

**INDUSTRIAL BUILDING LEASE**

**between**

**US Cactus Stockton, LLC,**

**as Landlord**

**and**

**KeHE Distributors, LLC,**

**as Tenant**

January 14, 2015

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## **INDUSTRIAL BUILDING LEASE**

THIS LEASE (the "Lease"), dated the 14th day of January, 2015 ("Date of Lease") is entered into by and between KeHE Distributors, LLC, a Delaware limited liability company ("Tenant") and US Cactus Stockton, LLC, a California limited liability company ("Landlord").

### **I. BASIC LEASE PROVISIONS**

1.1 **Premises.** Approximately 453,500 Square Feet of space known as 4650 Newcastle Road, as shown on **Exhibit A-1** attached hereto and made a part hereof and located at the Building, consisting of 211,495 Square Feet of cooler/freezer space and 240,005 Square Feet of ambient warehouse and office space.

1.2 **Building.** The building shown on the attached **Exhibit A-1**, containing approximately 750,560 Square Feet and located at 4650 Newcastle Road, Stockton, California.

1.3 **Land.** The parcel of land which comprises the Building, as more particularly described on **Exhibit A-2** attached hereto and made a part hereof, and all rights, easements and appurtenances thereunto belonging or pertaining.

1.4 **Property.** The Building and the Land and all improvements built thereon.

1.5 **Project.** The development known as 4650 Newcastle Road, Stockton, California, comprised of the Building, the Land and all improvements built thereon, containing approximately 750,560 Square Feet.

1.6 **Square Feet (Foot) or Area.** The area within the Premises, Building or Project deemed to be the amounts set forth in this **Article I**. Landlord and Tenant stipulate and agree that the Square Feet of the Premises, Building and Project are correct and shall not be remeasured.

1.7 **Term.** The period commencing on the Commencement Date and expiring on the last day of the one hundred twentieth (120th) full calendar month following the Rent Commencement Date, subject to adjustment and earlier termination as provided in the Lease.

1.8 **Commencement Date; Rent Commencement Date.** As used herein "Commencement Date" shall mean the date Landlord has achieved Substantial Completion (as hereafter defined) of the Landlord's Improvements; and "Rent Commencement Date" shall mean the later of (i) the Commencement Date and (ii) May 1, 2015. Notwithstanding the foregoing, Tenant shall be given access to the Premises upon execution of the Lease by both parties for purposes of installing racking, equipment and any other items necessary for Tenant's operation of the Premises, provided Tenant shall not interfere with Landlord's Work and shall be subject to all provisions of this Lease except no Basic Rent or Additional Rent shall be due until the Commencement Date.

1.9 **Expiration Date.** The last day of the one hundred twentieth (120th) full calendar month following the Rent Commencement Date, subject to adjustment and earlier termination as provided in the Lease.

1.10 **Lease Year.** Each consecutive 12 month period elapsing after: (i) the Rent Commencement Date if the Rent Commencement Date occurs on the first day of a month; or (ii) the first day of the month following the Rent Commencement Date if the Rent Commencement Date does not occur on the first day of a month. Notwithstanding the foregoing, the first Lease Year shall include the additional days, if any, between the Rent Commencement Date and the first day of the month following the Rent Commencement Date, in the event the Rent Commencement Date does not occur on the first day of a month.

1.11 **Calendar Year.** For the purpose of this Lease, Calendar Year shall be a period of 12 months commencing on each January 1 during the Term, except that the first Calendar Year shall be that period from and including the Rent Commencement Date through December 31 of that same year, and the last Calendar Year shall be that period from and including the last January 1 of the Term through the earlier of the Expiration Date or date of Lease termination.

1.12 **Basic Rent.** The amount set forth in the schedule below, subject to adjustment as specified in **Article IV**.

<u>Lease Year</u>	<u>Monthly Basic Rent</u>	<u>Annual Basic Rent</u>
1	\$ 215,412.50	\$ 2,584,950.00
2	\$ 220,259.28	\$ 2,643,111.38
3	\$ 225,215.12	\$ 2,702,581.38
4	\$ 230,282.46	\$ 2,763,389.46
5	\$ 235,463.81	\$ 2,825,565.72
6	\$ 240,761.75	\$ 2,889,140.95
7	\$ 246,178.89	\$ 2,954,146.63
8	\$ 251,717.91	\$ 3,020,614.92
9	\$ 257,381.56	\$ 3,088,578.76
10	\$ 263,172.65	\$ 3,158,071.78

1.13 Security Deposit; Advanced Rent Payment. The amount of the Security Deposit is EIGHT HUNDRED SIXTY-ONE Thousand SIX HUNDRED FIFTY AND NO/100THS Dollars (\$861,650.00). Upon execution and delivery of the Lease, Tenant shall deliver the Security Deposit and \$261,941.60 ("Advanced Rent Payment") comprised of the installment of the Basic Rent in the amount of \$215,412.50 and the installment of Additional Rent in the amount of \$46,529.10 due for the first (1<sup>st</sup>) full calendar month following the Rent Commencement Date.

1.14 Interest Rate. The per annum interest rate listed as the base rate on corporate loans at large U.S. money center commercial banks as published from time to time under "Money Rates" in the Wall Street Journal plus 3%, but in no event greater than the maximum rate permitted by law. In the event the Wall Street Journal ceases to publish such rates, Landlord shall choose, at Landlord's reasonable discretion, a similarly published rate.

1.15 Tenant's Proportionate Share; Initial Expense Adjustment Amount. Tenant's Proportionate Share of the Building is 60.42% (determined by dividing the square feet of the Premises by the square feet of the Building and multiplying the resulting quotient by one hundred and rounding to the second decimal place). The initial Expense Adjustment Amount (as defined in Section 4.3) is \$558,349.20 per annum.

1.16	<u>Broker(s).</u>	<u>Landlord's</u>	<u>Tenant's</u>
		CBRE 1776 W. March Lane, Suite 170 Stockton, CA 95207 Attention: Tyson Vallenari	Colliers International 6250 N. River Road, Suite 11-100 Rosemont, IL 60018 Attention: Frederick L. Regnery

1.17 Guarantor(s). None.

1.18 Landlord's Notice Address. 9830 Colonnade Boulevard, Suite 600  
San Antonio, Texas 78230-2239  
Attention: VP Real Estate Counsel  
Attention: VP Portfolio Management

with a copy at  
the same time to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

Landlord's Payment Address. US Cactus Stockton, LLC

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

1.19 Tenant's Notice  
Address.

Prior to Commencement Date:  
KeHE Distributors, LLC  
1245 E. Diehl Road, Suite 200  
Naperville, IL 60564  
Attention: Chief Operating Officer

As of the Commencement Date:  
4650 Newcastle Road  
Stockton, California

With copies to:  
KeHE Distributors, LLC  
1245 E. Diehl Road, Suite 200  
Naperville, IL 60564  
Attention: Chief Operating Officers

And

KeHE Distributors, LLC  
1245 E. Diehl Road, Suite 200  
Naperville, IL 60564  
Attention: General Counsel

1.20 Agents. Officers, partners, directors, employees, agents, licensees, contractors, customers and invitees; to the extent customers and invitees are under the principal's control or direction.

1.21 Common Area. All areas from time to time designated by Landlord for the general and nonexclusive common use or benefit of Tenant, other tenants of the Project, and Landlord, including, without limitation, roadways, entrances and exits, loading areas, landscaped areas, open areas, park areas, service drives, walkways, common trash areas, vending or mail areas, common pipes, conduits, wires and appurtenant equipment within the Building, maintenance and utility rooms and closets, exterior lighting, exterior utility lines, and parking facilities.

1.22 Parking Allocation. During the Term, Tenant shall have the exclusive right to utilize the parking area labelled "Reserved Parking Area" on **Exhibit A-1** attached hereto, which consists of at least 130 dedicated employee spaces subject to the Rules and Regulations set forth in **Exhibit D** and validation, key-card, sticker or other identification systems set forth by Landlord from time to time.

## **II. PREMISES AND TERM**

2.1 Premises. Landlord hereby leases the Premises to Tenant, and Tenant hereby leases the Premises from Landlord, upon and subject to the terms, covenants, provisions and conditions of this Lease.

2.2 Commencement Date. The Term shall commence on the Commencement Date and expire at midnight on the Expiration Date.

## **III. BASIC RENT AND SECURITY DEPOSIT**

3.1 Types of Rental Payments. "Rent" shall be and consist of (a) Basic Rent payable in monthly installments as set forth in **Section 1.12**, in advance, on the first day of each and every calendar month in which Basic Rent is due during the Term of this Lease commencing on the Rent Commencement Date; and (b) Additional Rent as defined in **Section 4.1**. Rent shall be paid, in Tenant's discretion, by check, electronically via automatic debit, ACH credit or wire transfer to such account

as Landlord designates in writing to Tenant. Landlord may, in its sole discretion, designate an address for payment in lawful U.S. Dollars. The Advanced Rent Payment shall be due and payable at the time of execution and delivery of this Lease.

3.2 Covenants Concerning Rental Payments. Tenant shall pay the Basic Rent and the Additional Rent promptly when due, without notice or demand therefor, and without any abatement, deduction or setoff for any reason whatsoever, except as may be expressly provided in this Lease. No payment by Tenant, or receipt or acceptance by Landlord, of a lesser amount than the correct Basic Rent and/or Additional Rent shall be deemed to be other than a payment on account, nor shall any endorsement or statement on any check or letter accompanying any payment be deemed an accord or satisfaction, and Landlord may accept such payment without prejudice to its right to recover the balance due or to pursue any other remedy in this Lease or at law. In addition, any such late Rent payment that continues to be unpaid for five days following written demand from Landlord shall bear interest from the date such Rent became due and payable to the date of payment thereof by Tenant at the Interest Rate. Such interest shall be due and payable within two (2) days after written demand from Landlord.

3.3 Triple Net Lease. It is intended that the Rent provided for in this Lease shall be a triple net lease for the Term of this Lease and any renewals or extensions thereof.

3.4 Security Deposit. (a) Contemporaneously with the execution of this Lease, Tenant shall pay to Landlord a security deposit of in the amount set forth in Section 1.13, in immediately available funds, which shall be held by Landlord without liability for interest and as security for the performance by Tenant of its obligations under this Lease. The Security Deposit is not advance payment of Basic Rent or Additional Rent or a measure or limit of Landlord's damages upon an Event of Default (as such term is defined in Section 21.1 of this Lease). Landlord shall be entitled to commingle the Security Deposit with Landlord's other funds. Landlord may, from time to time and without prejudice to any other remedy, use all or part of the Security Deposit to perform any obligation which Tenant was obligated, but failed, to perform hereunder. Tenant waives the provisions of Section 1950.7 of the California Civil Code and all other provisions of law, now or hereafter enforced, which provide that Landlord may claim from a security deposit only those sums reasonably necessary to remedy defaults in the payment of rent, to repair damage caused by Tenant or to clean the Premises, it being agreed that Landlord may, in addition, claim those sums reasonably necessary to compensate Landlord for any other loss or damage for which Tenant is responsible under this Lease. 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. Within sixty (60) days after the Term ends, provided Tenant has performed all of its obligations hereunder, Landlord shall return to Tenant the balance of the Security Deposit not applied to satisfy Tenant's obligations. If Landlord transfers its interest in the Premises, then Landlord may assign the Security Deposit to the transferee and Landlord thereafter shall have no further liability for the return of the Security Deposit. Provided Tenant is not then in default hereunder beyond any applicable notice or cure period, on December 1, 2018, Landlord shall return to Tenant the sum of \$430,825.00 and the Security Deposit shall be reduced to the remaining \$430,825.00 (equal to two month's initial Basic Rent) then remaining on deposit with Landlord for the remainder of the Term.

(b) Form of Security Deposit. The Security Deposit may, at Tenant's option, be posted with Landlord in the form of a Letter of Credit (the "Letter of Credit"). Should Tenant elect to post all or a portion of the Security Deposit in the form of a Letter of Credit, the Letter of Credit shall be (i) unconditional; (ii) irrevocable; (iii) issued by a financial institution approved by Landlord in Landlord's reasonable discretion; (iv) in a form permitting partial and multiple drawings; (v) for multiple terms of one (1) year each in duration, renewed at least thirty (30) days prior to the expiration thereof, the entire term extending until the date which is sixty (60) days after the expiration of the Lease Term; and (vi) be in the form attached hereto as Exhibit F and otherwise in form and substance acceptable to the Landlord, in its reasonable discretion. If a partial drawing occurs under the Letter of Credit, the Tenant shall, upon demand but not more than five (5) business days after notice of such partial drawing is furnished to Tenant, cause the financial institution to reissue the Letter of Credit in the amount then currently required under the terms of the Lease. Notwithstanding the foregoing, the Landlord shall be entitled to draw down the entire amount of the Letter of Credit, without any notice, at any time on or after the earlier of (i) the occurrence of an Event of Default by Tenant under this Lease; or (ii) the thirtieth (30th) day preceding the expiration date of the Letter of Credit in the event Tenant is required to and fails to replace the Letter of Credit in the form provided herein.

#### **IV. ADDITIONAL RENT**

4.1 Additional Rent. In addition to paying the monthly Basic Rent, but commencing on the Commencement Date, Tenant shall pay as "Additional Rent" the amounts determined pursuant to this Article IV and all other amounts payable by Tenant under this Lease. Without limitation on the other obligations of Tenant which shall survive the expiration or earlier

termination of this Lease, the obligations of Tenant to pay the Rent incurred during the Term of this Lease shall survive the expiration or earlier termination of this Lease. For any partial Calendar Year, Tenant shall be obligated to pay only a pro rata share of the Additional Rent, equal to Additional Rent for such entire Calendar Year divided by 365, such quotient multiplied by the number of days of the Term falling within such Calendar Year.

4.2 Definitions. As used herein, the following terms shall have the following meanings:

(a) "Basic Costs" shall mean all expenses, costs and disbursements which Landlord shall pay or become obligated to pay because of, or in connection with, the normal commercial operation, maintenance and repair of the Project, including but not limited to (i) wages, salaries and fees of all personnel directly engaged in operating, maintaining or securing the Project, including taxes, insurance and benefits relating thereto; (ii) a management fee payable to Landlord or the company or companies managing the Project but in no event to exceed 2% of Basic Rent; (iii) all supplies, tools, equipment and materials used directly in the operation and maintenance of the Project, including any lease payments therefor; (iv) cost of reasonable repairs and general maintenance, including but not limited to the parking lot, roof repairs (but roof repairs, other than ordinary roof maintenance, shall not exceed \$5,000 per annum in any year) and landscaping (excluding repairs and general maintenance paid by proceeds of insurance or by Tenant or other parties, and alterations attributable solely to specific tenants of the Project); (v) legal expenses and accounting expenses incurred with respect to the Project; (vi) Taxes; (vii) cost of all water, sewer and external electrical utility services and of all maintenance and service agreements for the Project, and any equipment related thereto, including window cleaning and snow removal; (viii) premiums and deductibles paid for insurance relating to the Project, including, without limitation, fire and extended coverage, boiler, earthquake, windstorm, rental loss, and commercial general liability insurance; (ix) capital improvements, except that Basic Costs for capital improvements shall be limited to (A) the cost during the Term of this Lease of any capital improvement which is reasonably intended to reduce any component cost included within Basic Costs as reasonably amortized by Landlord with interest on the unamortized amount at the Interest Rate, and (B) the cost of any capital improvements which are necessary to keep the Project or any part thereof in compliance with all governmental rules and regulations applicable thereto from time to time as reasonably amortized by Landlord with interest on the unamortized amount at the Interest Rate; and (x) all amounts paid under easements, declarations, or other agreements or instruments affecting the Project, including, without limitation, assessments paid to property owners' or similar associations or bodies. Any capital improvement costs which are included in the term "Basic Costs" shall only be included to the extent any such costs are attributable, on a straight-line amortization (based on the life of the improvement for federal tax purposes), to the remaining portion of the Term of this Lease and any renewal or extension thereof.

(b) Exclusions from Basic Costs. The following items are specifically excluded from the definition of Basic Costs: (i) interest (except as otherwise allowed herein) and principal payments on mortgages, and other debt costs, if any; (ii) depreciation; (iii) penalties and fines; (iv) marketing expenses and commissions; (v) costs of services or labor provided solely and directly to specific tenants at the Project, including, but not limited to tenant improvement costs; (vi) organizational expenses associated with the creation and operation of the entity which constitutes Landlord; (vii) general or special assessments levied against the owner of the Project for public improvements which are not currently due; (viii) capital improvements except as set forth in subparagraph (a) above; (ix) Landlord's general corporate overhead and administrative expense, including any salaries or wages paid to executives or officers of Landlord or the property manager above the regional manager; (x) costs arising from the gross negligence or fault of other tenants or Landlord; (xi) "in-house" accounting or legal fees; (xii) costs of advertising and public relations and promotional costs and attorneys' fees associated with the leasing of the Building; and (xiii) costs incurred in connection with the sale, financing, refinancing, mortgaging, or other change of ownership of the Building.

(c) "Taxes" shall be defined as (i) all real property taxes and assessments levied by any public authority against the Project; (ii) all personal property taxes levied by any public authority on personal property of Landlord used in the management, operation, maintenance and repair of the Project, (iii) all taxes, assessments and reassessments of every kind and nature whatsoever levied or assessed in lieu of or in substitution for existing or additional real or personal property taxes and assessments on the Project, or (iv) amounts necessary to be expended because of governmental orders, whether general or special, ordinary or extraordinary, unforeseen as well as foreseen, of any kind and nature for public improvements, services, benefits or any other purposes which are assessed, levied, confirmed, imposed or become a lien upon the Premises or Project or become payable during the Term. Should the State of California or any political subdivision thereof, or any other governmental authority having jurisdiction over

the Property, (i) impose a tax, assessment, charge or fee which Landlord shall be required to pay in substitution for such real estate taxes, or (ii) impose an income or franchise tax or a tax on rents in substitution for a tax levied against the Project, all such taxes, assessments, fees or charges (referred to herein as "in-lieu-of taxes") shall be deemed to constitute Taxes hereunder. Further, for the purposes of this **Article IV**, Taxes shall include the reasonable expenses (including, without limitation, attorneys' fees) incurred by Landlord in challenging or obtaining or attempting to obtain a reduction of such Taxes, regardless of the outcome of such challenge, and any costs incurred by Landlord for compliance, review and appeal of tax liabilities. Notwithstanding the foregoing, Landlord shall have no obligation to challenge Taxes. If as a result of any such challenge, a tax refund is made to Landlord, then provided no Event of Default exists under this Lease, the amount of such refund less the expenses of the challenge shall be deducted from Taxes due in the Calendar Year such refund is received. In the case of any Taxes which may be evidenced by improvement or other bonds or which may be paid in annual or other periodic installments, Landlord shall elect to cause such bonds to be issued or cause such assessment to be paid in installments over the maximum period permitted by law. **Nothing contained in this Lease shall require Tenant to pay any franchise, gift, estate, inheritance or succession transfer tax of Landlord, or any income, profits or revenue tax or charge, upon the net income of Landlord from all sources**

4.3 Expense Adjustment. Commencing on the Commencement Date and continuing throughout the remainder of the Term, Tenant shall pay to Landlord as Additional Rent, on the first day of each calendar month, an amount equal to one-twelfth (1/12) of Tenant's Proportionate Share of the total amount of the Basic Costs incurred with respect to each Calendar Year in the Term of this Lease (the total amount paid by the Tenant in each Calendar Year being referred to herein as the "Expense Adjustment Amount"). The Expense Adjustment Amount for each Calendar Year shall be estimated from time to time by Landlord and communicated by written notice to Tenant not more frequently than quarterly. Landlord shall cause to be kept books and records showing Basic Costs in accordance with an appropriate system of accounts and account practices consistently maintained. Following the close of each Calendar Year, Landlord shall cause the amount of the Expense Adjustment Amount which should have been paid by Tenant for such Calendar Year (the "Final Expense Amount") to be computed on the basis of the actual Basic Costs for each Calendar Year, and Landlord shall deliver to Tenant a statement of such Final Expense Amount within 90 days after the expiration of each Calendar Year, or as soon thereafter as is practicable. If the Final Expense Amount exceeds the Expense Adjustment Amount, Tenant shall pay such deficiency within thirty (30) days after receipt of such statement. If the Expense Adjustment Amount exceeds the Final Expense Amount, then at Landlord's option, so long as Tenant is not in monetary default beyond any applicable notice or cure period as of such time in an amount in excess of the amounts then due to Tenant, such excess shall be either credited against payments of Additional Rent next due or refunded by Landlord or, in the event the Lease has expired or terminated, Landlord shall pay Tenant the total amount of such overpayment within 30 days. Delay in computation of the Final Expense Amount or any Expense Adjustment Amount shall not be deemed a default hereunder or a waiver of Landlord's right to collect the Final Expense Amount or Expense Adjustment Amount, as the case may be. Notwithstanding anything to the contrary contained in this Lease, if Tenant or any other tenant in the Project uses a disproportionate share of utilities that are included in Basic Costs, as reasonably determined by Landlord, then Landlord shall have the right to adjust the Proportionate Share of the Basic Costs attributable to such utility use as allocated to the Tenant and other tenants of the Project on a reasonable basis.

4.4 Tenant's Right to Audit. Tenant shall have a right to audit Landlord's Final Expense Amount upon the following terms and conditions. Tenant shall notify Landlord in writing that it is exercising its right to audit within 90 days following delivery of the Final Expense Amount, indicating in such notice with reasonable specificity those cost components of the Final Expense Amount to be subject to audit. The audit shall take place at Landlord's regional offices or, at Landlord's option, the Project, at a time mutually convenient to Landlord and Tenant (but not later than 60 days after receipt of Tenant's notice to audit). Except as Landlord may consent in writing, the audit shall be completed within 10 days after commencement. The audit may be accomplished by either Tenant's own employees with accounting experience reasonably sufficient to conduct such review, or a nationally or regionally recognized public accounting firm mutually acceptable to Landlord and Tenant that is engaged on either a fixed price or hourly basis. Under no circumstances shall Landlord be required to consent to an accounting firm that is also a tenant of Landlord (or any Landlord affiliate) in the Project or any building in the city or metropolitan area in which the Project is located. The records reviewed by Tenant shall be treated as confidential and prior to commencing the audit, Tenant and any other person which may perform such audit for Tenant, shall execute a Confidentiality Agreement in a form reasonably acceptable to Landlord. A copy of the results of the audit shall be delivered to Landlord within 30 days after the completion of the audit. If Landlord and Tenant determine that the Final Expense Amount for the Calendar Year is less than reported, Landlord shall give Tenant a credit in the amount of the overpayment toward Tenant's next monthly payment of Additional Rent for Basic Costs, or, in the event the Lease has expired or terminated and no

monetary Event of Default exists in an amount which exceeds the amount then due Tenant, Landlord shall pay Tenant the total amount of such overpayment within 30 days. If Landlord and Tenant determine that the Final Expense Amount for the Calendar Year is more than reported, Tenant shall pay Landlord the amount of any underpayment within 30 days. **Failure by Tenant to timely request an audit is deemed a waiver of the applicable audit right and any right to contest the Final Expense Amount for the applicable Calendar Year and is deemed acceptance of the Final Expense Amount for the applicable Calendar Year.** In the event such examination or audit discloses conclusively an overcharge to Tenant of fifteen percent (15%) or more during any calendar year, Landlord shall reimburse Tenant for the reasonable and actual cost of such examination or audit, not to exceed \$3,500.00. Any audit review by Tenant shall not postpone or alter the liability and obligation of Tenant to pay any Rent due under the terms of the Lease. No subtenant shall have any right to conduct an audit except for a permitted assignee or sublessee under **Article IX** of the Lease occupying the entire Premises and no assignee or sublessee shall conduct an audit for any period during which such assignee or sublessee was not in possession of the Premises or for any period in which Tenant has conducted an audit.

4.5 Sales or Excise Taxes. Tenant shall pay to Landlord, as Additional Rent, concurrently with payment of Basic Rent all taxes, including, but not limited to any and all sales, rent or excise taxes (but specifically excluding income taxes calculated upon the net income of Landlord) on Basic Rent, Additional Rent or other amounts otherwise benefiting Landlord, as levied or assessed by any governmental or political body or subdivision thereof against Landlord on account of such Basic Rent, Additional Rent or other amounts otherwise benefiting Landlord, or any portion thereof.

4.6 Limitations on Additional Rent for Basic Costs. Anything in this **Article IV** to the contrary notwithstanding, for purposes of determining Tenant's Additional Rent for Basic Costs, commencing in 2016 in no event shall Controllable Basic Costs (as hereinafter defined) be deemed to have increased during any Calendar Year (or prorated portion thereof) of the initial Term by more than an amount equal to Controllable Basic Costs for the 2015 Calendar Year, grossed up for the entire year based upon actual expenses, increased by five percent (5%) per annum, compounded annually on a cumulative basis. For purposes of this **Section 4.6**, Controllable Basic Costs are defined as all Basic Costs except utilities, insurance, Taxes, snow and ice removal, wages and costs of complying with changes in law.

## **V. USE**

5.1 Use of Premises. In accordance with the terms, covenants and conditions set forth in this Lease, and applicable governmental regulations, restrictions and permitting (without the necessity of obtaining any zoning changes, conditional use permits or other special use permits), for distribution of food and general merchandise, office, warehouse and uses related and incidental thereto, but for no other purpose.

5.2 Operation of Tenant's Business. If any governmental license or permit, other than a Certificate of Occupancy (if any is issued or required), shall be required for the proper and lawful conduct of Tenant's business in the Premises or any part thereof, Tenant shall first provide Landlord with prior written notice and obtain Landlord's consent thereto. Thereafter, at its expense, Tenant shall procure such license prior to the first day of the Term, and thereafter maintain and renew such license or permit. Tenant shall, at all times, comply with the terms and conditions of each such license or permit. Tenant shall not, at any time, use or occupy, or suffer or permit anyone to use or occupy, the Premises, or do or permit anything to be done in the Premises, in any manner which may (a) violate any Certificate of Occupancy for the Premises or for the Building; (b) cause, or be liable to cause injury to the Building or any equipment, facilities or systems therein; (c) constitute a violation of the laws and requirements of any public authority or the requirements of insurance bodies; (d) materially or unreasonably impair or tend to materially or unreasonably impair the character, reputation or appearance of the Project or the Building; (e) materially or unreasonably impair or tend to materially or unreasonably impair the proper and economic maintenance, operation, and repair of the Project and/or its equipment, facilities or systems; and (f) materially or unreasonably annoy or inconvenience other tenants or users of the Building and the Project, if any. Tenant shall take all substantial or non-substantial actions necessary to comply with all applicable statutes, ordinances, rules, regulations, orders and requirements regulating the use by Tenant of the Premises, including without limitation, the Occupational Safety and Health Act, and regulating Hazardous Materials (as such term is herein defined in **Section 24.2**). If the nature of Tenant's use or occupancy of the Premises causes any increase in Landlord's insurance premiums over and above those chargeable for the normal and reasonable occupancy legally permitted in the Premises, the Landlord will promptly give written notice of such increase to Tenant (which such notice shall include supporting documents evidencing such premium increase) and if Tenant fails to limit its use so as to negate such premium increase, Tenant will thereafter pay the resulting increase within ten (10) days after receipt of a statement from Landlord setting forth the amount thereof.

5.3 Use of Common Areas. Tenant and its employees and visitors shall have the non-exclusive right to use any Common Areas of the Project as constituted from time to time, subject to the rules and regulations set forth on Exhibit D and such other reasonable rules and regulations governing the use as Landlord from time to time may prescribe ("Rules and Regulations"). Provided Tenant's use of and access to the Premises is not materially adversely affected, Landlord reserves the right from time to time to: (i) install, use, maintain, repair, replace and relocate pipes, ducts, conduits, wires and appurtenant meters and equipment above the ceiling surfaces, below the floor surfaces, within the walls and in the central core areas of the Building; (ii) make changes to the design and layout of the Project; and (iii) use or close temporarily the Common Areas, and other portions of the Project while engaged in making improvements, repairs or alterations to the Project or any portion thereof. In addition, Landlord expressly reserves the right to change the name of the Building or the Project.

## **VI. CONDITION AND DELIVERY OF PREMISES**

6.1 AS IS. Except as expressly set forth in this Lease, Tenant hereby agrees that Tenant is familiar with the condition of the Project and the Premises and that Tenant is accepting the Premises on an "AS-IS," "WHERE IS," "WITH ALL FAULTS" basis as further provided in this Section. Except as expressly set forth herein, Landlord is making absolutely no repairs, replacements or improvements of any kind or nature to the Premises or the Project in connection with, or in consideration of, this Lease, Landlord has not made any representations or warranties, express or implied, with respect to the quality, suitability or fitness thereof of the Premises, or the condition or repair thereof. Landlord agrees to enforce, upon Tenant's request, all manufacturer's or contractor's warranties given in connection with Landlord Improvements.

6.2 Landlord Warranties. Landlord represents and warrants that on the Commencement Date (i) the Premises will be in compliance with all existing laws, including but not limited to the Americans with Disabilities Act ("ADA"), (ii) all mechanical, HVAC, cooling systems in the existing freezer and cooler equipment serving the Premises ("Cooler/Freezer Equipment"), plumbing, electrical systems serving the Premises, except to the extent modified or adversely impacted by Tenant Work or damaged by Tenant or its Agents, will be functioning and in good and operating condition and Landlord covenants that such portions of the Premises shall remain in good operating condition for a period of one (1) year following the Commencement Date subject to any damage caused by the Tenant Work or any misuse or damage caused by Tenant or its Agents. Landlord's warranty with respect to the Cooler/Freezer Equipment shall exclude (i) the Start-Up Work and (ii) the first \$100,000.00 of repairs to the Cooler/Freezer Equipment space incurred after any initial repair work required to be performed by Landlord pursuant to Exhibit B in connection with the initial start-up of the existing Cooler/Freezer Equipment. Tenant's acceptance of the Premises shall not be construed to alter or limit Landlord's maintenance, repair and replacement obligations or any representations as to the condition of the Premises. Landlord further represents and warrants to Tenant that to Landlord's knowledge the Premises are properly zoned for the Permitted Use and there are no restrictions, covenants, restrictions or conditions that would prevent Tenant's initial proposed use and that Landlord has the authority to enter into this Lease and perform all obligations provided herein.

## **VII. SUBORDINATION; NOTICE TO SUPERIOR LESSORS AND MORTGAGEES; ATTORNMENT**

This Lease is subject and subordinate to all ground or underlying leases (each a "Ground Lease") and to any mortgage, deed of trust, security interest, or title retention interest now or hereafter affecting the Land, Building or Project (each a "Mortgage") and to all renewals, modifications, consolidations, replacements and extensions thereof. This subordination shall be self-operative; however, in confirmation thereof, Tenant shall, within 10 days of receipt thereof, execute any reasonable instrument that Landlord, any ground lessor under a Ground Lease ("Ground Lessor") or any holder of any note or obligation secured by a Mortgage (the "Mortgagee") may request confirming such subordination. Notwithstanding the foregoing, before any foreclosure sale under a Mortgage or termination of a Ground Lease, the Mortgagee or Ground Lessor, as applicable, shall have the right to subordinate the Mortgage or Ground Lease, as applicable, to this Lease, in which case, in the event of such foreclosure or termination, this Lease may continue in full force and effect and Tenant shall attorn to and recognize as its landlord, as applicable, the Ground Lessor or the purchaser at foreclosure of Landlord's interest under this Lease. Tenant shall, upon the request of a Mortgagee, Ground Lessor or purchaser at foreclosure, execute, acknowledge and deliver any reasonable instrument that has for its purpose and effect the subordination of any Ground Lease or the lien of any Mortgage to this Lease or Tenant's attornment to such Ground Lessor or purchaser of Landlord's interest under this Lease, as applicable. Landlord shall use commercially reasonable efforts to obtain from any Ground Lessor, purchaser or Mortgagee an agreement that this lease shall not be disturbed and remain in full force and effect so long as Tenant is not in default hereunder beyond any applicable notice or cure period.

## **VIII. QUIET ENJOYMENT**

So long as Tenant pays all of the Rent and performs all of its other obligations hereunder, Tenant shall peaceably and quietly have, hold and enjoy the Premises without hindrance, ejection or molestation by Landlord, or any other person lawfully claiming through or under Landlord, subject, nevertheless, to the provisions of this Lease and to those of a Mortgage and to all laws, ordinances, orders, rules and regulations of any governmental authority. Landlord shall not be responsible for the acts or omissions of any other persons or third party that may interfere with Tenant's use and enjoyment of the Premises.

## **IX. ASSIGNMENT, SUBLETTING AND MORTGAGING**

### **9.1 Landlord's Consent.**

(a) Tenant shall not assign, transfer, mortgage or otherwise encumber this Lease or sublet or rent (or permit a third party to occupy or use) the Premises, or any part thereof, nor shall any assignment or transfer of this Lease or the right of occupancy hereunder be effected by operation of law or otherwise, without the prior written consent of Landlord, such consent not to be unreasonably withheld, conditioned or delayed. A transfer at any one time or from time to time of a majority interest in Tenant (whether stock, partnership interest or other form of ownership or control) shall be deemed to be an assignment of this Lease, unless at the time of such transfer Tenant is an entity whose outstanding stock is listed on a recognized security exchange. Within 30 days following Landlord's receipt of Tenant's request for Landlord's consent to a proposed assignment, sublease, or other encumbrance, together with all information required to be delivered by Tenant pursuant to the provisions of this **Section 9.1**, Landlord shall: (i) consent to such proposed transaction; or (ii) refuse such consent acting reasonably; or (iii) elect to terminate this Lease in the event of an assignment of the Lease in its entirety or the sublease of more than fifty percent (50%) of the Premises. Any assignment, sublease or other encumbrance without Landlord's written consent shall be voidable by Landlord and, at Landlord's election, constitute an Event of Default hereunder. Without limiting other instances in which Landlord may reasonably withhold consent to an assignment or sublease, Landlord and Tenant acknowledge that Landlord may withhold consent (a) if an Event of Default exists under this Lease or if an Event of Default would exist but for the pendency of any cure periods provided under **Section 21.1**; or (b) if the proposed assignee or sublessee is: a person or entity with whom Landlord has negotiated for space in the Project during the prior 6 months; a present tenant in the Project; a person or entity whose tenancy in the Project would violate any exclusivity arrangement which Landlord has with any other tenant; a person or entity of a character or reputation or engaged in a business which is not consistent with the quality of the Project; or not a party of reasonable financial worth and/or financial stability in light of the responsibilities involved under this Lease on the date consent is requested. If Tenant requests Landlord's consent to a specific assignment or subletting, Tenant will submit in writing to Landlord: (1) the name and address of the proposed assignee or subtenant; (2) a counterpart of the proposed agreement of assignment or sublease; (3) reasonably satisfactory information as to the nature and character of the business of the proposed assignee or subtenant, and as to the nature of its proposed use of the space; (4) banking, financial or other credit information reasonably sufficient to enable Landlord to determine the financial responsibility and character of the proposed assignee or subtenant; (5) executed estoppel certificates from Tenant containing such information as provided in **Article XXIV**; and (6) any other information reasonably requested by Landlord.

(b) Notwithstanding that the prior express written permission of Landlord to any of the aforesaid transactions may have been obtained, the following shall apply:

(i) In the event of an assignment, regardless of whether such assignment requires the granting of Landlord's aforesaid consent, Tenant shall cause the assignee to expressly assume in writing and agree to perform all of the covenants, duties, and obligations of Tenant hereunder and such assignee shall be jointly and severally liable therefore along with Tenant.

(ii) All terms and provisions of the Lease shall continue to apply after any such transaction.

(iii) In any case where Landlord consents (or is not required to consent) to a transfer, encumbrance or subletting, the undersigned Tenant and any guarantor shall nevertheless remain directly and primarily liable for the performance of all of the covenants, duties, and obligations of Tenant hereunder (including, without limitation, the obligation to pay all Rent and other sums herein provided to be paid), and Landlord shall be permitted to enforce the provisions of this instrument against the undersigned Tenant, any guarantor and/or any assignee without demand upon or proceeding in

any way against any other person. Neither the consent by Landlord to any assignment, transfer, encumbrance or subletting nor the collection or acceptance by Landlord of rent from any assignee, subtenant or occupant shall be construed as a waiver or release of the initial Tenant or any guarantor from the terms and conditions of this Lease or relieve Tenant or any subtenant, assignee or other party from obtaining the consent in writing of Landlord to any further assignment, transfer, encumbrance or subletting.

(iv) Tenant hereby assigns to Landlord the rent and other sums due from any subtenant, assignee or other occupant of the Premises and hereby authorizes and directs each such subtenant, assignee or other occupant to pay such rent or other sums directly to Landlord; provided however, that until the occurrence of an Event of Default, Tenant shall have the license to continue collecting such rent and other sums. Notwithstanding the foregoing, in the event that the rent due and payable by a sublessee under any such permitted sublease (or a combination of the rent payable under such sublease plus any bonus or other consideration therefor or incident thereto) exceeds the hereinabove provided Rent payable under this Lease, or if with respect to a permitted assignment, permitted license, or other transfer by Tenant permitted by Landlord, the consideration payable to Tenant by the assignee, licensee, or other transferee exceeds the Rent payable under this Lease, then Tenant shall be bound and obligated to pay Landlord 50% of the Net Profits (as defined in Section 9.3) in accordance with Section 9.3 within 10 days following receipt thereof by Tenant from such sublessee, assignee, licensee, or other transferee, as the case may be.

(v) Tenant shall pay Landlord's actual costs, but in no event to exceed \$1,500.00 to reimburse Landlord for all its expenses under this Article IX, including, without limitation, reasonable attorneys' fees, in connection with any request for Landlord's consent to a sublease, assignment or deemed assignment, whether or not Landlord consents to such request.

9.2 Landlord's Option to Recapture Premises. If Tenant proposes to assign this Lease, Landlord may, at its option, upon written notice to Tenant given within 30 days after its receipt of Tenant's notice of proposed assignment, together with all other necessary information, elect to recapture the Premises and terminate this Lease. If Tenant proposes to sublease more than fifty percent (50%) of the Premises, Landlord may, at its option upon written notice to Tenant given within 30 days after its receipt of Tenant's notice of proposed subletting, together with all other necessary information, elect to recapture such portion of the Premises as Tenant proposes to sublease and upon such election by Landlord, this Lease shall terminate as to the portion of the Premises recaptured. If a portion of the Premises is recaptured, the Rent payable under this Lease shall be proportionately reduced based on the square footage of the Square Feet retained by Tenant and the square footage of the Square Feet leased by Tenant immediately prior to such recapture and termination, and Landlord and Tenant shall thereupon execute an amendment to this Lease in accordance therewith. Landlord may thereafter, without limitation, lease the recaptured portion of the Premises to the proposed assignee or subtenant without liability to Tenant. Upon any such termination, Landlord and Tenant shall have no further obligations or liabilities to each other under this Lease with respect to the recaptured portion of the Premises, except with respect to obligations or liabilities which accrue or have accrued hereunder as of the date of such termination (in the same manner as if the date of such termination were the date originally fixed for the expiration of the Term).

9.3 Distribution of Net Profits. In the event that Tenant assigns this Lease or sublets all or any portion of the Premises during the Term to any entity, Landlord shall receive 50% of any "Net Profits" (as hereinafter defined) and Tenant shall receive 50% of any Net Profits received by Tenant from any such assignment or subletting. The term "Net Profits" as used herein shall mean such portion of the Rent payable by such assignee or subtenant in excess of the Rent payable by Tenant under this Lease (or pro rata portion thereof in the event of a subletting) for the corresponding period, after deducting from such excess Rent all of Tenant's documented reasonable third party costs associated with such assignment or subletting, including, without limitation, broker commissions, attorney fees and any costs incurred by Tenant to prepare or alter the Premises, or portion thereof, for the assignee or sublessee.

9.4 Transfers to Related Entities. Notwithstanding anything in this Article IX to the contrary, provided no Event of Default exists under this Lease or would exist but for the pendency of any cure periods provided for under Section 21.1, Tenant may, without Landlord's consent, but after providing written notice to Landlord and subject to the provisions of Section 9.1(b)(i-iii), assign this Lease or sublet all or any portion of the Premises to any Related Entity (as hereinafter defined) provided that (i) such Related Entity is not a governmental entity or agency; (ii) such Related Entity's use of the Premises would not cause Landlord to be in violation of any exclusivity agreement within the Project; and (iii) the tangible net worth (computed in accordance with generally accepted accounting principles exclusive of goodwill) of any assignee after such

transfer is greater than or equal to the greater of (a) the tangible net worth of Tenant as of the Date of Lease; or (b) the tangible net worth of Tenant immediately prior to such transfer, and proof satisfactory to Landlord that such tangible net worth standards have been met shall have been delivered to Landlord at least 10 days prior to the effective date of any such transaction. "Related Entity" shall be defined as (i) any parent company, subsidiary, affiliate or related corporate entity of Tenant that controls, is controlled by, or is under common control with Tenant; or (ii) the surviving entity in the case of any merger, consolidation, dissolution or liquidation of Tenant. For the purposes of the preceding sentence and **Section 10.5**, internally prepared financial statements of such Related Entity certified by an executive officer of the Related Tenant shall constitute proof reasonably satisfactory to Landlord.

## **X. COMPLIANCE WITH LAWS**

10.1 **General Compliance.** Tenant shall give prompt notice to Landlord of any notice it receives of the violation of any law or requirement of any governmental or administrative authority with respect to the Premises or Tenant's particular use thereof. Tenant shall, at Tenant's expense, comply with all laws and requirements of any governmental or administrative authorities which shall impose any violation, order or duty on Landlord or Tenant arising from (a) Tenant's particular use of the Premises; (b) the manner or conduct of Tenant's business or operation of its installations, equipment or other property therein; (c) any improvements installed in the Premises on behalf of or by Tenant; (d) breach of any of Tenant's obligations under this Lease, whether or not such compliance requires work which is structural or non-structural, ordinary or extraordinary, foreseen or unforeseen; and Tenant shall pay all the costs, expenses, fines, penalties and damages which may be imposed upon Landlord by reason or arising out of Tenant's failure to fully and promptly comply with and observe the provisions of this **Article X**. Nothing in this **Article X** shall make Tenant responsible for any structural repairs or improvements that are not specifically necessitated by the causes set forth in **Clauses (a), (b), (c) or (d)** of the immediately preceding sentence.

10.2 **ADA Compliance.** Notwithstanding any other statement in this Lease, the following provisions shall govern the parties' compliance with the Americans With Disabilities Act of 1990, as amended from time to time, Public Law 101-336; 42 U.S.C. §§12101, et seq. (the foregoing, together with any similar state statute governing access for the disabled or handicapped collectively referred to as the "**ADA**") and Title 24 of the California Administrative Code; Health and Safety §18902, State Building Standards Code, as adopted by the City of Stockton (the "**California ADA**"):

(a) To the extent governmentally required as of the Commencement Date of this Lease under Title III of the ADA, the California ADA or any regulation thereunder, Landlord shall be responsible for causing, at Landlord's sole cost, the Premises and Common Area of the Project to comply therewith as of the Commencement Date, and such expense shall not be included as a Basic Costs of the Project. To the extent governmentally required subsequent to the Commencement Date of this Lease as a result of an amendment to Title III of the ADA, the California ADA or any regulation thereunder enacted subsequent to the Commencement Date of this Lease, Landlord shall be responsible for compliance with Title III of the ADA and the California ADA with respect to any repairs, replacements or alterations to the Common Area of the Project, and such expense shall be included as a Basic Costs of the Project. **Landlord shall indemnify, defend and hold harmless Tenant and its Agents from all fines, suits, procedures, penalties, claims, liability, losses, expenses and actions of every kind, and all costs associated therewith (including, without limitation, reasonable attorneys' and consultants' fees) arising out of or in any way connected with Landlord's failure to comply with Title III of the ADA and the California ADA as required above.**

(b) To the extent governmentally required subsequent to the Commencement Date as a result of either (i) (a) Tenant's particular use of the Premises; (b) the manner or conduct of Tenant's business or operation of its installations, equipment or other property therein; (c) any improvements installed in the Premises on behalf of or by Tenant; (d) breach of any of Tenant's obligations under this Lease, whether or not such compliance requires work which is structural or non-structural, ordinary or extraordinary, foreseen or unforeseen; or (ii) an amendment to Title III of the ADA, the California ADA or any regulation thereunder enacted subsequent to the Commencement Date of this Lease, Tenant shall be responsible for compliance, at its expense, with Titles I and III of the ADA and the California ADA with respect to the Premises. **Tenant shall indemnify, defend and hold harmless Landlord and its Agents from all fines, suits, procedures, penalties, claims, liability, losses, expenses and actions of every kind, and all costs associated therewith (including, without limitation, reasonable attorneys' and consultants' fees) arising out of or in any way connected with Tenant's failure to comply with Titles I and III of the ADA and the California ADA as required above.**

## **XI. INSURANCE**

11.1 **Certain Insurance Risks.** Tenant will not do or permit to be done any act or thing upon the Premises or the Project which would: (i) jeopardize or be in conflict with fire insurance policies covering the Project, and fixtures and property in the , the Project; or (ii) increase the rate of fire insurance applicable to the Project to an amount higher than it otherwise would be for general business office and warehouse use of the Project; or (iii) subject Landlord to any liability or responsibility for injury to any person or persons or to property by reason of any business or operation being conducted upon the Project.

11.2 **Landlord's Insurance.** At all times during the Term, Landlord will carry and maintain:

(a) Property insurance coverage at least equal to ISO Special Form causes of loss with respect to the Building, its equipment and common area furnishings, and leasehold improvements in the Premises to the extent of any initial build out of the Premises by the Landlord;

(b) Commercial general liability insurance, with a combined single occurrence limit and aggregate of not less than \$1,000,000. All such insurance will be on an occurrence ISO form, or comparable, including only commercially reasonable limitations, bodily injury, property damage, personal injury, advertising injury, products and completed operations liability, and limited contractual liability coverage for the performance by Landlord of the indemnity agreements set forth in this Lease. Such insurance shall include waiver of subrogation rights in favor of Tenant; and

(c) Such other insurance as Landlord reasonably determines from time to time.

The insurance coverages and amounts in this **Section 11.2** will be determined by Landlord in an exercise of its reasonable discretion.

11.3 **Tenant's Insurance.** At all times during the Term, Tenant will carry and maintain, at Tenant's expense, the following insurance, in the amounts specified below or such other amounts as Landlord may from time to time reasonably request, with insurance companies and on forms satisfactory to Landlord:

(a) Commercial general liability insurance, with a combined single occurrence limit and aggregate of not less than \$1,000,000. All such insurance will be on an occurrence ISO or comparable form including without limitation, bodily injury, property damage, personal injury, advertising injury, products and completed operations liability, and limited contractual liability coverage for the performance by Tenant of the indemnity agreements set forth in this Lease. Such insurance shall include waiver of subrogation rights in favor of Landlord and Landlord's management company;

(b) A policy of cause of loss-specialty property insurance coverage at least equal to ISO Special Form Causes of Loss and covering all of Tenant's furniture and fixtures, machinery, equipment, stock and any other personal property owned and used in Tenant's business and found in, on or about the Project, and any leasehold improvements to the Premises in excess of any initial buildout of the Premises by Landlord, in an amount not less than the full replacement cost. Property forms will provide coverage on a special perils basis insuring against "all risks of direct physical loss." All policy proceeds will be used for the repair or replacement of the property damaged or destroyed, however, if this Lease ceases under the provisions of **Article XIX**, Tenant will be entitled to any proceeds resulting from damage to Tenant's furniture and fixtures, machinery and equipment, stock and any other personal property;

(c) Worker's compensation insurance insuring against and satisfying Tenant's obligations and liabilities under the worker's compensation laws of the state in which the Premises are located, including employer's liability insurance in the limit of \$1,000,000 aggregate. Such insurance shall include waiver of subrogation rights in favor of Landlord and Landlord's management company;

(d) If Tenant operates owned, hired, or non-owned vehicles on the Project, commercial automobile liability will be carried at a limit of liability not less than \$1,000,000 combined bodily injury and property damage;

(e) Umbrella liability insurance in excess of the underlying coverage listed in paragraphs (a), (c) and (d) above, with limits of not less than \$5,000,000 per occurrence/\$5,000,000 aggregate;

(f) Loss of income and extra expense insurance and contingent business income insurance in amounts as will reimburse Tenant for direct or indirect loss of earning attributable to all perils insured against under the ISO Causes of Loss - Special Form Coverage, or attributable to prevention of access to the Premises as a result of such perils. Such insurance shall provide for an extended period of indemnity to be not less than twelve (12) months; and

(g) All insurance required under this **Article XI** shall be issued by such good and reputable insurance companies qualified to do and doing business in the state in which the Premises are located and having a rating not less than A:VIII as rated in the most current copy of Best's Insurance Report in the form customary to this locality.

11.4 **Forms of the Policies.** Landlord, Landlord's management company, Landlord's Mortgagee and such other parties as Landlord shall designate to Tenant who have an insurable interest in the Premises or Project shall be (i) named as additional insured with respect to the coverages provided for under **Section 11.3 (a), (c), (d) and (e)** (other than Worker's Compensation), and (ii) as loss payees as their interest may appear with respect to the coverage provided under **Section 11.3 (b)**. Certificates of insurance naming Landlord, Landlord's management company, and any others specified by Landlord as additional insureds or loss payee (as the case may be) will be delivered to Landlord prior to Tenant's occupancy of the Premises and from time to time at least 30 days following to the expiration of the term or reduction in coverage of each such policy. Tenant's agent or broker shall agree to endeavor to provide at least 30 days prior written notice to Landlord and Landlord's Mortgagee of policy termination. All commercial general liability and property policies (including any umbrella policies in excess of such policies) herein required to be maintained by Tenant will be written as primary policies, not contributing with and not supplemental to the coverage that Landlord may carry. Commercial general liability insurance required to be maintained by Tenant by this **Article XI** will be subject to a commercially reasonable deductible or self-insured retention. Landlord hereby agrees that Tenant's current deductible of \$250,000 in Tenant's commercial general liability insurance policy is deemed commercially reasonable. In the event Tenant fails to purchase and maintain any of the insurance required hereunder, Landlord reserves the right, but not the obligation, to purchase such insurance on behalf of Tenant, and at Tenant's expense, with any expenses incurred by Landlord in connection therewith being reimbursed to Landlord by Tenant within thirty (30) days of written demand thereof.

11.5 **Waiver of Subrogation.** Landlord and Tenant each waive and shall cause their respective insurance carriers to waive any and all rights to recover against the other or against the Agents of such other party for any loss or damage to such waiving party (including deductible amounts) arising from any cause covered by any property insurance required to be carried by such party pursuant to this **Article XI** or any other property insurance actually carried by such party to the extent of the limits of such policy. Tenant, from time to time, will cause its respective insurers to issue appropriate waiver of subrogation rights endorsements to all property insurance policies carried in connection with the Project or the Premises or the contents of the Project or the Premises. Tenant use commercially reasonable efforts to cause all other occupants of the Premises claiming by, under or through Tenant, to execute and deliver to Landlord and its affiliates, Landlord's management company and Landlord's Mortgagee such a waiver of claims and to obtain such waiver of subrogation rights endorsements.

11.6 **Adequacy of Coverage.** Landlord and its Agents make no representation that the limits of liability specified to be carried by Tenant pursuant to this **Article XI** are adequate to protect Tenant. If Tenant believes that any of such insurance coverage is inadequate, Tenant will obtain such additional insurance coverage as Tenant deems adequate, at Tenant's sole expense. Furthermore, in no way does the insurance required herein limit the liability of Tenant assumed elsewhere in the Lease.

## **XII. ALTERATIONS**

12.1 **Procedural Requirements.** Tenant may, from time to time, at its expense, make such alterations, additions, or improvements (hereinafter collectively referred to as "Alterations") in and to the Premises as Tenant may reasonably consider necessary for the conduct of its business in the Premises; provided, however, that the written consent of the Landlord is first obtained. Notwithstanding the foregoing, Tenant shall not be required to seek Landlord's consent for Alterations of less than \$100,000, provided such Alterations do not affect the exterior or structural integrity of the Building. Landlord's consent shall not be unreasonably withheld, conditioned or delayed to Alterations, provided that: (a) the exterior of the Building shall not be affected; (b) the Alterations are non-structural and the structural integrity of the Building shall not be affected; (c) the Alterations are to the interior of the Premises and no part of the Building (including the roof) outside of the Premises shall be

affected; (d) the proper functioning of the mechanical, electrical, sanitary and other service systems of the Building shall not be materially and adversely affected and the usage of such systems by Tenant shall not be increased; (e) Tenant shall have appropriate insurance coverage reasonably satisfactory to Landlord regarding the Alterations; and (f) before proceeding with any Alterations, Tenant shall submit to Landlord for Landlord's approval, plans and specifications for the work to be done and Tenant shall not proceed with such work until Tenant has received said approval. Tenant shall obtain and deliver to Landlord (if so requested) either (i) a performance bond and a labor and materials payment bond (issued by a corporate surety licensed to do business in the state in which the Project is located) each in an amount equal to one hundred twenty-five percent (125%) of the estimated cost of the Alterations and in form satisfactory to Landlord, or (ii) such other security as shall be reasonably satisfactory to Landlord. All computer, telecommunications or other cabling, wiring and associated appurtenances (collectively, "Cabling") installed by Tenant inside any of the interior walls of the Premises, above the ceiling of the Premises, in any portion of the ceiling plenum above or below the Premises, or in any portion of the Common Areas of the Building, including but not limited to any of the shafts or utility rooms of the Building, shall be clearly labeled or otherwise identified as having been installed by Tenant. All Cabling installed by Tenant shall comply with the requirements of the National Electric Code and any other applicable fire and safety codes. All or any part of the Alterations, whether made with or without the consent of Landlord, shall, at the election of Landlord, either be removed by Tenant at its expense before the expiration of the Term or shall remain upon the Premises and be surrendered therewith at the Expiration Date or earlier termination of this Lease as the property of Landlord without disturbance, molestation or injury; provided, however, Landlord may only require removal of Tenant's Alterations to the extent Landlord was not required to consent to the Alterations or to the extent Landlord provided Tenant notice at the time of Landlord's consent that Landlord would require such Alterations to be removed at the expiration or termination of this Lease. The parties agree Tenant shall have no obligation to remove any of the initial Tenant Improvements as described the Work Letter attached as **Exhibit B**.

12.2 **Performance of Alterations.** Tenant, at its expense, shall obtain all necessary governmental permits and certificates for the commencement and prosecution of Alterations and for the final approval thereof upon completion, and shall cause the Alterations to be performed in compliance therewith and in compliance with all applicable laws and requirements of public authorities, including without limitation, Titles I and III of the ADA, the California ADA, the OSHA General Industry Standard (29 C.F.R. Section 1910.1001, et seq.) and the OSHA Construction Standard (29 C.F.R. Section 1926.1001, et seq.), and with Landlord's rules and regulations or any other reasonable restrictions Landlord may impose on the Alterations. Tenant shall not commence any Alterations without having first demonstrated, to Landlord's satisfaction, that all such permits and certificates have been obtained. The Alterations shall be diligently performed in a good and workmanlike manner, using new materials and equipment at least equal in quality and class to the standards for the Building established by Landlord. Tenant's Agents shall work in harmony, and not interfere with, Landlord and its Agents or with any other tenants or occupants of the Building. **Tenant shall, and hereby does, indemnify, defend, and hold Landlord harmless from any and all claims, damages or losses, of any nature (including reasonable fees of attorneys of Landlord's choosing), suffered by Landlord, whether directly or indirectly, as a result of, or due to, or arising from, the performance of any Alterations by, or on behalf of, Tenant.** Alterations shall be performed in such manner so as to not unreasonably interfere with or delay and so as not to impose any additional expense upon Landlord in the construction, maintenance, repair or operation of the Building; and if any such expense is incurred by Landlord, Tenant shall pay the same upon demand. Tenant acknowledges that if any Alterations commenced or performed in violation of any provision of this **Article XII** shall cause Landlord irreparable injury, Landlord shall have the right to enjoin any such violations by injunction or other equitable relief.

12.3 **Lien Prohibition.** Tenant shall not permit any mechanics' or materialmen's liens to attach to the Premises, the Property, the Project, Tenant's leasehold estate or any of them. **Tenant shall and hereby does defend, indemnify, and hold Landlord harmless from and against any and all mechanics' and other liens and encumbrances filed in connection with Alterations or any other work, labor, services, or materials done for or supplied to Tenant, or any person claiming through or under Tenant, including, without limitation, security interests in any materials, fixtures or articles installed in and constituting a part of the Premises and against all costs, expenses, and liabilities (including reasonable fees of attorneys of Landlord's choosing) incurred in connection with any such lien or encumbrance or any action or proceeding brought thereon.** Tenant, at its expense, shall procure the satisfaction or discharge of record of all such liens and encumbrances within thirty (30) days after the filing thereof. In the event Tenant has not so performed, Landlord may, at its option, pay and discharge such liens and Tenant shall be responsible to reimburse Landlord for all costs and expenses incurred in connection therewith, together with interest thereon at the Interest Rate set forth in **Section 1.14** above, which expenses shall include reasonable fees of attorneys of Landlord's choosing, and any costs in posting bond to effect discharge or release of the lien as an encumbrance against the Premises, the Property, the Project, Tenant's leasehold estate or any of them.

### **XIII. LANDLORD'S AND TENANT'S PROPERTY**

13.1 **Landlord's Property.** All Alterations, fixtures, machinery, equipment, improvements and appurtenances to, or built into, the Premises after the Commencement Date, whether or not placed there by, or at the expense of, Tenant shall be and remain a part of the Premises; shall be deemed the property of Landlord (the "Landlord's Property"), without compensation or credit to Tenant; and shall not be removed by Tenant except as expressly required under this **Section 13.1** and otherwise unless Landlord requests their removal. With respect to any fixtures, machinery, equipment, improvements, appurtenances or other Alterations that Tenant is required to remove, Tenant shall, on or before the Expiration Date or earlier termination of this Lease, remove the designated items, repair any damage to the Premises or Building resulting from such removal, and restore the Premises to the condition required under **Article XX**. Removal of any Tenant Work shall be governed by the provisions of **Exhibit B-1**. Further, any personal property in the Premises on the Commencement Date, unless installed and paid for by Tenant, shall be and shall remain the property of the Landlord and shall not be removed by Tenant. Any flooring in the Premises during the Term shall be and remain the property of Landlord and shall not be removed or replaced without the prior written consent and approval by Landlord.

13.2 **Tenant's Property.** All movable business and trade fixtures, machinery and equipment, communications equipment and office equipment, whether or not attached to, or built into, the Premises, which are installed in the Premises by, or for the account of, Tenant without expense to Landlord and which can be removed without structural damage to the Building, and all furniture, furnishings and other articles of movable personal property owned by Tenant and located in the Premises shall be and shall remain the property of Tenant (the "Tenant's Property") and may be removed by Tenant at any time during the Term. In the event Tenant's Property is so removed, Tenant shall repair or pay the cost of repairing any damage to the Premises or to the Building resulting from the installation and/or removal thereof and restore the Premises to the condition required under **Article XX**.

13.3 **Removal of Tenant's Property.** At or before the Expiration Date, or the date of any earlier termination hereof, Tenant, at its expense, shall remove from the Premises all Alterations that Tenant is required to remove pursuant to **Article XII** and all of Tenant's Property, and Tenant shall repair any damage to the Premises or the Building resulting from any installation and/or removal of Tenant's Property and restore the Premises to the condition required under **Article XX**. Any items of Tenant's Property which shall remain in the Premises after the Expiration Date, or following an earlier termination date, and provided Landlord has given Tenant ten (10) days' written notice to remove, may, at the option of Landlord, be deemed to have been abandoned, and in such case, such items may be retained by Landlord as its property or be disposed of or stored by Landlord, without accountability, in such manner as Landlord shall determine, at Tenant's expense.

### **XIV. REPAIRS AND MAINTENANCE**

14.1 **Tenant Repairs and Maintenance.** Except with respect to Landlord's obligations set forth in **Section 14.2** below, Tenant, at its sole cost and expense, throughout the Term of this Lease, shall take good care of the Premises, (including, without limitation, maintenance and repair of the slab), and shall keep the same in good, condition and repair, and shall make and perform all routine maintenance thereof, including janitorial maintenance, and all necessary repairs, ordinary and extraordinary, foreseen and unforeseen, of every nature, kind and description. As used herein, "repairs" shall include all necessary maintenance, repairs, replacements and restorations. All repairs made by Tenant shall be of good quality and shall be made by Tenant in accordance with all laws, ordinances and regulations whether heretofore and hereafter enacted. The necessity for or adequacy of repairs shall be measured by the standards which are appropriate for improvements of similar construction and class, provided that Tenant shall in any event make all repairs necessary under this **Section 14.1** to avoid any damage or injury to the Premises. Throughout the Term of this Lease, except for any period during which Landlord elects to maintain a Master HVAC Services Agreement (as defined in this **Section**) as provided below, Tenant will maintain a maintenance contract for not less than quarterly servicing of the HVAC system with a servicer reasonably acceptable to Landlord, and deliver a copy of such maintenance logs on site and will cause the personnel engaged in the maintenance of the Premises to make timely and detailed entries in those logs so that the logs at all times accurately reflect the maintenance activity performed with respect to the Premises and its Building systems. Landlord's representatives may inspect and copy those logs at any reasonable time after reasonable notice has been given to Tenant. Landlord will have the right to cause the maintenance of the Premises to be reviewed and the Premises inspected annually (or more frequently if Landlord determines that it is prudent to do so) by a qualified engineer or property manager consultant of Landlord's choosing, to determine whether Tenant is maintaining the Premises in accordance with this **Section 14.1** and, if it is determined that Tenant has not maintained the Premises as herein required, Tenant will reimburse Landlord for the cost of repairing the Premises and for the

fees and expenses of such engineer or consultant within thirty (30) days after Landlord's demand. Tenant will cooperate with the engineer or consultant in its performance of such review and inspection. Except with respect to the maintenance contract for the servicing of the HVAC system, Tenant may fulfill its maintenance and repair obligations under this **Section 14.1** at its option either through the use of its employees or through the use of Agents. Notwithstanding the above, if Tenant defaults in its obligations to provide quarterly service of the HVAC system, Landlord may enter into a master service agreement for HVAC maintenance ("Master HVAC Services Agreement") with respect to the Building and Tenant shall pay its Proportionate Share of such cost in accordance with the provisions of **Article IV**.

14.2 **Landlord Repairs.** Landlord shall keep in good repair, (i) the structural portions of the foundation and exterior walls (exclusive of all glass and all exterior doors) of the Building; (ii) the roof and roof membrane of the Building; (iii) the outside Common Areas of the Project, including the parking lots, landscaping; and (iv) underground utility and sewer pipes outside the exterior walls of the Building, if any. All such repairs shall be at Landlord's sole cost and expense, except that the cost of items **Section 14.2(iii)** shall be a Basic Cost to the extent permitted by the provisions of **Article IV**. Notwithstanding the foregoing, the cost of repairs referenced in this **Section 14.2** rendered necessary by the negligence or willful misconduct of Tenant or Tenant's Agents or as a result of Tenant's failure to use the Premises in accordance with the terms of **Article V** of this Lease, shall be reimbursed by Tenant to Landlord within thirty (30) days of Landlord's written demand.

14.3 **Tenant Equipment.** Tenant shall not place a load upon any floor of the Premises which exceeds either the load per square foot which such floor was designed to carry or which is allowed by law. Business machines and mechanical equipment belonging to Tenant which cause noise or vibrations that may be transmitted to the structure of the Building or to the Premises to such a degree as to be objectionable to Landlord shall, at the Tenant's expense, be placed and maintained by Tenant in settings of cork, rubber or spring-type vibration eliminators sufficient to eliminate such noise or vibration.

14.4 **Telecommunications Equipment.** Tenant may install in the Premises and/or on the roof of the Building, and may maintain and operate, telecommunications and other equipment which transmits or receives signals to or from communication carriers or transmitters, and other similar devices (the "Telecommunications Equipment"), subject to Landlord's approval of the location and transmitting frequencies of such equipment. Tenant shall install the Telecommunications Equipment in accordance with plans and specifications, installation methods and locations, reasonably approved by Landlord and in accordance with all applicable laws, codes, rules and regulations. In connection therewith, and with Landlord's reasonable approval, Tenant may run through the Building and to the roof thereof, lines, conduits, cables, risers and any other lines and/or equipment necessary or desirable in connection with installing and operating the telecommunications equipment. No monthly rental or other charge shall be assessed Tenant for the Telecommunications Equipment, the use of the roof, or the Building's risers or ducts, but Tenant shall reimburse Landlord for any of Landlord's third party consultants or contractors fees incurred in connection with the review of any drawings, plans and specifications and the Telecommunications Equipment installation. Tenant shall pay for the cost of all utility services, including the installation, separate metering or submetering, if necessary. Tenant shall be responsible, at its sole cost and expense, for installing, maintaining and repairing such equipment, and shall procure and maintain all permits and licenses which are required by any in connection therewith. Any Telecommunications Equipment shall be and remain Tenant's property and promptly shall be removed by Tenant upon the expiration or earlier termination of this Lease. If Tenant shall install such Telecommunications Equipment on the roof of the Building, then Landlord shall not thereafter install or permit any other tenant of any Building to install antennas, communications dishes or other equipment which may unreasonably interfere with the operation of Tenant's Telecommunications Equipment. Any roof penetrations made in connection with such installation must be performed in a manner and by such subcontractor as may be required by any warrantor of the roof so as not to void or impair the roof warranty. Tenant shall maintain all permits necessary for the maintenance and operation of the Telecommunications Equipment while it is on the Project and operate and maintain the Telecommunications Equipment in such a manner so as not to unreasonably interfere with any other satellite, Telecommunications Equipment, or other transmission facility on the Building's roof or in the Project; provided however, that should such interference occur, Tenant must eliminate such interference or remove the Telecommunications Equipment. Landlord may require that Tenant screen the Telecommunications Equipment with a parapet wall or other screening device acceptable to Landlord. Tenant shall maintain the Telecommunications Equipment and the screening therefor in good repair and condition. Tenant shall, at its risk and expense, remove the Telecommunications Equipment, within five days after the expiration or earlier termination of this Lease. If Tenant fails to do so, Landlord may remove the Telecommunications Equipment and store or dispose of it in any manner Landlord deems appropriate without liability to Landlord; Tenant shall reimburse Landlord for all costs incurred by Landlord in connection therewith within ten (10) business days after Landlord's request therefor. Tenant shall repair any damage to the Project caused by or relating to the Telecommunications Equipment, including that which is caused by its installation,

maintenance, use, or removal and shall indemnify Landlord against all liabilities, losses, damages, and costs (a "Loss") arising from the installation, maintenance, use, or removal of the Telecommunications Equipment, **except to the extent caused by Landlord's negligence or willful misconduct.**

## **XV. UTILITIES**

15.1 **Purchasing Utilities.** Tenant shall purchase all utility services other than water, sewer and Common Area utility services, and specifically including, but not limited to, fuel, water, sewerage and electricity serving the Premises, from the utility or municipality providing such service, shall provide for cleaning and extermination services, and shall pay for such services when payments therefor are due. Landlord shall provide separate metering or submetering of all utilities except sewer services. Tenant shall be solely responsible for the repair and maintenance of any meters necessary in connection with such services.

15.2 **Use of Electrical Energy by Tenant.** Tenant's use of electrical energy in the Premises shall not, at any time, exceed the capacity of (i) any of the electrical conductors and equipment in or otherwise serving the Premises; or (ii) the Building's HVAC system. In order to insure that such capacity is not exceeded and to avert possible adverse effects upon the Building's electric service, Tenant shall not, without Landlord's prior written consent in each instance, make any material alteration or addition to the electrical system of the Premises existing as of the Commencement Date. If requested by Landlord or a governmental entity having jurisdiction over the Premises, Tenant shall report to Landlord and such requesting entity the Tenant's utility usage and such other related information as may be requested within the time required by the governmental entity or such other reasonable time frame as may be requested by Landlord or, at Landlord's option, provide any written authorization or other documentation required for Landlord to request information regarding Tenant's utility usage with respect to the Premises directly from the applicable utility company.

## **XVI. INVOLUNTARY CESSATION OF SERVICES**

Landlord reserves the right, without any liability to Tenant and without affecting Tenant's covenants and obligations hereunder, to stop service of the heating, air conditioning, electric, sanitary, elevator, or other Building systems serving the Premises, or to stop any other services required by Landlord under this Lease, whenever and for so long as may be necessary, by reason of (i) accidents, emergencies, strikes, or the making of repairs or changes which Landlord in good faith deems necessary, or (ii) any other cause beyond Landlord's reasonable control. Further, it is also understood and agreed that Landlord shall have no liability or responsibility for a cessation of services to the Premises or in the Building which occurs as a result of causes beyond Landlord's control. Except as provided herein, no such interruption of service shall be deemed an eviction or disturbance of Tenant's use and possession of the Premises or any part thereof, or render Landlord liable to Tenant for damages, or relieve Tenant from performance of Tenant's obligations under this Lease including the obligation to pay Rent. Notwithstanding the foregoing, (i) if any interruption of utilities or services required to be provided by Landlord under this Lease shall continue for three (3) business days after written notice from Tenant to Landlord; and (ii) such interruption of utilities or services shall render any portion of the Premises unusable for the normal conduct of Tenant's business and Tenant, in fact, ceases to use and occupy such portion of the Premises for the normal conduct of its business; and (iii) such interruption of utilities or services is due to the negligence or willful misconduct of Landlord; then all Rent payable hereunder with respect to such portion of the Premises rendered unusable for the normal conduct of Tenant's business in which Tenant, in fact, ceases to use and occupy, shall be abated after the expiration of such three (3) business day period, in the event such utilities or services are not restored, and continue until such time that the utilities or services are restored.

## **XVII. LANDLORD'S RIGHTS OF ACCESS**

Landlord and its Agents shall have the right to enter and/or pass through the Premises at any time or times (a) to examine the Premises and to show them to actual and prospective Mortgagees, or prospective purchasers or Mortgagees of the Building; and (b) to make such repairs, alterations, additions and improvements in or to the Premises and/or in or to the Building or its facilities and equipment as Landlord is required or desires to make; provided, however, that Landlord shall use reasonable efforts to avoid disturbing Tenant, Tenant's employees and Tenant's business operations. Landlord shall provide Tenant with reasonable prior notice of entry into the Premises, but in no event less than forty eight (48) hours, (which may be given verbally), except in the event of an apparent emergency condition arising within or affecting the Premises that endangers or threatens to endanger property or the safety of individuals. Landlord shall be allowed to take all materials into and upon the Premises that may be required in connection therewith, without any liability to Tenant and without any reduction of Tenant's

covenants and obligations hereunder; provided Landlord shall use reasonable efforts to avoid unreasonably disturbing Tenant, Tenant's employees and Tenant's business operations. During the period of twelve (12) months prior to the Expiration Date (or at any time, if Tenant has vacated or abandoned the Premises), Landlord and its Agents may exhibit the Premises to prospective tenants.

## **XVIII. NON-LIABILITY AND INDEMNIFICATION OF LANDLORD**

18.1 **Tenant Indemnification.** Except to the extent caused by the negligence or willful misconduct of Landlord, but subject to the waiver of subrogation in Section 11.5, Tenant will indemnify, hold harmless and defend Landlord, its Agents and Mortgagee, from and against, any and all demands, claims, causes of action, fines, penalties, damages, liabilities, judgments, and expenses (including, without limitation, reasonable attorneys' fees) incurred in connection with or arising from (i) the use or occupancy or manner of use or occupancy of the Premises by Tenant or its Agents; (ii) the negligence of Tenant or its Agents; (iii) any breach, violation or nonperformance by Tenant or its Agents of any term, covenant or provision of this Lease or any law, ordinance or governmental requirement of any kind; and (iv) any injury or damage to the person, property or business of Tenant or its Agents.

18.2 **Waiver and Release.** Except as otherwise expressly provided in Section 18.3, Tenant covenants and agrees that Landlord, its Agents and Mortgagee will not at any time or to any extent whatsoever be liable, responsible or in any way accountable for any loss to Tenant's property or Tenant's business occasioned by (i) any act or omission of Landlord or its Agents; (ii) any acts or omissions, including, without limitation, theft by any other tenant, occupant or visitor of the Project; or (iii) any damage to Tenant's property resulting from any fire, theft, casualty, explosion, falling plaster or other masonry or glass, steam, gas, electricity, water, snow, ice, or rain which may leak from any part of the Building or any other portion of the Project or from the pipes, appliances or plumbing works therein or from the roof, street or subsurface or from any other place, or resulting from dampness. Tenant agrees to give prompt notice to Landlord upon the occurrence of any of the events set forth in this Section 18.2 or of defects in the Premises or the Building, or in the fixtures or equipment. Notwithstanding anything herein to the contrary, Landlord's liability with respect to any matter not covered by the foregoing release and not subject to the indemnity in Section 18.3, shall be limited to the extent of insurance maintained by Landlord with respect to such matter.

18.3 **Landlord Indemnification.** Except to the extent caused by the negligence or willful misconduct of Tenant, but subject to the waiver of subrogation in Section 11.5, Landlord hereby indemnifies, defends and holds Tenant harmless from and against any and all demands, claims, causes of action, fines, penalties, damages, liabilities, judgments, and expenses (including, without limitation, reasonable attorneys' fees) actually suffered or incurred by Tenant to the extent caused as a direct result of any negligent, willful or intentional acts or omissions of any or all of the Landlord, its Agents and any parties within the direct control of either or both of Landlord and Agent.

18.4 **Survival.** The covenants, agreements and indemnification obligations under this Article XVIII will survive the expiration or earlier termination of this Lease. Tenant's covenants, agreements and indemnification obligations are not intended to and will not relieve any insurance carrier of its obligations under policies required to be carried by Tenant pursuant to the provisions of this Lease.

## **XIX. DAMAGE OR DESTRUCTION**

19.1 **Damage to the Premises.** If the Premises or the Building shall be damaged by fire or other cause, Landlord shall diligently and as soon as practicable after such damage occurs (taking into account the time necessary to effect a satisfactory settlement with any insurance company involved) repair such damage at the expense of Landlord; provided, however, that Landlord's obligation to repair such damage shall not exceed the proceeds of insurance available to Landlord (reduced by any proceeds retained pursuant to the rights of Mortgagee). Notwithstanding the foregoing, if the Premises or the Building are damaged by fire or other insured cause to such an extent that, in Landlord's reasonable judgment, the damage cannot be substantially repaired within 210 days after the date of such damage, or if the Premises are substantially damaged during the last Lease Year, then: (i) Landlord may terminate this Lease as of the date of such damage by written notice to Tenant; or (ii) Tenant may terminate this Lease as of the date of such damage by written notice to Landlord within 10 days after (a) Landlord's delivery of a notice that the repairs cannot be made within such 210-day period (Landlord shall deliver to Tenant such notice within 60 days of the date of such damage or casualty); or (b) the date of damage, in the event the damage occurs during the last year of the Lease. Rent shall be apportioned and paid to the date of such damage.

During the period that Tenant is deprived of the use of the damaged portion of the Premises, Basic Rent and Tenant's Proportionate Share shall be reduced by the ratio that the Square Footage of the Premises damaged bears to the total Square Footage of the Premises before such damage. All injury or damage to the Premises or the Building resulting from the gross negligence or willful misconduct of Tenant or its Agents shall be repaired by Landlord, at Tenant's expense (subject to the waivers in **Section 11.5**), and Rent shall not abate nor shall Tenant be entitled to terminate the Lease. Notwithstanding anything herein to the contrary, Landlord shall not be required to rebuild, replace, or repair any of the following: (i) specialized Tenant improvements as reasonably determined by Landlord, other than any Tenant Work; (ii) Alterations; or (iii) Tenant's Property.

19.2 **Condemnation.** If any of the Premises, 20% or more of the Building or 30% or more of the Land shall be taken or condemned by any governmental or quasi-governmental authority for any public or quasi-public use or purpose (including, without limitation, sale under threat of such a taking), then the Term shall cease and terminate as of the date when title vests in such governmental or quasi-governmental authority, and Rent shall be prorated to the date when title vests in such governmental or quasi-governmental authority. If less than 20% of the Building (none of which is within the Premises) and less than 30% of the Land is taken or condemned by any governmental or quasi-governmental authority for any public or quasi-public use or purpose (including, without limitation, sale under threat of such a taking), this Lease shall continue in full force and effect. Tenant shall have no claim against Landlord (or otherwise) as a result of such taking, and Tenant hereby agrees to make no claim against the condemning authority for any portion of the amount that may be awarded as compensation or damages as a result of such taking; provided, however, that Tenant may, to the extent allowed by law, claim an award for moving expenses and for the taking of any of Tenant's Property (other than its leasehold interest in the Premises) which does not, under the terms of this Lease, become the property of Landlord at the termination hereof, as long as such claim is separate and distinct from any claim of Landlord and does not diminish Landlord's award. Tenant hereby assigns to Landlord any right and interest it may have in any award for its leasehold interest in the Premises.

19.3 **Waiver.** Except as otherwise expressly provided in this Article XIX, Tenant waives all of its rights to terminate this Lease pursuant to rights presently or hereafter accorded by law to tenants as a result of damage or destruction, including the provisions of Sections 1932(2) and 1933(4) of the California Civil Code and any successor statutes. Except as otherwise provided in this **Article XIX**, Tenant waives all of its rights to terminate this Lease pursuant to rights presently or hereafter accorded by law to tenants as a result of a taking, including the provisions of Section 1265.130 of the California Code of Civil Procedure and any successor statutes.

## **XX. SURRENDER AND HOLDOVER**

On the Expiration Date, or upon any earlier termination of this Lease or Tenant's right of possession in accordance with this Lease, or upon any re-entry by Landlord upon the Premises, Tenant shall quit and surrender the Premises to Landlord "broom-clean" and in good order, condition and repair, except for ordinary wear and tear and such damage or destruction as Landlord is required to repair or restore under this Lease, and Tenant shall remove all of the Tenant's Property therefrom, except as otherwise expressly provided in this Lease. In the event that Tenant shall not immediately surrender the Premises to Landlord on the Expiration Date or earlier termination of this Lease, Tenant shall be deemed to be a tenant-at-will pursuant to the terms and provisions of this Lease, except the daily Basic Rent shall be the Holdover Rate (as hereafter defined) (computed on the basis of a thirty (30) day month). As used herein, "Holdover Rate" shall mean a rate equal (x) one hundred ten percent (110%) of the Basic Rent payable during the last month of the Term during the first sixty (60) days of such holdover period and (b) after the first sixty (60) days of such holdover period, one hundred fifty percent (150%) of the Basic Rent payable during the last month of the Term. Notwithstanding the foregoing, if Tenant shall hold over after the Expiration Date or earlier termination of this Lease, and Landlord shall desire to regain possession of the Premises, then Landlord may forthwith re-enter and take possession of the Premises without process, or by any legal process provided under applicable state law. **If Landlord is unable to deliver possession of the Premises to a new tenant, or to perform improvements for a new tenant, as a result of Tenant's holdover, and Landlord has given Tenant not less than thirty (30) days' notice of its need for the space, Tenant shall be liable to Landlord for all damages, including, without limitation, special or consequential damages, that Landlord suffers from the holdover.**

## **XXI. DEFAULT**

21.1 **Events of Default.** Each of the following shall constitute an Event of Default by Tenant: (i) Tenant fails to

pay Rent within 5 days after notice from Landlord; provided that no such notice shall be required if at least two such notices shall have been given during the previous twelve (12) months; (ii) Tenant fails to observe or perform any other term, condition or covenant herein binding upon or obligating Tenant within 30 days after notice from Landlord; provided, however, that if such failure cannot be cured within said 30-day period, and Tenant commences diligent efforts to cure such failure within 30 days after notice from Landlord, the period to cure the default shall be extended up to an additional 60 days, provided Tenant has commenced to cure the default within the 30-day period and diligently pursues such cure to completion; (iii) Tenant abandons or vacates the Premises and fails to pay rent during such period; (iv) Tenant fails to execute and return a subordination agreement or estoppel within the time periods provided for in Article VII or Article XXIII and such failure continues for fifteen (15) days following notice from Landlord; (v) Tenant or any Guarantor makes or consents to a general assignment for the benefit of creditors or a common law composition of creditors, or a receiver of the Premises for all or substantially all of Tenant's or Guarantor's assets is appointed, or Tenant or Guarantor hereafter files a voluntary petition in any bankruptcy or insolvency proceeding, or an involuntary petition in any bankruptcy or insolvency proceeding is filed against Tenant or Guarantor and is not discharged by Tenant or Guarantor within 60 days; or (vi) Tenant fails to immediately remedy or discontinue any material hazardous conditions which Tenant has created or permitted in violation of law or of this Lease. Any such notices required under this Section 21.1 shall be in lieu of, and not in addition to, any notice required under Section 1161 of the California Code of Civil Procedure. Any notice periods provided for under this Section 21.1 shall run concurrently with any statutory notice periods and any notice given hereunder may be given simultaneously with or incorporated into any such statutory notice.

21.2 Landlord's Remedies. Upon the occurrence of an Event of Default, Landlord, at its option, without further notice or demand to Tenant, may, in addition to all other rights and remedies provided in this Lease, at law or in equity, elect one or more of the following remedies:

(a) Terminate this Lease, in which event Tenant shall immediately surrender possession of the Premises to Landlord, and Landlord shall have all the rights and remedies of a landlord provided by California Civil Code Section 1951.2, or any successor statute, and in addition to any other rights and remedies Landlord may have, Landlord shall be entitled to recover from Tenant:

- (i) the worth at the time of award of the unpaid Rent which had been earned at the time of such termination; plus
- (ii) the worth at the time of 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
- (iii) the worth at the time of award of the amount by which the unpaid Rent for the balance of the Lease Term after the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus
- (iv) Any other amount necessary to compensate Landlord for all 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, including, but not limited to, the costs and expenses (including attorneys' fees, whether in-house or outside counsel) of recovering possession of the property, expenses of reletting to the extent such expenses of reletting are limited by the percentage the remaining Lease term bears to the term Landlord enters into as a result of the reletting, including necessary repair of the Premises to marketable condition and brokerage commissions, and any other reasonable costs and expenses.

As used in Sections 21.2(a)(i) and (ii) above, the "worth at the time of award" is computed by allowing interest at the prime rate per annum announced by Wells Fargo Bank, N.A., San Francisco, California as its prime Interest Rate. As used in Section 21.2(a)(iii) 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%).

(b) Terminate Tenant's right of possession of the Premises without terminating this Lease, in which event Landlord may, but shall not be obligated to except to the extent otherwise required by law, relet the Premises, or any part thereof, for the account of Tenant, for such rent and term and upon such other conditions as are reasonably acceptable to Landlord. For purposes of such reletting, Landlord is authorized to redecorate, repair, alter and improve the Premises to the extent necessary in Landlord's discretion. Until Landlord relets the Premises, Tenant shall remain obligated to pay Rent to Landlord as provided in this Lease. If and when the Premises are relet and if a sufficient sum is not realized from such reletting after payment of all of Landlord's expenses of reletting (including, without limitation, rental concessions to new

tenants, repairs, Alterations, legal fees and brokerage commissions) to satisfy the payment of Rent due under this Lease for any month, Tenant shall pay Landlord any such deficiency, as defined above, upon demand. Tenant agrees that Landlord may file suit to recover any sums due Landlord under this Section from time to time and that such suit or recovery of any amount due Landlord shall not be any defense to any subsequent action brought for any amount not previously reduced to judgment in favor of Landlord;

(c) In accordance with California Civil Code Section 1951.4 (or any successor statute), Tenant acknowledges that in the event Tenant has breached this Lease and abandoned the Premises, this Lease shall continue in effect for so long as Landlord does not terminate Tenant's right to possession, and Landlord may enforce all its rights and remedies under this Lease, including the right to recover the Rent as it becomes due under this Lease. Acts of maintenance or preservation efforts to relet the Premises, or the appointment of a receiver upon initiative of Landlord to protect Landlord's interest under this Lease shall not constitute a termination of Tenant's right to possession.

(d) Take any lawful self-help or judicial action, including using a master or duplicate key or changing or picking the locks and security devices, without having any civil or criminal liability therefor to (i) reenter the Premises, repossess the Premises and exclude Tenant and other occupants from the Premises, and/or (ii) make such payment or do such act as Landlord determines is necessary (without obligation to do so) to cure the Event of Default or otherwise satisfy Tenant's obligations under the terms of this Lease. Tenant agrees to reimburse Landlord on demand for any expenses which Landlord may incur in connection with the foregoing actions, which expenses shall bear interest until paid at the Interest Rate, and that Landlord shall not be liable for any damages resulting to Tenant from such actions.

(e) Withhold or suspend payment that this Lease would otherwise require Landlord to make.

No right or remedy herein conferred upon or reserved to Landlord is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder or now or hereafter existing at law or in equity or by statute. In addition to other remedies provided in this Lease, Landlord shall be entitled, to the extent permitted by applicable law, to injunctive relief in case of the violation, or attempted or threatened violation, of any of the covenants, agreements, conditions or provisions of this Lease, or to a decree compelling performance of any of the covenants, agreements, conditions or provisions of this Lease, or to any other remedy allowed to Landlord at law or in equity.

**21.3 Mitigation of Damages.** Landlord agrees to use commercially reasonable efforts to mitigate and damages as a result of an Event of Default by Tenant. Tenant agrees that if Landlord markets the Premises in a manner substantially similar to the manner in which Landlord markets other space in the Building, then Landlord shall be deemed to have used commercially reasonable efforts to mitigate damages. Tenant shall continue to be liable for all Rent (whether accruing prior to, on or after the date of termination of this Lease or Tenant's right of possession and/or pursuant to the holdover provisions of **Article XX** above) and Damages, except to the extent that Tenant receives any credit against unpaid Rent or to the extent Landlord fails to exercise commercially reasonable efforts to mitigate damages to the extent required under this **Section 21.3** and that Landlord's failure caused an avoidable and quantifiable increase in Landlord's damages for unpaid Rent. Without limitation to the foregoing, Landlord shall not be deemed to have failed to mitigate damages, or to have used efforts required by law to do so, because: (i) Landlord leases other space in the Project which is vacant prior to re-letting the Premises; (ii) Landlord refuses to relet the Premises to any Related Entity of Tenant, or any principal of Tenant, or any Related Entity of such principal; (iii) Landlord refuses to relet the Premises to any person or entity whose creditworthiness is not acceptable to Landlord in the exercise of its reasonable discretion; (iv) Landlord refuses to relet the Premises to any person or entity because the use proposed to be made of the Premises by such prospective tenant is not warehouse or general business office use of a type and nature consistent with that of the other tenants in the portions of the Project leased or held for lease for warehouse and general business office purposes as of the date Tenant defaults under this Lease (by way of illustration, but not limitation, manufacturing facilities, call center or other high density use, government offices, consular offices, doctor's offices or medical or dental clinics or laboratories, or schools would not be uses consistent with that of other tenants in the Project), or such use would, in Landlord's reasonable judgment, impose unreasonable or excessive demands upon the Building systems, equipment or facilities; (v) Landlord refuses to relet the Premises to any person or entity, or any affiliate of such person or entity, who has been engaged in litigation with Landlord or any of its affiliates; (vi) Landlord refuses to relet the Premises because the tenant or the terms and provisions of the proposed lease are not approved by the holders of any liens or security interests in the Building, or would cause Landlord to be in default of, or to be unable to perform any of its covenants or obligations under, any agreements between Landlord and any third party; (vii) Landlord refuses to relet the Premises because the proposed tenant is

unwilling to execute and deliver Landlord's standard lease form or such tenant requires improvements to the Premises to be paid at Landlord's cost and expense; (viii) Landlord refuses to relet the Premises to a person or entity whose character or reputation, or the nature of such prospective tenant's business, would not be acceptable to Landlord in its reasonable discretion; or (ix) Landlord refuses to expend any material sums of money to market the Premises in excess of the sums Landlord typically expends in connection with the marketing of other space in the Project.

21.4 **No Waiver.** No waiver by Landlord of any breach shall operate as a waiver of such covenant, condition or agreement itself, or of any subsequent breach thereof. No payment of Rent by Tenant or acceptance of Rent by Landlord shall operate as a waiver of any breach or default by Tenant under this Lease. No payment by Tenant or receipt by Landlord of a lesser amount than the monthly installment of Rent herein stipulated shall be deemed to be other than a payment on account of the earliest unpaid Rent, nor shall any endorsement or statement on any check or communication accompanying a check for the payment of Rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or to pursue any other remedy provided in this Lease. No act, omission, reletting or re-entry by Landlord, and no acceptance by Landlord of keys from Tenant, shall be considered an acceptance of a surrender of the Lease, shall be construed as an actual or constructive eviction of Tenant, or an election on the part of Landlord to terminate this Lease unless a written notice of such intention is given to Tenant by Landlord.

21.5 **Late Payment.** If Tenant fails to pay any Rent within 5 days after such Rent becomes due and payable, Tenant shall pay to Landlord a late charge of 5% of the amount of such overdue Rent. Such late charge shall be deemed Rent and shall be due and payable within 2 days after written demand from Landlord. Tenant hereby acknowledges that late payment by Tenant to Landlord of Rent or other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which is not readily ascertainable. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Landlord by the terms of any mortgage or deed of trust covering the Premises and/or Project. Acceptance of such late charges by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amounts, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder.

21.6 **Waiver of Redemption.** **Tenant hereby waives, for itself and all persons claiming by and under Tenant, all rights and privileges which it might have under any present or future law to redeem the Premises or to continue this Lease after being dispossessed or ejected from the Premises.**

21.7 **Tenant's Remedies.** If Landlord fails to perform any obligation, covenant or condition or to comply with any provisions of this Lease and such failure continues for thirty (30) days after written notice from Tenant, unless said default requires more than thirty (30) days to cure and Landlord commences a cure within thirty (30) days after written notice and thereafter maintains a diligent effort to complete the cure, then Tenant shall have the right to perform the applicable obligations not performed by Landlord on behalf of and at the expense of Landlord, and seek reimbursement from Landlord of all such expenses incurred in connection therewith, together with interest thereon at the Interest Rate from the date such expenses are incurred, and Landlord agrees to reimburse Tenant for such expenses, with interest on or before thirty (30) days from Tenant's written demand therefor, accompanied by reasonable supporting documentation evidencing such expenditures. In the event Landlord fails to timely pay Tenant for the amounts properly demanded, Tenant shall, then and only then, have the right to offset the delinquent amounts properly due Tenant from Tenant's next installment or installments of Basic Rental until repaid in full; provided that such offset shall not exceed twenty-five percent of any monthly installment of Basic Rent.

## **XXII. BROKER**

Landlord recognizes Broker(s) as the sole broker(s) procuring this Lease and shall pay Broker(s) a commission therefor pursuant to a separate agreement between Broker(s) and Landlord. Landlord and Tenant each represents and warrants to the other that it has dealt with no broker, agent finder or other person other than Broker(s) relating to this Lease. **Landlord shall indemnify and hold Tenant harmless, and Tenant shall indemnify and hold Landlord harmless, from and against any and all loss, costs, damages or expenses (including, without limitation, all attorneys' fees and disbursements) by reason of any claim of liability to or from any broker or person arising from or out of any breach of the indemnitor's representation and warranty.**

## **XXIII. ESTOPPEL CERTIFICATES**

Tenant agrees, at any time and from time to time, as requested by Landlord, to execute and deliver to Landlord (and to any existing or prospective mortgage lender, ground lessor, or purchaser designated by Landlord), within fifteen (15) days after the request therefor, a statement 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); certifying the dates to which the Rent has been paid; stating whether or not, to Tenant's knowledge, Landlord is in default in performance of any of its obligations under this Lease, and, if so, specifying each such default; and stating whether or not, to Tenant's knowledge, any event has occurred which, with the giving of notice or passage of time, or both, would constitute such a default, and, if so, specifying each such event. Any such statement delivered pursuant hereto shall be relied upon by Landlord and by others with whom such party may be dealing, regardless of independent investigation. Tenant also shall include in any such statements such other information concerning this Lease as Landlord may reasonably request including, but not limited to, the amount of Basic Rent and Additional Rent under this Lease, and whether Landlord has completed all improvements to the Premises required under this Lease. In the event Tenant fails to deliver to Landlord an estoppel certificate as required by this paragraph within the specified 15-day period, in addition to any other remedies Landlord may have, Tenant shall be conclusively presumed to have adopted and affirmed the contents of the form of estoppel certificate delivered to Tenant by Landlord, and any prospective mortgagee, purchaser, or other third-party may rely on the accuracy of such estoppel certificate as if executed and affirmed by Tenant.

#### **XXIV. ENVIRONMENTAL**

24.1 **Hazardous Material.** Tenant shall not cause or permit any Hazardous Material (as hereinafter defined) to be brought upon, kept or used in or about the Project and/or Premises by Tenant or its Agents, except for such Hazardous Material as is necessary for Tenant's business. Any Hazardous Material permitted on the Project and/or Premises as provided herein, and all containers therefor, shall be used, kept, stored and disposed of in a manner that complies with all federal, state and local laws or regulations applicable to such Hazardous Material. Title to Hazardous Materials will remain and be stored or disposed of solely in Tenant's name. Tenant shall not release, discharge, leak or emit or permit to be released, discharged, leaked or emitted, any material into the atmosphere, ground, ground water, surface water, storm or sanitary sewer system or any body of water, any Hazardous Material or any other material (as is reasonably determined by Landlord or any governmental authority) which may pollute or contaminate the same or may adversely affect (a) the health, welfare or safety of persons, or (b) the condition, use or enjoyment of the Project and/or Premises, or any other real or personal property. At the commencement of the Lease Term and each year thereafter during the Lease Term, Tenant shall disclose to Landlord the names and approximate amounts of all Hazardous Material that Tenant intends to store, use or dispose of on the Project and/or Premises during such year. In addition, at the commencement of each year during the Lease Term, beginning with the second such year, Tenant shall disclose to Landlord the names and amounts of all Hazardous Materials that were actually used, stored or disposed of on the Project and/or Premises if such materials were not previously identified to Landlord at the commencement of the previous year.

24.2 **Definition.** As used herein, "Hazardous Material" means (a) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976, as amended from time to time, and regulations promulgated thereunder (or any state counterpart to the foregoing statute); (b) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended from time to time, and regulations promulgated thereunder (or any state counterpart to the foregoing statute); (c) any oil, petroleum products and their by-products; (d) asbestos; (e) polychlorobiphenyls ("PCB"); and (f) any substance that is or becomes regulated by any federal, state or local governmental authority.

24.3 **Tenant's Liability.** Tenant hereby agrees that it shall be fully liable for all costs and expense related to the use, storage and disposal of Hazardous Material kept on the Project and/or Premises by Tenant or its Agents, and Tenant shall give immediate notice to Landlord of any violation or potential violation of the provisions of **Section 24.1** above. **Tenant shall defend, indemnify and hold Landlord and its Agents harmless from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses (including without limitation, attorneys' and consultants' fees, court costs and litigation expense) of whatever kind or nature, known or unknown contingent or otherwise, to the extent caused by Tenant or its Agents arising out of or in any way related to (a) the presence, disposal, release or threatened release of any such Hazardous Material that is on, from or affecting the soil, water, vegetation, buildings, personal property, persons, animals or otherwise located on or around the Premises; (b) any personal injury (including wrongful death), property damage (real or personal) arising out of or related to such Hazardous Material; (c) any lawsuit brought or threatened, settlement reached or government order relating to such Hazardous Material; (d) any violation**

of any laws applicable thereto; (e) a decrease in value of the Project and/or Premises, (f) damages caused by loss or restriction of rentable or usable space; and (g) damages caused by adverse impact on marketing of the space. Without limitation of the foregoing, if the Tenant causes or permits the presence of any Hazardous Materials on the Project and/or Premises which results in contamination, Tenant shall promptly, at its sole expense, take any and all necessary actions to return the Project and/or Premises to the condition existing prior to the presence of any such Hazardous Material on the Project and/or Premises. Tenant shall first obtain Landlord's approval for any such remedial action. The provisions of this **Section 24.3** shall be in addition to any other obligations and liabilities Tenant may have to Landlord at law or in equity and shall survive the transactions contemplated herein and shall survive the termination of this Lease.

24.4 **Landlord's Liability; Special Damages.** Landlord shall indemnify, defend and hold harmless Tenant from and against any and all claims, damages, fines, judgments, penalties, costs, liabilities, losses and reasonable attorney's fees to the extent caused by Landlord or its Agents and (i) arising out of or in connection with the existence of Hazardous Materials on the Project or Premises; or (ii) relating to any clean-up or remediation of the Project or Premises required under any applicable environmental laws. The obligations of Landlord under this **Section 24.4** shall survive the Term of this Lease.

## **XXV. SIGNAGE**

25.1 Except as expressly provided for in this **Article XXV**, no sign, advertisement or notice shall be inscribed, painted, affixed, placed or otherwise displayed by Tenant on any part of the Project or the outside or the inside of the Building to the extent visible from the exterior of the Premises, Building or Project. Landlord shall provide, at Tenant's expense, signage on the entry door to the Premises listing Tenant's name and suite number in Building standard sign material and lettering. If any prohibited sign, advertisement or notice is nevertheless exhibited by Tenant, Landlord shall have the right to remove the same, and Tenant shall pay upon demand any and all expenses incurred by Landlord in such removal, together with interest thereon at the Interest Rate from the demand date.

25.2 **Tenant's Signage.** During the Term of this Lease, Tenant shall have the exclusive right to display its corporate or trade name on the roofline or upper portion of the Premises ("Building Sign"), and the non-exclusive right to display its corporate name on any street level signs identifying tenants of the Project including at the entry to the Project. Any freestanding signage identifying multiple tenants of the Project shall display Tenant's corporate name prominently and above any other tenants. The Building Sign shall at all times comply with applicable laws and shall be subject to (i) all requisite governmental and industrial park approvals, and (ii) the approval of Landlord with respect to size, location, design and content, which approval shall not be unreasonably withheld, conditioned or delayed. Tenant will bear all costs associated with creating, designing, manufacturing, installing, maintaining and removing the Building Sign.

## **XXVI. MISCELLANEOUS**

26.1 **Merger.** Tenant expressly acknowledges and agrees that Landlord has not made and is not making, and Tenant, in executing and delivering this Lease, is not relying upon, any warranties, representations, promises, or statements, except to the extent that the same are expressly set forth in this Lease. All prior understandings and agreements between the parties are merged in this Lease (which includes the Exhibits attached hereto and made a part hereof), which alone fully and completely express the agreement of the parties. No agreement shall be effective to change, modify, waive, release, discharge, terminate or effect an abandonment of this Lease, in whole or in part, unless such agreement is in writing, and is signed by the party against whom enforcement of said change or modification is sought.

26.2 **Notices.** Any notice required to be given by either party pursuant to this Lease, shall be in writing and shall be deemed to have been properly given, rendered or made only if personally delivered, if sent by Federal Express or other comparable delivery service, or if sent by registered or certified mail, return receipt requested, postage prepaid, addressed to the other party at the addresses set forth in **Article I** (or to such other address as Landlord or Tenant may designate to each other from time to time by written notice), and shall be deemed to have been received upon the earlier of receipt, refusal or attempted delivery thereof.

26.3 **Non-Waiver.** The failure of either party to insist, in any one or more instances, upon the strict performance of any one or more of the obligations of this Lease, or to exercise any election herein contained, shall not be construed as a waiver or relinquishment for the future of the performance of such one or more obligations of this Lease or of the right to

exercise such election, but the Lease shall continue and remain in full force and effect with respect to any subsequent breach, act or omission. The receipt by Landlord of Rent with knowledge of breach by Tenant of any obligation of this Lease shall not be deemed a waiver of such breach.

26.4 Parties Bound. Except as otherwise expressly provided for in this Lease, this Lease shall be binding upon, and inure to the benefit of, the successors and assignees of the parties hereto. However, the obligations of Landlord shall not be binding upon Landlord herein named with respect to any period subsequent to the conveyance and transfer of its entire interest in the Building, as owner thereof, and in the event of such conveyance and transfer, said obligations shall thereafter be binding upon each transferee, and **Tenant waives all rights and causes of action Tenant may then have, as against the Landlord herein named.** Submission of this instrument by Landlord to Tenant for examination shall not bind Landlord in any manner, and no lease, option, agreement to lease or other obligation of Landlord shall arise until the instrument is signed by, and delivered to, both Landlord and Tenant. Notwithstanding anything to the contrary in this Lease, the liability of Landlord hereunder and any recourse by Tenant against Landlord shall be limited solely and exclusively to an amount equal to the interest of Landlord in the Project, and neither Landlord, nor any of its constituent shareholders, partners, members, managers, directors, officers or employees, shall have any personal liability therefor. Except in the case of Landlord's gross negligence or willful misconduct, Landlord not be liable hereunder for consequential damages or special damages.

26.5 Recordation of Lease. Tenant shall not record or file this Lease in the public records of any county or state.

26.6 Survival of Obligations. Upon the Expiration Date or other termination of this Lease, neither party shall have any further obligation or liability to the other except as otherwise expressly provided in this Lease and except for such obligations as, by their nature or under the circumstances, can only be, or by the provisions of this Lease, may be, performed after such expiration or other termination; and, in any event, unless otherwise expressly provided in this Lease, any liability for any payment hereunder which shall have accrued to, or with respect to, any period ending at the time of expiration or other termination of this Lease shall survive the Expiration Date or other termination of this Lease.

26.7 Prorations. Any apportionments or prorations of Rent to be made under this Lease shall be computed on the basis of a year containing three hundred sixty five (365) days, consisting of twelve (12) months of thirty (30) days each.

26.8 Governing Law; Construction. This Lease shall be governed by and construed in accordance with the laws of the state in which the Project is located. If any provision of this Lease 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 Lease 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. The captions, headings and titles in this Lease are solely for convenience of reference and shall not affect its interpretation. This Lease shall be construed without regard to any presumption or other rule requiring construction against the party causing this Lease to be drafted. Each covenant, agreement, obligation, or other provision of this Lease on Tenant's part to be performed, shall be deemed and construed as a separate and independent covenant of Tenant, not dependent on any other provision of this Lease. All terms and words used in this Lease, regardless of the number or gender in which they are used, shall be deemed to include any other number and any other gender as the context may require.

26.9 Time. Time is of the essence of this Lease and in the performance of all obligations hereunder. If the time for performance hereunder falls on a Saturday, Sunday or a day which is recognized as a holiday in the state in which the Project is located, then such time shall be deemed extended to the next day that is not a Saturday, Sunday or holiday in the state in which the Project is located.

26.10 Authority of Tenant.

(a) If Tenant signs as a corporation or limited liability company, the person executing this Lease on behalf of Tenant hereby represents and warrants that Tenant is a duly formed and validly existing entity, in good standing, qualified to do business in the district in which the Project is located, that the entity has full power and authority to enter into this Lease and that he or she is authorized to execute this Lease on behalf of the entity. Tenant further agrees that it shall provide Landlord with a secretary's certificate from the secretary of said entity certifying as to the above in the form of **EXHIBIT C** attached hereto and made a part hereof.

(b) If Tenant signs as a partnership, the person executing this Lease on behalf of Tenant hereby represents and warrants that Tenant is a duly formed, validly existing partnership, qualified to do business in the applicable state, that the partnership, has full power and authority to enter into this Lease, and that he or she is authorized to execute this Lease on behalf of the partnership. Tenant further agrees that it shall provide Landlord with an authorization from the partnership certifying as to the above in a form acceptable to Landlord.

26.11 **Security.** Landlord makes no representation or warranty regarding security at the Property, the Building or the Project. If Tenant requests security services and Landlord approves such services, Tenant shall pay the cost of all such security services.

26.12 **Financial Reports.** Prior to the execution of this Lease by Tenant and thereafter within 15 days after Landlord's request (but in no event more than twice per annum), Tenant will furnish Tenant's most recent audited financial statements (including any notes to them) to Landlord, or, if no such audited statements have been prepared, such other financial statements (and notes to them) as may have been prepared by an independent certified public accountant, or, failing those, Tenant's internally prepared financial statements, certified by Tenant. Landlord agrees to treat such financial statements as confidential and not to disclose such financial statements to any party other than its agents, accountants and attorneys and its lenders and prospective purchasers who agree to keep the financial statements confidential.

26.13 **Rules and Regulations.** Tenant and its Agents shall at all times abide by and observe the Rules and Regulations set forth in **Exhibit D** and any amendments thereto that may reasonably be promulgated from time to time by Landlord for the operation and maintenance of the Project and the Rules and Regulations shall be deemed to be covenants of the Lease to be performed and/or observed by Tenant, provided however, such Rules and Regulations shall not unreasonably discriminate against Tenant. Nothing contained in this Lease shall be construed to impose upon Landlord any duty or obligation to enforce the Rules and Regulations, or the terms or provisions contained in any other lease, against any other tenant of the Project. Landlord shall not be liable to Tenant for any violation by any party of the Rules and Regulations or the terms of any other Project lease. If there is any inconsistency between this Lease (other than **Exhibit D**) and the then current Rules and Regulations, this Lease shall govern.

26.14 **Force Majeure.** Neither party shall have liability to the other party with respect to any act, event or circumstances arising out of (a) failing to fulfill, or delaying in fulfilling any of its obligations under this Lease by reason of fire; earthquake; explosion; flood; hurricane; the elements; acts of God or the public enemy; actions, restrictions, governmental authorities (permitting or inspection), governmental regulation of the sale of materials or supplies or the transportation thereof; war; invasion; insurrection; rebellion; riots; strikes or lockouts, inability to obtain necessary materials, goods, equipment, services, utilities or labor; or any other cause whether similar or dissimilar to the foregoing; or (b) any failure or defect in the supply, quantity or character of electricity, gas, steam or water furnished to the Premises, or by reason of any requirement, act or omission of any public utility or others serving the Project, beyond Landlord's reasonable control. Tenant agrees that under no circumstances shall Landlord be liable to Tenant or any third party for any loss of, destruction of, damage to Tenant's property; including, by way of illustration and not limitation, equipment, goods or merchandise, including Tenant's Property placed on the Premises or suffered to be placed thereon by Tenant, it being the intention of the parties hereto that the risk of any and all such loss, destruction, damage or shortage shall be borne by Tenant.

26.15 **Waiver of Jury Trial.** Landlord and Tenant each waive trial by jury in connection with proceedings or counterclaims brought by either of the parties against the other with respect to any matter whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant hereunder or Tenant's use or occupancy of the Premises.

26.16 **Attorneys' Fees.** If either Landlord or Tenant commences or engages in any legal action or proceeding against the other party (including, without limitation, litigation or arbitration) arising out of or in connection with the Lease, the Premises, the Property or the Project (including, without limitation (a) the enforcement or interpretation of either party's rights or obligations under this Lease (whether in contract, tort, or both) or (b) the declaration of any rights or obligations under this Lease), the prevailing party shall be entitled to recover from the losing party reasonable attorneys' fees, together with any costs and expenses, incurred in any such action or proceeding, including any attorneys' fees, costs, and expenses incurred on collection and on appeal.

26.17 Intentionally deleted.

26.18 Landlord's Fees. Whenever Tenant requests Landlord to take any action or give any consent required or permitted under this Lease, Tenant will reimburse Landlord for all of Landlord's actual reasonable costs incurred in reviewing the proposed action or consent, including, without limitation, third party attorneys', engineers' or architects' fees, but in no event to exceed \$5,000, within 10 days after Landlord's delivery to Tenant of a statement of such costs. Tenant will be obligated to make such reimbursement without regard to whether Landlord consents to any such proposed action.

26.19 Light, Air or View Rights. Any diminution or shutting off of light, air or view by any structure which may be erected on lands adjacent to or in the vicinity of the Building and Project shall not affect this Lease, abate any payment owed by Tenant hereunder or otherwise impose any liability on Landlord.

26.20 Counterparts. 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.

26.21 Nondisclosure of Lease Terms. Tenant acknowledges and agrees that the terms of this Lease are confidential and constitute proprietary information of Landlord. Disclosure of the terms could adversely affect the ability of Landlord to negotiate other leases and impair Landlord's relationship with other tenants. Accordingly, Tenant agrees that it, and its Agents shall not intentionally or voluntarily disclose the terms and conditions of this Lease to any newspaper or other publication or any other tenant or apparent prospective tenant of the Building, the Premises or the Project, without the prior written consent of Landlord, provided, however, that Tenant may disclose the terms to prospective subtenants or assignees under this Lease.

26.22 Intentionally deleted.

26.23 Notice of Lease Term Dates. Within thirty (30) days after the Commencement Date, Landlord and Tenant shall execute the Notice of Lease Term Dates, the form of which is attached hereto as **Exhibit E** and made a part hereof.

26.24 Anti-Terrorism. Tenant represents and warrants to and covenants with Landlord that (i) neither Tenant nor any of its owners or affiliates currently are, or shall be at any time during the term hereof, in violation of any laws relating to terrorism or money laundering (collectively, the "Anti-Terrorism Laws"), including without limitation Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and regulations of the U.S. Treasury Department's Office of Foreign Assets Control (OFAC) related to Specially Designated Nationals and Blocked Persons (SDN's OFAC Regulations), and/or the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56) (the "USA Patriot Act"); (ii) neither Tenant nor any of its owners, affiliates, investors, officers, directors, employees, vendors, subcontractors or agents is or shall be during the term hereof a "Prohibited Person" which is defined as follows: (1) a person or entity owned or controlled by, affiliated with, or acting for or on behalf of, any person or entity that is identified as an SDN on the then-most current list published by OFAC at its official website, <http://www.treas.gov/offices/eotffc/ofac/sdn/tl1sdn.pdf>, or at any replacement website or other replacement official publication of such list, and (2) a person or entity who is identified as or affiliated with a person or entity designated as a terrorist, or associated with terrorism or money laundering pursuant to regulations promulgated in connection with the USA Patriot Act; and (iii) Tenant has taken appropriate steps to understand its legal obligations under the Anti-Terrorism Laws and has implemented appropriate procedures to assure its continued compliance with such laws. Tenant hereby agrees to defend, indemnify, and hold harmless Landlord, its officers, directors, agents and employees, from and against any and all claims, damages, losses, risks, liabilities and expenses (including attorney's fees and costs) arising from or related to any breach of the foregoing representations, warranties and covenants. At any time and from time-to-time during the term, Tenant shall deliver to Landlord within ten (10) days after receipt of a written request therefor, a written certification or such other evidence reasonably acceptable to Landlord evidencing and confirming Tenant's compliance with this paragraph.

26.25 Statement Required under California Civil Code § 1938. The Premises has not undergone inspection by a Certified Access Specialist.

## **XXVII. RIGHT OF FIRST REFUSAL**

27.1 General. Provided that (i) this Lease is in full force and effect, and (ii) no Event of Default shall exist under this Lease, either on the date Tenant exercises its Right of First Refusal (as defined herein) or as of the date Tenant takes occupancy of such space, or would exist but for the pendency of any cure periods provided under **Section 21.1**, herein;

Landlord agrees that Tenant shall have a right to lease the First Refusal Space on the following terms and conditions (the "Right of First Refusal"). As used herein "First Refusal Space" shall mean that certain approximately 297,060 square foot space located adjacent to the Premises and identified on **Exhibit A-1** attached hereto and incorporated by reference herein. If during the Term Landlord receives from a prospective third party tenant an offer to lease all or a portion of the First Refusal Space which Landlord is willing to accept (the "Third Party Offer"), it shall promptly notify Tenant in writing of the Third Party Offer. Tenant shall have a period of five (5) business days after the date following the notice to Tenant within which to exercise the Right of First Refusal (the "Acceptance Period") by delivery to Landlord of written notice of its exercise on or before the last day of the Acceptance Period. If Tenant fails to duly and timely exercise the Right of First Refusal, or elects not to exercise the Right of First Refusal, the same shall lapse, and be of no further force and effect, and Landlord shall be free to lease the First Refusal Space and provided that Landlord enters into a lease on substantially the same economic terms as the Third Party Offer (i.e., base rent not less than ninety percent of that set forth in the Third Party Offer) within one hundred eighty (180) days following the expiration of the Acceptance Period, Tenant's Right of First Refusal to the First Refusal Space (or portion thereof covered by the Third Party Offer) shall be inapplicable for the term of such lease and any renewals or extensions thereof.

Within ten (10) days after the effective date of Tenant's exercise of the Right of First Refusal, Landlord and Tenant shall enter into an amendment to this Lease. The amendment shall add the First Refusal Space to the Premises and subject the First Refusal Space to the terms and provisions of this Lease and Landlord shall deliver the First Refusal Space to Tenant in its then "AS IS" condition, "WITH ALL FAULTS," provided that all building systems shall be in operational order and in compliance with all laws. If Tenant fails to timely execute the amendment, then the First Refusal Right shall terminate and the First Refusal Space shall not be added to the Premises.

The Right of First Refusal will automatically terminate and become null and void upon the earlier to occur of (i) the termination of Tenant's rights of possession of the Premises or (ii) the sublease by Tenant of all of the Premises or (iii) the assignment of the Lease by Tenant to a party other than a Related Party.

## **XXVIII. RENEWAL OPTION**

28.1 **Grant of Option and General Terms.** Provided that (i) this Lease is in full force and effect, and (ii) no Event of Default shall exist under this Lease, either on the date Tenant exercises a Renewal Option (as hereinafter defined) or as of the effective date of a Renewal Term (as hereinafter defined), or would exist but for the pendency of any cure periods provided under **Section 21.1** herein; Tenant shall have the option to extend the Term of this Lease with respect to the entire Premises for three (3) additional periods (each a "Renewal Option") of five (5) years (each a "Renewal Term"). The Renewal Option shall be subject to all of the terms and conditions contained in the Lease except that (i) the Renewal Rent (as hereinafter defined) shall be at the then prevailing Market Rate (as defined below) on the commencement date of the applicable Renewal Term; (ii) Landlord shall have no obligation to improve the Premises or provide any improvement allowance; and (iii) there shall be no further option to extend the Term beyond the third Renewal Term.

28.2 **Determination of Market Rate.** Tenant shall send Landlord a preliminary expression of Tenant's willingness to renew this Lease no earlier than 365 days or later than 270 days prior to the expiration of the then current Term of this Lease (the "Renewal Notice"). In the event Tenant timely provides Landlord with Tenant's Renewal Notice, Landlord shall notify Tenant ("Landlord's Response"), within thirty (30) days of the Renewal Notice of the Renewal Rent to be payable by Tenant during the Renewal Term. Upon receipt of Landlord's Response, Tenant shall thereafter have the right, exercisable by written notice to Landlord on or before 30 days after Landlord's delivery of Landlord's Response to (i) reject Landlord's Response and rescind its Renewal Notice, in which event this **Article XXVIII** shall be null and void in all respects and Tenant shall vacate and surrender the Premises to Landlord in accordance with this Lease upon expiration of the initial Term, (ii) accept Landlord's Response or (iii) reject Landlord's Response and elect to have the Market Rate determined by the Three-Appraiser Method (as defined below). In the event Tenant fails to accept or reject Landlord's Response on or before the expiration of such 30-day period, then it shall be conclusively deemed that Tenant shall have irrevocably exercised its Renewal Option under this **Article XXVIII** for the Renewal Rent stated in Landlord's Response. In the event any date referenced in this **Section 28.2** falls on a day other than a business day, such date shall be deemed to be the next following business day. If Tenant elects to invoke the Three-Appraiser Method, then each of Landlord and Tenant shall within ten (10) days following Tenant's election designate an appraiser to provide a detailed determination of the Market Rate on their behalf. Said real estate appraisers shall each (i) be licensed in the state in which the Premises is located with a SIOR or CCIM designation, have been actively and continuously engaged in the leasing of industrial/office space in the Stockton/Tracy/Lathrop/Manteca

metropolitan area for the preceding five (5) years, (ii) during that time period have been the primary broker representing either the landlord or tenant in a lease covering at least 250,000 square feet of industrial/office space, and (iii) be unaffiliated with either Landlord or Tenant and recognized as ethical and reputable within their field. The two (2) appraisers selected by Landlord and Tenant shall promptly select a third appraiser ("Arbitrating Appraiser") within fifteen (15) days after they both have been appointed, and each appraiser, within thirty (30) days after the third appraiser is selected, shall submit to the Arbitrating Appraiser his or her determination of the then projected Market Rate. The Arbitrating Appraiser shall select either the Tenant's appraiser's or the Landlord's appraiser's determination of the Market Rate as the Market Rate applicable to the Renewal Term and such determination shall be binding upon the parties.

28.3 Renewal Rent. The Renewal Rent for the Renewal Term shall be an amount equal to the prevailing Market Rate. As used herein "Market Rate" shall mean the then prevailing market rate for triple net base rent (and with charges for parking, which parking charges shall be in addition to Basic Rent) for tenants of comparable quality for renewal leases in buildings of comparable size, age, use, location and quality in the Stockton, California market area, taking into consideration the extent of the availability of space as large as the Premises in the marketplace and all other economic terms then customarily prevailing in such renewal leases in said marketplace.

28.4 Personal Option. This Renewal Option is personal with respect to KeHE Distributors, LLC. Any assignment or subletting shall automatically terminate KeHE Distributors, LLC's rights hereunder. Time is of the essence with respect to the provisions of this Article XXVIII.

*Signature Page Attached*


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

**LANDLORD:**

US Cactus Stockton, LLC,  
a California limited liability company

By: US Real Estate Limited Partnership,  
a Texas limited partnership,  
its sole Member

By: USAA Real Estate Company,  
a Delaware corporation,  
its General Partner

By:   
Name: James Hime  
Title: Chief Financial Officer  
Date Executed: 1/14/15

**TENANT:**

KeHE Distributors, LLC,  
a Delaware limited liability company

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

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

Title: \_\_\_\_\_

Date Executed: \_\_\_\_\_

**IN WITNESS WHEREOF**, Landlord and Tenant have duly executed this Lease as of the day and year first above written.

**LANDLORD:**

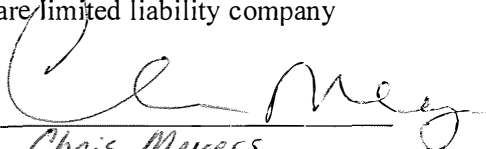
US Cactus Stockton, LLC,  
a California limited liability company,

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date Executed: \_\_\_\_\_

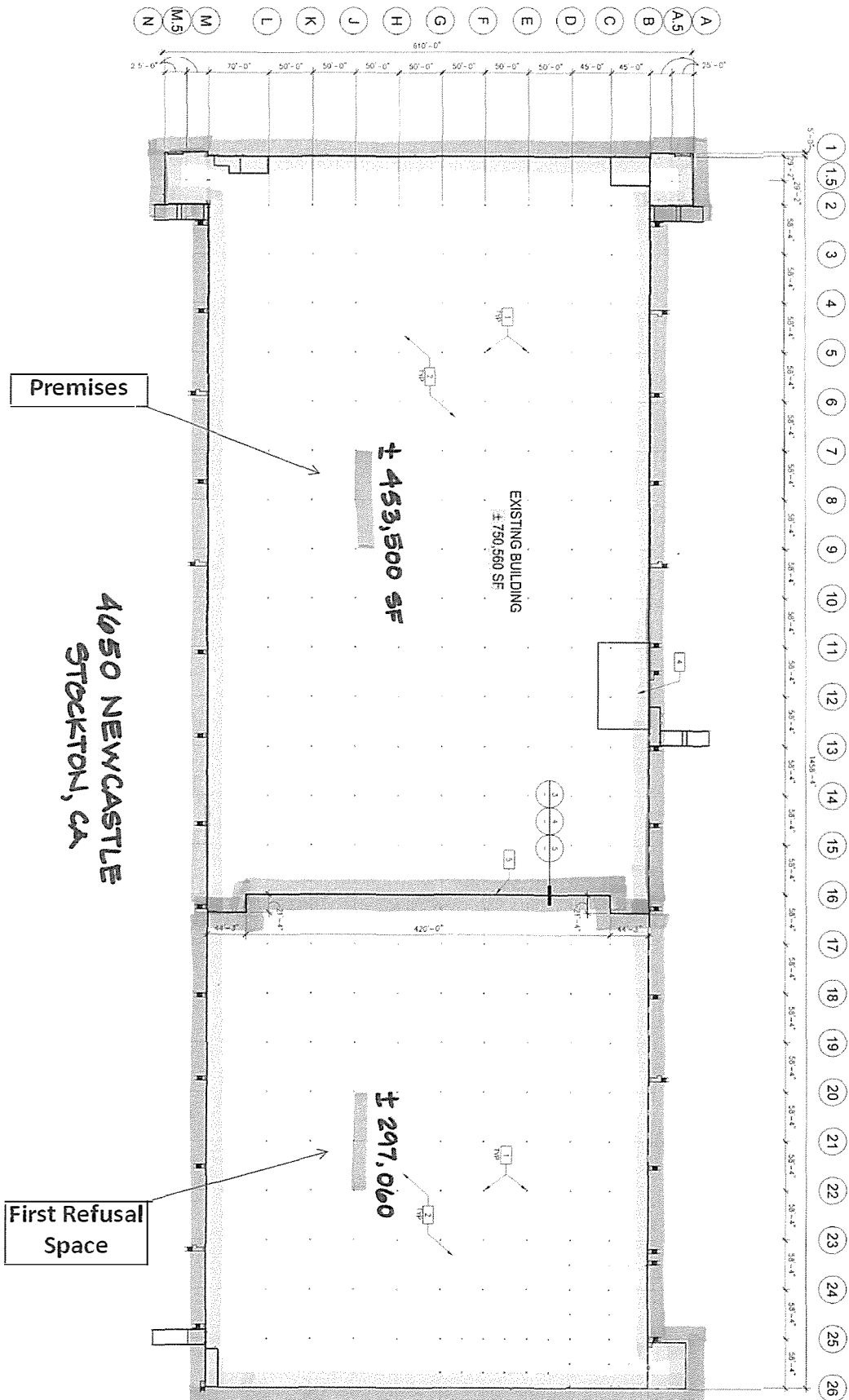
**TENANT:**

KeHE Distributors, LLC,  
a Delaware limited liability company

By:   
Name: Chris Meyers  
Title: CEO

Date Executed: 1/14/15

## DESCRIPTION OF PREMISES AND SITE PLAN



**EXHIBIT A-2**

**LEGAL DESCRIPTION OF LAND**

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

CITY OF STOCKTON

ADJUSTED PARCEL 3, AS DESCRIBED IN THE GRANT DEED RECORDED MAY 14, 2008, INSTRUMENT NO. 2008-79801, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING PORTIONS OF THOSE CERTAIN PARCELS OF LAND CONTAINING 135.000 ACRES GROSS AND 22.06 ACRES GROSS AS SHOWN ON THAT CERTAIN RECORD OF SURVEY FILED FOR RECORD ON FEBRUARY 5, 1969, IN BOOK 18 OF SURVEYS AT PAGE 126, OFFICIAL RECORDS SAN JOAQUIN COUNTY AND A PORTION OF PARCEL A OF THAT CERTAIN DOCUMENT ENTITLED "GRANT DEED", RECORDED ON JULY 10, 2007, AS INSTRUMENT NUMBER 2007-125731, OFFICIAL RECORDS SAN JOAQUIN COUNTY AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE CENTERLINE OF NEWCASTLE ROAD AND THE MONUMENT LINE OF ARCH ROAD, SAID POINT BEING THE SOUTHWEST CORNER OF THE NORTHWEST ¼ OF SECTION 27, TOWNSHIP 1 NORTH, RANGE 7 EAST, MOUNT DIABLO BASE AND MERIDIAN, AS SHOWN ON SAID MAP (18 R.S. 126); THENCE ALONG SAID CENTERLINE OF NEWCASTLE ROAD, NORTH 00° 21' 46" WEST, 1846.78 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION;

THENCE CONTINUING ALONG SAID CENTERLINE, NORTH 00° 21' 46" WEST, 806.68 FEET TO THE NORTHWEST CORNER OF SAID SECTION 27;

THENCE ALONG THE NORTHERLY PROLONGATION OF SAID CENTERLINE OF NEWCASTLE ROAD, NORTH 00° 21' 46" WEST, 106.32 FEET;

THENCE LEAVING LAST SAID LINE, NORTH 89° 38' 14" EAST, 2657.47 FEET TO A POINT ON THE NORTHWESTERLY PROLONGATION OF THE EASTERLY LINE OF THE AFOREMENTIONED 135.000 ACRE PARCEL OF LAND (18 R.S. 126), SAID EASTERLY LINE ALSO BEING THE EASTERLY LINE OF THE NORTHWEST 1/4 OF SAID SECTION 27;

THENCE SOUTHERLY ALONG SAID NORTHERLY PROLONGATION OF SAID EASTERLY LINE, SOUTH 00° 16' 03" EAST, 125.50 FEET TO THE NORTHEAST CORNER OF THE NORTHWEST 1/4 OF SAID SECTION 27;

THENCE CONTINUING ALONG SAID EASTERLY LINES, SOUTH 00° 16' 03" EAST, 1381.39 FEET TO A POINT THAT BEARS NORTH 00° 16' 03" WEST, 1269.08 FEET FROM THE SOUTHEAST CORNER OF THE NORTHWEST 1/4 OF SAID SECTION 27, SAID SOUTHEAST CORNER ALSO BEING LOCATED ON THE MONUMENT LINE OF ARCH ROAD;

THENCE LEAVING SAID EASTERLY LINE, SOUTH 89° 43' 57" WEST, 72.00 FEET;

THENCE SOUTH 74° 35' 18" WEST, 961.47 FEET TO A POINT THAT BEARS NORTH 89° 38' 14" EAST, 1654.47 FEET, AND SOUTH 00° 21' 46" EAST, 843.40 FEET FROM THE POINT OF BEGINNING OF THIS DESCRIPTION;

THENCE NORTH 00° 21' 46" WEST, 843.40 FEET;

THENCE SOUTH 89° 38' 14" WEST, 1654.47 FEET TO THE POINT OF BEGINNING.

## EXHIBIT B

### WORK AGREEMENT

This Work Agreement supplements the Industrial Lease Agreement (the "**Lease**"), executed concurrently herewith, by and between Landlord and Tenant, covering certain Premises described in the Lease. All terms not defined herein shall have the same meaning set forth in the Lease.

#### A. LANDLORD'S WORK

1. Improvements. Landlord shall perform the following work at Landlord's sole cost and expense:

1. All existing equipment in the Premises and the roof are in good working order prior to occupancy. Landlord shall cover the cost of repairs to the Freezer/Cooler Equipment which are not part of the Start-up Work to the extent necessary to cause the Freezer/Cooler Equipment to be in good working order;
2. Construct sheet rock demising wall to separate Tenant's space from remainder of warehouse space;
3. Separate warehouse electrical for Tenant's space on separate meter/transformer/or submeter;
4. Modify fire sprinklers to accommodate separation of the Premises;
5. Other utilities will be sub-metered for the Premises (other than sewer);
6. Chain link fencing and gates (as needed) to separate Tenant's truck court from remainder of Building;
7. The power to be provided to Tenant's space shall be roughly 8,000 amps to be served primarily from the northwestern and southwestern PG&E transformers which are each 4,000 amps services. Actual amperage shall be determined upon further design of the electrical split for the Tenant's Space (collectively, the "**Landlord Improvements**").

The Landlord Improvements shall be constructed pursuant to this Work Agreement. All Landlord Improvements shall become the property of Landlord upon expiration or earlier termination of the Lease and shall remain on the Premises at all times during the Term of the Lease. In the event Landlord fails to complete any of the Landlord Improvements on or before the later of (x) April 1, 2015 and (y) five days following written notice of the need for such Landlord Improvements with respect to performance of repairs for which Landlord is responsible with respect to the Freezer/Cooler Equipment, other than as a result of Tenant Delay (the foregoing deadlines shall be extended on a day-for-day basis for any Tenant Delay), Tenant shall have the right, but not the duty, to perform such work on behalf of and for the account of Landlord and Landlord shall reimburse Tenant within ten (10) business days following demand for all actual and reasonable out-of-pocket expenses incurred by Tenant in performing such work.

2. Completion Date. Landlord shall use commercially reasonable efforts to complete Landlord Improvements in accordance with the terms of this Work Agreement within seventy-five (75) days following receipt of a permit for Landlord's Work and currently anticipates completing Landlord's Work by March 15, 2015 (the "Estimated Commencement Date"), but neither the validity of this Lease nor the obligations of Tenant under this Lease shall be affected by a failure to complete the Landlord Improvements by such date, and Tenant shall have no claim against Landlord because of Landlord's failure to complete the Landlord Improvements on the date originally fixed therefor. Notwithstanding the foregoing, if Landlord has not achieved Substantial Completion (as hereafter defined) of the Landlord Improvements by the Estimated Commencement Date for any reason other than Tenant Delay (as hereafter defined) the Commencement Date shall be delayed on a day for day basis until Substantial Completion of the Landlord Improvements is achieved. Notwithstanding the foregoing, if Landlord has not achieved Substantial Completion (as hereafter defined) of the Landlord Improvements by June 1, 2015 for any reason other than Tenant Delay Tenant shall be entitled to a credit against rent payable under the Lease equal to two days' of rent for each day beyond June 1, 2015 that Substantial Completion of the Landlord Improvements is delayed, and if Substantial Completion of the Landlord Improvements is delayed beyond August 31, 2015 for any reason other than Tenant Delay, Tenant may terminate this Lease. As used herein, a "Tenant Delay" shall mean any delay in the performance of Landlord's Improvements caused by Tenant or Tenant's or Tenant's contractors, agents, employees or representatives. "Substantial Completion" of the Landlord Improvements shall be conclusively deemed to have occurred as soon as the Landlord Improvements to be installed by Landlord pursuant to this Work Agreement has been constructed, subject to minor or insubstantial details of construction, decoration or mechanical adjustment, the lack of completion of which will not materially interfere with Tenant's permitted use of the Premises, and delays in the Substantial Completion of the Landlord Improvements due to a Tenant Delay.

## B. TENANT'S WORK

### 1. General

1.1 Purpose. This Work Agreement sets forth the terms and conditions governing Tenant's construction of tenant improvements to be installed in the Premises (the "**Tenant Work**"), including, without limitation, office modifications, expand the freezer by two bays (approx. 40,000 SF new construction; approx. 61,000 SF total) and the Start-up Work. Tenant shall perform that scope of work associated with the start-up and charging of the existing refrigeration/freezer systems of the Premises (the "**Start-up Work**") which are identified on Exhibit B-1, attached hereto. If Landlord is designated by Tenant to act as project manager for all of Tenant's build-out needs, said improvements shall be competitively bid out to no less than three (3) general contractors to be agreed upon by both Tenant and Landlord; provided, however, that Tenant shall have the right to designate the contractors to perform the Tenant's Work. Tenant shall commence the Start-up Work within thirty (30) days following the Effective Date and Tenant shall give Landlord notice of its intent to commence the Start-Up Work.

Landlord shall manage the work related to the Tenant Work Allowance (defined below) but shall not charge Tenant a management fee on the Tenant Work Allowance. The Tenant Work Allowance may be applied against the Start-Up Work.

1.2 Construction Representatives. Landlord hereby appoints, and Tenant hereby approves, Jason Hans as Landlord's representative ("**Landlord's Representative**") to act for Landlord in all matters covered by this Work Agreement. Tenant hereby appoints and Landlord hereby approves Craig Turner as Tenant's representative ("**Tenant's Representative**") to act for Tenant in all matters covered by this Work Agreement. All inquiries, requests, instructions, authorizations or other communications with respect to the Tenant Work shall be made to Landlord's Representative or Tenant's Representative, as the case may be. Authorizations made by Tenant's Representative shall be binding and Tenant shall be responsible for all costs authorized by Tenant's Representative. Either party may change its representative at any time by written notice to the other party. Landlord shall not be obligated to respond to or act upon any plan, drawing, change order approval or other matter relating to the Tenant Work until it has been executed or otherwise approved in writing by Tenant's Representative.

### 2. Tenant Work Allowance.

2.1 Allowance for Tenant Work. Tenant shall receive as a credit against the actual Cost of the Tenant Work (as defined in this Paragraph) an amount up to Two Million Four Hundred Sixty-seven Thousand Dollars (\$2,467,000.00) (the "**Tenant Work Allowance**"). Landlord shall pay the Tenant Work Allowance directly to Tenant or, at Tenant's option, to Tenant's architect or Tenant's general contractor, as the case may be. Landlord shall have no obligations to pay, reimburse or allow Tenant any right of offset to the extent of any unspent portion of the Tenant Work Allowance, except that up to \$300,000.00 of any unspent portion of the Tenant Work Allowance may be credited towards Basic Rent. All costs of the Tenant Work in excess of the Tenant Work Allowance shall be payable by Tenant. "**Cost of the Tenant Work**" means all costs to be expended in connection with the construction of the Tenant Work, including but not limited to the following: (i) architectural and engineering fees incurred in connection with the preparation of the Test Fit (as defined in Paragraph 2.2) and the Tenant's Plans (as defined in Paragraph 2.2); (ii) governmental agency plan check, permit and other fees; (iii) sales and use taxes, if any; (iv) insurance fees associated with the construction of the Tenant Work; (v) testing and inspecting costs; and (vi) the actual costs and charges for material and labor, contractor's profit and contractor's general overhead incurred in constructing the Tenant Work. The Tenant Work Allowance shall be available to Tenant through the date that is 18 months after the Commencement Date and thereafter up to \$300,000.00 of any unspent portion of the Tenant Work Allowance shall be credited towards Basic Rent and the balance shall no longer be available to Tenant.

2.2 Allowance for Design. As more fully described below, Tenant shall cause its architect to prepare a Space Plan and Construction Drawings and Specifications as defined below (collectively referred to as the "**Tenant Plans**").

2.3 Disbursement of Tenant Work Allowance for Tenant Work. (a) Landlord shall make progress payments of the Tenant Work Allowance on account of the Tenant Work to Tenant as follows:

i. Not more often than once per month, Tenant shall submit to Landlord's Representative for approval, such approval not to be unreasonably withheld or delayed, Tenant's contractor's or contractors' application(s) for payment for Tenant Work completed during the preceding month.

ii. Each application for payment shall be based on an approved schedule of values incorporated in the construction documents. The schedule of values (a) shall allocate the entire construction contract sum among the various portions of the Tenant Work, (b) shall be prepared in such form and supported by such reasonable data as is necessary to substantiate its accuracy as Landlord's Representative may reasonably require, and (c) shall be used as a basis for reviewing Tenant's Contractor's applications for payment.

iii. Each application for payment shall be for an amount equal to the estimated cost of the Tenant Work completed, and less all previous payments.

iv. Each application for payment shall include from Tenant's Contractor and all subcontractors and materialmen (a) an unconditional lien waivers for Costs of the Tenant Work at least equal to all prior advances of the Tenant Work Allowance and (b) a conditional lien waiver for Costs of the Tenant Work at least equal to the pending payment application. The form of conditional lien waiver to be executed by Tenant's Contractor and its subcontractors and materialmen shall be in the applicable statutory form.

(b) Within twenty (20) days after the submission of each application for payment to the Landlord's Representative, the amount thereof, as approved above, shall be due and payable by Landlord to Tenant in current funds.

2.4 Mechanic's Liens. In the event that any mechanic's lien is recorded against the Building or Premises or any stop notices are served on Landlord during the course of the Tenant Work, then Landlord shall have the right to withhold from the Tenant Work Allowance a sum equal to one hundred fifty percent (150%) of the disputed amount. Landlord shall have the right to make payment of the disputed sum directly to the claimant to cause the release of any mechanic's lien that has been filed against the Building or Premises or to cause the release of any stop notice served on Landlord where said lien has not been removed by the recordation of either a release of mechanic's lien or a statutory lien release bond issued by a corporate surety reasonably acceptable to Landlord within ten (10) business days following the date Tenant receives notice of filing of the mechanic's lien or Landlord's receipt of the stop notice.

### 3. Design and Schedule.

#### 3.1 Tenant Plans for Tenant Work.

(a) Space Plan: The "Space Plan" as used herein shall mean a plan containing, among other things, a partition layout, door location and system furniture located in key spaces within the Premises.

(b) Construction Drawings and Specifications: The "Construction Drawings and Specifications" as used herein shall mean the construction working drawings, the mechanical, electrical and other technical specifications, and the finishing details, including wall finishes and colors and technical and mechanical equipment installation, if any, all of which details the installation of the Tenant Work in the Premises. The Construction Drawings and Specifications shall:

(i) be compatible with the Building shell, and with the design, construction and equipment of the Building;

(ii) comply with all applicable laws, codes and ordinances including the Americans With Disabilities Act, and the rules and regulations of all governmental authorities having jurisdiction;

(iii) comply with all applicable insurance regulations and the requirements of the Board of Underwriters for a fire resistant Class A building; and

(iv) include locations of all Tenant Work including complete dimensions.

(c) Except as specified by Landlord pursuant to Paragraph 8 hereof, all Tenant Work, whether covered by the Tenant Work Allowance or not, which is permanently affixed to the Premises or alters the operational systems of the Building shall become the property of Landlord upon expiration or earlier termination of the Lease and shall remain on the Premises at all times during the Term.

3.2 Approvals by Landlord. Landlord has approved ESI Group USA as Tenant's design and build professionals, which design and build professionals shall generate the mechanical, electrical plans for the freezer / cooler

system. All Tenant Plans for the Tenant Work shall be subject to Landlord's prior written approval, which shall not be unreasonably withheld, except that Landlord shall have complete discretion with regard to granting or withholding approval of the Tenant Plans to the extent they materially impact the Building's structure. Any changes, additions or modifications that Tenant desires to make to the Tenant Plans also shall be subject to Landlord's prior written approval, which shall not be unreasonably withheld except as provided above for Building structure impact. The contract with Tenant's general contractor shall be subject to Landlord's prior written approval, which shall not be unreasonably withheld, except that Landlord shall have the right to withhold its approval in the event that the contract does not contain a written construction schedule (the "Written Construction Schedule").

3.3 Course of Construction. If the course of construction of the Tenant Work as set forth in the Written Construction Schedule is delayed for a time period equal to or greater than two weeks, then Landlord shall have the right to require a meeting with Tenant's general contractor and appropriate consultants.

4. Construction of Tenant Work. Following Landlord's final approval of the Tenant Plans and Tenant obtaining building and other governmentally required permits, Tenant shall commence and diligently proceed with the construction of the Tenant Work. Landlord and Tenant acknowledge that Tenant shall hire its own general contractor or contractors to complete the Tenant Work. The Tenant Work shall be conducted with due diligence, in a good and workmanlike manner befitting a first class industrial building, and in accordance with the Tenant Plans and all applicable laws, codes, ordinances and rules and regulations of all governmental authorities having jurisdiction.

In addition to Tenant's indemnity obligations under the Lease, Tenant hereby agrees to indemnify Landlord and hold Landlord harmless from any and all claims for personal or bodily injury and property damage that may arise from the performance of the Tenant Work, whether resulting from the negligence or willful misconduct of its general contractors, subcontractors or otherwise, except to the extent caused by the negligence or willful misconduct of Landlord or Landlord's Agents or representatives. Tenant shall, and use commercially reasonable efforts to cause its contractors and subcontractors shall execute such additional documents as Landlord deems reasonably appropriate to evidence said indemnity.

Notwithstanding the foregoing, Tenant shall not commence the Tenant Work until the following is provided:

(a) Insurance. Prior to construction, Tenant shall cause the general contractor to provide Landlord with an original certificate of All-Risk Builder's Risk Insurance (the "Builder's Risk Insurance Policy"), subject to Landlord's reasonable approval, in the minimum amount of the replacement cost of the Tenant Work issued by a company or companies acceptable to Landlord and authorized to do business in California, covering the Premises, with premiums prepaid, and which names the Landlord as an additional insured. Said policy shall insure the Tenant Work and all materials and supplies for the Tenant Work stored on the Premises (or at any other sites) against loss or damage by fire and the risks and hazards insured against by the standard form of extended coverage, and against vandalism and malicious mischief, and such other risks and hazards as Landlord may reasonably request. Said insurance coverage shall be for 100% of replacement cost, including architectural fees. The Builder's Risk Insurance Policy shall contain a provision that the insurance company waives the rights of recovery or subrogation against Landlord and Landlord's Agents and their insurers.

(b) Governmental Permits. Building permits and other appropriate permits and licenses from the appropriate agency or office of any governmental or regulatory body having jurisdiction over the Premises and which are required for the construction of the Tenant Work.

(c) Accepted Contract and Bid. Tenant shall provide Landlord with a copy of the contract entered into with the general contractor, which shall include the Written Construction Schedule and the names of all subcontractors, materialmen and suppliers. Tenant shall further provide Landlord with a copy of the contract (which may be in the form of a purchase order or work authorization) for any design professionals and other vendors involved in the execution of the Tenant Work.

5. Change Orders. If Tenant desires any change or addition to the work or materials to be provided pursuant to this Tenant Work Agreement after Tenant's and Landlord's approval of the Tenant Plans, Tenant shall provide Landlord with a description of the scope of the work which shall be subject to approval in accordance with the terms of Section 3.2 hereof.

6. Inspection by Landlord. Landlord shall have the right to inspect the Tenant Work at all reasonable times upon prior notice to Tenant. Landlord's failure to inspect the Tenant Work shall in no event constitute a waiver of any of Landlord's rights hereunder nor shall Landlord's inspection of the Tenant Work constitute the Landlord's approval of same.

7. Removal of Tenant Improvements. Tenant shall not be required to remove any portion of Tenant's work at the expiration or termination of the Lease or any Renewal Term.

9. Completion of Tenant Work. Tenant shall notify Landlord in writing when the Tenant Work has been Substantially Completed. Notwithstanding anything to the contrary, the Tenant Work shall not be considered Substantially Completed until all designated or required governmental inspections, permits and certifications necessary for the Tenant Work, including, but not limited to final inspection by the governing jurisdiction, have been made, given and/or posted.

Signature Page Attached

EXECUTED the 14<sup>th</sup> day of January, 2015.

LANDLORD:

TENANT:

US Cactus Stockton, LLC,  
a California limited liability company

KeHE Distributors, LLC,  
a Delaware limited liability company

By: US Real Estate Limited Partnership,  
a Texas limited partnership,  
its sole Member

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

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

Title: \_\_\_\_\_

By: USAA Real Estate Company,  
a Delaware corporation,  
its General Partner

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

Name: James Hime

Title: Chief Financial Officer

EXECUTED the 14<sup>th</sup> day of January, 2015.

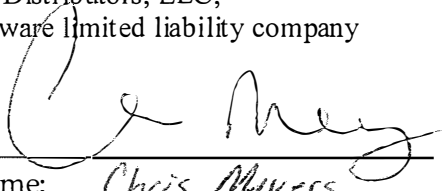
LANDLORD:

US Cactus Stockton, LLC,  
a California limited liability company,

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

TENANT:

KeHE Distributors, LLC,  
a Delaware limited liability company

By:   
Name: Chris Meyers  
Title: CFO

## **EXHIBIT B-1**

### **START-UP WORK**

Start-Up Work as defined in the Work Agreement shall be defined as the following:

1. Pre-startup Check: Includes a visual check of the general condition of the system, refrigerant piping, insulation, compressor packages, condensers, and receiver, check motor rotations, cold alignment of compressor/motors, testing of safety controls verification that valve tags and pipe labels are properly installed.
2. Pressure Test: System will be pressure tested with nitrogen and held for 24 hours.
3. Evacuation: System will be pulled into a 750 micron vacuum and evacuated to remove moisture.
4. Compressor Start-up: Set up of microprocessor including set points and sensor calibrations, verify proper operation of oil pump, verify proper operation of oil return system, verify proper operation of slide valve, hot alignment, take oil sample for analysis, baseline vibration analysis.
5. Condenser Start-up: Align motor and fan pulleys, verify proper wiring, check belt tension, check for water leaks, purge solenoids in operation, verify nozzle spray patterns, check head pressure controls, verify that all eliminators are in place and fastened down check strainers. \*\*It is recommended that the condenser is pacified prior to start up. This task is not included in this scope and work and should be provided by the water treatment contractor.
6. Evaporator Start-up: Motors and fans on evaporators will be rotated and bump tested. Superheats will be checked and metering valves adjusted as needed.
7. Charge Refrigerant: System will be charged with 20,000 lbs. of R-507 refrigerant as specified on the supplied drawings.
8. Charge Glycol: System will be charged with 6,000 gallons of propylene glycol in a 30% solution as specified on the supplied drawings.
9. Control System Start-up: Logic controls tech will start-up and test the controls system.
10. Training of Personnel: One training session will be provided for plant personnel that will cover basic system operation of the system.

**EXHIBIT C**

**SECRETARY'S CERTIFICATE**

The undersigned, as secretary of KeHE Distributors, LLC (the "Company") named below, certifies that at a special meeting of the Managers of the Company, duly called and held on the 13<sup>th</sup> day of January, 2015, which a quorum of the Managers were present and acting throughout, the following resolutions were unanimously adopted and are still in force and effect:

RESOLVED that the president, the vice president or other officers listed below of the Company shall be authorized to execute a lease for warehouse and office space on behalf of the Company, described below:

Date of Lease: January\_\_\_\_, 2015

Landlord: US Cactus Stockton, LLC

Tenant: KeHe Distributors, LLC, a Delaware limited liability company

Premises: 4650 Newcastle Road, Stockton, California

Building Address: 280 North Pioneer Avenue, Stockton, California

RESOLVED FURTHER, that the president, vice president or other officer listed below is authorized on behalf of the Company to execute and deliver to the Landlord all instruments reasonably necessary for the Lease. Landlord is entitled to rely upon the above resolutions until the board of directors of the Company revokes or alters same in written form, certified by the secretary of the Company, and delivers same, certified mail, return receipt requested, to the Landlord. The Company is duly organized and is in good standing under the laws of the State of Delaware. The undersigned further certifies that on the meeting date referred to above, the names and respective titles of the officers of the Company were as follows:

<u>Name</u>	<u>Title</u>
<u>Brandon Barnholt</u>	<u>President</u>
<u>Christopher Meyers</u>	<u>Secretary / Treasurer</u>
<u>Joel Jorgensen</u>	<u>Authorized Signatory</u>

WITNESS MY HAND this 13<sup>th</sup> day of January, 2015.

KeHE Distributors, LLC

Name of Company

Signature of Secretary of Company

CHRIS MEYERS

Name of Secretary

***Acknowledgement Attached***

This instrument was acknowledged before me on the 13<sup>th</sup> day of JANUARY, 2015 by CHRIS MEYERS, SECRETARY of KeHE Distributors, LLC, a Delaware limited liability company, on its behalf.



Maryann Wickham  
Notary Public for the State of ILLINOIS  
Name of Notary: MARYANN WICKHAM

## **EXHIBIT D**

### **INDUSTRIAL PARK - RULES AND REGULATIONS**

Tenant covenants and agrees to comply with the following rules and regulations as they may be modified or amended during the Term. Landlord will not be responsible to Tenant for the nonperformance of such rules and regulations by any other tenant or occupant of the Project.

1. The sidewalks, entrances, passages, elevators, vestibules, stairways, corridors or hall shall not be obstructed by Tenant or used for any purpose other than ingress and egress to and from the Premises.

2. No awning or other projections shall be attached to the outside walls of the Premises or the building of which they form, and no curtains, blinds, shades, screens or lights shall be attached to or hung in, or used in connection with any exterior window or exterior door of the Premises without, in each instance, the prior written consent of Landlord. No tenant and no employees of any tenant shall go upon the roof of the Building without the consent of Landlord.

3. Tenant shall not place, affix or maintain any showcases, merchandise, security devices, signs or other articles to the exterior of Tenant's Premises or in the common areas of the Project without the prior written consent of the Landlord.

4. Except as otherwise permitted under the Lease, no sign, advertisement, display, notice, or other lettering shall be exhibited, inscribed, painted, or affixed on any part of the outside of the Premises or inside, if visible from the outside, or outside the building of which they form a part, and no symbol, design, mark, or insignia adopted by Landlord for the Building or the tenants therein shall be used in connection with the conduct of Tenant's business in the Premises or elsewhere without, in each instance, the prior written consent of Landlord. All such signs, displays, advertisements, and notices of Tenant so approved by Landlord shall be maintained by Tenant in good and attractive condition at Tenant's expense and risk. Tenant shall not use handbills for advertising at the Building.

5. The Premises shall not be used for (i) an auction, "fire sale", "liquidation sale", "going out of business sale" or any similar such sale or activity, (ii) lodging or sleeping, or (iii) any immoral or illegal purposes, unless pursuant to court order.

6. No radio or television or other similar device shall be installed without, in each instance, Landlord's prior written consent not to be unreasonably withheld. No aerial shall be erected on the roof or exterior walls of the Premises, or on the grounds without, in each instance, the prior written consent of Landlord. Any aerial so installed without such written consent shall be subject to removal without notice at any time.

7. No loud speakers, television sets, phonographs, radios, musical instruments or other devices shall be used in a manner so as to be heard or seen outside of the Premises without the prior written consent of Landlord.

8. Tenant shall not make or permit any noise, odor or gases which Landlord deems objectionable to emanate from the Premises. Tenant shall not suffer, allow, or permit any vibration, light, or other effect to emanate from the Premises, or from any machine or other installation therein, or otherwise suffer, allow, or permit the same to constitute a nuisance or otherwise interfere with the safety, comfort, or convenience of Landlord or any of the other tenants or occupants of the Building or their Agents, or any others lawfully in or upon the Building. Upon notice by Landlord to Tenant that any of the aforesaid is occurring, Tenant agrees to forthwith remove or control the same.

9. Canvassing, soliciting and peddling in the Building are prohibited and each Tenant shall cooperate to prevent the same.

10. No material shall be placed in the trash boxes, containers or receptacles in the Building unless such material may be disposed of in the ordinary and customary manner of removing and disposing of trash and garbage and will not result in a violation of any law or ordinance governing such disposal. All empty boxes, containers, garbage and other refuse shall be kept in the kind of container specified by Landlord, and shall be placed in the area specified by Landlord and prepared for collection in the manner and at the times and places specified by Landlord. If Landlord shall provide or designate a service for picking up refuse and garbage, Tenant shall use same at Tenant's cost, provided such cost shall be competitive to any similar service available to Tenant. Tenant will not install or cause to be installed any automatic garbage disposal equipment without the prior written consent of Landlord.

11. The toilet rooms, urinals, wash bowls and other apparatus shall not be used for any purposes other than those for which they were constructed. No foreign substance of any kind (including sweepings, rubbish, rags, etc.) shall be thrown therein and the expense for any breakage, stoppage, or damage resulting from the violation of this rule shall be borne by the Tenant who, or whose employees or invitees shall have caused it.

12. Subject to Tenant's Parking Allocation, Landlord reserves the right, in its sole discretion, to allocate parking spaces among Building occupants. Only vehicles which reasonably fit within the lined spaces may use the parking facilities, which may not be used for the continuous parking of any vehicle or trailer, regardless of size. No parking is allowed in roadways, driveways, fire lanes, service areas, walkways, building entrances, or any other area not designated for parking. Any trucks or trailers serving the Premises shall be parked in areas designated by Landlord and shall not interfere with other occupants' access to other premises, parking, or other common areas. Landlord shall not be responsible for any illegally parked vehicle that Landlord shall have towed.

13. Tenant shall, at Tenant's cost, use such pest extermination contractor as Landlord may direct at such intervals as Landlord may require, provided the cost thereof is competitive to any similar service available to Tenant.

14. Tenant shall not install, maintain, or operate any coin or token video games, pinball machine or other entertainment devices or any coin operated device for the sale of any goods, wares, merchandise, food, beverages, or services without the prior written consent of Landlord.

15. Tenant will assure that the doors of premises are closed and locked and that all water faucets, water apparatus, and utilities are shut off (except heat to the extent necessary to prevent the freezing or bursting of pipes and heat and air conditioning to the extent necessary to prevent the drawing of heated or cooled air) before Tenant or Tenant's employees leave the Premises, so as to prevent waste or damage. For any default or carelessness in this regard, Tenant will pay for all injuries sustained by other tenants or occupants of the Building or by Landlord.

16. Tenant shall not attach or permit to be attached additional locks or similar devices to any door, transom or window of the Premises; change existing locks or the mechanism thereof, or make or permit to be made any keys for any door other than those provided by Landlord. If more than two keys for one lock are desired, Landlord will provide upon payment therefore by Tenant. Tenant, upon termination of its tenancy, shall deliver to the Landlord all keys of offices, rooms and toilet rooms which have been furnished to Tenant or which Tenant shall have had made, in the event of loss of any keys so furnished shall pay Landlord therefore.

17. Landlord shall have the right to prohibit any advertising by any tenant which in Landlord's opinion, tends to impair the reputation of the Project.

18. No tenant shall use any area within the Project for storage purposes other than the interior of the Premises.

19. Landlord will direct electricians as to where and how telephone or telegraph wires are to be introduced. No boring or cutting for wires or stringing of wires will be allowed without written consent of Landlord. The location of telephones, call boxes and other office equipment affixed to the Premises shall be subject to the approval of Landlord.

20. Parking spaces associated with the Building are intended for the exclusive use of passenger automobiles. Except for intermittent deliveries, no vehicles other than passenger automobiles may be parked in a parking space (other than spaces expressly designated for truck parking) without the express written permission of Landlord. Trucks may be parked only in truck dock positions and in other paved areas expressly designated for such purpose. Trailers may be parked only in paved areas expressly designated for such purpose. Neither trucks nor trailers may be parked or staged in (i) areas adjacent to truck docks, serving any portion of the Building, which are intended by Landlord for truck maneuvering or (ii) any driveway, drive aisle or other paved area which provides ingress or egress for cars or trucks to or from any portion of the Building or any street adjoining the Building.

21. No tenant shall use any area within the Project for storage purposes other than the interior of the Premises.

22. Tenant will have the right to stripe or mark the floor of the Building only in compliance with this rule. Landlord strongly encourages Tenant to stripe or otherwise mark the floor of the Building only with 3M floor striping tape. If Tenant elects to paint stripes or other markings on the floor of the Building, all such paint must, prior to expiration or termination of this Lease, be removed by Tenant at its expense in accordance with this rule. Paint on the floor of the Building must be removed only by use of a chemical paint remover; provided that the chemical used for removal must be permissible for such use under applicable federal, state and local laws or regulations and the chemical must be used (and all chemicals and removed paint must be disposed of) in accordance with applicable federal, state and local laws or regulations. Under no circumstances may paint be removed from the floor of the Building by grinding, scraping or shot-blasting. After paint has been chemically removed in accordance with this rule, the floor must be thoroughly cleaned to remove completely any chemical residue which might be present as a result of the removal process.

23. If Tenant installs any racking, equipment or machinery in the Building which requires installation of bolts in the floor of the Building, Tenant must, prior to expiration or termination of this Lease, at the expense of Tenant, remove all such bolts in accordance with this rule. All bolts will be cut or ground so that the top of the remaining portion of the bolt is at least one-quarter inch below the surface of the floor. All holes created by such removal of bolts must be filled with 100% epoxy,

which meets the standards set by the American Concrete Institute and which is color-matched to the floor being filled.

24. Each tenant shall store all trash and garbage within its premises or in such other areas specifically designated by Landlord. No materials shall be placed in the trash boxes or receptacles in the Building unless such materials may be disposed of in the ordinary and customary manner of removing and disposing of trash and garbage and will not result in a violation of any law or ordinance governing such disposal. All garbage and refuse disposal shall be only through entryways and elevators provided for such purposes and at such times as Landlord shall designate.

25. Landlord may waive any one or more of these rules and regulations for the benefit of any particular tenant or tenants, but no waiver by Landlord will be construed as a waiver of those rules and regulations in favor of any other tenant or tenants, nor prevent Landlord from enforcing any rules and regulations against any or all of the tenants of the Building.

**EXHIBIT E**

**NOTICE OF LEASE TERM DATES**

Date: \_\_\_\_\_

US Cactus Stockton, LLC  
9830 Colonnade Boulevard, Suite 600  
San Antonio, Texas 78230-2239  
Attention: VP Real Estate Counsel  
Attention: VP Portfolio Management

RE: Industrial Building Lease ("Lease") dated: to be effective as of \_\_\_\_\_ ("Date of Lease") between US Cactus Stockton, LLC ("Landlord"), and KeHE Distributors, LLC, a Delaware limited liability company ("Tenant"), concerning 4650 Newcastle Road, Stockton, California ("Premises").

In accordance with the subject Lease, we wish to advise and/or confirm as follows:

1. That the Premises have been accepted herewith by the Tenant as being substantially complete in accordance with the subject Lease and that there is no deficiency in construction.
2. That the Tenant has possession of the subject Premises and acknowledges that under the provisions of the subject Lease the Term of said Lease shall commence as of \_\_\_\_\_ for a term of [Initial Term] ending on \_\_\_\_\_.
3. That in accordance with the subject Lease, Rent commences to accrue on \_\_\_\_\_.
4. If the Commencement Date of the subject Lease is other than the first day of the month, then the first billing will contain a pro rata adjustment. Each billing thereafter shall be for the full amount of the monthly installment as provided for in said Lease.
5. Rent is due and payable in advance on the first day of each and every month during the term of said Lease. Rent should be payable via wire transfer to

\_\_\_\_\_  
\_\_\_\_\_  
ABA # \_\_\_\_\_  
To Credit: US Cactus Stockton, LLC  
Account #: \_\_\_\_\_

6. The number of square feet within the Premises is 453,500 square feet.
7. Tenant's Proportionate Share is 60.42%.

**LANDLORD:**

US Cactus Stockton, LLC,  
a California limited liability company

By: US Real Estate Limited Partnership,  
a Texas limited partnership,  
its sole Member

By: USAA Real Estate Company,  
a Delaware corporation,  
its General Partner

**TENANT:**

KeHE Distributors, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date Executed: \_\_\_\_\_

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

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

Title: \_\_\_\_\_

Date Executed: \_\_\_\_\_

EXHIBIT F

FORM OF LETTER OF CREDIT

DRAFT APPROVED: \_\_\_\_\_

AUTHORIZED SIGNATURE

COMPANY: KEHE DISTRIBUTORS, LLC

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

BANK OF AMERICA, N.A. - CONFIDENTIAL

DATE: JANUARY XX, 2015

IRREVOCABLE STANDBY LETTER OF CREDIT NO. XXXXXXXX

ISSUING BANK:  
BANK OF AMERICA, N.A.  
ONE FLEET WAY  
PA6-580-30-02  
SCRANTON, PA 18507-1999

BENEFICIARY:

APPLICANT:  
KEHE DISTRIBUTORS, LLC  
1245 E. DIEHL RD.  
SUITE 200  
NAPERVILLE, IL 60563

AMOUNT NOT EXCEEDING USD XXX.XXX  
NOT EXCEEDING XXXXXXXXXXXX XXXXXXXX AND 00/ 100 UNITED STATES DOLLARS

EXPIRATION  
JANUARY XX, 2016 AT OUR COUNTERS

WE HEREBY ESTABLISH IN YOUR FAVOR OUR IRREVOCABLE STANDBY LETTER OF CREDIT NO.

XXXXXXXXX FOR THE ACCOUNT OF KEHE DISTRIBUTORS, LLC UP TO THE AGGREGATE AMOUNT OF USD XX.00 (XXX XXXXXX AND 00/100 UNITED STATES DOLLARS, AVAILABLE BY YOUR DRAFT(S) AT SIGHT DRAWN ON BANK OF AMERICA, N.A., ONE FLEET WAY, PA6-580-02-30, SCRANTON, PA 18507-1999 ACCOMPANIED BY THE FOLLOWING DOCUMENTS:

1. THE ORIGINAL LETTER OF CREDIT, AND ANY AMENDMENTS THERETO.

2. BENEFICIARY'S SIGNED AND DATED STATEMENT CERTIFYING: "(I) WE HEREBY CERTIFY THAT AN EVENT OF DEFAULT UNDER THE LEASE DATED \_\_\_\_\_, 2015, AND ANY AMENDMENTS THERETO, BETWEEN KEHE DISTRIBUTORS, LLC ("TENANT") AND \_\_\_\_\_ ("LANDLORD") HAS OCCURRED" OR, IN THE CASE OF A NON-EXTENSION NOTICE, "(II) WE HEREBY CERTIFY THAT KEHE DISTRIBUTORS, LLC ("TENANT") HAS NOT FURNISHED LANDLORD WITH A REPLACEMENT IRREVOCABLE LETTER OF CREDIT OR EXTENDED THE EXPIRATION DATE OF THIS LETTER OF CREDIT AT LEAST TEN (10) DAYS PRIOR TO THE CURRENT EXPIRATION DATE IN ACCORDANCE WITH THE TERMS OF THE LEASE DATED \_\_\_\_\_, 20\_\_\_\_, AND ANY AMENDMENTS THERETO, BETWEEN TENANT AND \_\_\_\_\_ ("LANDLORD")."

THERE SHALL BE NO ADDITIONAL REQUIREMENTS FOR BENEFICIARY TO RECEIVE PAYMENT HEREUNDER. THIS IRREVOCABLE LETTER OF CREDIT SETS FORTH, IN FULL, THE TERMS OF OUR UNDERTAKING, AND SUCH UNDERTAKING SHALL NOT IN ANY WAY BE CONSTRUED AS AN AMENDMENT OR MODIFICATION TO ANY AGREEMENT BETWEEN THE BENEFICIARY AND THE APPLICANT.

EACH DRAFT MUST BE MARKED "DRAWN UNDER BANK OF AMERICA N.A. LETTER OF CREDIT NO. XXXXXXXX DATED JANUARY XX 2015."

PARTIAL AND MULTIPLE DRAWINGS ARE PERMITTED.

THIS LETTER OF CREDIT IS TRANSFERABLE ONE OR MORE TIMES IN FULL AND NOT IN PART. ANY TRANSFER MADE HEREUNDER MUST CONFORM STRICTLY TO THE TERMS HEREOF AND TO THE CONDITIONS OF ARTICLE 39 OF THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (2007 REVISION) FIXED BY THE INTERNATIONAL CHAMBER OF COMMERCE, PUBLICATION NO. 600. SHOULD YOU WISH TO EFFECT A TRANSFER UNDER THIS CREDIT, SUCH TRANSFER WILL BE SUBJECT TO THE RETURN TO US OF THE ORIGINAL CREDIT INSTRUMENT, ACCOMPANIED BY OUR FORM OF TRANSFER, PROPERLY COMPLETED AND SIGNED BY AN AUTHORIZED SIGNATORY OF YOUR FIRM, BEARING YOUR BANKERS STAMP AND SIGNATURE AUTHENTICATION. SUCH TRANSFER FORM IS AVAILABLE UPON REQUEST. TRANSFER FEES ARE FOR THE ACCOUNT OF THE APPLICANT.

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT IS DEEMED TO BE AUTOMATICALLY EXTENDED WITHOUT AMENDMENT FOR PERIOD(S) OF ONE YEAR EACH FROM THE CURRENT EXPIRY DATE HEREOF, OR ANY FUTURE EXPIRATION DATE, UNLESS AT LEAST SIXTY (60) DAYS PRIOR TO ANY EXPIRATION DATE, WE NOTIFY YOU BY REGISTERED MAIL OR OVERNIGHT COURIER SERVICE AT THE ABOVE LISTED ADDRESS THAT WE ELECT NOT TO CONSIDER THIS LETTER OF CREDIT EXTENDED FOR ANY SUCH ADDITIONAL PERIOD.

WE HEREBY AGREE WITH YOU THAT DRAFT(S) DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT SHALL BE DULY HONORED UPON DUE PRESENTATION TO US.

EXCEPT SO FAR AS OTHERWISE EXPRESSLY STATED, THIS LETTER OF CREDIT IS ISSUED SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (2007

REVISION), ICC PUBLICATION NO. 600.

PLEASE DIRECT ANY CORRESPONDENCE, INCLUDING DRAWING OR INQUIRY, QUOTING  
OUR  
REFERENCE NUMBER TO BANK OF AMERICA, N.A., 1 FLEET WAY, SCRANTON, PA  
18507-1999,  
ATTN: TRADE OPERATIONS - STANDBY UNIT. OUR CUSTOMER SERVICE PHONE NUMBER  
IS  
800-370-7519, OPTION 1.

VERY TRULY YOURS,

BANK OF AMERICA, N.A.

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AUTHORIZED SIGNATURE