupy the Shopping Center as a whole, **TENANT** shall pay to **LANDLORD** its pro rata share of such assessment, levy or tax. **TENANT’S** share shall be determined by using the fraction described in Section 16 hereof. Notwithstanding the foregoing, this Section shall not impose upon **TENANT** the obligation to reimburse **LANDLORD** for any income, gift, inheritance, or estate tax as such taxes are now structured and imposed. Initially, **TENANT’S** payment of the rent tax on rental shall be as defined on the **FACE PAGE** per year, which shall be as defined on the **FACE PAGE** per month payable in advance on or before the first day of each month.

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|  | 20. | **PROPERTY TAXES** |

**TENANT** shall pay **LANDLORD**, as additional rent, a real property tax contribution charge which shall be the greater of (a) **TENANT’S** pro rata share of all real property taxes which may be levied or assessed by any lawful authority against the Building and the common areas of the Shopping Center or against **LANDLORD** in respect of the land and improvements in the Building/or the common areas of the Shopping Center, or (b) a minimum charge as defined on the **FACE PAGE** per square foot of **TENANT’S** Demised Premises per year.

The amount of **TENANT’S** minimum charge and the amount of **TENANT’S** pro rata share of the aforesaid total taxes assessed against the Building or against the **LANDLORD** in respect of the land and improvements in the Building shall be computed by using the fraction the numerator of which shall be the square foot area of the Demised Premises and the denominator of which shall be the gross leasable square foot area in the Building. The amount of **TENANT’S** minimum charge and the amount of **TENANT’S** pro rata share of the aforesaid total taxes assessed against the Shopping Center or against the **LANDLORD** in respect of the land and improvements in the Shopping Center shall be computed by using the fraction the numerator of which shall be the square foot area of the Demised Premises and the denominator of which shall be the gross leasable square foot area in the Shopping Center. Initially, **TENANT’S** minimum charge shall be as defined and set forth on the **FACE PAGE** per year, which shall be paid as defined and set forth on the **FACE PAGE** per month. If the term of this Lease shall begin on and/or terminate at a time other than the beginning (or ending, as the case may be) of a tax year, a proper apportionment of said real estate taxes for the year shall be made to cover the fraction of a year included within the term of this Lease.

**TENANT** shall pay the tax contribution charge to **LANDLORD** in twelve (12) equal monthly installments which shall be paid in advance on or before the first day of each month, which may, at **LANDLORD’S** election, be based upon an estimate of taxes to become due. Upon receipt of the actual tax bill with respect to each calendar year for which **TENANT’S** pro rata share of the tax contribution charge exceeds the minimum charge as defined on the **FACE PAGE**, **LANDLORD** shall deliver to **TENANT** a copy of the tax bill and a statement for such year and the monthly payments paid or payable shall be adjusted between **LANDLORD** and **TENANT**, **TENANT** hereby agreeing that **TENANT** shall pay **LANDLORD** within thirty (30) days of receipt of such bill and statement such amounts as may be necessary to effect adjustment to the agreed pro rata share for such year.

6

In the event that either (a) during any prior calendar year **TENANT’S** pro rata share of the tax contribution charge as finally adjusted exceeds the minimum charge as defined on the **FACE PAGE**, or (b) an estimate, statement or projection in writing by the taxing authority indicates that taxes with respect to the current calendar year will exceed the minimum charge as defined on the **FACE PAGE**, **LANDLORD** shall have the right in either event to increase the monthly installments for the balance of the current year by such amounts as required to equal in the aggregate **TENANT’S** pro rata share for such prior calendar year or in respect of such estimate. Upon receipt of the actual tax bill with respect to such calendar year, **LANDLORD** shall deliver to **TENANT** a copy of the tax bill and a statement for such year and the monthly payments paid or payable shall be adjusted between **LANDLORD** and **TENANT**, both **LANDLORD** and **TENANT** hereby agreeing that **TENANT** shall pay **LANDLORD** or **LANDLORD** shall credit **TENANT’S** account or pay **TENANT**, if in respect of **TENANT’S** final Lease Year, (but in no event in reduction of the minimum charge as defined on the **FACE PAGE**) within thirty (30) days of receipt of such bill and statement such amounts as may be necessary to effect adjustment to the agreed pro rata share for such period.

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|  | 21. | **INSURANCE PREMIUMS** |

**TENANT** shall pay **LANDLORD**, as additional rent, an insurance premium contribution charge which shall be the greater of (a) **TENANT’S** pro rata share of all premiums for fire insurance, extended coverage insurance, liability insurance, “other perils” insurance, and any other insurance carried by **LANDLORD** on or with respect to the Building, or (b) a minimum charge as defined on the **FACE PAGE** per square foot of **TENANT’S** Demised Premises per year. The amount of **TENANT’S** minimum charge and the amount of **TENANT’S** pro rata share of the aforesaid total premiums shall be computed by using the fraction the numerator of which shall be the square foot area of the Demised premises and the denominator of which shall be the gross leasable square foot area in the Building. Initially, **TENANT’S** minimum charge shall be as defined and set forth on the **FACE PAGE** per year, which shall be paid as defined and set forth on the **FACE PAGE** per month.

**TENANT** shall pay the insurance premiums contribution charge to **LANDLORD** in twelve (12) monthly installments which shall be paid in advance on or before the first day of each month. Upon receipt of insurance premium bills with respect to each calendar year for which **TENANT’S** pro rata share of the insurance premiums contribution charge shall exceed the minimum charge as defined on the **FACE PAGE**, **LANDLORD** shall deliver to **TENANT** a copy of the premium bills and a statement therefor and the monthly payments paid or payable shall be adjusted between **LANDLORD** and **TENANT**, **TENANT** hereby agreeing that **TENANT** shall pay **LANDLORD** within thirty (30) days of receipt of such bills and statement such amounts as may be necessary to effect adjustment to the agreed pro rata share for such year.

In the event that during any prior calendar year **TENANT’S**pro rata share of the insurance premiums contribution charge as finally adjusted exceeds the minimum charge as defined on the **FACE PAGE**, **LANDLORD** shall have the right to increase the monthly installments for the balance of the current year by such amounts as required to equal in the aggregate **TENANT’S** pro rata share for such prior calendar year. Upon receipt of the premium bills with respect to such calendar year, **LANDLORD** shall deliver to **TENANT** a copy of the premium bills and a statement for such year and the monthly payments paid or payable shall be adjusted between **LANDLORD** and **TENANT**, both **LANDLORD** and **TENANT** hereby agreeing that **TENANT** shall pay **LANDLORD** or **LANDLORD** shall credit **TENANT’S** account or pay **TENANT**, if in respect of **TENANT’S** final Lease Year, (but in no event in reduction of the minimum charge as defined on the **FACE PAGE**) within thirty (30) days of receipt of such statement such amounts as may be necessary to effect adjustment to the agreed pro rata share for such period. If the term of this Lease shall begin and/or terminate at a time other than the beginning (or ending, as the case may be) of an insurance policy year, a proper apportionment of said insurance premiums for the year shall be made to cover the fraction of a year included within the term of this Lease.

If there should ever be any additional or extra premium for fire insurance, extended coverage insurance, liability insurance, “other perils” insurance, and any other insurance carried by **LANDLORD** on or with respect to the Shopping Center, and if the additional or extra premium results from articles which are kept, used, sold or offered for sale by **TENANT**, or results from any activity which is carried on or conducted by **TENANT**, then at **LANDLORD’S** election which may be made and changed from time to time **TENANT** shall pay to **LANDLORD** the full amount of the additional or extra premium regardless of whether **LANDLORD** has given its consent with respect to any particular article or activity. The additional or extra premium shall be paid in the same manner in which **TENANT’S** pro rata share of the other premiums is to be paid and shall be considered additional rent under this Lease. Whether any additional or extra premium is charged, and, if so, the amount thereof, shall be determined from the bills, rate schedules, letters or other written statements of the insurance company charging the additional or extra premiums.

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|  | 22. | **TENANT’S LIABILITY AND CASUALTY INSURANCE** |

**TENANT** shall, during the entire term hereof, keep in full force and effect (a) a policy of liability insurance which shall include personal injury, property damage, and personal injury liability insurance with respect to the Demised Premises, and the business operated by **TENANT** and any subtenant or assignee of **TENANT** in the Demised Premises, in which the limits of liability shall not be less than that which is provided by a $ 2,000,000 combined single limit policy, on a per occurrence basis for damages resulting from bodily injury or death, personal injury and property damage with the employee exclusion deleted, (b) a policy of fire and casualty insurance in an amount equal to the full value of the leasehold improvements to the Demised Premises, and (c) a policy of fire and casualty insurance in an amount equal to the full value of **TENANT’S** trade fixtures and inventory. **LANDLORD** and **MANAGING AGENT**shall be designated as an additional named insured with respect to the policy of liability insurance and the policy of fire and casualty insurance on the leasehold improvements, with each such insurance company and the terms of each such policy approved by **LANDLORD**, and with each such insurance company agreeing to give notice to **LANDLORD**, by notifying both **LANDLORD** and its managing agents, at least thirty (30) days in advance, of any cancellation or any change in coverage. **TENANT** will furnish to **LANDLORD** at least thirty (30) days before **TENANT** opens for business and thirty (30) days before expiration or termination of any such policy, copies of policies or certificates of insurance evidencing such policy of liability insurance and such policy of fire and casualty insurance on the leasehold improvements. Notwithstanding anything to the contrary herein, the insurance company herein described shall be “A Rated” or better by either Moody’s or Standard and Poor’s.

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|  | 23. | **INDEMNIFICATION OF LANDLORD** |

**TENANT** will indemnify **LANDLORD** and save it harmless from and against any and all claims, actions, loss, cost (including attorney’s fees), damages, expenses, and liability (including statutory liability and liability under workmen’s compensation laws) in connection with loss of life, personal injury and/or damage to property arising from or growing out of (a) any occurrence in, upon or at the Demised Premises, or the occupancy or use by **TENANT** of the Demised Premises or any part thereof, and (b) any activities of **TENANT** in the Shopping Center which are occasioned wholly or in part by any act or omission of **TENANT**, **TENANT’S** partners, agents, contractors, sub-contractors, invitees, customers, employees, servants, lessees or concessionaires. In case **LANDLORD** shall, without fault on its part, be made a party to any litigation commenced by or against **TENANT**, then **TENANT** shall protect and hold **LANDLORD** harmless and shall pay all costs, expenses, and reasonable attorney’s fees incurred or paid by **LANDLORD** in connection with such litigation. As used in this indemnification provision, the term “Demised Premises” shall include the entire sidewalk in front of the Demised Premises, extending to the outer edge of the sidewalk, and shall include all loading areas used by **TENANT** or used for the benefit of **TENANT’S** business.

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|  | 24. | **LOSS AND DAMAGE** |

**LANDLORD** shall not be liable for any damage to property of **TENANT** or of others entrusted to **TENANT** or to employees of **TENANT**, nor for the loss of or damage to any property of **TENANT** or of others by theft or otherwise. **LANDLORD** shall not be liable for any injury (including death) or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain or snow or leaks from any part of the Demised Premises or from the pipes, appliances or plumbing works or from the roof, street or subsurface or from any other place or by dampness or by any other cause of whatsoever nature. **LANDLORD** shall not be liable for any such damage caused by other tenants or persons in the Demised Premises, occupants of adjacent property of the Shopping Center, or the public, or caused by operations in construction of any private, public, or quasi-public work. **LANDLORD** shall not be liable to **TENANT** for any latent defect in the Demised Premises or in the building of which they form a part. All property of **TENANT** kept or stored on the Demised Premises shall be so kept or stored at the risk of **TENANT** only, and **TENANT** shall hold **LANDLORD** harmless from any claims arising out of damage to the same, including subrogation claims by **TENANT’S** insurance carriers.

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|  | 25. | **TENANT’S RIGHT TO MAKE ALTERATIONS** |

**TENANT** covenants and agrees that it shall not make any alterations, improvements or additions to or upon the Demised Premises during the term of this Lease or any extension hereof, if any, without first obtaining the prior, specific written consent of **LANDLORD** on reasonable written notice to **LANDLORD**. **TENANT** shall not cut or drill into, or secure any fixture, apparatus or equipment of any kind to any part of the Demised Premises without first obtaining the prior, specific written consent of **LANDLORD** on reasonable prior written notice to **LANDLORD**. All alterations, improvements and additions made by **TENANT** as aforesaid shall remain upon the Demised Premises at the expiration or earlier termination of this Lease and shall become the property of **LANDLORD** upon installation, unless **LANDLORD** shall prior to the termination of this Lease have given written notice and direction to **TENANT** to remove the same at **TENANT’S** sole cost and expense, in which event **TENANT** shall at its expense remove such alterations, improvements and additions and restore the Demised Premises to the same good

8

working order and condition in which it was at the commencement of the lease term. Should **TENANT** fail so to do, **LANDLORD** may do so, at **LANDLORD’S** option, collecting in such instance the cost and expense thereof from the **TENANT** as additional rent.

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|  | 26. | **LANDLORD’S RIGHT TO MAKE ALTERATIONS** |

**LANDLORD** hereby reserves the right at any time to make alterations or additions to, and to build additional stories on the building in which the Demised Premises are contained and to build adjoining the same. **LANDLORD** also reserves the right to construct and remove other buildings or improvements in the Shopping Center from time to time and to make alterations thereof or additions thereto and to build additional stories on any such building or buildings and to build adjoining same and to construct double-deck or elevated parking facilities. **LANDLORD** further reserves the right to enter and use the Demised Premises and adjacent property for the purpose of installing, repairing and removing wiring, piping, ducts and conduits for service or performing other work related to such construction, alteration, or addition to the Demised Premises or other buildings in the Shopping Center, provided that **LANDLORD** shall not unreasonably interfere with the use of the Demised Premises by **TENANT**.

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|  | 27. | **TRADE FIXTURES** |

All trade fixtures installed by **TENANT** in the Demised Premises shall remain the property of **TENANT** and shall be removable at the expiration or earlier termination of this Lease or any renewal or extension thereof, provided **TENANT** shall not at such time be in default under any covenant or agreement contained in this Lease, and provided, further, that in the event of such removal **TENANT** shall promptly and fully restore the Demised Premises to its original order and condition. Any such trade fixture not removed at or prior to such termination shall be and become the property of **LANDLORD**. All lighting fixtures, air conditioning equipment, electrical and plumbing installations, ceiling and ceiling support systems, the store front and demising and interior partitions, whether or not installed by **TENANT**, shall not be considered trade fixtures and shall not be removable by **TENANT** at the expiration or earlier termination of this Lease or at the expiration of any renewal or extension thereof and shall become the property of **LANDLORD**.

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|  | 28. | **AFFIRMATIVE COVENANTS OF TENANT** |

**TENANT** agrees:

(a) To comply with any and all requirements of any of the constituted public authorities having, or purporting to have, jurisdiction and with the terms of any State, Federal, or local statute, ordinance, or regulation applicable to **TENANT** or its use of the Demised Premises and to save and hold **LANDLORD** harmless from, and by these terms to indemnify **LANDLORD** for any and all penalties, fines, costs, expenses or damages, including, without limitation, **LANDLORD’S** attorney’s fees resulting from **TENANT’S** failure to do so;

(b) To give **LANDLORD** prompt written, full, complete, and specific notice of any accident, fire, damage, or injury whatsoever occurring in, on or to the Demised Premises;

(c) That all loading and unloading of goods shall be done only at such times and in the areas and through such entrances as may be designated for such purposes by **LANDLORD** and that trailers or trucks shall not be permitted to remain parked overnight in any area of the Shopping Center, whether loaded or unloaded, or to park or permit the parking of trucks and delivery vehicles so as to unreasonably interfere with, or suffer or permit any use thereon to interfere with, the use of any driveways, walks, roadways, highways, streets, or parking areas or other Common Areas.

(d) To keep all garbage and refuse in the kind of container specified by **LANDLORD** and to place the same outside of the Demised Premises prepared for collection in the manner and at the times and places specified by **LANDLORD** in accordance with all regulations of the public authorities having, or purporting to have, jurisdiction, and **TENANT** shall pay the cost of removal of any of **TENANT’S** garbage and refuse;

(e) To keep the exterior areas immediately adjoining the Demised Premises i.e. sidewalks, loading ramps, and service areas clean and free from dirt and garbage, trash, paper and all other refuse by **TENANT** to the satisfaction of **LANDLORD**. **TENANT** shall not burn any rubbish or place or permit any obstruction or merchandise in such areas;

(f) To keep the Demised Premises clean, orderly, sanitary and free from objectionable odors; and **TENANT** shall use at **TENANT’S** cost a qualified pest extermination contractor, whose services shall be scheduled so as not to unreasonably interfere with the operation of the Shopping Center, but on a frequency sufficient to keep the Demised Premises free of controllable insects, vermin, pests, etc.;

(g) To use **TENANT’S** good faith reasonable efforts to require their agents, employees,. tenants and concessionaires to park their respective vehicles in or on any of the Parking Areas at such locations as may from time to time be designated by **LANDLORD**as areas for employee parking.;

9

(h) To keep **TENANT’S** signs and exterior lights well lighted at all times during the term of this Lease during **TENANT’S** hours of operation as provided and defined on the **FACE PAGE** and to keep the Demised Premises open for business during **TENANT’S** hours of operation, and for such additional hours as may become the standard as maintained by a majority of the tenants of the Shopping Center;

(i) To conduct its business in the Demised Premises in all respects in a dignified manner and in accordance with good and generally accepted standards of operations, as appropriate for a first-class community shopping center, to help establish and maintain a good reputation for the whole Shopping Center;

(j) To comply with all reasonable rules and regulations of **LANDLORD** in effect at the time of the execution of this Lease and at any time or times and from time to time promulgated by **LANDLORD**, which **LANDLORD** in its sole discretion shall deem necessary or appropriate in connection with the Demised Premises, the Building, or the building(s) of the Shopping Center, including, without limitation, the installation of such fire extinguishers and other safety equipment as **LANDLORD** may reasonably require;

(k) [Intentionally omitted.]

(l) To be responsible for and to pay before delinquency all municipal, county or state taxes assessed during the term of this Lease against any leasehold interest or personal property of any kind, owned or placed in, upon or about the Demised Premises by the **TENANT**;

(m) To comply fully with all fire and safety codes, rules and regulations, in effect from time to time during the term of this Lease, of the public authorities having, or purporting to have, jurisdiction and to install, keep, and maintain at **TENANT’S** cost and expense any and all systems, equipment, and the like or differing required by any of the same;

(n) To use **TENANT’S** plumbing facilities for no other purpose than that for which they are constructed, and no foreign substance of any kind shall be thrown therein, and the expense of any breakage, stoppage, or damage resulting from a violation of this provision shall be borne by **TENANT**, who shall, or whose employees, agents, or invitees may have caused such breakage, stoppage, etc.;

(o) **TENANT** shall service, repair and keep clean of grease, all ventilation systems serving the Demised Premises;

(p) **TENANT** shall, if the Demised Premises are equipped with air conditioning and heating facilities separate from those in the remainder of the Shopping Center, keep the Demised Premises at a temperature commensurate with similar stores in the Shopping Center or the common enclosed areas and sufficiently high to prevent freezing of water and sprinkler pipes and plumbing fixtures;

(q) **TENANT** shall at all times keep, maintain and replace, at **TENANT’S** sole expense not to be reimbursed by **LANDLORD**, the interior of the Demised Premises in good working order, condition and repair including reasonable periodic painting as determined by **LANDLORD**, together with all fixtures and all electrical, plumbing, heat, air conditioning (including maintenance of the air conditioning and heating systems every two months by a licensed air conditioning contractor) and all other mechanical and other installations therein, all doors, and all plate glass and door and window glass using materials and labor of kind and quality equal to or better than the original work. Except only and solely as specifically provided in any, if any, written attachment to this Lease signed by **LANDLORD**, **LANDLORD** shall have no obligation to repair, maintain, alter or modify in any respect whatsoever the Demised Premises, or any part or portion thereof, or any plumbing, heating, electrical, air conditioning or other mechanical or other installation therein. However, if **TENANT** fails to replace any damaged or broken glass, **LANDLORD** shall have the right to do so at the expense of the **TENANT**. **TENANT** shall surrender the Demised Premises at the expiration or earlier termination of this Lease in as good condition as when received, excepting only and solely deterioration caused by mere ordinary wear and tear and damage by fire or other casualty of the kind actually insured against by **TENANT** in standard policies of fire insurance with extended coverage. **TENANT** shall surrender all keys for the Demised Premises to **LANDLORD** at the place then fixed for the payment of rent and shall inform **LANDLORD** of all combinations on locks, safes and vaults, if any, in the Demised Premises;

(r) **TENANT** shall forthwith pay all liens of contractors, subcontractors, sub-subcontractors, mechanics, laborers, and materialmen and all other items of like character and that **TENANT** does hereby indemnify **LANDLORD** against all legal costs and charges, bond premiums for release of liens, including all attorney’s fees of **LANDLORD** incurred in and about the prosecution or defense of any suit in discharging the Demised Premises and, alternatively, the Shopping Center or any part or portion thereof from any liens, judgments, or encumbrances caused or suffered to be caused, directly or indirectly, by **TENANT**, and that all the costs and charges above referred to shall be considered as rent due and shall be included in any lien for rent; and

10

(s) **TENANT** shall not have any authority to create any liens for labor or material on or against the **LANDLORD’S** interest in the Demised Premises or the Shopping Center and all persons contracting with **TENANT** for the destruction or the removal of any building or for the erection, installation, alteration, or repair of any building or other improvements in, on or to the Demised Premises; and all materialmen, contractors, subcontractors, mechanics, and laborers are hereby charged with notice that they must look solely and only to **TENANT’S** interests in the Demised Premises to secure the payment of any bill for work done or material furnished during the rental period created by this Lease and, specifically, not to the **LANDLORD** or the **LANDLORD’S** interest. **TENANT** agrees that it will include the language of this paragraph in any contract or agreement for any work done for **TENANT** in the Demised Premises.

(t) Promotional Services Association. **LANDLORD** may organize, sponsor and support, as hereinafter provided, and, as Developer may determine from time to time, either (i) a Merchants’ or Advertising and Promotional Services Association (hereinafter called “Association”) or (ii) a Promotion Fund (hereinafter called “Fund”) the purpose of which shall be to promote and enhance the commercial activities of the retail business conducted in the Shopping Center. **TENANT** shall join the Association or contribute to the Fund, as the case may be, and maintain such membership or contributions for the period provided for in the CORE Agreement. **TENANT**, during the entire period that it is a: member of the Association or contributor to the Fund, as the case may be, shall pay monthly dues to the Association or make monthly contributions to the Fund, as the case may be, at the annual rate set forth in the CORE Agreement.

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|  | 29. | **NEGATIVE COVENANTS OF TENANT** |

**TENANT** agrees that it will not do any of the following without the express, specific prior consent in writing of the **LANDLORD**:

(a) Use or operate any machinery or equipment that, in **LANDLORD’S** opinion, is harmful to the building or disturbing to other tenants in the building or the Shopping Center of which the Demised Premises is a part; nor shall **TENANT** use any loudspeakers, televisions, phonographs, radios or other like or differing devices in a manner so as to be heard or seen outside of the Demised Premises, nor use or permit to be used, the sidewalks adjacent to the Demised Premises, or any other premises outside of the Demised Premises for the sale or display of any merchandise or for any other business occupation or undertaking;

(b) Keep, use, sell, or offer for sale in or upon the Demised Premises any article which may be prohibited by law, ordinance or governmental regulation or by the standard form of insurance policy which affords insurance coverage to **LANDLORD** with respect to the Shopping Center;

(c) Do, or suffer to be done, any act, manner or thing objectionable to the fire insurance companies whereby the fire insurance or any other insurance now in force or hereafter to be placed on the Demised Premises or any part thereof, or on the building or Shopping Center of which the Demised Premises is a part shall become void or suspended, or whereby the same shall be rated at a more hazardous risk than at the date when **TENANT** received possession hereunder; in case of a breach of this covenant, in addition to all other remedies of **LANDLORD** hereunder, **TENANT** agrees to pay to **LANDLORD** as additional rent any and all increase or increases or premiums on insurance carried by **LANDLORD** on the Demised Premises, or any part thereof, and on the building and Shopping Center of which the Demised Premises is a part, caused in any way by the occupancy or use of **TENANT**;

(d) Commit or suffer to be committed any waste upon the Demised Premises or any nuisance or other act or thing which may disturb the quiet enjoyment of any other tenant in the building in which the Demised Premises may be located, or in the Shopping Center, or which may disturb the quiet enjoyment of any person within five hundred feet of the boundaries of the Shopping Center;

(e) Allow any cuts or penetration in the roof, canopy or walls of the Demised Premises; **TENANT** being responsible for the cost of repairs to the roof, canopy or walls because of openings, cuts or roof penetrations by **TENANT** or **TENANT’S** contractors even though **TENANT** first obtained **LANDLORD’S** prior written consent thereto;

(f) Attach any antenna or other projections to the roof or the outside walls of the Demised Premises of the building or Shopping Center of which the Demised Premises is a part; **TENANT** being responsible for the cost of repairs to the roof, canopy or walls because of openings, cuts or roof penetrations by **TENANT** or **TENANT’S** contractors even though **TENANT** first obtained **LANDLORD’S** prior written consent thereto;

(g) Erect or maintain an awning or other device protecting against the sun or the elements; however, **TENANT** agrees, upon obtaining prior written consent of **LANDLORD** as to such erection or maintenance, that it will at its own expense keep such awning or device in good condition and repair and that it will replace or recover the same whenever, in **LANDLORD’S** opinion, it shall become shabby or unattractive in appearance;

11

(h) Paint or decorate any part of the exterior of the Demised Premises and **TENANT** agrees to remove promptly upon order of **LANDLORD** any paint or any such decoration which has been applied to or installed upon the exterior of the Demised Premises or to take such other action with reference thereto as **LANDLORD** may direct;

(i) Conduct any auction, fire, bankruptcy, liquidation, going-out-of-business, selling-out or like sale in, on or about the Demised Premises (but this provision shall not restrict the absolute freedom of such occupant to determine its own selling prices nor shall it preclude the conduct of periodic seasonal, promotional or clearance sales);

(j) Execute or deliver any security agreement or financing statement or otherwise create any security interest in any trade fixtures, fixtures or equipment or other property placed in or on the Demised Premises at any time;

(k) Solicit business or distribute any handbills or other advertising matter in the common areas of the Shopping Center including, without limitation, sidewalks, pedestrian walkways, and parking areas and lots; or use, or permit to be used, the common Area, or Sidewalks adjacent to such occupant’s space, or any other premises outside such space, for the sale or display of any merchandise or for any other business, occupation or undertaking (except for activities sponsored by any Promotional Services Association).

(l) Operate a pool room, an arcade, vending machines, pinball machines, or electronic games or similar devices, or operate a massage parlor, a store dealing in sexually oriented material or entertainment, a store selling or permitting the use of illegal drugs or drug paraphernalia, within the Demised Premises.

(m) Use or permit the use of any portion of their respective Buildings for any activity of a type which is not generally considered appropriate for a first-class community shopping center conducted in accordance with good and generally accepted standards of operation.

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|  | 30. | **SIGNS** |

**TENANT** will not exhibit, inscribe, paint, or affix any sign, advertisement, notice or other lettering on any part of the outside of the Demised Premises or of the building of which the Demised Premises are a part, or inside the Demised Premises if visible from the outside, without first obtaining **LANDLORD’S** prior written approval thereof. In the event **TENANT** installs such signage without said approval, **LANDLORD** reserves the right for itself or its authorized agents, employees, or designees, to enter the Demised Premises and remove such signage immediately without thereby being liable for trespass or conversion. **TENANT** further agrees to maintain such sign, lettering, etc., as may be approved in good condition and repair at all times. **TENANT** agrees that all outdoor signs installed or maintained within the Demised Premises shall conform to Exhibit D of the CORE Agreement, and **TENANT** agrees that it will have any such a sign prepared and installed at **TENANT’S** expense.

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|  | 31. | **PERFORMANCE OF TENANT’S COVENANTS** |

**TENANT** covenants and agrees that it shall timely and fully perform all agreements and covenants herein expressed on its part to be performed, that it shall, promptly upon receipt of written notice of non-performance thereof, comply with the requirements of such notice, and that, if **TENANT** shall not comply with such notice to the satisfaction of **LANDLORD** within forty-eight (48) hours after delivery thereof (or if such compliance cannot reasonably be completed within forty-eight (48) hours, if **TENANT** shall not commence to comply within such period and thereafter in good faith expeditiously proceed to completion with all due diligence) **LANDLORD** may, at its option, do or cause to be done any or all of the things specified in said notice and in so doing **LANDLORD** shall have the right to cause its agents, employees and contractors to enter upon the Demised Premises and in such event shall have no liability whatsoever to **TENANT** for any loss or damage resulting in any way or manner whatsoever from such action; and **TENANT** agrees to pay promptly upon demand any expense whatsoever incurred by **LANDLORD** in taking such action, any such sum to be collectible from **TENANT** as additional rent hereunder.

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|  | 32. | **RIGHTS OF LANDLORD** |

**LANDLORD** reserves, without limitation to any and all of **LANDLORD’S** other rights under this Lease, the following rights with respect to the Demised Premises:

At all reasonable times whether or not during **TENANT’S** hours of operation and from time to time, by itself or its duly authorized agents or designees to go upon and inspect the Demised Premises, and every part thereof, and at its option to make repairs, alterations and additions to the Demised Premises or the building of which the Demised Premises is a part.

12

To display a “For Lease” or other sign at any time and from time to time after notice from either party, whether express or implied by conduct, of intention to terminate this Lease, or any time within six (6) months prior to the expiration of the term of this Lease, except on display windows or on door or doors leading into the demised premises. Prospective tenants authorized by **LANDLORD** may inspect the demised premises at all reasonable hours at any time and from time to time whether or not during **TENANT’S** hours of operation.

To install or place upon, or affix to, the roof and exterior walls of the Demised Premises equipment, signs, displays, antenna, and any other object(s) or structure(s) of any kind or sort, provided only and solely that the same shall not materially impair the structural integrity of the building or interfere directly with **TENANT’S** occupancy.

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|  | 33. | **RESPONSIBILITIES OF LANDLORD** |

**LANDLORD** shall maintain the roof, downspouts, exterior wall and wall area. In the event any repairs become necessary to the structural portions of the roof, exterior walls, or foundations of the Demised Premises, or sidewalks adjacent to said Demised Premises, during the term of this Lease, then, upon written notice from **TENANT** to **LANDLORD** stating the necessity therefor and the nature thereof, **LANDLORD** with reasonable promptness, and at its own expense, shall make any such necessary repairs specified in such notice. If **LANDLORD** is required to make repairs to structural portions by reason of **TENANT’S** negligent acts or omission to act, **TENANT** shall pay **LANDLORD’S**cost for making such repairs plus twenty percent (20%) for overhead. The phrase “structural portions” as above used shall not be so construed as to require **LANDLORD** to make repairs to interior surfaces of the Demised Premises unless the damage to such interior surface resulted from defects otherwise required to be kept in repair by **LANDLORD**. **LANDLORD** shall not be liable for damage to any goods or property, or injury to person (including death) caused by failure to perform any maintenance or repair which **LANDLORD** is obligated hereunder to perform unless **TENANT** shall first have notified **LANDLORD** of the need for same in writing and **LANDLORD** shall then have had a reasonable time thereafter to perform same with due diligence. **LANDLORD** shall not be responsible for maintaining and repairing window frames located in the exterior building wall.

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|  | 34. | **EVENTS OF DEFAULT** |

The occurrence of any one or more of the following shall constitute an event of default hereunder:

Failure of **TENANT** to commence business within the time period specified in Section 12 hereof; and,

Discontinuance by **TENANT** of the continuous conduct of all or a substantial portion of its business in the Demised Premises for a period of fifteen (15) days or greater; and,

The filing of a petition by or against **TENANT** for adjudication as a bankrupt or insolvent, or for its reorganization or for the appointment of a receiver or trustee of **TENANT’S** property; any reorganization or proceedings under any provisions of the Federal Bankruptcy Code; an assignment by **TENANT** for the benefit of creditors; or the taking possession of the property of **TENANT** by any governmental officer or agency pursuant to the statutory authority for the dissolution or liquidation of **TENANT**. If a petition in a bankruptcy or insolvency or for reorganization for the appointment of a receiver or trustee of all or a portion of the property of **TENANT** shall be filed against **TENANT** in any court, pursuant to any statute either of the United States or of any state, and if, within thirty (30) days thereafter, **TENANT** fails to secure a discharge thereof, or if **TENANT** shall voluntarily file any such petition or make an assignment for the benefit of creditors or petition for or enter into an arrangement, or if this Lease is taken under writ of execution (herein called “Act of Bankruptcy”), then **TENANT** shall be deemed in breach and default of this Lease and **LANDLORD**, in its discretion and at its election may, to the extent permitted by law, elect to cancel and terminate this Lease. If this Lease is assumed or assigned by a trustee pursuant to the provision of the Bankruptcy Reform Act of 1978 (“Bankruptcy Act”) (11 USC 1 et seq.), then the trustee shall cure any default under this Lease and shall provide such adequate assurance of future performance of this Lease as are required by the Bankruptcy Act (including, but not limited to, the requirements of Section 365[b][3] which require thereof adequate assurance (“Adequate Assurance”) of the course of rent and other considerations due under this Lease. The assumption or assignment of this Lease will not breach substantially any provision such as a radius, location, use or exclusivity provision in any other Lease relating to the Shopping Center; and the assumption or assignment of this Lease will not disrupt substantially any tenant mix or balance in such Shopping Center. If the trustee does not cure such defaults and provide such Adequate Assurance under the Bankruptcy Act within the applicable time periods provided by the Bankruptcy Act, then this Lease shall be deemed rejected and **LANDLORD** shall have the right to immediate possession of the Demised Premises and shall be entitled to all remedies provided by the Bankruptcy Act for damages for breach and or termination of this Lease; and

13

Failure of **TENANT** to pay within five (5) days of when due any installment of base rent, additional rent hereunder or any other sum hereunder required to be paid by **TENANT**; and

Vacation or desertion of the Demised Premises or permitting the same to be empty and unoccupied or the failure to operate during the hours herein required; and,

**TENANT’S** removal or attempt to remove, or manifesting an intention to remove, **TENANT’S** goods or property from or out of the Demised Premises otherwise than in the ordinary and usual course of business without having first paid and satisfied **LANDLORD** for all rent which may become due during the entire term of this Lease; and

TENANT’S failure to perform or abide by any other term, provision, covenant, agreement, undertaking, or condition of this Lease within three (3) days after written notice and demand, unless the failure is of such a character as absolutely to require more than three (3) days to cure, in which event **TENANT’S** failure to proceed immediately, continuously, and diligently to cure fully and completely such failure shall constitute an event of default.

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|  | 35. | **RIGHTS OF LANDLORD UPON DEFAULT BY TENANT** |

If an event of default as provided in Section 34 occurs, then **LANDLORD**, in addition to all rights and remedies granted under the laws of the State of Alabama, as stated on the **FACE PAGE**, shall have any and all of the following rights:

To re-enter and remove all persons and property from the Demised Premises, and such property may be removed and stored in a public warehouse, sidewalk or elsewhere at the cost of and for the account and sole risk of **TENANT**, all without service of notice or resort to legal process and without **LANDLORD** or its agents being deemed guilty of trespass, or becoming liable for any loss or damage which may be occasioned hereby, **TENANT** hereby absolutely waiving all claims for damages related, directly or indirectly, to any of the same; and

To terminate the Lease and re-let the Demised Premises for the account of the **LANDLORD** or within the sole discretion of **LANDLORD** the Demised Premises may be re-let for the account of the **TENANT**; and,

If any part or portion of the base rent, additional rent or payments agreed to be treated as rent shall remain due and unpaid for five (5) days next after the same shall become due and payable, **LANDLORD** shall have the option of declaring the balance of the entire unpaid rent for the entire rental term of this Lease to be accelerated and to be immediately due and payable, and **LANDLORD** may then proceed immediately to collect all of the unpaid rent called for by this Lease by distress or otherwise; and **LANDLORD** may terminate this Lease, without waiving **TENANT’S** obligation for all such accelerated rent should **TENANT** fail then to pay the balance of the entire rent for the entire rental term. For purposes of this paragraph, said balance means the entire base annual rent and additional rent for the balance of the term of this Lease plus, for each remaining year of the term of this Lease, and pro rata for any part of a year.

**TENANT** agrees to pay all costs, whether or not otherwise considered “court costs”, and expenses of collection and reasonable attorney’s fees on any part of rent or sums agreed to be treated as rent that may be collected by an attorney, suit, distress, or foreclosure; and, further, in the event that **TENANT** fails promptly and fully to perform and comply with each and every term, provision, covenant, agreement, undertaking, or condition under this Lease or upon the occurrence of an event of default, and the matter is turned over to **LANDLORD’S** attorney(s), **TENANT** shall pay **LANDLORD’S** reasonable attorney’s fees plus costs, where deemed necessary or appropriate by **LANDLORD**, whether suit is instituted or not.

The parties hereto shall, and they hereby do, irrevocably waive trial by jury in any and every action or proceeding brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way connected with this Lease, the relationship of **LANDLORD** and **TENANT**, **TENANT’S** use or occupancy of the Demised Premises, and any claim for injury or damage. In the event **LANDLORD** commences any proceedings, whether or not for nonpayment of base annual rent, any additional rent, or otherwise, **TENANT** shall not interpose, and hereby irrevocably waives the right to any counterclaim of whatever nature or description in any such proceeding(s). The provision in the immediately foregoing sentence shall not, however, be construed as a waiver of the **TENANT’S** right to assert claims, if any, in any separate action or actions brought by **TENANT**.

**TENANT** hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of **TENANT** being evicted or dispossessed for any cause or in the event of **LANDLORD** obtaining possession of the demised premises by reason of violation by **TENANT** of any of the terms, covenants or conditions of this Lease, or otherwise.

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|  | 36. | **FORCE MAJEURE** |

**LANDLORD** shall be excused for the period of any delay in the performance of any obligations hereunder when prevented from so doing by cause or causes beyond **LANDLORD’S** absolute control which shall include, without limitation, all labor disputes, civil commotion, civil disorder, riot, civil disturbance, war, war-like operations, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental regulations, orders, oratoriums, or controls, fire or other casualty, inability to obtain any material, services or financing or through Acts of God.

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|  | 37. | **LANDLORD’S EXCULPATION** |

Anything to the contrary contained in this Lease or otherwise notwithstanding, **LANDLORD** and **LANDLORD’S** heirs, personal representatives, successors and assigns, shall have absolutely no corporate or personal liability with respect to the performance of any of the terms, covenants, conditions and provisions of this Lease, and **TENANT** shall look solely to the equity of **LANDLORD**, its heirs, personal representatives, successors and assigns, in the Demised Premises for the satisfaction of each and every remedy of **TENANT** in the event of any breach of **LANDLORD**, its heirs, personal representatives, successors and assigns, of any of the terms, covenants, conditions, and provisions of this Lease to be performed by **LANDLORD**, such exculpation of liability to be absolute and without exception whatsoever.

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|  | 38. | **FINANCING AGREEMENT** |

**TENANT** agrees not to enter into, execute or deliver any financing or security agreement that could constitute a claim of priority to any mortgage given by **LANDLORD** or its successors and, in the event **TENANT** does so execute or deliver such financing or security agreement, such action on the part of **TENANT** shall be considered a breach of the terms and conditions of this Lease and a default by **TENANT** entitling **LANDLORD** to such remedies as are provided for herein.

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|  | 39. | **[INTENTIONALLY OMITTED]** |

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|  | 40. | **ASSIGNING, MORTGAGING, SUBLETTING** |

TENANT agrees not to assign, mortgage, pledge or encumber this Lease, in whole or in part, or to sublet the whole or any part of the Demised Premises, or to permit the use of the whole or any part of the Demised Premises by any licensee or concessionaire, without first obtaining the prior, specific written consent of **LANDLORD**, which consent shall not be unreasonably withheld, which shall be determined by (1) **TENANT** shall not be in default of any of the terms of this lease, (2) prospect is equal to or better than **TENANT**on both a financial and credit basis. Should **LANDLORD** approve the assignment, or subletting **TENANT** shall pay a transfer fee to **LANDLORD** of $500.00. **TENANT** agrees that, in the event of any such assignment, subletting, licensing or granting of a concession, made with the written consent of **LANDLORD** as aforesaid, it will nevertheless remain unconditionally liable for the performance and financial obligations of all of the terms and conditions and covenants of this Lease. If **TENANT** is an individual or individuals, an assignment by operation of law will be prohibited. If **TENANT** is a corporation or partnership and if control thereof in any respect whatsoever changes, in **LANDLORD’S** sole but bona fide opinion in any manner whatsoever at any time during the term of this Lease, **LANDLORD**, at its option and in its discretion, may by giving sixty (60) days prior written notice to **TENANT**, declare such change a breach of and default under this Lease. The changing of control shall be deemed and construed to include, without limiting the generality of the foregoing, the loss or removal of a key employee, the loss or removal of a key principal of **TENANT**, and any substantial change in management. **LANDLORD** hereby consents to the assignment of this Lease, or the subletting of the Demised Premises, to a wholly owned and controlled subsidiary of **TENANT**, provided that the **TENANT** remains fully liable nevertheless, as aforesaid.

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|  | 41. | **SUCCESSORS AND ASSIGNS** |

All rights, obligations and liabilities herein given to, or imposed upon, the respective parties hereto shall extend to and bind the several and respective heirs, executors, administrators, successors, permitted sublessees and permitted assigns of said parties, subject to the provisions of Section 40 and if there shall be more than one **TENANT**, they shall all be bound jointly and severally by the terms, covenants, and agreements herein; and the word **“TENANT”** shall be deemed and taken to mean each and every person or party mentioned as a **TENANT** herein, be the same one or more, including any permitted assignee or successor of the party signing this lease as **TENANT**; and if there shall be more than one **TENANT**, any notice required or permitted by the terms of this Lease may be given by or to any one thereof, and the same shall have the same force and effect as if given by or to all thereof. All rights, however, shall inure to the benefit of any assignee of **TENANT** unless the assignment to such assignee has been specifically approved by **LANDLORD** in writing as set forth elsewhere herein.

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|  | 42. | **ATTORNMENT** |

**TENANT** shall, in the event any proceedings are brought for the foreclosure of, or in the event of exercise of the power of sale under any mortgage made by the **LANDLORD** covering the Demised Premises, or any other sale of the Building made by **LANDLORD**, attorn to the purchaser upon any such foreclosure or sale and recognize such purchaser as the **LANDLORD** under this Lease.

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|  | 43. | **SUBORDINATION** |

**TENANT** agrees that it shall, and hereby does by these terms, fully, absolutely, and unconditionally subordinate its rights hereunder to the lien of a mortgage(s), deed of trust(s) or similar instruments, now or hereafter placed against **LANDLORD’S** (or its successor’s) interest in this Lease and/or any or all of the buildings now or hereafter built or to be built in the Shopping Center by **LANDLORD**, and to any and all advances, without limitations, made or to be made thereunder and to the interest thereon and to all renewals, replacements, consolidations and extensions thereof, and that **TENANT** will from time to time promptly execute upon demand and without charge such documents and instruments in such form and substance as **LANDLORD** or its mortgagees or its other lenders may require implementing further the foregoing subordination and agreement to subordinate. **TENANT** further agrees that it shall enter into and execute, without charge, all other documents which any mortgagee or any ground lessor may reasonably request **TENANT** to enter into and execute, including a subordination, non-disturbance and attornment agreement.

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|  | 44. | **ESTOPPEL CERTIFICATE** |

**TENANT**, upon request of **LANDLORD**, a proposed assignee of **LANDLORD** in connection with a proposed transfer of the Shopping Center or a portion thereof including the Demised Premises, or any holders of a mortgage or deed of trust(s) against the **LANDLORD’S** or such proposed assignee’s interest, shall from time to time without charge deliver or cause to be delivered to **LANDLORD**, such proposed assignee or such holder, within ten (10) days from the date of demand a certificate as provided by **LANDLORD**, duly executed and acknowledged in form for recording, certifying, if true, that this Lease is valid and subsisting and in full force and effect and that **LANDLORD** is not in default under any of the terms of this Lease or specifying, if applicable, any default of **LANDLORD**. Should **TENANT** fail or refuse to comply with its obligations contained in the preceding sentence of this Section 44, then, in addition to all other remedies of **LANDLORD** hereunder, **TENANT** shall pay **LANDLORD** $50.00 per day for each day during the period of its failure or refusal to comply and **TENANT** shall, and does hereby agree, that **TENANT** shall be estopped from denying the truth of each of those matters set forth in such certificate and **LANDLORD** shall in such event be, and it hereby is, appointed by **TENANT** as **TENANT’S** lawful attorney-in-fact for delivery of such certificate in the name, place and stead of **TENANT**.

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|  | 45. | **DESTRUCTION OF THE DEMISED PREMISES** |

If the Demised Premises be damaged by fire, the elements, unavoidable accident or other casualty, and the cost of repairing such damage shall not equal sixty (60%) percent of the fair replacement value of the destroyed improvements immediately prior to such damage, **LANDLORD** and **TENANT** shall, to the extent permitted by **LANDLORD’S** mortgagee, cause such damage to be repaired and the Demised Premises restored with due diligence and this Lease shall continue. If, however, in the event of damage from any of such causes the cost of restoring the Demised Premises to its condition immediately prior to such damage shall equal or exceed sixty (60%) percent of the destroyed improvements fair replacement value immediately prior to such damage, **LANDLORD** shall have the right to terminate this Lease by giving **TENANT** written notice of its election to do so within sixty (60) days after the date on which the damage occurs, whereupon this Lease shall be adjusted as of said date; but in default of such notice by **LANDLORD**, this Lease shall continue. Except in the event of termination of this Lease, as aforesaid, the base rent shall be abated to the extent of the fair rental value of such portion, if any, of the Demised Premises as shall be rendered unfit for occupancy for the usual conduct of **TENANT’S** business in consequence of the damage aforesaid for the period of such unfitness for occupancy.

Should the damage be repaired and the Demised Premises be restored in accordance with the foregoing paragraph of this Section 45, the repair and restoration shall be completed and paid for by **LANDLORD** and **TENANT** in accordance with their respective obligations for the initial construction and preparation of the Demised Premises and the leasehold improvements therein. **TENANT’S** payment of the repair and restoration of the leasehold improvements shall be reimbursed out of and to the extent of those fire and casualty insurance proceeds available under the policy of insurance required to be maintained therefor by **TENANT** pursuant to Section 22.

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|  | 46. | **DESTRUCTION OF THE SHOPPING CENTER** |

In the event that fifty (50%) percent or more of the occupied improvements, whether rentable by **LANDLORD** or owned by others, on the site of the Shopping Center, be damaged or destroyed by fire or other cause, such that the Demised Premises is inaccessible, notwithstanding that the Demised Premises may be unaffected by such fire or other cause, **LANDLORD** may terminate this Lease and the tenancy hereby created by giving to **TENANT** five (5) days prior written notice of **LANDLORD’S** election so to do which notice shall be given, if at all, within the sixty (60) days following the date of said occurrence. Rent shall be adjusted as of the date of such termination.

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|  | 47. | **TOTAL CONDEMNATION** |

If the whole of the Demised Premises shall be acquired or condemned under the power of eminent domain for any public or quasi-public use or purpose, then the term of this Lease shall cease and terminate as of the date of possession in such proceeding and all rentals shall be paid up to that date and **TENANT** shall have no claim against **LANDLORD** for the value of any unexpired term of this Lease.

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|  | 48. | **TOTAL CONDEMNATION OF THE PARKING AREA** |

If the whole of the common parking area in the Shopping Center shall be acquired or condemned under the power of eminent domain for any public or quasi-public use or purpose, then the term of this Lease shall cease and terminate as of the date of possession in such proceeding unless **LANDLORD** shall take immediate steps to provide other parking facilities substantially equal to the previously existing ratio between the common parking areas and the Demised Premises, and such substantially equal parking facilities shall be provided by **LANDLORD** at its own expense within ninety (90) days from the date of such acquisition or condemnation. In the event that **LANDLORD** shall provide such other substantially equal parking facilities, then this Lease shall continue in full force and effect. In any event, **TENANT** shall have no claim against **LANDLORD** for the value of any unexpired term of this Lease. Notwithstanding anything stated in this Section 48 of the Lease Agreement, applicable provisions of the CORE Agreement govern.

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|  | 49. | **PARTIAL CONDEMNATION** |

If any part of the Demised Premises shall be acquired or condemned under the power of eminent domain for any public or quasi-public use or purpose, and in the event that such partial taking by condemnation shall render the Demised Premises unsuitable for the business of the **TENANT**, it being agreed that any taking of less than twenty (20%) percent of the Demised Premises would not render the Demised Premises unsuitable for **TENANT**, then the term of this Lease shall cease and terminate as of the date of possession in such proceeding and **TENANT** shall have no claim against **LANDLORD** for the value of any unexpired term of this Lease. In the event of a partial taking or condemnation which is not extensive enough to render the demised premises unsuitable for the business of **TENANT**, then **LANDLORD** shall promptly restore the Demised Premises to a condition comparable to its condition at the time of such condemnation less the portion lost in the taking (except that **TENANT** shall be responsible for restoration and replacement of its leasehold improvements, fixtures, etc.), the Lease shall continue in full force and effect, and the minimum rent shall be reduced proportionately as to the portion lost in the taking.

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|  | 50. | **PARTIAL CONDEMNATION OF THE PARKING AREA** |

If any part of the parking areas in the Shopping Center shall be acquired or condemned by eminent domain for any public or quasi-public use or purpose and if, as the result of such partial taking, the ratio of parking spaces to square feet of the total gross leasable area of the entire Shopping Center buildings is reduced to a ratio below four spaces to one thousand square feet, then the term of this Lease shall cease and terminate from the date of possession resulting from such proceeding, unless **LANDLORD** shall take immediate steps toward increasing the parking ratio in excess of four spaces to one thousand square feet of gross leasable area, by providing additional parking area, multi-level parking, ramp parking or otherwise, in which event this lease shall be unaffected and remain in full force and effect as between the parties. In any event, **TENANT** shall have no claim against **LANDLORD** for the value of any unexpired term of this Lease. Notwithstanding anything stated in this Section 50 of the Lease Agreement, applicable provisions of the CORE Agreement govern.

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|  | 51. | **LANDLORD’S DAMAGES** |

In the event of any condemnation or taking as hereinbefore provided, whether sole or partial, **TENANT** shall not be entitled to any part of the award, as damages or otherwise, for such condemnation and **LANDLORD** is to receive the full amount of such award, **TENANT** hereby expressly waiving any right or claim to any part thereof.

17

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|  | 52. | **TENANT’S DAMAGES** |

Although all damages in the event of any condemnation are to belong to **LANDLORD** whether such damages are awarded as compensation for diminution in value of the leasehold or to the fee of the Demised Premises, **TENANT** shall have the right to claim and recover from the condemning authority, but not from **LANDLORD**, such compensation as may be separately awarded or recoverable by **TENANT** in **TENANT’S** own right on account of any and all damage to **TENANT’S** business by reason of the condemnation and for or on account of any cost or loss to which **TENANT** might be put in removing **TENANT’S** merchandise, furniture, leasehold improvements and equipment.

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|  | 53. | **RELEASE FROM LIABILITY** |

**TENANT** agrees not to hold **LANDLORD** responsible or liable in damages by abatement of rent, setoff, counterclaim, or otherwise for any damage sustained by **TENANT** or any other person, due to the building or any part thereof or any appurtenances thereof being or becoming out of repair, or due to the happening of any accident (unless resulting from affirmative acts of negligence on **LANDLORD’S** part) especially, but not exclusively, any damage caused by water, snow, windstorm, tornado, gas, steam, electric wiring, plumbing, or heating apparatus; and not to hold **LANDLORD** liable for any acts or omissions of co-tenants or other occupants of the building, or for losses by theft.

Notwithstanding any other provision in this Lease contained, **TENANT** hereby releases **LANDLORD** from any claim with respect to water or other damage sustained by **TENANT** from the sprinkler system, except that **TENANT** does not hereby waive any claim for such damage resulting from faulty installation or maintenance of said sprinkler system or the negligence of **LANDLORD** or any of **LANDLORD’S** servants, agents or employees.

Additionally, notwithstanding any other provision in this Lease, **TENANT** hereby expressly waives and releases all causes of action and all rights of recovery which **TENANT** may hereafter have against **LANDLORD**, or **LANDLORD’S** agents, employees, servants or partners, for any loss or damage to improvements to the Demised Premises or to personal property located on any of the Shopping Center premises, regardless of whether such loss or damage results in whole or in part from any negligence or other fault on the part of **LANDLORD**, or **LANDLORD’S** agents, employees, servants and partners as to all such causes of action and rights of recovery and as to any claims which may give rise to such causes of action and rights of recovery.

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|  | 54. | **HAZARDOUS WASTE** |

**TENANT** covenants that it will not generate, release, store or deposit, or permit or suffer the generation, release, storage, or deposit, over, beneath or on the Demised Premises or on or in any of the structures or common areas of the Shopping Center, from any source whatsoever, any hazardous substances, as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”), 42 USC 9601(14), pollutants or contaminants as defined in CERCLA, 42 USC 9601(33), or hazardous waste as defined by the Resource Conservation and Recovery Act (“RCRA”) 42 USC ‘6903(5), or other similar applicable federal or state laws and regulations, including, but not limited to, asbestos, PCBs and urea formaldehyde. **TENANT** covenants that it will indemnify, hold harmless, and defend **LANDLORD**, **LANDLORD’S** successors, assigns and mortgagees, from any and all claims, loss, damage, response costs and expenses arising out of or in any way relating to a breach of these environmental representations contained in the immediately preceding sentence including, but not limited to: (a) claims of third parties (including governmental agencies), for damages, penalties, response costs, injunctive or other relief; (b) expenses, including fees of attorneys and experts, or reporting the existence of hazardous substances or hazardous wastes to any governmental agency; (c) any and all expenses or obligations, including attorneys fees, incurred at, before and after any trial or appeal therefrom or administrative proceeding or appeal therefrom whether or not taxable as costs, including, without limitation, attorneys fees, witness fees (expert and otherwise), deposition costs, copying and telephone charges and other expenses, all of which shall by paid by **LANDLORD** when accrued.

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|  | 55. | **CUSTOM AND USAGE** |

It is hereby covenanted and agreed, any law, usage or custom to the contrary notwithstanding, that **LANDLORD** shall have the right at all times to enforce each and every of the terms, provisions, covenants, agreements, undertakings, and conditions of this Lease in strict accordance with the terms hereof, notwithstanding any conduct or custom on the part of **LANDLORD** in refraining from so doing at any time or times.

The waiver by **LANDLORD** of any breach of any term, provision, covenant, agreement, undertaking, or condition contained in this Lease shall absolutely not be deemed to be a continuing waiver of any such or of any subsequent breach of the same or any other like or differing term, provision, covenant, agreement, undertaking, or condition contained in this Lease. The subsequent acceptance of rent hereunder by **LANDLORD** shall not be deemed to be a waiver of any preceding breach by **TENANT** of any term, provision, covenant, agreement, undertaking, or condition of this Lease other than the failure of **TENANT** to pay the particular

18

rent so accepted, regardless absolutely of **LANDLORD’S** knowledge of such preceding breach at the time of acceptance of such rent. No term, provision, covenant, agreement, undertaking, or condition of this Lease shall be deemed to have been waived by **LANDLORD** unless such waiver be specifically set forth in writing and signed by **LANDLORD**.

Wherever **LANDLORD** is given in this Lease a right to consent or approve an action by **TENANT** which consent is not specified to be on the basis of reasonableness, **LANDLORD** may arbitrarily withhold its consent thereto.

In the event that in this Lease it is provided that the exercise of any right by **TENANT** or the performance of any obligations of **TENANT** shall be subject to the consent or approval of **LANDLORD** and that the consent or approval of **LANDLORD** shall not be unreasonably withheld or delayed, then in any case in which **LANDLORD** shall withhold or delay its consent, such determination by **LANDLORD** shall be conclusive upon **TENANT** unless, however, **TENANT** shall within twenty (20) days after notice from **LANDLORD** of its determination, file an equitable action in the appropriate court in the county in which the Shopping Center is located seeking injunctive relief from **LANDLORD’S** determination, which such injunctive relief shall be the sole remedy of **TENANT** for any such withholding or delaying of consent or approval by **LANDLORD**. In the event that any action for injunctive relief shall be filed by **TENANT** pursuant to the provisions of this paragraph, the sole issue to be submitted to the court shall be determination as to whether the withholding or delaying of consent or approval by **LANDLORD** shall have been reasonable or unreasonable, and in the event that it should be determined that the withholding or delay of a consent or approval by **LANDLORD** was unreasonable, then the court’s decision or order shall annul such withholding or delaying of consent or approval, such annulment being the sole remedy of **TENANT**, it being the intention of the parties hereto (as to which they are conclusively bound) that in no event shall any such withholding or delaying of consent or approval by **LANDLORD**, or any decision of any court with respect thereto impose any financial liability upon or result in any damages being recoverable from **LANDLORD** and/or create any right cognizable or remedy enforceable in favor of **TENANT** and against **LANDLORD** in law or equity (except as aforesaid) or under any special statutory proceeding or at all.

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|  | 56. | **HOLDING OVER** |

Any holding over after the expiration of the term hereof, without the consent of the **LANDLORD**, shall be construed to be a tenancy from month to month at double the rents herein specified (pro rated on a monthly basis) and shall otherwise be on the terms and conditions herein specified, so far as applicable. However, no holding over shall result in the waiver, loss or diminution of any of **LANDLORD’S** rights either under the terms of this Lease or under applicable law. Percentage rent shall likewise be paid monthly, on the rent paying day, on the basis of one-twelfth (1/12th) of the aggregate of the last full twelve (12) month payments of percentage rents.

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|  | 57. | **QUIET ENJOYMENT** |

Upon payment by **TENANT** of the rent herein provided, and upon the observance by **TENANT** of each and every of the terms, provisions, covenants, agreements, undertakings, and conditions on **TENANT’S** part to be observed and performed, **TENANT** shall peaceably and quietly hold and enjoy the Demised Premises for the term of this Lease without hindrance or interruption by **LANDLORD** or any other person or persons lawfully or equitably claiming by, through or under **LANDLORD**, subject, nevertheless, to each and every of the terms, provisions, covenants, agreements, undertakings and conditions of this Lease.

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|  | 58. | **REHABILITATION OF SHOPPING CENTER** |

**TENANT** agrees that, in the event **LANDLORD** undertakes a rehabilitation of the Building or participates in a rehabilitation of the Shopping Center, or a substantial portion thereof including the Demised Premises, **TENANT** shall cooperate with **LANDLORD** and with **LANDLORD’S** contractors, subcontractors, agents and employees in carrying out such rehabilitation, including but not limited to alteration of the facade and outside panel fascia of the storefront of the Demised Premises, removal and substitution of signage for the Demised Premises, and temporary and necessary interruption of **TENANT’S** operations for limited periods of time upon reasonable prior notice from **LANDLORD**. The costs and expenses of the materials and labor for any such rehabilitation shall be the sole obligation of **LANDLORD** except that, in the event that **LANDLORD**, or **TENANT** at **LANDLORD’S** request, removes and substitutes signage for the Demised Premises in connection with an overall alteration in the signage plan for the Shopping Center or a substantial portion thereof, **TENANT** shall pay the cost of preparation and installation of such signage and Section 30 hereof and Exhibit D of the CORE Agreement shall be deemed amended to embrace such new signage plan.

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|  | 59. | **LANDLORD’S LIEN AND CHATTEL MORTGAGE** |

**TENANT** hereby grants to **LANDLORD** for the whole of the term of this Lease a first lien and security interest in all of its equipment, fixtures, trade fixtures, personalty and other items installed in or supplied to the Demised Premises and hereby agrees to execute and deliver, either simultaneously herewith or at such later time during the term of this Lease as **LANDLORD** shall request, a chattel mortgage, security agreement and financing statement to confirm and perfect the security interest herein granted. **TENANT** further agrees to provide **LANDLORD** with an itemized listing, and receipts therefor, of such items as necessary or appropriate for annexation to such security instruments. **TENANT** shall not encumber, mortgage, hypothecate or finance its interest in such items without the prior written consent of **LANDLORD**.

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|  | 60. | **SCOPE AND INTERPRETATION OF THE AGREEMENT** |

This Lease and the Exhibits, and Riders, if any, attached hereto and forming a part hereof, set forth all the covenants, promises, agreements, conditions, and understandings between **LANDLORD** and **TENANT** concerning the Demised Premises and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than are herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon **LANDLORD** or **TENANT** unless reduced to writing and signed by them.

This Lease supersedes and revokes all previous negotiations, arrangements, letters of intent, offers to lease, lease proposals, brochures, representations, and information conveyed, whether oral or in writing, between the parties hereto or their respective representatives or any other person purporting to represent **LANDLORD** or **TENANT**. The **TENANT** acknowledges that it has not been induced to enter into this Lease by any representations not set forth in this Lease, it has not relied on any such representations, no such representations shall be used in the interpretation or construction of this Lease, and **LANDLORD** shall have no liability for any consequences arising as a result of any such representations.

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|  | 61. | **NO REPRESENTATIONS** |

By executing this Lease **TENANT** specifically confirms that neither **LANDLORD** nor anyone acting for **LANDLORD** has made any oral or written representations or warranties or promises with respect to the Demised Premises or the building in which they are a part, the tenant mix of the Shopping Center, shopper traffic volumes or how the same will or might effect **TENANT**. It is agreed that this Lease contains no restrictive covenants or exclusives in favor of **TENANT**. Nothing contained in this Lease is interpreted to be a warranty, representation or agreement on the part of **LANDLORD** that any department store or regional or national chain store or other merchant shall open or remain open for or operate a business, or occupy or continue to occupy any premises in or adjoining the Shopping Center during the lease term or any renewal or extensions thereof.

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|  | 62. | **NOTICES** |

Any notice, demand, request or other instrument which may be or is required to be given under this Lease shall be delivered in person or sent by United States certified mail postage prepaid and shall be addressed, if to **LANDLORD**, at the address as defined on the **FACE PAGE** or at such address as **LANDLORD** may designate by written notice and, if to **TENANT**, at the demised premises or at such other address as **TENANT** shall designate by written notice. Notice shall be deemed given when actually served on the **TENANT** in the manner of a summons or citation or when the return receipt of the certified mail shall be returned by the Post Office, as of the date marked “accepted” or “rejected”.

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|  | 63. | **SECTION NUMBERS** |

The section numbers appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of any provision of this Lease nor in any way affect this Lease.

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|  | 64. | **SEVERABILITY** |

If any term or provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease and the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

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|  | 65. | **EXAMINATION OF LEASE** |

Submission of this instrument for examination or signature by **TENANT** does not constitute a reservation or option for Lease, and this instrument shall not become effective as a Lease or in any other capacity until execution and delivery by both **LANDLORD** and **TENANT**.

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|  | 66. | **COUNTERPARTS** |

This lease has been executed in several counterparts, but all counterparts shall constitute one and the same legal document.

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|  | 67. | **RECORDING/SHORT FORM LEASE** |

**TENANT** shall not record this Lease without the written consent of **LANDLORD**; however, upon the request of either party hereto the other party shall join in the execution of a memorandum or so-called “short form” of this Lease for the purposes of recordation.

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|  | 68. | **CONFIDENTIALITY** |

**TENANT** acknowledges that the terms and provisions of this Lease, including, but not limited to, amounts and forms of rent and other consideration, were negotiated and agreed to by or on behalf of **LANDLORD** and **TENANT** without reference to comparability with the terms and conditions of leases for other of the tenantable space at the Shopping Center. **TENANT** agrees that it will not, without the prior written consent of **LANDLORD**, reveal the terms and conditions of this Lease, including, but not limited to, amounts and forms of rent, to anyone other than financial and legal advisors who themselves agree to keep such information confidential, including, but not limited to, other existing or prospective tenants of the Shopping Center.

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|  | 69. | **PATRIOT ACT COMPLIANCE** |

**LANDLORD** and **TENANT** hereby represent and warrant to the best of their actual knowledge that, as of the date of this Lease Agreement, neither party is in violation of Executive Order 13224, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, or similar list or any law, order, rule or regulation or any executive order of the President of the United States relating to terrorism or money laundering (collectively hereinafter, the “Patriot Act”).

21

IN WITNESS WHEREOF, **LANDLORD** and **TENANT** have duly executed this Lease as of the day and year first above written.

Signed, sealed and delivered in the presence of:

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| WITNESSES: | | |  |  |  | **LANDLORD: Nixon, LP** | | | | |
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|  | | |  |  |  | By: Nixon, LLC, General Partner | | | | |
|  | | |  | |  | |  | | |
|  | | |  |  |  | By: | |  | /s/ Earl Nimoy | |
|  |  |  |  |  |  |  | |  | Earl Nimoy | |
|  |  |  |  |  |  | As Its: | |  | Assistant Secretary | |

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| WITNESSES: | | |  |  |  | **TENANT: Hightech, Inc** | | |
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|  | | |  |  |  | By: |  | /s/ Marcia Peacock |
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| STATE OF MISSOURI |  | ) |
| AND |  | ) |
| COUNTY OF CLAY             ) |  |  |

I hereby certify that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared **Earl Nimoy** to me known to be the person described in and who executed the foregoing instrument as **Assistant Secretary of Nixon, LLC**, and he duly acknowledged before me that he executed the same as such officer in the name and on behalf of said corporation acting as such general partner of Nixon, LP.

WITNESS my hand and official seal in the County and State last aforesaid this      day of                     , 2009.

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| Notary Public                         (SEAL) |
| My Commission Expires: |

(INDIVIDUAL NOTARY ACKNOWLEDGMENT)

STATE OF ALABAMA

COUNTY OF HILLVILLE

BEFORE ME, the undersigned, a notary public in and for said State and County aforesaid, an officer duly authorized to take acknowledgments, personally appeared Marcia Peacock, personally known to me and known by me to be the person described in and who executed the foregoing instrument, and acknowledged before me that he/she executed the same for the uses and purposes in said instrument set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this day of                      , 2009.

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| Notary Public                         (SEAL) |
| My Commission Expires: |

STATE OF ALABAMA

COUNTY OF HILLVILLE

BEFORE ME, the undersigned, a notary public in and for said State and County aforesaid, an officer duly authorized to take acknowledgments, personally appeared                                 , personally known to me and known by me to be the person described in and who executed the foregoing instrument, and acknowledged before me that he/she executed the same for the uses and purposes in said instrument set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this day of                     , 2009.

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| Notary Public                         (SEAL) |
| My Commission Expires: |

**EXHIBIT A**

**SITE PLAN OF BUILDING**

**EXHIBIT B**

**SITE PLAN OF SHOPPING CENTER**

**EXHIBIT C**

**DESCRIPTION OF LANDLORD’S WORK**

The following work is to be done by LANDLORD at LANDLORD’s sole expense:

PREPARATION OF DEMISED PREMISES:

All work required to prepare the DEMISED PREMISES for TENANT’S WORK, as described in EXHIBIT D, is to be done by LANDLORD at LANDLORD’s sole expense: included in such work, but without limitation, are construction of a demising wall, separation utility systems, and all work necessary to ensure HVAC and electrical systems are in good working order.

**EXHIBIT D**

**DESCRIPTION OF TENANT’S WORK FOR**

The following work is to be done by TENANT at TENANT’s sole expense:

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|  | 1. | COMPLETION OF DEMISED PREMISES: |

All work required to complete and place the DEMISED PREMISES in finished condition for opening for business, except only for the work specifically described in Exhibit “B” as LANDLORD’s work, is to be done by TENANT at TENANT’s sole expense: included in such work, but without limitation, are all subdivision walls, floor coverings, wall finishes, all store fixture work, all painting and decorating.

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|  | 2. | TENANT’S CONSTRUCTION: |

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|  | (a) | Comply with all local and state codes in obtaining a Building Permit, as well as such construction criteria and other terms and conditions as LANDLORD may determine and provide to TENANT at the initial project manager’s meeting. |

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|  | (b) | TENANT to obtain a Building Permit regardless of the amount or extent of improvements. If the applicable jurisdiction does not require a Building Permit, TENANT shall evidence that fact to LANDLORD by delivery of a letter to that effect signed by the jurisdictional building inspection department. |

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|  | (c) | Plans and evidence of Building Permit to be submitted to the proper LANDLORD’s representative within sixty (60) days of the date this Lease Agreement is signed by all parties, but in no event later than fifteen (15) days prior to commencing any improvements. |

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|  | (d) | Provide for any heating and air conditioning equipment, required by TENANT in addition to units supplied by LANDLORD, all wiring and ductwork, designed by a professional engineer with seal. Space above ceiling may not be used as a return air plenum unless TENANT provides proper fire proofing. If space above ceiling is not used as a return air plenum, then heating ducts above ceiling shall be insulated. All such equipment to be in proper operation on day that TENANT opens the DEMISED PREMISE’S for business. |

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|  | (e) | All cutting and patching of the roof area required for installation of air conditioning and ventilation systems, plumbing or utilities shall be paid by the TENANT. However, in all cases said work shall be performed by the LANDLORD’s contractor’s roofing subcontractor. |

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|  | (f) | Plastered or dry walls, or their equivalent finish, required throughout the sales area. No exposed framing is allowed. Paint and decorate the entire interior of DEMISED PREMISES. |

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|  | (g) | Provide all floor coverings and wall finishes except what is shown on Exhibit B. |

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|  | (h) | Non-combustible materials must be used above ceilings. |

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|  | (i) | Mezzanines not permitted unless approved by LANDLORD. |

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|  | (j) | Provide fire extinguishers, which may be required by local code. |

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|  | (k) | TENANT shall be responsible for removal of all trash and debris produced as a result of its construction, fixturing and stocking. |

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|  | 3. | FIXTURING: |

TENANT shall furnish, install and connect trade fixtures as required by TENANT’s merchandising layout, which fixtures shall be new, unless otherwise approved in writing by LANDLORD.

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|  | 4 | SIGNS: |

Sign drawings must be submitted for the approval by LANDLORD. Additional sign criteria on attached “Sign Criteria”.

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|  | 5. | ACCESS TO DEMISED PREMISES: |

LANDLORD, LANDLORD’s agent or designee, an independent contractor, or an authorized utility company, as the case may be, shall have the right to run utility lines, pipes, conduits or duct work where necessary or desirable, through attic space, column space, or other parts of the DEMISED PREMISES, and to repair, alter, replace or remove the same, all in a manner which does not interfere unnecessarily with TENANT’s use of the DEMISED PREMISES.

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|  | 6. | INSURANCE: |

TENANT shall require its contractors to furnish LANDLORD evidence of adequate insurance coverage prior to TENANT’s contractors performing any work in the DEMISED PREMISES, and TENANT agrees to indemnify and hold harmless LANDLORD and LANDLORD’s contractors from and against any claims, actions or damages resulting from acts of negligence of TENANT, its agents, employees, or contractors in performance of TENANT’s work.

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|  | 7. | TENANT’S EMPLOYEES AND CONTRACTORS: |

TENANT shall be limited to performing its work, including any office or storage for construction purposes within the DEMISED PREMISES only. TENANT and TENANT’s contractors shall be responsible for daily removal from the Shopping Center of all trash, rubbish, and surplus materials resulting from construction, fixturing and merchandising of the DEMISED PREMISES.

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|  | 8. | TEMPORARY UTILITIES: |

TENANT shall be responsible for temporary utility connections for its work, including payment of utility charges.

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|  | 9. | APPROVALS: |

Any approval or consent by LANDLORD or LANDLORD’s architect shall in no way obligate LANDLORD in any manner whatsoever in respect to the finished product, design and/or construction by TENANT, Any deficiency in design or construction, although the same had prior approval of LANDLORD, shall be solely the sole responsibility of TENANT.

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|  | 10. | DAMAGES: |

TENANT shall be held liable for all damages caused to the DEMISED AREA or any area outside the DEMISED AREA. Damages shall be corrected by the TENANT under the LANDLORD’s supervision or by the LANDLORD, at the LANDLORD’s option. All repairs by either party shall be paid for by the TENANT.

**EXHIBIT E**

**CONSTRUCTION, OPERATING, AND RECIPROCAL EASEMENT AGREEMENT**

**FOR HILLVILLE FESTIVAL CENTER**

**(Recorded March 26, 1986)**

**EXHIBIT F**

**SUPPLEMENTAL AGREEMENT**

**(Dated March 20, 1986)**

**EXHIBIT G**

**SIGN CRITERIA FOR HILLVILLE FISTIVAL CENTRE**

**LeaseA#30**

**\Exhibit 10.0****3**

Poetas

**PRIVATE INSTRUMENT OF PROPERTY LEASE AGREEMENT FOR NON-RESIDENTIAL PURPOSES.**

**I – PARTIES**

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| I.1. | As “**LESSOR**”, hereinafter referred to as such, **CCG POETAS LTDA.**, a legal entity of private law with its principal place of business at Avenida XXX, in the City of Recife, State of Pernambuco, enrolled with the National Corporate Taxpayers Register of the Ministry of Finance (CNPJ/MF) under No. 10.171.00000, herein represented, pursuant to its Articles of Association, by **EDISON DESILVA**, Brazilian, married, industrialist, bearer of identity card RG No. 1.0000 SSP/PE, enrolled with the Individual Taxpayers Register of the Ministry of Finance (CPF/MF) under No. 000, resident and domiciled in the City of Recife, State of Pernambuco. |

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| I.2. | As “**LESSEE**” hereinafter referred to as such, **BUSCA S/A**, a joint-stock company enrolled with the CNPJ/MF under No. 09.0000, with its principal place of business in the City of São Paulo, State of São Paulo, at 0000, herein represented by its Officer, Mr. **MARINA FLORES**, Brazilian, married, businessperson, bearer of identity card RG No. 1800007 SSP/SP and enrolled with the CPF/MF under No. 000, resident and domiciled in the City of São Paulo, State of São Paulo. |

**II – SECTIONS AND CONDITIONS OF THE LEASE**

The undersigned parties named and identified above, by this private instrument and on the best terms of the law, agree to enter into this **PROPERTY LEASE AGREEMENT FOR NON-RESIDENTIAL PURPOSES**, in accordance with the following Sections and Conditions which the parties mutually an reciprocally agree upon and grant:

**SECTION ONE: LEASE PROPERTY**

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| 1.1. | **LESSOR** is the lawful owner and holder, free and clear of any liens or encumbrances, of the urban property located at AAA, in the City of Jaboatão dos Guararapes, State of Pernambuco, postal code 54335-025. |

A tract of land named “LOT 1A” (one A), with a total area of one hundred and fifty-two thousand, two hundred and ninety square meters (152,290 m2), identified by the Specifications transcribed below: Property name: ZZZZ

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| 1.1.2. | The property has a total area of one hundred and fifty-two thousand, two hundred and ninety square meters (152,900.00 m2) and shall have, once the constructions have been completed, the built-up area of eighty-one thousand, five hundred and twenty-four square meters (81,524 m2), composed as follows: |

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| (a) | a common area with three thousand, one hundred and twenty square meters (3,120.00 m2) composed of: i) an Administrative Block with an area intended for installation of a kitchen/cafeteria, male and female restrooms, medical care room, administrative room, training room, outside support restrooms; ii) a technical area composed of substation, measurement, generator and pump room; iii) an area composed of gatehouse, security room, restroom, water tank and raised security cabin; iv) an area intended for parking cargo and passenger vehicles; and |

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| (b) | the area of private use, which shall have seventy-eight thousand, four hundred and four square meters (78,404 m2), composed of three blocks named Block A, Block B and Block C; Block A shall be composed of fourteen (14) sheds for lease named 1A, 2A, 3A, 4A, 5A, 6A, 7A, 8A, 9A, 10A, 11A, 12A, 13A, 14A, each of the sheds with two thousand, two hundred and eighty-seven square meters (2,287 m2) of leasable area, containing four (4) docks each shed; Block B shall be composed of ten (10) sheds for lease, named 1B, 2B, 3B, 4B, 5B, 6B, 7B, 8B, 9B and 10B, each of the sheds with one thousand, eight hundred and thirty-seven square meters (1,837.00 m2) of leasable area, containing four (4) docks each shed; Block C shall be composed of eight (8) sheds for lease, named 1C, 2C, 3C, 4C, 5C, 6C, 7C, 8C, each of the sheds with three thousand, five hundred and two square meters (3,502.00 m2) of leasable area. |

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| 1.1.3. | **LESSOR** shall be entitled, at any time, upon prior communication to **LESSEE**, to formally implement the Condominium of said property, as provided for by Law 4591/64 and the Brazilian Civil Code; nonetheless, it is hereby agreed that all common expenses shall be apportioned since the beginning of this lease, in proportion to the leased areas, as provided for by article 23, paragraph 3 of Law 8245/91. |

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| 1.2. | The aforementioned property is free and clear of any judicial or extrajudicial liens or encumbrances, legal and conventional mortgages, emphyteusis, pension, provisional attachments or seizures that might affect its peaceful and undisturbed use, including by **LESSEE**. |

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| 1.3. | By this instrument and on the best terms of the law, **LESSOR** delivers to **LESSEE**, as non-residential lease for commercial purposes, **SHEDS “7A and 8A” (“PROPERTY”)**, described and characterized in item 1.1.2 of this Section One of this Lease Agreement, with a total area of 4,402 m2 of built-up area, and **LESSEE** receives the **PROPERTY** after a broad and careful inspection carried out by it in the **PROPERTY** and after **LESSEE** has confirmed that the **PROPERTY** has the area indicated and is in perfect conditions of use, with all its devices in full and perfect conditions of use and operation, undertaking to keep them as such throughout the lease term, until actual vacancy and return thereof to **LESSOR**, bearing all resulting costs and expenses, including those with the replacement of materials and equipment under this agreement. |

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| 1.4. | **LESSOR** hereby undertakes to supply any required documents regarding the **PROPERTY** in order to enable **LESSEE** to file for its Operating Permit and to start activities in the **PROPERTY**hereunder. **LESSOR** shall be liable for obtaining the certificate of occupancy of the **PROPERTY**. |

**SECTION TWO: DESTINATION**

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| 2.1. | The **PROPERTY** shall be solely and exclusively intended, on a continuous and uninterrupted basis, for performance of the activities set forth in the Articles of Association of **LESSEE** as of the date of execution of this Agreement, provided that the destination of the **PROPERTY** shall not be modified without prior and written consent of **LESSOR**, subject to penalty of termination hereof. |

**SECTION THREE: TERM OF EFFECTIVENESS OF THE LEASE**

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| 3.1. | The term of effectiveness of this Lease Agreement is **sixty (60) months (“Contractual Term”)**, starting on November 1, 2012 (“Lease Start Date”) and consequently expiring on October 31, 2017 (“Lease Expiration Date”). |

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| 3.2. | Upon expiration of the agreed term, this lease shall be terminated by operation of law, regardless of any notice or notification, in which case **LESSEE** shall immediately vacate the **PROPERTY** and return the respective keys thereto to **LESSOR**, letting it completely free of persons and objects, except for the right to the Action for Renewal under the applicable law. |

**SECTION FOUR: RENEWAL OPTION**

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| 4.1. | The parties establish the prerogative of renewal of this lease for another term of sixty (60) months (regarded as a “Renewal Term”). **LESSEE** shall exercise the prerogative by sending a written notice to LESSOR for that purpose (“Renewal Notice”) in the period from the 12th and the 6th month before the “Lease Expiration Date”. |

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| 4.2. | In the event that **LESSEE** exercises the prerogative within the respective “Renewal Term”, the same terms and conditions set forth in this Agreement shall be complied with, except in relation to the rent amount to be paid as from start of the “Renewal Term”, which shall be established in accordance with the market value adopted at the time of the renewal which, however, shall not be smaller than the amount in effect upon the “Renewal Notice” in any event whatsoever. |

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| 4.3. | The review of the rent amount upon the renewal prerogative is distinct from and shall not be confused with the rent adjustment in accordance with the procedure set forth in Section Six. |

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| 4.4. | The renewal prerogative may be solely exercised if **LESSEE**is in strictly compliance with all its legal and contractual obligations relating to this lease under the applicable Law. |

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| 4.5. | The Renewal shall be solely consummated if, upon granting of the “Renewal Term” within the advance term set forth in item 4.1 for delivery of the “Renewal Notice”, the parties reach an agreement in writing on the new rent amount to be adopted within the “Renewal Term”, with due regard of the right to the Action for Renewal set forth in the applicable law. |

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| 4.65. | If the parties fail to reach such agreement, **LESSEE** shall be consequently required to return the **PROPERTY** on the “Lease Expiration Date” set forth in item 3.1, precisely as provided for herein, except for the right to the Action for Renewal set forth in applicable law. |

**SECTION FIVE: RENT**

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| 5.1. | The monthly rent agreed by mutual and full agreement for the first twelve (12) months of lease to be paid by **LESSEE** to **LESSOR** is **SEVENTEEN *REAIS* (R$17.00)** per leased built-up square meter, thus resulting in the total amount of the monthly rent for this first period of twelve (12) months of lease of seventy-four thousand, eight hundred and thirty-four *Reais* (R$74,834.00) to be paid in Brazilian currency. |

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| 5.1.1. | The leased **PROPERTY** has a total lease built-up area of **4,402 m2** which, when multiplied by the amount of **seventeen *Reais* (R$17.00/m2)**, results in the monthly rent amount defined in item 5.1. |

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| 5.2. | For the first twelve (12) months of lease, **LESSOR** grants to **LESSEE** a discount of one *Real*per square meter (R$1.00/m2) of lease which, however, shall be solely applied of the payment of rent is undeferrably made by the date set forth in item 5.3. |

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| 5.2.1. | The discount of the monthly rent amount of the **PROPERTY** for the first twelve (12) months of lease is one *Real*per square meter (R$1.00/m2) which, when multiplied by the area of 4,402 m2 of the **PROPERTY**, results in an amount of discount of four thousand, four hundred and two *Reais* (R$4,402.00). |

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| 5.2.2. | As from the thirteenth (13th) month of rent, the discount granted in accordance with item 5.2 shall automatically expire, and the square meter (m2) lease amount of the **PROPERTY**, without any discount, shall return to the amount of seventeen *Reais* per square meter (R$17.00/m2), accrued by the annual adjustment index defined in Section Six of this Agreement. |

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| 5.3. | The amount corresponding to the monthly rent shall be paid by **LESSEE** by the fifth (5th) day of the month following month due, at the address of the principal place of business of **LESSOR**, located at Avenida Engenheiro Antônio de Góes, 60, 15th Floor, Suites 1503/1504, Pina, in the City of Recife, State of Pernambuco, or at any other place to be defined by **LESSOR** in writing, at least five (5) days in advance of the rent maturity date. |

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| 5.4. | **LESSOR** may issue a simple bank collection slip to be delivered at the address of **LESSEE** five (5) days before the rent maturity date, or **LESSEE** may make payment of the monthly rent amount by means of a bank deposit in the checking account held by **LESSOR** with **Banco do Brasil**, **Branch No. 3434-7**, **Checking Account No. 5671-5**. The corresponding deposit receipt shall be valid and effective as rent payment receipt, after the amount set forth in the deposit receipt becomes available to **LESSOR**. |

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| 5.5. | In the event that the rent is matured and not paid by the date set forth herein, it shall be accrued by: (a) default interest of one percent (1%) per month; (b) monthly monetary restatement in accordance with the indexes set forth in Section Six below; (c) default fine of ten percent (10%) on the total amount of the obligation in arrears and finally, (d) attorney’s fees of twenty percent (20%) of the total restated debt amount, in case of litigation. The amounts set forth in sub-items “a” and “b” shall be calculated on a pro rata die basis from the rent maturity date to the date of actual payment thereof. |

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| 5.6. | If **LESSOR** fails to make payment of monthly rent established herein within the term established herein, **LESSEE** shall be automatically served notice of default. |

**SECTION SIX: ADJUSTMENT**

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| 6.1. | The rent amount is permanently subject to adjustment in accordance with the occasional loss of the purchasing power of the legal currency, in order to avoid a reduction in the price established for the lease. |

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| 6.1.1. | The monthly rent amount due by **LESSEE** to **LESSOR**is defined in item 5.1 of this Agreement. |

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| 6.2. | The monetary restatement of the monthly rent amount shall be calculated in accordance with the positive accumulated variation of the General Market Price Index (IGP-M) calculated by Getúlio Vargas Foundation (FGV) and, in the absence of this index or in case of impossibility or impediment of its use, the restatement shall be based, in the following order, on (i) the General Price Index (IGP) calculated by Getúlio Vargas Foundation (FGV), (ii) the Consumer Price Index (IPC) calculated by the Economic Research Institute Foundation of São Paulo State University (IPC/FIPE) and (iii) any other official index, so that, in any and all event, the monthly rent amount shall be monetarily restated in order to avoid any loss of its value and, consequently, its degradation due to loss of the purchasing power of the currency. |

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| 6.3. | As long as there is any legal impediment to the monetary restatement of the monthly rent amount at a periodicity shorter than annual, the adjustment shall be made after each period of twelve (12) months, and the adjustment of the monthly rent amount for the first period of twelve (12) months of effectiveness of this agreement shall be made considering the positive accumulated variation of the General Market Price Index (IGP-M) calculated by Getúlio Vargas Foundation (FGV) or any index that may replace it, as set forth in item 6.2 above, in the period from the month before start of the term of effectiveness of the lease and the month before completion of the period of twelve (12) months, and as from this first adjustment, always after twelve (12) months and in the same month of the first adjustment, considering the positive accumulated variation of the previous period of twelve (12) months. |

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| 6.4. | If the monetary restatement of the monthly rent amount is authorized, by a court decision or a change in law, to be made at a periodicity shorter than twelve (12) months, the parties agree that the shorter periodicity then permitted shall be adopted upon prior communication to **LESSEE**. |

**SECTION SEVEN: CHARGES AND APPORTIONMENT OF THE EXPENSES OF THE COMMON AREAS**

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| 7.1. | In addition to the monthly rent agreed upon the parties and any other charges under the liability of **LESSEE** under this agreement, **LESSEE**shall be liable for paying the following, throughout the lease and for as long as it occupies the leased **PROPERTY**, until actual vacancy and return thereof to **LESSOR** under this agreement, (i) all taxes, fees and contributions of any kind whatsoever that are or may be levied on the **PROPERTY**, proportionally and corresponding to the leased area, and (ii) all expenses with consumption of electricity, water, sewage and any other supply of goods and services, and shall pay any such charges and expenses by the respective due dates, directly to whomever it may lawfully concern or to **LESSOR**, by way of reimbursement, in case that **LESSOR** has paid any such charges or expenses; in addition, **LESSEE** shall also bear any costs and charges arising out of any delayed payment of said obligations. |

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| 7.1.1. | **LESSOR** shall be entitled to pay the corresponding Urban Real Estate Tax (IPTU) on the urban property, as described in items 1.1.1 and 1.1.2 of Section One of this agreement, directly to the Municipal Public Authority, by making the apportionment among the lessees of leased areas, in proportion to said leased area, considering the total leased areas and areas available for lease, provided that the amount to be prorated shall correspond to the respective total amount due, in accordance with the calculation made by the Municipal Public Authority, as determined in the Tax Code of Jaboatão dos Guararapes – Municipal Law No. 155 of December 27, 1991, as subsequently amended. |

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| 7.1.2. | A discount shall be granted in general to all taxpayers of the city for advanced collection of said Urban Real Estate Tax (IPTU), as provided for by Article 22, paragraph 1 of the Tax Code of Jaboatão dos Guararapes – Municipal Law No. 155 of December 27, 1991, as subsequently amended and, in case that **LESSOR** benefits from this discount, the amount to be prorated shall take into account said discount for benefit of the **LESSEES**. |

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| 7.1.3. | However, in case of offset against the payment of the Urban Real Estate Tax (IPTU) to **LESSOR** on account and as a result of advance payment thereof, in any manner, such offset shall not be extended to the **LESSEES** because, in such event, it is not a benefit granted but rather a right available to **LESSOR** to offset its credit arising out of the amount that it may have paid in advance to the municipality in any manner, including by performing works of improvement of the municipal public infrastructure and streets, the costs of which shall be borne by the municipality. |

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| 7.1.4. | The supply of electricity to the **LESSEES**shall be made by means of the concessionaire, through a single supply line to the condominium to serve all lessees. However, an individual consumption measurer shall be installed for each lessee for purposes of apportionment of the total amount charged for the electricity supplied, in accordance with each measurer, and **LESSEE** agrees to pay the amount corresponding to its apportionment, which shall be clear, legal and payable. |

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| 7.2. | In accordance with item 1.1.2 and 1.1.3, the expenses of the common areas shall be due by **LESSEE** and paid to **LESSOR** on a monthly basis, always on the fifth (5th) day of each month, proportionally to the leased area and together with the monthly rent amount. Expenses of the common areas mean the armed or unarmed surveillance services, reception services, cleaning services of the common areas, apportionment of water, sewage and electricity of the common areas, gardening expenses, urban cleaning fee, firefighters fee and any other expenses or charges levied on the common areas and the respective management, which shall be prorated always in proportion to the leased area. |

**SECTION EIGHT: LESSEE’S OBLIGATIONS**

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| 8.1. | **LESSEE** is also required: (a) to pay the rent, lease charges and expenses of the common areas listed in items (h) and (i) below, in a timely manner, directly to the collecting agents and/or to **LESSOR**; (b) to use the **PROPERTY** for the purposes established in this Agreement; (c) to return the **PROPERTY**, upon lease expiration, under the conditions set forth in Sections Ten and Eleven; (d) to immediately notify **LESSOR**, by means of a formal and written document to be delivered at its address, as set forth in Section 1, item 1.1, of the occurrence of any defect or damage that shall be repaired by **LESSOR**, as well as of any disturbances by third parties; (e) to immediately repair any damages occurred in the **PROPERTY**, or in its facilities, caused by **LESSEE**, its employees, customers, suppliers, service providers, its own vehicles or the vehicles of third parties contracted by **LESSEE**; (f) not to modify the **PROPERTY** internally or externally without prior and written consent of **LESSOR**; (g) to immediately deliver to **LESSOR** any notice, summons, fine or requirement of any public authority, including those addressed to the **LESSEE**itself; (h) to pay the lease charges defined by the parties as the expenses relating to installed public utilities, purchase of insurances, and any taxes/costs directly related to the **PROPERTY** (power, electricity, gas, water, sewage and Urban Real Estate Tax – IPTU; (i) **LESSEE** shall pay the amount of the expenses of the common areas to **LESSOR**, on a monthly basis, in proportion to the leased area; (j) to enable inspection of the **PROPERTY** by **LESSOR**, upon delivery of prior communication by **LESSOR**indicating the date and time, and enable the **PROPERTY** inspection by third parties, in case of disposal thereof; (k) to undertake liability for the **PROPERTY** cleaning, preservation AND painting, including any hydraulic, electric, mechanic and security equipment; (1) any other expenses relating to the **PROPERTY** use or operation in accordance with the criterion set forth in Section Two, item 2.l. that are not defined above shall be also **LESSEE’S**liability. (m) **LESSEE** shall keep the area underneath the marquise free and clear of any type of material, products or goods at all times, as said area shall be solely used for load and unload of trucks. |

**SECTION NINE: INSURANCE AND RISKS FOR OCCURRENCE OF DAMAGES AND LOCAL PROPERTY INSURANCE**

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| 9.1. | **LESSOR** undertakes to keep the entire leased area, with all its accessions and improvements, throughout the lease term, regularly insured with a reputable, first-line insurer of the insurances market in Brazil, by means of a property policy covering all risks of building destruction, including but not limited to the risks arising out of destruction by fire, lightening, explosion, collapse for any reason, windstorm and vehicle crash, in accordance with a valuation performed by the insurer, but never less than the amount hereby accepted by the parties as the actual amount of the **PROPERTY** for the first period of twelve (12) months, of four million, four hundred and two thousand *Reais* (R$4,402,000.00), corresponding to the amount of one thousand *Reais* (R$1,000.00) per leased built-up square meter, restated after every twelve (12) months of effectiveness of this Agreement in accordance with monetary restatement index set forth in this Agreement for adjustment of the monthly rent or by the actual valuation of the leased **PROPERTY**, at all times adopting the highest amount, being established that **LESSOR** shall be the exclusive beneficiary of the insurance. |

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| 9.1.1. | The insurance shall be automatically renewed and maintained throughout the period when **LESSEE** remains in the leased building and this Agreement is in effect. |

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| 9.1.2. | **LESSOR** undertakes to provide **LESSEE** with copies of the respective insurance policies whenever there is a renewal, except in the beginning of the lease term, when the copies shall be sent before start of the activities. |

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| 9.1.3. | **LESSOR** shall purchase the insurance referred to in item 9.1 of this section, choosing the insurer and making payment of the respective premium. However, **LESSEE** agrees to reimburse **LESSOR** for the respective premium paid, provided that, if the insurance is purchased by **LESSOR** for the entire construction rather than only for the area leased to **LESSEE**, the respective premium shall be borne by **LESSEE**in proportion to and corresponding to the leased area. |

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| 9.1.3.1. | The reimbursement referred to in sub-item 9.1.3 above shall be made as if the premium payment had been contracted, upon submission by **LESSOR** to **LESSEE** of the Contract and the respective invoice paid or to be paid. |

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| 9.1.3.2. | If **LESSEE** delays the payment of one or more installments of said reimbursement, **LESSEE** agrees to pay the following on the amount in arrears: (i) monetary restatement according to the accumulated positive variation of the General Market Price Index (IGP-M), calculated by Getúlio Vargas Foundation (FGV), from the reimbursement date to the date of actual payment; (ii) default interest of one percent (1%) per month and a fraction thereof for the period of delay, and (iii) fine of ten percent (10%) on the amount then matured and unpaid, duly monetarily restated, provided that said charges shall apply regardless of judicial or extrajudicial claim, notice or notification. |

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| 9.2. | **LESSEE** hereby expressly, irrevocably and irreversibly acknowledges and agrees that **LESSOR** shall not be directly or indirectly held liable by **LESSEE**, in any event whatsoever, for any damages or losses caused to the equipment, machines, inventories of material, any other goods, documents and/or any other assets owned by **LESSEE** or by third parties, located in any of the components of the commercial **PROPERTY** leased to it, whether caused by theft, stealing, fire, collapse, water leakage, flooding or any act of anyone, or by any other accident, claim or fact that may occur due to any reason, throughout the time when **LESSEE** remains in any part of the **PROPERTY** hereby leased, until actual return thereof to **LESSOR**, completely empty, except when **LESSOR** has provenly contributed by fault or willful misconduct to the occurrence of any of the acts, accidents, losses or any other facts causing damages and losses to **LESSOR**and third parties. |

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| 9.2.1. | Consequently and in addition to the provisions above, **LESSEE** hereby waives any right or claim that it might have from **LESSOR** upon occurrence of any of the acts, accidents, claims or any other facts set forth above, for any reason, except in case of exclusive or concomitant negligence of **LESSSOR**. |

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| 9.2.2. | For that purpose, in case that **LESSEE** desires to prevent any of the problems set forth above, **LESSEE** shall, under its exclusive and full liability and at its sole and exclusive expense, purchase full insurance, from a reputable insurer, against all said claims and/or accidents, in the actual amounts of all its belongings and/or the belongings of any third parties located in any of the facilities of the commercial **PROPERTY** hereby leased and/or in its vicinity, from the lease start date to the date of full vacancy and return of the commercial **PROPERTY** hereby leased, completely vacated. |

**SECTION TEN: PROPERTY PRESERVATION AND IMPROVEMENTS**

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| 10.1. | **LESSEE** expressly represents that it is receiving the **PROPERTY** in perfect state of preservation, use and occupancy, with new painting and all its electric, hydraulic and sanitation installations in perfect operation, as described in the **INSPECTION REPORT** which, once duly executed by the parties, becomes an integral part hereof for all purposes, and **LESSEE**undertakes to keep the **PROPERTY**as such until actual return thereof to **LESSOR**. |

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| 10.2. | During the term of effectiveness of the lease and for as long as **LESSEE**holds the possession of the **PROPERTY**, **LESSEE** shall be required to perform, at its expense and under its sole liability, all works required for its preservation, maintenance and repair, while **LESSOR** shall be liable for any works relating to the building structure. |

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| 10.3. | **LESSOR** shall be entitled to inspect compliance with the obligations under the liability of **LESSEE** under this lease agreement, visit and inspect the **PROPERTY** by means of a person designated by **LESSOR** on a date and time previously notified to **LESSEE**, provided that the person authorized by **LESSOR** may be accompanied by a representative of **LESSEE**at such visit and inspection. |

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| 10.4. | **LESSEE** shall not, without prior and written consent of **LESSOR**, make any changes and/or improvements of any kind whatsoever in the PROPERTY. Once any improvements have been made, whether authorized or not, it is hereby clarified and agreed that they shall not give rise to any right to indemnity, shall be incorporated to the **PROPERTY** and shall not be used as a basis to claim retention of the **PROPERTY** upon expiration or termination of the Lease. |

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| 10.5. | Any removable improvements made in the **PROPERTY** may be taken away upon expiration or termination of this instrument, as long as it does not result in any damage to the **PROPERTY**, after prior and written authorization of **LESSOR**. In relation to non-removable improvements, to the extent that **LESSOR** agreed with their permanence in the **PROPERTY**, **LESSEE** shall leave them there and not be entitled to any withholding and/or indemnity in that regard. Also in relation to non-removable improvements, to the extent that **LESSOR** did not agree with their permanence in the **PROPERTY**, **LESSEE** shall remove them and leave the **PROPERTY** under the conditions indicated in the **INSPECTION REPORT**. |

**SECTION ELEVEN: PROPERTY RETURN**

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| 11.1. | Upon expiration or termination of the lease, **LESSEE** agrees to return the leased **PROPERTY** completely free and empty of persons and objects and in the state of preservation set forth in Section Ten of this Lease Agreement, except for wear and tear arising out of regular use and lapse of time. |

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| 11.2. | **LESSEE** shall notify **LESSOR** at least one hundred and eighty (180) days in advance of the “Lease Expiration Date”, for the parties to inspect it in order to determine whether it is in conditions of use and operation. If not, the parties shall enter into a proper instrument listing the repairs or works that **LESSEE** shall undertake to perform by the “Lease Expiration Date”, restoring it to the agreed conditions. |

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| 11.3. | It is also established that **LESSEE** shall mandatorily notify **LESSOR** one hundred and eighty (180) days in advance of the early return of the **PROPERTY**. |

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| 11.3.1. | If **LESSEE**fails to notify **LESSOR** with the aforementioned advanced time, for any reason whatsoever, **LESSEE** shall be subject to pay a fine corresponding to three (03) monthly rents, considering the rent amount in effect at the time of such collection, which shall be fully due at all times, regardless of the time of lease already elapsed. |

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| 11.4. | In addition to the notice referred to in item 11.3 above and, in the absence thereof, the payment of the fine established for failure to provide said notice, as set forth in sub-item 11.3.1 above, **LESSEE** shall also bear, in case of early termination of the lease by **LESSEE** in the year of the lease term, the payment of a fine corresponding to **four (04) monthly rents**, considering the rent amount in effect at the time of such collection, in proportion to the remaining period until expiration of the **LEASE**. |

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| 11.4.1. | It is established for the second (2nd) year of lease, corresponding to the period from the thirteenth (13th) month of lease to the twenty-fourth (24th) month of lease, that the fine of four (04) monthly rents set forth in item 11.4 shall be reduced to **three (03) monthly rents**, considering the rent amount in effect at the time of such collection, in proportion to the remaining period until expiration of the **LEASE**. |

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| 11.4.2. | It is established for the third (3rd) year of lease, corresponding to the period from the twenty-fifth (25th) month of lease to the thirty-sixth (36th) month of lease, that the fine of four (04) monthly rents set forth in item 11.4 shall be reduced to **two (02) monthly rents**, considering the rent amount in effect at the time of such collection, in proportion to the remaining period until expiration of the lease. |

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| 11.4.3. | It is established for the fourth (4th) year of lease, corresponding to the period from the thirty-seventh (37th) month of lease to the forty-eighth (48th) month of lease, that the fine of four (04) monthly rents set forth in item 11.4 shall be reduced to **two (02) monthly rents**, considering the rent amount in effect at the time of such collection, in proportion to the remaining period until expiration of the lease. |

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| 11.4.4. | It is established for the fifth (5th) year of lease, corresponding to the period from the forth-ninth (49th) month of lease to the sixtieth (60th) month of lease, that the fine of four (04) monthly rents set forth in item 11.4 shall be reduced to **01 monthly rent**, considering the rent amount in effect at the time of such collection, in proportion to the remaining period until expiration of the lease. |

**SECTION TWELVE: IRREVOCABILITY**

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| 12.1. | This Agreement is entered into by and between the parties on an irreversible and irrevocable basis and is governed by Law 8245/91. |

**SECTION THIRTEEN: ASSIGNMENT AND SUBLEASE**

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| 13.1. | **LESSEE** shall not (i) sublease and let the leased building, wholly or in part, or (ii) assign and transfer this agreement, wholly or in part, without prior and express consent of **LESSOR.** However, **LESSEE**may do so to companies of its economic group and/or to service provider companies that meet its purposes, provided, however, that in such event **LESSEE** and the **GUARANTOR** shall remain as principal and jointly liable for full compliance with all obligations arising out of the lease as established in this agreement, especially the payment of the monthly rents and any other lease charges, including the payment of fine in case of early termination of the lease by **LESSEE**. |

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| 13.2. | Any transfer of the equity control of **LESSEE**on any account whatsoever shall be also regarded as assignment/transfer for purposes of the provisions in the item above. |

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| 13.3. | The violation of any of the prohibitions set forth in this Section, in addition to not generating any obligations to **LESSOR**, shall result in termination of the Lease due to contractual breach and entitle **LESSOR** to resume possession of the **PROPERTY**. |

**SECTION FOURTEEN** –**PROPERTY DISPOSAL**

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| 14.1. | In the event that the **PROPERTY** is offered for sale, transfer or disposal, **LESSEE** shall not prevent the visit thereof by potential buyers and interested parties, as long as the parties previously agree upon the rules and procedures, provided that **LESSEE** shall have a right of first refusal in relation to the **PROPERTY** purchase, as set forth in Section Fifteen. |

**SECTION FIFTEEN: RIGHT OF FIRST REFUSAL**

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| 15.1. | In the event of sale, promise of sale, assignment or promise of assignment of rights or giving in payment of the **PROPERTY**, **LESSEE** shall have a right of first refusal to purchase it, under identical conditions with third parties, in which case **LESSOR** shall notify **LESSEE** of the business by means of judicial or extrajudicial notice or any other means of unequivocal notification. |

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| 15.2. | The communication set forth in Item 15.1. above shall contain all conditions of the business, especially the price, the payment method, as well as the place and date for examination of the proper documentation. |

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| 15.3. | The right of first refusal of **LESSEE** shall expire if it fails to unequivocally answer whether or it not fully accepts the proposal, within thirty (30) days as from the receipt of the notice set forth in item 15.1. |

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| 15.4. | **LESSEE** waives the right of first refusal for purchase of the **PROPERTY** in the event of sale or assignment thereof to associated, controlled or subsidiary companies of the economic group of **LESSOR**, or for creation of a specific Real Estate Investment Fund (FIP), in which case the existence of any type of equity interest of **LESSOR** or of any of its shareholders shall be sufficient for the company to be the holder of the **PROPERTY**. |

**SECTION SIXTEEN: ENVIRONMENTAL RISKS**

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| 16.1. | **LESSOR** shall have no liability or obligation whatsoever relating to or arising out of the conditions or materials that exist at the **PROPERTY**, including but not limited to any existing risks environmental, as long as arising out of the lease itself or attributed to the activity performed by **LESSEE**. |

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| 16.2. | **LESSOR** shall not be liable for any costs, expenses or obligations that may result in removal of any existing conditions or materials (including environmental risks) at the **PROPERTY**, as long as arising out of the lease itself or attributed to the activity performed by **LESSEE**. |

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| 16.3. | The execution of this Agreement shall not result in **LESSOR** undertaking control over or liability for any environmental risks or conditions inherent to the **PROPERTY** or undertaking any liability to any federal, state or municipal body for disclosure of any information relating to any conditions or materials relating to the **PROPERTY** which may represent a potential risk to the health, public security or environment, as long as arising out of the lease itself or attributed to the activity performed by **LESSEE**. |

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| 16.4. | As long as arising out of the lease itself or attributed to the activity performed by **LESSEE**, without limiting the other provisions of this Section, except for any liabilities arising out of any fault by **LESSOR**, **LESSEE** specifically agrees to defend, indemnify and hold **LESSOR** harmless for and against any and all costs (including reasonable attorney’s fees), losses, claims and liabilities relating to or resulting from: |

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| (a) | violation of any federal, state or municipal law, regulations or order by **LESSEE** relating to hazardous substances existing at the place of the **PROPERTY**; |

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| (b) | any commitments or negotiations of **LESSEE** relating to handling, removal, treatment, storage, transportation or issue of hazardous substances existing at the place of the **PROPERTY**; and |

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| (c) | any environmental risks or hazardous substances that may exist in relation to the **PROPERTY**. |

**SECTION SEVENTEEN: TERMINATION AND FINE**

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| 17.1. | Notwithstanding the provisions in Section Twelve, violation by the **PARTIES** of any of the sections of this Lease Agreement shall give rise to adoption of the following procedures by the non-defaulting party: |

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| 17.1.1. | Impose a fine corresponding to the amount of three (03) monthly rents, considering the rent amount in effect at the time of such collection, which shall be fully due at all times, regardless of the time of lease already elapsed. The aforementioned fine shall not apply to the contractual infractions set forth in **Section Five**, item 5.4 and **Section Eleven**, item 11.3 and its sub-item 11.3.1 and item 11.4 and its sub-items 11.4.1, 11.4.2, 11.4.3 and 11.4.4, since there are specific penalties for the events set forth therein. |

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| 17.1.2. | Consider this Lease Agreement terminated due to contractual breach not remedied by the defaulting party within thirty (30) days as from receipt of a notice from the compliant party. |

**SECTION EIGHTEEN: EXPROPRIATION**

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| 18.1. | In the event of full or partial expropriation of the **PROPERTY**, fire, collapse, or any occurrences that prevent the regular use of the **LESSEE** beyond control of **LESSOR** and **LESSEE**, as certified by engineers and architects chosen by both parties, this Lease Agreement shall be terminated by operation of law, without payment of any fine or indemnity by one party to the other. In case of partial expropriation of the **PROPERTY**, the parties agree that the rent shall be reduced proportionally to the remaining area. |

**SECTION NINETEEN: GUARANTEE**

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| 19.1. | Within sixty (60) days as from the date of execution of this agreement and under the conditions set forth in this section, **LESSEE** agrees to **contract a letter of guarantee or bank guarantee from a** **first-line insurer**, subject to penalty of immediate termination of this agreement by operation of law, regardless of judicial or extrajudicial claim, notice or notification, in which case **LESSEE**shall also bear, in case of failure to comply with this obligation within the established term and under the conditions indicated in this section, the payment to **LESSOR**of the contractual fine set forth in section seventeen, item 17.1.1 of this agreement. |

**Paragraph one. LESSEE**undertakes, upon contracting of lease insurance contract, to indicate **LESSOR**as the beneficiary of the insurance, and to provide **LESSOR**with a copy of the insurance policy within five (5) days as from contracting.

**Paragraph two.** The lease insurance contract shall be contracted in such a manner as to cover all legal and contractual obligations of **LESSEE**, as set forth in article 41 of Law No. 8.245/91, including but not limited to cover payment of rents, legal charges, court costs, attorney’s fees, contractual fines, especially but not limited to fines arising out of early termination of the lease by **LESSEE**and required compensation, as payment, for the failure to deliver termination notice of any such early termination of the lease by **LESSEE**, as established in section eleven, items 11.3., 11.3.1 and 11.4, 11.4.1, 11.4.2, 11.4.3 and 11.4.4, as well as damages to the **PROPERTY**.

**Paragraph three. LESSEE**shall be solely and exclusively liable for payment of the premium of the lease insurance contract referred to in this section.

**Paragraph four.** Said lease insurance contract shall be maintained by **LESSEE**in favor of **LESSOR**throughout the lease term, subject to penalty of termination of this agreement by operation of law in case of absence of said lease guarantee, regardless of judicial or extrajudicial claim, notice or notification, in which case **LESSEE**shall make payment to **LESSOR**of the contractual fine set forth in section seventeen, item 17.1.1 of this agreement.

**SECTION TWENTY: FINAL PROVISIONS**

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| 20.1. | The parties also agree as follows: |

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| 20.1.1. | It is also an obligation of **LESSEE**, which shall not be entitled to claim any reimbursement from **LESSOR** for that purpose, to satisfy all notices and notifications from any federal, state or municipal public bodies, government-controlled private companies, public agencies or companies, to the extent that said obligations are not exclusively incumbent upon the owner **LESSOR**. |

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| 20.1.2. | **LESSEE** shall pay any and all contribution, fine, interest, monetary restatement, costs, fees, and court costs in general that may be charged or imposed due to violation of any law or regulations, as long as relating to the lease term, including in the event of delayed payment of any taxes, charges or additional amounts set forth herein; |

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| 20.1.3. | **LESSEE** undertakes to immediately notify **LESSOR** in writing of the receipt of any notices and summons referred to in this Section, as well as to comply with the general rules that regulate the use of the leased **PROPERTY**, including the respective **Internal Regulations**, a copy of which is hereby received and fully acknowledged by **LESSEE**as an integral part of this instrument, which serves as a receipt thereof; |

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| 20.1.4. | **LESSEE** and the **GUARANTORS** also agree to notify **LESSOR** in writing of any change of address; |

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| 20.1.5. | Failure by any of the parties to exercise or the delayed exercise of any right ensured to it hereunder or by law shall not be deemed novation or waiver of such right or impair any subsequent exercise thereof; |

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| 20.1.6. | The nullity or invalidity of any of the sections of this Agreement shall not affect the validity and efficacy of the other sections and conditions set forth herein; |

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| 20.1.7. | If of the parties intends to arrange for annotations and/or registrations of this Agreement, all expenses resulting therefrom shall be such party’s full and exclusive liability; |

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| 20.1.8. | All documents and communications, which shall be made in writing at all times, to be sent by any of the parties shall be delivered at the addresses set forth in the preamble hereof, by letter with return receipt, registry of deeds and documents or delivery in person with acknowledgement of receipt. |

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| 20.1.9. | **LESSOR** is hereby authorized to disclose **LESSEE’S**logo, as well as the Entity name (in short and/or full form) on its electronic site, and any other advertising materials relating to **LESSOR**. |

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| 20.1.10. | **LESSEE** is entitled, at no additional cost or lien, to a right of lease reserve/preference under the same terms and conditions defined herein, of another four (4) neighboring properties of those set forth in this agreement, a right which shall be exercised by **LESSEE** by September 30, 2012. |

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| 20.1.11. | In the period from October 1 to 15, 2012, if **LESSOR** receives any written proposal from a third party for lease of two (02) or more neighboring sheds to the **PROPERTY** hereunder, **LESSOR**undertakes to notify **LESSEE** to exercise its right of first refusal. **LESSEE** shall answer in writing, within 5 business days as from receipt of said notice, confirming its right of first refusal in relation to the lease, under the same terms and conditions set forth herein. The failure to answer shall be characterized as waiver of said right. |

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| 21.1.12. | **LESSEE** shall be entitled to arrange for annotation of this Lease Agreement on the **PROPERTY** registration. |

**SECTION TWENTY-ONE: JURISDICTION**

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| 21.1. | The parties elect the Courts of the Judicial District of Recife, State of Pernambuco, to resolve any issues relating to the existence of, compliance with and validity of this Agreement, and expressly waive any other courts, however privileged they may be, including in case of change of domicile of any of them. |

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| 21.2. | It is also agreed that, in any Legal Proceeding, any Summons, Notice and Notification may be served in any of the manners set forth in article 58, item IV of Federal Law No. 8245/91. |

**III – CLOSING TERM AND SIGNATURES**

IN WITNESS WHEREOF, the parties execute this Lease Agreement in three (03) identical counterparts, in the presence of two (2) undersigned witnesses, to generate all its legal effects.

Recife/PE, September 18, 2012

/S/    EDISON DESILVA

**CCG POETAS LTDA.**

**Edison deSilva**

**LESSOR**

/S/    MARINA FLORES

**BUSCA S/A.**

**Marina Flores**

**LESSEE**

|  |  |  |
| --- | --- | --- |
|  |  |  |
| **Witnesses:** | | |
| 1.     /S/    A |  | 2.     /S/    B |
| Name: **A** |  | Name: **B** |
| ID card (RG): --- |  | ID card (RG): ---40 |

**1ST AMENDMENT TO LEASE AGREEMENT**

By this private instrument of **1ST AMENDMENT TO LEASE AGREEMENT** the parties designated and identified below, in the full and total understanding of all of the clauses and conditions freely covenanted and accepted, including as regards scope and effects, referred to jointly as PARTIES and severally as designated below, to wit:

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| --- | --- |
| 1. | On the one part, as **LESSOR**, as named hereinafter, the legal entity of private law incorporated as a limited liability company, **CCG POETAS LTDA**., with its head-office in this city of Recife, XXX, in the District if Pina, enrolled with the National Corporate Taxpayers Register of the Ministry of Finance under CNPJ/MF No. 10000, herein represented on the terms of its Articles of Association by its partner and executive officer, as declared by him, Mr. EDISON DESILVA, Brazilian, married, industrialist, enrolled with the Individual Taxpayers Register of the Ministry of Finance under CPF/MF No. 00000 and bearer of Identity Card RG No.  SSP–PE, resident and domiciled in the Municipality of Recife, Pernambuco. |

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| 2. | On the other part, as **LESSEE**, as named hereinafter, **BUSCA S.A.**, a joint stock company enrolled with the enrolled with the National Corporate Taxpayers Register of the Ministry of Finance under CNPJ/MF No. 00000, with its head-office in the Capital City of State of São Paulo YYY herein represented by its Executive Officer, Mr. **MARCELLO BRANCO**, bearer of Identity Card RG No. 240000 and enrolled with the Individual Taxpayers Register of the Ministry of Finance under CPF/MF No. 000, resident and domiciled in the Municipality of São Paulo/SP. |

**WHEREAS:**

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| 1. | On September 18, 2012 the PARTIES appointed and identified above executed a LEASE AGREEMENT having as its subject-matter MODULES 7A and 8A, included in a combination of modules of a total of 14 MODULES, constructed on “PLOT 1A” (one A), in ---- |

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| 2. | The **LESSEE** is interested in leasing another four (4) modules of the same and mentioned development of modules which are full and exclusive property of the **LESSOR**, which are the MODULES 5A, 6A, 9A and 10A, free and clear of persons and objects, there being no burdens or liens that are applicable to them. |

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| 3. | The **LESSOR,** in turn, is interested in granting under lease to the **LESSEE** the mentioned MODULES 5A, 6A, 9A and 10A, adjusting the term and the Insurance and maintaining the amount of the monthly rent for such new modules, as well as any and all of the clauses and conditions of the mentioned lease agreement. |

**RESOLVE** and have jointly agreed to AMEND the mentioned LEASE AGREEMENT so as to include in the subject-matter of the lease MODULES 5A, 6A, 9A and 10A, pursuant to the following clauses and conditions, to wit:

**Section 1. Subject-matter of the lease.**

MODULES 5A, 6A, 9A and 10A are included in the subject-matter of the LEASE AGREEMENT previously designated and now amended, with a leased area of 8,632 m2, which are described and characterized in items 1.1 and 1.1.2 of Section 1 of the lease agreement amended hereunder, to be delivered by the **LESSOR** to the **LESSEE** on the first (1st) day of the month of January of the year two thousand and thirteen (2013), the date on which the period of lease of such four (4) new modules begins to run.

**Section 2. Period of lease.**

The parties hereby establish by mutual agreement that, so that the end of the lease of all of the MODULES can occur during in the same period, the period of the lease of MODULES 7A and 8A shall be altered, so as to be effective for sixty-three (63) months. The beginning of the lease of MODULES 5A, 6A, 9A and 10A, therefore, as mentioned, shall be on the first (1st) day of the month of January of the year two thousand and thirteen (2013), thus ending at the same time as expected for MODULES 7A and 8A, thus scheduled for January 31, 2018, subject to the renewal on the terms of the lease agreement amended hereunder.

**Section 3. The monthly rent, its payment and the adjustment.**

The monthly rent of these new MODULES 5A, 6A, 9A and 10A, for the period from January 1, 2013 to October 31, 2013, shall correspond to the amount of seventeen *Reais* (R$17.00) per square meter, amounting to a monthly total of one hundred and forty-six thousand, seven hundred and forty-four *Reais* (R$146,744.00). For the period from January 1, 2013 to October 31, 2013 the **LESSOR** grants a discount of one *Real* per square meter (R$1.00/m2) of lease that, when multiplied by the area of 8,632 m2 of the property, totals the amount of the discount of eight thousand, six hundred and thirty-two *Reais* (R$8,632.00). The amount of the lease of the new MODULES shall be paid on the same day on which the monthly rents of MODULES 7A and 8A fall due, and together with the payment of such monthly leases of MODULES 7A and 8A, currently in an amount of seventy-four thousand, eight hundred and thirty-four *Reais* (R$74,834.00) with a discount of one *Real* per square meter (R$1.00/m2) of lease in the period from November 1, 2012 to October 31, 2013, arriving at an amount of discount of four thousand, four hundred and two *Reais* (R$4,402.00).

**Paragraph One**. The amount of the monthly lease of MODULES 5A, 6A, 9A and 10A shall be adjusted on November 1, 2013, according to the positive accrued variance of the IGP-M (General Market Price Index) calculated by the FGV (Getúlio Vargas Foundation), incurred in the period from November 1, 2012 to October 31, 2013, with the date of the first adjustment (November 1, 2013), on the terms of the agreement amended hereunder, being the base date for the other annual adjustments, so that as from then on the monthly rent shall be restated monetarily successively upon each period of twelve (12) months, always using as the base amount for the calculation of the adjustment the amount of the last adjusted lease.

**Section 4. The Insurance and the Risks Due to Occurrence of Damages and the Insurance of the Leased Property.**

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| 4.1. | For the lease of the new MODULES 5A, 6A, 9A and 10A the **LESSOR** undertakes to maintain the entire area leased, with all of its ancillary fixtures and improvements, throughout the entire period of the lease, regularly insured with a reputable and first-line insurer in the Brazilian insurance market by means of a property policy, covering all of the risks of destruction of the building, including but not limited to those deriving from destruction due to fire, lightning, explosion, landslide for any reason, windstorm and impact of vehicles, according to the valuation effective by the insurer, but never less than the amount accepted hereunder by the parties as being the true value of the property, for the first period of twelve (12) months, of eight million, six hundred and thirty-two thousand *Reais* (R$8,632,000.00), which corresponds to the amount of one thousand *Reais* (R$1,000.00) per leased constructed square meter, with restatement of the mentioned amount upon each twelve (12) months of effectiveness of this agreement, according to the monetary restatement index provided in this agreement for adjustment of the monthly rent and by the effective valuation of the leased property, always adopting the higher amount, showing the **LESSOR** as exclusive beneficiary of the insurance. |

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| 4.1.1. | The insurance shall be renewed annually and shall be maintained throughout the period that the **LESSEE** remains in the leased building and this Agreement is effective. |

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| 4.1.2. | The **LESSOR** hereby undertakes to send to the **LESSEE** copies of all of the relevant insurance policies whenever there is renewal thereof, except for the beginning of the period of lease, when the copies shall be sent upon the beginning of the activities. |

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| 4.1.3. | The **LESSOR** shall purchase the insurance referred to in item 4.1. above of this Section, choosing the insurer and effecting payment of the relevant premium, whereby the **LESSEE** undertakes to reimburse the **LESSOR** for the amount of the premium paid, making it clear that if the insurance is contracted by the **LESSOR** for the entire building and not only for the area leased to the **LESSEE**, the relevant premium shall be borne by the **LESSEE** in proportion to the leased area. |

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| 4.1.3.1. | The reimbursement referred to in sub-item 4.1.3 above shall be effective in the same way as the payment of the premium has been contracted, by means of presentation by the **LESSOR** to the **LESSEE** of the Agreement of the Contract and of the relevant invoice paid or to be paid. |

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| 4.1.3.2. | If the **LESSEE** delays the payment of one or more of the installments of the mentioned reimbursement, the **LESSEE** undertakes to pay (i) monetary restatement according to the positive variance of the General Market Price Index (IGP-M), calculated by the Getúlio Vargas Foundation (FGV) incurred from the date of the reimbursement to the date of effective payment; (ii) default interest of one percent (1%) per month or fraction thereof for the period of delay that has occurred, and (iii) a penalty fine of ten percent (10%) of the amount overdue and unpaid, duly restated monetarily, which charges shall apply irrespective of notice, notification or judicial or extrajudicial interpellation. |

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| 4.2. | The **LESSEE** hereby acknowledges and accepts on an express, irrevocable and irreversible basis, that under no circumstance may the **LESSOR** be held responsible, either directly or indirectly, by the **LESSEE** for any damages or losses caused to the equipment, machinery, stocks of materials, any other goods, documents and/or any other assets of the **LESSEE** or of any third parties, located in any one of the units of the commercial property leased hereunder, whether due to theft, robbery, fire, collapse, leakage of water, flooding or by any act of any party, or due to any other accident, insurance loss or fact that could occur for any reason, throughout the entire time in which the **LESSEE** remains in any part of the Property leased hereunder, up to its effective return fully unoccupied to the **LESSOR**, except in cases where the **LESSOR** provably has contributed, due to its fault or malice, to the occurrence of any one of the acts, accidents, insurance losses or other facts that cause damages and losses for the **LESSEE** and for third parties. |

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| 4.2.1. | As a consequence, in addition to what is stipulated above, the **LESSEE** hereby waives any right or claim that it could have in relation to the **LESSOR**, in the event that any one of the acts, accidents, insurance losses or other facts provided above could eventually occur, for any reason, except if there is exclusive or concurrent fault of the **LESSOR**. |

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| 4.2.2. | For such purpose, in order to prevent for itself the problems provided above, the **LESSEE** shall, under its exclusive and total responsibility and also at the sole and exclusive expense of the **LESSEE,** contract with a reputable company the total insurance against such insurance losses and/or accidents, and for the true values of all of its belongings and/or belongings of any third parties that are located in one of the premises of the commercial property leased hereunder and/or in its surroundings, from the beginning of the lease up to the date of its total withdrawal and of return of the commercial property leased hereunder totally unoccupied. |

**Section 5. Ratification, confirmation and renewal of the clauses of the amended lease agreement.**

All of the clauses and conditions of the lease agreement amended hereunder that have not been expressly or tacitly altered by this contractual amendment shall remain fully effective and without any alteration, whereby there is ratification, confirmation and renewal of all of such same clauses and conditions, particularly but not limited to those relative (i) to payment of all of the monthly rents and other lease charges, including due to delay of payment, and (ii) to its adjustments, including as to the shortest periodicity of the adjustment.

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

In Witness Whereof, the parties execute this private instrument of AMENDMENT OF LEASE AGREEMENT executed by and between the PARTIES on October 18, 2012, having as subject-matter MODULES 5A, 6A, 9A and 10A, included in a combination of modules of a total of 14 MODULES, constructed on “PLOT 1A” (one A), ---, the mentioned parties and the two witnesses below, in three (3) counterparts of equal content and form, so as to give it legal effect.

Recife/PE, October 18, 2012

/S/    EDISON DESILVA

**CCG POETAS LTDA.**

LESSOR

**Edison deSilva**

/S/    MARCELLO BRANCO

**BUSCA S.A.**

LESSEE

**Marcello Branco**

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| **Witnesses:** | | |
| 1.     /S/    A |  | 2.    /S/     B |
| Name: B |  | Name: |
| ID No.: |  | ID No.: |

Page \_ of \_ of the 1st Amendment to Lease Agreement by and between CCG POETAS LTDA. and BUSCA.COM. dated September 18, 2012.

**2nd PRIVATE INSTRUMENT OF AMENDMENT OF PROPERTY LEASE AGREEMENT FOR NON-RESIDENTIAL PURPOSE**

By this private instrument the parties designated and identified below, in the full and total understanding of the clauses and conditions freely covenanted and accepted, including as regards scope and effects, herein referred to jointly as PARTIES and severally as designated below, to wit:

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| 1. | **CCG POETAS LTDA**., a legal entity of private law, with its head-office at XXXX herein represented on the terms of its Articles of Association by **Edison deSilva**, Brazilian, married, industrialist, bearer of Identity Card RG No. 0000 PE, enrolled with the Individual Taxpayers Register of the Ministry of Finance under CPF/MF No. , resident and domiciled in the Municipality of Recife/PE, hereinafter referred to as “**LESSOR**”. |

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| 2. | **BUSCA S.A.**, a joint stock company enrolled with the enrolled with the National Corporate Taxpayers Register of the Ministry of Finance under with its head-office in the YYYY, herein represented by its Executive Officer, Mr. MARCELLO BRANCO, bearer of Identity Card an00000d enrolled with the Individual Taxpayers Register of the Ministry of Finance under CPF/MF No. , resident and domiciled in the Municipality of São Paulo, hereinafter referred to as “**LESSEE**”. |

Now, therefore, the Parties have agreed to amend the PROPERTY LEASE AGREEMENT FOR NON-RESIDENTIAL PURPOSES, executed on September 18, 2012, which has as its subject-matter the lease of the property located ------Modules 5A, 6A, 7A, 8A, 9A and 10A of Warehouse 1, amounting to a total of 13,034.00 m2, which shall be governed by the following clauses and conditions:

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| 1. | The monthly rent for the period of twelve (12) months counting from November 1, 2014 to October 31, 2015 is **R$18.423567/m2** of leased constructed area, thus representing a total amount of monthly rent for such period of twelve (12) months of lease of **two hundred and forty thousand, one hundred and thirty-two *Reais* and seventy-seven cents (R$240,132.77)**, to be paid in Brazilian legal currency. |

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| 2. | The leased PROPERTY has total area of **13,034.00 m2** of constructed area for lease, which multiplied by the amount of**R$18.423567/m2**, totals the amount of the monthly rent defined in item 1 above. |

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| 3. | For the amount of the lease in the period of twelve (12) months counting from June 1, 2015 up to May 31, 2016, the **LESSOR** grants to the **LESSEE** a discount of **R$0.923567/m2**. |

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| 4. | The discount of the month amount of the rent of the PROPERTY for such period of twelve (12) months of lease is **R$0.923567/m2**, which multiplied by the area of **13,034.00 m2** of the PROPERTY totals the amount of the discount of **twelve thousand, thirty-seven *Reais* and seventy-seven cents (R$12,037.77)**. |

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| 5. | As from June 1, 2016 the discount mentioned in items 3 and 4 above shall end automatically and the amount per square meter (m2) of rental of the PROPERTY, without discount, will return to the amount of **R$18.423567/m2**, with addition of the annual adjustment index defined in Section 6 of the Agreement amended hereunder, on the next base date of November 1, 2015. |

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| 6. | It is hereby agreed that if the **LESSEE** opts, irrespective of the reason, for early return of the PROPERTY in such period from June 1, 2015 to May 31, 2016, the discount granted in items 3 and 4 of this amendment shall be discontinued immediately, and the amount per square meter shall return to **R$18.423567/m2**. |

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| 7. | Thus, in addition to the provisions in item 6 above the **LESSEE** hereby undertakes, if it should opt for the early return of the PROPERTY in such period from June 1, 2015 to May 31, 2016, to pay the retroactive monthly difference assessed between the amount of the rent without the discount mentioned in items 1 and 2, **two hundred and forty thousand, one hundred and thirty-two *Reais* and seventy-seven cents (R$240,132.77)**, to be adjusted on November 1, 2015, and the amount of the current rent with the discount mentioned in items 3 and 4, **two hundred and twenty-eight thousand, ninety-five *Reais* (R$228,095.00)** to be recalculated after the adjustment on November 1, 2015. |

In Witness Whereof, the parties execute this instrument in three (3) counterparts of equal content and form, in the presence of the witnesses below:

Recife, May 31, 2015.

/S/    EDISON DESILVA

**GL POETAS LTDA.**

**Lessor**

**Edison deSilva**

/S/    MARCELLO BRANCO

**BUSCA S.A.**

**Lessee**

**Marcello Branco**

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| **Witnesses:** | | |
| 1.     /S/    WITNESS |  | 2.     /S/    WITNESS |
| ID No.: |  | ID No.: |
| CPF No.: |  | CPF No.: |

LeaseA#31

PROPERTY MANAGEMENT AND LEASING AGREEMENT

Exhibit 10.15

**PROPERTY MANAGEMENT AND LEASING AGREEMENT**

THIS **PROPERTY MANAGEMENT AND LEASING AGREEMENT** (this “Agreement”) is made and entered into as of August 16th, 2013, by and between **MORALES LLC**, a Delaware limited liability company (“Owner”), and **TARUMP COMPANY COMMERCIAL SERVICE ENTERPRISES, INC. D/B/A TARUMP BOYDON CSG**, a Texas corporation (“Manager”), under the following circumstances:

A. Owner owns the medical office building described on Exhibit A attached hereto (the “Property”).

B. Owner desires to retain Manager as property manager for the Property on the terms and conditions set forth herein.

C. Manager is qualified and properly licensed to manage the Property and to render the services required by Owner in the management of the Property.

D. Owner and Manager desire to set forth their understandings and agreements with respect to the services to be performed by Manager, the compensation to be paid to Manager and other matters relating thereto.

**NOW, THEREFORE,** in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, and the compensation to be paid as set forth herein, the parties hereto agree for themselves and their respective successors and assigns as follows:

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| **1.** | **APPOINTMENT OF MANAGER:** |

Owner hereby appoints Manager as Owner’s sole and exclusive managing agent for the purposes of managing, operating, maintaining and leasing the Property, all in accordance with this Agreement, and Manager hereby accepts such appointment. Manager represents that it is a duly licensed property manager under the laws of the state(s) in which the Property is located.

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| **2.** | **COMMENCEMENT DATE:** |

The term of this Agreement shall commence on August     , 2013, and shall continue until December 31, 2015, and thereafter shall be automatically renewed for consecutive one (1) year periods unless either party elects to not renew this Agreement by providing written notice of such election to the other no later than thirty (30) days prior to the expiration of the then current year. Notwithstanding the foregoing, the parties acknowledge that this Agreement may be sooner terminated as provided in Paragraph 14.

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| **3.** | **SERVICES TO BE PROVIDED BY MANAGER; MANAGER’S RESPONSIBILITIES:** |

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| **3.1** | **General Responsibility**: |

Manager, on behalf of Owner, shall implement, or cause to be implemented, the decisions of Owner with respect to the Property as provided in this Agreement. Manager agrees to use diligent efforts to manage and operate the Property in accordance with the terms of this Agreement, any lease(s) in place with respect to the Property, all applicable laws and regulations, and the management plans, budgets, policies, procedures and benchmark standards agreed upon with Owner and to comply with such instructions as may be imposed by Owner which are within the general scope of Manager’s duties under this Agreement.

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| **3.2** | **Supervision**: |

Manager shall hire, employ, pay and supervise all of Manager’s employees who deal with the Property at Manager’s sole cost and expense. Manager shall at all times enforce strict discipline and good order among its personnel and other agents, and shall not employ any personnel or other agents who are not skilled in the task(s) assigned. Manager shall, in the hiring and retention of employees, use such care to select qualified, competent and trustworthy employees as is commensurate with the prevailing standards in the real estate services industry for buildings and properties of comparable size and type in the market in which the Property is located.

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| **3.3** | **Confidentiality**: |

All information obtained or developed by Manager pursuant to this Agreement which is not otherwise publicly available is confidential, shall be maintained in strictest confidence, and shall not be disclosed to any person or entity other than Manager’s employees, attorneys and accountants (who shall in all cases be subject to and comply with the foregoing confidentiality agreement) without the prior written consent of Owner’s Representative (as defined in Paragraph 16.1(b)); provided, however, Manager may disclose confidential information if required by subpoena, court order or applicable law but only after giving Owner’s Representative prior written notice of the intended disclosure and giving Owner a period of ten (10) days to determine whether such disclosure by Manager should be contested at Owner’s sole cost. Manager shall provide access to confidential information only on a “need-to-know” basis. Manager shall take all reasonable steps to ensure that Manager’s employees do not use any confidential information for personal gain.

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| **3.4** | **Compliance with Laws, Agreements**: |

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|  | (a) | Manager shall keep itself fully informed of applicable laws, ordinances, regulations, rules and orders applicable to Manager in the performance of its responsibilities and services. Manager shall provide its services in full compliance with all laws, ordinances, regulations, rules and orders. Promptly following its inspections of the Property, Manager shall advise Owner in writing of any non-compliance which is actually discovered by Manager, or suspected non-compliance, with any of such laws, ordinances, regulations, rules and orders relating to the Property or use of the Property or operations or activities thereon. Manager is not required to inspect, or cause to be inspected, the Property specifically for compliance with building codes, health and safety codes, The Americans with Disabilities Act, environmental laws, or any other laws or regulations, and Manager shall not be liable to Owner for any Failure to detect |

- 2 -

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|  | any such non-compliance, except as directed by Owner and at Owner’s sole cost and expense. To the extent permitted under the approved Operating Budget for each calendar year and, when not so permitted, following written authorization from Owner’s Representative, Manager shall promptly remedy, or cause any tenant to remedy if required pursuant to its lease, as and if applicable, any violation of any such law, ordinance, rule, regulation or order relating to the use, operation, repair and maintenance of the Property, except in cases where Owner has notified Manager in writing of its contest of or its intention to contest such law, ordinance, rule, regulation or order. Notwithstanding anything to the contrary herein, Manger shall not knowingly take any action in connection with the build-out of tenant space in the Property which would cause the Property to be in violation of any fire, health, safety or building codes, laws, ordinances, rules or regulations governing such Property. |

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|  | (b) | Manager shall perform all of the obligations and duties to be performed under this Agreement and all leases, agreements, instruments or documents affecting the Property and in complying with all terms and conditions contained in any current or future ground lease, space lease, mortgage, deed of trust or other security instruments affecting the Property and brought to Manager’s attention by Owner. |

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|  | (c) | In the performance of Manager’s responsibilities hereunder, Manager shall adhere to the standard in complying with all laws, ordinances, rules, regulations or orders which pertain to or otherwise affect the manner in which Manager performs its services. Manager shall be responsible for performing its services pursuant to this Agreement in accordance with the laws applicable in the jurisdictions where the services are performed and where the Property is located. Manager shall be responsible for the performance of any of its services in a manner contrary to such laws, ordinances, rules, regulations and orders and will bear all costs, damages, losses and expenses incurred by Owner or any of its Affiliates attributable thereto; and except to the extent resulting from Manager’s gross negligence, Manager shall not be liable for any violation of law by any vendor. |

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| **3.5** | **Environmental**: |

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|  | (a) | Manager, at Manager’s sole cost and expense, shall indemnify and save harmless Owner, Owner’s successors and assigns and their respective present and future officers, directors, employees or agents (collectively, the “Owner Indemnitees”) from and against any and all liabilities, penalties, fines, forfeitures, demands, damages, losses, claims, causes of action, suits, judgments, and costs and expenses incidental thereto (including cost of defense, settlement, reasonable attorneys’ fees, reasonable consultant fees and reasonable expert fees), which Owner or any or all of the Owner Indemnitees may hereafter suffer, incur, be responsible for or disburse as a result of any Environmental Liabilities (as defined in Paragraph 22) directly or indirectly caused by or arising out of any Environmental Hazards (as defined in Paragraph 22) existing on or about the Property, but only to the extent that any such existence is caused by (i) the activities on or about the Property of Manager, or any of its officers or employees, |

- 3 -

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|  | or (ii) the activities on or about the Property of Manager’s agents or contractors (and their respective employees) which Manager was negligent in retaining. This provision shall survive the expiration or earlier termination of the Agreement. |

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|  | (b) | Owner represents and warrants to Manager that, to the best of Owner’s knowledge (without duty to investigate or inspect), the Property has not been used for the generation, storage, treatment of disposal of Hazardous Materials (as defined in Paragraph 22) and that no Hazardous Materials are located on the Property. Owner agrees to indemnify and hold harmless Manager, Manager’s successors and assigns, and their respective present and future officers, directors, employees and agents (collectively, the “Manager Indemnitees”) from and against any and all Environmental Liabilities which Manager or any or all of the Manager Indemnitees may hereafter suffer, incur, be responsible for or disburse as a result of any Environmental Hazard at the Property, except to the extent that any such existence is caused by (i) the activities on or about the Property of Manager or any of its officers or employees, or (ii) the activities on or about the Property of Manager’s agents or contractors (and their respective employees) which Manager was negligent in retaining. This provision shall survive the expiration or earlier termination of the Agreement. |

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| **3.6** | **Approved Budgets**: |

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|  | (a) | At least ninety (90) days prior to the beginning of each fiscal year of Owner which ends December 31 of each year (“Fiscal Year”), Manager shall prepare and submit to Owner for approval the following: |

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|  | (i) | A separate annual budget for operating, repairing, maintaining, marketing, promoting and leasing each Property and projection of monthly Property Income and Property Expenses for each Property for the forthcoming Fiscal Year in such format as is approved in writing by Owner (an “Operating Budget”). Each Operating Budget shall include a statement as to the amount of rentable square feet in the Property to be furnished by Owner and to be occupied by Manager and its employees as offices at no charge to Manager for the purpose of performing Manager’s obligations under this Agreement. The number, size and location of such offices shall be subject to the approval of Owner’s Representative, which approval shall not be unreasonably withheld. Disbursement categories in the Operating Budget shall be limited to Property Expenses. |

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|  | (ii) | An annual budget and projection of capital and extraordinary expenditures for the forthcoming Fiscal Year (the “Capital Budget”) for each Property in such format as is approved in writing by Owner. |

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|  | (b) | Owner shall consider the proposed budget and shall consult with Manager in the ninety (90) day period prior to the commencement of the next calendar year in order to agree on each Operating Budget and each Capital Budget. Owner shall use its reasonable efforts to approve or disapprove each Operating Budget and |

- 4 -

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|  | each Capital Budget within sixty (60) days after its receipt, but the failure of Owner to approve or disapprove any Operating Budget or Capital Budget within this time period will not indicate the approval of Owner to such Operating Budget or Capital Budget, in whole or in part. Until an Operating Budget and a Capital Budget have been approved in writing by Owner, Manager shall not incur or otherwise expend funds in excess of the amounts set forth on the approved Operating Budget and Capital Budget for the immediately preceding year, if any. |

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|  | (c) | The Operating Budget may include the pro-rata salary costs of the employees of Manager to be employed in the direct management, operation or maintenance of the Property who shall include, but not be limited to, those employees of Manager whose salaries may, from time to time, be charged prorata to the Property for direct management, operation and maintenance services rendered at the Property less than full time. Employees whose salaries are eligible to be charged prorata shall be: (i) “on site” employees who work or provide management, operation or maintenance services at the Property on a full time or part time basis (“On-Site Employees”); and (ii) employees who do not work “on site” at the Property, but who work exclusively in providing management, operation or maintenance services for the Property which have been approved in writing by Owner’s authorized representative as a reimbursable expense (“Off-Site Reimbursable Employees”). Employees whose salaries may not be charged prorata or otherwise include, but are not limited to, general management, administrative and clerical personnel, accountants, auditors and property managers not providing services at the Property on a full time or part time basis, and all other employees of Manager who are not On-Site Employees or Off-Site Reimbursable Employees. |

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| **3.7** | **Compliance with Operating Budgets**: |

Manager shall employ diligence and commercially reasonable efforts to ensure that the actual costs of maintaining and operating the Property shall not exceed the Operating Budget pertaining thereto either in total or in any separate accounting category. All expenses shall be charged to the property account and no expense may be classified or reclassified for the purpose of avoiding an excess in the annual budgeted amount of another accounting category. Manager shall obtain the prior written approval of Owner’s Representative for any expenditure that will result in an excess of five percent (5%) of the annual budgeted amount in any one expense category of the Operating Budget for the Property, or that will result in the operating expenses in the aggregate to exceed the amounts set forth in the Operating Budget by more than three percent (3%).

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| **3.8** | **Increases in Costs**: |

During the calendar year, Manager shall inform Owner in writing of any material increases in costs and expenses that were not foreseen during the budget preparation period and were, therefore, not reflected in the Operating Budget.

- 5 -

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| **3.9** | **Rent Collection**: |

Manager shall use diligent efforts to collect all rents, deposits, fees and other sums payable with respect to the Property. Manager shall not commingle any of the receipts or revenues from the Property with Manager’s own funds or funds from any property not subject to this Agreement. Manager shall collect and identify any income due Owner from miscellaneous services provided to tenants or the public including, but not limited to, parking income, tenant storage, and coin operated machines of all types. All monies so collected shall be deposited as provided in Paragraph 7.

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| **3.10** | **Tenant Defaults**. |

Manager shall not terminate any lease, lock out any tenant, institute suit for rent or for use and occupancy, or proceedings for recovery of possession, without the prior written approval of Owner’s Representative. In connection with such suits or proceedings, only legal counsel designated and retained by Owner’s Representative shall be used. All legal expenses incurred in bringing and prosecuting such approved suit or proceeding shall be submitted to Owner’s Representative for its approval prior to payment by Manager. Manager shall not write off any income items without the prior written approval of Owner’s Representative.

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| **3.11** | **Property Inspections**: |

Manager shall inspect the Property as frequently as Manager determines appropriate, but in no event less frequently than one time per fiscal quarter, as designated by Owner’s Representative. In conducting its inspections, Manager shall follow an inspection checklist approved in writing by Owner’s Representative and Manager.

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| **3.12** | **Repairs**: |

Manager shall keep, or shall cause the applicable tenant to keep, the Property and all parts thereof in a clean and attractive condition. Manager shall attend to the making and supervising of all ordinary and extraordinary repairs, decorations, replacements, additions, alterations and landscaping necessary or advisable for the proper operation of the Property, for the performance of Owner’s obligations under any lease or agreement, restrictive covenants or other encumbrances affecting the Property and to comply with all governmental or insurance requirements applicable to Owner, all of which, however, shall be subject to the limits of the approved Operating Budget. All work performed pursuant to this Paragraph shall be done in a good and workmanlike manner using building materials in conformity with the standard established by Owner. Manager shall be responsible for the making and supervision of all ordinary and extraordinary repairs, decorations and alterations; however, no single expenditure made for these purposes shall exceed $5,000 without prior written approval of Owner’s Representative or approval in a Property’s annual Operating Budget.

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| **3.13** | **Emergency**: |

In cases of emergency where repairs are immediately necessary for the preservation and safety of the Property, or to avoid the suspension of any essential service to the Property, or to avoid danger to life or property, Manager may make expenditures for such emergency repairs which exceed the amount set forth in Paragraph 3.15 without prior written approval of Owner. Manager shall promptly inform Owner of any such expenditures and the reasons therefor, but in no event later than within two (2) business days following such expenditure.

- 6 -

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| **3.14** | **Capital Expenditures**: |

The Capital Budget shall not constitute an authorization by Owner for Manager to expend any money. All capital expenditures must be specifically authorized in writing by Owner’s Representative. With respect to the purchase and installation of major items of new or replacement equipment (including, without limitation, elevators, HVAC, appliances, furniture and furnishings or floor coverings), Manager shall recommend that Owner purchase these items when Manager believes such purchase to be necessary or desirable. Owner’s Representative may arrange to purchase and install these items itself or may authorize Manager to do so subject to prescribed supervision and specification requirements and conditions. Unless Owner’s Representative specifically waives such requirements in writing, Manager shall obtain two bids for capital improvements/major items ranging from $5,000 to $15,000 and three bids for capital improvements/major items in excess of $15,000. Manager shall solicit bids in the form prescribed by Owner so that uniformity will exist in the bid quotes. Manager shall provide Owner with all bid responses accompanied by Manager’s recommendations as to the most acceptable bid. If Manager advises acceptance of other than the lowest bidder, Manager shall adequately support its recommendations in writing. Notwithstanding the foregoing, Manager and Owner acknowledge that capital expenditures with respect to the Property may be subject to specific covenants, obligations and responsibilities as set forth in the lease(s) in place with respect to the Property, the terms of which shall control with respect to this paragraph.

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| **3.15** | **Service Contracts**: |

Manager shall contract for all labor, materials and services required for the management, operation and upkeep of the Property in Manager’s own name, subject to the Operating Budget. Manager shall submit for competitive bidding any contracts with independent contractors or vendors providing services to the Property which (a) call for payments of more than $500 per month for a period of more than six (6) months; (b) call for a single payment of more than $5,000; or (c) have a total contract sum more than $15,000. All contracts for labor, materials and services must be submitted to Owner’s Representative for approval. If Manager obtains any volume discounts because of its purchasing power, Manager shall pass the benefit of such discounts on to Owner. Manager shall not knowingly enter into any contract with officers, employees, shareholders or Affiliates of Manager or anyone related to such employees, officers or Affiliates without Owner’s prior written consent in accordance with Paragraph 15. None of the following shall, with the knowledge of Manager, be vendors or contractors: (i) the directors, officers or employees of Owner or (ii) any family member of any such director, officer or employee. As used herein, “family member” means parent, spouse, child, brother or sister. Manager shall not enter into any contract with any Affiliate of Manager unless such contract has been competitively bid and the bid of Manager’s Affiliate was the lowest bid; such Affiliate is capable of performing the contracted services; and Manager has complied with Paragraph 15 with regard to such contract. Each such service contract shall:

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|  | (a) | be in the name of Manager; |

- 7 -

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|  | (b) | be assignable, at Owner’s option, to Owner or Owner’s nominee; |

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|  | (c) | be for a term of not more than twelve (12) months; |

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|  | (d) | include a provision for cancellation thereof by Owner or Manager upon not less than thirty (30) days’ written notice; |

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|  | (e) | require that the contractor/vendor provide evidence of insurance that satisfies Paragraph 4.2 (except that the limits of such insurance policies shall be acceptable if in an amount not less than $500,000); |

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|  | (f) | set forth the contractor’s tax ID number; and |

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|  | (g) | if obtainable through reasonable efforts, include the vendor’s agreement to indemnify and defend (through counsel acceptable to Owner or Manager as the case may be) Manager, Owner and its Affiliates against any claims or liabilities arising out of or alleged to arise out of, or connected with, any acts or omissions of such contractor/vendor, including liens. |

In the event that in any given situation Manager determines that it will not be feasible to comply with any of the requirements relating to competitive bidding or the terms and conditions of service contracts, Owner may authorize exceptions thereto if requested by Manager in writing. Owner may withhold such authorization in its reasonable discretion and no such authorization shall be effective unless given in writing signed by Owner’s Representative.

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| **3.16** | **Service Providers/Competitive Bidding**: |

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|  | (a) | Throughout the term of this Agreement and any extensions, Owner may provide Manager with current lists of approved vendors of certain services in the geographical area in which the Property is located. If such lists are provided, Manager shall use those vendors unless otherwise directed by Owner’s Representative. Notwithstanding that such lists of approved vendors are provided to Manager by Owner, Manager shall competitively bid such services, if required by Owner or by this Agreement, and notify Owner’s Representative if such services may be obtained from non-approved vendors more cost-effectively. If Owner’s Representative requires Manager to contract with an approved vendor despite the higher fees charged by such vendor and such higher charge results in an expenditure in excess of the agreed upon percentage of the annual budgeted amount in any accounting category of the Operating Budget (pursuant to Paragraph 3.7), such excess expenditure shall be considered approved by Owner. Nothing in this Paragraph, however, shall be construed as relieving Manager of its obligation to use its reasonable good faith efforts to negotiate the most cost beneficial contract possible with any vendor designated by Owner. If Owner has not designated a vendor, Manager shall provide the best value for performance of these services through sealed competitive bidding or negotiation, if required by Owner or by this Agreement. |

- 8 -

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|  | (b) | If this Agreement terminates as provided in Paragraph 14, or if this Agreement terminates as to any one Property as provided in Paragraphs 1 and 14, Manager shall, at Owner’s option, assign to Owner or to Owner’s nominee all service agreements pertaining to the Property. |

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| **3.17** | **Property Information Package**: |

Upon request by Owner’s Representative to Manager from time to time, Manager shall assist Owner in preparing a Property Information Package the Property, to be used by Owner for any purpose including, but not limited to, the sale of the Property. The Property Information Package shall consist of the following items:

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|  | (a) | **Lease Abstracts.** Abstracts of all leases on the Property, in such form and detail as Owner’s Representative may require; |

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|  | (b) | **Estoppel Certificates. Current Estoppel Certificates from all tenants at the Property.** To the extent such Certificates reveal problems, discrepancies, ambiguities or other matters needing resolution, Manager shall promptly begin working with the tenant to resolve the matter; |

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|  | (c) | **Rent Roll.** A current rent roll, including security deposits and delinquencies, in such form and detail as Owner’s Representative may require; |

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|  | (d) | **Leases.** Copies of all leases, licenses, concessions and other agreements affecting the Property and providing income from the Property, together with all amendments thereto; |

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|  | (e) | **Vendor Contracts.** Copies of all contracts with vendors providing goods and services to the Property, together with all amendments thereto; |

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|  | (f) | **Operating Budget.** The Operating Budget described in Paragraph 3.6; |

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|  | (g) | **Capital Budget.** The Capital Budget for the next twelve (12) month period for anticipated capital expenditures, including tenant improvements, if any; |

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|  | (h) | **Drawings and Plans.** Copies of as-built drawings and plans for the improvements on the Property; |

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|  | (i) | **Permits and Licenses.** To the extent reasonably available to Manager, copies of all licenses, permits and other governmental approvals applicable to the Property; |

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|  | (j) | **Environmental Reports.** Copies of all environmental reports, including asbestos surveys, available to Manager; |

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|  | (k) | **Monthly Income and Expense Report.** Latest monthly income and expense report with monthly and cumulative year-to-date information; and |

- 9 -

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|  | (l) | **Other Items.** To the extent reasonably available to Manager, copies of such other items as Owner may specify. |

Notwithstanding the foregoing, in the event Owner’s Representative requests that Manager, in connection with preparation of a Property Information Package, prepare any document, schedule, exhibit, financial report or analysis, spreadsheet or any other items or materials which Manager does not produce in the ordinary course of providing property management services under this Agreement (“Special Materials”), Owner shall compensate Manager for the preparation of Special Materials in an amount to be agreed upon by the parties at the time the request is made by Owner’s Representative.

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| **3.18** | **Tenant Relations**: |

Manager agrees to perform all of the following services:

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|  | (a) | Bill and undertake to collect, on behalf of Owner, all rents and other charges due from the tenants. |

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|  | (b) | Exercise diligent, reasonable efforts to perform all delegable duties of the landlord under the DFC Lease (as defined in Paragraph 3.19) and each Space Lease (as defined in Paragraph 3.19) so that each such lease remains in full force and effect and so that no default is made by Owner as landlord. |

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|  | (c) | Exercise diligent, reasonable efforts to ensure full performance by tenants of their obligations, periodically inspect the Property as reasonably necessary or desirable consistent with this Agreement, and, if appropriate, make demands on any tenants who have not performed such obligations to do so. |

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|  | (d) | Submit, at least annually, inspection reports on forms provided by Owner. |

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|  | (e) | Upon termination of the DFC Lease and any Space Leases, inspect the premises and, if appropriate and applicable, refund the security deposits of the tenant. |

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|  | (f) | Use diligent, reasonable efforts to give notice of and to enforce compliance with the rules and regulations of Owner, governing bodies, insurance carriers and association rules applicable to tenants and the Property. Manager shall not knowingly permit the use of the Property for any purposes except for uses permitted pursuant to the applicable lease(s), copies of which shall be provided to Manager by Owner’s Representative. Manager agrees not to knowingly permit the use of the Property for any purpose that might void any policy of insurance or that might render any loss under the insurance policy uncollectible or that would violate any governmental restriction. |

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|  | (g) | Maintain businesslike relations with tenants, receive requests, complaints and the like from tenants, respond and act upon the foregoing in reasonable fashion. |

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|  | (h) | Maintain, for Owner’s inspection, a record of the action taken with respect to all of the foregoing. |

- 10 -

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| **3.19** | **Leasing Services**: |

Manager acknowledges that the Property is, as of the date hereof, subject to the leases described on Schedule 3.19 attached hereto and by this reference made a part hereof (the “Existing Leases”). Following the expiration or sooner termination of the Existing Leases, Manager shall negotiate and cause to be prepared new leases of space in the Property as well as renewals or extensions of leases (“Space Leases”). Manager shall use its reasonable best efforts to ensure that the Space Leases contain rental rates that are at the highest possible level consistent with the then-current general state of the commercial real estate market in the area, but in no event, without all approvals required herein, less than the rate specified in the applicable standard business terms prescribed by Owner’s Representative. All Space Leases (i) shall be on Owner’s standard form of lease/rental agreement; and (ii) shall be in conformity with the then current standard business terms prescribed by Owner’s Representative for each Property as set forth in written directives submitted to Manager; provided, however, Owner shall have the right to change the standard form of lease/rental agreement, the standard business terms and the use restrictions and tenant covenants at any time and from time to time by delivering written notice thereof to Manager. The standard business terms referred to in clause (ii) above shall include, but may not necessarily be limited to, base rental rates, rental adjustment terms, any permitted rent concessions, terms of tenant tax and operating expense contributions and reimbursements, minimum and maximum lease terms and renewal options, maximum permissible square foot area of space that may be leased to a single tenant or one or more related tenants, and allowable tenant improvement allowances and terms of tenant improvement build-outs. All Space Leases shall be executed by Owner’s Representative or by such other person or persons as may be designated by Owner in writing from time to time. No Space Lease which does not comply with the requirements of subsections (i), (ii) and (iii) above, or has terms or provisions which deviate from or which omits any term or provision required by clauses (i), (ii) and (iii) or any of the standard business terms applicable to the Property to which such Space Lease relates, may be entered into unless Manager first submits such Space Lease to Owner’s Representative for review, and such Space Lease has been approved in writing by Owner’s Representative. In addition to the foregoing requirements, all leases to physician tenants or other referral sources must be in writing, and shall provide for rental payments that are not less than the fair market rental value of the premises leased, provide for a lease term not less than one (1) year, cover no more space than is reasonably necessary for the legitimate business use and purposes of the tenant, provide for a pass through of a pro rata share of operating expenses and shall otherwise be on commercially reasonable terms, assuming the absence of any potential for referrals.

- 11 -

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| **3.20** | **Tenant Improvement Work**: |

Manager shall, upon execution of a Space Lease, coordinate all tenant improvement construction required under the Space Lease, and if requested by Owner’s Representative, Manager shall manage the design and construction of all tenant improvement work in accordance with Exhibit C. Manager also shall plan and coordinate the move-in and move-out of tenants. Owner shall pay Manager for its management services in the design and construction of all tenant improvement work the fee set forth in Exhibit B. Upon Owner’s request, Manager shall provide copies of all contracts, invoices and other similar documentation relating to tenant improvement work being performed on the Property.

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| **3.21** | **Strategic Advisory Services**: |

Manager shall, on request of Owner, provide recommendations to Owner concerning the development of, and shall assist Owner in developing, an annual strategic plan in connection with the Property, which shall include the following:

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|  | (a) | An analysis identifying the role of the Property in the overall business plan; |

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|  | (b) | A schedule of senior level objectives and strategies to implement the objectives; |

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|  | (c) | In the development of the annual strategic plan, maintain regular communication with Owner’s Representative, and assist in planning sessions; |

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|  | (d) | Review, or upon request, prepare and deliver to Owner’s Representative forecasts and projections for the Property; |

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|  | (e) | Coordinate with and provide input to Owner’s Representative in connection with the annual budget process for the Property; |

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|  | (f) | Provide consultation, recommendations and analysis concerning the disposition of the Property, but only if Manager is engaged to provide brokerage services on an exclusive agency basis in accordance with Paragraph 11 with regard to the Property; |

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|  | (g) | Establish and deliver to Owner’s Representative operating baselines for benchmarking information with regard to the Property; |

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|  | (h) | After preparation of the annual strategic plan, coordinate the implementation of the plan; and |

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|  | (i) | Make recommendations concerning and assist in the initiation of property tax appeals with respect to the Property on an as needed basis. |

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| **4.** | **INSURANCE:** |

**4.1 Insurance Coverage.** Upon or prior to commencement of Manager’s services under this Agreement, Owner and Manager shall each procure and maintain, at their own

- 12 -

expense, all insurance policies and requirements as provided in Exhibit D to this Agreement. The carrier, total insurable values, and the various coverage types and limits of each policy of insurance must be acceptable to Owner in its commercially reasonable discretion. Manager shall be designated as a named insured under each insurance policy procured by Manager. Such policies, with the exception of Workers’ Compensation, Employer’s Liability, Employee Dishonesty/Crime, Professional Liability and Employment Practices Liability, shall name Owner as an additional insured and Owner shall be a named insured and loss payee under any required Property Insurance coverages. All deductibles, legal settlements and any other costs related to claims under the insurance policies required herein shall be Property Expenses. Upon thirty (30) days prior written notice to Manager, or immediately upon Manager’s failure to procure the required insurance in accordance with this Agreement, Owner may elect, in its sole discretion, to procure and maintain as a Property Expense, any of the insurance policies required and set forth under Exhibit D, except for Manager’s Workers’ Compensation and Employer’s Liability insurance policies. In the event Owner elects to procure directly any of the required insurance policies, then Owner shall be the named insured under each policy and Manager shall be included as a named insured or additional insured as appropriate in Owner’s sole discretion

**4.2 Safe Workplace.**Manager agrees to provide a safe and healthful workplace as required by OSHA. Manager shall conduct its work in compliance with the requirements of all federal, state and local regulatory entities, including but not limited to OSHA and the Environmental Protection Agency.

**4.3 Waiver of Liability/Subrogation.** Notwithstanding any provision of this Agreement to the contrary, each party hereto hereby waives any and every claim which arises or may arise in its favor and against the other party hereto during the Term for any and all loss of, or damage to, any of its property located within or upon, or constituting a part of, the Property, which loss or damage is covered by valid and collectible property insurance policies, to the extent that such loss or damage is recoverable under such policies. Said mutual waiver shall be in addition to, and not in limitation or derogation of, any other waiver or release contained in this Agreement with respect to any loss or damage to property of the parties hereto.

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| **5.** | **FINANCIAL REPORTING AND RECORD KEEPING:** |

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| **5.1** | **Books of Accounts**: |

Manager shall maintain, at an address set forth in Paragraph 16.3, or such other place or places as Owner may approve in advance and in writing, a comprehensive system of office records, books and accounts, including, without limitation, copies of all reports prepared pursuant to Paragraphs 3 and 5, and any additional information or records required by Owner’s Representative, including such records and information required for the preparation of federal, state and local tax returns, all in a manner reasonably satisfactory to Owner’s Representative. Manager, however, shall not be responsible for preparation of Owner’s tax returns. All entries shall be supported by sufficient documentation to show that such entries are properly and accurately recorded for the Property. Owner and others designated by Owner’s Representative, including Owner’s auditors and accountants, shall have at all times access to and the right to audit in accordance with Paragraph 6 and make copies of such records, accounts and books and all vouchers, files and all other material pertaining to the Property and this Agreement, all of which Manager shall keep

- 13 -

safe, available and separate from any records not relating to the Property. Manager shall exercise sufficient control over accounting and financial transactions as is reasonably required to protect Owner’s and its Affiliates’ assets from theft, error or fraudulent activity on the part of Manager’s associates or employees. Except to the extent resulting from the breach of this Agreement by Owner, all losses arising from such instances shall be borne by Manager and shall include, but not be limited to:

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|  | (a) | Theft of assets by Manager’s agents or employees; |

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|  | (b) | Penalties, interest or loss of vendor discounts due to delay by Manager in payment of invoices, bills or other like charges, provided that there are sufficient funds in the Operating Account to pay the invoices, bills or other like charges and provided Owner does not delay approval of such matters (if such approval is required under this Agreement); |

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|  | (c) | Overpayment or duplicate payment of invoices arising from either fraud or error of Manager or any of its officers or employees; |

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|  | (d) | A sum equal to the value of any form of payment or property made or given by contractors or vendors to Manager’s employees or agents which was paid or given with the intent to induce the purchase of goods or services for the Propery from any such contractors or vendors; and |

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|  | (e) | Unauthorized use of the Property or facilities by Manager’s employees or agents. |

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| **5.2** | **Account Classification**: |

Manager shall adopt Owner’s system of classification of accounting entries or provide a means of classification which can be easily translated by Owner to Owner’s requirements.

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| **5.3** | **Periodic Reports**: |

Manager shall provide to Owner such reports pertaining to its operation of the Property and at such times as indicated on Exhibit F attached hereto.

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| **5.4** | **Accounting Principles**: |

All financial statements and reports required by Owner shall be prepared on an accrual basis in accordance with generally accepted accounting principles.

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| **5.5** | **Books and Records**: |

Manager shall maintain, at its office located in Dallas, Texas, adequate and complete books and records, papers, accounts, contracts and files, including complete and current files of all leases for the Property, all of which will be the property of Owner, and Owner shall have access to the same at all reasonable times. Accounting records shall be kept and maintained on the real property data base/accounting application program prescribed by Owner. Manager shall maintain all of its books and records in such manner as will permit the preparation of certified audited financial statements in accordance with GAAP accounting.

- 14 -

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| **6.** | **OWNER’S RIGHT TO AUDIT:** |

Upon reasonable notice and during business hours, Owner shall have access to Manager’s books and records relating to the Property and shall have the right to audit such books and records during the period of this Agreement and for a period of two (2) years after termination of this Agreement. Owner also reserves the right upon reasonable notice and during business hours to perform any and all additional audit tests relating to Manager’s activities either at the Property or at any office of Manager. If Owner’s employees or appointees discover either weaknesses in internal control or errors in record keeping, Manager shall correct such discrepancies either upon discovery or within a reasonable period. Manager shall inform Owner in writing of the action taken to correct such audit discrepancies. Any and all such audits conducted either by Owner’s employees or appointees shall be at the sole expense of Owner. However, if an audit reveals any fraudulent or intentional errors in record keeping or any fraudulent or intentional misappropriation of funds by Manager or if the audit reveals that the net cash flow from the Property for the period audited exceeded the net cash flow reported by Manager in the periodic reports for such period by three percent (3%), the cost of the audit for the Property shall be borne by Manager. The right of Owner’s Representative to require Manager to pay the cost of audit under these circumstances shall be in addition to any other rights or remedies that Owner may have under this Agreement or in law or equity.

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| **7.** | **OWNER ACCOUNTS:** |

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| **7.1** | **Operating Account:** |

All rental or other receipts shall be deposited by Manager in a bank account (the “Operating Account”) opened by Manager in the name of Owner. If the law requires that the tenant security deposits be separately maintained, a separate interest-bearing account shall be opened by Manager at a bank approved by Owner’s Representative, and shall be maintained in accordance with applicable laws. The security deposit account shall be used only for maintaining and refunding security deposits. The bank shall be informed by Manager in writing that the funds of the security deposit account are held in trust for Owner. Manager shall maintain detailed records of all security deposits deposited into the security deposit account, and all records shall be open for inspection by Owner’s employees or appointees upon reasonable notice and during business hours. Manager shall obtain approval of Owner’s Representative prior to the return of any security deposits to any particular tenant when the amount of the return is greater than the amount the Manager is required by law to return to the tenant. Owner’s Representative may direct Manager to change a depository bank or the depository arrangements. The Operating Account and any security deposit accounts which are owned by Owner shall have Manager’s designated bonded employees additionally named as signatories with the title of Agent.

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| **7.2** | **Access to Account**: |

Through the use of signature cards, and subject to any relevant requirement of local law, authorized representatives of Owner shall be permitted access to any and all funds in the

- 15 -

Operating Account and any separate security deposit account at any time, and Owner’s Representative shall promptly advise Manager of any withdrawal of funds by Owner from such Operating Account or the security deposit account. Owner can terminate Manager’s authority to draw against such accounts at any time without notice to Manager.

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| **8.** | **COSTS PAID FROM THE OPERATING ACCOUNT:** |

Manager may pay only the following expenses directly from the Operating Account, subject to the conditions set forth in Paragraph 3 (including, without limitation, the Operating Budget) and obtaining any and all consents, approvals or authorizations of Owner required under Paragraph 3, in each case to the extent such amounts are not payable by the applicable tenant pursuant to the DFC Lease or the Space Lease(s):

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|  | (a) | Reasonable cost to comply with and correct any violation of federal, state and municipal laws, ordinances, regulations and orders relative to the leasing, use, repair and maintenance of the Property, or relating to the rules, regulations or orders of the local Board of Fire Underwriters or other similar body; |

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|  | (b) | Actual and reasonable cost of constructing all tenant improvements and making all repairs and alterations; |

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|  | (c) | Costs incurred by Manager in connection with all service contracts and agreements permitted to be entered into by Manager pursuant to this Agreement or otherwise approved by Owner in accordance with Paragraph 3.15; |

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|  | (d) | Costs of collection of delinquent rentals collected through a collection agency which has been approved in writing in advance by Owner’s Representative for the specific delinquent rentals; |

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|  | (e) | Legal fees and expenses, provided such attorneys have been designated and retained in accordance with Paragraph 3.10 by Owner in writing, and the specific amount of such attorney’s fee has been approved of by Owner in accordance with Paragraph 3.13 in writing in advance of payment; |

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|  | (f) | Costs of lease-up, operation, cleaning and maintenance of the Property, including but not limited to the cost of all utilities; |

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|  | (g) | Promotional expenses, including brochures, advertising, broker fees and tenant locator/referral fees approved by Owner’s Representative; |

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|  | (h) | Cost of business licenses required for the legal operation of the Property; |

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|  | (i) | All real and personal property taxes and assessments, including without limitation all general and special assessments and improvement district charges; |

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|  | (j) | Fees to any co-brokers representing tenants in Space Lease transactions, provided that the obligation has been submitted to and approved by Owner’s Representative; and |

- 16 -

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|  | (k) | Any other expenses to the extent reflected in the then applicable approved Operating Budget. |

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| **9.** | **COSTS WHICH ARE NOT REIMBURSED:** |

The following expenses or costs incurred by or on behalf of Manager in connection with the management, operation and leasing of the Property or in connection with the operation of Manager’s business shall be at the sole cost and expense of Manager and shall not be paid or reimbursed by Owner, except as provided on Exhibit B attached hereto, unless otherwise approved by Owner’s Representative:

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|  | (a) | Costs of salary and wages, payroll taxes, insurance benefits, worker’s compensation, pension benefits and other benefits of any of Manager’s employees or other personnel, except as set forth in the approved Operating Budget. |

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|  | (b) | General accounting and reporting services, to the extent these services are within the reasonable scope of Manager’s responsibility to Owner under this Agreement. |

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|  | (c) | Costs of stationary, forms, ledgers and other supplies and equipment used in Manager’s offices. |

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|  | (d) | Costs or pro rata costs of telephone and general office expenses incurred at the Property by Manager for the operation and management of properties other than the Property. |

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|  | (e) | Costs or pro rata costs of electronic data processing for data processed by computer service companies or Manager’s computers or any pro rata charge therefore, whether such computers are located at the Property or at Manager’s offices. |

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|  | (f) | Costs of all bonuses, incentive compensation, profit sharing or any pay advances by Manager to Manager’s employees. |

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|  | (g) | Costs attributable to losses arising from criminal acts or from gross negligence or fraud on the part of Manager or Manager’s affiliates, agents or employees. |

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|  | (h) | Costs of comprehensive crime insurance purchased by Manager for its own account. |

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|  | (i) | Cost of purchase or rental of computers, copiers, fax machines, telephones, office furnishings and other office equipment used at any office at a Property or any other office of Manager. |

- 17 -

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| **10.** | **DISBURSEMENTS TO OWNER; INSUFFICIENT GROSS INCOME:** |

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| **10.1** | **Disbursements to Owner**: |

On or before the tenth (10th) day of each month, Manager shall cause to be disbursed to Owner, in method and form suitable to Owner, any balance in the Depository Account in excess of the amount required to pay anticipated disbursements due and payable during such month after taking into account Property Income, receipt of which is anticipated during such month.

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| **10.2** | **Payment of Shortfall**: |

If, at any time, the Property Income from a Property is not sufficient to pay the bills and charges payable from the Operating Accounts which have been incurred with respect to such Property, Manager will submit to Owner a statement of all remaining unpaid bills and Owner will provide Manager with sufficient funds to pay any unpaid expenses. Manager shall have no obligation to advance any of Manager’s own funds to pay any such shortfall.

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| **10.3** | **Segregation of Accounts**: |

Manager shall segregate the income and expenses of each Property so that Property Income from each Property will be applied only to the bills and charges from such Property.

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| **11.** | **SALE OF A PROPERTY; COOPERATION WITH BROKER:** |

If a listing agreement is entered into with a broker other than Manager for the sale of any Property, Manager shall cooperate with such broker and permit the broker to exhibit such Property during reasonable business hours, provided the broker has secured Manager’s permission in advance. If requested by Owner’s Representative, Manager shall provide sales brokerage services for the Property as may be designated by Owner’s Representative; provided that Owner shall have no obligation to engage Manager to provide any of those services for the Property. If Owner requests Manager to provide any brokerage services, such services shall be subject to a brokerage agreement approved and executed by Owner and Manager.

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| **12.** | **COOPERATION ON CLAIMS:** |

Should any claims, demands, suits or other legal proceedings be made or instituted by any person against Owner or the title holder of any Property which arise out of any of the matters relating to this Agreement or the Property, Manager shall give Owner all pertinent information and reasonable assistance in the defense or other disposition thereof.

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| **13.** | **COMPENSATION:** |

As compensation for its services pursuant to this Agreement, Owner shall pay to Manager the fees set forth on Exhibit B. Except for the fees set forth on Exhibit B and the payments which Manager may make from the Operating Accounts as authorized pursuant to Paragraph 8 or as otherwise expressly authorized as provided elsewhere in this Agreement, Manager is not entitled to any other compensation or reimbursement for any other costs and expenses.

- 18 -

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| **14.** | **TERMINATION:** |

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| **14.1** | **Optional Termination**: |

In addition to the provisions of Paragraph 1, Owner may terminate this Agreement without cause by giving Manager not less than sixty (60) days prior notice in writing, and the date of termination shall be set forth in such notice. Manager may terminate this Agreement without cause by giving Owner not less than ninety (90) days prior notice in writing, and the date of termination shall be set forth in such notice.

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| **14.2** | **Termination by Owner “For Cause”**: |

This Agreement may be terminated by Owner “for cause” (as hereinafter defined) upon not less than five (5) business days’ prior notice to Manager. Notwithstanding the foregoing right to terminate, with respect to terminations for cause under clause (i) or (v) below, Owner shall give notice to Manager of the alleged default and Owner’s notice shall require that Manager cure the particular occurrence to the reasonable satisfaction of Owner within ten (10) days after receipt of such notice. If Manager does not so cure the occurrence within the applicable time period, or continue diligent prosecution of the cure as the case may be, then and in that event, without limitation of any other right or remedy of Owner at law or in equity, Owner may terminate this Agreement in its entirety. The term “cause” as used in this Paragraph 14 shall include but not be limited to: (i) material failure of Manager to perform its obligations under, or to comply with the provisions of, this Agreement, or to comply with the decisions or instructions of Owner; (ii) fraud or intentional misrepresentation or breach of trust by Manager; (iii) the occurrence of any of the events described in Paragraph 14.3; (iv) if Manager shall assign its rights or delegate any of its obligations under this Agreement without the assignment being first approved by Owner’s Representative; or (v) if Manager shall make expenditures or incur obligations not set forth in an annual approved Operating Budget or otherwise approved or permitted under this Agreement that are not reimbursed or otherwise cured. Notwithstanding the foregoing, nothing in this Paragraph 14.2 shall limit or otherwise place conditions upon Owner’s right to terminate the Agreement without cause as set forth in Section 14.1, which right shall not be subject to any notice or opportunity to cure in favor of Manager other than the requirement to provide Manager with written notice of its election to terminate the Agreement without cause.

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| **14.3** | **Other Events of Termination**: |

This Agreement may also be terminated by Owner in the event of a “Bankruptcy” (as hereinafter defined) of Manager. “Bankruptcy,” for the purposes of this Agreement, shall occur if Manager shall: (i) admit in writing its inability to pay its debts generally and its willingness to be adjudged a bankrupt; or (ii) file a petition in bankruptcy or a petition to take advantage of any insolvency act, file an answer admitting to, consenting to, or acquiescing in the relief sought by any such petition; or (iii) make an assignment for the benefit of creditors; or (iv) consent to or acquiesce in the appointment of a receiver or trustee of itself or of the whole or any substantial part of its property; or (v) be adjudicated a bankrupt or insolvent; or (vi) file a petition for reorganization or for the adoption of an arrangement under the Federal Bankruptcy Code, as amended, or any analogous statute of any foreign country, or an answer or admission seeking, consenting to, or acquiescing in the relief provided under the foregoing or admitting or failing to deny the material allegations of any such petition; or (vii) permit or acquiesce to the entry of an order appointing a receiver or trustee of Manager, or approving a petition filed against Manager for or affecting a reorganization or arrangement under the Federal Bankruptcy Code or any other applicable law or statute of the United States of America or any state or foreign country which order shall not be

- 19 -

vacated or set aside or stayed within sixty (60) days from the date of its entry; or (viii) permit or acquiesce to the entry of an order for any other judicial modification or alteration of the rights of creditors or mortgagees, which order shall not be vacated or set aside or stayed within sixty (60) days from the date of its entry.

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| **14.4** | **Effect of Termination:** |

Upon the effective date of any termination of this Agreement:

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|  | (a) | Manager shall promptly surrender and deliver up to Owner any and all Property Income and monies of Owner on hand or in any bank account, including all security deposits of tenants, if not previously delivered to Owner; |

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|  | (b) | Manager shall promptly deliver to Owner as received any monies received with respect to the Property after the effective date of termination; |

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|  | (c) | Manager shall promptly deliver to Owner all records, contracts, leases, receipts for deposits, unpaid bills, materials, supplies, keys, contracts, documents, plans, specifications, promotional materials, and all other accountings, papers, documents and records pertaining to this Agreement or the Property; |

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|  | (d) | Manager shall promptly assign to Owner or its designee all executed contracts relating to the operation and maintenance of the Property; |

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|  | (e) | Manager shall promptly deliver to Owner a final accounting, reflecting the balance of income and expenses of the Property, as of the date of termination which shall be delivered within thirty (30) days after such termination; |

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|  | (f) | Manager shall immediately cease the performance of all services required to be performed by Manager under this Agreement with respect to the Property and vacate such portion of the Property; |

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|  | (g) | Manager shall use reasonable efforts to cooperate with Owner to accomplish an orderly transfer of the operation and management of the Property to the party designated by Owner; |

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|  | (h) | Manager agrees that the termination of this Agreement in accordance with the terms of this Agreement by Owner will not create or give rise to any liability of or against Owner, except for post-termination obligations of Owner expressly set forth herein, and Manager waives all rights to institute any proceeding whatsoever against Owner based in any way on such termination of this Agreement in accordance with applicable terms of this Paragraph 14. The prior two sentences will not limit Manager’s (i) right to collect all fees and expense reimbursements permitted pursuant to Paragraph 8 or otherwise expressly provided in this Agreement to which it had become entitled prior to and through the date of termination, less any sums owned by Manager to Owner as a result of any default or breach by Manager, or (ii) right to contest by appropriate legal proceeding any “for cause” termination; and |

- 20 -

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|  | (i) | No such termination of this Agreement (either in whole or in part) by Owner shall prejudice in any way Owner’s rights and remedies under this Agreement or applicable law or any of its rights to seek and recover damages and other relief on account of the default of Manager or relieve Manager of any of its obligations and liabilities that arose or accrued prior to the full or partial termination of this Agreement. |

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| **15.** | **SUBSIDIARIES AND AFFILIATES:** |

Manager agrees not to enter into any contract or lease of any kind whatsoever between Manager and any of Manager’s subsidiary corporations or other Affiliates without providing prior written notice to Owner disclosing fully the nature of the relationship between Manager and such Affiliates, and any such contract or lease shall be subject to the prior written approval of Owner’s Representative which may be withheld in its sole discretion.

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| **16.** | **REPRESENTATIVES; MEETINGS; NOTICES:** |

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| **16.1** | **Authorized Representatives**: |

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|  | (a) | Manager shall designate a representative authorized to act on its behalf with respect to the matters described in this Agreement. The authorized representative shall examine documents submitted by Owner and shall promptly render decisions pertaining thereto to avoid unreasonable delay in the performance of Manager’s obligations hereunder. Owner shall communicate with Manager through its authorized representative. Manager’s authorized representative initially shall Tyrone Sorce or, in his absence, Bonny Anza. Manager’s authorized representative may be changed from time to time upon prior written notice to Owner’s Representative. |

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|  | (b) | Owner shall designate Owner’s Representative who shall be authorized to act on Owner’s behalf with respect to certain matters as provided in this Agreement. Owner’s Representative shall examine documents, notices and other requests submitted by Manager and shall promptly render decisions pertaining thereto (where decisions are requested or otherwise required by the terms of this Agreement) to avoid unreasonable delay in the performance of the services of Manager. Manager will communicate with Owner through such designated representatives. Owner’s Representative initially shall be James Schmid. Owner’s Representative may be changed from time to time upon written notice to Manager given by an authorized officer of Owner, and Owner reserves the right to designate different individuals as Owner’s Representative for the Property. The representatives of Owner shall each be given copies of all notices, reports, correspondence and other documents and communications of every kind, which are given or delivered by Manager under the terms of this Agreement or otherwise relating to the Property. |

- 21 -

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| **16.2** | **Periodic Meetings**: |

The authorized representatives of Owner and Manager will meet as requested by Owner’s Representative, but not more frequently than once each calendar month, to review matters relating to the Property and this Agreement, including, without limitation, budget variances, unanticipated increases in costs and expenses, performance standards, cost savings measures and performance.

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| **16.3** | **Notices**: |

All notices, demands, consents and reports provided for in this Agreement shall be in writing and delivered in person, or by facsimile transmission, or by certified or registered mail at the addresses set forth below or such other addresses as given in writing by one or more party to the other:

Owner:

xxxxxxxx

Orlando, FL 32801

Attention: Cecile Dembo, Esquire

with a copy to:

xxxxx

Orlando, FL 32801

Attention: Mo Blow

Telephone:

Facsimile:

Manager:

Tarump Boydon CSG

Nashville, Tennessee

Attention: Tyrone Sorce

Facsimile:

- 22 -

with copy to:

Tarump Company Commercial

Dallas, Texas 1

Attention: Bonny Anza

Facsimile:

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| **17.** | **ASSIGNMENT:** |

Except as otherwise provided in this Paragraph 17, Manager shall not assign this Agreement or any right, privilege or obligation appurtenant thereto without the prior written consent of Owner’s Representative, which Owner may withhold in its sole discretion. Notwithstanding the foregoing provisions of this Paragraph 17, Manager may assign this Agreement to an affiliate of Manager which assumes all of Manager’s obligations hereunder without the prior written consent of Owner’s Representative, but Manager shall not be released from its obligations hereunder by reason of any such assignment.

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| **18.** | **INDEMNIFICATION:** |

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| **18.1** | **Indemnification of Owner**: |

Manager indemnifies, defends (through counsel acceptable to Owner) and holds Owner, its parent, subsidiaries, Affiliates, directors, officers, partners, members, agents, servants and employees harmless for, from and against all claims, demands, causes of action, losses, damages, fines, penalties, liabilities, costs and expenses, including attorney’s fees and court costs, sustained or incurred by or asserted against Owner in excess of the limits of the insurance required to be maintained by Owner in Section 4.3, by reason of or arising out of (i) the gross negligence or willful misconduct of Manager, its employees or agents, (ii) the dishonest acts of Manager’s employees or agents, (iii) any claims brought against Owner by Manager’s employees or agents specifically asserting claims arising under this Agreement or with respect to the Property, and/or (iv) Environmental Liabilities for which Manager is responsible pursuant to Paragraph 3.5. Notwithstanding the foregoing, Manager shall have no obligation to indemnify, defend or hold Owner harmless to the extent that the claim arises from the gross negligence or willful misconduct of Owner, its agents or employees.

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| **18.2** | **Indemnification of Manager**: |

Owner indemnifies, defends (through counsel acceptable to Manager) and holds Manager, its parent, subsidiaries, Affiliates, directors, officers, partners, members, agents, servants and employees harmless for, from and against all claims, demands, causes of action, losses, damages, fines, penalties, liabilities, costs and expenses, including attorneys’ fees and court costs, (collectively “claims”) sustained or incurred by or asserted against Manager by reason of or arising out of (i) the gross negligence or willful misconduct of Owner, its employees or agents, (ii) Environmental Liabilities for which Owner is responsible pursuant to Paragraph 3.5,

- 23 -

(iii) building, health or safety code violations relating to the physical condition of the Property for which Manager is not responsible under the terms of this Agreement, (iv) any other matters relating to the physical condition of the Property or any other premises liability, and/or (v) any other claims brought against Manager arising out of its performance of services required herein, except as provided below. Notwithstanding the foregoing, Owner shall have no obligation to indemnify, defend or hold Manager harmless to the extent that the claim arises from (1) the gross negligence or willful misconduct of Manager, its agents or employees, or (2) acts which are outside the scope of Manager’s authority under this Agreement.

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| **18.3** | **Notice of Claim**: |

Each party shall notify the other in writing as soon as practicable after notice of a claim is received; and Owner and Manager shall use their best efforts to ensure that their respective agents and employees will not take any actions, including an admission of liability (unless legally compelled to do so), that would bar the other party from enforcing any applicable coverage under policies of insurance held by such party or would prejudice any defense of such party in any appropriate legal proceedings pertaining to any such matter or otherwise prevent such party from defending itself with respect to any such matter.

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| **18.4** | **Survival of Obligations**: |

The obligations of Owner and Manager under this Paragraph 18 shall survive the termination of this Agreement with respect to claims based on occurrences during the term of this Agreement.

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| **19.** | **ATTORNEYS’ FEES:** |

If there is any legal or arbitration action or proceeding between the parties to enforce any provision of this Agreement or to protect or establish any right or remedy of any of the parties, the unsuccessful party to such action or proceeding will pay to the prevailing party all costs and expenses, including reasonable attorneys’ fees (including allocated fees and costs of Owner’s or Manager’s in-house counsel) incurred by such prevailing party in such action or proceeding and in any appearance in connection therewith, and if such prevailing party recovers a judgment in any such action, proceeding or appeal, such costs, expenses and attorneys’ fees will be determined by the court or arbitration panel handling the proceeding and will be included in and as a part of such judgment.

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| **20.** | **MISCELLANEOUS:** |

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| **20.1** | **Time**: |

Time is of the essence of this Agreement.

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| **20.2** | **Invalidity**: |

The invalidity of any provision of this Agreement, as determined by a court of competent jurisdiction, shall not affect the validity of any other provision hereof.

- 24 -

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| **20.3** | **Waiver and Approvals**: |

No failure of either party to enforce any term hereof shall be deemed to be a waiver, and all waivers, approvals, consents, authorizations and instructions of Owner must be given in writing to become effective.

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| **20.4** | **Agreement Binding; Choice of Law**: |

This Agreement shall bind the parties, their successors and assigns. This Agreement shall be governed by the laws of the state in which the Property is located.

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| **20.5** | **Authorization**: |

By executing this Agreement, both parties represent that they are authorized and have the power to enter into this Agreement.

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| **20.6** | **Construction**: |

This Agreement shall not be construed either for or against either party.

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| **20.7** | **Complete Agreement; Amendment**: |

This Agreement and the Exhibits attached hereto (which Exhibits are hereby made a part of this Agreement) contain all agreements of the parties with respect to any matter mentioned herein. No prior agreement or understanding pertaining to any such matter shall be effective. This Agreement may be modified in writing only, signed by the parties at the time of modification.

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| **20.8** | **Pronouns**: |

The pronouns used in this Agreement referring to Manager shall be understood and construed to apply whether the Manager be an individual, partnership, limited liability company, corporation or an individual or individuals doing business under a firm or trade name.

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| **20.9** | **Headings**: |

All headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement.

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| **20.10** | **No Partnership**: |

Owner and Manager are not partners or joint venturers with one another, and nothing in this Agreement shall be construed to make them partners or joint venturers or impose any liability as such on either of them.

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| **20.11** | **No License to Use Trademarks; Advertising**: |

Manager shall have no right to display or otherwise use the name or trademarks and service marks of Owner in Manager’s own promotions, advertising, press releases or otherwise without first obtaining the prior written consent of Owner’s Representative which Owner may withhold in its sole and absolute discretion. Neither Owner nor Manager shall acquire any right, title or interest in or to the other party’s service marks and trademarks by virtue of this Agreement. To

- 25 -

the extent that Owner agrees to permit Manager to use or display Owner’s service marks and trademarks, Manager shall discontinue all such use or display upon termination of this Agreement. Any press releases, publicity statements or promotional materials regarding this Agreement, the Property or the appointment of Manger or which in any way mention or refer to Owner may not be issued by Manager without the prior written consent of Owner’s Representative, which Owner may withhold in its sole and absolute discretion.

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| **20.12** | **Limitation on Pledging Credit**: |

Manager shall not borrow any money or execute any promissory note, bill of exchange or other obligation, mortgage or encumbrance in the name and on behalf of Owner to pledge the credit of Owner or any of its Affiliates without the prior written consent of Owner’s Representative.

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| **20.13** | **Counterparts**: |

This Agreement may be executed in several counterparts, each of which shall be an original but all of which shall constitute one and the same instrument.

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| **20.14** | **Access to Books and Records**: |

Upon written request of the Secretary of Health and Human Services, the Comptroller General or any of his or her duly authorized representatives, Manager shall make available those contracts, books, documents and records necessary to verify the nature and extent of the cost of providing its services. Such inspection shall be available up to four (4) years after the rendering of such services. The parties agree that any attorney-client, accountant-client or any other legal privilege shall not be deemed waived by virtue of this Paragraph.

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| **21.** | **PROTECTION OF REIT STATUS.** |

Manager acknowledges that CNL Healthcare Properties, Inc., a Maryland corporation (“CNL REIT”) and an indirect owner of Owner, has elected to be treated as a real estate investment trust (a “REIT”) within the meaning of Sections 856 through 860 of the Internal Revenue Code of 1986, as amended (the “Code”), and Manager agrees that without the prior written consent of Owner (which may be given or withheld in Owner’s sole discretion), it will not (a) accept, or cause or allow to be earned, any rents or license fees or other amounts to be paid by a tenant or occupant at the Property that would be based, in whole or in part, on the income or profits derived by the business activities of such tenant or occupant, (b) furnish or render any services to a tenant or occupant at the Property other than services customarily furnished or rendered in connection with the rental of real property of a similar class in the geographic market in which the Property is located, or (c) accept, or cause or allow to be earned, any payments or other amounts which would fail to qualify as “rents from real property” as described in Section 856(d) of the Code. Accordingly, Manager shall not provide any services giving rise to such non qualifying income and shall not provide or allow to be provided by others any new services related to the Property without the prior written consent of Owner, which consent may be withheld in Owner’s sole discretion. In the event Owner consents to the provision of any non-customary services by Manager to any tenant or licensee of the Property, such services shall be provided by Manager at competitive rates and for its own account and neither Owner nor CNL REIT, directly or indirectly, shall participate in the collection of or share in the revenues or

- 26 -

profits derived from such services. Without limiting the generality of the foregoing, with respect to any of the services to be rendered by Manager for the Property, Manager agrees that it will not enter into any subcontract with or otherwise engage the services of any Person from whom Owner or CNL REIT, directly or indirectly, derives any revenue (including, for example, from a tenant of the Property), without the prior written consent of Owner. Manager further represents and warrants that neither Owner nor CNL REIT, directly or indirectly, derives any revenue from Manager, except for rent paid by Manager to occupy Management Space to manage the Property, which space shall be used solely for the management of the Property. Owner shall reimburse Manager for all reasonable out-of-pocket legal fees incurred by Manager in complying with the terms of this Section.

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| **22.** | **DEFINITIONS:** |

The following terms shall have the meanings set forth as follows:

**22.1**“Affiliate” when used in relation to a specified Person shall mean (i) all Parents of such Person, (ii) any other Person fifty percent (50%) or more of whose outstanding voting shares, partnership interests, membership interests or other equity ownership interests are owned by the specified Person, either directly or indirectly through one or more intermediaries, and (iii) any other Person, fifty percent (50%) or more of whose outstanding voting shares, partnership interests, membership interests or other equity ownership interests are owned by a Parent of the specified Person, either directly or indirectly through one or more intermediaries.

**22.2**“Agreement” shall have the meaning set forth in the introductory paragraph.

**22.3**“Bankruptcy” shall have the meaning set forth in Paragraph 14.3.

**22.4**“Capital Budget” shall have the meaning set forth in Paragraph 3.6(a)(ii).

**22.5**“Cause” shall have the meaning set forth in Paragraph 14.2.

**22.6**“Environmental Hazard” shall mean Hazardous Materials (as defined below), or the storage, handling, production, disposal, treatment or release thereof.

**22.7**“Environmental Liabilities” shall mean any liability, penalties, fines, forfeitures, demands, damages, losses, claims, causes of action, suits, judgments, and costs and expenses incidental thereto (including cost of defense, settlement, reasonable attorneys’ fees, reasonable consultant fees and reasonable expert fees), arising from or based on (i) environmental contamination or the threat of environmental contamination or (ii) non-compliance or violation of any federal, state or local law, regulation, rule or ordinance pertaining to Hazardous Materials, and shall include, but not be limited to, liability arising from:

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|  | (a) | any governmental action, order, directive, administrative proceeding or ruling; |

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|  | (b) | personal or bodily injuries (including death) or damages to any property (including loss of use) or natural resources; or |

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|  | (c) | clean-up, remediation, investigation, monitoring or other response action. |

- 27 -

**22.8**“Fiscal Year” shall have the meaning set forth in Paragraph 3.6.

**22.9**“Gross Receipts” shall mean all amounts and sums actually collected or received by Manager as rents or other charges for use and occupancy of space in the Property or for any services, equipment or furnishings provided in connection with such use or occupancy, including without limitation real estate taxes, operating expense reimbursements, payments made by occupants, rental increases due to cost-of-living provisions, payments made in consideration of the cancellation, surrender or modification of any Space Lease, damages by reason of any default (including without limitation applications of security deposits upon such default), and the proceeds of rental interruption insurance, but shall exclude any other amounts and sums collected or received related to the Property, including without limitation income derived from interest on bank accounts or otherwise, hazard or liability insurance or eminent domain proceeds, tax abatement awards, discounts and dividends on insurance policies, and remodeling and other like costs charges to tenants.

**22.10**“Hazardous Material” shall mean (a) any hazardous waste, any extremely hazardous waste, or any restricted hazardous waste, or words of similar import, as defined in the Resource Conservation and Recovery Act (42 U.S.C. §6901 et. seq.); (b) any hazardous substances as defined in the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601 et seq.); (c) any toxic substances as defined in the Toxic Substances Control Act (15 U.S.C. §2601 et seq.); (d) any pollutant as defined in the Clean Water Act (33 U.S.C. §1251 et seq.); (e) gasoline, petroleum or other hydrocarbon products or by-products; (f) asbestos; (g) any material, substance or waste subject to regulation pursuant to any regulations implementing the National Environmental Policy Act, including, but not limited to, those regulations set forth in 47 C.F.R. §1.1301-1.1319 (1986), as amended and supplemented from time to time and any similar replacement regulations; or (h) any other materials, substances or wastes subject to environmental regulation under any applicable federal, state or local law, regulation or ordinance now or hereafter in effect.

**22.11**“Manager” shall have the meaning set forth in the introductory paragraph.

**22.12**“Operating Account” shall have the meaning set forth in Paragraph 7.1.

**22.13**“Operating Budget” shall have the meaning set forth in Paragraph 3.6(a)(i).

**22.14** “Owner” shall have the meaning set forth in the introductory paragraph.

**22.15**“Owner’s Representative” shall have the meaning set forth in Paragraph 16.1(b).

**22.16**“Parent” when used in relation to a specified Person shall mean a Person who owns fifty percent (50%) or more of the outstanding voting shares, partnership interests, membership interests or other equity ownership interests of the specified Person, either directly or indirectly through one or more intermediaries.

**22.17**“Person” shall mean any individual, corporation, partnership, joint venture, association, joint stock company, limited liability company, limited liability partnership, trust, unincorporated organization, government or any agency or political subdivision thereof, or any other form of entity.

- 28 -

**22.18**“Property” shall have the meaning set forth in the recitals.

**22.19**“Property Expenses” shall mean all expenses which Manager may pay from the Operating Accounts in accordance with Paragraph 8.

**22.20**“Property Income” shall mean all income and other amounts and sums derived from or payable with respect to the Property or the use, operation or occupancy thereof, including, by way of example, but not necessarily limited to: all rents or other charges for use and occupancy of space in the Property or for any services, equipment or furnishings provided in connection with such use or occupancy; real estate taxes, insurance and operating expense reimbursements; rental increases due to cost-of-living provisions; sums payable in consideration of the cancellation, surrender or modification of any Space Lease; damages by reason of any default (including, without limitation, applications of security deposits upon such default); all other sums payable by occupants; the proceeds of rental interruption insurance; income derived from interest on bank accounts or otherwise; hazard or liability insurance or eminent domain proceeds; tax refunds; tax abatement awards; discounts and dividends on insurance policies; tenant improvement, remodeling and other like costs charged to tenants and income from vending machines and other coin operated devices located on the Property, but excluding income from radio frequency antenna devices located on the Property if managed under an agreement between Owner and any third party.

**22.21**“Space Leases” shall have the meaning set forth in Paragraph 3.19(b).

**22.22**“Special Materials” shall have the meaning set forth in Paragraph 3.17.

- 29 -

**IN WITNESS WHEREOF,**the parties hereto have executed this Agreement as of the date and year first above written.

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| **OWNER**    MORALES LLC,  a Delaware limited liability company | | |  |  |  | **MANAGER**    TARUMP COMPANY  COMMERCIAL SERVICE ENTERPRISES,  INC. D/B/A TARUMP BOYDON CSG | | |
|  |  | |  | |  | |  | |
| By: |  | /s/ Cecile Dembo |  |  |  | By: |  | /s/ Tyrone Sorce |
|  |  | Cecile Dembo |  |  |  | Title: |  | Senior Vice President |
| Title: |  | Vice President |  |  |  | Date: |  | 8/8/13 |
|  |  | |  | |  | |  | |
| Date: |  |  |  |  |  |  |  |  |

- 30 -

**SCHEDULE OF EXHIBITS**

Exhibit A - Description of the Property

Exhibit B - Manager’s Fees

Exhibit C - Tenant Buildout Services

**EXHIBIT A**

**Description of the Property**

[Intentionally Omitted]

**EXHIBIT B**

**Manager’s Fees**

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| 1. | **Property Management Fee**. Owner shall pay to Manager an annual fixed “Property Management Fee” equal to three percent (3%) of the rental and other revenues collected from the Property for which Property Management Services are being provided hereunder. Such fee shall be payable monthly in level installments equal to one-twelfth (1/12th) of such annual fixed fee. Manager shall send to Owner an invoice for such fee by the last day of each month, and Owner shall pay such invoice by check by the 15th day of the following month. |

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| 2. | **Leasing Fee**. Owner shall pay to Manager a four percent (4%) leasing commission on all new leases and two percent (2%) leasing commission on all renewals of Existing Leases. Any co-brokerage shall be considered by Owner on a case-by-case basis. Such commission shall be due upon payment by the applicable tenant of its first month’s rent under such new or renewed lease. |

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| 3. | **Construction Management Fees; Tenant Improvements**. If construction management services in accordance with Exhibit C are requested by Owner for the build out of tenant improvements in any space leased in a Property as provided in Section 3.20, Owner shall pay to Manager for such management services a fee equal to five percent (5%) of the amount of the final construction budget (as approved by Owner’s Representative pursuant to Exhibit C) for each such project, but excluding design and engineering fees; provided that the fee shall be reduced to three percent (3%) for the portion of any project costs in excess of $250,000. Such fee shall be due in a single lump sum installment following the date (the “Completion Date”) when all of the following have occurred: (a) the certificate of occupancy (or the local equivalent) for the leased space involved in the project has been issued by the governmental authority having jurisdiction, and (b) the architect has issued its certificates of substantial completion and final payment. Such fee shall be payable within thirty (30) days after Manager has delivered to Owner an invoice and satisfactory evidence that the events described in the preceding sentence have occurred. |

**EXHIBIT C**

**Tenant Buildout Services**

[Intentionally Omitted]

**EXHIBIT D**

**REQUIRED INSURANCE COVERAGE**

[Intentionally Omitted]

**EXHIBIT E**

**REPORTS TO OWNER**

[Intentionally Omitted]

**EXHIBIT G**

**OFFICE PROPERTY SERVICES QUESTIONNAIRE**

**SCHEDULE 3.19**

**EXISTING LEASES**

[Intentionally Omitted]

**LeaseA#32**

EXHIBIT 10.10

**Exhibit 10.10**

**STAFF LEASING AGREEMENT**

THIS STAFF LEASING AGREEMENT (the “Agreement”) is made and entered into effective as of April 1, 2011 (the “Effective Date”), by and between Merchant, LLC, an Oklahoma limited liability company (the “Company”), and Medhelp, a Nevada limited liability company (the “Lessor”), in connection with that certain Stock Purchase Agreement dated as of April 1, 2011 (the “Purchase Agreement”), by and among Spafun Trust, Inc., a California not-for-profit corporation (“Buyer”); the Company, Vivo, LLC, an Oklahoma limited liability company (“Vivo”), and Healthcheck LLC, an Oklahoma limited liability company (“Seller”).

**RECITALS**

A. The Company is the owner and operator of an acute care hospital facility located at xxx Oklahoma (the “Hospital”), where it provides a variety of inpatient and outpatient services; and

B. Lessor currently employs or has contracted with various clinical, administrative and other personnel, including physicians and senior executives, who are qualified to provide services to the Company for the efficient and effective operation of the Hospital; and

C. As of April 1, 2011, the Buyer entered into the Purchase Agreement with the Seller to acquire all ownership interests of the Company and the Hospital; and

D. The Company desires to lease certain employees and contractors from the Lessor, and Lessor desires to lease to the Company, such employees and contractors necessary for the effective provision of health care services to patients of the Hospital, upon the terms and subject to the conditions set forth in this Agreement.

**NOW, THEREFORE,**for and in consideration of the mutual representations, warranties, agreements, and covenants in this Agreement, and other good and valuable consideration exchanged between the parties, the receipt and sufficiency of which are hereby acknowledged, the parties intending to be legally bound agree as follows:

**AGREEMENTS**

**1. Leasing of Employees**. The Lessor currently employs or has otherwise retained the services of those professionals and staff set forth on Attachment A (the “Hospital Staff”). Lessor agrees to lease such individuals to Company to occupy and perform the functions of the positions set forth in Attachment A for the purposes of providing services to Company in the operation of the Hospital. Lessor shall engage in good faith efforts to employ or otherwise retain professionals, clinicians and other staff to occupy and perform the functions set forth in Attachment A during the term of this Agreement. This shall include listing the Company’s available

positions in printed advertisements and handling orientation functions for any newly hired employees. Company further agrees that the Hospital Staff shall be subject to Lessor’s compliance policies and procedures. Lessor shall assist the Company in obtaining liability and other customary and required types of insurance on behalf of the Hospital Staff pursuant to the provisions of the Management Services Agreement (as defined below). Lessor and its Affiliates will be endorsed as additional insureds on the commercial general liability and professional liability policies of the Company described above, including any excess (umbrella) policies to the extent applicable. The insurance coverages required above, through a policy or endorsement, will include a provision that the policy and endorsements relevant to this Agreement may not be canceled or modified without thirty (30) days’ prior written notice to Lessor. The Company will furnish a certificate of insurance to Lessor prior to the commencement of the lease of the Hospital Staff, showing compliance with the provisions of this Section 1.

**2. Leasing Fees.**

**(a) Direct Cost Reimbursement**. Subject to the restrictions contained herein, the Lessor shall be responsible for payment of any salary, wages, other compensation and taxes relating to such compensation of the Hospital Staff. The Lessor shall invoice or otherwise document, on a quarterly basis, an amount equal to the salary, wages or other compensation, any taxes payable by Lessor with respect to such compensation (including FICA, Medicare contributions or unemployment taxes) and Lessor-paid or accrued benefits, including any bonus, incentive, severance or overtime pay, if applicable, attributable on a pro-rata basis to services provided to Company (“Hospital Staff Cost”) of each member of the Hospital Staff during the previous month. The Company shall also be responsible for any additional costs and expenses, such as employee education training programs, if agreed to in advance by Company. The Company shall pay the Lessor such invoiced amounts within thirty (30) days of the date of each invoice. The Lessor shall pro-rate the foregoing leasing fees for partial months during which the Hospital Staff is leased to the Company. Any increase in the Hospital Staff Cost, whether on an annual basis or otherwise, shall be subject to the Operating Plan, as such term is defined in the separate Management Services Agreement between the parties of even date herewith (the “Management Services Agreement”).

**(b) Staff Leasing Fee**. In addition to the direct cost reimbursement described in Section 2(a) above, the Company shall also pay to Lessor a leasing fee equal to one hundred percent (100%) of the salary, wages or other compensation (excluding benefits) paid to the Hospital Staff. Such leasing fee shall also be invoiced on a quarterly basis and shall be paid by the Company with the Hospital Staff Cost.

**3. Direction of Hospital Staff.**Promptly after execution of this Agreement by the parties, the Lessor shall provide the Hospital Staff to the Company for the provision of services. The Lessor shall be ultimately responsible for their supervision, direction and control, subject to the provisions of the Management Services Agreement.

2

**4. Termination of Individuals; Company’s Participation in Replacement Employment Decisions**. Should any member of the Hospital Staff not perform to the Company’s reasonable satisfaction, the Company may submit a complaint in writing to the Lessor. The Lessor will carefully consider the Company’s complaint and will handle the complaint consistent with the Lessor’s human resources policies and the Company’s needs. In addition, the Company shall, at its option, have the right to interview any persons applying to fill a replacement position and provide the Lessor with its opinions regarding such interviews for the Lessor’s consideration. However, the Lessor retains the right to have final say over employment decisions concerning any of the Hospital Staff.

**5. Term and Termination**.

**(a) Term.**

**(i) Initial Term.**Unless extended under this Section 5(a) or earlier terminated under Section 5(b) of this Agreement, the initial term (the “Initial Term”) of this Agreement is for the period of twelve (12) months, beginning at 12:01 a.m. (Central time) on the next day following the Effective Date.

**(ii) Renewal Terms.**Upon the expiration of the Initial Term, the term of this Agreement will automatically renew and extend for additional one-year terms, upon the terms and conditions then in effect, unless either party gives written notice to the other of its election not to renew at least ninety (90) days prior to the applicable renewal date. The term of this Agreement, including the Initial Term or any renewal term of this Agreement, is referred to in this Agreement as the “Term.”

**(iii) No Subsequent Agreements.**If this Agreement is terminated within one year following the Effective Date, the Company and Lessor will not enter into an agreement involving the lease of the Hospital Staff within one year from the effective time of the termination, unless the new agreement has the same terms, including the same leasing fees for the lease of the Hospital Staff.

**(b) Grounds for Termination.**This Agreement will terminate upon the occurrence of any of the following conditions or events:

**(i) Mutual Agreement.**The Company and Lessor may agree in writing to terminate this Agreement at any time;

**(ii) Without Cause by Either Party.**Either may terminate this Agreement at any time without cause by giving at least ninety (90) days’ advance notice to the other party stating the effective time of termination of this Agreement;

**(iii) Loss of Licensure.**Lessor may terminate this Agreement, at its sole election if the Hospital or the Company fails to maintain its status as a properly licensed healthcare service provider and/or facility. Moreover, if the Company intends to convert the status of the Hospital to a federally qualified health center, it must obtain the prior written consent of the Lessor to any such change of status;

**(iv) Exclusion from Third-Party Payor Programs.**Lessor may terminate this Agreement, at its sole election, if the Company is barred or excluded as a provider in Medicare or Medicaid or any other Third-Party Payor Programs (as such term is defined in the Management Services Agreement);

3

**(v) Change of Control of Company**. Lessor may terminate this Agreement, if any of the following occur with respect to the Company: (A) a merger or consolidation of the Company with or into another entity; (B) the sale, license or transfer of all or substantially all of the properties and assets of the Company or its subsidiaries; (C) any acquisition by any person of beneficial ownership of a majority of the equity of the Company (whether or not newly-issued shares or equity interests) in a single transaction or a series of related transactions; (D) the redemption or repurchase of equity interests representing a majority of the voting power of the outstanding shares of equity of the Company; or (E) any other change of control of more than fifty percent (50%) of the outstanding voting power of the Company.

**(vi) Termination for Insolvency.**By either party upon the filing of a petition in voluntary bankruptcy or an assignment for the benefit of creditors by the other party or upon other action taken or suffered, voluntarily or involuntarily, under any Applicable Laws for the benefit of debtors by the other party, except for the filing of a petition in involuntary bankruptcy against the other party which is dismissed within sixty (60) days thereafter;

**(vii) Termination of Business Associate Exhibit.**The Company may terminate this Agreement in accordance with the provisions of Article 4 of the Business Associate Exhibit attached to the Management Services Agreement as Exhibit B;

**(viii) Good Reason by Company.**The failure or refusal by Lessor to faithfully or diligently perform its responsibilities or obligations under this Agreement, following written notice to Lessor specifying the grounds for termination and the actions by Lessor that would allow Lessor to cure the grounds and avoid termination, and giving Lessor no less than thirty (30) days to complete the actions to the reasonable satisfaction of the Company; or

**(ix) Good Reason by Lessor.**The failure or refusal by the Company to faithfully or diligently perform its responsibilities or obligations under this Agreement, following written notice to the Company specifying the grounds for termination and the actions by the Company that would allow the Company to cure the grounds and avoid termination, and giving the Company no less than thirty (30) days to complete the actions to the reasonable satisfaction of Lessor.

**(c) Effects of Termination.**In addition to the other specified effects of termination of this Agreement:

**(i)**In the event the Company terminates this Agreement, it may during any notice period prior to the effective time of termination, relieve Lessor of its regular responsibilities under this Agreement if there is a reasonably foreseeable risk of serious bodily harm to patients from Lessor continuing to furnish the Management Services during the notice period.

4

**(ii)**If the Company terminates this Agreement without cause pursuant to Section 5(b)(ii), or if the Lessor terminates this Agreement pursuant to Section 5(b)(v), then the Company shall be obligated to pay to Lessor (A) all Management Fees which have accrued through the effective date of such termination and (B) a termination fee equal to the product of the aggregate staff leasing fees paid to the Lessor pursuant to Section 2(b) of this Agreement for the 12-month period ended on the last day of the month immediately prior to the month during which the Company delivered notice of termination of the Agreement to the Manager (or, if the Agreement has been terminated prior to the expiration of a 12-month period of the Term, the amount of such staff leasing fees paid for such shorter period will be annualized based upon the average monthly fees paid during such shorter period), multiplied by three (3).

**(iii)**After termination, neither party will have any further rights, duties, or obligations under this Agreement, except as specifically provided otherwise herein for obligations that survive termination or are to be performed following termination of this Agreement. Each party will remain liable and responsible to the other for all obligations and duties arising or accruing under this Agreement prior to the effective date of termination and for all acts and omissions of such party prior to such termination.

**6. REPRESENTATIONS, WARRANTIES, AND COVENANTS OF COMPANY.**The Company represents, warrants, and covenants to and with Lessor that:

**(a) Organization.**It is a limited liability company duly organized, validly existing, and in good standing under the Applicable Laws (as such term is defined in the Management Services Agreement) of its state of formation, with full power and authority to conduct its business as it is now being conducted.

**(b) Authority.**It has the requisite right, power, authority, and capacity to execute, deliver and perform its obligations under this Agreement. The execution, delivery and performance of this Agreement have been duly authorized by all necessary action on the part of the Company.

**(c) Licensure.**It now possesses a valid and unrestricted license to own and operate the Hospital under the laws of the state in which the Hospital is located. If the Company intends to convert the status of the Hospital to a federally qualified health center, it must obtain the prior written consent of the Manager to any such change of status.

**(d) No Medicare/Medicaid Exclusion.**It has not been excluded, debarred, or suspended or deemed ineligible to participate in Medicare, Medicaid, or any other Third-Party Payor Programs, and is not the subject of any investigation regarding its participation in Medicare, Medicaid, or any other Third-Party Payor Programs, and has not been convicted of any crime relating to any Medicare, Medicaid, or any other Third-Party Payor Programs.

**(e) No Conflict.**Neither the making of this Agreement nor its performance by the Company will violate any Applicable Laws to which it is subject.

5

**7. REPRESENTATIONS, WARRANTIES, AND COVENANTS OF LESSOR.**Lessor represents, warrants, and covenants to and with the Company that:

**(a) Organization.**It is a corporation duly organized, validly existing, and in good standing under the Applicable Laws of its state of formation, with full power and authority to conduct its business as it is now being conducted.

**(b) Authority.**It has the requisite right, power, authority, and capacity to execute, deliver and perform its obligations under this Agreement. The execution, delivery and performance of this Agreement have been duly authorized by all necessary action on the part of Lessor.

**(c) No Medicare/Medicaid Exclusion.**It has not been excluded, debarred, or suspended or deemed ineligible to participate in Medicare, Medicaid, or any other Third-Party Payor Programs, and is not the subject of any investigation regarding its participation in Medicare, Medicaid, or any other Third-Party Payor Programs, and has not been convicted of any crime relating to any Medicare, Medicaid, or any other Third-Party Payor Programs.

**(d) No Conflict.**Neither the making of this Agreement nor its performance by Lessor will violate any Applicable Laws to which it is subject.

**8. INDEMNIFICATION.**

**(a) Indemnification by Lessor.**Lessor will indemnify and hold harmless the Company, its Affiliates, and their respective directors, officers, employees, representatives, agents, and attorneys from, against, for and in respect of any and all damages, penalties, fines, interest and monetary sanctions, losses, obligations, liabilities, claims, deficiencies, costs and expenses, including, without limitation, reasonable attorneys’ fees and other costs and expenses incident to any investigation, claim or Proceeding (collectively, the “Company’s Losses”) suffered, sustained, incurred, or required to be paid by any of them in connection with (i) a breach or default of this Agreement by Lessor, including a breach of any representation, warranty, or covenant made by Lessor in or pursuant to this Agreement, or (ii) Lessor’s willful misconduct, bad faith, or gross negligence in the performance of any of its obligations under this Agreement.

**(b) Indemnification by Company.**The Company will indemnify and hold harmless Lessor and its directors, officers, employees, representatives, agents, and attorneys from, against, for and in respect of any and all damages, penalties, fines, interest and monetary sanctions, losses, obligations, liabilities, claims, deficiencies, costs and expenses, including, without limitation, reasonable attorneys’ fees and other costs and expenses incident to any investigation, claim or Proceeding (collectively, the “Lessor’s Losses”) suffered, sustained, incurred, or required to be paid by any of them in connection with Lessor’s performance of its obligations under this Agreement other than Lessor’s Losses resulting from Lessor’s willful misconduct, bad faith or gross negligence in the performance of its obligations under this Agreement.

**(c) Notice of Loss.**Except to the extent set forth in the next sentence, neither the Company nor Lessor will have any liability under this Section 8 with respect to a particular matter unless a notice (the “Indemnification Notice”) setting forth in reasonable detail the breach which is asserted has been given to the indemnifying party. Notwithstanding the preceding sentence, failure of the indemnified party to give notice hereunder will not release the indemnifying party from its obligations under this Section 8, except to the extent the indemnifying party is actually prejudiced by the failure to give notice.

6

**(d) Right to Defend.**

**(i)**Upon receipt of notice of any investigation, claim, or proceeding for which indemnification might be claimed by an indemnified party, the indemnifying party is entitled to defend, contest, or otherwise protect against such investigation, claim, or proceeding at its own cost and expense, and the indemnified party must reasonably cooperate in any such defense or other action, including the assertion of any counterclaim or cross claim.

**(ii)**The indemnified party shall have the right, but not the obligation, to participate at its own expense in a defense thereof by counsel of its own choosing, but the indemnifying party is entitled to control the defense unless the indemnified party has relieved the indemnifying party from liability with respect to the particular matter or the indemnifying party fails to assume defense of the matter. If the indemnifying party fails to defend, contest, or otherwise protect in a timely manner against any such investigation, claim, or proceeding, the indemnified party shall have the right, but not the obligation, to defend, contest, or otherwise protect against the same and make any compromise or settlement thereof and recover the entire cost thereof from the indemnifying party including reasonable attorneys’ fees, disbursements and all amounts paid as a result of such investigation, claim, or proceeding or the compromise or settlement thereof; provided, however, that the indemnified party must send a written notice to the indemnifying party of any such proposed settlement or compromise, which settlement or compromise the indemnifying party may reject, in its reasonable judgment, within thirty (30) days after its receipt of the written notice.

**(iii)**A failure by the indemnifying party to reject such settlement or compromise within such 30-day period will be deemed an acceptance of such settlement or compromise. The indemnified party shall have the right to effect a settlement or compromise over the objection of the indemnifying party; provided, however, that if (A) the indemnifying party is contesting such claim in good faith, or (B) the indemnifying party has assumed the defense from the indemnified party and the indemnifying party has a net worth in excess of the amount being sought, the indemnified party must first waive, in a written instrument reasonably acceptable to the indemnifying party, any right to indemnity therefore.

**(iv)**If the indemnifying party undertakes the defense of such matters, the Indemnified Party will not, so long as the indemnifying party does not abandon the defense thereof, be entitled to recover from the indemnifying party any legal or other expenses subsequently incurred by the indemnified party in connection with the defense thereof other than the reasonable costs of investigation undertaken by the indemnified party with the prior written consent of the indemnifying party and other than such amounts incurred where a conflict of interest is reasonably determined to exist by the indemnified party such that more than one legal counsel is reasonably needed.

7

**9. MISCELLANEOUS.**

**(a) Notices.**All notices, consents, approvals, requests and other communications under this Agreement must be in writing and will be deemed given (a) when delivered personally; (b) on the fifth Business Day after being mailed by certified mail, return receipt requested; (c) the next Business Day after delivery to a recognized overnight courier; or (d) upon transmission and confirmation of receipt by a facsimile operator if sent by facsimile, to the parties at the following addresses or facsimile numbers (or to such other address or facsimile number as such party may have specified by notice given to the other party pursuant to this provision):

|  |  |  |
| --- | --- | --- |
|  |  |  |
| if to the Company: |  | with copies (which will not constitute notice) to: |
|  |  |  |
| if to the Lessor: |  | with copies (which will not constitute notice) to: |
|  |  |  |
| Medhelp, LLC |  | Merrit Kiegler LLP |
|  |
| Oklahoma City, |  | Philadelphia PA 19103-4196 |
| Attention: David Hirschhorn |  | Attention: Henry Fuur, Esq. |
| Telecopy: ( |  | Telecopy: |

Any such notice or other communication will be deemed to have been given and received (whether actually received or not) on the day it is personally delivered or delivered by courier or overnight delivery service or sent by telecopy or, if mailed, when actually received.

**(b) Interpretation.**The article and section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the parties and will not in any way affect the meaning or interpretation of this Agreement.

**(c) Entire Agreement; Modification.**This Agreement and the related documents contained as exhibits and schedules hereto or expressly contemplated hereby contain the entire understanding of the parties relating to the subject matter hereof and supersede all prior written or oral and all contemporaneous oral agreements and understandings relating to the subject matter hereof. The exhibits, schedules and recitals to this Agreement are hereby incorporated by reference into and made a part of this Agreement for all purposes. This Agreement may be amended, supplemented or modified, and any provision hereof may be waived, only by written instrument making specific reference to this Agreement signed by the party against whom enforcement is sought.

8

**(d) Amendments Required by Prospective Legal Events.**In the event any Applicable Laws are enacted or changed in any way that could reasonably be expected to have a material adverse effect on the practical realization of the benefits anticipated by one or more parties to this Agreement at the time it was entered into, the adversely affected party or parties, as the case may be, must notify the others in writing of such change and the effect thereof. The parties will promptly begin good faith negotiations to modify this Agreement to reflect such change. If an agreement on a method for modifying this Agreement is not reached within thirty (30) days after the date the written notice was received by the last of the other parties, the matter will be resolved pursuant to the dispute resolution procedures set forth in Section 9(m). The resolution must be either to (i) structure an amendment to this Agreement which will leave the parties as nearly as possible in the same economic position in which they would have been under the original terms of this Agreement, had the change not occurred; or (ii) if it is determined that the change is so fundamental that amendment and continuation of this Agreement is not feasible, structure a termination of this Agreement that will return the parties as nearly as possible to the economic position in which they would have been had they not entered into this Agreement, without altering in a material way the economic obligations or benefits derived from this Agreement by the parties during the period it was in effect.

**(e) Binding Effect; Assignment.**This Agreement is a contract for the services of Lessor, and Lessor may not assign this Agreement without the Company’s approval, which may be withheld in the sole discretion of the Company. Subject to the preceding sentence, this Agreement will be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

**(f) Language Construction.**The language in all parts of this Agreement will be interpreted, in all cases, according to its fair meaning and not for or against any party hereto. Each party acknowledges that it and its legal counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement.

**(g) Waiver of Provisions.**Any waiver of any terms and conditions hereof must be in writing and signed by all the parties hereto. The waiver of any of the terms and conditions of this Agreement cannot be construed as a waiver of any other terms and conditions hereof.

**(h) Survival.**All obligations, liabilities, limitations of liability, disclaimers and other provisions which, by their nature, are intended to survive the expiration or termination of this Agreement will survive and remain in effect beyond any expiration or termination thereof, including without limitation, the obligations, liabilities, limitations of liability, disclaimers and other provisions set out in the various provisions of Section 5 and Section 8 of this Agreement and this Section 9.

**(i) Severability.**The invalidity or unenforceability of any provision of this Agreement will not affect the validity or enforceability of any other provision of this Agreement, each of which will remain in full force and effect, so long as the economic or legal substance of the transactions contemplated by this Agreement is not affected in a manner materially adverse to any party.

9

**(j) Expiration of Time Periods.**In the event that any date specified herein is, or that any period specified herein expires on, a Saturday, a Sunday, or a holiday, then such date or the expiration date of such period, as the case may be, will be extended to the next succeeding Business Day.

**(k) Remedies Cumulative.**No right or remedy described or provided in this Agreement or otherwise conferred upon or reserved to any party is intended to be exclusive or to preclude a party from pursuing other rights and remedies to the extent available under this Agreement, at law or in equity, and the same will be distinct, separate and cumulative and may be exercised from time to time as often as occasion may arise or as such party may deem expedient.

**(l) No Obligation to Third Parties.**Except as provided otherwise in Section 8 with respect to indemnification obligations, this Agreement is for the sole benefit of the parties hereto, and nothing expressed or implied will give or be construed to give any other Person any legal or equitable rights, remedies, obligations or liabilities under or by reason of this Agreement.

**(m) Mandatory Mediation; Binding Arbitration; Governing Law; Venue; Attorney’s Fees.**

**(i)**THE PARTIES AGREE THAT, EXCEPT FOR INJUNCTIVE OR OTHER EQUITABLE RELIEF, ANY DISPUTE BETWEEN THEM RELATING TO THIS AGREEMENT, OR THE BREACH HEREOF, SHALL, IF NEGOTIATIONS AND OTHER DISCUSSIONS FAIL, BE FIRST SUBMITTED TO MEDIATION IN ACCORDANCE WITH THE PROVISIONS OF THE COMMERCIAL MEDIATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION (“AAA”) BEFORE RESORTING TO ARBITRATION. THE PARTIES AGREE TO CONDUCT THE MEDIATION IN GOOD FAITH AND MAKE REASONABLE EFFORTS TO RESOLVE THEIR DISPUTE BY MEDIATION. THE COMMERCIAL MEDIATION RULES OF THE AAA THEN IN EFFECT SHALL BE APPLIED. THE PARTIES AGREE TO CONDUCT THE MEDIATION IN BEVERLY HILLS, CALIFORNIA, OR ANOTHER MUTUALLY AGREED UPON LOCATION.

**(ii)**THE PARTIES AGREE THAT, EXCEPT FOR INJUNCTIVE OR OTHER EQUITABLE RELIEF, ANY DISPUTE BETWEEN THEM RELATING TO THIS AGREEMENT, OR THE BREACH HEREOF, SHALL BE SUBJECT TO BINDING ARBITRATION, IF THE DISPUTE IS NOT RESOLVED BY THE MEDIATION REQUIRED UNDER THE PRECEDING SECTION 10(m)(i), IN ACCORDANCE WITH THE PROVISIONS OF THE COMMERCIAL ARBITRATION RULES OF THE AAA, AND THAT JUDGMENT ON THE AWARD RENDERED BY THE ARBITRATOR MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF. THE ARBITRATION SHALL BE HEARD BEFORE ONE (1) ARBITRATOR SELECTED IN ACCORDANCE WITH THE COMMERCIAL ARBITRATION RULES. THE COMMERCIAL ARBITRATION RULES OF THE AAA THEN IN EFFECT SHALL BE APPLIED. THE PARTIES AGREE TO CONDUCT THE ARBITRATION IN BEVERLY HILLS, CALIFORNIA, OR ANOTHER MUTUALLY AGREED UPON LOCATION.

10

**(iii)**THIS AGREEMENT, AND ANY DISPUTE BETWEEN THE PARTIES RELATING HERETO, WILL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE SUBSTANTIVE LAWS OF THE STATE OF DELAWARE, WITHOUT GIVING EFFECT TO ANY CONFLICTS OF LAW RULE OR PRINCIPLE THAT MIGHT RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

**(iv)**The prevailing party in any mediation, arbitration, or litigation shall be entitled to recover from the other party reasonable attorney’s fees, court costs, and the administrative costs, fees, and expenses of the AAA, each as applicable, incurred in the same, in addition to any other relief that may be awarded.

**(n) Confidentiality.**No party hereto will disseminate or release to any third party any information regarding any provision of this Agreement, or any financial or business information regarding the other (past, present, or future) that was obtained by the other in the course of the negotiations of this Agreement or in the course of the performance of this Agreement, including, but not limited to, any information relating to the internal operations of the Company with respect to the Hospital, without the other party’s written approval; provided, however, the foregoing will not apply to information which (i) is generally available to the public other than as a result of a breach of this confidentiality provision; (ii) becomes available on a non-confidential basis from a source other than the other party or any Affiliate or agent of the other party, which source was not itself in violation of a confidentiality agreement by providing such information; (iii) which is required to be disclosed by Applicable Laws or pursuant to court order; provided, however, that Lessor will provide the Company with prompt written notice of the required disclosure and cooperate with the Company in its reasonable efforts to resist or narrow the request for disclosure; or (iv) except as required in connection with reports or filings with the United States Securities and Exchange Commission or any applicable state departments of securities.

**(o) Counterparts.**This Agreement may be executed in one or more counterparts (including by facsimile or portable document format (.pdf)) for the convenience of the parties hereto, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

**(p) Acknowledgment.**The parties to this Agreement agree and acknowledge that: (i) they have each been independently advised by counsel in respect of the provisions of this Agreement, or have had an opportunity to be so advised, and have voluntarily waived their right to have such independent advice; and (ii) the parties have negotiated the provisions hereof on an equal footing based on equal bargaining power.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

11

**IN WITNESS WHEREOF**, the parties hereto have executed and delivered this Agreement as of the Effective Date.

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| --- | --- | --- | --- | --- |
|  |  |  |  |  |
|  | **COMPANY:**  MERCHANT, LLC | | |  |
|  | By: |  | |  |
|  |  | Name: |  |  |
|  |  | Title: |  |  |
|  | | | | |
|  | EIN: |  | |  |
|  |  | | |  |
|  | **LESSOR:**  MEDHELP | | |  |
|  | By: |  | |  |
|  |  | Name: | Norb Stag |  |
|  |  | Title: | President and CEO |  |
|  | | | | |
|  | EIN: |  | |  |

[Signature Page to Management Services Agreement]

**LeaseA#34**

**Exhibit 10.107**

**Execution Version**

**EMPLOYEE LEASING AGREEMENT**

This Employee Leasing Agreement (this **“Agreement”**), is made and entered into effective as of October 3, 2019 (the **“Effective Date”**) by and between Corcoran, Inc., a Delaware corporation (**“Lessee”**) and Nimble Corporation, an Iowa corporation (**“Lessor”**) (together with Lessee and Buyer, the **“Parties,”**and each individually, a **“Party”**). Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Purchase Agreement (defined below).

**RECITALS**

WHEREAS, Lessor, ABG-SI LLC, a Delaware limited liability company (“**Buyer**”) and certain related parties entered into an Asset Purchase Agreement dated May 24, 2019 (“**Purchase Agreement**”) pursuant to which Buyer has acquired from Lessor and its Affiliates certain Acquired Assets relating to the Lessor’s “Soccer” Business (as defined in the Purchase Agreement);

WHEREAS, in connection with an agreement between Lessee and Buyer, and to facilitate the transfer of Acquired Assets pursuant to the Purchase Agreement, Buyer has requested that Lessor enter into this Agreement with Lessee;

WHEREAS, Lessor, through its Affiliates, currently employs those individuals identified on **Exhibit A** attached hereto and incorporated herein by this reference and who are Business Employees (as defined in the Purchase Agreement) that provided service relating to the Business (together with such other employees hired hereunder during the Term as provided herein (as hereinafter defined), the **“Employees”**);

WHEREAS, Lessee shall not assume any obligations of Lessor’s or any Affiliates of Lessor’s under any collective bargaining agreement associated with any Employees; and

WHEREAS, Lessor has agreed to employ the Employees (through its Affiliates) for a limited transition period after the Closing and to lease the Employees to Lessee during such period.

**AGREEMENT**

In consideration of the foregoing, the mutual covenants herein contained and other good and valuable consideration (the receipt, adequacy and sufficiency of which are hereby acknowledged by the Parties by their execution hereof), effective as of the Effective Date the Parties agree as follows.

1. **Employment of the Employees**. Lessor shall employ the Employees throughout the Term and shall provide all wages and all benefits to the Employees during the Term in accordance with this Agreement, including without limitation, Section 7 hereof. The Parties understand and recognize that certain Employees are employed at will by Lessor, certain Employees are employed by Lessor or Affiliates of Lessor subject to the terms and conditions of a collective bargaining agreement, and the persons identified as Employees on **Exhibit A** hereto may change from time to time pursuant to the terms of this Agreement. The Parties agree that such changes shall not affect the validity of this Agreement. The Parties understand and recognize that the employer entity of the Employees may be an Affiliate of Lessor and that Affiliates of Lessor may perform the obligations of Lessor under this Agreement.

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Upon the mutual agreement of the Parties, the Lessor may terminate Employees during the Term, including upon reasonable request by Lessee, and any severance owed to the Employee shall be governed by Section 7(c) of this Agreement. Lessor may also terminate Employees during the Term in accordance with its personnel policies and practices, provided that Lessor shall notify Lessee prior to any such termination. Lessee shall have no responsibility for severance or any other costs resulting from such termination. Upon the mutual agreement of the Parties, additional Employees may be hired by Lessor and treated as Employees hereunder as of the date of hire. Lessee shall have no authority to cause Lessor to hire additional Employees without Lessor’s consent. Employees whose employment terminates in accordance with this Agreement will be deemed removed from **Exhibit A**. The Parties shall update **Exhibit A** from time to time to reflect updates to the list of Employees. **Exhibit A** further indicates certain Employees that are expected to be terminated prior to the end of the Term, per Lessee’s request (the “**Delayed Leavers**”). During the Term, Lessee shall have reasonable access to the employee records of the Employees, subject to applicable Law. It is understood and agreed that as between Lessee and Lessor Employees will devote their full time and all efforts to providing services relating to the Business during the Term.

2. **Place of Performance**. All work and services by the Employees hereunder will be performed at those post-Closing business locations of Lessor or Lessee which correspond with the locations of the Lessor’s business prior to the Effective Date or at such other place as may be reasonably designated by mutual agreement of Lessor and Lessee. If such locations are leased in whole or in part by Lessee or its Affiliates, such leasehold shall be maintained at Lessee’s sole cost and expense and will be maintained and/or equipped as necessary for the reasonable and safe performance by the Employees of their duties in material compliance with the terms of the applicable Real Property Lease and in material compliance with occupational health and safety requirements of the jurisdiction where such business locations are located.

3. **Supervision**. During the Term, Lessee shall have the authority to designate tasks to be performed by the Employees related to the Business, and shall have the authority to instruct and oversee Employees in the manner, means and method of accomplishing such work to be performed. Lessor agrees to follow Lessee’s reasonable instructions as to the day to day management of the Employees and to instruct Employees to comply with Lessee’s reasonable instructions.

4. **Status of Leased Employees**. It is the intention of the Parties that during the Term, the Employees shall be treated as employees of Lessor for all applicable requirements under applicable Law, and that the Employees not be employees of Lessee. Lessor shall be responsible for maintaining payroll records, employment eligibility forms, personnel files, medical files, workers’ compensation records, unemployment compensation records, and other documents pertaining to the Employees in accordance with applicable law.

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5. **Insurance Coverage**. During the Term, Lessor or Affiliates of Lessor shall maintain insurance coverage, including for employee practices liability, workers’ compensation, disability and unemployment insurance, related to or associated with the employment of the Employees at levels and coverage types (excluding automobile insurance) maintained by Lessor or Affiliates of Lessor with respect to the Employees immediately prior to the Effective Date. During the Term, Lessee shall obtain and maintain automobile insurance providing coverage (at levels comparable to other Lessee Affiliate employees) with respect to any Employee prior to such Employee’s using a vehicle owned or rented by Lessee during the Term. In each case, insurance proceeds received by Lessor with respect to any Employee shall be taken into account in accordance with Section 11(a) in determining the amount of Losses indemnifiable by Lessee.

6. **No Assumption of Liabilities**. No Party is assuming or responsible for any obligation or liability of any other Party as a result of this Agreement, including, but not limited to, the assumption of any of Lessor’s or any Affiliates of Lessor’s collective bargaining obligations associated with any Employees, except as may be otherwise specifically provided herein.

7. Payments to Employees; Obligations Upon Termination.

a. Wages. Subject to the other provisions of this Agreement, Lessor acknowledges and agrees that it is responsible for and will pay (in accordance with its customary biweekly (or monthly, as applicable) payroll practices) all wages, at the rates in effect as of the Effective Date, and associated federal, state and local payroll taxes and social taxes (including any social security contributions) related to or associated with the employment of the Employees during the Term in any jurisdiction. For purposes of this Section 7(a), wages shall include, any annual incentive or short-term incentive bonus payments, sick pay and accrued paid time off (including but not limited to vacation) in each case to the extent that such costs are actually incurred by Lessor during the Term. Lessor will pay such amounts directly to the Employees or the appropriate agency, division or department, as applicable.

b. Employee Benefits. During the Term, Lessor or Affiliates of Lessor shall continue to maintain employee benefit and fringe benefit plans, programs and arrangements substantially as in effect as of the Effective Date with respect to the Employees, including contributions under Lessor’s 401(k) savings plan, and continue to provide Employees with such employee benefits and fringe benefits as authorized and provided pursuant to those plans, programs and arrangements as of such date, or as thereafter amended (“Benefits”).

c. Payments Upon Termination. In the event that any Employee’s employment by Lessor is terminated during or at the expiration of the Term:

i. With respect to the Delayed Leavers (provided such Delayed Leavers’ employment is terminated during the Term as expected), and with respect to any Employee receiving an offer of employment from Lessee on terms consistent with those set forth in this Agreement with employment to begin on January 2, 2020, Lessor shall be responsible for an amount in cash equal to (i) all vacation entitlements earned by such Employee that are required to be paid on January 2, 2020 pursuant to applicable Law or Lessor’s policy and (ii) any severance pay to which such Employee may be entitled under any Employee Benefit Plan.

3

ii. With respect to any Employee who is terminated by either Party for Cause, Lessee shall not be obligated to pay such Employee (i) any vacation entitlements earned by such Employee that are required to be paid on January 1, 2020 pursuant to applicable Law or Lessor’s policy and (ii) any severance pay to which such Employee may be entitled under any Employee Benefit Plan. For purposes of this provision, the term Cause shall mean: (x) refusal by Employee to materially perform the Employee’s job duties; (y) a violation of Company’s equal employment opportunity, non-discrimination or anti- harassment policies; or (z) any act of moral turpitude, fraud or misappropriation.

iii. With respect to any Employee, other than a Delayed Leaver, who is terminated at the request of Lessee during the Term (including as a result of Lessee terminating this Agreement prior to January 2, 2020) or who receives an offer of employment from Lessee on terms that are not consistent with those set forth in this Agreement, Lessee shall be responsible for, and shall either make the payment or advance to Lessor for payment, an amount in cash equal to (A) all vacation entitlements earned by such Employee that are required to be paid in connection with such termination pursuant to applicable Law and (B) any severance pay to which such Employee may be entitled under any Employee Benefit Plan ((A) and (B) collectively the “Lessee Termination Payments”); provided, however, that if the Employee is terminated by Lessor in accordance with its personnel policies and practices or for Cause, Lessee shall not be obligated to pay the Lessee Termination Payments.

d. Retention As Independent Contractor Without Severance Obligation On Lessee. Both during and after the Term, Lessee may retain Scott Price, Ben Reiter, Brian Strauss or Bryce Wood as an independent contractor without assuming any obligation to pay those individuals severance pay or any other form of compensation or benefits under any Employee Benefit Plan, and that any such obligations shall be satisfied by Lessor.

8. Fees; Lessee’s Payment Timing; Invoicing; Reconciliation.

a. Fees; Lessee’s Payment Timing. On a monthly basis (as more particularly specified below), Lessee agrees to pay Lessor by wire transfer of immediately available funds into an account controlled by Lessor the full amount of: (i) the wage-related payments to be made by Lessor pursuant to Section 7(a) of this Agreement and which relate to Lessor’s next biweekly (or monthly, as applicable) payroll period, including for the avoidance of doubt any vacation, annual incentive or short-term incentive bonus payments related to work performed during the Term (i.e., Lessee shall not be responsible for paying bonuses related to work performed before the Effective Date that are actually paid during the Term); (ii) the estimated cost of the Benefits to be provided to the Employees during the applicable calendar month of the Term in accordance with Section 7(b) of this Agreement, based on an estimate of Actual Employment Costs (as defined below) and the Lessor’s historic costs of providing such Benefits; provided, that, in the case of the Lessor’s self-insured medical, prescription drug and dental plans the estimated cost may, at the discretion of the Lessor, be equal to (A) the COBRA premiums that would have been charged to the Employees who participate in such self-insured medical, prescription drug and dental plans during such month, had they incurred a COBRA qualifying event on the Effective Date and timely elected COBRA continuation coverage, less (B) the amounts deducted from such Employees’ pay for coverage under such plans during such month; (iii) Lessor’s or its Affiliates’ estimated cost of the Lessee Termination Payments made in accordance with Section 7(c); and (iv) Lessor’s or its Affiliates’ estimated cost of the insurance coverage to be provided to the Employees during the applicable calendar month of the Term in accordance with Section 5 of this Agreement, based on current premium rates (each a “Monthly Fee” and collectively, for the entire Term, the “Total Lease Fee”). Lessor and Lessee agree that the first $4 million of the Total Lease Fee has been prepaid.

4

b. Invoicing. Not less than ten (10) business days following each calendar month during the Term, Lessor shall provide Lessee a monthly invoice estimating the amount of each Monthly Fee owed during that calendar month in accordance with Section 8(a) of this Agreement and describing each item described in Section 8(a)(i), (ii), and (iii) above and including any applicable reconciliations in accordance with Section 8(c) of this Agreement. Lessor and Lessee agree that: (i) any amount of the Total Lease Fee in excess of the $4 million prepayment will be invoiced and paid within 30 days of receipt of the invoice; and (ii) any amount of the Total Lease Fee that is less than the $4 million prepayment shall be refunded back to Lessee within 30 days of the invoice (or such shortfall may be used as a credit against other invoices payable by Lessee to Lessor).

c. Reconciliation.

i. The costs for wages set forth in Section 7(a), plus the costs for contributions under Lessor’s 401(k) or similar savings plan, shall be established based on the actual costs related to the individual Employees during the Term. All other costs, including costs for benefits set forth in Section 7(b) (other than contributions under Lessor’s 401(k) savings or similar plan accounted for in the previous sentence), may, at the discretion of Lessor, be established by either (i) the actual costs related to the individual Employees during the Term, or (ii) an amount equal to the deemed costs attributable to an Employee, where the deemed costs are equal to fifteen percent (15%) of the aggregate amount paid to such employee pursuant to Section 7(a) of this Agreement. The costs determined by the methods set forth in the foregoing sentences shall be the “Actual Employment Costs” for the purposes of this Agreement.

ii. If during the Term, Lessor identifies that any Monthly Fee paid by Lessee was in excess of or less than Lessor’s Actual Employment Costs during the corresponding monthly payroll period to which such Monthly Fee related, Lessor shall describe such underpayment or overpayment on the next invoice provided by Lessor to Lessee and the Monthly Fee to which such invoice relates shall be increased or decreased to reflect any such underpayment or overpayment as appropriate. Lessor shall promptly provide documentation supporting any such underpayment or overpayment upon Lessee’s reasonable request.

5

iii. Within ninety (90) days after the end of the run-off period, or earlier, Lessor shall provide Lessee with documentation demonstrating Lessor’s Actual Employment Costs related to the employment of the Employees (including for costs related to Lessor’s self-insured medical, prescription drug and dental plans) during the Term or COBRA coverage period, along with the calculation of the Shortfall Amount (as defined below) or the Excess Amount (as defined below) (the “Actual Employment Costs Notice”). For purposes of this Agreement, Actual Employment Costs may, at the discretion of Lessor in accordance with Section 7(c)(i), include wages, Benefits and other ancillary employment-related costs, including, without limitation, costs of insurance coverage related to the Employees and all Taxes related to or associated with the employment of the Employees in any jurisdiction. Notwithstanding anything set forth in this Agreement to the contrary, Lessor’s Actual Employment Costs for providing coverage to Employees under its self-insured medical, prescription drug and dental plans may, at the discretion of Lessor in accordance with Section 7(c)(i), include (a) the aggregate claims that were incurred by such self-insured medical, prescription drug and dental plans for claims incurred by Employees or their eligible dependents during the Term (or COBRA coverage period, if applicable), plus (b) the administrative service fees charged with respect to Employees during the Term (or COBRA coverage period, if applicable) under the administrative services agreement for the self- insured medical, prescription drug and dental plans, plus (c) the portion of the stop-loss premium payments paid by Lessor that were attributable to coverage of the Employees under the stop-loss policy applicable to the self-insured medical, prescription drug and dental plans during the Term (or COBRA coverage period, if applicable), minus (d) the amounts deducted from the Employees’ pay for coverage under such self-insured medical, prescription drug and dental plans during the Term (or COBRA coverage period). A claim is considered to be incurred for this purpose upon the rendering of health services or upon the purchase of a drug or supply giving rise to such claim. If Lessor’s Actual Employment Costs exceed the Total Lease Fee, Lessee shall pay Lessor the amount by which the Actual Employment Costs exceed the Total Lease Fee (the “Shortfall Amount”) by wire transfer in immediately available funds into an account controlled by Lessor within twelve (12) days after receiving the Actual Employment Costs Notice. Alternatively, if the Total Lease Fee exceeds Lessor’s Actual Employment Costs, Lessor shall pay Lessee the amount by which the Total Lease Fee exceeds the Actual Employment Costs (the “Excess Amount”) by wire transfer in immediately available funds into an account controlled by Lessee within twelve (12) days after providing the Actual Employment Costs Notice. Lessee shall have the right to review Lessor’s data and calculations related to its calculation of the Actual Employment Costs and any Shortfall Amount or Excess Amount and, to the extent either Lessor or Lessee disputes its obligation to pay any Shortfall Amount or Excess Amount, as the case may be, Lessor and Lessee shall act in good faith to resolve such dispute and adjust the Total Lease Fee paid by Lessee hereunder. In addition, for purposes of this Agreement, any Shortfall Amount or Excess Amount shall be calculated in a manner that takes into account any reconciliations with respect to any Monthly Fee calculated in accordance with Section 8(c)(ii) of this Agreement and which has already been paid or reimbursed at the time of such calculation.

6

iv. The run-off period for medical, dental and prescription drug claims incurred during the Term, or during the COBRA coverage period, if applicable, but not submitted to the plans and/or the Lessor for payment or reimbursement during the Term or COBRA coverage period, as applicable, will cease twelve (12) months after the end of the Term or end of the COBRA coverage period (such that claims that are submitted to the plans or to the Lessor during the applicable run-off period will be considered an Actual Employment Cost of Lessor and reimbursable hereunder). Lessor shall provide Lessee with documentation for such run-off claims (including the application of any stop loss insurance coverage) within thirty (30) days following the end of the run-off period. The appropriate Party shall pay the other Party any additional amount owed in respect of the run-off claims (taking into account any previous reconciliations and payments made pursuant to this Section 8) by wire transfer in immediately available funds into an account controlled by the payee Party within twelve (12) days after Lessor provides such documentation and reconciliation calculation.

v. With respect to any Employees (other than Delayed Leavers, Employees terminated by either Party for Cause, and Employees terminated at the request of Lessor) or their covered dependents who elect COBRA coverage during the Term, Lessee will pay the costs associated with such coverage as set forth in this Agreement through the period that any such Employees or their covered dependents are covered by COBRA.

9. Third Party Beneficiaries. Nothing expressed by or mentioned in this Agreement is intended or shall be construed to create any third party beneficiary or other rights in any Employee (including any beneficiary or dependent thereof) to employment with Lessee or any of its Affiliates, and nothing in this Agreement shall create any such rights in any such Employee in respect of any benefits or other compensation that may be provided, directly or indirectly, under any employee benefit plans of Lessor, Lessee, or any of their respective Affiliates. Nothing in this Agreement shall be construed to (i) amend, establish or terminate, or prohibit the amendment or termination of, any employee benefit plan of Lessor, Lessee or any of their respective Affiliates or (ii) require Lessee to employ any Employee following the end of the Term for any particular time, subject to Section 12.

7

10. Tax Returns. Lessor will prepare and file all tax returns required to be filed by Lessor as a result of Lessor’s employment of the Employees during the Term (including withholding tax returns and unemployment tax returns).

11. Indemnification.

a. Indemnification by Lessee. Subject to Section 11(b), Lessee assumes the risk of all damage, loss, cost and expense associated in any way with the Employees’ performance of their job duties during the Term and being the employer of the Employees during the Term. Lessee hereby agrees to indemnify Lessor and its Affiliates and assigns and to hold Lessor and such Affiliates and assigns harmless from and against any and all liabilities, damages, costs, compensation, losses, expenses, fines, penalties and attorneys’ fees of any kind (collectively referred to as “Losses”) that may accrue to or be sustained by Lessor or such Affiliates or assigns during or relating to the Term (whether asserted during or after the Term) on account of any claim, demand, charge, suit, action, investigation or proceeding made or brought against Lessor or such Affiliates or assigns by any person or entity related to or arising from: (i) Lessee’s failure to comply with any of its obligations under this Agreement; (ii) matters relating to the Employees’ performance of their job duties during the Term and being the employer of the Employees during the Term; (iii) matters relating to the employment of the Transferred Employees by Lessee after the Term; or (iv) the ownership or operation of the Lessee’s business (or any other location at which Employees perform services pursuant to this Agreement) after the Second Closing. The foregoing indemnifications shall survive the termination of this Agreement. Notwithstanding the foregoing, Lessee’s indemnification obligations pursuant to this Section 11 shall not apply to the extent of any liabilities, damages, costs, compensation, losses, expenses, fines, penalties or attorneys’ fees arising out of or resulting from Lessor’s (or its employees other than the Employees) gross negligence or willful misconduct or Lessor’s failure to comply with any of its obligations hereunder. The determination of the amount of Losses indemnifiable by Lessee shall take into account the application of any insurance proceeds received by Lessor, participant contributions received by Lessor, and payments made to Lessor by Lessee under other provisions of this Agreement.

b. Indemnification by Lessor. Lessor assumes the risk of all damage, loss, cost and expense associated in any way with the employment of, or rendering of services by, the Employees prior to the Effective Date. Lessor hereby agrees to indemnify Lessee and its Affiliates and assigns, and to hold Lessee and such Affiliates and assigns harmless from and against any and all Losses that may accrue to or be sustained by Lessee or such Affiliates and assigns during or relating to the Term (whether asserted during or after the Term) on account of any claim, demand, charge, suit or action, investigation or proceeding made or brought against Lessee or such Affiliates or assigns by any person or entity related to or arising from: (i) Lessor’s failure to comply with any of its obligations under this Agreement, or (ii) Lessor’s (or its employees other than the Employees) gross negligence or willful misconduct; provided, however, that the gross negligence or willful misconduct of the Employees shall not be deemed to be the gross negligence or willful misconduct of Lessor.

c. Limitation of Liability. Without limiting either party’s indemnification obligations (including to the extent any Losses are required to be paid to a third party), neither Lessor nor Lessee shall have any liability for consequential, special, incidental or punitive damage incurred by any other Party or any of its Affiliates or any third party (even if any such Party has been advised of the possibility of such damages), whether based on contract, tort or any legal theory, arising out of or related to this Agreement or the transactions contemplated herein.

8

12. Employment of Lessor’s Employees at Termination.

a. Offers. At least seven (7) days prior to the end of the Term, Lessee, at the behest of Buyer, shall make written offers of employment to each of the Employees, providing each such employee with an offer of a comparable position to which the employee had during the Term and with terms consistent with this Section 12 and effective as of the end of the Term. Any Employee who accepts Lessee’s offer of employment and becomes an employee of Lessee is referred to herein as a “Transferred Employee.”

b. Employment Terms. Lessee shall provide to each Employee, other than any Delayed Leaver, an offer of employment effective as of the end of the Term which includes: (i) a base salary at a rate that is equal to at least the base salary provided to such Transferred Employee during the Term, and (ii) employment at a worksite that is no greater than fifty (50) miles from the Transferred Employee’s worksite during the Term. Moreover, other than as set forth in (i) and (ii) of the previous sentence, the terms and conditions offered to an Employee shall be in the sole discretion of Lessee, and Lessee shall not be obligated to offer equivalent terms and conditions of employment as Lessor provided to the Employee (including, but not limited to, bonus plans, severance, health- care, 401k and any other benefits), for so long as all Transferred Employees receive health and welfare benefits which are substantially similar to those offered to any similarly situated employee of Lessee.

c. Employee Records Transfer. Following the Term, Lessee may request from any Transferred Employee such Transferred Employee’s written request and consent to Lessor’s transfer to Lessee of such Transferred Employee’s official personnel file to the extent maintained by Lessor (“Employee Records Consent”). Upon receiving an Employee Records Consent, Lessor shall promptly deliver a copy of the applicable official personnel file to Lessee, to the extent permitted by applicable law

13. Late Payments. Any amount due Lessor or Lessee hereunder and which is not paid when due shall bear interest at the prime rate (as published from time to time in The Wall Street Journal) plus two percent (2%) from such due date until paid in full. Such late charges shall be in addition to any other remedies available under this Agreement or otherwise.

14. Compliance with Laws. Each of Lessor and Lessee agrees to comply in all material respects with, and will cause its employees, agents and representatives to comply in all material respects with, all applicable Laws regarding the Employees. Neither Lessor nor Lessee may discriminate against the Employees on the basis of national origin, race, color, religion, age, disability, sex or any other class protected by applicable Law.

9

15. HIPAA and Data Protection. Lessor and Lessee agree that each of the Parties shall perform its obligations under this Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health Act, and their implementing regulations, as amended from time to time (“HIPAA”). For the purposes of this Agreement, Lessee will designate any Employees who have or will have access to protected health information (as defined under HIPAA) as members of Lessee’s “workforce” (as defined under HIPAA).

Lessor and Lessee agree that each of the Parties shall perform its obligations under this Agreement in compliance with all applicable Laws, including civil and common law, statute, subordinate legislation, treaty, binding regulations, directive, decision, by law, ordinance, code, order, decree, injunction or judgement of any regulator or government entity or court which relates to data privacy or data protection and are in force from time to time.

16. Term; Termination.

a. This Agreement shall be effective for the period commencing on the Effective Date and ending at 12:01 a.m. (Des Moines, Iowa time) on January 2, 2020 (such period of time, or until such earlier termination of this Agreement, the “Term”). Notwithstanding the preceding sentence, this Agreement shall continue to be effective with respect to any Employee whose shift continues past 12:01 a.m. (Des Moines, Iowa time) on the last day of the Term until the end of any such Employee’s shift on the last day of the Term at which time the “Term” of this Agreement will expire. Lessee may elect to terminate this Agreement earlier upon reasonable advance notice to Lessor, and the Parties will cooperate in good faith to manage an orderly transition.

b. Subject to the provisions of Section 7(c), Lessor may terminate this Agreement in the event Lessee fails to make any payment due by it to Lessor hereunder and such failure to pay remains uncured upon the expiration of fifteen (15) calendar days following Lessee’s receipt of written notice thereof. Any expiration or termination of this Agreement does not affect any amounts owed by Lessee to Lessor hereunder through such expiration or termination date, or any indemnification obligation of Lessee hereunder, which indemnification obligations shall survive the expiration or termination of this Agreement.

c. The Parties may terminate this Agreement at any time upon mutual agreement.

17. Miscellaneous.

a. Entire Agreement. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof. This Agreement may not be amended other than by written instrument signed by the Parties.

b. Specific Performance. The Parties acknowledge and agree that each Party shall be entitled to seek specific performance of any of the provisions of this Agreement in addition to any other legal or equitable remedies to which such Party may otherwise be entitled for a failure by the other Party to perform its obligations set forth in this Agreement.

c. Waiver of Jury Trial. Each Party hereby waives, to the fullest extent permitted by law, any right to trial by jury of any claim, demand, action or cause of action (i) arising under this Agreement or (ii) in any way connected with or related or incidental to the dealings of the Parties in respect of this Agreement or any of the transactions related hereto, in each case, whether now existing or hereafter arising, and whether in contract, tort, equity, or otherwise. Each Party hereby further agrees and consents that any such claim, demand, action, or cause of action shall be decided by court trial without a jury and that the Parties may file a copy of this Agreement with any court as written evidence of the consent of the Parties to the waiver of their right to trial by jury.

10

d. Jurisdiction and Venue. Each of the Parties (i) submits to the exclusive jurisdiction of the Court of Chancery of the State of Delaware and any federal court located in the State of Delaware, or, if neither of such courts has jurisdiction, any state court of the State of Delaware having jurisdiction, in any action or proceeding arising out of or relating to this Agreement, (ii) agrees that all claims in respect of such action or proceeding may be heard and determined in any such court and (iii) agrees not to bring any action or proceeding arising out of or relating to this Agreement in any other court. Each of the Parties waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought and waives any bond, surety or other security that might be required of any other Party with respect thereto. Each Party agrees that service of summons and complaint or any other process that might be served in any action or proceeding may be made on such Party by sending or delivering a copy of the process to the Party to be served at the address of the Party and in the manner provided for the giving of notices in Section 17(h). Nothing in this Section 17(d), however, shall affect the right of any Party to serve legal process in any other manner permitted by law. Each Party agrees that a final, non-appealable judgment in any action or proceeding so brought shall be conclusive and may be enforced by suit on the judgment or in any other manner provided by law.

e. Remedies. The Parties agree that irreparable damage for which monetary damages, even if available, would not be an adequate remedy, would occur in the event that the Parties do not perform their respective obligations under the provisions of this Agreement (including failing to take such actions as are required of them hereunder to consummate the Transactions) in accordance with their specific terms or otherwise breach such provisions. It is accordingly agreed that the Parties shall be entitled to an injunction or injunctions, specific performance and other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement (including Buyer’s obligation to consummate the transactions). Each of the Parties agrees that it will not oppose the granting of an injunction, specific performance and other equitable relief when expressly available pursuant to the terms of this Agreement on the basis that the other Parties have an adequate remedy at law or an award of specific performance is not an appropriate remedy for any reason at law or equity.

f. Survival. Notwithstanding anything to the contrary in this Agreement, the provisions contained in Sections 6, 8, 9, 11, 13, 16 and 17 of this Agreement shall survive the expiration or termination of this Agreement.

g. Expenses. Each Party shall bear and pay its own costs and expenses relating to the preparation of this Agreement and to the transactions contemplated by, or the performance of or compliance with any condition or covenant set forth in, this Agreement.

h. Notices. All notices, requests, consents, and other communications under this Agreement shall be in writing and shall be delivered by hand, overnight courier or given by E-mail (to the E-mail address provided by the relevant party) provided that any notice delivered by E-mail must be confirmed by the recipient to be received under this Section 17(h), or mailed by first class, certified or registered mail, return receipt requested, postage prepaid:

If to Lessor, to:

Nimble Corporation XXX Des Moines, IA

Attention: Henty Walton, Chief Development Officer,

General Counsel and Secretary

or at such other address as may be furnished in writing by Lessor to Lessee and Buyer;

If to Lessee:

Corcoran, Inc.

YYYYSeattle, WA 98101

Attention: Legal Department Email:

with a copy (which shall not constitute notice) to: XYZ LLP

New York, NYAttention: A

or at such other address as may be furnished in writing by Lessee to Lessor and Buyer.

Except as otherwise provided in this Agreement, all notices and communications hereunder shall be deemed to have been duly given (i) when transmitted by E-mail and confirmed, (ii) when personally delivered or upon receipt when delivered by overnight courier or mail, in each case given or addressed as aforesaid.

i. No Joint Venture or Partnership. The Parties agree that nothing contained herein is to be construed as making the Parties joint employers of the Employees, joint venturers or partners.

j. Governing Law. This Agreement shall be deemed to be a contract made under the laws of the State of Delaware, and for all purposes shall be construed in accordance with the laws of the State of Delaware, without regard to principles of conflicts of law.

[SIGNATURES ON FOLLOWING PAGE; REMAINDER OF PAGE IS BLANK.]

11

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first written above.

LESSOR:

NIMBLE CORPORATION

By: /s/ Ivko Batric

Name: Ivko Batric

Its: Chief Financial Officer

[Signature Page to Employee Leasing Agreement]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first written above.

LESSEE:

CORCORAN, INC.

By: /s/ Irina Sokolova

Name: Irina Sokolova

Its: Chief Executive Officer

[Signature Page to Employee Leasing Agreement]

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**LeaseA#35**

EX-10.4

**Exhibit 10.4**

**EMPLOYEE LEASING AGREEMENT**

THIS EMPLOYEE LEASING AGREEMENT (this “Agreement”) is executed effective as of November 9, 2010, by and among Healthy House, Inc., a Delaware corporation (“HHMI”), HHP Limited Partnership, a Delaware limited partnership (“HHPLP” and collectively with HHMI, “HHP”), and The Jason Arwell Corporation, a Delaware corporation (“Offshoot” and together with HHMI and HHPLP the “Parties”).  Unless otherwise indicated, capitalized terms have the meanings set forth in the Separation Agreement (as hereinafter defined).

**Statement of Background Information**

WHEREAS, the Parties have entered into that certain Separation Agreement (the “Separation Agreement”) dated as of November 9, 2010;

WHEREAS, Offshoot desires to temporarily lease substantially all of the employees of HHP who are primarily engaged in Offshoot’s business so that such employees have uninterrupted benefits coverage through the end of 2010, and HHP is willing to accommodate Offshoot’s desire to temporarily lease such employees, in each case in preparation for an orderly transfer of such employees to Offshoot; and

WHEREAS, the parties desire to set forth the terms and conditions pursuant to which this employee leasing arrangement will operate.

NOW, THEREFORE, in consideration of the promises and mutual covenants set forth in the Separation Agreement and herein, and other good and valuable consideration, and contingent upon the consummation of the transactions contemplated by the Separation Agreement, the parties hereby agree as follows:

**ARTICLE 1**

**DEFINITIONS**

“Agreement” has the meaning set forth in the preamble hereto.

“COBRA” shall mean the continuation coverage requirements under Code Section 4980B and Part 6 of Subtitle B, Title I of ERISA.

“Code” shall mean the Internal Revenue Code of 1986, as amended.

“Direct Payroll Costs” shall mean, with respect to any Leased Employee or Former Leased Employee, (i) the gross amount of all salaries and wages, including severance pay (if applicable) and vacation or other paid time-off, (ii) the gross amount of any bonus, commissions or other incentive compensation payable in cash (other than any compensation or other amounts payable pursuant to the HHP Key Employee Incentive Plan), (iii) employee benefit costs (in accordance with the methodology set forth in Exhibit A), (iv) amounts payable by an employer pursuant to federal, state or other workers’ compensation, unemployment insurance, other payments required by federal, state or local law or regulations, including employer contributions

pursuant to the Federal Insurance Contribution Act, and (v) costs incurred upon the exercise of employee option awards outstanding as of the Plan Effective Date, including the fair market value of any stock delivered upon the exercise of such options.

“ERISA” shall mean the Employee Retirement Income Security Act of 1974, as amended.

“Former Leased Employees” shall mean Leased Employees who, during or upon the expiration of the Term cease to be employed by HHP or any of its Affiliates.

“HHP Indemnified Parties” has the meaning set forth in Section 4.1.

“HIPAA” shall mean the Health Insurance Portability and Accountability Act of 1996.

“Indirect Payroll Costs” shall mean, with respect to any Leased Employee or Former Leased Employee, all costs (other than Direct Payroll Costs) associated with such employee’s compensation and benefits in accordance with the methodology set forth in Exhibit A.

“Leased Employees” has the meaning set forth in Section 2.1.

“Out-of-Pocket Expenses” means, with respect to any Leased Employee or Former Leased Employee, any reasonable actual out-of-pocket expenses that are incurred by HHP arising from or relating to the employment or termination of employment of such Leased Employee or Former Leased Employee (other than Direct Payroll Costs and Indirect Payroll Costs), including, but not limited to, reasonable business expenses properly incurred by Leased Employees or Former Leased Employees, costs of cars, laptops and other equipment and services provided to Leased Employee or Former Leased Employee, and bereavement gifts and other out-of-pocket expenses incurred in the ordinary course of business consistent with past practices as an employer, but excluding general corporate overhead costs otherwise allocable to Leased Employees and Former Leased Employees or the provisions of services by such Leased Employee or Former Leased Employee.

“Separation Agreement” has the meaning set forth in the Statement of Background Information herein.

“Offshoot Indemnified Parties” has the meaning set forth in Section 4.2.

“Term” has the meaning set forth in Section 2.2.

**ARTICLE 2**

**RESPONSIBILITIES OF  HHP**

Section 2.1             Provision of Leased Employees.

Subject to the terms and conditions hereof, HHP shall furnish to Offshoot during the Term the services of (i) all of the individuals who are employed by HHP or any of its Affiliates exclusively in or in support of the Offshoot business on the Plan Effective Date and are set forth in

2

Schedule A to the Employee Matters Agreement and (ii) such additional employees of HHP or any of its Affiliates as may be set forth in a written list mutually agreed by HHP and Offshoot, with such deletions as may be requested by Offshoot or may occur in the ordinary course of business (*e.g.*, by reason of an employee’s resignation, death or disability), and such additions as may be mutually agreed by the Parties, to perform the functions and services that were performed by the employees with respect to the business of the Parties as of the Plan Effective Date (such employees, with such additions and deletions, are collectively referred to hereinafter as “Leased Employees”).  All Leased Employees will perform their usual and customary functions, including at facilities owned or leased by Offshoot or one of its Affiliates, for a period not to exceed the Term of this Agreement.

Section 2.2             Term of Agreement.

The term of this Agreement with respect to each Leased Employee shall commence as of 12:01 a.m. on the day following the Plan Effective Date and shall continue in full force and effect with respect to such Leased Employee until December 31, 2010, unless terminated earlier by Offshoot upon at least five business days’ prior written notice to HHP (the “Term”).

Section 2.3             Status of Leased Employees.

(a)           Leased Employees providing services to Offshoot under this Agreement shall at all times during the Term remain employees of HHP solely for purposes of payroll, employment taxes, employee benefits, workers compensation and related obligations.  Offshoot shall have the right to have HHP remove any Leased Employee as a service provider to Offshoot.  HHP shall have the ultimate authority to make all termination decisions; provided, however, that HHP may only terminate a Leased Employee (i) at the request of Offshoot or (ii) as determined by HHP in good faith.  HHP shall also have the ultimate authority to make all hiring decisions, but HHP shall make all reasonable efforts to accommodate Offshoot’s needs and desires in operating its business.

(b)           All Leased Employees shall be subject to supervision and control solely by Offshoot and its Affiliates, and HHP shall not have any authority or responsibility to exercise any supervision or control over Leased Employees.  In particular, Offshoot and its Affiliates shall have full and exclusive responsibility to evaluate, train, supervise, promote, discipline and control the Leased Employees, and to determine which Leased Employees shall be designated to perform required tasks.  Certain Leased Employees may hold supervisory positions and, in such capacity (unless otherwise determined by Offshoot), shall control and determine the procedures to be followed by other Leased Employees regarding the time, place and manner of performance of work for Offshoot by the Leased Employees, including determination of hours of work, rest periods, lunch periods and the delegation and assignment of work; provided, however, that such Leased Employees having supervisory responsibilities shall adhere to all of HHP’s policies, practices and contractual obligations if any, concerning days of vacation, sick time, leave and all other terms and conditions of employment unless otherwise mutually agreed by the Parties.

(c)           Leased Employees shall not be treated as agents or representatives of HHP or any of its Affiliates and shall not have any authority or responsibility to enter into any contract or otherwise take any action in the name or on behalf of HHP or any of its Affiliates, except as

3

may be specifically authorized in writing on or after the date hereof by HHP.  Likewise, Leased Employees shall not have any authority or responsibility to enter into any contract in the name or on behalf of Offshoot and its Affiliates, except as may be specifically authorized in writing by Offshoot.

Section 2.4             Standards of Performance.

In performing HHP’s obligations under this Agreement, HHP agrees that it shall in good faith exercise the same standard of care as it has used to perform such services for its own account and for its other employees, except as mutually agreed in writing by HHP and Offshoot.

Section 2.5             Employee Benefits Matters.

Throughout the Term, unless otherwise specified in this Agreement, HHP shall maintain, or continue participation in, for the benefit of all Leased Employees and, if applicable, Former Leased Employees, all employee benefit programs that HHP generally makes available to its employees as of the Plan Effective Date, including, but not limited to, qualified retirement plans, welfare plans, fringe benefit plans and workers’ compensation benefits.

**ARTICLE 3**

**RESPONSIBILITIES OF OFFSHOOT**

Section 3.1             Reimbursement of Payroll Costs; Out-of Pocket Expenses.

(a)           Offshoot shall pay HHP for all Direct Payroll Costs, Indirect Payroll Costs and Out-of-Pocket Expenses attributable to all Leased Employees and Former Leased Employees.

(b)           During the Term and thereafter to the extent applicable, HHP shall supply Offshoot with an invoice of all Direct Payroll Costs, Indirect Payroll Costs and Out-of-Pocket Expenses as soon as practicable following the end of each pay period.  Payment shall be made by Offshoot of these amounts invoiced via wire transfer of immediately available funds into a bank account designated by HHP within 15 days following the date the invoice.  To the extent any Direct Payroll Costs or Out-of-Pocket Expenses are not included within HHP’s payroll system and therefore not included in the invoices generated each pay period, HHP shall supply Offshoot with an invoice of such Direct Payroll Costs or Out-of-Pocket Expenses as soon as practicable following payment by the HHP Group, but in no event later than fifteen (15) business days following the end of each month in which payment was made by the HHP Group.

(c)           HHP shall have no obligation to continue to employ any Leased Employee who is removed by Offshoot, is not offered employment with Offshoot concurrent with the expiration of the Term or does not accept employment with Offshoot and, if HHP terminates any such Leased Employee, Offshoot Shall be responsible for, and shall pay, any and all costs and expenses (including, without limitation, all severance benefits or costs) attributable to such terminated Leased Employee.  During the 90 day period following the termination of employment of a Leased Employee, HHP shall not re-employ such Leased Employee if such Leased Employee receives severance benefits.

4

**ARTICLE 4**

**OBLIGATIONS NET OF INSURANCE PROCEEDS AND OTHER AMOUNTS**

Section 4.1             The amount which Offshoot is required to pay under this Agreement will be reduced by any Insurance Proceeds theretofore actually recovered in respect of the related Liability.  If a Party receives a payment (an “Indemnity Payment”) required by this Agreement from Offshoot in respect of any Liability and subsequently receives Insurance Proceeds, then such Party will pay to Offshoot an amount equal to such Insurance Proceeds but not exceeding the amount of the Indemnity Payment paid by Offshoot in respect of such Liability.

Section 4.2             An insurer who would otherwise be obligated to pay any claim shall not be relieved of the responsibility with respect thereto or, solely by virtue of the indemnification provisions hereof, have any subrogation rights with respect thereto.  HHP shall use its commercially reasonable efforts to seek to collect or recover any third-party Insurance Proceeds (other than Insurance Proceeds under an arrangement where future premiums are adjusted to reflect prior claims in excess of prior premiums) to which HHP is entitled in connection with any Liability for which HHP seeks indemnification pursuant to this Agreement; provided, that HHP’s inability to collect or recover any such Insurance Proceeds shall not limit Offshoot’s obligations hereunder.

Section 4.3             Any Indemnity Payment under this Agreement shall be increased to take into account any inclusion in income of HHP arising from the receipt of such Indemnity Payment and shall be decreased to take into account any reduction in income of HHP arising from such indemnified Liability.  For purposes hereof, any inclusion or reduction shall be determined (i) using the highest marginal rates in effect at the time of the determination and applicable to a corporate resident of Chicago, Illinois and (ii) assuming that HHP, including any entity that qualifies as a real estate investment trust, will be liable for Taxes at such rate and has no Tax Attributes at the time of the determination.

**ARTICLE 5**

**INDEMNIFICATION AND LIMITATION OF LIABILITY**

Section 5.1             Indemnification of HHP.

Offshoot agrees to protect, indemnify, and hold harmless HHP and its affiliates, and their respective officers, directors, employees (including Leased Employees to the extent entitled to indemnification by HHP), and agents (“HHP Indemnified Parties”), from and against and in respect of any damages which result from, arise out of or relate to this Agreement and the employment or termination of employment of Leased Employees and Former Leased Employees, except to the extent arising from or relating to the willful misconduct or gross negligence of any HHP Indemnified Parties (other than Leased Employees).  For clarification and without limiting the generality of the foregoing, HHP shall not be responsible for any act or omission of any Leased Employee, and any such act or omission shall not constitute willful misconduct or gross negligence of HHP.

5

Section 5.2             Indemnification of Offshoot.

HHP agrees to protect, indemnify and hold harmless Offshoot and its affiliates, and their respective officers, directors, employees, and agents (“Offshoot Indemnified Parties”), from and against and in respect of any damages which result from, arise out of or relate to this Agreement and the employment or termination of employment of Leased Employees and Former Leased Employees to the extent resulting from or attributable to willful misconduct or gross negligence of HHP (excluding Leased Employees).

Section 5.3             Incorporation of Separation Agreement.

The indemnification provisions in this Article 4 shall be subject to the same procedures as set forth in Section 5.5, Section 5.6, Section 5.7, Section 5.8 and Section 5.9 of the Separation Agreement.

**ARTICLE 6**

**EMPLOYMENT TAX REPORTING**

Consistent with the Leased Employees and Former Leased Employees being or having been employees of HHP, HHP shall respond to all questions and inquiries from Offshoot, state and federal agencies, and other persons regarding payroll and employment data and history relating to the Leased Employees and Former Leased Employees for periods of employment with HHP.

**ARTICLE 7**

**SEVERANCE BENEFITS**

HHP shall notify Offshoot in advance of any contemplated termination of employment of any Leased Employee prior to the termination of his or her employment if Offshoot would be liable under the terms of this Agreement for any severance benefits or costs payable to, or on account of, the terminated Leased Employee.  Each Leased Employee shall be eligible for severance benefits, in the event of a termination of his or her employment during or at the end of the Term, in accordance with the provisions of HHP’s severance policy.

**ARTICLE 8**

**COBRA AND HIPAA; FLEX PLAN**

Section 8.1             COBRA and HIPAA.

(a)           HHP shall be solely responsible for the COBRA administration of HHP’s group health plans in respect of Leased Employees and Former Leased Employees (and their qualified beneficiaries), including providing the appropriate COBRA notices and making available any coverage required under COBRA in respect of such individuals for any qualifying event (as defined in COBRA) that occurs before they transfer to employment with Offshoot and its Affiliates.

6

(b)           HHP shall provide a timely certificate of creditable coverage (within the meaning of HIPAA) to each Leased Employee (and his or her covered dependents) who transfers to employment with Offshoot and its Affiliates for any HIPAA triggering event which occurs during such employee’s employment with HHP.

Section 8.2             Code Section 125 Benefits.

During the Term, the Leased Employees shall continue to participate in the flexible benefits plans sponsored by HHP, including any health care or dependent care spending account plans.

**ARTICLE 9**

**RELATIONSHIP OF PARTIES**

Section 9.1             Delivery of Information; Cooperation Between the Parties.

Offshoot and HHP shall provide each other with all such information and materials reasonably necessary to effect HHP’s and Offshoot’s prompt and complete performance of their duties and obligations under this Agreement.  The parties agree that they shall cooperate with each other and shall act in such a manner as to promote the prompt and efficient completion of the obligations hereunder.

Section 9.2             Confidentiality.

All materials delivered by Offshoot to HHP or HHP to Offshoot pursuant to this Agreement shall be treated as confidential information unless required to be disclosed pursuant to law or an order of a court of competent jurisdiction.  The terms of this Section 7.2 shall survive termination of this Agreement.  In addition to the foregoing, the confidentiality provision contained in the Separation Agreement shall apply to this Agreement and be enforceable in accordance with the terms of the Separation Agreement.

Section 9.3             Contractor Relationship.

(a)           The Parties stipulate and agree that HHP and each Leased Employee is an independent contractor with respect to its, his or her duties to Offshoot for all payroll, benefit and workers compensation purposes.

(b)           Unless otherwise agreed by the Parties, neither Offshoot nor HHP shall represent to any party that any Leased Employee is an employee of Offshoot, or that such Leased Employee’s relationship to Offshoot is other than that of an independent contractor for purposes described in Section 7.3(a).

Section 9.4             Compliance with Law.

HHP and its employees (other than Leased Employees), and any contractors, subcontractors and other agents engaged by HHP, shall comply with all applicable laws in

7

connection with the employment or termination of employment of the Leased Employees and Former Leased Employees.

Section 9.5             Liability Insurance Coverages.

(a)           HHP shall obtain and keep in force at all times during the term of this Agreement liability insurance coverage relating to the acts, omissions or employment of all Leased Employees and Former Leased Employees, including general liability and workers compensation, as though the Leased Employees and Former Leased Employees had remained assigned to a facility operated by HHP.

(b)           Offshoot shall obtain all necessary property and casualty and other liability coverage with respect to the premises at which the Leased Employees perform services, and with respect to any acts, omissions or the use of Leased Employees as is prudent under the circumstances.

**ARTICLE 10**

**MISCELLANEOUS**

Section 10.1           Captions.

The headings of the several Articles and Sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.

Section 10.2           Governing Law.

This Agreement is made pursuant to and shall be governed by and construed in accordance with the laws of the State of New York, without regard to any conflict of law rules which might result in the application of the laws of another jurisdiction.

Section 10.3           Dispute Resolution.

In the event a dispute arises among the parties relating to this Agreement, the parties agree to resolve such dispute pursuant to the procedures set forth in Article VII of the Separation Agreement, and the procedures of Article VII of the Separation Agreement is hereby incorporated into this Agreement in its entirety.

Section 10.4           Waiver of Jury Trial.

Each of the parties hereto hereby waives the right to a trial by jury in any proceeding or litigation brought against any other party with respect to this Agreement or the transactions contemplated herein.  Each Party represents that this waiver is made knowingly and voluntarily after consultation with and upon advice of counsel and is a material part of this Agreement.

8

Section 10.5           Counterparts.

This Agreement may be executed in one or more counterparts, each of which will be considered one and the same agreement.

Section 10.6           Notices.

Any notice or communication under this Agreement shall be made in a manner consistent with Section 8.5 of the Separation Agreement.

Section 10.7           Assignment.

This Agreement shall inure to the benefit of and be binding on the successors, assigns and legal representatives of each of the Parties; provided that no Party shall assign this Agreement without the written consent of each of the other Parties and any attempted assignment without said consent shall be null, void and without any effect *ab initio*; and provided, further, that no such assignment by either Party shall release the assignor from its obligations hereunder.

Section 10.8           Amendment.

This Agreement may not be amended, modified or any provision waived, except by an instrument in writing signed by the Party or an executive officer of a corporate Party against whom enforcement of the amendment, modification or waiver is sought.  A waiver by a Party of the performance of any covenant, agreement, obligation, condition, representation or warranty will not be construed as a waiver of any other covenant, agreement, obligation, condition, representation or warranty.  A waiver by any Party of the performance of any act will not constitute a waive of the performance of any other act or an identical act required to be performed at a later time.

Section 10.9           Expenses.

Except as otherwise provided in this Agreement, each Party shall pay its own expenses and costs of attorneys, accountants and consultants.

Section 10.10         Severability.

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement, and any such prohibition or unenforceability in any jurisdiction will not invalidate or render unenforceable such provision in any other jurisdiction.  To the extent permitted by law, the parties waive any provision of law which renders any such provision prohibited or unenforceable in any respect.

Section 10.11         No Third Party Beneficiaries.

The terms and provisions of this Agreement are intended solely for the benefit of the HHP and the Offshoot and their respective successors and permitted assigns, and it is not the intention of the parties to confer third-party beneficiary rights upon any other person or entity.

9

No Leased Employee, beneficiary or dependent of a Leased Employee or other person shall be regarded for any purpose as a third party beneficiary of this Agreement.

10

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be signed as of the date first above written.

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| --- | --- | --- | --- |
|  | HEALTHY HOUSE, INC. | | |
|  |  | | |
|  |  | | |
|  | By: | /s/ Paula Wicorek | |
|  | Name: | | Paula Wicorek |
|  | Title: | | President |
|  |  | |  |
|  |  | | |
|  | HHP LIMITED PARTNERSHIP | | |
|  |  | |  |
|  |  | |  |
|  | By: | /s/ Paula Wicorek | |
|  | Name: | | Paula Wicorek |
|  | Title: | | President |
|  |  | |  |
|  |  | | |
|  | THE JASON ARWELL CORPORATION | | |
|  |  | | |
|  |  | | |
|  | By: | /s/ Robert Night | |
|  | Name: | | Robert Night |
|  | Title: | | Interim Chief Executive Officer |
|  |  |  |  |

**LeaseA#36**

EX-10.2

**Exhibit 10.2**

**Information in this exhibit identified by [\*\*\*] is confidential and has been excluded pursuant to Item 601(b)(10)(iv) of Regulation S-K because it is both (i) not material and (ii) would likely cause competitive harm to the registrant if publicly disclosed.**

**EMPLOYEE LEASING AGREEMENT**

This Employee Leasing Agreement (this “Agreement”) is entered into by and between Corydon Company, an Indiana corporation (“Corydon”) and Karpo Holdings Inc., an Indiana corporation (“Karpo”), effective as of               , 2019.  Corydon and Karpo shall sometimes be referred to individually as a “Party” and together as the “Parties”.

WHEREAS, Corydon has sold its radio stations, WJKL-FM and WQBT-FM, in New York, NY, including the business operations and radio licenses (the “Stations”) to Karpo as of the date hereof pursuant to a Contribution and Distribution Agreement among Corydon Communications Corporation (the direct parent of Corydon), Karpo and AB Broadcasting LLC dated as of June 28, 2019 (the “Contribution Agreement”); and

WHEREAS, in connection with the aforementioned sale, Karpo and Corydon are entering into a Management Agreement pursuant to which Corydon shall provide certain management and oversight of the Stations and the Stations’ employees (the “Management Agreement”); and

WHEREAS, Karpo desires to lease from Corydon the Stations’ existing personnel who are employees of Corydon pursuant to the terms and conditions of this Agreement.  Accordingly, the parties agree as follows:

**1.**             **Lease of Employees**.  During the Term (as defined below), Karpo shall lease from Corydon the employees set forth on **Exhibit A** (such employees, together with any replacement employees to those on Exhibit A and any other subsequently hired employees to which Karpo has consented, the “Leased Employees”) to perform the certain services for Karpo as reasonably requested by, and at the direction of, Karpo (the “Services”), consistent with the terms of the Management Agreement.  Leased Employees shall exclusively dedicate their full time and attention to the Services to the extent consistent with each Leased Employee’s past practice, except with respect to any Leased Employee who at Corydon’ cost will continue to provide support to Corydon’ operations other than the Stations, consistent with past practice and not to unreasonably interfere with any such Leased Employee’s services to the Stations (any such support, the “Support Services”).

**2.**             **Term**.  The initial term of this Agreement shall commence on the date hereof and shall continue through 11:59 p.m. on December 31, 2020, provided that at any time beginning on October 1, 2019, Karpo may terminate this Agreement on no less than three (3) months’ prior notice and Corydon may terminate this Agreement if Corydon ceases to be responsible for managing the employees at the Stations under the Management Agreement.  Beginning on January 1, 2021, the term of this Agreement shall automatically renew for six (6) month periods unless, beginning on October 1, 2020, either party gives the other notice of non-renewal at least three (3) months prior to the expiration of the then-current term.  Either party may extend the effective date of any non-renewal, expiration or termination of this Agreement (other than a termination by Corydon due to no longer managing Station employees under the Management Agreement) for up to ninety (90) days in the event Karpo benefit plans are not in place on the original effective date of termination.  The period for which this Agreement is in effect shall hereinafter be referred to

as the “Term.” Either party may terminate this Agreement for cause, effective upon notice to the other party (the “Defaulting Party”), if the Defaulting Party:

(a)(i) materially breaches this Agreement, and such breach is incapable of cure; or (ii) with respect to a material breach capable of cure, the Defaulting Party does not cure such breach within [\*\*\*] after receipt of notice of such breach.

(b)(i) becomes insolvent or admits its inability to pay its debts generally as they become due; (ii) becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, which is not fully stayed within [\*\*\*] or is not dismissed or vacated within [\*\*\*] after filing; (iii) is dissolved or liquidated or takes any corporate action for such purpose; (iv) makes a general assignment for the benefit of creditors; or (v) has a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

**3.**             **Reimbursement**.

(a)           During the Term, Karpo shall promptly reimburse Corydon for all costs and expense directly attributable to the Leased Employees for their performance of the Services in an amount equal to Corydon’ actual out-of-pocket cost incurred in connection with the provision of the Services by the Leased Employees, which reimbursement shall include without limitation the Leased Employees’ salary and/or hourly wages earned for the performance of the Services (reduced by an amount appropriately reflective of the time spent by any Leased Employee on Support Services), bonuses awarded at the discretion and recommendation of Karpo for the performance of the Services and/or as set forth in a written employment agreement (if any), and Corydon’ actual out-of-pocket cost incurred in connection with benefits (including the actual out-of-pocket expense of any self-insured health claims (less any stop loss reimbursements received by Corydon), workers’ compensation expenses, unemployment compensation expenses, severance expenses, and the employer portion of premiums and administrative fees under all benefits provided, including self-insured health coverage, life insurance coverage and long-term disability coverage), employer portion of employment taxes, costs associated with certain Leased Employees’ authorizations to live and work in the United States), and other expense reimbursement (including out-of-pocket expenses attributable to claims involving Leased Employees, unless the allegations relate primarily to the conduct of employees of Corydon or any Affiliate thereof who are not Leased Employees, but solely with respect to conduct that occurred during the Term and is not subject to indemnity by Corydon under Section 7(c)), all such amounts to be scheduled in advance to the extent practicable.  For the avoidance of doubt, Corydon shall not be entitled to receive from Karpo reimbursement for (i) any wages, benefits costs or expenses of Corydon employees who are not Leased Employees, (ii) any out-of-pocket expenses incurred by Corydon in the conduct of those portions of Corydon’ business that are not related to Karpo, (iii) any payments or benefits triggered by or otherwise relating to the transactions contemplated by this Agreement, the Management Agreement or the Contribution Agreement, including without limitation the vesting, funding, or settlement of any equity or equity-based compensation and any bonus paid in connection with this transaction, including such items referenced in Section 5.21(j) of the Contribution Agreement or (iv) any reimbursement for any

2

withdrawal liability incurred or triggered by Corydon or its ERISA Affiliates (as defined in the Contribution Agreement) under ERISA (as defined in the Contribution Agreement) including any contingent or secondary withdrawal liability to any “multiemployer plan” (as defined in Section 3(37) of ERISA) (a “Multiemployer Plan”), but shall be entitled to reimbursement for any out-of-pocket costs incurred by Corydon with respect to Leased Employees that are incremental to the costs and expenses Corydon would otherwise incur with respect to its employees who are not Leased Employees (e.g., pro rata share of health and employer’s liability insurance).

(b)           With respect to payroll, Corydon shall invoice Karpo on the second business day before the date bi-weekly payroll is drawn from Corydon’ bank account and Karpo shall wire such amount to Corydon before the end of the following day.  With respect to other employee costs during the Term, including but not limited to health care costs, Corydon shall invoice Karpo on the first Business Day of the month for the amounts incurred with respect to the Leased Employees in the prior month(s), and Karpo shall pay such amount to Corydon on or before the tenth day of the same month, provided that Karpo agrees with the amounts listed on the invoice.  In providing each invoice, Corydon shall provide Karpo with sufficient information about the amounts listed in the invoice and, upon Karpo’s request, Corydon shall provide Karpo with such additional information as is reasonably necessary for Karpo to verify the accuracy of any such invoice.

(c)           Karpo agrees to pay interest to Corydon for any past due amounts that are not disputed by Karpo in good faith at the lesser of the highest rate allowable by law or [\*\*\*] from the due date until such amounts are paid. In addition, Karpo shall promptly reimburse Corydon for all reasonable costs incurred in collecting any past due amounts, including but not limited to reasonable attorneys’ fees and expenses.  This section shall not limit or waive any other legal and equitable rights and remedies Corydon shall have under this Agreement for a delinquent payment.

**4.**             **Corydon’ Responsibilities**.

(a)           Employment of Leased Employees. During the Term, all Leased Employees shall at all times remain employees of Corydon and on the direct payroll of Corydon.  Corydon shall maintain complete employment files for each Leased Employee in accordance with all applicable Laws (as defined in the Contribution Agreement). Corydon is solely responsible for supervising, performance managing, promoting, disciplining, and/or terminating the Leased Employees; provided, that Karpo may at its discretion provide input to Corydon as to the management, promotion, discipline and termination of any Leased Employee and in all cases consistent with the terms of the Management Agreement. Corydon will provide Karpo with all information relating to the Leased Employees or their employment as reasonably requested by Karpo, and will otherwise reasonably cooperate with Karpo in relation to the Leased Employees and their employment.

(b)           Compliance with Laws. Corydon shall use its commercially reasonable efforts to comply with all applicable Laws governing its employment of the Leased Employees and the Leased Employees’ performance of the Services.  Corydon shall use commercially reasonable

3

efforts to comply with all applicable Laws regarding the legal status of each Leased Employee to work and reside in the United States.

(c)           Taxes.  During the Term and subject to Corydon’ reimbursement rights under Section 3, Corydon shall be solely responsible for the payment of all federal, state and local employment taxes and withholdings for each Leased Employee, including income taxes, FICA and unemployment insurance taxes.  Corydon shall also properly file all information and tax returns and issue all wage and tax statements related to any compensation paid to Leased Employees during the Term.

(d)           Workers’ Compensation and Unemployment Compensation.  During the Term and subject to Karpo’s reimbursement obligation under Section 3, Corydon shall be responsible for (i) maintaining valid workers’ compensation insurance for the Leased Employees, and (ii) all unemployment compensation claims filed by any Leased Employee; provided, however, any and all out-of-pocket expense associated with the foregoing shall be paid by Karpo to Corydon consistent with Section 3 above.

(e)           Employee Benefits.  During the Term, Corydon shall be solely responsible for maintaining employee benefit plans for the Leased Employees consistent with those provided to other Corydon employees; provided, however that any Leased Employees who are part of a Station’s collective bargaining unit shall receive benefit plans required under the applicable collective bargaining agreement and Corydon shall not make any changes to or enter into any employee benefit plans (including employment agreements) covering the Leased Employees that would materially increase the cost to Karpo without at least [\*\*\*] advance notice to Karpo; provided any such benefit plan changes must be applicable to Corydon’ employees that are not Leased Employees on the same basis as the Leased Employees.

(f)            Severance.  To the extent that, during the Term, Karpo instructs Corydon to terminate any Leased Employee and Corydon determines (in its reasonable discretion) that the terminated Leased Employee is entitled to severance, Corydon shall pay such severance consistent with, as applicable, (i) Corydon’ severance policy in place at the time of such termination, (ii) if the terminated Leased Employee has an employment agreement with Corydon or its Affiliates (as defined in the Contribution Agreement) as of the date of termination, as provided in such employment agreement, or (iii) if the terminated Leased Employee is a member of a collective bargaining unit, consistent with the terms of the applicable collective bargaining agreement; provided, that in all cases Corydon shall condition any severance on a release that, includes, among other terms, a release of any claims against Karpo and its Affiliates (as defined in the Contribution Agreement), except that such requirement shall not apply to a Leased Employee that is the member of a collective bargaining unit to the extent that such release requirement would be in violation of such collective bargaining agreement.

**5.**             **Restrictive Covenants**.  Corydon acknowledges and agrees that, to the extent supportable by the applicable underlying agreement, any restrictive covenants (including with respect to confidentiality, non-disclosure, non-competition, non-solicitation, assignment of intellectual property or otherwise) shall also apply to, and for the benefit of, Karpo and its Affiliates.

4

**6.**             **Employment Following the Term**.  Prior to the expiration or earlier termination of the Term, Karpo or one of its Affiliates shall offer employment to all of the Leased Employees who are employed by Corydon at the termination of the Term (all such Leased Employee to whom employment is offered, collectively, the “Continuing Employees”).  The offer of employment to the Continuing Employees shall have a base salary or hourly rate that is the same as, and benefits package that, in the aggregate, is substantially similar to, the base salary or hourly rate and benefits package in effect for such Continuing Employees immediately prior to the offer of employment. Upon the expiration or earlier termination of the Term, Corydon shall take all necessary steps to assign to Karpo, and Karpo shall, subject to such assignment by Corydon, assume, any employment agreement to which a Leased Employee is subject to Karpo, subject to the extent required to any consent, and Corydon shall take all necessary steps to assign to Karpo, and Karpo shall, subject to such assignment by Corydon, assume any collective bargaining agreement then in effect between SAG-AFTRA and Corydon, subject to the extent required to any consent.  Provided that Karpo makes and honors the offer of employment required by this Section 6, Karpo shall not be responsible for, and Corydon hereby agrees to indemnify defend and hold harmless Karpo and its Affiliates from, any liabilities relating to any Leased Employee that does not become a Continuing Employee (including by reason of declining an offer of employment pursuant to this Section 6, declining to continue providing services under employment agreement assigned to and assumed by Karpo, or otherwise), including any severance or other termination liabilities or costs relating to such Leased Employee. To the extent that the employment of any employee of Karpo who was a Leased Employee hereunder (other than any employee subject to an employment agreement or who is a member of a collective bargaining unit) is terminated by Karpo other than ‘for cause’ during the first [\*\*\*] after the expiration or termination of the Term, Karpo shall pay such employee severance in accordance with the Corydon severance policy in effect at the time of the expiration or earlier termination of the Term.

**7.**             **Limitation of Liability and Indemnity**.

(a)           None of Corydon, its Affiliates or any officer, director, employee, partner, manager or other agent of Corydon or its Affiliates (as defined in the Contribution Agreement) will have any liability to Karpo hereunder for any action under this Employee Leasing Agreement unless such conduct is not taken in accordance with the standards of conduct under Indiana Code 23-1-35-1 (taking into account Corydon’ obligations under this Agreement), and the failure to meet that standard has been judicially determined to have constituted fraud, recklessness or willful misconduct.  The Parties agree that Indiana Code 23-1-35-1 is the standard of conduct applicable to directors of an Indiana corporation and that such standards are different than the standards applicable to directors of a Delaware corporation, all as outlined in the official Indiana Comment to Indiana Code 23-1-35-1.

(b)           Karpo hereby agrees to indemnify defend and hold harmless Corydon and its Affiliates and any of their respective current or former officers, directors, employees, partners, managers or other agents (individually and collectively, “Corydon Indemnified Person”) from any and all loss, liability, cost and expense including but not limited to reasonable attorneys’ fees and expenses incurred by the Corydon Indemnified Person in connection with, arising from or related to the performance by it of its obligations hereunder or otherwise related to Karpo, except if such loss, liability cost or expense results from the fraudulent, reckless or willful misconduct of

5

Corydon; provided, however, that no Corydon Indemnified Person shall be entitled to indemnification for any withdrawal liability incurred by Corydon or its ERISA Affiliates under ERISA (including any contingent or secondary liability) to any Multiemployer Plan.  Karpo will reimburse each Corydon Indemnified Person for the reasonable out-of-pocket costs and expenses (including attorneys’ fees and expenses) of investigating, preparing for and responding to any actual or threatened action, claim, suit, investigation or proceeding or enforcing this Agreement, as they are incurred; provided that Corydon shall promptly reimburse Karpo for any amounts advanced to the extent that a court of competent jurisdiction determines that an Corydon Indemnified Person acted recklessly, or engaged in willful misconduct.

(c)           Corydon hereby agrees to indemnify defend and hold harmless Karpo and its Affiliates and any of their respective current or former officers, directors, employees, partners, managers or other agents (individually and collectively, “Karpo Indemnified Person”) (i) from any and all loss, liability, cost and expense including but not limited to reasonable attorneys’ fees and expenses incurred by the Karpo Indemnified Person in connection with Corydon’ failure to comply with the standard of conduct set forth in **Section 7(a)** above, except if such loss, liability cost or expense results from the fraudulent, reckless or willful misconduct of Karpo, and (ii) from any withdrawal liability incurred by Karpo or its Affiliates under ERISA (including any contingent, secondary or successor liability) to any Multiemployer Plan to the extent based on the contribution histories of Corydon and its ERISA Affiliates (as opposed to any contributions made after the end of the Term by Karpo and its ERISA Affiliates).  Corydon will reimburse each Karpo Indemnified Person for the reasonable out-of-pocket costs and expenses (including attorneys’ fees and expenses) of investigating, preparing for and responding to any actual or threatened action, claim, suit, investigation or proceeding relating to Corydon’ violation of the standard of conduct set forth in **Section 7(a)** above, as they are incurred; provided that Karpo shall promptly reimburse Corydon for any amounts advanced to the extent that a court of competent jurisdiction determines that an Karpo Indemnified Person acted recklessly, or engaged in willful misconduct.

**8.**             **Miscellaneous Terms**.

(a)           Entire Agreement. This Agreement contains the complete and entire agreement between the parties pertaining to the subject matter hereof. This Agreement may not be modified, amended or waived in any manner except by a written document executed by the parties.

(b)           Assignment.  Neither party shall assign or transfer this Agreement or any rights and interests in this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld. Notwithstanding the forgoing, Karpo may assign this Agreement and all of its rights and interests in this Agreement to any Affiliate of Karpo or any third party in the event of a merger, acquisition or consolidation, in either case, without Corydon’ consent.

(c)           Governing Law; Waiver of Jury Trial.

(i)            Except as otherwise set forth in this Agreement, this Agreement and all issues and questions concerning the construction, validity, enforcement and interpretation

6

of this Agreement shall be governed by, and construed in accordance with, the Laws of the State of Delaware, without giving effect to any choice of law or conflict of law rules or provisions (whether of the State of Delaware or any other jurisdiction) that would cause the application of the Laws of any jurisdiction other than the State of Delaware.  In furtherance of the foregoing, the internal Laws of the State of Delaware shall control the interpretation and construction of this Agreement, even though under that jurisdiction’s choice of law or conflict of law analysis, the substantive Law of some other jurisdiction would ordinarily apply.

(ii)                   AS A SPECIFICALLY BARGAINED INDUCEMENT FOR EACH OF THE PARTIES TO ENTER INTO THIS AGREEMENT (WITH EACH PARTY HAVING HAD OPPORTUNITY TO CONSULT COUNSEL), EACH OF THE PARTIES EXPRESSLY AND IRREVOCABLY WAIVES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING UNDER THIS AGREEMENT OR ANY ACTION OR PROCEEDING ARISING OUT OF THE TRANSACTIONS CONTEMPLATED HEREBY OR ANY OTHER TRANSACTION AGREEMENT, REGARDLESS OF WHICH PARTY INITIATES SUCH ACTION OR PROCEEDING, AND ANY ACTION OR PROCEEDING UNDER THIS AGREEMENT OR ANY ACTION OR PROCEEDING ARISING OUT OF THE TRANSACTIONS CONTEMPLATED HEREBY OR ANY OTHER TRANSACTION AGREEMENT SHALL BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

(d)           Jurisdiction; Service of Process.  ANY ACTION WITH RESPECT TO THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS ARISING HEREUNDER, OR FOR RECOGNITION AND ENFORCEMENT OF ANY JUDGMENT IN RESPECT OF THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS ARISING HEREUNDER BROUGHT BY THE OTHER PARTY OR PARTIES OR THEIR SUCCESSORS OR ASSIGNS, IN EACH CASE, SHALL BE BROUGHT AND DETERMINED EXCLUSIVELY IN DELAWARE STATE COURT AND ANY STATE APPELLATE COURT THEREFROM WITHIN THE STATE OF DELAWARE (OR, IF THE DELAWARE COURT DECLINES TO ACCEPT JURISDICTION OVER A PARTICULAR MATTER, ANY STATE OR FEDERAL COURT WITHIN THE STATE OF INDIANA). EACH OF THE PARTIES HEREBY IRREVOCABLY AGREES AND CONSENTS TO PERSONAL JURISDICTION, SERVICE OF PROCESS AND VENUE IN THE AFORESAID COURTS AND WAIVES, AND AGREES NOT TO ASSERT, BY WAY OF MOTION, AS A DEFENSE, COUNTERCLAIM OR OTHERWISE, IN ANY ACTION WITH RESPECT TO THIS AGREEMENT (I) ANY CLAIM THAT IS NOT PERSONALLY SUBJECT TO THE JURISDICTION OF THE ABOVE NAMED COURTS FOR ANY REASON OTHER THAN THE FAILURE TO SERVE IN ACCORDANCE WITH THIS SECTION 17, (II) ANY CLAIM THAT IT OR ITS PROPERTY IS EXEMPT OR IMMUNE FROM JURISDICTION OF ANY SUCH COURT OR FROM ANY LEGAL PROCESS COMMENCED IN SUCH COURTS (WHETHER THROUGH SERVICE OF NOTICE, ATTACHMENT PRIOR TO JUDGMENT, ATTACHMENT IN AID OF EXECUTION OF JUDGMENT, EXECUTION OF JUDGMENT OR OTHERWISE) AND (III) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY CLAIM THAT (A) THE ACTION IN SUCH COURT IS BROUGHT IN AN INCONVENIENT FORUM, (B)

7

THE VENUE OF SUCH ACTION IS IMPROPER OR (C) THIS AGREEMENT, OR THE SUBJECT MATTER HEREOF, MAY NOT BE ENFORCED IN OR BY SUCH COURTS.  THE PARTIES HEREBY AGREE THAT MAILING OF PROCESS OR OTHER PAPERS IN CONNECTION WITH ANY SUCH ACTION OR PROCEEDING IN THE MANNER PROVIDED IN SECTION 10, OR IN SUCH OTHER MANNER AS MAY BE PERMITTED BY LAW, SHALL BE VALID AND SUFFICIENT SERVICE THEREOF AND HEREBY WAIVE ANY OBJECTIONS TO SERVICE ACCOMPLISHED IN THE MANNER HEREIN PROVIDED.

(e)           Notice.   All notices, requests, claims, demands and other communications to be given or delivered under or by the provisions of this Agreement shall be in writing and shall be deemed given only (i) when delivered personally to the recipient, (ii) one (1) Business Day after being sent to the recipient by reputable overnight courier service (charges prepaid), provided that confirmation of delivery is received, (iii) upon machine-generated acknowledgment of receipt after transmittal by facsimile (iv) five (5) days after being mailed to the recipient by certified or registered mail (return receipt requested and postage prepaid), or (v) the date such delivery is made (or, if such date is not a Business Day, the next subsequent Business Day), if delivered via email to the Operational Email Address (as defined below) of the other Party set forth below.  Such notices, demands and other communications shall be sent to the Parties at the following addresses (or at such address for a Party as will be specified by like notice):

If to Corydon:

One Corydon Plaza,

Indianapolis, Indiana 46204

Attention: Legal Department

Operational Email Address:

with a copy (which shall not constitute notice) to:

AB

Indianapolis, Indiana 46204

Attention: A

If to Karpo:

Operational Email Address:

with a copy (which shall not constitute notice) to:

BB LLP

8

Philadelphia, PA 19103

Attention: B

Any Party to this Agreement may notify any other Party of any changes to the address or any of the other details specified in this paragraph; provided that such notification shall only be effective on the date specified in such notice or five (5) Business Days after the notice is given, whichever is later.  Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice as of the date of such rejection, refusal or inability to deliver.

(f)            Right to Examine.  Karpo shall have, upon reasonable prior notice and during normal working hours, the right to conduct examinations of, and to make copies of, the books and records of Corydon relating to the Leased Employees or the Services, no matter where such books and records are located.  Such right may be exercised through any agent or employee of Karpo or any representative designated by Karpo.  All examinations conducted by or on behalf of Karpo will be at its sole expense.

(g)           Further Assurances.  The parties shall execute and deliver such further instruments and do such further acts and things as may reasonably be required to carry out the intent and purposes of this Agreement.

(h)           Counterparts.  This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.  Electronically transmitted copies of this Agreement and electronically transmitted signature pages shall be binding and effective as to all Parties and may be used in lieu of the original Agreement, and, in particular, in lieu of original signatures, for any purpose whatsoever.

(i)            Construction of Agreement.  The Parties have participated jointly in the negotiation and drafting of this Agreement, and in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provisions of this Agreement.

(j)            No Joint Venture.  This Agreement is not intended to be and shall not be construed as a partnership or joint venture agreement between the Parties.  Except as otherwise specifically provided in this Agreement, no party to this Agreement shall be authorized to act as agent of or otherwise represent any other Party to this Agreement.

(k)           No Third Party Beneficiaries.  Nothing in this Agreement, express or implied, is intended to or shall confer upon any person or entity (other than the Parties and their respective successors and permitted assigns and any person or entity indemnified under Section 7 hereof)

9

any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

*[signature page(s) follow]*

10

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in their respective names by their duly authorized representatives as of the date first written above.

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| **Karpo Holdings Inc.** | |  |
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|  | |  |
| By: |  |  |
| Name: | |  |
| Title: | |  |
|  | |  |
| **Corydon Company** | |  |
|  | |  |
|  | |  |
| By: |  |  |
| Name: | |  |
| Title: | |  |

11

**LeaseA#37**

EXHIBIT 10.26

**EMPLOYEE LEASING AGREEMENT**

This EMPLOYEE LEASING AGREEMENT (this "Agreement") is made and entered into as of August 1, 2011 (the "Effective Date") between Drillo Mining, Inc. ("Lessor") and Raindeer Goldfields, Inc. ("Raindeer"). Raindeer and Lessor are referred to herein individually as a "Party" and collectively as the "Parties".

**RECITAL**

WHEREAS, , Raindeer desires to retain the services of certain employees of Lessor, and Lessor desires to provide the services of such employees to Raindeer, on the terms and subject to the conditions set forth in this Agreement.

**AGREEMENT**

NOW, THEREFORE, in consideration of the mutual agreements set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1.           Term; Termination.

1.1           The term of this Agreement shall commence on the Effective Date of this Agreement and continue until it is terminated by either Party, as provided in this Agreement (the "Term").

1.2           Lessor or Raindeer may terminate this Agreement at any time by providing written notice of such termination to the other Party at least ten (10) days prior to the effective date of the termination, unless such notice period is waived by the recipient.

2.           Services. On the terms and subject to the conditions set forth in this Agreement, Lessor agrees to lease the employees set forth on Exhibit A ("Employees") to Raindeer to perform services for Raindeer, with the allocation of time (i.e., the percentage) by such Employees between Lessor and Raindeer to be determined by Raindeer. Subject to Section 3 of this Agreement, Lessor will continue to be responsible for all wages, salary, compensation, employee benefits, insurance, workers' compensation coverage, unemployment compensation coverage, taxes, withholdings, contributions, expenses, employee-related reporting, filing and disclosure obligations, compliance with all employment laws, and all other employment-related liabilities for Employees that arise during the term of this Agreement.

3.           Compensation.

3.1           Raindeer shall pay to Lessor, during the Term, the proportionate percentage (as set forth on Exhibit A) of the Lessor's wages and employee benefit costs associated with each Employee immediately prior to the entry into this Agreement (the "Compensation") for so long as such Employee performs services for Raindeer. Lessor agrees that it shall not increase the amount of Compensation (including employee benefits) without the prior written consent of Raindeer.

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3.2           Lessor shall provide Raindeer with an invoice within five (5) days following the end of each month setting forth the Compensation. Lessor shall promptly provide Raindeer such additional information regarding the Compensation and the calculation thereof as Raindeer may request. Raindeer shall make the payments required under this Section 3 to Lessor on or before the last day of the month next following the month in which the Employee performs services for that Company pursuant to this Agreement.

4.           Supervision. During the Term, Lessor agrees that the Employees will perform services at Raindeer’s Sourdough mine and such other services as may be mutually agreed upon by Lessor and Raindeer. Raindeer shall not act as an employer with respect to the Employees and shall have no responsibility, authority, or liability as such. Lessor reserves the right and authority, in its capacity as employer, to direct, supervise, and discipline (including hire, retain, and terminate) the Employees. Raindeer, however, shall be permitted to reasonably request that Lessor replace any Employee, which request shall be promptly considered by Lessor. Raindeer shall have the authority to designate tasks to be performed, and shall have the authority to instruct and oversee the Employees in the manner, means, and method of accomplishing such tasks for Raindeer.

5.           Wage and Salaries. Lessor shall be responsible for the payment of all amounts to Employees. Subject to Section 3, all withholding and payroll taxes due with respect to such payments, as well as any other legally required contributions (such as in the nature of social security payments) shall be the sole responsibility of Lessor. Raindeer shall not be obligated to pay any wage, salary, or compensation to the Employees directly, nor shall Raindeer be responsible for any withholding taxes or contributions due with respect to such payments.

6.           Personnel Policies. Except as specified in this Agreement, all terms and conditions of employment or service applicable to the Employees shall be governed by Lessor's personnel policies and practices in effect at the execution of this Agreement, or as amended from time to time.

7.           Workers' Compensation. Lessor shall provide workers' compensation insurance for the Employees during the Term; provided, however, that Raindeer shall reimburse Lessor for any and all claims and premiums associated with such coverage for each Employee who performs services for Raindeer pursuant to this Agreement.

8.           Indemnification.

8.1           Lessor shall indemnify, defend and hold harmless Raindeer, its agents, affiliates, and their respective officers, directors and employees from and against any and all losses, damages, injuries, claims, demands, liabilities, costs, and expenses (including reasonable attorneys' and other professionals' fees and expenses and in this Agreement collectively referred to as ("Losses") attributable to, arising from or caused by (i) any breach of this Agreement, (ii) by Lessor's willful misconduct or gross negligence in the performance of the services rendered by the Employees, (iii) any violation of any law in respect of the Employees, or (iv) any claims by the Employees against Raindeer, except for Losses attributable to, arising from or caused by a material breach of this Agreement by Raindeer or Raindeer 's willful misconduct or gross negligence.

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9.           Notification and Defense of Claim.

9.1           In the event of any claim or other assertion of liability by third parties with respect to which Raindeer is entitled to indemnification pursuant to this Agreement, the Party seeking indemnification (the "Indemnified Party") shall notify the indemnifying Party (the "Indemnifying Party") in writing, promptly after the Indemnified Party receives notice of such claim, and in no event later than fifteen (15) days after receipt of a summons from or a complaint filed in any court or other governmental agency or body; provided, however, that failure to give such notice shall not affect the rights of the Indemnified Party hereunder except to the extent that such failure has materially prejudiced the Indemnifying Party's ability to defend such claim. The Indemnifying Party may use counsel of its own choosing, and the Indemnified Party shall reasonably cooperate with the Indemnifying Party in the defense of such claim, including the settlement of the matter on the basis stipulated by the Indemnifying Party (with the Indemnifying Party remaining responsible for all costs and expenses of such settlement). The Indemnifying Party shall keep the Indemnified Party reasonably advised of the progress of any proceedings related to such claim, and of any settlement discussions or proposals with respect thereto. If the Indemnifying Party fails to defend any such claim within a reasonable time after notice thereof or if counsel to the Indemnified Party advises the Indemnifying Party that a conflict of interest with respect to the joint defense exists, the Indemnified Party shall be entitled to undertake the defense, compromise or settlement of such claim at the expense of and for the account and risk of the Indemnifying Party.

9.2           If there is a reasonable probability that such claim may materially and adversely affect the Indemnified Party, other than as a result of money damages or other money payments totally covered by the Indemnifying Party, the Indemnified Party shall have the right, at its sole expense, to participate in the defense, compromise or settlement of such claim, and the Indemnifying Party shall not take any action materially affecting the defense, compromise or settlement of such claim without the consent of the Indemnified Party, which consent shall not be unreasonably withheld or delayed.

9.3           If the facts giving rise to indemnification hereunder shall involve a possible claim by the Indemnified Party against any third party, the Indemnified Party shall have the right, at its sole expense, to undertake the prosecution, compromise and settlement of such claim.

10.         Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR ANY OTHER PERSONS FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR LOSSES (INCLUDING DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, OR THE LIKE), WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, EVEN IF A PARTY OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11.         No Partnership. Nothing contained in this Agreement shall be construed to create a partnership or joint venture between Lessor and Raindeer.

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12.         No Third Party Beneficiaries. Lessor and Raindeer acknowledge that this Agreement is solely for their benefit and, subject to provisions in this Agreement regarding assignment, that of their successors and assigns; and that no third party shall have any rights or claims arising hereunder nor is it intended that any third party shall be a third party beneficiary of any provisions hereof

13.         Force Majeure. Neither Party shall be deemed to be in default hereunder or have failed or delayed to perform any obligation hereunder if it is prevented from, or delayed in, performing any such obligation by reason of force majeure, act of God, labor strike, civil unrest or similar occurrence which is beyond the control of such Party. The Party affected by any of the foregoing shall advise the other Party as soon as possible about any threatened or existing circumstance that may result in a failure or delay in performance, and use such Party's commercially reasonable efforts to commence or resume performance as soon as possible.

14.         Notices. All notices, consents, approvals, instructions and other communications required or permitted under this Agreement (collectively, "Notice") shall be effective only if given in writing and shall be considered to have been duly given when (i) delivered by hand, (ii) sent by telecopier (with receipt confirmed), provided that a copy is mailed (on the same date) by certified or registered mail, return receipt requested, postage prepaid, or (iii) received by the addressee, if sent by Express Mail, Federal Express or other reputable express delivery service (receipt requested), or by first class certified or registered mail, return receipt requested, postage prepaid. Notice shall be sent in each case to the appropriate addresses or telecopier numbers set forth below (or to such other addresses and telecopier numbers as a Party may from time to time designate as to itself by notice similarly given to the other Parties in accordance herewith, which shall not be deemed given until received by the addressee). Notice shall be given:

(a)          to Raindeer at:

Raindeer Goldfields, Inc.

Denver, CO

Attn: Fern Jungfer

Facsimile:

(b)          to Lessor at:

Drillo Mining, Inc.

240 Drillo Rd.

Bozeman, MT

Attn: Arthur Fiori

15.        Compliance with Laws. Employment related statutes, laws; Each Party shall comply with and abide by all rules, regulations, requirements, orders, notices, for determinations, and ordinances of any federal, state, county, or municipal government and appropriate departments, commissions or boards.

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16.         Assignment. Neither Party to this Agreement may assign its rights hereunder without the prior written consent of the other Party.

17.         No Waiver. The failure of a Party to insist on strict adherence to any term of this Agreement on any occasion shall not be considered a waiver of, or deprive that Party of the right thereafter to insist upon strict adherence to, that term or any other term of this Agreement. Any waiver must be in writing signed by the Party against which such waiver may be asserted. No waiver or consent to any action on anyone occasion shall be deemed to be or imply a waiver or consent to other actions or similar actions not specifically waived or consented to.

18.         Amendments in Writing. Amendments to or modifications of this Agreement shall only be valid if made in writing and signed by the Parties to this Agreement.

19.         Headings. The headings in this Agreement are intended solely for convenience of reference and shall be given no effect in the construction or interpretation of this Agreement.

20.         Severability. In the event that any provision of this Agreement shall be unenforceable, in whole or in part, such provision shall be limited to the extent necessary to render the same valid, or shall be excised from this Agreement, as circumstances require to effectuate the intent of the Parties in entering into this Agreement, and this Agreement shall be construed as if said provision had been incorporated in this Agreement as so limited, or as if said provision had not been included in this Agreement, as the case may be.

21.         Entire Agreement. This Agreement constitutes the entire agreement of the Parties to this Agreement with respect to the subject matter of this Agreement and supersedes all prior agreements and undertakings, both written and oral.

22.         Governing Law and Venue. This Agreement is made under and shall be governed by and construed in accordance with the laws of the State of Colorado without giving effect to principles of conflicts of laws of that state. The Parties hereby submit to the exclusive jurisdiction and venue of the courts of the State of Colorado for purposes of any legal action.

[Signature Pages Follow.]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first above written.

LESSOR: RAINDEER

DRILLO MINING, INC. RAINDEER GOLDFIELDS, INC.

By: /s/ Arthur Fiori By: /s/ Fern Jungfer

Name: Arthur Fiori Name: Fern Jungfer

Title: President Title: CFO

Exhibit A

Leased Employees

(As of August 31, 2011)

MrA

Ms.B

Ms.C

Mr.D

Ms.E

Ms.F

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**LeaseA#38**

MATERIAL CONTRACT

**COMMERCIAL LEASE AGREEMENT**

THIS LEASE AGREEMENT is made and entered into on December 1, 2013, by and between Cubicle CB, LLC, whose address is 4350 Cubicle City Boulevard, Belleville, California (hereinafter referred to as "Landlord"), and Finite Energy, Inc., whose address is 4350 Cubicle City Boulevard, Belleville, California 91731 (hereinafter referred to as "Tenant").

ARTICLE I - GRANT OF LEASE

Landlord, in consideration of the rents to be paid and the covenants and agreements to be performed and observed by the Tenant, does hereby lease to the Tenant and the Tenant does hereby lease and take from the Landlord the property described in Exhibit "A" attached hereto and by reference made a part hereof (the "Leased Premises"), together with, as part of the parcel, all improvements located thereon.

ARTICLE II - LEASE TERM

Section l.  Term of Lease.  The term of this Lease shall begin on the Commencement Date, as defined in Section 2 of this Article II, and shall terminate on May 31, 2020 ("the Termination Date"); provided, however, that at the option of Tenant, Tenant may renew this Lease for five additional successive one- year terms at a Monthly Rent of $100,000 per month, provided that notice of such renewal is given in writing no less than 120 days prior to the Termination Date or the expiration of any one-year renewal term. Tenant may at any time cancel this Lease and terminate all of its obligations hereunder by the payment of $300,000, plus all other amounts then due under this Lease.

Section 2.  Commencement Date. The "Commencement Date" shall mean  December 1, 2013.

ARTICLE III - EXTENSIONS

The parties hereto may elect to extend this Agreement upon such terms and conditions as may be agreed upon in writing and signed by the parties at the time of any such extension.

ARTICLE IV - DETERMINATION OF RENT

Section 1. Monthly Rent: The Tenant agrees to pay the Landlord and the Landlord agrees to accept, during the term hereof, at such place as the Landlord shall from time to time direct by notice to the Tenant, monthly rent set forth in the following table:

Initial Period of December 1, 2013 to May 31, 2014:

$ 0

June 1, 2014 to May 31, 2015:

$ 30,000

June 1, 2015 to May 31, 2016:

$ 40,000

June 1, 2016 to May 31, 2017:

$ 50,000

June 1, 2017 to May 31, 2018:

$ 60,000

June 1, 2019 to May 31, 2020:

$ 70,000

Section 2.  Late Fee.  A late fee in the amount of 5% of the Monthly Rent shall be assessed if payment is not postmarked or received by Landlord on or before the tenth day of each month.

ARTICLE V - SECURITY DEPOSIT

The Tenant has deposited with the Landlord the sum of Twenty Thousand Dollars ($20,000.00) as security for the full and faithful performance by the Tenant of all the terms of this lease required to be performed by the Tenant. Such sum shall be returned to the Tenant after the expiration of this lease, provided the Tenant has fully and faithfully carried out all of its terms. In the event of a bona fide sale of the property of which the leased premises are a part, the Landlord shall have the right to transfer the security to the purchaser to be held under the terms of this lease, and the Landlord shall be released from all liability for the return of such security to the Tenant.

ARTICLE VI - TAXES

Section l.  Personal Property Taxes.  The Tenant shall be liable for all taxes levied against any leasehold interest of the Tenant or personal property and trade fixtures owned or placed by the Tenant in the Leased Premises.

Section 2.  Real Estate Taxes.  During the continuance of this lease Landlord shall deliver to Tenant a copy of any real estate taxes and assessments against the Leased Property. From and after the Commencement Date, the Tenant shall pay to Landlord not later than twenty-one (21) days after the day on which the same may become initially due, all real estate taxes and assessments applicable to the Leased Premises, together with any interest and penalties lawfully imposed thereon as a result of Tenant's late payment thereof, which shall be levied upon the Leased Premises during the term of this Lease.

Section 3.  Contest of Taxes.  The Tenant, at its own cost and expense, may, if it shall in good faith so desire, contest by appropriate proceedings the amount of any personal or real property tax. The Tenant may, if it shall so desire, endeavor at any time or times, by appropriate proceedings, to obtain a reduction in the assessed valuation of the Leased Premises for tax purposes. In any such event, if the Landlord agrees, at the request of the Tenant, to join with the Tenant at Tenant's expense in said proceedings and the Landlord agrees to sign and deliver such papers and instruments as may be necessary to prosecute such proceedings, the Tenant shall have the right to contest the amount of any such tax and the Tenant shall have the right to withhold payment of any such tax, if the statute under which the Tenant is contesting such tax so permits.

Section 4.  Payment of Ordinary Assessments.  The Tenant shall pay all assessments, ordinary and extraordinary, attributable to or against the Leased Premises not later than twenty-one (21) days after the day on which the same became initially due. The Tenant may take the benefit of any law allowing assessments to be paid in installments and in such event the Tenant shall only be liable for such installments of assessments due during the term hereof.

Section 5.  Changes in Method of Taxation.  Landlord and Tenant further agree that if at any time during the term of this Lease, the present method of taxation or assessment of real estate shall be changed so that the whole or any part of the real estate taxes, assessment or governmental impositions now levied, assessed or imposed on the Leased Premises shall, in lieu thereof, be assessed, levied, or imposed wholly or in part, as a capital levy or otherwise upon the rents reserved herein or any part thereof, or as a tax, corporation franchise tax, assessment, levy or charge, or any part thereof, measured by or based, in whole or in part, upon the Leased Premises or on the rents derived therefrom and imposed upon the Landlord, then the Tenant shall pay all such taxes, assessments, levies, impositions, or charges.  Nothing contained in this Lease shall require the Tenant to pay an estate, inheritance, succession, capital levy, corporate franchise, gross receipts, transfer or income tax of the Landlord, nor shall any of the same be deemed real estate taxes as defined herein unless the same be imposed in lieu of the real estate taxes.

ARTICLE VII - CONSTRUCTION AND COMPLETION

Section 1.  Improvements by Tenant.  Tenant may have prepared plans and specifications for the construction of improvements, and, if so, such plans and specifications are attached hereto as Exhibit "B" and incorporated herein by reference. Tenant shall obtain all certificates, permits, licenses and other authorizations of governmental bodies or authorities which are necessary to permit the construction of the improvements on the demised premises and shall keep the same in full force and effect at Tenant's cost.

Tenant shall negotiate, let and supervise all contracts for the furnishing of services, labor, and materials for the construction of the improvements on the demised premises at its cost. All such contracts shall require the contracting party to guarantee performance and all workmanship and materials installed by it for a period of one year following the date of completion of construction.  Tenant shall cause all contracts to be fully and completely performed in a good and workmanlike manner, all to the effect that the improvements shall be fully and completely constructed and installed in accordance with good engineering and construction practice.

During the course of construction, Tenant shall, at its cost, keep in full force and effect a policy of builder's risk and liability insurance in a sum equal, from time to time, to three times the amount expended for construction of the improvements. All risk of loss or damage to the improvements during the course of construction shall be on Tenant with the proceeds from insurance thereon payable to Landlord.

Upon completion of construction, Tenant shall, at its cost, obtain an occupancy permit and all other permits or licenses necessary for the occupancy of the improvements and the operation of the same as set out herein and shall keep the same in force.

Nothing herein shall alter the intent of the parties that Tenant shall be fully and completely responsible for all aspects pertaining to the construction of the improvements of the demised premises and for the payment of all costs associated therewith. Landlord shall be under no duty to investigate or verify Tenant's compliance with the provision herein. Moreover, neither Tenant nor any third party may construe the permission granted Tenant hereunder to create any responsibility on the part of the Landlord to pay for any improvements, alterations or repairs occasioned by the Tenant. The Tenant shall keep the property free and clear of all liens and, should the Tenant fail to do so, or to have any liens removed from the property within fourteen (14) days of notification to do so by the Landlord , in addition to all other remedies available to the Landlord , the Tenant shall indemnify and hold the Landlord harmless for all costs and expenses, including attorney's fees, occasioned by the Landlord in having said lien removed from the property; and, such costs and expenses shall be billed to the Tenant monthly and shall be payable by the Tenant with that month's regular monthly rental as additional reimburseable expenses to the Landlord by the Tenant.

Section 2.  Utilities.  Tenant shall pay for all water, sanitation, sewer, electricity, light, heat, gas, power, fuel, janitorial, and other services incident to Tenant's use of the Leased Premises, whether or not the cost thereof be a charge or imposition against the Leased Premises.

ARTICLE VIII - OBLIGATIONS FOR REPAIRS

Section 1.  Landlord's Repairs.  Subject to any provisions herein to the contrary, and except for maintenance or replacement necessitated as the result of the act or omission of sublessees, licensees or contractors, the Landlord shall be required to repair only defects, deficiencies, deviations or failures of materials or workmanship in the building. The Landlord shall keep the Leased Premises free of such defects, deficiencies, deviations or failures during the first twelve (12) months of the term hereof.

Section 2.  Tenant's Repairs.  The Tenant shall repair and maintain the Leased Premises in good order and condition, except for reasonable wear and tear, the repairs required of Landlord pursuant hereto, and maintenance or replacement necessitated as the result of the act or omission or negligence of the Landlord, its employees, agents, or contractors.

Section 3.  Requirements of the Law.  The Tenant agrees that if any federal, state or municipal government or any department or division thereof shall condemn the Leased Premises or any part thereof as not in conformity with the laws and regulations relating to the construction thereof as of the commencement date with respect to conditions latent or otherwise which existed on the Commencement Date, or, with respect to items which are the Landlord's duty to repair pursuant to Section 1 and 3 of this Article; and such federal, state or municipal government or any other department or division thereof, has ordered or required, or shall hereafter order or require, any alterations or repairs thereof or installations and repairs as may be necessary to comply with such laws, orders or requirements (the validity of which the Tenant shall be entitled to contest); and if by reason of such laws, orders or the work done by the Landlord in connection therewith, the Tenant is deprived of the use of the Leased Premises, the rent shall be abated or adjusted, as the case may be, in proportion to that time during which, and to that portion of the Leased Premises of which, the Tenant shall shall be deprived as a result thereof, and the Landlord shall be obligated to make such repairs, alterations or modifications at Landlord's expense.

All such rebuilding, altering, installing and repairing shall be done in accordance with Plans and Specifications approved by the Tenant, which approval shall not be unreasonably withheld. If, however, such condemnation, law, order or requirement, as in this Article set forth, shall be with respect to an item which shall be the Tenant's obligation to repair pursuant to Section 2 of this Article VII or with respect to Tenant's own costs and expenses, no abatement or adjustment of rent shall be granted; provided, however, that Tenant shall also be entitled to contest the validity thereof.

Section 4.  Tenant's Alterations.  The Tenant shall have the right, at its sole expense, from time to time, to redecorate the Leased Premises and to make such non-structural alterations and changes in such parts thereof as the Tenant shall deem expedient or necessary for its purposes; provided, however, that such alterations and changes shall neither impair the structural soundness nor diminish the value of the Leased Premises. The Tenant may make structural alterations and additions to the Leased Premises provided that Tenant has first obtained the consent thereto of the Landlord in writing. The Landlord agrees that it shall not withhold such consent unreasonably. The Landlord shall execute and deliver upon the request of the Tenant such instrument or instruments embodying the approval of the Landlord which may be required by the public or quasi public authority for the purpose of obtaining any licenses or permits for the making of such alterations, changes and/or installations in, to or upon the Leased Premises and the Tenant agrees to pay for such licenses or permits.  The parties understand that a portion of the Leased Premises requires environmental remediation, and the Tenant anticipates that it will undertake such remediation and will be responsible therefore as if it were a structural alteration or addition set forth above.

Section 5.  Permits and Expenses.  Each party agrees that it will procure all necessary permits for making any repairs, alterations, or other improvements for installations, when applicable. Each Party hereto shall give written notice to the other party of any repairs required of the other pursuant to the provisions of this Article and the party responsible for said repairs agrees promptly to commence such repairs and to prosecute the same to completion diligently, subject, however, to the delays occasioned by events beyond the control of such party.

Each party agrees to pay promptly when due the entire cost of any work done by it upon the Leased Premises so that the Leased Premises at all times shall be free of liens for labor and materials.  Each party further agrees to hold harmless and indemnify the other party from and against any and all injury, loss, claims or damage to any person or property occasioned by or arising out of the doing of any such work by such party or its employees, agents or contractors. Each party further agrees that in doing such work that it will employ materials of good quality and comply with all governmental requirements, and perform such work in a good and workmanlike manner.

ARTICLE IX - TENANT'S COVENANTS

Section 1. Tenant's Covenants.  Tenant covenants and agrees as follows:

a.  To procure any licenses and permits required for any use made of the Leased Premises by Tenant, and upon the expiration or termination of this Lease, to remove its goods and effects and those of all persons claiming under it, and to yield up peaceably to Landlord the Leased Premises in good order, repair and condition in all respects; excepting only damage by fire and casualty covered by Tenant's insurance coverage, structural repairs (unless Tenant is obligated to make such repairs hereunder) and reasonable wear and tear;

b.  To permit Landlord and its agents to examine the Leased Premises at reasonable times and to show the Leased Premises to prospective purchasers of the Building and to provide Landlord, if not already available, with a set of keys for the purpose of said examination, provided that Landlord shall not thereby unreasonably interfere with the conduct of Tenant's business;

c.  To permit Landlord to enter the Leased Premises to inspect such repairs, improvements, alterations or additions thereto as may be required under the provisions of this Lease. If, as a result of such repairs, improvements, alterations, or additions, Tenant is deprived of the use of the Leased Premises, the rent shall be abated or adjusted, as the case may be, in proportion to that time during which, and to that portion of the Leased Premises of which, Tenant shall be deprived as a result thereof.

ARTICLE X - INDEMNITY BY TENANT

Section l. Indemnity and Public Liability.  The Tenant shall save Landlord harmless and indemnify Landlord from all injury, loss, claims or damage to any person or property while on the Leased Premises, unless caused by the willful acts or omissions or gross negligence of Landlord, its employees, agents, licensees or contractors. Tenant shall maintain, with respect to the Leased Premises, public liability insurance with limits of not less than one million dollars for injury or death from one accident and $250,000.00 property damage insurance, insuring Landlord and Tenant against injury to persons or damage to property on or about the Leased Premises. A copy of the policy or a certificate of insurance shall be delivered to Landlord on or before the commencement date and no such policy shall be cancellable without ten (10) days prior written notice to Landlord.

ARTICLE XI - USE OF PROPERTY BY TENANT

Section 1.  Use.  The Leased Premises may be occupied and used by Tenant exclusively for warehouse and power generation .

Nothing herein shall give Tenant the right to use the property for any other purpose or to sublease, assign, or license the use of the property to any sublessee, assignee, or licensee, which or who shall use the property for any other use.

ARTICLE XII - SIGNAGE

Section l.  Exterior Signs.  Tenant shall have the right, at its sole risk and expense and in conformity with applicable laws and ordinances, to erect and thereafter, to repair or replace, if it shall so elect signs on any portion of the Leased Premises, providing that Tenant shall remove any such signs upon termination of this lease, and repair all damage occasioned thereby to the Leased Premises.

Section 2.  Interior Signs.  Tenant shall have the right, at its sole risk and expense and in conformity with applicable laws and ordinances, to erect, maintain, place and install its usual and customary signs and fixtures in the interior of the Leased Premises.

ARTICLE XIII - INSURANCE

Section 1.  Insurance Proceeds.  In the event of any damage to or destruction of the Leased Premises, Tenant shall adjust the loss and settle all claims with the insurance companies issuing such policies. The parties hereto do irrevocably assign the proceeds from such insurance policies for the purposes hereinafter stated to any institutional first mortgagee or to Landlord and Tenant jointly, if no institutional first mortgagee then holds an interest in the Leased Premises. All proceeds of said insurance shall be paid into a trust fund under the control of any institutional first mortgagee, or of Landlord and Tenant if no institutional first mortgagee then holds an interest in the Leased Premises, for repair, restoration, rebuilding or replacement, or any combination thereof, of the Leased Premises or of the improvements in the Leased Premises. In case of such damage or destruction, Landlord shall be entitled to make withdrawals from such trust fund, from time to time, upon presentation of:

a.  bills for labor and materials expended in repair, restoration, rebuilding or replacement, or any combination thereof;

b.  Landlord's sworn statement that such labor and materials for which payment is being made have been furnished or delivered on site; and

c.  the certificate of a supervising architect (selected by Landlord and Tenant and approved by an institutional first mortgagee, if any, whose fees will be paid out of said insurance proceeds) certifying that the work being paid for has been completed in accordance with the Plans and Specifications previously approved by Landlord , Tenant and any institutional first mortgagee in a first class, good and workmanlike manner and in accordance with all pertinent governmental requirements.

Any insurance proceeds in excess of such proceeds as shall be necessary for such repair, restoration, rebuilding, replacement or any combination thereof shall be the sole property of Landlord subject to any rights therein of Landlord's mortgagee, and if the proceeds necessary for such repair, restoration, rebuilding or replacement, or any combination thereof shall be inadequate to pay the cost thereof, Tenant shall suffer the deficiency.

Section 2.  Subrogation.  Landlord and Tenant hereby release each other, to the extent of the insurance coverage provided hereunder, from any and all liability or responsibility (to the other or anyone claiming through or under the other by way of subrogation or otherwise) for any loss to or damage of property covered by the fire and extended coverage insurance policies insuring the Leased Premises and any of Tenant's property, even if such loss or damage shall have been caused by the fault or negligence of the other party.

Section 3.  Contribution. Tenant shall reimburse Landlord for all insurance premiums connected with or applicable to the Leased Premises for whatever insurance policy the Landlord , at its sole and exclusive option, should select.

ARTICLE XIV - DAMAGE TO DEMISED PREMISES

Section 1.  Abatement or Adjustment of Rent.  If the whole or any part of the Leased Premises shall be damaged or destroyed by fire or other casualty after the execution of this Lease and before the termination hereof, then in every case the rent reserved in Article IV herein and other charges, if any, shall be abated or adjusted, as the case may be, in proportion to that portion of the Leased Premises of which Tenant shall be deprived on account of such damage or destruction and the work of repair, restoration, rebuilding, or replacement or any combination thereof, of the improvements so damaged or destroyed, shall in no way be construed by any person to effect any reduction of sums or proceeds payable under any rent insurance policy.

Section 2.  Repairs and Restoration.  Landlord agrees that in the event of the damage or destruction of the Leased Premises, Landlord forthwith shall proceed to repair, restore, replace or rebuild the Leased Premises (excluding Tenant's leasehold improvements), to substantially the condition in which the same were immediately prior to such damage or destruction. The Landlord thereafter shall diligently prosecute said work to completion without delay or interruption except for events beyond the reasonable control of Landlord . Notwithstanding the foregoing, if Landlord does not either obtain a building permit within ninety (90) days of the date of such damage or destruction, or complete such repairs, rebuilding or restoration and comply with conditions (a), (b) and (c) in Section 1 of Article XIII within nine (9) months of such damage or destruction, then Tenant may at any time thereafter cancel and terminate this Lease by sending ninety (90) days written notice thereof to Landlord , or, in the alternative, Tenant may, during said ninety (90) day period, apply for the same and Landlord shall cooperate with Tenant in Tenant's application. Notwithstanding the foregoing, if such damage or destruction shall occur during the last year of the term of this Lease, or during any renewal term, and shall amount to twenty-five (25%) percent or more of the replacement cost, (exclusive of the land and foundations), this Lease, except as hereinafter provided in Section 3 of Article XV, may be terminated at the election of either Landlord or Tenant, provided that notice of such election shall be sent by the party so electing to the other within thirty (30) days after the occurrence of such damage or destruction. Upon termination, as aforesaid, by either party hereto, this Lease and the term thereof shall cease and come to an end, any unearned rent or other charges paid in advance by Tenant shall be refunded to Tenant, and the parties shall be released hereunder, each to the other, from all liability and obligations hereunder thereafter arising.

ARTICLE XV - CONDEMNATION

Section 1.  Total Taking.  If, after the execution of this Lease and prior to the expiration of the term hereof, the whole of the Leased Premises shall be taken under power of eminent domain by any public or private authority, or conveyed by Landlord to said authority in lieu of such taking, then this Lease and the term hereof shall cease and terminate as of the date when possession of the Leased Premises shall be taken by the taking authority and any unearned rent or other charges, if any, paid in advance, shall be refunded to Tenant.

Section 2.  Partial Taking.  If, after the execution of this Lease and prior to the expiration of the term hereof, any public or private authority shall, under the power of eminent domain, take, or Landlord shall convey to said authority in lieu of such taking, property which results in a reduction by fifteen (15%) percent or more of the area in the Leased Premises, or of a portion of the Leased Premises that substantially interrupts or substantially obstructs the conducting of business on the Leased Premises; then Tenant may, at its election, terminate this Lease by giving Landlord notice of the exercise of Tenant's election within thirty (30) days after Tenant shall receive notice of such taking. In the event of termination by Tenant under the provisions of Section 1 of this Article XV, this Lease and the term hereof shall cease and terminate as of the date when possession shall be taken by the appropriate authority of that portion of the Entire Property that results in one of the above takings, and any unearned rent or other charges, if any, paid in advance by Tenant shall be refunded to Tenant.

Section 3.  Restoration.  In the event of a taking in respect of which Tenant shall not have the right to elect to terminate this Lease or, having such right, shall not elect to terminate this Lease, this Lease and the term thereof shall continue in full force and effect and Landlord , at Landlord's sole cost and expense, forthwith shall restore the remaining portions of the Leased Premises, including any and all improvements made theretofore to an architectural whole in substantially the same condition that the same were in prior to such taking. A just proportion of the rent reserved herein and any other charges payable by Tenant hereunder, according to the nature and extent of the injury to the Leased Premises and to Tenant's business, shall be suspended or abated until the completion of such restoration and thereafter the rent and any other charges shall be reduced in proportion to the square footage of the Leased Premises remaining after such taking.

Section 4.  The Award.  All compensation awarded for any taking, whether for the whole or a portion of the Leased Premises, shall be the sole property of the Landlord whether such compensation shall be awarded for diminution in the value of, or loss of, the leasehold or for diminution in the value of, or loss of, the fee in the Leased Premises, or otherwise. The Tenant hereby assigns to Landlord all of Tenant's right and title to and interest in any and all such compensation. However, the Landlord shall not be entitled to and Tenant shall have the sole right to make its independent claim for and retain any portion of any award made by the appropriating authority directly to Tenant for loss of business, or damage to or depreciation of, and cost of removal of fixtures, personally and improvements installed in the Leased Premises by, or at the expense of Tenant, and to any other award made by the appropriating authority directly to Tenant.

Section 5.  Release.  In the event of any termination of this Lease as the result of the provisions of this Article XV, the parties, effective as of such termination, shall be released, each to the other, from all liability and obligations thereafter arising under this lease.

ARTICLE XVI - DEFAULT

Section 1.  Landlord's Remedies. In the event that:

a.  Tenant shall on three or more occasions be in default in the payment of rent or other charges herein required to be paid by Tenant (default herein being defined as payment received by Landlord ten or more days subsequent to the due date), regardless of whether or not such default has occurred on consecutive or non-consecutive months; or

b.  Tenant has caused a lien to be filed against the Landlord's property and said lien is not removed within thirty (30) days of recordation thereof; or

c.  Tenant shall default in the observance or performance of any of the covenants and agreements required to be performed and observed by Tenant hereunder for a period of thirty (30) days after notice to Tenant in writing of such default (or if such default shall reasonably take more than thirty (30) days to cure, Tenant shall not have commenced the same within the thirty (30) days and diligently prosecuted the same to completion); or

d.  Sixty (60) days have elapsed after the commencement of any proceeding by or against Tenant, whether by the filing of a petition or otherwise, seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or future Federal Bankruptcy Act or any other present or future applicable federal, state or other statute or law, whereby such proceeding shall not have been dismissed (provided, however, that the non-dismissal of any such proceeding shall not be a default hereunder so long as all of Tenant's covenants and obligations hereunder are being performed by or on behalf of Tenant); then Landlord shall be entitled to its election (unless Tenant shall cure such default prior to such election), to exercise concurrently or successively, any one or more of the following rights:

I.  Terminate this Lease by giving Tenant notice of termination, in which event this Lease shall expire and terminate on the date specified in such notice of termination, with the same force and effect as though the date so specified were the date herein originally fixed as the termination date of the term of this Lease, and all rights of Tenant under this Lease and in and to the Premises shall expire and terminate, and Tenant shall remain liable for all obligations under this Lease arising up to the date of such termination, and Tenant shall surrender the Premises to Landlord on the date specified in such notice; or

ii.  Terminate this Lease as provided herein and recover from Tenant all damages Landlord may incur by reason of Tenant's default, including, without limitation, a sum which, at the date of such termination, represents the then value of the excess, if any, of (a) the Minimum Rent, Percentage Rent, Taxes and all other sums which would have been payable hereunder by Tenant for the period commencing with the day following the date of such termination and ending with the date herein before set for the expiration of the full term hereby granted, over (b) the aggregate reasonable rental value of the Premises for the same period, all of which excess sum shall be deemed immediately due and payable; or

iii.  Without terminating this Lease, declare immediately due and payable all Minimum Rent, Taxes, and other rents and amounts due and coming due under this Lease for the entire remaining term hereof, together with all other amounts previously due, at once; provided, however, that such payment shall not be deemed a penalty or liquidated damages but shall merely constitute payment in advance of rent for the remainder of said term. Upon making such payment, Tenant shall be entitled to receive from Landlord all rents received by Landlord from other assignees, tenants, and subtenants on account of said Premises during the term of this Lease, provided that the monies to which tenant shall so become entitled shall in no event exceed the entire amount actually paid by Tenant to Landlord pursuant to the preceding sentence less all costs, expenses and attorney's fees of Landlord incurred in connection with the reletting of the Premises; or

iv.  Without terminating this Lease, and with or without notice to Tenant, Landlord may in its own name but as agent for Tenant enter into and upon and take possession of the Premises or any part thereof, and, at landlord's option, remove persons and property therefrom, and such property, if any, may be removed and stored in a warehouse or elsewhere at the cost of, and for the account of Tenant, all without being deemed guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby, and Landlord may rent the Premises or any portion thereof as the agent of Tenant with or without advertisement, and by private negotiations and for any term upon such terms and conditions as Landlord may deem necessary or desirable in order to relet the Premises. Landlord shall in no way be responsible or liable for any rental concessions or any failure to rent the Premises or any part thereof, or for any failure to collect any rent due upon such reletting. Upon such reletting, all rentals received by Landlord from such reletting shall be applied: first, to the payment of any indebtedness (other than any rent due hereunder) from Tenant to Landlord; second, to the payment of any costs and expenses of such reletting,

including, without limitation, brokerage fees and attorney's fees and costs of alterations and repairs; third, to the payment of rent and other charges then due and unpaid hereunder; and the residue, if any shall be held by Landlord to the extent of and for application in payment of future rent as the same may become due and payable hereunder. In reletting the Premises as aforesaid, Landlord may grant rent concessions and Tenant shall not be credited therefor. If such rentals received from such reletting shall at any time or from time to time be less than sufficient to pay to Landlord the entire sums then due from Tenant hereunder, Tenant shall pay any such deficiency to Landlord. Such deficiency shall, at Landlord's option, be calculated and paid monthly. No such reletting shall be construed as an election by Landlord to terminate this Lease unless a written notice of such election has been given to Tenant by Landlord. Notwithstanding any such reletting without termination, Landlord may at any time thereafter elect to terminate this Lease for any such previous default provided same has not been cured; or

v.  Without liability to Tenant or any other party and without constituting a constructive or actual eviction, suspend or discontinue furnishing or rendering to Tenant any property, material, labor, Utilities or other service, whether Landlord is obligated to furnish or render the same, so long as Tenant is in default under this Lease; or

vi.  Allow the Premises to remain unoccupied and collect rent from Tenant as it comes due; or

vii.  Foreclose the security interest described herein, including the immediate taking of possession of all property on or in the Premises; or

viii.  Pursue such other remedies as are available at law or equity.

e.  Landlord's pursuit of any remedy of remedies, including without limitation, any one or more of the remedies stated herein shall not (1) constitute an election of remedies or preclude pursuit of any other remedy or remedies provided in this Lease or any other remedy or remedies provided by law or in equity, separately or concurrently or in any combination, or (2) sever as the basis for any claim of constructive eviction, or allow Tenant to withhold any payments under this Lease.

Section 2.  Landlord's Self Help.  If in the performance or observance of any agreement or condition in this Lease contained on its part to be performed or observed and shall not cure such default within thirty (30) days after notice from Landlord specifying the default (or if such default shall reasonably take more than thirty (30) days to cure, shall diligently prosecuted the same to completion), Landlord may, at its option, without waiving any claim for damages for breach of agreement, at any time thereafter cure such default for the account of Tenant, and any amount paid or contractual liability incurred by Landlord in so doing shall be deemed paid or incurred for the account of Tenant and Tenant agrees to reimburse Landlord therefor and save Landlord harmless therefrom. Provided, however, that Landlord may cure any such default as aforesaid prior to the expiration of said waiting period, without notice to Tenant if any emergency situation exists, or after notice to Tenant, if the curing of such default prior to the expiration of said waiting period is reasonably necessary to protect the Leased Premises or Landlord's interest therein, or to prevent injury or damage to persons or property. If Tenant shall fail to reimburse Landlord upon demand for any amount paid for the account of Tenant hereunder, said amount shall be added to and become due as a part of the next payment of rent due and shall for all purposes be deemed and treated as rent hereunder.

Section 3.  Tenant's Self Help.  If Landlord shall default in the performance or observance of any agreement or condition in this Lease contained on its part to be performed or observed, and if Landlord shall not cure such default within thirty (30) days after notice from Tenant specifying the default (or, if such default shall reasonably take more than thirty (30) days to cure, and Landlord shall not have commenced the same within the thirty (30) days and diligently prosecuted the same to completion), Tenant may, at its option, without waiving any claim for damages for breach of agreement, at any time thereafter cure such default for the account of Landlord and any amount paid or any contractual liability incurred by Tenant in so doing shall be deemed paid or incurred for the account of Landlord and Landlord shall reimburse Tenant therefor and save Tenant harmless therefrom. Provided, however, that Tenant may cure any such default as aforesaid prior to the expiration of said waiting period, without notice to Landlord if an emergency situation exists, or after notice to Landlord , if the curing of such default prior to the expiration of said waiting period is reasonably necessary to protect the Leased Premises or Tenant's interest therein or to prevent injury or damage to persons or property.  If Landlord shall fail to reimburse Tenant upon demand for any amount paid or liability incurred for the account of Landlord hereunder, said amount or liability may be deducted by Tenant from the next or any succeeding payments of rent due hereunder; provided, however, that should said amount or the liability therefor be disputed by Landlord, Landlord may contest its liability or the amount thereof, through arbitration or through a declaratory judgment action and Landlord shall bear the cost of the filing fees therefor.

ARTICLE XVII - TITLE

Section l.  Subordination.  Tenant shall, upon the request of Landlord in writing, subordinate this Lease to the lien of any present or future institutional mortgage upon the Leased Premises irrespective of the time of execution or the time of recording of any such mortgage. Provided, however, that as a condition to such subordination, the holder of any such mortgage shall enter first into a written agreement with Tenant in form suitable for recording to the effect that:

a.  in the event of foreclosure or other action taken under the mortgage by the holder thereof, this Lease and the rights of Tenant hereunder shall not be disturbed but shall continue in full force and effect so long as Tenant shall not be in default hereunder, and

b.  such holder shall permit insurance proceeds and condemnation proceeds to be used for any restoration and repair required by the provisions of Articles XIII, XIV or XV, respectively.  Tenant agrees that if the mortgagee or any person claiming under the mortgagee shall succeed to the interest of Landlord in this Lease, Tenant will recognize said mortgagee or person as its Landlord under the terms of this Lease, provided that said mortgagee or person for the period during which said mortgagee or person respectively shall be in possession of the Leased Premises and thereafter their respective successors in interest shall assume all of the obligations of Landlord hereunder. The word "mortgage", as used herein includes mortgages, deeds of trust or other similar instruments, and modifications, and extensions thereof. The term "institutional mortgage" as used in this Article XVII means a mortgage securing a loan from a bank (commercial or savings) or trust company, insurance company or pension trust or any other lender institutional in nature and constituting a lien upon the Leased Premises.

Section 2.  Quiet Enjoyment.  Landlord covenants and agrees that upon Tenant paying the rent and observing and performing all of the terms, covenants and conditions on Tenant's part to be observed and performed hereunder, that Tenant may peaceably and quietly have, hold, occupy and enjoy the Leased Premises in accordance with the terms of this Lease without hindrance or molestation from Landlord or any persons lawfully claiming through Landlord .

Section 3.  Zoning and Good Title.  Landlord warrants and represents, upon which warranty and representation Tenant has relied in the execution of this Lease, that Landlord is the owner of the Leased Premises, in fee simple absolute, free and clear of all encumbrances, except for the easements, covenants and restrictions of record as of the date of this Lease. Such exceptions shall not impede or interfere with the quiet use and enjoyment of the Leased Premises by Tenant. Landlord further warrants and covenants that this Lease is and shall be a first lien on the Leased Premises, subject only to any Mortgage to which this Lease is subordinate or may become subordinate pursuant to an agreement executed by Tenant, and to such encumbrances as shall be caused by the acts or omissions of Tenant; that Landlord has full right and lawful authority to execute this Lease for the term, in the manner, and upon the conditions and provisions herein contained; that there is no legal impediment to the use of the Leased Premises as set out herein; that the Leased Premises are not subject to any easements, restrictions, zoning ordinances or similar governmental regulations which prevent their use as set out herein; that the Leased Premises presently are zoned for the use contemplated herein and throughout the term of this lease may continue to be so used therefor by virtue of said zoning, under the doctrine of "non-conforming use", or valid and binding decision of appropriate authority, except, however, that said representation and warranty by Landlord shall not be applicable in the event that Tenant's act or omission shall invalidate the application of said zoning, the doctrine of "non-conforming use" or the valid and binding decision of the appropriate authority. Landlord shall furnish without expense to Tenant, within thirty (30) days after written request therefor by Tenant, a title report covering the Leased Premises showing the condition of title as of the date of such certificate, provided, however, that Landlord's obligation hereunder shall be limited to the furnishing of only one such title report.

Section 4.  Licenses.  It shall be the Tenant's responsibility to obtain any and all necessary licenses and the Landlord shall bear no responsibility therefor; the Tenant shall promptly notify Landlord of the fact that it has obtained the necessary licenses in order to prevent any delay to Landlord in commencing construction of the Leased Premises.

ARTICLE XVIII - EXTENSIONS/WAIVERS/DISPUTES

Section l.  Extension Period.  Any extension hereof shall be subject to the provisions of Article III hereof.

Section 2.  Holding Over.  In the event that Tenant or anyone claiming under Tenant shall continue occupancy of the Leased Premises after the expiration of the term of this Lease or any renewal or extension thereof without any agreement in writing between Landlord and Tenant with respect thereto, such occupancy shall not be deemed to extend or renew the term of the Lease, but such occupancy shall continue as a tenancy at will, from month to month, upon the covenants, provisions and conditions herein contained. The rental shall be the rental in effect during the term of this Lease as extended or renewed, prorated and payable for the period of such occupancy.

Section 3.  Waivers.  Failure of either party to complain of any act or omission on the part of the other party, no matter how long the same may continue, shall not be deemed to be a waiver by said party of any of its rights hereunder. No waiver by either party at any time, express or implied, of any breach of any provision of this Lease shall be deemed a waiver of a breach of any other provision of this Lease or a consent to any subsequent breach of the same or any other provision. If any action by either party shall require the consent or approval of the other party, the other party's consent to or approval of such action on any one occasion shall not be deemed a consent to or approval of said action on any subsequent occasion or a consent to or approval of any other action on the same or any subsequent occasion. Any and all rights and remedies which either party may have under this Lease or by operation of law, either at law or in equity, upon any breach, shall be distinct, separate and cumulative and shall not be deemed inconsistent with each other, and no one of them, whether exercised by said party or not, shall be deemed to be an exclusion of any other; and any two or more or all of such rights and remedies may be exercised at the same time.

Section 4.  Disputes.  It is agreed that, if at any time a dispute shall arise as to any amount or sum of money to be paid by one party to the other under the provisions hereof, the party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of the said party to institute suit for the recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said party to pay such sum or any part thereof, said party shall be entitled to recover such sum or so much thereof as it was not legally required to pay under the provisions of this Lease. If at any time a dispute shall arise between the parties hereto as to any work to be performed by either of them under the provisions hereof, the party against whom the obligation to perform the work is asserted may perform such work and pay the costs thereof "under protest" and the performance of such work shall in no event be regarded as a voluntary performance and shall survive the right on the part of the said party to institute suit for the recovery of the costs of such work. If it shall be adjudged that there was no legal obligation on the part of the said party to perform the same or any part thereof, said party shall be entitled to recover the costs of such work or the cost of so much thereof as said party was not legally required to perform under the provisions of this Lease and the amount so paid by Tenant may be withheld or deducted by Tenant from any rents herein reserved.

Section 5.  Tenant's Right to cure Landlord's Default.  In the event that Landlord shall fail, refuse or neglect to pay any mortgages, liens or encumbrances, the judicial sale of which might affect the interest of Tenant hereunder, or shall fail, refuse or neglect to pay any interest due or payable on any such mortgage, lien or encumbrance, Tenant may pay said mortgages, liens or encumbrances, or interest or perform said conditions and charge to Landlord the amount so paid and withhold and deduct from any rents herein reserved such amounts so paid, and any excess over and above the amounts of said rents shall be paid by Landlord to Tenant.

Section 6.  Notices.  All notices and other communications authorized or required hereunder shall be in writing and shall be given by mailing the same by certified mail, return receipt requested, postage prepaid, and any such notice or other communication shall be deemed to have been given when received by the party to whom such notice or other communication shall be addressed. If intended for Landlord the same will be mailed to the address herein above set forth or such other address as Landlord may hereafter designate by notice to Tenant, and if intended for Tenant, the same shall be mailed to Tenant at the address herein above set forth, or such other address or addresses as Tenant may hereafter designate by notice to Landlord.

ARTICLE XIX - PROPERTY DAMAGE

Section l.  Loss and Damage.  Notwithstanding any contrary provisions of this Lease, Landlord shall not be responsible for any loss of or damage to property of Tenant or of others located on the Leased Premises, except where caused by the willful act or omission or negligence of Landlord , or Landlord's agents, employees or contractors, provided, however, that if Tenant shall notify Landlord in writing of repairs which are the responsibility of Landlord under Article VII hereof, and Landlord shall fail to commence and diligently prosecute to completion said repairs promptly after such notice, and if after the giving of such notice and the occurrence of such failure, loss of or damage to Tenant's property shall result from the condition as to which Landlord has been notified, Landlord shall indemnify and hold harmless Tenant from any loss, cost or expense arising therefrom.

Section 2.  Force Majeure.  In the event that Landlord or Tenant shall be delayed or hindered in or prevented from the performance of any act other than Tenant's obligation to make payments of rent, additional rent, and other charges required hereunder, by reason of strikes, lockouts, unavailability of materials, failure of power, restrictive governmental laws or regulations, riots, insurrections, the act, failure to act, or default of the other party, war or other reason beyond its control, then performance of such act shall be excused for the period of the delay and the period for the performance of such act shall be extended for a period equivalent to the period of such delay.  Notwithstanding the foregoing, lack of funds shall not be deemed to be a cause beyond control of either party.

ARTICLE XX - OPTION TO PURCHASE

During the Term of this Lease, Tenant shall have the right to purchase the Leased Premises at any time for a purchase price equal to Three Million Dollars ($3,000,000).

ARTICLE XXI - MISCELLANEOUS

Section 1.  Assignment and Subletting.  Under the terms and conditions hereunder, Tenant shall have the absolute right to transfer and assign this lease or to sublet all or any portion of the Leased Premises or to cease operating Tenant's business on the Leased Premises provided that at the time of such assignment or sublease Tenant shall not be in default in the performance and observance of the obligations imposed upon Tenant hereunder. The use of the Leased Premises by such assignee or sublessee shall be expressly limited by and to the provisions of this lease.

Section 2.  Fixtures.  All personal property, furnishings and equipment presently and all other trade fixtures installed in or hereafter by or at the expense of Tenant and all additions and/or improvements, exclusive of structural, mechanical, electrical, and plumbing, affixed to the Leased Premises and used in the operation of the Tenant's business made to, in or on the Leased Premises by and at the expense of Tenant and susceptible of being removed from the Leased Premises without damage, unless such damage be repaired by Tenant, shall remain the property of Tenant and Tenant may, but shall not be obligated to, remove the same or any part thereof at any time or times during the term hereof, provided that Tenant, at its sole cost and expense, shall make any repairs occasioned by such removal.

Section 3.  Estoppel Certificates.  At any time and from time to time, Landlord and Tenant each agree, upon request in writing from the other, to execute, acknowledge and deliver to the other or to any person designated by the other a statement in writing certifying that the Lease is unmodified and is in full force and effect, or if there have been modifications, that the same is in full force and effect as modified (stating the modifications), that the other party is not in default in the performance of its covenants hereunder, or if there have been such defaults, specifying the same, and the dates to which the rent and other charges have been paid.

Section 4.  Invalidity of Particular Provision.  If any term or provision of this Lease or the application hereof to any person or circumstance shall, to any extent, be held invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held 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 law.

Section 5.  Captions and Definitions of Parties.  The captions of the Sections of this Lease are for convenience only and are not a part of this Lease and do not in any way limit or amplify the terms and provisions of this Lease. The word "Landlord" and the pronouns referring thereto, shall mean, where the context so admits or requires, the persons, firm or corporation named herein as Landlord or the mortgagee in possession at any time, of the land and building comprising the Leased Premises. If there is more than one Landlord, the covenants of Landlord shall be the joint and several obligations of each of them, and if Landlord is a partnership, the covenants of Landlord shall be the joint and several obligations of each of the partners and the obligations of the firm. Any pronoun shall be read in the singular or plural and in such gender as the context may require. Except as in this Lease otherwise provided, the terms and provisions of this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

Nothing contained herein shall be deemed or construed by the parties hereto nor by any third party as creating the relationship of principal and agent or of partnership or of a joint venture between the parties hereto, it being understood and agreed that neither any provision contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of Landlord and Tenant.

Section 6.  Brokerage.  No party has acted as, by or through a broker in the effectuation of this Agreement, except as set out hereinafter.

Section 7.  Entire Agreement.  This instrument contains the entire and only agreement between the parties, and no oral statements or representations or prior written matter not contained in this instrument shall have any force and effect. This Lease shall not be modified in any way except by a writing executed by both parties.

Section 8.  Governing Law. All matters pertaining to this agreement (including its interpretation, application, validity, performance and breach) in whatever jurisdiction action may be brought, shall be governed by, construed and enforced in accordance with the laws of the State of California. The parties herein waive trial by jury and agree to submit to the personal jurisdiction and venue of a court of subject matter jurisdiction located in Los Angeles County, State of California.  In the event that litigation results from or arises out of this Agreement or the performance thereof, the parties agree to reimburse the prevailing party's reasonable attorney's fees, court costs, and all other expenses, whether or not taxable by the court as costs, in addition to any other relief to which the prevailing party may be entitled. In such event, no action shall be entertained by said court or any court of competent jurisdiction if filed more than one year subsequent to the date the cause(s) of action actually accrued regardless of whether damages were otherwise as of said time calculable.

Section 9.  Contractual Procedures.  Unless specifically disallowed by law, should litigation arise hereunder, service of process therefor may be obtained through certified mail, return receipt requested; the parties hereto waiving any and all rights they may have to object to the method by which service was perfected.

Section 10.  Extraordinary remedies.  To the extent cognizable at law, the parties hereto, in the event of breach and in addition to any and all other remedies available thereto, may obtain injunctive relief, regardless of whether the injured party can demonstrate that no adequate remedy exists at law.

Section 11.  Reliance on Financial Statement.  Tenant shall furnish concurrently with the execution of this lease, a financial statement of Tenant prepared by an accountant. Tenant, both in corporate capacity, if applicable, and individually, hereby represents and warrants that all the information contained therein is complete, true, and correct. Tenant understands that Landlord is relying upon the accuracy of the information contained therein. Should there be found to exist any inaccuracy within the financial statement which adversely affects Tenant's financial standing, or should Tenant's financial circumstances materially change, Landlord may demand, as additional security, an amount equal to an additional two (2) months' rent, which additional security shall be subject to all terms and conditions herein, require a fully executed guaranty by a third party acceptable to Landlord, elect to terminate this Lease, or hold Tenant personally and individually liable hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this Lease the day and year first above written or have caused this Lease to be executed by their respective officers thereunto duly authorized.

CUBICLE CB, LLC

FINITE ENERGY, INC.

/s/ Lance Strong

Lance Strong

Lance Strong, Manager

Lance Strong, President

STATE OF CALIFORNIA

}

}

ss.

COUNTY OF LOS ANGELES          }

On this \_\_ day of  December,  2013, before me, the undersigned, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared  Lance Strong, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature:

Name (typed or printed)

My Commission expires:

EXHIBIT "A" LEGAL DESCRIPTION

The following described real property, together with all improvements thereon:

Initials:

LANDLORD  \_\_\_\_\_\_\_\_\_\_\_\_\_\_

TENANT   \_\_\_\_\_\_\_\_\_\_\_\_\_\_

EXHIBIT "B" TENANT PLANS AND SPECIFICATIONS

Initials:

LANDLORD  \_\_\_\_\_\_\_\_\_\_\_\_\_

TENANT   \_\_\_\_\_\_\_\_\_\_\_\_\_

**LeaseA#33**

EX-10.5

**Exhibit 10.5**

**AMENDED AND RESTATED**

**MANAGEMENT AND LEASING AGREEMENT**

THIS AMENDED AND RESTATED MANAGEMENT AND LEASING AGREEMENT (this “Agreement”), made and entered into as of February 14, 2018, among each of the entities set forth on Exhibit A (each, an “Owner” and collectively, the “Owners”), OSSI ASSET MANAGEMENT LLC, a Delaware limited liability company (“OSSI Asset”), and OSSI PR VENTURES II LLC, a Delaware limited liability company (“OSSI PR,” and together with OSSI Asset, hereinafter referred to as “Property Manager”).

W I T N E S S E T H :

WHEREAS, each Owner is the owner of the property set forth opposite its name on Exhibit B (together with any and all improvements now or hereafter erected thereon, each a “Property” and together, the “Properties”); and

WHEREAS, Property Manager has agreed to manage the Properties on behalf of the Owners in accordance with this Agreement; and

WHEREAS, Owners (or Owners’ predecessors in interest) and Property Manager’s predecessor in interest entered into certain property management agreements, service agreements and asset management agreements relating to the Properties (collectively, the “Existing Agreements”); and

WHEREAS, Owners and Property Manager desire to consolidate, amend and restate the Existing Agreements in their entirety on the terms set out herein and this Agreement shall supersede and replace the Existing Agreements in their entirety; and

WHEREAS, Owners wish to continue to engage Property Manager, exclusively, as the manager and leasing agent of the Properties and Property Manager is willing to perform such responsibilities, all in accordance with the terms and provisions hereof; and

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE ONE

Engagement of Property Manager

1.1 Engagement.

(a) Owners hereby engage and authorize Property Manager to take sole, entire and exclusive charge of the management and leasing of the Properties, and Property Manager hereby accepts said engagement and authorization and agrees to use the skills and efforts of Property Manager to effect the management and leasing of the Properties, all in accordance with the terms, conditions and provisions of this Agreement.

(b) This Agreement initially covers those Properties identified on Exhibit B hereto. Upon any sale of a Property, each such sold Property, upon the transfer of title or the transfer, directly or indirectly, of the controlling ownership interests in the entity holding title, shall no longer be a Property and shall be deleted from Exhibit B. Owners and Property Manager shall, upon either’s request from time to time, amend and restate Exhibit A and Exhibit B so that it contains an accurate list of the then existing Owners and Properties.

1.2 Independent Contractor Status. It is the express intent of Owners and Property Manager, and this Agreement shall be so construed, that the rights and duties hereby granted by Owners to Property Manager, and assumed by Property Manager, are those of an independent contractor only. Property Manager acknowledges that Owners have retained Property Manager in such capacity in reliance on Property Manager’s skill, expertise, efficiency, diligence, professional judgment and experience in the management and leasing of income-producing properties similar to the Properties and in performing its duties and obligations under this Agreement. Property Manager shall devote Property Manager’s time, energy and skills to perform Property Manager’s duties and obligations set forth in this Agreement. Notwithstanding the forgoing, in the performance of Property Manager’s duties hereunder, Property Manager may employ, engage or otherwise contract with any Person (as defined in Section 7.2) to perform various tasks for the Property, including subcontracts for the performance of Property Manager’s obligations under this Agreement provided that Property Manager remains primarily liable to Owner for the performance of such obligations.

1.3 Rights of Owners. Nothing set forth in this Agreement shall restrict the right of an Owner to enter on and inspect its Property, to exercise any and all of its rights and remedies under this Agreement, to direct any questions regarding operations of its Property to Property Manager, or to maintain a relationship with tenants.

1.4 Amendment and Restatement of the Existing Agreement.

(a) The Existing Agreements are hereby modified so that all of the terms and conditions of the Existing Agreements shall be restated in their entirety as set forth herein.

(b) This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and permitted assigns, and shall be deemed to be effective as of the date hereof.

(c) By its execution of this Agreement, (i) except for any fees that are due and payable to Property Manager but not yet paid as of the date hereof in relation to the Properties, Property Manager hereby waives any preexisting claims against Owners or any other claims arising under the Existing Agreement and acknowledges and agrees that this Agreement shall govern the rights and responsibilities of Owners and Property Manager going forward, and (ii) each Owner hereby waives any preexisting claims against Property Manager or any other claims arising under the Existing Agreement and acknowledges and agrees that this Agreement shall govern the rights and responsibilities of Owners and Property Manager going forward.

-2-

ARTICLE TWO

Duties of Property Manager

Subject to (i) the provisions hereof including Article One, and (ii) each Approved Budget (as defined in Section 2.2 below) and in accordance therewith, Property Manager shall have authority to take such actions, and perform such duties, as Property Manager deems necessary and desirable for the care, protection, providing security for, operation, maintenance, repair, replacement, and leasing of the Properties; provided, however, that it shall not be deemed a failure by Property Manager to perform its duties hereunder to the extent that the performance of any such duties requires the expenditure of funds which are not made available to Property Manager for such purposes.

Property Manager, in performing its duties and obligations under this Agreement, shall perform such duties and obligations ethically and to the best of its abilities using all necessary care, skill, expertise, prudence, and diligence in accordance with high standards of professional property management in the management of comparable properties of similar size and in similar locations and with standard practices acceptable and common in the community shopping center industry.

Property Manager’s duties hereunder shall include, without limitation, the following:

2.1 Manager Personnel.

(a) In the performance of Property Manager’s duties hereunder, Property Manager may engage or utilize certain entities or persons (including, without limitation, OSSI Corp., an Ohio corporation (“OSSI”), and its Affiliates and employees thereof) to perform various tasks for the Properties at the expense of Property Manager; provided, that such services which are performed by persons engaged, utilized or retained to perform services at the Properties, including, but not limited to, those persons or positions identified on Exhibit C attached hereto (“Manager Personnel”) shall be at Owners’ expense; provided, further, that such expenses shall be in accordance with each Approved Budget. Property Manager shall identify in the same manner those additional persons or categories of individuals whose salaries, from time to time in accordance with the Approved Budget or otherwise with the prior written consent of Owners, may be charged to each Property for direct services rendered to each Property based on the actual amount of time worked by such persons or categories of individuals for such Property. The persons and/or categories of individuals whose salaries are eligible to be charged are identified on Exhibit C. Exhibit C may be amended or supplemented from time to time with the prior written consent of Owners. If any such person does not provide services exclusively for the Property, then an equitable portion of the wages, bonuses, benefits, taxes and travel expenses (if any) of such person(s) and office overhead or Property Manager’s satellite offices based on the actual amount of time worked by such persons for the Property and, in the case of office overhead, based on the number of properties operated out of such office, shall be at Owners’ expense. Property Manager agrees that such allocation and any allocation of third-party expenses will be done utilizing the same hourly time-based methodology as used in other community centers managed by Property Manager and on a consistent and fair basis.

-3-

(b) Property Manager shall maintain an organization and systems as Property Manager reasonably deems necessary for the performance of Property Manager’s duties hereunder.

(c) To the extent provided for in each Approved Budget, all salaries (including severance pay, if any), wages, bonus and other compensation of the Manager Personnel, including, without limitation, fringe benefits, medical and health insurance, pension plans, social security, taxes, workers’ compensation, travel expenses (if any) for Manager and office overhead as described in Section 2.1(a) shall be deemed an operating expense of the Properties, and subject to reimbursement by Owners pursuant to Article Three hereof. Except as provided in each Approved Budget, it is not the intent of this Section 2.1 that Property Manager’s in-house corporate, home office and other expenses incurred in connection therewith be considered or treated as operating expenses of the Properties or an Owner, such expenses shall not be included in any Approved Budget, and no Owner shall be liable for any such expenses.

(d) Property Manager agrees that Property Manager shall not discriminate against any employee, or applicant for employment at the Properties, because of race, color, religion, national origin, ancestry, age or sex and further agrees to comply with all applicable employment, sexual harassment and discrimination laws.

(e) Subject to the supervision and direction of the Owner, Property Manager shall have the right, at its option (i) to engage third-party legal counsel and/or (ii) to utilize in-house attorneys or paralegals (collectively, “In-House Counsel”), in each case in connection with all matters related to the management of the Properties, including, but not limited to, the collection of monies, compliance with legal requirements, the negotiation and prosecution of claims for the reduction of taxes, litigation matters, insurance issues, financings, tenant notifications, maintenance of the corporate record books, furnishing of certified rent rolls and other data, the negotiation and enforcement of leases, the transfer of all or any portion of the Properties and the preparation and obtaining of estoppel certificates, subordination, nondisturbance and attornment agreements. If Property Manager elects to use In-House Counsel in connection with any matter related to the management of the Properties, Property Manager shall receive a fee from Owners, as the sole and exclusive compensation payable by Owners for such legal services performed by In-House Counsel, at market rates for legal services performed by in-house attorneys and paralegals, as agreed upon by Property Manager and Owners.

2.2 Preparation of Annual Budget.

(a) Contemporaneously with the execution and delivery of this Agreement, each Owner has acknowledged its approval of a budget for its Property for the Fiscal Year ending December 31, 2018, which has been prepared by Property Manager and delivered to such Owner as of the date hereof. With respect to each subsequent Fiscal Year, Property Manager shall prepare for each Property a separate proposed budget, which shall be in the form attached hereto as Exhibit D and shall include the information described in Exhibit D-1 and shall submit the same to each applicable Owner not later than November 15 of the prior Fiscal Year (until approved pursuant to this Section 2.2, each, a “Budget” and thereafter, an “Approved Budget”).

-4-

(b) If an Owner fails to approve a proposed Budget (or a particular portion thereof) for its Property for any Fiscal Year prior to the first day of such Fiscal Year, Property Manager shall operate such Property in accordance with the portion of the proposed Budget that was approved by such Owner and, in relation to the portion that was not approved, in accordance with the corresponding portion of the Approved Budget of such Property for the immediately preceding Fiscal Year, except that the applicable portion of such preceding Approved Budget shall be adjusted:

(i) to reflect (A) in relation to expenses not within the control of the Owner with respect to such Property (including real property taxes and assessments, insurance and utilities), the actual amount of such expenses; and (B) in relation to expenses within the control of the Owner with respect to such Property, an increase of five percent (5%) over the amount set out in such preceding Approved Budget; and

(ii) to remove any capital expenditures that were part of such portion of the preceding Approved Budget.

(c) If an Owner provides notice of any objection to a proposed Budget (each such notice, a “Budget Objection Notice”) within fifteen (15) days after receiving the proposed Budget, Property Manager shall modify the proposed Budget, taking into account the objections of the Owner, and shall resubmit a revised Budget to that Owner for reconsideration and the Owner may deliver further Budget Objection Notices (if any), which it shall endeavor to deliver within fifteen (15) days thereafter (in which event, the resubmission and review process described above in this sentence shall continue until an Budget for the Fiscal Year in question is accepted and consented to by such Owner).

(d) Intentionally Omitted.

(e) Subject to Section 2.9, Property Manager agrees to operate each Property in accordance with the Approved Budget pertaining thereto; provided that Property Manager may vary from the limitations set forth in any Approved Budget to the extent that (i) any expenditure for a single line item in such Approved Budget does not exceed the amount budgeted for such item by more than ten percent (10%) of the amount set forth in such Approved Budget and (ii) aggregate expenditures for such Property do not exceed one hundred five percent (105%) of the total budgeted amount in the Approved Budget for such Property. During the calendar year, Property Manager shall, as part of its quarterly reports required by Section 2.5(b), inform an Owner, promptly after they become known to Property Manager, of any material increases in costs, expenses and capital expenditures that were not foreseen during the budget preparation period and were, therefore, not reflected in the Approved Budgets. In the event that Property Manager proposes to make any expenditures in excess of the amounts permitted in this Section 2.2(e), Property Manager shall prepare and submit to the Owner a statement setting forth the details of the proposed expenditure and the reasons therefor, together with an explanation of the variance as it relates to the Approved Budgets. An Owner shall be deemed to have approved such expenditure unless it shall have affirmatively disapproved such expenditure in writing within ten (10) Business Days after Property Manager shall have delivered such statement to that Owner.

-5-

(f) As used herein, “Fiscal Year” shall mean the taxable year of the Property Manager for federal income tax purposes, which shall be the calendar year unless a different year is required by the Internal Revenue Code of 1986, as amended, or any corresponding provision(s) of succeeding law (the “Code”).

2.3 Bank Accounts. Property Manager shall cause a deposit account and a controlled disbursement account (or such other accounts as Property Manager deems necessary or appropriate from time to time) to be maintained for the benefit of the Owners at one or more banks, each of which shall be a member of the FDIC having not less than One Billion Dollars ($1,000,000,000) of assets and being “well capitalized” under FDIC rules for purposes of accepting brokered deposits (collectively, the “Operating Accounts”; each, an “Operating Account”). Property Manager shall cause all expenditures incurred by or on behalf of an Owner in accordance with each Approved Budget or at the request of such Owner, to be timely paid out of the applicable Operating Account and all income, cash receipts, and other monies of Owner received as a result of operation of the Owner’s Property to be promptly deposited into the Owner’s Operating Account. All such amounts shall be and remain the property of the applicable Owner and shall be held in the name of each Owner, and shall be received, held and disbursed by Property Manager solely for the purposes of managing and operating the Properties pursuant to this Agreement and as reasonably estimated by Property Manager, with the excess of all such amounts to be either (i) distributed to or on behalf of the applicable Owner, subject to estimated reserves for anticipated expenses, or (ii) invested for or on behalf of the Owner, in either case, at the written direction of such Owner. If an Owner does not provide any written direction, such Owner shall be deemed to have chosen option (i) above. In accordance with and Owner’s written direction, any excess funds to be invested by Property Manager for or on behalf of such Owner shall be invested in short-term investments having maturities of no more than ninety (90) days, which are securities issued or fully guaranteed by United States government agencies, certificates of deposit of banks having a net worth of at least Fifty Million Dollars ($50,000,000), bank repurchase agreements covering the securities of the United States government, commercial paper rated “A” or better by Moody’s Investors Services, Inc., money market funds having assets in excess of Ten Million Dollars ($10,000,000), or interest-bearing time deposits in banks or thrift institutions. No other funds of any Person (other than the Owners) shall in any way be commingled with any funds in the Operating Accounts, but funds of the Owners may be commingled in one or more Operating Accounts.

2.4 Collection of Monies.

(a) Except as may be otherwise required in any cash management arrangement in connection with any financing of the Properties by the Owners, Property Manager shall collect all rents, including percentage rents, and all other amounts, whether in the form of rents, common area maintenance charges or other reimbursable expenses, due to an Owner from any tenants within such Owner’s Property or parties to declarations and reciprocal easements, from concessionaires or licensees authorized to utilize portions of the applicable Property and from any other Persons (as defined in Section 7.2) who owe such sums to the Owner as a result of the operation of the Property, all in the ordinary course of business. In connection with the collection of percentage rentals, enforcement of consumer price index or other escalators and collection of any other variable rent, Property Manager shall keep all records required to effectuate such collections, including, but not limited to, gross sales reports of tenants within the Property.

-6-

(b) Any expenses, including reasonable attorneys’ fees and disbursements, incurred by Property Manager in connection with its performance under this Section shall be deemed an operating expense of the applicable Property and shall be reimbursable, in full, by such Owner in accordance with the provisions hereof. Property Manager is expressly authorized to retain counsel of its own choosing to assist Property Manager in fulfilling its responsibilities hereunder.

2.5 Books and Reports. Property Manager agrees that it shall, during the term of this Agreement, in accordance with the provisions hereof:

(a) Maintain, at the office of Property Manager, a comprehensive system of office records, books and accounts relating to the income, expenses and operations of the Properties based on the property management system utilized by Property Manager from time to time. Property Manager shall maintain such records, books and accounts in accordance with generally accepted accounting principles, as in effect from time to time. Each Owner and those designated by each Owner shall have access to such office records, books and accounts and to all vouchers, files and other material relating to the Properties and maintained pursuant to this Agreement. All such records shall relate solely to the Properties and shall be separate and distinct from any other records maintained by Property Manager not relating to the Properties. Each Owner shall exercise its rights of inspection hereunder after reasonable notice and solely during normal business hours and shall do so in such a manner so as not to unreasonably interfere with the operations of Property Manager.

(b) Deliver to each Owner, in accordance with the requirements set forth in Schedule 1 attached hereto and made a part hereof, on or before (i) forty-five (45) days after the end of the first three fiscal quarters of each Fiscal Year, and (ii) ninety (90) days after the end of each Fiscal Year during the term hereof, commencing with the fiscal quarter immediately succeeding the fiscal quarter in which the term of this Agreement shall commence, the reports identified on Schedule 1. Such reports shall be made on an accrual basis.

(c) Deliver to each Owner all financial information concerning the applicable Property that the Owner may reasonably require to prepare its tax returns.

(d) In the event of the termination of this Agreement, whether by normal expiration or otherwise, within the applicable time period set forth herein, deliver to each Owner both a quarterly report and a year-to-date report, each covering that portion of the relevant time period which is included within the term hereof, prior to such termination.

2.6 Compliance with Legal Requirements. To the extent of available cash, Property Manager shall take such actions as may be reasonably necessary in accordance with each Approved Budget to comply with any and all applicable laws, ordinances, orders, licenses,

-7-

permits or requirements affecting the Properties issued or established by any federal, state, county or municipal authority having jurisdiction thereover, and orders of the Board of Fire Underwriters or similar bodies, and to the extent such actions are not contemplated by the relevant Approved Budget emergency expenses, each Owner shall provide sufficient funds to enable Property Manager to take such actions, excluding tenanted areas if the occupants thereof are legally responsible therefor. To the extent of available cash, Property Manager shall take such actions as may be reasonably necessary to obtain all applicable licenses and permits affecting a Property and to the extent such actions are not contemplated by the Approved Budget but constitute emergency expenses, each Owner shall provide sufficient funds to enable Property Manager to take such actions. Provided Property Manager is timely notified, Property Manager shall not, however, take any such actions for so long as an Owner is contesting, or has affirmed its intention to contest and promptly institutes proceedings contesting, any such order or requirement, except that, if a failure to comply promptly with any such order or requirement would or might expose Property Manager to criminal or civil liability, Property Manager may cause compliance therewith. Property Manager shall promptly, and in no event later than seventy-two (72) hours from time of receipt, send written notice to the applicable Owner, including a copy thereof, of all such orders and notices of requirements and of Property Manager’s actions or proposed action, in response thereto.

2.7 Assistance in Tax and Awards Negotiations. Property Manager shall, when requested by an Owner, engage, on behalf of that Owner and cooperate with, Property Manager’s third-party consultant in connection with the negotiation and prosecution of all claims for the reduction or abatement of property taxes and other taxes affecting such Owner’s Property and for awards for taking by condemnation proceedings, or friendly acquisition in lieu thereof, of all or any portion of such Property. The cost and expense of such third-party consultant and any other out-of-pocket expenses incurred by Property Manager in connection therewith shall be deemed operating expenses of the applicable Property and reimbursed as provided in accordance with the provisions hereof.

2.8 Execution of Contracts. Property Manager, in its capacity as manager of the Properties, shall deal at arm’s-length with all third parties. Property Manager shall, in the name of or as agent for an Owner, enter into such contracts and other agreements for utilities and other services either required or deemed as desirable by Property Manager in connection with the operation of the Property owned by such Owner, provided that all such contracts and orders shall be subject to the limitations set forth in each Approved Budget or as otherwise approved or directed by the relevant Owner. Property Manager shall order, in the name of an Owner, such equipment, tools, appliances, materials and supplies as it deems desirable to properly maintain each Property. If requested by the contracting third party or Property Manager, each Owner shall execute such contract in its own name and by its own hand. Property Manager shall use commercially reasonable efforts to secure for, and credit to, the relevant Owner any discounts, commissions or rebates obtainable as a result of such contracts or orders; provided, however, that the relevant Owner shall be required to cause to be made available to Property Manager such sums of money as are required in order to enable Property Manager to obtain such discounts. All such contracts shall be terminable by Property Manager or the relevant Owner without cause on no more than ninety (90) days’ notice, other than as specifically provided in the relevant Approved Budget or as otherwise approved or directed by an Owner. Property Manager shall not incur obligations or grant rights on behalf of an Owner to any person or entity in which

-8-

Property Manager has a material financial or other interest or with which Property Manager is affiliated unless the price of or fee therefor is not higher than that which would have been charged as a result of bona fide arm’s-length negotiation for goods or services of comparable quality and Property Manager delivers to the applicable Owner prior notice of such transactions.

2.9 Maintenance and Repair of Properties. Property Manager shall maintain the Properties in accordance with the Approved Budget; provided, however, that no material alterations, additions or improvements which are not in the approved Budget shall be made without the prior approval of the Owners. Such maintenance shall include, but shall not necessarily be limited to, interior and exterior cleaning, painting, decorating and maintenance, both preventative and otherwise, of all systems and improvements which are a part of the Properties. To the extent set forth in the Approved Budget, or to the extent an expense is incurred under such circumstances as Property Manager shall reasonably and in good faith deem to be an emergency necessary for the preservation or safety of the Properties, and Property Manager was unable, after using commercially reasonable efforts to contact Owners for their approval or disapproval of such expenditure, to contact Owners, all expenses incurred in connection with such maintenance shall be timely paid out of the Operating Accounts, or in the event Property Manager advances its own funds to pay for any such expenses, such amounts advanced by Property Manager shall be reimbursable by Owners to Property Manager within thirty (30) days of Owners’ receipt of such request. If Property Manager was unable to contact Owners prior to making such expenditure, Property Manager shall contact Owners within twenty-four (24) hours thereafter to inform Owners of the circumstances of the emergency.

2.10 Insurance.

(a) Unless maintained by the tenants of the Properties or as otherwise requested by Owners, during the term of the this Agreement, Property Manager shall maintain the insurance listed below either (i) directly through an insurance provider reasonably acceptable to Owners; or (ii) through an insurance program maintained by Property Manager, OSSI, RVI or their respective Affiliates (as may be modified by Property Manager from time to time and only to the extent participation in the program is available at costs acceptable to Owners), in each case at Owners’ sole cost and expense (on a pro rata basis):

(i) Commercial General Liability insurance against all claims for personal injury, bodily injury, death, or property damage in an amount of not less than the greater of that amount required by any lender of an Owner or One Million Dollars ($1,000,000) single limit per occurrence and no less than Two Million Dollars ($2,000,000) in the aggregate;

(ii) Special form Causes of Loss Property Insurance in an amount of not less than the replacement cost of the Properties, exclusive of land and excavation costs and tenant improvements and betterments;

(iii) Workers’ compensation insurance in accordance with applicable law, and employer’s liability insurance, with limits of not less than Five Hundred Thousand Dollars ($500,000). The workers’ compensation insurance shall comply with the requirements of law of the state where the Property is located, and shall contain an “All-States” endorsement;

-9-

(iv) Commercial automobile liability insurance covering all owned, hired, or non-owned vehicles with limits of liability of not less than One Million Dollars ($1,000,000) per accident for personal injury and property damage;

(v) Fidelity and crime insurance in an amount equal to at least Five Million Dollars ($5,000,000) that may be maintained under a blanket policy covering all employees who handle or who are responsible for funds belonging to Owners; and

(vi) Such other insurance as may be required by any lender on a Property, by law or deemed desirable by either an Owner or Property Manager to cover the interest of said parties, including, but not limited to, workers’ compensation insurance, boiler insurance, burglary and theft insurance and, at the option of an Owner, rent insurance.

(b) The cost for such insurance shall include any deductible or self-insured retention costs, to the extent that any such policies required pursuant to this Agreement contain any deductible or self-insured retentions. In addition, each Owner hereby agrees to indemnify and hold harmless Property Manager against any loss, liability, damage, cost or expense incurred by Property Manager as a result of Property Manager’s payment of any such deductible or self-insured retention costs. Each Owner acknowledges that the insurance program maintained by Property Manager on the date of this Agreement satisfies the requirements of this Section 2.10. Property Manager shall promptly deliver to each Owner certificates of insurance, copies of insurance policies, or other evidence of the minimum levels of insurance set forth above, as reasonably requested by any Owner. The policies required under this Section or endorsements thereof shall provide that none of the required coverage may be canceled or terminated without thirty (30) days’ prior written notice to each Owner. Notwithstanding the expiration or early termination of this Agreement, Property Manager shall maintain insurance coverage until such time as an Owner shall have obtained new insurances policies (but in no event longer than 180 days from the date of such expiration or early termination) such that the provisions of this Section shall survive such expiration or early termination of this Agreement and Property Manager’s insurance carriers shall remain obligated under the policies for all claims, damages or other matters that arise which are within the scope of the requirements of insurance coverage set forth in this Section. Nothing in this Section shall be construed to in any way limit the scope of the indemnification granted in this Agreement.

(c) Property Manager shall carry, at its sole expense, its own commercial general liability insurance, which shall be secondary and non-contributory to the insurance described in Section 2.10(a)(i) above. All personnel of Property Manager or Owners, with each party being responsible for insuring its own personnel, handling any Owner’s funds or with access to the Operating Accounts shall be bonded or otherwise covered by insurance.

-10-

(d) All insurance obtained pursuant to the provisions hereof as well as any additional insurance which Owners, in their sole discretion, might desire to obtain, shall name both Owners and Property Manager as insureds, as their interests may appear (except as to casualty insurance where Property Manager shall not be named as an additional insured). Each such policy shall contain a waiver of subrogation reasonably acceptable to each Owner and Property Manager.

(e) Property Manager shall promptly investigate all accidents, damages and other casualty to a Property or any claims of injury, to property or person, arising out of or related to the ownership, operation and maintenance of the Properties. Property Manager shall promptly submit to Owners a written report regarding such incident including an estimate of the cost of repair of any damage or destruction and its recommendations as to such repair. Property Manager shall timely prepare any and all reports required of any insurance companies or other interested entities or governmental bodies regarding such damage, destruction or injury.

(f) Property Manager shall have the sole and exclusive authority to settle and compromise any and all claims relating to damage or destruction to any physical improvements on a Property or any liability claims which are not in excess of One Hundred Thousand Dollars ($100,000) (provided all such settlements are reported to the applicable Owner within thirty (30) days and no admission of liability is made on behalf of such Owner), but subject to any limits imposed by any Property lender, if any, and, in furtherance of this authorization, Property Manager is hereby empowered to execute any proofs of loss, adjustment of loss and reports and Property Manager is authorized to sign for, and receive, any insurance proceeds not in excess of said amount. If such claim is in excess of such amount or involves an admission of liability on behalf of the applicable Owner, Property Manager shall take no actions as to settlement, compromise, proof of loss, or the like without written consent thereto by the applicable Owner.

2.11 Claims. Property Manager shall advise the applicable Owner promptly, with confirmation in writing, of the service upon Property Manager of any summons, subpoena, or other similar legal document, as well as receipt of any notices, letters or other communication, in any case, setting out or claiming an actual or alleged potential liability of such Owner, a Property or Property Manager (if, as to Property Manager, such claim arises out of a Property). The written confirmation by Property Manager to the applicable Owner shall include a copy of any such summons, subpoena, or other communication.

2.12 Disbursements. Property Manager shall disburse funds to pay all expenses relating to a Property in accordance with the Approved Budget for such Property unless directed otherwise by the applicable Owner in writing and, to the extent that funds are available from receipts relating to the Property or otherwise received the Owner, cause to be disbursed in a timely fashion:

(a) Sums reimbursable to Property Manager pursuant to the provisions hereof; and

-11-

(b) Amounts otherwise due and payable as operating expenses of the Property and authorized pursuant to the terms and provisions hereof, inclusive of any compensation due and payable to Property Manager hereunder.

All such disbursements shall be made from the Operating Accounts, maintained by Property Manager pursuant to the provisions hereof. Each Owner shall, in connection with Property Manager’s duties hereunder, promptly forward to Property Manager any tax statements, payment schedules, invoices or similar notices received by the Owner relating to its Property and requiring payment of sums relating thereto, and Property Manager is hereby authorized to disburse funds to pay any such expenses.

2.13 Tenant Matters.

(a) Property Manager shall take such actions as it deems reasonably necessary in order to maintain a professional, businesslike relationship on behalf of Owners with all tenants within a Property. All material requests, complaints and notices delivered to Property Manager by any tenants will be incorporated into the quarterly reports required to be delivered by Property Manager to each Owner hereunder and such reports shall indicate the action, or proposed action, taken, or to be taken, with respect thereto. Property Manager shall be responsible for coordinating and monitoring the construction of landlord improvement work to be performed by or for an Owner at the Property and the construction of tenant improvements at the Property to be performed by or for tenants.

(b) Each Owner hereby expressly authorizes Property Manager to request, demand, collect, receive and receipt all rent and other charges and to institute legal proceedings, either in the name of Property Manager or, if necessary, the name of an Owner, for the collection of all rents, including percentage rents, and all other amounts, whether in the form of rents, common area maintenance charges, contributions to any Marketing and Promotion Fund (as defined in Section 2.15), if any, or other reimbursable expenses, due to an Owner from any tenants within a Property. Each Owner expressly authorizes Property Manager to file any legal actions to enforce the terms of any lease or leases related to a Property, including, but not limited to, dispossessory actions, or take any action to terminate leases on space within the Property, if such is deemed necessary by Property Manager. The authority granted in this subsection (b) as to lease enforcement shall be absolute. Any out-of-pocket expenses, including attorneys’ fees and disbursements, incurred by Property Manager in connection with its performance under this Section 2.13 shall be deemed an operating expense of a Property and shall be reimbursable, in full, in accordance the provisions hereof.

2.14 Leasing Services. Each Owner hereby authorizes Property Manager to perform those services necessary for the leasing of such Owner’s Property; provided that the Property Manager shall not execute any leases on any of the Owner’s behalf. The final form of any lease shall be subject to the applicable Owner’s approval.

2.15 Marketing and Promotion Fund. If the occupants of a Property contribute to a marketing and promotion fund for such Property (the “Marketing and Promotion Fund”) or form a merchants association, Property Manager shall act as an Owner’s representative to the merchants association, if any, on an Owner’s behalf.

-12-

2.16 Reports. Property Manager shall prepare or cause to be prepared and executed and filed by Property Manager all forms, reports and returns, if any, required by all federal, state, or local laws in connection with unemployment insurance, workmen’s compensation insurance, disability benefits, Social Security and other similar taxes now in effect or hereafter imposed for each Property.

2.17 Pay Taxes. Property Manager shall pay prior to delinquency all real estate taxes, sales tax, personal property taxes and assessments levied against the Properties (collectively, the “**Property Taxes**”), or any part thereof, and, to the extent that the Operating Accounts do not contain sufficient funds, each Owner agrees to provide sufficient funds to Property Manager. Property Manager may (and Owners agree to provide sufficient funds therefore) pay Property Taxes prior to their stated due date in order to take advantage of any discounts or incentives for the early payment of such Property Taxes.

2.18 Provide Assistance. Property Manager shall fully cooperate with an Owner in the event that Owner shall decide to assign, sell, mortgage, finance, hypothecate or otherwise transfer part or all of its interest in the Owner’s Property (including, without limitation, the furnishing of certified rent rolls and other data, the preparation and obtaining of estoppel certificates, subordination, nondisturbance and attornment agreements, tenant notifications and similar activities).

2.19 Supervise Contracts. Property Manager shall supervise and inspect the performance of third parties under all contracts and agreements for services and supplies provided to the Properties.

2.20 Signs. Property Manager may place one or more signs on or about the Properties stating, among other things, that Property Manager is the management and leasing agent for the Properties.

2.21 Third Party Vendors. Upon the request of an Owner, all third party vendors with whom Property Manager contracts on behalf of an Owner for services in excess of Five Thousand Dollars ($5,000) shall be required to submit certificates of insurance naming an Owner as an additional insured, evidencing that such vendor carries at least One Million Dollars ($1,000,000)in comprehensive general liability insurance and such workers compensation insurance as may be required by statute in the state in which the Property is located.

ARTICLE THREE

Responsibilities of Owners

3.1 Contract Execution. Each Owner agrees that it shall, if requested by Property Manager or any third party contracting with an Owner pursuant to the provisions of Article Two hereof, execute in its own name and by its own hand any such contracts.

3.2 Payments to and Reimbursement of Property Manager. Each Owner covenants and agrees that it shall make available to, or otherwise cause to be made available to, Property Manager such sums as are required pursuant to the provisions hereof and pursuant to each Approved Budget to (a) pay to Property Manager all compensation required by Article Five

-13-

hereof, and (b) provide monies for (or, if previously paid by Property Manager, reimburse Property Manager for) all expenses incurred pursuant to this Agreement to be paid by such Owner within fifteen (15) days of demand by Property Manager together with invoices evidencing such expenses. Property Manager shall not be required to, although it may in its sole discretion, advance its own funds for the benefit of an Owner. This provision shall survive the termination of this Agreement, whether by expiration or otherwise.

ARTICLE FOUR

Term and Termination

4.1 Term. This Agreement shall be in effect as of the date hereof and continue in force until December 31, 2019 (the “Initial Term”) and thereafter shall renew automatically for successive six (6) month periods (each, an “Automatic Renewal Term”). This Agreement may be terminated at the expiration of the Initial Term or any Automatic Renewal Term by the Owners or by Property Manager, with or without cause and without penalty, upon written notice sixty (60) days’ prior to the end of such term. This Agreement shall automatically terminate upon the effective date of termination or expiration of that certain External Management Agreement to be entered into between OSSI Asset and Retail Value Inc., an Ohio corporation (“RVI”).

4.2 Sale of Property. Upon any sale of a Property or the transfer, directly or indirectly, of the controlling ownership interests in the entity holding title to such Property, this Agreement shall terminate only with respect to such Property upon such sale or transfer. Notwithstanding any such termination, an Owner shall pay to Property Manager all fees and commissions theretofore earned but unpaid, and all reimbursements to which Property Manager is entitled, as of the date of termination, which obligations of such Owner shall expressly survive any such termination.

4.3 Other Termination Rights. In addition to the termination rights described above, this Agreement may be terminated by either party, without penalty, upon written notice ten (10) business days’ prior to the termination from the terminating party to the other party if the other party, its agents or its assignees breaches any material provision of this Agreement and such material breach shall continue for a period of ten (10) business days after written notice thereof.

4.4 Intentionally Deleted.

4.5 Duties upon Termination. Upon termination of this Agreement, the parties hereto agree that:

(a) Property Manager shall deliver to the Owner, or to any Person or agent designated by the Owner:

(i) Cash and investments in the Operating Accounts and other accounts hereunder including any security deposits or other payments of tenants in the Property held by Property Manager;

-14-

(ii) An assignment of any escrow accounts in a form approved by the depositories or holder thereof;

(iii) All executed copies of leases related to the Property and all related files;

(iv) All architectural, mechanical and electrical plans and specifications used in connection with the Property to the extent in the possession of Property Manager, as well as all sets of keys and all books and records pertaining to the Property in Property Manager’s possession;

(v) All permits issued by appropriate governmental authorities and utilities relative to the Property, if held by Property Manager;

(vi) All extra promotional brochures, forms, leases, posters, signs and stationery relating to the Property, and all engraved plates and art work used for such promotional items that do not contain references to Property Manager’s name, address or telephone number; and

(vii) Any other papers or items of any kind, including, without limitation, computation tables and disks, held by Property Manager relating to the Property.

Property Manager shall be entitled to retain copies of all records, documents and other agreements which were in Property Manager’s possession relating to a Property, and an Owner shall execute and deliver to Property Manager a receipt evidencing delivery by Property Manager to such Owner of all papers or items delivered in accordance with the provisions hereof. Additionally, each Owner hereby agrees to indemnify and hold Property Manager harmless from and against any and all costs, damages or expenses (including reasonable attorneys’ fees and disbursements) arising out of any claims made or threatened by third parties for return of security deposits so delivered to such Owner.

(b) Anything contained herein to the contrary notwithstanding, no termination of this Agreement shall release either party from any obligations or liabilities arising under the terms and provisions hereof prior to the date of such termination or pursuant to continuing contracts or other commitments approved, pursuant to the terms and provisions hereof, prior to the date of such termination. It is expressly agreed that no such termination shall affect or modify in any respect the compensation due and payable, or to become due and payable, prior to the date of such termination by an Owner to Property Manager hereunder and that Property Manager may utilize any funds of such Owner in its possession or in any Operating Account of such Owner to pay any such compensation. Without limiting the foregoing, within fifteen (15) days after the termination of this Agreement and delivery of final reports from Property Manager required pursuant to Section 4.5(c) of this Agreement, the Owner shall pay to Property Manager all fees and commissions theretofore earned, and all reimbursements to which Property Manager is entitled, under the provisions of this Agreement with respect to that Owner’s Property. In connection with any termination of this Agreement, Property

-15-

Manager shall assign to an Owner, if assignable, all contracts and other agreements, if any, executed in the name of Property Manager on behalf of that Owner, relating to the operation and maintenance of the Properties, provided that at the option of such Owner all such contracts with Affiliates of Property Manager shall be terminated. Each Owner shall expressly assume and agree to pay all obligations arising under such contracts or other agreements arising from and after the date of termination relating to such Owner, provided such contracts are made in accordance with the express provisions of this Agreement.

(c) Within thirty (30) days after the termination with respect to a Property, Property Manager shall deliver to the applicable Owner the written reports required by Section 2.5(b) hereof with respect to such terminated Property for any periods not covered by prior reports submitted pursuant to such Section and shall, within thirty (30) days after any such termination, deliver to Owner a profit and loss statement for the calendar year with respect to such terminated Property, or portion thereof, ending on the date of termination, and a balance sheet of the terminated Property as of the date of termination.

4.6 Post-Termination Services. While Property Manager agrees that it shall cooperate with Owners, at no cost to Owners, to effect an efficient and orderly transition of responsibility with respect to the management of the Properties upon the termination or expiration of this Agreement, any additional services which Owners desire, which are not set forth in this Agreement as duties of Property Manager, and Property Manager agrees to perform, after the date of termination or expiration of this Agreement, shall be upon such terms and conditions as Owners and Property Manager shall mutually agree in writing prior to delivery of such services.

4.7 Late Payment Interest. If any sum due under this Agreement is not paid or reimbursed, as the case may be, by an Owner to Property Manager on the date on which it is due, such unpaid sum shall accrue interest at a rate equal to the Prime Rate (as defined below) plus five percent (5%) per annum calculated from the date such payment or reimbursement was due (without regard to any grace or cure periods contained herein) until the date on which the Owner pays such unpaid sum, plus all accrued interest thereon. Anything contained in this Section 4.7 to the contrary notwithstanding, no late payment interest shall be payable if adequate funds are available and not restricted for use by Property Manager at the time in question in the Operating Accounts for such payment or reimbursement and Property Manager shall have been able, but shall have failed, to use such available funds to make such payment or reimbursement when due. As used herein, “Prime Rate” shall mean the prime rate of interest as published from time to time in the *Wall Street Journal.*

4.8 Survival. The provisions of Sections 4.2 through and including 4.7 shall survive the expiration or termination of this Agreement.

-16-

ARTICLE FIVE

Compensation of Property Manager

5.1 Management Fee.

(a) Subject to Section 5.1(c) below, the Owners shall pay monthly to Property Manager (on a cash basis of accounting), in consideration of Property Manager’s management services hereunder, an amount (as determined by Property Manager from time to time) no greater than five and a half percent (5.5%) of Gross Revenue, as reflected in the books maintained by Property Manager for the Owner pursuant to Section 2.5(a) hereof (the “Management Fee”). If the effective date of the commencement or termination of this Agreement is not the first or last day of a month, the Management Fee shall be prorated based upon the number of days in such month and the Gross Revenue for such entire month. “Gross Revenue” means all receipts of every kind and nature derived from the operation of the Properties during a specified month on a cash basis, including, without limitation, receipts from (i) all fixed and minimum rent, percentage rent and license fees payable by tenants and other occupants of the Property to Owner; (ii) the sale of electricity, utilities and heating, ventilation and air conditioning to tenants and other occupants of the Property, (iii) all amounts charged to tenants and other occupants of the Property for common area maintenance; real estate taxes and insurance; (iv) any other payments of any nature made by any tenants or other occupants, including, without limitation, “lease termination fee”, “prepaid rent” or similar payments in an amount not to exceed the annual aggregate rent that would have been payable under the terminated lease for the twelve (12) month period following the lease termination date (with percentage rent being calculated as the average annual percentage rent for the three (3) full years immediately preceding the lease termination date, or such shorter period of time if the lease was in effect for less than three (3) full years), provided, further, that, if a space as to which a lease termination fee is paid is re-leased during the twelve (12) month period and Property Manager is entitled to receive a Management Fee with respect to rent paid under such replacement lease, the portion of the lease termination payment attributable on a pro-rata basis to the period during which replacement tenant pays rent shall not be included in the calculation of Gross Revenue for such period, and (v) proceeds of rent insurance. Gross Revenues shall exclude any proceeds received and collected from: (A) proceeds from the financing or sale of any portions of the Property; (B) the condemnation or taking of all or a portion of the Property by eminent domain, (C) insurance policies (except for rent interruption insurance proceeds); (D) any extraordinary or non-recurring event, including but not limited to proceeds from any litigation other than rent (and other reimbursable expenses) collections; (E) security deposits and other deposits (unless applied upon rent, damages or other expenses); (F) trade discounts and rebates; (G) payments by tenants for tenant improvements; (H) refunds due to overpayment; (I) amounts paid to reimburse an Owner for cost of capital improvements or remodeling and tenant charges, including overhead or interest factor payable by tenants in connection with such reimbursement; (J) abatement, reduction of refund of taxes; (K) amortization for tenant work (except that portion which is part of base rent); and (L) any accrued interest on any of the amounts set forth in sub-clauses (i)-(v) of this Section 5.1(a).

(b) The Management Fee payable under Section 5.1(a) above shall be paid each month in advance on the first (1st) of each month based upon the average monthly Gross Revenues collected from all Properties during the three (3) months immediately preceding

-17-

the most recent Determination Date (including Properties disposed of during or subsequent to such period). For the purposes of this Agreement, “Determination Date” means the date hereof and thereafter January 1st and July 1st of each year. Following delivery of reports required pursuant to Section 2.5(b) of this Agreement, Property Manager shall re-calculate the amount of the Management Fee for such calendar month and any excess or shortfall shall be paid or offset, as applicable, from the Management Fee payable with respect to the next succeeding calendar month.

(c) The parties agree and acknowledge that a portion of the services to be performed by Property Manager under this Agreement may be performed outside of Commonwealth of Puerto Rico (“Puerto Rico”). The Management Fee shall be allocated to OSSI Asset and OSSI PR as determined by Property Manager from time to time.

5.2 Leasing and Sales Commissions; Disposition Fees. Each Owner shall pay to Property Manager leasing and sales commissions and disposition fees, in each case in accordance with the terms set forth in Schedule 2 hereof.

5.3 Construction and Tenant Coordination Fees. Owners shall pay to Property Manager all costs and expenses incurred by Property Manager in connection with construction and tenant coordination services (including the allocated cost of internal personnel in accordance with Section 2.1).

5.4 Reimbursable Expenses. Subject to Owner’s receipt of proof of payment of such expenses, each Owner shall reimburse Property Manager for all commercially reasonable out-of-pocket third-party costs and expenses incurred by Property Manager in the performance of its duties hereunder, including, but not limited to, all fees and expenses paid to outside consultants, architects, engineers and other professionals reasonably required for the performance of Property Manager’s duties hereunder, all reasonable, out of town travel expenses for Property Manager or other personnel described in Section 2.1 and attorneys’ fees and disbursements, each in accordance with and subject to the limitations set forth in the corresponding Approved Budget, including, without limitation, the fees and disbursements of Property Manager’s in-house attorneys and paralegals, in accordance with Section 2.1(d). Owners shall not be obligated to reimburse Property Manager for any expenses for (a) office equipment, office supplies or any other overhead expenses incurred in its general offices other than with respect to the categories of personnel as set forth on Exhibit C hereto and office overhead of Property Manager’s satellite offices; (b) any salaries of any executives or supervisory personnel of Property Manager, OSSI or their respective Affiliates other than as permitted in accordance with Section 2.1; or (c) any salaries, wages or expenses allocable to any personnel for activities with regard to the leasing of space in the Properties.

5.5 Payments Out of Operating Account. Property Manager shall be permitted to pay the fees, commissions and reimbursable expenses that Owners are required to pay Property Manager under this Article Five from the funds contained in the applicable Operating Accounts, as and when such fees, commissions and expenses are required to be paid hereunder, including, but not limited to, any fees, commissions and expenses outstanding as of the date of termination of this Agreement in its entirety or with respect to a Property.

-18-

5.6 Office. The Owner shall provide, without any obligation of Property Manager to pay rent or other costs in connection therewith, an appropriate office at each of the Properties listed on Schedule 5.6 attached hereto for the use of Property Manager for management of the Property. Property Manager shall vacate such offices upon the expiration or earlier termination of this Agreement with respect to such Property.

ARTICLE SIX

Representations

6.1 Property Manager Representations – OSSI Asset. OSSI Asset hereby represents and warrants as follows as of the date hereof:

(a) OSSI Asset is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, and has all requisite company power and authority to own, lease and operate its assets and business and to carry on its business as now being conducted in all jurisdictions where the Properties are located.

(b) OSSI Asset has the full legal right, power and authority required to enter into, execute and deliver this Agreement and to perform fully its obligations hereunder. This Agreement has been duly authorized, executed and delivered by OSSI Asset and is a valid and binding obligation of OSSI Asset enforceable in accordance with its terms.

(c) No consent, approval, authorization or order of, or qualification with, any court, governmental authority or agency or any other Person or entity is required in connection with the execution, delivery or performance by OSSI Asset of this Agreement or any other agreement contemplated by this Agreement, and this Agreement does not conflict with any other agreements, laws, orders or obligations binding upon OSSI Asset.

(d) OSSI Asset is not a debtor in any outstanding action or proceeding pursuant to any Bankruptcy Law. OSSI Asset is not contemplating either the filing of a petition by it under any Bankruptcy Law or the liquidation of all or a major portion of its assets or property.

(e) OSSI Asset has not incurred any obligation on behalf of Owners to or entered into any contract or granted any license to which any of the Properties may be subject with any Person or entity in which OSSI Asset has a material, financial or other interest or which OSSI Asset is affiliated.

6.2 Property Manager Representations – OSSI PR. OSSI PR hereby represents and warrants as follows as of the date hereof:

(a) OSSI PR is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, and has all requisite company power and authority to own, lease and operate its assets and business and to carry on its business as now being conducted in all jurisdictions where the Properties are located.

-19-

(b) OSSI PR has the full legal right, power and authority required to enter into, execute and deliver this Agreement and to perform fully its obligations hereunder. This Agreement has been duly authorized, executed and delivered by OSSI PR and is a valid and binding obligation of OSSI PR enforceable in accordance with its terms.

(c) No consent, approval, authorization or order of, or qualification with, any court, governmental authority or agency or any other Person or entity is required in connection with the execution, delivery or performance by OSSI PR of this Agreement or any other agreement contemplated by this Agreement, and this Agreement does not conflict with any other agreements, laws, orders or obligations binding upon OSSI PR.

(d) OSSI PR is not a debtor in any outstanding action or proceeding pursuant to any Bankruptcy Law. OSSI PR is not contemplating either the filing of a petition by it under any Bankruptcy Law or the liquidation of all or a major portion of its assets or property.

(e) OSSI PR has not incurred any obligation on behalf of Owners to or entered into any contract or granted any license to which any of the Properties may be subject with any Person or entity in which OSSI PR has a material, financial or other interest or which OSSI PR is affiliated.

6.3 Owners’ Representations. Each Owner hereby represents and warrants as follows:

(a) That Owner is duly organized, validly existing and in good standing under the laws of the State of its organization, and has all requisite company power and authority to own, lease and operate the Properties and its other assets and business and to carry on its business as now being conducted.

(b) That Owner has the full legal right, power and authority required to enter into, execute and deliver this Agreement and to perform fully its obligations hereunder. This Agreement has been duly authorized, executed and delivered by that Owner and is a valid and binding obligation of that Owner enforceable in accordance with its terms.

(c) No consent, approval, authorization or order of, or qualification with, any court, governmental authority or agency or any other Person or entity is required in connection with the execution, delivery or performance by that Owner of this Agreement or any other agreement contemplated by this Agreement, and this Agreement does not conflict with any other agreements, laws, orders or obligations binding upon that Owner.

-20-

(d) That Owner is not a debtor in any outstanding action or proceeding pursuant to any Bankruptcy Law. That Owner is not contemplating either the filing of a petition by it under any Bankruptcy Law or the liquidation of any Property or all or a major portion of its assets or property.

ARTICLE SEVEN

Miscellaneous

7.1 Indemnification.

(a) Property Manager agrees to indemnify and hold each Owner harmless from and against any and all liabilities, claims, obligations, expenses, losses, damages, judgments or other injuries (including, but not limited to, reasonable attorneys’ fees, costs and expenses of litigation and appeals, but specifically excluding any lost profits or consequential, special or punitive damages) (collectively, “Damages”) that Owner may incur or suffer in connection with (i) Property Manager’s gross negligence, fraud or willful misconduct, (ii) Property Manager’s material breach or failure to act in accordance with the terms of this Agreement, (iii) Property Manager’s actions taken outside the scope of Property Manager’s authority hereunder, (iv) misrepresentations of material fact by Property Manager under Article Six hereof and any other misrepresentation of material fact by Property Manager during the term of this Agreement and (v) the failure of Property Manager to be licensed as a broker in any jurisdiction in which the Properties are located.

(b) Each Owner agrees to indemnify and hold Property Manager harmless from and against any and all Damages with respect to the Property owned by such Owner that Property Manager may incur or suffer in connection with (i) such Owner’s material breach or failure to act in accordance with the terms of this Agreement, (ii) specific actions or inactions of Property Manager at such Owner’s direction, (iii) any contract or other agreement assumed by such Owner in accordance with Section 4.5(b) and (iv) the performance by Property Manager of its duties to the extent in compliance with this Agreement, except to the extent caused by any of the matters described in clauses (i) through (v) of Section 7.1(a).

(c) The indemnified party under this Section 7.1 shall give the indemnifying party thirty (30) days’ notice of any claims for Damages made by third parties (“Third Party Claims”), setting forth therein in reasonable detail the basis for such Third Party Claim, and the indemnifying party shall have the right (unless (i) the indemnifying party is also a party to such proceeding and the indemnified party determines in good faith that joint representation would be inappropriate or (ii) the indemnifying party fails to provide reasonable assurance to the indemnified party of its financial capacity to defend such proceeding and provide indemnification with respect to such proceeding) to undertake the defense thereof by representatives chosen by the indemnifying party, provided, that failure to provide such thirty (30) day notice shall not affect the indemnifying party’s obligations hereunder, except to the extent that the indemnifying party is actually prejudiced by such failure; and provided, further, that the indemnified party will reasonably cooperate with the indemnifying party in defending such Third Party Claim.

-21-

(d) If the indemnifying party, within a reasonable time after notice of any such Third Party Claim, fails to defend the indemnified party against which such Third Party Claim has been asserted, the indemnified party shall (upon further notice to the indemnifying party) have the right to undertake the defense, compromise or settlement of such Third Party Claim on behalf of and for the account and risk of the indemnifying party subject to the right of the indemnifying party to assume the defense of such Third Party Claim at any time prior to settlement, compromise or final determination thereof.

(e) Any provision in this Section 7.1 to the contrary notwithstanding, (i) if there is a reasonable probability that a Third Party Claim may materially and adversely affect the indemnified party other than as a result of money damages or other money payments, the indemnified party shall have the right to defend, compromise or settle such Third Party Claim; provided, however, that if such Third Party Claim is settled without the indemnifying party’s consent, the indemnified party shall be deemed to have waived all rights hereunder against the indemnifying party for money damages arising out of such Third Party Claim; and (ii) the indemnifying party shall not, without the written consent of the indemnified party, settle or compromise any Third Party Claim or consent to the entry of any judgment which does not include as an unconditional term thereof the giving by the claimant or the plaintiff to the indemnified party a release from all liability in respect of such Third Party Claim.

(f) Any settlement by the Property Manager as an indemnifying party on behalf of any Owner as an indemnified party shall at all times be subject to Section 2.10(f).

7.2 Protection of REIT Status. Notwithstanding any provision of this Agreement to the contrary, Property Manager shall not (and shall cause OSSI or its Affiliates to not), in any case or circumstance, perform any activity (such as build-out work for a tenant in accordance with a lease) that might (a) cause rent from a Property to fail to qualify as “rents from real property” within the meaning of Section 856(d) of the Code or (b) otherwise jeopardize the status of Owner (or any direct or indirect beneficial owner in an Owner as a result of its direct or indirect investment in that Owner) as a “real estate investment trust” (“REIT”) within the meaning of Section 856 of the Code. At Property Manager’s option, however, a special purpose designee chosen by Property Manager (which, subject to the last sentence of Section 2.8, shall be an Affiliate (as defined in this Section 7.2) of Property Manager) may perform such activities (provided such activities comply with all applicable REIT rules and regulations), provided performance by such entity would not cause rent from any property to fail to qualify as “rents from real property” as defined above for REIT purposes or otherwise jeopardize the REIT status of Owner or any direct or indirect beneficial owner of Owner. Notwithstanding any provision to the contrary, any provision of this Agreement or any action by Property Manager that might jeopardize the REIT status of Owner or any direct or indirect beneficial owner in an Owner as a result of its direct or indirect investment in that Owner shall be void and of no effect or reformed, as necessary, to avoid such potential loss of REIT status. As used herein, “Affiliate” means, when used with reference to a specified Person, any Person that directly or indirectly through one or more intermediaries controls or is controlled by or is under common control with the specified Person. For purposes of the foregoing, “control” (including the terms “controlling”, “controlled by” and “under common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise, and the actual or beneficial ownership

-22-

of more than 50% of the outstanding voting securities of a Person or, in the case of a Person that is a limited partnership, ownership of any general partnership interest herein. As used herein, “Person” means any individual, partnership, limited liability company, corporation, cooperative, trust, estate, government (or any branch or agency thereof), association or other entity.

7.3 Survival. The indemnifications contained in Section 7.1 and in the penultimate sentence of Section 2.10(b) and the agreements contained in Articles Three, Four and Five hereof shall survive any termination of this Agreement.

7.4 Notices. All notices, requests or other communications given under this Agreement shall be in writing and (a) sent by hand, (b) sent by certified mail, return receipt requested, with postage prepaid, (c) sent by nationally recognized overnight courier, or (d) sent by e-mail and addressed as follows:

If to Property Manager:

OSSI Asset Management LLC

Hillside, OH

Attention: General Counsel

If to Owners or an Owner:

c/o Other Inc.

Hillside, OH

Attention: General Counsel

or to such other addresses or addressees as a party shall notify the other hereunder. All notices shall be deemed delivered (i) on the day delivered if delivered by hand on a Business Day (or the next Business Day if delivered by hand on a day that is not a Business Day), (ii) on the next Business Day if delivered for overnight delivery by nationally recognized overnight courier, (iii) three (3) Business Days after being sent by certified mail, and (iv) on the date and time of transmission if delivered by e-mail; provided that (1) such e-mail transmission is sent during customary business hours in Cleveland, Ohio, and (2) such notice is also sent by one of the other means described in clauses (a)-(c) above within one (1) Business Day. When used in this Agreement, “Business Day” shall mean any Monday through Friday on which commercial banks are authorized to do business and are not required by law or executive order to close in Cleveland, Ohio.

7.5 Assignment. Property Manager shall not, without Owners’ prior written approval, assign any of its rights or obligations under this Agreement; provided, however, Property Manager may (1) pledge or assign, without Owners’ written consent, (i) its rights to fees under and subject to this Agreement, and (ii) its rights and obligations hereunder to any wholly-owned Affiliate of OSSI or RVI; and (2) bifurcate this Agreement into two or more separate property management agreements, in each case with an Affiliate of OSSI or RVI as the property manager and on the same form and terms as this Agreement. Each Owner shall not, without Property Manager’s prior written approval, assign any of its rights or obligations under this Agreement.

-23-

7.6 Competing Activities of Property Manager. Anything contained herein to the contrary notwithstanding, Owners hereby agree that, during the term of this Agreement, Property Manager, OSSI or any Affiliate of OSSI, may render services identical or similar to those required of Property Manager hereunder to other owners of real property, improved in a similar fashion to the Properties or otherwise, and may themselves engage in the acquisition, development, leasing and exploitation of real property for their own account and benefit or for others and without any accountability or liability whatsoever to Owners even though such services or business activities compete with or are enhanced by the business activity of Owners, including Owners’ involvement in the Properties. Property Manager will not contract with any Affiliate of Property Manager to perform any additional services under this Agreement which are outside the scope of Property Manager’s duties under this Agreement unless such additional services are at market rates and are contemplated by the relevant Approved Budget. In exercising its rights and performing its obligations under this Agreement, each party shall act in good faith and deal fairly with the other. Each party shall conduct itself in a commercially reasonable manner in the administration of this Agreement.

7.7 Time of Essence. Time is of the essence in the performance of each and every term of this Agreement.

7.8 Force Majeure. In the event that any obligation contained herein is not fulfilled within the time period required hereby, and such failure is beyond the obligor’s reasonable control, including but not limited to compliance with any regulations, order or instruction of any federal, state or municipal government or any department or agency thereof, acts or omissions of any other party hereto, acts of civil or military authority, fires, strikes, embargoes, war, terrorism, riots, earthquakes, floods and the inability (due to causes beyond such obligor’s reasonable control) to obtain necessary labor or materials (all of the foregoing, without limitation, being herein referred to as “force majeure”), such party shall give the other party prompt notice of the occurrence of any such force majeure delay or expected delay, specifying the cause thereof and the expected duration. In the event of any such delay, the date required for fulfillment of such obligation shall be automatically extended for a period equal to the time lost by reason of the delay. In no event, however, shall this provision apply to an obligation requiring solely the payment of money.

7.9 Owner Approvals. All approvals, consents, votes, decisions, or other actions permitted to be undertaken by all of the Owners as group under this Agreement must be made by all Owners as a group. All approvals, consents, votes, decisions, or other actions permitted to be undertaken by a single Owner shall only require the consent of that particular Owner. Property Manager shall be permitted to rely on any representation or decision made by an Owner on behalf of any Owner or the Owners as a group.

-24-

7.10 Amendment; No Third Party Beneficiaries.

(a) Neither this Agreement nor any provision hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

(b) Nothing in this Agreement, express or implied, is intended to or shall confer upon any Person other than the parties and their respective successors and permitted assigns any legal or equitable right, benefit or remedy of any nature under or by reason of this Agreement.

7.11 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio. If any provision of this Agreement or the application thereof to any Person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of that provision to other Persons or circumstances shall not be affected but rather shall be enforced to the extent permitted by law. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted.

7.12 Consent to Jurisdiction. To the fullest extent permitted by law, each party hereto hereby irrevocably consents and agrees, for the benefit of each party, that any legal action, suit or proceeding against it with respect to its obligations, liabilities or any other matter under or arising out of or in connection with this Agreement and with respect to the enforcement, modification, vacation or correction of an award rendered in an arbitration proceeding shall be brought in any city, state or federal court located in the County of Cuyahoga, City of Cleveland, or a federal or state court in the State of Ohio, and hereby irrevocably accepts and submits to the exclusive jurisdiction of each with respect to any such action, suit or proceeding. To the fullest extent permitted by law, each party hereto also hereby irrevocably consents and agrees, for the benefit of each other party, that any legal action, suit or proceeding against it shall be brought in any court in the State of Ohio, and hereby irrevocably accepts and submits to the exclusive jurisdiction of each such court with respect to any such action, suit or proceeding. To the fullest extent permitted by law, each party hereto waives any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions, suits or proceedings brought in any such court and hereby further waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought therein has been brought in an inconvenient forum. To the fullest extent permitted by law, each party hereto agrees that (i) service of process may be effectuated hereinafter by mailing a copy of the summons and complaint or other pleading by certified mail, return receipt requested, at its address set forth above and (ii) all notices that are required to be given hereunder may be given by the attorneys for the respective parties.

7.13 Subordination. Each Owner and Property Manager acknowledge and agree that this Agreement is expressly subordinate to any existing or future mortgage financing of any Property, without the need to execute any further documentation, provided that the mortgagee agrees that Property Manager’s obligations under this Agreement shall terminate unless such mortgagee pays all sums due Property Manager from and after the date of such mortgagee’s assumption of operation and/or ownership of the subject Property. This Agreement may be assigned by an Owner as additional security for any such mortgage financing, and in such event, Property Manager shall enter into a subordination agreement upon the standard form provided by the holder of such security interest, which form shall be reasonably acceptable to

-25-

Property Manager. Property Manager further agrees to execute, acknowledge and deliver, upon not less than (10) days’ notice from an Owner, an estoppel certificate certifying that this Agreement is unmodified and in full force and effect (or describing such modifications, if any), the dates to which the Management Fee due hereunder has been paid and stating whether there are any defaults hereunder on the part of Property Manager or, to Property Manager’s knowledge, an Owner, it being intended that any such statement may be relied upon by any prospective assignee of an Owner’s interest in a Property or any prospective mortgagee of a Property.

7.14 Entire Agreement. This Agreement constitutes and expresses the entire agreement of the parties hereto with regard to the subject matter covered and no agreements, warranties, representations or covenants not herein expressed shall be binding upon the parties.

7.15 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute one and the same instrument.

7.16 Captions. The captions appearing before Sections and Articles in this Agreement have been inserted solely for the purposes of convenience and ready reference. They do not purport to, and shall not be deemed to, define, limit or extend the scope or intent of the Sections or Articles to which they appertain.

7.17 Confidentiality. The parties recognize that they may be provided with certain confidential, non-public information (including, without limitation, reports, analyses, plans and forecasts prepared by or on behalf of the providing the other party and any information derived by any a party from such confidential information) regarding the other party and its Affiliates. For the avoidance of doubt, the Owners and Property Manager may share certain confidential, non-public information relating to the Properties and this Agreement to OSSI, RVI and their respective Affiliates. In consideration of providing such confidential information, the receiving party agrees that it will, and will cause its advisors, Affiliates, direct and indirect members, existing or potential investors and financiers, directors, employees, financial advisors, legal advisors, accountants and consultants to, not directly or indirectly disclose any such confidential, non-public information to any Person (other than to such persons) without the prior written consent of the party providing such information. Notwithstanding the foregoing, it is agreed that the following will not constitute “confidential information” for the purposes of this Agreement: (a) information which was already in the receiving party’s possession prior to the date hereof and which was not acquired or obtained from the providing party; (b) information which is obtained by the receiving party from a third person who, in the good faith belief of such party, is not prohibited from transmitting the information to such party by a contractual, legal or fiduciary obligation to the providing party; (c) information which is or becomes generally available to the public other than as a result of a wrongful disclosure by the receiving party or the persons noted above, (d) information that (i) is required to be disclosed by any of the parties hereto to comply with applicable laws or governmental regulations (including securities and freedom of information laws and applicable regulations) or a subpoena or judicial order; (ii) is utilized in a filing with the Securities and Exchange Commission or required pursuant to the Securities Act of 1933; (iii) is used for raising funds or acquiring additional properties, or (iv) is provided to credit agencies and Wall Street analysts for the purpose of their ongoing evaluation of Property Manager.

[signature page follows]

-26-

IN WITNESS WHEREOF, the parties hereto have set their hands as of the day and year first above written.

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| --- | --- | --- |
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| **OWNERS:** | | |
|  | | |
| EACH PERSON SET FORTH ON EXHIBIT A | | |
|  |  | |
| By: |  | /s/ Josep Ceaucescu |
|  |  | Name: Josep Ceaucescu |
|  |  | Title: Executive Vice President, General |
|  |  | Counsel & Secretary |
|  | | |
| **PROPERTY MANAGER:** | | |
|  | | |
| OSSI ASSET MANAGEMENT LLC, a Delaware limited liability company | | |
|  |  | |
| By: |  | /s/ Josep Ceaucescu |
|  |  | Name: Josep Ceaucescu |
|  |  | Title: Executive Vice President, General |
|  |  | Counsel & Secretary |
|  | | |
| OSSI PR VENTURES II LLC, a Delaware limited liability company | | |
|  |  | |
| By: |  | /s/ Josep Ceaucescu |
|  |  | Name: Josep Ceaucescu |
|  |  | Title: Executive Vice President, General |
|  |  | Counsel & Secretary |

-27-

**LeaseA#39**

LEASE AGREEMENT

**Exhibit 6.2**

**LEASE AGREEMENT**

**THIS LEASE AGREEMENT (“Lease”) is entered into by and between Brakers, LLC, a Delaware limited liability company (“Landlord”), whose address is XXX, Saint Charles, Florida, and FeatureFacts, LLC, a Florida limited liability company (“Tenant”), whose address is, YYYTampa, Florida**

**1.** **PREMISES.**Landlord hereby leases to Tenant a portion of the property known YYY Tampa, (the “**Premises**”), listed on the Pinellas County property tax records as Parcel Number 13-oooooo. The leased Premises consist of approximately 20,620 square feet of office building, and specifically excludes the 2,800 square foot auxiliary building. Landlord will be deemed to have delivered possession of the Premises to Tenant on the lease commencement date in its “As Is” condition on such commencement date. Tenant acknowledges that neither Landlord nor its agents or employees have made any representations or warranties as to the suitability or fitness of the Premises for the conduct of Tenant’s business or for any other purpose, including, without limitation, zoning compliance, nor has Landlord or its agents or employees agreed to undertake any alterations or construct any Tenant improvements to the Premises.

**2.** **TERM.**The term of this Lease shall commence on October 9, 2014 (the “**Commencement Date**”) and terminate on December 31, 2024 (the “**Term**”).

**3.** **RENT.**

**a.**Rent is waived from the Commencement Date until December 31, 2014.

**b.**Effective January 1, 2015, Tenant agrees to pay, without demand, setoff or deduction, to Landlord, the annual base rent of Two Hundred Fifty Seven Thousand Seven Hundred Fifty and zero cents ($257,750.00) plus applicable sales tax, **(“Rent”),**payable in monthly installments of Twenty One Thousand Four Hundred Seventy Nine Dollars and seventeen cents **($21,479.17)**plus applicable sales tax,

**c.**Effective January 1, 2017, and annually thereafter, the annual base rent shall be increased by 3% over the annual base rent then in effect.

**d.**All rent is payable in advance on the FIRST day of each calendar month, at Landlord’s address set forth above or any other address Landlord may designate pursuant to Section 22.a below. If the term of this Lease begins on a commencement date other than the first day of a month, rent shall be paid on such date at a prorated amount based on the number of days in the first month of the term of this Lease for which rent is due. If the last month of this Lease ends on a day other than the last day of a month, rent shall be paid at a prorated amount based on the number of days in the last month of this Lease.

**e.**Additional Rent. The following will be deemed additional rent payable on the date that monthly payments of base rent are due unless otherwise expressly provided:

**i.**One-twelfth (1/12) of the expense of the premiums for insurance Landlord maintains for the Premises, plus applicable sales tax.

**ii.**One-twelfth (1/12) of the real estate taxes and assessments for the Premises, plus applicable sales tax.

**iii.**All other amounts, including without limitation, sales tax, late fees, interest and attorney’s fees, that this Lease requires Tenant to pay in addition to base rent.

**iv.**The current estimated expenses for rent, insurance, taxes and assessments are as follows:

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|  |  |  |  |  |
|  |  | Monthly | |  |
| Base Rent |  | $ | 21,479.17 |  |
| Insurance |  | $ | 1,299.75 |  |
| Property Tax |  | $ | 1,413.31 |  |
| Florida Sales Tax |  | $ | 1,603.46 |  |
|  |  |  |  |  |
|  |  | $ | 25,885.69 |  |

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**v.** If the term of this Lease commences on a day other than the first day of a month, expenses for insurance and taxes and assessments will be paid by Tenant on such date at a prorated amount based on the expenses for the first full calendar month of this Lease.

**vi.** If at any time during the term of this Lease, the expenses for insurance or taxes and assessments change, Landlord shall, by written notice to Tenant, revise the expenses, and payments by Tenant subsequent to such notice shall be based on the revised expenses. In addition, within 120 days after the end of each calendar year or as soon thereafter as practical, Landlord will furnish to Tenant a statement of amounts payable for insurance and taxes and assessments for the calendar year just ended. If the statement shows an amount owing by Tenant that is less than the payments made by Tenant, the excess will be held by Landlord and credited against the next payment of rent (or refunded if the term of the Lease has expired and Tenant is not in default). If the statement shows an amount owing by Tenant that is more than the payments made by Tenant, Tenant shall pay the deficiency to Landlord within thirty (30) days of the date of the statement. The provisions of this paragraph shall survive the expiration or other termination of this Lease.

**vii.** All rent is payable in advance on the FIRST day of each calendar month, at Landlord’s address set forth above or any other address Landlord may designate pursuant to Section 22.a below. If the term of this Lease begins on a commencement date other than the first day of a month, rent shall be paid on such date at a prorated amount based on the number of days in the first month of the term of this Lease for which rent is due. If the last month of this Lease ends on a day other than the last day of a month, rent shall be paid at a prorated amount based on the number of days in the last month of this Lease.

**4.** **SECURITY DEPOSIT.**Tenant will pay to Landlord a security deposit in the amount of **$25,000.00**upon execution of this Lease. The security deposit may not be applied by Tenant as rent. If Landlord applies the security to payment of any sum that Tenant is obligated to pay, Tenant will restore the full amount so applied on Landlord’s demand. If Tenant fully performs the obligations under this Lease, Landlord will repay the security deposit to Tenant, subject to claims, if any, of Landlord. This repayment will be without interest, and will be made after the expiration of the term of this Lease, the timely surrender of the Premises, and after all obligations of Tenant to Landlord, including any that survive the expiration of the term of this Lease, are satisfied.

**5.** **EXPENSES PAYABLE BY TENANT.**Tenant shall be responsible for all costs of maintenance of Premises, pest control and any and all utilities used by Tenant. Tenant will pay to the parties respectively entitled thereto all: utility charges for water, sanitary sewer, garbage, telephone, electricity and all other utilities; building maintenance costs; pest control expenses; insurance premiums on policies required to be maintained, or otherwise maintained, by Tenant; and all other expenses incurred by Tenant or otherwise payable in connection with, or during the time of, the occupation and use of the Premises by Tenant. If, Tenant fails to make the payments provided by this Section, Landlord, at Landlord’s option, may make such payments. The payments made by Landlord will constitute additional rent payable by Tenant within five (5) business days of Tenant’s receipt of Landlord’s demand.

**6.** **LATE FEE; INTEREST.**Any Rent or additional rent, or any portion thereof, not paid by Tenant within three (3) days of the applicable due date will be charged a late fee equal to **5%** of such amount. In addition, Rent or additional rent, or any portion thereof, not paid by Tenant by the date a late charge is incurred is subject to interest at a rate of ten percent (10%) per annum from the due date until paid.

**7.** **USE OF PREMISES; COMPLIANCE WITH REGULATIONS**The Premises will be used by Tenant for the operation of Tenant’s business which is a **dental laboratory**and related office activity, and for no other use unless authorized by Landlord in writing in Landlord’s sole discretion. Tenant shall not commit or permit waste to the Premises nor engage in any unlawful activity or any activity constituting a nuisance or which disturbs the enjoyment of any adjacent tenant or property user. Tenant will not permit the presence, handling, storage, or disposal of hazardous or toxic materials (as such are

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defined under all applicable federal, state, and local laws) on or about the Premises. Tenant, at Tenant’s own expense, shall comply with all governmental regulations (“**governmental regulations**” mean all federal, state, and local laws, statutes, ordinances, rules, and regulations, including, without limitation, those related to zoning and land use) regarding the use and occupancy of the Premises by Tenant. Tenant shall indemnify and hold Landlord harmless from and against any and all claims, liabilities, injuries, damages, costs and expenses, including the cost of investigation and defense (including attorneys’ fees and costs at all tribunal levels, including appeal and bankruptcy) arising out of or in connection with Tenant’s violation of this Section, including, but not limited to the use of hazardous or toxic materials on or about the Premises.

**8.** **ASSIGNMENT AND SUBLETTING.**Tenant may not assign this Lease in whole or in part or sublet all or any part of the Premises without first obtaining Landlord’s written consent, which may be withheld in Landlord’s sole discretion. A sale of the controlling shares of Tenant, as same existed as of the Commencement Date, shall be deemed an assignment.

**9.** **INDEMNITY.**Tenant will indemnify Landlord and hold Landlord harmless from all liability, losses, costs, damages, or expenses, including the cost of investigation and defense, that Landlord may incur with respect to any claim or demand arising out of or in any way related to Tenant’s use or occupancy of the Premises, or the activity of Tenant’s officers, employees, agents, contractors, suppliers, licensees or invitees thereon.

**10. INSURANCE; CASUALTY.**Throughout the entire Term of this Lease, Tenant will obtain and maintain in good standing, at Tenant’s expense: (a) public liability insurance with respect to the Premises, and the business operated by Tenant, with such insurance companies and in such form as are acceptable to Landlord with minimum limits with respect to bodily injury of One Million Dollars ($1,000,000.00) per person, and One Million Dollars ($1,000,000.00) per accident or occurrence, and Five Hundred Thousand Dollars ($500,000.00) with respect to property damage; (b) all workmen’s compensation or employer’s liability insurance as may be required by law. Tenant will have all liability policies endorsed to show Landlord as an additional insured with respect to all occurrences and no insurance provided under this Lease will be subject to cancellation or reduction of limits unless at least ten (10) days written notice is given to Landlord. Certificates of all policies evidencing the insurance required must be delivered to Landlord within five (5) business days of Tenant’s execution of this Lease. Tenant will furnish Landlord with a copy of Tenant’s policy or policies of insurance or certificates thereof, within ten (10) days of Landlord’s request for same. If Tenant does not comply with the provision of this Section, Landlord may at its option, cause insurance as aforesaid to be issued, and in such event, Tenant agrees to pay the premium for the insurance within five (5) business days of Tenant’s receipt of Landlord’s demand along with a fee of three percent (3%) of the annual premium for any such policy in order to reimburse Landlord for the administrative cost of coordinating and ensuring Tenant’s compliance with this provision, which such cost would otherwise be extremely difficult and impractical to determine with certainty. In no event shall Landlord be liable for any loss occasioned by fire or other casualty to personal property or fixtures of Tenant, its agents, employees, assignees, sub lessees, bailers, licensees, invitees or of any other person, firm or corporation upon any part of the Premises. Tenant’s insurance will provide primary coverage to Landlord when any policy issued to Landlord provides duplicate or similar coverage; it being the intent of the foregoing that in such circumstance Landlord’s policy will provide excess coverage over Tenant’s policy. Tenant is advised that Tenant’s personal property and fixtures are not covered under any of Landlord’s property insurance policies

**11. CONSTRUCTION LIENS.**Landlord’s interest in the Premises shall not be subject to any liens for improvements made by Tenant, and Tenant shall have no power or authority to create any lien or permit any lien to attach to the Premises, or to the present estate, reversion or other estate of Landlord in the Premises as a result of improvements made by Tenant or for any other cause or reason. All materials suppliers, contractors, and artisans performing on or about the Premises or any part thereof are hereby charged with notice that such liens are expressly prohibited and that they must look solely to Tenant to secure payment for any work done or material furnished for improvements by Tenant or for any other

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purpose. Tenant shall indemnify Landlord against any loss or expenses incurred as a result of the assertion of any lien, and Tenant shall satisfy or transfer any claimed or asserted lien to a bond or such other security as may be permitted by law within ten (10) days of the assertion of any the lien or claim of lien. A Notice of Limited Interest in the form attached as ***Exhibit*** “***A***” may be executed and may at Landlord’s option be recorded in the public records of Hillsborough County, as public notice to all persons furnishing designs, labor, materials, or services to the Premises in connection with Tenant’s improvements.

**12. REPAIRS AND MAINTENANCE.**During the term of this Lease, Tenant, at Tenant’s sole expense, will affect all necessary maintenance, repairs, and replacements which are required for Tenant’s occupancy of the Premises, including any work required with regard to the structural and mechanical components of the Premises including, but not limited to, the electrical system, plumbing, roof, and the heating, ventilation, and air conditioning systems. It is agreed that Landlord shall not have any responsibility to effect any maintenance, repairs, or replacements to the Premises during the term of this Lease.

**13. ALTERATIONS.**Tenant, at Tenant’s sole expense, may make non-structural alterations to and remodel the Premises, without the consent of Landlord. However, Tenant shall make no structural alterations to the Premises without the prior written consent of Landlord. Tenant understands that any alterations or improvements Tenant undertakes or causes to be undertaken at the Premises is for the purpose of Tenant’s activities at the Premises and not for the benefit of Landlord. All alterations and improvements shall be subject to compliance with the terms of this Lease, including, without limitation, compliance with governmental regulations, such as the obtaining of all proper permits, and timely payment to persons constructing any alterations or improvements so that no lien or claim of lien by any such persons is filed. As to any alterations or improvements that are made, Tenant, at Landlord’s election, will be responsible at the expiration of the term of this Lease or earlier termination for the cost of removing such alterations and improvements and restoring the Premises to the condition existing prior thereto, if so requested by Landlord.

**14. ACCESS TO PREMISES.**Landlord will have the right during normal business hours during the term of this Lease to enter the Premises for any purpose that does not unreasonably interfere with Tenant’s business operations. Notwithstanding anything in this Section, Landlord may enter the Premises at any time and without notice for any purpose in the event of any emergency. An emergency is any condition that if not immediately repaired could cause severe or irreparable damage to any property or any condition that poses an immediate threat to the health or safety of any person. Landlord shall also have the right at reasonable times and consistent with the terms of this Lease to exhibit or show the Premises to an insurance agent or to a prospective purchaser, lender or tenant.

**15. SUBORDINATION.**This Lease is expressly subordinate and inferior to the lien of any present or future mortgage granted by Landlord with regard to the Premises. On request of Landlord, Tenant will execute and deliver a subordination agreement in such form as the Landlord’s lender reasonably may require, though this provision shall be deemed self-effecting without any such separate agreement.

**16. ESTOPPEL CERTIFICATE.**Upon not less than ten (10) days prior notice from Landlord or Landlord’s mortgagee, Tenant will execute, acknowledge and deliver a written statement certifying that this Lease is in full force and effect subject to such modifications as may be have been agreed to by Landlord and Tenant. The statement may be relied upon by any prospective transferee or mortgagee of all or any portion of the Premises. Tenant agrees to attorn to any transferee of Landlord’s interest in the Premises and upon any transfer of Landlord’s interest shall release Landlord from any liability to Tenant under this Lease.

**17. DEFAULT.**

**a**. Events of Default. Landlord, at its election, may exercise any one or more of the default remedies below upon the happening of any one or more of the following events (“**Events of Default**”): (a) Tenant’s failure to pay rent, or any other sums payable hereunder for a period of three (3) calendar days after written notice from Landlord, or such other time period as is specifically set forth in this Lease with regard to such other sums; (b) Tenant’s failure to observe, keep or perform any of the other terms, covenants, agreements or conditions of this Lease for a period of ten (10) days after Tenant’s receipt of written notice of such failure by Landlord or as to any default not curable within the

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ten (10) day period, if Tenant fails to institute appropriate action to cure the default within the ten (10) day period and thereafter prosecute the action with due diligence and continuity; (c) the bankruptcy of Tenant; (d) Tenant making an assignment for the benefit of creditors; (e) a receiver or trustee being appointed for Tenant or a substantial portion of Tenant’s assets; (f) Tenant voluntarily petitioning for relief under, or otherwise seeking the benefit of, any bankruptcy, reorganization, arrangement or insolvency law; (g) Tenant vacating or abandoning the Premises for a period of thirty (30) days or more; (h) Tenant’s interest under this Lease being sold or assigned under execution or other legal process; or (i) any of the goods or chattels of Tenant used in or incident to the operation of Tenant’s business on the Premises being seized, sequestered or impounded by virtue of, or under authority of, any legal proceeding, which seizure, sequestration or impounding shall, in the sole opinion of Landlord, materially affect the possible continuation of the operation of the Premises by Tenant.

**b.** Remedies Upon Event of Default. Upon any one or more Events of Default, Landlord, at its election, may exercise any one or more of the following options:

**i.**Terminate Tenant’s right to possession under this Lease and reenter and retake possession of the Premises and relet or attempt to relet the Premises on behalf of Tenant at such rent and under such terms and conditions as Landlord may deem best under the circumstances for the purpose of reducing Tenant’s liability; in such event, Landlord shall not be deemed to have accepted a surrender of the Premises, and Tenant shall remain liable for all rent and all other sums due under this Lease and for all damages suffered by Landlord because of Tenant’s breach of any of the covenants of this Lease.

**ii.**Declare this Lease to be terminated, and null and void, and reenter upon and take possession of the Premises, whereupon the Term and all right, title and interest of Tenant in the Premises shall end. The termination shall be without prejudice to Landlord’s right to collect from Tenant any rent or other sums payable hereunder which accrued prior to the termination plus all damages suffered by Landlord because of Tenant’s breach of any covenant of this Lease.

**iii.**Declare the entire remaining unpaid rent for the balance of this Lease to be immediately due and payable, and may, at once, take action to recover and collect the same either by distress or otherwise.

**iv.**Exercise any and all rights and privileges that Landlord may have under the Laws of the State of Florida, the United States of America, or both.

No re-entry or taking possession of the Premises by Landlord shall be construed as an election on its part to terminate this Lease, unless a written notice of such intention be given to Tenant. Notwithstanding any re-letting or re-entry or taking possession, Landlord may at any time thereafter elect to terminate this Lease for a previous default. Pursuit of any of the foregoing remedies shall not preclude pursuit of any remedy herein or constitute a forfeiture or waiver of any rent due to Landlord or of any damages accruing to Landlord by reason of the violation of any of the terms, provisions and covenants herein. Landlord’s acceptance of rent or payments following any Event of Default shall not be construed as Landlord’s waiver of the Event of Default. No waiver by Landlord of any violation or breach of any of the terms, provisions and covenants herein shall be deemed or construed to be a waiver of any other violation or breach of any of the terms, provisions and covenants herein. Forbearance by Landlord to enforce one or more of the remedies herein upon an Event of Default shall not be deemed or construed to be a waiver of any other violation or Event of Default. The loss or damage that Landlord may suffer by reason of termination of this Lease or the deficiency from any re-letting as provided for above shall include the expense of repossession and any repairs or remodeling undertaken by Landlord following possession.

**c.** Surrender of Premises. If Landlord elects to re-enter, as herein provided, or if it takes possession pursuant to legal proceedings or pursuant to any notice provided for by law: (a) Tenant will at once surrender possession of the Premises to Landlord and Landlord shall have the right to remove Tenant’s effects therefrom using such force as may be necessary, without being guilty of trespass, forcible entry, detainer or tort; and (b) Landlord may either terminate this Lease or it may from time to time, without terminating this Lease, make such alterations and repairs as may be necessary in order to re-let the Premises, and re-let the Premises or any part thereof for such term or terms (which may be for a term extending beyond the Term of this Lease) and at such rent and upon such terms and conditions as Landlord in its sole discretion may deem advisable.

**d.** Legal Expenses. If it becomes necessary for Landlord to employ an attorney to collect any sums due to it under this Lease or to enforce any term hereof, regardless of whether suit is brought, Tenant shall pay to Landlord all fees and costs charged by Landlord’s attorney for such services. If suit is brought to enforce the provisions of this Lease, attorneys’ fees and costs shall be awarded to the prevailing party, including attorneys’ fees and costs at all tribunal levels, including on appeal or in bankruptcy. The terms of this Section shall survive expiration or earlier termination of this Lease.

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**e.** Landlord’s Right to Perform Tenant’s Covenants. If Tenant fails at any time to comply with any provision of this Lease, Landlord may, without waiving or releasing Tenant from any obligations of Tenant contained in this Lease, pay any such amount or perform any act that Tenant is obligated to perform under this Lease, in such manner and to such extent as shall be necessary, and, in exercising any such rights, pay necessary and incidental costs and expenses, employ counsel and incur and pay reasonable attorneys’ fees. All sums so paid by Landlord and all necessary and incidental costs and expenses in connection with the performance of any such act by Landlord, together with interest thereon at a rate of ten percent (10%) per annum from the date of the making of such expenditure by Landlord, shall be deemed additional rent hereunder and, except as otherwise in this Lease expressly provided, shall be payable to Landlord on demand or at the option of Landlord may be added to any rent then due or thereafter becoming due under this Lease, and Tenant covenants to pay any such sum or sums of interest as aforesaid and Landlord shall have (in addition to any other right or remedy of Landlord) the same rights and remedies in the event of the non-payment thereof by Tenant as in the case of default by Tenant in the payment of Rent.

**18. SURRENDER OF PREMISES.**At the expiration of the term of this Lease, Tenant will, without notice or demand, surrender the Premises in as clean and as good condition as the Premises were in at the commencement of this Lease, reasonable use and wear excepted.

**19. BROKER.**Landlord shall pay all commissions and fees due to any broker, pursuant to Landlord’s agreement with any such broker. Tenant warrants and represents that there is no broker involved in this Lease on behalf of Tenant, and Tenant indemnifies Landlord from claims for compensation from any such broker.

**20. CASUALTY.**Landlord will have no obligation to repair or restore the Premises in the event of fire or other casualty. If Landlord notifies Tenant that Landlord chooses not to effect such repairs or restoration, Tenant will have the option, within twenty (20) days of said notice, to terminate the Lease, effective as of the date on which the damage was incurred, and the parties’ respective obligations under the Lease will terminate except for those that survive termination pursuant to the express terms of the Lease. If Landlord does elect, in Landlord’s sole discretion, to effect repairs or restoration, then during any period the Premises are untenantable, in whole or in part, as the result of a casualty, Tenant’s obligation to pay Rent shall abate in proportion to the extent the Premises are untenantable.

**21. EMINENT DOMAIN.**If the Premises are taken in their entirety by the exercise of the power of eminent domain, this Lease and Tenant’s obligation to pay rent will terminate on the date title vests in the taking authority. If the Premises are taken in part and the remainder is reasonably suitable for Tenant’s use, Landlord may, in Landlord’s sole discretion, but shall not be obligated to, restore the Premises or Landlord may terminate this Lease by notice to Tenant within sixty (60) days of the actual physical or deemed taking of possession by the condemning authority. During any period the Premises is untenantable as the result of a partial taking and to extent the Premises is not restored subsequent to the taking, Tenant’s obligation to pay Rent shall abate in proportion to the extent the Premises are untenantable or not restored. If Landlord elects to terminate this Lease, Tenant’s rent obligation will cease as of the date of termination set forth in the notice. All compensation awarded for the taking of the fee shall belong to Landlord. Tenant shall only be entitled to business damages and relocation expenses to the extent such does not in any way diminish Landlord’s award.

**22. MISCELLANEOUS.**

**a.** Notices. Any notice to be given to or served upon any party hereto, in connection herewith, must be in writing, and may be delivered by: (i) personal delivery (with receipt obtained); (ii) certified mail, return receipt requested; or (iii) overnight courier service. Notice shall be deemed to have been given and received when: (i) delivered to the recipient if delivered via personal delivery; (ii) two (2) business days after being deposited in the U.S. Mail, if sent via certified letter; or (iii) when delivered by overnight delivery service. Notices shall be given to the parties hereto at the addresses set forth at the beginning of this Lease. Either party may, at any time by giving five (5) days’ written notice to the other party, designate a new address in substitution of the foregoing address to which notice shall thereafter be given.

**b.** Entire Agreement. This Lease contains the entire agreement of Landlord and Tenant. There are no express or implied warranties or covenants that are not contained in this Lease. No agreement to modify this Lease will be effective unless in writing and executed by Landlord and Tenant.

**c.** Parties Bound. This Lease is binding on and inures to the benefit of the Landlord and Tenant and their respective heirs, personal representatives, successors, and assigns. Tenant’s agreements shall survive the expiration of the term or other termination of this Lease. Whenever the context requires, the singular includes the plural, and the masculine includes the feminine and neuter.

**d.**Waiver. The waiver by Landlord of a breach of any provision of this Lease will not operate as or be construed as a waiver of any other provisions of this Lease or of any future breach of the provision so waived.

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**e.**Severability. If any provision of this Lease, or the application thereof to any person or circumstance is, to any extent, held invalid or unenforceable, the remainder of this Lease or the application of such provision to the person or circumstance other than those to which it is held invalid or unenforceable will not be affected thereby and each provision of this Lease will be valid and enforceable to the fullest extent permitted by law.

**f.**No Recording. Tenant will not record this Lease or any memorandum of this Lease.

**g.**Criminal Activity. Tenant acknowledges and agrees that Landlord is not in any way responsible for criminal acts at or about the Premises, including any inquiry or loss caused by such acts. Landlord has made no representations or warranties regarding criminal activity at or about the Premises.

**h.**Radon. Radon is a naturally occurring active gas that, when accumulated in a building in sufficient quantities, may present a health risk to persons who are exposed to it over time. Levels of radon that exceed state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

**i.**Governing Law and Venue. This Lease is governed by Florida law. Sole venue for any legal action under or related to this Lease will be in the state courts of Hillsborough County, Florida.

**j.**Construction. This Lease will not be construed more strictly against Landlord or Tenant because one party may have drafted any or all of its provisions. Landlord and Tenant each acknowledge that they have negotiated the provisions of this Lease at “**arm’s length**” and have both contributed to the contents of its provisions. The titles of the Sections of this Lease are for the convenience of Landlord and Tenant and are intended to have no effect on the construction of this Lease.

**k.**WAIVER OF JURY TRIAL. LANDLORD AND TENANT WAIVE THEIR RIGHT TO A JURY TRIAL IN ANY ACTION BROUGHT PURSUANT TO THIS LEASE OR ARISING OUT OF OR IN CONNECTION WITH THIS LEASE AND TENANT’S USE AND OCCUPANCY OF THE PREMISES.

**l.**Time of the Essence. Time is of the essence in the performance of all provisions of this Lease.

**m.**OFAC Representation.

**i.** Tenant represents and warrants that (a) Tenant and each person or entity owning an interest in Tenant is (i) not currently identified on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control, Department of the Treasury (“**OFAC**”) and/or on any other similar list maintained by OFAC pursuant to any authorizing statute, executive order or regulation (collectively, the “**List**”), and (ii) not a person or entity with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or Executive Order of the President of the United States, (b) none of the funds or other assets of Tenant constitute property of, or are beneficially owned, directly or indirectly, by any Embargoed Person (as hereinafter defined), (c) no Embargoed Person has any interest of any nature whatsoever in Tenant (whether directly or indirectly), (d) none of the funds of Tenant have been derived from any unlawful activity with the result that the investment in Tenant is prohibited by law or that the Lease is in violation of law, and (e) Tenant has implemented procedures, and will consistently apply those procedures, to ensure the foregoing representations and warranties remain true and correct at all times. The term “**Embargoed Person**” means any person, entity or government subject to trade restrictions under U.S. law, including but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Orders or regulations promulgated thereunder with the result that the investment in Tenant is prohibited by law or Tenant is in violation of law.

**ii.**Tenant covenants and agrees (a) to comply with all requirements of law relating to money laundering, anti-terrorism, trade embargos and economic sanctions, now or hereafter in effect, (b) to immediately notify Landlord in writing if any of the representations, warranties or covenants set forth in this paragraph or the preceding paragraph are no longer true or have been breached or if Tenant has a reasonable basis to believe that they may no longer be true or have been breached, (c) not to use funds from any “Prohibited Person” (as such term is defined in the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism) to make any payment due to Landlord under this Lease and (d) at the request of Landlord, to provide such information as may be requested by Landlord to determine Tenant’s compliance with the terms hereof.

**iii.**Tenant’s inclusion on the List at any time during the Lease Term shall be a material default of this Lease. Notwithstanding anything herein to the contrary, Tenant shall not permit the Premises or any portion thereof to be used or occupied by any person or entity on the List or by any Embargoed Person (on a permanent, temporary or transient basis), and any such use or occupancy of the Premises by any such person or entity shall be a material default of this Lease.

**[Signature page follows]**

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[Signature page to October 9, 2014 Lease Agreement]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the date set forth below their signatures, the last of which dates shall be the effective date of this Lease.

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| **WITNESSES:** | | |  |  |  | **LANDLORD: Brakers, LLC,**  **a Delaware limited liability company** | | |
|  | | |  | |  | | | |
| /s/ Corinne Flynn | | |  |  |  |  | | |
|  |  | |  | |  | |  | |
| Print Name: |  | Corinne Flynn |  |  |  | By: |  | /s/ Mike Sindek |
|  | | |  |  |  | Mike Sindek, its Manager | | |
|  | | |  | |  | | | |
| /s/ Albrie Cantin | | |  |  |  |  | | |
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| Print Name: |  |  |  |  |  | Date: |  | 11/18/14 |

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| **WITNESSES:** | | | | | |  |  |  | **TENANT: FeatureFacts, LLC**  **a Florida limited liability company** | | | |
|  | | | | | |  | |  | | | | |
| /s/ Corinne Flynn | | | | | |  |  |  |  | | | |
|  |  | | | | |  | |  | |  | | |
| Print Name: |  | Corinne Flynn | | | |  |  |  | By: |  | /s/ Mike Sindek | |
|  | | | | | |  |  |  | Mike Sindek, its Manager | | | |
|  | | | | | |  | |  | | | | |
| /s/ | | | | | |  |  |  |  | | | |
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|  |  | Page 8 of 9 |  |  |
| Brakers LLC  FeatureFacts LLC  Lease Commencing October 9, 2014 |  |  |  |  |

**EXHIBIT “A”**

**NOTICE OF LIMITED INTEREST**

This Notice is made effective as of                         , 20    , pursuant to Florida Statutes, §713.10.

**BRAKERS, LLC,**a Delaware limited liability company (“**Owner**”) is owner of certain real property and improvements thereon located in Hillsborough County, Florida, legally described as:

[Legal description to be inserted prior to recording]

(the “**Property**”). Owner has entered into a lease of, or commitment to lease, the Property with various lessees. Owner notifies all potential lienors under Part I, Chapter 713, Florida Statutes that the interest of Owner in the Property is not subject to any liens for any improvements made to the Property by any tenant. Specifically, each lease or lease commitment with each such tenant or lessee contains the following language:

Landlord’s interest in the Premises shall not be subject to any liens for improvements made by Tenant, and Tenant shall have no power or authority to create any lien or permit any lien to attach to the Premises, or to the present estate, reversion or other estate of Landlord in the Premises as a result of improvements made by Tenant or for any other cause or reason. All materials suppliers, contractors, and artisans performing on or about the Premises or any part thereof are hereby charged with notice that such liens are expressly prohibited and that they must look solely to Tenant to secure payment for any work done or material furnished for improvements by Tenant or for any other purpose.

Without limiting the generality of the preceding paragraph, any liens for work performed under any direct contract with any tenant are and will remain subject, subordinate and inferior to the lien, security interest, and other provisions of any and all mortgages and related security documents now or hereafter placed on the Property. The provisions of this Notice bind Owner, and any tenant of the Property, and any person claiming by, through or under any of the foregoing, their respective heirs, successors or assigns. Such provisions inure to the benefit of Owner, Owner’s successors and assigns, and any existing or future mortgagee of Owner’s interest in the Property.

Signed and acknowledged in the presence of:

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| **WITNESSES:** | | |  |  |  | **BRAKERS, LLC,**  **a Delaware limited liability company** | | |
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| Print Name: |  |  |  |  |  | By: |  |  |
|  | | |  |  |  | Mike Sindek, its Manager | | |
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|  |  | Page 9 of 9 |  |  |
| Brakers LLC  FeatureFacts LLC  Lease Commencing October 9, 2014 |  |  |  |  |

**LeaseA#40**

10-A-17 BERG, ILLINOIS WAREHOUSE LEASE

**LAND LEASE AGREEMENT**

    This Lease Agreement made and entered into by and between PROPOW PROPERTIES, LLC, of Schaumburg, Illinois, as agent for **Berg Terminal LLC** hereinafter collectively referred to as "Landlord" and **Toolcomp Corporation** , a **corporation**of **Delaware** , hereinafter referred to as "Tenant":

WITNESSETH:

    Landlord hereby leases to Tenant, and Tenant hereby takes from Landlord that portion of the land consisting of **109** trailer parking spaces and **58** car parking spaces comprising the property commonly known as **3340 Berkowitz Ave., Berg Illinois** , as delineated **in yellow**on Exhibit "A" attached hereto, (the property leased by Tenant is referred to herein as the "Premises" or the "Leased Premises" and the entire property consisting of 15.3 acres which includes a building, the grounds surrounding the building, parking areas, driveways and dock areas located at **3340 Berkowitz Ave., Berg Illinois** is referred to herein as the "Entire Facility").  
  
    To have and to hold the same for the period beginning on the same date (the "Commencement Date") as the date of commencement of that certain **Building**Lease Agreement of even date herewith by and between the Landlord and Tenant for the lease of certain space in the building situated on the Entire Facility (the "Building Lease"), and ending on the same date as the Building Lease ends, (the "Initial Term" and along with any renewal or extension hereof the "Lease Term") upon the following terms, conditions, and covenants:  
  
    The Leased Premises (as defined herein) and the property leased to Tenant pursuant to the Building Lease, shall consist of a portion of the property located at **3340 Berkowitz Ave., Berg Illinois** , including but not limited to, a building, the grounds surrounding the building, driveways and dock areas, paved equipment parking, maneuvering spaces and areas, and all employee parking areas.  
  
1. RENTAL RATES:  
  
    A. Tenant agrees to pay Landlord without any prior demand therefore and without any deduction or set-off whatsoever, and at a Fixed Minimum Rent, as shown in Section B below, plus applicable lease tax, if any, in advance on the first day of each calendar month. If the Commencement Date shall be a date other than the first day of a calendar month, then Tenant shall pay on the Commencement Date, a pro rata portion of the monthly Fixed Minimum Rent, prorated on a per diem basis with respect to such fractional calendar month. First month's rent shall be paid immediately upon execution of this Lease. If possession is before the Commencement Date, rent will be paid on a pro-rata basis in advance.  
  
    B. During the Lease Term the monthly "Fixed Minimum Rent" shall be as follows:                                             
           **Period  
  
From 03/01/02 to 02/28/03 in Monthly Installments of $15,300.00  
From 03/01/03 to 02/29/04 in Monthly Installments of $15,720.00  
From 03/01/04 to 02/28/05 in Monthly Installments of $16,200.00  
From 03/01/05 to 02/28/06 in Monthly Installments of $16,680.00  
From 03/01/06 to 02/28/07 in Monthly Installments of $17,160.00  
From 03/01/07 to 02/29/08 in Monthly Installments of $17,700.00  
From 03/01/08 to 02/28/09 in Monthly Installments of $18,240.00  
From 03/01/09 to 02/28/10 in Monthly Installments of $18,780.00  
From 03/01/10 to 02/28/11 in Monthly Installments of $19,320.00  
From 03/01/11 to 02/29/12 in Monthly Installments of $19,920.00  
From 03/01/12 to 02/28/13 in Monthly Installments of $20,520.00  
From 03/01/13 to 02/28/14 in Monthly Installments of $21,180.00  
From 03/01/14 to 02/28/15 in Monthly Installments of $21,840.00  
From 03/01/15 to 02/29/16 in Monthly Installments of $22,500.00  
From 03/01/16 to 02/28/17 in Monthly Installments of $23,160.00**  
    Fixed Minimum Rent is an absolute amount and has been determined independently of the square footage of the Leased Premises.  
  
    C. The term "Lease Year" shall mean each twelve (12) consecutive calendar month period of the Lease Term, however, the first Lease Year shall commence on the Commencement Date, provided that if the Commencement Date shall be on any day other than the first of the month the first Lease Year shall include said partial month and the twelve (12) succeeding calendar months.  
      
    D.   Additional rent and Fixed Minimum Rent are sometimes collectively referred to herein as "Rent."  
  
    E.   The purpose and intent of this Lease is that the rental provided for in this section shall be an absolute net return to the Landlord, except for payments of Rent which are set forth in the Building Lease, and that all taxes shall be paid by Tenant, except income taxes and inheritance taxes levied against the Landlord's income or assets. Tenant shall pay all payments, expenses, costs, and charges of every kind and nature in connection with the operation, maintenance, upkeep, and preservation of the Leased Premises and of said leasehold interest and lease, including any lease tax or tax on rents and all payments required to be made and to keep said Lease free and clear of and from all liens and encumbrances of every description, and the preservation and maintenance of the Leased Premises and every part thereof in as good a condition and repair as of the date of execution of this lease shall be borne and paid by Tenant during the entire Lease Term, or any extension thereof.  
  
    F.   The real estate tax, operating expense and insurance obligations of the Tenant under the Land Lease are included within the payments for such expense provided for under the Building Lease.  
      
2.  ACCEPTANCE OF PREMISES:  
  
    Tenant acknowledges that it has fully inspected the Leased Premises and Tenant hereby accepts the Leased Premises, subject to the Landlord's completion of the work described on Exhibit "B", if any, and the buildings and improvements situated thereon, as suitable for the purposes for which the same are leased. Landlord is not obligated hereunder to perform any construction or "build-out" for Tenant, other than what is described on said Exhibit "B," if any.  
  
3.   USE OF PREMISES:  
  
    The Leased Premises shall be used and occupied only for the purpose of: **truck and trailer parking area.**  
  
4.   COMPLIANCE WITH LAW:  
  
    Tenant, at its sole cost and expense, shall comply with all governmental laws, ordinances, and regulations applicable to the use of the Leased Premises, and at its sole cost and expense shall promptly comply with all governmental orders and directives for the correction, prevention, and abatement of nuisances in or upon, or connected with the Leased Premises.  
  
5.   MAINTENANCE:  
  
    A.   Except as specifically set forth herein, all maintenance of the Leased Premises shall be done by Tenant at Tenant's sole cost and expense.  
  
    B.   Tenant shall at its sole cost and expense and risk maintain all parts of the Leased Premises and the grounds as delineated on Exhibit "A" in no poorer condition and repair than as of the date of execution of this lease, (as subsequently improved by Landlord's completion of the improvements set forth on Schedule B, if any).  
  
    Tenant shall provide Landlord with copies of any and all inspections and reports of maintenance upon reasonable request.  
  
    Tenant shall be liable to Landlord for any and all damage caused by Tenant, its employees, agents or its invitees to the Leased Premises, including but not limited to the parking lot area.  
  
    C.   Tenant shall, throughout the Lease term, take good care of the Leased Premises and keep it free from waste and nuisance; and shall deliver up the premises clean and neat at the termination of this Lease in as good repair and condition as of the date of execution of this lease, (as subsequently improved by Landlord's completion of the improvements set forth on Schedule B, if any), damage by fire, tornado, or other casualty excepted. Tenant shall maintain and repair all aspects of the Leased Premises i ncluding but not limited to light poles, driveways, asphalt, as well as snow removal from all driveways, sidewalks and other paved areas and maintenance of the driveway, gravel, sidewalks, truck aprons, exterior fencing, dolly pads and paved areas including asphalt resurfacing and seal coating as may be required, debris removal, concrete repair, and all landscaping and weed control and any underground utilities and detention pond repairs.  
  
    D.   In the event Tenant should neglect to maintain the Premises as set forth herein, and fails to commence repairs within 14 days after written notice, the Landlord shall have the right (but not the obligation) to cause repairs or corrections to be made and any reasonable costs therefore, plus fifteen percent overhead, shall be payable by Tenant to Landlord as additional rental on the next rental installment date.  
  
    **~~E.  Landlord's Maintenance. Except as otherwise provided herein, Landlord shall be responsible for maintenance and repair of the roof and structural system of the Building except for damage caused by Tenant or its employees, licensees, or invitees. Landlord shall be responsible for maintenance and repair of the building structure of the Entire Facility~~**      
6. ALTERATIONS, ADDITIONS, AND IMPROVEMENTS:  
  
    A.  No additional alternations, additions or improvements shall be made by Tenant without Landlord's written approval, which approval shall not be unreasonably withheld or delayed  
  
    B.   Tenant, at its sole cost and expense, shall complete all of Tenant's improvements subject to Landlord's written approval. Tenant's improvements shall be done in a good and workmanlike manner with materials of good quality and pursuant to appropriate governmental permits and in compliance with applicable laws and insurance requirements. Tenant's construction shall not interfere with the conducting of business by other tenants. During the Lease Term, Tenant shall provide Landlord with waivers of liens for any improvements done by Tenant or Tenant's contractors to the Leased Premises or shall bond or insure over any mechanic's liens with bonding or insurance companies reasonably acceptable to Landlord. In the event Tenant fails to provide said lien waivers or bond or insurance and Landlord is required to pay for such improvements in order to remove or avoid the filing of liens, then any such sums paid by Landlord shall be considered as additional rent and shall be payable by Tenant to Landlord on demand.  
  
    C.   During the course of construction of the improvements, Landlord and its representative may, upon reasonable prior notice of Tenant, inspect (but shall have no duty or obligation to inspect) Tenant's construction of improvements and the materials being used. If as a result of such inspection, Landlord, or its representative shall determine that any materials do not substantially conform to, or that the improvements are not being constructed in accordance with the terms of this Lease, prompt notice thereof may be given by Landlord to Tenant specifying the nature of the deficiency or defect or omission. Upon the receipt of any such notice, Tenant shall promptly take such steps as may be necessary to correct such defect. In the event that Tenant fails to correct said defect, or commence to cure said defect within thirty (30) days after Landlord's notice (or immediately, if an emergency) Landlord shall have the right, but not the obligation, in addition to any other remedies available to Landlord, to undertake same at Tenant's expense. In such event, Tenant shall pay as additional rent to Landlord for the cost of such work immediately upon receipt of an invoice therefore together with interest thereon at the annual rate of eighteen percent (18%) from the date expended by Landlord until paid in full.  
  
    D.   All of Tenant's contractors and subcontractors of its contractors shall carry public liability insurance with at least $1,000,000 single limit broad form coverage and worker's compensation insurance, and each such insurance policy shall name Landlord and the owner and, their beneficiaries, officers, directors, shareholders, Managers and Members, the agents of Landlord and the owner and their agents' beneficiaries, officers, directors, shareholders, Managers and Members as additional insureds. Each such contractor and subcontractor shall submit to Landlord proof of such insurance before they may begin work on the Leased Premises.  
  
    E.   During construction of improvements, Tenant shall carry builder's risk insurance, public liability insurance and worker's compensation insurance, in such amounts as are reasonably acceptable to Landlord, provided that the builder's risk policy coverage shall be at least in an amount sufficient to cover all so-called "hard costs" of construction of Tenant's improvements, together with adequate soft cost coverage. Landlord and the owner and, their beneficiaries, officers, directors, shareholders, Managers and Members, the agents of Landlord and the owner and their agents' beneficiaries, officers, directors, shareholders, Managers and Members shall be named as additional insureds under said policies. Tenant shall deliver certificates of insurance to Landlord prior to commencement of construction reflecting the coverage thereunder and showing the additional insureds required hereunder.  
  
    F.  All alterations, additions, or improvements made by Tenant shall become the property of Landlord at the termination of this Lease, except trade fixtures. Tenant may remove trade fixtures belonging to Tenant at the expiration of the Lease Term, provided that any damage or injury caused to the real estate by reason of the removal shall be repaired by Tenant at its sole cost and expense. Notwithstanding anything herein to the contrary, affixed dock plates and dock lights are to become realty and not personalty, and may not be removed by Tenant.  
  
7. INSURANCE:  
  
    Tenant agrees that it will at all times during the term hereof carry and maintain, for the mutual benefit of the Landlord and of the Tenant, general public liability insurance with an insurance company reasonably acceptable to Landlord against claims for personal injury, death, or property damage, occurring in, on or about the Leased Premises or premises adjacent to the Leased Premises, such insurance to afford protection to the limit of no less than Five Million Dollars ($5,000,000.00) in respect to injury or death of a single person, and to the limit of not less than Five Million Dollars ($5,000,000.00) in respect to any one accident. Tenant shall furnish Landlord with a duplicate certificate or certificates of its liability insurance policy or policies and shall from time to time whenever required, satisfy Landlord that such policy or policies is or are, in full force and effect. All insurance policies which Tenant is required to maintain shall name, "Landlord and the owner and, **~~their beneficiaries, officers, directors, shareholders,~~** Managers and Members, the agents of Landlord and the owner and **~~their agents' beneficiaries, officers, directors, shareholders~~** , Managers and Members" as additional insureds, and Landlord shall be given certificates of all insurance.  
  
    In addition to any additional rent Tenant is to pay for Landlord's maintenance of insurance, Tenant shall pay Landlord, upon demand, as additional rent, an amount equal to the increase in the premiums of Landlord's fire, malicious mischief, vandalism, and extended coverage insurance covering the building and surrounding land which is directly attributable to occupancy of the Leased Premises by Tenant including the use specified herein. If Tenant installs any electrical equipment that overloads the lines in the Leased Premises, Tenant shall, at its own expense, make whatever changes are necessary to comply with the requirements of the insurance underwriters and governmental authorities having jurisdiction.  
  
8.   WAIVER OF SUBROGATION:  
  
    Each party hereto waives any and every claim which arises or may arise in its favor and against the other party hereto during the Term of this Lease or any renewal or extension thereof for any and all loss of, or damage to, and of its property located within or upon, or constituting a part of, the premises leased to Tenant hereunder which loss or damage is covered or would have been covered if such party had complied with this Lease, by valid and collectable fire and extended coverage insurance policies, to the extent such loss or damage is recoverable under said insurance policies. Said mutual waivers will preclude the assignment of any aforesaid claim by way of subrogation (or otherwise) to an insurance company (or any other person), each party hereto agrees immediately to give to each insurance company which has issued to it policies of fire and extended coverage insurance, written notice of the terms of said mutual waivers, and to have said insurance policies properly endorsed, if necessary, to prevent the invalidation of said insurance coverage by reason of such waivers.  
  
9.   LANDLORD'S RIGHT OF ENTRY:  
  
    Landlord and its authorized agents shall have the right to enter the Leased Premises during normal working hours for the following purposes: (a) inspecting the general conditions and state of repair of the Leased Premises; (b) if Landlord is required to make any repairs hereunder that necessitate entry into the Leased Premises, the making of repairs required of Landlord; (c) the showing of the Leased Premises to any prospective Tenants or purchasers; or (d) as provided elsewhere in this Lease. In the event of an emergency, Landlord and its authorized agents shall have the right to enter the Leased Premises at any time to remedy such emergency.  
  
    If Tenant and Landlord have not agreed to a renewal or extension of this Lease prior to the final one hundred and eighty (180) day period of the Lease Term, Landlord and its authorized agents shall have the right to erect on or about the Leased Premises Landlord's signage advertising the Leased Premises for lease or for sale.  
  
10.  UTILITY SERVICES:  
  
    Tenant shall pay the cost of all utility services during the Lease Term as well as during any period in which Tenant is in possession of the Leased Premises, including but not limited to initial connection charges and all charges for gas, water, and electricity used on the Leased Premises, and for all electric light lamps or tubes. In the event no direct meter to a utility company is available, then Tenant shall pay Landlord for its Proportionate Share of the cost of such utility (i.e. gas, electric or water) as additional rent.  
  
11.  ASSIGNMENT AND SUBORDINATION TO MORTGAGES:  
  
    A.   This lease may not be assigned by Tenant and Tenant may not sublet the Leased Premises, except to an affiliate or subsidiary, without Landlord's written consent, but Landlord shall not unreasonably withhold or delay its consent so long as the Leased Premises shall be used for the same use as specified in this Lease. Tenant shall not permit to take place by any act of default of himself or any person within his control any transfer by operation of law of Tenant's interest created hereby. Tenant may not post rental notices or signs or any other similar signs or notices anywhere, or advertise the Leased Premises as being for lease or sublease in any publication or other source of advertisement whatsoever without first obtaining, the written consent of Landlord.  
  
    B.   If Tenant is a corporation, Tenant shall not transfer twenty‑five percent (25%) or more of the stock thereof without Landlord's prior written consent.  
  
    C.   Tenant shall, in the event that any proceedings are brought for the foreclosure of, or in the event of exercise of the power of sale under any mortgage made by the Landlord covering the Leased Premises, attorn to the purchaser upon any such foreclosure or sale and recognize such purchaser as the Landlord under this Lease provided that such purchaser or mortgagee shall recognize Tenant's Lease as remaining in full force and effect so long as Tenant is not in default hereunder.  
  
    D.   Landlord is hereby irrevocably vested with full power and authority to subordinate Tenant's interest hereunder to any mortgage, deed of trust, or other lien hereafter placed on the Leased Premises, and Tenant agrees upon demand to execute such further instruments subordinating this Lease as Landlord may request, provided such further subordination shall be upon the express condition that this Lease shall be recognized by the mortgages and that the rights of Tenant shall remain in full force and effect during the Lease Term, so long as Tenant shall continue to perform all of the covenants of this Lease.  
  
12. LIABILITY:  
  
    Tenant agrees to indemnify, defend and save Landlord and the owner and, their beneficiaries, officers, directors, shareholders, Managers and Members, the agents of Landlord and the owner and their agents' beneficiaries, officers, directors, shareholders, Managers and Members, harmless against and from any and all claims by or on behalf of any person or entity, arising from the conduct or management of the business conducted on the Leased Premises or from any work or thing done by or on behalf of Tenant or its subtenants, agents, employees, contractors, officers, directors, licensees or sublicensees on or about the Leased Premises and/or the Building, and will further indemnify and save Landlord and the owner and, their beneficiaries, officers, directors, shareholders, Managers and Members, the agents of Landlord and the owner and their agents' beneficiaries, officers, directors, shareholders, Managers and Members harmless against and from any and all claims arising during or after the Lease Term from any breach or default on the part of Tenant in the performance of any covenant or agreement on the part of Tenant to be performed pursuant to the terms of this Lease, or arising from any act of negligence or willful misconduct of Tenant, or any of its subtenants, agents, contractors, employees, officers, directors, licensees or sublicensees, and from and against all costs, counsel fees, expenses and liabilities arising from any such claim or action or proceeding brought thereon. If any action or proceeding is brought against Landlord by reason of any such claim, Tenant, upon request of Landlord, shall defend such action or proceeding by counsel reasonably satisfactory to Landlord.  
  
13.  CONDEMNATION:  
  
    A. If, during the Lease Term or any extension or renewal thereof, all or a substantial part of the Leased Premises as would prohibit Tenant from engaging in its business should be taken for any public or quasi‑public use under any governmental law, ordinances or regulation or by right of eminent domain, or should be sold to the condemning authority under threat of condemnation, this Lease shall terminate effective as of the date of said taking and Tenant shall be liable for all Fixed Minimum Rent and all additional rent due hereunder through such date and the rent shall be abated during the unexpired portion of this Lease.  
  
    B.   If such a portion of the Leased Premises as would still permit Tenant to engage in its business shall be taken for any public or quasi‑public use under any governmental law, ordinance, or regulation, or by right of eminent domain, or should be sold to the condemning authority under threat of condemnation, this Lease shall not terminate but Landlord shall forthwith at its sole expense restore the remaining portion of the Leased Premises provided such restoration and reconstruction shall make the same reasonably tenantable and suitable for the uses for which the Leased Premises are leased as defined above and provided that Landlord shall not be obligated to undertake repairs and alterations if the cost thereof exceeds the award Landlord received as a result of the condemnation. The rent payable hereunder during the Landlord's restoration of the Leased Premises and during the remainder of the Lease Term shall be adjusted equitably based on the remaining tenantable area.  
  
    C.   Landlord and Tenant shall each be entitled to receive and retain such separate awards and portions of lump sum awards as may be allocated to their respective interests in any condemnation proceedings.  
  
14.  HOLDING OVER:  
  
    Tenant shall pay Landlord double the latest **~~Adjusted~~** fixed minimum rent then applicable for each month or portion thereof Tenant retains possession of the Premises, or any portion thereof, after the expiration or termination of this Lease, and also shall pay all damages sustained by Landlord by reason of such retention of possession. The provisions of this Article shall not constitute a waiver by Landlord of any re-entry rights of Landlord hereinbefore or by law provided **~~. If Tenant retains possession of the Premises, or any part thereof, for ten (10) days after the expiration or termination of this Lease, then at the sole option of Landlord expressed by written notice to Tenant, but not otherwise, such holding over shall constitute a renewal of this Lease for a period of one year (or less if specified by Landlord at Landlord's option) on the same terms and conditions, except that the fixed minimum rent shall be increased to one hundred and twenty-five percent (125%) of the latest fixed minimum rent, plus any additional rent.~~**  
15.  DEFAULT BY TENANT:  
  
    A.   The following events shall be deemed to be events of default by Tenant under this Lease:  
  
    (1)  Tenant shall fail to pay any installment of Fixed Minimum Rent or additional rent on the date that same is due and such failure shall continue for a period of five (5) days after Landlord delivers written notice to Tenant.  
  
    (2)  Tenant shall fail to comply with any term, condition or covenant of this Lease, other than the payment of rent, and shall not cure such failure within ten (10) days of delivery of written notice provided however that if the Default cannot with due diligence be cured prior to the expiration of said ten (10) day period and if Tenant commences within ten (10) days from the date of delivery of said notice 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, then Tenant shall not be in Default.  
  
    (3)  If an event of Default occurs by Tenant under the Building Lease, it shall also be deemed an event of Default by Tenant under the Land Lease. **~~if an event of Default occurs by Tenant under this Lease.~~**      
    (4)  Tenant shall make an assignment for the benefit of creditors, or shall be ajudged a bankrupt.  
  
    B.   Upon the occurrence of a Default, Landlord shall have the option to pursue any one or more of the following remedies without any notice or demand whatsoever:  
  
    (1)  Landlord shall have the immediate right of re‑entry and may remove all persons and property from the Leased Premises, and such property may be removed and stored in a public warehouse or elsewhere at the cost of, and for the account of Tenant, with or without process of law, without being deemed guilty of trespass, or becoming liable to any party for any loss or damage which may be occasioned thereby;  
  
    (2)  Landlord may from time to time without terminating this Lease, and without releasing Tenant in whole or in part from Tenant's obligation to pay rent and perform any of the covenants, conditions and agreements to be performed by Tenant as provided in this Lease, make such alterations and repairs to the Leased Premises as may be necessary in order to relet the Leased Premises. Landlord may relet the Leased Premises or any part thereof for such term or terms (which may be for a term extending beyond the term of this Lease) and at such rental or rentals and upon such other terms and conditions as Landlord in its discretion may deem advisable. Upon each such reletting if all rentals received by the Landlord from such reletting during any month shall be less than that to be paid during that month by Tenant hereunder, Tenant shall pay any such deficiency to Landlord. Such deficiency shall be calculated and paid monthly. Notwithstanding any such reletting without termination, Landlord may at any time thereafter elect to terminate this Lease for such previous breach. Tenant shall also be liable to Landlord for all costs of reletting, including, but not limited to, alterations and repairs of the Leased Premises for a new tenant, brokerage commissions, attorneys fees, advertising and any other expenses incurred by Landlord in connection therewith and said costs shall be due upon demand (collectively, the "Reletting Costs");  
  
    (3)  Landlord may terminate this Lease, and with or without process of law may remove all persons, fixtures and property from the Leased Premises, and Landlord shall be entitled to receive as damages all Fixed Minimum Rent, all additional rent and all other sums payable by Tenant as of the date of termination, plus all Reletting Costs plus (1) a sum of money equal to the sums reserved for the balance of the Term for all Fixed Minimum Rent, all additional rent and other sums provided in this Lease to be paid by Tenant to Landlord for the remainder of the Lease Term, less the fair rental value of the Leased Premises for the period, (2) the cost of performing any other covenant to be performed by Tenant, and (3) all costs and attorneys' fees incurred by Landlord in connection with any action taken against Tenant; and  
  
    (4)  Enter upon the Leased Premises by force if necessary without being liable for prosecution of any claim for damages therefore, and do whatever Tenant is obligated to do under the terms of this Lease, and Tenant agrees to reimburse Landlord on demand for expenses, which Landlord may incur in thus effecting compliance with Tenant's obligations under this Lease, and Tenant further agrees that Landlord shall not be liable for any damages resulting to the Tenant from such action whether caused by the negligence of Landlord or otherwise.  
      
    C.   Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies herein provided or any other remedies provided by Law, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any rent due to Landlord hereunder or of any damages accruing to Landlord by reason of the violation of any of the terms, conditions, and covenants herein contained.  
  
16. TERMINATION  
  
    In the event this Lease or the Building Lease terminates for any reason, the other lease shall terminate simultaneously. In no event shall this Lease be in effect without the Building Lease in effect, and in no event shall the Building Lease be in effect without this Lease being in effect.  
  
17. ATTORNEY'S FEES:  
  
    Tenant shall pay all reasonable attorneys' fees and all costs incurred by Landlord in enforcing any of the covenants and obligations of Tenant under this Lease.    
  
18. QUIET ENJOYMENT:  
  
    Landlord warrants that it has full right and power to execute and perform this Lease and to grant the estate demised herein and that Tenant, on payment of all Fixed Minimum Rent and additional rent and performing the covenants herein contained, shall peaceably and quietly have, hold and enjoy the Leased Premises during the full term of this Lease and any extension or renewal hereof, provided that this Lease shall be subject and subordinate to any recorded mortgage, deed of trust or lien presently existing or hereafter placed on the Leased Premises.  
  
19. WAIVER OF DEFAULT:  
  
    The waiver by the parties hereto of any default or breach of any term, condition, or covenant of this Lease shall not be deemed to be a waiver of any subsequent default or breach of the same or any other term, condition, or covenant contained herein.  
  
20. FORCE MAJEURE:  
  
    Landlord shall be allowed to delay the performance of any term, condition, or covenant in this Lease so long as such performance is delayed or prevented by force majeure, which shall mean delays occasioned or caused by tenant preventing Landlord making Schedule "B" improvements, Act of God, strikes, lockouts, material or labor restrictions by any governmental authority, civil riot, floods, and any other cause not reasonably within the control of Landlord or Tenant and which by the exercise of due diligence Landlord is unable, wholly or in part, to prevent or overcome.  
  
21.  ESTOPPEL CERTIFICATE BY TENANT:  
  
    Tenant agrees that at any time and from time to time, upon not less than five (5) days prior written request by Landlord, to execute, acknowledge, and deliver to Landlord a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modifications that the same is in full force and effect as modified and stating the modifications), and the dates to which the rental and other charges have been paid in advance, if any, it being intended that any such statement delivered pursuant to this Section may be relied upon by any prospective lender or purchaser of the fee of the Leased Premises.  
  
22.   ENVIRONMENTAL:  
  
    A.     **Tenant, in the regular course of its business on the Leased Premises, will receive and distribute merchandise containing Hazardous Materials (as defined herein) in household quantities and in original closed containers. Tenant will indemnify, defend and save Landlord ~~Tenant agrees that it, its agents employees and contractors will not use, handle, generate, treat, store or dispose of, or permit the use, handling, generation in, on, under, around or above the Leased Premises now or at any future time Hazardous Materials (as defined herein) and will indemnify, defend and save Landlord~~** and the owner and, their beneficiaries, officers, directors, shareholders, Managers and Members, the agents of Landlord and the owner and their agents' beneficiaries, officers, directors, shareholders, Managers and Members harmless from any and all actions, proceedings, claims, costs, expenses and losses of any kind, including, but not limited to, those arising from injury to any person, including death, damage to or loss of use or value of real or personal property, and costs of investigation and cleanup or other environmental remedial work, which may rise in connection with the existence of Hazardous Materials brought on to the Leased Premises since the Commencement Date. The term "Hazardous Materials" when used herein, shall include, but shall not be limited to any substances, materials or wastes that are regulated by any local governmental authority, the state where the Leased Premises is located, or the United States of America because of toxic, flammable, explosive, corrosive, reactive, radioactive or other properties that may be hazardous to human health or the environment, including asbestos and including any materials or substances that are listed in the United States Department of Transportation Hazardous Materials Table, as amended 49 CFR 172.101, or in the Comprehensive Environmental Response, Compensation and Liability Act, as amended 42 USC sections 9601 et seq., or the Resources Conservation and Recovery Act, as amended, 42 USC sections 6901 et seq., or any other applicable governmental regulation imposing liability or standards of conduct concerning any hazardous, toxic or dangerous substances, waste or material, now or hereafter in effect. Tenant shall comply with applicable laws related to any fuel and oil leakage or spills and disposal of any solvents, soaps and chemicals used in truck washing operations, arising from or out of Tenant's use of the Leased Premises. For the purposes of this Environmental section, the Premises or Leased Premises shall include all buildings and improvements, all loading platform areas, all parking and driveway areas, any sidewalks adjacent to the Leased Premises or any streets in front of or appurtenant thereto, all adjoining property and property affected in any way by the operations of the Tenant upon the Leased Premises or upon the foregoing, the subsurface of the Leased Premises or the forgoing, including without limitation, the ground water, the Entire Facility and Leased Premises.  
  
    B.   Tenant does hereby indemnify, defend and hold harmless the Landlord and the owner and, their beneficiaries, officers, directors, shareholders, Managers and Members, the agents of Landlord and the owner and their agents' beneficiaries, officers, directors, shareholders, Managers and Members from all fines, suites, procedures, claims and actions of every kind, and all costs associated therewith (including attorneys' and consultants' fees) arising out of or in any way connected with any deposit, spill, discharge or release of Hazardous Materials that occurs during the Lease Term, at or from the Leased Premises, or which arises at any time from Tenant's or Tenant's agents, employees or contractor's use or occupancy of the Leased Premises, or from Tenant's or Tenant's agents, employees or contractor's failure to provide all information, make all submissions, and take all steps required by all applicable governmental authorities. Tenant's obligations and liabilities under this paragraph shall survive the expiration of the Lease Term.  
  
    C.   Tenant shall promptly advise Landlord in writing as to any deposit, spill, discharge or release of Hazardous Materials that occurs or which arises from Tenant's use or occupancy of the Leased Premises.  
  
    D.   Tenant will use the Leased Premises in accordance with all applicable federal, state and local laws and regulations, including but not limited to the storm water discharge rules and permits. This will include registration fees, monitoring, and all improvements, alterations and devices as may be required by the governmental authorities responsible for monitoring and controlling said regulations and laws.  
  
23. EXHIBITS:  
  
All exhibits, attachments, annexed instruments, and addenda referred to herein shall be considered a part hereof for all purposes with the same force and effect as if copied at full length herein.  
  
           **EXHIBIT "A" -- SITE PLAN**  
  
24.  USE OF LANGUAGE:  
  
    Words of any gender used in the Lease shall be held and construed to include any other gender, and words in the singular shall be held to include the plural, unless the context otherwise requires.  
  
25.  CAPTIONS:  
  
    The captions or headings of paragraphs in this Lease are inserted for convenience only and shall not be considered in construing the provisions hereof if any questions of intent should arise.  
  
26.  SUCCESSORS:  
  
    The terms, conditions, and covenants contained in this Lease shall apply to, inure to the benefit of, and be binding upon the parties hereto and their respective successors in interest and legal representatives except as otherwise herein expressly provided. All rights, powers, privileges, immunities and duties of Landlord under this Lease, including but not limited to any notices required or permitted to be delivered by Landlord to Tenant hereunder, may, at Landlord's option, by exercised or performed by Landlord's agent or attorney.  
  
27.  NOTICES:  
  
    Any notice or document required or permitted to be delivered hereunder shall be deemed to be delivered whether actually received or not the day after said notice is deposited for overnight delivery with an overnight delivery service or three (3) days after said notice is deposited in the United States mail, postage prepaid, certified mail addressed to the parties hereto at the respective addresses set out opposite their names below (on the last page), or at such other address as they have heretofore or hereafter specify by written notice delivered in accordance herewith. Five day notices may be delivered by certified mail or any other means permissible under the forcible entry and detainer act.  
  
28.  SEVERABILITY:  
  
    If any term or provision of this Lease shall to any extent be held to be invalid or unenforceable, the remaining terms and provisions of this Lease shall not be affected thereby, but each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.  
  
29.   LATE CHARGE:  
  
     In the event Landlord does not receive from Tenant any installment of rent or additional rent due hereunder on or before the fifth day after such payment is due, Tenant shall be liable for a late charge in an amount equal to five percent (5%) of the amount past due. If said rental payment is not paid by the fifteenth (15) day of the month due an additional ten percent (10%) late fee as additional rent will be due.  
  
30.  JURY TRIAL WAIVER:  
  
     LANDLORD AND TENANT HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER OR THEIR SUCCESSORS WITH RESPECT TO ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, OR TENANT'S USE OR OCCUPANCY OF THE LEASED PREMISES.  
            
31.  RULES AND REGULATIONS:  
  
     Landlord may attach hereto as an exhibit a copy of the current rules and regulations of the Building. Landlord shall have the right to adopt such additional rules and regulations for the Building, as Landlord shall determine to be appropriate for the enjoyable use thereof by all tenants. Tenant shall comply with all rules and regulations of Landlord.  
  
36.  NO WAIVER OF RIGHTS:  
  
     Landlord's delay in enforcing any of its rights and remedies hereunder shall not be deemed a waiver of said rights and remedies and shall not preclude Landlord form enforcing any of said rights and remedies at a later date.  
  
Dated: 1/16/02  
  
Landlord:                                                 Tenant:  
**Berg Terminal LLC**  
**By:**Propow Properties, LLC     Toolcomp Corporation  
  
Chicago, IL 60173                           Geneva, IL 60523   
  
  
By:                                                            By: Hussein Al Fata  
Its:  Member                                            Its: Sr. V.P., Retail Support & Logistics

**BUILDING LEASE AGREEMENT**

     This Lease Agreement made and entered into by and between PROPOW PROPERTIES, LLC, of Chicago, Illinois, as agent for Berg Terminal LLC hereinafter collectively referred to as "Landlord" and **Toolcomp Corporation** , a **Delaware corporation** , hereinafter referred to as "Tenant":

WITNESSETH:

     Landlord hereby leases to Tenant, and Tenant hereby takes from Landlord **60**doors (consisting of doors number 1 through 60) of a **122** -door truck terminal facility and accompanying dock facilities comprising approximately **37,236** square feet, and that portion of the land comprising the property commonly known as **3340 Berkowitz Ave., Berg** , Illinois, as delineated **in yellow**on Exhibit "A" **(1 & 2)** attached hereto, (the property leased by Tenant is referred to herein as the "Premises" or the "Leased Premises" **.** **~~and~~** **T** he entire property consisting of **15.3** acres which includes a building, the grounds surrounding the building, parking areas, driveways, access to said driveways and dock areas located at **3340 Berkowitz Ave., Berg** , Illinois is referred to herein as the "Entire Facility").  
  
     To have and to hold the same for the period beginning **March 1, 2002** , or such later date after the construction of the Leased Premises is substantially complete (the "Commencement Date"), and ending **February 28, 2017** (the "Initial Term" and along with any renewal or extension hereof the "Lease Term") upon the following terms, conditions, and covenants:  
  
1.  RENTAL RATES:  
  
     A.   Tenant agrees to pay Landlord without any prior demand therefore and without any deduction or set-off whatsoever, and at a Fixed Minimum Rent, as shown in Section B below, plus applicable lease tax, if any, in advance on the first day of each calendar month. If the Commencement Date shall be a date other than the first day of a calendar month, then Tenant shall pay on the Commencement Date, a pro rata portion of the monthly Fixed Minimum Rent, prorated on a per diem basis with respect to such fractional calendar month. First month's rent shall be paid immediately upon execution of this Lease. If possession is before the Commencement Date, rent will be paid on a pro-rata basis in advance.  
  
     B.   During the Lease Term the monthly "Fixed Minimum Rent" shall be as follows:  
                                               
      **Period** **From 03/01/02 to 02/28/03 in Monthly Installments of $8,400.00**           **From 03/01/03 to 02/29/04 in Monthly Installments of $8,700.00** **From 03/01/04 to 02/28/05 in Monthly Installments of $9,000.00** **From 03/01/05 to 02/28/06 in Monthly Installments of $9,300.00** **From 03/01/06 to 02/28/07 in Monthly Installments of $9,600.00** **From 03/01/07 to 02/29/08 in Monthly Installments of $9,900.00** **From 03/01/08 to 02/28/09 in Monthly Installments of $10,200.00** **From 03/01/09 to 02/28/10 in Monthly Installments of $10,560.00** **From 03/01/10 to 02/28/11 in Monthly Installments of $10,960.00** **From 03/01/11 to 02/29/12 in Monthly Installments of $11,280.00** **From 03/01/12 to 02/28/13 in Monthly Installments of $11,640.00** **From 03/01/13 to 02/28/14 in Monthly Installments of $12,000.00** **From 03/01/14 to 02/28/15 in Monthly Installments of $12,360.00** **From 03/01/15 to 02/29/16 in Monthly Installments of $12,780.00** **From 03/01/16 to 02/28/17 in Monthly Installments of $13,200.00**  
     Fixed Minimum Rent is an absolute amount and has been determined independently of the square footage of the Leased Premises.  
  
     C.   The term "Lease Year" shall mean each twelve (12) consecutive calendar month period of the Lease Term, however, the first Lease Year shall commence on the Commencement Date **,**provided that if the Commencement Date shall be on any day other than the first of the month the first Lease Year shall include said partial month and the twelve (12) succeeding calendar months.  
  
2.   ADDITIONAL RENT:  
  
     A.   Tenant agrees to pay to Landlord as additional rent, Tenant's Proportionate Share of "Ownership Taxes," (as hereinafter defined). Based upon the area of the Leased Premises, Tenant's Proportionate Share is **49.18%** (hereinafter referred to as Tenant's "Proportionate Share") which has been determined by a fraction, the numerator of which is the number of doors of the Leased Premises situated on the Entire Facility leased to Tenant hereunder, and the denominator of which is the total number of doors of the building situated on the Entire Facility. **Tenant's proportionate share of** the **~~base real estate~~** **Ownership T** axes shall be **$6,361.00** per month.  
  
     B.    "Ownership Taxes" shall mean real estate taxes, assessments (whether they be general or special), sewer rents, rates and charges, transit taxes, taxes based upon the receipt of rent, and any other federal, state or local governmental charge, general, special, ordinary or extraordinary but not including income or franchise taxes, capital stock, inheritance, estate, gift, or any other taxes imposed upon or measured by Landlord's income or profits, unless the same shall be imposed in lieu of real estate taxes or other ad valorem taxes, which may now or hereafter be levied, assessed or imposed against the Entire Facility or the land underlying the Entire Facility (hereinafter referred to as the "Land").  
  
  
     C.   Notwithstanding anything contained in this Section 2 to the contrary, if at any time during the Lease Term (or any renewal or extension thereof) the method of taxation prevailing at the Commencement Date shall be altered so that any new tax, assessment, levy, imposition or charge, or any part thereof, shall be measured by or be based in whole or in part upon this Lease, or the Land, or the building situated on the Land, or the Leased Premises, or the Fixed Minimum Rent, Additional Rent or other income from any or all of the foregoing and shall be imposed upon Landlord, then all such taxes, assessments, levies, impositions or charges, or the part thereof, to the extent that they are so measured or based, shall be deemed to be included within the term Ownership Taxes for the purposes hereof to the extent that such Ownership Taxes would be payable if the property were the only property of Landlord subject to such Ownership Taxes. It is agreed that Tenant will be responsible for taxes on its personal property.  
  
     D.   The Landlord reserves the right to cause the Ownership Taxes to be paid under protest and to retain attorneys of its choice (hereinafter referred to as "Tax Counsel") to contest the amount of Ownership Taxes imposed. Tax Counsel shall be retained on a contingency basis, whereby Tax Counsel is paid a percentage of the tax savings achieved as a result of such representation. The Tenant agrees to pay Tenant's Proportionate Share of Tax Counsel's reasonable fees, provided a reduction is obtained. In no event shall the Tenant's liability for Ownership Taxes and Tax Counsel fees be greater than the Ownership Taxes, which would have been due to the Landlord, from Tenant, in absence of the retention of Tax Counsel.  
  
     E.   [INTENTIONALLY OMITTED]  
  
     F.   Tenant shall also reimburse Landlord, as additional rent, for Tenant's Proportionate Share of the premiums for insurance paid by Landlord covering the Entire Facility. **Tenant's proportionate share of**insurance premiums are estimated to be $ **123.00** per month for year one and insurance may vary from year to year and Tenant shall pay insurance current in accordance with section 3. Said insurance may include, but is not limited to, coverage for fire, extended coverage, general public liability coverage, vandalism and malicious mischief, 12 months' rent loss coverage, and insurance against flood, if required by the Federal Flood Disaster Protection Act of 1993 and regulations issued thereunder, and such other or special or increased coverages as Landlord may reasonably require or as Landlord's mortgagee may reasonably require, including, without limitation, boiler explosion coverage and sprinkler leakage coverage.  
  
     In addition to Tenant's Proportionate Share of Premiums for insurance paid by Landlord covering the Entire Facility (including increases in said premiums), Tenant shall pay to Landlord, upon demand as additional rent an amount equal to any increase in the premiums of Landlord's fire, malicious mischief, vandalism, and extended coverage insurance covering the building or the Entire Facility which is directly attributable to the specific manner of use by Tenant.  
  
3.    PAYMENT OF ADDITIONAL RENT:  
  
A.  Insurance. Tenant covenants and agrees to pay Landlord monthly in advance as additional rent simultaneously with the payment of each month's installment of Fixed Minimum Rent, one‑twelfth (1/12) of the amount of Landlord's reasonable estimate of Tenant's liability for insurance as determined in Section 2 herein for the calendar year in which such payment becomes due. Such insurance premium shall be estimated from time to time by Landlord and set forth in written notices to Tenant. After the expiration of each calendar year, Landlord shall prepare, and shall forward to Tenant, a statement in writing and certified by Landlord setting forth, for the most recently ended calendar year, Landlord's actual insurance liability and Tenant's Proportionate Share thereof, provided that Landlord's failure to notify Tenant within said time period shall not effect Tenant's obligation to pay its Proportionate Share of Landlord's insurance liability. If, after preparation of such statement, Landlord finds that Tenant shall have paid to Landlord an amount less than Tenant's actual Proportionate Share of Landlord's liability for insurance for such calendar year, Tenant shall pay to Landlord the amount of such deficiency within thirty (30) days after receipt of an invoice therefor from Landlord. If Tenant has paid an amount greater than its Proportionate Share of Landlord's insurance liability, said excess shall be applied towards Tenant's obligation for Landlord's insurance liability for the next calendar year or, at Landlord's election, to any other amount due under the terms of this Lease, or if such excess is attributable to the final Lease Year of the Lease Term, such excess shall be refunded to Tenant within thirty (30) days of Landlord's determination of Landlord's actual liability for insurance for the applicable year, so long as Tenant does not owe Landlord any amount pursuant to the terms of this Lease. If the Lease Term shall begin or end other than on the first or last day of a calendar year, these charges shall be billed and adjusted on the basis of such fraction of a calendar year. Expiration of the Lease Term shall not effect Tenant's obligation to pay its Proportionate Share of Landlord's liability for insurance with respect to any deficiency in payment for the final calendar year, or portion thereof, of the Lease Term. Any payment, refund or credit made pursuant to this Section shall be made without prejudice to any right of Landlord to correct any items as billed pursuant to the provisions hereof.  
     B.   Ownership Taxes. Tenant covenants and agrees to pay Landlord monthly in advance as additional rent simultaneously with the payment of each month's installment of Fixed Minimum Rent, one‑twelfth (1/12) of the amount of Landlord's reasonable estimate of Tenant's liability for Ownership Taxes as determined in Section 2 herein for the calendar year in which such payment becomes due. Such Ownership Taxes shall be estimated from time to time by Landlord and set forth in written notices to Tenant. Within **thirty (30)** days prior to Landlord's payment of the Real Estate Taxes for a calendar year, Landlord shall prepare, and shall forward to Tenant, a statement in writing and certified by Landlord setting forth, for the most recently ended calendar year, actual Ownership Taxes and Tenant's Proportionate Share thereof, provided that Landlord's failure to notify Tenant within said time period shall not effect Tenant's obligation to pay its Proportionate Share of Ownership Taxes. If, after preparation of such statement, Landlord finds that Tenant shall have paid to Landlord an amount less than Tenant's actual Proportionate Share of Ownership Taxes for such calendar year, Tenant shall pay to Landlord the amount of such deficiency within **~~five (5)~~** **thirty (30)**days after receipt of an invoice therefore from Landlord. If Tenant has paid an amount greater than its Proportionate Share of Ownership Taxes, said excess shall be applied towards Tenant's obligation for Ownership Taxes for the next calendar year or, at Landlord's election, to any other amount due under the terms of this Lease, or if such excess is attributable to the final Lease Year of the Lease Term, such excess shall be refunded to Tenant within thirty (30) days of Landlord's determination of the actual Ownership Taxes for the applicable year, so long as Tenant does not owe Landlord any amount pursuant to the terms of this Lease. If the Lease Term shall begin or end other than on the first or last day of a calendar year, these charges shall be billed and adjusted on the basis of such fraction of a calendar year. Expiration of the Lease Term shall not effect Tenant's obligation to pay its Proportionate Share of Ownership Taxes with respect to any deficiency in payment for the final calendar year, or portion thereof, of the Lease Term. Any payment, refund or credit made pursuant to this Section shall be made without prejudice to any right of Landlord to correct any items as billed pursuant to the provisions hereof.  
  
     In the event that Tenant makes improvements which causes an increase in the real estate taxes which can be attributed to said improvements, Tenant shall pay as additional rent the amount of real estate taxes attributable to its improvements.  
  
     C.  Additional rent and Fixed Minimum Rent are sometimes collectively referred to herein as "Rent."  
  
     D.   The purpose and intent of this Lease is that the rental provided for in this section shall be an absolute net return to the Landlord, and that all taxes, as set forth in Section 2 of this Lease, shall be paid by Tenant, except income taxes and inheritance taxes levied against the Landlord's income or assets. Tenant shall pay all payments, expenses, costs, and charges of every kind and nature in connection with the operation, maintenance, upkeep, and preservation of the Leased Premises and of said leasehold interest and lease, including any lease tax or tax on rents and all payments required to be made and to keep said Lease free and clear of and from all liens and encumbrances of every description, and the preservation and maintenance of the Leased Premises and every part thereof in as good a condition and repair as of the date of execution of this lease shall be borne and paid by Tenant during the entire Lease Term, or any extension thereof.  
       
4.   ACCEPTANCE OF PREMISES:  
  
     Tenant acknowledges that it has fully inspected the Leased Premises and Tenant hereby accepts the Leased Premises; subject to the Landlord's completion of the work described on Exhibit "B", if any, and the buildings and improvements situated thereon, as suitable for the purposes for which the same are leased. Landlord is not obligated hereunder to perform any construction or "build-out" for Tenant, other than what is described on said Exhibit "B," if any.  
  
5.   USE OF PREMISES:  
  
     The Leased Premises shall be used and occupied only for the purpose of: a truck terminal facility . Floor load is limited to **2,800 pounds per square foot** .  
  
6.   SECURITY DEPOSIT:  
       
     Tenant has deposited with Landlord the sum of $ **-0-** as a Security Deposit on the understanding; **(a) that in the event Tenant does not perform the required repairs and maintenance as per paragraph 8 within 60 days of written notice then the Tenant shall promptly** **supply Landlord with a Security Deposit of $42,844.00;** (b) that such deposit or any portion thereof may be applied to the curing of any Default by Tenant that may exist, without prejudice to any other remedy or remedies which the Landlord may have on account thereof, and upon such application Tenant shall deposit with Landlord on demand the amount so applied which shall be added to the Security Deposit so the same will be restored to its original amount; (c) that should the Leased Premises be conveyed by Landlord, the Security Deposit or any portion thereof may be turned over to Landlord's grantee, and if the same be turned over as aforesaid, Tenant agrees to look to such grantee for such application or return; (d) that if Tenant shall faithfully perform all of the covenants and agreements in this Lease contained on the part of Tenant to be performed, and if Tenant is not in Default hereunder, the sum deposited or the part of portion thereof not previously applied, shall be returned to Tenant no later than thirty (30) days after the expiration of the Lease Term or any renewal or extension thereof, provided Tenant has vacated the Leased Premises and surrendered possession thereof to Landlord.  
  
7.   COMPLIANCE WITH LAW:  
  
      **Prior to the lease commencement date, Landlord represents, to the best of Landlord's knowledge, that the leased premises complies with the then enacted governmental laws, ordinances, and regulations applicable to the use of the Leased Premises. As of the lease commencement date and thereafter,**Tenant, at its sole cost and expense, shall comply with all governmental laws, ordinances, and regulations applicable to the use of the Leased Premises, and at its sole cost and expense shall promptly comply with all governmental orders and directives for the correction, prevention, and abatement of nuisances in or upon, or connected with the Leased Premises.  
  
8.   MAINTENANCE:  
  
     A.   Except as specifically set forth herein, all maintenance of the Leased Premises **~~and the~~** **~~Entire Facility~~** shall be done by Tenant at Tenant's sole cost and expense.  
  
     B.     **Immediately prior to the commencement of this Lease a videotape will be taken by Tenant of the then condition of the Leased Premises, a copy of which will be provided to Landlord. If this videotape discloses defects in or damage to the Leased Premises, it is understood that Tenant shall have no responsibility or liability under this Lease to repair or replace said defects or damage, unless the same shall have been repaired or replaced by Landlord during the term of this Lease.** Tenant shall at its sole cost and expense and risk maintain all parts of the Leased Premises in no poorer condition and repair than as of the date of execution of this lease, (as subsequently improved by Landlord's completion of the improvements set forth on Schedule B, if any), including but not limited to interior lighting fixtures, floors, windows, window glass, plate glass, overhead doors, **overhead door weather guards,** door railings, dock plates, dock bumpers, bollards, **exterior and** interior lighting, telephones, alarm systems, sprinkler systems, **if any,** electrical system, demising walls, existing heating and air conditioning equipment and the building in general, including but not limited to light poles, driveways, asphalt, as well as snow removal from all driveways, sidewalks and other paved areas and maintenance of the driveway, gravel, sidewalks, truck aprons, exterior fencing, dolly pads and paved areas including asphalt resurfacing and seal coating as may be required, debris removal, concrete repair, and all landscaping and weed control and any underground utilities and detention pond repairs.  
  
     All plumbing and plumbing fixtures shall be kept in good, clean operating condition and checked at least once each two years by a licensed plumbing contractor. All expenses for such inspection and repairs shall be paid by Tenant.  
  
     Tenant shall provide Landlord with copies of any and all inspections and reports of maintenance upon reasonable request.  
  
     Tenant shall be liable to Landlord for any and all damage caused by Tenant, its employees, agents or its invitees to the Leased Premises, including but not limited to the parking lot area, the dock area, the building, fixtures, overhead doors, door railings, and dock equipment. At Landlord's option, Tenant agrees to conduct a walk through inspection of the Leased Premises with Landlord on or about the beginning of each Lease Year as well as at the expiration of this Lease or any extension or renewal thereof. Tenant shall repair at its sole cost and expense any damage caused by Tenant, its employees, agents or its invitees to the interior and exterior of the Entire Facility, and the HVAC equipment and restore the Leased Premises to its condition as of the **commencement** date of **~~execution of~~**this lease **~~(as subsequently improved by Landlord's completion of the improvements set forth on Schedule B, if any)~~** , **ordinary wear and tear,**damage by fire, tornado or other casualty excepted.  
  
     C.    Tenant, at its expense, agrees to install portable fire extinguishers on the Leased Premises as required by the insurance companies or municipal authorities due to Tenant's use of the Leased Premises.  
  
     D.   Tenant shall, throughout the Lease term, take good care of the Leased Premises and keep it free from waste and nuisance; and shall deliver up the Leased Premises clean and neat at the termination of this Lease in as good repair and condition as of the **commencement** date **~~of execution~~**of this lease, **~~(as subsequently improved by~~** **~~Landlord's completion of the improvements set forth on Schedule B, if any~~** ), **ordinary wear and tear,** damage by fire, tornado, or other casualty excepted.  
  
     E.   In the event Tenant should neglect to maintain the Leased Premises as set forth herein, and fails to commence repairs within 14 days after written notice, the Landlord shall have the right (but not the obligation) to cause repairs or corrections to be made and any reasonable costs therefore, plus **ten** **~~fifteen~~** percent overhead, shall be payable by Tenant to Landlord as additional rental on the next rental installment date.  
  
F.  Landlord's Maintenance. Except as otherwise provided herein, Landlord shall be responsible for maintenance and repair of the roof and the structural system for the building except for damage caused by Tenant or its employees, licensees, or invitees, Landlord shall be responsible for maintenance and repair of the building structure of the Entire Facility.  
  
     Landlord shall make regularly scheduled maintenance and repairs to the HVAC and Tenant shall reimburse Landlord for such repairs in accordance with paragraph 2.E.  
  
9.   ALTERATIONS, ADDITIONS, AND IMPROVEMENTS:  
  
     A.    Except for minor decorative alterations, no additional alternations, additions or improvements shall be made by Tenant without Landlord's written approval, which approval shall not be unreasonably withheld or delayed.  
  
     B.   Tenant, at It's sole cost and expense, shall complete all of Tenant's interior improvements subject to Landlord's written approval. Tenant's improvements shall be done in a good and workmanlike manner with materials of good quality and pursuant to appropriate governmental permits and in compliance with applicable laws and insurance requirements. Tenant's construction shall not interfere with the conducting of business by other tenants in the building. During the Lease Term, Tenant shall provide Landlord with waivers of liens for any improvements done by Tenant or Tenant's contractors to the Leased Premises or shall bond or insure over any mechanic's liens with bonding or insurance companies reasonably acceptable to Landlord. In the event Tenant fails to provide said lien waivers or bond or insurance and Landlord is required to pay for such improvements in order to remove or avoid the filing of liens, then any such sums paid by Landlord shall be considered as additional rent and shall be payable by Tenant to Landlord on demand.  
  
     C.   During the course of construction of the improvements, Landlord and its representative may, upon reasonable prior notice of Tenant, inspect (but shall have no duty or obligation to inspect) Tenant's construction of improvements and the materials being used. If as a result of such inspection, Landlord, or its representative shall determine that any materials do not substantially conform to, or that the improvements are not being constructed in accordance with the terms of this Lease, prompt notice thereof may be given by Landlord to Tenant specifying the nature of the deficiency or defect or omission. Upon the receipt of any such notice, Tenant shall promptly take such steps as may be necessary to correct such defect. In the event that Tenant fails to correct said defect, or commence to cure said defect within thirty (30) days after Landlord's notice (or immediately, if an emergency) Landlord shall have the right, but not the obligation, in addition to any other remedies available to Landlord, to undertake same at Tenant's expense. In such event, Tenant shall pay as additional rent to Landlord for the cost of such work immediately upon receipt of an invoice therefore together with interest thereon at the annual rate of eighteen percent (18%) from the date expended by Landlord until paid in full.  
  
     D.   All of Tenant's contractors and subcontractors of its contractors shall carry public liability insurance with at least $1,000,000 single limit broad form coverage and worker's compensation insurance, and each such insurance policy shall name Landlord and the owner and, their beneficiaries, officers, directors, shareholders, Managers and Members, the agents of Landlord and the owner and their agents' beneficiaries, officers, directors, shareholders, Managers and Members as additional insureds. Each such contractor and subcontractor shall submit to Landlord proof of such insurance before they may begin work on the Leased Premises.  
  
E.  During construction of improvements, Tenant shall carry builder's risk insurance, public liability insurance and worker's compensation insurance, in such amounts as are reasonably acceptable to Landlord, provided that the builder's risk policy coverage shall be at least in an amount sufficient to cover all so-called "hard costs" of construction of Tenant's improvements, together with adequate soft cost coverage. Landlord and the owner and, their beneficiaries, officers, directors, shareholders, Managers and Members, the agents of Landlord and the owner and their agents' beneficiaries, officers, directors, shareholders, Managers and Members shall be named as additional insureds under said policies. Tenant shall deliver certificates of insurance to Landlord prior to commencement of construction reflecting the coverage thereunder and showing the additional insureds required hereunder.  
  
     F.  All alterations, additions, or improvements made by Tenant shall become the property of Landlord at the termination of this Lease, except trade fixtures. Tenant may remove trade fixtures belonging to Tenant at the expiration of the Lease Term, provided that any damage or injury caused to the real estate by reason of the removal shall be repaired by Tenant at its sole cost and expense. Notwithstanding anything herein to the contrary, affixed dock plates and dock lights are to become realty and not personalty, and may not be removed by Tenant.  
  
10.  SIGNS:  
  
     Tenant shall have the right, subject to Landlord's reasonable approval, to erect signs, at Tenant's expense, on the exterior walls of Tenant's portion of the building, securely attached to and parallel to said walls, subject to applicable laws, approvals of applicable government authorities, and deed restrictions. Signs shall conform to Landlord's plan for the building. Tenant shall obtain, at its sole cost and expense, all permits required for erection of its signs. Tenant shall not erect any signs other than customary trade signs identifying its business, and shall not erect any signs on the roof of the building. Tenant shall remove all signs at the termination of this Lease, and shall repair any damage and close any holes caused by such removal. Tenant agrees to indemnify and save Landlord harmless from any and all losses, claims, and suits for injury to person or property caused by any sign installed or maintained by Tenant. Letters of sign shall be no larger than 8" high.  
  
11. INSURANCE:  
  
     Tenant agrees that it will at all times during the term hereof carry and maintain, for the mutual benefit of the Landlord and of the Tenant, general public liability insurance with an insurance company reasonably acceptable to Landlord against claims for personal injury, death, or property damage, occurring in, on or about the Leased Premises or premises adjacent to the Leased Premises, such insurance to afford protection to the limit of no less than Five Million Dollars ($5,000,000.00) in respect to injury or death of a single person, and to the limit of not less than Five Million Dollars ($5,000,000.00) in respect to any one accident. Tenant shall furnish Landlord with a duplicate certificate or certificates of its liability insurance policy or policies and shall from time to time whenever required, satisfy Landlord that such policy or policies is or are, in full force and effect. All insurance policies which Tenant is required to maintain shall name, "Landlord and the owner **~~and, their beneficiaries, officers, directors, shareholders~~** , Managers and Members, the agents of Landlord and the owner **~~and their agents' beneficiaries, officers, directors, shareholders~~** , Managers and Members" as additional insureds, and Landlord shall be given certificates of all insurance.  
  
     Landlord shall maintain in effect throughout the term of this Lease policies of insurance covering the building and the improvements on the Leased Premises owned by Landlord, in an amount equal no less than 80% of their full replacement value, providing protection against any peril included under a standard form of insurance policy used in Illinois for fire and extended coverage, together with insurance against vandalism and malicious mischief.  
  
     In addition to any additional rent Tenant is to pay for Landlord's maintenance of insurance, Tenant shall pay Landlord, upon demand, as additional rent, an amount equal to the increase in the premiums of Landlord's fire, malicious mischief, vandalism, and extended coverage insurance covering the building and surrounding land which is directly attributable to occupancy of the Leased Premises by Tenant including the use specified herein. If Tenant installs any electrical equipment that overloads the lines in the Leased Premises, Tenant shall, at its own expense, make whatever changes are necessary to comply with the requirements of the insurance underwriters and governmental authorities having jurisdiction.  
  
12.  WAIVER OF SUBROGATION:  
  
     Each party hereto waives any and every claim which arises or may arise in its favor and against the other party hereto during the Term of this Lease or any renewal or extension thereof for any and all loss of, or damage to, any of its property located within or upon, or constituting a part of, the premises leased to Tenant hereunder which loss or damage is covered or would have been covered if such party had complied with this Lease, by valid and collectable fire and extended coverage insurance policies, to the extent such loss or damage is recoverable under said insurance policies. Said mutual waivers will preclude the assignment of any aforesaid claim by way of subrogation (or otherwise) to an insurance company (or any other person), each party hereto agrees immediately to give to each insurance company which has issued to it policies of fire and extended coverage insurance, written notice of the terms of said mutual waivers, and to have said insurance policies properly endorsed, if necessary, to prevent the invalidation of said insurance coverage by reason of such waivers.  
  
13.  LANDLORD'S RIGHT OF ENTRY:  
  
      **Upon one hour's telephone notice, except in case of emergency,** Landlord and its authorized agents shall have the right to enter the Leased Premises during normal working hours for the following purposes: (a) inspecting the general conditions and state of repair of the Leased Premises; (b) if Landlord is required to make any repairs hereunder that necessitate entry into the Leased Premises, the making of repairs required of Landlord; (c) the showing of the Leased Premises to any prospective Tenants or purchasers; or (d) as provided elsewhere in this Lease. In the event of an emergency, Landlord and its authorized agents shall have the right to enter the Leased Premises at any time to remedy such emergency.  
  
     If Tenant and Landlord have not agreed to a renewal or extension of this Lease prior to the final one hundred and eighty (180) day period of the Lease Term, Landlord and its authorized agents shall have the right to erect on or about the Leased Premises Landlord's signage advertising the Leased Premises for lease or for sale.  
  
14.  UTILITY SERVICES:  
  
     Tenant shall pay the cost of all utility services during the Lease Term as well as during any period in which Tenant is in possession of the Leased Premises, including but not limited to initial connection charges and all charges for gas, water, and electricity used on the Leased Premises (including costs of operating the HVAC system), and for all electric light lamps or tubes. In the event no direct meter to a utility company is available, then Tenant shall pay it's Proportionate Share to Landlord for the cost of such utility (i.e. gas, electric or water) as additional rent.  
  
15.  ASSIGNMENT AND SUBORDINATION TO MORTGAGES:  
  
     A.   This lease may not be assigned by Tenant and Tenant may not sublet the Leased Premises, except to an affiliate or subsidiary, without Landlord's written consent, but Landlord shall not unreasonably withhold or delay its consent so long as the Leased Premises shall be used for the same use as specified in this Lease. Tenant shall not permit to take place by any act of default of himself or any person within his control any transfer by operation of law of Tenant's interest created hereby. Tenant may not post rental notices or signs or any other similar signs or notices anywhere, or advertise the Leased Premises as being for lease or sublease in any publication or other source of advertisement whatsoever without first obtaining, the written consent of Landlord.  
  
     B.   If Tenant is a corporation, Tenant shall not transfer twenty‑five percent (25%) or more of the stock thereof without Landlord's prior written consent.  
  
     C.   Tenant shall, in the event that any proceedings are brought for the foreclosure of, or in the event of exercise of the power of sale under any mortgage made by the Landlord covering the Leased Premises, attorn to the purchaser upon any such foreclosure or sale and recognize such purchaser as the Landlord under this Lease provided that such purchaser or mortgagee shall recognize Tenant's Lease as remaining in full force and effect so long as Tenant is not in default hereunder.  
  
     D.   Landlord is hereby irrevocably vested with full power and authority to subordinate Tenant's interest hereunder to any mortgage, deed of trust, or other lien hereafter placed on the Leased Premises, and Tenant agrees upon demand to execute such further instruments subordinating this Lease as Landlord may request, provided such further subordination shall be upon the express condition that this Lease shall be recognized by the mortgages and that the rights of Tenant shall remain in full force and effect during the Lease Term, so long as Tenant shall continue to perform all of the covenants of this Lease.  
  
16.  FIRE AND CASUALTY DAMAGE:  
  
     A.   If the building or other improvements on the Leased Premises should be damaged or destroyed by fire, tornado, or other casualty, Tenant shall give prompt written notice thereof to Landlord.  
  
     B.   Total Destruction: If the building should be destroyed by fire, tornado, or other casualty, so that rebuilding or repairs cannot reasonably be completed within 180 working days from the earlier of the date of Tenant's delivery of written notification to Landlord of the happening of the damage or the date Landlord has actual knowledge of the damage, this Lease shall terminate and rent shall be abated for the unexpired portion of this Lease, effective as of the date the space becomes uninhabitable, except Tenant shall be liable for all Fixed Minimum Rent and all additional rent due hereunder through such date.  
  
C.  Partial Damage: If this Lease is not terminated pursuant to Paragraph B. above, Landlord shall, if the casualty has occurred prior to the final eighteen (18) months of the Lease Term, at its sole cost and risk proceed forthwith to rebuild or repair the building and other improvements substantially to the condition in which they existed prior to such damage, provided that Landlord shall not be obligated to expend for such rebuilding or repair an amount in excess of the insurance proceeds recovered as a result of such damage and in no event shall Landlord be required to repair or replace Tenant's stock in trade, fixtures, furnishings floor coverings or equipment. If the casualty occurs during the final eighteen (18) months of the Lease Term, Landlord shall not be required to rebuild or repair such damage unless the Lease is Renewed Pursuant to the Renewal Term (if any is contained herein) within thirty (30) days from the date of Tenant's delivery of Tenant's written notification of the happening of the damage or within thirty (30) days from the date Landlord has actual knowledge of the damage, whichever comes first. Whereupon, Landlord shall, at its sole cost and risk, proceed forthwith to rebuild or repair such damage, provided that Landlord shall not be obligated to expend for such rebuilding or repair an amount in excess of the insurance proceeds recovered as a result of such damage and in no event shall Landlord be required to repair or replace Tenant's stock in trade, fixtures, furnishings floor coverings or equipment. If the casualty has occurred during the final eighteen (18) months of the Lease Term and if the Lease is not renewed pursuant to the Renewal Term (if any is contained herein), within said thirty (30) day time frame, this Lease shall terminate, at the option of Landlord, and rent shall be abated for the unexpired portion of this Lease, effective as of the date the Leased Premises becomes uninhabitable and Tenant shall be liable for all Fixed Minimum Rent and all additional rent due hereunder through such date. If the Leased Premises and other improvements are to be rebuilt or repaired and are untenantable in whole or in part following such damage, the rent payable hereunder during the period in which they are untenantable shall be adjusted equitably based on the portions of the space that are tenantable and untenantable. In the event that Landlord should fail to substantially complete such rebuilding or repairs within one hundred eighty (180) days from the date of written notification by Tenant to Landlord of the happening of the damage or one hundred eighty (180) days from the date Landlord has actual knowledge of the damage, whichever comes first, Tenant may at its option terminate this Lease by written notification at such time to Landlord, whereupon all rights and obligations hereunder shall cease except that Tenant shall be liable for all Fixed Minimum Rent and all additional rent due hereunder through the date of termination. During the period when the Leased Premises are untenantable, rent shall abate for such period.  
  
17.  LIABILITY:  
  
Tenant agrees to indemnify, defend and save Landlord and the owner and, their beneficiaries, officers, directors, shareholders, Managers and Members, the agents of Landlord and the owner and their agents' beneficiaries, officers, directors, shareholders, Managers and Members, harmless against and from any and all claims by or on behalf of any person or entity, arising from the conduct or management of the business conducted on the Leased Premises or from any work or thing done by or on behalf of Tenant or its subtenants, agents, employees, contractors, officers, directors, licensees or sublicensees on or about the Leased Premises and/or the Building, and will further indemnify and save Landlord and the owner and, their beneficiaries, officers, directors, shareholders, Managers and Members, the agents of Landlord and the owner and their agents' beneficiaries, officers, directors, shareholders, Managers and Members harmless against and from any and all claims arising during or after the Lease Term from any breach or default on the part of Tenant in the performance of any covenant or agreement on the part of Tenant to be performed pursuant to the terms of this Lease, or arising from any act of negligence or willful misconduct of Tenant, or any of its subtenants, agents, contractors, employees, officers, directors, licensees or sublicensees, and from and against all costs, reasonable counsel fees, expenses and liabilities arising from any such claim or action or proceeding brought thereon. If any action or proceeding is brought against Landlord by reason of any such claim, Tenant, upon request of Landlord, shall defend such action or proceeding by counsel reasonably satisfactory to Landlord.  
  
18.  CONDEMNATION:  
  
     A.   If, during the Lease Term or any extension or renewal thereof, all or a substantial part of the Leased Premises as would prohibit Tenant from engaging in its business should be taken for any public or quasi‑public use under any governmental law, ordinances or regulation or by right of eminent domain, or should be sold to the condemning authority under threat of condemnation, this Lease shall terminate effective as of the date of said taking and Tenant shall be liable for all Fixed Minimum Rent and all additional rent due hereunder through such date and the rent shall be abated during the unexpired portion of this Lease.  
  
     B.   If such a portion of the Leased Premises as would still permit Tenant to engage in its business shall be taken for any public or quasi‑public use under any governmental law, ordinance, or regulation, or by right of eminent domain, or should be sold to the condemning authority under threat of condemnation, this Lease shall not terminate but Landlord shall forthwith at its sole expense restore the remaining portion of the Leased Premises provided such restoration and reconstruction shall make the same reasonably tenantable and suitable for the uses for which the Leased Premises are leased as defined above and provided that Landlord shall not be obligated to undertake repairs and alterations if the cost thereof exceeds the award Landlord received as a result of the condemnation. The rent payable hereunder during the Landlord's restoration of the Leased Premises and during the remainder of the Lease Term shall be adjusted equitably based on the remaining tenantable area.  
  
     C.   Landlord and Tenant shall each be entitled to receive and retain such separate awards and portions of lump sum awards as may be allocated to their respective interests in any condemnation proceedings.  
  
19.  HOLDING OVER:  
  
      Tenant shall pay Landlord double the latest **~~Adjusted~~** fixed minimum rent then applicable for each month or portion thereof Tenant retains possession of the Premises, or any portion thereof, after the expiration or termination of this Lease, and also shall pay all damages sustained by Landlord by reason of such retention of possession. The provisions of this Article shall not constitute a waiver by Landlord of any re-entry rights of Landlord hereinbefore or by law provided. **~~If Tenant retains possession of the Premises, or any part thereof, for ten (10) days after the expiration or termination of this Lease, then at the sole option of Landlord expressed by written notice to Tenant, but not otherwise, such holding over shall constitute a renewal of this Lease for a period of one year (or less if specified by Landlord at Landlord's option) on the same terms and conditions, except that the fixed minimum rent shall be increased to one hundred and twenty-five percent (125%) of the latest fixed minimum rent, plus any additional rent.~~**  
20.  DEFAULT BY TENANT:  
  
     A.   The following events shall be deemed to be events of default by Tenant under this Lease:  
  
     (1)  Tenant shall fail to pay any installment of Fixed Minimum Rent or additional rent on the date that same is due and such failure shall continue for a period of five (5) days after Landlord delivers written notice to Tenant.  
  
     (2)  Tenant shall fail to comply with any term, condition or covenant of this Lease, other than the payment of rent, and shall not cure such failure within ten (10) days of delivery of written notice provided however that if the Default cannot with due diligence be cured prior to the expiration of said ten (10) day period and if Tenant commences within ten (10) days from the date of delivery of said notice 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, then Tenant shall not be in Default.  
       
     (3)  Tenant shall make an assignment for the benefit of creditors, or shall be adjudged a bankrupt.  
  
     (4)  If an event of Default occurs by Tenant under the Land Lease, it shall also be deemed an event of Default by Tenant under the Building Lease. **~~if an event of Default occurs by Tenant under this Lease.~~**  
     B.   Upon the occurrence of a Default, Landlord shall have the option to pursue any one or more of the following remedies without any notice or demand whatsoever:  
  
     (1)  Landlord shall have the immediate right of re-entry and may remove all persons and property from the Leased Premises, and such property may be removed and stored in a public warehouse or elsewhere at the cost of, and for the account of Tenant, with or without process of law, without being deemed guilty of trespass, or becoming liable to any party for any loss or damage which may be occasioned thereby;  
  
     (2)  Landlord may from time to time without terminating this Lease, and without releasing Tenant in whole or in part from Tenant's obligation to pay rent and perform any of the covenants, conditions and agreements to be performed by Tenant as provided in this Lease, make such alterations and repairs to the Leased Premises as may be necessary in order to relet the Leased Premises. Landlord may relet the Leased Premises or any part thereof for such term or terms (which may be for a term extending beyond the term of this Lease) and at such rental or rentals and upon such other terms and conditions as Landlord in its discretion may deem advisable. Upon each such reletting if all rentals received by the Landlord from such reletting during any month shall be less than that to be paid during that month by Tenant hereunder, Tenant shall pay any such deficiency to Landlord. Such deficiency shall be calculated and paid monthly. Notwithstanding any such reletting without termination, Landlord may at any time thereafter elect to terminate this Lease for such previous breach. Tenant shall also be liable to Landlord for all costs of reletting, including, but not limited to, alterations and repairs of the Leased Premises for a new tenant, brokerage commissions, attorneys fees, advertising and any other expenses incurred by Landlord in connection therewith and said costs shall be due upon demand (collectively, the "Reletting Costs");  
  
     (3)  Landlord may terminate this Lease, and with or without process of law may remove all persons, fixtures and property from the Leased Premises, and Landlord shall be entitled to receive as damages all Fixed Minimum Rent, all additional rent and all other sums payable by Tenant as of the date of termination, plus all Reletting Costs plus (1) a sum of money equal to the sums reserved for the balance of the Term for all Fixed Minimum Rent, all additional rent and other sums provided in this Lease to be paid by Tenant to Landlord for the remainder of the Lease Term, less the fair rental value of the Leased Premises for the period, (2) the cost of performing any other covenant to be performed by Tenant, and (3) all costs and **reasonable**attorneys' fees incurred by Landlord in connection with any action taken against Tenant; and  
  
     (4)  Enter upon the Leased Premises by force if necessary without being liable for prosecution of any claim for damages therefore, and do whatever Tenant is obligated to do under the terms of this Lease, and Tenant agrees to reimburse Landlord on demand for expenses, which Landlord may incur in thus effecting compliance with Tenant's obligations under this Lease, and Tenant further agrees that Landlord shall not be liable for any damages resulting to the Tenant from such action whether caused by the negligence of Landlord or otherwise.  
       
     C.   Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies herein provided or any other remedies provided by Law, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any rent due to Landlord hereunder or of any damages accruing to Landlord by reason of the violation of any of the terms, conditions, and covenants herein contained.  
  
21.  ATTORNEY'S FEES:  
  
     Non-prevailing party shall pay all reasonable attorney's fees and all costs incurred by prevailing party in enforcing any of the covenants and obligations of non-prevailing party under this Lease.    
  
22.  QUIET ENJOYMENT:  
  
     Landlord warrants that it has full right and power to execute and perform this Lease and to grant the estate demised herein and that Tenant, on payment of all Fixed Minimum Rent and additional rent and performing the covenants herein contained, shall peaceably and quietly have, hold and enjoy the Leased Premises during the full term of this Lease and any extension or renewal hereof, provided that this Lease shall be subject and subordinate to any recorded mortgage, deed of trust or lien presently existing or hereafter placed on the Leased Premises.  
  
23.  WAIVER OF DEFAULT:  
  
     The waiver by the parties hereto of any default or breach of any term, condition, or covenant of this Lease shall not be deemed to be a waiver of any subsequent default or breach of the same or any other term, condition, or covenant contained herein.  
  
24.  FORCE MAJEURE:  
  
     Landlord shall be allowed to delay the performance of any term, condition, or covenant in this Lease so long as such performance is delayed or prevented by force majeure, which shall mean delays occasioned or caused by tenant preventing Landlord making Schedule "B" improvements, Act of God, strikes, lockouts, material or labor restrictions by any governmental authority, civil riot, floods, and any other cause not reasonably within the control of Landlord or Tenant and which by the exercise of due diligence Landlord is unable, wholly or in part, to prevent or overcome.  
  
25.  ESTOPPEL CERTIFICATE BY TENANT:  
  
     Tenant agrees that at any time and from time to time, upon not less than five (5) days prior written request by Landlord, to execute, acknowledge, and deliver to Landlord a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modifications that the same is in full force and effect as modified and stating the modifications), and the dates to which the rental and other charges have been paid in advance, if any, it being intended that any such statement delivered pursuant to this Section may be relied upon by any prospective lender or purchaser of the fee of the Leased Premises.  
  
26. ENVIRONMENTAL  
  
     A.     **Tenant, in the regular course of its business on the Leased Premises, will receive and distribute merchandise containing Hazardous Materials (as defined herein) in household quantities and in original closed containers. Tenant will indemnify, defend and save Landlord**and the owner and, their beneficiaries, officers, directors, shareholders, Managers and Members, the agents of Landlord and the owner and their agents' beneficiaries, officers, directors, shareholders, Managers and Members harmless from any and all actions, proceedings, claims, costs, expenses and losses of any kind, including, but not limited to, those arising from injury to any person, including death, damage to or loss of use or value of real or personal property, and costs of investigation and cleanup or other environmental remedial work, which may rise in connection with the existence of Hazardous Materials brought on to the Leased Premises since the Commencement Date. The term "Hazardous Materials" when used herein, shall include, but shall not be limited to any substances, materials or wastes that are regulated by any local governmental authority, the state where the Leased Premises is located, or the United States of America because of toxic, flammable, explosive, corrosive, reactive, radioactive or other properties that may be hazardous to human health or the environment, including asbestos and including any materials or substances that are listed in the United States Department of Transportation Hazardous Materials Table, as amended 49 CFR 172.101, or in the Comprehensive Environmental Response, Compensation and Liability Act, as amended 42 USC sections 9601 et seq., or the Resources Conservation and Recovery Act, as amended, 42 USC sections 6901 et seq., or any other applicable governmental regulation imposing liability or standards of conduct concerning any hazardous, toxic or dangerous substances, waste or material, now or hereafter in effect. Tenant shall comply with applicable laws related to any fuel and oil leakage or spills and disposal of any solvents, soaps and chemicals used in truck washing operations, arising from or out of Tenant's use of the Leased Premises. For the purposes of this Environmental section, the Premises or Leased Premises shall include all buildings and improvements, all loading platform areas, all parking and driveway areas, any sidewalks adjacent to the Leased Premises or any streets in front of or appurtenant thereto, all adjoining property and property affected in any way by the operations of the Tenant upon the Leased Premises or upon the foregoing, the subsurface of the Leased Premises or the forgoing, including without limitation, the ground water, the Entire Facility and Leased Premises.  
  
     B.   Tenant does hereby indemnify, defend and hold harmless the Landlord and the owner and, their beneficiaries, officers, directors, shareholders, Managers and Members, the agents of Landlord and the owner and their agents' beneficiaries, officers, directors, shareholders, Managers and Members from all fines, suits, procedures, claims and actions of every kind, and all costs associated therewith (including attorneys' and consultants' fees) arising out of or in any way connected with any deposit, spill, discharge or release of Hazardous Materials that occurs during the Lease Term, at or from the Leased Premises, or which arises at any time from Tenant's or Tenant's agents, employees or contractor's use or occupancy of the Leased Premises, or from Tenant's or Tenant's agents, employees or contractor's failure to provide all information, make all submissions, and take all steps required by all applicable governmental authorities. Tenant's obligations and liabilities under this paragraph shall survive the expiration of the Lease Term.  
  
     C.   Tenant shall promptly advise Landlord in writing as to any deposit, spill, discharge or release of Hazardous Materials that occurs or which arises from Tenant's use or occupancy of the Leased Premises.  
  
     D.   Tenant will use the Leased Premises in accordance with all applicable federal, state and local laws and regulations, including but not limited to the storm water discharge rules and permits. This will include registration fees, monitoring, and all improvements, alterations and devices as may be required by the governmental authorities responsible for monitoring and controlling said regulations and laws.  
  
27.  EXHIBITS:  
  
     All exhibits, attachments, annexed instruments, and addenda referred to herein shall be considered a part hereof for all purposes with the same force and effect as if copied at full length herein.  
       
            **EXHIBIT "A-1 & A-2" -- SITE PLAN  
            EXHIBIT "B" -- LANDLORD'S WORK**  
28.  USE OF LANGUAGE:  
  
     Words of any gender used in the Lease shall be held and construed to include any other gender, and words in the singular shall be held to include the plural, unless the context otherwise requires.  
  
29.  CAPTIONS:  
  
     The captions or headings of paragraphs in this Lease are inserted for convenience only and shall not be considered in construing the provisions hereof if any questions of intent should arise.  
  
30.  SUCCESSORS:  
  
     The terms, conditions, and covenants contained in this Lease shall apply to, inure to the benefit of, and be binding upon the parties hereto and their respective successors in interest and legal representatives except as otherwise herein expressly provided. All rights, powers, privileges, immunities and duties of Landlord under this Lease, including but not limited to any notices required or permitted to be delivered by Landlord to Tenant hereunder, may, at Landlord`s option, by exercised or performed by Landlord's agent or attorney.  
  
31.  NOTICES:  
  
     Any notice or document required or permitted to be delivered hereunder shall be deemed to be delivered whether actually received or not the day after said notice is deposited for overnight delivery with an overnight delivery service or three (3) days after said notice is deposited in the United States mail, postage prepaid, certified mail addressed to the parties hereto at the respective addresses set out opposite their names below (on the last page), or at such other address as they have heretofore or hereafter specify by written notice delivered in accordance herewith. Five-day notices may be delivered by certified mail or any other means permissible under the forcible entry and detainer act.  
  
32.  SEVERABILITY:  
  
     If any term or provision of this Lease shall to any extent be held to be invalid or unenforceable, the remaining terms and provisions of this Lease shall not be affected thereby, but each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.  
  
33.  LATE CHARGE:  
  
     In the event Landlord does not receive from Tenant any installment of rent or additional rent due hereunder on or before the fifth day after such payment is due, Tenant shall be liable for a late charge in an amount equal to five percent (5%) of the amount past due. If said rental payment is not paid by the fifteenth (15) day of the month due an additional ten percent (10%) late fee as additional rent will be due.  
  
34.  JURY TRIAL WAIVER:  
  
     LANDLORD AND TENANT HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER OR THEIR SUCCESSORS WITH RESPECT TO ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, OR TENANT'S USE OR OCCUPANCY OF THE LEASED PREMISES.  
       
35.  RULES AND REGULATIONS:  
  
     Tenant shall comply with all reasonable rules and regulations of Landlord not inconsistent with the terms of this Lease.  
  
36.  NO WAIVER OF RIGHTS:  
  
     Landlord's delay in enforcing any of its rights and remedies hereunder shall not be deemed a waiver of said rights and remedies and shall not preclude Landlord from enforcing any of said rights and remedies at a later date.  
  
37. CANCELLATION:  
  
     Tenant may cancel this Lease on February 29, 2012 by Tenant serving six (6) months prior written notice and the payment of $122,150.00 to Landlord concurrent with service of said notice. If notice is not served in strict accordance with this paragraph this provision is in no further force or effect and is null and void.  
  
38. EXISTING LEASE OBLIGATION:  
  
Upon commencement, Landlord will assume Tenant's (Toolcomp's) existing lease obligation at **6500 West 36** **th** **Place, Chicago, Illinois** through May 31, 2002 at a cost of **$22,858.44** per month, with a maximum aggregate cost of $ **68,575.32** . **Tenant represents to Landlord that its existing lease obligation is, in fact, at least $20,000 per month.**  
Dated:  
  
Landlord:  
**Berg Terminal, LLC**                         Tenant:  
**By:** Propow Properties, LLC        Toolcomp **Corporation**  
 Geneva, IL   
Chicago, IL                   
  
By:                                                              By: Hussein Al Fata  
Its: Member                                               Its: Sr. V.P., Retail Support & Logistics

**EXHIBIT B**

     Landlord's Work for **Toolcomp Corporation**  
  
Landlord, at its expense except where noted, shall substantially complete the construction of the following improvements:  
  
1. Truck Loading - New Dock Doors with appropriate seals and wall mounted dock lights. A ramped drive-in door will be installed.  
2. Floors - Repair floors where needed and apply sealer.  
3. Fencing - The front and rear yards will be fenced off per the attached drawing giving Ace the appropriate reserved parking and secured  
    access.  
4. Guard Shack - Allowable, at Ace's sole expense.  
5. Office Area - The upstairs office area will be demised according to the **Exhibit A-2** . In addition, the ceiling tiles will be replaced and new  recessed lighting installed.  
Bathrooms - Two new bathrooms will be constructed on the second floor fo