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LEASE AGREEMENT

Dated as of October 30, 2020

between

DPI SPECIALTY FOODS WEST, INC.,  
as the Tenant

and

DP ONTARIO CA LANDLORD, LLC,  
as the Landlord

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## LEASE AGREEMENT

THIS LEASE AGREEMENT (as amended, supplemented or otherwise modified from time to time, this “Lease”) made as of October 30, 2020, by and between DP ONTARIO CA LANDLORD, LLC, a Delaware limited liability company, as landlord, and DPI SPECIALTY FOODS WEST, INC., a Delaware corporation, as tenant.

In consideration of the rents and provisions herein stipulated to be paid and performed, the Landlord and Tenant, intending to be legally bound, hereby covenant and agree as follows:

1. Certain Definitions. All capitalized terms, unless otherwise defined herein, shall have the respective meanings ascribed to such terms in Appendix A annexed hereto and by this reference incorporated herein.

2. Demise of Leased Premises. Landlord hereby demises and lets to Tenant and Tenant hereby takes and leases from Landlord, for the term and upon the provisions hereinafter specified, the Leased Premises.

3. Title and Condition.

(a) The Leased Premises are demised and let subject to (i) the Permitted Encumbrances and (ii) the condition of the Leased Premises as of the Closing Date, without representation or warranty by Landlord; it being understood and agreed, however, that the recital of the Permitted Encumbrances herein shall not be construed as a revival of any thereof which for any reason may have expired or which may hereafter expire.

(b) LANDLORD LEASES AND WILL LEASE, AND TENANT TAKES AND WILL TAKE, THE LEASED PREMISES “AS IS”, AND TENANT ACKNOWLEDGES THAT LANDLORD (WHETHER ACTING AS LANDLORD HEREUNDER OR IN ANY OTHER CAPACITY) HAS NOT MADE AND WILL NOT MAKE, NOR SHALL LANDLORD BE DEEMED TO HAVE MADE, ANY WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, WITH RESPECT TO ANY OF THE LEASED PREMISES, INCLUDING ANY WARRANTY OR REPRESENTATION AS TO ITS FITNESS FOR ANY PARTICULAR USE OR PURPOSE, AS TO THE QUALITY OF THE MATERIAL OR WORKMANSHIP THEREIN, LATENT OR PATENT, AS TO LANDLORD’S TITLE THERETO, OR AS TO VALUE, COMPLIANCE WITH SPECIFICATIONS, DESIGN, LOCATION, USE, OPERATION, CONDITION, MERCHANTABILITY, QUALITY, DESCRIPTION, DURABILITY, ENVIRONMENTAL OR SOIL CONDITION OR AVAILABILITY OF UTILITIES, IT BEING AGREED THAT ALL RISKS INCIDENT TO ANY OF THE FOREGOING ARE TO BE BORNE BY TENANT. Tenant acknowledges and agrees that (i) the Leased Premises are of its selection and to its specifications, (ii) the Leased Premises have been inspected by Tenant and are satisfactory to it and (iii) Tenant has examined the title to the Leased Premises prior to the execution and delivery of this Lease and has found such title to be satisfactory for the purposes contemplated by this Lease. In the event of any defect or deficiency in any of the Leased Premises of any nature, whether patent or latent, Landlord shall not have any responsibility or liability with respect thereto or for any incidental, special, punitive or

consequential damages (including strict liability in tort). The provisions of this Section 3(b) have been negotiated, and the foregoing provisions are intended to be a complete exclusion and negation of any warranties by Landlord, express or implied, with respect to any of the Leased Premises, arising pursuant to the Uniform Commercial Code or any other law now or hereafter in effect or otherwise.

(c) Landlord hereby assigns, without recourse or warranty whatsoever, to Tenant, all Warranties, if any. Such assignment shall remain in effect until the termination of this Lease, provided that Landlord shall retain the right to enforce the Warranties in the name of Tenant during the continuance of an Event of Default. Any monies collected by Tenant (net of reasonable out-of-pocket collection expenses) under any of the Warranties during the continuation of an Event of Default shall be held in trust by Tenant and promptly paid over to Landlord. Landlord hereby agrees to execute and deliver, at Tenant's expense, such further documents, including powers of attorney, as Tenant may reasonably request in order that Tenant may have the full benefit of the assignment effected by this Section 3(c). Upon the termination of this Lease, the Warranties shall automatically revert to Landlord. The foregoing provision of reversion shall be self-operative and no further instrument of reassignment shall be required, provided that, in confirmation of such reassignment, Tenant shall promptly execute and deliver any instrument which Landlord may reasonably request.

(d) Landlord agrees to enter into, at Tenant's expense, such Record Agreements as reasonably requested by Tenant, subject to Landlord's approval of the form thereof, not to be unreasonably withheld, conditioned or delayed; provided, however, that no such Record Agreement shall (i) result in any material diminution in the value or utility of the Leased Premises for use as a distribution center (a "Facility") or (ii) render the use of the Leased Premises dependent upon any other property or condition or affect Tenant's rights under this Lease.

(e) Unless required by Applicable Law, Landlord shall not enter into any Record Agreements not requested by Tenant during the Term of this Lease without the prior written consent of Tenant, in each instance, not to be unreasonably withheld, conditioned or delayed so long as such Record Agreement would not materially interfere with Tenant's use or occupancy of, or access to, the Leased Premises in accordance with the Agreed Use, impair Tenant's rights or materially increase Tenant's costs or obligations under this Lease or otherwise materially adversely affect Tenant's obligations or rights under this Lease.

#### 4. Use of Leased Premises; Quiet Enjoyment.

(a) Tenant may use the Leased Premises as a Facility and for processing, manufacturing of food products, warehouse and office uses incidental thereto ("Agreed Use") and/or for any other lawful purpose, so long as such other lawful purpose would not (i) in Landlord's reasonable and good faith determination, have a material adverse effect on the value of the Leased Premises, or (ii) materially increase (when compared to use as for the Agreed Use) the likelihood that Tenant or Landlord would incur material liability under any provisions of any Environmental Laws. Tenant shall, at its expense, timely observe, perform, comply with, make any payments required under, and carry out the provisions of, each Record Agreement required therein to be observed and performed by the owner, operator or occupant of the Leased Premises

during the Term, including, without limitation, paying any and all assessments for common area maintenance costs.

(b) Tenant shall have at all times during the Term (that is, 24 hours a day, 7 days a week, 365 (or 366) days a year) access to the Leased Premises. Tenant, either itself or through one or more subtenants, shall continue to operate and occupy the Leased Premises during the Term, except during any restoration of the Leased Premises after a casualty or Condemnation, during any remodeling or construction of Alterations permitted under this Lease and during any period that such continued occupancy and operation is prevented by the occurrence and continuance of a Force Majeure Event. During any period that Tenant or a sublessee is not operating in and occupying the Leased Premises, Tenant shall take reasonable measures to secure the Leased Premises and protect against vandalism and unauthorized entry, shall continue to maintain the Leased Premises in accordance with the requirements of this Lease and shall pay for an annual inspection of the Leased Premises to be conducted by Landlord or Landlord's representative.

(c) Tenant shall not permit any unlawful occupation, business or trade to be conducted on the Leased Premises or any use to be made thereof contrary to any applicable Legal Requirements or Insurance Requirements or the provisions of any Record Agreement. Tenant shall not use, occupy or permit any of the Leased Premises to be used or occupied, nor do or permit anything to be done in or on any of the Leased Premises, in a manner that would (i) cause the cancellation of any insurance that Tenant is required hereunder to maintain in force (unless another reasonably adequate form of insurance is available) or (ii) cause any material injury or damage to any of the Improvements, except in connection with Alterations permitted under Section 12. Notwithstanding anything to the contrary contained herein, the mere use of the Leased Premises for the Agreed Use shall be deemed not to result in any of the consequences set forth in clause (ii) of the foregoing sentence.

(d) Subject to all of the provisions of this Lease, so long as no Event of Default exists hereunder, Landlord covenants that neither Landlord, nor any Person claiming by, through or under Landlord, shall do any act to disturb the peaceful and quiet occupation and enjoyment of the Leased Premises by Tenant.

## 5. Term

(a) Subject to the provisions hereof, Tenant shall have and hold the Leased Premises for an initial term commencing on the date hereof and ending on the Expiration Date, unless extended or sooner terminated pursuant to any provision of this Lease.

(b) Provided (i) this Lease shall not have been terminated pursuant to the provisions of Section 13(b) or 19 and (ii) no monetary or material non-monetary Event of Default has occurred and remains uncured, in each case on the date of its Renewal Option Notice and the Expiration Date (or the expiration date of the then expiring Renewal Term, as applicable), Tenant shall have three (3) consecutive options to extend the term of this Lease for a Renewal Term, commencing upon the day after the Expiration Date (or the expiration date of the then expiring Renewal Term, as applicable). If Tenant elects to exercise any one or more of said renewal options, it shall do so by giving a Renewal Option Notice to Landlord at any time during

the Term (or the then Renewal Term, as applicable) but, in any event, on or before that date which is twelve (12) months prior to the Expiration Date (or the expiration date of the then expiring Renewal Term, as applicable). If Tenant has not provided the notice for the exercise of a Renewal Term within the time frame set forth in the previous sentence, then Tenant, at Landlord's option, shall be deemed to have forever waived its right to exercise such renewal option and any subsequent renewal option. If Tenant shall elect to exercise any such renewal option, the term of this Lease shall be automatically extended for five (5) years, or, in the case of the third and final Renewal Term, four (4) years and eleven (11) months, without the execution of an extension or renewal lease. Any Renewal Term shall be subject to all of the provisions of this Lease, including, but not limited to, the Basic Rent provisions for such Renewal Term set forth on Exhibit B attached hereto, and all such provisions shall continue in full force and effect. For the avoidance of doubt, throughout each of the five (5) years or, in the case of the third and final Renewal Term, four (4) years and eleven (11) months, of any Renewal Term, Basic Rent shall be increased annually to an amount equal to the Basic Rent for the last month of the immediately preceding lease year multiplied by 1.02 percent. Within ten (10) days after request by either Landlord or Tenant, Landlord and Tenant shall execute, acknowledge and deliver to each other an instrument confirming that such option has been effectively exercised and confirming the extended expiration date of this Lease and the then applicable Basic Rent (but neither party's failure to request any such agreement nor the failure of Landlord or Tenant to execute or deliver such an agreement shall vitiate or limit in any way the provisions of this Section 5(a)).

6. Rent.

(a) Tenant shall pay to Landlord, as rent for the Leased Premises during the Term, the Basic Rent in advance, on the Closing Date and on each Basic Rent Payment Date occurring after the Closing Date, and shall pay the same by ACH or wire transfer in immediately available federal funds on the date due, to such account in such bank as Landlord shall designate in a written notice to Tenant in accordance with this Lease from time to time. In the event that the Closing Date is a date other than the first Business Day of a calendar month, the Basic Rent due on the Closing Date shall be an amount equal to the amount of Basic Rent set forth on Exhibit B hereto for the first Basic Rent Payment Date, times 1/30, times the number of days from and including the Closing Date to and excluding the first day of the following calendar month, and the Basic Rent due on the first Business Day of the month following the month in which the Closing Date occurs shall be the amount set forth on Exhibit B for the first Basic Rent Payment Date.

(b) Except as otherwise expressly provided herein, Tenant shall pay and discharge, as Additional Rent, all other amounts and obligations which Tenant assumes or agrees to pay or discharge pursuant to this Lease, together with every fine, penalty, interest and cost which may be added by the party to whom such payment is due for nonpayment or late payment thereof. All payments of Additional Rent that are payable to Landlord shall be paid by Tenant by ACH or wire transfer in immediately available federal funds to such account in such bank as Landlord shall designate in a written notice to Tenant in accordance with this Lease from time to time.

(c) If any installment of Basic Rent or Additional Rent is not paid within ten (10) days of when the same is due, in the case of the first late payment in any calendar year, or not

paid with the same is due, in the case of each subsequent late payment in such calendar year, Tenant shall pay to Landlord, within ten (10) Business Days of written demand, as Additional Rent, interest on such installment from the date such installment was due to the date such installment is paid at the Default Rate. In addition to the interest payable pursuant to the foregoing sentence, any payment not received within ten (10) days of the applicable due date, in the case of the first late payment in any calendar year, or on or before the applicable due date, in case of each subsequent late payment in such calendar year, shall incur a late charge in the amount of one percent (1%) of such late payment amount (except to the extent such late charge is prohibited by applicable law). Tenant and Landlord agree that this late charge represents a reasonable sum (considering all of the circumstances existing on the date of the execution of this Lease) and a fair and reasonable estimate of the costs that Landlord will incur by reason of Tenant's failure to pay such amounts on time. Tenant and Landlord further agree that proof of actual damages would be costly and inconvenient. Acceptance of any late charge shall not constitute a waiver of the default with respect to the overdue Basic Rent or Additional Rent payment and shall not prevent Landlord from exercising any of the other rights available under this Lease.

(d) Landlord and Tenant agree that this Lease is a true lease and does not represent a financing arrangement. Each party shall reflect the transactions represented by this Lease in all applicable books, records and reports (including, without limitation, income tax filings) in a manner consistent with "true lease" treatment rather than "financing" treatment.

7. Net Lease; Non-Terminability. Except as otherwise expressly provided in this Lease, this Lease shall not terminate and Tenant shall not have, and hereby waives, any right to terminate this Lease during the Term. This is a net lease and, except as otherwise expressly provided in this Lease, Tenant shall not be entitled to, and hereby waives any right to, any setoff, counterclaim, recoupment, abatement, suspension, deferment, diminution, deduction, reduction or defense of or to Basic Rent or Additional Rent, and the obligations of Tenant under this Lease shall not be affected by any circumstance or event, or for any reason, including but not limited to the following: (i) any damage to or destruction of any of the Leased Premises by any cause whatsoever, (ii) any Condemnation, (iii) the prohibition, limitation or restriction of, or interference with, Tenant's use of any of the Leased Premises, (iv) any eviction by paramount title, constructive eviction or otherwise, (v) Tenant's acquisition of ownership of any of the Leased Premises other than pursuant to an express provision of this Lease, (vi) any default on the part of Landlord under this Lease or under any other agreement, (vii) any latent or other defect in, or any theft or loss of, any of the Leased Premises, or (viii) any other cause, whether similar or dissimilar to the foregoing, any present or future Applicable Law to the contrary notwithstanding; provided, however, that the foregoing shall not apply or be construed to restrict Tenant's rights to pursue Landlord or any other Indemnatee for actual damages in the event of any affirmative act by Landlord in violation of the terms of this Lease or any gross negligence or willful misconduct of Landlord or any other Indemnatee. This Lease is an absolute and unconditional obligation of Tenant, and it is the intention of the parties hereto that the obligations of Tenant under this Lease shall be separate and independent covenants and agreements, and that Basic Rent and Additional Rent shall continue to be payable in all events (or, in lieu thereof, Tenant shall pay amounts equal thereto), and that the obligations of Tenant under this Lease shall continue unaffected, unless expressly provided in this Lease to the contrary or unless this Lease shall have been terminated pursuant to an express provision of this Lease. Notwithstanding the



foregoing, Tenant shall have the right to pursue a cause of action against Landlord for actual damages resulting from Landlord's default under this Lease, it being understood that Tenant shall have no right to set off any such damage against Basic Rent or Additional Rent payable under this Lease.

(b) Tenant agrees that it shall remain obligated under this Lease in accordance with its provisions and that, except as otherwise expressly provided herein, it shall not take any action to terminate, rescind or avoid this Lease, notwithstanding the bankruptcy, insolvency, reorganization, composition, readjustment, liquidation, dissolution, winding-up or other proceeding affecting Landlord, provided that if no Event of Default has occurred and is continuing, this Lease is terminated by Landlord under the Federal Bankruptcy Code or any trustee, receiver or liquidator of Landlord or by any court under the Federal Bankruptcy Code and Tenant is dispossessed of the Leased Premises, Tenant shall have no obligation to pay Basic Rent, Additional Rent or any other obligation under this Lease that accrues after such termination and dispossession so long as Tenant has returned the Leased Premises in accordance with the terms of this Lease.

#### 8. Payment of Impositions; Compliance with Legal Requirements and Insurance Requirements.

(a) (i) Tenant shall, before interest or penalties are due thereon, pay directly to the applicable third party and discharge all Impositions. If received by Landlord, Landlord shall, promptly after Landlord's receipt thereof, but in any event at least thirty (30) days prior to the due date for the related Imposition (provided that Landlord has received such bill or invoice prior to thirty-seven (37) days preceding such due date), deliver to Tenant any bill or invoice with respect to any Imposition. Tenant (and Landlord, if required) shall notify the applicable taxing authority that all invoices for property taxes and similar taxes should be sent directly to Tenant, to the extent permitted by Applicable Laws. Any payments required to be made by Tenant pursuant to this Section 8 that are not allowed to be paid directly to the appropriate Governmental Authority or such other Person to whom such payment is due, shall be made and paid to Landlord and Landlord shall pay such amounts, promptly after receipt, directly to the appropriate Governmental Authority or such other Person to whom such payment is due to discharge all such Impositions.

(ii) In the event that any Impositions may be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Tenant shall have the option to pay such Imposition (and any accrued interest on the unpaid balance of such Imposition) in installments; and in such event, Tenant shall be liable only for those installments which become due and payable during the Term. Tenant shall prepare and file all tax reports required by Governmental Authorities which relate to the Impositions; provided, however, that Landlord, at Landlord's expense, shall, to the extent required or permitted by Applicable Laws, prepare and file all tax returns and pay all taxes due in respect of Landlord's net income, gross receipts (from any source other than the Basic Rent and Additional Rent received by Landlord from Tenant), single business, ad valorem (except for ad valorem taxes levied on the Leased Premises, which Tenant shall bear), franchise taxes and taxes on its capital stock, and Tenant, at its expense, shall, to the extent required by Legal Requirements or to extent permitted by Applicable Law, prepare and file all other tax returns and reports in respect of any Imposition as

may be required by Government Authorities. If any refund shall be due from any Government Authorities or Person in respect of any Imposition paid by Tenant, the same shall be paid over to or retained by Tenant. Landlord and Tenant shall, upon request of the other, provide such data as is maintained by the party to whom the request is made with respect to the Leased Premises as may be necessary to prepare any required returns and reports. Where Landlord is legally required to file personal property tax returns for property covered by this Agreement and/or gross receipts tax returns for Basic Rent received by Landlord from Tenant, Landlord shall file the same with reasonable cooperation from Tenant. As applicable, Landlord shall provide Tenant with copies of both real and personal property assessment notices received by Landlord with respect to the Leased Premises promptly after receipt and, subject to the terms of Section 18, Tenant shall have the right to file and/or prosecute, at Tenant's expense, a personal or real property tax assessment protest, unless Tenant is prohibited from solely prosecuting such protest by Applicable Law, in which case the parties shall reasonably cooperate with each other in the prosecution of such protest. Tenant shall deliver to Landlord, (1) within thirty (30) days after payment by Tenant, receipts for the payments of all property taxes related to the Leased Premises and (2) within thirty (30) days after Landlord's written request therefor, copies of all settlements and notices pertaining to the Impositions which may be issued by any Governmental Authority and receipts for payments of all other Impositions made during each calendar year of the Term.

(iii) In the partial fiscal tax year in which the Term shall terminate, such taxes and assessments and the Impositions shall be prorated on a daily basis (using a 365-day year), and Tenant's payment obligations shall be computed accordingly.

(b) Tenant shall promptly comply with and conform to all of the Legal Requirements and Insurance Requirements.

(c) If any report, return or statement (a "Filing") is required to be filed with respect to any Imposition payable by Tenant hereunder, Tenant shall, if permitted by Applicable Laws to do so, timely file or cause to be filed such Filing with respect to such Imposition and shall promptly provide notice of such Filing to Landlord (except for any such Filing that Landlord has notified Tenant in writing that Landlord intends to file) and will (if ownership of the Leased Premises or any part thereof or interest therein is required to be shown on such Filing) show the ownership of the Leased Premises in the name of Landlord and send a copy of such Filing to Landlord. If Tenant is not permitted by Applicable Laws to file any such Filing, Tenant will promptly notify Landlord of such requirement and prepare and deliver to Landlord a proposed form of such Filing and such information as is within Tenant's reasonable control or access with respect to such Filing within a reasonable time, and in all events at least twenty (20) days, prior to the time such Filing is required to be filed. Tenant shall hold Landlord harmless from and against any liabilities, including, but not limited to penalties, additions to tax, fines and interest, arising out of any insufficiency or inaccuracy in any such Filing, if such insufficiency or inaccuracy is attributable to Tenant, it being understood that Tenant shall have no liability hereunder with respect to any failure of Landlord to timely file any Filing that Tenant has provided to Landlord pursuant to the second sentence of this subsection (c) or for any insufficiency or inaccuracy in any Filing if such insufficiency or inaccuracy is attributable to Landlord.

(d) Notwithstanding anything herein to the contrary, any obligations of Tenant under the provisions of this Section 8 that accrue prior to the expiration or earlier termination of this Lease shall survive such expiration or earlier the termination of this Lease.

9. Liens; Recording and Title.

(a) Subject to the Tenant's right to contest as set forth in Section 18, Tenant shall not, directly or indirectly, create or permit to be created or to remain, and shall within thirty (30) days after written request by Landlord discharge or bond over, any Lien on the Leased Premises, the Basic Rent or any Additional Rent, other than the Permitted Encumbrances and any mortgage, Lien or other charge created by or resulting from any act of Landlord or those claiming by, through or under Landlord (except Tenant). **Notice is hereby given that Landlord shall not be liable for any labor, services or materials furnished or to be furnished to Tenant, or to anyone holding any of the Leased Premises through or under Tenant, and that no mechanic's or other Liens for any such labor, services or materials shall attach to or affect the interest of Landlord in and to any of the Leased Premises.**

(b) Each of Landlord and Tenant shall execute, acknowledge and deliver to the other a written Memorandum of this Lease to be recorded in the appropriate land records of the jurisdiction in which the Leased Premises is located, in order to give public notice and protect the validity of this Lease. In the event of any discrepancy between the provisions of such recorded Memorandum of this Lease and the provisions of this Lease, the provisions of this Lease shall prevail. Tenant shall pay all costs and expenses associated with recording such Memorandum of this Lease.

(c) Nothing in this Lease and no action or inaction by Landlord shall be deemed or construed to mean that Landlord has granted to Tenant any right, power or permission to do any act or to make any agreement which may create, give rise to, or be the foundation for, any right, title, interest or Lien in or upon the estate of Landlord in any of the Leased Premises, other than an assignment or a sublease, in either case, as permitted under the provisions of Section 17.

10. Indemnification.

(a) Tenant agrees to assume liability for, and to indemnify, protect, defend, save and keep harmless each Indemnitee from and against any and all Claims, whether asserted prior to, during or after the Term, that are actually suffered, imposed on or asserted against any Indemnitee arising, directly or indirectly, out of (i) the operation, possession, use, leasing, sub-leasing, non-use, maintenance, modification, alteration, construction, reconstruction, restoration, condition, design or replacement of the Leased Premises (or any portion thereof), (ii) the non-compliance of the Leased Premises with Applicable Laws and any other liability under Applicable Laws related to the Leased Premises or this Lease, (iii) any patent, trademark or copyright infringement related to the Leased Premises or any part thereof, (iv) any Event of Default by Tenant under this Lease, (v) the business and activities of Tenant or of any other Person (except Indemnitees) on or about the Leased Premises (whether as an invitee, subtenant, licensee, contractor or otherwise), and (vi) the actual presence, use, storage, generation or Release of any Hazardous Materials on, under, from, to or at the Leased Premises or any portion thereof, in each case prior to or during the Term, including the actual and reasonable cost of

assessment, containment and/or removal of any such Hazardous Materials, the actual and reasonable cost of any actions taken in response to a Release of any such Hazardous Materials so that it does not migrate or otherwise cause or threaten danger to present or future public health, safety, welfare or the environment, and actual and reasonable costs incurred to comply with Environmental Laws in connection with all or any portion of the Leased Premises, or the operation thereof. Notwithstanding the foregoing, nothing herein shall be construed to obligate Tenant to indemnify, defend and hold harmless any Indemnitee from and against any Claims imposed on or incurred by such Indemnitee to the extent such Claims arise by reason of (i) any Indemnitee's affirmative act in violation of the terms of this Lease or willful misconduct or gross negligence, (ii) any Liens and/or liabilities created by Landlord on the Leased Premises or that arise from Landlord's failure to pay any Taxes or Impositions, in each case for which Tenant is not responsible under this Lease, (iii) Landlord's default in the performance of any of Landlord's obligations under this Lease or (iv) events or circumstances that occur after the expiration or termination of this Lease and the return of the Leased Premises in accordance with this Lease.

(b) In case any Claim shall be made or brought against any Indemnitee, such Indemnitee shall give prompt notice thereof to Tenant; provided that failure to so notify Tenant shall not reduce Tenant's obligations to indemnify any Indemnitee hereunder except to the extent such failure adversely affects Tenant's rights to defend such Claim. Tenant shall be entitled to (and shall, if directed by Landlord), at its expense, acting through counsel selected by Tenant (and reasonably satisfactory to such Indemnitee), assume and control the negotiation, litigation and/or settlement of any such Claim. Such Indemnitee may (but shall not be obligated to) participate at its own expense and with its own counsel in any proceeding conducted by Tenant in accordance with the foregoing, in which case Tenant shall keep such Indemnitee and its counsel fully informed of all proceedings and filings. Notwithstanding the foregoing, Tenant shall not be entitled to assume and control the defense of any Claim if (i) an Event of Default has occurred and is continuing, (ii) the proceeding involves possible imposition of any criminal liability or penalty or unindemnified civil penalty on such Indemnitee, (iii) the proceeding involves the granting of injunctive relief against the Indemnitee not related to this Lease, (iv) a significant counterclaim is available to the Indemnitee that would not be available to and cannot be asserted by Tenant or (v) Tenant has not acknowledged to such Indemnitee in writing that such Claim is fully covered by Tenant's indemnity hereunder.

(c) Upon payment in full of any Claim by Tenant pursuant to this Section 10 to or on behalf of an Indemnitee, Tenant, without any further action, shall be subrogated to any and all Claims that such Indemnitee may have relating thereto (other than claims in respect of insurance policies maintained by such Indemnitee at its own expense or claims against another Indemnitee for which Tenant would have indemnity obligations hereunder) to the extent of such payment, and such Indemnitee shall execute such instruments of assignment and conveyance and other documents as may be necessary to preserve any such Claims and otherwise reasonably cooperate with Tenant to enable Tenant to pursue such Claims. In no event shall Tenant settle or compromise any Claim against any Indemnitee if such settlement or compromise does not contain a full release of such Indemnitee or admits culpability on the part of such Indemnitee, unless such Indemnitee otherwise consents in writing.

(d) The obligations of Tenant and Landlord under this Section 10 shall survive any termination or expiration of this Lease.

(e) Notwithstanding anything to the contrary contained in this Lease (including Section 19 of this Lease), nothing in this Lease shall impose any obligations on Tenant or Landlord to be responsible or liable for, and each hereby releases the other from all liability for, consequential damages, other than those consequential damages incurred by Landlord (provided that Landlord has used commercially reasonable efforts to notify Tenant in advance in writing of the possibility of such damages) in connection with a holdover of the Leased Premises by Tenant after the expiration or earlier termination of this Lease.

12. Maintenance and Repair.

(a) Except as expressly provided herein, Tenant shall at all times from and after the Closing Date, put, keep and maintain the Leased Premises (including, without limitation, the roof, landscaping, walls, footings, foundations, parking areas, driveways and structural components of the Leased Premises) in the same (or better) condition and order of repair as exists as of the Closing Date, except for ordinary wear and tear, and shall promptly make all repairs and replacements of every kind and nature, whether foreseen or unforeseen, which may be required to be made upon or in connection with the Leased Premises in order to keep and maintain the Leased Premises in the order and condition required by this Section 11(a). In particular, and in addition to Tenant's other maintenance, replacement and repair obligations set forth in this Section 11, Tenant, at its expense, shall recoat the roof of the Improvements in calendar year 2021, if such recoating is necessary in order to keep and maintain the Leased Premises in the same (or better) condition and order of repair as exists on the Closing Date, except for ordinary wear and tear. Tenant shall do or cause others to do all shoring of the Leased Premises or of foundations and walls of the Improvements and every other act necessary or appropriate for preservation and safety thereof, by reason of or in connection with any excavation or other building operation upon any of the Leased Premises, whether or not Landlord shall, by reason of any Legal Requirements or Insurance Requirements, be required to take such action or be liable for failure to do so. LANDLORD SHALL NOT BE REQUIRED TO MAKE ANY REPAIR, WHETHER FORESEEN OR UNFORESEEN, OR TO MAINTAIN ANY OF THE LEASED PREMISES OR ADJOINING PROPERTY IN ANY WAY, AND, TENANT HEREBY EXPRESSLY WAIVES THE RIGHT TO MAKE REPAIRS AT THE EXPENSE OF THE LANDLORD, WHICH RIGHT MAY BE PROVIDED FOR IN ANY LAW NOW OR HEREAFTER IN EFFECT. Nothing in the preceding sentence shall be deemed to preclude Tenant from being entitled to insurance proceeds or condemnation awards for Restoration pursuant to Sections 13(c) and 14(g). Tenant shall, in all events, make all repairs for which it is responsible hereunder promptly (but in any event shall commence such repairs within thirty (30) days of the date Tenant becomes aware that such repairs are necessary, or, in the event of a Restoration pursuant to Section 13(c) or 14(g), within thirty (30) days of the date insurance proceeds or a condemnation award has been paid to the Trustee (it being understood that Tenant shall take such steps as are reasonably necessary to protect and preserve the integrity and safety of the Leased Premises pending such payment) and shall diligently pursue such repairs to completion), and all repairs shall be made in a good, proper and workmanlike manner.

(b) In the event that any Improvement shall violate any Legal Requirements or Insurance Requirements, then Tenant, at the request of Landlord, shall either (i) obtain valid and effective variances, waivers or settlements of all claims, liabilities and damages resulting from each such violation, whether the same shall affect Landlord, Tenant or both (or in the case of a

violation of Insurance Requirements, obtain new coverage where there is no violation of any Insurance Requirements), or (ii) take such reasonable action as shall be necessary to remove such violation, including, if necessary, the making of an Alteration. Any such repair or Alteration shall be made in conformity with the provisions of Section 12.

(c) If Tenant shall be in default under any of the provisions of this Section 11, Landlord may, thirty (30) days after Tenant's receipt of written notice of such default and failure of Tenant to commence to cure during such period or to diligently pursue such cure to completion, but without notice in the event of an emergency, do whatever is reasonably necessary to cure such default as may be reasonably appropriate under the circumstances for the account of, and at the expense of, Tenant. In the event of an emergency Landlord shall notify Tenant of the situation by phone or other available communication and shall give Tenant as much time as is reasonably practicable (not to exceed thirty (30) days) before acting independently to cure such default. All actual and reasonable sums so paid by Landlord and all actual and reasonable costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) so incurred, together with interest thereon at the Default Rate from the date of payment or incurring the expense, shall constitute Additional Rent payable by Tenant under this Lease within thirty (30) days of written demand.

(d) Tenant shall from time to time replace with Replacement Equipment any of the Equipment that shall have become worn out or unusable for the purpose for which it is intended, been taken by a Condemnation as provided in Section 13, or been lost, stolen, damaged or destroyed as provided in Section 14. Tenant shall repair at its sole cost and expense all damage to the Leased Premises caused by the removal of Equipment or other personal property of Tenant or the installation of Replacement Equipment. All Replacement Equipment (except for Trade Fixtures) shall become the property of Landlord, shall be free and clear of all Liens and rights of others and shall become a part of the Equipment as if originally demised herein.

## 12. Alterations.

(a) Upon prior written notice to Landlord, Tenant shall have the right to make any Alteration(s) to the Leased Premises, that are not Structural Alterations and the cost of which does not exceed the Threshold Amount, in the aggregate (with all alterations project combined), in any calendar year; provided, that, Tenant complies with clause (c) of this Section 12.

(b) Upon at least ten (10) Business Days' prior written notice to Landlord, Tenant shall have the right to make any Alteration(s) to the Leased Premises that are Structural Alterations and/or the cost of which exceeds the Threshold Amount, in the aggregate (with all alterations project combined), in any calendar year; provided, that (i) no Event of Default has occurred and is then continuing, (ii) Tenant complies with clause (c) of this Section 12, and (iii) prior to making any such Alteration(s), Tenant shall provide Landlord with the plans and specifications, estimated budget and proposed schedule of construction with respect thereto and Landlord shall have consented to such Alterations, which consent shall not be unreasonably withheld, conditioned or delayed and shall be deemed consented to if Landlord fails to consent to or disapprove (in which case Landlord shall describe in detail to Tenant the items giving rise to such disapproval) such Alteration(s) within thirty (30) days of receipt by Landlord of Tenant's request therefor and the other materials described in the foregoing clause (iii).

(c) In connection with any Alteration: (i) the fair market value of the Leased Premises shall not be materially lessened after the completion of any such Alteration, or its structural integrity materially impaired; (ii) all such Alterations shall be performed in a good and workmanlike manner, and shall be expeditiously completed in compliance with all Legal Requirements and Insurance Requirements, subject to Force Majeure Events; (iii) no such Alteration shall change the permitted use of the Leased Premises (as described in Section 4), (iv) Tenant shall promptly pay all costs and expenses of any such Alteration and shall discharge all Liens filed against any of the Leased Premises arising out of the same; (v) Tenant shall procure and pay for all permits and licenses required in connection with any such Alteration; and (vi) in the case of any Alteration the estimated cost of which in any one instance exceeds the Threshold Amount, such Alterations shall be made under the supervision of an architect or engineer and in accordance with plans and specifications which shall be submitted to Landlord prior to the commencement of the Alterations. Upon Tenant's request, Landlord shall reasonably cooperate with Tenant (at no cost to Landlord) in obtaining any licenses, permits, approvals or certificates, including, by way of example and not of limitation, that Landlord join in any such applications, from any and all governmental authorities having jurisdiction of the Leased Premises which may be necessary for Tenant's Alterations and/or the conduct of Tenant's business therein.

(d) All Alterations shall, upon the expiration or earlier termination of this Lease become the property of Landlord, without any further act. To the extent permitted by the Code and by any applicable state tax laws and regulations, Tenant shall be entitled to the tax benefits, if any, with respect to any Alterations made by Tenant at Tenant's expense until such time as such Alterations become the property of Landlord pursuant to the foregoing sentence.

### 13. Condemnation.

(a) Each of Landlord and Tenant, promptly upon obtaining knowledge of the institution of any proceeding for Condemnation, shall notify the other party thereof and each of Landlord and Tenant shall be entitled, at its sole cost and expense, to participate in any Condemnation proceeding. Subject to the provisions of this Section 13 and Section 15, Tenant hereby irrevocably assigns to Landlord any award or payment in respect of any Condemnation of the Leased Premises or any part thereof, except that (except as hereinafter provided) nothing in this Lease shall be deemed to assign to Landlord any Tenant's Award to the extent Tenant shall have a right to make a separate claim therefor against the condemnor, it being agreed, however, that Tenant shall in no event be entitled to any payment that reduces the award to which Landlord is or would be entitled for the condemnation of Landlord's interest in the Leased Premises.

(b) If (I) the entire Leased Premises, (II) a material portion (10% or more with respect to the Land or the Improvements) of the Land or the Improvements or any means of ingress, egress or access to the Leased Premises, the loss of which, even after restoration (to the extent practicable, in Tenant's commercially reasonable judgment), would, in Tenant's reasonable business judgment, be materially adverse to the business operations of Tenant at the Leased Premises, or (III) any means of ingress, egress or access to the Leased Premises which does not result in at least one method of ingress and egress to and from the Leased Premises remaining that is sufficient for Tenant's use thereof and that meets all existing Legal Requirements, as determined by Tenant in its reasonable discretion, shall be subject of a Taking by a duly

constituted authority or agency having jurisdiction, then Tenant may, not later than ninety (90) days after such Taking has occurred, serve a Tenant's Termination Notice upon Landlord, in which case this Lease shall terminate on the applicable Termination Date and Landlord shall be entitled to receive and retain the entire Award.

(c) (i) In the event of a Condemnation of any part of the Leased Premises which does not result in a termination of this Lease, promptly after the Award with respect to such Condemnation has been paid by the related authority to the Trustee, Tenant, to the extent Restoration of the Leased Premises is reasonably practicable, shall commence and diligently continue to completion such Restoration.

(ii) Upon the payment to the Trustee of the Net Award of a Taking which falls within the provisions of this Section 13(c), the Trustee shall, to the extent received, make the Net Award available to Tenant for Restoration in accordance with the provisions of Section 15. The proceeds remaining after the completion of, and payment for, the Restoration, if any, shall be retained by Landlord. In the event of any such partial Condemnation, all Basic Rent and Additional Rent shall continue unabated and unreduced.

(iii) In the event of a Requisition of the Leased Premises, Landlord shall apply the Net Award of such Requisition received by Landlord to the installments of Basic Rent or Additional Rent thereafter payable and Tenant shall pay any balance remaining thereafter. Upon the expiration of the Term, any portion of such Net Award which shall not have been previously credited to Tenant on account of the Basic Rent and Additional Rent shall be paid to Tenant to the extent allocable to the Term.

(d) No agreement with any condemnor in settlement of or under threat of any Condemnation shall be made by either Landlord or Tenant without the written consent of the other, and of the Lenders, if the Leased Premises are then subject to a Mortgage, which consent shall not be unreasonably withheld, conditioned, or delayed, provided that if Tenant has served a Tenant's Termination Notice, then Tenant's consent shall not be required.

#### 14. Insurance.

(a) Tenant shall maintain, during the Term at its sole cost and expense, the following insurance on the Leased Premises:

(i) Insurance against loss of or damage to the Improvements and the Equipment under an ISO special form or broader coverage insurance policy, which shall include coverage against all risks of direct physical loss or damage (which shall include windstorm and earthquake insurance and flood insurance if the Leased Premises is located within either a Special Flood Hazard Area or a Non-Special Flood Hazard Area as determined by FEMA flood zone ratings of A or V). Such insurance shall also include (A) ordinance and law coverage (hazards A, B and C, with limits for A of not less than replacement cost and limits for B and C not less than \$1,000,000 in the aggregate) and (B) a condition that permits the insured to elect to rebuild on another site, provided that such rebuilding does not increase the amount of loss or damage that would otherwise be payable to rebuild at the original site (it being understood that Tenant may not rebuild at another site without Landlord's prior written approval, which approval



shall not be unreasonably withheld or delayed, but which may be conditioned, among other things, on the fulfillment of certain reasonable conditions precedent). Such insurance shall be in amounts sufficient to prevent Landlord or Tenant from becoming a co-insurer under the applicable policies, and in any event in amounts not less than the actual replacement cost of the Improvements and Equipment (excluding footings and foundations and other parts of the Improvements which are not insurable, and coverage for the peril of earthquake subject to coverage limits of \$35,000,000 per occurrence/annual aggregate). Such insurance policies may contain reasonable exclusions and deductible amounts, all in accordance with industry standards.

(ii) Commercial general liability insurance against claims for bodily injury, death or property damage occurring on, in or about the Leased Premises, which insurance shall (A) be written on an "Occurrence Basis", and shall provide limits of not less than \$5,000,000 per occurrence and in the annual aggregate and (B) include premises and operations liability coverage, products and completed operations liability coverage, and blanket contractual liability coverage. In addition, Tenant shall maintain auto liability insurance in an amount not less than \$1,000,000 combined single limit.

(iii) Workers' compensation insurance covering all persons employed by Tenant on the Leased Premises.

(iv) Boiler and machinery coverage on a comprehensive form in an amount not less than the actual replacement cost of the Improvements and Equipment (excluding footings and foundations and other parts of the Improvements which are not insurable).

(v) Business interruption insurance (A) covering all risks required to be covered by the insurance provided for in subsection (i) above for a period commencing at the time of loss for such length of time as it takes to repair or replace with the exercise of due diligence, and (B) containing an indemnity coverage extension which provides that after the physical loss to the Leased Premises has been repaired, the continued loss of income will be insured until such income either returns to the same level it was at prior to the loss or the expiration of one hundred eighty (180) days, whichever occurs first.

(vi) Whenever Tenant shall be engaged in making any Alteration, repairs or construction work of any kind (collectively, "Work") for which the estimated cost exceeds the Threshold Amount, completed value builder's risk insurance and worker's compensation insurance or other adequate insurance coverage covering all persons employed in connection with the Work, whether by Tenant, its contractors or subcontractors and with respect to whom death or bodily injury claims could be asserted against Landlord.

(vii) Such additional and/or other insurance with respect to the Leased Premises, and such increases in limits of insurance, in each case as are requested by Landlord or a Lender and that is then generally carried by prudent owners or operators of a property of comparable size, construction, type, location and use as the Leased Premises.

(b) The insurance required by Section 14(a) shall be written by companies having a claims paying ability rating by Standard & Poor's (or equivalent ratings agency) of not less than A, and an A.M. Best Insurance Reports rating of not less than "A" and a financial size category

of at least “VIII”, and all such companies shall be authorized to do an insurance business in the State, or otherwise agreed to by Landlord. The insurance policies shall be in amounts sufficient at all times to satisfy any coinsurance requirements thereof. The general liability insurance shall name Landlord, Tenant, and, if a Mortgage is then in effect, the Trustee and each Lender as additional insured parties, as their respective interests may appear; the “all risk” property insurance shall name Landlord (or, if directed by Landlord to Tenant, the Trustee) as loss payee. If said insurance or any part thereof shall expire, be withdrawn, become void by breach of any condition thereof by Tenant or become void or unsafe by reason of the failure or impairment of the capital of any insurer, Tenant shall immediately obtain new or additional insurance reasonably satisfactory to Landlord and, if a Mortgage is then in place, the Lenders.

(c) Each insurance policy referred to in clauses (i), (iv) and (vi) of Section 14(a), shall contain standard non-contributory mortgagee clauses in favor of each Lender and the Trustee. Each of the policies required by Section 14(a) shall state that if at any time the policies are to be cancelled, or their coverage is to be reduced (by any party including the insured), the insurer will endeavor to mail thirty (30) days’ (10 days’ in the event of non-payment of the premium) written notice to the additional insureds and/or loss payee named in such policies ), to the extent that a policy meeting the foregoing requirements (x) would be obtained by a reasonable and prudent owner or operator for a property of comparable size, construction, type, location and use as the Leased Premises and (y) is generally available from two (2) or more insurers meeting the rating requirements set forth in this Section 14 herein. Each policy shall also provide that any losses otherwise payable thereunder shall be payable notwithstanding (i) any act, omission or neglect of Landlord, Tenant or any other Person which might, absent such provision, result in a forfeiture of all or a part of such insurance payment or (ii) the occupation or use of any of the Leased Premises for purposes more hazardous than permitted by the provisions of such policy. Tenant hereby waives any and every claim for recovery from the Lenders and Landlord, and Landlord hereby waives any and every claim for recovery from Tenant, for any and all loss or damage covered by any of the insurance policies to be maintained under this Lease to the extent that such loss or damage is recovered by Tenant, Lenders or Landlord, respectively, under any such policy. If the foregoing waiver will preclude the assignment of any such claim to the extent of such recovery, by subrogation (or otherwise), to an insurance company (or other person), Tenant (or other appropriate party) shall give written notice of the terms of such waiver to each insurance company which has issued, or which may issue in the future, any such policy of insurance (if such notice is required by the insurance policy) and shall cause each such insurance policy to be properly endorsed by the issuer thereof to, or to otherwise contain one or more provisions that, prevent the invalidation of the insurance coverage provided thereby by reason of such waiver.

(d) Tenant shall pay as they become due all premiums for the insurance required by this Section 14, shall renew or replace each policy, and shall deliver to Landlord a certificate or other evidence (on an ACORD 28 (2003/10) form, in the case of property insurance, and on an ACORD 25 form, in the case of liability insurance, and otherwise reasonably satisfactory to Landlord) of the existing policy and such renewal or replacement policy at least two Business Days prior to the Insurance Expiration Date of each policy. In the event of Tenant’s failure to comply with any of the foregoing requirements of this Section 14 within ten (10) Business Days of the giving of written notice by Landlord to Tenant (or on the date any required insurance coverage will lapse, if sooner), Landlord shall be entitled to procure such insurance. Any sums

expended by Landlord in procuring such insurance shall be Additional Rent and shall be repaid by Tenant, together with interest thereon at the Default Rate, from the time of payment by Landlord until fully paid by Tenant, within thirty (30) days of written demand therefor by Landlord.

(e) Anything in this Section 14 to the contrary notwithstanding, any insurance which Tenant is required to obtain pursuant to Section 14(a) may be carried under a “blanket” policy or policies covering other properties or liabilities of Tenant, provided that such “blanket” policy or policies otherwise comply with the provisions of this Section 14. In the event any such insurance is carried under a blanket policy, Tenant shall deliver to Landlord evidence of the issuance and effectiveness of the policy, the amount and character of the coverage with respect to the Leased Premises and the presence in the policy of provisions of the character required in the above sections of this Section 14.

(f) In the event of any property loss exceeding the Threshold Amount, Tenant shall give Landlord prompt notice thereof. Tenant shall adjust, collect and compromise any and all claims, with the consent of Landlord, not to be unreasonably withheld, conditioned or delayed, and Landlord shall have the right, at its sole expense, to join with Tenant therein (except with respect to any property loss of the Threshold Amount or less, in which case no consent of Landlord shall be required). If the estimated cost of Restoration or repair shall be an amount equal to the Threshold Amount or less, all proceeds of any insurance required under clauses (i), (iv) and (v) of Section 14(a) shall be payable to Tenant. Each insurer is hereby authorized and directed to make payment under the property insurance policies (i) for all property losses of the Threshold Amount or less, directly to Tenant and (ii) for all other property losses, directly to the Trustee, instead of to Landlord and Tenant jointly; and Tenant and Landlord each hereby appoints such Trustee as its attorney-in-fact to endorse any draft therefor for the purposes set forth in this Lease. Except as expressly provided below, in the event of any casualty (whether or not insured against) resulting in damage to the Leased Premises or any part thereof, the Term shall nevertheless continue and there shall be no abatement or reduction of Basic Rent or Additional Rent. The Net Proceeds of all insurance payments for property losses exceeding the Threshold Amount shall be paid to the Trustee, and the Trustee shall make the Net Proceeds available to Tenant for restoration in accordance with the provisions of Section 15. Subject to Section 14(g), Tenant shall, whether or not the Net Proceeds are sufficient for the purpose, promptly and diligently repair or replace the Improvements and Equipment in accordance with the provisions of Section 11(a). In the event that any damage or destruction shall occur at such time as Tenant shall not have maintained third-party insurance in accordance with Section 14(a)(i), (iv) and (vi), Tenant shall pay to the Trustee Tenant’s Insurance Payment. Notwithstanding anything herein to the contrary, all proceeds of any business interruption insurance maintained by Tenant shall be payable directly to Tenant.

(g) If a casualty occurs during the last eighteen (18) months of the Initial Term or during the last eighteen (18) months of any Renewal Term and the cost of Restoration with respect thereto is reasonably expected to exceed fifty percent (50%) or more of the replacement cost of the Leased Premises, then Tenant may, at Tenant’s option, not later than ninety (90) days after such casualty has occurred, serve a Tenant’s Termination Notice upon Landlord, in which case this Lease and the Term hereof shall terminate on the Termination Date specified in the Termination Notice; and in such event Tenant shall have no obligation to commence or complete

the Restoration and all of the insurance proceeds payable in connection with the casualty (other than Tenant's business interruption insurance proceeds) shall be paid to, and Tenant shall pay the amount of any applicable deductible with respect to such casualty insurance to, the Trustee.

(h) Landlord and Tenant agree that with respect to any property loss that is paid by insurance then being carried by Landlord or Tenant, respectively, the party carrying such insurance and suffering said loss releases the other of and from any and all claims with respect to such loss; and they further agree that their respective insurance companies shall have no right of subrogation against the other on account thereof.

15. Restoration. The Restoration Fund shall be disbursed by the Trustee in accordance with the following conditions:

(a) If the cost of Restoration will exceed the Threshold Amount, prior to commencement of the Restoration the architects, general contractor(s), and plans and specifications for the Restoration shall be approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed, and which approval shall be granted to the extent that the plans and specifications depict a Restoration which is substantially similar to the Improvements and Equipment which existed prior to the occurrence of the casualty or Taking, whichever is applicable. Landlord will not withhold its consent for variations to the Improvements required as a result of current zoning and building code requirements.

(b) At the time of any disbursement, no monetary or material non-monetary Event of Default shall exist and no mechanics' or materialmen's Liens shall have been filed and remain uncontested (in accordance with the provisions of Section 18), undischarged or unbonded or for which Tenant shall fail to provide affirmative title insurance coverage.

(c) Disbursements shall be made from time to time in an amount not exceeding the hard and soft cost of the work and costs incurred since the last disbursement upon receipt of (1) satisfactory evidence, including an architect, engineer, general contractor or construction manager's certificate of the stage of completion, of the estimated cost of completion and of performance of the work to date in a good and workmanlike manner in accordance with the contracts and the plans and specifications, (2) partial releases of Liens or conditional Lien waivers from all contractors, subcontractors and materialmen (but not architects, engineers or other design consultants) having contracts for work, materials and/or services exceeding \$50,000, and (3) other reasonable evidence of cost and payment so that Landlord can verify that the amounts disbursed from time to time are represented by work that is completed in place or delivered to the site and free and clear of mechanics' Lien claims.

(d) Each request for disbursement shall be sent by Tenant to Landlord and to the Trustee, accompanied by a certificate of Tenant describing the work, materials or other costs or expenses for which payment is requested and stating (i) the cost incurred in connection therewith, (ii) that no Event of Default exists and no mechanics' Liens shall have been filed and remain uncontested (in accordance with the provisions of Section 18), undischarged or unbonded, and (iii) that Tenant has not previously received payment for such work or expense; the certificate to be delivered by Tenant upon completion of the work shall, in addition, state that the work that is the subject of the request for disbursement has been substantially completed and

complies with the applicable requirements of this Lease. The Trustee shall not release funds from the Restoration Fund unless and until it has received a written authorization from Landlord approving such release, which Landlord agrees to promptly give if Tenant has satisfied all of the requirements set forth in this Section 15 in connection with such release.

(e) The Trustee shall retain a commercially reasonable retainage amount (but in no event more than 10% of the expected repair cost, other than general conditions, initially, and 5% upon completion of fifty percent (50%) of the work under such contract).

(f) The Restoration Fund shall be held by the Trustee and shall be invested as directed by Landlord. All interest shall become a part of the Restoration Fund.

(g) At all times the undisbursed balance of the Restoration Fund held by the Trustee, plus any funds contributed thereto by Tenant, at its option, shall be not less than the cost of completing the Restoration (as reasonably estimated by Tenant, provided that Tenant shall provide to Landlord the basis for such estimate, in reasonable detail, promptly after Landlord's request therefor), free and clear of all Liens. Prior to commencement of Restoration and at any time during Restoration, if the estimated cost of Restoration, as reasonably determined by a contractor or architect mutually selected by Landlord and Tenant, exceeds the amount of the Net Proceeds or the Net Award, as applicable, and Tenant Insurance Payment available for such Restoration, either, at Tenant's option and determination, the amount of such excess shall be paid by Tenant to the Trustee to be added to the Restoration Fund or Tenant shall fund at its own expense the costs of such Restoration until the remaining Restoration Fund is sufficient for the completion of the Restoration. Any sum in the Restoration Fund which remains in the Restoration Fund upon the completion of Restoration with respect to a casualty shall be paid to Tenant; any portion of a Net Award remaining after completion of Restoration with respect to a Taking shall be paid to Landlord.

(h) Notwithstanding anything to the contrary contained herein, if any Lender under any Loan prevents Landlord or Trustee from disbursing or otherwise making the Net Award or Net Proceeds, as applicable, available to Tenant for such Restoration in accordance with the terms of this Lease, or in the event that Landlord or Trustee does not have the right to disburse or otherwise make such funds available to Tenant in accordance with the terms of this Lease, then Tenant may, at Tenant's option, not later than ninety (90) days after such determination has been made, serve a Tenant's Termination Notice upon Landlord, in which case this Lease and the Term hereof shall terminate on the Termination Date specified in the Termination Notice; and in such event Tenant shall have no obligation to commence or complete the Restoration and all of the insurance proceeds payable in connection with the casualty (other than Tenant's business interruption insurance proceeds) shall be paid to, and Tenant shall pay the amount of any applicable deductible with respect to such casualty insurance to, the Trustee.

#### 16. Subordination to Financing.

(a) (i) Subject to the provisions of Section 16(a)(ii), Tenant agrees that this Lease shall at all times be subject and subordinate to the Lien of the Mortgage, if any.

(ii) Except as expressly provided in this Lease by reason of the existence of an Event of Default that remains uncured, and as a condition to the subordination described in Section 16(a)(i) above, Tenant's tenancy and Tenant's rights under this Lease shall not be disturbed, terminated or otherwise adversely affected, nor shall this Lease be affected, by the existence of, or any default under, a Mortgage, and in the event of a foreclosure or other enforcement of a Mortgage, or sale in lieu thereof, the purchaser at such foreclosure sale shall be bound to Tenant for the Term of this Lease, the rights of Tenant under this Lease shall expressly survive and this Lease shall in all respects continue in full force and effect so long as no Event of Default has occurred and is continuing. Tenant shall not be named as a party defendant in any such foreclosure suit, except as may be required by law. Any Mortgage to which this Lease is now or hereafter subordinate shall provide, in effect, that during the time this Lease is in force and no Event of Default has occurred and is then continuing hereunder, insurance proceeds and any condemnation award shall be disbursed pursuant to the provisions of this Lease.

(b) Notwithstanding the provisions of Section 16(a), the holder of the Mortgage to which this Lease is subject and subordinate shall have the right, at its sole option, at any time, to subordinate and subject the Mortgage, in whole or in part, to this Lease by recording a unilateral declaration to such effect.

(c) At any time prior to the expiration of the Term, Tenant agrees, at the election and upon demand of any owner of the Leased Premises, or of a Lender who has granted non-disturbance to Tenant pursuant to Section 16(a) above, to attorn, from time to time, to any such owner or Lender, upon the terms and conditions of this Lease, for the remainder of the Term. The provisions of this Section 16(c) shall inure to the benefit of any such owner or Lender, shall apply notwithstanding that, as a matter of law, this Lease may terminate upon the foreclosure of the Mortgage, shall be self-operative upon any such demand, and no further instrument shall be required to give effect to said provisions. Notwithstanding the foregoing, the Tenant shall be under no obligation to so attorn unless the successor owner of the Leased Premises or the Lender, as the case may be, within twenty (20) days after the date of obtaining title pursuant to a foreclosure or other enforcement of a Mortgage, or sale in lieu thereof, assumes all of the obligations of the Landlord under this Lease which arise from and after the date of such foreclosure or other enforcement of a Mortgage, or sale in lieu thereof, pursuant to a written assumption agreement which shall be delivered to Tenant.

(d) Each of Tenant and Landlord agrees that, if requested by the other or by any Lender, each shall (and Landlord shall cause each Lender), without charge, enter into a Subordination, Non-Disturbance and Attornment Agreement, in substantially the form attached hereto as Exhibit C or such other commercially reasonable form reasonably requested by a Lender and reasonably acceptable to Landlord and Tenant, provided such agreement contains provisions relating to non-disturbance in accordance with the provisions of Section 16(a); the party requested to enter into a Subordination, Non-Disturbance and Attornment Agreement shall respond promptly, but in any event within fifteen (15) Business Days after receipt of the requested form of such agreement, with any comments thereto and, provided that such Subordination, Non-Disturbance and Attornment Agreement is in substantially the form attached hereto as Exhibit C or is otherwise reasonably acceptable to such party, thereafter shall promptly execute and deliver such agreement. It shall be reasonable for Tenant to refuse to execute any such instrument that is not in substantially the form of Exhibit C hereto that does not contain the

substantive provisions described in this Section 16(a), or that contains provisions that are inconsistent with such substantive provisions, or contains provisions that have the effect of: (1) reducing or extending the Term, (2) increasing the Basic Rent or Additional Rent, (3) reducing the usable area of the Leased Premises, (4) otherwise increasing Tenant's obligations or Landlord's rights under this Lease, or (5) otherwise decreasing the obligations of Landlord or the rights of Tenant under this Lease, except, in the case of the foregoing clauses (4) and (5) as a result of certain rights of Lender with respect to attornment, receipt of notice of defaults and the like to no materially greater degree than the terms set forth in the form of Exhibit C.

17. Assignment, Subleasing.

(a) Tenant may assign its interest in this Lease and may sublet the Leased Premises in whole or in part, from time to time, to any Person without the consent of Landlord, provided that such Person is not then the subject of any bankruptcy or insolvency proceeding. Tenant shall have no rights to mortgage or otherwise hypothecate its leasehold interest under this Lease.

(b) Each sublease of the Leased Premises or any part thereof shall be subject and subordinate to the provisions of this Lease. No assignment or sublease shall affect or reduce any of the obligations of Tenant hereunder, which shall remain the primary obligations of Tenant, and all such obligations shall continue in full force and effect as obligations of a principal and not as obligations of a guarantor, as if no assignment or sublease had been made (unless Landlord and Tenant expressly otherwise agree in writing that Tenant shall be released from all obligations hereunder, which agreement may be withheld by Landlord in its sole and absolute discretion). No assignment or sublease shall impose any obligations on Landlord under this Lease except as otherwise provided in this Lease or as otherwise expressly agreed to in writing by Landlord, which agreement may be withheld by Landlord in its sole and absolute discretion. Tenant agrees that in the case of an assignment of this Lease, Tenant shall, within fifteen (15) days after the execution and delivery of any such assignment, deliver to Landlord (i) a duplicate original of such assignment and (ii) an agreement executed and acknowledged by the assignee wherein the assignee shall agree to assume and to observe and perform all of the terms and provisions of this Lease on the part of the Tenant to be observed and performed from and after the date of such assignment. In the case of a sublease, Tenant shall, within fifteen (15) days after the execution and delivery of such sublease, deliver to Landlord a duplicate original of such sublease. A direct or indirect transfer or sale of a majority of the voting interests of Tenant or any Guarantor shall not constitute an assignment of this Lease.

(c) Upon the occurrence and during the continuance of an Event of Default under this Lease, Landlord shall have the right to collect and enjoy all rents and other sums of money payable under any sublease of any of the Leased Premises, which rents and other sums shall be applied to Tenant's outstanding obligations under this Lease (and any excess shall be paid to Tenant for such time as Landlord is collecting such rents and other sums or until such time as this Lease is terminated) and Tenant hereby unconditionally assigns such rents and money to Landlord, which assignment may be exercised upon the occurrence and during the continuance of an Event of Default (but not before the occurrence or after the cure of an Event of Default).

18. Permitted Contests.

(a) So long as no Event of Default has occurred and is continuing, after prior written notice to Landlord, Tenant shall not be required to (i) pay any Imposition, (ii) comply with any Legal Requirement or Applicable Law (including, without limitation, any Environmental Law), (iii) discharge or remove any Lien referred to in Section 9 or 12, or (iv) take any action with respect to any violation referred to in Section 11(b) so long as Tenant shall contest, in good faith and at its expense, the existence, the amount or the validity thereof, the amount of the damages caused thereby, or the extent of its or Landlord's liability therefor, by appropriate proceedings which shall operate during the pendency thereof to prevent (A) the collection of, or other realization upon, the Imposition or Lien so contested, (B) the sale, forfeiture or loss of any of the Leased Premises, any Basic Rent or any Additional Rent to satisfy the same or to pay any damages caused by the violation of any such Legal Requirement or by any such violation, (C) any interference with the use or occupancy of any of the Leased Premises, (D) any interference with the payment of any Basic Rent or any Additional Rent, and (E) the cancellation of any insurance policy required to be maintained under this Lease. Landlord shall reasonably cooperate with Tenant in connection with any such contest at Tenant's sole cost and expense.

(b) In no event shall Tenant pursue any contest with respect to any Imposition, Legal Requirement, Lien, or violation, referred to above in such manner that exposes Landlord or any Lender to (i) criminal liability, penalty or sanction, (ii) any civil liability, penalty or sanction for which Tenant has not made provisions reasonably acceptable to Landlord and Lenders (which may include the requirement to post a bond therefor or other requirements reasonably acceptable to Landlord) or (iii) defeasance of its interest (including the subordination of the Lien of the Mortgage to a Lien to which such Mortgage is not otherwise subordinate prior to such contest) in the Leased Premises.

(c) Tenant agrees that each such contest shall be promptly and diligently prosecuted to a final conclusion, except that Tenant shall have the right to attempt to settle or compromise such contest through negotiations. If requested by Landlord, Tenant shall deliver a bond, cash collateral or other surety in an amount reasonably sufficient to discharge any Lien of record related to such contest during the pendency thereof. Tenant shall pay and save each Indemnitee harmless against any and all actual losses, judgments, decrees and costs (including all reasonable attorneys' fees and expenses) in connection with any such contest and shall, promptly after the final determination of such contest, fully pay and discharge the amounts which shall be levied, assessed, charged or imposed or be determined to be payable therein or in connection therewith, together with all penalties, fines, interest, costs and expenses thereof or in connection therewith, and perform all acts the performance of which shall be ordered or decreed as a result thereof.

19. Conditional Limitations; Default Provisions.

(a) If any Event of Default exists, Landlord shall have the right at its option, then or at any time during the continuance of such Event of Default, to do any one or more of the following:

(i) Landlord may give Tenant notice of Landlord's intention to terminate this Lease on a date specified in such notice (which date shall be no sooner than ten



(10) Business Days after the date of the notice); provided that Tenant has not cured all Events of Default prior to the date specified in Landlord's notice, the Term and the estate hereby granted and all rights of Tenant hereunder shall expire and terminate as if such date were the date hereinabove fixed for the expiration of the Term, but Tenant shall remain liable for all its obligations hereunder through the date hereinabove fixed for the expiration of the Term, including its liability for Basic Rent and Additional Rent as hereinafter provided in Sections 19(b) and (c).

(ii) Landlord may, whether or not the Term of this Lease shall have been terminated pursuant to clause (i) above, give Tenant notice to surrender the Leased Premises to Landlord on a date specified in such notice (which date shall be no sooner than ten (10) Business Days after the date of the notice), at which time Tenant shall surrender and deliver possession of the Leased Premises to Landlord. Upon or at any time after taking possession of the Leased Premises, Landlord may remove any persons or property therefrom. Landlord shall be under no liability for or by reason of any such entry, repossession or removal. No such entry or repossession shall be construed as an election by Landlord to terminate this Lease unless Landlord gives a written notice of such intention to Tenant pursuant to clause (i) above.

(iii) After repossession of the Leased Premises pursuant to clause (ii) above, whether or not this Lease shall have been terminated pursuant to clause (i) above, Landlord may relet the Leased Premises or any part thereof to such tenant or tenants for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the Term) for such rent, on such conditions (which may include concessions or free rent) and for such uses as Landlord, in its reasonable discretion, may determine; and Landlord shall collect and receive any rents payable by reason of such reletting. The rents received on such reletting shall be applied (A) first to the actual and reasonable expenses of such reletting and collection, including without limitation reasonably necessary renovation and alterations of the Leased Premises, reasonable attorneys' fees and any reasonable real estate commissions paid, and (B) thereafter toward payment of all sums due or to become due Landlord hereunder. If a sufficient amount to pay such expenses and sums shall not be realized, then Tenant shall pay Landlord any such deficiency monthly, and Landlord may bring an action therefor as such monthly deficiency shall arise. Landlord shall not, in any event, be required to pay Tenant any sums received by Landlord on a reletting of the Leased Premises in excess of the rent provided in this Lease, but such excess shall reduce any accrued present or future obligations of Tenant hereunder. Landlord's re-entry and reletting of the Leased Premises without termination of this Lease shall not preclude Landlord from subsequently terminating this Lease as set forth above. Landlord may make such Alterations as Landlord in its reasonable discretion may deem advisable. Tenant agrees to pay Landlord, as Additional Rent, immediately within thirty (30) days of written demand, all actual and reasonable expenses incurred by Landlord in obtaining possession, in performing Alterations and in reletting any of the Leased Premises, including reasonable fees and commissions of attorneys, architects, agents and brokers.

(iv) Landlord may exercise any other right or remedy now or hereafter existing by law or in equity.

(b) In the event of any expiration or termination of this Lease or repossession of any of the Leased Premises by reason of the occurrence of an Event of Default that remains uncured, Tenant shall pay to Landlord Basic Rent and all Additional Rent required to be paid by Tenant to and including the date of such expiration, termination or repossession and, thereafter, TENANT SHALL, UNTIL THE END OF WHAT WOULD HAVE BEEN THE TERM IN THE ABSENCE OF SUCH EXPIRATION, TERMINATION OR REPOSSESSION, AND WHETHER OR NOT ANY OF THE LEASED PREMISES SHALL HAVE BEEN RELET, BE LIABLE TO LANDLORD FOR AND SHALL PAY TO LANDLORD AS LIQUIDATED AND AGREED CURRENT DAMAGES: (I) BASIC RENT AND ADDITIONAL RENT WHICH WOULD BE PAYABLE UNDER THIS LEASE BY TENANT IN THE ABSENCE OF SUCH EXPIRATION, TERMINATION OR REPOSSESSION FROM TIME TO TIME AS SUCH BASIC RENT AND ADDITIONAL RENT BECOME DUE, LESS (II) THE NET PROCEEDS, IF ANY, OF ANY RELETTING PURSUANT TO SECTION 19(A)(III), AFTER DEDUCTING FROM SUCH PROCEEDS ALL OF LANDLORD'S ACTUAL AND REASONABLE EXPENSES IN CONNECTION WITH SUCH RELETTING (INCLUDING ALL REASONABLE REPOSSESSION COSTS, BROKERAGE COMMISSIONS, LEGAL EXPENSES, ATTORNEYS' FEES, EMPLOYEES' EXPENSES, COSTS OF ALTERATION AND EXPENSES OF PREPARATION FOR RELETTING) OR, IF LANDLORD HAS NOT EXPENDED COMMERCIALY REASONABLE EFFORTS TO RELET THE LEASED PREMISES, THE NET FAIR MARKET VALUE RENT THAT LANDLORD COULD HAVE RECEIVED FOR THE LEASED PREMISES IN THEIR THEN CONDITION FOR THE REMAINDER OF THE TERM (THE "NET RENT PROCEEDS"), PLUS (III) ALL ADDITIONAL PAYMENTS PAID OR PAYABLE BY LANDLORD. Tenant hereby agrees to be and remain liable for all sums aforesaid and Landlord may recover such damages from Tenant and institute and maintain successive actions or legal proceedings against Tenant for the recovery of such damages. Nothing herein contained shall be deemed to require Landlord to wait to begin such action or other legal proceedings until the date when the Term would have expired by limitation had there been no such Event of Default. If Tenant has paid the amount of damages due pursuant to Section 19(c), Landlord shall not be entitled to claim any further amounts pursuant to this Section 19(b).

(c) AT ANY TIME AFTER SUCH EXPIRATION OR SOONER TERMINATION OF THIS LEASE BY LANDLORD PURSUANT TO SECTION 19 OR PURSUANT TO LAW OR IF LANDLORD SHALL HAVE REENTERED THE LEASED PREMISES, AS THE CASE MAY BE, WHETHER OR NOT LANDLORD SHALL HAVE RECOVERED ANY AMOUNTS UNDER SECTION 19(A)(III) OR 19(B) (BUT WITHOUT DOUBLE-COUNTING), LANDLORD SHALL BE ENTITLED TO RECOVER FROM TENANT AND TENANT SHALL PAY TO LANDLORD, WITHIN THIRTY (30) DAYS OF WRITTEN DEMAND, AS AND FOR LIQUIDATED AND AGREED FINAL DAMAGES FOR TENANT'S DEFAULT, THE FOLLOWING AMOUNT:

(A) THE BASIC RENT RESERVED HEREUNDER FOR THE UNEXPIRED PORTION OF THE TERM DEMISED HEREIN AS IF THIS LEASE HAD NOT EXPIRED OR BEEN TERMINATED, DISCOUNTED TO PRESENT WORTH AT THE ANNUAL RATE OF FIVE PERCENT (5%), MINUS

(B) THE NET RENT PROCEEDS, IF ANY, OF ANY RELETING PURSUANT TO SECTION 19(A)(III) RECEIVED BY LANDLORD PRIOR TO THE DATE OF PAYMENT OF SUCH DAMAGES, MINUS

(C) THE RENT RESERVED FOR THE UNEXPIRED PORTION OF THE TERM DEMISED HEREIN AS IF THIS LEASE HAD NOT EXPIRED OR BEEN TERMINATED IN ANY REPLACEMENT LEASE ENTERED INTO BY LANDLORD FOR THE LEASED PREMISES OR ANY PORTION THEREOF PURSUANT TO SECTION 19(A)(III) OR, IF LANDLORD HAS NOT EXPENDED COMMERCIALY REASONABLE EFFORTS TO RELET THE LEASED PREMISES, THE NET FAIR MARKET VALUE RENT THAT LANDLORD COULD HAVE RECEIVED FOR THE LEASED PREMISES IN THEIR THEN CONDITION FOR THE REMAINDER OF THE TERM, DISCOUNTED TO PRESENT WORTH AT THE ANNUAL RATE OF FIVE PERCENT (5%), MINUS

(D) ANY DEFICIENCY PAYMENTS MADE BY TENANT TO LANDLORD PURSUANT TO SECTION 19(B) FOR THE PERIOD OF TIME, OR ANY PORTION THEREOF, FOR WHICH BASIC RENT IS INCLUDED IN CLAUSE (A) ABOVE, PLUS

(E) ANY ADDITIONAL PAYMENTS PAID OR PAYABLE BY LANDLORD.

If any statute or rule of law governing a proceeding in which such liquidated final damages provided for in this Section 19(c) are to be proved shall validly limit the amount thereof to an amount less than the amount above agreed upon, Landlord shall be entitled to the maximum amount allowable under such statute or rule of law.

EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE IN PARAGRAPHS (b) AND (c) ABOVE AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS LEASE WAS MADE, THE CONSEQUENCES OF THE ABOVE LIQUIDATED DAMAGES PROVISION.

INITIALS:

  
LANDLORD

  
TENANT

(d) Notwithstanding anything to the contrary set forth in this Lease, Landlord shall be in default in the performance of any obligation required to be performed by Landlord pursuant to this Lease if Landlord fails to perform such obligation within thirty (30) days after the receipt of written notice from Tenant specifying in detail Landlord's failure to perform; provided, however, if the nature of Landlord's obligation is such that more than thirty (30) days are required for its performance, then Landlord shall not be in default under this Lease if it shall commence such performance within such thirty (30) day period and thereafter diligently pursue the same to completion. Upon any such default by Landlord under this Lease, Tenant may, except as otherwise specifically provided in this Lease to the contrary, exercise any of its rights provided at

law or in equity, it being understood that Tenant shall not have the right to terminate this Lease or to offset any damages against Basic Rent or Additional Rent.

20. Additional Rights of Landlord and Tenant.

(a) Except as may be specifically provided herein, no right or remedy conferred upon or reserved to Landlord in this Lease 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 contained in this Lease. No delay or failure by Landlord to enforce its rights under this Lease shall be construed as a waiver, modification or relinquishment thereof. In addition to the 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 provisions of this Lease, or to specific performance of any of the provisions of this Lease.

(b) Tenant hereby waives and surrenders for itself and all those claiming under it, including creditors of all kinds, any right and privilege which it or any of them may have under any present or future law to redeem any of the Leased Premises or to have a continuance of this Lease after termination of this Lease or of Tenant's right of occupancy or possession pursuant to any court order or any provision hereof.

(c) Landlord hereby waives any right to distrain or levy upon Trade Fixtures or any property of Tenant and any Landlord's Lien or similar Lien upon Trade Fixtures and any other property of Tenant. Landlord agrees, at the request and actual and reasonable expense of Tenant, to execute a waiver of any Landlord's or similar Lien for the benefit of any present or future holder of a security interest in or lessor of any of Trade Fixtures or any other personal property of Tenant, provided that such waiver is in form and substance reasonably acceptable to Landlord. Landlord agrees to review any requested form of waiver provided by Tenant within ten (10) Business Days of receipt thereof. Additionally, Tenant shall be permitted to remove Trade Fixtures or any property of Tenant from the Leased Premises without Landlord's consent (free and clear of any Landlord's Lien or similar Lien), provided that Tenant repairs any damage to the Leased Premises and other improvements located in the Leased Premises caused by such removal. Some of Tenant's Trade Fixtures installed and used by Tenant on the Leased Premises may be directly financed by a third-party lender or lessor (an "Equipment Lienor"), and Landlord hereby agrees to recognize the rights of any such Equipment Lienor upon the terms and conditions set forth in this Section 20(c). Landlord agrees that all of Tenant's Trade Fixtures installed or to be installed on the Leased Premises shall be and remain personal property and not real property, and to the extent of its interest therein such Equipment Lienor shall also have a removal right whether or not Tenant is in default under this Lease, subject to the obligation to repair damage caused thereby, to promptly remove such Trade Fixtures after any termination or expiration of this Lease and other reasonable requirements of Landlord. Landlord acknowledges and agrees that it does not have, and shall not assert, any right, lien or claim in or to the financed or leased Tenant's Trade Fixtures and agrees that any Equipment Lienor may remove and dispose of such financed or leased Tenant's Trade Fixtures on or before the expiration or earlier termination of this Lease, without reference to, and free and clear of, any demand of Landlord other than a demand to repair any damage caused by such removal, provided that such disposal or sale shall not under any circumstances be made on the Leased Premises.

(d) (i) Tenant agrees to pay to Landlord any and all reasonable costs and expenses incurred by Landlord in connection with any litigation or other action instituted by Landlord to enforce the obligations of Tenant under this Lease, to the extent that Landlord has prevailed in any such litigation or other action. Any amount payable by Tenant to Landlord pursuant to this Section 20(d)(i) shall be due and payable by Tenant to Landlord as Additional Rent within thirty (30) days after a final, non-appealable judgment or decision is rendered in favor of Landlord in such litigation or other action.

(ii) Landlord agrees to pay to Tenant any and all reasonable costs and expenses incurred by Tenant in connection with any litigation or other action instituted by Tenant to enforce the obligations of Landlord under this Lease, to the extent that Tenant has prevailed in any such litigation or other action. Any amount payable by Landlord to Tenant pursuant to this Section 20(d)(ii) shall be due and payable within thirty (30) days after a final, non-appealable judgment or decision is rendered in favor of Tenant in such litigation or other action.

21. Notices. All notices, demands, requests and approvals pursuant to this Lease shall be in writing and shall be deemed to have been given for all purposes (i) four (4) days after having been sent by United States mail, by registered or certified mail, return receipt requested, postage prepaid, addressed to the other party at its address as stated below, (ii) one (1) Business Day after having been sent for overnight delivery by a nationally recognized air courier service, (iii) on the day delivered, if personally delivered on a Business Day during business hours or (iv) for purposes of Section 6(c) only, on the day sent by electronic mail, if sent during business hours on a Business Day (or if not sent during such time, on the next Business Day) so long as receipt thereof is confirmed electronically and the same written notice is also sent by nationally recognized air courier service or messenger.

To the Addresses stated below:

If to Landlord:

DP Ontario CA Landlord, LLC  
c/o SunTrust Equity Funding, LLC  
3333 Peachtree Road, NE, 10<sup>th</sup> Floor  
Atlanta, Georgia 30326  
Attention: Patrick Zepeda  
Email: patrick.zepeda@truist.com

If to Tenant:

DPI Specialty Foods West, Inc.  
601 S. Rockefeller Ave.  
Ontario, CA 91761  
Attention: Marc Barth  
Email: marc.barth@dpspecialtyfoods.com

With copies to:

Winston & Strawn, LLP  
35 W. Wacker Drive  
Chicago, Illinois 60601-9703  
Attention: Andrew T. White, Esq.  
Email: awhite@winston.com

If any Lender shall have advised Tenant by notice in the manner aforesaid that it is the holder of a Mortgage and states in said notice its address for the receipt of notices, then simultaneously with the giving of any notice by Tenant to Landlord, Tenant shall send a copy of such Notice to Lender in the manner aforesaid. For the purposes of this Section 21, any party may substitute its address by giving fifteen (15) days' notice to the other party in the manner provided above. Any notice, demand and request may be given on behalf of any party by its counsel.

22. Estoppel Certificates. At any time and from time to time, upon not less than ten (10) Business Days' written notice by either party (but in no event more frequently than one time (1) per calendar year, except in connection with any financing or sale of the Leased Premises or in connection with any assignment of this Lease or sublease of any portion of the Leased Premises), the party receiving such notice shall execute and deliver to the other an estoppel certificate in substantially the form attached hereto as Exhibit D or such other form as may be reasonably requested by the requesting party. It is intended that any such statements may be relied upon by the requesting party, its lenders or potential lenders, and any prospective purchaser, mortgagee or permitted subtenant of all or any portion of the Leased Premises or the leasehold estate created hereby and by any prospective purchaser of the membership interests in Landlord.

23. Surrender and Holding Over.

(a) Upon the expiration or earlier termination of this Lease, Tenant shall peaceably leave and surrender the Leased Premises to Landlord. Tenant shall remove from the Leased Premises on or prior to such expiration or earlier termination the Trade Fixtures and personal property which is owned by Tenant or third parties other than Landlord, and Tenant at its expense shall, on or prior to such expiration or earlier termination, repair any damage caused by such removal. Trade Fixtures and personal property not so removed at the expiration of the Term or within thirty (30) days after the earlier termination of the Term for any reason whatsoever shall become the property of Landlord, and Landlord may thereafter cause such property to be removed from the Leased Premises. The actual and reasonable cost of removing and disposing of such property and repairing any damage to any of the Leased Premises caused by such removal shall be borne by Tenant. Landlord shall not in any manner or to any extent be obligated to reimburse Tenant for any property which becomes the property of Landlord as a result of such expiration or earlier termination.

(b) Any holding over by Tenant of the Leased Premises or such portion thereof after the expiration or earlier termination of the term of this Lease or any extensions thereof shall operate and be construed as tenancy from month to month only, on account of the portion of the Leased Premises not so surrendered, at one hundred twenty-five percent (125%) of the Basic Rent in effect immediately prior to such expiration or termination for the first three (3) months

and at one hundred fifty percent (150%) of the Basic Rent in effect immediately prior to such expiration or termination thereafter and upon the same terms and conditions as contained in this Lease. Notwithstanding the foregoing, any holding over without Landlord's consent shall entitle Landlord, in addition to collecting Basic Rent at the rate set forth in the previous sentence, to exercise all rights and remedies provided by law or in equity, including the remedies of Section 19(b).

24. No Merger of Title. There shall be no merger of this Lease nor of the leasehold estate created by this Lease with the fee estate in or ownership of any of the Leased Premises by reason of the fact that the same person, corporation, firm or other entity may acquire or hold or own, directly or indirectly, (a) this Lease or the leasehold estate created by this Lease or any interest in this Lease or in such leasehold estate and (b) the fee estate or ownership of any of the Leased Premises or any interest in such fee estate or ownership. No such merger shall occur unless and until all persons, corporations, firms and other entities having any interest in (i) this Lease or the leasehold estate created by this Lease and (ii) the fee estate in or ownership of the Leased Premises or any part thereof sought to be merged shall join in a written instrument effecting such merger and shall duly record the same.

25. Definition of Landlord.

(a) Anything contained herein to the contrary notwithstanding, any claim based on or in respect of any liability of Landlord under this Lease shall be enforced only against the Landlord's interest in the Leased Premises, including, without limitation, the condemnation, property insurance, rent or sale proceeds related thereto, and shall not be enforced against the Landlord individually or personally, or against any member or other Affiliate of Landlord.

(b) The term "Landlord" as used in this Lease so far as covenants or obligations on the part of Landlord are concerned, shall be limited to mean and include only the owner or owners of the Leased Premises or holder of the Mortgage in possession at the time in question of the Leased Premises and in the event of any transfer or transfers of the title of the Leased Premises, the Landlord herein named (and in case of any subsequent transfers or conveyances, the then grantor) shall be automatically freed and relieved from and after the date of such transfer and conveyance of all liability as respects the performance of any covenants or obligations on the part of Landlord contained in this Lease thereafter to be performed (but shall remain liable with respect to all such liability arising from events or circumstances existing prior to the date of such transfer).

26. Hazardous Substances.

(a) Tenant agrees that it will not on, about, or under the Leased Premises, make, Release, treat, store, use, generate or dispose of any Hazardous Materials; except in the ordinary course of business of Tenant and in accordance with all Applicable Laws. Tenant covenants that it will at all times comply with each applicable Environmental Law.

(b) To the extent required by any Environmental Laws, subject to Tenant's right to contest the same in accordance with Section 18 hereof, Tenant shall remove any Hazardous Materials, whether now or hereafter existing on the Leased Premises and whether or not arising

out of or in any manner connected with Tenant's occupancy of the Leased Premises during the Term, and shall remediate any damage or harm caused, or that may be caused, by such Hazardous Materials.

(c) The Tenant agrees that it will not install any underground storage tank at the Leased Premises without specific, prior written approval from Landlord.

27. Entry by Landlord. Subject to Tenant's reasonable security requirements, Landlord and its authorized representatives shall have the right upon reasonable notice (which shall be not less than two (2) Business Days except in the case of emergency, in which case Landlord shall make commercially reasonable attempts to notify Tenant) to enter the Leased Premises at all reasonable business hours (and at all other times in the event of an emergency): (a) for the purpose of inspecting the same or for the purpose of doing any work under Section 11(c), and may take all such action thereon as may be necessary or appropriate for any such purpose (but nothing contained in this Lease or otherwise shall create or imply any duty upon the part of Landlord to make any such inspection or do any such work), and (b) for the purpose of showing the Leased Premises to prospective purchasers, lenders and mortgagees and, at any time within twelve (12) months prior to the expiration of the Term of this Lease (unless Tenant has exercised its renewal option), for the purpose of showing the same to prospective tenants. No such entry shall constitute an eviction of Tenant, but any such entry shall be done by Landlord in such reasonable manner as to minimize any disruption of, or interference with, Tenant's use, occupancy and business operations in the Leased Premises.

28. No Usury. The intention of the parties being to conform strictly to the applicable usury laws, whenever any provision herein provides for payment by Tenant to Landlord of interest at a rate in excess of the legal rate permitted to be charged, such rate herein provided to be paid shall be deemed reduced to such legal rate.

29. Separability. Each and every covenant and agreement contained in this Lease is, and shall be construed to be, a separate and independent covenant and agreement, and the breach of any such covenant or agreement by Landlord shall not discharge or relieve Tenant from its obligation to perform the same. If any term or provision of this Lease or the application thereof to any provision of this Lease or the application thereof to any person or circumstances shall to any extent be invalid and unenforceable, the remainder of this Lease, or the application of such term or provision to person or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and shall be enforced to the extent permitted by law.

30. Miscellaneous.

(a) The Section headings in this Lease are used only for convenience in finding the subject matters and are not part of this Lease or to be used in determining the intent of the parties or otherwise interpreting this Lease.

(b) As used in this Lease the singular shall include the plural as the context requires and the following words and phrases shall have the following meanings: (i) "including" shall mean "including but not limited to"; (ii) "provisions" shall mean "provisions, terms, agreements,



covenants and/or conditions”; and (iii) “obligation” shall mean “obligation, duty, agreement, liability, covenant or condition”.

(c) Any act which Landlord is permitted to perform under this Lease may be performed at any time and from time to time by Landlord or any person or entity designated by Landlord. Any act which Tenant is required to perform under this Lease shall be performed at Tenant’s sole cost and expense, except as otherwise expressly provided herein.

(d) This Lease may be modified, amended, discharged or waived only by an agreement in writing signed by the party against whom enforcement of any such modification, amendment, discharge or waiver is sought. This Lease and the Lease Guaranty embody the entire agreement and understanding between Tenant and Landlord with respect to the transactions contemplated hereby and supersede all other agreements and understandings between Tenant and Landlord with respect to the subject matter thereof. This Lease and the Lease Guaranty represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of Tenant and Landlord or any course of prior dealings. There are no unwritten oral agreements between the parties.

(e) The covenants of this Lease shall run with the Land and bind Tenant, the successors and assigns of Tenant and all present and subsequent encumbrances and subtenants of any of the Leased Premises, and shall inure to the benefit of and bind Landlord, its successors and assigns.

(f) This Lease will be simultaneously executed in several counterparts, each of which when so executed and delivered shall constitute an original, fully enforceable counterpart for all purposes. Executed copies of this Lease distributed in a pdf or similar format shall constitute originals thereof.

(g) This Lease shall be governed by and construed according to the laws of the State in which the Leased Premises is located.

(h) TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAWS, LANDLORD AND TENANT IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS LEASE (“DISPUTE”) AND ANY COUNTERCLAIM THEREUNDER. Any and all Disputes shall be resolved by a single general judicial referee (“Referee”) pursuant to California Code of Civil Procedure Section 638 et seq., or any successor statute or statute, court rule, or provision of law containing reasonably similar provisions. The Referee shall be a retired state or federal judge or other neutral associated with JAMS or other dispute resolution entity agreeable to the parties, residing in the Ontario, California area, who is either (i) agreed to by the parties to a Dispute within ten days after either the parties agreeing to or the court ordering appointment of a Referee, or (ii) failing such agreement, is appointed pursuant to California Code of Civil Procedure Section 640, or any successor statute or statute, court rule, or provision of law containing reasonably similar provisions. The parties intend this judicial reference agreement to be specifically enforceable. The parties further agree that any motion to appoint a Referee in connection with any Dispute may be brought on an ex parte basis requiring at least five (5) business days’ notice and an opportunity for the non-moving party to respond to the ex parte

application and/or motion to appoint a Referee. The Referee shall have all powers provided in and comply with all requirements of California Civil Procedure Code Section 638 et seq. or any successor statute or statute, court rule, or provision of law containing reasonably similar provisions, including to hear and determine all the issues in any action or proceeding. The action shall be conducted and the issues determined in compliance with all judicial rules and all statutory and decisional law of the State of California as if the matter were formally litigated in the Superior Court of California. It is the parties' intention and the parties and the Referee shall use their best efforts to be certain that (i) discovery be conducted as expeditiously as possible, and (ii) trial be set on a date that is within one (1) year after the date the Referee is appointed. If a court reporter is requested by either party, then such reporter shall be present at any proceedings where requested, and the fees of such reporter shall be borne by the party requesting such reporter, subject to any further determination by the Referee. Such fees shall be an item of recoverable costs. During the pendency of any proceedings before the Referee, and before the entry of any decision, order, or judgment therein, the parties shall bear equal shares of the fees charged and costs incurred by or in connection with the Referee. The prevailing party in any Dispute shall be entitled to reasonable court costs and legal fees, including customary attorney fees, expert witness fees, paralegal fees, the fees and costs of the Referee and other reasonable costs and disbursements charged to the prevailing party by its counsel, in such amount as is determined by the Referee. The Referee shall in his/her statement of decision and/or order set forth the bases for his/her decision and/or order and his/her findings of fact and conclusions of law. The court in any proceeding in which a Referee has been appointed pursuant to this Section 30(h) shall enter the order, decision, and/or judgment of the Referee. Any decision of the Referee and/or judgment or other order entered thereon shall be appealable to the same extent and in the same manner that such order, decision, or judgment would be appealable if rendered by a court. EACH PARTY ACKNOWLEDGES THAT THE PROVISIONS OF THIS SECTION 30(H) ARE A MATERIAL INDUCEMENT TO THE OTHER PARTY'S ENTERING INTO THIS AGREEMENT.

(i) Tenant hereby represents and warrants that neither Tenant nor any of its Affiliates is in violation of (i) any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto, (ii) Executive Order No. 13,224, 66 Fed Reg 49,079 (2001), issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit or Support Terrorism) or (iii) the anti-money laundering provisions of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001) (the "USA Patriot Act") amending the Bank Secrecy Act, 31 U.S.C. Section 5311 et seq and any other laws relating to terrorism or money laundering, provided that Tenant makes no representation with respect to any Affiliate that constitutes an Affiliate by virtue of owning publicly traded securities.

(j) Landlord hereby represents and warrants that neither Landlord nor any of its Affiliates is in violation of (i) any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto, (ii) Executive Order No. 13,224, 66 Fed Reg 49,079 (2001), issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit or Support Terrorism) or (iii) the anti-money laundering provisions of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into

law October 26, 2001) (the “USA Patriot Act”) amending the Bank Secrecy Act, 31 U.S.C. Section 5311 et seq and any other laws relating to terrorism or money laundering, provided that Landlord makes no representation with respect to any Affiliate that constitutes an Affiliate by virtue of owning publicly traded securities.

(k) If Landlord or Tenant is a limited liability company, corporation, trust or partnership, such entity hereby represents that (1) such party is a duly formed and existing entity qualified to do business in the State in which the Leased Premises is located, (2) such party has full right and authority to execute and deliver this Lease and (3) each person signing on behalf of such party is authorized to do so.

(l) Landlord and Tenant each hereby warrants and represents that neither its execution of nor performance under this Lease shall cause it to be in violation of any agreement, instrument, contract, law, rule or regulation by which it is bound, and it shall protect, defend, indemnify and hold the other party harmless against any claims, demands, losses, damages, liabilities, costs and expenses, including, without limitation, reasonable attorneys’ fees and costs, arising from its breach of this warranty and representation.

(m) Landlord and Tenant hereby waive the provisions of any present or future statutes relating to termination of leases when leased property is damaged or destroyed and agree that such an event shall be governed by the terms of this Lease. In the event of an interruption in, or failure or inability to provide any service or utility for the Leased Premises for any reason, such interruption, failure or inability shall not constitute an eviction of Tenant, constructive or otherwise, or impose upon Landlord any liability whatsoever, including, but not limited to, liability for consequential damages or loss of business by Tenant. Tenant hereby waives the provisions of California Civil Code Section 1932(1) or any other applicable existing or future legal requirement permitting the termination of this Lease due to such interruption, damage, destruction, failure or inability. Tenant hereby waives California Civil Code Sections 1932(2) and 1933(4), providing for termination of hiring upon destruction of the thing hired and Sections 1941 and 1942, providing for repairs to and of premises. Landlord and Tenant each hereby waive the provisions of California Code of Civil Procedure Section 1265.130 and any other applicable existing or future legal requirement providing for, or allowing either party to petition the courts of the state in which the Leased Premises is located for, a termination of this Lease upon a partial taking of the Leased Premises and/or the Improvements.

(n) The parties acknowledge that a landlord may be required to disclose certain information concerning the energy performance of the Leased Premises pursuant to California Public Resources Code Section 25402.10 and the regulations adopted pursuant thereto (collectively the “Energy Disclosure Requirements”). Tenant hereby consents to the applicable utility companies’ release of the Tenant’s energy consumption information for the Leased Premises to Landlord pursuant to the Energy Disclosure Requirements.

(o) Landlord makes the following statement based on Landlord's actual knowledge in order to comply with California Civil Code Section 1938: The Improvements and the Leased Premises have not undergone an inspection by a Certified Access Specialist (CASP). A CASp can inspect the Leased Premises and determine whether the Leased Premises comply with all of the applicable construction-related accessibility standards under state law. Although state law

does not require a CASp inspection of the Leased Premises, Landlord may not prohibit Tenant from obtaining a CASp inspection of the Leased Premises for the occupancy or potential occupancy of Tenant, if requested by Tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection; Tenant shall be responsible for the payment of the fee for the CASp inspection and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Leased Premises (which repairs shall be made in accordance with the standards set forth in Section 11 of this Lease).

*[signatures appear on following page]*

IN WITNESS WHEREOF, each of Landlord and Tenant have caused this Lease to be executed by its respective duly authorized officer as of the day and year first above written.

**LANDLORD:**

DP ONTARIO CA LANDLORD, LLC, a  
Delaware limited liability company

By: STEF NLIP, LLC, its sole member

By: SunTrust Equity Funding, LLC, its  
sole member


By: 

Name: Allison McLeod

Title: Manager

**TENANT:**

**DPI SPECIALTY FOODS WEST, INC.,**  
a Delaware corporation

By 

Name: Marc Barth

Title: Chief Financial Officer

## EXHIBIT A

### Legal Description

The Land referred to herein below is situated in the City of Ontario, County of San Bernardino, State of California, and is described as follows:

#### PARCEL 1:

THAT PORTION OF PARCELS 7, 11 AND 15 OF AMENDED PARCEL MAP NO. 6875, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 77, PAGES 23 THROUGH 38, INCLUSIVE OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY DESCRIBED AS A WHOLE AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF PARCEL B IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS DESCRIBED IN LOT LINE ADJUSTMENT NO. L83-12 RECORDED OCTOBER 13, 1983, AS INSTRUMENT NO. 83-241019, OF OFFICIAL RECORDS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY RECORDER OF SAID COUNTY; THENCE SOUTH 0° 34' 00" WEST 880.80 FEET ALONG THE WESTERLY LINE OF SAID PARCEL B AND THE WESTERLY LINE OF PARCEL C AS DESCRIBED IN SAID LOT LINE ADJUSTMENT NO. 83-12 TO A LINE PARALLEL WITH AND SOUTHERLY 204.80 FEET FROM THE SOUTHERLY LINE OF SAID PARCEL B; THENCE SOUTH 89° 26' 00" EAST 638.00 FEET ALONG SAID PARALLEL LINE TO THE EASTERLY LINE OF SAID PARCEL C; THENCE ALONG SAID EASTERLY LINE AND THE EASTERLY AND NORTHERLY LINES OF SAID PARCEL B, THE FOLLOWING COURSES: NORTH 0° 34' 00" EAST 880.80 FEET AND NORTH 89° 26' 00" WEST 638.00 FEET TO THE POINT OF BEGINNING.

#### PARCEL 2:

AN EASEMENT FOR RAILROAD PURPOSES OVER AND ACROSS A PORTION OF PARCEL 7 OF AMENDED PARCEL MAP NO. 6875, IN THE CITY OF ONTARIO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 77, PAGES 23 THROUGH 38 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY ALSO KNOWN AS A PORTION OF PARCEL "A" OF THE APPROVED LEGAL DESCRIPTION ATTACHED TO THE CERTIFICATE APPROVING A LOT LINE ADJUSTMENT OWNERS CERTIFICATE NO. L83-12 AND RECORDED OCTOBER 13, 1983, AS INSTRUMENT NO. 83-241019, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEASTERLY CORNER OF SAID PARCEL A; THENCE NORTH 89° 26' 00" WEST 15.00 FEET ALONG THE SOUTHERLY LINE OF SAID PARCEL A TO THE TRUE POINT OF BEGINNING, SAID POINT BEING ON THE WESTERLY LINE OF THAT CERTAIN EASEMENT, 30.00 FEET WIDE, FOR RAILROAD PURPOSES TO THE CITY OF ONTARIO AS SHOWN ON AMENDED PARCEL MAP NO.

6875, FILED IN BOOK 77, PAGES 23 THROUGH 38 OF PARCEL MAPS, IN THE OFFICE OF SAID COUNTY RECORDER; THENCE ALONG SAID WESTERLY LINE, THE FOLLOWING COURSES; NORTH 0° 34' 00" EAST 73.59 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 397.24 FEET AND NORTHEASTERLY 36.02 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 5° 11' 42" TO A POINT OF CUSP; THENCE SOUTH 14° 51' 43" WEST 24.24 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 392.24 FEET; THENCE SOUTHWESTERLY 87.08 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 12° 43' 10" TO THE SOUTHERLY LINE OF SAID PARCEL A; THENCE SOUTH 89° 26' 00" EAST 16.35 FEET ALONG SAID SOUTHERLY LINE TO THE TRUE POINT OF BEGINNING.

TOGETHER WITH ALL THE TENEMENTS, HEREDITAMENTS AND APPURTENANCES THERETO BELONGING OR IN ANYWISE PERTAINING.



## EXHIBIT B

### BASIC RENT

Basic Rent is due commencing on the Closing Date on each Basic Rent Payment Date during the Term (including any Renewal Term exercised by Tenant) in an amount equal to the amount for such Basic Rent Payment Date set forth on Schedule I attached hereto.

# SCHEDULE I

## Basic Rent

Month	Date	Rent Payment
1	11/1/2020	\$314,911.27
2	12/1/2020	\$314,911.27
3	1/1/2021	\$314,911.27
4	2/1/2021	\$314,911.27
5	3/1/2021	\$314,911.27
6	4/1/2021	\$314,911.27
7	5/1/2021	\$314,911.27
8	6/1/2021	\$314,911.27
9	7/1/2021	\$314,911.27
10	8/1/2021	\$314,911.27
11	9/1/2021	\$314,911.27
12	10/1/2021	\$314,911.27
13	11/1/2021	\$321,209.50
14	12/1/2021	\$321,209.50
15	1/1/2022	\$321,209.50
16	2/1/2022	\$321,209.50
17	3/1/2022	\$321,209.50
18	4/1/2022	\$321,209.50
19	5/1/2022	\$321,209.50
20	6/1/2022	\$321,209.50
21	7/1/2022	\$321,209.50
22	8/1/2022	\$321,209.50
23	9/1/2022	\$321,209.50
24	10/1/2022	\$321,209.50
25	11/1/2022	\$327,633.69
26	12/1/2022	\$327,633.69
27	1/1/2023	\$327,633.69
28	2/1/2023	\$327,633.69
29	3/1/2023	\$327,633.69
30	4/1/2023	\$327,633.69
31	5/1/2023	\$327,633.69
32	6/1/2023	\$327,633.69
33	7/1/2023	\$327,633.69
34	8/1/2023	\$327,633.69
35	9/1/2023	\$327,633.69
36	10/1/2023	\$327,633.69

37	11/1/2023	\$334,186.36
38	12/1/2023	\$334,186.36
39	1/1/2024	\$334,186.36
40	2/1/2024	\$334,186.36
41	3/1/2024	\$334,186.36
42	4/1/2024	\$334,186.36
43	5/1/2024	\$334,186.36
44	6/1/2024	\$334,186.36
45	7/1/2024	\$334,186.36
46	8/1/2024	\$334,186.36
47	9/1/2024	\$334,186.36
48	10/1/2024	\$334,186.36
49	11/1/2024	\$340,870.09
50	12/1/2024	\$340,870.09
51	1/1/2025	\$340,870.09
52	2/1/2025	\$340,870.09
53	3/1/2025	\$340,870.09
54	4/1/2025	\$340,870.09
55	5/1/2025	\$340,870.09
56	6/1/2025	\$340,870.09
57	7/1/2025	\$340,870.09
58	8/1/2025	\$340,870.09
59	9/1/2025	\$340,870.09
60	10/1/2025	\$340,870.09
61	11/1/2025	\$347,687.49
62	12/1/2025	\$347,687.49
63	1/1/2026	\$347,687.49
64	2/1/2026	\$347,687.49
65	3/1/2026	\$347,687.49
66	4/1/2026	\$347,687.49
67	5/1/2026	\$347,687.49
68	6/1/2026	\$347,687.49
69	7/1/2026	\$347,687.49
70	8/1/2026	\$347,687.49
71	9/1/2026	\$347,687.49
72	10/1/2026	\$347,687.49
73	11/1/2026	\$354,641.24
74	12/1/2026	\$354,641.24
75	1/1/2027	\$354,641.24
76	2/1/2027	\$354,641.24
77	3/1/2027	\$354,641.24
78	4/1/2027	\$354,641.24
79	5/1/2027	\$354,641.24

80	6/1/2027	\$354,641.24
81	7/1/2027	\$354,641.24
82	8/1/2027	\$354,641.24
83	9/1/2027	\$354,641.24
84	10/1/2027	\$354,641.24
85	11/1/2027	\$361,734.07
86	12/1/2027	\$361,734.07
87	1/1/2028	\$361,734.07
88	2/1/2028	\$361,734.07
89	3/1/2028	\$361,734.07
90	4/1/2028	\$361,734.07
91	5/1/2028	\$361,734.07
92	6/1/2028	\$361,734.07
93	7/1/2028	\$361,734.07
94	8/1/2028	\$361,734.07
95	9/1/2028	\$361,734.07
96	10/1/2028	\$361,734.07
97	11/1/2028	\$368,968.75
98	12/1/2028	\$368,968.75
99	1/1/2029	\$368,968.75
100	2/1/2029	\$368,968.75
101	3/1/2029	\$368,968.75
102	4/1/2029	\$368,968.75
103	5/1/2029	\$368,968.75
104	6/1/2029	\$368,968.75
105	7/1/2029	\$368,968.75
106	8/1/2029	\$368,968.75
107	9/1/2029	\$368,968.75
108	10/1/2029	\$368,968.75
109	11/1/2029	\$376,348.12
110	12/1/2029	\$376,348.12
111	1/1/2030	\$376,348.12
112	2/1/2030	\$376,348.12
113	3/1/2030	\$376,348.12
114	4/1/2030	\$376,348.12
115	5/1/2030	\$376,348.12
116	6/1/2030	\$376,348.12
117	7/1/2030	\$376,348.12
118	8/1/2030	\$376,348.12
119	9/1/2030	\$376,348.12
120	10/1/2030	\$376,348.12
121	11/1/2030	\$383,875.08
122	12/1/2030	\$383,875.08

123	1/1/2031	\$383,875.08
124	2/1/2031	\$383,875.08
125	3/1/2031	\$383,875.08
126	4/1/2031	\$383,875.08
127	5/1/2031	\$383,875.08
128	6/1/2031	\$383,875.08
129	7/1/2031	\$383,875.08
130	8/1/2031	\$383,875.08
131	9/1/2031	\$383,875.08
132	10/1/2031	\$383,875.08
133	11/1/2031	\$391,552.59
134	12/1/2031	\$391,552.59
135	1/1/2032	\$391,552.59
136	2/1/2032	\$391,552.59
137	3/1/2032	\$391,552.59
138	4/1/2032	\$391,552.59
139	5/1/2032	\$391,552.59
140	6/1/2032	\$391,552.59
141	7/1/2032	\$391,552.59
142	8/1/2032	\$391,552.59
143	9/1/2032	\$391,552.59
144	10/1/2032	\$391,552.59
145	11/1/2032	\$399,383.64
146	12/1/2032	\$399,383.64
147	1/1/2033	\$399,383.64
148	2/1/2033	\$399,383.64
149	3/1/2033	\$399,383.64
150	4/1/2033	\$399,383.64
151	5/1/2033	\$399,383.64
152	6/1/2033	\$399,383.64
153	7/1/2033	\$399,383.64
154	8/1/2033	\$399,383.64
155	9/1/2033	\$399,383.64
156	10/1/2033	\$399,383.64
157	11/1/2033	\$407,371.31
158	12/1/2033	\$407,371.31
159	1/1/2034	\$407,371.31
160	2/1/2034	\$407,371.31
161	3/1/2034	\$407,371.31
162	4/1/2034	\$407,371.31
163	5/1/2034	\$407,371.31
164	6/1/2034	\$407,371.31
165	7/1/2034	\$407,371.31

166	8/1/2034	\$407,371.31
167	9/1/2034	\$407,371.31
168	10/1/2034	\$407,371.31
169	11/1/2034	\$415,518.74
170	12/1/2034	\$415,518.74
171	1/1/2035	\$415,518.74
172	2/1/2035	\$415,518.74
173	3/1/2035	\$415,518.74
174	4/1/2035	\$415,518.74
175	5/1/2035	\$415,518.74
176	6/1/2035	\$415,518.74
177	7/1/2035	\$415,518.74
178	8/1/2035	\$415,518.74
179	9/1/2035	\$415,518.74
180	10/1/2035	\$415,518.74
181	11/1/2035	\$423,829.11
182	12/1/2035	\$423,829.11
183	1/1/2036	\$423,829.11
184	2/1/2036	\$423,829.11
185	3/1/2036	\$423,829.11
186	4/1/2036	\$423,829.11
187	5/1/2036	\$423,829.11
188	6/1/2036	\$423,829.11
189	7/1/2036	\$423,829.11
190	8/1/2036	\$423,829.11
191	9/1/2036	\$423,829.11
192	10/1/2036	\$423,829.11
193	11/1/2036	\$432,305.69
194	12/1/2036	\$432,305.69
195	1/1/2037	\$432,305.69
196	2/1/2037	\$432,305.69
197	3/1/2037	\$432,305.69
198	4/1/2037	\$432,305.69
199	5/1/2037	\$432,305.69
200	6/1/2037	\$432,305.69
201	7/1/2037	\$432,305.69
202	8/1/2037	\$432,305.69
203	9/1/2037	\$432,305.69
204	10/1/2037	\$432,305.69
205	11/1/2037	\$440,951.81
206	12/1/2037	\$440,951.81
207	1/1/2038	\$440,951.81
208	2/1/2038	\$440,951.81

209	3/1/2038	\$440,951.81
210	4/1/2038	\$440,951.81
211	5/1/2038	\$440,951.81
212	6/1/2038	\$440,951.81
213	7/1/2038	\$440,951.81
214	8/1/2038	\$440,951.81
215	9/1/2038	\$440,951.81
216	10/1/2038	\$440,951.81
217	11/1/2038	\$449,770.84
218	12/1/2038	\$449,770.84
219	1/1/2039	\$449,770.84
220	2/1/2039	\$449,770.84
221	3/1/2039	\$449,770.84
222	4/1/2039	\$449,770.84
223	5/1/2039	\$449,770.84
224	6/1/2039	\$449,770.84
225	7/1/2039	\$449,770.84
226	8/1/2039	\$449,770.84
227	9/1/2039	\$449,770.84
228	10/1/2039	\$449,770.84
229	11/1/2039	\$458,766.26
230	12/1/2039	\$458,766.26
231	1/1/2040	\$458,766.26
232	2/1/2040	\$458,766.26
233	3/1/2040	\$458,766.26
234	4/1/2040	\$458,766.26
235	5/1/2040	\$458,766.26
236	6/1/2040	\$458,766.26
237	7/1/2040	\$458,766.26
238	8/1/2040	\$458,766.26
239	9/1/2040	\$458,766.26
240	10/1/2040	\$458,766.26

**First Renewal Term**

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241	11/1/2040	\$467,941.59
242	12/1/2040	\$467,941.59
243	1/1/2041	\$467,941.59
244	2/1/2041	\$467,941.59
245	3/1/2041	\$467,941.59
246	4/1/2041	\$467,941.59
247	5/1/2041	\$467,941.59
248	6/1/2041	\$467,941.59
249	7/1/2041	\$467,941.59
250	8/1/2041	\$467,941.59

251	9/1/2041	\$467,941.59
252	10/1/2041	\$467,941.59
253	11/1/2041	\$477,300.42
254	12/1/2041	\$477,300.42
255	1/1/2042	\$477,300.42
256	2/1/2042	\$477,300.42
257	3/1/2042	\$477,300.42
258	4/1/2042	\$477,300.42
259	5/1/2042	\$477,300.42
260	6/1/2042	\$477,300.42
261	7/1/2042	\$477,300.42
262	8/1/2042	\$477,300.42
263	9/1/2042	\$477,300.42
264	10/1/2042	\$477,300.42
265	11/1/2042	\$486,846.43
266	12/1/2042	\$486,846.43
267	1/1/2043	\$486,846.43
268	2/1/2043	\$486,846.43
269	3/1/2043	\$486,846.43
270	4/1/2043	\$486,846.43
271	5/1/2043	\$486,846.43
272	6/1/2043	\$486,846.43
273	7/1/2043	\$486,846.43
274	8/1/2043	\$486,846.43
275	9/1/2043	\$486,846.43
276	10/1/2043	\$486,846.43
277	11/1/2043	\$496,583.35
278	12/1/2043	\$496,583.35
279	1/1/2044	\$496,583.35
280	2/1/2044	\$496,583.35
281	3/1/2044	\$496,583.35
282	4/1/2044	\$496,583.35
283	5/1/2044	\$496,583.35
284	6/1/2044	\$496,583.35
285	7/1/2044	\$496,583.35
286	8/1/2044	\$496,583.35
287	9/1/2044	\$496,583.35
288	10/1/2044	\$496,583.35
289	11/1/2044	\$506,515.02
290	12/1/2044	\$506,515.02
291	1/1/2045	\$506,515.02
292	2/1/2045	\$506,515.02
293	3/1/2045	\$506,515.02



294	4/1/2045	\$506,515.02
295	5/1/2045	\$506,515.02
296	6/1/2045	\$506,515.02
297	7/1/2045	\$506,515.02
298	8/1/2045	\$506,515.02
299	9/1/2045	\$506,515.02
300	10/1/2045	\$506,515.02

**Second Renewal Term**

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301	11/1/2045	\$516,645.32
302	12/1/2045	\$516,645.32
303	1/1/2046	\$516,645.32
304	2/1/2046	\$516,645.32
305	3/1/2046	\$516,645.32
306	4/1/2046	\$516,645.32
307	5/1/2046	\$516,645.32
308	6/1/2046	\$516,645.32
309	7/1/2046	\$516,645.32
310	8/1/2046	\$516,645.32
311	9/1/2046	\$516,645.32
312	10/1/2046	\$516,645.32
313	11/1/2046	\$526,978.23
314	12/1/2046	\$526,978.23
315	1/1/2047	\$526,978.23
316	2/1/2047	\$526,978.23
317	3/1/2047	\$526,978.23
318	4/1/2047	\$526,978.23
319	5/1/2047	\$526,978.23
320	6/1/2047	\$526,978.23
321	7/1/2047	\$526,978.23
322	8/1/2047	\$526,978.23
323	9/1/2047	\$526,978.23
324	10/1/2047	\$526,978.23
325	11/1/2047	\$537,517.79
326	12/1/2047	\$537,517.79
327	1/1/2048	\$537,517.79
328	2/1/2048	\$537,517.79
329	3/1/2048	\$537,517.79
330	4/1/2048	\$537,517.79
331	5/1/2048	\$537,517.79
332	6/1/2048	\$537,517.79
333	7/1/2048	\$537,517.79
334	8/1/2048	\$537,517.79
335	9/1/2048	\$537,517.79

336	10/1/2048	\$537,517.79
337	11/1/2048	\$548,268.15
338	12/1/2048	\$548,268.15
339	1/1/2049	\$548,268.15
340	2/1/2049	\$548,268.15
341	3/1/2049	\$548,268.15
342	4/1/2049	\$548,268.15
343	5/1/2049	\$548,268.15
344	6/1/2049	\$548,268.15
345	7/1/2049	\$548,268.15
346	8/1/2049	\$548,268.15
347	9/1/2049	\$548,268.15
348	10/1/2049	\$548,268.15
349	11/1/2049	\$559,233.51
350	12/1/2049	\$559,233.51
351	1/1/2050	\$559,233.51
352	2/1/2050	\$559,233.51
353	3/1/2050	\$559,233.51
354	4/1/2050	\$559,233.51
355	5/1/2050	\$559,233.51
356	6/1/2050	\$559,233.51
357	7/1/2050	\$559,233.51
358	8/1/2050	\$559,233.51
359	9/1/2050	\$559,233.51
360	10/1/2050	\$559,233.51

**Third Renewal Term**

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361	11/1/2050	\$570,418.18
362	12/1/2050	\$570,418.18
363	1/1/2051	\$570,418.18
364	2/1/2051	\$570,418.18
365	3/1/2051	\$570,418.18
366	4/1/2051	\$570,418.18
367	5/1/2051	\$570,418.18
368	6/1/2051	\$570,418.18
369	7/1/2051	\$570,418.18
370	8/1/2051	\$570,418.18
371	9/1/2051	\$570,418.18
372	10/1/2051	\$570,418.18
373	11/1/2051	\$581,826.55
374	12/1/2051	\$581,826.55
375	1/1/2052	\$581,826.55
376	2/1/2052	\$581,826.55
377	3/1/2052	\$581,826.55

378	4/1/2052	\$581,826.55
379	5/1/2052	\$581,826.55
380	6/1/2052	\$581,826.55
381	7/1/2052	\$581,826.55
382	8/1/2052	\$581,826.55
383	9/1/2052	\$581,826.55
384	10/1/2052	\$581,826.55
385	11/1/2052	\$593,463.08
386	12/1/2052	\$593,463.08
387	1/1/2053	\$593,463.08
388	2/1/2053	\$593,463.08
389	3/1/2053	\$593,463.08
390	4/1/2053	\$593,463.08
391	5/1/2053	\$593,463.08
392	6/1/2053	\$593,463.08
393	7/1/2053	\$593,463.08
394	8/1/2053	\$593,463.08
395	9/1/2053	\$593,463.08
396	10/1/2053	\$593,463.08
397	11/1/2053	\$605,332.34
398	12/1/2053	\$605,332.34
399	1/1/2054	\$605,332.34
400	2/1/2054	\$605,332.34
401	3/1/2054	\$605,332.34
402	4/1/2054	\$605,332.34
403	5/1/2054	\$605,332.34
404	6/1/2054	\$605,332.34
405	7/1/2054	\$605,332.34
406	8/1/2054	\$605,332.34
407	9/1/2054	\$605,332.34
408	10/1/2054	\$605,332.34
409	11/1/2054	\$617,438.98
410	12/1/2054	\$617,438.98
411	1/1/2055	\$617,438.98
412	2/1/2055	\$617,438.98
413	3/1/2055	\$617,438.98
414	4/1/2055	\$617,438.98
415	5/1/2055	\$617,438.98
416	6/1/2055	\$617,438.98
417	7/1/2055	\$617,438.98
418	8/1/2055	\$617,438.98
419	9/1/2055	\$617,438.98

EXHIBIT C

Form of Subordination, Non-Disturbance and Attornment Agreement

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**SUBORDINATION, NON-DISTURBANCE  
AND ATTORNMENT AGREEMENT**

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Dated: \_\_\_\_\_, 20\_\_

Location:

County:

PREPARED BY AND UPON  
RECORDATION RETURN TO:

## **SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT**

THIS **SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT** (this "Agreement") is made as of \_\_\_\_\_, 20\_\_ by and among the undersigned lender, having an address at \_\_\_\_\_ (together with its any of its successors and/or assigns, "Lender"), \_\_\_\_\_ (as successor in interest to DP \_\_\_\_\_ Landlord, LLC), as landlord, having an address at \_\_\_\_\_ ("Landlord") and **DPI SPECIALTY FOODS** \_\_\_\_\_, INC., a \_\_\_\_\_ corporation, having an address at 601 S. Rockefeller Ave., Ontario, CA 91761 ("Tenant").

### **RECITALS:**

A. Lender has made a loan to Landlord (defined below), which Loan is given pursuant to the terms and conditions of a [Loan Agreement] between Lender and Landlord (as amended from time to time, the "Loan Agreement"). The Loan is evidenced by a certain promissory note given by Landlord to Lender (the "Note") and secured by a certain mortgage, deed of trust or deed to secure debt dated as of even date with the Note, given by Landlord to Lender (the "Security Instrument"), which encumbers the fee estate of Landlord in certain premises described in Exhibit A attached hereto (the "Property");

B. Tenant occupies the Property under and pursuant to the provisions of that certain Lease Agreement, dated as of October \_\_, 2020 (as amended, supplemented and otherwise modified from time to time, the "Lease") between Landlord, as landlord, and Tenant, as tenant; and

C. Tenant has agreed to subordinate the Lease to the Security Instrument and to the lien thereof and Lender has agreed to grant non-disturbance to Tenant under the Lease, in each case on the terms and conditions hereinafter set forth.

### **AGREEMENT:**

For good and valuable consideration, Tenant and Lender agree as follows:

1. Subordination. Tenant agrees, subject to the terms and conditions of this Agreement, that the Lease and all of the terms, covenants and provisions thereof and all rights, remedies and options of Tenant thereunder are and shall at all times continue to be subject and subordinate in all respects to the Security Instrument and to the lien thereof and all terms, covenants and conditions set forth in the Security Instrument and the Loan Agreement, including without limitation, all renewals, increases, modifications, spreaders, consolidations, replacements and extensions thereof and to all sums secured thereby with the same force and effect as if the Security Instrument and Loan Agreement had been executed, delivered and (in the case of the Security Instrument) recorded prior to the execution and delivery of the Lease.

2. Non-Disturbance. Lender agrees that if any action or proceeding is commenced by Lender for the foreclosure of the Security Instrument or the sale of the Property or to enforce any rights or remedies of Lender under the Note, the Security Instrument and the Loan Agreement, Tenant shall not be named as a party therein unless such joinder shall be required by

law, provided, however, such joinder shall not result in the termination of the Lease or disturb the Tenant's possession or use of the premises demised thereunder. The sale of the Property in any such action or proceeding and the exercise by Lender of any of its other rights under the Note, the Security Instrument and the Loan Agreement shall be made subject to all rights of Tenant under the Lease and shall not diminish, interfere, disturb, alter or terminate the Tenant's rights and privileges thereunder or Tenant's possession or use of the premises demised thereunder in any manner, provided that at the time of the commencement of any such action or proceeding or at the time of any such sale or exercise of any such other rights the Lease shall be in full force and effect and Tenant shall not be in default under any of the terms, covenants or conditions of the Lease on Tenant's part to be observed or performed beyond the expiration of any applicable notice or grace periods.

3. Attornment. Lender and Tenant agree that upon the conveyance of the Property by reason of the foreclosure of the Security Instrument or the acceptance of a deed or assignment in lieu of foreclosure or otherwise, the Lease shall not be terminated or affected thereby but shall continue in full force and effect as a direct lease between the transferee of the Property (the "Transferee") and Tenant upon all of the terms, covenants and conditions set forth in the Lease and in that event, Tenant agrees to attorn to the Transferee and the Transferee shall accept such attornment, provided, however, that the Transferee shall not be:

A. liable for Landlord's failure to perform any of its obligations under the Lease which have accrued prior to the date on which the Transferee shall become the owner of the Property;

B. subject to any offsets, defenses, abatements or counterclaims which shall have accrued to Tenant against Landlord prior to the date upon which the Transferee shall become the owner of the Property, unless Tenant shall have provided Lender with notice of the applicable default that gave rise to such offset or defense, and the opportunity to cure the same, in accordance with the terms of Section 6 below;

C. liable for the return of rental security deposits, if any, paid by Tenant to Landlord in accordance with the Lease unless such sums are actually received by the Transferee;

D. bound by any payment of rents, additional rents or other sums which Tenant may have paid more than one (1) month in advance to any prior Landlord unless (i) such sums are actually received by the Transferee or (ii) such prepayment shall have been expressly approved of by the Transferee or required to be paid in advance under the Lease; or

E. bound by any agreement amending, modifying or terminating the Lease made without the Lender's prior written consent prior to the time the Transferee succeeded to Landlord's interest, except if the consent of Lender to any agreement amending or modifying the Lease is not required under the Note, Security Instrument or Loan Agreement and except for any termination of the Lease specifically permitted to be exercised by Tenant unilaterally pursuant to the terms of the Lease.

4. Notice to Tenant. After written notice is given to Tenant by Lender (in the manner hereinafter provided) that the Landlord is in default under the Note and the Security Instrument and that the rentals under the Lease should be paid to Lender pursuant to the terms of the assignment of leases and rents executed and delivered by Landlord to Lender in connection therewith, Tenant shall thereafter pay to Lender or as directed by the Lender, all rentals and all other monies due or to become due to Landlord under the Lease and Landlord hereby expressly authorizes Tenant to make such payments to Lender and hereby releases and discharges Tenant from any liability to Landlord on account of any such payments. Tenant is hereby irrevocably authorized by Landlord to rely upon and comply with any notice or demand by the Lender for the payment to the Lender of any rental or other amounts which may be or become due under the Lease, or for the performance of any obligations under the Lease. Landlord irrevocably agrees that Tenant shall not be liable to Landlord or any person claiming under Landlord, for making any payment or rendering any performance to Lender and shall credit such payments against amounts due from Tenant under the Lease. Tenant shall have no obligation or right to inquire whether any default by Landlord has actually occurred or is then existing under the Note, the Security Instrument or the documents related thereto.

5. Lender's Consent. Tenant shall not, without obtaining the prior written consent of Lender, (a) enter into any agreement materially amending, materially modifying or terminating the Lease, except if the consent of Lender to any agreement amending or modifying the Lease is not required under the Note, Security Instrument or Loan Agreement and except for any termination of the Lease specifically permitted to be exercised by Tenant unilaterally pursuant to the terms of the Lease, or (b) prepay any of the rents, additional rents or other sums due to Landlord under the Lease for more than one (1) month in advance of the due dates thereof unless such prepayment shall have been expressly required to be paid in advance under the Lease; and any such amendment, modification, termination or prepayment, without Lender's prior consent, shall not be binding upon Lender.

6. Lender to Receive Notices. Tenant shall notify Lender of any default by Landlord under the Lease of which Tenant has actual knowledge which would entitle Tenant to cancel the Lease or to an abatement of the rents, additional rents or other sums payable thereunder, and agrees that, notwithstanding any provisions of the Lease to the contrary, no notice of cancellation thereof or of such an abatement shall be effective unless Lender shall have received notice of default giving rise to such cancellation or abatement and shall have failed within thirty (30) days after receipt of such notice to cure such default, or if such default cannot be cured within thirty (30) days, shall have failed within thirty (30) days after receipt of such notice to commence and thereafter diligently pursue any action necessary to cure such default (but in no event shall Lender's latter cure right exceed one hundred eighty (180) days after Lender's receipt of Tenant's notice).

7. Notices. All notices or other written communications hereunder shall be deemed to have been properly given (i) if delivered in person, (ii) after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Tenant: DPI Specialty Foods \_\_\_\_\_, Inc.  
601 S. Rockefeller Ave.  
Ontario, CA 91761  
Attention: Marc Barth  
Email: marc.barth@dpispecialtyfoods.com

With copies to:

Winston & Strawn, LLP  
35 W. Wacker Drive  
Chicago, Illinois 60601-9703  
Attention: Andrew T. White, Esq.  
Email: awhite@winston.com

If to Landlord:

If to Lender:

or addressed as such party may from time to time designate by written notice to the other parties. Any such notice or other communication shall be deemed to have been given on the date of receipted delivery, refusal to accept delivery or when delivery is first attempted but cannot be made due to a change of address for which no notice is given. Either party by notice to the other may designate additional or different addresses for subsequent notices or communications.

8. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Lender and Tenant and their respective successors and assigns.

9. Definitions. The term "Lender" as used herein shall include the successors and assigns of Lender and any person, party or entity which shall become the owner of the Property by reason of a foreclosure of the Security Instrument or the acceptance of a deed or assignment in lieu of foreclosure or otherwise. The term "Landlord" as used herein shall mean and include the present landlord under the Lease and such landlord's predecessors and successors in interest under the Lease, but shall not mean or include Lender. The term "Property" as used herein shall mean the Property, the improvements now or hereafter located thereon and the estates therein encumbered by the Security Instrument.

10. No Verbal Modifications. This Agreement may not be modified in any manner or terminated except by an instrument in writing executed by the parties hereto.

11. Governing Law. This Agreement shall be deemed to be a contract entered into pursuant to the laws of the State where the Property is located and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State where the Property is located.

12. Inapplicable Provisions. If any term, covenant or condition of this Agreement is held to be invalid, illegal or unenforceable in any respect, this Agreement shall be construed without such provision.



13. Duplicate Originals; Counterparts. This Agreement may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Agreement may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Agreement.

14. Further Acts. Tenant will, at the cost of Landlord, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts and assurances as Lender shall, from time to time, reasonably require, for the better assuring and confirming unto Lender of the property and rights hereby intended, or for carrying out the intention or facilitating the performance of the terms of this Agreement or for filing, registering or recording this Agreement.

15. Limitations on Lender's Liability. In no event shall Lender or any purchaser of the Property at foreclosure sale or any grantee of the Property named in a deed-in-lieu of foreclosure, nor any heir, legal representative, successor or assignee of Lender or any such purchaser or grantee (collectively the Lender, such purchaser, grantee, heir, legal representative, successor or assignee, the "Subsequent Landlord") have any personal liability for the obligations of Landlord under the Lease and should the Subsequent Landlord succeed to the interests of the Landlord under the Lease, Tenant shall look only to the estate and property of any such Subsequent Landlord in the Property (including without limitation the rental income or profits therefrom, proceeds from the sale of the Property, and insurance and condemnation proceeds with respect to the Property) for the satisfaction of Tenant's remedies for the collection of a judgment (or other judicial process) requiring the payment of money in the event of any default by any Subsequent Landlord as landlord under the Lease, and no other property or assets of any Subsequent Landlord shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies under or with respect to the Lease; provided, however, that the Tenant may exercise any other right or remedy provided thereby or by law or equity in the event of any failure by Subsequent Landlord to perform any such obligation.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, Lender and Tenant have duly executed this Agreement as of the date first above written.

**LENDER:**

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

**ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

This instrument was ACKNOWLEDGED before me, on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, on behalf of said \_\_\_\_\_, by means of [\_\_\_\_] physical presence or [\_\_\_\_] online notarization. S/he [\_\_\_\_] is personally known to me or [\_\_\_\_] has produced \_\_\_\_\_ as identification.

Notary Public, State of \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
[printed name]

My commission expires: \_\_\_\_\_

[SEAL]

**TENANT:**

DPI SPECIALTY FOODS  
\_\_\_\_\_, INC.

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

**ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was ACKNOWLEDGED before me, on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of DPI Specialty Foods \_\_\_\_\_, Inc., a \_\_\_\_\_ corporation, on behalf of said corporation, by means of [\_\_\_\_\_] physical presence or [\_\_\_\_\_] online notarization. He [\_\_\_\_\_] is personally known to me or [\_\_\_\_\_] has produced \_\_\_\_\_ as identification.

Notary Public, State of \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

[printed name]

My commission expires: \_\_\_\_\_  
[SEAL]

**LANDLORD:**

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

**ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

This instrument was ACKNOWLEDGED before me, on the \_\_\_\_ day of \_\_\_\_\_,  
20\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of  
\_\_\_\_\_, a \_\_\_\_\_, on behalf of said  
\_\_\_\_\_, by means of [\_\_\_\_] physical presence or [\_\_\_\_] online  
notarization. S/he [\_\_\_\_] is personally known to me or [\_\_\_\_] has produced  
\_\_\_\_\_ as identification.

Notary Public, State of \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
[printed name]

My commission expires: \_\_\_\_\_

[SEAL]

**EXHIBIT A**  
**LEGAL DESCRIPTION**

## EXHIBIT D

### FORM OF ESTOPPEL CERTIFICATE

Reference is made to that certain Lease Agreement, dated as of October 30, 2020 (as heretofore amended, the "Lease"), between DP Ontario CA Landlord, LLC, a Delaware limited liability company ("Landlord"), and DPI Specialty Foods West, Inc., a Delaware corporation ("Tenant"). The terms used herein, which are not otherwise defined herein, shall have the same meanings as set forth in the Lease. The undersigned does hereby certify to Landlord and *[insert name of potential purchaser/lender]* as of \_\_\_\_\_, 20\_\_, as follows:

1. The Lease, a complete and accurate copy of which is attached hereto as Exhibit A and incorporated herein by this reference, has been duly authorized and executed by Tenant and is in full force and effect; there are no amendments, modifications or supplements of any kind to the Lease, except as follows: *[add amendments, if applicable]*; and Tenant has not given any notice of termination under the Lease.

2. Tenant is in possession of the Leased Premises, such possession having been delivered by Landlord pursuant to the Lease and, as between Tenant and Landlord, having been unconditionally accepted by Tenant.

3. To Tenant's actual knowledge, Tenant has no offsets, claims or defenses to the payment of Basic Rent or Additional Rent under the Lease, except as follows: *[add, if applicable]*.

4. No security deposit has been given by Tenant under the terms of, or with respect to, the Lease.

5. To Tenant's actual knowledge, no uncured default, event of default, or breach by Tenant (or, to Tenant's actual knowledge, Landlord) exists under the Lease, and to Tenant's actual knowledge, no event has occurred that, with the passage of time will or could constitute a default, event of default, or breach by Tenant (or, to Tenant's actual knowledge, Landlord) under the Lease. Tenant has made no claim against Landlord alleging the Landlord's default under the Lease, except as follows: *[add, if applicable]*.

6. To Tenant's actual knowledge, there are no rental, lease, or similar commissions payable with respect to the Lease that remain unpaid.

7. The Basic Rent currently being paid by Tenant under the Lease is \$\_\_\_\_\_ per month. Tenant has not prepaid any rent or other amounts to Landlord more than one month in advance, except as follows: *[add, if applicable]*. No rent concessions from the stated Basic Rent in the Lease have been granted, and there are no credits, charges or other amounts of any kind due Tenant as of the date hereof, except as follows: *[add, if applicable]*.

8. The Initial Term of the Lease commenced on October 30, 2020, and unless the Lease is extended or terminated sooner as provided in the Lease, shall expire on October 31, 2040.

9. Pursuant to, and in accordance with, the terms and provisions of the Lease, Tenant has the option to extend the Lease for up to four (4) consecutive Renewal Terms of five (5) years each.

10. Tenant has no outstanding options, rights of first refusal or rights of first offer to purchase the Leased Premises or any part thereof.

11. Tenant is the holder of all right, title and interest in the leasehold estate created by the Lease. Tenant has not transferred, assigned, or sublet any portion of the Leased Premises *[except as follows: \_\_\_\_\_]*. Tenant has not received written notice of any assignment, hypothecation, mortgage or pledge of Landlord's interest in the Lease or the rents or other amounts payable thereunder.

12. No actions, whether voluntary or involuntary, are pending against Tenant under any bankruptcy, insolvency or similar laws of the United States or any state thereof.

13. The undersigned representative of Tenant is duly authorized and fully qualified to execute this instrument on behalf of Tenant thereby binding Tenant. This Estoppel Certificate shall be binding upon Tenant and its successors and assigns and shall inure to the benefit of and be enforceable by Landlord and its successors and assigns.

[The remainder of this page is intentionally blank.]

IN WITNESS WHEREOF, the undersigned has caused this Estoppel Certificate to be executed by its duly authorized officer as of the date written above.

DPI SPECIALTY FOODS WEST, INC., a  
Delaware corporation

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



Exhibit A

Lease

See the Attached

## EXHIBIT E

### TRADE FIXTURES

All cheese room equipment.

3 Box machines.

4 Cryovac Machines

Cheese Room Compressor.

Shop container storage.- outside on south side

Shop Office trailer (mini mobile)

Trash Compactor - on outside west dock

Cardboard Bailer.

10 Camera servers.

approximately 100 cameras.

Battery area racking.

1 Exhaust Fan for tractors in shop area

1 Oil Tank - located outside on north parking lot

1 Dump oil Tank - located outside on north parking lot

All Racking in warehouse.

## APPENDIX A

“Additional Payments” shall mean all amounts that are actual and reasonable out-of-pocket costs, expenses, charges or penalties (including the Make-Whole Premium), if any, incurred by Landlord as a result of the prepayment or defeasance of a Note(s) as the result of the occurrence of an Event of Default. Notwithstanding anything to the contrary set forth in this Lease, in no event shall Tenant be responsible for the payment of any Additional Payments that are payable by Landlord to a Lender as a result of a default by Landlord pursuant to the Note or Mortgage, which default is not the result of a default by Tenant hereunder.

“Additional Rent” shall mean all amounts, costs, expenses, liabilities, indemnities and obligations (including Tenant’s obligation to pay any Default Rate interest hereunder) which Tenant is required to pay pursuant to the terms of this Lease, other than Basic Rent.

“Affiliate” of any Person shall mean any other Person directly or indirectly controlling, controlled by or under common control with, such Person and shall include, if such Person is an individual, members of the immediate family of such Person, and trusts for the benefit of such individual. For the purposes of this definition, the term “control” (including the correlative meanings of the terms “controlling”, “controlled by” and “under common control with”), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

“Alteration” or “Alterations” shall mean any or all changes, additions (whether or not adjacent to or abutting any then existing buildings), expansions (whether or not adjacent to or abutting any then existing buildings), improvements, reconstructions, removals or replacements of any of the Improvements or Equipment, both interior or exterior, and ordinary and extraordinary, it being understood that Alterations shall not include repairs or ordinary maintenance.

“Applicable Laws” shall mean all existing and future applicable laws (including common laws), rules, regulations, statutes, treaties, codes, ordinances, permits, certificates, orders and licenses of any Governmental Authorities, and applicable judgments, decrees, injunctions, writs, orders or like action of any court, arbitrator or other administrative, judicial or quasi-judicial tribunal or agency of competent jurisdiction (including those pertaining to the environment and those pertaining to the construction, use or occupancy of the Leased Premises). Applicable Laws shall include Environmental Laws.

“Basic Rent” shall mean the amounts set forth on Exhibit B annexed to this Lease.

“Basic Rent Payment Dates” shall mean the Closing Date and the first Business Day of each month thereafter during the Term.

“Business Day” means any day other than a Saturday or a Sunday or other day on which commercial banks in the State of Georgia are required or are authorized to be closed.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601-9657.

“Claims” shall mean Liens (including, without limitation, Lien removal and bonding costs), liabilities, obligations, damages, losses, demands, penalties, assessments, payments, fines, claims, actions, suits, judgments, settlements, costs, expenses and disbursements (including, without limitation, reasonable legal fees and expenses and costs of investigation and enforcement) of any kind and nature whatsoever.

“Closing Date” shall mean October 30, 2020.

“Code” shall mean the Internal Revenue Code of 1986, as amended from time to time.

“Condemnation” shall mean a Taking and/or a Requisition.

“Default Rate” shall mean the greater of (i) 8.00% per annum and (ii) the then current Prime Rate plus 3.00% per annum.

“Environmental Laws” shall mean and include the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. §§ 6901-6987, as amended by the Hazardous and Solid Waste Amendments of 1984, CERCLA, the Hazardous Materials Transportation Act of 1975, 49 U.S.C. §§ 1801-1812, the Toxic Substances Control Act, 15 U.S.C. §§ 2601-2671, the Clean Air Act, 42 U.S.C. §§ 7401 et seq., the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136 et seq and all other federal, state and local laws, ordinances, rules, orders, statutes, codes and regulations applicable to the Leased Premises or the operations thereon or use thereof and (i) relating to the environment, human health or natural resources, (ii) regulating, controlling or imposing liability or standards of conduct concerning Hazardous Materials, or (iii) regulating the clean-up or other remediation of the Leased Premises or any portion thereof, as any of the foregoing may have been amended, supplemented or supplanted from time to time.

“Equipment” shall mean, collectively, the machinery and equipment which is attached to the Improvements in such a manner as to become fixtures under Applicable Law, together with all additions and accessions thereto, substitutions therefor and replacements thereof, excepting therefrom the Trade Fixtures.

“Event of Default” shall mean the occurrence of any one or more of the following events under this Lease: (i) a failure by Tenant to make (regardless of the pendency of any bankruptcy, reorganization, receivership, insolvency or other proceedings, in law, in equity or before any administrative tribunal which had or might have the effect of preventing Tenant from complying with the provisions of this Lease): (x) any payment of Basic Rent when due and payable and the continuance of such failure for five (5) Business Days after written notice thereof to Tenant (provided that no such written notice shall be required for the second or any subsequent late payment of Basic Rent during any one calendar year) or (y) any payment of any other sum herein required to be paid by Tenant which continues unremedied for a period of ten (10) Business Days after written notice thereof to Tenant; (ii) subject to Section 18 relating to permitted contests, failure by Tenant to perform and observe, or a violation or breach of, any other provision in this Lease, or failure by any Lease Guarantor to perform and observe, or a violation

or breach of, any provision of the Lease Guaranty and, in any such case, such default shall continue for a period of thirty (30) days after written notice thereof is given by Landlord, or if such default is of such a nature that it cannot reasonably be cured within such period of thirty (30) days, such period shall be extended for such longer time as is reasonably necessary (not to exceed 180 days), provided that Tenant or Lease Guarantor, as the case may be, has commenced to cure such default within said period of thirty (30) days and is actively, diligently and in good faith proceeding with continuity to remedy such default; (iii) Tenant or any Lease Guarantor shall (A) voluntarily be adjudicated a bankrupt or insolvent, (B) voluntarily consent to the appointment of a receiver or trustee for itself or for any of the Leased Premises, (C) voluntarily file a petition seeking relief under the bankruptcy or other similar laws of the United States, any state or any jurisdiction, (D) voluntarily file a general assignment for the benefit of creditors, (E) be the subject of an involuntary case or proceeding against Tenant or any Lease Guarantor of the nature referred to in the foregoing subclauses of this clause (iii) which remains undismissed for more than ninety (90) days or (F) generally not be paying its debts as they become due, or state that it cannot, or that it anticipates that it will not be able to, generally pay its debts as they become due; (iv) a court shall enter an order, judgment or decree appointing a receiver or trustee for Tenant or any Lease Guarantor or for the Leased Premises or approving a petition filed against Tenant or any Lease Guarantor which seeks relief under the bankruptcy or other similar laws of the United States or any State or otherwise entering an order for relief in any such proceeding, and such order, judgment or decree shall remain in force, undischarged or unstayed, sixty (60) days after it is entered; (v) Tenant or Lease Guarantor shall in any insolvency proceedings be liquidated or dissolved or shall voluntarily commence proceedings towards its liquidation or dissolution; or (vi) unless Tenant shall be contesting such lien or attachment in good faith in accordance with Section 18, the estate or interest of Tenant in the Leased Premises shall be levied upon or attached in any proceeding and such estate or interest is about to be sold or transferred or such process shall not be vacated or discharged within sixty (60) days after such levy or attachment' or (vii) any Lease Guarantor shall repudiate the Lease Guaranty or the Lease Guaranty shall be unenforceable in any material respect for any reason.

"Expiration Date" shall mean the last day of the month in which the twentieth (20<sup>th</sup>) anniversary of the Closing Date occurs, unless the Closing Date is the first day of a calendar month, in which case the Expiration Date shall mean the last day of the calendar month immediately preceding the month in which the twentieth (20<sup>th</sup>) anniversary of the Closing Date occurs.

"Force Majeure Event" shall mean any circumstance caused by any of the following: strikes, lockouts, labor disputes, inability to obtain services, labor materials or reasonable substitutes therefor; acts of God; civil commotion; pandemic; epidemic; fire or any other casualty; governmental action or inaction (including, without limitation, revocation or refusal to grant any required license or permit or mandated business closures or curtailments where such revocation, refusal or mandated business closure or curtailment is not due to the fault of the party affected thereby); or any other cause or circumstance, in each case which is not in the reasonable control of either party hereto. Neither lack of financing nor general economic or market factors nor the failure to make any payment when due is a Force Majeure Event.

"GAAP" shall mean generally accepted accounting principles, uniformly applied, as in effect from time to time in the United States of America.

“Governmental Authority” shall mean any federal, state, county, municipal, foreign or other governmental or regulatory authority, agency, board, body, instrumentality, court or quasi-governmental authority (or private entity in lieu thereof).

“Hazardous Materials” shall mean all chemicals, petroleum, crude oil or any fraction thereof, hydrocarbons, polychlorinated biphenyls (PCBs), asbestos, asbestos-containing materials and/or products, urea formaldehyde, or any substances which are classified as “hazardous” or “toxic” under CERCLA; hazardous waste as defined under the Solid Waste Disposal Act, as amended 42 U.S.C. § 6901; air pollutants regulated under the Clean Air Act, as amended, 42 U.S.C. § 7401, et seq.; pollutants as defined under the Clean Water Act, as amended, 33 U.S.C. § 1251, et seq., any pesticide as defined by Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. § 136, et seq., any hazardous chemical substance or mixture or imminently hazardous substance or mixture regulated by the Toxic Substances Control Act, as amended, 15 U.S.C. § 2601, et seq., any substance listed in the United States Department of Transportation Table at 45 CFR 172.101; any chemicals included in regulations promulgated under the above listed statutes or any similar federal or state statutes relating to the environment, human health or natural resources; any explosives, radioactive material, and any chemical regulated by state statutes similar to the federal statutes listed above and regulations promulgated under such state statutes.

“Imposition” or “Impositions” shall mean, collectively, all Taxes of every kind and nature on or with respect to the Leased Premises or the Basic Rent or Additional Rent, or the use, lease, ownership or operation thereof; all charges, fees, expenses and/or taxes for or under any Record Agreement or other agreement maintained for the benefit of the Leased Premises; all general and special assessments, levies, permits, inspection and license fees on or with respect to the Leased Premises; all water and sewer rents and other utility charges on or with respect to the Leased Premises; all ground rents on or with respect to the Leased Premises, if any; all common area maintenance fees, if any, applicable to the Leased Premises, and all other public charges and/or taxes whether of a like or different nature, even if unforeseen or extraordinary, imposed or assessed upon or with respect to the Leased Premises, prior to or during the Term, against Landlord, Tenant or any of the Leased Premises as a result of or arising in respect of the occupancy, leasing, use, maintenance, operation, management, repair or possession thereof, or any activity conducted on the Leased Premises, or the Basic Rent or Additional Rent, including without limitation, any sales tax, occupancy tax, rent tax or excise tax levied by any governmental body on or with respect to such Basic Rent or Additional Rent; all payments required to be made to a governmental or quasi-governmental authority (or private entity in lieu thereof) that are in lieu of any of the foregoing, whether or not expressly so designated; and any penalties, fines, additions or interest thereon or additions thereto, provided that the term “Impositions” shall exclude any federal, state or local (A) transfer taxes or mortgage taxes as the result of a sale, exchange, or other disposition or conveyance by (or suffered by) Landlord to any Person (except to the extent resulting from an Event of Default) or as a result of Landlord granting or recording a mortgage lien on the Leased Premises, (B) franchise, capital stock, corporate, gross income, gross receipt, single business or payroll taxes that are in the nature of franchise or capital stock taxes or similar taxes, if any, of Landlord, (C) income, excess profits or other taxes, if any, of Landlord, determined on the basis of or measured by its general or net income, worth or revenue, (D) estate, inheritance, succession, gift, capital levy or similar taxes of Landlord, (E) Tax that would not have been imposed but for the failure of an Indemnitee to

comply with certification, information, documentation or other reporting requirements applicable to such Indemnatee and for which (i) Tenant is not responsible under this Lease or (ii) is of the type set forth in Section 8 of this Lease that are not allowed to be paid by Tenant directly to the appropriate Governmental Authority or Person, but which has been paid by Tenant to Landlord, (F) any interest or penalties incurred by Landlord as a result of the failure of Landlord to file any return or report timely and in the form prescribed by Legal Requirements or to timely pay any Impositions or Taxes (except to the extent such failure is a result of a breach by Tenant of its obligations pursuant to Section 8), (G) any Impositions imposed on Landlord that are a result of Landlord not being considered a “United States person,” as defined in Section 7701(a)(30) of the Code, (H) any Impositions that are enacted or adopted by their express terms as a substitute for any tax that would not have been payable by Tenant pursuant to the terms of this Lease, or (I) any Impositions imposed as a result of a breach of covenant or representation by Landlord or an Indemnatee in any agreement entered into by Landlord or such Indemnatee governing Landlord’s conduct or operation or as a result of the gross negligence or willful misconduct of Landlord or an Indemnatee.

“Improvements” shall mean, collectively, the buildings, structures and other improvements on the Land.

“Indemnatee” shall mean Landlord, each Lender, the Trustee, any trustee under a Mortgage which is a deed of trust, each of their assignees or other transferees and each of their Affiliates and their respective officers, directors, employees, shareholders, members or other equity owners.

“Initial Term” shall mean the period of time commencing on the Closing Date and terminating on the Expiration Date.

“Insurance Expiration Date” shall mean, with respect to an insurance policy, the date that such insurance policy will expire.

“Insurance Requirements” shall mean, as the case may be, any one or more of the terms of each insurance policy required to be carried by Tenant under this Lease and the requirements of the issuer of such policy.

“Land” shall mean the lot(s) or parcel(s) of land described in Exhibit A attached to this Lease and made a part hereof, together with the easements, rights and appurtenances thereunto belonging or appertaining.

“Landlord” shall mean DP Ontario CA Landlord, LLC, a Delaware limited liability company.

“Lease Guarantor” shall mean DPI Specialty Foods, Inc., a Delaware corporation, and NextWave Distribution, Inc., a Delaware corporation, and their respective successors, jointly and severally.

“Lease Guaranty” shall mean the Lease Guaranty, dated as of the Closing Date, issued by Lease Guarantors, as it may be amended, supplemented or otherwise modified from time to time.

“Leased Premises” shall mean, collectively, the Land, the Improvements and the Equipment, together with any and all other property and interest in property conveyed to Landlord pursuant to the deeds, bills of sale or other documents executed in connection with the purchase of the Land, the Improvements and the Equipment by Landlord.

“Legal Requirement” or “Legal Requirements” shall mean, as the case may be, any one or more of all present and future laws, codes, ordinances, orders, judgments, decrees, injunctions, rules, regulations and requirements, even if unforeseen or extraordinary, of every duly constituted governmental authority or agency and all covenants, restrictions and conditions now of record which may be applicable to Tenant, Landlord (with respect to the Leased Premises) or to all or any part of or interest in the Leased Premises, or to the use, manner of use, occupancy, possession, operation, maintenance, alteration, repair or reconstruction of the Leased Premises.

“Lender” or “Lenders” shall mean, collectively, the Trustee and each financial institution or other Person that makes a Loan to Landlord, secured, directly or indirectly, by a Mortgage and evidenced by a Note or which is the holder of the Mortgage and a Note, or an interest therein, as a result of an assignment thereof or otherwise.

“Lien” or “Liens” shall mean any lien, mortgage, pledge, charge, security interest or encumbrance of any kind, or any type of preferential arrangement that has the practical effect of creating a security interest, including, without limitation, any thereof arising under any conditional sale agreement, capital lease or other title retention agreement and including, without limitation, any statutory or common law lien.

“Loan” shall mean a loan made by a Lender to Landlord secured by a Mortgage and evidenced by a Note.

“Make-Whole Premium” means any make-whole premium, prepayment amount, termination fee or similar amount or charge payable by Landlord in connection with the early payment, in whole or in part, of any Note.

“Mortgage” shall mean a mortgage, deed of trust or similar security instrument hereafter executed covering the Leased Premises from Landlord to secure the repayment of a Loan.

“Net Award” shall mean the entire award payable to Landlord or the Trustee by reason of a Condemnation, less any actual and reasonable expenses incurred by Landlord or the Trustee in collecting such award.

“Net Proceeds” shall mean the entire proceeds of any insurance required under clause (i), (iv), or (vi) of Section 14(a) of this Lease, less any actual and reasonable expenses incurred by Tenant, Landlord or Trustee in collecting such proceeds.

“Note” or “Notes” shall mean a promissory note or notes executed from Landlord to a Lender, which note or notes is secured by a Mortgage.

“Permitted Encumbrances” shall mean those covenants, restrictions, reservations, Liens, conditions, encroachments, easements and other matters of title that affect the Leased Premises as of the date of Landlord’s acquisition thereof, including but not limited to that certain



Declaration of Covenants, Conditions and Restrictions, California Commerce Center at Ontario, dated September 14, 1983, recorded September 23, 1983 as Instrument No. 83-223429, as affected by that certain Memorandum of Certain Conditions Affecting Real Property dated October 30, 1983, recorded November 28, 1983 as Instrument No. 83-278203.

“Person” shall mean an individual, corporation, partnership, joint venture, association, joint-stock company, trust, limited liability company, non-incorporated organization or government or any agency or political subdivision thereof.

“Prime Rate” shall mean the prime rate of interest published in *The Wall Street Journal* or its successor, from time to time.

“Record Agreement” shall mean an easement agreement, restrictive covenant, declaration, right-of-way or any other agreement or document of record now or hereafter affecting the Leased Premises, including each Permitted Encumbrance for as long as it is in effect.

“Release” shall mean the release or the threatened release of any Hazardous Materials into or upon any land or water or air, or otherwise into the environment, including, without limitation, by means of burial, disposal, discharge, emission, injection, spillage, leakage, seepage, leaching, dumping, pumping, escaping, emptying, placement and the like.

“Renewal Option Notice” shall mean a written notice from Tenant to Landlord of its election to extend the Term (or any then Renewal Term) of this Lease pursuant to Section 5 of this Lease.

“Renewal Term” shall mean an additional Lease term of five (5) years or, in the case of the third and final Renewal Term, four (4) years and eleven (11) months.

“Replaced Equipment” shall mean Equipment that has been replaced by Tenant with Replacement Equipment.

“Replacement Equipment” shall mean operational equipment or other parts used by Tenant to replace any of the Equipment.

“Requisition” shall mean any temporary condemnation or confiscation of the use or occupancy of the Leased Premises by any Governmental Authority, civil or military, whether pursuant to an agreement with such Governmental Authority in settlement of or under threat of any such requisition or confiscation, or otherwise.

“Restoration” shall mean, following a casualty or Condemnation, the restoration of the Leased Premises to as nearly as reasonably practicable the same condition which existed immediately prior to such casualty or Condemnation in light of then existing circumstances (assuming that the Leased Premises has been maintained to no lesser standard than that required under this Lease), in accordance with the provisions of this Lease, including but not limited to the provisions of Sections 11(a), 12 and 15.

“Restoration Award” shall mean that portion of the Net Award equal to the cost of Restoration.

“Restoration Fund” shall mean, collectively, the Net Proceeds, Restoration Award and Tenant’s Insurance Payment.

“SEC” means the Securities and Exchange Commission.

“State” shall mean the State or Commonwealth in which the Leased Premises is situated.

“Structural Alteration” shall mean an Alteration that (i) will result in a change in the footprint of the Improvements beyond a *de minimis* extent, (ii) involves the addition of one or more floors to the Improvements, (iii) affects the structural elements or any exterior walls of the Improvements beyond a *de minimis* extent, (iv) decreases the rentable square footage of the Leased Premises other than to a *de minimis* extent or (v) materially adversely affects the proper functioning and/or capacity of the building systems in the Improvements.

“Taking” shall mean any taking of the Leased Premises, or any portion thereof, in or by condemnation or other eminent domain proceedings pursuant to any law, general or special, or by reason of any agreement with any condemnor in settlement of or under threat of any such condemnation or other eminent domain proceedings or by any other means, or any de facto condemnation.

“Tax” or “Taxes” shall mean the following present and future taxes, including income (gross or net), gross or net receipts, sales, use, leasing, value added, franchise, doing business, transfer, capital, property (tangible or intangible), ad valorem, municipal assessments, rent, excise and stamp taxes, levies, imposts, duties, charges, assessments or withholding, together with any penalties, fines, additions or interest thereon or additions thereto (any of the foregoing being referred to herein individually as a “Tax”), imposed by any Governmental Authority. Taxes shall include the costs of any contest or appeal pursued which reduces the Taxes (or attempts to do so), including reasonable attorneys’ fees and costs incident thereto. Without limiting the foregoing, if at any time during the term of this Lease the methods of taxation prevailing at the execution hereof shall be changed or altered so that in lieu of or as a supplement or addition to or a substitute for the whole or any part of the real estate taxes or assessments now or from time to time thereafter levied, assessed or imposed by applicable taxing authorities for the funding of governmental services, there shall be imposed (i) a tax, assessment, levy, imposition or charge, wholly or partially as a capital levy or otherwise, on the gross rents received or otherwise attributable to the Leased Premises, or (ii) a tax, assessment, levy (including but not limited to any municipal, state or federal levy), imposition or charge measured by or based in whole or in part upon the Leased Premises or this Lease, and imposed on the Landlord under this Lease or any portion thereof, or (iii) a license fee or other fee or tax measured by the gross rent payable under this Lease, or (iv) any other tax, assessment, levy, charge, fee or the like payable with respect to the Leased Premises, the rents, issues and profits thereof, then all such taxes, assessments, levies, impositions and/or charges, or the part thereof so measured or based, shall be deemed to be Taxes.

“Tenant” shall mean DPI Specialty Foods West, Inc., a Delaware corporation.

“Tenant’s Award” shall mean, to the extent Tenant shall have a right to make a separate claim therefor against the condemnor, any award or payment (in connection with a Condemnation) for Tenant’s leasehold interest hereunder, relocation assistance available to Tenant under federal or state law including, but not limited to, on account of loss of business during the remainder of the Term, on account of Trade Fixtures or other personal property of Tenant, Tenant’s moving expenses and Tenant’s out-of-pocket expenses incidental to the move, if available.

“Tenant’s Insurance Payment” shall mean, in the event of damage or destruction, the amount of the proceeds that would have been payable under the third-party insurance required to be maintained pursuant to Section 14(a)(i), (iv) or (vi) had such insurance program been in effect.

“Tenant’s Termination Notice” shall mean a written notice from Tenant to Landlord of Tenant’s intention to terminate this Lease in accordance with Section 13 or 14 of this Lease, which notice shall set forth the Termination Date.

“Term” shall mean the Initial Term, together with any Renewal Term.

“Termination Date” shall mean the date for the termination of this Lease pursuant to Tenant’s Termination Notice, which date shall be on a Basic Rent Payment Date occurring no sooner than thirty (30) days after the date of such Tenant’s Termination Notice.

“Threshold Amount” shall mean \$1,000,000.

“Trade Fixtures” shall mean all furniture, trade fixtures, equipment and other items of personal property (whether or not attached to the Improvements) that are owned or leased by Tenant and used in connection with the operation of the business conducted on the Leased Premises, including, without limitation, the items set forth on Exhibit E attached hereto.

“Trustee” shall mean any trustee for the benefit of lenders providing financing to Landlord in connection with the Leased Premises, and any successor thereto. If no Notes are outstanding as of any date of determination, each reference to the Trustee in this Lease shall be inapplicable, and any payments to be made, or notices or consents to be given, to or by the Trustee shall be paid or given, as the case may be, to or by Landlord.

“Warranties” shall mean all warranties, guaranties and indemnities, express or implied, and similar rights which Landlord may have against any manufacturer, seller, engineer, contractor or builder in respect of any of the Leased Premises, including, but not limited to, any rights and remedies existing under contract or pursuant to the Uniform Commercial Code.