

**STANDARD FORM  
INDUSTRIAL BUILDING LEASE  
(SINGLE-TENANT)**

1. **BASIC TERMS.** This Section 1 contains the Basic Terms of this lease (this "Lease") between Landlord and Tenant, named below. Other Sections of the Lease referred to in this Section 1 explain and define the Basic Terms and are to be read in conjunction with the Basic Terms.

- 1.1. Effective Date of Lease: June 30, 2008
- 1.2. Landlord: Elkton Venture, LLC, a Delaware limited liability company
- 1.3. Tenant: Tree of Life, Inc., a Delaware corporation
- 1.4. Premises: A building ("**Building**") and land commonly known as 4055 Deer Park Blvd., Elkton, Florida 32033 and containing approximately 246,818 rentable square feet (approximately 222,518 square feet on the ground floor and approximately 24,300 square feet on a second story) as legally described on **Exhibit A** attached hereto.
- 1.5. Lease Term: Twelve (12) years and one (1) day ("**Term**"), commencing June 30, 2008 ("**Commencement Date**") and ending on June 30, 2020 ("**Expiration Date**"). Landlord has acquired title to the Premises from Tenant on and as of the Commencement Date, and it is expressly intended by Landlord and Tenant that the commencement of the Lease Term occur simultaneously with the transfer of title to the Premises by Tenant to Landlord such that no gap of any nature or duration exists between the time that title to the Premises is transferred by Tenant to Landlord and the time that the Lease Term commences, and in that regard Tenant has remained in uninterrupted possession of the Premises.
- 1.6. Permitted Uses: (See Section 4.1) Subject to the terms of this Lease and the exceptions set forth in the immediately following sentence, any lawful purpose for which Tenant has obtained all necessary licenses, permits and approvals. Permitted Uses shall not include any use that (i) would increase any environmental or health risk associated with the Premises, (ii) would void or violate any insurance policies required by this Lease or otherwise associated with the Premises, (iii) would void or violate any certificate of occupancy or other license, permit or approval applicable to the Premises, (iv) would involve any radioactive, explosive or ultrahazardous goods, materials or substances, (v) would constitute, create or contribute to a public nuisance, or (vi) is heavy industrial in nature or scope.
- 1.7. Tenant's Guarantor: Royal Wessanen NV (a/k/a Koninklijke Wessanen nv)
- 1.8. Brokers: (See Section 23; if none, so state): (A) Tenant's Broker: Cushman & Wakefield; and (B) Landlord's Broker: None.
- 1.9. Security/Damage Deposit: (See Section 4.3) None.
- 1.10. Exhibits to Lease: The following exhibits are attached to and made a part of this Lease. (If none, so state): A (legal description); B (Tenant Operations Inquiry Form); C (Landlord's Work), D (Confirmation of Commencement Date), E (Broom Clean Condition and Repair Requirements), and Rider No. 1 (Tenant's Term Extension Option)

2. **LEASE OF PREMISES; RENT.**

2.1. **Lease of Premises for Lease Term.** Landlord hereby leases the Premises to Tenant, and Tenant hereby rents the Premises from Landlord, for the Term and subject to the conditions of this Lease.

2.2. **Types of Rental Payments.** Tenant shall pay net base rent to Landlord in monthly installments, in advance, on the first day of each and every calendar month during the Term of this Lease (the "**Base Rent**") in the amounts and for the periods as set forth below:

### Base Rent Payments

<u>Lease Period</u>	<u>Annual Base Rent</u>	<u>Monthly Base Rent</u>
Commencement Date thru 06/30/2009	\$1,199,535.48	\$99,961.29
07/01/2009 thru 06/30/2010	\$1,217,528.52	\$101,460.71
07/01/2010 thru 06/30/2011	\$1,235,791.44	\$102,982.62
07/01/2011 thru 06/30/2012	\$1,254,328.32	\$104,527.36
07/01/2012 thru 06/30/2013	\$1,273,143.24	\$106,095.27
07/01/2013 thru 06/30/2014	\$1,292,240.40	\$107,686.70
07/01/2014 thru 06/30/2015	\$1,311,624.00	\$109,302.00
07/01/2015 thru 06/30/2016	\$1,331,298.36	\$110,941.53
07/01/2016 thru 06/30/2017	\$1,351,267.80	\$112,605.65
07/01/2017 thru 06/30/2018	\$1,371,536.88	\$114,294.74
07/01/2018 thru 06/30/2019	\$1,392,109.92	\$116,009.16
07/01/2019 thru 06/30/2020	\$1,412,991.54	\$117,749.30

Except as otherwise specifically provided in this Lease, Tenant shall also directly pay all Operating Expenses (defined below) and any other amounts owed by Tenant hereunder (collectively, "**Additional Rent**"). In the event any monthly installment of Base Rent or Additional Rent, or both, is not paid within 7 days of the date when due, a late charge in an amount equal to 5% of the then delinquent installment of Base Rent and/or Additional Rent (the "**Late Charge**"; the Late Charge, Default Interest, as defined in **Section 22.3** below, Base Rent and Additional Rent shall collectively be referred to as "**Rent**"), shall be paid by Tenant to Landlord, c/o First Industrial, L.P., 75 Remittance Drive, Suite 1475, Chicago, Illinois 60675-1475, or if sent by overnight courier, to Landlord, c/o First Industrial, L.P., Suite 1475, The Northern Trust Co., 350 North Orleans Street, Receipt and Dispatch 8<sup>th</sup> Floor, Chicago, IL 60654 (or such other entity designated as Landlord's management agent, if any, and if Landlord so appoints such a management agent, the "**Agent**"), or pursuant to such other directions as Landlord shall designate in this Lease or otherwise in writing.

**2.3. Covenants Concerning Rental Payments; Initial and Final Rent Payments.** Tenant shall pay the Rent promptly when due, without notice or demand, and without any abatement, deduction or setoff. No payment by Tenant, or receipt or acceptance by Agent or Landlord, of a lesser amount than the correct Rent shall be deemed to be other than a payment on account, nor shall any endorsement or statement on any check or letter accompanying any payment be deemed an accord or satisfaction, and Agent or Landlord may accept such payment without prejudice to its right to recover the balance due or to pursue any other remedy available to Landlord. A payment by Tenant of Rent or any other sum due under this Lease shall not be deemed paid by Tenant until the payment (i) is actually received by Landlord, and (ii) has cleared the banking system and been fully credited to Landlord's account; provided, however, that the payment will be deemed paid on the date actually received by Landlord if the payment clears the banking system and is fully credited to Landlord's account on the occasion first submitted for payment by Landlord provided that Landlord deposits such payment on a reasonably prompt basis. If the Commencement Date occurs on a day other than the first day of a calendar month, the Rent due for the first calendar month of the Term shall be prorated on a per diem basis (based on a 360 day, 12 month year) and paid to Landlord on the Commencement Date.

**2.4. Net Lease.** This is an absolutely net lease to Landlord. It is the intent of the parties that the Base Rent payable under this Lease shall be an absolutely net return to Landlord and that Tenant shall pay all costs and expenses relating to the ownership, use and operation of the Premises and the business carried on therein, unless otherwise expressly and specifically provided to the contrary in this Lease. Any amount or obligation relating to the Premises or its ownership, use or operation that is not expressly and specifically declared (under this Lease) to be that of Landlord shall be deemed to be an obligation of Tenant to be performed by Tenant, at Tenant's expense. It is the intention of the parties that the obligations of Tenant under this Lease shall be separate and independent covenants and agreements, that the Base Rent and the Additional Rent shall continue to be payable in all events, and that the obligations of Tenant under this Lease shall continue unaffected in all events, unless the requirement to pay or perform the same shall have been specifically terminated pursuant to an express provision of this Lease.

**2.5. Florida Sales and Use Tax.** In addition to Operating Expenses, as hereinafter defined in Section 3.1.1, Tenant shall pay to Landlord, for remittance by Landlord to the appropriate taxing authority, any sales, use or other similar tax on the Rent or other sums or charges payable to Landlord by Tenant under this Lease (including, without limitation, the so-called Florida Sales and Use Tax). Tenant shall also pay, prior to the time the same shall become delinquent or payable with penalty, all taxes imposed on Tenant's property, including movable goods, inventory, office furniture, equipment, trade fixtures and other movable personal property belonging to Tenant, and leasehold improvements installed by Tenant or by Landlord on behalf of Tenant (except to the extent such leasehold improvements shall be covered by those taxes referred to in Section 3.1.2), and any other property of Tenant.

### **3. OPERATING EXPENSES.**

**3.1. Definitional Terms Relating to Additional Rent.** For purposes of this Section and other relevant provisions of the Lease:

**3.1.1. Operating Expenses.** The term "Operating Expenses" shall mean all of the following: (i) a management fee to Landlord in an amount equal to one percent (1%) per annum of all Base Rent due hereunder, payable by Tenant to Landlord in equal monthly installments on the first day of each calendar month during the Term; (ii) Taxes, as hereinafter defined in Section 3.1.2, (iii) dues, fees or other costs and expenses, of any nature, due and payable to any association or comparable entity to which Landlord, as owner of the Premises, is a member or otherwise belongs and that governs or controls any aspect of the ownership and operation of the Premises; and (iv) any real estate taxes and common area maintenance expenses levied against, or attributable to, the Premises under any declaration of covenants, conditions and restrictions, reciprocal easement agreement or comparable arrangement that encumbers and benefits the Premises and other real property (e.g. a business park).

**3.1.2. Taxes.** The term "Taxes," as referred to in Section 3.1.1(ii) above shall mean (i) all governmental taxes, assessments, fees and charges of every kind or nature (other than Landlord's income taxes), whether general, special, ordinary or extraordinary, due at any time or from time to time, during the Term and any extensions thereof, in connection with the ownership, leasing, or operation of the Premises, or of the personal property and equipment located therein or used in connection therewith; and (ii) any reasonable expenses incurred by Landlord in contesting such taxes or assessments and/or the assessed value of the Premises. For purposes hereof, Tenant shall be responsible for any Taxes that are due and payable at any time or from time to time during the Term and for any Taxes that are assessed, become a lien, or accrue during any Operating Year, which obligation shall survive the termination or expiration of this Lease. Provided Tenant gives Landlord at least sixty (60) days advance written notice of Tenant's decision to contest the property taxes and/or assessments applicable to the Premises for a particular year during the Term and provided further Tenant is not in Default, Tenant shall have the right to contest such taxes or assessments subject to and in accordance with all Laws and the procedural requirements of the applicable tribunal(s), and Tenant shall provide Landlord with copies of all petitions, orders, pleadings and other submissions relating to such contest as and when prepared, received, filed or issued.

**3.1.3. Operating Year.** The term "Operating Year" shall mean the calendar year commencing January 1st of each year (including the calendar year within which the Commencement Date occurs) during the Term.

**3.2. Payment of Operating Expenses.** Tenant shall pay, as Additional Rent and in accordance with the requirements of Section 3.3, all of the Operating Expenses, as set forth in Section 3.3. Additional Rent commences to accrue upon the Commencement Date. The Operating Expenses payable hereunder for the Operating Years in which the Term begins and ends shall be prorated to correspond to that portion of said Operating Years occurring within the Term. The Operating Expenses and any

other sums due and payable under this Lease shall be adjusted upon receipt of the actual bills therefor, and the obligations of this Section 3 shall survive the termination or expiration of the Lease.

**3.3. Payment of Additional Rent.** Unless (y) a Default of Tenant has occurred under this Lease and (z) in response to the Default Landlord notifies Tenant in writing that some or all of the Operating Expenses (as specified in the notice, the "**Specified Operating Expenses**") shall thereafter be included in and payable by Tenant to Landlord as part of Estimated Additional Rent under this Section 3.3 (such notice referred to as an "**Estimated Additional Rent Notice**"), Tenant shall pay all Operating Expenses directly to the party to whom the Operating Expenses are payable, on or before the applicable due date for such Operating Expenses (although, with respect to Taxes, in no event after March 15 of each year), and Tenant shall promptly provide to Landlord reasonable written evidence that all such payments were made in full and on a timely basis. From and after the delivery by Landlord to Tenant of an Estimated Additional Rent Notice (until such time, if ever, that the Estimated Additional Rent Notice is revoked by Landlord), Landlord shall reasonably estimate the Specified Operating Expenses for each Operating Year. Upon Landlord's or Agent's notice to Tenant of such estimated amount, Tenant shall pay, on the first day of each month during that Operating Year, an amount (the "**Estimated Additional Rent**") equal to the estimate of the Specified Operating Expenses divided by 12 (or the fractional portion of the Operating Year remaining at the time Landlord delivers its notice of the estimated amounts due from Tenant for that Operating Year). If the aggregate amount of Estimated Additional Rent actually paid by Tenant during any Operating Year is less than Tenant's actual ultimate liability for Specified Operating Expenses for that particular Operating Year, Tenant shall pay the deficiency within thirty (30) days of Landlord's written demand therefor. If the aggregate amount of Estimated Additional Rent actually paid by Tenant during a given Operating Year exceeds Tenant's actual liability for Specified Operating Expenses for such Operating Year, the excess shall be credited against the Estimated Additional Rent next due from Tenant during the immediately subsequent Operating Year, except that in the event that such excess is paid by Tenant during the final Lease Year, then upon the expiration of the Term, Landlord or Agent shall pay Tenant the then-applicable excess promptly after determination thereof.

#### **4. USE OF PREMISES; SIGNAGE; SECURITY DEPOSIT.**

**4.1. Use of Premises.** The Premises shall be used by the Tenant for the purpose(s) set forth in Section 1.6 above and for no other purpose whatsoever. Tenant shall not, at any time, use or occupy, or suffer or permit anyone to use or occupy, the Premises, or do or permit anything to be done in the Premises, in any manner that may (a) violate any Certificate of Occupancy for the Premises; (b) cause, or be liable to cause, injury to, or in any way impair the value or proper utilization of, all or any portion of the Premises (including, but not limited to, the structural elements of the Premises) or any equipment, facilities or systems therein; (c) constitute a violation of the laws and requirements of any public authority or the requirements of insurance bodies or the rules and regulations of the Premises, including any covenant, condition or restriction affecting the Premises; (d) exceed the load bearing capacity of the floor of the Premises; or (e) impair or tend to impair the character, reputation or appearance of the Premises. On or prior to the date hereof, Tenant has completed and delivered for the benefit of Landlord a "Tenant Operations Inquiry Form" in the form attached hereto as Exhibit B describing the nature of Tenant's proposed business operations at the Premises, which form is intended to be, and shall be, relied upon by Landlord. From time to time during the Term (but no more often than once in any twelve month period unless Tenant is in default hereunder or unless Tenant assigns this Lease or subleases all or any portion of the Premises, whether or not in accordance with Section 8), Tenant shall provide an updated and current Tenant Operations Inquiry Form upon Landlord's request.

**4.2. Signage.** Tenant shall not affix any sign of any size or character to any portion of the Premises, without prior written approval of Landlord, which approval shall not be unreasonably withheld or delayed, and then only in accordance with all Laws and Easements. Tenant shall remove all signs of Tenant upon the expiration or earlier termination of this Lease and immediately repair any damage to the Premises caused by, or resulting from, such removal or the installation or existence of the signs.

**4.3. Security/Damage Deposit.** Intentionally Deleted.

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

**5.1. Condition of Premises.** Tenant agrees that Tenant is familiar with the condition of the Premises, and Tenant hereby accepts the foregoing on an "AS-IS," "WHERE-IS" basis, except as is otherwise expressly and specifically described on Exhibit C attached hereto and incorporated herein by this reference, it being understood that, if Landlord has agreed to perform any tenant improvements in or to the Premises in consideration of Tenant's entry into this Lease (collectively, "**Landlord's Work**"), all of Landlord's Work shall be described on Exhibit C. Tenant acknowledges that neither Landlord nor Agent, nor any

representative of Landlord or Agent, has made any representation or warranty, whether express or implied, written or oral, as to the condition or habitability of the Premises, Landlord's title to the Premises, the suitability of the Premises for Tenant's intended use, the legal compliance of the Premises, the zoning of the Premises, the environmental condition of the Premises, or any other fact, matter or condition in any way related to the Premises or this Lease, all of which are waived by Tenant and disclaimed by Landlord. Tenant represents and warrants that Tenant has made its own inspection of the foregoing. Neither Landlord nor Agent shall be obligated to make any repairs, replacements or improvements (whether structural or otherwise) of any kind or nature to the foregoing in connection with, or in consideration of, this Lease, except as expressly and specifically set forth in this Lease.

5.2. **Tenant's Possession of the Premises.** Tenant acknowledges that Tenant is in possession of the Premises.

5.3. **Memorandum of Commencement Date.** Tenant has delivered to Landlord a Confirmation of Commencement Date in substantially the form attached hereto as **Exhibit D**.

6. **SUBORDINATION; ESTOPPEL CERTIFICATES; ATTORNMENT.**

6.1. **Subordination and Attornment.** This Lease is and shall be subject and subordinate at all times to (a) all ground leases or underlying leases that may now exist or hereafter be executed affecting the Premises and (b) subject to Section 6.4 below, any mortgage or deed of trust that may now exist or hereafter be placed upon, and encumber, any or all of (x) the Premises; (y) any ground leases or underlying leases for the benefit of the Premises; and (z) all or any portion of Landlord's interest or estate in any of said items. Tenant shall execute and deliver, within ten (10) days of Landlord's request, and in the form reasonably requested by Landlord (or its lender), any documents evidencing the subordination of this Lease subject to Section 6.4 below. Notwithstanding the foregoing, Landlord shall have the right to subordinate or cause to be subordinated to this Lease any such ground lease or mortgage subject to Section 6.4 below. Tenant shall execute and deliver, within ten (10) days of Landlord's request, and in the form reasonably requested by Landlord (or its lender), any documents evidencing the subordination of this Lease; provided that such documents shall provide, in effect, that this Lease shall not terminate solely as a result of the foreclosure of such lien or Landlord's default under such ground lease, and Tenant's rights under this Lease shall continue in force and effect and Tenant's possession and use of the Premises shall not be disturbed and shall be preserved in accordance with Section 6.4, except in accordance with the provisions of this Lease and applicable Law. Tenant hereby covenants and agrees that Tenant shall attorn to any successor to Landlord in accordance with this Section.

6.2. **Estoppel Certificate.** Tenant agrees, from time to time and within ten (10) days after request by Landlord, to deliver to Landlord, or Landlord's designee, an estoppel certificate stating such matters pertaining to this Lease as may be reasonably requested by Landlord. Failure by Tenant to timely execute and deliver such certificate within ten (10) days after Landlord delivers written notice of Tenant's failure to deliver the requested estoppel certificate within the initial ten (10) day period above shall constitute a Default, as defined below (without any further obligation to provide any notice thereof or any further opportunity to cure such failure to timely perform).

6.3. **Transfer by Landlord.** In the event of a sale or conveyance by Landlord of the Premises, the same shall operate to release Landlord from any future liability for any of the covenants or conditions, express or implied, herein contained in favor of Tenant and first arising or accruing after the effective date of Landlord's transfer of its interest in the Premises, and in such event Tenant agrees to look solely to Landlord's successor in interest ("**Successor Landlord**") with respect thereto and agrees to attorn to such successor.

6.4. **Landlord's Minimum Equity Requirement.** Landlord, including its successors and assigns, agrees that it shall throughout the Term and any Extension Period (as hereinafter defined) maintain a minimum equity in the Premises of at least Two Million Dollars (\$2,000,000).

7. **LIMITED QUIET ENJOYMENT.** Subject to the provisions of this Lease and to the exercise of any rights or remedies available to Landlord or Landlord's assignor in connection with the purchase of the Premises by Landlord or Landlord's assignor from Tenant, so long as Tenant duly and punctually pays all of the Rent and performs all of its other obligations hereunder, Tenant's possession of the Premises shall not be materially disturbed by the affirmative acts of Landlord or Agent, excluding acts of Landlord or Agent that relate to arise from Landlord's (or Landlord's assignor's) purchase of the Premises from Tenant. Notwithstanding the foregoing or any other provision of this Lease, Tenant acknowledges and agrees that Landlord shall have the right to grant utility easements and licenses (including without limitation, cable, fiber optics and cellular and satellite communication

services) with respect to portions of the Premises (but not the interior of the Building); provided, however, that in all events and under all circumstances, the grant of any such easement or license shall not interfere with (a) Tenant's rights to occupy and use the Premises in the manner and for the purposes contemplated hereunder; (b) Tenant's right to utilize the vehicular parking areas located on the Premises; and (c) Tenant's right of access, ingress and egress to and from the Premises.

8. **ASSIGNMENT AND SUBLETTING.** Tenant shall not (a) assign (whether directly or indirectly), in whole or in part, this Lease, or (b) allow this Lease to be assigned, in whole or in part, by operation of law or otherwise, including, without limitation, by transfer of a controlling interest (*i.e.* greater than a 25% interest) of stock, membership interests or partnership interests, or by merger or dissolution, which transfer of a controlling interest, merger or dissolution shall be deemed an assignment for purposes of this Lease, or (c) mortgage or pledge the Lease, or (d) sublet the Premises, in whole or in part, without (in the case of any or all of (a) through (d) above) the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed. Tenant may, however, assign this Lease or sublease a portion of the Premises to a wholly-owned subsidiary, provided that Tenant advises Landlord, in writing, in advance, and otherwise complies with the succeeding provisions of this Section 8. In no event shall any assignment or sublease ever release Tenant or any guarantor from any obligation or liability hereunder; and in the case of any assignment, Landlord shall retain all rights with respect to the Security. Any purported assignment, mortgage, transfer, pledge or sublease made without the prior written consent of Landlord shall be absolutely null and void. No assignment of this Lease shall be effective and valid unless and until the assignee executes and delivers to Landlord any and all documentation reasonably required by Landlord in order to evidence assignee's assumption of all obligations of Tenant hereunder. Regardless of whether or not an assignee or sublessee executes and delivers any documentation to Landlord pursuant to the preceding sentence, any assignee or sublessee shall be deemed to have automatically attorned to Landlord in the event of any termination of this Lease. If this Lease is assigned, or if the Premises (or any part thereof) are sublet or used or occupied by anyone other than Tenant, whether or not in violation of this Lease, Landlord or Agent may (without prejudice to, or waiver of its rights), collect Rent from the assignee, subtenant or occupant. In the event of an assignment of this Lease and the payment of consideration from the assignee to the Tenant in connection therewith, 50% of such consideration shall be paid to Landlord. With respect to the allocable portion of the Premises sublet, in the event that the total rent and any other considerations received under any sublease by Tenant is greater than (on a pro rata and proportionate basis) the total Rent required to be paid, from time to time, under this Lease, Tenant shall pay to Landlord fifty percent (50%) of such excess as received from any subtenant and such amount shall be deemed a component of the Additional Rent. In the event of any assignment or sublease, and regardless of whether such assignment or sublease occurs pursuant to this Section 8, the Guaranty (as hereinafter defined) shall remain in full force and effect, and Guarantor's liability thereunder shall not be diminished, released or modified.

## 9. **COMPLIANCE WITH LAWS.**

9.1. **Compliance with Laws.** Tenant shall, at its sole expense (regardless of the cost thereof), comply with all local, state and federal laws, statutes, rules, regulations, codes, ordinances, orders and requirements now or hereafter in force and all judicial and administrative decisions in connection with the enforcement thereof (collectively, "Laws"), whether such Laws (a) pertain to either or both of the Premises and Tenant's use and occupancy thereof; (b) concern or address matters of an environmental or health nature; (c) require the making of any structural, unforeseen or extraordinary changes or additions; and (d) involve a change of policy on the part of the body enacting the same, including, in all instances described in (a) through (d), but not limited to, the Americans With Disabilities Act of 1990 (42 U.S.C. Section 12101 *et seq.*), and regulations and guidelines promulgated thereunder, as the same may be amended and supplemented from time to time, the Florida Accessibility Code and any other state or local laws of similar intent, as the same may be in effect or amended from time to time. If any license or permit is required for the conduct of Tenant's business in the Premises, Tenant, at its expense, shall procure such license prior to the Commencement Date, and shall maintain such license or permit in good standing throughout the Term. Tenant shall give prompt notice to Landlord of any written notice it receives of the alleged violation of any Law or requirement of any governmental or administrative authority with respect to either or both of the Premises and the use or occupation thereof.

9.2. **Hazardous Materials.** If, at any time or from time to time during the Term (or any extension thereof), any Hazardous Material (defined below) is generated, transported, stored, used, treated or disposed of at, to, from, on or in the Premises by, or as a result of any act or omission of, any or all of Tenant and any or all of Tenant Parties (defined below): (i) Tenant shall, at its own cost, at all times comply (and cause all others to comply) with all Laws relating to Hazardous Materials, and Tenant shall further, at its own cost, obtain and maintain in full force and effect at all times all permits and other approvals required in connection therewith; (ii) Tenant shall promptly provide Landlord or Agent with complete copies of all communications, permits or agreements with, from or issued by any governmental authority or agency (federal, state or local) or any private entity relating in any way to the presence, release, threat of release, or placement of Hazardous Materials on or in the Premises or any portion of the Premises, or the

generation, transportation, storage, use, treatment, or disposal at, on, in or from the Premises, of any Hazardous Materials; (iii) Landlord, Agent and their respective agents and employees shall have the right to either or both (x) enter the Premises and (y) conduct appropriate tests, at Tenant's expense, for the purposes of ascertaining Tenant's compliance with all applicable Laws or permits relating in any way to the generation, transport, storage, use, treatment, disposal or presence of Hazardous Materials on, at, in or from all or any portion of the Premises; (iv) upon written request by Landlord or Agent, Tenant shall cause to be performed, and shall provide Landlord with the results of reasonably appropriate tests of air, water or soil to demonstrate that Tenant complies with all applicable Laws or permits relating in any way to the generation, transport, storage, use, treatment, disposal or presence of Hazardous Materials on, at, in or from all or any portion of the Premises, and (v) at Tenant's sole cost, Tenant will at all times during the Term (and at all times thereafter that Tenant remains in possession of the Premises) take all reasonable measures to prevent the release or discharge of Hazardous Materials at or from the Premises, which measures shall include, but are not limited to, making regular inspections of all areas, containers and apparatus in which Hazardous Materials are stored, used, generated or otherwise present, and installing and maintaining appropriate containment and secondary containment devices. This **Section 9.2** does not authorize the generation, transportation, storage, use, treatment or disposal of any Hazardous Materials at, to, from, on or in the Premises in contravention of this **Section 9**. Tenant covenants to investigate, clean up and otherwise remediate, at Tenant's sole expense, any release of Hazardous Materials caused, contributed to, or created by any or all of (A) Tenant and (B) any or all of Tenant's officers, directors, members, managers, partners, invitees, agents, employees, contractors or representatives (collectively, "**Tenant Parties**") during the Term. Such investigation and remediation shall be performed only after Tenant has obtained Landlord's prior written consent; provided, however, that Tenant shall be entitled to respond (in a reasonably appropriate manner) immediately to an emergency without first obtaining such consent. All remediation shall be performed in strict compliance with Laws and to the reasonable satisfaction of Landlord. Tenant shall not enter into any settlement agreement, consent decree or other compromise with respect to any claims relating to any Hazardous Materials in any way connected to the Premises without first obtaining Landlord's written consent (which consent may be given or withheld in Landlord's sole, but reasonable, discretion) and affording Landlord the reasonable opportunity to participate in any such proceedings. As used herein, the term, "**Hazardous Materials**," shall mean any waste, material or substance (whether in the form of liquids, solids or gases, and whether or not airborne) that is or may be deemed to be or include a pesticide, petroleum, asbestos, polychlorinated biphenyl, radioactive material, urea formaldehyde or any other pollutant or contaminant that is or may be deemed to be hazardous, toxic, ignitable, reactive, corrosive, dangerous, harmful or injurious, or that presents a risk to public health or to the environment, and that is or becomes regulated by any Law. The undertakings, covenants and obligations imposed on Tenant under this **Section 9.2** shall survive the termination or expiration of this Lease. Nothing in this Lease shall be deemed to create liability of Tenant under this Lease for Hazardous Materials found to have been present on the Premises before the Commencement Date; provided, however, that the foregoing shall not affect any liability of Tenant in respect of Hazardous Materials as specifically provided for in the purchase agreement and closing documents related thereto.

## **10. INSURANCE.**

**10.1. Policies.** Tenant shall purchase, at its own expense, and keep in force at all times during this Lease the policies of insurance set forth below (collectively, "**Tenant's Policies**"). All Tenant's Policies shall (a) be issued by an insurance company with a Best and S & P rating of A or better and otherwise reasonably acceptable to Landlord and shall be licensed to do business in the state in which the Premises is located; (b) provide that such insurance shall not be canceled or materially modified unless thirty (30) days' prior written notice shall have been given to Landlord; (c) provide for deductible amounts that are reasonably acceptable to Landlord (and its lender, if applicable) and (d) otherwise be in such form, and include such coverages, as Landlord may reasonably require. The Tenant's Policies described in subsections 10.2(ii) and 10.2(iii) below shall (1) provide coverage on an occurrence basis; (2) except as otherwise specifically provided below, name all of (x) Landlord, (y) First Industrial, L.P., but only during such period of time as Landlord is an entity related to, or affiliated with, First Industrial, L.P., and (z) Landlord's lender, if applicable, as additional insureds; (3) provide coverage, to the full extent insurable, for the indemnity obligations of Tenant under this Lease; (4) contain a separation of insured parties provision; (5) be primary, not contributing with, and not in excess of, coverage that Landlord may carry; and (6) provide coverage with no exclusion for a pollution incident arising from a hostile fire. All Tenant's Policies (or, at Landlord's option, Certificates of Insurance and applicable endorsements, including, without limitation, an "Additional Insured-Managers or Landlords of Premises" endorsement) shall be delivered to Landlord prior to the Commencement Date and renewals thereof shall be delivered to Landlord's Corporate and Regional Notice Addresses (set forth on the signature page of this Lease) at least 30 days prior to the applicable expiration date of each Tenant's Policy. In the event that Tenant fails, at any time or from time to time, to comply with the requirements of the preceding sentence, Landlord may (A) order such insurance and charge the cost thereof to Tenant, which amount shall be payable by Tenant to Landlord upon demand, as Additional Rent or (B) impose on Tenant, as Additional Rent, a monthly delinquency fee, for each month during which Tenant fails to comply with the foregoing

obligation, in an amount equal to five percent (5%) of the Base Rent then in effect. Tenant shall give prompt notice to Landlord and Agent of any bodily injury, death, personal injury, advertising injury or property damage occurring in and about the Premises.

**10.2.** Tenant shall purchase and maintain, throughout the Term, a Tenant's Policy(ies) of:

- (i) commercial property insurance covering the improvements constructed, installed or located on the Premises (but excluding Tenant's Property). Such property insurance policy (the "**Property Insurance**"): (A) shall name Landlord (and its lender(s), if applicable) as mortgagee/loss payee, as its (their respective) interest(s) may appear; (B) shall, at a minimum, cover both (x) the Building and (y) all other improvements, of any nature, situated on the Premises at any time, or from time to time during the Term, including, but not limited to, parking areas and landscaping (collectively, the "**Insured Improvements**"), against direct physical loss, as would be insured against under a standard ISO Special Form ("all risk" coverage); (C) shall be for no less than 100% of the full replacement cost value of the Building and the Insured Improvements, with an "agreed amount" endorsement; (D) shall include, at a minimum, the following extensions of coverage; building ordinance, inclusive of demolition and increased cost of construction; terrorism; earthquake/earth movement; flood; windstorm, and boiler and machinery/equipment breakdown; (E) shall include rental interruption insurance for twelve (12) months of Rent and operating expense reimbursement for that same twelve (12) month period; and (F) shall provide for a per occurrence deductible that is no greater than \$100,000.00. The policy limits and sublimits under the Property Insurance shall be acceptable to Landlord, in its reasonable discretion. For purposes of this **Section 10.2**, "full replacement cost value" shall be interpreted to mean the cost of replacing the Premises without deduction for depreciation or wear and tear, less the cost of footings, foundations and other structures below grade, which value shall be memorialized in a letter agreement (including an ACORD Certificate evidencing such required insurance), to be executed by Landlord and Tenant not later than thirty (30) days after the Commencement Date, and which value shall be trended-forward on each anniversary of the Commencement Date using the trending criteria generally applied by Factory Mutual or other recognized insurance consultants;
- (ii) commercial general or excess liability insurance, including bodily injury and property damage, in the amount of not less than \$2,000,000.00 per occurrence, and \$5,000,000.00 annual general aggregate;
- (iii) comprehensive automobile liability insurance covering Tenant's owned, hired and non-owned autos against any personal injuries or deaths of persons and property damage based upon or arising out of the ownership, use, occupancy or maintenance of a motor vehicle at the Premises and all areas appurtenant thereto in the amount of not less than \$1,000,000, combined single limit;
- (iv) commercial property insurance covering Tenant's personal property (at its full replacement cost);
- (v) workers' compensation insurance per the applicable state statutes covering all employees of Tenant;
- (vi) if Tenant handles, stores or utilizes Hazardous Materials in its business operations, pollution legal liability insurance; and
- (vii) during any period of construction or during which any Alterations are being made, builder's risk or floater installation coverage in an amount equal to or greater than the cost of such Alterations or other work or improvements performed on the Premises by Tenant.

Notwithstanding anything to the contrary contained in this **Section 10**, upon the occurrence of a Default, Landlord shall have the right to, upon written notice to Tenant, purchase any or all of the aforementioned Tenant's Policies on Tenant's behalf and charge the cost thereof to Tenant, which amounts shall be payable by Tenant to Landlord, upon demand as Additional Rent.

**10.3. Blanket Policies.** Notwithstanding anything to the contrary contained in this **Section 10**, Tenant's obligation to carry insurance may be satisfied by coverage under a so-called "blanket policy" or policies of insurance; provided, however, that all insurance certificates provided by Tenant to Landlord pursuant to **Section 10.1** above shall reflect that Tenant has been afforded coverage specifically with respect to the Premises.



11. **ALTERATIONS.** Tenant may, from time to time, at its expense, make alterations or improvements in and to the Premises (hereinafter collectively referred to as "**Alterations**"), provided that Tenant first obtains the written consent of Landlord, except that non-structural renovations to the interior of the Building that enhance the economic value and utility of the Premises and do not cost more than \$25,000.00 in the aggregate to complete (based upon written bids submitted and reasonably acceptable to Landlord) shall not require the prior written consent of Landlord but shall be subject to the remaining provisions of this Section. All of the following shall apply with respect to all Alterations: (a) the structural integrity of the Premises shall not be affected; (b) the proper functioning of the mechanical, electrical, heating, ventilating, air-conditioning ("**HVAC**"), sanitary and other service systems of the Premises shall not be affected and the usage of such systems by Tenant shall not be increased; (c) no roof or wall penetrations shall be made, and (d) Tenant shall have appropriate insurance coverage, reasonably satisfactory to Landlord, regarding the performance and installation of the Alterations. Additionally, before proceeding with any Alterations, Tenant shall (i) at Tenant's expense, obtain all necessary governmental permits and certificates for the commencement and prosecution of Alterations; (ii) if Landlord's consent is required for the planned Alteration, submit to Landlord, for its written approval, working drawings, plans and specifications and all permits for the work to be done and Tenant shall not proceed with such Alterations until it has received Landlord's approval (if required); and (iii) cause those contractors, materialmen and suppliers engaged to perform the Alterations to deliver to Landlord certificates of insurance (in a form reasonably acceptable to Landlord) evidencing policies of commercial general liability insurance (providing the same coverages as required in **Section 10** above) and workers' compensation insurance. Such insurance policies shall satisfy the obligations imposed under **Section 10**. Tenant shall cause the Alterations to be performed in compliance with all applicable permits, Laws and requirements of public authorities, and with Landlord's reasonable rules and regulations or any other restrictions that Landlord may impose on the Alterations. Tenant shall cause the Alterations to be diligently performed in a good and workmanlike manner, using new materials and equipment at least equal in quality and class to the standards for the Premises established by Landlord. With respect to any and all Alterations for which Landlord's consent is required, Tenant shall provide Landlord with "as built" plans, copies of all construction contracts, governmental permits and certificates and proof of payment for all labor and materials, including, without limitation, copies of paid invoices and final lien waivers. If Landlord's consent to any Alterations is required, and Landlord provides that consent, then at the time Landlord so consents, Landlord shall also advise Tenant whether or not Landlord shall require that Tenant remove such Alterations at the expiration or termination of this Lease.

12. **LANDLORD'S AND TENANT'S PROPERTY.** All fixtures, non-removable machinery and equipment, improvements and appurtenances attached to, or built into, the Premises at the commencement of, or during the Term, whether or not placed there by or at the expense of Tenant, shall become and remain a part of the Premises; shall be deemed the property of Landlord (the "**Landlord's Property**"), without compensation or credit to Tenant; and shall not be removed by Tenant at the Expiration Date unless Landlord requires their removal (including, but not limited to, Alterations pursuant to **Section 10**). In no event shall Tenant remove any of the following materials or equipment without Landlord's prior written consent (which consent may be given or withheld in Landlord's sole discretion): any power wiring or power panels, lighting or lighting fixtures, wall or window coverings, carpets or other floor coverings, heaters, air conditioners or any other HVAC equipment, fencing or security gates, or other similar building operating equipment and decorations, or any freezer/cooler unit(s) at the Premises. At or before the Expiration Date, or the date of any earlier termination, Tenant, at its expense, shall remove from the Premises all of Tenant's personal property and any Alterations that Landlord requires be removed pursuant to **Section 10**, and Tenant shall repair (to Landlord's reasonable satisfaction) any damage to the Premises resulting from either or both of such installation and removal. Any other items of Tenant's personal property that remain in the Premises after the Expiration Date, or following an earlier termination date, may, at the option of Landlord, be deemed to have been abandoned, and in such case, such items may be retained by Landlord as its property or be disposed of by Landlord, in Landlord's sole and absolute discretion and without accountability, at Tenant's expense. Notwithstanding the foregoing, if Tenant is in default under the terms of this Lease, Tenant may remove Tenant's personal property from the Premises only upon the express written direction of Landlord.

13. **REPAIRS AND MAINTENANCE.**

13.1. **Tenant Responsibilities.** Tenant acknowledges that, with full awareness of its obligations under this Lease, Tenant has accepted the condition, state of repair and appearance of the Premises. Except for events of damage, destruction or casualty to the Premises (as addressed in **Section 18** below), Tenant agrees that, at its sole expense, it shall put, keep and maintain the Premises, including any Alterations and any altered, rebuilt, additional or substituted buildings, structures and other improvements thereto or thereon, in a good, legal, clean and safe condition, repair and appearance (collectively, the "**Required Condition**") and shall make all repairs and replacements necessary therefore. Without limiting the foregoing, Tenant shall promptly make all structural and nonstructural, foreseen and unforeseen, ordinary and extraordinary changes, replacements and repairs of every kind and nature, and correct any patent or latent defects in the Premises. Tenant will keep the Premises orderly and free and clear of rubbish. Tenant

covenants to perform or observe all terms, covenants and conditions of any easement, restriction, covenant, declaration or maintenance agreement (collectively, "**Easements**") to which the Premises are currently subject or become subject pursuant to this Lease, whether or not such performance is required of Landlord under such Easements, including, without limitation, payment of all amounts due from Landlord or Tenant (whether as assessments, service fees or other charges) under such Easements. Tenant shall deliver to Landlord promptly, but in no event later than five (5) business days after receipt thereof, copies of all written notices received from any party thereto regarding the non-compliance of the Premises or Landlord's or Tenant's performance of obligations under any Easements. Tenant shall, at its expenses, use reasonable efforts to enforce compliance with any Easements benefiting the Premises by any other person or entity or property subject to such Easement. Except with respect to any Landlord's Work specified on **Exhibit C**, Landlord shall not be required to maintain, repair or rebuild, or to make any alterations, replacements or renewals of any nature to the Premises, or any part thereof, whether ordinary or extraordinary, structural or nonstructural, foreseen or not foreseen, or to maintain the Premises or any part thereof in any way or to correct any patent or latent defect therein. Tenant hereby expressly waives any right to make repairs at the expense of Landlord which may be provided for in any Law in effect at the Commencement Date or that may thereafter be enacted. If Tenant shall vacate or abandon the Premises or cease or substantially curtail business operations at the Premises, it shall give Landlord immediate written notice thereof.

Tenant shall, promptly upon entry into same, provide to Landlord copies of all contracts for maintenance and repair services at the Premises, including without limitation, landscaping, grounds maintenance, and janitorial services, to the extent Tenant did not already provide same to Landlord as part of the transaction pursuant to which Tenant sold the Premises to Landlord.

Without limiting the provisions of this **Section 13.1**, Tenant at its sole cost shall make the specific repairs and replacements contemplated by attached **Schedule 13.1** in accordance with the schedule set forth in attached **Schedule 13.1**, and contemporaneously provide written evidence to Landlord of the timely completion of such repairs and replacements.

**13.2. HVAC Maintenance Contract.** Tenant shall also maintain, in full force and effect, a preventative maintenance and service contract with a reputable service provider for maintenance of the HVAC systems of the Premises (the "**HVAC Maintenance Contract**"). The terms and provisions of any such HVAC Maintenance Contract shall require that the service provider maintain the Premises' HVAC system in accordance with the manufacturer's recommendations and otherwise in accordance with normal, customary and reasonable practices in the geographic area in which the Premises is located and for HVAC systems comparable to the Premises' HVAC system. Within 30 days following the Commencement Date, Tenant shall procure and deliver to Landlord the HVAC Maintenance Contract. Thereafter, Tenant shall provide to Landlord a copy of renewals or replacements of such HVAC Maintenance Contract no later than 30 days prior to the then-applicable expiry date of the existing HVAC Maintenance Contract. If Tenant fails to timely deliver to Landlord the HVAC Maintenance Contract (or any applicable renewal or replacement thereof), then Landlord shall have the right to contract directly for the periodic maintenance of the HVAC systems in the Premises and to charge the cost thereof back to Tenant as Additional Rent.

**14. UTILITIES.** Tenant shall directly purchase all utility services and all life/fire safety and security monitoring services, and shall provide for scavenger, cleaning and extermination services. Tenant shall pay the utility and monitoring charges for the Premises directly to the utility, municipality or other party providing such service, all charges shall be paid by Tenant before they become delinquent. Tenant shall be solely responsible for the installation, repair, replacement and maintenance of any meters and monitoring equipment and apparatus necessary in connection with such services. Tenant's use of electrical energy in the Premises shall not, at any time, exceed the capacity of either or both of (x) any of the electrical conductors and equipment in or otherwise servicing the Premises; and (y) the HVAC systems of the Premises.

**15. INVOLUNTARY CESSATION OF SERVICES.** Landlord reserves the right, without any liability to Tenant and without affecting Tenant's covenants and obligations hereunder, to stop service of any or all of the HVAC, electric, sanitary, elevator (if any), and other systems serving the Premises, or to stop any other services required by Landlord under this Lease, whenever and for so long as may be necessary by reason of (i) accidents, emergencies, strikes, or (ii) any other cause beyond Landlord's reasonable control. Further, it is also understood and agreed that Landlord or Agent shall have no liability or responsibility for a cessation of services to the Premises that occurs as a result of causes beyond Landlord's or Agent's reasonable control. No such interruption of service shall be deemed an eviction or disturbance of Tenant's use and possession of the Premises or any part thereof, or render Landlord or Agent liable to Tenant for damages, or relieve Tenant from performance of Tenant's obligations under this Lease, including, but not limited to, the obligation to pay Rent; provided, however, that if any interruption of services persists for a period in excess of five (5) consecutive business days Tenant shall, as Tenant's sole remedy, be entitled to a proportionate abatement of Rent to the extent, if any, of any actual loss of use of the Premises by Tenant.

16. **LANDLORD'S RIGHTS.** Landlord, Agent and their respective agents, employees and representatives shall have the right to enter and/or pass through the Premises at any time or times upon reasonable prior notice (except in the event of emergency) to examine and inspect the Premises and to show them to actual and prospective lenders, prospective purchasers or mortgagees of the Premises or providers of capital to Landlord and its affiliates; and in connection with the foregoing, to install a sign at or on the Premises to advertise the Premises for lease or sale; during the period of six months prior to the Expiration Date (or at any time, if Tenant has vacated or abandoned the Premises or is otherwise in default under this Lease), Landlord and its agents may exhibit the Premises to prospective tenants. Additionally, Landlord and Agent shall have the following rights with respect to the Premises, exercisable without notice to Tenant, without liability to Tenant, and without being deemed an eviction or disturbance of Tenant's use or possession of the Premises or giving rise to any claim for setoff or abatement of Rent: (i) to have pass keys, access cards, or both, to the Premises; and (ii) to decorate, remodel, repair, alter or otherwise prepare the Premises for reoccupancy at any time after Tenant vacates or abandons the Premises for more than 30 consecutive days or without notice to Landlord of Tenant's intention to reoccupy the Premises.

17. **NON-LIABILITY AND INDEMNIFICATION.**

17.1. **Non-Liability.** None of Landlord, Agent, any other managing agent, or their respective affiliates, owners, partners, directors, officers, agents and employees shall be liable to Tenant for any loss, injury, or damage, to Tenant or to any other person, or to its or their property, irrespective of the cause of such injury, damage or loss; provided, however, that the preceding limitation shall not be construed to limit or negate Landlord's obligations under Section 17.3 below. In the event that Landlord's indemnity under Section 17.3 is applicable, it shall apply only as and to the specific extent expressly provided in Section 17.3. Further, none of Landlord, Agent, any other managing agent, or their respective affiliates, owners, partners, directors, officers, agents and employees shall be liable to Tenant (a) for any damage caused by other persons in, upon or about the Premises, or caused by operations in construction of any public or quasi-public work; (b) for consequential or indirect damages, including those purportedly arising out of any loss of use of the Premises or any equipment or facilities therein by Tenant or any person claiming through or under Tenant; (c) for any defect in the Premises; or (d) for injury or damage to person or property caused by fire, or theft, or resulting from the operation of heating or air conditioning or lighting apparatus, or from falling plaster, or from steam, gas, electricity, water, rain, snow, ice, or dampness, that may leak or flow from any part of the Premises, or from the pipes, appliances or plumbing work of the same.

17.2. **Tenant Indemnification.** Except in the event of, and to the extent of, Landlord's negligence, sole negligence or willful misconduct, Tenant hereby indemnifies, defends, and holds Landlord, Agent, Landlord's members and their respective affiliates, owners, partners, members, directors, officers, agents and employees (collectively, "**Landlord Indemnified Parties**") harmless from and against any and all Losses (defined below) arising from or in connection with any or all of: (a) the conduct or management of the Premises or any business therein, or any work or Alterations done, or any condition created by any or all of Tenant and Tenant Parties in or about the Premises during the Term; (b) any act, omission or negligence of any or all of Tenant and Tenant Parties; (c) any accident, injury or damage whatsoever occurring in, at or upon the Premises; (d) any breach by Tenant of any or all of its warranties, representations and covenants under this Lease; (e) any actions necessary to protect Landlord's interest under this Lease in a bankruptcy proceeding or other proceeding under the Bankruptcy Code; (f) the creation or existence of any Hazardous Materials in, at, on or under the Premises, if and to the extent brought to the Premises or caused by Tenant or any party within Tenant's control during the Term or any period after expiration of the Term or termination of this Lease that Tenant remains in possession of the Premises; and (g) any violation or alleged violation by any or all of Tenant and Tenant Parties of any Law (collectively, "**Tenant's Indemnified Matters**"). In case any action or proceeding is brought against any or all of Landlord and the Landlord Indemnified Parties by reason of any of Tenant's Indemnified Matters, Tenant, upon notice from any or all of Landlord, Agent or any Superior Party (defined below), shall resist and defend such action or proceeding by counsel reasonably satisfactory to, or selected by, Landlord. The term "**Losses**" shall mean all claims, demands, expenses, actions, judgments, damages (actual, but not consequential), penalties, fines, liabilities, losses of every kind and nature, suits, administrative proceedings, costs and fees, including, without limitation, attorneys' and consultants' reasonable fees and expenses, and the costs of cleanup, remediation, removal and restoration, that are in any way related to any matter covered by the foregoing indemnity. The provisions of this Section 17.2 shall survive the expiration or termination of this Lease.

17.3. **Landlord Indemnification.** Landlord hereby indemnifies, defends and holds Tenant harmless from and against any and all Losses actually suffered or incurred by Tenant to the extent the direct result of any negligent, willful or intentional acts or omissions of any or all of Landlord, Agent and any parties within the direct control of either or both of Landlord and Agent. Notwithstanding anything to the contrary set forth in this Lease, however, in all events and under all circumstances, the liability of

Landlord to Tenant, whether under this **Section 17.3** or any other provision of this Lease or otherwise, shall be limited to the interest of Landlord in the Premises, which Landlord hereby covenants and agrees shall at all times during the Term or Extension Period be maintained in accordance with Section 6.4, and Tenant agrees to look solely to Landlord's interest in the Premises for the recovery of any judgment or award against Landlord, it being intended that neither Landlord nor any member or partner of Landlord shall be personally liable for any judgment or deficiency. The provisions of this **Section 17.3** shall survive the expiration or termination of this Lease.

**17.4. Force Majeure.** Each of the obligations of Tenant (except the obligation to pay Rent and the obligation to maintain insurance, and provide evidence thereof, in accordance with **Section 10.2**) and each of the obligations of Landlord, shall be excused, and neither Landlord nor Tenant shall have any liability whatsoever to the other, to the extent that any failure to perform, or delay in performing such obligation arises out of either or both of (a) any labor dispute, governmental preemption of property in connection with a public emergency or shortages of fuel, supplies, or labor, or any other cause, whether similar or dissimilar, beyond Landlord's or Tenant's, as the case may be, reasonable control; or (b) any failure or defect in the supply, quantity or character of utilities furnished to the Premises, or by reason of any requirement, act or omission of any public utility or others serving the Premises, beyond Landlord's or Tenant's, as the case may be, reasonable control.

## **18. DAMAGE OR DESTRUCTION.**

**18.1. Notification and Repair; Rent Abatement.** Tenant shall give prompt notice to Landlord and Agent of (a) any fire or other casualty to the Premises, and (b) any damage to, or defect in, any part or appurtenance of the Premises' sanitary, electrical, HVAC, elevator or other systems. Subject to (i) the provisions of **Section 18.2** below, and (ii) Landlord's receipt of both (x) insurance proceeds from Tenant's insurer and (y) payment from Tenant in an amount equal to the applicable deductible due under Tenant's Property Insurance policy, if the Premises is damaged by fire or other insured casualty, Landlord shall repair (or cause Agent to repair) the damage and restore and rebuild the Premises (except Tenant's personal property) with reasonable dispatch after the adjustment of the insurance proceeds attributable to such damage. In no event, however, shall Landlord be obligated to expend any monies for such repairs in excess of the aggregate amount that Landlord receives under (ii)(x) and (y) above. Landlord (or Agent, as the case may be) shall use its diligent, good faith efforts to make such repair or restoration promptly and in such manner as not to unreasonably interfere with Tenant's use and occupancy of the Premises, but Landlord or Agent shall not be required to do such repair or restoration work except during normal business hours of business days. Provided that any damage to the Premises is not caused by, or is not the result of acts or omissions by, any or all of Tenant and Tenant Parties, if the Premises are partially damaged by fire or other casualty, the Rent shall be proportionally abated to the extent of any actual loss of use of the Premises by Tenant.

**18.2. Total Destruction.** If the Premises shall be totally destroyed by fire or other casualty, or if the Premises shall be so damaged by fire or other casualty that (in the reasonable opinion of a reputable contractor or architect designated by Landlord): (i) its repair or restoration requires more than one hundred eighty (180) days or (ii) such repair or restoration requires the expenditure of more than fifty percent (50%) of the full insurable value of the Premises immediately prior to the casualty, Landlord shall have the option to terminate this Lease (by so advising Tenant, in writing) within ten (10) days after said contractor or architect delivers written notice of its opinion to Landlord and Tenant, but in all events prior to the commencement of any restoration of the Premises by Landlord. Additionally, if the damage (x) is less than the amount stated in (ii) above, but more than ten percent (10%) of the full insurable value of the Premises; and (y) occurs during the last two years of Lease Term, Landlord shall also have the option to terminate this Lease pursuant to the notice and within the time period established pursuant to the immediately preceding sentence. In the event of a termination pursuant to either of the preceding two (2) sentences, applicable insurance proceeds shall be disbursed to Landlord (or its lender, if applicable) and the termination shall be effective as of the date upon which Tenant receives timely written notice from Landlord terminating this Lease pursuant to the preceding sentence. If Landlord does not timely deliver a termination notice, this Lease shall remain in full force and effect. Notwithstanding the foregoing, if (A) any holder of a mortgage or deed of trust encumbering the Premises or landlord pursuant to a ground lease encumbering the Premises (collectively, "**Superior Parties**") or other party entitled to the insurance proceeds fails to make such proceeds available to Landlord in an amount sufficient for restoration of the Premises, or (B) the issuer of any commercial property insurance policies on the Premises fails to make available to Landlord sufficient proceeds for restoration of the Premises, then Landlord may, at Landlord's sole option, terminate this Lease by giving Tenant written notice to such effect within thirty (30) days after Landlord receives notice from the Superior Party or insurance company, as the case may be, that such proceeds shall not be made available, in which event the termination of this Lease shall be effective as of the date Tenant receives written notice from Landlord of Landlord's election to terminate this Lease. Landlord shall have no liability to Tenant, and Tenant shall not be entitled to terminate this Lease by virtue of any delays in completion of repairs and

restoration. For purposes of this **Section 18.2** only, "full insurable value" shall mean replacement cost, less the cost of footings, foundations and other structures below grade.

**19. EMINENT DOMAIN.** If the whole, or any substantial (as reasonably determined by Landlord) portion, of the Premises is taken or condemned for any public use under any Law or by right of eminent domain, or by private purchase in lieu thereof, and such taking would prevent or materially interfere with the Permitted Use of the Premises, this Lease shall terminate effective when the physical taking of said Premises occurs. If less than a substantial portion of the Premises is so taken or condemned, or if the taking or condemnation is temporary (regardless of the portion of the Premises affected), this Lease shall not terminate, but the Rent payable hereunder shall be proportionally abated to the extent of any actual loss of use of the Premises by Tenant. Landlord shall be entitled to any and all payment, income, rent or award, or any interest therein whatsoever, which may be paid or made in connection with such a taking or conveyance, and Tenant shall have no claim against Landlord for the value of any unexpired portion of this Lease. Notwithstanding the foregoing, any compensation specifically and independently awarded to Tenant for loss of business or goodwill, or for its personal property, or for Tenant's relocation costs shall be the property of Tenant provided that such award does not reduce any award to Landlord.

**20. SURRENDER AND HOLDOVER.** On the last day of the Term, or upon any earlier termination of this Lease, or upon any re-entry by Landlord upon the Premises: (a) Tenant shall quit and surrender the Premises to Landlord "broom-clean" (as defined by **Exhibit E** attached hereto and incorporated herein by reference), and in a condition that would reasonably be expected with normal and customary use in accordance with prudent operating practices and in accordance with the covenants and requirements imposed under this Lease, subject only to ordinary wear and tear (as is attributable to deterioration by reason of time and use, in spite of Tenant's reasonable care) and such damage or destruction as Landlord is required to repair or restore under this Lease; (b) Tenant shall remove all of Tenant's personal property therefrom, except as otherwise expressly provided in this Lease, and remove (other than Landlord's property) all Alterations and restore all improvements removed or modified in the course of performing Alterations if so specified in **Section 11** or in Landlord's consent for the Alterations, except as otherwise agreed by Landlord and Tenant; and (c) Tenant shall surrender to Landlord any and all keys, access cards, computer codes or any other items used to access the Premises. Landlord shall be permitted to inspect the Premises in order to verify compliance with this **Section 20** at any time prior to (x) the Expiration Date, (y) the effective date of any earlier termination of this Lease, or (z) the surrender date otherwise agreed to in writing by Landlord and Tenant. The obligations imposed under the first sentence of this **Section 20** shall survive the termination or expiration of this Lease. If Tenant remains in possession after the Expiration Date hereof or after any earlier termination date of this Lease or of Tenant's right to possession: (i) Tenant shall be deemed a tenant-at-will; (ii) Tenant shall pay 150% of the aggregate of all Rent last prevailing hereunder, and also shall pay all actual damages sustained by Landlord, directly by reason of Tenant's remaining in possession after the expiration or termination of this Lease; (iii) there shall be no renewal or extension of this Lease by operation of law; and (iv) the tenancy-at-will may be terminated by either party hereto upon 30 days' prior written notice given by the terminating party to the non-terminating party. The provisions of this **Section 20** shall not constitute a waiver by Landlord of any re-entry rights of Landlord provided hereunder or by law.

Upon the expiration of the Lease Term or any earlier termination of the Lease or Lease Term, all warranties and guaranties relating to the Building, Building systems and components, or any part of the Premises generally, shall, to the extent not already assigned to Landlord, automatically be deemed to have been assigned and transferred to Landlord, that this provision shall be conclusive evidence of such assignment and transfer. Before any such expiration or termination but on and after any Default, Landlord shall have the right, in the name and on behalf of Tenant, to enforce and otherwise pursue any and all rights and claims available under any such warranty or guaranty, and power of attorney (non-revocable and coupled with an interest) is granted by Tenant to Landlord for such purposes.

**21. EVENTS OF DEFAULT.**

**21.1. Bankruptcy of Tenant or Guarantor.** It shall be a default by Tenant under this Lease ("Default" or "Event of Default") if either or both of Guarantor (defined in **Section 21.2**) and Tenant makes an assignment for the benefit of creditors, or files a voluntary petition under any state or federal bankruptcy (including the United States Bankruptcy Code) or insolvency law, or an involuntary petition is filed against either or both of Tenant and Guarantor, as the case may be under any state or federal bankruptcy (including the United States Bankruptcy Code) or insolvency law that is not dismissed within ninety (90) days after filing, or whenever a receiver of either or both of Tenant and Guarantor, as the case may be, or of, or for, the property of either or both of Tenant and Guarantor, as the case may be shall be appointed, or either or both of Tenant and Guarantor, as the case may be admits it is insolvent or is not able to pay its debts as they mature.

**21.2. Default Provisions.** In addition to any Default arising under **Section 21.1** above, each of the following shall constitute a Default: (a) if Tenant fails to pay Rent or any other payment when due hereunder within seven (7) days after written notice from Landlord of such failure to pay on the due date; provided, however, that if in any consecutive twelve (12) month period, Tenant shall, on two (2) separate occasions, fail to pay any installment of Rent on the date such installment of Rent is due, then, on the third such occasion and on each occasion thereafter on which Tenant shall fail to pay an installment of Rent on the date such installment of Rent is due, Landlord shall be relieved from any obligation to provide notice to Tenant, and Tenant shall then no longer have a seven (7) day period in which to cure any such failure; (b) if Tenant fails, whether by action or inaction, to timely comply with, or satisfy, any or all of the obligations imposed on Tenant under this Lease (other than the obligation to pay Rent) for a period of thirty (30) days after Landlord's delivery to Tenant of written notice of such default under this **Section 21.2(b)**; provided, however, that if the default cannot, by its nature, be cured within such thirty (30) day period, but Tenant commences and diligently pursues a cure of such default promptly within the initial thirty (30) day cure period, then Landlord shall not exercise its remedies under **Section 22** unless such default remains uncured for more than sixty (60) days after the initial delivery of Landlord's original default notice; and, at Landlord's election, (c) if Tenant vacates or abandons the Premises during the Term, except that vacating or abandoning the Premises shall not by itself be a Default unless the Premises are still vacated or abandoned on or after the 60<sup>th</sup> day after the first date of vacation or abandonment but only if Tenant at all times continues to operate the HVAC system of the Premises at the appropriate levels as if the Premises were not vacated or abandoned and Tenant does not shut off any other Premises utility services, or (d) the Guarantor breaches, defaults under, or fails to comply with any or all of the requirements of its Guaranty.

## **22. RIGHTS AND REMEDIES.**

**22.1. Landlord's Cure Rights Upon Default of Tenant.** If a Default occurs, then Landlord may (but shall not be obligated to) cure or remedy the Default for the account of, and at the expense of, Tenant, but without waiving such Default.

**22.2. Landlord's Remedies.** In the event of any Default by Tenant under this Lease, Landlord, at its option, may, in addition to any and all other rights and remedies provided in this Lease or otherwise at law or in equity, do or perform any or all of the following:

**22.2.1.** Terminate Tenant's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Tenant shall immediately surrender possession to Landlord. In such event, Landlord shall be entitled to recover from Tenant all of: (i) the unpaid Rent that is accrued and unpaid as of the date on which this Lease is terminated; (ii) the worth, at the time of award, of the amount by which (x) the unpaid Rent that would otherwise be due and payable under this Lease (had this Lease not been terminated) for the period of time from the date on which this Lease is terminated through the Expiration Date exceeds (y) the amount of such rental loss that the Tenant proves could have been reasonably avoided; and (iii) any other amount necessary to compensate Landlord for all the detriment proximately caused by the Tenant's failure to perform its obligations under this Lease or which, in the ordinary course of events, would be likely to result therefrom, including but not limited to, the cost of recovering possession of the Premises, expenses of reletting, including reasonable costs to prepare the Premises for another tenant and reasonable attorneys' fees. The worth, at the time of award, of the amount referred to in provision (ii) of the immediately preceding sentence shall be computed by discounting such amount at the current yield, as of the date on which this Lease is terminated under this **Section 22.2.1**, on United States Treasury Bills having a maturity date closest to the stated Expiration Date of this Lease, plus one percent per annum. Efforts by Landlord to mitigate damages caused by Tenant's Default shall not waive Landlord's right to recover damages under this **Section 22.2**. If this Lease is terminated through any unlawful entry and detainer action, Landlord shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable in such action, or Landlord may reserve the right to recover all or any part of such Rent and damages in a separate suit; or

**22.2.2.** Continue the Lease and either (a) continue Tenant's right to possession or (b) terminate Tenant's right to possession and in the case of either (a) or (b), recover the Rent as it becomes due. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the Landlord's interests shall not constitute a termination of the Tenant's right to possession; or

**22.2.3.** Pursue any other remedy now or hereafter available under the laws of the state in which the Premises are located.

**22.2.4.** Without limitation of any of Landlord's rights in the event of a Default by Tenant, Landlord may also exercise its rights and remedies with respect to any Security under **Section 4.3** above.

Any and all personal property of Tenant that may be removed from the Premises by Landlord pursuant to the authority of this Lease or of law may be handled, removed or stored by Landlord at the sole risk, cost and expense of Tenant, and in no event or circumstance shall Landlord be responsible for the value, preservation or safekeeping thereof. Tenant shall pay to Landlord, upon demand, any and all expenses incurred in such removal and all storage charges for such property of Tenant so long as the same shall be in Landlord's possession or under Landlord's control. Any such property of Tenant not removed from the Premises as of the Expiration Date or any other earlier date on which this Lease is terminated shall be conclusively presumed to have been conveyed by Tenant to Landlord under this Lease as in a bill of sale, without further payment or credit by Landlord to Tenant. Neither expiration or termination of this Lease nor the termination of Tenant's right to possession shall relieve Tenant from its liability under the indemnity provisions of this Lease.

**22.3. Additional Rights of Landlord.** All sums advanced by Landlord or Agent on account of Tenant under this Section after a Default, or pursuant to any other provision of this Lease, and all Base Rent and Additional Rent not paid by Tenant and received by Landlord within thirty (30) days of the date when due hereunder, shall bear interest ("**Default Interest**") at the rate of five percent (5%) per annum above the "prime" or "reference" or "base" rate (on a per annum basis) of interest publicly announced as such, from time to time, by the JPMorgan Chase Bank, NA, or its successor, from the due date thereof until paid, and such interest shall be and constitute Additional Rent and be due and payable upon Landlord's or Agent's submission of an invoice therefor. The various rights, remedies and elections of Landlord reserved, expressed or contained herein are cumulative and no one of them shall be deemed to be exclusive of the others or of such other rights, remedies, options or elections as are now or may hereafter be conferred upon Landlord by law.

**22.4. Event of Bankruptcy.** In addition to, and in no way limiting the other remedies set forth herein, Landlord and Tenant agree that if Tenant ever becomes the subject of a voluntary or involuntary bankruptcy, reorganization, composition, or other similar type proceeding under the federal bankruptcy laws, as now enacted or hereinafter amended, then: (a) "adequate assurance of future performance" by Tenant pursuant to Bankruptcy Code Section 365 will include (but not be limited to) payment of an additional/new security deposit in the amount of three times the then current Base Rent payable hereunder; (b) any person or entity to which this Lease is assigned, pursuant to the provisions of the Bankruptcy Code, shall be deemed, without further act or deed, to have assumed all of the obligations of Tenant arising under this Lease on and after the effective date of such assignment, and any such assignee shall, upon demand by Landlord, execute and deliver to Landlord an instrument confirming such assumption of liability; (c) notwithstanding anything in this Lease to the contrary, all amounts payable by Tenant to or on behalf of Landlord under this Lease, whether or not expressly denominated as "Rent", shall constitute "rent" for the purposes of Section 502(b)(6) of the Bankruptcy Code; and (d) if this Lease is assigned to any person or entity pursuant to the provisions of the Bankruptcy Code, any and all monies or other considerations payable or otherwise to be delivered to Landlord or Agent (including Base Rent, Additional Rent and other amounts hereunder), shall be and remain the exclusive property of Landlord and shall not constitute property of Tenant or of the bankruptcy estate of Tenant. Any and all monies or other considerations constituting Landlord's property under the preceding sentence not paid or delivered to Landlord or Agent shall be held in trust by Tenant or Tenant's bankruptcy estate for the benefit of Landlord and shall be promptly paid to or turned over to Landlord.

**23. BROKER.** Tenant covenants, warrants and represents that the broker set forth in **Section 1.8(A)** was the only broker to represent Tenant in the negotiation of this Lease ("**Tenant's Broker**"). Landlord covenants, warrants and represents that the broker set forth in **Section 1.8(B)** was the only broker to represent Landlord in the negotiation of this Lease ("**Landlord's Broker**"). Tenant shall be solely responsible for paying the commissions and other fees and charges of Tenant's Broker. Each party agrees to and hereby does defend, indemnify and hold the other harmless against and from any brokerage commissions or finder's fees or claims therefor by a party claiming to have contracted with the indemnifying party and all costs, expenses and liabilities in connection therewith, including, without limitation, reasonable attorneys' fees and expenses, for any breach of the foregoing. The foregoing indemnification shall survive the termination or expiration of this Lease.

## **24. MISCELLANEOUS.**

**24.1. Merger.** All prior understandings and agreements between the parties are merged in this Lease, which alone fully and completely expresses the agreement of the parties. No agreement shall be effective to modify this Lease, in whole or in part, unless such agreement is in writing, and is signed by the party against whom enforcement of said change or modification is sought.



**24.2. Notices.** Any notice required to be given by either party pursuant to this Lease, shall be in writing and shall be deemed to have been properly given, rendered or made only if (a) personally delivered, or (b) if sent by Federal Express or other comparable commercial overnight delivery service, or (c) sent by certified mail, return receipt requested and postage prepaid addressed (in the case of any or all of (a), (b) and (c) above) to the other party at the addresses set forth below each party's respective signature block (or to such other address as Landlord or Tenant may designate to each other from time to time by written notice), and shall be deemed to have been given, rendered or made (i) on the day so delivered or (ii) in the case of overnight courier delivery on the first business day after having been deposited with the courier service, and (iii) in the case of certified mail, on the third (3<sup>rd</sup>) business day after deposit with the U.S. Postal Service, postage prepaid.

**24.3. Non-Waiver.** The failure of either party to insist, in any one or more instances, upon the strict performance of any one or more of the obligations of this Lease, or to exercise any election herein contained, shall not be construed as a waiver or relinquishment for the future of the performance of such one or more obligations of this Lease or of the right to exercise such election, but the Lease shall continue and remain in full force and effect with respect to any subsequent breach, act or omission. The receipt and acceptance by Landlord or Agent of Base Rent or Additional Rent with knowledge of any breach by Tenant of any obligation of this Lease shall not be deemed a waiver of such breach.

**24.4. Legal Costs.** Any party in breach or default under this Lease (the "Defaulting Party") shall reimburse the other party (the "Nondefaulting Party") upon demand for any legal fees and court (or other administrative proceeding) costs or expenses that the Nondefaulting Party incurs in connection with the breach or default, regardless whether suit is commenced or judgment entered. Such costs shall include legal fees and costs incurred for the negotiation of a settlement, enforcement of rights or otherwise. Furthermore, in the event of litigation, the court in such action shall award to the party in whose favor a judgment is entered a reasonable sum as attorneys' fees and costs, which sum shall be paid by the losing party. Tenant shall pay Landlord's attorneys' reasonable fees incurred in connection with Tenant's request for Landlord's consent under provisions of this Lease governing assignment and subletting, or in connection with any other act which Tenant proposes to do and which requires Landlord's consent.

**24.5. Parties Bound.** Except as otherwise expressly provided for in this Lease, this Lease shall be binding upon, and inure to the benefit of, the successors and assignees of the parties hereto. Tenant hereby releases Landlord named herein from any obligations of Landlord for any period subsequent to the conveyance and transfer of Landlord's ownership interest in the Premises. In the event of such conveyance and transfer, Landlord's obligations hereunder shall thereafter be binding upon each transferee (whether Successor Landlord or otherwise). No obligation of Landlord shall arise under this Lease until the instrument is signed by, and delivered to, both Landlord and Tenant.

**24.6. Recordation of Lease.** Tenant shall not record or file this Lease (or any memorandum hereof) in the public records of any county or state.

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

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

**24.9. Authority of Tenant.** Tenant and the person(s) executing this Lease on behalf of Tenant hereby represent, warrant, and covenant with and to Landlord as follows: the individual(s) acting as signatory on behalf of Tenant is(are) duly authorized to execute this Lease; Tenant has procured (whether from its members, partners or board of directors, as the case may be), the requisite authority to enter into this Lease; this Lease is and shall be fully and completely binding upon Tenant; and Tenant shall timely and completely perform all of its obligations hereunder.



**24.10. WAIVER OF TRIAL BY JURY.** LANDLORD AND TENANT HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM INVOLVING ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH (i) THIS LEASE, (ii) THE RELATIONSHIP OF LANDLORD AND TENANT, (iii) TENANT'S USE OR OCCUPANCY OF THE PREMISES, OR (iv) THE RIGHT TO ANY STATUTORY RELIEF OR REMEDY. THE WAIVERS SET FORTH IN THIS SECTION 24.10 ARE MADE KNOWINGLY, INTENTIONALLY, AND VOLUNTARILY BY TENANT. TENANT FURTHER ACKNOWLEDGES THAT IT HAS BEEN REPRESENTED (OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED) IN THE SIGNING OF THIS LEASE AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT COUNSEL, SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THESE WAIVERS WITH COUNSEL. THIS PROVISION IS A MATERIAL INDUCEMENT TO LANDLORD IN AGREEING TO ENTER INTO THIS LEASE.

**24.11. Financial Information.** From time to time during the Term, Tenant shall deliver to Landlord and Tenant shall cause Guarantor to deliver to Landlord information and documentation describing and concerning Tenant's and Guarantor's financial condition, and in form and substance reasonably acceptable to Landlord, within ten (10) days following Landlord's written request therefor. Upon Landlord's request, Tenant shall provide and Tenant shall cause Guarantor to provide to Landlord the most currently available audited financial statement of Tenant and of Guarantor; and if no such audited financial statement is available, then Tenant shall instead deliver to Landlord and Tenant shall cause Guarantor to deliver to Landlord its most currently available balance sheet and income statement. Furthermore, upon the delivery of any such financial information from time to time during the Term, Tenant and Guarantor each shall be deemed to automatically represent and warrant to Landlord that the financial information delivered to Landlord is true, accurate and complete, and that there has been no adverse change in the financial condition of Tenant or Guarantor, as the case may be, since the date of the then-applicable financial information.

**24.12. Confidential Information.** The parties agree to maintain in strict confidence the economic terms of this Lease, except (i) for disclosure to the parties' respective professional advisors, and (ii) where (and to the extent that) disclosure is mandated by Laws or legal process or is necessary to comply with Laws to which the disclosing party is subject or, in the case of Landlord, is related to an actual or potential sale or financing of the Premises or an actual or potential sale or financing of an interest in Landlord. Except for disclosures (1) to Landlord's professional advisors, (2) where (and to the extent that) disclosure is mandated by Laws or legal process or is necessary to comply with Laws to which Landlord is subject, (3) related to an actual or potential sale or financing of the Premises or an actual or potential sale or financing of an interest in Landlord, and (4) of information in the public domain or obtained by Landlord from a source other than Tenant, Landlord will use its reasonable best efforts not to disclose Tenant's proprietary and confidential "budget" information, if and to the extent provided to Landlord by Tenant before the date of this Lease, to third parties. The provisions of this Section 24.12 shall survive the termination of this Lease.

**24.13. Submission of Lease.** Submission of this Lease to Tenant for signature does not constitute a reservation of space or an option to lease. This Lease is not effective until execution by and delivery to both Landlord and Tenant.

**24.14. Lien Prohibition.** Tenant shall not permit any mechanics or materialmen's liens to attach to the Premises. Tenant shall notify all contractors making improvements to the Premises that the Landlord's interest in the Premises is not subject to construction liens and that this Lease contains a provision prohibiting a lien on the Landlord's interest in the Premises. At Landlord's election, Tenant shall join Landlord in executing a short form of this Lease, which Landlord shall record in the Public Records of St. Johns County, Florida, to evidence the foregoing provision. Tenant, at its expense, shall procure the satisfaction or discharge of record of all such liens and encumbrances within 30 days after the filing thereof; or, within such thirty (30) day period, Tenant shall provide Landlord, at Tenant's sole expense, with endorsements (satisfactory, both in form and substance, to Landlord and the holder of any mortgage or deed of trust) to the existing title insurance policies of Landlord and the holder of any mortgage or deed of trust, insuring against the existence of, and any attempted enforcement of, such lien or encumbrance. In the event Tenant has not so performed, Landlord may, at its option, pay and discharge such liens and Tenant shall be responsible to reimburse Landlord, on demand and as Additional Rent under this Lease, for all costs and expenses incurred in connection therewith, together with Default Interest thereon, which expenses shall include reasonable fees of attorneys of Landlord's choosing, and any costs in posting bond to effect discharge or release of the lien as an encumbrance against the Premises.

**24.15. No Termination Right of Tenant.** Tenant confirms and acknowledges that it has no right to terminate this Lease, whether pursuant to any term or provision of this Lease or pursuant to any provision of Law, all of which rights are fully and unconditionally waived by Tenant.

**24.16. Counterparts.** This Lease may be executed in multiple counterparts, but all such counterparts shall together constitute a single, complete and fully-executed document.

**24.17. Qualified to Do Business in Florida.** If Tenant is not an individual, the person(s) executing this Lease on behalf of Tenant hereby covenants and warrants that: Tenant is qualified to do business and in good standing in the State of Florida; and such person(s) are duly authorized by Tenant to execute and deliver this Lease on behalf of Tenant. Tenant shall remain qualified to do business and in good standing in Florida throughout the Term.

**24.18. Statutory Notice Requirement.** Tenant hereby acknowledges receipt of the following notice as required by Chapter 88-285, Laws of Florida:

RADON GAS: Radon is naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risk to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

[Signature Page Follows]

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

WITNESSES:

LANDLORD:

ELKTON VENTURE, LLC, a Delaware limited liability company  
By: Bradley Associates, L.L.C., an Illinois limited liability company,  
its Manager

Print Name: ROSANNE ELWORTHY

By: [Signature]  
Its: MANAGER

Print Name: Bradley J. Jara

TENANT:

TREE OF LIFE, INC., a Delaware corporation

Print Name: FORTH ACOSTA

By: [Signature]  
Its: Vice President

Print Name: ROSANNE ELWORTHY

Landlord's Addresses for Notices:  
c/o First Industrial Realty Trust, Inc.  
311 South Wacker Drive, Suite 4000  
Chicago, Illinois 60606  
Attn: Executive Vice President-Operations

Tenant's Addresses for Notices:  
405 Golfway West Drive  
St. Augustine, Florida 32095  
Attn: President

With a copy to:  
c/o First Industrial Realty Trust, Inc.  
5313 Johns Road, Suite 201  
Tampa, Florida 33634  
Attn: Leasing/Marketing Director

With a copy to:  
405 Golfway West Drive  
St. Augustine, Florida 32095  
Attn: General Counsel

With a copy to:

Barack Ferrazzano Kirschbaum & Nagelberg, LLP  
200 West Madison Street, Suite 3900  
Chicago, Illinois 60606  
Attn: Suzanne Bessette-Smith

and

Dykema Gossett PLLC  
300 Ottawa Ave., NW, Suite 700  
Grand Rapids, Michigan 49503  
Attn: Brian J. Page

LEASE EXHIBIT D

CONFIRMATION OF COMMENCEMENT DATE

June 30, 2008

Tree of Life, Inc.  
405 Golfway West Drive  
St. Augustine, FL 32095

RE: Industrial Building Lease dated June 30, 2008 (the "Lease") between Elkton Venture, LLC, as Landlord, and Tree of Life, Inc., as Tenant, for premises commonly known as 4055 Deer Park Blvd., Elkton, FL

Dear \_\_\_\_\_:

This letter confirms the following with respect to the Lease:

1. Tree of Life, Inc., a Delaware corporation, as Tenant, confirms that (i) it is in possession of the Premises (as defined in the Lease); (ii) the Lease is in full force and effect; (iii) Landlord is not in default under the Lease; and (iv) possession of the Premises is accepted by Tenant as in accordance with the terms and conditions of the Lease.

2. The Building contains 246,818 square feet of space:

3. The following dates are confirmed:

Commencement Date and Base Rent Commencement Date: June 30, 2008

Next Monthly Base Rent Due: July 1, 2008

Lease Term Expiration Date: June 30, 2020

Please sign two (2) copies of this letter in the space provided below acknowledging your agreement with the above and return them to me at my office. I suggest you attach a copy of this letter to your copy of the Lease.

Thank you again for your cooperation and assistance regarding this matter. Please contact me at any time should you have questions regarding the lease, building, or any related manner.

Sincerely,

Acknowledged and Agreed to this 30<sup>th</sup> day of June, 2008

Tree of Life, Inc., a Delaware corporation

Property Manager

By:

Title:

[Signature]  
Vice President

Exhibit A

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LEGAL DESCRIPTION

Parcel 1

A part of Section 9, Township 8 South, Range 29 East, St. Johns County, Florida, being more particularly described as follows:

Commencing at the Southeasterly corner of said Section 9; thence along the Easterly line of said Section 9, North 01 degrees 23 minutes 54 seconds West, 195.01 feet; thence South 88 degrees 16 minutes 50 seconds West, 1759.70 feet; thence North 01 degrees 14 minutes 43 seconds West, 2357.61 feet to a point on the Southeasterly right of way line of State Road No. 207; thence North 53 degrees 48 minutes West 182.00 feet; to a point on the Northwesternly right of way line of said State Road No. 207; thence along said Northwesternly right of way line of State Road No. 207, South 36 degrees 12 minutes 00 seconds West, 491.73 feet; thence continuing along said Northwesternly right of way line, South 35 degrees 50 minutes 00 seconds West, 716.96 feet; thence North 00 degrees 18 minutes 58 seconds West, 981.93 feet; thence South 89 degrees 41 minutes 02 seconds West, 100.00 feet to the Point of Beginning of the parcel of land to be described; thence continue South 89 degrees 41 minutes 02 seconds West, 624.44 feet to the Westerly line of that certain parcel of land described as Parcel One in Official Records Book 789, Page 156, of the public records of St. Johns County, Florida; thence North 01 degrees 54 minutes 28 seconds West, along said Westerly line 693.00 feet; thence continuing along said Westerly line North 16 degrees 54 minutes 28 seconds West, 600.00 feet; thence continuing along said Westerly line; North 00 degrees 05 minutes 32 seconds East, 301.46 feet; thence North 88 degrees 19 minutes 11 seconds East, 780.10 feet; thence South 01 degrees 40 minutes 49 seconds East, 1385.58 feet; thence South 00 degrees 18 minutes 58 seconds East, 202.59 feet to the Point of Beginning.

Subject to and together with a 30 foot wide drainage easement as recorded in Official Records Book 319, Page 73, of the Public Records of St. Johns County, Florida.

AND

Parcel 2

A part of Section 9, Township 8 South, Range 29 East, St. Johns County, Florida, being more particularly described as follows:

Commencing at the Southeasterly corner of said Section 9; thence along the Easterly line of said Section 9, North 01° 23' 54" West, 195.01 feet; thence South 88° 16' 50" West, 1759.70 feet; thence North 01° 14' 43" West, 2357.61 feet to a point on the Southeasterly right of way line of State Road No. 207; thence North 53° 48' 00" West, 182.00 feet to a point on the Northwesternly right of way line of said State Road No. 207, thence along said Northwesternly right-of-way line of State Road No. 207, South 36° 12' 00" West, 491.73 feet; thence continuing along said Northwesternly right of way line, South 35° 50' 00" West, 478.22 feet to the Westerly right of way line of Deer Park Boulevard (100' right of way); thence North 54° 10' 00" West, along said Westerly right of way line of Deer Park Boulevard, 120.49 feet to the point of curvature of a curve concave Northeasterly having a radius of 350.00 feet; thence Northwesternly 328.95 feet, along said

curve and along said right of way line, through a central angle of  $53^{\circ} 51' 02''$ ; thence North  $00^{\circ} 18' 58''$  West, continuing along said right of way line, 638.03 feet; thence North  $01^{\circ} 40' 49''$  West, continuing along said Westerly right of way line of Deer Park Boulevard and the Northerly extension thereof, 1420.58 feet to the Point of Beginning of the parcel of land to be described; thence continue North  $01^{\circ} 40' 49''$  West, along said Northerly extension of Deer Park Boulevard, 165.00 feet; thence South  $88^{\circ} 19' 11''$  West, 773.91 feet; thence South  $00^{\circ} 05' 32''$  West, 200.10 feet; thence North  $88^{\circ} 19' 11''$  East, 118.77 feet; thence North  $01^{\circ} 40' 49''$  West, 100.00 feet; thence North  $88^{\circ} 19' 11''$  East, 50.00 feet; thence South  $01^{\circ} 40' 49''$  East, 100.00 feet; thence North  $88^{\circ} 19' 11''$  East, 571.33 feet; thence North  $01^{\circ} 40' 49''$  West, 35.00 feet; thence North  $88^{\circ} 19' 11''$  East, 40.00 feet to the Point of Beginning.

Together with an easement for ingress and egress described as follows:

A 35.00 foot wide easement for ingress and egress, lying 17.50 feet on each side of the following described centerline:

A part of Section 9, Township 8 South, Range 29 East, St. Johns County, Florida, being more particularly described as follows:

Commencing at the Southeasterly corner of said Section 9; thence along the Easterly line of said Section 9, North  $01^{\circ} 23' 54''$  West, 195.01 feet; thence South  $88^{\circ} 15' 50''$  West, 1759.70 feet; thence North  $01^{\circ} 14' 43''$  West 2357.61 feet to a point on the Southeasterly Right-of-Way line of State Road No. 207; thence North  $53^{\circ} 48' 00''$  West 182.00 feet to a point on the Northwestern Right-of-Way line of said State Road No. 207; thence along said Northwestern Right-of-Way line of State Road No. 207, South  $36^{\circ} 12' 00''$  West 491.73 feet; thence continuing along said Northwestern Right-of-Way line, South  $35^{\circ} 50' 00''$  West 478.22 feet, to the Westerly Right-of-Way line of Deer Park Boulevard (100.00 foot Right-of-Way); thence North  $54^{\circ} 10' 00''$  West along said Westerly Right-of-Way line of Deer Park Boulevard, 120.49 feet to the point of curvature of a curve Northeasterly having a radius of 350.00 feet; thence Northwestern 328.95 feet, along said curve and along said Right of Way line, through a central angle of  $53^{\circ} 51' 02''$ ; thence North  $00^{\circ} 18' 58''$  West, continuing along said Right of Way line 638.03 feet; thence North  $01^{\circ} 40' 49''$  West, continuing along said Westerly Right-of-Way line of Deer Park Boulevard 1385.58 feet to a point hereinafter referred to as Point "A"; thence South  $01^{\circ} 40' 49''$  East, along the Northerly extension of the Westerly Right of Way line of Deer Park Boulevard, 17.50 feet to the Point of Beginning of the centerline to be described; thence South  $88^{\circ} 19' 11''$  West 643.83 feet; thence South  $01^{\circ} 40' 49''$  East 17.50 feet and there terminating.

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# LEASE EXHIBIT B

## TENANT OPERATIONS INQUIRY FORM

1. Name of Company/Contact Tree of Life, Inc./
2. Address/Phone \_\_\_\_\_  
\_\_\_\_\_
3. Provide a brief description of your business and operations: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Will you be required to make filings and notices or obtain permits as required by Federal and/or State regulations for the operations at the proposed facility? Specifically:

- |   |     |    |
|---|-----|----|
| a. SARA Title III Section 312 (Tier II) reports<br>(> 10,000lbs. of hazardous materials STORED at any one time) | YES | NO |
| b. SARA Title III Section 313 (Tier III) Form R reports<br>(> 10,000lbs. of hazardous materials USED per year)  | YES | NO |
| c. NPDES or SPDES Stormwater Discharge permit<br>(answer "No" if "No-Exposure Certification" filed)             | YES | NO |
| d. EPA Hazardous Waste Generator ID Number  | YES | NO |

5. Provide a list of chemicals and wastes that will be used and/or generated at the proposed location. Routine office and cleaning supplies are not included. Make additional copies if required.

Chemical/Waste	Approximate Annual Quantity Used or Generated	Storage Container(s) (i.e. Drums, Cartons, Totes, Bags, ASTs, USTs, etc)




**LEASE EXHIBIT C**  
**LANDLORD'S WORK**

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**NONE.**

LEASE EXHIBIT D

CONFIRMATION OF COMMENCEMENT DATE

June 30, 2008

Tree of Life, Inc.  
405 Golfway West Drive  
St. Augustine, FL 32095

RE: Industrial Building Lease dated June 30, 2008 (the "Lease") between Elkton Venture, LLC, as Landlord, and Tree of Life, Inc., as Tenant, for premises commonly known as 4055 Deer Park Blvd., Elkton, FL

Dear \_\_\_\_\_:

This letter confirms the following with respect to the Lease:

1. Tree of Life, Inc., a Delaware corporation, as Tenant, confirms that (i) it is in possession of the Premises (as defined in the Lease); (ii) the Lease is in full force and effect; (iii) Landlord is not in default under the Lease; and (iv) possession of the Premises is accepted by Tenant as in accordance with the terms and conditions of the Lease.

2. The Building contains 246,818 square feet of space:

3. The following dates are confirmed:

Commencement Date and Base Rent Commencement Date: June 30, 2008

Next Monthly Base Rent Due: July 1, 2008

Lease Term Expiration Date: June 30, 2020

Please sign two (2) copies of this letter in the space provided below acknowledging your agreement with the above and return them to me at my office. I suggest you attach a copy of this letter to your copy of the Lease.

Thank you again for your cooperation and assistance regarding this matter. Please contact me at any time should you have questions regarding the lease, building, or any related manner.

Sincerely,

Acknowledged and Agreed to this \_\_\_\_ day of \_\_\_\_\_, 2008

Tree of Life, Inc., a Delaware corporation

Property Manager

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

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

## LEASE EXHIBIT E

### Broom Clean Condition and Repair Requirements

- All lighting is to be placed into good working order. This includes replacement of bulbs, ballasts, and lenses as needed.
- All truck doors and dock levelers should be serviced and placed in good operating order (including, but not limited to, overhead door springs, rollers, tracks and motorized door operator). This would include the necessary (a) replacement of any dented truck door panels, broken panels and cracked lumber, and (b) adjustment of door tension to insure proper operation. All door panels that are replaced shall be painted to match the building standard.
- All structural steel columns in the warehouse and office should be inspected for damage, and must be repaired. Repairs of this nature shall be pre-approved by the Landlord prior to implementation.
- HVAC system shall be in good working order, including the necessary replacement of any parts to return the unit to a well-maintained condition. This includes, but is not limited to, filters, thermostats, warehouse heaters and exhaust fans. Upon move-out, Landlord will have an exit inspection performed by a certified mechanical contractor to determine the condition of the HVAC system.
- All holes in the sheet rock walls shall be repaired prior to move-out..
- The carpets and vinyl tiles shall be in a clean condition and shall not have any holes or chips in them. Flooring shall be free of excessive dust, dirt, grease, oil and stains. Cracks in concrete and asphalt shall be acceptable as long as they are ordinary wear and tear, and are not the result of misuse.
- Facilities shall be returned in a clean condition, including, but not limited to, the cleaning of the coffee bar, restroom areas, windows, and other portions of the Premises.
- There shall be no protrusion of anchors from the warehouse floor and all holes shall be appropriately patched. If machinery/equipment is removed, the electrical lines shall be properly terminated at the nearest junction box.
- All exterior windows with cracks or breakage shall be replaced.
- Tenant shall provide keys for all locks on the Premises, including front doors, rear doors, and interior doors.
- All mechanical and electrical systems shall be left in a safe condition that conforms to code. All low voltage wiring shall be removed from the Premises and any damage caused by such removal shall be repaired to Landlord's reasonable satisfaction. Bare wires and dangerous installations shall be corrected to Landlord's reasonable satisfaction.
- All plumbing fixtures shall be in good working order, including, but not limited to, the water heater. Faucets and toilets shall not leak.
- All dock bumpers shall be left in place and well-secured.
- Drop grid ceiling shall be free of excessive dust from lack of changing filters. No ceiling tiles may be missing.
- All trash shall be removed from both inside and outside of the building.
- All signs in front of building and on glass entry door and rear door shall be removed.

**RIDER NO. 1**  
**Tenant's Term Extension Option**

1. Provided that (i) Tenant is not in default of any of the terms or conditions of the Lease beyond any applicable notice and cure period, (ii) Tenant has not sublet any portion of the Premises or assigned the Lease, and (iii) the Tenant specifically identified in Section 1.3 of the Lease is itself in possession of the Premises, Tenant shall have the option ("**Term Extension Option**") to extend the Lease Term for one (1) period of ten (10) years (the "**Extension Period**"), on all the same terms and conditions set forth in this Lease, except that annual Base Rent during the Extension Period shall be equal to the greater of (a) the Fair Market Rental Rate (as defined in this Exhibit) or (b) 101.5% of the annual Base Rent in effect during the last year of the original Term, in the case of clause (b) increased by 1.5% annually for each subsequent Lease Year during the Extension Period (the greater of (a) and (b), including the annual 1.5% increases with in the case of clause(b), shall be hereinafter referred to as the "**Term Extension Base Rent**"). Tenant shall deliver written notice to Landlord of Tenant's election to exercise the Term Extension Option ("**Term Extension Notice**") not less than six (6) months, nor more than ten (10) months, before the expiration date of the original Term, and if Tenant fails to timely deliver the Term Extension Notice to Landlord, then Tenant shall automatically be deemed to have irrevocably waived and relinquished the Term Extension Option.

2. As used in this Rider, the term "**Fair Market Rental Rate**" shall mean the then prevailing annual base rental rate per square foot of space comparable in area and location to the space for which the Fair Market Rental Rate is being determined and being leased for a duration comparable to the period for which such space is to be leased for periods commencing on or about the commencement of the term of such space, including annual rental rate increases then prevailing. The Fair Market Rental Rate shall be determined by taking into consideration comparable fact situations during the prior twelve-month period or any more recent relevant period in comparable buildings in the market in which the Building is located (the "**Relevant Market**").

3. Landlord shall notify Tenant of Landlord's determination of the Fair Market Rental Rate within thirty (30) days after Tenant delivers a Term Extension Notice ("**Fair Market Rental Rate Notice**"). Tenant shall then have ten (10) days after Landlord's delivery of the Fair Market Rental Rate Notice in which to advise Landlord, in writing (the "**Base Rent Response Notice**") whether Tenant (i) accepts the Fair Market Rent established by Landlord in the Fair Market Rental Rate Notice and agrees to lease the Premises, during the Extension Period, at the rate established pursuant to Section 1 of this Rider; or (ii) elects to withdraw and revoke its Term Extension Notice, whereupon the Term Extension Option shall automatically be rendered null and void; or (iii) elects to contest Landlord's determination of the Fair Market Rental Rate. In the event that Tenant fails to timely deliver the Base Rent Response Notice, then Tenant shall automatically be deemed to have elected (i) above. Alternatively, if Tenant timely elects (ii), then this Lease shall expire on the original expiration date of the Initial Term. If, however, Tenant timely elects (iii), then: (1) Landlord and Tenant shall, during the fifteen (15) day period after delivery of the Base Rent Response Notice ("**15 Day Negotiation Period**"), attempt to agree on the Fair Market Rental Rate; (2) if Landlord and Tenant are unable to agree on the Fair Market Rent Rate during the 15 Day Negotiation Period, then the Fair Market Rental Rate shall be determined as provided in Section 4 below.

4. If the Fair Market Rental Rate is to be determined as provided in this Section 4 pursuant to the last sentence of Section 3 of this Rider, Landlord and Tenant shall each select an expert (as hereinafter described) within ten (10) days after expiration of the 15 Day Negotiation Period. Such experts shall be independent and experienced in leasing similar-real estate in the Relevant Market, and shall be instructed to form their opinions based on the criteria specified above. Both experts so selected shall within ten (10) days after their selection select a third expert who shall also meet the same qualifications. The three (3) experts so selected shall within fifteen (15) days after the selection of the third expert each independently formulate and deliver to Landlord and Tenant their written opinion of the Fair Market Rental Rate for the Premises for the Extension Period. The Fair Market Rental Rate shall be the arithmetic average of the Fair Market Rental Rate set forth in the three (3) opinions; provided however, that if any expert's opinion is more than ten percent (10%) greater or less than the middle opinion, then such greater or lesser opinion (or both if each is more at variance from the middle opinion than 10%) shall be disregarded. The determination of the Fair Market Rental Rate by the three (3) experts shall be the final, conclusive determination, and not subject to appeal or dispute. Landlord and Tenant shall each pay for the services of its expert and shall share equally the costs of the third expert.

5. If the Fair Market Rental Rate is to be determined as provided in Section 4 pursuant to the last sentence of Section 3 of this Rider, and if the then applicable Term expires and the Extension Period commences before the date on which the Fair Market Rental Rate is finally determined, then from the commencement date of the Extension Period through the date on which the Fair Market Rental Rate is finally determined (the "**Determination Date**"), Tenant shall pay monthly Base Rent to Landlord at a rate equal to 101.5% of the rate of monthly Base Rent in effect on the expiration date of the Initial Term (the "**Temporary Base Rent**"). Within

ten (10) business days after the Determination Date, Landlord shall pay to Tenant, or Tenant shall pay to Landlord, whatever sum that Landlord or Tenant, as the case may be, owes the other (the **"Catch-Up Payment"**), based on the Temporary Base Rent actually paid and the Base Rent determined to be effective during the Extension Period pursuant to Section 1 of this Rider, together with interest at the rate of Prime (defined below), plus three percent (3.0%) per annum from the date each monthly component of the Catch-Up Payment would have been due, had the Fair Market Rental Rate been determined prior to the commencement of the Extension Period, through the date on which the Catch-Up Payment is paid, in full (inclusive of interest thereon). For purposes hereof, **"Prime"** shall mean the per annum rate of interest publicly announced by JP Morgan Chase Bank (or its successor), from time to time, as its **"prime"** or **"base"** or **"reference"** rate of interest.

**SCHEDULE 13.1**  
**Specific Repair Schedule**

**Retaining Walls:**

- \* The retaining walls on either side of the ramped dock to be repaired, or replaced as necessary, within 60 days after the Commencement Date.

**Roof:**

- \* The standing seam metal panel roof to be repaired per the property inspection report within 30 days after the Commencement Date.

**ADA:**

- \* Reconfigure one accessible parking space for van access within 30 days after the Commencement Date.
- \* Within 30 days after the Commencement Date, re-install the accessible parking sign that was removed and replaced with an "employee of the month" sign, so that the required amount of accessible parking spaces are available.
- \* Within 30 days after the Commencement Date, install a high unit drinking fountain so as to be in compliance with ADA guidelines (\$2,000).