



October 29, 2013

Mr. Greg Magnell  
Plymouth Packaging, Inc.  
4075 Columbia Avenue West  
Battle Creek, MI 49015

Re: Railhead Lease Agreement

Dear Greg,

Enclosed please find a fully executed lease agreement for your file. We look forward to having Plymouth Packaging as a tenant at Railhead Industrial Park.

Please do not hesitate to contact me if you have any questions or if I can be of assistance.

Sincerely,

Bob Currie

BC/lp  
Enclosure

INDUSTRIAL  
LEASE AGREEMENT

THIS INDUSTRIAL LEASE AGREEMENT (this "Lease") is executed as of this 24<sup>th</sup> day of October, 2013, by and between **WR RAILHEAD ROAD, LLC**, a Georgia limited liability company ("**Landlord**"), and **Plymouth Packaging, Inc.** ("**Tenant**").

WITNESSETH:

ARTICLE 1 - LEASE OF PREMISES

Section 1.01 Basic Lease Provisions and Definitions.

A. Leased Premises (shown outlined on **Exhibit A** attached hereto): approximately 145,560 square feet of space in that certain building (the "**Building**") located at 4675 Railhead Road, Fort Worth, Texas, located in Railhead Industrial Park, Building 4 (the "**Park**");

B. Rentable Area: approximately 145,560 square feet;

Landlord shall use commercially reasonable standards, consistently applied, in determining the Rentable Area and the rentable area of the Building. Landlord's determination of Rentable Area shall conclusively be deemed correct for all purposes hereunder; provided, that Tenant, at its option and cost, may elect to have its architect or space planner measure the square footage of the Leased Premises and the Building based on BOMA Industrial Buildings: Standard Methods of Measurement (ANSI/BOMA Z65.2—2012) and (so long as Landlord confirms such measurement in its reasonable judgment) to thereafter adjust the Minimum Annual Rent and Tenant's Proportionate Share. If Tenant so elects to remeasure, the parties after such measurement shall promptly reconcile any amounts owing from one to the other by payment of such amount upon demand (or by reduction or credit against the Minimum Annual Rent next owing if Tenant is owed such amount).

C. Tenant's Proportionate Share: 33.98% (145,560 square feet 428,400/square feet for Building); subject to adjustment if and when the rentable square footage of the Leased Premises and/or the Building changes pursuant to the provisions above.

D. Minimum Annual Rent:

Months 1-16	\$3.10 (psf)	\$451,236
Months 17-28	\$3.15 (psf)	\$458,514
Months 29-40	\$3.20 (psf)	\$465,792
Months 41-52	\$3.25 (psf)	\$473,070
Months 53-64	\$3.30 (psf)	\$480,348
Months 65-76	\$3.35 (psf)	\$487,626
Months 77-88	\$3.40 (psf)	\$494,904
Months 89-100	\$3.45 (psf)	\$502,182
Months 101-112	\$3.50 (psf)	\$509,460
Months 113-124	\$3.55 (psf)	\$516,738

E. Monthly Rental Installment:

Months 1 – 16	\$37,603.00	March 14 – June 15
Months 17 – 28	\$38,209.50	July 15 – June 16
Months 29 – 40	\$38,816.00	July 16 – June 17
Months 41 – 52	\$39,422.50	July 17 – June 18
Months 53 – 64	\$40,025.00	July 18 – June 19
Months 65 – 76	\$40,635.50	July 19 – June 20
Months 77 – 88	\$41,242.00	July 20 – June 21
Months 89 – 100	\$41,848.50	July 21 – June 22
Months 101 – 112	\$42,455.00	July 22 – June 23
Months 113 – 124	\$43,061.50	July 23 – June 24

Notwithstanding anything to the contrary, so long as Tenant, is not in Default under this Lease beyond any applicable notice and cure periods, Tenant shall be entitled to an

abatement of Minimum Annual Rent in the amount of \$37,603.00 per month for the first four (4) full calendar months of the Lease Term, beginning with the first calendar month of the Lease Term (the “**Base Rent Abatement Period**”). The total amount of Minimum Annual Rent abated during the Base Rent Abatement Period shall equal \$150,412.00 (the “**Abated Base Rent**”). During the Base Rent Abatement Period, only Base Rent shall be abated, and all additional rent and other costs and charges specified in this Lease shall remain as due and payable pursuant to the provisions of this Lease.

- F. Tenant’s Initial Estimated Share of Taxes and Insurance Per Rentable Square Foot: \$0.95;
- G. Commencement Date: The earlier of (i) the date of Substantial Completion (hereinafter defined) of the Leased Premises which Landlord anticipates will be sixty (60) days from the date of this Lease (the “**Target Commencement Date**”) or (ii) the date Tenant commences business in the Leased Premises. Tenant will be granted beneficial occupancy on or after the date of this Lease (and on an ongoing basis thereafter until the Commencement Date) for purposes of preparation by Tenant in order that it may begin setting up operations such as equipment installation and installation of racking, storage silo and tenant improvements as determined by Tenant to be necessary and for which it will be responsible, other than the Tenant Improvements (as defined hereinafter) (but this preparation and/or installation by Tenant shall not be deemed to be Tenant’s commencement of business).
- H. Lease Term (a/k/a Original Term): 124 months;
- I. Security Deposit: \$52,280.30;
- J. Guarantor: Not applicable;
- K. Broker(s): Cushman & Wakefield of Texas, Inc.;
- L. Permitted Use: Manufacturing; warehousing; storage and distribution of Tenant’s products and inventory; third party logistics services; and office and administrative uses reasonably ancillary thereto;

M. Address for notices:

Landlord: WR Railhead Road, LLC  
c/o Weeks Robinson Properties  
3350 Riverwood Parkway, Suite 700  
Atlanta, Georgia 30339

With a copy to: DLA Piper LLP (US)  
1717 Main Street, Suite 4600  
Dallas, Texas 75201  
Attention: Craig B. Anderson

Tenant: Plymouth Packaging, Inc.  
4075 W. Columbia Avenue  
Battle Creek, Michigan 490015  
Attn: Greg Magnell, President

With a copy to: BODMAN PLC  
6th Floor at Ford Field  
1901 St. Antoine Street  
Detroit, Michigan 48226  
Attn: Glen Zatz

Address for rental and other payments:

WR Railhead Road, LLC  
c/o Weeks Robinson Properties  
3350 Riverwood Parkway, Suite 700  
Atlanta, Georgia 30339

Exhibits attached hereto:

Exhibit A:	Site Plan of Leased Premises
Exhibit B:	Tenant Improvements
Exhibit C:	Letter of Understanding
Exhibit D:	Special Stipulations
Exhibit E:	Additional Surrender Conditions
Exhibit F:	Building Rules and Regulations

Section 1.02 Leased Premises. Landlord hereby leases to Tenant and Tenant leases from Landlord, under the terms and conditions herein, the Leased Premises.

## **ARTICLE 2 - TERM AND POSSESSION**

Section 2.01 Term. The term of this Lease ("**Lease Term**") shall be for the period of time set forth in Section 1.01H and shall commence on the Commencement Date described in Section 1.01G of the Basic Lease Provisions. If Landlord, for any reason whatsoever, cannot deliver possession of the Leased Premises to Tenant on the Target Commencement Date with Substantial Completion having occurred (subject to delays caused by Tenant Delays or force majeure events), this Lease shall not be void or voidable, nor shall Landlord be liable to Tenant for any loss or damage resulting therefrom, but in that event the Minimum Annual Rent, Additional Rent (as hereinafter defined) and all other charges due from Tenant hereunder shall be abated from the time it would otherwise respectively commence for the number of days that Landlord is late in so delivering the Leased Premises after the Target Commencement Date. By way of example and not limitation, if for purposes of this example the Target Commencement Date is December 1, 2013 and possession of the Leased Premises is delivered to Tenant with Substantial Completion on December 15, 2013 (which would be the Commencement Date), then Additional Rent shall be abated until December 30, 2013 and Minimum Annual Rent shall be abated until April 30, 2014 (e.g. the Base Rent Abatement Period shall be extended for an additional fifteen (15) days from when it would otherwise have ended). In addition, if possession of the Leased Premises is not delivered to Tenant in the required condition as provided above by March 1, 2014 (subject to delays caused by Tenant Delays or force majeure events), then Tenant, at its option, may by thirty (30) days prior written notice to Landlord, given prior to such delivery: (i) terminate this Lease without further obligation (unless Landlord so delivers within such time period), or (ii) undertake to complete the unfinished portion of the Tenant Improvements (in which case Tenant, at its option, may use Landlord's general contractor(s) and their subcontractors or use such general contractor(s) and subcontractors as Tenant may select); and if requested in writing by Tenant, Landlord shall assign to Tenant its rights under its construction contract with its general contractor(s), but no such assignment shall be deemed an agreement or undertaking by Tenant to be liable for any acts, duties, obligations or liabilities of Landlord accruing prior to such assignment. If Tenant so elects to complete the Tenant Improvements, Landlord shall reimburse Tenant within ten (10) days following written demand for the costs and expenses so incurred by Tenant (except for that amount, if any which represents the cost of the Tenant Improvements in excess of the Allowance as is determined at the time the Bid Process is completed as provided in attached Exhibit B); and if Landlord fails to pay or reimburse Tenant within said time period, then Tenant may deduct the amount owing to Tenant from the monthly payment(s) of Minimum Annual Rent next coming due.

Section 2.02 Notwithstanding the foregoing, in the event the Commencement Date is delayed due to Tenant Delays (as hereinafter defined), then Tenant shall (subject to rent abatement as provided in this Lease) commence payment of rent as set forth herein on the date that the Commencement Date would have occurred but for the Tenant Delays. "**Tenant Delays**", as used herein, shall mean and refer to delays directly or substantially attributable to or caused by Tenant or Tenant's employees or agents. Upon delivery of possession of the Leased Premises to Tenant, Tenant shall execute Landlord's Letter of Understanding form, attached hereto as **Exhibit C**, acknowledging (i) the Commencement Date of this Lease, and (ii) that Tenant has accepted the Leased Premises. If Tenant takes possession of and occupies the Leased Premises for its business (other than its beneficial occupancy for preparation of the Leased Premises as provided in Section 1.01G above) following Substantial Completion, Tenant shall be deemed to have accepted the Leased Premises and agreed that the condition of the Leased Premises and the Building were at the time satisfactory and in conformity with the provisions of this Lease in all respects, subject to any latent defects (which Landlord shall promptly repair at its sole cost and expense), to Landlord's completion of any punch list items not yet done at the time of Substantial Completion (which Landlord shall complete at its sole cost and expense as set forth in **Exhibit B** attached hereto), and to any warranty available to Tenant from Landlord or a third party who provided material and/or labor in connection with the Tenant Improvements.

Section 2.03 Construction of Tenant Improvements. Landlord shall at its cost and expense (but subject to a maximum cost of the Allowance as provided in Exhibit B) construct the Leased Premises for the Tenant's use and occupancy substantially in accordance with plans and specifications prepared by Landlord's architect, incorporating in such construction all items or work described in Exhibit B attached hereto and made a part hereof. Any work in addition to any of the items specifically enumerated in said Exhibit B shall be performed by the Tenant at its cost and expense. Except for Landlord's work set forth in said Exhibit B and except as otherwise expressly provided in this Lease, Tenant will accept the Leased Premises in an "As Is" condition without representation or warranty by Landlord of the suitability or fitness thereof for any purpose.

Section 2.04 Surrender of the Premises. Upon the expiration or earlier termination of this Lease, Tenant shall immediately surrender the Leased Premises to Landlord in broom-clean condition and in good condition and repair and in accordance with the surrender conditions listed on the **Exhibit E** attached hereto. Tenant shall also remove its personal property, trade fixtures (including the Tenant Improvements and including wiring and cabling whether below or above ceiling), and any of Tenant's alterations installed by Tenant and designated in writing by Landlord prior to the time of Tenant's installation as having to be removed upon expiration or earlier termination of this Lease, and promptly repair any damage caused by such removal. If Tenant fails to do so after ten (10) business days' notice from Landlord, Landlord may cause all of said property to be removed and all damage reasonably and necessarily caused by such removal to be repaired, at Tenant's expense, and Tenant hereby agrees to pay all the costs and expenses thereby reasonably incurred. All Tenant property which is not removed upon the expiration or earlier termination of this Lease within ten (10) business days following Landlord's written demand therefor shall be conclusively deemed to have been abandoned by Tenant, and Landlord shall be entitled to dispose of such property at Tenant's cost without thereby incurring any liability to Tenant. The provisions of this section shall survive the expiration or other termination of this Lease.

Section 2.05 Holding Over. If Tenant retains possession of the Leased Premises after the expiration or earlier termination of this Lease, Tenant shall be a tenant at sufferance at 125% of the Minimum Annual Rent and Annual Rental Adjustment for the Leased Premises in effect upon the date of such expiration or earlier termination, and otherwise upon the terms, covenants and conditions herein specified, so far as applicable. Acceptance by Landlord of rent after such expiration or earlier termination shall not result in a renewal of this Lease, nor shall such acceptance create a month to month tenancy. This Section shall in no way constitute consent by Landlord to any holding over by Tenant upon the expiration or earlier termination of this Lease, nor limit Landlord's remedies in such event.

Section 2.06 Landlord Representations. Landlord represents and warrants to Tenant that (i) the Building and its interior and exterior common areas, the Leased Premises, and all equipment and systems in the Leased Premises at the Commencement Date will be in compliance with all Governmental Requirements, as defined hereinafter (including, but not limited to, the ADA), title encumbrances, fire underwriter's requirements and in good condition

and repair; (ii) the Landlord is not in default under any mortgage or deed of trust filed against the Building or the land of which it is a part ; (iii) the Building and the land of which it is a part are not subject to any pending litigation or government investigation; (iv) the Leased Premises are not leased and are not subject to any rights of first refusal, rights of first offer, options or other preferential rights to lease, occupy, license or purchase; (v) the Building and the Park have Triple Freeport Inventory tax exemption status, are located in Foreign Trade Zone 39, and have Foreign Trade Zone designation.

### ARTICLE 3 - RENT

Section 3.01 Base Rent. Tenant shall pay to Landlord the Minimum Annual Rent in the Monthly Rental Installments identified in Section 1.01.E herein, in advance, without demand and without abatement, deduction or offset, beginning on the Commencement Date (subject to the abatements, deductions or offsets provided in this Lease) and continuing on or before the first day of each and every calendar month thereafter during the Lease Term. The Monthly Rental Installments for partial calendar months shall be prorated based on the number of days in that month.

#### Section 3.02 Additional Rent.

(a) Any amount required to be paid by Tenant hereunder (in addition to Minimum Annual Rent) and any charges or expenses incurred by Landlord on behalf of Tenant which are to be reimbursed to Landlord by Tenant under the terms of this Lease shall be considered "Additional Rent" payable in the same manner and upon the same terms and conditions as the Minimum Annual Rent reserved hereunder except as set forth herein to the contrary. Any failure on the part of Tenant to pay such Additional Rent when and as the same shall become due shall entitle Landlord to the remedies available to it for non-payment of Minimum Annual Rent.

(b) In addition to the Minimum Annual Rent, Tenant shall pay to Landlord for each calendar year during the Lease Term, as Additional Rent, Tenant's Proportionate Share of all costs and expenses incurred by Landlord during the Lease Term for Operating Expenses (as hereinafter defined) for the Building and the common areas associated therewith. Operating Expenses for the year 2013 are estimated to be \$0.26 per square foot of Rentable Area.

(c) In addition to the Minimum Annual Rent and Tenant's Proportionate Share of Operating Expenses, Tenant shall pay to Landlord for each calendar year during the Lease Term, as Additional Rent, Tenant's Proportionate Share of (i) Insurance Premiums (as herein defined) payable by Landlord; and (ii) all Real Estate Taxes (as herein defined). Tenant's Proportionate Share of Insurance Premiums and Real Estate Taxes for the year 2013 are estimated to be \$0.95 per square foot of Rentable Area.

(d) For purposes of this Lease, "**Operating Expenses**" shall mean all of Landlord's expenses actually paid or incurred (but net of any refunds, reimbursements or recoveries) for operation, repair, replacement and maintenance to keep the Building and the common areas associated therewith in good order, condition and repair (including all additional direct costs and expenses of operation and maintenance of the Building which vary directly with the occupancy of the Building and which Landlord reasonably determines it would have paid or incurred during such year if the Building had been 95% occupied), including, but not limited to the following: management or administrative fees; utilities; insurance deductibles; stormwater discharge fees; license, permit, inspection and other fees; fees and assessments imposed by any covenants or owners' association; access patrols; and maintenance and repair and replacement of the driveways, parking areas (including snow removal), exterior lighting, landscaped areas, walkways, curbs, drainage strips and sewer lines.

Operating Expenses shall not include the following:

(i) costs of roof replacement and costs of other capital improvements, except for those capital improvements (other than roof replacement) that (x) increase the efficiency of the Building and thereby reduce Operating Expenses, or (y) are required under any governmental law or regulation, or (z) do not exceed \$20,000 in the aggregate in any calendar year and are part of normal repair or replacement of components of the Building, but in any case to be amortized over such

reasonable period as Landlord shall determine (but not less than the life of the improvement) ;

(ii) ground rent and interest on and amortization of mortgages or other debt service;

(iii) Landlord's local, state and/or federal income, gift, estate, inheritance, transfer, excise or franchise taxes (other than the Texas "margin tax" imposed under Texas Tax Code Chapter 171, as may be amended; provided that (1) the margin tax shall be calculated as if the Building were the only income-producing asset belonging to Landlord, (2) Tenant's obligations to pay Landlord's margin taxes will be reduced by the benefit of Landlord being able to deduct (or use as a credit) its margin tax from federal income taxes or other payments, (3) Tenant will not be responsible for Landlord's margin tax if the state of Texas repeals the reduction in real property tax rates that was enacted in connection with the adoption of the Texas margin tax, and (4) Landlord's margin taxes paid by Tenant will not include revenue from sales of real property or other extraordinary transactions consummated by Landlord);

(iv) salaries of Landlord's employees above building manager level or not engaged full time in the operation, management, maintenance or repair of the Building;

(v) legal fees incurred in connection with the leasing of the Building or in connection with disputes with other tenants relating to the collection of rent and similar matters not benefiting the tenants of the Building generally;

(vi) leasing commissions, advertising expenses, tenant inducements and other such expenses incurred in leasing or marketing the space within the Building;

(vii) costs for which Landlord is entitled to (and actually receives) specific reimbursement by Tenant (including without limit utility costs other than those solely attributable to common areas), any other tenants of the Building, or any other third party;

(viii) costs of initial construction of the Building;

(ix) cost of renovating or modifying space in the Building for lease to other tenants;

(x) the cost (including the amount of any deductible or self-insured retention up to \$50,000.00 per occurrence [of which Tenant would pay Tenant's Proportionate Share and which would be included in Operating Expenses]) of repairing and restoring any portion of the Building damaged by fire or other casualty, to the extent covered by insurance or which would have been covered had Landlord carried the insurance required under this Lease;

(xi) depreciation allowance;

(xii) contributions to operating cost reserves;

(xiii) expenditures for travel, entertainment, professional dues, subscriptions, donations, data processing, errors and omissions insurance, automobile allowances, political donations and professional fees of any kind;

(xiv) the cost of correcting latent defects and defects in base building construction for the Building or its systems, including without limit noncompliance with governmental codes and laws currently in effect;

(xv) insurance premiums solely to the extent any other tenant causes Landlord's existing insurance premiums to increase or require Landlord to purchase additional insurance;

(xvi) other than property management fees, any cost representing an amount paid to any entity related to or affiliated with Landlord (or its members, managers or employees, or relatives or such parties) which is in excess of the amount which would have been paid in the absence of such relationship;

(xvii) cost incurred due to violation by Landlord or any other tenant of the terms of any lease or condition, covenant or restriction affecting the Building or common areas, or any laws, rules, regulations or ordinances applicable to the Building or common areas;

(xviii) costs of repairs, replacements or other work occasioned by the exercise by governmental authorities of the right of eminent domain;

(xix) penalties and interest for late payment of, including taxes, insurance, equipment leases and other past due amounts;

(xx) costs of selling, syndicating, financing, mortgaging or hypothecating any of Landlord's interest in the Building or common areas;

(xxi) any cost of acquiring, maintaining (other than routine cleaning), and restoring objects of art;

(xxii) costs of constructing additions to the Building or constructing new buildings on, or otherwise developing the Building or other property owned by Landlord;

(xxiii) charitable contributions;

(xxiv) costs solely associated with the operation of the limited liability company, partnership or other entity which constitutes Landlord, as distinguished from costs of operation of the Building or otherwise provided for herein;

(xxv) Landlord's property management fees in excess of three percent (3%) of the gross rent of the Building, and Landlord's general overhead and general administrative expenses (including, without limitation advertising, administrative, marketing and promotional expenditures, legal fees, auditing fees, including costs of acquiring and installing signs in or on the Premises identifying the owner of the Building or in an effort to generate rental income or promote the Property or any tenant therein);

(xxvi) parties or events hosted by Landlord for the tenants of the Building; and

(xxvii) costs and disbursements relating to or arising in any way, directly or indirectly, from the testing, handling, removal, treatment, disposal or replacement of asbestos, asbestos containing materials or other hazardous substances in or on Building or common areas to the extent caused by Landlord or its agents, employees, tenants or other occupants [other than Tenant], contractors or invitees ("Landlord Parties") (and not excluding the same to the extent caused by Tenant or its agents, employees, subtenants, contractors or invitees ("Tenant Parties")); and to the extent not caused by either Landlord Parties or by Tenant Parties, then such costs and disbursements shall be included as Operating Expenses only to a maximum amount of Ten Thousand Dollars (\$10,000.00) per year and a maximum amount of Twenty Five Thousand Dollars (\$25,000.00) in the aggregate during the Term of this Lease.

(e) In no event shall "**Controllable Expenses**," as that term is defined below, included in Operating Expenses increase after 2014 by more than eight percent (8%) per calendar year during the Lease Term, calculated on a cumulative and compounding basis. The parties agree and acknowledge that the following are non-controllable expenses and shall not be subject to the foregoing cap: Taxes, insurance, the utility rates charged by a third party provider, management fees (only to the extent of increases due to Building rent increases), and capital improvements required by laws not in place as of the Commencement Date and any other costs not reasonably controllable by Landlord. For purposes of this Lease, "Controllable Expenses"

shall mean only the following: all Operating Expenses other than the non-controllable expenses defined above.

(f) For purposes of this Lease, "**Insurance Premiums**" shall include insurance premiums for insurance coverage on the Building or common areas (but net of any refunds, reimbursements or recoveries of premiums) and shall include all fire and extended coverage insurance on the Building and all liability insurance coverage on the common areas of the Building, and the grounds, sidewalks, driveways and parking areas related thereto, together with such other insurance coverage, including, but not limited to, rent interruption insurance, as are from time to time obtained by Landlord.

(g) For purposes of this Lease, "**Real Estate Taxes**" shall include any form of real estate tax or assessment or service payments in lieu thereof, and any license fee, commercial rental tax, improvement bond or other similar charge or tax (other than local, state and federal gift, inheritance, income, excise, franchise, transfer or estate taxes) imposed upon the Building or the common areas associated therewith (or against Landlord's business of leasing the Building) by any authority having the power to so charge or tax, together with costs and expenses of contesting the validity or amount of Real Estate Taxes to the extent they do not exceed the tax savings (but Real Estate Taxes shall be net of any refunds, reimbursements or recoveries of any portion thereof). Real Estate Taxes shall also include the Texas "margin tax" imposed under Texas Tax Code Chapter 171, as may be amended; provided that (1) the margin tax shall be calculated as if the Building were the only income-producing asset belonging to Landlord, (2) Tenant's obligations to pay Landlord's margin taxes will be reduced by the benefit of Landlord being able to deduct (or use as a credit) its margin tax from federal income taxes or other payments, (3) Tenant will not be responsible for Landlord's margin tax if the state of Texas repeals the reduction in real property tax rates that was enacted in connection with the adoption of the Texas margin tax, and (4) Landlord's margin taxes paid by Tenant will not include revenue from sales of real property or other extraordinary transactions consummated by Landlord. Additionally, Tenant shall pay, prior to delinquency, all taxes assessed against and levied upon trade fixtures, furnishings, equipment and all personal property of Tenant contained in the Leased Premises. Landlord shall pay all assessments and improvement bonds in the maximum number of installments allowed. Real Estate Taxes shall be allocated to the taxing period which they cover and prorated where the taxing period ends after the Lease Term ends or after this Lease otherwise terminates. Real Estate Taxes shall not include any penalty, interest or late charge for late payment.

**Section 3.03 Payment of Additional Rent.** Landlord shall estimate the total amount of Additional Rent to be paid by Tenant during each calendar year of the Lease Term, pro-rated for any partial years. Commencing on the Commencement Date, Tenant shall pay to Landlord each month, at the same time the Monthly Rental Installments are due, an amount equal to one-twelfth (1/12th) of the estimated Additional Rent for such year. Tenant shall make all payments of Additional Rent notwithstanding any "free rent" period provided herein, except as may be otherwise expressly provided in this Lease. Within a reasonable time (but not longer than 150 days) after the end of each calendar year, Landlord shall submit to Tenant a statement of the actual amount of such Additional Rent ("**Additional Rent Reconciliation Statement**") and within thirty (30) days after receipt of such statement, Tenant shall pay any deficiency between the actual amount owed and the estimates paid during such calendar year. In the event of overpayment, Landlord shall credit the amount of such overpayment toward the next installments of Minimum Annual Rent (and pay any balance to Tenant if the Lease Term ends before all credit is applied) or pay such overpayment to Tenant within thirty (30) days after Tenant's receipt of such statement where the Lease Term has ended. Landlord agrees to maintain complete records of all Additional Rent. All such records shall be maintained in accordance with generally accepted accounting practices and shall be retained for a period of one year following the date on which the Additional Rent Reconciliation Statement is delivered to Tenant.

**Section 3.04 Late Charges.** Tenant acknowledges that Landlord shall incur certain additional unanticipated administrative and legal costs and expenses if Tenant fails to pay timely any payment required hereunder. Therefore, in addition to the other remedies available to Landlord hereunder, if any payment required to be paid by Tenant to Landlord hereunder shall become overdue for more than ten (10) days once during any calendar year (and thereafter no such grace period shall be applicable that calendar year), Tenant shall pay an administrative fee equal to five percent (5%) of such past due amount.

Section 3.05 Audit. For a period of one hundred twenty (120) days following the date on which Landlord delivers to Tenant the statement of actual Additional Rent, Tenant at its expense shall have the right during Landlord's normal business hours to examine (using a non-contingency fee qualified auditor) Landlord's books and records relating to the Additional Rent for the year to which such statement relates. If Tenant shall not request an audit in accordance with the provisions of this Section within ninety (90) days of receipt of Landlord's statement, such statement shall be conclusive and binding on Tenant. Additionally, Tenant must keep all information it obtains from Landlord's books and records in strictest confidence and Tenant shall cause its auditor to be similarly bound. In the event that such examination reveals that Tenant was over charged, then Landlord shall promptly reimburse Tenant for such overcharge (if such payment is not received within thirty (30) days of the final determination, then Tenant may offset such amount against future rent due hereunder). Further, in the event that such examination reveals that Tenant was over charged by more than 5%, then Landlord shall also promptly reimburse Tenant for the reasonable actual cost out of pocket of performing the audit.

#### **ARTICLE 4 - SECURITY DEPOSIT**

Upon Tenant's execution of this Lease, Tenant shall deposit with Landlord the Security Deposit as security for the performance by Tenant of all of Tenant's obligations contained in this Lease. In the event of a default by Tenant, Landlord may apply all or any part of the Security Deposit to cure all or any part of such default; provided, however, that any such application by Landlord shall not be or be deemed to be an election of remedies by Landlord or viewed as liquidated damages. Tenant agrees to deposit promptly, upon demand, such additional sum with Landlord as may be required to maintain the full amount of the Security Deposit. All sums held by Landlord pursuant to this section shall be without interest and may be commingled by Landlord with other security deposits for the Building, but nonetheless be deemed held in trust for the benefit of Tenant to the extent of Tenant's interest as provided herein. Within fifteen (15) days after the end of the Lease Term, provided that there is then no uncured default, Landlord shall return the Security Deposit to Tenant.

#### **ARTICLE 5 - USE**

Section 5.01 Use of Leased Premises. The Leased Premises are to be used by Tenant solely for the Permitted Use and for no other purposes without the prior written consent of Landlord. Tenant shall have access to and use of the Leased Premises for the Permitted Use on a 24-7 (around the clock) basis. Nothing in this Lease shall be deemed to impose upon Tenant any obligation to operate its business within or to occupy the Leased Premises (subject to compliance with the other terms of this Lease).

Section 5.02 Covenants of Tenant Regarding Use. Tenant shall (i) use and maintain the Leased Premises and conduct its business thereon in a safe, careful, reputable and lawful manner, (ii) comply with all laws, rules, regulations, orders, ordinances, directions and requirements of any governmental authority or agency, now in force or which may hereafter be in force, including without limitation those which shall impose upon Landlord or Tenant any duty with respect to or triggered by a change in the use or occupation of, or any improvement or alteration to, the Leased Premises, and including without limitation the requirements of Title III of the Americans with Disabilities Act of 1990 and all rules and regulations promulgated with respect thereto, (iii) comply with any protective covenants applicable to the Park which are in effect and, to the extent they do not impose material additional costs or obligations upon Tenant or materially detract from Tenant's rights under this Lease, as may hereafter be adopted and promulgated and (iv) comply with and obey all reasonable written directions of the Landlord, including any reasonable rules and regulations that may be adopted by Landlord from time to time of which Tenant is given written notice and which are uniformly applied to all tenants and occupants of the Building and which do not conflict with the provisions of this Lease. Tenant shall not do or permit anything to be done in or about the Leased Premises or common areas which will in any way obstruct or interfere with the rights of other tenants or occupants of the Building or injure or annoy them. Landlord shall not be responsible to Tenant for the nonperformance by any other tenant or occupant of the Building of its lease or of any rules and regulations. Tenant shall not overload the floors of the Leased Premises. All damage to the floor structure or foundation of the Building due to improper positioning or storage of items or materials shall be repaired by Landlord at the sole expense of Tenant, who shall reimburse Landlord immediately therefor upon demand. Tenant shall not use the Leased Premises, or allow the Leased Premises to be used, for any purpose or in any manner which would invalidate any

policy of insurance now or hereafter carried on the Building or increase the rate of premiums payable on any such insurance policy unless Tenant reimburses Landlord as Additional Rent for any increase in premiums charged. Nothing in this Lease shall be deemed to obligate Tenant, or to impose upon Tenant a duty, to make any alterations, additions or changes to the Leased Premises to comply with Governmental Requirements unless required by applicable laws then in effect which were not in violation prior to the Commencement Date and which only affect the Leased Premises (and not other portions of the Building). Landlord represents that the Leased Premises and the Building will be in compliance with all Governmental Requirements, including without limit the requirements of Title III of the Americans with Disabilities Act of 1990 and all rules and regulations promulgated with respect thereto as of the Commencement Date.

**Section 5.03 Landlord's Rights Regarding Use.** In addition to the rights specified elsewhere in this Lease, Landlord shall have the following rights regarding the use of the Leased Premises or the common areas, each of which may be exercised without notice or liability to Tenant, (a) Landlord may install such signs, advertisements, notices or tenant identification information as it shall deem necessary or proper in the common areas; (b) Landlord shall have the right at any time to control, change or otherwise alter the common areas as it shall deem necessary or proper; provided that this does not unreasonably interfere with Tenant's access to or use of the parking areas or the Leased Premises, including without limit access to or use of any loading dock areas; and (c) Landlord or Landlord's agent shall be permitted to inspect or examine the Leased Premises at any reasonable time upon reasonable notice (except in an emergency when only such notice as is practical, if any, shall be required), and Landlord shall have the right to make any repairs to the Leased Premises which are necessary for its preservation (if Tenant fails to make the repairs within the time period required under Section 13.01(b) of this Lease or if the repairs are Landlord's responsibility) at any reasonable time upon reasonable notice (except in an emergency when only such notice as is practical, if any, shall be required provided), provided, however, that any repairs made by Landlord shall be at Tenant's expense, except as provided in Section 7.02 hereof. Landlord shall incur no liability to Tenant for such entry, nor shall such entry constitute an eviction of Tenant or a termination of this Lease, or entitle Tenant to any abatement of rent therefor, provided that Landlord does not materially interfere with Tenant's use of the Leased Premises.

## **ARTICLE 6 - UTILITIES AND SERVICES**

Tenant shall obtain in its own name and pay directly to the appropriate supplier the cost of all utilities and services serving the Leased Premises. However, if any services or utilities are jointly metered with other property, Landlord shall make a reasonable determination of Tenant's proportionate share of the cost of such utilities and services (at rates that would have been payable if such utilities and services had been directly billed by the utilities or services providers) and Tenant shall pay such share to Landlord within fifteen (15) days after receipt of Landlord's written statement, along with copies of the applicable utility bills and Landlord's calculations. Landlord shall not be liable in damages or otherwise for any failure or interruption of any utility or other Building service and no such failure or interruption shall entitle Tenant to terminate this Lease or withhold sums due hereunder, except if due to the breach of this Lease by Landlord or if due to the gross negligence or willful misconduct of Landlord or its employees, agents or contractors (and also in such case the failure or interruption is not due to Tenant's breach of this Lease or the negligence or willful acts of Tenant or its employees, agents or contractors) (a "Utility Interruption Event") and lasts for more than seven (7) consecutive days during the Lease Term, in which case all rent payments (including Minimum Annual Rent and Additional Rent) shall abate for each day of such failure or interruption for each day of such failure or interruption after said 7 days. Further, if a Utility Interruption Event lasts for more than sixty (60) consecutive days, then in addition to rent abatement as provided above Tenant, at its option, may at any time after said 60 days (but before service is restored) on ten (10) days prior written notice terminate this Lease by notice to Landlord (unless service is restored within such time period). In the event of utility "deregulation", Landlord shall choose the service provider. Landlord represents that as of the Commencement Date the Leased Premises will have available to it (from utility providers using existing utility lines into the Leased Premises) water, sewer, gas and electric service.

## **ARTICLE 7 - MAINTENANCE AND REPAIRS**

**Section 7.01 Tenant's Responsibility.** During the Lease Term, Tenant shall, at its own cost and expense, maintain the Leased Premises in good condition, regularly servicing and

promptly making all repairs and replacements thereto, including but not limited to the electrical systems, heating and air conditioning systems, plate glass, floors, windows and doors, and sprinkler and plumbing systems, and shall obtain a preventive maintenance contract on the heating, ventilating and air-conditioning systems, and provide Landlord with a copy thereof; provided, however, that to the extent any of the foregoing items require repair solely because of the negligence, misuse, or default under this Lease by Landlord, its employees, agents, customers or invitees, Landlord shall make such repairs solely at Landlord's expense. The preventive maintenance contract shall meet or exceed Landlord's standard maintenance criteria, and shall provide for the inspection and maintenance of the heating, ventilating and air conditioning system on not less than a semi-annual basis. In the event Tenant fails to maintain the Leased Premises as required herein or fails to commence repairs (requested by Landlord in writing) within thirty (30) days after such request, or fails diligently to proceed thereafter to complete such repairs, Landlord shall have the right in order to preserve the Leased Premises or portion thereof, and/or the appearance thereof, to make such repairs or have a contractor make such repairs and charge Tenant for the cost thereof as Additional Rent. Nothing herein shall obligate or impose a duty upon Tenant to make any capital expenditure with respect to this Section with respect to HVAC.

Section 7.02 Landlord's Responsibility. During the Lease Term, Landlord shall maintain in good condition and repair, and replace as necessary, the roof, roof membrane, exterior walls, foundation, floor slab and structural frame of the Building and the parking and landscaped areas, the costs of which shall be included in Operating Expenses; provided, however, that to the extent any of the foregoing items require repair because of the negligence, misuse, or default of Tenant, its employees, agents, customers or invitees, Landlord shall make such repairs solely at Tenant's expense.

Section 7.03 Alterations. Tenant shall not permit structural alterations in or to the Leased Premises unless and until the plans and the contractor have been approved by Landlord in writing, such approval not to be unreasonably withheld, conditioned or delayed. As a condition of Landlord's approval, Landlord may at the time of such approval require in writing that Tenant remove the alterations and restore the Leased Premises upon termination of this Lease; otherwise, all such alterations shall at Landlord's become a part of the realty and the property of Landlord, and shall not be removed by Tenant. Tenant shall ensure that all alterations shall be made in accordance with all applicable laws, regulations and building codes, in a good and workmanlike manner and of quality equal to or better than the original construction of the Building, and that its contractors comply with the terms and conditions of Landlord's Building Contractor Guidelines (which Landlord agrees to furnish to Tenant upon request and which shall be uniformly applicable to all tenants and occupants of the Building). Upon completion of the work, Tenant shall provide lien waivers from the subcontractors or a final affidavit of lien waiver from the general contractor, and such lien waiver shall be in a form acceptable to Landlord. No person shall be entitled to any lien derived through or under Tenant for any labor or material furnished to the Leased Premises, and nothing in this Lease shall be construed to constitute consent by Landlord to the creation of any lien. If any lien is filed against the Leased Premises for work claimed to have been done for or material claimed to have been furnished to Tenant, Tenant shall cause such lien to be discharged of record within thirty (30) days after filing. Tenant shall indemnify Landlord from all costs, losses, expenses and attorneys' fees in connection with any construction or alteration and any related lien.

Section 7.04 Compliance With Law.

(a) Existing Governmental Regulations. If any federal, state or local laws, ordinances, codes, statutes, orders, rules, regulations or requirements (collectively, "**Governmental Requirements**") in existence as of the date of the Lease require an alteration or modification of the Leased Premises (a "**Code Modification**") and such Code Modification (i) is not made necessary as a result of the specific use being made by Tenant of the Leased Premises (as distinguished from an alteration or improvement which would be required to be made by the owner of any warehouse-office building comparable to the Building irrespective of the use thereof by any particular occupant), and (ii) is not made necessary as a result of any alteration of the Leased Premises by Tenant (which for the sake of clarification include the Tenant Improvements), such Code Modification shall be performed by Landlord, at Landlord's sole cost and expense.

(b) Governmental Regulations – Landlord Responsibility. If, as a result of one or more Governmental Requirements that are not in existence as of the date of this Lease, it is necessary from time to time during the Lease Term, to perform a Code Modification to the Building or the Common Areas that (i) is not made necessary as a result of the specific use being made by Tenant of Leased Premises (as distinguished from an alteration or improvement which would be required to be made by the owner of any warehouse-office building comparable to the Building irrespective of the use thereof by any particular occupant), and (ii) is not made necessary as a result of any alteration of the Leased Premises by Tenant (which for the sake of clarification shall include the Tenant Improvements), such Code Modification shall be performed by Landlord and cost thereof shall be included in Operating Expenses without being subject to any applicable cap on expenses set forth herein.

(c) Governmental Regulations – Tenant Responsibility. If, as a result of one or more Governmental Requirements, it is necessary from time to time during the Lease Term to perform a Code Modification to the Building or the Common Areas that is made necessary as a result of the specific use being made by Tenant of the Leased Premises (as distinguished from an alteration or improvement which would be required to be made by the owner of any warehouse-office building comparable to the Building irrespective of the use thereof by any particular occupant) or as a result of any alteration of the Leased Premises by Tenant, such Code Modification shall be the sole and exclusive responsibility of Tenant in all respects; provided, however, that Tenant shall have the right to retract its request to perform a proposed alteration in the event that the performance of such alteration would trigger the requirement for a Code Modification.

## ARTICLE 8 - INSURANCE

Section 8.01 Landlord's Insurance. During the Lease Term, Landlord shall maintain (a) All Risk Coverage, Vandalism and Malicious Mischief, and Sprinkler Leakage insurance, if applicable, for the full cost of replacement on the Building (excluding the Tenant Improvements and all trade fixtures and property required to be insured by Tenant under this Lease), (b) Liability insurance in the Commercial General Liability form (including Broad Form Property Damage and Contractual Liabilities or reasonable equivalent thereto) covering the Building against claims for bodily injury or death, property damage and product liability occurring upon, in or about the Building, such insurance to be written on an occurrence basis (not a claims made basis), to be in combined single limits amounts not less than \$3,000,000 and to have general aggregate limits of not less than \$5,000,000 for each policy year, and (c) Worker's Compensation: minimum statutory amount (if required by applicable law).

Section 8.02 Tenant's Insurance. During the Lease Term, Tenant shall maintain the following types of insurance, in the amounts specified and in the form hereinafter provided for:

(a) Liability insurance in the Commercial General Liability form (including Broad Form Property Damage and Contractual Liabilities or reasonable equivalent thereto) covering the Leased Premises and Tenant's use thereof against claims for bodily injury or death, property damage and product liability occurring upon, in or about the Leased Premises, such insurance to be written on an occurrence basis (not a claims made basis), to be in combined single limits amounts not less than \$3,000,000 and to have general aggregate limits of not less than \$5,000,000 for each policy year.

(b) All Risk Coverage, Vandalism and Malicious Mischief, and Sprinkler Leakage insurance, if applicable, for the full cost of replacement of Tenant's trade fixtures (which for the sake of clarification includes the Tenant Improvements), merchandise and personal property.

(c) Worker's Compensation: minimum statutory amount.

(d) Business interruption insurance (for up to \$250,000 of coverage for twelve months interruption).

All policies of insurance provided for in this Section 8.02 (i) shall be issued in form reasonably acceptable to Landlord, (ii) shall name Landlord, Landlord's managing agent, any mortgagee and any other party reasonably designated by Landlord as additional insureds, and (iii) shall provide that they may not be canceled on less than 15 days' prior written notice to Landlord. Tenant shall furnish Landlord with Certificates of Insurance evidencing all required coverages on or

before the Commencement Date, and thereafter within thirty (30) days prior to the expiration of each such policy. If Tenant fails to carry such insurance, Landlord may obtain such insurance and Tenant shall promptly reimburse Landlord therefor.

Section 8.03 Waiver of Subrogation. Landlord and Tenant hereby waive any rights each may have against the other on account of any loss or damage occasioned to Landlord or Tenant, as the case may be, or their respective property, the Leased Premises, its contents, or other portions of the Building arising from any risk which is insured against under any all risk coverage insurance carried (or required to be carried) by either Landlord or Tenant. All insurance policies maintained by Landlord or Tenant as provided in this Lease shall contain an agreement by the insurer waiving the insurer's right of subrogation against the other party to this Lease.

Section 8.04 Tenant's Responsibility. All of Tenant's trade fixtures, merchandise and personal property in the Leased Premises shall be and remain at Tenant's sole risk. Landlord shall not be liable to Tenant or to any other person, and Tenant hereby releases Landlord from (i) any and all liability for theft thereof or any damage thereto occasioned by any act of God or by any acts, omissions or negligence of any persons, and (ii) any and all liability for any injury to the person or property of Tenant or other persons in or about the Leased Premises, the Building or the common areas associated therewith, except to the extent caused by Landlord's breach of this Lease or the negligence or willful misconduct of Landlord or its employees, agents or contractors. Notwithstanding the foregoing, nothing contained in this Section 8.04 shall override (or be deemed to override) the waivers contained in Section 8.03 above. This provision shall survive the expiration or earlier termination of this Lease.

Section 8.05 Tenant's Indemnity. Tenant shall indemnify, defend and hold harmless Landlord, its agents, employees and contractors from and against any and all claims, demands, penalties, costs, liabilities, losses and expenses (including reasonable attorneys' fees actually incurred) to the extent arising from or based upon any alleged act, omission or negligence of Tenant or Tenant's agents, employees contractors or invitees or otherwise arising in connection with the Leased Premises or Tenant's use of the common areas associated therewith, except to the extent caused by the negligence or willful misconduct of Landlord or its employees, agents or contractors. Notwithstanding the foregoing, nothing contained in this Section 8.05 shall override (or be deemed to override) the waivers contained in Section 8.03 above. This provision shall survive the expiration or earlier termination of this Lease.

Section 8.06 Landlord's Indemnity. Landlord shall indemnify, defend and hold harmless Tenant, its agents, employees and contractors from and against any and all claims, demands, penalties, costs, liabilities, losses and expenses (including reasonable attorneys' fees actually incurred) to the extent arising from or based upon any alleged act, omission or gross negligence of Landlord or Landlord's agents, employees or contractors arising in connection with the Leased Premises, the Building or the common areas associated therewith, except to the extent caused by the negligence or willful misconduct of Tenant or its employees, agents or contractors. Notwithstanding the foregoing, nothing contained in this Section 8.06 shall override (or be deemed to override) the waivers contained in Section 8.03 above. This provision shall survive the expiration or earlier termination of this Lease.

## **ARTICLE 9 - CASUALTY**

Section 9.01 If the Leased Premises or the Building are a part are totally or partially damaged or destroyed thereby rendering the Leased Premises totally or partially inaccessible or unusable, then Landlord shall diligently repair and restore the Leased Premises (excluding the Tenant Improvements and alterations made by Tenant or Tenant's trade fixtures or personal property which alterations, trade fixtures and personal property shall be Tenant's responsibility to repair and restore and Tenant shall be entitled to all insurance proceeds for the same from insurance carried by Tenant), the Building and the land to substantially the same condition they were in prior to such damage or destruction; provided, however, that if (a) in Landlord's reasonable judgment such repair and restoration cannot be completed within 210 days after the occurrence of such damage or destruction (taking into account the time needed for effecting a satisfactory settlement with any insurance company involved, removal of debris, preparation of plans and issuance of all required governmental permits) or (b) twenty percent (20%) or more of the Leased Premises is damaged or unusable and less than six (6) months would remain of the Lease Term or any renewal thereof upon completion of the repairs (unless Tenant exercises any

then existing renewal option to renew or extend the Lease Term for more than six months), then Landlord and Tenant shall each have the right, at its sole option, to terminate this Lease by giving written notice of termination to the other party within forty-five (45) days after the occurrence of such damage or destruction and specifying in such notice the termination date (which shall be at least fifteen (15) but not more than thirty (30) days after such notice is given).

Section 9.02 If this Lease is terminated pursuant to Section 9.02 above, then all rent (including Minimum Annual Rent and Additional Rent) shall be apportioned (based on the portion of the Leased Premises, if any, which is usable after such damage or destruction) and paid to the date of termination. If this Lease is not terminated as a result of such damage or destruction, then until such repair and restoration of the Leased Premises, Building and/or land are substantially complete (allowing Tenant access to and use of the Leased Premises to the same extent as existed immediately before such casualty), Tenant shall be required to pay the Minimum Annual Rent and Additional Rent only for the portion of the Leased Premises that is usable while Landlord's repair and restoration are being made. Notwithstanding the foregoing, Tenant shall not be entitled to any reduction in rent if the damage or destruction was caused by Tenant, its agents, employees, or contractors and in such case Landlord is unable to recover for such rent under any a rental interruption policy carried by it. Tenant shall not be entitled to any compensation or damages from Landlord for loss of the use of the whole or any portion of the Leased Premises or for any inconvenience or annoyance occasioned by any such damage, repair or restoration. "**Substantially complete**" means that a certificate of occupancy has been issued for the Leased Premises and only minor punch list items remain to be completed which can (and will) be completed by Landlord within thirty (30) days thereafter with no more than minimal interference to Tenant's use of the Leased Premises.

Section 9.03 Notwithstanding anything herein to the contrary, Landlord shall not be obligated to restore the Leased Premises or the Building and shall have the right to terminate this Lease if (a) the holder of any mortgage fails or refuses to make insurance proceeds available for such repair and restoration, or (b) zoning or other Governmental Requirements do not permit such repair and restoration, provided the leases of all other tenants in the Building are similarly terminated.

#### **ARTICLE 10 - EMINENT DOMAIN**

If all or any substantial part of the Building or common areas shall be acquired by the exercise of eminent domain, either party may terminate this Lease by giving written notice to the other on or before the date that actual possession thereof is so taken. If all or any part of the Leased Premises, the Building or land of which they are a part shall be acquired by the exercise of eminent domain so that the Leased Premises shall become impractical for Tenant to use for the Permitted Use or such taking materially and adversely affects Tenant's use of the Leased Premises for the Permitted Use, Tenant may terminate this Lease as of the date that actual possession thereof is so taken by giving written notice to Landlord. All damages awarded shall belong to Landlord; provided, however, that Tenant may claim dislocation damages, moving expenses, loss of profits, loss of goodwill, and the unamortized portion of alterations, fixtures and other equipment installed by it if such amount is not subtracted from Landlord's award (and Landlord agrees that it shall not make a claim for such damages belonging to Tenant). In the event of the exercise of eminent domain of any portion of the Leased Premises or the Building which does not result in a termination of this Lease, then this Lease shall continue in full force and effect as to the part of the Leased Premises not taken, except that as of the date possession is taken by such authority, Tenant shall not be required to pay the Minimum Annual Rent or the Additional Rent with respect to the part of the Leased Premises taken.

#### **ARTICLE 11 - ASSIGNMENT AND SUBLEASE**

Section 11.01 Assignment and Sublease. Tenant shall not assign this Lease or sublet the Leased Premises in whole or in part without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Subject to Section 11.02 below, any change in control of Tenant resulting from a merger, consolidation, stock transfer or asset sale shall be considered an assignment or transfer that requires Landlord's prior written consent. In the event of any permitted assignment or subletting, Tenant shall remain primarily liable hereunder, and any extension, expansion, rights of first offer, rights of first refusal or other options granted to Tenant under this Lease shall be rendered void and of no further force or effect except with respect to a Permitted Transferee. The acceptance of rent from any other

person shall not be deemed to be a waiver of any of the provisions of this Lease or to be a consent to the assignment of this Lease or the subletting of the Leased Premises. Any assignment or sublease consented to by Landlord shall not relieve Tenant (or its assignee) from obtaining Landlord's consent to any subsequent assignment or sublease. By way of example and not limitation, Landlord shall be deemed to have reasonably withheld consent to a proposed assignment or sublease if in Landlord's opinion (i) the condition of the Leased Premises are or may be in any way adversely affected; (ii) the business reputation of the proposed assignee or subtenant is unacceptable; (iii) the financial worth of the proposed assignee or subtenant is insufficient to meet the obligations hereunder, or (iv) the prospective assignee or subtenant is a current tenant at the Park or is a bona-fide third-party prospective tenant (and Landlord has prior to the proposed assignment or sublease offered to the proposed transferee or sublessee, as the case may be, space at the Park substantially similar in size and permitted use to the Leased Premises). In the event that Tenant assigns or sublets the Leased Premises or any part thereof, and at any time receives rent and/or other consideration which exceeds that which Tenant would at that time be obligated to pay to Landlord (after first deducting all costs and expenses incurred by Tenant in connection with the assignment or sublet, including without limit costs of alterations or tenant improvements, attorneys' fees, brokerage commissions, tenant improvement allowances, moving expense allowances, rent buydowns, and advertising expenses), Tenant shall pay to Landlord, as Additional Rent, Fifty Percent (50%) of such excess rent and/or other consideration as and when it is actually received by Tenant. Tenant agrees to pay Landlord \$1,000.00 upon demand by Landlord to reimburse Landlord for reasonable accounting and attorneys' fees incurred in conjunction with the processing and documentation of any requested assignment, subletting or any other hypothecation of this Lease or Tenant's interest in and to the Leased Premises.

Section 11.02 Permitted Transfer. Notwithstanding anything to the contrary contained in Section 11.01 above, Tenant shall have the right, without Landlord's consent, but upon ten (10) days prior notice to Landlord to be effective as to Landlord, to (i) sublet all or part of the Leased Premises to any related corporation or other entity which controls Tenant, is controlled by Tenant or is under common control with Tenant; (ii) assign all or any part of this Lease to any related corporation or other entity which controls Tenant, is controlled by Tenant, or is under common control with Tenant, or to a successor entity into which or with which Tenant is merged or consolidated or which acquires substantially all of Tenant's assets in property; or (iii) effectuate any public offering of Tenant's stock on the New York Stock exchange or in the NASDAQ over the counter market, provided that in the event of a transfer pursuant to clause (ii), the net worth after any such transaction is not less than the net worth of Tenant as of the date hereof and provided further that such successor entity assumes all of the obligations and liabilities of Tenant (any such entity hereinafter referred to as a "**Permitted Transferee**"). For the purpose hereof "**control**" shall mean ownership of not less than fifty percent (50%) of all voting stock or legal and equitable interest in such corporation or entity. Any such transfer shall not relieve Tenant of its obligations under this Lease.

## **ARTICLE 12 - TRANSFERS BY LANDLORD**

This Lease and all rights of Tenant hereunder are and shall be subordinate to the lien and security title of any Mortgage (as hereinafter defined) presently existing or, conditioned upon Tenant first entering into subordination, non-disturbance and attornment agreement with the holder of the Mortgage that recognizes all of Tenant's rights and remedies under this Lease as long as Tenant is not in default hereunder beyond any applicable notice or cure period (an "**SNDA**") hereafter encumbering the Building. For purposes of this Lease, "**Mortgage**" shall mean any or all mortgages, deeds to secure debt, deeds of trust or other instruments in the nature thereof, and any amendments, modifications, extensions or renewals thereof. Within twenty (20) days following receipt of a written request from Landlord, Tenant shall execute and deliver to Landlord (a) any and all instruments reasonably requested by Landlord to confirm the subordination, attornment and nondisturbance of this Lease (notwithstanding the fact that such subordination shall be self-operative), and (b) an estoppel certificate in such form as Landlord may reasonably request certifying (i) that this Lease is in full force and effect and unmodified or stating the nature of any modification, (ii) the date to which rent has been paid, (iii) that there are not, to Tenant's actual knowledge, any uncured defaults or specifying such defaults if any are claimed, and (iv) any other matters or state of facts reasonably required respecting the Lease, it being intended that any such statement delivered pursuant hereto may be relied upon by Landlord and by any purchaser or mortgagee of the Building. Landlord, within five (5) days after the date of this Lease, shall deliver to Tenant an SNDA acceptable to Tenant from the current

holder of any Mortgage (which Landlord represents is Wells Fargo Bank, N.A. and that no other party holds a Mortgage on the Leased Premises as of the date of the Lease); and if Landlord fails to so deliver the SNDA, Tenant, at its option, within fifteen (15) days thereafter, may terminate this Lease by written notice to Landlord and in the event of such termination receive an immediate refund of all rent, security deposit and other payments made to Landlord hereunder. No owner of the Leased Premises, whether or not named herein, shall have liability hereunder for duties or obligations incurred by the landlord after it ceases to hold title to the Leased Premises, but this shall not release such owner from liability for its duties or obligations incurred as landlord while the owner of the Leased Premises.

In the event any proceedings are brought for the foreclosure of, or in the event of exercise of the power of sale under, any mortgage covering the Leased Premises or any portion thereof, or in the event the interests of Landlord under this Lease shall be transferred by reason of deed in lieu of foreclosure or other legal proceedings, or in the event of termination of any lease under which Landlord may hold title, Tenant shall, with respect to the transferee or purchaser at foreclosure or under power of sale, or the lessor of Landlord upon such lease termination, as the case may be (sometimes hereinafter call "**such person**"), attorn to such person and shall recognize and be bound and obligated hereunder to such person as Landlord under this Lease; provided, however, that no such person shall be (i) bound by any payment of Rent for more than one (1) month in advance of the due date hereunder, except prepayments in the nature of security for the performance by Tenant of its obligations under this Lease (and then only if such prepayments have been deposited with and are under the control of such person); (ii) bound by any amendment or modification of this Lease (which decreases the rent, changes the Lease Term, or changes or grants any extension, renewal, purchase, early termination or expansion option) made without the express written consent of the mortgagee or lessor of Landlord, as the case may be, while such person was the mortgagee or lessor of Landlord; (iii) liable for any act or omission of any prior landlord (including Landlord), except to the extent and during the time that such act or omission constitutes a continuing default or breach while such person is the landlord; (v) subject to any offsets or defenses which Tenant might have against any prior landlord (including Landlord), except to the extent and during the time that the act or omission giving rise to such offset or defense constitutes a continuing default or breach while such person is the landlord. Tenant agrees to execute any attornment agreement not in conflict herewith requested by Landlord, the mortgagee or such person. Tenant's obligation to attorn to such person shall survive the exercise of any such power of sale, foreclosure or other proceeding. Tenant agrees that the institution of any suit, action or other proceeding by any mortgagee to realize on Landlord's interest in the Leased Premises or the Building pursuant to the powers granted to a mortgagee under its mortgage, shall not, by operation of law or otherwise, result in the cancellation or termination of the obligations of Tenant hereunder. Landlord and Tenant agree that notwithstanding that this Lease is expressly subordinate to any mortgages, any mortgagee, its successors and assigns, or other holder of a mortgage or of a note secured thereby (subject to the subordination, non-disturbance and attornment provisions herein), may sell the Leased Premises or the Building, in the manner provided in the mortgage subject to this Lease.

Tenant will notify Wells Fargo Bank, N.A. at 2859 Paces Ferry Road, Suite 1200, Atlanta, GA 30339, Attention: Loan Administration Manager ("**Lender**") in writing concurrently with any notice given to Landlord of any default by Landlord under the Lease, and Tenant agrees that Lender shall have the right (but not the obligation) to cure any breach or default specified in such notice within the time periods set forth below and Tenant will not declare a default of the Lease, as to Lender, if Lender cures such default within fifteen (15) days from and after the expiration of the time period provided in the Lease for the cure thereof by Landlord; provided, however, that if such default cannot with diligence be cured by Lender within such fifteen (15) day period, the commencement of action by Lender within such fifteen (15) day period to remedy the same shall be deemed sufficient so long as Lender pursues such cure with diligence and completes such cure within the earlier of forty-five (45) days after the expiration of the time period provided in this Lease for the cure by Landlord or sixty (60) days after Tenant has provided Lender with notice of Landlord's default.

### **ARTICLE 13 - DEFAULT AND REMEDY**

Section 13.01 Default. The occurrence of any of the following shall be a "**Default**":

- (a) Tenant fails to pay any Monthly Rental Installment or Additional Rent within five (5) days after notice that the same is due.

(b) Tenant fails to perform or observe any other term, condition, covenant or obligation required under this Lease for a period of thirty (30) days after notice thereof from Landlord; provided, however, that if the nature of Tenant's default is such that more than thirty days are reasonably required to cure, then such default shall be deemed to have been cured if Tenant commences such performance within said thirty-day period and thereafter diligently completes the required action within a reasonable time.

(c) Tenant shall assign or sublet all or a portion of the Leased Premises in contravention of the provisions of Article 11 of this Lease.

(d) All or substantially all of Tenant's assets in the Leased Premises or Tenant's interest in this Lease are attached or levied under execution (and Tenant does not discharge the same within sixty (60) days thereafter); a petition in bankruptcy, insolvency or for reorganization or arrangement is filed by or against Tenant (and Tenant fails to secure a stay or discharge thereof within sixty (60) days thereafter); Tenant is insolvent and unable to pay its debts as they become due; Tenant makes a general assignment for the benefit of creditors; Tenant takes the benefit of any insolvency action or law; the appointment of a receiver or trustee in bankruptcy for Tenant or its assets if such receivership has not been vacated or set aside within thirty (30) days thereafter; or dissolution or other termination of Tenant's corporate charter if Tenant is a corporation.

Section 13.02 Remedies. Upon the occurrence of any Default, Landlord shall have the following rights and remedies, in addition to those allowed by law or in equity, any one or more of which may be exercised without further notice to Tenant:

(a) Terminate this Lease by giving Tenant notice of termination, in which event this Lease shall expire and terminate on the date specified in such notice of termination and all rights of Tenant under this Lease and in and to the Leased Premises shall terminate. Tenant shall remain liable for all obligations under this Lease arising up to the date of such termination, and Tenant shall surrender the Leased Premises to Landlord on the date specified in such notice. Furthermore, Tenant shall be liable to Landlord for the unamortized balance of any Tenant improvement allowance and brokerage fees paid in connection with the Lease.

(b) Without terminating this Lease, and with or without notice to Tenant, re-enter the Leased Premises and cure any default of Tenant, and Tenant shall reimburse Landlord as Additional Rent for any costs and expenses which Landlord thereby incurs; and Landlord shall not be liable to Tenant for any loss or damage which Tenant may sustain by reason of Landlord's action.

(c) Terminate this Lease as provided in subparagraph (a) above and recover from Tenant all damages Landlord may incur by reason of Tenant's default, including, without limitation, an amount which, at the date of such termination is equal to the sum of the following: (i) the value of the excess, if any, discounted at the prime rate of interest (as reported in the *Wall Street Journal*), of (A) the Minimum Annual Rent, Additional Rent and all other sums that would have been payable hereunder by Tenant for the period for the remainder of the Lease Term had this Lease not been terminated (said period being referred to herein as the "**Remaining Term**"), less (B) the aggregate reasonable rental value of the Leased Premises for the Remaining Term (including without limit base or minimum rent and additional rent), as determined by a real estate broker licensed in the State of Texas who has not previously represented Landlord or any its members, partners or shareholders and who has at least ten (10) years of experience in leasing industrial buildings in Fort Worth; (ii) the costs of recovering possession of the Leased Premises and all other expenses incurred by Landlord due to Tenant's Default, including, without limitation, reasonable attorney's fees and the cost to prepare the Leased Premises for re-letting (all costs and expenses set forth in this clause (ii) being referred to herein, collectively, as the "**Default Damages**"); and (iii) the unpaid Minimum Annual Rent and Additional Rent that accrued prior to the date of termination, including the amount of any "free rent" concessions granted Tenant herein, plus any interest and late fees due hereunder and any other sums of money and damages owing on the date of termination by Tenant to Landlord under this Lease or in connection with the Leased Premises (all amounts set forth in this clause (iii) being referred to herein, collectively, as the "**Prior Obligations**"). The amount as calculated above shall be deemed immediately due and payable. Landlord and Tenant acknowledge and agree that the payment of the amount set forth in clause (i) above shall not be deemed a penalty, but shall merely constitute payment of liquidated damages, it being understood that actual damages to

Landlord are extremely difficult, if not impossible, to ascertain. Tenant expressly acknowledges and agrees that the liabilities and remedies specified in this subparagraph (c) shall survive the termination of this Lease.

(d) Without terminating this Lease, declare immediately due and payable the sum of the following: (i) the present value (discounted at the prime rate of interest, as reported in the *Wall Street Journal*) of all Minimum Annual Rent and Additional Rent due and coming due under this Lease for the entire Remaining Term (as if by the terms of this Lease they were payable in advance), (ii) all Default Damages, and (iii) all Prior Obligations, whereupon Tenant shall be obligated to pay the same to Landlord; provided, however, that such payment shall not be deemed a penalty or liquidated damages, but shall merely constitute payment in advance of all Minimum Annual Rent and Additional Rent payable hereunder throughout the Remaining Term, and provided further, however, that upon Landlord receiving such payment, Tenant shall be entitled to receive from Landlord all rents received by Landlord from other assignees, tenant and subtenants on account of said Leased Premises during the Remaining Term (but only to the extent that the monies to which Tenant shall so become entitled do not exceed the entire amount actually paid by Tenant to Landlord pursuant to this subparagraph (d)), less all Default Damages of Landlord incurred but not yet reimbursed by Tenant.

(e) Without terminating this Lease, terminate Tenant's right to possession of the Leased Premises as of the date of Tenant's Default, and thereafter (i) neither Tenant nor any person claiming under or through Tenant shall be entitled to possession of the Leased Premises, and Tenant shall immediately surrender the Leased Premises to Landlord; and (ii) Landlord may re-enter the Leased Premises and dispossess Tenant and any other occupants of the Leased Premises by any lawful means and may remove their effects, without prejudice to any other remedy which Landlord may have. Thereafter, Landlord may, but shall not be obligated to, re-let all or any part of the Leased Premises as the agent of Tenant for a term different from that which would otherwise have constituted the balance of the Lease Term and for rent and on terms and conditions different from those contained herein, whereupon Tenant shall be obligated to pay to Landlord as liquidated damages the difference between the rent provided for herein and that provided for in any lease covering a subsequent re-letting of the Leased Premises, for the Remaining Term, together with all Default Damages. Neither the filing of a dispossessory proceeding nor an eviction of personalty in the Leased Premises shall be deemed to terminate the Lease.

(f) Intentionally omitted.

(g) Sue for injunctive relief or to recover damages for any loss resulting from the Default.

(h) In the event of a Default by Tenant, Landlord may, without judicial process, enter upon the Leased Premises, by force if necessary, without having any civil or criminal liability therefor (including specifically any liability or duty under Section 93.002 of the Texas Property Code which is superseded by this Paragraph 13.02), and do whatever Tenant is obligated to do under the terms of this Lease, and Tenant agrees to reimburse Landlord on demand for any expenses which Landlord may incur in effecting compliance with Tenant's obligations under this Lease plus an administrative fee equal to ten percent (10%) of the amount of such reimbursement. Tenant further agrees that Landlord shall not be liable for any damages resulting to Tenant from such action, whether caused by the negligence of Landlord or otherwise.

(i) Any repossession of or re-entering on the Leased Premises by Landlord under this Article shall be without liability or responsibility for damages to Tenant. No repossession of or re-entering upon the Leased Premises or any part thereof pursuant to this Article and no reletting of the Leased Premises or any part thereof pursuant to this Article shall relieve Tenant or any guarantor of its liabilities and obligations hereunder, all of which shall survive such repossession or re-entering. In the event of any such repossession of or re-entering upon the Leased Premises or any part thereof by reason of the occurrence of an event of Default, Tenant will continue to pay to Landlord Rent required to be paid by Tenant; provided, however, that if Tenant has vacated the Leased Premises and is not contesting Landlord's right to the possession of the Leased Premises, Landlord will use commercially reasonable efforts to mitigate its damages. In the event Landlord is so required to use commercially reasonable efforts to mitigate its damages, (i) Landlord shall be required only to use reasonable efforts to mitigate, which shall not exceed such efforts as Landlord generally uses to lease other space in the Building; (ii) Landlord will not

be deemed to have failed to mitigate if Landlord leases any other portions of the Building before reletting all or any portion of the Leased Premises; (iii) Landlord shall not be deemed to have failed to mitigate if it incurs Default Damages; and (iv) Tenant shall bear the burden of proof that Landlord failed to mitigate.

(j) No right or remedy herein conferred upon or reserved to Landlord is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder or now or hereafter existing at law or in equity or by statute. In addition to the other remedies provided in this Lease, Landlord shall be entitled, to the extent permitted by applicable law, to injunctive relief in case of the violation, or attempted or threatened violation, of any of the covenants, agreements, conditions or provisions of this Lease, or to a decree compelling performance of any of the covenants, agreements, conditions or provisions of this Lease, or to any other remedy allowed to Landlord at law or in equity. Tenant shall indemnify and hold Landlord harmless from any and all costs, expenses (including reasonable attorneys' fees), claims and causes of action arising from or in connection with any Default by Tenant under this Lease, but in no event shall Tenant be liable to Landlord for loss of profits, or speculative damages.

(k) If Landlord repossesses the Leased Premises pursuant to the authority herein granted or provided at law or in equity, then Landlord shall have the right, at the sole cost and expense of Tenant, to remove and dispose of, or at Landlord's election, store on behalf of Tenant, all of the furniture, fixtures and equipment at the Leased Premises, including that which is owned by or leased to Tenant at all times prior to repossession thereof by Tenant or third party having a superior lien thereon. Landlord also shall have the right to relinquish possession of all or any portion of such furniture, fixtures, equipment and other property to any person (a "**Claimant**") who presents to Landlord a copy of any instrument represented by Claimant to have been executed by Tenant (or any predecessor of Tenant) granting Claimant the right under various circumstances to take possession of such furniture, fixtures, equipment or other property, without the necessity on the part of Landlord to inquire into the authenticity or legality of said instrument. The rights of Landlord herein stated shall be in addition to any and all other rights that Landlord has or may hereafter have at law or in equity; and Tenant stipulates and agrees that the rights herein granted Landlord are commercially reasonable.

**Section 13.03 Landlord's Default and Tenant's Remedies.** Landlord shall be in default if it fails to perform any term, condition, covenant or obligation required under this Lease for a period of thirty (30) days after written notice thereof from Tenant to Landlord; provided, however, that if the term, condition, covenant or obligation to be performed by Landlord is such that it cannot reasonably be performed within thirty (30) days, such default shall be deemed to have been cured if Landlord commences such performance within said thirty-day period and thereafter diligently undertakes to complete the same. Upon the occurrence of any such default, Tenant may sue for injunctive relief or to recover damages for any loss directly resulting from the breach, (but in no event shall Landlord be liable to Tenant for loss of profits, or consequential or speculative damages) or exercise any other right available at law or in equity. In the event of any such default pertaining to Landlord's failure to perform a required repair, maintenance or replacement or to provide a service required hereunder the lack of which after thirty (30) days' written notice of default from Tenant materially interferes with Tenant's business operations in the Leased Premises, Tenant may (but is not obligated to) undertake all reasonable action to cure Landlord's failure of performance. If Tenant elects to cure said default, Tenant shall, prior to commencement of said work (except in an emergency situation), provide to Landlord a specific description of the work to be performed by Tenant and the name of Tenant's contractor. Landlord shall reimburse Tenant within thirty (30) days after delivery of written request for all reasonable third party out-of-pocket expenses incurred by Tenant in connection with such cure, provided that Tenant delivers to Landlord lien waivers (if applicable) and adequate bills or other supporting evidence substantiating said cost. If Landlord fails to make such payment to Tenant within thirty (30) days after Tenant's request, then the amount due shall bear interest from the date such amount was due from Landlord to Tenant at the prime rate of interest plus five percent (5%) per annum and may be deducted from the Minimum Annual Rent due hereunder, provided that the maximum offset in any calendar month shall not exceed fifty percent (50%) of the Minimum Annual Rent due for such month. Tenant may also sue Landlord to recover the same. If Landlord fails to cure any default under this Lease in the time period required or otherwise breaches this Lease, and Tenant recovers a money judgment against Landlord as a result of said default or breach, in addition to and not in lieu of all other collection rights, Tenant may deduct from the Minimum Annual Rent due hereunder the amount of such judgment.

Section 13.04 Limitation of Landlord's Liability. If Landlord shall fail to perform any term, condition, covenant or obligation required to be performed by it under this Lease and if Tenant shall, as a consequence thereof, recover a money judgment against Landlord, Tenant agrees that it shall look solely to Landlord's right, title and interest in and to the Building and the Park, and the proceeds thereof, for the collection of such judgment; and Tenant further agrees that no other assets of Landlord shall be subject to levy, execution or other process for the satisfaction of Tenant's judgment.

Section 13.05 Nonwaiver of Defaults. Either party's failure or delay in exercising any of its rights or remedies or other provisions of this Lease shall not constitute a waiver thereof or affect its right thereafter to exercise or enforce such right or remedy or other provision. No waiver of any default shall be deemed to be a waiver of any other default. Landlord's receipt of less than the full rent due shall not be construed to be other than a payment on account of rent then due, nor shall any statement on Tenant's check or any letter accompanying Tenant's check be deemed an accord and satisfaction. No act or omission by Landlord or its employees or agents during the Lease Term shall be deemed an acceptance of a surrender of the Leased Premises, and no agreement to accept such surrender shall be valid unless in writing and signed by Landlord.

Section 13.06 Attorneys' Fees. If a Default shall occur or a default by Landlord should occur which is not cured within the applicable notice and cure period, Tenant shall pay to Landlord, or Landlord shall pay to Tenant, as the case may be, on demand, all expenses incurred by the non-defaulting party as a result thereof, including reasonable attorneys' fees, court costs and expenses actually incurred; provided, however, that Landlord and Tenant shall each reimburse the other for the reasonable and actual attorneys' fees incurred by such other party in connection with any litigation initiated by Landlord or Tenant, as the case may be, pursuant to this Lease which results in a final, unappealable judgment as to the merits in the other party's favor.

#### **ARTICLE 14 - LANDLORD'S RIGHT TO RELOCATE TENANT**

[Intentionally Omitted]

#### **ARTICLE 15 - TENANT'S RESPONSIBILITY REGARDING ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES.**

##### **Section 15.01 Definitions.**

(a) **"Environmental Laws"** - All present or future federal, state and municipal laws, ordinances, rules and regulations applicable to the environmental and ecological condition of the Leased Premises, the rules and regulations of the Federal Environmental Protection Agency or any other federal, state or municipal agency or governmental board or entity having jurisdiction over the Leased Premises.

(b) **"Hazardous Substances"** - Those substances included within the definitions of "hazardous substances," "hazardous materials," "toxic substances," "solid waste" or "infectious waste" under Environmental Laws and petroleum products.

Section 15.02 Compliance. Tenant, at its sole cost and expense, shall promptly comply with the Environmental Laws including any notice from any source issued pursuant to the Environmental Laws or issued by any insurance company which shall impose any duty upon Tenant with respect to Tenant's use, occupancy, maintenance or alteration of the Leased Premises whether such notice shall be served upon Landlord or Tenant; provided, that Tenant shall only be liable for the acts of Tenant or its employees, agents, representatives, customers, invitees or contractors on or about the Leased Premises.

Section 15.03 Restrictions on Tenant. Tenant shall operate its business and maintain the Leased Premises in compliance with all Environmental Laws; provided, that Tenant shall only be liable for the acts of Tenant or its employees, agents, representatives, customers, invitees or contractors on or about the Leased Premises. Tenant shall not cause or permit through its employees, agents, representatives, customers, invitees or contractors, the use, generation, release, manufacture, refining, production, processing, storage or disposal of any Hazardous

Substances on, under or about the Leased Premises, or the transportation to or from the Leased Premises of any Hazardous Substances, except as necessary and appropriate for its Permitted Use in which case the use, storage or disposal of such Hazardous Substances shall be performed in compliance with the Environmental Laws and the highest standards prevailing in the industry.

Section 15.04 Notices, Affidavits, Etc. Tenant shall immediately notify Landlord of (i) any violation by Tenant, its employees, agents, representatives, customers, invitees or contractors of the Environmental Laws on, under or about the Leased Premises, or (ii) the presence or suspected presence of any Hazardous Substances on, under or about the Leased Premises and shall immediately deliver to Landlord any notice received by Tenant relating to (i) and (ii) above from any source. Tenant shall execute affidavits, representations and the like within ten (10) days of Landlord's request therefor concerning Tenant's actual knowledge and belief regarding the presence of any Hazardous Substances on, under or about the Leased Premises.

Section 15.05 Landlord's Rights. Landlord and its agents shall have the right, but not the duty, upon advance notice (except in the case of emergency when no notice shall be required) to inspect the Leased Premises and conduct tests thereon to determine whether or the extent to which there has been a violation of Environmental Laws by Tenant or whether there are Hazardous Substances on, under or about the Leased Premises. In exercising its rights herein, Landlord shall use reasonable efforts to minimize interference with Tenant's business but such entry shall not constitute an eviction of Tenant, in whole or in part, or default by Landlord as long as there is no material interference, loss, or damage to Tenant's property or business caused thereby.

Section 15.06 Tenant's Indemnification. Tenant shall indemnify Landlord and Landlord's managing agent from any and all claims, losses, liabilities, costs, expenses and damages, including attorneys' fees, costs of testing and remediation costs, incurred by Landlord in connection with any breach by Tenant of its obligations under this Article 15. The covenants and obligations under this Article 15 shall survive the expiration or earlier termination of this Lease.

Section 15.07 Landlord's Representation. Landlord warrants and represents to the best of Landlord's knowledge, but without any independent investigation or inquiry, that no Hazardous Substances or environmental condition which could pose a potential threat to the Leased Premises currently exists on or within or about the Premises or the Park. Notwithstanding anything contained in this Article 15 to the contrary, Tenant shall not have any liability to Landlord under this Article 15 resulting from any conditions existing, or events occurring, or any Hazardous Substances existing or generated at, in, on, under or in connection with the Leased Premises prior to the Commencement Date of this Lease or, regardless when first existing or occurring, caused by any party other than Tenant or Tenant's employees, agents, representatives, customers, invitees or contractors. Landlord shall indemnify, defend and hold Tenant harmless from and against any loss or damages, liabilities, judgments, claims or expenses, penalties, and attorney's and consultant's fees reasonable and actually incurred, arising out of and involving any Hazardous Substances within or about the Leased Premises caused by Landlord, its agents, employees, representatives, customers, invitees or contractors or caused by any other party (except for Tenant or Tenant's agents, employees, representatives, customers, invitees or contractors). The covenants and obligations under this Article 15 shall survive the expiration or earlier termination of this Lease.

## **ARTICLE 16 - MISCELLANEOUS**

Section 16.01 Benefit of Landlord and Tenant. This Lease shall inure to the benefit of and be binding upon Landlord and Tenant and their respective successors and assigns.

Section 16.02 Governing Law. This Lease shall be governed in accordance with the laws of the State where the Building is located.

Section 16.03 Quiet Possession. So long as Tenant shall observe and perform the covenants and agreements binding on it hereunder, Tenant shall at all times during the Lease Term herein granted and subject to the provisions of this Lease peacefully and quietly have and

enjoy the possession of the Leased Premises without any encumbrance or hindrance by, from or through Landlord, its successors or assigns, or those acting under any of them.

Section 16.04 Force Majeure. Landlord and Tenant (except with respect to the payment of any monetary obligation) shall be excused for the period of any delay in the performance of any obligation hereunder when such delay is occasioned by causes beyond its control, including but not limited to work stoppages, boycotts, slowdowns or strikes; shortages of materials, equipment, labor or energy; unusual weather conditions; or acts or omissions of governmental or political bodies.

Section 16.05 Examination of Lease. The submission of this Lease by Landlord to Tenant for examination or consideration does not constitute an offer by Landlord to lease the Leased Premises and this Lease shall become effective, if at all, only upon the execution and delivery thereof by Landlord and Tenant. Execution and delivery of this Lease by Tenant to Landlord constitutes an offer to lease the Leased Premises on the terms contained herein. The offer by Tenant will be irrevocable until 6:00 p.m. Eastern time for three (3) days after the date of execution of this Lease.

Section 16.06 Indemnification for Leasing Commissions. Tenant warrants and represents to Landlord that no other party is entitled, as a result of the actions of Tenant, to a commission or other fee resulting from the execution of this Lease. Landlord warrants and represents to Tenant that no party is entitled, as a result of the actions of Landlord, to a commission or other fee resulting from the execution of this Lease, except for Cushman & Wakefield who shall be paid a commission by Landlord pursuant to a separate agreement. Landlord and Tenant agree to indemnify and hold each other harmless from any loss, cost, damage or expense (including reasonable attorneys' fees) incurred by the nonindemnifying party as a result of the untruth or incorrectness of the foregoing warranty and representation, or failure to comply with the provisions of this subparagraph. The parties acknowledge that certain officers, directors, shareholders, or partners of Landlord or its general partner(s), are licensed real estate brokers and/or salesmen under the laws of the State of Texas. Tenant consents to such parties acting in such dual capacities.

Section 16.07 Notices. Any notice required or permitted to be given under this Lease or by law shall be deemed to have been given if it is written and delivered in person or by overnight courier or mailed by certified mail, postage prepaid, return receipt requested, to the party who is to receive such notice at the address specified in Article 1. If delivered in person, notice shall be deemed given as of the delivery date. If sent by overnight courier, notice shall be deemed given as of the first business day after sending. If mailed, the notice shall be deemed to have been given on the date which is three (3) business days after mailing. Either party may change its address by giving written notice thereof to the other party.

Section 16.08 Partial Invalidity; Complete Agreement. If any provision of this Lease shall be held to be invalid, void or unenforceable, the remaining provisions shall remain in full force and effect. This Lease represents the entire agreement between Landlord and Tenant covering everything agreed upon or understood in this transaction. There are no oral promises, conditions, representations, understandings, interpretations or terms of any kind as conditions or inducements to the execution hereof or in effect between the parties. No change or addition shall be made to this Lease except by a written agreement executed by Landlord and Tenant.

Section 16.09 Financial Statements. During the Lease Term and any extensions thereof and upon the written request of Landlord (but not more than once per calendar year), Tenant shall provide to Landlord, within thirty (30) days of receipt of such written request, a copy of Tenant's most recent financial statements (on a review basis if the Minimum Annual Rent hereunder exceeds \$100,000) prepared as of the end of Tenant's fiscal year. Such financial statements shall be signed by Tenant (or an officer of Tenant, if applicable) who shall attest to the truth and accuracy of the information set forth in such statements. All financial statements provided by Tenant to Landlord hereunder shall be prepared in conformity with generally accepted accounting principles, consistently applied.

Section 16.10 Signage. Tenant shall pay all costs associated with signage associated with this Lease and Tenant's occupancy of the Leased Premises. Landlord shall have the right to approve the placing of exterior signs and the size and quality of the same. Tenant shall place no exterior signs on the Leased Premises without the prior written consent of Landlord, which

consent shall not be unreasonably withheld, conditioned or delayed. Any signs not in conformity with the Lease may be immediately removed by Landlord. On or before the expiration or earlier termination of this Lease, Tenant shall be responsible for removing all of its signage and returning the Building and the surrounding premises to their original condition if damaged due to the installation or removal of such signage.

Section 16.11 Consent. Where the consent of a party is required, such consent will not be unreasonably withheld, conditioned or delayed.

Section 16.12 Parking. Tenant shall be entitled at no charge, cost or fee to park in common with other tenants of Landlord in the designated parking areas surrounding the Building. Tenant agrees not to overburden the parking facilities and agrees to cooperate with Landlord and other tenants in the use of parking facilities. Landlord reserves the right in its absolute discretion to determine whether parking facilities are becoming crowded and, in such event, to allocate parking spaces equitably among Tenant and other tenants. There will be no assigned parking unless Landlord, in its sole discretion, may deem advisable. No vehicle may be repaired or serviced in the parking area and any vehicle deemed abandoned by Landlord will be towed from the project and all costs therein shall be borne by the Tenant. All driveways, ingress and egress, and all parking spaces are for the joint use of all tenants. There shall be no parking permitted on any of the streets or roadways located within the Park. Tenant shall be guaranteed the right to access a minimum of twenty (20) dock doors and one (1) drive-in door on the Leased Premises, and in no event shall Landlord cause access to or use of these be blocked or otherwise interfered with during the Lease Term.

Section 16.13 Time. Time is of the essence of each term and provision of this Lease.

Section 16.14 Representations and Warranties. Each party hereby represents and warrants that (i) it is duly organized, validly existing and in good standing (if applicable) in accordance with the laws of the state under which it was organized; (ii) it is authorized to do business in the State where the Building is located; and (iii) the individual(s) executing and delivering this Lease on behalf of it has been properly authorized to do so, and such execution and delivery shall bind that party to its terms.

Section 16.15 Estoppel Certificates. Landlord and Tenant each agree to certify in writing the status of this Lease and the rent payable hereunder, at any time, upon fifteen (15) days written notice. Such certificate shall be in a form reasonably satisfactory to any governmental authority or public agency or to a prospective purchaser from, or assignee or sublessee of, or holder of a security instrument executed by Landlord or Tenant, as the case may be. In addition to any other matters required, such certificate shall certify the Commencement Date of the Lease Term and the anticipated termination date thereof; whether or not this Lease is in full force and effect; whether or not this Lease has been amended or modified, and if so, in what manner; the date through which rent payments have been made; whether or not there are any known defaults under this Lease, and if so, specifying the particulars of such default and the action required to remedy it; and whether or not there are any setoffs against or defenses to the enforcement of the terms and conditions of this Lease, and if so, specifying the particulars of such setoffs or defenses.

Section 16.16 Rules And Regulations. The rules and regulations attached to this Lease are hereby made a part of this Lease, and Tenant agrees to comply with and observe the same. Tenant's failure to keep and observe said rules and regulations shall constitute a breach of the terms of this Lease in the manner as if the same were contained herein as covenants. Landlord reserves the right from time to time to reasonably amend or supplement said rules and regulations, and to adopt and promulgate additional reasonable rules and regulations, to the extent not inconsistent with the rest of this Lease and uniformly applicable to all tenants and occupants at the Premises, the Building, and the Park. Notice of such additional rules and regulations, and amendments and supplements, if any, shall be given to Tenant, and Tenant agrees thereupon to comply with and observe all such rules and regulations, and amendments thereto.

Section 16.17 Determination of Charges. Landlord and Tenant agree that each provision of this Lease for determining charges and amounts payable by Tenant hereunder are commercially reasonable and, as to each such charge or amount, constitute a statement of the

amount of the charge or a method by which the charge is to be computed for purposes of Section 93.012 of the Texas Property Code.

Section 16.18 Telecommunications. Tenant shall have no right of access to and within the Building (other than the Leased Premises), for the installation and operation of telecommunications systems, including voice, video, data, Internet, and any other services provided over wire, fiber optic, microwave, wireless, and any other transmission systems (“**Telecommunications Services**”), for part or all of Tenant’s telecommunications installed within or at the Building without Landlord’s prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. All providers of Telecommunications Services shall be required to comply with the rules and regulations of the Building, applicable Laws and Landlord’s policies and practices for the Building. Tenant acknowledges that Landlord shall not be required to provide or arrange for any Telecommunications Services and that Landlord shall have no liability to Tenant in connection with the installation, operation or maintenance of Telecommunications Services or any equipment or facilities relating thereto. Tenant, at its cost and for its own account, shall be solely responsible for obtaining all Telecommunications Services.

LANDLORD AND TENANT EXPRESSLY DISCLAIM ANY IMPLIED WARRANTY THAT THE PREMISES ARE SUITABLE FOR TENANT’S INTENDED COMMERCIAL PURPOSE, AND, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, TENANT SHALL CONTINUE TO PAY THE RENT, WITHOUT ABATEMENT, DEMAND, SETOFF OR DEDUCTION, NOTWITHSTANDING ANY BREACH BY LANDLORD OF ITS DUTIES OR OBLIGATIONS HEREUNDER, WHETHER EXPRESS OR IMPLIED.

(SIGNATURES CONTAINED ON FOLLOWING PAGE)

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

**LANDLORD:**

**WR RAILHEAD ROAD, LLC,**  
a Georgia limited liability company

By: Weeks Robinson Industrial Fund I, LP,  
a Delaware limited partnership,  
its sole managing member

By: WR Industrial Fund I GP, LLC,  
a Delaware limited liability company  
its general partner

By:   
Forrest W. Robinson, Manager

**TENANT:**

**PLYMOUTH PACKAGING, INC.**

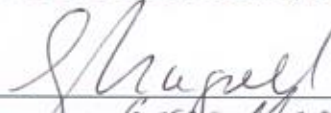
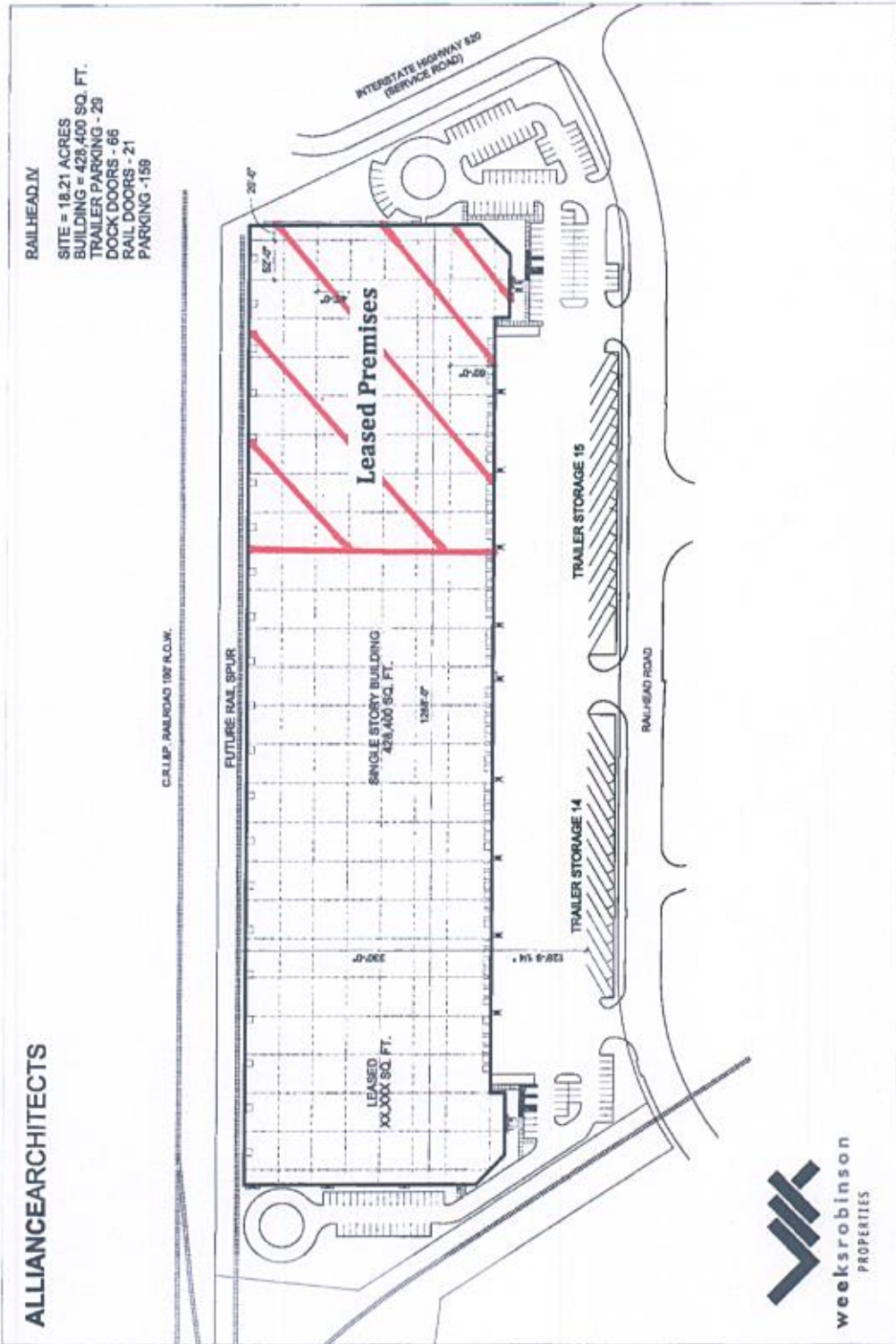
By:   
Name: Greg Magrell  
Title: President

EXHIBIT A

SITE PLAN OF LEASED PREMISES



**EXHIBIT B****TENANT IMPROVEMENTS**

1. Landlord's Obligations. Tenant has personally inspected the Leased Premises and, except for latent defects, accepts the same "AS IS" without representation or warranty by Landlord of any kind, except to the extent expressly set forth in this Lease, and with the understanding that as a condition to Landlord's initial delivery of, and Tenant's accepting possession of, the Leased Premises, Landlord shall have no responsibility with respect to the physical condition thereof except to construct and install within the Leased Premises, in a good and workmanlike manner, in compliance with all Governmental Requirements the Tenant Improvements, in accordance with this Exhibit B.

2. Construction Drawings. On or before the twentieth (20th) day following the later of the date Tenant approves the final space plan and the date hereof, Landlord shall prepare and submit to Tenant a set of construction drawings (the "CD's") covering all work to be performed by Landlord in constructing and installing the Tenant Improvements, which shall be based on the scope of work attached as Exhibit B-1 hereto. Tenant shall have five business days after receipt of the CD's in which to review the CD's and to give to Landlord written notice of Tenant's approval of the CD's or its requested changes to the CD's. Tenant shall have no right to request any changes to the CD's that would materially alter the exterior appearance or basic nature of the Building or the Building systems (exclusive of those portions of the Building systems exclusively serving the Leased Premises). If Tenant fails to approve or request changes to the CD's within five business days after its receipt thereof, Tenant shall be deemed to have approved the CD's and the same shall thereupon be final. If Tenant requests any changes to the CD's, Landlord shall make those changes which are reasonably requested by Tenant and shall within ten (10) days of its receipt of such request submit the revised portion of the CD's to Tenant. Tenant may not thereafter disapprove the revised portions of the CD's unless Landlord has unreasonably failed to incorporate reasonable comments of Tenant and, subject to the foregoing, the CD's, as modified by said revisions, shall be deemed to be final upon the submission of said revisions to Tenant. Once the CD's are finalized, Landlord shall undertake the Bid Process as set forth in paragraph 8 below. Landlord shall promptly provide Tenant with a detailed, line item breakdown of the resulting soft and hard costs for the Tenant Improvements and Tenant shall have five (5) days thereafter to approve the costs or request changes to the CD's based on the cost of specific items. If Tenant fails to approve or request changes to the CD's within five (5) days after its receipt thereof, Tenant shall be deemed to have approved the costs and the same shall thereupon be final. If Tenant requests any changes to the CD's because of the costs, Landlord shall make those changes which are reasonably requested by Tenant and shall within ten (10) days of its receipt of such request submit the revised portion of the CD's to Tenant. Tenant acknowledges and agrees that the cost statement may include design fees, permit fees and fees payable to the construction manager or general contractor, but shall not include a project management fee charged by Landlord. Landlord shall not receive any management, supervisory or other administrative fee for the installation of the Tenant Improvements nor shall Tenant be responsible for any of the foregoing for any third party engaged by Landlord in connection with the Tenant Improvements. Tenant shall at all times in its review of the CD's, and of any revisions thereto, act reasonably and in good faith. Without limiting the foregoing, Tenant agrees to confirm Tenant's consent to the CD's in writing within three (3) days following Landlord's written request therefor.

With respect to any of Tenant's initial work to the Leased Premises, Landlord shall have the right to review and approve all of Tenant's plans and specifications thereafter, and the contractor and subcontractors performing such work, such approval not to be unreasonably withheld. If Landlord fails to approve or request changes to the Tenant's plans and specifications, or to the contractor and subcontractors performing such work, within five business days after its receipt thereof, Landlord shall be deemed to have approved the same.

3. Schedule and Early Occupancy. Landlord shall provide Tenant with a proposed schedule for the construction and installation of the Tenant Improvements and shall notify Tenant of any material changes to said schedule. Tenant agrees to coordinate with Landlord regarding the installation of Tenant's phone and data wiring and any other trade related fixtures that will need to be installed in the Leased Premises prior to Substantial Completion. In addition, if and to the extent permitted by applicable laws, rules and ordinances, Tenant shall have the right to enter the Leased Premises prior to the anticipated Commencement Date (at such time as

have been vacated by the current tenant) to construct and install its Tenant Improvements which include without limit certain items so designated on attached Exhibit B-1. Tenant shall have the right to be reimbursed or paid from the Allowance, within 30 days after demand by Tenant, for the costs incurred by Tenant for those items designated on Exhibit B-1 as tenant improvements to be installed by Tenant, upon presentation to Landlord of a copy of the contract and related invoices for improvements. If Landlord fails to pay Tenant the amount of such costs incurred by Tenant within said 60 days, Tenant may thereafter deduct such costs from the monthly payments of Minimum Annual Rent next coming due. During any entry prior to the Commencement Date (a) Tenant shall comply with all terms and conditions of this Lease other than the obligation to pay rent, (b) Tenant shall not interfere with Landlord's completion of the Tenant Improvements, (c) Tenant shall cause its personnel and contractors to comply with the terms and conditions of Landlord's rules of conduct (which Landlord agrees to furnish to Tenant upon request), and (d) Tenant shall not begin operation of its business. Tenant acknowledges that Tenant shall be responsible for obtaining all applicable permits and inspections relating to any such entry by Tenant.

4. Change Orders. Tenant shall have the right to request changes to the CD's at any time following the date hereof by way of written change order (each, a "**Change Order**", and collectively, "**Change Orders**"). Provided such Change Order is reasonably acceptable to Landlord, Landlord shall prepare and submit promptly to Tenant a memorandum setting forth the impact on cost and schedule resulting from said Change Order (the "**Change Order Memorandum of Agreement**"). Tenant shall, within three (3) days following Tenant's receipt of the Change Order Memorandum of Agreement, either (a) execute and return the Change Order Memorandum of Agreement to Landlord, or (b) retract its request for the Change Order. At Landlord's option, Tenant shall pay to Landlord (or Landlord's designee), within ten (10) days following Landlord's request, any increase in the cost to construct the Tenant Improvements resulting from the Change Order, as set forth in the Change Order Memorandum of Agreement, to the extent the Change Order causes the resulting cost of the Tenant Improvements to be in excess of the Allowance (as hereafter defined). Landlord shall not be obligated to commence any work set forth in a Change Order until such time as Tenant has delivered to Landlord the Change Order Memorandum of Agreement executed by Tenant and, if applicable, Tenant has paid Landlord in full for said Change Order.

5. Tenant Delay. Notwithstanding anything to the contrary contained in the Lease, if Substantial Completion of the Tenant Improvements is delayed beyond the Target Commencement Date as a result of Tenant Delay (as hereinafter defined), then, for purposes of determining the Commencement Date, Substantial Completion of the Tenant Improvements shall be deemed to have occurred on the date that Substantial Completion of the Tenant Improvements would have occurred but for such Tenant Delay. Without limiting the foregoing, Landlord shall use commercially reasonable speed and diligence to Substantially Complete the Tenant Improvements on or before the Target Commencement Date. For clarification purposes, Landlord acknowledges the rent abatement and other provisions set forth in Section 2.01 of the Lease.

6. Letter of Understanding. Promptly following the Commencement Date, Tenant shall execute Landlord's Letter of Understanding in substantially the form attached hereto as **Exhibit C** and made a part hereof, acknowledging (a) the Commencement Date of this Lease, and (b) except for any punchlist items and latent defects, that Tenant has accepted the Leased Premises. If Tenant takes possession of and occupies the Leased Premises, Tenant shall be deemed to have accepted the Leased Premises and that the condition of the Leased Premises and the Building was at that time satisfactory and in conformity with the provisions of this Lease in all respects, subject to any punchlist items and latent defects.

7. Definitions. For purposes of this Lease (a) "**Substantial Completion**" (or any grammatical variation thereof) shall mean completion of construction of the Tenant Improvements, subject only to punchlist items (which punchlist items will be completed by Landlord within thirty (30) days after Tenant's occupancy without material interference to Tenant's access to or use of the Leased Premises) to be identified by Landlord and Tenant in a joint inspection of the Leased Premises prior to Tenant's occupancy, as established by a certificate of occupancy for the Leased Premises or other similar authorization issued by the appropriate governmental authority, if required, accompanied by delivery of possession of the Leased Premises free of all other tenants and occupants, and (b) "**Tenant Delay**" shall mean any delay in the completion of the Tenant Improvements to the extent attributable to Tenant,

including, without limitation (i) Tenant's failure to meet any time deadlines specified herein, (ii) Change Orders to the extent that Landlord advises Tenant in writing prior to Tenant agreeing to the Change Order that it may cause a Tenant Delay of a particular number of days and such delay in fact occurs, (iii) the performance of any other work in the Leased Premises by any person, firm or corporation employed by or on behalf of Tenant, or any failure to complete or delay in completion of such work, (iv) Landlord's inability to obtain an occupancy permit for the Leased Premises because of the need for completion of all or a portion of improvements being installed in the Leased Premises directly by Tenant, and (v) any other act or omission of Tenant.

8. Bid Process. Landlord shall be responsible for the hiring of a mutually agreed upon general contractor for completion of the Tenant Improvements, with the assistance of Tenant and its project management, design and engineering firms. Landlord agrees to competitively bid the project based on the approved CD's to a minimum of three (3) general contractors (none of whom are affiliates of Landlord or of any of its shareholders, members or partners and each of whom has been approved by Tenant, such approval not to be unreasonably withheld, conditioned or delayed) prior to entering into an agreement with a general contractor on a fixed price or guaranteed maximum price basis, and agrees to cooperate with Tenant and its construction advisers during the bidding process (including getting Tenant's consent, not to be unreasonably withheld, as to subcontractors being paid over \$50,000.00) as well as completion of the Tenant Improvements. Commercial Interiors, Iron Horse Construction and Fast Trak Construction are all deemed approved by Tenant as possible general contractors.

9. Tenant Improvement Allowance.

(a) Landlord shall provide Tenant with an allowance in an amount of \$2.50 per rentable square foot of the Leased Premises (or a total of \$363,900.00 based on 145,560 rentable square feet) (the "**Allowance**") for all soft and hard construction costs (including without limitation architectural expenses, CDs, construction management fees and permits) associated with the completion of the Tenant Improvements and Landlord's and Tenant's work under this Exhibit. Tenant shall be responsible for any and all costs associated with the Tenant Improvements in excess of the Allowance, except Landlord will pay for the cost of the demising wall outside of the Allowance. Any portion of the Allowance not required for completion of the Tenant Improvements in accordance with the final plans and specifications referred to below shall be the property of Landlord.

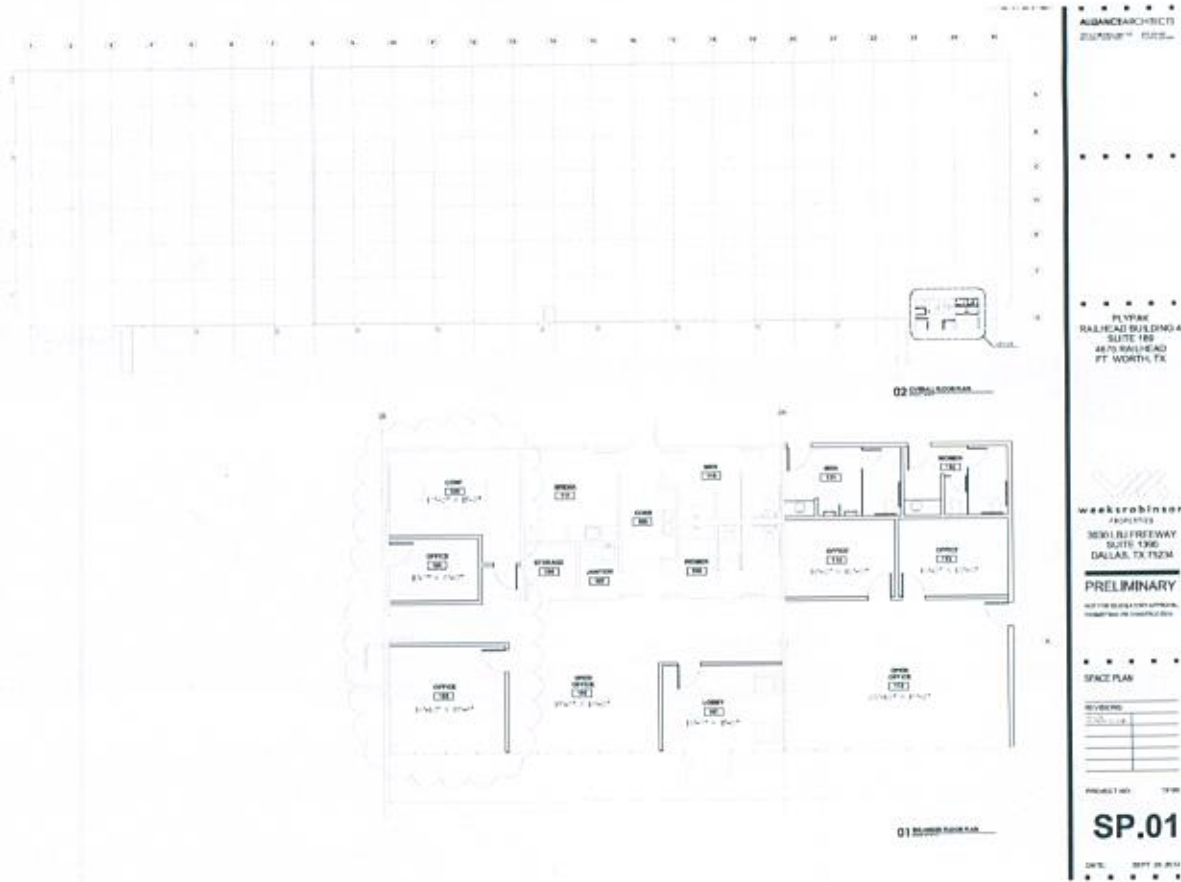
(b) Landlord and Tenant agree that the Tenant Improvements shall be performed in accordance with the terms and conditions contained in this Lease, specifically this **Exhibit B** and the final plans and specifications attached hereto as **Exhibit B-1**.

**EXHIBIT B-1****SCOPE OF WORK****Work to be performed by Landlord:**

1. Office:
  - a. Expansion and modification of existing office space - per architect's drawings approved October 8, 2013 (**PPsp01\_REV01.pdf attached**)
  - b. Carpeting - New
  - c. Paint exterior of offices
2. Dock Level Equipment:
  - a. leveling equipment for 14 docks – equipment specification **attached (Q-65264-01-4675 Railhead Dock Renovation Project.pdf)**
3. Gas termination to Leased Premises:
  - a. 21,000 CU Ft per hour
  - b. 3" outlet connector from meter
  - c. 10psi minimum pressure
4. Electric service upgrade: Leased Premises access to electrical service 2500A, 480 3 phase, includes any excavation work that is required to install conduit from Leased Premises to transformer
5. Lighting: Additional lighting along manufacturing areas and warehouse per a lighting plan to be approved by Tenant
6. West-wall rail doors safety: Folding style safety gate for 7 west rail doors
7. Powered Ventilation Fans: –
  - a. 4' x 4' (L x W)
  - b. 2500 CFM 230 VAC Single Phase Belt Drive (standard 1750 RPM)
  - c. Install at two existing louver locations on West Wall (**see attached document [ventilation fan location.pdf]**)
8. Demising wall guard rail: minimum height to be specified as well as distance from wall
9. Ramp door expansion: Increase width of ramp door to \_\_\_\_ feet [as determined by Tenant] (ramp not modified) – Tenant will notify landlord with ten days of Lease signing if this work will be required
10. Floor drain at western location (to be specified by Tenant per CAD drawing): Sub-floor pipe to sewer (pipe size and drain location to be provided by Tenant)

**Work to be performed by Tenant:**

11. Electrical: main electrical disconnect and switch gear distribution center panels (**see attached document from RESA Power Solutions Plant City, LLC dated 10-11-13**). Landlord approves this work and RESA Power Solutions Plant City, LLC as the contractor.
12. Such other tenant improvement work as Tenant may desire to perform prior to the Commencement Date





*RESA Power Solutions Plant City, LLC*  
 2500A Switchboard Budget Proposal

October 11, 2013

Mr. Bill Fayling  
 Plant Manager  
 Plymouth Packaging  
 Battle Creek, MI

Dear Mr. Fayling:

We are pleased to present the following budget proposal for your approval. Please review and advise if you have any questions.

Scope of Supply

Provide reconditioned three-section switchboard, 2500A, 480Y/277, 3P4W, 42KAIC, Indoor Rated as follows:

- Section One Incoming Line Pull Section
- Section Two Main Breaker Section  
 2500A 3-Pole Fixed Mount Breaker  
 Solid State Trip Unit w/ LSIG functions  
 Three Power Monitor w/ 3 - Current Transformers
- Section Three Feeder Section  
 Qty 6 - 800A Breaker - 80% Rated

Budget Lot Price: \$ 44,785.00 plus freight and applicable sales tax

Estimated Lead Time: Ready to Ship 20 - 25 working days A.R.O.

Condition: Reconditioned and Tested, Written Test Reports provided

Warranty: 12 months from date of delivery

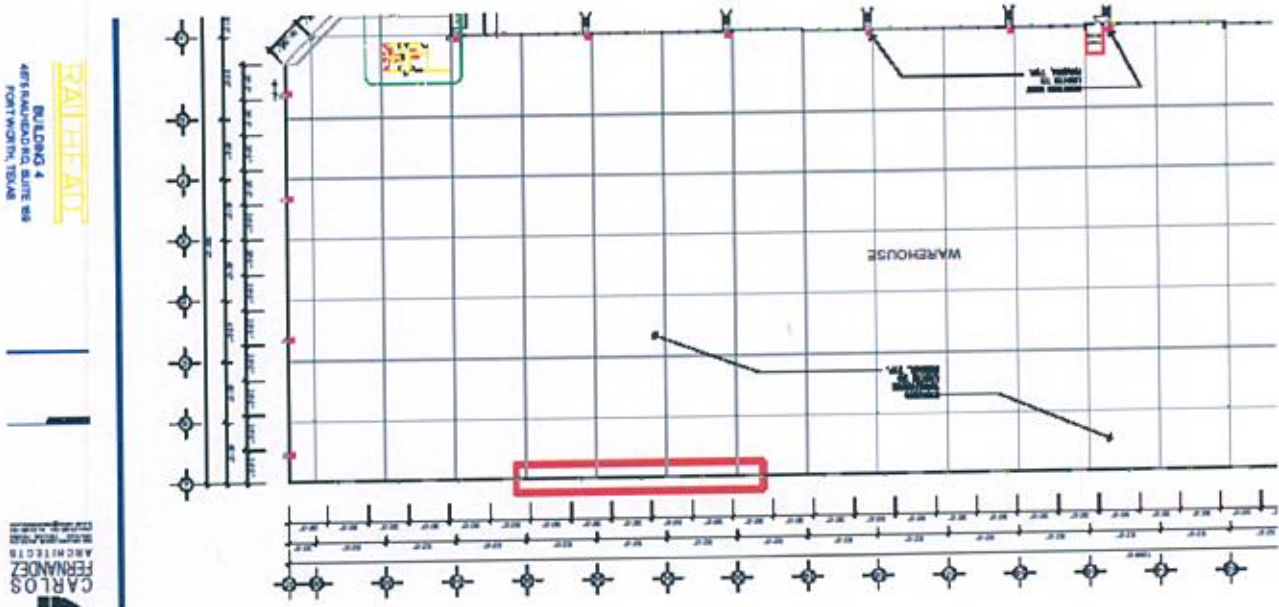
Freight: FOB, Shipping Point, Customer-arranged

We look forward to working with you on this project.

Respectfully submitted,

Kendall Brock  
 Sales Engineer

1401 MERCANTILE COURT PLANT CITY, FLORIDA 33567-1152 (800)-688-2382





**Southern Dock Products**  
Distributors of Loading Dock  
& Materials Handling Equipment

**QUOTATION**  
**Q-65264.01**

**To:** Plymouth Packaging  
4675 Railhead Bldg #4  
Fort Worth, TX 76137

**Attn:** Bill Fayling

**Phone:**

**Fax:**

**Email:** bfayling@plypack.com

**Issued:** Tuesday, October 08, 2013

**Expiration:** Thursday, November 07, 2013

**Sales Contact:** David Little  
**Direct:** 817-686-7300 **Cell:** 817-528-0600  
**Email:** dlittle@southerndock.com

**Reference:** 4675 Railhead Dock Renovation Project

Qty	Description	Price	Total
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**Mechanical Standard Docks**

- 12 Serco Mechanical Dock Leveler
  - 6' wide x 8' long Deck
  - 40,000 Lbs Capacity
  - Standard 16" lip
  - Single adjustment point extension spring counterbalance
  - Patented Posi-Trac Unlimited Float Hold-down
  - Patented HYDRA-CAM Plus Automatic Lip Extension
  - High Tensile Steel Lip, dock & beams
  - Working range Safety Toe Guards
  - Exclusive SafeTFrame® Design - Shimless Installation, Stronger, More Durable
  - Structural Steel Safety Legs
  - Below-dock endloading capability
  - Grease fittings
  - Integral maintenance strut & lip support latch
  - Heavy duty B410-14F dock bumpers
  - Reduced lip crown / extended lip chamfer standard
- 12 Mechanical Install
  - WEEKDAY WORK ONLY 7am - 5 pm
- 12 Demo, Form & Pour Back Concrete Dock Pits
  - 73" wide x 87" long x 20" deep




**Total: \$50,220.00**



Qty	Description	Price	Total
<b>Hydraulic Heavier Capacity Docks</b>			
2	<b>Serco Heavy Duty Hydraulic Dock Leveler</b> aulic Dock Leveler <ul style="list-style-type: none"><li>• 6' wide x 8' long Dock</li><li>• 80,000 Lbs Capacity</li><li>• Patented HYDRA MAX® Powered-in/Powered-out Lip Extension</li><li>• Regenerative Hydraulics</li><li>• Yieldable Hydraulic Lip</li><li>• Hydraulic Velocity Fuse Safety Stop</li><li>• CLEAN FRAME® Design</li><li>• Below-dock End Loading Capability</li><li>• Dual Integral Maintenance Struts &amp; Lip Support Latch</li></ul>		
2	<b>Mechanical Install</b> <ul style="list-style-type: none"><li>• WEEKDAY WORK ONLY 7am - 5 pm</li></ul>		
2	<b>Demo, Form &amp; Pour Back Concrete Dock Pits</b> <ul style="list-style-type: none"><li>• 73" wide x 87" long x 24" deep (Includes hydraulic hose embeds)</li></ul>		
		Total:	\$20,290.00
1	<b>Freight</b>	\$1,364.00	\$1,364.00
1	<b>Forklift: Unloading &amp; Installation</b> Receive, Unload & Inventory Equipment (Included) Planned Maintenance (PM) 12 Months PM Service (Included)	\$750.00	\$750.00
		Total:	\$2,114.00
		Project Total:	\$81,624.00
		Tax:	\$3,324.86
		Total Including Taxes:	\$84,948.86

**OPTIONS (Per Dock)**

1	<b>Increase Mechanical Dock Lip Length: 16 inches to 18 inches</b>	\$96.00	\$96.00
1	<b>ADD Brush Weather Seal</b>	\$89.00	\$89.00
1	<b>Steel Faced Vertical Bumper (pair)</b> <ul style="list-style-type: none"><li>• Eliminates wear from up and down friction movement of trailers loading and unloading.</li><li>• Cost effective due to longer wear expectancy and fewer replacement costs.</li><li>• Impervious to weather damage.</li><li>• Maintenance free.</li><li>• Ideal for use in docking areas where excessive friction from up and down trailer movement occurs.</li><li>• Can be used in any material handling system area where heavy duty protection is needed.</li></ul>	\$228.00	\$228.00





QUOTATION  
Q-65264.01

Qty	Description	Price	Total
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Scope of Work

- 1) UNLOADING & STORAGE: All unloading and storage of equipment purchased is the responsibility of the purchaser unless otherwise specified
- 2) INSTALLATION: All prices for installation are based on the following:  
a) Unless specifically stated otherwise, all installation will be performed by factory-trained non-union personnel. If union labor is required, additional charges will apply.  
b) All wire, wiring, conduit, electrical hookup, control wiring, mounting of control panels and outside lights (if applicable) by others.  
c) Prices are based on installation of equipment during normal business hours and a normal business week. If specified work is to be done on weekend, additional charges will apply.  
d) Pricing is also based on all equipment being installed on same trip with driveway to be poured prior to start of installation. Additional charges will be added if additional trips are involved due to site conditions.  
e) If installation involves removal of existing equipment, pricing does not provide for handling and disposing of existing equipment unless otherwise specified.  
f) Preparation of site, removal of obstructions to accept equipment, cutting, patching, and painting is by others.
- 3) DOCK LEVELERS: Specific to dock levelers and their proper installation:  
a) Installation of levelers excludes excavating, forming of pits, and pit steel. Pit forming can be provided and quoted as an option.  
b) Installation pricing includes necessary materials, off loading into pre-formed pit, positioning, shimming, and welding in place for pit leveler only.  
c) Box Leveler - Shimming and securing a box leveler in place is the responsibility of others. Installation refers to final adjustment only for this type of leveler.  
d) If pit formation has been included, Just Rite Equipment, Southern Dock Products, and affiliates are not responsible for any sub-surface complications during pit excavation. Should unforeseen obstructions (conduit, water lines, wall thickness greater than 10", slab thickness greater than 6", etc.) be encountered, customer will be notified.  
e) Unless otherwise noted, pit formation does not include a dust control enclosure around the dock during concrete cutting.
- 4) OVERHEAD DOORS: Specific to overhead doors and their proper installation:  
a) Installation of overhead doors is based on an enclosed facility with a finished floor.  
b) All interior mounting surfaces to flush and plumb.  
c) Door frames, extensions and anchor plates for track, springs and / or electric operators are to be supplied and installed by others.  
d) For operators, all electrical wiring, interconnections, and supply of primary power by others.
- 5) ELECTRICAL: Electrical install for power and controls by others. All wire, wiring, conduit, electrical hookup, control wiring, mounting of control panels and outside lights (if applicable) by others.

For Standard Terms & Conditions of Sale please visit:  
<http://www.southerndockproducts.com/terms.html>

Accepted By: \_\_\_\_\_ Date: \_\_\_\_\_  
Bill Fayling - Plymouth Packaging

PO #: \_\_\_\_\_



EXHIBIT C  
LETTER OF UNDERSTANDING

3350 Riverwood Parkway, Suite 700  
Atlanta, Georgia 30339

RE: Lease between WR Railhead Road, LLC ("Landlord"), and  
\_\_\_\_ ("Tenant") for the Leased Premises located at  
\_\_\_\_, Suite \_\_\_\_\_, Dallas, Texas (the "Leased  
Premises"), dated \_\_\_\_\_ (the "Lease").

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

The undersigned, on behalf of the Tenant, certifies to the Landlord as follows:

- 1. The Commencement Date under the Lease is \_\_\_\_\_, 2013.
- 2. The rent commencement date is \_\_\_\_\_, 201\_\_.
- 3. The expiration date of the Lease is \_\_\_\_\_, 20\_\_.
- 4. The Lease (including amendments or guaranty, if any) is the entire agreement between Landlord and Tenant as to the leasing of the Leased Premises and is in full force and effect.
- 5. The Landlord has completed the improvements designated as Landlord's obligation under the Lease, if any, and Tenant has accepted the Leased Premises as of the Commencement Date [subject to punchlist items and latent defects].
- 6. To the best of the undersigned's knowledge, there are no uncured events of default by either Tenant or Landlord under the Lease.

IN WITNESS WHEREOF, the undersigned has caused this Letter of Understanding to be executed this \_\_\_\_ day of \_\_\_\_\_, 2013.

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

**EXHIBIT D****SPECIAL STIPULATIONS**

The Special Stipulations set forth herein are hereby incorporated into the body of the lease to which these Special Stipulations are attached (the "Lease"), and to the extent of any conflict between these Special Stipulations and the Lease, these Special Stipulations shall govern and control.

1. Option to Extend.

(a) Grant and Exercise of Option. Provided that (i) the liquidity and net worth of Tenant as of the date it exercises its option to extend the Term is in each case at least 90% of its liquidity and net worth as of the date of the Lease, (ii) there is no existing Default, and (iii) Tenant originally named herein or a Permitted Transferee remains in possession of and is then operating in at least eighty (80%) of the Leased Premises, except if non-operation is due to casualty, condemnation or force majeure events, Tenant shall have up to two (2) options to extend the Original Term for additional periods of five (5) years each (the "**Extension Term**"). Each Extension Term shall be upon the same terms and conditions contained in the Lease for the Original Term except (i) Tenant shall not have any further option to extend (except for any remaining and unexercised Extension Term) and (ii) the Minimum Annual Rent shall be adjusted as set forth herein ("**Rent Adjustment**"). Tenant shall exercise such option by delivering to Landlord, no later than six (6) months prior to the expiration of the Original Term or the first Extension Term, as the case may be, written notice of Tenant's desire to extend the Original Term or the first Extension Term, as the case may be. Tenant's failure to properly exercise such option shall waive it. If Tenant properly exercises its option to extend, Landlord shall notify Tenant of the Rent Adjustment no later than the earlier of (i) 120 days prior to the commencement of the Extension Term or (ii) thirty (30) days after Tenant properly exercises its option to extend. Tenant shall be deemed to have rejected the Rent Adjustment if it fails to deliver to Landlord a written acceptance thereof within ten (10) business days after receipt of it. If Tenant properly exercises its option to extend, Landlord and Tenant shall execute an amendment to the Lease reflecting the terms and conditions of the Extension Term, within thirty (30) days after Tenant's acceptance of the Rent Adjustment, although the failure to execute such amendment shall not invalidate or impair the effectiveness of the exercise of Tenant's option to extend. For purposes of this paragraph, "liquidity" shall be measured by the ratio of Tenant's current assets (cash, non-related party accounts receivable and other current assets under generally accepted accounting principles, consistently applied ("GAAP")) to its current liabilities (current liabilities under GAAP, excluding related party payables and current portion of long term debt and capitalized leases).

(b) Rent Adjustment. The Minimum Annual Rent during each Extension Term shall be adjusted to equal the Fair Market Rent during the Extension Term. The "**Fair Market Rent**" shall be equal to the annual minimum or base rent, taking into account all relevant factors, at which, as of the commencement of such Extension Term, tenants are leasing non-sublease space comparable in size, location, type of use, and quality to the Leased Premises in the Building and in other Comparable Buildings (as defined below) for a term of five (5) years, in an arm's-length transaction consummated within the six (6) month period prior to Tenant's exercise of its extension option (the "**Comparable Transactions**") including, without limitation, the following concessions or lack thereof (the "**Concessions**"): (a) rental abatement concessions, if any, being granted such tenants in connection with such comparable space; (b) tenant improvements or allowances provided or to be provided for such comparable space, taking into account, and deducting the value of, the existing improvements in the Leased Premises, such value to be based upon the age, condition, design, quality of finishes and layout of the existing improvements and the extent to which the same can be utilized by the tenant; (c) utilities and services included in the minimum or base rent being paid thereunder; (d) brokerage commissions landlord is obligated to pay tenant's broker; (e) free (or abated) rent granted to tenant; (f) parking rights; (g) signage rights; (h) amount of taxes, insurance and maintenance, administrative and other operating expenses being passed through to the tenant, including whether or not there is base year and whether or not there are caps on these costs that are passed through; and (i) other reasonable monetary concessions (including without limit moving costs or buyouts/buydowns of rent at other leased locations) being granted such tenants in connection with such comparable space. For purposes of this Lease, the term "**Comparable Buildings**" shall mean other industrial buildings located in the North Fort Worth, Texas market, which buildings have a similar quality

of tenant mix, quality of construction, and exterior appearance, and are of similar size, and offer similar services and amenities, as the Building.

(c) Arbitration. If Landlord and Tenant shall fail to agree in writing upon a final and binding Rent Adjustment (e.g. Fair Market Rent) within twenty (20) days after Landlord shall have given Tenant written notice of the same ("**Rent Negotiation Period**"), then Landlord and Tenant shall mutually designate an arbitrator whose determination of Fair Market Rent shall be final and binding upon Landlord and Tenant. If Landlord and Tenant shall fail to agree in writing upon the choice of such arbitrator within fifteen (15) days after the end of the Rent Negotiation Period, then either party may apply to the American Arbitration Association or any successor thereto having jurisdiction to designate an arbitrator. The arbitrator shall be a real estate broker or consultant who is MAI certified by the Appraisal Institute and who shall have at least ten (10) years' continuous experience in the business of managing real estate or acting as a real estate agent or broker for industrial real estate in the Fort Worth, Texas metropolitan area. Within three (3) days of the selection of the arbitrator, Landlord and Tenant shall each submit to the arbitrator its respective proposal of the Fair Market Rent. The arbitrator shall conduct such hearings and investigations and he or she may deem appropriate and shall, within 30 days after his or her designation, determine which of the two (2) proposals shall be the Fair Market Rent, and that choice by the arbitrator shall be final and binding upon Landlord and Tenant, provided that the arbitrator shall not have the power to add, modify or change any of the provisions of this Lease. Each party shall pay its own counsel fees and expenses, if any, in connection with any arbitration under this Paragraph, and the parties shall share equally all other expenses and fees of such arbitration.

(d) Late Determination. If for any reason the Fair Market Rent shall not have been determined prior to the commencement of an Extension Term, then, until the Fair Market Rent and, accordingly, the Minimum Annual Rent for the Extension Term, shall have been finally determined, the Minimum Annual Rent of the Extension Term payable for and during the Extension Term shall be equal to the Fair Market Rent initially proposed by Landlord. If, upon final determination of the Fair Market Rent by the arbitrator, it shall have been determined that the Minimum Annual Rent for the Extension Term is different than that initially proposed by Landlord, then the Minimum Annual Rent for such Extension Term shall be as determined by the arbitrator and an appropriate adjustment made between Landlord and Tenant to reflect any overpayment (which shall be credited against the next installment(s) of Minimum Annual Rent coming due) or underpayment (which shall be paid by Tenant along with the next payment of Minimum Annual Rent coming due).

2. Right of First Refusal. Provided that (i) the liquidity and net worth of Tenant as of the date it exercises its right of first refusal hereunder is in each case at least 90% of its liquidity and net worth as of the date of the Lease, (ii) no Default has occurred and is then continuing, and (iii) the Tenant originally named herein or a Permitted Transferee remains in possession of and is then operating in at least eighty percent (80%) of the Leased Premises, except if non-operation is due to casualty, condemnation or force majeure events, Landlord shall, before entering into a lease with a third party for the remaining contiguous vacant space in the Building (the "Offer Space"), notify Tenant in writing of the availability of such space for leasing and the terms and conditions upon which it will be leased ("Landlord's Notice"). In the event that Landlord has a third party prospect for space in the Building that included the Offer Space, if Tenant desires to exercise Tenant's rights under this Section, Tenant must agree to lease all the space then proposed to be leased by such third party prospect. Tenant shall have five (5) business days from its receipt of Landlord's Notice to deliver to Landlord a written notice agreeing to lease the applicable Offer Space on the terms and conditions contained in Landlord's Notice. In the event Tenant fails to notify Landlord of its agreement to lease the applicable space within said five business day period, such failure shall be conclusively deemed a rejection of the applicable Offer Space, whereupon this Section shall be void and of no further force or effect with respect to such Offer Space and Landlord may lease it upon the terms and conditions set forth in Landlord's Notice. The base rental for an Offer Space shall be equal to the rate which is then being quoted by Landlord to prospective new tenants for such Offer Space as provided in the Landlord's Notice, and the additional rent and/or pass through of taxes, insurance and/or operating expenses, and the other terms and conditions, as to the Offer Space shall be as set forth in Landlord's Notice. The term for the applicable Offer Space shall be coterminous with the Lease Term, provided, however, that the minimum term for the applicable Offer Space shall be three (3) years and the Lease Term shall be extended, if necessary, to be coterminous with the term for the applicable Offer Space. For purposes of this paragraph,

“liquidity” shall be measured by the ratio of Tenant’s current assets (cash, non-related party accounts receivable and other current assets under generally accepted accounting principles, consistently applied (“GAAP”)) to its current liabilities (current liabilities under GAAP, excluding related party payables and current portion of long term debt and capitalized leases).

Tenant’s rights under this Section are referred to herein as the “Right of First Refusal”. If Tenant notifies Landlord in writing of the acceptance of such offer as provided above, Landlord and Tenant shall enter into a written agreement modifying and supplementing this Lease and specifying that such Offer Space accepted by Tenant is a part of the Leased Premises demised pursuant to this Lease (including without limit for purposes of Tenant’s option to extend the Lease Term), and containing other appropriate terms and conditions relating to the addition of the Offer Space to this Lease (including specifically any increase or adjustment of the rent as a result of such addition). Any termination of this Lease shall terminate all rights of Tenant with respect to the Offer Space. The rights of Tenant with respect to the Offer Space shall not be severable from this Lease, nor may such rights be assigned or otherwise conveyed except in connection with an assignment of this Lease to a Permitted Transferee. Nothing herein contained should be construed so as to limit or abridge Landlord’s ability to deal with the Offer Space or to lease the Offer Space to other tenants, Landlord’s sole obligation being to offer, and if such offer is accepted, to deliver the Offer Space to Tenant in accordance with this Section.

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**EXHIBIT "E"****ADDITIONAL SURRENDER CONDITIONS**

Prior to vacating the Leased Premises, it must be left in the same condition as the Leased Premises were in on the Commencement Date (together with any repairs or replacements made by Landlord in the Leased Premises thereafter), exclusive of Tenant's furniture, fixtures, and equipment, with all systems in good working order, subject to casualty, condemnation, permitted alterations, normal wear and tear, and Landlord's obligations or responsibility under Section 7.02 of the Lease or due to the negligence or willful acts of Landlord or its employees, agents or contractors. The items that will be inspected by Landlord are listed below, but are not limited to the following (in each subject to the above qualifications):

1. Service and repair all heating and air conditioning equipment, exhaust fans and hot water heater. Provide Landlord's office with a copy of the inspection and service report provided by the mechanical contractor.
2. All lights in the office and warehouse must be working. Relamp and/or reballast the fixtures as necessary.
3. Overhead doors must be serviced and repaired.
4. All exterior metal doors, including hardware should be serviced or replaced as necessary.
5. Repair all damaged sheetrock in the office area and in the warehouse along the demising walls.
6. Office and warehouse floors should be left in good, clean condition.
7. Fire sprinkler system (if available) must have a current year inspection.
8. Any exterior signage must be removed; repair and repaint the fascia as necessary.
9. The slab shall be returned to its original condition, including without limitation properly filling all trench drains, and removing equipment pads above the surface.

If the Tenant elects not to do any of the above, please note that the Landlord will have the necessary repairs made and charge Tenant therefor.

**EXHIBIT "F"****BUILDING RULES AND REGULATIONS**

1. No person shall at any time occupy any part of the Building or the Leased Premises as sleeping or lodging quarters.
2. Landlord will not be responsible (except if due to Landlord or its employees, agents or contractors) for lost or stolen personal property, equipment, money or jewelry from the Leased Premises or public rooms regardless of whether such loss occurs when any such area is locked against entry or not.
3. Landlord will not permit entrance to the Leased Premises by use of pass key controlled by Landlord, to any person at any time without written permission by Tenant, except employees, contractors, or service personnel directly supervised by Landlord.
4. None of the entries, passages, doors, or hallways shall be blocked or obstructed, or any rubbish, litter, trash, or material of any nature placed, emptied or thrown into these areas, including any alleyways to the rear of the Leased Premises, or such areas be used at any time except for ingress or egress by Tenant, Tenant's agents, employees or invitees.
5. The bathrooms and other water fixtures shall not be used for any purpose other than those for which they were constructed. No person shall waste water by interfering with the faucets or otherwise.
6. Except as required for Tenant to comply with applicable disability or accessibility laws, no animals shall be brought into the Building or the Leased Premises.
7. In the event Landlord should advance upon the request, or for the account of the Tenant, any amount for labor, material, packing, shipping, postage, freight or express for articles delivered to the Leased Premises or for the safety, care and cleanliness of the Leased Premises, the amount so paid shall be regarded as additional rent and shall be due and payable forthwith to Landlord from Tenant.
8. Tenant shall not do or permit to be done within the Leased Premises anything which would unreasonably annoy or interfere with the rights of other tenants in the Building; it being acknowledged that Tenant's operation of the Leased Premises for the Permitted Use in compliance with Governmental Requirements will not be a violation of this paragraph.