

LEASE AGREEMENT

THIS LEASE, made this 10th day of June, 2009, by and between WINMAR CORPORATION, Suite 208, Bakhaus Building, 1500 West Main Street, Lexington, Kentucky 40511, Party of the First Part, hereinafter referred to as Lessor, and SMURFIT-STONE CONTAINER ENTERPRISES, INC., 170 Lisle Road, Lexington, Kentucky 40511, Party of the Second Part, hereinafter referred to as Lessee,

WITNESSETH:

WHEREAS, Lessor wishes to lease to Lessee and Lessee wishes to hire from Lessor for a twenty-four month term commencing on June 1, 2009, and ending on May 31, 2011 (the Term), that property known as 170 and 172 Lisle Road, Lexington, Kentucky 40511;

WHEREAS, Lessee is currently engaged in reorganization under Title 11 of the United States Bankruptcy Code and Lessor is agreeable to granting to Lessee a "blended" rate for one hundred sixty-one thousand two hundred eighty square feet (161,280 ft²) at the rate of one and 86/100 (\$1.86) dollars per square foot for that property known as 170 and 172 Lisle Road, Lexington, Kentucky 40511 (the Property);

WHEREAS, Lessor and Lessee have agreed that the rental payment schedule for the Term shall be at the rate of twenty-four thousand nine hundred ninety-eight and 40/100 (\$24,998.40) dollars per month; and

WHEREAS, Said rent shall be payable in advance without demand on the first day of each month of the Term.

NOW THEREFORE, In consideration of the premises and terms hereinafter contained, the parties hereto, their successors and assigns, hereby covenant as follows:

1. That the Lessor does lease to the Lessee for the Term the Property.
2. Lessee agrees to pay in monthly installments at the rate of twenty-four thousand nine hundred ninety-eight and 40/100 (\$24,998.40) dollars per month. Each installment to be paid in advance on the first day of each month. Lessee agrees to pay a late fee of one point five (1.5%) percent of any monthly installment received by Lessor after the twenty-fifth (25) day of any month.
3. Lessee hereby covenants and agrees with Lessor as follows:
 - A. That Lessee has full right to lease the Property hereby demised for the Term, and that the transaction described herein is entered into in the ordinary course of business and does not require bankruptcy court approval.
 - B. To pay the aforesaid rent when due, by mailing to Lessor's offices at Suite 208, Bakhaus Building, 1500 West Main Street, Lexington, Kentucky 40511.
 - C. To conform to and obey all applicable existing or future laws or ordinances

and all rules, regulations, requirements and orders of the governmental authorities or agencies respecting the use and occupancy of the Property insofar as same create any liability upon Lessor for the performance thereof.

- D. Not to assign this lease nor sublet the Property nor any part thereof without the prior written consent of the Lessor, but such consent will not be unreasonably withheld or conditioned.
- E. To permit the Lessor to enter upon the Property at all reasonable times for the purpose of examining the conditions of the same.
- F. To leave the Property at the expiration or prior termination of this lease or any renewal or extension thereof in as good condition as when received, excepting reasonable wear and tear and damage by fire and the elements or other causes beyond the control of the Lessee.
- G. To keep in good repair at all times the interior of the Property and the fixtures and facilities therein, including all utility facilities installed therein. Lessee further agrees that it will make no material structural changes; substantial alterations, modifications or additions to the improvements on the the Property, other than partitions, without first obtaining the prior written consent of Lessor, and it is further understood and agreed that all alterations, modifications or addition, which Lessee is permitted to install or make, as provided herein, shall be at Lessee's sole expense, shall become a part of the realty; provided, however that Lessee has the right to install and/or remove its contents, inventory, signs, fixtures, equipment and machinery throughout the term of this Agreement. All such contents, inventory, signs, fixtures, machinery and equipment shall remain the property of the Lessee during the term of the Agreement, and the same shall not be treated as fixtures merged with the realty or a part of the realty or Property. Upon termination of the Agreement, Lessee shall be permitted to remove all of Lessee's contents, inventory, signs, fixtures, equipment and machinery subject only to repairing any damage to the Property resulting from the removal of said signs, fixtures, equipment and machinery.
- H. To pay all water gas, heat, light and power and telephone service, and all other such services supplied to the Property at the request of Lessee during the existence of this lease or any renewal or extension thereof.
- I. To indemnify and save harmless the Lessor as the owner and landlord of the Property from any and all claims (Claims) of whatsoever kind and nature that may be made against Lessor as the result of any injuries or damage to any person while on, in or about the Property, resulting from Lessee's negligence by virtue of its use and occupancy of the Property or by anyone else with its permission or under its control, provided however, in no event shall Lessee be liable for any Claims arising from Lessor's negligence.

- J. To pay during the term of the lease any taxes upon the Property in excess of those applicable to the Property as of the commencement of the term; payment of any such taxes for a fractional part of a year included in the Term to be prorated. The Property is a portion of a larger tract owned by the **Lessor**, and in the event of an increase in the assessment or rate of taxes, the portion of such increase attributable to the Property shall be determined on a pro-rata basis in proportion to the total land of the tract including the Property; all increases in taxes upon the improvements included in the Property to be borne by the **Lessee** in full in addition to the increase in tax upon the land included in the lease as determined as set forth above.
 - K. To pay all realtor commissions incurred by **Lessee** on **Lessee's** behalf, if any, arising from or pertaining to the negotiation, creation or execution of this Lease.
4. **Lessor** hereby covenants and agrees with **Lessee** as follows:
- A. That it has full right to lease the Property for the Term.
 - B. To keep the **Lessee** in quiet possession of the Property during the Term, providing **Lessee** is not in breach hereof.
 - C. To pay all real property ad valorem taxes assessed against the Property, and to maintain fire and extended coverage insurance upon the Property in such amount as it may deem advisable.
 - D. To keep in good repair the roof of the building, the exterior thereof, except the plate glass in the windows, doors, etc., which shall be maintained by **Lessee**, that portion of all utilities lying outside the building and all streets, roads, driveways and sidewalks, if any.
 - E. **Lessor** has not secured the services of any realtor pertaining to the negotiation, creation or execution of this Lease. **Lessor** agrees to pay all realtor commissions incurred by **Lessor** on **Lessor's** behalf, if any, arising from or pertaining to the negotiation, creation or execution of this Lease.

5. If **Lessee** shall at any time be in default in the payment of rent herein, or be in default in the performance of any of the material covenants, terms, conditions or provisions of this lease for a period longer than thirty (30) days after proper written notice of such default from **Lessor** has been given to **Lessee**, then the **Lessor** shall have the option to declare a forfeiture of this lease and to have immediate possession of the Property without demand, notice or process, and it shall be lawful for **Lessor** to enter upon the Property and have the possession of same, and thereupon this lease and everything herein contained on the part of the **Lessor** to be done and performed shall cease and determine, without prejudice, however, to the right of the **Lessor** to recover from the **Lessee** all rent due up to the time of such entry and such other damages as said **Lessor** may sustain by reason of the default on the part of said **Lessee**. In case of any such

default and entry by Lessor, said Lessor shall use its best efforts to re-let the Property for the remainder of the Term for the highest rent obtainable and may recover from Lessee any deficiency between the amount so obtained and the rent herein provided.

6. If during the Term of this lease or any renewal or extension thereof, the Property shall be so damaged by fire or other casualty that the Property shall be unsuitable for restoration for Lessee's continued use and occupancy in Lessee's business within 120 days, then at Lessee's option, in lieu of Lessor's rebuilding, replacing and repairing the Property, Lessee may give notice to Lessor, within thirty (30) days after the occurrence of such damage or destruction, of Lessee's intention to terminate this Agreement on any business day specified in such notice which occurs not more than one hundred twenty (120) days after the date of said notice, and this Lease shall terminate on such date, except with respect to obligations and liabilities of Lessee under this Agreement, actual or contingent, which have arisen on or prior to such date, upon payment by Lessee of all installments of basic rental and all other sums then due and payable under this Agreement to and including such date of termination,

In the event Lessee does not elect to terminate this lease, then the Lessor shall be obligated to complete the rebuilding or restoration of the building as promptly as possible and the rent herein provided for shall be abated during the period from the date of the damage until the date when the building is again ready for occupancy.

In the event of partial destruction of the building by fire or otherwise during the Term or any extended term hereof, and if such partial destruction should leave a sufficient portion of the building in such condition that same could advantageously be used by Lessee during the time that rebuilding or restoration is in progress, Lessee may elect to use such portion of said building during such time, but in such event, the rent, during the period of rebuilding or restorations, shall be proportionately abated.

7. If (i) the Property shall be taken in or by condemnation or other eminent domain proceedings pursuant to any law, general or specific; or (ii) any substantial portion of the Property, which is sufficient to render the remaining portion thereof unsuitable for Lessee's continued use or occupancy in Lessee's business, shall be taken in or by any such proceedings, then Lessee may give notice to Lessor of its intention to terminate this Lease on the day of such taking. If less than the entire Property shall have been taken, as part of said notice of termination, Lessee may deliver to Lessor a notice stating that, in the judgment of Lessee's executive management, the portion of the Property so taken is sufficient to fulfill the conditions set forth in clause (ii) of this sub-paragraph. This Agreement shall then terminate on such date, except with respect to obligations and liabilities of Lessee under this Agreement, actual or contingent, which have arisen on or prior to such date, upon payment by Lessee of all installments of basic rent and all other sums then due and payable under this Agreement to and including such termination date.

If a portion of the Property shall be taken in or by condemnation or other eminent domain proceedings pursuant to any law, general or special, which taking is not sufficient to authorize or require that Lessee give notice of its intention to terminate this Lease as provided in sub-paragraph (ii) above, then this Agreement shall continue in full force and offset with prorata

abatement of any basic rent, and Lessor shall at its option (1) promptly after any such taking or requisition and at its sole cost and expense, repair any damage caused by such taking or requisition so that after the completion of such repairs, the Property shall be as nearly as possible in a condition as good as the condition thereof immediately prior to such taking or requisition; or (2) terminate this Agreement without liability to Lessee.

8. Lessee shall have the right to erect and maintain upon the Property, an appropriate sign or signs, provided that upon the termination hereof, Lessee shall cause same to be removed and shall pay the cost of any repairs made necessary by such removal.

9. It is agreed between the parties hereto that this lease, all covenants, stipulations and agreements contained herein, shall be binding on the successors and assigns of the parties hereto.

10. Notice shall be deemed given to Lessor when delivered to it at its address first above written or such other location as Lessor may direct. Notice shall be deemed given to Lessee when delivered to the Property or mailed postage prepaid to the last address of Lessee.

11. In no event shall either party be liable for any consequential, incidental, speculative or punitive damages, however caused and on any theory of liability, whether in contract, strict liability, or tort (including negligence or otherwise), even if advised of the possibility of such damage.

12. Except for that outstanding rent owed by Lessee to Lessor which was due in January, 2009, Lessor hereby waives any liabilities or claims Lessor may have or have accrued under that certain Lease dated June 2, 2003, by and between Lessor and Lessee (including without limitation, any payment defaults that arose prior to the commencement of Lessee's Chapter 11 case).

IN WITNESS WHEREOF, the parties hereto have executed this lease in duplicate the day and year set forth above, each copy to have the force and effect of the original.

LESSOR:

WINMAR CORPORATION

BY: 

TITLE:

LESSEE:

**SMURFIT-STONE CONTAINER
ENTERPRISES, INC.**

BY: 

TITLE: Sr. VP, Secretary and
General Counsel